

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, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On March 12, 2004 I served the following:

NOTICE OF MOTION AND MOTION OF DEFENDANT MONTE VISTA WATER DISTRICT FOR ORDER COMPELLING WATERMASTER TO ESTABLISH A PROGRAM TO EQUITABLY ALLOCATE BENEFITS FROM WATER QUALITY MITIGATION MEASURES UNDER THE PHYSICAL SOLUTION; DECLARATION OF MARK KINSEY; MEMORANDUM OF POINTS AND AUTHORITIES

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:
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.

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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.

Executed on March 12, 2004 in Rancho Cucamonga, California.



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FILED-Rancho Cucamonga District
SAN BERNARDINO COUNTY
SUPERIOR COURT

MAR 11 2004

By: *[Signature]*
Deputy

5 Attorneys for Defendant
6 MONTE VISTA WATER DISTRICT

Exempt from Filing Fee Under
Government Code § 6103

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DISTRICT

10
11 CHINO BASIN MUNICIPAL WATER DISTRICT,
12 Plaintiff,

13 v.

14
15 THE CITY OF CHINO,
16 Defendants.

) CASE NO. RCV 51010
) Assigned for All Purposes to
) Honorable J. MICHAEL GUNN
) Department R11
)
) NOTICE OF MOTION AND MOTION
) OF DEFENDANT MONTE VISTA
) WATER DISTRICT FOR ORDER
) COMPELLING WATERMASTER TO
) ESTABLISH A PROGRAM TO
) EQUITABLY ALLOCATE BENEFITS
) FROM WATER QUALITY
) MITIGATION MEASURES UNDER
) THE PHYSICAL SOLUTION;
) DECLARATION OF MARK KINSEY;
) MEMORANDUM OF POINTS AND
) AUTHORITIES
)
) DATE: April 22, 2004
) TIME: 8:30 a.m.
) DEPT: R11 *ef*

17
18
19 AND RELATED CROSS-ACTIONS.
20

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23
24 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

25 PLEASE TAKE NOTICE THAT on April 22, 2004 in Department R11 of the above-
26 entitled Court, located at 8303 Haven Avenue, Rancho Cucamonga, Petitioner MONTE VISTA
27 WATER DISTRICT ("Monte Vista") will move this Court for an order compelling the CHINO
28 BASIN WATERMASTER ("Watermaster") to establish a program to equitably allocate benefits in

1 proportion to water quality mitigation expenditures under the Physical Solution.

2 Monte Vista brings this Motion pursuant to paragraph 15 of the January 30, 1978 Judgment,
3 which reserves continuing jurisdiction to this Court "to make such further or supplemental orders or
4 directions as may be necessary or appropriate for interpretation, enforcement or carrying out of" the
5 Judgment.

6 Monte Vista bases this Motion on the mandatory Watermaster duty to establish a program
7 equitably allocating benefits in proportion to water quality mitigation expenditures under the
8 Physical Solution. Watermaster has a clear and present duty as set forth in paragraph 1(c) of
9 Exhibit I of the Judgment, Section 5.5 of the Peace Agreement and Watermaster Rule 4.10.
10 Watermaster has failed to carry out that duty, despite Monte Vista's repeated requests that
11 Watermaster carry out its duty.

12 Monte Vista bases this Motion on this Notice of Motion, the Declaration of Mark Kinsey
13 and Memorandum of Points and Authorities attached hereto, on the papers and records on file
14 herein, and on such oral and documentary evidence as may be presented at the hearing of this
15 Motion.

16 DATED: March 11, 2004

MCCORMICK, KIDMAN & BEHRENS, LLP

17
18 By: Boyd L. Hill
19 ARTHUR G. KIDMAN
20 BOYD L. HILL
21 Attorneys for Defendant
22 MONTE VISTA WATER DISTRICT

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1 DECLARATION OF MARK KINSEY

2 I, Mark Kinsey, am the General Manager of the Monte Vista Water District. The following
3 facts are based on my personal knowledge:

4 1. Monte Vista is a County Water District formed and operating pursuant to Division
5 12 of the California Water Code (§§ 30000 et seq.). Monte Vista provides retail and wholesale
6 water supply services to a population of over 100,000 within a 30-square mile area, including the
7 communities of Montclair, Chino Hills, portions of the City of Chino and the unincorporated area
8 lying between the cities of Pomona, Chino Hills, Chino and Ontario. Monte Vista does not provide
9 sewer service and does not discharge wastewater into the Chino Basin.

10 2. Watermaster is established under paragraph 16 of the Judgment in this case “to
11 administer and enforce the provisions of the Judgment and any subsequent instructions or orders of
12 the Court thereunder.” Watermaster is currently comprised of a nine-member board, each member
13 representing the interests of a certain party or group of parties and designated by that party or group
14 of parties.

15 3. Watermaster must establish a program that equitably allocates benefits in proportion
16 to water quality mitigation expenditures under the Physical Solution in this case, based on the
17 following:

18 a. Judgment. Paragraph 1(c) of Exhibit “T” to the Judgment provides that
19 Watermaster, as an inferior officer of the Court, “shall consider” “financial feasibility, economic
20 impact and the cost and optimum utilization of the Basin’s resources and the physical facilities of
21 the parties” “equal in importance to water quantity and quality parameters” in the implementation of
22 the Physical Solution.

23 b. Peace Agreement. Section 5.5 of the Peace Agreement provides:
24 “Watermaster shall assign to the members of the Appropriative Pool, salt credits under the
25 OBMP...”¹

26 _____
27 ¹ At page 4, lines 24-25 of this Court’s July 13, 2000 Order Concerning Adoption of OBMP, this Court
28 ordered: “Watermaster shall proceed in a manner consistent with the peace Agreement and the OBMP
Implementation Plan.”

1 c. Watermaster Rules. Watermaster Rule 4.10 provides: "Salt credits shall be
2 held in trust for the benefit of the individual members of the Appropriative Pool according to
3 section 5.5 of the Peace Agreement. Watermaster shall assign each member's proportionate share
4 of Salt Credits to the member of the Appropriate Pool upon request by the member. This rule
5 establishes no basis for the allocation of Salt Credits. Such procedures shall be developed in the
6 Appropriative Pool Rules at the time Salt Credits become available for assignment."

7 4. Monte Vista is beneficially interested in the establishment of such a program because
8 Monte Vista has contributed and is committed to contribute expenditures for water quality
9 mitigation measures under the Peace Agreement. Monte Vista agreed to make those contributions
10 based on Watermaster's commitment to carry out the Watermaster Performance provisions
11 contained in Article V of the Peace Agreement, as ordered by this Court. In particular, Watermaster
12 agreed to honor the "bargained-for consideration" of equitable allocation of benefits to each party
13 accruing from that party's expenditures for OBMP salt removal and prevention measures through
14 the process denominated assignment of "salt credits." (See October 26, 2000 Post Order
15 Memorandum, page 14.)

16 5. Watermaster has previously represented to this Court's Referee that "initiation of [a]
17 pending request would trigger the requirement for Watermaster to then come forward and develop
18 rules" [bold and underline added] regarding salt credits. (See pages 30-31 of March 8, 2001
19 Reporter's Transcript of Special Referee Workshop on Watermaster Rules and Regulations attached
20 hereto and incorporated herein by this reference as Exhibit 1.)

21 6. Watermaster has failed and refused, and continues to fail and refuse, to establish
22 such a program despite Monte Vista's formal request that Watermaster do so. Monte Vista made a
23 formal request for equitable allocation of benefits to Monte Vista in proportion to Monte Vista's
24 contribution to water quality mitigation measures under the Physical Solution. The request was
25 contained in a May 29, 2003 letter from Monte Vista to the Watermaster, which stated:

26 Monte Vista Water District respectfully requests Watermaster to review
27 and resolve an inequity arising from allocation of costs associated with the
28 upcoming proposed Basin Plan amendment. The inequity or "harm," results
from the fact that certain parties to the Judgment are required to pay OBMP
program costs which inure, disproportionately, to the benefit of other parties to

1 the Judgment. The Judgment, the Peace Agreement and the Watermaster Rules
2 and Regulations all require costs under the Judgment to be apportioned among
the parties in a manner that is equitable in relationship to the benefits derived
from those costs.

3 Monte Vista urges the Watermaster to consider and act upon this
4 request before moving forward with proposed amendments to the Regional
Water Quality Control Board's Basin Plan. The Basin Plan amendments are
5 predicated upon OBMP programs and will provide significant and unique
benefits to those appropriators who provide sewer services.

6 A true and correct copy of the Monte Vista May 29, 2003 letter to the Watermaster is
7 attached hereto and incorporated herein by this reference as Exhibit 2. Monte Vista's request for
8 equitable allocation of benefits accruing from OBMP water quality mitigation expenditures,
9 whether in the form of "salt credits" assignment or otherwise, is still pending with the Watermaster.

10 7. As a result of Watermaster's failure to establish such a program, only waste
11 dischargers currently obtain the benefits of water quality mitigation measures under the Physical
12 Solution, which benefits accrue in the form of relaxed Regional Board Basin Plan requirements for
13 TIN/TDS discharges.

14 8. Over the last year, Monte Vista has repeatedly requested, and Watermaster has
15 repeatedly failed, to undertake proceedings to determine a program to equitably allocate benefits in
16 proportion to water quality mitigation expenditures under the Physical Solution in this case. A true
17 and correct copy of excerpts from the May 15, May 21, June 12, June 25 and July 10, 2003
18 Appropriative Pool meeting minutes and August 28, 2003 Watermaster Board meeting minutes are
19 attached hereto and incorporated herein by this reference as Exhibit 3.

20 9. Monte Vista's presentation to the Watermaster is reported in the June 12, 2003
21 Appropriative Pool meeting minutes, as follows:

22 Mr. Kinsey gave an overhead presentation to explain why MVWD is
23 concerned. With the higher objectives, MVWD believes the appropriators who
do not provide sewer service will be required to pay a pro-rata share to
24 subsidize the desalters that will uniquely benefit only the appropriators who do
provide sewer service. They recall the parties approving the Peace Agreement
25 and OBMP based on the understanding that costs and benefits of salt mitigation
programs would be apportioned fairly. He said the value of the water MVWD
26 alone is contributing to offset the desalter replenishment obligation is upwards
of \$300,000 per year. However, MVWD agreed to subsidize the desalter
27 replenishment obligation in exchange for salt credits generated. With the
proposed change, any salt credits generated will go to support the Basin Plan
28 Amendment through the Maximum Beneficial Use Analysis. If Basin Plan
objectives are raised, restrictions that existed for reclamation will be freed up

1 that Monte Vista will contribute nearly \$6 million dollars towards water quality mitigation measures
2 during the term of the Peace Agreement, but will receive *no benefit therefrom*. Waste dischargers,
3 however, will receive *very substantial benefits*. A true and correct copy of that presentation is
4 attached hereto and incorporated herein by this reference as Exhibit 4.

5 11. At all times herein mentioned, Watermaster has been able to establish such a program.
6 Notwithstanding such ability, and despite Monte Vista's request for such a program, Watermaster has
7 refused to and continues to refuse to undertake to establish such a program. Watermaster has artfully
8 dodged action on Monte Vista's request, referring the request to the pool committees on one occasion
9 and to a special committee on another occasion. Both times the request died in committee without
10 substantial report back to the Watermaster and without any formal or definitive action by
11 Watermaster.

