

January 5, 2016

Paul D. Jones, II, P.E., General Manager
Eastern Municipal Water District
P. O. Box 8300
Perris, CA 92572-8300

Re: Management of the San Jacinto Groundwater Basin

The following examines whether an agency formed under the Sustainable Groundwater Management Act ("SGMA") can manage the unadjudicated part of the San Jacinto Basin.

Executive Summary

As SGMA is newly enacted, this issue is a matter of first impression and there is no legal precedent to aid us in reaching a legal conclusion. Nevertheless, based on the language of the statute and the legislative comments, we believe that the stronger position is that agency formed under SGMA ("GSA") can manage the part of the San Jacinto Basin not under the court's control and can manage pumping by those who are not parties to the *San Jacinto lawsuit*, regardless of where they pump.¹ We believe that this interpretation best carries out the intention of the act and best protects the water resource.

Analysis

Background

Part of the San Jacinto Basin is managed by a Watermaster pursuant to a stipulated judgment.² This adjudication is simply an agreement between certain

¹ The District can also address ambiguities in SGMA by seeking clarifying legislation. If there are doubts about using a GSA to manage the San Jacinto Basin, they can be resolved when the proposed GSA is submitted to the state for approval.

² *Eastern Municipal Water District v. City of Hemet, et al.*, Riverside County Superior Court, Case No. RIC 1207274 ("San Jacinto lawsuit")

of the water producers in the basin that has been converted into a judgment in order to settle a lawsuit. The adjudication is not binding on any producer that was not a party to the lawsuit and did not sign the settlement agreement. Although the parties have agreed among themselves to subject themselves to the continued authority of the Watermaster and the court, the Watermaster lacks any authority to control the behavior of any other producer in the basin.

As a result, the area of adjudication does not cover the entire hydrological basin. Further, not all pumpers in the area of adjudication are parties to the judgment. Stated another way, the adjudication excludes significant portions of the groundwater basin and excludes significant pumpers in the region that it adjudicates.

SGMA

During 2015, the California Legislature adopted several laws on groundwater, including SGMA and an act streamlining adjudications.³

SGMA allows the creation of GSAs to manage groundwater basins and assumes that a GSA will have authority over the entirety of pre- identified basins: "Unless other basin boundaries are established pursuant to this chapter, a basin's boundaries shall be as identified in Bulletin 118." (Water Code 10722). The entire San Jacinto Groundwater Basin is identified as Basin No. 8-05 in Bulletin 118. The Act also "carves out" certain "adjudicated areas," including:

"[...This] part does not apply to the following adjudicated areas or a local agency that conforms to the requirements of an adjudication of water rights for one of the following adjudicated areas: ... (16) San Jacinto Basin""⁴ (Emphasis added.)

SGMA defines "adjudication action" as "an action filed in superior or federal court to determine the rights to extract groundwater from a basin or store water within a basin, including but not limited to actions to quiet title respecting rights to extract or store groundwater or an action brought to impose a physical solution

³ Chapter 255 (SB 13): creates groundwater management agencies; Chapter 346 (SB1168): Sustainable Groundwater Management Act; Chapter 347 (AB 1739): reporting and technical assistance; Chapter 348 (SB 1319): state board authority; Chapter 350 (AB 2453): Act special to Paso Robles basin; Chapter 672 (AB 1390): streamline adjudications; and Chapter 676 (SB 255): technical changes to SGMA.

⁴ Water Code Section 10720.8 (a)

on a basin." The *San Jacinto lawsuit* is not a complete adjudication of the basin because the area of adjudication does not include all of the geographical boundaries of the hydrological basin and because the area that has been adjudicated excludes significant pumpers.

SGMA also contains an exception to the carve-out noted above:

"If an adjudication action has determined the rights to extract groundwater for only a portion of a basin, [...the exclusion] apply only within the area for which the adjudication action has determined rights."⁵ (Emphasis added.)

Based on this language we believe that SGMA can be invoked for areas of the basin where the judgment has not determined rights.

In our view, SGMA also applies to pumping by persons who are not parties to the lawsuit, even if they are pumping in the adjudication area. The court has not assumed jurisdiction over a region, it has only assumed jurisdiction over certain pumpers in that region. The court has no power to impose its orders over parties who were not named in the lawsuit.

SGMA was enacted to promote integrated basin management: "[I]t is the intent of the Legislature to...manage groundwater basins through the actions of local governmental agencies to the greatest extent feasible...." A narrow interpretation of the GSA's authority would create a class of producers that was not under the jurisdiction and control of the Watermaster but also could not be regulated by the GSA. This would create the perverse effect of permitting certain producers to draw down the basin without any control – exactly the result that SGMA was designed to prevent.

