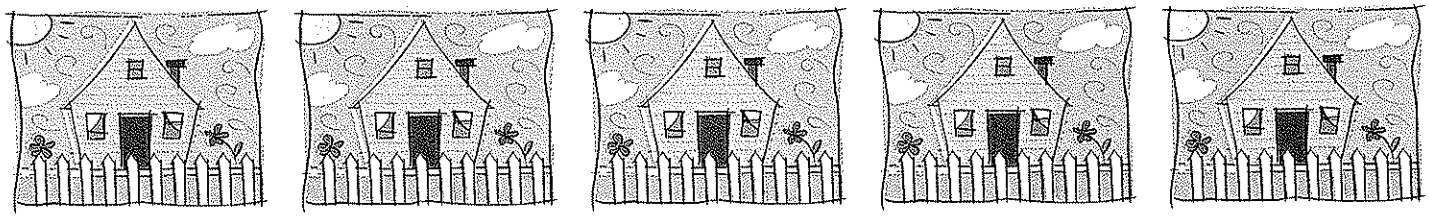


CHINO BASIN WATERMASTER

NOTICE OF MEETINGS

Thursday, June 8, 2006

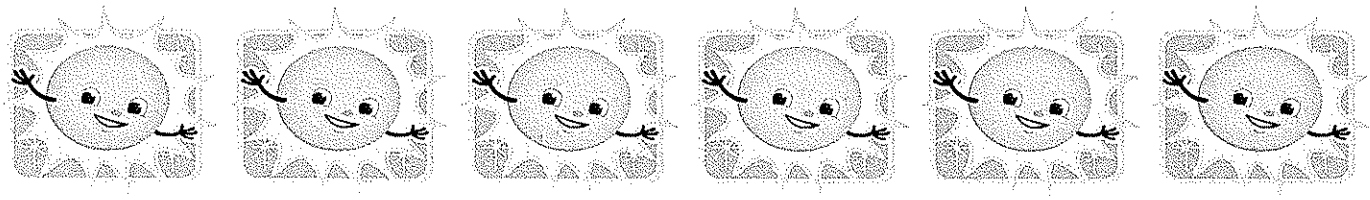
9:00 a.m. – Joint Appropriative and Non-Agricultural Pool Meeting

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

Tuesday, June 20, 2006

9:00 a.m. – Agricultural Pool Meeting

AT THE INLAND EMPIRE UTILITIES AGENCY OFFICES
6075 Kimball Ave. Bldg. A Board Room
Chino, CA 91710
(909) 993-1600



CHINO BASIN WATERMASTER

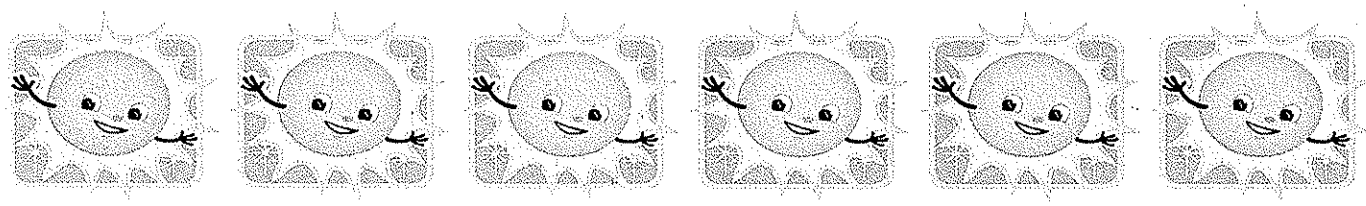
June 8, 2006

9:00 a.m. - Joint Appropriative & Non-Agricultural Pool Meeting

June 20, 2006

9:00 a.m. - Agricultural Pool Meeting

AGENDA PACKAGE



CHINO BASIN WATERMASTER
JOINT MEETING APPROPRIATIVE & NON-AGRICULTURAL POOLS

10:00 a.m. – June 8, 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 Joint Appropriative and Non-Agricultural Pool Meeting held May 18, 2006 (page 1)

B. **FINANCIAL REPORTS**
1. Cash Disbursements for the month of May 2006 (page 17)
2. Combining Schedule of Revenue, Expenses and Changes in Working Capital for the Period July 1, 2005 through April 30, 2006 (page 21)
3. Treasurer's Report of Financial Affairs for the Period April 1, 2006 through April 30, 2006 (page 23)
4. Profit & Loss Budget vs. Actual July through April 2006 (page 25)

C. **WATER TRANSACTION**
1. **Consider Approval for Transaction of Notice of Sale or Transfer** – Fontana Water Company has agreed to purchase from Cucamonga Valley Water District water in storage in the amount of 2,500 acre-feet to satisfy a portion of the Company's anticipated Chino Basin replenishment obligation for Fiscal Year 2005/2006. Date of application: May 11, 2006 (page 27)

2. **Consider Approval for Transaction of Notice of Sale or Transfer** – The one-year lease of 5,350 acre-feet of water from the City of Chino's annual production rights to the Cucamonga Valley Water District. This lease is made first form Chino's net underproduction in Fiscal Year 2005-2006, with any remainder to be recaptured from storage. Date of application: May 10, 2006 (page 43)

3. **Consider Approval for Transaction of Notice of Sale or Transfer** – the lease of 2,500 acre-feet of water, first from the City of Pomona's (Pomona) net underproduction, if any, from its FY 2005/2006 allocation, with any remainder from Pomona's local storage account

in the Chino Basin, to the Cucamonga Valley Water District. Date of application: May 30, 2006 (page 57)

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

E. **28TH ANNUAL REPORT**

II. **BUSINESS ITEMS**

A. **PEACE II TERM SHEET**
Consider Approval (page 71)

B. **JOINT CHINO BASIN WATERMASTER/IEUA CHINO BASIN DATA EXCHANGE (DATA X) SYSTEM DEVELOPMENT AGREEMENT AMENDMENT**
Consider Approval (page 73)

III. **REPORTS/UPDATES**

A. **WATERMASTER GENERAL LEGAL COUNSEL REPORT**
1. OCWD PEIR Comments (page 77)
2. RWQCB Waste Discharge Permit (page 81)
3. North Gualala Decision (page 83)

B. **CEO/STAFF REPORT**
1. Storm Water/Recharge Report
2. Legislative/Bond Update
3. MZ1 Committee Update

IV. **INFORMATION**
1. Newspaper Articles (page 119)

V. **POOL MEMBER COMMENTS**

VI. **OTHER BUSINESS**

VII. **FUTURE MEETINGS**

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

Meeting Adjourn

CHINO BASIN WATERMASTER
AGRICULTURAL POOL MEETING

9:00 a.m. – June 20, 2006
At The Offices Of
Inland Empire Utilities Agency
6075 Kimball Ave., Bldg. A, Board Room
Chino, CA 91710

AGENDA

CALL TO ORDER

AGENDA - ADDITIONS/REORDER

I. CONSENT CALENDAR
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A. **MINUTES**
1. Minutes of the Annual Agricultural Pool Meeting held May 16, 2006 (page 9)

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3. **Consider Approval for Transaction of Notice of Sale or Transfer** – the lease of 2,500 acre-feet of water, first from the City of Pomona's (Pomona) net underproduction, if any, from its FY 2005/2006 allocation, with any remainder from Pomona's local storage account in the Chino Basin, to the Cucamonga Valley Water District. Date of application: May 30, 2006 (page 57)

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3. MZ1 Committee Update

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1. Newspaper Articles (page 119)

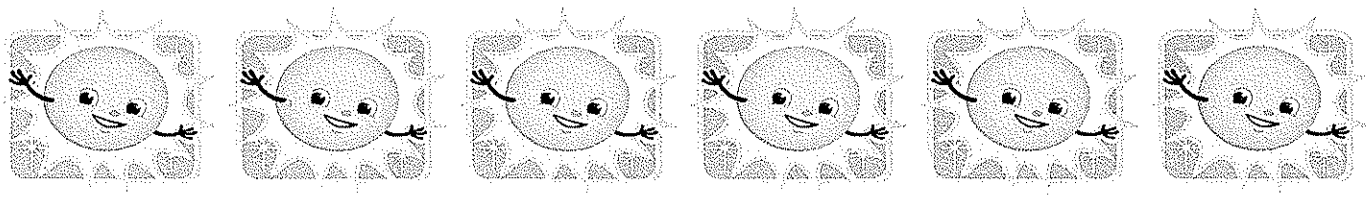
V. **POOL MEMBER COMMENTS**

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

Meeting Adjourn

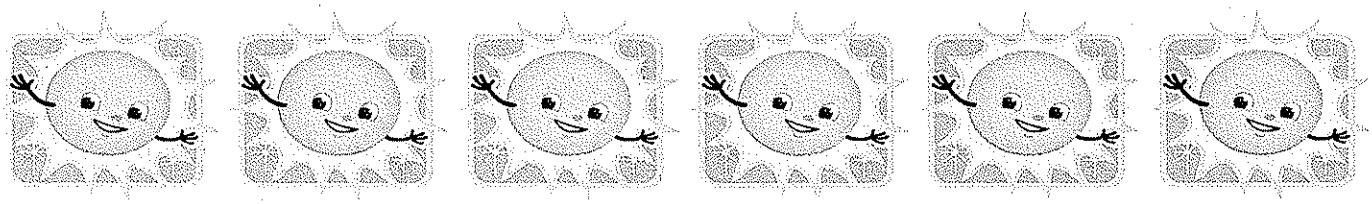


CHINO BASIN WATERMASTER

I. CONSENT CALENDAR

A. MINUTES

1. Joint Appropriative & Non-Agricultural Pool Meeting – May 18, 2006



Draft Minutes
CHINO BASIN WATERMASTER
JOINT APPROPRIATIVE & NON-AGRICULTURAL POOL MEETING
May 18, 2006

The Joint Appropriative and Non-Agricultural Pool Meeting were held at the offices of Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, CA, on May 18, 2006 at 10:00 a.m.

