

July 21, 2016

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VIA EMAIL

California Water Commission
Attn: Mr. Joseph Byrne, Chairperson
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RE: Comments on DWR's Draft Approved Basin Boundary Modification for Chino Sub-Basin (Bulletin 118 No. 8-02.01)

Dear Chairperson Byrne:

Brownstein Hyatt Farber Schreck, LLP represents the Chino Basin Watermaster ("Watermaster") and presents these comments on our client's behalf regarding the Department of Water Resources' ("DWR") Draft Approved Basin Boundary Modification for the Chino Sub-Basin (designated basin number 8-02.01 in DWR's Bulletin 118) ("Chino Basin Draft Approved Boundary Modification"). The Chino Basin Draft Approved Boundary Modification includes additional modifications to the proposed boundaries submitted in the Inland Empire Utility Agency's Basin Boundary Modification Request ("Chino Basin Modification Request").¹ Attachment "A" to this letter provides a visual comparison of the Basin's adjudicated boundaries, the Basin's boundaries as delineated by Bulletin 118, the Chino Basin Modification Request, and the boundaries being recommended for approval by DWR pursuant to the Chino Basin Draft Approved Boundary Modification.

Watermaster is the arm of the San Bernardino County Superior Court that oversees implementation of the 1978 Judgment that adjudicated the groundwater rights to the Chino Groundwater Sub-Basin ("Chino Basin" or the "Basin") and established a physical solution for the sustainable management of the Basin. One of the key features of the 1978 Judgment is the Court's retention of continuing jurisdiction to ensure that the Basin's resources are utilized in a manner consistent with Article X, Section 2 of the California Constitution – that its waters be conserved to ensure both that they are put to beneficial use to the fullest extent they are capable and that unreasonable use is avoided.

One of the central tasks given to Watermaster under the 1978 Judgment is to implement the 1978 Judgment's physical solution for the Chino Basin. This physical solution takes the form of a comprehensive and integrated, court-approved groundwater management plan called the Optimum Basin Management Program ("OBMP"). Watermaster and the parties to the 1978 Judgment have invested significant time and hundreds of millions of dollars to develop and implement the OBMP and the OBMP Implementation Plan; the result of which is a successful Basin management structure.

¹ The Chino Basin Modification Request was also joined by Three Valleys Municipal Water District and Western Municipal Water District.

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Watermaster appreciates DWR's recommended changes consistent the jurisdictional modifications in the Chino Basin Modification Request. In light of the modifications recommended in the Chino Basin Draft Approved Boundary Modification, however, Watermaster appreciates the opportunity to provide the California Water Commission ("CWC")² with the following comments. Watermaster's focus in providing these comments is the preservation of the investment of the Parties to the 1978 Judgment in the OBMP and OBMP Implementation Plan, as these have been found by the overseeing court to provide for the sustainable management of the Basin consistent with Article X, section 2 of the California Constitution.

Bulletin No. 118 Basin Boundaries Not Intended for Groundwater Management

The Sustainable Groundwater Management Act ("SGMA") defines a basin's boundaries as those "identified and defined in Bulletin 118." (Wat. Code § 10721(b).) Bulletin 118, however, was not developed—or intended—to be used as a basis for groundwater management. (See Wat. Code § 12924.) Instead, Bulletin 118 boundaries were based strictly on geological and hydrogeological studies, which did not account for the feasibility of management. Such practical considerations are necessary if the state is serious about achieving SGMA's central goal of sustainable groundwater management. We urge the CWC to request that DWR take a more flexible approach in accepting proposed basin boundary modifications that may not strictly conform to the boundaries set forth in Bulletin 118, but that have a high chance of success in terms of promoting and maintaining a sustainable groundwater management structure.

Creation of Additional "Fringe Areas" are Not Supported by Best Available Science

The Chino Basin Draft Approved Boundary Modification consists of additional "fringe areas"³ not included in the Chino Basin Modification Request. The Chino Basin Modification Request is based on the 1978 Judgment Boundary and more recent published geologic maps in Special Report 217 of the California Geologic Survey (Morton and Miller, 2006). For the purposes of characterizing the occurrence and movement of groundwater, the geologic formations from Special Report 217 were delineated into two main groups: unconsolidated sediments and consolidated bedrock. Unconsolidated sediments are composed of Quaternary-age alluvial deposits of gravel, sand, silt, and clay. The Unconsolidated sediments contain the aquifer system of the Chino Basin. Consolidated bedrock is comprised of Tertiary- to Precambrian-aged sedimentary, igneous, and metamorphic rocks that form an impermeable¹ barrier to groundwater flow and can act as a hard-rock boundary of the Chino Basin.

The majority of the Chino Basin Modification Request's proposed boundary follows consolidated bedrock. The unconsolidated sediments that extend outside of the adjudicated boundary of the Chino Basin in the foothills were excluded from the proposed basin boundary, as these areas are small, are located on the thin edges of the basin, and likely contain relatively small volumes of groundwater. Well driller's logs obtained from DWR verify that historical wells in these areas are few, and those wells that existed were relatively shallow, appear to be screened within the shales and siltstones of the Consolidated Bedrock, and produced groundwater at relatively low rates compared to the typical production wells located in the Chino Basin (e.g. less than 10 gallons per minute). It is likely that most of these wells have been destroyed as land uses changed from undeveloped and agricultural to urban. Based on this information, Watermaster respectfully requests the CWC to urge DWR to reconsider the Chino Basin Draft Approved Boundary Modification's inclusion of these additional areas overlying unconsolidated sediment.

