

1 **Thomas H. McPeters/Bar No. 034300**
2 **McPeters McAlearney Shimoff & Hatt**
3 A Professional Corporation
4 4 West Redlands Blvd., 2nd Floor
5 Redlands, California 92373
6 Ph. No. (909) 792-8919
7 Fax No. (909) 792-6234

8 Attorney for Fontana Union Water Company

FILED-West District
San Bernardino County Clerk

SEP 30 2002
By *Leslie Richardson*
Deputy

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10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION**

11	CHINO BASIN MUNICIPAL WATER DISTRICT,)	CASE NO. REV 51010
12		Judge: Honorable J. MICHAEL GUNN
13	Plaintiff,)	
14	v.)	OPPOSITION OF FONTANA
15		UNION WATER COMPANY
16	THE CITY OF CHINO,)	TO SPECIAL REFEREE'S
17	Defendants.)	RECOMMENDATION TO
18		INSTITUTE A LEGAL
19		PROCEEDING TO DETERMINE
20		EXTENT AND SCOPE OF THE
		COURT'S JURISDICTION
		UNDER PARAGRAPH 15 OF
		THE JUDGMENT
		Date: October 17, 2002
		Time: 1:30 pm
		Dept: R8

21 **OPPOSITION OF FONTANA UNION WATER COMPANY TO SPECIAL REFEREE'S**
22 **RECOMMENDATION TO INSTITUTE A LEGAL PROCEEDING TO DETERMINE**
23 **EXTENT AND SCOPE OF THE COURT'S JURISDICTION UNDER PARAGRAPH 15**
24 **OF THE JUDGMENT**

25 Fontana Union Water Company ("Fontana Union") opposes the Special Referee's

1 Recommendation (“the Recommendation”) to “set a briefing schedule to address the jurisdiction,
2 cost allocation and other legal issues raised in this Report and Recommendation” and urges the
3 Court to not adopt it.

4
5 The Recommendation emanates from the Special Referee’s viewpoint that the “consensus”
6 management style of Watermaster and the Parties does not work, and, that a Judicial “coercive”
7 style is required for successful management. Fontana Union disagrees, and, is concerned that delay
8 and damage to the progress and successful management of the Chino Basin will result from
9 implementation of the Recommendation. If the Recommendation is to be implemented ever, it
10 should not be at this time.

11
12 The “consensus” management style has produced very large concrete results, and, in a fairly
13 short period of time. It is probable that a Judicial “coercive” style could not have produced those
14 results.

15
16 It is clear that progress is continuing. The actual work of Watermaster and the Parties is out
17 of view of the Court and the Special Referee. The status of progress and results are reported, but the
18 actual work, which is continuous, time consuming, and participatory, is not really knowable to
19 anyone but the participants. The actual process will always be something of a mystery to anyone
20 but the participants, and, for that reason will likely always be viewed with some degree of
21 “suspicion” and “scepticism.”

22
23 It should be noted that not a single contested matter has been placed before the Court for
24 decision since appointment of Watermaster. What better proof is there that the “consensus”
25 management style works?

1 The “consensus” management style is necessarily “ambiguous”. “Certainty” and “finality”
2 come slowly, but it would be an illusion to conclude that a Judicial “coercive” style would proceed
3 more quickly, or would produce a better result. The right balance of participation - Watermaster,
4 Parties and the Court - is now in place, and ought to be left alone.

5
6 The Special Referee has raised the prospect that “consensual” agreements by the Parties
7 subsequent to the Judgment, the Peace Agreement among them, might be viewed as interpretative
8 of the meaning of the Judgment itself. (Report and Recommendation, page 48, lines 19-22). The
9 clear implication of the Special Referee is that they do, which would not be in keeping with the
10 intent of the Parties, if not all, virtually all. Any implication in that regard would have a chilling
11 effect on further “consensual agreements” by the Parties, an essential component of the continuing
12 “consensus” management style.

