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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

UPPER SAN GABRIEL VALLEY MUNICIPAL WATER DISTRICT,

Plaintiff,

vs.

CITY OF ALHAMBRA, et al.

Defendant.

Case No: C924 128

WATERMASTER STATUS REPORT RE BALDWIN PARK OPERABLE UNIT PROJECT AGREEMENT RENEWAL

Assigned for All Purposes to the Honorable Maureen Duffy-Lewis, Dept. 38

Status Conference:

Date: April 18, 2016
Time: 9:30 a.m.
Dept.: Dept. 38
RES ID: 160120098125

This Status Report is submitted by the Main San Gabriel Basin Watermaster ("Watermaster") in connection with the status conference scheduled before this Court on April 18, 2016.

I. INTRODUCTION.

On May 9, 2002, this Court approved Watermaster's participation in the Baldwin Park Operable Unit Project Agreement ("Project Agreement"). The Project Agreement set a landmark precedent providing over $350 million dollars to clean-up contaminated water supplies for beneficial re-use in the San Gabriel Valley.

The Project Agreement represents the culmination of many years of intense negotiations among Watermaster, the United States Environmental Protection Agency ("EPA") and 15 parties with widely divergent interests,[1] resulting in a funding mechanism to both cleanup contaminated groundwater and restore critically needed water supplies.

The Project Agreement was executed on March 29, 2002, with an original term of 15 years from an effective date of May 9, 2002. The Project Agreement is set to expire on May 9, 2017. Pursuant to Article 9.2 of the Project Agreement, the parties agreed to negotiate the terms and conditions for renewal in good faith.[2] Consistent with this contractual provision, the Parties have begun the extension negotiation process.

Renewal of the Project Agreement is of critical importance given the current state of the Main San Gabriel Groundwater Basin ("Basin"). The Basin is suffering from the worst drought in California's recorded history, water levels are at

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[1] The original parties to the Project Agreement are: Main San Gabriel Basin Watermaster, San Gabriel Basin Water Quality Authority, San Gabriel Valley Water Company, La Puente Valley County Water District, Valley County Water District, California Domestic Water Company and Suburban Water Systems (collectively, the "Water Entities") on the one hand, and Aerojet-General Corporation, Azusa Land Reclamation Co., Inc., Fairchild Holding Corporation, Hartwell Corporation, Huffy Corporation, Oil & Solvent Process Company, Reichhold, Inc., and Wynn Oil Company (collectively, the "Cooperating Respondents") on the other hand.

[2] Section 9.2 of the Project Agreement provides: "Extension of the Term: The Parties agree to negotiate in good faith in an effort to reach agreement as to the terms and conditions of an extension of the Term in the event that the Final ROD anticipates, or any of the Parties desire, the continued operation of all or a substantial portion of the Project Facilities."

historic lows, and imported water supplies are limited. The groundwater contamination continues to impact Basin water supplies. It is imperative that this groundwater source be treated and cleaned as contemplated by the original Project Agreement.

Renewal of the Project Agreement will require approval by this Court. If Agreement is not reached, there will be a dramatic impact on Basin conditions, operation, and the availability of water supplies to more than 1.2 million people in the San Gabriel Valley. (*See* "Status Conference with the Honorable Maureen Duffy-Lewis Regarding the USEPA Superfund Baldwin Park Operable Unit Project Agreement" PowerPoint Presentation attached hereto as Exhibit "A").

II. HISTORY OF THE PROJECT.

Extensive groundwater contamination was discovered in the Basin, resulting from the use and improper handling and disposal of various chemicals. High levels of trichloroethylene ("TCE") were first detected in 1979, and since then over 30 wells have been impacted by varying concentrations of TCE, perchloroethylene ("PCE"), carbon tetrachloride ("CTC"), and other volatile organic compounds ("VOCs"). EPA began investigating groundwater contamination in the Basin during the early 1980's, and in 1984, the Basin was declared a Superfund site. EPA divided the contaminated area into several discrete units, known as Operable Units. The Baldwin Park Operable Unit ("BPOU") is a several-mile long area of groundwater contamination in and near the cities of Baldwin Park, Azusa and Irwindale.

From the mid-1980's to the mid-1990's, EPA conducted extensive investigation and developed a cleanup plan to address the contamination. In the meantime, water purveyors were dealing with the water supply impacts of the contamination by building treatment facilities where practical, and by building new wells and finding alternative sources of water.

In March 1994, EPA selected an interim remedy for the BPOU through the issuance of a Record of Decision ("ROD"). The objectives of the ROD are to: (1)

prevent the contaminated groundwater from moving into clean or less contaminated areas and depths; (2) remove a significant mass of contamination from the groundwater; and (3) provide the necessary data to determine final cleanup standards for the area. Shortly after the issuance of the ROD, EPA began to name the companies responsible for the groundwater contamination. In 1997, during the final pre-implementation stages of the ROD, three new contaminants, perchlorate, n-nitrosodimethylamine ("NDMA") and 1-4 dioxane, were discovered within the BPOU. Perchlorate is an inorganic chemical that does not respond to the treatment technology used for VOC's. In fact, when the presence of perchlorate was initially discovered in the BPOU, there was no known cost-effective treatment for removal of perchlorate to the level necessary to meet state action levels.

