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CALIFORNIA WATER NEWS

SEVEN STATES AT AN IMPASSE ON COLORADO RIVER WATER SUPPLIES

The western states are experiencing significant challenges and negotiations regarding Colorado River supplies. As demand for water increases and supplies diminish due to prolonged drought and climate change, states like California, Arizona, and Nevada are at an impasse over how to allocate the limited resources equitably. This situation has prompted discussions about new agreements and potential federal interventions to manage the crisis.

Background

The Colorado River, which supplies water to around 40 million people in the southwestern United States, is drying up. The river's reservoirs, Lakes Mead and Powell, are at historically low levels, threatening water and power supplies.

The 1922 Colorado River Compact overestimated the river's water supply, leading to overallocation. Additionally, water allocations did not account for evaporation losses, and climate change has exacerbated the situation by increasing evaporation rates. The river is governed by a complex system known as the "Law of the River," which includes the 1922 Compact, court decisions, and federal legislation. This system is stressed due to low flows and overallocation, and there is resistance to making significant changes to it.

Indigenous tribes, particularly the Navajo Nation, have historically been excluded from water allocation decisions. They face significant challenges in accessing water and are often asked to make the most sacrifices in water use negotiations. Many tribes have legal claims to water rights that date back to treaties, but these rights are often overlooked in state negotiations, leading to inequities in water access.

Negotiations Continue

Seven western states that rely on the Colorado River are at a standstill in their negotiations over new rules to address chronic water shortages. The states are divided into two camps: the lower basin states (California, Arizona, Nevada) and the upper basin states (Colorado, Utah, Wyoming, New Mexico).

California's Colorado River commissioner reportedly contends that the upper basin states for resisting participation in water cutbacks. The upper basin states argue that they already face serious shortages and seek proportionate reductions. The Biden Administration has outlined options for new guidelines, and the incoming Trump Administration will also play a role in finding a plan acceptable to all seven states. If disagreements aren't resolved, the states could enter a legal battle.

The Upper Basin states—Colorado, Utah, Wyoming, and New Mexico—have been involved in discussions about water cutbacks due to the ongoing drought and decreasing water levels in the Colorado River system. However, their participation in actual cutbacks reportedly has been less aggressive compared to the Lower Basin states. The Upper Basin states argue that they have legal obligations to deliver a certain amount of water downstream, and as a result, they are more focused on maintaining their entitlements while exploring voluntary conservation measures and efficiencies.

The Upper Basin states are exploring various measures to address the water crisis and promote conservation, including: (1) market-based solutions: implementing systems that allow for the buying and selling of water rights to incentivize conservation and efficient use; (2) infrastructure improvements: upgrading irrigation systems and water management infrastructure to reduce losses and improve efficiency in water use; (3) drought contingency plans: developing plans that outline specific actions to take during periods of drought to manage water supplies more effectively; and (4) collaboration with stakeholders: engaging with agricultural users, municipalities, and Indigenous communities to find collaborative solutions that address the needs of all parties involved.

The implications of these measures are significant, as they can impact the overall water supply, affect local economies, and require careful negotiation to ensure compliance with existing legal frameworks.

Conclusion and Implications

With federal guidelines set to expire in 2026, there is an urgent need for new agreements to avoid litigation and ensure a sustainable water supply for the future. Experts agree that long-term solutions require a focus on sustainable ecosystems and communities. There reportedly is a need for more inclusive and transparent governance, as well as greater consideration of equity and justice issues. Universities and researchers may play a crucial role in facilitating dialogue, conducting research, and educating the public about the complexities of water management. The alternative is protracted, uncertain litigation which has occurred for well over a century involving these precious water supplies for many of the western states. (Wes Miliband)

DELTA WATERMASTER EXTENDS DEADLINE FOR ALTERNATIVE DELTA WATER RIGHT REPORTING

On November 25, 2024, the Delta Watermaster announced that the deadline for water right reporting for the 2024 water year using the Delta Alternative Compliance Plan (Delta ACP) has been extended from February 1, 2025, to April 1, 2025. The Delta ACP enables water diverters to measure and report water use within the Sacramento-San Joaquin River Delta (Delta) using satellite imaging and evapotranspiration data. The regulatory deadline was extended to account for delays in updating the Delta ACP online platform.

The Delta Watermaster

The position of Delta Watermaster was created as part of the Delta Reform Act of 2009. (Wat. Code, § 85230.) While the Watermaster is appointed to a four-year term by the State Water Resources Control Board (State Water Board), the position is an independent officer of the state who reports to both the State Water Board and the Delta Stewardship Council (Council).

The Delta Watermaster oversees the day-to-day management of water rights in the Delta and possesses monitoring, reporting, and enforcement authority over Delta diverters. The Delta Watermaster is also responsible for assisting the State Water Board and Council with executing their legislative and administrative purposes to enhance the ecology and improve the reliability of the water supply in the Delta.

Senate Bill 88

In response to a series of critical drought years, the Legislature passed Senate Bill (SB) 88 in 2015, requiring all California water right holders who divert more than ten acre-feet of water per year to measure and report their diversions to the State Water Board. (Wat. Code, §§ 1840-1841.5.) The State Water Board adopted regulations implementing the SB 88 diversion requirements in 2016 and is currently considering adjustments to certain requirements and key terms. (Cal. Code Regs., tit. 23, §§ 931-938.) The required frequency of monitoring ranges from monthly to hourly, based on the amount of water a right holder directly diverts or stores in a year. Failure to comply with the measurement and reporting requirements or implement an acceptable alternative compliance plan can result in civil liability of up to $500 per day, pursuant to Water Code section 1846.

The Delta Alternative Compliance Plan

During the initial implementation of SB 88, it became evident that strict compliance with the measurement and reporting rules was not feasible for many Delta water users, due to unique hydrologic conditions and other limitations. The Delta's subsided, channelized islands, and the wide use of siphon pumps that are affected by fluctuating tides and debris, can cause traditional methods of metering at points of diversion to be less reliable and face more technical challenges. Those challenges prompted a group of diverters and experts to form the Delta Measurement Experimentation Consortium (Consortium) in 2016, and the development of the Delta ACP as an alternative plan under SB 88.

The Delta ACP, which went into effect in March of 2023, is a reporting system that tracks the overall consumptive use of water from all points of diversion in the Delta. A program called OpenET quantifies evapotranspiration data via satellite imaging to approximate consumptive use in a given area. The

evapotranspiration data is the amount of water that evaporates from crop plants, as well as land and water surfaces. Using Landsat satellites and surface weather information, OpenET estimates the quantity of water used by crops, rather than the quantity diverted by growers. In addition to avoiding the expense and challenge of individual meters, the Consortium also found the OpenET method of measuring water use more accurately accounts for the unused diverted water that returns to its source via porous Delta lands.

