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6 Fee exempt – Gov. Code §§6103 and 27383

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION**

11 CHINO BASIN MUNICIPAL WATER  
DISTRICT,

12 Plaintiff,

13 vs.

14 THE CITY OF CHINO, et al.,

15 Defendants.

CASE NO. RCV 51010

Assigned for All Purposes to:  
Honorable J. MICHAEL GUNN  
Department R8

**RESPONSE TO WATERMASTER'S  
COMPLIANCE WITH CONDITIONS  
SUBSEQUENT NUMBERS THREE AND  
FOUR OF THE COURT'S 12/21/2007  
ORDER; REQUEST FOR ADDITIONAL  
TIME TO EVALUATE  
WATERMASTER'S COMPLIANCE  
WITH CONDITION SUBSEQUENT  
NUMBER THREE; AND WITHDRAWAL  
OF MONTE VISTA WATER DISTRICT'S  
JOINDER TO WATERMASTER'S  
MOTION FOR APPROVAL OF PEACE II  
DOCUMENTS**

[Declaration of Mark Kinsey filed  
concurrently herewith]

Date: May 1, 2008  
Time: 2:00 p.m.  
Dept. R8

25  
26 Defendant, Monte Vista Water District ("Monte Vista"), by and through its attorneys of  
27 record, McCormick, Kidman & Behrens, LLP, hereby responds to Watermaster's Compliance with  
28 Conditions Subsequent Numbers Three and Four of the Court's December 21, 2007, Order

1 Concerning Watermaster's Motion for Approval of Peace II Documents ("Court Order"). Monte  
2 Vista requests that this Court stay the Court Order so that the parties may have the opportunity to  
3 fully review their prior concurrence to Peace II documents in light of the belated revelation of a  
4 projected substantial reduction in safe yield, which was not originally contemplated by the parties.  
5 Monte Vista also hereby withdraws its Joinder to Watermaster's Motion for Approval of Peace II  
6 Documents, filed with this Court on November 9, 2007.

7  
8 **I. INTRODUCTION**

9 On or about October 25, 2007, Watermaster filed a Motion for Approval of Peace II  
10 Documents ("Watermaster's Motion"). On November 9, 2007, Monte Vista filed a Joinder to  
11 Watermasters' Motion. Following a report from the Special Referee and a hearing regarding  
12 Watermaster's Motion, on December 21, 2007, the Court filed an Order Concerning Watermaster's  
13 Motion. Subject to the satisfaction of certain conditions, the Court ordered the approval of three  
14 amendments to the Judgment, the second amendment to the Peace Agreement, and Resolution 07-05.  
15 (Court Order, p. 7, lines 8-22.)

16 The Court further ordered compliance with a number of conditions subsequent, including, but  
17 not limited to:

- 18 1) Preparing and submitting a brief to the Court to explain the amendments to  
19 Judgment Paragraph 8 and Judgment Exhibit "G";
- 20 2) Preparing and submitting to the Court for approval a corrected initial schedule to  
21 replace Resolution No 07/05, Attachment "E", together with an explanation of the  
22 corrections made;
- 23 3) Preparing and submitting to the Court for approval a new Hydraulic Control  
24 technical report addressing all factors in the Special Referee's Final Report and  
25 Recommendations, including a technical analysis of the projected decline in safe  
26 yield and a definition of "new equilibrium" issues; and
- 27 4) Reporting to the Court on the status of CEQA compliance.

28 (Court Order, p. 7, lines 24-28; p. 8, lines 1-9.)

1 In compliance with condition subsequent number 3, on or about March 3, 2008, Watermaster  
2 filed a technical report prepared by Wildermuth Environmental, Inc. ("Wildermuth Report"), which  
3 addresses the issues raised by the Special Referee, including a technical analysis of the projected  
4 decline in safe yield. After reviewing the Wildermuth Report, and in light of a change in  
5 circumstance, Monte Vista hereby withdraws its Joinder to Watermaster's Motion, responds to the  
6 technical analysis presented in the Wildermuth Report, and requests that the Court allow the parties  
7 an opportunity to fully analyze the impact of the reduction in safe yield, as set out more fully in the  
8 Wildermuth Report.

