

**Minutes**  
**CHINO BASIN WATERMASTER**  
**JOINT APPROPRIATIVE & NON-AGRICULTURAL POOL MEETING**  
August 13, 2009

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 August 13, 2009 at 10:00 a.m.

**APPROPRIATIVE POOL MEMBERS PRESENT**

Ken Jeske	City of Ontario
Mark Kinsey	Monte Vista Water District
Robert DeLoach	Cucamonga Valley Water District
Robert Tock	Jurupa Community Services District
Mike McGraw	Fontana Water Company
Robert Young	Fontana Union Water Company
Charles Moorrees	San Antonio Water Company
Raul Garibay	City of Pomona
Ron Craig	City of Chino Hills
Dave Crosley	City of Chino
J. Arnold Rodriguez	Santa Ana River Water Company
Anthony La	City of Upland

**NON-AGRICULTURAL POOL MEMBERS PRESENT**

Kevin Sage	Vulcan Materials Company (Calmat Division)
Mohamed El Amamy	City of Ontario

**Watermaster Board Members Present**

Jim Curatalo	Cucamonga Valley Water District
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**Watermaster Staff Present**

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

**Watermaster Consultants Present**

Michael Fife	Brownstein, Hyatt, Farber & Schreck
Scott Slater	Brownstein, Hyatt, Farber & Schreck
Mark Wildermuth	Wildermuth Environmental Inc.

**Others Present**

David De Jesus	Three Valleys Municipal Water District
Marty Zvirbulis	Cucamonga Valley Water District
Doug La Belle	City of Chino Hills Consultant
Josh Swift	Fontana Water Company
John Mura	City of Chino Hills
Eunice Ulloa	Chino Basin Water Conservation District
Marv Shaw	Inland Empire Utilities Agency
Ryan Shaw	Inland Empire Utilities Agency
Sandra Rose	Monte Vista Water District

Chair Jeske called the Joint Appropriative and Non-Agricultural Pool Meeting to order at 10:02 a.m.

## **AGENDA - ADDITIONS/REORDER**

No additions or reorders were made to the agenda.

### **I. CONSENT CALENDAR**

#### **A. MINUTES**

1. Minutes of the Joint Appropriative and Non-Agricultural Pool Meeting held July 9, 2009

#### **B. FINANCIAL REPORTS**

1. Cash Disbursements for the month of July 2009
2. Watermaster Visa Check Detail for the month of June 2009
3. Combining Schedule for the Period July 1, 2008 through June 30, 2009
4. Treasurer's Report of Financial Affairs for the Period June 1, 2009 through June 30, 2009
5. Budget vs. Actual July 2008 through June 2009

*Motion by DeLoach, second by Garibay, and by unanimous vote – Non-Ag concurred  
**Moved to approve Consent Calendar item A through B, as presented***

### **II. BUSINESS ITEM**

#### **A. NOTICE OF INTENT TO PURCHASE**

Mr. Manning stated as part of the Peace II Agreement in the purchase of the Overlying Non-Agricultural water one of the requirements was to issue an official notice of Intent to Purchase. This is the water that is the subject of the auction. Counsel Fife stated the issuance of the notice which states the first payment of the water must be tendered to the Non-Agricultural Pool within 30 days of the issuance of the notice. The intent is to use the proceeds from the auction to make that payment. Staff has proposed to put the purchase date out as far as possible and still be in compliance with the Purchase and Sale Agreement due to not knowing the exact date of the auction; the proposed date is December 18, 2009. Counsel Fife stated the primary issue is that the notice has to identify how the water will be used. The discussions have been that the auction will be for 36,000 acre-feet. The agreement in Peace II stated that the Appropriative Pool would be able to purchase all water in storage as of June 30, 2007. On June 30, 2007 there is actually 38,652 acre-feet in that account. The question is what amount the Appropriative Pool wants to use for the auction. The notice indicates the entire amount because staff has not been given direction otherwise. Mr. Manning stated in the preparation of the due diligence package which will go out as part of the auction will need to have the acre-feet of water identified. A discussion regarding this item ensued.

