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FILED-Rancho Cucamonga District
 SAN BERNARDINO COUNTY
 SUPERIOR COURT

JAN 31 2002

By Dave H. Wolford Deputy

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

11 CHINO BASIN MUNICIPAL WATER)
 12 DISTRICT,)

13 Plaintiff,)

14 v.)

16 THE CITY OF CHINO,)

17 Defendants.)

CASE NO. RCV 51010
 [Judge: Honorable J. Michael Gunn]

**RESPONSE OF THE CITY OF
 CHINO TO THE COURT'S
 ORDER FOR INFORMATION;
 AND MOTION PURSUANT TO
 PARAGRAPH 15 OF THE
 JUDGMENT**

DATE: February 28, 2002
 TIME: 2:00 p.m.
 DEPT: 8

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I.

INTRODUCTION

A. The Immediate Problem.

Chino has an immediate problem that cries out for relief. An area of approximately 200 acres within the City of Chino is sinking. This area is located along Central Avenue between Schaefer Avenue on the north and Eucalyptus Avenue on the south. Since 1987, this area has sunk more than 2 feet, including a much smaller area that sunk approximately 2 1/2 feet. Hereafter, this area shall be referred to as "the Area of Subsidence." The depth that this area has sunk far exceeds the one to two inches of subsidence experienced in a much wider area of the Chino Basin within which the "Area of Subsidence" is located. This Area of Subsidence has been well documented and is not in dispute.

B. The Dispute.

What is in dispute is the cause of the subsidence. The City of Chino has believed for some time that the sinking in the Area of Subsidence is caused by Chino Hills production of water from the deep aquifers beneath the Area of Subsidence. However, the City of Chino Hills disputes that its production of water from the deep aquifers beneath the Area of Subsidence is the cause of the subsidence in that Area. Also, Watermaster is not ready to make such a determination. Both believe that more information is necessary.

However, the City of Chino believes that the mountain of available evidence clearly demonstrates the causal connection between the sinking in the Area of Subsidence and Chino Hills production of water from the deep aquifers beneath that Area.

Further, the City of Chino retained GeoPentech to interpret all of available data as to its sufficiency from which to determine the cause of the sinking of the Area of Subsidence and if so to ascertain the cause or causes. The report of GeoPentech concludes that the cause of the sinking in the Area of Subsidence is Chino Hills production of water from the deep aquifers beneath the Area of Subsidence. (See Declaration of Patrick J. Glover, with the attached report by GeoPentech).

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1 **C. Risk of No Action.**

2 As the studies and discussions about the cause of sinking in the Area of Subsidence
3 continue, so do the risks of subsidence in that Area. While no one can predict when the
4 sinking in the Area of Subsidence will cause actual physical damage, it is reasonable to
5 assume that it will occur if the subsidence continues.

6 The greatest risk is to do nothing. Watermaster may well believe that the cause
7 should be studied further; but the City of Chino believes that the cause is clear and that the
8 time is now to focus on a solution.

9 **D. Assumption of Jurisdiction.**

10 The first step is for the Court to assume jurisdiction over the land subsidence in the
11 Area of Subsidence within the City of Chino. It is observed that the City of Chino Hills
12 and Watermaster, both, agree that the Court has jurisdiction to resolve the disputes between
13 the City of Chino and the City of Chino Hills under paragraph 15 of the Judgment herein.
14 However, it does not appear that the Court has so determined and another party to this
15 Judgment may contest the Court's jurisdiction.

16 It is no secret that the City of Chino Hills disputes the contention of the City of
17 Chino that the Area of Subsidence is being caused by Chino Hills production of water from
18 the deep aquifers beneath that Area. This past year, it was suggested that Watermaster may
19 have a mandatory or adequate binding process by which to resolve this dispute, although
20 the City of Chino questioned its availability and adequacy.

21 Nevertheless, the City of Chino submitted a written request to Watermaster about
22 the availability such a remedy on September 26, 2001. (See Declaration of Jimmy L.
23 Gutierrez and Exhibits attached thereto). However, on October 31, 2001, John Rossi, the
24 C.E.O of the Chino Basin Watermaster, wrote a letter to the City of Chino stating that
25 Watermaster had declined the invitation to determine the availability of Watermaster
26 remedies. Therein, he also stated as follows: "*Watermaster recommends that Chino or*
27 *any other party to the Judgment that desires relief related to evaluating the causes,*
28 *arresting, or mitigating subsidence that they file a Request for Judicial Relief Under*

1 *Paragraph 15 of the Judgment. Please be assured that in the event the City of Chino or*
2 *any other party to the Judgment makes such a request, Watermaster will file its petition*
3 *with the Court acknowledging Watermaster's jurisdiction over the subject matter and*
4 *request the Court for direction on how it should precede."*

5 Most recently, the City of Chino Hills filed a Petition for Writ of Mandate against
6 the City of Chino on December 7, 2001. In paragraph 7, thereof, the City of Chino Hills
7 states that venue for the petition was "*before the Honorable J. Michael Gunn, the*
8 *designated judge to hear all disputes among water producers relating to the Chino Basin,*
9 *pursuant to Article IV, paragraph 15 of the final Judgment in the case entitled" Chino*
10 *Basin Municipal Water District v. City of Chino, et al., San Bernardino Superior Court*
11 *case number RCV 164325, now designated number RCV 51010."* Further, the City of
12 Chino Hills alleges in paragraph 27 of the petition that "*the subsidence dispute is, however,*
13 *within the exclusive jurisdiction of the Honorable J. Michael Gunn, as provided in the*
14 *Judgment."*

15 While the City of Chino also believes that this Court has jurisdiction pursuant to
16 paragraph 15 of the Judgment herein to resolve what the City of Chino Hills refers to as the
17 "*subsidence dispute*" including the causes and remedies of land subsidence in the Area of
18 Subsidence within the City of Chino, it is not all together clear that such a determination
19 has been made, and other producers may object to the Court's assumption of jurisdiction
20 with respect to these issues. The City of Chino acknowledges the Order made by the
21 Honorable Joseph E. Johnston on December 19, 2001, in City of Chino Hills v. City of
22 Chino, case number RCV 059670 and the Order made by the Honorable J. Michael Gunn
23 on the same date in this case. However, it is not clear whether either Order confirms the
24 Court's jurisdiction regarding this dispute.

25 As an example, the Order by Judge Johnston provides, in pertinent part, as follows:
26 "*The Court construes the petition by the City of Chino Hills as encompassing two separate*
27 *matters . . . The second matter is properly described as a motion brought under paragraph*
28 *15 of the Judgment. [In RCV 51010], which encompasses all claims pertaining to the rights*

1 *and obligations of the parties with respect to the production of water in the Chino Basin,*
2 *including any issues related to subsidence."* However, such an Order falls short of ruling
3 that the Court has jurisdiction to resolve those disputes.

4 Likewise, on December 19, 2001, the Honorable J. Michael Gunn issued an Order
5 in this action and makes two recitals and then orders the parties in this action "*to report on*
6 *the status of the technical work performed to date by Watermaster and other concerning*
7 *subsidence and related issues."* The first recital to that Order states that the City of Chino
8 Hills filed a Petition for Writ of Mandate against the City of Chino "*raising issues related*
9 *to the rights and obligations of the parties with respect to the production of water in the*
10 *Chino Basin, including any issue related to subsidence, which are subject to the continuing*
11 *jurisdiction of this Court under paragraph 15 of the Judgment herein, and therefore, must*
12 *be brought in this Court as a Motion for Relief Under Paragraph 15 of the Judgment."*

13 Likewise, the second recital states, "*it has been determined that only those issues that are*
14 *subject to the continuing jurisdiction of the Court under paragraph 15 of the Judgment*
15 *shall be specially assigned to this Court."* Said order and recitals also fall short of a clear
16 statement that the Court has assumed or will assume jurisdiction of the dispute between the
17 City of Chino Hills and the City of Chino regarding water production and land subsidence
18 disputes.

19 II.

20 REQUEST FOR RELIEF UNDER PARAGRAPH 15

21 The City of Chino respectfully requests the Court to assume jurisdiction over its
22 dispute with the City of Chino Hills regarding water production and land subsidence. The
23 purpose, without limitation, of this request is to resolve the following issues:

24 (a) Whether the City of Chino Hills' production of water from the deep aquifers
25 within the City of Chino is causing land subsidence in an area approximately 200 acres in
26 size that is located along Central Avenue from Schaefer Avenue on the north to Eucalyptus
27 Avenue on the south; and if so, to fashion a remedy to abate the land subsidence.

28

1 (b) Whether Chino Hills proposed purchase of ground water from the Monte
 2 Vista Water District will have the potential to degrade the quantity or quality of water that
 3 Chino now extracts from its northerly wells; and, if so, to fashion a remedy that will avoid
 4 set impacts.

5 As to these two overriding issues, the first is immediate while the second is not, as
 6 production has not yet commenced.

7 In seeking this relief, Chino is willing to submit itself to any reasonable process
 8 suggested by the Court. However, the City of Chino is concerned that any process
 9 involving Watermaster may not be viable, because the appropriators may be required to
 10 finance some portion of the ultimate remedy. Under paragraph 5.4(d) of the Peace
 11 Agreement, a producer such as Chino Hills is entitled to apply *"to Watermaster for*
 12 *reimbursement or credit against future OBMP Assessments for any capital or operations*
 13 *and maintenance expenses incurred in the implementation of any project or program,*
 14 *including the costs of relocating ground water production facilities, that carries out the*
 15 *purposes of the OBMP including but not limited to those facilities relating to the*
 16 *prevention of subsidence in the basin."*

17 The City of Chino welcomes the Court's resolution of these disputes directly, but
 18 understands that the Court can delegate some aspects of the resolution process to
 19 Watermaster or the special referee. In such an event, Chino will cooperate with any such
 20 process but requests that such a process be reviewed *de novo* by the Court as required by
 21 paragraph 15 of the Judgment.

22
 23 **III.**

24 **THE COURT HAS JURISDICTION TO ORDER A PARTY TO ABATE THE**
 25 **CAUSES OF SUBSIDENCE OR TO IMPLEMENT A PROCESS BY WHICH TO**
 26 **MITIGATE SUCH SUBSIDENCE**

27 The Court has broad jurisdiction to fashion and authorize implementation of a
 28 remedy by which to manage the water resources of the Basin to avoid subsidence, in the

1 exercise of its continuing jurisdiction over administration of its Physical Solution for the
2 Chino Basin.

3 **A. The Judgment Was Intended to Implement a Physical Solution.**
4

5 The Judgment sets forth the parameters under which the Court retains jurisdiction in
6 order to oversee the development and implementation of the Physical Solution. Paragraph
7 15 of the Judgment reserves to the Court full jurisdiction, power and authority as to all
8 matters contained in the Judgment unless the matters are expressly exempted.¹

9 At its core, the Judgment requires that a Physical Solution be developed. (Judgment
10 Article VI, pp. 39-57.) The purpose of the Physical Solution is to maximize the beneficial
11 utilization of the Basin pursuant to the mandate of Article X, § 2 of the California
12 Constitution so that the Basin can be maintained to function as a common pool resource
13 from which all of the parties can continue to receive benefit. The Court's continuing
14 jurisdiction is provided for the purpose of enabling the Court to make further Orders as is
15 necessary or appropriate for the interpretation, enforcement or carrying out of the
16 Judgment, and to modify, amend or amplify any of the provisions of the Judgment.
17 (Judgment, 15, pp. 11-12.) In addition, Article VI of the Judgment describes the Physical
18 Solution and it expressly directs the Watermaster to develop an Optimum Basin
19 Management Program ("OBMP") to create and implement the management elements that
20 will lead to a maximization of the Basin resources. (Judgment, pg. 41.)
21

22 **B. The Plain Meaning of the Judgment the Court to Make Orders that**
23 **Provides Remedies for the Consequences of Groundwater Production Including**
24 **Subsidence.**
25
26

27 ¹ The retained jurisdiction of the Court is limited only in respect to (1) the redetermination of Safe Yield
28 during the first 10 years of operation of the Judgment;(2) the allocation of Safe Yield among the Pools; (3) the
determination of specific rights in the Safe Yield; and (4) the method of allocation and recovery of replenishment
assessments except under certain circumstances.

1 The same rules of interpretation apply in ascertaining the meaning of a judgment as
2 in ascertaining the meaning of any other similar writing. Strohm v. Strohm, (1960) 182
3 Cal.2d 53. A stipulated judgment in particular is regarded as a contract between the parties
4 and is to be construed as a contract. Hi-Desert County Water District v. Blue Skies
5 Country Club, (1994) 23 Cal.App.4th 1723; In re Application of Ferrigno, (1937) 22
6 Cal.App.2d 472. Intent is the paramount feature of a contract, and the function of all
7 interpretation is to try to ascertain the true intent of the parties. Scott v. Sun-Maid Raisin
8 Growers Assn., (1936) 13 Cal.App.2d 353.)

9 In Pasadena v. City of Alhambra, (1949) 33 Cal.2d 908 the term "safe yield" was
10 defined solely in terms of a balance between extractions and additions to the groundwater
11 basin. Any lowering of the water table was susceptible to being characterized as an
12 "undesirable result." Subsequently, the California Supreme Court in City of Los Angeles
13 v. City San Fernando, (1975) 14 Cal.3d 199, broke free from this rigid definition and
14 instead looked at a broader context for basin management. The San Fernando opinion was
15 issued just three years prior to the entry of the Judgment in the instant case. Thus, the
16 Court may presume that this is the meaning the parties gave to the phrase "undesirable
17 result" at the time when the Judgment was entered rather than the rigid characterization
18 used in the Pasadena case.

