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FILED-Rancho Cucamonga District  
SAN BERNARDINO COUNTY  
SUPERIOR COURT

MAY 29 2003

8 Attorneys For  
9 CHINO BASIN WATERMASTER

By W. Michael Gunn Dep

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION

12 CHINO BASIN MUNICIPAL WATER  
13 DISTRICT,

14 Plaintiff,

15 vs.

16 CITY OF CHINO, et al.,

17 Defendants.

Case No. RCV 51010

[Assigned for All Purposes to the Hon. J. Michael Gunn]

CORRECTIONS AND SUPPLEMENTAL  
MATERIALS FOR JUNE 5, 2003  
HEARING

Hearing Date: June 5, 2003  
Hearing Time: 1:30 pm  
Dept: R8

18 On May 7, 2003, Watermaster filed a *Motion for Approval of Metropolitan Dry Year*  
19 *Yield Funding Agreement* and a *Motion Requesting Approval of: 1. Watermaster Annual Report;*  
20 *2. Status Report Nos. 5 and 6; 3. Intervention of Niagara Bottling Company.* This supplemental  
21 pleading provides minor corrections to these pleadings, and provides supplemental information  
22 inadvertently omitted from the same.

23 I. CORRECTIONS

24 A. Proof of Service

25 The above referenced pleadings were served on all parties in accordance with  
26 Watermaster's normal and customary service procedures. However, the Attorney Service List  
27 was in advertently omitted from the Proof of Service as filed with the Court. While all of the  
28

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21 East Carrillo Street  
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1 attorneys were in fact served with the pleadings, for the benefit of the Court's files, Watermaster  
2 provides a corrected Proof of Service for both pleadings here as Exhibit "A."

3 It should be noted in this regard, that in accordance with prior suggestions from the Court  
4 that Watermaster transition to a less paper-intensive process, all of the attorneys of record in this  
5 case now receive service through electronic means.

#### 6 **B. Order of Exhibits**

7 The *Motion for Approval of Metropolitan Dry Year Yield Funding Agreement* contains a  
8 lengthy Exhibit 2, which itself contains seventeen attachments. Unfortunately, the copy served on  
9 the Court and many of the parties had a compiling error which has resulted in confusion over this  
10 Exhibit. As served, the Exhibit begins with Attachment VII. About three-quarters of the way  
11 through the Exhibit, following Attachment XVII, is a cover sheet titled "Memorandum and  
12 Attachments" and dated February 13, 2003. This cover sheet marks the beginning of the Exhibit.

13 Watermaster regrets this error and any confusion it may have caused.

## 14 **II. SUPPLEMENTAL INFORMATION**

#### 15 **A. Authentication Declaration**

16 The *Motion for Approval of Metropolitan Dry Year Yield Funding Agreement* lacked a  
17 Declaration authenticating the documents provided in support of the Motion. For the benefit of  
18 the Court's records, attached to this pleading as Exhibit "B" is a Declaration of Michael T. Fife  
19 which provides authentication of the documents previously filed with the Court. No new  
20 documents are being offered to the Court, and this error therefore does not result in prejudice to  
21 any party.

#### 22 **B. Niagara Intervention Request**

23 The Motion for Approval of Niagara's Intervention Request referenced Niagara's formal  
24 request for intervention via letter dated April 1, 2003, but did not provide a copy of this letter.  
25 For the benefit of the Court's records, attached to this pleading as Exhibit "C" is a copy of  
26 Niagara's formal letter request for intervention pursuant to paragraph 60 of the Judgment as well  
27 as the staff report acted upon by the Watermaster Advisory Committee and Board in accepting  
28

1 the request for intervention at their April 24, 2003 meetings. Attached to this pleading as Exhibit  
2 "D" is a Declaration of Michael T. Fife authenticating these documents.


