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TO GOV. CODE § 6103

5 Attorney for: Cucamonga Valley Water District
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN BERNARDINO
11 RANCHO CUCAMONGA DISTRICT

12
13 CHINO BASIN MUNICIPAL WATER
DISTRICT,

14 Plaintiff,

15 v.

16 CITY OF CHINO, et al.,

17 Defendant.
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Case No. RCV 51010
Judge: Hon. Keith D. Davis

**CUCAMONGA VALLEY WATER
DISTRICT'S REPLY TO SPECIAL
REFEREE'S RESPONSE TO MOTION TO
DISCONTINUE THE APPOINTMENT OF
THE SPECIAL REFEREE**

[Filed Concurrently With Declaration of Sheri
Rojo and Declaration of Robert A. DeLoach]

Date: August 21, 2008
Time: 2:00 p.m.
Dept. R6

RVFUBJWILLIS752370.1

CUCAMONGA VALLEY WATER DISTRICT'S REPLY TO SPECIAL REFEREE'S REPOSE TO CVWD'S MOTION TO
DISCONTINUE THE APPOINTMENT OF THE SPECIAL REFEREE

1 **I. INTRODUCTION**

2
3 As an initial matter, the Special Referee's response to CVWD's motion should be
4 stricken. The Special Referee is not a party to the Judgment, and to CVWD's knowledge, the
5 Special Referee does not have the authority to unilaterally file such a response without prior
6 Court authorization. If the Court authorized the Special Referee to file a response, CVWD
7 respectfully requests that the Court's Order be served on the parties. CVWD further submits that
8 it was inappropriate for the Special Referee, as a neutral arm of the Court, to submit a pleading
9 that both advocates the Special Referee's own interests and is highly critical of a party to the
10 Judgment. CVWD therefore requests that the Court weigh the merits of CVWD's motion
11 independently and strike the Special Referee's response. Even if the Court chooses not to strike
12 the Special Referee's response, CVWD requests, for the reasons detailed in CVWD's Motion and
13 this Reply, that CVWD's motion be granted.

14
15 **II. ARGUMENT**

16
17 **A. The Ongoing Role of the Special Referee Has Not Been Directly**
18 **Addressed By The Court**

19 The Special Referee argues that CVWD's motion is improper because the Court has
20 already ruled that an ongoing and/or permanent Special Referee is needed in this case. In support
21 of this argument, the Special Referee cites to a brief filed by Watermaster in December 2007 in
22 which Watermaster commented on the impact of the continued existence of a Special Referee.
23 The brief cited by the Special Referee was Watermaster's Response to Special Referee's
24 Preliminary Comments and Recommendations regarding Peace II measures. The Special Referee
25 characterizes the statements made in that brief as "arguments" regarding the Special Referee's
26 ongoing role that were "rejected" by the Court in its December 21, 2007 Order. In fact, the
27 Special Referee goes so far as to characterize Watermaster's pleading as a "motion" that was
28 "denied" by the Court. (Response at p. 11.) CVWD believes it is disingenuous of the Special

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1 Referee, not to mention inaccurate, to suggest that Watermaster's statements in a brief that dealt
2 with approval of Peace II measures somehow constituted a "motion" for which Watermaster
3 sought relief, or that the issue of the Special Referee's ongoing role has been properly raised,
4 briefed, or decided by the Court. Further, the Court's December 21, 2007 Order merely states
5 that the Court would like the Special Referee to continue monitoring OBMP implementation; it
6 does not indicate Court approval of a permanent role for the Special Referee.

7
8 To CVWD's knowledge, the ongoing role of the Special Referee has not been addressed
9 by the parties or the Court, and CVWD believes that it is entirely proper for CVWD, as a party to
10 the Judgment, to raise the issue now. Further, while the Special Referee states that she has "at all
11 times" acted consistent with Court Orders, her own response indicates that this is not the case. In
12 footnote 8 of her response, the Special Referee takes issue with CVWD's representation of a
13 meeting that occurred on October 3, 2007 at Watermaster offices. In fact, The Special Referee
14 accuses CVWD of making factual misrepresentations regarding this and other matters. If the
15 Court permits live evidence on this motion, CVWD would like to subpoena Watermaster
16 staff/consultants to testify on this issue, as well as other factual issues raised by CVWD in this
17 motion.

