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GOVERNMENT CODE SECTION 6103

FILED - West District  
San Bernardino County Clerk

SEP 22 2000

By Susan King Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN BERNARDINO  
10 RANCHO CUCAMONGA DISTRICT

11 CHINO BASIN MUNICIPAL WATER  
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendants.

Case No. RCV 51010  
Judge: J. Michael Gunn

DEFENDANT CUCAMONGA COUNTY  
WATER DISTRICT'S REPLY  
MEMORANDUM OF POINTS AND  
AUTHORITIES TO CITY OF CHINO'S  
OPPOSITION TO MOTION TO EXTEND  
THE NINE-MEMBER BOARD FOR A  
FULL FIVE-YEAR TERM

[Filed concurrently with Declaration of  
Robert A. DeLoach]

Date: September 28, 2000  
Time: 2:00 p.m.  
Dept: 8

1 REPLY MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 1. INTRODUCTION

4  
5 Defendant City of Chino's ("Chino") Opposition to Motion to Extend the Nine-Member  
6 Board for a Full Five-Year Term, dated September 18, 2000 ("Opposition"), ignores the relevant  
7 question before the Court and improperly attempts to revisit an issue which has been well-settled for  
8 some time. The six conditions set forth in the Court's July 13, 2000 Order have been satisfied. The  
9 Nine-Member Board ("Board") has proven itself throughout this process and should be extended, in  
10 its current structure, for a full five-year term without further delay. Chino's self-serving attempt to  
11 improve its own posture by excluding other appropriators from service on the Board is contrary to  
12 the Court's prior rulings and threatens to derail the progress that is being made toward  
13 implementation of the OBMP. Moreover, Chino's arguments can only be raised through a noticed  
14 motion and, therefore, are not properly before the Court. Accordingly, the Court should disregard  
15 Chino's Opposition and promptly grant the Watermaster's Motion.

16  
17 2. ANALYSIS

18  
19 A. CHINO'S POSITION IS INCONSISTENT WITH THE COURT'S JULY  
20 13, 2000 ORDER AND IGNORES THE ISSUES CURRENTLY BEFORE  
21 THE COURT

22  
23 In its Order dated July 13, 2000, the Court set forth six conditions to final approval of the  
24 OBMP and extension of the Board for a full five-year term. Those conditions are:

- 25  
26 1. Unanimous approval of the Peace Agreement by the parties thereto, no later than  
27 August 1, 2000;

- 1           2.     Certification of the Programmatic Environmental Impact Report for the OBMP by
- 2                     Inland Empire Utilities Agency;
- 3           3.     Appropriation by the California Legislature by October 1, 2000, of at least
- 4                     \$121,000,000 from the proceeds made available by the passage of Proposition 13, for
- 5                     the benefit of the Santa Ana Watershed Project Authority;
- 6           4.     Submission by September 1, 2000, of a schedule for Watermaster's adoption and
- 7                     Court approval of Uniform Groundwater Rules and Regulations; such adoption and
- 8                     approval to be accomplished no later than December 1, 2000;
- 9           5.     Submission by September 1, 2000, of a schedule and a process for submission to the
- 10                    Court of detailed periodic reports regarding compliance with OBMP Implementation;
- 11                    such periodic reports to commence no later than October 31, 2000; and
- 12           6.     Court approval of all Judgment modifications in furtherance of the OBMP.

13  
14           As set forth more fully in the Watermaster's Motion to Extend the Nine-Member Board For  
15 a Full Five-Year Term, dated August 30, 2000 ("Motion"), each of these six conditions have been  
16 satisfied. The Board has performed admirably throughout this process by facilitating the Peace  
17 Agreement and the OBMP. The Board has proven that it has what it takes to resolve the issues  
18 facing the Chino Basin. Accordingly, the current structure of the Board should be extended for a full  
19 five-year term without further delay.

20  
21           By failing to raise any disputed issue regarding the above six conditions or the extension of  
22 the Board in general, Chino's Opposition completely misses the mark. Rather than addressing the  
23 pertinent issues at hand, Chino raises arguments which are extraneous and wholly irrelevant to the  
24 extension of the Board. For instance, Chino urges the Court, under the guise of opposing the  
25 Motion, to further postpone a decision on the Board while it establishes a rotation schedule for the  
26 Appropriate Pool's seats on the Board. Not only is this argument irrelevant to whether the term  
27 of the Board should be extended for an additional five years, it is entirely lacking in merit.