As a result of the discovery of the new contaminants, a water supply crisis emerged in the southern portion of the BPOU and water purveyors were forced to shut down wells because there was no cost-effective treatment available. In addition, the discovery necessitated further investigation by EPA and modification of the remediation plan to address the newly discovered contaminants. In response to the new contamination problem, Watermaster spearheaded an effort to secure a practical technology to address perchlorate contamination in order to restore the impacted water supplies. In 1998, Watermaster initiated discussions with the Cooperating Respondents and EPA, with the objective of facilitating a cleanup plan that would not only treat the contaminated water but also provide potable water for delivery to customers.

In 1999, EPA updated the ROD, through the issuance of an Explanation of Significant Differences ("ESD"), to address the newly discovered contaminants. By 1999, effective technologies were available for the treatment of perchlorate. The ESD provides for the incorporation of treatment technologies to treat perchlorate, NDMA, and 1-4 dioxane. The updated ROD provides for the construction and operation of groundwater extraction wells, treatment facilities, and conveyance facilities capable of pumping and treating large amounts of groundwater from two broad sub areas of

contamination within the BPOU. The ROD also reflects EPA's preference that the treated groundwater be delivered to water purveyors for distribution to their residential and business customers through existing distribution systems.

In June 2000, EPA issued the UAO directing nineteen responsible parties to begin implementation of the groundwater cleanup under the ROD. Thereafter, Watermaster continued to participate in discussions among the responsible parties and certain impacted water purveyors, with the objective of developing a combined groundwater cleanup and potable water supply project that would address the requirements of the UAO.

Following several months of intense negotiations facilitated by EPA, the Water Entities and Cooperating Respondents executed a Memorandum of Understanding ("MOU") on January 12, 2001. Under the provisions of the MOU, the parties agreed to negotiate a definitive agreement for the funding, construction and operation of the Project over a 15-year period.

Following execution of the MOU in January 2001, the parties were engaged in intense negotiations for over a year in an effort to craft a definitive agreement that meets their respective needs and is satisfactory to EPA for implementing the requirements of the ROD. During the course of the negotiations, it was necessary to resolve a myriad of difficult issues, including Project technology issues, the funding mechanism and financial assurances to be provided by the Cooperating Respondents, responsibilities of the Water Entities, the scope of Project insurance and indemnities, and the nature and scope of public funding to be administered through the San Gabriel Water Quality Authority ("WQA"). The negotiation process culminated in a final Project Agreement approved by all parties, the EPA and this Court. The Project Agreement represents a delicate balance among the competing interests and priorities of the parties and EPA, and sets a national precedent for achieving the dual goals of groundwater cleanup and restoration of water supplies.

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III. THE PROJECT AGREEMENT AND OPERATION.

The Project Agreement calls for: (1) the implementation of EPA's mandated clean-up of contaminated groundwater within the Basin; and (2) restoration of desperately needed water supplies within the San Gabriel Valley.

The Project consists of six separate subprojects, each involving water extraction, treatment and distribution facilities owned and operated by a water purveyor within the San Gabriel Basin. The Project facilities are designed to help meet the water supply needs of the purveyors and to address the groundwater remediation objectives formulated by the EPA. The Project Agreement provides for, among other things: (1) the construction, operation and management of the Project facilities by the respective water purveyors; (2) funding and financial assurances by the Cooperating Respondents for Project costs; (3) coordination and administration of the Project by Watermaster; and (4) administration and oversight by WQA of reimbursements from federal and state funding sources.

In addition to providing for funding the future costs of the Project, the Project Agreement also provides for payment by the Cooperating Respondents for certain past costs and interim costs incurred by the Water Entities as a result of the groundwater contamination in the Basin.

The Project was originally funded and financially assured by eight of the responsible parties named in the EPA's Unilateral Administrative Order of June 30, 2000 ("the UAO") on a joint several basis. Since the initiation of the Project, three of the original responsible parties have declared bankruptcy and are no longer subject to the Project Agreement.

Expenditures pursuant to the Project Agreement have exceeded $350 million; of that amount, the public funding secured by WQA has totaled approximately $42 million.

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IV. WATERMASTER'S ROLE AND PRIOR COURT APPROVAL.

This Court approved Watermaster's participation in the Project Agreement on May 9, 2002. Watermaster's role under the Project Agreement has been to provide administration, coordination, and monitoring services for the Project as a whole. Since the individual subprojects are owned and operated by several water purveyors, it is essential that an entity with Basin-wide authority be involved to help coordinate these subprojects to assist in meeting both the Basin water supply goals and the requirements of the EPA imposed under the UAO. Each of the operating water purveyors is a party to the Judgment and Watermaster is invested with authority to deal with Basin-wide groundwater contamination issues. Accordingly, Watermaster is uniquely positioned to perform this function.

The individual subproject operators, along with the WQA, have been involved in assuring compliance with applicable federal and state environmental laws. The EPA has maintained overall responsibility for the remediation of the groundwater and has been actively involved in supervising the work and monitoring the results to ensure that Project remediation goals are met.

Watermaster's role under the Project Agreement has included the following tasks:

1. Providing EPA interface for the subprojects, including technical and administrative coordination through Watermaster staff and consultants;

2. Participating on the technical coordinating committee for the Project and on each of the individual subproject committees;

3. Providing accounting services necessary to track Project costs, invoices, and payments, and to create budgets;

4. Retaining the services of Project manager to supervise the Project in accordance with the provisions of the UAO;

5. In the event of a Project modification, determining which of the subproject operators will implement the required changes;

6. Arranging for and supervising required groundwater monitoring; and

7. Preparing and submitting required Project-wide reports to EPA.

In addition, Watermaster is a signatory to the Trust Agreement, an exhibit to the Project Agreement. The Trust Agreement provides the mechanism by which the Cooperating Respondents have furnished financial assurances for their funding obligations. Watermaster has acted as the Water Entities' representative in providing and receiving notices that are required to be given pursuant to the Trust Agreement and exercising remedies made available therein in the case of non-performance.

