

California Regional Water Quality Control Board
Santa Ana Region

June 10, 2010

STAFF REPORT

ITEM: 9

SUBJECT: Order No. R8-2010-0031, Stipulation and Settlement Agreement for Administrative Civil Liability Complaint, Chino Basin Watermaster and Inland Empire Utilities Agency

On April 1, 2010, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2010-0013 to the Chino Basin Watermaster (Watermaster) and the Inland Empire Utilities Agency (IEUA). The complaint alleged violations of Waste Discharge Requirements, Order No. R8-2007-0039, and that Watermaster and IEUA had failed to maintain hydraulic control (an element of the "maximum benefit" commitments included in the Basin Plan) and had violated a time schedule for restoring hydraulic control. The complaint proposed a penalty of \$227,700 for the alleged violations.

Watermaster and IEUA agreed to waive their right to a hearing and settle the complaint by paying \$124,350 to the State Water Resources Control Board and by participating in a supplemental environmental project (SEP) for the balance of the assessed penalty. The proposed SEP is a self-regenerating water softener removal rebate program, as described in the settlement agreement. Order No. R8-2010-0031 formalizes the settlement agreement, including participation in the SEP.

RECOMMENDATION:

Board staff recommends that the Board adopt Order No. R8-2010-0031 as proposed.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	
)	
Chino Basin Watermaster;)	
Inland Empire Utilities Agency)	Order No. R8-2010-0031
)	
No. R8-2010-0013 for)	Settlement Agreement and Stipulation for
Administrative Civil Liability)	Entry of Order; Order
)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulation") is entered into by and between the Santa Ana Regional Water Quality Control Board Prosecution Staff ("Prosecution Staff"), Chino Basin Watermaster and Inland Empire Utilities Agency (referred to collectively as "Settling Respondent") (the Prosecution Staff and Settling Respondent are referred to collectively as "Parties") and is presented to the Santa Ana Regional Water Quality Control Board ("Regional Water Board") for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The Settling Respondent is subject to the Water Quality Control Plan for the Santa Ana Basin ("Basin Plan"), which established "maximum benefit" objectives for TDS and nitrogen for the Chino North Groundwater Management Zone ("Chino Basin"). The "maximum benefit objectives apply provided that specific commitments are satisfied by the Settling Respondent. Table 5-8a of Regional Board Resolution R8-2004-0001 identifies the projects and requirements that must be implemented to demonstrate that water quality consistent with maximum benefit to the people of the state will be maintained and that, therefore, the maximum benefit objectives are applicable. Requirements to implement these maximum benefit commitments are incorporated in Order No. R8-2007-0039, issued by the Regional Board to the Settling Respondent.
2. The Complaint recommends imposing an administrative civil liability totaling \$227,700 for alleged violations of the requirements to implement certain maximum benefit commitments. That amount includes staff costs of \$21,000.
3. To resolve by consent and without further administrative proceedings alleged violations of Order No. R8-2007-0039 requirements implementing the maximum benefit commitments and the Basin Plan set forth in the Complaint, the Parties have agreed to the imposition of \$124,350 against the Settling Respondent, which includes \$21,000 for

staff costs. Payment of \$124,350 to the State Water Resources Control Board Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board executing this Order. The remaining \$103,350 in penalties shall be suspended upon completion of a Supplemental Environmental Project ("SEP"), as described herein in Paragraph 7.

4. The Complaint alleges that the Settling Respondent violated the provisions of Order No. R8-2007-0039 by failing to maintain hydraulic control and also failing, repeatedly, to comply with the correction schedule submitted in response to the requirements of Provision G.4g(2) of Order No. R8-2007-0039. The requirement to maintain hydraulic control is one of nine maximum benefit commitments specified in the Basin Plan and Order No. R8-2007-0039. The Settling Respondent has to date fulfilled the other eight commitments.

5. The Basin Plan does not specify the schedule or method by which Hydraulic Control is to be achieved and maintained. The Settling Respondent has identified the construction of the Chino Creek Well Field as the physical method by which Hydraulic Control is to be achieved and maintained. The Settling Respondent has no direct control over construction of the Chino Creek Well Field, which is being implemented by the Chino Desalter Authority (CDA). Nevertheless, the Settling Respondent has and accepts responsibility to maintain Hydraulic Control and to assure that actions are taken in a timely manner to implement corrective action when necessary.

6. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation and that this Stipulation is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

7. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling \$227,700 as set forth in Paragraph X of Section II herein. Further, the Settling Respondent agrees that \$103,350 of this administrative civil liability shall be suspended pending completion of a SEP as set forth in Paragraph 7 herein.

8. **SEP:** The parties agree that this Settlement Agreement and Stipulation includes a supplemental environmental project (SEP) as provided for as follows:

A. Definitions

"Cleanup and Abatement Account" – the State Water Pollution Cleanup and Abatement Account.

