

# **BOARD BRIEFING 2014**

February 24, 2014

## **Chino Basin Adjudication Legal Framework**

## **A. Judgment: (Restated) Major Concepts**

### **I. Underlying Litigation**

- a. Complaint sought “adjudication of water rights (*determine relative priority*), injunctive relief, and the imposition of a physical solution” (ital clarification added).
- b. Physical Solution is a term of art in California Water Law. It is a defense to a request for an injunction filed by paramount water rights. A Physical Solution exists where a junior user can implement a measure or set of measures that fully mitigate harm to the paramount water right. Full mitigation is generally equated to avoidance of material injury or substantial expense. If a junior priority user can prove the existence of a Physical Solution, they may continue to pump groundwater.

### **2. Customary Goals of Adjudication.**

- a. Fill the void in groundwater management.
- b. A final determination of all rights to waters of Chino Groundwater Basin. End conflict among respective water right holders.
- c. Certainty in rights and rules, facilitating economic investment, land use and water supply planning.
- d. Efficiency through Court administration of groundwater rights.

### **3. Stipulated Judgment.**

- a. Contract among the Parties.

- (i) Settlement Agreement.
  - (ii) Interpreted as a contract - plain meaning of the language controls.
- b. Judicial Approval.
- (i) Subject Matter Jurisdiction. The Court has jurisdiction over the “subject matter” of the action. (Paragraph I) The subject matter includes Storage and Withdrawal of Stored Water.
  - (ii) Personal Jurisdiction. The Court has jurisdiction over the Parties and their successors and assigns. (Paragraph I.)
  - (iii) Court approves the Settlement (Judgment) as being consistent with the provisions of California Constitution, Article X, Section 2. and **adopts** the findings and conclusions of law.
- c. Administration. The Judgment is administered pursuant to its terms, as a contract among the Parties and as it may be construed by the Court consistent with the terms of the contract and as may otherwise be required by law.
- (i) Court injunction prohibits actions inconsistent with the Judgment. Injunction is enforceable by the power of “contempt.”
  - (ii) Court Maintains Continuing Jurisdiction.
    - (a) Unusual for Judgments generally.
    - (b) Customary and Likely Required in adjudications. (Cal, Const, Art. X, § 2)

- (c) Paragraph 15 provides for a “contractual” reservation from the court’s jurisdiction. Is this a matter of “contract” or “subject matter jurisdiction”? If the former, the Court is precluded from addressing a subject within the reservation? If it is the latter, does the Court’s authority include the inherent right to modify the contract, if required to impose a Physical Solution or to improve the existing one?
  - (iii) Watermaster . A special master charged with the duty of administering the Judgment under the contractually ascribed terms, subject to the Court’s continuing jurisdiction.
    - (a) Watermasters take various forms and shapes and customarily serve at the discretion of the Court. Its actions are reviewable either under Paragraph 15 or Paragraph 31.
    - (b) Customary function is to monitor, record, report, determine (adjudicate) facts.
    - (c) CBWM – a polycentric” form of governance. (Bloomquist)
- 4. Apportionment of Safe Yield among members of three pools.
  - a. Allocation of Safe Yield to overlying parties, remaining share of Safe Yield to Appropriators. (§§8, 9, 13, 44)
  - b. Successors or newly producing parties may intervene into the proper Pool. (§ 60)
  - c. Appropriative Pool Pooling Plan anticipates conversion of lands in agricultural production to municipal service and

provides for reallocation of Safe Yield to meet such future demands. (Exhibit “H,” ¶ 10)

5. Implementation of a Physical Solution. (¶ 39-57))

a. Physical Solution Under the Judgment.

“The purpose of these provisions is to establish a legal and practical means for making the maximum reasonable and beneficial use of the waters of Chino Basin by providing the optimum economic, long-term, conjunctive utilization of surface waters, ground waters and supplemental water, to meet the requirements of water users having rights in or dependent on Chino Basin.” (Paragraph 39.)

b. Need for Flexibility to “maximize use.” (Paragraph 40.)  
Court’s powers are available under its reserved jurisdiction to “supplement” Watermaster.

c. In order to maximize beneficial use, consistent with Constitutional requirement, the Physical Solution requires an Optimum Basin Management Program. (¶ 41)

(i) Fundamental premise that all users allowed to pump sufficient waters to meet requirements. (¶ 42)

(ii) To the extent pumping exceeds Safe Yield, the Pools will provide funds to enable Watermaster to conduct replenishment. (¶¶ 42, 45)

(iii) Must take into account both water quantity and water quality considerations.

d. Management of Basin under Watermaster control.