*Motion by DeLoach, second by Crosley, and by unanimous vote – Non-Ag noted this was for information only*

***Moved to place the 2,652 acre-feet toward an account dedicated to desalter replenishment and the balance of 36,000 acre-feet toward the auction process and to approve the Notice of Intent to Purchase to reflect distribution of water as noted in motion, as presented***

#### **B. MEMORANDUM OF UNDERSTANDING**

Mr. Manning stated this item has commonly been referenced as Plan B. Staff is looking for discussion and possible direction as to what staff is being asked to do. Staff would entertain a motion to allow staff to draft an alternative plan to the auction. Mr. Kinsey stated at the last Appropriative Pool meeting there was consensus as to the approach that would be taken in the event of a failed auction. That process would be for the Appropriative Pool to acquire the water based on pre-agreed to formula and have Watermaster hold it in trust based on the belief that it would be auctioned off at a later date within a defined time period. Mr. Kinsey inquired as to what is needed from this Pool to draft the MOU. Mr. Manning stated based upon those terms, Watermaster staff will draft an MOU based on the terms specified. A discussion regarding this matter ensued. Mr. Kinsey inquired as to how long this water might be held in trust to allow an

auction or an alternative use for the water to be developed. It was decided the water will be held for 3 years in trust and will be recorded and held separately for all accounting purposes. It was asked that the MOU be drafted and would be distributed as soon as possible for review. A discussion regarding export and storage ensued.

*No motion was made.*

#### **C. MEETING SCHEDULES**

Chair Jeske stated this item was put on the agenda by the Appropriative Pool chair and is a potential outcome of a series of meetings that have been informally held by Appropriators. This issue was raised a few times by various parties during the discussions regarding governance. The Pool members have spent time discussing improvements that could be recommended to the governance system to help make the processes work better. Chair Jeske noted this item and the next item regarding open meeting rules are the recommendations from those informal meetings/discussions. Chair Jeske stated this item has been discussed with the CEO of Watermaster to make sure there is no staff impact at Watermaster. Chair Jeske stated by amending the schedules of meetings which would provide some more separation between the different levels of policy making at Watermaster so there would be opportunity for discussion and/or revisions of materials that are made at one meeting prior to being submitted to the Watermaster Board. Chair Jeske stated the first recommendation would be to move the Appropriative Pool up a week. The second recommendation would be to move the Advisory Committee meeting up two weeks. A discussion regarding these recommendations ensued. Mr. Manning stated another recommendation at those informal meetings was to move Watermaster staff to the audience as well as our engineering consultant to allow four more seats for Appropriators at the table to allow for additional dialogue. Mr. Manning noted the separate and distinct agenda packets that were sent out this month for the Pools. This meeting packet change will allow for changes to be made to the individual packets to properly reflect amendments/recommendations made at prior meetings. A discussion regarding the scheduling of meeting dates including having the CEO reviewing the package agenda with the each appropriate chair ensued.

*Motion by DeLoach, second by Craig, and by unanimous vote – Non-Ag concurred with the stipulation to review the schedule*

***Moved to change the Appropriative and Non-Agricultural Pool meeting to the first Thursday of every month at 1:00 p.m. starting at the September meeting, as presented***

*Motion by DeLoach, second by Kinsey, and by unanimous vote – Non-Ag concurred*

***Moved to recommend to the Advisory Committee members to move their meeting up one week to the third Thursday of the month starting at the October meeting, as presented***

#### **D. OPEN MEETING RULES**

Chair Jeske stated part of the discussion from the informal meetings dealt with open meeting conduct through the process. Mr. Manning stated there are references throughout the Judgment and other pertinent documents regarding the Brown Act or some other source to be followed by Watermaster. There is no clear statement that Watermaster must follow the Brown Act. Chair Jeske noted during the discussions a lot more was learned about the actual Brown Act and what it pertains to which goes far beyond conducting a meeting. Several items contained in it just do not apply to Watermaster and because of our unique nature some things just can't be applied. Chair Jeske stated because of these discussions were that Watermaster should come up with its own standards for meeting rules and then run those through the process. The committee instructed staff and counsel, if needed, to begin working on open meeting rules and bring back recommendations through the open process. A discussion regarding this matter ensued. Mr. Manning stated this is perfect timing to do start on this request because staff has already

begun, as mentioned at other meetings, a Watermaster Policy Manual and this would blend in perfectly with that.

