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

CHINO BASIN MUNICIPAL WATER  
 DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, ET AL.,

Defendants.

Case No: RCVRS 51010 (formerly 164327)

**AMENDED NOTICE OF RELATED CASE**

*[Assigned for All Purposes to the Honorable  
 Stanford E. Reichert]*

Department: R6

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 In accordance with California Rules of Court, Rule 3.300, Defendant TAMCO hereby  
3 gives notice that the instant case, Case No. CIVDS1601994, the complaint to which is  
4 attached as **Exhibit A** (the "Complaint"), is related to *Chino Basin Municipal Water District v.*  
5 *City of Chino, et al.*, San Bernardino Superior Court Case No. RCVR 51010 (formerly 164327),  
6 filed January 2, 1975 (the "Chino Basin Action"). The two cases are related because:

7 1. Case No. CIVDS 1601994 seeks to quiet title to certain water rights that exist  
8 and are administered pursuant to the judgment in the Chino Basin Action.

9 2. Plaintiff Ameron International Corp. ("Ameron") and Defendant TAMCO in Case  
10 No. CIVDS1601994 also are parties to the Chino Basin Action.

11 3. The Chino Basin Action remains pending with an active docket, and the Court in  
12 that action continues to manage the water resources of the Chino Basin and the water rights of  
13 the parties, including Ameron and TAMCO, on an ongoing basis.

14 4. Ultimately the Court in the Chino Basin Action must establish the ownership of  
15 the same water rights that are at issue in Case No. CIVDS 1601994, whether by action of  
16 Watermaster as an arm of the Court or by undertaking de novo judicial review. It would  
17 conserve judicial resources for the Court in the Chino Basin Action to hear Case No. CIVDS  
18 1601994 in the first instance.

19 **I. BACKGROUND**

20 The Chino Basin Action was initiated in 1975 when several Chino Basin water  
21 producers filed suit to settle the problem of allocating water rights in the Chino Basin. The  
22 action resulted in an original judgment signed on January 27, 1978, which was amended and  
23 restated in 2012. A copy of the legally operative restated judgment is attached as **Exhibit B**  
24 (the "Chino Basin Judgment" or "Judgment"). The Chino Basin Action remains pending in  
25 Department R6 of San Bernardino Superior Court pursuant to the Court's reservation of  
26 continuing jurisdiction. (See Exhibit B, Judgment, § 15, pp.9-10.)

27 The Chino Basin Judgment adjudicated all groundwater rights in Chino Basin and  
28 contains a physical solution to meet the requirements of water users having rights in the Chino

1 Basin. (See *generally* Exhibit B, Judgment.) The Judgment established Watermaster as a  
2 Court-created entity to administer and enforce the provisions of the Judgment and any  
3 subsequent instructions or orders of the Court. (*Id.* at § 16, p.10.) The Judgment declares and  
4 allocates rights to the Basin's safe yield to members of the Agricultural Pool, the Non-  
5 Agricultural Pool, and the Appropriative Pool. (*Id.* at § 44, p.21.)

6 The duties of Watermaster include reviewing and approving transfers of water rights  
7 between parties to the Judgment, as set forth in the first Chino Basin Peace Agreement dated  
8 June 29, 2000, a copy of which is attached as **Exhibit C** ("Peace I"). (See Exhibit C, Peace I,  
9 at § 5.3, pp.31-35.) Watermaster's discretion to disapprove a proposed transfer is strictly  
10 limited. In order to disapprove a transfer, Watermaster must find a "Material Physical Injury"  
11 (see *id.* at § 5.3(b), pp.31-32), defined as certain injuries resulting from physical causes such  
12 as rising groundwater – not economic injuries. (*Id.* at § 1.1(y), p.8.) Any party to the Judgment  
13 may seek de novo judicial review of Watermaster's action or decision. (See *id.* at § 5.3(b)(vi),  
14 pp.32-33; Exhibit B, Judgment, at § 31(d), p.14.) In addition, any party may file a motion with  
15 the Court asserting that another party has lost its water rights under the Judgment. (See  
16 Exhibit B, Judgment, at § 61, p.27.)

17 The Complaint in Case No. CIVDS1601994 alleges that the plaintiff, Ameron, is a party  
18 to the Judgment and holds 82.858 acre-feet of rights to safe yield as a member of the Non-  
19 Agricultural Pool. (Exhibit A, Complaint, at ¶¶ 12, 19.) TAMCO also became a party to the  
20 Judgment in 2013 in connection with the transfer of 15 acre-feet of Ameron's rights to TAMCO.  
21 (See *id.*, at ¶¶ 26-28.)

22 The Complaint alleges that Ameron continues to hold 82.858 acre-feet of rights to safe  
23 yield under the Judgment, even though an application to transfer the water rights to TAMCO  
24 was submitted to Watermaster on June 11, 2014. (See Exhibit A, Complaint, at ¶¶ 21, 38, 46.)  
25 After Watermaster started processing the application and provided Ameron with notice of the  
26 imminent transfer, Ameron suddenly objected to Watermaster's approval and asked that  
27 Watermaster not process the transfer. (*Id.* at ¶¶ 50-51.) The Complaint seeks to cancel or  
28

1 rescind the water transfer documents based on allegations of mistake and fraud. (*Id.* at ¶¶ 49-  
2 56.)

## 3 **II. LEGAL ANALYSIS**

4 Two civil cases are related pursuant to CRC, Rule 3.300, subdivision (a), regardless of  
5 whether the first case is currently pending or was disposed of by judgment, if the cases:

- 6 (1) Involve the same parties and are based on the same or similar claims;
- 7 (2) Arise from the same or substantially identical transactions, incidents, or events  
8 requiring the determination of the same or substantially identical questions of law  
9 or fact;
- 10 (3) Involve claims against, title to, possession of, or damages to the same property;  
11 or
- 12 (4) Are likely for other reasons to require substantial duplication of judicial resources  
13 if heard by different judges.

14 Cases may be related if they satisfy any one of the above criteria. Case No. CIVDS 1601994  
15 and the Chino Basin Action should proceed as related cases because they satisfy three of the  
16 four criteria.

### 17 **A. The Cases Are Related Because They Involve the Same Parties and Are** 18 **Based on Similar Claims.**

19 These two cases qualify as related under the first criterion set forth in California Rules of  
20 Court, Rule 3.300, subdivision (a), because they “involve the same parties and are based on . .  
21 . similar claims.” Both Ameron and TAMCO are parties to Case No. CIVDS 1601994. Both  
22 entities also are parties to the Chino Basin Action as members of the Non-Appropriative Pool  
23 under the Judgment. (See Exhibit A, Complaint, at ¶¶ 12, 19, 26-28.) Because Ameron and  
24 TAMCO are parties to both cases, the cases “involve the same parties,” regardless of how  
25 many additional parties may be involved in the Chino Basin Action.

26 Further, the two cases are “based on . . . similar claims” because Ameron’s Complaint  
27 in Case No. CIVDS 1601994 seeks to cancel or rescind a pending water transfer that the  
28



1 Court-appointed Watermaster is required to approve in the Chino Basin Action.<sup>1</sup> (See Exhibit  
2 C, Peace I, at § 5.3, pp.31-35.) All the causes of action asserted by Ameron in Case No.  
3 CIVDS 1601994, including quiet title, seek to prevent or reverse such approval. Ameron's  
4 claims are similar to TAMCO's request in the Chino Basin Action that Watermaster establish  
5 the validity of the water transfer.

6 **B. The Cases Are Related Because They Involve Claims Against, or Title to,**  
7 **the Same Property.**

8 These two cases qualify as related under the third criterion set forth in California Rules  
9 of Court, Rule 3.300, subdivision (a), because they "[i]nvolve claims against, [or] title to, . . . the  
10 same property." Ameron's Complaint in Case No. CIVDS 1601994 seeks to quiet title to  
11 82.858 acre-feet of safe yield water rights that are allocated to the Non-Agricultural Pool under  
12 the Judgment. The 82.858 acre-feet of water rights exist and are administered pursuant to the  
13 Chino Basin Action, and they have no value unless their ownership is recognized in the Chino  
14 Basin Action. Ownership of the 82.858 acre-feet of water rights necessarily is at issue in the  
15 Chino Basin Action. Thus, the two cases involve claims against, and title to, the same  
16 property.

17 **C. The Cases Are Related Because They Are Likely to Require Substantial**  
18 **Duplication of Judicial Resources if Heard by Different Judges.**

19 These two cases qualify as related under the fourth criterion set forth in California Rules  
20 of Court, Rule 3.300, subdivision (a), because they "[a]re likely for other reasons to require  
21 substantial duplication of judicial resources if heard by different judges." The Court in the  
22 Chino Basin Action retains jurisdiction to oversee the Judgment (see Exhibit B, Judgment, §  
23 15, pp.9-10), and after many decades the Chino Basin Action remains pending with an active  
24 docket. The 82.858 acre-feet of safe yield water rights at issue in Case No. CIVDS 1601994  
25 exist and are administered pursuant to the Judgment. Ultimately the Court in the Chino Basin  
26 Action must establish the ownership of those water rights, whether by the action of  
27

28 <sup>1</sup> Watermaster cannot disapprove the transfer because there are no facts that could support a  
finding of "Material Physical Injury." (See Exhibit C, Peace I, at § 1.1(y), p.8.)

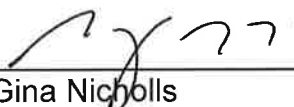
1 Watermaster as an arm of the Court, or by undertaking de novo judicial review pursuant to  
2 Peace I, § 5.3(b)(vi) or pursuant to the Judgment, § 31, subd. (d) or § 61. The Court in the  
3 Chino Basin Action already is familiar with the requirements of the Judgment, Peace I, and  
4 numerous other documents that interpret and give effect to the Judgment, and that Court  
5 would not need to expend judicial resources to understand the nature of the water rights at  
6 issue, nor the requirements related to their transfer. Therefore, it would serve the interest of  
7 judicial economy to relate the two cases.

8 **III. CONCLUSION**

9 Relating Case No. CIVDS 1601994 with the Chino Basin Action will conserve judicial  
10 resources and respect the broad reservation of jurisdiction in the Chino Basin Action. TAMCO  
11 respectfully requests that the Court deem the cases to be related.

12  
13 Dated: April 25, 2016

NOSSAMAN LLP  
Byron Gee  
Gina Nicholls

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16  
17 By:   
18 Gina Nicholls  
19 Attorneys for Defendant, TAMCO  
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## **EXHIBIT “A”**

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

AMERON INTERNATIONAL CORP.,  
a Delaware corporation

Plaintiff,

vs.

TAMCO, a California corporation  
and DOES 1 through 100, inclusive,  
Defendants.

Case No.

CIVDS1601994

~~CIVDS1601984~~

VERIFIED COMPLAINT TO  
QUIET TITLE AND REMOVE  
CLOUD ON TITLE;  
CANCELLATION; RESCISSION  
BASED ON FRAUD; RESCISSION  
BASED ON MISTAKE; AND FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

Plaintiff, AMERON INTERNATIONAL CORP., a Delaware corporation [individually and  
as successor in interest to Ameron Steel Producers, Inc.] (hereinafter, "Ameron" or "Plaintiff") for

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

FEB 09 2016

BY

JESSICA MORALES, DEPUTY

1 its Complaint against Defendant, TAMCO, a California corporation, and DOES 1 through 100  
2 inclusive, complains and alleges, as follows:

3 I.

4 THE PARTIES

5 1. Plaintiff Ameron is a Delaware corporation with its principal place of business in  
6 Houston, Harris County, Texas, and is duly authorized to do business in the State of California.

7 2. Defendant TAMCO ("TAMCO") is a California corporation with its principal place  
8 of business in Rancho Cucamonga, San Bernardino County, California.

9 3. The true names and capacities, whether individual, corporate, associate, or otherwise  
10 of defendants Does 1 through 100 (collectively, the "Doe Defendants"), inclusive, are unknown to  
11 Plaintiff, who, therefore, sues such defendants by their fictitious names pursuant to California Code  
12 of Civil Procedure Section 474. Plaintiff will amend this Complaint to show such Doe Defendants'  
13 true names and capacities once they have been ascertained. Plaintiff is informed and believes and  
14 thereon alleges that these fictitiously named Defendants also claim some right, title, estate, lien, or  
15 interest in the water rights in the property described below adverse to Plaintiff's title as more  
16 specifically described herein, and such Doe Defendants' claims, and each of them, constitute a cloud  
17 on Plaintiff's title. Plaintiff is further informed and believes and based thereon alleges that each of  
18 the Doe Defendants is in some way responsible for Plaintiff's damages as alleged herein. Plaintiff is  
19 further informed and believes and based thereon alleges that each such Doe Defendant was aware  
20 that TAMCO and others planned to commit the fraud alleged herein and TAMCO agreed with such  
21 Doe Defendants and intended that the fraud be committed. (TAMCO and the Doe Defendants are  
22 collectively referred to herein as "Defendants".)

23 4. Plaintiff is informed and believes and thereon alleges that, at all times herein alleged,  
24 each Defendant, including TAMCO and each Doe Defendant, was the agent, employee, partner, heir,  
25 successor, assign, executor, administrator or trustee, general partners, joint venturer, corporate or  
26 other alter ego, or subsidiary of the other defendants in the commission of the acts or in the  
27 omissions herein alleged, and was acting the course and scope of its authority as such agency,  
28 employment, partnership, joint venture, alter ego, or subsidiary relationship, and with the express

1 and implied permission, knowledge, consent and ratification, and acted in concert with each  
2 remaining Defendant. Plaintiff is further informed and believes and thereon alleges that the  
3 Defendants knew or should have known that their acts and omissions would cause substantial harm  
4 to Plaintiff. Plaintiff is further informed and believes and thereon alleges that each of such  
5 Defendants acquiesced in and ratified the conduct of each other Defendant as alleged herein.  
6 Plaintiff is informed and believes and thereon alleges that the Defendants actively participated in or  
7 subsequently ratified or adopted, or both, each and all of the act omissions or conduct with full  
8 knowledge of the material facts and circumstances and with the intent and purpose of effecting the  
9 alleged acts and omissions about which Ameron complains.

10 **II.**

11 **JURISDICTION AND VENUE**

12 5. This court has jurisdiction over the subject matter of this Complaint pursuant to Code  
13 of Civil Procedure § 760.040, in that this is an action with respect to water rights beneath real  
14 property located in the County of San Bernardino, and pursuant to Code of Civil Procedure § 410.10  
15 in that acts giving rise to this action occurred in the County of San Bernardino, and Plaintiff and  
16 Defendants were and are doing business in the County of San Bernardino, and the amount in  
17 controversy is in excess of \$25,001, exclusive of interest and costs.

18 6. Venue is proper in this Court and in the County of San Bernardino pursuant to  
19 California Code of Civil Procedure §§ 392 and 760.050, in that the real property and interests therein  
20 that are the subject of this action are located in San Bernardino County, California.

21 **III.**

22 **FACTUAL BACKGROUND AND SUBSTANTIVE ALLEGATIONS**

23 **A. AMERON'S WATER RIGHTS**

24 7. Until 2013, Ameron owned certain real property consisting of thirty and 722/1000  
25 (30.722) acres, more or less, in San Bernardino County, located at 12459 Arrow Route in Rancho  
26 Cucamonga, California, and more particularly described as "Parcel 3 of Parcel Map No. 7847, in the  
27 city of Rancho Cucamonga, County of San Bernardino, State of California, as per plat recorded in  
28 Book 82 of Parcel Maps, Pages 48 through 51, inclusive, records of said County" ("Real Property").

1           8.       The Real Property sits atop the Chino Basin, an underground aquifer covering over  
2 220 square miles ("Basin") that provides water for over 700,000 residents. The Basin's storage  
3 capacity is between 5 and 7 million acre-feet, and the safe yield from over 800 active wells within  
4 the Basin is more than 140,000 acre-feet a year. The Basin is strategically located amid one of the  
5 population centers and major growth areas of Southern California.

6           9.       On January 2, 1975, several Chino Basin water producers filed suit in Superior Court  
7 for the County of San Bernardino (Case No. 164327) to settle the problem of allocating water rights  
8 in the Chino Basin. On January 27, 1978, the Court entered a judgment in *Chino Basin Municipal*  
9 *Water District v. City of Chino et. al.*, adjudicating water rights in the Chino Basin and creating a  
10 physical solution to meet the requirements of water users having rights in or dependent upon the  
11 Chino Basin ("1978 Judgment").

12           10.     In the 1978 Judgment, Ameron was awarded right to draw a safe yield of up to 93.858  
13 acre-feet of water per year from its existing water wells without charge for replenishment. Any  
14 portion of such safe yield not drawn by Ameron in a given year was deemed to accumulate and  
15 remain in local storage within the Basin for Ameron's future benefit. For example, as of June 2007,  
16 Ameron had accrued rights with respect to approximately 1,764.485 acre-feet of water in local  
17 storage. Ameron received approximately \$617,570 in exchange for the transfer of its rights in and to  
18 such local storage.

19           11.     The 1978 Judgment also created an entity, known as the "Chino Basin Watermaster"  
20 ("Watermaster"), to plan, account for and manage the Chino Basin, including monitoring of each  
21 water producer's compliance with its adjudicated safe yield and the calculation of a user's local  
22 storage volumes. As part of its management of the Basin, the Watermaster levies and collects  
23 certain small assessments based upon, among other things, the amount of a water producer's safe  
24 yield, to cover general administrative, special project and replenishment costs.

25           12.     The 1978 Judgment was amended and restated, most recently in a "Restated  
26 Judgment" made effective by order entered by the Superior Court for the County of San Bernardino  
27 in *Chino Basin Municipal Water District v. City of Chino et. al.* (Case No. RCV 51010) on  
28 September 27, 2012 ("Restated Judgment"). Pursuant to the Restated Judgment, Ameron's Safe

1 Yield was increased to 97.858 acre-feet. At such time, Ameron had rights in and to approximately  
2 264.274 acre-feet of water in local storage, which continued to accrue.

3 **B. THE REAL ESTATE CONTRACT AND THE SALE OF THE PROPERTY TO**  
4 **TAMCO**

5 13. In or about late 2012, TAMCO sought to purchase the approximately 30-acre Real  
6 Property. The negotiations were handled primarily by Matthew Robey, Ameron's real estate counsel  
7 in Houston, and TAMCO's outside counsel, Karla McCary and Byron Gee, both of the Nossaman  
8 law firm. Ameron's California personnel, who were involved in Ameron's dealings with the  
9 Watermaster, did not participate in such negotiations.

10 14. During the course of negotiations between the Ameron's Houston lawyer and  
11 TAMCO's California lawyers, Ms. McCary raised the issue of TAMCO's purchase of Ameron's  
12 water rights in the Chino Basin.

13 15. In February 2013, after several months of back and forth negotiations on such issue,  
14 Ameron agreed to sell TAMCO the Real Property and a total of fifteen (15) acre feet of Ameron's  
15 yearly 97.858 acre feet safe yield in the Basin pursuant to a "Real Estate Contract and Joint Escrow  
16 Instructions" executed by the parties thereto on February 26, 2013 ("Real Estate Contract"). A true  
17 and correct copy of the Real Estate Contract reflecting such sale is attached hereto as Exhibit "A".

18 16. The Real Estate Contract was executed on behalf of Ameron by Kenneth A. Jeck,  
19 Vice President- Risk Management of Ameron, who had been specifically authorized by Ameron to  
20 execute the Real Estate Contract.

21 17. The Real Estate Contract was executed on behalf of TAMCO by Robert Wallace,  
22 Senior Corporate Attorney and Assistant Secretary of TAMCO. Plaintiff is informed and believes  
23 and thereon alleges that Mr. Wallace had been specifically authorized by TAMCO to execute the  
24 Real Estate Contract on its behalf.

25 18. Pursuant to the Real Estate Contract, Ameron agreed to sell to TAMCO the Real  
26 Property "together with those certain buildings and improvements located thereon" for Seventeen  
27 Million Dollars (\$17,000,000).  
28



19. Ameron also agreed in the Real Estate Contract agreed to sell a small portion of its water rights which the parties specifically defined in Section 1.01 of the Real Estate Contract, as follows:

***"Water Rights" shall mean fifteen (15) acre-feet of Decreed Share of Safe Yield of Chino Basin Non-Agricultural Pool Rights**, as such terms are defined and used in the Water Rights Judgment, As of September 5, 2012, the Seller's Water Rights include 125 acre-feet of Total Overlying Non-Agricultural Rights, which is 97.858 acre-feet of Decreed Share of Safe Yield of Chino Basin Non-Agricultural Pool Rights."*

20. By Section 4.01 of the Real Estate Contract, Ameron agreed to sell TAMCO and TAMCO agreed to purchase the "Water Rights" specifically described in Section 1.01:

***"Transfer of Water Rights"**. The sale contemplated by this Agreement includes the transfer of the Water Rights. Purchaser is responsible for processing the Water Rights transfer documents with the Watermaster and any other appropriate governmental agencies. Seller shall cooperate with Purchaser's efforts to effect the transfer of the Water Rights including signing necessary applications and documents. It is understood that the procedures to effect the transfer of the Water Rights are not expected to be completed by the Closing, and is expected to take several months."*

Section 4.01, read together with the definition of "Water Rights" in Section 1.01 unambiguously states and confirms that the only water rights which the parties intended would be transferred to TAMCO were the fifteen (15) acre-feet of Decreed Share of Safe Yield of Chino Basin Non-Agricultural Pool Rights and nothing else.

21. As a result of the February 2013 sale pursuant to the Real Estate Contract, Ameron owned and still owns 82.858 safe yield water rights, together with its local storage rights not covered by the Real Estate Contract. Ameron's right to draw 82.858 acre feet of yearly safe yield and its rights with respect to the local storage following the Real Estate Contract are referred to collectively hereafter as the "Ameron's Retained Water Rights."

///

1           22.    Section 12.03 of the Real Estate Contract states:

2                   “Merger. This Agreement represents the complete understanding between the parties  
3                   hereto and supersedes all prior negotiations, representations or Agreements, either  
4                   written or oral, as to the Real Property. This Agreement may be amended only by  
5                   written Instrument signed by both parties. No requirement, obligation, remedy or  
6                   provision of this Agreement shall be deemed to have been waived unless expressly  
7                   waived in writing and such waiver shall not affect the right to enforce any other  
8                   provisions hereof or such provision hereafter.”

9           23.    Following the February 2013 execution of the Real Estate Contract, Ameron has not  
10           ever agreed in writing or otherwise to modify the Real Estate Contract and has never executed or  
11           authorized any document modifying the Real Estate Contract or transferring all or any portion of the  
12           Ameron’s Retained Water Rights or any water rights related to the Real Property other those “Water  
13           Rights” specifically defined in Section 1.01 of the Real Estate Contract as “fifteen (15) acre-feet of  
14           Decreed Share of Safe Yield of Chino Basin Non-Agricultural Pool Rights” (hereinafter, the  
15           “TAMCO Water Rights”).

16           24.    Section 12.09 of the Real Estate Contract provides:

17                   “Attorneys’ Fees: In any Action, the prevailing party shall be entitled to recover actual  
18                   attorneys’ fees and all other litigation costs including without limitation costs  
19                   awardable pursuant to California Code of Civil Procedure Section 1033.5 and  
20                   amounts payable to expert witnesses (“Costs”) in addition to any other available  
21                   remedy. In addition to the fees and Costs recoverable under the preceding sentence,  
22                   the parties agree that the prevailing party shall be entitled to recover actual attorneys’  
23                   fees and Costs incurred In connection with the enforcement of a judgment arising  
24                   from such Action.”

25           **C.    THE TRANSFER OF THE TAMCO WATER RIGHTS**

26           25.    Under Section 4.01 the Real Estate Contract, TAMCO was “responsible for  
27           processing the . . . transfer documents with the Watermaster and any other governmental agencies.”  
28

1 Ameron's obligation was to "cooperate with [TAMCO] to effect the transfer . . . [that] is expected to  
2 take several months" after closing.

3 26. In both the Watermaster's regulations and the Restated Judgment, any such transfer  
4 must be approved by the Watermaster. Under the Restated Judgment, all actions taken by the  
5 Watermaster are subject to de novo review by the Superior Court of San Bernardino County, which  
6 maintains continuing jurisdiction over the Watermaster.

7 27. Therefore, the transfer of the TAMCO Water Rights, that is, the 15 acre feet of  
8 Ameron's safe yield, to TAMCO was effective only upon approval by the Watermaster and the court  
9 which entered the Restated Judgment pursuant to Section 1.01 and 4.01 of the Real Estate Contract.

10 28. Between May and July 2013, TAMCO's counsel, Byron Gee, dealt directly with Mr.  
11 Robey and Ameron's other real estate representatives in Houston under Mr. Robey's supervision to  
12 obtain from Ameron the documents necessary to secure the approval of TAMCO's purchase of the  
13 TAMCO Water Rights, that is, the 15 acre feet of safe yield. Ameron's California personnel, who  
14 were responsible for Ameron's dealings with the Watermaster, were not involved in such  
15 discussions.

16 29. Mr. Gee provided Ameron's Houston representatives with a "draft letter . . . and  
17 [Watermaster] consolidated forms 3, 4 and 5" for "the transfer of 15 acre-feet of Ameron's share of  
18 safe yield to TAMCO" ("collectively, the 2013 Transfer Documents").

19 30. Ameron's Houston representatives reviewed, approved and caused the 2013 Transfer  
20 Documents to be signed and returned to Mr. Gee on May 30, 2013.

21 **D. TAMCO'S EFFORTS TO COMMANDEER AMERON'S RETAINED WATER**  
22 **RIGHTS**

23 31. On September 30, 2013, Mark Ward, an Ameron employee previously based in  
24 California and a person at Ameron who dealt with the Watermaster, received the Watermaster's  
25 "Water Activity Report" for Ameron for the period July 1, 2012 – June 30, 2013. Such report  
26 contained the Watermaster's calculation of Ameron's "storage account balances, Share of Safe  
27 Yield, well production and water transfers." Ameron was instructed by the Watermaster to review  
28 and confirm the calculations by September 12, 2013.

1           32.     Mr. Ward, who had recently transferred to Phoenix from Ameron's California office,  
2     had no involvement with or information regarding the terms of the 2013 Real Estate Contract, but  
3     understood that TAMCO had purchase certain water rights of Ameron. Mr. Ward mistakenly  
4     thought that TAMCO may have purchased all of Ameron's Retained Water Rights.

5           33.     If TAMCO had purchased such rights, TAMCO was the party responsible for  
6     communications with the Watermaster. Mr. Ward, therefore, sought confirmation from Jeff  
7     Dambrun, Mr. Ward's counterpart at TAMCO, stating in an e-mail:

8           "Dani [the assistant general manager of Watermaster] sent these to me as usual. I  
9     thought that you were going to handle all the reporting with them now? Am I  
10    mistaken?"

11    In fact, Mr. Ward was mistaken. However, Mr. Dambrun of TAMCO did not correct Mr. Ward's  
12    mistake and made no effort to inform Mr. Ward of the correct facts relating to Ameron's Retained  
13    Water Rights and, specifically, that TAMCO had no rights or interest in the Ameron's Retained  
14    Water Rights. Instead, Mr. Dambrun instructed Mr. Ward to send the documents to Mr. Dambrun.  
15    Without knowledge of the true facts and in reliance on Mr. Dambrun, Mr. Ward complied with Mr.  
16    Dambrun's instructions.

17           34.     On October 24, 2013, Mr. Ward's superior, Jeff Bruny, received an unsolicited e-mail  
18    from a third-party market research company requesting information regarding the "valuation" of the  
19    "15,000 AF (sic) out of the 97,858 AF (sic) of Ameron's adjudicated" Chino Basin Ameron's  
20    Retained Water Rights that were sold to TAMCO. Mr. Bruny, like Mr. Ward, had no involvement  
21    with or specific information regarding the terms of the 2013 Real Estate Contract, but understood  
22    that TAMCO had purchased certain water rights of Ameron in connection with the sale. Mr. Bruny  
23    asked Paul Pavlis, Ameron's in-house California counsel, whether Ameron owned any remaining  
24    water rights as was indicated by the correspondence Mr. Bruny had received. Like Messrs. Ward  
25    and Bruny, Mr. Pavlis likewise had no involvement with or specific information regarding the terms  
26    of the 2013 Real Estate Contract.

27           35.     Although Mr. Pavlis was working on a matter unrelated to Ameron's water rights, he  
28    reviewed Mr. Bruny's question, and obtained a copy of the Real Estate Contract from Mr. Robey.

1 Mr. Pavlis conducted a quick review of the water rights terms of sale in the contract for the first time  
2 and incorrectly concluded that all of Ameron's water rights had been sold to TAMCO as part of the  
3 land sale, not just the 15 acre-feet included within TAMCO's Water Rights as specified in that  
4 contract. Mr. Pavlis then informed Mr. Bruny and Mr. Ward of his mistaken conclusion.

5 36. Shortly thereafter, Mr. Ward received the Watermaster's assessment invoice in the  
6 amount of \$3,116.91. In reliance upon Mr. Dambrun's previous misrepresentation and Mr. Pavlis'  
7 error regarding the construction of the 2013 sale agreement, Mr. Ward informed TAMCO and the  
8 Watermaster of his mistaken belief that Ameron had sold all of its water rights to TAMCO in 2013.  
9 After discussions with Mr. Ward and TAMCO, the Watermaster informed the parties that it  
10 understood the parties' position was that the Watermaster's approval of Ameron's transfer of the 15  
11 acre-feet of safe yield specified in the 2013 Transfer Documents was in error, and that the remainder  
12 of Ameron's safe yield and all water in storage "should have also been transferred to TAMCO as  
13 part of that process." The Watermaster instructed the parties to inform the Watermaster if such  
14 understanding was incorrect. The Watermaster also informed the parties of the documents required  
15 to obtain the Watermaster's approval to correct the mistake. TAMCO knew that Ameron's transfer  
16 of the 15 acre feet of safe yield specified in the 2013 Transfer Documents was not an error or  
17 mistake, and that the remainder of Ameron's safe yield and all water in storage should not have also  
18 been transferred to TAMCO as part of the Watermaster's approval of the 2013 transfer. TAMCO,  
19 however, did not correct the Watermaster.

20 37. Instead, TAMCO, with full knowledge of the mistakes and misunderstandings of  
21 Ameron regarding the Real Estate Contract, seized the opportunity. By e-mail dated January 27,  
22 2014, Mr. Dambrun represented to Mr. Ward that the Watermaster was inquiring as to whether  
23 TAMCO and Ameron had "corrected the water rights transfer from last year" and that TAMCO  
24 management had provided approval "to complete the transfer." TAMCO also offered to "prepare  
25 the appropriate documents for the transfer" and subsequently prepared such documents.

26 38. The documents sent by TAMCO to Mr. Ward on March 18, 2014 included a  
27 document entitled "Water Transfer Agreement" purporting to unconditionally transfer Ameron's  
28 82.858 safe yield and local storage rights "to eliminate the need for Ameron to pay ongoing fees

1 associated with the ownership of Chino Basin water rights.” TAMCO also provided Mr. Ward with  
2 Watermaster consolidated forms 3, 4 and 5 identical in form to the 2013 Transfer Documents with  
3 the exception of the safe yield being transferred. TAMCO inaccurately represented that such  
4 documents were “prepared to effectuate the transfer of Ameron’s water rights to TAMCO.” Such  
5 language was intended by TAMCO to apparently track the language of Ameron’s obligations in the  
6 2013 Real Estate Contract “to cooperate with [TAMCO’s] efforts to effect the transfer of Ameron’s  
7 Retained Water Rights including signing necessary applications and documents.”

8 39. At this point, or before, Plaintiff is informed and believes and thereon alleges that one  
9 or more of the Nossaman lawyers who had worked with Mr. Robey and clearly knew of Mr. Ward  
10 and Ameron’s mistake, prepared the documentation to allegedly “correct” the 15 acre feet transfer.  
11 Mr. Dambrun was certain to point out in his cover e-mail forwarding the transfer correction  
12 documents to Mr. Ward dated March 18, 2014, the asserted “consideration” that TAMCO and its  
13 lawyers had concocted for the “transfer” reflected in such documents: “TAMCO will pay all future  
14 Watermaster fees and assessments.” In fact, the payment of such “future Watermaster fees and  
15 assessments” was no actual consideration to Ameron.

16 40. As a result of the foregoing mistakes and misunderstandings, and in reliance on the  
17 inaccurate and deceptive statements and conduct of TAMCO and its employees and representatives,  
18 Mr. Ward signed the documents provided by TAMCO (and drafted by its counsel) and returned the  
19 documents to Mr. Dambrun on March 25 2014. On June 6, 2014, TAMCO provided Mr. Ward with  
20 Watermaster consolidated forms 3, 4 and 5 that had been slightly revised from the March 25 forms  
21 to include certain information which TAMCO said the Wastermaster was requesting in the forms,  
22 along with a letter to the Watermaster drafted by TAMCO for Mr. Ward’s signature regarding the  
23 transfer. Mr. Ward signed the revised forms and letter and delivered them to Mr. Dambrun on June  
24 10, 2014.

25 41. Mr. Ward signed all such documents in reliance upon TAMCO’s representations and  
26 concealments as a ministerial task in his mistaken and incorrect belief that the documents were made  
27 only to “effect” or “effectuate” a mere correction of the 2013 Transfer Documents. Based on  
28 TAMCO’s deceptions, Mr. Ward had no reason to believe that such documents were anything other

1 than the form of the documents that would be required by Watermaster "to correct" the ostensibly  
2 "incorrect" 15 acre feet safe yield specified in the 2013 Transfer Documents that were also prepared  
3 by TAMCO and its lawyers.

4 42. However, Mr. Ward was not authorized by Ameron to execute such documents or any  
5 other document transferring or purporting to transfer Ameron's Retained Water Rights, nor is Mr.  
6 Ward's position one which would have implied or actual authority to execute any such transfer of  
7 Ameron's Retained Water Rights. The 2014 Transfer Documents, unlike the 2013 Real Estate  
8 Contract, were not executed by an authorized officer of Ameron. Accordingly, the 2014 Transfer  
9 Documents are not enforceable as a contract of Ameron and were not binding on Ameron in any  
10 respect, and are void.

11 43. Plaintiff is informed and believes and thereon alleges that the 2014 Transfer  
12 Documents, unlike the 2013 Real Estate Contract, also were not executed by an authorized officer of  
13 TAMCO.

14 44. Neither Mr. Robey, nor anyone in Houston involved in the actual negotiations and  
15 discussions regarding the Real Estate Contract, knew anything of the foregoing exchange of  
16 correspondence and other communications or had any reason to be aware.

17 45. Plaintiff is informed and believes and thereon alleges that TAMCO and its lawyers,  
18 however, (i) knew that Ameron was represented by Houston counsel regarding Ameron's Retained  
19 Water Rights and all documents and agreements "to effect" the transfers of such rights and (ii)  
20 caused or encouraged TAMCO to communicate directly with Mr. Ward regarding the subject matter  
21 of Houston counsel's representation of Ameron. TAMCO's communications with Ameron were  
22 carefully crafted in such a manner so as not to alert Ameron and its lawyers regarding the mistake  
23 and to mislead Ameron employees into the belief that TAMCO shared such Ameron's mistaken  
24 belief. The 2014 Transfer Documents were drafted solely by TAMCO and its counsel with the  
25 express intent of not alerting Mr. Ward and Ameron's California personnel that "all" of Ameron's  
26 Retained Water Rights had not been sold to TAMCO in the 2013 property sale, and with the intent  
27 of masking TAMCO's plan to acquire a transfer of Ameron's remaining rights under the guise of a  
28 "correction" to the May 2013 Application.

1           46.     On June 11, 2014, Mr. Dambrun provided the Watermaster with the "Water Transfer  
2 Agreement," revised Watermaster consolidated forms 3, 4 and 5, and the letter drafted by TAMCO  
3 (or its counsel) and signed by Mr. Ward (collectively, the "2014 Transfer Documents"). Despite the  
4 fact that the 2014 Transfer Documents were void and unenforceable, Mr. Dambrun requested that  
5 the "transfer" be approved by the Watermaster.

6           47.     There exists in every contract in California a covenant of good faith and fair dealing  
7 which requires all parties to act in a fashion so as not to disrupt or disappoint the expectations of the  
8 other party. That covenant was present in the Real Estate Contract entered into between the Plaintiff  
9 and TAMCO regarding the transfer of the TAMCO Water Rights and Ameron's retention of Ameron  
10 Retained Water Rights.

11           48.     TAMCO and the Defendants breached such covenant implied in the Real Estate  
12 Contract by attempting to contravene the original 2013 agreement and commandeer Ameron's  
13 Retained Water Rights.

14           **E.     AMERON'S CANCELLATION OF THE 2014 TRANSFER DOCUMENTS**

15           49.     In July 2014, the Watermaster's determination of TAMCO's request for approval of  
16 the transfer was pending. It was soon to be presented to the board of the Watermaster.

17           50.     On July 11, 2014, just a few days before the Watermaster board's consideration, Mr.  
18 Robey learned fortuitously that Mr. Ward had been asked by TAMCO to sign a "Notice of  
19 Withdrawal from Non-Agricultural Pool." The document provided that Ameron "currently owns no  
20 Safe Yield or water in storage within the Chino Basin." Mr. Robey was shocked by such statements,  
21 and immediately began to investigate. Mr. Robey learned of portions of Ameron's mistake and  
22 TAMCO's conduct.

23           51.     Mr. Robey promptly informed the Watermaster on July 16, 2014 by letter that the Mr.  
24 Ward's signature on the 2014 Transfer Documents was the result of a mistake, and that Ameron  
25 objected to the Watermaster's approval of such attempted transfer and asked that the transfer not be  
26 processed.

27           52.     Additionally, Mr. Robey wrote a letter to TAMCO on July 18, 2014 presenting  
28 Ameron's position that Ameron reserved all but the 15 acres purchased by TAMCO. Mr. Robey



1 enclosed the July 16th letter sent to the Watermaster and informed TAMCO that "Mr. Ward was  
2 under the mistaken impression that all of the water rights had been sold, and that he was merely  
3 performing a ministerial function in recording an agreed-upon sale.... Furthermore, Mr. Ward, who  
4 is not an officer of Ameron, National Oilwell Varco, Inc. or any other related entity, would have no  
5 authority to enter into such an agreement on behalf of Ameron."

6 53. TAMCO's outside counsel, Mr. Gee, apparently acting behind the scenes in some  
7 manner at all times prior thereto, emerged from the shadows and by letter dated July 30, 2014,  
8 expressed TAMCO's position that the attempted transfer of the 82.585 acre-feet of the Chino Basin,  
9 that is, Ameron's Retained Water Rights, was a separate transfer void of evidence of any mistakes.  
10 That assertion was not true.

11 54. Mr. Gee further asserted that "[b]ased on the Ameron's actions and its agreement to  
12 transfer Chino Basin water rights to TAMCO, TAMCO incurred costs to effectuate the transfer and  
13 has made facility modifications that would allow it to receive and use the additional water rights in  
14 reliance of this transfer...TAMCO is entitled to the 82.585 acre-feet of Chino Basin water rights."

15 55. Ameron thereafter gave prompt notice of rescission to TAMCO and agreed and  
16 offered to restore to TAMCO everything of value that Ameron received from TAMCO under the  
17 contract or offer to restore the same upon condition that TAMCO do likewise, and TAMCO is  
18 unable or positively refuses to do so.

19 56. Mr. Ward's signature on the 2014 Transfer Documents was given by mistake, or  
20 obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of  
21 TAMCO and its agents, employees, representatives and attorneys, for which TAMCO is responsible.  
22 Ameron never authorized Mr. Ward to execute such documents on its behalf and did not consent to  
23 the transfer of the Ameron's Retained Water Rights. Accordingly, the 2014 Transfer Documents are  
24 void and unenforceable and are not a binding agreement of Ameron.

25 ///

26 ///

27 ///

28 ///

IV.

**FIRST CAUSE OF ACTION**

**TO QUIET TITLE AND TO REMOVE CLOUD ON TITLE**

57. Plaintiff hereby incorporates by reference paragraphs 1 through 56 of this complaint as though the same were set forth full hereat.

58. Plaintiff is informed and believes and thereon alleges that the Defendants and each of them claim or assert an interest in the Ameron's Retained Water Rights that is adverse to the rights and interests of Plaintiff in and to the Ameron's Retained Water Rights.

59. Plaintiff seeks a determination and judgment quieting its title in and to the Ameron's Retained Water Rights, as described above, and against the claims of Defendants, and each of them, and that the Defendants, and each of them, have no right, title or interest in the Ameron's Retained Water Rights and that the 2014 Transfer Documents constitute a cloud on Plaintiff's title to the Ameron's Retained Water Rights, and Defendants and each of them, have no right, title or interest in the Ameron's Retained Water Rights or any part thereof.

60. The claims of Defendants in and to the Ameron's Retained Water Rights are without any right whatsoever and such Defendants have no right, title, estate, lien, or interest whatever in the Ameron's Retained Water Rights or any part thereof.

61. Plaintiff seeks to quiet its title in and to the Ameron's Retained Water Rights as of June 11, 2014, the date of the Water Transfer Agreement.

V.

**SECOND CAUSE OF ACTION**

**FOR CANCELLATION OF INSTRUMENT**

**(CIVIL CODE § 3412)**

62. Plaintiff hereby incorporates by reference paragraphs 1 through 61 of this complaint as though the same were set forth full hereat.

63. Defendants claim and assert an interest in Ameron's Retained Water Rights based on the 2014 Transfer Documents.



1           72.     TAMCO concealed or failed to disclose a material fact during a transaction, causing  
2 damage to the Ameron. TAMCO failed to disclose or concealed a material fact with an intent to  
3 defraud Ameron. TAMCO had a duty to disclose. TAMCO took steps to hide important  
4 information from AMERON. TAMCO disclosed some information to Ameron, but the disclosed  
5 information was misleading unless more information was given and it was not. TAMCO was aware  
6 of key information and knew Ameron was unlikely to discover that information. Ameron was  
7 unaware of the fact and would not have acted as it did if it knew of the fact. Ameron sustained  
8 damages, in an amount to be proven at trial, as a result of the concealment.

9           73.     Defendants refused and continue to refuse to cancel the 2014 Transfer Documents or  
10 to confirm that such documents are void and unenforceable

11           74.     In the alternative, Plaintiff prays that the Court declare that the 2014 Transfer  
12 Documents have been rescinded.

13           75.     Ameron will suffer substantial and irreparable harm if the 2014 Transfer Documents  
14 are not rescinded.

15                               **VII.**

16                               **FOURTH CAUSE OF ACTION**

17                               **(For Rescission Due to Mistake and Lack of Consideration)**

18           76.     Plaintiff refers to and re-alleges each and every allegation contained in paragraph 1  
19 through 75, both inclusive, as if set forth herein.

20           77.     Any consent of Ameron to the 2014 Transfer Documents was given by mistake,  
21 exercised by or with the connivance of TAMCO and its agents, employees, representatives and  
22 attorneys, for which TAMCO is responsible.

23           78.     The mistake was material. The mistake was not the result of neglect of a legal duty.  
24 The enforcement of the contract as made would be unconscionable. TAMCO can be placed in status  
25 quo. Ameron gave prompt notice of its election to rescind. Ameron offered to restore to TAMCO  
26 everything of value which had been received.

27           79.     Ameron received no consideration for the execution or delivery of the 2014 Transfer  
28 Documents.

81. Ameron will suffer substantial and irreparable harm if the 2014 Transfer Documents are not rescinded.

## VIII.

### FIFTH CAUSE OF ACTION

**(Declaratory Relief)**

82. Plaintiff refers to and re-alleges each and every allegation contained in paragraph 1 through 81, both inclusive, as if set forth herein.

83. An actual controversy has arisen regarding the effectiveness of the alleged transfer by Ameron of its Ameron's Retained Water Rights to TAMCO by the 2014 Transfer Documents by reason of (1) any consent of Ameron was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of TAMCO and its agents, employees, representatives and attorneys, for which TAMCO is responsible; (2) lack or failure of consideration; and/or (3) lack of authority of Ameron's agents and employees to provide such alleged transfer.

84. By reason of the foregoing controversy, Ameron respectfully requests that the Court make a judicial determination that:

- (a) TAMCO does not own any part of the Ameron's Retained Water Rights and does not possess any other interest in, or claims to, said Ameron's Retained Water Rights;
- (b) TAMCO possesses no ownership of, interest in, or claims to the Ameron's Retained Water Rights;
- (c) the 2014 Transfer Documents are not enforceable and have been rescinded; and
- (d) any alleged transfer of Ameron's Retained Water Rights to TAMCO is invalid, unenforceable, rescinded and void.

85. Such a judicial determination is necessary at this time in order for Ameron to resolve and settle any disputes regarding Ameron's Retained Water Rights as alleged herein.

///



(b) Deliver the 2014 Water Transfer Documents to the Clerk of this Court for  
cancellation; and

(c) Such other and further injunctive relief as the court deems just.

**X.**

**PRAYER**

WHEREFORE, Plaintiff prays for judgment against the Defendants, as follows:

**ON THE FIRST CAUSE OF ACTION**

1. For a judgment that Plaintiff is the sole owner of the Ameron Retained Water Rights  
and that Defendants have no interest in such water rights adverse to the Plaintiff;

**ON THE SECOND CAUSE OF ACTION**

2. For the 2014 Water Transfer Documents to be delivered to the Clerk of this Court for  
cancellation and that they be declared void;

**ON THE THIRD CAUSE OF ACTION**

3. In the alternative, for rescission of the 2014 Transfer Documents and all ancillary  
documents respecting the Ameron's Retained Water Rights and that the Court declare that the 2014  
Transfer Documents have been rescinded, and for damages in an amount to be proven at trial;

**ON THE FOURTH CAUSE OF ACTION:**

4. In the alternative, for rescission of the 2014 Transfer Documents and all ancillary  
documents respecting the Ameron's Retained Water Rights and that the Court declare that the 2014  
Transfer Documents have been rescinded and for damages in an amount to be proven at trial;

**ON THE FIFTH CAUSE OF ACTION:**

5. For a judicial determination and declaration that:

(a) TAMCO does not own any part of the Ameron's Retained Water Rights and does  
not possess any other interest in, or claims to, said Ameron's Retained Water Rights;

(b) TAMCO possesses no ownership of, interest in, or claims to the Ameron's  
Retained Water Rights;

(c) the 2014 Transfer Documents have been rescinded; and

(d) the alleged transfer of Ameron's Retained Water Rights to TAMCO in any of the 2014 Transfer Documents are invalid, unenforceable, rescinded and void.

6. For such ancillary orders and decrees as may be necessary to implement, effectuate, carry out, and enforce said judicial determination;

7. For a declaratory judgment declaring the respective rights, duties, responsibilities of the parties, as set forth above; and

8. For such other and further relief as the court deems just.

ON THE SIXTH CAUSE OF ACTION:

9. For preliminary and permanent injunctive relief;

AS TO ALL CAUSES OF ACTION:

10. For its attorneys' fees as applicable;

11. For costs of suit incurred herein; and


12. For such other and further relief as the court deems just and proper.

Date: February 4, 2016

Respectfully submitted,

STAFF WEEMS LLP  
RICHARD W. STAFF  
and

LOCKE LORD LLP  
JOHN J. HARRIS  
VERONICA ROTTER

By   
JOHN J. HARRIS  
Attorneys for PLAINTIFF  
AMERON INTERNATIONAL CORP.



Locke Lord LLP  
300 South Grand Avenue, Suite 2600  
Los Angeles, CA 90071

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on its complaint and each cause of action therein.

Date: February 4, 2016

Respectfully submitted,  
STAFF WEEMS LLP  
RICHARD W. STAFF  
and

LOCKE LORD LLP  
JOHN J. HARRIS  
VERONICA ROTTER

By

  
JOHN J. HARRIS  
Attorneys for PLAINTIFF  
AMERON INTERNATIONAL CORP.

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Los Angeles, CA 90071

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VERIFICATION

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN BERNARDINO )

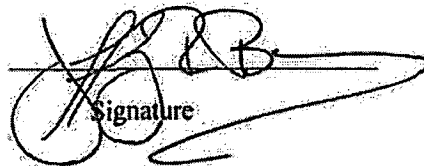
I am Jeffrey Bruny, Vice President -- Manufacturing of Plaintiff, AMERON INTERNATIONAL CORP., a Delaware corporation, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing Verified Complaint and I am familiar with its contents. I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

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

Executed this 8<sup>th</sup> day of February 2016, at Rancho Cucamonga, California.

JEFFREY R BRUNY

Type or print name

  
Signature

## Exhibit A

**REAL ESTATE CONTRACT  
AND JOINT ESCROW INSTRUCTIONS**

This Real Estate Contract and Joint Escrow Instructions is made by and between Ameron International Corporation, a Delaware corporation, with its principal place of business being at 7909 Parkwood Circle Drive, Houston, Texas 77036 (hereinafter "Seller") and TAMCO, a California corporation, having an address of 12459 Arrow Highway, Rancho Cucamonga, California 91739 (hereinafter the "Purchaser"), upon the terms and conditions set forth herein.

**WITNESSETH**

Seller hereby agrees to sell and convey unto Purchaser, and Purchaser hereby agrees to purchase from Seller, subject to the terms and conditions herein set forth, that certain Property, defined below, which includes that certain tract or parcel of land located at the 12459 Arrow Rie in Rancho Cucamonga, California, consisting of thirty and 722/100 (30.722) acres, more or less, more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes together with those certain buildings and improvements located thereon, for the Purchase Price (hereinafter defined), upon and subject to the terms, provisions and conditions hereinafter set forth.

**ARTICLE I**

**1.01 Certain definitions as used in this Agreement:**

"Agreement" shall mean, and the words "herein", "hereof", "hereunder" and other words of similar import shall refer to, this Real Estate Contract and Joint Escrow Instructions.

"Escrow Holder" and "Escrow Agent" shall mean Chicago Title Insurance Company, with an address of 700 S. Flower Street, Suite 800, Los Angeles, CA 90017.

"Improvements" shall mean any buildings and related facilities constructed upon the Land and owned by Seller, together with any and all other improvements located on the Land.

"Inspection Period" shall mean the period of time set out in Article II during which Purchaser may physically inspect the Property and improvements and perform its due diligence of all aspects of the Property.

"Joint Usage Agreement" means that certain Joint Usage and Easement Agreement dated November 28, 1983 between Ameron, Inc. as lessor and Purchaser as lessee, recorded November 29, 1983 as Document No. 83-280362 of the Official Records of San Bernardino, California, as amended by the First Amendment to Joint Usage and Easement Agreement dated October 21, 2010 between Seller as lessor and Purchaser as lessee.

"Land" shall mean that tract or parcel of real property consisting of the 30.722 acres, more or less, being more particularly described in Exhibit "A" attached hereto, together with all and singular the rights, benefits, privileges, easements, tenements, hereditaments and appurtenances thereon or in anywise appertaining to such real property, and all right, title and interest of Seller in and to all strips and gores and any land lying in the bed of any street, road, alley or right-of-way, open or proposed, adjoining such real property, and including without limitation, to the extent Seller owns, possesses and may transfer same, all development rights.

air rights, water rights and water stock relating thereto, and any easements, rights of way and other rights appurtenant thereto or used in conjunction therewith.

**"Property"** shall mean the Land and the Water Rights.

**"Title Company"** shall mean Chicago Title Insurance Company, with an address of 700 S. Flower Street, Suite 800, Los Angeles, CA 90017.

**"Water Rights"** shall mean fifteen (15) acre-feet of Decreed Share of Safe Yield of Chino Basin Non-Agricultural Pool Rights, as such terms are defined and used in the Water Rights Judgment. As of September 5, 2012, the Seller's Water Rights include 125 acre-feet of Total Overlying Non-Agricultural Rights, which is 97.858 acre-feet of Decreed Share of Safe Yield of Chino Basin Non-Agricultural Pool Rights.

**"Water Rights Judgment"** shall mean that certain Judgment, as amended, originally filed in January 30, 1978 in the Superior Court for the County of San Bernardino, in the matter of Chino Basin Municipal Water District v. City of Chino, et al., Case No. RCV 51010 (formerly Case No. 164327).

**"Water Rights Transfer Approval"** shall mean all approvals required for the transfer of the Water Rights and the use of the water pursuant to the Water Rights Judgment, or any other applicable laws, regulations, ordinances, judicial orders and the like, including, but not limited to, all related approvals required by the Watermaster, subject to resolution of any Complaints and Contests, and the Superior Court under the Water Rights Judgment, including a motion by Purchaser to intervene as a party to the Water Rights Judgment Overlying (Non-Agricultural) Pool (as described in the Water Rights Judgment).

**"Watermaster"** shall mean the court-appointed party or entity now or hereafter serving as the "Watermaster" under Article V, Section A, of the Water Rights Judgment.

1.02 **Consideration for the Property.** The consideration for the Property shall be Seventeen Million Dollars (\$17,000,000.00) (the **"Purchase Price"**). The Purchase Price will be payable as follows:

(a) Within five (5) business days following the mutual execution and delivery of this Agreement into Escrow (with a copy to the other party), Purchaser shall deposit or have deposited with the Title Company the sum of Five Hundred Thousand Dollars (\$500,000.00) as earnest money deposit to bind this sale (the **"Earnest Money"**), which shall be held by the Title Company in an interest bearing account. Concurrent with the Deposit an escrow (**"Escrow"**) shall be opened by Seller and Purchaser with the Title Company, which shall also act as the Escrow Agent. Upon the expiration of the Inspection Period, the Earnest Money will be released to Seller. The Earnest Money, and any interest accrued prior to the delivery of the Earnest Money, shall be applied to the Purchase Price at Closing. If this Agreement terminates pursuant to any express right of Purchaser to terminate this Agreement, any such earnest money paid shall be returned to Purchaser immediately upon request, less any sums stipulated in Section 2.01 herein, and all further rights and obligations of the parties under this Agreement shall terminate except those that by their terms survive any termination of this Agreement. Absent the exercise of any such express right to terminate this Agreement, the Earnest Money shall become nonrefundable at the end of the Inspection Period. The Earnest Money shall be held and disbursed by the Escrow Agent pursuant to Article 13 of this Agreement. The terms

and conditions set forth in this Agreement shall constitute both an agreement between Seller and Purchaser and escrow instructions for the Title Company operating as Escrow holder.