As previously determined by this Court, the role of Watermaster under the Project Agreement is consistent with the Judgment in this action. Section 40(a) of the Judgment requires Watermaster to develop an adequate and effective program of Basin management, including "the maintenance, improvement, and control of water quality and quantity of the Basin." Section 40(c) provides as follows:

> "Watermaster may act individually or participate with others to carry on technical and other necessary investigations of all kinds and collect data necessary to carry out the herein stated purposes. It may engage in contractual relations with the EPA or other agencies in furtherance of the cleanup of the Basin and enter into contracts with agencies of the United States, the State of California, or any political subdivision, municipality, or district thereof, to the extent allowed under the applicable federal or state statutes."

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Further, Section 40(d) of the Judgment requires Watermaster to adopt "programs to promote, manage and accomplish cleanup of the Basin and its waters including but not limited to, measures to confine, move, and remove contaminants and pollutants."

V. CURRENT STATUS OF NEGOTIATIONS.

The Watermaster and the Water Entities have sought to negotiate The Project Agreement renewal in a manner that is consistent with the original Project Agreement. The Cooperating Respondents, however, are suggesting an approach that departs from the original Project Agreement in multiple fundamental respects. Some of the key issues in dispute include the Cooperating Respondent's continuing responsibility to achieve not only mass removal and containment of specific contaminants, but also the restoration of water supplies that were made unavailable by the contamination.

Another issue in dispute involves the scope of the Cooperating Respondent's duty to fund project water treatment costs, including the costs to treat chemicals of concern, costs necessary to pump and produce potable drinking water, costs necessary to achieve regulatory standards, and the costs necessary to fund project administration and overhead.

The parties have also not reached resolution on the scope of the Cooperating Respondent's control over project water facilities, and the Cooperating Respondent's role, if any, in modifying individual subprojects. In addition, the Cooperating Respondents are now seeking to direct the Water Entities as to how water must be made available to meet their replacement water obligations, under the Project Agreement, notwithstanding the increased cost to Basin water customers.

Other disputed issues include the scope of: environmental liabilities; insurance; financial assurances; and the level of oversight by WQA and the Watermaster. Contrary to the original Project Agreement, the Cooperating Respondents are now seeking to limit the role of WQA and Watermaster, even though Watermaster

has responsibilities to the Basin under the Judgment, and even though WQA has statutory responsibilities for the Basin and must oversee a public investment of $42 million in the Project. Indeed, the Watermaster sponsored the Project Agreement from the beginning which required Court approval to become effective. Consistent with the terms and intent of the original Project Agreement, the continuing participation of Watermaster and WQA is essential.

VI. CONCLUSION.

The Watermaster submits this statement to alert the Court of the status of the Project Agreement previously approved by this Court, and the status of ongoing negotiations to renew the Project Agreement. If the Watermaster, the Water Entities and the Cooperating Respondents reach agreement on the terms for renewal, the Watermaster will file a petition with this Court to approve the Project Agreement.

If agreement is not reached among the parties, this will have significant impact on basin operations. Some of the key impacts are likely to include:

- Extraction/treatment facilities may be partially or totally shutdown;
- Water producers may need to purchase treated imported water;
- Water producers may need to use alternative local supplies, if available;
- Water producers may need to fund operation of treatment facilities; and
- Potential litigation against the Cooperating Respondents for costs incurred to abate the contamination.

The impacts above will likely result in increased costs and increased water rates to the more than 1.2 million people who rely on the Basin as a water source. Given the current state of the Basin, which is suffering through the worst drought in California's recorded history and historic water lows, it is imperative that this groundwater source be treated and cleaned as contemplated by the original Project Agreement.

Given the urgency of the need to continue implementation of this clean-up program, it is hoped that the parties will reach agreement promptly. Renewal of the Project Agreement is essential so that the funding obligations and treatment facilities can be maintained, without dramatic adverse impacts to the public. In the meantime, Watermaster and the other involved parties stand ready to respond to any questions or concerns the Court may have concerning the Project Agreement and its renewal.