To participate in the Delta ACP, growers must input the place of use boundaries of their fields in the Delta ACP website, DeltaACP.com, which then applies the water use information from OpenET to the diverter's land. OpenET uses the digitized place of use for each diverter to compare acreage and monthly evapotranspiration in acre-feet. The Delta ACP website provides diverters with a preview of their evapotranspiration data obtained from OpenET, allowing participants to review the data for errors. After confirming their place of use boundaries and ET data, participants complete the remainder of their supplemental statements of diversion pursuant to SB 88. The consumptive use is then reported in the participant's annual supplemental statement of diversion and use form that is electronically provided to the State Water Board.

About half of Delta water users have participated in the Delta ACP reporting since its adoption and the Delta Watermaster has championed the program as a contributor to the ninety-eight percent reporting compliance rate for Delta diverters in 2023.

Purpose for the Extension

For the 2024 water year, which covers the period of water diverted and used between October 1, 2023 and September 30, 2024, the Delta Watermaster has granted a two-month extension from the regulatory reporting deadline of February 1, 2025 to account for delays resulting from the need for software upgrades and integration of new OpenET data. With the extension, participants in the Delta ACP will have additional time to submit their reports to the Delta ACP website interface, which resumed operation on December 1, 2024.

Conclusion and Implications

The reporting deadline extension will provide participants additional time to familiarize themselves with the updated Delta ACP website. While the need for a deadline extension indicates the Delta ACP is still being refined, the high reporting compliance rate and the innovative method for tracking water use in the Delta demonstrate the utility of the tool.

The deadline extension announcement and documents associated with the Delta ACP are available at the State Water Board's website at: https://www.waterboards.ca.gov/water_issues/programs/delta_watermaster/#:~:text=The%20extension%20for%20filing%20for,be%20incorporated%20into%20the%20system.

(Sarah Nagle, Austin Cho)

REGULATORY DEVELOPMENTS

U.S. FISH AND WILDLIFE SERVICE ISSUES BIOLOGICAL OPINION FOR LONG-TERM WATER PROJECT OPERATIONS

Surface water in California is conveyed primarily by two large conveyance systems commonly known as the State Water Project (SWP) and the Central Valley Project (CVP), which are owned and operated by the State of California Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR), respectively. The CVP and SWP are a network of dams, reservoirs, canals, and other facilities that provide water, power, and flood control for California. What one system does may, and often does, impact the other, thus making coordinated operations critical for timely and reliable delivery of water supplies throughout the state. These operations are referred as Long-Term Operations and become subjected to myriad of federal and state regulatory and environmental compliance requirements.

Background

Among those requirements for the federal government is developing and adopting a Biological Opinion, which the United States Fish and Wildlife Service (USFWS) has issued for the CVP's Long-Term Operations. USFWS is the primary federal agency whose main responsibility is to manage fish and wildlife resources.

By way of brief background, the Biological Opinions include Reasonable and Prudent Alternative (RPA) actions to prevent the projects from jeopardizing these species. For example, the 2008 Biological Opinion recommended actions to prevent the Delta smelt from becoming endangered. The Biological Opinions are intended to ensure consistency between the federal and state agencies that operate the CVP and SWP. However, a lawsuit filed by California and others in 2019 challenged the Biological Opinions, claiming the opinions did not provide enough protection for protected species.

In September 2021, the USBR requested to reinitiate Endangered Species Act consultation on the Long-Term Operations of the CVP and SWP. The new Biological Opinion includes goals to support species viability, protect life history diversity, support operational flexibility, provide regulatory certainty, support science and monitoring, and create a single, adaptable, coordinated operation for the CVP and SWP.

During late November 2024, the USFWS issued its Biological Opinion for the Long-Term Operations. This opinion assesses the potential impacts of the LTO on sixteen federally-listed and proposed species, as well as designated critical habitats.

Long-Term Operations Plan

The Long-Term Operations plan aims to provide more predictable actions for endangered fish species and a more reliable response to multi-year droughts. Key points include: (1) improved regulatory certainty for water users and a more stable water supply for communities, farms, and fish; (2) a new framework for Shasta Reservoir operations to benefit winter-run Chinook salmon; (3) revised operational criteria for Delta exports; (4) early implementation of components of the Healthy Rivers and Landscapes Program to provide more Delta outflow and habitat restoration in the Sacramento-San Joaquin Bay-Delta; and (5) collaboration with partners from various federal and state agencies.

The plan purports to be designed to build resilience to drought, support endangered species, and improve habitat conditions throughout the Delta. Also included in the plan is early implementation of components of the Healthy Rivers and Landscapes Program to provide more Delta outflow and habitat restoration. The Healthy Rivers and Landscapes Program involves numerous interests coming together to provide water for fisheries and riparian habitats in the Delta as part of the California State Water Resources Control Board's Water Quality Control Plan Update.

Ultimately, the proposed action's key findings include: (1) may affect, but is not likely to adversely affect, four species; (2) it is not likely to jeopardize the continued existence of twelve species; (3) the pro-

posed action may affect, but is not likely to adversely affect, designated habitat for one species; and (4) it is not likely to destroy or adversely modify designated critical habitat for three species

Conclusion and Implications

Biological Opinions impact the balancing of water resource management with the protection of endangered species and their habitats, especially given California's challenges with droughts. The Biological Opinion may impose restrictions on water deliveries to protect species such as salmon and delta smelt, affecting agricultural, urban, and environmental water users some of whom hold very senior water rights in the state. Long-term, this could lead to more stringent water management practices and investment in infrastructure or alternative water sources to mitigate impacts on water supply reliability. Additionally, these opinions may spur legal challenges or policy adjustments as stakeholders seek to balance ecological protection with their water needs.
(Wes Miliband)

STATE WATER PROJECT ALLOCATIONS STARTED AT 5 PERCENT, THEN JUMP TO 15 PERCENT AFTER LATE NOVEMBER ATMOSPHERIC RIVERS MARKING A WETTER YEAR THAN INITIALLY FORECASTED

The State Water Project (SWP), initiated in the mid-20th century, stands as one of California's most ambitious infrastructure achievements. Conceived to address the state's uneven water distribution the SWP transports water from northern sources, where supplies are abundant, to southern regions that experience chronic shortages. The project comprises a network of dams, reservoirs, aqueducts, and pumping stations that provide water to over 27 million residents and irrigate vast agricultural areas. Managed by the California Department of Water Resources (DWR), the SWP also supports flood control, power generation, and environmental conservation efforts. The project's operations, however, are subject to variable hydrological conditions, regulatory constraints, and complex allocation mechanisms.

Purpose of the State Water Project

The SWP's primary goal is to ensure a reliable water supply for California's urban, agricultural, and environmental stakeholders. The system's centerpiece, the California Aqueduct, spans hundreds of miles to convey water from the Sacramento-San Joaquin Delta to users throughout the state. Key reservoirs such as Lake Oroville and San Luis Reservoir store and regulate water flows. Beyond its supply function, the SWP must meet certain ecological goals by maintaining freshwater flows into ecosystems, such as the Delta's estuarine habitat. Balancing these competing demands requires careful planning, particularly given California's susceptibility to droughts and other climatic extremes.

