

PERS00283

*Minutes*  
**CHINO BASIN WATERMASTER  
AGRICULTURAL POOL MEETING**  
*August 11, 2011*

The Agricultural Pool Meeting was held at the offices of Chino Basin Watermaster, 9841 San Bernardino Road, Rancho Cucamonga, CA, on August 11, 2011 at 1:00 p.m.

Agricultural Pool Members Present Who Signed In

Bob Feenstra, Chair  
John Huitaing  
Gene Koopman  
Rob Vanden Heuvel  
Glen Durrington  
Jeff Pierson  
Pete Hall  
Jennifer Novak

Dairy  
Dairy  
Milk Producers Council  
Milk Producers Council  
Crops  
Crops  
State of California, CIM  
State of California, Dept. of Justice, CIM

Watermaster Board Member Present

Paul Hofer

Crops

Watermaster Staff Present

Desi Alvarez  
Joe Joswiak  
Sheri Molino

Chief Executive Officer  
Chief Financial Officer  
Recording Secretary

Watermaster Consultants Present

Michael Fife

Brownstein, Hyatt, Farber & Schreck

Others Present Who Signed In

Tracy Egoscue  
Dave Crosley  
Richard Rees  
Paul Deutsch  
Bob Gluck  
Marsha Westropp  
Gil Aldaco

Paul Hastings  
City of Chino  
State of California, Dept. of Justice, CIM  
Geomatrix  
City of Ontario  
Orange County Water District  
City of Chino

Chair Feenstra called the Agricultural Pool meeting to order at 1:10 p.m.

Chair Feenstra apologized to the committee members, Watermaster staff, and parties present for the late start on the meeting.

AGENDA - ADDITIONS/REORDER

Mr. Alvarez noted the State of the Basin Report will be given at the September meeting. Chair Feenstra stated there will be a closed session today.

Chair Feenstra welcomed Ms. Egoscue to her first official Agricultural Pool meeting.

I. CONSENT CALENDAR

A. MINUTES

1. Minutes of the Agricultural Pool Meeting held July 14, 2011



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**B. FINANCIAL REPORTS**

1. Cash Disbursements for the month of June 2011
2. Watermaster VISA Check Detail for the month of June 2011
3. Combining Schedule for the Period July 1, 2010 through June 30, 2011
4. Treasurer's Report of Financial Affairs for the Period June 1, 2011 through June 30, 2011
5. Budget vs. Actual July 2010 through June 2011

**C. SEMI-ANNUAL STATUS REPORT 2011-1**

*Motion by Dunnington, second by Novak, and by unanimous vote*

*Moved to approve Consent Calendar Items A through C with one change provided by Ms. Novak to the Recording Secretary on the July 14, 2011 minutes, as presented*

**II. BUSINESS ITEMS**

**A. RESOLUTION 11-05 RESOLUTION TO TAX DEFER MEMBER PAID CONTRIBUTIONS AND RESOLUTION 11-06 RESOLUTION FOR PAYING AND REPORTING THE VALUE OF EMPLOYER PAID MEMBER CONTRIBUTIONS**

Mr. Alvarez stated this item is to clarify the tax status of certain benefits. The tax code allows agencies to designate certain contributions as being picked up by the employer and treated as employer contributions for tax purposes. Mr. Alvarez stated the item before this Committee has to do with those types of issues. Currently, the Watermaster reports to CalPERS all of the member contributions on a tax deferrable basis, and in order to comply with both the internal revenue code and CalPERS regulations, staff needs to have a resolution adopted by the Watermaster Board that recognizes that. The two resolutions that are before you address those issues. Mr. Alvarez stated CalPERS originally contacted Watermaster in 2008 asking for such resolutions. That was not done at that time and this action would take care of this matter. Staff is recommending this Committee adopt them to move them forward to the Advisory Committee, and ultimately the Watermaster Board.

