

*Served 3/13 just hearing 3/16*

**FEE EXEMPT**

*Arthur G. Kidman*

1 McCORMICK, KIDMAN & BEHRENS, LLP  
ARTHUR G. KIDMAN, Bar No. 61719  
2 DAVID D. BOYER, Bar No. 144697  
3 695 Town Center Drive, Suite 1400  
Costa Mesa, CA 92626  
4 714/755-3100; fax 714/755-3110

5 Attorneys for Defendant  
6 MONTE VISTA WATER DISTRICT

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SAN BERNARDINO

13 CHINO BASIN MUNICIPAL WATER )  
DISTRICT, )  
14 )  
Plaintiff, )  
15 )  
16 v. )  
17 CITY OF CHINO, et al., )  
18 Defendants. )  
19 )  
20 )  
21 )

CASE NO. RCV 51010  
Assigned For All Purposes to  
The Honorable J. Michael Gunn  
Department R-8

**MONTE VISTA WATER DISTRICT'S  
RESPONSE TO WATERMASTER'S  
STATUS REPORT**

Date: March 16, 2000  
Time: 1:30 p.m.  
Dept: R-8

22  
23 I.  
24 INTRODUCTION

25 Monte Vista Water District ("MVWD") remains committed to the completion and  
26 implementation of the Optimum Basin Management Plan ("OBMP"). MVWD further recognizes  
27 that many positive steps have been taken by the Watermaster and by the parties towards completion  
28 and implementation of the OBMP.

McCORMICK, KIDMAN & BEHRENS, LLP  
LAWYERS

1 MVWD fully supports the selection of Scott S. Slater to act as legal counsel to the Chino  
 2 Basin Watermaster. Mr. Slater is recognized as an expert in California water law and as one of the  
 3 most able water policy consensus builders in the State. MVWD, however, also was supportive of  
 4 Mr. Wayne K. Lemieux as counsel to the Watermaster. MVWD is concerned that the change in  
 5 Watermaster legal counsel followed closely upon the issuance of Mr. Lemieux's advice  
 6 memorandum concerning the "paper transfer" of water stored in the Chino Basin (Exhibit "1").  
 7 The implication is strong that Mr. Lemieux's dismissal as legal counsel was precipitated by this  
 8 advice memorandum, which the Watermaster, under advice from the Advisory Committee chose  
 9 not to follow. The tension between "wet water recharge" and paper transfer of stored water in  
 10 Chino Basin is sharp, though the two concepts are not mutually exclusive in managing the Basin.  
 11 MVWD is concerned by the combination of Mr. Lemieux's departure and the content of  
 12 Watermaster's Status Report filed by Mr. Slater, especially as related to the wet water recharge  
 13 issue. The combination of these factor implies that Chino Basin Watermaster continues to struggle  
 14 to achieve a proper balance between its, and the Court's, role to promote the public interest in  
 15 managing the Chino Basin as a public resource, and its role in representing the pecuniary interests  
 16 of Chino Basin water producers.

17 MVWD recognizes that Mr. Slater has not had sufficient time since his appointment to meet  
 18 the parties or review each party's position on the issues involved in the OBMP. The Status Report  
 19 filed by Mr. Slater, however, implies that an effort has been made to prejudice his view on the  
 20 important subject of wet water recharge in the Chino Basin. This is demonstrated by the less than  
 21 evenhanded discussion of the issue of wet water recharge contained in the Status Report. While  
 22 several paragraphs in the report are dedicated to the purported negatives of this process, there is no  
 23 discussion concerning the value of this process to overall Basin water quality, a matter that has  
 24 been repeatedly presented and extensively discussed with the Watermaster. Moreover, the  
 25 Watermaster status report impugns the motives of those who advocate wet water recharge.

26 It is critical to the public interest in the management of the Chino Basin under Article X,  
 27 Section 2 of the California Constitution, that the Watermaster, its counsel and its staff remain  
 28 objective and take an evenhanded approach to issues concerning the Basin, and to avoid favoring



1 The process of approving paper water transfers is currently under dispute before the  
2 Watermaster and, as noted above, evidently led to the dismissal of Mr. Lemieux. MVWD, with  
3 support from a number of other Chino Basin water producers, has urged the Watermaster to  
4 administer transfers and subsequent extractions of stored water in a manner consistent with the  
5 Judgment, the Pooling Plans and the Uniform Groundwater Rules and Regulations. The omission  
6 of this issue, or the dispute surrounding it, from Watermaster's Status Report may be further  
7 indication that wet water recharge opponents, the defenders of the *status quo* in Chino Basin, have  
8 gone to some lengths to influence Mr. Slater in these matters.

9 III.

10 WATERMASTER'S STATUS REPORT DOES NOT PRESENT  
11 WET WATER RECHARGE AND PAPER WATER TRANSFER ISSUES IN  
12 A BALANCED MANNER

13 Wet water recharge and paper water transfer issues have been discussed extensively in  
14 connection with development of the OBMP. The Watermaster's Status Report (pp. 9-10),  
15 dedicates almost one-half page to criticisms of wet water recharge, charging that it will lead to  
16 rising groundwater problems, thereby, reducing the effectiveness of recharge efforts, reducing  
17 storage capacity for conjunctive use, worsening of water quality in the southwestern end of the  
18 Basin and in the Santa Ana River, and inviting intervention by the Regional Water Quality Control  
19 Board. The implication, therefore, is that wet water recharge is inconsistent with the Judgment and  
20 detrimental to groundwater management in the Chino Basin.

21 In its single sentence discussion of the position of the proponents of wet water recharge, the  
22 Watermaster Status Report claims (incorrectly) that the proponents support "wet water only"  
23 rather than wet water recharge in combination with other methods of correcting water quality. The  
24 Watermaster Status Report further suggests that wet water recharge does not insure improvement  
25 of Basin water quality and that those advocating for wet water recharge are motivated by their  
26 pecuniary interests.

27 ///

28

1           These assertions in the Watermaster Status Report do not reflect the discussion of these  
2 issues in any balanced way and border on fictitious. To begin with, MVWD has repeatedly urged  
3 that wet water recharge is not only consistent with the Judgment (Exhibits "3" and "4") and the  
4 OBMP, it is preferred over other methods of recharge. The OBMP also indicates a need for wet  
5 water recharge. In fact, Section 2 of the OBMP is clear that wet water recharge is one of the chief  
6 methods of maintaining water supplies and solving Basin water quality issues.

7           MVWD has never advocated wet water recharge in isolation from other groundwater  
8 management practices, notably extraction, treatment and use of degraded quality water from the  
9 Basin. Some of the evils attributed to wet water recharge, further degradation of water quality in  
10 the southern end of the Basin and degraded rising water discharges to the Santa Ana River, will not  
11 occur, or will be substantially reduced, if wet water recharge is pursued in combination with  
12 extraction, treatment and use of degraded quality water from the southern portion of the Basin.

13           Further, MVWD is not aware that any party to the Judgment has advocated wet water  
14 recharge as the exclusive method to replenish the Basin or to offset over production in some areas  
15 of the Basin. Nor are the proponents of wet water recharge motivated by pecuniary interests.  
16 MVWD has been one of the most outspoken of these proponents and has little to gain financially  
17 by use of this method of recharge. As it has previously been indicated in papers filed with the  
18 court, MVWD recognizes the importance of wet water recharge as a critical component to resolve  
19 Basin water quality issues. (*See* Response of MVWD to Watermaster Motion Concerning OBMP,  
20 Status of Negotiations, p.5, attached as Exhibit "5")

21           The fact is that wet water recharge, in combination with the extraction, treatment and use of  
22 degraded quality water, is a sure method to address water quality problems in the Basin. Absent  
23 this procedure of extraction and recharge, water quality throughout the Basin will be difficult to  
24 improve or properly manage.

25           MVWD has repeatedly brought these issue before the Watermaster. The purported  
26 negatives to wet water recharge, however, are identified for the first time in the Watermaster's  
27 Status Report.

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IV.

**THE WATERMASTER SHOULD BE REQUIRED TO FOLLOW  
ITS UNIFORM GROUNDWATER RULES WITH RESPECT TO  
THE TRANSFER AND SUBSEQUENT EXTRACTION OF STORED WATER**

The Watermaster Status Report does not even mention the controversy over the last several months concerning Watermaster proceeding for approval of paper water transfers without approval of groundwater extraction plans (Exhibit "4"). As stated above, improvement of water quality in the Chino Basin requires the extraction of degraded quality groundwater in storage in the Basin. The Judgment requires the transfer of stored water in place and an extraction plan for its subsequent removal. The omission of approved extraction plans cripples the ability of the Watermaster to assure that paper transfers of water and production rights are in furtherance of Basin water quality objectives.

The current practices of Chino Basin Watermaster do not encourage the use of degraded quality groundwater from the Basin. Instead the Watermaster has encouraged the use of intra-Basin transfers and suggests that the solution to water quality issues is for the various producers to simply locate their pumping facilities in the sweet water portions of the Basin, ensuring that water quality issues are never dealt with in the areas where water quality is the poorest.

Many parties to the Judgment transfer water rights and stored water in the Chino Basin to other parties to the Judgment. Often times the party receiving the transfer will be located in a different portion of the Basin or management zone than the party making the transfer. The transfer, however, is actually a fiction or paper transfer, and there is no corresponding increase in actual groundwater supplies in the location of the transferee or a corresponding decrease in actual groundwater supplies in the location of the transferor.

Often, these transfers are the result of unproduced agricultural water from the southwestern end of the Basin which is transferred to a party in the northern part of the Basin. The result is that the high quality water in the northern end of the Basin continues to be produced, while the lower quality water in the southeastern portion of the Basin remains stagnant. This practice eliminates the

///

1 normal flushing action which occurs when the groundwater moves in its natural state from north to  
2 south in the Basin.

3 Section 11 of the Judgment empowers the Watermaster to control and regulate the use of  
4 storage capacity within the Chino Basin and specifies that water may be stored in the Basin only  
5 according to an agreement between the storing party and the Watermaster. Section 14 prohibits  
6 storage of water *and the withdrawal of stored water* except according to a storage agreement and  
7 according to Watermaster regulations. Section 28 requires the Watermaster to adopt uniform rules  
8 for storage agreements and specifies that such rules must “*preclude operations which will have a*  
9 *substantial adverse impact on other users.*” The required contents of storage agreements are  
10 further specified in Exhibit “1” to the Judgment, including “*procedures for establishment and*  
11 *administration of withdrawal schedules, locations and methods.*”

12 The above Judgment mandates has been implemented in Section 2.9 of the Uniform  
13 Groundwater Rules and Regulations (“Uniform Rules”).

14 2.9 RECAPTURE. Stored water may be recaptured by Storage Party by the direct  
15 extraction of groundwater from Chino Basin as approved by Watermaster. Each Storage  
16 Party shall notify Watermaster in writing of the method, amount, rate of extraction, and  
17 location of production at least thirty (30) days prior to commencement of direct recapture  
18 . . . *Watermaster shall determine whether a significant adverse impact will result to the*  
19 *Chino Basin and to other producers by reason of such production and shall either confirm,*  
20 *deny, or modify such proposed extraction schedule.*

21 There is no question that this process should apply to all types of paper water transfers,  
22 including transfers of stored water. Despite these provisions, the Watermaster has refused to  
23 require producers to provide extraction schedules and has refused to make any determination  
24 consistent with Section 2.9 with regard to the paper water transfers and the subsequent water  
25 extractions. The Watermaster’s reasoning has been that it has never require extraction schedules  
26 for transferred stored water or made determinations as to the impact on the Basin of the paper  
27 transfers and it sees no reason to begin doing so now, despite what the Uniform Rules provide,  
28 claiming that it will be addressed as part of the OBMP.