Recent Allocation Adjustments

In early December 2024, the DWR announced SWP's 2025 water allocations at 5 percent. This original amount was surprisingly lowly considering the previous two wet years. That being said on December 23, 2024, DWR raised the initial allocation from 5 percent to 15 percent of contractors' requested Maximum Annual Table A Amounts. This decision followed a series of atmospheric rivers in late November, which significantly boosted water storage and runoff forecasts. The updated allocation reflects improved hydrological conditions as of December 1, 2024, enabling more water deliveries to SWP contractors while maintaining operational and ecological responsibilities.

Factors influencing this allocation include projected contractor demands, available storage, runoff estimates, and compliance with state and federal environmental regulations. The DWR emphasized that further revisions might occur if conditions change, highlighting the system's inherent adaptability to evolving water availability.

The updated 15 percent allocation applies broadly across SWP contractors, with specific amounts prorated according to regional needs and agreements. To schedule SWP water deliveries under this allocation, DWR will develop the fifteen percent water delivery schedules by prorating the ten percent schedules sub-

mitted by the SWP contractors in October 2024 (as part of initial requests) or as revised with any subsequent updates. Major recipients include contractors in Southern California, which collectively account for a significant share of the SWP's annual water deliveries.

Hydrological and Regulatory Considerations

The December 2024 allocation adjustment underscores the critical role of hydrology in SWP operations. California's water supply is highly dependent on winter precipitation, often delivered through atmospheric river events. While these storms provided much-needed relief in late 2024, the state's water managers must navigate a range of challenges, including variability in snowpack accumulation, reservoir capacity, and runoff timing. As of the original 5 percent allocation in early December, DWR was anticipating a dryer year which fortunately was partially negated by the late November atmospheric rivers.

That being said, after the previous two years where Allocations reached 100 percent in 2023 and 40 percent in 2024, SWP Contractors are hoping to reach allocations higher than 15 percent as the water year continues.

Conclusion and Implications

The recent increase in SWP allocations from 5 percent to 15 percent marks a positive development for California's water users, reflecting improved hydrological conditions. However, this adjustment also highlights the system's sensitivity to climatic and regulatory factors. The SWP's history and purpose illustrate the complexity of balancing competing demands in a state characterized by stark regional disparities and environmental vulnerabilities. (Darien Key, Derek Hoffman)

DELTA STEWARDSHIP COUNCIL RELEASES DRAFT CLIMATE ADAPTATION PLAN FOR THE DELTA

In November 2024, the Delta Stewardship Council released for public review a draft adaptation plan for the Sacramento-San Joaquin Delta, called the Delta Adapts: Creating a Climate Resilient Future Adaptation Plan (Plan). The Plan is intended to be a comprehensive, regional approach to climate resiliency that relies on federal, state, local, and regional collaboration for the Delta and Suisun Marsh. The Plan is the second phase of a broader climate adaptation initiative started by the Council in 2018—in shorthand, Delta Adapts—and follows the Council's completion of the Climate Change Vulnerability Assessment in 2021.

Background

In 2009, the Legislature enacted the Delta Reform Act. In the Delta Reform Act, the Legislature found that the:

> Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable. Resolving the crisis requires fundamental reorganization of the state's management of Delta watershed resources. (Wat. Code, § 85001, subd. (a).)

Accordingly, the Legislature established the "coequal goals" of "providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem" as "the basic goals of the state for the Delta." (Pub. Resources Code, § 29702, subd. (a); Water Code, §§ 85001, subd. (c) [same], 85054 [defining the coequal goals].)

The Act created the Delta Stewardship Council (Council) as an independent state agency (Wat. Code, § 85200, subd. (a)) to help safeguard Delta assets. The Act directed the Council to prepare a Delta Plan that furthers the coequal goals. (*Ibid.*, § 85300, subd. (a)). The Delta Plan is intended to be "the comprehensive, long term management plan for the Delta" to further the coequal goals and "assist in guiding state and local agency actions related to the Delta." (*Id.*, §§ 85300, subd. (a), 85302, subd. (a)).

To respond to the challenge of climate adaptation, the Council developed the Delta Adapts: Creating a Climate Resilient Future (Delta Adapts). According to the Council, climate change must be considered to attain the Council's coequal goals, namely, securing a reliable water supply for California, protecting and restoring the ecosystem and wildlife it supports, and enhancing the Delta as a unique place, with its com-

munity, tribal, and agricultural heritage. Initiated in 2018 by the Council, Delta Adapts began with a Climate Change Vulnerability Assessment (CCVA) to understand how regional climate impacts will affect the Delta's ecosystems, water supply, infrastructure, agriculture, and communities, including socially vulnerable communities. The Adaptation Plan is intended to build upon the CCVA and proposes strategies to address how Delta communities, infrastructure, and ecosystems can adapt to climate change in a manner consistent with the Council's resilience goals.

The Climate Adaptation Plan

The Plan contains four categories of strategies: flood risk reduction, ecosystem, agricultural, and water supply reliability. Each category of strategy contains a description of the strategy and identifies associated implementation actions to effectuate the strategy. Strategies are also connected with existing Delta Plan policies and recommendations, and the Plan identifies the relevant policies or recommendations the strategies are connected with. Finally, the Plan also provides an intended implementation roadmap for the North, Central, and South Delta, as well as the Suisun Marsh and out-of-Delta areas.

With respect to flood risk reductions strategies, the Plan calls for: (1) the development of a comprehensive, climate-informed understanding of flood dynamics in the Delta, (2) improvements and modernization of levees based on asset importance and vulnerability, (3) restoration of climate-resilient ecosystems to act as nature-based solutions for natural flood mitigation and support biodiversity, (4) improvements to flood emergency preparedness, (5) promotion of innovative farming practices and technologies that minimize flood risks, (6) communicate flood risks, warnings, and mitigation strategies to all at-risk communities, (7) use land use and urban planning to reduce flood risks, (8) use adaptive resilience planning in high-risk flood areas with consideration for existing land uses, and (9) manage and expand upstream water storage capability.

Ecosystem Strategies

With respect to ecosystem strategies, the Plan calls for: (1) improvement of capacity of ecosystems and native species to adapt to and thrive under future conditions, (2) protect at-risk ecosystems by halting and reversing subsidence and reducing the risk of levee failures, (3) building capacity and coordination to improve ecosystem function and resilience, and (4) protecting and enhancing urban ecosystems and use nature-based solutions to increase climate resilience of urban areas in and near the Delta and Suisun Marsh.

Agricultural Strategies

With respect to agricultural strategies, the Plan calls for: (1) expanding adoption and supporting implementation of climate-smart farming practices across Delta agricultural lands, (2) building a sustainable, equitable regional food system, (3) supporting diversification of income/revenue opportunities on operating agricultural lands, and (4) cooperatively identifying strategic agricultural land retirement opportunities where land uses would be of high value (monetary or non-monetary).