19 In the twenty-seven years since entry of Judgment in San Fernando, the
20 understanding that land subsidence may be an "undesirable result" and thus a part of the
21 concept of Safe Yield, has become a commonplace. In a standard textbook on the subject
22 first published in 1980, it is stated that:

23 *The [Safe Yield] of a groundwater basin defines the rate at which water can be*
24 *withdrawn perennially under specified operating conditions without producing an*
25 *undesired result. An undesired result is an adverse situation such as (1) progressive*
26 *reduction of the water resource, (2) development of uneconomic pumping*
27 *conditions, (3) degradation of groundwater quality, (4) interference with prior*
28 *water rights, or (5) land subsidence caused by lowered groundwater levels.*

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Todd, Groundwater Hydrology 363-364 (2nd ed.)

3. The Peace Agreement and the Implementation Plan.

The fact that "subsidence" was intended to be resolved can be found in the parties agreement to not oppose the OBMP Implementation Plan that was an Exhibit to the Peace Agreement. Moreover, Program Element 4 thereto establishes the goal of abating subsidence, as it was approve by order of this court. It clearly states:

"The occurrence of subsidence and fissuring in Management Zone I is not acceptable and should be reduced to tolerable levels or abated. The OBMP calls for a management plan to reduce or abate the subsidence and fissuring problems to the extent that it may be caused by production in MZ1."

IV.

THE COURT SHOULD ISSUE AN ORDER INDICATING ITS ASSUMPTION OF JURISDICTION OVER THE ISSUES OF WATER PRODUCTION AND SUBSIDENCE IN DISPUTE BETWEEN THE CITIES OF CHINO AND CHINO HILLS AN PROCEED TO ESTABLISH A PROCESS FOR RESOLVING SAME

No absolute certainty of the causes of subsidence damage ever can be achieved, but that level of certainty is not necessary for meaningful mitigation of that phenomenon. All existing data concludes that the logical cause of subsidence in the City of Chino is production from the deep aquifer wells of the City of Chino Hills located within the City of Chino; and the most recent study and analysis of Geopentech concludes not only that such production is the only credible cause of such subsidence, but also that there are no other credible causes. This subsidence has occurred over a long period of time, and has been the subject of numerous studies of various types. The City of Chino should not have to suffer


1 further risks by waiting on further studies when it is necessary to take action to mitigate
2 subsidence, at least on an interim basis.

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Dated: January 31, 2002

JIMMY L. GUTIERREZ
City Attorney

By:



Jimmy L. Gutierrez
Attorneys for Defendant
CITY OF CHINO

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REVISION, 01-22-01

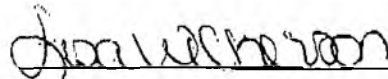
[X] by regular mail;

[X] I caused such envelope(s) to be deposited in the mail at Chino, California. The envelope was mailed with postage thereon fully prepaid.

[X] I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing, under which it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Chino, California. 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 (1) day after deposit of mailing affidavit.

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

Executed on January 31, 2002, at Chino, California.



Lisa Wilkerson

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FILED-Rancho Cucamonga District
SAN BERNARDINO COUNTY
SUPERIOR COURT

JAN 31 2002

By Dave H. Welford Deputy

8 Attorneys for Defendant THE CITY OF CHINO

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

11 CHINO BASIN MUNICIPAL WATER)
12 DISTRICT,)

CASE NO. RCV 51010
[Judge: Honorable J. Michael Guinn]
RECEIVED
JAN 31 2002
RANCHO CUCAMONGA DISTRICT

13 Plaintiff,

DECLARATION OF PATRICK
J. GLOVER

14 v.

15 THE CITY OF CHINO,

DATE: February 28, 2002

16 Defendants.

TIME: 2:00 p.m.

DEPT: 8

23
24 I, PATRICK J. GLOVER, state and declare as follows:

25 1. I am Director of Public Works and City Engineer, for the City of Chino and I
26 have held this position since 1998.

27 2. The following facts are from my personal knowledge, and if called as a
28 witness I could and would so competently testify thereto under oath.

1 3. I received a Bachelor of Science Degree in Civil Engineering from California
2 State Polytechnic University, Pomona, in 1981. The emphasis of my studies was in
3 structural design and analysis of buildings. I am a licensed Civil Engineer, in the State of
4 California, licensed number 38164. I am also a Certified Building Official, licensed
5 number 1157 and a licensed Plans Examiner, licensed number 18338.

6 4. I have over 20 years of experience in the field of engineering. I worked in
7 responsible positions in four governmental agencies and a private engineering company at
8 such I was a principal. That experience consists of the following:

9 (a) From 1981 until 1992, I worked in the building and safety field. For
10 the cities of Los Angeles, Burbank, and West Covina. In this capacity, I reviewed building
11 plans including structural calculation reviews for both vertical and lateral loading on
12 buildings that ranged in size from single family homes to high-rise structures.

13 (b) From 1986 until 1988, I was a principal in a civil engineering
14 company. During that time, I performed structural analysis and prepared calculations for a
15 variety of buildings from single family homes to three-story steel-framed structures.

16 (c) From 1992 to the present time, I have been working in the public
17 works and city engineering for local governments. From 1994 to 1998, I was a Public
18 Works Director and City Engineer for the City of West Covina. From 1998 to the present,
19 I have been employed as the Public Works Director and City Engineer for the City of
20 Chino. In these positions, I have been responsible for all aspects of Public Works and
21 Civil Engineering of the design, construction and maintenance of the infrastructure of the
22 cities. Further, I have been responsible for the review of design of all private development
23 within the cities.

24 5. In my capacity as Public Works Director and City Engineer for the City of
25 Chino, I have reviewed and become familiar with the data regarding subsidence within the
26 southern portion of the City of Chino along Central Avenue between Schaefer Avenue on
27 the north and Eucalyptus Avenue on the south. In particular, I have carefully reviewed the
28 studies, surveys and mappings that have been performed for the past 10 years regarding

1 subsidence of land in this area, including all of the following:

2 (a) Final Report Ground Fissure Study for C.I.M., august 1994 by
3 Geomatrix Consultants.

4 (b) Three Reports from Kleinfelder.

5 1. Geotechnical investigation, regional subsidence and related
6 ground fissuring, August 1993.

7 2. Chino Basin Subsidence and Fissuring Study, March 1996.

8 3. Update of Subsidence Map, March 1999.

9 (c) Optimum Basin Management Plan for Chino Basin Watermaster,
10 August 1999.

11 (d) Four sets of survey elevations from Associated Engineers for the City
12 of Chino, 1995, 1999, 2000, and 2001.

13 (e) Subsidence Monitoring Project for the City of Chino, March 1999 by
14 G. Peltzer.

15 6. While the foregoing information and data take on many different formats,
16 they all indicate an area of maximum subsidence generally located along Central Avenue
17 and between Schaefer Avenue on the north and Eucalyptus Avenue on the south. The
18 survey work completed by associated engineers shows a maximum subsidence depth in the
19 order of 2 ½ feet over the past 14 years, with an area of approximately 200 acres showing
20 subsidence of 2 feet or greater. In contrast, the remote sensing study reveals that a lesser
21 amount of subsidence, in the order of 1 to 3 inches, has been occurring over a much wider
22 area of the Chino Basin.

23 7. In evaluating the risks that subsidence presents to property, buildings and
24 infrastructure, it is important to look at the Area of Subsidence, the uniformity of its
25 elevation, and the total depth to which it has taken place. This is because each building
26 and each infrastructure component is designed to perform a function based on the land
27 elevation remaining constant. Changes in elevation of land caused by subsidence adversely
28 affect the ability of the infrastructure component and building to perform its original design

1 function. The greater the depth of subsidence and the shorter the distance over which it
2 occurs, the greater the risk of damage.

3 8. In addition, it is necessary to look at the type of improvements and buildings
4 constructed on the properties in the Area of Subsidence and the quantity and type of
5 infrastructure facilities built below the ground surface. These buildings and infrastructure
6 facilities are significant to the operation of a city because they provide a variety of
7 functions such as preventing flooding, carrying raw sewage to treatment facilities,
8 delivering water to residences and businesses, as well as providing structures that house
9 citizens and businesses vital to the economic health of the community.

10 9. When looking at the two and a half feet of subsidence that has occurred, in
11 the Area of Subsidence, it is important to note that this depth has occurred over a relatively
12 short horizontal distance of 3,000 feet along the east/west axis on Eucalyptus Avenue
13 between Central Avenue and a point just west of Monte Vista Avenue. This change in the
14 slope of the land has the potential to impact a variety of infrastructure components and
15 building improvements. While this is the area that has the greatest slope within the Area of
16 Subsidence, it is not the only location where potential damage may occur.

17 10. Studies have shown that there has been ground fissuring along the eastern
18 edge of the Area of Subsidence for some time. I have observed some of this fissuring
19 along 12th Street in the City of Chino. This fissuring ran directly under an older single-
20 family residence making it unfit for habitation. If fissuring were to continue to occur as a
21 result of land subsidence, it has the potential to cause sever damage to any building or
22 infrastructure facility that is built on or through the area of the fissure. This ground
23 separation can cause buildings to fail structurally, water lines, sewer lines, storm drains and
24 streets to crack and fail.

25 11. **Threat to Street Drainage.** When a City street is constructed, it is
26 generally crowned in the center to slope to the curbs and gutters on each side of the street.
27 These curbs and gutters are then sloped to carry the water to the storm drain catch basin
28 usually located in the face of the curb. Since the City of Chino has very little natural

1 elevation change from the east the west, it is a challenge to maintain good drainage on
2 streets that run east and west. Subsidence adversely effects what is already an area of poor
3 drainage due to low slopes. In fact, subsidence can even change the direction of water
4 flow away from catch basins that were originally designed to receive the water.

5 12. As an example, the land along Eucalyptus Avenue between Monte Vista on
6 the west and Central Avenue on the east, experienced a reversal in its natural slope. In
7 1987, this area sloped ever so slightly from east to west. In other words, the land on the
8 west at Avenues Monte Vista and Eucalyptus was lower than the land in the east at the
9 intersection of Eucalyptus and Central Avenues. Now, after the subsidence, the land along
10 Eucalyptus Avenue slopes 12" in the opposite direction. In other words, the land on the
11 west at the intersection of Monte Vista and Eucalyptus Avenues is higher by 12" than the
12 land to the east at the intersection of Eucalyptus and Central Avenues.

13 13. Therefore, one affect of subsidence is that it brings about a change in
14 drainage patterns on streets, as well as other lands designed with very little slope such as
15 parking lots and parks. As the drainage pattern on the these streets and lands change due to
16 subsidence, water will drain less quickly and also pond and puddle, which can be a hazard
17 to the motoring public.

18 14. **Threat to on Storm Drains and Sewer Lines.** The potential adverse
19 impacts of subsidence on storm drains and sewer lines are similar to those on curbs and
20 gutters because of the same need to carry water and waste water in areas with low slopes.
21 Storm drains and sewers are designed according to formulas that calculate the capacity and
22 performance based on the size and slope of the pipe. The potential for land subsidence to
23 impact this performance adversely is increased in areas where the natural slope of the land
24 is low. In addition to altering the storm drain and sewer's ability to carry water, subsidence
25 can cause the pipeline or storm drain structures themselves to fail. Storm drain structures
26 are usually built with concrete pipe segments joined together, or continuous concrete box
27 structures that carry greater flows. Sewer lines are constructed of clay pipe segments
28 joined together with fittings. As subsidence occurs, the joints in those facilities are subject

1 to movement that will weaken the joint and eventually cause them to fail when enough
2 subsidence occurs. This can cause the water or sewage carried by these facilities to leak
3 and erode the ground, causing potential sink holes. In addition, soil debris can enter these
4 facilities causing blockage and further damage downstream.

5 15. **Threat to Water Lines.** Water lines that carry potable and recycled water
6 in the Area of Subsidence are pressurized and therefore are not as susceptible to gravity-
7 flow based performance impacts caused by land subsidence as are storm drains, sewers and
8 streets. However, these water systems are very carefully designed based on elevations
9 throughout the service areas and, as such, are impacted adversely by subsidence. These
10 negative performance impacts, which are mainly a reduction in water pressure, will
11 increase as subsidence continues to occur. Like with storm drains and sewers, water lines
12 have joints that will be subject to movement and failure as subsidence increases. Because
13 these lines are pressurized, breakage can result in a higher potential for erosion and sink
14 holes.

15 16. **Threat to Utility Services.** Throughout the Area of Subsidence, there
16 is a variety of general utility service lines. These include gas lines (both general and high
17 pressure mains), electrical lines, phone lines, cable TV lines, and even an old oil line.
18 While the ability of each of these utilities to tolerate subsidence varies, it is safe to say that
19 all will be affected in some fashion. As subsidence continues, the risk of adverse impacts
20 to these important utility services increases.

21 17. **Threat to Buildings.** There is a wide variety of building types within
22 the Area of Subsidence. These generally range from one story wood-framed homes to
23 large 400,000 square-foot concrete tilt-up warehouses. Both the size and type of
24 construction are important when evaluating the risks for subsidence. With respect to the
25 size of a typical building, generally the smaller and more flexible the structure, the less
26 susceptible it will be to damage caused by subsidence. In addition, generally the more
27 uniform the subsidence, the less the potential for damage. This is because the building will
28 tilt ever so slightly, which does not cause any significant stress to build up. If, on the other

1 hand, the land under only a portion of a building were to subside, it would introduce
2 secondary stresses from the differential deflection. These stresses can manifest
3 themselves in cracked floor slabs, cracked foundations, cracked walls and reduction of a
4 building's ability to resist earthquake forces.

