

1 SCOTT S. SLATER (State Bar No. 117317)
MICHAEL T. FIFE (State Bar No. 203025)
2 **HATCH & PARENT, A LAW CORPORATION**
21 East Carrillo Street
3 Santa Barbara, CA 93101
Telephone No: (805) 963-7000
4 Facsimile No: (805) 965-4333

5 **Attorneys For**
CHINO BASIN WATERMASTER

FREE EXEMPT
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT
JAN 3 2006

BY *Arlene Salazar*
DEPUTY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10 CHINO BASIN MUNICIPAL DISTRICT

11 Plaintiff,

12 vs.

13 CITY OF CHINO, ET AL.

14 Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the Honorable
MICHAEL GUNN]

**COMMENTS AND OPPOSITION TO
SPECIAL REFEREE REPORT**

Hearing Date: February 9, 2006
Time: 2:00 p.m.
Department: 8

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19 Chino Basin Watermaster has received and reviewed the Special Referee's Comments and
20 Recommendations Concerning Motion to Re-Appoint the Nine-Member Board for a Further Five-
21 Year Term. Watermaster objects to the recommendations of the Special Referee's Report.
22 Specifically, Watermaster wishes to correct the Referee's "interpretation" of Watermaster's motion
23 as a request for a two-year appointment. Indeed, Watermaster respectfully requests this Court to re-
24 appoint the Board for a full five-year term. For the purpose of providing additional context for a
25 likely uncontested Motion to Re-Appoint the Nine-Member Board for a Further Five-Year Term we
26 provide additional comments below.
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OPPOSITION

1 **I. The Referee's Report Mischaracterizes the Content of Watermaster's Motion**

2 The Special Referee's Report ("the Report") asserts that, "... it would be appropriate to
3 interpret Watermaster's Motion as a request for an interim re-appointment for two years"
4 (Referee Report 15:12-14.) No such intention was ever discussed by the Respective Pools, the
5 Advisory Committee and the Board. However, having received the Report prior to the January
6 Advisory Committee and Board Meeting, Watermaster can now clearly and unequivocal state that its
7 request is that the Watermaster Board be re-appointed for an additional term of five years. A
8 summary of the process leading up the filing of the Motion requesting the extension was as follows.

9
10 Watermaster legal counsel was directed by the Pools, the Advisory Committee and the Board
11 to request a five-year reappointment with the condition that the Watermaster Board would convene a
12 committee to investigate and make recommendations concerning Watermaster governance. This
13 direction was based upon discussion amongst the parties about the most appropriate method to
14 address the question of Watermaster governance, and was a compromise that satisfied all parties.
15 Evidence of the wide-support for the motion is the expected absence of objection by any party to the
16 Judgment.

17
18 Apparently, the Referee construed language in Watermaster's pleading regarding its self-
19 examination as a determination that the appointment would be a defacto two-year appointment.
20 The Referee noted that "... it appears from the motion that significant changes are anticipated with
21 regard to Watermaster governance structure within two years." (Referee Report 15:9-10.) However,
22 the Referee misunderstands the declaration and commitment to review its governance structure as a
23 conditional request for re-appointment.

24
25 Watermaster intends to engage in self-examination of its governance structure. The
26 Judgment, the Peace Agreement and Optimum Basin Management Program ("OBMP") are a form of
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1 adaptive management. Governance of Watermaster must be up to the challenges presented by this
2 evolutionary management effort.

3 Some parties have questioned whether the current governance structure is optimally
4 composed for the current needs of the Chino Basin, but that there has not at this time been enough
5 public discussion of the issue to determine the nature of their concerns or what structural changes, if
6 any, would be required to address them. The parties have thus committed to conduct an evaluation
7 which will receive the same level of scrutiny and evaluation as do all major decisions concerning
8 management of the Chino Basin.
9

10 Watermaster does not believe that any party has pre-conceived expectations about the results
11 of this committee discussion; and there is simply no support for the notion that Watermaster
12 anticipates significant changes to the Watermaster governance structure.
13

14 **II. The Report Over-Looks and Undervalues the Success of Watermaster's**
15 **Implementation of the OBMP**

16 It has not gone unnoticed that the tone of the Report is predominantly negative. But the tone
17 may reflect a well-intentioned concern that Watermaster resolve pending issues and promptly lay the
18 foundation for the next increment of basin management under the Judgment. What is particularly
19 troubling is that the Report seems to minimize the vast majority of the Watermaster's success over
20 the past five years.
21

22 For more than 5 years the Watermaster process (broadly defined) has consistently yielded a
23 "consensus based" successful implementation of all of its major Basin Management initiatives.¹
24 Watermaster has overseen the design, permitting, construction and operation of hundreds of millions
25 of dollars in public and private projects. All this has occurred without this Court having to hear a
26

27 ¹ To reflect this fact, the words "Partners in Basin Management" have recently been added to
28 Watermaster's logo. The most recent version of this logo can be viewed at Watermaster's website:
www.cbwm.org.

1 single contested motion or without any new litigation having been filed contesting Watermaster
2 actions in any Court.

3 If the role of the Watermaster is to act as an extension of this Court, to resolve disputes and
4 administer the Judgment in accordance with this Court's equitable powers to administer a physical
5 solution, the Watermaster Board has more than adequately discharged its duties.
6

7 Since 2000, Watermaster and the parties to the Judgment have:

- 8 • Secured tens of millions in State funding for Peace Agreement Desalters, negotiated
9 and executed agreements for the acquisition of existing facilities and the permitting,
10 design, financing, construction and operation of more than 29 million gallons per day
11 of desalting in the lower end of the Basin with water supply agreements valued in
12 excess of \$500,000,000. These desalters will be fully operational in 2006.
- 13 • Completed the design, construction and implementation of its Recharge Master Plan
14 at a cost of nearly \$50 million.
- 15 • Published a Request for Proposal for Storage and Recovery Projects, evaluated the
16 proposals, completed more than \$1 million in technical studies, prepared CEQA
17 consistency findings and executed a 100,000 acre-feet Dry-Yield Agreement with the
18 Metropolitan Water District of Southern California.
- 19 • Prepared a complete and comprehensive set of Rules and Regulations.
20
21

22 Despite these and other enormous accomplishments, the Report gives them scant attention
23 and little weight. For example, the Report directs significant criticism to Watermaster and the
24 parties on the issue of future desalters yet generally ignores the substantial success of the broader
25 desalter effort. For example, the Report acknowledges that the parties anticipate that Desalter II will
26 become operational in early 2006, but does not seem to appreciate the Herculean effort on the part of
27 the parties that it took to get to that point (see above).
28

1 Moreover, the completion of the Chino I Expansion and the Chino II Desalter, provides 29
2 mgd of physical desalting capacity. The progress of the CDA in the implementation of the desalter
3 element of the OBMP has been well-documented over the course of the last several years in the
4 status reports that have been filed with the Court. Had Watermaster only succeeded in the
5 achievement of the desalters alone, it should have been entitled to serious consideration for re-
6 appointment. However, there was substantially more that Watermaster has accomplished.