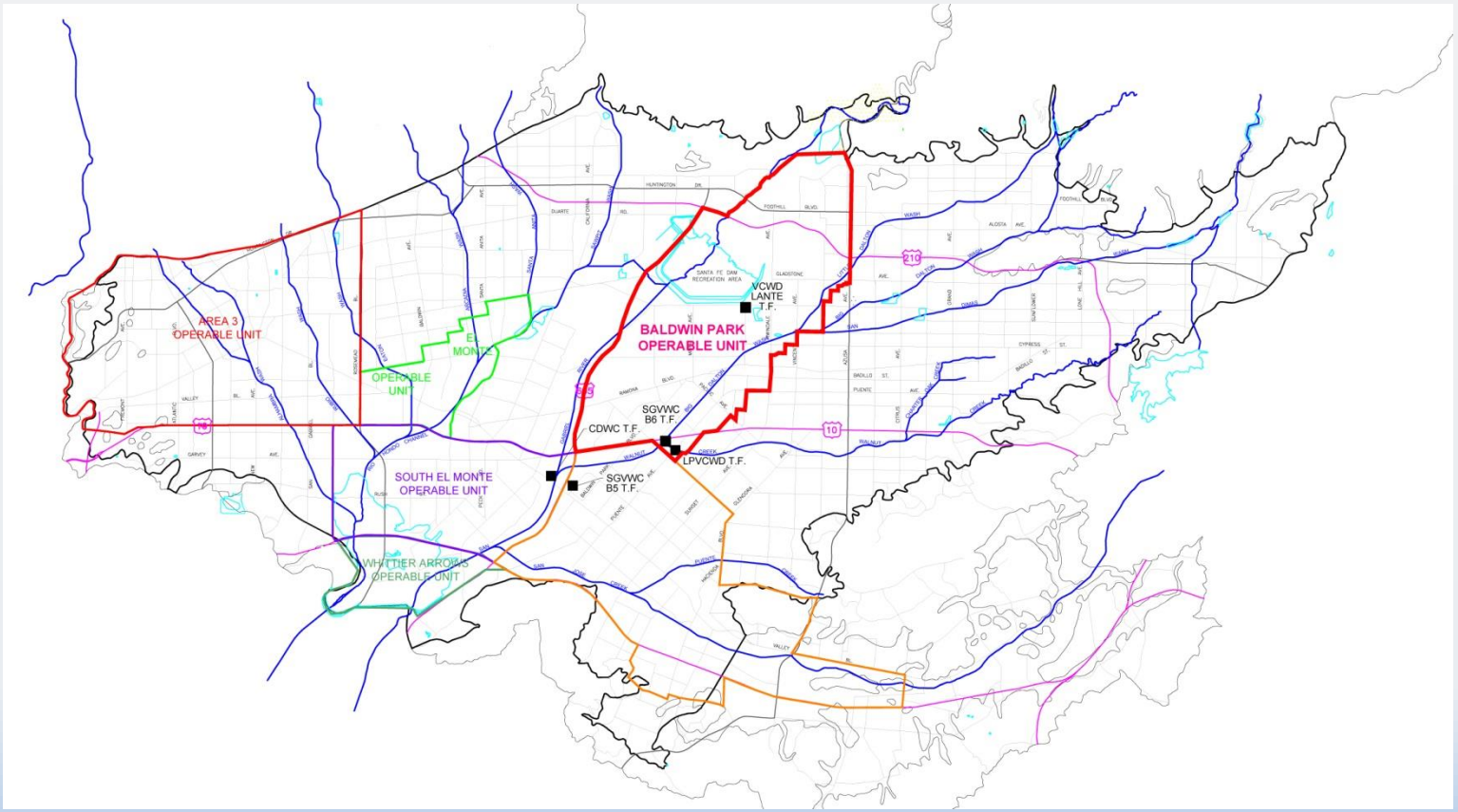
DATED: March 4, 2016

NOSSAMAN LLP
Frederic A. Fudacz
Alfred E. Smith

By: _____
Frederic A. Fudacz
Attorneys for Main San Gabriel Basin Watermaster

EXHIBIT A

STATUS CONFERENCE WITH THE HONORABLE MAUREEN DUFFY-LEWIS REGARDING THE USEPA SUPERFUND BALDWIN PARK OPERABLE UNIT PROJECT AGREEMENT