18
19 Moreover, the Special Referee acknowledges in her response that the Workshop originally
20 scheduled for that date was cancelled by Court Order dated October 2, 2007, and that an
21 "informal" meeting was held between the Special Referee and certain parties (notably, CVWD
22 understands that counsel for the parties were not present at the "informal meeting"). Thus,
23 according to the Special Referee's own response, (1) a properly noticed and scheduled Workshop
24 was cancelled; (2) the Court signed an Order that was served on all parties indicated that the
25 Workshop was cancelled; and (3) the Special Referee nonetheless held an "informal" meeting
26 with certain parties, without notice to other parties that the meeting was occurring. CVWD does
27 not believe that this *ex parte*, informal meeting was in any way pursuant to or consistent with
28 Court Orders, nor does CVWD believe that the meeting was proper.

1 In terms of the Special Referee's bills, the Special Referee misconstrues the point of
2 CVWD's motion. CVWD does not contest the legitimacy of the work performed by the Special
3 Referee, nor does CVWD believe that the Special Referee has been dishonest or unethical with
4 respect to the amounts billed by the Special Referee. Rather, CVWD noted the amount billed by
5 the Special Referee and her staff in order to highlight the fact that the parties have spent an
6 extraordinary amount of money over the last ten years on work performed by the Special Referee
7 and her staff. The numbers cited by CVWD in its motion were obtained from Watermaster staff.
8 CVWD has verified the numbers with Watermaster staff and has confirmed that the amounts cited
9 are consistent with Watermaster's records. (Declaration of Sheri Rojo ¶¶ 3-8.)

10
11 Further, although the Special Referee states that CVWD and/or Watermaster have always
12 had an opportunity to object to the legal bills submitted by the Special Referee, CVWD is not
13 aware of any process by which CVWD would be able to contest the bills. (Declaration of Robert
14 A. DeLoach ["DeLoach Decl.,"] ¶ 3.) To CVWD's knowledge, the bills are simply passed on to
15 the parties. (DeLoach Decl. ¶ 4.) To that end, CVWD views the Special Referee's bills as the
16 functional equivalent of a bill from the Court. (DeLoach Decl. ¶ 5.)¹ To that end, it seems
17 untenable that a party to the Judgment would feel comfortable challenging the bills of the Court-
18 appointed entity recommending actions to the Court that affect that party's interests. It also bears
19 noting that, to CVWD's knowledge, the Court has never addressed the propriety of permitting
20 these ongoing, significant legal bills to be passed along to parties, and ultimately the ratepayers.
21 Moreover, it is unclear whether the Court has an opportunity to review and approve the bills
22 before they are sent to Watermaster. These are all issues CVWD feels need to be addressed. As
23 has been previously stated, this is the only adjudicated Basin with both a Watermaster and a
24 Special Referee.

25
26 ¹ As to the bills of Judy Schurr, it is still not clear to CVWD how that arrangement is structured or why it is
27 appropriate. Footnote 4 of the Special Referee's response states that Ms. Schurr is a "contract research attorney" for
28 Ellison, Schneider & Harris. However, it is CVWD's understanding that Ms. Schurr is employed as a Judicial Staff
Counsel for the Superior Court, Central Division. If this is the case, CVWD does not understand why the parties are
charged by the Special Referee's law firm, on an hourly basis, for Ms. Schurr's time.