7
8 The Report understates the importance of Watermaster's recharge efforts. Over the span of
9 the 16 pages of the Referee's Report, exactly three sentences are dedicated to the fact that since
10 2000, Watermaster has developed and **fully implemented** its Recharge Master Plan. (Referee Report
11 6:4-7.) This award-winning project is complete and fully operational as noted above at an expense of
12 nearly \$50 million. The initial estimate is that this project will result in an average of 12,000 acre-
13 feet per year of New Yield.

14
15 Similarly overlooked in the Report are other published Watermaster successes over the past
16 five years. For example, the Referee's Report ignores Watermaster's successful development of a
17 dry year storage program with the Metropolitan Water District of Southern California. This project
18 resulted in the construction of necessary facilities and the storage of over 40,000 acre-feet of water,
19 which will be available to the parties in times of drought. The Referee and the Court are well aware
20 of the details of this project because they were brought before the Court as a part of the Dry Year
21 Yield Funding Agreement, as well as the Rules and Regulations Article X Storage Application that
22 were both submitted to the Court for approval. (Order Concerning Groundwater Storage Program
23 Funding Agreement – Agreement No. 49960 filed June 5, 2003; Order Approving Storage and
24 Recovery Program Storage Agreement re Implementation of Dry Year Yield Storage Project filed
25 June 24, 2004.) It is true that Watermaster's Motion to Request Reappointment did not provide
26 extensive references to these accomplishments but this was not because they should not be entitled
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1 to great weight but because the Court had already been extensively apprised of the Watermaster's
2 accomplishments in prior briefings of the Court.

3 Watermaster has achieved an important and constructive relationship with the California
4 Regional Water Quality Control Board ("RWQCB"). A primary example of this constructive
5 relationship can be found in the recently adopted Basin Plan Amendments. Based in part on its
6 confidence in Watermaster and the success of the OBMP, the RWQCB has put in place special
7 "maximum benefit" water quality objectives for the Chino Basin. These objectives will remain in
8 place so long as Watermaster's success under the OBMP continues as it has for the past five years.
9 These innovative amendments to the Basin Plan were well received by the State Water Resources
10 Control Board and they were approved largely without opposition because the amendments will
11 facilitate the use and recharge of recycled water throughout the Chino Basin.
12

13 Watermaster has also been working in close cooperation with the RWQCB to address various
14 water quality anomalies throughout the Basin. Watermaster sponsored technical assistance for the
15 RWQCB, which resulted in the issuance of Cleanup and Abatement Orders regarding the Ontario
16 International Airport plume. Watermaster is currently beginning work to also address a separate
17 plume at the Chino Municipal Airport.
18

19 As the Referee and the Court are aware, Watermaster has sought to offer guidance to
20 producers in Management Zone 1. It has formed a Technical Committee and successfully worked
21 with stakeholders to avert litigation. The MZ1 Committee, through the Watermaster, has
22 implemented a comprehensive monitoring program. The centerpiece of this program is the state-of-
23 the-art extensometer facility at Ayala Park. The subsidence management efforts have also involved
24 continued participation by the cities of Chino and Chino Hills in Watermaster's Forbearance
25 Program. Under this program, the cities reduced their pumping in the subsidence area of concern and
26 were provided replacement water by Watermaster. The result of this program and the technical
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1 understanding that has been achieved through the work of the MZ1 Committee, is that inelastic
2 subsidence in the area of concern has been halted and the parties are ready to formulate and
3 implement a long-term plan for the management of subsidence. As is the case with the physical
4 projects referenced above, all of these facts were previously reported to the Special Referee and her
5 technical assistant at a special workshop that was held for that purpose on May 25, 2005 as a follow-
6 up to the workshop held August 29, 2002.

8 When the Watermaster Board was appointed for its first five-year term in 2000, the Court
9 ordered Watermaster to file periodic status reports regarding OBMP implementation so that the
10 Referee and her technical assistant could provide the Court with independent verification of the
11 status of OBMP implementation. The Court ordered Watermaster to file 10 such status reports.
12 Watermaster voluntarily increased its reporting to the Court, and to date has filed a total of 14 status
13 reports with the Court.² Indeed, when the Court ordered Watermaster to prepare these reports, it

15 _____
16 ² The following is a selected list of transmittals that have been made to the Court over the past five years:

17	Transmittal of Status Report 1	March 30, 2001
	Transmittal of Status Report 2	September 28, 2001
18	Transmittal of Status Report 2 Supplement	December 14, 2001
	Transmittal of 24 th Annual Report	January 31, 2002
19	Transmittal of Status Report 3	March 29, 2002
	Transmittal of Subsidence Interim Plan	June 19, 2002
20	Transmittal of ISOB	October 10, 2002
	Transmittal of Status Report 4	October 10, 2002
21	Transmittal of Status Report 5	January 6, 2003
	Transmittal of 25 th Annual Report	March 27, 2003
22	Transmittal of Status Report 6	April 1, 2003
	Transmittal of Status Reports 7 and 8	October 24, 2003
23	Transmittal of 26 th Annual Report	March 8, 2004
	Transmittal of Status Report 9	March 8, 2004
24	Transmittal of Technical Memoranda	March 8, 2004
	Transmittal of Status Report 10	June 24, 2004
25	Transmittal of Status Report 11	October 13, 2004
	Transmittal of 27 th Annual Report	August 9, 2005
26	Transmittal of Status Report 12	August 9, 2005
	Transmittal of Status Report 13	August 9, 2005
27	Transmittal of Status report 14	August 9, 2005