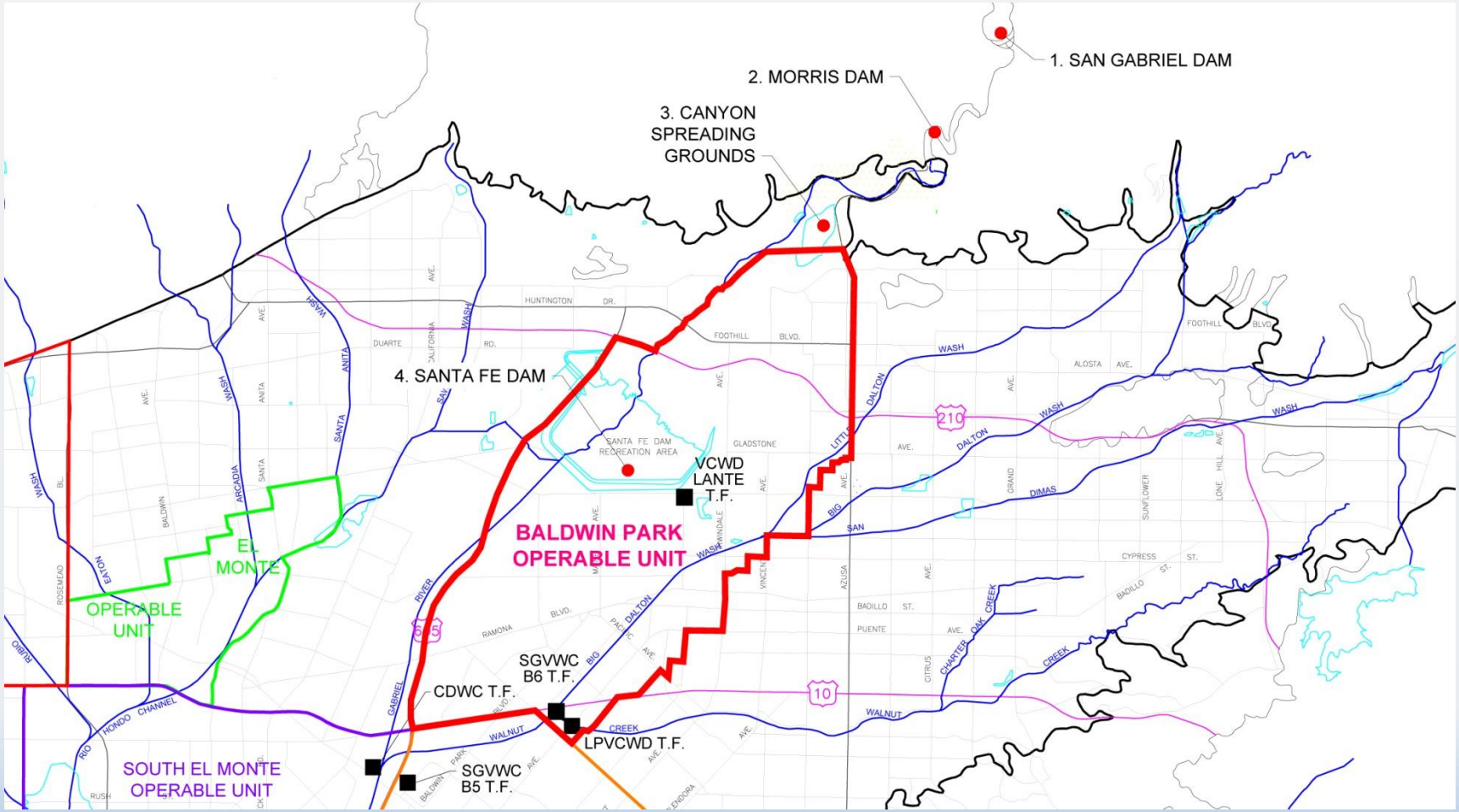
SUMMARY

- Judge's Tour (2015)
- Historical Operations Under the BPOU Agreement
- Renewal of BPOU Project Agreement

JUDGE'S TOUR (2015)

- Historical Operations
- Groundwater Basin Management
- Regional Water Supply
- Integration of BPOU Operable Unit Cleanup

JUDGE'S TOUR
MAY 26, 2015



JUDGE'S TOUR

JUDGE'S TOUR
HISTORICAL OPERATIONS IN SAN GABRIEL VALLEY

- Provides groundwater/surface water supplies to 1.2 million people
- Approximately 35 retail water agencies rely on local water supplies (and they provide necessary treatment) to serve municipal customers
- Approximately 225,000 AF of local supplies produced each year

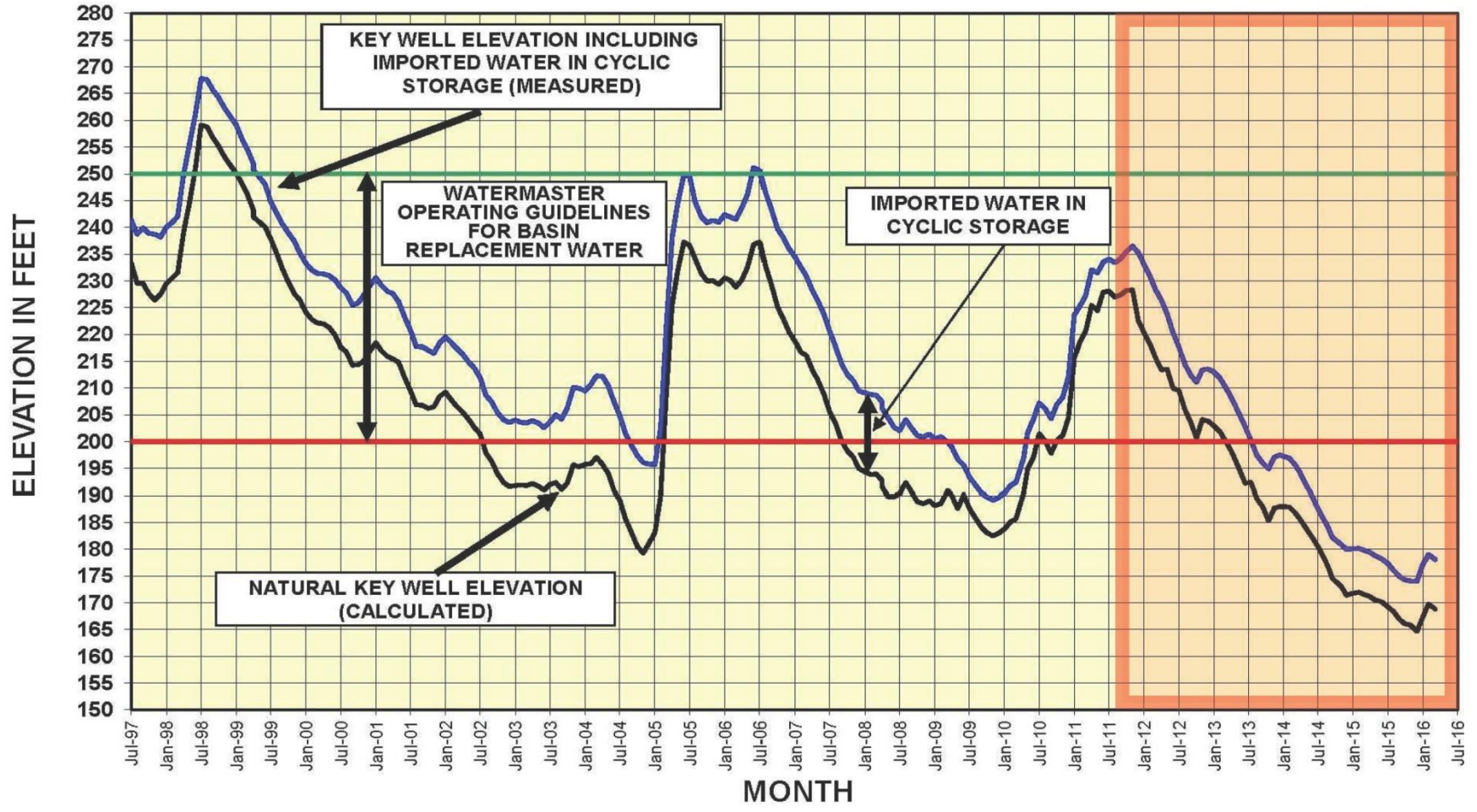
JUDGE'S TOUR
GROUNDWATER BASIN MANAGEMENT

