



October 17, 2016

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VIA U.S. MAIL AND E-MAIL (Janiene.friend@water.ca.gov; cwc@water.ca.gov; sgmps@water.ca.gov)

Mark W. Cowin, Director
California Department of Water Resources
P.O. Box 942836, Room 1115-1
Sacramento, CA 94236-0001

California Water Commission
Commission Members
P.O. Box 942836
Sacramento, California 94236-0001

**Re: California Department of Water Resources' Final Recommendation Re
Basin Boundary Modification Request for San Jacinto Basin (No. 8-05)**

Dear Director Cowin and Commission Members:

We represent the Domenigoni-Barton Mutual Water Company and the Domenigoni-Barton entities (collectively, the "Domenigoni-Bartons"). The Domenigoni-Bartons are the primary landowners and groundwater producers in the Domenigoni Valley area of the Santa Margarita River Watershed adjudication boundary.

The local water supplier, Eastern Municipal Water District ("EMWD") submitted a request for a Basin Boundary Modification to align the San Jacinto Basin with the adjudication boundary by including two alluvial areas within the San Jacinto Basin: the upper Domenigoni Valley area and the Southern basin area. **Attachment 1** shows these basin areas (Basin Boundary Modification Request, Attachment D.3 [map]). DWR's Final Recommendation for EMWD's Request is "Approved, as modified".

The Domenigoni-Bartons support approval of DWR's Final Recommendation for the upper Domenigoni Valley portion of the San Jacinto Basin Boundary Modification Request, but request that DWR reconsider the request to include the Southern basin area modification under the correct evaluation criteria; and that CWC and DWR review the public notification and comment processes employed in this round of basin boundary modifications in order to improve public participation in time for the 2018 cycle of boundary modification requests.

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As discussed in greater depth below, DWR did not apply the correct evaluation criteria in recommending denial of the Southern basin area of the San Jacinto Basin Boundary Modification Request. Additionally, DWR's public notice and comment processes should be modified to improve public participation in this important process.

1. Background.

The Legislature has designated the Santa Margarita River Watermaster as the managing entity for the Domenigoni Valley area and Southern basin area. (Water Code § 10720.8(a)(17).) The local water supplier, EMWD, is the Requesting Agency for the Basin Boundary Modification. EMWD's Request was supported by the Domenigoni-Bartons and the Santa Margarita River Watermaster.

The Request is the result of discussions among the Domenigoni-Bartons, Watermaster, and EMWD to achieve sustainable groundwater management within the adjudicated basin area. Before EMWD submitted the Request, all three parties discussed the proposed Request with DWR to ensure that, as the Requesting Agency, EMWD could submit sufficient evidence to justify DWR's approval of the Request as a Scientific External Modification.

Consistent with DWR's Basin Boundary Modification Emergency Regulations ("Emergency Regulations"), Title 23, Cal. Code Regs., § 344.14(a), EMWD's submittal packet for the Request included, among other things:

- U.S. Geological Survey ("USGS") Map prepared for the Santa Margarita River Watershed adjudication, *U.S.A. v. Fallbrook Public Utility District, et al.*, Civil No. 51-cv-1247-GPC-RBBB, dated April 5, 1961;
- USGS Open File Report 03-188 for the Winchester 7.5' Quadrangle ("USGS Report") and Preliminary Geologic Map of the Winchester 7.5' Quadrangle prepared by USGS in coordination with the California Geological Survey ("CGS"), dated 2003; and
- EMWD and USGS Geologic Composite Map.

These technical studies and maps all show alluvium in the Southern basin area.

2. **DWR's Public Notice and Comment Processes Should be Clarified to Improve Public Participation.**

Section 345.4 of DWR's Emergency Regulations, entitled "Criteria for Evaluating Supporting Information," establishes the procedure and criteria that DWR is to use in evaluating basin boundary modification requests. "Supporting Information" is the information that must be submitted by the requesting agency, so that DWR can review the submission packet and issue its completeness determination. (§§ 344 *et seq.*, 343.10.) DWR confirmed that EMWD's submission packet was complete.

On July 1, 2016, DWR released its draft recommendations for all basin boundary modification requests. As to EMWD's Request, DWR preliminarily recommended to "Approve, as modified." DWR recommended approval of just the upper Domenigoni Valley area modification, but not the Southern basin area. The decision was surprising because EMWD's submission packet included U. S. Geological Survey ("USGS") and California Geological Survey ("CGS") maps documenting the Southern basin area's alluvium. DWR's July 1 draft provided no explanation or rationale underlying DWR's decision. No information was given as to what information DWR would or would not consider in connection with public comments on the draft recommendations that were required to be submitted by the July 15, 2016 deadline.