1 stated that the, "OBMP progress reports, together with independent assessment of OBMP
2 implementation status including verification of data to be provided by the Special Referee and her
3 technical expert, *will be the basis for consideration of continuing the appointment.*" (September 28,
4 2000 Order, 4:15-18 [emphasis added].) All of the above referenced actions have been addressed in
5 the Reports and other pleadings previously filed with the Court.
6

7 Over the past five years, Watermaster has communicated regularly with the Special Referee
8 about the form and content of the reports. This has been a constructive process that is greatly
9 preferred to more formal workshops and hearings that tend to become evidentiary in nature. Past
10 experience suggests that the adjudicatory character of such proceedings chills discussion and
11 collaboration.
12

13 Surely, the fact that the information transmitted by Watermaster is in a form that is generally
14 suitable for use by Watermaster, if not always presented in the manner most desired by the Referee
15 should not be a reason for failing to re-appoint the Board for a 5-year term.
16

17 Furthermore, much of the Report focuses on several items that are described under the Peace
18 Agreement and call for discretionary action by Watermaster in 2005-2006. These issues include the
19 imposition of losses of water held in storage, the continuation of the recharge of supplemental water
20 in MZ1, and the continuation of the cap on local storage. These items have been under consideration
21 for the past two years by the parties. The parties convened a confidential stakeholder process to
22 address these and other legal/technical issues.
23

24 Watermaster and the parties remain committed to the implementation of the Judgment and
25 the Peace Agreement and there has been considerable effort expended toward resolution of these
26 issues. The continuing efforts of the parties to meet in a collaborative confidential session over a two
27 year period has been consistently reported at all regular Watermaster meetings, and the Special
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1 Referee and her assistants have received consistent updates from Watermaster, if not the specifics of
2 any proposed resolution.

3 In the Fall of 2005 Watermaster conducted two lengthy public workshops designed to obtain
4 input and incorporate public review into its decision-making. These workshops have yielded dozens
5 of questions and Watermaster is seeking to respond to each of these questions as well as supplement
6 its earlier technical work.
7

8 With the exception of the implementation of the next increment of desalter capacity, the
9 actions to be taken with regard to the issues under discussion are otherwise fully within the
10 discretion of Watermaster to resolve. While it is important to the parties to come to consensus on the
11 actions that Watermaster should perform, whether or not Watermaster has so acted should not be
12 cited as any kind of deficiency in Watermaster's management of the Basin when it is simply
13 attempting in earnest to maintain a broad base of support for its actions.
14

15 To be sure, the status of the Future Desalters remains an important issue to the parties,
16 Watermaster, the Referee and the Court. The new round of commitments required to implement the
17 balance of the desalting projects, as contemplated by the OBMP, are substantial. As should be
18 expected, the parties are unwilling to make a commitment of more than a \$100 million in capital and
19 operations and maintenance without considerable deliberation. Watermaster is actively involved in
20 discussions with stakeholders to create a structure that is well suited to ensure a viable plan within
21 2006 and binding commitments following the completion of any required CEQA. Whether these
22 discussions bear fruit is certainly important to the success of the OBMP and of great interest to the
23 Court. However, more time is required to determine whether a consensus plan for addressing future
24 desalting will emerge.
25

26 //

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1 **III. The Court Should Continue Informal Dialogue Between the Referee and**
2 **Watermaster Staff and Not Conduct Workshops.**

3 The Report recommends that the Special Referee conduct two workshops over the next six
4 months. Watermaster offers a substitute recommendation that instead the Special Referee continue
5 to meet informally with Watermaster staff from time to time to be apprised of the progress of
6 discussions.
7

8 In addition, with proper notice Watermaster believes that the Special Referee and her
9 technical assistant would be welcome attendees at future Watermaster workshops and meetings to
10 observe the progress being made. A court hearing in mid-July to hear a further report from
11 Watermaster on its efforts to develop a consensus plan for future desalting is warranted. The Court
12 could easily combine any further reporting that the Referee or the Court deem necessary with that
13 hearing date.
14

15 **IV. The Court Should Grant Watermaster's Motion as Presented to the Court**

16 No party has opposed Watermaster's Motion. In fact, the Motion as filed with the Court was
17 a consensus-based document that was unanimously approved by the Advisory Committee and the
18 Board. Whether Watermaster or any party will petition the Court in two years to propose a
19 refinement of the Watermaster governance structure is not something that can be determined at this
20 time. What can be determined is that implementation of the OBMP is proceeding, as documented in
21 the fourteen status reports filed with the Court.³
22

23 If the Referee's Report were read in isolation it could convey a predominantly negative
24 impression of the success of Watermaster and the parties over the past five years. However, such a
25 historical interpretation is radically different from Watermaster's view of the progress made to date
26


27 ³ Again, the Special Referee finds it very significant that Status Report 15 has not been filed with the
28 Court, while finding no significance in the fact that Watermaster was only required by the Court to
file 10 status reports in the first place.

1 in administering the Judgment and implementing the Peace Agreement and the OBMP. By all
2 accounts, the Chino Basin is now an extraordinarily well-managed basin.

3 As evidenced by the tremendous progress on difficult issues in the modern litigious era, the
4 Watermaster process is working. Watermaster hopes the Referee and the Court share this view and
5 will re-appoint Watermaster and allow the parties to continue successfully managing the Basin.
6

7 As stated in Watermaster's Motion and again herein, Watermaster knows of no opposition to
8 the request to re-appoint the Board for another five-year term. However, at the January 26, 2006,
9 Advisory Committee and Board meetings, several parties expressed a desire to respond to the
10 Special Referee's Report, but also pointed-out that the short time-frame for responses makes it
11 virtually impossible for public agency parties to receive the necessary authorizations in order to file
12 a response. These parties ask that if the Court intends to order anything other than what was
13 requested by Watermaster, that is, an unconditional five-year reappointment, then the parties would
14 like the Court to continue the hearing for 30 days, so that appropriate responses can be filed.
15

16
17 Dated: January 30, 2006

18 By: 
19 HATCH & PARENT
20 Scott S. Slater
21 Michael T. Fife
22 Attorneys for Chino Basin Watermaster
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1 SCOTT S. SLATER (State Bar No. 117317)
MICHAEL T. FIFE (State Bar No. 203025)
2 **HATCH & PARENT, A LAW CORPORATION**
21 East Carrillo Street
3 Santa Barbara, CA 93101
Telephone No: (805) 963-7000
4 Facsimile No: (805) 965-4333

5 **Attorneys For**
CHINO BASIN WATERMASTER

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10 CHINO BASIN MUNICIPAL DISTRICT

11 Plaintiff,

12 vs.