9  
10 **II. THE NEGOTIATIONS OF PEACE I, PEACE II, AND OBMP WERE LARGELY**  
11 **PREDICATED ON SUSTAINING AND/OR ENHANCING SAFE YIELD IN THE**  
**BASIN.**

12 The parties have been engaged in the negotiation and development of Peace I and Peace II  
13 since 1998. (Declaration of Mark Kinsey ("Kinsey Dec.") ¶5.) The negotiation process was premised  
14 on the belief that implementation of Peace I, Peace II and the Optimum Basin Management Program  
15 (OBMP) would sustain current safe yield and would potentially enhance safe yield.<sup>1</sup> (Kinsey Dec. ¶5.)  
16 Based on these premises, Monte Vista agreed to Peace I and conditionally agreed to Peace II. (Kinsey  
17 Dec. ¶6.)

18 However, in 2007, after the parties had preliminarily agreed to Peace II measures, the  
19 Declaration of Mark Wildermuth, filed concurrently with the Watermaster Motion and using the newly  
20 updated model that was not available during the Peace II negotiations, for the first time introduced the  
21 assertion that the safe yield in the Chino Basin is projected to substantially decline, even with the  
22 implementation of Peace I, Peace II, and OBMP. (Watermaster Motion, Exhibit C, Declaration of  
23 Mark Wildermuth, ("Wildermuth Declaration") p. 7-8; Kinsey Dec. ¶7.) The Parties had been  
24 engaged in years of negotiation, but the parties were told, and it was Monte Vista's understanding, that  
25 implementation of Peace I, Peace II, and OBMP would sustain or enhance safe yield, not that the safe  
26

27  
28 <sup>1</sup> In fact, the Watermaster Motion indicates that: "Watermaster has determined that the Basin Re-operation strategy as described in the Project Description is a beneficial strategy to the Basin that will advance the OBMP goals of yield enhancement and protection . . ." (Watermaster Motion, p. 13, lines 12-14, emphasis added.)

1 yield was projected to substantially decline. (Kinsey Dec. ¶5.) The filing of Mr. Wildermuth's  
2 Declaration and the 2007 Chino Basin Watermaster Groundwater Model was the first time Monte  
3 Vista was made aware of a projected substantial decline in safe yield. (Kinsey Dec. ¶8; see also,  
4 Special Referee's Final Report and Recommendations on Motion for Approval of Peace II Documents,  
5 p. 27, lines 16-18.<sup>2</sup>)

6 In fact, this information was even new to the Watermaster. In response to Special Referee's  
7 Preliminary Comments and Recommendations on the Watermaster Motion relating to the decline in  
8 safe yield, Watermaster stated: "Safe Yield is projected to decline for reasons that are completely  
9 unrelated to the Peace II measures. The information is new to Watermaster and not relevant to  
10 Watermaster's Motion." (Watermaster Response to Special Referee's Preliminary Comments and  
11 Recommendations on Motion for Approval of Peace II Documents, p. 47, lines 19-21.) Monte Vista  
12 agrees the information about a substantial reduction in Safe Yield is new, but cannot agree the  
13 information is irrelevant to approval and implementation of the Peace II documents. Monte Vista and  
14 the other parties should have a reasonable opportunity to evaluate the new information and determine  
15 whether the Peace II documents should stand as submitted to the Court or should be revised. Monte  
16 Vista has not had an opportunity to fully evaluate the cause and impact of the reduction in safe yield.  
17 (Kinsey Dec. ¶8.)