*Motion by Pierson, second by Vanden Heuvel, and by unanimous vote*

*Moved to approve Resolution 11-05 to tax defer member paid contributions and Resolution 11-06 for paying and reporting the value of employer paid member contributions, as presented*

**B. LOAN AGREEMENT WITH CHINO BASIN WATER CONSERVATION DISTRICT, CITY OF ONTARIO, AND JURUPA COMMUNITY SERVICES DISTRICT**

Mr. Alvarez stated this item has to do with the financing of the replenishment water. Mr. Alvarez stated since Watermaster was not set up for this purchase, one alternative is that Watermaster could acquire funds through a loan arrangement. Mr. Alvarez stated the Chino Basin Water Conservation District (CBWCD) had stepped forward and stated they wanted to help in any way they could and informed Watermaster they had money available to loan. Mr. Alvarez stated the CBWCD board adopted specific terms for a loan for Watermaster, and there have also been discussions with other parties who expressed their interest in purchasing the water now through a special assessment. Mr. Alvarez stated for those parties that would like to take care of their obligation now, they would loan the money equivalent to the anticipated amount that they are going to be approximately assessed in three years, and then that would protect them in the event of having to pay additional costs for this water. Mr. Alvarez stated the item before this Committee is to approve the generic terms of a Loan Agreement. This Loan Agreement would be the one Watermaster would enter into with the CBWCD, JCSD, and the City of Ontario, which are the parties that expressed interest in loaning the money. Mr. Alvarez stated the terms of the Loan Agreement are that those parties are entitled to interest at a variable rate equal to LAIF plus 1.5%, and that interest payments would be made on a monthly basis. Mr. Alvarez stated funding for the interest would come out of the unrestricted reserves that Watermaster has and would be recovered at the time of assessments to pay the loans; all is depending on the direction given to Watermaster. Mr. Alvarez stated staff is looking for direction whether to move forward with the Loan Agreements or not. Mr. Alvarez stated another condition in these

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Loan Agreements is that once these Loan Agreements are approved through the Watermaster process, they will then be taken to the Judge for his approval and acknowledgment that there will be a special assessment for the repayment of these loans. Mr. Alvarez stated the last caveat has to do with the priority of repayment of the loans which is still in negotiations. However, CBWCD has placed a condition on their loan by stating they would have a priority in the repayment; meaning having added a priority clause in the agreement with CBWCD that may not be in the other agreements. Mr. Durrington inquired about CBWCD having excess funds to loan Watermaster the money for this particular transaction and why banks have not come forward to loan Watermaster money. A discussion regarding the CBWCD available funds and potential bank ability to loan Watermaster money ensued. Mr. Koopman inquired about Niagara's purchase of the replenishment water. Mr. Alvarez stated both Niagara and Fontana Water Company have true replenishment requirements each year. Mr. Koopman inquired about losses. Mr. Alvarez stated they are not subject to losses and the reason is the water that is being purchased by Watermaster is basin augmentation, which is recharged just as storm water is and that is not subject to any losses directly. However, indirectly it is because it is accounted every four or five years when the safe yield is calculated. Mr. Koopman offered comment on losses. Mr. Pierson inquired if the \$5M agreement was rolling. Mr. Alvarez stated the amount of money that is required to buy all the water that was committed in taking the full 60,000 acre-foot is approximately \$10M, and this request is for approximately half of the full amount needed. Mr. Alvarez offered further comment on the loans Watermaster is looking at. Chair Feenstra offered comment on the vast snow melt for this year, and encouraged staff to set up some financing mechanism for Watermaster to purchase water in the future. A discussion regarding Inland Empire Utilities Agency's (IEUA) offer to loan Watermaster money ensued. Mr. Koopman offered comment on IEUA's position on loaning Watermaster money for the purchase of the replenishment water.

*Motion by Koopman, second by Pierson, and by unanimous vote*

*Moved to approve the Loan Agreement with Chino Basin Water Conservation District, City of Ontario, and Jurupa Community Services District, as presented*