12 12. Monte Vista has no means of recourse to cause Watermaster to establish such a
13 program other than by seeking the relief sought in this Petition pursuant to paragraph 15 of the
14 Judgment. Watermaster has not taken any action to equitably allocate benefits under the Physical
15 Solution that would provide a basis upon which damages could be calculated in an action at law or to
16 which a challenge could be made in a motion to this Court pursuant to paragraph 31 of the Judgment.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing
18 facts and documents are true and correct of my personal knowledge. Executed this 11th day of March
19 2004 at Montclair, California.

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22 MARK KENSEY
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION.

3 The Chino Basin Judgment and the Peace Agreement require Watermaster to develop a
4 program to equitably allocate benefits to parties in proportion to expenditures they contribute to
5 water quality mitigation under the Physical Solution, including those accruing under the Optimum
6 Basin Management Program (“OBMP”). All Appropriators in the Peace Agreement agreed to
7 contribute to expenditures for desalters (the provision of replacement water) and storm water
8 recharge in consideration for a Watermaster commitment to develop a program to equitably allocate
9 benefits in proportion to each party’s contribution. The parties anticipated that the equitable
10 allocation would be carved out in a program denominated assignment of “salt credits.” However,
11 no “salt credit” or other benefit allocation program has been established by Watermaster. Thus,
12 waste dischargers receive a disproportionate benefit from the water quality mitigation measures
13 supported by Monte Vista’s contributions. Monte Vista does not discharge wastewater to the Chino
14 Basin. In order to achieve equity under the Physical Solution, Watermaster must provide a
15 program, in lieu of salt credits, to equitably allocate benefits of basin water quality mitigation (a
16 “Mitigation Allocation Program” or “MAP”) to all those parties who expend money for salt
17 removal and prevention.

18 Monte Vista has made a formal request that Watermaster develop a MAP under the Physical
19 Solution. Watermaster has failed to take any action on Monte Vista’s request for a MAP.
20 Watermaster has so far artfully dodged taking any action on the request for a MAP, and the issue
21 has been obfuscated by narrow technical distortions of the “salt credits” concept. Thus, Monte
22 Vista is forced to request this Court to compel Watermaster to perform its mandatory duty under the
23 Judgment and Peace Agreement to develop a MAP to equitably allocate benefits in proportion to
24 expenditures for water quality mitigation measures under the Physical Solution.

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1 **II. THIS COURT SHOULD USE ITS RESERVED EQUITABLE POWERS TO**
2 **COMPEL WATERMASTER TO ESTABLISH A MAP THAT WILL EQUITABLY**
3 **ALLOCATE BENEFITS IN PROPORTION TO WATER QUALITY MITIGATION**
4 **EXPENDITURES UNDER THE PHYSICAL SOLUTION.**

5 Paragraph 15 of the Judgment reserves jurisdiction and power for this Court to accomplish
6 the equitable purposes of the Judgment. Paragraph 15 provides, in pertinent part:

7 Full jurisdiction, power and authority are retained and reserved to the Court as
8 to all matters contained in this judgment, except: [safe yield determination and
9 allocation]. . . . Said continuing jurisdiction is provided for the purpose of
10 enabling the Court, upon application of any party, the Watermaster, the
11 Advisory Committee or any Pool Committee, by motion and, upon at least 30
12 days' notice thereof, and after hearing thereon, to make such further or
13 supplemental orders or directions as may be necessary or appropriate for
14 interpretation, enforcement or carrying out of this Judgment, and to modify,
15 amend or amplify any of the provisions of this Judgment.

12 The California Supreme Court in *City of L.A. v. City of Glendale* (1943) 23 Cal.2d 68, 81, stated
13 that the reservation of jurisdiction in water rights adjudications is for the purpose of making
14 equitable adjustment of substantial public interests:

15 The retention of jurisdiction to meet future problems is regarded as an
16 appropriate exercise of equitable jurisdiction in litigation over water rights,
17 particularly when the adjustment of substantial public interests is involved.
[cites omitted] In giving declaratory relief a court has the powers of a court of
equity.

18 The equitable remedy authorized in paragraph 15 of the Judgment to compel carrying out of
19 the Judgment is akin to the remedy of a writ of mandate, which under Code of Civil Procedure
20 section 1085 allows a court to "compel the performance of an act which the law specially enjoins,
21 as a duty resulting from an office, trust, or station." (See *Inyo County v. City of Los Angeles* (1976)
22 61 Cal.App.3d 91, 96 ["Mandate proceedings, although not of equitable origin, are governed by
23 equitable principles."; See also 6 Witkin, California Procedure, Provisional Remedies § 279 (4th
24 Ed.) ["Mandamus, like a mandatory injunction, compels action; but mandamus is limited to duties
25 specially required by law."])

26 Just as in a mandate proceeding, this Court may issue an order under its equitable powers to
27 compel an inferior public officer to undertake the exercise of discretion without compelling that
28 discretion to be exercised in a particular manner or reaching a result. (Compare *Ballard v.*

1 *Anderson* (1971) 4 Cal.3d 873, 884-885 [mandate] with *Camp v. Board of Supervisors* (1981) 123
2 Cal.App.3d 334, 355-357 [equitable relief].)

3 Just as in a mandate proceeding, under its equitable powers, this Court may issue an order to
4 compel an officer of the court in which the action is brought. (Compare *Trafficschoolonline, Inc. v.*
5 *Superior Court* (2001) 89 Cal.App.4th 222, 237 [mandate] with *Glade v. Glade* (1995) 38
6 Cal.App.4th 1441, 1455 [equitable relief].)

7 **A. THE PHYSICAL SOLUTION AND PEACE AGREEMENT ARE INTENDED**
8 **TO MAXIMIZE WATER QUALITY AND QUANTITY FOR THE**
9 **EQUITABLE BENEFIT OF ALL THE PARTIES.**

10 The Judgment sought to maximize Basin water quality and quantity by means of a Physical
11 Solution that equitably distributes its benefits. Paragraph 39 of the Judgment provides:

12 The purpose of these provisions is to establish a legal and practical means for
13 making the maximum reasonable beneficial use of the waters of Chino Basin
14 by providing the optimum economic, long-term, conjunctive utilization of
15 surface waters, ground waters and supplemental water, to meet the
16 requirements of water users having rights in or dependent upon Chino Basin.

17 Paragraph 41 of the Judgment specifies that the development and implementation of an Optimum
18 Basin Management Program was intended to accomplish the goals of the Physical Solution to
19 maximize water quality and quantity and equitably distribute benefits:

20 Both the quantity and quality of said water resources may thereby be
21 preserved and the beneficial utilization of the Basin maximized.

22 The equitable allocation of costs and benefits among the parties is part and parcel of a
23 physical solution. The California Supreme Court in *City of Los Angeles v. City of San Fernando*
24 (1975) 14 Cal.3d 199, 290, stated:

25 The usual purpose of a physical solution is to avoid a waste of water
26 without unreasonably or adversely affecting the rights of the parties.

27 Indeed, this Court retained jurisdiction for the express purpose to supplement Watermaster
28 discretion in order to insure, *inter alia*, the equitable allocation of benefits under the Physical
Solution. Paragraph 40 of the Judgment provides:

It is essential that this Physical Solution provide maximum flexibility

1 and adaptability in order that Watermaster and the Court may be free to use
2 existing and future technological, social, institutional and economic options, in
3 order to maximize beneficial use of the waters of Chino Basin. To that end, the
Court's retained jurisdiction will be utilized, where appropriate, to supplement
the discretion herein granted to the Watermaster.

4 In formulating the OBMP so as to maximize water quality and water quantity benefits, it
5 was apparent that water quality mitigation measures for desalters would primarily benefit waste
6 dischargers by reducing their cost of compliance with Regional Board regulations. Thus, the
7 Watermaster facilitated the development of a Peace Agreement between the parties stipulating to
8 the Judgment expressly designed to resolve disputes among the parties to the Judgment relating to
9 "benefits, procedures and the adoption and implementation of the OBMP." (Peace Agreement,
10 page 3, 12th Whereas clause.)

11 **B. THIS COURT HAS ORDERED WATERMASTER TO CARRY OUT THE**
12 **PEACE AGREEMENT AND WATERMASTER RULES.**

13 This Court has ordered Watermaster to carry out the provisions of the Peace Agreement
14 and Watermaster Rules and Regulations. At page 4, lines 24-25 of this Court's July 13, 2000 Order
15 Concerning Adoption of OBMP, this Court ordered: "Watermaster shall proceed in a manner
16 consistent with the Peace Agreement and the OBMP Implementation Plan." And, in this Court's
17 July 19, 2001 Order Granting Final Approval of Watermaster Rules and Regulations, this Court
18 approved and ordered adoption of the Watermaster Rules and Regulations.

19 **C. THE JUDGMENT, PEACE AGREEMENT AND WATERMASTER RULES**
20 **COMPEL WATERMASTER TO ESTABLISH A MAP.**

21 Paragraph 1(c) of Exhibit I to the Judgment expressly states that, in the implementation of
22 the Physical Solution, Watermaster must equitably allocate water quality and quantity costs and
23 benefits that the Physical Solution intends to maximize:

24 In the process of implementing the physical solution for Chino Basin,
25 Watermaster shall consider the following parameters: (c) Financial
26 feasibility, economic impact and the cost and optimum utilization of the
27 Basin's resources and the physical facilities of the parties are objectives and
concerns equal in importance to water quantity and quality parameters.

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1 Recognizing that the desalter alternative would benefit only waste dischargers rather than
2 all Appropriators, the parties collectively agreed in the Peace Agreement to equitably distribute the
3 benefits of desalters and salt prevention. The parties agreed that distribution would take place in
4 the form of mandatory Watermaster assignment of "salt credits." Section 5.5 of the Peace
5 Agreement provides: "Watermaster shall assign to the members of the Appropriative Pool, salt
6 credits under the OBMP"

7 Under the Peace Agreement, the MAP to allocate benefits accruing based on cost
8 contributions for OBMP salt removal and prevention activities is denominated a "salt credit"
9 program. Section 1.1(rr) of the Peace Agreement defines "salt credits" as "an assignable credit that
10 may be granted by the Regional Water Quality Control Board and computed by Watermaster from
11 activities that result from removal of salt from the Basin, or that result in a decrease in the amount
12 of salt entering the Basin."

13 Watermaster has previously represented to this Court that assignment of "salt credits" was a
14 material consideration for obligations of the parties under the Peace Agreement and that "salt
15 credits" accrue and must be assigned regardless of Regional Board action. At page 13 of the June
16 26, 2000 Post Order Memorandum, referring to salt credits that "may accrue or be awarded by the
17 Regional Board," Watermaster represented: "This is a component of bargained for consideration
18 in the Peace Agreement that Watermaster intends to respect." [emphasis added] At page 15 of
19 the same Memorandum, Watermaster further stated:

20 It is also essential that Watermaster fairly allocate the credits to future
21 projects for the general benefit of the Appropriative Pool. The salt credits will
22 have been earned by the efforts and actions of the entire Appropriative Pool
23 and the benefits should be fairly meted out to ensure the maximum benefit for
24 those projects that add to the end goal of timely implementation of the OBMP.
(*Id.* at p. 15.)

24 The use of the word "may" in the definition of "salt credits" does not diminish the mandatory "shall
25 assign" contained in section 5.5 of the Peace Agreement. "'May,' however, should be interpreted
26 as 'shall' and as invoking a mandatory duty if such an interpretation is necessary to carry out
27 legislative intent." (See *Elmore v. Imperial Irrigation Dist.* (1984) 159 Cal App.3d 185, 194.)