18 In light of the new information regarding a projected decline in safe yield, the Court required  
19 as condition subsequent 3, a technical analysis to be completed addressing this issue of reduction of  
20 safe yield. On or about March 3, 2008, Watermaster filed the Wildermuth Report in response to  
21 condition subsequent 3, which, for the first time, clearly analyzed and presented the extent and  
22 projections of a substantial decline in safe yield, the full impact of which the Appropriative Pool  
23 bears.<sup>3</sup> The reduction to the Appropriative Pool's share of the safe yield is substantial, and is a change

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25 <sup>2</sup> "Watermaster's Technical Report indicated – for the first time – that safe yield would decline, from 140,000 acre-feet  
26 per year to slightly less than 120,000 acre-feet per year by 2059/60." (Special Referee's Final Report and  
Recommendations on Motion for Approval of Peace II Documents, p. 27, lines 16-18.)

27 <sup>3</sup> "The modeling analysis of the Peace II project description suggests that the safe yield will decline in the future and  
28 reach about 120,000 acre-ft/yr in the out years. Pursuant to the Judgment, changes in safe yield will be credited solely  
to the members of the Appropriative Pool (see Judgment paragraph 44, page 25 lines 20 and 21). This means that if  
the safe yield were to decrease as is suggested by the modeling work, the 20,000 acre-ft/yr decline in safe yield would



1 in circumstance from the information available to the parties during the negotiation of Peace I and  
2 Peace II.<sup>4</sup> (Kinsey Dec. ¶9.) Monte Vista believes the outcome of the Peace I and Peace II  
3 negotiations may have been quite different had the information now before the Court been available to  
4 the parties during the negotiations. (Kinsey Dec. ¶6.)

5 Watermaster's compliance with condition subsequent number 3 highlights the issue of  
6 reduction in safe yield and presents a different circumstance than what prevailed when Monte Vista  
7 participated in negotiating Peace I and Peace II. (Kinsey Dec. ¶9.) Monte Vista needs, and believes  
8 the other parties need, additional time to meet and confer, evaluate, and determine if any adjustments  
9 need to be made in the Peace II documents in light of the projected decline in safe yield. (Kinsey Dec.  
10 ¶10.)

11  
12 **III. THE WILDERMUTH REPORT DOES NOT PROPERLY ACCOUNT FOR THE**  
13 **IMPACT OF A REDUCTION IN SAFE YIELD ON THE APPROPRIATIVE POOL**  
14 **ACCORDING TO THE JUDGMENT.**

15 **A. The Judgment Expressly Provides a Specific Priority in the Apportionment of**  
16 **Unallocated Overlying Agricultural Rights When There is a Reduction in Safe**  
17 **Yield.**

18 Throughout the negotiation of Peace I and Peace II, the parties were told and operated under  
19 the assumption that implementation of Peace I, Peace II and OBMP would sustain or enhance safe  
20 yield, not reduce safe yield. (Kinsey Dec. ¶5.) In light of the new information of a projected  
21 substantial decline in safe yield, the impacted parties will need to understand how the Judgment and  
22 the subsequent Amendments, Peace I and Peace II apportion unused agricultural rights.

23 The Wildermuth Report projects a "40 percent decrease in the safe yield allocated to the

---

24 be distributed among the members of the Appropriative Pool based on each member's initiation share of safe yield."  
(Wildermuth Report, p. 5-6, ¶5.2.2.)

25 <sup>4</sup> "The Court must appreciate that information is very new and further evaluation and better understanding of the causes  
26 and whether they can be reversed on mitigated by methods other than expanded recharge is warranted. That said,  
27 Watermaster must point out that the gravity of the predicted condition in the Final Report actually grows worse if the  
28 Peace II Measures are not implemented. (November 15, 2007 Declaration of Mark Wildermuth, ¶17.)

There can be no better place to address the subject of declining yield than in the proposed Recharge Master Plan  
process." (Watermaster Response to Special Referee's Preliminary Comments and Recommendations on Motion for  
Approval of Peace II Documents, p. 33, lines 1-7.)

