

FEE EXEMPT

1 Arthur G. Kidman, Bar No. 61719
2 Boyd L Hill, Bar No. 140435
3 MCCORMICK, KIDMAN & BEHRENS, LLP
4 695 Town Center Drive, Suite 400
5 Costa Mesa, California 92626
6 Telephone: 714.755.3100
7 Facsimile: 714.755.3110

8 Attorneys for Defendant
9 MONTE VISTA WATER DISTRICT

FILED-Rancho Cucamonga District
SAN BERNARDINO COUNTY
SUPERIOR COURT

MAY 22 2007

By Suzey Quintana
Deputy

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

13 CHINO BASIN MUNICIPAL WATER DISTRICT,

14 Plaintiff,

15 V.

16 THE CITY OF CHINO,

17 Defendants.

18 AND RELATED CROSS-ACTIONS.
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) CASE NO. RCV 51010
) Assigned for All Purposes to
) Honorable J. MICHAEL GUNN
) Department R8

) MONTE VISTA WATER DISTRICT'S
) RESPONSE TO REFEREE REPORT
) AND RECOMMENDATIONS

) DATE: May 24, 2007
) TIME: 1:30 P.M.
) DEPT: 8

1 **I. INTRODUCTION AND REQUEST FOR ORDER.**

2 Monte Vista Water District supports the Special Referee Comments and Recommendations.
3 As the Referee recognizes, Peace II efforts involving this Court are designed to take advantage of the
4 Regional Board's Basin Plan Amendment. As the Referee notes, the Stipulated Judgment will need to
5 be amended to "re-operate" the Chino Basin under the concept of "hydraulic control." Specifically,
6 Peace II will require a Judgment amendment to permit production for desalter purposes in excess of
7 allowable Operating Safe Yield.

8 By way of this Response, Monte Vista requests that this Court consider an additional
9 recommendation for its Order. Monte Vista requests that this Court order Watermaster to conduct an
10 open and public workshop among the parties to establish the scope of the socioeconomic analysis as
11 required by Section I.E. the Peace II Term Sheet. The order should allow the parties access to Dr.
12 Sunding's data, assumptions and findings so that the analysis can be subject to peer review. An open
13 and public process is necessary to protect the interests of the public and of the minority producers.

14 **II. IMPORTANCE OF ECONOMIC ISSUES.**

15 One of the key issues negotiated by the parties in the Peace II Term Sheet is who pays for
16 OBMP facilities and operations, including principally desalter replenishment water. The desalter
17 replenishment issue has been a primary focus of Watermaster governance oversight by this Court.
18 (See January 20, 2006 Special Referee Report, p. 4:10-15)

19 Various provisions of the Peace II Term Sheet are designed to address that issue. Among the
20 key provisions is a condition precedent of a Watermaster updated analysis of the socioeconomic
21 impacts of implementing the OBMP and Peace Agreement. (Term Sheet, § I.E) The purpose of the
22 socioeconomic analysis is to determine whether the assessment formula is equitable considering the
23 distribution of benefits resulting from implementation of the OBMP. The OBMP economic impacts
24 and benefits to the parties are of equal importance under the Judgment as are OBMP impacts and
25 benefits to basin groundwater quantity and quality. (Judgment, Exhibit I, § 1 (c))

26 A second key provision is the requirement for two separate categories of storage loss
27 assessments, those applicable to parties who have contributed to implementation of the OBMP and
28 those applicable to third party storage. (Term Sheet, § VI.A) Third party assessments would likely

1 cover most of the anticipated appropriator obligations for desalter replenishment water. (See
2 Attachment 1)

3 **III. MONTE VISTA CONCERNS.**

4 Section I.E. of the Peace II Term Sheet requires an open and public Watermaster workshop to
5 establish the scope of the socioeconomic analysis. Open and public Watermaster workshops have
6 helped the Watermaster exercise its independent discretion and avoid the tyranny of the majority,
7 which are measures of whether the Watermaster is governing effectively. (See December 12, 1997
8 Special Referee Report, pp. 8:7-11 & 9:13-10:6) Also, peer review of Dr. Sunding's study will help
9 the public and minority parties to be well-informed about issues of economic equity.