**C. STORAGE AGREEMENT WITH INLAND EMPIRE UTILITIES AGENCY AND THREE VALLEYS MUNICIPAL WATER DISTRICT**

Mr. Alvarez stated this item is regarding the replenishment water this year which Watermaster began taking in on May 16, 2011. Mr. Alvarez stated the availability of the replenishment water was unplanned, so it was not a previously budgeted item. Mr. Alvarez stated approximately 50% of the water has been paid for through preemptive replenishment purchases that are being done by Appropriators who need replenishment water, and the water is being put into storage accounts that are limited to replenishment purposes only. Mr. Alvarez stated starting in September, Watermaster needs to start making provisions for how the remainder is going to be paid for. Mr. Alvarez stated there are two options available to accomplish that task; 1) For Watermaster to obtain financing and pay for the water directly through loans, or 2) The water would be acquired by other regional agencies and be put into a storage account. Mr. Alvarez stated the proposal before this Committee is for extending potential storage agreements to the regional agencies, and that the water put into storage would be for preemptive replenishment of the desalter obligations which start accruing in 2013. Mr. Alvarez stated the cost of the water would be \$409, plus \$12 an acre-foot for an IEUA surcharge, for delivering water to the basin and then an additional cost of \$42 an acre-foot for that water that's being recharged through direct injection. Actual acquisition cost is approximately \$420.34 per acre-foot. Mr. Alvarez stated once the storage agreements are entered there would be a condition that the water would be called for desalter replenishment at such time as necessary, and the storage agreements would be subject to not only the limitation that the water is there for preemptive replenishment, but that Watermaster would pay for the acquisition costs plus the carrying costs. The carrying costs would be the finance costs for the agencies as well as the annual losses and storage losses at 2%. The anticipated base price for the water in 2014 is \$473.62. Mr. Alvarez stated staff is suggesting that Watermaster would pay no more than the anticipated MWD replenishment rate at that point in time. Mr. Alvarez stated staff is recommending storage

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agreements with respective agencies that are interested, and to authorize negotiations with those agencies. Mr. Alvarez stated in the event that Watermaster pays more for actual cost of the water, staff's recommendation is that a condition be put in to the agreement that the difference in revenue between the actual cost and the actual amount paid, be reserved solely for investments in the Chino Basin to be mutually agreed to between the agency and Watermaster. Mr. Koopman stated there may not be a replenishment rate from MWD at the time of the call, and offered comment on the costs outlined by Mr. Alvarez. Mr. Alvarez stated the intent is that the base rate that water would be purchased at the time of the call would be to cover all the expenses, and the number in the report is an estimate based on what the projected finance costs may be. A discussion regarding the rate, costs, and this matter ensued. Mr. Pierson offered comment on all the extra charges being put upon the IEUA loan, and noted he was uncomfortable with them seemingly making some sort of a profit on this transaction. A lengthy discussion regarding IEUA's loan, loan concerns, future mechanism for Watermaster to make water purchases in the future, and future replenishment needs ensued. Mr. Alvarez stated Watermaster put together a Recharge Master Plan (RMP) and there must be implementation of that plan, and part of the issue identified in the RMP is to acquire some water and do some recharge to take care of the Desalter obligations. Chair Feenstra asked if the agreement could be reviewed by this Committee prior to it being finalized. Mr. Pierson inquired if the Chino Desalter Authority (CDA) has ever been looked at as a purchaser. Mr. Alvarez stated the CDA made a commitment to invest in the facilities with a condition that they would not be responsible for the actual replenishment, and noted this was not a worthwhile endeavor for them. A lengthy discussion regarding the CDA and this matter ensued. Mr. Alvarez stated there is an agreement that part of Peace II states the desalter replenishment obligation is going to be paid for by a special assessment.

*Motion by Durrington, second by Pierson, and by unanimous vote*

*Moved to approve authorizing Watermaster CEO to execute a Storage Agreement with Inland Empire Utilities Agency and with Three Valleys Municipal Water District, and to waive the thirty day notice period and the twenty-one day consideration period for applications for Local Storage Agreements with IEUA and TVMWD to store desalter replenishment water, as presented*

- D. PRESENTATION ON THE STATE OF THE BASIN REPORT (For Information Only)**  
It was noted the State of the Basin Report will be given at the September meeting.

Added Item:

Chair Feenstra asked that Watermaster staff provide a place in the reports section for their new general counsel, Tracy Egoscue, to give a report on Agricultural Pool legal issues. Mr. Alvarez stated that would not be a problem to add that to the agendas.