///

1 MVWD has repeatedly raised this issue to the Watermaster and to the Advisory Committee,  
2 (Exhibits "3 "and "4"). At the December 16, 1999 Joint Meeting of the Watermaster, Pools and  
3 Advisory Committee, Mr. Lemieux provided a written legal opinion that an administrative hearing  
4 procedure should be utilized for transfers and subsequent extractions of stored water (Exhibit "1").  
5 The Watermaster Board voted against changing the current procedure and has since retained new  
6 counsel. The resulting inference may be that Mr. Slater must adhere to this philosophy of  
7 groundwater management or suffer the same consequence as Mr. Lemieux.  
8

9 As the situation currently exists, transfers of production rights and of water in storage, and  
10 the subsequent extractions, are occurring without any determination by the Watermaster as to  
11 whether the extraction will have an adverse impact upon the Basin, including water quality.  
12

13 V.

14 CONCLUSION

15 It is not in the short term pecuniary interest of most producers of water from the Chino  
16 Basin to change the *status quo*. Correcting water quality problems in the Chino Basin is an  
17 expensive process. Consequently, it is not surprising that some of the producers oppose wet water  
18 recharge and oppose correcting the current process used by the Watermaster to process the paper  
19 water transfers and subsequent extraction of Basin water.  
20

21 Improvement of Basin water quality is, however, in the public interest as required by the  
22 California Constitution. It is the Watermaster's role under the Judgment to protect the public  
23

24 ///

25 ///

26 ///

27 ///

28

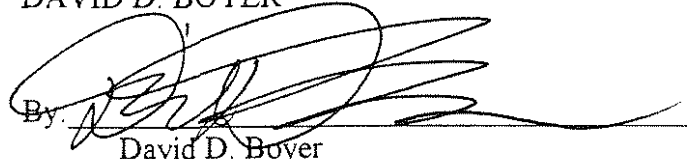


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

interest as well as the interest of Basin water producers. Unfortunately, the Status Report filed by the Watermaster fails to recognize this concurrent obligation.

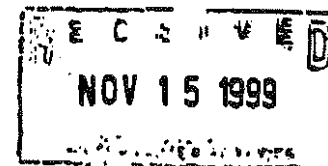
Dated: March 13, 2000

McCORMICK, KIDMAN & BEHRENS, LLP  
ARTHUR G. KIDMAN  
DAVID D. BOYER

By: 

David D. Boyer  
Attorneys for Defendant  
MONTE VISTA WATER DISTRICT

C:\OFFICE\WPWIN\WPDOCS\MONTE\REV2.STA



200 North Westlake Blvd. • Suite 100 • Westlake Village • California 91362-3755 • Tel: 805.495.4770 • Fax: 805.495.2787

November 12, 1999.

Traci Stewart, Chief of Watermaster Services  
Chino Basin Watermaster  
8632 Archibald Avenue, Suite 109  
Rancho Cucamonga, CA 91730

**RE: Transfer of Water or Water Rights**

On October 14, 1999, the Watermaster approved the request of the Advisory Committee to obtain our opinion concerning the procedures to be followed when water or water rights are transferred from storage.

### Background

Following our usual practice, this analysis will center on the Judgment because Watermaster Rules can explain, but not modify, the Judgment.

This work is the result of a request by Monte Vista Water District. The District was concerned about the approval of transfers from storage accounts and the lease of production rights. The District raised two issues: whether the Watermaster must make findings to approve the transfers, and whether the approval of such transfers has an adverse impact on the basin. We will not comment on the possibility of adverse impact. Our analysis is limited to legal issues.

### Water Rights Transfers

The Judgment permits appropriators to transfer water rights.<sup>1</sup> However, the Judgment says:

"Watermaster shall not approve transfer, lease or license of a right for exercise in an area or under conditions where such production would be contrary to sound basin management or detrimental to the rights or operations of other producers."<sup>2</sup>

The Watermaster must determine the impact of a water rights transfer. The question is what type of proceeding is needed to make the determination. The decision to approve or disapprove a transfer can have a profound impact on a valuable asset. The affected parties will have the right to obtain court review of the Watermaster's decision.<sup>3</sup> The courts have held an administrative

<sup>1</sup> Exhibit "H," Paragraph 13.

<sup>2</sup> Ibid.

<sup>3</sup> Paragraph 31.

EXHIBIT "1" / "1"

agency must articulate its decision and the reasoning behind the decision to enable the courts to conduct meaningful oversight. Administrative decisions are defective in the absence of explicit findings. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 113 Cal.Rptr. 836.) This rationale is appropriate for administrative decisions by Watermaster. Further, since property rights can be adversely affected, the parties have a right to due process when the Watermaster is assembling its record of decision. (cf. *Strumsky v. San Diego County Employees Retirement System* (1974) 11 Cal.3d 28, 112 Cal.Rptr. 805.) "Due process" does not require a full scale hearing. With respect to transfer of water rights, due process should be satisfied by the Watermaster by: (1) giving adequate notice of the hearing; (2) allowing affected parties to participate in the hearing; (3) conducting the hearing to permit the introduction of reliable evidence; and (4) making a clear record of decision.

To summarize, the Judgment requires the Watermaster to act on transfers of rights. The Watermaster cannot discharge this duty without finding the facts necessary to make the decision. The Watermaster must give affected parties the opportunity to present opposing views. The most efficient way to gather the information from affected parties is to conduct a hearing.<sup>4</sup>

### Water Transfers

Our analysis of the need for findings when rights are transferred applies with equal vigor to the transfer of water because the Judgment does not distinguish rights from the "exercise of rights." However, water transfers add the complication of the provisions of the Judgment dealing with stored water.

The Judgment says "supplemental" water may be stored or withdrawn pursuant to a written agreement with Watermaster.<sup>5</sup> "Supplemental water" is water imported from outside the watershed and reclaimed water.<sup>6</sup> The District does not seem to question the Watermaster's ability to approve the transfer of supplemental water placed in storage if appropriate procedures are followed. But "stored water" is defined as supplemental water held in storage "as a result of direct spreading, in lieu delivery, or otherwise, for subsequent withdrawal and use pursuant to agreement with Watermaster."<sup>7</sup> The District seems to question the Watermaster's ability to approve the transfer of stored, in lieu water even if procedures are followed.

"In lieu water" is not defined. Presumably, the use of the term in the definition of "stored water" refers to "in lieu procedures," i.e., "deliveries of water for direct surface use, in lieu of groundwater production."<sup>8</sup> The Judgment says appropriators may refrain from pumping in an "in

<sup>4</sup> Some rules deal with transfers indirectly. For example, Rule 3.12 deals with the introduction of water into storage, but not the withdrawal. The rule says storage agreements shall include procedures for administering withdrawals. Rule 3.12 (a)(v).

<sup>5</sup> Paragraph 14. This does not apply to "supplemental water spread or provided in lieu by Watermaster pursuant to the Physical Solution."

<sup>6</sup> Paragraph 4 (bb).

<sup>7</sup> Paragraph 4 (aa).

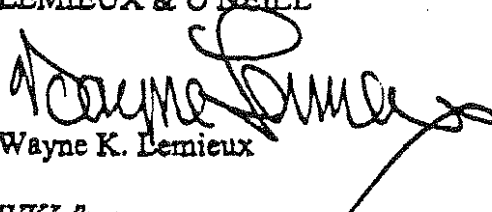
<sup>8</sup> Paragraph 50 (b). In lieu production, spreading and injections are the three ways the Judgment mentions for replenishing the Basin.

Traci Stewart  
November 12, 1999  
Page 3 of 3

lieu area" and offer the unpumped water to the Watermaster.<sup>9</sup> The Judgment contains a formula for calculating the amount paid by the Watermaster and for deciding where in lieu areas re located.<sup>10</sup> In lieu water cannot be transferred by an appropriator to another appropriator because in lieu water is controlled by the Watermaster when it is "taken" from storage.<sup>11</sup>

Very truly yours,

LEMIEUX & O'NEILL



Wayne K. Lemieux

WKL/lms

---

<sup>9</sup> Exhibit "H", paragraph 11 (a).

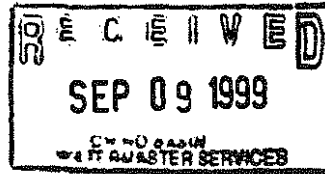
<sup>10</sup> Ibid., paragraph 11 (b).

<sup>11</sup> The Watermaster's ability to transfer in lieu water is a separate question.

# Monte Vista

September 8, 1999

Ms. Traci Stewart, Chief of Watermaster Services  
CHINO BASIN WATERMASTER  
Suite 109  
8632 Archibald Avenue  
Rancho Cucamonga, California 91730



Mark N. Kinsey  
GENERAL MANAGER

Cam W. Good Jr.  
CONTROLLER

Bruce Lance  
LEGAL COUNSEL

## Optimum Basin Management Plan Report for the Chino Groundwater Basin

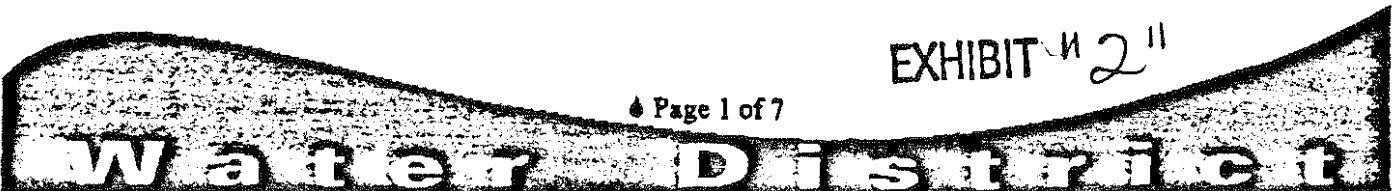
The Monte Vista Water District ("District") submits the following correspondence for inclusion into the September 15, 1999 public hearing record for the Optimum Basin Management Program (OBMP) Report. District comments are designed to identify components of the OBMP Report that limit the Program's goal of optimizing the beneficial use of the Chino Groundwater Basin. The District anticipates that it will provide oral testimony at the September 15, 1999 hearing, and reserves the right to submit additional written testimony on the OBMP process.

District comments are based on review of OBMP documentation, previous written and oral comments provided by other agencies, Article X, Section 2 of the California Constitution, and review of the Judgment and its supporting documentation. Our comments have been organized into two separate categories. General comments to the OBMP Report and OBMP Summary Matrix and Recommended Action Plan are provided below. Specific comments to a given page of Section 4 of the OBMP Report are included as Attachment 1, and should be reviewed along with the referenced page, and program element of the OBMP Report.

The District is also concerned about submitting an incomplete OBMP document to the Court. The OBMP Report scheduled for review by the Court in October 1999 is lacking the necessary sections addressing OBMP Plan implementation, and cost distribution. These sections the Plan may result in modification to the scope of the OBMP actually implemented by Watermaster; the Judgment recognizes that economic considerations are part of criteria utilized in Basin management.

Given the above, the OBMP Report should be submitted to the Court as only a progress report, with a request that the Court takes action to only receive the Report.

EXHIBIT "2"



## OBMP REPORT

1. Groundwater Recharge. An active groundwater recharge program is necessary to ensure the optimum beneficial use of the Chino Groundwater Basin. Physical recharge as a means of maintaining Basin yield and water quality has been discussed since the beginning of the OBMP process. An active groundwater recharge program is a critical component of the OBMP affecting yield, water quality, Basin storage, and conjunctive use programs.

The Court in the *City of Chino v. Chino Basin Municipal Water District* Judgment ("Judgment") retained continuing jurisdiction over the Chino Basin adjudication under authority of Article X, Section 2 of the California Constitution which requires the waters of California to be put to beneficial use to the fullest extent of which they are capable. Current operations under the Judgment do not achieve the directive of the Constitution because, among other reasons, (1) insufficient emphasis is given to actual physical wet-water recharge of the Basin and (2) insufficient management of substitutions for wet-water recharge, such as *in lieu* recharge and production right transfers.

With minor exceptions, the Chino Basin receives recharge only through percolation of naturally occurring surface waters, primarily in the northeastern and north-central parts of the Basin. Since a major portion of total production in the Basin also occurs in the northeastern and north-central sector of the Basin, other areas of the Basin are largely cut off from the benefits of this natural recharge. Concurrently, natural recharge, which formerly occurred in the northwestern portion of the Basin, has been largely lost due to the channelization of the San Antonio Creek which conveys local runoff past the best recharge areas and generally past any possibility of beneficial use within the Chino Basin.