APPROPRIATIVE POOL MEMBERS PRESENT

Robert DeLoach, Chair	Cucamonga Valley Water District
Jim Taylor	City of Pomona
Dave Crosley	City of Chino
Ken Jeske	City of Ontario
J. Arnold Rodriguez	San Antonio Water Company
Rosemary Hoerning	City of Upland
Mike McGraw	Fontana Water Company
Mark Kinsey	Monte Vista Water District
Frank LoGuidice	Fontana Union Water Company

NON-AGRICULTURAL POOL MEMBERS PRESENT

Justin Scott-Coe	Vulcan Materials Company (Calmat Division)

Watermaster Board Members Present

Sandra Rose	Monte Vista Water District

Watermaster Staff Present

Kenneth R. Manning	Chief Executive Officer
Sheri Rojo	CFO/Asst. General Manager
Sherri Lynne Molino	Recording Secretary

Watermaster Consultants Present

Michael Fife	Hatch & Parent
Mark Wildermuth	Wildermuth Environmental Inc.
Andy Malone	Wildermuth Environmental Inc.

Others Present

Marty Zvirbulis	Cucamonga Valley Water District
Craig Stewart	Geomatrix
Frank Brommenschenkel	Ag Pool Representative
Ashok K. Dhingra	City of Pomona
Paul Deutsch	Geomatrix for GE
Chris Diggs	Fontana Water Company
Charles Moorrees	San Antonio Water Company
Manuel Carrillo	Representative Senator Soto's Office
Robert Kent	U.S. Geological Survey
Kenneth Belitz	U.S. Geological Survey
Anthony La	City of Upland

Chair DeLoach called the meeting to order at 10:10 a.m.

AGENDA - ADDITIONS/REORDER
There were no additions or reorders made to the agenda.

I. CONSENT CALENDAR

A. MINUTES

1. Minutes of the Joint Appropriative and Non-Agricultural Pool Meeting held April 13, 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

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

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

Motion by Jeske, second by Kinsey, and by unanimous vote – Non-Ag concurred
Moved to approve Consent Calendar Items A through C, as presented

II. BUSINESS ITEMS

A. WATERMASTER BUDGET FOR FISCAL YEAR 2006/2007

Ms. Rojo stated the recent budget workshop was very well attended. Ms. Rojo presented the 2006/2007 budget and reviewed the budget highlights which include a slight increase in administration expenses increases. It was noted the administration area of the budget included a 4.7% Cola increase and a proposed increase in the medical insurance cap for employees. Ms. Rojo stated the Cola figure was based on CPI. Mr. Manning stated the Personnel Committee has reviewed the health benefits issue, and in examining other water agencies benefits Chino Basin Watermaster's benefits are under what other agencies offer and what we are asking for is placing us to the medium of those other agencies over a two year period. The Personnel Committee is still working on this evaluation which will be presented to the Watermaster Board in June. Ms. Rojo stated staff is anticipating increases in all cost areas, however, in the area of the OBMP this figure will be increasing by approximately $600,000 due to the undertaking of the CEQA process as a result of the Peace II negotiations/process. The State of the Basin Report will need to be rewritten and a separate line item has been added to track the cost of this particular item. A question regarding the cost for CEQA was presented. Ms. Rojo stated the CEQA process is being budgeted, but since the CEQA will be contracted, the exact cost is not known. The amount budgeted is approximately $500,000 in itself and Mr. Manning stated some of the cost will go to special consultants to perform this type of work. Ms. Rojo reviewed the OBMP Implementation projects which have an anticipated increase in the areas of groundwater quality monitoring, recharge O&M, recharge debt service, and recharge master plan. Ms. Rojo noted there is a substantial increase to our recharge debt service. For the Phase I recharge debt payment, we are budgeting $600,000 and that payment, will be assessed based on each appropriators share of operating safe yield. The million dollar represents the payment for the DWR grant which was approved two months ago to pay back over a three year period. The portion

payable by Watermaster will be around $3M and $1M will be budgeted each year. A question regarding cost sharing for the DWR grant was presented. Ms. Rojo stated the DWR grant is a $5M dollar grant and a $5M dollar cost in which Inland Empire Utilities Agency is fronting the money on a pass through cost to Watermaster, who will be charged interest only at the LAIF rate. A question regarding O&M recharge was presented. Ms. Rojo stated Watermaster's obligated to pay for the O&M on the recharge basins that is over and above what the Flood Control would otherwise need to do for their flood protection purposes. Mr. Manning stated staff included a letter from Mr. Atwater in the package because he discusses about the fact that O&M costs last year were built into the FEMA grants that we had as well as the previous DWR grants. Ms. Rojo reviewed the special projects that will decrease which are ground level monitoring, MZ1, and meter installation and maintenance. Mr. Manning offered comment on the groundwater expenses and noted those expenses are being kept tracked of separately so that we may be reimbursed from the PRP's on both the Ontario and Chino Airport plumes. A discussion regarding cost sharing ensued. Mr. Jeske stated a refresher report needs to be given on cost sharing. Mr. Jeske asked that if by adopting the budget does that make any change or alterations to the way we are portioning the costs for the presented items. Mr. Manning stated those items will be assessed by using the same formula as we have in the past. A discussion ensued with regard to the 2006/2007 budget presentation. Mr. Kinsey noted he would like see an overview at the assignment of recharge O&M and recharge debt services to see if some of those costs might be allocated differently than proposed in the budget. The committee members agreed they would want to have a separate meeting/workshop held with regards to Mr. Kinsey's suggestion for exploration.

Motion by Kinsey, second by Jeske, and by unanimous vote – Non-Ag concurred
Moved to approve the Watermaster Budget for fiscal year 2006/2007, as presented

B. TIME CHANGE FOR THE APPROPRIATIVE AND NON-AGRICULTURAL POOL MEETINGS

Chair DeLoach stated the request to change the meeting time from 9:00 a.m. to 10:00 a.m. was by his request. Several committee members agreed the time change would assist in their schedules also.

Motion by Rodriguez, second by Kinsey, and by unanimous vote – Non-Ag concurred
Moved to approve changing the meeting start time to 10:00 a.m., as presented

III. REPORTS/UPDATES

A. WATERMASTER GENERAL LEGAL COUNSEL REPORT

1. Peace II Process

Counsel Fife stated there is a 4:00 p.m. conference call scheduled for today regarding the Peace II Proposal and it appears there is great hope that staff will be asking the Watermaster Board to release the agreed upon proposal for their approval to move this item through the Watermaster process in June. Counsel Fife noted Director Vanden Heuvel gave a short presentation at the Agricultural Pool meeting this past Tuesday and it appeared his comments and views were accepted by all committee members present. After the presentation there was a very positive question and comment process that acknowledged the Agricultural Pool members were pleased with the final outcome of the process.

2. Santa Ana River Application

Counsel Fife stated Orange County Water District (OCWD) has issued a PEIR and Watermaster is going to provide comment on that report. Between now and the time we comment on their PEIR, there is a piece legislation SB 1795 that is being sponsored by Stockton East Water District concerning applications to the State Board for water rights for diversion of surface streams for recharge into a groundwater basin, which is similar to Chino Basin's situation. There have been some modifications to language that Watermaster wanted to make which would make it clearer and more applicable to our

situation. Counsel Fife stated Mr. Manning did a great job of working those modifications into the language. Counsels understanding from the meeting at ACWA last week is those modifications are being incorporated into the bill, although, the State Board is opposed to this bill. The bill is essentially designed to resolve some problems with how the State Board processes applications for diversion of surface streams for recharge into a groundwater basin. At the ACWA Legal Affairs Committee Meeting last week, there was a suggestion from the attorney representing Stockton East that the bill was fading fast based on the State Board opposition. OCWD EIR is out; however, no report has come out of Western Municipal Water District.

3. Boardsmanship Workshop Update
Counsel Fife stated after the April Board meeting, Chino Basin Watermaster held a workshop. This is a workshop that staff wants to offer on a yearly basis to hold in January when new board members are appointed.. This was a largely attended workshop and went very well. There were handouts/materials at that workshop which are available upon request. Mr. Manning stated this was an academic approach to the board's responsibilities as opposed to what their responsibilities might be in the individual board positions they hold; the roles are slightly different. Mr. Manning stated that Counsel Slater and Counsel Fife did an outstanding job of providing the information to the members. Staff will take what was taught and discussed at this workshop and turn that into some sort of curriculum that we will use every other year and then in the off year staff will put together a course that would extend the information into a slightly more technical approach to the basin.

This item was moved from B. WATERMASTER ENGINEERING CONSULTANT REPORT to be reported under the General Legal Counsel section.

4. Proposed Waste Discharge Requirements (WDR) for Recharge of Imported Water
Counsel Fife stated this item is part of the Basin Plan Amendment process, the Regional Board has been issuing various permits and this is one of the final pieces of the whole Basin Plan Amendment process. There is a copy of the proposed WDR in the meeting packet starting on page 63. In summarizing the permit, it indicates that anyone who wants to recharge imported water, if they are doing it in a basin that is governed by the Maximum Benefit Standards; they need an acknowledgement from the Maximum Benefit entities that the recharge is consistent with the Maximum Benefit objectives. Counsel Fife noted that Mr. Thibeault recently commented, The Maximum Benefit people have bought assimilative capacity and if anyone else wants to use that assimilative capacity, they need to get permission from the people who made the investments. Counsel Fife stated that by issuing the permit what the Regional Board is attempting to regulate is the recharge of imported state project water which is not commonly liked by other parties. Mr. Manning offered comment regarding the adoption of this permit. A brief discussion ensued with regard to the Regional Board.