**III. REPORTS/UPDATES**

**A. WATERMASTER GENERAL LEGAL COUNSEL REPORT**

**1. September 30, 2011 Hearing**

Counsel Fife stated this hearing is still on calendar; however, there has been talk about the need to possibly push back the date. The main subject of the hearing will be the CDA Resolution, which was adopted by the Watermaster Board in October, 2010. A meeting took place recently with the CDA parties in order to begin the process of preparing for the hearing. A pleading is being drafted and there will be witnesses called at the hearing. This hearing will be similar, in format, to the ones in front of Judge Wade in order to give Judge Reichert more Watermaster educational background during the hearing, as requested. For a while each hearing will offer the Judge more educational information until he is up to speed on issues, instead of holding separate informational hearings as Judge Wade had requested. Counsel Fife stated when the preparation is done for the hearing it will be done in an open process where parties can come and see what is going to be presented to the Judge and offer comment. Counsel Fife stated one of the issues for the Agricultural Pool is

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that in the Watermaster Resolution there are some issues that affect some individual Agricultural Pool parties. Counsel Fife stated during the Desalter expansion it had been identified what is being called the Zone of Influence, which is the new Chino Creek Wellfield, and it is anticipated to impact some agricultural wells. Those wells have been identified and the well owners have been contacted at some level. However, they are not aware of this process nor are they aware of the potential of going to court. Before going to court, as part of the process of being open and transparent, Watermaster wants to contact the well owners, and staff is seeking assistance from the Agricultural Pool in performing this task. Counsel Fife stated he has spoken to Ms. Egoscue directly prior to this meeting and noted it was the first time she had heard of this matter. Counsel Fife noted the CDA group met last Thursday and thought it would be appropriate and helpful to bring this matter up to the Agricultural Pool and enlist its help. Counsel Fife stated the scope of that help is unknown at this time and counsel would like to work with the Agricultural Pool counsel and Chair on how to accomplish this task. Counsel Fife stated the issue is known regarding desalter production having an impact on agricultural wells. This has been a big issue in the past and was a huge issue when Desalter I first went on line. These types of concerns need to be addressed in advance. Chair Feenstra thanked counsel for the detailed report and asked that Watermaster legal counsel be in contact with the Agricultural Pool counsel without delay, as to the activities on this important issue regarding court hearings or any related discussions or happenings. Chair Feenstra reinforced the point of "without delay" for counsels' communications with this matter. Ms. Novak stated she has a vague recollection of some of these discussions from last year. Ms. Novak stated part of what is being discussed is how to address any legal remedies that water rights owners and producers within this basin have if they are adversely affected by the CDA, which is an important issue to address. Ms. Novak stated she recalls, at that time, there were some concerns and there was going to be some sort of plan worked on. However, she does not recall if she was ever told what the plan was, and noted it is certainly not in front of this Committee today for consideration. Ms. Novak stated it is about 45 days until the hearing, which is not a lot of time for consideration of plans, or for contacting individual well owners. Ms. Novak stated she also recalls the Zone of Influence being established at that time, which may or may not be the true amount of people who are going to be adversely affected by this situation. Ms. Novak offered comment on state wells which were considered to be outside the Zone of Influence, even though the state wells are essentially across the street from the desalters, and arguably the state's water would be affected in the future by the Desalter drawdown. Ms. Novak stated she has some real concerns, not only because of the situation, but because there is not a clear recognition of who was contacted, if all who needed to be contacted were, and on what level they were contacted. Ms. Novak stated she clearly remembers being told the owners who were believed to be affected were being contacted, and her concern is if the owners knew what was coming, so that they could or should speak out, or whether they were just inadvertently waiving their rights while not even knowing their rights even existed. Ms. Novak stated she believes she was assured at that time that those affected well owners were indeed contacted. However, nothing has been discussed or no information has been provided since that time. Ms. Novak stated she does not have a problem with counsel and/or staff keeping this Committee notified in advance of what is going on. The problem is it appears the people who are going to be adversely affected are not being given the opportunity to be educated as to what is going on, what the history is, or even why they should be concerned, nor do they attend these meetings to be able to give their opinions or ask questions. All of this is anticipated to be done by September 30<sup>th</sup> - this raises a number of concerns. Chair Feenstra offered comment on the history of Desalter drawdown and the serious situations it caused. Counsel Fife stated the entire purpose of bringing this information today to this Committee was to request the assistance of the Agricultural Pool, and to get aid in contacting the individual well owners. Counsel Fife stated he wanted to reiterate, if he was not clear in his report, that if the timing of the scheduled hearing did not work out for this undertaking, then the hearing can and will be rescheduled. Ms. Novak stated she cannot stress enough it is almost mandated to reschedule the hearing to allow adequate time for this process to be properly completed

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**Chair Fenstra dismissed the Agricultural Pool Committee meeting at 3:25 p.m.**

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

**Minutes Approved: September 8, 2011**