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1 **D. WATERMASTER HAS FAILED TO CARRY OUT ITS MANDATORY**
2 **DUTY AS A TRUSTEE OF BENEFITS.**

3 Watermaster and the parties understood and intended that Watermaster would have a
4 mandatory trustee duty to account for accrued salt credits independent of Regional Board action.

5 Watermaster Rule 4.10, enacted in June 2001, provides:

6 Salt credits shall be held in trust for the benefit of individual members
7 of the Appropriative Pool according to section 5.5 of the Peace Agreement.
8 Watermaster shall assign each member's proportionate share of Salt Credits to
9 the member of the Appropriative Pool upon request by the member. This rule
 establishes no basis for the allocation of Salt Credits. Such procedures shall be
 developed in the Appropriative Pool Rules at the time Salt Credits become
 available for assignment.

10 If salt credits did not exist until Regional Board assignment, there would be no salt credits for
11 Watermaster to hold in trust pending assignment.

12 As expressed in Watermaster Rule 4.10, Watermaster holds benefits from expenditures for
13 water quality mitigation under the Physical Solution in trust, and has a fiduciary duty to equitably
14 allocate benefits in proportion to expenditures for water quality mitigation under the Physical
15 Solution. Restatement Second, Trusts, section 2 defines a trust as:

16 [A] fiduciary relationship with respect to property, subjecting the person by
17 whom the title to the property is held to equitable duties to deal with the
18 property for the benefit of another person, which arises as a result of a
 manifestation of an intention to create it.

19 Watermaster has failed to carry out its equitable duty to develop a MAP as requested by
20 Monte Vista. (See paragraphs 6 & 8 of Mark Kinsey Declaration and Exhibits 2 & 3.) Watermaster
21 Rule 4.10 provides: "Watermaster shall assign each member's proportionate share of Salt Credits to
22 the member of the Appropriative Pool upon request by the member."

23 Watermaster counsel, on behalf of Chino Basin Parties, previously represented to this Court,
24 at the Referee's hearing on the Rules, that Watermaster has the obligation to assign salt credits upon
25 pending request by an appropriator. Pages 30-31 of the transcript of that hearing (see Exhibit 1
26 attached to the Mark Kinsey Declaration) provides:

27 Schneider: But I do have some specific questions about this section that is there.
28 These are—there is sort of a set of provisions that talk about shutting down wells and
 there's provisions on salt credits, and both of those seem to hold out for some later

1 time the development of, I guess, rules and regulations to address those issues. And
2 is that the sense here, that you have a placeholder and later on will come back and
develop rules and regs on salt credits? Is that the idea?

3 Slater: Yeah. I think that is particularly true with regard to salt credits. They are a
commodity, if you will, that is controlled primarily by the regional board and not
4 Watermaster per se. *But the parties collectively recognize that they would rather
take credit among themselves to be able to take greatest advantage of how the
credits will ultimately be deployed.* And not having full knowledge about how it
5 may be best to use them, they have decided to *punt until an opportunity comes or
arises to be able to assign and allocate them.* The Watermaster must hold them in
6 trust, and it does recognize that the time will come, perhaps soon, that it will need to
address that with more robust and definite rules.

7 Schneider: So where it says on page 25, rule establishes no basis for allocation of
salt credits, what do you intend then? That further rules and regs will be further
8 amended to provide procedures for this?

9 Slater: That's correct. We do know there is a—there are three general
statements. One is that the salt credits were held in trust by Watermaster.
10 *There is an assignment to each member of the appropriative pool.* Upon
request by the member, if there is not a pending request, then *presumably*
11 *initiation of that pending request would trigger the requirement for*
Watermaster to then come forward and develop rules. [Italics added]

12 “The remedies of a beneficiary against the trustee for breach of trust are exclusively in
13 equity.” (Prob. Code § 16421.) Those remedies include an order “to compel the trustee to perform
14 the trustee’s duties.”² (Prob. Code § 16420(a)(1).) This Court should issue an order compelling
15 Watermaster establish a MAP to equitably allocate benefits in proportion to water quality mitigation
16 measures under the Physical Solution, whether in the form of “salt credits” or otherwise.

17 **E. MONTE VISTA DOES NOT HAVE AN ADEQUATE REMEDY AT LAW.**

18 Because Watermaster failed to act on Monte Vista’s request for a MAP, Monte Vista has no
19 plain, speedy, and adequate remedy in the ordinary course of law. Equitable relief should be issued
20 in all cases when there is not a plan, speedy, and adequate remedy, in the ordinary course of law.
21 (See *Hicks v. Clayton* (1977) 67 Cal.App.3d 251, 264.) The adequacy of other remedies is a factual
22 question whose determination lies largely in the discretion of the court. (See *Id.*) An inadequate
23 remedy at law exists when there are no grounds for an action at law against the responding party.
24 (See *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885, fn.

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27 ² Another statutory remedy provided for breach of trust is “to remove the trustee.” (Prob. Code § 16420(a)(5).
28 Although the petition does not seek such relief, this Court might want to re-examine the whether majority interests
dominating the Watermaster governance structure currently in place are the reason for Watermaster refusal to do its
duty in this regard (See Pages 6-10 of the December 15, 1997 Referee Report to this Court)

1 3 [petitioner had no grounds for an action for refund of school impact fees or for administrative
2 challenge.]

3 Similarly, in the present case, Monte Vista has no contractual remedy against the
4 Watermaster, a non-party to the Peace Agreement. Monte Vista has no remedy to challenge a
5 Watermaster administrative action under paragraph 38 of the Judgment because the Watermaster
6 has refused to take any action allocating benefits accruing from expenditures for water quality
7 mitigation measures under the Physical Solution despite Monte Vista's formal request for such
8 action. (See Exhibits 2 and 3 attached to the Petition.)

9 **F. MONTE VISTA IS A BENEFICIALLY INTERESTED PARTY.**

10 Monte Vista has standing as a beneficially interested party in the requested relief.
11 Mandatory equitable relief may be granted to a party who can show an invasion of a legally
12 protected interest that is concrete and particularized and actual or imminent. (See *Cornelius v. Los*
13 *Angeles county etc. Authority* (1996) 49 Cal.App.4th 1761, 1768-1769.) Monte Vista has shown that
14 it has and will make
15 expenditures in the millions of dollars for water quality mitigation measures under the Physical
16 Solution but does not and will not receive any of the benefits to which it has an equitable claim
17 under the Judgment and Peace Agreement. (See Exhibit 4 attached to the Mark Kinsey
18 Declaration.) Monte Vista has a legally protected interest in obtaining a proportional benefit from
19 those expenditures.

20 **III. CONCLUSION.**

21 This Court has continuing jurisdiction to consider the Petition to compel
22 Watermaster to undertake the development of a program to equitably allocate benefits of
23 water quality mitigation measures under the Physical Solution. The Watermaster has a
24 mandatory duty under the Judgment and Peace Agreement to undertake the development of
25 such a program upon request by a party. Although this Court cannot dictate the
26 discretionary details of how that program will equitably allocate benefits, this Watermaster
27 has a clear, present and mandatory duty to develop such a discretionary program.
28 Watermaster has refused to undertake that duty despite Monte Vista's formal request for

1 Watermaster to act. This Court must therefore compel Watermaster to undertake the
2 development of such a program.

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DATED: March 11, 2004

MCCORMICK, KIDMAN & BEHRENS, LLP

By: Boyd L. Hill
ARTHUR G. KIDMAN
BOYD L. HILL
Attorneys for Petitioner
MONTE VISTA WATER DISTRICT

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EXHIBIT 1

BEFORE THE CHINO BASIN WATERMASTER
BOARD OF DIRECTORS

--oOo--

In Re)
)
OPTIMUM BASIN MANAGEMENT PROGRAM)
)
Special Referee Workshop, Rules)
and Regulations.)
)

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

DATE AND TIME: THURSDAY, MARCH 8, 2001
10:15 A.M.

PLACE: LAW OFFICES OF
BEST, BEST & KRIEGER
3500 EAST PORSCH WAY
SUITE 200
ONTARIO, CA 92764

REPORTED BY: WINIFRED S. KRALL, C.S.R. #5123

OUR JOB NO.: WK-24371

1 added.

2 But I do have some specific questions about this
3 section that is there. There are -- there is sort of a
4 set of provisions that talk about shutting down wells and
5 there's provisions on salt credits, and both of those
6 seem to hold out for some later time the development of,
7 I guess, rules and regulations to address those issues.
8 And is that the sense here, that you have a placeholder
9 and later on will come back and develop rules and regs on
10 salt credits? Is that the idea?

11 MR. SLATER: Yeah. I think that is particularly
12 true with regard to salt credits. They are a commodity,
13 if you will, that is controlled primarily by the regional
14 board and not Watermaster per se. But the parties
15 collectively recognize that they would rather take credit
16 generally amongst themselves to be able to take greatest
17 advantage of how the credits will ultimately be deployed.
18 And not having full knowledge about how it may be best to
19 use them, they have decided to punt until an opportunity
20 comes or arises to be able to assign and allocate them.
21 The Watermaster must hold them in trust, and it does
22 recognize that the time will come, perhaps soon, that it
23 will need to address that with more robust and definite
24 rules.

25 MS. SCHNEIDER: So where it says on page 25,

1 rule establishes no basis for allocation of salt credits,
2 what do you intend, then? That further rules and regs
3 will be further amended to provide procedures for this?

4 MR. SLATER: That's correct. We do know there
5 is a -- there are three general statements. One is that
6 the salt credits were held in trust by Watermaster.
7 There is an assignment to each member of the
8 appropriative pool. Upon request by the member, if there
9 is no pending request, then presumably initiation of that
10 pending request would trigger the requirement for
11 Watermaster to then come forward and develop rules.

12 MS. SCHNEIDER: Should there be some reference
13 to form 9 here? Form 9 is applications for reimbursement
14 or credit, the salt credit.

15 MR. SLATER: The question is, should salt
16 credits fall within the purview of Article 10 such that
17 when a party comes forward, they have to follow that
18 process.

19 MS. SCHNEIDER: 'Cause it's clearly not, but it
20 probably needs to say.

21 MR. SLATER: Okay. It's a good question that I
22 think we need to run down. I think initially the
23 expectation was that it would not follow the process of
24 Article 10, but I could be corrected by the stakeholders.
25 I think the general impression was that there would be

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REPORTER'S CERTIFICATE

I, Winifred S. Krall, a certified shorthand reporter licensed by the State of California, hereby certify:

That the foregoing oral proceedings, taken down by me in stenotype, were thereafter reduced to typewriting by computer-aided transcription under my direction;

That this typewritten transcript is a true record of the foregoing oral proceedings.

I further certify that I am not in any way interested in the outcome of this action and that I am not related to any of the parties thereto.

Witness my hand the 15th day of March, 2001.