- (i) No storage other than through written agreement with Watermaster. (¶¶ 11, 12, 14; Exhibit “I,” ¶ 4)
- (ii) Watermaster must approve assignments, transfers and leases. (Exhibit “H,” ¶ 13)

6. Watermaster administration of Judgment

- a. Polycentric – Interest Based Management. Division of management responsibility among competing interests, subject to Court review.
- b. Structure.
  - (i) Pools. (¶¶ 30-39)
    - (a) Implement the Restated Judgment.
    - (b) Make recommendations to the Advisory Committee. (¶ 38(a))
    - (c) May hire own counsel. (¶ 39(c))
    - (d) May meet in executive session.
  - (ii) Advisory Committee. (¶¶ 30-39)
    - (a) Interest-based representation. (¶ 38(b).)
    - (b) Power of the purse – approve annual budget. (¶ 30)
    - (c) May hire own counsel. (¶ 39(c))
    - (d) May meet in executive session.
    - (e) Minimum voting power. ¶ 34)
      - (1) Overlying (Agricultural) Pool - 20%.

- (2) Overlying (Non-Agricultural) Pool - 5%.
      - (3) Appropriative Pool - 20%.
    - (f) Majority Vote v. Volume Vote.(¶ 38(b))
      - (1) Advisory Committee recommendations.
      - (2) Advisory Committee mandate - 80% vote.
  - (iii) Board (¶¶ 17-29)
    - (a) Vision, policy direction, independence.
    - (b) Rules and Regulations.
    - (c) Acquire facilities.
    - (d) Employment of Experts and Agents.
    - (e) Measuring Devices.
    - (f) With advice from the Advisory Committee, the Board “is granted discretionary powers” to develop an OBMP. (¶ 41)
    - (g) Watermaster Board may approve, deny and refer matters to the Pools and the Advisory Committee.
    - (h) Manage staffing and administration.
    - (i) Nine-member Board since 1999.
  - c. Administration funded through production assessments. (¶¶ 51-56)
7. Restated Judgment, adopted in September 2012, incorporates all prior Judgment amendments.

## **B. Peace Agreement: Challenges from 1978-2000; Major Concepts**

- I. The Peace Agreement is a contract among the Parties – not with Watermaster. Watermaster was “ordered” to proceed pursuant to its terms.
  - a. Resolves disputes as to power and authority Watermaster regarding recharge, ownership of property, water transfers, storage, yield management, land use conversion, assessments, and the OBMP. (Peace Agreement, Recitals, pp. 2-3)
  - b. Parties consent to Watermaster performance to facilitate implementation of the OBMP.
    - (i) Recharge and Replenishment
      - (a) All recharge with Supplemental Water subject to Watermaster approval. (Peace Agreement, ¶ 5.1(a))
      - (b) Watermaster assumes Best Efforts obligations to: protect and enhance Safe Yield; ensure recharge capacity to meet goals of OBMP; achieve long term balance within the Basin; recharge areas where groundwater level declines may result in MPI; maintain long-term hydrologic balance between recharge and discharge in all areas; coordinate construction of facilities necessary to allow recharge identified OBMP Implementation Plan. (Peace Agreement, ¶ 5.1(e))
      - (c) Watermaster obligation to wet recharge 32,500 AFY of Supplemental Water within MZI over five-year period. (Peace Agreement, ¶ 5.1(g))

(ii) Storage and Recovery

- (a) All storage capacity is subject to Watermaster regulation and control. (Peace Agreement, ¶ 5.2(a)(i))
- (b) Extension of prior Local Storage agreements. (Peace Agreement, ¶ 5.2(b)(i))
- (c) 50,000 AF cap on new Local Storage agreements. (Peace Agreement, ¶ 5.2(b)(iv))
- (d) First in time priority scheme for Local Storage agreement applications. (Peace Agreement, ¶ 5.2(b)(vii))
- (e) After 2005, 2% loss rate on water in Local Storage. (Peace Agreement, ¶ 5.2(b)(xii))
- (f) Target for 500,000 AF stored pursuant to Storage and Recovery Programs. (Peace Agreement, ¶ 5.2(c))