13 CITY OF CHINO, ET AL.

14 Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the Honorable
MICHAEL GUNN]

**DECLARATION OF MICHAEL FIFE IN
SUPPORT OF OPPOSITION TO SPECIAL
REFEREE REPORT**

Hearing Date: February 9, 2006
Time: 2:00 P.M.
Department: 8

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18 I Michael Fife under penalty and perjury:

19 1. I am an attorney with the law firm of Hatch and Parent licensed to practice law in the
20 State of California.

21 2. The Law firm of Hatch and Parent serves as general counsel to the Chino Basin
22 Watermaster.

23 3. I have served as general counsel for the Chino Watermaster since February 2000 and
24 am readily familiar with the practices and procedures of all Watermaster Committees and the
25 Board.
26

27 4. I was in attendance at the January 26, 2005 Advisory Committee and Board meetings and
28

DECLARATION OF MICHAEL T. FIFE

1 received unequivocal direction that Watermaster's request is for a five-year, and not a two-year
2 reappointment.

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5 January 30, 2006



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MICHAEL T. FIFE

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

1 JOEL S. MOSKOWITZ (State Bar No. 048374)
2 MOSKOWITZ, BRESTOFF, WINSTON & BLINDERMAN LLP
3 1880 Century Park East, Suite 300
4 Los Angeles, California 90067
5 Telephone: (310) 373-9790
6 Facsimile: (310) 388-5728
7 E-mail: Joel@MoskowitzHQ.com

8 Attorneys for Defendant, City of Ontario

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN BERNARDINO
11 RANCHO CUCAMONGA DISTRICT

12 CHINO BASIN MUNICIPAL WATER
13 DISTRICT,

14 Plaintiff,

15 v.

16 CITY OF CHINO, *et al.*,

17 Defendants.

) Case No. RCV 51010
) Judge: Hon. J. Michael Gunn

) MEMORANDUM OF CITY OF ONTARIO IN
) SUPPORT OF MOTION OF WATERMASTER TO
) REAPPOINT THE NINE-MEMBER BOARD FOR
) A FURTHER FIVE-YEAR TERM AND
) OBJECTIONS TO SPECIAL REFEREE'S REPORT
) AND RECOMMENDATIONS

) Date: February 9, 2006
) Time: 2:00 p.m.
) Dept: 8

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21 I. **THE COURT SHOULD RULE ON THE WATERMASTER'S MOTION AS
22 PRESENTED, NOT AS THE SPECIAL MASTER WOULD HAVE THE COURT
23 "CONSTRUE" IT**

24 Paragraph 16 of the 1978 Judgment states that this Court will provide for successive
25 Watermaster terms or for a successor Watermaster. In accordance with this provision, the Watermaster
26 has applied to this Court "... to re-appoint the nine-member Watermaster Board for another five-year
27 term beginning February 9, 2006, and ending February 9, 2011." (Motion to Re-Appoint the
28 Nine-Member Board for a Further Five-Year Term, p. 6 ("Motion").)



1 Notwithstanding the unambiguously plain meaning of the Motion, the Special Referee would
2 have this Court “construe” the Motion for a *five* year appointment as a request for a *two* year
3 appointment. “Special Referee's Comments and Recommendations Concerning Motion to
4 Re-appoint the Nine-member Board for a Further Five-year Term” (“Special Referee’s Comments”)
5 pages 14-15.

6 It is inconceivable that the Court would take the Special Referee’s suggestion, and plant in
7 the mouths of the Watermaster and its counsel a motion that they are obviously not making, and in
8 fact oppose. That the Special Referee would make such a disingenuous request of the Court should
9 properly cast doubt on the merits of the Special Referee’s position, a matter to which the City of
10 Ontario next turns.

11 **II. THAT THE WATERMASTER IS ENGAGED IN AN ONGOING REVIEW OF ITS**
12 **GOVERNING STRUCTURE, AND INDEED ALL ITS OPERATIONS, IS HARDLY A**
13 **BASIS TO TRUNCATE THE TERMS OF THE BOARD MEMBERS.**

14 The Special Referee commends to the Court a rejection of the Motion of the Watermaster, and a
15 reappointment of its Board for only a scant two year term on the flimsy basis that:

16 . . . it appears from the motion that significant changes are anticipated with regard to
17 Watermaster governance structure within two years. Because the governance structure of
18 “the Nine-Member Watermaster Board” has been established by the Court's 1998 Ruling,
19 it will require a Court order to change the governance structure. For this reason, it would
20 be appropriate to interpret Watermaster's Motion as a request for an interim
21 re-appointment for two years, until such time as the committee has completed its review.

22 Obviously, in advance of the committee’s review, it is wholly speculative what
23 recommendations will be made, if any. Further, it is speculative that the recommendations of the
24 members of the committee will be accepted at all, let alone in two years. Finally, it is speculative that
25 any motion will be before the Court after two years, let alone what this Court’s ruling will be with
26 respect to it.

27 Granting the motion before the Court in no way preempts the jurisdiction or ability of the
28 Court to make any ruling it wishes on any future motion that arises from the study of the committee.
The Special Referee does not even offer speculation as to why the rejection of the motion before the



1 Court would result in a more thoughtful or effective study.

2 Finally, it is ironic that the Watermaster would be punished by a truncation of the terms of its
3 members for wishing to study how its governance might be made more effective.

4 The special referee does not provide any reasoning for this recommendation except for the
5 obscure pronouncement that “[i]t would be appropriate.” (Special Referee’s Comments, page 15, line
6 16.)

7 **III. THE COURT SHOULD REJECT THE SPECIAL REFEREE’S CALL FOR THE**
8 **SPECIAL REFEREE TO CONDUCT “WORKSHOPS.”**

9 The special referee’s request that the terms of the Watermaster Board be truncated to two years
10 is coupled with a request that: “The Court should direct Special Referee to conduct workshops with
11 respect to the issues to be addressed by Watermaster.” (Special Referee’s Comments, page 15, lines 23-
12 24.)

13 The Special Referee provides no explanation at all as to why the Watermaster is incapable of
14 judicious consideration of the issues before it without the interposition of “workshops” conducted by the
15 Special Referee. The need for this is apparent chiefly to the Special Referee, who labors under a
16 financial conflict of interest in making this suggestion.