5 18. With these factors being considered, the adverse impacts of subsidence will
6 occur in buildings that are generally larger in size, and/or are constructed of more rigid
7 materials and to those that are located on land that has subsided at different rates. The
8 types of damage that can occur on buildings as a result of subsidence are:

9 (a) Reduction of roof drainage, such as water ponding, that can lead to
10 failure of large roofs with minimum slopes;

11 (b) Concrete floor slabs cracking in areas with differential subsidence
12 depths; and

13 (c) Drywall cracks which occur with small amounts of differential
14 settlement.

15 As subsidence continues, the potential for these types of physical damage
16 increases, as does the potential that the subsidence will cause differential settlement under
17 buildings.

18 19. With the wide variety of infrastructure and building improvements that have
19 been constructed on lands within the Area of Subsidence, the risks of physical damage to
20 these facilities are high. Because the value of these improvements is in the hundreds of
21 millions of dollars, these risks present a large financial exposure if subsidence is not
22 abated. If subsidence continues to occur in the Area of Subsidence, all of the above-
23 mentioned infrastructure will experience physical damage of some type..

24 20. Based upon my review of the data about the Area of Subsidence, I have
25 believed for some time that the cause of subsidence in the Area of Subsidence was a
26 production of water from the deep aquifers beneath the Area of Subsidence by the City of
27 Chino Hills. However, my expertise is not in this area. Therefore, I initiated the process of
28 obtaining such expertise that resulted in the retention of the GeoPentech firm for this

1 purpose.

2 21. As a result, GeoPentech has reviewed all of the available data and has
3 concluded that the Area of Subsidence is caused by the production of water in the deep
4 aquifers beneath the Area of Subsidence by the City of Chino Hills. I attached a copy of
5 the report of GeoPentech dated January 30, 2002, as Exhibit "A" hereto, for the Court's
6 review and consideration.

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

9 Executed this 31 day of January, 2002, at Chino, California

10
11 
12 PATRICK J. GLOVER

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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

} Case Number RCV 510101

I am employed in the County of San Bernardino, State of California. I am over the age of 18 years, and not a party to the above-named action. My business address is: Jimmy L. Gutierrez, A.P.C., 12616 Central Avenue, Chino, California, 91710.

On January 31, 2002, I served the foregoing document(s) described as:

DECLARATION OF PATRICK J. GLOVER

by placing [] the original or [x] a true copy thereof, enclosed in a sealed envelope(s), and addressed as follows:

Scott S. Slater, Esq.
Hatch and Parent
21 East Carrillo Street
Santa Barbara, CA 93101

Mark S. Hensley, Esq.
Burke, William & Sorensen, LLP
611 West 6th Street, Suite 2500
Los Angeles, CA 90017

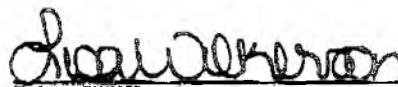
[x] by regular mail;

[x] I caused such envelope(s) to be deposited in the mail at Chino, California. The envelope was mailed with postage thereon fully prepaid.

[x] I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing, under which it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Chino, California. 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 (1) day after deposit of mailing affidavit.

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

Executed on January 31, 2002, at Chino, California.



Lisa Wilkerson

1 Jimmy L. Gutierrez (SBN 59448)
 2 JIMMY L. GUTIERREZ
 3 A Professional Corporation
 4 12616 Central Avenue
 5 Chino, California 91710
 Telephone: (909) 591-6336
 Facsimile: (909) 628-9803
 Attorneys for Defendant THE CITY OF CHINO

FILED-Rancho Cucamonga District
 SAN BERNARDINO COUNTY
 SUPERIOR COURT

JAN 31 2002

By Dana L. Wolford Deputy

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

11 CHINO BASIN MUNICIPAL WATER)
 12 DISTRICT,)

CASE NO. RCV 51010
 [Judge: Honorable J. Michael Gunn]

13 Plaintiff,)

DECLARATION JIMMY L.
 GUTIERREZ

14 v.)

15 THE CITY OF CHINO,)
 16)

DATE: February 28, 2002
 TIME: 2:00 p.m.
 DEPT: 8

17 Defendants.)
 18)
 19)
 20)
 21)
 22)

23
 24
 25 I, JIMMY L. GUTIERREZ, state and declare as follows:

26 1. I am an attorney at law duly licensed to practice law in all the Court's in the
 27 State of California. I also serve as the City Attorney for the City of Chino, a position that I
 28 have held since January 7, 1975.

1 2. I have personal knowledge of the matter contained in this declaration; and if
2 called as a witness I could and would so competently testify thereto under oath.

3 3. A dispute has arisen between the Officials of the City of Chino and the
4 Officials of the City of Chino Hills regarding the responsibility of the City of Chino Hills
5 for land subsidence within the City of Chino due to the production of water from deep
6 aquifers underneath a portion of the City of Chino along Central Avenue bounded by
7 Schaefer Avenue on the north and Eucalyptus Avenue on the south.

8 4. During this dispute, it was suggested that Officials or employees of the City
9 of Chino Hills that the foregoing dispute was a subject of remedies under Article X entitled
10 "Applications, Contests and Complaints" of the Chino Basin Watermaster Rules and
11 Regulations. However, my reading of Article X did not lend itself to such a remedy and
12 further, such a remedy, if available, appeared to be inadequate to address the concerns of
13 the City of Chino regarding land subsidence.

14 5. Nevertheless, on September 26, 2001, I forwarded a letter to John Rossi,
15 CEO of Chino Basin Watermaster, requesting an opinion on the subject from the
16 Watermaster General Council. A true copy of my letter together with my specific requests
17 is contended hereto as Exhibit "A".

18 6. Subsequently, I was informed that my request was denied and I submitted a
19 second letter to Mr. Rossi, dated October 5, 2001, a true copy which is attached hereto as
20 Exhibit "B".

21 7. Thereafter, I received a letter addressed to Jim Erickson at my office dated
22 October 9, 2001, from Scott Slater, who is the general counsel to Watermaster. In essence,
23 said letter advises that the Watermaster Board declined to act upon my request. A true
24 copy of this letter is attached hereto as Exhibit "C".

25 8. Lastly, I received a letter from John Rossi dated October 31, 2001, directed
26 to Jim Erickson at my office. In that letter, Mr. Rossi reports that Watermaster
27 recommends that the City of Chino file a Request for Judicial Relief Under Paragraph 15
28 of the Judgment. A true copy of that letter is attached hereto as Exhibit "D"

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

Executed this 3/ day of January, 2002, at Chino, California


JIMMY L. GUTIERREZ

FEB-05-2002 15:54



CHINO BASIN WATERMASTER

8632 Archibald Avenue, Suite 109, Rancho Cucamonga, Ca 91730
Tel: 909.484.3888 Fax: 909.484.3890 www.cbwm.org

JOHN V. ROSSI
Chief Executive Officer

TRACI STEWART
Chief of Watermaster Services

October 31, 2001

Jim Erickson
Law Offices of Jimmy L. Gutierrez
12616 Central Avenue
Chino, CA 91710

Re: City of Chino Correspondence of September 26, 2001

Dear Mr. Erickson:

This letter is provided in response to your correspondence referenced above. Watermaster has considered your request for an opinion by Watermaster General Counsel concerning the availability of potential remedies and the construction of the Judgment and Watermaster Rules and Regulations regarding subsidence.

Watermaster has considered your letter, the Judgment, the Rules and Regulations and the concerns of the parties to the Judgment. Many parties have expressed a concern over Watermaster issuing an advisory opinion or the potential subject matter jurisdiction of the Court under the Judgment.

Watermaster recommends that Chino or any other party to the Judgment that desires relief related to evaluating the causes, arresting, or mitigating subsidence that they file a request for judicial relief under paragraph 15 of the Judgment. Please be assured that in the event the City of Chino or any other party to the Judgment makes such a request, Watermaster will file its own petition with the Court acknowledging Watermaster's jurisdiction over the subject matter and requesting the Court for direction on how it should proceed.

If you have any questions, please call me at 909-484-3886.

Sincerely,

John V. Rossi, CEO
Chino Basin Watermaster

EXHIBIT 6

FEB-05-2002 15:54

STANLEY C. HATCH
 GERALD R. PARENT
 S. TIMOTHY BLYTHAK
 SUSAN F. PETROVICH
 PETER N. BROWN
 STANLEY M. RODEN
 SCOTT S. SLATER
 STEVEN A. AMERIKANER
 GARY M. KVISTAD
 CHRISTOPHER A. JACOBS
 JEFFREY A. DINKIN
 JEFFERY H. SPEICH
 ROBERT J. SAPERSTEIN
 LORI LEWIS PERRY
 JOSEF D. HOUSKA
 SARAH J. KNECHT

STEPHANIE OSLER HASTINGS
 TRADLEY E. LEINOGREN
 DENORAH L. MARTIN
 MICHELLE L. PICKETT
 ROBIN L. LEWIS
 TIMOTHY C. MALE
 GRAHAM M. LYONS
 MICHAEL T. FIFE
 MINDY A. WOLFE
 CAROLYN L. TROKEY
 RUSSELL M. MCCLUTHUN
 STEVEN A. JUNG
 TRAVIS PANANIDES
 ERIC M. TOKUYAMA
 KENNETH J. RICHARDSON
 CHRISTINE E. RAY

HATCH AND PARENT
 A PROFESSIONAL CORPORATION

MAILING ADDRESS:
 POST OFFICE DRAWER 720
 SANTA BARBARA, CALIFORNIA 93102-0720

21 EAST CARRILLO STREET
 SANTA BARBARA, CALIFORNIA 93101-2782
 TELEPHONE: (805) 963-7000
 FACSIMILE: (805) 965-4339
 WWW.HATCHPARENT.COM

OF Counsel
 CHRIS FRAHM
 KIRK R. WILSON
 STEVEN L. HOCH
 GEORGE SHORT
 IAN A. GREEN
 KEVIN J. NEESE
 1959 - 1999

LOS ANGELES
 11911 SAN VICENTE BLVD.
 SUITE 350
 LOS ANGELES, CA 90049
 TELEPHONE: (310) 440-9996

SAN DIEGO
 110 WEST C STREET, SUITE 2200
 SAN DIEGO, CA 92101
 TELEPHONE: (619) 702-6100

SOUTH LAKE TAHOE
 THE SUMMIT
 SOUTH LAKE TAHOE, CA 96150
 TELEPHONE: (530) 342-7800

OUR FILE # 8350.1
 DIRECT DIAL # (805) 882-1420
 INTERNET: SSLater
 @HatchParent.com

October 9, 2001

Jim Erickson, Esq.
 Law Offices of Jimmy L. Gutierrez
 12616 Central Avenue
 Chino CA 91710

Re: City of Chino's Request for Opinion/Correspondence 9/26/2001

Mr. Erickson:

This letter is provided in response to your recent inquiry concerning the action taken by Watermaster Board with regard to the City of Chino's request for a written opinion as set forth in the above-referenced correspondence. This letter will confirm that Watermaster is in receipt of the letter and Watermaster general counsel is presently considering potential responses to the questions raised.

To be sure, the City of Chino's concerns are understood by the Watermaster Board, staff, as well as legal counsel. Although your cover letter expressly references subsidence, the listed questions address processes that *may* be broader in scope and precedential in character. Rather than respond to the City without first having the benefit of a more deliberate consideration of issues, the Watermaster Board directed legal counsel to reach out to prospective stakeholders. It should come as no surprise that the Watermaster Board will be likely to support a consensus-based solution, as it has in virtually every instance of potential conflict that has arisen over the past 18 months. Accordingly, for the time being, the Watermaster Board has directed legal counsel to convene a stakeholder process among the parties to the Judgment to obtain the benefit of a broader understanding of all the underlying issues and the critical path to resolution.

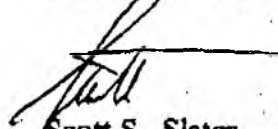
I think our meeting of October 4, 2001 was a good first step. While I clearly appreciate the City of Chino's specific concerns regarding the timing and form of Watermaster's response, we are unable to provide a more specific answer as of the date of this writing.

EXHIBIT C

Page 2

As always, if you have any questions concerning the contents of this letter or any other matter, please call.

Sincerely yours,



Scott S. Slater
For HATCH AND PARENT

SSS:psw

cc: Watermaster Board
John Rossi

FEB-05-2002 15:55

EUNICE M. ULLOA
Mayor

EARL C. ELROD
Mayor Pro Tem



GLENN DUNCAN
TOM HAUGHEY
DENNIS YATES
Council Members

JIMMY GUTIERREZ
City Attorney

October 5, 2001

CITY of CHINO

Mr. John Rossi, CEO
Chino Basin Watermaster
8632 Archibald Avenue, Suite 109
Rancho Cucamonga, CA 91730

Re: Request for Legal Opinion

Dear Mr. Rossi:

I understand that the request of the City of Chino for an administrative construction of the law governing the existing administrative processes of Watermaster by an opinion of its general counsel, conveyed to you by my letter dated and hand delivered on September 26, 2001, was considered by the Watermaster Board in an executive session held during its meeting on September 27, 2001. It is also my understanding that the Board declined to authorize its general counsel to issue that legal opinion.

In the event that my understanding is incorrect, I would appreciate you advising me of the action taking by the Board on my request at your earliest conveyance.