10 Contrary to the Term Sheet and successful governance principles, the Advisory Committee
11 purported to mandate a private scoping process with Watermaster counsel supervision. However,
12 Watermaster discretionary actions such as hiring of an expert and OBMP implementation are not
13 subject to the 80% Advisory Committee mandate. (See the December 12, 1997 Referee Report pp.
14 14:10-21 & 17:1-9) Monte Vista has requested Watermaster counsel to advise it of the date for the
15 open and public scoping meeting required by the Peace II Term Sheet. (See Attachment 2)

16 **IV. CONCLUSION.**

17 Monte Vista respectfully requests that this Court adopt the Referee Report and approve the
18 Referee Recommendations. In addition, Monte Vista also requests that the Court enter in its order the
19 following language: "On or before July 1, 2007, Watermaster shall conduct a public Watermaster
20 workshop among the parties to establish the scope of the socioeconomic analysis as required by
21 Section I.E. of the Peace II Term Sheet. Upon request by a party, Watermaster shall promptly provide
22 all information necessary for peer review of Dr. Sunding's socioeconomic study, including all data,
23 assumptions and findings."

24 DATED: May 21, 2007

MCCORMICK, KIDMAN & BEHRENS, LLP

25 By: Boyd L. Hill
26 ARTHUR G. KIDMAN
27 BOYD L. HILL
28 Attorneys for Defendant
MONTE VISTA WATER DISTRICT

Range of Desalter Replenishment Obligation

	HIGH	LOW	years	At the end of 25 years
Existing Desalter	32,000	32,000	25	800,000
Western Desalter	10,000	10,000	20	200,000
	<u>42,000</u>	<u>42,000</u>		<u>1,000,000</u>
Total Desalter	1,000,000	1,000,000		
Less Inducement	300,000	400,000	12,000-16,000/yr	300,000-400,000
Avoided Losses	-	<u>150,000</u>	0-6,000/yr	
Kaiser Water	10,000	10,000	10,000 balance	
Non Ag Water	10,000	10,000	10,000 balance	
Non Ag Water	17,500	17,500	700/yr = 7,000asy x 10%	
Subtotal Credits	<u>337,500</u>	<u>587,500</u>		
Replenishment Obligation	662,500	412,500		
Less Forgiveness	<u>400,000</u>	<u>400,000</u>		
Req'd Replenishment	262,500	12,500		

Attachment 1

Boyd Hill

From: Boyd Hill [bhill@mkblawyers.com]
Sent: Thursday, May 10, 2007 2:02 PM
To: Scott Slater (Scott Slater)
Cc: 'Michael T Fife'; 'Mark Kinsey'; 'Arthur G. Kidman'; 'Danielle Broderick'
Subject: Monte Vista/Chino Basin/Peace II Term Sheet Issues

Scott:

I hope all is well. I have a couple of questions about the Peace II Term Sheet and related matters. I appreciate your prompt response.

1. I reviewed the April 30 Watermaster filing containing a revised "Timeline of Peace II Implementation." I note Exhibit C item 6 does not contain a date for the "public Watermaster workshop among stakeholders" at which the scope of Dr. Sunding's analysis is to be established as is set forth in Section I.E. of the Term Sheet. Can you please provide a date when this will occur?

2. I have seen the deal points for the proposed expansion of the Dry Year Yield expansion. Would those deal points allow MWD to pay the same amount for storage losses as the parties as set forth in Section VI.B of the Term Sheet, or would MWD pay storage losses based upon the pre-implementation of the OBMP and Hydraulic Control baseline set forth in Section VI.A.1.a of the Term Sheet?

If MWD pays under Section VI.B of the Term Sheet, then is that a material change in the Term Sheet? If MWD pays under Section VI.B, then who will be responsible for payment for the 150,000 acre-feet of desalter replenishment that was anticipated to be received through the assessment of 3rd party losses on MWD storage accounts (i.e., will the proposal increase the unmet desalter replenishment obligation)?

Do the LRP payments benefit only CDA parties? If so, does the commitment of storage space in exchange for those payments conflict with Sections 5.2(c)(iv)(b), 5.2(c)(v), 5.2(c)(vi), and 7.4(b)(iv) of the Peace I Agreement?

I understand that MWD is moving forward with a vote on the deal points next month. If there is a potential for conflict with provisions of Peace I and Peace II, should Watermaster ask MWD to put off a vote until those issues can be resolved, possibly through negotiation of Peace II?