Water Supply Reliability Strategies

With respect to water supply reliability strategies, the Plan calls for: (1) reducing reliance on the Delta by improving regional self-reliance through conservation and development local water supplies, (2) increasing local storage of surface and groundwater supplies north and south of the Delta, (3) improving or modifying water infrastructure in the Delta to minimize the impacts of through-Delta conveyance, (4) modifying reservoir operations to adapt to changing climate conditions, and (5) reviewing and considering modifications to water quality standards to develop climate-informed objectives for agricultural uses, fishing, recreational, tribal, and other human beneficial uses of water.

Other Strategies

The Plan ascribes various strategies and implementing actions to portions of the Delta, *i.e.* the North, Central, and South Delta. For example, for North Delta water supply, the Plan suggests employing all five water supply reliability strategies, whereas for the Central Delta, it only recommends applying water supply reliability strategies 3-5. Accordingly, the Plan purports to tailor the various strategies to the unique regional needs of the Delta.

Conclusion and Implications

The Plan is intended to build on the CCVA and thus is in concept related to specific aspects of the Delta that are expected to be affected by climate change. It remains to be seen whether the strategies proposed by the Council will further the policies and recommendations of the Delta Plan as the climate continues to change. The Draft Plan available at: https://deltacouncil.ca.gov/pdf/delta-plan/2024-11-18-delta-adapts-draft-adaptation-plan.pdf
(Miles Krieger)

BAY CONSERVATION AND DEVELOPMENT COMMISSION PUBLISHES REGIONAL SHORELINE ADAPTATION PLAN IMPLEMENTATION

The San Francisco Bay Conservation and Development Commission (BCDC) has developed the Regional Shoreline Adaptation Plan (RSAP), as mandated by California Senate Bill 272. This comprehensive policy establishes guidelines for cities and counties in the Bay Area to address sea level rise through coordinated, region-wide planning efforts. The RSAP is designed to ensure consistent and equitable adaptation measures across jurisdictions while protecting communities, infrastructure, and ecosystems from coastal flooding.

One Bay Vision: A Regional Framework

The RSAP is built around the "One Bay Vision," which outlines the desired long-term outcomes for the Bay shoreline. This vision emphasizes enhancing community health and well-being by improving public safety and reducing displacement risks. It also prioritizes protecting and expanding natural habitats to ensure ecosystem health and resilience. Sustainable growth and equitable land use are key components, alongside safeguarding critical infrastructure and services from flood hazards. Ensuring uninterrupted public shoreline access and maintaining critical transportation routes are vital goals. The vision also focuses on reducing environmental hazards related to shoreline contamination and fostering collaborative governance to promote inter-agency cooperation and shared responsibility.

Subregionl Shoreline Adaptation Plans (Subregional Plans)

Local governments within BCDC's jurisdiction are required to create Subregional Plans that detail how they will adapt to rising sea levels. These plans must align with the One Bay Vision and fulfill specific requirements.

Each plan must outline how stakeholders are involved in the decision-making process, ensuring transparency and inclusivity. They must also include an analysis of existing shoreline conditions, infrastructure, and community vulnerabilities to establish a baseline for adaptation strategies. Vulnerability assessments must evaluate areas at risk due to sea level rise and coastal flooding, identifying critical assets that require protection.

Adaptation strategies in the plans should include specific measures to reduce flood risks, with an emphasis on nature-based solutions that benefit both the environment and communities. Policies to support resilient development and land use must be integrated into the plans to guide sustainable growth. Implementation plans should include timelines, responsible agencies, and funding strategies to ensure that proposed projects are actionable and achievable. Additionally, the plans must include a comprehensive list of proposed adaptation projects, prioritizing those that address the most urgent risks and needs.

Minimum Standards for Compliance

The RSAP establishes four critical Minimum Standards that all Subregional Plans must meet to ensure consistency and effectiveness. Evaluations must address a range of future sea level rise scenarios based on the latest scientific data, incorporating both intermediate and high-risk projections. Plans must also account for essential community assets, such as housing, transportation, and environmental resources, ensuring that critical infrastructure and vulnerable populations are protected. Equity considerations are a central requirement, mandating that planning processes prioritize socially vulnerable communities and incorporate their needs into adaptation measures. Proposed strategies must align with regional goals while allowing local flexibility to address unique community conditions and priorities.

Plan Submission and Review Process

Subregional Plans must be submitted to BCDC for review and approval, following a structured process to ensure alignment with RSAP guidelines by January 1, 2034. After this, BCDC will conduct a thorough evaluation to assess compliance. Plans that meet the requirements are approved, while those that do not are returned with specific recommendations for revision. Local agencies will be incentivized to have an RSAP because they will be prioritized for funding for the implementation of sea level rise adaptation strategies and recommended projects in the approved plan. Once approved, plans must be updated periodically to reflect changing conditions, new data, and progress on implementation efforts. This iterative process ensures that adaptation measures remain effective and relevant over time.

Conclusion and Implications

The RSAP establishes a forward-looking framework for managing sea level rise and coastal flood risks in the San Francisco Bay Area. By requiring comprehensive, locally-driven Subregional Plans that align with region-wide standards, the policy aims to create a resilient, equitable, and environmentally sustainable shoreline. Local governments are tasked with the next steps of responsibility by developing and implementing these plans proactively. These plans look to ensure long-term protection for residents, infrastructure, and natural ecosystems, while also creating a new framework for coordinated climate adaptation efforts in coastal regions.
(Darien Key)

KERN SUBBASIN GROUNDWATER SUSTAINABILITY AGENCIES SUBMIT REVISED GROUNDWATER SUSTAINABILITY PLAN TO AVOID POTENTIAL PROBATION

In December, 20 Groundwater Sustainability Agencies (GSAs) overlying the Kern County subbasin of the San Joaquin Valley Groundwater basin submitted a revised Groundwater Sustainability Plan (GSP) prior to a February 2025 probationary hearing for the subbasin. The revised plan is intended to redress issues affecting the plan's ability to achieve sustainability by 2040 identified by the Department of Water Resources (DWR).

Background

Enacted in 2014, the Sustainable Groundwater Management Act (SGMA) ushered in a paradigm shift in the local management of groundwater. Under SGMA, local Groundwater Sustainability Agencies are tasked with achieving long-term sustainability of their groundwater basins. A single subbasin may be managed by multiple GSAs. A GSA or GSAs develop a plan to achieve the sustainability goals of SGMA, *i.e.* a Groundwater Sustainability Plan. GSPs are comprehensive documents for how groundwater sustainability will be achieved and how the basin will avoid undesirable results, such as groundwater depletion, land subsidence, and negative water quality impacts, among other negative results. SGMA uses "minimum thresholds" to set numeric values to define undesirable results.