"Designated Water Board Representative" – the representative from the Regional Water Quality Control Board responsible for oversight of the supplemental environmental project (SEP). The contact information for this representative is as follows:

Name: Hope Smythe
Address: 3737 Main Street, Suite 500
Riverside, CA 92501-3348
Phone: (951) 782-4493
email: hsmythe@waterboards.ca.gov

"Enforcement Coordinator" – the person on the Regional Water Quality Control Board staff who is responsible for enforcement coordination.

"Implementing Party" – Can be an independent third party(ies) with whom the Settling Respondent has contracted or otherwise engaged to implement the SEP, or the Settling Respondent itself. The Settling Respondent has chosen to implement the SEP in this instance and is therefore the Implementing Party for purposes of this Agreement.

"Milestone Requirement" – a requirement with an established time schedule for meeting/ascertaining certain identified measurements of completed work. Upon the timely and successful completion of each milestone requirement, an amount of liability will be permanently suspended or excused as set forth in the Description of the SEP below.

"SEP Completion Date" – the date by which the SEP will be completed in its entirety.

B. Administrative Civil Liability And Costs Of Enforcement

1. Total Civil Liability

Settling Respondent shall be subject to administrative civil liability in the total amount of \$227,700. This includes the amount of \$21,000 for the costs incurred by the Regional Board staff to investigate and prosecute the administrative civil liability enforcement action. The civil liability also includes the cost of a SEP in the amount of \$103,350. The cost of the SEP will be referred to as the SEP Amount and will be treated as a Suspended Administrative Civil Liability.

2. Payment and Costs

Payment of \$124,350 shall be made within 30 days of receipt of the Stipulated Order executed on behalf of the Water Board to the Cleanup and Abatement Account. The payment of Water Board staff costs incurred for overseeing the implementation of the SEP is addressed in paragraph F, below. Payment shall be submitted to the Payment Administrator, as follows:

Hope Smythe
3737 Main Street, Suite 500
Riverside, CA 92501-3348

3. Funding of Special Environmental Projects

Settling Respondent agrees to perform the SEP as described further below.

C. Description of the SEP

1. Organization proposing the project:

Inland Empire Utilities Agency (IEUA), a municipal water district

Project Manager: Pari Dezhnam, Manager, Pre-Treatment Program
Inland Empire Utilities Agency
Pdezham@ieua.org
909-993-1650

2. Proposed project:

Residential Self-Regenerating Water Softener Removal Rebate Program.

The purpose of the IEUA-sponsored Self-Regenerating Water Softener Rebate program is to provide a rebate to fund the voluntary removal of existing self-regenerating water softeners from residential properties within IEUA's service area to reduce the impact of salinity discharges from these devices on recycled water and the Chino Groundwater Basin. The program is expected to fund the removal of approximately 160 existing water softeners and to take out approximately 37 tons per year of TDS from the recycled water supply that is used in the Chino Basin for outdoor irrigation and groundwater recharge.

3. Application of SEP funds:

IEUA is proposing to use \$103,350, 50% of the fine assessed under ACL Complaint R8-2010-0013 (accounts for deduction of Regional Board staff costs). The total program cost for removal of 160 water softeners is \$178,000, of which \$74,500 covers the cost of advertising, water softener removal costs (a free plumber service that is provided to participating residents), break down and disposal of the used equipment, and staff administrative time and the remainder (\$103,350) covers the residential rebates. The SEP funds will be used solely for the rebates. The implementation funding is already included in the Agency's proposed FY 2010/2011 budget. There is no CEQA requirement. The rebate program started as a demonstration project in 2008 with funding from Metropolitan Water District of Southern California, National Water Resources Institute and the Southern California Salinity Coalition.

4. Schedule:

Project start date: July 1, 2010
Completion date: June 30, 2012

5. End Product:

IEUA will provide quarterly updates on the status of the program and a final report which summarizes the number of applications received, number of applications approved,

number of water softeners removed, and the estimated salt and water savings generated by the program.

6. Nexus:

Achievement of hydraulic control in the Chino Basin is a key element of the "Maximum Benefit" Plan/Basin Plan amendments adopted by the Regional Board in 2004. Hydraulic control is intended to protect the water quality for the lower Santa Ana River and Orange County Groundwater Management Zone. Another key water quality element in the "Maximum Benefit" Plan/Basin Plan amendments is the reduction of salts entering the Chino Basin and specifically managing TDS in recycled water supplies to remain below the 550 mg/l discharge limit. The proposed SEP project is a voluntary program implemented by IEUA that incentivizes residents to take out and destroy *existing* self-regenerating water softeners, thereby removing tons of TDS from the recycled water supply and benefiting water quality in the Chino Basin and downstream. See attached program materials.