Further, it is not clear that the judgment can be amended to include the unregulated producers. (Note that because the Watermaster is an attaché of the court, any request for an amendment would need to be made by a party, not the Watermaster.) Ordinarily, entry of final judgment terminates the court's jurisdiction unless the judgment reserves (continuing) jurisdiction. The *San Jacinto* judgment reserves jurisdiction, but only for the court to consider "matters contained in the judgment." (Section 8.1.) Since the unregulated producers are not currently in the judgment they could argue that the court has not reserved

⁵ *Id* at 10720.8(e)

jurisdiction to bring them into the case. If this argument proves persuasive, a new case would have to be filed to bring in new parties. However, the new case would not have a SGMA carve out and this would create more ambiguity over jurisdiction. Arguably the court would need to consider the GSA management plan before adopting a physical solution.⁶

For these reasons we believe that the appropriate interpretation of SGMA is that, the court imposed physical solution for the *San Jacinto lawsuit* does not affect the power of a GSA except as to named pumpers.

In a letter dated 12/22/15, the Lake Hemet MWD ("LHMWD") suggested that "forming a GSA over the adjudicated area" would lead to "substantial confusion and potential conflict" regarding the relative goals of the Watermaster and the GSA. It is important to note EMWD does not intend to form a GSA "over the adjudicated area". The GSA will cover those parties who are not covered by the adjudication. The letter seems to rely on the presumption that "adjudicated area" means all of the real property in the geographic area referenced in the Judgment (at Exh A). Relying on the term "area" ignores the limited jurisdiction of the Judgment, which only covers parties to the adjudication. Since certain pumpers in that geographic area of the basin are not parties and do not have determined rights, a more precise interpretation is that some of the geographic area is subject to the Judgment. For example, if there is a 10 acre ranch where groundwater is being produced that is owned by a party that is not a named pumper, those 10 acres should not be considered to be in the "adjudicated area."

Regarding the alleged "confusion and conflict", there may be some misunderstanding here. The parties to the adjudication will be subject to Watermaster jurisdiction, and are specifically carved out of GSA jurisdiction. The GSA authority would not extend to those pumpers who are already subject to the Judgment. Furthermore, there is no intent to "usurp" the Watermaster's role, as LHMWD suggests. The Watermaster's role is defined in the Judgment; the GSA is subject to the requirements set forth in SGMA. There is no usurpation contemplated, nor possible. EMWD agrees the Watermaster's role in administering the requirements of the Judgment is outside the purview of the GSA, and will not be usurped.

Evidently there has also been an assertion that the non-participants are included in the adjudication because they are identified as "non-participants," and that

⁶ Code of Civil Procedure section 849(b)

their pumping was quantified for purposes of calculating allowable pumping under the adjudication. The fact they are "non-participants" answers the question. The Superior Court and thus the Watermaster have no jurisdiction over these pumps. For the court and the Watermaster to have jurisdiction, they must have been named as parties to the case and have been given due process through the judicial proceeding. They were not. The fact that their pumping is quantified for purposes of determining safe yield is irrelevant. Decisions made by a hydrogeologist to quantify safe yield have nothing to do with jurisdiction. If one of these non-parties begins to increase pumping to an extent which affects the basin's production, the Watermaster has no jurisdiction over these parties. The only agency that would have jurisdiction would be the GSA.

This position supports the Legislature's goals in adopting SGMA. For example, groundwater management pursuant to SGMA shall be consistent with Article X, section 2 of the Constitution. (Water Code 10720.5). If a non-party is wasting water, and that party is not named in the adjudication, who will enforce the provisions of Article X? The Watermaster has no jurisdiction. Obviously, that is the role of the GSA.

Very truly yours,

LEMIEUX & O'NEILL



Steven P. O'Neill

SON/mdd

EXHIBIT C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT C

BASE PRODUCTION RIGHTS

1. Public Agencies

AGENCY NAME	Base Production Rights (Acre-feet per year)
Eastern Municipal Water District	10,869
Lake Hemet Municipal Water District	11,063
City of Hemet	6,320
City of San Jacinto	4,031

2. Class B Participants

NAME	BASE PRODUCTION RIGHTS	APN
BOERSMA (Eric Jon Boersma; Julie Ann Boersma; Peter Boersma, Trustee of the Peter & Rita Gayle Boersma Family Trust dated October 13, 1989; and Rita Gayle Boersma, Trustee of the Peter & Rita Gayle Boersma Family Trust dated October 13, 1989)	195	425-100-005, Acres: 71.86 425-100-017, Acres: 7.23 425-200-003, Acres: 18.12 425-200-023, Acres: 3.61 425-210-004, Acres: 12.51 425-220-003, Acres: 14.38 425-100-019, Acres: 6.89 425-220-013, Acres: 0.27
BORUCHIN (the Amended and Restated John and Dora Boruchin Administrative Trust dated December 23, 2012, by Co-Trustee Rabbi Eliezer Gross and Co-Trustee Rex Johnson, as the successor-in-interest to John Boruchin, Trustee of the John and Dora Boruchin Living Trust dated December 15, 1981)	266	436-080-001 436-080-002 436-080-006