WINIFRED S. KRALL, C.S.R. #5123

EXHIBIT 2

McCORMICK, KIDMAN & BEHRENS, LLP

LAWYERS

H. L. (MIKE) McCORMICK*
ARTHUR G. KIDMAN*
RUSSELL G. BEHRENS*
SUZANNE M. TAGUE*
JANET R. MORNINGSTAR*
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*A PROFESSIONAL CORPORATION

May 29, 2003

Hand Delivered

CHINO BASIN WATERMASTER
8632 Archibald Ave., Suite 109
Rancho Cucamonga, CA 91730

Re: *Monte Vista Water District Request for Review of Cost Apportionment*

Dear Board Members:

Monte Vista Water District respectfully requests Watermaster to review and resolve an inequity arising from allocation of costs associated with the upcoming proposed Basin Plan amendment. The inequity, or "harm," results from the fact that certain parties to the Judgment are required to pay OBMP program costs which inure, disproportionately, to the benefit of other parties to the Judgment. The Judgment, the Peace Agreement and the Watermaster Rules and Regulations all require costs under the Judgment to be apportioned among the parties in a manner that is equitable in relationship to the benefits derived from those costs.

Monte Vista urges the Watermaster to consider and act upon this request before moving forward with proposed amendments to the Regional Water Quality Control Board's Basin Plan. The Basin Plan amendments are predicated upon OBMP programs and will provide significant and unique benefits to those appropriators who provide sewer services.

Monte Vista believes that, under current approaches to apportionment of OBMP program costs, appropriators which do not provide sewer service are or will be required to provide specific support to OBMP programs that will uniquely benefit the appropriators which do provide sewer service. Monte Vista is currently preparing a cost/benefit analysis in support of this request and wishes to present that analysis for consideration by Watermaster.

CHINO BASIN WATERMASTER

Re: *Monte Vista Water District Request for Review of Cost Apportionment*

May 29, 2003

Page 2 of 2

Monte Vista believes that Watermaster and the parties have obligations under the Chino Basin Judgment and Peace Agreement to consider this request before proceeding with support for the Basin Plan amendment. Monte Vista believes that the Peace Agreement and OBMP were approved by the parties with the common understanding that the costs and benefits of salt mitigation programs would be apportioned fairly.

Thank you for considering this request. Monte Vista looks forward to cooperating with the Watermaster and the other parties to establish a mutually agreeable and equitable cost and benefit apportionment.

Very truly yours,

MCCORMICK, KIDMAN & BEHRENS



ARTHUR G. KIDMAN

AGK\BLH\mbr

Hand Delivered at Watermaster meeting at:

City of Ontario
Council Chambers
303 East "B" Street
Ontario, California 91764

cc: John Rossi, Watermaster Chief Executive Officer
Scott Slater, Watermaster Counsel

EXHIBIT 3

<p>1/30/03 Agenda: Advisory Committee Annual Mtg.</p>	<p>II. BUSINESS ITEMS – Action</p> <p>A. MAXIMUM BENEFIT ANALYSIS</p> <p>Fees for contract with Risk Sciences to perform Maximum Benefit Analysis plus contract administration costs through the Santa Ana Watershed Project Authority.</p>
<p>1/30/03 Advisory Committee Annual Mtg.</p>	<p>II. BUSINESS ITEMS</p> <p>A. MAXIMUM BENEFIT ANALYSIS</p> <p>The contract issued to Risk Sciences to perform a maximum benefit analysis was approved and is complete. Staff requested authorization to pay administrative costs related to the contract, incurred by Santa Ana Watershed Project Authority (SAWPA) in the amount of \$31,220.</p> <p>Motion by DeLoach, second by Black, and by unanimous vote.</p> <p>Moved, to approve staff recommendation to process payment of Invoice No. 50041 in the amount of \$31,220 for administrative costs incurred by SAWPA.</p>
<p>4/10/03 Ag Pool</p>	<p>E. SALT MANAGEMENT BUDGET (Agricultural Pool)</p> <p>Mr. Rossi stated that a line item in the amount of \$150,000 has not been utilized and no further action has been taken on this project upon revisions of the Peace Agreement Mr. Rossi recommends the pools to request Watermaster to research the maximum benefits of this salt management program and amend the current budget to reflect the line item amount set forth. The Pools agreed that the line item set forth for the salt management project will be included in the proposed budget for FY 2003-2004 and applied to the May 2003 meeting agenda for continued discussion and possible action.</p>
<p>5/15/03 Agenda: Ag Pool</p>	<p>C. MAXIMUM BENEFIT PROPOSAL/BASIN PLAN AMENDMENT</p> <p>Staff and Wildermuth Environmental, Inc. will present information at the meeting regarding the latest on the Basin Plan Amendment process through the Regional Water Quality Control Board.</p>
<p>5/15/03 Appropriative Pool</p>	<p>C. MAXIMUM BENEFIT PROPOSAL/BASIN PLAN AMENDMENT</p> <p>Mr. Wildermuth provided an update on the Basin Plan Amendment process through the Regional Water Quality Control Board. The Maximum Benefit Proposal implements the concept that basin plan objectives change for nitrates and TDS, allowing for higher objectives to create a proactive basin-wide management program so that recycled water projects, stormwater projects, and imported water projects would not require individual mitigation. Mr. Wildermuth encouraged everyone to review the handout. Table 5-7a identifies the projects and requirements that must be implemented to demonstrate maximum benefit and provides compliance dates. No later than 2006 and every three years thereafter (to coincide with the Regional Board's triennial review process), the Regional Board intends to review the status of the activities planned and executed by Watermaster and IEUA to demonstrate maximum benefit and justify continued implementation of the maximum benefit water quality objectives. In the event that the projects and actions specified in Table 5-7a are not implemented, the Regional Board will require that</p>

the Watermaster and IEUA mitigate any effects of lowering of water quality resulting from the recharge of recycled water in the Chino North Management Zone and/or in the downstream Orange County Management Zone. Questions and discussion ensued. Mr. Kimsey expressed that Monte Vista Water District (MVWD) has a concern as to whether the Maximum Beneficial Use Analysis is consistent in terms of allocating salt credits as agreed to in the Peace Agreement. MVWD's concerns were pursued. Realizing the importance of resolving the concerns at this level rather than at the Advisory Committee level, the members scheduled a Special Meeting of the Appropriative Pool on May 21, 12:30 p.m. at the City of Ontario on Bon View Avenue to continue discussing this matter. A recommendation, if any, will be made at that meeting. Mr. Thibeault, Regional Water Quality Control Board (RWQCB), was in attendance to participate in the Basin Plan Amendment discussion. After the discussion, he said he had to leave. Mr. Jeske requested a moment of his time to express gratitude to the RWQCB for their help and expertise during a recent incident with Ontario's sewage system. The action recommended by a RWQCB staff member over the telephone was the same action recommended by their field crew upon arriving at the site. With everyone working together and in agreement, the incident was quickly brought under control. He also thanked Cucamonga County Water District, the City of Fontana, the City of Chino Hills, the City of Chino and the City of Upland for their help and for the quick response in assisting to achieve complete containment of the problem. No action taken.

5/15/03
Ag Pool

C. MAXIMUM BENEFIT PROPOSAL/BASIN PLAN AMENDMENT

Mr. Wildermuth provided an update on the Basin Plan Amendment process through the Regional Water Quality Control Board. The Maximum Benefit Proposal implements the concept that basin plan objectives change for nitrates and TDS, allowing for higher objectives to create a proactive basin-wide management program so that recycled water projects, stormwater projects, and imported water projects would not require individual mitigation. Mr. Wildermuth reviewed Table 5-7a outlining programs/projects and compliance dates. No later than 2006 and every three years thereafter (to coincide with the Regional Board's triennial review process), the Regional Board intends to review the status of the activities planned and executed by Watermaster and IEUA to demonstrate maximum benefit and justify continued implementation of the maximum benefit water quality objectives. In the event that the projects and actions specified in Table 5-7a are not implemented, the Regional Board will require that the Watermaster and IEUA mitigate any effects of lowering of water quality resulting from the recharge of recycled water in the Chino North Management Zone and/or in the downstream Orange County Management Zone. Questions and discussion ensued in which staff was requested to report next month on findings regarding how the October 1, 2005 20 MGD desalter plan commitment came about.

Motion by Pierson, second by Koopman, and by unanimous vote.

Moved, to forward a recommendation for approval of the commitments outlined in Table 5-7a and further explained for the Chino Basin Maximum Benefit Proposal.

5/21/03
Appropriative
Pool Special
Mtg.

I. MAXIMUM BENEFIT PROPOSAL/BASIN PLAN AMENDMENT

At the Pool meetings held May 15, 2003, Wildermuth Environmental, Inc. presented information regarding the most recent process through the Regional Water Quality Control Board on the Maximum Benefit Proposal/Basin Plan Amendment. The Appropriative Pool took no action at that time. The Appropriative Pool members scheduled this special meeting to continue discussing the matter.

Following the distribution of handout materials, the appropriators discussed "salt credits" as defined in Section 5.5 of the Peace Agreement and in Section 4.10 of the Rules & Regulations. There were opposing opinions expressed with regard to how and when salt credits would be allocated that related back to negotiations of the Peace Agreement. The history and interpretations of salt removal and salt credits discussed during formulation of the Peace Agreement were reviewed.

Discussion ensued regarding the amount of salt currently being removed at Desalter I. It was noted that the numbers have not yet been quantified. Under implementation of the OBMP, salt credits from Desalter I will go toward cleaning up the legacy contamination in the Basin whereas the Desalter I expansion and the future Desalter II will fall under the 80/20 Rule.

Mr. Wildermuth handed out engineering data predating Desalter I that indicated an estimated amount of salts coming in from recharge (recycled water, imported water and stormwater) and out from the desalter. Mr. Wildermuth was asked to update the numbers in the engineering data prior to the next Appropriative Pool meeting. Questions were asked about how salt credits might be available from other Watermaster activities and how some credits could be left over after assignment. Watermaster staff was asked to talk to the Regional Board about assigning left over credits to Watermaster or about accumulating salt credits. Monte Vista Water District (MVWD) felt that salt credits should be assigned to the appropriators before recycled water (net), not on total credits (gross). Mr. Kinsey said MVWD did not agree to subsidize the Recycled Water Program. To resolve an inequity, less expensive recycled water could be purchased. However, everyone agreed that the fundamental question is whether or not there will be salt credits.

Counsel Fife explained that it is up to the Regional Board to create the salt credits and Watermaster can only divide what they decide. It was suggested that staff take a look at what is currently being removed at Desalter I subject to Section 5.5, determine what Chino II Desalter might do based on best information and find out how the system would work to benefit the people. Once that has been accomplished, a salt credit and debit methodology could be created. Staff was asked to discuss salt credits with the Regional Board, how credits would work with or without the Basin Plan Amendment, and fall back on antidegradation requirements.

CDA issues were mentioned. Mr. Craig said that the City of Chino Hills never envisioned a commodity value to salt credits. Discussion continued regarding the concept of overall costs and benefits shared vs. project by project and Item F on the Plan vs. required third desalter commitment.

The following is a summary of actions to be taken:

- 1) Watermaster staff to discuss salt credits with the Regional Board
- 2) Mr. Wildermuth to revise/update TDS/TIN in and out credits schedule and consider net/gross issue (with or without recycled water)
- 3) (Something about clarifying the language where it says "we are going to do a study.")
- 4) Agendize this item for possible action by the Appropriative Pool in June. Chair Jeske adjourned the meeting at 2:00 p.m.

5/29/03
Advisory
Committee

5. Other

Mr. Rossi reported on the Storage & Recovery Special Meeting on the Maximum Benefit Basin Plan Amendment language. Specifically Monte Vista had some issues regarding the language and how it may impact issues pertaining to recharge of recycled water. Monte Vista was also concerned that the language may have a bearing on the salt credits concept included in the Peace Agreement. Upon discussion of this meeting, staff was directed to bring additional information for discussion at the next pool meetings scheduled June 12, 2003.

