# CITY OF ONTARIO

ONTARIO MUNICIPAL UTILITIES COMPANY



May 11, 2020

VIA EMAIL AND FIRST CLASS MAIL
Slee@ieua.org
Ms. Sylvia Lee
Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708

**Re: City of Ontario Comments on Draft Subsequent EIR for the Optimum Basin Management Program Update**

Dear Ms. Lee,

The City of Ontario (City) submits the following comments related to the draft Subsequent Environmental Impact Report (DSEIR, Draft SEIR) for the Chino Basin Watermaster Optimum Basin Management Program Update (OBMP Update). We incorporate by reference the additional comments in the attached letter from Nossaman LLP.

The Draft SEIR raises a number of complex technical, legal and policy issues regarding the future long-term management of the Chino Basin and feasible alternatives and mitigation measures to avoid, minimize, and mitigate the environmental effects of the OBMP Update. The City objects to the certification of the Draft SEIR and the approval of the OBMP Update, unless and until (i) the parties develop an Implementation Plan and Agreement that serves as the Project Description, (ii) IEUA corrects the legal and factual errors identified in the City's comments; and (iii) IEUA recirculates a revised Draft SEIR for additional review and comment. In light of the issues identified below, the City again requests that IEUA and Watermaster complete CEQA review of storage management separately from the OBMP Update to allow for an increase in storage space up to 800,000 AF prior to the expiration of the current OBMP Programmatic EIR Addendum.



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## General Comments

### 1. The Approval of the Update Should Be Deferred to Allow the Parties to Develop an Implementation Plan and Agreement.

It is noteworthy that in 2000, after the OBMP was developed in a "collaborative public process," the parties then developed an Implementation Plan and an agreement *prior to* CEQA review. This process served to ensure that CEQA review covered the correct scope: that is, the projects intended to be implemented by the parties. In the current OBMP Update, Watermaster chose to embark on the OBMP Update CEQA without any agreement by the parties on an implementation plan. It is possible and likely that what the parties agree to in the Implementation Plan will be different from the Project Description included in the current Draft SEIR.

The DSEIR states that the "OBMPU Implementation Plan Update (OBMPU IP) is a revision of the implementation plans included in the Peace I and Peace II Agreements and incorporates the proposed activities and facilities identified in the 2020 OBMPU and ongoing activities from the 2000 OBMP." However, the parties have not yet drafted, reviewed or negotiated an implementation plan.

In addition, Appropriative Pool parties requested that Watermaster pursue CEQA review for storage management separately and in advance of the OBMP Update CEQA review. The primary driver for this request was the looming expiration of the current temporary storage excursion based on the 2017 Addendum. Instead, Watermaster inexplicably chose to delay CEQA review of storage management in order to concurrently evaluate the Storage Management Plan and the OBMP Update, despite the fact that these two documents were crafted in different processes and are not interdependent.

### 2. The Draft SEIR Fails to Address Issues Raised by the City of Ontario Regarding Discharge of Recycled Water to the Santa Ana River.

In an email related to the scope of the DSEIR following release of the Initial Study, the City pointed out that the topic of the Santa Ana River discharges and flows needed to be properly addressed. IEUA is currently engaged in re-negotiation of a regional wastewater contract that governs the use of recycled water. During these negotiations IEUA and its member agencies have taken contrary positions regarding the legal control over the disposition of recycled water. The Draft SEIR excludes any mention of ongoing conversations among Chino Basin stakeholders on an issue that is necessary for an adequate evaluation of the effects of the OBMP Update. The Draft SEIR's assumption that IEUA has ownership of and control over treated wastewater flows and diversions creates a false premise to the evaluation of potential physical changes to the environment from the implementation of various activities under the OBMP Update. As a result, the Draft SEIR appears to be structured to advance IEUA's position and does not provide an objective evaluation of the reasonable alternatives that are feasible and that could achieve most of the basic objectives of the OBMP Update.

The Draft SEIR is founded on incorrect assumptions regarding the legal regime governing continued discharge of recycled water to the Santa Ana River. The DSEIR improperly assumes that reclaimed water generated in the Chino Basin will continue to be used to comply with the Orange County Judgment. Rights to this recycled water are defined by a regional wastewater contract. The City, along with IEUA's other member agencies, has a priority claim to recycled water generated by the regional wastewater treatment system, to the extent it contributes wastewater to that system. This source of water is essential for the City to meet the water supply needs of its customers. Retaining recycled water generated in the Chino Basin for beneficial uses in the Chino Basin is necessary for the Update to achieve its first stated goal of increasing the water supply and reliability for the Chino Basin Parties.

Page 3-27 of the DSEIR states, "Historically, the IEUA's operating plan has prioritized the use of recycled water…[first] to meet the IEUA's discharge obligation to the Santa Ana River (17,000 afy)…." This statement incorrectly describes both the historical and contractual management of recycled water in the following ways:

1. With limited exceptions, to date there has been sufficient recycled water in each year to meet direct use, recharge, and discharge requirements. In two recent years, IEUA discharged less than 17,000 AF of wet water to the river. By meeting direct use demands and recharging recycled water but not meeting its minimum discharge obligation in those instances, IEUA in practice prioritized direct use and recharge over the Santa Ana River obligation. Notably, this is consistent with the regional contract and the stance of IEUA's member agencies.

2. Recycled water is governed by the regional contract between IEUA and its member agencies. IEUA's "prioritization" of recycled water, whatever it may be, is subject to the terms of the regional contract. In the case of a conflict, the regional contract takes precedence over any policy that IEUA may unilaterally adopt.

Chino Basin Parties are in negotiations regarding revisions to the regional agreements governing recycled water. The DSEIR improperly and incorrectly presumes the result of those negotiations. For the DSEIR to meet the requirements of a program EIR, the DSEIR is required to be restructured to include in the Project Description the retention in the Chino Basin of recycled water generated by the Chino Basin Parties including the City.

**3. The Draft SEIR Does Not Evaluate A Reasonable Range of Alternatives.**

The DSEIR should evaluate an alternative that would allow for recycled water generated in the Chino Basin to be retained for use in the Chino Basin, rather than continuing to discharge recycled water to the Santa Ana River. This alternative is consistent with the City's rights to the use of reclaimed water, but the Draft SEIR fails to include any evaluation of an alternative that would retain recycled water for use in the Basin.

The Draft SEIR acknowledges that some elements of the original OBMP have not been implemented since its approval twenty years ago. It is therefore foreseeable that some elements of the OBMP Update will not be implemented during the planning horizon of the OBMP Update. Therefore, the Draft SEIR should also evaluate an alternative that assumes that some elements of the program will not be implemented during the program's planning horizon. The document appears to be written such that the activities are not only interrelated but also interdependent. For example, page 1-12 states that "no major changes in the program have been identified at this stage." One "major change" in the program could be a decision not to implement one or more activities. The OBMP Update consists of discrete activities that are independent and must not rely upon the completion of other activities.

**4. The Project Description is Unstable and Confusing.**

The Project Description should be revised to clearly identify (i) the elements of the original OBMP that have been implemented and that will not be changed by the Update, (ii) the original elements of the OBMP that have been implemented, but that will be changed by the Update, (iii) the elements of the original OBMP that have not been implemented, but that are proposed to be changed by the Update, and (iv) the new elements proposed by the Update. Structuring the Project Description in this manner will allow the public to understand and distinguish the impacts of the existing and fully implemented OBMP elements from the impacts of original elements not implemented and from the impacts of new elements.

**Closing**

The City appreciates your prompt and thorough attention to the items identified herein, including the attached letter from Nossaman LLP. Addressing these deficiencies is critical to the success of this project in whichever form it is ultimately implemented. I continue to offer my and my team's support as we move forward collaboratively.

Sincerely,

Katie Gienger

Katie Gienger, P.E.
Water Resources Manager

c: Scott Burton, Utilities General Manager, City of Ontario
Peter Kavounas, General Manager, Chino Basin Watermaster
Fred Fudacz, Partner, Nossaman LLP

Enc: Comment Letter from Nossaman LLP

NOSSAMAN LLP

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Refer To File # 280856-0002

May 8, 2020

VIA FIRST CLASS MAIL AND EMAIL
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Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708

Re: City of Ontario Comments on Draft Subsequent EIR for Optimum Basin Management Plan Update

Dear Ms. Lee:

This letter is submitted on behalf of the City of Ontario (City). It provides comments on the Draft Subsequent Environmental Impact Report (DEIR) regarding the proposed Optimum Basin Management Plan Update (OBMPU or Update). This letter supplements other comments submitted by the City on the Update and/or DEIR.

The City Ontario owns water rights in the Chino Basin, and is a CEQA Responsible Agency regarding the OBMPU. As a CEQA Responsible Agency, the City has the authority to determine whether the DEIR is adequate for its use, to determine whether to prepare a subsequent EIR, and whether to challenge the DEIR in court. (14 Cal.Code.Regs., § 15096, subd. (e).)[1]

As currently structured, the DEIR is not adequate. The City respectfully requests that the lead agency revise the DEIR to address the comments of the City, and to recirculate the revised DEIR for additional public review and comment. The City also requests that the Inland Empire Utilities Agency (IEUA) and the Watermaster defer any action on the DEIR (including certification) and on the Update until the necessary parties reach agreement on the terms of the agreement to implement revisions to the Optimum Basin Management Plan. The lead agency and responsible agencies could then determine the appropriate scope of any CEQA evaluation of those elements agreed to by the parties to the implementation agreement.

[1] Hereinafter, "CEQA Guidelines."