D. Representations and Agreements Regarding SEPs

1. Settling Respondent performing SEP

a. Representation of the Settling Respondent

As a material consideration for the Water Board's acceptance of this Stipulated Order, the Settling Respondent represents that it will utilize the funds outlined in paragraph C(3) to implement the SEP in accordance with the schedule for performance (described in C(4)). The Settling Respondent understands that its promise to implement the SEP, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Settling Respondent and the Water Board.

b. Agreement of Settling Respondent to Implement SEP

The Settling Respondent represents that: 1) it will spend the SEP amount as described in this Stipulated Order; 2) it will provide a certified, written report to the Water Board consistent with the terms of this Stipulated Order detailing the implementation of the SEP, and 3) within 30 days of the completion of the SEP, it will provide written certification, under penalty of perjury, that the Settling Respondent followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (if applicable), the federal Clean Water Act and the Porter-Cologne Act. The Settling Respondent agrees that the Water Board has the right to require an audit of the funds expended by it to implement the SEP.

E. Publicity Associated with SEP

Whenever the Settling Respondent or its agents or subcontractors or the Implementing Party publicizes one or more elements of the SEP, they shall state in a **prominent**

manner that the project is being undertaken as part of the settlement of an enforcement action by the Water Board against the Settling Respondent.

F. Water Board Oversight Costs

Settling Respondent shall pay \$1,000 to the State Water Pollution Cleanup and Abatement Account to fully cover the Water Board's estimated costs of overseeing the implementation of the SEP. This payment is due within 30 days of the entry of the Order by the Regional Water Board that accepts this SEP.

G. Submittal of Progress Reports

Settling Respondent and/or the Implementing Party shall provide quarterly reports of progress to the Designated Water Board Representative, starting with September 30, 2010.

Settling Respondent and/or the Implementing Party shall permit inspection of the SEP by the Water Board staff at any time without notice.

H. Audits and Certification of Environmental Project

1. Certification of Expenditures.

On or before June 30, 2012, Settling Respondent shall submit a certified statement by responsible corporate officials representing the Settling Respondent (and the Implementing Party) documenting the expenditures by Settling Respondent (and the Implementing Party) during the completion period for the SEP. The expenditures may be external payments to outside vendors or contractors implementing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. Settling Respondent shall provide any additional information requested by the Water Board staff which is reasonably necessary to verify Settling Respondent's SEP expenditures. The certification need not address any costs incurred by the Regional Board for oversight.

2. Certification of Performance of Work

On or before August 1, 2012 the Settling Respondent (or the Implementing Party on behalf of the Respondent) shall submit a report, submitted under penalty of perjury, stating that the SEP has been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Board to evaluate the completion of the SEP and the costs incurred by the Settling Respondent. The certification should state:

I testify, under penalty of perjury, that the work on the Residential Self Regenerating Water Softener Removal Rebate Program is complete as of [date.]

3. Certification that Work Performed on SEP Met or Exceeded Requirements of CEQA and other Environmental Laws [Where Applicable].

On or before July 1, 2010, the Settling Respondent (or the Implementing Party on behalf of the Settling Respondent) shall submit documentation, under penalty of perjury, stating that the SEP meets or exceeds the requirements of CEQA, if applicable, and or other environmental laws. The Settling Respondent (or the Implementing Party on behalf of the Settling Respondent) shall, before the SEP implementation date, consult with other interested State Agencies regarding potential impacts of the SEP. Other interested State Agencies include, but are not limited to, the California Department of Fish and Game. To ensure compliance with CEQA where necessary, the Settling Respondent and/or the Implementing Party shall provide the Water Board with the following documents from the lead agency:

- a) Categorical or statutory exemptions;
- b) Negative Declaration if there are no "significant" impacts;
- c) Mitigated Negative Declaration if there are potential "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potential significant impacts;
- d) Environmental Impact Report (EIR) if there are "significant" impacts.

4. Third Party Audit

If the Designated Regional Board Representative obtains information that causes the representative to reasonably believe that the Settling Respondent (or Implementing Party) has not expended money in the amounts claimed by the Settling Respondent (or Implementing Party), or has not adequately completed any of the work in the SEP Workplan, the Designated Regional Board Representative may require, and the Settling Respondent shall submit, at its sole cost, a report prepared by an independent third party(ies) acceptable to the Water Board staff providing such party(ies)'s professional opinion that Settling Respondent (and the Implementing Party) has expended money in the amounts claimed by the Settling Respondent. In the event of such an audit, the Settling Respondent (and the Implementing Party) agree that they will provide the third-party auditor with access to all documents which the auditor requests. Such information shall be provided to the Designated Water Board Representative within three (3)

months of the completion of the Settling Respondent's SEP obligations. The audit need not address any costs incurred by the Regional Board for oversight.

I. Regional Board Acceptance of Completed SEP

Upon the Settling Respondent's satisfaction of its obligations under this Stipulated Order, the completion of the SEP and any audits, the Designated Water Board Representative, with notice to the regional Enforcement Coordinator, shall request that the Water Board issue a "Satisfaction of Order". The issuance of the Satisfaction of Order shall terminate any further obligations of the Settling Discharger and/or the Implementing Party under this Stipulated Order.

J. Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved SEP

In the event that Settling Respondent is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that it (and/or the Implementing Party) has spent the entire SEP Amount for the completed SEP, Settling Respondent shall pay the difference between the Suspended Administrative Civil Liability and the amount Settling Respondent can demonstrate was actually spent on the SEP, as an administrative civil liability.