These physical facts are exacerbated by the failure of the current operating scheme under the Judgment to adequately regulate *in lieu* recharge and intra-basin water transfers. *In lieu* recharge does not bring in wet-water to replace overproduction within the Basin. Water is "recharged" *in situ*, while the replacement water is used on the surface. Similarly, transfer of water production rights from a party who under-uses adjudicated rights to a party who over-uses adjudicated rights, denies to the Basin the benefit of wet-water recharge to offset the overproduction by the water right transferee.

The District completed a review of the Judgment to determine whether it expresses any preference for physical replenishment of the groundwater Basin, as opposed to *in-lieu* recharge or intra-pool transfers. Consistent with Article X, Section 2 of the California Constitution, Sections 39-41 of the Judgment clearly provide that the overall goal of the Judgment is to achieve maximum reasonable beneficial use of the waters of the Chino Basin, taking into account both water quantity and quality considerations. These sections further grant the Watermaster broad general powers and provide for flexibility in the Judgment to achieve this goal.

Subsequent sections of the Judgment also appear to allude to preference for wet water recharge. For example, Section 50 of the Judgment provides for methods of replenishment. The section states: "Watermaster may accomplish replenishment of overproduction from the Basin by any reasonable method, including:

- a. Spreading and percolation or injection of water in existing or new facilities...
- b. In-Lieu Procedures. Watermaster may make, or cause to be made, deliveries of water for direct surface use, in lieu of groundwater production."

The fact that wet water recharge is listed first implies a preference to in-lieu procedures.

Section 49 identifies possible sources of supplemental water that may be used to recharge the Basin. The Judgment states: "Maximum beneficial use of reclaimed water shall be given high priority by Watermaster." This again implies a preference to wet-water recharge.

Section 11 of Exhibit H of the Appropriative Pool Pooling Plan provides the criteria for accomplishing replenishment by in-lieu means. The section states: "there are, or may develop, certain areas within the Chino Basin where good management practices dictate that recharge of the Basin be accomplished, to the extent practical, by taking surface supplies of supplemental water in lieu of groundwater otherwise subject to production as an allocated share of the Operating Safe Yield." This section again alludes to the preference of wet water recharge over in lieu means, and requires that in lieu recharge be completed only when dictated by good Basin management practices.

Section 13 of Exhibit H of the Appropriative Pool Pooling Plan addresses the criteria for the assignment or lease of an appropriative Operating Safe Yield right. The section states: "Watermaster shall not approve transfer, lease, or license of a right for exercise in an area or under conditions where such production would be contrary to sound Basin management or detrimental to the rights or operations of other producers."

The Judgment requires that the Basin be operated to achieve maximum reasonable beneficial use of the waters of the Chino Basin. The Court, under the authority of Article X, Section 2 of the California Constitution, retains the authority to compel Watermaster to operate the Basin to achieve this constitutional mandate. Serious groundwater management and equity issues exist within the current operating regimen under the Judgment. These management and equity issues interfere with the optimum management of the Chino Basin to achieve the directives of the California Constitution.

The OBMP Report does not provide the necessary program mandate to require Watermaster to complete wet-water recharge as part of the management of the Basin. The OBMP Report does not require the development of criteria to determine if in lieu replenishment or production right transfers constitute sound management practices under the Judgment and the OBMP.

Wet-water recharge should be enhanced, with both native and imported supplemental water, by the development of additional recharge facilities in the various recharge zones of the Basin. In lieu recharge and water right transfers should be better regulated under the Judgment and the OBMP in order to promote the health of the Basin and to facilitate the fullest beneficial use of its water.

2. Watermaster Role in OBMP Implementation. During the OBMP process, significant discussion has occurred regarding the role of Watermaster as an implementer of OBMP related projects and facilities. There appears to be a consensus of the parties to the Judgment that Watermaster is prohibited under the Judgment from owning property and substantial capital assets.

Under Section 17 of the Judgment, Watermaster's authority is limited to matters in the Judgment and later court orders. "Watermaster shall have and may exercise the express powers, and shall perform the duties, as provided in this Judgment or hereafter ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction." The Watermaster's powers are derived from the court and are subject to the same limitations as the court's jurisdiction. The court maintains jurisdiction over, and only over, the parties to the action and administers the relationship among the parties in connection with the subject matter addressed by the 1978 Judgment.

The limited authority of the Watermaster is often characterized under the rubric of "The Watermaster cannot own property." In fact, the Judgment expressly prohibits ownership of real property by the Watermaster: "Watermaster may purchase, lease, acquire, and hold all necessary facilities and equipment; provided that it is not the intent of the Court that Watermaster acquire any interest in real property or...." The inherent limitation on the Watermaster's power, however, is really more fundamental. The Watermaster has no corporate existence. This is more clear now that the Watermaster is not the Chino Basin Municipal Water District. Since it has no corporate existence, the Watermaster may not contract, sue, or be sued, without court consent. Only by virtue of the court's authority to compel the parties in the case to guarantee the obligations incurred by the Watermaster can goods and services be secured to carry out the Judgment.

As part of the OBMP process, a finding from the Watermaster legal counsel concerning this issue should be prepared and incorporated into the OBMP Report. Reference in the OMBP Report to Watermaster assuming responsibility for the construction or ownership of OBMP-related facilities should be modified to reflect the limitations established in the Judgment.

## OBMP SUMMARY MATRIX AND RECOMMENDED ACTION PLAN

1. Program Element 2 – Groundwater Recharge. The District is supportive of the Chino Basin Water Conservation District's (CBWCD) efforts to provide for increased recharge of the Chino Groundwater Basin. Through their positive efforts, the Basin's knowledge and understanding of the importance of recharge has increased greatly. Program Element 2 is clearly one of the more critical components to the success of the OMBP.



By correspondence, dated August 5, 1999, the Cucamonga County Water District (CCWD) raises a number of issues regarding the CBWCD's role in implementing this element of the OBMP. As noted in the CCWD correspondence, the CBWCD service area does not encompass the larger Chino Basin region, and is generally limited to the western half of the groundwater Basin. Funding for CBWCD activities are generated through a property tax assessment levied within its service area boundaries. Use of this revenue to support recharge activities outside of the agency's service area could result in the transfer of this tax revenue to areas outside corporate boundaries of the agency. There appears to be a number of approaches available to address this issue and could include, but not be limited to, the following:

- Limit the role of the agency to those activities within its corporate boundaries. There are a number of recharge projects and activities within this area requiring implementation through the OBMP.
- Have the agency cooperatively participate with other agencies to implement OBMP recharge activities outside of the CBWCD boundaries. A cost-sharing approach could be established to address the funding issues presented above.
- Have the agency expand its service area and taxing authority to encompass the majority of the Basin's service area.

The District does not agree with CCWD's suggestion that consideration be given to utilization of the CBWCD's tax revenue as an offset to desalter project costs. This approach could create the same issues identified above, and would result in the use of the agency's tax revenue for an activity possibly outside its service responsibilities.

2. Program Element 3/5 - Water Supply Plans For Impaired Areas of the Basin/Regional Water Supply Plans. The District is supportive of a program that maintains historic Basin production patterns and yield, while improving Basin water quality.

Program Element 3, focuses almost exclusively on addressing the water quality issues associated with the southern or "agricultural" region of the Basin. The element does not address other areas of the Basin that have, or face significant water quality impairment. Review of OBMP Report Figure 2-71 identifies a large nitrate plume located in the northwestern portion of the Basin. The plume is identified as having contaminant levels in excess of 80 percent of the Maximum Contaminant Level for nitrate (36 mg/l).

The leading edge of the plume currently encompasses approximately 40 percent of the District's service area. Several District wells have been abandoned due to nitrate levels that are 2.5 to 3.5 times drinking water standards. Groundwater flow vectors in the northwestern portion of the Basin indicate that this plume will continue to move in a southwesterly direction toward the city of Pomona's groundwater production well field. The identified plume affects implementation of OBMP Goal 1 - *Enhance Basin Water Supplies* and Goal 2 - *Protect and Enhance Water Quality*. Program Element 3 should be modified to address the other impaired regions of the Basin.

Program Element 5 - Regional Water Supply Plan, identifies facilities designed to maintain historic production patterns and yield, while improving water quality in the southern portion of the Basin. The Plan proposes to maintain current agricultural production patterns in the Basin through the delivery of groundwater supplies to meet increasing urban demand within the southern portion of the Basin. Facilities required to implement this water supply plan include groundwater production wells, water distribution systems and desalter facilities to remove excess levels of total dissolved salts and nitrates from the underlying groundwater basin. The success of this plan requires a difficult balance between program phasing and cost.

The phasing of the proposed facilities does not accurately reflect the water supply programs and demands of the identified purchasing agencies. For example, the identified water supply plan for the city of Chino Hills does not include deliveries under the water supply agreement between the District and the city. Under this agreement, the District is obligated to deliver up to 18,175 acre-feet of water to the city annually. Combined with the city's other existing water supply sources, the firm water supply for the city could exceed projected year 2020 demand by up to 10,000 acre-feet annually.

The OBMP Report should revise the regional water supply to more accurately reflect existing firm water supply plans of the identified purchasing agencies and their projected increased water demand from growth within the agricultural areas. The OBMP Report should also complete an analysis of the relationship between the proposed water supply plan and the acreage of agricultural land scheduled for annexation by these agencies. This analysis may be beneficial in determining the quantity of desalter product water purchased by the individual agencies, and in determining the phasing of proposed desalter facilities.

The District is supportive of the desalter program, and Watermaster efforts to establish a program based on equitable distribution of desalter capacity and costs. We are also encouraged and supportive of the efforts of SAWPA and IEUA to secure state and federal funding sources. Finally, we agree with CCWD that Orange County water agencies should be approached to determine their interest in either purchasing desalter product water or assisting in the funding of the project itself.

3. Program Element 6/7 - Salt Budget/Manure Management. As noted in District Attachment 1, and in CCWD's correspondence dated August 5, 1999, the Regional Water Quality Control Board is considering adoption of Tentative Order Number 99-11 for General Waste Discharge Requirements for Dairies and Related Concentrated Animal Feeding Operation (NPDES Number CA8000336). If adopted, manure disposal practices in the Basin would become a regulatory compliance requirement for the dairy operators.

The District does not feel that it is the responsibility of the Watermaster to subsidize regulatory compliance requirements of agencies or individual business operations. Watermaster may want to reconsider the OBMP Program Element 6/7 recommendation to subsidize manure removal within the Chino Basin region. Given the projected cost of full OBMP implementation, the proposed subsidy could be shifted to offset the cost of

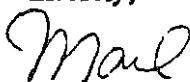
**OBMP Recommended Action Plan**

implementing the water supply plan envisioned in Program Elements 3/5. The identified water supply plan would provide a salt benefit to both the Basin and to dairy and agricultural interests.

Thank you for the opportunity to provide comments to the OBMP process. The District is supportive of the process and its goal to optimize the beneficial use of the Chino Groundwater Basin. The success of this endeavor will depend on our collective ability to craft a program that

equitably distributes costs and benefits to the parties of the Judgment. The District will remain an active participant in the OBMP process. Again, on behalf of the Monte Vista Water District, thank you for your efforts.