B. WATERMASTER ENGINEERING CONSULTANT REPORT

1. Summary of WEI April 2006 Report Regarding Hydraulic Control, Desalters and New Yield
Mr. Malone stated what Mark Wildermuth has done for the Peace II process is to generate a report on Hydraulic Control which addressed a lot of the questions that came out of the November Attorney-Manager Workshop. Mr. Malone reviewed the map which showed the basin conditions in 1905; before a lot of groundwater pumping occurred and then reviewed the same map for 2000, showing drawdown. Mr. Malone stated all of the pumping that has occurred since 1905 has reduced the groundwater levels, and reduced the groundwater that was rising to become surface water flowing out of the basin. With all this water level drawdown we have increased the yield of the basin significantly by reducing the entire groundwater outflow as surface water. The concept of hydraulic control and the intent of the OBMP was to maintain basin yield by constructing the desalter well field and

keeping water levels suppressed in the southern end of the basin. This concept was incorporated into the Maximum Benefit commitments that Chino Basin Watermaster (CBWM) and Inland Empire Utilities Agency (IEUA) presented to the Regional Board in the most recent Basin Plan Update. Hydraulic Control means that CBWM and IEUA are committing to isolating the Chino Basin from any downstream impacts, in exchange; we received Maximum Benefit Water Quality Objectives. Those objectives were raised artificially to allow for things like recycled water recharge. We have a monitoring program that the Regional Board can evaluate and shows that we are isolating the basin. A report was just released to the Regional Board which will become an annual report on the Hydraulic Control Monitoring Program. Mr. Malone reviewed a slide which shows we have achieved a good deal of hydraulic control. Mr. Malone stated there are three elements to the monitoring program; one element looks at water levels, the second element looks at various water qualities, and the third element is groundwater modeling to verify we are creating the barrier. Several other well location maps were reviewed and discussed. A discussion regarding the location of new wells ensued.

2. Proposed Waste Discharge Requirements (WDR) for Recharge of Imported Water
This item was reported under the General Legal Counsel Section by Counsel Fife.

C. CEO/STAFF REPORT

1. Water Quality Update
Mr. Manning stated the Water Quality Committee is meeting on a regular basis and a report was given at their last meeting regarding the General Electric (GE) plumes. GE's program currently calls for them to be pumping from wells treating the water and then recharging into the Ely basins. Recently their permit for recharge into the basin which is with both the Conservation District and with the Flood Control District was up for renewal. The City of Ontario, Inland Empire Utilities Agency, and Chino Basin Watermaster wrote letter of concern because, we are using the Ely basins for increased recycled water recharge and for storm water recharge and in the future for imported water recharge and having GE occupy space within those basins limits our capacity. We would like to move GE into the position of solving their Regional Board orders with remedies that are within their control. The Regional Board has recently issued GE a five year permit to continue recharging in the Ely basins. In conversations with Pat Mead of Flood Control, it was noted that GE knows their permit will not be renewed after the five year term and during those five years they must seek other basins for their recharge needs. In speaking with GE we believe they are making progress in this area.

2. Strategic Planning Committee Update
Mr. Manning stated an open invitation conference is 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 we are going to be doing in many other areas as well.

3. Personnel Committee Update
Mr. Manning stated part of this item was covered under the budget presentation. The second part is there is still 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. Groundwater Ambient Monitoring and Assessment (GAMA) Presentation by Robert Kent, California Water Science Center

Mr. Manning introduced the representatives from USGS who will be giving a presentation today. Mr. Manning stated the GAMA program was originally developed in response to the Groundwater Quality Monitoring Act of 2001. Its mandate is to assess the monitoring and quality of groundwater in the public supply from municipalities in California. The Chino Basin is not the first water agency/region that they have dealt with. The presentation is to give an overview of what the USGS plans for the Chino Basin and the Santa Ana River Region in general. Mr. Belitz stated the AB 599 Groundwater Quality Monitoring act of 2001 region objectives include: 1) Assess each groundwater basin in the state through direct and other statistically reliable sampling approaches, 2) Integrate existing monitoring programs and acquire new data as needed, and 3) Prioritize groundwater basins that provide drinking water. Mr. Belitz reviewed several detailed maps which included public supply wells, municipal pumping, agricultural pumping, leaky tanks, and pesticide applications. There are thirty-five study units to be examined, nine of which have been already sampled. Six units will be sampled from May 2006 – December 2006 which include the areas of Coastal Plain, Upper Santa Ana, Central Sacramento, Central Sierras, Owens/Indian Wells, and Central Sierras. Mr. Belitz reviewed the scope of the work which will be performed and noted there is a tiered analytical schedule to follow. The fast list of analytes and slow list of analytes was reviewed in detail. Mr. Belitz discussed how the reporting of results would be handled for each study unit. It was noted that well locations and names will not be reported and the implementation in upper Santa Ana was assessed by various area maps. Mr. Belitz stated randomized, spatially distributed sampling allows for unbiased assessment. Low level detection limits were reviewed. Mr. Belitz noted that environmental tracers are the basis for assessing connection between sources of compounds and occurrence in public supply wells. Mr. Belitz noted that basin-scale data will be collected consistently which allows for easier comparison between basins. Mr. Belitz stated Dr. Robert Kent is the studying hydrologist. In addition to the studying hydrologist there are teams of people who move from basin to basin performing the sampling. There is also another team who simply manage the phone lines for arrangements of well samples. Mr. Belitz noted there are several handouts at the back table which describes in more detail several of the items mentioned in today's presentation. Mr. Jeske inquired if some of the other well sampling data in other areas were available. Mr. Belitz noted the San Diego data report is available on their web site. A brief discussion ensued with regard to reporting. Mr. Manning inquired on how USGS would interface with the retailers and the Watermaster on the development on the scheduling of testing. Mr. Belitz stated this presentation is the start for communication with Watermaster and the owners of the wells are typically contacted personally approximately two months prior to sampling. A discussion ensued with regard to communication. Mr. Manning stated several of the wells that USGS requests to perform sampling on has already been sampled by Watermaster on the same levels. Mr. Manning asked what will be USGS's effort to coordinate with Watermaster and with our staff and consultants to ensure we are conducting these tests in an efficient way so that Watermaster is apprised as to what is going on in the basin. Mr. Belitz stated they will make every effort to coordinate every effort with Watermaster staff and Wildermuth's staff. Mr. Manning asked that USGS be made aware of our monitoring and sampling program that is in place right now as to compliment what we are already doing. A discussion ensued with regard to the analytes that will be tested for in the wells. Mr. Wildermuth asked that the results be made available in electronic for Watermaster and the parties. Mr. Belitz stated that should not be a problem and that he will make the State Board aware that we have made this request.

5. Storm Water/Recharge Update
   Mr. Manning stated Andy Campbell from IEUA who puts these numbers together for our update is on vacation; however, staff feels we are on target for our 50,000 acre-feet with our storm water recharge numbers.

6. Inland Empire Public Affairs Network (IEPAN) Update
   Mr. Manning stated the flyer for this event is in the meeting packet on page 93. 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 November is Gary Miller. The intention behind IEPAN is to try and bring into the basin on a regular basis those people who are helping make policy and set policy within this country and state.

7. Legislative/Bond Update
   Mr. Manning stated there is a bond going on the ballot in November which does not include water, there is a flood control component in it; this bill is basically transportation, education, flood, and a small amount of housing. There will be the Caves Initiative coming up shortly and a number of water agencies will take an opposition approach to the Caves Initiative. It is another one of those initiatives that is using the credibility of the water industry and scare tactics to talk people into using voting for funds to go to environmental issues. This will also provide more land for conservation purposes and will be more of an environmental plan than a water plan and it is not a water quality initiative. Mr. Manning stated this can possibly dig into our ability to go after "real" water bonds in the future.

IV. INFORMATION

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

V. POOL MEMBER COMMENTS

No comment was made regarding this item.

VI. OTHER BUSINESS

No comment was made regarding this item.

VII. FUTURE MEETINGS

May 16, 2006	9:00 a.m.	Agricultural Pool Meeting @ IEUA
May 18, 2006	9:00 a.m.	MZ1 Technical Committee Meeting
May 18, 2006	10:00 a.m.	Joint Appropriative & Non-Agricultural Pool Meeting
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

The Joint Appropriative & Non-Agricultural Pool Meeting Adjourned at 11:50 a.m.

Secretary: _____

Minutes Approved: _____

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CHINO BASIN WATERMASTER

I. CONSENT CALENDAR

A. MINUTES

1. Agricultural Pool Meeting – May 16, 2006

Draft Minutes
CHINO BASIN WATERMASTER
AGRICULTURAL POOL MEETING
May 16, 2006

The Agricultural Pool Meeting was held at the offices of the Inland Empire Utilities Agency, 6075 Kimball Avenue, Chino, CA, on May 16, 2006 at 9:00 a.m.

Agricultural Pool Members Present

Nathan deBoom, Chair	Dairy
Glen Durrington	Crops
John Huitsing	Dairy
Bob Feenstra	Dairy
Pete Hettinga	Dairy
Nathan Mackamul	State of California CIW

Watermaster Board Member Present

Geoffrey Vanden Heuvel	Crops

Watermaster Staff Present

Kenneth R. Manning	Chief Executive Officer
Sheri Rojo	CFO /Asst. General Manager
Gordon Treweek	Project Engineer
Danielle Maurizio	Senior Engineer
Sherri Lynne Molino	Recording Secretary

Watermaster Consultants Present

Michael Fife	Hatch & Parent
Andy Malone	Wildermuth Environmental Inc.

Others Present

Steve Lee	Reid & Hellyer
John Dickson	State of California CIW
Monica Trujillo	State of California CIW

Chair deBoom called the meeting to order at 9:10 a.m.

AGENDA - ADDITIONS/REORDER
There were no additions or reorders made to the agenda.

I. CONSENT CALENDAR

A. MINUTES

1. Minutes of the Annual Agricultural Pool Meeting held April 18, 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

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

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

Motion by Feenstra, second by Durrington, and by unanimous vote
Moved to approve Consent Calendar Items A through C, as presented

II. BUSINESS ITEMS

A. WATERMASTER BUDGET FOR FISCAL YEAR 2006/2007

Ms. Rojo stated the recent budget workshop was very well attended. Ms. Rojo presented the 2006/2007 budget and reviewed the budget highlights which included administration expenses increases. It was noted the administration area included a 4.7% Cola increase and a proposed increase in the medical insurance cap for employees. A question regarding the figures for the administration increases was presented. Ms. Rojo stated the Cola figure was based on CPI. Mr. Manning stated the Personnel Committee has reviewed the health benefit issue, and in examining other water agency health insurance benefits Chino Basin Watermaster's benefits are under what other agencies offer and what we are asking for is placing us to the medium of those other agencies over a two year period. The Personnel Committee is still working on this evaluation which is due to the Watermaster Board in June. Ms. Rojo stated staff is anticipating increases in all cost areas, however, in the area of the OBMP this figure will be increasing by approximately $600,000 due to the undertaking of the CEQA process as a result of the Peace II negotiations/process. The State of the Basin Report will need to be rewritten and a separate line item has been added to track the cost of this particular item. A question regarding the cost for CEQA was presented. Ms. Rojo stated the CEQA process is approximately $500,000 in itself and Mr. Manning stated some of the cost will go to special consultants to perform this type of work. A discussion ensued with regard to the cost increase on the CEQA item. Ms. Rojo reviewed the OBMP Implementation projects which have an anticipated increase in the areas of groundwater quality monitoring, recharge O&M, recharge debt service, and recharge master plan. Each of the special project increase items were discussed in detail. Ms. Rojo reviewed the special projects that will decrease which are ground level monitoring, MZ1, and meter installation and maintenance. A brief discussion ensued with regard to the 2006/2007 budget presentation.

