

CHINO BASIN WATERMASTER



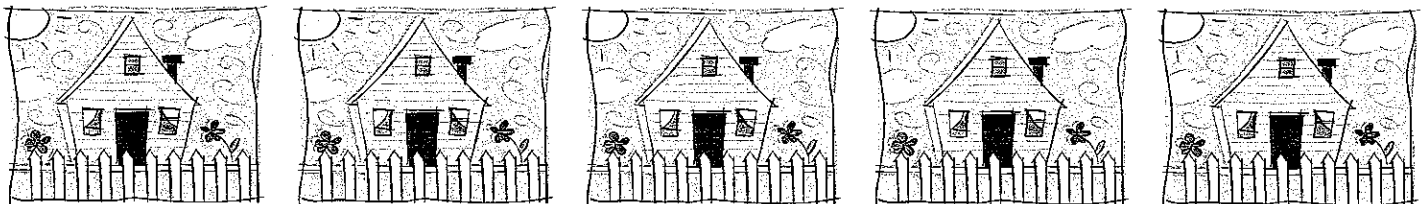
NOTICE OF MEETINGS

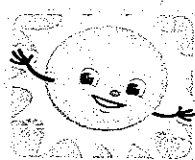
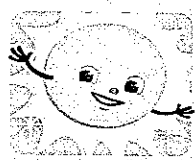
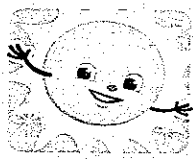
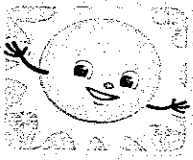
Thursday, June 22, 2006

9:00 a.m. – Advisory Committee Meeting
11:00 a.m. – Watermaster Board Meeting

(Lunch will be served)

AT THE CHINO BASIN WATERMASTER OFFICES
9641 San Bernardino Road
Rancho Cucamonga, CA 91730
(909) 484-3888





CHINO BASIN WATERMASTER

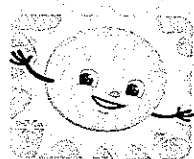
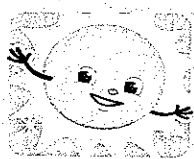
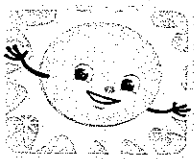
JUNE 22, 2006

9:00 a.m. - Advisory Committee Meeting

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(Lunch will be served)

AGENDA PACKAGE



**CHINO BASIN WATERMASTER
ADVISORY COMMITTEE MEETING**

9:00 a.m. – June 22, 2006

At The Offices Of

Chino Basin Watermaster

9641 San Bernardino Road

Rancho Cucamonga, CA 91730

AGENDA

CALL TO ORDER

AGENDA - ADDITIONS/REORDER

I. CONSENT CALENDAR

Note: All matters listed under the Consent Calendar are considered to be routine and non-controversial and will be acted upon by one motion in the form listed below. There will be no separate discussion on these items prior to voting unless any members, staff, or the public requests specific items be discussed and/or removed from the Consent Calendar for separate action.

A. MINUTES

1. Minutes of the Advisory Committee Meeting held May 25, 2006 *(Page 1)*

B. FINANCIAL REPORTS

1. Cash Disbursements for the month of May 2006 *(Page 15)*
2. Combining Schedule of Revenue, Expenses and Changes in Working Capital for the Period July 1, 2005 through April 30, 2006 *(Page 19)*
3. Treasurer's Report of Financial Affairs for the Period April 1, 2006 through April 30, 2006 *(Page 21)*
4. Profit & Loss Budget vs. Actual July through April 2006 *(Page 23)*

C. WATER TRANSACTION

1. **Consider Approval for Transaction of Notice of Sale or Transfer** – Fontana Water Company has agreed to purchase from The Nicholson Trust water in storage in the amount of 0.623 acre-feet and annual production rights in the amount of 8.000 acre-feet. Date of application: April 14, 2006 *(Page 25)*
2. **Consider Approval for Transaction of Notice of Sale or Transfer** – Fontana Water Company has agreed to purchase from West Valley Water District water in storage in the amount of 2,000 acre-feet. Date of application: April 7, 2006 *(Page 39)*

D. NOTICE: MAYER, HOFFMAN & McCANN TO PERFORM AUDIT FOR 2005-2006 FISCAL YEAR ENDING JUNE 30, 2006

E. CHINO BASIN WATERMASTER 28TH ANNUAL REPORT

II. BUSINESS ITEMS

A. PEACE II TERM SHEET

Consider Approval for the Chino Basin Watermaster Peace II Term Sheet *(Page 53)*

- B. JOINT CHINO BASIN WATERMASTER/IEUA CHINO BASIN DATA EXCHANGE (DATA X) SYSTEM DEVELOPMENT AGREEMENT AMENDMENT**
 Consider Approval of the Joint Chino Basin Watermaster/Inland Empire Utilities Agency Chino Basin Data Exchange (DataX) System Development Agreement Amendment (*Page 83*)

III. REPORTS/UPDATES

A. WATERMASTER GENERAL LEGAL COUNSEL REPORT

- 1. OCWD PEIR Comments (*Page 87*)
- 2. RWQCB Waste Discharge Permit Update
- 3. North Gualala Decision (*Page 93*)

B. CEO/STAFF REPORT

- 1. Storm Water/Recharge Report
- 2. Legislative/Bond Update
- 3. MZ1 Committee Update
- 4. Desalter I Production Update

C. INLAND EMPIRE UTILITIES AGENCY

- 1. Recycled Water Update – Oral Report
- 2. CCWRF Salinity Report – Oral Report
- 3. Monthly Water Conservation Programs Report (*Page 131*)
- 4. Groundwater Operations Recharge Summary (*Page 135*)
- 5. Monthly Imported Water Deliveries Report (*Page 137*)
- 6. State/Federal Legislation Reports (*Page 143*)
- 7. Public Relations Report (*Page 175*)

D. OTHER METROPOLITAN MEMBER AGENCY REPORTS

IV. INFORMATION

- 1. Newspaper Articles (*Page 177*)
- 2. Cost of Living Adjustment

V. COMMITTEE MEMBER COMMENTS

VI. OTHER BUSINESS

VII. FUTURE MEETINGS

June 22, 2006	9:00 a.m.	Advisory Committee Meeting
June 22, 2006	11:00 a.m.	Watermaster Board Meeting
July 13, 2006	10:00 a.m.	Joint Appropriative & Non-Agricultural Pool Meeting
July 18, 2006	9:00 a.m.	Agricultural Pool Meeting @ IEUA
July 26, 2006	T. B. D.	Workshop for Peace II
July 27, 2006	9:00 a.m.	Advisory Committee Meeting
July 27, 2006	11:00 a.m.	Watermaster Board Meeting

Meeting Adjourn

**CHINO BASIN WATERMASTER
BOARD MEETING**

11:00 a.m. – June 22, 2006

At The Offices Of

Chino Basin Watermaster

9641 San Bernardino Road

Rancho Cucamonga, CA 91730

AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE

AGENDA - ADDITIONS/REORDER

I. CONSENT CALENDAR

Note: All matters listed under the Consent Calendar are considered to be routine and non-controversial and will be acted upon by one motion in the form listed below. There will be no separate discussion on these items prior to voting unless any members, staff, or the public requests specific items be discussed and/or removed from the Consent Calendar for separate action.

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D. NOTICE: MAYER, HOFFMAN & McCANN TO PERFORM AUDIT FOR 2005-2006 FISCAL YEAR ENDING JUNE 30, 2006

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B. JOINT CHINO BASIN WATERMASTER/IEUA CHINO BASIN DATA EXCHANGE (DATA X) SYSTEM DEVELOPMENT AGREEMENT AMENDMENT

Consider Approval of the Joint Chino Basin Watermaster/Inland Empire Utilities Agency Chino Basin Data Exchange (DataX) System Development Agreement Amendment *(Page 83)*

C. COST OF LIVING ADJUSTMENT (COLA)

Authorize 4.7% COLA to be Applied to the Salary Schedule as Approved in the FY 2006-07 Budget, Beginning July 1, 2006

D. HEALTH BENEFITS

Consider Approval from the Recommendation of the Personnel Committee on the Revised Health Benefits Package

III. REPORTS/UPDATES

A. WATERMASTER GENERAL LEGAL COUNSEL REPORT

1. OCWD PEIR Comments *(Page 87)*
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B. CEO/STAFF REPORT

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IV. INFORMATION

1. Newspaper Articles *(Page 177)*

V. BOARD MEMBER COMMENTS

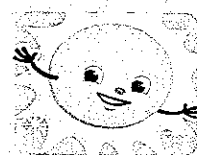
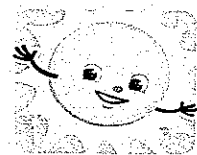
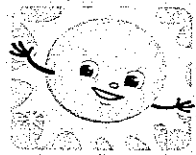
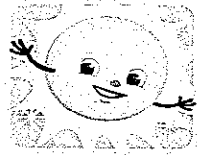
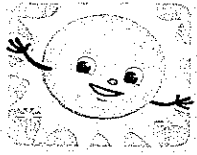
VI. OTHER BUSINESS

VII. CONFIDENTIAL SESSION

VIII. FUTURE MEETINGS

June 22, 2006	9:00 a.m.	Advisory Committee Meeting
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July 26, 2006	T. B. D.	Workshop for Peace II
July 27, 2006	9:00 a.m.	Advisory Committee Meeting
July 27, 2006	11:00 a.m.	Watermaster Board Meeting

Meeting Adjourn



CHINO BASIN WATERMASTER

I. CONSENT CALENDAR

A. MINUTES

1. Advisory Committee Meeting – May 25, 2006



Draft Minutes
CHINO BASIN WATERMASTER
ADVISORY COMMITTEE MEETING
May 25, 2006

The Advisory Committee meeting was held at the offices of the Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California, on May 25, 2006 at 9:00 a.m.

ADVISORY COMMITTEE MEMBERS PRESENT

Agricultural Pool

Nathan deBoom, Chair	Ag Pool/Dairy
Bob Feenstra	Ag Pool/Dairy

Appropriative Pool

Ken Jeske	City of Ontario
Robert DeLoach	Cucamonga Valley Water District
Chris Diggs	Fontana Water Company
Rosemary Hoerning	City of Upland
Dave Crosley	City of Chino
Jim Taylor	City of Pomona
Charles Moorrees	San Antonio Water Company
Mark Kinsey	Monte Vista Water District
J. Arnold Rodriguez	Santa Ana River Water Company
Justin Brokaw	Marygold Mutual Water Company
Mike Maestas	City of Chino Hills

Non-Agricultural Pool

Justin Scott-Coe	Vulcan Materials Company (Calmat Division)
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Watermaster Staff Present

Kenneth R. Manning	Chief Executive Officer
Sheri Rojo	CFO/Asst. General Manager
Gordon Treweek	Project Engineer
Janine Wilson	Recording Secretary

Watermaster Consultants Present

Michael Fife	Hatch & Parent
Mark Wildermuth	Wildermuth Environmental Inc.

Others Present

Phil Rosentrater	Western Municipal Water District
Bill Kruger	City of Chino Hills
Ashok K. Dhingra	City of Pomona
Tom McMonagle	Metcalf & Eddy, Inc.
Rich Atwater	Inland Empire Utilities Agency
Steve Kennedy	Three Valleys Municipal Water District

The Advisory Committee meeting was called to order by Chair deBoom at 9:04 a.m.

AGENDA - ADDITIONS/REORDER

No additions or reorders were made to the agenda.

I. CONSENT CALENDAR

A. MINUTES

1. Minutes of the Advisory Committee Meeting held April 27, 2006

B. FINANCIAL REPORTS

1. Cash Disbursements for the month of April 2006
2. Combining Schedule of Revenue, Expenses and Changes in Working Capital for the Period July 1, 2005 through March 31, 2006
3. Treasurer's Report of Financial Affairs for the Period March 1, 2006 through March 31, 2006
4. Profit & Loss Budget vs. Actual July through March 2006

Motion by Kinsey, second by Jeske, and by unanimous vote

Moved to approve Consent Calendar Items A through B, as presented

II. BUSINESS ITEMS**A. WATERMASTER BUDGET FOR FISCAL YEAR 2006/2007**

Mr. Manning stated the full presentation was given at each of the pool meetings and noted Sheri Rojo is available to give the presentation again if the committee members want to see it. Mr. Manning stated most of the increases in the budget are due to our increased operation and maintenance (O&M) costs that are not being absorbed this year by the FEMA grant or the State and/or shared grants with Inland Empire Utilities Agency (IEUA). This budget also includes our debt repayment options, a 4.7% Cola which was a CPI index from March to March of this year, and also includes money for the Personnel Committee's proposals (does not include acceptance of those proposals – only the money to deal with them with the Personnel Committee makes their reports in June through the Watermaster process). Mr. DeLoach noted Sheri did give a detailed presentation at each of the pool meetings and unless the committee members want to see it again he would make the motion for approval of the presented Watermaster budget for discussion. Ms. Horning inquired if Watermaster staff was going to be holding a separate meeting on the allocation of recharge O&M costs. Mr. Manning stated that would be an option if the party members wanted to hold such a meeting and noted this item was discussed at the recently held Budget Workshop. Ms. Hoerning inquired about the surcharge. Ms. Rojo stated that prior to the recharge improvement project the only basins that were on-line were the Montclair Basins and when Watermaster passed through the IEUA cost of the water to the parties they would add the \$2.00 OC59 connection fee and an additional \$2.00 for the projected maintenance costs on the Montclair Basins. Now that we have twenty basins on-line the O&M costs have gone up substantially so the \$2.00 dollar surcharge would now be a around \$40.00 per acre-foot. Mr. Jeske inquired if Watermaster is paying for others to perform the O&M out of the budget and how that is formulated. Ms. Rojo stated those costs are included the budget and will be billed through the Assessment Package. Mr. Manning stated this item will be brought back with scenarios on how the distributions might work out and noted it will be thoroughly discussed prior to the distribution of the Assessment Package through the Watermaster process.

Motion by DeLoach, second by Rodriguez, and by unanimous vote

Motion to approve the Watermaster budget for fiscal year 2006/2007 and direct staff to bring back the allocation discussion of the recharge maintenance, as presented

III. REPORTS/UPDATES**A. WATERMASTER GENERAL LEGAL COUNSEL REPORT****1. Santa Ana River Application**

Counsel Fife stated there are a number of issues surrounding this item including SB 1795 which appears to be stalled. Counsel Fife stated the comments on the Orange County Water District EIR are due next week and Watermaster will be submitting a brief letter supporting them and the 1969 judgment. Once the letter is ready it will be distributed to the parties.

2. Boardsmanship Workshop Update

Counsel Fife stated there was a Boardmanship workshop held after the last Watermaster Board meeting in April. A number of people have inquired to receive the paperwork that was distributed at that workshop and Sherri Lynne has been handling that distribution. If anyone still needs copies they can contact her when she gets back or me after this meeting.

3. Peace II Update

Counsel Fife stated there does seem to be an agreement on the Peace II Term Sheet and that will be presented to the Watermaster Board members today for discussion. The Board members have received the agreement in advance of today's meeting and there is a short staff letter in the meeting package. Counsel Fife stated staff will be requesting an approval to move the Term Sheet through the Watermaster process.

Counsel Fife noted he will be reporting on the second item under the Watermaster Engineering Consultants Report on the proposed Waste Discharge Requirements for recharge of imported water.

B. WATERMASTER ENGINEERING CONSULTANT REPORT

1. Summary of WEI April 2006 Report Regarding Hydraulic Control, Desalters and New Yield
Mr. Wildermuth stated a detailed presentation was given by Mr. Malone regarding the summary of hydraulic control at the pool meetings. It was noted by the committee members this presentation does not need to be given again because of prior review and discussions at the pool meetings.

2. Proposed Waste Discharge Requirements (WDR) for Recharge of Imported Water
Counsel Fife stated this item was discussed at the pool meetings in detail and after the last meeting there was a workshop with the Regional Board. This was a very interesting workshop. The San Bernardino Municipal Water District (SBMWD) has some strong opinions about these waste discharge requirements; their presentation at that workshop was about an hour long. There were also six or seven various representatives from SBMWD testifying at this workshop. Also in attendance were several other parties who also gave presentations on their observations. The bottom line is that the Regional Board, through SAWPA is going to convene a process to discuss the waste discharge requirements and what should be done and how the issue should be approached. Watermaster is in an interesting position in this regard because we are at the center of the issue. Both Watermaster and IEUA are discussed in the waste discharge requirements. Counsel Fife stated Watermaster's position at the workshop and previously has been just one of support for Jerry Thibeault and for the Regional Board and to stay focused on the good work they have done. A discussion ensued with regard to the recent workshop and counsel noted this workshop was a way to introduce the implementation of the Basin Plan Amendment Requirements. Mr. Kinsey stated it was his understanding that this item has been pulled off calendar and is being redirected to entities on an appointed task force and Mr. Manning agreed that was also his understanding. Mr. Manning stated it is staff's objective to keep things positive and to not jeopardize what we have already accomplished in the Chino Basin. A discussion ensued with regard to this issue. Mr. Atwater added comments on the history of these types of processes and what IEUA's objectives are to move forward in this matter in a positive and creative way. A discussion on the potential to resume Colorado River recharge ensued.

C. CEO/STAFF REPORT

1. Water Quality Update

Mr. Treweek stated that over the last year the Water Quality Committee has concentrated on three major plumes and each of those plumes is in a different phase of the remediation process. The first plume is from the Ontario International Airport which is in the remedial investigation phase because the process is just getting started. A second meeting with the potential responsible parties (PRPs) has taken place and at that meeting staff tried to establish a cooperative relationship with them. Staff hoped the PRPs recognized that one or more of them were the cause of this plume and that they would look at the expansion of

the desalter well field and the desalters as a logical remedial action to which they would be willing to contribute. The PRPs have banded together and hired Tetra Tech to review data and compile findings. The second plume is from the Chino Airport which has been discussed at these meetings before and this undertaking is in the feasibility study phase. In the last two years the PRPs have also hired Tetra Tech to do an investigation and have put in nine wells on the airport; these are shallow wells and have identified the plume on the airport property. They have linked that finding to two possible sources at the airport where they did renovations of aircrafts. Staff has met with this group with the idea of seeing the desalter expansion as an additional opportunity to remediate the plume and at the same time recover more water and put that water to beneficial use. It was noted the Regional Board has participated in all these discussions and are very supportive of this process. The third and final plume is the GE Flat Iron plume; it is in the remedial action phase and has been that way for over a decade now. They have a two step process of doing air stripping to remove TCE and then they also have ION exchange which is used to remove chromate. Their water, after treatment, meets all the maximum containment levels and would be acceptable as drinking water. GE does not want to introduce their water into the drinking water system; they have discharged that water into the Ely Basins. Watermaster staff has explained to GE that we need those basins for storm water and for recycled water and we would like to phase out their usage of the basins. Last month GE met with the Flood Control District and all the interested parties and pointed out they have performed a feasibility study, in which they have identified additional basins that they may purchase for recharge. They are also looking at additional options.

2. Strategic Planning Committee Update

Mr. Manning stated an open invitation conference is being planned by the Strategic Planning Committee for October 1, 2, and 3, in Indian Wells at the Grand Champions Hyatt Hotel. The event will be kicked off on Sunday with workshops held all day Monday, October 2, and then Tuesday, October 3, will be a half day session. We will be working on issues dealing with expansion of our recharge facilities based upon the Urban Water Management Plans that were submitted. There is strategic planning that we are going to be doing in many other areas as well. Flyers for this conference will be sent out so that this conference can be placed on agendas. A question regarding holding the conference locally was presented. Mr. Manning stated the idea behind not holding the conference locally is we want peoples' focus to be solely on the task at hand and not on trying to leave early or come late because of other obligations. Staff expects to have follow-up sessions and those sessions will be held locally.

3. Personnel Committee Update

Mr. Manning stated part of this item was covered under the budget presentation. The second part is the CEO evaluation going on through the Personnel Committee; they are still meeting on this item. Mr. Manning noted Watermaster contracted with a new consultant this year by the name of Mathis and Associates who deal with cities and water districts around the country on issues dealing with personnel and recruitment. Mathis and Associates is currently working with the Personnel Committee on both the surveys that were needed for the health issues and on the CEO evaluation.

4. GAMA Presentation by Robert Kent, California Water Science Center

Mr. Manning stated that Mr. Belitz and Mr. Kent from USGS gave a detailed presentation at the May Appropriative & Non-Agricultural pool meeting. USGS is scheduled to be in the Chino Basin in the fall to begin their work. A public workshop will be held prior to the start of their project so that people will be given an opportunity to have input on how the process will be monitored and how information will be dealt with. Their presentation was very informative and it did allow the process of dialog to start between USGS and the Chino Basin.

5. Storm Water/Recharge Update

Mr. Treweek stated through the end of April we have recharged 36,000 acre-feet of storm water, imported, and recycled water. April was a very good water month and in that month alone there were over 5,000 acre-feet of water recharged.

Mr. Treweek stated the Chino Basin Watermaster in conjunction with Inland Empire Utilities Agency has decided to pursue a company by the name of Hansen Aggregates. We are requesting them to repair the damage that their discharges did to our Lower Day Basin. Over the winter Hansen Aggregates discharged silt which went into the Lower Day Basin and the damage from that silt discharge is estimated to be about a half a million dollars. Staff has met with IEUA and they are going to draft a demand letter to Hansen Aggregates. Staff feels we have very good evidence that it was their discharge that caused the basin damage. Chair deBoom inquired if the Regional Board was involved in this issue. Mr. Treweek stated the Regional Board has a waste discharge permit for them, which will be a strong element in our case as this was an illegal discharge of silt and clay into the flood control channel. Mr. Manning stated CBWM's position is Hansen Aggregates can either voluntarily participate in the clean up or staff can go to the Regional Board and they can force their hand in clean up efforts. A discussion ensued with regard to the water recharge lost due to this issue.

6. Inland Empire Public Affairs Network (IEPAN) Update

Jerry Silva with Southern California Edison and Mr. Manning are involved with setting up this event. This is a public affairs network that is involved with trying to bring speakers who are policy makers both in the State of California and the federal government to the policy decision people within the Inland Empire and allow them to speak directly to each other. Our first luncheon is Friday, June 2, with the guest speaker being Fred Aguiar; he is going to be talking about the State of California and the governor's proposals. IEPAN will be holding quarterly luncheons and the next speaker for September is Gary Miller. The intention behind IEPAN is to try and bring into the basin on a regular basis those people make policy and set policy within this country and state.

7. Legislative/Bond Update

Mr. Manning stated he was in Sacramento on May 24, 2006 and had a chance to facilitate a meeting with the Southern California Water Committee and Senator Perada's office. This meeting was to attempt to get a feel for where Senator Perada's water issues will go given the fact it was not part of this year's bond package. We were also able to discuss the Simitian Bill. Senator Perada was very positive with regard to the Simitian Bill. Several other meetings took place regarding water policy which opened doors for good conversation on where we are at in the water policy issues process. These meetings were especially interesting because they combined staff from the Southern California Water Committee and the Bay Area Counsel. Mr. Manning stated he felt it was a very progressive day and was a good start; we are committed to having these types of meetings on a regular basis.

Mr. Manning stated he recently received an email regarding SB 1795 having to do with the changes within the bill regarding recharge. The changes are advantageous to us in the Chino Basin.

D. INLAND EMPIRE UTILITIES AGENCY

1. Monthly Water Conservation Programs Report

Mr. Atwater stated on June 2, 2006 in Ontario at the Kaiser medical facility the State Board will be doing a groundbreaking event to celebrate their \$4M grant for the San Antonio pipeline. That will take recycled water through Ontario over to Montclair and will also recharge the Brooks Basin. All are welcome to be at this event which will start at 10:00 a.m.

Some cleaning needs to be performed at the Banana and Hickory Basins from the rain in March and April. The good news is that rain water is free water; however, it does slow up recharge operations.

- 2. Groundwater Operations Recharge Summary
No comment was made regarding this item.
- 3. Monthly Imported Water Deliveries Report
No comment was made regarding this item.
- 4. State/Federal Legislation Reports
No comment was made regarding this item.
- 5. Public Relations Report
No comment was made regarding this item.

E. OTHER METROPOLITAN MEMBER AGENCY REPORTS
No comment was made regarding this item.

IV. INFORMATION

- 1. Newspaper Articles
No comment was made regarding this item.

V. COMMITTEE MEMBER COMMENTS

No comment was made regarding this item.

VI. OTHER BUSINESS

No comment was made regarding this item.

VII. FUTURE MEETINGS

May 23, 2006	9:00 a.m.	GRCC Committee Meeting
May 25, 2006	9:00 a.m.	Advisory Committee Meeting
May 25, 2006	11:00 a.m.	Watermaster Board Meeting
June 8, 2006	10:00 a.m.	Appropriative & Non-Agricultural Pool Meeting
June 20, 2006	9:00 a.m.	Agricultural Pool Meeting @ IEUA
June 22, 2006	9:00 a.m.	Advisory Committee Meeting
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The Advisory Committee Meeting Adjourned at 9:49 a.m.

Secretary: _____

Minutes Approved: _____



CHINO BASIN WATERMASTER

I. CONSENT CALENDAR

A. MINUTES

1. Watermaster Board Meeting – May 25, 2006



Draft Minutes
CHINO BASIN WATERMASTER
WATERMASTER BOARD MEETING

May 25, 2006

The Watermaster Board Meeting was held at the offices of the Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California, on May 25, 2006 at 11:00 a.m.

WATERMASTER BOARD MEMBERS PRESENT

Ken Willis, Chair	West End Consolidated Water Company
Sandra Rose	Monte Vista Water District
John Anderson	Inland Empire Utilities Agency
Al Lopez	Western Municipal Water District
David DeJesus	Three Valleys Municipal Water District
Bob Bowcock	Vulcan Materials Company
Paul Hofer	Agricultural Pool, Crops
Paul Hamrick	Jurupa Community Services District
Geoffrey Vanden Heuvel	Agricultural Pool, Dairy

Watermaster Staff Present

Kenneth R. Manning	Chief Executive Officer
Sheri Rojo	CFO/Asst. General Manager
Gordon Treweek	Project Engineer
Janine Wilson	Recording Secretary

Watermaster Consultants Present

Scott Slater	Hatch & Parent
Michael Fife	Hatch & Parent
Mark Wildermuth	Wildermuth Environmental Inc.

Others Present

Rosemary Hoerning	City of Upland
Bill Kruger	City of Chino Hills
Steve Kennedy	Three Valleys Municipal Water District
Manuel Carrillo	Senator Soto's office
Jeff Pierson	Ag Pool
Jim Taylor	City of Pomona
Mike Maestas	City of Chino Hills
Carole McGreevy	Jurupa Community Services District
Dave Crosley	City of Chino

The Watermaster Board Meeting was called to order by Mr. Willis at 11:04 a.m.

PLEDGE OF ALLEGIANCE

AGENDA - ADDITIONS/REORDER

There were no additions or reorders made to the agenda.

I. CONSENT CALENDAR

A. MINUTES

1. Minutes of the Watermaster Board Meeting held April 27, 2006

Mr. Vanden Heuvel stated he wanted the April 27, 2006 minutes to reflect the costs that would be incurred if there was no implementation of Peace II since it is such a costly amount and there was a long discussion at that meeting regarding such costs. Mr. Manning stated the minutes could be revised to include Mr. Vanden Heuvel's request of projected costs.

Motion by Lopez, second by Hofer, and by unanimous vote

Moved to approve Consent Calendar Item A with the amendment made regarding the cost of non-implementing Peace II added to the April 27, 2006 minutes, as presented

B. FINANCIAL REPORTS

1. Cash Disbursements for the month of April 2006
2. Combining Schedule of Revenue, Expenses and Changes in Working Capital for the Period July 1, 2005 through March 31, 2006
3. Treasurer's Report of Financial Affairs for the Period March 1, 2006 through March 31, 2006
4. Profit & Loss Budget vs. Actual July through March 2006

Ms. Rose asked if would be possible on the check register to have a separate memo column that might explain the costs incurred for. Mr. Manning stated that would take a great deal of work on staff's part and that we could possibly have more specific categories in place of an exact description. Ms. Rose asked a question regarding check number 10416 to Mathis & Associates and whether it was too late to stop the check from being mailed. The response was that the check had already gone out. A brief discussion ensued with regard to the policy of approving checks that have already gone out.

Motion by Hamrick, second by Willis, and by unanimous vote

Moved to approve Consent Calendar Item B, as presented

II. BUSINESS ITEMS

A. WATERMASTER BUDGET FOR FISCAL YEAR 2006/2007

Mr. Manning stated Ms. Rojo will give a more detailed description for this item and noted this item has gone to the Pools and Advisory Committee and had unanimous approval at those meetings. A budget workshop was held prior to this item being placed on the agenda and was very well attended. Ms. Rojo stated several appropriators and a few board members attended the budget workshop and the budget was reviewed and discussed in great detail. What is in the meeting package is the actual summary budget; the detailed budget will be available on our ftp and web site. The Watermaster budget is made up of four main expense areas; 1) administration, 2) general OBMP expenses, 3) OBMP implementation projects, and 4) water purchases. The budget in the administration area has two main areas of interest, first being the proposed COLA of 4.7% which is based on the CPI for this area and then the second is the proposed increase in the medical insurance cap; this is actually a place holder which Mr. Manning will be discussing further on the June meeting. Mr. Manning stated the adoption of the presented budget places the money that is in the category to cover the expenses. The actual item will go through the Watermaster process in June as a separate action item with a recommendation from the Personnel Committee. In the general OBMP category there are a couple of areas that increased overall. The first is staff is proposing, as a result of Peace II, we are going to have to do CEQA work and that is budgeted in the OBMP category; this is a place holder; we will be sub-contracting out that work. The second is the next State of the Basin Report, before now this was placed in the budget as an OBMP expense; this is now a separate line item to allow people to better understand the cost. Under the implementation projects and special projects there are a few areas that will be increasing; some slightly and some substantially. Ground water quality monitoring is anticipated to increase; those expenses are being tracked separately. The recharge O&M which was discussed in detail at the Appropriative and Advisory Committee meetings, substantially increased due to the number of basins which have recently come on-line. There is also our recharge debt service a result of the DWR grant funding, that is being cost shared with Inland Empire Utilities Agency on the payment. The debt

service line item was reviewed and discussed in detail. There are a few decreases in the project implementation area which relate to ground level monitoring. The MZ1 and the meter installation and maintenance costs are projected to drop. Overall staff is expecting an increase to assessments this year. Mr. Hofer inquired into how the cost of living adjustment is determined. Ms. Rojo stated that figure is based on the Consumer Price Index (CPI) for the Inland Empire.

Mr. Manning stated, in regards to our groundwater quality monitoring program, that Chino Basin Watermaster is pursuing working with the potential responsible parties (PRP's) on both the Ontario International Airport and the Chino Airport. All of those expenses are recoverable when we settle with the PRP's. Those are funds that would come back to the agency and to the organization at some point in time; we do not know when that will be exactly but they are recoverable expenses.

Mr. Vanden Heuvel inquired where were the increased costs of operations and maintenance for recharge located in the budget. Ms. Rojo stated that has been placed into the OBMP implementation projects category.

Ms. Rose inquired into the three bullets that Mr. Manning mentioned one being the Personnel Committee recommendations regarding the market survey. Mr. Manning stated this is a placeholder which allows the latitude to be able to work with any recommendation that would come through the approval by the Watermaster Board in June.

Motion by Lopez, second by Anderson, and by unanimous vote

Motion to approve the Watermaster budget for fiscal year 2006/2007, as presented

B. PEACE II NON-BINDING TERM SHEET

Mr. Manning stated this item will be covered by Counsel Slater and noted that each member should have already received a copy of the Peace II Non-Binding Term Sheet under separate cover. Counsel Slater stated this item has been developed by the diligent work of the parties for the past twenty-four months who attempted to come to resolution for a proposed road map to take us into the next generation of Watermaster planning. At the last Board meeting in April counsel had indicated that a broader stakeholder meeting had taken place and that there was interest and support in convening additional meetings in an effort to, once and for all, come to a final conclusion as to an appropriate road map. Meetings were held on May 4, 2006 and May 15, 2006; those meetings resulted in a proposed stakeholder non-binding term sheet which is being presented to you today for your consideration. Counsel Slater stated he wanted to make clear the requested action that is being sought today by the Board members. The responsibility for preparation of the Optimum Basin Management Plan lies with this board. The genesis for the plan and for modifications of the plan lies with this board. Staff is not asking today to approve the non-binding term sheet; staff is recommending that this board refer the term sheet to the Pools and the Advisory Committee to move through the Watermaster process. Ms. Rose stated that she is glad that the board members were allowed to attend the last few sessions because it really helped in the understanding of the issues. Mr. Vanden Heuvel complimented the staff and all the parties for all the serious work done on the concerns raised at the last go around of the term sheet noting this is a better document now that all parties should be proud of.

Motion by Vanden Heuvel, second by Rose, and by unanimous vote

Motion to approve to move the non-binding term sheet through the Watermaster process for further consideration, as presented

C. MZ1 SUMMARY REPORT

Mr. Manning stated this is the same item that was presented to the Board a month ago noting this item has gone through the Pools and Advisory Committee and was passed with only one dissenting vote at the Advisory Committee meeting. At the Board meeting last month a

recommendation was made that this item be postponed for a month to give the Board Chairman an opportunity to meet with members of the Chino Hills counsel to discuss this subject. Mr. Manning stated he was not in attendance at any of those meetings. However, it is his understanding that the City of Chino Hills is now in the process of preparing a document that will provide some guidance for us on what they think could or should be achieved through the long-term plan. The outcome turned out well from the meetings that Chair Willis conducted with the City of Chino Hills. Staff's recommendation is still the same in that the Summary Report is just a report and does include the interim criterion which is voluntary in nature in terms of compliance. It does set out the guidance for good behavior to occur until the long-term plan is decided upon and is adopted. Staff is encouraging the Board to approve the report at this time. Chair Willis invited representatives of Chino Hills to speak. Mr. Maestas stated there are still some concerns with the MZ1 Criteria that have been released. Chino Hills believes there are still concerns that have not yet been addressed through this criteria plan, and believe they are going to be affected by it in production and/or source of water. It appears the MZ1 Committee is attempting to set up criteria. It is unknown how Chino Hills is going to be assisted or compensated for the loss of production by following this criteria. The City of Chino Hills wishes to work with Watermaster and wants resolution. However, Chino Hills does not want to step into a position were they are not taken care of as far as loss of production by following this set of criteria. Until these issues are resolved, the City of Chino Hills is not on board for approval. Chair Willis stated he looks forward to Watermaster staff and members of the Board working with the City of Chino Hills to find out what is in the realm of possibilities and to see if what they are suggesting is or is not possible. Mr. Manning stated he had a conversation with Mr. Kruger prior to the start of the Board meeting and Mr. Kruger commented that the city manager was going to be in contact with Watermaster staff shortly to schedule a meeting.

*Motion by Lopez, second by Anderson, and by unanimous vote
Motion to approve the MZ1 Summary Report, as presented*

III. REPORTS/UPDATES

A. **WATERMASTER GENERAL LEGAL COUNSEL REPORT**

1. Santa Ana River Application

Counsel Slater stated that Orange County has come with its revised environmental report and the comment period is now open. Watermaster's general legal counsel is presently working to provide a set of draft comments which will be circulated shortly.

2. Boardsmanship Workshop Update

Counsel Slater stated staff and counsel did follow through with the holding of the Boardsmanship workshop and overall it was well received by those who attended. Counsel enjoyed the process and is in contact with the Special Referee with regard to potentially composing advanced curriculum to the extent that the Board thinks it is useful. Staff is thinking of putting together a technical segment which will entail more detailed information on any subject that the Board feels they would like to know more about. Counsel Slater noted that staff and counsel are involving the Special Referee in that curriculum.

B. **WATERMASTER ENGINEERING CONSULTANT REPORT**

1. Summary of WEI April 2006 Report Regarding Hydraulic Control, Desalters and New Yield

Mr. Wildermuth stated he wanted to bring the board up to date on the Hydraulic Control Monitoring Program and then compare those results to the actual modeling work that was recently done. Mr. Wildermuth reviewed a map from the late 1800's to the early 1900's when USGS was investigating this entire watershed, mapping springs and performing geology work. Mr. Wildermuth stated when the desalter program was designed it was actually designed to do two things; 1) to replace the supply that would be lost from agriculture and 2) to keep water from going out to the river. If we did nothing and Watermaster parties just did what they normally do and agriculture went away there would be no production in that area. What the modeling results shows is that the water levels in the north would drop quite a bit and we would lose, on average, over 20,000 acre-feet a

year to the river. This would also cause us to have water quality problems with the Regional Board and we would have to desalt wastewater or dilute that water. After the OBMP and Peace Agreement were completed and during the TIN/TDS process it became clear that we could isolate the basin with the desalters and if we could isolate it we could end up with higher water quality objectives for TDS and nitrogen. The desalters were set up to cut off outflow; this is how they were developed initially with the information that was at hand. During the preparation of the Basin Plan Amendment which included the Chino Basin/Inland Empire's Maximum Benefits Proposal, we came up with a Hydraulic Control Monitoring Plan. That plan was incorporated into the Basin Plan Amendment. The 2004 Basin Plan Amendment required us to produce annual reports; the first report came out in May. In that report there are nine new wells that were constructed by Watermaster/IEUA and were partially funded by grant monies. In addition to that there are approximately forty other wells that were needed to provide water quality data for this purpose along with twenty five surface water stations. What we are trying to accomplish with the monitoring program is to look at the water level data and determine from the water level data how much containment we have. Mr. Wildermuth reviewed the modeling results map in detail. A discussion ensued with regard to some of the modeling results. Mr. Wildermuth discussed the conclusions which included monitoring data and groundwater simulations that suggest failure to gain hydraulic control west of Desalter I/well no. 5, surface water monitoring which suggests negligible water quality impact to the Santa Ana River. The Regional Water Quality Control Board requires the containment at wells, the locating of the new desalter wells in the west, reducing storage of the basin by 400,000 acre-feet, with the possibility that basin yield could increase by 14,000 to 17,000 acre-feet per year.