Sincerely,

JIMMY L. GUTIERREZ
City Attorney

By:

Jimmy L. Gutierrez

Cc: Mayor and City Council Members
Glen Rojas, City Manager
Patrick Glover, Director of Public Works



Document No. 11869

12616 Central Avenue, Chino, California 91710
(909) 591-6336 • (909) 628-9803 Fax

EXHIBIT B

#5928-027

FEB-05-2002 15:55

**REQUEST FOR WATERMASTER LEGAL COUNSEL OPINION RE
AVAILABLE WATERMASTER DISPUTE RESOLUTION PROCESS**

1. Is any Watermaster process available, either (a) the Article X Complaint process or other process defined in its existing Rules & Regulations, or (b) some other process authorized by the generic jurisdiction of the Judgment although not defined in such Rules & Regulations, by which to secure:
 - a. Any order of Watermaster necessary or desirable to avoid or minimize property damage and direct and indirect "*economic*" and other damage to a party to the Judgment or a third party caused by the groundwater pumping of another party to the Judgment, even though not caused by any Watermaster action, decision or rule regarding its approval of an application or any other function of Watermaster, including but not limited to an order to cease or reduce pumping from wells which are a substantial factor in causing land subsidence; and,
 - b. Indemnification or compensation of a party to the Judgment and other third parties for any such damage.
2. Is the provision of Section 9.3 of the Peace Agreement that disputes between the Parties shall be resolved by non-binding mediation a mandatory alternative process in lieu of any such Watermaster process?
3. Would there be any presumption that no cognizable damage had been created by the other party actions complained of in such process.
4. Would the pursuit of such a Watermaster process stay the ability of the complaining party to pursue otherwise available legal remedies until such process is exhausted and a final decision rendered by Watermaster?
5. In the event Watermaster orders a party to cease or reduce pumping from wells causing land subsidence that were in existence on the Date of Execution of the Peace Agreement (June 29, 2000), would Watermaster be obligated to compensate such party for the reasonable cost of replacement groundwater Production facilities.
6. In the event Watermaster is obligated to pay for such costs, against which Producers would it be assessed?
7. In the event Watermaster is obligated to pay for the cost of such replacement facilities if it orders a party to cease or reduce pumping, would the conflict of that economic self interest be a legal impediment to a valid decision by Watermaster whether or not to issue such an order?
8. Is judicial review of the decision of Watermaster in such a process available on a "*de novo*" basis, not just limited to a determination of whether there was "*substantial evidence*" to support that decision?
9. Is the scope of judicial review of this decision limited only to situations where the alleged injury arises from the Recharge, Transfer or Qualifying Storage or Recapture of water?

Doc. # 11837 v1

#5928-028

FEB.05.2002 16:48 RECEIVED FROM:

909 484 3890

Mayor

EARL C. ELROD
Mayor Pro Tem



GLENN DUNCAN
TOM HAUGHEY
DENNIS YATES
Council Members

JIMMY GUTIERREZ
City Attorney

CITY of CHINO

September 26, 2001

Mr. John Rossi, CEO
Chino Basin Watermaster
8632 Archibald Avenue, Suite 109
Rancho Cucamonga, CA 91730

Re: Request for Legal Opinion

Dear Mr. Rossi:


It has been asserted by the City of Chino Hills that an adequate remedy is available through existing authorized Watermaster procedures by which to redress the potential land subsidence and other damages to the City of Chino, its property owners, inhabitants and others caused by the production of Chino Hills from the wells from which it has and will derive its supply of water.

However, we have several specific questions about the availability and adequacy of any such remedy, which need to be resolved by the responsive written opinion of Watermaster general counsel providing an authorized administrative construction by Watermaster of applicable law. We understand, however, that in order to secure this opinion we need to submit a formal written request for such an opinion for approval by yourself or your Board. Accordingly, we enclose our written request for an opinion on each of the specifically identified legal issues regarding the availability and adequacy of such a remedy, answers to which we need before we would be able to consider relying on the use of such a remedy.

Time is important, and we urge you to secure whatever approval is necessary to authorize issuance of such an opinion as soon as possible.

Sincerely,

JIMMY L. GUTIERREZ
City Attorney

By: 
Jimmy L. Gutierrez

JLG:js
Enclosure



12616 Central Avenue, Chino, California 91710
(909) 591-6336 • (909) 628-9803 Fax

Doc. # 11834 v1

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO } Case Number RCV 510101

I am employed in the County of San Bernardino, State of California. I am over the age of 18 years, and not a party to the above-named action. My business address is; Jimmy L. Gutierrez, A.P.C., 12616 Central Avenue, Chino, California, 91710.

On January 31, 2002, I served the foregoing document(s) described as:

DECLARATION OF JIMMY L. GUTIERREZ

by placing [] the original or [x] a true copy thereof, enclosed in a sealed envelope(s), and addressed as follows:

Scott Slater, Esq.
Hatch and Parent
21 East Carrillo Street
Santa Barbara, CA 83101-2782

Mark S. Hensley, Esq.
Burke, William & Sorensen, LLP
611 West 6th Street, Suite 2500
Los Angeles, CA 90017

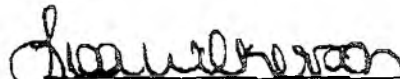
[x] by regular mail;

[x] I caused such envelope(s) to be deposited in the mail at Chino, California. The envelope was mailed with postage thereon fully prepaid.

[x] I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing, under which it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Chino, California. 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 (1) day after deposit of mailing affidavit.

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

Executed on January 31, 2002, at Chino, California.



Lisa Wilkerson

LAW OFFICES OF

JIMMY L. GUTIERREZ

A PROFESSIONAL CORPORATION

12616 CENTRAL AVENUE

EL CENTRAL REAL PLAZA

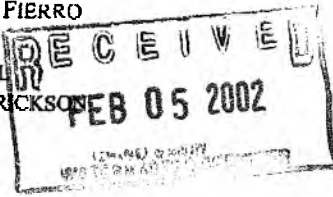
CHINO, CALIFORNIA 91710

TELEPHONE (909) 591-6336

FAX (909) 628-9803

JIMMY L. GUTIERREZ
ARTURO N. FIERRO

OF COUNSEL
JAMES E. ERICKSON



FACSIMILE TRANSMITTAL LETTER

DATE: February 5, 2002

NUMBER: (909) 484-3890

NUMBER OF PAGES: 01

TO: Toni Stewart

FROM: Joaquín Lockerman

REMARKS:

attached are confirmed copies of the documents
that were filed last week. Please let me know
if there is anything else you are missing

CONFIDENTIALITY NOTE

The information contained in this facsimile message is legally privileged and confidential information which is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this message in error, please notify us by telephone immediately so that we can arrange for the return of the original documents to us at no cost to you.

1 Jimmy L. Gutierrez (SBN 59448)
 2 JIMMY L. GUTIERREZ
 3 A Professional Corporation
 4 12616 Central Avenue
 5 Chino, California 91710
 Telephone: (909) 591-6336
 Facsimile: (909) 628-9803
 Attorneys for CITY OF CHINO

FILED-Rancho Cucamonga District
 SAN BERNARDINO COUNTY
 SUPERIOR COURT

JAN 31 2002

By Donald H. Welford Deputy

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

11 CHINO BASIN MUNICIPAL WATER)
 12 DISTRICT,)

13 Plaintiff,)

14 v.)

16 THE CITY OF CHINO,)

17 Defendants.)

CASE NO. RCV 51010
 [Judge: Honorable J. Michael Gunn]

RESPONSE OF THE CITY OF
 CHINO TO THE COURT'S
 ORDER FOR INFORMATION;
 AND MOTION PURSUANT TO
 PARAGRAPH 15 OF THE
 JUDGMENT

DATE: February 28, 2002
 TIME: 2:00 p.m.
 DEPT: 8

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I.

INTRODUCTION

A. The Immediate Problem.

Chino has an immediate problem that cries out for relief. An area of approximately 200 acres within the City of Chino is sinking. This area is located along Central Avenue between Schaefer Avenue on the north and Eucalyptus Avenue on the south. Since 1987, this area has sunk more than 2 feet, including a much smaller area that sunk approximately 2 1/2 feet. Hereafter, this area shall be referred to as "the Area of Subsidence." The depth that this area has sunk far exceeds the one to two inches of subsidence experienced in a much wider area of the Chino Basin within which the "Area of Subsidence" is located. This Area of Subsidence has been well documented and is not in dispute.

B. The Dispute.

What is in dispute is the cause of the subsidence. The City of Chino has believed for some time that the sinking in the Area of Subsidence is caused by Chino Hills production of water from the deep aquifers beneath the Area of Subsidence. However, the City of Chino Hills disputes that its production of water from the deep aquifers beneath the Area of Subsidence is the cause of the subsidence in that Area. Also, Watermaster is not ready to make such a determination. Both believe that more information is necessary.

However, the City of Chino believes that the mountain of available evidence clearly demonstrates the causal connection between the sinking in the Area of Subsidence and Chino Hills production of water from the deep aquifers beneath that Area.

Further, the City of Chino retained GeoPentech to interpret all of available data as to its sufficiency from which to determine the cause of the sinking of the Area of Subsidence and if so to ascertain the cause or causes. The report of GeoPentech concludes that the cause of the sinking in the Area of Subsidence is Chino Hills production of water from the deep aquifers beneath the Area of Subsidence. (See Declaration of Patrick J. Glover, with the attached report by GeoPentech).

///

1 **C. Risk of No Action.**

2 As the studies and discussions about the cause of sinking in the Area of Subsidence
3 continue, so do the risks of subsidence in that Area. While no one can predict when the
4 sinking in the Area of Subsidence will cause actual physical damage, it is reasonable to
5 assume that it will occur if the subsidence continues.

6 The greatest risk is to do nothing. Watermaster may well believe that the cause
7 should be studied further; but the City of Chino believes that the cause is clear and that the
8 time is now to focus on a solution.

9 **D. Assumption of Jurisdiction.**

10 The first step is for the Court to assume jurisdiction over the land subsidence in the
11 Area of Subsidence within the City of Chino. It is observed that the City of Chino Hills
12 and Watermaster, both, agree that the Court has jurisdiction to resolve the disputes between
13 the City of Chino and the City of Chino Hills under paragraph 15 of the Judgment herein.
14 However, it does not appear that the Court has so determined and another party to this
15 Judgment may contest the Court's jurisdiction.

16 It is no secret that the City of Chino Hills disputes the contention of the City of
17 Chino that the Area of Subsidence is being caused by Chino Hills production of water from
18 the deep aquifers beneath that Area. This past year, it was suggested that Watermaster may
19 have a mandatory or adequate binding process by which to resolve this dispute, although
20 the City of Chino questioned its availability and adequacy.

21 Nevertheless, the City of Chino submitted a written request to Watermaster about
22 the availability such a remedy on September 26, 2001. (See Declaration of Jimmy L.
23 Gutierrez and Exhibits attached thereto). However, on October 31, 2001, John Rossi, the
24 C.E.O of the Chino Basin Watermaster, wrote a letter to the City of Chino stating that
25 Watermaster had declined the invitation to determine the availability of Watermaster
26 remedies. Therein, he also stated as follows: "*Watermaster recommends that Chino or*
27 *any other party to the Judgment that desires relief related to evaluating the causes,*
28 *arresting, or mitigating subsidence that they file a Request for Judicial Relief Under*

1 *Paragraph 15 of the Judgment. Please be assured that in the event the City of Chino or*
2 *any other party to the Judgment makes such a request, Watermaster will file its petition*
3 *with the Court acknowledging Watermaster's jurisdiction over the subject matter and*
4 *request the Court for direction on how it should precede."*

5 Most recently, the City of Chino Hills filed a Petition for Writ of Mandate against
6 the City of Chino on December 7, 2001. In paragraph 7, thereof, the City of Chino Hills
7 states that venue for the petition was "*before the Honorable J. Michael Gunn, the*
8 *designated judge to hear all disputes among water producers relating to the Chino Basin,*
9 *pursuant to Article IV, paragraph 15 of the final Judgment in the case entitled" Chino*
10 *Basin Municipal Water District v. City of Chino, et al., San Bernardino Superior Court*
11 *case number RCV 164325, now designated number RCV 51010."* Further, the City of
12 Chino Hills alleges in paragraph 27 of the petition that "*the subsidence dispute is, however,*
13 *within the exclusive jurisdiction of the Honorable J. Michael Gunn, as provided in the*
14 *Judgment."*

15 While the City of Chino also believes that this Court has jurisdiction pursuant to
16 paragraph 15 of the Judgment herein to resolve what the City of Chino Hills refers to as the
17 "*subsidence dispute*" including the causes and remedies of land subsidence in the Area of
18 Subsidence within the City of Chino, it is not all together clear that such a determination
19 has been made, and other producers may object to the Court's assumption of jurisdiction
20 with respect to these issues. The City of Chino acknowledges the Order made by the
21 Honorable Joseph E. Johnston on December 19, 2001, in City of Chino Hills v. City of
22 Chino, case number RCV 059670 and the Order made by the Honorable J. Michael Gunn
23 on the same date in this case. However, it is not clear whether either Order confirms the
24 Court's jurisdiction regarding this dispute.

25 As an example, the Order by Judge Johnston provides, in pertinent part, as follows:
26 "*The Court construes the petition by the City of Chino Hills as encompassing two separate*
27 *matters . . . The second matter is properly described as a motion brought under paragraph*
28 *15 of the Judgment. [In RCV 51010], which encompasses all claims pertaining to the rights*

1 *and obligations of the parties with respect to the production of water in the Chino Basin,*
 2 *including any issues related to subsidence."* However, such an Order falls short of ruling
 3 that the Court has jurisdiction to resolve those disputes.