1 In the pleading filed by the Agricultural Pool in response to CVWD's motion, the
2 Agricultural Pool suggests it may be appropriate to prepare a new Order of Reference that more
3 clearly articulates and defines the scope of the Special Referee's duties, and that further briefing
4 by interested parties may be appropriate. Although CVWD disagrees that the continued use of a
5 Special Referee is needed,² CVWD agrees that, should the Court choose to continue the role of
6 Special Referee, further briefing and a new Order of Reference would be appropriate. Further,
7 since the Judgment is silent as to the role of Special Referee, CVWD believes it would be
8 appropriate to conduct further briefing regarding whether a Judgment Amendment is required if
9 the role of Special Referee becomes permanent.

10
11 **B. An Inherent Conflict Of Interest Exists With A "Permanent" Special**
12 **Referee**

13 As CVWD states in its Motion, there is an inherent conflict associated with utilizing a
14 practicing lawyer who bills on an hourly basis to assume a permanent or ongoing role as a court-
15 appointed neutral. Even if one assumes that every hour billed by the Special Referee has been
16 reasonable and necessary, the fact remains that the Special Referee has a direct financial interest
17 in the case and in ensuring her continued involvement in the matter. The Special Referee's
18 response simply confirms her belief that her role is one of an ongoing, if not permanent, nature.
19 CVWD believes that, in this case, there is a fundamental problem associated with assigning a
20 permanent role as an arm of the Court to any practicing lawyer or other person or entity with a
21 pecuniary interest in the matter, especially where, as here, there is no clear Order of Reference
22 defining the scope of authority or the duties of an ongoing, permanent Special Referee. CVWD is
23 unaware whether the Court reviews or approves the bills before they are sent to Watermaster.

24
25
26 ² As CVWD stated in its motion, CVWD believes that continued technical oversight may be appropriate. CVWD is
27 open to discussing how best this can be accomplished. The Agricultural Pool employs its own technical expert, and
28 CVWD believes that the process utilized by the Agricultural Pool could serve as a starting point for determining how
best to maintain any necessary continued technical oversight.

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1 C. The Special Referee Has A Legal Conflict Of Interest

2 In CVWD's motion, CVWD provided a detailed analysis of what CVWD believes is a
3 legal conflict of interest that disqualifies Ms. Schneider from the role of Special Referee. In
4 response, the Special Referee asserts that no such conflict exists because (1) she disclosed her
5 representation of SBCFCD to Chino Basin interested parties in 1997; (2) the substance of the
6 proceedings was such that no conflict existed; and (3) the Special Referee's representation of the
7 Local Sponsors "in no way involves the representation of Local Sponsors in matters affecting
8 either Watermaster or Basin Re-Operation." (Response at pp. 6-10.)
9

10 The June 5, 1997 letter that was sent by the Special Referee to Chino Basin interested
11 parties stated that "[w]e also currently represent San Bernardino County Flood Control and Water
12 Conservation District with regard to unrelated issues related to Seven Oaks Dam." (Response at
13 p. 9.) Thus, the letter disclosed only that the Special Referee represented SBCFCD in an
14 "unrelated" matter. While this may have been true in 1997, the situation changed in 2001, when
15 Watermaster filed its water rights application. Moreover, any conceivable basis for arguing that
16 the matters were "unrelated" dissolved when the State Board decided to consider all pending
17 Santa Ana River applications in one hearing. The Special Referee suggests that this has no
18 bearing on the analysis of whether a conflict exists because, as it happened, the Local Sponsors
19 did not take a position as to Watermaster's application and, as it happened, the Local Sponsors
20 stipulated with Watermaster not to present evidence or cross-examine witnesses concerning
21 Watermaster's application. However, the very fact that it was *possible* for the Local Sponsors to
22 protest Watermaster's application, and the very fact that the parties deemed it necessary to enter
23 into a stipulation that the Local Sponsors would not present evidence against Watermaster or
24 cross-examine Watermaster's witnesses demonstrates that the matters are *not* unrelated.³ Until

25 ³ It also bears noting that the Stipulation between the Local Sponsors and Watermaster (Exhibit 12 to the Kiel
26 Declaration) contains language indicating that "[t]he Local Sponsors' execution of this stipulation shall not be
27 construed as an endorsement of or concurrence with the testimony offered by Chino Basin Watermaster in support of
28 Application 31369." This language does not appear in any other Stipulation entered between Watermaster and other
parties to the Hearing, suggesting that some level of negotiation occurred between Watermaster and the firm of
Ellison, Schneider & Harris that did not occur with other hearing participants. To the extent the Court deems it

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1 the stipulation was entered (approximately 2 weeks before the Hearing), the Local Sponsors could
2 have submitted evidence against Watermaster's application.