(iii) Transfers

- (a) Watermaster must approve Transfers so long as they will not result in MPI. (Peace Agreement, ¶ 5.3(b))
- (b) Producers may lease water rights to offset over-Production. (Peace Agreement, ¶ 5.3(c))
- (c) Unproduced Overlying (Agricultural) Pool water transferred to Appropriative Pool through one-time transfer and ongoing Early Transfer. (Peace Agreement, ¶¶ 5.3(f), (g))

- (iv) Assessments, Credits and Reimbursements
  - (a) Pomona credit for anion exchange project. (Peace Agreement, ¶ 5.4(b))
  - (b) Credit to Kaiser for Desalter Recharge water. (Peace Agreement, ¶ 5.4(c))
  - (c) Other parties may apply for OBMP Assessment credits. (Peace Agreement, ¶ 5.4(d))
- c. Desalters
  - (i) OBMP requires construction and operation. (Peace Agreement, ¶ 7.1)
  - (ii) Chino I Desalter to be expanded, Chino II Desalter and Future Desalters to be constructed by IEUA and WMWD.
  - (iii) Desalter requirements assume external funding. (Peace Agreement, ¶ 7.4)
  - (iv) Replenishment water is required for Desalter production, and paragraph 7.5 provides the hierarchy through which replenishment water will be provided. (Peace Agreement, ¶ 7.5)
  - (v) Reserved requirement for Future Desalters.
- d. Modifications to the Judgment
  - (i) Overlying (Non-Agricultural) Pool rights may be transferred or leased within the Pool or to Watermaster. (Peace Agreement, ¶¶ 4.4(a), (b))
  - (ii) Further modifications to land use conversion allocations. (Peace Agreement, ¶ 4.4(c))

- (iii) New Yield will be considered as part of Operating Safe Yield. (Peace Agreement, ¶ 4.5)
  - e. Overlying (Agricultural) Pool provisions
    - (i) Appropriative Pool agrees to pay Overlying (Agricultural) Pool expenses. (Peace Agreement, ¶ 5.4(a))
    - (ii) Overlying (Agricultural) Pool agrees to forego any compensation from Storage and Recovery Programs. (Peace Agreement, ¶ 6.3)
    - (iii) Overlying (Agricultural) Pool members may enter into Voluntary Agreements for service by members of Appropriative Pool. (Peace Agreement, ¶ 5.3(i))
  - f. 30-year term (Peace Agreement, ¶ 8.2)
    - (i) One mandatory 30-year extension on same terms upon unilateral election of either of Appropriative or Overlying (Agricultural) Pool prior to end of 25th year; any further extension must be through consensual agreement. (Peace Agreement, ¶¶ 8.4, 8.6)
    - (ii) Parties may meet and confer during 25th year to discuss new or modified terms, but modification or amendment cannot be a precondition to 30-year mandatory extension. (Peace Agreement, ¶ 8.3)
- 2. Watermaster is not a party, but proceeds in a manner consistent with the Peace Agreement as a matter of discretion and Court order. (Peace Agreement, Exh. "A")

## C. OBMP: Goals; Implementation Plan

- I. OBMP originates in Paragraph 41 of the Judgment:
  - a. Watermaster Board is granted discretionary powers to develop “an optimum basin management program for the Chino Basin, including both water quantity and water quality considerations. Withdrawals and supplemental water replenishment of Basin Water, and the full utilization of the water resources of the Chino Basin, must be subject to procedures established by and administered through Watermaster with the advice and assistance of the Advisory and Pool Committees composed of the affected producers. Both the quantity and quality of said water resources may thereby be preserved and the beneficial utilization of the Basin maximized.” (Restated Judgment, ¶ 41.)
2. OBMP as a Foundational Planning / Reference Document
  - a. Four Goals (OBMP Phase I Report, pp. 3-1 – 3-4):
    - (i) *Enhance Basin Water Supplies*: enhance recharge of storm water runoff, increase the recharge of recycled water, develop new sources of supplemental water, promote the direct use of recycled water, promote the treatment and use of contaminated groundwater, reduce groundwater outflow, and re-determine safe yield.
    - (ii) *Protect and Enhance Basin Water Quality*: treat contaminated groundwater to meet beneficial uses, monitor and manage the Basin to reduce contaminants and improve water quality, manage salt accumulation, and address problems posed by specific contaminants.