13
14 The Peace Agreement is NOT an amendment to the Judgment. It represents the “consensus”
15 management style. The Parties worked out among themselves a great number of significant things.
16 The process that led to the Peace Agreement continued and is continuing with widespread
17 participation. Every manager and every attorney is personally known each to the other, and, knows
18 the needs and problems of all with respect to the Chino Basin. It has taken literally hundreds of
19 hours to reach this point, a point that has never before existed in the history of the Chino Basin.

20
21 Nothing should be done that would adversely affect this process. Fontana Union believes
22 that a legal proceeding commenced at this time with respect to determining the extent and scope of
23 the Court’s jurisdiction would adversely affect this process, and, might dismantle it altogether.

24
25 The Parties put aside their strongly held views with respect to the Court’s jurisdiction at the
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1 time of the Peace Agreement in the interest of managing the Chino Basin better than it had been
2 managed in the past. Chino Basin management took precedence over legalistic positions with
3 respect to the extent and scope of Judicial “coercion.” And, that priority remains in place.

4
5 A legal proceeding to determine the extent and scope of the Court’s jurisdiction would take
6 several years to conclude. Its pendency would likely impede if not stop altogether the “consensual”
7 process until the legal proceeding reached “finality.” Enormous time and attention would be devoted
8 to the litigation. That would be, in the view of Fontana Union, harmful to the management of Chino
9 Basin. There is no need to proceed along this path, may be never, but certainly not at this time.

10
11 The issue that brings forth the Recommendation is “subsidence”, but any legal proceeding
12 would affect in the end virtually all, if not all, issues likely to come before Watermaster over the
13 course of the next several years. The “certainty” and “finality” that would result with respect to the
14 “subsidence” issue has the potential for ending the “consensus” management style altogether, and,
15 in Fontana Union’s view, that would be detrimental to the management of Chino Basin.

16
17 It would be nice in the abstract to have “certainty” and “finality” with respect to the extent
18 and scope of the Court’s jurisdiction, but the “certainty” and “finality” sought by the Parties would
19 be different from Party to Party, to some degree at least, and, the end result might be a more narrow
20 jurisdiction than contended for by any particular Party. Nobody is smart enough to really know the
21 end result, but it is likely that the “consensus” management style would become limited or may be
22 even suspended altogether while the process ran its course.

23
24 There is no compelling reason to initiate a legal proceeding to determine the extent and scope
25 of the Court’s jurisdiction at this time. There is nothing pending before the Court by way of a
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1 contested matter than compels it.

2

3 The Recommendation is no doubt a genuine expression of the Special Referee's viewpoint
4 and no doubt offered as a way to provide "certainty" and "finality" with respect to the subsidence
5 issue and related concerns. Fontana Union has more confidence in the "consensus" management
6 style than does the Special Referee, and, is concerned that implementation of the Recommendation
7 would stall progress in the management of Chino Basin for a very long time, and, possibly dismantle
8 the process that has produced and continues to produce good results for the Chino Basin.


9

10 DATED: September 30, 2002

MCPETERS MCALEARNEY SHIMOFF & HATT
A Professional Corporation

11

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By: 

Thomas H. McPeters
Attorney for Fontana Union Water Company

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CHINO BASIN WATERMASTER

Case No. RCV 51010

Chino Basin Municipal Water District v. The City of Chino

PROOF OF SERVICE

I declare that:

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

On September 30, 2002 I served the attached:

HEARING DATE: October 17, 2002

- 1) WATERMASTER COMMENTS TO REFEREE REPORT ON INTERIM PLAN AND MOTION FOR ORDER TO PROCEED IN ACCORDANCE WITH THE INTERIM PLAN:
Exhibit "A" - Revised Interim Plan
Exhibit "B" - MZ-1 Interim Plan Monitoring Program - Draft Work Plan
- 2) DEFENDANT CUCAMONGA COUNTY WATER DISTRICT'S OBJECTIONS TO SPECIAL REFEREE'S REPORT AND RECOMMENDATION.
- 3) OPPOSITION OF FONTANA UNION WATER COMPANY TO SPECIAL REFEREE'S RECOMMENDATION TO INSTITUTE A LEGAL PROCEEDING TO DETERMINE EXTENT AND SCOPE OF THE COURT'S JURISDICTION UNDER PARAGRAPH 15 OF THE JUDGMENT.
- 4) JOINDER OF SAN ANTONIO WATER COMPANY TO OPPOSITION OF FONTANA WATER COMPANY.