(b) At the closing of the transaction contemplated hereby ("Closing"), Purchaser shall deposit with the Escrow Agent in immediate, same-day federal funds wired for credit into the Escrow Agent's escrow account, the Purchase Price, less the Total Earnest Money that is applied to the Purchase Price, plus or minus applicable prorations.

## ARTICLE II INSPECTION AND ENTITLEMENTS

2.01. Purchaser shall have a period of forty-five (45) days after mutual execution of this Agreement to physically inspect or cause one or more engineers or representatives of Purchaser to physically inspect the Property and Improvements and perform its due diligence. Within five (5) business days of the execution of this Agreement, Seller shall provide Purchaser with: property tax bills for the past two years, certificates of occupancy, an easement map, and any existing records, reports, studies and files of Seller related to soils, environmental conditions, wetlands, engineering, site drainage, title and survey, zoning and land use or economic feasibility of the Property, notices of violations of any governmental law or regulation or any covenants or restrictions encumbering the Property or Improvements, notices of any action or proceeding pending or, to Seller's knowledge, threatened against Seller which relate directly to the Property or Improvements, including, without limitation, any condemnation or bankruptcy proceedings, copies of all development, zoning or entitlement documents, agreements or applications, and associated documents, and a current Natural Hazard Disclosure Statement ("Due Diligence Items"), which are not already in the possession of the Purchaser. Seller shall have an ongoing obligation during the pendency of this Agreement to provide Purchaser with any document described above and coming into Seller's possession or produced by Seller after the initial delivery of the Due Diligence Items. In the course of its inspections, Purchaser may make inquiries to third parties, including, without limitation, tenants, lenders, contractors, property managers, parties to service contracts and municipal, local and other government officials and representatives, and Seller consents to such inquiries, provided that such inquiries do not violate Purchaser's obligation to keep the terms and conditions of this transaction confidential pursuant to Section 12.14 of this Agreement.

Purchaser shall have through the last day of the Inspection Period in which to examine, inspect and investigate the Property, Improvements and Due Diligence Items and, in Purchaser's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Purchaser and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Purchaser may terminate this Agreement by giving notice of termination to Seller (the "Due Diligence Termination Notice") on or before the last day of the Inspection Period. If Purchaser does not give the Due Diligence Termination Notice, this Agreement shall continue in full force and effect. If this Agreement terminates pursuant to this Section, the Initial Earnest Money, less \$100 which amount shall be non-refundable to Purchaser for any reason, and which Escrow Holder shall deliver to Seller in consideration of Seller entering into this Agreement ("Inspection Consideration"), shall be refunded to Purchaser immediately upon request, and all further rights and obligations of the parties under this Agreement shall terminate. In the event Purchaser does not purchase the Property, then Purchaser shall return all Due Diligence and Inspection Items to Seller within ten calendar days.

## ARTICLE III

## TITLE COMMITMENT/SURVEY

3.01 Title Exceptions. On or before five (5) business days from the date of mutual execution of this Agreement, Seller shall obtain and furnish to Purchaser a Commitment for Title Insurance ("Commitment") by the Title Company to issue to Purchaser an ALTA Owner's policy of title insurance including extended coverage ("Title Policy"), and accompanied by true, complete, and legible copies of all documents referred to in the Title Commitment. The Commitment shall be on a form approved by Purchaser in an amount equal to the Purchase Price showing title to the Property (other than the Water Rights) vested in Purchaser, with a current effective date, and will set forth the state of title of the Property (other than the Water Rights) and all exceptions to title which are properly of record.

Purchaser shall have until that date which is ten (10) days prior to the expiration of the Inspection Period within which to review same and advise Seller in writing of any title exceptions in the Commitment which are not acceptable to Purchaser. Any exceptions to title to which Purchaser does not object within such period shall be deemed to be acceptable and any objections thereto shall be deemed to have been waived for all purposes by Purchaser. Within five (5) days after receipt of Purchaser's written objections to the Commitment, Seller shall specify to Purchaser which of such objectionable title exceptions, if any, that Seller agrees to remove of record or cure to Purchaser's satisfaction prior to the Closing and, thereafter, Seller shall proceed to do so at Seller's sole cost. In any event, Seller shall, on or before Closing, remove any objections to title constituting liens upon the Property created by Seller. In the event Seller is unwilling or unable, to remove such objections, to the reasonable satisfaction of Purchaser, within a reasonable amount of time after receipt of Purchaser's written objections, or if by reason of such objections the Title Company refuses to guarantee the title to Purchaser in the form herein provided, then Purchaser, at its option and as its sole remedy, shall have the right to either (a) waive any such objections and accept title to the Property subject thereto, or (b) cancel this Agreement, whereupon Purchaser shall be entitled to receive full reimbursement of the Earnest Money, and neither Purchaser nor Seller shall have any further claim against the other hereunder. Seller shall use its best efforts to satisfy the reasonable objections of Purchaser as hereinabove provided; however, Seller shall not be obligated to file suit or spend any sums of money to satisfy Purchaser's objections. If the Title Company revises the Title Commitment after the expiration of the Inspection Period to add or materially modify exceptions, or to add or materially modify the conditions to obtaining any endorsement requested by Purchaser during the Inspection Period, and such additions or modifications are not reasonably acceptable to Purchaser and are not removed by Seller by the Closing Date, Purchaser may terminate this Agreement and receive a refund of the Earnest Money. The term "Permitted Exceptions" shall mean: the specific exceptions (exceptions that are not part of the promulgated title insurance form) in the Title Commitment that the Title Company has not agreed to insure over or remove from the Title Commitment as of the end of the Inspection Period, and that Seller is not required to remove as provided above; real estate taxes not yet due and payable; and tenant in possession under the Lease without any option or right to purchase or acquire any other interest whatsoever in the Property.

3.02 Survey. Within ten (10) business days following execution of this Agreement, Seller shall deliver to Purchaser the most recent survey of the Property in Seller's possession, if any. Purchaser may obtain at its expense a survey of the Property pursuant to Section 2.01. Purchaser shall have through the last day of the Inspection Period in which to review and approve the survey and any updated title commitment reflecting survey-related exceptions.

**ARTICLE IV**  
**TRANSFER OF WATER RIGHTS; SEPARATE METERING OF UTILITIES**

4.01 Transfer of Water Rights. The sale contemplated by this Agreement includes the transfer of the Water Rights. Purchaser is responsible for processing the Water Rights transfer documents with the Watermaster and any other appropriate governmental agencies. Seller shall cooperate with Purchaser's efforts to effect the transfer of the Water Rights including signing necessary applications and documents. It is understood that the procedures to effect the transfer of the Water Rights are not expected to be completed by the Closing, and is expected to take several months.

4.02 Separate Metering of Utilities. Seller and Purchaser agree to use commercially reasonable efforts to cause the utility providers for the Property and the "Dominant Tenement" (as defined in the Joint Usage Agreement) to install their own meters measuring services provided to the Dominant Tenements, by February 28, 2014, such that the utility providers bill the Property and the Dominant Tenement separately for all such services. Seller shall use its commercially reasonable efforts to cause the current owner(s) of the Dominant Tenement to join the efforts to have separate metering of utilities by February 28, 2014. \$250,000 of the Purchase Price (the "Metering Holdback") shall remain in escrow until the utilities are separately metered. Upon the separate metering of all the utilities jointly serving the Property and the Dominant Tenement, the Metering Holdback shall be released to Seller. The Metering Holdback shall be released back to Purchaser to the extent Seller does not reimburse Purchaser for utilities serving the Dominant Tenement, upon Purchaser's written demand supported by (1) cancelled checks or other evidence of payment of the utilities serving the Dominant Tenement, (2) a copy of the demand for payment sent to the Seller, and (3) evidence of delivery of that demand a minimum of 30 days earlier.

**ARTICLE V**  
**CLOSING**

5.01 The Closing and Closing Date. Upon compliance with all of the terms and conditions hereof and satisfaction or waiver of all conditions to closing, the parties shall proceed to close this transaction on a mutually acceptable date ("Closing Date") which shall not be later than fifteen (15) days following the expiration of the Inspection Period. Closing shall occur through Escrow with the Escrow Agent, with both parties delivering to the Escrow Agent all closing deliverables through the mail, by courier service or in person on or before the Closing Date. Funds shall be deposited into and held by Escrow Agent in a closing escrow account with a bank satisfactory to Purchaser and Seller. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record the Grant Deed, and deliver the closing documents to the appropriate parties and make disbursements according to the closing statements executed by Seller and Purchaser. The Escrow Agent shall agree in writing with Purchaser that (a) recordation of the Deed (as hereinafter defined) constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statement, and (b) release of funds to the Seller shall irrevocably commit it to issue the Title Policy in accordance with this Agreement.



5.02 Seller's Obligations at Closing. At Closing, Seller shall:

(a) Execute, acknowledge and deliver to Escrow Holder a grant deed in the form of Exhibit "B" attached hereto ("Deed") conveying good and indefeasible title to the Property (other than the Water Rights) to the Purchaser free and clear of all liens and encumbrances except the Permitted Exceptions.

(b) Cause Title Company to deliver the Title Policy to Purchaser.

(c) Deliver to Title Company any affidavits or documents required by the Title Company to Issue the Title Policy.

(d) Deliver to Purchaser copies of all plats and engineering drawings in Seller's possession or control pertaining to the Property, Improvements and any utilities.

(e) Deliver to the Title Company, for delivery to Purchaser, a Foreign Investment in Real Property Tax Act affidavit or qualifying statement satisfying the requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder, as well as the California Franchise Tax Board Form 593-C, both executed by Seller. If Seller fails to provide the necessary affidavit and/or documentation of exemption on the Closing Date, Purchaser may proceed with withholding provisions as provided by law.

(f) A Bill of Sale in the form of Exhibit C attached hereto (the "Bill of Sale"), executed and acknowledged by Seller, vesting in Purchaser good title to the property described therein free of any claims.

(g) Such disclosures and reports as are required by applicable state and local law in connection with the conveyance of real property.

(h) If the Property is subject to a declaration of covenants, conditions and restrictions or similar instrument, restrictive covenants or equitable servitudes ("CCRs") governing or affecting the use, operation, maintenance, management or improvement of the Property, (i) estoppel certificates, in form and substance satisfactory to Purchaser, from the declarant, association, board, committee, agent and/or other person or entity having governing or approval rights under the CCRs, and (ii) a recordable assignment, in form and substance satisfactory to Purchaser, assigning any and all developer, declarant or other related rights or interests of Seller (or any affiliate of Seller) in or under the CCRs.

(i) Evidence of the existence, organization and authority of Seller and of the authority of the persons executing documents on behalf of Seller reasonably satisfactory to the Escrow Agent and the Title Company.

(j) Any additional documents that Purchaser, the Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

5.03 Purchasers Obligation at Closing. At Closing, Purchaser shall do the following:

- (a) Deliver to Escrow Holder the balance of the Purchase Price.
- (b) Any additional documents that Seller, the Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

5.04 Closing Statements. At least one (1) business day prior to the Closing Date, Seller and Purchaser shall deposit with the Escrow Agent executed closing statements consistent with this Agreement in the form required by the Escrow Agent. If Seller and Purchaser cannot agree on the closing statement to be deposited as aforesaid because of a dispute over the prorations and adjustments set forth therein, the Closing nevertheless shall occur, and the amount in dispute shall be withheld from the Purchase Price and placed in an escrow with the Title Company, to be paid out upon the joint direction of the parties or pursuant to court order upon resolution or other final determination of the dispute.

#### **ARTICLE VI CLOSING COSTS AND PRORATIONS**

6.01 Closing Costs. Seller will pay any and all transfer taxes, the basic portion of the Title Policy, costs of recording instruments to release any Seller financings or mechanics' liens or to cure other title matters Seller has elected to cure, as well as all documentary stamp fees and recording fees. The escrow fee of Escrow Holder shall be shared equally by Seller and Purchaser. All Water Rights transfer costs shall be borne by Purchaser. Each party shall pay its own attorneys' fees, if any, related to the transfer of the Water Rights. All other expenses incurred by Seller or Purchaser with respect to Closing, including but not limited to attorneys' fees of Purchaser and Seller and the extended coverage portion of the Title Policy, shall be borne exclusively by the party incurring same, without reimbursement, except to the extent otherwise specifically provided herein. Any other costs and expenses relating to this sale shall be allocated according to the custom of San Bernardino County, California.

6.02 Taxes. All ad valorem and real property taxes and assessments shall be prorated as of the Closing Date. Purchaser shall receive a credit for any accrued but unpaid real estate taxes and assessments ("Taxes") (including without limitation any assessments imposed by private covenant or CCRs) applicable to any period before the Closing Date, even if such taxes and assessments are not yet due and payable. If the amount of any such taxes have not been determined as of Closing, such credit shall be based on 102 percent of the most recent ascertainable taxes and shall be re-prorated upon issuance of the final tax bill. Purchaser shall receive a credit for any special assessments which are levied or charged against the Property, whether or not then due and payable.

6.03 Water Rights. Water Rights for the 2013 Fiscal Year, as defined by the Water Rights Judgment, shall be prorated as of the Closing Date.

6.04 Reproration. After year-end (or other applicable period) adjustments after receipt of final Tax, Water Rights fee assessments and other bills, Purchaser shall prepare and present to Seller a calculation of the re-proration of Taxes, Water Rights fee assessments and other items, based upon the actual amount of such items charged to or received by the parties for the year or other applicable fiscal period. The parties shall make the appropriate adjusting payment between them within thirty (30) days after presentment to Seller of Purchaser's calculation.

subject to Seller's obligations to pay taxes under the Lease. Seller may inspect Purchaser's books and records related to the Property to confirm the calculation. Either party shall be entitled to a post-Closing adjustment for any incorrect proration or adjustment. No other expense related to the ownership or operation of the Property shall be charged to or paid or assumed by Purchaser, whether allocable to any period before or after the Closing, other than those obligations expressly assumed by Purchaser. The provisions in this Section 6.3 shall survive the Closing and recordation of the Deed.

## ARTICLE VII CONDITIONS TO CLOSING

**7.01 Purchaser's Closing Conditions.** Purchaser shall not be obligated to consummate the transaction contemplated hereby unless and until all of the following conditions have been satisfied or waived by Purchaser:

- (a) Seller shall have removed of record or cured Exceptions that Seller agreed to remove or cure under Article III, and the Title Company shall be irrevocably committed to issue the Title Policy (or extended coverage Title Policy, if requested by Purchaser), in the form of the title commitment, including endorsements, agreed to by Purchaser in writing prior to the end of the Inspection Period, to Purchaser as of the Closing Date.
- (b) Any inspections, tests, environmental audits, engineering studies, investigations and reviews conducted by Purchaser have results that are satisfactory to Purchaser or Purchaser has waived any objections thereto.
- (c) All necessary agreements and consents of any party to the consummation of this transaction or obligations pertinent hereto have been obtained. These must be obtained prior to the expiration of the Inspection Period; after which this condition is waived.

**7.02 Conditions to Closing.** In addition to the conditions otherwise provided in this Agreement, Purchaser's obligations under this Agreement are conditioned upon the fulfillment of the following:

- (a) Moratoriums. No moratorium, statute, regulation, ordinance or federal, state, county or local legislation, order, judgment, ruling or decree of any governmental agency or of any court of competent jurisdiction is enacted, adopted, issued or entered which would materially and adversely prohibit Purchaser's intended use of the Property. For purposes of this condition, Purchaser's intended use of the Property shall be the manufacture of steel products and such incidental uses appurtenant thereto as may be necessary or appropriate.
- (b) Condemnation. No notice of condemnation or eminent domain action to acquire the property or any portion thereof that would impair Purchaser's use of or access to the Property shall have been received by Seller.
- (c) Bankruptcy. No action proceeding shall have been commenced by or against Seller under the Federal Bankruptcy Code which would impair or restrict Seller's ability to convey the Property.

(d) Closing Deliverables. Seller shall have delivered to the Title Company all of the deliverables identified in Section 5.02 above.

(e) Representations and Warranties. Seller's representations and warranties in this Agreement shall be true and correct in all material respects as of the Closing Date.

(f) Seller's Obligations. As of the Closing Date, Seller shall have performed all of the obligations required to be performed by Seller under this Agreement.

(g) No Leases or Contracts. As of Closing Date, Seller shall have terminated all leases and contracts affecting the Property.

## ARTICLE VIII REPRESENTATIONS AND WARRANTIES

8.01 Seller's Representations and Warranties. Seller represents and warrants to and agrees with Purchaser as follows:

(a) Authority. Seller is a Delaware corporation, duly formed, validly existing and in good standing under the laws of the State of Delaware, and is qualified to do business in the state where the Property is located, with the right, power and authority to own the Property and to consummate the transactions contemplated by this Agreement. This Agreement and all instruments, documents and agreements to be executed by Seller in connection herewith are or when delivered will be duly authorized, executed and delivered by Seller and will be valid, binding and enforceable obligations of Seller in accordance with their terms.

(b) Consents. As of the Closing, Seller will have obtained all consents and approvals (other than approval of the transfer of the Water Rights) required to consummate the transactions contemplated in this Agreement.

(c) Condemnation/Actions. There is no existing or pending action, suit or proceeding for eminent domain or condemnation known to Seller which affects the Property. There is no other action or proceeding pending or, to Seller's knowledge, threatened against Seller or relating to the Property or Improvements, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement. For purposes of this representation, it is agreed and understood that Purchaser's contemplated use of the Property is the manufacture of steel products and such incidental uses appurtenant thereto as may be necessary or appropriate.

(d) Contracts and Leases. With the exception of recorded Permitted Exceptions, there are no contracts, leases, licenses, instruments or other rights affecting the Property or Improvements which will survive or otherwise be enforceable against Purchaser following the Closing Date. There is no agreement to which Seller is a party or, to Seller's knowledge, binding on Seller which is in conflict with this Agreement.

(e) Notice of Violations or Defects. Seller has received no written notice: (i) that the Property, Improvements or the use thereof violates any governmental law or regulation or any covenants, restrictions or CCRs encumbering the Property; or (ii) of any physical defect in the Improvements.

(f) Environmental. Seller has no knowledge of any violation of Environmental Laws (as hereinafter defined) related to the Property or the presence or release of Hazardous Materials on or from the Property or Improvements. Seller has no knowledge of any underground storage tanks located on the Property. Seller has not manufactured, introduced, released or discharged from or onto the Property any Hazardous Materials or any toxic wastes, substances or materials (including, without limitation, asbestos), and Seller has not used the Property, Improvements or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Materials in violation of any Environmental Laws. The term "Environmental Laws" includes without limitation the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act and other federal laws governing the environment as in effect on the Effective Date together with their implementing regulations and guidelines as of the Effective Date, and all state, regional, county, municipal and other local laws, regulations and ordinances that are equivalent or similar to the federal laws recited above or that purport to regulate Hazardous Materials (as hereinafter defined). The term "Hazardous Materials" includes petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel (or mixtures of natural gas or such synthetic gas), asbestos and asbestos containing materials and any substance, material waste, pollutant or contaminant listed or defined as hazardous or toxic under any Environmental Law.

(g) Outside Agreements. Other than as delivered with the Due Diligence Items or as disclosed in the Permitted Exceptions, to Seller's knowledge, there is no other agreement, understanding or restriction with or for the benefit of any person or entity, whether private, public or quasi-public, that will be binding upon Purchaser after Closing and which may prevent or limit in any way the current use, or Purchaser's intended use, of the Property or for any uses allowed by current zoning regulations.

(h) Bankruptcy. Seller has not (i) made a general assignment for the benefit of its creditors, (ii) admitted in writing its inability to pay its debts as they mature, (iii) had an attachment, execution or other judicial seizure of any property interest which remains in effect, or (iv) taken, failed to take or submitted to any action indicating a general inability to meet its financial obligations as they accrue. There is not pending any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or reconstitution of Seller under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking appointment of a receiver, trustee, or custodian for Seller for all or any substantial part of its property.

(i) Water Rights. Seller has not transferred or encumbered the Water Rights.

(j) Reaffirmation. The representations and warranties of Seller set forth hereinabove, are true and correct as of the date of this Agreement and shall continue to be true and correct as of the Closing Date. Closing shall constitute Seller's reaffirmation of these representations and warranties as of the Closing Date.

8.02 Indemnification. Seller shall hold harmless, and indemnify Purchaser, its directors and shareholders, from and against any direct loss or damage to Purchaser directly resulting from any inaccuracy in or breach of any representation or warranty of Seller. The representations and warranties shall survive the Close of Escrow and survive for a period of one (1) calendar year after the Closing Date.

**8.03 Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller as follows:

(a) **Authority.** Purchaser is a corporation, duly formed, validly existing and in good standing under the laws of the State of California, with the right, power and authority to own the Property and, as of the Closing, shall have the authority to consummate the transactions contemplated by this Agreement (other than the Water Rights Approval which is not expected to be obtained until after the Closing). This Agreement and all instruments, documents and agreements to be executed by Purchaser in connection herewith are or when delivered will be duly authorized, executed and delivered by Purchaser and will be valid, binding and enforceable obligations of Purchaser.

(b) **Consents.** As of the Closing, Purchaser will have obtained all consents and approvals required to consummate the transactions contemplated in this Agreement.

**8.04 Indemnification.** Purchaser shall hold harmless, and indemnify Seller, its directors and shareholders, from and against any direct loss or damage to Seller directly resulting from any inaccuracy in or breach of any representation or warranty of Purchaser in **Section 8.03**. The representations and warranties shall survive the Close of Escrow and survive for a period of one (1) calendar year after the Closing Date.

## **ARTICLE IX ENVIRONMENTAL**

**9.01. Environmental.** Purchaser is currently in possession of the Property as a Lessee and shall continue to have the right to make such additional environmental audits, inspections or tests of the Property and Improvements as Purchaser deems reasonably necessary, including without limitation a Phase I or Phase II environmental report. All inspections, fees and other expenses of any kind incurred by Purchaser relating to any audit or inspection of the Property and Improvements will be solely at Purchaser's expense. Any such inspection or audit will be non-destructive in nature, but may include invasive testing of the soils, Improvements or groundwater, if deemed prudent in Purchaser's discretion. Seller shall cooperate with Purchaser in all reasonable respects in making such audits, inspections, tests, investigations and reviews. Purchaser shall notify Seller not less than one (1) business day in advance of making any such tests and Seller hereby reserves a right to have a representative present at the time of any such inspections or tests.

In the event Purchaser elects to have an independent third party environmental consultant conduct environmental audits, inspections, tests or investigations as herein provided, Purchaser shall select such environmental consultant. Purchaser shall pay for the cost of any environmental audit conducted by a third party environmental consultant. Purchaser covenants and agrees that it and its environmental consultant shall keep the results of any such audit confidential and shall not disclose same to Seller or any third party unless authorized in writing by Seller.

Purchaser hereby agrees to indemnify, defend and hold Seller harmless from any and all costs, liabilities, claims and expenses arising in connection with Purchaser or its agents performing any of the examinations, investigations, inspections, tests and studies on the Property, including without limitation any environmental tests as provided for herein or any

inspections as provided for in Article II; however, nothing in this Agreement shall be deemed to impose liability on Purchaser for merely discovering the existence of a pre-existing condition that Purchaser did not cause, contribute to or exacerbate.

9.02 Seller shall not be responsible to Purchaser for any environmental matters or conditions on the Property known to Purchaser as of Closing. Seller will be responsible only for those environmental matters related to its own activities on the Property and that are unknown to Purchaser and could not have been reasonably discovered as of Closing. Seller explicitly disclaims any liability for any environmental matters or conditions arising from Purchaser's use of the Property at any time. The provisions of this Section 9.02 shall survive the Close of Escrow and shall not be deemed to be merged in the Deed.

9.03 Nothing in this Agreement shall affect Purchaser's rights to pursue any claims including environmental indemnity claims, against Seller and others under the September 14, 2010 TAMCO Stock Purchase Agreement between Seller, Mitsui & Co. (U.S.A.), Inc., a New York corporation, Tokyo Manufacturing Co. Ltd., a Japanese corporation, and Purchaser (the "SPA"). The time for filing any claim arising under the SPA shall not be extended by virtue of any provision of this Agreement or any alleged breach thereof.

#### ARTICLE X DEFAULT

10.01 IF PURCHASER FAILS TO CLOSE ESCROW AND SUCH FAILURE CONSTITUTES A DEFAULT BY PURCHASER, THEN SELLER SHALL, AS ITS SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT, BY WRITTEN NOTICE TO PURCHASER AND THE ESCROW HOLDER, TERMINATE THIS AGREEMENT, WHEREUPON SELLER SHALL RETAIN AS SELLER'S LIQUIDATED DAMAGES FOR SUCH PURCHASER'S DEFAULT THE EARNEST MONEY, IT BEING EXPRESSLY UNDERSTOOD AND AGREED BETWEEN PURCHASER AND SELLER THAT SELLER'S ACTUAL DAMAGES RESULTING FROM SUCH PURCHASER'S DEFAULT WOULD BE SUBSTANTIAL BUT EXTREMELY DIFFICULT TO ASCERTAIN AND THAT SUCH LIQUIDATED AMOUNT IS A REASONABLE SUM CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING AS OF THE AGREEMENT DATE. BY PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

Initials of Seller:

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Initials of Purchaser:

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inspections as provided for in Article II; however, nothing in this Agreement shall be deemed to impose liability on Purchaser for merely discovering the existence of a pre-existing condition that Purchaser did not cause, contribute to or exacerbate.

9.02 Seller shall not be responsible to Purchaser for any environmental matters or conditions on the Property known to Purchaser as of Closing. Seller will be responsible only for those environmental matters related to its own activities on the Property and that are unknown to Purchaser and could not have been reasonably discovered as of Closing. Seller explicitly disclaims any liability for any environmental matters or conditions arising from Purchaser's use of the Property at any time. The provisions of this Section 9.02 shall survive the Close of Escrow and shall not be deemed to be merged in the Deed.

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Initials of Seller:

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Initials of Purchaser:

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**ARTICLE XI**  
**OPERATIONS AND RISK OF LOSS**

**11.01 Ongoing Operations.** During the pendency of this Agreement:

(a) **Operations.** After the Effective Date, Seller will not use the Property for any business or activity that differs materially to its current business on the Property and/or which results in the new or increased use of Hazardous Materials in the course of such new activity or business. Seller will not enter into any contract, commitment, dedication or other instrument that will be an obligation affecting the Property subsequent to the Closing without the prior written consent of Purchaser.

(b) **Listings and Other Offers.** Seller will not list the Property with any broker or otherwise solicit or make or accept any offers to sell the Property, engage in any discussions or negotiations with any third party with respect to the sale or other disposition of the Property, or enter into any contracts or agreements (whether binding or not) regarding any disposition of the Property.

(c) **Notices.** Seller shall promptly furnish to Purchaser copies of any written notices hereafter received by Seller of (i) any suit, judgment or other proceeding filed, entered or threatened with respect to the Property or Seller's use or ownership thereof, or (ii) any actual or contemplated changes in zoning of the Property or any other legal requirement which would adversely affect the use, ownership, maintenance or leasing of the Property.

(d) **Insurance.** Through the Closing Date, Seller shall maintain or cause to be maintained, at Seller's sole cost and expense, Seller's existing policy or policies of insurance insuring the Property and Improvements.

(e) **Miscellaneous.** Seller shall not convey any portion of the Property, Improvements or rights therein, nor enter into any conveyance, security document, easement or other agreement or amendment to agreement granting to any third party or reserving on Seller's behalf any rights with respect to the Property or any part thereof, or any interest whatsoever therein, or any option thereto, and any such conveyance or other agreement entered into in violation of this provision shall be null and void and of no force or effect.

**ARTICLE XII**  
**MISCELLANEOUS**

**12.01 Assignment.** This Agreement may not be assigned by either party hereto without the express prior written consent of the other party. Such consent may be withheld for any reason, there being no obligation to act reasonably with regard to such consent. However, notwithstanding the foregoing, without Seller's consent Purchaser may assign its rights hereunder to any person or entity which controls, is controlled by or is under the common control with Purchaser, or to any corporation into or with which Purchaser may be merged or consolidated, to any partnership or limited liability company in which Purchaser or one of its subsidiaries is a partner or member, as the case may be, or to any person or entity which purchases all or substantially all of the assets of Purchaser.

**12.02 Casualty and Condemnation.** Seller agrees to give Purchaser five (5) days' notice of any casualty affecting the Property between the date of execution of this Agreement

and the date of Closing or of any actual or threatened taking or condemnation of all or any portion of the Property.

If prior to Closing, there shall occur;

- (a) damage to the Property caused by casualty which would cost \$10,000.00 or more to repair, or which materially adversely affects access to the Property; or
- (b) taking or condemnation of any portion of the Property, or a threat thereof.

Purchaser, at its option and as its sole remedy, may elect to terminate its obligations under this Agreement by written notice given to Seller within ten (10) days of Purchaser's receipt of notice of such event and Purchaser shall receive full reimbursement of the Earnest Money. In the event Purchaser does not so elect to terminate this Agreement, then the Closing shall take place as provided herein without reduction of the Purchaser Price, without any abatement of rent, and Seller shall assign to Purchaser at Closing any and all interest of Seller in and to any insurance proceeds or condemnation awards which may be payable to Seller on account of such occurrence.

**12.03 Merger.** This Agreement represents the complete understanding between the parties hereto and supersedes all prior negotiations, representations or Agreements, either written or oral, as to the Property. This Agreement may be amended only by written instrument signed by both parties. No requirement, obligation, remedy or provision of this Agreement shall be deemed to have been waived unless expressly waived in writing and such waiver shall not affect the right to enforce any other provisions hereof or such provision hereafter.

**12.04 Headings.** The headings or title of the Articles herein are for convenience and shall not affect the meaning or the interpretation of the contents hereof.

**12.05 Notice.** All notices authorized or required herein shall be in writing and shall be delivered either (a) by hand delivery (including messenger or a nationally recognized overnight delivery service), in which case notice shall be deemed delivered upon receipt (if by hand delivery) or one (1) business day after deposit with such courier, (b) by certified mail, return receipt requested, in which case notice shall be deemed delivered 3 business days after such mailing, or (c) sent by facsimile or email, in which case notice shall be deemed delivered upon a successfully completed transmission of such notice, to Seller or Purchaser at their respective addresses as set forth below:

**SELLER:**

7909 Parkwood Circle Drive  
Houston, Texas 77036  
Attn: Legal Dept.  
Telephone: (713) 346-7550  
Facsimile: (713) 346-7995  
Email: [Rebecca.hernandez@nov.com](mailto:Rebecca.hernandez@nov.com)  
[Matthew.robey@nov.com](mailto:Matthew.robey@nov.com)

**PURCHASER:**

Gerdau Ameristeel Corporation  
Attn: Robert Wallace, Esq.  
Senior Corporate Counsel  
Suite 600  
4221 West Boy Scout Boulevard  
Tampa FL 33607  
Telephone: (813) 207-2289  
Facsimile: (813) 207-2307  
Email: Robert.Wallace@gerdau.com

**With a copy to:**

Nossaman LLP  
Attn: Karla N. MacCary, Esq.  
777 S. Figueroa Street, 34<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 612-7862  
Facsimile: (213) 612-7801  
Email: kmaccary@nossaman.com

A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Purchaser shall be deemed given by Purchaser and notices given by counsel to the Seller shall be deemed given by Seller.

**12.06 Time.** Time is of the essence with this Agreement.

**12.07 Real Estate Commission.** It is understood and agreed that the only brokers involved in the negotiation of this Agreement are: Lee & Associates—Ontario ("Seller's Broker"), representing the Seller and Jones Lang LaSalle Brokerage Inc. ("Purchaser's Broker") representing the Purchaser. Seller shall pay Seller's Broker a commission pursuant to a separate agreement between Seller and Broker. If and when the transaction contemplated hereby has been closed, a commission of two percent (2%) of the Purchase Price shall be earned by Purchaser's Broker and paid by Seller through Escrow. Seller and Purchaser each represent to the other that it has not done anything to cause any real estate commission or fee (other than any commissions owed to Broker) to be owing with respect to this sale, and each representing party agrees to indemnify, defend and hold harmless the other party against claims, liabilities, losses, damages, costs and expenses incurred by the other party and arising from any such commission or fee alleged to be due as a result of the actions of the representing party.

**12.08 Applicable Law.** Unless superseded by Federal Law, this Agreement shall be interpreted, construed and enforced under the laws of the State of California.

**12.09 Attorneys' Fees.** In any Action, the prevailing party shall be entitled to recover actual attorneys' fees and all other litigation costs including without limitation costs awardable pursuant to California Code of Civil Procedure Section 1033.5 and amounts payable to expert witnesses ("Costs") in addition to any other available remedy. In addition to the fees and Costs recoverable under the preceding sentence, the parties agree that the prevailing party shall be entitled to recover actual attorneys' fees and Costs incurred in connection with the enforcement of a judgment arising from such Action.

12.10 Neither party shall be responsible for failure to comply with the notice or delivery provisions of this Agreement, if such failure is due to unusually inclement weather, acts of God, strikes or any cause beyond such parties control (force majeure); provided however, that any delay by such reason of force majeure shall extend the time within which such party is obligated to comply by a period of time equal to such delay.

12.11 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. Pacific time.

12.12 Exhibits. All exhibits referenced herein and attached hereto or made a part hereof for all purposes as fully and to the same extent as if set forth in the text hereof verbatim.

12.13 Invalidity, Waiver and Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and agree that the normal rule of construction, to the effect that any ambiguities are to be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

12.14 Confidentiality. Seller and Purchaser agree that the business and legal terms of this Agreement are proprietary and confidential to the parties hereto. Until the Closing Date, neither party will discuss the legal or business terms or conditions of this Agreement with a third party, except for Purchaser's consultants, lenders, affiliates, attorneys, governmental authorities and tax advisors, without the other party's written consent.

12.15 As-Is. Except as expressly provided herein to the contrary, Seller agrees to sell and Purchaser agrees to purchase the Property on an "as is, where is" basis. Seller makes no warranties as to the condition of the Property other than as expressly set forth herein or in the documents delivered at Closing.

12.16 Survival. The provisions of Sections 6.02, 9.02, 12.07 and Article IV, and any other provisions that are expressly stated to survive, shall survive closing and shall not be deemed to have merged herewith or with the Deed. In addition, the provisions of this Agreement that contemplate performance after the Closing and the obligations of the parties not fully performed at the Closing shall survive the Closing and shall not be deemed to be merged into or waived by the Instruments of Closing.

12.17 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. Execution copies of this Agreement may be delivered by facsimile or

email, and the parties hereto agree to accept and be bound by facsimile or email signatures hereto. The signature of any party on a facsimile or email document, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of either party, any facsimile or email document is to be re-executed in original form by the party who executed the original facsimile or email document. Neither party may raise the use of a facsimile machine or the fact that any signature was transmitted through the use of a facsimile machine as a defense to the enforcement of this Agreement.

**12.18 Section 1031 Exchange.** Each party may consummate the purchase and sale of the Property as part of a so-called like kind exchange (the "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect the Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary; (c) the non-exchanging party shall not be required to take an assignment of the purchase agreement for the relinquished property or be required to acquire or hold title to any real property for purposes of consummating the Exchange; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by either party had the exchanging party not consummated its purchase through the Exchange. The non-exchanging party shall not by this agreement or acquiescence to the Exchange (x) have its rights under this Agreement affected or diminished in any manner, or (y) be responsible for compliance with or be deemed to have warranted to the exchanging party that the Exchange in fact complies with Section 1031 of the Code.

**12.19 Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party at Closing, each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing, any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the conveyance, transfer and assignment of the Property to Purchaser.

**12.20 Marketing.** Seller agrees not to market or show the Property to any other prospective purchasers during the term of this Agreement.

**12.21 Procedure for Indemnity.** The following provisions govern actions for indemnity under this Agreement. Promptly after receipt by an Indemnitee of notice of any claim, such Indemnitee will, if a claim in respect thereof is to be made against the Indemnitor, deliver to the Indemnitor written notice thereof and the Indemnitor shall have the right to participate in and, if the Indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the Indemnitee with respect to such claim, to assume the defense thereof, with counsel mutually satisfactory to the parties; provided, however, that an Indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnitor, if the Indemnitee reasonably believes that representation of such Indemnitee by the counsel retained by the Indemnitor would be inappropriate due to actual or potential differing interests between such Indemnitee and any other party represented by such counsel in such proceeding. The failure of Indemnitee to deliver written notice to the Indemnitor within a reasonable time after Indemnitee receives notice of any such claim shall relieve such Indemnitor of any liability to the Indemnitee under this indemnity only if and to the extent that such failure is

prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld such consent.

### ARTICLE XIII ESCROW INSTRUCTIONS

**13.01 Investment and Use of Funds.** The Escrow Agent shall invest the Earnest Money in government insured interest-bearing accounts satisfactory to Purchaser at an institution having assets of not less than \$125,000,000, shall not commingle the Earnest Money with any funds of the Escrow Agent or others and shall promptly provide Purchaser and Seller with confirmation of the investments made. If the Closing under this Agreement occurs, the Escrow Agent shall deliver the Earnest Money to, or upon the instructions of, Purchaser on the Closing Date. Provided such supplemental escrow instructions are not in conflict with this Agreement as it may be amended in writing from time to time, Seller and Purchaser agree to execute such supplemental escrow instructions as may be appropriate to enable Escrow Agent to comply with the terms of this Agreement.

**13.02 Termination before Expiration of Due Diligence Period.** The Purchaser shall notify the Escrow Agent of the date that the Inspection Period ends promptly after such date is established under this Agreement, and Escrow Agent may rely upon such notice. If Purchaser elects to terminate the Agreement pursuant to Section 2.01, Escrow Agent shall pay the entire Earnest Money to Purchaser one (1) business day following receipt of the Due Diligence Termination Notice from Purchaser (as long as the current investment can be liquidated in one (1) day) and this Agreement shall thereupon terminate, less the nonrefundable One Hundred Dollars (\$100.00) stipulated in Section 2.01, which shall be delivered to Seller. No notice to Escrow Agent from Seller shall be required for the release of the Earnest Money to Purchaser by Escrow Agent. The Earnest Money shall be released and delivered to Purchaser from Escrow Agent upon Escrow Agent's receipt of the Due Diligence Termination Notice, despite any objection or potential objection by Seller. Seller agrees it shall have no right to bring any action against Escrow Agent which would have the effect of delaying, preventing or in any way interrupting Escrow Agent's delivery of the Earnest Money to Purchaser pursuant to this Section, any remedy of Seller being against Purchaser, not Escrow Agent.

**13.03 Other Terminations.** Upon a termination of this Agreement other than as described in Section 13.02, either party to this Agreement (the "Terminating Party") may give written notice to the Escrow Agent and the other party (the "Non-Terminating Party") of such termination and the reason for such termination. Such request shall also constitute a request for the release of the Earnest Money to the Terminating Party. The Non-Terminating Party shall then have five (5) business days in which to object in writing to the release of the Earnest Money to the Terminating Party. If the Non-Terminating Party provides such an objection, then the Escrow Agent shall retain the Earnest Money until it receives written instructions executed by both Seller and Purchaser as to the disposition and disbursement of the Earnest Money, or until ordered by final court order, decree or judgment, which is not subject to appeal, to deliver the Earnest Money to a particular party, in which event the Earnest Money shall be delivered in accordance with such notice, instruction, order, decree or judgment.

**13.04 Interpleader.** Except as provided in Section 13.02, Seller and Purchaser mutually agree that in the event of any controversy regarding the Earnest Money, unless mutual written

Instructions are received by the Escrow Agent directing the Earnest Money's disposition, the Escrow Agent shall not take any action, but instead shall await the disposition of any proceeding relating to the Earnest Money or, at the Escrow Agent's option, the Escrow Agent may interplead all parties and deposit the Earnest Money with a court of competent jurisdiction in which event the Escrow Agent may recover all of its court costs and reasonable attorneys' fees. Seller or Purchaser, whichever loses in any such interpleader action, shall be solely obligated to pay such costs and fees of the Escrow Agent, as well as the reasonable attorneys' fees of the prevailing party in accordance with the other provisions of this Agreement.

**13.05 Liability of Escrow Agent.** The parties acknowledge that the Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that the Escrow Agent shall not be deemed to be the agent of either of the parties, and that the Escrow Agent shall not be liable to either of the parties for any action or omission on its part taken or made in good faith, and not in disregard of this Agreement, but shall be liable for its negligent acts and for any loss, cost or expense incurred by Seller or Purchaser from the Escrow Agent's mistake of law respecting the Escrow Agent's scope or nature of its duties. Seller and Purchaser shall jointly and severally indemnify and hold the Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of the Escrow Agent's duties hereunder, except with respect to actions or omissions taken or made by the Escrow Agent in bad faith, in disregard of this Agreement or involving negligence on the part of the Escrow Agent.

In witness hereof, the parties have entered into this Agreement in multiple original counterparts, each of which shall have the full force and effect and original, constituting only one instrument, effective as of the 26<sup>th</sup> day of February, 2013.

**AMERON INTERNATIONAL CORPORATION, TAMCO**, a California corporation  
a Delaware corporation

By: Kenneth A. Jack  
Name: Kenneth A. Jack  
Title: Vice President - Risk Management

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

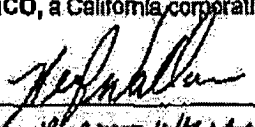
Instructions are received by the Escrow Agent directing the Earnest Money's disposition, the Escrow Agent shall not take any action, but instead shall await the disposition of any proceeding relating to the Earnest Money or, at the Escrow Agent's option, the Escrow Agent may interplead all parties and deposit the Earnest Money with a court of competent jurisdiction in which event the Escrow Agent may recover all of its court costs and reasonable attorneys' fees. Seller or Purchaser, whichever loses in any such interpleader action, shall be solely obligated to pay such costs and fees of the Escrow Agent, as well as the reasonable attorneys' fees of the prevailing party in accordance with the other provisions of this Agreement.

**13.05 Liability of Escrow Agent.** The parties acknowledge that the Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that the Escrow Agent shall not be deemed to be the agent of either of the parties, and that the Escrow Agent shall not be liable to either of the parties for any action or omission on its part taken or made in good faith, and not in disregard of this Agreement, but shall be liable for its negligent acts and for any loss, cost or expense incurred by Seller or Purchaser from the Escrow Agent's mistake of law respecting the Escrow Agent's scope or nature of its duties. Seller and Purchaser shall jointly and severally indemnify and hold the Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of the Escrow Agent's duties hereunder, except with respect to actions or omissions taken or made by the Escrow Agent in bad faith, in disregard of this Agreement or involving negligence on the part of the Escrow Agent.

In witness hereof, the parties have entered into this Agreement in multiple original counterparts, each of which shall have the full force and effect and original, constituting only one instrument, effective as of the 26<sup>th</sup> day of February, 2013.

**AMERON INTERNATIONAL CORPORATION, TAMCO**, a California corporation  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Name: Robert Wallace  
Title: SR. CORPORATE ATTORNEY  
ASST. SECRETARY



#### JOINDER OF TITLE COMPANY

Title Company hereby joins in the execution of the Agreement and agrees to accept, hold and return the Deposit, and disburse any funds received under the Agreement in accordance with the provisions of such Agreement. The Title Company shall only be bound to those provisions of the Agreement relating to title insurance, the Deposit, and the Closing escrow. Provided that the Title Company complies with such provisions of the Agreement, the parties to the Agreement agree that the Title Company shall not be liable for any loss or damage arising thereunder.

#### CHICAGO TITLE INSURANCE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Title  
Insurance  
Co.

**EXHIBIT "A"**

**PROPERTY DESCRIPTION**

Parcel 3 of Parcel Map No. 7847, in the city of Rancho Cucamonga, County of San Bernardino, State of California, as per plat recorded in Book 82 of Parcel Maps, Pages 48 through 51, inclusive, records of said County\*\*\*\*\*

**EXHIBIT "B"**  
**FORM OF CALIFORNIA GRANT DEED**

Recording Requested By and  
When Recorded Return To:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

(Space above this line for Recorder's use)

In accordance with Section 11932 of the California Revenue and Taxation Code, as amended, the Grantor (as hereinafter defined) has declared the amount of the transfer tax by a separate statement which is not being recorded with this Grant Deed.

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, \_\_\_\_\_, a \_\_\_\_\_ ("Grantor") hereby grants to \_\_\_\_\_, a \_\_\_\_\_ ("Grantee"), the real property located in the City of Rancho Cucamonga, County of San Bernardino, State of California, described on Exhibit A, attached hereto and made a part hereof (the "Property").

**SUBJECT ONLY TO**, all matters of record.

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Insert Notary acknowledgment for state/county where the document is physically  
executed/notarized OR use Multi-state acknowledgment approved by Title Company]

EXHIBIT A

PROPERTY

[Check with Title Company for Transfer Tax Statement applicable for the county where the Property is located.]

EXHIBIT "C"

BILL OF SALE

Between: Ameron International Corporation

"Seller"

And: TAMCO

"Purchaser"

Dated: \_\_\_\_\_, 2013

This instrument is executed and delivered pursuant to that certain Real Estate Contract and Joint Escrow Instructions (the "Agreement") dated February \_\_\_\_\_, 2013, by and between Seller and Purchaser. This instrument addresses the "Land" as defined in the Agreement, located on Arrow Highway in Rancho Cucamonga, California.

1. Sale of Personalty. For good and valuable consideration, Seller hereby sells, transfers, sets over and conveys to Purchaser the following:

a. All of Seller's right, title and interest, in and to all fixtures, furniture, equipment, and other tangible personal property, if any, owned by Seller located on the Land as of the Closing Date (the "Personal Property"); and

b. All of Seller's right, title and interest in and to all site plans, permits, surveys, plans and specifications, floor plans, drawings, entitlements, zoning permits, building permits and applications, third-party reports, neighbor agreements and easements which relate to the Land (the "Intangible Property").

2. Agreement Applies. The covenants, agreements, representations, warranties, indemnities and limitations provided in the Agreement with respect to the property conveyed hereunder (including, without limitation, the limitations of liability provided in the Agreement), are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Purchaser and Seller and their respective successors and assigns.

BILL OF SALE

IN WITNESS WHEREOF, the undersigned have caused this Bill of Sale to be executed as of the date written above.

**Seller:**

**AMERON INTERNATIONAL  
CORPORATION, a Delaware  
corporation**

**By:**

**Name:** Kenneth A. Jeck

**Its:** Vice President - Risk Management

**Date:** \_\_\_\_\_



## **EXHIBIT “B”**

1 DONALD D. STARK  
A Professional Corporation  
2 Suite 201 Airport Plaza  
2061 Business Center Drive  
3 Irvine, California 92715  
Telephone: (714) 752-8971  
4

5 CLAYSON, ROTHROCK & MANN  
601 South Main Street  
Corona, California 91720  
6 Telephone: (714) 737-1910  
Attorneys for Plaintiff  
7

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO  
10

11 CHINO BASIN MUNICIPAL WATER  
12 DISTRICT,

13 Plaintiff,

No. RCV 51010<sup>1</sup>

14  
15 v.

CITY OF CHINO, et al.

16 Defendants  
17

18  
19  
20 RESTATED JUDGMENT  
21  
22  
23  
24  
25  
26

27 <sup>1</sup> Original Judgment signed January 27, 1978, Case # 164327 by Judge Howard B. Weiner. File transferred August 1989, by order  
28 of the Court and assigned new case number RCV 51010.

JUDGMENT  
TABLE OF CONTENTS

I. INTRODUCTION.....	1
1. Pleadings, Parties and Jurisdiction.....	1
2. Stipulation for Judgment.....	2
3. Trial; Findings and Conclusions.....	2
4. Definitions.....	2
5. Exhibits.....	4
II. DECLARATION OF RIGHTS.....	5
A. HYDROLOGY.....	5
6. Safe Yield.....	5
7. Overdraft and Prescriptive Circumstances.....	5
B. WATER RIGHTS IN SAFE YIELD.....	5
8. Overlying Rights.....	5
9. Appropriative Rights.....	6
10. Rights of the State of California.....	7
C. RIGHTS TO AVAILABLE GROUND WATER STORAGE CAPACITY.....	7
11. Available Ground Water Storage Capacity.....	7
12. Utilization of Available Ground Water Capacity.....	7
III. INJUNCTION.....	8
13. Injunction Against Unauthorized Production of Basin Water.....	8
14. Injunction Against Unauthorized Storage or Withdrawal of Stored Water.....	8
IV. CONTINUING JURISDICTION.....	9
15. Continuing jurisdiction.....	9
V. WATERMASTER.....	10
A. APPOINTMENT.....	10
16. Watermaster Appointment.....	10
B. POWERS AND DUTIES.....	10

1	17.	Powers and Duties.....	10
2	18.	Rules and Regulations.....	11
3	19.	Acquisition of Facilities.....	11
4	20.	Employment of Experts and Agents.....	12
5	21.	Measuring Devices.....	12
6	22.	Assessments.....	12
7	23.	Investment of Funds.....	12
8	24.	Borrowing.....	12
9	25.	Contracts.....	12
10	26.	Cooperation With Other Agencies.....	12
11	27.	Studies.....	13
12	28.	Ground Water Storage Agreements.....	13
13	29.	Accounting for Stored Water.....	13
14	30.	Annual Administrative Budget.....	13
15	31.	Review Procedures.....	14
16	C.	ADVISORY AND POOL COMMITTEES.....	15
17	32.	Authorization.....	15
18	33.	Term and Vacancies.....	15
19	34.	Voting Power.....	15
20	35.	Quorum.....	16
21	36.	Compensation.....	16
22	37.	Organization.....	16
23	38.	Powers and Functions.....	17
24	VI.	PHYSICAL SOLUTION.....	19
25	A.	GENERAL.....	19
26	39.	Purpose and Objective.....	19
27	40.	Need for Flexibility.....	19

41.	Watermaster Control.....	19
42.	General Pattern of Operations.....	20
B.	POOLING.....	20
43.	Multiple Pools Established.....	20
44.	Determination and Allocation of Rights to Safe Yield of Chino Basin.....	21
45.	Annual Replenishment.....	21
46.	Initial Pooling Plans.....	22
C.	REPORTS AND ACCOUNTING.....	22
47.	Production Reports.....	22
48.	Watermaster Reports and Accounting.....	22
D.	REPLENISHMENT.....	22
49.	Sources of Supplemental Water.....	22
50.	Methods of Replenishment.....	23
E.	REVENUES.....	23
51.	Production Assessment.....	23
52.	Minimal Producers.....	24
53.	Assessment Proceeds – Purposes.....	24
54.	Administrative Expenses.....	24
55.	Assessments -- Procedure.....	24
56.	Accumulation of Replenishment Water Assessment Proceeds.....	25
57.	Effective Date.....	25
VII.	MISCELLANEOUS PROVISIONS.....	25
58.	Designation of Address for Notice and Service.....	25
59.	Service of Documents.....	26
60.	Intervention After Judgment.....	26
61.	Loss of Rights.....	27
62.	Scope of Judgment.....	27

63.	Judgment Binding on Successors.....	27
64.	Costs.....	27
EXHIBIT 'A'	-- Location Map of Chino Basin.....	28
EXHIBIT 'B'	-- Hydrologic Map of Chino Basin.....	29
EXHIBIT 'C'	-- Parties With Overlying Agricultural Rights.....	30
EXHIBIT 'D'	-- Parties With Overlying Non-Agricultural Rights.....	53
EXHIBIT 'E'	-- Appropriative Rights.....	54
EXHIBIT 'F'	-- Overlying Agricultural Pooling Plan.....	55
EXHIBIT 'G'	-- Overlying Non-Agricultural Pooling Plan.....	57
EXHIBIT 'H'	-- Appropriative Pooling Plan.....	62
EXHIBIT 'I'	-- Engineering Appendix.....	70
EXHIBIT 'J'	-- Map of In Lieu Area No. 1.....	74
EXHIBIT 'K'	-- Legal Description of Chino Basin.....	75

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

CHINO BASIN MUNICIPAL WATER  
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.

Defendants

No. RCV 51010<sup>2</sup>

JUDGMENT

I. INTRODUCTION

1. Pleadings, Parties and Jurisdiction. The complaint herein was filed on January 2, 1975, seeking an adjudication of water rights, injunctive relief and the imposition of a physical solution. A first amended complaint was filed on July 16, 1976. The defaults of certain defendants have been entered, and certain other defendants dismissed. Other than defendants who have been dismissed or whose defaults have been entered, all defendants have appeared herein. By answers and order of this Court,

<sup>2</sup> Original Judgment signed January 27, 1978, Case # 164327 by Judge Howard B. Weiner. File transferred August 1989, by order of the Court and assigned new case number RCV 51010.

1 the issues have been made those of a full inter se adjudication between the parties. This Court has  
2 jurisdiction of the subject matter of this action and of the parties herein.

3 2. Stipulation For Judgment. Stipulation for entry of judgment has been filed by and on  
4 behalf of a majority of the parties, representing a majority of the quantitative rights herein adjudicated.

5 3. Trial; Findings and Conclusions. Trial was commenced on December 16, 1977, as to the  
6 non-stipulating parties, and findings of fact and conclusions of law have been entered disposing of the  
7 issues in the case.

8 4. Definitions. As used in this Judgment, the following terms shall have the meanings  
9 herein set forth:

10 (a) Active Parties. All parties other than those who have filed with Watermaster a  
11 written waiver of service of notices, pursuant to Paragraph 58.

12 (b) Annual or Year -- A fiscal year, July 1 through June 30, following, unless the  
13 context shall clearly indicate a contrary meaning.

14 (c) Appropriative Right -- The annual production right of a producer from the Chino  
15 Basin other than pursuant to an overlying right.