- (iii) *Enhance Management of the Basin:* develop policies and procedures that will encourage stable, creative and fair water resource management, optimize the use of local groundwater storage, develop or encourage location of production and facilities to ensure maximum and equitable availability of groundwater and minimize land subsidence, and develop conjunctive use programs to optimize use of Basin.
- (iv) *Equitably Finance the OBMP:* equitable allocation of payment responsibility, establishment of incentives to increase water quality and recovery of value from storage space.

### 3. OBMP Implementation Plan

- a. Attachment to the Peace Agreement and a portion of the binding Agreement. The Parties *did not* agree to adopt and contractually agree to the OBMP as opposed to the OBMP Implementation Plan.
- b. Nine Elements:
  - (i) Develop and Implement Comprehensive Monitoring Program.
  - (ii) Develop and Implement Comprehensive Recharge Program.
  - (iii) Develop and Implement Water Supply Plan for the Impaired Areas of the Basin.
  - (iv) Develop and Implement Comprehensive Groundwater Management Plan for Management Zone I.

- (v) Develop and Implement Regional Supplemental Water Program.
- (vi) Develop and Implement Cooperative Programs with the Regional Water Quality Control Board, Santa Ana Region (Regional Board) and Other Agencies to Improve Basin Management.
- (vii) Develop and Implement Salt Management Program.
- (viii) Develop and Implement Groundwater Storage Management Program.
- (ix) Program Element 9 – Develop and Implement Storage and Recovery Programs.

**D. Chino Basin Desalter Authority (“CDA”) is Established and Acquires Desalters and All Rights and Responsibilities from SAWPA Project Committee 14.**

1. Formed under a Joint Exercise of Powers Agreement (“JPA”) in September 2001, and comprising of: City of Chino, City of Chino Hills, City of Norco, City of Ontario, IEUA, Jurupa CSD, Santa Ana River Water Company, Western Municipal Water District.
2. Manages the production, treatment, and distribution of water produced by the Desalters

**E. First Amendment to Peace Agreement**

1. Some Parties contended that Peace Agreement’s Salt Credits were to benefit non-discharging appropriators for obligation to provide share of storm flow recharge New Yield for Desalter Replenishment. (First Amendment to Peace Agreement, Recital B.)
2. The Basin Plan Amendment’s inclusion of Maximum Benefit standards meant that it was not necessary to create a Salt Credit offset system.
3. The Parties agreed that if stormwater New Yield was excepted from Desalter Replenishment requirements, Salt Credits could similarly be eliminated. (First Amendment to Peace Agreement, Recital D, ¶ 1.)
4. Stormwater New Yield, anticipated to average 12,000 AFY, was dedicated to Appropriators according to percentages of Safe Yield, and excepted from Desalter Replenishment under Peace Agreement § 7.5(b). (First Amendment to Peace Agreement, ¶ 2.)

**F. Basin Plan Amendment (RWQCB Resolution R8-2004-0001)**

1. Includes “Maximum Benefit” standards in addition to antidegradation requirements.
  - a. Recommended by Watermaster in 2002.
  - b. Facilitates the implementation of the OBMP and relies on the OBMP, rather than water quality based anti-degradation standards, as the primary mechanism to protect the health of and maximize the beneficial uses within the Basin.
  - c. So long as Maximum Benefit requirements (OBMP implementation) are fulfilled, the RWQCB will evaluate the Basin under those standards; if they are not fulfilled, the RWQCB will revert to prior water quality standards.
2. Further desalter construction required to meet obligations.
  - a. Recharge of recycled water was contingent upon expansion and design of Chino 1 and 2 desalters. (Attachment to Resolution R8-2004-0001, Table 5-8a)
  - b. Required submittal of plan and schedule for future desalters to the RWQCB by October 1, 2005. (Attachment to Resolution R8-2004-0001, Table 5-8a)
  - c. Required IEUA wastewater quality improvement plan and schedule if IEUA’s effluent discharge exceeded thresholds. (Attachment to Resolution R8-2004-0001, Table 5-8a)
3. Required blending as a condition of recharge of recycled water. (Attachment to Resolution R8-2004-0001, Table 5-8a)
4. Required achievement and maintenance of Hydraulic Control. (Attachment to Resolution R8-2004-0001, Table 5-8a)

