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**FILED - West District
San Bernardino County Clerk**

MAR 30 2000

by [Signature]

5 Attorneys for CHINO BASIN WATERMASTER
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7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION**

11 CHINO BASIN MUNICIPAL WATER DISTRICT,)

CASE NO. RCV 51010

12 Plaintiff,)

Judge: Honorable J. MICHAEL GUNN

13 v.)

14 THE CITY OF CHINO,)

**JOINT STATEMENT OF THE
PARTIES OF LEGAL ISSUES**

15 Defendants.)

16 _____)
17 AND RELATED CROSS-ACTIONS.)
18 _____)

Date: April 6, 2000
Time: 1:30 PM
Dept: R8

19 **I. INTRODUCTION**

20 On March 16, 2000, a hearing was held in this court to determine the status of progress
21 toward the implementation phase of the Chino Basin Optimum Basin Management Program
22 (OBMP). The Court determined that there was a need to hold a further status hearing in order to
23 ascertain whether there are any outstanding legal issues that need to be addressed and to define
24 such issues.

25 Counsel for interested parties met on March 22, 2000, and agreed to exercise best efforts
26 to explore an expedited process for a negotiated resolution of the outstanding issues that might
27 delay or impede Watermaster's successful compliance with prior orders of this Court. The
28 Watermaster Board met in a special session on March 29, 2000, and approved this exploration

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1 and authorized legal counsel to facilitate a joint statement of the legal issues. All parties hereto
2 agree that the key legal issues are stated below.

3 **II. JOINT STATEMENT OF LEGAL ISSUES**

4 **A. ISSUE NO. 1: Does the Watermaster or the Court have the power to impose and**
5 **implement the Optimum Basin Management Program and under what conditions?**

6 The resolution of this issue may involve the consideration of various contentions made by
7 the parties, each of which may have some bearing on the power of Watermaster, whether it be
8 acting alone, with the consent of some or all parties or pursuant to order of the Court.
9 Specifically, the power to *impose* the OBMP over the objection of one or more parties is at the
10 heart of this issue. However, resolution of companion contentions may be inextricably
11 intertwined and therefore, require legal determinations regarding Watermaster and the rights of
12 individual parties to execute agreements, own property, water rights and facilities.

13 Examples of specific questions that might be the basis for contentions by the parties and
14 are relevant to the resolution of this issue include but are not limited to the following:

15 Who has the authority to compel implementation of the OBMP?

16 Does any other entity have authority to compel implementation of the OBMP provisions?

17 What is the Court's authority to implement the OBMP?

18 What is the Court's authority to modify the Judgment?

19 To what extent is Watermaster's authority limited by the Advisory Committee?

20 What are the circumstances under which the Court can appoint a Watermaster that is
21 opposed by the Advisory Committee?

22 Can a party remove itself from the Judgment?

23 Can Watermaster own and/or operate OBMP facilities?

24 Can existing public agencies own and/or operate OBMP facilities?

25 Does the Judgment authorize Watermaster to protect against land subsidence?

26 To what extent must the OBMP process coordinate with government agencies including
27 but not limited to the Department of Toxic Substances Control, the Regional Water Quality
28 Control Board, and the State Water Resources Control Board?

1 Can the State Water Resources Control Board reduce the rights of Chino Basin parties
2 adjudicated by this Court, not now used but prospectively useable to implement the OBMP?

3 Can the legislature augment or limit the authority of Watermaster?

4 Can the legislature augment or limit the authority of existing public agencies in the Basin
5 to implement the OBMP?

6 Can the Watermaster curtail require shift in production?

7 **B. ISSUE NO. 2: What legal limitations are there on the allocation of costs under the**
8 **Optimum Basin Management Program?**

9 Although related to the power of Watermaster to impose the OBMP (Issue No. 1), the
10 parties have identified the allocation of costs as a separate and independent issue from the
11 Watermaster's power to impose and implement the OBMP. Parties may contend that there are
12 legal limitations on the power of Watermaster to allocate costs under the OBMP. For example, to
13 what extent should the specific form of allocation take into account the tensions between
14 competing philosophies of general vs. special benefit?

15 Examples of specific questions that might be the basis for contentions by the parties and
16 are relevant to the resolution of this issue include but are not limited to the following:

17 How are costs to be apportioned?

18 To what extent must the general vs. special benefit reflect equal access to water
19 quality/quantity vs. choice of location?

20 Can the Overlying Ag-pool be exempt from OBMP assessments?

21 Can Overlying Ag pool be assessed for salt removal? Does the 1996 agreement disallow
22 such assessments?

23 Can Watermaster assess the parties for clean-up of the Basin?

24 Can Watermaster assess Overlying Ag-pool for capital improvements and expenditures to
25 increase safe yield?

26 Can Kaiser be assessed any further than it already has?

27 Can costs of replenishment be apportioned across management zones?
28

1 Can the Court authorize the Watermaster to impose assessments other than the specific
2 assessments described in the Judgment?

