Allen W. Hubsch (Bar No. 136834)
HOGAN LOVELLS US LLP
1999 Avenue of the Stars, 15th Floor
Los Angeles, California 90067
Telephone: (310) 785-4600
Facsimile: (310) 785-4601

Attorneys for Non-Agricultural (Overlying) Pool Committee

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, ET AL.,

Defendants.

Case No. RCVRS 51010

Judgment Entered On January 27, 1978, as Amended

**REPLY MEMORANDUM OF NON-AGRICULTURAL (OVERLYING) POOL COMMITTEE**

Filed concurrently herewith:

1) Statement Regarding Role of Watermaster and Watermaster Counsel
2) Response to Statement of City of Ontario
3) Declarations of Robert W. Bowcock, Kevin D. Sage and Allen W. Hubsch

Date: May 14, 2010
Time: 10:30 a.m.
Dept.: Dept. C-1
Chino, California

Assigned for All Purposes to the Honorable STANFORD E. REICHERT

## Table of Contents

## TABLE OF AUTHORITIES

Page(s)

CASES

**STATUTES**



**OTHER AUTHORITIES**

## REPLY MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

The assertion in the Opposition Briefs that the Peace II Option is not an option flies in the face of prior statements to the contrary made by Watermaster to Judge Gunn in this action, and other representations and statements made by Watermaster since December 21, 2007.

The Opposition Briefs do not explain or mention the November 5, 2009 report from Watermaster staff confirming that the written Notice of Intent to Purchase had not yet been given. The Opposition Briefs do not explain or rebut the declarations of Bob Bowcock and Kevin Sage that Watermaster counsel and members of the Appropriative Pool confirmed publicly in the fall of 2009 that the written Notice of Intent to Purchase had not been given, and would not be given if at all until the last possible date. The Opposition Briefs do not explain why the so-called Plan B, adopted on November 5, 2009 states that the written Notice of Intent to Purchase "will" be given.

The Opposition Briefs offer a variety of convoluted, and in some cases demonstrably exaggerated or inaccurate facts and theories purporting to demonstrate "reasonable notice" and "substantial compliance" with the requirements of the Peace II Option. The Opposition Brief's facts are not supported by the evidence, and the theories are not supported by the law. Watermaster's reliance upon theories like "reasonable notice" and "substantial compliance" only demonstrates how weak the Opposition's positions are.

## II. THE NON-AG POOL

The Opposition Briefs contain numerous misleading statements about the relationships between the members of the Non-Ag Pool, and between their representatives. These misleading statements require clarification.

### A. Each Member of the Non-Ag Pool Committee Has Individual Rights

The Judgment created both Pools and Pool Committees. The Pools are composed of water users who are similarly situated. Judgment, §43. The Non-Ag Pool was composed of all overlying producers who produce water for industrial or commercial purposes. Judgment, § 43(b). Each Pool has a Pool Committee. Judgment, § 38. Under the Judgment, the purpose of

each Pool Committee is "the power and responsibility for developing policy recommendations for administration of its particular pool." Judgment, § 38.

The Pool Committee of the Non-Ag Pool is composed of all members of Non-Ag Pool. Bowcock Reply Decl. ¶2. This fact distinguishes the Non-Ag Pool Committee from the Pool Committee of the other overlying Pool -- the Agricultural Pool. The Agricultural Pool has over 100 members. Bowcock Reply Decl. ¶2. The Agricultural Pool is so large that its Pool Committee is not composed of all members of the Agricultural Pool. The Pool Committee of the Agricultural Pool is composed of only 7 representatives of the members of the Agricultural Pool. Bowcock Reply Decl. ¶2.

Unlike the Agricultural Pool, the members of the Non-Ag Pool have never appointed what might be called an "at large" representative. Instead, the members of the Non-Ag Pool act within a governance structure where each member of the Non-Ag Pool votes individually, and exercises its rights individually. No member of the Non-Ag Pool has delegated its authority to vote, or any other right or power, to any other member of the Non-Ag Pool. Mr. Bowcock and Mr. Sage are representatives of Vulcan Materials Company ("Vulcan"). Bowcock Moving Decl. ¶3. No member, other than Vulcan, has appointed Mr. Bowcock or Mr. Sage as agent for giving or receiving notices. Bowcock Reply Decl. ¶3; Sage Reply Decl. ¶4.

**B. <u>Each Member of the Non-Ag Pool Appoints Individual Representatives</u>**

The Non-Ag Pool is composed of industrial or commercial water users. Judgment, § 43(b). At present, each member of the Non-Ag Pool is an entity. Bowcock Reply Decl. ¶4. As such, each entity which is a member of the Non-Ag Pool has appointed an individual as its representative to serve on the Non-Ag Pool Committee. Bowcock Reply Decl. ¶4. At least within recent memory, each member of the Pool has appointed separate individuals to represent them on the Non-Ag Pool Committee. In other words, two or members of the Non-Ag Pool have not appointed a single individual to represent them jointly on the Non-Ag Pool Committee. Bowcock Reply Decl. ¶4. Again, the members of the Non-Ag Pool have always preserved their individual authority to vote, and their individual rights with respect to Watermaster matters.

C. **The Members of the Non-Ag Pool Are Operating Businesses**

The relationship of the members of the Non-Ag Pool to Watermaster is quite different from the relationship of the members of the Appropriative Pool to Watermaster. The members of the Appropriative Pool are water companies. Bowcock Reply Decl. ¶5. For most or perhaps all of the Appropriators, the Chino Basin is a key component of their water supply. And water supply is the sole reason for their existence, and the only business they conduct.

The members of the Appropriative Pool appoint individuals whose sole or principal job is water supply to serve as their representatives on the Pool Committee of the Appropriative Pool. Bowcock Reply Decl. ¶5. The representatives of the Appropriative Pool generally follow Watermaster matters closely, participate actively, communicate frequently with one another about Watermaster matters, and attend all or substantially all meetings of Watermaster. Bowcock Reply Decl. ¶5.

In contrast, the members of the Non-Ag Pool are generally operating companies. Bowcock Reply Decl. ¶6. The members include a company that owns and operates an automobile racetrack, a company that owns and operates a mobile home park and a company that manufactures steel. Bowcock Reply Decl. ¶6. For these companies, the water they use is a component of their business. For these companies, water is similar to other utility services – be it water or natural gas, electricity or phone service. The members of the Non-Ag Pool devote as much time and resources to Watermaster matters as could reasonably be expected of any such companies.

The individuals who have been designated by these operating companies to serve as their respective representatives on the Non-Ag Pool Committee are generally operating personnel. For example, the representative of the racetrack is the director of track administration. Bowcock Reply Decl. ¶6. The representative of the mobile home park is the general manager of the mobile home park. Bowcock Reply Decl. ¶6. The representative of the steel manufacturer is an environmental engineer. Bowcock Reply Decl. ¶6. For these individuals, the water their companies use is only a small component of their job responsibilities. These individuals devote as much time and resources to Watermaster matters as could reasonably be expected of them.

D. **The Non-Ag Pool Committee Has Had Little Watermaster Business**

As stated previously, pursuant to the Judgment, the sole purpose of each Pool Committee is "the power and responsibility for developing policy recommendations for administration of its particular pool.". For several years prior to the occurrence of this dispute, the members of the Non-Ag Pool were content. For several years prior to the occurrence of this dispute, the members of the Non-Ag Pool had no desire to develop new "policy recommendations" for the Non-Ag Pool. As a result, although Watermaster staff scheduled meetings of the Non-Ag Pool on a monthly basis, for several years prior to the occurrence of this dispute, members of the Non-Ag Pool did not attend these meetings. Bowcock Reply Decl. ¶7.

A perusal of the minutes of the Non-Ag Pool is telling. During calendar year 2008 and 2009, the two years during which the Peace II Option was exercisable, Watermaster staff scheduled 24 meetings of the Non-Ag Pool. Bowcock Reply Decl. ¶8. According to the minutes, at 11 of those meetings, representatives of 2 members of the Non-Ag Pool attended. Bowcock Reply Decl. ¶8. According to the minutes, at the remaining meetings, a representative of 1 member attended. Bowcock Reply Decl. ¶8. And although the Opposition Briefs seem to suggest that, by "custom and practice", Mr. Bowcock was the representative for all members of the Non-Ag Pool, Mr. Bowcock himself attended 1 of the 24 meetings of the Non-Ag Pool during calendar years 2008 and 2009. Bowcock Reply Decl. ¶8.

The Non-Ag Pool was less active during 2008 and 2009 because its members had little or infrequent business of their own to conduct during that period. As the Opposition Briefs point out, the meetings of the Non-Ag Pool and the Appropriative Pool were scheduled for the same dates and times, and at Watermaster's offices. Watermaster staff and Watermaster counsel attended these meetings. The fact that the Non-Ag Pool was inactive, and that members infrequently attended the scheduled meetings, was obvious and well-known to the Appropriative Pool, Watermaster staff and Watermaster counsel.

In a context of relative inactivity by members of the Non-Ag Pool, written notice under the Peace II Agreement was required, and was the only reasonable notice that could have been given.

E. **Watermaster Only Had to Deliver Notice to 10 Addresses**

Only 10 of the 19 members of the Non-Ag Pool had pre-June 30, 2007 water in storage. Bowcock Reply Decl. ¶9. Accordingly, Watermaster only had to delivery the written Notice of Intent to Purchase to 10 members of the Non-Ag Pool. The 10 members of the Non-Ag Pool entitled to the notice were among the least active members of the Non-Ag Pool. According to the minutes of the Non-Ag Pool posted on the Watermaster's webstie, of the 10, one had last attended a meeting of the Non-Ag Pool in January 2004, and eight had not attended a meeting of the Non-Ag Pool since before 2004. Bowcock Reply Decl. ¶9. Because attendance at these meetings was a public record, the Appropriative Pool, Watermaster staff and Watermaster counsel knew that these members were unlikely to be aware of any action taken by the Appropriative Pool or the Watermaster Board unless written notice were actually delivered to these members.

Watermaster and the Appropriative Pool were only required to give the written Notice of Intent to Purchase to 10 addresses. Vulcan Materials Company, who Mr. Bowcock and Mr. Sage represented, was not one of the 10. Bowcock Reply Decl. ¶9. The cost of delivering written notice by U.S. mail to these 10 addresses would have been tiny. The 10 addresses were known to Watermaster. Watermaster annually sent other notices to these same 10 addresses, in writing, by U.S. mail.[1]

The Appropriative Pool would like to claim that someone else was responsible for giving the written Notice of Intent to Purchase. But the Appropriative Pool has failed to provide evidence of a single instance in which notice directed to a member of the Non-Ag Pool (other than Vulcan) was accepted by Mr. Bowcock or Mr. Sage. To the contrary, all notices from Watermaster to members of the Non-Ag Pool, like all notices given to other Parties to the Judgment, are given by Watermaster staff directly to the Parties. Bowcock Reply Decl. ¶10.