1 appropriators.” (Wildermuth Report, p. 5-6, ¶5.2.2, and Table 5-2.) In addition, the Wildermuth  
2 Report states the Appropriative Pool’s share of Safe Yield (“Operating Safe Yield”) is calculated by  
3 “subtracting the safe yield allocated to the Overlying Non-agricultural Pool and the Overlying  
4 Agricultural Pool from the safe yield.” (Wildermuth Report, p. 5-5 to 5-6, ¶5.2.1.)

5 A priority system is established under the Judgment to reallocate Unallocated (meaning  
6 “unused” for agricultural purposes) Overlying Agricultural Pool rights as follows: (1) to supplement  
7 water available from the Operating Safe Yield to compensate for any reduction in the Safe Yield by  
8 reason of recalculation; (2) pursuant to conversion claims; and (3) to supplement the Operating Safe  
9 Yield without regard to reductions in Safe Yield. (Judgment, Exhibit H, p. 73-74, ¶10(a).) As the  
10 1978 Post-Trial Memorandum indicates:

11 “It is contemplated that over a long period of years, agricultural production may well  
12 fall substantially below the aggregate amount of the Safe Yield right allocated to the  
13 pool. That Safe Yield right will remain available for agricultural use, but in a given  
14 year or a series of years there may be a substantial amount of Safe Yield water which  
15 is not pumped by Overlying Agricultural Pool parties. The Judgment adopts a formula  
16 for allocating that unpumped water among the members of the Appropriative Pool by  
17 first, replacing any reductions in Safe Yield (the full impact of which falls on the  
18 Appropriative Pool), and then to recognize the conversion of agricultural land to  
19 municipal and domestic purposes.”

20 (Plaintiff’s Post-Trial Memorandum, filed July 12, 1978, p. 8, ¶7, emphasis added.)

21 Although there have been subsequent amendments to the Judgment, the priorities set forth in  
22 Paragraph 10(a) of Exhibit H in the Judgment, have not been changed. When a reduction in safe yield  
23 occurs, unused agricultural water rights must first be used to backfill the reductions prior to any other  
24 priorities, including conversions claims and Early Transfers.

25 **B. The Parties Need to Evaluate the Projected Decline in Safe Yield in Light of the**  
26 **Priorities Set Forth in the Judgment.**

27 Peace I, Peace II, and subsequent Amendments to the Judgment primarily addressed the second  
28 and third priority for the reallocation of unused agricultural water rights. Specifically, the second  
29 priority listed in the Judgment recognized that agricultural lands may be converted to other urban uses,  
30 and as such, Appropriators may undertake to permanently provide water service to converted  
31 overlying lands. (Judgment, Exhibit H, p. 74 ¶10(b).) The allocation of conversion claims, as

1 described in Paragraph 10(b) of Exhibit H, was amended in 1995 and again in 2001.<sup>5</sup> These  
2 conversion claims are not guaranteed claims, particularly when there is insufficient unallocated safe  
3 yield from the overlying agricultural pool. (*see* 1995 Amendment, ¶10(b)(3)(i).)

4 Furthermore, Peace I created a reallocation of unallocated agricultural water rights in the  
5 establishment of the Early Transfer. An Early Transfer is the reallocation of the greater of 32,800 or  
6 32,800 acre-ft/yr plus the actual amount of water not produced by the Agricultural Pool for each fiscal  
7 year, after all the land use conversions were satisfied, to be allocated among the members of the  
8 Appropriative Pool in accordance with their pro-rata share of the safe yield. (Peace I, p. 33, ¶5.3 (g).)  
9 The Early Transfer is essentially a reallocation of unused Agricultural Pool water (Post-Order  
10 Memorandum, filed October 26, 2000, p.10, line 16), and is a refinement of the third priority  
11 established in the Judgment to supplement the operating safe yield without regard to reductions in safe  
12 yield. (Judgment, p. 74, line 3-4.)