2. Proposed Waste Discharge Requirements (WDR) for Recharge of Imported Water

Mr. Wildermuth stated that when CBWM and IEUA were participating in the TIN/TDS work which started in 1996 and was completed in 2002, the technical people along with the decision makers participated in discussing the likelihood of managing the recharge of imported water and eventually permit it. The Regional Board has come out with a proposal to do which basically states, if you have a maximum benefit basin and if anyone else tried to recharge which is not consistent with our plan and did not obtain approval, they would get anti-degradation objectives. The Regional Board is trying to protect the maximum benefits objectives. The hopes are that parties will try and adopt a management plan that implement the Basin Plan without the Regional Board having to issue WDR's for recharge. Mr. Vanden Heuvel offered comments regarding water quality and costs to ensure that quality.

C. **CEO/STAFF REPORT**

1. Water Quality Update

Mr. Treweek stated that over the last year he Water Quality Committee over the last year has concentrated on three major plumes and each of those plumes is in a different phase of the remediation process. The first plume is from the Ontario International Airport which is in the remedial investigation phase because the process is just getting started. A second meeting with the potential responsible parties (PRPs) has taken place and at that meeting staff tried to establish a cooperative relationship with them. Staff hoped the PRPs recognized that one or more of them were the cause of this plume and that they would look at the expansion of the desalter well field and the desalters as a logical remedial action to which they would be willing to contribute. The PRPs have banded together and hired Tetra Tech to review data and compile findings. The second plume is from the Chino Airport which has been discussed at these meetings before and this undertaking is in the feasibility study phase. In the last two years the PRPs have also hired Tetra Tech to do an investigation and have put in nine wells on the airport; these are shallow wells and have identified the plume on the airport property. They have linked that findings to two possible sources at the airport where they did renovations of aircrafts. Staff has met with this group with the idea of seeing the desalter expansion as an additional opportunity to remediate the plume and at the same time recover more water and put that water to beneficial use. It was noted the Regional Board has participated in all these discussions and are very supportive

of this process. The third and final plume is the GE Flat Iron plume; it is in the remedial action phase and has been that way for over a decade now. They have a two step process of doing air stripping to remove TCE and then they also have ION exchange which is used to remove chromate. Their water, after treatment, meets all the maximum containment levels and would be acceptable as drinking water. GE does not want to introduce their water into the drinking water system; they have discharged that water into the Ely Basins. Watermaster staff has explained to GE that we need those basins for storm water and for recycled water and we would like to faze them out of the use of them. The GE permits came up for renewal (one with the Water Conservation District and one with the Flood Control District), we have asked the Flood Control District to extend their permit year-by-year to ensure GE made sequential progress in getting out of the Ely Basins. The Flood Control District decided to extend their permit through 2011. Last month GE met with the Flood Control District and all the interested parties and pointed out they have performed a feasibility study, in which they have identified additional basins that they may purchase and recharge into. They are also looking at Aquifer Storage and Recovery well installation and also have looked into recycling water into the recycled water distribution system. A discussion ensued with regard to the String Fellow Plume.

2. Strategic Planning Committee Update

Mr. Manning stated an open invitation conference is being planned by the Strategic Planning Committee for October 1, 2, and 3, in Indian Wells at the Grand Champions Hyatt Hotel. The event will be kicked off on Sunday with workshops held all day Monday, October 2, and then half day Tuesday, October 3. We will be working on issues dealing with expansion of our recharge facilities based upon the Urban Water Management Plans that were submitted. There is strategic planning that we are going to be doing in many other areas as well. Flyers for this conference will be sent out in a timely manner to be placed on agendas as needed. Staff expects to have follow up sessions and those sessions will be held at Chino Basin Watermaster office or a near by facility locally. Ms. Rose inquired as to how many people are going to be invited. Mr. Manning stated the agencies who are a part of the Watermaster family and their board of directors also the agencies who have an influence on what we are doing at Watermaster, the total count of invitees could be very large. Ms. Rose inquired as to how many from Watermaster will be attending. Mr. Manning stated the majority of our key staff will be attendance. Ms. Rose asked if it will cost to attend the conference and Mr. Manning stated there will be a charge to attend. A discussion ensued with regard to the conference. Chair Willis suggested that the area of governance and policy resolution be discussed at the conference. Mr. Manning stated this item will be discussed with regard to processes.

3. Personnel Committee Update

Mr. Manning stated part of this item was covered under the budget presentation. The second part is the CEO evaluation going on through the Personnel Committee; they are still meeting on this item. Mr. Manning noted Watermaster contracted with a new consultant this year by the name of Mathis and Associates who deal with cities and water districts around the country on issues dealing with personnel and recruitment. Mathis and Associates is currently working with the Personnel Committee on both the surveys that were needed for the health issues and on the CEO evaluation.

4. GAMA Presentation by Robert Kent, California Water Science Center

Mr. Manning stated that Mr. Belitz and Mr. Kent from USGS gave a detailed presentation at the May Appropriative & Non-Agricultural pool meeting. USGS is scheduled to be in the Chino Basin in fall to begin their work. A public workshop will be held prior to the start of their project so that people will be given an opportunity to have input on how the process will be monitored and how information will be dealt with. Their presentation was very informative and it did allow dialog to start between USGS and the Chino Basin.

5. Storm Water/Recharge Update

Mr. Treweek stated through the end of April we have recharged 36,000 acre-feet of storm water, imported, and recycled water. April was a very good water month and in that month alone there were over 5,000 acre-feet of water recharged.

Chino Basin Watermaster in conjunction with Inland Empire Utilities Agency has decided to pursue Hansen Aggregates (a sand and gravel operation) to repair the damage that their discharges did to our Lower Day Basin. Over the winter Hansen Aggregates discharged silt which went into the Lower Day Basin and the damage from that silt discharge is about a half a million dollars. Staff has met with IEUA and they are going to draft a demand letter to Hansen Aggregates. Staff feels we have very good evidence that it was their discharge that caused the basin damage. Mr. Manning stated CBWM's position is Hansen Aggregates can either voluntarily participate in the clean up or we can go to the Regional Board and they can force clean up.

6. Inland Empire Public Affairs Network (IEPAN) Update

Jerry Silva with Southern California Edison and Mr. Manning are involved with setting up this event. This is a public affairs network that is involved with trying to bring speakers who are policy makers both in the State of California and the federal government to the policy decision people within the Inland Empire and allow them to speak directly to each other. Our first luncheon is Friday, June 2, with the guest speaker being Fred Aguiar; he is going to be talking about the State of California and the governor's proposals. IEPAN will be holding quarterly luncheons and the next speaker for September is Gary Miller. The intention behind IEPAN is to try and bring into the basin on a regular basis those people who are helping set policy within this country and state.

7. Legislative/Bond Update

Mr. Manning stated he was in Sacramento on May 24, 2006 and had a chance to facilitate a meeting with the Southern California Water Committee and Senator Perada's office. This meeting was to attempt to get a feel for where Senator Perada's water issues will go given the fact it was not part of this year's bond package. We were also able to the Simitian Bill. Senator Perada was very positive with regard to the Simitian Bill. Several other meetings took place regarding water policy which opened doors for good conversation on where we are at in the water policy issues process. These meetings were especially interesting because they combined staff from the Southern California Water Committee and the Bay Area Counsel. Mr. Manning stated he felt it was a very progressive day and was a good start; we are committed to having these types of meetings on a regular basis.

Mr. Manning stated he recently received an email regarding SB 1795 having to do with the changes within the bill regarding recharge. The changes are advantageous in the Chino Basin.

Mr. Vanden Heuvel offered comment on legislative issues and thanked Mr. Manning for his recent efforts in Sacramento.

IV. INFORMATION

1. Newspaper Articles

No comment was made regarding this item.

V. BOARD MEMBER COMMENTS

Mr. Vanden Heuvel stated he would like to see the production for Desalter 1 on future agendas and offered comment on the minutes from the October 25, 2001 Board meeting regarding desalters.

This is a very important issue and will require some serious staff work. Mr. Vanden Heuvel requested this item be explored and to be on the June agenda if at all possible.

VI. OTHER BUSINESS

No comment was made regarding this item.

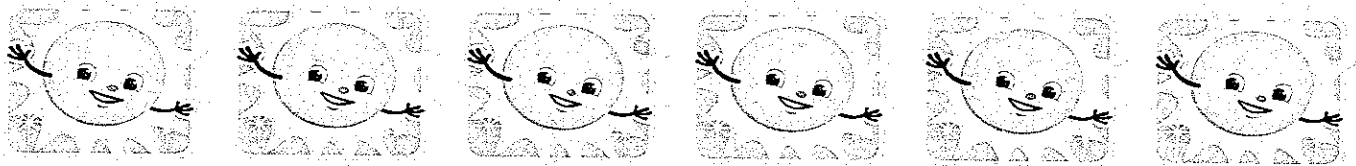
VII. FUTURE MEETINGS

May 23, 2006	9:00 a.m.	GRCC Committee Meeting
May 25, 2006	9:00 a.m.	Advisory Committee Meeting
May 25, 2006	11:00 a.m.	Watermaster Board Meeting
June 8, 2006	10:00 a.m.	Appropriative & Non-Agricultural Pool Meeting
June 20, 2006	9:00 a.m.	Agricultural Pool Meeting @ IEUA
June 22, 2006	9:00 a.m.	Advisory Committee Meeting
June 22, 2006	11:00 a.m.	Watermaster Board Meeting

The Watermaster Board Meeting Adjourned at 12:50 p.m.

Secretary: _____

Minutes Approved: _____



CHINO BASIN WATERMASTER

I. CONSENT CALENDAR

B. FINANCIAL REPORTS

1. Cash Disbursements for the month of May 2006
2. Combining Schedule of Revenue, Expenses and Changes in Working Capital for the Period July 1, 2005 through April, 2006
3. Treasurer's Report of Financial Affairs for the Period April 1, 2006 through April 30, 2006
4. Profit & Loss Budget vs. Actual July through April 2006





CHINO BASIN WATERMASTER

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KENNETH R. MANNING
Chief Executive Officer

STAFF REPORT

DATE: June 8, 2006
June 20, 2006
June 22, 2006

TO: Committee Members
Watermaster Board Members

SUBJECT: Cash Disbursement Report – May 2006

SUMMARY

Issue – Record of cash disbursements for the month of May 2006.

Recommendation – Staff recommends the Cash Disbursements for May 2006 be received and filed as presented.

Fiscal Impact – All funds disbursed were included in the FY 2005-06 Watermaster Budget.

BACKGROUND

A monthly cash disbursement report is provided to keep all members apprised of Watermaster expenditures.

DISCUSSION

Total cash disbursements during the month of May 2006 were \$1,956,019.33. The most significant expenditures during the month were Wildermuth Environmental Inc. in the amount of \$229,353.78 and Hatch and Parent in the amount of \$65,987.68.

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CHINO BASIN WATERMASTER
Cash Disbursement Detail Report
May 2006

Type	Date	Num	Name	Amount
May 06				
Bill Pmt -Check	5/2/2006	10458	VIP AUTO DETAILING	-399.40
Bill Pmt -Check	5/4/2006	10459	ANDERSON, JOHN	-125.00
Bill Pmt -Check	5/4/2006	10460	APPLIED COMPUTER TECHNOLOGIES	-2,063.20
Bill Pmt -Check	5/4/2006	10461	BOWCOCK, ROBERT	-375.00
Bill Pmt -Check	5/4/2006	10462	COSTCO	-426.06
Bill Pmt -Check	5/4/2006	10463	CUCAMONGA VALLEY WATER DISTRICT	-5,076.00
Bill Pmt -Check	5/4/2006	10464	DIRECTV	-74.98
Bill Pmt -Check	5/4/2006	10465	HAMRICK, PAUL	-375.00
Bill Pmt -Check	5/4/2006	10466	INLAND COUNTIES INSURANCE SERVICES, INC.	-238.57
Bill Pmt -Check	5/4/2006	10467	INLAND EMPIRE UTILITIES AGENCY	-507,306.10
Bill Pmt -Check	5/4/2006	10468	KUHN, BOB	-375.00
Bill Pmt -Check	5/4/2006	10469	LOS ANGELES TIMES	-42.40
Bill Pmt -Check	5/4/2006	10470	MEDIA JIM	-975.00
Bill Pmt -Check	5/4/2006	10471	MONTE VISTA WATER DIST	-375.00
Bill Pmt -Check	5/4/2006	10472	PAYCHEX	-180.38
Bill Pmt -Check	5/4/2006	10473	PURCHASE POWER	-2,016.99
Bill Pmt -Check	5/4/2006	10474	THE FURMAN GROUP, INC.	-2,648.00
Bill Pmt -Check	5/4/2006	10475	UNION 76	-141.84
Bill Pmt -Check	5/4/2006	10476	UNITEK TECHNOLOGY INC.	-16,377.77
Bill Pmt -Check	5/4/2006	10477	VANDEN HEUVEL, GEOFFREY	-250.00
Bill Pmt -Check	5/4/2006	10478	VELASQUEZ JANITORIAL	-1,200.00
Bill Pmt -Check	5/4/2006	10479	VERIZON	-425.43
Bill Pmt -Check	5/4/2006	10480	WILLIS, KENNETH	-500.00
Bill Pmt -Check	5/4/2006	10481	YUKON DISPOSAL SERVICE	-134.72
Bill Pmt -Check	5/11/2006	10482	INLAND EMPIRE UTILITIES AGENCY	-399,761.00
Bill Pmt -Check	5/11/2006	10483	LAYNE CHRISTENSEN COMPANY	-90,630.00
Bill Pmt -Check	5/15/2006	10484	ACWA SERVICES CORPORATION	-234.16
Bill Pmt -Check	5/15/2006	10485	BANK OF AMERICA	-1,587.63
Bill Pmt -Check	5/15/2006	10486	COMPUSA, INC.	-3,064.35
Bill Pmt -Check	5/15/2006	10487	HATCH AND PARENT	-65,987.68
Bill Pmt -Check	5/15/2006	10488	INLAND EMPIRE UTILITIES AGENCY	-80.00
Bill Pmt -Check	5/15/2006	10489	MATHIS & ASSOCIATES	-6,656.00
Bill Pmt -Check	5/15/2006	10490	MAYER HOFFMAN MC CANN P.C.	-85.00
Bill Pmt -Check	5/15/2006	10491	MCI	-908.17
Bill Pmt -Check	5/15/2006	10492	PARK PLACE COMPUTER SOLUTIONS, INC.	-2,805.00
Bill Pmt -Check	5/15/2006	10493	PETTY CASH	-408.74
Bill Pmt -Check	5/15/2006	10494	PREMIERE GLOBAL SERVICES	-29.08
Bill Pmt -Check	5/15/2006	10495	REID & HELLYER	-9,902.35
Bill Pmt -Check	5/15/2006	10496	RICOH BUSINESS SYSTEMS-Lease	-4,500.14
Bill Pmt -Check	5/15/2006	10497	STANTEC CONSULTING, INC.	-225.00
Bill Pmt -Check	5/15/2006	10498	UNITED PARCEL SERVICE	-367.06
Bill Pmt -Check	5/15/2006	10499	RICOH BUSINESS SYSTEMS-Maintenance	-985.08
Bill Pmt -Check	5/15/2006	10500	CAFE CALATO	-315.17
General Journal	5/15/2006	06/05/3	PAYROLL	-5,585.41
General Journal	5/15/2006	06/05/3	PAYROLL	-20,382.72
Bill Pmt -Check	5/16/2006	10501	CITISTREET	-5,550.00
Bill Pmt -Check	5/16/2006	10502	PUBLIC EMPLOYEES' RETIREMENT SYSTEM	-6,727.80
Bill Pmt -Check	5/16/2006	10503	PUBLIC EMPLOYEES' RETIREMENT SYSTEM	-6,347.06
Bill Pmt -Check	5/16/2006	10504	PUBLIC EMPLOYEES' RETIREMENT SYSTEM	-425.30
Bill Pmt -Check	5/18/2006	10505	COMPUSA, INC.	-94.81
Bill Pmt -Check	5/18/2006	10506	ELLISON, SCHNEIDER & HARRIS, LLP	-7,993.00
Bill Pmt -Check	5/18/2006	10507	INLAND EMPIRE UTILITIES AGENCY	-510,000.00
Bill Pmt -Check	5/18/2006	10508	RAUCH COMMUNICATION CONSULTANTS, LLC	-5,146.43
Bill Pmt -Check	5/18/2006	10509	STATE COMPENSATION INSURANCE FUND	-86.64
Bill Pmt -Check	5/18/2006	10510	STAULA, MARY L	-136.61
Bill Pmt -Check	5/18/2006	10511	WILDERMUTH ENVIRONMENTAL INC	-229,353.78
Bill Pmt -Check	5/18/2006	10512	STATE COMPENSATION INSURANCE FUND	-791.71
Bill Pmt -Check	5/19/2006	10513	CAFE CALATO	-102.90
Bill Pmt -Check	5/22/2006	10514	ONO HAWAIIAN BBQ	-171.27
Bill Pmt -Check	5/23/2006	10515	MEDIA JIM	-160.00
Bill Pmt -Check	5/30/2006	10516	PETTY CASH	-437.01
General Journal	5/30/2006	06/05/5	PAYROLL	-5,891.31
General Journal	5/30/2006	06/05/5	PAYROLL	-20,002.12
				-1,956,019.33

May 06

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CHINO BASIN WATERMASTER
 COMBINING SCHEDULE OF REVENUE, EXPENSES AND CHANGES IN WORKING CAPITAL
 FOR THE
 PERIOD JULY 1, 2005 THROUGH APRIL 30, 2006

	WATERMASTER ADMINISTRATION	OPTIMUM BASIN MANAGEMENT	POOL ADMINISTRATION AND SPECIAL PROJECTS APPROPRIATIVE POOL	AGRICULTURAL POOL	NON-AGRIC. POOL	GROUNDWATER OPERATIONS GROUNDWATER REPLENISHMENT	SB222 FUNDS	EDUCATION FUNDS	GRAND TOTALS	BUDGET 2004-05
Administrative Revenues										
Administrative Assessments			4,781,347		66,160				4,847,507	\$3,984,888
Interest Revenue			207,296	13,620	6,304			57	227,277	78,330
Mutual Agency Project Revenue		29,434							29,434	0
Grant Income									-	0
Miscellaneous Income									-	0
Total Revenues	-	29,434	4,988,643	13,620	72,464	-	-	57	5,104,218	4,063,218
Administrative & Project Expenditures										
Watermaster Administration	473,216								473,216	621,784
Watermaster Board-Advisory Committee	46,206								46,206	37,018
Pool Administration			16,893	106,222	3,661				126,776	91,153
Optimum Basin Mgmt Administration		1,142,160							1,142,160	1,019,183
OBMP Project Costs		1,845,653							1,845,653	3,733,694
Education Funds Use								375	375	375
Mutual Agency Project Costs	26,773								26,773	80,004
Total Administrative/OBMP Expenses	546,195	2,987,813	16,893	106,222	3,661			375	3,661,159	5,583,211
Net Administrative/OBMP Income	(546,195)	(2,958,379)								
Allocate Net Admin Income To Pools	546,195		424,148	114,326	7,722				-	0
Allocate Net OBMP Income To Pools		2,958,379	2,297,328	619,227	41,824				-	0
Agricultural Expense Transfer			833,625	(833,625)					-	0
Total Expenses			3,571,994	6,150	53,206	-	-	375	3,661,159	5,583,211
Net Administrative Income			1,416,649	7,470	19,258			(318)	1,443,059	(1,519,993)
Other Income/(Expense)										
Replenishment Water Purchases						6,635,065			6,635,065	0
MZ1 Supplemental Water Assessments									-	2,179,500
Water Purchases									-	0
MZ1 Imported Water Purchase									-	(2,278,500)
Groundwater Replenishment						(6,896,667)			(6,896,667)	0
Net Other Income						(261,602)			(261,602)	(99,000)
Net Transfers To/(From) Reserves			1,416,649	7,470	19,258	(261,602)		(318)	1,181,457	(1,618,993)
Working Capital, July 1, 2005			4,450,869	464,653	187,298	3,580,499	158,251	2,238	8,843,808	
Working Capital, End Of Period			5,867,518	472,123	206,556	3,318,897	158,251	1,920	10,025,265	
04/05 Production			127,810.967	34,450.449	2,326.836				164,588.252	
04/05 Production Percentages			77.655%	20.931%	1.414%				100.000%	

CHINO BASIN WATERMASTER
 COMBINING SCHEDULE OF REVENUE, EXPENSES AND CHANGES IN WORKING CAPITAL
 FOR THE
 PERIOD JULY 1, 2005 THROUGH APRIL 30, 2006

	WATERMASTER ADMINISTRATION	OPTIMUM BASIN MANAGEMENT	POOL ADMINISTRATION AND SPECIAL PROJECTS APPROPRIATIVE POOL	AGRICULTURAL POOL	NON-AGRIC. POOL	GROUNDWATER OPERATIONS GROUNDWATER REPLENISHMENT	SB222 FUNDS	EDUCATION FUNDS	GRAND TOTALS	BUDGET 2004-05
Administrative Revenues										
Administrative Assessments			4,781,347		66,160				4,847,507	\$3,984,888
Interest Revenue			207,296	13,620	6,304			57	227,277	78,330
Mutual Agency Project Revenue		29,434							29,434	0
Grant Income									-	0
Miscellaneous Income									-	0
Total Revenues	-	29,434	4,988,643	13,620	72,464	-	-	57	5,104,218	4,063,218
Administrative & Project Expenditures										
Watermaster Administration	473,216								473,216	621,784
Watermaster Board-Advisory Committee	46,206								46,206	37,018
Pool Administration			16,893	106,222	3,661				126,776	91,153
Optimum Basin Mgmt Administration		1,142,160							1,142,160	1,019,183
OBMP Project Costs		1,845,653							1,845,653	3,733,694
Education Funds Use								375	375	375
Mutual Agency Project Costs	26,773								26,773	80,004
Total Administrative/OBMP Expenses	546,195	2,987,813	16,893	106,222	3,661			375	3,661,159	5,583,211
Net Administrative/OBMP Income	(546,195)	(2,958,379)								
Allocate Net Admin Income To Pools	546,195		424,148	114,326	7,722				-	0
Allocate Net OBMP Income To Pools		2,958,379	2,297,328	619,227	41,824				-	0
Agricultural Expense Transfer			833,625	(833,625)					-	0
Total Expenses			3,571,994	6,150	53,206	-	-	375	3,661,159	5,583,211
Net Administrative Income			1,416,649	7,470	19,258			(318)	1,443,059	(1,519,993)
Other Income/(Expense)										
Replenishment Water Purchases						6,635,065			6,635,065	0
MZ1 Supplemental Water Assessments									-	2,179,500
Water Purchases									-	0
MZ1 Imported Water Purchase									-	(2,278,500)
Groundwater Replenishment						(6,896,667)			(6,896,667)	0
Net Other Income						(261,602)			(261,602)	(99,000)
Net Transfers To/(From) Reserves			1,416,649	7,470	19,258	(261,602)		(318)	1,181,457	(1,618,993)
Working Capital, July 1, 2005			4,450,869	464,653	187,298	3,580,499	158,251	2,238	8,843,808	
Working Capital, End Of Period			5,867,518	472,123	206,556	3,318,897	158,251	1,920	10,025,265	
04/05 Production			127,810.967	34,450.449	2,326.836				164,588.252	
04/05 Production Percentages			77.655%	20.931%	1.414%				100.000%	

**CHINO BASIN WATERMASTER
TREASURER'S REPORT OF FINANCIAL AFFAIRS FOR THE PERIOD
APRIL 1 THROUGH APRIL 30, 2006**

DEPOSITORIES:

Cash on Hand - Petty Cash			\$	500
Bank of America				
Governmental Checking-Demand Deposits	\$	152,857		
Savings Deposits		9,697		
Zero Balance Account - Payroll		-		162,554
Vineyard Bank CD - Agricultural Pool				419,039
Local Agency Investment Fund - Sacramento				10,555,983
<hr/>				
TOTAL CASH IN BANKS AND ON HAND		4/30/2006		\$ 11,138,076
TOTAL CASH IN BANKS AND ON HAND		3/31/2006		11,490,724
PERIOD INCREASE (DECREASE)				\$ (352,648)

CHANGE IN CASH POSITION DUE TO:

Decrease/(Increase) in Assets: Accounts Receivable			\$	110,417
Assessments Receivable				141
Prepaid Expenses, Deposits & Other Current Assets				(17,886)
(Decrease)/Increase in Liabilities: Accounts Payable				740,120
Accrued Payroll, Payroll Taxes & Other Current Liabilities				574
Transfer to/(from) Reserves				(1,186,014)
<hr/>				
PERIOD INCREASE (DECREASE)				\$ (352,648)

	Petty Cash	Gov't'l Checking Demand	Zero Balance Account Payroll	Savings	Vineyard Bank	Local Agency Investment Funds	Totals
SUMMARY OF FINANCIAL TRANSACTIONS:							
Balances as of 3/31/2006	\$ 500	\$ 117,151	\$ 25,423	\$ 9,697	\$ 417,810	\$ 10,945,566	\$ 11,516,147
Deposits	-	141	-	-	1,229	110,417	111,787
Transfers	-	447,928	52,072	-	-	(500,000)	-
Withdrawals/Checks	-	(412,363)	(52,072)	-	-	-	(464,435)
<hr/>							
Balances as of 4/30/2006	\$ 500	\$ 152,857	\$ 25,423	\$ 9,697	\$ 419,039	\$ 10,555,983	\$ 11,163,499
<hr/>							
PERIOD INCREASE OR (DECREASE)	\$ -	\$ 35,706	\$ 25,423	\$ -	\$ 1,229	\$ (389,583)	\$ (352,648)

**CHINO BASIN WATERMASTER
TREASURER'S REPORT OF FINANCIAL AFFAIRS FOR THE PERIOD
APRIL 1 THROUGH APRIL 30, 2006**

INVESTMENT TRANSACTIONS

Effective Date	Transaction	Depository	Activity	Redeemed	Days to Maturity	Interest Rate(*)	Maturity Yield
4/15/2006	Withdrawal		\$ (500,000)				
4/13/2006	Interest		\$ 110,417				
TOTAL INVESTMENT TRANSACTIONS			\$ (389,583)	-			

* The earnings rate for L.A.I.F. is a daily variable rate; 4.03% was the effective yield rate at the Quarter ended March 31, 2006

**INVESTMENT STATUS
April 30, 2006**

<u>Financial Institution</u>	<u>Principal Amount</u>	<u>Number of Days</u>	<u>Interest Rate</u>	<u>Maturity Date</u>
Local Agency Investment Fund	\$ 10,555,983			
TOTAL INVESTMENTS	\$ 10,555,983			

Funds on hand are sufficient to meet all foreseen and planned Administrative and project expenditures during the next six months.

All investment transactions have been executed in accordance with the criteria stated in Chino Basin Watermaster's Investment Policy.

Respectfully submitted,



Sheri M. Rojo, CPA
Chief Financial Officer & Assistant General Manager
Chino Basin Watermaster

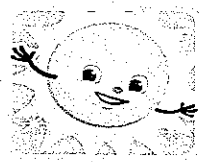
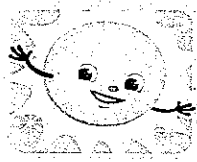
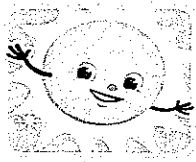
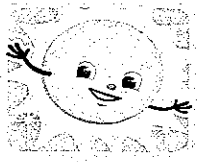
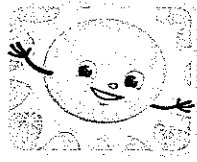
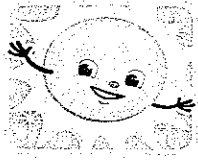
CHINO BASIN WATERMASTER
Profit & Loss Budget vs. Actual
July 2005 through April 2006

	<u>Jul '05 - Apr 06</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Ordinary Income/Expense				
Income				
4010 · Local Agency Subsidies	29,434.38	132,000.00	-102,565.62	22.3%
4110 · Admin Asmnts-Approp Pool	4,781,346.88	4,804,121.00	-22,774.12	99.53%
4120 · Admin Asmnts-Non-Agri Pool	66,160.17	73,425.00	-7,264.83	90.11%
4700 · Non Operating Revenues	227,277.13	78,330.00	148,947.13	290.15%
Total Income	<u>5,104,218.56</u>	<u>5,087,876.00</u>	<u>16,342.56</u>	<u>100.32%</u>
Gross Profit	5,104,218.56	5,087,876.00	16,342.56	100.32%
Expense				
6010 · Salary Costs	388,368.26	404,153.00	-15,784.74	96.09%
6020 · Office Building Expense	67,411.15	97,850.00	-30,438.85	68.89%
6030 · Office Supplies & Equip.	42,664.69	47,500.00	-4,835.31	89.82%
6040 · Postage & Printing Costs	66,185.81	75,700.00	-9,514.19	87.43%
6050 · Information Services	92,326.56	103,500.00	-11,173.44	89.2%
6060 · Contract Services	30,619.69	130,500.00	-99,880.31	23.46%
6080 · Insurance	18,676.80	24,210.00	-5,533.20	77.15%
6110 · Dues and Subscriptions	10,596.95	14,000.00	-3,403.05	75.69%
6140 · WM Admin Expenses	2,369.58	6,500.00	-4,130.42	36.46%
6150 · Field Supplies	-1,751.96	4,050.00	-5,801.96	-43.26%
6170 · Travel & Transportation	50,644.99	45,200.00	5,444.99	112.05%
6190 · Conferences & Seminars	15,548.65	17,500.00	-1,951.35	88.85%
6200 · Advisory Comm - WM Board	11,243.53	14,082.00	-2,838.47	79.84%
6300 · Watermaster Board Expenses	34,962.41	29,782.00	5,180.41	117.39%
8300 · Appr PI-WM & Pool Admin	16,892.56	15,347.00	1,545.56	110.07%
8400 · Agri Pool-WM & Pool Admin	16,525.38	18,756.00	-2,230.62	88.11%
8467 · Agri-Pool Legal Services	81,047.10	45,000.00	36,047.10	180.11%
8470 · Ag Meeting Attend -Special	8,650.00	10,000.00	-1,350.00	86.5%
8500 · Non-Ag PI-WM & Pool Admin	3,660.74	7,423.00	-3,762.26	49.32%
6500 · Education Funds Use Expens	375.00	375.00	0.00	100.0%
9500 · Allocated G&A Expenditures	<u>-310,445.21</u>	<u>-378,284.00</u>	<u>67,838.79</u>	<u>82.07%</u>
	646,572.68	733,144.00	-86,571.32	88.19%
6900 · Optimum Basin Mgmt Plan	1,038,286.66	996,767.00	41,519.66	104.17%
6950 · Mutual Agency Projects	26,773.00	75,000.00	-48,227.00	35.7%
9501 · G&A Expenses Allocated-OBMP	<u>103,873.02</u>	<u>109,541.00</u>	<u>-5,667.98</u>	<u>94.83%</u>
	1,168,932.68	1,181,308.00	-12,375.32	98.95%
7101 · Production Monitoring	68,480.38	68,755.00	-274.62	99.6%
7102 · In-line Meter Installation	56,245.66	97,954.00	-41,708.34	57.42%
7103 · Grdwtr Quality Monitoring	66,434.63	66,503.00	-68.37	99.9%
7104 · Gdwtr Level Monitoring	126,648.87	184,812.00	-58,163.13	68.53%
7105 · Sur Wtr Qual Monitoring	13,223.48	90,223.00	-76,999.52	14.66%
7106 · Wtr Level Sensors Install	0.00	5,734.00	-5,734.00	0.0%
7107 · Ground Level Monitoring	231,309.45	554,825.00	-323,515.55	41.69%
7108 · Hydraulic Control Monitoring	290,191.50	495,368.00	-205,176.50	58.58%
7109 · Recharge & Well Monitoring Prog	226,096.30	133,061.00	93,035.30	169.92%

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06/01/06
Accrual Basis

CHINO BASIN WATERMASTER
Profit & Loss Budget vs. Actual
July 2005 through April 2006

	<u>Jul '05 - Apr 06</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
7200 · PE2- Comp Recharge Pgm	276,896.35	759,105.00	-482,208.65	36.48%
7300 · PE3&5-Water Supply/Desalte	338.93	12,548.00	-12,209.07	2.7%
7400 · PE4- Mgmt Plan	195,178.21	1,081,014.00	-885,835.79	18.06%
7500 · PE6&7-CoopEfforts/SaltMgmt	81,188.46	255,769.00	-174,580.54	31.74%
7600 · PE8&9-StorageMgmt/Conj Use	6,848.56	77,268.00	-70,419.44	8.86%
7690 · Recharge Improvement Debt Pymt	0.00	300,000.00	-300,000.00	0.0%
7700 · Inactive Well Protection Prgm	0.00	12,128.00	-12,128.00	0.0%
9502 · G&A Expenses Allocated-Projects	206,572.18	268,742.00	-62,169.82	76.87%
	<u>1,845,652.96</u>	<u>4,463,809.00</u>	<u>-2,618,156.04</u>	<u>41.35%</u>
Total Expense	<u>3,661,158.32</u>	<u>6,378,261.00</u>	<u>-2,717,102.68</u>	<u>57.4%</u>
Net Ordinary Income	<u>1,443,060.24</u>	<u>-1,290,385.00</u>	<u>2,733,445.24</u>	<u>-111.83%</u>
Other Income/Expense				
Other Income				
4231 · MZ1 Assigned Water Sales	0.00	600,000.00	-600,000.00	0.0%
4210 · Approp Pool-Replenishment	6,635,065.45	0.00	6,635,065.45	
Total Other Income	<u>6,635,065.45</u>	<u>600,000.00</u>	<u>6,035,065.45</u>	<u>1,105.84%</u>
Other Expense				
5010 · Groundwater Replenishment	6,896,667.10	699,000.00	6,197,667.10	986.65%
9999 · To/(From) Reserves	1,181,458.59	-1,389,385.00	2,570,843.59	-85.04%
Total Other Expense	<u>8,078,125.69</u>	<u>-690,385.00</u>	<u>8,768,510.69</u>	<u>-1,170.09%</u>
Net Other Income	<u>-1,443,060.24</u>	<u>1,290,385.00</u>	<u>-2,733,445.24</u>	<u>-111.83%</u>
Net Income	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.0%</u>

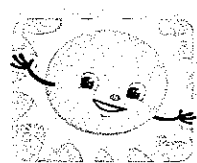
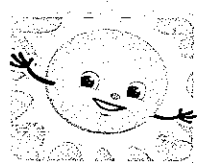
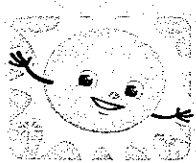
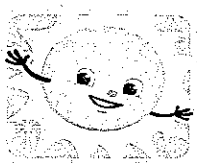


CHINO BASIN WATERMASTER

I. CONSENT CALENDAR

C. WATER TRANSACTIONS

1. Notice of Sale or Transfer – Fontana Water Company has agreed to purchase from The Nicholson Trust water in storage in the amount of 0.623 acre-feet and annual production rights in the amount of 8.000 acre-feet.
2. Notice of Sale or Transfer – Fontana Water Company has agreed to purchase from West Valley Water District water in storage in the amount of 2,000 acre-feet.



CHINO BASIN WATERMASTER

NOTICE

OF

APPLICATION(S)

RECEIVED FOR

WATER TRANSACTIONS – ACTIVITIES

Date of Notice:

April 19, 2006

This notice is to advise interested persons that the attached application(s) will come before the Watermaster Board on or after 30 days from the date of this notice.

NOTICE OF APPLICATION(S) RECEIVED

Date of Application: **April 14, 2006**

Date of this notice: **April 19, 2006**

Please take notice that the following Application has been received by Watermaster:

- A. Notice of Sale or Transfer – Fontana Water Company has agreed to purchase from The Nicholson Trust water in storage in the amount of 0.623 acre-feet and annual production right in the amount of 8.000 acre-feet.

This *Application* will first be considered by each of the respective pool committees on the following dates:

Appropriative Pool: May 11, 2006

Non-Agricultural Pool: May 11, 2006

Agricultural Pool: May 16, 2006

This *Application* will be scheduled for consideration by the Advisory Committee *no earlier than thirty days from the date of this notice and a minimum of twenty-one calendar days* after the last pool committee reviews it.

After consideration by the Advisory Committee, the *Application* will be considered by the Board.

Unless the *Application* is amended, parties to the Judgment may file *Contests* to the *Application* with Watermaster *within seven calendar days* of when the last pool committee considers it. Any *Contest* must be in writing and state the basis of the *Contest*.

Watermaster address:

Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Tel: (909) 484-3888
Fax: (909) 484-3890

CHINO BASIN WATERMASTER

NOTICE OF TRANSFER OF WATER

Notification Dated: April 19, 2006

A party to the Judgment has submitted a proposed transfer of water for Watermaster approval. Unless contrary evidence is presented to Watermaster that overcomes the rebuttable presumption provided in Section 5.3(b)(iii) of the Peace Agreement, Watermaster must find that there is "no material physical injury" and approve the transfer. Watermaster staff is not aware of any evidence to suggest that this transfer would cause material physical injury and hereby provides this notice to advise interested persons that this transfer will come before the Watermaster Board on or after 30 days from the date of this notice. The attached staff report will be included in the meeting package at the time the transfer begins the Watermaster process (comes before Watermaster).