3
4 Moreover, the Special Referee suggests that it was Watermaster's responsibility to
5 complain if it, or any of the Chino Basin interested parties, took issue with the Special Referee's
6 representation of the Local Sponsors. This argument ignores and is inconsistent with the Special
7 Referee's responsibilities under the Code of Judicial Ethics, as well as the California Rules of
8 Court, which place on the Special Referee an ongoing duty to inform both the Local Sponsors and
9 Watermaster of facts that could form the basis for disqualification. (C. R.C., Rule 3.904(b);
10 Canon (D)(5)(a), which requires a referee to disclose in writing, or on the record, information that
11 is reasonably relevant to the question of disqualification under Canon 6D(3), even where the
12 referee concludes there is no actual basis for disqualification.)

13
14 The Special Referee also states that the timing of CVWD's motion and the allegations of a
15 conflict are "suspect." As support for this assertion, the Special Referee notes that she received a
16 copy of CVWD's *draft* motion prior to the time it was filed. This is not an insignificant fact.
17 First, the Special Referee never should have been in receipt of any such draft motion. Any receipt
18 by the Special Referee of a draft motion constitutes an improper *ex parte* communication between
19 the Special Referee and a party to the Judgment. Any *ex parte* communication received by the
20 Special Referee should have either been discarded immediately or served on all parties. CVWD
21 finds it troublesome and shocking that a party to the Judgment would send a draft pleading to the
22 Special Referee, or that the Special Referee would be in receipt of such a document without
23 informing the Court or the parties. CVWD respectfully requests that the Court require the Special
24 Referee to either divulge the party from whom she received the draft, or submit a declaration
25 under oath indicating that she does not know the identity of the party.

26
27
28 helpful, CVWD believes it would be appropriate to subpoena correspondence related to the Stipulation.

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1 Second, in terms of the timing of CVWD's motion, there is nothing "suspect" about it.
2 Put simply, CVWD waited until the conclusion of the Peace II process to file the motion so as to
3 avoid disrupting the process and also because it feared that, once the motion was filed, CVWD
4 would not be able to obtain fair or unbiased treatment from the Special Referee. Indeed,
5 CVWD's fears have been confirmed. As noted in CVWD's motion, The Court, and by
6 implication a Special Referee who assists the Court, must maintain not just actual impartiality,
7 but also the appearance of impartiality. The California Code of Judicial Conduct provides that a
8 judge or referee should act at all times in a manner that promotes public confidence in the
9 integrity and impartiality of the judiciary. (Code of Judicial Ethics, Canon 2A.) CVWD submits
10 that the Special Referee's response to its motion is itself inconsistent with this Canon and
11 constitutes independent grounds for disqualification of the Special Referee. (See Canon
12 6D(3)(vii)(C), which requires disclosure when "a person aware of the facts might reasonably
13 entertain a doubt that the [referee] would be able to be impartial. Bias or prejudice toward an
14 attorney in the proceeding may be grounds for disqualification.")

15
16 **III. CONCLUSION**

17
18 In conclusion, CVWD respectfully requests that the Court strike the Special Referee's
19 response and grant CVWD's motion to discontinue the appointment of the Special Referee.