K. Failure to Complete the SEP

If the SEP is not fully implemented within the SEP Completion Period required by this Stipulated Order or there has been a material failure to satisfy a Milestone Requirement, the Designated Water Board Representative shall issue a Notice of Violation. As a consequence, Settling Respondent shall be liable to pay the entire Suspended Liability or, some portion thereof less the value of the completion of any Milestone Requirements. Unless otherwise ordered, Settling Respondent shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEP prior to the date of the "Notice of Violation" by the Water Board. The amount of the Suspended Liability owed shall be determined via a "Motion for Payment of Suspended Liability" before the Water Board. Upon a determination by the Regional Water Board of the amount of the Suspended Liability assessed, the amount owed shall be paid to the State Water Pollution Cleanup and Abatement Account within thirty (30) days after the service of the Regional Water Quality Control Board's determination. In addition, the Settling Respondent shall be liable for the Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy the Settling Respondent's obligations to implement the SEP.

L. Water Board is Not Liable

Neither the Water Board members nor the Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting

from acts or omissions by Settling Respondent (or the Implementing Party where applicable), its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

The Settling Respondent and the Implementing Party covenant not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the ACL, this Stipulated Order or the SEP.

9. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.

10. **Party Contacts for Communications related to Stipulation/Order:**

For the Regional Water Board:

Kurt Berchtold, Assistant Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

Julie Macedo, Senior Staff Counsel
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814

For the Settling Respondent:

Kenneth Manning, Chief Executive Officer
Chino Basin Watermaster
9641 San Bernardino Rd.
Rancho Cucamonga, CA 91730

Thomas Love, CEO/General Manager
Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708

11. **Bankruptcy:** Should the Settling Respondent enter into bankruptcy proceedings before all payments are paid in full, the Settling Respondent agrees to not seek to discharge any of these penalties in bankruptcy proceedings.

12. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

13. **Matters Addressed by Stipulation:** Upon adoption by the Regional Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint, or which could have been asserted against the Settling Respondent as of May 10 2010 based on the specific facts alleged in the Complaint or this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Paragraph 3, meeting the revised schedule hereby approved by the Regional Board for the construction of the Chino Creek Wellfield in the form attached hereto as Attachment A, and the Settling Respondent's full satisfaction of the obligations in performing the SEP, as described in Paragraph 7.

14. **Settling Respondent's Denial of Liability:** In settling this matter, the Settling Respondent does not admit to any of the findings of the Complaint, or that it has been or is in violation of the CWC, or any other federal, state, or local law or ordinance, provided, the Settling Respondent agrees that in the event of any future enforcement actions by the Regional Water Board, this Order may be used as evidence of a prior enforcement action consistent with CWC section 13327.

15. **Public Notice:** The Settling Respondent understands that this Stipulation and proposed Order was noticed for public comment on May 10, 2010, prior to consideration by the Regional Water Board. In the event objections are raised during the public comment period, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the Stipulation and proposed Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.

16. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

17. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Settling Respondent is represented by counsel in this matter.

18. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties and approved by the Regional Water Board.

19. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

20. **Waiver of Hearing:** The Settling Respondent has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

21. **Waiver of Right to Petition:** The Settling Respondent hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

22. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

23. **Necessity For Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Regional Water Board regarding submissions or notices

shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval required by this Order.

24. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

25. **Effective Date:** The obligations under Paragraphs 3, 7 and Attachment A, incorporated by reference, of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board which incorporates the terms of this Stipulation.

26. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

27. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Santa Ana Region

By: _____
Gerard J. Thibeault, Executive Officer

Date: _____

SETTLING RESPONDENT'S NAME

By: _____
NAME
TITLE

Date: _____

Order of the Regional Water Board

1. This Order incorporates the foregoing Stipulation.
2. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in CWC sections 13327, 13351, and 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board. In addition to these factors, this settlement recovers the costs incurred by the staff of the Regional Water Board for this matter.

Pursuant to CWC section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the Santa Ana Regional Water Quality Control Board.

Gerard J. Thibeault
Executive Officer

Date: _____

**Order No. R8-2010-0031
Attachment A**

Revised Schedule for Construction of Chino Creek Well Field

The Settling Respondent agrees to implement the Chino Creek Well Field in accordance with the schedule detailed below, subject to the following:

1. The Parties will meet at least once every three months to review compliance with the revised schedule presented below for the construction of the Chino Creek Well Field and to review the current status of Hydraulic Control.
2. If, for just cause, milestones in the revised schedule below have not been met, or if technical analyses by the Settling Respondent, the Regional Board or other qualified individuals/organizations indicate that Hydraulic Control has not been attained, then the Parties agree to consider revised schedule milestones and/or other remedial efforts. In evaluating just cause, the Regional Board shall take into consideration the activities of third parties over whom the Settling Respondent has no control but that may affect the schedule for achieving Hydraulic Control, including the responsible parties for the Chino Airport and Ontario Airport contamination plumes. Upon notification by the Regional Board that efforts to achieve Hydraulic Control have failed or are inadequate, the Settling Respondent shall submit a proposed revised schedule, which may be based on an alternative plan of remedial efforts designed to achieve Hydraulic Control, no later than 3 months from the date of notification. Upon agreement by the Regional Board, after the opportunity for public comment has been provided, on a revised schedule and/or other remedial efforts, the revised schedule/remedial efforts shall form the basis for assessment of compliance with the requirements of Order No. R8-2007-0039, Provision G.4g(2) for the maintenance of hydraulic control.
3. The Settling Respondent acknowledges that failure to achieve Hydraulic Control in accordance with the revised schedule below, or with a further revised and approved remedial plan or schedule, may result in a determination by the Regional Board, after the opportunity for input by the Settling Respondent and the public has been provided, that the "maximum benefit" objectives do not apply and that the Settling Respondent is responsible to identify and implement an acceptable plan to mitigate TDS and nitrogen discharges in excess of the limitations specified in Order No. R8-2007-0039 that are based on the applicable antidegradation objectives.

Revised Schedule

May 5, 2010	Advertise Drilling of first set of wells ¹
June 15, 2010	Open Bids at WMWD for first set of wells
June 24, 2010	Watermaster Finding of No Material Physical Injury and Approving Location of Hydraulic Control Wells
August 31, 2010	Notice to Proceed for first set of wells
October 29, 2010	Completion of Chino II Desalter expansion
January 26, 2011	Water Quality Results for first set of wells
February 25, 2011	Completion of drilling for first set of wells
August 1, 2011	Notice to Proceed for second set of wells
May 18, 2012	Completion of Wellfields Intertie Pipeline and Pump Station
May 18, 2012	Completion of Chino II Product Water Pump Stations
June 14, 2012	Completion of drilling for second set of wells
July 23, 2012	Completion of Chino II Product Water Pipelines
July 24, 2012	Completion of equipping first set of wells
September 4, 2012	Start-up of first set of wells and Completion of Raw Water Pipeline from CCWF to Chino I Desalter
April 25, 2013	Completion of Chino I Desalter Expansion
October 18, 2013	Completion of equipping second set of wells
November 1, 2013	Start-up of second set of wells
March 10, 2014	Completion of Concentrate Reduction Facilities

¹ The "Chino Creek Wellfield" is anticipated to include six production wells. The "first set" of wells will include two of these wells. Following installation and testing of these wells, Settling Respondent and the CDA, in consultation with Regional Board staff, will evaluate whether all four of the "second set" of wells are necessary in order to achieve and maintain Hydraulic Control.

The revised schedule for the Chino Creek Well Field set forth in the preceding table is a schedule for the completion of the Expansion Project otherwise known as Phase III of the Chino Basin Desalters. The Expansion Project is being pursued under direction of the San Bernardino Superior court and it is intended to achieve "Hydraulic Control"².

The Settling Respondents expect that substantial progress will have been made towards obtaining Hydraulic Control by September of 2012 when the first set of production wells is connected to the raw water pipeline. The Settling Respondents expect that the completion of the Expansion Project will achieve the goal of obtaining Hydraulic Control.

The Chino Basin Watermaster will update the enclosed schedule at least once every three months and more frequently when necessary to account for progress to date and to request adjustments when there are unexpected intervening circumstances.

² Hydraulic Control is defined as the elimination of groundwater discharge from the Chino Basin to the Santa Ana River or controlling the discharge to de minimus levels.

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the Matter of:

Chino Basin Watermaster)
9641 San Bernardino Road)
Rancho Cucamonga, CA 91730)
Attn: Kenneth R. Manning)
)
)
Inland Empire Utilities Agency)
6075 Kimball Avenue)
Chino, CA 91708)
Attn: Richard W. Atwater)

Revised
Complaint No. R8-2010-0013
for
Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The Chino Basin Watermaster and Inland Empire Utilities Agency (hereinafter "Watermaster" and "IEUA") are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter "Regional Board"), may impose administrative civil liability under California Water Code (hereinafter "CWC") §13350.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint, unless pursuant to CWC Section 13323, the Watermaster and Inland Empire Utilities Agency waives their right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Board's regular meeting on June 10, 2010, at the Irvine Ranch Water District, 15600 Sand Canyon Ave, Irvine, CA 92618. The Watermaster and IEUA, or their designated representatives, will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. An agenda for the meeting and the staff report relating to this item will be mailed to you not less than 10 days prior to the hearing date.
3. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability

amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

THE COMPLAINT IS BASED ON THE FOLLOWING FACTORS:

1. The Chino Basin Watermaster (Watermaster) was established under a judgment from the San Bernardino County Superior Court. The Judgment adjudicated the Chino Groundwater Basin and required the Basin to be operated in accordance with the provisions of the Judgment and under the direction of a court-appointed watermaster. The Watermaster consists of various public and private entities that pump water from Chino Basin, including municipalities in the Chino Basin, water districts, agricultural operators, commercial enterprises and other private interests. The Judgment required the Watermaster to develop an Optimum Basin Management Program (OBMP) and to implement the OBMP. Components of the OBMP include extensive groundwater monitoring, development of recharge facilities, construction of storage and recovery projects, management of salt loads, and development of new water sources such as reclaimed water and storm water recharge.
2. In 2004, the Regional Board approved amendments to the Water Quality Control Plan for the Santa Ana Basin (Basin Plan) that established so-called "maximum benefit" objectives for TDS and nitrogen for the Chino North groundwater Management Zone (also referred to in this Complaint as the Chino Basin). The "maximum benefit" TDS and nitrogen objectives are less stringent than the "antidegradation" objectives for the Chino North Management Zone, which were also established by the 2004 Basin Plan amendments. The "maximum benefit" objectives accommodate water recycling and recharge projects, while ensuring protection of the beneficial uses of Chino Basin and downstream water bodies. Pursuant to the Basin Plan, the application of the "maximum benefit" objectives, rather than the "antidegradation objectives", is contingent on the implementation by the Watermaster and IEUA of their maximum benefit commitments, which are a specific program of projects and requirements (shown in Table 5-8a of the Basin Plan) that are also an integral part of the OBMP.
3. One of the maximum benefit requirements specified in the Basin Plan is that hydraulic control, *i.e.*, eliminating groundwater discharge from the Chino Basin to the Santa Ana River, or controlling the discharge to *de minimis* levels, be maintained.
4. On April 15, 2005, the Regional Board issued Water Recycling Requirements (Order No. R8-2005-0033) to the Watermaster and IEUA for Phase I of the Chino Basin Recycled Water Groundwater Recharge Project. Pursuant to Section H. PROVISIONS 4.h. of Order No. R8-2005-0033, the Watermaster and IEUA are required to implement their maximum benefit commitments, including maintaining hydraulic control.
5. On June 29, 2007, the Regional Board amended R8-2005-0033 and issued revised Water Recycling Requirements (Order No. R8-2007-0039) to the Watermaster and IEUA for the Chino Basin Recycled Water Groundwater Recharge Program, Phase I

and Phase II Projects. Order No. R8-2007-0039 identifies the Watermaster and IEUA as “dischargers” or “users”. Order No. R8-2007-0039 continues to require that the Watermaster and IEUA implement their maximum benefit commitments. With respect to the maintenance of hydraulic control, Section G. PROVISIONS, 4.g(2) requires, *“The users shall submit a plan and schedule to correct loss of hydraulic control within 60 days of a determination by the Regional Board that hydraulic control is not being maintained. The schedule shall assure that hydraulic control is achieved as soon as possible but no later than 180 days after loss of hydraulic control is identified. The users shall implement the plan and schedule upon approval by the Regional Board.”*

6. The Watermaster and IEUA have violated the provisions of Order No. R8-2007-0039 by failing to maintain hydraulic control and also failing, repeatedly, to comply with the correction schedule submitted in response to the requirements of Provision G.4g(2) of the Order:
 - a) On April 15, 2006, the Watermaster and IEUA submitted the Chino Basin Maximum Benefit Monitoring Program 2005 Annual Report. Analysis of groundwater level data in this report indicated that hydraulic control was not occurring in the area bounded by the Chino Hills and Desalter I Well No.5 in the Chino North Management Zone. This finding was confirmed in three reports prepared in 2006 by Wildermuth Environmental, Inc. at the direction of the Watermaster.
 - b) The Watermaster conducted detailed modeling investigations to develop a new desalter well field (hereafter the Chino Creek Well Field) and a groundwater management program that, when implemented, are expected to correct the loss of hydraulic control.
 - c) By letter to the Watermaster and IEUA dated February 14, 2007, the Executive Officer acknowledged the finding of the loss of hydraulic control and requested by March 16, 2007, a time schedule that identifies design and construction milestones for the Chino Creek Well Field, leading to correction of the loss of hydraulic control. The February 14, 2007 letter makes clear the Executive Officer's expectation, based on detailed discussions with Watermaster and IEUA on November 30, 2006, that the corrective action schedule to be proposed by the Watermaster/IEUA would not exceed three years.
 - d) By letter dated February 28, 2007, the Watermaster and IEUA requested that the submittal of the time schedule for design and construction milestones for the Chino Creek Well Field be delayed to March 31, 2007. On March 12, 2007, the Executive Officer granted the extension.
 - e) On March 30, 2007, the Watermaster and IEUA provided two versions of the requested Chino Creek Well Field design and construction milestone schedule: Schedule A – Pragmatic Schedule for the planning, design and construction of the

Chino Creek Well Field; and, Schedule B – Accelerated schedule for planning, design and construction of the Chino Creek Well Field. Schedule A and B identified completion dates of November 2012 and February 2012, respectively. The February 2012 schedule was recognized as feasible only if requisite analyses pursuant to the California Environmental Quality Act and other planning and design processes were completed expeditiously.

