

September 4, 2015

Bradley J. Herrema  
Attorney at Law  
310.500.4609 tel  
310.500.4602 fax  
BHerrema@bhfs.com

**VIA E-MAIL AND U.S. MAIL**

California Department of Water Resources  
Attn: Sustainable Groundwater Management Section  
P.O. Box 942836  
Sacramento, CA 94236

**RE: Department of Water Resources Draft Basin Boundary Emergency Regulations**

Dear Department of Water Resources:

Brownstein Hyatt Farber Schreck, LLP represents the Chino Basin Watermaster ("Watermaster") and presents these comments on Watermaster's behalf in connection with the Department of Water Resources' (DWR) Draft Basin Boundary Emergency Regulations ("Draft Regulations"). Watermaster appreciates the opportunity to submit comments on the Draft Regulations.

Watermaster is the arm of the San Bernardino County Superior Court that oversees implementation of the 1978 Judgment, which adjudicated the groundwater rights to the Chino Groundwater Basin ("Chino Basin" or the "Basin"). One of the key features of the 1978 Judgment is that the Court retains continuing jurisdiction to ensure that the water resources of the Chino Basin are utilized in a manner consistent with Article X, Section 2 of the California Constitution. As an adjudicated basin subject to ongoing judicial oversight, Chino Basin is exempt from the Sustainable Groundwater Management Act's (SGMA) groundwater sustainability plan ("Plan") requirement. (Wat. Code, § 10720.8, subd. (a)(4).)

One of the central tasks given to Watermaster under the 1978 Judgment is to develop a physical solution for the Chino Basin. This physical solution takes the form of a comprehensive and integrated groundwater management plan called the Optimum Basin Management Program (OBMP). Watermaster and the parties to the Judgment have invested a substantial amount of time and hundreds of millions of dollars to develop and implement the OBMP and the OBMP Implementation Plan, and the result of their investment is a remarkable Basin management structure. Watermaster has been effectively managing the Basin pursuant to the OBMP Implementation Plan since its approval by the Court in 2000.

Watermaster's focus in providing these comments is the preservation of the investment of the Parties to the Judgment in the OBMP and OBMP Implementation Plan, as these have been found by the Court to provide for the sustainable management of the Basin consistent with Article X, section 2 of the California Constitution. Watermaster provides the following comments regarding three aspects of the Draft Regulations: (1) the jurisdictional modification procedure should incorporate SGMA's presumption of existing effective management in adjudicated basins; (2) the need for alternative management mechanisms in fringe areas in the absence of a mechanism for addressing fringe areas through Basin Boundary revisions; and (3) a request that non-agency basin management entities be allowed to request basin boundary modifications.

2049 Century Park East, Suite 3550  
Los Angeles, CA 90067  
main 310.500.4600

#### **Section 342.4: Jurisdictional Modifications**

The Draft Regulations would provide a mechanism through which internal basin boundaries may be revised to comport with jurisdictional boundaries. (See Code Regs., §§ 340.4, subd. (p), 342.4.) Watermaster supports the Draft Regulations' proposed inclusion of such a mechanism for jurisdictional modifications. Watermaster believes such a change may be appropriate in the case of the Chino Basin, where Chino Basin shares a boundary with other adjudicated Bulletin 118 basins and sub-basins and there are offsets between the adjudicated boundaries and those delineated under Bulletin 118, but there is no lack of coverage of a management structure – an adjudication.

Attached to this letter as Exhibit "A" is a comparison of the Basin's adjudicated boundaries to those delineated by Bulletin 118. This figure also shows the Bulletin 118 and adjudicated boundaries of neighboring basins. As an example, the Six Basins adjudicated portion of the Main San Gabriel Basin and the Cucamonga Basin, to the northwest of Chino Basin, are adjudicated basins that are also exempt from SGMA's Plan requirement. (See Exh. A; Wat. Code, § 10720.8, subd. (a)(5), (22).) Although the adjudicated boundaries do not match the Bulletin 118 boundaries, no absence of groundwater management results from the inconsistency. However, the discrepancy between the adjudicated and 118 boundaries creates uncertainty as to what the impact of this inconsistency might be in future SGMA administration.

