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California Department of Water Resources  
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**RE: Draft GSP Emergency Regulations Public Comment**

To Whom It May Concern:

Brownstein Hyatt Farber Schreck, LLP represents the Chino Basin Watermaster (“Watermaster”) and presents these comments on our client’s behalf regarding the Department of Water Resources’ (“DWR”) Draft Groundwater Sustainability Plan Emergency Regulations (“Draft GSP Emergency Regulations”). Watermaster appreciates the opportunity to submit comments on the Draft GSP Emergency Regulations.

Watermaster is the arm of the San Bernardino County Superior Court that oversees implementation of the 1978 Judgment that adjudicated the groundwater rights to the Chino Groundwater Basin (“Chino Basin” or the “Basin”) and established a physical solution for the sustainable management of the Basin. One of the key features of the 1978 Judgment is the Court’s retention of continuing jurisdiction to ensure that the Basin’s resources are utilized in a manner consistent with Article X, Section 2 of the California Constitution – that its waters be conserved to ensure both that they are put to beneficial use to the fullest extent they are capable and that unreasonable use is avoided. As an adjudicated basin subject to ongoing judicial oversight, Chino Basin is expressly exempted from the Sustainable Groundwater Management Act’s (“SGMA”) groundwater sustainability plan (“GSP”) requirement. (See Wat. Code, § 10720.8, subd. (a)(4).)

One of the central tasks given to Watermaster under the 1978 Judgment is to implement the 1978 Judgment’s physical solution for the Chino Basin. This physical solution takes the form of a comprehensive and integrated, court-approved groundwater management plan called the Optimum Basin Management Program (OBMP). Watermaster and the parties to the 1978 Judgment have invested significant time and hundreds of millions of dollars to develop and implement the OBMP and the OBMP Implementation Plan; the result of which is a successful Basin management structure.

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Attached to this letter as Exhibit “A” is a comparison of the Basin’s adjudicated boundaries to those delineated by Bulletin 118.<sup>1</sup> Consistent with the 1978 Judgment, the OBMP and the OBMP Implementation Plan may only be enforced within the boundaries of the adjudication action. Enforcement and implementation of the OBMP and the OBMP Implementation Plan within this portion of the Basin, however, have the effect of bringing the entire Basin, as defined in Bulletin 118, into sustainability. Therefore, although the adjudicated boundaries within Chino Basin do not match the Bulletin 118 boundaries<sup>2</sup>, no absence of sustainability results from the inconsistency.

Watermaster’s focus in providing these comments is the preservation of the investment of the Parties to the 1978 Judgment in the OBMP and OBMP Implementation Plan, as these have been found by the overseeing court to provide for the sustainable management of the Basin consistent with Article X, section 2 of the California Constitution.

Against this backdrop, Watermaster provides the following comments on the Draft GSP Emergency Regulations.

### **Need for Alternative Management Mechanism for “Fringe Areas”**

In many areas within the state 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 Attachment 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 GSP requirement. The requirement of a GSP 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—though unnecessary—requirements for coordination of the management pursuant to an adjudication 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 throughout the Bulletin 118 boundaries—including within the fringe areas.

In the Chino Basin, the parties to the 1978 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

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<sup>1</sup> 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 Wat. Code, § 10720.8, subd. (a)(5), (22).)

<sup>2</sup> A Basin Boundary Modification Request has been filed by the Inland Empire Utilities Agency, the Three Valleys Municipal Water District, and the Western Municipal Water District to conform much of the Bulletin 118 boundary for the Chino Basin to the boundary utilized within the 1978 Judgment.

management in a fringe area, as the result of a required GSP, 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 GSP Emergency Regulations do not include a mechanism—or any flexibility—expressly addressing such concerns regarding fringe areas. DWR’s draft issue papers prepared in over the past year 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.) Watermaster encourages DWR to develop (and include in the final GSP Emergency Regulations) an alternative mechanism in which the concerns described above may be addressed short of a full-scale GSP that may be consistent with adjudication.

**Comment on Article 9 (Alternatives and Adjudicated Areas)**

Initially, the language of proposed section 358.4(c)(3) is inconsistent with section 10733.6 of the Water Code, which sets forth eligible GSP alternatives. The Draft GSP Emergency Regulations state that “[a]n alternative submitted pursuant to Water Code Section 10733.6(b)(3) shall demonstrate that no undesirable results are present in the basin or have occurred between January 1, 2005 and January 1, 2015.” (23 CCR 358.4(c)(3).) However, Water Code section 10733.6(b)(3) provides that the alternative include an “analysis of basin conditions that demonstrates that the basin has operated within its sustainable yield over a period of at least 10 years.” The proposed requirement of section 358.4 is materially different than that authorized by the legislature under SGMA. We recommend that this section be revised to be consistent with SGMA.

Additionally, when evaluating whether an alternative submitted Water code section 10733.6(b)(3) meets the requirements of SGMA, DWR’s review should be limited to those portions of a basin subject to SGMA’s requirement for the development of a GSP or GSP Alternative – not the portion of the basin that is subject to an adjudication Court’s continuing jurisdiction. SGMA’s exemption for adjudicated basins recognizes the courts’ continuing jurisdiction over these basins and limits the requirements of adjudicated basins to submitting copies of all final judgments and annual reporting of certain information regarding groundwater extraction and use within the basin. (Wat. Code § 10720.8(f).) Therefore, Watermaster recommends that, in evaluating a Plan Alternative, DWR adopt a presumption of sustainability for those portions of a basin subject to an adjudication action recognized in section 10733.6 of the Water Code, which would require only the evaluation of 10 years’ data within the area of the basin outside the adjudication boundaries.

Sincerely,



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# **EXHIBIT A**

# Basin Boundaries

in the Upper Santa Ana River Watershed

-  DWR Bulletin 118
-  Adjudicated (Labeled)