4 Likewise, on December 19, 2001, the Honorable J. Michael Gunn issued an Order
 5 in this action and makes two recitals and then orders the parties in this action *"to report on*
 6 *the status of the technical work performed to date by Watermaster and other concerning*
 7 *subsidence and related issues."* The first recital to that Order states that the City of Chino
 8 Hills filed a Petition for Writ of Mandate against the City of Chino *"raising issues related*
 9 *to the rights and obligations of the parties with respect to the production of water in the*
 10 *Chino Basin, including any issue related to subsidence, which are subject to the continuing*
 11 *jurisdiction of this Court under paragraph 15 of the Judgment herein, and therefore, must*
 12 *be brought in this Court as a Motion for Relief Under Paragraph 15 of the Judgment."*

13 Likewise, the second recital states, *"it has been determined that only those issues that are*
 14 *subject to the continuing jurisdiction of the Court under paragraph 15 of the Judgment*
 15 *shall be specially assigned to this Court."* Said order and recitals also fall short of a clear
 16 statement that the Court has assumed or will assume jurisdiction of the dispute between the
 17 City of Chino Hills and the City of Chino regarding water production and land subsidence
 18 disputes.

19 **II.**

20 **REQUEST FOR RELIEF UNDER PARAGRAPH 15**

21 The City of Chino respectfully requests the Court to assume jurisdiction over its
 22 dispute with the City of Chino Hills regarding water production and land subsidence. The
 23 purpose, without limitation, of this request is to resolve the following issues:

- 24 (a) Whether the City of Chino Hills' production of water from the deep aquifers
 25 within the City of Chino is causing land subsidence in an area approximately 200 acres in
 26 size that is located along Central Avenue from Schaefer Avenue on the north to Eucalyptus
 27 Avenue on the south; and if so, to fashion a remedy to abate the land subsidence.

1 (b) Whether Chino Hills proposed purchase of ground water from the Monte
2 Vista Water District will have the potential to degrade the quantity or quality of water that
3 Chino now extracts from its northerly wells; and, if so, to fashion a remedy that will avoid
4 set impacts.

5 As to these two overriding issues, the first is immediate while the second is not, as
6 production has not yet commenced.

7 In seeking this relief, Chino is willing to submit itself to any reasonable process
8 suggested by the Court. However, the City of Chino is concerned that any process
9 involving Watermaster may not be viable, because the appropriators may be required to
10 finance some portion of the ultimate remedy. Under paragraph 5.4(d) of the Peace
11 Agreement, a producer such as Chino Hills is entitled to apply "*to Watermaster for*
12 *reimbursement or credit against future OBMP Assessments for any capital or operations*
13 *and maintenance expenses incurred in the implementation of any project or program,*
14 *including the costs of relocating ground water production facilities, that carries out the*
15 *purposes of the OBMP including but not limited to those facilities relating to the*
16 *prevention of subsidence in the basin.*"

17 The City of Chino welcomes the Court's resolution of these disputes directly, but
18 understands that the Court can delegate some aspects of the resolution process to
19 Watermaster or the special referee. In such an event, Chino will cooperate with any such
20 process but requests that such a process be reviewed *de novo* by the Court as required by
21 paragraph 15 of the Judgment.

22 23 III.

24 HE COURT HAS JURISDICTION TO ORDER A PARTY TO ABATE THE 25 CAUSES OF SUBSIDENCE OR TO IMPLEMENT A PROCESS BY WHICH TO 26 MITIGATE SUCH SUBSIDENCE

27 The Court has broad jurisdiction to fashion and authorize implementation of a
28 remedy by which to manage the water resources of the Basin to avoid subsidence, in the

1 exercise of its continuing jurisdiction over administration of its Physical Solution for the
2 Chino Basin.

3 **A. The Judgment Was Intended to Implement a Physical Solution.**
4

5 The Judgment sets forth the parameters under which the Court retains jurisdiction in
6 order to oversee the development and implementation of the Physical Solution. Paragraph
7 15 of the Judgment reserves to the Court full jurisdiction, power and authority as to all
8 matters contained in the Judgment unless the matters are expressly exempted.¹

9 At its core, the Judgment requires that a Physical Solution be developed. (Judgment
10 Article VI, pp. 39-57.) The purpose of the Physical Solution is to maximize the beneficial
11 utilization of the Basin pursuant to the mandate of Article X, § 2 of the California
12 Constitution so that the Basin can be maintained to function as a common pool resource
13 from which all of the parties can continue to receive benefit. The Court's continuing
14 jurisdiction is provided for the purpose of enabling the Court to make further Orders as is
15 necessary or appropriate for the interpretation, enforcement or carrying out of the
16 Judgment, and to modify, amend or amplify any of the provisions of the Judgment.
17 (Judgment, 15, pp. 11-12.) In addition, Article VI of the Judgment describes the Physical
18 Solution and it expressly directs the Watermaster to develop an Optimum Basin
19 Management Program ("OBMP") to create and implement the management elements that
20 will lead to a maximization of the Basin resources. (Judgment, pg. 41.)
21

22 **B. The Plain Meaning of the Judgment the Court to Make Orders that**
23 **Provides Remedies for the Consequences of Groundwater Production Including**
24 **Subsidence.**
25
26

27 ¹ The retained jurisdiction of the Court is limited only in respect to (1) the redetermination of Safe Yield
28 during the first 10 years of operation of the Judgment;(2) the allocation of Safe Yield among the Pools; (3) the
determination of specific rights in the Safe Yield; and (4) the method of allocation and recovery of replenishment
assessments except under certain circumstances.

1 The same rules of interpretation apply in ascertaining the meaning of a judgment as
2 in ascertaining the meaning of any other similar writing. Strohm v. Strohm, (1960) 182
3 Cal.2d 53. A stipulated judgment in particular is regarded as a contract between the parties
4 and is to be construed as a contract. Hi-Desert County Water District v. Blue Skies
5 Country Club, (1994) 23 Cal.App.4th 1723; In re Application of Ferrigno, (1937) 22
6 Cal.App.2d 472. Intent is the paramount feature of a contract, and the function of all
7 interpretation is to try to ascertain the true intent of the parties. Scott v. Sun-Maid Raisin
8 Growers Assn., (1936) 13 Cal.App.2d 353.)

9 In Pasadena v. City of Alhambra, (1949) 33 Cal.2d 908 the term "safe yield" was
10 defined solely in terms of a balance between extractions and additions to the groundwater
11 basin. Any lowering of the water table was susceptible to being characterized as an
12 "undesirable result." Subsequently, the California Supreme Court in City of Los Angeles
13 v. City San Fernando, (1975) 14 Cal.3d 199, broke free from this rigid definition and
14 instead looked at a broader context for basin management. The San Fernando opinion was
15 issued just three years prior to the entry of the Judgment in the instant case. Thus, the
16 Court may presume that this is the meaning the parties gave to the phrase "undesirable
17 result" at the time when the Judgment was entered rather than the rigid characterization
18 used in the Pasadena case.

19 In the twenty-seven years since entry of Judgment in San Fernando, the
20 understanding that land subsidence may be an "undesirable result" and thus a part of the
21 concept of Safe Yield, has become a commonplace. In a standard textbook on the subject
22 first published in 1980, it is stated that:

23 *The [Safe Yield] of a groundwater basin defines the rate at which water can be*
24 *withdrawn perennially under specified operating conditions without producing an*
25 *undesired result. An undesired result is an adverse situation such as (1) progressive*
26 *reduction of the water resource, (2) development of uneconomic pumping*
27 *conditions, (3) degradation of groundwater quality, (4) interference with prior*
28 *water rights, or (5) land subsidence caused by lowered groundwater levels.*

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Todd, Groundwater Hydrology 363-364 (2nd ed.)

3. The Peace Agreement and the Implementation Plan.

The fact that "subsidence" was intended to be resolved can be found in the parties agreement to not oppose the OBMP Implementation Plan that was an Exhibit to the Peace Agreement. Moreover, Program Element 4 thereto establishes the goal of abating subsidence, as it was approve by order of this court. It clearly states:

"The occurrence of subsidence and fissuring in Management Zone 1 is not acceptable and should be reduced to tolerable levels or abated. The OBMP calls for a management plan to reduce or abate the subsidence and fissuring problems to the extent that it may be caused by production in MZ1."

IV.

THE COURT SHOULD ISSUE AN ORDER INDICATING ITS ASSUMPTION OF JURISDICTION OVER THE ISSUES OF WATER PRODUCTION AND SUBSIDENCE IN DISPUTE BETWEEN THE CITIES OF CHINO AND CHINO HILLS AN PROCEED TO ESTABLISH A PROCESS FOR RESOLVING SAME

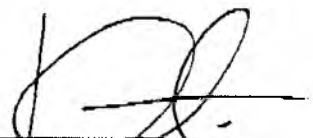
No absolute certainty of the causes of subsidence damage ever can be achieved, but that level of certainty is not necessary for meaningful mitigation of that phenomenon. All existing data concludes that the logical cause of subsidence in the City of Chino is production from the deep aquifer wells of the City of Chino Hills located within the City of Chino; and the most recent study and analysis of Geopentech concludes not only that such production is the only credible cause of such subsidence, but also that there are no other credible causes. This subsidence has occurred over a long period of time, and has been the subject of numerous studies of various types. The City of Chino should not have to suffer

1 further risks by waiting on further studies when it is necessary to take action to mitigate
2 subsidence, at least on an interim basis.

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Dated: January 31, 2002

JIMMY L. GUTIERREZ
City Attorney

By: 
Jimmy L. Gutierrez
Attorneys for Defendant
CITY OF CHINO

16 | Riverside, CA 92501

17 | [X] by regular mail;

18 | [X] I caused such envelope(s) to be deposited in the mail at Chino, California. The
19 | envelope was mailed with postage thereon fully prepaid.

20 | [X] I am "readily familiar" with the firm's practice of collection and processing
21 | correspondence for mailing, under which it would be deposited with the U.S. Postal
22 | Service on that same day, with postage thereon fully prepaid, at Chino, California. I am
23 | aware that, on motion of the party served, service is presumed invalid if postal cancellation
date or postage meter date is more than one (1) day after deposit of mailing affidavit.

24 | I declare under penalty of perjury under the laws of the State of California that the
25 | foregoing is true and correct.

26 | Executed on January 31, 2002, at Chino, California.

27 |
28 | 
Lisa Wilkerson

1 Jimmy L. Gutierrez (SBN 59448)
 2 JIMMY L. GUTIERREZ
 3 A Professional Corporation
 4 12616 Central Avenue
 5 Chino, California 91710
 6 Telephone: (909) 591-6336
 7 Facsimile: (909) 628-9803

FILED-Rancho Cucamonga District
 SAN BERNARDINO COUNTY
 SUPERIOR COURT

JAN 31 2002

By Dana L. Welford Deputy

8 Attorneys for Defendant THE CITY OF CHINO

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

11 CHINO BASIN MUNICIPAL WATER)
 12 DISTRICT,)

13 Plaintiff,)

14 v.)

15 THE CITY OF CHINO,)
 16)

17 Defendants.)
 18)
 19)
 20)
 21)
 22)

CASE NO. RCV 51010

[Judge: Honorable J. Michael Gunn]

RECEIVED
 JAN 31 2002
 RANCHO CUCAMONGA DISTRICT

DECLARATION OF PATRICK J. GLOVER

DATE: February 28, 2002

TIME: 2:00 p.m.

DEPT: 8

23 I, PATRICK J. GLOVER, state and declare as follows:

24 1. I am Director of Public Works and City Engineer, for the City of Chino and I
 25 have held this position since 1998.

26 2. The following facts are from my personal knowledge, and if called as a
 27 witness I could and would so competently testify thereto under oath.
 28

1 3. I received a Bachelor of Science Degree in Civil Engineering from California
2 State Polytechnic University, Pomona, in 1981. The emphasis of my studies was in
3 structural design and analysis of buildings. I am a licensed Civil Engineer, in the State of
4 California, licensed number 38164. I am also a Certified Building Official, licensed
5 number 1157 and a licensed Plans Examiner, licensed number 18338.

6 4. I have over 20 years of experience in the field of engineering. I worked in
7 responsible positions in four governmental agencies and a private engineering company at
8 such I was a principal. That experience consists of the following:

9 (a) From 1981 until 1992, I worked in the building and safety field. For
10 the cities of Los Angeles, Burbank, and West Covina. In this capacity, I reviewed building
11 plans including structural calculation reviews for both vertical and lateral loading on
12 buildings that ranged in size from single family homes to high-rise structures.

13 (b) From 1986 until 1988, I was a principal in a civil engineering
14 company. During that time, I performed structural analysis and prepared calculations for a
15 variety of buildings from single family homes to three-story steel-framed structures.

16 (c) From 1992 to the present time, I have been working in the public
17 works and city engineering for local governments. From 1994 to 1998, I was a Public
18 Works Director and City Engineer for the City of West Covina. From 1998 to the present,
19 I have been employed as the Public Works Director and City Engineer for the City of
20 Chino. In these positions, I have been responsible for all aspects of Public Works and
21 Civil Engineering of the design, construction and maintenance of the infrastructure of the
22 cities. Further, I have been responsible for the review of design of all private development
23 within the cities.

24 5. In my capacity as Public Works Director and City Engineer for the City of
25 Chino, I have reviewed and become familiar with the data regarding subsidence within the
26 southern portion of the City of Chino along Central Avenue between Schaefer Avenue on
27 the north and Eucalyptus Avenue on the south. In particular, I have carefully reviewed the
28 studies, surveys and mappings that have been performed for the past 10 years regarding

1 subsidence of land in this area, including all of the following:

2 (a) Final Report Ground Fissure Study for C.I.M., august 1994 by
3 Geomatrix Consultants.

4 (b) Three Reports from Kleinfelder.

5 1. Geotechnical investigation, regional subsidence and related
6 ground fissuring, August 1993.

7 2. Chino Basin Subsidence and Fissuring Study, March 1996.