## **G. Peace II: Challenges from 2000-2007; Major Concepts**

- I. Challenge. Future desalters presented a substantial capital and o&m expense to be borne by the parties to the Judgment. A legal structure had to be negotiated to establish a foundation for the expense and to apportion replenishment and associated capital costs.
2. Major Concepts.
  - a. Peace II Measures in further implementation of OBMP.
    - (i) OBMP Implementation Plan supplemented to reflect that WMWD, working alone or with City of Ontario and JCSD, would exercise good faith and reasonable best efforts to arrange for the design, planning and construction of Future Desalters to obtain Hydraulic Control, Re-Operation and support the Future Desalters; (Peace II, ¶ 5.2)
    - (ii) Watermaster's election to exercise its reserved discretion as provided in the Judgment, the Peace Agreement and the OBMP Implementation Plan, to amend the Watermaster Rules and Regulations;
    - (iii) Watermaster's execution and Court approval of the proposed Purchase and Sale Agreement with the Non-Agricultural (Overlying) Pool;
    - (iv) Watermaster's and the Court's approval of the proposed amendments to the Judgment;
    - (v) Watermaster's approval of and further agreement to act in accordance with the Peace II Agreement, including the provisions related to Future Desalters;

- (vi) Watermaster's and the Court's approval of the 2007 Supplement to the OBMP Implementation Plan; and
  - (vii) Execution of the proposed Second Amendment to the Peace Agreement.
- b. Future Desalters
- (i) Goal of increasing Desalter production capacity to 40,000 AFY by 2012. (Peace II, ¶ 5.1)
  - (ii) Watermaster will ensure that location of production facilities will achieve both Hydraulic Control and maximize yield enhancement. (Peace II, ¶¶ 5.4. 5.8(a)(i))
  - (iii) WMWD's obligation to develop or purchase Future Desalter Water contingent on cost of water not projected to exceed a set MWD rate benchmark. (Peace II, ¶ 5.7)
  - (iv) Future Desalters entitled to first priority for allocation of 400,000 AF controlled overdraft, so long as prescribed wells produce half of Future Desalter water. (Peace II, ¶ 5.8(a)(ii))
  - (v) WMWD is to minimize exports of Future Desalter production. (Peace II, ¶ 5.8(b))
  - (vi) To facilitate Hydraulic Control through Basin Re-Operation, additional sources of water made available for Desalter Production/Replenishment obligation. Watermaster will levy assessments to make up any required difference. (Peace II, ¶¶ 6.2(a), (b))
- c. Yield Accounting

- (i) New Yield attributable to Desalters will not be factored into Safe Yield. (Peace II, ¶ 7.1)
- (ii) Watermaster, Appropriative Pool and WMWD to agree on apportionment of 400,000 AF controlled overdraft. (Peace II, ¶ 7.2)
- (iii) Watermaster will continue to assess a 2% loss on groundwater held in storage until substantial evidence exists to warrant the implementation of another loss factor. A 6% loss factor will be applied to the storage accounts of parties that have not contributed to the implementation of the OBMP as a Party to the Judgment and promised future compliance with the Watermaster Rules and Regulations. (Peace II, ¶ 7.4)

d. Recharge

- (i) Watermaster is to update and obtain Court approval of the Recharge Master Plan to address how the Basin will be contemporaneously managed to secure and maintain Hydraulic Control and subsequently operated at a new equilibrium at the conclusion of Re-Operation. (Peace II, ¶ 8.1)
  - (a) Updates to the Plan will be jointly approved by IEUA and Watermaster;
  - (b) “Plan will reflect an appropriate schedule for planning, design, and physical improvements as may be required to provide reasonable assurance that following the full beneficial use of the groundwater withdrawn in accordance with the Basin Re-Operation and authorized controlled overdraft, that sufficient Replenishment capability

exists to meet the reasonable projections of Desalter Replenishment obligations;”