3 **C. Status of CIM Approval of Access Agreement**

4 Watermaster's Status Report No. 6 included a summary of Program Element 1 – Develop  
5 and Implement Comprehensive Monitoring Program. As part of this summary, a discussion of  
6 the installation of new monitoring equipment was provided on page 6. Watermaster is very happy  
7 to report that since the date of the filing of Status Report No. 6, a Right of Entry Agreement has  
8 been executed with the State of California – CIM that will allow Watermaster to conduct  
9 enhanced piezometric level and production monitoring at CIM wells. This most recent Right of  
10 Entry Agreement follows on the previous Right of Entry Agreement dated July 1, 2002, that has  
11 allowed for the installation of the piezometers and the extensometer in Ayala Community Park  
12 and a recent amendment in April 2003 allowing for temporary expansion of that project site onto  
13 other CIM property. Watermaster looks forward to continuing its cooperative and productive  
14 relationship with the State of California – CIM.

15 **III. CONCLUSION**

16 Watermaster knows of no objections that have or will be filed to any of the matters set  
17 for hearing on June 5, 2003 at 1:30 pm. The matters corrected and supplemented as described  
18 above do not result in any new or different information and these corrections and supplemental  
19 documents are provided solely for the benefit of the Court's records. Thus, these omissions do  
20 not work to the prejudice of any party.

23 HATCH & PARENT, A LAW CORPORATION

24  
25 By:   
26 Scott S. Slater  
27 Michael T. Fife  
28 Attorneys for  
CHINO BASIN WATERMASTER

# Exhibit A

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

**CORRECTED 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 May 7, 2003 I served the following for hearing on June 5, 2003, 1:30 p.m., Dept. R8

- A. **Motion Requesting Approval of:**
  - 1. **Watermaster Annual Report**
  - 2. **Status Report Nos. 5 and 6**
  - 3. **Intervention of Niagara Bottling Company**
- B. **Motion for Approval of Metropolitan Dry Year Yield Funding Agreement**

/\_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:***

Attorney Service List  
Mailing List 1

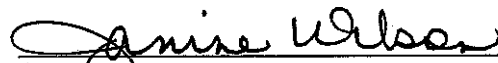
/\_\_/\_ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/\_\_/\_ BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

/\_x\_/ BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

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

Executed on May 29, 2003 in Rancho Cucamonga, California.

  
\_\_\_\_\_  
Janine Wilson  
Chino Basin Watermaster

---

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# Exhibit B

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FILED-Rancho Cucamonga District  
SAN BERNARDINO COUNTY  
SUPERIOR COURT

MAY 29 2003

By Michael T. Fife Deputy

8 Attorneys for CHINO BASIN WATERMASTER

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION

11 CHINO BASIN MUNICIPAL WATER DISTRICT, )  
12 Plaintiff, )  
13 v. )  
14 THE CITY OF CHINO, )  
15 Defendants. )  
16 )  
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20 )  
21 )

CASE NO. RCV 51010

Judge: Honorable J. MICHAEL GUNN

**DECLARATION OF MICHAEL T. FIFE IN SUPPORT OF MOTION FOR APPROVAL OF METROPOLITAN DRY YEAR YIELD FUNDING AGREEMENT**

Date: June 5, 2003

Time: 1:30

Dept: R8

- 22 1. My name is Michael Fife and I am an attorney with the law firm of Hatch &
- 23 Parent.
- 24 2. Hatch & Parent is the General Counsel for the Chino Basin Watermaster.
- 25 3. In my capacity as General Counsel for the Chino Basin Watermaster I have
- 26 participated in the process regarding approval of the Metropolitan Dry Year Yield
- 27 Funding Agreement as described in the *Motion for Approval of Metropolitan Dry*
- 28 *Year Yield Funding Agreement.*