8 3. Update of Subsidence Map, March 1999.

9 (c) Optimum Basin Management Plan for Chino Basin Watermaster,
10 August 1999.

11 (d) Four sets of survey elevations from Associated Engineers for the City
12 of Chino, 1995, 1999, 2000, and 2001.

13 (e) Subsidence Monitoring Project for the City of Chino, March 1999 by
14 G. Peltzer.

15 6. While the foregoing information and data take on many different formats,
16 they all indicate an area of maximum subsidence generally located along Central Avenue
17 and between Schaefer Avenue on the north and Eucalyptus Avenue on the south. The
18 survey work completed by associated engineers shows a maximum subsidence depth in the
19 order of 2 ½ feet over the past 14 years, with an area of approximately 200 acres showing
20 subsidence of 2 feet or greater. In contrast, the remote sensing study reveals that a lesser
21 amount of subsidence, in the order of 1 to 3 inches, has been occurring over a much wider
22 area of the Chino Basin.

23 7. In evaluating the risks that subsidence presents to property, buildings and
24 infrastructure, it is important to look at the Area of Subsidence, the uniformity of its
25 elevation, and the total depth to which it has taken place. This is because each building
26 and each infrastructure component is designed to perform a function based on the land
27 elevation remaining constant. Changes in elevation of land caused by subsidence adversely
28 affect the ability of the infrastructure component and building to perform its original design

1 function. The greater the depth of subsidence and the shorter the distance over which it
2 occurs, the greater the risk of damage.

3 8. In addition, it is necessary to look at the type of improvements and buildings
4 constructed on the properties in the Area of Subsidence and the quantity and type of
5 infrastructure facilities built below the ground surface. These buildings and infrastructure
6 facilities are significant to the operation of a city because they provide a variety of
7 functions such as preventing flooding, carrying raw sewage to treatment facilities,
8 delivering water to residences and businesses, as well as providing structures that house
9 citizens and businesses vital to the economic health of the community.

10 9. When looking at the two and a half feet of subsidence that has occurred, in
11 the Area of Subsidence, it is important to note that this depth has occurred over a relatively
12 short horizontal distance of 3,000 feet along the east/west axis on Eucalyptus Avenue
13 between Central Avenue and a point just west of Monte Vista Avenue. This change in the
14 slope of the land has the potential to impact a variety of infrastructure components and
15 building improvements. While this is the area that has the greatest slope within the Area of
16 Subsidence, it is not the only location where potential damage may occur.

17 10. Studies have shown that there has been ground fissuring along the eastern
18 edge of the Area of Subsidence for some time. I have observed some of this fissuring
19 along 12th Street in the City of Chino. This fissuring ran directly under an older single-
20 family residence making it unfit for habitation. If fissuring were to continue to occur as a
21 result of land subsidence, it has the potential to cause sever damage to any building or
22 infrastructure facility that is built on or through the area of the fissure. This ground
23 separation can cause buildings to fail structurally, water lines, sewer lines, storm drains and
24 streets to crack and fail.

25 11. **Threat to Street Drainage.** When a City street is constructed, it is
26 generally crowned in the center to slope to the curbs and gutters on each side of the street.
27 These curbs and gutters are then sloped to carry the water to the storm drain catch basin
28 usually located in the face of the curb. Since the City of Chino has very little natural

1 elevation change from the east the west, it is a challenge to maintain good drainage on
2 streets that run east and west. Subsidence adversely effects what is already an area of poor
3 drainage due to low slopes. In fact, subsidence can even change the direction of water
4 flow away from catch basins that were originally designed to receive the water.

5 12. As an example, the land along Eucalyptus Avenue between Monte Vista on
6 the west and Central Avenue on the east, experienced a reversal in its natural slope. In
7 1987, this area sloped ever so slightly from east to west. In other words, the land on the
8 west at Avenues Monte Vista and Eucalyptus was lower than the land in the east at the
9 intersection of Eucalyptus and Central Avenues. Now, after the subsidence, the land along
10 Eucalyptus Avenue slopes 12" in the opposite direction. In other words, the land on the
11 west at the intersection of Monte Vista and Eucalyptus Avenues is higher by 12" than the
12 land to the east at the intersection of Eucalyptus and Central Avenues.

13 13. Therefore, one affect of subsidence is that it brings about a change in
14 drainage patterns on streets, as well as other lands designed with very little slope such as
15 parking lots and parks. As the drainage pattern on the these streets and lands change due to
16 subsidence, water will drain less quickly and also pond and puddle, which can be a hazard
17 to the motoring public.

18 14. **Threat to on Storm Drains and Sewer Lines.** The potential adverse
19 impacts of subsidence on storm drains and sewer lines are similar to those on curbs and
20 gutters because of the same need to carry water and waste water in areas with low slopes.
21 Storm drains and sewers are designed according to formulas that calculate the capacity and
22 performance based on the size and slope of the pipe. The potential for land subsidence to
23 impact this performance adversely is increased in areas where the natural slope of the land
24 is low. In addition to altering the storm drain and sewer's ability to carry water, subsidence
25 can cause the pipeline or storm drain structures themselves to fail. Storm drain structures
26 are usually built with concrete pipe segments joined together, or continuous concrete box
27 structures that carry greater flows. Sewer lines are constructed of clay pipe segments
28 joined together with fittings. As subsidence occurs, the joints in those facilities are subject

1 to movement that will weaken the joint and eventually cause them to fail when enough
2 subsidence occurs. This can cause the water or sewage carried by these facilities to leak
3 and erode the ground, causing potential sink holes. In addition, soil debris can enter these
4 facilities causing blockage and further damage downstream.

5 **15. Threat to Water Lines.** Water lines that carry potable and recycled water
6 in the Area of Subsidence are pressurized and therefore are not as susceptible to gravity-
7 flow based performance impacts caused by land subsidence as are storm drains, sewers and
8 streets. However, these water systems are very carefully designed based on elevations
9 throughout the service areas and, as such, are impacted adversely by subsidence. These
10 negative performance impacts, which are mainly a reduction in water pressure, will
11 increase as subsidence continues to occur. Like with storm drains and sewers, water lines
12 have joints that will be subject to movement and failure as subsidence increases. Because
13 these lines are pressurized, breakage can result in a higher potential for erosion and sink
14 holes.

15 **16. Threat to Utility Services.** Throughout the Area of Subsidence, there
16 is a variety of general utility service lines. These include gas lines (both general and high
17 pressure mains), electrical lines, phone lines, cable TV lines, and even an old oil line.
18 While the ability of each of these utilities to tolerate subsidence varies, it is safe to say that
19 all will be affected in some fashion. As subsidence continues, the risk of adverse impacts
20 to these important utility services increases.

21 **17. Threat to Buildings.** There is a wide variety of building types within
22 the Area of Subsidence. These generally range from one story wood-framed homes to
23 large 400,000 square-foot concrete tilt-up warehouses. Both the size and type of
24 construction are important when evaluating the risks for subsidence. With respect to the
25 size of a typical building, generally the smaller and more flexible the structure, the less
26 susceptible it will be to damage caused by subsidence. In addition, generally the more
27 uniform the subsidence, the less the potential for damage. This is because the building will
28 tilt ever so slightly, which does not cause any significant stress to build up. If, on the other

1 hand, the land under only a portion of a building were to subside, it would introduce
2 secondary stresses from the differential deflection. These stresses can manifest
3 themselves in cracked floor slabs, cracked foundations, cracked walls and reduction of a
4 building's ability to resist earthquake forces.

5 18. With these factors being considered, the adverse impacts of subsidence will
6 occur in buildings that are generally larger in size, and/or are constructed of more rigid
7 materials and to those that are located on land that has subsided at different rates. The
8 types of damage that can occur on buildings as a result of subsidence are:

9 (a) Reduction of roof drainage, such as water ponding, that can lead to
10 failure of large roofs with minimum slopes;

11 (b) Concrete floor slabs cracking in areas with differential subsidence
12 depths; and

13 (c) Drywall cracks which occur with small amounts of differential
14 settlement.

15 As subsidence continues, the potential for these types of physical damage
16 increases, as does the potential that the subsidence will cause differential settlement under
17 buildings.

18 19. With the wide variety of infrastructure and building improvements that have
19 been constructed on lands within the Area of Subsidence, the risks of physical damage to
20 these facilities are high. Because the value of these improvements is in the hundreds of
21 millions of dollars, these risks present a large financial exposure if subsidence is not
22 abated. If subsidence continues to occur in the Area of Subsidence, all of the above-
23 mentioned infrastructure will experience physical damage of some type..

24 20. Based upon my review of the data about the Area of Subsidence, I have
25 believed for some time that the cause of subsidence in the Area of Subsidence was a
26 production of water from the deep aquifers beneath the Area of Subsidence by the City of
27 Chino Hills. However, my expertise is not in this area. Therefore, I initiated the process of
28 obtaining such expertise that resulted in the retention of the GeoPentech firm for this

1 purpose.

2 21. As a result, GeoPentech has reviewed all of the available data and has
3 concluded that the Area of Subsidence is caused by the production of water in the deep
4 aquifers beneath the Area of Subsidence by the City of Chino Hills. I attached a copy of
5 the report of GeoPentech dated January 30, 2002, as Exhibit "A" hereto, for the Court's
6 review and consideration.

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

9 Executed this 31 day of January, 2002, at Chino, California

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11 
12 PATRICK J. GLOVER

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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

} Case Number RCV 510101

I am employed in the County of San Bernardino, State of California. I am over the age of 18 years, and not a party to the above-named action. My business address is: Jimmy L. Gutierrez, A.P.C., 12616 Central Avenue, Chino, California, 91710.

On January 31, 2002, I served the foregoing document(s) described as:

DECLARATION OF PATRICK J. GLOVER

by placing [] the original or [x] a true copy thereof, enclosed in a sealed envelope(s), and addressed as follows:

Scott S. Slater, Esq.
Hatch and Parent
21 East Carrillo Street
Santa Barbara, CA 93101

Mark S. Hensley, Esq.
Burke, William & Sorensen, LLP
611 West 6th Street, Suite 2500
Los Angeles, CA 90017

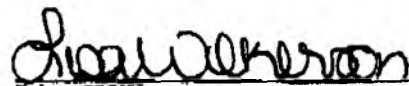
[x] by regular mail;

[x] I caused such envelope(s) to be deposited in the mail at Chino, California. The envelope was mailed with postage thereon fully prepaid.

[x] I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing, under which it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Chino, California. 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 (1) day after deposit of mailing affidavit.

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

Executed on January 31, 2002, at Chino, California.



Lisa Wilkerson

1 Jimmy L. Gutierrez (SBN 59448)
JIMMY L. GUTIERREZ

2 A Professional Corporation
12616 Central Avenue

3 Chino, California 91710

4 Telephone: (909) 591-6336

Facsimile: (909) 628-9803

5 Attorneys for Defendant THE CITY OF CHINO

FILED-Rancho Cucamonga District
SAN BERNARDINO COUNTY
SUPERIOR COURT

JAN 31 2002

By Dana J. Welford Deputy

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

10
11 CHINO BASIN MUNICIPAL WATER)
12 DISTRICT,)

13 Plaintiff,)

14 v.)

15 THE CITY OF CHINO,)
16)

17 Defendants.)
18)
19)
20)
21)
22)

CASE NO. RCV 51010
[Judge: Honorable J. Michael Gunn]

DECLARATION JIMMY L.
GUTIERREZ

DATE: February 28, 2002
TIME: 2:00 p.m.
DEPT: 8

23
24
25 I, JIMMY L. GUTIERREZ, state and declare as follows:

26 1. I am an attorney at law duly licensed to practice law in all the Court's in the
27 State of California. I also serve as the City Attorney for the City of Chino, a position that I
28 have held since January 7, 1975.

1 2. I have personal knowledge of the matter contained in this declaration; and if
2 called as a witness I could and would so competently testify thereto under oath.

3 3. A dispute has arisen between the Officials of the City of Chino and the
4 Officials of the City of Chino Hills regarding the responsibility of the City of Chino Hills
5 for land subsidence within the City of Chino due to the production of water from deep
6 aquifers underneath a portion of the City of Chino along Central Avenue bounded by
7 Schaefer Avenue on the north and Eucalyptus Avenue on the south.

8 4. During this dispute, it was suggested that Officials or employees of the City
9 of Chino Hills that the foregoing dispute was a subject of remedies under Article X entitled
10 "Applications, Contests and Complaints" of the Chino Basin Watermaster Rules and
11 Regulations. However, my reading of Article X did not lend itself to such a remedy and
12 further, such a remedy, if available, appeared to be inadequate to address the concerns of
13 the City of Chino regarding land subsidence.

14 5. Nevertheless, on September 26, 2001, I forwarded a letter to John Rossi,
15 CEO of Chino Basin Watermaster, requesting an opinion on the subject from the
16 Watermaster General Council. A true copy of my letter together with my specific requests
17 is contended hereto as Exhibit "A".

18 6. Subsequently, I was informed that my request was denied and I submitted a
19 second letter to Mr. Rossi, dated October 5, 2001, a true copy which is attached hereto as
20 Exhibit "B".

21 7. Thereafter, I received a letter addressed to Jim Erickson at my office dated
22 October 9, 2001, from Scott Slater, who is the general counsel to Watermaster. In essence,
23 said letter advises that the Watermaster Board declined to act upon my request. A true
24 copy of this letter is attached hereto as Exhibit "C".