- (c) Plan will be updated and amended as frequently as necessary with Court approval and not less than every five (5) years;
  - (d) Watermaster and IEUA will share costs of recharge facilities utilized for recharge of recycled water.
- (ii) Access to 400,000 AF is contingent upon an annual finding of substantial compliance with the Recharge Master Plan Update. (Peace II, ¶ 8.3)
  - (iii) 6,500 AFY Supplemental water recharge in MZI to continue for duration of Peace Agreement. (Peace II, ¶ 8.4(d))
- e. Amendment to the Peace Agreement to Increase the cap on Local Storage accounts to 100,000 AF. (Watermaster Resolution No. 07-05, Attachment “L” (Second Amendment to Peace Agreement))
  - f. Amendment of Rules and Regulations.
    - (i) Overlying (Agricultural) Pool Reallocation: mechanism for proportional reduction in reallocation to quantity of water available for Reallocation. (Watermaster Resolution No. 07-05, Attachment “F,” § I.A.)
    - (ii) Errors: four year limitations period for correction of errors in Assessment Package. (Watermaster Resolution No. 07-05, Attachment “F,” § III.A.)
  - g. Judgment Amendments

- (i) Overlying (Non-Agricultural) Pool rights may be transferred to Appropriative Pool members through Physical Solution Transfer mechanism. (Watermaster Resolution No. 07-05, Attachment “H,” Attachment “I”)
  - (ii) Addition of Overlying (Non-Agricultural) Pool Special Project OBMP Assessment. (Watermaster Resolution No. 07-05, Attachment “I”)
  - (iii) Amendment of ENGINEERING APPENDIX to account for Hydraulic Control and Re-Operation. (Watermaster Resolution No. 07-05, Attachment “J”)
- h. Purchase and Sale Agreement re Overlying (Non-Agricultural) Pool stored water.

## **H. Resolution 2010-04: Implementation of Peace II Agreement and Phase III Desalter Expansion**

- I. Watermaster determinations that:
  - a. CDA Emergency Response Plan, SEIR mitigation plans, and 2010 RMPU projects will not present threat of MPI;
  - b. Access to 400,000 will not be suspended so long as there is substantial compliance with Recharge Master Plan;
  - c. Upon completion of Desalter Phase III expansion, the Parties will be deemed to have satisfied all obligations arising from Peace Agreement, OBMP Implementation Plan, Peace II measures and all prior Court orders related to construction of Desalters;
  - d. Replenishment for Desalter production will be as provided in Peace Agreement, Section 6.2(b)(ii);
  - e. Watermaster will negotiate with the County of San Bernardino toward remuneration of incremental expenses of CDA operation associated with Chino Airport Plume;
  - f. WMWD has 24 months to determine whether to intervene into the Appropriative Pool or to assign its Desalter yield to a CDA member of the Appropriative Pool.
2. The Court approved Resolution in October 2011, and directed Watermaster to proceed pursuant to its commitments thereunder.

## **I. Court Administration: Continuing Jurisdiction and Review of Watermaster Actions.**

- I. Rules of Construction – Harmonizing the Legalese.
  - a. The Restated Judgment controls.
  - b. The Peace Agreements yield only to the Restated Judgment.
  - c. The Rules and Regulations implement the Restated Judgment, Peace and Peace II Agreements.
    - (i) Once approved by the Court may be modified by Watermaster.
    - (ii) Always yield to the Restated Judgment and the Peace Agreements.
    - (iii) Current Rules and Regulations (2001) do not include approved and ordered Peace II changes.
2. Paragraph 15 provides continuing jurisdiction to “make such further or supplemental orders or directions as necessary or appropriate for interpretation, enforcement or carrying out of this Judgment, and to modify, amend or amplify any of the provisions of this Judgment,” except:
  - a. Redetermination of Safe Yield for 10 years (expired 1988);
  - b. Allocation of Safe Yield among the Pools;
  - c. Determination of specific shares of Safe Yield and Operating Safe Yield as declared in Exhibits “D” and “E;” and
  - d. Modification of 85/15 Rule for first 10 years, and thereafter only with required party approval. (Restated Judgment, ¶ 15.)

3. Pursuant to Paragraph 31, “[a]ll action, decisions or rules of Watermaster shall be subject to review by the Court on its own motion or on timely motion by any party, the Watermaster, the Advisory Committee or any Pool Committee.”
  - a. Paragraph 15 contains procedure for noticed motion and hearing;
  - b. Court reviews questions at issue *de novo*;
  - c. Court’s decision is an appealable supplemental order. (Restated Judgment, ¶ 31.)