16 (d) Basin Water -- Ground water within Chino Basin which is part of the Safe Yield,  
17 Operating Safe Yield, or replenishment water in the Basin as a result of operations under the  
18 Physical Solution decreed herein. Said term does not include Stored Water.

19 (e) CBMWD -- Plaintiff Chino Basin Municipal Water District.

20 (f) Chino Basin or Basin -- The ground water basin underlying the area shown as  
21 such on Exhibit "B" and within the boundaries described in Exhibit "K".

22 (g) Chino Basin Watershed -- The surface drainage area tributary to and overlying  
23 Chino Basin.

24 (h) Ground Water -- Water beneath the surface of the ground and within the zone of  
25 saturation, i.e., below the existing water table.  
26  
27  
28



1 (i) Ground Water Basin -- An area underlain by one or more permeable formations  
2 capable of furnishing substantial water storage.

3 (j) Minimal Producer -- Any producer whose production does not exceed **ten** acre-  
4 feet per year.<sup>3</sup>

5 (k) MWD -- The Metropolitan Water District of Southern California.

6 (l) Operating Safe Yield -- The annual amount of ground water which Watermaster  
7 shall determine, pursuant to criteria specified in Exhibit "I", can be produced from Chino Basin by  
8 the Appropriative Pool parties free of replenishment obligation under the Physical Solution herein.

9 (m) Overdraft -- A condition wherein the total annual production from the Basin  
10 exceeds the Safe Yield thereof.

11 (n) Overlying Right -- The appurtenant right of an owner of lands overlying Chino  
12 Basin to produce water from the Basin for overlying beneficial use on such lands.

13 (o) Person. -- Any individual, partnership, association, corporation, governmental  
14 entity or agency, or other organization.

15 (p) PVMWD -- Defendant Pomona Valley Municipal Water District.

16 (q) Produce or Produced -- To pump or extract ground water from Chino Basin.

17 (r) Producer -- Any person who produces water from Chino Basin.

18 (s) Production -- Annual quantity, stated in acre feet, of water produced.

19 (t) Public Hearing -- A hearing after notice to all parties and to any other person  
20 legally entitled to notice.

21 (u) Reclaimed Water -- Water which, as a result of processing of waste water, is  
22 suitable for a controlled use.

23 (v) Replenishment Water -- Supplemental water used to recharge the Basin  
24 pursuant to the Physical Solution, either directly by percolating the water into the Basin or  
25

26  
27 <sup>3</sup> Order dated September 27, 2001.  
28

1 indirectly by delivering the water for use in lieu of production and use of safe yield or Operating  
2 Safe Yield.

3 (w) Responsible Party — The owner, co-owner, lessee or other person designated by  
4 multiple parties interested in a well as the person responsible for purposes of filing reports  
5 hereunder.

6 (x) Safe Yield — The long-term average annual quantity of ground water (excluding  
7 replenishment or stored water but including return flow to the Basin from use of replenishment or  
8 stored water) which can be produced from the Basin under cultural conditions of a particular year  
9 without causing an undesirable result.

10 (y) SBVMWD — San Bernardino Valley Municipal Water District.

11 (z) State Water — Supplemental Water imported through the State Water Resources  
12 Development System, pursuant to Chapter 8, Division 6, Part 6 of the Water Code.

13 (aa) Stored Water — Supplemental water held in storage, as a result of direct  
14 spreading, in lieu delivery, or otherwise, for subsequent withdrawal and use pursuant to  
15 agreement with Watermaster.

16 (bb) Supplemental Water — Includes both water imported to Chino Basin from outside  
17 Chino Basin Watershed, and reclaimed water.

18 (cc) WMWD — Defendant Western Municipal Water District of Riverside County.

19 5. List of Exhibits. The following exhibits are attached to this Judgment and made a part  
20 hereof:  
21

22 “A” -- “Location Map of Chino Basin” showing boundaries of Chino Basin Municipal Water  
23 District, and other geographic and political features of Chino Basin.

24 “B” -- “Hydrologic Map of Chino Basin” showing hydrologic features of Chino Basin.

25 “C” – Table Showing Parties in Overlying (Agricultural) Pool.

26 “D” – Table Showing Parties in Overlying (Non-agricultural Pool and Their Rights.

27 “E” – Table Showing Appropriators and Their Rights.  
28

1 "F" -- Overlying (Agricultural) Pool Pooling Plan.

2 "G" -- Overlying (Non-agricultural) Pool Pooling Plan.

3 "H" -- Appropriative Pool Pooling Plan.

4 "I" -- Engineering Appendix.

5 "J" -- Map of In Lieu Area No. 1.

6 "K" -- Legal Description of Chino Basin.

7  
8 II. DECLARATION OF RIGHTS

9  
10 A. HYDROLOGY

11  
12 6. Safe Yield. The Safe Yield of Chino Basin is 140,000 acre feet per year.

13 7. Overdraft and Prescriptive Circumstances. In each year for a period in excess of five  
14 years prior to filing of the First Amended Complaint herein, the Safe Yield of the Basin has been  
15 exceeded by the annual production therefrom, and Chino Basin is and has been for more than five years  
16 in a continuous state of over draft. The production constituting said overdraft has been open, notorious,  
17 continuous, adverse, hostile and under claim of right. The circumstances of said overdraft have given  
18 notice to all parties of the adverse nature of such aggregate over-production.

19 B. WATER RIGHTS IN SAFE YIELD

20  
21 8. Overlying Rights. The parties listed in Exhibits "C" and "D", are the owners or in  
22 possession of lands which overlie Chino Basin. As such, said parties have exercised overlying water  
23 rights in Chino Basin. All overlying rights owned or exercised by parties listed in Exhibits "C" and "D",  
24 have, in the aggregate, been limited by prescription except to the extent such rights have been preserved  
25 by self-help by said parties. Aggregate preserved overlying rights in the Safe Yield for agricultural pool  
26 use, including the rights of the State of California, total 82,800 acre feet per year. Overlying rights for  
27 non-agricultural pool use total 7,366 acre feet per year and are individually decreed for each affected  
28

1 party in Exhibit "D". No portion of the Safe Yield of Chino Basin exists to satisfy unexercised overlying  
2 rights, and such rights have all been lost by prescription. However, uses may be made of Basin Water on  
3 overlying lands which have no preserved overlying rights pursuant to the Physical Solution herein. All  
4 overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart  
5 therefrom ***for the term of the Peace Agreement except that the members of the Overlying (Non-***  
6 ***Agricultural) Pool shall have the right to Transfer or lease their quantified Production rights (i)***  
7 ***within the Overlying (Non-Agricultural) Pool; (ii) to Watermaster in conformance with the***  
8 ***procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000;***  
9 ***or (iii) in accordance with the Overlying (Non-Agricultural) Pool Pooling Plan set forth in Exhibit***  
10 ***"G."***<sup>4</sup>

11 9. Appropriative Rights. The parties listed in Exhibit "E" are the owners of appropriative  
12 rights, including rights by prescription, in the unadjusted amounts therein set forth, and by reason thereof  
13 are entitled under the Physical Solution to share in the remaining Safe Yield, after satisfaction of overlying  
14 rights and rights of the State of California, and in the Operating Safe Yield in Chino Basin, in the annual  
15 shares set forth in Exhibit "E".

16 (a) Loss of Priorities. By reason of the long continued overdraft in Chino Basin, and  
17 in light of the complexity of determining appropriative priorities and the need for conserving and  
18 making maximum beneficial use of the water resources of the State, each and all of the parties  
19 listed in Exhibit "E" are estopped and barred from asserting special priorities or preferences, inter  
20 se. All of said appropriative rights are accordingly deemed and considered of equal priority.

21 (b) Nature and Quantity. All rights listed in Exhibit "E" are appropriative and  
22 prescriptive in nature. By reason of the status of the parties, and the provisions of Section 1007  
23 of the Civil Code, said rights are immune from reduction or limitation by prescription.  
24

25  
26  
27 <sup>4</sup> Order dated September 28, 2000 and Order dated April 19, 2001 further modified by Order dated December 21, 2007.  
28

1           10.     Rights of the State of California. The State of California, by and through its Department  
2 of Corrections, Youth Authority and Department of Fish and Game, is a significant producer of ground  
3 water from and the State is the largest owner of land overlying Chino Basin. The precise nature and  
4 scope of the claims and rights of the State need not be, and are not, defined herein. The State, through  
5 said departments, has accepted the Physical Solution herein decreed, in the interests of implementing the  
6 mandate of Section 2 of Article X of the California Constitution. For all purposes of this Judgment, all  
7 future production by the State or its departments or agencies for overlying use on State-owned lands shall  
8 be considered as agricultural pool use.

9  
10                   C. RIGHTS TO AVAILABLE GROUND WATER STORAGE CAPACITY

11           11.     Available Ground Water Storage Capacity. There exists in Chino Basin a substantial  
12 amount of available ground water storage capacity which is not utilized for storage or regulation of Basin  
13 Waters. Said reservoir capacity can appropriately be utilized for storage and conjunctive use of  
14 supplemental water with Basin Waters. It is essential that said reservoir capacity utilization for storage  
15 and conjunctive use of supplemental water be undertaken only under Watermaster control and regulation,  
16 in order to protect the integrity of both such Stored Water and Basin Water in storage and the Safe Yield  
17 of Chino Basin.

18  
19           12.     Utilization of Available Ground Water Capacity. Any person or public entity, whether a  
20 party to this action or not, may make reasonable beneficial use of the available ground water storage  
21 capacity of Chino Basin for storage of supplemental water; provided that no such use shall be made  
22 except pursuant to written agreement with Watermaster, as authorized by Paragraph 28. In the allocation  
23 of such storage capacity, the needs and requirements of lands overlying Chino Basin and the owners of  
24 rights in the Safe Yield or Operating Safe Yield of the Basin shall have priority and preference over  
25 storage for export.  
26  
27  
28

1 III. INJUNCTION

2 13. Injunction Against Unauthorized Production of Basin Water. Each party in each of the  
3 respective pools is enjoined, as follows:  
4

5 (a) Overlying Agricultural Pool. Each party in the Overlying (Agricultural) Pool, its  
6 officers, agents, employees, successors and assigns, is and they each are ENJOINED AND  
7 RESTRAINED from producing ground water from Chino Basin in any year hereafter in excess of  
8 such party's correlative share of the aggregate of 82,800 acre feet allocated to said Pool, except  
9 pursuant to the Physical Solution or a storage water agreement.

10 (b) Overlying Non-Agricultural Pool. Each party in the Overlying Non-Agricultural  
11 Pool, its officers, agents, employees, successors and assigns, is and they each are ENJOINED  
12 AND RESTRAINED from producing ground water of Chino Basin in any year hereafter in excess  
13 of such party's decreed rights in the Safe Yield, except pursuant to the provisions of the Physical  
14 Solution or a storage water agreement.

15 (c) Appropriative Pool. Each party in the Appropriative Pool, its officers, agents,  
16 employees, successors and assigns, is and they are each ENJOINED AND RESTRAINED from  
17 producing ground water of Chino Basin in any year hereafter in excess of such party's decreed  
18 share of Operating Safe Yield, except pursuant to the provisions of the Physical Solution or a  
19 storage water agreement.  
20

21 14. Injunction Against Unauthorized Storage or Withdrawal of Stored Water. Each party, its  
22 officers, agents, employees, successors and assigns is and they each are ENJOINED AND  
23 RESTRAINED from storing supplemental water in Chino Basin for withdrawal, or causing withdrawal of,  
24 water stored by that party, except pursuant to the terms of a written agreement with Watermaster and in  
25 accordance with Watermaster regulations. Any supplemental water stored or recharged in the Basin,  
26 except pursuant to such a Watermaster agreement, shall be deemed abandoned and not classified as  
27 Stored Water. This paragraph has no application, as such, to supplemental water spread or provided in  
28 lieu by Watermaster pursuant to the Physical Solution.

1 IV. CONTINUING JURISDICTION

2 15. Continuing Jurisdiction. Full jurisdiction, power and authority are retained and reserved  
3 to the Court as to all matters contained in this judgment, except:  
4

5 (a) The redetermination of Safe Yield, as set forth in Paragraph 6, during the first ten  
6 (10) years of operation of the Physical Solution;

7 (b) The allocation of Safe Yield as between the several pools as set forth in  
8 Paragraph 44 of the Physical Solution;

9 (c) The determination of specific quantitative rights and shares in the declared Safe  
10 Yield or Operating Safe Yield herein declared in Exhibits "D" and "E"; and  
11

12 (d) The amendment or modification of Paragraphs 7 (a) and (b) of Exhibit "H", during  
13 the first ten (10) years of operation of the Physical Solution, and thereafter only upon affirmative  
14 recommendation of at least 67% of the voting power (determined pursuant to the formula  
15 described in Paragraph 3 of Exhibit "H"), but not less than one-third of the members of the  
16 Appropriative Pool Committee representatives of parties who produce water within IEUA or  
17 WMWD; after said tenth year the formula set forth in said Paragraph 7 (a) and 7 (b) of Exhibit "H"  
18 for payment of the costs of replenishment water may be changed to 100% gross or net, or any  
19 percentage split thereof, but only in response to recommendation to the Court by affirmative vote  
20 of at least 67% of said voting power of the Appropriative Pool representatives of parties who  
21 produce ground water within IEUA or WMWD, but not less than one-third of their number. In  
22 such event, the Court shall act in conformance with such recommendation unless there are  
23 compelling reasons to the contrary; and provided, further, that the fact that the allocation of Safe  
24 Yield or Operating Safe Yield shares may be rendered moot by a recommended change in the  
25 formula for replenishment assessments shall not be deemed to be such a "compelling reason."  
26  
27  
28

1 Said continuing jurisdiction is provided for the purpose of enabling the Court, upon application of any  
2 party, the Watermaster, the Advisory Committee or any Pool Committee, by motion and, upon at least 30  
3 days' notice thereof, and after hearing thereon, to make such further or supplemental orders or directions  
4 as may be necessary or appropriate for interpretation, enforcement or carrying out of this Judgment, and  
5 to modify, amend or amplify any of the provisions of this Judgment.

## 6 V. WATERMASTER

### 7 A. APPOINTMENT

8  
9  
10 16. Watermaster Appointment. CBMWD, acting by and through a majority of its board of  
11 directors, is hereby appointed Watermaster, to administer and enforce the provisions of this Judgment  
12 and any subsequent instructions or orders of the Court hereunder. The term of appointment of  
13 Watermaster shall be for five (5) years. The Court will by subsequent orders provide for successive terms  
14 or for a successor Watermaster. Watermaster may be changed at any time by subsequent order of the  
15 Court, on its own motion, or on the motion of any party after notice and hearing. Unless there are  
16 compelling reasons to the contrary, the Court shall act in conformance with a motion requesting the  
17 Watermaster be changed if such motion is supported by a majority of the voting power of the Advisory  
18 Committee.

### 19 B. POWERS AND DUTIES

20  
21 17. Powers and Duties. Subject to the continuing supervision and control of the Court,  
22 Watermaster shall have and may exercise the express powers, and shall perform the duties, as provided  
23 in this Judgment or hereafter ordered or authorized by the Court in the exercise of the Court's continuing  
24 jurisdiction.



1           18.     Rules and Regulations.<sup>5</sup>

2                   (a) Upon recommendation by the Advisory Committee, Watermaster shall make  
3 and adopt, after public hearing, appropriate rules and regulations for conduct of Watermaster  
4 affairs, including, meeting schedules and procedures, and compensation of members of  
5 Watermaster. Thereafter, Watermaster may amend the rules from time to time upon  
6 recommendation, or with approval of the Advisory Committee after hearing noticed to active  
7 parties, except that compensation of Watermaster members shall be subject to Court Approval. A  
8 copy of the rules and regulations, and of amendments, shall be mailed to each active party.  
9

10                  (b) Under the rules, Watermaster members shall be paid up to \$125 for each day's  
11 attendance at meetings at the direction of the board, not to exceed eight meetings in each month.  
12 Compensation shall not be paid for junkets or attendance at conferences, seminars, or retreats at  
13 locations other than Watermaster headquarters. Members shall not be compensated for more than  
14 one meeting each day.

15                  (c) Under the rules, Watermaster members may be reimbursed for reasonable and  
16 necessary travel, meals, lodging and registration expenses incurred on Watermaster business.  
17 Mileage shall not be paid for travel to or from Watermaster meetings unless the individual must  
18 travel more than 50 miles per month. The Watermaster's budget shall include an appropriation for  
19 expense reimbursement. The Watermaster shall file a report on the expense reimbursement with  
20 the court as part of the Annual Report. The Report shall disclose total expense reimbursements  
21 and single expenditures for items of \$125.00 or more.  
22

23           19.     Acquisition of Facilities. Watermaster may purchase, lease, acquire and hold all  
24 necessary facilities and equipment; provided, that it is not the intent of the Court that Watermaster acquire  
25 any interest in real property or substantial capital assets.  
26

---

27 <sup>5</sup> Order dated March 31, 1999.  
28

1           20.     Employment of Experts and Agents. Watermaster may employ or retain such  
2 administrative, engineering, geologic, accounting, legal or other specialized personnel and consultants as  
3 may be deemed appropriate in the carrying out of its powers and shall require appropriate bonds from all  
4 officers and employees handling Watermaster funds. Watermaster shall maintain records for purposes of  
5 allocation of costs of such services as well as of all other expenses of Watermaster administration as  
6 between the several pools established by the Physical Solution.

7           21.     Measuring Devices. Watermaster shall cause parties, pursuant to uniform rules, to install  
8 and maintain in good operating condition, at the cost of each party, such necessary measuring devices or  
9 meters as Watermaster may deem appropriate. Such measuring devices shall be inspected and tested  
10 as deemed necessary by Watermaster, and the cost thereof shall constitute an expense of Watermaster.  
11

12           22.     Assessments. Watermaster is empowered to levy and collect all assessments provided  
13 for in the pooling plans and Physical Solution.  
14

15           23.     Investment of Funds. Watermaster may hold and invest any and all Watermaster funds  
16 in investments authorized from time to time for public agencies of the State of California.

17           24.     Borrowing. Watermaster may borrow from time to time amounts not exceeding the  
18 annual anticipated receipts of Watermaster during such year.  
19

20           25.     Contracts. Watermaster may enter into contracts for the performance of any powers  
21 herein granted; provided, however, that Watermaster may not contract with or purchase materials,  
22 supplies or services from IEUA, except upon the prior recommendation and approval of the Advisory  
23 Committee and pursuant to written order of the Court.

24           26.     Cooperation With Other Agencies. Subject to prior recommendation or approval of the  
25 Advisory Committee, Watermaster may act jointly or cooperate with agencies of the United States and the  
26 State of California or any political subdivisions, municipalities or districts or any person to the end that the  
27 purpose of the Physical Solution may be fully and economically carried out.  
28

1           27.     Studies. Watermaster may, with concurrence of the Advisory Committee or affected Pool  
2 Committee and in accordance with Paragraph 54 (b), undertake relevant studies of hydrologic conditions,  
3 both quantitative and qualitative, and operating aspects of implementation of the management program  
4 for Chino Basin.

5           28.     Ground Water Storage Agreements. Watermaster shall adopt, with the approval of the  
6 Advisory Committee, uniformly applicable rules and a standard form of agreement for storage of  
7 supplemental water, pursuant to criteria therefore set forth in Exhibit "I". Upon appropriate application by  
8 any person, Watermaster shall enter into such a storage agreement; provided that all such storage  
9 agreements shall first be approved by written order of the Court, and shall by their terms preclude  
10 operations which will have a substantial adverse impact on other producers.  
11

12           29.     Accounting for Stored Water. Watermaster shall calculate additions, extractions and  
13 losses and maintain an annual account of all Stored Water in Chino Basin, and any losses of water  
14 supplies or Safe Yield of Chino Basin resulting from such Stored Water.  
15

16           30.     Annual Administrative Budget. Watermaster shall submit to Advisory Committee an  
17 administrative budget and recommendation for each fiscal year on or before March 1. The Advisory  
18 Committee shall review and submit said budget and their recommendations to Watermaster on or before  
19 April 1, following. Watermaster shall hold a public hearing on said budget at its April quarterly meeting  
20 and adopt the annual administrative budget which shall include the administrative items for each pool  
21 committee. The administrative budget shall set forth budgeted items in sufficient detail as necessary to  
22 make a proper allocation of the expense among the several pools, together with Watermaster's proposed  
23 allocation. The budget shall contain such additional comparative information or explanation as the  
24 Advisory Committee may recommend from time to time. Expenditures within budgeted items may  
25 thereafter be made by Watermaster in the exercise of powers herein granted, as a matter of course. Any  
26 budget transfer in excess of 20% of a budget category during any budget year or modification of such  
27 administrative budget during any year shall be first submitted to the Advisory Committee for review and  
28 recommendation.

1           31.     Review Procedures. All actions, decisions or rules of Watermaster shall be subject to  
2 review by the Court on its own motion or on timely motion by any party, the Watermaster (in the case of a  
3 mandated action), the Advisory Committee, or any Pool Committee, as follows:

4                   (a)     Effective Date of Watermaster Action. Any action, decision or rule of  
5 Watermaster shall be deemed to have occurred or been enacted on the date on which written  
6 notice thereof is mailed. Mailing of copies of approved Watermaster minutes to the active parties  
7 shall constitute such notice to all parties.

8                   (b)     Noticed Motion. Any party, the Watermaster (as to any mandated action), the  
9 Advisory Committee, or any Pool Committee may, by a regularly noticed motion, apply to the  
10 Court for review of any Watermaster's action, decision or rule. Notice of such motion shall be  
11 served personally or mailed to Watermaster and to all active parties. Unless otherwise ordered  
12 by the Court, such motion shall not operate to stay the effect of such Watermaster action,  
13 decision or rule.

14                   (c)     Time for Motion. Notice of motion to review any Watermaster action, decision or  
15 rule shall be served and filed within ninety (90) days after such Watermaster action, decision or  
16 rule, except for budget actions, in which event said notice period shall be sixty (60) days.

17                   (d)     De Novo Nature of Proceedings. Upon the filing of any such motion, the Court  
18 shall require the moving party to notify the active parties, the Watermaster, the Advisory  
19 Committee, and each Pool Committee, of a date for taking evidence and argument, and on the  
20 date so designated shall review de novo the question at issue. Watermaster's findings or  
21 decision, if any, may be received in evidence at said hearing, but shall not constitute presumptive  
22 or prima facie proof of any fact in issue.

23                   (e)     Decision. The decision of the Court in such proceeding shall be an appealable  
24 supplemental order in this case. When the same is final, it shall be binding upon the  
25 Watermaster and all parties.  
26  
27  
28

1  
2  
3 C. ADVISORY AND POOL COMMITTEES

4 32. Authorization. Watermaster is authorized and directed to cause committees of producer  
5 representatives to be organized to act as Pool Committees for each of the several pools created under  
6 the Physical solution. Said Pool Committees shall, in turn, jointly form an Advisory Committee to assist  
7 Watermaster in performance of its functions under this judgment. Pool Committees shall be composed as  
8 specified in the respective pooling plans, and the Advisory Committee shall be composed of ten (10)  
9 voting representatives from each pool, as designated by the respective Pool Committee<sup>6</sup> **in accordance**  
10 **with each pool's pooling plan.** WMWD, **Three Valleys Municipal Water District (Successor to**  
11 **PVMWD)** and SBVMWD shall each be entitled to one non-voting representative on said Advisory  
12 Committee.

13  
14 33. Term and Vacancies. Members of any Pool Committee, shall serve for the term, and  
15 vacancies shall be filled, as specified in the respective pooling plan. Members of the Advisory Committee  
16 shall serve at the will of their respective Pool Committee.

17 34. Voting Power. The voting power on each Pool Committee shall be allocated as provided  
18 in the respective pooling plan. The voting power on the Advisory Committee shall be one hundred (100)  
19 votes allocated among the three pools in proportion to the total assessments paid to Watermaster during  
20 the preceding year; provided, that the minimum voting power of each pool shall be

- 21  
22 (a) Overlying Agricultural Pool 20,  
23 (b) Overlying Non-Agricultural Pool 5, and  
24 (c) Appropriative Pool 20.

25  
26  
27 <sup>6</sup> Order dated September 18, 1996.  
28

1 In the event any pool is reduced to its said minimum vote, the remaining votes shall be allocated between  
2 the remaining pools on said basis of assessments paid to Watermaster by each such remaining pool  
3 during the preceding year. The method of exercise of each pool's voting power on the Advisory  
4 Committee shall be as determined by the respective pool committees.

5 35. Quorum. A majority of the voting power of the Advisory Committee or any Pool  
6 Committee shall constitute a quorum for the transaction of affairs of such Advisory or Pool Committee;  
7 provided, that at least one representative of each Pool Committee shall be required to constitute a  
8 quorum of the Advisory Committee. No Pool Committee representative may purposely absent himself or  
9 herself, without good cause, from an Advisory Committee meeting to deprive it of a quorum. Action by  
10 affirmative vote of a majority of the entire voting power of any Pool Committee or the Advisory Committee  
11 shall constitute action by such committee. Any action or recommendation of a Pool Committee or the  
12 Advisory Committee shall be transmitted to Watermaster in writing, together with a report of any  
13 dissenting vote or opinion.  
14

15 36. Compensation. Pool or Advisory Committee members may receive compensation, to be  
16 established by the respective pooling plan, but not to exceed twenty-five dollars (\$25.00) for each  
17 meeting of such Pool or Advisory Committee attended, and provided that no member of a Pool or  
18 Advisory Committee shall receive compensation of more than three hundred (\$300.00) dollars for service  
19 on any such committee during any one year. All such compensation shall be a part of Watermaster  
20 administrative expense. No member of any Pool or Advisory Committee shall be employed by  
21 Watermaster or compensated by Watermaster for professional or other services rendered to such Pool or  
22 Advisory Committee or to Watermaster, other than the fee for attendance at meetings herein provided,  
23 plus reimbursement of reasonable expenses related to activities within the Basin.  
24

25 37. Organization.

26 (a) Organizational Meeting. At its first meeting in each year, each Pool Committee  
27 and the Advisory Committee shall elect a chairperson and a vice chairperson from its  
28

1 membership. It shall also select a secretary, a treasurer and such assistant secretaries and  
2 treasurers as may be appropriate, any of whom may, but need not, be members of such Pool or  
3 Advisory Committee.

4 (b) Regular Meetings. All Pool Committees and the Advisory Committee shall hold  
5 regular meetings at a place and time to be specified in the rules to be adopted by each Pool and  
6 Advisory Committee. Notice of regular meetings of any Pool or Advisory Committee, and of any  
7 change in time or place thereof, shall be mailed to all active parties in said pool or pools.  
8

9 (c) Special Meetings. Special meetings of any Pool or Advisory Committee may be  
10 called at any time by the Chairperson or by any three (3) members of such Pool or Advisory  
11 Committee by delivering notice personally or by mail to each member of such Pool or Advisory  
12 Committee and to each active party at least 24 hours before the time of each such meeting in the  
13 case of personal delivery, and 96 hours in the case of mail. The calling notice shall specify the  
14 time and place of the special meeting and the business to be transacted. No other business shall  
15 be considered at such meeting.  
16

17 (d) Minutes. Minutes of all Pool Committee, Advisory Committee and Watermaster  
18 meetings shall be kept at Watermaster's offices. Copies thereof shall be mailed or otherwise  
19 furnished to all active parties in the pool or pools concerned. Said copies of minutes shall  
20 constitute notice of any Pool or Advisory Committee action therein reported, and shall be  
21 available for inspection by any party.

22 (e) Adjournments. Any meeting of any Pool or Advisory Committee may be  
23 adjourned to a time and place specified in the order of adjournment. Less than a quorum may so  
24 adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously  
25 posted forthwith on or near the door of the place where the meeting was held.

26 38. Powers and Functions. The powers and functions of the respective Pool Committees  
27 and the Advisory Committee shall be as follows:  
28

1 (a) Pool Committees. Each Pool Committee shall have the power and responsibility  
2 for developing policy recommendations for administration of its particular pool, as created under  
3 the Physical Solution. All actions and recommendations of any Pool Committee which require  
4 Watermaster implementation shall first be noticed to the other two pools. If no objection is  
5 received in writing within thirty (30) days, such action or recommendation shall be transmitted  
6 directly to Watermaster for action. If any such objection is received, such action or  
7 recommendation shall be reported to the Advisory Committee before being transmitted to  
8 Watermaster.

9 (b) Advisory Committee. The Advisory Committee shall have the duty to study, and  
10 the power to recommend, review and act upon all discretionary determinations made or to be  
11 made hereunder by Watermaster.  
12

13 [1] Committee Initiative. When any recommendation or advice of the  
14 Advisory Committee is received by Watermaster, action consistent therewith may be  
15 taken by Watermaster; provided, that any recommendation approved by 80 votes or more  
16 in the Advisory Committee shall constitute a mandate for action by Watermaster  
17 consistent therewith. If Watermaster is unwilling or unable to act pursuant to  
18 recommendation or advice from the Advisory Committee (other than such mandatory  
19 recommendations), Watermaster shall hold a public hearing, which shall be followed by  
20 written findings and decision. Thereafter, Watermaster may act in accordance with said  
21 decision, whether consistent with or contrary to said Advisory Committee  
22 recommendation. Such action shall be subject to review by the Court, as in the case of  
23 all other Watermaster determinations.

24 [2] Committee Review. In the event Watermaster proposes to take  
25 discretionary action, other than approval or disapproval of a Pool Committee action or  
26 recommendation properly transmitted, or execute any agreement not theretofore within  
27 the scope of an Advisory Committee recommendation, notice of such intended action  
28



1 shall be served on the Advisory Committee and its members at least thirty (30) days  
2 before the Watermaster meeting at which such action is finally authorized.

3 (c) Review of Watermaster Actions. Watermaster (as to mandated action), the  
4 Advisory Committee or any Pool Committee shall be entitled to employ counsel and expert  
5 assistance in the event Watermaster or such Pool or Advisory Committee seeks Court review of  
6 any Watermaster action or failure to act. The cost of such counsel and expert assistance shall be  
7 Watermaster expense to be allocated to the affected pool or pools.  
8

## 9 VI. PHYSICAL SOLUTION

### 10 A. GENERAL

11  
12 39. Purpose and Objective. Pursuant to the mandate of Section 2 of Article X of the  
13 California Constitution, the Court hereby adopts and orders the parties to comply with a Physical Solution.  
14 The purpose of these provisions is to establish a legal and practical means for making the maximum  
15 reasonable beneficial use of the waters of Chino Basin by providing the optimum economic, long-term,  
16 conjunctive utilization of surface waters, ground waters and supplemental water, to meet the  
17 requirements of water users having rights in or dependent upon Chino Basin.  
18

19 40. Need for Flexibility. It is essential that this Physical solution provide maximum flexibility  
20 and adaptability in order that Watermaster and the Court may be free to use existing and future  
21 technological, social, institutional and economic options, in order to maximize beneficial use of the waters  
22 of Chino Basin. To that end, the Court's retained jurisdiction will be utilized, where appropriate, to  
23 supplement the discretion herein granted to the Watermaster.

24 41. Watermaster Control. Watermaster, with the advice of the Advisory and Pool  
25 Committees, is granted discretionary powers in order to develop an optimum basin management program  
26 for Chino Basin, including both water quantity and quality considerations. Withdrawals and supplemental  
27 water replenishment of Basin Water, and the full utilization of the water resources of Chino Basin, must  
28

1 be subject to procedures established by and administered through Watermaster with the advice and  
2 assistance of the Advisory and Pool Committees composed of the affected producers. Both the quantity  
3 and quality of said water resources may thereby be preserved and the beneficial utilization of the Basin  
4 maximized.

5 42. General Pattern of Operations. It is contemplated that the rights herein decreed will be  
6 divided into three (3) operating pools for purposes of Watermaster administration. A fundamental  
7 premise of the Physical Solution is that all water users dependent upon Chino Basin will be allowed to  
8 pump sufficient waters from the Basin to meet their requirements. To the extent that pumping exceeds  
9 the share of the Safe Yield assigned to the Overlying Pools, or the Operating Safe Yield in the case of the  
10 Appropriative Pool, each pool will provide funds to enable Watermaster to replace such overproduction.  
11 The method of assessment in each pool shall be as set forth in the applicable pooling plan.

## 13 B. POOLING

14 43. Multiple Pools Established. There are hereby established three (3) pools for  
15 Watermaster administration of, and for the allocation of responsibility for, and payment of, costs of  
16 replenishment water and other aspects of this Physical Solution.

17  
18 (a) Overlying (Agricultural) Pool. The first pool shall consist of the State of California  
19 and all overlying producers who produce water for other than industrial or commercial purposes.  
20 The initial members of the pool are listed in Exhibit "C".

21  
22 (b) Overlying (Non-agricultural) Pool The second pool shall consist of overlying  
23 producers who produce water for industrial or commercial purposes. The initial members of this  
24 pool are listed in Exhibit "D".

25 (c) Appropriative Pool. A third and separate pool shall consist of owners of  
26 appropriative rights. The initial members of the pool are listed in Exhibit "E".  
27  
28

Any party who changes the character of his use may, by subsequent order of the Court, be reassigned to the proper pool; but the allocation of Safe Yield under Paragraph 44 hereof shall not be changed. Any non-party producer or any person who may hereafter commence production of water from Chino Basin, and who may become a party to this physical solution by intervention, shall be assigned to the proper pool by the order of the Court authorizing such intervention.

44. Determination and Allocation of Rights to Safe Yield of Chino Basin. The declared Safe Yield of Chino Basin is hereby allocated as follows:

<u>Pool</u>	<u>Allocation</u>
Overlying (Agricultural) Pool	414,000 acre-feet in any five (5) consecutive years.
Overlying (Non-agricultural) Pool	7,366 acre-feet per year.
Appropriative Pool	49,834 acre-feet per year.

The foregoing acre foot allocations to the overlying pools are fixed. Any subsequent change in the Safe Yield shall be debited or credited to the Appropriative Pool. Basin Water available to the Appropriative Pool without replenishment obligation may vary from year to year as the Operating Safe Yield is determined by Watermaster pursuant to the criteria set forth in Exhibit "I".

45. Annual Replenishment. Watermaster shall levy and collect assessments in each year, pursuant to the respective pooling plans, in amounts sufficient to purchase replenishment water to replace production by any pool during the preceding year which exceeds that pool's allocated share of Safe Yield in the case of the overlying pools, or Operating Safe Yield in the case of the Appropriative Pool. It is anticipated that supplemental water for replenishment of Chino Basin may be available at different rates to the various pools to meet their replenishment obligations. If such is the case, each pool will be assessed only that amount necessary for the cost of replenishment water to that pool, at the rate available to the pool, to meet its replenishment obligation.

1           46.     Initial Pooling Plans. The initial pooling plans, which are hereby adopted, are set forth in  
2 Exhibits "F", "G" and "H", respectively. Unless and until modified by amendment of the judgment pursuant  
3 to the Court's continuing jurisdiction, each such plan shall control operation of the subject pool.

4  
5                                   C. REPORTS AND ACCOUNTING

6           47.     Production Reports. Each party or responsible party shall file periodically with  
7 Watermaster, pursuant to Watermaster rules, a report on a form to be prescribed by Watermaster  
8 showing the total production of such party during the preceding reportage period, and such additional  
9 information as Watermaster may require, including any information specified by the affected Pool  
10 Committee.

11  
12           48.     Watermaster Report and Accounting. **Watermaster's Annual Report shall be filed by**  
13 **January 31 of each year. The Report shall apply to the preceding fiscal years' operation. The**  
14 **Report shall contain details as to operation of the Pools. A certified audit of assessments and**  
15 **expenditures pursuant to this Physical Solution, and a review of Watermaster activity.<sup>7</sup>**

16                                   D. REPLENISHMENT

17  
18           49.     Sources of Supplemental Water. Supplemental water may be obtained by Watermaster  
19 from any available source. Watermaster shall seek to obtain the best available quality of supplemental  
20 water at the most reasonable cost for recharge in the Basin. To the extent that costs of replenishment  
21 water may vary between pools, each pool shall be liable only for the costs attributable to its required  
22 replenishment. Available sources may include, but are not limited to:

23                   (a)     Reclaimed Water. There exist a series of agreements generally denominated the  
24 Regional Waste Water Agreements between IEUA and owners of the major municipal sewer  
25

26  
27 <sup>7</sup> Order dated March 31, 1999.  
28

1 systems within the basin. Under those agreements, which are recognized hereby but shall be  
2 unaffected and unimpaired by this judgment, substantial quantities of reclaimed water may be  
3 made available for replenishment purposes. There are additional sources of reclaimed water  
4 which are, or may become, available to Watermaster for said purposes. Maximum beneficial use  
5 of reclaimed water shall be given high priority by Watermaster.

6 (b) State Water. State water constitutes a major available supply of supplemental  
7 water. In the case of State Water, Watermaster purchases shall comply with the water service  
8 provisions of the State's water service contracts. More specifically, Watermaster shall purchase  
9 State Water from MWD for replenishment of excess production within IEUA, WMWD and  
10 TVMWD, and from SBVMWD to replenish excess production within SBVMWD's boundaries in  
11 Chino Basin, except to the extent that MWD and SBVMWD give their consent as required by  
12 such State water service contracts.

13  
14 (c) Local Import. There exist facilities and methods for importation of surface and  
15 ground water supplies from adjacent basins and watersheds.

16  
17 (d) Colorado River Supplies. MWD has water supplies available from its Colorado  
18 River Aqueduct.

19 50. Methods of Replenishment. Watermaster may accomplish replenishment of  
20 overproduction from the Basin by any reasonable method, including:

21  
22 (a) Spreading and percolation or Injection of water in existing or new facilities,  
23 subject to the provisions of Paragraphs 19, 25 and 26 hereof.

24  
25 (b) In Lieu Procedures. Watermaster may make, or cause to be made, deliveries of  
26 water for direct surface use, in lieu of ground water production.

## 27 E. REVENUES

1           51.     Production Assessment. Production assessments, on whatever basis, may be levied by  
2 Watermaster pursuant to the pooling plan adopted for the applicable pool.

3           52.     Minimal Producers. Minimal Producers shall be exempted from payment of production  
4 assessments, upon filing of production reports as provided in Paragraph 47 of this Judgment, and  
5 payment of an annual five dollar (\$5.00) administrative fee as specified by Watermaster rules.  
6

7           53.     Assessment Proceeds -- Purposes. Watermaster shall have the power to levy  
8 assessments against the parties (other than minimal pumpers) based upon production during the  
9 preceding period of assessable production, whether quarterly, semi-annually or annually, as may be  
10 determined most practical by Watermaster or the affected Pool Committee.

11           54.     Administrative Expenses. The expenses of administration of this Physical Solution shall  
12 be categorized as either (a) general Watermaster administrative expense, or (b) special project expense.  
13

14                   (a)     General Watermaster Administrative Expense shall include office rental, general  
15 personnel expense, supplies and office equipment, and related incidental expense and general  
16 overhead.  
17

18                   (b)     Special Project Expense shall consist of special engineering, economic or other  
19 studies, litigation expense, meter testing or other major operating expenses. Each such project  
20 shall be assigned a Task Order number and shall be separately budgeted and accounted for.  
21 General Watermaster administrative expense shall be allocated and assessed against the  
22 respective pools based upon allocations made by the Watermaster, who shall make such  
23 allocations based upon generally accepted cost accounting methods. Special Project Expense  
24 shall be allocated to a specific pool, or any portion thereof, only upon the basis of prior express  
25 assent and finding of benefit by the Pool Committee, or pursuant to written order of the Court.

26           55.     Assessments -- Procedure. Assessments herein provided for shall be levied and  
27 collected as follows:  
28

1 (a) Notice of Assessment. Watermaster shall give written notice of all applicable  
2 assessments to each party on or before ninety (90) days after the end of the production period to  
3 which such assessment is applicable.

4 (b) Payment. Each assessment shall be payable on or before thirty (30) days after  
5 notice, and shall be the obligation of the party or successor owning the water production facility at  
6 the time written notice of assessment is given, unless prior arrangement for payment by others  
7 has been made in writing and filed with Watermaster.

8 (c) Delinquency. Any delinquent assessment shall bear interest at 10% per annum  
9 (or such greater rate as shall equal the average current cost of borrowed funds to the  
10 Watermaster) from the due date thereof. Such delinquent assessment and interest may be  
11 collected in a show-cause proceeding herein instituted by the Watermaster, in which case the  
12 Court may allow Watermaster its reasonable costs of collection, including attorney's fees.

13 56. Accumulation of Replenishment Water Assessment Proceeds. In order to minimize  
14 fluctuation in assessment and to give Watermaster flexibility in purchase and spreading of replenishment  
15 water, Watermaster may make reasonable accumulations of replenishment water assessment proceeds.  
16 Interest earned on such retained funds shall be added to the account of the pool from which the funds  
17 were collected and shall be applied only to the purchase of replenishment water.

18 57. Effective Date. The effective date for accounting and operation under this Physical  
19 Solution shall be July 1, 1977, and the first production assessments hereunder shall be due after July 1,  
20 1978. Watermaster shall, however, require installation of meters or measuring devices and establish  
21 operating procedures immediately, and the cost of such Watermaster activity (not including the cost of  
22 such meters and measuring devices) may be recovered in the first administrative assessment in 1978.

VII. MISCELLANEOUS PROVISIONS

58. Designation of Address for Notice and Service. Each party shall designate the name and address to be used for purposes of all subsequent notices and service herein, either by its endorsement on the Stipulation for Judgment or by a separate designation to be filed within thirty (30) days after Judgment has been served. Said designation may be changed from time to time by filing a written notice of such change with the Watermaster. Any party desiring to be relieved of receiving notices of Watermaster or committee activity may file a waiver of notice on a form to be provided by Watermaster. Thereafter such party shall be removed from the Active Party list. Watermaster shall maintain at all times a current list of all active parties and their addresses for purposes of service. Watermaster shall also maintain a full current list of names and addresses of all parties or their successors, as filed herein. Copies of such lists shall be available, without cost, to any party, the Advisory Committee or any Pool Committee upon written request therefor.

59. Service of Documents. Delivery to or service upon any party or active party by the Watermaster, by any other party, or by the Court, of any item required to be served upon or delivered to such party or active party under or pursuant to the Judgment shall be made personally or by deposit in the United States mail, first class, postage prepaid, addressed to the designee and at the address in the latest designation filed by such party or active party.

60. Intervention After Judgment. Any non-party assignee of the adjudicated appropriative rights of any appropriator, or any other person newly proposing to produce water from Chino Basin, may become a party to this Judgment upon filing a petition in intervention. Said intervention must be confirmed by order of this Court. Such intervenor shall thereafter be a party bound by this judgment and entitled to the rights and privileges accorded under the Physical Solution herein, through the pool to which the Court shall assign such intervenor.



61. Loss of Rights. Loss, whether by abandonment, forfeiture or otherwise, of any right herein adjudicated shall be accomplished only (1) by a written election by the owner of the right filed with Watermaster, or (2) by order of the Court upon noticed motion and after hearing.

62. Scope of Judgment. Nothing in this Judgment shall be deemed to preclude or limit any party in the assertion against a neighboring party of any cause of action now existing or hereafter arising based upon injury, damage or depletion of water supply available to such party, proximately caused by nearby pumping which constitutes an unreasonable interference with such complaining party's ability to extract ground water.

63. Judgment Binding on Successors. This Judgment and all provisions thereof are applicable to and binding upon not only the parties to this action, but also upon their respective heirs, executors, administrators, successors, assigns, lessees and licensees and upon the agents, employees and attorneys in fact of all such persons.

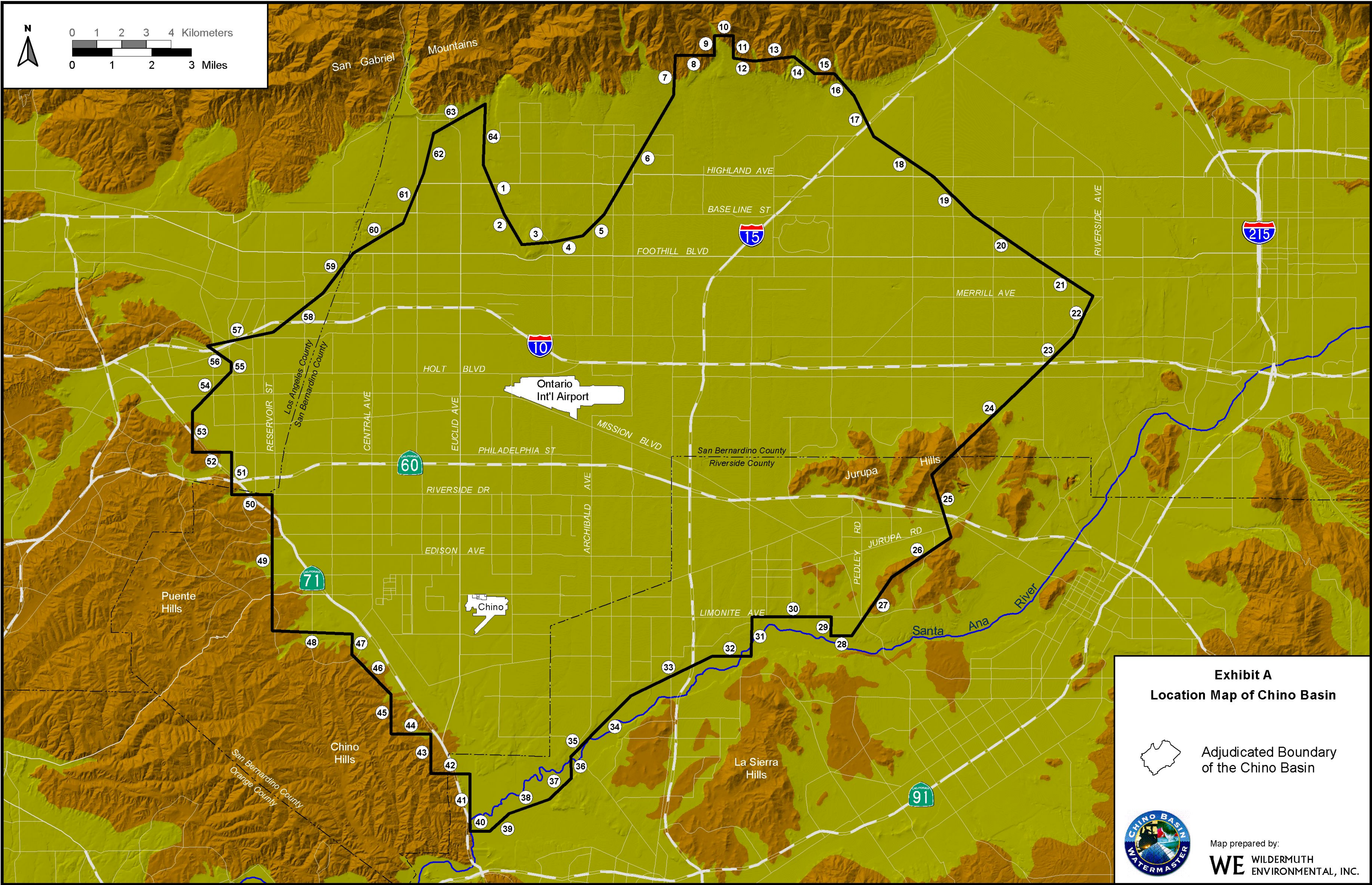
64. Costs. No party shall recover any costs in this proceeding from any other party.

Dated: January 1, 1978

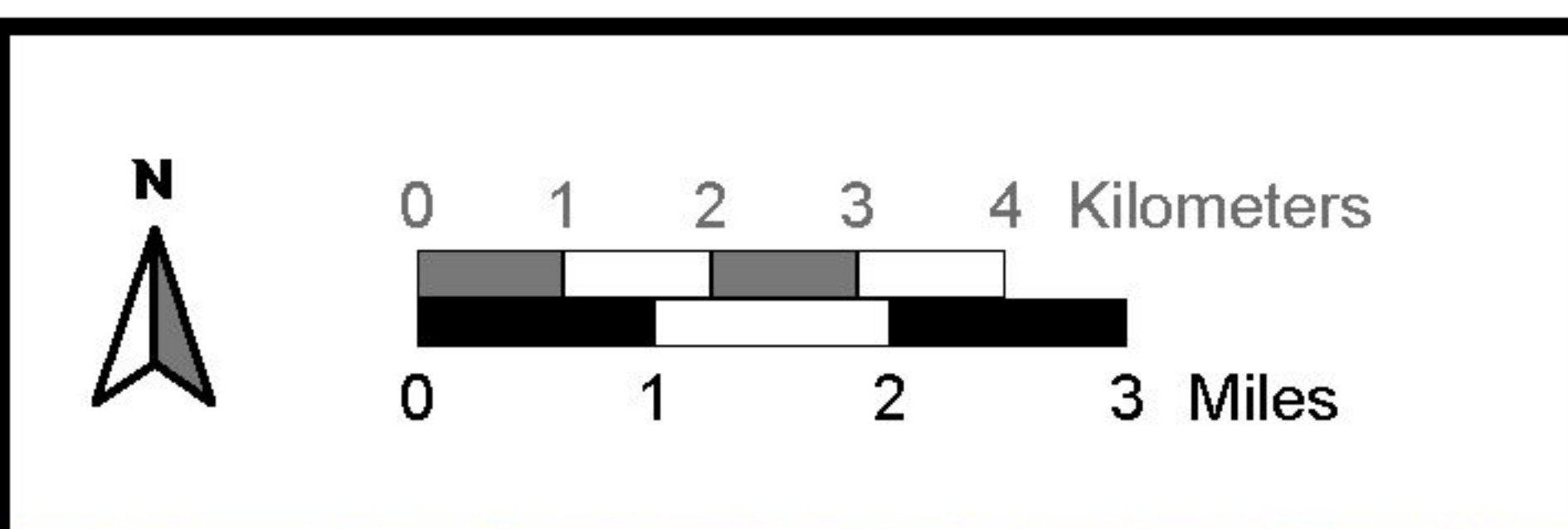
Howard B. Weiner

Howard B. Weiner









**Exhibit B**  
**Hydrologic Map of Chino Basin**

- Fault**  
(Solid where known; dashed where approximate; dotted where concealed; queried where unknown; big dots where barrier to groundwater flow)
- Groundwater Divide**



Map prepared by:  
**WE** WILDERMUTH ENVIRONMENTAL, INC.