1. **The DEIR Is Not Sufficient as an Informational Document. It is Therefore Inadequate as a Matter of Law.**

**a. The DEIR Acknowledges that the 2000 Program EIR Is Out of Date and the Need for a Comprehensive Analysis of the Effects of the OBMPU.**

The OBMPU is the proposed update of the Optimum Basin Management Program – a large and complex program governing the management of regional water resources and groundwater of the Chino Basin. As the DEIR readily acknowledges, the OBMPU is an "expansive" program that covers nine program elements and the construction and operation of multiple new and revised facilities in four project categories including: (1) Well Development and Monitoring; (2) Conveyance Facilities and Ancillary Facilities; (3) Storage Basins, Recharge Facilities, and Storage Bands; and (4) Desalters and Water Treatment Facilities.

The Optimum Basin Management Program and the 2000 Final PEIR are over twenty years old. The DEIR states that the existing OBMP and related 2000 Program EIR, as supplemented, (i) are out of date, (ii) do not reflect current information regarding the hydrology and hydrogeology of the Chino Basin, (iii) do not address important new environmental issues impacting the environmental resources of the Chino Basin such as the impact of climate change on the state's water supply and resulting impacts on Chino Basin stakeholders, and (iv) are not adequate to achieve the current objectives for the management of water resources of the Chino Basin. (Draft EIR, Initial Study, p. 3.) The Inland Empire Utilities Agency (IEUA) therefore determined that it was necessary to prepare a subsequent environmental impact report to comprehensively analyze the environmental effects of the OBMPU.

**b. The DEIR Does Not Comply With CEQA Standards.**

The basic purpose of an EIR is to "provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (Pub. Resources Code, § 21061; see Guidelines, § 15003, subds. (b)–(e).) An EIR that complies with CEQA allows the public to know the basis on which the agency approved or rejected environmentally significant action, "so that the public, being duly informed, can respond accordingly to action with which it disagrees." (*Laurel Heights Improvement Assn. v. Regents* (1988) 47 Cal.3d 376, 392 [invalidating EIR for university expansion].) "The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decision making and informed public participation." (*Sierra Club v. County of Fresno (2018)* 6 Cal.5th 502, 515.) For the DEIR to comply with CEQA requirements as an informational document, it must include sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed OBMPU raises. (*Id.* at p. 510 ["the adequacy of an

EIR's discussion of environmental impacts is an issue distinct from the extent to which the agency is correct in its determination whether the impacts are significant."].) This is a question of law that the courts review *de novo*. (*Id*; *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515 [invalidating regional transportation program EIR]; (*RiverWatch v. Olivenhain Municipal Water Dist*. (2009) 170 Cal.App.4th 1186, 1201 ["If a final environmental impact report (EIR) does not 'adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project,' informed decision making cannot occur under CEQA and the final EIR is inadequate as a matter of law."].)

For the reasons described in detail below and in the separate comments of the City, the DEIR fails to comply with CEQA standards as a matter of law. The DEIR:

- Does not meet the standards for a program EIR because it does not address adequately the water supply needs of the Chino Basin, and alternatives to achieve those needs, over the thirty-year life of the Update.

- Does not include a stable, finite, consistent, and comprehensible project description;

- Improperly tiers from prior EIRs that (i) analyze a different CEQA "project" and (ii) that the DEIR also contends are out of date;

- Fails to evaluate the significance of the effects of the Update as compared against a valid CEQA baseline of existing conditions;

- Defers evaluation of significant effects and mitigation measures;

- Does not evaluate adequately significant cumulative effects;

- Fails to explain in understandable terms the analytical route followed from evidence to the DEIR's conclusions;

- Does not analyze effects using the most current version of the Chino Basin Groundwater Model, and instead uses an outdated version of the Model;

- Does not disclose material uncertainties in the Chino Basin Model or the environmental effects of the uncertainties;

- Does not evaluate a reasonable range of alternatives to the Update, including an alternative that would retain recycled water for use within the Chino Basin consistent with the City's water rights to recycled water; and

- Fails to identify valid mitigation measures.

## 2. The DEIR Does Not Meet the Standards for a Program EIR.

### a. Program EIR Standards.

The purposes of a program EIR are to (a) provide a more thorough consideration of environmental effects and alternatives than could be provided in an EIR for an individual action, (b) ensure that cumulative impacts are fully considered, and (c) allow policy alternatives and program wide mitigation measures to be considered at an early stage. (CEQA Guidelines, § 15168, subd. (b).) The Draft EIR fails to accomplish the purposes of a program EIR because it (i) defers the evaluation of many effects of the Update to later project-level CEQA evaluations, (ii) fails to include an adequate evaluation of the cumulative effects of the program, (iii) defers the identification of enforceable measures to mitigate the significance of impacts of the program, and (iv) fails to evaluate a reasonable range of alternatives to the program.

Program EIRs are subject to the same CEQA standards of legal sufficiency that apply to "project-level" EIRs. A program EIR is required to include "sufficient analysis to intelligently consider the environmental consequences of the project." (*Cleveland Nat'l Forest Foundation v. San Diego Ass'n of Governments* 17 Cal.App.5th, *supra,* at p. 426 [invalidating program EIR for regional transportation plan].) A program EIR does not decrease the level of analysis otherwise required by CEQA. The agency is required to disclose what it reasonably can, and any determination that it is not feasible to provide sufficient information is required to be supported by substantial evidence.

### b. Failure To Evaluate Retention of Recycled Water in Chino Basin.

The first stated project objective and goal of the Update is "to increase the water supplies available for Chino Basin Parties and improve water supply reliability." (DEIR, p. 1-4.) The DEIR acknowledges that projected climate change impacts on the region's water supply necessitates a reevaluation of the OBMP. (DEIR, p. 3-2.) The California Department of Water Resources estimates that "[b]y the end of this century, California's Sierra Nevada snowpack is projected to experience a 48-65% loss from the historical April 1 average." (https://water.ca.gov/Programs/All-Programs/Climate-Change-Program/Climate-Change-and-Water [visited 4.29.20]. Reductions in the Sierra Nevada snowpack, and increasingly stringent environmental restrictions on State Water Project exports are projected to reduce materially the reliability of water deliveries from the State Water Project. Reductions in precipitation in the Colorado River basin are also estimated to result in reductions of delivery of Colorado River water to southern

California. Collectively, climate change and changes in state law require the development of local water supplies, including the use of reclaimed surface and groundwater, to meet southern California's water supply needs.

The DEIR improperly assumes that reclaimed water generated in the Chino Basin will continue to be used to comply with the Orange County Judgment. The City has a priority claim to recycled water to the extent contributed to the regional wastewater treatment system. This source of water is essential for the City to meet the water supply needs of its citizens. Retaining recycled water generated in the Chino Basin for beneficial uses in the Chino Basin is necessary if the Update is to achieve its first stated goal of increasing the water supply and reliability for the Chino Basin Parties.

The Chino Basin Parties are in negotiations regarding revisions to the regional agreement governing recycled water. The DEIR improperly and incorrectly presumes the result of those negotiations. For the DEIR to meet the requirements of a program EIR, the DEIR is required to be restructured to include in the project description the retention in the Chino Basin of recycled water generated by the Chino Basin Parties including the City.

**c. Improper Deferral of Analysis of Regional Impacts and Mitigation Measures.**

A primary function of a program EIR is to evaluate the regional effects of the program activities. This important function is defeated because the DEIR defers a quantitative evaluation of the regional impacts of program activities. While CEQA authorizes the use of tiered EIRs in some circumstances, CEQA does not allow the lead agency to defer an analysis of reasonably foreseeable significant impacts to a later EIR. (CEQA Guidelines, § 15152, subd. (b); *Vineyard Area Citizens for Responsible Growth v. City of Ranch Cordova* (2017) 40 Cal.4th 412, 441 [invalidating EIR for long-range development plan that deferred water supply analysis].) The DEIR defers any detailed evaluation of a number of regional effects of program activities. The following is a partial list of the Draft EIR's invalid deferral of the evaluation of impacts:

- Air quality impacts related to operation of Update facilities (DEIR, p. 4-27);
- Biological resource impacts (DEIR, p. 4-64);
- Archaeological resource impacts (DEIR, p. 4-92); and
- Greenhouse gas emission impacts (DEIR, p. 4-145).

CEQA requires that an EIR discuss mitigation measures that minimize or avoid the project's significant effects. (Pub.Res.Code, §§ 21002, 21002.1, subd. (a); CEQA Guidelines, § 15126.4.) CEQA generally prohibits the deferral of the identification of feasible and enforceable mitigation measures to address the significant effects. (CEQA Guidelines, § 15126.4, subd. (a)(1)(B).) Agencies may defer identification of the details of a mitigation measure where it is impractical to devise a specific measure. But in this

circumstance the agency is require to commit to implementation of enforceable mitigation measures that will achieve identified performance standards articulated in the EIR. (*Id.; Sacramento Old City Ass'n v. City Council* (1991) 229 Cal.App.3d 1011, 1029.)

The DEIR defers the identification of specific mitigation measures to address significant effects of the Update and does not commit to enforceable performance standards. A partial list of examples of invalid, deferred mitigation include measures addressing the following:

- Biological Resources (DEIR, p. 4-68, 4-70);
- Cultural Resources (DEIR, p. 4-94);
- Energy (DEIR, p. 4-117);
- Cumulative hydrology effects (DEIR, p. 4-201);
- Subsidence effects (DEIR, p. 4-189);
- Net recharge effects (DEIR, p. 4-190);
- Hydraulic control effects (DEIR, p. 4-193);
- Hydrology effects (DEIR, p. 4-197-199); and
- Erosion and siltation effects (DEIR, p. 4-204).