[1] The fact that notices of annual assessments are sent by U.S. mail every year by Watermaster staff directly to all 19 members of the Non-Ag Pool demonstrates that Watermaster possesses, and always has possessed, the means to deliver written notice by U.S. mail to any or all of the members of the Non-Ag Pool. The fact that such notices are sent by U.S. mail every year also reflects upon the credibility of Watermaster, insofar as Watermaster has misleadingly claimed on page 22 of its Opposition Brief that "[t]oday all parties who wish to receive notices receive email notice of all Watermaster matters" To the contrary, when Watermaster wants money, Watermaster sends its notices directly to all of the members of the Non-Ag Pool, in writing, by U.S. mail.

Watermaster has a full-time staff of approximately 10 individuals. Bowcock Reply Decl. ¶10. The role and function of Watermaster staff is to perform administrative tasks on behalf of the Pool Committees. Bowcock Reply Decl. ¶10.

Written notice was required by the Peace II Option Agreement. Delivery of written notice by U.S. mail was required by the Judgment. Watermaster's and the Appropriative Pool's failure to give the written notice by U.S. mail to just 10 members of the Non-Ag Pool is inexcusable.

## III. THE PEACE II OPTION IS AN OPTION

Prior to filing its Opposition brief, Watermaster repeatedly conceded that the Peace II Option is an option. The characterization as an option was made in pleadings filed with Judge Gunn in 2008, and in statements made to the Non-Agricultural Pool and other parties to the Judgment in 2009 and 2010. For Watermaster now to claim that the Peace II Option is not an option raises questions of credibility.

### A. In Prior Pleadings, Watermaster Conceded Conclusively that the Peace II Option Is an Option

By Order entered on December 21, 2007, Judge Gunn ordered Watermaster to explain the Peace II Option Agreement in a brief to be submitted to this Court no later than February 1, 2008.[2] The first two sentences of the brief submitted by Watermaster in response to Judge Gunn's Order show that the purpose of the brief was to resolve, definitively, interpretation issues relating to the Peace II Option Agreement:

> In its Order approving the Peace II Measures and directing Watermaster to proceed in accordance with Watermaster Resolution 07-05, the Court set forth several conditions subsequent, the first two of which are relevant to this pleading. The first condition was that Watermaster, "prepare and submit a brief to explain the amendments to Judgment Paragraph 8 and Exhibit 'G'." This request arises out of **concerns expressed by the Special Referee regarding interpretation of the amendments in the event of future conflicts regarding their intended**

[2] The December 21, 2007 Order is included within Watermaster's Exhibits as Exhibit 6. The referenced language appears on page 7 of Exhibit 6.

**meaning**.[3]

Watermaster's brief went on to state as follows:

> As for the quantities held in storage as of June 30, 2007 (less the special transfer quantity), the members of the Non-Agricultural Pool have exercised their discretion to **option** the water to Watermaster under the defined terms of the Purchase and Sale Agreement for the Purchase and Sale of Water by Watermaster from the Overlying (Non-Agricultural) Pool (the "Purchase and Sale Agreement"). Accordingly, the members of the Non-Agricultural Pool have exercised their discretion to make the water available to Watermaster, and Watermaster now has discretion under the defined terms of **the option** to obtain the water for use either in connection with a storage and recovery project or for desalter replenishment.
>
> **The option** gives Watermaster two years from the date of Court approval of the Peace II Measures (December 21, 2009) to evaluate whether it requires the water for the potential purposes. Both Watermaster and the members of the Non-Agricultural Pool are provided certainty of financial terms with a negotiated incremental increase in the price for water and further adjusted by CPI as a hedge against inflation.
>
> In the event the Watermaster does not exercise **its option** to purchase the water held in storage and Watermaster and members of the Non-Agricultural Pool do not mutually agree to otherwise extend the date of **the option**, then the stored water will be made available for purchase by the members of the Appropriative Pool under the procedures set forth in the Judgment Amendment Paragraph 9(iv) (Purchase and Sale Agreement Paragraph 8) that is applicable to quantities made available for purchase by members of the Non-Agricultural Pool. . . .
>
> The special transfer quantity creates an earmark for the purchase of 8,350

[3] The January 31, 2008 Brief submitted by Watermaster to Judge Gunn is included within Watermaster's Exhibits as Exhibit 17. The quoted language appears on page 1 of Exhibit 17.

acre feet by San Antonio Water Company ("SAWCO") from Vulcan Materials that is expressly deducted from the quantity available for Watermaster, or in the event Watermaster does not exercise **the option** to the members of the Appropriative Pool. . . . The earmark helped to address concerns expressed over the delays between the time the original financial terms were negotiated for the Purchase and Sale Agreement and the time at which **the option** may be finally exercised by Watermaster or the water is acquired by members of the Appropriative Pool. . . .

However, it should be noted that **there is no requirement that Watermaster purchase the water made available** and any unsubscribed quantities will be apportioned back among the members of the Non-Agricultural Pool in proportion to the amount each member made available. . . .[4]

In its present Opposition Brief, Watermaster (using the same law firm, and the same lawyers within that law firm) state repeatedly that the Peace II Option is not an option. In connection with this Motion, Watermaster has made statements that are directly and unequivocally contrary to the statements made by Watermaster in the brief submitted to Judge Gunn. Watermaster's lack of consistency, and remarkably poor or selective memory, cast doubt upon the credibility of Watermaster in connection all of its assertions relating to the pending Motion.

Watermaster's statements are admissible as evidence that the Peace II Option is an option. Because these statements were made pursuant to an Order from Judge Gunn, and were for the purpose of resolving, in advance, disputes regarding interpretation, upon which the Parties could and should be entitled to rely in interpreting and enforcing the Peace II Option Agreement, the statements should be res judicata, and the Parties should be bound by the prior determination that the Peace II Option is an option.

[4] Watermaster's Exhibits, Exhibit 17. The quoted language appears on pages 7, 8 and 9 of Exhibit 17.

**B. In January 2009, Watermaster Again Conceded that the Peace II Option Is an Option**

In January 2009, at a Watermaster Board meeting, Watermaster Counsel Scott Slater again conceded that the Peace II Option is an option. According to the official minutes of the January 22, 2009 Board meeting, Mr. Slater stated the following:

> Counsel Slater stated this item has not been to the Board previously in its present form and it is not before the Board for any specific action. However, this committee does need to be made aware of a process that is underway, and the intention is to implement an agreement. The context is that during the Peace II process Watermaster executed an agreement and that agreement was approved by the court which was a Purchase and Sale Agreement. That agreement allows Watermaster to purchase water which is presently held in storage and then to use that water in connection for one of two purposes: 1) Watermaster can **exercise the option** and buy the water and use it for a Storage & Recovery Agreement or, 2) Watermaster can use it in connection with Desalter replenishment. The agreement has a two year shelf life; and that agreement would expire at the end of 2009. If Watermaster fails to **exercise its option rights** to purchase the water in this calendar year, that water would then default back and be made available to the Appropriators under another provision of the Peace II Agreement.

Bowcock Reply Decl. ¶11, Exhibit A (emphasis added). According to the official minutes, in addition to the members of the Watermaster Board, Messrs. Slater and Fife, and approximately 35 parties to the Judgment were present at this public meeting. Id. Mr. Bowcock was present at this meeting. Id. Because Mr. Slater was Watermaster counsel, and was addressing the Watermaster Board at a public meeting, the Non-Ag Pool had reason to rely upon Mr. Slater's characterization of the Peace II Option as an option.

Mr. Slater's statements in January 2009 are admissible as evidence that the Peace II Option is an option. Mr. Slater's statements are also admissible as evidence as to credibility of Watermaster and Watermaster counsel in matters relating to this Motion. In addition, because

these statements were made prior to the existence of a dispute in this matter, at a time when the Non-Ag Pool and the Appropriative Pool were both in a position to rely upon them, Watermaster should be estopped from denying that the Peace II Option is an option.

C. **In Letters Tendering Payment, Watermaster Conceded that the Peace II Option Is an Option**

Watermaster did not tender payment under the Peace II Option Agreement until mid-January 2010. In a letter dated January 14, 2010 from Watermaster CEO Ken Manning to Mr. Bowcock, Mr. Manning also conceded that the Peace II Option is an option. Watermaster CEO Manning stated in his letter:

> As you may recall, Watermaster entered into discussions and negotiations with parties in the Basin, and these conversations resulted in our Peace II settlement agreement. Part of that document allows for the sale of water in storage from the Non-Agricultural Pool to the Appropriators. In accordance with this provision, the Appropriators have **exercised their option** to purchase the stored water.

Bowcock Reply Decl. ¶12, Exhibit B (emphasis added). On January 17, Mr. Manning sent 10 additional letters to the 10 members of the Non-Ag Pool who owned the Non-Ag Storage Water, purporting to tender payment to each of them. Bowcock Decl. ¶13. These 10 additional letters contained identical language regarding the character of the Peace II Option Agreement:

> As you may recall, Watermaster entered into discussions and negotiations with parties in the Basin, and these conversations resulted in our Peace II settlement agreement. Part of that document allows for the sale of water in storage from the Non-Agricultural Pool to the Appropriators. In accordance with this provision, the Appropriators have **exercised their option** to purchase the stored water. The attached payment represents one quarter of the full payment.

Bowcock Reply Decl. ¶13, Exhibit C (emphasis added). Because Mr. Manning was Watermaster CEO, and was acting in this capacity when sending these letters, the members of the Non-Ag Pool had reason to rely upon Mr. Manning's characterization of the Peace II Option as an option.

Mr. Manning's statements in January 2010 are admissible as evidence that the Peace II

Option is an option. Mr. Manning's statements are also admissible as further evidence as to credibility of Watermaster and Watermaster staff in matters relating to this Motion. In addition, because these statements were made after the existence of a dispute in this matter but before the filing of the Motion in this matter, at a time when the Non-Ag Pool was in a position to rely upon them in deciding whether to file the Motion, Watermaster should be estopped from denying that the Peace II Option is an option.

**D. As A Matter of Law, the Peace II Option Is an Option**

According to Black's Law Dictionary (9th Ed. 2009), an option is "the right (but not the obligation) to buy or sell a given quantity of securities, commodities or other assets at a fixed price within a specified time." Under California law, the definition is the same. An option "is a contract by which an owner gives another the exclusive right to purchase his property for a stipulated price within a specified time". County of San Diego v. Miller, 13 Cal.3d 684, 688 (1975).