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CHINO BASIN WATERMASTER

9641 San Bernardino Road, Rancho Cucamonga, Ca 91730
Tel: (909) 484.3888 Fax: (909) 484-3890 www.cbwm.org

KENNETH R. MANNING
CHIEF EXECUTIVE OFFICER

DATE: April 19, 2006
TO: Watermaster Interested Parties
SUBJECT: Summary and Analysis of Application for Water Transaction

Summary -

There does not appear to be a potential material physical injury to a party or to the basin from the proposed transaction as presented.

Issue -

- Notice of Sale or Transfer – Fontana Water Company has agreed to purchase from The Nicholson Trust water in storage in the amount of 0.623 acre-feet and annual production right in the amount of 8.000 acre -feet.

Recommendation –

1. Continue monitoring as planned in the Optimum Basin Management Program.
2. Use all new or revised information when analyzing the hydrologic balance and report to Watermaster if a potential for material physical injury is discovered, and
3. Approve the transaction as presented.

Fiscal Impact –

- None
- Reduces assessments under the 85/15 rule
- Reduce desalter replenishment costs

Background

The Court approved the Peace Agreement, the Implementation Plan and the goals and objectives identified in the OBMP Phase I Report on July 13, 2000, and ordered Watermaster to proceed in a manner consistent with the Peace Agreement. Under the Peace Agreement, Watermaster approval is required for applications to store, recapture, recharge or transfer water, as well as for applications for credits or reimbursements and storage and recovery programs.

Where there is no material physical injury, Watermaster must approve the transaction. Where the request for Watermaster approval is submitted by a party to the Judgment, there is a rebuttable presumption that most of the transactions do not result in Material Physical Injury to a party to the Judgment or the Basin (Storage and Recovery Programs do not have this presumption).

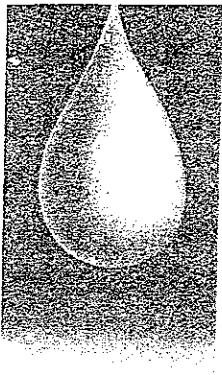
The following application for water transaction is attached with the notice of application.

- Notice of Sale or Transfer – Fontana Water Company has agreed to purchase from The Nicholson Trust water in storage in the amount of 0.623 acre-feet and annual production right in the amount of 8.000 acre -feet.

Notice of the water transaction identified above was mailed on April 19, 2006 along with the materials submitted by the requestors.

DISCUSSION

Water transactions occur each year and are included as production by the respective entity (if produced) in any relevant analyses conducted by Wildermuth Environmental pursuant to the Peace Agreement and the Rules & Regulations. There is no indication additional analysis regarding this transaction is necessary at this time. As part of the OBMP Implementation Plan, continued measurement of water levels and the installation of extensometers are planned. Based on no real change in the available data, we cannot conclude that the proposed water transaction will cause material physical injury to a party or to the Basin.



FONTANA WATER COMPANY

A DIVISION OF SAN GABRIEL VALLEY WATER COMPANY

8440 NUEVO AVENUE • P.O. BOX 987, FONTANA, CALIFORNIA 92334 • (909) 822-2201

April 14, 2006

Mr. Kenneth R. Manning, Chief Executive Officer
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, California 91730

Subject: Purchase of Water in Storage
Chino Basin-Fiscal Year 2005/2006

Dear Mr. Manning:

Please take notice that Fontana Water Company ("Company") has agreed to purchase from The Nicholson Trust water in storage and annual production right in the amount of 8.623 acre-feet to satisfy a portion of the Company's anticipated Chino Basin replenishment obligation for Fiscal Year 2005/2006.

Enclosed are fully executed Chino Basin Watermaster Forms No. 3 and 5, along with the company's Recapture Plan for consideration by Watermaster. Please agendaize this proposed transfer at the earliest possible opportunity.

If you should have any question or require additional information concerning this matter, please call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael J. McGraw".

Michael J. McGraw
General Manager

MJM:bf
Enclosures

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APPLICATION FOR
SALE OR TRANSFER OR RIGHT TO PRODUCE WATER FROM STORAGE

TRANSFER FROM LOCAL STORAGE AGREEMENT # _____

The Nicholson Trust
Name of Party

April 12, 2006
Date Requested

Date Approved

11142 Garvey Avenue
Street Address

.623 Acre-feet
Amount Requested

Acre-feet
Amount Approved

El Monte CA 91737
City State Zip Code

Telephone: (626) 448-6183

Facsimile: (626) 448-5530

Robert H. Nicholson, Jr.
The Nicholson Trust
Robert H. Nicholson, Jr., Trustee

TRANSFER TO:

Fontana Water Company
Name of Party

Attach Recapture Form 4

8440 Nuevo Avenue
Street Address

Fontana CA 92335
City State Zip Code

Telephone: (909) 822-2201

Facsimile: (909) 823-5046

Have any other transfers been approved by Watermaster
between these parties covering the same fiscal year? Yes [] No [X]

WATER QUALITY AND WATER LEVELS

What is the existing water quality and what are the existing water levels in the areas that are likely to be affected?

MATERIAL PHYSICAL INJURY


Is the Applicant aware of any Material Physical Injury to a party to the judgment or the Basin that
may be caused by the action covered by the application? Yes [] No [X]

If yes, what are the proposed mitigation measures, if any, that might reasonably be imposed to ensure that the
action does not result in Material Physical Injury to a party to the Judgment or the Basin?

N/A

ADDITIONAL INFORMATION ATTACHED

Yes [] No [X]


Michael J. McGraw, General Manager
Fontana Water Company

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____ Agreement # _____

APPLICATION TO TRANSFER ANNUAL PRODUCTION RIGHT OR SAFE YIELD

Fiscal Year 2005 - 2006

Commencing on July 1, 2005 and terminating on June 30, 2006, The Nicholson Trust ("Transferor") hereby transfers to Fontana Water Company ("Transferee") the quantity of 8.0 acre-feet of corresponding Annual Production Right (Appropriative Pool) or Safe Yield (Non-Agricultural Pool) adjudicated to Transferor or its predecessor in interest in the Judgment rendered in the Case of "CHINO BASIN MUNICIPAL WATER DISTRICT vs. CITY OF CHINO, et al.," RCV 51010 (formerly Case No. SCV 164327).

Said Transfer shall be conditioned upon:

- (1) Transferee shall exercise said right on behalf of Transferor under the terms of the Judgment and the Peace Agreement and for the period described above. The first water production in any year shall be that produced pursuant to carry-over rights defined in the Judgment. After production of its carry-over rights, if any, the next (or first if no carry-over rights) water produced by Transferee from the Chino Basin shall be that produced hereunder.
(2) Transferee shall put all waters utilized pursuant to said Transfer to reasonable beneficial use.
(3) Transferee shall pay all Watermaster assessments on account of the water production hereby Transferred.
(4) Any Transferee not already a party must intervene and become a party to the Judgment.

TO BE EXECUTED by both Transferor and Transferee, and to be accomplished by a general description of the area where the Transferred water was to be Produced and used prior to the Transfer, and where it will be Produced and used after the Transfer. This general description can be in the form of a map.

WATER QUALITY AND WATER LEVELS

What is the existing water quality and what are the existing water levels in the areas that are likely to be affected?

Recapture by Fontana Water Company accomplished by pumping of 15 wells-static levels vary from 375' to 684'. Of the wells routinely pumped, nitrate levels vary from a low of 8 mg/l to a high of 33 mg/l.

MATERIAL PHYSICAL INJURY?

Is the Applicant aware of any potential Material Physical Injury to a party to the Judgment or the Basin that may be caused by the action covered by the applicant? Yes [] No [X]

If yes, what are the proposed mitigation measures, if any, that might reasonably be imposed to ensure that the action does not result in Material Physical Injury to a party to the Judgment or the Basin?

N/A

ADDITIONAL INFORMATION ATTACHED

Yes [] No [X]

Robert H. Nicholson, Trustee
The Nicholson Trust
Robert H. Nicholson, Jr., Trustee

Michael J. McGraw
Michael J. McGraw, General Manager
Fontana Water Company

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

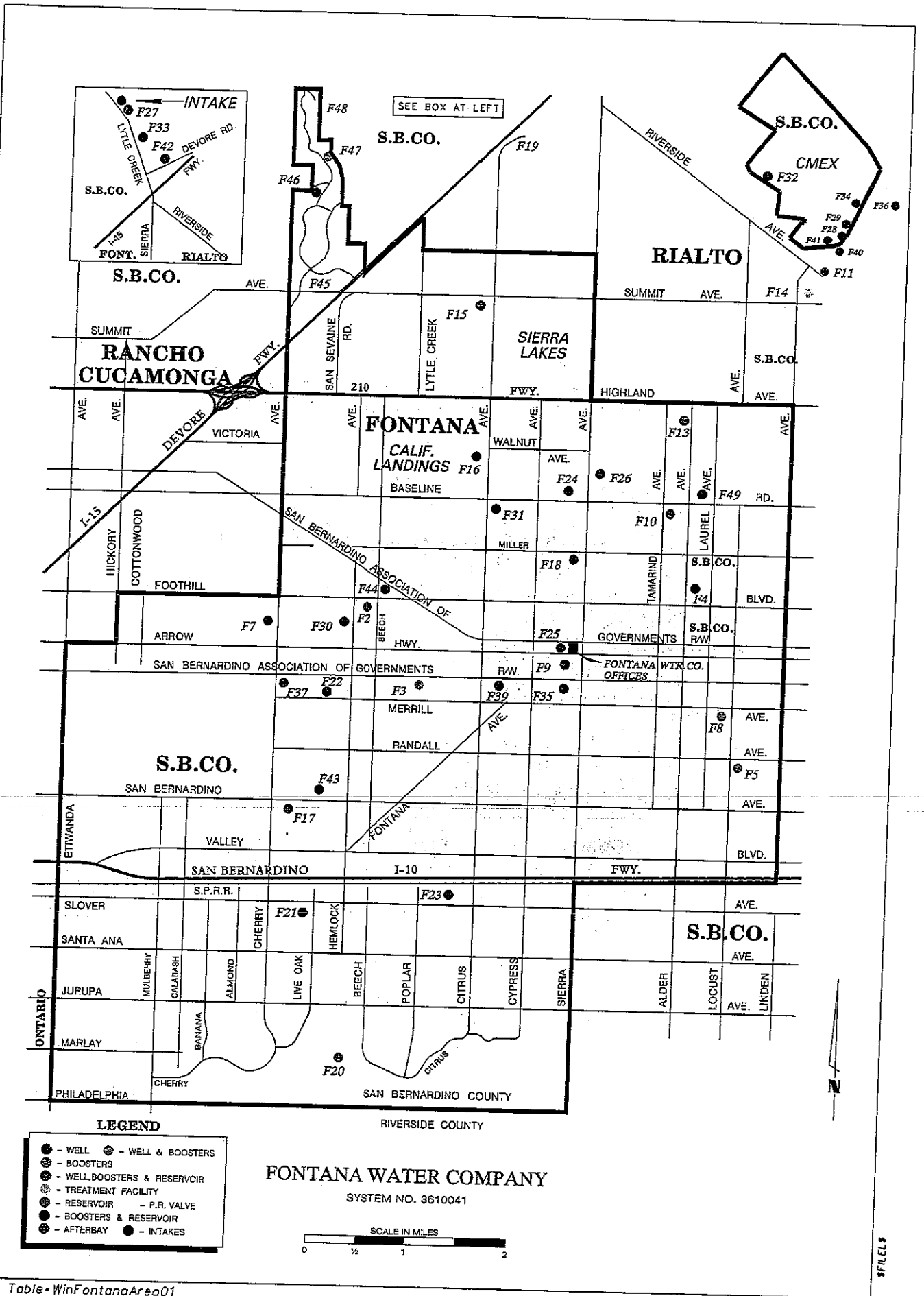
DATE OF BOARD APPROVAL: _____ Agreement # _____

FONTANA WATER COMPANY
Recapture Plan

The subject water is a transfer of stored groundwater and annual production right from The Nicholson Trust to Fontana Water Company (FWC) of 8.623 acre-feet to satisfy a portion of FWC's replenishment obligation for FY 2005/2006. Recapture of the stored water is accomplished by the production of any or all of the 15 wells owned and operated by FWC within Management Zone 3 of the Chino Groundwater Basin. The approximate daily production capacity of these wells is as follows:

<u>Well</u>	<u>Production</u> <u>Acre-Feet/Day</u>
F23A	10.6
F21A	5.7
F37A	5.7
F7A	11.0
F22A	8.2
F24A	8.4
F26A	8.6
F31A	7.3
F2A	10.6
F30A	5.1
F44A	11.0
F44B	10.6
F44C	10.6
F17B	5.7
F17C	7.1
Daily Total	<u>126.2</u>

The attached map shows the location of these wells within FWC's service area. Prior to 1992, water produced from the majority of these wells was pumped within Management Zone 3 by Fontana Union Water Company with safe yield rights in the Chino Groundwater Basin. However, as a result of a bankruptcy settlement agreement dated February 7, 1992 all of Fontana Union's Chino Groundwater Basin water, including overlying (agricultural) pool reallocation, is annually transferred to Cucamonga Valley Water District's storage account. Pursuant to the same 1992 bankruptcy settlement agreement, Fontana Water Company acquired Fontana Union's water production wells and continues to produce water from Management Zone 3, in the same manner and for the same purpose as had been done prior to 1992.



CHINO BASIN WATERMASTER

NOTICE

OF

APPLICATION(S)

RECEIVED FOR

WATER TRANSACTIONS – ACTIVITIES

Date of Notice:

April 19, 2006

This notice is to advise interested persons that the attached application(s) will come before the Watermaster Board on or after 30 days from the date of this notice.

NOTICE OF APPLICATION(S) RECEIVED

Date of Application: **April 7, 2006**

Date of this notice: **April 19, 2006**

Please take notice that the following Application has been received by Watermaster:

- A. Notice of Sale or Transfer – Fontana Water Company has agreed to purchase from West Valley Water District water in storage in the amount of 2000 acre-feet.

This *Application* will first be considered by each of the respective pool committees on the following dates:

Appropriative Pool: May 11, 2006

Non-Agricultural Pool: May 11, 2006

Agricultural Pool: May 16, 2006

This *Application* will be scheduled for consideration by the Advisory Committee *no earlier than thirty days from the date of this notice and a minimum of twenty-one calendar days* after the last pool committee reviews it.

After consideration by the Advisory Committee, the *Application* will be considered by the Board.

Unless the *Application* is amended, parties to the Judgment may file *Contests* to the *Application* with Watermaster *within seven calendar days* of when the last pool committee considers it. Any *Contest* must be in writing and state the basis of the *Contest*.

Watermaster address:

Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Tel: (909) 484-3888
Fax: (909) 484-3890

CHINO BASIN WATERMASTER

NOTICE OF TRANSFER OF WATER

Notification Dated: April 19, 2006

A party to the Judgment has submitted a proposed transfer of water for Watermaster approval. Unless contrary evidence is presented to Watermaster that overcomes the rebuttable presumption provided in Section 5.3(b)(iii) of the Peace Agreement, Watermaster must find that there is "no material physical injury" and approve the transfer. Watermaster staff is not aware of any evidence to suggest that this transfer would cause material physical injury and hereby provides this notice to advise interested persons that this transfer will come before the Watermaster Board on or after 30 days from the date of this notice. The attached staff report will be included in the meeting package at the time the transfer begins the Watermaster process (comes before Watermaster).

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CHINO BASIN WATERMASTER

9641 San Bernardino Road, Rancho Cucamonga, Ca 91730
Tel: (909) 484.3888 Fax: (909) 484-3890 www.cbwm.org

KENNETH R. MANNING
CHIEF EXECUTIVE OFFICER

DATE: April 19, 2006
TO: Watermaster Interested Parties
SUBJECT: Summary and Analysis of Application for Water Transaction

Summary -

There does not appear to be a potential material physical injury to a party or to the basin from the proposed transaction as presented.

Issue -

- Notice of Sale or Transfer –Fontana Water Company has agreed to purchase from West Valley Water District water in storage in the amount of 2000 acre -feet.

Recommendation –

1. Continue monitoring as planned in the Optimum Basin Management Program.
2. Use all new or revised information when analyzing the hydrologic balance and report to Watermaster if a potential for material physical injury is discovered, and
3. Approve the transaction as presented.

Fiscal Impact –

- None
- Reduces assessments under the 85/15 rule
- Reduce desalter replenishment costs

Background

The Court approved the Peace Agreement, the Implementation Plan and the goals and objectives identified in the OBMP Phase I Report on July 13, 2000, and ordered Watermaster to proceed in a manner consistent with the Peace Agreement. Under the Peace Agreement, Watermaster approval is required for applications to store, recapture, recharge or transfer water, as well as for applications for credits or reimbursements and storage and recovery programs.

Where there is no material physical injury, Watermaster must approve the transaction. Where the request for Watermaster approval is submitted by a party to the Judgment, there is a rebuttable presumption that most of the transactions do not result in Material Physical Injury to a party to the Judgment or the Basin (Storage and Recovery Programs do not have this presumption).

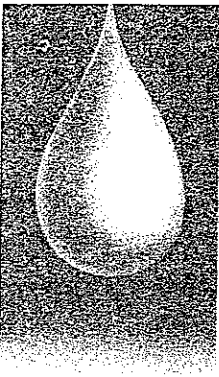
The following application for water transaction is attached with the notice of application.

- Notice of Sale or Transfer – Fontana Water Company has agreed to purchase from West Valley Water District water in storage in the amount of 2000 acre -feet.

Notice of the water transaction identified above was mailed on April 19, 2006 along with the materials submitted by the requestors.

DISCUSSION

Water transactions occur each year and are included as production by the respective entity (if produced) in any relevant analyses conducted by Wildermuth Environmental pursuant to the Peace Agreement and the Rules & Regulations. There is no indication additional analysis regarding this transaction is necessary at this time. As part of the OBMP Implementation Plan, continued measurement of water levels and the installation of extensometers are planned. Based on no real change in the available data, we cannot conclude that the proposed water transaction will cause material physical injury to a party or to the Basin.



FONTANA WATER COMPANY

A DIVISION OF SAN GABRIEL VALLEY WATER COMPANY

8440 NUEVO AVENUE • P.O. BOX 987, FONTANA, CALIFORNIA 92334 • (909) 822-2201

April 7, 2006

RECEIVED

APR 11 2006

CHINO BASIN WATERMASTER

Mr. Kenneth R. Manning, Chief Executive Officer
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, California 91730

Subject: Purchase of Water in Storage
Chino Basin-Fiscal Year 2005/2006

Dear Mr. Manning:

Please take notice that Fontana Water Company ("Company") has agreed to purchase from West Valley Water District water in storage in the amount of 2000 acre-feet to satisfy a portion of the Company's anticipated Chino Basin replenishment obligation for Fiscal Year 2005/2006.

Enclosed are fully executed Chino Basin Watermaster Forms No. 3 and 4, along with the company's Recapture Plan for consideration by Watermaster. Please agendize this proposed transfer at the earliest possible opportunity.

If you should have any question or require additional information concerning this matter, please call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael J. McGraw".

Michael J. McGraw
General Manager

MJM:bf
Enclosures

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APPLICATION FOR SALE OR TRANSFER OR RIGHT TO PRODUCE WATER FROM STORAGE

TRANSFER FROM LOCAL STORAGE AGREEMENT # _____

West Valley Water District Name of Party March 31, 2006 Date Requested _____ Date Approved _____

855 West Baseline Avenue Street Address 2000 Acre-feet Amount Requested 2000 Acre-feet Amount Approved

Rialto CA 92377 City State Zip Code

Telephone: (909) 875-1804

Facsimile: (909) 875-7284

Anthony W. Araiza, General Manager West Valley Water District

TRANSFER TO:

Fontana Water Company Name of Party

Attach Recapture Form 4

8440 Nuevo Avenue Street Address

Fontana CA 92334 City State Zip Code

Telephone: (909) 822-2201

Facsimile: (909) 823-5046

Have any other transfers been approved by Watermaster between these parties covering the same fiscal year? Yes [] No [X]

WATER QUALITY AND WATER LEVELS

What is the existing water quality and what are the existing water levels in the areas that are likely to be affected?

Recapture by Fontana Water Company accomplished by pumping of 15 wells-static water levels vary from 375' to 684'. Of the wells routinely pumped, nitrate levels vary from a low of 8 mg/l to a high of 33 mg/l.

MATERIAL PHYSICAL INJURY


Is the Applicant aware of any Material Physical Injury to a party to the judgment or the Basin that may be caused by the action covered by the application? Yes [] No [X]

If yes, what are the proposed mitigation measures, if any, that might reasonably be imposed to ensure that the action does not result in Material Physical Injury to a party to the Judgment or the Basin?

N/A

ADDITIONAL INFORMATION ATTACHED

Yes [] No [X]



Michael J. McGraw, General Manager
Fontana Water Company

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____ Agreement # _____

APPLICATION OR AMENDMENT TO APPLICATION TO RECAPTURE WATER IN STORAGE

APPLICANT

Fontana Water Company Name of Party March 31, 2006 Date Requested Date Approved 8440 Nuevo Avenue Street Address 2000 Acre-feet Amount Requested Acre-feet Amount Approved Fontana CA 92335 City State Zip Code Projected Rate of Recapture Projected Duration of Recapture Telephone: (909) 822-2201 Facsimile: (909) 823-5046

IS THIS AN AMENDMENT TO A PREVIOUSLY APPROVED APPLICATION? [] YES [X] NO IF YES, ATTACH APPLICATION TO BE AMENDED

IDENTITY OF PERSON THAT STORED THE WATER: West Valley Water District

PURPOSE OF RECAPTURE

- [] Pump when other sources of supply are curtailed [X] Pump to meet current or future demand over and above production right [] Pump as necessary to stabilize future assessment amounts [] Other, explain

METHOD OF RECAPTURE (if by other than pumping) (e.g. exchange)

N/A

PLACE OF USE OF WATER TO BE RECAPTURED

Within Fontana Water Company's Service Area

LOCATION OF RECAPTURE FACILITIES (IF DIFFERENT FROM REGULAR PRODUCTION FACILITIES).

N/A

WATER QUALITY AND WATER LEVELS

What is the existing water quality and what are the existing water levels in the areas that are likely to be affected?

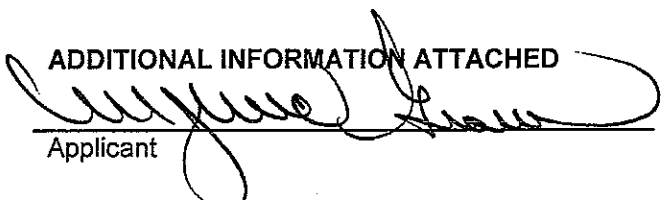
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If yes, what are the proposed mitigation measures, if any, that might reasonably be imposed to ensure that the action does not result in Material Physical Injury to a party to the Judgment or the Basin?

ADDITIONAL INFORMATION ATTACHED Yes [] No [X]


Applicant

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

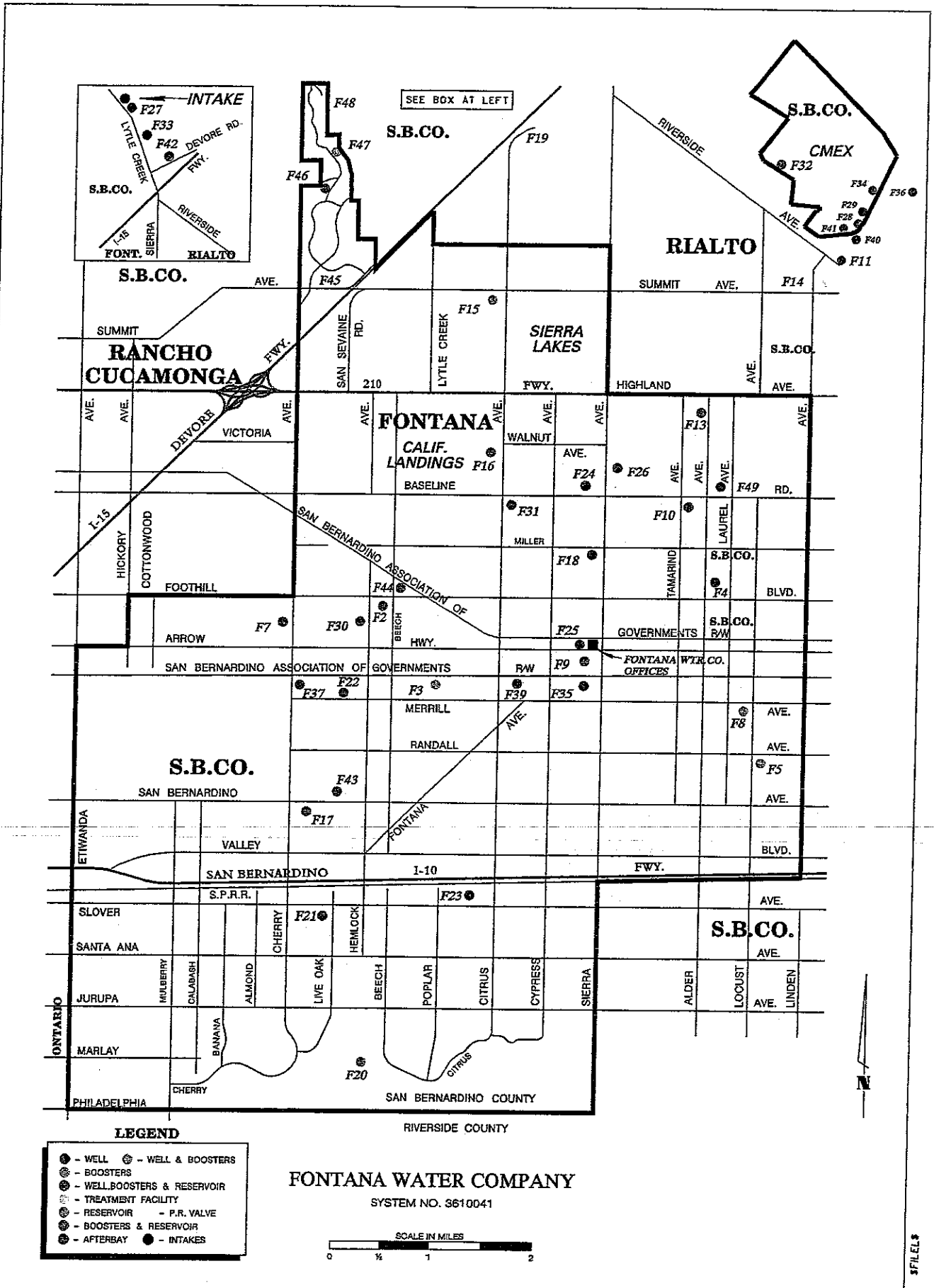
DATE OF BOARD APPROVAL: _____ Agreement # _____

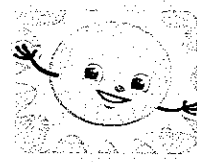
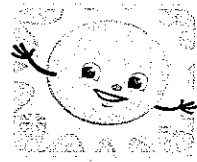
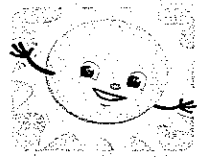
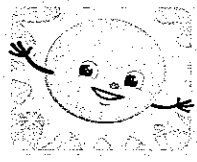
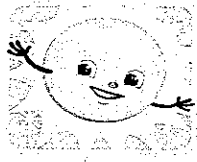
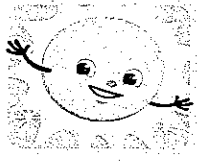
FONTANA WATER COMPANY
Recapture Plan

The subject water is a transfer of stored groundwater from West Valley Water District to Fontana Water Company (FWC) of 2000 acre-feet to satisfy a portion of FWC's replenishment obligation for FY 2005/2006. Recapture of the stored water is accomplished by the production of any or all of the 15 wells owned and operated by FWC within Management Zone 3 of the Chino Groundwater Basin. The approximate daily production capacity of these wells is as follows:

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F31A	7.3
F2A	10.6
F30A	5.1
F44A	11.0
F44B	10.6
F44C	10.6
F17B	5.7
F17C	7.1
Daily Total	<u>126.2</u>

The attached map shows the location of these wells within FWC's service area. Prior to 1992, water produced from the majority of these wells was pumped within Management Zone 3 by Fontana Union Water Company with safe yield rights in the Chino Groundwater Basin. However, as a result of a bankruptcy settlement agreement dated February 7, 1992 all of Fontana Union's Chino Groundwater Basin water, including overlying (agricultural) pool reallocation, is annually transferred to Cucamonga Valley Water District's storage account. Pursuant to the same 1992 bankruptcy settlement agreement, Fontana Water Company acquired Fontana Union's water production wells and continues to produce water from Management Zone 3, in the same manner and for the same purpose as had been done prior to 1992.

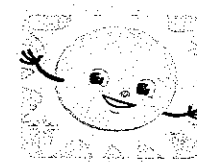
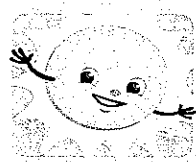
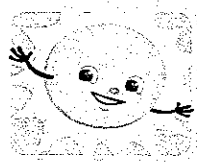
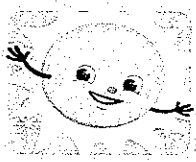




CHINO BASIN WATERMASTER

III. BUSINESS ITEMS

A. Peace II Term Sheet





CHINO BASIN WATERMASTER

9641 San Bernardino Road, Rancho Cucamonga, Ca 91730
Tel: 909.484.3888 Fax: 909.484.3890 www.cbwm.org

KENNETH R. MANNING
Chief Executive Officer

STAFF REPORT

DATE: June 8, 2006
June 20, 2006
June 22, 2006

TO: Committee Members
Watermaster Board Members

SUBJECT: Non-Binding Term Sheet

RECOMMENDATION

Staff and General Counsel recommend that the Advisory Committee and Board approve the enclosed Stakeholder Non-Binding Term Sheet as a template approach for the development of final agreements.

BACKGROUND

The Judgment requires Watermaster to prepare an Optimum Basin Management Plan ("OBMP"). Under Court Supervision, the Peace Agreement and the OBMP Implementation Plan were approved by the Watermaster Board in June of 2000. Court approval of the Peace Agreement and the OBMP Implementation Plan followed in September of 2000.

Within the Peace Agreement there are specific items that require Watermaster to consider and exercise its discretion in the 2005/2006 time frame. Other sections of the Peace Agreement authorize Watermaster to take certain action that may have significant financial and water supply consequences on the parties to the Judgment.

In February of 2004, Watermaster convened a process among the parties to the Judgment to address these issues. This effort resulted in several months of meetings. The meetings were suspended in July of 2004 and then resumed again in March of 2005 to allow a thorough technical review of the management strategies being considered by the parties.

Several issues were under consideration by the parties through this process:

- In its effort to further refine the OBMP Implementation Plan, Watermaster Staff and stakeholders have become aware of the significance of implementing a new groundwater management goal, commonly referred to as "Hydraulic Control." Properly implemented through

- a strategy referred to as Basin Re-Operation, achievement of this goal will allow Watermaster to enjoy beneficial coverage under the Maximum Benefit objectives of the RWQCB's Basin Plan and will further created long-term reliable yield improvements for the benefits of the parties.
- As production from the new Desalters begins and sources of replenishment water, such as the Kaiser account, as exhausted, it has become necessary for the parties to address the question of replenishment for the existing Desalter production.
 - Under the OBMP, there is still a need to construct additional Desalter capacity beyond that achieved with Desalter I, the Desalter I Expansion, and Desalter II. Because of this, it is necessary for the parties to address such questions as potential configurations for the next desalting project, cost strategies, and replenishment obligations.
 - Under the Rules and Regulations, the method of accounting for a shortfall in the quantity of water available to meet the cumulative obligations of Land Use Conversions and the Early Transfer was due to be reconsidered.
 - A range of storage issues were due to be addressed, such as the imposition of losses, and the limitations on the further accrual of water in local storage accounts.
 - The question of how to implement the credits provisions of the Peace Agreement have been a source of conflict among the stakeholders in need of resolution.
 - The completion of the Supplemental Water recharge in MZ1 required Watermaster to evaluate the need to consider whether it is necessary to continue to specially purchase 6,500 AFY of Supplemental Water for MZ1 recharge purposes.
 - Under the Peace Agreement, the members of the Non-Agricultural Pool were given the ability to transfer water among the members of the Pool or to Watermaster for certain purposes. Since the time of the Peace Agreement, the question has arisen as to whether further transfer options should be available to this Pool.
 - As Watermaster has improved its information collection and processing abilities, past errors have and will become manifest. Watermaster requested the parties to agree upon a uniform approach to addressing past errors in order to guide staff when such situations arise.
 - The Long-Term Plan for the Management of Subsidence is under development and needs to be incorporated into the overall management strategies for the Basin.

COMPLETION OF STAKEHOLDERS NON-BINDING TERM SHEET

In August of 2005 an initial consensus on these issues among the parties to the Judgment concerning a "Peace II Term Sheet" resulted in the Watermaster Board scheduling public workshops where numerous comments were received from stakeholders.

Further technical analysis and written responses to questions presented at these workshops were completed in April of 2006. In response to issues raised in these workshops, the Watermaster Board authorized Watermaster Staff and General Counsel to prepare a "Facilitator Proposal" and distribute it for discussion among a new, broader group of stakeholders for evaluation.

On March 18, 2006, this process formally concluded with the Stakeholder Non-Binding Term Sheet enclosed here. This term sheet has been unanimously supported by all stakeholders in attendance at the sessions.

However, Watermaster has received correspondence from the City of Chino Hills that they remain concerned about the implementation of Article IX regarding management of Management Zone 1 issues. They have declared their right to oppose any and all measures in the Stakeholder Proposal if the MZ#1 issues are not resolved to their satisfaction. Watermaster Staff and General Counsel do not believe the approval of the Stakeholder Proposal precludes any proposal on MZ#1. Nor does it pre-determine any specific outcome. Rather, Article IX constitutes a vessel capable of receiving whatever reasonable approach is developed by the parties.

As is clearly indicated by the Stakeholder Non-Binding Term Sheet, the term sheet is non-binding. No party has executed the term sheet and no party is asked to execute the term sheet. The purpose of the term sheet is rather to form the basis for a generalized "project description" so that further technical analysis, including CEQA analysis, can commence. It will also form the starting point for further discussions which will lead to a binding agreement, Judgment and Rules and Regulations amendments, and whatever other documentation is required in order to implement the approach described by the term sheet.

On this basis, staff and general counsel recommend that the Advisory Committee and Board approve the enclosed Stakeholder Non-Binding Term Sheet as a template approach for the development of final agreements.

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**STAKEHOLDER
NON-BINDING TERM SHEET**

- I. PRE-CONDITIONS TO A BINDING AGREEMENT IN PROPOSED ORDER OF SATISFACTION
- A. Watermaster Completion of Technical Evaluation
1. Staff / Wildermuth Evaluation.
 2. Cost / Benefit Analysis. Watermaster will retain the services of an independent competent economist with experience in evaluating water markets and water projects to provide an evaluation of the macro costs and benefits to the parties as a whole that are attributable to Hydraulic Control, Basin Re-Operation and Desalter elements of the Non-Binding Term Sheet. The macro analysis will provide general consideration to the relative costs of implementing Hydraulic Control as compared to the no-action alternative and be completed no later than July 1, 2006. The macro analysis will not evaluate the individual costs and benefits to be assumed or received by any individual party or interest. The study will be sponsored by Watermaster, and the cost of the study will be undertaken for not more than \$20,000 and will be paid for as an OBMP assessment. Watermaster will take comments on the scope of the macro analysis at an informal workshop to be scheduled in June.
- B. Watermaster Approval of this Non-Binding Term Sheet By:
1. Distribution to and consideration by each of the Three Pools.
 2. Approval by the Advisory Committee.
 3. Approval by the Watermaster Board.
- C. Court Direction to Proceed in Accordance with the Non-Binding Term Sheet.
1. Court Workshop July 26, 2006, including but not limited to the completion of a thorough professional review of the technical work compiled by Watermaster in support of this Non-Binding Term Sheet.
 2. Court Hearing September 2006.
- D. This Non-Binding Term Sheet will Form the Basis for a Project Description and ensuing CEQA Review.
1. The characterization of the Term Sheet as “non-binding” reflects the intention of the stakeholders that the Non-Binding Term Sheet is not to constitute a binding agreement. The Non-Binding Term Sheet will serve

as the basis for completing a binding agreement, Judgment Amendments and implementing rules and regulations that will contain the terms set forth in this Non-Binding Term Sheet as well as other terms and conditions that may be determined to be essential. Accordingly, Watermaster's approval of this Non-Binding Term Sheet may not be relied upon by any Party to the Judgment to compel action by any other or support a claim of estoppel against any other.