25 8. Lastly, I received a letter from John Rossi dated October 31, 2001, directed
26 to Jim Erickson at my office. In that letter, Mr. Rossi reports that Watermaster
27 recommends that the City of Chino file a Request for Judicial Relief Under Paragraph 15
28 of the Judgment. A true copy of that letter is attached hereto as Exhibit "D"

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

Executed this 3/ day of January, 2002, at Chino, California



JIMMY L. GUTIERREZ

FEB-05-2002 15:54



CHINO BASIN WATERMASTER

8632 Archibald Avenue, Suite 109, Rancho Cucamonga, Ca 91730
Tel: 909.484.3888 Fax: 909.484.3890 www.cbwm.org

JOHN V. ROSSI
Chief Executive Officer

TRACI STEWART
Chief of Watermaster Services

October 31, 2001

Jim Erickson
Law Offices of Jimmy L. Gutierrez
12616 Central Avenue
Chino, CA 91710

Re: City of Chino Correspondence of September 26, 2001

Dear Mr. Erickson:

This letter is provided in response to your correspondence referenced above. Watermaster has considered your request for an opinion by Watermaster General Counsel concerning the availability of potential remedies and the construction of the Judgment and Watermaster Rules and Regulations regarding subsidence.

Watermaster has considered your letter, the Judgment, the Rules and Regulations and the concerns of the parties to the Judgment. Many parties have expressed a concern over Watermaster issuing an advisory opinion or the potential subject matter jurisdiction of the Court under the Judgment.

Watermaster recommends that Chino or any other party to the Judgment that desires relief related to evaluating the causes, arresting, or mitigating subsidence that they file a request for judicial relief under paragraph 15 of the Judgment. Please be assured that in the event the City of Chino or any other party to the Judgment makes such a request, Watermaster will file its own petition with the Court acknowledging Watermaster's jurisdiction over the subject matter and requesting the Court for direction on how it should proceed.

If you have any questions, please call me at 909-484-3888.

Sincerely,

John V. Rossi, CEO
Chino Basin Watermaster

EXHIBIT

FEB-05-2002 15:54

STANLEY C. HATCH
 GERALD R. PARENT
 L. TIMOTHY BUYNAK
 SUSAN F. PETROVICH
 PETER N. BROWN
 STANLEY M. RODEN
 SCOTT S. SLATER
 STEVEN A. AMERIKANER
 GARY M. KVISTAD
 CHRISTOPHER A. JACOBS
 JEFFREY A. DINKIN
 JEFFERY H. SPEIGH
 ROBERT J. SAPERSTEIN
 LORI LEWIS PERRY
 JOSEF D. HOUJKA
 SARAH J. KNECHT

STEPHANIE OSLER HASTINGS
 BRADLEY E. LUNDGREN
 DERORAH L. MARTIN
 NICHELLE L. PICKETT
 ROBIN L. LEWIS
 TIMOTHY C. MALE
 GRAHAM M. LYONS
 MICHAEL T. PIFE
 NINDY A. WOLFE
 CAROLYN L. TRONKY
 KUSSELL M. MCCLOTHUN
 STEVEN A. JUNG
 TRAVIS PANANIDES
 ERIC M. TOKUYAMA
 KENNETH J. RICHARDSON
 CHRISTINE E. RAY

HATCH AND PARENT

A PROFESSIONAL CORPORATION

MAILING ADDRESS:
 POST OFFICE DRAWER 720
 SANTA BARBARA, CALIFORNIA 93102-0720

21 EAST CARRILLO STREET
 SANTA BARBARA, CALIFORNIA 93101-2782
 TELEPHONE: (805) 963-7000
 FACSIMILE: (805) 965-4333
 WWW:HATCHPARENT.COM

OF Counsel
 CHRIS FRANK
 KARE R. WILSON
 STEVEN L. HOCH
 GEORGE SHORT
 JAN A. GREEN
 KEVIN J. NEESE
 1958 - 1999

LOS ANGELES
 11911 SAN VICENTE BLVD.
 SUITE 950
 LOS ANGELES, CA 90049
 TELEPHONE: (310) 440-9996

SAN DIEGO
 110 WEST C STREET, SUITE 2200
 SAN DIEGO, CA 92101
 TELEPHONE: (619) 702-6100

SOUTH LAKE TAHOE
 THE SUMMIT
 SOUTH LAKE TAHOE, CA 96150
 TELEPHONE: (530) 542-7800

OUR FILE # 8350.1
 DIRECT DIAL # (805) 882-1420
 INTERNET: SSlater
 @HatchParent.com

October 9, 2001

Jim Erickson, Esq.
 Law Offices of Jimmy L. Gutierrez
 12616 Central Avenue
 Chino CA 91710

Re: City of Chino's Request for Opinion/Correspondence 9/26/2001

Mr. Erickson:

This letter is provided in response to your recent inquiry concerning the action taken by Watermaster Board with regard to the City of Chino's request for a written opinion as set forth in the above-referenced correspondence. This letter will confirm that Watermaster is in receipt of the letter and Watermaster general counsel is presently considering potential responses to the questions raised.

To be sure, the City of Chino's concerns are understood by the Watermaster Board, staff, as well as legal counsel. Although your cover letter expressly references subsidence, the listed questions address processes that *may* be broader in scope and precedential in character. Rather than respond to the City without first having the benefit of a more deliberate consideration of issues, the Watermaster Board directed legal counsel to reach out to prospective stakeholders. It should come as no surprise that the Watermaster Board will be likely to support a consensus-based solution, as it has in virtually every instance of potential conflict that has arisen over the past 18 months. Accordingly, for the time being, the Watermaster Board has directed legal counsel to convene a stakeholder process among the parties to the Judgment to obtain the benefit of a broader understanding of all the underlying issues and the critical path to resolution.

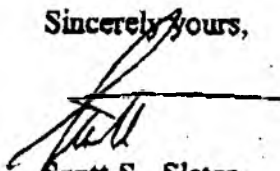
I think our meeting of October 4, 2001 was a good first step. While I clearly appreciate the City of Chino's specific concerns regarding the timing and form of Watermaster's response, we are unable to provide a more specific answer as of the date of this writing.

EXHIBIT C

Page 2

As always, if you have any questions concerning the contents of this letter or any other matter, please call.

Sincerely yours,



Scott S. Slater
For HATCH AND PARENT

SSS:psw

cc: Watermaster Board
John Rossi

FEB-05-2002 15:55

EUNICE M. ULLOA
Mayor

EARL C. ELROD
Mayor Pro Tem



GLENN DUNCAN
TOM HAUGHEY
DENNIS YATES
Council Members

JIMMY GUTIERREZ
City Attorney

October 5, 2001

CITY of CHINO

Mr. John Rossi, CEO
Chino Basin Watermaster
8632 Archibald Avenue, Suite 109
Rancho Cucamonga, CA 91730

Re: Request for Legal Opinion

Dear Mr. Rossi:

I understand that the request of the City of Chino for an administrative construction of the law governing the existing administrative processes of Watermaster by an opinion of its general counsel, conveyed to you by my letter dated and hand delivered on September 26, 2001, was considered by the Watermaster Board in an executive session held during its meeting on September 27, 2001. It is also my understanding that the Board declined to authorize its general counsel to issue that legal opinion.

In the event that my understanding is incorrect, I would appreciate you advising me of the action taking by the Board on my request at your earliest conveyance.

Sincerely,

JIMMY L. GUTIERREZ
City Attorney

By:

Jimmy L. Gutierrez

Cc: Mayor and City Council Members
Glen Rojas, City Manager
Patrick Glover, Director of Public Works



Document No. 11869

12616 Central Avenue, Chino, California 91710
(909) 591-6336 • (909) 628-9803 Fax

FEB-05-2002 15:55

**REQUEST FOR WATERMASTER LEGAL COUNSEL OPINION RE
AVAILABLE WATERMASTER DISPUTE RESOLUTION PROCESS**

1. Is any Watermaster process available, either (a) the Article X Complaint process or other process defined in its existing Rules & Regulations, or (b) some other process authorized by the generic jurisdiction of the Judgment although not defined in such Rules & Regulations, by which to secure:
 - a. Any order of Watermaster necessary or desirable to avoid or minimize property damage and direct and indirect "economic" and other damage to a party to the Judgment or a third party caused by the groundwater pumping of another party to the Judgment, even though not caused by any Watermaster action, decision or rule regarding its approval of an application or any other function of Watermaster, including but not limited to an order to cease or reduce pumping from wells which are a substantial factor in causing land subsidence; and,
 - b. Indemnification or compensation of a party to the Judgment and other third parties for any such damage.
2. Is the provision of Section 9.3 of the Peace Agreement that disputes between the Parties shall be resolved by non-binding mediation a mandatory alternative process in lieu of any such Watermaster process?
3. Would there be any presumption that no cognizable damage had been created by the other party actions complained of in such process.
4. Would the pursuit of such a Watermaster process stay the ability of the complaining party to pursue otherwise available legal remedies until such process is exhausted and a final decision rendered by Watermaster?
5. In the event Watermaster orders a party to cease or reduce pumping from wells causing land subsidence that were in existence on the Date of Execution of the Peace Agreement (June 29, 2000), would Watermaster be obligated to compensate such party for the reasonable cost of replacement groundwater Production facilities.
6. In the event Watermaster is obligated to pay for such costs, against which Producers would it be assessed?
7. In the event Watermaster is obligated to pay for the cost of such replacement facilities if it orders a party to cease or reduce pumping, would the conflict of that economic self interest be a legal impediment to a valid decision by Watermaster whether or not to issue such an order?
8. Is judicial review of the decision of Watermaster in such a process available on a "de novo" basis, not just limited to a determination of whether there was "substantial evidence" to support that decision?
9. Is the scope of judicial review of this decision limited only to situations where the alleged injury arises from the Recharge, Transfer or Qualifying Storage or Recapture of water?

Doc. # 11837 v1

#5928-028

909484 3890

FEB.05.2002 16:48 RECEIVED FROM:

FEB-05-2002 15:55

Mayor

EARL C. ELROD

Mayor Pro Tem



GLENN DUNCAN
TOM HAUGHEY
DENNIS YATES
Council Members

JIMMY GUTIERREZ
City Attorney

CITY of CHINO

September 26, 2001

Mr. John Rossi, CEO
Chino Basin Watermaster
8632 Archibald Avenue, Suite 109
Rancho Cucamonga, CA 91730

Re: Request for Legal Opinion

Dear Mr. Rossi:

It has been asserted by the City of Chino Hills that an adequate remedy is available through existing authorized Watermaster procedures by which to redress the potential land subsidence and other damages to the City of Chino, its property owners, inhabitants and others caused by the production of Chino Hills from the wells from which it has and will derive its supply of water.

However, we have several specific questions about the availability and adequacy of any such remedy, which need to be resolved by the responsive written opinion of Watermaster general counsel providing an authorized administrative construction by Watermaster of applicable law. We understand, however, that in order to secure this opinion we need to submit a formal written request for such an opinion for approval by yourself or your Board. Accordingly, we enclose our written request for an opinion on each of the specifically identified legal issues regarding the availability and adequacy of such a remedy, answers to which we need before we would be able to consider relying on the use of such a remedy.

Time is important, and we urge you to secure whatever approval is necessary to authorize issuance of such an opinion as soon as possible.

Sincerely,

JIMMY L. GUTIERREZ
City Attorney

By: _____

Jimmy L. Gutierrez

JLG:js
Enclosure

12616 Central Avenue, Chino, California 91710
(909) 591-6336 • (909) 628-9803 Fax

Doc. # 11834 v1



EXHIBIT A

#5928-029

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO } Case Number RCV 510101

I am employed in the County of San Bernardino, State of California. I am over the age of 18 years, and not a party to the above-named action. My business address is: Jimmy L. Gutierrez, A.P.C., 12616 Central Avenue, Chino, California, 91710.

On January 31, 2002, I served the foregoing document(s) described as:

DECLARATION OF JIMMY L. GUTIERREZ

by placing [] the original or [x] a true copy thereof, enclosed in a sealed envelope(s), and addressed as follows:

Scott Slater, Esq.
Hatch and Parent
21 East Carrillo Street
Santa Barbara, CA 83101-2782

Mark S. Hensley, Esq.
Burke, William & Sorensen, LLP
611 West 6th Street, Suite 2500
Los Angeles, CA 90017

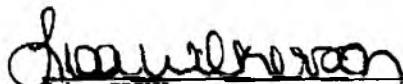
[x] by regular mail;

[x] I caused such envelope(s) to be deposited in the mail at Chino, California. The envelope was mailed with postage thereon fully prepaid.

[x] I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing, under which it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Chino, California. 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 (1) day after deposit of mailing affidavit.

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

Executed on January 31, 2002, at Chino, California.



Lisa Wilkerson

Siles

JIMMY L. GUTIERREZ
ARTURO N. FIERRO

OF COUNSEL
JAMES E. ERICKSON

LAW OFFICES OF
JIMMY L. GUTIERREZ
A PROFESSIONAL CORPORATION
12616 CENTRAL AVENUE
EL CENTRAL REAL PLAZA
CHINO, CALIFORNIA 91710

TELEPHONE (909) 591-6336
FAX (909) 628-9803

FACSIMILE TRANSMITTAL LETTER

DATE: February 4, 2002 NUMBER: (909) 484-3890
NUMBER OF PAGES: 4

TO: Traci Stewart

FROM: Lisa Wilberson

REMARKS: Attached are the Proof of Services you asked for.

CONFIDENTIALITY NOTE

The information contained in this facsimile message is legally privileged and confidential information which is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this message in error, please notify us by telephone immediately so that we can arrange for the return of the original documents to us at no cost to you.

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

Case Number RCV 510101

I am employed in the County of San Bernardino, State of California. I am over the age of 18 years, and not a party to the above-named action. My business address is: Jimmy L. Gutierrez, A.P.C., 12616 Central Avenue, Chino, California, 91710.