- f) On May 29, 2007, in a meeting with Watermaster and IEUA representatives, the Executive Officer approved the time schedule for achieving hydraulic control. The approved time schedule included interim milestone dates and specified that hydraulic control would be achieved by November 2012. One of the interim milestone dates required the EIR for the project to be finalized by September 1, 2009. The EIR has not yet been finalized.
- g) In response to a January 15, 2008 request by the Executive Officer for a status report on progress to achieve hydraulic control, on February 11, 2008, the Watermaster and IEUA submitted a letter acknowledging that hydraulic control had not yet been achieved and that some groundwater outflow from Chino North management zone appeared to be occurring near Chino Creek. The Watermaster/IEUA letter indicated that the magnitude of this discharge was estimated to be approximately 4,000 to 5,000 acre-ft/yr. The letter proposed a **revised** schedule for the planning, design and construction of the Chino Creek Well Field, with completion by early 2013.
- h) By letter dated May 23, 2008, the Executive Officer requested that the Watermaster and IEUA provide quarterly reports, including schedules, on progress to implement hydraulic control measures until hydraulic control is achieved.
- i) On July 15, 2008, the Watermaster and IEUA submitted a letter report constituting the July 15th progress report. Per this July 15th report, start-up of the Chino Creek Well Field was projected to occur in November 2013. The July 15th report also stated that: "...since February 2008 there has been no significant progress on the project."
- j) At the September 5, 2008, Regional Board meeting, the Executive Officer reported on the status of the Watermaster and IEUA's progress in meeting the maximum benefit commitments and requirements, including correction of the loss of hydraulic control. The Executive Officer reported that the Watermaster and IEUA had submitted a schedule on March 30, 2007 that specified a 4-year schedule (November 2012) to construct the Chino Creek Well field and thereby correct the loss of hydraulic control. The Executive Officer also reported that on February 11, 2008, the Watermaster and IEUA had submitted a revised schedule for the completion of the Chino Creek Well Field by May 2013. The Executive Officer reported that the Watermaster and IEUA had also reported on July 15,

2008 that there had been no significant progress on the Well Field project since February 2008. Testimony provided by the Watermaster indicated that the delay was due, in significant part to financial and membership issues within the Chino Desalter Authority that were expected to be resolved shortly.

- j) Subsequently, at the November 21, 2008 Regional Board meeting, the Executive Officer reported that Watermaster representatives had indicated that the outstanding issue related to CDA had been resolved and that the plan and schedule provided by the Watermaster and IEUA would assure that hydraulic control would be achieved by November 2013. Given the reported resolution of issues, the Executive Officer did not propose enforcement by the Regional Board, given the assurances by the Watermaster.
 - k) On October 30, 2009, the Watermaster and IEUA submitted the Chino Desalter Phase 3 Quarterly report – July 1, 2009 to September 30, 2009. The quarterly report included a revised schedule for construction of the Chino Creek Wellfield: construction was to begin on August 7, 2008 and be complete by December 2, 2014. This is more than two years beyond the November 2012 schedule identified in the March 30, 2007 Watermaster submittal.
 - l) The Watermaster and IEUA have failed to maintain hydraulic control and to take timely action to correct the loss of hydraulic control, as required by Order No. R8-2007-0039.
 - m) By electronic message dated December 9, 2009, the Executive Officer advised the Watermaster and IEUA of the intent to proceed with enforcement action for the continuing failure by Watermaster and IEUA to meet the maximum benefit requirements specified in Order No. R8-2007-0039, specifically, those requirements pertaining to hydraulic control.
7. Pursuant to CWC § 13350. (a) Any person who... (2) in violation of any **waste discharge requirement**, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).
8. Pursuant to § 13350 (e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both. The Executive Officer proposes to impose civil liability per CWC §13350 (e)(1), on a daily basis.
9. CWC §13350(e)(1) states that the civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs. The maximum liability for the violation cited above on a daily basis is \$1,060,000 (212 days x \$5,000 per day).
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This is based on 212 days of violation of the September 1, 2009 deadline for finalizing the EIR.

10. CWC §13327 specifies factors that the Regional Board shall consider in establishing the amount of civil liability. Consideration of these factors is addressed in the following table.

Factor	Comment
<p>A. Nature, Circumstances, Extent and Gravity of Violation</p>	<p>The Watermaster and IEUA have failed to comply with Order No. R8-2007-0039 wherein the Watermaster and IEUA are required to implement the maximum benefit program commitment, to maintain hydraulic control to eliminate or control to <i>de minimus</i> levels the discharge of groundwater from the Chino Basin to the Santa Ana River. As a result, hydraulic control has not been achieved at least since 2006 and continues not to be achieved. The continuing failure to correct the loss of hydraulic control will adversely affect the quality and beneficial uses of affected receiving waters. The requirement to achieve hydraulic control was based on extensive analyses, conducted as part of 2004 Basin Plan amendments, to incorporate maximum benefit objectives and to identify measures necessary to assure that other receiving waters are not adversely affected as the result of implementation of those objectives.</p> <p>The Watermaster and IEUA acknowledged in 2006 that hydraulic control was not being met and have failed to address the problem in a timely manner, as required by Order No. R8-2007-0039.</p> <p>The estimated 4,000 - 5,000 acre-feet per year of groundwater in the Chino Basin that is not contained in Chino Basin, rises into the Santa Ana River and becomes part of the surface flows recharged in the Orange County Groundwater Management Zone. The Santa Ana River serves as the primary source of water supply through groundwater recharge for Orange County. The 2006 ambient TDS and nitrate-nitrogen water quality determinations for the Chino Basin were 340 mg/L and 9.7 mg/L, respectively – representing a 40 mg/L increase in TDS and a 2.3 mg/L increase in nitrate-nitrogen from the 1997 ambient water quality determination. Absent hydraulic control, discharges from Chino Basin could adversely affect the quality of groundwater discharge to the River and the quality of flows recharged in the Orange County Groundwater Management Zone, and thus the quality of Orange County groundwater used for domestic and municipal supply.</p>