Under SGMA, the Department of Water Resources first reviews GSPs as to whether they are complete or incomplete. If a GSP is deemed incomplete, for instance because it is missing required components under SGMA or because DWR determines the GSP will not achieve the sustainability goals of SGMA, DWR will typically return the GSP for further revision and resubmission. If, however, a GSP fails to meet the sustainability objectives of SGMA, DWR will deem the GSP "inadequate." An inadequate designation results in a jurisdictional shift from DWR to the State Water Board. SGMA provides that:

> . . .in those circumstances where a local groundwater management agency is not managing its groundwater sustainably, the State needs to protect the resource until it is determined that a local groundwater management agency can sustainably manage the groundwater basin or subbasin. (Wat. Code, § 10735 *et seq.*)

To ensure SGMA is implemented successfully, the State Water Board may temporarily intervene

in groundwater management after DWR determines that proposed management of a groundwater basin is inadequate due to deficiencies in the GSP(s) for the basin.

The State Water Resources Control Board (State Water Board) will first consider whether to designate a basin as "probationary," which triggers several requirements. The State Water Board may designate a basin probationary if state intervention authorities are triggered and after providing notice and holding a public hearing (Wat. Code, § 10735.2, subd. (a)). The overall goal of probation is to gather information to help local GSAs address deficiencies in their plans, so they can sustainably manage their groundwater resources as soon as possible. During a probationary designation, the State Water Board will require many groundwater extractors to report their extractions, which will help resolve data gaps related to groundwater use, and State Water Board staff will provide guidance to GSAs working to develop an adequate sustainability plan (or plans). Concurrently, GSA efforts to fix deficiencies should continue.

After GSAs have adopted a revised plan (or plans) that resolve the deficiencies, they can seek to exit probationary status by submitting the plan (or plans) to the State Water Board. If the State Water Board determines that deficiencies were addressed, the Board may resolve to have the GSA (or GSAs) exit probation. If, however, deficiencies in the GSP remain, the Board has authority to institute an interim plan, which includes corrective actions, a schedule for those actions, monitoring, and enforcement.

Amending the GSP

The Kern County Subbasin of the San Joaquin Valley Groundwater Basin (Subbasin) is one of 21 basins and subbasins identified by DWR as being critically overdrafted. The Subbasin GSAs submitted five GSPs (collectively the Plan) to DWR in January 2020 (2020 GSPs). DWR designated the Plan as "incomplete" in January 2022 and identified three main deficiencies. In July 2022, the GSAs amended and resubmitted six GSPs to DWR to address the identified deficiencies (2022 GSPs). In March 2023, DWR designated the Plan as "inadequate" after reviewing the 2022 GSPs. As a result, the Subbasin is subject to the state intervention process defined in SGMA regulations and under California Water Code (CWC) § 10735 et seq. In July 2024, the State Water Board set a February 20, 2025 probationary hearing for the Subbasin.

To avoid the risk of the Subbasin being placed on probation, the 20 GSAs amended the Plan (2024 Plan) to redress key deficiencies identified by DWR in the 2022 GSPs, namely, (1) the GSPs did not establish undesirable results that are consistent for the entire Subbasin, (2) the Subbasin's chronic lowering of groundwater levels sustainable management criteria did not satisfy the requirements of SGMA and the GSP Regulations, and (3) the Subbasin's land subsidence sustainable management criteria did not satisfy the requirements of SGMA and the GSP Regulations. DWR proposed a number of corrective actions related to each purported deficiency, and the 2024 Plan is intended to address them. For instance, with respect to establishing undesirable results consistently for the entire Subbasin and the issue of chronic lowering of groundwater levels, the 2024 Plan contains a Subbasin-wide well impacts analysis using revised minimum thresholds and a Subbasin-wide well inventory to quantify potential impacts to beneficial users at the minimum thresholds as compared to a revised definition for chronic lowering of groundwater levels. Under the worst-case scenario, a total of 260-307 drinking water wells could be potentially impacted if all reach the minimum thresholds. Therefore, significantly fewer would be impacted at the definition of 25 percent of the minimum thresholds being reached, or 15 drinking water wells going dry in any given year.

With respect to land subsidence, the 2024 Plan references and discusses key findings from the six independent subsidence studies to fill data gaps. This included the installation of a new extensometer, extensive studies and data collection, differentiation between subsidence caused by activities within and outside of the GSAs' authority to control (*i.e.*, GSA-related vs. non-GSA-related) in coordination with State Water Project California Aqueduct Subsidence Program and Friant Water Authority. The 2024 Plan contains numerous other efforts to address DWR's corrective actions related to each purported deficiency, all with the aim of achieving an "adequate" designation of the 2024 Plan to avoid the Subbasin being placed on probationary status by the State Water Board.

Conclusion and Implications

The 2024 Plan represents a coordinated effort to achieve SGMA compliance before the Subbasin goes to a probationary hearing before the State Water Board and potentially placed in probationary status.

It remains to be seen whether DWR will deem the 2024 Plan adequate prior to a probationary hearing. Revised GSP is available at: https://kerngsp.com/wp-content/uploads/2024/12/Kern-Subbasin-2024-Groundwater-Sustainability-Plan.pdf
(Miles Krieger)

LAWSUITS FILED OR PENDING

INDIAN WELLS VALLEY GROUNDWATER AUTHORITY PETITIONS CALIFORNIA SUPREME COURT FOR REVIEW OF TRIAL PHASING ORDER IN COMPREHENSIVE GROUNDWATER ADJUDICATION

On November 25, 2024, the Indian Wells Valley Groundwater Authority (Authority) filed a petition for review with the California Supreme Court (Petition), challenging an August 5, 2024, trial phasing order in the comprehensive groundwater adjudication of the Indian Wells Valley Groundwater Basin. (*Indian Wells Valley Groundwater Authority v. Superior Court of Orange County*, California Supreme Court, Nov. 25, 2024, Case No. S288048.) In the wake of a summary denial of the Authority's petition for writ of mandate on November 14, 2024 (Fourth District Court of Appeal, Case No. G064757), the Petition seeks clarification from the Supreme Court on the interplay between the Sustainable Groundwater Management Act (SGMA) and the so-called Streamlined Adjudication Statutes, which govern the legal process for groundwater adjudications under SGMA. (*Indian Wells Groundwater Authority v. Superior Court*, filed Nov. 25, 2024, Cal. Supereme Court.)

SGMA and the Streamlined Adjudication Statutes

The California Legislature reshaped groundwater management in 2014 with the enactment of the SGMA, which assigns responsibility to local groundwater sustainability agencies (GSA) to develop and implement Groundwater Sustainability Plans (GSP) for the sustainable management of the majority of the state's groundwater basins by 2040. (Wat. Code, §§ 10720-10738.) Each GSP must detail how the Groundwater Sustainability Agency (GSA) will manage the groundwater resources in the basin to achieve "sustainable yield," which SGMA defines as the "maximum quantity of water that can be withdrawn annually from a groundwater supply without causing an undesirable result." (*Id.* at § 10721(w).)