As Watermaster acknowledged in the January 2008 brief it submitted to Judge Gunn, Watermaster had the right, but not the obligation, to acquire the Non-Ag Storage Water. "Watermaster now has the discretion under the defined terms of the option to obtain the water for use either in connection with a storage and recovery project or for desalter replenishment. . . . However, it should be noted that there is no requirement that Watermaster purchase the water made available. . . ."[5]. "If Watermaster fails to exercise its option rights to purchase the water in this calendar year, that water would then default back and be made available to the Appropriators under another provision of the Peace II Agreement." [6]. For the same reasons articulated in the brief Watermaster submitted to Judge Gunn, the Peace II Option is an option under California law.

The fact that the Peace II Option was included in an agreement that contained other covenants, some of which were mutual or bilateral, and the fact that some or all of the other

[5] Watermaster's Exhibits, Exhibit 17. The quoted language appears on pages 7 and 9.

[6] Watermaster's Exhibits, Exhibit 17. The quoted language appears on page 8.

covenants had previously been performed, does not affect the character of the Peace II Option as an option. In each of the leading cases relevant to this Motion, the option at issue was included within an agreement that contained other covenants that were mutual or bilateral, and had been performed. For example, in Bekins, the option at issue was contained in an office lease with a 10-year term. Bekins Moving & Storage Co. v. Prudential Insurance Company of America, 176 Cal.App.3d 245, 248 (2nd Dist. 1986). The option was not exercisable, and the dispute did not arise, until the end of the term, after ten years of mutual or bilateral performance of the other covenants in the lease. Id. at 248-249. In Simons, the option at issue was contained in a residential lease with a two-year term, and again the option at issue was not exercisable, and the dispute did not arise, until the end of the term. Simons v. Young, 93 Cal.App.3d 170, 174-175 (4th Dist. 1979). In Hayward, the option at issue was contained in an industrial lease with a 1-year term, and again the option was not exercisable, and the dispute did not arise until the end of the term. Hayward Lumber & Inv. Co. v. Construction Products Corp., 117 Cal. App. 2d 221, 223-225 (2nd Dist. 1953). In none of these cases did the fact that the option was contained in an agreement that had many other covenants that were mutual or bilateral, and had been performed, even over a lengthy period, render the option contained in the agreement something other than an option. In each of these cases, the Courts held that the optionor was subject to strict or exact compliance (not substantial performance) in connection with exercise of the option. Hayward, 117 Cal.App.2d at 229; Bekins, 176 Cal.App.3d at 224; Simons, 93 Cal.App.3d at 182.

The use of the word "condition subsequent" in Section H of the Peace II Option Agreement is consistent with the character of the Peace II Option as an option. "An option, as a matter of legal theory, is considered to have a dual nature." Palo Alto Town & Country Village, Inc. v. BBTC Company, 11 Cal.3d 494, 503-504 (1974). According to the Supreme Court in Palo Alto, the exercise of an option can be seen from two different "viewpoints". Id. From the viewpoint of the optionee, the option notice can be considered a condition precedent (i.e., occurs before the formation of a binding purchase obligation). Id. But from the viewpoint of the optionor, the option notice can be considered a condition subsequent (i.e., occurs after the option has been created). Id. In fact, the Peace II Option Agreement uses the words "condition

subsequent" only once, when referring to the viewpoint of Watermaster (the optionee) in the phrase "Upon Watermaster's failure to satisfy the condition subsequent . . . ." This phrase appears in Section H of the Peace II Option Agreement, the Section of the Peace II Option Agreement which creates the so-called secondary option. As stated by Mr. Slater in January 2009:

> If Watermaster fails to **exercise its option rights** to purchase the water in this calendar year, that water would then default back and be made available to the Appropriators under another provision of the Peace II Agreement.

Bowcock Reply Decl. ¶ 11, Exhibit A (emphasis added). In other words, Watermaster's failure to exercise the option contained in Section C of the Peace II Option Agreement does not terminate the Peace II Option Agreement. Rather, it terminates the option contained in Section C, and immediately renders effective the secondary option contained in Section H.

The fact that Watermaster counsel and staff, before and after this dispute became known, repeatedly used the word "option" to describe the Peace II Option is a natural result of the fact that Paragraph C of the Peace II Option Agreement is unquestionably an option in both the ordinary and legal meanings of the word.

## IV. THE NOVEMBER 5 STAFF REPORT AND THE DECLARATIONS OF MESSRS. BOWCOCK AND SAGE ARE UNCONTROVERTED

As described in the Non-Ag Pool's Moving Brief, at the meeting of the Appropriative Pool on November 5, 2009, Watermaster staff submitted a report to the Appropriative Pool reminding the Appropriative Pool of the need to provide the written Notice of Intent to Purchase. The November 5 Staff Report stated, in relevant part, as follows:

> Under the Purchase and Sale Agreement, Watermaster, at the direction of the Appropriative Pool, is to issue a Notice of Intent to Purchase to the Non-Agricultural Pool within 24 months after Court approval of the Peace II Documents. Thus the Notice of Intent to Purchase must be issued by December 21, 2009.

Bowcock Moving Decl. ¶18, Exhibit N at p. 1. The November 5 Staff Report then went on to

make a single critical recommendation:

> Staff recommends that the Appropriative Pool direct Watermaster to issue the Notice of Intent to Purchase prior to December 21, 2009 and place the water purchased in storage pursuant to the proposed Plan.

Bowcock Moving Decl. ¶18, Exhibit N at p. 2.

The November 5 Staff Report is not discussed or explained in either of the Opposition Briefs. If the written Notice of Intent had been given in August (or perhaps September or October) 2009 as the Opposition Briefs now claim, then it is inexplicable that Watermaster staff, on November 5, would still be requesting authority to give the written Notice of Intent to Purchase. If the Watermaster staff gave the written Notice of Intent to Purchase "in the normal and customary manner", as the Opposition Briefs now claim, it is inexplicable that the Watermaster staff would not be aware that they themselves had already given the notice. If "everyone knew" that the option under the Peace II Option Agreement had already been exercised prior to November 5, as Watermaster boldly claims in footnote 42 of its Opposition Brief, it is inexplicable that Watermaster staff did not know. If it was incumbent upon anyone to remind the Appropriative Pool that the written Notice of Intent had not been given, it appears that Watermaster staff was attempting to do so. As of November 5, 2009, the written Notice of Intent to Purchase had still not been given, and Watermaster staff knew it, and so informed the Appropriative Pool with unquestionable clarity. [7]

In addition, as stated in the Moving Brief, during meetings of the Appropriative Pool during the summer and fall of 2009, Watermaster counsel Michael Fife and members of the

[7] Similarly, in October 2009, Watermaster staff and the Appropriative Pool were discussing the Peace II Option as if it had not yet been exercised. In a report addressed to the Appropriative Pool on that date, Watermaster staff informed the Appropriative Pool that there were still "three options" for disposition of the Non-Ag Storage Water. Bowcock Reply Decl. ¶14, Exhibit D. The first two options were to use the Non-Ag Storage Water for either of the two uses permitted under Paragraph C of the Peace II Option Agreement. Bowcock Reply Decl. ¶14, Exhibit D at p. 1. The third was to **not exercise** the option under Paragraph C, but instead to allow it to terminate, and to then exercise the so-called secondary option under Paragraph H. Bowcock Reply Decl. ¶14, Exhibit D at p. 2. The fact that, in October 2009, the Appropriative Pool was still discussing whether to exercise the Peace II Option, and how, and for what uses, further demonstrates that, in October 2009, the Appropriative Pool did not consider the August "form" of Notice to be the final form, and did not believe that the notice had been given.

Appropriative Pool stated publicly that the written Notice of Intent to Purchase would be given to the Non-Ag Pool if at all **on the last possible date**. Bowcock Moving Decl. ¶21; Sage Moving Decl. ¶4. The necessary corollaries to these statements are (1) that the written Notice of Intent to Purchase had not yet been given; and (2) that the Appropriative Pool knew that it had not yet been given. Neither Mr. Bowcock nor Mr. Sage, nor any other person who heard these statements, would have reason to believe that the written Notice of Intent had previously been given, or that Watermaster or the Appropriative Pool believed that the written Notice of Intent had previously been given. Neither Mr. Bowcock nor Mr. Sage nor any other person who heard these statements would have any reason to question, object to or complain that the written Notice of Intent had not been given.

Likewise, no member of the Non-Ag Pool had any reason to question, object to or complain about the November 5 Staff Report. The November 5 Staff Report was not only consistent with the statements made by Watermaster counsel Michael Fife and by members of the Appropriative Pool, the November 5 Staff Report confirmed them. Anyone who read the November 5 Staff Report would reasonably conclude that, as of November 5, the written Notice of Intent to Purchase had not yet been given, and Watermaster staff had very clearly and publicly announced that fact.

At its meeting on November 5, the Appropriative Pool also adopted the so-called Plan B which stated in relevant part: "By December 21, 2009, Watermaster, under the direction of the Appropriative Pool, **will** send the Notice of Intent to Purchase pursuant to the Purchase and Sale Agreement". Bowcock Moving Decl. ¶19, Exhibit O at VII.1. At its meeting on November 19, the Watermaster Board was presented with a substantially modified Plan B, although still dated November 5, which also still stated in relevant part: "By December 21, 2009, Watermaster, under the direction of the Appropriative Pool, **will** send the Notice of Intent to Purchase pursuant to the Purchase and Sale Agreement". Bowcock Moving Decl. ¶20, Exhibit Q at II.A.2 & final page. The use of the future tense is consistent with the November 5 Staff Report and the oral statements

made by Watermaster counsel Michael Fife and members of the Appropriative Pool.[8] As of November 5 (and perhaps as late as November 19), the record shows that the written Notice of Intent to Purchase still had not been given. Based upon these circumstances, neither Mr. Bowcock, nor Mr. Sage nor anyone else who was participating in these meetings would have reasonably concluded that the written Notice of Intent to Purchase had been given, or that any further reminders were necessary.

The Opposition Briefs do not mention the November 5 Staff Report. The Opposition Briefs do not mention or attempt to rebut the testimony of Messrs. Bowcock and Sage about the statements made by Watermaster counsel Michael Fife and members of the Appropriative Pool. The Opposition Briefs ignore the fact that Plan B, in both its November 5 and November 19 incarnations, uses the word "will" to describe giving of the written Notice of Intent to Purchase. Despite numerous other attendees at these meetings, no declarations were timely submitted, or at all, by Watermaster or the Appropriative Pool to explain the November 5 Staff Report or the language in Plan B, or to rebut the Declarations of Messrs. Bowcock and Sage. As such, the November 5 Staff Report, the statements in Plan B and the Declarations of Messrs. Bowcock and Sage are uncontroverted evidence that the written Notice of Intent to Purchase was not given in August or September or October of 2009.