HATCH AND PARENT  
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4. I drafted the pleading captioned *Motion for Approval of Metropolitan Dry Year Yield Funding Agreement* and am readily familiar with the Exhibits to this pleading.
5. Exhibit 1 to this pleading is a true and correct final copy of the referenced Agreement. Though not all of the attachments to this Agreement had been finalized at the time of filing, these attachments do not result in any alteration of the terms of the Agreement. A copy with all attachments will be provided to the Court at the June 5, 2003 hearing.
6. Exhibit 2 to this pleading is a true and correct copy of the Memorandum and Attachments which provides the information upon which the Advisory Committee and Board's decision was based.
7. Exhibit 3 to this pleading is a true and correct copy of the staff report upon which the Advisory Committee and Board's decision was based.
8. Exhibits 4-6 are true and correct copies of previous Metropolitan storage agreements in the Chino Basin as previously approved by the Court
9. I swear under penalty of perjury that the foregoing is true to the best of my knowledge.



Michael T. Fife

DATED: May 29, 2003

# Exhibit C



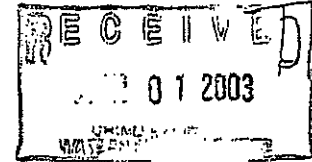


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www.niagarawater.com



April 1, 2003

**VIA FACSIMILE (909) 484-3890**

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

**RE: NIAGARA BOTTLING, LLC, GENERAL BUSINESS MATTERS**

***Subject: Request for Intervention by Niagara Bottling LLC***

Dear Mr. Rossi:

Please allow this correspondence to serve as Niagara's formal request to intervene in the Chino Basin Judgment (Case No. RCV 51010), effective April 1, 2003. In accordance with this request, we request that Niagara be placed into the Appropriate Pool with adjudicated production rights of 0 acre-feet per year and a full replenishment obligation. In other words, in the interests of compromise, Niagara will forfeit any and all existing water rights (including arguably convertible agricultural rights) it may have, and will terminate its relationship with Wayne Lemieux, to the extent such representation deals with, or in any way pertains to the Chino Basin and/or the Chino Basin Watermaster.

In order to demonstrate our desire to compromise, and participate as a member of the Chino Basin Community, and conditioned upon the Watermaster's acceptance of the terms set forth herein, Niagara will agree to pay the replenishment assessment (\$243 per acre-foot) on the water it produced from May of 2002 to April 1, 2003. Based on information provided to us by Watermaster, we are informed that this amount of water is approximately 169.2 acre-feet resulting in a replenishment cost of \$41,115.60.

We understand that with an approved intervention on these terms, all past issues with Niagara will have been resolved, and that Niagara will be able to produce water from the Chino Basin with all rights afforded to us as a party to the Judgment.



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**WATER**

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(949) 863-1400, (949) 955-0758 Facsimile

[www.niagarawater.com](http://www.niagarawater.com)

In the event you have any questions or concerns, please do not hesitate to contact the undersigned at (949) 735-4045.

Best Regards,

A handwritten signature in black ink, appearing to read "Brian M. Hess", written over a horizontal line.

**Brian M. Hess**

General Counsel for

Niagara Drinking Waters, Inc.

([bhess@niagarawater.com](mailto:bhess@niagarawater.com))

cc: Michael Fife via facsimile (805) 965-4333



# 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

## STAFF REPORT

**DATE:** April 24, 2003  
**TO:** Advisory Committee Members  
Watermaster Board Members  
**SUBJECT:** Intervention of Niagara Bottling, LLC

### SUMMARY

Issue – Request for Intervention by Niagara Bottling, LLC

**Recommendation** – Staff recommends that the Pools recommend to the Advisory Committee that Niagara's request for intervention be accepted according to the following terms:

1. Niagara will be assigned to the Appropriative Pool.
2. Niagara will have an adjudicated right of 0 acre-feet per year.
3. Niagara will pay a full replenishment obligation.
4. Niagara will reimburse Watermaster for water pumped prior to intervention in the amount of \$41,115.00

**Fiscal Impact** - None

### BACKGROUND

Niagara is a water bottling company that is pumping water from a well within the service area of the Cucamonga County Water District. On April 1, 2003, through counsel, Niagara submitted a letter to Watermaster, which indicated that it would like to voluntarily intervene into the Judgment. Such intervention is authorized by Paragraph 60 of the Judgment.