**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	STATE OF CALIFORNIA	Aphesssetche, Xavier
2	COUNTY OF SAN BERNARDINO	Arena Mutual Water Assn.
3	Abacherli, Dairy, Inc.	Armstrong Nurseries, Inc.
4	Abacherli, Frank	Arretche, Frank
5	Abacherli, Shirley	Arretche, Jean Pierre
6	Abbona, Anna	Arvidson, Clarence F.
7	Abbona, James	Arvidson, Florence
8	Abbona, Jim	Ashley, George W.
9	Abbona, Mary	Ashley, Pearl E.
10	Agliani, Amelia H.	Atlas Farms
11	Agman, Inc.	Atlas Ornamental Iron Works, Inc.
12	Aguerre, Louis B.	Aukeman, Carol
13	Ahmanson Trust Co.	Aukeman, Lewis
14	Akiyama, Shizuye	Ayers, Kenneth C., aka
15	Akiyama, Tomoo	Kelley Ayers
16	Akkerman, Dave	Bachoc, Raymond
17	Albers, J.N.	Baldwin, Edgar A.
18	Albers, Nellie	Baldwin, Lester
19	Alewyn, Jake J.	Banbury, Carolyn
20	Alewyn, Normalee	Bangma Dairy
21	Alger, Mary D.	Bangma, Arthur
22	Alger, Raymond	Bangma, Ida
23	Allen, Ben F.	Bangma, Martin
24	Allen, Jane F.	Bangma, Sam
25	Alta-Dena Dairy	Barba, Anthony B.
26	Anderson Farms	Barba, Frank
27	Anguiano, Sarah L.S.	Barcellos, Joseph
28	Anker, Gus	Barnhill, Maurine W.
	Barnhill, Paul	Boersma, Angie

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Bartel, Dale	Boersma, Berdina
2	Bartel, Ursula	Boersma, Frank
3	Bartel, Willard	Boersma, Harry
4	Barthelemy, Henry	Boersma, Paul
5	Barthelemy, Roland	Boersma, Sam
6	Bassler, Donald V., M.D.	Boersma, William L.
7	Bates, Lowell R.	Bohlander & Holmes, Inc.
8	Bates, Mildred L.	Bokma, Peter
9	Beahm, James W.	Bollema, Jacob
10	Beahm, Joan M.	Boonstoo, Edward
11	Bekendam, Hank	Bootsma, Jim
12	Bekendam, Pete	Borba, Dolene
13	Bello, Eugene	Borba, Dolores
14	Bello, Olga	Borba, Emily
15	Beltman, Evelyn	Borba, George
16	Beltman, Tony	Borba, John
17	Bergquist Properties, Inc.	Borba, John & Sons
18	Bevacqua, Joel A.	Borba, John Jr.
19	Bevacqua, Marie B.	Borba, Joseph A.
20	Bidart, Bernard	Borba, Karen E.
21	Bidart, Michael J.	Borba, Karen M.
22	Binnell, Wesley	Borba, Pete, Estate of
23	Black, Patricia E.	Borba, Ricci
24	Black, Victor	Borba, Steve
25	Bodger, John & Sons Co.	Borba, Tom
26	Boer, Adrian	Bordisso, Alleck
27	Boersma and Wind Dairy	Borges, Angelica M.
28	Borges, Bernadette	Bothof, Roger W.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Borges, John O.	Bouma, Cornie
2	Borges, Linda L.	Bouma, Emma
3	Borges, Manual Jr.	Bouma, Henry P.
4	Borges, Tony	Bouma, Martin
5	Bos, Aleid	Bouma, Peter G. & Sons Dairy
6	Bos, Gerrit	Bouma, Ted
7	Bos, John	Bouman, Helen
8	Bos, John	Bouman, Sam
9	Bos, Margaret	Bower, Mabel E.
10	Bos, Mary	Boys Republic
11	Bos, Mary Beth	Breedyk, Arie
12	Bos, Tony	Breedyk, Jessie
13	Bosch, Henrietta	Briano Brothers
14	Bosch, Peter T.	Briano, Albert
15	Boschma, Betty	Briano, Albert Trustee for
16	Boschma, Frank	Briano, Albert Frank
17	Boschma, Greta	Briano, Lena
18	Boschma, Henry	Brink, Russell N.
19	Bosma, Dick	Brinkerhoff, Margaret
20	Bosma, Florence G.	Brinkerhoff, Robert L.
21	Bosma, Gerrit	Britschgi, Florence
22	Bosma, Jacob J.	Britschgi, Magdalena Garetto
23	Bosma, Jeanette Thea	Britschgi, Walter P.
24	Bosman, Frank	Brommer, Marvin
25	Bosman, Nellie	Brookside Enterprizes, dba
26	Bosnyak, Goldie M.	Brookside Vineyard Co.
27	Bosnyak, Martin	Brothers Three Dairy
28	Brown, Eugene	Chino Corona Investment

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Brun, Martha M.	Chino Water Co.
2	Brun, Peter Robert	Christensen, Leslie
3	Buma, Duke	Christensen, Richard G.
4	Buma, Martha	Christian, Ada R.
5	Bunse, Nancy	Christian, Harold F.
6	Bunse, Ronnie L.	Christy, Ella J.
7	Caballero, Bonnie L.	Christy, Ronald S.
8	Caballero, Richard F.	Cihigoyenette, Jean
9	Cable Airport Inc.	Cihigoyenette, Leona
10	Cadlini, Donald	Cihigoyenette, Martin
11	Cadlini, Jesse R.	Clarke, Arthur B.
12	Cadlini, Marie Edna	Clarke, Nancy L.
13	Cambio, Anna	Clarke, Phyllis J.
14	Cambio, Charles, Estate of	Coelho, Isabel
15	Cambio, William V.	Coelho, Joe A. Jr.
16	Cardoza, Florence	Collins, Howard E.
17	Cardoza, Olivi	Collins, Judith F.
18	Cardoza, Tony	Collinsworth, Ester L.
19	Carnesi, Tom	Collinsworth, John E.
20	Carver, Robt M., Trustee	Collinsworth, Shelby
21	Cauffman, John R.	Cone Estate (05-2-00648/649)
22	Chacon Bros.	Consolidated Freightways Corp.
23	Chancon, Elvera P.	of Delaware
24	Chacon, Joe M.	Corona Farms Co.
25	Chacon, Robert M.	Corra, Rose
26	Chacon, Virginia L.	Costa, Dimas S.
27	Chez, Joseph C.	Costa, Laura
28	Costa, Myrtle	De Boer, L.H.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Costamagna, Antonio	De Boer, Sidney
2	Costamagna, Joseph	De Bos, Andrew
3	Cousyn, Claus B.	De Graaf, Anna Mae
4	Cramer, Carole F.	De Graaf, Gerrit
5	Cramer, William R.	De Groot, Dick
6	Crossroads Auto Dismantlers, Inc.	De Groot, Dorothy
7	Crouse, Beatrice I.	De Groot, Ernest
8	Crouse, Roger	De Groot, Henrietta
9	Crowley, Juanita C.	De Groot, Jake
10	Crowley, Ralph	De Groot, Pete Jr.
11	Cucamonga Vintners	De Haan, Bernadene
12	D'Astici, Teresa	De Haan, Henry
13	Da Costa, Cecilia B.	De Hoog, Adriana
14	Da Costa, Joaquim F.	De Hoog, Joe
15	Daloisio, Norman	De Hoog, Martin
16	De Berard Bros.	De Hoog, Martin L.
17	De Berard, Arthur, Trustee	De Hoog, Mitch
18	De Berard, Charles	De Hoog, Tryntje
19	De Berard, Chas., Trustee	De Jager, Cobi
20	De Berard, Helan J.	De Jager, Edward D.
21	De Berard, Robert	De Jong Brothers Dairy
22	De Berard, Robert Trustee	De Jong, Cornelis
23	De Bie, Adrian	De Jong, Cornelius
24	De Bie, Henry	De Jong, Grace
25	De Bie, Margaret M.	De Jong, Jake
26	De Bie, Marvin	De Jong, Lena
27	De Boer, Fred	De Leeuw, Alice
28	De Leeuw, Sam	Dirkse, Catherine



**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	De Soete, Agnes	Dirkse, Charles C.
2	De Soete, Andre	Dixon, Charles E.
3	De Vries, Abraham	Dixon, Geraldine A.
4	De Vries, Case	Doesberg, Hendrica
5	De Vries, Dick	Doesburg, Theodorus, P.
6	De Vries, Evelyn	Dolan, Marion
7	De Vries, Henry, Estate of	Dolan, Michael H.
8	De Vries, Hermina	Dominguez, Helen
9	De Vries, Jack H.	Dominguez, Manual
10	De Vries, Jane	Donkers, Henry A.
11	De Vries, Janice	Donkers, Nellie G.
12	De Vries, John	Dotta Bros.
13	De Vries, John J.	Douma Brothers Dairy
14	De Vries, Neil	Douma, Betty A.
15	De Vries, Ruth	Douma, Fred A.
16	De Vries, Theresa	Douma, Hendrika
17	De Wit, Gladys	Douma, Herman G.
18	De Wit, Peter S.	Douma, Narleen J.
19	De Wyn, Evert	Douma, Phillip M.
20	De Zoete, Hattie V.	Dow Chemical Co.
21	Do Zoete, Leo A.	Dragt, Rheta
22	Decker, Hallie	Dragt, William
23	Decker, Henry A.	Driftwood Dairy Farm
24	Demmer, Ernest	Droogh, Case
25	Di Carlo, Marie	Duhalde, Marian
26	Di Carlo, Victor	Duhalde, Lauren
27	Di Tommaso, Frank	Duits, Henrietta
28	Duits, John	Excelsior Farms F.D.I.C.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Dunlap, Edna Kraemer,	Fagundes, Frank M.
2	Estate of	Fagundes, Mary
3	Durrington, Glen	Fernandes, Joseph Jr.
4	Durrington, William F.	Fernandes, Velma C.
5	Dusi, John Sr.	Ferraro, Ann
6	Dykstra, Dick	Ferreira, Frank J.
7	Dykstra, John	Ferreira, Joe C. Jr.
8	Dykstra, John & Sons	Ferreira, Narcie
9	Dykstra, Wilma	Fillippi, J. Vintage Co.
10	Dyt, Cor	Filippi, Joseph
11	Dyt, Johanna	Filippi, Joseph A.
12	E and S Grape Growers	Filippi, Mary E.
13	Eaton, Thomas, Estate of	Fitzgerald, John R.
14	Echeverria, Juan	Flameling Dairy Inc.
15	Echeverria, Carlos	Flamingo Dairy
16	Echeverria, Pablo	Foss, Douglas E.
17	Eilers, E. Myrle	Foss, Gerald R.
18	Eilers, Henry W.	Foss, Russel
19	El Prado Golf Course	Fred & John Troost No. 1 Inc.
20	Ellsworth, Rex C.	Fred & Maynard Troost No. 2 Inc.
21	Engelsma, Jake	Freitas, Beatriz
22	Engelsma, Susan	Freitas, Tony T.
23	Escojeda, Henry	Gakle, Louis L.
24	Etiwanda Grape Products Co.	Galleano Winery, Inc.
25	Euclid Ave. Investment One	Galleano, Bernard D.
26	Euclid Ave. Investment Four	Galleano, D.
27	Euclid Ave. Three Investment	Galleano, Mary M.
28	Garcia, Pete	Hansen, Raymond F.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Gardner, Leland V.	Hanson, Ardeth W.
2	Gardner, Lola M.	Harada, James T.
3	Garrett, Leonard E.	Harada, Violet A.
4	Garrett, Patricia T.	Haringa, Earl and Sons
5	Gastelluberry, Catherine	Haringa, Herman
6	Gastelluberry, Jean	Haringa, Rudy
7	Gilstrap, Glen E.	Haringa, William
8	Gilstrap, Marjorie J.	Harper, Cecilia de Mille
9	Godinho, John	Harrington, Winona
10	Godinho, June	Harrison, Jacqueline A.
11	Gonsalves, Evelyn	Hatanaka, Kenichi
12	Gonsalves, John	Heida, Annie
13	Gorzeman, Geraldine	Heida, Don
14	Gorzeman, Henry A.	Heida, Jim
15	Gorzeman, Joe	Heida, Sam
16	Govea, Julia	Helms, Addison D.
17	Goyenetché, Albert	Helms, Irma A.
18	Grace, Caroline E.	Hermans, Alma I.
19	Grace, David J.	Hermans, Harry
20	Gravatt, Glenn W.	Hettinga, Arthur
21	Gravatt, Sally Mae	Hettinga, Ida
22	Greydanus Dairy, Inc.	Hettinga, Judy
23	Greydanus, Rena	Hettinga, Mary
24	Griffin Development Co.	Hettinga, Wilbur
25	Haagsma, Dave	Heublein, Inc., Grocery Products
26	Haagsma, John	Group
27	Hansen, Mary D.	Hibma, Catherine M.
28	Hibma, Sidney	Hohberg, Harold C.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Hicks, Kenneth I.	Hohberg, Harold W.
2	Hicks, Minnie M.	Holder, Arthur B.
3	Higgins Brick Co.	Holder, Dorothy F.
4	Highstreet, Alfred V.	Holmes, A. Lee
5	Highstreet, Evada V.	Holmes, Frances P.
6	Hilarides, Bertha as Trustee	Hoogeboom, Gertrude
7	Hilarides, Frank	Hoogeboom, Pete
8	Hilarides, John as Trustee	Hoogendam, John
9	Hindelang, Tillie	Hoogendam, Tena
10	Hindelang, William	Houssels, J. K. Thoroughbred
11	Hobbs, Bonnie C.	Farm
12	Hobbs, Charles W.	Hunt Industries
13	Hobbs, Hazel I.	Idsinga, Ann
14	Hobbs, Orlo M.	Idsinga, William W.
15	Hoekstra, Edward	Imbach Ranch, Inc.
16	Hoekstra, George	Imbach, Kenneth E.
17	Hoekstra, Grace	Imbach, Leonard K.
18	Hoekstra, Louie	Imbach, Oscar K.
19	Hofer, Paul B.	Imbach, Ruth M.
20	Hofer, Phillip F.	Indaburu, Jean
21	Hofstra, Marie	Indaburu, Marceline
22	Hogeboom, Jo Ann M.	Iseli, Kurt H.
23	Hogeboom, Maurice D.	Ito, Kow
24	Hogg, David V.	J & B Dairy Inc.
25	Hogg, Gene P.	Jaques, Johnny C. Jr.
26	Hogg, Warren G.	Jaques, Mary
27	Hohberg, Edith J.	Jaques, Mary Lou
28	Jay Em Bee Farms	Knevelbaard, John

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Johnson Bro's Egg Ranches, Inc.	Knudsen, Ejnar
2	Johnston, Ellwood W.	Knudsen, Karen M.
3	Johnston, George F. Co.	Knudsen, Kenneth
4	Johnston, Judith H.	Knudson, Robert
5	Jones, Leonard P.	Knudson, Darlene
6	Jongsma & Sons Dairy	Koel, Helen S.
7	Jongsma, Diana A.	Koetsier, Gerard
8	Jongsma, Dorothy	Koetsier, Gerrit J.
9	Jongsma, George	Koetsier, Jake
10	Jongsma, Harold	Koning, Fred W.
11	Jongsma, Henry	Koning, Gloria
12	Jongsma, John	Koning, J. W. Estate
13	Jongsma, Nadine	Koning, James A.
14	Jongsma, Tillie	Koning, Jane
15	Jordan, Marjorie G.	Koning, Jane C.
16	Jordan, Troy O.	Koning, Jennie
17	Jorritsma, Dorothy	Koning, John
18	Juliano, Albert	Koning, Victor A.
19	Kamper, Cornelis	Kooi Holstein Corporation
20	Kamstra, Wilbert	Koolhaas, Kenneth E.
21	Kaplan, Lawrence J.	Koolhaas, Simon
22	Kasbergen, Martha	Koolhaas, Sophie Grace
23	Kasbergen, Neil	Koopal, Grace
24	Kazian, Angelen Estate of	Koopal, Silas
25	Kingsway, Const. Corp.	Koopman, Eka
26	Klapps Market	Koopman, Gene T.
27	Kline, James K.	Koopman, Henry G.
28	Koopman, Ted	Leck, Arthur A.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Koopman, Tena	Leck, Evelyn M.
2	Koot, Nick	Lee, Harold E.
3	Koster, Aart	Lee, Helen J.
4	Koster, Frances	Lee, Henrietta C.
5	Koster, Henry B.	Lee, R. T. Construction Co.
6	Koster, Nellie	Lekkerkerk, Adriana
7	Kroes, Jake R.	Lekkerkerk, L. M.
8	Kroeze, Bros	Lekkerkerker, Nellie
9	Kroeze, Calvin E.	Lekkerkerker, Walt
10	Kroeze, John	Lewis Homes of California
11	Kroeze, Wesley	Livingston, Dorothy M.
12	Kruckenber, Naomi	Livingston, Rex E.
13	Kruckenber, Perry	Lokey, Rosemary Kraemer
14	L. D. S. Welfare Ranch	Lopes, Candida A.
15	Labrucherie, Mary Jane	Lopes, Antonio S.
16	Labrucherie, Raymond F.	Lopez, Joe D.
17	Lako, Samuel	Lourenco, Carlos, Jr.
18	Landman Corp.	Lourenco, Carmelina P.
19	Lanting, Broer	Lourenco, Jack C.
20	Lanting, Myer	Lourenco, Manual H.
21	Lass, Jack	Lourenco, Mary
22	Lass, Sandra L.	Lourenco, Mary
23	Lawrence, Cecelia, Estate of	Luiten, Jack
24	Lawrence, Joe H., Estate of	Luiz, John M.
25	Leal, Bradley W.	Luna, Christine I.
26	Leal, John C.	Luna, Ruben T.
27	Leal, John Craig	Lusk, John D. and Sons A California Corporation
28		
	Lyon, Gregory E.	Mickel, Louise

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Lyon, Paula E.	Miersma, Dorothy
2	M & W Co. #2	Meirsma, Harry C.
3	Madole, Betty M.	Minaberry, Arnaud
4	Madole, Larry B.	Minaberry, Marie
5	Marquez, Arthur	Mistretta, Frank J.
6	Marquine, Jean	Mocho and Plaa Inc.
7	Martin, Lelon O.	Mocho, Jean
8	Martin, Leon O.	Mocho, Noeline
9	Martin, Maria D.	Modica, Josephine
10	Martin, Tony J.	Montes, Elizabeth
11	Martins, Frank	Montes, Joe
12	Mathias, Antonio	Moons, Beatrice
13	Mc Cune, Robert M.	Moons, Jack
14	Mc Masters, Gertrude	Moramarco, John A. Enterprise
15	Mc Neill, J. A.	Moreno, Louis W.
16	Mc Neill, May F.	Moss, John R.
17	Mees, Leon	Motion Pictures Associates, Inc.
18	Mello and Silva Dairy	Moynier, Joe
19	Mello and Sousa Dairy	Murphy, Frances V.
20	Mello, Emilia	Murphy, Myrl L.
21	Mello, Enos C.	Murphy, Naomi
22	Mello, Mercedes	Nanne, Martin Estate of
23	Mendiondo, Catherine	Nederend, Betty
24	Mendiondo, Dominique	Nederend, Hans
25	Meth. Hosp. – Sacramento	Norfolk, James
26	Metzger, R. S.	Norfolk, Martha
27	Metzger, Winifred	Notrica, Louis
28	Nyberg, Lillian N.	Ormonde, Viva

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Nyenhuis, Annie	Ortega, Adeline B.
2	Nyenhuis, Jim	Ortega, Bernard Dino
3	Occidental Land Research	Osterkamp, Joseph S.
4	Okumura, Marion	Osterkamp, Margaret A.
5	Okumura, Yuiche	P I E Water Co.
6	Oldengarm, Effie	Palmer, Eva E.
7	Oldengarm, Egbert	Palmer, Walter E.
8	Oldengarm, Henry	Parente, Luis S.
9	Oliviera, Manuel L.	Parente, Mary Borba
10	Oliviera, Mary M.	Parks, Jack B.
11	Olson, Albert	Parks, Laura M.
12	Oltmans Construction Co.	Patterson, Lawrence E. Estate of
13	Omlin, Anton	Payne, Clyde H.
14	Omlin, Elsie L.	Payne, Margo
15	Ontario Christian School Assn.	Pearson, Athelia K.
16	Oord, John	Pearson, William C.
17	Oostdam, Jacoba	Pearson, William G.
18	Oostdam, Pete	Pene, Robert
19	Oosten, Agnes	Perian, Miller
20	Oosten, Anthonia	Perian, Ona E.
21	Oosten, Caroline	Petrissans, Deanna
22	Oosten, John	Petrissans, George
23	Oosten, Marinus	Petrissans, Jean P.
24	Oosten, Ralph	Petrissans, Marie T.
25	Orange County Water District	Pickering, Dora M.
26	Ormonde, Manuel	(Mrs. A. L. Pickering)
27	Ormonde, Pete, Jr.	Pierce, John
28	Pierce, Sadie	Righetti, A. T.



**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Pietszak, Sally	Riley, George A.
2	Pine, Joe	Riley, Helen C.
3	Pine, Virginia	Robbins, Jack K.
4	Pires, Frank	Rocha, John M.
5	Pires, Marie	Rocha, Jose C.
6	Plaa, Jeanne	Rodrigues, John
7	Plaa, Michel	Rodrigues, Manuel
8	Plantenga, Agnes	Rodrigues, Manuel, Jr.
9	Plantenga, George	Rodrigues, Mary L.
10	Poe, Arlo D.	Rodriguez, Daniel
11	Pomona Cemetery Assn.	Rogers, Jack D.
12	Porte, Cecelia, Estate of	Rohrer, John A.
13	Porte, Garritt, Estate of	Rohrer, Theresa D.
14	Portsmouth, Vera McCarty	Rohrs, Elizabeth H.
15	Ramella, Mary M.	Rossetti, M. S.
16	Ramirez, Concha	Roukema, Angeline
17	Rearick, Hildegard H.	Roukema, Ed.
18	Rearick, Richard R.	Roukema, Nancy
19	Reinalda, Clarence	Roukema, Siebren
20	Reitsma, Greta	Ruderian, Max J.
21	Reitsma, Louis	Russell, Fred J.
22	Rice, Bernice	Rusticus, Ann
23	Rice, Charlie E.	Rusticus, Charles
24	Richards, Karin	Rynsburger, Arie
25		
26	(Mrs. Ronnie Richards)	Rynsburger, Berdena, Trust
27	Richards, Ronald L.	Rynsburger, Joan Adele
28	Ridder, Jennie Wassenaar	Rynsburger, Thomas
	S. P. Annex, Inc.	Scott, Frances M.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Salisbury, Elinor J.	Scott, Linda F.
2	Sanchez, Edmundo	Scott, Stanley A.
3	Sanchez, Margarita O.	Scritsmier, Lester J.
4	Santana, Joe Sr.	Serl, Charles A.
5	Santana, Palmira	Serl, Rosalie P.
6	Satragni, John B. Jr.	Shady Grove Dairy, Inc.
7	Scaramella, George P.	Shamel, Burt A.
8	Schaafsma Bros.	Shelby, Harold E.
9	Schaafsma, Jennie	Shelby, John A.
10	Schaafsma, Peter	Shelby, Velma M.
11	Schaafsma, Tom	Shelton, Alice A.
12	Schaap, Andy	Sherwood, Robert W.
13	Schaap, Ids	Sherwood, Sheila J.
14	Schaap, Maria	Shue, Eva
15	Schacht, Sharon C.	Shue, Gilbert
16	Schakel, Audrey	Sieperda, Anne
17	Schakel, Fred	Sieperda, James
18	Schmid, Olga	Sigrist, Hans
19	Schmidt, Madeleine	Sigrist, Rita
20	Schoneveld, Evert	Silveira, Arline L.
21	Schoneveld, Henrietta	Silveira, Frank
22	Schoneveld, John	Silveira, Jack
23	Schoneveld, John Allen	Silveira, Jack P. Jr.
24	Schug, Donald E.	Simas, Dolores
25	Schug, Shirley A.	Simas, Joe
26	Schuh, Bernatta M.	Singleton, Dean
27	Schuh, Harold H.	Singleton, Elsie R.
28	Sinnott, Jim	Staal, John

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Sinnott, Mildred B.	Stahl, Zippora P.
2	Slegers, Dorothy	Stampfl, Berta
3	Slegers, Hubert J.	Stampfl, William
4	Slegers, Jake	Stanley, Robert E.
5	Slegers, Jim	Stark, Everett
6	Slegers, Lenwood M.	Stellingwerf, Andrew
7	Slegers, Martha	Stellingwerf, Henry
8	Slegers, Tesse J.	Stellingwerf, Jenette
9	Smith, Edward S.	Stellingwerf, Shana
10	Smith, Helen D.	Stellingwerf, Stan
11	Smith, James E.	Stelzer, Mike C.
12	Smith, Keith J.	Sterk, Henry
13	Smith, Lester W.	Stiefel, Winifred
14	Smith, Lois Maxine	Stiefel, Jack D.
15	Smith, Marjorie W.	Stigall, Richard L.
16	Soares, Eva	Stigall, Vita
17	Sogioka, Mitsuyoshi	Stockman's Inn
18	Sogioka, Yoshimato	Stouder, Charlotte A.
19	Sousa, Sam	Stouder, William C.
20	Southern Pacific Land Co.	Struikmans, Barbara
21	Southfield, Eddie	Struikmans, Gertie
22	Souza, Frank M.	Struikmans, Henry Jr.
23	Souza, Mary T.	Struikmans, Henry Sr.
24	Spickerman, Alberta	Struikmans, Nellie
25	Spickerman, Florence	Swager, Edward
26	Spickerman, Rudolph	Swager, Gerben
27	Spyksma, John	Swager, Johanna
28	Swager, Marion	Terpstra, Theodore G.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Swierstra, Donald	Teune, Tony
2	Swierstra, Fanny	Teunissen, Bernard
3	Sybrandy, Ida	Teunissen, Jane
4	Sybrandy, Simon	Thomas, Ethel M.
5	Sytsma, Albert	Thommen, Alice
6	Sytsma, Edith	Thommen, Fritz
7	Sytsma, Jennie	Tillema, Allie
8	Sytsma, Louie	Tillema, Harold
9	Te Velde, Agnes	Tillema, Klaas D.
10	Te Velde, Bay	Timmons, William R.
11	Te Velde, Bernard A.	Tollerup, Barbara
12	Te Velde, Bonnie	Tollerup, Harold
13	Te Velde, Bonnie G.	Trapani, Louis A.
14	Te Velde, George	Trimlett, Arlene R.
15	Te Velde, George, Jr.	Trimlett, George E.
16	Te Velde, Harm	Tristant, Pierre
17	Te Velde, Harriet	Tuinhout, Ale
18	Te Velde, Henry J.	Tuinhout, Harry
19	Te Velde, Jay	Tuinhout, Hilda
20	Te Velde, Johanna	Tuls, Elizabeth
21	Te Velde, John H.	Tuls, Jack S.
22	Te Velde, Ralph A.	Tuls, Jake
23	Te Velde, Zwaantina, Trustee	Union Oil Company of California
24	Ter Maaten, Case	United Dairyman's Co-op.
25	Ter Maaten, Cleone	Urquhart, James G.
26	Ter Maaten, Steve	Usle, Cathryn
27	Terpstra, Carol	Usle, Faustino
28		
	V & Y Properties	Van Hofwegen, Clara

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Vaile, Beryl M.	Van Hofwegen, Jessie
2	Valley Hay Co.	Van Klaveren, A.
3	Van Beek Dairy Inc.	Van Klaveren, Arie
4	Van Canneyt Dairy	Van Klaveren, Wilhelmina
5	Van Canneyt, Maurice	Van Klaveren, William
6	Van Canneyt, Wilmer	Van Leeuwen, Arie C.
7	Van Dam, Bas	Van Leeuwen, Arie C.
8	Van Dam, Isabelle	Van Leeuwen, Arlan
9	Van Dam, Nellie	Van Leeuwen, Clara G.
10	Van Den Berg, Gertrude	Van Leeuwen, Cornelia L.
11	Van Den Berg, Joyce	Van Leeuwen, Harriet
12	Van Den Berg, Marinus	Van Leeuwen, Jack
13	Van Den Berg, Marvin	Van Leeuwen, John
14	Van Der Linden, Ardith	Van Leeuwen, Letie
15	Van Der Linden, John	Van Leeuwen, Margie
16	Van Der Linden, Stanley	Van Leeuwen, Paul
17	Van Der Veen, Kenneth	Van Leeuwen, William A.
18	Van Diest, Anna T.	Van Ravenswaay, Donald
19	Van Diest, Cornelius	Van Ryn Dairy
20	Van Diest, Ernest	Van Ryn, Dick
21	Van Diest, Rena	Van Surksum, Anthonetta
22	Van Dyk, Bart	Van Surksum, John
23	Van Dyk, Jeanette	Van Veen, John
24	Van Foeken, Martha	Van Vliet, Effie
25	Van Foeken, William	Van Vliet, Hendrika
26	Van Hofwegen, Steve	Van Vliet, Hugo
27	Van Hofwegen, Adrian A.	Van Vliet, Klaas
28		
	Vande Witte, George	Vander Laan, Katie

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Vanden Berge, Gertie	Vander Laan, Martin Jr.
2	Vanden Berge, Gertie	Vander Laan, Tillie
3	Vanden Berge, Jack	Vander Leest, Anna
4	Vanden Berge, Jake	Vander Leest, Ann
5	Vanden Brink, Stanley	Vander Meer, Alice
6	Vander Dussen, Agnes	Vander Meer, Dick
7	Vander Dussen, Cor	Vander Poel, Hank
8	Vander Dussen, Cornelius	Vander Poel, Pete
9	Vander Dussen, Edward	Vander Pol, Irene
10	Vander Dussen, Geraldine Marie	Vander Pol, Margie
11	Vander Dussen, James	Vander Pol, Marines
12	Vander Dussen, John	Vander Pol, William P.
13	Vander Dussen, Nelvina	Vander Schaaf, Earl
14	Vander Dussen, Rene	Vander Schaaf, Elizabeth
15	Vander Dussen, Sybrand Jr.	Vander Schaaf, Henrietta
16	Vander Dussen, Sybrand Sr.	Vander Schaaf, John
17	Vander Dussen Trustees	Vander Schaaf, Ted
18	Vander Eyk, Case Jr.	Vander Stelt, Catherine
19	Vander Eyk, Case Sr.	Vander Stelt, Clarence
20	Vander Feer, Peter	Vander Tuig, Arlene
21	Vander Feer, Rieka	Vander Tuig, Sylvester
22	Vander Laan, Ann	Vander Veen, Joe A.
23	Vander Laan, Ben	Vandervlag, Robert
24	Vander Laan, Bill	Vander Zwan, Peter
25	Vander Laan, Corrie	Vanderford, Betty W.
26	Vander Laan, Henry	Vanderford, Claud R.
27	Vander Laan, James	Vanderham, Adrian
28	Vanderham, Cornelius	Vestal, J. Howard

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Vanderham, Cornelius P.	Visser, Gerrit
2	Vanderham, Cory	Visser, Grace
3	Vanderham, E. Jane	Visser, Henry
4	Vanderham, Marian	Visser, Jess
5	Vanderham, Martin	Visser, Louie
6	Vanderham, Pete C.	Visser, Neil
7	Vanderham, Wilma	Visser, Sam
8	Vasquez, Eleanor	Visser, Stanley
9	Veenendaal, Evert	Visser, Tony D.
10	Veenendaal, John H.	Visser, Walter G.
11	Veiga, Dominick, Sr.	Von Der Ahe, Fredric T.
12	Verbree, Jack	Von Euw, George
13	Verbree, Tillie	Von Euw, Majorie
14	Verger, Bert	Von Lusk, a limited partnership
15	Verger, Betty	Voortman, Anna Marie
16	Verhoeven, Leona	Voortman, Edward
17	Verhoeven, Martin	Voortman, Edwin J.
18	Verhoeven, Wesley	Voortman, Gertrude Dena
19	Vermeer, Dick	Wagner, Richard H.
20	Vermeer, Jantina	Walker, Carole R.
21	Vernola Ranch	Walker, Donald E.
22	Vernola, Anthonietta	Walker, Wallace W.
23	Vernola, Anthony	Wardle, Donald M.
24	Vernola, Frank	Warner, Dillon B.
25	Vernola, Mary Ann	Warner, Minnie
26	Vernola, Pat F.	Wassenaar, Peter W.
27	Vestal, Frances Lorraine	Waters, Michael
28	Weeda, Adriana	Wiersma, Jake

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Weeda, Daniel	Wiersma, Otto
2	Weeks, O. L.	Wiersma, Pete
3	Weeks, Verona E.	Winchell, Verne H., Trustee
4	Weidman, Maurice	Wind, Frank
5	Weidman, Virginia	Wind, Fred
6	Weiland, Adaline I.	Wind, Hilda
7	Weiland, Peter J.	Wind, Johanna
8	Wesselink, Jules	Woo, Frank
9	West, Katharine R.	Woo, Sem Gee
10	West, Russel	Wybenga, Clarence
11	West, Sharon Ann	Wybenga, Gus
12	Western Horse Property	Wybenga, Gus K.
13	Westra, Alice	Wybenga, Sylvia
14	Westra, Henry	Wynja, Andy
15	Westra, Hilda	Wynja, Iona F.
16	Westra, Jake J.	Yellis, Mildred
17	Weststeyn, Freida	Yellis, Thomas E.
18	Weststeyn, Pete	Ykema-Harmsen Dairy
19	Whitehurst, Louis G.	Ykema, Floris
20	Whitehurst, Pearl L.	Ykema, Harriet
21	Whitmore, David L.	Yokley, Betty Jo
22	Whitmore, Mary A.	Yokley, Darrell A.
23	Whitney, Adolph M.	Zak, Zan
24	Wiersema, Harm	Zivelonghi, George
25	Wiersema, Harry	Zivelonghi, Margaret
26	Wiersma, Ellen H.	Zwaagstra, Jake
27	Wiersma, Gladys J.	Zwaagstra, Jessie M.
28		Zwart, Case



**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

NON-PRODUCER WATER DISTRICTS

Chino Basin Municipal Water District  
Chino Basin Water Conservation District  
Pomona Valley Municipal Water District  
Western Municipal Water District of Riverside County

DEFAULTING OVERLYING AGRICULTURAL PRODUCERS

Cheryl L. Bain	Roy W. Lantis
Warren Bain	Sharon I. Lantis
John M. Barcelona	Frank Lorenz
Letty Bassler	Dagney H. MacDonald
John Brazil	Frank E. Martin
John S. Briano	Ruth C. Martin
Lupe Briano	Connie S. Mello
Paul A. Briano	Naldiro J. Mello
Tillie Briano	Felice Miller
Arnie B. Carlson	Ted Miller
John Henry Fikse	Masao Nerio
Phyllis S. Fikse	Tom K. Nerio
Lewellyn Flory	Toyo Nerio
Mary I. Flory	Yuriko Nerio
L. H. Glazer	Harold L. Rees
Dorothy Goodman	Alden G. Rose
Sidney D. Goodman	Claude Rouleau, Jr.
Frank Grossi	Patricia M. Rouleau
Harada Brothers	Schultz Enterprises
Ellen Hettinga	Albert Shaw

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Hein Hettinga	Lila Shaw
2	Dick Hofstra, Jr.	Cathy M. Stewart
3	Benjamin M. Hughey	Marvin C. Stewart
4	Frieda L. Hughey	Betty Ann Stone
5	Guillaume Indart	John B. Stone
6	Ellwood B. Johnston, Trustee	Vantoll Cattle Co., Inc.
7	Perry Kruckenberg, Jr.	Catherine Verburg
8	Martin Verburg	
9	Donna Vincent	
10	Larry Vincent	
11	Cliff Wolfe & Associates	
12	Ada M. Woll	
13	Zarubica Co.	

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# EXHIBIT "D"

## OVERLYING NON-AGRICULTURAL RIGHTS

<u>Party</u>	<u>Total Overlying Non-Agricultural Rights (Acre-Feet)</u>	<u>Share of Safe Yield (Acre-Feet)</u>
Ameron Steel Producers, Inc.	125	97.858
County of San Bernardino (Airport)	171	133.870
Conrock Company	406	317.844
Kaiser Steel Corporation	3,743	2,930.274
Red Star Fertilizer	20	15.657
Southern California Edison Co.	1,255	982.499
Space Center, Mira Loma	133	104.121
Southern Service Co. dba Blue Seal Linen	24	18.789
Sunkist Growers, Inc.	2,393	1,873.402
Carlsberg Mobile Home Properties, Ltd '73	593	464.240
Union Carbide Corporation	546	427.446
Quaker Chemical Co.	<u>0</u>	<u>0.000</u>
Totals	9,409	7,366.000

**EXHIBIT "E"**

<b><u>APPROPRIATIVE RIGHTS</u></b>			
<u>Party</u>	<u>Appropriative Right (Acre Feet)</u>	<u>Share of Initial Operating Safe Yield (Acre-Feet)</u>	<u>Share of Operating Safe Yield (Percent)</u>
City of Chino	5,271.7	3,670.067	6.693
City of Norco	289.5	201.545	0.368
City of Ontario	16,337.4	11,373.816	20.742
City of Pomona	16,110.5	11,215.852	20.454
City of Upland	4,097.2	2,852.401	5.202
Cucamonga County Water District	4,431.0	3,084.786	5.626
Jurupa Community Services District	1,104.1	768.655	1.402
Monte Vista County Water District	5,958.7	4,148.344	7.565
West San Bernardino County Water District	925.5	644.317	1.175
Etiwanda Water Company	768.0	534.668	0.975
Feldspar Gardens Mutual Water Company	68.3	47.549	0.087
Fontana Union Water Company	9,188.3	6,396.736	11.666
Marygold Mutual Water Company	941.3	655.317	1.195
Mira Loma Water Company	1,116.0	776.940	1.417
Monte Vista Irrigation Company	972.1	676.759	1.234
Mutual Water Company of Glen Avon Heights	672.2	467.974	0.853
Park Water Company	236.1	164.369	0.300
Pomona Valley Water Company	3,106.3	2,162.553	3.944
San Antonio Water Company	2,164.5	1,506.888	2.748
Santa Ana River Water Company	1,869.3	1,301.374	2.373
Southern California Water Company	1,774.5	1,235.376	2.253
West End Consolidated Water Company	<u>1,361.3</u>	<u>947.714</u>	<u>1.728</u>
TOTAL	78,763.8	55,834.000	100.000

**EXHIBIT “F”**

**OVERLYING (AGRICULTURAL) POOL**

POOLING PLAN

1.     Membership in Pool. The State of California and all producers listed in Exhibit “C” shall be the initial members of this pool, which shall include all producers of water for overlying uses other than industrial or commercial purposes.
  
2.     Pool Meetings. The members of the pool shall meet annually, in person or by proxy, at a place and time to be designated by Watermaster for purposes of electing members of the Pool Committee and conducting any other business of the pool. Special meetings of the membership of the pool may be called and held as provided in the rules of the pool.
  
3.     Voting. All voting at meetings of pool members shall be on the basis of one vote for each 100 acre feet or any portion thereof of production from Chino Basin during the preceding year, as shown by the records of Watermaster.
  
4.     Pool Committee. The Pool Committee for this pool shall consist of not less than nine (9) representatives selected at large by members of the pool. The exact number of members of the Pool Committee in any year shall be as determined by majority vote of the voting power of members of the pool in attendance at the annual pool meeting. Each member of the Pool Committee shall have one vote and shall serve for a two-year term. The members first elected shall classify themselves by lot so that approximately one-half serve an initial one-year term. Vacancies during any term shall be filled by a majority of the remaining members of the Pool Committee.
  
5.     Advisory Committee Representatives. The number of representatives of the Pool Committee on the Advisory Committee shall be as provided in the rules of the pool from time to time but not exceeding ten (10). The voting power of the pool on the Advisory Committee shall be apportioned and exercised as determined from time to time by the Pool Committee.
  
6.     Replenishment Obligation. The pool shall provide funds for replenishment of any production by persons other than members of the Overlying Non-Agricultural Pool or Appropriator Pool,

in excess of the pool's share of Safe Yield. During the first five (5) years of operations of the Physical Solution, reasonable efforts shall be made by the Pool Committee to equalize annual assessments.

7. Assessments. All assessments in this pool (whether for replenishment water cost or for pool administration or the allocated share of Watermaster administration) shall be in an amount uniformly applicable to all production in the pool during the preceding year or calendar quarter. Provided, however, that the Agricultural Pool Committee, may recommend to the Court modification of the method of assessing pool members, inter se, if the same is necessary to attain legitimate basin management objectives, including water conservation and avoidance of undesirable socio-economic consequences. Any such modification shall be initiated and ratified by one of the following methods:

(a) Excess Production. - In the event total pool production exceeds 100,000 acre feet in any year, the Pool Committee shall call and hold a meeting, after notice to all pool members, to consider remedial modification of the assessment formula.

(b) Producer Petition. - At any time after the fifth full year of operation under the Physical Solution, a petition by ten percent (10%) of the voting power or membership of the Pool shall compel the holding of a noticed meeting to consider revision of said formula of assessment for replenishment water.

In either event, a majority action of the voting power in attendance at such pool members' meeting shall be binding on the Pool Committee.

8. Rules. - The Pool Committee shall adopt rules for conducting meetings and affairs of the committee and for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

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**EXHIBIT "G"**

**OVERLYING (NON-AGRICULTURAL) POOL**

**POOLING PLAN**

1.     Membership in Pool. The initial members of the pool, together with the decreed share of the Safe Yield of each, are listed in Exhibit "D". Said pool includes producers of water for overlying industrial or commercial non-agricultural purposes, or such producers within the Pool who may hereafter take water pursuant to Paragraph 8 hereof.

2.     Pool Committee. The Pool Committee for this pool shall consist of one representative designated by each member of the pool. Voting on the committee shall be on the basis of one vote for each member, unless a volume vote is demanded, in which case votes shall be allocated as follows:

The volume voting power on the Pool Committee shall be 1,484 votes. Of these, 742 votes shall be allocated on the basis of one vote for each ten (10) acre feet or fraction thereof of decreed shares in Safe Yield. (See Exhibit "D"). The remaining 742 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year.<sup>8</sup>

**Affirmative action of the Committee shall require a majority of the voting power of the members in attendance, provided that it includes concurrence by at least one-third of its total members.<sup>9</sup>**

3.     Advisory Committee Representatives. At least three (3) members of the Pool Committee shall be designated by said committee to serve on the Advisory Committee. The exact number of such representatives at any time shall be as determined by the Pool Committee. The voting power of the pool shall be exercised in the Advisory Committee as a unit, based upon the vote of a majority of said representatives.

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<sup>8</sup> Or production assessments paid under Water Code Section 72140 et seq., as to years prior to the second year of operation under the Physical Solution hereunder.

<sup>9</sup> Order dated October 8, 2010.

4. Replenishment Obligation. The pool shall provide funds for replenishment of any production in excess of the pool's share of Safe Yield in the preceding year.

5. Assessments.<sup>10</sup>

(a) Replenishment Assessments. Each member of this pool shall pay an assessment equal to the cost of replenishment water times the number of acre feet of production by such producer during the preceding year in excess of (a) his decreed share of the Safe Yield, plus (b) any carry-over credit under Paragraph 7 hereof.

(b) Administrative Assessments. In addition, the cost of the allocated share of Watermaster administration expense shall be recovered on an equal assessment against each acre foot of production in the pool during such preceding fiscal year or calendar quarter; and in the case of Pool members who take substitute ground water as set forth in Paragraph 8 hereof, such producer shall be liable for its share of administration assessment, as if the water so taken were produced, up to the limit of its decreed share of Safe Yield.

(c) Special Project OBMP Assessment. Each year, every member of this Pool will dedicate ten (10) percent of their annual share of Operating Safe Yield to Watermaster or in lieu thereof Watermaster will levy a Special Project OBMP Assessment in an amount equal to ten percent of the Pool member's respective share of Safe Yield times the then-prevailing MWD Replenishment Rate.

6. Assignment. Rights herein decreed are appurtenant to *that* land and are only assignable with the land for overlying use thereon; provided, however, (a) that any appropriator who may, directly or indirectly, undertake to provide water service to such overlying lands may, by an appropriate agency agreement on a form approved by Watermaster, exercise said overlying right to the extent, but only to the extent necessary to provide water service to said overlying lands, and (b) *the members of the pool shall have the right to Transfer or lease their quantified production rights within the pool or to*

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<sup>10</sup> Order dated December 21, 2007.



***Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000 for the term of the Peace Agreement.***<sup>11</sup>

7. Carry-over. Any member of the pool who produces less than its assigned water share of Safe Yield may carry such unexercised right forward for exercise in subsequent years. The first water produced during any such subsequent year shall be deemed to be an exercise of such carry-over right. In the event the aggregate carry-over by any pool member exceeds its share of Safe Yield, such member shall, as a condition of preserving such surplus carryover, execute a storage agreement with Watermaster.

8. Substitute Supplies. To the extent that any Pool member, at the request of Watermaster and with the consent of the Advisory Committee, takes substitute surface water in lieu of producing ground water otherwise subject to production as an allocated share of Safe Yield, said party shall nonetheless remain a member of this Pool.

9. Physical Solution Transfers. All overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart therefrom except that for the term of the Peace Agreement the members of the Overlying (Non-Agricultural) Pool shall have the discretionary right to Transfer or lease their quantified Production rights and carry-over water held in storage accounts in quantities that each member may from time to time individually determine as Transfers in furtherance of the Physical Solution: (i) within the Overlying (Non-Agricultural) Pool; (ii) to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000; (iii) in conformance with the procedures described in Paragraph I of the Purchase and Sale Agreement for the Purchase of Water by Watermaster from Overlying (Non-Agricultural Pool dated June 30, 2007; or (iv) to Watermaster and thence to members of the Appropriative Pool in accordance with the following guidelines and those procedures Watermaster may further provide in Watermaster's Rules and Regulations:

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<sup>11</sup> Order dated September 28, 2000 and Order dated April 19, 2001.

(a) By December 31 of each year, the members of the Overlying (Non-Agricultural) Pool shall notify Watermaster of the amount of water each member shall make available in their individual discretion for purchase by the Appropriators. By January 31 of each year, Watermaster shall provide a Notice of Availability of each Appropriator's pro-rata share of such water;

(b) Except as they may be limited by paragraph 9(e) below, each member of the Appropriative Pool will have, in their discretion, a right to purchase its pro-rata share of the supply made available from the Overlying (Non-Agricultural) Pool at the price established in 9(d) below. Each Appropriative Pool member's pro-rata share of the available supply will be based on each Producer's combined total share of Operating Safe Yield and the previous year's actual Production by each party;

(c) If any member of the Appropriative Pool fails to irrevocably commit to their allocated share by March 1 of each year, its share of the Overlying (Non-Agricultural) Pool water will be made available to all other members of the Appropriative Pool according to the same proportions as described in 9(b) above and at the price established in Paragraph 9(d) below. Each member of the Appropriative Pool shall complete its payment for its share of water made available by June 30 of each year.

(d) Commensurate with the cumulative commitments by members of the Appropriative Pool pursuant to (b) and (c) above, Watermaster will purchase the surplus water made available by the Overlying (Non-Agricultural) Pool water on behalf of the members of the Appropriative Pool on an annual basis at 92% of the then-prevailing "MWD Replenishment Rate" and each member of the Appropriative Pool shall complete its payment for its determined share of water made available by June 30 of each year.

(e) Any surplus water cumulatively made available by all members of the Overlying (Non-Agricultural) Pool that is not purchased by Watermaster after completion of the process set forth herein will be pro-rated among the members of the Pool in proportion to the total quantity offered for transfer in accordance with this provision and may be retained by the

Overlying (Non-Agricultural) Pool member without prejudice to the rights of the members of the Pool to make further beneficial use or transfer of the available surplus.

(f) Each Appropriator shall only be eligible to purchase their pro-rata share under this procedure if the party is: (i) current on all their assessments; and (ii) in compliance with the OBMP.

(g) The right of any member of the Overlying (Non-Agricultural) Pool to transfer water in accordance with this Paragraph 9(a)-(c) in any year is dependent upon Watermaster making a finding that the member of the Overlying (Non-Agricultural) Pool is using recycled water where it is both physically available and appropriate for the designated end use in lieu of pumping groundwater.

(h) Nothing herein shall be construed to affect or limit the rights of any Party to offer or accept an assignment as authorized by the Judgment Exhibit "G" paragraph 6 above, or to affect the rights of any Party under a valid assignment.

910. Rules. The Pool Committee shall adopt rules for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

**EXHIBIT "H"**  
**APPROPRIATIVE POOL**  
POOLING PLAN

1. Qualification for Pool. Any city, district or other public entity and public utility -- either regulated under Public Utilities Commission jurisdiction, or exempt therefrom as a non-profit mutual water company (other than those assigned to the Overlying (Agricultural) Pool) -- shall be a member of this pool. All initial members of the pool are listed in Exhibit "E", together with their respective appropriative rights and acre foot allocation and percentage shares of the initial and subsequent Operating Safe Yield.

2. Pool Committee. The Pool Committee shall consist of one (1) representative appointed by each member of the Pool.

3. Voting. The total voting power on the Pool Committee shall be 1,000 votes. Of these, 500 votes shall be allocated in proportion to decreed percentage shares in Operating Safe Yield. The remaining 500 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year. Routine business of the Pool Committee may be conducted on the basis of one vote per member, but upon demand of any member a weighted vote shall be taken. Affirmative action of the Committee shall require a majority of the voting power of members in attendance, provided that it includes concurrence by at least one-third of its total members.

4. Advisory Committee Representatives. **Members of the Pool Committee shall be designated to represent this pool on the Advisory Committee *on the following basis:* Each major appropriator, i.e., the owner of an adjudicated appropriative right in excess of 3,000 acre feet, or each appropriator that produces in excess of 3,000 acre feet based upon the prior year's production, shall be entitled to one representative. Two additional representatives of the Appropriative Pool on the Advisory Committee shall be elected at large by the remaining members of the pool. The voting power of the Appropriative Pool on the Advisory Committee shall be apportioned between the major appropriator representatives in proportion to their respective voting power in the Pool Committee. The two representatives of the remaining appropriators shall exercise equally the voting power proportional to the Pool Committee voting power of said**

remaining appropriators; provided, however, that if any representative fails to attend an Advisory Committee meeting, the voting power of that representative shall be allocated among the representatives of the Appropriative Pool in attendance in the same proportion as their respective voting powers.<sup>12</sup>

5. Replenishment Obligation. The pool shall provide funds for purchase of replenishment water to replace any production by the pool in excess of Operating Safe Yield during the preceding year.

6. Administrative Assessment. Costs of administration of this pool and its share of general Watermaster expense shall be recovered by a uniform assessment applicable to all production during the preceding year.

7. Replenishment Assessment. The cost of replenishment water required to replace production from Chino Basin in excess of Operating Safe Yield in the preceding year shall be allocated and recovered as follows:

(a) For production, other than for increased export,  
within CBMWD or WMWD:

(1) Gross Assessment. 15% of such replenishment water costs shall be recovered by a uniform assessment against all production of each appropriator producing in said area during the preceding year.

(2) Net Assessment. The remaining 85% of said costs shall be recovered by a uniform assessment on each acre foot of production from said area by each such appropriator in excess of his allocated share of Operating Safe Yield during said preceding year.

(b) For production which is exported for use outside Chino Basin in excess of maximum export in any year through 1976, such increased export production shall be assessed against the exporting appropriator in an amount sufficient to purchase replenishment water from CBMWD or WMWD in the amount of such excess.

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<sup>12</sup> Order dated September 18, 1996.

(c) For production within SBVMWD or PVMWD:

By an assessment on all production in excess of an appropriator's share of Operating Safe Yield in an amount sufficient to purchase replenishment water through SBVMWD or MWD in the amount of such excess.

8. Socio-Economic Impact Review. The parties have conducted certain preliminary socio-economic impact studies. Further and more detailed socio-economic impact studies of the assessment formula and its possible modification shall be undertaken for the Appropriator Pool by Watermaster no later than ten (10) years from the effective date of this Physical Solution, or whenever total production by this pool has increased by 30% or more over the decreed appropriative rights, whichever is first.

9. Facilities Equity Assessment. Watermaster may, upon recommendation of the Pool Committee, institute proceedings for levy and collection of a Facilities Equity Assessment for the purposes and in accordance with the procedures which follow:

(a) Implementing Circumstances. - There exist several sources of supplemental water available to Chino Basin, each of which has a differential cost and quantity available. The optimum management of the entire Chino Basin water resource favors the maximum use of the lowest cost supplemental water to balance the supplies of the Basin, in accordance with the Physical Solution. The varying sources of supplemental water include importations from MWD and SBVMWD, importation of surface and ground water supplies from other basins in the immediate vicinity of Chino Basin, and utilization of reclaimed water. In order to fully utilize any of such alternate sources of supply, it will be essential for particular appropriators having access to one or more of such supplies to have invested, or in the future to invest, directly or indirectly, substantial funds in facilities to obtain and deliver such water to an appropriate point of use. To the extent that the use of less expensive alternative sources of supplemental water can be maximized by the inducement of a Facilities Equity Assessment, as herein provided, it is to the long-term benefit of the entire basin that such assessment be authorized and levied by Watermaster.

(b) Study and Report. - At the request of the Pool Committee, Watermaster shall undertake a survey study of the utilization of alternate supplemental supplies by

members of the Appropriative Pool which would not otherwise be utilized and shall prepare a report setting forth the amount of such alternative supplies being currently utilized, the amount of such supplies which could be generated by activity within the pool, and the level of cost required to increase such uses and to optimize the total supplies available to the basin. Said report shall contain an analysis and recommendation for the levy of a necessary Facilities Equity Assessment to accomplish said purpose.

(c) Hearing. - If the said report by Watermaster contains a recommendation for imposition of a Facilities Equity Assessment, and the Pool Committee so requests, Watermaster shall notice and hold a hearing not less than 60 days after distribution of a copy of said report to each member of the pool, together with a notice of the hearing date. At such hearing, evidence shall be taken with regard to the necessity and propriety of the levy of a Facilities Equity Assessment and full findings and decision shall be issued by Watermaster.

(d) Operation of Assessment. - If Watermaster determines that it is appropriate that a Facilities Equity Assessment be levied in a particular year, the amount of additional supplemental supplies which should be generated by such assessment shall be estimated. The cost of obtaining such supplies, taking into consideration the investment in necessary facilities shall then be determined and spread equitably among the producers within the pool in a manner so that those producers not providing such additional lower cost supplemental water, and to whom a financial benefit will result, may bear a proportionate share of said costs, not exceeding said benefit; provided that any producer furnishing such supplemental water shall not thereby have its average cost of water in such year reduced below such producer's average cost of pumping from the Basin. In so doing, Watermaster shall establish a percentage of the total production by each party which may be produced without imposition of a Facilities Equity Assessment. Any member of the pool producing more water than said percentage shall pay such Facilities Equity Assessment on any such excess production. Watermaster is authorized to transmit and pay the proceeds of such Facilities Equity Assessment to those producers who take less than their share of Basin water by reason of furnishing a higher percentage of their requirements through use of supplemental water.

10. Unallocated Safe Yield Water. To the extent that, in any five years, any portion of the share of Safe Yield allocated to the Overlying (Agricultural) Pool is not produced, such water shall be available for reallocation to members of the Appropriative Pool, as follows:

(a) Priorities. - Such allocation shall be made in the following sequence:

(1) to supplement, in the particular year, water available from Operating Safe Yield to compensate for any reduction in the Safe Yield by reason of recalculation thereof after the tenth year of operation hereunder.

(2) pursuant to conversion claims as defined in Subparagraph (b) hereof.

(3) as a supplement to Operating Safe Yield, without regard to reductions in Safe Yield.

(b) Conversion Claims.<sup>13</sup> The following procedures may be utilized by any appropriator:

1) **Record of Unconverted Agricultural Acreage. Watermaster shall maintain on an ongoing basis a record with appropriate related maps of all agricultural acreage within the Chino Basin subject to being converted to appropriative water use pursuant to the provisions of this subparagraph. An initial identification of such acreage as of June 30, 1995 is attached hereto as Appendix 1.**

(2) **Record of Water Service Conversion. Any appropriator who undertakes to permanently provide water service to lands *subject to conversion* may report such intent to change water service to Watermaster. Watermaster *should* thereupon verify such change in water service and shall maintain a record and account for each appropriator of the total acreage involved. *Should, at any time, converted acreage return to water service from the Overlying (Agricultural) Pool, Watermaster shall return such acreage to unconverted status***

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<sup>13</sup> Order dated November 17, 1995.



*and correspondingly reduce or eliminate any allocation accorded to the appropriator involved.*

**(3) Allocation of Safe Yield Rights**

**(i) *For the term of the Peace Agreement in any year in which sufficient unallocated Safe Yield from the Overlying (Agricultural) Pool is available for such conversion claims, Watermaster shall allocate to each appropriator with a conversion claim 2.0 acre feet of unallocated Safe Yield water for each converted acre for which conversion has been approved and recorded by the Watermaster.***<sup>14</sup>

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

**(4) Notice and Allocation.** Notice of the special allocation of Safe Yield water pursuant to conversion claims shall be given to each appropriator and shall be treated for purposes of this Physical Solution as an addition to such appropriator's share of the Operating Safe Yield for the particular year only.

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<sup>14</sup> Order dated September 28, 2000 and Order dated April 19, 2001.

