

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 15<sup>th</sup> progress report. Per this July 15<sup>th</sup> report, start-up of the Chino Creek Well Field was projected to occur in November 2013. The July 15<sup>th</sup> 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><b>A. Nature, Circumstances, Extent and Gravity of Violation</b></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>B. Culpability</b></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><b>C. Economic Benefit or Savings</b></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><b>D. Prior History of Violations</b></p>	<p>Neither Watermaster nor IEUA has violated Order No. R8-2007-0039 in the past.</p>
<p><b>E. Staff Costs</b></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><b>F. Ability to pay</b></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

  
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Gérard J. Thibeault  
Executive Officer  
Regional Board Prosecution Team