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NAME	BASE PRODUCTION RIGHTS	APN
CURCI SAN JACINTO INVESTORS	260	434-230-003, Acres: 9.52 434-230-004, Acres: 9.52 433-110-020, Acres: 1.26 433-110-040, Acres: 4.62 (Portion) 434-190-007, Acres: 6.99 434-190-008, Acres: 1.61 433-070-051, Acres: 11.84 434-300-012, Acres: 3.81 434-300-016, Acres: 32.94 434-300-017, Acres: 6.31 (Portion) 434-300-013-0, Acres: 1.34 434-271-026, Acres: 9.52 434-250-002, Acres: 19.05
LAUDA FAMILY LIMITED PARTNERSHIP	3,530	425-080-033; 286.65 Acres 430-060-020; 145.59 Acres 430-110-009; 34.60 Acres 425-090-022; 46.59 Acres 425-200-019; 54.01 Acres 430-080-004; 122.00 Acres 430-080-010; 152.11 Acres 425-080-032; 84.95 Acres 430-050-010; 238.53 Acres 425-080-015; 149.13 Acres 423-240-008; 0.56 Acres 423-240-010; 75.29 Acres 425-080-018; 16.45 Acres 425-080-019; 11.74 Acres 425-080-038; 4.67 Acres 423-240-025; 18.92 Acres 423-240-026; 173.35 Acres 425-080-016; 101.52 Acres 425-090-023; 15.12 Acres 430-080-011; 18.80 Acres 425-200-020; 143.65 Acres 423-240-013 423-240-014 425-080-034 425-080-035; 2.85 Acres 425-080-036; 0.80 Acres
NUEVO DEVELOPMENT	151	425-120-011, Acres: 36.28
PASTIME LAKES INVESTMENT CO.	212	425-110-004, Acres: 0.81 425-110-008, Acres: 75.12 425-110-009, Acres: 45.11 425-110-016, Acres: 0.46

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NAME	BASE PRODUCTION RIGHTS	APN
RANCHO DIAMANTE INVESTMENTS	166	465-140-021, Acres:12.43 (Portion) 465-140-035, Acres: 3.63 465-140-034, Acres: 7.82 465-140-014, Acres: 12.84 465-140-015, Acres: 12.55 465-140-001, Acres: 32.22 465-140-004, Acres: 9.00 465-140-024, Acres: 10.71 465-140-022, Acres: 7.90 465-140-002, Acres: 1.28
SAN JACINTO SPICE RANCH	265	433-110-004, Acres: 5.84 433-110-015, Acres: 4.81 433-110-021, Acres: 0.76 433-110-023, Acres: 0.02 433-110-025, Acres: 1.03 433-110-033, Acres: 2.86 433-110-034, Acres: 1.02 433-130-001, Acres: 1.41 433-130-020, Acres: 77.27 433-120-025, Acres: 13.67 433-120-026, Acres: 6.18 433-120-027, Acres: 0.33
SCOTT A.G. PROPERTIES, L.P.; SCOTT AG PROPERTY, L.P.	1,755	430-050-017; 1.69 Acres 430-050-018; 7.23 Acres 430-050-030; 69.01 Acres 430-050-031; 308.23 Acres 430-060-023; 12.84 Acres 430-060-024; 0.68 Acres 430-060-025; 20.61 Acres 425-080-012; 0.52 Acres 430-050-014; 43.25 Acres 430-060-019; 213.77 Acres 430-070-011; 140.69 Acres 436-110-014; 58.18 Acres 430-140-007; 3.46 Acres
VAN DAM (Donald Dick Van Dam, Trustee of the Donald Dick & Frances L. Van Dam Revocable Family Trust; & Frances L. Van Dam, Trustee of the Donald Dick & Frances L. Van Dam Revocable Family Trust)	531	432-180-004, Acres: 77.00 432-190-015, Acres: 0.02

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NAME	BASE PRODUCTION RIGHTS	APN
WARREN/UNITED AIRCRAFT	442	432-280-006; 9.77 Acres 432-280-007; 9.77 Acres 432-280-001; 3.88 Acres 432-280-002; 4.51 Acres 432-280-003; 4.48 Acres 432-280-004; 4.39 Acres 432-280-005; 0.16 Acres 444-030-012; 6.10 Acres 444-030-016; 4.89 Acres 444-030-018; 4.89 Acres 444-030-027; 30.43 Acres