On July 8, 2016, we asked DWR's Southern Region Office why it recommended the modification. We learned that DWR reviewed Google Earth images not submitted by EMWD and a handful of readily available well logs, and concluded that the alluvial material in the adjudicated Southern basin area is considered too shallow to be included within the basin. DWR said that a contrary interpretation would call into question the definition of a basin statewide. On July 14, 2016, we submitted a comment letter pointing out that DWR's review of EMWD's Request did not follow the evaluation procedure and criteria required by the Emergency Regulations and applied a standard for depth of alluvium not found in Bulletin 118's definition of a groundwater basin or other applicable standards and regulations.

After the close of the public comment period, DWR updated the draft recommendations to disclose its rationale for the draft recommendations. For EMWD's Request, DWR said:

Modifications proposed in the Domenigoni Valley portion of the basin were approved. ***However, a portion of the proposed basin south of Domenigoni Valley was determined to not have sufficient thickness of alluvial deposits to support inclusion as basin area. In addition, portions of the San Jacinto basin were revised based on newer and more detailed geological mapping.*** (Emphasis added.)

However, the newer and more detailed 2003 USGS/CGS geological mapping actually confirms the presence of alluvium in the Southern basin area supporting EMWD's Request. DWR's Final Recommendation for EMWD's Request maintains its preliminary recommendation to "Approve, as Modified" – omitting the Southern basin area and approving only the upper Domenigoni Valley area – without addressing the procedural and substantive errors raised in our July 14, 2016 letter.

Additionally, the public was misinformed that DWR would present the Final Modifications to CWC in September 2016. DWR reiterated at the CWC's August 17, 2016 meeting that it would appear at the CWC once again in September 2016 to present the final modifications. Following CWC's August meeting, DWR sent another email update through its list serve affirming that it would appear before the CWC at the September 2016 meeting. However, the item did not appear on the CWC's September agenda and we were informed by CWC staff that its role in the basin boundary modification process is now over. The item is now being presented by DWR to CWC at the October 18, 2016 Board Meeting for comment.

3. DWR's Recommendation for the Southern Basin Area Should be Reconsidered Consistent with the Evaluation Criteria in the Emergency Regulations.

Under § 345.4(a), DWR was to evaluate EMWD's "Qualified Maps" for whether they show the "presence or absence of a groundwater flow boundary." (§ 345.4(a)(2)-(3).) "Qualified map" means a "geologic map of a scale no smaller than 1:250,000 that is published by the U. S. Geological Survey or the California Geological Survey, or is a map published as part of a geologic investigation conducted by a state or federal agency, or is a geologic map prepared and signed by a professional geologist that is acceptable to the Department." (§ 341(u).) The maps submitted by EMWD satisfy this definition.

However, the Google Earth images used by DWR to disapprove the Southern basin area portion of the Request are not "Qualified Maps" because they are unpublished satellite images viewed through the internet. Furthermore, DWR applied an arbitrary "minimum alluvial thickness" standard instead of evaluating whether the Southern basin area had a "presence or absence of a groundwater flow boundary." (§ 345.4(a)(2)-(3).)

DWR's Final Recommendation for EMWD's Request deviates significantly from others that are also "Approved, as modified." EMWD's Request is the only "Approved, as modified" recommendation that excludes mapped alluvial areas. In all other cases, DWR expanded the scope of the original request to add alluvial areas into the basin.

4. **Conclusion.**

In light of the above, we ask DWR to reconsider the Southern basin area modification under the correct evaluation criteria and approve EMWD's Request. Further, we respectfully request that CWC and DWR review the public notification and comment processes employed in this round of basin boundary modifications in order to improve the process for the 2018 cycle.

We appreciate the opportunity to submit these comments and to work with CWC and DWR to improve the boundary modification process. If you have any questions, please contact me (at mstaples@jacksontidus.law, (949) 851-7409) or Kristin Garcia (at kgarcia@jacksontidus.law, (949) 851-7423).

Sincerely,



Michele A. Staples

MAS
w/encls.

cc: Timothy Godwin, Department of Water Resources Sustainable Groundwater
Management Program *
Charlie Bachmann, Eastern Municipal Water District*
Chuck Binder, Watermaster, Santa Margarita River Watershed Adjudication*
Kristin Garcia*

*via e-mail, w/encls.