To comply with CEQA, mitigation measures must be effective and enforceable. Conditioning implementation of mitigation measures to the extent "feasible" renders the measure unenforceable in violation of CEQA. (*King & Gardner Farms, LLC v. County of Kern* 220 Cal.App.LEXIS 161 [invalidating oil and gas permitting ordinance where mitigation required where "feasible."].) In several other instances, the Draft EIR identifies mitigation measures, but then conditions the implementation of the measure only to the extent "feasible." (DEIR, p. 4-65 [biological resources mitigation "if feasible"].)

## 3. The DEIR Does Not Evaluate a Reasonable Range of Feasible Alternatives.

### a. Limiting the Alternatives Analysis to the No Project Alternative Does Not Comply With the "Reasonable Range" Obligation.

CEQA requires a DEIR to evaluate a reasonable range of alternatives which would feasibly "attain most of basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project." (CEQA Guidelines, § 15126.6, subd. (a); (*Watsonville Pilots Ass'n v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087 [invalidating general plan EIR that included two alternatives with the same level of increased development as the proposed plan].)

The DEIR fails to analyze any alternative to the Update other than the No Project alternative. The No Project alternative does not satisfy the requirement for a reasonable range of alternatives because the alternative is defined as the continuation of the OBMP without the new and revised program activities. (DEIR, p. 5-4.) The DEIR states that the goals of the Update are the "same as" the goals of the OBMP. (DEIR, p. 3-4.) At the

same time, the DEIR concludes that continuation of the OBMP will not achieve the goals and objectives of the Update. (DEIR, p. 5-7 ["under the No Project/Baseline alternative, the ability to attain the goals and objectives . . . would be virtually eliminated."].) Thus, the DEIR does not include an evaluation of a reasonable range of alternatives that could attain most of the objectives of the Update.

The DEIR acknowledges that material elements of the twenty-year old OBMP have not been implemented. Nevertheless, the Draft EIR makes the implausible assumption that all elements of the Update will be implemented within the thirty-year planning horizon of the Update. There is no substantial evidence to support this dubious assumption. Indeed, given the continuing disagreement among the applicable parties regarding implementation of the OBMP, and the need for all of the applicable parties to agree to the implementation agreement, it is not reasonable for the DEIR to assume full implementation of the Update, which requires the agreement of all the Chino Basin Parties. Given the substantial possibility that not all elements of the OBMP Update will be agreed to, and the documented inability of timely implementation of OBMP elements, the DEIR should evaluate alternatives that assume that not all program elements will be implemented within the planning horizon of the Update.

**b. The DEIR Should Evaluate An Alternative that Retains Recycled Water in the Basin.**

The City has a priority claim to recycled water generated by the regional wastewater treatment system to the extent it contributes wastewater to the system. Retaining recycled water in the Basin would attain one of the most important objectives of the Update: increasing the water supply and reliability for the Chino Basin Parties. The DEIR should evaluate an alternative to the Update that retains recycled water generated by the regional wastewater treatment system for beneficial uses in the Basin. This alternative is feasible. It would attain the major objectives of the Update identified in the DEIR.

## 4. The DEIR Baseline Does Not Comply with CEQA.

CEQA requires the EIR to identify a "baseline" of environmental conditions against which the significant impacts of the proposed project are identified and evaluated. The baseline is required to reflect actual and realistic, not hypothetical, conditions. The EIR must employ a realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project's likely impacts. (*Communities for a Better Environment v. South Coast Air Quality Mngmt. Dist.* (2010) 48 Cal.4th 439, 322, 325, 328 [invalidating baseline based on existing permitted, but unrealistic emission levels from refinery].)

With very narrow exceptions not applicable here, the baseline is required to be the "existing conditions" at the time of the preparation of the EIR. (CEQA Guidelines,

§ 15125, subd. (a); (*Neighbors for Smart Rail v. Exposition Metro Line Construction Auth.* (2013) 57 Cal.4th 439, 448 [DEIR may not rely solely on a future conditions baseline unless the existing conditions baseline would be misleading].) An agency that elects not to provide an analysis based on existing conditions must provide an adequate justification for doing so. (*POET, LLC v. State Air Resources Bd.* (2017) 12 Cal.App.5th 52, 80 [baseline invalid because it overestimated NOx emission levels, resulting in underestimate of NOx emissions from change in air regulation].) The future impacts of full implementation of a proposed project are required to be compared against the "existing conditions" baseline. Thus, the DEIR should be evaluating the future impacts (i.e., impacts at the horizon year) of all elements of the Update against a baseline of existing conditions that are realistic -- not hypothetical.

Because the planning horizon for the Update is very lengthy (30 years) it is also necessary that the DEIR analyze the short-term and mid-term effects of the Update against the existing conditions baseline. A short and mid-term analysis is necessary to provide the public with a realistic analysis of how the effects of the Update will change over time. (*Neighbors for Smart Rail, supra,* 57 Cal.4th at p. 456.)

Where, as here, the "project" is a change to an existing plan or program, the future impacts of the changes to the program are **also** required to be compared against the impacts of the existing program. (CEQA Guidelines, §§ 15125, subd. (e), 15126.6 subd.(e)(3)(A); *Woodward Park Homeowners Ass'n v. City of Fresno* (2007) 150 Cal.App.4th 683, 707 [invalidating EIR that compared impacts of zone change against impacts of development under existing zoning]; (See also (*Environmental Planning & Info. Council v. County of El Dorado* (1982) 131 Cal.App.3d 350 [invalidating baseline based on no project conditions].) Thus, CEQA is required to compare the future effect of all elements of the Update against both an existing conditions baseline, and to compare the future effects of the Update elements against the future effects of the existing OBMP.

The DEIR suffers from the same errors identified in *Woodward Park Homeowners Ass'n. v. City of Fresno* and *Environmental Planning & Info Council v. County of El Dorado* because the DEIR determines the significance of effects by comparing the Update against the OBMP, rather than against existing conditions. The DEIR exacerbates this error by assuming effects of the OBMP that are not implemented, and that are therefore not reflected in the existing conditions baseline.

The baseline used in the Draft EIR is confusing. The Draft EIR does not clearly describe the baseline used to identify significant impacts. In several sections, the baseline appears to be conditions in the absence of the OBMP. In other sections, the baseline appears to be conditions with implementation of the OBMP, but without the new facilities and activities proposed in the Update. The DEIR does not clearly describe the existing conditions or explain the time period used to determine the appropriate existing conditions baseline.

Regulations adopted by the Watermaster require safe yield reset calculations to be based on precipitation from 1921 to the date of the reset. The Draft EIR should disclose and explain any differences between the precipitation baseline required by the Watermaster regulations and the "existing conditions" baseline required to comply with CEQA.

Where, as here, the existing conditions varied over time (e.g. as result of variations in precipitation and water-year type, groundwater storage and extraction levels etc.), the baseline should be defined to allow the public to understand the potential for worst-case effects (e.g. during drought years). For example, it is not appropriate to use an average or other similar generalizations of baseline conditions when doing so masks the project's real effects.

The confusion created by the baseline is made worse because of the DEIR's heavy reliance on complex, uncertain, and opaque computer and statistical models of groundwater and surface water. The California Supreme Court warned that reliance on complex computer or statistical models in the identification of future baseline conditions create the risk of, intentionally or unintentionally, obfuscating public understanding of environmental effects. (*Neighbors for Smart Rail, supra,* 57 Cal.4th at p. 456 ["an agency must not create unwarranted barriers to public understanding of the EIR by unnecessarily substituting a baseline of projected future conditions for one based on actual existing conditions"].)

For all of the above reasons, the baseline used by the DEIR to evaluate environmental effects is fatally flawed.

**5. The Project Description is Not "Accurate, Stable and Finite."**

CEQA requires an EIR to include an "accurate, stable and finite" description of the project under review. Where there is a potential for varying levels of implementation of a project, the project description must clearly disclose the level proposed by the agency.

The "project" here is the Update to the OBMP. The DEIR Project Description includes the existing OBMP program elements, and the changes to the nine program elements proposed by the OBMPU. In several sections, the DEIR describes the Project as continuing the OBMP (e.g., DEIR, p. 3-30.) The description of the Project as "continuing" implementation of the OBMP results in a flawed impact analysis that fails to distinguish clearly between the impacts of the OBMP that have been fully implemented and the impacts of the new features of the OBMP proposed in the Update.

In some sections, the DEIR appears to analyze the impact of the continued implementation of the OBMP including the new and revised components of the Update. In other sections, the DEIR appears to limit the analysis to the impacts of the new facilities proposed in the Update. The errors in the project description are similar to the

errors identified in the seminal project description case. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192 [invalidating LADWP Owens Valley groundwater project because of inconsistent description of project elements].) The confusing and inconsistent project description results in a very confusing analysis of the impacts of the Update.

For example, the evaluation of hydrology impacts refers to a "baseline" scenario "based on expected groundwater pumping and recharge activities of the parties in the absence of storage and recovery programs." (DEIR, p. 4-172.) This baseline scenario is then compared against three scenarios of "increasing bands of storage, alternative facility and operating plans." (DEIR, p. 4-173.) The project description does not select or propose a particular scenario. The Project Description is required to describe clearly the level of storage, facility and operation plans proposed by the lead agency. Failure to do so violates CEQA's require for a "stable and finite" description of the project. (*Washoe Meadows Community v. Department of Parks and Recreation* (2017) 17 Cal.App.5th 277 [Invalid project description where agency did not propose specific level of discharge to river].)

## 6. The DEIR Does Not Use the Best Available Model and Fails to Disclose Uncertainties in the Groundwater Model.

### a. The DEIR Does Not Use the Current Groundwater Model.

CEQA requires the Draft EIR to evaluate the impacts of the Update using the best available data and methods. (*Berkeley Keep Jets Over the Bay v. Board of Port Comm's* (2001) 91 Cal.App.4th 1344.) The Draft EIR evaluates the hydrology and water quality impacts of the Update using outdated elements of, and assumptions in, the 2013 version of the Chino Basin Groundwater Model (Model). Over the last several years, consultants to the Watermaster have revised the Model to prepare the 2020 Safe Yield Reset. The revisions to the Model have resulted in material changes to the estimated safe yield, but the 2020 Model revisions are not evaluated in the Draft EIR. The Draft EIR should be revised to incorporate the most recent revisions to the assumptions and elements of the Model, and should disclose any differences between the versions of the Model used in the preparation of the Draft EIR and in the 2020 Safe Yield Reset Report.