Your prompt response on the above issues will be greatly appreciated.

Boyd L. Hill, Attorney
McCormick, Kidman & Behrens, LLP
714-755-3100

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5/21/2007

Attachment 2

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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and not a party to the within action; my business address is: 650 Town Center Drive, Suite 100, Costa Mesa, California 92626.

On May 21, 2007, I served the following document: MONTE VISTA WATER DISTRICT'S RESPONSE TO REFEREE REPORT AND RECOMMENDATIONS on the Chino Basin Watermaster with instructions for the Watermaster to serve copies on all interested parties in this matter, as follows:

Janine Wilson
CHINO BASIN WATERMASTER
9641 San Bernardino Road
Rancho Cucamonga, California 91730
909 484-3888 Ext. 228 Fax: 909 484-3890
jwilson@cbwm.org

[X] (BY ELECTRONIC SERVICE) To jwilson@cbwm.org. Receipt of service was confirmed using the Return Receipt Requested feature of electronic mail system.

[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 May 21, 2007, at Costa Mesa, California.


Danielle Broderick

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 May 22, 2007, I served the following:

1) MONTE VISTA WATER DISTRICT'S RESPONSE TO REFEREE REPORT AND RECOMMENDATIONS

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

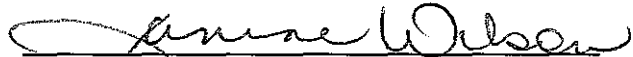
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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 May 22, 2007 in Rancho Cucamonga, California.



JANINE WILSON
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

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

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

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

CHARLES FIELD
4415 FIFTH STREET
RIVERSIDE, CA 92501

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

DAN FRALEY
HERMAN G. STARK YOUTH
CORRECTIONAL FACILITY
15180 S EUCLID
CHINO, CA 91710

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
25345 AVENUE STANFORD, STE 208
VALENCIA, CA 91355

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

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

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

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

PETER HETTINGA
14244 ANON CT
CHINO, CA 91710

PETE HALL
PO BOX 519
TWIN PEAKS, CA 92391

MANUEL CARRILLO
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

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

STEVE ARBELBIDE
417 PONDEROSA TR
CALIMESA, CA 92320

SANDRA ROSE
PO BOX 337
CHINO, CA 91708

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

SYP VANDER DUSSEN
14380 EUCLID
CHINO, CA 91710

SYBRAND VANDER DUSSEN
10573 EDISON AVE
ONTARIO, CA 91761

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

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

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

BOB KUHN
669 HUNTERS TRAIL
GLENORA, CA 91740

GEOFFREY VANDEN HEUVEL
CBWM BOARD MEMBER
8315 MERRILL AVENUE
CHINO, CA 91710

BRIAN GEYE
DIRECTOR OF TRACK ADMIN
CALIFORNIA SPEEDWAY
PO BOX 9300
FONTANA, CA 92334-9300

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

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

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

JIM BOWMAN
CITY OF ONTARIO
303 EAST "B" STREET
ONTARIO, CA 91764

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

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

JUSTIN BROKAW
MARYGOLD MUTUAL WATER CO
9725 ALDER ST
BLOOMINGTON, CA 92316-1637

SWRCB
PO BOX 2000
SACRAMENTO, CA 95809-2000

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

Members:

