



# CHINO BASIN WATERMASTER

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

---

PETER KAVOUNAS, P.E.  
General Manager

February 20, 2013

Mr. Chuck Hays  
Public Works Director  
City of Fontana  
Public Works Department  
16489 Orange Way  
Fontana, CA 92335

Re: Recharge Master Plan Steering Committee – Task 5 Update: MS4 Accounting Process

Dear Mr. Hays:

In its February 13, 2013 letter, attached, the City of Fontana (Fontana) is commenting on the above subject, with the following main points:

[1] If the goal of the Recharge Master Plan Update (RMPU) is to enhance water supply reliability in the basin then [the current proposal of allocating MS4 recharge according to OSY] is a step in the wrong direction;

[2] The current proposed allocation is requiring Fontana to pay for its water supply twice;

[3] The current proposal adds to Fontana's reporting obligations and Fontana does not consider it reasonable to perform and report for zero benefit;

We offer the following in response to each of the points:

**[1] If the goal of the RMPU is to enhance water supply reliability in the basin then [the current proposal of allocating MS4 recharge according to OSY] is a step in the wrong direction;**

Fontana is mischaracterizing Chino Basin Watermaster (Watermaster's) position that New Yield from MS4 compliance recharge is to be allocated according to Operating Safe Yield (OSY) as a "proposal". This position is based on the Peace Agreement, and is incorporated into the Watermaster Rules and Regulations Section 6.2b. It is not a proposal; rather it is a statement of existing rules governing water rights in Chino Basin. This has been explained and discussed in prior Steering Committee meetings.

As to the goals of the Recharge Master Plan Update, Watermaster is proceeding consistently with the ultimate goal of the Recharge Master Plan to ensure that at any time during the period when the 400,000 acre-feet of Basin Re-Operation are being produced, Watermaster and the parties will have the ability to cease production of the 400,000 acre-feet and return the Basin to normal operations. The goal of the 2013 Amendment to the 2010 RMPU is to reconsider the conclusions of the 2010 RMPU in light of the 2011 Urban Water Management Plan (UWMP's) filed by the basin appropriators. In addition, pursuant to the court's approval of the 2010 RMPU, Watermaster was directed to convene a committee and develop monitoring, reporting, and accounting practices that will be required to estimate local project stormwater recharge (due to MS4 compliance), and to develop a financing and implementation plan for any necessary

recharge projects. The RMPU Amendment and Task 5 in particular, are not intended to re-open the Peace Agreement and change the way New Yield is allocated. This has been explained and discussed in prior Steering Committee meetings.

**[2] The current proposed allocation is requiring the City of Fontana to pay for its water supply twice;**

Fontana is incorrectly suggesting that the cost of MS4 compliance is due to Watermaster actions, past or present. MS4 compliance and any associated costs are required by the Regional Water Quality Control Board.

Fontana is correct that its ratepayers do not enjoy the benefits of possessing water rights, and that Fontana Water Company is obligated to pay to meet its replenishment obligations. This is the result of prior litigation expressed in the 1978 Judgment. Watermaster's mission is to equitably administer and enforce the provisions of the Judgment, and not to offer remedies for provisions of the Judgment that parties may consider unjust. This has been explained and discussed in prior Steering Committee meetings.

**[3] The current proposal adds to the City's reporting obligations and Fontana does not consider it reasonable to perform and report for zero benefit;**

The City of Fontana is mischaracterizing Task 5 of the 2013 Amendment to the 2010 RMPU effort as a proposal to create reporting obligations. Watermaster is preparing the Amendment as required, and is creating a process that could monitor, report, and account for MS4 recharge, should it become desirable. This has been explained and discussed in prior Steering Committee meetings.

As has been previously discussed on numerous occasions during Steering Committee meetings, if the Appropriative Pool is interested in changing the current methodology of allocating New Yield, it needs to create a proposal for consideration by the other Pools, Watermaster and the Court. Watermaster staff has consistently expressed its willingness to consider any such proposal that carries the approval of the Appropriative Pool.

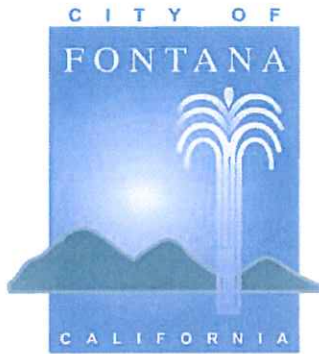
Sincerely,

CHINO BASIN WATERMASTER



Peter Kavounas, P.E.  
General Manager

Attached: City of Fontana, February 13, 2013, correspondence



**City of Fontana**  
**Public Works Department**  
**16489 Orange Way**  
**Fontana, CA 92335**

February 13, 2013

Mr. Peter Kavounas  
General Manager  
Chino Basin Watermaster  
9641 San Bernardino Road  
Rancho Cucamonga, CA 91730

RE: RECHARGE MASTER PLAN STEERING COMMITTEE – TASK 5 UPDATE: MS4 ACCOUNTING PROCESS

Dear Mr. Kavounas:

The City of Fontana recognizes that the Recharge Master Plan Steering Committee has moved Tasks 1 thru 4 of the Recharge Master Plan Update forward and is diligently working on the remaining tasks.