Minimal Additional Fringe Areas Require Major Investment of Time, Effort and Resources

² Watermaster also provided similar comments to DWR at its public hearing in Santa Ana on July 14, 2016.

³ DWR has described these areas, in its Discussion Paper: Topic 5 – Boundaries (Aug. 3, 2015).

The Chino Basin Draft Approved Boundary Modification creates additional “fringe areas” along the Chino Hills and the San Gabriel Mountains. As illustrated by Attachment A, these “fringe areas” are disconnected and minimal in acreage.⁴ The time, effort and financial resources in order to ensure that they are in compliance with SGMA, however, will be significant. For example, achieving compliance with SGMA may require engaging the governing bodies of three counties to form three separate groundwater sustainability agencies (“GSA”), invest taxpayer money and public resources to undertake three separate hydrogeologic studies, develop three separate groundwater sustainability plans (“GSP”), and negotiate and enter in to coordination agreements so that these negligible fringe areas will conform to a strict reading of the Basin Boundary Modification Regulations (“Modification Regulations”) and the Groundwater Sustainability Regulations (“GSP Regulations”). Throughout this expensive process, the OBMP—although technically only applied within the adjudicated boundaries—will continue to effectively provide a sustainable management structure for the entire Chino Basin. Surely the drafters of SGMA – who recognized an exemption within adjudicated basins – did not intend compliance to require such an ineffective use of public resources. Watermaster and the parties to the 1978 Judgment have invested significant time and hundreds of millions of dollars to develop and implement the OBMP and respectfully request the CWC to advocate to DWR to take a more flexible—and rational—interpretation of the Modification Regulations and the GSP Regulations and reconsider the inclusion of these additional “fringe areas” in its Chino Basin Draft Approved Boundary Modification.

Need for Alternative Management Mechanism for “Fringe Areas” in Adjudicated Basins

As an adjudicated basin subject to ongoing judicial oversight, Chino Basin is expressly exempted from SGMA’s groundwater sustainability plan (“GSP”) requirement. (See Wat. Code, § 10720.8, subd. (a)(4).) As in many areas within the state, however, there are incongruities between Chino Basin’s Bulletin 118 boundaries and those boundaries set forth in the Basin’s 1978 Judgment. This incongruity results in areas of the Bulletin 118 defined boundaries extending outside the adjudication boundaries and creating unmanaged “fringe areas.” As depicted on Attachment A, the Chino Basin Draft Approved Boundary Modification includes multiple, disconnected fringe areas, not included in the Chino Basin Modification Request, on both the northeastern portion and the southwestern portion of the adjudicated boundary.

Because SGMA’s exemption of adjudicated basins applies only to the extent of the adjudicated boundaries, fringe areas are not exempted from SGMA’s GSP requirement. As discussed above, the requirement of a GSP in a fringe area that abuts an adjudicated basin may raise the concern of inconsistency in the management within and outside the adjudication, and additional—though unnecessary—requirements for coordination of the management pursuant to an adjudication. In the Chino Basin, the parties to the 1978 Judgment have invested substantial time and resources to craft a basin management program—the OBMP and the OBMP Implementation Plan—that is specifically tailored to provide sustainable management of the Basin.⁵ As the result of the time and effort invested by those parties, they reasonably expect to be able to rely on the management structure carried forward through the OBMP Implementation Plan. If faced with the potential for inconsistent groundwater management in multiple fringe areas, as the result of a required GSP, the parties to the adjudication may be faced with the choice of seeing their efforts and investments frustrated or reallocating time and money to coordination efforts that will have little material impact on the Basin’s sustainable groundwater management.

⁴ The Chino Basin Modification Request included a more significant “fringe area” along the Santa Ana River, which was approved by DWR as submitted.

⁵ Although, consistent with the 1978 Judgment, the OBMP and the OBMP Implementation Plan may only be enforced within the boundaries of the adjudication action, Watermaster’s enforcement and implementation of the OBMP and the OBMP Implementation Plan within the Basin’s adjudicated boundaries has the effect of bringing the entire Basin, as defined in Bulletin 118, into sustainability.

Although DWR's draft issue papers have shown that DWR is aware of the need to address fringe areas, particularly in the situation of incongruity between adjudicated and Bulletin 118 boundaries, neither the Modification Regulations or the GSP Regulations include a mechanism—or any flexibility—to address such concerns regarding fringe areas. (See Discussion Paper 5, supra, at 4-5.) Watermaster encourages CWC to urge DWR to work with Watermaster—and other similarly situated basins—to develop an alternative mechanism to address these concerns consistent with SGMA's exemption of adjudicated basins, including recommending amendment of the Modification Regulations and/or the GSP Regulations.

Once again, Watermaster thanks the CWC for its attention to this important matter and for the opportunity to provide comments on the Chino Basin Draft Approved Boundary Modification.

Sincerely,



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