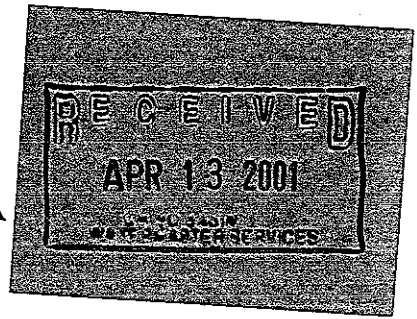


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10 COUNTY OF SAN BERNARDINO



11 CHINO BASIN MUNICIPAL WATER DISTRICT,

12 Plaintiff,

13 vs.

14 THE CITY OF CHINO,

15 Defendants.

) CASE NO. RCV 51010  
) Judge: Honorable J. Michael Gunn  
) Dept. R8

) MONTE VISTA WATER DISTRICT'S  
) STATEMENT OF NON-OPPOSITION  
) AND RESERVATION OF RIGHTS IN  
) RESPONSE TO CHINO BASIN WATER-  
) MASTER'S MOTION TO APPROVE  
) CHINO BASIN WATERMASTER  
) RULES AND REGULATIONS; AND  
) DECLARATION OF MARK KINSEY

) DATE: APRIL 19, 2001  
) TIME: 2:00 PM  
) DEPT: R8

16 Monte Vista Water District ("Monte Vista") presents the following "Statement of Non-  
17 Objection and Reservation of Rights" in response to the Chino Basin Watermaster "Motion to  
18 Approve Chino Basin Watermaster Rules and Regulations":

19 **I. NON-OBJECTION TO RULES AND REGULATIONS**

20 The Chino Basin Watermaster Rules and Regulations ("Rules and Regulations") must  
21 facilitate proper implementation of the Physical Solution contained in the Judgment in this case.  
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The Physical Solution, including the Optimum Basin Management Program (“OBMP”), should maximize economic, long-term conjunctive utilization of Basin water and supplemental water to meet the requirements of water users having rights in or dependent upon the Chino Basin (Judgment, ¶ 39, p. 23, Ins. 6-11). As this Court noted: “The imposition of a Physical Solution was intended to stop the growing decline in groundwater levels and storage capacity.” (July 13, 2000 Order Concerning Adoption of OBMP, p. 2, Ins. 7-8) The Physical Solution, through its OBMP additionally should maintain and improve water quality (Judgment, ¶ 41, p. 23, Ins. 22-23; Judgment Ex. “F”, ¶ 1(b), p. 79, Ins. 13-15; July 13, 2000 Order Concerning Adoption of OBMP, p. 2, Ins. 13-21; February 1998 Ruling, p. 8, Ins. 16-18).

Monte Vista persists in its concern that the Watermaster implement the Physical Solution in a manner which promotes those public interests. Monte Vista does not object to Court approval of the Rules and Regulations which have been compiled through the process of compromise and have been recommended by the Advisory Committee and adopted by Watermaster. However, Monte Vista does object to an interpretation of the Rules and Regulations which subverts the Watermaster role.

**II. RESERVATION OF RIGHTS**

Despite its non-objection to the Rules and Regulations, Monte Vista reserves its rights: (1) to object to Advisory Committee mandates of current Watermaster discretionary powers; (2) to obtain Court guidance and oversight of OBMP implementation by means of reference, or otherwise; and (3) to obtain enforcement, if necessary, of the Implementation Plan.