### b. Failure to Disclose Uncertainties in the Model and Disagreements Regarding the Model.

CEQA requires an EIR to disclose uncertainties in the analysis of environmental effects, and is also required to disclose disagreements with analytical methods employed by the EIR. (CEQA Guidelines, § 15151 [requiring "good faith effort at full disclosure"]; *Berkeley Keep Jets Over the Bay, supra,* at p. 1367 [invalidating EIR for airport expansion that relied on outdated profile of aircraft emissions].) The obligation to use the best available data and methods is particularly important where, as here, the project has

a long-term planning horizon, and the EIR is relying on statistical and computer modeling to forecast project effects. (*Neighbors for Smart Rail, supra,* 57 Cal.4th at p. 456.)

The 2013 version of the Chino Basin Model used in the DEIR includes numerous assumptions and parameters to forecast future groundwater conditions in the Chino Basin and downstream impacts of the Update. The author of the model (WEI) has acknowledged that some important elements of the 2013 version of the Model are outdated, and have been replaced by the 2020 version of the Model. (WEI Technical Memorandum, April 27, 2020 [incorporated by reference].) Indeed, WEI is relying on the 2020 version of the Model to calculate the 2020 Safe Yield Reset required by the judgment. If a ten-year adjustment in the Safe Yield Rest requires the use of the latest version of the Model, *a fortiori,* the lead agency should be using the most current version of the Model to evaluate the significant effects of the thirty-year Update. The WEI Technical Memorandum documents that the 2020 version of the Model includes material changes to the 2013 version:

- "Since the prior Safe Yield re-calculation, the number of hydraulic subareas has substantially increased to more accurately estimate precipitation/runoff processes and stormwater recharge."

- "In the 2020 CVM, the method for estimating daily precipitation for each hydrologic subarea was improved from past reliance on interpolating daily precipitation at precipitation stations across the watershed . . . ."

- "Subarea surface flows from the Cucamonga and Riverside Basins are greater in the 2020 CVM relative to the 2013 Model . . . "

- "Streambed infiltration in the Santa Ana River has also increased."

- "The pumping projections used in the 2020 safe yield calculation are about 6,000 to 27,000 afs less for 2015 through 2035 . . . ."

(WEI, Technical Memorandum at p. 2-3.)

As documented in the April 23, 2020 comments of Thomas Harder & Co. on the 2020 Safe Yield Reset (incorporated by reference), there is significant uncertainty in the Chino Basin Model. Predictive uncertainty analysis is a standard practice in groundwater modeling, and is a best management practice identified by the Department of Water Resources for groundwater analyses prepared pursuant to the Sustainable Groundwater Management Act.

The Draft EIR fails to disclose any of the uncertainties in the Model, and fails to evaluate the potential for errors in the impact evaluation related to modeling

uncertainties. The Draft EIR is required to disclose fully the uncertainties in the Model and disclose the range of potential impacts of the Update in light of the uncertainties.

**c. The DEIR is Not Written in Plain Language. It Fails to Explain the Model in Terms that the Public is Able to Understand.**

EIRs are required to be organized and written in a manner that will make them "meaningful and useful to decision-makers and the public." (Pub.Res.Code, § 21003(b). EIRs must be written in plain language. (CEQA Guidelines, § 15140.) Documents that are "hypertechnical and confusing in their presentation may be incomprehensible to the very people they are meant to inform." (*San Franciscans for Reasonable Growth v. City & County of San Francisco* (1987) 193 Cal.App.3d 1544, 1548.)

The Chino Basin Model is the central analytical device used by the DEIR to evaluate hydrologic and water quality impacts of the Update. But the DEIR does not explain the Model, or the analysis of hydrologic and water quality effects in a manner that is clear and comprehensible to the public. The following are just a few of many representative examples of the DEIR's opaque and confusing language:

- "A Baseline planning scenario (Scenario 1A) based on expected groundwater pumping and recharge activities of the parties in the absence of Storage and Recovery Programs (as of 2017) was developed as a point of comparison to the Storage and Recovery Programs. And Storage and Recovery Program scenarios based on the two bands (FMSB and the 2000,000 af for use by future Storage and Recovery Programs) were also developed to compare against the Baseline and identify their impacts (Scenarios 2, 3 and 4)."

- "The Programs do not specifically address the facilities proposed as part of the OBMPU, and outline in the Project Description under Summary of All Facilities. However, these facilities fall under the same general project categories as those included as part of the OBMPU, and the impacts are assumed to correspond equally unless otherwise specified." (DEIR, p. 4-173.)

- "The ASR and in-lieu recharge capacities are estimated to be about 5,480 afy and 17,700 afy, respectively (WEI 2018). The initial OBMP recharge master plan was developed in 2002; its current version is the 2013 Amendment to the 2010 Recharge Master Plan Update (2013 RMPU) (WEI 2013)." (DEIR at p. 4-176.)

- "Future supplemental water recharge capacity requirements are estimated using future supplemental water recharge projections in the context of the

availability of supplemental water for recharge." (DEIR, p. 4-177.)

- "To evaluate the risk of MPI due to subsidence over the entirety of MZ-1, historical groundwater levels were used to develop a groundwater level control surface (new land subsidence metric throughout MZ-1 that define the likelihood of initiating new subsidence." (DEIR, p. 4-164.)

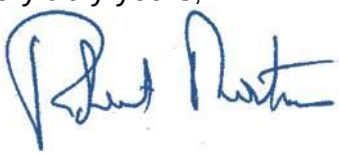
- "The new land subsidence projections described above indicate, for the baseline scenarios described in section 4 and in Storage and Recovery Program scenarios described in this section that new land subsidence could occur by 2056 under baseline conditions (Scenarios 1A) and with Storage and Recovery Programs operating (Scenarios 2C through 4B)." (DEIR, p. 4-185.)

It is impossible for anyone without a familiarity with hydrologic engineering and experience with hydrologic modeling to understand text such as the above. The language seems designed to obfuscate the analysis of the Update's effects rather than provide an analysis that is "meaningful and useful" to the public.

## 7. Conclusion.

The City respectfully requests that the lead agency revise the DEIR to address the comments above, and to recirculate the revised DEIR for additional public review and comment. The City also requests that the Inland Empire Utilities Agency (IEUA) and the Watermaster defer any action on the DEIR and on the Update until the necessary parties reach agreement on the terms of the agreement to implement revisions to the Optimum Basin Management Plan. The lead agency and responsible agencies could then determine the appropriate scope of any CEQA evaluation of those elements agreed to by the parties to the implementation agreement.

Very truly yours,



Robert D. Thornton
Nossaman LLP

RDT:lmb

cc: Scott Burton, City of Ontario
Katie Gienger, City of Ontario
Frederic Fudacz, Nossaman

State of California – Natural Resources Agency
CDFW OF FISH AND WILDLIFE
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Ontario, CA 91764
www.wildlife.ca.gov

***GAVIN NEWSOM, Governor***
***CHARLTON H. BONHAM, Director***

May 8, 2020
*Sent via email*

Ms. Sylvie Lee, P.E.
Inland Empire Utilities Agency
6075 Kimball Avenue, Chino, CA 91708
Slee@ieua.org

Subject: Chino Basin Watermaster, Optimum Basin Management Program Update Draft Subsequent Environmental Impact Report - State Clearinghouse No. 2020020183

Dear Ms. Lee:

The California Department of Fish and Wildlife (CDFW) received the Subsequent Environmental Impact Report (SEIR) from the Inland Empire Utilities Agency (IEUA; the CEQA lead agency) for the Optimum Basin Management Program Update (OBMPU; Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the OBMPU that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the OBMPU that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. *(Id.,* § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. For example, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

## PROJECT DESCRIPTION

The OBMPU covers the Chino Basin which includes approximately 235 square miles in the Upper Santa Ana River Watershed and lies within portions of San Bernardino, Riverside, and Los Angeles counties. The Chino Basin is mapped within the USGS – Corona North, Cucamonga Peak, Devore, Fontana, Guasti, Mount Baldy, Ontario, Prado Dam, Riverside West and San Dimas Quadrangles, 7.5 Minute Series topographic maps. The center of the Chino Basin is located near the intersection of Haven Avenue and Mission Boulevard at Longitude 34.038040N, and Latitude 117.575954W.

The Chino Basin Watermaster (Watermaster) developed a regional water resources and groundwater management program for the Chino Basin (Optimum Basin Management Program; OBMP). The update to the OBMP is intended to address possible program activities and projects at a programmatic level over the next 30 years. The current draft SEIR (herein referred to as 'OBMPU SEIR') addresses the current environmental setting, assesses the impacts related to the construction and operation of the regional program, and provides information to support required permitting process.

## PROJECT BACKGROUND

The original OBMP and the accompanying Programmatic EIR (PEIR; July 2000) described the physical state of the groundwater basin and defined a set of management goals and actions. Agreements to implement the OBMP (termed 'Peace I Agreement' and 'Peace II Agreement'), and their associated CEQA analysis (Peace II SEIR, 2010; SEIR amendment, 2017) were also approved. The OBMP identified and described several management activities that, if implemented, could achieve the OBMP goals. These activities, and associated objectives and tasks defined in the 2000 OBMP, have been retained for the OBMPU. The OBMPU Implementation Plan Update is a revision of the implementation plans included in the Peace I and Peace II Agreements and incorporates the proposed activities and facilities identified in the 2020 OBMPU and ongoing activities from the 2000 OBMP.