The assurances by Watermaster counsel and members of the Appropriative Pool that the written Notice of Intent to Purchase would be given if at all on the last possible date are not a substitute for actual communication of the written Notice of Intent to Purchase, and do not excuse the failure to give it. It would be ironic, and create remarkable uncertainty in California law if the

[8] Near the top of page 13 of Watermaster's Opposition, Watermaster concedes that verb tenses should be read literally and are essential to understanding. In that portion of its brief, Watermaster indicates that the form of notice submitted to the Watermaster Board in August 2009 contains the phrase "[t]he date of issuance of this notice is December 18, 2009". Watermaster draws from use of the present tense "is" that the notice was actually delivered in August. Rather, the opposite conclusion is more logical – i.e., the use of the present tense "is" demonstrates that the notice was prepared with the intention that it would be given on December 18, 2009 – the last possible date -- and the only date that would make use of the present tense "is" accurate. Likewise, the Plan B circulated on November 5 and November 19 states that the written Notice of Intent to Purchase "will" be issued in the future, and the future tense "will" demonstrates that the notice had not yet been given as of November 5. Both verb tenses in both documents can and should be read literally and logically together.

legal rule were that the more often and more strenuously a party insists that it will give a timely notice, the less responsibility it has to actually give the notice in a timely manner.

In the leading case of Hayward, the Court faced a similar issue. Thirty days before the expiration of the lease (which was also the deadline for the tenant to exercise an option to renew), the tenant (represented by Mr. Wells) cured monetary defaults under the lease by payments to the landlord (represented by Mr. Hubbard) in order to avoid cancellation of the lease. Hayward, 117 Cal.App.2d at 224. Landlord and tenant understood that if the lease were in default, the option could not be exercised, and that tenant's payment was made solely for the purpose of exercising the option. Id. At the time the curative payment was made, landlord and tenant had the following conversation: "Mr. Hubbard said to me 'Obviously, after going to all the trouble to wire that money to me last night, you must be intending to stay" and I said 'Yes, obviously'." Id.

In Hayward, the Court held that this seemingly unequivocal communication was not strict compliance, and that the option was terminated. The Court held that the verbal assurance, made only 30 days before the option date, was not proper notice. Id. at 228. The verbal assurance was only one of several "generalized and amorphous conversations between the parties regarding some immediate problem under discussion." Id. The Court treated the curative payment, which both landlord and tenant understood was made solely for the purpose of preserving the option, as not legally relevant. Id.

In another leading case in this area, the optionor, Bekins, as tenant under a 10-year office lease, had an option to renew the lease. Bekins, 176 Cal.App.3d at 248. The deadline to exercise the option was June 30, 1981. Id. In anticipation of renewal, Bekins elected to install new air conditioning units to serve the premises. Id. During the period February through June 1981, Bekins, as tenant, and Prudential, as landlord, communicated frequently about the air conditioning work, which was a material alteration of landlord's premises, and which Bekins was performing at its own considerable expense. Id. Under the lease, the new air conditioning equipment would become landlord's property if the option were not exercised, so installation of the air conditioning equipment only made sense if tenant intended to exercise the option. Bekins failed to given written notice of renewal, and claimed that its actions constituted constructive

notice and/or substantial compliance. Id. at 251. The Court held that performance of the air conditioning work by Bekins was not a substitute for written notice. Id. at 251. The Court also held that the extensive communications between Prudential and Bekins about the air conditioning did not constitute waiver by Prudential of the requirement for written notice. Id.

The communications between Bekins and Prudential about new air-conditioning are in some ways analogous to the communications between the Appropriative Pool and the Non-Ag Pool about the auction. Bekins and Prudential communicated extensively with one another about the installation of new air-conditioning. Likewise, the Appropriative Pool and the Non-Ag Pool communicated with one another about the auction. Bekins asked for and received Prudential's cooperation in connection with installation of the air-conditioning. Likewise, the Appropriative Pool asked for and received the Non-Ag Pool's cooperation in connection with the auction. Nothing about the communications or cooperation between Bekins and Prudential waived the requirement for written notice. And nothing about the communication or cooperation relating to the auction should be construed as waiver of strict compliance with the requirement for written notice under the Peace II Option Agreement.[9] Adoption of a rule that treated communication and cooperation as an implied waiver would necessarily diminish communication and cooperation, and increase the likelihood of disputes.

In the fall of 2009, Watermaster staff and counsel stated repeatedly in public meetings that the auction would occur on November 4. Notwithstanding these assurances, the auction did not occur on November 4, 2009. Likewise, in the fall of 2009, Watermaster staff and counsel stated in public meetings that the written Notice of Intent to Purchase would be given if at all on the last

[9] A significant difference between the facts in Bekins and the present case is that Bekins actually completed the air-conditioning work before the option period expired, but the Appropriative Pool cancelled the auction before the option period expired, creating doubt about the ability and willingness of the Appropriative Pool to exercise the option. Watermaster contends in its brief that an assessment was levied on the Appropriative Pool, and that an assessment package was "distributed" at meetings on November 19. Watermaster does not explain exactly how and to whom the assessment package was "distributed", or why it was not included in the agenda package. Watermaster purports to attach a copy of the November 19 assessment package as Exhibit 15 of its Exhibits. But each of the pages attached as Exhibit 15 is dated in January 2010 -- several months after the November 19 meetings. None of the pages show assessment amounts. The pages solely show water quantities. Watermaster's claims about the amount and purpose of this assessment are unsubstantiated, and subject to doubt.

possible date. But the written Notice of Intent to Purchase was not given. Stating that something will happen in the future is not the same as it actually happening, nor is it a substitute for causing it to happen.

As California case law demonstrates, assurances and actions are not relevant, now matter how often or how strenuously repeated. Where written notice of option exercise is called for, strict or exact compliance with the requirement of written notice must be observed.

## V. WATERMASTER WAS REQUIRED TO PROVIDE WRITTEN NOTICE BY U.S. MAIL

All of Watermaster's claims of giving notice revolve around inclusion of a form of notice in the agenda package for the August 27 meeting of the Watermaster Board, and the minutes of that meeting. This Court should not reach the issue of whether the actions of Watermaster in August, September and October 2009 were sufficient written notice, unless this Court disregards the November 5 Staff Report, the Declarations of Messrs. Bowcock and Slater, and the wording of so-called Plan B, all of which are uncontroverted, and which are consistent in demonstrating that the written Notice of Intent to Purchase was not given prior to November 5, 2009, and was not intended to be given if at all until the last possible date.

### A. The Peace II Option Required Written Notice

In claiming that the actions taken in August, September and/or October were sufficient, the Opposition Briefs rely substantially on the incorrect and disingenuous assertion that the Peace II Option did not specify any particular kind of notice.[10] In making these claims, the Opposition Briefs disregard the fact that the Peace II Option Agreement specifically required that Watermaster provide "**written** Notice of Intent to Purchase the Non-Agricultural (Overlying) Pool water". The Civil Code states as follows:

If a proposal prescribes **any conditions** concerning the communication of its

[10] Watermaster quotes from Crossman v. Smith, 231 Cal.App.2d 370 (1st Dist. 1964) for the proposition that where no particular form of notice is required, notice may be given in any reasonable manner. But in Crossman, written notice was required, written notice was given by U.S. mail, and written notice was actually received by U.S. mail. In Crossman, the issue was whether or not registered mail was required in light of, among other things, the fact that the optionor acknowledged receipt in writing of the option exercise notice within days of its actual delivery. Id. at 372. Accordingly, reliance by Watermaster upon Crossman is misplaced.

acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

Civil Code § 1582. Any claims that posting of documents in electronic form on Watermaster's website is "reasonable notice" are irrelevant, because posting of documents on a website in electronic form is not **written** notice.

**B. The Judgment Required Written Notice By U.S. Mail.**

The Opposition Briefs assert that Section 58 and 59 of the Judgment, governing notice generally, are not applicable. Rather, the Opposition Briefs point to Section 2.7 of the Rules and Regulations, governing notice of Board meetings, for their claim that electronic delivery of the written Notice of Intent to Purchase was effective. The Opposition Briefs does not quote Section 2.7 in full, which reads as follows:

> 2.7 Notice. Notice shall be given in writing to all Active Parties and each such person who has requested notice in writing, and shall specify the time and place of the meeting and the business to be transacted at the meeting. Notice may be provided[11] by either facsimile or electronic mail delivery if the party so consents to such delivery. [Based on Judgment ¶37(c)]. Delivery of notice shall be deemed made on the date personally given or within ninety-six (96) hours of deposit thereof in the United States mail, first class, postage prepaid, addressed to the designee and at the address in the latest designation filed by such person. Copies of all such notices shall be published on the Watermaster website. Watermaster will maintain a current list of the names and active parties and their addresses for the purpose of providing service, and will maintain a current list of

[11] In their respective Opposition Briefs, Watermaster and the Appropriative Pool argue that the words "provided" and "delivery" have two distinct meanings. At the same time, the Opposition Briefs argue that notice is governed by Section 2.7. Yet, Section 2.7 uses the words "provided", "give" and "delivery" interchangeably, as synonyms. "Notice may be **provided** by facsimile and e-mail **delivery** if the party so consents to such **delivery**. . . .**Delivery** of notice shall be deemed made on the date **given** . . . . Watermaster will maintain a current list of . . . addresses for the purpose of **providing** service. . . ." Watermaster counsel drafted both the Peace II Option Agreement and the Rules and Regulations. The use by Watermaster of these terms interchangeably demonstrates that Watermaster intended them, and the parties are entitled to construe them as, synonymous.

the names and addresses of all parties to the Judgment. [Judgment ¶ 58.]

Section 2.7 is substantively identical to Section 58 and 59 of the Judgment. Section 2.7, like Section 59, mandates written notice by U.S. mail. The only difference is that, pursuant to Section 2.7, "copies" of all notices must be published on the Watermaster website. The publishing of "copies" on the website is clearly intended to supplement, not replace, notice by U.S. mail.

Section 2.7 allows delivery by fax or e-mail, but only of notice of "the time and place of the meeting and the business to be transacted at the meeting". Section 2.7 does not authorize notice by electronic means of any other information, or in any other circumstance. A plain reading demonstrates that Section 2.7 governs only to notice of meetings of the Watermaster Board, and does not apply to any other notices required to be given by Watermaster. See, e.g., Rules and Regulations, Section 2.28 (which states that "[a]dministration of each of the three Pools is not governed by these Rules and Regulations").