*Motion by Kinsey, second by DeLoach, and by unanimous vote – Non-Ag concurred*  
***Moved to approve staff and counsel to begin working on open meeting rules, as presented***

#### **E. DYY EXTENSION**

Mr. Manning stated this item has been through the Watermaster process previously and is being brought back before this committee again for consideration. Last May this item was on the agenda and discussed at length and at that meeting this committee asked it be tabled to allow meetings to take place with the Metropolitan Water District (MWD) to possibly get an extension of time. This extension would allow discussions to take place regarding a different concept for storage programs within the Chino Basin. Those discussions have taken place with MWD in person and with several phone calls regarding the potential extension of time. MWD is not in the position at this time to give an extension on the existing proposal that requires Watermaster to take action on this storage approval before September 1, 2009. Staff is cognizant of the fact that there are two existing issues within the agreement between the three municipal water districts that are inconsistent with the Peace Agreement. Two items are the losses issue and the quid pro quo of storage for subsidy. Discussions have taken place with some of the parties regarding those issues and Watermaster staff feels those issues can be solved internally and discussions to do that have begun. Watermaster staff is recommending the Appropriative Pool and the Non-Agricultural Pool approve the establishment of the storage program as requested by the three municipal water districts as outlined in the May, 2009 staff report and documents and authorize staff to implement those documents prior to the September 1, 2009 deadline. Mr. Manning stated discussions will continue with MWD and the three municipal water districts. This would allow Watermaster to not jeopardize the LRP subsidies for the Desalter Authority. A lengthy discussion regarding this issue ensued. Counsel Fife noted a hearing with Judge Wade is scheduled for September 17, 2009 and any last documents that need approval could be done prior to Judge Wade retiring. Mr. Kinsey discussed conditional approval for this document from the Watermaster Board and a discussion ensued. Chair Jeske noted the issues raised during discussions are the LRP credits, storage and losses, and the quantity cap which would change the 100,000 acre-feet to 150,000 acre-feet. Mr. DeLoach formed a motion and a discussion regarding that motion ensued. Counsel Fife noted Watermaster is going to need assistance from Inland Empire Utilities Agency to work with MWD on this matter.

*Motion by DeLoach, second by Crosley, and by majority vote – Non-Ag concurred – Kinsey voted no*

***Moved to approve the application including the extension on the program to 150,000 acre-feet with the workout to resolve these issues prior to the Watermaster Board meeting and if not worked out by that meeting, it will be worked out by the September 17, 2009 court hearing, as presented***

### **III. REPORTS/UPDATES**

#### **A. WATERMASTER GENERAL LEGAL COUNSEL REPORT**

##### **1. August 11, 2009 Hearing**

Counsel Fife stated the August 11, 2009 hearing took place and went very well. The hearing concerned the ongoing status report of the OBMP, Program Elements 7, 8, and 9, and the approval of the Watermaster's motion to approve the template Storage & Recovery Agreement. A proposed order was submitted which was worked out in advance and the judge did sign the revised order as submitted and notice was provided to the parties. Counsel Fife stated a few items did come up at the hearing because of losing Judge Wade to retirement regarding transitioning into another judge. Counsel Fife commented on Judge Wade's recommendations for the new judge transition. There is another hearing scheduled for September 17, 2009 if it is needed and can be cancelled if it is not needed. Counsel Fife

offered comment on a case management order that would be submitted to Judge Wade which would serve as a signal to the next judge. This case management order could let the court know where Watermaster is on various matters. This order will go through the Watermaster process.

2. Auction Update

Counsel Fife stated since this auction is on such a tight time frame an auction update will be kept on all the agendas so the parties know what is happening. FTI was hired and there was a workshop with FTI to cover how the auction will proceed in a logistical fashion. A due diligence package and marketing materials are now being put together that can be sent out to potential bidders. A strategy is being worked on as to how to go about the marketing of the auction with FTI. Staff is looking at the auction being held in the last week of October. A discussion regarding the auction and the bidders ensued. Mr. Manning offered comment on possible potential bidders and what the due diligence package will look like.