## COMMENTS AND RECOMMENDATIONS

CDFW is concerned about the adequacy of the OBMPU SEIR in identifying potentially significant impacts and establishing adequate and enforceable mitigation measures. CDFW's comments and recommendations are presented below.

<u>Impact Analysis</u>

The SEIR describes the intent of the document as follows: "*This document assesses the impacts, including unavoidable adverse impacts and cumulative impacts, related to the construction and operation of the proposed Project. This Program (*Draft*) SEIR is also intended to support the permitting process of all agencies from which discretionary approvals must be obtained for particular elements of this Project*." (SEIR, p. 1-2). Such analysis would allow CDFW to provide specific input on the adequacy of the analysis, and whether that analysis was sufficient for use in future discretionary actions, such as Fish and Game Code section 1602 Lake and Streambed Alteration Agreements or Fish and Game Code section 2081 Incidental Take Permits. However, the SEIR does not identify or assess any impacts to biological resources, and in most cases, defers this analysis to some future action. In the case of direct

impacts to biological resources, the OBMPU SEIR defers this analysis to future CEQA analysis, stating, "*Because it is difficult to determine the number or extent of these kinds of impacts, direct impacts on special-status wildlife species will be addressed in subsequent, project specific environmental reviews once a specific component of the OBMPU has been defined for design and implementation*." (SEIR, p. 4-62). In the case of indirect impacts to biological resources, the OBMPU SEIR conceded that "*potential indirect impacts associated with future OBMP facilities include alteration of jurisdictional water hydrology, host plant stress, destruction of native vegetation, habitat fragmentation, and noise and light pollution*", but concluded that it would be "*difficult to quantify and measure these kinds of impacts, indirect impacts on special-status wildlife species are described qualitatively and will be quantitatively addressed in project specific second tier environmental evaluations*". (SEIR, p. 4-62). Similarly, for ongoing operations or maintenance activities requiring ground disturbance, clearing, and grubbing, the OBMPU SEIR concluded that these actions "*could cause erosion and sedimentation or could indirectly affect the hydrology of nearby jurisdictional waters and the species that depend on these resources*." However, the OBMPU SEIR determined that "*maintenance activities that would have potential impacts on special-status wildlife species are limited to the program right-of-way areas that are currently in service or that will be added to normal program operations and maintenance through separate design, environmental review and construction of such facilities at a later date*" (SEIR, p. 4-62).

While CDFW recognizes the programmatic nature of the SEIR, some level of analysis could be completed at this time based on the data and information collected within the previous 20 years of OBMP implementation, information gathered in biological surveys for proposed Project areas, and the foreseeable impacts associated with future, contemplated projects. If the SEIR will defer biological analysis to future, second tier environmental analysis, the SEIR should specify the threshold that will be relied on for requiring additional environmental review, and which of the projects contemplated will be required to complete additional environmental review. If the threshold for triggering additional environmental review is low, or if additional environmental reviewed is not anticipated, CDFW requests that the lead agency recirculate this SEIR and include the results of an appropriate level of analysis for which CDFW may rely on for future discretionary actions. Regardless of the lead agency's approach for analyzing specific biological impacts, the SEIR must address the 'whole of the action', as it is inappropriate under CEQA review to divide a project into smaller, separate projects. The SEIR must address the cumulative effects of the Project as a whole.

The SEIR claims that, "*To the extent feasible, this document utilizes conservative (worst case) assumptions in making impact forecasts based on the assumption that, if impacts cannot be absolutely quantified, the impact forecasts should over-predict consequences rather than under-predict them*." CDFW disagrees that the SEIR provides conservative assumptions in forecasting impacts and argues that potential impacts may have been understimated. According to the OBMPU SEIR (Section 4.3 Biological), direct impacts from construction of any facility should "*only result in mostly minimal impacts on special-status wildlife species, because only a limited amount of marginal habitat for special-status wildlife species would be impacted by construction activities. All facilities would impact barren, urban, or agricultural areas, and thus construction would potentially impact only the special-status wildlife species that use mostly urban areas (e.g., special-status bird species, special-status mammal species, special-status bat species or species present in wetland or streambed habitats)*. Adjacency to urban areas does not necessarily determine habitat value or the use of these areas by special-status species. CDFW is concerned that the SEIR has trivialized the significance of the Project's potential impacts on

special-status species that could use such aeras. Many special-status species, including burrowing owl (*Athene cunicularia*) and tricolored blackbirds (*Agelaius tricolor*) use disturbed areas, such as agricultural fields and manmade structures (burrowing owls) that could be indirectly and/or directly impacted by the Project. Impacts to special-status species, regardless of habitat quality or location, must be identified, evaluated and mitigated to a level below significance.

Analysis of Cumulative Effects to Biological Resources

The Watermaster prepared and circulated a Notice of Preparation (NOP) for the OBMPU. As part of the review process, Orange County Water District (OCWD) requested that the OBMPU SEIR evaluate within Prado Basin the following:

1) The groundwater levels (e.g., groundwater pumping, groundwater storage, or groundwater overdraft) and the distribution of groundwater dependent ecosystem, such as riparian vegetation and wetlands;
2) Any changes or effects to surface flow rates in Chino Creek, Mill Creek, and the Santa Ana River;
3) The potential impacts of increased fire risk, riparian habitat loss, and riparian habitat conversion to non-native plant species; and
4) A quantitative analysis of impacts on Santa Ana River flows.

According to the OBMPU SEIR, impacts to biological resources have been assessed in the Biological Resources Subchapter 4.3 and in the Biological Resources Assessment (Volume 2 of the SEIR), with mitigation being identified "*where applicable to address impacts of OBMPU Projects on groundwater levels and potential related habitat impacts*".

The comments below are separated to reflect the distinction between the entire watershed within the Chino Basin and the 'Prado Basin'.

*Prado Basin*

Under Section 4.3.6(a).1 Prado Basin Habitat, it was concluded that: "***a reasonable assumption of the volume of water consumed by Prado Basin wetland/riparian habitat is about 18,000 AFY (****emphasis added). The IEUA and Western Municipal Water District (WMWD) are responsible for an average annual flow of 42,000 afy at Prado. However, when their cumulative credits exceed 30,000 afy (which they currently do and will continue to do so for the foreseeable future), they are responsible for a minimum annual flow of 34,000 afy. IEUA and WMWD split this responsibility 50/50, thus each agency is responsible for 17,000 afy of flow at Prado. The OBMPU is not anticipated to result in the inability of either IEUA or WMWD to meet this obligation, **and is therefore not anticipated to result in a significant impact to the health of the habitat supported at Prado Basin*** (emphasis added)".

CDFW is concerned that "reasonable assumptions", rather than data and detailed analyses, were used to determine whether significant impacts to habitat are anticipated to occur. The Watermaster, on behalf of the Chino Basin stakeholders and parties, is to maintain habitat in the Prado Basin as defined in the Peace II SEIR. Specifically, within the Peace II SEIR (Section 4.3.8 Cumulative Impacts), it states that "*the proposed OBMPU may result in a reduction in surface flows into Prado Basin. In addition, Low Impact Development ordinances, local policies,*

*and municipal storm water detention regulations will encourage water conservation and flow detention, resulting in a cumulative reduction in surface flows reaching Prado Basin.* ***These cumulative flow reductions may result in reduced acreage of healthy riparian forest that supports special-status species such as least Bell's vireo as well as aquatic species such as Santa Ana sucker and Southern California arroyo chub*** (emphasis added)*. To mitigate the effects of the cumulative diversions on habitat values and conservation objectives, regional organizations such as the Santa Ana Watershed Project Authority (SAWPA) and San Bernardino Valley Water District have developed local programs and partnerships to address cumulative impacts to habitat within Prado Basin.*" Pursuant to the OBMP Implementation Plan, long-term plans for monitoring groundwater production, groundwater level, groundwater quality, ground level (including remote sensing), surface water, and well construction/destruction have been developed and implemented to not only meet the OBMP requirements, but to also meet other regulatory requirements and Watermaster obligations under agreements, Court orders, and CEQA.

For example, the Prado Basin Habitat Sustainability Program (PBHS) has produced a time series of data and information on the extent and quality of the riparian habitat in the Prado Basin over a historical period that includes both regional mapping using multi-spectral remote-sensing data and air photos. In particular, the 2017 Annual Report determined that: 1) discharge in the Santa Ana River and its tributaries has declined since 2005; 2) decreases in the normalized difference vegetation index (NDVI) observed from 2015-2017 at several areas occurred during the growing-season for both Chino Creek and Mill Creek; and 3) northern reaches above the Mill Creek and the Santa Ana River confluence are "losing reaches" characterized by streambed recharge, while most other areas along Chino Creek and Mill Creek are "gaining reaches" characterized by groundwater discharge. This and other available data should be used in analyzing the potential cumulative impacts of the Project. CDFW realizes that the full extent of OBMPU may not be known at this time, but maintains that in order to determine significant environmental impacts and feasible mitigation measures, meaningful analyses need to be conducted and disclosed prior to Project approval.

While the results of the PBHS were not included in the OMBPU SEIR, it did clarify that "*the monitoring within the PBHS itself is not considered mitigation, but the commitment of Watermaster to initiate adaptive management programs to prevent significant loss of habitat (due to hydraulic control) serves as the mitigation to offset such damage or loss of Prado Basin Habitat*". As this monitoring program is intended to prevent impacts to habitat, it would be beneficial to discuss the monitoring results, adaptive management actions taken as a result of adverse effects identified, and strategies to mitigate potential future impacts that may occur from this proposed Project. To be effective, CDFW recommends that adaptive management should include: (1) objectives describing the desired condition; (2) management that is designed to meet the objectives; (3) monitoring to determine if the objectives are, or have been, met; and (4) management that is adapted if the objectives are not reached. To avoid irreversible change, detection of smaller changes may be important while they are still relatively minor. CDFW is available to assist the IEUA to identify 'adverse impacts to the riparian habitat or special-status species' and coordinate with all parties on future adaptive management action(s) that may need to be implemented.