Motion by Feenstra, second by Durrington, and by unanimous vote
Moved to approve the Watermaster Budget for fiscal year 2006/2007, as presented

III. REPORTS/UPDATES

A. WATERMASTER GENERAL LEGAL COUNSEL REPORT

1. Peace II Process

Counsel Fife invited Mr. Vanden Heuvel, who asked prior to the meeting if he could present this item to the committee members, to offer his comment on the recent Peace II meeting. Mr. Vanden Heuvel handed out his comments regarding the New Peace II term sheet which came to conclusion on May 15, 2006. Mr. Vanden Heuvel stated the first version of Peace II came out in November of 2005. Strong objections to that document were raised primarily because of the magnitude of the mining of water that was called for. The original Peace II term sheet proposed the un-replenished extraction of 600,000 acre-feet of water from the Chin Basin. Mr. Vanden Heuvel stated over the past five months extensive discussions have taken place and eventually the facilitator produced a revised Peace II, which has now

been substantially agreed to by the parties including himself. Mr. Vanden Heuvel stated what the new Peace II deal does is limit mining to only what is necessary for the basin to obtain Hydraulic Control, noting Mark Wildermuth's scientific estimation is that this will require 400,000 acre-feet of mining. This number must be verified and endorsed by Joe Scalmanini, the special referee's technical assistant before it can be adopted. Mr. Vanden Heuvel stated the 400,000 acre-feet is to be used for desalter replenishment, but only if the new wells for desalter expansion, which is mandated by this deal, are located in the southern part of the Chino Basin where Hydraulic Control can most efficiently be obtained and maintained. It was noted the other deal improvements include: The overlying Non-Ag Pool deal is slimmed down, a requirement to use reclaimed water is put in, a pool of money is created to be used to help compensate disproportionate appropriator benefits from reclaimed water, and the Appropriators agree on a division of responsibility for payment of desalter replenishment obligations. Mr. Vanden Heuvel stated he is on board with what was presented and accepted at the May 15, 2006 Attorney-Manager meeting and is ready to support this item at the Watermaster Board level. It was noted this item will be on the Board agenda for this month for approval to forward this item through the Watermaster process in June.

Added Comment:

Mr. Vanden Heuvel added comment regarding the MZ1 Summary Report which was not approved at the April Board meeting due to the noted concerns of Chino Hills. Mr. Vanden Heuvel stated it was decided at the April Board meeting that Chair Willis would address this issue with Chino Hills personally to attempt to understand their concerns in signing off on this technical report. Counsel Fife stated Mr. Willis has indeed met with representatives of Chino Hills, however, has not discussed with him the outcome of that meeting. Counsel Fife also confirmed Mr. Manning has reached out to encourage Chino Hills to meet with Chino Basin Watermaster's staff to open up to what their needs are.

2. Santa Ana River Application

Counsel Fife stated Orange County Water District (OCWD) has issued a PEIR and Watermaster is going to provide comment on that. Between now and the time we comment on their PEIR, there is a piece legislation SB 1795 that is being sponsored by Stockton East Water District concerning applications to the State Board for water rights for diversion of surface streams for recharge into a groundwater basin, which is Chino Basin's situation. There have been some modifications to language that Watermaster wanted to make which would make it clearer and more applicable to our situation. Counsel Fife stated Mr. Manning did a great job of working those modifications into the language. Counsels understanding from the meeting at ACWA last week is those modifications are being incorporated into the bill, although, the State Board is opposed to this bill. The bill is essentially designed to resolve some problems with how the State Board processes applications for diversion of surface streams for recharge into a groundwater basin. At the ACWA Legal Affairs Committee Meeting last week, there was a suggestion from the attorney representing Stockton East that the bill was fading fast based on the State Board opposition. OCWD EIR is out; however, no report has come out of Western Municipal Water District.

3. Boardsmanship Workshop Update

Counsel Fife stated after the April Board meeting, Chino Basin Watermaster held a workshop. This is a workshop that staff wants to offer on a yearly basis to hold in January when the new board members come on. This was a largely attended workshop and went very well. There were handouts/materials at that workshop which are available upon request. Mr. Manning stated this was an academic approach to the board's responsibilities as opposed to what their responsibilities might be in their board positions they hold; the roles are slightly different. Mr. Manning stated that Counsel Slater and Counsel Fife did an outstanding job of providing the information to the members and it was well received at the

workshop. Staff will take what was taught and discussed at this workshop and turn that into some sort of curriculum that we will use every other year and then in the off year staff will put together a course that would extend that information into a slightly more technical approach to the basin.

B. WATERMASTER ENGINEERING CONSULTANT REPORT

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

Mr. Malone noted Mr. Wildermuth, who could not attend today's meeting, will be giving this presentation in greater detail at the Appropriative and Non-Agricultural Pool meeting this Thursday and will keep the door open if this committee wants to have him present the more detailed report at a later Agricultural Pool meeting. Mr. Malone stated what Mark has done for the Peace II process is to generate a report on Hydraulic Control which addressed a lot of the questions that came out of the November Attorney-Manager Workshop. Mr. Malone reviewed the map which showed the basin conditions in 1905; before a lot of groundwater pumping occurred and then reviewed the same map for 2000, showing drawdown. Mr. Malone stated all of the pumping that has occurred since 1905 has reduced the groundwater levels, and reduced the groundwater that has been rising to become surface water flowing out of the basin. With all this water level drawdown we have increased the yield of the basin significantly by reducing the entire groundwater outflow as surface water. The concept of hydraulic control and the intent in the OBMP was to maintain basin yield by constructing the desalter well field and keeping water levels suppressed in the southern end of the basin. This concept was incorporated into the Maximum Benefit commitments that Chino Basin Watermaster (CBWM) and Inland Empire Utilities Agency (IEUA) presented to the Regional Board in the most recent Basin Plan Update. The concept of hydraulic control has evolved into was to actually create a barrier for any water that is recharged up in the northern part of the basin to cut that recharge off from flowing into the southern end of the basin and causing rising water there. Hydraulic Control means that CBWM and IEUA are committing to isolating the Chino Basin from any downstream impacts, in exchange; we received Maximum Benefit Water Quality Objectives. Those objectives were raised artificially to allow for things like recycled water recharge. We have a monitoring program that the Regional Board can evaluate and shows that we are isolating the basin. A report was just released to the Regional Board which will become an annual report on the Hydraulic Control Monitoring Program. Mr. Malone reviewed a slide which shows we have achieved a good deal of hydraulic control. Mr. Malone stated there are three elements to the monitoring program; one element looks at water levels, the second element looks at various water qualities, and the third element is groundwater modeling to verify we are creating the barrier. Several other well location maps were reviewed and discussed. A question regarding the maps showing plumes was presented. Mr. Manning stated the third dimension that is referred to in Peace II and in Hydraulic Control is an outgrowth of the two airport plums of contamination. Mr. Malone stated if the committee members did not want to read the entire large binder regarding Hydraulic Control he suggested reading section six titled Conclusions which will provide great detail on Hydraulic Control in summary formation. A discussion regarding the shown plumes ensued.

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

Counsel Fife stated this item is part of the Basin Plan Amendment process, the Regional Board has been issuing various permits and this is one of the final pieces of the whole Basin Plan Amendment process. There is a copy of the proposed WDR in the meeting packet starting on page 63. In summarizing the permit, it indicates that anyone who wants recharge imported water, if they are doing it in a basin that is governed by the Maximum Benefit Standards, they need an acknowledgement from the Maximum Benefit entities that the recharge is consistent with what the Maximum Benefit entities are doing. Counsel Fife noted that Jerry Thibeault recently stated, "The Maximum Benefit people have bought assimilative capacity and if anyone else wants to use that assimilative capacity, they need to get permission from the people who bought it". Counsel Fife stated that by issuing the

permit what the Regional Board is attempting to regulate the recharge of imported state project water which is no commonly liked by other parties. Mr. Manning offered comment regarding the adoption of this permit. A brief discussion ensued with regard to the Regional Board.

C. CEO/STAFF REPORT

1. Water Quality Update

Mr. Treweek stated the 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) had 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 to. The PRPs have banned 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. The have linked that find 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 better 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 PRPs actions and decisions for clean up.

2. Strategic Planning Committee Update

Mr. Manning stated an open (all invited) conference is planned by the Strategic Planning Committee which Chair deBoom sits on 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 and how we are going to meet and pay for those. There is the strategic planning we are going to be doing in many other areas as well.

3. Personnel Committee Update

Mr. Manning stated part of this item was covered under the budget presentation. The second part is there is still the CEO evaluation going on through the Personnel Committee;

they are still meeting on this item. Mr. Manning noted Watermaster does have 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 personal evaluation. A question was asked regarding a personnel consultant and Mr. Manning stated a third party is often needed on investigating issues and on their stamp of approval.

4. GAMA Presentation by Robert Kent, California Water Science Center
Mr. Manning stated this item is a reminder that Mr. Robert Kent from the USGS California Water Science Center will be giving a presentation at the Appropriative and Non-Agricultural Pool meeting this Thursday on the GAMA program. This is a program where USGS does sampling of wells around the basins and then provides their information to the State Water Resources Control Board. This is a program that Watermaster has some hesitation as to how it is going to be performed and staff will be asking lots of questions at their presentation.