13 Peace I and Peace II did not address the possibility of a reduction in safe yield, or how the  
14 priorities would be treated. In addition, Watermaster's Rules and Regulations do not provide guidance  
15 as to how the Watermaster will handle reductions in safe yield, nor does it account for the procedures  
16 to handle conversion claims pursuant to the 1995 Amendment when unused agricultural rights are  
17 insufficient to meet all conversion claims.<sup>6</sup> (Chino Basin Watermaster Rules and Regulations, July  
18

19 <sup>5</sup> The 1995 Amendment to the Judgment provided that "in any year in which sufficient unallocated Safe Yield from the  
20 Overlying (Agricultural) Pool is available for such conversion claims", the appropriator is allocated 1.3 acre-feet for  
21 each converted acre which has been approved and recorded by the Watermaster. (Order Approving Amendments to  
22 Judgment, Exhibit 1 ("1995 Amendment"), ¶10(b)(3)(i).) The 1995 Amendment also contemplated that in any year  
when the unallocated Ag Pool water was insufficient to satisfy the conversion claims, the Watermaster would establish  
allocation percentages for each Appropriator with conversion claims. (*Ibid.*)

23 The 2001 Amendment, which followed Peace I, modified the allocation from 1.3 acre-feet to 2.0 acre-feet for each  
24 converted acre. (Order Approving Post-Order Memorandum and Confirming Judgment Modifications; Approving  
25 Intervention; Receiving and Filing Twenty-Third Annual Report; Tentatively Approving Watermaster Rules and  
Regulations; Receiving Reports on OBMP Implementation ("2001 Amendment to Judgment"); p. 3, lines 10-18.)  
However, all other provisions of Paragraph 10(b) as presented in the 1995 Amendment were to remain the same.  
(*Ibid.*)

26 <sup>6</sup> Paragraph 10(b)(3)(ii) states:

27 "In any year in which the unallocated Safe Yield water from the Overlying (Agricultural) Pool is not sufficient to  
28 satisfy all outstanding conversion claims pursuant to subparagraph (i) herein above, Watermaster shall establish  
allocation percentages for each appropriator with conversion claims. The percentages shall be based upon the ratio of  
the total of such converted average approved and recorded for each appropriator's account in comparison to the total  
of converted acreage approved and recorded for each appropriator's account in comparison to the total of converted

1 2001, p. 32, ¶6.3 (a).)

2 Watermaster Motion indicates that “the specification of an acre-foot quantity of the Early  
3 Transfer created the possibility that the sum total of the Land Use Conversion Claims, the Early  
4 Transfer, and the actual Agricultural Pool production in any given year would total more than the  
5 rights available to the Agricultural Pool.” (Watermaster Motion, p. 20, lines 25-28.) However, there  
6 is no “overdraft permitted by this accommodation.” (*Id.* at p. 10, lines 23-24.)

7 In conformance with the proper interpretation of the Judgment providing that the first priority  
8 of unallocated agricultural water rights is to supplement any reduction in the operating safe yield to  
9 compensate for reductions in the safe yield, the parties will need to evaluate how the decline in safe  
10 yield will impact their individual agencies, particularly agencies with conversion claims. Because the  
11 impact of a reduction in safe yield falls entirely on the Appropriative Pool, the parties also need to  
12 understand the economic impact of the projected decline in safe yield. The combined total of  
13 backfilling any reduction in the operating safe yield, conversion claims, and Early Transfer may have  
14 a substantial impact on each member of the Appropriative Pool.

15  
16 **IV. THE WILDERMUTH REPORT STATES ADDITIONAL STORAGE AND**  
17 **RECOVERY PROGRAMS MAY REDUCE SAFE YIELD EVEN FURTHER**

18 The Wildermuth Report notes that there currently is only one groundwater storage program  
19 approved in the Chino Basin, specifically the Dry Year Yield Program (DYYP) with the Metropolitan  
20 Water District of Southern California (“MET”). (Wildermuth Report, p. 2-5, ¶2.3.3.) MET, IEUA,  
21 and Watermaster are in the process of considering expanding this program by an additional 50,000  
22 acre-ft over the next few years. (*Ibid.*) The Wildermuth Report points out that additional programs  
23 are being contemplated, but that the expansion programs “could cause groundwater discharge to the  
24 Santa Ana River and result in noncompliance with hydraulic control *and a loss in safe yield.*” (*Ibid.*,  
25 emphasis added.)