The City was very much in favor of the Task 5 proposal created by Watermaster which was presented to the group on July 19, 2012 and provided a written response accordingly. Watermaster subsequently created a Task 5 memorandum and presented it to the group in September, 2012 which was fundamentally opposite, in nearly every way from the original July proposal. At the Recharge Master Plan Update committee meeting on February 7, 2013, an update was provided by staff to the committee regarding the process for accounting for water recharged as a result of MS4 compliance. Apparently, the position currently being considered by Watermaster and now the committee is that any water captured as a result of regulatory compliance will be assigned to the collective pool based on Operating Safe Yield (OSY) and distributed to the parties accordingly.

It seems reasonable that there should be significant dialogue on this issue, since it was noted to be a topic requiring resolution and decision since the 2010 Recharge Master Plan was issued. The wording in the 2010 document stated "The types of incentives under review include: clarifying who owns the water, giving water credits to developers of this water, and cost sharing agreements or other financial incentives". Watermaster seems to have completely adopted the terms of the September, 2012 proposal and completely disregarded the July 19, 2012 Task 5 proposal without any of the promised discussion among the parties. The September, 2012 task 5 proposal does not incentivize any land use agency that is not a water provider to go beyond the minimum requirements of MS4, therefore limiting

the actual amount of recharge that may/could take place. If one of the goals of the RMPU is to enhance water supply reliability in the basin we believe this is a step in the wrong direction.

There are cities in the basin that are almost completely developed which means these cities will have minimal MS4 related responsibilities. The City of Fontana, on the other hand, has ample opportunities for development to take place which puts us in a position where we must pay for implementing, monitoring and inspecting these projects while receiving no benefit. Not only will we not receive benefit, we will in fact be required to pay twice for the water. Based on the currently proposed allocation of water, we will pay once to recharge it so it can then be divided up based on OSY and once again when Fontana Water Company (FWC) needs to purchase it back from whomever it was allocated to in order to meet their replenishment obligations. It does not seem reasonable that the City of Fontana, whose rate payers do not enjoy the benefits of possessing water rights, would now have to pay twice for any water captured through the implementation of the MS4 program. A substantial part of the community and the unincorporated areas served by FWC are considered disadvantaged or severely disadvantaged communities. The September, 2012 Task 5 memorandum sets up a system requiring this community to pay twice for any water recharged through the MS4 process and allows other appropriators to benefit from water captured through our efforts.

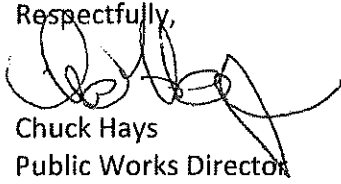
It has been stated by Watermaster's engineer that most water that lands on the surface of undeveloped land either evaporates, gets absorbed by native vegetation or runs off the land completely. MS4 compliance requires that storm water be retained onsite and recharged. This water is currently not being put to any other form of beneficial use by parties within the Chino Basin, and the City wants to make substantial efforts to optimize recharge within our community. Fontana is in a unique situation because we are an appropriator who has no share of OSY and we are served by a water company with virtually no share of OSY. Our MS4 efforts will result in "net new recharge" and this "net new recharge" should be available to the party who created it. Parties should be incentivized to maximize the capture and recharge of water ultimately resulting in increased yield to the basin.

In addition to exercising its "best efforts" to protect and enhance the Safe Yield of the Chino basin through replenishment and recharge, page 12 of Exhibit B to the Peace Agreement states: "Watermaster will facilitate the development of physical recharge capacity in the Chino Basin. Recharge facilities will be sized and located to balance long term production and recharge. Watermaster will seek to maximize recharge so that each Producer will be able to Produce both the quantity and quality of water to meet its water supply needs to the greatest extent possible from the water that underlies the Producer's area of benefit". It has been proven that several wells will be affected by reduced water levels and it has been further demonstrated that there is a significant lack of recharge assets in the MZ3 service area. Most of our projects will recharge water and create yield opportunities that will benefit the entire MZ3 area and accomplish the goals of Watermaster to facilitate recharge and ensure that the parties are accomplishing their obligations to satisfy this recharge obligation.

Watermaster's current proposal further adds to the city's compliance reporting obligations that will yield absolutely no benefit to rate payers. We do not consider it reasonable, to expect us to perform and report for zero benefit.

The City of Fontana strongly believes that if a member of the Appropriative Pool takes action to capture water that is not otherwise recharged in this basin or put to beneficial use that they should receive credit for any "Net New Recharge" created. We have previously submitted letters detailing our position on this matter and look forward to further discussions.

Respectfully,

A handwritten signature in black ink, appearing to read "CHUCK HAYS", written over the typed name and title.

Chuck Hays  
Public Works Director