Moreover, Section 2.7 authorizes electronic notice to a party only "if the party so consents." Section 2.7 explicitly references Section 58, is clearly based on Section 58 of the Judgment, and presumably cannot be valid if contrary to Section 58 of the Judgment. Under Section 58 of the Judgment, waiver of notice by U.S. mail is only permitted if the parties desiring to be relieved of such notice "file a waiver of notice on a form to be provided by Watermaster". Judgment, §58. Because any such consent was required to be "filed" and "on a form to be provided by Watermaster", Watermaster should be able to produce any consents filed by members of the Non-Ag Pool for the Court's review. Watermaster cannot, because these consents do not exist, and have never existed, because such consents were never given by members of the Non-Ag Pool. Bowcock Reply Decl. ¶15.

The Opposition Briefs' reliance upon Section 2.7 of the Rules and Regulations is misplaced because Section 2.7, by its terms, only governs notice of the time and place of Board meetings. Section 2.7 is inapplicable to the written Notice of Intent to Purchase, or any other notice to be given by Watermaster. Moreover, the Opposition Brief's claims that Section 58 and 59 of the Judgment do not govern notice under the Peace II Option Agreement, but that Section 2.7 of the Rules and Regulations does, is circular because Section 2.7 points directly back to

Section 58 of the Judgment. Under Sections 58 and 59 of the Judgment (and even under Section 2.7, to the extent applicable), Watermaster was required to given written notice by U.S. mail.

On page 23 of the Watermaster Opposition, Watermaster concedes that Section 31(a) of the Judgment is relevant to this Motion. Section 31(a) of the Judgment provides as follows:

> (a) Effective Date of Watermaster Action. Any action, decision or rule of Watermaster shall be deemed to have occurred or been enacted on the date on which **written** notice thereof is **mailed**.

Section 31(a) of the Judgment is consistent with and reinforces and clarifies Sections 58 and 59 of the Judgment. Pursuant to Section 58 and 59, Watermaster was required to give the written Notice of Intent to Purchase in writing by U.S. mail. Under Section 31(a), the delivery of notice in any manner other than U.S. mail is ineffective. Even if Watermaster had provided a Notice of Intent to Purchase in electronic form, such electronic notice would have been ineffective pursuant to Section 31(a) of the Judgment, because electronic notice is not notice by U.S. mail.

**C. California Law Requires That An Exercise Notice Actually Be Communicated**

The Watermaster Opposition relies upon Merriam Webster for its legal argument that the written Notice of Intent to Purchase need not be sent, but only "made available". The California Supreme Court has held otherwise. In Erlich v. Granoff, 109 Cal.App.3d 920, 929 (1980), the Supreme Court held that an option could only be validly exercised by communicating exercise of the option to the optionor. "In the instant case the Erichs exercised their option by **communicating** to Granoff **in writing** their election to accept his offer." Id. (emphasis added). In a footnote, the Supreme confirmed that this statement was meant as an expression of California law. "Option contracts are subject to the statutory provision on acceptance of an offer, hence the option was effectively exercised at the time acceptance was deposited in the mail.." Id. at fn. 3. The foregoing is consistent with the general principal of contract law that acceptance of an offer is not valid unless actually communicated to the offeror. Commercial Casualty Ins. Co. v. Industrial Acc. Comm., 116 Cal.App.2d 901, 907 (2nd Dist. 1953).

In Bourdieu v. Baker, 6 Cal.App.2d 150 (4th Dist. 1935), a case involving an option to purchase real property, the Court held that failure to deliver notice of exercise directly to the

optionor was fatal where the whereabouts of the optionor were known. The Court found persuasive that "There is no evidence in the record that plaintiff could not be found." Id. at 158. Similarly, in this case, the Watermaster has offered no evidence that the addresses of the 10 members of the Non-Ag Pool entitled to notice were unknown. In Bourdieu, the optionee had deposited money and closing instructions into escrow with a bank. The Court held that making the money "available" was irrelevant where no notice thereof had been give to the optionor. Among other things, "no duty rested upon [the optionor] to go to that bank or to make demand for the money." Id. at 160-161. Likewise, in the instant case, the members of the Non-Ag Pool had no duty to sift through the hundreds of documents stored electronically on Watermaster's website over the two-year period of the option. The burden was upon Watermaster to give a **written** notice, which Watermaster clearly had the ability to do. Making the notice "available" for the 10 members of the Non-Ag Pool to hunt for is not legally sufficient and not reasonable under the circumstances.

As noted previously, only 10 of the 19 members of the Non-Ag Pool owned pre-June 30, 2007 storage water. Bowcock Reply Decl. ¶9. On January 17, 2010, Watermaster CEO Ken Manning tendered 10 checks purporting to pay the first installment of the option price, under cover of 10 letters, delivered by overnight mail, to the 10 respective mailing addresses of the 10 respective members of the Non-Ag Pool who owned the Non-Ag Storage Water. Bowcock Reply Decl. ¶13. Watermaster cannot in good faith claim that these 10 members of the Non-Ag Pool could not be located, or that sending these 10 members a written Notice of Intent to Purchase by U.S. mail would have been unduly burdensome or expensive.

**D. Under California Law, Notice Must Be Clear and Unambiguous**

As stated in the Moving Brief, notice of exercise of an option must be clear and unambiguous in order to be effective. "A clear and unambiguous notice, timely given, and in the form prescribed by the contract, is essential to the exercise of an option". Contracts, Corpus Juris Secundum (June 2009) (option to terminate). The party exercising an option must inform the optionor "in unequivocal terms of his unqualified intention to exercise his option". Hayward, 117 Cal.App.2d at 227-228; Bekins, 176 Cal.App.3d at 251. As has been discussed previously, as late

as November 5, 2009, Watermaster staff believed that the written Notice of Intent to Purchase had not yet been given. The November 5 Staff Report alone is sufficient evidence that, if notice was given prior to November 5 (which the Non-Ag Pool disputes), it was not clear and unambiguous.

If Watermaster had given a written notice that was clear and unambiguous, the pleadings on this Motion would not now constitute over 100 pages. The exhibits would not now constitute over 1,000 pages. If Watermaster had given a written notice that was clear and ambiguous, the Opposition Briefs would not be advancing theories of "constructive notice" and "reasonable notice" and "substantial performance" on various alternative dates in August, September and October 2009. The volume and extent of the paperwork filed by Watermaster in connection with this motion, by themselves, are sufficient evidence that no notice given by Watermaster was "clear and unambiguous".

**E. Watermaster's Statements About Custom and Practice Are Misleading**

Watermaster's discussion of "custom and practice" is extremely misleading. On page 22 of Watermaster's Opposition Brief, Watermaster claims that "electronic delivery became the preferred and Court-approved method of providing notice in 2001." The Declaration of Sherri Molino, which Watermaster cites near the bottom of the same page to support this claim, states as follows: "Starting in late October 2002 and up through the present, it has been the custom and practice of Watermaster to provide all parties that are to receive notices about Watermaster matters such notice via email, except for those parties who have specifically requested to continue receiving paper notice, with the exception of Board members, who receive both a paper copy and an email notification of the Board agenda package every month." Molino Decl. ¶6. The one-year inconsistency between the date identified in the Brief and the date identified in the Declaration is overshadowed by the more significant inconsistency they both bear to the truth.

Watermaster did not stop providing written notice until 2008. The following are the contents of a paper that Watermaster apparently placed on a table at one or more Watermaster

Board meetings: [12]

Urgent Message

Starting January 1, 2008 we will no longer be mailing our packages out and you will need to provide us with your email address. All agendas/packages can be downloaded and printed off our ftp site www.cbwm.org/ftp if you do not have an email address you be able to pick a package up at the Chino Basin Watermaster office. Thank you for your understanding. Chino Basin Watermaster.

Several items in this paper are notable. First, it became effective on January 1, 2008, not in 2001 (or 2002) as suggested by Watermaster. Contrary to the claims of Watermaster, it is not a longstanding custom and practice -- it is a policy with a recent inception. In fact, the policy became effective after the Peace II Option Agreement was signed, and after entry of the Order approving the Peace II Option Agreement. Second, it purported to apply only to agendas and agenda packages. No member of the Non-Ag Pool would have reasonably interpreted this new policy as applying to the written Notice of Intent to Purchase required to be given under the Peace II Option Agreement. Third, the policy was inconsistent with Section 2.7 of the Rules and Regulations, and Section 58 of the Judgment, both of which required affirmative, written consent for any method of service other than notice by U.S. mail.

In addition, a person can only waive those rights of which he or she has full knowledge. Padres Hacia Una Vida Mejor v. Davis, 96 Cal.App.4th 1123 (5th Dist. 2002); People v. Connor, 270 Cal.App.2d 630 (2nd Dist. 1969). Watermaster has not submitted any evidence that the 10 members of the Non-Ag Pool who were entitled to receive written Notice of Intent to Purchase were present at any of the Watermaster Board meetings at which this paper was apparently placed "on a table", or that they otherwise saw this paper, or were aware of it. Watermaster has

[12] In January 2010, the Non-Ag Pool asked the Watermaster to provide evidence whether any members of the Non-Ag Pool had consented to delivery of the written Notice of Intent to Purchase by electronic means. On February 4, 2010, Watermaster staff provided a paper containing this statement, and informed the Non-Ag Pool that this paper had been placed on a table or posted at one or more Watermaster Board meetings. Hubsch Reply Decl. ¶2, Exhibit F. On February 4, 2010, Watermaster counsel stated that this paper evidenced consent of the members of the Non-Ag Pool to electronic delivery of the written Notice of Intent to Purchase. Hubsch Reply Decl. ¶2.

submitted no evidence that any of the 10 members of the Non-Ag Pool ever consented to delivery of electing notice by "fil[ing] a waiver on a form to be provided by Watermaster". Watermaster has submitted no evidence that Watermaster even prepared such a form, or made any effort to obtain a valid consent or waiver in accordance with Section 58 of the Judgment.

Watermaster's statements about custom and practice, as with other statements made in the Opposition Briefs, are materially misleading.