26  
27  
28 acreage approved and recorded for all appropriators. Watermaster shall apply such allocation percentage for each  
appropriator to the total unallocated Safe Yield water available for conversions claims to derive the amount allocable  
to each appropriator. “ (1995 Amendment, Exhibit 1, ¶10(b)(3)(ii).)

1 The Wildermuth Report did not analyze the proposed project with consideration to this  
2 possible expansion of the Storage and Recovery Program. (*Ibid.*) It is Monte Vista's understanding  
3 that certain agreements are underway establishing terms and conditions between MET and three MET  
4 agencies (Three Valleys Municipal Water District, Inland Empire Utilities Agency, and Western  
5 Municipal Water District) regarding the possibility of MET storing additional water in the Basin. The  
6 expansion of the Storage and Recovery Program needs to be more fully analyzed in light of the impact  
7 to the basin and the possible additional loss in safe yield. (Kinsey Dec. ¶11.)  
8

9 **V. REDUCTION IN SAFE YIELD IS A SIGNIFICANT ENVIRONMENTAL IMPACT**  
10 **WHICH MUST BE ANALYZED IN AN ENVIRONMENTAL IMPACT REPORT**

11 On April 1, 2008, Watermaster filed Watermaster Compliance with Condition Subsequent  
12 Number Four, reporting to the Court on the status of CEQA documentation, compliance and  
13 requirements. Another reason the parties need an opportunity to reconsider Peace II is that the  
14 projected decline in safe yield may constitute a significant environmental impact under the California  
15 Environmental Quality Act (CEQA). Monte Vista asserts that the new projection of substantial  
16 declines in safe yield from, and resultant potential overdraft of, the Chino Basin is a material changed  
17 environmental condition that requires reanalysis of the environmental conclusions under the OBMP-  
18 PEIR. Monte Vista asserts further that, without such reanalysis, the various CEQA actions described  
19 in Watermaster's April 1, 2008 filing may constitute inappropriate segmentation of the CEQA analysis  
20 the Court has rightfully required the public agency parties to complete prior to committing to the  
21 Peace II documents.

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1 VI. CONCLUSION

2 For the reasons stated above, Monte Vista respectfully withdraws its Joinder to Watermaster's  
3 Motion and requests that this Court stay the approval of Peace II Documents so that the parties may  
4 have sufficient time to meet and confer, evaluate and determine the full impact of the reduction in  
5 safe yield and the proper compliance with the requirements of CEQA.

6  
7 DATED: April 9, 2008

8 MCCORMICK, KIDMAN & BEHRENS, LLP

9  
10 By:   
11 ARTHUR KIDMAN  
12 TRAM T. TRAN  
13 Attorneys for MONTE VISTA WATER DISTRICT  
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA )  
3 COUNTY OF ORANGE )

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

7 On April 10, 2008, I served the foregoing document described as: **RESPONSE TO**  
8 **WATERMASTER'S COMPLIANCE WITH CONDITIONS SUBSEQUENT NUMBERS**  
9 **THREE AND FOUR OF THE COURT'S 12/21/2007 ORDER; REQUEST FOR**  
10 **ADDITIONAL TIME TO EVALUATE WATERMASTER'S COMPLIANCE WITH**  
11 **CONDITION SUBSEQUENT NUMBER THREE; AND WITHDRAWAL OF MONTE VISTA**  
12 **WATER DISTRICT'S JOINDER TO WATERMASTER'S MOTION FOR APPROVAL OF**  
13 **PEACE II DOCUMENTS** on the interested parties in this action by placing a true copy thereof  
14 enclosed in a sealed envelope addressed as follows:

15 Jannie Wilson  
16 Chino Basin Watermaster  
17 9641 San Bernardino Road  
18 Rancho Cucamonga, California 91730  
19 (909) 484-3888

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

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

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

[ ] (BY FACSIMILE) I transmitted said document by fax transmission to the fax  
number(s) indicated

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

Executed on April 10, 2008, at Costa Mesa, California.