On January 31, 2002, I served the foregoing document(s) described as:

DECLARATION OF PATRICK J. GLOVER

by placing [] the original or [x] a true copy thereof, enclosed in a sealed envelope(s), and addressed as follows:

Scott S. Slater, Esq.
Hatch and Parent
21 East Carrillo Street
Santa Barbara, CA 93101

Mark S. Hensley, Esq.
Burke, William & Sorensen, LLP
611 West 6th Street, Suite 2500
Los Angeles, CA 90017

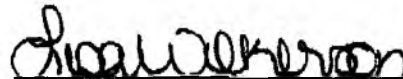
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[x] I caused such envelope(s) to be deposited in the mail at Chino, California. The envelope was mailed with postage thereon fully prepaid.

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

Executed on January 31, 2002, at Chino, California.



Lisa Wilkerson

PROOF OF SERVICE

1
2
3 STATE OF CALIFORNIA)
4) Case Number RCV 51010
5)
6 COUNTY OF SAN BERNARDINO)

7 I am employed in the County of San Bernardino, State of California. I am over the
8 age of 18 years, and not a party to the above-named action. My business address is: Jimmy
9 L. Gutierrez, A.P.C., 12616 Central Avenue, Chino, California, 91710. On January 31,
10 2002, I served the foregoing document(s) described as: **CITY OF CHINO RESPONSE**
11 **TO COUR ORDER FOR INFORMATION; AND MOTION PURSUANT TO**
12 **PARAGRAPH 15 OF THE JUDGMENT** by placing [] the original or [X] a true copy
13 thereof, enclosed in a sealed envelope(s), and addressed as follows:

14 Scot S. Slater
15 Hatch and Parent
16 21 East Carillo Street
17 Santa Barbara, CA 93101

18 Mark Hensley, City of Chino Hills
19 Burke, Williams & Sorensen ,LLP
20 3403 Tenth Street, Suite 300
21 Riverside, CA 92501

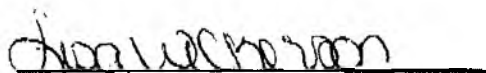
22 [X] by regular mail;

23 [X] I caused such envelope(s) to be deposited in the mail at Chino, California. The
24 envelope was mailed with postage thereon fully prepaid.

25 [X] I am "readily familiar" with the firm's practice of collection and processing
26 correspondence for mailing, under which it would be deposited with the U.S. Postal
27 Service on that same day, with postage thereon fully prepaid, at Chino, California. I am
28 aware that, on motion of the party served, service is presumed invalid if postal cancellation
date or postage meter date is more than one (1) day after deposit of mailing affidavit.

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

Executed on January 31, 2002, at Chino, California.


Lisa Wilkerson

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

Case Number RCV 510101

I am employed in the County of San Bernardino, State of California. I am over the age of 18 years, and not a party to the above-named action. My business address is: Jimmy L. Gutierrez, A.P.C., 12616 Central Avenue, Chino, California, 91710.

On January 31, 2002, I served the foregoing document(s) described as:

DECLARATION OF JIMMY L. GUTIERREZ

by placing [] the original or [x] a true copy thereof, enclosed in a sealed envelope(s), and addressed as follows:

Scott Slater, Esq.
Hatch and Parent
21 East Carrillo Street
Santa Barbara, CA 83101-2782

Mark S. Hensley, Esq.
Burke, William & Sorensen, LLP
611 West 6th Street, Suite 2500
Los Angeles, CA 90017

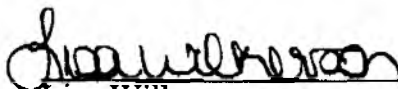
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[x] I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing, under which it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Chino, California. 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 (1) day after deposit of mailing affidavit.

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

Executed on January 31, 2002, at Chino, California.



Lisa Wilkerson

LAW OFFICES OF
JIMMY L. GUTIERREZ
A PROFESSIONAL CORPORATION
12616 CENTRAL AVENUE
EL CENTRAL REAL PLAZA
CHINO, CALIFORNIA 91710

TELEPHONE (909) 591-6336
FAX (909) 628-9803

JIMMY L. GUTIERREZ
ARTURO N. FIERRO

OF COUNSEL
JAMES E. ERICKSON

FACSIMILE TRANSMITTAL LETTER

DATE: February 4, 2002 NUMBER: (909) 484-3890
NUMBER OF PAGES: 7

TO: Traci Stewart
FROM: Leo Wilkinson

REMARKS: _____
_____ Attached are the exhibits for Declaration of
_____ Jimmy L. Gutierrez. The Exhibits for Patrick Glover's
_____ Declaration is a booklet of about 60 pages. I will
_____ mail that.

CONFIDENTIALITY NOTE

The information contained in this facsimile message is legally privileged and confidential information which is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this message in error, please notify us by telephone immediately so that we can arrange for the return of the original documents to us at no cost to you.

CONCEPCION M. ULLORA
Mayor

EARL C. ELROD
Mayor Pro Tem



P. 02/07
GLENN DUNCAN
TOM HAUGHEY
DENNIS YATES
Council Members

JIMMY GUTIERREZ
City Attorney

CITY of CHINO

September 26, 2001

Mr. John Rossi, CEO
Chino Basin Watermaster
8632 Archibald Avenue, Suite 109
Rancho Cucamonga, CA 91730

Re: Request for Legal Opinion

Dear Mr. Rossi:

It has been asserted by the City of Chino Hills that an adequate remedy is available through existing authorized Watermaster procedures by which to redress the potential land subsidence and other damages to the City of Chino, its property owners, inhabitants and others caused by the production of Chino Hills from the wells from which it has and will derive its supply of water.

However, we have several specific questions about the availability and adequacy of any such remedy, which need to be resolved by the responsive written opinion of Watermaster general counsel providing an authorized administrative construction by Watermaster of applicable law. We understand, however, that in order to secure this opinion we need to submit a formal written request for such an opinion for approval by yourself or your Board. Accordingly, we enclose our written request for an opinion on each of the specifically identified legal issues regarding the availability and adequacy of such a remedy, answers to which we need before we would be able to consider relying on the use of such a remedy.

Time is important, and we urge you to secure whatever approval is necessary to authorize issuance of such an opinion as soon as possible.

Sincerely,

JIMMY L. GUTIERREZ
City Attorney

By: _____

Jimmy L. Gutierrez

JLG:js
Enclosure



12616 Central Avenue, Chino, California 91710
(909) 591-0336 • (909) 628-9803 Fax

Doc. # 11834 v1

FEB-04-2002 15:03

**REQUEST FOR WATERMASTER LEGAL COUNSEL OPINION RE
AVAILABLE WATERMASTER DISPUTE RESOLUTION PROCESS**

1. Is any Watermaster process available, either (a) the Article X Complaint process or other process defined in its existing Rules & Regulations, or (b) some other process authorized by the generic jurisdiction of the Judgment although not defined in such Rules & Regulations, by which to secure:
 - a. Any order of Watermaster necessary or desirable to avoid or minimize property damage and direct and indirect "economic" and other damage to a party to the Judgment or a third party caused by the groundwater pumping of another party to the Judgment, even though not caused by any Watermaster action, decision or rule regarding its approval of an application or any other function of Watermaster, including but not limited to an order to cease or reduce pumping from wells which are a substantial factor in causing land subsidence; and,
 - b. Indemnification or compensation of a party to the Judgment and other third parties for any such damage.
2. Is the provision of Section 9.3 of the Peace Agreement that disputes between the Parties shall be resolved by non-binding mediation a mandatory alternative process in lieu of any such Watermaster process?
3. Would there be any presumption that no cognizable damage had been created by the other party actions complained of in such process.
4. Would the pursuit of such a Watermaster process stay the ability of the complaining party to pursue otherwise available legal remedies until such process is exhausted and a final decision rendered by Watermaster?
5. In the event Watermaster orders a party to cease or reduce pumping from wells causing land subsidence that were in existence on the Date of Execution of the Peace Agreement (June 29, 2000), would Watermaster be obligated to compensate such party for the reasonable cost of replacement groundwater Production facilities.
6. In the event Watermaster is obligated to pay for such costs, against which Producers would it be assessed?
7. In the event Watermaster is obligated to pay for the cost of such replacement facilities if it orders a party to cease or reduce pumping, would the conflict of that economic self interest be a legal impediment to a valid decision by Watermaster whether or not to issue such an order?
8. Is judicial review of the decision of Watermaster in such a process available on a "de novo" basis, not just limited to a determination of whether there was "substantial evidence" to support that decision?
9. Is the scope of judicial review of this decision limited only to situations where the alleged injury arises from the Recharge, Transfer or Qualifying Storage or Recapture of water?

Doc. # 11837 v1



EUNICE M. ULLOA
Mayor

EARL C. ELROD
Mayor Pro Tem

GLENN DUNCAN
TOM HAUGHEY
DENNIS YATES
Council Members

JIMMY GUTIERREZ
City Attorney

October 5, 2001

CITY of CHINO

Mr. John Rossi, CEO
Chino Basin Watermaster
8632 Archibald Avenue, Suite 109
Rancho Cucamonga, CA 91730

Re: Request for Legal Opinion

Dear Mr. Rossi:

I understand that the request of the City of Chino for an administrative construction of the law governing the existing administrative processes of Watermaster by an opinion of its general counsel, conveyed to you by my letter dated and hand delivered on September 26, 2001, was considered by the Watermaster Board in an executive session held during its meeting on September 27, 2001. It is also my understanding that the Board declined to authorize its general counsel to issue that legal opinion.

In the event that my understanding is incorrect, I would appreciate you advising me of the action taking by the Board on my request at your earliest conveyance.

Sincerely,

JIMMY L. GUTIERREZ
City Attorney

By: _____

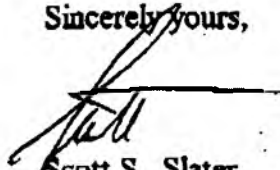
Jimmy L. Gutierrez

Cc: Mayor and City Council Members
Glen Rojas, City Manager
Patrick Glover, Director of Public Works



As always, if you have any questions concerning the contents of this letter or any other matter, please call.

Sincerely yours,



Scott S. Slater
For HATCH AND PARENT

SSS:psw

cc: Watermaster Board
John Rossi

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October 9, 2001

Jim Erickson, Esq.
 Law Offices of Jimmy L. Gutierrez
 12616 Central Avenue
 Chino CA 91710

Re: City of Chino's Request for Opinion/Correspondence 9/26/2001

Mr. Erickson:

This letter is provided in response to your recent inquiry concerning the action taken by Watermaster Board with regard to the City of Chino's request for a written opinion as set forth in the above-referenced correspondence. This letter will confirm that Watermaster is in receipt of the letter and Watermaster general counsel is presently considering potential responses to the questions raised.

To be sure, the City of Chino's concerns are understood by the Watermaster Board, staff, as well as legal counsel. Although your cover letter expressly references subsidence, the listed questions address processes that *may* be broader in scope and precedential in character. Rather than respond to the City without first having the benefit of a more deliberate consideration of issues, the Watermaster Board directed legal counsel to reach out to prospective stakeholders. It should come as no surprise that the Watermaster Board will be likely to support a consensus-based solution, as it has in virtually every instance of potential conflict that has arisen over the past 18 months. Accordingly, for the time being, the Watermaster Board has directed legal counsel to convene a stakeholder process among the parties to the Judgment to obtain the benefit of a broader understanding of all the underlying issues and the critical path to resolution.

I think our meeting of October 4, 2001 was a good first step. While I clearly appreciate the City of Chino's specific concerns regarding the timing and form of Watermaster's response, we are unable to provide a more specific answer as of the date of this writing.

EXHIBIT C



CHINO BASIN WATERMASTER

8632 Archibald Avenue, Suite 109, Rancho Cucamonga, Ca 91730
Tel: 909.484.3888 Fax: 909.484.3890 www.cbwm.org

JOHN V. ROSSI
Chief Executive Officer

TRACI STEWART
Chief of Watermaster Services

October 31, 2001

Jim Erickson
Law Offices of Jimmy L. Gutierrez
12616 Central Avenue
Chino, CA 91710

Re: City of Chino Correspondence of September 26, 2001

Dear Mr. Erickson:

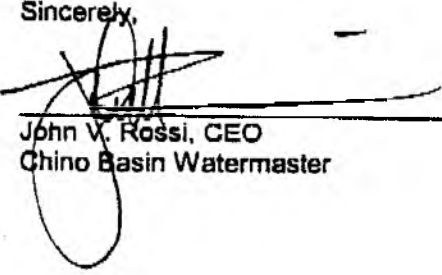
This letter is provided in response to your correspondence referenced above. Watermaster has considered your request for an opinion by Watermaster General Counsel concerning the availability of potential remedies and the construction of the Judgment and Watermaster Rules and Regulations regarding subsidence.

Watermaster has considered your letter, the Judgment, the Rules and Regulations and the concerns of the parties to the Judgment. Many parties have expressed a concern over Watermaster issuing an advisory opinion or the potential subject matter jurisdiction of the Court under the Judgment.

Watermaster recommends that Chino or any other party to the Judgment that desires relief related to evaluating the causes, arresting, or mitigating subsidence that they file a request for judicial relief under paragraph 15 of the Judgment. Please be assured that in the event the City of Chino or any other party to the Judgment makes such a request, Watermaster will file its own petition with the Court acknowledging Watermaster's jurisdiction over the subject matter and requesting the Court for direction on how it should proceed.

If you have any questions, please call me at 909-484-3888.

Sincerely,



John V. Rossi, CEO
Chino Basin Watermaster

EXHIBIT 6