17 As this suggestion is coupled with the suggestion that the Court create a false urgency by the
18 truncation of the terms of the Board, it provides another reason to reject the Special Referee’s comment.

19 **IV. THE COURT SHOULD REJECT THE SPECIAL REFEREE’S MINIMIZATION OF**
20 **THE WATERMASTER’S SIGNIFICANT PROGRESS**

21 The City of Ontario joins in the response that the Watermaster will be filing to the Special
22 Referee’s comments concerning the commendable progress that the Watermaster has made.

23 Especially considering the difficulty of the task that the Watermaster has undertaken, its
24 successes have been remarkable. The \$50 million Recharge Master Plan, the dry year storage program
25 developed with the Metropolitan Water District, the over \$300 million committed toward desalting
26 facilities, the 25 million gallons per day of desalting capacity created, the imminent completion of the
27 Chino II desalter and other achievements, should have provoked applause from the Special Referee, but
28 instead evoked no reaction or minimization, coupled with a recommendation for expanding the role of



1 the Special Referee.

2 Instead, the Special Referee focuses upon ongoing tasks that are wholly within the discretion of
3 the Watermaster and its members. As the additional potential tasks were never ordered by the Court to
4 be undertaken, nor any particular action to be taken on them, the Special Referee's disdainful critique
5 that these measures are under consideration but not yet taken is baseless.

6 It is appropriate that the Court and the Watermaster be duly aware of the work that lies ahead,
7 but that is no reason to belittle the work that has been done, or to pronounce the distance that has been
8 traveled a failure.

9 **V. IF THE COURT HAS ANY INCLINATION TO ACCEPT THE BASELESS**
10 **RECOMMENDATIONS OF THE SPECIAL REFEREE, OR REQUIRES FURTHER**
11 **INFORMATION, THE CITY OF ONTARIO JOINS IN ASKING FOR A**
12 **CONTINUANCE ON THE MOTION**

13 The City of Ontario urges that the merits of the motion before the Court are self-evident, and
14 widely supported by the participants, who are best able to discern whether the process to which they are
15 lending their time and efforts is working. The Court should grant the motion now.

16 If the Court wishes more input, however, it should reject the call by the Special Referee for all
17 comments to have been made by "Tuesday, January 30, 2006," (which is incorrect, as that Tuesday is
18 January 31) and instead continue the hearing on the motion.

19 Dated: January 28, 2006

JOEL S. MOSKOWITZ
MOSKOWITZ, BRESTOFF, WINSTON & BLINDERMAN LLP

20 By Joel S. Moskowitz
21 Joel S. Moskowitz
22 Attorneys for Defendant, City of Ontario

23 *by Paula Molta*



1 JILL N. WILLIS, Bar No. 200121
2 BEST BEST & KRIEGER LLP
3 3750 University Avenue
4 P.O. Box 1028
5 Riverside, California 92502
6 Telephone: (951) 686-1450
7 Telecopier: (951) 686-3083
8
9 Attorneys for: Cucamonga Valley Water District
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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN BERNARDINO
15 RANCHO CUCAMONGA DISTRICT
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13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,
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16 Plaintiff,
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18 v.
19 CITY OF CHINO, et al.,
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21 Defendant.
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Case No. RCV 51010
Judge: Hon. J. Michael Gunn

**OBJECTIONS BY CUCAMONGA VALLEY
WATER DISTRICT TO SPECIAL
REFEREE'S REPORT AND
RECOMMENDATIONS CONCERNING
MOTION TO RE-APPOINT THE NINE-
MEMBER BOARD FOR A FURTHER
FIVE-YEAR TERM**

Date: February 9, 2006
Time: 2:00 p.m.
Dept: 8

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 Cucamonga Valley Water District ("CVWD") submits the following Objections to the
2 Comments and Recommendations provided by the Special Referee.

3
4 At the outset, CVWD notes that the timeframe provided by the Special Referee to respond
5 to the Comments and Recommendations is insufficient to fully and accurately address the scope
6 and nature of the Comments and Recommendations. Thus, CVWD requests that the Court grant a
7 thirty-day extension of time to respond to the Special Referee's Comments and
8 Recommendations. The Objections and comments provided herein constitute a summary of
9 CVWD's response to the Special Referee's Comments and Recommendations. Should the Court
10 grant CVWD's request for an extension of time, CVWD will provide a more comprehensive set
11 of Objections and comments.

12 **I. CVWD Objects to the Recommendation that Further Special Referee**
13 **Involvement is Needed in Watermaster Affairs**

14
15 Having reached the end of the first full five-year term of the Watermaster Board, the
16 Special Referee has filed a Report which paints a bleak picture of the accomplishments of the
17 parties over the past five years, and predictably suggests that the best way to move forward in the
18 next five years is to increase the involvement of the Special Referee in the management of the
19 Basin.

20 The Referee Report recommends that: "The Court should direct [the] Special Referee to
21 conduct workshops with respect to the issues to be addressed by Watermaster." (Referee Report,
22 15:23-24.) This open-ended recommendation suggests *carte blanche* for the Referee to conduct
23 workshops on a variety of Watermaster issues, thus ensuring continued employment for the full
24 staff of the Court's consultants.¹

25 This recommendation seems to be an outgrowth of the entire tenor of the Special
26

27 ¹ The Court's consultant staff currently includes the Special Referee, an attorney assistant for the Special Referee and
28 a technical assistant for the Special Referee. In effect, the Court's consultant staff is nearly as large as Watermaster's.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 Referee's Report which discounts the many millions of dollars that have been spent on OBMP
2 implementation by the members of the Appropriative Pool over the past five years in order to
3 suggest that further (and perhaps increased) oversight by the Special Referee is necessary in order
4 to ensure continued implementation of the OBMP.

5
6 Furthermore, the steps outlined by the Special Referee appear to overreach the original
7 authority granted the Referee, and this usurps the proper role of the Watermaster and parties to
8 the Judgment. Notably, the cost of the Special Referee and the related expense incurred by the
9 Parties and their ratepayers to respond to the Special Referee and related issues continues to
10 grow; it is anticipated that this will become an issue for some Parties to the Judgment.