Mr. Rossi reported on the grant application that needs to be submitted to DWR by June 9, 2003 of \$76,000,000 that is available for conjunctive-use programs.

Mr. Rossi stated that the operating plans must be in by June 1, 2003 for the Long-Term In- Lieu Storage Program to be submitted by Friday, If there are any questions contact Mr. Rossi or Andrew Lazenby.

Mr. Rossi reported that SAWPA acknowledged that the Watermaster would receive an integrated project of the year award for the OBMP at an award ceremony held on Thursday, June 4, 2003. Mr. Rossi will ask Mr. Yates to accept this award on behalf of Watermaster.

5/29/03
WM Board

4. Reschedule June 26 Advisory & Board Meetings to June 19

Mr. Rossi asked to reschedule the Advisory Committee and Watermaster Board meeting from June 26th to June 19th due to an Invitation from WESTCAS to speak on the OBMP and the Chino Basin Maximum Benefit Proposal.

6/12/03
Appropriative
and Non-Ag
Pools

B. CONSIDER REQUEST FROM MONTE VISTA WATER DISTRICT FOR REVIEW OF COST APPORTIONMENT RELATED TO OBMP SALT CREDITS

Mr. Rossi referenced the letter from Monte Vista Water District on page 107 regarding cost apportionment of OBMP salt credits. Staff has been working for some time on a Maximum Benefit Proposal using California Water Code section 13241 and other criteria to establish TDS and TIN objectives In the Chino Basin.

In May, the Mr. Kinsey, Monte Vista Water District (MVWD), expressed concern that the proposed Basin Plan Amendment could alter the apportionment of future salt credits. The members of the Appropriative Pool scheduled a special meeting on May 21 to continue discussing MVWD's concern. No action was taken on May 21. Instead, staff was directed to schedule the item for further discussion at the June Appropriative Pool meeting. The enclosed letter from MVWD requesting a review of this issue was presented to the Watermaster Board on May 29. The Watermaster Board directed staff and Legal Counsel to gather information and prepare a white paper on this matter for further review.

Mr. Kinsey said that MVWD believes the appropriators who do not provide sewer service will be required to provide specific support to OBMP programs that will uniquely benefit the appropriators who do provide sewer service. They also believe that the Peace Agreement and OBMP were approved by the parties with the understanding that costs and benefits of salt mitigation programs would be apportioned fairly. They are preparing a cost/benefit analysis for presentation to Watermaster.

Mr. Rossi confirmed that staff and Legal Counsel will gather as much background as possible to prepare the white paper as requested and continue this dialogue in July. Mr. Wellington requested consideration as to how this particular issue, one element of the OBMP, might integrate and relate with other issues, recognizing the total objective is to have a well managed basin. The Regional Board has scheduled a Basin Plan

Amendment workshop for August 22 and a hearing in October.

Discussion will continue in July; no action taken.

6/12/03
Ag Pool

B. CONSIDER REQUEST FROM MONTE VISTA WATER DISTRICT FOR REVIEW OF COST APPORTIONMENT RELATED TO OBMP SALT CREDITS

Mr. Rossi referred to the Maximum Benefit Proposal requesting the Regional Board to raise objectives related to recharge of groundwater, specifically TDS and Nitrates, in the Basin Plan Amendment. Staff has been working for some time on the Maximum Benefit Proposal using California Water Code section 13241 and other criteria to establish TDS and TIN objectives in the Chino Basin.

In May, the General Manager of Monte Vista Water District (MVWD) expressed concern that the Basin Plan Amendment as proposed could alter the apportionment of future salt credits. The members of the Appropriative Pool scheduled a special meeting on May 21 to continue discussing MVWD's concern. No action was taken on May 21. Instead, staff was directed to schedule the item for further discussion at the June Appropriative Pool meeting. The enclosed letter from MVWD requesting a review of this matter was presented to the Watermaster Board on May 29. The Watermaster Board directed staff and Legal Counsel to gather information and prepare a white paper on the issue.

Mr. Kinsey gave an overhead presentation to explain why MVWD is concerned. With the higher objectives, MVWD believes the appropriators who do not provide sewer service will be required to pay a pro-rata share to subsidize the desalters that will uniquely benefit only the appropriators who do provide sewer service. They recall the parties approving the Peace Agreement and OBMP based on the understanding that costs and benefits of salt mitigation programs would be apportioned fairly. He said the value of the water MVWD alone is contributing to offset the desalter replenishment obligation is upwards of \$300,000 per year. However, MVWD agreed to subsidize the desalter replenishment obligation in exchange for salt credits generated. With the proposed change, any salt credits generated will go to support the Basin Plan Amendment through the Maximum Beneficial Use Analysis. If Basin Plan objectives are raised, restrictions that existed for reclamation will be freed up allowing the use of salt credits for reclamation. MVWD believes this represents a material change in what was negotiated in the Peace Agreement. Any potential offset for the funding subsidy will be eliminated, creating an inequity due to the secondary benefit of reclamation through the use of salt credits.

Mr. Rossi pointed out that some of the appropriators expressed a belief that salt credits have a potential to be marketable if available. At this time, however, salt credits do not exist and during negotiations of the Peace Agreement, they did not know if they would ever exist. It is the intent of staff and Legal Counsel to prepare a white paper as requested by the Board and to continue this dialogue at the July meetings. The Regional Board has scheduled a Basin Plan Amendment workshop on August 22 and a hearing in October.

6/25/03
Appropriative
Pool Special
Mtg.

I. MONTE VISTA WATER DISTRICT'S REQUEST FOR REVIEW OF SALT CREDITS PER THE PEACE AGREEMENT

Mr. Kinsey presented charts and graphs supporting the concerns of Monte Vista Water District (MVWD) regarding salt credit benefits. During negotiations of the Peace Agreement, it was his understanding that the appropriators would receive a cost apportionment of OBMP salt credits in return for subsidizing the desalters. He compared the cost apportionment with and without implementation of the Maximum Benefit Proposal/Basin Plan Amendment. He said that approval of the Maximum Benefit Proposal/Basin Plan Amendment by the State Water Resources Control Board would change the business deal that had been negotiated in the Peace Agreement by removing this benefit. Additionally, MVWD believes that salt credits should be assigned to the appropriators before recycled water (net), not on total credits (gross). Mr. Kinsey noted that MVWD never agreed to subsidize the Recycled Water Program.

Mr. Kinsey reviewed the charts prepared by MVWD indicating the \$(in millions)/Fiscal Year being expended by the appropriators to subsidize the desalters, as well as the recycled water recharge supported by OBMP programs from Year 2003 through 2020. The history and interpretation of salt removal and salt credits that had been discussed during formulation of the Peace Agreement were revisited.

Further discussion ensued among the members regarding the amount of salts currently being removed at Desalter I. It was noted, however, that the numbers have not yet been quantified. Under the OBMP, salt credits from Desalter I will first go toward cleaning up the legacy contamination in the Basin; whereas, the Desalter I expansion and the future Desalter II will fall under the 80/20 Rule. Additionally, only the Regional Water Quality Control Board can issue salt credits and they have not done so. Therefore, some of the Appropriators expressed that because salt credits do not exist, this discussion or concern is moot. Staff was asked to talk with the Regional Board about the assignment of left over salt credits or the accumulation of salt credits.

Mr. Kinsey indicated that MVWD feels very strongly about this matter. He added that MVWD never agreed to subsidize the Recycled Water Program. To resolve an inequity, Mr. Kinsey suggested that less expensive recycled water be purchased.

With regard to receiving a benefit in exchange for subsidizing the desalters, several of the Appropriators commented that the only benefits they anticipated during negotiations of the Peace Agreement were more general, in terms of a basin-wide benefit. As to salt credits benefits, the fundamental question is whether or not there will be salt credits in the future.

Staff prepared a white paper as requested and at their last meeting, the Watermaster Board requested that MVWD provide the figures to support their concerns to resolve this issue. Requested information will be provided to the members of the Board and the item rescheduled for possible action at the next Appropriative Pool meeting in July.

7/10/03
Appropriative
and Non-Ag
Pool

II. BUSINESS ITEMS

A. REVIEW OF COST APPORTIONMENT RELATED TO OBMP SALT CREDITS

Mr. Kinsey explained that Monte Vista Water District's (MVWD) understanding during the Peace Agreement negotiations was that in return for subsidizing the desalter, salt credits would be cost apportioned back to the Appropriators. If the State Board adopts the Maximum Benefit Proposal/Basin Plan Amendment, salt credits will go away. At previous meetings, Mr. Kinsey presented charts and graphs supporting this concern. Additionally, if the Maximum Benefit Proposal is approved, MVWD will end up subsidizing the recharge operation of a basin that is outside its jurisdiction. There may be solutions to eliminate their concerns before this becomes a legal issue. In order to explore solutions, action on the Maximum Benefit Proposal/Basin Plan Amendment would have to be delayed.

Discussion ensued in which the difference between "salt balance" and "salt credit" was defined; ownership of recycled water was clarified; and, whether or not the Regional Board would be willing to create a salt credit program was contemplated. There was a recap of and a brief discussion regarding suggestions that might allow the parties to move forward with this item. The following motion was made and Chair Pool Jeske requested the minutes reflect the Ayes, Noes and Abstentions.

Motion by Black, second by Kurth, and by majority vote.

Ayes: City of Chino, City of Chino Hills, Cucamonga County Water District, Fontana Union Water Company, Fontana Water Company, City of Ontario, Nicholson Trust, City of Pomona

Noes: Jurupa Community Services District, Monte Visa Irrigation Company, Monte Vista Water District, San Antonio Water Company

Abstain: Santa Ana River Water Company

Moved, that because the Regional Board has not issued salt credits, the Appropriative Pool recommends that Watermaster take no action at this time on MVWD's request regarding salt credit allocation per to the Peace Agreement.

7/17/03
Ag Pool

B. REVIEW OF COST APPORTIONMENT RELATED TO OBMP SALT CREDITS

At the end of May, Monte Vista Water District (MVWD) sent a letter to the Watermaster Board requesting staff look into the way the salt credit benefit would be cost apportioned to the parties and to consider asking the Regional Board to delay action on the Maximum Benefit Proposal/Basin Plan Amendment. Mr. Rossi reported that this matter has been discussed at five Appropriative Pool meetings since that time. Last Thursday, the Appropriators took the following action: "Because the Regional Board has not issued salt credits, the Appropriative Pool recommends that the Watermaster Board take no action on salt credits relative to the OBMP at this time". The motion received four nays, one abstention, and the remaining votes were affirmative. The differences in opinion and perspectives relate to each party's interpretation of the intent during negotiations of the Peace Agreement regarding salt credits and whether or not a salt credit program would ever come to fruition.

Mr. Kinsey explained that MVWD was talking about ways to incentivise the export of salt from the Chino Basin. He presented tables and charts supporting their position. In order to support maximum beneficial use, clean up of the Chino Basin will have to follow higher objectives and those objectives would then facilitate reclamation. During negotiations of the Peace Agreement, MVWD understood that in exchange for subsidizing the desalters, the Appropriators would receive a cost apportionment of salt credits. This business deal was based on Peace Agreement, Section 5.5, which states that salt credits will be allocated back to the Appropriative Pool without stipulating the individual Appropriators (some exceptions exist for the first desalter). Section 4.1 states that salt credits are allocated to each individual Appropriator on a pro-rata share. MVWD is concerned because this benefit will go away with State Board approval of the Maximum Benefit Proposal/Basin Plan Amendment. Another concern they have is that upon approval of the Maximum Benefit Proposal, MVWD will be subsidizing the recharge operation in a basin that is outside their jurisdiction. He believes there are solutions that should be explored in order to eliminate this becoming a legal issue.