**B. ENGINEERING REPORT**

1. Recharge Master Plan Update

Mr. Wildermuth stated Wildermuth Environmental staff is working diligently on the Recharge Master Plan. A meeting with Black & Veatch took place last month to go over a plethora of supplemental water recharge projects and those will be brought back through the Watermaster process in September. Mr. Wildermuth stated with regard to the modeling work that has been being worked on to optimize recharge and pumping is almost complete. A new Material Physical Injury report has been created for Peace II so that it could be used in CEQA.

2. Balance of Recharge & Discharge Discussion

Mr. Wildermuth stated Watermaster is obligated to do the balance of recharge and discharge report every other year and Wildermuth staff will be working with Watermaster staff on trying to get a memo distributed for discussion next month. Mr. Wildermuth noted after discussions have taken place and any changes that need to be made are done, it will then be finalized. Mr. Wildermuth stated Watermaster has complete control and discretion on supplemental recharge in the Chino Basin pursuant to the Peace Agreement and there are certain issues in the Peace Agreement that Watermaster has to contend with. One of those issues is the 6,500 acre-foot MZ1 recharge commitment every year. That amount accrues annually if it is not satisfied in MZ1 area; then the balance of recharge and discharge has to be done after that.

Mr. Wildermuth stated Wildermuth Environmental produced Task 5 memorandum which talked about the projected groundwater production in the basin using the parties' projections from last year. Those projections have been analyzed to figure out what the replenishment requirements are going to be under various scenarios, including the recharge of recycled water. The last version was produced in April and it has subsequently been modified but did not get reprinted. Comments have been received from Inland Empire Utilities Agency in July from the April release and now that those have been received staff will be working to complete this task. A discussion on Mr. Wildermuth's report ensued.

**C. FINANCIAL REPORT**

1. Year End Project/Budget Update

Ms. Rojo advised the pools that all water activity reports had been sent out plus some have already been received back. We are looking to receive back all of the water Activity Reports by the end of the week and staff is looking forward to the holiday the assessment package workshop in early September.

3. Year End Audit Update

Ms. Rojo Stated that Watermaster's fiscal year ended June 30, 2009 and our annual audit is currently under way. If anyone has any questions or issues regarding Watermaster's financial activities, please see Ken Manning.

**D. CEO/STAFF REPORT**1. Legislative Update

Mr. Manning stated now that the state budget has been approved, it appears there is certain consensus that the water issues are taking front and center stage in Sacramento. There are five separate bills that have been developed as part of a master water plan to resolve Delta issues and water problems in the State of California. Those five bills are being reviewed starting next week with a joint committee meeting between the assembly and senate. This first meeting will be the start of a series of meetings and will take approximately four weeks to resolve. There are still discussions on what the joint committee will look like in terms of who will sit on the committee. A discussion regarding this matter ensued and Mr. Manning noted he will send out the five bills to all the parties later today.

Mr. Manning stated he had an opportunity to meet face-to-face with former Senator Mike Machado and Tom Zukerman who represent interests in the Delta. Mr. Manning commented on the topics discussed at this meeting.

2. Recharge Update

No comment was made regarding this item.

**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. CONFIDENTIAL SESSION - POSSIBLE ACTION**

Pursuant to the Appropriative and Non-Agricultural Pool Rules & Regulations, a Confidential Session may be held during the Watermaster Pool meeting for the purpose of discussion and possible action.

No confidential session was called.

**VIII. FUTURE MEETINGS**

August 11, 2009	9:30 a.m.	Watermaster Hearing @ San Bernardino Court
August 13, 2009	8:00 a.m.	MZ1 Technical Committee Meeting @ CBWM
August 13, 2009	10:00 a.m.	Appropriative & Non-Agricultural Pool Meeting @ CBWM
August 18, 2009	9:00 a.m.	Agricultural Pool Meeting @ IEUA
August 27, 2009	8:00 a.m.	IEUA Dry Year Yield Meeting @ CBWM
August 27, 2009	9:00 a.m.	Advisory Committee Meeting @ CBWM
August 27, 2009	11:00 a.m.	Watermaster Board Meeting @ CBWM

The Appropriative Pool and Non-Agricultural Pool meeting was dismissed by Chair Jeske at 11:50 a.m.

Minutes Joint Appropriative & Non-Agricultural Pool Meeting

August 13, 2009

Secretary: \_\_\_\_\_

Minutes Approved: September 3, 2009