Sincerely,



Mark N. Kinsey  
General Manager

Attachment

cc: Monte Vista Water District Board of Directors  
Mr. Art Kidman, McCormick, Kidman, and Behrens

\\ntserver\common\board\mg info folder\board letters\990908 obmp action letter.doc\MK\nt

## Attachment 1

### Monte Vista Water District Comments to OBMP Section 4 - Management and Implementation Plan

- Page 4-4: Production Monitoring Program: The text states that "about 600 agricultural wells will be equipped with in-line totalizing flow meters." Given the fact that alternatives to the complete metering of the agricultural wells are currently under review, consideration to modifying the text to reflect this fact should be given.
- Page 4-6: Well Construction, Abandonment, and Destruction Monitoring: The text should clarify that Watermaster involvement in well abandonment will be limited to non-Appropriative Pool producers. The Appropriative Pool agencies currently follow the necessary regulations for the abandonment of production wells, and should report this information to Watermaster as part its annual reporting requirements.
- Page 4-6: Groundwater Level Monitoring: The text states that for the Appropriative Pool, the data will be collected by the "*pool member or Watermaster staff at pool member discretion.*" It is clearly within the ability of each pool member to collect the necessary information for submittal to Watermaster. The District does not support the concept of subsidizing other agency operation through this type of activity; the other pools should individually pay for the cost of Watermaster providing these services.
- Page 4-9: Program Element 2: The statement that "*some recycled water projects that are currently being planned will increase recharge when groundwater production downgradient of these proposed recharge projects is decreasing. The result will be increased outflow to the Santa Ana River and no yield improvement*" should be modified or deleted from the text. The District feels that additional analysis is required to support this conclusion.
- Page 4-10: Program Element 2: The discussion regarding recharge needs could imply that "*in-lieu*" replenishment is the preferred approach to offsetting Basin over-draft conditions. Long-term use of in-lieu replenishment has the potential to create negative yield and water quality impacts to the Basin. From review of the water supply plans developed by Watermaster, it appears that the replenishment obligation may be understated.

The District is currently delivering 16.2 mgd of water to the city to assist in meeting its demands. To meet this obligation, it is anticipated that the District could increase its groundwater production by approximately 10,000 acre-feet per year over what is currently identified in the OBMP water supply plan. Based on this additional demand, the estimated new recharge capacity required for Management Zone 1 would increase to approximately 28,000 acre-feet per year in 2020.

- Page 4-18: Program Element 4: The finding that the city of Chino Hills *firm* year 2020 water supply source is short by an estimated 5,600 acre-feet per year needs clarification. Under the water supply agreement between the city and the District, the city has "acquired" a right for deliveries from the District's system equal to 16.22 mgd (18,175 acre-feet per year).

Facilities to provide deliveries to the city include groundwater production wells, nitrate blending stations, and District capacity at the WFA facility located in the city of Upland. Facilities are under construction to permit the District to increase the use of groundwater supplies to meet our water supply obligation to the city. After accounting for water supply deliveries from the District, and the assumption that the city's year 2020 deliveries of desalter water remain constant at 2,240 acre-feet per year (year 2000 estimate) in 2020, the city's water supply sources could exceed projected demand by approximately 10,000 acre-feet per year.

- Page 4-23: Program Element 3: The information regarding the Inland Empire Utilities Agency requires minor updating. The current population within the IEUA service area is estimated at 700,000 people. In addition to the identified service responsibilities, the agency will begin operating the SAWPA Desalter when it becomes operational in the year 2000.
- Page 4-28: Program Element 4: The District concurs with the statement that "*increases in Management Zone 1 production may need to be matched with increases in groundwater recharge to ensure that a balance in pumping and recharge is maintained.*"

Recharge should be provided annually to maintain both yield and water quality. It may be necessary for Watermaster to provide recharge through targeted injection to assist in yield maintenance within the subsidence zone or to provide water quality benefits to the larger MZ-1 area. Procedures have already been established in the Judgment to undertake and distribute the cost to complete these activities.

- Page 4-33: Program Element 6: The Regional Water Quality Control Board is currently in the process of considering the adoption of Tentative Order Number 99-11 for General Waste Discharge Requirements for Dairies and Related Concentrated Animal Feeding Operation. (NPDES Number CA8000336). The order, if adopted, would change manure removal practices within the Chino Basin region.

The District does not feel that it is the responsibility of the Watermaster to subsidize regulatory compliance requirements of agencies or individual business operations. Watermaster may want to reconsider the OBMP Program Element 6/7 recommendation to subsidize manure removal within the Chino Basin region.

# Monte Vista

February 25, 2000

Mark N. Kinsey  
GENERAL MANAGER

Board of Directors  
CHINO BASIN WATERMASTER  
Suite 109  
8632 Archibald Avenue  
Rancho Cucamonga, California 91730

### Legal Counsel

Honorable Board Members:

At the January 13, 2000 meeting, the Chino Basin Watermaster Board took action to replace Legal Counsel, Wayne Lemieux. It is our observation that the decision was difficult and made after much deliberation and thought.

At such a critical phase in the OBMP process, this decision placed significant challenges before the Board. New legal counsel needed to be hired. We would like to complement you on how quickly and successfully this item was brought to closure. Scott Slater is known as one of the more visionary groundwater attorneys in the state.

As a party reliant on the Chino Basin and committed to the Watermaster process, we would like to take this opportunity to respectfully request that the Board consider addressing the organizational and institutional problems that may have contributed to Mr. Lemieux's termination. We are concerned that a large part of Mr. Lemieux's frustration was associated with the preparation of legal opinions that, while consistent with the Judgment, were not consistent with the interests of various Basin producers.

Historically, Watermaster staff and the producers have established procedures and legal interpretations that, while beneficial to the producer groups, are questionable under the Judgment. Based on the premise of producer group concurrence, we believe legal counsel prior to Mr. Lemieux generally ignored addressing Watermaster procedures and practices that were inconsistent with the Judgment. As presented below, it is our perception that the practice continues today.

EXHIBIT "3"

Page 1 of 4

# Water District

10575 Central Avenue, Post Office Box 71 • Montclair, California 91763 • (909) 624-0035 • FAX (909) 624-4725

Robb D. Quincey  
PRESIDENT

Josephine M. Johnson  
VICE PRESIDENT

Sandra S. Rose  
DIRECTOR

James T. Morgan  
DIRECTOR

Maynard E. Lenhart  
DIRECTOR

**Legal Counsel****Kaiser Venture's Proposal to Sell Water From Storage**

In September 1998, Watermaster staff forwarded a request to the Advisory Committee and the Board from Kaiser Ventures to consider the use of its water in storage to meet the replenishment obligation of both the California Speedway and the larger Appropriative Pool. On the surface, this proposal would seem straightforward. However, the proposal raises several significant issues under Judgment.

Kaiser Ventures is a member of the Non-Agricultural Pool. Water rights for this Pool, like those of the Agricultural Pool, are overlying in nature. Pursuant to the Judgment, the rights are "*appurtenant to the land and cannot be assigned or conveyed separate or apart therefrom.*" The Kaiser proposal would have separated the water right from the land and created a significant financial value for the resource.

In forwarding the item to the Advisory Committee and the Board, staff did not identify or give any indication that the proposal was not permitted or questionable under the Judgment. The report generally endorsed the concept based on the benefit to California Speedway, Kaiser, and the Appropriative Pool.

Watermaster staff should have identified issues that the Kaiser proposal raised. At a minimum, a legal opinion should have been requested, and changes to the Judgment necessary to allow the proposal to move forward identified before the item was presented to the Advisory Committee and the Board. It is the District's perception that this request was withdrawn from consideration only because of the objection raised by a limited number of Watermaster parties and Mr. Lemieux's finding that the proposal was inconsistent with the Judgment.

**Uniform Groundwater Rules and Regulations**

In September 1999, the Appropriative Pool approved the transfer of over 25,000 acre-feet of water in storage to offset Fiscal Year 1998-99 overproduction by the city of Ontario, Jurupa Community Services District, and Fontana Water Company. The practice is significant in that it eliminates the ability of Watermaster to use groundwater replenishment as a management tool in the Basin.

Clearly, the procedures currently practiced by the producers are inconsistent with the provisions of Section 2.9 of the Uniform Groundwater Rules and Regulations (UGRR's). Under Section 2.9, Watermaster approval is required *before* water is removed from storage. The rules require the Board to review all plans to remove water from storage to ensure that the action will not have a significant adverse impact to the Basin and other producers.

## Legal Counsel

Despite a legal opinion from Mr. Lemieux and sufficient evidence that the current practice is inconsistent with the UGRR's, the producers and the Board continue to endorse the process. At the December 16, 1999 Advisory Committee and Board meetings, Watermaster staff even stated that the current procedure for the removal of water from a local storage account is not in violation of the UGRR's.

It is apparent that the current practice is being completed in violation of the Judgment. We, therefore, urge the Board to work with Mr. Slater to resolve this matter.

### Legal Counsel Reporting Relationship

As part of the selection process for new legal counsel, at the February 13, 2000 Board meeting, significant discussion occurred regarding the reporting relationship between legal counsel and the Watermaster group (Pools, Committees, and Board). The discussion involved a proposed change in the reporting relationship such that legal counsel would represent the entire Watermaster group and not the Board. It appears that proposed change had been incorporated into the material distributed to the attorneys without the advanced knowledge or formal consideration by the Board. The proposed change is in direct contradiction to Judge Gunn's ruling on the reporting relationship of legal counsel within the Watermaster group.

If implemented, this proposal would have a significant impact to the Watermaster process. It would limit the ability of counsel to provide independent legal review for the Board. Any action forwarded to the Board by majority vote, even if inconsistent with the Judgment, could create an adverse condition between the Board and the Committee and result in legal counsel disqualification. Options available to a producer party to appeal a Committee or Pool vote would be essentially reduced to going to Court. We are very concerned that this item may be reflective of an effort to consolidate the control of the Watermaster process by majority vote rather than through administration of the Judgment itself.

By way of example, these items, at times, portray a troublesome view of the Watermaster process. The process needs to work outside the perception, real or imagined, of influence by and bias towards individual producers. The opportunity is present for the Board to take steps to address these issues.

We urge the Board to clarify the reporting relationship between staff, legal counsel, and the producer groups. The current relationship between legal counsel and the Board should be maintained. This relationship allows counsel to provide the producer parties with legal input of the Judgment without concern for conflict. It also maintains the opportunity for the mediation of possible producer conflicts and interpretation of the Judgment at the Board level instead of Court.



## Legal Counsel

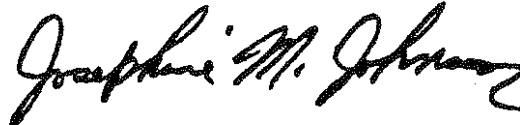
Consideration should also be given to the establishment of organizational procedures that ensure staff can effectively carry out the provisions of the Judgment without the perception of possible influence by or pressure from the producer groups. We believe this change would increase the overall openness of the process and allow the Watermaster parties to more effectively work together to achieve Basin management goals envisioned in the Judgment.

We remain committed to a process that is open and representative of an effort to realize common goals for the optimal use of the Chino Basin. Thank you for your consideration and your ongoing efforts to improve the Watermaster process.

Respectfully,



Robb Quincey  
President, Board of Directors



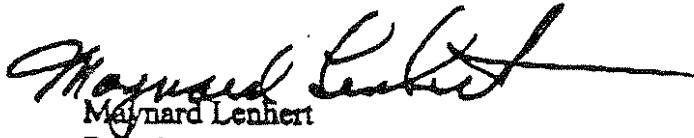
Josephine Johnson  
Vice-President, Board of Directors



James Morgan  
Board Member



Sandra Rose  
Board Member



Maynard Lenhart  
Board Member

000223 wm legal counsel.doc\MK\rt

MCCORMICK, KIDMAN & BEHRENS, LLP

LAWYERS

H. L. (MIKE) MCCORMICK\*  
ARTHUR G. KIDMAN\*  
RUSSELL G. BEHRENS\*  
SUZANNE M. TAGUE\*  
JANET R. MORNINGSTAR\*  
KEITH E. MCCULLOUGH\*  
DAVID D. BOYER  
PAETER E. GARCIA  
EDWARD L. BERTRAND

\*A PROFESSIONAL CORPORATION

IMPERIAL BANK BUILDING  
695 TOWN CENTER DRIVE  
SUITE 1400  
COSTA MESA, CALIFORNIA 92626-7187  
TELEPHONES (714) 755-3100  
(800) 755-3125  
FAX (714) 755-3110  
E-MAIL [mkb1@ix.netcom.com](mailto:mkb1@ix.netcom.com)

SACRAMENTO OFFICE:  
980 NINTH STREET  
16<sup>TH</sup> FLOOR  
SACRAMENTO, CALIFORNIA 95814-2736  
TELEPHONE (916) 449-9533  
FAX (916) 446-7104

February 29, 2000

Chino Basin Watermaster  
8632 Archibald Avenue  
Suite 109  
Rancho Cucamonga, CA 91730

Re: Watermaster's Current Practice Concerning Water Transfers and Removal

Dear Watermaster Members:

This firm acts as special legal counsel to Monte Vista Water District, a party to the Judgment in *Chino Basin Municipal Water District v. City of Chino*. Monte Vista wishes to officially register its protest to the procedures followed by the Watermaster to approve the transfer of 5,000 acre feet of stored water from the City of Upland to the City of Ontario. Monte Vista does not protest the substance of the underlying transfer. Rather, Monte Vista wishes to point out for the record that the Watermaster has failed to adhere to the procedures required by the Judgment and the Uniform Groundwater Rules and Regulations in connection with the removal of the transferred water supply.