11 **II. The Diminished Role of the Court Over the Past Five Years is the Best**
12 **Evidence of the Success of Watermaster and Alone Justifies Reappointment**

13
14 The Special Referee's Report declines to mention even once the fact that in the past five
15 years, the Court has not been called upon to resolve a single contested issue between the parties.
16 The parties have demonstrated complete success in managing their conflicts amongst themselves,
17 and the primary work for the Court and its three consultants has been to review status reports and
18 approve specific implementation items. In the past five years, no party has found it necessary to
19 utilize the complaint procedure of Article X of Watermaster's Rules and Regulations, nor has any
20 party complained about the progress of OBMP implementation. This fact alone justifies the
21 reappointment of Watermaster.

22
23 The diminished role of the Court over the past five years is the best evidence that the
24 Watermaster process is working, and there is certainly no need for expensive Referee workshops
25 in order to establish that fact. Indeed, the long-term objective of the Court should be the gradual
26 phasing out of the Special Referee and technical experts, which add to the Parties' expenses and
27 may prove unnecessary in the future. The Watermaster successfully fulfilled its mission without
28 the need for a Special Referee until recently, when the Advisory Committee petitioned the Court

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 for a functional change to deal with the OBMP. At this time, it appears that the continuation of
2 the Special Referee is overly burdensome and does not promote consensus building among the
3 Parties who are charged with carrying out the OBMP and Judgment; thus, it is in the best interest
4 of the Parties to the Judgment and the ratepayers within the jurisdiction of Watermaster not to
5 continue the present role of the Special Referee. Rather, Watermaster should be permitted to
6 dictate its own schedule and develop management strategies consistent with the OBMP for the
7 public good.

8
9 **III. The Special Referee's "Construction" Of Watermaster's Motion as a Motion**
10 **for a Two-Year Reappointment is Incorrect**


11 The Special Referee suggests that Watermaster's motion should be construed as a motion
12 to re-appoint the Nine-Member Board for a period of two years. The Special Referee's
13 suggestion is faulty and would cause the Parties to deviate from their mission to complete work
14 that is significantly more important to the management of the Basin in order to respond to the
15 issues raised by the Special Referee. The Parties, through Watermaster, moved the Court for a
16 five-year re-appointment of the Watermaster Nine-Member Board. To the best of CVWD's
17 knowledge, the Motion is unopposed, and all Parties to the Judgment are supportive of a five-year
18 re-appointment under the conditions outlined in Watermaster's Motion. The Motion, which
19 expresses the intent and desire of the Parties, does not call for workshops or other added oversight
20 by the Special Referee. Such workshops do not further any objective of governance or
21 management.

22 Finally, it appears that the Special Referee takes exception to the format of the Parties'
23 reporting process. The Parties' reporting process is a product of this Court's orders; if the Court
24 desires a change in the format or frequency of the reporting process, the Court may so order.
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1 Thus, CVWD respectfully requests that the Court grant Watermaster's Motion to re-
2 appoint the Nine-Member Board and decline to accept the recommendations of the Special
3 Referee.

4 Dated: January 30, 2006

BEST BEST & KRIEGER LLP

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6 By: 
7 J. N. WILLIS
8 Attorney for
9 Cucamonga Valley Water District

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

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 January 29, 2006, I served the following:

- 1) **COMMENTS AND OPPOSITION TO SPECIAL REFEREE REPORT; DECLARATION OF MICHAEL FIFE IN SUPPORT OF OPPOSITION TO SPECIAL REFEREE REPORT;**
- 2) **MEMORANDUM OF CITY OF ONTARIO IN SUPPORT OF MOTION TO WATERMASTER TO REAPPOINT THE NINE-MEMBER BOARD FOR A FURTHER FIVE-YEAR TERM AND OBJECTIONS TO SPECIAL REFEREE'S REPORT AND RECOMMENDATIONS;**
- 3) **OBJECTIONS BY CUCAMONGA VALLEY WATER DISTRICT TO SPECIAL REFEREE'S REPORT AND RECOMMENDATIONS CONCERNING MOTION TO RE-APPOINT THE NINE-MEMBER BOARD FOR A FURTHER FIVE-YEAR TERM.**

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

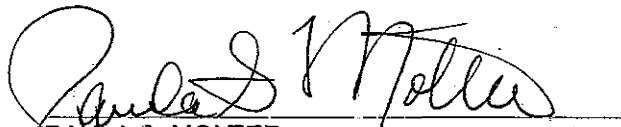
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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.

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 January 29, 2006 in Rancho Cucamonga, California.