28

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1 The Appropriative Pool does not need the Court to set new standards for rotation on the  
2 Board. As set forth in greater detail below, the standards already exist and are abundantly clear.  
3 Indeed, all of the Appropriators, including Chino, had previously agreed on a rotation schedule based  
4 on those standards. (Declaration of Robert A. DeLoach ("DeLoach Decl."); ¶¶ 3-5.) Only after the  
5 agreement had been reached did Chino begin demanding concessions and threatening to oppose the  
6 Motion if its demands were not met. (DeLoach Decl., ¶ 6.)

7  
8 Chino's proposed course risks disrupting the progress of recent months and the spirit of  
9 cooperation between the parties that took so long to reach. Thus, Chino's attempt to place its own  
10 self-interest in front of the common good by bringing a meritless Opposition to the Motion should  
11 be recognized for what it is and summarily rejected.

12  
13 B. CHINO'S POSITION IS CONTRARY TO THE COURT'S FEBRUARY 19,  
14 1998 RULING

15  
16 Throughout the negotiations within the Appropriative Pool and by way of its Opposition,  
17 Chino has sought to increase the frequency of its own participation on the Board by excluding other  
18 appropriators from participating. For example, Chino has attempted to exclude the Fontana Union  
19 Water Company on the grounds that it is controlled by other appropriators. Chino's argument runs  
20 directly contrary to the Court's February 19, 1998 ruling ("Ruling"), which provides: "Except as to  
21 members of the first Watermaster Board, Watermaster Board members shall serve staggered three-  
22 year terms. The appointments by the Municipal Water District boards, the Appropriative Pool and  
23 the Overlying (Non-Agricultural) Pool shall be made on a rotating basis with all members afforded  
24 an equal opportunity to serve." (Ruling, p. 5, Ins. 15-19 (emphasis added).)

25  
26 All appropriators are entitled to an equal opportunity on the Board, including those which may  
27 be owned by other appropriators. In fact, the Ruling specifically address the issue of cross-  
28 ownership. "Any member of the Appropriative Pool which owns or has a controlling interest in

1 another member of the Appropriative Pool will not be allowed to serve concurrently with said other  
2 member of the Appropriative Pool on the Watermaster Board.” (Ruling, p. 5, Ins. 3-6.) Thus, the  
3 Ruling clearly contemplates that no appropriator will be denied an opportunity to serve merely  
4 because it is owned by another appropriator. The only limitation is on concurrent service. Chino self-  
5 serving effort to impose new limitations which would deprive other appropriators of their rightful  
6 opportunity to serve is unjustified and unfair to the constituents of those appropriators.

7

8 C. CHINO’S OPPOSITION IS PROCEDURALLY IMPROPER

9

10 The Judgment provides a mechanism by which a party may seek the type of relief sought in  
11 Chino’s Opposition. Paragraph 15 of the Judgment reserves broad continuing jurisdiction to the  
12 Court as to virtually all matters contained in the Judgment. Paragraph 15 further provides:

13

14 Said continuing jurisdiction is provided for the purpose of enabling the  
15 Court, upon application of any party, the Watermaster the Advisory  
16 Committee of any Pool Committee, by motion and, upon at least 30  
17 days’ notice thereof, and after hearing thereon, to make such further  
18 or supplemental orders or directions as may be necessary or  
19 appropriate for interpretation, enforcement or carrying out of this  
20 Judgment, and to modify, amend or amplify any of the provision of this  
21 Judgment.

22

23 Chino, however, has failed to follow this procedure. Rather than bring a noticed motion as  
24 it is required to do under the Judgment, Chino has improperly included its request for relief in an  
25 Opposition to an unrelated motion. This attempted end-run around the established procedure  
26 effectively deprives all other parties of a fair opportunity to formulate a thorough response and  
27 threatens to derail the progress that is being made on implementation of the OBMP. If Chino wishes  
28 to bring a noticed motion to address the rotation issue, it certainly has the right and power to do so.

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1 Until then, however, the issue is not properly before the Court and should not be considered at the  
2 September 28, 2000 hearing. Therefore, CCWD joins with the Watermaster in urging the Court to  
3 promptly extend the current structure of the Board for a full five-year term and leave it to the parties  
4 to devise a just and fair rotation schedule.