Section 11 of the Judgment empowers the Watermaster to control and regulate the use of storage capacity within the Chino Basin and specifies that water may be stored in the Basin only according to an agreement between the storing party and the Watermaster. Section 14 prohibits storage of water *and the withdrawal of stored water* except according to a storage agreement and according to Watermaster regulations. Section 28 requires Watermaster to adopt uniform rules for storage agreements and specifies that such rules must "*preclude operations which will have a substantial adverse impact on other users.*" The required contents of storage agreements are further specified in Exhibit 1 to the Judgment, including "*procedures for establishment and administration of withdrawal schedules, locations and methods.*"

The Judgment clearly requires the Watermaster to regulate withdrawals from storage and this mandate has been implemented in Section 2.9 of the Uniform Groundwater Rules and Regulations ("Uniform Rules").

EXHIBIT "4"

Chino Basin Watermaster  
February 29, 2000  
Page 2

2.9 RECAPTURE. Stored water may be recaptured by Storage Party by the direct extraction of groundwater from Chino Basin as approved by Watermaster. Each Storage Party shall notify Watermaster in writing of the method, amount, rate of extraction, and location of production at least thirty (30) days prior to commencement of direct recapture . . . . *Watermaster shall determine whether a significant adverse impact will result to the Chino Basin and to other producers by reason of such production and shall either confirm, deny, or modify such proposed extraction schedule.*

Section 2.7 of the Uniform Rules allows for stored water to be sold and transferred in place and requires the Watermaster to adjust the storage accounts accordingly. This requires that the transferee also have a storage account under a storage agreement. Thus, the transferee storage party must be subject to the requirements of Section 2.9, to the same extent as the transferor storage party. That is, the stored water transferred in place is subject to the requirement to provide 30 days prior notice to Watermaster of the recapture plan and the Watermaster is required to make a no-harm determination before the stored water can be withdrawn. There is no rationale why this requirement for approval a recapture plan should not apply to transferred water in storage the same as it does to water in storage that is not transferred.

It is appropriate to note that in an analogous situation under the Judgment, prior notice to Watermaster and a Watermaster no-harm determination is also required. Section 13 of the Appropriative Pool Pooling Plan (Exhibit H to the Judgment) requires that before a Chino Basin water rights can be transferred, leased or licensed to another appropriator for exercise in a given year, the Watermaster must be given notice of the proposed transfer, lease or license and Watermaster must not approve the proposal if the exercise of the water right in a given area or under given conditions "would be contrary to sound basin management or detrimental to the rights of operations of other producers." There is no rationale why this no-harm standard would apply to the transfer of water production rights under Section 13 of the Appropriative Pool Pooling Plan, but not apply to the transfer in place and extraction of stored water under Section 2.7 of the Uniform Rules.

Please note that Monte Vista has made these arguments to the Advisory Committee at least twice in writing by letters dated September 16, 1999 and December 23, 1999, as well as at the Joint Meeting of the Watermaster, Pools and Advisory Committees on December 16, 1999. . . . As explained in Judge Turner's July 31, 1989 Order, by making these arguments to each of these entities, Monte Vista has exhausted all existing administrative remedies and is now free to seek judicial review. (See Judge Turner's Order, pp. 7-8.)

Chino Basin Watermaster  
February 29, 2000  
Page 3

The only response Monte Vista received to the arguments it presented in its letters and at the Joint Meeting was that this same practice with regard to transfers and removal has been going on for many years, and the suggestion that an 80% vote by the Advisory Committee approving this practice would constitute a mandate to the Watermaster to continue the practice. Based upon this rationale, the Advisory Committee voted in favor of ignoring Section 2.9 of the Uniform Rules and of continuing the current practice for processing water transactions and removal of transferred stored water without a no-harm determination.

As noted above, however, the current practice by the Watermaster is in conflict with the Uniform Rules, and these rules may not be amended without leave of court. There is no exception to following these rules based upon past practices. Furthermore, the provision in the Judgment regarding an 80 vote mandate by the Advisory Committee only applies to discretionary determinations by the Watermaster. The decision to follow or to ignore the Uniform Rules clearly does not meet the definition of "discretionary determinations" contained in the December 12, 1997 Report and Recommendation of Special Referee to Court. Furthermore, as noted in the minutes to the Joint Meeting, the vote by the Advisory Committee was less than 80% in favor of continuing past practices. Thus, even if such a decision was discretionary in nature, the vote could not be considered a mandate under the Judgment.

Regardless of past practice, the Watermaster should commence enforcement of the clear requirements of Section 2.9 of the Uniform Rules. When a proposal is made to transfer stored water in place under Section 2.7 of the Uniform Rules, the transferee must file a recapture plan with Watermaster and Watermaster must review and approve withdrawal of the transferred stored water, subject to a no-harm determination, before removal may occur. We, therefore, request that Watermaster review its previous decision with its legal counsel before approving any further transfers or allowing the removal of transferred stored water.

Very truly yours,

McCORMICK, KIDMAN & BEHRENS, LLP



Arthur G. Kidman  
Special Counsel, Monte Vista Water District

AGK:var

cc: Monte Vista Board of Directors  
Scott Slater, Watermaster Legal Counsel

C:\OFFICE\WPWIN\WPDOS\MONTE\WTRMSTR2.LTR

**MCCORMICK, KIDMAN & BEHRENS, LLP**

LAWYERS  
695 TOWN CENTER DRIVE, SUITE 1400  
COSTA MESA, CA 92626-1924

TELEPHONE: (714) 755-3100 OR  
1-800-755-3125  
FAX NUMBER: (714) 755-3110

**FAX TRANSMITTAL**

Date: March 1, 2000 Time: Client/Matter No.: 13906.001

Title of Document: CORRESPONDENCE

Transmission To:	Telephone Number:	Fax Number:
Mark Kinsey		909/624-0037
Traci Stewart		909/484-3890
Scott Slater		805/965-4333

Transmission From: DAVID D. BOYER

Comments:

WE ARE TRANSMITTING A TOTAL OF 4 PAGES, INCLUDING THIS COVER SHEET.  
IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL OUR OFFICE (VICKIE)  
IMMEDIATELY.

Original will be sent via:

Mail  Federal Express  Messenger  Will Not Be Sent

NOTE: The information contained in this facsimile document is confidential and is intended only for the use of the individual(s) named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original document to us at the above address via U.S. Mail. We will reimburse you for postage. Thank you.

We are transmitting from an OMNIFAX 9x.

**Group Send Report**

Time : Mar-01-00 10:38am  
Tel line : 7147553110  
Name : MCCORMICK, KIDMAN & BEHRENS, LLP

Job number : 307  
Date : Mar-01 10:08am  
Document pages : 04  
Start time : Mar-01 10:32am  
End time : Mar-01 10:38am

**Successful**

Fax number

☎19096240037  
☎19094843890  
☎18059654333

**Unsuccessful**

**Pages sent**

McCORMICK, KIDMAN & BEHRENS, LLP  
LAWYERS

1 McCORMICK, KIDMAN & BEHRENS, LLP  
2 ARTHUR G. KIDMAN, Bar No. 61719  
3 DAVID D. BOYER, Bar No. 144697  
4 695 Town Center Drive, Suite 1400  
5 Costa Mesa, CA 92626  
6 714/755-3100; fax 714/755-3110

7 Attorneys for Defendant  
8 MONTE VISTA WATER DISTRICT

9  
10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF SAN BERNARDINO

12 CHINO BASIN MUNICIPAL WATER	)	CASE NO. RCV 51010
13 DISTRICT,	)	Specially Assigned to The
	)	Honorable J. Michael Gunn
14 Plaintiff,	)	Department R-8
	)	
15 v.	)	RESPONSE OF DEFENDANT,
	)	MONTE VISTA WATER DISTRICT,
16 CITY OF CHINO, et al.,	)	TO WATERMASTER MOTION
	)	CONCERNING OPTIMUM BASIN
18 Defendants.	)	MANAGEMENT PLAN, STATUS OF
	)	NEGOTIATIONS.
	)	
	)	Hearing Date: September 30, 1999
	)	Time: 1:30 p.m.
	)	Department: R-8

22  
23 **I. INTRODUCTION**

24 This Court's ruling of February 19, 1998 in the above entitled matter requires the Chino  
25 Basin Watermaster to "notice a hearing on or before October 28, 1999 to consider all  
26 parties' input as the continuance of the nine-member board as Watermaster after June 30,  
27 2000." The same order requires a noticed hearing before September 30, 1999 to report on  
28

1 EXHIBIT "5"

1 the status of negotiations with the Department of Water Resources "related to its takeover  
2 of Watermaster operations, should the nine-member board fail to operate independently  
3 and effectively." In the same ruling, this Court also ordered the Watermaster to submit an  
4 optimum basin management program to the Court no later than September 30, 1999. The  
5 Court expressly stated an intended linkage between the continuation of the nine person  
6 Watermaster panel and the timely submission of an optimum basin management program:

7 "It should be apparent that timely filing of all reports with the court and  
8 development of an optimum basin management program are of significant  
9 interest to the court in the continuation of the nine-member board as  
10 Watermaster."  
11

12 The Watermaster motion before the Court is in response to these deadlines.

13 The Board of Directors of the Monte Vista Water District met specially on  
14 September 8 to consider the several items currently pending before the Court under  
15 Watermaster's motion. Monte Vista Water District believes that the parties to the  
16 Judgment have exerted substantial good faith diligence to bring the Optimum Basin  
17 Management Plan ("OBMP"), Phase I (Sections 1-4) to the current submission. Monte  
18 Vista believes that the court should grant additional time for the Watermaster and the  
19 parties to complete the OBMP and that such additional time is necessary and will be put to  
20 good use. While Monte Vista Water District notes some issues with the Phase I OBMP, it  
21 is necessary to bring this phase to closure, even in its imperfect state, in order that the  
22 parties may focus on the important issues of ways and means to implement the OBMP.  
23 The Phase I OBMP should not be approved, but should instead be "received" as a progress  
24 report. The parties, the Watermaster and the Court cannot reasonably approve or agree to  
25 a OBMP when the feasibility of ways and means of implementation remain unknown. If  
26 the ways and means of implementation are infeasible, then it may be necessary to adjust  
27 the goals and scope of the OBMP.  
28



1 Monte Vista believes that the nine-member Watermaster has performed reasonably  
2 well over the last eighteen months, but a decision on whether to grant the panel a five year  
3 appointment should await completion of the OBMP.