*Burrowing owl*
The OBMPU SEIR discusses the need and availability of water to sustain certain vegetation communities and the species that depend on these habitats. The SEIR should also address

areas where flooding and water inundation is not preferred. The primary purpose of Prado Reservoir is flood control for the Santa Ana River Watershed, with water conservation being secondary. CDFW is aware that an agreement between OCWD, the United States Army Corps of Engineers (USACE) and the United States Fish and Wildlife Service was reached in 1993 that allowed for increased water conservation from March through September each year to store up to 26,000 acre-feet of water at elevation 505 feet. In 2006, a subsequent agreement was made to capture additional water behind Prado Dam to store more water from October through February each year by increasing the conservation pool for recharge of groundwater from elevation 494 feet to 498 feet. It is CDFW's understanding that a deviation to the Prado Dam Water Control Plan to increase the flood season water surface elevation of the pool behind Prado Dam from an elevation 498 feet to 505 feet for a period of five years has occurred. More water storage, particularly during winter, may increase the extent of areas subject to inundation, including burrowing owl occupied and/or suitable breeding and wintering habitat.

Much of the land contained below the 566-foot inundation line behind Prado Dam is intended to accommodate natural open space, wildlife preserves, and crop farming. Within the area previously known as the 'Dairy Preserve', large housing and industrial developments, including the Preserve (City of Chino), as well as, the Ontario Ranch (City of Ontario) have collected development fees over the last two decades to offset impacts to burrowing owls. The CEQA documents for these large planning developments proposed the creation, enhancement, and/or expansion of 300 acres (600 acres total) of high-quality wildlife habitat located generally below the Prado Dam 566-foot inundation line. While CDFW is unclear whether the proposed increase of water storage will affect habitat suitable for burrowing owl, given the past increases of storage to meet stakeholders demands, CDFW would like to have a better understanding of how burrowing owls and their habitat will be monitored and mitigated for over the next 30 years.

*Watershed*

Within the OBMPU SEIR Section 4.3 Biological Resources, the "*potential impacts on jurisdictional waters, special-status plant communities, protected trees, special-status plant, and wildlife species (including critical habitat) will be analyzed for each facility as site-specific design has been established. Once a particular facility area of potential effect (APE) is established,* ***a detailed second-tier evaluation to assure resource impacts are quantified, and site-specific measures are identified. Where none of the biological resource impacts occur in Prado Basin will occur, no further biological resource impact analysis may be necessary*** *(emphasis added).*" Furthermore, Section 4.3.6(a).1 Prado Basin Habitat concluded that for any future surface water diversions, "*mitigation is required to continue the monitoring program and to conduct detailed environmental reviews of future diversion impacts on* ***Prado Basin habitat prior to approval of such projects*** *(emphasis added). Thus, no specific diversion project can be implemented until an appropriate second-tier, public CEQA review is completed*".

CDFW is concerned that potential impacts will only be addressed if those impacts will occur within the Prado Basin, even though the project covers the entirety of the Chino Basin. Under Section 15355 of the CEQA Guidelines, cumulative effects refers to "*two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts*". Physical changes caused by a project can contribute incrementally to cumulative effects that are significant, even if individual changes resulting from a project are limited. The Lead Agency must determine whether the cumulative impact is significant, as well as whether an individual effect is 'cumulatively considerable'. This means "*the incremental*

*effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects*" (Guidelines Section 15064(h)(1)).

The OBMPU SEIR includes storage basin projects that would divert flows that ultimately reach Prado Basin (Project Category 3). Also, groundwater pumping can alter how water moves between an aquifer and a stream, lake, or pond by either intercepting groundwater flow that discharges into the surface-water body under natural conditions, or by increasing the rate of water movement from the surface-water body into an aquifer (e.g., draw down, cone of depression, etc.). Finally, diversion of surface water, recycling of water, and other water manipulation can alter and affect biological resources throughout the watershed. Thus, CDFW strongly encourages IEUA to consider the entire watershed and how the OBMPU will affect vegetation communities and the species that depend on those habitats.

Mitigation

The SEIR states, "*if the regulatory agencies determine an alternative, equivalent mitigation program during acquisition of regulatory permits, such measure shall be deemed equivalent to the avoidance and minimization measures listed in SEIR Section 4.3.7… no additional environmental documentation shall be required to implement a measure different than the listed avoidance measures*". CEQA requires environmental review of discretionary projects at the earliest *meaningful* stage to analyze and plan for the reduction and/or avoidance of environmental impacts *before* deciding to approve the project(s). While there are often discrepancies between CEQA's mandate for *early* review and its requirement of *detailed* discussions of impacts and mitigation measures, postponing the analysis of impacts to a future date is not appropriate. CEQA Guidelines §15126.4, subdivision (a)(1)(8) states formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center* v. *County* of *Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after project approval. Courts have also repeatedly not supported conclusions that impacts are mitigatable when essential studies, and therefore impact assessments, are incomplete *(Sundstrom* v. *County* of *Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry* v. *City* of *Murrietta (1995)* 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc.* v. *County* of *Orange* (2005) 131 Cal. App. 4th 777). Therefore, CDFW strongly suggests the SEIR incorporate sufficient, specific, and current biological information on the existing habitat and species at the Project site; measures to minimize and avoid sensitive biological resources; and mitigation measures to offset the loss of native flora and fauna and State waters. The CEQA document should not defer impact analysis and mitigation measures to future regulatory discretionary actions, such as a Lake or Streambed Alteration Agreement.

**FURTHER COORDINATION**

The CDFW appreciates the opportunity to comment on the SEIR for the OBMPU (State Clearinghouse No. 2020020183) and recommends that the IEUA address the CDFW's comments and concerns.

If you should have any questions pertaining to the comments provided in this letter, or wish to schedule a meeting and/or site visit, please contact Kim Romich at (909) 980-3818 or at kimberly.romich@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Patricia Moyer
CAB3EB907ADE4A9416...

Patricia Moyer
Environmental Program Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento
ec: HCPB CEQA Coordinator

Monte Vista
Dedicated to Quality, Service and Innovation
Justin Scott-Coe, PhD
GENERAL MANAGER

May 11, 2020

Sylvia Lee
Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708

Delivered via email to Sylvia Lee, slee@ieua.org

**Comments on Draft March 2020 Subsequent Environmental Impact Report for the Chino Basin Optimum Basin Management Program Update**

Dear Ms. Lee,

Monte Vista Water District (District) appreciates this opportunity to provide comments on the Draft Subsequent Environmental Impact Report (SEIR) regarding the proposed Optimum Basin Management Plan Update (OBMPU).

1. **The District opposes the portion of the proposed OBMPU project that removes 25,000 acre-feet per year of production from Management Zone 1 of the Chino Basin.**

   The Chino Basin Judgment includes a Court-ordered adherence to a "Physical Solution" that provides for "the maximum reasonable beneficial use of the waters of Chino Basin…to meet the requirements of water users having rights in…Chino Basin." The Judgment further clarifies this provision: "A fundamental premise of the Physical Solution is that all water users dependent upon the Chino Basin be allowed to pump sufficient waters from the Basin to meet their requirements." (¶39, 42)

   The Draft SEIR proposes a project that is inconsistent with the Physical Solution. The proposed project seeks to "relocate up to 25,000 afy of pumping from [Management Zone 1]" (page 3-26 and elsewhere). This proposed relocation of production out of Management Zone 1 of the Chino Basin would directly impact the ability of the District and other Judgment parties who produce groundwater from Management Zone 1 to "pump sufficient waters from the Basin to meet their requirements."

2. **The District requests that the SEIR include an alternative project that focuses on Chino Basin storage management.**

   The SEIR states that "based on the integrated nature of the OBMPU programs, reducing its scope relative to the proposed project is not considered to be a 'feasible' alternative" (page 1-12). The District does not believe this to be the case. The District requests that the SEIR include an alternative project limited only to the storage management portions of the OBMPU project, consistent with Chino Basin Watermaster's 2019 Storage Framework Investigation. The SEIR should study this alternative project to ensure that storage management may move forward regardless of the fate of the remaining portions of the OBMPU project scope.

The District respectfully requests that the lead agency revise the Draft SEIR to address the above comments and then recirculate the revised SEIR for additional public review and comment.

Thank you for the opportunity to provide comments on the proposed document. If there are any questions, please feel free to contact me at (909) 267-2125 or jscottcoe@mvwd.org.