A lengthy followed in which several of the Agricultural Pool producers expressed their perception of this issue. Board Member Vanden Heuvel pointed out that "Peace" itself is much more valuable than any small dip in the road. During negotiations of the Peace Agreement, all of the parties gave up individual claims in the interest of Peace. He asked that everyone continue to focus on the bigger picture, the benefits that exist today and the benefits that will accrue and be there tomorrow as a result of the Peace Agreement. He reminded them that the Regional Board could not move forward on the Maximum Benefit Proposal/Basin Plan Amendment without findings that it will benefit the people in the State of California. To his knowledge, this is the only place in the State that has had a serious chance of being successful. Watermaster is on the cutting edge of doing something really great for the people that live here and compromise is the price of Peace.

Mr. Kinsey concurred but explained that the Maximum Beneficial Use/Basin Plan Amendment was not a compromise; instead, it was a major change to a business deal. There was a general consensus that this issue should be resolved outside the Court if MVWD could provide a plan or a proposal for resolution. Otherwise, this issue will remain a difference in opinions. No action.

8/28/03
WM Board

E. MVWD PRESENTATION TO BOARD REGARDING SALT CREDITS

As clarification, Mr. Rossi apologized to Monte Vista Water District (MVWD) for this item being incorrectly titled as an "MWD" presentation on the pool meeting agenda. He updated the Watermaster Board members with regard to the number of meetings that have been held and the action previously taken by the appropriators with regard to salt credits.

Mr. Kinsey, General Manager of MVWD, provided background information and explained that MVWD continues to pursue the matter of salt credits based on their understanding during negotiations of the Peace Agreement that the appropriators would receive salt credits to offset their share of the costs to construct desalters. He emphasized that MVWD supports the Maximum Beneficial Use Proposal, however they believe there is an equity issue that needs to be addressed. MVWD hired Mr. Glenn Reiter, Lowry Consultants, to review the equity issue and present his analysis at this meeting.

Mr. Reiter presented a comparison of mg/l between the Basin Objectives and the TIN/TDS Study Objectives under the Maximum Benefit Proposal. Comparisons were also shown of the number of appropriators providing funds and the number receiving benefits, the percentages of funding vs. benefit allocation among the appropriators, and the cost difference using imported water versus recycled water. He recommended a "work group" be assigned to look into possible solutions to resolve the equity issues. Mr. Atwater has volunteered to Chair the group.

Mr. Kidman, Legal Counsel for MVWD, added that MVWD's request is for fairness and equity rather than specifically for salt credits. He cited historical information that led up to the appointment and current composition of the 9-member Watermaster Board. He said it was comprised in such a way to ensure equity among its members. Additionally, his firm prepared a memorandum for inclusion in the record that describes the legal undertakings for a concept to provide either salt credits or a substitute for salt credits. He pointed out that Monte Vista intends to uphold the Peace Agreement because it calls for salt credits to be allocated equitably as a benefit of the costs incurred to improve Basin water quality.

Some Board Members expressed that the Peace Agreement was negotiated for a far greater purpose than individual agency benefits. Following the Court order and timeline for developing the Optimum Basin Management Program (OBMP), the parties negotiated and entered the Peace Agreement for the purpose of working together in a cooperative manner toward one goal, to develop and implement OBMP projects for the benefit of the Basin, the public, and the generations to come. Everyone had agreed that was the right thing to do. Some of the Board Members felt that MVWD's concerns could be further evaluated by a workgroup. In that same cooperative vein, there were no objections to establishing a workgroup as requested to explore possible solutions to resolve the equity issue

Motion by Whitehead, second by Catlin, and by unanimous vote.

Moved, to support the establishment of a workgroup consisting of Watermaster, Inland Empire Utilities Agency and others appropriate to seek ways to address this issue.

EXHIBIT 4

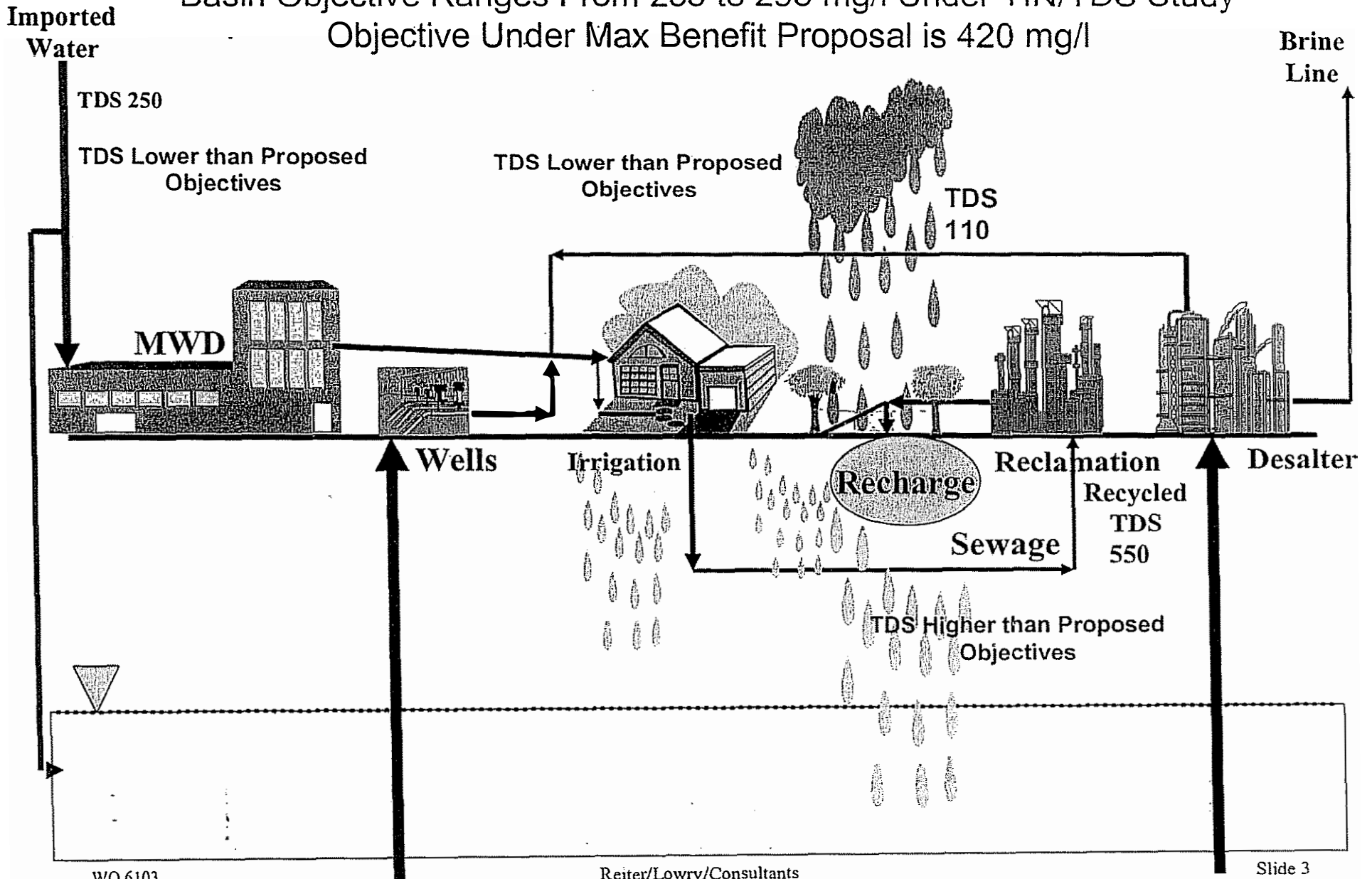
Peace Agreement

- **Basic Principal**
 - **Provide Equity and Fairness For All Participants**

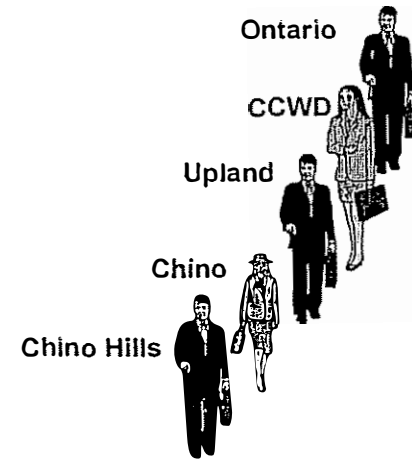
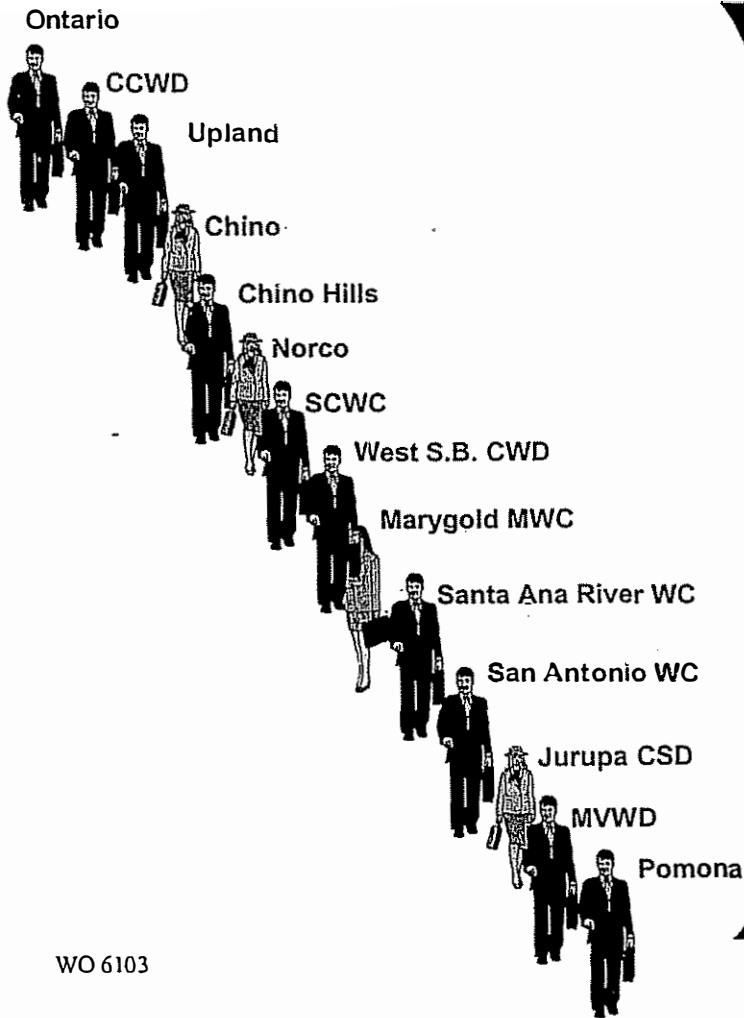
Potential Problem