## VI. EXERCISE OF AN OPTION MUST OCCUR WITHIN THE TIME PROVIDED IN THE OPTION CONTRACT

The Watermaster Opposition contends that because the Peace II Option Agreement does not contain a "time is of the essence" clause, Watermaster was free to transmit the written Notice of Intent to Purchase at "any reasonable time". Like most of the Watermaster's legal arguments, this argument is also inconsistent with California law. "The length of time in which an option may be exercised is an essential term to an option contract." Allen v. Smith, 94 Cal.App.4th 1270, 1281 (4th Dist. 2002). "It is futile to discuss, as Appellant does discuss, the question as to whether or not the written option contained anything indicating that time was of the essence thereof. Such considerations have nothing to do with options". Auslen v. Johnson, 118 Cal.App.2d 319, 322 (3rd Dist. 1953) (quoted with approval in Wilson v. Ward, 155 Cal.App.2d 390, 394 (2nd Dist. 1957) and in Allen, 94 Cal.App.4th at p. 1281). "Rather, on the lapse of the option period 'the matter is completely ended and the offer is withdrawn'". Auslen, 118 Cal.App.2d at 322; Wilson, 155 Cal.App.2d at 394; Allen, 94 Cal.App.4th at 1281.[13]

The Ninth Circuit Court of Appeals, applying California law, has held that "where the option is to be exercised within a stated time and in a particular manner, that must be done **exactly** as prescribed." Cummings v. Bullock, 367 F.2d 182, 183 (9th Cir. 1966) (emphasis added). The Court further stated:

The result may seem harsh, and the rules applied are technical. But the decisions

[13] Watermaster relies upon Lodge v. General Accident, Fire and Life Assurance Corp., 105 Cal.App. 160 (4th Dist. 1930) for the suggestion that Watermaster should be excused from timely compliance. Lodge did not involve an option, but a bad-faith denial of insurance coverage. Id. at 165. As this Court is likely aware, the law of bad faith denial of insurance coverage has its own extensive body of law, and has no relevance to this dispute.

> cited make the reason clear. An option, given for consideration, binds the optionor, and but it does not bind the optionee. He may, if he chooses, walk away from the deal. That is why the language of the option agreement is construed in favor of the optionor and why the courts require that the optionee comply strictly with whatever conditions the agreement imposes upon his right to exercise the option if he chooses to do so.

Cummings v. Bullock, 367 F.2d 182, 186 (9th Cir. 1966) (applying California law). The California Supreme Court has cited Cummings with approval, stating that Cummings "dealt with the time within which an option must be exercised and correctly held that such time cannot be extended beyond that provided in the contract. To hold otherwise would give the optionee, not the option he bargained for, but a longer and therefore more extensive option". Holiday Inns of America, Inc. v. Knight, 70 Cal.2d 327, 330 (1969). "When that time expires, the option holder has received the full agreed equivalent of the price he paid for his option; and a refusal to give effect to an acceptance that is one minute late results in no forfeiture." Sheveland v. Reed, 159 Cal.App.2d 820, 822 (3rd Dist. 1958) (quoting 1 Corbin on Contracts, Section 273). "A full appreciation of the nature of an option precludes the idea that courts may allow the optionee time beyond that limited in the writing in which to accept the offer of the other party. With the lapse of time the right to exercise the option automatically expires." Wightman v. Hall, 62 Cal.App.632, 634 (2nd Dist. 1923).

## VII. EXERCISE NOTICE MUST STRICTLY COMPLY WITH OPTION TERMS

As stated at length in the Moving Brief, and repeated in many of the cases cited above, well-established California authority requires strict compliance with the notice requirements in an option contract. "An option is an offer by which a promisor binds himself in advance to make a contract if the optionee accepts the terms and within the time designated in the option. Since the optionor is bound while the optionee is free to accept or not as he chooses, courts are strict in holding an optionee to **exact** compliance with the terms of the option." Hayward, 117 Cal.App.2d at 229; Simons, 93 Cal.App.3d at 182; Bekins, 176 Cal.App.3d at 229. "[W]here, as here, the acceptance or the 'election' or the 'exercise' of the option is by the terms of the contract

to be made in a particular manner, it must be strictly so made in order to constitute a valid acceptance." Callisch v. Franham, 83 Cal.App.2d 427, 430 (3rd Dist. 1948) (option to purchase real estate).

The Opposition Briefs would like this Court to disregard established authority, and adopt a standard of substantial performance which is legally foreign. In Bekins, the Court expressly rejected the doctrine of substantial performance. "Bekins' reliance on the doctrine of substantial compliance is also futile. The doctrine of substantial performance comes into play only when there is a binding contract. An option is but an offer which expires by its own terms if it is not accepted within the time prescribed." Bekins, 176 Cal.App.3d at 251.

Moreover, because strict compliance is required, equitable relief for the optionor's failure to timely exercise the option is not available. "When that time (the time in which the option is to be exercised) expires, the option holder has received the full equivalent of the price he paid for his option; and a refusal to give effect to an acceptance that is one minute late results in no forfeiture." Sheveland, 159 Cal.App.2d at 822 (quoted with approval in Simons, 93 Cal.App.3d at 182). " [A] court may not grant equitable relief to extend an option period beyond that agreed to by the parties when, as here, the failure to timely exercise the option is due entirely to the inadvertence or neglect of the optionee." Simons, 93 Cal.App.3d at 182; Bekins, 93 Cal.App.3d at 253. "It is futile to discuss the size, amount or nature of the consideration paid for the option, for when the option period that was bargained for by the parties has expired, the optionee has received everything for which he bargained and for which he gave consideration, regardless of the amount or nature of the consideration." Simons, 93 Cal.App.3d at 189 (citing Sheveland, 159 Cal.App.2d at 822).[14] As the California Supreme Court stated in Holiday Inns, to grant equitable relief "would give the optionee, not the option he bargained for, but a longer and more extensive

[14] Watermaster relies upon Riverside Fence Co., Inc. v. Novak, 273 Cal.App.2d 656 (4th Dist. 1969) for the proposition that the option period should be extended. In Riverside, the optionee exercised the option far in advance of the expiration of the option. The optionor refused to perform. The optionee "repeatedly inquired", before the option period expired, why the optionor declined to perform. Id. at 659-660. The optionee refused to reveal his reasons until after the option period expired. Id. In the present case, Watermaster and the Appropriative Pool elected, in their discretion, to delay giving the notice until the "last possible date". In the present case, Watermaster and the Appropriative Pool affirmatively elected to delay notice until the last possible date, and then failed to give the notice at all.

option." Holiday Inns, 70 Cal.2d at 330.[15]

The California cases cited throughout the Moving Brief and this Reply Brief are filled with examples of what the Opposition Briefs would likely consider "substantial performance". The law is clear. Substantial performance is insufficient. Strict compliance with the requirements relating to exercise is required. By conceding in their Opposition Briefs that Watermaster's actions constituted only substantial performance, the Opposition Briefs have conceded that Watermaster's actions were not legally sufficient.

## VIII. MISLEADING OR EXAGGERATED STATEMENTS IN OPPOSITION BRIEFS

In addition to matters referenced previously in this Brief, the Opposition Briefs contain other misleading or exaggerated factual statements, some of which are noted here.

### A. The August 13 Agenda Package Was Not Delivered By E-Mail

On page 21 of its Opposition Brief, Watermaster claims that "The Pool and the members of the Pool were provided the Notice **through e-mail delivery of the August agenda packages**." Watermaster submits no declaration to support this statement, and could not, because it is untrue. The August 13 agenda package was an electronic file that was 39.50MB in size, and was therefore, as a practical matter, physically incapable of being delivered by e-mail. Bowcock Moving Decl. ¶29, Exhibit V & Exhibit W. If Watermaster had made an accurate statement about the August 13 agenda package in its Opposition Brief, Watermaster would have admitted that the August 13 agenda package was never e-mailed by Watermaster to anyone. The agenda package was merely posted on the so-called FTP internet site of Watermaster, among hundreds of other documents of similar size, with no notice given to members of the Non-Ag Pool that its contents contained anything of special importance to them. Bowcock Moving Decl. ¶29, Exhibit

[15] In Holiday Inns, the Supreme Court found that the optionor had failed to make the last of five annual payments required to keep the option agreement effective. The Court drew a distinction between giving notice of exercise, and complying with other covenants in the agreement that included the option. Id. at 330-331. The Supreme Court found that the requirements relating to giving of notice must be strictly complied with, and the time for giving of notice could not be extended. Id. In Simons, the Court stated "Although the quoted language may not technically have constituted a part of the holding of the Holiday Inns decision, it is difficult to imagine a more direct and specific indication of the court's view that it would be inappropriate to grant relief under Civil Code Section 2375 to permit exercise of an option after the option period had expired. Simons, 93 Cal.App.3d at 184-185.

T. Even if reasonable notice were allowed instead of written notice, this was not "reasonable notice".

During the two-year period prior to December 21, 2009, Watermaster sent hundreds of e-mails, in generic form, giving notice of posting of agendas, agenda packages and minutes on the FTP internet site, and more notices about updates and revisions thereto, for the Board, the Advisory Committee, the Appropriative Pool, the Agricultural Pool, the Non-Ag Pool and various ad hoc committees. Bowcock Reply Decl. ¶16. Sending generic e-mails regarding agendas, agenda packages and minutes of public meetings is not a reasonable substitute for **written** notice of exercise of an option under a written contract.

Moreover, as discussed in the Moving Brief, only about half of the 10 members of the Non-Ag Pool who were entitled to receive the written Notice of Intent to Purchase were included on Watermaster's e-mail service list in August 2009. Moving Brief, page 13, fn. 4; Moving Declarations of David L. Penrice ¶4, Curtis Stubbings ¶4, Brian Geye ¶4, David Starnes, ¶4. Watermaster cannot accurately claim to have sent notice to the "members of the Pool" in light of such a substantial omission. And Watermaster cannot honestly have intended the e-mail to have constituted notice to the 10 members entitled to notice, when it did not even confirm whether the 10 members were included on the e-mail service list.

**B. The August 27 Board Minutes Were Not Delivered By E-Mail**

On page 8 of its Opposition Brief, Watermaster claims that "The minutes for the August 27, 2009 Board Meeting were electronically distributed to interested parties on September 18, 2009". This is likewise inaccurate, and for the same or similar reasons. On September 17 (not September 18), one of many hundreds of generic e-mails was sent stating that an agenda package for the September 24, 2009 board meeting was then available on the Watermaster FTP internet site. Bowcock Reply Decl. ¶17, Exhibit E. The e-mail does not mention or refer to the minutes of the August meeting of the Watermaster Board, or give members of the Non-Ag Pool any notice that the contents of the board package for September contained anything of special relevance to them. The referenced agenda package is an electronic file on the Watermaster FTP site. Bowcock Reply Decl. ¶17. The file on the FTP site is in pdf format, is 18.38MB in size, and 126

pages long. Id. Included within the file are six pages of unapproved minutes of the August 27 meeting of the Watermaster Board. Bowcock Reply Decl. ¶17.