2. No party may be compelled to take any action under any final agreement, Judgment Amendment and rules and regulations unless and until there has been compliance with all applicable laws, including the satisfaction of the California Environmental Quality Act ("CEQA").
 3. No Party to the Judgment may allege reliance upon this Non-Binding Term Sheet to support a claim of estoppel against any other.
 4. It is understood and agreed among the Parties to the Judgment that this Non-Binding Term Sheet does not contain all the essential terms that are to be included in a final binding agreement, judgment amendments and rules and regulations. Further analysis, negotiation and documentation are required before binding commitments are intended to be effectuated by or among the Parties to the Judgment.
 5. No Party to the Judgment is bound to continue participation in further meetings or to continue negotiations. No party will be bound to implement any of the measures set forth herein.
 6. No action by any party following Watermaster approval of this Non-Binding Term Sheet will be construed as an "intent to be bound" under the terms set forth herein.
-
- E. Watermaster will update earlier analysis of socioeconomic impacts conducted pursuant to the Judgment prior to requesting Court approval of the final agreement and Judgment Amendments. The analysis of socioeconomic impacts will consider the impacts (positive and negative) of implementing the OBMP and the Peace Agreement as well as those that may arise from Watermaster pursuing the suite of actions set forth in this Non-Binding Term Sheet, including but not limited to Watermaster assessments. The analysis will specifically address the potential distribution of costs and benefits among the parties that were initiated with the approval of the Peace Agreement in 2000. This socioeconomic impact study will be considered by Watermaster as it discharges its continuing duties under Exhibits "H" and "I" of the Judgment. The study will be completed by March 1, 2007. Accordingly, each party and Watermaster will have the benefit of socioeconomic analysis prior to executing a binding agreement. The scope of this analysis will be set in a public Watermaster workshop among stakeholders.

- F. Concurrent Documentation and approvals of Final Binding Agreement Among the Parties to the Judgment, Amendments to the Judgment and the Rules and Regulations.
- G. Court Approval of Judgment Amendments and the Issuance of Direction to Proceed in Accordance with the Proposed Final Form of the Documents, Subject to Execution of Agreements and the Adoption of CEQA Findings.
- H. Final Execution by the:
 - 1. Principals.
 - 2. The Three Pools, the Advisory Committee, and the Watermaster Board.

II. REFINED BASIN MANAGEMENT STRATEGY

A. Adopt (“Reconfirm”) the Management Goal of Hydraulic Control.

1. The Optimum Basin Management Program (“OBMP”) will be amended to reflect that obtaining and maintaining Hydraulic Control is an essential goal that is critical to prudent Basin management in accordance with Watermaster’s obligation to prepare and implement an OBMP. (See Judgment Paragraph 39 and 40, Judgment Exhibit “I”, paragraph 1(b).) Benefits include but are not limited to meeting objectives established by the Regional Water Quality Control Board. This will require an amendment to the OBMP Implementation Plan attached to the Peace Agreement. (“OBMP Implementation Plan”)
2. Watermaster will develop a Hydraulic Control Operation Plan (“HCOP”) as a supplement to the OBMP. The HCOP supplement will be prepared in a form approved by Watermaster and will describe the projected actions to be taken by Watermaster relative to achieving and maintaining of Hydraulic Control of the Chino Basin. These actions include, but are not limited to: implementation of the Hydraulic Control Monitoring Program (“HCMP”), the sizing and location of Desalter groundwater extraction facilities for the purpose of achieving and maintaining Hydraulic Control, and the managed lowering of water levels in strategic locations of the Chino Basin (“Basin Re-Operation”). This will require a supplement to the OBMP Implementation Plan.
3. Hydraulic Control is defined herein as the reduction of groundwater discharge from the Chino North Management Zone to the Santa Ana River to de minimus quantities. The Chino North Management Zone is defined in the 2004 Basin Plan amendment (RWQCB resolution R8-2004-001). ~~Hydraulic Control insures that the water management activities in the Chino North Management Zone do not materially impact the beneficial uses of the Santa Ana River downstream of Prado Dam.~~
4. Re-Operation is defined herein as the increase in controlled overdraft as defined in the Judgment from 200,000 acre-feet over the period 1978 through 2017 to 600,000 acre-feet through 2030 with the 400,000 acre-feet increase allocated specifically to meet the replenishment obligation of the Desalters. A cumulative change in storage of up to 400,000 acre-feet greater than initially authorized by the original Judgment will result.

B. Adopt the Management Strategy of Basin Re-Operation to Obtain and Maintain Hydraulic Control.

1. The managed withdrawal of quantities of water from existing storage from the Basin is required for achieving and maintaining Hydraulic Control. Therefore, it is a prudent and efficient use of Basin resources *to the extent*

it is required for achieving and maintaining Hydraulic Control. However, the production of quantities of groundwater from storage in excess of that quantity which is required to secure Hydraulic Control is not authorized under this management goal.

2. The parties will jointly authorize Basin Re-Operation through the method of forgiving replenishment of groundwater production from the Desalters as follows:
 - a. A target for achieving and maintaining Hydraulic Control by de-watering the Basin by a cumulative quantity of 400,000 acre-feet of un-replenished production from the Existing Desalters *and* Future Desalters (all authorized Desalters) will be used for *planning purposes*. In order to qualify for replenishment forgiveness as provided in this Non-Binding Term Sheet there must be new groundwater production facilities for the Future Desalters, and the new Desalter groundwater extraction facilities must be located in the southern end of the Basin. A map depicting the "southern end" is attached hereto as Exhibit "A." The southern end includes much of the OBMP-proposed Desalter III well-field and the shallow aquifer system among Desalter I wells No. 1 through 4 and west of Desalter I that are likely to increase yield benefits under the Basin Re-Operation.
 - b. Watermaster will prepare a summary of the cumulative total of groundwater production and desalting from all authorized Desalters and other activities authorized by the OBMP as provided in the Peace Agreement in a schedule that: (i) identifies the total change in groundwater storage that *will* result from the proposed Basin Re-Operation to obtain Hydraulic Control, and (ii) characterizes and accounts for all water that is projected to be produced by all authorized Desalters for the initial Term of the Peace Agreement. This schedule shall be prepared prior to the adoption of the final agreement. Watermaster will modify its projections from time to time, as may be prudent under the circumstances. "All authorized Desalters" is intended to encompass the Existing Desalters and Future Desalters.
 - c. An evaluation of Watermaster's achievement of Basin outflow conditions and compliance with Regional Board orders will be completed annually by Watermaster. In the event that Hydraulic Control is secured in any year *before* the full 400,000 acre-feet has been utilized, the further forgiveness of replenishment will be suspended beginning in the next fiscal year, unless and until Watermaster approves a revised schedule for un-replenished production, subject to the continuing cap of 400,000 acre-feet. In the alternative, Watermaster may prepare and adopt a contingency

plan that establishes conditions and protective measures to avoid Material Physical Injury and equitably address the contingency, if and when it should occur. The Watermaster approval of any revised schedule must be supported by a technical report demonstrating the need to continue some level of un-replenished production from the Desalters.

- d. There are material yield benefits to the parties through Basin Re-Operation. The extent of these benefits is somewhat dependent upon the final location of new production facilities within the southerly end. Accordingly, Watermaster should require the location of Future Desalter groundwater production facilities to achieve both Hydraulic Control and maximize yield enhancement.
 - e. Basin Re-Operation should be phased over a reasonable period of time to secure the physical condition of Hydraulic Control and to achieve the identified yield benefits while at the same time avoiding Material Physical Injury or an inefficient use of basin resources. Watermaster will have discretion to apportion the forgiveness under a schedule that reflects the needs of the parties and the need for economic certainty. Watermaster may elect to establish a schedule for Basin Re-Operation that best meets the needs of the parties and the conditions of the Basin, including but not limited to "ramping up," "ramping down," or "straight-lining."
 - f. To ameliorate any long-term risks attributable to reliance upon un-replenished groundwater production by the Desalters, the annual availability of any portion of the 400,000 acre-feet set aside for forgiveness, is expressly subject to Watermaster making an annual finding it is in substantial compliance with the revised Watermaster Recharge Master Plan.
- C. Basin Management Assistance. Three Valleys shall assist in the management of the Basin through a financial contribution in an amount of up to \$300,000 to study the feasibility of developing a water supply program within Management Zone 1 of the Basin that would assist Watermaster in meeting its Hydraulic Control and Management Zone 1 subsidence management goals. The key elements and Three Valleys' participation in this program and/or future financial assistance in the management of the Basin will be set forth in a non-binding Memorandum of Understanding between Watermaster and Three Valleys and subsequently incorporated into the final binding agreement among the parties.
- D. Reservation of Rights. As stated further below, none of the approvals referenced herein will preclude any party from seeking judicial review of any Watermaster action to the extent those rights exist under the Judgment. Nothing herein shall be construed as limiting the rights of Watermaster to manage the Basin in accordance with the parameters set forth in Exhibit "F" to the Judgment.

- E. Judgment Amendment. Implementation of Basin Re-Operation Strategy at the projected levels will require a Judgment Amendment. An amendment to the OBMP Implementation Plan and implementing Rules and Regulations are also required.

III. REPLENISHMENT OBLIGATIONS FOR DESALTER PUMPING

- A. The replenishment obligation for Desalter production in any year will be determined by Watermaster as follows: First, Watermaster will apply any applicable replenishment credits to the total quantity of groundwater production for the preceding year. Second, to the extent available credits are insufficient to fully offset the quantity of groundwater production attributable to the Desalters, Watermaster will levy a Replenishment Assessment among the members of the Overlying (Non-Agricultural) Pool and the Appropriative Pool.
1. Replenishment credits will be provided against cumulative groundwater production from the Desalters from (a) the Kaiser account (Peace Agreement Section 7.5(a).); (b) dedication of water from the Overlying (Non-Agricultural) Pool Storage Account; (c) New Yield (other than Stormwater (Peace Agreement Section 7.5(b))); (d) any declared losses from storage; (e) Safe Yield that may be contributed by the parties (Peace Agreement Section 7.5(c)); and (f) any forgiveness that is authorized as a part of the Basin Re-Operation strategy pursuant to paragraph II.B.1 above.
 2. Watermaster will make an annual finding as to the quantity of New Yield that is made available by Basin Re-Operation. Any subsequent recalculation of New Yield as Safe Yield by Watermaster will not change the priorities set forth above for off-setting Desalter production. However, the express crediting of New Yield for this purpose will be for the initial term of the Peace Agreement.
 3. After applying any of the credits provided in A.1 above, any unmet replenishment obligation that is attributable to the production of groundwater from the Desalters will be satisfied by Watermaster levying:
 - a. A Special OBMP Assessment against the Overlying (Non-Agricultural) Pool equivalent to a Replenishment Assessment as more specifically described in Article IX below. The Replenishment Assessment will be assessed pro-rata on each member's share of Safe Yield, followed by
 - b. A Replenishment Assessment against the Appropriative Pool, pro rata based on each Producer's combined total share of Operating Safe Yield and the previous year's actual production. Desalter Production is excluded from this calculation. However, if there is a material reduction in the net cost of Desalter product water to the purchasers of product water, Watermaster may re-evaluate whether to continue the exclusion of Desalter Production but only after giving due regard to the contractual commitment of the parties. The quantification of any Party's share of Operating Safe Yield does not include the result of any land use conversions.

- B. The obligations of the parties, whatever they may be, regarding Replenishment Assessments attributable to all Desalters and Future Desalters in any renewal term of the Peace Agreement are not altered by this Agreement.
- C. A Judgment Amendment and an amendment to the Peace Agreement and implementing Rules and Regulations are required to implement this provision.

IV. FUTURE DESALTERS

A. Plan for Future Desalters. The physical capacity and potable water use of water from the existing desalters will be supplemented as required to ensure the legal and physical ability to produce approximately 42,000 acre-feet of groundwater from All Authorized Desalters by 2012.

1. Western Municipal Water District (“Western”) is the best qualified party to implement the expansion. However, the definition of the “project” *may* depend on whether it is able to purchase excess capacity from the Chino Basin Desalter Authority (“CDA”) or it is required to build stand-alone facilities. Accordingly, within six months of Watermaster’s receipt of direction to proceed in accordance with the Non-Binding Term Sheet, CDA and any member of the Appropriative Pool *may* present a proposal to Watermaster for evaluation as an alternative to the proposed Western Expansion. The proposal for an alternative *may* include Western’s acquisition of some portion of the existing CDA facilities or a joint venture between Western and another party. Any potential arrangement between CDA and Western and/or any other party is completely discretionary among all parties involved. Nothing herein shall be construed as committing CDA to take any specific action to accommodate the needs or requests of Watermaster, Western or any Party to the Judgment, whatever the request may be.

2. Failing Watermaster’s adoption of a proposed alternative, Western has proposed that it be responsible for the planning, designing, financing, constructing and operating of up to 9 mgd from new desalter facilities and the purchase of product water from existing and expanded facilities. Western will prepare a proposed project description for Watermaster’s tentative approval.

a. The Western project will be designed so as to minimize the export of groundwater from the Basin. Any plan presented by Western will address how this will be accomplished.

(i) Watermaster will account for water imported and exported by Western in connection to the proposed project.

(ii) Watermaster will prepare an initial reconciliation of Western imports and exports at the end of the first ten years of operation and every year thereafter to determine whether a “net export” occurred.

(iii) Western will pay an assessment on all “net exports” in accordance with Judgment Exhibit “H,” paragraph 7(b).

b. If Western’s operation of a Future Desalter should result in an export, it will pay the applicable assessment for export.

- c. Other expected key elements of proposed terms to be incorporated into a final binding agreement with Western will be set forth in a non-binding Memorandum of Understanding between Watermaster and Western and will address the following terms:
- (i) Western's status as a purchaser of product water from CDA;
 - (ii) Western's arrangements with CDA, Jurupa and other Chino Basin parties for the common use of existing facilities;
 - (iii) Western's arrangement with the owners of the SARI line;
 - (iv) Western's arrangements with the Appropriative Pool regarding the forgiveness of replenishment associated with expanded groundwater production for the Future Desalters;
 - (v) Western's "make-whole payment" if any;
 - (vi) The schedule for approvals and project completion.
- d. A price cap governing Western's rights and obligations to proceed prior to execution of a binding purchase agreement.
- (i) The full acre-foot cost to Western for Capital and O&M (assuming a waiver of replenishment costs), including delivery of the desalted water to its Mockingbird Reservoir or directly to the City of Norco, any applicable ongoing Watermaster assessments, payments to CDA and Jurupa and for SARI utilization, shall not exceed the sum of the following: (1) the MWD Tier II Rate; (2) the MWD Treatment Surcharge calculated in terms of an annual average acre-foot charge; and (3) \$150 per acre-foot of water delivered to account for water supply reliability. If the full acre-foot cost should exceed this cap, Western may withdraw, and would have no further obligations under this Term Sheet.
 - (ii) If grants and the MWD subsidy should reduce Western's costs to an amount which is \$75 below the cap described in paragraph (i), Western will equally share all additional savings with Watermaster on a 50-50 basis.
 - (iii) Western may elect to exercise its right of withdrawal under paragraph (i) above within 120 days following the later of (1) completion of preliminary design; or (2) the certification of whatever CEQA document is prepared for the project, but not later than 60 days thereafter and in no

event after a binding water purchase agreement has been executed.

3. If physically and economically feasible, new groundwater production facilities will be located in the southern end of the Basin to achieve the dual purpose of obtaining Hydraulic Control and increasing Basin yield. To the extent Western commits to the construction of new wells in the shallow aquifer system among Desalter I wells No. 1 through 4 and west of Desalter I for the production of at least one-half of its groundwater, it shall be entitled to first priority for the allocation of the any remaining portion of the 400,000 acre-feet of forgiven replenishment required to secure Hydraulic Control. (See II.B.1 above.)
4. Within twelve months of the final approval and no later than July 1, 2008, with facilitation by Watermaster, Western and the Appropriative Pool will negotiate which portion of the 400,000 acre-feet of Desalter replenishment forgiveness should be applied to Future Desalters. Relevant considerations in the negotiations will include, but are not limited to the nexus between the proposed expansion and achieving Hydraulic Control, the nexus between the project and obtaining increased yield, the identified capital costs, operating and maintenance expenses, and the availability of third-party funding. Upon completion of their negotiations, the parties will present the proposed agreement to Watermaster.
5. If Western and the Appropriative Pool do not reach agreement on the appropriate level of Desalter replenishment forgiveness that should be allocated to the Western Expansion, then no later than July 2009, the members of the Appropriative Pool will submit an alternate plan to Watermaster that achieves the identified goals of increasing the physical capacity of the Desalters and potable water use of approximately 42,000 acre-feet of groundwater production from All Authorized Desalters from the Basin no later than 2012.
6. Responsibility for compliance with Future Desalter obligations, whatever they may be after receiving further Watermaster and Court direction, will be shared jointly and severally among the members of the Appropriative Pool.
7. Watermaster will promptly seek the execution of a non-binding MOU between Watermaster and Western that more specifically articulates the proposed terms and processes for Western to proceed in the interim period between Watermaster's approval of a non-binding term sheet with the terms set forth herein and the execution of binding agreements.
8. In coordination and consultation with CDA and other affected producers, Watermaster will have discretion to secure and dedicate compensation obtained from third parties, including but not limited to groundwater

clean-up, to off-set the capital and operations and maintenance costs of All-Authorized Desalters, in whole or in part.

- B. Quantification of New Yield Benefits. Watermaster will quantify the amount of New Yield that is specifically attributable to the existing Desalters and the Future Desalters (Western Expansion) as it may be proposed in its Final Form.
- C. Satisfaction of Peace Agreement Obligations. Upon completion of the implementation of a 10,000 AFY (9 mgd) expansion of groundwater production and desalting from Desalter II, and all other measures concerning Hydraulic Control as provided herein and in the OBMP, the Parties will be deemed to have satisfied all obligations, whatever they may be, with regard to Future Desalters as described in Part VII of the Peace Agreement. The OBMP Implementation Plan and the Peace Agreement will be formally reconciled from 40 mgd of “product water” to approximately 42,000 acre-feet of desalter groundwater production.
- D. An amendment to the Peace Agreement and implementing Rules and Regulations are required to implement this provision.

V. AGRICULTURAL POOL REALLOCATION

- A. Effective FY 2006-2007, Section 6.3(c) of the Watermaster Rules and Regulations shall be amended to read:

“(c) In the event actual Production from the Agricultural Pool does not exceed 82,800 acre-feet in any one year or 414,000 acre-feet in any five years but total allocation from all the uses set forth in section 6.3(a) above exceeds 82,800 acre-feet in any year, the amount of water made available to the members of the Appropriative Pool under section 6.3(a) shall be reduced pro rata in proportion to the benefits received by each member of the Appropriative Pool through such allocation. This reduction shall be accomplished according to the following procedure:

1. All of the amounts to be made available under 6.3(a) shall be added together. This amount shall be the “Potential Acre-Feet Available” for Reallocation.
2. Each Appropriative Pool member’s potential share of the Potential Acre-Feet Available for Reallocation shall be determined. This potential share shall be expressed as a percentage share of the Potential Acre-Feet Available for Reallocation.
3. Each Appropriative Pool member’s potential share of the Potential Acre-Feet Available for Reallocation shall be reduced pro rata according to the percentage determined in 2. above.”

- B. Effective FY 2006-2007, a Section 6.3(d) shall be added to the Watermaster Rules and Regulations which shall read:

“(d) In the event actual Production from the Agricultural Pool does not exceed 82,800 acre-feet in any one year or 414,000 acre-feet in any five years and total Production from all the uses set forth in section 6.3(a) above does not exceed 82,800 acre-feet in any year, the amount of surplus water made available to the members of the Appropriative Pool shall be allocated according to the formula described in 6.3(c).”

- C. Consistent with the OBMP goal of maintaining production in the Southern end of the Basin, Watermaster shall acknowledge that all existing voluntary agreements and agricultural land use conversions shall continue to remain in effect. Future voluntary agreements described in Peace Agreement section 5.3(i) and Rules and Regulations section 9.6 shall be permitted only to the extent that such voluntary agreements occur within areas eligible for conversion as described in Attachment 1 to the Judgment which was added to the Judgment as an amendment by Order of the Court dated November 17, 1995.

- D. Except as described above, all current Watermaster accounting practices with regard to Land Use Conversions, Assignments, voluntary agreements, Early Transfer, and reallocation of surplus Agricultural Pool water are hereby ratified and shall continue as currently implemented.

VI. STORAGE

A. Uniform Losses

1. In accordance with paragraph 5.2(b)(xii) of the Peace Agreement, Watermaster will establish uniform losses for all water held in storage based upon two baseline conditions:
 - a. pre-implementation of the OBMP and Hydraulic Control; and
 - b. post-implementation of the OBMP for achieving and maintaining Hydraulic Control.
2. Watermaster shall develop conforming Rules and Regulations concerning the implementation of the respective loss factors.

B. Reduction in the Loss Percentage for Individual Storage Accounts to de minimus (less than 1 percent).

1. Any Party to the Judgment (agency, entity or person) may reduce the uniform loss percentage applied to its storage account from the applicable percentage to less than one percent if they are:
 - a. in compliance with their continuing covenants under the Peace Agreement or they have paid Watermaster a "financial equivalent" (fee/charge) special assessment to off-set the cost of past performance; and
 - b. promised future compliance.
2. Any special assessment (fee) to obtain "financial equivalency" will be established by Watermaster for the purpose of equitably distributing the cost of implementing the OBMP among the parties benefiting therefrom and may take into account the fact that one or more parties are not similarly situated.

C. Allocation of Losses

1. Any water lost from storage shall be deemed to have been salvaged and recaptured by Watermaster by its achieving and maintaining Hydraulic Control.
2. The water lost from storage, salvaged and recaptured will be credited against any desalter replenishment obligation that may exist in the year of the recovery.
3. Any water recovered from loss pursuant to the OBMP and Hydraulic Control that is not required to offset any desalter replenishment obligation

in the year in which it is salvaged and recaptured will be dedicated to the members of the Appropriative Pool, pro rata based on each Producer's combined total share of Operating Safe Yield and the previous year's actual production. However, before any appropriator is entitled to receive a distribution of any such losses, they must have been a full participant in the implementation of the OBMP and paid all their applicable Watermaster assessments.

D. Local Storage

1. The terms of all Local Storage Agreements as provided in the Peace Agreement and as previously authorized pursuant to the Rules and Regulations shall be extended for an additional five-year term from the date of a Court Order approving a binding agreement.
2. The current cap of 50,000 acre-feet of Storage of Supplemental Water described in section 5.2(b) of the Peace Agreement shall be raised to 100,000 acre-feet. Any Party to the Judgment may make Application to Watermaster to store Supplemental Water pursuant to the terms of section 5.2(b) of the Peace Agreement except that the rebuttable presumption applicable to Local Storage Agreements described in Peace Agreement section 5.2(b)(v) shall no longer be in effect.

E. Hydraulic Control and Storage

1. Watermaster will continue to monitor the cumulative quantity of water held in storage under all accounts. If the total quantity of water held in storage threatens a loss of Hydraulic Control, Watermaster, in its reasonable discretion for the purpose of avoiding waste and unreasonable use may:
 - a. Adopt a revised uniform loss percentage for storage to provide penalties for holding water in storage;
 - b. Place limitations on the future accrual of future storage.
2. Watermaster may authorize the forgiveness of replenishment if its approval of a Storage and Recovery Agreement is in accordance with the Judgment and the Peace Agreement and is otherwise reasonable under the circumstances, if the storage of water will cause the loss of Hydraulic Control. In evaluating any potential forgiveness of replenishment in connection with a proposed Storage and Recovery Agreement, Watermaster will give due consideration and preference to proposals that reasonably sequence a "take" from storage in advance of a "put" to storage.
3. Prior to authorizing any additional action under E.1 or E.2 above, Watermaster will first prepare a cost/benefit analysis that compares the

additional quantity of over-production that is proposed to be forgiven against available alternatives, using an imputed value for the proposed over-production at two times the then prevailing rate of replenishment water made available by the Metropolitan Water District.

F. Overlying (Non-Agricultural) Pool

1. Watermaster will purchase all of the Non-Agricultural Pool water held in storage as of July 1, 2006 in accordance with the following terms.
 - a. The quantity is presently estimated between 40,000 acre-feet and 50,000 acre-feet.
 - b. Delivery of the water to Watermaster will be conditioned upon the "final approval."
 - c. 10 (ten) percent of the cumulative quantity of the water initially designated for transfer by the Overlying (Non-Agricultural) Pool will be dedicated to desalter replenishment obligations without compensation by Watermaster. Payment for the balance of water delivered will be made in four annual installments over a four-year period commencing upon the effective date of this Agreement.
 - d. The price per acre-foot will escalate each year with the price in the initial year being \$215, in Year Two \$220, in Year Three \$225, and in Year Four \$230.
 - e. The balance of the water obtained by Watermaster will be available for use in connection with a Storage and Recovery Project with third parties TBD; or in connection with Desalter Replenishment pursuant to the Judgment and the Peace Agreement. Watermaster will exercise reasonable best efforts to secure a purchaser of the Non-Agricultural Pool water as soon as practicable.
2. A Judgment Amendment, an amendment to the Peace Agreement and implementing Rules and Regulations would be required to implement this provision.

VII. CREDITS

- A. The Pomona Credit will continue for the duration set forth in the Peace Agreement. The financial responsibility for the "Pomona Credit" described in section 5.4(b) of the Peace Agreement will be the sole and exclusive financial responsibility of the Three Valleys Municipal Water District ("TVMWD"). Within 90 (ninety) days of each five-year period following the Effective Date of this Agreement, TVMWD shall make an election whether to continue or terminate its responsibilities under this paragraph. TVMWD shall provide written notice of such election to Watermaster. Watermaster will provide an annual invoice to TVMWD for the amount of the credit. In any renewal Term, TVMWD will continue to make an equivalent financial contribution which TVMWD consents to Watermaster's use for the benefit of MZI, subject to the same conditions set forth above with respect to TVMWD's payment of the "Pomona Credit."

- B. The Peace Agreement will be amended to eliminate credits and reimbursements as described in Peace Agreement § 5.4(d), other than the Pomona Credit as provided in A., above.

VIII. RECHARGE

A. 6,500 Acre-Foot Supplemental Recharge

1. A fundamental premise of the Physical Solution is that all water users dependent upon Chino Basin will be allowed to pump sufficient waters from the Basin to meet their requirements. To promote the goal of equal access to groundwater within all areas and sub-areas of the Chino Basin, Watermaster has committed to use its best efforts to direct recharge relative to production in each area and sub-area of the Basin and to achieve long-term balance between total recharge and discharge.
2. To assist Watermaster in providing for recharge, the Peace Agreement sets forth a requirement for Appropriative Pool purchase of 6,500 acre-feet per year of Supplemental Water for recharge in Management Zone 1 (MZ1). The purchases have been credited as an addition to Appropriative Pool storage accounts. The water recharged under this program has not been accounted for as replenishment water.
3. Watermaster is required to evaluate the continuance of this requirement in 2005 by taking into account provisions of the Judgment, Peace Agreement and OBMP, among all other relevant factors. It has been determined that other obligations in the Judgment and Peace Agreement, including the requirement of hydrologic balance and projected replenishment obligations, will provide for sufficient wet-water recharge to make the separate commitment of Appropriative Pool purchase of 6,500 acre-feet unnecessary. Therefore, because the recharge target as described in the Peace Agreement has been achieved, further purchases under the program will cease.
- ~~4. The parties acknowledge that, regardless of replenishment obligations, Watermaster will independently determine whether to require wet-water recharge within MZ1 to maintain hydrologic balance and to provide equal access to groundwater. Watermaster will conduct its recharge in a manner to provide hydrologic balance within, and will emphasize recharge in MZ1. Accordingly, the Parties acknowledge and agree that each year Watermaster shall be guided in the exercise of its discretion concerning recharge by the principles of hydrologic balance.~~

- B. Update the Recharge Master Plan. The Recharge Master Plan will be updated as frequently as necessary and not less than every five years, to reflect an appropriate schedule for planning, design, and physical improvements as may be required to offset the controlled mining at the end of the Peace Agreement and the end of forgiveness for Desalter replenishment.

- C. The members of the Appropriative Pool will coordinate the development of their respective Urban Water Management Plans and Water Supply Master Plans with Watermaster as follows.
 - 1. Each Appropriator that prepares an Urban Water Management Plan and Water Supply Plans will provide Watermaster with copies of their existing and proposed plans.
 - 2. Watermaster will use the Plans in evaluating the adequacy of the Recharge Master Plan and other OBMP Implementation Plan program elements.
- D. Each Appropriator will provide Watermaster with a draft in advance of adopting any proposed changes to their Urban Water Management Plans and in advance of adopting any material changes to their Master Water Plans respectively in accordance with the customary notification routinely provided to other third parties to offer Watermaster a reasonable opportunity to provide informal input and informal comment on the proposed changes.
- E. Any party that experiences the loss or the imminent threatened loss of a material water supply source will provide reasonable notice to Watermaster of the condition and the expected impact, if any, on the projected groundwater use.
- F. An amendment to the Peace Agreement and implementing Rules and Regulations would be required to implement this provision.

IX. TRANSFERS

- A. Any water un-produced by the Non-Agricultural Pool water will be made available to the Appropriators in accordance with the following process:
1. By December 31 of each year, the members of the Non-Agricultural Pool shall notify Watermaster of the amount of water each member shall make available for purchase by the Appropriators. By January 31, Watermaster shall provide a Notice of Availability of each Appropriator's pro-rata share of such water;
 2. Except as provided in paragraphs IX.A.4 and IX.C below, each member of the Appropriative Pool will have a right to purchase its pro-rata share of the supply made available from the Non-Agricultural Pool at the price established in IX.C below. Each member's pro rata share of the available supply will be based on each Producer's combined total share of Operating Safe Yield and the previous year's actual production;
 3. If any member of the Appropriative Pool fails to irrevocably commit to their allocated share within 30 days of the Notice of Availability, its share of the Non-Agricultural Pool water will be made available to all other members of the Appropriative Pool according to the same proportions as described in IX.A.2 above and at the price established in IX.C below. Each member of the Appropriative Pool shall make payment for its share by June 30.
 4. Parties shall only be eligible to purchase their pro rata share under this provision if the party is:
 - a. current on all their OBMP assessments; and
 - b. in compliance with the contractual covenant of the Peace I and this Non-Binding Term Sheet.
- B. The right of any member of the Overlying (Non-Agricultural) Pool to transfer water in accordance with this Article IX is dependent upon Watermaster making a finding that the transferor is using recycled water where it is both physically available and appropriate for the designated end use in lieu of pumping groundwater. This provision is not intended to have any effect on water presently held in and to be transferred from storage in accordance with Article VI.F.
- C. Watermaster guarantees the purchase of surplus Non-Agricultural Pool water on an annual basis at 92% of the then prevailing "MWD Replenishment Rate." The water obtained by Watermaster will be made available to the members of the Appropriative Pool in accordance with the procedures set forth in IX.A above.
- D. Watermaster will levy a Special Project OBMP Assessment against members of the Overlying (Non-Agricultural) Pool. The Special Project OBMP Assessment

will be levied on ten percent of the Overlying (Non-Agricultural) Pool member's share of Safe Yield in the preceding year in an amount equivalent to the MWD Replenishment Rate. As provided in Article III above, the first priority for the Special Project OBMP Assessment will be to purchase replenishment water to offset any over-production by the Desalters. In the event that there is no unmet replenishment obligation, Watermaster will still levy the Special Project OBMP Assessment and will distribute the revenue collected by the special OBMP Assessment to any member(s) of the Appropriative Pool that Watermaster may determine have received a disproportionately small portion of the benefits obtained from recycled water and other salt management strategies. Following the approval of this Non-Binding Term Sheet, Watermaster will convene a process among the members of the Appropriative Pool to develop a recommendation as to whether one or more parties should be expressly designated to receive a grant from Watermaster and on what conditions. In the event that no recommendation is forthcoming, in consultation with the Appropriative Pool, Watermaster will have discretion to establish a grant program to distribute available revenues to ensure an equitable distribution of recycled water benefits.

- E. Nothing herein shall be construed to affect or limit the rights of any Party to offer or accept an assignment as authorized by the Judgment Exhibit "G" paragraph 6, or to affect the rights of any Party under a valid assignment.
- F. A Judgment Amendment, an amendment to the Peace Agreement and implementing Rules and Regulations would be required to implement this provision.

X. ERROR CORRECTIONS

- A. A new section 3.3 shall be added to the Watermaster Rules and Regulations which shall read:

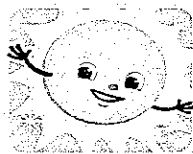
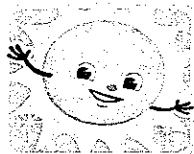
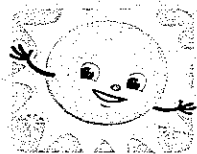
3.3 Error Corrections. All reports or other information submitted to Watermaster by the parties shall be subject to a four-year limitations period regarding the correction of errors contained in such submittals. In addition, all information generated by Watermaster shall be subject to the same four-year limitations period. All corrections to errors shall apply retroactively for no more than four years.

XI. MANAGEMENT ZONE 1: LONG-TERM PLAN FOR MANAGEMENT OF
SUBSIDENCE

- A. Watermaster shall issue guidance criteria which will specify the conditions under which Watermaster believes that groundwater can be produced in MZ1 so as to minimize the risk of subsidence in the southern subsidence area by no later than July 1, 2006. These guidance criteria will be informational only and will have no binding effect on any party.
- B. By December 31, 2006, Watermaster will develop a proposed long-term management plan for subsidence in the southern subsidence area of MZ1.

The guidance criteria and the long-term plan will be incorporated into the final binding agreement.

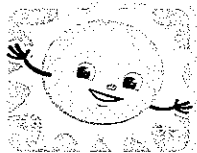
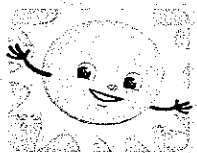
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CHINO BASIN WATERMASTER

II. BUSINESS ITEM

- B. Joint Chino Basin Watermaster/IEUA Chino Basin Data Exchange (Data X) System Development Agreement Amendment





CHINO BASIN WATERMASTER

9641 San Bernardino Road, Rancho Cucamonga, Ca 91730
Tel: 909.484.3888 Fax: 909.484.3890 www.cbwm.org

KENNETH R. MANNING
Chief Executive Officer

STAFF REPORT

DATE: June 8, 2006
June 20, 2006
June 22, 2006

TO: Committee Members
Watermaster Board Members

SUBJECT: Joint Chino Basin Watermaster/IEUA Chino Basin Data Exchange (DataX) System Development Agreement Amendment

SUMMARY

Issue – Approval of the Chino Basin Data Exchange (DataX) joint Chino Basin Watermaster/IEUA project.

Recommendation – Authorize the Chief Executive Officer to execute Amendment 1 to the Memorandum of Agreement No. AKB05020.

Fiscal Impact – Chino Basin Watermaster and IEUA have each agreed to pay one-half of the costs of this project. Funds are in the budget that has been prepared for Fiscal Year 2006/07.

BACKGROUND

DataX is a joint Watermaster/IEUA Project that was started in October 2003. The purpose of the project is to facilitate the collection, management and sharing of water resources data including groundwater production and levels, water quality, well construction, recharge of supplemental and storm water, imported water quantity and certifications, surface water diversion and use, and recycled water production and use. DataX will improve data quality, lead to consistent reporting and use of data, facilitate data sharing, eliminate redundant data requests, and minimize costs and staff time. Data that are contained within DataX are used for Watermaster's Assessment Package, Annual Report, groundwater recharge calculations, models, and various reports required by the Court. IEUA will use the DataX data for the NPDES Water Supply Report, imported water certifications/billing, groundwater recharge calculations, and recycled water market analyses.

As part of DataX, an Inter-Agency web-based data entry portal will be developed that will serve as a centralized location for Watermaster and IEUA to receive and store data that is being collected and submitted by other parties. The objectives of the portal are to streamline the data request process, improve data quality, and minimize data processing costs. The benefits to participating Agencies/Cities include limiting numerous data

requests to one submittal per agency/city and secure viewing and download of the agency data through the DataX portal.

This project is being implemented in phases. Phase III will occur in Fiscal Year 2006/2007. The components of Phase III are (1) direct data input by all Appropriative Pool data generators (including groundwater production, groundwater level, IEUA imported water certifications, and other data as needed for Watermaster and IEUA reports), (2) displaying of recharge basin calculated/results SCADA data, and (3) interfacing the imported and recycled water system with the IEUA billing system.

Most of the development work is being accomplished by Wildermuth Environmental, Inc. (WEI), with support from Watermaster and IEUA's staff as necessary. Watermaster and IEUA have each agreed to pay one half of WEI's charges for Phase III of the project, as set forth in the attached Amendment 1 to the Memorandum of Agreement.

INLAND EMPIRE UTILITIES AGENCY

AMENDMENT NO. 1

TO

CHINO BASIN DATA EXCHANGE SYSTEM DEVELOPMENT

THIS AGREEMENT NUMBER AKB05020, between the Chino Basin Watermaster (Watermaster) and the Inland Empire Utilities Agency (IEUA) (collectively, the Parties) for the development of the Chino Basin Data Exchange (DataX) system to facilitate the collection, management and sharing of water resources data between the Parties, shall be amended as follows:

The Parties hereto agree to pay one half of WEI's charges for Phase III of the project. All work shall be approved by the Parties, in advance, for Phase III via an established and agreed to work plan.

TERM OF THE AGREEMENT: The term of this Agreement shall extend from July 1, 2004, and shall remain in effect through June 30, 2007.

ALL OTHER PROVISIONS OF THIS AGREEMENT REMAIN UNCHANGED.

IN WITNESS WHEREOF, the parties hereby have caused this Amendment to be entered into as of the day and year written below.