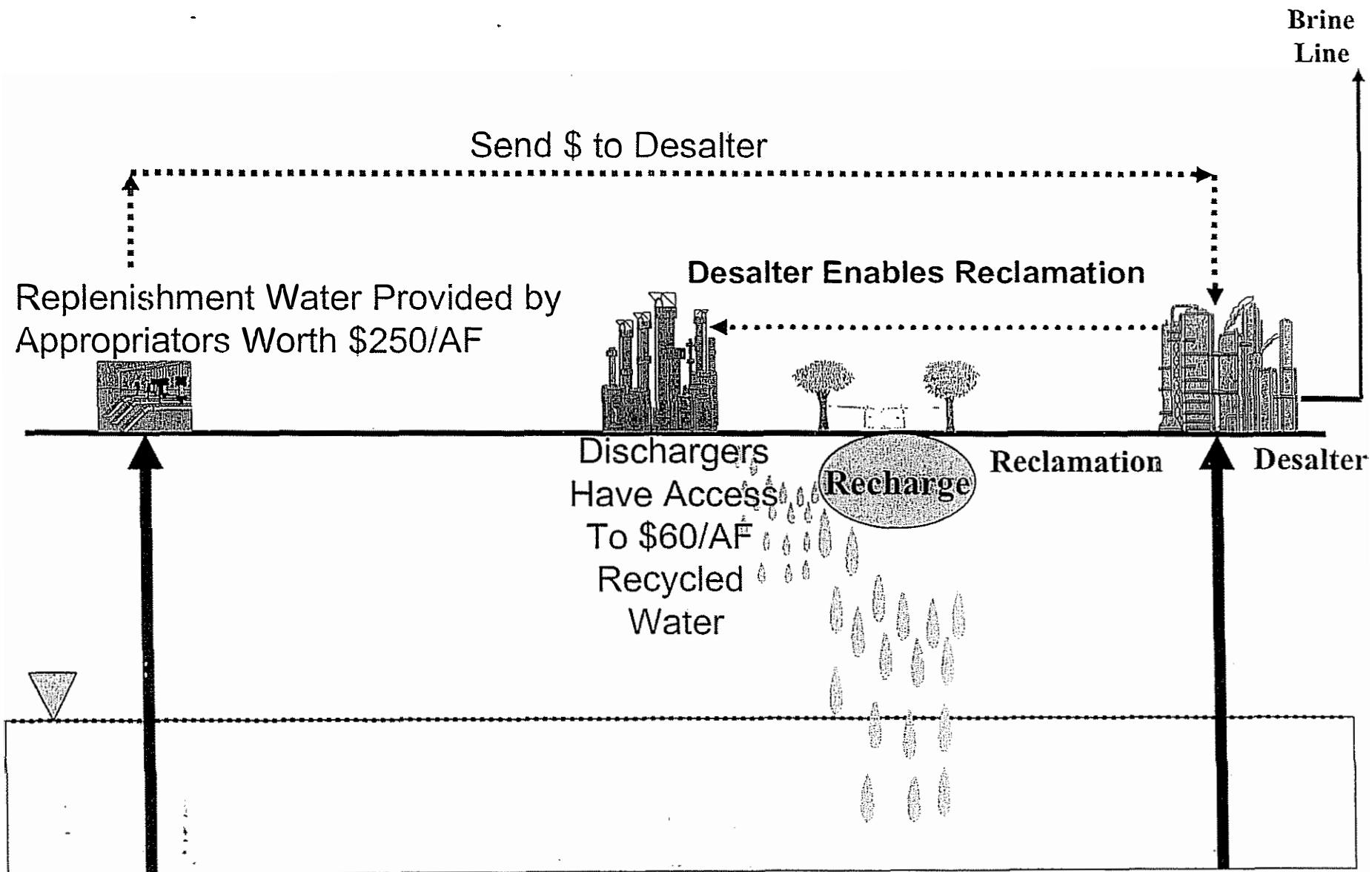
- **“Salt Credits” Intended to Fairly Apportion Water Quality Benefits Among the Appropriators**
- **No Action Has Been Taken to Date**
- **Without Action a Few Will Benefit at the Expense of Many**

Basin Objective Ranges From 255 to 293 mg/l Under TIN/TDS Study
Objective Under Max Benefit Proposal is 420 mg/l



Payment vs. Benefit

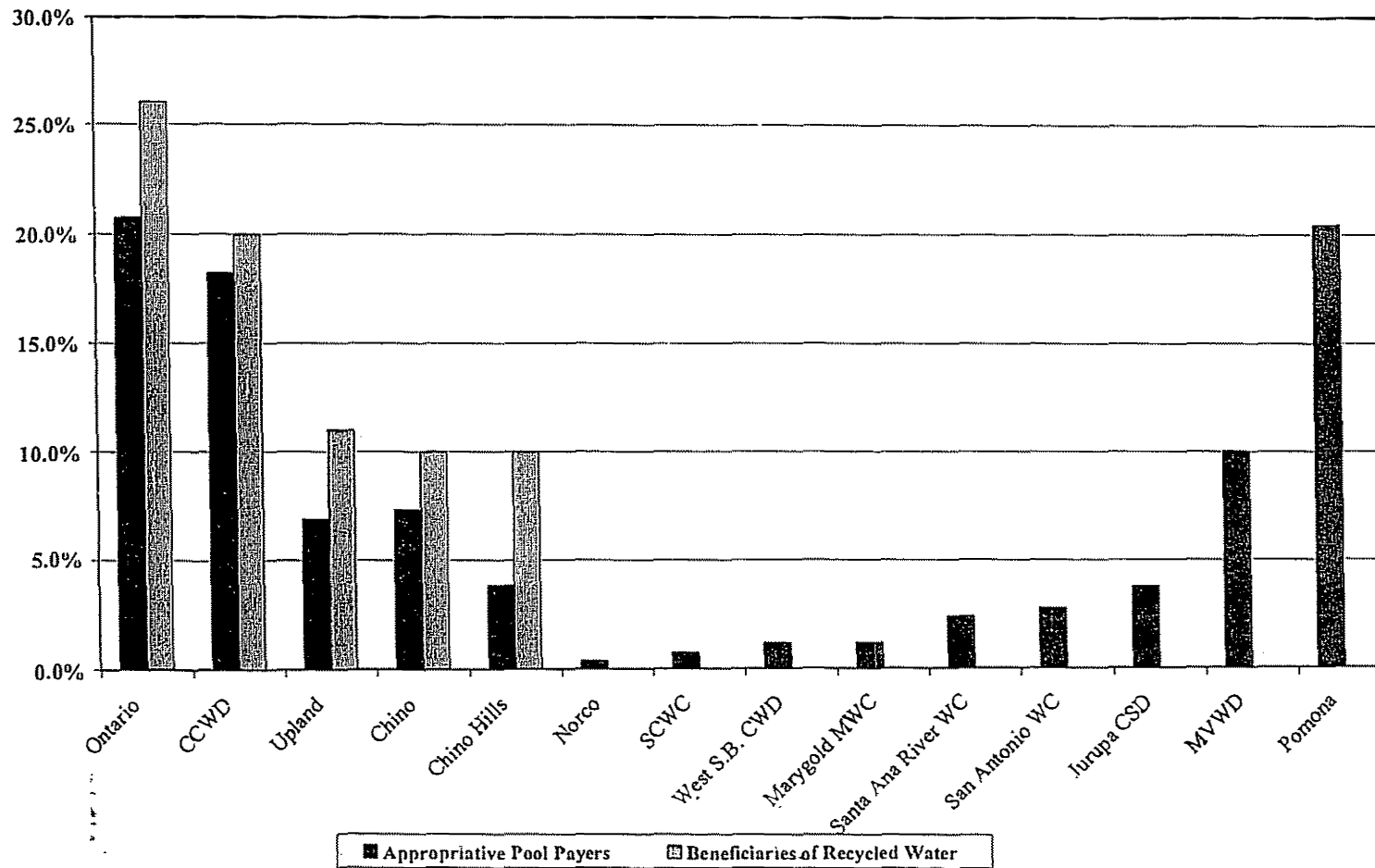




Example of Cost Difference Using Imported Water VS Recycled Water

	Annual Productio	MVWD Share 10.00%	Imported Water Cost \$250	Recycled Water Cost \$60
Total Desalter Production	28,950 af			
Replacement from Santa Ana River	14,475 af			
Net Outstanding	14,475 af			
New Yield-Storm Water	12,000 af	1,200 af		
Import/Recycled	2,475 af	248 af		
Total MVWD Obligation		1,448 af		
Cost Using Imported Water			\$361,875	
Cost Using Recycled Water				\$86,850
Difference			\$275,025	

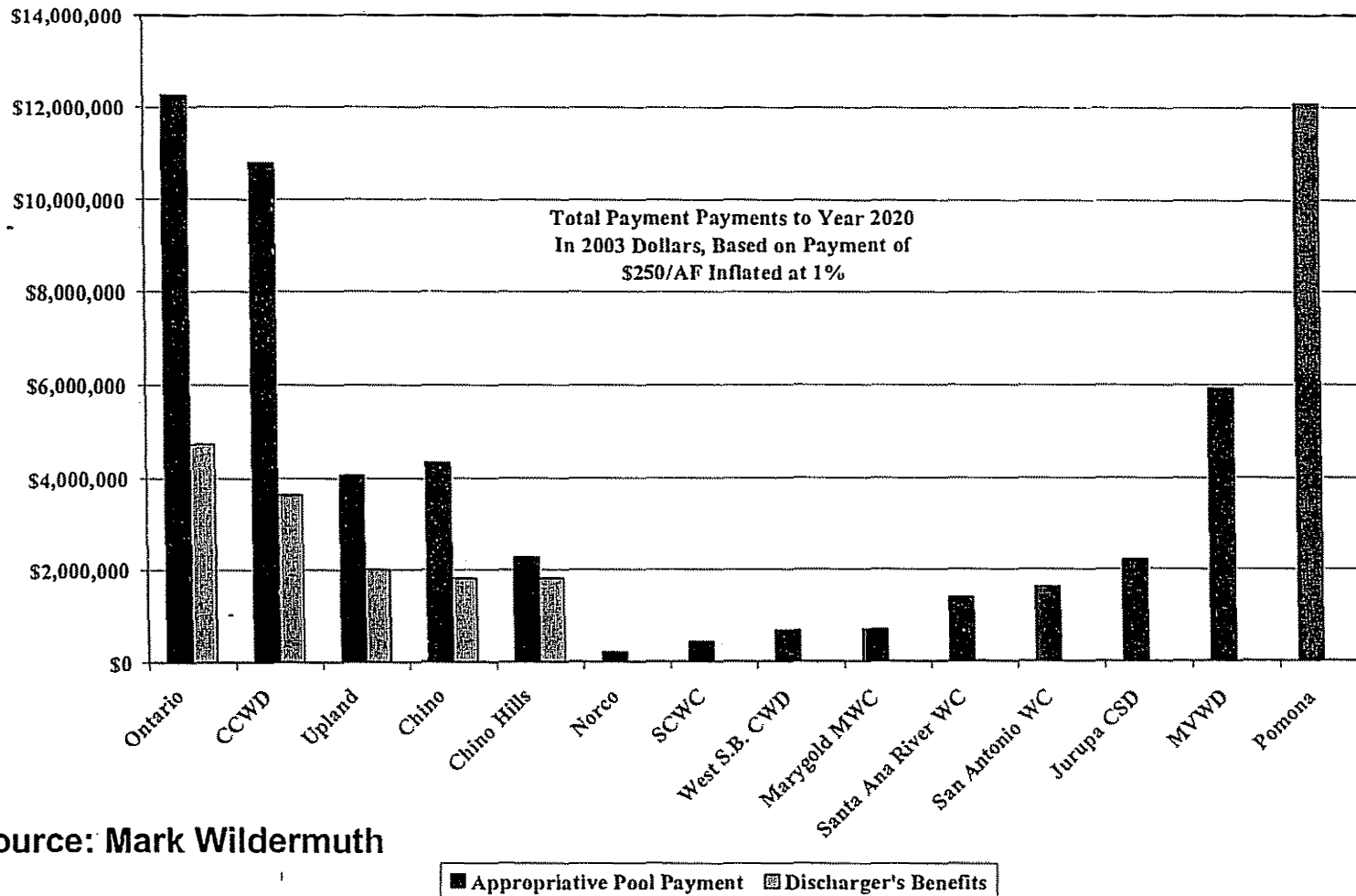
Peace Agreement Agency Funding/Benefit Allocation