5  
6 3. CONCLUSION

7  
8 Chino's arguments are not properly before the Court and, even if they were, they are contrary  
9 to the Court's prior rulings and totally lacking in merit. The Board has done a commendable job thus  
10 far, and ought to be extended, in its current structure, without further delay. With momentum on our  
11 side, it is incumbent on the Court to move this process along, and not get bogged down in the details  
12 of a minor dispute among the appropriators. Therefore, Cucamonga County Water District  
13 respectfully requests that the Court grant the Watermaster's Motion to Extend the Nine-Member  
14 Board for a Full Five-Year Term at the September 28, 2000 hearing.

15  
16 DATED: September 21, 2000.

BEST BEST & KRIEGER LLP

17  
18 By:   
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21 Attorneys for Defendant  
22 Cucamonga County Water District  
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6 Attorneys for Defendant  
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By Susan King  
Deputy

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9 COUNTY OF SAN BERNARDINO

10 RANCHO CUCAMONGA DISTRICT

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12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

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Case No. RCV 51010  
Judge: J. Michael Gunn

DECLARATION OF ROBERT A.  
DELOACH IN SUPPORT OF  
DEFENDANT CUCAMONGA COUNTY  
WATER DISTRICT'S REPLY  
MEMORANDUM OF POINTS AND  
AUTHORITIES TO CITY OF CHINO'S  
OPPOSITION TO MOTION TO EXTEND  
THE NINE-MEMBER BOARD FOR A  
FULL FIVE-YEAR TERM

[Filed concurrently with CCWD's Reply  
Memorandum of Points And Authorities]

Date: September 28, 2000  
Time: 2:00 p.m.  
Dept: 8

DECLARATION OF ROBERT A. DELOACH

I, Robert A. DeLoach, declare:

1. I have personal knowledge of the facts contained in this Declaration and, if called to testify, could and would testify truthfully to those facts.

2. I am the general manager of the Cucamonga County Water District ("CCWD"). As general manager, I am responsible for representing CCWD at meetings of the Appropriative Pool under the Judgment in this case.

3. At the Appropriative Pool meeting on August 28, 2000, and after great deliberation, the members of the Appropriative Pool reached a consensus on several factors which would guide the rotation scheme:

- Empowering parties to the judgment
- Fair opportunity to serve
- Fair representation of a producer's stake or interest in the basin
- Continuity of leadership
- Frequent renewed opportunity for service
- Geographical diversity
- Stability

4. These considerations lead to a categorization of the producers on the basis of relative size. Using the existing "volume vote" criteria already utilized by Watermaster, which is based on actual production and production assessments paid, the appropriators were placed into three categories based on relative size:



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- 1 • "Big" producers included City of Ontario, Fontana Water Company, City of  
2 Pomona, and Jurupa Community Services District  
3 • "Medium" producers included Monte Vista Water District, Fontana Union  
4 Water District, City of Chino, and Cucamonga County Water District  
5 • "Small" producers included City of Upland, San Antonio Water Company,  
6 Santa Ana River Water Company and City of Chino Hills  
7

8 5. Using the above categories, the producers formulated and agreed upon a rotation  
9 schedule. A true copy of the schedule is attached as Exhibit "A."  
10

11 6. Shortly after this consensus was reached, Chino began demanding concessions and  
12 threatening to oppose the Motion if its demands were not met. For example, Chino demanded that  
13 Fontana Union Water Company be removed from the rotation altogether because it is controlled by  
14 other appropriators.  
15

16 I declare under penalty of perjury under the laws of the State of California that the foregoing  
17 is true and correct.  
18

19 Executed on Sept. 21, 2000 at Rancho Cucamonga, California.  
20

21   
22 Robert A. DeLoach  
23  
24  
25  
26  
27  
28

Exhibit "A"

**CONSENSUS ROTATION SCHEDULE**

<b>FY</b>	<b>Big (2 yrs)</b>	<b>Med (2 yrs)</b>	<b>Small (3 yrs)</b>
01-02	FWC	CCWD	Monte Vista
02-03	FWC	Ontario <sup>1</sup>	Upland
03-04	Pomona	Chino	Upland
04-05	Pomona	Chino	Upland
05-06	Jurupa	Fontana Union	Minor Rep
06-07	Jurupa	Fontana Union	Minor Rep
07-08	Ontario	Monte Vista	Minor Rep
08-09	Ontario	Monte Vista	Chino Hills
09-10	FWC	CCWD	Chino Hills
10-11	FWC	CCWD	Chino Hills
11-12	Pomona	Chino	Minor Rep
12-13	Pomona	Chino	Minor Rep
13-14	Jurupa	Fontana Union	Minor Rep
14-15	Jurupa	Fontana Union	Upland

---

<sup>1</sup> This accommodation between Cucamonga and Ontario makes the term of service between Ontario, Monte Vista and Cucamonga equal.