### DISCUSSION

The terms of intervention that Niagara has requested are the same terms under which Arrowhead intervened into the Judgment.

Based on information provided by Niagara, Watermaster estimates that Niagara's production from the Basin to date has been less than 200 acre-feet. While Niagara has drilled a well with an estimated capacity of approximately 400 acre-feet per year, it appears that operational issues to date have prevented Niagara from using this well to its full capacity. Estimating Niagara's production has been complicated by the fact that it imports via trucks a considerable amount of water to its facility from outside the Basin. Based on extensive negotiations over the past few months, Watermaster believes that the amount of money that Niagara has offered to reimburse to Watermaster for the water that it has pumped to date is a fair reimbursement, representing substantially all of the water that has been pumped. Niagara is aware that it will be required to install a meter on its well in order to measure future production.

Given the relatively small quantity of water anticipated to be produced by Niagara in the future, Watermaster does not believe that any Material Physical Injury to any party or to the Basin will result from Niagara's intervention. Staff recommends that the Pools forward a recommendation to the Advisory Committee and Board to approve Niagara's request for intervention according to the terms listed above.

At their meetings held April 10, 2003, the Pool Committees voted unanimously to recommended approval of staff's recommendation.

# Exhibit D

FEE EXEMPT

1 Scott S. Slater (SBN 117317)  
Michael T. Fife (SBN 203025)  
2 HATCH AND PARENT  
21 East Carrillo Street  
3 Santa Barbara, CA 93101  
Phone: 805-963-7000  
4 Fax: 805-965-4333

FILED-Rancho Cucamonga District  
SAN BERNARDINO COUNTY  
SUPERIOR COURT

MAY 29 2003

5 Attorneys for CHINO BASIN WATERMASTER

By Michael T. Fife Deputy

6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION

10  
11 CHINO BASIN MUNICIPAL WATER DISTRICT, )  
12 Plaintiff, )

CASE NO. RCV 51010

Judge: Honorable J. MICHAEL GUNN

13 v. )

14 THE CITY OF CHINO, )  
15 Defendants. )

DECLARATION OF MICHAEL T. FIFE IN SUPPORT OF MOTION FOR APPROVAL OF METROPOLITAN DRY YEAR YIELD FUNDING AGREEMENT

Date: June 5, 2003

Time: 1:30

Dept: R8

HATCH AND PARENT  
21 East Carrillo Street  
Santa Barbara, CA 93101

- 16  
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21  
22 1. My name is Michael Fife and I am an attorney with the law firm of Hatch &  
23 Parent.  
24 2. Hatch & Parent is the General Counsel for the Chino Basin Watermaster.  
25 3. In my capacity as General Counsel for the Chino Basin Watermaster I have  
26 participated in the process regarding approval of the request for intervention by  
27 the Niagara Bottling Company as described in the May 7, 2003 Motion filed with  
28 the Court.

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4. Attached to the pleading captioned *Corrections and Supplemental Materials for June 5, 2003 Hearing* as Exhibit "C" is a true and correct copy of Niagara's formal letter request for intervention and staff report providing an analysis and recommendation concerning this request.
5. The Watermaster Advisory Committee and Board's decision to accept the intervention was based upon this letter and staff report.
6. I swear under penalty of perjury that the foregoing is true to the best of my knowledge.



Michael T. Fife

DATED: May 29, 2003

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 May 29, 2003 I served the attached:

**CORRECTIONS AND SUPPLEMENTAL MATERIALS FOR JUNE 5, 2003 HEARING**

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:**  
Attorney Service List  
Mailing List 1

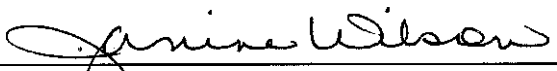
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

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

Executed on May 29, 2003 in Rancho Cucamonga, California.

  
\_\_\_\_\_  
Janine Wilson  
Chino Basin Watermaster

---

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**Updated 5/29/03**

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