**(5) Administrative Costs. Any costs of Watermaster attributable to the administration of such special allocations and conversion claims shall be assessed against the appropriators participating in such reporting, apportioned in accordance with the total amount of converted acreage held by each appropriator participating in the conversion program.**

11. In Lieu Procedures. There are, or may develop, certain areas within Chino Basin where good management practices dictate that recharge of the basin be accomplished, to the extent practical, by taking surface supplies of supplemental water in lieu of ground water otherwise subject to production as an allocated share of Operating Safe Yield.

(a) Method of Operation. - An appropriator producing water within such designated in lieu area who is willing to abstain for any reason from producing any portion of such producer's share of Operating Safe Yield in any year may offer such unpumped water to Watermaster. In such event, Watermaster shall purchase said water in place, in lieu of spreading replenishment water, which is otherwise required to make up for over production. The purchase price for in lieu water shall be the lesser of:

- (1) Watermaster's current cost of replenishment water, whether or not replenishment water is currently then obtainable, plus the cost of spreading; or
- (2) The cost of supplemental surface supplies to the appropriator, less
  - a. said appropriator's average cost of ground water production, and
  - b. the applicable production assessment were the water produced.

Where supplemental surface supplies consist of MWD or SBVMWD supplies, the cost of treated, filtered State water from such source shall be deemed the cost of supplemental surface supplies to the appropriator for purposes of such calculation.

In any given year in which payments may be made pursuant to a Facilities Equity Assessment, as to any given quantity of water the party will be entitled to payment under this section or pursuant to the Facilities Equity Assessment, as the party elects, but not under both.

(b) Designation of In Lieu Areas. - The first in lieu area is designated as the "In Lieu Area No. 1" and consists of an area wherein nitrate levels in the ground water generally exceed 45 mg/l, and is shown on Exhibit "J" hereto. Other in lieu areas may be designated by subsequent order of Watermaster upon recommendation or approval by Advisory Committee. Said in lieu areas may be enlarged, reduced or eliminated by subsequent orders; provided, however, that designation of In Lieu Areas shall be for a minimum fixed term sufficient to justify necessary capital investment. In Lieu Area No. 1 may be enlarged, reduced or eliminated in the same manner, except that any reduction of its original size or elimination thereof shall require the prior order of Court.

12. Carry-over. Any appropriator who produces less than his assigned share of Operating Safe Yield may carry such unexercised right forward for exercise in subsequent years. The first water produced during any such subsequent year shall be deemed to be an exercise of such carry-over right. In the event the aggregate carry-over by any appropriator exceeds its share of Operating Safe Yield, such appropriator shall, as a condition of preserving such surplus carry-over, execute a storage agreement with Watermaster. Such appropriator shall have the option to pay the gross assessment applicable to such carry-over in the year in which it accrued.

13. Assignment, Transfer and Lease. Appropriative rights, and corresponding shares of Operating Safe Yield, may be assigned or may be leased or licensed to another appropriator for exercise in a given year. Any transfer, lease or license shall be ineffective until written notice thereof is furnished to and approved as to form by Watermaster, in compliance with applicable Watermaster rules. Watermaster shall not approve transfer, lease or license of a right for exercise in an area or under conditions where such production would be contrary to sound basin management or detrimental to the rights or operations of other producers.

14. Rules. The Pool Committee shall adopt rules for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

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## EXHIBIT "I"

### **ENGINEERING APPENDIX**

1. Basin Management Parameters. In the process of implementing the physical solution for Chino Basin, Watermaster shall consider the following parameters:

(a) Pumping Patterns. - Chino Basin is a common supply for all persons and agencies utilizing its waters. It is an objective in management of the Basin's waters that no producer be deprived of access to said waters by reason of unreasonable pumping patterns, nor by regional or localized recharge of replenishment water, insofar as such result may be practically avoided.

(b) Water Quality. - Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster.

(c) Economic Considerations. - Financial feasibility, economic impact and the cost and optimum utilization of the Basin's resources and the physical facilities of the parties are objectives and concerns equal in importance to water quantity and quality parameters.

2. **Hydraulic Control and Re-Operation.** In accordance with the purpose and objective of the Physical Solution to "establish a legal and practical means for making the maximum reasonable beneficial use of the waters of the Chino Basin" (paragraph 39) including but not limited to the use and recapture of reclaimed water (paragraph 49(a) ) and the identified Basin Management Parameters set forth above, Watermaster will manage the Basin to secure and maintain Hydraulic Control through controlled overdraft.

(a) **Hydraulic Control.** "Hydraulic Control" means the reduction of groundwater discharge from the Chino North Management Zone to the Santa Ana River to de minimus quantities. The Chino North Management Zone is more fully described and set forth in Attachment I-1 to this Engineering Appendix. By obtaining Hydraulic Control, Watermaster will ensure that the water management activities in the Chino North Management Zone do not cause

materially adverse impacts to the beneficial uses of the Santa Ana River downstream of Prado Dam.

(b) **Re-Operation.** “Re-Operation” means the controlled overdraft of the Basin by the managed withdrawal of groundwater for the Desalters and the potential increase in the cumulative un-replenished Production from 200,000 acre-feet authorized by paragraph 3 below, to 600,000 acre feet for the express purpose of securing and maintaining Hydraulic Control as a component of the Physical Solution.

[1] The increase in the controlled overdraft herein is separate from and in addition to the 200,000 acre-feet of accumulated overdraft authorized in paragraph 3(a) and 3(b) below over the period of 1978 through 2017.

[2] “Desalters” means the Chino I Desalter, the Chino I Expansion, the Chino II Desalter and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin water, including extraction wells and transmission facilities for delivery of groundwater to the Desalter. Desalter treatment and delivery facilities for the desalted water include pumping and storage facilities and treatment and disposal capacity in the Santa Ana Regional Interceptor.

[3] The groundwater Produced through controlled overdraft pursuant to Re-Operation does not constitute New Yield or Operating Safe Yield and it is made available under the Physical Solution for the express purpose of satisfying some or all of the groundwater Production by the Desalters until December 31, 2030. (“Period of Re-Operation”).

[4] The operation of the Desalters, the Production of groundwater for the Desalters and the use of water produced by the Desalters pursuant to Re-Operation are

subject to the limitations that may be set forth in Watermaster Rules and Regulations for the Desalters.

(5) Watermaster will update its Recharge Master Plan and obtain Court approval of its update, to address how the Basin will be contemporaneously managed to secure and maintain Hydraulic Control and operated at a new equilibrium at the conclusion of the period of Re-Operation. The Recharge Master Plan shall contain recharge projections and summaries of the projected water supply availability as well as the physical means to accomplish recharge projections. The Recharge Master Plan may be amended from time to time with Court approval.

(6) Re-Operation and Watermaster's apportionment of controlled overdraft in accordance with the Physical Solution will not be suspended in the event that Hydraulic Control is secured in any year before the full 400,000 acre-feet has been Produced without Replenishment, so long as: (i) Watermaster has prepared, adopted and the Court has approved a contingency plan that establishes conditions and protective measures that will avoid unreasonable and unmitigated material physical harm to a party or to the Basin and that equitably distributes the cost of any mitigation attributable to the identified contingencies; and (ii) Watermaster is in substantial compliance with a Court approved Recharge Master Plan.<sup>15</sup>

3. Operating Safe Yield. Operating Safe Yield in any year shall consist of the Appropriative Pool's share of Safe Yield of the Basin, plus any controlled overdraft of the Basin which Watermaster may authorize. In adopting the Operating Safe Yield for any year, Watermaster shall be limited as follows:

(a) Accumulated Overdraft. - During the operation of this Judgment and Physical Solution, the overdraft accumulated from and after the effective date of the Physical Solution and

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<sup>15</sup> Order dated December 21, 2007.

resulting from an excess of Operating Safe Yield over Safe Yield shall not exceed 200,000 acre feet.

(b) Quantitative Limits. - In no event shall Operating Safe Yield in any year be less than the Appropriative Pool's share of Safe Yield, nor shall it exceed such share of Safe Yield by more than 10,000 acre feet. The initial Operating Safe Yield is hereby set at 54,834 acre feet per year. Operating Safe Yield shall not be changed upon less than five (5) years' notice by Watermaster. Nothing contained in this paragraph shall be deemed to authorize, directly or indirectly, any modification of the allocation of shares in Safe Yield to the overlying pools, as set forth in Paragraph 44 of the Judgment.

4. Ground Water Storage Agreements. Any agreements authorized by Watermaster for storage of supplemental water in the available ground water storage capacity of Chino Basin shall include, but not be limited to:

- (a) The quantities and term of the storage right.
- (b) A statement of the priority or relation of said right, as against overlying or Safe Yield uses, and other storage rights.
- (c) The procedure for establishing delivery rates, schedules and procedures which may include:
  - [1] spreading or injection, or
  - [2] in lieu deliveries of supplemental water for direct use.
- (d) The procedures for calculation of losses and annual accounting for water in storage by Watermaster.
- (e) The procedures for establishment and administration of withdrawal schedules, locations and methods.

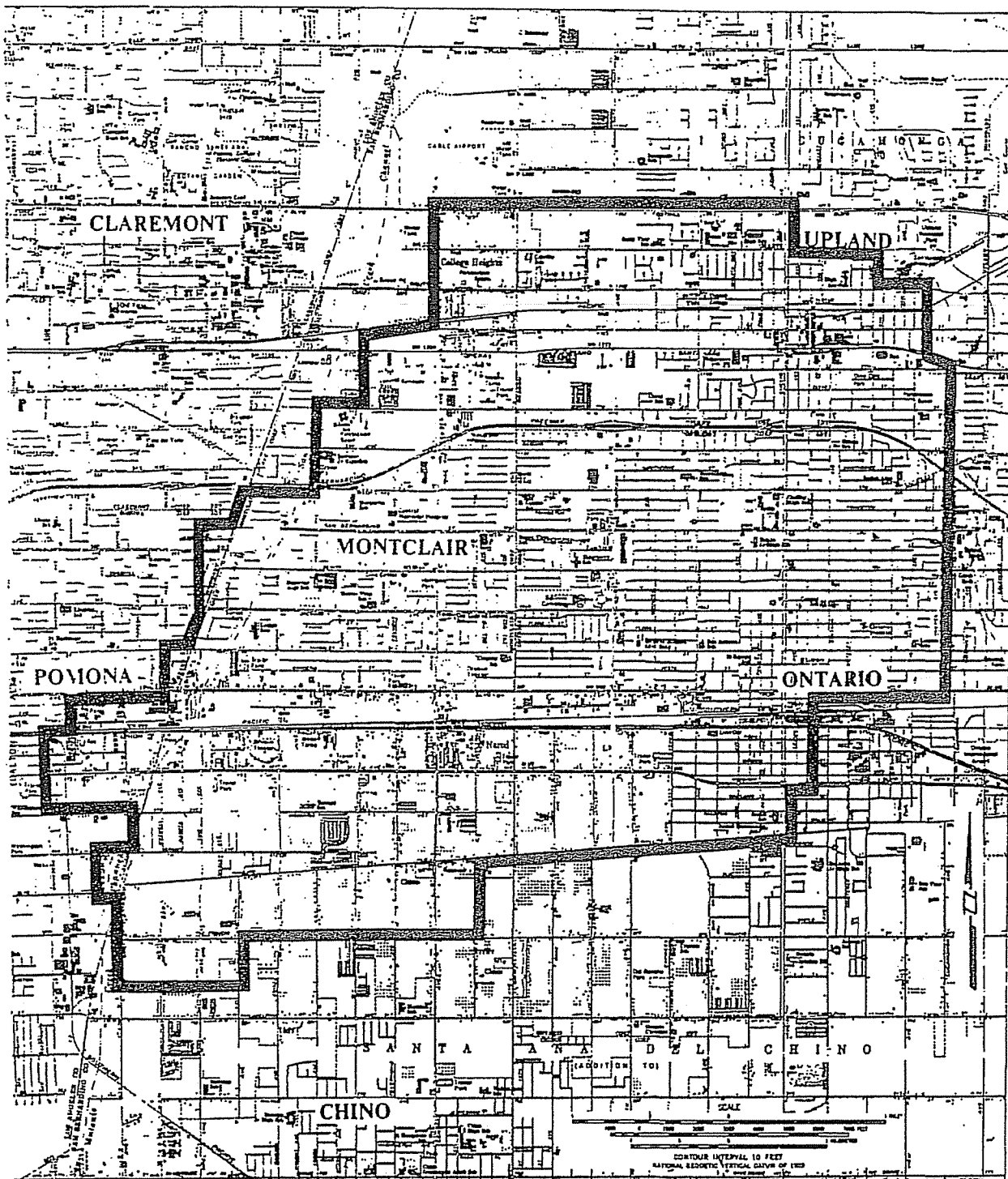
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CHINO BASIN  
IN LIEU AREA NO. 1

EXHIBIT "J"



**EXHIBIT “K”  
LEGAL DESCRIPTION  
OF CHINO BASIN**

Preamble

All of the townships and ranges referred to in the following legal description are the San Bernardino Base and Meridian. Certain designated sections are implied as the System of Government Surveys may be extended where not established. Said sections are identified as follows:

Section 20, T1N, R8W is extended across Rancho Cucamonga;

Section 36, T1N, R8W is extended across the City of Upland;

Sections 2,3, and 4, T1S, R7W are extended across Rancho Cucamonga;

Section 10, T1S, R8W is extended across the City of Claremont;

Sections 19, 20, 21, 30, 31 and 32, T1S, R8W are extended across the City of Pomona;

Sections 4, 5, and 28, T2S, R8W are extended across Rancho Santa Ana Del Chino;

Sections 15 and 16, T3S, R7W are extended across Rancho La Sierra; and

Sections 17 and 20, T3S, R7W are extended across Rancho El Rincon.

Description

Chino Basin is included within portions of the Counties of San Bernardino, Riverside and Los Angeles, State of California, bounded by a continuous line described as follows:

EXHIBIT "K"

BEGINNING at the Southwest corner of Lot 241 as shown on Map of Ontario Colony Lands, recorded in Map Book 11, page 6, Office of the County Recorder of San Bernardino County, said corner being the Point of Beginning;

1. Thence Southeasterly to the Southeast corner of Lot 419 of said Ontario Colony Lands;
2. Thence Southeasterly to a point 1300 feet North of the South line and 1300 feet East of the West line of Section 4, T1S, R7W;
3. Thence Easterly to a point on the East line of Section 4, 1800 feet North of the Southeast corner of said Section 4;
4. Thence Easterly to the Southeast corner of the Southwest quarter of the Northeast quarter of Section 3, T1S, R7W;
5. Thence Northeasterly to a point on the North line of Section 2, T1S, R7W, 1400 feet East of the West line of said Section 2;
6. Thence Northeasterly to the Southwest corner of Section 18, T1N, R6W;
7. Thence Northerly to the Northwest corner of said Section 18;
8. Thence Easterly to the Northeast corner of said Section 18;

9. Thence Northerly to the Northwest corner of the Southwest Quarter of Section 8, T1N, R6W;
10. Thence Easterly to the Northeast corner of said Southwest quarter of said Section 8;
11. Thence Southerly to the Southeast corner of said Southwest Quarter of said Section 8;
12. Thence Easterly to the Northeast corner of Section 17, T1N, R6W;
13. Thence Easterly to the Northeast corner of Section 16, T1N, R6W;
14. Thence Southeasterly to the Northwest corner of the Southeast quarter of Section 15, T1N, R6W;
15. Thence Easterly to the Northeast corner of said Southeast quarter of said Section 15;
16. Thence Southeasterly to the Northwest corner of the Northeast quarter of Section 23, T1N, R6W;
17. Thence Southeasterly to the Northwest corner of Section 25, T1N, R6W;
18. Thence Southeasterly to the Northwest corner of the Northeast quarter of Section 31, T1N, R5W;
19. Thence Southeasterly to the Northeast corner of the Northwest quarter of Section 5, T1S, R5W;
20. Thence Southeasterly to the Southeast corner of Section 4, T1S, R5W;
21. Thence Southeasterly to the Southeast corner of the Southwest quarter of Section 11, T1S, R5W;
22. Thence Southwesterly to the Southwest corner of Section 14, T1S, R5W;

23. Thence Southwest to the Southwest corner of Section 22, T1S, R5W;
24. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 6, T2S, R5W;
25. Thence Southeasterly to the Northeast corner of Section 18, T2S, R5W;
26. Thence Southwesterly to the Southwest corner of the Southeast quarter of Section 13, T2S,  
R6W;
27. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 26, T2S, R6W;
28. Thence Westerly to the Southwest corner of the Northwest quarter of said Section 26;
29. Thence Northerly to the Northwest corner of said Section 26;
30. Thence Westerly to the Southwest corner of Section 21, T2S, R6W;
31. Thence Southerly to the Southeast corner of Section 29, T2S, R6W;
32. Thence Westerly to the Southeast corner of Section 30, T2S, R6W;
33. Thence Southwesterly to the Southwest corner of Section 36, T2S, R7W;
34. Thence Southwesterly to the Southeast corner of Section 3, T3S, R7W;
35. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 10, T3S, R7W;

36. Thence Southerly to the Northeast corner of the Northwest quarter of Section 15, T3S, R7W;
37. Thence Southwesterly to the Southeast corner of the Northeast quarter of Section 16, T3S, R7W;
38. Thence Southwesterly to the Southwest corner of said Section 16;
39. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 20, T3S, R7W;
40. Thence Westerly to the Southwest corner of the Northwest quarter of said Section 20;
41. Thence Northerly to the Northwest corner of Section 17, T3S, R7W;
42. Thence Westerly to the Southwest corner of Section 7, T3S, R7W;
43. Thence Northerly to the Southwest corner of Section 6, T3S, R7W;
44. Thence Westerly to the Southwest corner of Section 1, T3S, R8W;
45. Thence Northerly to the Southeast corner of Section 35, T2S, R8W;
46. Thence Northwesterly to the Northwest corner of said Section 35;
47. Thence Northerly to the Southeast corner of Lot 33, as shown on Map of Tract 3193, recorded in Map Book 43, pages 46 and 47, Office of the County Recorder of San Bernardino County;
48. Thence Westerly to the Northwest corner of the Southwest quarter of Section 28, T2S, R8W;

49. Thence Northerly to the Southwest corner of Section 4, T2S, R8W;
50. Thence Westerly to the Southwest corner of Section 5, T2S, R8W;
51. Thence Northerly to the Southwest corner of Section 32, T1S, R8W;
52. Thence Westerly to the Southwest corner of Section 31, T1S, R8W;
53. Thence Northerly to the Southwest corner of Section 30, T1S, R8W;
54. Thence Northeasterly to the Southwest corner of Section 20, T1S, R8W;
55. Thence Northerly to the Northwest corner of the Southwest quarter of the Southwest quarter of said Section 20;
56. Thence Northwesterly to the Northeast corner of the Southeast quarter of the Southeast quarter of the Northwest quarter of Section 19, T1S, R8W;
57. Thence Easterly to the Northwest corner of Section 21, T1S, R8W;
58. Thence Northeasterly to the Southeast corner of the Southwest quarter of the Southwest quarter of Section 10, T1S, R8W;
59. Thence Northeasterly to the Southwest corner of Section 2, T1S, R8W;

60. Thence Northeasterly to the Southeast corner of the Northwest quarter of the Northwest quarter of Section 1, T1S, R8W;
61. Thence Northerly to the Northeast corner of the Northwest quarter of the Northeast quarter of Section 36, T1N, R8W;
62. Thence Northerly to the Southeast corner of Section 24, T1N, R8W;
63. Thence Northeasterly to the Southeast corner of the Northwest quarter of the Northwest quarter of Section 20, T1N, R7W; and
64. Thence Southerly to the Point of Beginning.

Sections Included

Said perimeter description includes all or portions of the following Townships, Ranges and Sections of San Bernardino Base and Meridian:

T1N, R5W - Sections: 30, 31 and 32

T1N, R6W - Sections: 8, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35  
and 36

T1N, R7W - Sections: 19, 20, 24, 25, 26, 29, 30, 31, 32, 35 and 36

T1N, R8W - Sections: 25 and 36

T1S, R5W - Sections: 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31 and 32

T1S, R6W - Sections: 1 through 36, inclusive

T1S, R7W - Sections: 1 through 36, inclusive

T1S, R8W - Sections: 1, 2, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,  
32, 33, 34, 35 and 36

T2S, R5W - Sections: 6, 7 and 18

T2S, R6W - Sections: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,  
26, 29, 30 and 31

T2S, R7W - Sections: 1 through 36, inclusive

T2S, R8W - Sections: 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 35 and  
36

T3S, R7W - Sections: 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17 and 20

T3S, R8W - Sections: 1.

SB 565248 v1:038350.0001



## **EXHIBIT “C”**

***PEACE AGREEMENT***

***CHINO BASIN***

***JUNE 29, 2000***

## TABLE OF CONTENTS

	Page
RECITALS .....	1
I. DEFINITIONS AND RULES OF CONSTRUCTION .....	3
1.1 Definitions .....	3
1.2 Rules of Construction .....	12
II. COMPLIANCE WITH CEQA .....	13
2.1 Commitments Shall be Consistent With CEQA Compliance .....	13
2.2 Reservation of Discretion .....	14
2.3 No Prejudice by Comment or Failure to Comment .....	14
2.4 Acknowledgment that IEUA is the Lead Agency .....	14
III. CONDITIONS PRECEDENT .....	14
3.1 Performance Under Articles V, VI, and VII is Subject to Satisfaction of Conditions Precedent .....	14
IV. MUTUAL COVENANTS .....	15
4.1 Joint Defense .....	15
4.2 No Opposition to the OBMP .....	15
4.3 Indemnification of the Agricultural Pool .....	16
4.4 Consent to Specified Changes to the Judgment .....	16
4.5 Construction of "Operating Yield" Under the Judgment .....	17
4.6 Best Efforts to Obtain Funding for OBMP .....	17
4.7 CBWCD .....	18
V. WATERMASTER PERFORMANCE .....	18
5.1 Recharge and Replenishment .....	18
5.2 Storage and Recovery .....	23

	<u>Page</u>
5.3 Transfers .....	31
5.4 Assessments, Credits, and Reimbursements .....	36
5.5 Salt Credits .....	38
5.6 Metering .....	38
 VI. COVENANTS BY THE MEMBERS OF THE AGRICUL- TURAL POOL .....	 39
6.1 Best Efforts to Support Storage and Recovery .....	39
6.2 Covenant of Good Faith and Fair Dealing .....	39
6.3 Waiver of Compensation .....	40
 VII. DESALTERS .....	 40
7.1 Need for Desalters .....	40
7.2 Ownership and Operation .....	40
7.3 Design and Construction of Chino II Desalter, Chino I Expansion and Future Desalters .....	 42
7.4 Funding .....	44
7.5 Replenishment Water .....	46
7.6 Sale of Water .....	47
 VIII. TERM .....	 49
8.1 Commencement .....	49
8.2 Expiration .....	49
8.3 Meet and Confer .....	50
8.4 Independent Right to Extend .....	50
8.5 Force Majeure .....	50
8.6 Only One Mandatory Extension .....	51
8.7 Effect of Termination .....	51
8.8 Rescission of Resolutions 84-2 and 88-3 .....	51
8.9 Mediation Upon Failure to Secure Capital Funding for Future Desalters .....	 52
8.10 Parties Rights Unaffected Upon Termination .....	52

	<u>Page</u>
IX	CONFLICTS ..... 53
9.1	Events Constituting a Default by a Party ..... 53
9.2	Remedies Upon Default ..... 53
9.3	Dispute Resolution ..... 55
X.	GENERAL PROVISIONS ..... 57
10.1	Supersedence ..... 57
10.2	Applicability to Others ..... 57
10.3	Admissions by Parties ..... 57
10.4	Construction of Agreement ..... 57
10.5	Each Party Bears Own Costs ..... 58
10.6	Waiver of Breach ..... 58
10.7	Awareness of Contents/Legal Effect ..... 58
10.8	Agreement Binding On All ..... 58
10.9	Counterparts ..... 59
10.10	Captions ..... 59
10.11	Choice of Law ..... 59
10.12	Authority to Enter into This Agreement ..... 59
10.13	Notice ..... 59
10.14	Amendments and/or Changes to Agreement ..... 60
XI.	ACKNOWLEDGMENTS: CONFIRMATION OF RIGHTS ..... 60

# **PEACE AGREEMENT CHINO BASIN**

THIS AGREEMENT (Agreement) is dated the 29th day of June, 2000 regarding the Chino Groundwater Basin.

## **RECITALS**

**WHEREAS**, disputes have arisen from time to time among and between water users within the Santa Ana River Watershed resulting in a judgment entered in Orange County Superior Court Case No. 117628, Orange County Water District v. City of Chino in 1969; and

**WHEREAS**, a complaint was filed on January 2, 1975, seeking an adjudication of water rights, injunctive relief and the imposition of a physical solution for the Chino Groundwater Basin (hereinafter Chino Basin); and

**WHEREAS**, a Judgment was entered in San Bernardino County Superior Court Case No. 164327 in Chino Basin Municipal Water District v. City of Chino, et al. in 1978, now designated No. RCV 51010 that adjudicated rights to the groundwater and storage capacity within the Chino Basin and established a physical solution; and

**WHEREAS**, the Parties intend that each Producer should be able to Produce both the quantity and quality of water to meet its water supply needs to the greatest extent possible from the water that underlies the Producer's area of benefit; and

**WHEREAS**, the Judgment provides the State of California is the largest owner of land overlying the Chino Basin, and provides that all future Production by the State, or its departments or agencies for overlying use on State-owned lands shall be considered as use by the Agricultural Pool; and

**WHEREAS**, Paragraph 16 of the Judgment authorized the appointment of a Watermaster for a term or terms of five (5) years; and

**WHEREAS**, Watermaster has the express powers and duties as provided in the Judgment or as "hereafter ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction" subject to the limitations stated elsewhere in the Judgment; and

**WHEREAS**, Paragraph 41 of the Judgment provides that "Watermaster, with the advice of the Advisory and Pool Committees" has "discretionary powers in order to develop an optimum basin management program (OBMP) for Chino Basin"; and

**WHEREAS**, on February 19, 1998, in San Bernardino County Superior Court Case Number RCV 51010, the Court appointed a "Nine-member Board as Interim Watermaster for a twenty-six month period commencing March 1, 1998 and ending June 30, 2000" and "directed the Interim Watermaster to develop and submit the OBMP"; and

**WHEREAS**, a draft Programmatic Environmental Impact Report (PEIR) for the OBMP has been completed and distributed to the Parties as well as the State Clearinghouse and other interested Parties and the Inland Empire Utilities Agency (IEUA) is serving as "Lead Agency" for purposes of preparing and completing the PEIR as previously directed by the Court on November 18, 1999; and

**WHEREAS**, this Agreement facilitates the implementation of the OBMP which is subject to environmental review under the California Environmental Quality Act (CEQA) as previously directed by the Court; and

**WHEREAS**, disputes have arisen in regard to a number of matters pertaining to the power and authority of the Court and Watermaster under the Judgment, including but not limited to Watermaster power and author-

ity regarding recharge, owning property, holding water rights, water Transfers, storage, yield management, land use conversions, assessments, benefits, procedures and the adoption and implementation of the OBMP; and

**WHEREAS**, OCWD has filed a petition with the State Water Resources Control Board requesting a change of the Santa Ana River's "Fully Appropriated" status, and filed an application to appropriate up to five hundred seven thousand (507,000) acre-feet of such newly declared surplus water; and

**WHEREAS**, the Parties to this Agreement desire to resolve issues by consent under the express terms and conditions stated herein; and

**WHEREAS**, the Parties wish to preserve and maintain Watermaster's role under the Judgment without compromising the Parties' collective and individual "benefits of the bargain" under this Agreement; and

**WHEREAS**, the Parties intend that this Agreement shall enable the adoption and implementation of an OBMP consistent herewith, which will benefit the Basin and all Parties hereto;

**NOW, THEREFORE**, in consideration of the mutual promises specified herein and by conditioning their performance under this Agreement upon conditions precedent set forth in Article III, the Watermaster approval and Court Order of its terms, and for other good and valuable consideration, the Parties agree as follows:

## **I**

### **DEFINITIONS AND RULES OF CONSTRUCTION**

- 1.1 Definitions. As used in this Agreement, these terms, including any grammatical variations thereof shall have the following meanings:



- (a) "Agricultural Pool" shall have the meaning of Overlying (Agricultural) Pool as used in the Judgment and shall include all its members;
- (b) "Appropriative Pool" shall have the meaning as used in the Judgment and shall include all its members;
- (c) "Basin Water" means groundwater within Chino Basin which is part of the Safe Yield, Operating Safe Yield, or Replenishment Water in the Basin as a result of operations under the physical solution decreed in the Judgment. Basin Water does not include "Stored Water;"
- (d) "Best Efforts" means reasonable diligence and reasonable efforts under the totality of the circumstances. Indifference and inaction do not constitute Best Efforts. Futile action(s) are not required.
- (e) "CBWCD" means the Chino Basin Water Conservation District;
- (f) "CEQA" means the California Environmental Quality Act, Public Resources Code Sections 21000 et seq; 14 California Code of Regulations 15000 et seq.;
- (g) "Chino Basin" or "Basin" means the groundwater basin underlying the area shown on Exhibit "B" to the Judgment and within the boundaries described on Exhibit "K" to the Judgment;
- (h) "Chino Basin Watershed" means the surface drainage area tributary to and overlying Chino Basin;

- (i) “Chino I Desalter” also known as the SAWPA Desalter means the Desalter owned and operated by PC14 with a present capacity of eight (8) million gallons per day (mgd) and in existence on the Effective Date;
- (j) “Chino I Desalter Expansion” means the planned expansion of the Chino I Desalter from its present capacity of eight (8) mgd to a capacity of up to fourteen (14) mgd, to be owned and operated by IEUA and WMWD acting through PC14;
- (k) “Chino II Desalter” means a new Desalter not in existence on the Effective Date with a design capacity of ten (10) mgd, to be owned, constructed, and operated by IEUA and WMWD acting independently or in their complete discretion, acting through the PC14, constructed and operated consistent with the OBMP and to be located on the eastside of the Chino Basin;
- (l) “Court” means the court exercising continuing jurisdiction under the Judgment;
- (m) “Date of Execution” means the first day following the approval and execution of the Agreement by the last Party to do so;
- (n) “Desalter” and “Desalters” means the Chino I Desalter, Chino I Desalter Expansion, the Chino II Desalter and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin Water, including extraction wells, transmission facilities for delivery of groundwater to the Desalter, Desalter treatment and delivery facilities for the desalted water including pumping and storage facilities, and treatment and disposal capacity in the SARI System;

- (o) “Early Transfer” means the reallocation of Safe Yield not Produced by the Agricultural Pool to the Appropriative Pool on an annual basis rather than according to the five year increment described in Paragraph 10 of Exhibit “H” of the Judgment;
- (p) “Effective Date” means October 1, 2000, provided that all conditions precedent have been waived or satisfied;
- (q) “Future Desalters” means enlargement of the Chino I Desalter to a capacity greater than the Chino I Expansion or enlargement of the Chino II Desalter and any other new Desalter facilities that may be needed to carry out the purposes of the OBMP over the term of this Agreement;
- (r) “General law” means all applicable state and federal law;
- (s) “Groundwater” means water beneath the surface of the ground and within the zone of saturation, i.e., below the existing water table;
- (t) “IEUA” means the Inland Empire Utilities Agency, referred to in the Judgment as Chino Basin Municipal Water District;
- (u) “In-lieu recharge” means taking supplies of Supplemental Water in lieu of pumping groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, as provided in Exhibit “H” Paragraph 11 of the Judgment;
- (v) “Judgment” means the Judgment dated January 27, 1978, in San Bernardino County Case No. 164327 (redesignated as San Bernardino County Case No. RCV 51010) as amended by Order Approving Amendments to Judgment Dated December 1, 1995, and Order for Amendments to the Judgment Regard-

ing Changes in Pooling Plans and Appropriative Pool Representation on the Advisory Committee, dated September 18, 1996 and other such amendments;

- (w) “Jurupa Community Services District” (JCSD) means the Jurupa Community Services District and the Santa Ana River Water Company individually. Subject to the provisions of this Agreement, the design and delivery obligations for the Chino II Desalter set forth in Section 7.3 regarding Jurupa Community Services District include both the Jurupa Community Services District and the Santa Ana River Water Company. Santa Ana River Water Company may exercise its discretion to receive its portion of the desalted water through an interconnection or at its own expense through an independent pipeline to connect to the Chino II Desalter or in any other method as the Jurupa Community Services District and the Santa Ana River Water Company may jointly agree. Nothing in this definition shall be construed as expanding the initial mgd capacity of the Chino II Desalter as provided in the facilities plan which is attachment “1” to the OBMP Implementation Plan (Exhibit “B” hereto). If it is necessary to meet Santa Ana River Water Company’s demands and there is insufficient initial capacity in the Chino II Desalter to satisfy the demands of Santa Ana River Water Company for desalted water in the quantities as provided in the Revised Draft Water Supply Plan Phase I Desalting Project Facilities Report, Jurupa’s and Ontario’s entitlement to desalted water made available from the initial capacity of the Chino II Desalter shall abate pro-rata to accommodate the demand of Santa Ana River Water Company up to a maximum quantity of 1,300 acre feet per year.
- (x) “Local Storage” means water held in a storage account pursuant to a Local Storage agreement between a party to the

Judgment and Watermaster and consisting of: (i) a Producer's unproduced carry-over water or (ii) a party to the Judgment's Supplemental Water, up to a cumulative maximum of fifty thousand (50,000) acre-feet for all parties to the Judgment.

- (y) "Material Physical Injury" means material injury that is attributable to the Recharge, Transfer, storage and recovery, management, movement or Production of water, or implementation of the OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence, increases in pump lift (lower water levels) and adverse impacts associated with rising groundwater. Material Physical Injury does not include "economic injury" that results from other than physical causes. Once fully mitigated, physical injury shall no longer be considered to be material;
- (z) "Metropolitan Water District" means the Metropolitan Water District of Southern California;
- (aa) "New Yield" means proven increases in yield in quantities greater than historical amounts from sources of supply including, but not limited to, capture of rising water, capture of available storm flow, operation of the Desalters (including the Chino I Desalter), induced Recharge and other management activities implemented and operational after June 1, 2000;
- (bb) "Non-Agricultural Pool" shall have the meaning as used in the Judgment for the Overlying (Non-Agricultural Pool) and shall include all its members;
- (cc) "OBMP Assessments" means assessments, other than the assessments levied as provided in Section 5.1(g), levied by Watermaster for the purpose of implementing the Optimum

Basin Management Program (OBMP),, which shall be deemed Administrative Assessments under Paragraph 54 of the Judgment.

- (dd) “OCWD” means the Orange County Water District;
- (ee) “Operating Safe Yield” means the annual amount of groundwater which Watermaster shall determine, pursuant to criteria specified in Exhibit “I” to the Judgment, can be Produced from Chino Basin by the Appropriative Pool parties free of Replenishment obligation under the Physical Solution. Watermaster shall include any New Yield in determining Operating Safe Yield;
- (ff) “Overdraft” means a condition wherein the total annual Production from the Basin exceeds the Safe Yield thereof, as provided in the Judgment;
- (gg) “Party or Parties” means a Party to this Agreement;
- (hh) “Party or parties to the Judgment” means a party to the Judgment;
- (ii) “Produce or Produced” means to pump or extract groundwater from the Chino Basin;
- (jj) “Producer” means any person who Produces groundwater from the Chino Basin;
- (kk) “Production” means the annual quantity, stated in acre feet, of water Produced from the Chino Basin;
- (ll) “PC14” means Project Committee No. 14, members of SAWPA, composed of IEUA, WMWD, and OCWD, pursuant

to Section 18 of the SAWPA Joint Exercise of Powers Agreement which now constitutes the executive Authority through which SAWPA acts with respect to the Chino I Desalter;

- (mm) “Public Hearing” means a hearing of Watermaster after notice pursuant to Paragraphs 58 and 59 or other Paragraphs of the Judgment that may be applicable, to all parties to the Judgment and to any other person entitled to notice under the Judgment, this Agreement or general law;
- (nn) “Recharge and Recharge Water” means introduction of water into the Basin, directly or indirectly, through injection, percolation, delivering water for use in-lieu of Production or other method. Recharge references the physical act of introducing water into the Basin. Recharge includes Replenishment Water but not all Recharge is Replenishment Water. This definition shall not be construed to limit or abrogate the authority of CBWCD under general law;
- (oo) “Replenishment Water” means Supplemental Water used to Recharge the Basin pursuant to the physical solution, either directly by percolating or injecting the water into the Basin or indirectly by delivering the water for use in lieu of Production and use of Safe Yield or Operating Safe Yield;
- (pp) “Recycled Wastewater” means water which, as a result of treatment of wastewater, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource, referred to as “reclaimed water” in the Judgment.
- (qq) “Safe Yield” means the long-term average annual quantity of groundwater (excluding Replenishment Water or Stored Water but including return flow to the Basin from use of

Replenishment or Stored Water) which can be Produced from the Basin under cultural conditions of a particular year without causing an undesirable result;

- (rr) "Salt Credits" means an assignable credit that may be granted by the Regional Water Quality Control Board and computed by Watermaster from activities that result from removal of salt from the Basin, or that result in a decrease in the amount of salt entering the Basin;
- (ss) "SAWPA" means the Santa Ana Watershed Project Authority;
- (tt) "Sphere of Influence" has the same meaning as set forth in Government Code Section 56076;
- (uu) "Storage and Recovery Program" means the use of the available storage capacity of the Basin by any person under the direction and control of Watermaster pursuant to a storage and recovery agreement but excluding "Local Storage", including the right to export water for use outside the Chino Basin and typically of broad and mutual benefit to the parties to the Judgment;
- (vv) "Stored Water" means Supplemental Water held in storage, as a result of direct spreading, injection or in-lieu delivery, for subsequent withdrawal and use pursuant to agreement with Watermaster;
- (ww) "Supplemental Water" means water imported to Chino Basin from outside the Chino Basin Watershed and recycled water;
- (xx) "Transfer" means the assignment, lease, or sale of a right to Produce water to another Producer within the Chino Basin or to another person or entity for use outside the Basin in con-



formance with the Judgment, whether the Transfer is of a temporary or permanent nature;

(yy) “TVMWD” means Three Valleys Municipal Water District (referred to in the Judgment as Pomona Valley Municipal Water District);

(zz) “Watermaster” means Watermaster as the term is used in the Judgment;

(aaa) “Watermaster Resolution 88-3” means the resolution by the Chino Basin Watermaster establishing the procedure for transferring unallocated Safe Yield water from the Agricultural Pool to the Appropriative Pool, adopted on April 6, 1988 and rescinding Resolution 84-2 in its entirety;

(bbb) “WMWD” means Western Municipal Water District;

## 1.2 Rules of Construction.

(a) Unless the context clearly requires otherwise:

(i) The plural and singular forms include the other;

(ii) “Shall,” “will,” “must,” and “agrees” are each mandatory;

(iii) “may” is permissive;

(iv) “or” is not exclusive;

(v) “includes” and “including” are not limiting; and

(vi) “between” includes the ends of the identified range.

- (b) Headings at the beginning of Articles, paragraphs and subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement and shall not be used in construing it.
- (c) The masculine gender shall include the feminine and neuter genders and vice versa.
- (d) The word "person" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, water district and other entity of whatever nature.
- (e) Reference to any agreement (including this Agreement), document, or instrument means such agreement, document, instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.
- (f) Except as specifically provided herein, reference to any law, statute, ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part and in effect from time to time, including any rules and regulations promulgated thereunder.

## II COMPLIANCE WITH CEQA

- 2.1 Commitments Shall be Consistent With CEQA Compliance. In executing this Agreement, the Parties agree that no commitment will be made to carry out any "project" under the OBMP and within the meaning of CEQA unless and until the environmental review and assessments required by CEQA for that defined "project" have been

completed. Any future implementing actions in furtherance of Program Elements 2 through 9 that meet the definition of "project" under CEQA, shall be subject to further environmental documentation in the form of an exemption, a negative declaration, mitigated negative declaration, environmental impact report, supplemental EIR or subsequent EIR. Any challenge claiming a breach of this article shall be brought within the same period of time applicable to claims under Public Resources Code section 21000, et seq.

2.2 Reservation of Discretion. Execution of this Agreement is not intended to commit any Party to undertake a project without compliance with CEQA or to commit the Parties to a course of action, which would result in the present approval of a future project.

2.3 No Prejudice by Comment or Failure to Comment. Nothing in the PEIR, or a Party's failure to object or comment thereon, shall limit any Party's right to allege that "Material Physical Injury" will result or has resulted from the implementation of the OBMP, the storage, recovery, management, movement or Production of water as provided in Article V herein.

2.4 Acknowledgment that IEUA is the Lead Agency. IEUA has been properly designated as the "Lead Agency" for the purposes of preparing the PEIR as ordered by court on November 18, 1999.

### **III CONDITIONS PRECEDENT**

3.1 Performance Under Articles V, VI, and VII is Subject to Satisfaction of Conditions Precedent. Each Party's obligations under this Agreement are subject to the satisfaction of the following conditions on or before the dates specified below, unless satisfaction of a specified condition or conditions is waived in writing by all other Parties:

- (a) The Parties' covenants and commitments set forth in Article V are expressly conditioned upon Watermaster's contemporaneous approval of this Agreement and the OBMP Implementation Plan by June 29, 2000 and upon an Order of the Court directing Watermaster to proceed in accordance with this Agreement and only this Agreement, on or before July 13, 2000. Watermaster's approval of this Agreement and the OBMP Implementation Plan shall be in the form of a resolution substantially similar to Exhibit "A" attached hereto and it shall contain a commitment to adopt the requisite policies and procedures to implement the provisions set forth in Article V on or before December 31, 2000, unless an earlier date for performance is otherwise expressly provided herein.
- (b) Appropriation by the California Legislature of at least \$121,000,000 from the proceeds made available by the passage of Proposition 13 for the benefit of the SAWPA by October 1, 2000.

#### IV MUTUAL COVENANTS

- 4.1 Joint Defense. The Parties shall proceed with reasonable diligence and use Best Efforts to jointly defend any lawsuit or administrative proceeding challenging the legality, validity, or enforceability of any term of this Agreement. However, nothing herein shall require the State of California to incur legal or administrative costs in support of such an effort.
- 4.2 No Opposition to the OBMP. No Party to this Agreement shall oppose Watermaster's adoption and implementation of the OBMP as provided in Exhibit B attached hereto in a manner consistent with this Agreement, or the execution of Memoranda of Agreement that incorporate the provisions which are substantially similar to those

contained in Exhibit "C" attached hereto. Nothing herein shall be construed as limiting any Party's right of participation in all the functions of Watermaster as are provided in the Judgment or to preclude a party to the Judgment from seeking judicial review of Watermaster determinations pursuant to the Judgment or as otherwise provided in this Agreement.

4.3 Indemnification of the Agricultural Pool. The Parties shall indemnify and defend the State of California and the members of the Agricultural Pool against any lawsuit or administrative proceedings, without limitation, arising from Watermaster's adoption, approval, management, or implementation of a Storage and Recovery Program.

4.4 Consent to Specified Changes to the Judgment. Each Party consents to the following modifications to the Judgment.

- (a) The Judgment shall be amended so that the last sentence of Paragraph 8 of the Judgment reads:

All overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart therefrom for the term of the Peace Agreement except that the members of the Overlying (Non-Agricultural) Pool shall have the right to Transfer or lease their quantified Production rights within the Overlying (Non-Agricultural) Pool or to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000.

- (b) Paragraph 6 of Exhibit "G" to the Judgment regarding the Overlying Non-Agricultural Pool shall be amended to read:

Assignment. Rights herein decreed are appurtenant to that land and are only assignable with the land for over-

lying use thereon; provided, however, (a) that any appropriator who may, directly or indirectly, undertake to provide water service to such overlying lands may, by an appropriate agency agreement on a form approved by Watermaster, exercise said overlying right to the extent, but only to the extent necessary to provide water service to said overlying lands, and (b) the members of the pool shall have the right to Transfer or lease their quantified Production rights within the pool or to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000 for the term of the Peace Agreement.

- (c) The 1995 Amendment to the Judgment shall be amended as follows: Section 10(b)(3)(i) shall now read:

“For the term of the Peace Agreement, in any year in which sufficient unallocated Safe Yield from the Overlying (Agricultural) Pool is available for such conversion claims, Watermaster shall allocate to each appropriator with a conversion claim, 2.0 acre-feet of unallocated Safe Yield water for each converted acre for which conversion has been approved and recorded by the Watermaster.”

Appendix 1 to the Judgment shall be construed to be consistent with this amendment. All other parts of the 1995 Amendment shall remain the same.

- 4.5 Construction of “Operating Yield” Under the Judgment. Exhibit I to the Judgment shall be construed to authorize Watermaster to include New Yield as a component of Operating Safe Yield.
- 4.6 Best Efforts to Obtain Funding for OBMP. Each Party shall use Best Efforts to obtain and support funding that is consistent with the

OBMP and this Agreement. The Parties shall coordinate their individual efforts and report their progress to Watermaster no less than each quarter beginning on the Effective Date.

- 4.7 CBWCD. Watermaster shall provide for, arrange or approve the necessary revenue to fund Recharge activities listed in the OBMP and CBWCD shall not assume any legal duty or responsibility to conduct Recharge other than as is expressly set forth herein, as it may agree or as may be provided under general law or the Judgment.

## V

### WATERMASTER PERFORMANCE

- 5.1 Recharge and Replenishment. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding Recharge and Replenishment:

- (a) All Recharge of the Chino Basin with Supplemental Water shall be subject to Watermaster approval.
- (b) Watermaster will ensure that any person may make application to Watermaster to Recharge the Chino Basin with Supplemental Water, including the exercise of the right to offer to sell in-lieu Recharge water to Watermaster as provided in the Judgment and the Agreement in a manner that is consistent with the OBMP and the law. Watermaster shall not approve an application by any party to the Judgment if it is inconsistent with the terms of the Agreement, or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any Party or the Basin caused by the Recharge of Supplemental Water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and

reasonably mitigated, the request for Recharge of Supplemental Water must be denied.

- (c) Watermaster shall administer, direct and conduct the Recharge of all water in a manner that is consistent with this Agreement, the OBMP and causes no Material Physical Injury to any party to the Judgment or the Chino Basin. Nothing herein shall be construed as committing a Party to provide Supplemental Water upon terms and conditions that are not deemed acceptable to that Party.
- (d) Notwithstanding Section 5.1(c), CBWCD shall reserve its complete discretion to Recharge the Basin with water other than Supplemental Water as may be authorized by general law so long as the Recharge is in accordance with the limitations in the Judgment, if any and is in accordance with the provisions of Section 5.1(d)(i)-(v).
  - (i) Upon request by Watermaster CBWCD shall exercise Best Efforts to consult, coordinate and cooperate with Watermaster when recharging water into the Basin;
  - (ii) CBWCD shall provide Watermaster with reasonable notice in advance of any material change in its historic Recharge operations;
  - (iii) CBWCD shall not be required to provide funding for Recharge projects merely by virtue of its execution of this Agreement;
  - (iv) CBWCD shall Recharge the Basin in a manner that does not cause Material Physical Injury to any party to the Judgment or the Basin. Upon Watermaster's receipt of a written allegation that an existing or proposed



CBWCD Recharge activity has or will cause Material Physical Injury to any party to the Judgment or the Basin, Watermaster shall hold a Public Hearing within a reasonable time. Watermaster shall provide notice and opportunity to be heard to interested parties to the Judgment including CBWCD. After hearing, Watermaster may approve, deny or condition the CBWCD's Recharge. Watermaster's decision shall be based upon the record and it shall be subject to the court's review;

- (v) CBWCD's Recharge of the Basin coupled with an intent to store and recover water shall require a storage and recovery agreement.

(e) Watermaster shall exercise its Best Efforts to:

- (i) protect and enhance the Safe Yield of the Chino Basin through Replenishment and Recharge;
- (ii) ensure there is sufficient Recharge capacity for Recharge Water to meet the goals of the OBMP and the future water supply needs within the Chino Basin;
- (iii) direct Recharge relative to Production in each area and sub-area of the Basin to achieve long term balance and to promote the goal of equal access to groundwater within all areas and sub-areas of the Chino Basin;
- (iv) evaluate the potential or threat for any Material Physical Injury to any party to the Judgment or the Chino Basin, including, but not limited to, any Material Physical Injury that may result from any Transfer of water in storage or water rights which is proposed in place of

physical Recharge of water to Chino Basin in accordance with the provisions of Section 5.3;

- (v) establish and periodically update criteria for the use of water from different sources for Replenishment purposes;
  - (vi) ensure a proper accounting of all sources of Recharge to the Chino Basin;
  - (vii) Recharge the Chino Basin with water in any area where groundwater levels have declined to such an extent that there is an imminent threat of Material Physical Injury to any party to the Judgment or the Basin;
  - (viii) maintain long-term hydrologic balance between total Recharge and discharge within all areas and sub-areas;
  - (ix) coordinate, facilitate and arrange for the construction of the works and facilities necessary to implement the quantities of Recharge identified in the OBMP Implementation Plan.
- (f) Watermaster shall undertake Recharge, using water of the lowest cost and the highest quality, giving preference as far as possible to the augmentation and the Recharge of native storm water.
- (g) In furtherance of its obligations under this Section, for a period of five years, commencing with Fiscal Year 2000-2001, and within each such Fiscal Year Watermaster shall arrange for the physical Recharge of Supplemental Water in the amount of an annual average of 6,500 acre-feet per year in one or more of

the areas commonly known as the Montclair, Brooks and Upland spreading facilities.

- (i) If for any reason at the end of the five year period, a cumulative total of 32,500 acre-feet of physical Recharge has not been accomplished under this subdivision, then Recharge shall continue at the above referenced locations at the average annual rate of 6,500 acre-feet until the full 32,500 acre-feet of physical Recharge has been accomplished;
- (ii) The Recharged Supplemental Water shall increase the Operating Safe Yield under the Judgment. The cost and allocation of this Supplemental Water under this Section 5.1g shall be apportioned pro rata among the members of the Appropriative Pool under the Judgment according to the Producer's share of the initial Safe Yield;
- (iii) The need to continue physical Recharge under this paragraph shall be evaluated by Watermaster after the conclusion of Fiscal Year 2004-2005. In evaluating further physical Recharge pursuant to this paragraph, Watermaster shall take into account the provisions of this Article, the Judgment and the OBMP among all other relevant factors. Except as to Watermaster's determination of Material Physical Injury, the rights of each party to the Judgment to purchase or lease water to meet its over-Production obligation shall be unaffected by this provision;
- (h) Watermaster shall not own Recharge projects, including but not limited to spreading grounds, injection wells, or diversion works. It shall never own real property. However, Watermaster may own water rights in trust for the benefit of the

parties to the Judgment. Moreover, Watermaster shall arrange, facilitate and provide for Recharge by entering into contracts with appropriate persons, which may provide facilities and operations for physical Recharge of water as required by the Judgment and this Agreement, or pursuant to the OBMP. Any such contracts shall include appropriate terms and conditions, including terms for the location and payment of costs necessary for the operation and maintenance of facilities, if any.

- (i) CBWCD's rights and obligations to obtain Replenishment Water are unaffected by the execution of this Agreement. Its obligation, rights and duties regarding Recharge may be set by arms length negotiation through separate agreement or as they otherwise exist under general law and the Judgment.
- (j) Watermaster shall provide an annual accounting of the amount of Recharge and the location of the specific types of Recharge.

5.2 Storage and Recovery. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding the storage and recovery of water:

- (a) In General.
  - (i) All storage capacity shall be subject to regulation and control by Watermaster;
  - (ii) No person shall store water in and recover water from the Chino Basin without an agreement with Watermaster;
  - (iii) Watermaster will ensure that any person, including but not limited to the State of California and the Department

of Water Resources may make application to Watermaster to store and recover water from the Chino Basin as provided herein in a manner that is consistent with the OBMP and the law. Watermaster shall not approve an application to store and recover water if it is inconsistent with the terms of this Agreement or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any Party or the Basin caused by the storage and recovery of water shall be reasonably and fully mitigated as a condition of approval. In the event the Material Physical Injury cannot be mitigated, the request for storage and recovery must be denied.

- (iv) This Agreement shall not be construed to limit the State or its department or agencies from using available storage capacity in the Basin in accordance with the provisions of this Section under a storage and recovery agreement with Watermaster.

(b) Local Storage.

- (i) For a period of five years from the Effective Date, Watermaster shall ensure that: (a) the quantity of water actually held in Local Storage under a storage agreement with Watermaster is confirmed and protected and (b) each party to the Judgment shall have the right to store its un-Produced carry-over water. Thereafter, a party to the Judgment may continue to Produce the actual quantity of carry-over water and Supplemental Water held in its storage account, subject only to the loss provisions set forth in this Section 5.2. This means a party to the Judgment may increase the total volume of carry-over water it holds in Local Storage up to five years after the

Effective Date and as Watermaster may approve pursuant to a Local Storage agreement for Supplemental Water.

- (ii) For a period of five years from the Effective Date, any party to the Judgment may make application to Watermaster for a Local Storage agreement, whereby it may store Supplemental Water in the Chino Basin.
- (iii) Watermaster shall provide reasonable advance written notice to all interested parties of the proposed Local Storage agreement, prior to approving the agreement. The notice shall include the persons engaged in the Local Storage, the location of the Recharge and Production facilities and the potential for any Material Physical Injury, if any.
- (iv) Watermaster shall approve the Local Storage agreement so long as: (1) the total quantity of Supplemental Water authorized to be held in Local Storage under all then existing Local Storage agreements for all parties to the Judgment does not exceed the cumulative total of 50,000 acre-feet; (2) the party to the Judgment making the request provides their own Recharge facilities for the purpose of placing the Supplemental Water into Local Storage; (3) the agreement will not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed agreement with conditions that mitigate any threatened or potential Material Physical Injury.
- (v) There shall be a rebuttable presumption that the Local Storage agreement for Supplemental Water does not

result in Material Physical Injury to a party to the Judgment or the Basin.