CHINO BASIN WATERMASTER:

INLAND EMPIRE UTILITIES AGENCY:

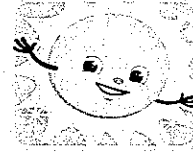
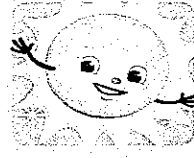
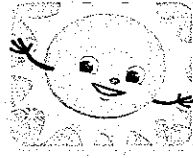
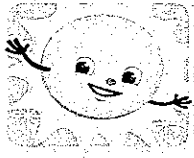
Ken Manning
General Manager

Date

Richard W. Atwater
Chief Executive Officer
General Manager

Date

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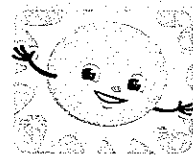
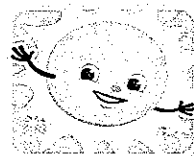
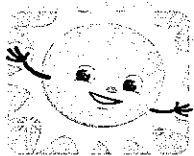


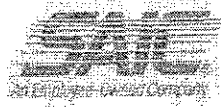
CHINO BASIN WATERMASTER

III. REPORTS/UPDATES

A. GENERAL LEGAL COUNSEL REPORT

1. OCWD PEIR Comments
3. North Gualala Decision





May 31, 2006

Mr. Craig Miller
Orange County Water District
10500 Ellis Avenue
Fountain Valley, CA 92708

Re: Orange County Water District Application to Appropriate Santa Ana River Water
Recirculated Draft Program Environmental Impact Report (March 2006)

Dear Mr. Miller:

Science Applications International Corporation (SAIC) serves as a consultant to San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County (Muni/Western) in connection with Muni/Western's water right applications to divert water from the Santa Ana River and is pleased to submit these comments on behalf of Muni/Western. Muni/Western appreciate the opportunity to review the above-referenced Draft Program Environmental Impact Report (Draft PEIR). Muni/Western support the efforts of Orange County Water District (OCWD) to maximize the beneficial use of the region's water resources in ways consistent with the 1969 *Orange County* judgment. Muni/Western offer the following comments:

1. In 1969, Muni/Western, OCWD, and other parties entered into a stipulated judgment in *Orange County Water District v. City of Chino* (Orange County Superior Court No. 117628). Under that judgment, parties upstream of Prado Reservoir have a right to:

divert, pump, extract, conserve, store and use all surface and groundwater supplies originating within Upper Area without interference or restraint by Lower Area claimants, so long as Lower Area receives the water to which it is entitled under this judgment and there is compliance with all of its provisions.

The *Orange County* judgment further provides that Muni/Western "and other entities upstream of Prado Dam shall have *full freedom to engage in any activities for conservation or storage above Prado Reservoir*, provided that the Base Flow obligations in Paragraph(s) 5(b) and (c) of the Judgment herein are fulfilled." (Emphasis added.) By means of the Memorandum of Understanding to Affirm and Preserve Existing Rights in the Santa Ana River Watershed dated November 16, 1999, OCWD agreed that Application No. 31174 would not change or affect the terms of the *Orange County* judgment and that Application No. 31174 would not serve as the basis for OCWD "to obtain any right as against any Upper Area water user or entity inconsistent with the terms of the [*Orange County*] judgment."

Science Applications International Corporation
525 Anacapa Street | Santa Barbara, CA 93101 | tel: 805.584.6100 | fax: 805.965.6344 | www.saic.com

Muni/Western appreciate and commend OCWD for acknowledging that any rights that may be acquired pursuant to Application No. 31174 will be subject to and consistent with the terms of the *Orange County* Judgment. Muni/Western conclude that OCWD intends that the descriptions of OCWD's water rights, OCWD's operations, and other matters contained in the Draft PEIR to be construed in a manner that is fully consistent with the terms of the *Orange County* Judgment and the 1999 Memorandum of Understanding. It would be helpful for the Final PEIR to recognize and acknowledge that all operations of OCWD pursuant to Application No. 31174 will be consistent with both the *Orange County* Judgment and the 1999 Memorandum of Understanding.

2. The use of different diversion capacities in different portions of the Draft PEIR has created inconsistencies between text and figures in the cumulative analyses in Chapter 7 and Appendix D. Figure 7-2 shows, based on a repeat of Water Year (WY) 1992/1993 conditions that OCWD would divert 313 TAF, resulting in a flow to the ocean of 247 TAF. Figure 4 of Appendix D, which is a simulated repetition of WY 1992/1993 shows a "With Project" diversion of 341 TAF by OCWD, resulting in 219 TAF flowing to the ocean. The reader expects these data to match in the two figures. The issue is further confused, as it is unclear why OCWD's actual WY 1992/1993 diversions were not used. OCWD's actual diversion rates in WY 1992/1993 are stated as 237 TAF on page ES-2 and as 260 TAF in Figure 4 Appendix D.
3. The water availability assessment contained in Appendix D is consistent with Muni/Western's analysis. Appendix D considers the entire Muni/Western proposed applications for 200,000 af, and the full San Bernardino Water Conservation District Application in Table 4 and the accompanying text. However, text on Page D-14, describing Figure 6 states, "As shown in Figure 6, assuming 100 percent of planned diversions along the SAR are implemented, at least 262,000 af would continue to flow to the ocean." That statement should be clarified to explain that Figure 6 does not show 100 percent of Muni/Western's planned diversions of 200,000 af (as accurately identified in Table 4 of Appendix D), but rather shows Muni/Western having diverted the maximum amount of water available assuming a simulated repetition of water year 1992-93 with increased urbanization.
4. The Chino Basin Watermaster Rights are characterized in two different ways in Appendix D. Within Figure 4, the No Project condition for Chino diversions is 0 TAF. Within Figure 6 the No Project condition for Chino is diversions of 27 TAF. Why are these descriptions of No Project conditions different?
5. Appendix J contains the cumulative impact assessment tables developed jointly by Muni/Western and OCWD. It appears the tables used by OCWD are an old version. Muni/Western request the following changes be included in the Final PEIR:
 - Under Air Quality row, Upstream of Seven Oaks Dam to REX-Rialto Effluent Outfall column, add the following text, "(SAR DEIR, 6-56)"

Mr. Craig Miller

May 31, 2006

Page 3

- Under Air Quality row, RIX-Rialto Outfall to Prado Flood Control Reservoir column, add the following text, "(SAR DEIR, 6-58)"
- Under Geology, Soils, and Minerals row, RIX-Rialto Outfall to Prado Flood Control Reservoir column, text should read, "(NI) (SAR DEIR, 6-20)"
- Under Groundwater Hydrology and Water Quality row, RIX-Rialto Outfall to Prado Flood Control Reservoir column, text should read "(NI) (SAR DEIR, 6-29)"
- Under Hazardous Materials row, RIX-Rialto Outfall to Prado Flood Control Reservoir column, text should read, "(NI) (SAR DEIR 6-53)"
- Under Recreation row, Upstream of Seven Oaks Dam to RIX-Rialto Effluent Outfall column, text should read, "Increase in number of zero flow days in river reach with generally little to no flow. (LTS) (SAR DEIR, 6-42)"

Thank you for the opportunity to comment on the Draft PEIR. Please call if you have any questions.

Very truly yours,

Science Applications International Corporation

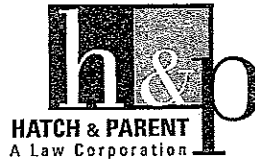


Meredith Clement
Project Manager

cc: Robert L. Reiter
John V. Rossi
David Aladjem

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21 East Carrillo Street
Santa Barbara, CA 93101
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Michael T. Fife
(805) 882-1453
MFife@HatchParent.com

May 30, 2006

Mr. Craig Miller
Orange County Water District
10500 Ellis Avenue
Fountain Valley, CA 92708

Dear Mr. Miller:

Thank you for the opportunity to provide the comments to Orange County Water District's ("OCWD") Recirculated Draft PEIR to assess potential environmental effects of OCWD's Application to Appropriate Water from the Santa Ana River. The following comments are submitted on behalf of the Chino Basin Watermaster ("Watermaster").

Watermaster appreciates the clear affirmation in the PEIR of the management regime for the Santa Ana Watershed that is created through the 1969 Judgment. The PEIR acknowledges that upstream water agencies' concerns about the effects of OCWD's proposed water rights application on upstream water rights and water management operations is a major area of controversy regarding OCWD's application. (PEIR 1-13.) This concern stems, in part, from the fact that the water identified as available for appropriation by OCWD's application is in some instances the same water identified by the upstream entities' applications as available for appropriation by the upstream entities. The PEIR provides assurances that the project analyzed by the PEIR does not involve any impacts that might be associated with some type of guarantee to OCWD of flows beyond those guaranteed by the 1969 Judgment. If the result of the application process were to involve some type of guarantees of flows beyond those guaranteed by the 1969 Judgment, then the "project" described by the PEIR would involve impacts not analyzed by the PEIR.

As a point of clarification, we should note that the PEIR at times lacks precision concerning the description of OCWD's rights under the 1969 Judgment as it relates to flows that pass Prado Dam. The 1969 Judgment grants OCWD a guarantee that 42,000 AFY will flow past the specific geographic location of Prado Dam. Under the 1969 Judgment, OCWD has the right to this 42,000 AF, plus any additional flows that pass by Prado Dam. The PEIR, however, sometimes describes OCWD's rights under the 1969 Judgment to involve water that reaches the "Prado Dam conservation pool." For example, in the description of the objectives of the project, the PEIR states: "The Application . . . was submitted to establish the rights to base and storm flows in excess of the 42,000 afy, to a maximum of 505,000 afy, that reach the **Prado Dam**

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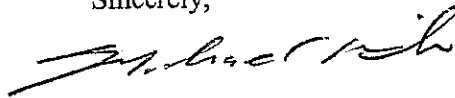
Mr. Craig Miller
May 30, 2006
Page 2

conservation pool. The District is not requesting any mandate of releases to create flows beyond those granted in the 1969 Stipulated Judgment, but seeks a right to capture the SAR flow that does reach **Prado Dam** each year.” (PEIR 1-8.) OCWD’s rights under the 1969 Judgment are defined by flows at Prado Dam, and not by the Prado Dam conservation pool. Watermaster believes this clarification has no effect on the analysis in the PEIR and offers the comment merely for the sake of accuracy.

Watermaster appreciates the inclusion in the revised PEIR of an analysis of cumulative effects of the project in combination with projects proposed by upstream entities and fully agrees with the conclusion of the PEIR that, “. . . no cumulative effects to base flow would result from the OCWD diversions combined with proposed upstream reclamation projects.” (PEIR 7-8.)

Watermaster looks forward to continuing to work with OCWD and the other upstream entities through not only the water rights application process, but in the overall management of the Santa Ana River Watershed.

Sincerely,



Michael T. Fife
For HATCH & PARENT
A Law Corporation

MXF: rrr

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

NORTH GUALALA WATER
COMPANY,

Plaintiff and Appellant,

v.

STATE WATER RESOURCES
CONTROL BOARD,

Defendant and Respondent.

A109438

(Mendocino County
Super. Ct. Nos. SCUK CVG '01 86109,
SCUK CV PT '03 90347)

The North Gualala Water Company (NGWC) appeals from a judgment denying two consolidated petitions for writ of mandate. The petitions challenge the State Water Resources Control Board's (Board) jurisdiction to compel NGWC to obtain a permit to pump groundwater from two wells located near the North Fork Gualala River, as well as the Board's interpretation of pumping limitations placed on the permit. In an issue of first impression, the parties dispute the proper construction of the statutory phrase, "subterranean streams flowing through known and definite channels," which has defined the Board's permitting jurisdiction over the state's groundwater resources since 1914.¹ As a fallback position in the event that the Board's statutory permitting authority over the

¹ The quoted language appears in Water Code section 1200, which limits the Board's permitting authority over subsurface water as follows: "Whenever the terms stream, lake or other body of water, or water occurs in relation to applications to appropriate water or permits or licenses issued pursuant to such applications, such term refers only to surface water, and to subterranean streams flowing through known and definite channels." All further statutory references are to the Water Code unless otherwise indicated.

wells is upheld, NGWC argues that the Board has placed unwarranted conditions on the company's permit. We affirm the trial court's judgment denying NGWC's petitions.

I. BACKGROUND

A. *Water-Right Permit 14853 and Term 9*

NGWC provides municipal water service to approximately 1,000 customers in, or near, the Town of Gualala. Between 1965 and 1989, NGWC diverted surface water directly from the North Fork of the Gualala River (North Fork) by means of an infiltration gallery located at the confluence of the North Fork and the Little North Fork Gualala River.² This diversion was authorized by appropriative water-right permit 14853 (Permit 14853), issued by the Board's predecessor in 1965.

Permit 14853 authorized NGWC to divert two cubic feet per second from the North Fork. To resolve a protest to its permit application by the California Department of Fish and Game (DFG), NGWC agreed to accept limitations on its right to divert water from the river that were intended to maintain instream flows for the protection of fish life. These limitations were set forth in "Term 9" of the permit. However, given flow conditions in the North Fork at that time, Term 9 in its original form never actually limited NGWC's diversions.

In 1978, as a result of a further protest by DFG and after discussions between NGWC and DFG, the Board amended Term 9 to read as follows: "For the protection of fish and wildlife, permittee shall during the period: (a) from November 15 through February 29, bypass a minimum of 40 cubic feet per second; (b) from March 1 through May 31, bypass a minimum of 20 cubic feet per second; (c) from June 1 through November 14, bypass a minimum of 4 cubic feet per second. The total streamflow shall be bypassed whenever it is less than the designated amount for that period."³ Under

² An infiltration gallery is a network of perforated collector pipes located just beneath the surface of the river bed which are connected to a pumping system that draws the water out for treatment, storage, and distribution.

³ In a later order, the Board explained that the word "bypass" in Term 9 originally referred to the volume of water that must flow past the point of diversion per second before water could be diverted under Permit 14853. As discussed below, when NGWC

certain flow conditions, the amended Term 9 did restrict NGWC's right to divert water from the North Fork.

B. NGWC's Production Wells: 1989–2001 Proceedings

In 1989 and 1996, NGWC developed two production wells, Wells 4 and 5, in an area adjacent to the North Fork known as Elk Prairie. Both wells were located approximately 200 feet from the river. One purpose of constructing the wells was to improve the quality of water and reduce water treatment costs. The wells draw groundwater from depths of approximately 50 and 140 feet below the ground.

When NGWC developed Well 4 it did not seek any water right permit for it because NGWC believed that Well 4 was pumping percolating groundwater which is not subject to the Board's permitting jurisdiction. (See § 1200.)⁴ In a June 1989 letter replying to a third party complaint lodged against NGWC by the Gualala River Steelhead Project, the chief of the Board's Division of Water Rights addressed the jurisdictional issue as follows: "Your letter also requested information regarding [NGWC's] River Deep Well. Our information indicates that the well is located near the North Fork Gualala River, about 100 feet upstream of [NGWC's] point of diversion. The well is about 100 feet deep. Analysis of the well water indicates that it has a composition different than the surface supply which suggests that well water is percolating ground water, not river underflow. The Board does not have jurisdiction over the use of percolating ground water."

In November 1992, a groundwater geologist hired by the Sea Ranch Water Company, Richard Slade, reported to the Board that relatively impermeable rock formations underlie the North Fork channel, that the stream valley itself is filled with

later changed the point of diversion under the permit, the bypass terminology in Term 9 could no longer be applied according to its original meaning.

⁴ As further discussed below, subsurface water that is not part of a subterranean stream flowing through a known and definite channel is referred to in the case law as "percolating groundwater," which falls outside the Board's jurisdiction. (See *People v. Shirokow* (1980) 26 Cal.3d 301, 304, fn. 2.)

alluvial deposits⁵ of unconsolidated layers of gravel, sand, silt, and clay, and that a water quality analysis indicated that the source of the well water was the Gualala River system. The report concluded that the groundwater extracted by Well 4 from the alluvium underneath Elk Prairie was from a subterranean stream as defined by the Board. Based on the Slade report, the Board staff notified NGWC that its extraction from Well 4 was an illegal diversion of water, and advised it to submit a water right application for the well.

In February 1993, NGWC filed a petition to change the authorized points of diversion in Permit 14853 to include Well 4. In its petition, NGWC stated that it was reserving the right to challenge the Board's conclusion that Well 4 pumped water from a subterranean stream after conducting additional field work. NGWC filed a petition to add Well 5 to Permit 14853 in 1994.

In January 1998, NGWC's consultants, Luhdorff & Scalmanini Consulting Engineers, filed a technical report with the Board regarding the groundwater pumped by Wells 4 and 5. Based on its own measurements and data collection, Luhdorff & Scalmanini concluded that the groundwater in the alluvial deposits under the Elk Prairie is not recharged from the North Fork and is not flowing in a subterranean stream. Contrary to the conclusion of the Slade report, Luhdorff & Scalmanini found that the groundwater underneath Elk Prairie is maintained by a combination of deep percolation of surface precipitation during the rainy season and subsurface flow from the underlying bedrock formations into the alluvium during the dry season. Also contrary to Slade's analysis, Luhdorff & Scalmanini concluded that the underlying bedrock beneath Elk Prairie was not relatively impermeable, but was highly fractured and permeable, most likely due to its proximity to the San Andreas fault zone.

The chief of the Board's Division of Water Rights responded to NGWC that, after reviewing Luhdorff & Scalmanini's analysis, the Division of Water Rights still believed

⁵ "Alluvium" is defined by Webster's Dictionary as "clay, silt, sand, gravel, or similar detrital material deposited by running water." (Merriam-Webster's Collegiate Dict. (10th ed. 2000), p. 31.)

the groundwater pumped by Wells 4 and 5 was flowing in a known and definite channel, and thus was subject to the Board's jurisdiction. Citing Slade's analysis, other studies of the area, and the Board's own investigations, the Division of Water Rights rejected Luhdorff & Scalmanini's critical finding that the bedrock was permeable to water relative to the overlying alluvium. It opined instead that "it appears that the bedrock is sufficiently impervious relative to the alluvial aquifer material to form the bed and banks of a subterranean stream." The Division of Water Rights advised that if NGWC wished to withdraw its petition to change the point of diversion, it would recommend that the Board hold a groundwater classification hearing to resolve the issue of the Board's permitting authority.

NGWC made no formal request for a groundwater classification hearing at that time. It informed the Board that it wished to continue the process of petitioning to change the point of diversion, while reserving the issue of groundwater classification for any future hearing to be held on its change petitions.

In August 1999, the Board adopted Order WR-99-09-DWR which granted NGWC's petitions to substitute Wells 4 and 5 for the previous points of diversion. DFG and other fishing interests protested the change sought by NGWC. The protestants expressed concern that NGWC was not meeting the bypass flow requirements of Term 9, and that the company would have trouble supplying the water demand of its customers if it was required to reduce diversions from the wells to meet these requirements. To address these concerns, Order WR-99-09-DWR required as a condition of the approval that NGWC submit a surface flow measurement plan to ensure compliance with Term 9 of Permit 14853. A subsequent order, Order WR 99-11, added a further condition that NGWC prepare a water supply contingency plan to address how municipal water needs would be met if the natural flow of the North Fork fell below the minimum amounts specified in Term 9.

NGWC did not challenge any of the findings or conditions in the 1999 orders, but proceeded to develop and file proposed plans for measuring surface flows and addressing water supply contingencies. In January and August 2000, the Board staff requested

changes in these plans. Through its attorneys, NGWC agreed to some of the changes. At the same time, NGWC asserted that the Board had never issued a formal decision on the issue of whether the groundwater pumped by Wells 4 and 5 was part of a subterranean stream or percolating groundwater, and that NGWC had not waived its rights on that issue. In addition, NGWC disputed whether, by its terms, the second sentence of Term 9 (“[t]he total streamflow shall be bypassed whenever it is less than the designated amount for that period”) placed any limitation on the pumping of groundwater from Wells 4 and 5 so long as the pumping did not reach a level that would reverse the normal groundwater gradient between the wells and the river, thereby reducing surface streamflows. NGWC requested that its issues concerning the classification of the groundwater and the application of Term 9 be resolved through a formal hearing.

In April 2001, the chief of the Division of Water Rights informed NGWC that its plans were not approved. The chief’s letter explained that Term 9 applied to any diversions of water under the permit, and since Wells 4 and 5 are the only points of diversion in the permit, Term 9 applied to them. NGWC petitioned the Board for reconsideration of the chief’s decision. The petition asked the Board to hold a hearing on the legal classification of the groundwater pumped by Wells 4 and 5 and on the interpretation of Term 9.

In Order WR 2001-14, issued in June 2001, the Board: (1) upheld the chief’s decision that NGWC’s water measurement and water supply plans were inadequate; (2) determined that a groundwater classification hearing was not properly part of a proceeding seeking reconsideration of the chief’s decision to disapprove the two plans submitted by NGWC; (3) discussed and rejected NGWC’s interpretation that Term 9 was not a limitation on its ability to pump groundwater from Wells 4 and 5; and (4) invited NGWC to petition to change the bypass flow requirements in Term 9 and to bring the groundwater classification issue before the Board, either by raising it as a defense to a future enforcement action or by initiating an independent proceeding.

In July 2001, NGWC filed a complaint for declaratory relief and petition for writ of mandate challenging the sufficiency of the evidence to support Order WR 2001-14

(2001 mandate petition). NGWC's 2001 mandate petition also challenged the Board's interpretation of Term 9. The trial court stayed the case in December 2001 to allow NGWC to formally petition the Board for a groundwater classification hearing and to permit the Board to resolve that issue before the case proceeded.

C. 2002 Groundwater Classification Hearing

NGWC filed its request for a groundwater classification hearing in January 2002 and a hearing was conducted on June 4 and 5, 2002. In addition to NGWC, the participants included DFG and a "permitting team" from the Division of Water Rights. By established Board procedure, the permitting team was separated by an ethical wall from the "hearing team" that assisted the hearing officer and Board members in the hearing.

The Board proposed to apply a four-part test for determining whether groundwater fell within its permitting authority that it had first utilized in a 1999 decision concerning the Garrapata Water Company: "[F]or groundwater to be classified as a subterranean stream flowing through a known and definite channel, the following physical conditions must exist: [¶] 1. A subsurface channel must be present; [¶] 2. The channel must have a relatively impermeable bed and banks; [¶] 3. The course of the channel must be known or capable of being determined by reasonable inference; and [¶] 4. Groundwater must be flowing in the channel."⁶ (*In re Garrapata Water Co.* (June 17, 1999) State Wat.

Resources Control Bd. Dec. No. 1639

<<http://www.waterrights.ca.gov/hearings/Decisions.htm>> [as of May 31, 2006]

(*Garrapata*.) The Board based the *Garrapata* test on its reading of an 1899 California Supreme Court case, *City of Los Angeles v. Pomeroy* (1899) 124 Cal. 597 (*Pomeroy*).

NGWC accepted the four-part test with certain qualifications, but argued that the groundwater pumped by Wells 4 and 5 did not satisfy its requirements because: (1) the

⁶ The Board utilized the test again in 2002 in a case involving the Pauma Valley Water Company. (*In re Determination of Legal Classification of Groundwater in the Pauma and Pala Basins etc.* (Oct. 17, 2002) State Wat. Resources Control Bd. Dec. No. 1645 <<http://www.waterrights.ca.gov/hearings/Decisions.htm>> [as of May 31, 2006].)

only subsurface channel present, that formed by the alluvial materials in the vicinity of the North Fork, does not narrow or contract in the direction of the alleged flow as would be required under a correct reading of *Pomeroy*; (2) the Franciscan bedrock forming the bed and banks of the alluvial channel is not sufficiently impermeable to satisfy the second element of the test; and (3) the groundwater underneath Elk Prairie is not in fact flowing “in the channel,” but in a direction perpendicular to it.

DFG expressed its concern that absent regulation by water right permit, NGWC could significantly expand its pumping and reduce river flows to levels inadequate for fish protection.

The Board found in Order WRO 2003-0004 that all elements of its four-part test had been met and that the water pumped from NGWC’s wells required a water right permit. Upon NGWC’s ensuing petition for reconsideration, the Board rejected NGWC’s argument that the water in a subterranean stream must always be flowing in a direction parallel to the sides of the subsurface channel. The Board found that “water is in fact flowing generally downstream within the channel under Elk Prairie, following a hydraulic gradient and following the path of least resistance.”

D. 2003 Mandate Petition

In May 2003, NGWC filed a new petition for writ of mandate, challenging Order WRO 2003-0004, which was eventually consolidated with NGWC’s 2001 mandate petition.

The trial court concluded that the Board’s four-part test was the appropriate means of making the determination required by section 1200. The court applied the substantial evidence standard to each of the four elements, and found that substantial evidence existed to support the Board’s findings as to all four elements. The court denied NGWC’s consolidated petitions for writ of mandate, and entered judgment in favor of the Board on December 14, 2004. This appeal followed.

II. DISCUSSION

A. *Standard of Review*

The parties differ over the applicable standard of review. The Board concedes that its interpretation of the “subterranean stream” language in section 1200 is subject to de novo review, but argues that if the four-part *Garrapata* test properly effectuates the intent of that language, the Board’s findings that the various elements of the test have been satisfied must be upheld unless they are unsupported by substantial evidence. NGWC maintains that this court must conduct a de novo review of the Board’s determination that it has jurisdiction over the wells because the Board made no findings of fact on “the principal disputed factual issues.”

NGWC had maintained that to be part of a subterranean stream coming within section 1200 the groundwater must (1) flow in a direction generally parallel to the subterranean channel and (2) not be maintained by subsurface inflows emanating from fractures in the underlying bedrock. It asserts that Order WRO 2003-0004 contained no findings of fact on these disputed factual issues. According to NGWC, the Board must therefore have determined *as a matter of law* that the groundwater is part of a subterranean stream for purposes of section 1200 based solely on the fact that the groundwater occurs in alluvial deposits which are more permeable than the Franciscan bedrock underlying them. Although we do not believe this accurately characterizes the Board’s findings or methodology in this case, we concur that the materiality of groundwater source and flow direction present questions of law that we will consider de novo.

In sum, both parties agree that the Board’s interpretation of the “subterranean stream” clause of section 1200 presents a question of law subject to de novo review. Issues regarding the materiality of groundwater source and flow direction under section 1200 also present questions of law subject to de novo review. To the extent that NGWC disputes any of the facts found by the Board, as opposed to disputing the legal methodology the Board applied to determine its jurisdiction, the Board’s findings must be

upheld unless they are unsupported by substantial evidence. (§ 1126, subd. (c); Code Civ. Proc., § 1094.5, subd. (c).)⁷

B. Deference Due to Board's Interpretation of Section 1200

The parties also differ over the degree of deference which this court should give to the Board's interpretation of section 1200. According to the Board, because the Legislature has delegated a "designated field of expertise" to the Board, the Board's statutory interpretation should "generally be followed unless it is clearly erroneous." (*San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, 856.) NGWC maintains that the proper standard is that applicable when a court must decide whether an agency regulation exceeds the authority delegated to the agency by the Legislature. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11, fn. 4 (*Yamaha*); *Environmental Protection Information Center v. Department of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1011, 1022.) According to NGWC, when an agency is construing a statute affecting its own jurisdiction, the proper standard of review is therefore one of " 'respectful nondeference.' " (*Environmental Protection Information Center v. Department of Forestry & Fire Protection*, at p. 1022.)

Yamaha distinguishes between two types of administrative rule-making: "[T]here are two categories of administrative rules One kind—quasi-legislative rules—represents an authentic form of substantive lawmaking: Within its jurisdiction, the agency has been delegated the Legislature's lawmaking power. [Citations.] . . . When a

⁷ When a fundamental vested right is affected, the reviewing court applies the independent judgment test rather than the substantial evidence test. (*Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 32.) Under the independent judgment test, the trial court independently reviews the administrative record to determine whether the weight of the evidence supports the administrative body's findings and action. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 143, fn. 10.) After the trial court exercises its independent judgment, the appellate court need only review the record to determine whether the trial court's findings are supported by substantial evidence. (*Ibid.*) NGWC made no argument in its opening brief that the independent judgment test applies, and has therefore waived the point. (*Tisher v. California Horse Racing Bd.* (1991) 231 Cal.App.3d 349, 361.)

court assesses the validity of such rules, the scope of its review is narrow. If satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end. ¶ . . . ¶ [T]he other class of administrative rules, those interpreting a statute, . . . does not implicate the exercise of a delegated lawmaking power; instead, it represents the agency's view of the statute's legal meaning and effect, questions lying within the constitutional domain of the courts. But because the agency will often be interpreting a statute within its administrative jurisdiction, it may possess special familiarity with satellite legal and regulatory issues. It is this 'expertise,' expressed as an interpretation (whether in a regulation or less formally . . .), that is the source of the presumptive value of the agency's views. An important corollary of agency interpretations, however, is their diminished power to bind. Because an interpretation is an agency's legal opinion, however 'expert,' rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference." (*Yamaha, supra*, 19 Cal.4th at pp. 10–11, italics omitted.)

The interpretation of section 1200 that the Board has formulated in the context of deciding the *Garrapata* and subsequent groundwater cases comes within the class of administrative rules interpreting a statute under *Yamaha*. Deciding these cases is not an exercise of the Board's quasi-legislative power to adopt regulations of general applicability. Thus, we reject the Board's proposed standard—based on pre-*Yamaha* case law—that we must defer to the Board's interpretation of section 1200 unless it is clearly erroneous. At the same time, the issue before us is not whether the Board has adopted a regulation or test that is outside of the realm of authority delegated to it by the Legislature. Whether the Board's interpretation of section 1200 is correct or not, its power to formulate and apply a construction of that statute in the course of adjudicating permitting disputes is not in question in this proceeding. The Board could not decide groundwater classification issues if it did not have that power. NGWC's proposed standard of " 'respectful nondeference' " is thus also inapplicable.

The degree of deference to which the Board's interpretation of section 1200 is entitled depends on a series of situation-specific factors identified in *Yamaha*: “[There are] two broad categories of factors relevant to a court’s assessment of the weight due an agency’s interpretation: Those ‘indicating that the agency has a comparative interpretive advantage over the courts,’ and those ‘indicating that the interpretation in question is probably correct.’ [Citations.] [¶] In the first category are factors that ‘assume the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion. A court is more likely to defer to an agency’s interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.’ [Citation.] The second group of factors . . . —those suggesting the agency’s interpretation is likely to be correct—includes indications of careful consideration by senior agency officials (‘an interpretation of a statute contained in a regulation adopted after public notice and comment is more deserving of deference than [one] contained in an advice letter prepared by a single staff member’ [citation]), evidence that the agency ‘has consistently maintained the interpretation in question, especially if [it] is long-standing’ [citation]) (‘[a] vacillating position . . . is entitled to no deference’ [citation]), and indications that the agency’s interpretation was contemporaneous with legislative enactment of the statute being interpreted. If an agency has adopted an interpretive rule in accordance with Administrative Procedure Act provisions—which include procedures (e.g., notice to the public of the proposed rule and opportunity for public comment) that enhance the accuracy and reliability of the resulting administrative ‘product’—that circumstance weighs in favor of judicial deference. However, even formal interpretive rules do not command the same weight as quasi-legislative rules. Because ‘“the ultimate resolution of . . . legal questions rests with the courts” ’ [citation], judges play a greater role when reviewing the persuasive value of interpretive rules than they do in determining the validity of quasi-legislative rules.” (*Yamaha, supra*, 19 Cal.4th at pp. 12–13.)

The relevant situational factors in this case counsel in favor of limited deference to the Board's interpretation of the statutory language, as embodied in the *Garrapata* test. The language in issue is unique to section 1200, and has no analogue elsewhere in the statutes of this state. Judging from the record before us, even expert hydrologists disagree about the physical conditions and range of naturally occurring phenomena to which the subterranean stream language might refer. Translating that language into a usable and practical legal test therefore necessarily draws upon areas of the Board's technical expertise, experience, and familiarity with its own prior precedents. Although the *Garrapata* test does not reflect a long-standing administrative interpretation of section 1200, it has been adopted and applied by the agency's highest officials in a considered manner following contested proceedings. These factors warrant some degree of deference on our part to the test the agency has formulated. At the same time, our analysis of the history, text, and intent of the subterranean stream language leads us to the conclusion that the Board's jurisdiction over groundwater was intended to be the exception rather than the rule when the Legislature adopted the language in issue. Where the Board appears to be seeking endorsement for a more expansive construction of its potential jurisdiction, as in its reading of *Los Angeles v. Hunter* (1909) 156 Cal. 603 (*Hunter*), we have not deferred to the Board's views.

C. Historical Roots of the Subterranean Stream Language in Section 1200

California is the only western state that still treats surface water and groundwater under separate and distinct legal regimes. (Sax, *We Don't Do Groundwater: A Morsel of California Legal History* (2003) 6 U.Denv. Water L.Rev. 269, 270 (hereafter *We Don't Do Groundwater*)). The persistence of these alternative regimes inevitably leads to thorny issues of classification and boundary-setting. As the present case illustrates, classification disputes in this field quickly take on an Alice-in-Wonderland quality because the legal categories (e.g., "subterranean streams flowing through known and definite channels," "percolating water") are drawn from antiquated case law and bear little or no relationship to hydrological realities. (See generally, *We Don't Do*

Groundwater, at pp. 270–304.)⁸ Because the Legislature has shown little inclination to reformulate this area of law, we are left to try to construe and apply a legal classification that is borrowed from cases decided more than 100 years ago.

1. Origin of Section 1200

Section 1200 derives from section 42 of the Water Commission Act of 1913 which was passed by the Legislature in 1913 as part of Assembly Bill No. 642, and became effective following a public referendum on December 19, 1914. (See Stats. 1913, ch. 586, § 42, p. 1033; *People v. Shirokow*, *supra*, 26 Cal.3d at p. 307, fn. 6.)⁹ The Water Commission Act grew out of a 1912 report by the California Conservation Commission (Commission) which found that the then-existing means of regulating the appropriation of water and water rights did not adequately protect the public’s interest in the state’s water resources, and did not effectively settle disputes over water rights. Regarding underground water, the Commission called for its statutory regulation and predicted that the failure to enact such legislation would result in increasing litigation over the use of underground water.

As introduced in January 1913, Assembly Bill No. 642 would have given the Board’s predecessor, the State Water Commission, the power to investigate and determine appropriative “rights to water or the use of water” in “all streams, stream systems, portions of stream systems, lakes, or other bodies of water” in the state. (Assem. Bill No. 642 (1913 Reg. Sess.) Jan. 23, 1913, § 10.) Section 42 of the bill as introduced provided that “[t]he word ‘water’ in this act shall be construed as embracing

⁸ Professor Sax argues that section 1200 was intended to end the artificial legal separation of surface water and groundwater by giving the Board broad jurisdiction over all groundwater flows that have a direct and appreciable impact on a surface stream. (*We Don’t Do Groundwater*, *supra*, 6 U.Denv. Water L.Rev. at pp. 286–306.) However, neither party to this litigation has embraced Sax’s analysis, and we find no support for it in the legislative history or text of the statute.

⁹ The relevant sentence of section 42 of the Water Commission Act stated: “Whenever the terms stream, stream system, lake or other body of water or water occurs in this act, such term shall be interpreted to refer only to surface water, and to subterranean streams flowing through known and definite channels.”

the term 'or use of water'; and the term 'or use of water' in this act shall be construed as embracing the word 'water.' ” The bill's broad grant of authority to the water commission made no apparent distinction between underground and surface water. However, by amendments made on April 2 and 22, 1913, the following sentence limiting the state water commission's jurisdiction to surface water was added to section 42: “Whenever the terms stream, stream system, lake or other body of water or water occurs in this act, *such term shall be interpreted to refer only to surface water.*” (Italics added.) Finally, on April 30, 1913, the phrase “and to subterranean streams flowing through known and definite channels” was added to this sentence of section 42.

The record before us contains no evidence of contemporaneous statements discussing the legislative intent of the subterranean stream language in section 42 of the Water Commission Act, and no published court cases have interpreted the phrase since its enactment into law in 1914. From the sequence of amendments made to section 42 of Assembly Bill No. 642, it appears that the Legislature deliberately rejected wording that might otherwise have supported a broad assertion of jurisdiction over subsurface water. The addition, a few weeks later, of the phrase “and to subterranean streams flowing through known and definite channels” cannot reasonably be construed as an attempt to restore any major part of that jurisdiction. First, in contrast to the broad and inclusive list used to describe the state water commission's surface water jurisdiction (“stream, stream system, lake or other body of water”), the phrase “subterranean streams flowing through known and definite channels” seems deliberately narrow. Virtually every word in it sets a limiting condition (e.g., flowing, known, definite, channel) that seems to reduce its breadth. Second, the use of the word “only” in the sentence is inconsistent with any legislative intent or understanding that jurisdiction over subterranean streams would encompass a major part of the state's groundwater resources.

As discussed below, the concept of a subterranean stream flowing through a known and definite channel did not spring fully-formed from the 1913 deliberations over Assembly Bill No. 642. The concept played an important role in a series of California Supreme Court water rights cases going back to 1871. One 1899 California Supreme

Court case, *Pomeroy*, used language identical to that adopted by the Legislature in 1913. The parties have therefore properly focused our attention on these pre-1913 water law authorities. (See *People v. Lawrence* (2000) 24 Cal.4th 219, 231 [where the language of a statute uses terms that have been judicially construed there is a strong presumption that the terms carry the same technical meaning that had been placed upon them by the courts].)¹⁰

2. Distinction Between Flowing and Percolating Groundwater

In several cases decided between 1871 and 1909, the California Supreme Court addressed the distinction between groundwater flowing in subterranean streams and groundwater that was considered to be merely percolating through the soil. The former was governed by riparian and appropriative restrictions on use,¹¹ while the latter was (until 1903) subject to the unrestricted ownership rights of the overlying property owner. Thus, in *Hanson v. McCue* (1871) 42 Cal. 303, 308–309, the court observed that a “subterranean stream of a defined character, and flowing in a defined channel” would be subject to the same riparian rules that govern the use of “similar streams flowing upon the surface of the earth.” In contrast, “[w]ater filtrating or percolating in the soil belongs to the owner of the freehold—like the rocks and minerals found there.” (*Hanson v. McCue*, at p. 308; see also, *Southern Pac. R. R. Co. v. Dufour* (1892) 95 Cal. 615, 620; *Gould v.*

¹⁰ At the Board’s request, we have also taken judicial notice of the 1914 ballot arguments in favor of and against the Water Commission Act. The opponents of the measure claimed that it would “place under the control of a political commission all of the waters of the state, both of surface and underground stream or flow.” However, exaggerated characterizations of the scope of a ballot measure, made in an unsuccessful effort to defeat it, are not persuasive.