4 **II. PHASE I, OPTIMUM BASIN MANAGEMENT PLAN SHOULD BE**  
5 **RECEIVED AS A REPORT, BUT NOT APPROVED AS A FINAL PLAN**

6 The written and verbal comments submitted to the Watermaster by the parties at the  
7 Watermaster's September 15 hearing on the OBMP, Phase I by and large seem to concur in  
8 the OBMP goals set forth in Section 3. The comments, however, express various  
9 disagreements, doubts and concerns with the state of the Basin described in Section 2 and  
10 the plan elements set forth in Section 4. As set forth below, Monte Vista has some  
11 reservations about the Phase I OBMP. Monte Vista, however, urges the Court to receive  
12 the OBMP, Phase I, Sections 1-4 as a progress report and allow the parties to set aside that  
13 part of this work. The parties can then focus attention on what seems likely to be the even  
14 more difficult and contentious process of trying to achieve consensus on ways and means  
15 to implement the OBMP.  
16

17 Many of the party's comments show an understanding that the implementation,  
18 especially the apportionment of implementation cost, must be fair and equitable. Monte  
19 Vista believes that consensus should be pursued because, as pointed out by legal counsel to  
20 Cucamonga Water District, there are some inherent limitations on the jurisdiction of the  
21 Court to force affirmative actions by parties. The OBMP needs to establish incentives for  
22 voluntary affirmative actions by the parties to implement the OBMP, especially in regard  
23 to improving basin water quality.  
24

25 Neither the parties nor the Court can reasonably endorse the OBMP, Phase I until  
26 the ways and means for plan implementation under Phase II (Section 5) have been  
27 developed. To do so would be akin to adopting a household budget, based only upon the  
28 wants and desires wish list of the family, without taking into account the available

1 financial resources or the fair allocation of benefits, cost and effort among the family  
2 members. It may be necessary to set priorities or to otherwise adjust some of the goals and  
3 objectives of the OBMP in order to match available resources and to fairly apportion cost  
4 among those who would utilize the natural resources of the Chino Basin groundwater  
5 aquifers.

6           Though imperfect (see noted deficiencies below), the OBMP Phase I report needs to  
7 be received and set aside for now so that the pressing work of identifying ways and means  
8 for implementation can proceed. The many comments of the parties submitted to the  
9 Watermaster show that perfection has not been achieved in the Phase I, OBMP. Yet at  
10 some point the law of diminishing returns takes over in the pursuit of perfection. So it is  
11 that Monte Vista urges the Court to receive, but not approve, this imperfect document, put  
12 it aside for the time being, and direct the parties to focus their efforts on the  
13 implementation phase. If it turns out that implementation of parts of the OBMP are  
14 infeasible or unfair, then the parties may be able to agree on modification of the portions of  
15 the Phase I goals and/or plan elements in order to produce harmony between the goals and  
16 the ways and means.

17  
18 **III. MONTE VISTA WATER DISTRICT NOTES DEFICIENCIES IN PHASE I,**  
19 **OBMP**

20           **A. Advisory Committee Role.** Page 1-1 of the OBMP states "The Watermaster  
21 Advisory Committee was established as the policy setting body and charged with the  
22 oversight of Watermaster's discretionary activities." This expression of subordination of  
23 the Watermaster to the Advisory committee is not supported by the Judgment and is clearly  
24 at odds with the Watermaster independence envisioned by this Courts Ruling of February  
25 19, 1998. In connection with the motion to appoint the nine-member panel as  
26 Watermaster, the Court stated:

27           "However, if the appointment of a nine-member board would permit the Advisory  
28

1 Committee to control the Watermaster, and/or deprive the Watermaster of its ability  
2 to administer the Judgment independently and objectively, surely it would be a  
3 compelling reason to deny the motion.”

4 Other passages of the Court’s Ruling show a clear intent that the relationship of the  
5 Watermaster to the Advisory Committee was to be independent, not subordinate.

6 **B. Wet Water Recharge.** The OBMP recognizes the need for additional  
7 recharge facilities in various parts of the basin. There is no recognition, however, that  
8 current basin management practices do not promote actual, physical, wet-water recharge of  
9 the basin. Monte Vista Water District believes that current programs for *in lieu* recharge  
10 and intra-basin transfer of pumping rights, while benign in theory, actually interfere with  
11 the needed recharge of the basin and other basin management objectives. For example, if a  
12 producer whose well capacity is shut in because of water quality contamination is allowed  
13 to transfer production rights to a producer whose production exceeds its pumping share,  
14 then no wet water recharge is obtained. Moreover, the basin objective of extracting the  
15 contaminated water is not advanced. The OBMP should require these policies and  
16 practices followed by the Watermaster to be reexamined in light of the goals of the OBMP.

17 **C. Water Quality.** The OBMP extensively addresses water quality concerns in  
18 the Southern portion of Chino Basin, but pays scant, if any, attention to significant water  
19 quality issues in other portions of the Basin. The OBMP should address water quality  
20 concerns wherever manifest in the basin, including the Northwestern portion of  
21 Management Zone 1.

22  
23 **IV. MONTE VISTA SUPPORTS INTERIM EXTENSION OF NINE-PERSON**  
24 **WATERMASTER PANEL**  
25

26 The Phase I OBMP shows diligent effort by the Watermaster and the parties to the  
27 Judgment to develop a management plan for the Basin in the public interest, as well as in  
28 the self-interest of the water producer community. Based upon this demonstrated effort,

1 the interim appointment of the nine-member board should be continued, but the more  
2 permanent appointment should be held under submission by the Court. The performance  
3 of the nine-member panel as Watermaster cannot be fully evaluated or endorsed, however,  
4 until a final and complete OBMP is prepared. Will the admittedly legitimate financial  
5 interests of the producers control the nine-person panel's evaluation of the Phase II,  
6 OBMP? Or will enlightened self interest and the public interest in groundwater basin  
7 resource management also drive the Phase II, OBMP? Until these questions are answered,  
8 the final report card on the nine-member panel cannot be completed.

9  
10 Moreover, the Court should not lose sight that the Statement of Decision and Order  
11 issued by Judge Turner in this case, more than ten years ago on July 31, 1989, directed the  
12 Watermaster and the parties to prepare an optimum basin management program. Little  
13 tangible was accomplished under that order until this Court tied the interim appointment  
14 and evaluation of the nine-member panel to the preparation of the OBMP. This linkage  
15 should be continued, the Court endorsing neither the nine-member panel nor the California  
16 Department of Water Resources as permanent Watermaster, until the final OBMP is  
17 prepared and in place. The prospect of losing water producer participation/control over  
18 management of the Chino Basin groundwater resource has provided powerful incentive to  
19 the progress to date on the OBMP.

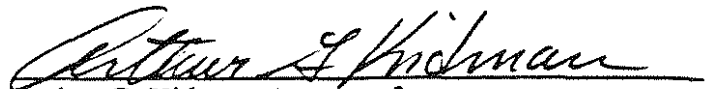
20 Monte Vista Water District recognizes that the producer parties, including Monte  
21 Vista, have substantial financial investments in continuing the *status quo* of management  
22 practices in the Chino Basin. The Court in footnote 1, at page 8, of its February 19, 1998  
23 Ruling recognized the tendency of those charged with managing the commons to  
24 manipulate the system to their own self interest. While changes in the ground rules for the  
25 water producers need to be gradual to avoid undue economic dislocation, changes are still  
26 needed. Self interest in the *status quo* must not override the public interest in sound  
27 resource management in the Chino Basin.  
28

1 Monte Vista Water District respectfully requests the court to take these views into  
2 consideration.

3 Dated: September 23, 1999

Respectfully submitted,

5 McCORMICK, KIDMAN & BEHRENS, LLP

7   
8 Arthur G. Kidman, Attorney for  
9 Monte Vista Water District

9 C:\DROTH\MONTEVIS\PLEAD\REPLY.DOC

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
McCORMICK, KIDMAN & BEHRENS, LLP  
LAWYERS



MCCORMICK, KIRN & BEHRENS, LLP  
LAWYERS

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is: 695 Town Center Drive, Suite 1400, Costa Mesa, CA 92626.

On September 23, 1999, I served the foregoing document described as: RESPONSE OF DEFENDANT, MONTE VISTA WATER DISTRICT, TO WATERMASTER MOTION CONCERNING OPTIMUM BASIN MANAGEMENT PLAN, STATUS OF NEGOTIATIONS on the interested parties on the attached service list as follows:

by causing a true copy thereof, enclosed in a sealed envelope, addressed as stated below:

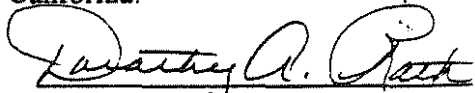
X 1ST CLASS MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Costa Mesa, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

— EXPRESS MAIL I am readily familiar with the firm's practice of collection and processing pleadings, discovery and documents for Express Mail service and I personally performed the acts described herein. I deposited the aforementioned document(s) and envelope(s) with Express Mail postage fully prepaid in a mailbox, mail chute or like facility regularly maintained by the United States Postal Service for receipt of Express Mail at Riverside, California on the aforementioned case.

— CERTIFIED MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Costa Mesa, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 23, 1999 at Costa Mesa, California.

  
Dorothy A. Roth

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is: 695 Town Center Drive, Suite 1400, Costa Mesa, CA 92626.

On **March 13, 2000**, I served the foregoing document described as: **MONTE VISTA WATER DISTRICT'S RESPONSE TO WATERMASTER'S STATUS REPORT** on the interested parties on the attached service list as follows:

by causing a true copy thereof, enclosed in a sealed envelope, addressed as stated below:

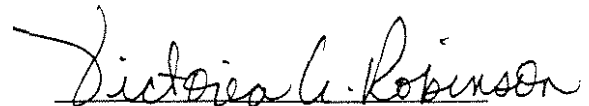
**1ST CLASS MAIL** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Costa Mesa, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**EXPRESS MAIL** I am readily familiar with the firm's practice of collection and processing pleadings, discovery and documents for Express Mail service and I personally performed the acts described herein. I deposited the aforementioned document(s) and envelope(s) with Express Mail postage fully prepaid in a mailbox, mail chute or like facility regularly maintained by the United States Postal Service for receipt of Express Mail at Riverside, California on the aforementioned case.

**CERTIFIED MAIL** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Costa Mesa, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **March 13, 2000** at Costa Mesa, California.

  
Victoria A. Robinson

CA\OFFICE\WP\WIN\WP\DOCS\MONTE\REV2.STA



ATTORNEY SERVICE LIST

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RICHARD ADAMS II  
DEPUTY COUNSEL-POMONA  
ALVAREZ-GLASMAN & CLOVEN  
505 S. GAREY AVE.  
POMONA, CA. 91766

WILLIAM J. BRUNICK ESQ.  
BRUNICK ALVAREZ & BATTERSBY  
PO BOX 6425  
SAN BERNARDINO, CA. 92412

JEAN CIHIGOYENETCHE  
GENERAL COUNSEL-IEUA  
CIHIGOYENETCHE GROSSEBERG & CLOUSE  
3602 INLAND EMPIRE BLVD. STE. C315  
ONTARIO, CA. 91764

ROBERT DOUGHERTY  
GENERAL COUNSEL- ONTARIO  
COVINGTON & CROWE  
PO BOX 1515  
ONTARIO, CA. 91762

FREDERIC FUDACZ  
NOSSAMAN GUTHNER KNOX & ELLIOTT LLP  
445 S. FIGUEROA ST 31ST FL.  
LOS ANGELES, CA. 90071-1672

JIMMY GUTIRREZ  
ATTORNEY- CITY OF CHINO  
EL CENTRAL REAL PLAZA  
12616 CENTRAL AVE.  
CHINO, CA. 91710

MARK HENSLEY  
ATTORNEY- CITY OF CHINO HILLS  
BURKE WILLIAMS & SORENSON  
611 W. 6TH STE. 2500  
LOS ANGELES, CA. 90071-1469

STEVEN KENNEDY  
GENERAL COUNSEL- TVMWD  
BRUNICK ALVAREZ & BATTERSBY  
PO BOX 6425  
SAN BERNARDINO, CA. 92412

JARLATH OLAY  
DEPUTY GENERAL COUNSEL MWD  
700 N. ALAMEDA ST  
LOS ANGELES, CA. 90012

MARILYN LEVIN  
STATE OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL  
300 S. SPRING ST 11TH FL. N. TOWER  
LOS ANGELES, CA. 90013-1232