**A. RESERVED RIGHT TO OBJECT TO ADVISORY COMMITTEE MANDATES.**

Monte Vista objects to an Advisory Committee role which divests the Watermaster of its

1 discretion to determine whether the parties or the Chino Basin are being harmed. Since 1997, this  
2 Court and the Court-appointed Referee have recognized that the Watermaster failed to adopt and  
3 implement an OBMP because it had failed to act independent of the Advisory Committee  
4 (February 1998 Ruling, p. 11, ln. 20 to p. 12, ln. 1; September 28, 2000 Referee Report and  
5 Recommendation Concerning Motion to Extend Nine-Member Board, p. 2, lns. 3-10; December  
6 12, 1997 Report and Recommendation of Special Referee to Court Regarding: (1) Motion for  
7 Order that Audit Commissioned by Watermaster is not a Watermaster Expense, and (2) Motion to  
8 Appoint a Nine- Member Watermaster Board, p. 2, ln. 14 to p. 3, ln. 2; page 5, lns. 13-15; p. 22,  
9 ln. 20 to p. 27, ln. 20; p. 34, ln. 2 to p. 35, ln. 6--"The Advisory Committee has, in effect, usurped  
10 that role through the Task Force Plan process.").

11  
12  
13 The Court and Referee expect the Watermaster to exercise its power to adopt and  
14 implement the Physical Solution and its OBMP independent of Advisory Committee mandate  
15 (February 1998 Ruling, p. 11, ln. 20 to p. 12, ln. 1; December 12, 1997 Report and  
16 Recommendation of Special Referee to Court Regarding: (1) Motion for Order that Audit  
17 Commissioned by Watermaster is not a Watermaster Expense, and (2) Motion to Appoint a Nine-  
18 Member Watermaster Board, p. 11, ln. 13 to p. 15, ln. 5; p. 34, ln. 2 to p. 35, ln. 6).

19  
20 The Rules and Regulations and the Watermaster Motion to Approve the Rules and  
21 Regulations evidence that, collectively, the parties have not been able to resolve whether the  
22 Watermaster should be able to exercise its present discretionary powers to implement the Physical  
23 Solution independent of Advisory Committee mandates (See Rules and Regulations, Rules 1.4,  
24 10.17, 10.25; See also Watermaster Motion to Approve Rules and Regulations, p. 4, lns. 18-21).

25  
26 The implementation of the Physical Solution and of the OBMP should not falter in its  
27 progress because the Watermaster cannot act independently of the Advisory Committee. Monte  
28

1 Vista reserves its rights to object to Advisory Committee mandates other than those specified in  
2 the December 12, 1997 Report and Recommendation of Special Referee to Court Regarding: (1)  
3 Motion for Order that Audit Commissioned by Watermaster is not a Watermaster Expense, and  
4 (2) Motion to Appoint a Nine- Member Watermaster Board, p. 11, ln. 13 to p. 15, ln. 5; p. 34, ln.  
5 2 to p. 35, ln. 6.  
6

7 **B. RESERVED RIGHT TO OBTAIN OVERSIGHT BY REFEREE.**  
8

9 This Court decided to provide guidance and oversight of the Watermaster and of its  
10 OBMP process through appointment of the Referee and Engineer in order to prevent the Advisory  
11 Committee from usurping Watermaster independence (February 1998 Ruling, p. 8, ln. 15 to p. 9,  
12 ln. 16; December 12, 1997 Report and Recommendation of Special Referee to Court Regarding:  
13 (1) Motion for Order that Audit Commissioned by Watermaster is not a Watermaster Expense,  
14 and (2) Motion to Appoint a Nine- Member Watermaster Board, p. 29, ln. 19 to p. 30, ln. 5; p. 33,  
15 lns. 23-26; September 28, 2000 Referee Report and Recommendation Concerning Motion to  
16 Extend Nine-Member Board, p. 2, lns. 3-5).  
17