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21 Dated: August 13, 2008

BEST BEST & KRIEGER LLP

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23 By: 
24 JILL N. WILLIS
25 Attorney for
26 Cucamonga Valley Water District

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Attorney for: Cucamonga Valley Water District

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

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CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

Case No. RCV 51010
Judge: Hon. Keith D. Davis

**CUCAMONGA VALLEY WATER
DISTRICT'S REPLY TO JOINT
OPPOSITION TO CVWD'S MOTION TO
DISCONTINUE THE APPOINTMENT OF
THE SPECIAL REFEREE**

Date: August 21, 2008
Time: 2:00 p.m.
Dept. R6

RVPUBJWILLIS\752428.1

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1 Cucamonga Valley Water District ("CVWD") hereby responds to the Joint Opposition of
2 Monte Vista Water District, Chino Hills, and Chino ("Joint Opposition") to CVWD's Motion to
3 Discontinue the Appointment of the Special Referee.


4
5 Because the Joint Opposition was filed in an untimely fashion,¹ CVWD cannot fully
6 respond to the factual misrepresentations and inaccurate assertions contained therein. Further,
7 since a majority of the factual assertions relate to Watermaster performance, CVWD believes it
8 would be appropriate for the Court to order Watermaster to prepare a response clarifying the
9 factual assertions contained in the Joint Opposition. CVWD also requests that the Court permit
10 further briefing by CVWD after CVWD has had the opportunity to subpoena the appropriate
11 records from Watermaster. Thereafter, CVWD can respond more fully to the Joint Opposition.

12
13 In response to the evidentiary objections filed with the Joint Opposition, although CVWD
14 believes the objections have no merit, CVWD believes it would be appropriate to permit live
15 testimony in order to further substantiate the factual assertions supporting CVWD's Motion.

16
17 Respectfully Submitted,

18
19 Dated: August 13, 2008

BEST BEST & KRIEGER LLP

20
21 By: 
22 JILL N. WILLIS
23 Attorney for
24 Cucamonga Valley Water District

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27 ¹ Under Code of Civil Procedure Section 1005(b), opposition papers must be filed at least nine (9) court days before
28 the hearing. This means that any opposition would have been due on Friday, August 8, 2008. The Joint Opposition
was filed and served on Monday, August 11, 2008.

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5 Attorney for: Cucamonga Valley Water District

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

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13 CHINO BASIN MUNICIPAL WATER
DISTRICT,

14 Plaintiff,

15 v.

16 CITY OF CHINO, et al.,

17 Defendant.

Case No. RCV 51010
Judge: Hon. Keith D. Davis

**DECLARATION OF ROBERT A.
DELOACH IN SUPPORT OF
CUCAMONGA VALLEY WATER
DISTRICT'S REPLY TO SPECIAL
REFEREE'S RESPONSE TO MOTION TO
DISCONTINUE THE APPOINTMENT OF
THE SPECIAL REFEREE**

Date: August 21, 2008
Time: 2:00 p.m.
Dept. R6

28 RVPUBJWILLIS\752416.1

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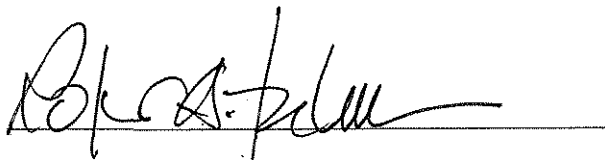
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DECLARATION OF ROBERT A. DELOACH

I, ROBERT A. DELOACH, declare:

1. I am the General Manager and Chief Executive Officer of Cucamonga Valley Water District ("CVWD").
2. I have personal knowledge of the facts contained herein, and if called to testify as a witness, I could competently testify to the facts contained herein.
3. CVWD is not aware of any process by which CVWD would be able to contest the bills of the Special Referee.
4. To CVWD's knowledge, the bills of the Special Referee are simply passed on to the parties.
5. CVWD views the Special Referee's bills as the functional equivalent of a bill from the Court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 13, 2008, at Rancho Cucamonga, California.