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

See attached service list:

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Mailing List 1

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/ / BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete and without error on the transmission report, which was properly issued by the transmitting fax machine.

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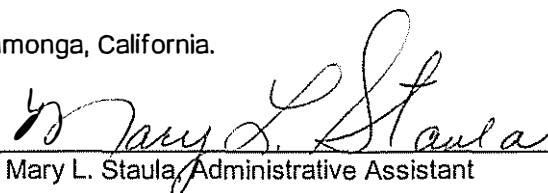
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Attorney Service List - Email
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

FILED West District
Executed on September 30, 2002 in Rancho Cucamonga, California.
San Bernardino County Clerk

SEP 30 2002


Mary L. Staula, Administrative Assistant

By 
Deputy

Attorney Service List

Updated 9/30/02

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

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

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

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

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

JESS SENEAL
LAGERLOF SENEAL BRADLEY
GOSNEY & KRUSE
301 N LAKE AVE 10TH FLOOR
PASADENA CA 91101-4108

Distribution List Name: Attorney Service List

Members:

Anne Schneider (E-mail)	ajs@eslawfirm.com
Art Kidman (E-mail)	akidman@mkblawyers.com
Dan McKinney (E-mail)	dmckinney@rhlaw.com
Eric Garner (E-mail)	elgarner@bbklaw.com
Gene Tanaka (E-mail)	gtanaka@bbklaw.com
Geralyn Skapik (E-mail)	gskapik@bwsllaw.com
James P Morris (E-mail)	jpmorris@bbklaw.com
Jean Cihigoyenette (E-mail)	Jean_CGC@hotmail.com
Jim Erickson (E-mail 3)	Jim@city-attorney.com
Jim Erickson (E-mail)	jeeinc@aol.com
Jim Markman (E-mail)	jmarkman@rwglaw.com
Jimmy Gutierrez (E-mail)	jimmy@city-attorney.com
John Schatz (E-mail)	jschatz13@cox.net
Marilyn Levin (E-mail)	Levinm@hdcdojnet.state.ca.us
Michelle Staples (E-mail)	mstaples@jdpplaw.com
Robert Dougherty (E-mail)	RED@covcrowe.com
Scott Slater (E-mail)	sslater@hatchparent.com
Sharon Joyce (E-mail)	SJoyce@executive.corr.ca.gov
Steve Kennedy (E-mail)	BRALBA@eee.org
Susan Trager (E-mail)	smt@tragerlaw.com
Thomas S Bunn (E-mail)	TomBunn@Lagerlof.com
Timothy Ryan (E-mail)	tjryan@sgvwater.com
Tom McPeters (E-mail)	THMcP@aol.com
William J Brunick (E-mail)	bralba@eee.org