WAYNE K. LEMIEUX  
LEMIEUX & O'NEILL  
200 N. WESTLAKE BLVD. STE 100  
WESTLAKE VILLAGE, CA. 91362-3755

JAMES L. MARKMAN  
RICHARDS WATSON & GERSON  
C/O CITY OF UPLAND  
P. O. BOX 460  
UPLAND, CA 91785

THOMAS H MCPETERS  
MCPETERS MCALEARNEY SHIMFF & HATT  
PO BOX 2084  
REDLANDS, CA. 92373

DAN MCKINNEY  
SPECIAL COUNSEL-AG POOL  
REID & HELLYER  
PO BOX 1300  
RIVERSIDE, CA. 92502-1300

JOHN SCHATZ  
COUNSEL- OCSO  
PO BOX 2279  
MISSION VIEJO, CA. 92690-2279

ANNE J. SCHNEIDER  
ELLISON & SCHNEIDER  
2015 H ST.  
SACRAMENTO, CA. 95814-3109

TIMOTHY J. RYAN  
SAN GABRIEL VALLEY WATER COMPANY  
PO BOX 6010  
EL MONTE, CA. 91734

GENE TANAKA  
BEST BEST & KRIEGER LLP.  
PO BOX 1028  
RIVERSIDE, CA. 92502-1028

ANNE T. THOMAS  
BEST BEST & KRIEGER LLP.  
PO BOX 1028  
RIVERSIDE, CA. 92502-1028

SUSAN TRAGER  
LAW OFFICES OF SUSAN M. TRAGER  
2100 SE. MAIN ST. STE 104  
IRVINE, CA. 92614-6238

SCOTT S. SLATER  
HATCH AND PARENT  
21 EAST CARRILLO STREET  
SANTA BARBARA, CA 93101



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF SERVICE BY HAND DELIVERY**

\_\_\_\_\_, declares as follows:

I am employed in the County of Orange, State of California; I am over the age of eighteen (18) years and am not a party to this action; my business address is 695 Town Center Drive, Suite 1400, Costa Mesa, CA 92626, in said County and State; I am employed by O.C. Corporate Services, Inc. On March 13, 2000, I received an envelope from McCormick, Kidman & Behrens, along with the following documents for each envelope: **MONTE VISTA WATER DISTRICT'S RESPONSE TO WATERMASTER'S STATUS REPORT** and which envelope(s) (was/were) addressed as follows:

TRACI STEWART  
CHIEF OF WATERMASTER SERVICES  
CHINO BASIN WATERMASTER  
8632 ARCHIBALD AVE, STE 109  
RANCHO CUCAMONGA, CA 91730

and on the same date I placed the aforementioned document(s) in its/their respective envelope(s), sealed the envelopes, and served such document(s):

\_\_\_\_\_ by personally delivering such envelope to said person(s) at the address(es) listed above;

in the absence of the attorney(s) named above, by personally delivering such envelope to his/her clerk or the person in charge of said office; or

\_\_\_\_\_ by leaving such envelope between the hours of 9:00 in the morning and 5:00 in the afternoon in a conspicuous place in the office, because no person was in the office.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 13, 2000, at Costa Mesa, California.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

PROOF OF SERVICE

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 8632 Archibald Avenue, Suite 109, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On March 13, 2000, I served the attached:

***MONTE VISTA WATER DISTRICT'S RESPONSE TO WATERMASTER'S STATUS REPORT***  
*for hearing March 16, 2000, 1:30 p.m., Superior Court Department R-8*

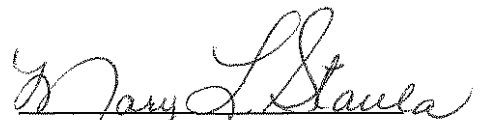
in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for overnight delivery by United States Postal Service mail at Rancho Cucamonga, California, addressed as follows:

**See service lists attached :**

Mailing List A

Attorney Service List

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Rancho Cucamonga, California, on March 13, 2000.

  
Mary L. Staula

List updated 03/02/2000

**ATTORNEY SERVICE LIST**

DAVID B. ANDERSON  
**DEPARTMENT OF WATER RESOURCES**  
 1416 NINTH ST  
 P.O. BOX 94236  
 SACRAMENTO CA 94236-0001

THOMAS S. BUNN III  
**LAGERLOF SENEAL BRADLEY  
 GOSNEY & KRUSE**  
 301 N LAKE AVE 10<sup>TH</sup> FL  
 PASADENA CA 91101-4108

**JIM ERICKSON**  
 LAW OFFICES OF JIMMY GUTIERREZ  
 EL CENTRAL REAL PLAZA  
 12616 CENTRAL AVE  
 CHINO CA 91710

**JIMMY GUTIERREZ**  
 ATTORNEY-CITY OF CHINO  
 EL CENTRAL REAL PLAZA  
 12616 CENTRAL AVE  
 CHINO CA 91710

ARTHUR KIDMAN  
 ATTORNEY-MVWD  
**MC CORMICK KIDMAN & BEHRENS**  
 695 TOWN CENTER DR STE 1400  
 COSTA MESA CA 92626-1924

DAN MC KINNEY  
 SPECIAL COUNSEL-AG POOL  
**REID & HELLYER**  
 P O BOX 1300  
 RIVERSIDE CA 92502-1300

TIMOTHY J RYAN  
**SAN GABRIEL VALLEY WATER COMPANY**  
 P O BOX 6010  
 EL MONTE CA 91734

JESS SENEAL  
**LAGERLOF SENEAL BRADLEY  
 GOSNEY & KRUSE**  
 301 N LAKE AVE 10<sup>TH</sup> FL  
 PASADENA CA 91101-4108

ANNE T THOMAS  
**BEST BEST & KRIEGER LLP**  
 P O BOX 1028  
 RIVERSIDE CA 92502-1028

RICHARD ADAMS II  
 DEPUTY COUNSEL - POMONA  
**ALVAREZ-GLASMAN & CLOVEN**  
 505 S GAREY AVE  
 POMONA CA 91766

JEAN CIHIGOYENETCHE  
 GENERAL COUNSEL-IEUA  
**CIHIGOYENETCHE GROSSBERG & CLOUSE**  
 3602 INLAND EMPIRE BLVD STE C315  
 ONTARIO CA 91764

FREDERIC FUDACZ  
**NOSSAMAN GUTHNER KNOX & ELLIOTT LLP**  
 445 S FIGUEROA ST 31<sup>ST</sup> FL  
 LOS ANGELES CA 90071-1672

MARK HENSLEY  
 ATTORNEY-CITY OF CHINO HILLS  
**BURKE WILLIAMS & SORENSON**  
 611 W 6<sup>TH</sup> ST STE 2500  
 LOS ANGELES CA 90071-1469

MARILYN LEVIN  
**STATE OF CALIFORNIA**  
 OFFICE OF THE ATTORNEY GENERAL  
 300 S SPRING ST 11<sup>TH</sup> FL N TOWER  
 LOS ANGELES CA 90013-1232