PAULA S. MOLTER
Chino Basin Watermaster

RICHARD ANDERSON
1365 W. FOOTHILL BLVD
SUITE 1
UPLAND, CA 91786

RODNEY BAKER
COUNSEL FOR EGGWEST &
JOHNSON
PO BOX 438
COULTERVILLE, CA 95311-0438

PATRICK BAUER
ARROWHEAD WATER COMPANY
5772 JURUPA RD
ONTARIO, CA 91761-3672

BOB BEST
NAT'L RESOURCE CONS SVCS
25864 BUSINESS CENTER DR K
REDLANDS, CA 92374

BRUCE CASH
UNITED WATER MGMT CO INC
1881 BUSINESS CENTER DR
SUITE 8A
SAN BERNARDINO, CA 92408

WILLIAM P. CURLEY
PO BOX 1059
BREA, CA 92882-1059

DAVID B. COSGROVE
RUTAN & TUCKER
611 ANTON BLVD
SUITE 1400
COSTA MESA, CA 92626

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

JOE DELGADO
BOYS REPUBLIC
3493 GRAND AVENUE
CHINO HILLS, CA 91709

GLEN DURRINGTON
5512 FRANCIS ST
CHINO, CA 91710

DICK DYKSTRA
10129 SCHAEFER
ONTARIO, CA 91761-7973

RALPH FRANK
755 LAKEFIELD RD #E
WESTLAKE VILLAGE, CA 91361

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

PAUL DEUTSCH
GEOMATRIX CONSULTANTS, INC.
2444 MAIN ST., SUITE 215
FRESNO, CA 93721

JIM GALLAGHER
SOUTHERN CALIFORNIA WATER CO
2143 CONVENTION CENTER WAY
SUITE 110
ONTARIO, CA 91764

DON GALLEANO
4220 WINEVILLE RD
MIRA LOMA, CA 91752-1412

PETER HETTINGA
14244 ANON CT
CHINO, CA 91710

PETE HALL
PO BOX 519
TWIN PEAKS, CA 92391

LISA HAMILTON
GE/MGR ENV REMEDIATION PRGM
640 FREEDOM BUSINESS CTR
KING OF PRUSSIA, PA 19406

CARL HAUGE
SWRCB
PO BOX 942836
SACRAMENTO, CA 94236-0001

SUSAN TRAGER
LAW OFFICES OF SUSAN M. TRAGER
19712 MACARTHUR BLVD
SUITE 120
IRVINE, CA 92612

JOEL KUPERBERG
OCWD GENERAL COUNSEL
RUTAN & TUCKER, LLP
611 ANTON BLVD., 14TH FLOOR
COSTA MESA, CA 92626-1931

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

W. C. "BILL" KRUGER
CITY OF CHINO HILLS
2001 GRAND AVE
CHINO HILLS, CA 91709

SHARON JOYCE
STATE OF CA CDC
1515 S STREET, ROOM 314-F
SACRAMENTO, CA 95814

BOB THOMPSON
CONSULTANT TO SENATOR SOTO
822 N EUCLID AVE, SUITE A
ONTARIO, CA 91762

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

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

MARILYN LEVIN
300 S SPRING ST
SUITE 1702
LOS ANGELES, CA 90013

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

ALAN MARKS
COUNSEL – COUNTY OF SAN
BERNARDINO
157 W 5TH STREET
SAN BERNARDINO, CA 92415

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

BOB KUHN
669 HUNTERS TRAIL
GLENORA, CA 91740

ROBB QUINCY
CITY OF UPLAND
PO BOX 460
UPLAND, CA 91786

RICK REES
GEOMATRIX
2450 EAST RINCON STREET
CORONA, CA 92879

ROBERT REITER
SAN BERNARDINO VALLEY MWD
PO BOX 5906
SAN BERNARDINO, CA 92412-5906

LES RICHTER
CALIFORNIA SPEEDWAY
PO BOX 9300
FONTANA, CA 92334-9300

DAVID RINGEL
MONTGOMERY WATSON
PO BOX 7009
PASADENA, CA 91109-7009

AL LOPEZ
CBWM BOARD MEMBER
PO BOX 1773
CORONA, CA 92878

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

SENATOR NELL SOTO
STATE CAPITOL
ROOM NO 4066
SACRAMENTO, CA 95814

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

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

CRAIG STEWART
GEOMATRIX CONSULTANTS INC
510 SUPERIOR AVE, SUITE 200
NEWPORT BEACH, CA 92663

ROBERT BOWCOCK
INTEGRATED RESOURCES MGMNT
405 N. INDIAN HILL BLVD
CLAREMONT, CA 91711-4724

CHRIS SWANBERG
DEPT OF CORRECTIONS – LEGAL
AFFAIRS DIVISION
PO BOX 942883
SACRAMENTO, CA 94283-0001

SWRCB
PO BOX 2000
SACRAMENTO, CA 95809-2000

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

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

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

GEOFFREY VANDEN HEUVEL
CBWM BOARD MEMBER
7551 KIMBALL AVE
CHINO, CA 91710

SYBRAND VANDER DUSSEN
10573 EDISON AVE
ONTARIO, CA 91761

SYP VANDER DUSSEN
14380 EUCLID
CHINO, CA 91710

JOHN ANDERSON
CBWM BOARD MEMBER
12475 CEDAR AVENUE
CHINO, CA 91710

STEVE ARBELBIDE
417 PONDEROSA TR
CALIMESA, CA 92320

SANDRA ROSE
MONTE VISTA WATER DISTRICT
PO BOX 71
MONTCLAIR, CA 91763

ERIC WANG
SUNKIST GROWERS
760 E SUNKIST ST
ONTARIO, CA 91761

ROBERT NEUFELD
CBWM BOARD CHAIRMAN
14111 SAN GABRIEL CT
RANCHO CUCAMONGA, CA 91739

LEAGUE OF CA HOMEOWNERS
ATTN: KEN WILLIS
99 "C" STREET, SUITE 209
UPLAND, CA 91786

PAUL HAMRICK
JURUPA COMMUNITY SVCS DIST
11201 HARREL ST
MIRA LOMA, CA 91752

Distribution List Name: Committee List 1- Court Filings, Water Transactions

Members:

Al Lopez	lopezsixto@netzero.net
Alice Shiozawa	afshioza@gswater.com
Andy Malone	amalone@wildermuthenvironmental.com
Anne Schneider	ajs@eslawfirm.com
April Woodruff	awoodruff@ieua.org
Arnold Rodriguez	jarodriguez@sarwc.com
Art Kidman	akidman@mkblawyers.com
Barbara Swanson	Barbara_Swanson@yahoo.com
Bill Kruger	citycouncil@chinohills.org
Bill Rice	brice@rb8.swrcb.ca.gov
Bill Stafford	bstaff@uslxtreme.com
Bill Thompson	bthompson@ci.norco.ca.us
Bob Feenstra	feenstra@agconceptsinc.com
Bob Kuhn	bgkuhn@aol.com
Bonnie Tazza	bonniet@cvwdwater.com
Boyd Hill	bhill@mkblawyers.com
Brenda Fowler	balee@fontanawater.com
Brian Hess	bhess@niagarawater.com
Butch Araiza	butcharaiza@mindspring.com
Carole McGreevy	cmcgreevy@jcsd.us
Charles Moorrees	cmoorrees@sawaterco.com
Chris Swanberg	chris.swanberg@corr.ca.gov
Cindy LaCamera	clacamera@mwdh2o.com
Craig Stewart	cstewart@geomatrix.com
Curtis Aaron	caaron@fontana.org
Dan Arrighi	darrighi@sgwwater.com
Dan Hostetler	dghostetler@csupomona.edu
Dan McKinney	dmckinney@rhlaw.com
Daniel Cozad	dcozad@sawpa.org
Dave Argo	argodg@bv.com
Dave Crosley	DCrosley@cityofchino.org
Dave Hill	dhill@ieua.org
David B. Anderson	danders@water.ca.gov
David Ringel	david.ringel@mwhglobal.com
ddejesus@mwdh20.com	ddejesus@mwdh20.com
Diane Sanchez	dianes@water.ca.gov
Don Galleano	donald@galleanowinery.com
Duffy Blau	Duffy954@aol.com
Eric Garner	elgarner@bbklaw.com
Eunice Ulloa	ulloa.cbwcd@verizon.net
Frank Brommenschenkel	frank.brommen@verizon.net
Fred Fudacz	ffudacz@nossaman.com
Fred Lantz	flantz@ci.burbank.ca.us
Garth Morgan	gmorgan@ieua.org
Gene Koopman	GTKoopman@aol.com
Gerard Thibeault	gthibeault@rb8.swrcb.ca.gov
Gerry Black	gblack@FontanaWater.com
Glen Whritenour	gwhritenour@reliantenergy.com
Gordon P. Treweek	GTreweek@CBWM.ORG
Grace Cabrera	grace_cabrera@ci.pomona.ca.us
Henry Pepper	henry_pepper@ci.pomona.ca.us
James Jenkins	cnomgr@airports.sbcounty.gov
James P. Morris	jpmorris@bbklaw.com
Janine Wilson	Janine@CBWM.ORG
Jarlath Oley	joley@mwdh2o.com
Jean Cihigoyenette	Jean_CGC@hotmail.com
jeeinc@aol.com	jeeinc@aol.com
Jeffrey L. Pierson	jpierson@unitexcorp.com
Jerry King	jking@psomas.com
Jess Senecal	JessSenecal@lagerlof.com
Jill Willis	jwillis@bbklaw.com
Jim Bryson	jtbryson@fontanawater.com
Jim Hill	jhill@cityofchino.org