- (vi) In the event any party to the Judgment, or Watermaster, objects to a proposed Local Storage agreement for Supplemental Water and submits evidence that there may be a Material Physical Injury to any party to the Judgment or the Basin, Watermaster shall hold a Public Hearing and allow the objecting party to the Judgment a reasonable opportunity to be heard.
- (vii) In the event more than one party to the Judgment submits a request for an agreement to store Supplemental Water pursuant to a Local Storage agreement, Watermaster shall give priority to the first party to file a bona fide written request which shall include the name of the party to the Judgment, the source, quantity and quality of the Supplemental Water, an identification of the party to the Judgment's access to or ownership of the Recharge facilities, the duration of the Local Storage and any other information Watermaster shall reasonably request. Watermaster shall not grant any person the right to store more than the then existing amount of available Local Storage. The amount of Local Storage available for the storage of Supplemental Water shall be determined by subtracting the previously approved and allocated quantity of storage capacity for Supplemental Water from the cumulative maximum of 50,000 acre-feet.
- (viii) Watermaster shall base any decision to approve or disapprove any proposed agreement upon the record.

- (ix) Any party to the Judgment may seek judicial review of Watermaster's decision.
- (x) Five years after the Effective Date, Watermaster shall have discretion to place reasonable limits on the further accrual of carry-over and Supplemental Water in Local Storage. However, Watermaster shall not limit the accrual of carry-over Local Storage for Fontana Union Mutual Water Company and Cucamonga County Water District when accruing carry-over storage pursuant to *Lease of Corporate Shares Coupled with Irrevocable Proxy, dated July 1, 1993 between Cucamonga County Water District and Fontana Water Resources Inc. and the Settlement Agreement Among Fontana Union Water Company, Kaiser Steel Reserves Inc., San Gabriel Valley Water Company and Cucamonga County Water Districts dated February 7, 1992*, to a quantity less than 25,000 acre-feet for the term of this Agreement.
- (xi) Watermaster shall evaluate the need for limits on water held in Local Storage to determine whether the accrual of additional Local Storage by the parties to the Judgment should be conditioned, curtailed or prohibited if it is necessary to provide priority for the use of storage capacity for those Storage and Recovery Programs that provide broad mutual benefits to the parties to the Judgment as provided in this paragraph and Section 5.2(c) below;
- (xii) Watermaster shall set the annual rate of loss from Local Storage for parties to the Judgment at zero until 2005. Thereafter the rate of loss from Local Storage for parties to the Judgment will be 2% until recalculated based upon the best available scientific information. Losses



shall be deducted annually from each party to the Judgment's storage account;

- (xiii) Watermaster shall allow water held in storage to be transferred pursuant to the provisions of Section 5.3 below. Storage capacity is not transferable by any party to the Judgment or any Party hereto.

(c) Storage and Recovery Program.

- (i) Watermaster will ensure that no person shall store water in and recover water from the Basin, other than pursuant to a Local Storage agreement, without a storage and recovery agreement with Watermaster;
- (ii) Watermaster shall prepare a list of basic information that a proposed applicant for a Storage and Recovery Program must submit to Watermaster prior to the execution of a storage and recovery agreement;
- (iii) As a precondition of any project, program or contract regarding the use of Basin storage capacity pursuant to a Storage and Recovery Program, Watermaster shall first request proposals from qualified persons.
- (iv) Watermaster shall be guided by the following criteria in evaluating any request to store and recover water from the Basin by a party to the Judgment or any person under a Storage and Recovery Program.
  - (a) The initial target for the cumulative quantity of water held in storage is 500,000 acre-feet in addition to the existing storage accounts;

- (b) Watermaster shall prioritize its efforts to regulate and condition the storage and recovery of water developed in a Storage and Recovery Program for the mutual benefit of the parties to the Judgment and give first priority to Storage and Recovery Programs that provide broad mutual benefits;
- (v) For the term of this Agreement, members of the Appropriative Pool and the Non-Agricultural Pool shall be exclusively entitled to the compensation paid for a Storage and Recovery Program irrespective of whether it be in the form of money, revenues, credits, proceeds, programs, facilities, or other contributions (collectively "compensation") as directed by the Non-Agricultural and the Appropriative Pools;
- (vi) The compensation received from the use of available storage capacity under a Storage and Recovery Program, may be used to off-set the Watermaster's cost of operation, to reduce assessments on the parties to the Judgment within the Appropriative and Non-Agricultural Pools, and to defray the costs of capital projects as may be requested by the members of the Non-Agricultural Pools and the Appropriative Pool;
- (xiii) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by storage and recovery of water, whether Local Storage and recovery or pursuant to a Storage and Recovery Program, shall be reasonably and fully mitigated as a condition of approval;
- (ix) Watermaster reserves discretion to negotiate appropriate terms and conditions or to refuse to enter into a Storage

and Recovery or to deny any request. However, with respect to persons not parties to the Judgment, Watermaster reserves complete discretion. Watermaster shall base any decision to approve or disapprove any proposed Storage and Recovery Program upon the record. However, it may not approve a proposed Storage and Recovery Program unless it has first imposed conditions to reasonably and fully mitigate any threatened or potential Material Physical Injury;

- (x) Any party to the Judgment may seek review of the Watermaster's decision regarding a Storage and Recovery Program.
- (d) The specific terms and conditions for the use of the facilities of CBWCD in connection with Local Storage or Storage and Recovery Programs shall be covered under separate agreements reached by arms length bargaining between Watermaster and CBWCD. Watermaster and any other Party shall not be entitled to the income received by CBWCD for use of its facilities in connection with Local Storage or Storage and Recovery Programs without the consent of CBWCD. Nothing in this Agreement shall be construed as preventing CBWCD from entering into an agreement with others for use of its facilities in a manner consistent with Section 5.1(d) i-v of this Agreement.
- (e) Nothing herein shall be construed as prohibiting the export of Supplemental Water stored under a Storage and Recovery Program and pursuant to a storage and recovery agreement.
- (f) Watermaster shall exercise Best Efforts to undertake the following measures:

- (i) Complete the Short-term conjunctive use project, authorized by Watermaster and conducted by IEUA, TVMWD and MWD;
- (ii) Evaluate and develop a seasonal peaking program for in-Basin use and dry year yield to reduce the Basin's demand on the Metropolitan Water District for imported water;
- (iii) Evaluate and develop a dry year export program;
- (iv) Evaluate and develop a seasonal peaking export program;

5.3 Transfers. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding the Transfer of water:

- (a) Watermaster will ensure that any party to the Judgment may Transfer water in a manner that is consistent with this Agreement, the OBMP and the law. Watermaster shall not approve a Transfer if it is inconsistent with the terms of the Agreement, or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Transfer of water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Transfer must be denied.
- (b) A party to the Judgment may make application to Watermaster to Transfer water as provided in the Judgment.

- (i) Watermaster shall provide reasonable advance written notice to all the parties to the Judgment of a proposed Transfer, prior to approving the Transfer. The notice shall include the persons engaged in the Transfer, the location of the Production and Watermaster's analysis of the potential for Material Physical Injury, if any;
- (ii) Watermaster shall approve the Transfer of water as provided in the Judgment so long as the individual Transfer does not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed Transfer with conditions that fully and reasonably mitigate any threatened or potential Material Physical Injury;
- (iii) There shall be a rebuttable presumption that the Transfer and the Production by the transferee does not result in Material Physical Injury to a party to the Judgment or the Basin;
- (iv) In the event any party to the Judgment, or Watermaster, objects to a proposed Transfer and submits evidence that there may be Material Physical Injury to any party to the Judgment or the Basin, Watermaster shall hold a Public Hearing and allow the objecting party to the Judgment a reasonable opportunity to be heard;
- (v) Watermaster shall base any decision to approve or disapprove any proposed Transfer upon the record after considering potential impacts associated with the individual Transfer alone and without regard to impacts attributable to any other Transfers;

- (vi) Any party to the Judgment may seek judicial review of the Watermaster's decision.
- (c) Watermaster shall allow Producers to lease water rights to make up for the lessee's over-Production.
- (d) Except as provided in Section 5.2, Producers shall not be required to file a storage and recovery or recapture plan except when Producing water transferred from a storage account.
- (e) Watermaster shall approve the Transfer or lease of the quantified Production rights of Non-Agricultural Producers within the Non-Agricultural Pool subject to the provisions of paragraph (b) above. The right to Transfer within the pool includes the right to lease water to other members of the Non-Agricultural Overlying Pool. In addition, the parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter or for a Storage and Recovery Program.
- (f) Consistent with the provisions of 88-3, Watermaster shall approve the Transfer of unallocated Safe Yield under-Produced by the Agricultural Pool in Fiscal Year 1998-99, for Transfer to the Appropriative Pool in Fiscal Year 1999-2000, 35,262.452 acre-feet consistent with Watermaster Resolution 88-3. This Transfer shall be in addition to the Early Transfer of the 32,800 acre-feet per year from the Agricultural Pool to the Appropriative Pool referenced below in 5.3(g).
- (g) Watermaster shall approve an "Early Transfer" of water to the Appropriative Pool in an amount not less than 32,800 acre-feet per year that is the expected approximate quantity of water not Produced by the Agricultural Pool. The quantity of water sub-

ject to Early Transfer under this paragraph shall be the greater of (i) 32,800 acre-feet or (ii) 32,800 acre-feet plus the actual quantity of water not Produced by the Agricultural Pool for that Fiscal Year that is remaining after all the land use conversions are satisfied pursuant to 5.3(i) below.

- (i) The Early Transfer water shall be annually allocated among the members of the Appropriative Pool in accordance with their pro-rata share of the initial Safe Yield.
- (ii) The Transfer shall not limit the Production right of the Agricultural Pool under the Judgment to Produce up to 82,800 acre-feet of water in any year or 414,000 acre-feet in any five years as provided in the Judgment.
- (iii) The combined Production of all parties to the Judgment shall not cause a Replenishment assessment on the members of the Agricultural Pool. The Agricultural Pool shall be responsible for any Replenishment obligation created by the Agricultural Pool Producing more than 414,000 acre-feet in any five-year period.
- (iv) The parties to the Judgment and Watermaster shall Produce water in accordance with the Operating Safe Yield and shall procure sufficient quantities of Replenishment Water to satisfy over-Production requirements, whatever they may be, and avoid Material Physical Injury to any party to the Judgment or the Basin;
- (v) Nothing herein shall be construed as modifying the procedures or voting rights within or by the members of the Agricultural Pool.

- (h) The amount of water rights converted for agricultural land to urban use is presently 2.6 acre-feet per acre, with 1.3 acre-feet per acre being allocated collectively to all members of the Appropriative Pool with an initial share of Safe Yield and 1.3 acre-feet per acre being allocated to that appropriator providing service for that urban use. The rate of 2.6 acre-feet per acre shall be changed to a total of 2.0 acre-feet per acre, all of which shall be allocated upon the conversion of the land to that party to the Judgment which is an a member of the Appropriative Pool, on the Effective Date of this Agreement, and whose Sphere of Influence or authorized service area contains the land (purveyor). Upon such conversion of water rights, the purveyor will pledge that amount of water needed for such urban land use, when such urban land use is established, up to 2 acre-feet of water per acre of land per year will be made available for service for such converted land by purveyor under its then-existing standard laws, regulations, rules and policies, or for service arranged by such purveyor, subject only to prohibition of such service by a federal, state agency or court with jurisdiction to enforce such prohibition. The owner of such converted land shall have the right to enforce such pledge by specific performance or writ of mandate under the terms of this Agreement. No monetary damages shall be awarded.
- (i) The members of the Agricultural Pool, including the State of California, shall have the right to engage in a voluntary agreement with an appropriator which has a service area contiguous to or inclusive of the agricultural land, to provide the required water to the overlying land on behalf of the member of the Agricultural Pool unless otherwise prohibited by general law. The appropriator providing service shall be entitled to a credit to off-set Production to the extent it is serving the overlying land up to the amount of the historical maximum annual quantity of water previously used on the property.



5.4 Assessments, Credits, and Reimbursements. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding Assessments.

- (a) During the term of this Agreement, all assessments and expenses of the Agricultural Pool including those of the Agricultural Pool Committee shall be paid by the Appropriate Pool. This includes but is not limited to OBMP Assessments, assessments pursuant to Paragraphs 20, 21, 22, 30, 42, 51, 53, 54 both General Administrative Expenses and Special Project Expenses, 55, and Exhibit F (Overlying Agricultural Pool Pooling Plan) of the Judgment except however in the event the total Agricultural Pool Production exceeds 414,000 acre-feet in any five consecutive year period as defined in the Judgment, the Agricultural Pool shall be responsible for its Replenishment obligation pursuant to Paragraph 45 of the Judgment.
- (b) The City of Pomona (Pomona) shall be allowed a credit of up to \$2 (two) million against OBMP Assessments for its installation and operation and maintenance of its existing anion exchange project, which is hereby determined to further the purposes of the OBMP. Pomona's construction and operation of its anion exchange project was not legally compelled and Pomona had no legal duty to construct the project. For the 30 (thirty) year initial Term of this Agreement, Pomona's OBMP Assessment shall be credited \$66,667 per year, not to exceed Pomona's total BMP Assessment attributable to the project's Production for that year. Extension of the Term of this Agreement shall not extend the period of credit.
- (c) Kaiser Ventures (Kaiser) in recognition of its contribution of 25,000 acre-feet to offset Replenishment obligations for the

Desalters shall be allowed a credit of up to \$900,000 (nine hundred thousand dollars) against OBMP Assessments for the Desalters and related facilities. For the 30 (thirty) year initial Term of this Agreement, Kaiser's OBMP Assessment shall be credited up to \$30,000 (thirty thousand dollars) per year, not to exceed Kaiser's OBMP Assessment attributable to Desalters and related facilities. Extension of the Term of this Agreement shall not extend the period of credit. In the event Kaiser Transfers its water rights appurtenant to its overlying land which it owns on the date of execution, the purchaser (Kaiser's successor in interest) shall be entitled one-half (1/2) of the annual credit.

- (d) Watermaster shall adopt reasonable procedures to evaluate requests for OBMP credits against future OBMP Assessments or for reimbursement. Any Producer or party to the Judgment, including but not limited to the State of California, may make application to Watermaster for reimbursement or credit against future OBMP Assessments for any capital or operations and maintenance expenses incurred in the implementation of any project or program, including the cost of relocating groundwater Production facilities, that carries out the purposes of the OBMP including but not limited to those facilities relating to the prevention of subsidence in the Basin, in advance of construction or that is prospectively dedicated to service of the stated goals of the OBMP. Watermaster shall exercise reasonable discretion in making its determination, considering the importance of the project or program to the successful completion of the OBMP, the available alternative funding sources, and the professional engineering and design standards as may be applicable under the circumstances. However, Watermaster shall not approve such a request for reimbursement or credit against future BMP Assessments under this section where the

Producer or party to the Judgment was otherwise legally compelled to make the improvement.

- (e) Any Producer that Watermaster compels to move a groundwater Production facility that is in existence on the Date of Execution shall have the right to receive a credit against future Watermaster assessments or reimbursement up to the reasonable cost of the replacement groundwater Production facility.
- (f) The procurement of Replenishment Water and the levy of assessments shall be consistent with the provisions of Section 5.4(a) above.

5.5 Salt Credits. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding Salt Credits. Watermaster shall assign to the members of the Appropriative Pool, salt credits under the OBMP other than those that were previously allocated for the existing Chino I Desalter, or are attributable to a project or program undertaken by the State of California for the benefit of its overlying land and that carry out the purposes of the OBMP.

5.6 Metering. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding metering:

- (a) With respect to the obligation to install meters, which is set forth in the Judgment Paragraph 21, any Assessment levied by Watermaster on the members of the Agricultural Pool, regarding metering shall be paid by the Appropriative Pool. Members of the Agricultural Pool, shall have no obligation to install meters hereafter. The obligation to install meters on wells

owned or operated by members of the Agricultural Pool, shall become that of the Watermaster.

- (b) Agricultural Pool meters shall be installed within thirty-six months of the Date of Execution. Watermaster shall be responsible for providing the meter, as well as the cost of any installation, maintenance, inspection, testing and repairing. The members of the Agricultural Pool, shall provide reasonable access during business hours to a location reasonably appropriate for installation, inspection, and repairing of a meter.
- (c) The State of California reserves its right to continue to install, operate, maintain, inspect, test and repair its own meters on wells owned or operated by the State, unless it consents to installation by Watermaster in which case Watermaster assumes the cost.

## VI

### COVENANTS BY THE MEMBERS OF THE AGRICULTURAL POOL

- 6.1 Best Efforts to Support Storage and Recovery. The members and representatives of the Agricultural Pool shall exercise Best Efforts to support the development of any Storage and Recovery Project, once it has been approved by Watermaster, so long as there is no Material Physical Injury to a member of the Agricultural Pool or the Basin.
- 6.2 Covenant of Good Faith and Fair Dealing. The members and representatives of the Agricultural Pool, including the State of California in its capacity as a member and owner of overlying land within the Agricultural Pool, shall be bound by the covenant of good faith and fair dealing, and not oppose or undermine the efforts of Watermaster to secure the development of a Storage and Recovery Program, so

long as there is no potential or threatened Material Physical Injury to a member of the Agricultural Pool or the Basin.

- 6.3 Waiver of Compensation. For the term of this Agreement, the members and representatives of the Agricultural Pool shall waive any claims or rights they might raise or possess, and shall not be entitled, to any compensation from a Storage and Recovery Program irrespective of whether it be in the form of money, revenues, credits, proceeds, programs, facilities, or other contributions (compensation). Further, the members of the Appropriative Pool and the Non-Agricultural Overlying Pool shall have the exclusive rights to any such compensation. This Section shall not apply to the charges adopted by CBWCD for storage and recovery purposes. This paragraph shall not be construed as a limitation on the ability of the State of California to make application to the Watermaster for a Storage and Recovery Program pursuant to Section 5.2.

## VII DESALTERS

- 7.1 Need for Desalters. The OBMP requires construction and operation of Desalters. The Desalters shall be owned, operated and maintained by IEUA and WMWD acting independently or in their complete discretion, acting through PC14 consistent with the terms of this Agreement.
- 7.2 Ownership and Operation.
- (a) Chino I Desalter.
    - (i) The existing "Chino I Desalter," also known as the "SAWPA Desalter," consisting of extraction wells, transmission facilities for delivery of groundwater to the Chino I Desalter, Desalter treatment and delivery facil-

ities for product water, including pumping and storage facilities, and treatment and disposal capacity in the SARI System, is owned and operated by SAWPA, which has created "The Project Committee No. 14 (PC14)" comprised of SAWPA members, IEUA, WMWD, and OCWD, pursuant to "Project Agreement No. 14" dated April 2, 1991, to exercise all the powers and responsibilities of Section 18 of the SAWPA Joint Exercise of Powers Agreement, which now constitutes the executive authority through which SAWPA acts with respect to the Chino I Desalter and to fund repayment for any loans for construction and operation and maintenance of such Desalter and a "Financing Agreement" dated April 1, 2000.

- (ii) The Chino I Desalter is operated pursuant to (a) "take or pay" agreements with the purchasers of water made available from such Desalter; (b) an agreement with the Metropolitan Water District (MWD) subsidizing that Desalter to reduce the cost of the water made available by that Desalter compared to the alternative cost of uninterruptible treated imported water available from MWD; and (c) an agreement with the Watermaster, all Pools of Producers from the Chino Basin, Kaiser Ventures, Inc., formerly known as Kaiser Resources, Inc. (Kaiser) and the California Regional Water Quality Control Board, Santa Ana Region (RWQB), regarding provision of certain water with which to satisfy the Replenishment obligation for operating the Desalter.

(b) Chino II Desalter and Chino I Expansion.

IEUA and WMWD acting independently or in their complete discretion through PC14 must own and operate the Chino II



Desalter and the Chino I Expansion in the same manner as the Chino I Desalter, except as otherwise provided in this Agreement.

(c) Future Desalters.

IEUA and WMWD acting independently or in their complete discretion through PC14 must own and operate Future Desalters, if and only if, they can secure funding from state, federal or sources other than the Parties to pay the capital costs required to construct Future Desalters.

7.3 Design and Construction of Chino II Desalter, Chino I Expansion and Future Desalters.

- (a) IEUA and WMWD acting independently or in their complete discretion, acting through PC14 shall design and construct the Chino II Desalter on the eastside of the Chino Basin and expand the capacity of the Chino I Desalter already in existence on the Date of Execution, from 8 mgd up to 14 million gallons per day.
- (b) The Chino II Desalter shall have an initial capacity of 10 mgd and shall be designed to deliver water to Jurupa Community Services District, the City of Ontario, and if requested, others subject to the limitations of available funding. The existing capacity of the Chino I Desalter shall be expanded by a minimum of 2 mgd and up to 6 mgd, depending on the rate of development and availability of funding and shall be designed to deliver water to the Cities of Chino, Chino Hills and the State of California as provided in this Section.

- (c) There is no minimum initial capacity established for Future Desalters as the size and timing of Future Desalters are dependent upon variables not presently subject to reliable estimates.
  - (i) It is contemplated by the Parties that Future Desalters, and a further expansion of the Chino I Desalter to a capacity greater than the Chino I Expansion or the Chino II Desalter to a capacity greater than 10 mgd may occur;
  - (ii) IEUA and WMWD shall design and construct Future Desalters, whether acting independently, or in their complete discretion, through PC14, provided that their obligation shall be conditioned upon their ability to secure funding from the state or federal sources other than the Parties to pay the capital costs of construction. Absent such funding, the IEUA and WMWD, acting independently or, in their complete discretion, acting through PC14, shall have no obligation to construct Future Desalters;
- (d) The specific location of wells to supply the Chino II Desalter and Future Desalters shall be determined with Watermaster approval and shall be in a location, which is consistent with and shall carry out the purpose of the OBMP. The design and construction of the Chino II Desalter, Chino I Expansion, and Future Desalters shall be in accordance with the OBMP and subject to Watermaster approval. Watermaster approval shall not be unreasonably withheld and shall insure that the operation of the Desalters will implement the OBMP and not result in Material Physical Injury to any party to the Judgment or the Basin.
- (e) Wells operated in connection with the Desalters shall be designed and constructed to Produce water with high total

dissolved solids (TDS) and be located in areas consistent with the purposes of the OBMP.

#### 7.4 Funding.

- (a) The capital costs of the Chino I Desalter are not affected by this Agreement.
- (b) The capital costs of designing and constructing the Chino II Desalter and the Chino I Desalter Expansion shall be partially derived from Proposition 13 funds. The Parties shall exercise their Best Efforts to secure said funds from the appropriate state agencies. However, all unmet capital, operation and maintenance costs relative to the Chino II Desalter shall be paid from the following sources and in the following order of priority:
  - (i) The net amount of funding received by SAWPA from its existing preliminary gross allocation of \$87,000,000 from the \$235,000,000 Proposition 13 bond funding provided for the Santa Ana River Watershed sub-account, which currently includes \$20,000,000-30,000,000 earmarked for the Chino II Desalter and \$5,000,000 for the Chino I Desalter Expansion;
  - (ii) All other eligible Proposition 13 bond funding;
  - (iii) All other available federal, state or SAWPA funding;
  - (iv) MWD subsidies or other funding without committing the storage space of the Chino Basin under any storage and recovery or conjunctive use agreement, such as that secured pursuant to Agreement Number 7658, between MWD, SAWPA, IEUA, WMWD and OCWD dated

December 7, 1995, and entitled "Chino Basin Desalination Program, Phase I, Joint Participation Agreement for Recovery and Utilization of Contaminated Groundwater;"

- (v) Revenue derived from the sale of water made available from the Desalters; and
  - (vi) Any additional revenue arranged by IEUA and WMWD acting independently or in their complete discretion, acting through PC14, pursuant to an agreement substantially similar to or an amendment of the SAWPA PC14 Agreement entered into on or about April 2, 1991.
- (c) IEUA's and WMWD's obligation to construct Future Desalters whether acting independently, or in their complete discretion, through PC14, shall be conditioned upon their ability to secure state or federal funding to pay for the capital costs related to such construction. Absent such state and/or federal funding, the IEUA and WMWD, acting independently or, in their complete discretion, acting through PC14, shall have no obligation to construct Future Desalters.
- (i) If, after the earlier of ten years, or the conversion of 20,000 acres of agricultural land, Watermaster, in its discretion, determines that Future Desalters are necessary to implement the OBMP, IEUA or WMWD, acting independently or in their complete discretion acting through PC14, shall have a period up to thirty-six (36) months to secure sufficient funding from State or Federal sources to pay for all the capital costs required to construct "Future Desalters;"

- (ii) If IEUA and WMWD acting independently or, in their complete discretion, acting through PC14 cannot secure the necessary funding, the Parties, other than the Agricultural Pool, will exercise their Best Efforts to negotiate new terms and conditions so as to accomplish the implementation of this portion of the OBMP;
- (iii) If, however, the Parties, other than the Agricultural Pool, are unable to negotiate new terms to this Agreement within twenty-four (24) months from the initiation of negotiations, the Parties may appoint a mutually agreed upon mediator. Failing an agreement, the Parties reserve all legal rights and remedies, provided that the Agricultural Pool shall not be liable for the costs of the Future Desalters. The remainder of this Agreement shall remain in full force and effect.

7.5 Replenishment Water. Replenishment for the Desalters shall be provided from the following sources in the following order of priority.

- (a) Watermaster Desalter Replenishment account composed of 25,000 acre-feet of water abandoned by Kaiser pursuant to the "Salt Offset Agreement" dated October 21, 1993, between Kaiser and the RWQB, and other water previously dedicated by the Appropriative Pool.
- (b) New Yield of the Basin, unless the water Produced and treated by the Desalters is dedicated by a purchaser of the desalted water to offset the price of desalted water to the extent of the dedication;
- (c) Safe Yield of the Basin, unless the water Produced and treated by the Desalters is dedicated by a purchaser of the desalted

water to offset the price of desalted water to the extent of the dedication;

- (d) Additional Replenishment Water purchased by Watermaster, the costs of which shall be levied as an Assessment by Watermaster.

#### 7.6 Sale of Water.

- (a) The terms and conditions for the purchase and sale of water from the Chino I Desalter shall be as provided by separate agreement.
- (b) The terms and conditions for the purchase and sale of desalted water from the Chino II Desalter and Chino I Expansion are as follows.
  - (i) Members of the Appropriative Pool and the State of California shall have the first priority right to purchase desalted water developed by Chino II and Chino I Expansion on an equal basis, pursuant to a water supply contract, which is not a "take or pay" contract but contains a minimum annual quantity of water available to be purchased and is consistent with the provisions of this Agreement.
  - (ii) OCWD shall have the second priority right to purchase desalted water from the Chino II Desalter and the Chino I Expansion provided that IEUA and WMWD have elected to act through PC14.
  - (iii) If the members of the Appropriative pool, the State of California and the OCWD do not contract for the delivery of all desalted water made available by Chino



II Desalter and the Chino I Expansion, other persons may purchase the water.

- (c) The terms and conditions for the purchase and sale of desalted water from Future Desalters are contingent upon IEUA and WMWD acting independently or, in their complete discretion, acting through PC14, securing sufficient funding to pay the capital costs of transporting the desalted water from the Chino II Desalter and Chino I Expansion to other parties to the Judgment that are members of the Appropriative Pool and that desire to purchase desalted water. If sufficient funding is acquired, then other parties to the Judgment that are members of the Appropriative Pool shall have the right to purchase desalted water under the terms and conditions provided in this Article.
- (d) The price of desalted water to the parties to the Judgment that are members of the Appropriative Pool, the State of California and OCWD when purchasing water pursuant to Section 7.6(b)2 above, shall be the actual cost of providing the water but shall not exceed \$375.00 per acre foot, as adjusted by the purchase and sale agreement between IEUA, WMWD, PC14 and the purchasing party, but in no event shall such adjustment exceed the annual consumer's price index for the LA/Anaheim/Riverside Area or the percent increase in the MWD treated water rates, or its equivalent, whichever is less as measured from the Effective Date.
- (i) If a party to the Judgment elects to Produce water for the Chino II Desalter, the Chino I Expansion or Future Desalters they shall be entitled to a credit against the purchase price in an amount equivalent to the cost of alternative Replenishment Water then available from MWD as interruptible, untreated water or the then pre-

vailing value of the avoided Replenishment obligation, whichever is less;

- (ii) If the purchaser is a person other than a party to the Judgment, the price shall be no less than the cost of the alternative water supplies with comparable reliability and quality or if no purchasers are identified then at the highest price that may be attained under the circumstances;
  - (iii) Fifty percent of any annual revenues received by the Project 14 Committee in excess of the actual ongoing operation, maintenance and Replenishment expenses which revenues are derived from sales of water to any person not a Producer under the Judgment, or the OCWD, shall be provided to Watermaster for use as an off-set against any future assessments against the Parties by Watermaster.
- (e) The term of such Water Supply Contract shall be not less than 30 years if requested by a Party to this Agreement.

## VIII TERM

- 8.1 Commencement. This Agreement shall become effective on the Effective Date and shall expire on the Termination Date.
- 8.2 Expiration. Unless extended pursuant to paragraph 8.3, this Agreement shall expire and thereupon terminate on December 31 of the thirtieth (30th) calendar year starting on January 1, of the first calendar year following the Effective Date.

8.3 Meet and Confer. The Parties agree to meet and confer during the 25th year of this Agreement to discuss any new or modified terms which may be requested or required by each Party in order to continue the term of this Agreement. However, no Party shall be required to modify or amend a term of this Agreement as a precondition to exercising their right to one thirty (30) year extension as provided in 8.4 below.

8.4 Independent Right to Extend. The term of this Agreement may be extended for a period of an additional thirty (30) years, upon the unilateral election of either the Appropriative or Agricultural Pool, (as a Pool only and not the individual members of either Pool) acting in accordance with Watermaster procedures under the Judgment, prior to the end of the twenty-fifth (25<sup>th</sup>) year. The election shall be made in writing with a copy to be sent to the Watermaster and all Parties to this Agreement. In the event an election is made to continue this Agreement, the Agreement shall continue for the extended term on the same terms and conditions as existed during the first thirty (30) years of the Agreement.

8.5 Force Majeure.

- (a) If the performance, in whole or in part, of the obligations of the respective Parties is prevented by act or failure to act of any agency other than a Party to this Agreement, court or any other person, by natural disaster or catastrophic event (such as earthquake, fire, drought or flood), contamination, war, strikes, lockouts, acts of God, or acts of civil or military authority, by the operation of applicable law, or by any other cause beyond the control of the affected Party or Parties, whether similar to the causes specified herein or not, the obligation of the affected Party or Parties to perform an act or actions under this Agreement shall be suspended from the time and to the extent that the performance thereof is prevented, but reasonable diligence

shall be observed by the affected Party or Parties, so far as it lies in their power, in performing such respective obligations in whole or in part under this Agreement.

- (b) In the event performance is prevented as described above, the Parties agree actively to cooperate and use their Best Efforts to resume performance.

- 8.6 Only One Mandatory Extension. In no event shall a Party be required to extend performance under this Agreement beyond the first two terms of this Agreement, irrespective of the existence of force majeure. Any further extensions under this Agreement shall be consensual among the Parties to such an agreement.
- 8.7 Effect of Termination. Upon termination of this Agreement further performance by the Parties under the Agreement shall be excused. Performance under the Agreement shall not be the cause of any action or claim other than as expressly provided herein. Other than as provided in paragraph 8.8, upon termination of this Agreement, the legal rights, remedies, responsibilities and authorities of all Parties regarding the Judgment, interpretation of the Judgment and the powers and authority of Watermaster or the Court, in existence on the Date of Execution, whatever they may be, are expressly reserved and shall be as they existed on the Date of Execution, provided that such rights and remedies shall not be a basis to challenge a Party's performance under this Agreement.
- 8.8 Rescission of Resolutions 84-2 and 88-3. Upon termination of this Agreement, the members of the Appropriative Pool shall have no obligation to pay the Watermaster Assessments for the members of the Agricultural Pool. The provisions of Resolution 84-2 and 88-3 shall be rescinded and except as provided for in Section V above,

pertaining to “Early Transfers” of Safe Yield during the term of this Agreement, the members of the Appropriative Pool shall not be entitled to further Early Transfers of water from the Agricultural Pool. Upon the termination of this Agreement, the Parties agree that no further Early Transfers of unallocated Safe Yield shall occur. The determination of the Safe Yield as provided for in the Judgment at Paragraph 44 shall be construed to mean that the Appropriative Pool shall receive no Transfers of unallocated Safe Yield from the Agricultural Pool for a period of five (5) consecutive years after the termination of this Agreement, at which time the Appropriative Pool shall receive the difference between 414,000 acre-feet allocated to the Agricultural Pool and the actual water used by the Agricultural Pool for the first five consecutive calendar years immediately following the termination of this Agreement.

- 8.9 Mediation Upon Failure to Secure Capital Funding for Future Desalters. If IEUA or WMWD have not acquired the funding within thirty-six (36) months of the date of the Watermaster determination regarding the need for the Future Desalters as provided in Article VII, then the members of the Appropriative Pool, Non-Agricultural Pool and IEUA and WMWD will exercise Best Efforts to negotiate new terms and conditions for the capital costs for any such Future Desalters.
- 8.10 Parties Rights Unaffected Upon Termination. Each Party’s rights shall be unaffected by their having approved, executed or implemented this Agreement pursuant to their mutual consent other than as provided in Section 8.8.

## IX CONFLICTS

9.1 Events Constituting a Default by a Party. Each of the following constitutes a "default" by a Party under this Agreement.

- (a) A Party fails to perform or observe any term, covenant, or undertaking in this Agreement that it is to perform or observe and such failure continues for ninety (90) days from a Notice of Default being sent in the manner prescribed in Section 10.13.

9.2 Remedies Upon Default. In the event of a default, each Party shall have the following rights and remedies:

- (a) Specific Performance. Each Party agrees and recognizes that the rights and obligations set forth in this Agreement are unique and of such a nature as to be inherently difficult or impossible to value with money. If one Party does not perform in accordance with the specific wording of any of the provisions in this Agreement applicable to that Party, defaults, or otherwise breaches this Agreement, an action at law for damages or other remedies at law would be wholly inadequate to protect the unique rights and interests of the other Party to the Agreement. Accordingly, in any court controversy concerning this Agreement, the Agreement's provisions will be enforceable in a court of equity by specific performance. This specific performance remedy is not exclusive and is in addition to any other remedy available to the Parties to enforce the terms of this Agreement.

- (b) Injunction. Each Party agrees and recognizes that the rights and obligations set forth in this Agreement are material to another Party and of such a nature that there will be substantial



reliance upon the terms of this Agreement. If one Party does not perform in accordance with specific wording of any of the provisions of this Agreement applicable to that Party, defaults, or otherwise breaches this Agreement, an action at law for damages or other remedies at law would be wholly inadequate to prevent substantial and irreparable harm to another Party to the Agreement. Accordingly, in any court controversy concerning this Agreement, the Agreement's provisions will be enforceable in a court of equity by mandatory and prohibitory injunction. This mandatory and prohibitory injunction remedy is not exclusive and is in addition to any other remedy available to the Parties to enforce the terms of this Agreement.

- (c) Cumulative Rights and Remedies. The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any right or remedy, the non-breaching Party does not thereby waive that right or remedy. Furthermore, no single or partial exercise of any right, power, or privilege precludes any further exercise of a right, power, or privilege granted by this Agreement or otherwise.
- (d) Attorneys' Fees. In any adversarial proceedings between the Parties other than the dispute resolution procedure set forth below and under the Judgment, the prevailing Party shall be entitled to recover their costs, including reasonable attorneys' fees. If there is no clear prevailing Party, the Court shall determine the prevailing Party and provide for the award of costs and reasonable attorneys' fees. In considering the reasonableness of either Party's request for attorneys' fees as a prevailing Party, the Court shall consider the quality, efficiency, and

value of the legal services and similar/prevaling rate for comparable legal services in the local community.

### 9.3 Dispute Resolution.

- (a) Scope of Dispute Resolution. Disputes (Disputes) between the Parties other than those constituting a “Default”, or “Exclusion” (defined below), shall be resolved pursuant to the provisions of this Section.
- (b) Exclusions:
  - (i) Emergency. An emergency event which, if not promptly resolved may result in imminent danger to the public health, safety or welfare shall not be subject to dispute resolution.
  - (ii) Complete Discretion. Those matters reserved to the complete discretion of a Party under this Agreement shall not be subject to dispute resolution.
  - (iii) Review Under the Judgment Unaffected. The rights and remedies of the parties to the Judgment to seek review of Watermaster actions shall not be subject to dispute resolution.
- (c) Disputes.
  - (i) Each Party to this Agreement may submit any Dispute related to or arising under this Agreement to non-binding mediation by delivering a Notice of Dispute to the other Party;

- (ii) The written Notice of Dispute prepared by the Party shall be delivered to the other Party in accordance with Section 10.13. The Notice of Dispute shall clearly describe the basis of the dispute and the Sections of the Agreement under which the Dispute arises;
- (iii) The non-binding mediation shall be conducted by Judicial Arbitration Mediation Services (JAMS) or an equivalent mediation service agreed to by the Parties;
- (iv) Unless otherwise agreed, a mediator shall be appointed within forty-five (45) days of the date the Notice of Dispute is delivered to hear the dispute and provide a written determination. The mediator shall be chosen jointly by the Parties. If the Parties cannot agree, the Court shall appoint the mediator. Employees or agents of Watermaster or any Party are ineligible to serve as the mediator;
- (v) The mediation shall be held within ninety (90) days of the date the Notice of Dispute is delivered;
- (vi) Any statute of limitations applicable to any claims, rights, causes of action, suits, or liabilities of whatever kind or nature, in law, equity or otherwise, whether known or unknown, shall be tolled during the mediation process. For purposes of this Section, the mediation process shall commence upon the service of a Notice of Dispute to the other Party pursuant to Section 9.3c(i) above. For purposes of this Section, the mediation process shall be deemed complete ten (10) days after service of the mediator's written notice of the conclusion of the mediation;

## X GENERAL PROVISIONS

- 10.1 Supersedence. Upon execution of this Agreement, any and all existing agreements or contracts between the Parties concerning the precise subject matter of this Agreement are hereby rescinded to the extent that they conflict with express terms herein.
- 10.2 Applicability to Others.
- (a) After the Date of Execution, each Party agrees that any other agreement or contract relating to the subject matter of this Agreement, or the Judgment, to which it is a party, shall be consistent with the provisions of this Agreement, unless all other Parties consent to the inconsistent agreement or contract.
  - (b) After the Date of Execution, each Party reserves complete discretion to enter into other agreements or contracts on subject matter not covered by the terms of this Agreement.
- 10.3 Admissions by Parties. Nothing in this Agreement constitutes an admission of liability by any Party hereto for any prior or past acts that preceded the Date of Execution. This Agreement and any documents prepared in connection herewith may not be used as evidence in any litigation, except as necessary to interpret or enforce the terms of this Agreement.
- 10.4 Construction of Agreement. Each Party, with the assistance of competent legal counsel, has participated in the drafting of this Agreement and any ambiguity should not be construed for or against any Party on account of such drafting.

- 10.5 Each Party Bears Own Costs. Each Party is to bear its own costs, expenses, and attorneys' fees arising out of or in connection with the subject matter of this Agreement and the negotiation, drafting, and execution of this Agreement. Each of the Parties understands that this Agreement includes all claims for loss, expense and attorneys' fees, taxable or otherwise, incurred by it or arising out of any matters leading up to the execution of this Agreement.
- 10.6 Waiver of Breach. No waiver or indulgence of any breach or series of breaches of this Agreement shall be deemed or construed as a waiver of any other breach of the same or any other provision hereof or affect the enforceability of any part or all of this Agreement. No waiver shall be valid unless executed in writing by the waiving Party.
- 10.7 Awareness of Contents/Legal Effect. The Parties expressly declare and represent that they have read the Agreement and that they have consulted with their respective counsel regarding the meaning of the terms and conditions contained herein. The Parties further expressly declare and represent that they fully understand the content and effect of this Agreement and they approve and accept the terms and conditions contained herein, and that this Agreement is executed freely and voluntarily.
- 10.8 Agreement Binding On All. This Agreement shall be binding upon and shall inure to the benefit of each of the Parties, and each of their respective agents, employees, directors, officers, attorneys, representatives, principals, shareholders, sureties, parents, subsidiaries, affiliates, successors, predecessors, assigns, trustees or receivers appointed to administer their assets, and attorneys of any and all such individuals and entities. All the covenants contained in this Agreement are for the express benefit of each and all such persons described in this Section. This Agreement is not intended to benefit any third parties.

- 10.9 Counterparts. This Agreement may be executed in counterparts. This Agreement shall become operative as soon as one counterpart hereof has been executed by each Party. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of all Parties do not appear on the same page.
- 10.10 Captions. The captions contained herein are included solely for convenience and shall not be construed as part of this Agreement or as full or accurate descriptions of the terms hereof.
- 10.11 Choice of Law. This Agreement shall be construed and enforced pursuant to the laws of the State of California.
- 10.12 Authority to Enter into This Agreement. Each Party represents and warrants that its respective obligations herein are legal and binding obligations of such Party; that each Party is fully authorized to enter into this Agreement, and that the person signing this Agreement hereinafter for each Party has been duly authorized to sign this Agreement on behalf of said Party.
- 10.13 Notice.
- (a) Any notice required under this Agreement shall be written and shall be served either by personal delivery, mail or fax.
  - (b) In the case of service by personal delivery or fax, no additional time, in days, shall be added to the time in which a right may be exercised or an act may be done.
  - (c) In the case of service by mail, notice must be deposited in a post office, mailbox, sub post-office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the representative(s) of the Party



on whom it is to be served, at their place of business. The service is complete at the time of deposit. Any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of notice by mail shall be extended five days. Any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of notice by Express mail or other method of delivery providing for overnight delivery shall be extended by two court days.

10.14 Amendments and/or Changes to Agreement.

- (a) Any amendments and/or changes to this Agreement must be in writing, signed by a duly authorized representative of the Parties hereto, and must expressly state the mutual intent of the Parties to amend this Agreement as set forth herein. The Parties to this Agreement recognize that the terms and conditions of this Agreement, which are set forth herein in the Sections preceding this Section have been arrived at through the collective negotiations by the Parties.
- (b) The Parties hereby agree that no amendments and/or changes may be made to this Agreement without the express written approval of each Party to this Agreement, provided that upon request, no such approval shall be unreasonably withheld.

**XI**  
**ACKNOWLEDGMENTS:**  
**CONFIRMATION OF RIGHTS**

- 11.1 Each Party's rights to water it presently holds in storage with Watermaster are confirmed and protected.

11.2 The Parties confirm that in addition to the benefits received by the State under this Agreement, including an exemption from the payment of Watermaster Assessments as a member of the Agricultural Pool, the rights of the State of California under the Judgment to Produce water are not modified or altered by this Agreement. For all purposes of the Judgment all future Production by the State or its departments or agencies, including but not limited to the Department of Corrections, Department of Fish and Game, Youth Authority, Department of Parks and Recreation, Department of Toxic Substances Control, and Department of Transportation as set forth in Paragraph 10 of the Judgment, for overlying use on State-owned lands, shall be considered use by the Agricultural Pool. This Agreement is not intended to limit the State or its departments or agencies including but not limited to, the Department of Corrections, Department of Fish and Game, Youth Authority, Department of Parks and Recreation, Department of Toxic Substances Control, and Department of Transportation from exercising the State's rights of future Production for overlying use on State-owned lands as set forth in Paragraph 10 of the Judgment. The Parties agree that they will not oppose the State's exercise of its rights pursuant to the Judgment. The State of California is not executing this Agreement on behalf of the State Water Resources Control Board, the Department of Water Resources, Department of Toxic Substances Control, or the California Regional Water Quality Control Board or the Department of Fish and Game except as stated above. Nothing in this Agreement shall be construed in any way as modifying, altering or limiting the regulatory and trustee obligations, legal rights or duties of any State Agencies, including the Department of Fish and Game, the State Water Resources Control, the California Regional Water Quality Control Boards, the Department of Toxic Substances Control and Department of Water Resources. This Agreement does not limit in any way, and expressly recognizes the rights and ability of the Department of Water Resources to make application to

Watermaster to use groundwater storage space in the Chino Basin as described in Water Code Section 11258 and as provided in Section 5.2(c) herein.

- 11.3 Nothing in this Agreement shall be construed as modifying, altering, or limiting CBWCD from carrying out its obligations under general law.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED:

7/31/00

**CITY OF ONTARIO**

By 

DATED:

**CITY OF POMONA**

By \_\_\_\_\_

DATED:

**CITY OF UPLAND**

By \_\_\_\_\_

[Signatures continued on following pages]

Watermaster to use groundwater storage space in the Chino Basin as described in Water Code Section 11258 and as provided in Section 5.2(c) herein.

- 11.3 Nothing in this Agreement shall be construed as modifying, altering, or limiting CBWCD from carrying out its obligations under general law.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED:

**CITY OF ONTARIO**

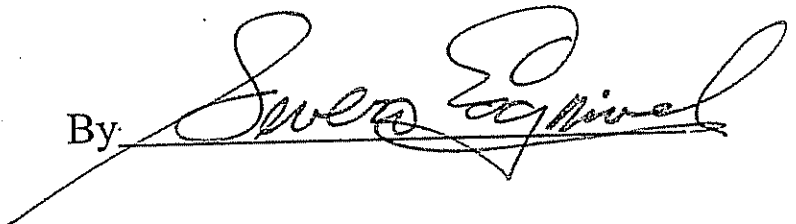
By \_\_\_\_\_

DATED:

**CITY OF POMONA**

7-31-2000

By \_\_\_\_\_

A handwritten signature in dark ink, appearing to read "Steven Espinoza", written over a horizontal line.

DATED:

**CITY OF UPLAND**

By \_\_\_\_\_

[Signatures continued on following pages]

Watermaster to use groundwater storage space in the Chino Basin as described in Water Code Section 11258 and as provided in Section 5.2(c) herein.

- 11.3 Nothing in this Agreement shall be construed as modifying, altering, or limiting CBWCD from carrying out its obligations under general law.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED:

**CITY OF ONTARIO**

By \_\_\_\_\_

DATED:

**CITY OF POMONA**

By \_\_\_\_\_

DATED: 7/24/00

**CITY OF UPLAND**

By Robert R. Nelson

[Signatures continued on following pages]

DATED: 8/1/00

STATE OF CALIFORNIA

By Marilyn H. Levin

DATED:

CITY OF CHINO

By \_\_\_\_\_

DATED:

07/31/00

CUCAMONGA COUNTY  
WATER DISTRICT

By James M. Wilson

DATED:

MONTE VISTA WATER  
DISTRICT

By \_\_\_\_\_

DATED: 7-27-00

FONTANA UNION WATER  
COMPANY

By Walter J. Black

[Signatures continued on following pages]



DATED:

STATE OF CALIFORNIA

By \_\_\_\_\_

DATED:

CITY OF CHINO

By Ludie M. Villa

DATED:

CUCAMONGA COUNTY  
WATER DISTRICT

By \_\_\_\_\_

DATED:

MONTE VISTA WATER  
DISTRICT

By \_\_\_\_\_

DATED:

FONTANA UNION WATER  
COMPANY

By \_\_\_\_\_

[Signatures continued on following pages]

DATED:

STATE OF CALIFORNIA

By \_\_\_\_\_

DATED:

CITY OF CHINO

By \_\_\_\_\_

DATED:

CUCAMONGA COUNTY  
WATER DISTRICT

By \_\_\_\_\_

DATED: 7/31/00

MONTE VISTA WATER  
DISTRICT

By Maureen J. [Signature]

DATED:

FONTANA UNION WATER  
COMPANY

By \_\_\_\_\_

[Signatures continued on following pages]

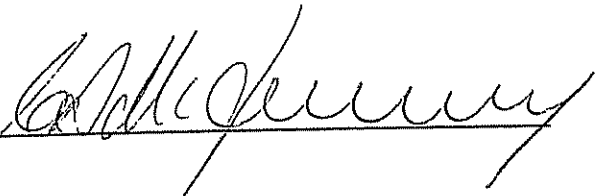
DATED:

**CITY OF CHINO HILLS**

By \_\_\_\_\_

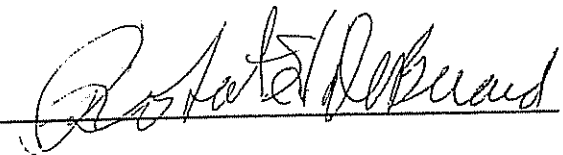
DATED:

**JURUPA COMMUNITY  
SERVICES DISTRICT**

By 

DATED:

**AGRICULTURAL POOL**

By 

DATED:

**APPROPRIATIVE POOL**

By \_\_\_\_\_

DATED: 7/27/00

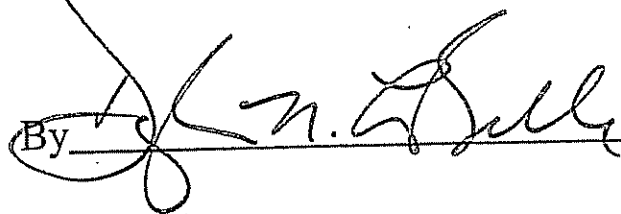
**NON-AGRICULTURAL POOL**

By 

[Signatures continued on following pages]

DATED: 7/31/00

CITY OF CHINO HILLS

By 

DATED:

JURUPA COMMUNITY  
SERVICES DISTRICT

By \_\_\_\_\_

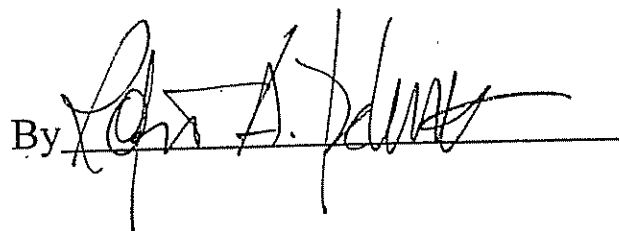
DATED:

AGRICULTURAL POOL

By \_\_\_\_\_

DATED:

APPROPRIATIVE POOL

By 

DATED:

NON-AGRICULTURAL POOL

By \_\_\_\_\_

[Signatures continued on following pages]

DATED:

July 31, 2000

**INLAND EMPIRE UTILITY  
AGENCY**

By John L. Anderson

DATED:

**THREE VALLEYS  
MUNICIPAL WATER  
DISTRICT**

By \_\_\_\_\_

DATED:

**KAISER VENTURES, INC.**

By \_\_\_\_\_

DATED:

**WESTERN MUNICIPAL  
WATER DISTRICT**

By \_\_\_\_\_

[Signatures continued on following pages]

DATED:

INLAND EMPIRE UTILITY  
AGENCY

By \_\_\_\_\_

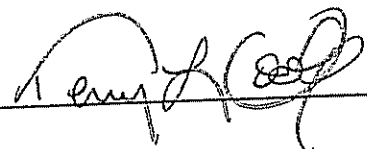
DATED:

THREE VALLEYS  
MUNICIPAL WATER  
DISTRICT

By \_\_\_\_\_

DATED: 7/31-00

KAISER VENTURES, INC.

By  \_\_\_\_\_

DATED:

WESTERN MUNICIPAL  
WATER DISTRICT

By \_\_\_\_\_

[Signatures continued on following pages]



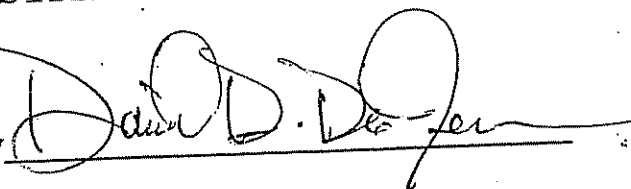
DATED:

INLAND EMPIRE UTILITY  
AGENCY

By \_\_\_\_\_

DATED:

THREE VALLEYS  
MUNICIPAL WATER  
DISTRICT

By  \_\_\_\_\_

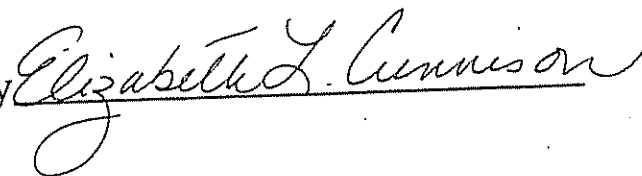
DATED:

KAISER VENTURES, INC.

By \_\_\_\_\_

DATED:

WESTERN MUNICIPAL  
WATER DISTRICT

By  \_\_\_\_\_

[Signatures continued on following pages]

DATED: 7/31/00

SAN ANTONIO WATER  
COMPANY

By Tom Thomas

DATED:

CHINO BASIN WATER  
CONSERVATION DISTRICT

By \_\_\_\_\_

DATED:

[Signatures continued on following pages]

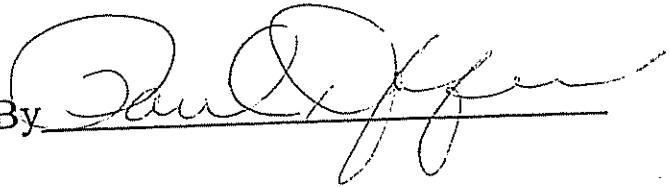
DATED:

**SAN ANTONIO WATER  
COMPANY**

By \_\_\_\_\_

DATED: 7/28/2000

**CHINO BASIN WATER  
CONSERVATION DISTRICT**

By  \_\_\_\_\_

DATED:

[Signatures continued on following pages]

# EXHIBIT A

WATERMASTER RESOLUTION  
NO. 2000-\_\_

**RESOLUTION OF THE CHINO BASIN WATERMASTER TO ADOPT THE GOALS AND PLANS OF THE PHASE I REPORT AS IMPLEMENTED BY THE OBMP IMPLEMENTATION PLAN, CONSISTENT WITH THE PEACE AGREEMENT AS ITS OBMP ("OBMP"), TO ADOPT THE REQUISITE POLICIES AND PROCEDURES TO IMPLEMENT THE PROVISIONS SET FORTH IN ARTICLE V OF THE PEACE AGREEMENT ON OR BEFORE DECEMBER 31, 2000, AND TO APPROVE THE "PEACE AGREEMENT."**

WHEREAS, the Judgment in the Chino Basin Adjudication, *Chino Basin Municipal Water District v. City of Chino, et al.*, San Bernardino Superior Court No. 164327, created the Watermaster and directed it to perform the duties as provided in the Judgment or ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction; and

WHEREAS, the Judgment directs Watermaster to develop an OBMP subject to the limitations contained in the Judgment; and

WHEREAS, Watermaster and prepared and submitted a Phase I Report regarding the OBMP to the Court; and

WHEREAS, the Court ordered the Inland Empire Utilities Agency (IEUA) to act as "lead agency" for the purposes of preparing any applicable environmental review for the OBMP in the form of a Programmatic Environmental Impact Report (PEIR) and the Court is exercising continuing jurisdiction over this matter; and

WHEREAS, the parties developed a Memorandum of Principles which articulated a framework of an agreement which the Watermaster Board

articulated a framework of an agreement which the Watermaster Board unanimously approved on May 26, 2000; and

WHEREAS, the parties have reduced the principles into a more definitive agreement and an OBMP Implementation Plan.