The following year, the Legislature passed Assembly Bill 1390 and Senate Bill 226 (Streamlined Adjudication Statutes) to amend the California Water Code and Code of Civil Procedure to streamline the legal process for comprehensive groundwater adjudications in superior court, and ensure consistency with SGMA objectives. (*See generally*, Code Civ. Proc. §§ 830 *et seq*.)

Indian Wells Valley Groundwater Basin

The Indian Wells Valley Groundwater Basin (Basin) lies in the northwestern corner of the Mojave Desert in southeastern California and is the sole supply of potable water for the Indian Wells Valley. (Petition at 21.) The vast majority of the Basin, nearly 80 percent of its acreage, is owned by the United States Navy for the Naval Air Weapons Station China Lake, or managed by the U.S. Bureau of Land Management. The remainder is used for domestic, industrial, or agricultural purposes. The Basin was designated as "high-priority" under SGMA by the Department of Water Resources (DWR) because of its history of overdraft and declining groundwater levels.

In July 2016, the City of Ridgecrest, Inyo County, Kern County, San Bernardino County, and the Indian Wells Valley Water District formed the Authority for the purpose of serving as the GSA for the Basin. (Petition at 20.) The Authority developed and adopted its GSP (Plan) in January 2020, which DWR approved in 2022. The Plan determined the Basin's sustainable yield to be 7,650 acre-feet per year. The Authority began implementing the Plan by identifying a water import project and adopting a replenishment fee to pay for the imported water and other actions identified in the Plan as necessary to achieve sustainability. The replenishment fee was subject to litigation in *Mojave Pistachios, LLC v. Superior Court* (2024) 99 Cal.App.5th 605.

The adjudication arose from a quiet title action in 2021 over the groundwater rights of four of the biggest producers of groundwater in the Basin—Mojave Pistachios, LLC, Indian Wells Valley Water District (District), Searles Valley Minerals, Inc. (SVM), and

Meadowbrook Dairy Real Estate, LLC—after the District filed a cross-complaint for comprehensive adjudication pursuant to the Streamlined Adjudication Statutes. (Petition at 24.) Among the issues in dispute, some pumpers argued that the Basin's safe yield should be 14,300 acre-feet per year, nearly double the 7,650 acre-feet identified in the Plan. (*Id.* at 17.)

The Petition for Review

In May of 2024, SVM moved to set trial phases to determine the safe yield of the Basin (Phase 2) and establish a physical solution (Phase 3). (Petition at 24.) The Authority opposed the trial phasing order on the grounds that a comprehensive groundwater adjudication cannot be used to collaterally attack an adopted GSP. (*Id.* at 30–31.) However, the trial court granted SVM's motion and certified the issue for immediate review, holding that its determination of a safe yield was a key component of the physical solution. (*Id.* at 36.) The Authority filed a petition for writ of mandate in the Court of Appeal for the Fourth District, arguing the trial court should be required to accept the safe/sustainable yield the Authority already established in the Plan. (*Id.* at 24–25.) The appeals court summarily denied the Authority's writ petition in a two-page order.

In its Petition, the Authority relies on the Streamlined Adjudication Statutes to argue Phase 2 is inappropriate and the court should defer to the findings in the Plan. (Petition at 25–26.) For instance, courts have authority to stay proceedings to allow adoption of a GSP that addresses issues in the adjudication. (Code Civ. Proc., § 848(a)(1); see also *id.* at § 849(b) ["Before adopting a physical solution, the court shall consider any existing [GSP] or program."].) The Authority argues a Phase 2 determination of a safe yield for the Basin would essentially be a reevaluation of the sustainable yield determination in the Plan and a challenge of the Plan itself, because the two are so inextricable. (Petition at 34–37.) The Petition states the provisions of the Streamlined Adjudication Statutes:

> . . .make clear that the Legislature intended for adjudications to be managed to take advantage of, and not interfere with, the technical information developed as part of a Plan. (*Id.* at 28–29.)

According to the Petition, Phase 2 could invalidate and supplant the Plan, which should only be done through a reverse validation action. (Petition at 26–28, citing Wat. Code, § 10726.6.) The Authority argues SGMA's incorporation of the validation statutes (Code Civ. Proc., §§ 860 *et seq.*) reflects a legislative intent that courts defer to the expertise of the GSA and its technical information and findings on a basin. (Petition at 28.) Further, SGMA states that any judgment entered by the court must "not substantially impair the ability of a [GSA] … to achieve sustainable groundwater management." (*Ibid.*, citing Wat. Code, § 10737.8.) In sum, the Petition argues that the trial court's phasing order authorizes an improper collateral attack on the Plan's technical findings, creates redundancy and confusion, and contravenes the legislative intent in the Streamlined Adjudication Statutes and SGMA to implement sustainable groundwater management.

Conclusion and Implications

The Authority's Petition asks the California Supreme Court to clarify the role of a trial court in a comprehensive groundwater adjudication when the basin is concurrently managed under a GSP. While SGMA and the Streamlined Adjudication Statutes contemplate harmonization, neither law explicitly provides how that must be done. As of this writing, the Supreme Court has not yet granted or denied the Authority's Petition.
(N. Chapman, Austin Cho)

RECENT CALIFORNIA DECISIONS

FOURTH DISTRICT COURT REJECTS MOTIONS CHALLENGING COURT-CREATED AGENCY'S BUDGET ADOPTION FOR CEQA FIRST-TIER REVIEW LEAD AGENCY

Chino Basin Municipal Water District v. City of Ontario, *Unpub.*, Case No. E080533 (4th Dist. Nov. 12, 2024).

In an *unpublished* opinion filed on November 12, 2024, the Fourth District Court of Appeal affirmed the trial court's denial of appellants' motions challenging a court-created agency's fiscal year (FY) 2022/2023 budget that included appropriations for environmental review of an updated long-term management program, managing several parties' basin water rights.

Factual and Procedural Background

The Basin, Pools, and Watermaster

In 1975, Chino Basin Municipal Water District initiated this action against several parties to adjudicate their rights and obligations with respect to groundwater in the Chino Groundwater Basin (Basin). Three years later, the parties stipulated a judgment (1978 Judgment) governing several parties' water rights in the Basin by establishing the Basin's governance structure, providing judicial oversight via continuing jurisdiction provisions, and creating the Chino Basin Watermaster (Watermaster), an arm of the court.

The 1978 Judgment also established three "Pools" of parties with water interests in the Basin: Overlying Agricultural Pool (Ag Pool), Overlying Non-Agricultural Pool (Non-Ag Pool), and Appropriative Pool (Ap Pool). The Pools are responsible for the costs of replenishment water and other aspects of the physical solution. Each Pool has a committee that administers its internal affairs, employs its own separate counsel, and may seek judicial review of any Watermaster action or failure to act. The Pool Committees can jointly form an Advisory Committee to advise and assist Watermaster in performing its functions under the 1978 Judgment. Appellants City of Ontario (Ontario) and City of Chino (Chino) are members of the Ap Pool.