Sincerely,

***Monte Vista Water District***

Justin M. Scott-Coe
General Manager

cc: Monte Vista Water District Board of Directors

825 East Third Street, San Bernardino, CA 92415-0835 | Phone: 909.387.8109 Fax: 909.387.7876
www.SBCounty.gov

SAN BERNARDINO COUNTY

# Department of Public Works

- Flood Control
- Operations
- Solid Waste Management
- Surveyor
- Transportation

**Brendon Biggs, M.S., P.E.**
Interim Director

May 11, 2020

File: 10(ENV)-4.01

Sylvie Lee, P.E.,
Inland Empire Utilities Agency,
6075 Kimball Avenue,
Chino, CA 91708
Email: Slee@ieua.org **Transmitted Via Email**

**RE: CEQA NOTICE OF COMPLETION OF A DRAFT SUBSEQUENT ENVIORNMENTAL IMPACT REPORT FOR THE CHINO BASIN WATERMASTER OPTIMUM BASIN MANAGEMENT PROGRAM PROJECT**

Dear Ms. Lee:

Thank you for allowing the San Bernardino County Department of Public Works the opportunity to comment on the above-referenced project. **We received this request on April 1, 2020** and pursuant to our review, the following comments are provided:

**Flood Control Planning and Water Resources Division (Michael Fam,Chief, 909-387-8120):**

1. From the information that was provided, it appears that the project proponent proposes to revise the existing Facility Master Plan in order to make facility improvements needed to meet IEUA's long-term planning objectives. Any revision to the drainage should be reviewed and approved by the jurisdictional agency in which the revision occurs. The need for any changes and their impacts should be addressed in the EIR prior to adoption and certification by the Lead Agency. The project is subject to the following District Comprehensive Storm Drain Plans (CSDP) and Master Plans of Drainage (MPD):

- CSDP 1
- Chino Airport MSDP
- Chino Hills Area MPD
- CSDP 2
- Ontario MPD
- Montclair MPD
- Rancho Cucamonga
- Chino MPD
- W. Cucamonga MPD
- Upland MPD
- Chino Hills MPD

2. According to the most recent FEMA Flood Insurance Rate Maps (FIRM), Panels 06071C7915H, 7920H, 8600H, 8605H, 8606H, 8607H, 8608H, 8615H, 8616H, 8620H, 8629H, 8638H, 8643H, 8644H, 8651H, 8652H, 8654H, 8656H, 8657H, 8658H, 8659H, 8665H, 8666H, 8667H, 9330H, 9335H, 9345H, 9375H, dated August 28, 2008; 7895J, 8634J, 8635J, 8642J, dated September 26, 2014; 8609J, 8617J, 8628J, 8630J, dated February 18, 2015; 7870J, 7890J, 8633J, 8637J, 8639J, 8641J, 8653J, dated September 2, 2016; the proposed site lies within Zones A, AE, AH, AO, D, X-shaded (500-yr. floodplain), X-unshaded, and the Regulatory Floodway.

**Permits/Operations Support Division (Melissa Walker, Chief, 909-387-7995):**

1. The Project involves use of San Bernardino County Flood Control District (SBCFCD) right-of-way and facilities. Any new or altered activities on the District's right-of-way or facilities, will require a permit from the SBCFCD prior to start of construction and may require amendments to existing agreements between the SBCFCD and local water agencies. Also, SBCFCD facilities built by the Army Corps of Engineers (ACOE) will require the SBCFCD to obtain approval (408-Permit) from the ACOE. The necessity for any, or all of these permits, and any impacts associated with them, should be addressed in the DEIR prior to adoption and certification.

2. The proposed recommendations include potential conversion of the Lower Cucamonga Creek Basins (SBFCD System Number 1-310-2A) and Riverside Basin (SBCFCD System Number 1-604-4) into a multipurpose facility that would temporary store storm water. Operations Support is in concurrence with Mitigation Measure HYD-16. If there are any modification required for the Cucamonga Creek Channel (SBCFCD Number 1-310-1H), this system conveys flows from each basin and is under the co-jurisdiction of the United Stated Army Corps of Engineers (USACE) and may require permits from the USACE.

3. Page 4-208, Section HYD-16, correct the first sentence to read, "…SBCFCD, RCFCD, and/or Division of Safety…."

4. Section 3.4.3.2 Program Element 2. Develop and Implement Comprehensive Recharge Program and Section 3.4.3.2.3 OBMPU Project Description - The recommended recharge program outlined for the Lower Cucamonga Creek Basins and Riverside Basins, may require an Amendment to original Agreement 03-0083 (Between IEUA, CBWC, SBCFCD, & CBWM), and approval from the San Bernardino County Board of Supervisor acting as the governing body of the SBCFCD, since Lower Cucamonga Creek Basin and Riverside Basin were not included in the original Agreement 03-0083 or the Memorandum of Agreement that was included as part of Agreement 03-0083.

5. The Watermaster's Diversion Permits Number 19895 and 20753 with the Stater Water Resources Board do not include Lower Cucamonga Creek Basins or Riverside Basins, these permits MAY need to be updated with the State Water Resources Board.

We respectfully request to be included on the circulation list for all project notices, public reviews, or public hearings. In closing, I would like to thank you again for allowing the San Bernardino County Department of Public Works the opportunity to comment on the above-referenced project. Should you have any questions or need additional clarification, please contact the individuals who provided the specific comment, as listed above.

Sincerely,

Michael Perry

**Michael R. Perry**
Supervising Planner
Environmental Management

SINCE 1933

**ORANGE COUNTY WATER DISTRICT**

ORANGE COUNTY'S GROUNDWATER AUTHORITY



May 11, 2020

Ms. Sylvie Lee, P.E.
Inland Empire Utilities Agency
6075 Kimball Avenue
Chino CA, 91708

***Subject: OCWD Comments on Draft SEIR for Chino Basin Watermaster OBMP Update, SCH#2020020183***

Dear Ms. Lee:

The Orange County Water District (OCWD) appreciates the opportunity to comment on the Draft Subsequent Environmental Impact Report (Draft SEIR) (SCH 2020020183) for projects proposed in the Chino Basin Optimum Basin Management Program Update (OBMPU).

OCWD is a special district formed in 1933 by an act of the California Legislature. The District manages the groundwater basin that underlies north and central Orange County. Water produced from the basin is the primary water supply for approximately 2.5 million residents living within the District's boundaries. OCWD also owns more than 2,000 acres of land in the Prado Basin and is keenly interested in projects that may affect the Prado Basin.

By virtue of its statutory authority and its extensive activities in Prado Basin, including water conservation/stormwater capture and operation of constructed wetlands to enhance Santa Ana River water quality, OCWD is particularly sensitive to environmental values and natural resources in Prado Basin.

As stated in OCWD's comment letter submitted for the Notice of Preparation of the OBMPU dated March 6, 2020, "the distribution of riparian vegetation and wetlands in Prado Basin and the occurrence of shallow groundwater and groundwater discharge to the ground surface (commonly referred to a 'rising groundwater' or 'groundwater seepage') are typical of a Groundwater Dependent Ecosystem (GDE)." The CA Department of Water Resources (DWR) defines a GDE as an "ecological community or species that is dependent on groundwater emerging from aquifers or on groundwater occurring near the ground surface". Given the habitat in Prado Basin's dependence on surface water and on the year-round

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availability of shallow groundwater, the Final SEIR should evaluate and address the vital linkage between the hydrologic conditions and biological impacts from projects in the OBMPU. As an example, embedded in the OBMPU are proposed projects to build diversions structures, storage basins and booster pump stations on Chino, Lower Cucamonga and Mill Creeks. These projects propose to divert and capture stormwater and dry-weather flows. OCWD understands and recognizes that future diversion projects within the OBMPU will undergo a Second Tier CEQA evaluation once these specific projects are identified. OCWD assumes that the diversions covered under Mitigation Measure BIO-25 will include all dry-weather flow diversions, decreased discharge of recycled water, and stormwater capture or diversions projects. If this is not an accurate interpretation of Mitigation Measure BIO-25, it should be clarified in the Final SEIR.

Pursuant to the execution of the Peace II agreement in 2007, Chino Basin Watermaster (CBWM) and Inland Empire Utilities Agency (IEUA) formed the Prado Basin Habitat Sustainability Committee (PBHSC), of which OCWD is a participating member. As mentioned on page 4-63 of the Draft SEIR, "[t}he monitoring itself is not considered mitigation, but the commitment of Watermaster to initiate adaptive management programs to prevent significant loss of habitat (due to hydraulic control) serves as the mitigation to offset such damage or loss of Prado Basin Habitat". Whereas OCWD recognizes the value and function of the monitoring component in the Prado Basin Habitat Sustainability Program, the program has not established thresholds to identify at what level of impact the impact is determined to be significant and therefore requires mitigation. Although an EIR can permissibly defer the identification of project-specific mitigation measures where the mitigative effect of such measures can be reasonably assured, the Draft SEIR does not identify specific mitigation measures nor does it identify guidelines or criteria for any future project-specific mitigation measures that would ensure that significant impacts related to damage or loss of Prado Basin habitat or biological resources would not occur. As it is stated in the Draft EIR that the monitoring conducted by the PBHSC is not a form of mitigation, the Final SEIR should define what criteria are used to define when impacts to biological resources such as riparian habitat have occurred. The Final SEIR should also identify measures that could be implemented to provide reasonable assurance that significant environmental impacts associated with the loss of habitat will not occur.

The hydrological modeling used in the Draft SEIR was conducted using a 10-year model using 3 take, 3 hold and 4 put years. This hydrological model depicts future groundwater conditions under various scenarios by changing the volumes of puts and takes to reflect likely hydrologic outcomes. The model uses the 10-year average of the 123-year annual average precipitation. Exhibit 4.7-1 in the Draft SEIR shows that weather patterns in the Chino Basin can have long term trends that deviate from the average. It is common to have dry and wet periods last much longer than 10 years. Global climate change adds an

additional level of uncertainty to assessing future conditions, since scientific publications suggest future weather cycles could exhibit more extreme conditions compared to historic observed conditions. Long-term droughts are one of the conditions that can have large negative impacts on the availability of water to support riparian vegetation in Prado Basin. For Second Tier CEQA evaluations that are conducted for diversion projects, the analyses should account for long-term droughts that can occur in the future.

Mitigation Measure BIO-7 states "Prior to commencement of construction activity on a project facility within a MSHCP/HCP plan area, consistency with that plan, or take authorization through that plan, shall be obtained. Through avoidance, compensation or a comparable mitigation alternative, each project shall be shown to be consistent with a MSHCP/HCP." Please confirm that this will include the Upper Santa Ana River Habitat Conservation Plan that is being developed by the Upper Santa Ana River Sustainable Resources Alliance.