WHEREAS, the goals and plans in the Phase I Report implemented consistent with the OBMP Implementation Plan and the Peace Agreement constitute the OBMP; and

WHEREAS, the IEUA has prepared and circulated a draft PEIR and held a public meeting to take public comment on the OBMP on June 28, 2000; and

WHEREAS, the parties to the Peace Agreement and the parties to the Judgment have requested Watermaster to approve the Peace Agreement and the OBMP Implementation Plan and to implement the goals and plans contained in the OBMP Phase I Report in a manner consistent with the Peace Agreement and the OBMP Implementation Plan.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND DETERMINED THAT:

1. The goals and plans in the Phase I Report and their implementation as provided in and consistent with the Implementation Plan and the Peace Agreement are in furtherance of the physical solution set forth in the Judgment and Article X, Section 2 of the California Constitution.



2. Although not a signatory, the Chino Basin Watermaster Board supports and approves the Peace Agreement negotiated by the parties thereto.
3. Subject to the satisfaction of all conditions precedent set forth in the Peace Agreement and the unanimous approval of the Peace Agreement by the Parties thereto no later than August 1, 2000:
  - a. Watermaster adopts the goals and plans of the Phase I Report consistent with the Implementation Plan and the Peace Agreement.
  - b. The Watermaster will proceed in accordance with the OBMP Implementation Plan and the Peace Agreement.
  - c. Watermaster will comply with the conditions described in Article V of the Peace Agreement labeled, "Watermaster Performance" and Watermaster shall adopt all necessary policies and procedures in order to implement the provisions set forth in Article V on or before December 31, 2000, unless an earlier date is specified in the Peace Agreement or the OBMP Implementation Plan.
4. The Watermaster Board will transmit a request to the Court to issue an Order authorizing and directing Watermaster to proceed in accordance with this Resolution.
5. In approving this Agreement, Watermaster is not committing to carry-out any project within the meaning of CEQA unless and until environmental review and assessments required by CEQA

for that defined "project" have been completed. Any future actions that meet the definition of a "project" under CEQA shall be subject to environmental documentation.

**EXHIBIT A**

Locke Lord LLP  
300 South Grand Avenue, Suite 2600  
Los Angeles, CA 90071

STAFF WEEMS LLP  
RICHARD W. STAFF (*pro hac vice* forthcoming)  
rstaff@staffweems.com  
6363 Woodway, Ste. 1100  
Houston, Texas 77057  
Telephone: (281) 903-5988

and

LOCKE LORD LLP  
JOHN J. HARRIS (SBN 93841)  
jharris@lockelord.com  
VERONICA ROTTER (SBN 307902)  
veronica.rotter@lockelord.com  
300 S. Grand Ave, Suite 2600  
Los Angeles, CA 90071  
Telephone: 213-485-1500  
Facsimile: 213-485-1200

Attorneys for PLAINTIFF,  
AMERON INTERNATIONAL CORP.

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

AMERON INTERNATIONAL CORP.,  
a Delaware corporation

Plaintiff,

vs.

TAMCO, a California corporation  
and DOES 1 through 100, inclusive,  
Defendants.

Case No.

VERIFIED COMPLAINT TO  
QUIET TITLE AND REMOVE  
CLOUD ON TITLE;  
CANCELLATION; RESCISSION  
BASED ON FRAUD; RESCISSION  
BASED ON MISTAKE; AND FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

CIVDS1601994

~~CIVDS1601984~~

Plaintiff, AMERON INTERNATIONAL CORP., a Delaware corporation [individually and  
as successor in interest to Ameron Steel Producers, Inc.] (hereinafter, "Ameron" or "Plaintiff") for

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

FEB 09 2016

BY   
JESSICA MORALES, DEPUTY

its Complaint against Defendant, TAMCO, a California corporation, and DOES 1 through 100 inclusive, complains and alleges, as follows:

I.

THE PARTIES

1. Plaintiff Ameron is a Delaware corporation with its principal place of business in Houston, Harris County, Texas, and is duly authorized to do business in the State of California.

2. Defendant TAMCO ("TAMCO") is a California corporation with its principal place of business in Rancho Cucamonga, San Bernardino County, California.

3. The true names and capacities, whether individual, corporate, associate, or otherwise of defendants Does 1 through 100 (collectively, the "Doe Defendants"), inclusive, are unknown to Plaintiff, who, therefore, sues such defendants by their fictitious names pursuant to California Code of Civil Procedure Section 474. Plaintiff will amend this Complaint to show such Doe Defendants' true names and capacities once they have been ascertained. Plaintiff is informed and believes and thereon alleges that these fictitiously named Defendants also claim some right, title, estate, lien, or interest in the water rights in the property described below adverse to Plaintiff's title as more specifically described herein, and such Doe Defendants' claims, and each of them, constitute a cloud on Plaintiff's title. Plaintiff is further informed and believes and based thereon alleges that each of the Doe Defendants is in some way responsible for Plaintiff's damages as alleged herein. Plaintiff is further informed and believes and based thereon alleges that each such Doe Defendant was aware that TAMCO and others planned to commit the fraud alleged herein and TAMCO agreed with such Doe Defendants and intended that the fraud be committed. (TAMCO and the Doe Defendants are collectively referred to herein as "Defendants".)

4. Plaintiff is informed and believes and thereon alleges that, at all times herein alleged, each Defendant, including TAMCO and each Doe Defendant, was the agent, employee, partner, heir, successor, assign, executor, administrator or trustee, general partners, joint venturer, corporate or other alter ego, or subsidiary of the other defendants in the commission of the acts or in the omissions herein alleged, and was acting the course and scope of its authority as such agency, employment, partnership, joint venture, alter ego, or subsidiary relationship, and with the express

1 and implied permission, knowledge, consent and ratification, and acted in concert with each  
2 remaining Defendant. Plaintiff is further informed and believes and thereon alleges that the  
3 Defendants knew or should have known that their acts and omissions would cause substantial harm  
4 to Plaintiff. Plaintiff is further informed and believes and thereon alleges that each of such  
5 Defendants acquiesced in and ratified the conduct of each other Defendant as alleged herein.  
6 Plaintiff is informed and believes and thereon alleges that the Defendants actively participated in or  
7 subsequently ratified or adopted, or both, each and all of the act omissions or conduct with full  
8 knowledge of the material facts and circumstances and with the intent and purpose of effecting the  
9 alleged acts and omissions about which Ameron complains.

10 **II.**

11 **JURISDICTION AND VENUE**

12 5. This court has jurisdiction over the subject matter of this Complaint pursuant to Code  
13 of Civil Procedure § 760.040, in that this is an action with respect to water rights beneath real  
14 property located in the County of San Bernardino, and pursuant to Code of Civil Procedure § 410.10  
15 in that acts giving rise to this action occurred in the County of San Bernardino, and Plaintiff and  
16 Defendants were and are doing business in the County of San Bernardino, and the amount in  
17 controversy is in excess of \$25,001, exclusive of interest and costs.

18 6. Venue is proper in this Court and in the County of San Bernardino pursuant to  
19 California Code of Civil Procedure §§ 392 and 760.050, in that the real property and interests therein  
20 that are the subject of this action are located in San Bernardino County, California.

21 **III.**

22 **FACTUAL BACKGROUND AND SUBSTANTIVE ALLEGATIONS**

23 **A. AMERON'S WATER RIGHTS**

24 7. Until 2013, Ameron owned certain real property consisting of thirty and 722/1000  
25 (30.722) acres, more or less, in San Bernardino County, located at 12459 Arrow Route in Rancho  
26 Cucamonga, California, and more particularly described as "Parcel 3 of Parcel Map No. 7847, in the  
27 city of Rancho Cucamonga, County of San Bernardino, State of California, as per plat recorded in  
28 Book 82 of Parcel Maps, Pages 48 through 51, inclusive, records of said County" ("Real Property").

1           8.       The Real Property sits atop the Chino Basin, an underground aquifer covering over  
2 220 square miles ("Basin") that provides water for over 700,000 residents. The Basin's storage  
3 capacity is between 5 and 7 million acre-feet, and the safe yield from over 800 active wells within  
4 the Basin is more than 140,000 acre-feet a year. The Basin is strategically located amid one of the  
5 population centers and major growth areas of Southern California.

6           9.       On January 2, 1975, several Chino Basin water producers filed suit in Superior Court  
7 for the County of San Bernardino (Case No. 164327) to settle the problem of allocating water rights  
8 in the Chino Basin. On January 27, 1978, the Court entered a judgment in *Chino Basin Municipal*  
9 *Water District v. City of Chino et. al.*, adjudicating water rights in the Chino Basin and creating a  
10 physical solution to meet the requirements of water users having rights in or dependent upon the  
11 Chino Basin ("1978 Judgment").

12           10.     In the 1978 Judgment, Ameron was awarded right to draw a safe yield of up to 93.858  
13 acre-feet of water per year from its existing water wells without charge for replenishment. Any  
14 portion of such safe yield not drawn by Ameron in a given year was deemed to accumulate and  
15 remain in local storage within the Basin for Ameron's future benefit. For example, as of June 2007,  
16 Ameron had accrued rights with respect to approximately 1,764.485 acre-feet of water in local  
17 storage. Ameron received approximately \$617,570 in exchange for the transfer of its rights in and to  
18 such local storage.

19           11.     The 1978 Judgment also created an entity, known as the "Chino Basin Watermaster"  
20 ("Watermaster"), to plan, account for and manage the Chino Basin, including monitoring of each  
21 water producer's compliance with its adjudicated safe yield and the calculation of a user's local  
22 storage volumes. As part of its management of the Basin, the Watermaster levies and collects  
23 certain small assessments based upon, among other things, the amount of a water producer's safe  
24 yield, to cover general administrative, special project and replenishment costs.

25           12.     The 1978 Judgment was amended and restated, most recently in a "Restated  
26 Judgment" made effective by order entered by the Superior Court for the County of San Bernardino  
27 in *Chino Basin Municipal Water District v. City of Chino et. al.* (Case No. RCV 51010) on  
28 September 27, 2012 ("Restated Judgment"). Pursuant to the Restated Judgment, Ameron's Safe



1 Yield was increased to 97.858 acre-feet. At such time, Ameron had rights in and to approximately  
2 264.274 acre-feet of water in local storage, which continued to accrue.

3 **B. THE REAL ESTATE CONTRACT AND THE SALE OF THE PROPERTY TO**  
4 **TAMCO**

5 13. In or about late 2012, TAMCO sought to purchase the approximately 30-acre Real  
6 Property. The negotiations were handled primarily by Matthew Robey, Ameron's real estate counsel  
7 in Houston, and TAMCO's outside counsel, Karla McCary and Byron Gee, both of the Nossaman  
8 law firm. Ameron's California personnel, who were involved in Ameron's dealings with the  
9 Watermaster, did not participate in such negotiations.

10 14. During the course of negotiations between the Ameron's Houston lawyer and  
11 TAMCO's California lawyers, Ms. McCary raised the issue of TAMCO's purchase of Ameron's  
12 water rights in the Chino Basin.

13 15. In February 2013, after several months of back and forth negotiations on such issue,  
14 Ameron agreed to sell TAMCO the Real Property and a total of fifteen (15) acre feet of Ameron's  
15 yearly 97.858 acre feet safe yield in the Basin pursuant to a "Real Estate Contract and Joint Escrow  
16 Instructions" executed by the parties thereto on February 26, 2013 ("Real Estate Contract"). A true  
17 and correct copy of the Real Estate Contract reflecting such sale is attached hereto as Exhibit "A".

18 16. The Real Estate Contract was executed on behalf of Ameron by Kenneth A. Jeck,  
19 Vice President- Risk Management of Ameron, who had been specifically authorized by Ameron to  
20 execute the Real Estate Contract.

21 17. The Real Estate Contract was executed on behalf of TAMCO by Robert Wallace,  
22 Senior Corporate Attorney and Assistant Secretary of TAMCO. Plaintiff is informed and believes  
23 and thereon alleges that Mr. Wallace had been specifically authorized by TAMCO to execute the  
24 Real Estate Contract on its behalf.

25 18. Pursuant to the Real Estate Contract, Ameron agreed to sell to TAMCO the Real  
26 Property "together with those certain buildings and improvements located thereon" for Seventeen  
27 Million Dollars (\$17,000,000).  
28

19. Ameron also agreed in the Real Estate Contract agreed to sell a small portion of its water rights which the parties specifically defined in Section 1.01 of the Real Estate Contract, as follows:

***"Water Rights" shall mean fifteen (15) acre-feet of Decreed Share of Safe Yield of Chino Basin Non-Agricultural Pool Rights**, as such terms are defined and used in the Water Rights Judgment, As of September 5, 2012, the Seller's Water Rights include 125 acre-feet of Total Overlying Non-Agricultural Rights, which is 97.858 acre-feet of Decreed Share of Safe Yield of Chino Basin Non-Agricultural Pool Rights."*

20. By Section 4.01 of the Real Estate Contract, Ameron agreed to sell TAMCO and TAMCO agreed to purchase the "Water Rights" specifically described in Section 1.01:

***"Transfer of Water Rights"**. The sale contemplated by this Agreement includes the transfer of the Water Rights. Purchaser is responsible for processing the Water Rights transfer documents with the Watermaster and any other appropriate governmental agencies. Seller shall cooperate with Purchaser's efforts to effect the transfer of the Water Rights including signing necessary applications and documents. It is understood that the procedures to effect the transfer of the Water Rights are not expected to be completed by the Closing, and is expected to take several months."*

Section 4.01, read together with the definition of "Water Rights" in Section 1.01 unambiguously states and confirms that the only water rights which the parties intended would be transferred to TAMCO were the fifteen (15) acre-feet of Decreed Share of Safe Yield of Chino Basin Non-Agricultural Pool Rights and nothing else.

21. As a result of the February 2013 sale pursuant to the Real Estate Contract, Ameron owned and still owns 82.858 safe yield water rights, together with its local storage rights not covered by the Real Estate Contract. Ameron's right to draw 82.858 acre feet of yearly safe yield and its rights with respect to the local storage following the Real Estate Contract are referred to collectively hereafter as the "Ameron's Retained Water Rights."

///

1           22.     Section 12.03 of the Real Estate Contract states:

2           "Merger. This Agreement represents the complete understanding between the parties  
3           hereto and supersedes all prior negotiations, representations or Agreements, either  
4           written or oral, as to the Real Property. This Agreement may be amended only by  
5           written Instrument signed by both parties. No requirement, obligation, remedy or  
6           provision of this Agreement shall be deemed to have been waived unless expressly  
7           waived in writing and such waiver shall not affect the right to enforce any other  
8           provisions hereof or such provision hereafter."

9           23.     Following the February 2013 execution of the Real Estate Contract, Ameron has not  
10          ever agreed in writing or otherwise to modify the Real Estate Contract and has never executed or  
11          authorized any document modifying the Real Estate Contract or transferring all or any portion of the  
12          Ameron's Retained Water Rights or any water rights related to the Real Property other those "Water  
13          Rights" specifically defined in Section 1.01 of the Real Estate Contract as "fifteen (15) acre-feet of  
14          Decreed Share of Safe Yield of Chino Basin Non-Agricultural Pool Rights" (hereinafter, the  
15          "TAMCO Water Rights").

16          24.     Section 12.09 of the Real Estate Contract provides:

17          "Attorneys' Fees: In any Action, the prevailing party shall be entitled to recover actual  
18          attorneys' fees and all other litigation costs including without limitation costs  
19          awardable pursuant to California Code of Civil Procedure Section 1033.5 and  
20          amounts payable to expert witnesses ("Costs") in addition to any other available  
21          remedy. In addition to the fees and Costs recoverable under the preceding sentence,  
22          the parties agree that the prevailing party shall be entitled to recover actual attorneys'  
23          fees and Costs incurred In connection with the enforcement of a judgment arising  
24          from such Action."

25          **C.     THE TRANSFER OF THE TAMCO WATER RIGHTS**

26          25.     Under Section 4.01 the Real Estate Contract, TAMCO was "responsible for  
27          processing the . . . transfer documents with the Watermaster and any other governmental agencies."  
28

1 Ameron's obligation was to "cooperate with [TAMCO] to effect the transfer . . . [that] is expected to  
2 take several months" after closing.

3 26. In both the Watermaster's regulations and the Restated Judgment, any such transfer  
4 must be approved by the Watermaster. Under the Restated Judgment, all actions taken by the  
5 Watermaster are subject to de novo review by the Superior Court of San Bernardino County, which  
6 maintains continuing jurisdiction over the Watermaster.

7 27. Therefore, the transfer of the TAMCO Water Rights, that is, the 15 acre feet of  
8 Ameron's safe yield, to TAMCO was effective only upon approval by the Watermaster and the court  
9 which entered the Restated Judgment pursuant to Section 1.01 and 4.01 of the Real Estate Contract.

10 28. Between May and July 2013, TAMCO's counsel, Byron Gee, dealt directly with Mr.  
11 Robey and Ameron's other real estate representatives in Houston under Mr. Robey's supervision to  
12 obtain from Ameron the documents necessary to secure the approval of TAMCO's purchase of the  
13 TAMCO Water Rights, that is, the 15 acre feet of safe yield. Ameron's California personnel, who  
14 were responsible for Ameron's dealings with the Watermaster, were not involved in such  
15 discussions.

16 29. Mr. Gee provided Ameron's Houston representatives with a "draft letter . . . and  
17 [Watermaster] consolidated forms 3, 4 and 5" for "the transfer of 15 acre-feet of Ameron's share of  
18 safe yield to TAMCO" ("collectively, the 2013 Transfer Documents").

19 30. Ameron's Houston representatives reviewed, approved and caused the 2013 Transfer  
20 Documents to be signed and returned to Mr. Gee on May 30, 2013.

21 **D. TAMCO'S EFFORTS TO COMMANDEER AMERON'S RETAINED WATER**  
22 **RIGHTS**

23 31. On September 30, 2013, Mark Ward, an Ameron employee previously based in  
24 California and a person at Ameron who dealt with the Watermaster, received the Watermaster's  
25 "Water Activity Report" for Ameron for the period July 1, 2012 – June 30, 2013. Such report  
26 contained the Watermaster's calculation of Ameron's "storage account balances, Share of Safe  
27 Yield, well production and water transfers." Ameron was instructed by the Watermaster to review  
28 and confirm the calculations by September 12, 2013.

1           32.     Mr. Ward, who had recently transferred to Phoenix from Ameron's California office,  
2     had no involvement with or information regarding the terms of the 2013 Real Estate Contract, but  
3     understood that TAMCO had purchase certain water rights of Ameron. Mr. Ward mistakenly  
4     thought that TAMCO may have purchased all of Ameron's Retained Water Rights.

5           33.     If TAMCO had purchased such rights, TAMCO was the party responsible for  
6     communications with the Watermaster. Mr. Ward, therefore, sought confirmation from Jeff  
7     Dambrun, Mr. Ward's counterpart at TAMCO, stating in an e-mail:

8           "Dani [the assistant general manager of Watermaster] sent these to me as usual. I  
9     thought that you were going to handle all the reporting with them now? Am I  
10    mistaken?"

11    In fact, Mr. Ward was mistaken. However, Mr. Dambrun of TAMCO did not correct Mr. Ward's  
12    mistake and made no effort to inform Mr. Ward of the correct facts relating to Ameron's Retained  
13    Water Rights and, specifically, that TAMCO had no rights or interest in the Ameron's Retained  
14    Water Rights. Instead, Mr. Dambrun instructed Mr. Ward to send the documents to Mr. Dambrun.  
15    Without knowledge of the true facts and in reliance on Mr. Dambrun, Mr. Ward complied with Mr.  
16    Dambrun's instructions.

17           34.     On October 24, 2013, Mr. Ward's superior, Jeff Bruny, received an unsolicited e-mail  
18    from a third-party market research company requesting information regarding the "valuation" of the  
19    "15,000 AF (sic) out of the 97,858 AF (sic) of Ameron's adjudicated" Chino Basin Ameron's  
20    Retained Water Rights that were sold to TAMCO. Mr. Bruny, like Mr. Ward, had no involvement  
21    with or specific information regarding the terms of the 2013 Real Estate Contract, but understood  
22    that TAMCO had purchased certain water rights of Ameron in connection with the sale. Mr. Bruny  
23    asked Paul Pavlis, Ameron's in-house California counsel, whether Ameron owned any remaining  
24    water rights as was indicated by the correspondence Mr. Bruny had received. Like Messrs. Ward  
25    and Bruny, Mr. Pavlis likewise had no involvement with or specific information regarding the terms  
26    of the 2013 Real Estate Contract.

27           35.     Although Mr. Pavlis was working on a matter unrelated to Ameron's water rights, he  
28    reviewed Mr. Bruny's question, and obtained a copy of the Real Estate Contract from Mr. Robey.

1 Mr. Pavlis conducted a quick review of the water rights terms of sale in the contract for the first time  
2 and incorrectly concluded that all of Ameron's water rights had been sold to TAMCO as part of the  
3 land sale, not just the 15 acre-feet included within TAMCO's Water Rights as specified in that  
4 contract. Mr. Pavlis then informed Mr. Bruny and Mr. Ward of his mistaken conclusion.

5 36. Shortly thereafter, Mr. Ward received the Watermaster's assessment invoice in the  
6 amount of \$3,116.91. In reliance upon Mr. Dambrun's previous misrepresentation and Mr. Pavlis'  
7 error regarding the construction of the 2013 sale agreement, Mr. Ward informed TAMCO and the  
8 Watermaster of his mistaken belief that Ameron had sold all of its water rights to TAMCO in 2013.  
9 After discussions with Mr. Ward and TAMCO, the Watermaster informed the parties that it  
10 understood the parties' position was that the Watermaster's approval of Ameron's transfer of the 15  
11 acre-feet of safe yield specified in the 2013 Transfer Documents was in error, and that the remainder  
12 of Ameron's safe yield and all water in storage "should have also been transferred to TAMCO as  
13 part of that process." The Watermaster instructed the parties to inform the Watermaster if such  
14 understanding was incorrect. The Watermaster also informed the parties of the documents required  
15 to obtain the Watermaster's approval to correct the mistake. TAMCO knew that Ameron's transfer  
16 of the 15 acre feet of safe yield specified in the 2013 Transfer Documents was not an error or  
17 mistake, and that the remainder of Ameron's safe yield and all water in storage should not have also  
18 been transferred to TAMCO as part of the Watermaster's approval of the 2013 transfer. TAMCO,  
19 however, did not correct the Watermaster.

20 37. Instead, TAMCO, with full knowledge of the mistakes and misunderstandings of  
21 Ameron regarding the Real Estate Contract, seized the opportunity. By e-mail dated January 27,  
22 2014, Mr. Dambrun represented to Mr. Ward that the Watermaster was inquiring as to whether  
23 TAMCO and Ameron had "corrected the water rights transfer from last year" and that TAMCO  
24 management had provided approval "to complete the transfer." TAMCO also offered to "prepare  
25 the appropriate documents for the transfer" and subsequently prepared such documents.

26 38. The documents sent by TAMCO to Mr. Ward on March 18, 2014 included a  
27 document entitled "Water Transfer Agreement" purporting to unconditionally transfer Ameron's  
28 82.858 safe yield and local storage rights "to eliminate the need for Ameron to pay ongoing fees

1 associated with the ownership of Chino Basin water rights.” TAMCO also provided Mr. Ward with  
2 Watermaster consolidated forms 3, 4 and 5 identical in form to the 2013 Transfer Documents with  
3 the exception of the safe yield being transferred. TAMCO inaccurately represented that such  
4 documents were “prepared to effectuate the transfer of Ameron’s water rights to TAMCO.” Such  
5 language was intended by TAMCO to apparently track the language of Ameron’s obligations in the  
6 2013 Real Estate Contract “to cooperate with [TAMCO’s] efforts to effect the transfer of Ameron’s  
7 Retained Water Rights including signing necessary applications and documents.”

8 39. At this point, or before, Plaintiff is informed and believes and thereon alleges that one  
9 or more of the Nossaman lawyers who had worked with Mr. Robey and clearly knew of Mr. Ward  
10 and Ameron’s mistake, prepared the documentation to allegedly “correct” the 15 acre feet transfer.  
11 Mr. Dambrun was certain to point out in his cover e-mail forwarding the transfer correction  
12 documents to Mr. Ward dated March 18, 2014, the asserted “consideration” that TAMCO and its  
13 lawyers had concocted for the “transfer” reflected in such documents: “TAMCO will pay all future  
14 Watermaster fees and assessments.” In fact, the payment of such “future Watermaster fees and  
15 assessments” was no actual consideration to Ameron.

16 40. As a result of the foregoing mistakes and misunderstandings, and in reliance on the  
17 inaccurate and deceptive statements and conduct of TAMCO and its employees and representatives,  
18 Mr. Ward signed the documents provided by TAMCO (and drafted by its counsel) and returned the  
19 documents to Mr. Dambrun on March 25 2014. On June 6, 2014, TAMCO provided Mr. Ward with  
20 Watermaster consolidated forms 3, 4 and 5 that had been slightly revised from the March 25 forms  
21 to include certain information which TAMCO said the Wastermaster was requesting in the forms,  
22 along with a letter to the Watermaster drafted by TAMCO for Mr. Ward’s signature regarding the  
23 transfer. Mr. Ward signed the revised forms and letter and delivered them to Mr. Dambrun on June  
24 10, 2014.

25 41. Mr. Ward signed all such documents in reliance upon TAMCO’s representations and  
26 concealments as a ministerial task in his mistaken and incorrect belief that the documents were made  
27 only to “effect” or “effectuate” a mere correction of the 2013 Transfer Documents. Based on  
28 TAMCO’s deceptions, Mr. Ward had no reason to believe that such documents were anything other



1 than the form of the documents that would be required by Watermaster "to correct" the ostensibly  
2 "incorrect" 15 acre feet safe yield specified in the 2013 Transfer Documents that were also prepared  
3 by TAMCO and its lawyers.

4 42. However, Mr. Ward was not authorized by Ameron to execute such documents or any  
5 other document transferring or purporting to transfer Ameron's Retained Water Rights, nor is Mr.  
6 Ward's position one which would have implied or actual authority to execute any such transfer of  
7 Ameron's Retained Water Rights. The 2014 Transfer Documents, unlike the 2013 Real Estate  
8 Contract, were not executed by an authorized officer of Ameron. Accordingly, the 2014 Transfer  
9 Documents are not enforceable as a contract of Ameron and were not binding on Ameron in any  
10 respect, and are void.

11 43. Plaintiff is informed and believes and thereon alleges that the 2014 Transfer  
12 Documents, unlike the 2013 Real Estate Contract, also were not executed by an authorized officer of  
13 TAMCO.

14 44. Neither Mr. Robey, nor anyone in Houston involved in the actual negotiations and  
15 discussions regarding the Real Estate Contract, knew anything of the foregoing exchange of  
16 correspondence and other communications or had any reason to be aware.

17 45. Plaintiff is informed and believes and thereon alleges that TAMCO and its lawyers,  
18 however, (i) knew that Ameron was represented by Houston counsel regarding Ameron's Retained  
19 Water Rights and all documents and agreements "to effect" the transfers of such rights and (ii)  
20 caused or encouraged TAMCO to communicate directly with Mr. Ward regarding the subject matter  
21 of Houston counsel's representation of Ameron. TAMCO's communications with Ameron were  
22 carefully crafted in such a manner so as not to alert Ameron and its lawyers regarding the mistake  
23 and to mislead Ameron employees into the belief that TAMCO shared such Ameron's mistaken  
24 belief. The 2014 Transfer Documents were drafted solely by TAMCO and its counsel with the  
25 express intent of not alerting Mr. Ward and Ameron's California personnel that "all" of Ameron's  
26 Retained Water Rights had not been sold to TAMCO in the 2013 property sale, and with the intent  
27 of masking TAMCO's plan to acquire a transfer of Ameron's remaining rights under the guise of a  
28 "correction" to the May 2013 Application.

1           46.     On June 11, 2014, Mr. Dambrun provided the Watermaster with the "Water Transfer  
2 Agreement," revised Watermaster consolidated forms 3, 4 and 5, and the letter drafted by TAMCO  
3 (or its counsel) and signed by Mr. Ward (collectively, the "2014 Transfer Documents"). Despite the  
4 fact that the 2014 Transfer Documents were void and unenforceable, Mr. Dambrun requested that  
5 the "transfer" be approved by the Watermaster.

6           47.     There exists in every contract in California a covenant of good faith and fair dealing  
7 which requires all parties to act in a fashion so as not to disrupt or disappoint the expectations of the  
8 other party. That covenant was present in the Real Estate Contract entered into between the Plaintiff  
9 and TAMCO regarding the transfer of the TAMCO Water Rights and Ameron's retention of Ameron  
10 Retained Water Rights.

11           48.     TAMCO and the Defendants breached such covenant implied in the Real Estate  
12 Contract by attempting to contravene the original 2013 agreement and commandeer Ameron's  
13 Retained Water Rights.

14           **E.     AMERON'S CANCELLATION OF THE 2014 TRANSFER DOCUMENTS**

15           49.     In July 2014, the Watermaster's determination of TAMCO's request for approval of  
16 the transfer was pending. It was soon to be presented to the board of the Watermaster.

17           50.     On July 11, 2014, just a few days before the Watermaster board's consideration, Mr.  
18 Robey learned fortuitously that Mr. Ward had been asked by TAMCO to sign a "Notice of  
19 Withdrawal from Non-Agricultural Pool." The document provided that Ameron "currently owns no  
20 Safe Yield or water in storage within the Chino Basin." Mr. Robey was shocked by such statements,  
21 and immediately began to investigate. Mr. Robey learned of portions of Ameron's mistake and  
22 TAMCO's conduct.

23           51.     Mr. Robey promptly informed the Watermaster on July 16, 2014 by letter that the Mr.  
24 Ward's signature on the 2014 Transfer Documents was the result of a mistake, and that Ameron  
25 objected to the Watermaster's approval of such attempted transfer and asked that the transfer not be  
26 processed.

27           52.     Additionally, Mr. Robey wrote a letter to TAMCO on July 18, 2014 presenting  
28 Ameron's position that Ameron reserved all but the 15 acres purchased by TAMCO. Mr. Robey

1 enclosed the July 16th letter sent to the Watermaster and informed TAMCO that “Mr. Ward was  
2 under the mistaken impression that all of the water rights had been sold, and that he was merely  
3 performing a ministerial function in recording an agreed-upon sale.... Furthermore, Mr. Ward, who  
4 is not an officer of Ameron, National Oilwell Varco, Inc. or any other related entity, would have no  
5 authority to enter into such an agreement on behalf of Ameron.”

6 53. TAMCO’s outside counsel, Mr. Gee, apparently acting behind the scenes in some  
7 manner at all times prior thereto, emerged from the shadows and by letter dated July 30, 2014,  
8 expressed TAMCO’s position that the attempted transfer of the 82.585 acre-feet of the Chino Basin,  
9 that is, Ameron’s Retained Water Rights, was a separate transfer void of evidence of any mistakes.  
10 That assertion was not true.

11 54. Mr. Gee further asserted that “[b]ased on the Ameron’s actions and its agreement to  
12 transfer Chino Basin water rights to TAMCO, TAMCO incurred costs to effectuate the transfer and  
13 has made facility modifications that would allow it to receive and use the additional water rights in  
14 reliance of this transfer...TAMCO is entitled to the 82.585 acre-feet of Chino Basin water rights.”

15 55. Ameron thereafter gave prompt notice of rescission to TAMCO and agreed and  
16 offered to restore to TAMCO everything of value that Ameron received from TAMCO under the  
17 contract or offer to restore the same upon condition that TAMCO do likewise, and TAMCO is  
18 unable or positively refuses to do so.

19 56. Mr. Ward’s signature on the 2014 Transfer Documents was given by mistake, or  
20 obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of  
21 TAMCO and its agents, employees, representatives and attorneys, for which TAMCO is responsible.  
22 Ameron never authorized Mr. Ward to execute such documents on its behalf and did not consent to  
23 the transfer of the Ameron’s Retained Water Rights. Accordingly, the 2014 Transfer Documents are  
24 void and unenforceable and are not a binding agreement of Ameron.

25 ///

26 ///

27 ///

28 ///

IV.

**FIRST CAUSE OF ACTION**

**TO QUIET TITLE AND TO REMOVE CLOUD ON TITLE**

57. Plaintiff hereby incorporates by reference paragraphs 1 through 56 of this complaint as though the same were set forth full hereat.

58. Plaintiff is informed and believes and thereon alleges that the Defendants and each of them claim or assert an interest in the Ameron's Retained Water Rights that is adverse to the rights and interests of Plaintiff in and to the Ameron's Retained Water Rights.

59. Plaintiff seeks a determination and judgment quieting its title in and to the Ameron's Retained Water Rights, as described above, and against the claims of Defendants, and each of them, and that the Defendants, and each of them, have no right, title or interest in the Ameron's Retained Water Rights and that the 2014 Transfer Documents constitute a cloud on Plaintiff's title to the Ameron's Retained Water Rights, and Defendants and each of them, have no right, title or interest in the Ameron's Retained Water Rights or any part thereof.

60. The claims of Defendants in and to the Ameron's Retained Water Rights are without any right whatsoever and such Defendants have no right, title, estate, lien, or interest whatever in the Ameron's Retained Water Rights or any part thereof.

61. Plaintiff seeks to quiet its title in and to the Ameron's Retained Water Rights as of June 11, 2014, the date of the Water Transfer Agreement.

V.

**SECOND CAUSE OF ACTION**

**FOR CANCELLATION OF INSTRUMENT**

**(CIVIL CODE § 3412)**

62. Plaintiff hereby incorporates by reference paragraphs 1 through 61 of this complaint as though the same were set forth full hereat.

63. Defendants claim and assert an interest in Ameron's Retained Water Rights based on the 2014 Transfer Documents.



1           72.     TAMCO concealed or failed to disclose a material fact during a transaction, causing  
2 damage to the Ameron. TAMCO failed to disclose or concealed a material fact with an intent to  
3 defraud Ameron. TAMCO had a duty to disclose. TAMCO took steps to hide important  
4 information from AMERON. TAMCO disclosed some information to Ameron, but the disclosed  
5 information was misleading unless more information was given and it was not. TAMCO was aware  
6 of key information and knew Ameron was unlikely to discover that information. Ameron was  
7 unaware of the fact and would not have acted as it did if it knew of the fact. Ameron sustained  
8 damages, in an amount to be proven at trial, as a result of the concealment.

9           73.     Defendants refused and continue to refuse to cancel the 2014 Transfer Documents or  
10 to confirm that such documents are void and unenforceable

11           74.     In the alternative, Plaintiff prays that the Court declare that the 2014 Transfer  
12 Documents have been rescinded.

13           75.     Ameron will suffer substantial and irreparable harm if the 2014 Transfer Documents  
14 are not rescinded.

15                               **VII.**

16                               **FOURTH CAUSE OF ACTION**

17                               **(For Rescission Due to Mistake and Lack of Consideration)**

18           76.     Plaintiff refers to and re-alleges each and every allegation contained in paragraph 1  
19 through 75, both inclusive, as if set forth herein.

20           77.     Any consent of Ameron to the 2014 Transfer Documents was given by mistake,  
21 exercised by or with the connivance of TAMCO and its agents, employees, representatives and  
22 attorneys, for which TAMCO is responsible.

23           78.     The mistake was material. The mistake was not the result of neglect of a legal duty.  
24 The enforcement of the contract as made would be unconscionable. TAMCO can be placed in status  
25 quo. Ameron gave prompt notice of its election to rescind. Ameron offered to restore to TAMCO  
26 everything of value which had been received.

27           79.     Ameron received no consideration for the execution or delivery of the 2014 Transfer  
28 Documents.

81. Ameron will suffer substantial and irreparable harm if the 2014 Transfer Documents are not rescinded.

## VIII.

### FIFTH CAUSE OF ACTION

**(Declaratory Relief)**

82. Plaintiff refers to and re-alleges each and every allegation contained in paragraph 1 through 81, both inclusive, as if set forth herein.

83. An actual controversy has arisen regarding the effectiveness of the alleged transfer by Ameron of its Ameron's Retained Water Rights to TAMCO by the 2014 Transfer Documents by reason of (1) any consent of Ameron was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of TAMCO and its agents, employees, representatives and attorneys, for which TAMCO is responsible; (2) lack or failure of consideration; and/or (3) lack of authority of Ameron's agents and employees to provide such alleged transfer.

84. By reason of the foregoing controversy, Ameron respectfully requests that the Court make a judicial determination that:

- (a) TAMCO does not own any part of the Ameron's Retained Water Rights and does not possess any other interest in, or claims to, said Ameron's Retained Water Rights;
- (b) TAMCO possesses no ownership of, interest in, or claims to the Ameron's Retained Water Rights;
- (c) the 2014 Transfer Documents are not enforceable and have been rescinded; and
- (d) any alleged transfer of Ameron's Retained Water Rights to TAMCO is invalid, unenforceable, rescinded and void.

85. Such a judicial determination is necessary at this time in order for Ameron to resolve and settle any disputes regarding Ameron's Retained Water Rights as alleged herein.

///





(b) Deliver the 2014 Water Transfer Documents to the Clerk of this Court for  
cancellation; and

(c) Such other and further injunctive relief as the court deems just.

**X.**

**PRAYER**

WHEREFORE, Plaintiff prays for judgment against the Defendants, as follows:

**ON THE FIRST CAUSE OF ACTION**

1. For a judgment that Plaintiff is the sole owner of the Ameron Retained Water Rights  
and that Defendants have no interest in such water rights adverse to the Plaintiff;

**ON THE SECOND CAUSE OF ACTION**

2. For the 2014 Water Transfer Documents to be delivered to the Clerk of this Court for  
cancellation and that they be declared void;

**ON THE THIRD CAUSE OF ACTION**

3. In the alternative, for rescission of the 2014 Transfer Documents and all ancillary  
documents respecting the Ameron's Retained Water Rights and that the Court declare that the 2014  
Transfer Documents have been rescinded, and for damages in an amount to be proven at trial;

**ON THE FOURTH CAUSE OF ACTION:**

4. In the alternative, for rescission of the 2014 Transfer Documents and all ancillary  
documents respecting the Ameron's Retained Water Rights and that the Court declare that the 2014  
Transfer Documents have been rescinded and for damages in an amount to be proven at trial;

**ON THE FIFTH CAUSE OF ACTION:**

5. For a judicial determination and declaration that:

(a) TAMCO does not own any part of the Ameron's Retained Water Rights and does  
not possess any other interest in, or claims to, said Ameron's Retained Water Rights;

(b) TAMCO possesses no ownership of, interest in, or claims to the Ameron's  
Retained Water Rights;

(c) the 2014 Transfer Documents have been rescinded; and

(d) the alleged transfer of Ameron's Retained Water Rights to TAMCO in any of the 2014 Transfer Documents are invalid, unenforceable, rescinded and void.

6. For such ancillary orders and decrees as may be necessary to implement, effectuate, carry out, and enforce said judicial determination;

7. For a declaratory judgment declaring the respective rights, duties, responsibilities of the parties, as set forth above; and

8. For such other and further relief as the court deems just.

ON THE SIXTH CAUSE OF ACTION:

9. For preliminary and permanent injunctive relief;

AS TO ALL CAUSES OF ACTION:

10. For its attorneys' fees as applicable;

11. For costs of suit incurred herein; and


12. For such other and further relief as the court deems just and proper.

Date: February 4, 2016

Respectfully submitted,

STAFF WEEMS LLP  
RICHARD W. STAFF  
and

LOCKE LORD LLP  
JOHN J. HARRIS  
VERONICA ROTTER

By   
JOHN J. HARRIS  
Attorneys for PLAINTIFF  
AMERON INTERNATIONAL CORP.

Locke Lord LLP  
300 South Grand Avenue, Suite 2600  
Los Angeles, CA 90071

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on its complaint and each cause of action therein.

Date: February 4, 2016

Respectfully submitted,  
STAFF WEEMS LLP  
RICHARD W. STAFF  
and

LOCKE LORD LLP  
JOHN J. HARRIS  
VERONICA ROTTER

By

  
JOHN J. HARRIS  
Attorneys for PLAINTIFF  
AMERON INTERNATIONAL CORP.

Locke Lord LLP  
300 South Grand Avenue, Suite 2600  
Los Angeles, CA 90071

VERIFICATION

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN BERNARDINO )

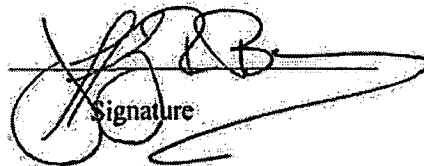
I am Jeffrey Bruny, Vice President -- Manufacturing of Plaintiff, AMERON INTERNATIONAL CORP., a Delaware corporation, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing Verified Complaint and I am familiar with its contents. I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

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

Executed this 8<sup>th</sup> day of February 2016, at Rancho Cucamonga, California.

JEFFREY R BRUNY

Type or print name

  
Signature

## Exhibit A

**REAL ESTATE CONTRACT  
AND JOINT ESCROW INSTRUCTIONS**

This Real Estate Contract and Joint Escrow Instructions is made by and between Ameron International Corporation, a Delaware corporation, with its principal place of business being at 7909 Parkwood Circle Drive, Houston, Texas 77036 (hereinafter "Seller") and TAMCO, a California corporation, having an address of 12459 Arrow Highway, Rancho Cucamonga, California 91739 (hereinafter the "Purchaser"), upon the terms and conditions set forth herein.

**WITNESSETH**

Seller hereby agrees to sell and convey unto Purchaser, and Purchaser hereby agrees to purchase from Seller, subject to the terms and conditions herein set forth, that certain Property, defined below, which includes that certain tract or parcel of land located at the 12459 Arrow Rie in Rancho Cucamonga, California, consisting of thirty and 722/100 (30.722) acres, more or less, more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes together with those certain buildings and improvements located thereon, for the Purchase Price (hereinafter defined), upon and subject to the terms, provisions and conditions hereinafter set forth.

**ARTICLE I**

**1.01 Certain definitions as used in this Agreement:**

"Agreement" shall mean, and the words "herein", "hereof", "hereunder" and other words of similar import shall refer to, this Real Estate Contract and Joint Escrow Instructions.

"Escrow Holder" and "Escrow Agent" shall mean Chicago Title Insurance Company, with an address of 700 S. Flower Street, Suite 800, Los Angeles, CA 90017.

"Improvements" shall mean any buildings and related facilities constructed upon the Land and owned by Seller, together with any and all other improvements located on the Land.

"Inspection Period" shall mean the period of time set out in Article II during which Purchaser may physically inspect the Property and improvements and perform its due diligence of all aspects of the Property.

"Joint Usage Agreement" means that certain Joint Usage and Easement Agreement dated November 28, 1983 between Ameron, Inc. as lessor and Purchaser as lessee, recorded November 29, 1983 as Document No. 83-280362 of the Official Records of San Bernardino, California, as amended by the First Amendment to Joint Usage and Easement Agreement dated October 21, 2010 between Seller as lessor and Purchaser as lessee.

"Land" shall mean that tract or parcel of real property consisting of the 30.722 acres, more or less, being more particularly described in Exhibit "A" attached hereto, together with all and singular the rights, benefits, privileges, easements, tenements, hereditaments and appurtenances thereon or in anywise appertaining to such real property, and all right, title and interest of Seller in and to all strips and gores and any land lying in the bed of any street, road, alley or right-of-way, open or proposed, adjoining such real property, and including without limitation, to the extent Seller owns, possesses and may transfer same, all development rights.



air rights, water rights and water stock relating thereto, and any easements, rights of way and other rights appurtenant thereto or used in conjunction therewith.

**"Property"** shall mean the Land and the Water Rights.

**"Title Company"** shall mean Chicago Title Insurance Company, with an address of 700 S. Flower Street, Suite 800, Los Angeles, CA 90017.

**"Water Rights"** shall mean fifteen (15) acre-feet of Decreed Share of Safe Yield of Chino Basin Non-Agricultural Pool Rights, as such terms are defined and used in the Water Rights Judgment. As of September 5, 2012, the Seller's Water Rights include 125 acre-feet of Total Overlying Non-Agricultural Rights, which is 97,858 acre-feet of Decreed Share of Safe Yield of Chino Basin Non-Agricultural Pool Rights.

**"Water Rights Judgment"** shall mean that certain Judgment, as amended, originally filed in January 30, 1978 in the Superior Court for the County of San Bernardino, in the matter of Chino Basin Municipal Water District v. City of Chino, et al., Case No. RCV 51010 (formerly Case No. 164327).

**"Water Rights Transfer Approval"** shall mean all approvals required for the transfer of the Water Rights and the use of the water pursuant to the Water Rights Judgment, or any other applicable laws, regulations, ordinances, judicial orders and the like, including, but not limited to, all related approvals required by the Watermaster, subject to resolution of any Complaints and Contests, and the Superior Court under the Water Rights Judgment, including a motion by Purchaser to intervene as a party to the Water Rights Judgment Overlying (Non-Agricultural) Pool (as described in the Water Rights Judgment).

**"Watermaster"** shall mean the court-appointed party or entity now or hereafter serving as the "Watermaster" under Article V, Section A, of the Water Rights Judgment.

1.02 **Consideration for the Property.** The consideration for the Property shall be Seventeen Million Dollars (\$17,000,000.00) (the **"Purchase Price"**). The Purchase Price will be payable as follows:

(a) Within five (5) business days following the mutual execution and delivery of this Agreement into Escrow (with a copy to the other party), Purchaser shall deposit or have deposited with the Title Company the sum of Five Hundred Thousand Dollars (\$500,000.00) as earnest money deposit to bind this sale (the **"Earnest Money"**), which shall be held by the Title Company in an interest bearing account. Concurrent with the Deposit an escrow (**"Escrow"**) shall be opened by Seller and Purchaser with the Title Company, which shall also act as the Escrow Agent. Upon the expiration of the Inspection Period, the Earnest Money will be released to Seller. The Earnest Money, and any interest accrued prior to the delivery of the Earnest Money, shall be applied to the Purchase Price at Closing. If this Agreement terminates pursuant to any express right of Purchaser to terminate this Agreement, any such earnest money paid shall be returned to Purchaser immediately upon request, less any sums stipulated in Section 2.01 herein, and all further rights and obligations of the parties under this Agreement shall terminate except those that by their terms survive any termination of this Agreement. Absent the exercise of any such express right to terminate this Agreement, the Earnest Money shall become nonrefundable at the end of the Inspection Period. The Earnest Money shall be held and disbursed by the Escrow Agent pursuant to Article 13 of this Agreement. The terms

and conditions set forth in this Agreement shall constitute both an agreement between Seller and Purchaser and escrow instructions for the Title Company operating as Escrow holder.

(b) At the closing of the transaction contemplated hereby ("Closing"), Purchaser shall deposit with the Escrow Agent in immediate, same-day federal funds wired for credit into the Escrow Agent's escrow account, the Purchase Price, less the Total Earnest Money that is applied to the Purchase Price, plus or minus applicable prorations.

## ARTICLE II INSPECTION AND ENTITLEMENTS

2.01. Purchaser shall have a period of forty-five (45) days after mutual execution of this Agreement to physically inspect or cause one or more engineers or representatives of Purchaser to physically inspect the Property and Improvements and perform its due diligence. Within five (5) business days of the execution of this Agreement, Seller shall provide Purchaser with: property tax bills for the past two years, certificates of occupancy, an easement map, and any existing records, reports, studies and files of Seller related to soils, environmental conditions, wetlands, engineering, site drainage, title and survey, zoning and land use or economic feasibility of the Property, notices of violations of any governmental law or regulation or any covenants or restrictions encumbering the Property or Improvements, notices of any action or proceeding pending or, to Seller's knowledge, threatened against Seller which relate directly to the Property or Improvements, including, without limitation, any condemnation or bankruptcy proceedings, copies of all development, zoning or entitlement documents, agreements or applications, and associated documents, and a current Natural Hazard Disclosure Statement ("Due Diligence Items"), which are not already in the possession of the Purchaser. Seller shall have an ongoing obligation during the pendency of this Agreement to provide Purchaser with any document described above and coming into Seller's possession or produced by Seller after the initial delivery of the Due Diligence Items. In the course of its inspections, Purchaser may make inquiries to third parties, including, without limitation, tenants, lenders, contractors, property managers, parties to service contracts and municipal, local and other government officials and representatives, and Seller consents to such inquiries, provided that such inquiries do not violate Purchaser's obligation to keep the terms and conditions of this transaction confidential pursuant to Section 12.14 of this Agreement.

Purchaser shall have through the last day of the Inspection Period in which to examine, inspect and investigate the Property, Improvements and Due Diligence Items and, in Purchaser's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Purchaser and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Purchaser may terminate this Agreement by giving notice of termination to Seller (the "Due Diligence Termination Notice") on or before the last day of the Inspection Period. If Purchaser does not give the Due Diligence Termination Notice, this Agreement shall continue in full force and effect. If this Agreement terminates pursuant to this Section, the Initial Earnest Money, less \$100 which amount shall be non-refundable to Purchaser for any reason, and which Escrow Holder shall deliver to Seller in consideration of Seller entering into this Agreement ("Inspection Consideration"), shall be refunded to Purchaser immediately upon request, and all further rights and obligations of the parties under this Agreement shall terminate. In the event Purchaser does not purchase the Property, then Purchaser shall return all Due Diligence and Inspection Items to Seller within ten calendar days.

## ARTICLE III

## TITLE COMMITMENT/SURVEY

3.01 Title Exceptions. On or before five (5) business days from the date of mutual execution of this Agreement, Seller shall obtain and furnish to Purchaser a Commitment for Title Insurance ("Commitment") by the Title Company to issue to Purchaser an ALTA Owner's policy of title insurance including extended coverage ("Title Policy"), and accompanied by true, complete, and legible copies of all documents referred to in the Title Commitment. The Commitment shall be on a form approved by Purchaser in an amount equal to the Purchase Price showing title to the Property (other than the Water Rights) vested in Purchaser, with a current effective date, and will set forth the state of title of the Property (other than the Water Rights) and all exceptions to title which are properly of record.

Purchaser shall have until that date which is ten (10) days prior to the expiration of the Inspection Period within which to review same and advise Seller in writing of any title exceptions in the Commitment which are not acceptable to Purchaser. Any exceptions to title to which Purchaser does not object within such period shall be deemed to be acceptable and any objections thereto shall be deemed to have been waived for all purposes by Purchaser. Within five (5) days after receipt of Purchaser's written objections to the Commitment, Seller shall specify to Purchaser which of such objectionable title exceptions, if any, that Seller agrees to remove of record or cure to Purchaser's satisfaction prior to the Closing and, thereafter, Seller shall proceed to do so at Seller's sole cost. In any event, Seller shall, on or before Closing, remove any objections to title constituting liens upon the Property created by Seller. In the event Seller is unwilling or unable, to remove such objections, to the reasonable satisfaction of Purchaser, within a reasonable amount of time after receipt of Purchaser's written objections, or if by reason of such objections the Title Company refuses to guarantee the title to Purchaser in the form herein provided, then Purchaser, at its option and as its sole remedy, shall have the right to either (a) waive any such objections and accept title to the Property subject thereto, or (b) cancel this Agreement, whereupon Purchaser shall be entitled to receive full reimbursement of the Earnest Money, and neither Purchaser nor Seller shall have any further claim against the other hereunder. Seller shall use its best efforts to satisfy the reasonable objections of Purchaser as hereinabove provided; however, Seller shall not be obligated to file suit or spend any sums of money to satisfy Purchaser's objections. If the Title Company revises the Title Commitment after the expiration of the Inspection Period to add or materially modify exceptions, or to add or materially modify the conditions to obtaining any endorsement requested by Purchaser during the Inspection Period, and such additions or modifications are not reasonably acceptable to Purchaser and are not removed by Seller by the Closing Date, Purchaser may terminate this Agreement and receive a refund of the Earnest Money. The term "Permitted Exceptions" shall mean: the specific exceptions (exceptions that are not part of the promulgated title insurance form) in the Title Commitment that the Title Company has not agreed to insure over or remove from the Title Commitment as of the end of the Inspection Period, and that Seller is not required to remove as provided above; real estate taxes not yet due and payable; and tenant in possession under the Lease without any option or right to purchase or acquire any other interest whatsoever in the Property.

3.02 Survey. Within ten (10) business days following execution of this Agreement, Seller shall deliver to Purchaser the most recent survey of the Property in Seller's possession, if any. Purchaser may obtain at its expense a survey of the Property pursuant to Section 2.01. Purchaser shall have through the last day of the Inspection Period in which to review and approve the survey and any updated title commitment reflecting survey-related exceptions.