- Operating Safe Yield – amount of free groundwater pumping annually determined
  - Based on water levels at Key Well/hydrogeologic factors
    - Rainfall
    - Local water in reservoirs
    - Imported water availability for replenishment
    - Water in cyclic storage
  - Pumping above OSY is assessed and untreated imported water purchased/replaced
  - Historical OSY has averaged about 200,000 AFY
  - Historical Replacement Water Obligation has averaged about 40,000 AFY (Imported Water)

JUDGE'S TOUR
BALDWIN PARK KEY WELL (MAP)

- Operating range is 200 feet msl to 250 feet msl (Graph)
- Prolonged 4-year drought has resulted in significantly decreased groundwater levels
- Basin groundwater levels/storage primarily influenced by local stormwater runoff and replenishment

JUDGE'S TOUR
BALDWIN PARK KEY WELL



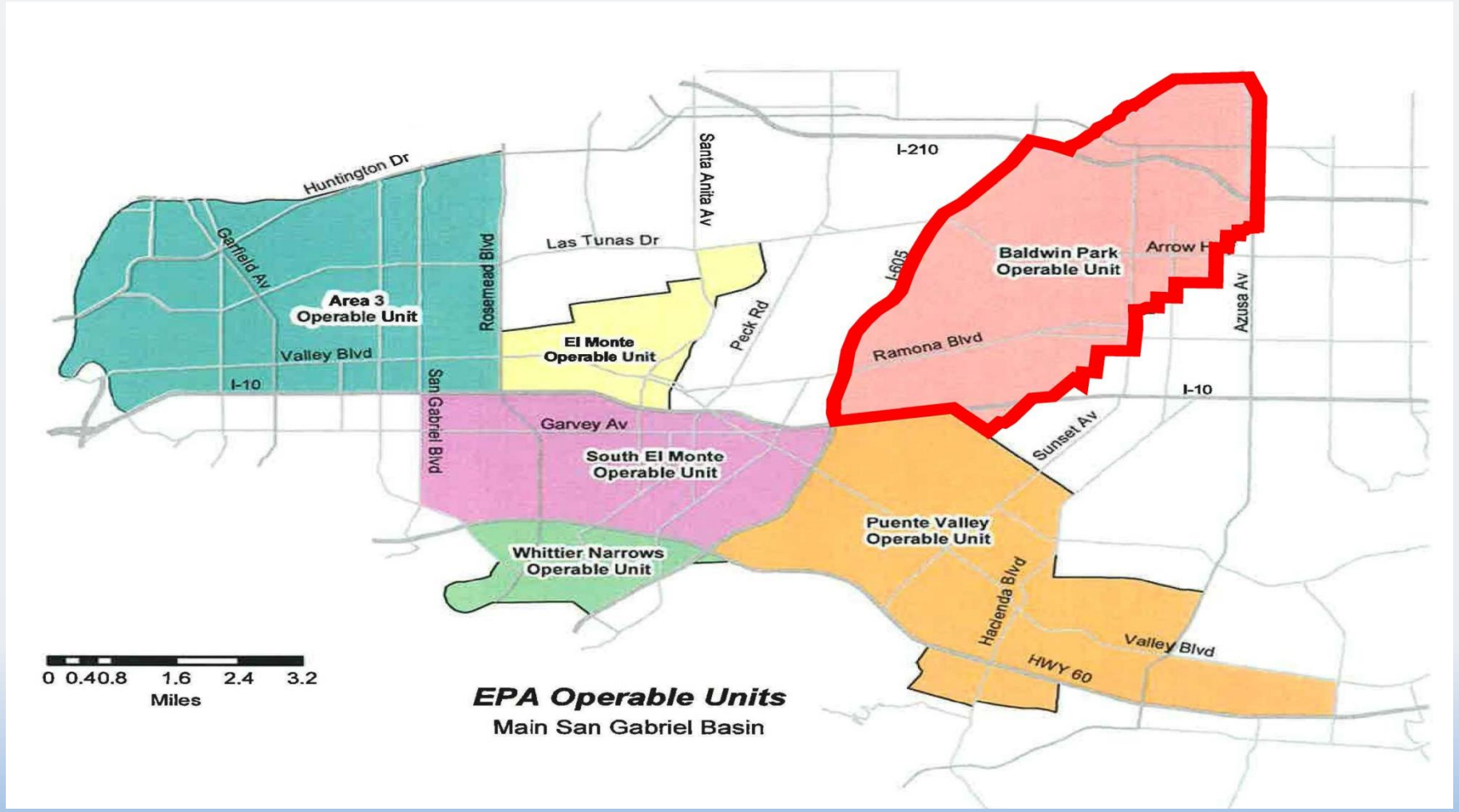
JUDGE'S TOUR
REGIONAL IMPORTED WATER SUPPLY