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
Ashok Dhingra	ashok.dhingra@m-e.aecom.com
Barbara Swanson	Barbara_Swanson@yahoo.com
Bill Kruger	citycouncil@chinohills.org
Bill Rice	brice@rb8.swrcb.ca.gov
Bill Thompson	bthompson@ci.norco.ca.us
Bob Feenstra	feenstra@agconceptsinc.com
Bob Kuhn	bgkuhn@aol.com
Bonnie Tazza	bonniet@cwddwater.com
Boyd Hill	bhill@mkblawyers.com
Brenda Fowler	balee@fontanawater.com
Brian Hess	bhess@niagarawater.com
Butch Araiza	butcharaiza@mindspring.com
Charles Field (cdfield@charter.net)	cdfield@charter.net
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@sgvwater.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 D DeJesus	ddejesus@mwdh2o.com
David D DeJesus (davidcicgm@aol.com)	davidcicgm@aol.com
David Ringel	david.ringel@mwhglobal.com
Diane Sanchez	dianes@water.ca.gov
Don Galleano	donald@galleanowinery.com
Duffy Blau	Duffy954@aol.com
Eidon Horst	ehorst@jcsd.us
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
Gene Koopman	GTKoopman@aol.com
Gerard Thibeault	gthibeault@rb8.swrcb.ca.gov
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 Cihigoyenetché	Jean_CGC@hotmail.com
jeeinc@aol.com	jeeinc@aol.com
Jeffrey L. Pierson	jpierson@unitexcorp.com
Jennifer Novak	jennifer.novak@doj.ca.gov
Jerry King	jking@psomas.com
Jess Senecal	JessSenecal@lagerlof.com
Jill Willis	jnwillis@bbklaw.com
Jim Bryson	jtbryson@fontanawater.com
Jim Hill	jhill@cityofchino.org
Jim Markman	jmarkman@rwglaw.com
Jim Taylor	jim_taylor@ci.pomona.ca.us
Jim@city-attorney.com	Jim@city-attorney.com

jimmy@city-attorney.com
Joe Graziano
Joe P LeClaire
Joe Scalmanini
John Anderson
John Huitsing
John Rossi
John Schatz
John Vega
Judy Schurr
Julie Saba
Kathy Kunysz
Kathy Tiegs
Ken Jeske
Ken Kules
Kenneth Willis
Kevin Sage
Kyle Snay
Lisa Hamilton
Mark Hensley
Martin Zvirbulis
Robert Bowcock

jimmy@city-attorney.com
jgraz4077@aol.com
jleclaire@wildermuthenvironmental.com
jscai@lsce.com
janderson@ieua.org
johnhuitsing@gmail.com
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
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:

Manuel Carrillo	Manuel.Carrillo@SEN.CA.GOV
Marilyn Levin	marilyn.levin@doj.ca.gov
Mark Kinsey	mkinsey@mwwd.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 Lenhart	directorlenhart@mwwd.org
Michael B. Malpezzi	MMalpezzi@reliant.com
Michael Fife	Mfife@hatchparent.com
Michelle Staples	mstaples@jdplaw.com
Mike Del Santo	mdelsant@prologis.com
Mike Maestas	mmaestas@chinohills.org
Mike McGraw	mjmcgraw@FontanaWater.com
Mike Thies	mthies@spacecenterinc.com
Mohamed El-Amamy	melamamy@ci.ontario.ca.us.
Nathan deBoom	n8deboom@gmail.com
Pam Wilson	pwilson@hatchparent.com
Paul Deutsch	pdeutsch@geomatrix.com
Paul Hofer	farmwatchtoo@aol.com
Paula Molter	PMolter@CBWM.ORG
Pete Hall	richard.okeefe@corr.ca.gov
Phil Krause	pkrause@parks.sbcountry.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 Bowcock	rbowcock@irmwater.com
Robert DeLoach	robertd@cvwdwater.com
Robert Dougherty	RED@covcrowe.com
Robert Neufeld	robertn@cvwdwater.com
Robert Rauch	robert.rauchcc@verizon.net
Robert W. Nicholson	rnicholson@sgwwater.com
Robert Young (rkyoung@fontanawater.com)	rkyoung@fontanawater.com
Roger Florio	roger.florio@ge.com
Ron Craig	RonC@rbf.com
Ron Small	ron.small@dgs.ca.gov
Rosemary Hoerning	rhoerning@ci.upland.ca.us
Sam Fuller	samf@sbsvmwd.com
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
Steven Orr	sorr@rwglaw.com
Tej Pahwa	tpahwa@dtsc.ca.gov
Terry Catlin	tcatlin@verizon.net
Timothy Ryan	tjryan@sgwwater.com
Tom Bunn	TomBunn@Lagerlof.com
Tom Love	TLove@ieua.org
Tom McPeters	THMcP@aol.com
Tracy Tracy	ttracy@mwwd.org
Virginia Grebbien	vgrebbien@ocwd.com
Wayne Davison	wayne.davison2@cdcr.ca.gov
Wendy Leslie	wleslie@jcsd.us
William J. Brunick	bbrunick@bbmbllaw.com
WM Admin Staff	