*Alla Vainberg*  
\_\_\_\_\_  
ALLA VAINBERG

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4 Attorneys for Defendant, MONTE VISTA WATER DISTRICT

6 Fee exempt – Gov. Code §§6103 and 27383

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

10  
11 CHINO BASIN MUNICIPAL WATER  
DISTRICT,

12 Plaintiff,

13 vs.

14 THE CITY OF CHINO, et al.,

15 Defendants.  
16

CASE NO. RCV 51010

Assigned for All Purposes to:  
Honorable J. MICHAEL GUNN  
Department R8

**DECLARATION OF MARK KINSEY**

17  
18 I, Mark Kinsey, declare as follows:

19 1. I am the General Manager of Monte Vista Water District (“Monte Vista”). I have  
20 worked in my present position since November 1998.

21 2. On behalf of Monte Vista, I actively participated in the negotiation of the Peace I and  
22 Peace II Agreements and the Optimum Basin Management Plan (OBMP). I was also involved in the  
23 development, discussions, and agreements that led to the adoption of the Watermaster Resolution No.  
24 07-05 and the implementing legal instruments that were transmitted to the Court on or about October  
25 25, 2007 (collectively the “Peace II measures”).

26 3. I read the reports prepared in support of the Peace II measures, including a report by  
27 Dr. David Sunding, prepared at the direction of Watermaster, concerning the cumulative benefits that  
28 could be achieved by the parties to the Judgment as well as the subsequent report prepared by Dr.



1 Sunding regarding the individual benefits that the various parties to the Judgment might receive as a  
2 result of the identified Peace II measures.

3 4. I also represented Monte Vista in the socioeconomic work group, formed at the  
4 direction of the Watermaster, wherein the parties discussed the costs and benefits of Peace I, Peace II,  
5 and OBMP to ensure that the implementation of Peace II was fair and equitable to all producers in the  
6 Basin. To my knowledge, at no time during these discussions did the participants discuss a projected  
7 substantial decline of up to 20,000 acre-feet of water per year in safe yield or an apportionment of  
8 water rights if a substantial reduction in safe yield were to occur.

9 5. Throughout the negotiation process of Peace I, Peace II, and the OBMP, which  
10 commenced around 1998, the parties were told, and it was Monte Vista's understanding, that the  
11 implementation of the OBMP would sustain current safe yield and potentially enhance the safe yield  
12 over time. This understanding that safe yield would be sustained or enhanced provided the basis for  
13 many negotiating concessions by Monte Vista and others in the Peace I and Peace II process.

14 6. Based on the negotiations and representations that these implementation measures  
15 would sustain and/or enhance safe yield, Monte Vista agreed to Peace I and conditionally agreed to  
16 Peace II, subject to a complete CEQA review. Monte Vista believes the Peace I and Peace II  
17 agreements would have been materially different had the current information on substantial reductions  
18 in safe yield been available during the negotiation process.

19 7. Monte Vista was unaware of any projected substantial decline in safe yield until Mark  
20 Wildermuth's Declaration, filed concurrently with Watermaster's Motion, which used the newly  
21 updated model (2007 Chino Basin Watermaster Groundwater Model) that was not available during the  
22 Peace II negotiations. While the issue of a possible reduction in safe yield was raised from time to  
23 time, it was raised in the context that the probability and significance of a reduction was slight and  
24 implementation of Peace I, Peace II and OBMP would avoid or mitigate to insignificance any such  
25 occurrence.