AAA AA
MAILING LIST 1
UPDATED 7/9/02

RICHARD ANDERSON
1365 W FOOTHILL BLVD STE 1
UPLAND CA 91786

RODNEY BAKER
COUNSEL FOR EGGSWEST & JOHNSO
BROS
P.O. BOX 438
Coulterville CA 95311-0438

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

BRUCE CASH
UNITED WATER MGMT CO INC
1905 BUSINESS CENTER DR STE 100
SAN BERNARDINO CA 92408

STEVE CORTNER
VULCAN MATERIALS COMPANY
P.O. BOX 39756
LOS ANGELES CA 90039

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

ROBERT DEBERARD
CHAIRMAN-AG POOL
1886 UKIAH WAY
UPLAND CA 91784

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

GLENN DUNCAN
CBWM BOARD/ALTERNATE
P.O. BOX 667
CHINO CA 91708-0667

GLEN DURRINGTON
5512 FRANCIS ST
CHINO CA 91710

DICK DYKSTRA
10129 SCHAEFER
ONTARIO CA 91761-7973

RALPH FRANK
755 LAKEFIELD RD #E
WESTLAKE VILLAGE CA 91361

CARL FREEMAN
L. D. KING
2151 CONVENTION CENTRE WAY
ONTARIO CA 91764

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

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

JACK HAGERMAN
STATE OF CALIFORNIA CIM
4158 CENTER ST
NORCO CA 92860

PATSY HAMILTON
STATE OF CALIFORNIA CIW
P.O. BOX 6000
CORONA CA 91718

CARL HAUGE
SWRCB
P.O. BOX 942836
SACRAMENTO CA 94236-0001

PAUL HOFER
CBWM BD (AG)
11248 S TURNER AVE
ONTARIO CA 91761

CLARK IDE
OCWD GENERAL COUNSEL
P.O. BOX 8300
FOUNTAIN VALLEY CA 92728-8300

ANNESLEY IGNATIUS
COUNTY OF SAN BERNARDINO FCD
825 E 3RD ST
SAN BERNARDINO CA 92415-0835

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

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

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

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

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

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

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

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

MURIEL O'BRIEN
CBWM BD (TVMWD)
1021 E MIRAMAR AVE
CLAREMONT CA 91711-2052

DANA OLDENKAMP
MILK PRODUCERS COUNCIL
3214 CENTURION PL
ONTARIO CA 91761

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

MARY PARENTE
8559 EDISON AVE
CHINO CA 91710-9242

ROBB QUINCEY
CITY OF HESPERIA
15776 MAIN ST
HESPERIA CA 92345

MARTIN RAUCH
RAUCH COMMUNICATIONS
936 OLD ORCHARD RD
CAMPBELL CA 95008

ROBERT RAUCH
RAUCH COMMUNICATIONS
1086 DIAMOND CREST
SANTA BARBARA CA 93110

ROBERT REITER
SAN BERNARDINO VALLEY MWD
P.O. BOX 5906
SAN BERNARDINO CA 92412-5906

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

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

PATRICK SAMPSON
P.O. BOX 660
POMONA CA 91769

JOSEPH C SCALMANINI
500 FIRST ST
WOODLAND CA 95695

DONALD SCHROEDER
CBWM BD (WMWD)
3700 MINTERN
RIVERSIDE CA 92509

JUDY SCHURR
76433 SHOSHONE DR
INDIANWELLS CA 92210

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

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

NELL SOTO
STATE CAPITOL
ROOM NO 4066
SACRAMENTO CA 95814

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

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

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

SWRCB
SWRCB
P.O. BOX 2000
SACRAMENTO CA 95809-2000

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

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

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

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

R.E. THRASH III
PRAXAIR
5705 AIRPORT DR
ONTARIO CA 91761

ERNIE VAN SANT
DEPARTMENT OF CORRECTIONS - FAC
MGMT DIV.
P.O. BOX 942883
SACRAMENTO CA 94283-0001

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

Distribution List Name: Mailing List 1 - Service List - E-mail

Members:

A.W." Butch" Araiza (E-mail)	butcharaiza@mindspring.com
Arnold Rodriguez (E-mail)	jarodriguez@sarwc.com
Barret Kehl (E-mail)	CBWCD.email@verizon.net
Bill Dendy (E-mail)	bdendy@aol.com
Bill Rice (E-mail)	brice@rb8.swrcb.ca.gov
Bob Feenstra (E-mail)	milkproducerscouncil@juno.com
Carole McGreevy (E-mail 2)	cmcgreevy@jcsd.us
Carole McGreevy (E-mail)	cm_jcsd@pacbell.net
Cole Frates (E-mail)	cfrates@laynewater.com
Craig Stewart (E-mail)	cstewart@geomatrix.com
Curtis Aaron (E-mail)	caaron@fontana.org
Dan Arrighi (E-mail)	darrighi@sgvwater.com
Dave Argo (E-mail)	argodg@bv.com
Dave Crosley (E-mail)	DCrosley@cityofchino.org
David Cooper (E-mail)	dcooper@sunkistgrowers.com
Dennis Yates (E-mail)	dyates1329@aol.com
Diane Sanchez (E-mail)	dianes@water.ca.gov
Don Harriger (E-mail)	dharriger@wmwd.com
Doug Drury (E-mail)	d4@ieua.org
Eric Mills (E-mail)	eric.m.mills@mwhglobal.com
Erick Vaughn (E-mail)	stafengr@aol.com
Frank Brommenschenkel (E-mail)	FBrommensc@aol.com
Fred Lantz (E-mail)	flantz@ci.burbank.ca.us
Gene Koopman (E-mail)	GTKoopman@aol.com
Geoffrey Vanden Heuvel (E-mail)	GeoffreyVH@juno.com
Gerald Black (E-mail)	gblack@FontanaWater.com
Gerald DuBois (E-mail)	info@duboisadvertising.com
Henry Pepper (E-mail)	henry_pepper@ci.pomona.ca.us
James Jenkins (E-mail)	cnomgr@earthlink.net
Jeffrey L. Pierson (E-mail)	jpierson@intexcorp.com
Jennifer Hunt-Harris (E-mail)	jhuntharris@optimalwater.com
Jerry A. King (E-mail)	jking@psomas.com
Jim Bryson (E-mail)	jtbyson@fontanawater.com
Jim Moody (E-mail)	jmoody@ci.upland.ca.us
Joe Grindstaff (E-mail)	jgrindstaff@sawpa.org
Joe Scalmanini (E-mail)	jschal@lsce.com
Joe Schenk (E-mail)	jschenk@ci.Norco.ca.us
John Hayball (E-mail)	john.hayball@sce.com
Judy Schurr (E-mail)	jschurr@earthlink.net
Ken Jeske (E-mail)	kjeske@ci.ontario.ca.us
Kyle Snay (E-mail)	kylesnay@scwater.com
Lisa A Hamilton P.G. (E-mail)	Lisa.Hamilton@corporate.gecom
Mark Kinsey (E-mail)	mkinsey@mwwd.org
Mark Ward (E-mail)	mark_ward@ameron-intl.com
Mark Wildermuth (E-mail)	mwildermuth@wildh2o.com
Martin Rauch (E-mail)	martin@rauchcc.com
Michael Boccadoro (E-mail)	mboccadoro@aol.com
Mike Maestas (E-mail)	mmaestas@chinohills.org
Mike McGraw (E-mail)	mjmcmgraw@FontanaWater.com
Mohamed El-Amamy (E-mail)	melamamy@ci.ontario.ca.us.
Neil Clifton (E-mail)	nclifton@ieua.org
Paul Leon (E-mail)	emoore@ci.ontario.ca.us
Peter Von Haam (E-mail)	peter.vonhaam@doj.ca.gov
Ray Wellington (E-mail)	rwellington@tstonramp.com

Richard Atwater (E-mail 2)
Richard Atwater (E-mail)
Rick Hansen (E-mail)
Rita Kurth (E-mail)
Robert DeLoach (E-mail)
Robert Neufeld (E-mail)
Robert Rauch (E-mail)
Robert W Bowcock (E-mail)
Robert W. Nicholson (E-mail)
Rod Smith (E-mail)
Ron Craig (E-mail)
Steve Arbelbide (E-mail)
Terry Catlin (E-mail)
Vic Barrion (E-mail)
Virginia Grebbien (E-mail)

ratwater33@aol.com
Atwater@ieua.org
rhansen@tvmwd.com
RitaK@ccwdwater.com
robertd@ccwdwater.com
n78098@aol.com
robert.rauchcc@verizon.net
bobbowcock@aol.com
rwnicholson@sgvwater.com
smith@waterstrategist.com
RonC@rbf.com
sarbelbide@californiasteel.com
tcatlin@sunkistgrowers.com
vbarrion@reliant.com
vgrebbien@ocwd.com