The Draft Regulations would create certain showings necessary for the California Water Commission to be able to approve a jurisdictional boundary revision. (Code Regs., §§ 344.16, 345.4, subd. (b).) These largely focus on the ability of the basin, as revised, to be sustainably managed. (Code Regs., § 345.2.) In its exemption of adjudicated basins from its Plan requirements, SGMA demonstrates a presumption of sustainable management within adjudicated basins. (Wat. Code, § 10720.8.) Watermaster suggests that this presumption should be incorporated in the regulations governing basin boundary revisions such that, unless evidence is provided otherwise, it is assumed that the area within an adjudicated boundary will be sustainably managed. Inclusion of such a presumption – Watermaster suggests that it be inserted in section 345.4, subdivision (b) – would facilitate modifications required to conform the Bulletin 118 boundaries to the boundaries of adjudications, allowing such changes to be made more efficiently, which is in the interests of both the entities requesting the modification and those administering the boundary revision processes.

#### **Alternative Management Mechanism for "Fringe Areas"**

In many areas within the state – if not in all circumstances – there are incongruities between basin boundaries, as described in Bulletin 118, and the boundaries as provided for in adjudication decrees, which result in areas of the Bulletin 118 defined basin extending outside the adjudication boundaries. DWR has described these areas, in its *Discussion Paper: Topic 5 – Boundaries* (Aug. 3, 2015) as "fringe areas." The Chino Basin is not exempt from the fringe area issue, with a prime example being in the southeast of the Basin. (See Att. A.) Because the SGMA's exemption of adjudicated basins applies only to the extent of the adjudicated boundaries, fringe areas would not be exempted from SGMA's Plan requirement. The SGMA requires sustainable management for the entire Bulletin 118 basin, so a demonstration of sustainable management – either through the adoption of a new Plan or through SGMA's plan alternative mechanism (Wat. Code, § 10720.8, subd. (e).) – will be required for fringe areas. The requirement of a Plan in a fringe area that abuts an adjudicated basin may raise the concern of inconsistency in the management within and outside the adjudication, and additional – but unnecessary – requirements for coordination of the adjudication's management with this new mechanism. As may be shown at the appropriate time, based on the manner in which Watermaster manages the Basin within the adjudicated boundary, sustainable management is ensured through the Bulletin 118 boundaries – including within the fringe areas.

The parties to the Chino Basin Judgment have invested substantial time and resources to craft a basin management program that is specifically tailored to provide sustainable management of the Basin. As the result of the time and effort invested by those parties, they reasonably expect to be able to rely on the management structure carried forward through the OBMP Implementation Plan. If faced with the potential for inconsistent groundwater management in a fringe area, as the result of a Plan, the parties to the adjudication may be faced with the choice of seeing their efforts and investments frustrated or investing more time and money in coordination efforts.

The Draft Regulations do not include a mechanism to eliminate such concerns regarding fringe areas through a boundary revision. DWR's draft issue papers prepared in advance of the regulation promulgation process have shown that DWR is aware of the need to address fringe areas, particularly in the situation of incongruity between adjudicated and Bulletin 118 boundaries. (See *Discussion Paper 5, supra*, at 4-5.) To the extent that DWR does not believe it is appropriate to allow basin boundary modifications to address fringe area concerns, Watermaster encourages DWR to continue to work to develop an alternative mechanism in which the concerns described above may be addressed short of a full-scale Plan that may be consistent with adjudication.

### **Section 343.2: Non-Agency Basin Management Entities**

As described above, Watermaster is an arm of the adjudication court, and has been tasked with the administration of the adjudication, subject to the court's ongoing jurisdiction. Watermaster is a judicial entity, and therefore not a local agency as contemplated by the SGMA. (Wat. Code, § 10721, subd. (m).) The Draft Regulations require that a request for boundary revision be initiated by a local agency whose jurisdiction lies within or borders the basin or sub-basin for which the boundary modification is sought. The Draft Regulations therefore have the effect of precluding Watermaster—the entity responsible for administration of the Chino Basin adjudication—from requesting modification of its boundaries. As representatives of all of the parties to an adjudication, including multiple local agencies, it is not clear why watermasters should not have the ability to request boundary revisions and Watermaster requests that DWR incorporate such a change into its final regulations. This addition to the DWR's final Regulations would promote efficiency in the process of proposing and considering basin boundary revisions.

Thank you for this opportunity to provide comments on the Draft Regulations. Watermaster respectfully requests that DWR address these comments in its final regulations for basin boundary modifications pursuant to SGMA.

Sincerely,



Bradley J. Herrema

BXH:olr

# Exhibit A