Watermaster is a nine-member board, comprised of representatives of parties to the 1978 Judgment, including representatives from each Pool, and it administers and enforces the 1978 Judgment and any subsequent instructions of the Superior Court. It has express powers and duties as provided in the 1978 Judgment or as authorized by the court, but it may not contract with or purchase materials, supplies, or services from Inland Empire Utilities Agency (IEUA), a municipal water district that provides wastewater treatment services to various cities including Chino and Ontario, except upon the prior recommendation and approval of the Advisory Committee and pursuant to written order of the court.

Optimum Basin Management Program (OBMP)

In 1999, at the court's direction, Watermaster prepared the OBMP to address the Basin's water quality issues. The OBMP had two phases: Phase I (the report), adopted in 1999, and Phase II (Implementation Plan), submitted to the Superior Court for approval in 2000. Watermaster conducted a California Environmental Act (CEQA) evaluation of the OBMP via preparing a Program EIR (PEIR) since the OBMP was likely to involve numerous public agencies undertaking activities that may cause direct as well as indirect physical environmental harm, necessitating further project-specific CEQA evaluation, such as the desalter program. On November 18, 1999, the Superior Court approved the decision to prepare a PEIR and the designation of IEUA as the lead agency, and the completion of the PEIR was scheduled for May 17, 2000.

In preparation for the development of the OBMP PEIR, Watermaster budgeted for and assessed the parties for expenses associated with the CEQA review in FY 1998/1999 and 1999/2000. On June 29, 2000, the parties executed the Peace Agreement (Peace I) to fa-

cilitate the implementation of the OBMP. According to Peace I, the parties agreed that no project subject to CEQA review would be carried out unless and until the environmental review and assessments have been completed. Peace I's recitals state that the draft PEIR for the OBMP was completed and circulated to the parties prior to execution of Peace I. Certification of the OBMP PEIR was a condition for court approval of Peace I. Peace I was amended in 2004 and 2007.

In 2007, the parties entered into the Peace II Agreement (Peace II, collectively with Peace I as Peace Agreements) wherein they agreed, among others, to support Watermaster's OBMP Implementation Plan and acknowledged IEUA as the properly designated lead agency to complete environmental assessment and review of the proposed project, such as expanded desalting and re-operation programs.

Addendum to OBMP PEIR

By 2017, the water storage capacity of the Basin had exceeded 500,000 acre-feet (AF), when the Peace Agreements and the OBMP Implementation Plan had established rules and procedures for stored water up to a maximum of 500,000 AF. Storage of the increased amount was temporarily authorized from June 2017 until June 30, 2021, and IEUA, as the lead agency, certified an addendum to the OBMP PEIR (Add PEIR), stating a temporary increase in storage would have no undesirable results.

In 2020, Watermaster began a facilitated process for negotiation of the OBMPU, an update to the OBMP, to address the storage capacity of over 500,000 AF, holding orientation and drafting sessions on March 2 and 16, 2020. Cost for the updated PEIR (PEIRU) for the OBMPU (which focused on groundwater storage management within the Basin—as high as 1,000,000 AF) had been added to the FY 2019/2020 budget; appellants did not challenge Watermaster's budgeting process or how its technical consultant and legal counsel participated in the development and review of the OBMPU PEIRU. The budget amendment for CEQA work for the OBMPU PEIRU was unanimously recommended for approval by the Ap Pool Committee and unanimously approved by the Advisory Committee, but the process for negotiation of the OBMPU was paused due to the COVID-19 pandemic, and the parties focused on the local storage limitation solution. IEUA still continued preparing a draft OBMPU PEIRU, but when Ontario sent a letter to IEUA alleging deficiencies in the draft OBMPU PEIRU, IEUA's board of directors did not certify the draft OBMPU PEIRU.

In the meantime, since Watermaster and the parties to the 1978 Judgment had vastly exceeded the initial expectations for storing water in the Basin, Watermaster requested the Superior Court issue an order for the management of all quantities of water held in storage in amounts from 500,001 AF up to a maximum of 700,000 AF until June 30, 2030, and thereafter a maximum of 620,000 AF until June 30, 2025. Moreover, on March 17, 2021, as the lead agency, IEUA certified a second addendum to the OBMP PEIR (2ndAddPEIR), which concluded there were no significant unavoidable adverse impacts attributable to the adoption and implementation of the local storage limitation solution. Like the AddPEIR, IEUA did not require the consent of all signatories to the Peace Agreements for the 2ndAddPEIR because Watermaster only sought to supplement and not amend or modify the

Peace Agreements and the OBMP Implementation Plan.

Updated OBMP PEIR (OBMPU PEIRU)

After COVID-19 restrictions were lifted, preparations for the OBMPU PEIRU resumed. Watermaster included funding for activities necessary to complete the environmental review of the OBMPU in its FY 2022/2023 budget, and presented its proposed budget to the Advisory Committee for approval. In May 2022, the Advisory Committee approved the FY 2022/2023 budget. Soon after, over appellants' objections, Watermaster adopted the FY 2022/2023 budget that allocated a certain amount to fund the OBMPU PEIRU and to assist the parties in agreeing to amend the OBMP Implementation Plan. Appellants objected.

In response, in July 2022, Watermaster provided a staff report that addressed the need for the OBMPU PEIRU, explaining that the 22-year-old PEIR was unable to address the current conditions sufficiently to secure state and federal funding and held a special meeting to attend to appellants' concerns, favoring in approving only environmental coverage of the local storage limitation solution. At the meeting, Watermaster staff explained that the OBMPU does not mandate projects, and the programmatic CEQA evaluation of the OBMPU does not obligate any

party to any such expenditures, that the programmatic analysis was simply a cumulative analysis of any projects the parties might choose to agree on and to implement in the future. The General Manager of Watermaster reiterated the environmental analysis of the OBMPU was at the programmatic level and not a prescriptive-type document.

Following the close of the meeting, Watermaster took action to: (1) direct staff to meet with all interested stakeholders to evaluate the current status of the OBMPU, consider changes in circumstances, and gather stakeholder input; and with this input, (2) develop a project description for the OBMPU PEIRU (with IEUA as lead agency), and (3) proceed with the effort within the approved budget.

At the Trial Court

On August 26, 2022, appellants challenged Watermaster's FY 2022/2023 budget action to fund CEQA review of the 2020 OBMP (the OBMPU PEIRU) by moving for a court order invalidating (1) Watermaster's May 26, 2022, adoption of the FY 2022/2023 budget to the extent it includes funding for the OBMPU PEIRU, and (2) any corresponding assessments. Moving parties further sought an order restraining and preventing Watermaster from expending funds on CEQA review until after parties to the Peace Agreements agreed on an amendment to the 2020 OBMP Implementation Plan and provided direction to Watermaster regarding the projects requiring CEQA review.