## IX. CONTEXT AND BACKGROUND

The Opposition Briefs, particularly the Opposition Brief of the Appropriative Pool, adopt a strident cadence, using charged words like "greed". The Non-Ag Pool gave considerable value for entry into the Peace II Agreements, which consideration is ignored or glossed over in the Opposition Briefs.

As part of the Peace II Measures adopted in 2007, the members of the Non-Ag Pool agreed to transfer to Watermaster 10% of all their water held in storage on June 30, 2007, and agreed perpetually to transfer to Watermaster 10% of all water held in storage after June 30, 2007, in both cases for purpose of providing much-needed desalter replenishment for the benefit of all parties to the Judgment. Bowcock Reply Decl. ¶18. In addition to permanently sacrificing 10% of its storage water, the Non-Ag Pool agreed to option 100% of its remaining storage water (after the 10% dedication) to the Appropriative Pool. The option of its pre-June 30, 2007 water is the subject of this dispute.

The respective benefits and burdens of the Peace II Option Agreement were considered fair at the time of Peace II, and the Parties supported them. One of the known risks of the Peace II Option Agreement was that the Watermaster would not exercise the Peace II Option, and that the Appropriative Pool would then purchase the Non-Ag Storage Water at slightly higher rates under the so-called secondary option. The risk that Watermaster would not exercise the Peace II Option was expressly addressed and provided for in the Peace II Option Agreement, by inclusion of the secondary option.

In Watermaster's January 2008 brief submitted to Judge Gunn, Watermaster stated as follows:

> In the event that Watermaster does not exercise its option to purchase the water held in storage and Watermaster and members of the Non-Agricultural Pool do not mutually agree to otherwise extend the date of the option, then the stored water will be made available for purchase by the members of the Appropriative

Pool under the procedures set forth in the Judgment Amendment Paragraph 9(iv) (Purchase and Sale Agreement, Paragraph 8). . . .

Through these procedures the future avoidance of large accumulations of unused water accruing to the members of the Non-Agricultural Pool can likely be avoided under terms that are considered **fair** to the members of the Non-Agricultural Pool and the Appropriative Pool and consistent with the policy objectives of Watermaster. . . .

As a condition of the Non-Agricultural Pool obtaining more extended rights of transferability, . . . each member of the Non-Agricultural Pool will dedicate ten percent of its respective annual share of Safe Yield to Watermaster (Exhibit "G" paragraph 5(c)(1).) . . . .

Through the dedication, the Non-Agricultural Pool members will be directly contributing towards that obligation.

The Judgment amendments do provide approval of the one-time transfer as a component of the overall package of approvals that are believed to provide **balanced and fair terms** for liberating the water within the Non-Agricultural Pool as of June 30, 2007. . . .

While the weight given to each of the numerous considerations may vary based upon interest and point of view, from the perspective of Watermaster, the amendments provide Watermaster with a two-year option of acquiring the water from storage at a fixed price for designated purposes of desalter replenishment and storage recovery through a period of transition.

If these larger opportunities cannot be realized, the purchased water can nevertheless be made available as a local supply to all appropriators in lieu of replenishment under **terms deemed fair by the members of the Appropriative Pool**. It is true that the amendments will provide for some opportunities for **isolated economic gain** along with the increased beneficial use.

However, this is traditionally the case with the beneficial use of water.

> More importantly, given the Herculean commitments undertaken by Watermaster and the parties in implementing Basin Re-Operation and Hydraulic Control efforts, the amendments add to the foundation of broad, indeed unanimous support without posing any specific threat of harm to any party or the Basin.[16]

The Peace II Option Agreement contains opportunities for "isolated economic gain" for both the Non-Ag Pool and the Appropriative Pool. If the Peace II Option terminates, then the so-called secondary option becomes effective. Under the secondary option, the Non-Ag Pool would receive an incremental benefit of about $112 per acre-foot. Bowcock Moving Decl. ¶25. If the Appropriative Pool pursues the auction successfully and realizes prices up to $1,000 per acre-foot for the Non-Ag Storage Water, as publicly claimed by the Watermaster CEO (Bowcock Moving Decl. ¶14), then the Appropriative Pool could still realize a huge windfall of about $663 per acre-foot, or about $25,500,000 in the aggregate. Bowcock Moving Decl. ¶25.

## X. CONCLUSION

Written Notice of Intent to Purchase was never given. The Appropriative Pool's complicated strategy to obtain a windfall by auctioning the Non-Ag Pool Storage Water to investors outside the basin failed through no fault of the Non-Ag Pool. The Appropriative Pool now simply wants to use its dominance of Watermaster to seize the Non-Ag Storage Water as if the written Notice of Intent had been given. Although the written Notice of Intent to Purchase was not given, the Non-Ag Storage Water is still available to the Appropriative Pool pursuant to the secondary option, on the terms therein.

For the reasons stated in the Moving Brief and this Reply Brief, the Non-Ag Pool hereby seeks entry of an Order, in substantially the form accompanying the Motion, (a) that Watermaster on behalf of the Appropriative Pool did not provide written Notice of Intent to Purchase within the time and manner provided by the Peace II Option Agreement; (b) that all of the Non-Ag Storage Water should be restored to the accounts of the members of the Non-Ag Pool; and (c) that the Non-Ag Storage Water remains available to the Appropriative Pool pursuant to Paragraph H

[16] Watermaster's Exhibits, Exhibit 17. The quoted language appears on pages 8, 9, 10, 14, 18 and 19.

of the Peace II Option Agreement.

Date: May 10, 2010

HOGAN LOVELLS US LLP

By: _____
ALLEN W. HUBSCH
Attorneys for Non-Agricultural (Overlying) Pool

# 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 10, 2010 I served the following:

1. **REPLY MEMORANDUM OF NON-AGRICULTURAL (OVERLYING) POOL COMMITTEE FILED CONCURRENTLY WITH:**

    1) **STATEMENT OF NON-AGRICULTURAL (OVERLYING) POOL COMMITTEE REGARDING ROLE OF WATERMASTER AND WATERMASTER COUNSEL**
    2) **RESPONSE OF NON-AGRICULTURAL (OVERLYING) POOL COMMITTEE TO CITY OF ONTARIO STATEMENT**
    3) **REPLY DECLARATIONS OF ROBERT BOWCOCK, KEVIN SAGE, AND ALLEN HUBSCH**
    4) **DECLARTION OF ALLEN W. HUBSCH REGARDING SERVICE OF REPLY MEMORANDUM**
    5) **NOTICE OF CHANGE OF FIRM NAME**
    6) **COPIES OF OPINIONS CITED IN REPLY MEMORANDUM OF NON-AGRICULTURAL (OVERLYING) POOL COMMITTEE**

/_x_/ 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.

/_x_/ 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 10, 2010 in Rancho Cucamonga, California.

Alexandra Perez
Chino Basin Watermaster

MICHAEL CAMACHO
6055 ZIRCON AVE.
RANCHO CUCAMONGA, CA 91701

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

MICHAEL WHITEHEAD
P.O. BOX 6010
EL MONTE, CA 91734

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
GLENDORA, CA 91740

CHARLES FIELD
4415 FIFTH STREET
RIVERSIDE, CA 92501

TOM HAUGHEY
CITY OF CHINO
PO BOX 667
CHINO, CA 91708-0667

GLEN DURRINGTON
5512 FRANCIS ST
CHINO, CA 91710

ROBERT DELOACH
P.O.BOX 638
RANCHO CUCAMONGA, CA 91729

BOB FEENSTRA
P.O. BOX 17482
ANAHEIM HILLS, CA 92817

MARK KINSEY
10575 CENTRAL AVE.
P.O. BOX 71
MONTCLAIR, CA 91763

**Members:**

| | |
|---|---|
| Al Lopez | lopezsixto@netzero.net |
| Alice Shiozawa | afshioza@gswater.com |
| Andy Campbell | acampbell@ieua.org |
| Andy Malone | amalone@wildermuthenvironmental.com |
| Anthony La | ala@ci.upland.ca.us |
| April Woodruff | awoodruff@ieua.org |
| Arnold Rodriguez | jarodriguez@sarwc.com |
| Ashok Dhingra | ash@akdconsulting.com |
| Ben Lewis | benjamin.lewis@gswater.com |
| Ben Pak | bpak@cbwm.org |
| Bill Kruger | citycouncil@chinohills.org |
| Bill Thompson | bthompson@ci.norco.ca.us |
| Bob Bowcock | bbowcock@irmwater.com |
| Bob Bowcock | bbowcock@irmwater.com |
| Bob Feenstra | bobfeenstra@gmail.com |
| Bob Kuhn | bgkuhn@aol.com |
| Bob Lawhn | rlawhn@rrienergy.com |
| Bonnie Tazza | bonniet@cvwdwater.com |
| Brenda Fowler | balee@fontanawater.com |
| Brian Geye | bgeye@autoclubspeedway.com |
| Brian Hess | bhess@niagarawater.com |
| Carl Hauge | chauge@water.ca.gov |
| Charles Field | cdfield@att.net |
| Charles Moorrees | cmoorrees@sawaterco.com |
| Cindy Cisneros | Cindy_Cisneros@ci.pomona.ca.us |
| Cindy LaCamera | clacamera@mwdh2o.com |
| Craig Stewart (craig.stewart@amec.com) | craig.stewart@amec.com |
| Curtis Stubbing | Curtis_Stubbings@praxair.com |
| Dan Arrighi | darrighi@sgvwater.com |
| Dan Hostetler | dghostetler@csupomona.edu |
| Dave Argo | argodg@bv.com |
| Dave Crosley | DCrosley@cityofchino.org |
| David D DeJesus | tvmwddiv2rep@gmail.com |
| David D DeJesus | davidcicgm@aol.com |
| David Penrice | dpenrice@acmwater.com |
| David Ringel | david.j.ringel@us.mwhglobal.com |
| David Starnes | david.starnes@mcmcnet.net |
| Dennis Poulsen | dpoulsen@californiasteel.com |
| Dennis Williams | dwilliams@geoscience-water.com |
| Diana Sturgeon | dsturgeon@chinohills.org |
| Don Cutler | dcutler@jcsd.us |
| *Don Galleano* | *donald@galleanowinery.com* |
| Donna Stokes | dstokes@cityofchino.org |
| Earl Elrod | earl.elrod@verizon.net |
| Edward Gonsman | Edward.Gonsman@cdcr.ca.gov |
| Eldon Horst | ehorst@jcsd.us |
| Eunice Ulloa | eulloa@cbwcd.org |
| Frank Brommenschenkel | frank.brommen@verizon.net |
| Frank LoGuidice | faloguidice@sgvwater.com |
| Gene Koopman | GTKoopman@aol.com |
| Geoff Willis | gwillis@sheppardmullin.com |
| Geoffrey Vanden Heuvel | GeoffreyVH@juno.com |
| Gerald Yahr | yahrj@koll.com |
| Gerard Thibeault | gthibeault@rb8.swrcb.ca.gov |
| Geye, Brian | BGeye@autoclubspeedway.com |
| Grace Cabrera | grace_cabrera@ci.pomona.ca.us |
| Greg Woodside | gwoodside@ocwd.com |
| Ida Martinez | idam@cvwdwater.com |
| Isabel Martinez | imartinez_wfa@verizon.net |
| Jack Safely | jsafely@wmwd.com |
| James Jenkins | cnomgr@airports.sbcounty.gov |