5. Storm Water/Recharge Update
Mr. Manning stated Andy Campbell from IEUA who puts these numbers together for our update is on vacation; however, staff feels we are on target for our 50,000 acre-feet with our storm water recharge numbers. A brief discussion ensued with regard to the Santa Ana River.

6. Inland Empire Public Affairs Network (IEPAN) Update
Mr. Manning stated the flyer for this event is in the meeting packet on page 93. 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. We will be doing quarterly luncheons and our next speaker for November is Gary Miller. We are trying to bring into the basin on a regular basis those people who are helping make policy and set policy within this country and state.

7. Legislative/Bond Update
Mr. Manning stated there is a bond going on the ballot in November which does not include water, there is a flood control component in it; this bill is basically transportation, education, flood, and a small amount of housing. There will be the Caves Initiative coming up shortly and a number of water agencies will take an opposition approach to the Caves Initiative. It is another one of those initiatives that is using the credibility of the water industry and scare tactics to talk people into using voting for funds to go to environmental issues. This will also provide more land for conservation purposes and will be more of an environmental plan than a water plan and it is not a water quality initiative. Mr. Manning stated this can possibly dig into our ability to go after "real" water bonds in the future.

IV. INFORMATION

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

V. POOL MEMBER COMMENTS

No comment was made regarding this item.

VI. OTHER BUSINESS

No comment was made regarding this item.

VII. FUTURE MEETINGS

May 16, 2006	9:00 a.m.	Agricultural Pool Meeting @ IEUA
May 18, 2006	9:00 a.m.	MZ1 Technical Committee Meeting
May 18, 2006	10:00 a.m.	Joint Appropriative & Non-Agricultural Pool Meeting
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

The Agricultural Pool Meeting Adjourned at 10:55 a.m.

Secretary: _____

Minutes Approved: _____

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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

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 20, 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
May 06				**-1,956,019.33**

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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 Mgnt 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%	

C:\Financial Statements\05-06\06 Apr\[CombiningSchedule Apr.xls]Sheet1

Prepared by Sheri Rojo, Chief Financial Officer /Assistant General Manager

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 Mgnt 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%	

Q:\Financial Statements\05-06\06 Apr\[CombiningSchedule Apr.xls]Sheet1

Prepared by Sheri Rojo, Chief Financial Officer /Assistant General Manager

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
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)
	PERIOD INCREASE (DECREASE)	**$ (352,648)**

SUMMARY OF FINANCIAL TRANSACTIONS:

	Petty Cash	Govt'l Checking Demand	Zero Balance Account Payroll	Savings	Vineyard Bank	Local Agency Investment Funds	Totals
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)
Balances as of 4/30/2006	$ 500	$ 152,857	$ 25,423	$ 9,697	$ 419,039	$ 10,555,983	$ 11,163,499
	-	-	25,423	-	-	-	
PERIOD INCREASE OR (DECREASE)	**$ -**	**$ 35,706**	**$ -**	**$ -**	**$ 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

Financial Institution	**Principal Amount**	**Number of Days**	**Interest Rate**	**Maturity Date**
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

3:47 PM
06/01/06
Accrual Basis

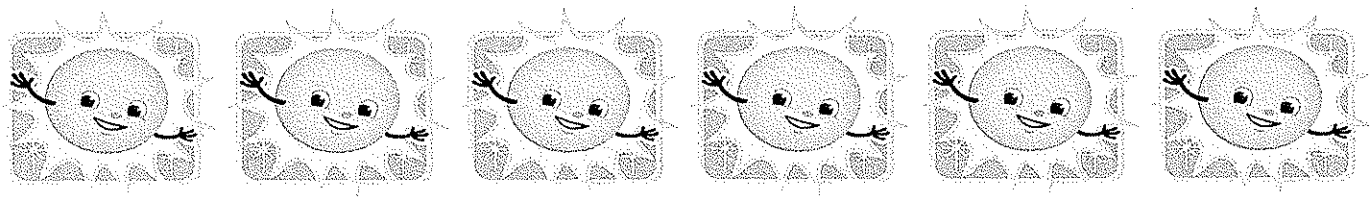
CHINO BASIN WATERMASTER
Profit & Loss Budget vs. Actual
July 2005 through April 2006

	Jul '05 - Apr 06	Budget	$ Over Budget	% of Budget
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	5,104,218.56	5,087,876.00	16,342.56	100.32%
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	-310,445.21	-378,284.00	67,838.79	82.07%
	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	103,873.02	109,541.00	-5,667.98	94.83%
	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%

3:47 PM
06/01/06
Accrual Basis

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

	Jul '05 - Apr 06	Budget	$ Over Budget	% of Budget
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%
	1,845,652.96	4,463,809.00	-2,618,156.04	41.35%
Total Expense	3,661,158.32	6,378,261.00	-2,717,102.68	57.4%
Net Ordinary Income	1,443,060.24	-1,290,385.00	2,733,445.24	-111.83%
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	6,635,065.45	600,000.00	6,035,065.45	1,105.84%
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	8,078,125.69	-690,385.00	8,768,510.69	-1,170.09%
Net Other Income	-1,443,060.24	1,290,385.00	-2,733,445.24	-111.83%
Net Income	0.00	0.00	0.00	0.0%



CHINO BASIN WATERMASTER

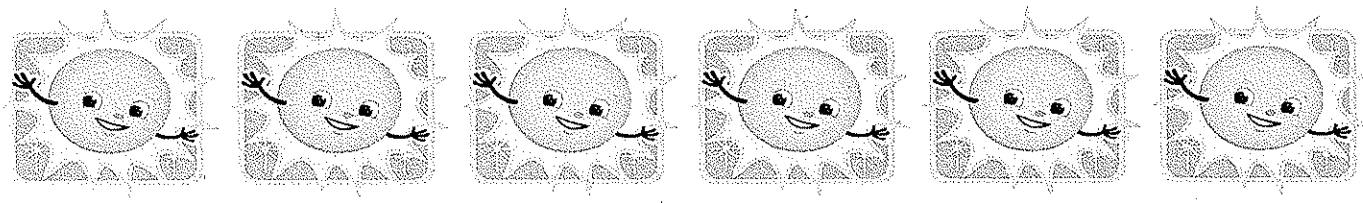
I. CONSENT CALENDAR

C. WATER TRANSACTIONS

1. Notice of Sale or Transfer – Fontana Water Company has agreed to purchase from Cucamonga Valley Water District water in storage in the amount of 2,500 acre-feet.

2. Notice of Sale or Transfer - the one-year lease of 5, 350 acre-feet of water from City of Chino to Cucamonga Valley Water District.

3. Notice of Sale or Transfer – the lease of 2, 500 acre-feet of water from the City of Pomona to Cucamonga Valley Water District



CHINO BASIN WATERMASTER

NOTICE

OF

APPLICATION(S)

RECEIVED FOR

WATER TRANSACTIONS – ACTIVITIES

Date of Notice:

May 15, 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: **May 10, 2006** Date of this notice: **May 15, 2006**

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

A. Notice of Sale or Transfer – the one-year lease of 5,350 acre-feet of water from the City of Chino's annual production rights to the Cucamonga Valley Water District. This lease is made first from Chino's net underproduction in Fiscal Year 2005-2006, with any remainder to be recaptured from storage.

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

Appropriative Pool:	June 8, 2006
Non-Agricultural Pool:	June 8, 2006
Agricultural Pool:	June 20, 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: May 15, 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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HAS

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FOR PAGINATION

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: **May 15, 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 – the one-year lease of 5,350 acre-feet of water from the City of Chino's annual production rights to the Cucamonga Valley Water District. This lease is made first from Chino's net underproduction in Fiscal Year 2005-2006, with any remainder to be recaptured from storage.

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
[X] 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 – the one-year lease of 5,350 acre-feet of water from the City of Chino's annual production rights to the Cucamonga Valley Water District. This lease is made first from Chino's net underproduction in Fiscal Year 2005-2006, with any remainder to be recaptured from storage.

Notice of the water transaction identified above was mailed on May 15, 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.

CITY of CHINO

May 5, 2006

Mr. Ken Manning
Chief Executive Officer
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Subject: Lease of Water Production in Chino Basin

Dear Mr. Manning:

This letter is to notify Watermaster of the one-year lease of 5,350 acre-feet of water from the City of Chino's annual production rights to the Cucamonga Valley Water District. This lease is made first from Chino's net underproduction in Fiscal Year 2005-2006, with any remainder to be recaptured from storage.

Executed original Watermaster forms and all supporting documentation shall be provided under separate cover. Please advise me as to when this transaction will be scheduled for Watermaster committee review/action.

Please contact me at (909) 591-9823 if you have any questions.

Sincerely,

David G. Crosley, P.E.
Water & Environmental Manager

DGC:djm

cc: Robert DeLoach (Cucamonga Valley Water District)
Sheri Rojo (Chino Basin Watermaster)

13220 Central Avenue, Chino, California 91710
Mailing Address: P.O. Box 667, Chino, California 91708-0667
(909) 627-7577 • (909) 591-6829 Fax
Web Site: www.cityofchino.org

CITY of CHINO

May 10, 2006

Chino Basin Water Master
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Subject: Chino/CVWD Transfer

We are hereby transmitting to you [ ] separately [X] enclosed, the following:

Purpose:
- [ ] For necessary action
- [ ] For checking
- [ ] For approval
- [X] For Processing
- [ ] For your information
- [ ] For your comments
- [ ] Per your request

Remarks: Any questions, please call me at (909) 591-9823

Sincerely,

Dave Crosley
Water & Environmental Manager

DC:ml

13220 Central Avenue, Chino, California 91710
Mailing Address: P.O. Box 667, Chino, California 91708-0667

Form 3

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

TRANSFER FROM LOCAL STORAGE AGREEMENT #____

City of Chino
Name of Party

May 5, 2006
Date Requested

_____
Date Approved

13220 Central Avenue
Street Address

5350 Acre-feet
Amount Requested

_____ Acre-feet
Amount Approved

Chino — CA — 91710-4127
City — State — Zip Code

Telephone: (909) 627-7577

Facsimile: (909) 591-6829

David Crosley
Applicant

5/9/06

TRANSFER TO:
Cucamonga Valley Water District

Attach Recapture Form 4

Name of Party
10440 Ashford Street
Street Address

Rancho Cucamonga — CA — 91730
City — State — Zip Code

Telephone: (909) 987-2591

Facsimile: (909) 476-8032

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?