Appropriative Pool Payers
 Beneficiaries of Recycled Water

Reiter/Lowry/Consultants

Peace Agreement Agency Funding/Benefit Allocation



Data Source: Mark Wildermuth

■ Appropriative Pool Payment ▨ Discharger's Benefits

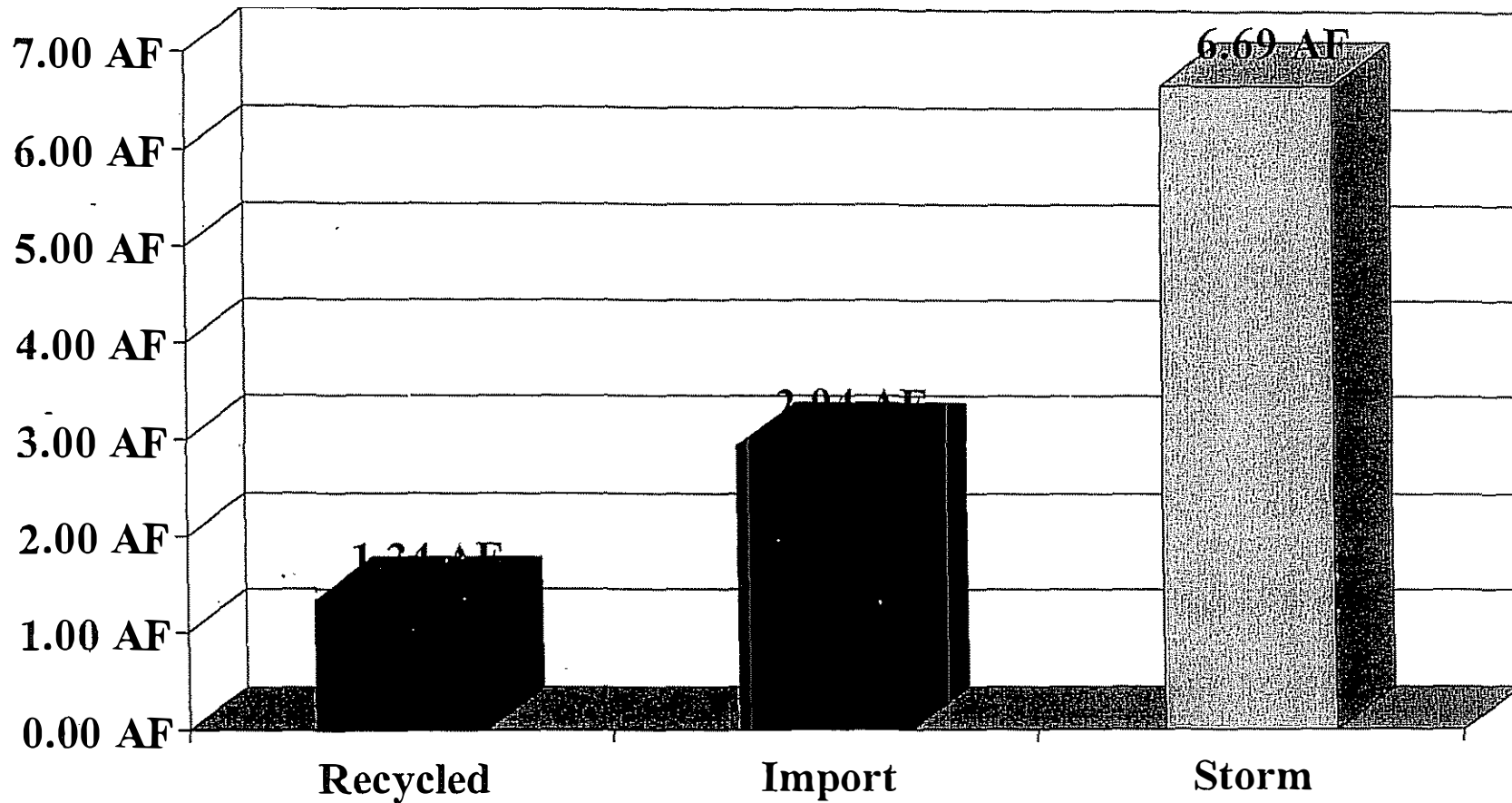
Objective

- **To Fulfill the Original Intent of the Peace Agreement:**
 - **Optimize Local Water Resources**
 - **Distribute Cost And Benefit as Equally as Possible**

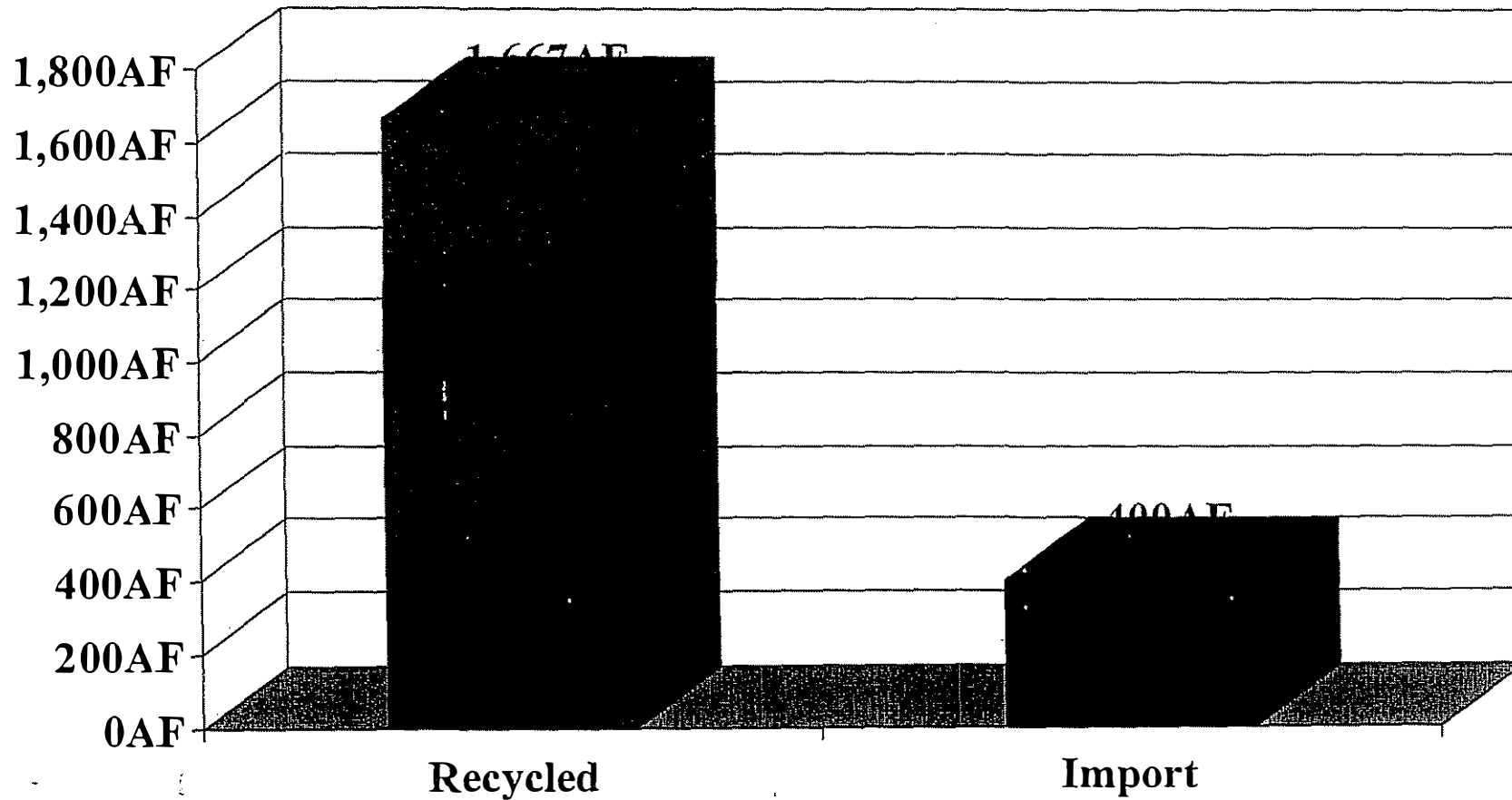
Recommendation

- **Assign a Working Group to Look Into Possible Solutions Such as:**
 - **Provide Access to Recycled Water for All Appropriators**
 - **Use of Recycled Water to Meet a Portion of the Desalter Replenishment Needs**
 - **Other**

AF Per Ton of Salt



\$100,000 Will Buy



1 PROOF OF SERVICE

2
3 STATE OF CALIFORNIA)
4) ss.
5 COUNTY OF ORANGE)

6 I am employed in the County of Orange, State of California. I am over the age of eighteen
7 (18) years and not a party to the within action; my business address is: 695 Town Center Drive,
8 Suite 400, Costa Mesa, California 92626.

9 On March 11, 2004, I instructed our process server First Legal Support Services to
10 personally serve a conformed copy of the foregoing document described as: NOTICE OF MOTION
11 AND MOTION OF DEFENDANT MONTE VISTA WATER DISTRICT FOR ORDER
12 COMPELLING WATERMASTER TO ESTABLISH A PROGRAM TO EQUITABLY
13 ALLOCATE BENEFITS FROM WATER QUALITY MITIGATION MEASURES UNDER THE
14 PHYSICAL SOLUTION; DECLARATION OF MARK KINSEY; MEMORANDUM OF POINTS
15 AND AUTHORITIES on the Chino Basin Watermaster with instructions for the Watermaster to
16 serve copies on all interested parties in this matter. I by placing a true copy thereof enclosed in a
17 sealed envelope addressed as follows:

18 Mr. John Rossi, Executive Director
19 CHINO BASIN WATERMASTER
20 9641 San Bernardino Road
21 Rancho Cucamonga, California 91730
22 909 484-3888 Ext. 228 Fax: 909 484-3890

23 [] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing
24 correspondence by mailing. Under that practice it would be deposited with U.S. postal
25 service on that same day with postage fully prepaid at Costa Mesa, California in the ordinary
26 course of business. I am aware that on motion of the party served, service is presumed
27 invalid if postal cancellation date or postage meter date is more than one day after date of
28 deposit for mailing in affidavit.

[] (BY OVERNIGHT MAIL) I caused such document to be delivered by overnight mail to the
offices of the addressee(s).

[X] (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the
offices of the addressee.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

Executed on **March 11, 2004**, 2002, at Costa Mesa, California.

26 
27 _____
28 Mary Beth Reyneveld