| | |
|---|---|
| Jeff Pierson | jpierson@unitexcorp.com |
| Jeffrey L. Pierson | jpierson@intexcorp.com |
| Jill Willis | jnwillis@bbklaw.com |
| Jim Hill | jhill@cityofchino.org |
| Jim Taylor | jim_taylor@ci.pomona.ca.us |
| Joe Graziano | jgraz4077@aol.com |
| 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 Kennedy | jkennedy@ocwd.com |
| John Mura | jmura@chinohills.org |
| John Rossi | jrossi@wmwd.com |
| Jon Lambeck | jlambeck@mwdh2o.com |
| Jorge Rosa Jr. | Jorge.Rosa@sce.com |
| Julie Velez | JVelez@sdcwa.org |
| Justin Brokaw | jbrokaw@hughes.net |
| Karen Johnson | kejwater@aol.com |
| Kathy Kunysz | kkunysz@mwdh2o.com |
| Kathy Tiegs | Kathyt@cvwdwater.com |
| Ken Jeske | kjeske@eee.org |
| Ken Kules | kkules@mwdh2o.com |
| Ken Manning | KManning@CBWM.ORG |
| Ken Waring | kwaring@jcsd.us |
| Kenneth Willis | kwillis@homeowners.org |
| Kevin Blakeslee | kblakeslee@dpw.sbcounty.gov |
| Kevin Sage | Ksage@IRMwater.com |
| Kurt Berchtold | kberchtold@rb8.swrcb.ca.gov |
| Kyle Snay | kylesnay@gswater.com |
| Lindsay Gomez | lgomez@wildermuthenvironmental.com |
| Lisa Hamilton | Lisa.Hamilton@corporate.ge.com |
| Marguerite P Battersby | pbattersby@sheppardmullin.com |
| Maribel Sosa | Maribel_Sosa@ci.pomona.ca.us |
| Mark Norton | mnorton@sawpa.org |
| Marsha Westropp | MWestropp@ocwd.com |
| Martin Zvirbulis | martinz@cvwdwater.com |
| Michael Whitehead | mlwhitehead@sgvwater.com |
| Michelle Lauffer | mlauffer@jcsd.us |
| Mike Thies | mthies@spacecenterinc.com |
| Neil Miller | neil_miller@ci.pomona.ca.us |
| W. C. "Bill" Kruger | wkrugers@earthlink.net |
| W. C. "Bill" Kruger | citycouncil@chinohills.org |

**Members:**

| | |
|---|---|
| Manuel Carrillo | Manuel.Carrillo@SEN.CA.GOV |
| Maria Linzay | mlinzay@ci.upland.ca.us |
| Maria Mendoza | mmendoza@wildermuthenvironmental.com |
| Maribel Sosa | Maribel_Sosa@ci.pomona.ca.us |
| Mark Kinsey | mkinsey@mvwd.org |
| Mark Ward | mark_ward@ameron-intl.com |
| Mark Wildermuth | mwildermuth@wildermuthenvironmental.com |
| Marla Doyle | marla_doyle@ci.pomona.ca.us |
| Marsha Westropp | MWestropp@ocwd.com |
| Martha Davis | mdavis@ieua.org |
| Martin Rauch | martin@rauchcc.com |
| Martin Zvirbulis | martinz@cvwdwater.com |
| Marv Shaw | mshaw@ci.ontario.ca.us |
| Masha Klachko Blair | mklachko-blair@bhfs.com |
| Maynard Lenhert | directorlenhert@mvwd.org |
| Melanie Otero | melanie_otero@ci.pomona.ca.us |
| Michael Camacho | mcamacho@pacificaservices.com |
| Michael T Fife | MFife@bhfs.com |
| Mike Maestas | mmaestas@chinohills.org |
| Mohamed El-Amamy | melamamy@ci.ontario.ca.us. |
| Nate Mackamul | Nate.Mackamul@cdcr.ca.gov |
| Nathan deBoom | n8deboom@gmail.com |
| Pam Sharp | PSharp@chinohills.org |
| Pam Wilson | pwilson@bhfs.com |
| Pat Glover | pglover@cityofchino.org |
| Patrick Mead | pmead@dpw.sbcounty.gov |
| Patrick Sheilds | psheilds@ieua.org |
| Paul Deutsch (paul.deutsch@amec.com) | paul.deutsch@amec.com |
| Paul Hofer | farmwatchtoo@aol.com |
| Paul Schenk | pschenk@ldking.com |
| Peggy Asche | peggy@wvwd.org |
| Pete Hall | r.pete.hall@cdcr.ca.gov |
| Peter Hettinga | peterhettinga@yahoo.com |
| Phil Krause | pkrause@parks.sbcounty.gov |
| Phil Rosentrater | prosentrater@wmwd.com |
| Raul Garibay | raul_garibay@ci.pomona.ca.us |
| Richard Atwater | Atwater@ieua.org |
| Rick Hansen | rhansen@tvmwd.com |
| Rick Rees (Richard.Rees@amec.com) | Richard.Rees@amec.com |
| Rob Vanden Heuvel | Robert.t.van@gmail.com |
| Robert C. Hawkins | RHawkins@earthlink.net |
| Robert Cayce | rcayce@airports.sbcounty.gov |
| Robert DeLoach | robertd@cvwdwater.com |
| Robert Neufeld | rrneufeld@sbvwcd.dst.ca.us |
| Robert Nobles | Robert.Nobles@cdcr.ca.gov |
| Robert Tock | rtock@jcsd.us |
| Robert Young | rkyoung@fontanawater.com |
| Roger Han | roger_han@praxair.com |
| Ron Craig | RonC@rbf.com |
| Sam Fuller | samf@sbvmwd.com |
| Sandra S. Rose | directorrose@mvwd.org |
| Sandy Lopez | slopez@ci.ontario.ca.us |
| Sarah Kerr | skerr@ci.ontario.ca.us. |
| Sarah Schneider (sarah.schneider@amec.com) | sarah.schneider@amec.com |
| Scott Burton | sburton@ci.ontario.ca.us |
| Scott Slater | sslater@bhfs.com |
| Shaun Stone | sstone@ci.upland.ca.us |
| Sherrie Schnelle | sschnelle@chinohills.org |
| Sonya Bloodworth | sbloodworth@wmwd.com |
| Steve Arbelbide | sarbelbide@californiasteel.com |
| Steve Nix | snix@chinohills.org |

| | |
|---|---|
| Steve Riboli | steve.riboli@sanantoniowinery.com |
| Ted Leaman | tleaman@sunkistgrowers.com |
| Terry Catlin | tlcatlin@verizon.net |
| Tim Hampton | tim_hampton@ci.pomona.CA.US |
| Tim Skrove | tskrove@mwdh2o.com |
| Toby Moore | TobyMoore@gswater.com |
| Tom Cruikshank | tcruikshank@spacecenterinc.com |
| Tom Harder | thomas_harder@att.net |
| Tom Haughey | tom@haugheyinsurance.com |
| Tom Love | TLove@ieua.org |
| Toni Medel | mmedel@RBF.com |
| Tracy Tracy | ttracy@mvwd.org |
| Umesh Shah | ushah@jcsd.us |
| Van Jew | vjew@mvwd.org |
| Vicki Hahn | vhahn@tvmwd.com |
| William P. Curley | wcurley@rwglaw.com |
| WM Admin Staff | |

**Members:**

| | |
|---|---|
| Alfred E. Smith | asmith@nossaman.com |
| Allen W. Hubsch | awhubsch@hhlaw.com |
| Amy Steinfeld | asteinfeld@bhfs.com |
| Andrew Lazenby | lazenbyag@bv.com |
| Art Kidman | akidman@mkblawyers.com |
| Barbara Swanson | Barbara_Swanson@yahoo.com |
| Beth Barry | bethb@cvwdwater.com |
| Bob Feenstra | bobfeenstra@gmail.com |
| Carol | marie@tragerlaw.com |
| Carol Davis | cdavis@lagerlof.com |
| Chris Swanberg | chris.swanberg@corr.ca.gov |
| Dan McKinney | dmckinney@rhlaw.com |
| Eric Garner | elgarner@bbklaw.com |
| Fred Fudacz | ffudacz@nossaman.com |
| Jean Cihigoyenetche | Jean_CGC@hotmail.com |
| jeeinc@aol.com | jeeinc@aol.com |
| Jennifer Novak | jennifer.novak@doj.ca.gov |
| Jill Willis | jnwillis@bbklaw.com |
| Jim Markman | jmarkman@rwglaw.com |
| Jim@city-attorney.com | Jim@city-attorney.com |
| jimmy@city-attorney.com | jimmy@city-attorney.com |
| John Cotti | jcotti@localgovlaw.com |
| John Schatz | jschatz13@cox.net |
| Joseph S. Aklufi | AandWLaw@aol.com |
| Kuperberg, Joel | jkuperberg@rutan.com |
| Marguerite P Battersby | pbattersby@sheppardmullin.com |
| Mark Hensley | mhensley@localgovlaw.com |
| Michelle Staples | mstaples@jdplaw.com |
| Rodney Baker | rodbaker03@yahoo.com |
| smt@tragerlaw.com | smt@tragerlaw.com |
| Steve Kennedy | skennedy@bbmblaw.com |
| Steven K. Beckett | skbeckett@bbmblaw.com |
| Steven Lee | slee@rhlaw.com |
| Steven R. Orr | sorr@rwglaw.com |
| Tom Bunn | TomBunn@Lagerlof.com |
| Tom McPeters | THMcP@aol.com |
| Tram Tran | ttran@mkblawyers.com |
| William J. Brunick | bbrunick@bbmblaw.com |
| William P. Curley | wcurley@rwglaw.com |