



CHINO BASIN WATERMASTER

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STAFF REPORT

DATE: July 28, 2022
TO: Board Members
SUBJECT: 2020 OBMP CEQA Preparation Process (Business Item I.C.)
SUMMARY:

Issue: Monte Vista Water District, Monte Vista Irrigation Company, City of Ontario and City of Chino ("Four Appropriators") have expressed concerns about the budgeting of expenses that may be incurred pertinent to environmental review of the 2020 OBMP and request that Watermaster direct its General Counsel to prepare a written legal opinion on the justification of inclusion of these expenses in the annual budget. [Within WM Duties and Powers]

Recommendation: In lieu of directing General Counsel to provide an opinion:

1. Direct staff to meet with all interested stakeholders, including the Four Appropriators, to evaluate the current status of the 2020 OBMP, consider changes in circumstances, and gather stakeholder input.
2. Using input from the meetings with stakeholders, develop a project description for the 2020 OBMP PEIR and proceed with the effort within the approved budget.

Financial Impact: N/A

Future Consideration
Watermaster Board – July 28, 2022: Direction to staff

ACTIONS:
Watermaster Board – July 28, 2022:

Watermaster's function is to administer and enforce provisions of the Judgment and subsequent orders of the Court, and to develop and implement an Optimum Basin Management Program

BACKGROUND

The development of an OBMP is a discretionary power reserved to the Watermaster.

In 1998 the Court directed the commencement of an OBMP and the Inland Empire Utilities Agency began preparation of a Programmatic Environmental Impact Report (“PEIR”). Technical support of this effort, including work by Wildermuth Environmental, was in part, supported by assessments levied in accordance with the Judgment’s procedures.

In June of 2000 the Peace Agreement and a suite of projects under an OBMP Implementation Plan were approved by Parties to the Judgment. Subsequently, the Peace Agreement, the OBMP Implementation Plan and the OBMP were all approved by the Court and Watermaster was ordered to proceed in accordance with their terms. The certification of the Programmatic EIR for the 2000 OBMP was a condition for Court approval of the Peace Agreement.

The 2000 OBMP was first supplemented in 2007 in connection with the adoption of the Peace II Agreement, again with environmental review being completed by IEUA, with technical support from Wildermuth Environmental being funded by Watermaster Assessments. Further updates by way of two Addenda to the 2000 OBMP Programmatic EIR were completed in 2017 and again in 2021 allowing the study of effects local storage and leading to the Local Storage Limitation Solution (“LSLS”).

The existing PEIR is 22 years old and is stale for purpose of addressing current conditions in a manner sufficient to secure State and Federal funding and to properly inform the Court, the parties to the Judgment, and the public generally of potential environmental impacts attributable to new projects. Before embarking on new implementation measures a refreshed environmental review can address current conditions and include or enable subsequent project level approval for the benefit of basin stakeholders.

A draft Subsequent Environmental Impact Report on the 2020 OBMP was prepared in 2020, however IEUA resolved not to certify it because of concerns expressed by one stakeholder, resulting in a shift in focus to approving only environmental coverage of the LSLS. Ultimately, the LSLS was approved by Watermaster and the Court in 2021.

The State of California is currently facing record shortage conditions. The California State Water Project is meeting only 5% of contractor demands, the Bureau of Reclamation has declared shortage conditions on the Colorado River for the first time in history, the Metropolitan Water District has imposed water conservation mandates as has the California State Water Resources Control Board. Moreover, the Inland Empire continues to require water for the people and economy. Cooperative regional solutions like the OBMP play a critical role in meeting these needs.

According to the Restated Judgment the budget for annual Watermaster expenses is approved by the Advisory Committee (AC) and adopted by the Board; the effort to complete the 2020 OBMP CEQA documentation is budgeted in FY 2022/23, was approved by AC and adopted by Watermaster Board in May 2022.

Watermaster’s power to levy assessments is derived from the Judgment. Assessments are levied in November after the Assessment Package is approved by the Board. While the effort to complete CEQA review for the 2020 OBMP is included in the FY 2022/23 Budget, no assessments have yet been levied for these budgeted costs.

DISCUSSION

Four Appropriator Position

On May 2, 2022 the Four Appropriators wrote to CFO Joe S. Joswiak concerning the FY 2022/2023 budget regarding the inclusion of “scoping items related to implementation of projects” included in the

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OBMP 2020 Update Report, which was adopted by the Board in October of 2020 (Attachment 1.) The letter references the timing of potential expenditures in the amount of \$276,799 arising from a proposed scope of work related to environmental review, technical work and legal support and objects to the items being included in the budget.

The principal grounds for objecting to inclusion of the expenses in the budget are that if amendments to the Peace Agreement and the Implementation Plan are proposed, they require unanimous consent, and that Watermaster is not a public agency with CEQA responsibilities and therefore expenditures of funds are not appropriate.

The Four Appropriators believe that CEQA review is not warranted before an OBMP Implementation Plan (IP) update is drafted first and a Peace Agreement Amendment is negotiated, and believe it is better to reconvene the IP drafting process first;

On May 25, 2022 the Four Appropriators again wrote in follow-up to the May 2, 2022 letter desiring a response to the questions posed therein and further requesting a "Written Opinion from Watermaster General Counsel that identifies both the CEQA "project" description and provision(s) in the Chino Basin Judgment and/or Peace Agreements, and any other agreement among the parties to the Judgment which authorizes such expenditures." (Attachment 2.)

The Four Appropriators further expressed a concern that funding CEQA consultants to develop information that might be used by IEUA in preparing a CEQA document is a "conflict of interest" if IEUA is a proponent of an OBMP project that requires Watermaster approval under the Judgment. Thus, they request a written legal opinion of Watermaster General Counsel as to whether this funding would create a conflict of interest.