## 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 September 22, 2000, I served the attached:

**Chino Basin Watermaster Hearing Date: 9/28/2000 2:00 p.m.**

- **REPLY TO BRIEF'S REGARDING MOTION TO EXTEND NINE-MEMBER BOARD**
- **DEFENDANT CUCAMONGA COUNTY WATER DISTRICT'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES TO CITY OF CHINO'S OPPOSITION TO MOTION TO EXTEND THE NINE-MEMBER BOARD FOR A FULL FIVE-YEAR TERM**
- **DECLARATION OF ROBERT A. DELOACH IN SUPPORT OF DEFENDANT CUCAMONGA COUNTY WATER DISTRICT'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES TO CITY OF CHINO'S OPPOSITION TO MOTION TO EXTEND THE NINE-MEMBER BOARD FOR A FULL FIVE-YEAR TERM**
- **CITY OF ONTARIO'S JOINDER IN MOTION TO EXTEND THE NINE-MEMBER BOARD FOR A FULL FIVE-YEAR TERM**

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

*See attached service lists:*

- Attorney Service List
- Mailing List A

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Rancho Cucamonga, California, on September 22, 2000.

  
Michelle Lauffer

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ONTARIO CA 91761

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

JAMES JENKINS  
CNTY OF SAN BERNARDINO  
7000 MERRILL AVE BOX 1  
CHINO CA 91710-9027

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

ROB KETTLE  
STATE OF CALIFORNIA, CIW  
P.O. BOX 6000  
CORONA CA 91718

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

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

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

GENE KOOPMAN  
13898 ARCHIBALD AVE  
ONTARIO CA 91761-7979

KRONICK ET AL  
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

RONALD LA BRUCHERIE  
12953 S BAKER AVE  
ONTARIO CA 91761-7903

MIKE LINTON  
VULCAN MATERIALS COMPANY  
3200 SAN FERNANDO RD  
LOS ANGELES CA 90065

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

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

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

DANA OLDENKAMP  
MILK PRODUCERS COUNCIL  
3214 CENTURION PL  
ONTARIO CA 91761

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

MARY PARENTE  
8559 EDISON AVE  
CHINO CA 91710-9242

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

JEFF PIERSON  
2 HEXAM ST  
IRVINE CA 92612

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

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

LES RICHTER  
CALIFORNIA SPEEDWAY  
P.O. BOX 9300  
FONTANA CA 92334-9300

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  
5705 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 C SCALMANINI  
500 FIRST ST  
WOODLAND CA 95695

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

JUDY SCHURR  
30587 LOS ALTOS DR  
REDLANDS CA 92373

DAVID SCRIVEN  
KRIEGER & STEWART ENGINEERING  
3602 UNIVERSITY AVE  
RIVERSIDE CA 92501

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

NELL SOTO  
STATE CAPITOL  
ROOM NO 4066  
SACRAMENTO CA 95814

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

MICHELE STAPLES  
JACKSON DEMARCO & PECKENPAUGH  
4 PARK PLAZA 16TH FL  
IRVINE CA 92614

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

TOM STETSON  
STETSON ENGINEERS INC  
3104 E GARVEY AVE  
WEST COVINA CA 91791

CRAIG STEWART  
GEOMATRIX CONSULTANTS INC.  
330 W BAY ST STE 140  
COSTA MESA CA 92629

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

SWRCB  
SWRCB - DIV 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

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

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

GEOFFREY VANDEN HEUVEL  
CBWM BOARD  
7551 KIMBALL AVE  
CHINO CA 91710

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

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

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  
DWR-SO DIST  
770 FAIRMONT AVE  
GLENDALE CA 91203-1035

MICHAEL WHITEHEAD  
SAN GABRIEL VALLEY WC  
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