

SCOTT S. SLATER (State Bar No. 117317)
MICHAEL T. FIFE (State Bar No. 203025)
AMY M. STEINFELD (State Bar No. 240175)
BROWNSTEIN HYATT FARBER SCHRECK, LLP
21 East Carrillo Street
Santa Barbara, CA 93101
Telephone No: (805) 963-7000
Facsimile No: (805) 965-4333

Attorneys For
CHINO BASIN WATERMASTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER
DISTRICT

Plaintiff,

vs.

CITY OF CHINO, ET AL.

Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the
Honorable JOHN P. WADE]

WATERMASTER TRANSMITTAL OF
HEARING OUTLINE

Hearing Date: February 2, 2009
Time: 9:30 AM
Dept.: S32

At the November 13, 2008 hearing, the Court directed Watermaster to appear on February 2 and 3, 2009 to address the status of the physical solution and the corresponding effort to recharge and replenish water, and to provide an overview of the Optimum Basin Management Program ("OBMP") and its compliance with previously imposed commitments and requirements, including commitments regarding "governance." Watermaster viewed the most appropriate response to the Court's request to be the provision of testimony and oral explanations that are intended as a substitute for the often voluminous written status reports. Consequently it has advised the parties to the Judgment of its intention to present witness and offer testimony in a non-adversarial manner and it has encourage parties to cooperate in its approach.

Moreover, in an effort to provide the parties to the Judgment with a full and fair opportunity to evaluate Watermaster's proposed responses, Watermaster committed to provide the Court and the parties with an outline of its intended witnesses and testimony in preparation of the February 2 and 3 hearing. Consistent with that commitment, an outline of Watermaster's intended presentation is attached to this pleading as Exhibit "A"

In addition, counsel for Watermaster has proposed a number of procedural stipulations that will allow for a more orderly and efficient presentation of information to the Court working with legal counsel to avoid objections. These stipulations have been presented to Counsel for the parties of record electronically. As of the date of this transmittal, Watermaster Counsel has a good faith belief there are no objections to the procedural stipulations.

I. Preparation of Outline and Testimony

A first draft of the hearing outline, including a proposed witness list was distributed at the Watermaster Advisory Committee and Board meetings on December 18, 2008 and electronically distributed to the Watermaster attorneys on December 19, 2008. Watermaster scheduled informal conference calls with the parties' attorneys on January 10, 2009, January 16, 2009 and January 26, 2009, and an in-person meeting at the Watermaster offices on January 21, 2009 in order to receive comments on the outline and associated intended testimony. All Watermaster witness preparation sessions were open to all parties, and summaries of expected testimony with references to potential exhibits were distributed to the parties as they were developed. No exhibits or demonstrative material has been concealed from any party or their counsel. A draft of this pleading was distributed to the parties on January 20, 2009. Filing of the pleading and outline followed a final discussion by the Advisory Committee and Board on January 22, 2009.

II. Content and Structure of Watermaster Hearing Presentation

Watermaster believes that its intended February 2 and 3, 2009 presentation will be responsive to the Court's November 13, 2008 description of the intent of the hearing.

Watermaster Counsel will begin by providing an overview through an opening statement. Watermaster will describe the OBMP, and will provide an overview and a status report on Watermaster's progress in implementation of the plan. The OBMP is composed of nine program elements and Watermaster will present testimony on each of these program elements by the person or persons most knowledgeable of these elements. The testimony will present both a historical description of the OBMP and its elements, as well as a summary of where the program currently stands.

During the course of its testimony concerning the OBMP, Watermaster will place special emphasis on testimony concerning the update of the Recharge Master Plan. This is the plan for replenishing the overproduction in the Basin that was of major concern for the Court in its December 21, 2007 Order. As part of the February 2 and 3, 2009 hearing, Watermaster has also submitted for approval, in compliance with Condition Subsequent Number Seven, a revised schedule of the updates for the Recharge Master Plan.