ATTACHMENT 1

EASTERN MUNICIPAL WATER DISTRICT

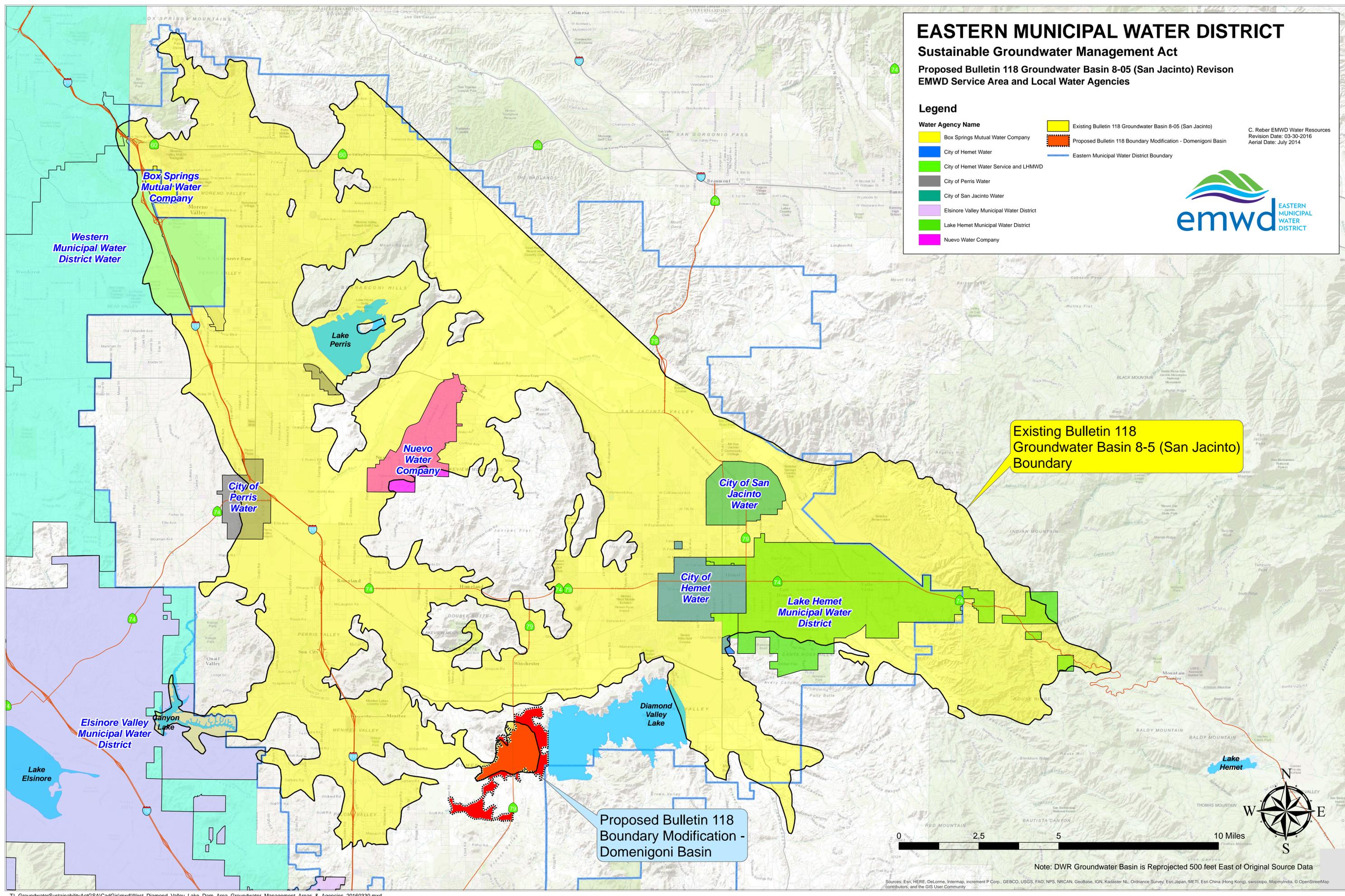
Sustainable Groundwater Management Act

Proposed Bulletin 118 Groundwater Basin 8-05 (San Jacinto) Revision EMWD Service Area and Local Water Agencies

Legend

Water Agency Name	Symbol	Description
Box Springs Mutual Water Company	Yellow	Existing Bulletin 118 Groundwater Basin 8-05 (San Jacinto)
City of Hemet Water	Blue	Proposed Bulletin 118 Boundary Modification - Domenigoni Basin
City of Hemet Water Service and LHMWD	Light Green	Eastern Municipal Water District Boundary
City of Perris Water	Grey	
City of San Jacinto Water	Dark Green	
Elsinore Valley Municipal Water District	Purple	
Lake Hemet Municipal Water District	Light Green	
Nuevo Water Company	Pink	

C. Reber EMWD Water Resources
Revision Date: 03-30-2016
Aerial Date: July 2014



Existing Bulletin 118
Groundwater Basin 8-5 (San Jacinto)
Boundary

Proposed Bulletin 118
Boundary Modification -
Domenigoni Basin



Note: DWR Groundwater Basin is Reprojected 500 feet East of Original Source Data

Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community