Jim Markman
Jim Taylor
Jim@city-attorney.com
jimmy@city-attorney.com
Joe Graziano
Joe P LeClaire
Joe Scalmanini
Joel Moskowitz (joel@MoskowitzHQ.com)

markman@nwgilaw.com
n_taylor@ci.pomona.ca.us
Jim@city-attorney.com
jimmy@city-attorney.com
jgraz4077@aol.com
jleclaire@wildermuthenvironmental.com
jscal@lsce.com

John Anderson
John Hayball
John Huitsing
John Rossi
John Schatz
John Vega
Judy Schurr
Julie Saba
Kathy Kunysz
Kathy Tiegs
Ken Jeske
Ken Kules
Kenneth Willis
Kevin Sage
Kimberly Arce
Kyle Snay
Lisa Hamilton
Mark Hensley
Martin Zvirbulis
Robert W Bowcock

joel@MoskowitzHQ.com
janderson@ieua.org
john.hayball@sce.com
johnh@milkproducers.org
jrossi@wmwd.com
jschatz13@cox.net
johnv@cvwdwater.com
jschurr@earthlink.net
jsaba@ieua.org
kkunysz@mwdh2o.com
ktiegs@ieua.org
kjeske@ci.ontario.ca.us
kkules@mwdh2o.com
kwillis@homeowners.org
Ksage@IRMwater.com
KArce@HatchParent.com
kylesnay@gswater.com
Lisa.Hamilton@corporate.ge.com
mhensley@localgovlaw.com
martinz@cvwdwater.com
bbowcock@irmwater.com

Distribution List Name: Committee List 2 - Court Filings, Water Transactions

Members:

Marilyn Levin	marilyn.levin@doj.ca.gov
Mark Kinsey	mkinsey@mvwd.org
Mark Ward	mark_ward@ameron-intl.com
Mark Wildermuth	mwildermuth@wildermuthenvironmental.com
Martha Davis	mdavis@ieua.org
Martin Rauch	martin@rauchcc.com
Martin Zvirbulis	martinz@cvwdwater.com
Maynard Lenhert (directorlenhert@mvwd.org)	directorlenhert@mvwd.org
Michael Fife	Mfife@hatchparent.com
Michelle Staples	mstaples@jdplaw.com
Mike Del Santo	mike_delsanto@catellus.com
Mike Maestas	mmaestas@chinohills.org
Mike McGraw	mjm McGraw@FontanaWater.com
Mike Thies	mthies@spacecenterinc.com
Mohamed El-Amamy	melamamy@ci.ontario.ca.us
Nathan deBoom	nathan@milkproducers.org
Pam Wilson	pwilson@hatchparent.com
Paul Hamrick	wleslie@jcsd.us
Paul Hofer	farmwatchtoo@aol.com
Paula Molter	PMolter@CBWM.ORG
Pete Hall	richard.okeefe@corr.ca.gov
Peter Von Haam	peter.vonhaam@doj.ca.gov
Phil Krause	pkrause@parks.sbcounty.gov
Phil Rosentrater	prosentrater@wmwd.com
Rachel R Robledo	RRobledo@HatchParent.com
Raul Garibay	raul_garibay@ci.pomona.ca.us
Richard Atwater	Atwater@ieua.org
Rick Hansen	rhansen@tvmwd.com
Rick Rees	rrees@geomatrix.com
Rita Kurth	ritak@cvwdwater.com
Robert DeLoach	robertd@cvwdwater.com
Robert Dougherty	RED@covcrowe.com
Robert Neufeld	N78098@aol.com
Robert Neufeld	robertn@cvwdwater.com
Robert Rauch	robert.rauchcc@verizon.net
Robert W Bowcock	bbowcock@irmwater.com
Robert W. Nicholson	rwnicholson@sgvwater.com
Ron Craig	RonC@rbf.com
Ron Small	ron.small@dgs.ca.gov
Rosemary Hoerning	rhoeming@ci.upland.ca.us
Sandra S. Rose	ybarose@verizon.net
Sandy Lopez	slopez@ci.ontario.ca.us
Scott Burton	sburton@ci.ontario.ca.us
Sharon Joyce	SJoyce@executive.corr.ca.gov
Steve Arbelbide	sarbelbide@californiasteel.com
Steve Kennedy	skennedy@bbmbllaw.com
Steven Lee	slee@rhlaw.com
Tej Pahwa	tpahwa@dtsc.ca.gov
Terry Catlin	tcatlin@verizon.net
Timothy Ryan	tjryan@sgvwater.com
Tom Bunn	TomBunn@Lagerlof.com
Tom Love	TLove@ieua.org
Tom McPeters	THMcP@aol.com
Tracy Tracy	ttracy@mvwd.org
Virginia Grebbien	vgrebbien@ocwd.com
Wayne Davison	ciwcpm@earthlink.net
William J. Brunick	bb Brunick@bbmbllaw.com
William P. Curley	wcurley@rwglaw.com
WM Admin Staff	