¹¹ “The riparian doctrine confers upon the owner of land contiguous to a watercourse the right to the reasonable and beneficial use of water on his land.” (*People v. Shirokow, supra*, 26 Cal.3d at p. 307.) “All riparians on a stream system are vested with a common ownership such that in times of water shortage all riparians must reduce their usage proportionately. [Citations.]” (*United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 101.) The diversion of water for other than riparian or overlying uses is subject to the appropriation doctrine under which the appropriator’s right to the water is subordinate to those of riparian users and earlier appropriators. (*Id.* at pp. 101–102.)

Eaton (1896) 111 Cal. 639, 644; *Pomeroy, supra*, 124 Cal. at pp. 630–637; *Vineland Irr. Dist. v. Azusa Irr. Co.* (1899) 126 Cal. 486, 494–495; *Katz v. Walkinshaw* (1903) 141 Cal. 116, 125–126 (*Katz*); *Hunter, supra*, 156 Cal. at pp. 607–608.) Under the case law, groundwater was presumed to be percolating; the burden of showing that it flowed instead in a defined subterranean stream rested with the party asserting rights in such a stream. (See *Hanson v. McCue*, at p. 308; *Pomeroy*, at pp. 628, 633–634; *Arroyo D. and W. Co. v. Baldwin* (1909) 155 Cal. 280, 284.)¹²

3. The *Pomeroy* Case

Among all of the pre-1913 cases, *Pomeroy* contains the most extended and detailed discussion of how to classify groundwater as either water flowing in a subterranean stream or percolating in the soil. It also utilizes language identical to that later adopted by the Legislature in section 42 of the Water Commission Act. The specific phrase, “subterranean streams flowing through known and definite channels,” appeared for the first time in *Pomeroy* and the *Pomeroy* court emphasized that “the main question in the case” was “the proper definition of a subterranean stream.” (*Pomeroy, supra*, 124 Cal. at p. 632.) *Pomeroy* accordingly provides the best available evidence of the original legislative intent of the phrasing now found in section 1200.

The central issue in *Pomeroy* was the valuation of lands condemned by the City of Los Angeles under its eminent domain powers. (*Pomeroy, supra*, 124 Cal. at p. 604.) The lands were to be used for the purpose of constructing a tunnel and filtration galleries to divert water flowing underneath the bed of the Los Angeles River at its narrow outlet

¹² The rule recognizing absolute ownership of percolating groundwater was abrogated by the California Supreme Court’s 1903 decision in *Katz, supra*, 141 Cal. at pages 128–129, 132–134. *Katz* rejected the doctrine that “each landowner owns absolutely the percolating waters in his land, with the right to extract, sell, and dispose of them as he chooses, regardless of the results to his neighbor,” and held instead that percolating groundwater in California was subject to the same common law restrictions on use as surface water and subterranean streams. (*Id.* at pp. 121, 133–136.) As a result of the *Katz* decision, it was no longer necessary for the courts to determine at common law whether groundwater in dispute between litigants was percolating groundwater or groundwater flowing in subterranean streams. (*McClintock v. Hudson* (1903) 141 Cal. 275, 281.)

from the San Fernando Valley, to supply the city's inhabitants. (*Id.* at pp. 604–607.) The city asserted that the groundwater on defendant's property was part of the river's underflow for which the city would not have to pay compensation. (*Id.* at pp. 607, 617.) The defendants maintained that the groundwater was percolating groundwater which they owned and for which compensation must be made in the jury's award. (*Id.* at p. 617.) After being instructed in detail about how to distinguish percolating groundwater from water flowing in a subterranean stream, the jury made no award for the value of the water. (*Id.* at pp. 616–617.) On appeal in the Supreme Court, the defendants challenged several of the jury instructions on this issue. (*Id.* at pp. 630–636.) The court affirmed the judgment and upheld the trial court's instructions. (*Id.* at pp. 630–636, 650.)

Pomeroy rejected the defendants' claim that "all water passing through sand, gravel, and [boulders] is percolating water" and instead endorsed the view that a subterranean stream can exist "when the material through which the water forces itself fills a well-defined channel with impervious sides and bed." (*Pomeroy, supra*, 124 Cal. at p. 631.) Later in the opinion, the court observed that such a channel could be formed by the "comparatively impervious mountain sides" creating the opening through which the disputed water passed out of the San Fernando Valley. (*Id.* at p. 632, italics added.)

Turning its attention to the proper definition of a subterranean stream, the *Pomeroy* court quoted in full from and endorsed as a correct statement of the law the following discussion found in Clesson S. Kinney's 1894 volume, *A Treatise on the Law of Irrigation* (hereafter *Kinney on Irrigation*): "Subterranean or underground water courses are, as their names indicate, those water currents that flow under the surface of the earth. A large portion of the great plains and valleys of the mountainous regions of the west is underlaid by a stratum of water-bearing sand and gravel, and fed by the water from the mountain drainage. This water-bearing stratum is of great thickness, the water is moving freely through it, is practically inexhaustible, and, if it can be brought to the surface, will irrigate a large portion of the country overlying it. In and near the mountains many streams have a bed which was originally a rocky canyon, but has been filled up with [boulders] and coarse gravel. In this debris a large portion or all of the

water sinks from sight, to reappear only when some rocky reef crosses the channel and forces the water to the surface. The movement of this water through the porous gravel, owing to the declivity of the stream, is often quite rapid, and a considerable volume may thus pass down the channel hidden from sight.

“These watercourses are divided into two distinct classes—those whose channels are known or defined, and those unknown and undefined. It is necessary to bear this distinction in mind in our discussion, as they are governed by entirely different principles of law. And in this connection it will be well to say that *the word “defined” means a contracted and bounded channel, though the course of the stream may be undefined by human knowledge; and the word “known” refers to knowledge of the course of the stream by reasonable inference.* Regarding the laws governing these two classes, it must be known that if underground currents of water flow in well-defined and known channels, the course of which can be distinctly traced, they are governed by the same rules of law that govern streams flowing upon the surface of the earth.

“The owner of land under which a stream flows can, therefore, maintain an action for the diversion of it if such diversion takes place under the same circumstances as would enable him to recover if the stream had been wholly above ground. But for this purpose the underground water must flow in known and well-defined channels . . . in order that the riparian owner or appropriator may invoke the same rules as are applied to surface streams, or otherwise the presumption will be that they have their sources in the ordinary percolations through the soil. This rule practically disposes of the second class of subterranean waters—those whose channels are unknown and undefined—although there are undoubtedly a great many underground streams whose waters flow in confined channels but whose courses are not known, and, following the above rule, these are all classed with percolating waters.’ ” (*Pomeroy, supra*, 124 Cal. at pp. 633–634, quoting *Kinney on Irrigation, supra*, § 48, pp. 69–70, italics added.)¹³

¹³ Section 49 of *Kinney on Irrigation*, which was not quoted in *Pomeroy*, states the following rationale for distinguishing between known subterranean streams and percolating waters and those whose sources are unknown: “Where there is nothing to show that the waters of a spring or well are supplied by any defined flowing stream the

The *Pomeroy* court goes on to apply these definitions and distinctions to the case before it: “In this case the boundaries of the channel and the existence and course of the underground stream were unknown and undefined except so far as they could be inferred, but there was a great amount of evidence from which a reasonable inference could be drawn that the channel was bounded and defined by the sloping sides of the Cahuenga and Verdugo hills meeting under ground, and that there was a subsurface flow corresponding with the surface flow from west to east out through the gap. Without any excavation beneath the surface, or other test or experiment, all this could be inferred from the topography of the country, the amount of rainfall and the gradually augmenting volume of the surface stream in its approach to the narrowest point in the pass. And the court was certainly justified in submitting to the jury the question whether the subsurface flow was a part of the stream unless the mere fact that it was forcing its way through sand and gravel and [boulders] deprived it of the character of a stream. [¶] Upon this point we are satisfied that the view of the superior court was the reasonable and just view and not opposed to anything that has ever been decided in this court.” (*Pomeroy, supra*, 124 Cal. at p. 634.)

presumption will be that they have their source in the ordinary percolations of water through the soil. Percolating waters, and those whose sources are unknown, belong to the realty in which it is found. The reason for this rule is that, as percolations spread themselves in every direction through the earth[,] it is impossible to avoid disturbing them without relinquishing the necessary enjoyment of the land the law does not therefore forbid their disturbance.” (Kinney on Irrigation, *supra*, § 49, pp. 70–71, fns. omitted.) As stated in *Wheatley v. Baugh* (1855) 25 Pa. 528, 532: “When the filtrations are gathered into sufficient volume to have an appreciable value, and to flow in a clearly defined channel, it is generally possible to see it, and to avoid diverting it without serious detriment to the owner of the land through which it flows. But percolations spread in every direction through the earth, and it is impossible to avoid disturbing them without relinquishing the necessary enjoyment of the land. . . . [¶] . . . No man could dig a cellar, or a well, or build a house on his own land, because these operations necessarily interrupt the filtrations through the earth.”

D. Parties' Conflicting Analyses of Section 1200

As an initial matter, the Board claims that NGWC cannot challenge whether the *Garrapata* test reflects a correct interpretation of section 1200 on this appeal because NGWC failed to exhaust its administrative remedies. The Board maintains that both sides explicitly accepted the *Garrapata* framework in their arguments and presentation of evidence before the Board, but merely disputed whether certain elements of the test were satisfied as applied to the groundwater pumped by NGWC's wells. (See *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 686–687 [exhaustion of administrative remedies doctrine bars party from offering its own property appraisal methodology for the first time on appeal].) NGWC insists that it did not exhaust its administrative remedies because: (1) it expressly argued to the Board that the *Garrapata* test must be qualified in specified respects, and (2) the arguments and evidence on which it relies on appeal are in substance identical to those it advanced in the administrative proceedings. With the possible exception of one argument, discussed below, that NGWC raised for first time in the trial court, we agree with NGWC (and the trial court) that there was no failure to exhaust administrative remedies. We will therefore consider NGWC's arguments on their merits.

With one exception, NGWC does not disagree that the wording of the Board's four-part test, as far as it goes, is consistent with *Pomeroy*. Thus, NGWC does not disagree that under *Pomeroy* the existence of a "subterranean stream[] flowing through a known and definite channel" requires that a subsurface channel be present, that the course of the channel be known or capable of being determined by reasonable inference, and that groundwater be flowing in the channel. NGWC also agrees that the channel must have a bed and banks, although it disagrees that a bed and banks composed of "relatively impermeable" materials would suffice under *Pomeroy*. In essence, NGWC argues that the *Garrapata* test omits important limiting factors that are found in or implicit in the

pre-1913 case law. Without these limitations, NGWC maintains that the test is over inclusive and therefore overstates the Board's statutory jurisdiction.¹⁴

1. Meaning of "Contracted"

First, NGWC argues that *Pomeroy*'s definition of a "defined" channel as a "contracted and bounded" channel means that the width of the channel must be narrowing rather than widening as the groundwater flows through it. According to NGWC, this was clearly the case in *Pomeroy* where the court was concerned with a relatively narrow outlet from the San Fernando Valley. In contrast, the channel posited by the Board in this case is not "contracted" at Elk Prairie, but widens at that location.

NGWC places too much weight on the word "contracted." *Pomeroy* quoted the phrase "contracted and bounded" from *Kinney on Irrigation*. (*Pomeroy, supra*, 124 Cal. at pp. 633–634.) The phrase apparently derived from two earlier Irish cases. (See *Kinney on Irrigation, supra*, § 48, p. 69, fn. 1; *Black v. Ballymena Township Cmmrs.* (1885) 17 I.L.R. 459; *Ewart v. Belfast Poor-Law Guardians* (1881) 9 I.L.R. 172.) A few cases from other jurisdictions have also quoted this formulation, citing *Kinney on Irrigation*. (See *Huber v. Merkel* (1903) 117 Wis. 355, 360; *Deadwood Cent. R. Co. v. Barker* (S.D. 1901) 86 N.W. 619, 621.) None of these authorities, including *Pomeroy*, support NGWC's thesis that unless the channel through which the groundwater is flowing is narrowing or contracting the water is not flowing in a "definite" channel. Aside from the bare use of the word "contracted" none of the authorities discusses or endorses any such restriction in classifying groundwater. In context, the word "contracted" appears to mean simply that the channel constrains and controls the flow of the groundwater compared to how the water would behave if the channel did not exist. There is no indication in *Pomeroy* or any of the other pre-1913 authorities that determining whether a subterranean channel is narrowing, widening, or maintaining the same width is essential to the classification of the groundwater flowing in it.

¹⁴ This court has also reviewed and considered amicus curiae briefs submitted by the California Water Association and the Northern California Water Association addressed to the Board's jurisdiction.

2. Meaning of “Bounded”

Second, NGWC argues that the bed and banks of a subterranean channel must be more than “relatively impermeable.”¹⁵ In NGWC’s view, the proper test under *Pomeroy* is whether the bed and banks present a “significant boundary to groundwater flow.” In NGWC’s formulation, the *relative* permeability of the materials composing the bed and banks is a potentially relevant but never dispositive factor in that determination. The critical question, according to NGWC, is whether the bed and banks are *sufficiently impermeable* that they “ ‘prevent the transmission of all but relatively minor quantities through the channel boundary’ ” (quoting language actually used by the Board in its *Garrapata* decision). NGWC argues that the second element of the test, as so modified, has not been established. According to NGWC’s expert, the majority of the groundwater in the alluvium under Wells 4 and 5 originates in the Franciscan formation north of Elk Prairie and then flows south *across* the interface between the Franciscan rock and the alluvium. If so, then the channel boundary between the bedrock and alluvium at Elk Prairie is not an effective barrier to the transmission of groundwater.

According to the Board, the critical question in deciding whether a definite subterranean channel exists is whether groundwater, once it enters the channel, will be confined to it. This, in turn, is a function of the permeability of the materials filling the channel compared to those forming the channel’s bed and banks, as well as of the gradient or slope at which the groundwater is descending toward sea level. The Board cites the testimony of NGWC’s expert that the flow of water across the interface between

¹⁵ Although not specified in the shorthand statement of the four-part test quoted earlier, the Board compared the permeability of the materials contained within the channel, in this case the alluvial aquifer materials beneath Elk Prairie, with the permeability of the materials forming the bed and banks, in this case the Franciscan bedrock. DFG’s expert found, based on various measurements, that the alluvium was two and one-half to three orders of magnitude more permeable than the bedrock. The Board accepted this finding. According to the Board, this means in lay terms that for every drop of water that passes through the bedrock 300 to 1,000 drops would flow through the alluvial aquifer. To the extent that NGWC disputes the Board’s factual findings concerning the relative impermeability of the bedrock, they are supported by substantial evidence.

the bedrock and the alluvium on the north side of Elk Prairie is a one-way flow; water flows into the alluvium but no water flows back out into the bedrock. The Board also notes, and NGWC implicitly concedes, that no natural, geologic boundary is 100 percent impermeable.

In our view, the Board's position is more consistent with *Pomeroy* and other pre-1913 case law than is NGWC's. These cases focus not on the source of the water gathered in a subterranean stream, but on the physical coherence of the stream *once it is formed*: “ ‘Where percolating waters collect or are gathered in a stream running in a defined channel, no distinction exists between waters so running under the surface or upon the surface of land.’ (*Cross v. Kitts* [(1886)] 69 Cal. 217.) Water passing through the soil, not in a stream, but by way of filtration, is not distinctive from the soil itself; the water forms one of its component parts. In this condition it is not the subject of appropriation. When, however, it gathers in sufficient volume, whether by percolation or otherwise, to form a running stream, it no longer partakes of the nature of the soil, but has become separate and distinct therefrom and constitutes a stream of flowing water subject to appropriation.” (*de Wolfskill v. Smith* (1907) 5 Cal.App. 175, 181.) As stated in one of the jury instructions approved in *Pomeroy*: “ ‘If such [underground] watercourse exists, it is immaterial, so far as the watercourse is concerned, from or through what lands the waters flow in reaching the channel, or whether they reach the same by percolation or by clearly-defined streams.’ ” (*Pomeroy, supra*, 124 Cal. at p. 624.)

Thus, nothing in the pre-1913 case law suggests that the one-way seepage of water into a subterranean (or surface) stream through bedrock fissures or fractures, as posited by NGWC's expert, negates the existence of a “known and definite” subterranean channel, any more than the infiltration or seepage of water into a surface stream negates its character as a defined surface channel.¹⁶

¹⁶ The pre-1913 cases recognize, either implicitly or explicitly, that water in known, subterranean channels implicated the same legal rights as that in surface streams because both behaved in an essentially similar fashion, i.e., crossing through adjacent properties in well-defined and ascertainable courses. (See, e.g., *Hanson v. McCue, supra*, 42 Cal. at p. 308.) As stated in the same section of Kinney on Irrigation from which the

The type of comparative analysis required by the Board's test is certainly consistent with *Pomeroy*, which described the mountain sides forming the bed and banks of the alluvial channel in issue there as "comparatively impervious." (*Pomeroy, supra*, 124 Cal. at p. 632.) Just as the bed and banks of surface streams necessarily permit some seepage of water, an absolute standard that subterranean channels be watertight would be entirely unrealistic. As stated in one of the jury instructions approved in *Pomeroy*, the bed of a subterranean watercourse " 'may consist of any material which keeps the waters from penetrating below a certain depth and such banks or sides may consist of any material which has the effect of confining the waters within circumscribed limits.' " (*Id.* at p. 623.) We find nothing in *Pomeroy* nor any evidence in the administrative record suggesting that a subsurface channel boundary that is two and one-half or three orders of magnitude less permeable to water than the materials it contains is insufficient for those purposes.

While the Board's "relatively impermeable bed and banks" requirement might profit from greater specificity, we cannot say that NGWC's "significant boundary" formulation is an improvement, or that it is more consistent with the pre-1913 case law. It fails most notably to draw any distinction between the various means by which groundwater may enter the channel and the degree to which the channel contains and confines the water once it has entered.

3. Relevance of Flow Direction

Third, NGWC points out that section 1200 and *Pomeroy* both refer to subterranean streams flowing *through* a known and definite channel. (§ 1200; *Pomeroy, supra*, 124 Cal. at p. 632.) NGWC construes this to mean that the groundwater flow must be

Pomeroy court quoted at length: "No distinction exists between waters running under the surface, in defined channels, and those running in distinct channels upon the surface. The distinction is made between all waters running in distinct channels, whether upon the surface or subterranean, and those oozing or percolating through the soil in varying quantities and uncertain directions." (Kinney on Irrigation, *supra*, § 48, pp. 69-70, fn. 2, citing *Strait v. Brown* (1881) 16 Nev. 317.)

parallel to the channel or, if not precisely parallel to it, then at least flowing in the same general direction at all times. NGWC maintains that the water pumped by Wells 4 and 5 flunks this essential test because its flow direction underneath Elk Prairie is perpendicular to the alluvial channel forming the bed and banks of the asserted subterranean stream. In NGWC's view, the north-south flow direction is caused by the significant amounts of groundwater entering the alluvial channel through fractures in the bedrock north of Elk Prairie. According to NGWC, this north-south stream is flowing *across* the defined alluvial channel, not *through* it as contemplated by section 1200. NGWC rejects as inconsistent with the available data any theory that the groundwater underneath Elk Prairie is merely "channelized" groundwater moving in a westerly direction along the alluvial channel that has been deflected south by the damning effect of a subsurface geological formation.

DFG's expert presented an alternative theory to account for the flow direction at Elk Prairie. He cited evidence (which was disputed as insufficient by NGWC) that groundwater is flowing from east to west through the subsurface channel just upstream of Elk Prairie, before it encounters a relatively impermeable clay layer under Elk Prairie which deflects it toward the south. He also believed that the proximity of the San Andreas fault zone immediately to the west of Elk Prairie could contribute to the bend in subsurface flow direction toward the North Fork. DFG's expert rejected as speculative and unsupported NGWC's theory that the bedrock north of Elk Prairie could be a significant source of groundwater flow into the alluvium that would account for its north-south flow direction at Elk Prairie.

In its decision in this case, the Board held specifically as follows: "The fourth element in [the *Garrapata* test] does not require that the flow direction within the subterranean streamflow be parallel to the channel. . . . Further, any directional deviation of the subterranean stream from parallel to the channel is irrelevant to the issue of whether [NGWC's] wells are taking water from a subterranean stream in a known and definite channel. Nothing in Water Code section 1200 or . . . in the [relevant] case law requires that a subterranean stream exactly follow the course of the channel. Therefore,

the test is satisfied as long as the water is flowing within the channel.” The Board asserted that this analysis was consistent with the behavior of surface streams: “In a surface stream, the flow may deviate or even reverse at points from the general direction of flow as water enters from a tributary, flows around a barrier, or moves along the bottom of the stream. Likewise, such deviations may occur in a subterranean stream.”

Subject to certain qualifications, we agree with the Board’s position. Nothing in the relevant case law requires that a subterranean stream *precisely* follow the course of the channel. As in surface streams, flow direction need not be parallel to the banks of the channel at all locations along its length. The presence of local obstructions or seasonal variations in flow volume, among other conditions, may affect flow direction. Thus, a directional deviation of the subterranean stream from parallel to the channel at the point of diversion would, in general, be irrelevant to the issue of whether the Board would have jurisdiction over appropriations from the stream, as the Board stated in Order WRO 2003-0004.

At the same time, the further statement in the Board’s decision that the *Garrapata* test “is satisfied as long as the water is flowing within the channel” is gratuitous, and may invite an overbroad application of the *Garrapata* test in future cases. Construed together, the words of the subterranean stream clause clearly contemplate that the stream flows in the same general direction as the channel. The following sentence from *Pomeroy* is illustrative: “[T]here are undoubtedly a great many underground streams whose waters flow in confined channels but whose courses are not known, and, following the above rule, these are all classed with percolating waters.” (*Pomeroy, supra*, 124 Cal. at p. 634, quoting Kinney on Irrigation, *supra*, § 48, p. 70.) Thus, as stated in Kinney on Irrigation, and as the Supreme Court recognized in *Pomeroy*, a subsurface stream only avoids classification as percolating water if the course of the *stream* is known and definite. That the course of the channel through which it flows is known and definite matters only insofar as that course defines the course of the stream, and allows the latter to be ascertained. This point is underlined by the critical passage in *Pomeroy* in which the court, using Kinney on Irrigation, defined the key terms later borrowed for section 1200:

“ ‘[T]he word “defined” means a contracted and bounded channel, though the *course of the stream* may be undefined by human knowledge; and the word “known” refers to *knowledge of the course of the stream* by reasonable inference.’ ” (*Pomeroy*, at p. 633, italics added.)¹⁷

Thus, the subterranean stream clause of section 1200 cannot properly be construed to grant jurisdiction over a groundwater stream that wanders independently of the banks of the putative channel. Such a reading would be inconsistent with *Pomeroy* and with the original legal rationale for treating water flowing in definite underground streams differently from percolating groundwater. Where, as in this case, the flow direction of the underground stream is perpendicular or nearly perpendicular to the banks of the asserted channel, some explanation is required for the stream’s extreme deviation from the general course of the channel. Contrary to NGWC’s position, such a deviation (or even a reverse flow) at the point of diversion does not negate the existence of a subterranean stream flowing through a known and definite channel *if* such a flow direction can be satisfactorily explained by localized conditions that obstruct or divert the stream from its path along the channel.

The Board recognized the need in this case to explain the north-south flow direction of the stream under Elk Prairie in Order WRO 2003-0004 by citing in a footnote to the testimony of DFG’s expert on this point. In its subsequent petition for reconsideration of Order WRO 2003-0004, NGWC attacked the expert’s opinions on this point as being unsupported and misleading. The Board’s order denying reconsideration discussed the DFG expert testimony at some length and responded to NGWC’s contentions in relevant part as follows: “[NGWC] wants the [footnote] to state that it is just a report of the opinion of the DFG witness, and impliedly wants it not to be a finding of the [Board]. Further, [NGWC] argues that the entire footnote ignores [NGWC’s] rebuttal testimony. [NGWC] asserts that its rebuttal testimony was successful in

¹⁷ The very rationale for treating subterranean streams differently than percolating water—that the landowner would know where he could excavate and build on his land without disturbing the stream—depends on the premise that the stream generally follows the known and definite course of the channel. See footnote 13, *ante*.

demonstrating that the opinions of the DFG expert regarding flow direction are not supported by the available data and are contrary to basic principles of groundwater hydrology. The [Board] disagrees with this assertion. [¶] . . . [¶] [The footnote] points out that the record does contain substantial evidence in the form of testimony and exhibits presented by a qualified expert witness that explains why the groundwater is flowing from north to south at [NGWC's] production wells. First, due to the subsurface conditions beneath Elk Prairie, one would not expect the groundwater to flow parallel to the channel at that location. . . . At the location of the wells, the less-permeable clay sediments in the alluvium near the wells tend to force the subterranean streamflow into the more permeable parts of the alluvium, making it easier for the groundwater to flow around, rather than through, the clay sediments. Second, the presence of clay deposits influences the groundwater gradient beneath [NGWC's] property by causing the groundwater to flow in a more southerly direction in that area. . . . [¶] [W]ater in the channel flows in a gradient from a higher to a lower elevation within the channel. Based on the evidence, the observed deviation of the groundwater flow direction at the wells from a predominantly east to west direction of the channel is consistent with a general downstream flow of the subterranean stream. . . . [¶] . . . The evidence in the record demonstrates that water is in fact flowing generally downstream within the channel under Elk Prairie, following a hydraulic gradient and following the path of least resistance.”

An administrative agency must “render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the board’s action.” (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514.) But such findings need not be stated with the formality and precision required in judicial proceedings. (*Alford v. Pierno* (1972) 27 Cal.App.3d 682, 691.) They are to be liberally construed to support rather than defeat the decision under review. (*Fair Employment Practice Com. v. State Personnel Bd.* (1981) 117 Cal.App.3d 322, 329.) Nor must the court remand if it determines that necessary findings may be reasonably implied. (*Alford v. Pierno*, at p. 691.) We must uphold the decision of an administrative agency

challenged pursuant to section 1094.5 if “the agency ‘in truth found those facts which as a matter of law are essential to sustain its . . . [decision].’ ” (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348, 1356, quoting *McMillan v. American Gen. Fin. Corp.* (1976) 60 Cal.App.3d 175, 184.)

Construing Order WRO 2003-0004 and the Board’s ensuing order denying reconsideration together, we believe the Board did make adequate findings explaining the perpendicular flow direction of the stream underneath NGWC’s wells. The Board found the flow direction at that site was caused by clay sediments under Elk Prairie that deflected the water toward the south. This explanation is consistent with and supportive of the Board’s ultimate statutory finding that the groundwater in issue comes from a subterranean stream flowing through a known and definite channel.

NGWC also contends that the Board failed to make a finding as to the source of the groundwater under its wells. However, it is inherent in the theory advanced by DFG’s expert—that the flow direction turns in a southerly direction at Elk Prairie due to subsurface geologic conditions—that the alluvium to the east is a major source of the groundwater being pumped. This finding, and the evidence supporting it, was explicitly discussed in the Board’s order denying reconsideration.

NGWC contends in the alternative that any findings made by the Board concerning flow direction and water source are not supported by the evidence. While acknowledging that “complex, conflicting evidence” on the issue was presented by NGWC and DFG experts, NGWC merely asserts in conclusory fashion that “the opinions on source and flow direction offered by [the DFG expert] were demonstrated to be incorrect by cross-examination of him and by rebuttal evidence submitted by [NGWC].” We disagree. Based on our review of the record, both sides drew reasonable but conflicting inferences from the very limited data points available. Our task on appeal is not to decide whether different findings would have been more reasonable, but to determine whether any substantial evidence in the administrative record supports the Board’s findings. (Code Civ. Proc., § 1094.5, subd. (c); *Northern Inyo Hosp. v. Fair Emp. Practice Com.* (1974) 38 Cal.App.3d 14, 24.) In our view, the testimony and

opinions of the DFG expert concerning flow direction and water source do constitute substantial evidence supporting the Board's findings on those issues.

4. NGWC's Proposed Alternative Approach

Finally, NGWC proposes that the four-part *Garrapata* test be scrapped altogether in favor of a classification of groundwater found in a 1911 treatise authored by Samuel C. Wiel, *Water Rights in the Western States*. According to NGWC, three classes of underground water are recognized in the case law: (1) percolating water, (2) the underflow of surface streams, and (3) "definite known underground streams." NGWC maintains that *Pomeroy* and other cases involving water flowing in alluvial channels are underflow cases. On the other hand, groundwater flowing in "definite known underground streams," according to NGWC, is limited exclusively to water flowing through open spaces—fissures, voids, and tunnels—in bedrock formations. Wiel states that "definite known underground streams" are "of rare occurrence, and the presumption is against their presence in any given case." (2 Wiel, *Water Rights in the Western States* (3d ed. 1911) ch. 43, § 1077, pp. 1011–1012.) On this theory, water flowing in the alluvium underneath Elk Prairie could not be subject to the Board's jurisdiction under section 1200 unless it was part of the underflow of the North Fork. Since the Board made no finding that Wells 4 and 5 are drawing on river underflow, NGWC argues that it erred in asserting jurisdiction.

As an initial matter, we note that NGWC did not advance its proposed alternative methodology during the administrative proceedings. NGWC therefore arguably failed to exhaust its administrative remedies as to this specific argument. (See *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco*, *supra*, 102 Cal.App.4th at pp. 686–687; *Park Area Neighbors v. Town of Fairfax* (1994) 29 Cal.App.4th 1442, 1447–1449.) However, because the argument is closely related to NGWC's other objections to the *Garrapata* test, we will address it on the merits.

We find no indication in Wiel's discussion of "definite known underground streams" that he considered these to occur exclusively in bedrock formations. To the contrary, Wiel mentions that a stream underflow may become an underground stream

during the dry season when water seeps down the alluvial channel without flowing on the surface. (2 Wiel, *Water Rights in the Western States*, *supra*, ch. 43, § 1077, p. 1012.) Moreover, there is no indication in *Pomeroy* or other pre-1913 cases that the phrase “subterranean stream flowing through a known and definite channel” referred exclusively to underflows of a surface stream or water flowing through channels in bedrock. Rather, the pre-1913 case law suggests that underflows of surface streams were simply a subcategory of definite underground streams, not a distinct, stand-alone category recognized as such in the cases. The case law does not support NGWC’s claim that the subterranean stream language in the statute categorically excludes water flowing in an alluvial channel unless it is the underflow of a surface stream.¹⁸

Two final caveats are in order concerning our approval of the Board’s methodology in this case. First, NGWC and amici curiae are concerned with language in the Board’s decision suggesting that water moving within a wide alluvial valley, whatever its form or direction, constitutes a subterranean stream. In particular, the Board appears to read *Hunter*, *supra*, 156 Cal. 603 as holding that all groundwater flowing in the San Fernando Valley is part of a single subterranean stream. We reject any such expansive view of the Board’s jurisdiction. Such a view would be directly at odds with *Pomeroy*,¹⁹ and no case has cited *Hunter* as authority for so sweeping a proposition.

¹⁸ In *Pomeroy*, the court approved a jury instruction stating that if the jury found the water moving underground was “ ‘[I]t must be made to appear that the water usually flows in a certain direction and in a regular channel, with banks or sides, though it need not . . . be in a straight line. [¶] Waters, whether under or above ground, having no certain general course or definite limits, such as those merely percolating through the strata of the earth and those diffused over its surface, are not watercourses . . . [¶] . . . [¶] Water moving by force of gravity in a valley or basin of wide extent . . . and moving generally through the whole or through a large portion of the basin, along through the natural voids or

¹⁹ In rejecting the property owners’ claim that the entire San Fernando basin was a subterranean stream under the trial court’s instructions, the *Pomeroy* court cited the following instruction: “ ‘[I]t must be made to appear that the water usually flows in a certain direction and in a regular channel, with banks or sides, though it need not . . . be in a straight line. [¶] Waters, whether under or above ground, having no certain general course or definite limits, such as those merely percolating through the strata of the earth and those diffused over its surface, are not watercourses . . . [¶] . . . [¶] Water moving by force of gravity in a valley or basin of wide extent . . . and moving generally through the whole or through a large portion of the basin, along through the natural voids or

However, we do not find that the Board's interpretation and application of section 1200 in this case depends in any way on its analysis of *Hunter*.

Second, we reject as inconsistent with section 1200 the trial court's passing suggestion that once the operation of NGWC's wells is shown to have an impact on the North Fork surface flows, the Board's jurisdiction over the wells follows automatically. We find no indication in the record that the Board relied on any such "impact" test in rendering its classification decision.

Subject to the qualifications stated in this opinion, we hold that the four-part *Garrapata* test is consistent with the language and intent of section 1200, that the Board made all findings necessary to determine that the groundwater in issue satisfied the test, and that such findings were supported by substantial evidence.

E. Application of Term 9

NGWC argues in the alternative that even if the Board has permitting jurisdiction over the wells in issue, it has improperly construed the manner in which Term 9 applies to them. According to NGWC, the second sentence of Term 9 ("[t]he total streamflow shall be bypassed whenever it is less than the designated amount for that period") has no application to Wells 4 and 5 unless the company's groundwater pumping actually *reduces* surface streamflows during a period when they were already below one of the seasonal minimums specified in the first sentence of Term 9.²⁰ The Board, on the other hand, construes Term 9 to mean that all groundwater pumping is automatically prohibited whenever surface water flows fall below the minimums specified.

interstices of the earth, composed of alluvial or other deposit lying throughout the entire basin . . . do not constitute a watercourse.' " (*Pomeroy, supra*, 124 Cal. at pp. 626–627, 631–632.)

²⁰ This would occur, at least theoretically, if NGWC was pumping Wells 4 and 5 at levels that induced infiltration of surface water from the North Fork. However, NGWC's expert testified that the company's pumping had not historically produced any induced infiltration, and could not be made to do so even under test conditions exceeding normal pumping.

In our view, NGWC waived this issue by failing to timely raise it in 1999 when the Board issued Orders WR-99-09-DWR and WR 99-11. (§ 1126, subd. (b) [“party aggrieved by any decision or order may, not later than 30 days from the date of final action by the board, file a petition for a writ of mandate for review of the decision or order”]; see *Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 767 [holding claim of invalid zoning permit conditions to be untimely]; *United States v. State of Cal.* (E.D.Cal. 1981) 529 F.Supp. 303, 312 [dismissing as untimely challenge to state water board decision not filed within 30 days after final decision].) These orders placed conditions on NGWC’s request for a change in the point of diversion—the development of water measurement and water supply contingency plans—that were unmistakably premised on Term 9’s restrictions being fully applicable to groundwater diversions, not just to surface water diversions that could only occur under extreme pumping scenarios. NGWC could not have misunderstood the nature of the protests lodged against its change petition, nor the reading of Term 9 on which the Board predicated its ensuing orders addressing these concerns. It could not, consistent with section 1126, manifest its acceptance of the conditions and then wait until nearly two years later to challenge the premise on which they were self-evidently based.

In any event, we do not find NGWC’s interpretation of Term 9 persuasive on the merits. Generally, we extend considerable deference to an administrative agency’s interpretation of its own regulations and language: (*Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1107; *Bello v. ABA Energy Corp.* (2004) 121 Cal.App.4th 301, 318.) Such interpretation is entitled to great weight unless it is unauthorized, unreasonable, or clearly erroneous. (*Bello v. ABA Energy Corp.*, at p. 318.) Although Term 9 is awkwardly worded in light of the change in the point of diversion, the Board’s interpretation that the term applies to all diversion points subject to the permit is reasonable in light of Term 9’s history and purpose in protecting streamflows and fish life in the North Fork. In contrast, NGWC’s proposed interpretation would make Term 9 substantially, if not completely, ineffective in fulfilling these purposes. Accordingly, should the Board determine that it has

jurisdiction over NGWC's wells, it may enforce Term 9 according to its interpretation that the term applies to all diversion points subject to the permit.

We find no error in the trial court's disposition of NGWC's petitions.

III. DISPOSITION

The judgment denying the consolidated petitions is affirmed.

Margulies, J.

We concur:

Marchiano, P.J.

Swager, J.

Trial Court: Mendocino County Superior Court

Trial Judge: Hon. Leonard J. LaCasse

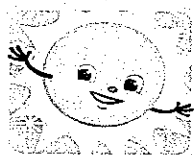
Counsel:

Bartkiewicz, Kronick & Shanahan, Alan B. Lilly, Ryan S. Bezerra for Plaintiff and Appellant.

Somach, Simmons & Dunn, Andrew M. Hitchings, Nicholas A. Jacobs for Northern California Water Association as Amicus Curiae on behalf of Plaintiff and Appellant.

Nossaman, Guthner, Knox & Elliott, Frederic A. Fudacz, Nicole A. Tutt, Alfred E. Smith for California Water Association as Amicus Curiae on behalf of Plaintiff and Appellant.

Bill Lockyer, Attorney General, Tom Greene, Chief Assistant Attorney General, Mary E. Hackenbracht, Senior Assistant Attorney General, Mark W. Poole, Deputy Attorney General for Defendant and Respondent.