At the November 13, 2008 hearing, the Court observed the allegation that Watermaster may not be in compliance with certain conditions and requirements. Watermaster will present testimony and other evidence to provide a clear report as to the specific requirements established by the Court, by Watermaster on its own motion, by agreement with the parties to the Judgment, or otherwise and the context for achieving the respective requirements. The Court especially noted allegations

1 concerning Watermaster's compliance with commitments regarding governance. Watermaster will
2 present specific testimony on this subject.

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4 **III. Procedural Stipulations**
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7 With the exception of Watermaster's motion to approve Condition Subsequent Number
8 Seven, there is no matter presently "at issue" before the Court that require a substantive
9 determination. Consequently, Watermaster and the parties to the Judgment intend to constructively
10 address the Court's request to use the February 2nd and 3rd hearing to provide Watermaster's
11 summary of present status. Watermaster and the parties recognized that to fully articulate all of the
12 details and all parties' views of the numerous OBMP program elements would take much longer
13 than two days. Watermaster's approach to this task is to present the person most knowledgeable
14 about each subject. While the hearing presentation is Watermaster's status report, in some instances
15 the persons testifying are not Watermaster staff. However, in each instance, any party will testify
16 from his or her own perspective. Other parties may disagree with such perspectives and Watermaster
17 has assured the parties that the presentation of these perspectives at this hearing is not intended to
18 foreclose any party's presentation of evidence at a subsequent hearing that controverts the expressed
19 views. Thus, to increase the likelihood that this summary can be provided most effectively and
20 efficiently, Watermaster Counsel has proposed the following procedural stipulations:
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- 23
24 1. The hearing testimony will be structured as a "status report" on the physical solution and
25 Watermaster's compliance with relevant commitments and requirements.
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2. Each party reserves their respective rights to, without prejudice, produce evidence to rebut or controvert evidence as to any matter that is at a later time placed "at issue" pursuant to a subsequent order of the Court, a party's motion or review of Watermaster action.

3. At the February 2, 2009 hearing, all parties shall have the opportunity to ask clarifying questions at the conclusion of any witness' testimony. The parties stipulate that any such clarifying questions shall be solely for the purpose of establishing that there may be alternative viewpoints.

4. If any party wishes to produce additional witnesses, a list of such witnesses and there intended testimony shall be distributed to the parties by January 26, 2009. If any party wishes to produce additional witnesses, such witnesses shall be produced at the point in the hearing where that witness' testimony will be most relevant. For example, any additional witnesses whose testimony concerns the issue of desalters will be put on immediately following Watermaster's witness on the issue of desalters. If a witness' testimony cannot be so categorized, then the party putting on such witness agrees to work in good faith with Watermaster prior to the hearing to agree upon an appropriate place for that witness' testimony. Watermaster Counsel reserves the right to present rebuttal testimony to address new material introduced by the party witnesses, if any.

5. No party shall raise evidentiary objections to testimony including but not limited to the following: (a) lack of foundation as to testimony or exhibits, (b) questions that call for a narrative answer, (c) hearsay, etc.

6. No party shall be required to qualify any expert witnesses. Any party shall be free to elicit testimony about the background and qualifications of its witness if it believes that such would be helpful to the Court.

7. Any party's failure to raise an objection regarding the matters identified in paragraphs 5 and 6 will not be construed as a waiver of the right to make such an objection at a subsequent hearing.

8. All parties reserve the right to present closing comments in the event that a witness provides surprise testimony and such comments shall be limited to clarifying that there are alternative viewpoints. Any party who intends to provide closing comments shall timely provide notice to the other parties at the conclusion of the testimony that has caused the surprise.

9. It has been represented to Watermaster counsel that discussions among some of the parties are ongoing regarding governance and procedural issues that may result in recommendations to the Court in a separate proceeding in connection with the reappointment of the Watermaster Board in 2011 regarding changes to the Watermaster process.