THOMAS H MC PETERS  
**MC PETERS MC ALEARNEY SHIMFF & HATT**  
 P O BOX 2084  
 REDLANDS CA 92373

JOHN SCHATZ  
**COUNSEL-JCSD**  
 P O BOX 2279  
 MISSION VIEJO CA 92690-2279

SCOTT SLATER  
**HATCH & PARENT**  
 21 E CARRILLO ST  
 SANTA BARBARA CA 93101-2782

SUSAN TRAGER  
**LAW OFFICES OF SUSAN M TRAGER**  
 2100 SE MAIN ST STE 104  
 IRVINE CA 92614-6238

CHINO BASIN WATERMASTER  
 8632 ARCHIBALD ST STE 109  
 RANCHO CUCAMONGA CA 91730

WILLIAM J. BRUNICK ESQ.  
**BRUNICK ALVAREZ & BATTERSBY**  
 P O BOX 6425  
 SAN BERNARDINO CA 92412

ROBERT DOUGHERTY  
 GENERAL COUNSEL-ONTARIO  
**COVINGTON & CROWE**  
 P O BOX 1515  
 ONTARIO CA 91762

ERIC GARNER  
**BEST BEST & KRIEGER LLP**  
 P O BOX 1028  
 RIVERSIDE CA 92502-1028

STEVEN KENNEDY  
 GENERAL COUNSEL-TVMWD  
**BRUNICK ALVAREZ & BATTERSBY**  
 P O BOX 6425  
 SAN BERNARDINO CA 92412

JAMES L MARKMAN  
**RICHARDS WATSON & GERSHON**  
 C/O CITY OF UPLAND  
 P O BOX 460  
 UPLAND CA 91785

**JARLATH OLAY**  
 DEPUTY GENERAL COUNSEL MWD  
 700 N ALAMEDA ST  
 LOS ANGELES CA 90012

ANNE J SCHNEIDER  
**ELLISON & SCHNEIDER**  
 2015 H ST  
 SACRAMENTO CA 95814-3109

GENE TANAKA  
**BEST BEST & KRIEGER LLP**  
 P O BOX 1028  
 RIVERSIDE CA 92502-1028

JAMES P MORRIS  
**BEST BEST & KRIEGER LLP**  
 P O BOX 1028  
 RIVERSIDE CA 92502-1028



AAA AA  
MAILING LIST 1  
UPDATED 2/14/00

CURTIS AARON  
CITY OF FONTANA  
8353 SIERRA AVE  
FONTANA CA 92335-3598

CHET ANDERSON  
SOUTHERN CALIFORNIA WATER CO  
401 S SAN DIMAS CANYON RD  
SAN DIMAS CA 91773

RICHARD ANDERSON  
1365 W FOOTHILL BLVD STE 1  
UPLAND CA 91786

AW ARAIZA  
WEST SAN BERNARDINO C W D  
P.O. BOX 920  
RIALTO CA 92376-0920

STEVE ARBELBIDE  
CBWM BOARD  
417 PONDEROSA TR  
CALIMESA CA 92320

SCOTT ATHERTON  
CALIFORNIA SPEEDWAY  
P.O. BOX 9300  
FONTANA CA 92334-9300

RICH ATWATER  
IEUA  
P.O. BOX 697  
RCHO CUCA CA 91729-0697

RODNEY BAKER  
P.O. BOX 438  
COULTERVILLE CA 95311-0438

VICTOR BARRION  
RELIANT ENERGY ETIWANDA  
8996 ETIWANDA AVE  
ETIWANDA CA 91739

BOB BEST  
NAT'L RESOURCES CONS SVS  
25864 BUSINESS CENTER DR K  
REDLANDS CA 92374

GERALD BLACK  
FONTANA UNION WATER CO  
P.O. BOX 309  
FONTANA CA 92334

KATHIE BLYSKAL  
SUNKIST GROWERS INC  
760 E SUNKIST ST  
ONTARIO CA 91761

PATTI BONAWITZ  
IEUA  
P.O. BOX 697  
RCHO CUCA CA 91729-0697

LESTER E. BOSTON JR.  
CBWM BOARD  
3694 PEREGRINE DR  
CORONA CA 91719

BEVERLY BRADEN  
WEST END CONS WATER CO  
P.O. BOX 460  
UPLAND CA 91785

FRANK BROMMENSCHENKEL  
134 DAVIS ST  
SANTA PAULA CA 93060

RICK BUFFINGTON  
STATE OF CA CIM  
P.O. BOX 1031  
CHINO CA 91710

TERRY CATLIN  
CBWM BOARD  
2344 IVY CT  
UPLAND CA 91784

NEIL CLIFTON  
IEUA  
P.O. BOX 697  
RANCHO CUCAMONGA CA 91729-0697

TERRY COOK  
KAISER VENTURES INC  
3633 E INLD EMP BLVD STE 850  
ONTARIO CA 91764

GEORGE COSBY  
CALMAT PROPERTIES CO  
3200 N SAN FERNANDO RD  
LOS ANGELES CA 90065

DAVID B COSGROVE  
RUTAN & TUCKER  
611 ANTON BLVD STE 1400  
COSTA MESA CA 92626

DAVE CROSLEY  
CITY OF CHINO  
5050 SCHAEFER AVE  
CHINO CA 91710-5549

ROBERT DEBERARD  
CHAIRMAN-AG POOL  
P.O. BOX 1223  
UPLAND CA 91785-1223

ROBERT DELOACH  
CUCAMONGA COUNTY WATER DIST  
P.O. BOX 638  
RANCHO CUCA CA 91729-0638

BILL DENDY  
BILL DENDY & ASSOCIATES  
429 F ST SUITE 2  
DAVIS CA 95616-4111

GREG DEVEREAUX  
CITY OF ONTARIO  
303 E "B" ST  
ONTARIO CA 91764

TED W. DUTTON  
UNITED WATER MANAGEMENT CO INC  
1905 BUSINESS CENTER DR STE 100  
SAN BERNARDINO CA 92408

DICK DYKSTRA  
10129 SCHAEFER  
ONTARIO CA 91761-7973

BOB FEENSTRA  
MILK PRODUCERS COUNCIL  
13545 S EUCLID AVE  
ONTARIO CA 91762-6656

RALPH FRANK  
755 LAKEFIELD RD #3  
WESTLAKE VILLAGE CA 91361

SAM FULLER  
SAN BERNARDINO VALLEY MWD  
P.O. BOX 5906  
SAN BERNARDINO CA 92412-5906

MARK GAGE P E  
GEOMATRIX CONSULTANTS INC  
2101 WEBSTER ST #1200  
OAKLAND CA 94612

JIM GALLAGHER  
SOUTHERN CALIFORNIA WATER CO  
2143 CONVENTION CTR WAY STE 110  
ONTARIO CA 91764

ALLAN E GLUCK  
N AMERICAN COMM REAL EST  
123 S. FIGUEROA ST STE 190 B  
LOS ANGELES CA 90012-5517

JOE GRINDSTAFF  
SAWPA  
11615 STERLING AVE  
RIVERSIDE CA 92503

JACK HAGERMAN  
STATE OF CALIFORNIA CIM  
4158 CENTER ST  
NORCO CA 91760

RICK HANSEN  
THREE VALLEYS M W D  
P.O. BOX 1300  
CLAREMONT CA 91711

DONALD HARRIGER  
CBWM BOARD  
P.O. BOX 5286  
RIVERSIDE CA 92517-5286

CARL HAUGE  
DEPT OF WATER RESOURCES  
1020 9TH ST 3RD FL  
SACRAMENTO CA 95814

SCOTT HENDRIX  
ARROWHEAD WATER COMP  
5772 JURUPA RD  
ONTARIO CA 91761-3672

ATTORNEY AT LAW  
HIGGS FLETCHER & MACK  
401 W A STREET  
SAN DIEGO CA 92101-7908

PAUL HOFER  
CBWM BOARD  
11248 S TURNER AVE  
ONTARIO CA 91761

NINA JAZMADARIAN  
METROPOLITAN WATER DISTRICT  
P.O. BOX 54153  
LOS ANGELES CA 90054-0153

KEN JESKE  
CITY OF ONTARIO  
1425 S BON VIEW AVE  
ONTARIO CA 91761-4406

JOSEPHINE JOHNSON  
CBWM BOARD  
3635 RIVERSIDE DR  
CHINO CA 91710

BARRETT KEHL  
CBWCD  
P.O. BOX 2400  
MONTCLAIR CA 91763-0900

PATRICK J. KING  
CBWM BOARD  
303 E "B" ST  
ONTARIO CA 91764-4196

MARK KINSEY  
MONTE VISTA IRRIGATION CO  
10575 CENTRAL AVE  
MONTCLAIR CA 91763

MARK KINSEY  
MONTE VISTA WATER DISTRICT  
P.O. BOX 71  
MONTCLAIR CA 91763-0071

VERN KNOOP  
DEPT OF WATER RESOURCES  
770 FAIRMONT AVE  
GLENDALE CA 91203-1035

GENE KOOPMAN  
13898 ARCHIBALD AVE  
ONTARIO CA 91761-7979

MANAGER  
KREIGER & STEWART ENGINEERING  
FIRM  
3602 UNIVERSITY AVE  
RIVERSIDE CA 92501

MANAGER  
KRONICK MOSKOVITZ TIEDEMANN &  
GIRARD  
400 CAPITOL MALL 27TH FL  
SACRAMENTO CA 95814-4417

A. A. KRUEGER  
CBWM BOARD  
3736 TOWNE PARK CR  
POMONA CA 91767

KENNETH KULES  
METROPOLITAN WATER DISTRICT  
P.O. BOX 54153  
LOS ANGELES CA 90054-0153

FRANK LOGUIDICE  
SAN GABRIEL VALLEY WC  
P.O. BOX 6010  
EL MONTE CA 91734

CARLOS LOZANO  
STATE OF CA YTS  
15180 S. EUCLID  
CHINO CA 91710

MIKE MAESTAS  
CITY OF CHINO HILLS  
2001 GRAND AVE  
CHINO HILLS CA 91709-4869



ALAN MARKS  
CTY OF SAN BERN CTY CNSL  
157 W 5TH ST  
SAN BERNARDINO CA 92415

MIKE MCGRAW  
FONTANA WATER COMPANY  
P.O. BOX 987  
FONTANA CA 92334-0987

CAROLE MCGREEVY  
JURUPA COMM SVCS DIST  
8621 JURUPA RD  
RIVERSIDE CA 92509-3229

BILL MILLS  
ORANGE COUNTY WATER DIST  
P.O. BOX 8300  
FTN VALLEY CA 92728-8300

BRYAN MOLLOY  
STATE OF CALIFORNIA - CIM  
P.O. BOX 128  
CHINO CA 91710-0128

RUBEN MONTES  
SAN BERNARDINO CTY FLD CONT DIST  
825 E THIRD ST  
SAN BERNARDINO CA 92415

JIM MOODY  
CITY OF UPLAND  
P.O. BOX 460  
UPLAND CA 91785-0460

EILEEN MOORE  
SECY ONTARIO CITY COUNCIL  
303 E "B" STREET  
ONTARIO CA 91764

CHRIS NAGLER  
DEPT OF WATER RESOURCES  
770 FAIRMONT AVE SUITE 102  
GLENDALE CA 91203-1035

JUAN NESSI  
STATE OF CA, CIM  
18952 BETLEY ST  
ROWLAND HEIGHTS CA 91748

ROBERT NEUFELD  
CHAIRMAN CBWM BOARD  
14111 SAN GABRIEL CT  
RANCHO CUCAMONGA CA 91739

JOE ODETTE  
STATE OF CALIFORNIA - CIM  
P.O. BOX 128  
CHINO CA 91710-0128

DANA OLDENKAMP  
MILK PRODUCERS COUNCIL  
3214 CENTURION PL  
ONTARIO CA 91761

ROBERT OLISLAGERS  
CNTY OF SAN BERNARDINO  
7000 MERRILL AVE BOX 1  
CHINO CA 91710-9027

SANDY OLSON  
WALNUT VALLEY WATER DISTRICT  
271 S BREA CANYON RD  
WALNUT CA 91789

HENRY PEPPER  
CITY OF POMONA  
505 S GAREY AVE  
POMONA CA 91766

JEFFREY PIERSON  
UNITEX /CORONA FARMS  
3090 PULLMAN ST STE 209  
COSTA MESA CA 92626

ROBB QUINCEY  
INLAND PACIFIC WATER COMPANY  
8300 UTICA AVE 3RD FLOOR  
RANCHO CUCAMONGA CA 91730

LEE R REDMOND III  
KAISER VENTURES INC  
3633 E INLD EMP BLVD STE 850  
ONTARIO CA 91764

BILL RICE  
RWQCB - SANTA ANA REGION  
3737 MAIN ST STE 500  
RIVERSIDE CA 92501-3339

DAVID RINGEL  
MONTGOMERY WATSON  
P.O. BOX 7009  
PASADENA CA 91109-7009

ARNOLD RODRIGUEZ  
SANTA ANA RIVER WATER CO  
10530 54TH ST  
MIRA LOMA CA 91752-2331

GLEN ROJAS  
CITY OF CHINO  
P.O. BOX 667  
CHINO CA 91708-0667

WAYNE SALMI  
PRAXAIR  
5735 AIRPORT DR  
ONTARIO CA 91761

PATRICK SAMPSON  
P.O. BOX 660  
POMONA CA 91769

JOSEPH C SCALMANINI  
500 FIRST ST  
WOODLAND CA 95695

JOE SCHENK  
CITY OF NORCO  
P.O. BOX 428  
NORCO CA 91760-0428

DAVID SCRIVEN  
KRIEGER & STEWART  
3602 UNIVERSITY AVE  
RIVERSIDE CA 92501

SCOTT SLATER  
HATCH & PARENT  
21 E CARRILLO ST  
SANTA BARBARA CA 93101

MICHAEL SMITH  
NICHOLS STEAD BOILEAU & KOSTOFF  
223 W FOOTHILL BLVD #200  
CLAREMONT CA 91711-2708

MS. PHIL SMITH  
STATE OF CA  
P.O. BOX 942883  
SACRAMENTO CA 94283-0001

BILL STAFFORD  
MARYGOLD MUTUAL WATER CO  
9725 ALDER ST  
BLOOMINGTON CA 92316-1637

DAVID STARNES  
MOBILE COMMUNITY MGMT CO  
1801 E EDINGER AVE STE 230  
SANTA ANA CA 92705

L HAIT  
STERN & GOLDBERG  
9150 WILSHIRE BLVD STE 100  
BEVERLY HILLS CA 90210

SWRCB  
DIVISION OF WATER RIGHTS  
P.O. BOX 2000  
SACRAMENTO CA 95809-2000

LENNA TANNER  
CITY CLERK - CITY OF CHINO  
P.O. BOX 667  
CHINO CA 91708-0667

JIM TAYLOR  
POMONA UTILITY SVS DEPT.  
148 N HUNTINGTON BLVD  
POMONA CA 91768

JERRY THIBEAULT  
RWQCB - SANTA ANA REGION  
3737 MAIN ST STE 500  
RIVERSIDE CA 92501-3339

MICHAEL THIES  
SPACE CENTER MIRA LOMA INC  
3401 S ETIWANDA AVE BLDG 503  
MIRA LOMA CA 91752-1126

DAVID THOMPSON  
GE-MGR ENV REMEDIATION PROGRAMS  
640 FREEDOM BUSINESS CTR.  
KING OF PRUSSIA PA 19406

JOHN THORNTON  
PSOMAS AND ASSOCIATES  
3187 RED HILL AVE, SUITE 250  
COSTA MESA CA 92626

HAROLD TREDWAY  
10841 PARAMOUNT BLVD  
DOWNEY CA 90241

ARLAN VAN LEEUWEN  
FAIRVIEW FARMS  
6875 PINE AVE  
CHINO CA 91710-9165

GEOFFREY VANDEN HEUVEL  
CBWM BOARD  
7551 KIMBALL AVE  
CHINO CA 92710-9269

ERICK VAUGHN  
ANGELICA RENTAL SERVICE  
1575 N CASE ST  
ORANGE CA 92867-3635

JAMES WARD  
THOMPSON & COLGATE  
P.O. BOX 1299  
RIVERSIDE CA 92502

MARK WARD  
AMERON INTERNATIONAL  
13032 SLOVER AVE  
FONTANA CA 92335-6990

RAY WELLINGTON  
SAN ANTONIO WATER COMPANY  
139 N EUCLID AVE  
UPLAND CA 91786-6036

CHARLES R. WHITE  
DEPT WATER RESOURCES-SO DIST  
770 FAIRMONT AVE  
GLENDALE CA 91203-1035

MICHAEL WHITEHEAD  
SAN GABRIEL VALLEY WATER CO  
P.O. BOX 6010  
EL MONTE CA 91734

MARK WILDERMUTH  
WILDERMUTH ENVIRONMENTAL INC  
415 N EL CAMINO REAL STE A  
SAN CLEMENTE CA 92672

JEROME WILSON  
CBWM BOARD  
6035 FALLING TREE LN  
ALTA LOMA CA 91737