Static water levels vary from 418' to 503'. Of the wells routinely pumped, nitrate levels vary from a low of 3.5 ppm to a high of 38 ppm.

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 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]

Applicant 5/9/06

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 #_____

Form 4

APPLICATION OR AMENDMENT TO APPLICATION TO RECAPTURE WATER IN STORAGE

APPLICANT

Cucamonga Valley Water District
Name of Party

May 5, 2006
Date Requested

Date Approved

10440 Ashford Street
Street Address

5350 Acre-feet
Amount Requested

Acre-feet
Amount Approved

Rancho Cucamonga (City) | CA (State) | 91730 (Zip Code)

Varies
Projected Rate of Recapture

July 1, 2005 – June 30, 2006
Projected Duration of Recapture

Telephone: (909) 987-2591

Facsimile: (909) 476-8032

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: City of Chino

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 Cucamonga Valley Water District's service area (see attached map) Management Zone 2

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?

Static water levels vary from 418' to 503. Of the wells routinely pumped, nitrate levels vary from a Low of 3.5 ppm to a high of 38 ppm.

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 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]

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 #_____

Form 5

APPLICATION
TO
TRANSFER ANNUAL PRODUCTION RIGHT OR SAFE YIELD

Fiscal Year 2005 - 2006

Commencing on July 1, 2005 and terminating on June 30, 2006, City of Chino ("Transferor") hereby transfers to Cucamonga Valley Water District ("Transferee") the quantity of 5350 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 produced 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 accompanied 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?

Static water levels vary from 418' to 503'. Of the wells routinely pumped, nitrate levels vary from a low of 3.5 ppm to a high of 38 ppm.

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 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]

5/9/06

Transferor

Transferee

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

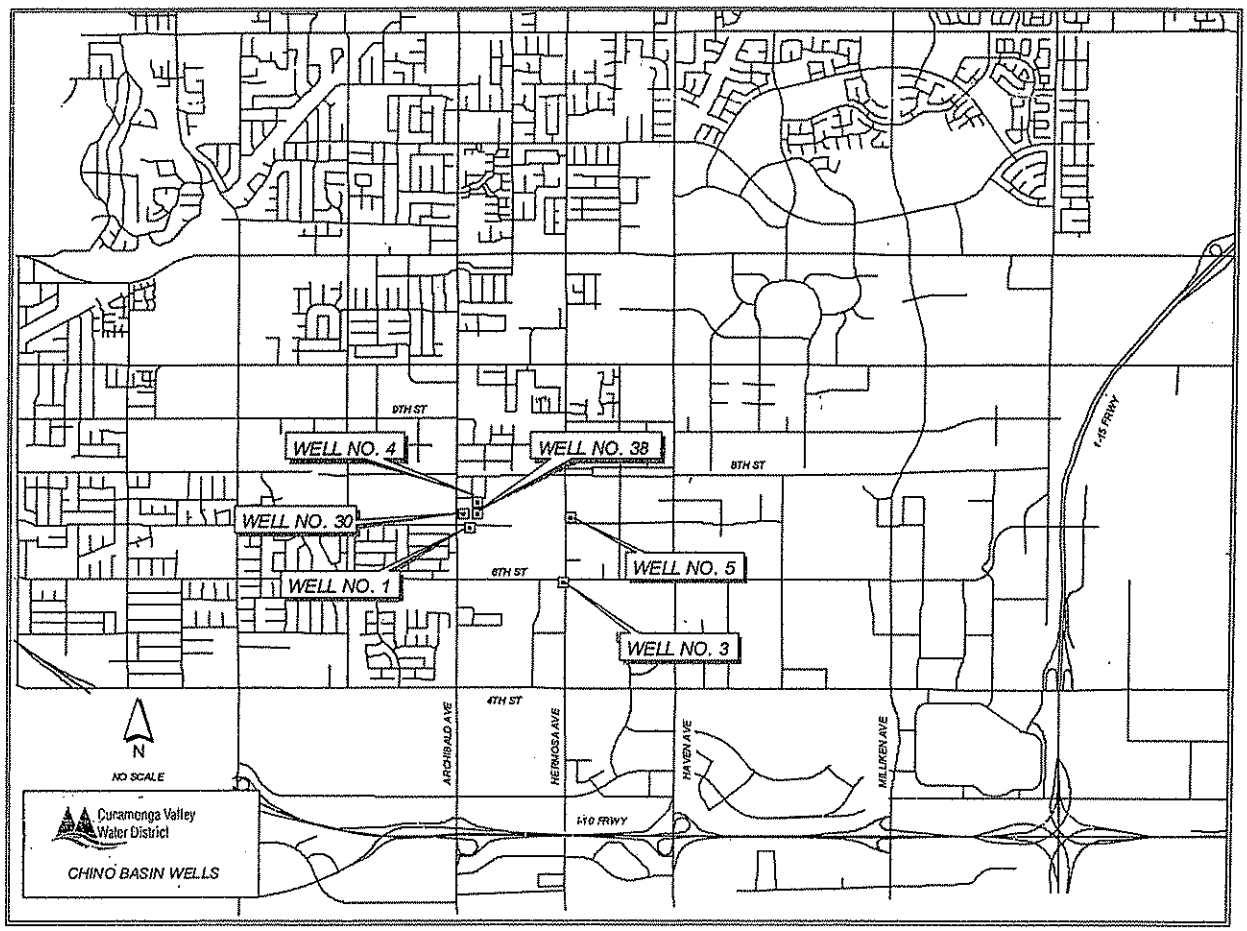
DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____ Agreement #_____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Cucamonga Valley Water District
CHINO BASIN WELLS

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CHINO BASIN WATERMASTER

NOTICE

OF

APPLICATION(S)

RECEIVED FOR

WATER TRANSACTIONS – ACTIVITIES

Date of Notice:

May 16, 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: **May 11, 2006** Date of this notice: **May 16, 2006**

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

A. Notice of Sale or Transfer – Fontana Water Company ("Company") has agreed to purchase from Cucamonga Valley Water District water in storage in the amount of 2,500 acre-feet to satisfy a portion of the Company's anticipated Chino Basin replenishment obligation for Fiscal Year 2005/2006.

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

Appropriative Pool:	June 8, 2006
Non-Agricultural Pool:	June 8, 2006
Agricultural Pool:	June 20, 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: May 16, 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: **May 16, 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 ("Company") has agreed to purchase from Cucamonga Valley Water District water in storage in the amount of 2,500 acre-feet to satisfy a portion of the Company's anticipated Chino Basin replenishment obligation for Fiscal Year 2005/2006.

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
[X] 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 ("Company") has agreed to purchase from Cucamonga Valley Water District water in storage in the amount of 2,500 acre-feet to satisfy a portion of the Company's anticipated Chino Basin replenishment obligation for Fiscal Year 2005/2006.

Notice of the water transaction identified above was mailed on May 16, 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

May 11, 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 Cucamonga Valley Water District water in storage in the amount of 2,500 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,

Michael J. McGraw
General Manager

MJM:bf
Enclosures

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Form 3

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

TRANSFER FROM LOCAL STORAGE AGREEMENT # _____

Cucamonga Valley Water District
Name of Party

April 6, 2006
Date Requested

Date Approved

10440 Ashford Street
Street Address

2,500 Acre-feet
Amount Requested

Acre-feet
Amount Approved

Rancho Cucamonga | CA | 91729
City | State | Zip Code

Telephone: (909) 987-2591

Facsimile: (909) 476-8032

X _____
Robert A. DeLoach, General Manager
Cucamonga 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 # _____

Form 4

APPLICATION OR AMENDMENT TO APPLICATION TO RECAPTURE WATER IN STORAGE

APPLICANT

Fontana Water Company Name of Party			April 6, 2006 Date Requested	Date Approved
8440 Nuevo Avenue Street Address			2,500 Acre-feet Amount Requested	Acre-feet Amount Approved
Fontana City	CA State	92335 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: Cucamonga 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?

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?