Page 4-75 of the Draft SEIR states "Because the specific locations for future OBMPU Projects are not presently known, there is a potential that a future OBMPU facility may be developed in an area containing significant biological resources that cannot be avoided. Though substantial mitigation is provided to minimize impacts under most circumstances for future OBMPU facilities, no feasible mitigation exists to completely avoid impacts to biological resources within the Chino Basin. Thus, the proposed Project is forecast to cause significant unavoidable adverse impacts to biological resources." OCWD assumes that this text in the Draft SEIR does not refer to impacts to riparian vegetation due to decreased availability of water to support healthy riparian habitat. Decreased availability of water for riparian habitat and subsequent adverse impacts on riparian habitat could occur through a decrease in available surface water or a greater depth to groundwater or a combination of these two factors. We assume that this text in the Draft SEIR refers to impacts caused by construction itself, such as physical removal of vegetation to construct a project. Please clarify if this text in the Draft SEIR relates to impacts such as removal of vegetation as part of construction of facilities and does not refer to impacts on riparian vegetation caused by decreased availability of water.

As a point of clarity OCWD would like the Final SEIR to more precisely define Appendix 1. Appendix 1 is titled 'List of Pools'. Page 2 of Appendix 1 then appears to list the Chair and Vice Chair and other persons who are members of the Agricultural Pool Committee. Please clarify if this list on Page 2 is intended to identify members of the Agricultural Pool or members of the Agricultural Pool Committee. OCWD is also a member of the Agricultural Pool, as specified by the Judgment entered in Chino Basin Municipal Water District v. City of Chino, et al., San Bernardino Superior Court, Case No. RCVRS 51010 (formerly Case No. 164327) as Restated.

Because of OCWD's extensive activities in Prado Basin, we request that IEUA continue to provide notification to OCWD for all projects and their related CEQA analysis that have the potential to impact the Prado Basin and its groundwater dependent habitat.

If you have any questions, please contact Kevin O'Toole at (714) 378-8248 or kotoole@ocwd.com.

Sincerely,

Michael R. Markus, P.E., D.WRE, BCEE, F.ASCE
General Manager

JASON E. UHLEY
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# RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

May 11, 2020

**Emailed this date to: Slee@ieua.org**

Ms. Sylvie Lee, P.E.
Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708

Dear Ms. Lee:

Re: Notice of Availability of a Draft Subsequent Environmental Impact Report for the Chino Basin Watermaster Optimum Basin Management Program Update

This letter is written in response to the Notice of Availability of a Draft Subsequent Environmental Impact Report (DSEIR) received by the Riverside County Flood Control and Water Conservation District (District). The Inland Empire Utilities Agency (IEUA) has prepared a DSEIR for the proposed Optimum Basin Management Program Update (OBMPU) describing facility improvements and activities of the Chino Basin Watermaster (CBWM). IEUA is the Lead Agency for this project under the California Environmental Quality Act (CEQA) and has prepared this document on behalf of the CBWM. The District is tasked with effectively managing flood hazards to protect life and property within western Riverside County.

The District has reviewed the DSEIR provided and has the following comments regarding this project:

1. Please be advised that the proposed project is located within multiple District Master Drainage Plans (MDP). When fully implemented, these MDP facilities will provide adequate drainage and flood protection within the MDP area. The District's MDP facility maps can be viewed online at: http://content.rcflood.org/MDPADP/. The proposed project facilities should be designed and constructed in a manner to avoid conflicts with the MDP facilities. To obtain further information on the MDP and proposed facilities, please contact Mike Wong of the District's Planning Section at 951.955.1345.

2. The proposed project may impact existing District facilities and rights of way. Any work that involves District rights of way, easements, or facilities will require an encroachment permit from the District. Therefore, the District will likely be a CEQA Responsible Agency, and any potential impacts to District facilities should be considered in the DSEIR. To obtain further information on District encroachment permits and to find an application form, please refer to https://rcflood.org/I-Want-To/Services/Obtain-Encroachment-or-Access-Permit, or contact the District at 951.955.1200 and speak with encroachment permit staff to help confirm permit requirements.

Thank you for the opportunity to review this DSEIR. If you have any questions or require additional information regarding the comments on this letter, please contact Sean Berriman at 951.955.1242 or me at 951.955.1306.

Very truly yours,

RANDY SHEPPEARD
Senior Flood Control Planner

SB:mcv
P8\231170

*XAVIER BECERRA*
*Attorney General*

*State of California*
*DEPARTMENT OF JUSTICE*

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May 11, 2020

Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708
Attn.: Ms. Sylvie Lee, P.E.
slee@ieua.org

*Via Electronic and U.S. Mail*

RE: Chino Basin Optimum Basin Management Program Update
Comments on Draft Subsequent Environmental Impact Report

Dear Ms. Lee:

The Inland Empire Utilities Agency (IEUA), as Lead Agency, has prepared a Draft Subsequent Environmental Impact Report (DSEIR) that summarizes the potential environmental effects associated with the implementation of projects identified in Chino Basin Watermaster's Optimum Basin Management Program Update (OBMPU). We respectfully submit the following comments on the DSEIR in the document's chronological order:

**The California Institution for Men**

**Page x** of the DSEIR, listing Abbreviations and Acronyms, and various parts of the document (although not all occurrences), misidentifies "CIM" as "Chino Institute for Men" or "California Institute for Men." The correct term is "California Institution for Men."

**The 2020 Storage Management Plan**

**Page 3-41** of the DSEIR, discussing the 2020 SMP, identifies the need for Watermaster to "periodically review and update the SMP … at least five years before the aggregate amount of managed storage by the Parties is projected to fall below 340,000 af." This summary of the SMP lacks important context for the 340,000 af threshold, which was established because impacts to the basin (e.g., subsidence induced by groundwater withdrawal, loss of pumping sustainability caused by groundwater withdrawal, etc.) due to a reduction of existing managed storage below this threshold have not been evaluated. As of the date of these comments, Watermaster has not approved the 2020 SMP or any implementation plan for storage management. Given that the SMP, even after being adopted, may be modified in the future, we request that such potentially significant impacts and any other MPI resulting from the aggregate amount of managed storage by the Parties falling below 340,000 af be identified as a potentially significant impact. Mitigation measures to address such potentially significant impacts should include, at a

minimum, requirements for Watermaster to (a) conduct an MPI analysis at least five years before the aggregate amount of managed storage by the Parties is projected to fall below 340,000 af; (b) prepare a report that describes its analysis and conclusions regarding potential MPI to the basin; and (c) develop and implement measures to mitigate MPI caused by removal of managed storage below the 340,000 af threshold.

**Use of CIM Property**

**Page 3-58** of the DSEIR identifies a potential project for a new diversion structure, booster pump stations, pipelines and storage basin at CIM. According to the DSEIR, "the new storage basin…could have an estimated area between 50 and 100 acres, although its capacity and the amount of surface water diverted is unknown at this time. The proposed new storage basin will require conveyance facilities that include up to 60,000 linear feet of pipelines and presently an unknown number, locations and capacities of booster pump stations, basins and related appurtenances."

The California Department of Corrections and Rehabilitation (CDCR) recognizes that the DSEIR is a Program Level Environmental Impact Report and not an approval document to construct a storage basin, conveyance facilities, booster pump stations, and associated pipelines at CIM. However, CDCR is not aware of such a project and has not been approached to discuss such a project. A storage basin of this magnitude would require another Tier of California Environmental Quality Act analysis, and CDCR has general concerns with any proposed physical improvements within the boundaries of CIM in light of the fact this is an operating correctional facility. Additional study and consultation with CDCR will be required to determine if CDCR could ultimately support construction of these improvements at CIM. Therefore, this is not a forseeable project at this time.

**The Agricultural Pool**

**Page 3-72** of the DSEIR identifies the "State of California, California Institut[ion] for Men," "State of California, Department of Conservation," and "State of California, Department of Justice," as public entity members of the Agricultural Pool. This is inconsistent with the Restated Judgment's expansive definition of the State of California as a member of the Agricultural Pool. (See Restated Judgment, p. 7, ¶ 10 ["all future production by the State or its departments or agencies for overlying use on State-owned lands shall be considered as agricultural pool use."].) Accordingly, Section 3.7 should simply identify the "State of California."

The County of San Bernardino is another public entity member of the Agricultural Pool, but it was omitted from your list.

Further, this section of the DSEIR states that Appendix 1 lists "all Agricultural Pool participants." However, Appendix 1 only lists members of the Agricultural Pool Committee, not all of its constituent members.

Thank you for the opportunity to comment of the DSEIR. As a stakeholder and landowner, the State of California considers local and regional environmental issues to be a priority as the need for water as a consumable commodity and the use, conveyance, and disposal thereof impacts CDCR's institutions. The State looks forward to a continued collaboration with the Chino Basin Watermaster, the County of San Bernardino, and IEUA, all of whom continue asset use at CIM through monitoring well agreements or rights of entry (including use by California Polytechnic University, Pomona to dispose of effluent on CIM property – a combination of both CIM and IEUA wastewater).

Please feel free to contact me if you have any questions.

Sincerely,

/S/ Carol A.Z. Boyd

CAROL A. Z. BOYD
Deputy Attorney General

For XAVIER BECERRA
Attorney General

CAZB: Self

cc: Michael Beaber, Associate Director, Facility Planning, Construction and Management, CDCR
Tamer Ahmed, Associate Director, Facility Planning, Construction and Management, CDCR
Peter Connelly, Senior Environmental Planner, CDCR
Dean L. Borg, Director, Facility Planning, Construction and Management, CDCR
Robert Feenstra, Chair, Agricultural Pool