Dated: January 26, 2009

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 

Scott S. Slater
Michael T. Fife
Attorneys for CHINO BASIN WATERMASTER

Exhibit A

EXHIBIT “A”

Chino Basin Watermaster February 2, 2009 Hearing Outline

I. Opening Statement

II. Governance

- A. Ken Willis, Watermaster Board President.
Introduction of the 9 Member Board. The Board will be put on the stand as a panel to be introduced and to be available for cross examination or questions from the judge.
- B. Geoff Vanden Heuvel, Watermaster Board Member.
History of nine-member Board; Board governance commitments and Board compliance.

Graphics: Organizational chart

III. History

Physical Setting and History

- A. Ken Manning, CEO Chino Basin Watermaster
Institutional; context of Chino Basin within CA, funding, etc.
- B. Mark Wildermuth, Wildermuth Environmental
Technical; development of OBMP
- C. Sheri Rojo, CFO/Assistant General Manager, Chino Basin Watermaster
Watermaster administration; budget and assessments

Graphics: Land use maps; model; location maps

IV. OBMP

- A. Data Collection and the Model: Time History and Cost
Program Element 1 – Monitoring
Andy Malone, Wildermuth Environmental
- B. Program Element 4 – MZ1 Management

1. Subsidence

Andy Malone, WEI – data collection; Long Term Plan; costs

Dave Crosley, City of Chino – Subsidence

Ron Craig, City of Chino Hills – Subsidence

2. MZI Recharge Issues

Mark Kinsey, Monte Vista Water District – Recharge Issues

C. Recharge Master Plan

Program Element 2 – Recharge

Program Element 5 – Regional Supplemental Water Supply Program

Mark Wildermuth, WEI

Graphic: Bar chart showing decline in stream bed recharge

D. Storage

Program Element 8 – Groundwater Storage Management

Program Element 9 – Storage and Recovery Program

Robert Deloach, Cucamonga Valley Water District

E. Water Quality

Program Element 6 – Cooperative Programs with Regional Board

Maximum Benefit

Industrial Plumes

Ken Manning, Chino Basin Watermaster

Gerry Thibeault, Executive Director, Regional Water Quality Control Board

Graphic: Map showing plumes

F. Salt Management/Recycled Water

Program Element 7 – Salt Management

Rich Atwater, Inland Empire Utilities Agency

G. Desalters

Program Element 3 – Water Supply for Impaired Areas

Program Element 7 – Salt Management

Ken Jeske, City of Ontario

V. The Future – 15 to 20 year horizon
Ken Manning

VI. Closing Statements

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 26, 2009 I served the following:

1) WATERMASTER TRANSMITTAL OF HEARING OUTLINE

☒ 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

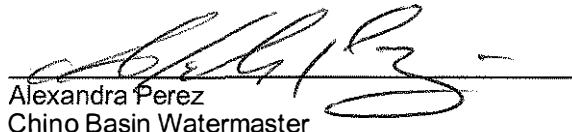
☐ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

☐ 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 26, 2009 in Rancho Cucamonga, California.


Alexandra Perez
Chino Basin Watermaster

MICHAEL CAMACHO
IEUA
P.O. BOX 9020
CHINO HILLS, CA 91709

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

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

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

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

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

BOB KUHN
669 HUNTERS TRAIL
GLEN DORA, CA 91740

CHARLES FIELD
4415 FIFTH STREET
RIVERSIDE, CA 92501

JAMES CURATALO
CVWD
PO BOX 638
RANCHO CUCAMONGA ,CA
91729-0638

GLEN DURRINGTON
5512 FRANCIS ST
CHINO, CA 91710

MICHAEL WHITEHEAD
P.O. Box 6010
El Monte, Ca 91734

Members:

Alfred E. Smith
Amy Steinfeld
Art Kidman
Barbara Swanson
Bill Dendy
Carol
Carol Davis
Chris Swanberg
Dan McKinney
Diane Sanchez
Eric Garner
Fred Fudacz
James P. Morris
Jean Cihigoyenetché
jeeinc@aol.com
Jennifer Novak
Jess Senecal
Jill Willis
Jim Markman
Jim@city-attorney.com
jimmy@city-attorney.com
John Cotti
John Schatz
Joseph S. Aklufi
Kuperberg, Joel
Mark Hensley
Michelle Staples
Rodney Baker
smt@tragerlaw.com
Steve Kennedy
Steven K. Beckett
Steven Lee
Steven R. Orr
Tom Bunn
Tom McPeters
Tram Tran
William J. Brunick
William P. Curley

asmith@nossaman.com
asteinfeld@bhfs.com
akidman@mkblawyers.com
Barbara_Swanson@yahoo.com
bdendy@aol.com
marie@tragerlaw.com
cdavis@lagerlof.com
chris.swanberg@corr.ca.gov
dmckinney@rhlaw.com
dianes@water.ca.gov
elgarner@bbklaw.com
ffudacz@nossaman.com
jpmorris@bbklaw.com
Jean_CGC@hotmail.com
jeeinc@aol.com
jennifer.novak@doj.ca.gov
JessSenecal@lagerlof.com
jnwillis@bbklaw.com
jmarkman@rwglaw.com
Jim@city-attorney.com
jimmy@city-attorney.com
jcotti@localgovlaw.com
jschatz13@cox.net
AandWLaw@aol.com
jkuperberg@rutan.com
mhensley@localgovlaw.com
mstaples@jdplaw.com
rodbaker03@yahoo.com
smt@tragerlaw.com
skennedy@bbmblaw.com
skbeckett@bbmblaw.com
slee@rhlaw.com
sorr@rwglaw.com
TomBunn@Lagerlof.com
THMcP@aol.com
ttran@mkblawyers.com
bbrunick@bbmblaw.com
wcurley@rwglaw.com

Members:

Manuel Carrillo	Manuel.Carrillo@SEN.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
Michael T Fife	MFife@bhfs.com
Mike Del Santo	mdeisanto@prologis.com
Mike Maestas	mmaestas@chinohills.org
Mike McGraw	mjmccraw@FontanaWater.com
Mike Thies	mthies@spacecenterinc.com
Mohamed El-Amamy	melamamy@ci.ontario.ca.us
Nathan deBoom	n8deboom@gmail.com
Pam Wilson	pwilson@bhfs.com
Paul Deutsch	pdeutsch@geomatrix.com
Paul Hofer	farmwatchtoo@aol.com
Paul Lacroix	placroix@reliant.com
Pete Hall	r.pete.hall@cdcr.ca.gov
Peter Hettinga	peterhettinga@yahoo.com
Phil Krause	pkrause@parks.sbcounty.gov
Phil Rosenberg	prosenberg@hargis.com
Rachel R Robledo	rrobledo@bhfs.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	bbowcock@irmwater.com
Robert Cayce	rcayce@airports.sbcounty.gov
Robert DeLoach	robertd@cvwdwater.com
Robert Rauch	robert.rauchcc@verizon.net
Robert Tock	rtock@jcsd.us
Robert W. Nicholson	rwnicholson@sgvwater.com
Robert Young	rkyoung@fontanawater.com
Roger Florio	roger.florio@ge.com
Ron Craig	RonC@rbf.com
Ryan Shaw	rshaw@ieua.org
Sam Fuller	samf@sbvmwd.com
Sandra S. Rose	directorrose@mvwd.org
Sandy Lopez	slopez@ci.ontario.ca.us
Scott Burton	sburton@ci.ontario.ca.us
Steve Arbelbide	sarbelbide@californiasteel.com
Tej Pahwa	tpahwa@dtsc.ca.gov
Terry Catlin	tlcatlin@verizon.net
Timothy Ryan	tjryan@sgvwater.com
Tom Love	TLove@ieua.org
Tony Banages	tbanegas@sunkistgrowers.com
Tracy Tracy	ttracy@mvwd.org
Vanessa Hampton	vhampton@jcsd.us
WM Admin Staff	

Members:

Anne Schneider
Joe Scalmanini
Judy Schurr

ajs@eslawfirm.com
jscal@lsce.com
jschurr@courts.sbcounty.gov

Members:

Al Lopez	lopezsixto@netzero.net
Andy Malone	amalone@wildermuthenvironmental.com
Anthony La	ala@ci.upland.ca.us
April Woodruff	awoodruff@ieua.org
Arnold Rodriguez	jarodriguez@sarwc.com
Ashok K. Dhingra	ashok.dhingra@m-e.aecom.com
Bill Kruger	citycouncil@chinohills.org
Bill Rice	WRice@waterboards.ca.gov
Bill Thompson	bthompson@ci.norco.ca.us
Bob Feenstra	feenstra@agconceptsinc.com
Bob Kuhn	bgkuhn@aol.com
Bonnie Tazza	bonniet@cvwdwater.com
Brenda Fowler	balee@fontanawater.com
Brian Hess	bhess@niagarawater.com
Butch Araiza	butcharaiza@mindspring.com
Carl Hauge	chauge@water.ca.gov
Charles Field	cdfield@att.net
Charles Moorrees	cmoorrees@sawaterco.com
Cindy LaCamera	clacamera@mwdh2o.com
Craig Stewart	cstewart@geomatrix.com
Cruz Diaz	cruzdiaz1965@hotmail.com
Curtis Aaron	caaron@fontana.org
Cyndi Windell	cynthia.windell@sce.com
Dan Arrighi	darrighi@sgvwater.com
Dan Hostetler	dghostetler@csupomona.edu
Dan McKinney	dmckinney@rhlaw.com
Dave Argo	argodg@bv.com
Dave Crosley	DCrosley@cityofchino.org
David B. Anderson	danders@water.ca.gov
David D DeJesus	TVMWDDIV2REP@gmail.com
David D DeJesus	davidcicgm@aol.com
David Ringel	david.j.ringel@us.mwhglobal.com
Dennis Dooley	ddooley@angelica.com
Don Galleano	donald@galleanowinery.com
Duffy Blau	Duffy954@aol.com
Eldon Horst	ehorst@jcsd.us
Eunice Ulloa	eulloa@cbwcd.org
Frank Brommenschenkel	frank.brommen@verizon.net
Fred Lantz	flantz@ci.burbank.ca.us
Gene Koopman	GTKoopman@aol.com
Geoffrey Vanden Heuvel	GeoffreyVH@juno.com
Gerard Thibeault	gthibeault@rb8.swrcb.ca.gov
Gerry Foote	gfoote@cbwcd.org
Grace Cabrera	grace_cabrera@ci.pomona.ca.us
Greg Woodside	gwoodside@ocwd.com
Henry Pepper	henry_pepper@ci.pomona.ca.us
James Curatalo	jamesc@cvwdwater.com
James Jenkins	cnomgr@airports.sbcounty.gov
Janine Wilson	jwilson@cbwm.org
Jarlath Oley	joley@mwdh2o.com
Jeff Pierson	jpierson@unitexcorp.com
Jerry King	jking@psomas.com
Jim Hill	jhill@cityofchino.org
Jim Taylor	jim_taylor@ci.pomona.ca.us
Joe P LeClaire	jleclaire@wildermuthenvironmental.com
John Anderson	janderson@ieua.org
John Ayers	jayers@sunkistgrowers.com
John Bosler	JohnBo@cvwdwater.com
John Huitsing	johnhuitsing@gmail.com
John Thornton	jthornton@psomas.com
John V. Rossi	jrossi@wmwd.com
John Vega	johrv@cvwdwater.com

Jose Galindo
Justin Brokaw
Kathy Kunysz
Kathy Tiegs
Ken Jeske
Ken Kules
Kenneth Willis
Kevin Sage
Kylie Snay
Lisa Hamilton
Mark Hensley
Martin Zvirbulis
Mike Thies
Robert Bowcock

jose_a_galindo@praxair.com
jbrokaw@hughes.net
kkunysz@mwdh2o.com
ktiegs@ieua.org
kjeske@cl.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
mthies@spacecenterinc.com
bbowcock@irmwater.com