26 8. The Wildermuth Report filed by the Watermaster in compliance with condition  
27 subsequent number 3 is the first time Monte Vista has seen a detailed model and specific discussion  
28 from the Watermaster identifying the magnitude of the projected decline in safe yield and its impact

1 on Monte Vista. This is the first time that this issue has been presented concisely, identifying the  
2 change in induced inflow, the change in recharge, and the change in safe yield. It is possible that  
3 Peace II measures would look different if there had been a direct discussion regarding these issues.  
4 Monte Vista has not had an opportunity to fully evaluate the cause and impact of the reduction in safe  
5 yield other than its post hoc review of the Wildermuth Report.

6 9. A projected substantial decline in safe yield is a different circumstance from the  
7 information available to the parties during the negotiation of Peace I and Peace II.

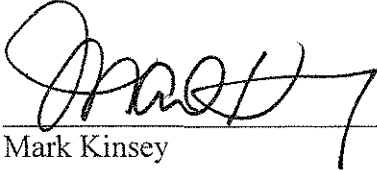
8 10. Monte Vista needs additional time to meet and confer, evaluate, and determine if any  
9 adjustments need to be made in the Peace II documents in light of the projected decline in safe yield.

10 11. It is Monte Vista's understanding that certain agreements are underway establishing  
11 terms and conditions between Metropolitan Water District of Southern California (MET) and three  
12 MET member agencies (Three Valleys Municipal Water District, Inland Empire Utilities Agency, and  
13 Western Municipal Water District) to expand the Storage and Recovery Program to allow MET to  
14 store an additional 50,000 acre-feet of water in the Chino Basin. Based on the Wildermuth Report,  
15 the expansion of the Storage and Recovery Program may contribute to the decline in safe yield, and  
16 Monte Vista is concerned that the Storage and Recovery Program may impact members of the  
17 Appropriative Pool by increasing the appropriator's replenishment obligations. The Peace II  
18 documents need to be reevaluated in light of these proposed agreements and their potential impact on  
19 safe yield.

20 12. I declare under penalty of perjury that I have personal knowledge of the facts stated  
21 herein and if called as a witness, I could and would competently testify thereto.

22 I swear under penalty of perjury under the laws of the State of California that the foregoing is  
23 true and correct to the best of my knowledge. Executed this 9 day of April, 2008 in

24 Montclair, California.

25   
26 \_\_\_\_\_  
27 Mark Kinsey  
28

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
3 COUNTY OF ORANGE )

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

7 On April 10, 2008, I served the foregoing document described as: **DECLARATION OF**  
8 **MARK KINSEY** on the interested parties in this action by placing a true copy thereof enclosed in a  
9 sealed envelope addressed as follows:

10 Jannie Wilson  
11 Chino Basin Watermaster  
12 9641 San Bernardino Road  
13 Rancho Cucamonga, California 91730  
14 (909) 484-3888

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

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

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

25 [ ] (BY FACSIMILE) I transmitted said document by fax transmission to the fax  
26 number(s) indicated

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

Executed on April 10, 2008, at Costa Mesa, California.

23 *Alla Vainberg*  
24 \_\_\_\_\_  
25 ALLA VAINBERG

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 April 11, 2008 I served the following:

- 1) **RESPONSE TO WATERMASTER'S COMPLIANCE WITH CONDITIONS SUBSEQUENT NUMBERS THREE AND FOUR OF THE COURT'S 12/21/2007 ORDER; REQUEST FOR ADDITIONAL TIME TO EVALUATE WATERMASTER'S COMPLIANCE WITH CONDITION SUBSEQUENT NUMBER THREE; AND WITHDRAWAL OF MONTE VISTA WATER DISTRICT'S JOINDER TO WATERMASTER'S MOTION FOR APPROVAL OF PEACE II DOCUMENTS**
- 2) **DECLARATION OF MARK KINSEY**

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 April 11, 2008 in Rancho Cucamonga, California.



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