18 The Court has been gauging the independence of the current Watermaster according to its  
19 progress in the adoption and implementation of the OBMP (See September 28, 2000 Referee  
20 Report and Recommendation Concerning Motion to Extend Nine-Member Board, p. 2, lns. 17-  
21 19). Monte Vista requests that this Court continue to monitor the progress of the OBMP through  
22 the Referee and Engineer until there is adequate assurance that the Implementation Plan has been  
23 or will be followed. Monitoring by the Referee has previously been embraced by the parties in this  
24 case (December 12, 1997 Report and Recommendation of Special Referee to Court Regarding: (1)  
25 Motion for Order that Audit Commissioned by Watermaster is not a Watermaster Expense, and  
26 (2) Motion to Appoint a Nine- Member Watermaster Board, p. 29, ln. 19 to p. 30, ln. 5).  
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1 Monte Vista is concerned that many water producers in Chino Basin would like to be freed  
2 from oversight by the Special Referee so that they, through the Advisory Committee, can return to  
3 the regime of dominion over the Watermaster.  
4

5 **C. RESERVED RIGHT TO ENFORCE IMPLEMENTATION OF OBMP.**

6 This Court has adopted the OBMP and its Implementation Plan. Monte Vista has reserves  
7 its right to seek enforcement of the Implementation Plan in the event that the Advisory Committee  
8 pressures the Watermaster to backslide on the Implementation Plan.  
9

10 As a particular example, the Implementation Plan for the OBMP lists, in Table 1 thereof,  
11 facilities for recharge. The Implementation Plan expressly states: "All the facilities listed in Table 1  
12 for supplemental recharge in Management Zone 1 will need to be constructed to meet  
13 replenishment obligations and to balance recharge with production." (July 13, 2000 Watermaster  
14 Motion for Order Approving Watermaster's Adoption of the OBMP and Directing Watermaster to  
15 Proceed in Accordance with the Peace Agreement, the OBMP Implementation Plan, and the Pro  
16 Forma Recharge Memorandum of Agreement, Attachment II [Peace Agreement], Exhibit B, p.  
17 15). Table 1 lists specific facilities and recharge projects and ranks them in order of priority. The  
18 priority of ranking therein was crucial to the votes of Monte Vista representatives on the Advisory  
19 Committee and Watermaster Board in adoption of the Peace Agreement (See attached Declaration  
20 of Mark Kinsey).  
21

22 The March 30, 2001 OBMP Implementation Status Report reveals that Watermaster staff  
23 appears to be readjusting these priorities with respect to implementation of recharge in  
24 Management Zone 1. Page 5 of that Report references a "Schedule of OBMP Activities and  
25 Status" contained in Exhibit "A." Line 128 of Exhibit "A" indicates that the prioritization of  
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recharge projects is still an ongoing process, despite Table 1 of the Implementation Plan and this Court's order adopting the Implementation Plan.


Additionally, the Watermaster appears to be discriminating between the implementation of groundwater management programs for Management Zones 1 and 3 in the March 30, 2001 OBMP Implementation Status Report. With respect to Management Zone 3, the language of the Report (p. 6, ln. 28 to p. 7, ln. 7) and of Exhibit "A" (lines 157-160) focuses on balancing recharge and discharge and on implementation of a management plan. Whereas, with respect to Management Zone 1, the language of the Report (p. 6, lns. 20-27) and of Exhibit "A" (lines 151-156) focuses on mere development of an interim management strategy.

**III. SUMMARY.**

Monte Vista appreciates the dedication of this Court and its appointed Referee and Engineer in monitoring the progress of the OBMP. Monte Vista understands and appreciates the tremendous effort which has been made in establishing principles of agreement and rules which govern. However, Monte Vista urges this Court's continued monitoring through the Referee and Engineer to insure successful implementation of the Physical Solution in general and of the OBMP in particular.

DATE: April 12, 2001

McCORMICK, KIDMAN & BEHRENS, LLP  
ARTHUR G. KIDMAN  
BOYD D. HILL

By:   
ARTHUR G. KIDMAN  
Attorneys for MONTE VISTA WATER  
DISTRICT

DECLARATION OF MARK KINSEY

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MCCORMICK, KIDMAN & BEHRENS, LLP  
LAWYERS

I, Mark Kinsey, declare as follows:

1. I am the general manager of Monte Vista Water District (the "District"). In my position, I attend District board meetings and am aware of its policy goals and decisions with respect to the Physical Solution and its Optimum Basin Management Program ("OBMP") in this case.