3 Can the California Legislature augment or limit the power of the Watermaster to
4 implement the OBMP?

5 Can the California Legislature augment or limit the power of the public agencies with
6 boundaries overlying the basin to implement the provisions of the OBMP?

7 To what extent are limitations imposed by Proposition 218?

8 Can any party be required to purchase water from the desalters and at what price?

9 **C. ISSUE NO. 3: What legal limitations are there on the Watermaster's and the**
10 **parties' acquisition, allocation, transfer or use of the basin's storage capacity or**
11 **recharge activities?**

12 Arguably resolution of this issue may turn on the determinations made within the Court's
13 evaluation of Issue No. 1. However, the fact that the Watermaster may have the power to impose
14 and implement the OBMP may not itself be determinative of the specific nuances that may arise
15 when addressing the power of Watermaster and the parties with regard to storage rights and
16 recharge activities. Parties may wish to raise contentions grounded in rights or powers that may
17 have accrued under the law.

18 Examples of specific questions that might be the basis for contentions by the parties and
19 are relevant to the resolution of this issue include but are not limited to the following:

20 Who has the right to control the basin's storage capacity?

21 Can Watermaster lease the storage capacity to parties outside the basin in order to create a
22 revenue stream for the OBMP?

23 What are the priorities for usage of storage space under the Judgment?

24 Is Watermaster's classification of recently controlled storm water as new water
25 allowable?

26 What is the correct method of calculating safe yield?

27 Are there legal preferences for methods of recharge?
28

1 **D. ISSUE No. 4: What legal limitations are imposed on the transfer of water and water**
2 **rights?**

3 The successful implementation of the OBMP will require certainty and clear guidelines
4 for future conduct. Some Parties may contend that successful OBMP implementation and lasting
5 “peace” requires a contemporaneous determination of the rights and procedures regarding the
6 transfer, lease and exchange of water.

7 Examples of specific questions that might be the basis for contentions by the parties and
8 are relevant to the resolution of this issue include but are not limited to the following:

9 In general, what rights do the parties have?

10 What are the rights of overlying pools to transfer water and water rights?

11 What are the allowable transfer procedures?

12 Is it allowable to transfer unallocated safe yield from the overlying ag pool to the
13 appropriative pool?

14 What legal limitations are imposed on the parties ability to export native, imported, and
15 reclaimed water?

16 **III. CONCLUSION**

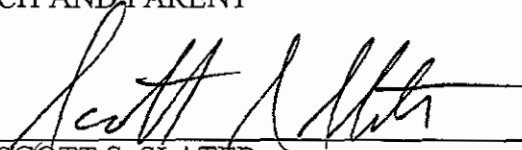
17 The parties acknowledge the contentious history of this matter. However, the lawyers for
18 the interested parties, including legal counsel for Watermaster, have begun regular meetings in an
19 effort to negotiate a settlement so that Watermaster can comply with the orders of this Court and
20 the established schedule. Toward this end, the Watermaster Board has approved a
21 recommendation for the lawyers to outline a process for expedited settlement negotiations that
22 would involve lawyers, principals and technical representatives, and to report on progress at an
23 April 4, 2000, special Watermaster Board meeting.

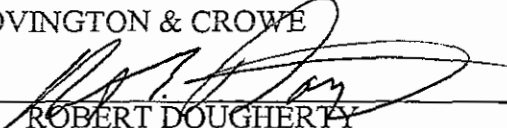
24 While the parties understand and appreciate the Court’s desire to have any material legal
25 issues decided prior to the entry of a Court determination regarding Watermaster’s compliance,
26 all parties are deeply concerned that a premature determination of legal issues and the time spent
27 briefing them would have a serious and negative impact on the potential success of a consensual
28 negotiating process. The parties are in agreement that there is no immediate need for resolution


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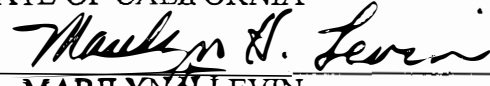
of these issues in order for meaningful negotiations to go forward at this time. Moreover, the parties believe that the legal issues identified herein are not presently ripe for determination. Accordingly, the parties, including Watermaster, respectfully request that this Court consider and respect demonstrated progress in arms length bargaining that is designed to occur within the Court's schedule for the OBMP.

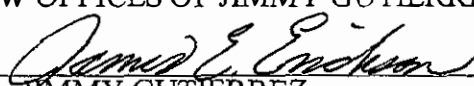
The parties would like this Court to reserve any decision concerning the legal issues to be briefed until the parties have an opportunity to be heard at the scheduled status report on April 6, 2000, and in papers that may be filed prior to that hearing. The parties are willing to maintain close contact with the Court and to report on the progress of substantive negotiations to either the Court or the Court Referee and to appear, if necessary, for a further status report on April 13, 2000, and thereafter as the Court may deem appropriate.