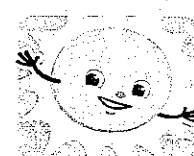
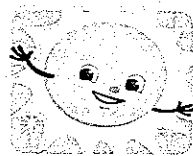


CHINO BASIN WATERMASTER

IV. REPORTS/UPDATES

C. INLAND EMPIRE UTILITIES AGENCY

3. Monthly Water Conservation Programs Report
4. Groundwater Operations Recharge Summary
5. Monthly Imported Water Deliveries Report
6. State and Federal Legislative Reports
7. Public Relations Report



CHINO BASIN WATERMASTER

ADVISORY COMMITTEE

June 22, 2006

AGENDA

INTERAGENCY WATER MANAGERS' REPORT

Chino Basin Watermaster

9641 San Bernardino Road

Rancho Cucamonga, CA 91730

15-20 Minutes

Discussion Items:

- Recycled Water Update – Oral Report
- CCWRF Salinity Report – Oral report

Written Updates:

- Monthly Water Conservation Programs Report
- Groundwater Operations Recharge Summary
- Monthly Imported Water Deliveries Report
- State and Federal Legislative Reports
- Community Outreach/Public Relations Report

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Regional Conservation Programs

Monthly Report-June

Water Resources Activities

- **2005 Urban Water Management Plan**- By request of the retail agencies, IEUA has amended the 2005 UWMP to extend projections an additional five years to 2030. A public hearing will take place on June 21st, followed by the adoption of the amendment by the board of directors.

MWD Activities

- **California Friendly Marketing Campaign**- The "California Friendly" campaign is an effort by MWD and its member agencies to get people to conserve resources by using water and energy efficient products along with changing to water efficient landscapes. Marketing materials have been developed and the new California Friendly campaign was kicked off on April 10, 2006, with TV advertisements, public service announcements, magazine advertisements, and other materials. The various types of advertisements will continue through July.

Landscape Programs

- **"SmarTimer of Inland Empire" Program**- SmarTimer controllers were exchanged for residents' existing controllers at three local PDA classes over the months of spring, where approximately 50 controllers were successfully exchanged. In addition, the Conservation Partnership is holding a regional SmarTimer exchange event on July 22nd at the Chino Basin Water Conservation District, where they anticipate exchanging 200 controllers. Residents also have the opportunity to apply for a rebate if they personally purchase a qualifying SmarTimer controller.
- **Phase II Landscape Audit Program (05/06)** - The RFP for the 05/06 Landscape Audit Program was released April 18, 2006, and proposals were due May 4th. The Conservation Partnership will review the bids in June with anticipation to go to board with a recommendation for a contract in July.
- **Ontario Cares**- City of Ontario will implement a pilot project to integrate "California Friendly" into the city's program to improve existing neighborhoods. A MWD consultant presented "California Friendly" templates to Ontario Cares inspection staff and landscape contractors. MWD will test templates and marketing materials on 4-5 houses and report back with results. The group will finalize materials and then implement the "California Friendly" landscape designs.
- **Landscape Collaborative**- IEUA staff met with city officials to consider the formation of a landscape task force to coordinate water efficient landscaping throughout the regions programs and policy recommendations.

Commercial/Industrial/Institutional Program

- **(CII SAVE-A-BUCK)**- At the April Conservation Partnership meeting, Honeywell presented an overview of their marketing strategies for the MWD service area, and more specifically IEUA's service area. Strategies for the IEUA service area include tailoring existing materials to target our area, new bill inserts, and to have representatives present at local chamber meetings, agency events and other significant events. Honeywell will implement their three month push strategy where they will send three mailers to customers and then call to entice participation. The following is a list of rebate activity for FY05/06 within the IEUA service area:
 - **High Efficiency Clothes Washers** - There were 12 clothes washer rebates for the month of March. To date 327 commercial high efficiency clothes washers have been installed in our service area since FY 00/01.
 - **Conductivity Controller Cooling Tower** - 1 controller was installed in FY 05/06 bringing the total to 15 conductivity controllers installed through the Save-a-Buck program since FY 00/01.
 - **ULF Toilets** - 264 ULFTs were rebated in April bringing the total to 1,320 ULFs in our service area since FY 00/01.
 - **Waterless Urinals** - 4 waterless urinals were installed in the month of April. This was the first installation of waterless urinals rebated for in the IEUA service area.
 - **Water Broom** - 114 water brooms were rebated in October bringing the total to 693 since FY 00/01.
- **Restaurant Spray Heads**- This program is being implemented by the CUWCC. Phase II was completed in December, 2005 with approximately 861 spray nozzles installed in our service area. To date approximately 1,192 spray heads have been installed. Phase III began in March and will end in December 2006.

Residential Programs

- **Single-Family ULF Toilet Exchange Programs**- There will be no more ULF toilet exchange events. The Conservation Partnership is planning to conduct a pilot program for a single family direct install to begin late summer.

- **Multi-Family ULF Toilet Program**– Currently, through the direct install program approximately 5,047 toilets have been installed and 953 toilets remain. The remaining toilets are expected to be installed by June 30th. In the next round of the program 22,000 toilets will be retrofitted. On April 19th IEUA board of directors approved the contract with Bottom Line Utilities Solutions to implement this program, to begin in the summer.
- **High Efficiency Clothes Washer Rebate**- Approximately 110 rebates were issued during May, bringing the total for the current fiscal year to 1,234 rebates. This brings the total number of rebates to approximately 6,293 since the rebate program began in 2002.

School Education Programs

- **Garden in Every School**- Six gardens have been completed including Coyote Canyon in Rancho Cucamonga, Ranch View in Ontario, Foothill Knolls in Upland, Hidden Trials in Chino Hills, Newman in Chino and North Tamarind in Fontana. Three successful dedications took place in May and three more will occur in the beginning of June. Our Lady of Lourdes School Garden is being postponed till the summer. Applications for next year's program will be sent out early June.
- **National Theatre for Children**- The spring schedule is completed. The Conservation Partnership is currently discussing next year's program.
- **Groundwater Model**- Chino Hills' and IEUA's staffs are now in the process of learning how to operate the Model. Once this is done meetings to see the model demonstrated will be set up with interested agencies.
- **Solar Cup (2006)** - The MWD Solar Cup event took place May 19th through May 21st, 2006. IEUA (as the member agency) was represented by three schools: Chino Hills High School and Ayala High School in Chino Hills, and Upland High School. 1st place was awarded to Diamond Bar High School. Chino Hill High School was awarded 2nd place, and 3rd place was awarded to Charter Oak High School.

Outreach

- **Water Fair**- The Water Fair committee has been meeting every month to plan a fair that will provide information on rebates and promote other ways to conserve water in our region. The event is set for October 14, 2006 and will take place at Montclair Plaza.
- **Conservation Ads (monthly and special)** - Conservation tips are printed in the Daily Bulletin monthly (on Sundays at the end of each month).
- **Water Education Water Awareness Committee (WEWAC)** - In April, the members of WEWAC discussed initiatives for the next year. The awards ceremony for the Annual Video Contest took place May 4th where Bonita High School was announced and recognized as the 1st place winner.
- **BMP Support Grants**- No new action.

Water Conservation Budget/Actual (As of 5/01/06)

<u>Revenues (est.)</u>	<u>Annual Budget</u>	<u>Est. Actual to date (FY05/06)</u>
Imported \$4/AF Surcharge	\$380,000	\$229,479
Retail Meter Revenue	\$54,863	\$45,719
Property Tax	\$75,000	\$62,500
Regional Sewage Fund Transfer	\$50,000	\$41,666
Interest	\$25,800	\$21,500
Subtotal	\$583,663	\$400,864
Other Agency Funding		
MWD (est. CCP Credits & Rebates)	\$668,000	\$325,210
Subtotal	\$668,000	\$325,210
Total Budget	\$1,251,663	\$355,448
Expenditures		
HECWs	\$110,000	\$127,177
ULFTs	\$830,700	\$618,632
Landscape Programs	\$148,000	\$11,054
CUWCC Dues	\$11,000	\$0

Education Programs	\$95,000	\$53,940
Agency Support	\$2,500	\$0
CII Marketing	\$27,000	\$0
BMP Partnership Funding	\$2,000	\$2,000
Public Information	\$56,000	\$9,000
Totals	\$1,282,200	\$821,803

Upcoming Events

CALENDAR

June 11 th -16 th , 2006	AWWA Annual Conference (San Antonio, TX)
July 22, 2006	SmarTimer Exchange Event (Chino Basin Water Conservation District)
October 14, 2006	Water Fair (Montclair Plaza)

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SUMMARY OF GROUNDWATER RECHARGE OPERATIONS							
Drainage System	Recharge Volume (AF)						
Basin	Jan 2006	Feb 2006	Mar 2006	Apr 2006	May 2006	Jun 2006	FY To Date
San Antonio Channel Drainage System							
College Heights East	182	207	233	291	105		1,592
College Heights West	397	395	290	538	236		3,457
Upland	555	704	566	597	914		5,416
Montclair 1, 2, 3 & 4	624	818	590	840	139		5,282
Brooks	257	393	215	261	301		3,199
Non-replenishment* (MVWD)	-	(44)	-	-	0		(156)
West Cucamonga Channel Drainage System							
8 th Street	66	187	216	153	31		905
7 th Street	50	56	110	77	19		372
Ely	218	422	338	362	64		2,136
Non-replenishment* (GE)	(8)	(80)	-	-	(29)		(460)
Cucamonga and Deer Creek Channel Drainage Systems							
Turner 1 & 2	262	152	427	390	97		2,049
Turner 3 & 4	75	71	171	260	72		774
Day Creek Channel Drainage System							
Lower Day	357	306	205	246	124		3,304
Etiwanda Channel Drainage System							
Etiwanda Debris	214	221	276	297	307		2,210
Victoria	26	43	110	59	29		324
San Sevaine Channel Drainage System							
San Sevaine	968	1124	964	1187	1386		9,572
Banana	56	77	55	36	54		965
Hickory	95	114	27	43	77		1,624
Declez Channel Drainage System							
RP3	33	64	161	127	37		742
Declez	35	110	191	101	58		720
Minor Drainage							
Grove	-	-	75	41	17		133
Subtotals	4,463	5,337	5,176	5,873	4,037		44,085
Recharge Water by Type							
Storm Water (SW) w/ Local Runoff (LR)	762	1661	3,133	3,305	848		12,681
MWD Water (MWD)	3,548	3467	2,043	2,568	3190		30,173
Recycled Water (RW)	154	209	-	-	0		1,231
Subtotals (Month)	4,463	5,337	5,176	5,873	4,037		44,085
Subtotals (FY to Date)	23,661	28,999	34,174	40,048	44,085		FY To Date
Notes							
SW : Storm Water, LR : Local Runoff, MW: MWD Water, RW : Recycled Water							
- :No stormwater/local runoff, or basin not in use due to maintenance or testing.							
X : Turnouts not available - to be installed within future projects.							
N : Not Applicable or No turnout planned for installation.							
*Non-Replenishment (deduct) is groundwater pumped from Chino Basin and recharged back into the basin.							
Data are preliminary based on the data available at the time of this report preparation							

Jun. 06, 06

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3RD QUARTER FY2005/06
 RECYCLED WATER SUMMARY

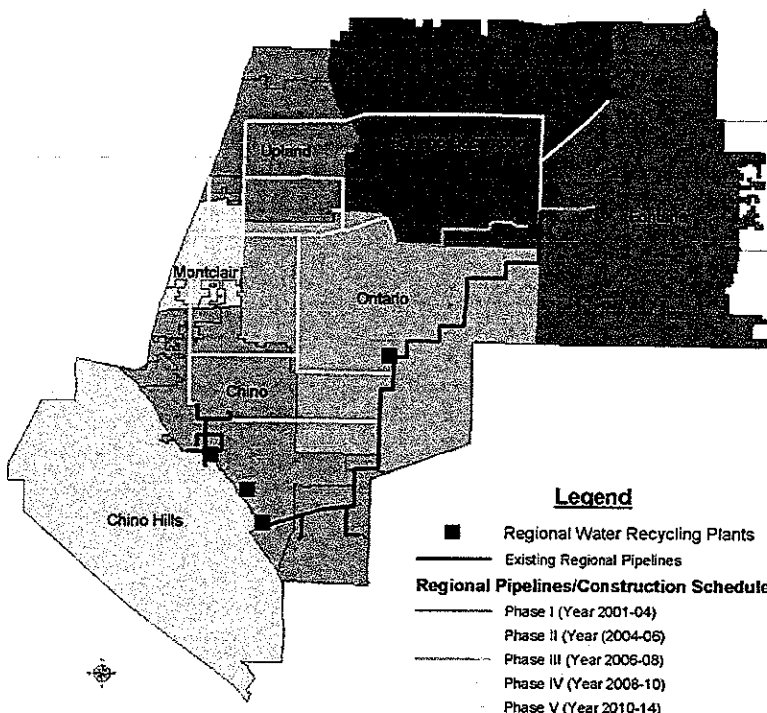
Capital Projects Summary

PROJECTS IN DESIGN AND CONSTRUCTION

- RP-4 Area 3 MG Regional Recycled Water Reservoir, Pipeline and Pump Station
 50% design complete. This project will establish two different pressure zones: northern half and southern half. In addition, the reservoir would be filled during low energy periods and off-peak hours to meet the demand and to conserve energy.
- North Etiwanda Regional Water Pipeline and Pump Station
 On-hold awaiting property acquisition
- RP-1 South Recycled Water Pump Station
 100% design complete. This pump station will pressurize the existing 30" gravity line to allow additional flow to growing demands in the area south of RP-1.
- San Antonio Channel Recycled Water Pipeline
 There are two design segments; Segment A & B. Segment A—Design complete. Segment B—90% design complete. Segment A will extend from the Cucamonga Channel to Benson Avenue. Segment B will extend through the City of Montclair providing recycled water to Bellevue Cemetery and parks and schools in Montclair.



Edison Avenue Pipeline



- Wineville Recycled Water Pipeline Extension
 90% design complete. This pipeline will serve industries including several major laundry facilities in Ontario as well as serving the City of Fontana.

- 7th & 8th St. Basin Pipeline
 90% design complete and value engineering has been completed. This pipeline will bring recycled water to 7th and 8th Street Basins and will serve schools and parks along the alignment.

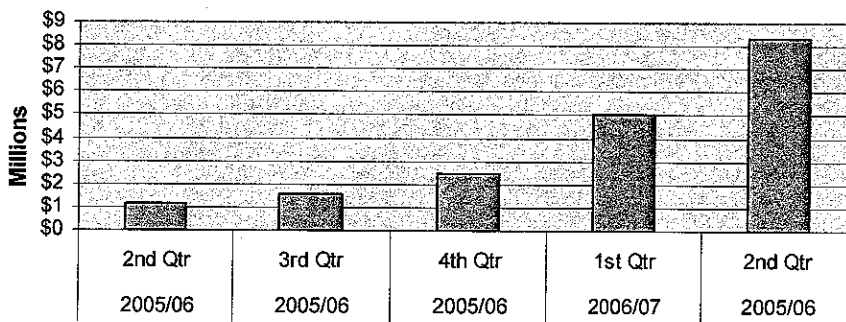
- Edison Avenue Pipeline
 Construction of Edison-Eucalyptus Regional Recycled Water Transmission Pipeline is underway. This pipeline will interconnect the existing CCWRF and TP-1 Outfall system providing additional recycled water supply to meet the growing demand in the southern service area. It will serve major agricultural users in Ontario, College Park in Chino and ultimately many parks and other landscape irrigation customers.

Projected Budget — \$70,300,000

Current Implementation Plan

D	Task Name	2006												2007												
		Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
1	RP-1 Recycled Water South Pump Station	[Gantt bar]												\$4,800,000												
2	San Antonio Channel Recycled Water Pipeline	[Gantt bar]												\$12,400,000												
3	Wineville Avenue Pipeline Extension	[Gantt bar]												\$6,600,000												
4	7th & 8th Street Basin Pipeline	[Gantt bar]												\$3,300,000												
5	Edison Avenue Pipeline	[Gantt bar]												\$9,100,000												
6	RP-4 Recycled Water Pipeline, Reservoir & Pump Station	[Gantt bar]												\$11,500,000												
7	North Etiwanda Recycled Water Pipeline, Reservoir & Pump Station	[Gantt bar]												\$21,000,000												

Regional Recycled Water Phase II—Projected Cash Flow



Financing Plan (2006-2016)

Project No.	Project Description	Budgeted Cost	State Grant Funding	Federal Grant Funding	SRF Loan	Total Grant/Loan Funding
1	San Antonio Channel Pipeline	13	3		10	13
2	TP-1 South Zone Pump Station	5	1		4	5
3	RP-4 Reservoir and Pump Station	12		5	7	12
4	Edison Avenue Pipeline	9	7			7
5	Wineville Avenue Pipeline Extension	7	1.5		5.5	7
6	7th and 8th St. Basin Pipeline	3	2			2
7	Etiwanda Ave. Pipeline, Reservoir, Pump Station	21		10	11	21
8	RP-1 Outfall Parallel	10		5	5	10
9	San Sevaine, Etiwanda Basin Pipelines	22	4		18	22
10	Etiwanda Pipeline South	4	2		2	4
11	Chino/Chino Hills Zone 800	11	3		8	11
12	RP-5/2 Recycled Water Pipelines	3.8				
	Land	5				
	Total (\$ Millions)	126	23.5	20	70.5	114



Chaparral Elementary School



Vellano Golf Course Development

TYCIP Projects (2006-2016)

- Capital Cost \$117 million
- Grant Funding \$42.5 million
- State Loan Funds \$66.5 million
- Local Funding \$8 million

Customer Development

■ Agricultural customers along the TP-1 Outfall line

Six service connections in Ontario and one for the City of Chino have been made for the farmers. Two more farm connections in Chino and three others in Ontario will be completed in June 2006. Although most of these farmers need to use booster pumps to irrigate, with the completion of the RP-1 South Pump Station next summer, those pumps would not be necessary. The combined total recycled water usage from these farms could exceed 7,000 AFY.

■ NRW (Non-Reclaimable Water) Customers

IEUA staff working closely with the retail agencies are targeting NRW customers. With passing of new pass through rate, these customers potentially save as much as 40% discount on the wastewater discharge in addition to the water bill by converting to use recycled water for their process and irrigation. Companies such as Coca-Cola USA and Metal Coaters of CA have already signed the letter of commitment to use recycled water. The other NRW Customers such as Ecolochem, Frito-Lay, and Sierra Aluminum I & II are ready to commit to use recycled water.

■ Targeted Major Customers in 2006

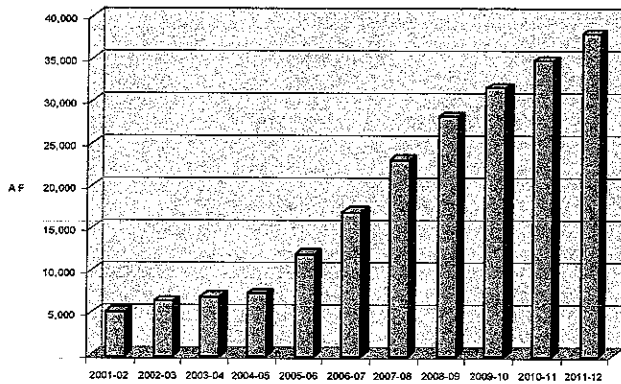
1. Empire Lakes Golf Course (CVWD) - On-line
2. Temple Inland (Ontario)
3. Guasti Park (Ontario)
4. Additional Farms on Outfall (Ontario & Chino) - two On-line
5. Ontario Center Owners Association (Ontario)
6. California Co-generation (Chino)
7. Vellano Golf Course (Chino Hills)
8. Mission Linen (Chino)
9. Cintas I & II (Ontario)

■ Consulting services for recycled water program management services

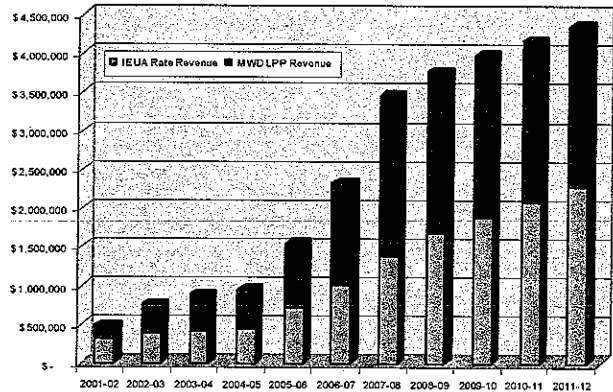
In order to expedite the approval process by DHS, IEUA staff and consultant are assisting the Cities with the Engineer's report as well as drafting a master engineer's report for each of the Cities.

Projected Sales & Revenue

Projected Recycled Water Sales



Projected Recycled Water Revenue



Regulatory/Permits

- CEQA—PEIR Certified June, 2002
- CBWM Article X Permit — *Approved* May, 2002
- SARWQCB Basin Plan "Maximum Benefit" — *Approved* January, 2004
- DHS Title 22 Report (Recharge) - *Approved* April, 2005
- SARWQCB Recharge Permit—*Approved* March 2005



CalPoly Pomona Farming in CIM

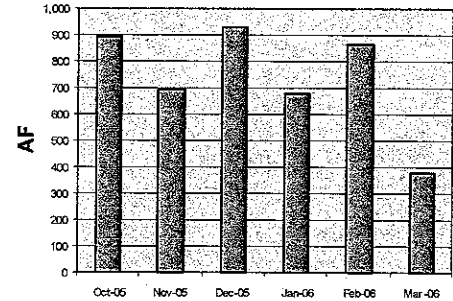
Activity Summary

New Customers in 2005

- 8 new recycled water customers were connected:

	Estimated Usage (AFY)
Lewis Homes Phase II (4 connections)	100
Redwood Business Center	10
CalPoly Pomona in CIM	1,000
Chaparral Elementary School	20
Bubalo Construction	20
Campus Owners Corporation	5
Panattoni Construction	5
Ethan Ellen Inc.	10
Total	1,170

Recycled Water Sales



New Customers in 2006

	Expected Connection Date	Expected Usage (AFY)
Chino Hills High School and Wickman elementary school	August	30
Temple Inland	July	1,100
Kaiser Hospital	June	100
Lewis Homes Phase I (6 connections)	On-line	20
Empire Lakes Golf Course	On-line	800
Irrigation Customer along 6th Street	June	25
City Parks in Chino Hills	July	25
Bakken Property	On-line	2
El Prado Business Park	December	2
Fruit Growers Supply	July	20
Farmers in Ontario (6 connections)	June (2 On-line)	2,000
Chad's Farm in Chino	On-line	150
Monte Vista Farm	On-line	200
Total		4,474

Delivery Period	2004/05	2005/06
3rd Quarter	736	1,917
Year to Date	736	1,917
FY Total	4,006	7,267
Budget		8,290

Operation & Planning

- On March 13, there was a line break on TP-1 Outfall line at the intersection of Kimball Avenue and Flight Road. The repair was made and the line was back in service on the same day.

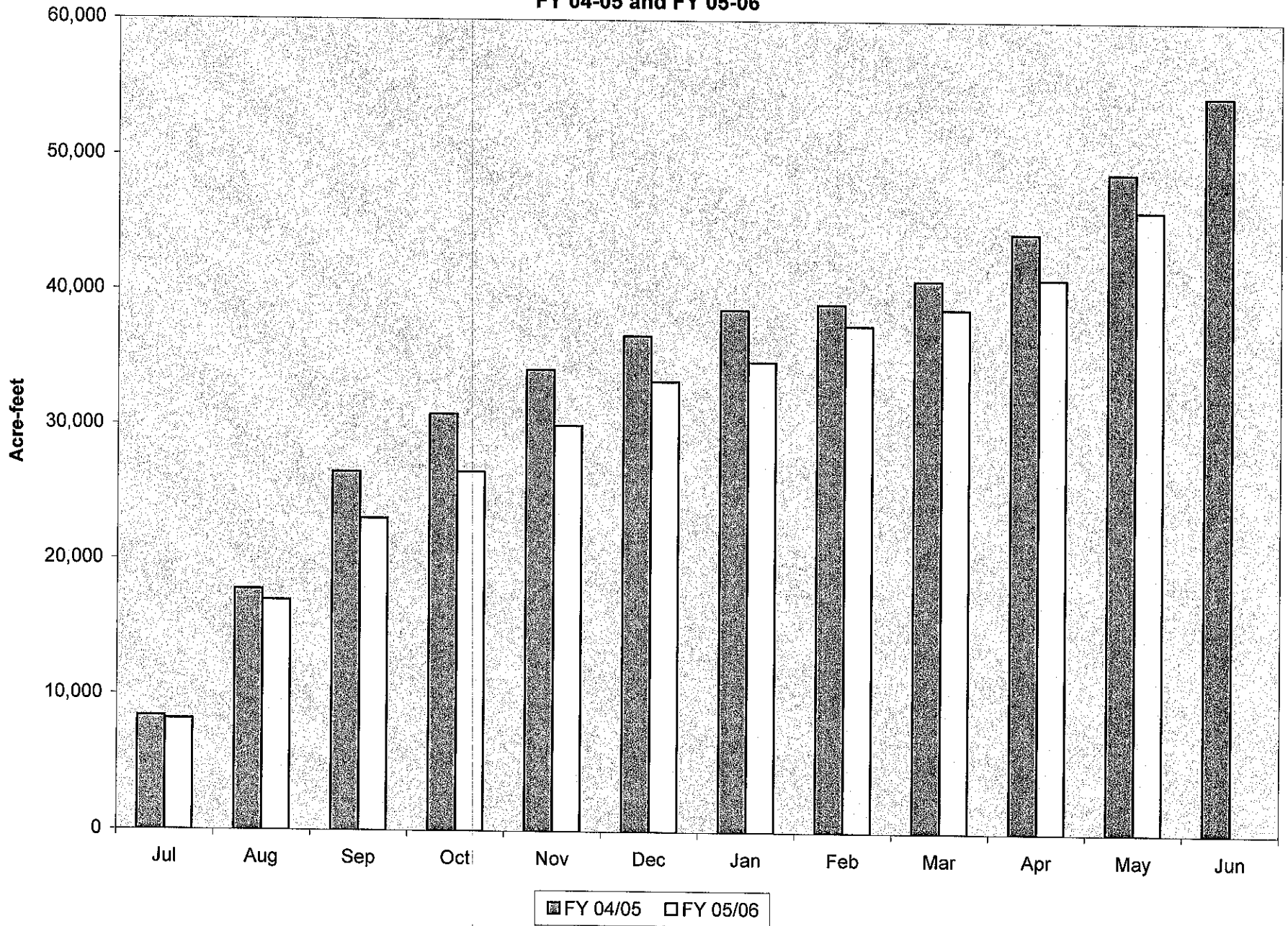
Potential Customers in 2006

- City of Chino
Mission Linen, OLS Energy and College Park (2,500 homes, 2 schools, extension of Ayala Park over 435 acre)
- City of Chino Hills
Vellano Golf Course and Western Hills Golf Course
- City of Ontario
California Commerce North & South, Blue Beacon, Guasti Park, Bakken Property, Fruit Growers Supply, Longs Drug, Ontario Mills, Carlisle Tire & Wheel, Cintas I & II, Crothall Laundry, Danco Metal Surfacing, Unifirst, and Agricultural customers
- City of Rancho Cucamonga
Metal Coaters of California, Steelscape, Tamco
- City of Fontana
California Steel, California Speedway, Sierra Aluminum, and Pacific Forge

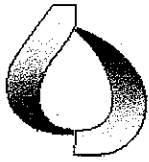


Cal Poly Pomona Farming in CIM

**Cumulative Monthly Full Service Imported Water Deliveries
Within IEUA's Service Area
FY 04-05 and FY 05-06**



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Inland Empire
UTILITIES AGENCY

Date: June 21, 2006

To: The Honorable Board of Directors

Through: Public, Legislative Affairs and Water Resources Committee (6/14/06)

From: Richard W. Atwater
Chief Executive Officer/General Manager

Submitted by: Martha Davis
Executive Manager of Policy Development

Subject: May Legislative Report from Geyer and Associates

RECOMMENDATION

This is an informational item for the Board of Directors to receive and file.

BACKGROUND

Bill Geyer and Jennifer West provide a monthly report on their state activities on behalf of IEUA.

PRIOR BOARD ACTION

None.

IMPACT ON BUDGET

None.

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MEMORANDUM

TO: Rich Atwater and Martha Davis

FROM: Jennifer West

DATE: June 1, 2006

RE: May Legislative Report

House of Origin Deadline

This week marks the deadline for bills to pass out of their "house of origin." Those Assembly or Senate bills that failed to move to the opposite house will be considered dead for the year. As indicated in the attached bill list, a number of bills IEUA is tracking failed to pass out of the Appropriations committee. Those bills that made it to their respective floors generally passed. The one exception was SB 1242 (Lowenthal), which made significant changes to the Integrated Regional Water Management program, by limiting participation in the program and the types of agencies that could receive future bond funds. SAWPA and other water agencies were opposed to the bill and were successful in helping to convince Senator Lowenthal to drop SB 1242.

Budget Conference Committee Begins

The Governor released his revision to the 2006-7 spending plan on May 12. The revised spending plan reflects a significant improvement in the state's fiscal condition, largely due to higher than anticipated 05-06 revenue collections. The May Revision proposes to use these revenues to pre-pay debt, boost school spending, increase the state's reserve and augment spending for various programs. Some highlights include:

- \$500 million for immediate levee and improvement of levees;
- \$100 million to local flood control agencies as payment toward outstanding claims for water channel improvement and levee projects.

The outstanding budget issues that were not resolved in the budget subcommittees are now being considered by the Budget Conference Committee. With the additional revenues, many legislators have predicted that the budget will be on time. IEUA will be following the budget process and the "budget trailer bills" closely. Trailer bills are introduced right after the passage of the budget and do not go through the regular policy

committees, even though they often contain significant policy issues. There is likely to be a trailer bill on Cal-Fed, for example.

Marketing Incentives for Compost

Since January, IEUA and the Association of Compost Producers (ACP) have been exploring possible legislative and administrative changes to increase the use of compost in the state. This week IEUA organized a meeting with the Secretary of Food and Agriculture to discuss how the Department of Agriculture (CDFA) could allow compost labels to communicate its benefits to the consumer. CDFA agreed that compost use statewide would probably increase if changes were made in the labeling law and existing regulations with regard to compost. IEUA and ACP will be working with CDFA over the next few months to develop a compost-specific labeling section in the statute for possible introduction as legislation in 2007.

Inland Empire Utilities Agency

Positions List

June 1, 2006

	Summary	Status	Position
AB 371 (Goldberg) Recycled Water	Sponsored by WaterReuse. Makes a number of changes recommended by the Water Recycling Task Force. Some water agencies had concerns with the bill and it was stripped of numerous controversial provisions. WaterReuse continues to try to work out the remaining problems with the bill.	Senate Floor	Support
AB 1421 (Laird) Contamination	Sponsor said that they do not intend to pursue the bill in 2006. Would have given a RWQCB the authority to issue a cease and desist order for any degradation of water quality – even if it involved recycled water.	Senate E.Q.	Oppose unless amended
AB 1969 (Yee) Energy	IEUA sponsored. Helps offset demand while increasing environmentally friendly renewable energy production to meet the state's goals. The bill will permit the interconnection of up to 1 MW of renewable energy generated by a water/wastewater agency to the grid with minimum problems and maximum value per kwh generated.	Senate	Support
AB 1881 (Laird) Water Conservation	Will codify all the AB 2717 taskforce recommendations. Currently it does the following: Requires DWR to update the model local water landscape ordinance, including restriction on overspray and runoff, by Jan. 2009. Requires local agencies to adopt either the model ordinance or one that is at least as effective by Jan. 2010. Requires public water systems to install, or require installation of water meters for landscaped areas exceeding 5,000 sq feet for non-single family residence.	Passed to Senate	Support
AB 2396 (Calderon) Metropolitan Water Districts	States the intent of the Legislature to enact legislation to change the composition of MWD's board of directors and to provide for the direct election of members of the board of directors by voters residing in the service area of a metropolitan water district. Sponsored by	Not set	Oppose

	AFSCME.		
AB 2397 (Calderon)	This bill, with a certain exception, would prohibit MWD from entering into a contract for permanent or temporary services, skilled or unskilled, if those services, in the judgment of the district, are of a kind that persons selected through its civil service system could perform adequately and competently. Sponsored by AFSCME.	Senate Local Gov. 6/21	Oppose
AB 2928 (Laird) Green Building Guidelines	Requires the CIWMB to adopt voluntary green building guidelines for residential construction by 2008 which include, but are not limited to: a) Energy efficiency measures; b) Water efficiency measures; c) Materials efficiency measures; d) Indoor environmental quality measures; e) A method for determining the life-cycle costs of green buildings. Directs the CIWMB to consult with appropriate state agencies, the building and construction industry, environmental organizations, local government, and other interested parties when developing the guidelines. Directs the CIWMB to consider all relevant guidelines relating to residential green buildings, including, but not limited to: The US Green Building Council's Leadership in Energy and Environmental Design for Homes (LEED for Homes) rating system.	Passed to Senate	Recommend Support
SB 153 (Chesbro) Resources Bond	2006 Park and Water bond measure. Contains \$200 million for the Integrated Regional Water Management Program and other coastal and water quality funding. This was one of the bond measures under consideration for inclusion in the Governor's resources bond or in Senator Perata's infrastructure bond.	Assembly	Support
SB 1317 (Torlakson) Property Tax	Would alter the manner in which certain property tax revenue is allocated within a county. Sponsored by Southern California Edison. Sponsors of the bill say that it would encourage the development of electric substation and generation facilities by allocating all of the property tax revenue from the property to the county in which the facilities are built. After school entities and county entities receive the amount of property	Passed to Senate	Oppose

	tax they have received in prior years, the remaining tax would be allocated to the city or county (depending upon the location) in which the facility is built. <u>As recently amended, it would only impact enterprise special districts.</u>		
SB 1345 (Chesbro) Compost: Caltrans	Requires Caltrans to increase its use of compost on state highways. By 2010 Caltrans would be required to use more than 1 million tons of compost per year.	Held in Senate Approps.	Support
SB 1640 (Kuehl) Water	SB 1640 is very similar to the final version of SB 820 (Kuehl), which IEUA supported last year, but which was vetoed by the Governor because of its groundwater reporting requirements. However, bill's groundwater language is still a "work in progress." The Senator has begun working with all interests to try to resolve the outstanding issues regarding groundwater reporting. The bill requires DWR to collect groundwater data statewide. Southern California counties have been required to report groundwater data to the SWRCB since the late 1950s. IEUA is participating in these discussions to ensure that adjudicated basins and others in Southern California are not required to do any more reporting than is now required.	Passed to Assembly	Support
SB 1795 (Machado) Groundwater	On May 24 the bill was completely amended. It now states the Legislature's intent to identify the placement of surface storage water into a groundwater basin for the purposes of repelling saline intrusion and recovering groundwater basin levels in order to improve water quality as a beneficial use of water.	Passed to Assembly	Support if amended

Watch List

Bill #	Summary	Status
Water Conservation		
AB 2496 (Laird) Low flush water closets	Requires all new buildings constructed in the state after 2009 to use urinals and water closets that meet recent performance standards established by the American Society of Mechanical Engineers.	Senate Transportation and Housing
AB 2515 (Ruskin) Water Conservation	Prohibits a water supplier from receiving state bond funds unless it has adopted BMPs in accordance with the MOU regarding urban water conservation or the MOU regarding agriculture water use efficiency.	Passed to Senate

	Requires the Energy Commission to establish water efficiency standards for residential and commercial water-using appliances and other products and report to the legislature.	
SB 1608 (Simitian) Water Landscape	Requires Cal-Trans and all local transportation agencies that receive state funds to use California native plants and other water-saving plants in consultation with the local native plant society or the Resources Agency.	Held in Senate Approps.
Groundwater		
SB 1425 (Kuehl) Groundwater	Makes minor changes to the groundwater Recordation Act that applies to four counties in Southern California.	Assembly Water Parks and Wildlife
Floods and Delta		
AB 2208 (Jones) Delta Levee Fees	Requires DWR to conduct a study to recommend which Delta beneficiaries should pay for Delta levee improvements and the conveyance system. Requires DWR to recommend, in accordance with the "beneficiary pays" principle, who should pay a Delta user fee for Delta levee and conveyance system improvements.	Passed to the Senate
SB 1251 (Alquist) Floods	Requires DWR, not later than 2007, to convene a task force to prepare a comprehensive statewide flood and storm water management plan with prescribed components and a financing strategy for the implementation of the plan.	Held in Senate Approps.
SB 1574 (Kuehl) Delta Exports	Current law requires DWR and DFG to determine the principal options for the delta. This bill would require one of those principal options to be designed to reduce dependence on the delta for water supply through greater investments in local water supplies, water use efficiency, water recycling, demand management programs, and other actions outside the delta. The bill would substantially revise those objectives relating to the delta and Sacramento and San Joaquin river systems. The bill would require DWR and DFG by 2007, to provide a draft joint report to the Independent Science Board of the California Bay-Delta Authority, or its successor. The bill would require that board to provide DWR with an independent peer review of the draft report. The bill would require DWR to revise the draft joint report to reflect the comments of the peer review in the joint report.	Assembly Water Parks and Wildlife
Compost		

<p>SB 1778 (Alarcon) Compost</p>	<p>Sponsored by Californians Against Waste (CAW), the bill phases out the use of alternative daily cover and includes incentives for the use of compost. The bill was held on suspense in the Appropriations Committee because it represented a significant general fund impact to the state and there was significant opposition from local government.</p>	<p>Held in Senate Approps.</p>
<p>Integrated Regional Water Management Program</p>		
<p>SB 1242 (Lowenthal) IRWMP</p>	<p>Sponsored by Long Beach Water Department. Significantly revises the governance structure of the IRWMP. Restricts the groups that can develop an IRWMP to water management agencies. Specifies that only water management agencies should have final approval over the contents of the plan. Long Beach has indicated that they are willing to add additional kinds of groups into the IRWMP planning process, but feel that the water management agencies need to retain final approval over what is contained in the plan. They are also interested in "grandfathering" existing plans such as SAWPA's.</p> <p>The bill was held on the Senate Floor because of opposition from SAWPA and other groups. ACWA has convened a task force to look at possible needed changes to the IRWMP. SAWPA is participating in this process.</p>	<p>Held on Senate Floor</p>

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ACWA STATE LEGISLATIVE OUTREACH ADVISORY

Association of California Water Agencies • 916.441.4545 • fax 916.325.2306 • www.acwa.com

June 1, 2006

ACWA State Legislative Advisory 06-06

CONGRATULATIONS! AB 2951 (GOLDBERG) CAPITAL FACILITIES FEES BILL PASSES OUT OF THE ASSEMBLY

Final Vote 50-22 - Next Stop - State Senate

AB 2951 was heard on the Assembly floor yesterday, May 31. We knew it would be a tough fight right before the election, but thanks to the effective contact from our members with their legislators, we were successful in getting the bill passed on the Assembly floor. Thank you to all of our Outreach Network participants who took the time necessary to get the job done. The next stop will be the Senate where the fight will be even tougher.