- State Water Project
  - Long-term is about 50 percent allocation
  - Drought
  - Environmental Issues (Delta Smelt)
  - Sea Water Intrusion
  - Proposed Tunnels
- Colorado River Water
  - Over allocated to 7 basin states
  - Drought
  - Quagga Mussel
  - Water Quality – salinity
  - Management

HISTORICAL OPERATIONS
UNDER THE BPOU AGREEMENT
INTEGRATION OF USEPA SUPERFUND OPERABLE UNIT CLEANUP SIX OU's (MAP)

- Watermaster and Producers have collaborated with USEPA and Responsible Parties named by USEPA
- Water Producers own and operate treatment facilities
  - Responsible Parties pay for all treatment costs
  - Historical beneficial use and Basin management is maintained

HISTORICAL OPERATIONS
UNDER THE BPOU PROJECT AGREEMENT



HISTORICAL OPERATIONS UNDER BALDWIN PARK PROJECT AGREEMENT (LARGEST OU)

- History of BPOU
  - VOCs detected in 1979
  - USEPA Superfund Site in 1984
  - USEPA issued Record of Decision in 1994; identified remedy
  - Additional contaminants detected in 1997, which delayed treatment facility construction
    - NDMA
    - Perchlorate
    - 1,4-Dioxane
  - ROD updated in 1999

HISTORICAL OPERATIONS
BPOU PROJECT AGREEMENT
WATER SUPPLY AND CLEANUP

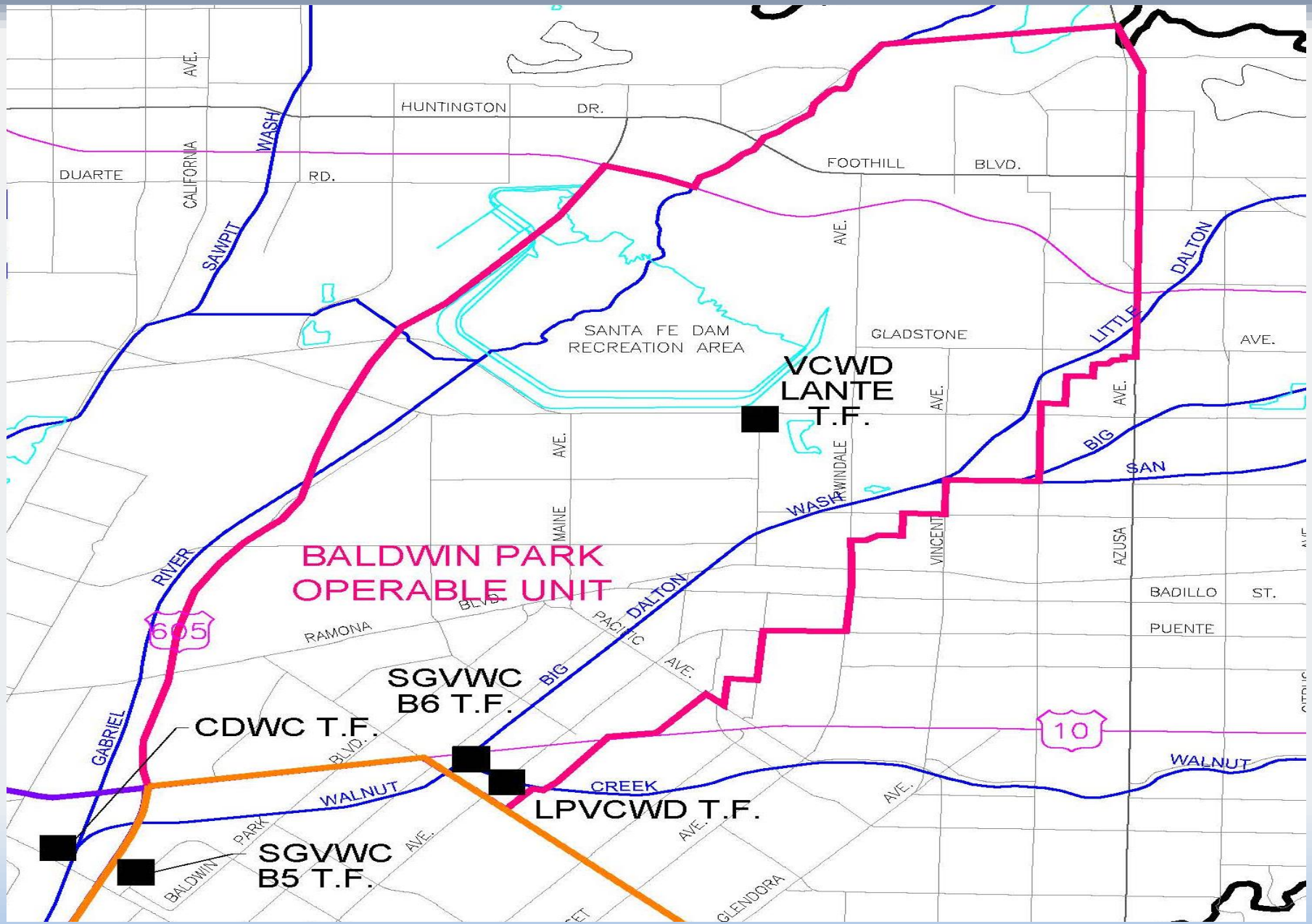
- Contaminants first detected 1979
- USEPA began investigations early 1980s
- Basin declared a Superfund site 1984
- USEPA Record of Decision March 1994
- Watermaster Initiates Discussions with Responsible Parties 1998
- USEPA Record of Decision updated in 1999
- USEPA, Water Entities, and Responsible Parties execute MOU January 2001
- Project Agreement Approved by the Court May 9, 2002
- Term is 15 years (May 9, 2017)