The Four Appropriators repeated their request for a written legal opinion in a third letter, dated June 21, 2022 (Attachment 3.)

Watermaster Response

Watermaster staff and Counsel have responded to the above concerns on several occasions during the annual budget review and approval process and beyond. In summary the response is that the contemplated CEQA analysis is broad and intended to enable any management actions and projects the parties might agree to implement at a later time, and may also include project level analysis where there is specific agreement to proceed. In addition to facilitating the update of the OBMP Implementation Plan, the cumulative CEQA analysis streamlines future project-specific analyses and also creates a contemporary CEQA analysis for grant applications.

The 2020 OBMP is a broad management plan for Chino Basin for the next 20 years that was written as an update to the 2000 OBMP through an extensive stakeholder engagement process. It is envisioned that many projects could be conceived by the parties from this planning document and a project-specific EIR would need to be prepared before a specific project can be implemented by any party to the Judgment. Such environmental review may be included with the final 2020 OBMP CEQA documentation or may be tiered off of this analysis at a later time.

The adoption of an OBMP by Watermaster is not a "project" for purposes of CEQA. However, the physical projects carried out under the OBMP may be. This is abundantly clear. One of the historical problems solved by the OBMP PEIR was to put all pertinent potential projects on the table for programmatic evaluation, to reduce friction and infighting over competition for a limited set of dollars and resources and legal roadblocks to project completion.

Parties to the Peace Agreement may wish to update the OBMP Implementation Plan and possibly amend the Peace Agreement to move forward with implementation of management activities and projects they

may agree on. The environmental analysis for the 2020 OBMP will provide information to the parties and thus facilitate negotiations.

Since the time the Project Description for the 2020 OBMP PEIR was drafted in 2020, Program Element 8 – Storage has been addressed in a separate CEQA document (Second Addendum to the 2000 OBMP PEIR) and other projects (e.g. IEUA’s Chino Basin Program) have also certified CEQA documentation. As a result, the project description for CEQA review of the 2020 OBMP needs to be reviewed.

Following discussions with the Watermaster Board staff included funds in the proposed FY 2022/23 budget to assist the parties, if requested, in developing an updated OBMP Implementation Plan and negotiating an update to the Peace Agreement, and to review and update the 2020 OBMP environmental review documentation so it can be considered by the IEUA Board of Directors. The estimated expense for these efforts is as follows:

Engineering Services 6906.26	2020 OBMP Implementation Plan	\$15,282
	Support PA Amendment	\$15,282
	2020 OBMP CEQA	\$246,235
	Total:	\$276,799
Legal Services 6907.45	Budget for all 3 components:	\$126,000

Prior to its approval by the Watermaster Board, the budget was approved as presented by majority vote of the Advisory Committee, with the Four Appropriators in opposition.

Watermaster also has an obligation to ensure that CEQA has been performed as a precondition to processing and approving certain discretionary decisions under the Judgment, Peace Agreement, and Watermaster Rules and Regulations. The Peace Agreement recites and provides for IEUA to perform environmental review functions for the 2020 OBMP. It has undertaken this responsibility for the convenience of the parties on multiple occasions, e.g. Dry-Year Yield, Basin-Re-Operation – Hydraulic Control; Storage Addendums. Further, regardless of CEQA, it has an obligation to conduct an analysis of Material Physical Injury of qualifying projects and actions under the Peace Agreement and Court order. Consequently, it is reasonable, natural, and efficient for Watermaster to offer its technical expertise and services to IEUA, where IEUA is preparing an EIR to facilitate Watermaster functions.

While the Four Appropriators prefer a narrower and more restricted approach, the majority of the stakeholders, as expressed in the Advisory Committee vote to approve the budget, disagree. The Judgment provides clear instruction on the approval of the budget.

The Four Appropriators asked for an extension of time during which to challenge Watermaster’s adoption of the budget that was approved by the Advisory Committee. Watermaster has agreed to extend the Judgment period for challenging the Budget from 60-days to a date certain, 30 days from the July 28, 2022 Special Board meeting to allow for more discussion.

Staff believes that instead of preparing a legal opinion as requested, further discussion with stakeholders whereby we make it clear that no technical expenditures will proceed in advance of re-examining the scope of the 2020 OBMP and the inclusion or exclusion of additional projects and implementation measures at a programmatic and potentially a project level is advisable. Consequently, staff is proposing, and seeking direction from the Board to proceed with, a process to obtain input from all stakeholders to revise the CEQA documentation Project Description and to develop a work plan while honoring the Peace Agreement and the Judgment. This will allow time to discuss and clarify the proposed CEQA document preparation as well as address other concerns.

The act of budgeting for a future event that is likely to occur within the next fiscal year does not constitute a commitment to any specific outcome to implement a change, modify the Peace Agreement, or the

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Implementation Plan. As was the case with the LSLs, new commitments vitiated the need for altering previous ones in a manner that required unanimous consent of the Parties. New subject matter is not necessarily subject to the limitations of the Peace Agreement.

Watermaster can both establish a budget for an expected action, requiring technical support, while reserving to its discretion, to the extent it exists under the Judgment and Peace Agreement, and likewise to the parties to the Judgment to address any action that Watermaster may take when there are clear facts before us.

ATTACHMENTS

1. May 2, 2022, letter from the Four Appropriators to Joe Joswiak subject "Chino Basin Watermaster, Fiscal Year 2022/23 Draft Budget"
2. May 25, 2022, letter from the Four Appropriators to Watermaster Board Members subject "Chino Basin Watermaster, Fiscal Year 2022/23 Draft Budget"
3. June 21, 2022, letter from the Four Appropriators to Watermaster Board Chair Curatalo subject "Chino Basin Watermaster, Fiscal Year 2022/23 Draft Budget"