Watermaster and IEUA opposed the motion, arguing that approval of the budget was based on the advice and counsel of the three Pools and the recommendation of the Advisory Committee; that the budget was to study actions, not a project; that technical work in support of a PEIR is not the same as performing a CEQA duty; and that Watermaster's technical support of IEUA was previously ordered in 1999, by the Superior Court, and subsequently contractually agreed to under Peace I. Separately, IEUA argued that the pending motion was not so much a challenge of Watermaster's authority but rather a manipulation of the Watermaster process to challenge IEUA's separate project (Chino Basin Project), which addresses local water issues involving water exchange, recycled water projects, and new infrastructure and upgrades. On November 18, 2022, the Superior Court heard arguments from both sides and denied the appellants' motion.

The Court of Appeal's Decision

The Fourth District Court of Appeal affirmed the trial court's order denying appellants' motion. The court first clarified the two main issues raised: (1) Whether the Watermaster may appropriate and expend funds for the OBMPU PEIRU and (2) Whether the Watermaster may designate IEUA as the lead agency. Chino and Ontario differed in raising their arguments on several minor points, but the court analyzed them under the two main issues.

Appropriation and Expenditure of Funds for the OBMPU PEIRU

The appellants argued that CEQA does not apply because Watermaster is not an agency, that its action does not qualify as a project, and that it may not assess money for CEQA review. However, the court diagnosed that this case did not present a typical project-specific CEQA case and, in challenging the funding for the OBMPU PEIRU in the FY 2022/2023 budget, that appellants ignored or discounted the value of the 1978 Judgment, prior court orders, Watermaster rules and regulations, the initial PEIR for the OBMP, and past actions approved by the parties.

After analyzing statutes and case law regarding "tiering" in the context of CEQA, the court concluded that CEQA also applies to long-term, multipart projects such as the OBMP and the OBMPU. Thus, the court decided that the OBMPU PEIRU was the first-tier programmatic level EIR under CEQA that analyzes the broad impact of the management program that addresses the Basin's water quality issues.

Turning its analysis to the propriety of budgeting for the OBMPU PEIRU in the FY 2022/2023 budget, the court found that Watermaster was charged with discretionary authority and responsibility to adopt a management program to achieve full utilization of the Basin's resources. After examining how Watermaster prepared the OBMP back in 1999 and the OBMP PEIR subsequently, the court acknowledged that the Basin's conditions in the next 20 years had changed enough (such as the water storage capacity) to update the OBMP and the PEIR. The court also recognized that Watermaster received the Advisory Committee's unanimous approval for the budget amendment of the

CEQA work, complying with its rules and regulations and the Judgment. The court stated that nothing in the Judgment, Peace Agreements, Watermaster's rules and regulations, or prior practice of the parties prevented Watermaster from budgeting or approving a budget that includes funding for the OBMPU PEIRU. Rather, the court found that the 1978 Judgment explicitly permits Watermaster to undertake and fund environmental studies, hydrologic conditions, and operating aspects of implementation of the management program for the Basin.

As previously agreed by the parties, the court noted that the operating aspects of implementing the OBMP were subject to a first-tier programmatic CEQA review because the OBMP was likely to involve numerous public agencies undertaking activities that may cause direct and indirect physical environmental harm. Watermaster thus limited the CEQA review of the OBMPU to a first-tier PEIR. In short, the court decided that appellants failed to provide any evidence Watermaster violated the Judgment or any other controlling document by budgeting for the OBMPU PEIRU.

Designation of IEUA as the Lead Agency and Watermaster's Neutrality

The court also disagreed that Watermaster's support for IEUA's CEQA review of the OBMPU violated the neutrality principle by endorsing IEUA as the lead agency and the projects it may choose to review, regardless of whether the other parties to the 1978 Judgment agree. The court reasoned that the identification of IEUA as the lead agency for the OBMPU PEIRU was based on the Peace Agreements and IEUA's long history of serving as the lead agency for the OBMP PEIR. IEUA was approved by the parties and designated as the lead agency by the Superior Court in 1999. Additionally, in 2022, by a majority vote, the advisory committee approved Watermaster's FY 2022/2023 budget, which included funding for the OBMPU PEIRU by IEUA. The court could not find anything in the FY 2022/2023 budget that pre-supposes IEUA should or will be the lead agency for any project not yet identified or agreed upon.

Appellants claimed that the Chino Basin Program (CBP), IEUA's own billion-dollar potential project discussed in Watermaster's OBMPU," created a potential conflict of interests with IEUA's role as lead agency for the OBMPU PEIRU because it gives the ability to advance IEUA's own proposed projects at the expense of other parties to the 1978 Judgment. The court rejected this claim because a lead agency need not be free from receiving any benefit from the project, as long as that agency can fully and fairly provide the necessary environmental information required by CEQA's processes, citing *Center for Biological Diversity v. County of San Bernardino* (2016) 247 Cal.App.4th 326, 345. Even though Ontario initiated a lawsuit against IEUA relating to the CBP, the court decided that the merits of an action between Ontario and IEUA over competing projects were irrelevant to the challenge of Watermaster's funding of the OBMPU PEIRU by IEUA. Particularly, the court noted that, according to the general manager of IEUA, IEUA had implemented approximately 30 of its own projects that fall within the umbrella of the OBMP PEIR, yet no party asserted that IEUA used its lead agency status for the PEIR to favor its own projects over the projects of others.

Thus, the court concluded that Watermaster's designation of IEUA as lead agency for the OBMPU PEIRU neither violated its neutrality nor presupposed a preference that IEUA lead any or all future specific projects, but merely affirmed IEUA's prior designation as lead agency for the PEIR of the updated OBMP. Given IEUA's history as lead agency, the court found Watermaster's decision as economically sound.

Appellants' Challenge Was Not Premature

Lastly, the court agreed appellants' contention that the Superior Court erred in finding that the appellants' challenge was premature. Appellants challenged Watermaster's May 26, 2022, action of adopting the FY 2022/2023 budget. According to Paragraph 31(c) of the 1978 Judgment, notice of motion to review Watermaster's budget actions shall be within sixty (60) days of the action. Because Watermaster extended the deadline to challenge its budget action by an additional 30 days from its July 28, 2022, special meeting, the appellants' challenge filed on August 26, 2022, was not premature, though it did not change the outcome of this case.

Conclusion and Implications

This seems to be a unique case, where the challenged agency does not belong to one municipality but works with many. However, as long as that agency

acted within the given boundary of the Superior Court judgment that created it, it shows that such agency could have a great impact in forming and adopting a budget that few other municipalities have to follow. Thus, it would be prudent to inquire and review before entering into an agreement when forming such an agency in the first place and clarifying the authority it has to create less confusion. The court's *unpublished* opinion is available online at: https://www4.courts.ca.gov/opinions/nonpub/E080533.PDF
(David Song)

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