## **J. 2010 RMPU: Obligation, Purpose, Conclusions**

1. Obligation arises out of Peace II: “Watermaster will update and obtain Court approval of its update to the Recharge Master Plan to address how the Basin will be contemporaneously managed to secure and maintain Hydraulic Control and subsequently operated at a new equilibrium at the conclusion of the period of Re-Operation.” Peace II, ¶ 8.1
2. Condition Subsequent 8 required the 2010 RMPU to be submitted by July 1, 2010. Order Concerning Motion for Approval of Peace II Documents. (December 21, 2007) 8:21-23.
3. The 2010 RMPU was completed, but, based on the timing vis-à-vis extended deadline for 2010 Urban Water Management Plans, indicated that further work was necessary
4. IEUA did not approve the 2010 RMPU based on its belief that the water demand and production assumptions were overly conservative and should be re-evaluated with the completion of the parties’ UWMPs to avoid unnecessary expense to the parties
5. The Court approved the 2010 RMPU, but ordered additional work (Order Approving Watermaster’s Compliance with Condition Subsequent Number Eight and Approving Procedures to be Used to Allocate Surplus Agricultural Pool Water in the Event of a Decline in Safe Yield (October 8, 2010) p. 3):
  - a. (1) The Court finds that the 2010 updated Recharge Master Plan is responsive to the Court's December 21, 2007, condition subsequent number eight, and satisfies this condition.
  - b. (3) Watermaster is hereby ordered to convene the committee described in item 3 of section 7.1 of the updated RMP to develop the monitoring, reporting, and accounting

practices that will be required to estimate local project stormwater recharge and new yield.

- c. (4) Watermaster is hereby ordered to conduct further analyses as described in section 7.2 of the updated RMP of the Phase I through III projects to refine the projects, to develop a financing plan, and to develop an implementation plan.
- d. (5) By December 17, 2011, six months following completion of the parties UWMPs, Watermaster will report to the Court on any changes to the 2010 RMP necessitated by information received through the UWMPs. In this report Watermaster will also report on progress made under items (3) and (4) above, and will report on the status of IEUA's approval of the RMP.

## **K. 2013 Amendment to the 2010 RMPU: Scope, Fontana Challenge**

1. Watermaster convened a Steering Committee to assist in the preparation of the 2013 Amendment to the 2010 RMPU (“2013 RMPU Amendment”).
2. Watermaster reported to the Court in May 2012, pursuant to an extended deadline, as to any changes to the 2010 RMP necessitated by information received through the UWMPs, its progress on the 2013 RMPU Amendment, and IEUA’s participation in the Amendment process.
3. The 2013 RMPU Amendment included:
  - a. Engineering and economic analyses of the 2010 RMPU Phase I through III projects, along with additional projects suggested by the members of the Steering Committee pursuant to agreed upon evaluation and ranking criteria;
  - b. Recommendation of further analysis of sustainability projects and implementation of yield enhancement projects that are projected to develop up to 6,781 acre-feet per year of additional stormwater recharge and 4,936 acre-feet per year of additional recycled water recharge, at a projected total capital expense exceeding \$57 million.
  - c. Implementation and Financing Plans for the recommended projects; and
  - d. Monitoring, reporting and accounting practices required to estimate stormwater recharge and any resultant New Yield associated therewith, arising from compliance with the requirements of the RWQCB’s

permit for Municipal Separate Storm Sewer Systems (MS4s).

4. The City of Fontana opposed Section 5 of the 2013 RMPU Amendment, which included the monitoring, reporting and accounting practices required to estimate stormwater recharge and any resultant New Yield associated with compliance with the MS4 permit.
  - a. The City maintained that Section 5 should include language as the allocation of any such New Yield.
  - b. In September 2013, the City filed a Motion to Revise Section 5 of the 2013 Recharge master Plan Update and Restated Judgment.
  - c. Watermaster and the City stipulated to a continuance of the hearing on the City's Motion in order that Watermaster could convene a facilitated discussion process to determine whether the City's concerns could be resolved without a Court hearing.
  - d. After four meetings, the City indicated that it did not believe the facilitated process would lead to resolution of the City's concerns. The City's Motion is on calendar for hearing on April 4, 2014.
5. In December 2014, the Court approved the 2013 RMPU Amendment, excluding Section 5, as responsive to the Court's October 2010 Order.