_____

_____

_____

_____

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: _____

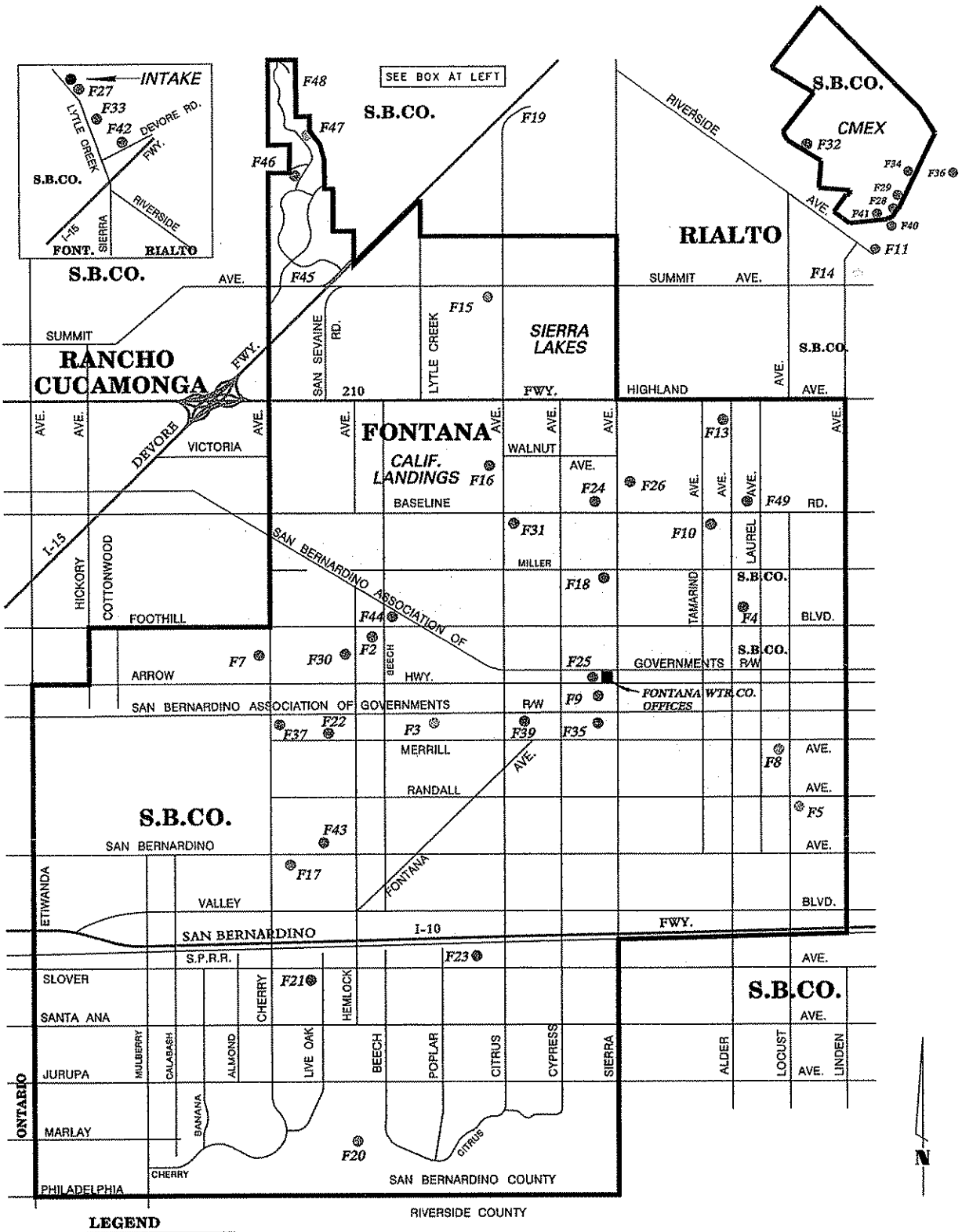
DATE OF BOARD APPROVAL: _____ Agreement # _____

FONTANA WATER COMPANY
Recapture Plan

The subject water is a transfer of stored groundwater from Cucamonga Valley Water District to Fontana Water Company (FWC) of 2,500 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:

Well		Production Acre-Feet/Day
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		126.2

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.



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CHINO BASIN WATERMASTER

NOTICE

OF

APPLICATION(S)

RECEIVED FOR

WATER TRANSACTIONS – ACTIVITIES

Date of Notice:

May 31, 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: **May 30, 2006** Date of this notice: **May 31, 2006**

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

A. Notice of Sale or Transfer – the lease of 2,500 acre-feet of water, first from the City of Pomona's (Pomona) net underproduction, if any, from its FY 2005/2006 allocation, with any remainder from Pomona's local storage account in the Chino Basin, to the Cucamonga Valley Water District.

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

Appropriative Pool:	June 8, 2006
Non-Agricultural Pool:	June 8, 2006
Agricultural Pool:	June 20, 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: May 31, 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: **May 31, 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 – the lease of 2,500 acre-feet of water, first from the City of Pomona's (Pomona) net underproduction, if any, from its FY 2005/2006 allocation, with any remainder from Pomona's local storage account in the Chino Basin, to the Cucamonga Valley Water District.

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
[X] 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 – the lease of 2,500 acre-feet of water, first from the City of Pomona's (Pomona) net underproduction, if any, from its FY 2005/2006 allocation, with any remainder from Pomona's local storage account in the Chino Basin, to the Cucamonga Valley Water District.

Notice of the water transaction identified above was mailed on May 31, 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.

THE CITY OF
POMONA

HENRY PEPPER
Utility Services Director

Utility Services Department

VIA TELEFAX (909) 484-3890 AND U.S. MAIL

May 30, 2006

Ms. Danielle Maurizio
P.E., Senior Engineer
Chino Basin Watermaster
8632 Archibald Avenue, Suite 109
Rancho Cucamonga, CA 91730

RE: Lease of Water in the Chino Basin, FY 2005/2006

Dear Ms. Maurizio:

This letter is to notify Watermaster of the lease of 2,500 acre feet of water, first from the City of Pomona's (Pomona) net underproduction, if any, from its FY 2005/2006 allocation, with any remainder from Pomona's local storage account in the Chino Basin, to the Cucamonga Valley Water District (CVWD). The water is to be placed in CVWD's storage account for possible future production. Since the appropriate forms have been delivered to your office, please agendize the proposed purchase at the earliest possible opportunity.

If you have any questions or require additional information concerning this matter, please contact me at (909) 620-2283. Thank you.

Sincerely,

Henry Pepper
Utility Services Director

HP:gc

cc: Robert DeLoach, General Manager, Cucamonga Valley Water District
Meg McWade, Utility Business Services Manager
Jim Taylor, Water/Wastewater Operations Manager

I:usadmin\Henry\DM FY 05/06 Lease to CVWD

Form 3

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

TRANSFER FROM LOCAL STORAGE AGREEMENT # 15, 15.1, 15.2, 15.3, 15.4

CITY OF POMONA
Name of Party

5/17/2006
Date Requested

Date Approved

505 South Garey Avenue
Street Address

2,500 Acre-feet
Amount Requested

Acre-feet
Amount Approved

Pomona CA 91769
City State Zip Code

Telephone: (909) 620-2283

Facsimile: (909) 620-2030

Henry Pepper, Utility Services Director
Applicant

TRANSFER TO:

Cucamonga Valley Water District
Name of Party

Attach Recapture Form 4

10440 Ashford Street
Street Address

Rancho Cucamonga CA 91730-2799
City State Zip Code

Telephone: (909) 987-2591

Facsimile: (909) 476-8032

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

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?

Not Applicable.

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 application? Yes [ ] No [XX]

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?

Not Applicable.

ADDITIONAL INFORMATION ATTACHED Yes [ ] No [X]

Henry Pepper, Utility Services Director
Applicant City of Pomona

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 #_____

Form 4

APPLICATION OR AMENDMENT TO APPLICATION TO RECAPTURE WATER IN STORAGE

APPLICANT

Cucamonga Valley Water District
Name of Party

May 18, 2006
Date Requested

_____
Date Approved

10440 Ashford Street
Street Address

2500 Acre-feet
Amount Requested

_____ Acre-feet
Amount Approved

Rancho Cucamonga (City) CA (State) 91730 (Zip Code)

Varies
Projected Rate of Recapture

July 1, 2005 – June 30, 2006
Projected Duration of Recapture

Telephone: (909) 987-2591

Facsimile: (909) 476-8032

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: City of Pomona

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 Cucamonga Valley Water District's service area (see attached map) Management Zone 2

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?

Static water levels vary from 429' to 494. Of the wells routinely pumped, nitrate levels vary from a Low of 5.4 ppm to a high of 16 ppm.

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 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]

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 #_____

APPLICATION
TO
TRANSFER ANNUAL PRODUCTION RIGHT OR SAFE YIELD

Fiscal Year 2005 - 2006

Commencing on July 1, 2005 and terminating on June 30, 2006, City of Pomona ("Transferor") hereby transfers to Cucamonga Valley Water District ("Transferee") the quantity of 2500 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 produced 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 accompanied 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?

Static water levels vary from 429' to 494'. Of the wells routinely pumped, nitrate levels vary from a low of 5.4 ppm to a high of 16 ppm.

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 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]

Transferor

Transferee

TO BE COMPLETED BY WATERMASTER:

DATE OF APPROVAL FROM NON-AGRICULTURAL POOL: _____

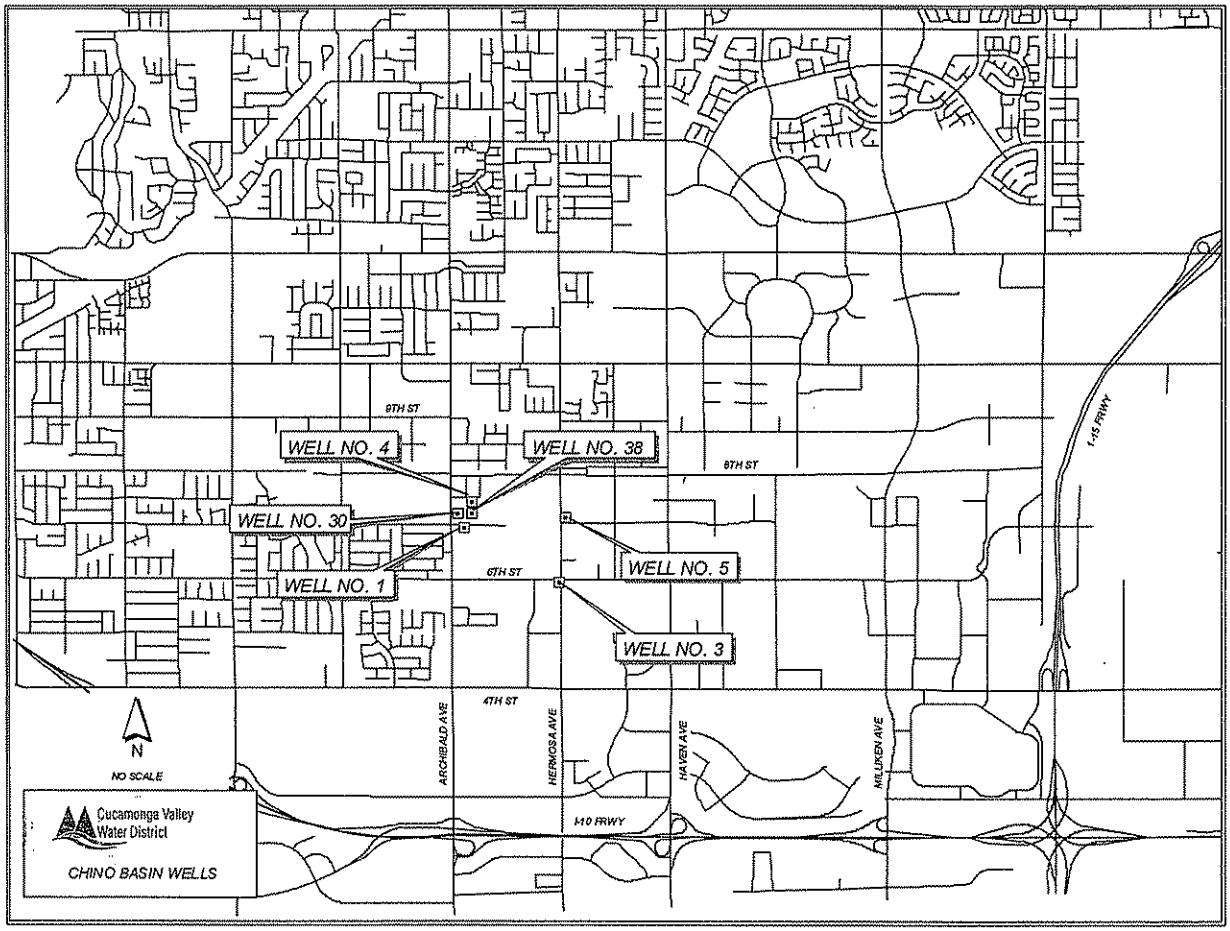
DATE OF APPROVAL FROM AGRICULTURAL POOL: _____