ROBERT A. DELOACH

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Attorney for: Cucamonga Valley Water District

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

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CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

Case No. RCV 5101
Judge: Hon. Keith D. Davis

DECLARATION OF SHERI ROJO

[Filed Concurrently with Cucamonga Valley
Water District's Reply to Special Referee's
Response to CVWD's Motion to Discontinue the
Appointment of the Special Referee]

Date: August 21, 2008
Time: 2:00 p.m.
Dept. R6

DECLARATION OF SHERI ROJO

I, SHERI ROJO, declare:

1. I am the Chief Financial Officer for the Chino Basin Watermaster.

2. I perform all primary accounting functions for the Chino Basin Watermaster and have personal knowledge of Watermaster's financial and billing records.

3. Prior to the filing of Cucamonga Valley Water District's Motion to Discontinue the Appointment of the Special Referee, counsel for CVWD asked for Watermaster's records concerning amounts billed by the Special Referee and her staff to Watermaster over the last three fiscal years. Pursuant to her request, I provided those records.

4. I have reviewed CVWD's Motion to Discontinue the Appointment of the Special Referee, including the references contained therein regarding the amounts billed by the Special Referee and her staff to Watermaster over the last three fiscal years.

5. Watermaster's records reflect that the amount invoiced by Ellison, Schneider & Harris from July, 2005 through May, 2008 totaled \$505,188 and the amounts invoiced by Mr. Scalmanini for the same time period totaled \$288,347. The total of the two equals \$793,535.

6. For services rendered from July 2007, through May 2008, Watermaster has been invoiced \$337,663. Of the \$337,663 invoiced to Watermaster, \$100,049 was attributable to Mr. Scalmanini's invoices. The majority of the amount invoiced was done in the first half of the fiscal year, with \$44,861 being invoiced by Ellison, Schneider & Harris, \$23,777 for legal & \$21,084 for technical services.

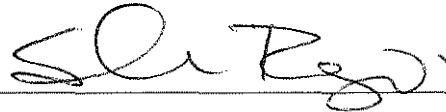
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1 7. For the calendar year 2006, the amount invoiced in total by Ellison, Schneider &
2 Harris was \$243,744. The amount for the "fiscal year" 2006/2007 invoiced to Watermaster
3 totaled \$305,665 with \$150,308 invoiced by Mr. Scalmanini's firm.

4
5 8. Thus, Watermaster's records reflect that the amounts cited in CVWD's Motion are
6 consistent with Watermaster's records regarding amounts billed by the Special Referee and her
7 staff over the last three fiscal years. The differences between the numbers cited in CVWD's
8 Motion and the Special Referee's Response to the Motion appear to be based on the difference
9 between fiscal year and calendar year, as well as CVWD's inclusion of work performed by Mr.
10 Scalmanini.

11
12 I declare under penalty of perjury under the laws of the State of California that the foregoing is
13 true and correct, and that this declaration was executed on August 13, 2008, at Rancho
14 Cucamonga, California.

15
16 

17 SHERI ROJO, CPA

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 August 13, 2008 I served the following:

- 1) CUCAMONGA VALLEY WATER DISTRICT'S REPLY TO SPECIAL REFEREE'S RESPONSE TO MOTION TO DISCONTINUE THE APPOINTMENT OF THE SPECIAL REFEREE
- 2) CUCAMONGA VALLEY WATER DISTRICT'S REPLY TO JOINT OPPOSITION TO CVWD'S MOTION TO DISCONTINUE THE APPOINTMENT OF THE SPECIAL REFEREE
- 3) DECLARATION OF ROBERT A. DELOACH IN SUPPORT OF CUCAMONGA VALLEY WATER DISTRICT'S REPLY TO SPECIAL REFEREE'S RESPONSE TO MOTION TO DISCONTINUE THE APPOINTMENT OF THE SPECIAL REFEREE
- 4) DECLARATION OF SHERI ROJO

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

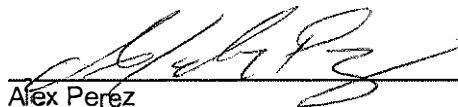
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 13, 2008 in Rancho Cucamonga, California.



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