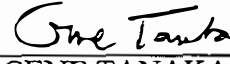
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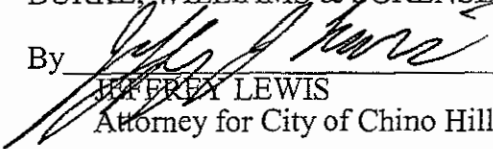
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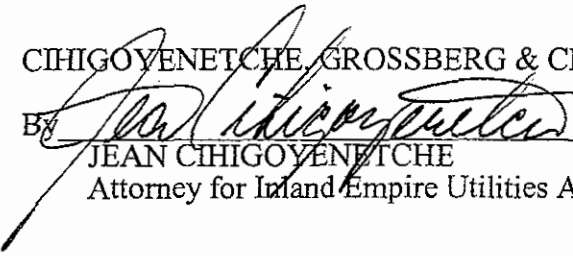
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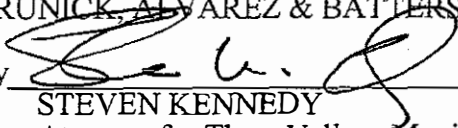
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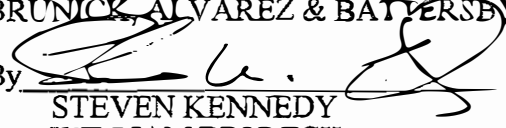
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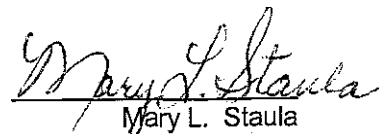
I declare that:

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 30, 2000, I served the documents identified below by placing a true and correct copy of same in sealed envelopes for overnight delivery by United States Postal Service mail at Rancho Cucamonga, California, to each of the addresses listed on the attached Attorneys Service List and Mailing List 1:

***JOINT STATEMENT OF THE PARTIES OF LEGAL ISSUES
for hearing April 6, 2000, 1:30 PM, Dept. R8***

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 30, 2000.


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CBWM BD
14111 SAN GABRIEL CT
RCH CUCA 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
SBC DEPT OF AIRPORTS
7000 MERRILL AVE BOX 1
CHINO CA 91710-9027

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

BOB PAGE
DAILY BULLETIN
P.O. BOX 4000
ONTARIO CA 91761

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

JEFFREY L. PIERSON
UNITEX/CORONA FARMS
2 HEXHAM ST
IRVINE CA 92612

ROBB QUINCEY
INLAND PACIFIC WATER COMPANY
8300 UTICA AVE 3RD FL
RCHO CUCA CA 91730

LEE REDMOND III
KAISER VENTURES INC
3633 E INLAND EMPIRE BLVD STE 850
ONTARIO CA 91764

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

DAVE 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

DIANE SANCHEZ
DWR
770 FAIRMONT AVE
GLENDALE CA 91203-1035

JOSEPH SCALMANINI
LUHDORF & SCALMININI
555 FIRST ST
WOODLAND CA 95695

JOE SCHENK
CITY OF NORCO
PO BOX 428
NORCO CA 91760-0428

DAVID SCRIVEN
KRIEGER & STEWART
3602 UNIVERSITY AVE
RIVERSIDE CA 92501

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

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

DAVID STARNES
MCMGMT. CO\SWAN LAKE
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

KEVIN SULLIVAN
LOS SERRANOS COUNTRY CLUB
15656 YORBA AVE
CHINO CA 91709

LENNA TANNER
CITY OF CHINO
PO BOX 667
CHINO CA 91708-0667

JIM TAYLOR
POMONA
148 N HUNTINGTON BLVD
POMONA CA 91768

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

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

DAVID THOMPSON
GENERAL ELECTRIC CO
640 FREEDOM BUSINESS CTR
KING OF PRUSSIA PA 19406

JOHN THORNTON
PSOMAS & ASSOCIATES
3187 RED HILL AVE STE 250
COSTA MESA CA 92626

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

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

GEOFFREY VANDEN HEUVEL
CBWM BD
7551 KIMBALL AVE
CHINO CA 91710

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

ERIC WANG
SUNKIST GROWERS INC
760 E SUNKIST ST
ONTARIO CA 91761

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

MARK WARD
AMERON
13032 SLOVER AVE
FONTANA CA 92335-6990

FRANK WARREN
STATE OF CALIFORNIA YCF
15180 EUCLID AVE
CHINO CA 91710

RAY WELLINGTON
SAWCO
139 N EUCLID AVE
UPLAND CA 91786-6036

CHARLES WHITE
DWR
770 FAIRMONT AVE
GLENDALE CA 91203-1035

MICHAEL WHITEHEAD
SAN BABRIEL VALLEY WC
P O BOX 6010
EL MONTE CA 91734

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

JEROME WILSON
CBWM BD/ALT
6035 FALLING TREE LN
ALTA LOMA CA 91737