DATE OF APPROVAL FROM APPROPRIATIVE POOL: _____

HEARING DATE, IF ANY: _____

DATE OF ADVISORY COMMITTEE APPROVAL: _____

DATE OF BOARD APPROVAL: _____ Agreement #_____


WELL NO. 4
WELL NO. 38
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I-10 FRWY
ARCHIBALD AVE
HERMOSA AVE
HAVEN AVE
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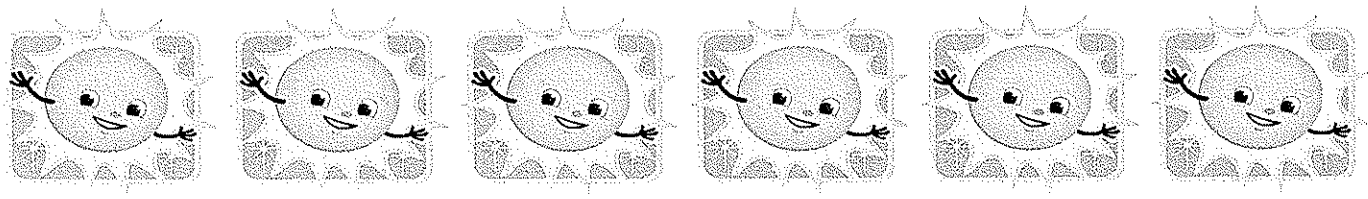
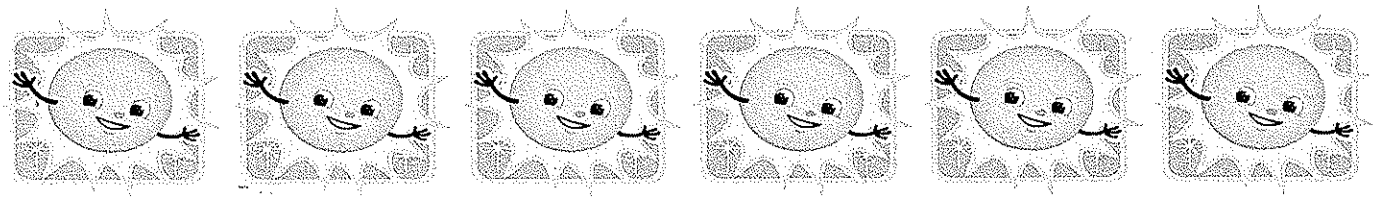
Cucamonga Valley Water District
CHINO BASIN WELLS



CHINO BASIN WATERMASTER

II. BUSINESS ITEM

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

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

TO: Appropriative Pool
Overlying (Non-Agricultural) Pool
Overlying (Agricultural) Pool

RECOMMENDATION

Staff and General Counsel recommend that the Pools approve the enclosed Stakeholder Non-Binding Term Sheet as a template approach for the development of final agreements, and to forward the Non-Binding Term Sheet to the Advisory Committee and Board with a recommendation for similar action.

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.

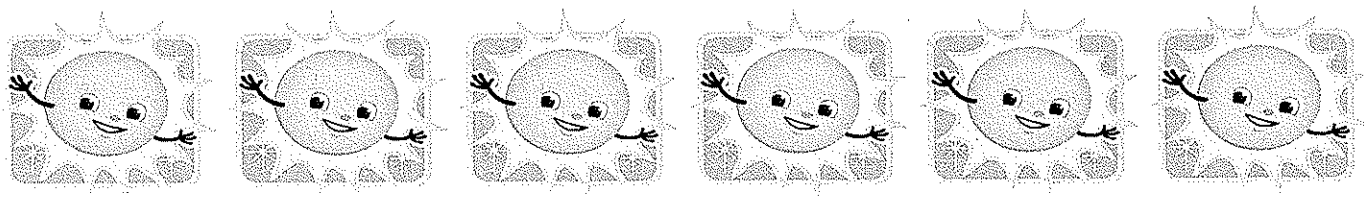
Further technical analysis and written responses to questions presented at these workshops were completed in April of 2006. In response to issues raised in these workshops, the Watermaster Board authorized Watermaster Staff and General Counsel to prepare a "Facilitator Proposal" and distribute it for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

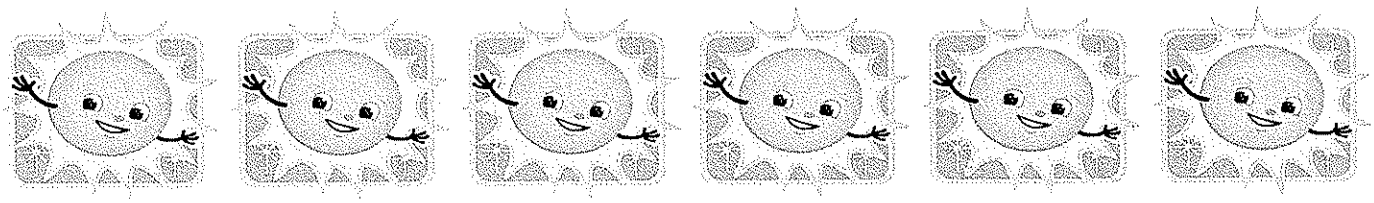
On this basis, staff and general counsel recommend that the Pools approve the enclosed Stakeholder Non-Binding Term Sheet as a template approach for the development of final agreements, and to forward the Non-Binding Term Sheet to the Advisory Committee and Board with a recommendation for similar action



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 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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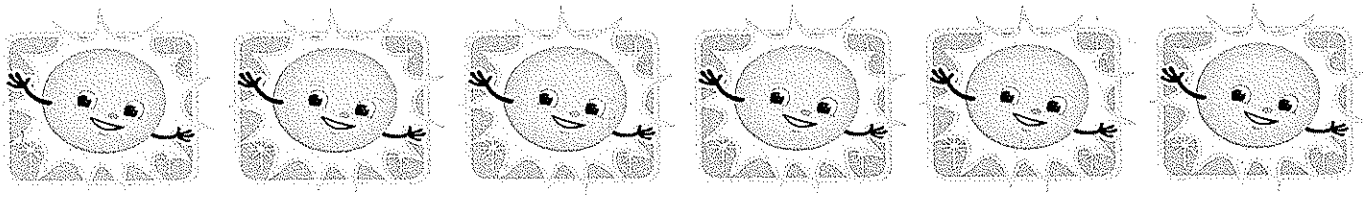
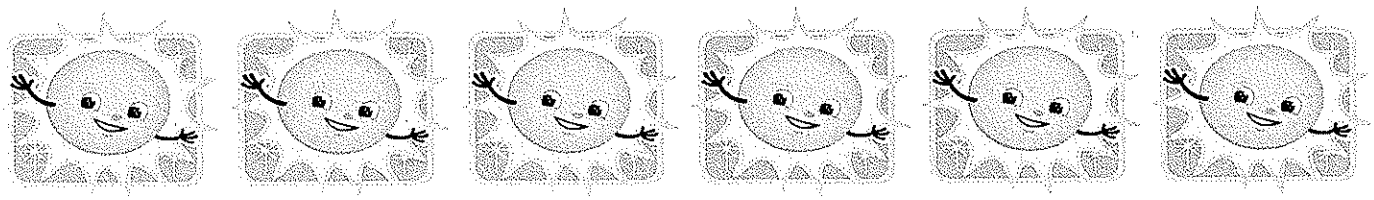


CHINO BASIN WATERMASTER

III. REPORTS/UPDATES

A. GENERAL LEGAL COUNSEL REPORT

1. OCWD PEIR Comments
2. RWQCB Waste Discharge Permit
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: 805.564.6100 | fax: 805.965.6944 | 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 afy 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 RIX-Rialto Effluent Outfall column, add the following text, "(SAR DEIR, 6-56)"

- 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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HATCH & PARENT
A Law Corporation

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**

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 accurancy.

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

SB 393087 v1:008350.0001

Filed 5/31/06

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 though February 29, bypass a minimum of 40 cubic feet per second; (b) from March 1 though May 31, bypass a minimum of 20 cubic feet per second; (c) from June 1 though 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

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[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 deposits[5] 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

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[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

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[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.*

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[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.)

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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.

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[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]

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[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

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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.

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[18] In *Pomeroy*, the court approved a jury instruction stating that if the jury found the water moving underground was " 'in the same general direction as the surface stream and in connection with it,' " then the water should be considered part of the watercourse. (*Pomeroy, supra*, 124 Cal. at p. 624.) The *Pomeroy* court thus may have considered underflow to be a *sufficient* condition to establish the existence of a subterranean stream, but not necessarily an *essential* condition.

[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.

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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:

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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

V. INFORMATION

1. Newspaper Articles

INLAND VALLEY
Daily Bulletin
MONDAY | MAY 29, 2006

THE MAIL

Public TV series to feature water issues

I 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

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 WateReuse 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 WateReuse 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 Grebbien, general manager of the Orange County Water District.

Her agency began using reclaimed water in the 1970s to recharge a coastal basin threatened 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 Michalczyk 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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