HISTORICAL OPERATIONS COMPONENTS OF BPOU PROJECT AGREEMENT

- BPOU Project Management (Since 2002)
  - Watermaster
    - Coordination/Administration/Water Supply and Basin Cleanup
    - Retention of Project Manager (Steve Johnson/Stetson)
  - Water Quality Authority (WQA)
  - Water Entities/Sub-project Committee
- Basic Principle
  - Water Entities plan, design, build and operate treatment for water supply
  - Responsible Parties fund all treatment costs
  - Dispute process if Responsible Parties question costs

HISTORICAL OPERATIONS
BPOU EXTRACTIONS WELLS AND TREATMENT FACILITIES

- Valley County Water District
- San Gabriel Valley Water Company (Two Treatment Facilities)
- La Puente Valley County Water District
- California Domestic Water Company
- Suburban Water Systems (Receives Replacement Water)


HUNTINGTON DR.
DUARTE RD.
FOOTHILL BLVD.
CALIFORNIA AVE.
SAWPIT WASH
SANTA FE DAM RECREATION AREA
GLADSTONE
LITTLE DALTON AVE.
VCWD LANTE T.F.
BIG SAN WASH
IRWINDALE AVE.
MAINE AVE.
VINCENT AVE.
AZUSA AVE.
BADILLO ST.
PUENTE
BALDWIN PARK OPERABLE UNIT
605
RAMONA BLVD.
PACIFIC AVE.
DALTON
RIVER
SGVWC B6 T.F.
CDWC T.F.
GABRIEL
BLVD.
10
WALNUT CREEK
LPVCWD T.F.
WALNUT PARK
SGVWC B5 T.F.
BALDWIN AVE.
AVE.
GLENDORA

HISTORICAL OPERATIONS
BPOU PROJECT EXPENSES

- Capital Costs to Date - $144 Million
- O&M Costs to Date - $205 Million
- WQA Public Funding about $42 Million

HISTORICAL OPERATIONS
BPOU TREATMENT FACILITY OPERATIONS
2002 TO PRESENT

Treatment Facility	Well	Total Water Treated	Pounds of Contaminants Removed	Water Quality		
				Contaminant	Concentration (ug/l)	MCL (ug/l)
California Domestic Water Co.		314,000	14,000	TCE	30	5
				PCE	17	5
				Perchlorate	12	6
				NDMA	0.01	0.01
La Puente Valley County Water District		49,500	10,300	TCE	14	5
				PCE	1.1	5
				Perchlorate	17	6
				NDMA	0.02	0.01
San Gabriel Valley Water Company	B5	86,500	3,700	TCE	14	5
				PCE	2.8	5
				Perchlorate	16	6
				NDMA	0.11	0.01
	B6	81,500	16,800	TCE	49	5
				PCE	27	5
				Perchlorate	41	6
				NDMA	0.08	0.01
Valley County Water District		62,500	39,600	TCE	15	5
				PCE	36	5
				Perchlorate	7.4	6
				NDMA	ND(<0.01)	0.01

HISTORICAL OPERATIONS
BPOU PROJECT AGREEMENT
TERM/RENEWAL PROVISIONS

- Article 9.1; 15 years from May 9, 2002
- Agreement expires May 9, 2017
- Article 9.2; Parties agree to negotiate as to the terms and conditions of an extension

STATUS OF EXTENSION

- Responsible Parties Negotiating Positions
  - Reduce/eliminate the “water supply” priority for the BPOU contamination cleanup
  - Reduce/eliminate Responsible Party obligations for treatment costs before water may be served w/o treatment
  - Eliminate Responsible Party obligations to treat “other” contaminants before potable use
  - Reduce/eliminate Watermaster management roles to allow Responsible Parties to manage cleanup
  - Reduce/eliminate financial assurances provided in cash for O & M
  - Reduce insurance coverage for Water Entities
  - Shift significant cleanup costs from Responsible Parties to the Water Entities/Public

STATUS OF EXTENSION

- Coordinating with USEPA Management
  - USEPA meeting in San Francisco on February 24, 2016

STATUS OF EXTENSION

- Concerns if Agreement is not renewed
  - Extraction/treatment facilities will partially/totally shutdown
  - Contamination will spread
  - Water Entities will need to purchase treated imported water
  - Water Entities will need to use alternative local supplies, if available
  - Water entities will need to fund operation of treatment facilities
  - Results in increased costs and increased water rates for the public
  - Water Entities reinstate lawsuits against Responsible Parties