The passage of AB 2951 (Goldberg) is critically important in clarifying the law as to the rights and responsibilities of local agency public utilities and the public institutions they serve. It would preserve the authority of local public agency utilities to charge commodity rates that include a capital component to pay for the costs of ongoing capital improvements needed to serve all customers. This bill will not have a fiscal impact on public agencies. The bill is needed in light of recent legal challenges seeking to undermine the authority of public utilities to include continuing capital costs in their monthly rates and impose those rates on other public entities, particularly public schools and educational institutions and state agencies.

Things to keep in mind:

AB 2951 is currently awaiting referral to a Senate policy committee.

When referred, we will be asking outreach participants to contact the Senate members of the policy committee to urge their support for AB 2951.

Please be ready!

AB 2951 will not make it through the Senate by itself. We will have to fight to get it through.

Be sure to thank representatives who supported AB 2951.

The following page provides information on how individuals in the Assembly voted. If appropriate, please contact your representatives to thank them for their vote and to offer your agency as a resource for future water policy discussions.

For more information, please contact ACWA Legislative Advocate Whitnie Henderson at (916) 441-4545 or by email at whitnieh@acwa.com.

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Martha Davis

From: Richard Atwater
Sent: Sunday, May 28, 2006 3:22 PM
To: Martha Davis; Michael Boccadoro; Jennifer West
Subject: FW: CSDA Legislative Update - May 26, 2006

FYI

Rich

From: Geoffrey Neill [mailto:gneill@csga.net]
Sent: Friday, May 26, 2006 5:32 PM
To: Richard Atwater
Subject: CSDA Legislative Update - May 26, 2006

Committees Pass Bills on Eminent Domain, Property Tax Reallocation, Others

With the California Legislature racing toward the June 2 deadline for bills to pass their house of introduction, this was a busy week. Additionally, the Senate and Assembly Appropriations Committees considered their suspense files yesterday. Presented below are summaries of bills of interest that received action this week. You can search for the text of these bills, committee analyses of them and other important information in the 'Legislation & Action' section of the CSDA members website

Assembly Bill 3050 (Committee on Judiciary) : This is the bill that would hold local governments jointly liable for flood-related damages in many circumstances. The bill failed on the Assembly Floor Thursday on a 35 to 34 vote. 41 votes were needed and the bill received reconsideration and will be considered again next week. CSDA opposes AB 3050.

Senate Bill 1650 (Kehoe) : One of the major eminent domain reform bills, SB 1650 passed the Senate Floor on vote of 38 to 0. Sen. Tom McClintock, a supporter of stronger reforms including the initiative that is almost certain to qualify for the November ballot, voted for the bill, but cautioned senators that the voters of California will have the final say on "real" reforms this November.

Senate Bill 1317 (Torlakson) : This bill would provide incentives to cities and counties to site certain energy facilities by shifting the unitary property tax revenues from enterprise special districts to the city or county who sites the facility. The bill passed the Senate Appropriations Committee Thursday and will be considered by the full Senate next week. CSDA strongly opposes SB 1317.

Senate Bill 1431 (Cox) : This bill would have granted authority to all cities, counties and special districts to use the design-build method of engineering and construction contracting, which supports claim saves both time and money. The bill was held (defeated) in the Senate Appropriations Committee on Thursday. CSDA supports SB 1431.

Assembly Bill 1899 (Wolk) : This bill requires cities and counties to include environmental assessments for new development relating to flood protection. The bill passed, as amended, the Assembly Appropriations Committee on Thursday. CSDA is watching AB 1899.

Assembly Bill 2402 (Ruskin) : This bill would require the Department of Health Services to identify treatment methods, technologies and other management options that reduce or eliminate the need to add disinfectants or additives to drinking water. The bill was held in the Assembly Appropriations Committee. CSDA is watching AB 2402.

Assembly Bill 2699 (Emmerson) : AB 2699 is a comprehensive bill relating to habitat mitigation. The bill was substantially amended and passed by the Assembly Appropriations Committee. The amendments may address CSDA concerns.

Assembly Bill 2951 (Goldberg) : The bill would clarify that municipal utilities have the authority to charge schools and other public agencies capital facilities fees was passed by the Assembly Appropriations Committee. CSDA is a co-sponsor of AB 2951.

Assembly Bill 3003 (LaMalfa) : This measure relates to capping bond administrative expenses by the Department of Water Resources and was amended to place that cap at 5%. Prior version of the bill capped the expenses at 3%. The bill passed the Assembly Appropriations Committee. CSDA is watching AB 3003.

CSDA Selects New Executive Director

The CSDA board of directors has selected Neil McCormick as CSDA's new executive director. McCormick has served as CSDA's deputy director since 2002 and has been responsible for all member services, member recruitment and retention, education and conferences, marketing and the CSDA Finance Corporation. He holds bachelor of science and master of business administration degrees from California State University, Sacramento and has an extensive background in association management.

"Neil has been instrumental in the phenomenal growth of CSDA over the past four years," said Sherry M. Sterrett, CSDA president and board member of the Pleasant Hill Recreation and Park District. "The board unanimously supported Neil's selection and remains confident in CSDA's leadership role in California's local government community under Neil's direction."

Neil's first day as executive director was Monday, May 22, 2006.

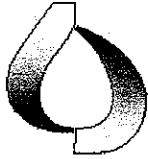
Email Updates Available for All Member Agencies' Officials and Employees

Legislative Updates are emailed every Friday that the California Legislature is in session. Past and current updates are available in the Legislation & Action section of the CSDA member's website. If anyone else at your agency would like to receive these updates by email, or if you would like to stop receiving these updates, let us know by calling toll-free (877) 924-CSDA or by emailing

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A proud member of the CSDA Alliance.
California Special Districts Association
Special District Risk Management Authority
CSDA Finance Corporation

1112 I Street, Suite 200, Sacramento, CA 95814

6/3/2006



Date: June 21, 2006

To: The Honorable Board of Directors

Through: Public, Legislative Affairs and Water Resources Committee (6/14/06)

From: Richard W. Atwater
Chief Executive Officer/General Manager

Submitted by: Martha Davis
Executive Manager of Policy Development

Subject: May Legislative Report from Dolphin Group

RECOMMENDATION

This is an informational item for the Board of Directors to receive and file.

BACKGROUND

Michael Boccadoro provides a monthly report on his activities on behalf of the Chino Basin/Optimum Basin Management Program Coalition.

PRIOR BOARD ACTION

None.

IMPACT ON BUDGET

None.

RWA:MD:mef

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Chino Basin / OBMP Coalition

Status Report – May 2006

ASSEMBLY BILL 1969

CA AB 1969

AUTHOR: Yee [D]
TITLE: Electrical Corporations; Water Agencies
INTRODUCED: 02/09/2006
LAST AMEND: 05/04/2006
DISPOSITION: Pending
FILE: 43
LOCATION: Assembly Third Reading File
SUMMARY:

Requires every electrical corporation to file with the Public Utilities Commission a standard tariff for renewable energy output produced at an electric generation facility that is an eligible renewable energy resource. Requires the corporation to make this tariff available to public water or wastewater agencies that own and operate an electric facility on a first-come-first-served basis, until the combined statewide cumulative rated capacity reaches a specified total amount of megawatts.

This measure recently passed out of the Assembly on a 55-7 bipartisan vote

Position: Support

This measure is sponsored by IEUA and SAWPA. The bill seeks to remove barriers and obstacles and encourage the full potential of renewable energy generation by the state's water and wastewater agencies. AB 1969 will help offset demand while increasing environmentally friendly renewable energy production to meet the state's goals.

Specially, AB 1969 will:

- Require electrical corporations to create tariffs (standard contract) for the purchase of renewable energy developed by water and wastewater agencies;
- Limit individual facilities to 1 MW and the cumulative statewide capacity to 250 MW; and
- Help electrical corporations meet the renewables energy procurement standard and resource adequacy requirements

Benefits include:

- Adding renewable energy generation resources;
- Helping the state meet its Renewable Portfolio Standard (RPS) goals;
- Addressing current transmission constraints;
- Improving the environment through a reduction in greenhouse gases; and
- Offsetting rising water treatment and water delivery costs

ENERGY/REGULATORY

Energy Efficiency Funding for Water Conservation Efforts

On May 24, the California Public Utilities Commission issued a scoping memo in the proceeding that will, in part, consider expanding the electric utilities' energy efficiency portfolios to include water conservation efforts. The scoping memo sets out the schedule as well as the issues for consideration in the proceeding.

Specifically, the scoping memo split the proceeding into six phases. Phase III will solely address the eligibility, verification and methodology for including embedded (upstream) energy savings associated with water conservation measures. An informal workshop, to be coordinated by PG&E and the Natural Resources Defense Council (NRDC) will take place in the first half of July. Testimony on this issue is due on July 24th.

One major issue scoped by the judge in the proceeding is whether such savings should be incorporated into the current 2006-2008 EE funding cycle or the next 2009-2011 cycle.

DGI has intervened in the case on behalf of IEUA, and will attend the workshop and offer comments and briefs, as appropriate, in this proceeding. The scoping memo stated it is the intent of the Commission to rule on Phase III by early 2007.

Critical Peak Pricing

The bizarre tale of Critical Peak Pricing continued on May 25, when the CPUC adopted a decision deferring consideration of default critical peak pricing until 2009 for customers of Southern California Edison. Critical Peak Pricing charges very high on-peak energy rates during periods of extreme demand on the electrical systems to discourage usage. In exchange, energy rates are lowered during other time periods to avoid an increase in total cost.

The Commission decided to reject a settlement among parties to bolster the current voluntary CPP program and reject any default CPP enrollment. An alternate decision by Commissioner Bohn to accept the settlement was voted down 1-4.

The decision ordered SCE to refile a proposal to implement default CPP rates at part of their next General Rate Case filing. That filing is expected to be made in late 2008, and will be litigated in 2009. This will mark the third time that this issue will be litigated by parties without resolution.

In late 2005 the Commission instituted a proceeding and testimony was offered, but the Commission declined to adopt mandatory CPP rates at that time. The utilities were again ordered to file proposals for default CPP rates in early 2006. After testimony was offered again, a settlement was reached among parties to simply bolster the current voluntary CPP program. By rejecting that settlement in this decision, all parties will again have to litigate this issue for a third time.

LEGISLATIVE ACTION

CA AB 2778 **AUTHOR:** Lieber [D]
 TITLE: Electricity: Self-Generation Incentive Program
 INTRODUCED: 02/24/2006
 DISPOSITION: Pending
 LOCATION: Assembly Second Reading File
 SUMMARY:
 Requires the Public Utilities Commission, in consultation with the Energy Commission, to administer a self-generation incentive program for distributed generation resources in the same form that exists on 1/1/04.

This measure passed out of the Assembly Appropriations Committee on a 7-0 vote

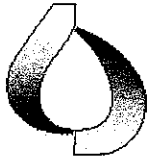
CA AB 2315 **AUTHOR:** McCarthy [R]
 TITLE: Energy: Renewables Portfolio Standard Program
 INTRODUCED: 02/22/2006
 LAST AMEND: 04/03/2006
 DISPOSITION: Pending
 LOCATION: Assembly Utilities and Commerce Committee
 SUMMARY:
 Makes nonsubstantive clarifying changes to the requirements placed upon the Energy Commission under the state Renewables Portfolio Standard Program. States the Intent of the Legislature to enact legislation to establish the Climate Neutral Combustion Power Generation Program to complement the Renewable Energy Resources Program and to supplement the Renewables Portfolio Standard Program.

The author pulled this bill and it will not be considered this year.

CA SB 1727 **AUTHOR:** Kehoe [D]
 TITLE: Public Utilities: Electrical Corporations
 INTRODUCED: 02/24/2006
 DISPOSITION: Pending
 LOCATION: Senate Energy, Utilities and Communications Committee
 SUMMARY:
 Creates an exception from the definition of an electrical corporation where electricity is generated on private real property and privately distributed across a highway to an immediately adjacent private real property owned or otherwise controlled by the corporation or person, solely for its own use or the use of its tenants and not for sale or transmission to others make conforming changes to specific exceptions for certain persons or corporations using co generation technology.

The author pulled this bill and it will not be considered this year.

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Inland Empire
UTILITIES AGENCY

Date: June 21, 2006

To: The Honorable Board of Directors

Through: Public, Legislative Affairs and Water Resources Committee (6/14/06)

From: Richard W. Atwater
Chief Executive Officer/General Manager

Submitted by: Martha Davis
Executive Manager of Policy Development

Subject: May Legislative Report from Agricultural Resources

RECOMMENDATION

This is an informational item for the Board of Directors to receive and file.

BACKGROUND

Dave Weiman provides a monthly report on his federal activities on behalf of IEUA.

PRIOR BOARD ACTION

None.

IMPACT ON BUDGET

None.

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Agricultural Resources

635 Maryland Avenue, N.E.
Washington, D.C. 20002-5811
(202) 546-5115
(202) 546-4472-fax
agresources@erols.com

May 29, 2006

Legislative Report

TO: Richard W. Atwater
General Manager, Inland Empire Utility Agency

FR: David M. Weiman
Agricultural Resources
LEGISLATIVE REPRESENTATIVE, IEUA

SU: Legislative Report, May 2006

Highlights:

- House Appropriates \$1 million for IEUA Recycling Program
- Recycling "Summit" Convened
- WaterReuse Prepares, Submits Draft "Reform" Bill to Congress
- Napolitano Reacts to Bureau Submission of Southern California Report (Projects Declared Infeasible)
- Baca Perchlorate Provision Approved by House
- News and Notes
- IEUA Working Partners

Appropriations Begin in House, Energy and Water Provides \$ 1 million for IEUA. The House Appropriators provided \$1 million for IEUA's water recycling program in the CALFED account. This is the second year of funding for this program. The Energy and Water bill was brought to the House Floor and passed. The bill is pending in the Senate and is expected to be considered in June or July.

The House and Senate Water Subcommittees Convene Recycling "Summit" With WaterReuse, IEUA Participates. In early May, the House and Senate Subcommittee on Water and Power (majority and minority on a bi-partisan basis) met, with representatives from WaterReuse, IEUA, Orange County Water District as well as representatives from Nevada and Florida to discuss changes in the Title XVI "organic" act. IEUA's Rich Atwater attended. It was a comprehensive discussion of the program, the law, water recycling policy and implementation by the Bureau. Senator Feinstein's office recommended some "improvements" to the Act. WaterReuse agreed to prepare a draft for the committees and Senator Feinstein. This meeting occurred less than a week after the Bureau of Reclamation submitted the "so-called" Southern California Comprehensive Water Reclamation and Reuse "Feasibility" Study to Congress (five years late) and determined that the program determined by the Bureau to be feasible in 2001 somehow failed to be feasible a half-decade later. The House and Senate Committees are not pleased with the Bureau's conduct regarding this program. When agreement is reached on a draft bill, then it is expected to be introduced by Senators Feinstein and Murkowski. Then, the Senate Committee has signaled that it will take up some of the pending water recycling bills, including the Dreier and Gary Miller/Feinstein project bills.

WaterReuse Draft Bill. A drafting committee consisting of OCWD and WaterReuse's Eric Sapirstein, MWD's Gary Ellsworth and myself took the Feinstein Title XVI criteria and fashioned it into appropriate legislative language. The decision was made not to create a stand-alone bill, but to amend the existing law (much of the Feinstein-proposed criteria was already found in the 1992 Act). Policy recommendations were largely based on Rich Atwater's testimony last February before the Senate Energy Committee when they held their water recycling oversight hearing. After the draft recommendations were submitted to the Committees, briefings for staff and others were conducted.

Napolitano Reacts to Bureau of Reclamation Declaration that Southern California Water Recycling Projects were Not Feasible. No Member of Congress has been more vigorous in defense of the water recycling program than Rep. Grace Napolitano. From her position as Ranking Member, Subcommittee on Water and Power, she has persistently and consistently challenged the Bureau over the studies, policies and missed deadlines. When informed that the Bureau found the 34 projects in the Southern California feasibility study "not feasible," she was disbelieving. She has sent letters to involved water agencies and is asking a new round of questions.

Baca Perchlorate Study Provision Included in Defense Bill. Rep. Joe Baca advanced an amendment to the DOD Authorization bill requiring DOD to undertake studies at FUDS (Formerly Used Defense Sites). Bill passed the House and is now pending in the Senate. It's a companion bill to his perchlorate cleanup bill (which passed the House and is pending in the Senate).

News and Notes. DOI Secretary Dirk Kempthorne. Early May, Senate Energy Committee held confirmation hearings. He was confirmed by the Senate immediately prior to the Memorial

Day break. **Bureau of Reclamation – Replacement for Commissioner Keys.** The White House began interviewing candidates for the Commissionership, BuRec. Reportedly, Acting Commissioner Bill Rinne is under consideration, and so is Jason Peltier, the Deputy Assistant Secretary for Water and Power. Former Congressman Jay Rhodes is under consideration and so is Bob Johnson, the Regional Director from the region that covers Southern California.

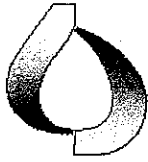
Oversight Hearing, Senate Energy on Bureau Future. Senator Murkowski held an oversight hearing on the future of the Bureau based on the recently published National Academy study.

Budget. The House finally approved a budget. **Drought Legislation.** Senators Domenici and Nelson of Nebraska have introduced a drought planning bill advanced by the Western Governors Association. Hearings are expected shortly.

IEUA Continues to Work With Various Partners. On an on-going basis in Washington, IEUA continues to work with:

- a. Metropolitan Water District of Southern California (MWD)
- b. Milk Producer's Council (MPC)
- c. Santa Ana Watershed Project Authority (SAWPA)
- d. Water Environment Federation (WEF)
- e. Association of California Water Agencies (ACWA)
- f. WateReuse Association
- g. CALStart
- h. Orange County Water District (OCWD)
- i. Cucamonga Valley Water District (CVWD)
- j. Western Municipal Water District
- k. Chino Basin Watermaster

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Inland Empire
UTILITIES AGENCY

Date: June 21, 2006

To: The Honorable Board of Directors

Through: Public, Legislative Affairs and Water Resources Committee (6/14/06)

From: Richard W. Atwater
Chief Executive Officer/General Manager

Submitted by: Martha Davis
Executive Manager of Policy Development

Subject: May Legislative Report from Copeland and Associates

RECOMMENDATION

This is an informational item for the Board of Directors to receive and file.

BACKGROUND

Letitia White provides a monthly report on their federal activities on behalf of IEUA.

PRIOR BOARD ACTION

None.

IMPACT ON BUDGET

None.

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Copeland Lowery Jacquez Denton & White LLC
Specializing in Government Relations

MEMORANDUM

TO: Rich Atwater and Martha Davis
Inland Empire Utilities Agency

FROM: Letitia White and Heather McNatt
Copeland Lowery Jacquez Denton & White

DATE: May 12, 2006

RE: May Monthly Legislative Report

IEUA's Washington legislative agenda has made significant progress during the past month. CLJ learned yesterday that the House Energy and Water Subcommittee included \$1 million for IEUA in the CALFED account. In a lean budget year like this one, it was very good to see that money was provided for worthwhile projects that benefit the region like IEUA's. Also, Title 16 is receiving renewed interest on the Hill, which we hope will result in Senate passage of IEUA's authorization bill in the coming few weeks.

Congress has ended the third week of a five week stretch in Washington. The Senate has completed work on a FY06 supplemental appropriations bill and may turn back to immigration before the Memorial Day recess. Last week the House passed its lobbying reform legislation and has now turned to its FY07 appropriations bills. In addition, the House may still attempt to pass an FY07 Budget Resolution. The lobbying reform and FY06 supplemental appropriations bills are now both in conference, with the supplemental appropriations bill expected to be sent to the President before Memorial Day.

FY '07 Energy and Water Appropriations

The Energy and Water Appropriations bill passed the House subcommittee on Thursday, May 11th and contains significant funding reductions for the agencies it funds. The bill reduces total earmarks by \$200 million, or 16 percent, compared to last year's House bill. The full committee is scheduled to consider the bill on Tuesday, May 16th. It contains a total of \$30 billion in budget authority for the U.S. Army Corps of Engineers-Civil Works, the Department of Interior including the Bureau of Reclamation, the Department of Energy, and several Independent Agencies. This bill is \$172 million below last year's level and \$546 million above the President's request.

Corps of Engineers

FY '07 will be another extremely tight budget year for the Corps. The bill contains \$5 billion for the Corps of Engineers Civil Works program. That level is \$251 million above the President's request and \$345 million below last year's level, when adjusted for emergency supplemental spending bills. Continuing the trend that has prevailed in recent years, the emphasis in the bill is to focus the Corps' limited resources on completing high priority projects.

Bureau of Reclamation

The committee funded the Bureau at \$900,779,000, which is \$7 million above the President's budget request and \$124 million below the FY '06 enacted level. Like the Corps, the Bureau is facing a substantial budget crunch. The bill contains limitations on the Bureau's ability to reprogram funds, and it refuses to fund the Bureau's Water 2025 Initiative because the program is not authorized. CALFED is funded at \$40,110,000, which is an increase of \$1.5 million over the President's budget request. The bill includes \$6 million to assess existing and future flood risks in the California Bay-Delta area near Sacramento and a five-year budget planning requirement for the Bureau.

California Levee Funding in the FY '06 Emergency Supplemental Spending Bill

As we reported last month, the Senate version of the FY '06 emergency supplemental spending bill contains \$37 million in funding for California levee repair and flood control projects. That bill passed the Senate on May 4th at a total cost of \$108.9 billion, which is about \$14 billion more than the original White House request. Both the House and the White House have expressed serious opposition to the Senate bill, with the President threatening to veto any bill that costs over \$94.5 billion. The next step for the bill will be a contentious House/Senate conference, and the California funding will be an item for the debate. The House leadership has stated it will not support a bill that is \$1 more than what the President has asked. We will continue to monitor the levee funding as the bill moves forward.

FY07 Appropriations

House appropriators are moving forward with the FY07 appropriations bills. As of today, the Agriculture, Interior and Environment and Military Quality of Life Appropriations bills have been passed by the full committee. Additionally, the Homeland Security and Energy and Water subcommittees have passed their bills. The Senate is unlikely to begin work on appropriations bills until after Memorial Day.

House 302(b) Allocations

Chairman Jerry Lewis and the House Appropriations Committee approved the FY07 allocations for spending bills on May 9th. With those allocations in place, the rest of the appropriations process can now move forward. Total discretionary spending for FY07 is \$872.8 billion; \$475 million less than the President's budget request, and \$39.5 billion more than FY06. The FY07 allocations are attached for your review. The allocations shift \$7.4 billion from defense and foreign operations to domestic programs in an effort

to relieve some of the pressure that budget restrictions have been placing on labor, health and education programs.

House Agriculture

The House Appropriations Committee approved its FY07 appropriations bill on Tuesday, May 9th. The bill provides \$18.4 billion in discretionary spending, \$564 million more than the President requested. The legislation provides \$80 million to avian flu vaccine development and preparedness -- double the amount appropriated in FY06 but \$33 million below the President's request.

House Interior and Environment

The Interior and Environment bill totals \$25.9 billion in discretionary spending for the Interior Department and EPA -- \$418 million more than requested by the President. The Interior Department would receive \$9.7 billion, \$211 million less than last year but \$40 million more than the President requested. EPA would receive \$7.56 billion, \$55 million below last year, but \$254 million more than the President requested. An amendment approved during full committee mark-up will lift a 25-year-old congressional ban on offshore natural gas exploration. This provision will probably be a point of contention as the bill goes forward. State and Tribal Assistance (STAG) Grants, which protect public health by helping states and communities comply with the Clean Water and the Safe Drinking Water Act, are funded at \$3 billion, \$209 million below last year and \$207 million above the President's request.

FY07 Budget Resolution

The House has ended another week without reaching agreement on the FY07 Budget Resolution. As reported earlier, the Senate approved its version of a Fiscal Year 2007 Budget Resolution by a narrow vote of 51-49 on Thursday, March 16. Overall, the Senate version calls for \$2.8 trillion in total spending for FY 2007.

The House Republican leadership was forced to pull the FY07 Budget Resolution off the floor on April 6 after it was clear it did not have the votes to pass the legislation. A struggle ensued between conservatives, moderates and appropriators within the Republican Party. Majority Leader Boehner is continuing to negotiate with House Members. The leadership has still not scheduled floor time for the budget resolution, making it less relevant as appropriators move forward with their FY07 appropriations bills.

Even if the House is able to pass a budget, it will be very difficult to reach a final deal with the Senate, who added roughly \$16 billion to the domestic discretionary spending level recommended by the President.

Lobbying Reform

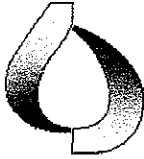
The House passed its legislation (H.R. 4975) for overhauling the way Members interact with the lobbying community on May 3rd by a vote of 217-213 after the Republican

leadership was able to win the support of Republican appropriators. The bill calls for earmarks in appropriations bills to be listed by sponsor and would create a budget point of order against earmarks added to conference reports. However, appropriators wanted the language to apply to appropriations, tax and authorization bills and would not support the legislation until they had a firm commitment from the leadership to do so in House-Senate conference. The Republican leadership agreed to this stipulation and the bill passed the House with the appropriators support.

The measure differs from the Senate lobbying bill which passed that chamber on March 29 by a vote of 90-8. The Senate bill applies earmark restrictions not only to appropriations bills, but also to authorization and tax bills. As mentioned above, the House bill applies only to appropriations bills. The two bills will now go to conference.

Immigration

Senate Majority Leader Bill Frist (R-TN) and Senate Minority Leader Harry Reid (D-NV) have agreed on a deal that will allow for Senate consideration of immigration reform next week. Although the substance of the bill was agreed upon in April, Democrats and Republicans disagreed on several procedural points. The deal sets the terms of the conference committee and the number of amendments that will be allowed. Once the Senate has passed the bill, it faces a difficult conference to reconcile it with the House version.



Date: June 21, 2006

To: The Honorable Board of Directors

Through: Public, Legislative Affairs and Water Resources Committee
(6/12/06)

From: Richard W. Atwater
Chief Executive Officer/General Manager

Submitted by: Sondra Elrod
Public Information Officer

Subject: Public Outreach and Communications

RECOMMENDATION

This is an informational item for the Board of Directors to receive and file.

BACKGROUND

Outreach/Tours

None.

Calendar of Upcoming Events

- Thursday, June 29, 2006, Chino Hills State of the City Address from 5pm to 7pm at Los Serranos Country Club.

Outreach/Education Inland Valley Daily Bulletin Newspaper Campaign

- May 2006, two page Water Awareness Month ad.
- May 2006, four page Living Here Magazine ad.

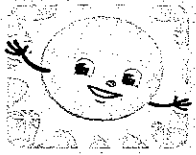
PRIOR BOARD ACTION

None.

IMPACT ON BUDGET

None.

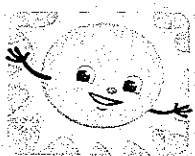
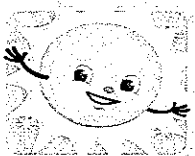
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CHINO BASIN WATERMASTER

V. INFORMATION

1. Newspaper Articles



INLAND VALLEY Daily Bulletin

MONDAY | MAY 29, 2006

THE MAIL

Public TV series to feature water issues

GET a kick out of watching Huell Howser on KCET or PBS. He has an uncanny way of telling stories about some of the most curious things in California.

And, he gets people talking about his discoveries and their thoughts in such a basic, conversational way that you sometimes feel you are overhearing a private conversation.

Huell is producing a new series. It's called "California Water." It got my attention because I am involved in the water business, but also because I have always wished I could better tell the public about water - how we get it, manage it and need to conserve it.

Huell hit the nail on the head as he introduced this series, which is being broadcast throughout the state on PBS stations.

He said most people know very little about water and the system that ultimately gets it to them. And he said that as your population grows, and business and industry expands, more water will be needed in the future.

He promises to report on opportunities to enhance our water supplies and ensure that the needs of cities, farms and industries can be met.

Huell makes it basic and interesting, describing nature's process as water is taken up to the skies through evaporation and comes back to ground

as precipitation in rain and snow, where it might percolate through the Earth to be stored in an aquifer deep underground before it resurfaces in a brand new use.

Huell has a lot of ideas for the series. He is going to open our eyes and ears to such things as flood control, the fragile and essential Bay-Delta, how we can clean contaminants from water, and how we get our water from one part of the state to another.

I am proud that the Association of California Water Agencies and Inland Empire Utilities Agency are helping Huell get the story of California's Water to you on PBS. It's in everyone's best interest. You will find this to be an educational and entertaining series the whole family can enjoy.

Please check your KCET channel for the air dates. The upcoming programmed segments will be aired at 7:30 p.m. on June 4 and at 6 p.m. on June 19 covering the Flood Fight of 2006.

GENE KOOPMAN
Inland Empire Utilities Agency
Board of Directors

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Doubts Still Swirl to Surface

Recycled wastewater's 'yuck!' factor slows push to recharge aquifers for drinking supplies.

By BETTINA BOXALL
Times Staff Writer

The talk was of psychology, dead cockroaches and disgust. A small gathering of water managers and consultants met in the South Bay for an unusual session a couple of years ago. They were seeking insight into the resounding public "yuck!" that has thwarted efforts to turn the steady stream from Californians' toilets, showers and kitchen sinks into drinking water.

In a semi-arid region such as Southern California, where most of the water is piped in from far-flung rivers, recycled water — a.k.a. treated sewage — is in many ways a utility's dream.

It's locally produced. As long as people keep flushing and bathing, it will keep flowing. Agencies would like to use more reclaimed water, not just on freeway landscaping and golf courses but for drinking supplies, by pumping it into groundwater basins and surface reservoirs.

Parts of Southern California have been doing that, without controversy, for a long time. Some 5 million people drink from regional aquifers partly re-

[See Wastewater, Page B12]

It's Tough to Counter the Bathroom Imagery

[Wastewater, from Page B1]

charged with treated wastewater. But over the last decade, similar projects in the San Fernando Valley, San Diego and Northern California have triggered a collective gag reflex from the public.

In early 2004, the research arm of the nonprofit WaterReuse Assn., a national group that promotes water reclamation and desalination, convened a panel of psychologists at a South Bay water agency to understand why.

One of the speakers, Paul Rozin, a University of Pennsylvania psychology professor and expert on contagion, related an experiment he has conducted numerous times.

In front of a group of students, he briefly dips a dead cockroach into a glass of juice. Then he offers the students a sip. Everyone refuses. He tells them the bug has been sterilized with the same kind of equipment hospitals use to clean surgical tools. Still no drinkers.

"They say it's because they think cockroaches are vectors of disease, but of course since it's sterilized, that can't be," Rozin recalled. "It's the idea that a cockroach was in there. That sense does not go away with time."

Recycled water can't escape its past, despite stringent state regulation and assurances by officials that today's sophisticated treatment technology can scrub sewage to better-than-drinking-water standards.

Settling tanks, sand filtration, chemical disinfection and naturally occurring bacteria are conventionally used to clean wastewater. Those methods do not remove all traces of the pharmaceutical products that researchers are finding in sewage. But studies indicate that more advanced treatment, consisting of reverse osmosis — pushing the water through ultra-thin membranes — and disinfection with ultraviolet light and peroxide can reduce such contaminants to undetectable levels.

Even then, it's against state policy to send reclaimed water directly to household taps. It must make an intermediate stop in a reservoir or aquifer, where it is mixed with other water sources.

But that's still not enough to counter the bathroom imagery.

"I just look at what goes down my toilet," said Mary Quartiano, spokeswoman for the Revolting Grandmas, a San Diego civic organization that opposed a late 1990s proposal to pump purified wastewater into a city reservoir.

'All the water we have is all the water we've ever had or ever will have. This is from Napoleon's last bath.'

Earle Hartling, water reuse coordinator of the County Sanitation Districts of Los Angeles County

A local advisory group has tentatively revived the idea, but if the city pursues it, Quartiano predicted, "it will get shot down again."

Said Rozin: "People say they're worried about the safety of recycled water. But a good part of it is not the safety, it's the idea — like the cockroach."

He and several other researchers led by Brent Haddad, an associate professor of environmental studies at UC Santa Cruz, are embarking on a project, commissioned by the WaterReuse organization, to study ways of making reclaimed water more palatable to the public.

"In a sense it's a battle for minds," Rozin said. "How do you change the way people think?"

Along with Texas, Florida and Arizona, California is a national leader in using reclaimed water. Still, less than 2% of the state's urban and agricultural water is recycled. And most of that is used to irrigate farmland and landscaping. A 2003 task force concluded that if California quadrupled its reclaimed use over the next 30 years, the water saved would amount to as much as half the supplies needed to satisfy the demands of projected population growth during that period.

"The potential for reusing water in California is enormous," said Peter Gleick, president of the Pacific Institute, an Oakland-based think tank. "We spend billions capturing water we've used for some purpose, treating it to a very high standard and then throwing it away. We can no longer afford to do that."

The most economical way to use large amounts of recycled water is to "put it into a groundwater basin," said Virginia Greblien, general manager of the Orange County Water District.

Her agency began using reclaimed water in the 1970s to recharge a coastal basin threat-

ened by seawater intrusion. In a major expansion of that project, the district plans by the end of next year to send 70 million gallons a day of cleansed sewage into an aquifer used by more than 2 million people in north-central Orange County.

There has been no significant opposition, thanks in part, backers say, to an exhaustive outreach program. The district's staff made 120 presentations a year for seven years, to a wide range of groups in Orange County, including the Daffodil Society, Kiwanis clubs and PTAs.

"This is the future. More will follow," district communications director Ron Wildermuth said of the recharge project.

Actually, the future began in 1962 in southeast Los Angeles County, when sanitation districts started to use treated wastewater to partly replenish an aquifer that provides drinking water to 3 million people.

That program, too, has been largely free of controversy, though more than a decade ago Miller Brewing Co. sued, with partial success, to block an expansion that the company claimed would have tainted the underground water source for its Irwindale plant.

Water reclamation was discussed as early as 1948, when local officials started talking about "mining the sewers," said Earle Hartling, water reuse coordinator of the County Sanitation Districts of Los Angeles County.

"All the water we have is all the water we've ever had or ever will have," Hartling mused as he dipped a glass flask into a treatment tank at a reclamation plant near Whittier that sends releases downstream to aquifer spreading grounds. "This is from Napoleon's last bath."

Still, the public seems to prefer that nature do the recycling.

When local opposition killed a plan by the Dublin-San Ramon Services District to inject a relatively small amount of treated wastewater into a drinking water aquifer in the Bay Area in the late 1990s, general manager Bert Michalczuk puzzled over the reaction.

After all, he pointed out to a friend, a good deal of California's municipal water comes from rivers, such as the Sacramento and Colorado, that are at the end of the outlet pipe from big-city sewage-treatment plants.

"It's OK if Mother Nature has touched it," his friend explained. "But going right from your treatment plant, Mother Nature has not touched that and blessed it."

Indeed, Haddad says a way of gaining acceptance may be to use more visible natural processes in water reclamation — mimicking, for instance, river flows.

He doubts that sanitized phrases like "showers to flowers" will change many minds.

Not that language isn't powerful. In Los Angeles, three little words — "toilet to tap" — were effectively used by critics who in 2001 helped quash a \$55-million plan to use treated wastewater to partly recharge an east San Fernando Valley aquifer that provides roughly 15% of L.A.'s water.

"Makes me gag," "outrageous," "aesthetically offensive" and "gross" were some of the public comments that appeared in newspaper coverage of the proposal.

David Spath, who until he retired late last year headed the state health department's drinking water and environmental management division, said there are legitimate issues associated with supplementing drinking supplies with reclaimed water.

Treatment equipment can break down. The proportion of wastewater mixed into groundwater basins or reservoirs is often greater than the percentage of sewage in big rivers like the Colorado.

Still, Spath concluded, the risks "are essentially — I won't say nonexistent — but no greater and probably in some cases better than what people may be drinking from river systems around the country..."

"[It] continues to be more an emotional/political issue than a technical one."

MAY 7, 2006
L.A. TIMES

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Perchlorate study in bill

Staff Report
San Bernardino County Sun

The Department of Defense would have to study former defense sites for possible perchlorate contamination under an amendment to the defense authorization act approved Thursday by the House of Representatives.

The bill and the amendment still need to get through the Senate.

Rep. Joe Baca, D-Rialto, introduced the amendment Wednesday night.

Perchlorate, a rocket-fuel ingredient known to reduce thyroid function, has contaminated groundwater in Redlands, Rialto, Colton and Fontana.

No water with perchlorate is being served to customers. Wells are either shut down or have treatment equipment on them.

It's not clear the amendment will make much difference locally, said Kurt Berchtold of the Santa Ana Regional Water Quality Control Board.

Defense officials have already said the federal government is not responsible for the contamination originating in Rialto, he said.

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