EASTERN MUNICIPAL WATER DISTRICT

Hemet/San Jacinto Management Area

Private Groundwater Producers

Legend

-  City of Hemet Water
-  City of Hemet Water Service and LHMWD
-  City of San Jacinto Water
-  Lake Hemet Municipal Water District
-  Eastern Municipal Water District Boundary
-  Hemet/San Jacinto Management Plan Area

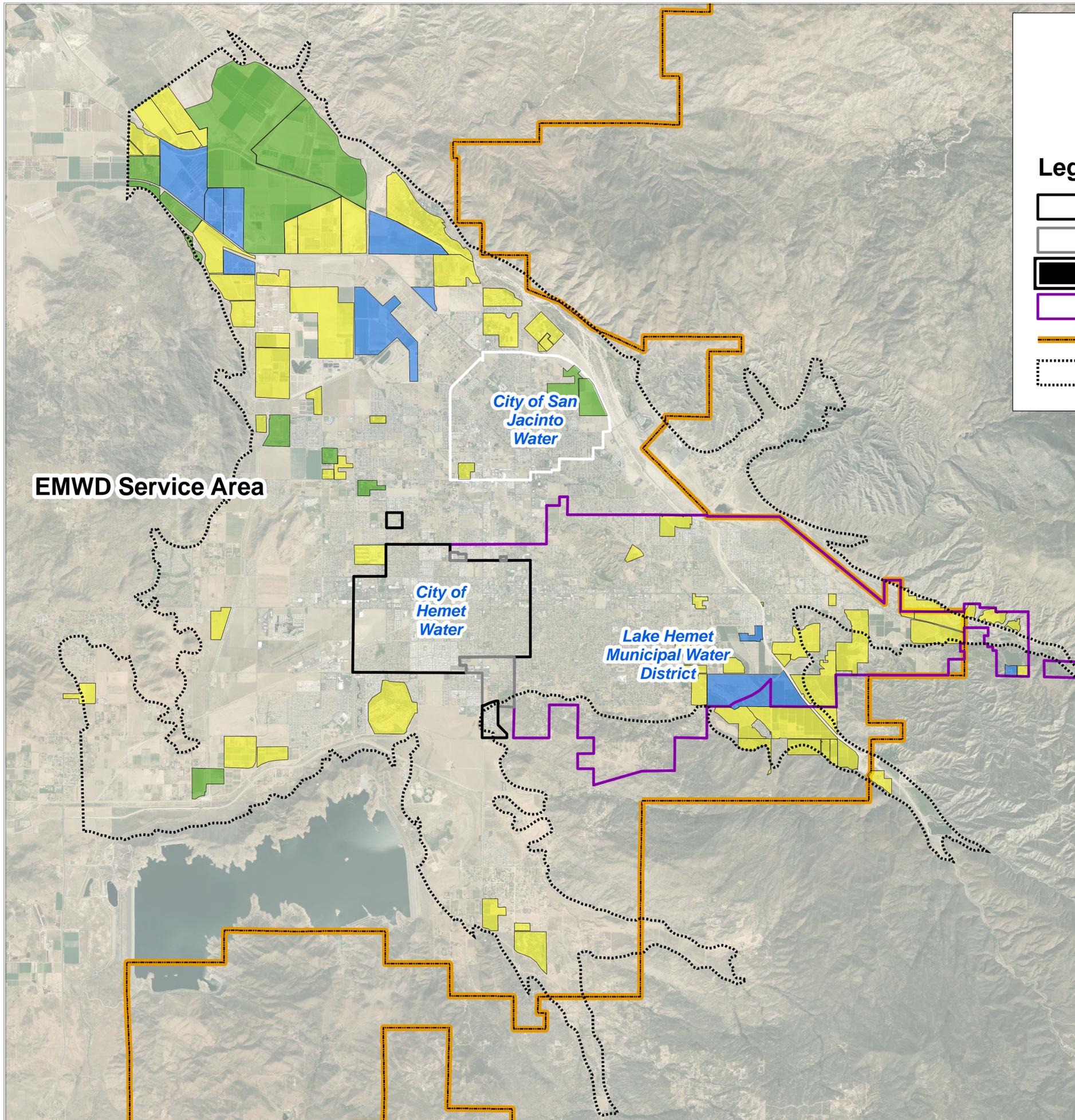
Participant Class and Non-Participants (25 AF or more)

-  A
-  B
-  Non-Participant

AF= AcreFeet



C. Reber EMWD
Revision Date: 01-18-2016
Aerial Date: July 2014



EMWD Service Area

Entity	2015 Water Right (AF)
EMWD	9,300
LHMWD	9,417
City of Hemet	5,590
City of San Jacinto	3,637
Class A Participants	6,265
Class B Participants	7,912
Non-Participants *	8,035
Total	50,156

* Includes estimated quantities for some pumpers