2. At all times, it has been the District's policy to follow the Physical Solution by adopting and implementing the OBMP in a manner which maintains the Chino Basin as a public resource without usurpation by narrow producer interests. That policy requires that physical recharge of water where necessary to maintain the integrity of the Chino Basin and the public interests. This Statement of Non-Opposition is filed to reiterate the District's policy with regard to the adoption of the Rules and Regulations.

3. The District representative on the Advisory Committee and Watermaster Board voted to approve the Peace Agreement based, in significant part, on the priorities for recharge facilities and implementation identified in the Implementation plan.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 12th day of April 2001.

  
MARK KINSEY

**PROOF OF SERVICE**  
**CCP 1013a(3)**  
**FRCP 5(b)**

STATE OF CALIFORNIA, COUNTY OF ORANGE

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 400, Costa Mesa, California 92626-7187.

On April 12, 2001, I served the foregoing document described as **MONTE VISTA WATER DISTRICT'S STATEMENT OF NON-OPPOSITION AND RESERVATON OF RIGHTS IN RESPONSE TO CHINO BASIN WATER-MASTER'S MOTION TO APPROVE CHINO BASIN WATERMASTER RULES AND REGULATIONS; AND DECLARATION OF MARK KINSEY** on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

- BY 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 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.
- BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee.
- BY FACSIMILE:** I transmitted said document by fax transmission from 714.744.3110 to the fax number(s) indicated. The transmission was reported as complete and without error on the transmission report which was properly issued by the transmitting fax maching.
- (STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 12, 2001, in Costa Mesa, California.

  
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**CHINO BASIN WATERMASTER**  
Case No. RCV 51010  
Chino Basin Municipal Water District v. The City of Chino

**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 April 13, 2001, I served the document identified below:

**MONTE VISTA WATER DISTRICT'S STATEMENT OF NON-OPPOSITION AND  
RESERVATION OF RIGHTS IN RESPONSE TO CHINO BASIN WATERMASTER'S  
MOTION TO APPROVE CHINO BASIN WATERMASTER RULES AND REGULATIONS;  
AND DECLARATION OF MARK KINSEY**

by placing a true copy of same in sealed envelopes for delivery by United States Postal Service mail at Rancho Cucamonga, California, to each of the addresses shown on the attached service lists:

- 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 April 13, 2001.

  
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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 KING  
CONSULTANT TO SENATOR NELL SOTO  
822 N EUCLID AVE  
ONTARIO CA 91762

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

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

FRED LANTZ  
CBWM BD/ALTERNATE (TVMWD)  
P.O. BOX 2701  
POMONA CA 91769

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  
CBWM BD MEMBER/FWC  
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 DIS  
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

ROBERT NICHOLSON  
SAN GABRIEL VALLEY WC  
P.O. BOX 6010  
EL MONTE CA 91734-2010

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

STAN OWENS  
STATE OF CA CIM  
P.O. BOX 128  
CHINO CA 91710

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  
CITY OF HESPERIA  
15776 MAIN ST  
HESPERIA CA 92345

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

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

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500 FIRST ST  
WOODLAND CA 95695

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

DONALD SCHROEDER  
CBWM BOARD  
3700 MINTERN  
RIVERSIDE CA 92509

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

KYLE SNAY  
SOUTHERN CA WATER CO  
401 S SAN DIMAS CANYON RD  
SAN DIMAS CA 91773

NELL SOTO  
STATE CAPITOL  
ROOM NO 4066  
SACRAMENTO CA 95814

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

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

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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  
1021 E MIRAMAR AVE  
CLAREMONT CA 91711-2052

GEOFFREY VANDEN HEUVEL  
CBWM BOARD  
7551 KIMBALL AVE  
CHINO CA 91710

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

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