Factor	Comment
<p>B. Culpability</p>	<p>The Watermaster and IEUA are responsible for implementing the maximum benefit requirements specified in Order No. R8-2007-0039, including the requirement to maintain hydraulic control and to identify and implement an acceptable plan to correct the loss of hydraulic control, should it occur.</p> <p>Both IEUA and the Watermaster have detailed knowledge and understanding of the basis for the requirement to maintain hydraulic control and to correct the failure to maintain control. Both IEUA and Watermaster are aware that the application of "maximum benefit" objectives is contingent on their implementation of maximum benefit commitments specified in the Basin Plan and in Order No. R8-2007-0039. To support implementation of the OBMP and thereby optimize the use of water resources, including recycled water, in the Chino Basin, the Watermaster and IEUA sought approval and implementation of the "maximum benefit" objectives and committed to implement a specific program of programs and projects, including actions necessary to maintain hydraulic control.</p>
<p>C. Economic Benefit or Savings</p>	<p>Regional Board staff has insufficient information to assess the economic benefit of the failure to implement the Chino Creek Well Field. The delay in constructing the facilities needed for maintaining hydraulic control has resulted in cost savings to the member agencies of the Chino Basin Desalter Authority, the Watermaster and IEUA. The exact cost benefit from this delay could not be ascertained. Regional Board staff believes that the assessment proposed in this complaint is adequate to recover these savings.</p>
<p>D. Prior History of Violations</p>	<p>Neither Watermaster nor IEUA has violated Order No. R8-2007-0039 in the past.</p>
<p>E. Staff Costs</p>	<p>Regional Board staff spent approximately 300 hours investigating the failure of The Watermaster to maintain hydraulic control and preparing this enforcement action (@\$70 per hour, the total cost for staff time is \$21,000.</p>

Factor	Comment
<p>F. Ability to pay</p>	<p>According to the following document, "The Watermaster, Thirty-Second Annual Report, Fiscal Year 2008-2009", including an Independent Auditors' Report, the Watermaster's net assets at the end of the 2008-2009 fiscal year totaled \$10,995,966, a 77% increase in net assets over the previous fiscal year. This takes into account operating expenses, non-operating expenses and all revenues. Therefore, it appears that the Watermaster has the ability to pay the proposed administrative civil liability.</p> <p>According to IEUA's "Budget in Brief, FY 2009/10", for the 2009-10 fiscal year, IEUA's adopted budget includes an ending fund balance of \$111,000,000. This takes into account operating expenses, capital program costs, net income and prior fiscal year roll-over funding. Therefore, it appears that IEUA has the ability to pay the proposed administrative civil liability.</p>

11. After consideration of the above factors, the Executive Officer proposes that civil liability be imposed administratively on Chino Basin Watermaster and Inland Empire Utilities Agency in the amount of \$227,700 for the violation cited above.

This penalty assessment is based on a consideration of the potential for harm from the failure to maintain hydraulic control and the repeated failure to implement control actions in a timely manner. The Executive Officer determined that an assessment of \$5,000 per day is appropriate. The total assessment based on a total of 212 days of violation is \$1,060,000. This amount is then adjusted based on the potential harm from the violation, adjustment to the per day assessment amount, and the Watermaster's and IEUA's culpability, cooperation to address the violation and prior history of violations. Based on these findings, the Executive Officer finds that an assessment of \$206,700 is appropriate.

CWC §13327 also requires consideration of economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. These costs are added to the final liability to determine the assessed civil liability for the alleged violation(s). No economic benefit has been assessed for the Watermaster's failure to implement the hydraulic control program. The costs of investigation and enforcement are considered as one of the "other factors as justice may require". The staff costs (\$21,000) are added to the amount in the above paragraph, for a total assessment of \$227,700.

WAIVER OF HEARING

Please see the attached Wavier Form for details regarding the waiver procedures.

If you have any questions, please contact Hope Smythe at (951) 782-4493, Joanne Schneider at (951) 782-3287 or Kurt Berchtold at (951)782-3286.

4/19/10
Date



Gérard J. Thibeault
Executive Officer
Regional Board Prosecution Team