**ARTICLE IV**  
**TRANSFER OF WATER RIGHTS; SEPARATE METERING OF UTILITIES**

4.01 Transfer of Water Rights. The sale contemplated by this Agreement includes the transfer of the Water Rights. Purchaser is responsible for processing the Water Rights transfer documents with the Watermaster and any other appropriate governmental agencies. Seller shall cooperate with Purchaser's efforts to effect the transfer of the Water Rights including signing necessary applications and documents. It is understood that the procedures to effect the transfer of the Water Rights are not expected to be completed by the Closing, and is expected to take several months.

4.02 Separate Metering of Utilities. Seller and Purchaser agree to use commercially reasonable efforts to cause the utility providers for the Property and the "Dominant Tenement" (as defined in the Joint Usage Agreement) to install their own meters measuring services provided to the Dominant Tenements, by February 28, 2014, such that the utility providers bill the Property and the Dominant Tenement separately for all such services. Seller shall use its commercially reasonable efforts to cause the current owner(s) of the Dominant Tenement to join the efforts to have separate metering of utilities by February 28, 2014. \$250,000 of the Purchase Price (the "Metering Holdback") shall remain in escrow until the utilities are separately metered. Upon the separate metering of all the utilities jointly serving the Property and the Dominant Tenement, the Metering Holdback shall be released to Seller. The Metering Holdback shall be released back to Purchaser to the extent Seller does not reimburse Purchaser for utilities serving the Dominant Tenement, upon Purchaser's written demand supported by (1) cancelled checks or other evidence of payment of the utilities serving the Dominant Tenement, (2) a copy of the demand for payment sent to the Seller, and (3) evidence of delivery of that demand a minimum of 30 days earlier.

**ARTICLE V**  
**CLOSING**

5.01 The Closing and Closing Date. Upon compliance with all of the terms and conditions hereof and satisfaction or waiver of all conditions to closing, the parties shall proceed to close this transaction on a mutually acceptable date ("Closing Date") which shall not be later than fifteen (15) days following the expiration of the Inspection Period. Closing shall occur through Escrow with the Escrow Agent, with both parties delivering to the Escrow Agent all closing deliverables through the mail, by courier service or in person on or before the Closing Date. Funds shall be deposited into and held by Escrow Agent in a closing escrow account with a bank satisfactory to Purchaser and Seller. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record the Grant Deed, and deliver the closing documents to the appropriate parties and make disbursements according to the closing statements executed by Seller and Purchaser. The Escrow Agent shall agree in writing with Purchaser that (a) recordation of the Deed (as hereinafter defined) constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statement, and (b) release of funds to the Seller shall irrevocably commit it to issue the Title Policy in accordance with this Agreement.

5.02 Seller's Obligations at Closing. At Closing, Seller shall:

(a) Execute, acknowledge and deliver to Escrow Holder a grant deed in the form of Exhibit "B" attached hereto ("Deed") conveying good and indefeasible title to the Property (other than the Water Rights) to the Purchaser free and clear of all liens and encumbrances except the Permitted Exceptions.

(b) Cause Title Company to deliver the Title Policy to Purchaser.

(c) Deliver to Title Company any affidavits or documents required by the Title Company to Issue the Title Policy.

(d) Deliver to Purchaser copies of all plats and engineering drawings in Seller's possession or control pertaining to the Property, Improvements and any utilities.

(e) Deliver to the Title Company, for delivery to Purchaser, a Foreign Investment in Real Property Tax Act affidavit or qualifying statement satisfying the requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder, as well as the California Franchise Tax Board Form 593-C, both executed by Seller. If Seller fails to provide the necessary affidavit and/or documentation of exemption on the Closing Date, Purchaser may proceed with withholding provisions as provided by law.

(f) A Bill of Sale in the form of Exhibit C attached hereto (the "Bill of Sale"), executed and acknowledged by Seller, vesting in Purchaser good title to the property described therein free of any claims.

(g) Such disclosures and reports as are required by applicable state and local law in connection with the conveyance of real property.

(h) If the Property is subject to a declaration of covenants, conditions and restrictions or similar instrument, restrictive covenants or equitable servitudes ("CCRs") governing or affecting the use, operation, maintenance, management or improvement of the Property, (i) estoppel certificates, in form and substance satisfactory to Purchaser, from the declarant, association, board, committee, agent and/or other person or entity having governing or approval rights under the CCRs, and (ii) a recordable assignment, in form and substance satisfactory to Purchaser, assigning any and all developer, declarant or other related rights or interests of Seller (or any affiliate of Seller) in or under the CCRs.

(i) Evidence of the existence, organization and authority of Seller and of the authority of the persons executing documents on behalf of Seller reasonably satisfactory to the Escrow Agent and the Title Company.

(j) Any additional documents that Purchaser, the Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

5.03 Purchasers Obligation at Closing. At Closing, Purchaser shall do the following:

- (a) Deliver to Escrow Holder the balance of the Purchase Price.
- (b) Any additional documents that Seller, the Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

5.04 Closing Statements. At least one (1) business day prior to the Closing Date, Seller and Purchaser shall deposit with the Escrow Agent executed closing statements consistent with this Agreement in the form required by the Escrow Agent. If Seller and Purchaser cannot agree on the closing statement to be deposited as aforesaid because of a dispute over the prorations and adjustments set forth therein, the Closing nevertheless shall occur, and the amount in dispute shall be withheld from the Purchase Price and placed in an escrow with the Title Company, to be paid out upon the joint direction of the parties or pursuant to court order upon resolution or other final determination of the dispute.

#### **ARTICLE VI CLOSING COSTS AND PRORATIONS**

6.01 Closing Costs. Seller will pay any and all transfer taxes, the basic portion of the Title Policy, costs of recording instruments to release any Seller financings or mechanics' liens or to cure other title matters Seller has elected to cure, as well as all documentary stamp fees and recording fees. The escrow fee of Escrow Holder shall be shared equally by Seller and Purchaser. All Water Rights transfer costs shall be borne by Purchaser. Each party shall pay its own attorneys' fees, if any, related to the transfer of the Water Rights. All other expenses incurred by Seller or Purchaser with respect to Closing, including but not limited to attorneys' fees of Purchaser and Seller and the extended coverage portion of the Title Policy, shall be borne exclusively by the party incurring same, without reimbursement, except to the extent otherwise specifically provided herein. Any other costs and expenses relating to this sale shall be allocated according to the custom of San Bernardino County, California.

6.02 Taxes. All ad valorem and real property taxes and assessments shall be prorated as of the Closing Date. Purchaser shall receive a credit for any accrued but unpaid real estate taxes and assessments ("Taxes") (including without limitation any assessments imposed by private covenant or CCRs) applicable to any period before the Closing Date, even if such taxes and assessments are not yet due and payable. If the amount of any such taxes have not been determined as of Closing, such credit shall be based on 102 percent of the most recent ascertainable taxes and shall be re-prorated upon issuance of the final tax bill. Purchaser shall receive a credit for any special assessments which are levied or charged against the Property, whether or not then due and payable.

6.03 Water Rights. Water Rights for the 2013 Fiscal Year, as defined by the Water Rights Judgment, shall be prorated as of the Closing Date.

6.04 Reproration. After year-end (or other applicable period) adjustments after receipt of final Tax, Water Rights fee assessments and other bills, Purchaser shall prepare and present to Seller a calculation of the re-proration of Taxes, Water Rights fee assessments and other items, based upon the actual amount of such items charged to or received by the parties for the year or other applicable fiscal period. The parties shall make the appropriate adjusting payment between them within thirty (30) days after presentment to Seller of Purchaser's calculation.

subject to Seller's obligations to pay taxes under the Lease. Seller may inspect Purchaser's books and records related to the Property to confirm the calculation. Either party shall be entitled to a post-Closing adjustment for any incorrect proration or adjustment. No other expense related to the ownership or operation of the Property shall be charged to or paid or assumed by Purchaser, whether allocable to any period before or after the Closing, other than those obligations expressly assumed by Purchaser. The provisions in this Section 6.3 shall survive the Closing and recordation of the Deed.

## ARTICLE VII CONDITIONS TO CLOSING

**7.01 Purchaser's Closing Conditions.** Purchaser shall not be obligated to consummate the transaction contemplated hereby unless and until all of the following conditions have been satisfied or waived by Purchaser:

- (a) Seller shall have removed of record or cured Exceptions that Seller agreed to remove or cure under Article III, and the Title Company shall be irrevocably committed to issue the Title Policy (or extended coverage Title Policy, if requested by Purchaser), in the form of the title commitment, including endorsements, agreed to by Purchaser in writing prior to the end of the Inspection Period, to Purchaser as of the Closing Date.
- (b) Any inspections, tests, environmental audits, engineering studies, investigations and reviews conducted by Purchaser have results that are satisfactory to Purchaser or Purchaser has waived any objections thereto.
- (c) All necessary agreements and consents of any party to the consummation of this transaction or obligations pertinent hereto have been obtained. These must be obtained prior to the expiration of the Inspection Period; after which this condition is waived.

**7.02 Conditions to Closing.** In addition to the conditions otherwise provided in this Agreement, Purchaser's obligations under this Agreement are conditioned upon the fulfillment of the following:

- (a) Moratoriums. No moratorium, statute, regulation, ordinance or federal, state, county or local legislation, order, judgment, ruling or decree of any governmental agency or of any court of competent jurisdiction is enacted, adopted, issued or entered which would materially and adversely prohibit Purchaser's intended use of the Property. For purposes of this condition, Purchaser's intended use of the Property shall be the manufacture of steel products and such incidental uses appurtenant thereto as may be necessary or appropriate.
- (b) Condemnation. No notice of condemnation or eminent domain action to acquire the property or any portion thereof that would impair Purchaser's use of or access to the Property shall have been received by Seller.
- (c) Bankruptcy. No action proceeding shall have been commenced by or against Seller under the Federal Bankruptcy Code which would impair or restrict Seller's ability to convey the Property.



(d) Closing Deliverables. Seller shall have delivered to the Title Company all of the deliverables identified in Section 5.02 above.

(e) Representations and Warranties. Seller's representations and warranties in this Agreement shall be true and correct in all material respects as of the Closing Date.

(f) Seller's Obligations. As of the Closing Date, Seller shall have performed all of the obligations required to be performed by Seller under this Agreement.

(g) No Leases or Contracts. As of Closing Date, Seller shall have terminated all leases and contracts affecting the Property.

## ARTICLE VIII REPRESENTATIONS AND WARRANTIES

8.01 Seller's Representations and Warranties. Seller represents and warrants to and agrees with Purchaser as follows:

(a) Authority. Seller is a Delaware corporation, duly formed, validly existing and in good standing under the laws of the State of Delaware, and is qualified to do business in the state where the Property is located, with the right, power and authority to own the Property and to consummate the transactions contemplated by this Agreement. This Agreement and all instruments, documents and agreements to be executed by Seller in connection herewith are or when delivered will be duly authorized, executed and delivered by Seller and will be valid, binding and enforceable obligations of Seller in accordance with their terms.

(b) Consents. As of the Closing, Seller will have obtained all consents and approvals (other than approval of the transfer of the Water Rights) required to consummate the transactions contemplated in this Agreement.

(c) Condemnation/Actions. There is no existing or pending action, suit or proceeding for eminent domain or condemnation known to Seller which affects the Property. There is no other action or proceeding pending or, to Seller's knowledge, threatened against Seller or relating to the Property or Improvements, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement. For purposes of this representation, it is agreed and understood that Purchaser's contemplated use of the Property is the manufacture of steel products and such incidental uses appurtenant thereto as may be necessary or appropriate.

(d) Contracts and Leases. With the exception of recorded Permitted Exceptions, there are no contracts, leases, licenses, instruments or other rights affecting the Property or Improvements which will survive or otherwise be enforceable against Purchaser following the Closing Date. There is no agreement to which Seller is a party or, to Seller's knowledge, binding on Seller which is in conflict with this Agreement.

(e) Notice of Violations or Defects. Seller has received no written notice: (i) that the Property, Improvements or the use thereof violates any governmental law or regulation or any covenants, restrictions or CCRs encumbering the Property; or (ii) of any physical defect in the Improvements.

(f) Environmental. Seller has no knowledge of any violation of Environmental Laws (as hereinafter defined) related to the Property or the presence or release of Hazardous Materials on or from the Property or Improvements. Seller has no knowledge of any underground storage tanks located on the Property. Seller has not manufactured, introduced, released or discharged from or onto the Property any Hazardous Materials or any toxic wastes, substances or materials (including, without limitation, asbestos), and Seller has not used the Property, Improvements or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Materials in violation of any Environmental Laws. The term "Environmental Laws" includes without limitation the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act and other federal laws governing the environment as in effect on the Effective Date together with their implementing regulations and guidelines as of the Effective Date, and all state, regional, county, municipal and other local laws, regulations and ordinances that are equivalent or similar to the federal laws recited above or that purport to regulate Hazardous Materials (as hereinafter defined). The term "Hazardous Materials" includes petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel (or mixtures of natural gas or such synthetic gas), asbestos and asbestos containing materials and any substance, material waste, pollutant or contaminant listed or defined as hazardous or toxic under any Environmental Law.

(g) Outside Agreements. Other than as delivered with the Due Diligence Items or as disclosed in the Permitted Exceptions, to Seller's knowledge, there is no other agreement, understanding or restriction with or for the benefit of any person or entity, whether private, public or quasi-public, that will be binding upon Purchaser after Closing and which may prevent or limit in any way the current use, or Purchaser's intended use, of the Property or for any uses allowed by current zoning regulations.

(h) Bankruptcy. Seller has not (i) made a general assignment for the benefit of its creditors, (ii) admitted in writing its inability to pay its debts as they mature, (iii) had an attachment, execution or other judicial seizure of any property interest which remains in effect, or (iv) taken, failed to take or submitted to any action indicating a general inability to meet its financial obligations as they accrue. There is not pending any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or reconstitution of Seller under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking appointment of a receiver, trustee, or custodian for Seller for all or any substantial part of its property.

(i) Water Rights. Seller has not transferred or encumbered the Water Rights.

(j) Reaffirmation. The representations and warranties of Seller set forth hereinabove, are true and correct as of the date of this Agreement and shall continue to be true and correct as of the Closing Date. Closing shall constitute Seller's reaffirmation of these representations and warranties as of the Closing Date.

8.02 Indemnification. Seller shall hold harmless, and indemnify Purchaser, its directors and shareholders, from and against any direct loss or damage to Purchaser directly resulting from any inaccuracy in or breach of any representation or warranty of Seller. The representations and warranties shall survive the Close of Escrow and survive for a period of one (1) calendar year after the Closing Date.

**8.03 Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller as follows:

(a) **Authority.** Purchaser is a corporation, duly formed, validly existing and in good standing under the laws of the State of California, with the right, power and authority to own the Property and, as of the Closing, shall have the authority to consummate the transactions contemplated by this Agreement (other than the Water Rights Approval which is not expected to be obtained until after the Closing). This Agreement and all instruments, documents and agreements to be executed by Purchaser in connection herewith are or when delivered will be duly authorized, executed and delivered by Purchaser and will be valid, binding and enforceable obligations of Purchaser.

(b) **Consents.** As of the Closing, Purchaser will have obtained all consents and approvals required to consummate the transactions contemplated in this Agreement.

**8.04 Indemnification.** Purchaser shall hold harmless, and indemnify Seller, its directors and shareholders, from and against any direct loss or damage to Seller directly resulting from any inaccuracy in or breach of any representation or warranty of Purchaser in **Section 8.03**. The representations and warranties shall survive the Close of Escrow and survive for a period of one (1) calendar year after the Closing Date.

## **ARTICLE IX ENVIRONMENTAL**

**9.01. Environmental.** Purchaser is currently in possession of the Property as a Lessee and shall continue to have the right to make such additional environmental audits, inspections or tests of the Property and Improvements as Purchaser deems reasonably necessary, including without limitation a Phase I or Phase II environmental report. All inspections, fees and other expenses of any kind incurred by Purchaser relating to any audit or inspection of the Property and Improvements will be solely at Purchaser's expense. Any such inspection or audit will be non-destructive in nature, but may include invasive testing of the soils, Improvements or groundwater, if deemed prudent in Purchaser's discretion. Seller shall cooperate with Purchaser in all reasonable respects in making such audits, inspections, tests, investigations and reviews. Purchaser shall notify Seller not less than one (1) business day in advance of making any such tests and Seller hereby reserves a right to have a representative present at the time of any such inspections or tests.

In the event Purchaser elects to have an independent third party environmental consultant conduct environmental audits, inspections, tests or investigations as herein provided, Purchaser shall select such environmental consultant. Purchaser shall pay for the cost of any environmental audit conducted by a third party environmental consultant. Purchaser covenants and agrees that it and its environmental consultant shall keep the results of any such audit confidential and shall not disclose same to Seller or any third party unless authorized in writing by Seller.

Purchaser hereby agrees to indemnify, defend and hold Seller harmless from any and all costs, liabilities, claims and expenses arising in connection with Purchaser or its agents performing any of the examinations, investigations, inspections, tests and studies on the Property, including without limitation any environmental tests as provided for herein or any

inspections as provided for in Article II; however, nothing in this Agreement shall be deemed to impose liability on Purchaser for merely discovering the existence of a pre-existing condition that Purchaser did not cause, contribute to or exacerbate.

9.02 Seller shall not be responsible to Purchaser for any environmental matters or conditions on the Property known to Purchaser as of Closing. Seller will be responsible only for those environmental matters related to its own activities on the Property and that are unknown to Purchaser and could not have been reasonably discovered as of Closing. Seller explicitly disclaims any liability for any environmental matters or conditions arising from Purchaser's use of the Property at any time. The provisions of this Section 9.02 shall survive the Close of Escrow and shall not be deemed to be merged in the Deed.

9.03 Nothing in this Agreement shall affect Purchaser's rights to pursue any claims including environmental indemnity claims, against Seller and others under the September 14, 2010 TAMCO Stock Purchase Agreement between Seller, Mitsui & Co. (U.S.A.), Inc., a New York corporation, Tokyo Manufacturing Co. Ltd., a Japanese corporation, and Purchaser (the "SPA"). The time for filing any claim arising under the SPA shall not be extended by virtue of any provision of this Agreement or any alleged breach thereof.

#### ARTICLE X DEFAULT

10.01 IF PURCHASER FAILS TO CLOSE ESCROW AND SUCH FAILURE CONSTITUTES A DEFAULT BY PURCHASER, THEN SELLER SHALL, AS ITS SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT, BY WRITTEN NOTICE TO PURCHASER AND THE ESCROW HOLDER, TERMINATE THIS AGREEMENT, WHEREUPON SELLER SHALL RETAIN AS SELLER'S LIQUIDATED DAMAGES FOR SUCH PURCHASER'S DEFAULT THE EARNEST MONEY, IT BEING EXPRESSLY UNDERSTOOD AND AGREED BETWEEN PURCHASER AND SELLER THAT SELLER'S ACTUAL DAMAGES RESULTING FROM SUCH PURCHASER'S DEFAULT WOULD BE SUBSTANTIAL BUT EXTREMELY DIFFICULT TO ASCERTAIN AND THAT SUCH LIQUIDATED AMOUNT IS A REASONABLE SUM CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING AS OF THE AGREEMENT DATE. BY PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

Initials of Seller:

RS

Initials of Purchaser:

\_\_\_\_\_

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Initials of Seller:

\_\_\_\_\_

Initials of Purchaser:

\_\_\_\_\_

**ARTICLE XI**  
**OPERATIONS AND RISK OF LOSS**

**11.01 Ongoing Operations.** During the pendency of this Agreement:

(a) **Operations.** After the Effective Date, Seller will not use the Property for any business or activity that differs materially to its current business on the Property and/or which results in the new or increased use of Hazardous Materials in the course of such new activity or business. Seller will not enter into any contract, commitment, dedication or other instrument that will be an obligation affecting the Property subsequent to the Closing without the prior written consent of Purchaser.

(b) **Listings and Other Offers.** Seller will not list the Property with any broker or otherwise solicit or make or accept any offers to sell the Property, engage in any discussions or negotiations with any third party with respect to the sale or other disposition of the Property, or enter into any contracts or agreements (whether binding or not) regarding any disposition of the Property.

(c) **Notices.** Seller shall promptly furnish to Purchaser copies of any written notices hereafter received by Seller of (i) any suit, judgment or other proceeding filed, entered or threatened with respect to the Property or Seller's use or ownership thereof, or (ii) any actual or contemplated changes in zoning of the Property or any other legal requirement which would adversely affect the use, ownership, maintenance or leasing of the Property.

(d) **Insurance.** Through the Closing Date, Seller shall maintain or cause to be maintained, at Seller's sole cost and expense, Seller's existing policy or policies of insurance insuring the Property and Improvements.

(e) **Miscellaneous.** Seller shall not convey any portion of the Property, Improvements or rights therein, nor enter into any conveyance, security document, easement or other agreement or amendment to agreement granting to any third party or reserving on Seller's behalf any rights with respect to the Property or any part thereof, or any interest whatsoever therein, or any option thereto, and any such conveyance or other agreement entered into in violation of this provision shall be null and void and of no force or effect.

**ARTICLE XII**  
**MISCELLANEOUS**

**12.01 Assignment.** This Agreement may not be assigned by either party hereto without the express prior written consent of the other party. Such consent may be withheld for any reason, there being no obligation to act reasonably with regard to such consent. However, notwithstanding the foregoing, without Seller's consent Purchaser may assign its rights hereunder to any person or entity which controls, is controlled by or is under the common control with Purchaser, or to any corporation into or with which Purchaser may be merged or consolidated, to any partnership or limited liability company in which Purchaser or one of its subsidiaries is a partner or member, as the case may be, or to any person or entity which purchases all or substantially all of the assets of Purchaser.

**12.02 Casualty and Condemnation.** Seller agrees to give Purchaser five (5) days' notice of any casualty affecting the Property between the date of execution of this Agreement

and the date of Closing or of any actual or threatened taking or condemnation of all or any portion of the Property.

If prior to Closing, there shall occur;

- (a) damage to the Property caused by casualty which would cost \$10,000.00 or more to repair, or which materially adversely affects access to the Property; or
- (b) taking or condemnation of any portion of the Property, or a threat thereof.

Purchaser, at its option and as its sole remedy, may elect to terminate its obligations under this Agreement by written notice given to Seller within ten (10) days of Purchaser's receipt of notice of such event and Purchaser shall receive full reimbursement of the Earnest Money. In the event Purchaser does not so elect to terminate this Agreement, then the Closing shall take place as provided herein without reduction of the Purchaser Price, without any abatement of rent, and Seller shall assign to Purchaser at Closing any and all interest of Seller in and to any insurance proceeds or condemnation awards which may be payable to Seller on account of such occurrence.

**12.03 Merger.** This Agreement represents the complete understanding between the parties hereto and supersedes all prior negotiations, representations or Agreements, either written or oral, as to the Property. This Agreement may be amended only by written instrument signed by both parties. No requirement, obligation, remedy or provision of this Agreement shall be deemed to have been waived unless expressly waived in writing and such waiver shall not affect the right to enforce any other provisions hereof or such provision hereafter.

**12.04 Headings.** The headings or title of the Articles herein are for convenience and shall not affect the meaning or the interpretation of the contents hereof.

**12.05 Notice.** All notices authorized or required herein shall be in writing and shall be delivered either (a) by hand delivery (including messenger or a nationally recognized overnight delivery service), in which case notice shall be deemed delivered upon receipt (if by hand delivery) or one (1) business day after deposit with such courier, (b) by certified mail, return receipt requested, in which case notice shall be deemed delivered 3 business days after such mailing, or (c) sent by facsimile or email, in which case notice shall be deemed delivered upon a successfully completed transmission of such notice, to Seller or Purchaser at their respective addresses as set forth below:

**SELLER:**

7909 Parkwood Circle Drive  
Houston, Texas 77036  
Attn: Legal Dept.  
Telephone: (713) 346-7550  
Facsimile: (713) 346-7995  
Email: [Rebecca.hernandez@nov.com](mailto:Rebecca.hernandez@nov.com)  
[Matthew.robey@nov.com](mailto:Matthew.robey@nov.com)



**PURCHASER:**

Gerdau Ameristeel Corporation  
Attn: Robert Wallace, Esq.  
Senior Corporate Counsel  
Suite 600  
4221 West Boy Scout Boulevard  
Tampa FL 33607  
Telephone: (813) 207-2289  
Facsimile: (813) 207-2307  
Email: Robert.Wallace@gerdau.com

**With a copy to:**

Nossaman LLP  
Attn: Karla N. MacCary, Esq.  
777 S. Figueroa Street, 34<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 612-7862  
Facsimile: (213) 612-7801  
Email: kmaccary@nossaman.com

A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Purchaser shall be deemed given by Purchaser and notices given by counsel to the Seller shall be deemed given by Seller.

**12.06 Time.** Time is of the essence with this Agreement.

**12.07 Real Estate Commission.** It is understood and agreed that the only brokers involved in the negotiation of this Agreement are: Lee & Associates—Ontario ("Seller's Broker"), representing the Seller and Jones Lang LaSalle Brokerage Inc. ("Purchaser's Broker") representing the Purchaser. Seller shall pay Seller's Broker a commission pursuant to a separate agreement between Seller and Broker. If and when the transaction contemplated hereby has been closed, a commission of two percent (2%) of the Purchase Price shall be earned by Purchaser's Broker and paid by Seller through Escrow. Seller and Purchaser each represent to the other that it has not done anything to cause any real estate commission or fee (other than any commissions owed to Broker) to be owing with respect to this sale, and each representing party agrees to indemnify, defend and hold harmless the other party against claims, liabilities, losses, damages, costs and expenses incurred by the other party and arising from any such commission or fee alleged to be due as a result of the actions of the representing party.

**12.08 Applicable Law.** Unless superseded by Federal Law, this Agreement shall be interpreted, construed and enforced under the laws of the State of California.

**12.09 Attorneys' Fees.** In any Action, the prevailing party shall be entitled to recover actual attorneys' fees and all other litigation costs including without limitation costs awardable pursuant to California Code of Civil Procedure Section 1033.5 and amounts payable to expert witnesses ("Costs") in addition to any other available remedy. In addition to the fees and Costs recoverable under the preceding sentence, the parties agree that the prevailing party shall be entitled to recover actual attorneys' fees and Costs incurred in connection with the enforcement of a judgment arising from such Action.

12.10 Neither party shall be responsible for failure to comply with the notice or delivery provisions of this Agreement, if such failure is due to unusually inclement weather, acts of God, strikes or any cause beyond such parties control (force majeure); provided however, that any delay by such reason of force majeure shall extend the time within which such party is obligated to comply by a period of time equal to such delay.

12.11 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. Pacific time.

12.12 Exhibits. All exhibits referenced herein and attached hereto or made a part hereof for all purposes as fully and to the same extent as if set forth in the text hereof verbatim.

12.13 Invalidity, Waiver and Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and agree that the normal rule of construction, to the effect that any ambiguities are to be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

12.14 Confidentiality. Seller and Purchaser agree that the business and legal terms of this Agreement are proprietary and confidential to the parties hereto. Until the Closing Date, neither party will discuss the legal or business terms or conditions of this Agreement with a third party, except for Purchaser's consultants, lenders, affiliates, attorneys, governmental authorities and tax advisors, without the other party's written consent.

12.15 As-Is. Except as expressly provided herein to the contrary, Seller agrees to sell and Purchaser agrees to purchase the Property on an "as is, where is" basis. Seller makes no warranties as to the condition of the Property other than as expressly set forth herein or in the documents delivered at Closing.

12.16 Survival. The provisions of Sections 6.02, 9.02, 12.07 and Article IV, and any other provisions that are expressly stated to survive, shall survive closing and shall not be deemed to have merged herewith or with the Deed. In addition, the provisions of this Agreement that contemplate performance after the Closing and the obligations of the parties not fully performed at the Closing shall survive the Closing and shall not be deemed to be merged into or waived by the Instruments of Closing.

12.17 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. Execution copies of this Agreement may be delivered by facsimile or

email, and the parties hereto agree to accept and be bound by facsimile or email signatures hereto. The signature of any party on a facsimile or email document, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of either party, any facsimile or email document is to be re-executed in original form by the party who executed the original facsimile or email document. Neither party may raise the use of a facsimile machine or the fact that any signature was transmitted through the use of a facsimile machine as a defense to the enforcement of this Agreement.

**12.18 Section 1031 Exchange.** Each party may consummate the purchase and sale of the Property as part of a so-called like kind exchange (the "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect the Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary; (c) the non-exchanging party shall not be required to take an assignment of the purchase agreement for the relinquished property or be required to acquire or hold title to any real property for purposes of consummating the Exchange; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by either party had the exchanging party not consummated its purchase through the Exchange. The non-exchanging party shall not by this agreement or acquiescence to the Exchange (x) have its rights under this Agreement affected or diminished in any manner, or (y) be responsible for compliance with or be deemed to have warranted to the exchanging party that the Exchange in fact complies with Section 1031 of the Code.

**12.19 Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party at Closing, each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing, any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the conveyance, transfer and assignment of the Property to Purchaser.

**12.20 Marketing.** Seller agrees not to market or show the Property to any other prospective purchasers during the term of this Agreement.

**12.21 Procedure for Indemnity.** The following provisions govern actions for indemnity under this Agreement. Promptly after receipt by an Indemnitee of notice of any claim, such Indemnitee will, if a claim in respect thereof is to be made against the Indemnitor, deliver to the Indemnitor written notice thereof and the Indemnitor shall have the right to participate in and, if the Indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the Indemnitee with respect to such claim, to assume the defense thereof, with counsel mutually satisfactory to the parties; provided, however, that an Indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnitor, if the Indemnitee reasonably believes that representation of such Indemnitee by the counsel retained by the Indemnitor would be inappropriate due to actual or potential differing interests between such Indemnitee and any other party represented by such counsel in such proceeding. The failure of Indemnitee to deliver written notice to the Indemnitor within a reasonable time after Indemnitee receives notice of any such claim shall relieve such Indemnitor of any liability to the Indemnitee under this indemnity only if and to the extent that such failure is

prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld such consent.

### ARTICLE XIII ESCROW INSTRUCTIONS

13.01 Investment and Use of Funds. The Escrow Agent shall invest the Earnest Money in government insured interest-bearing accounts satisfactory to Purchaser at an institution having assets of not less than \$125,000,000, shall not commingle the Earnest Money with any funds of the Escrow Agent or others and shall promptly provide Purchaser and Seller with confirmation of the investments made. If the Closing under this Agreement occurs, the Escrow Agent shall deliver the Earnest Money to, or upon the instructions of, Purchaser on the Closing Date. Provided such supplemental escrow instructions are not in conflict with this Agreement as it may be amended in writing from time to time, Seller and Purchaser agree to execute such supplemental escrow instructions as may be appropriate to enable Escrow Agent to comply with the terms of this Agreement.

13.02 Termination before Expiration of Due Diligence Period. The Purchaser shall notify the Escrow Agent of the date that the Inspection Period ends promptly after such date is established under this Agreement, and Escrow Agent may rely upon such notice. If Purchaser elects to terminate the Agreement pursuant to Section 2.01, Escrow Agent shall pay the entire Earnest Money to Purchaser one (1) business day following receipt of the Due Diligence Termination Notice from Purchaser (as long as the current investment can be liquidated in one (1) day) and this Agreement shall thereupon terminate, less the nonrefundable One Hundred Dollars (\$100.00) stipulated in Section 2.01, which shall be delivered to Seller. No notice to Escrow Agent from Seller shall be required for the release of the Earnest Money to Purchaser by Escrow Agent. The Earnest Money shall be released and delivered to Purchaser from Escrow Agent upon Escrow Agent's receipt of the Due Diligence Termination Notice, despite any objection or potential objection by Seller. Seller agrees it shall have no right to bring any action against Escrow Agent which would have the effect of delaying, preventing or in any way interrupting Escrow Agent's delivery of the Earnest Money to Purchaser pursuant to this Section, any remedy of Seller being against Purchaser, not Escrow Agent.

13.03 Other Terminations. Upon a termination of this Agreement other than as described in Section 13.02, either party to this Agreement (the "Terminating Party") may give written notice to the Escrow Agent and the other party (the "Non-Terminating Party") of such termination and the reason for such termination. Such request shall also constitute a request for the release of the Earnest Money to the Terminating Party. The Non-Terminating Party shall then have five (5) business days in which to object in writing to the release of the Earnest Money to the Terminating Party. If the Non-Terminating Party provides such an objection, then the Escrow Agent shall retain the Earnest Money until it receives written instructions executed by both Seller and Purchaser as to the disposition and disbursement of the Earnest Money, or until ordered by final court order, decree or judgment, which is not subject to appeal, to deliver the Earnest Money to a particular party, in which event the Earnest Money shall be delivered in accordance with such notice, instruction, order, decree or judgment.

13.04 Interpleader. Except as provided in Section 13.02, Seller and Purchaser mutually agree that in the event of any controversy regarding the Earnest Money, unless mutual written

Instructions are received by the Escrow Agent directing the Earnest Money's disposition, the Escrow Agent shall not take any action, but instead shall await the disposition of any proceeding relating to the Earnest Money or, at the Escrow Agent's option, the Escrow Agent may interplead all parties and deposit the Earnest Money with a court of competent jurisdiction in which event the Escrow Agent may recover all of its court costs and reasonable attorneys' fees. Seller or Purchaser, whichever loses in any such interpleader action, shall be solely obligated to pay such costs and fees of the Escrow Agent, as well as the reasonable attorneys' fees of the prevailing party in accordance with the other provisions of this Agreement.

**13.05 Liability of Escrow Agent.** The parties acknowledge that the Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that the Escrow Agent shall not be deemed to be the agent of either of the parties, and that the Escrow Agent shall not be liable to either of the parties for any action or omission on its part taken or made in good faith, and not in disregard of this Agreement, but shall be liable for its negligent acts and for any loss, cost or expense incurred by Seller or Purchaser from the Escrow Agent's mistake of law respecting the Escrow Agent's scope or nature of its duties. Seller and Purchaser shall jointly and severally indemnify and hold the Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of the Escrow Agent's duties hereunder, except with respect to actions or omissions taken or made by the Escrow Agent in bad faith, in disregard of this Agreement or involving negligence on the part of the Escrow Agent.

In witness hereof, the parties have entered into this Agreement in multiple original counterparts, each of which shall have the full force and effect and original, constituting only one instrument, effective as of the 26<sup>th</sup> day of February, 2013.

**AMERON INTERNATIONAL CORPORATION, TAMCO**, a California corporation  
a Delaware corporation

By: Kenneth A. Jack  
Name: Kenneth A. Jack  
Title: Vice President - Risk Management

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

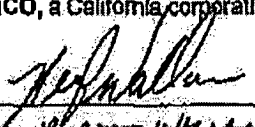
Instructions are received by the Escrow Agent directing the Earnest Money's disposition, the Escrow Agent shall not take any action, but instead shall await the disposition of any proceeding relating to the Earnest Money or, at the Escrow Agent's option, the Escrow Agent may interplead all parties and deposit the Earnest Money with a court of competent jurisdiction in which event the Escrow Agent may recover all of its court costs and reasonable attorneys' fees. Seller or Purchaser, whichever loses in any such interpleader action, shall be solely obligated to pay such costs and fees of the Escrow Agent, as well as the reasonable attorneys' fees of the prevailing party in accordance with the other provisions of this Agreement.

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In witness hereof, the parties have entered into this Agreement in multiple original counterparts, each of which shall have the full force and effect and original, constituting only one instrument, effective as of the 26<sup>th</sup> day of February, 2013.

**AMERON INTERNATIONAL CORPORATION, TAMCO**, a California corporation  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Name: Robert Wallace  
Title: SR. CORPORATE ATTORNEY  
ASST. SECRETARY

#### JOINDER OF TITLE COMPANY

Title Company hereby joins in the execution of the Agreement and agrees to accept, hold and return the Deposit, and disburse any funds received under the Agreement in accordance with the provisions of such Agreement. The Title Company shall only be bound to those provisions of the Agreement relating to title insurance, the Deposit, and the Closing escrow. Provided that the Title Company complies with such provisions of the Agreement, the parties to the Agreement agree that the Title Company shall not be liable for any loss or damage arising thereunder.

#### CHICAGO TITLE INSURANCE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Title  
Insurance  
Co.



**EXHIBIT "A"**

**PROPERTY DESCRIPTION**

Parcel 3 of Parcel Map No. 7847, in the city of Rancho Cucamonga, County of San Bernardino, State of California, as per plat recorded in Book 82 of Parcel Maps, Pages 48 through 51, inclusive, records of said County\*\*\*\*\*

**EXHIBIT "B"**  
**FORM OF CALIFORNIA GRANT DEED**

Recording Requested By and  
When Recorded Return To:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

(Space above this line for Recorder's use)

In accordance with Section 11932 of the California Revenue and Taxation Code, as amended, the Grantor (as hereinafter defined) has declared the amount of the transfer tax by a separate statement which is not being recorded with this Grant Deed.

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, \_\_\_\_\_, a \_\_\_\_\_ ("Grantor") hereby grants to \_\_\_\_\_, a \_\_\_\_\_ ("Grantee"), the real property located in the City of Rancho Cucamonga, County of San Bernardino, State of California, described on Exhibit A, attached hereto and made a part hereof (the "Property").

**SUBJECT ONLY TO**, all matters of record.

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Insert Notary acknowledgment for state/county where the document is physically  
executed/notarized OR use Multi-state acknowledgment approved by Title Company]

EXHIBIT A

PROPERTY

[Check with Title Company for Transfer Tax Statement applicable for the county where the Property is located.]

EXHIBIT "C"

BILL OF SALE

Between: Ameron International Corporation

"Seller"

And: TAMCO

"Purchaser"

Dated: \_\_\_\_\_, 2013

This instrument is executed and delivered pursuant to that certain Real Estate Contract and Joint Escrow Instructions (the "Agreement") dated February \_\_, 2013, by and between Seller and Purchaser. This instrument addresses the "Land" as defined in the Agreement, located on Arrow Highway in Rancho Cucamonga, California.

1. Sale of Personalty. For good and valuable consideration, Seller hereby sells, transfers, sets over and conveys to Purchaser the following:

a. All of Seller's right, title and interest, in and to all fixtures, furniture, equipment, and other tangible personal property, if any, owned by Seller located on the Land as of the Closing Date (the "Personal Property"); and

b. All of Seller's right, title and interest in and to all site plans, permits, surveys, plans and specifications, floor plans, drawings, entitlements, zoning permits, building permits and applications, third-party reports, neighbor agreements and easements which relate to the Land (the "Intangible Property").

2. Agreement Applies. The covenants, agreements, representations, warranties, indemnities and limitations provided in the Agreement with respect to the property conveyed hereunder (including, without limitation, the limitations of liability provided in the Agreement), are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Purchaser and Seller and their respective successors and assigns.

BILL OF SALE

IN WITNESS WHEREOF, the undersigned have caused this Bill of Sale to be executed as of the date written above.

**Seller:**

**AMERON INTERNATIONAL  
CORPORATION, a Delaware  
corporation**

**By:**

**Name:** Kenneth A. Jeck

**Its:** Vice President - Risk Management

**Date:** \_\_\_\_\_



**EXHIBIT B**

1 DONALD D. STARK  
A Professional Corporation  
2 Suite 201 Airport Plaza  
2061 Business Center Drive  
3 Irvine, California 92715  
Telephone: (714) 752-8971  
4

5 CLAYSON, ROTHROCK & MANN  
601 South Main Street  
Corona, California 91720  
6 Telephone: (714) 737-1910  
Attorneys for Plaintiff  
7

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO  
10

11 CHINO BASIN MUNICIPAL WATER  
12 DISTRICT,

13 Plaintiff,

No. RCV 51010<sup>1</sup>

14  
15 v.

16 CITY OF CHINO, et al.

Defendants  
17

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19  
20 RESTATED JUDGMENT  
21  
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26  
27 <sup>1</sup> Original Judgment signed January 27, 1978, Case # 164327 by Judge Howard B. Weiner. File transferred August 1989, by order  
of the Court and assigned new case number RCV 51010.  
28

JUDGMENT  
TABLE OF CONTENTS

I. INTRODUCTION.....	1
1. Pleadings, Parties and Jurisdiction.....	1
2. Stipulation for Judgment.....	2
3. Trial; Findings and Conclusions.....	2
4. Definitions.....	2
5. Exhibits.....	4
II. DECLARATION OF RIGHTS.....	5
A. HYDROLOGY.....	5
6. Safe Yield.....	5
7. Overdraft and Prescriptive Circumstances.....	5
B. WATER RIGHTS IN SAFE YIELD.....	5
8. Overlying Rights.....	5
9. Appropriative Rights.....	6
10. Rights of the State of California.....	7
C. RIGHTS TO AVAILABLE GROUND WATER STORAGE CAPACITY.....	7
11. Available Ground Water Storage Capacity.....	7
12. Utilization of Available Ground Water Capacity.....	7
III. INJUNCTION.....	8
13. Injunction Against Unauthorized Production of Basin Water.....	8
14. Injunction Against Unauthorized Storage or Withdrawal of Stored Water.....	8
IV. CONTINUING JURISDICTION.....	9
15. Continuing jurisdiction.....	9
V. WATERMASTER.....	10
A. APPOINTMENT.....	10
16. Watermaster Appointment.....	10
B. POWERS AND DUTIES.....	10

17.	Powers and Duties.....	10
18.	Rules and Regulations.....	11
19.	Acquisition of Facilities.....	11
20.	Employment of Experts and Agents.....	12
21.	Measuring Devices.....	12
22.	Assessments.....	12
23.	Investment of Funds.....	12
24.	Borrowing.....	12
25.	Contracts.....	12
26.	Cooperation With Other Agencies.....	12
27.	Studies.....	13
28.	Ground Water Storage Agreements.....	13
29.	Accounting for Stored Water.....	13
30.	Annual Administrative Budget.....	13
31.	Review Procedures.....	14
C.	ADVISORY AND POOL COMMITTEES.....	15
32.	Authorization.....	15
33.	Term and Vacancies.....	15
34.	Voting Power.....	15
35.	Quorum.....	16
36.	Compensation.....	16
37.	Organization.....	16
38.	Powers and Functions.....	17
VI.	PHYSICAL SOLUTION.....	19
A.	GENERAL.....	19
39.	Purpose and Objective.....	19
40.	Need for Flexibility.....	19

41.	Watermaster Control.....	19
42.	General Pattern of Operations.....	20
B.	POOLING.....	20
43.	Multiple Pools Established.....	20
44.	Determination and Allocation of Rights to Safe Yield of Chino Basin.....	21
45.	Annual Replenishment.....	21
46.	Initial Pooling Plans.....	22
C.	REPORTS AND ACCOUNTING.....	22
47.	Production Reports.....	22
48.	Watermaster Reports and Accounting.....	22
D.	REPLENISHMENT.....	22
49.	Sources of Supplemental Water.....	22
50.	Methods of Replenishment.....	23
E.	REVENUES.....	23
51.	Production Assessment.....	23
52.	Minimal Producers.....	24
53.	Assessment Proceeds – Purposes.....	24
54.	Administrative Expenses.....	24
55.	Assessments -- Procedure.....	24
56.	Accumulation of Replenishment Water Assessment Proceeds.....	25
57.	Effective Date.....	25
VII.	MISCELLANEOUS PROVISIONS.....	25
58.	Designation of Address for Notice and Service.....	25
59.	Service of Documents.....	26
60.	Intervention After Judgment.....	26
61.	Loss of Rights.....	27
62.	Scope of Judgment.....	27

1	63.	Judgment Binding on Successors.....	27
2	64.	Costs.....	27
3	EXHIBIT 'A'	-- Location Map of Chino Basin.....	28
4	EXHIBIT 'B'	-- Hydrologic Map of Chino Basin.....	29
5	EXHIBIT 'C'	-- Parties With Overlying Agricultural Rights.....	30
6	EXHIBIT 'D'	-- Parties With Overlying Non-Agricultural Rights.....	53
7	EXHIBIT 'E'	-- Appropriative Rights.....	54
8	EXHIBIT 'F'	-- Overlying Agricultural Pooling Plan.....	55
9	EXHIBIT 'G'	-- Overlying Non-Agricultural Pooling Plan.....	57
10	EXHIBIT 'H'	-- Appropriative Pooling Plan.....	62
11	EXHIBIT 'I'	-- Engineering Appendix.....	70
12	EXHIBIT 'J'	-- Map of In Lieu Area No. 1.....	74
13	EXHIBIT 'K'	-- Legal Description of Chino Basin.....	75

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

CHINO BASIN MUNICIPAL WATER  
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.

Defendants

No. RCV 51010<sup>2</sup>

JUDGMENT

I. INTRODUCTION

1. Pleadings, Parties and Jurisdiction. The complaint herein was filed on January 2, 1975, seeking an adjudication of water rights, injunctive relief and the imposition of a physical solution. A first amended complaint was filed on July 16, 1976. The defaults of certain defendants have been entered, and certain other defendants dismissed. Other than defendants who have been dismissed or whose defaults have been entered, all defendants have appeared herein. By answers and order of this Court,

<sup>2</sup> Original Judgment signed January 27, 1978, Case # 164327 by Judge Howard B. Weiner. File transferred August 1989, by order of the Court and assigned new case number RCV 51010.



1 the issues have been made those of a full inter se adjudication between the parties. This Court has  
2 jurisdiction of the subject matter of this action and of the parties herein.

3 2. Stipulation For Judgment. Stipulation for entry of judgment has been filed by and on  
4 behalf of a majority of the parties, representing a majority of the quantitative rights herein adjudicated.

5 3. Trial; Findings and Conclusions. Trial was commenced on December 16, 1977, as to the  
6 non-stipulating parties, and findings of fact and conclusions of law have been entered disposing of the  
7 issues in the case.

8 4. Definitions. As used in this Judgment, the following terms shall have the meanings  
9 herein set forth:

10 (a) Active Parties. All parties other than those who have filed with Watermaster a  
11 written waiver of service of notices, pursuant to Paragraph 58.

12 (b) Annual or Year -- A fiscal year, July 1 through June 30, following, unless the  
13 context shall clearly indicate a contrary meaning.

14 (c) Appropriative Right -- The annual production right of a producer from the Chino  
15 Basin other than pursuant to an overlying right.

16 (d) Basin Water -- Ground water within Chino Basin which is part of the Safe Yield,  
17 Operating Safe Yield, or replenishment water in the Basin as a result of operations under the  
18 Physical Solution decreed herein. Said term does not include Stored Water.

19 (e) CBMWD -- Plaintiff Chino Basin Municipal Water District.

20 (f) Chino Basin or Basin -- The ground water basin underlying the area shown as  
21 such on Exhibit "B" and within the boundaries described in Exhibit "K".

22 (g) Chino Basin Watershed -- The surface drainage area tributary to and overlying  
23 Chino Basin.

24 (h) Ground Water -- Water beneath the surface of the ground and within the zone of  
25 saturation, i.e., below the existing water table.  
26  
27  
28

1 (i) Ground Water Basin -- An area underlain by one or more permeable formations  
2 capable of furnishing substantial water storage.

3 (j) Minimal Producer -- Any producer whose production does not exceed **ten** acre-  
4 feet per year.<sup>3</sup>

5 (k) MWD -- The Metropolitan Water District of Southern California.

6 (l) Operating Safe Yield -- The annual amount of ground water which Watermaster  
7 shall determine, pursuant to criteria specified in Exhibit "I", can be produced from Chino Basin by  
8 the Appropriative Pool parties free of replenishment obligation under the Physical Solution herein.

9 (m) Overdraft -- A condition wherein the total annual production from the Basin  
10 exceeds the Safe Yield thereof.

11 (n) Overlying Right -- The appurtenant right of an owner of lands overlying Chino  
12 Basin to produce water from the Basin for overlying beneficial use on such lands.

13 (o) Person. -- Any individual, partnership, association, corporation, governmental  
14 entity or agency, or other organization.

15 (p) PVMWD -- Defendant Pomona Valley Municipal Water District.

16 (q) Produce or Produced -- To pump or extract ground water from Chino Basin.

17 (r) Producer -- Any person who produces water from Chino Basin.

18 (s) Production -- Annual quantity, stated in acre feet, of water produced.

19 (t) Public Hearing -- A hearing after notice to all parties and to any other person  
20 legally entitled to notice.

21 (u) Reclaimed Water -- Water which, as a result of processing of waste water, is  
22 suitable for a controlled use.

23 (v) Replenishment Water -- Supplemental water used to recharge the Basin  
24 pursuant to the Physical Solution, either directly by percolating the water into the Basin or  
25

26  
27 <sup>3</sup> Order dated September 27, 2001.  
28

1 indirectly by delivering the water for use in lieu of production and use of safe yield or Operating  
2 Safe Yield.

3 (w) Responsible Party — The owner, co-owner, lessee or other person designated by  
4 multiple parties interested in a well as the person responsible for purposes of filing reports  
5 hereunder.

6 (x) Safe Yield — The long-term average annual quantity of ground water (excluding  
7 replenishment or stored water but including return flow to the Basin from use of replenishment or  
8 stored water) which can be produced from the Basin under cultural conditions of a particular year  
9 without causing an undesirable result.

10 (y) SBVMWD — San Bernardino Valley Municipal Water District.

11 (z) State Water — Supplemental Water imported through the State Water Resources  
12 Development System, pursuant to Chapter 8, Division 6, Part 6 of the Water Code.

13 (aa) Stored Water — Supplemental water held in storage, as a result of direct  
14 spreading, in lieu delivery, or otherwise, for subsequent withdrawal and use pursuant to  
15 agreement with Watermaster.

16 (bb) Supplemental Water — Includes both water imported to Chino Basin from outside  
17 Chino Basin Watershed, and reclaimed water.

18 (cc) WMWD — Defendant Western Municipal Water District of Riverside County.

19 5. List of Exhibits. The following exhibits are attached to this Judgment and made a part  
20 hereof:  
21

22 “A” -- “Location Map of Chino Basin” showing boundaries of Chino Basin Municipal Water  
23 District, and other geographic and political features of Chino Basin.

24 “B” -- “Hydrologic Map of Chino Basin” showing hydrologic features of Chino Basin.

25 “C” – Table Showing Parties in Overlying (Agricultural) Pool.

26 “D” – Table Showing Parties in Overlying (Non-agricultural Pool and Their Rights.

27 “E” – Table Showing Appropriators and Their Rights.  
28

1 "F" -- Overlying (Agricultural) Pool Pooling Plan.

2 "G" -- Overlying (Non-agricultural) Pool Pooling Plan.

3 "H" -- Appropriative Pool Pooling Plan.

4 "I" -- Engineering Appendix.

5 "J" -- Map of In Lieu Area No. 1.

6 "K" -- Legal Description of Chino Basin.

7  
8 II. DECLARATION OF RIGHTS

9  
10 A. HYDROLOGY

11  
12 6. Safe Yield. The Safe Yield of Chino Basin is 140,000 acre feet per year.

13 7. Overdraft and Prescriptive Circumstances. In each year for a period in excess of five  
14 years prior to filing of the First Amended Complaint herein, the Safe Yield of the Basin has been  
15 exceeded by the annual production therefrom, and Chino Basin is and has been for more than five years  
16 in a continuous state of over draft. The production constituting said overdraft has been open, notorious,  
17 continuous, adverse, hostile and under claim of right. The circumstances of said overdraft have given  
18 notice to all parties of the adverse nature of such aggregate over-production.

19 B. WATER RIGHTS IN SAFE YIELD

20  
21 8. Overlying Rights. The parties listed in Exhibits "C" and "D", are the owners or in  
22 possession of lands which overlie Chino Basin. As such, said parties have exercised overlying water  
23 rights in Chino Basin. All overlying rights owned or exercised by parties listed in Exhibits "C" and "D",  
24 have, in the aggregate, been limited by prescription except to the extent such rights have been preserved  
25 by self-help by said parties. Aggregate preserved overlying rights in the Safe Yield for agricultural pool  
26 use, including the rights of the State of California, total 82,800 acre feet per year. Overlying rights for  
27 non-agricultural pool use total 7,366 acre feet per year and are individually decreed for each affected  
28

1 party in Exhibit "D". No portion of the Safe Yield of Chino Basin exists to satisfy unexercised overlying  
2 rights, and such rights have all been lost by prescription. However, uses may be made of Basin Water on  
3 overlying lands which have no preserved overlying rights pursuant to the Physical Solution herein. All  
4 overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart  
5 therefrom ***for the term of the Peace Agreement except that the members of the Overlying (Non-***  
6 ***Agricultural) Pool shall have the right to Transfer or lease their quantified Production rights (i)***  
7 ***within the Overlying (Non-Agricultural) Pool; (ii) to Watermaster in conformance with the***  
8 ***procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000;***  
9 ***or (iii) in accordance with the Overlying (Non-Agricultural) Pool Pooling Plan set forth in Exhibit***  
10 ***"G."***<sup>4</sup>

11 9. Appropriative Rights. The parties listed in Exhibit "E" are the owners of appropriative  
12 rights, including rights by prescription, in the unadjusted amounts therein set forth, and by reason thereof  
13 are entitled under the Physical Solution to share in the remaining Safe Yield, after satisfaction of overlying  
14 rights and rights of the State of California, and in the Operating Safe Yield in Chino Basin, in the annual  
15 shares set forth in Exhibit "E".

16 (a) Loss of Priorities. By reason of the long continued overdraft in Chino Basin, and  
17 in light of the complexity of determining appropriative priorities and the need for conserving and  
18 making maximum beneficial use of the water resources of the State, each and all of the parties  
19 listed in Exhibit "E" are estopped and barred from asserting special priorities or preferences, inter  
20 se. All of said appropriative rights are accordingly deemed and considered of equal priority.

21 (b) Nature and Quantity. All rights listed in Exhibit "E" are appropriative and  
22 prescriptive in nature. By reason of the status of the parties, and the provisions of Section 1007  
23 of the Civil Code, said rights are immune from reduction or limitation by prescription.  
24

25  
26  
27 <sup>4</sup> Order dated September 28, 2000 and Order dated April 19, 2001 further modified by Order dated December 21, 2007.  
28

1           10.     Rights of the State of California. The State of California, by and through its Department  
2 of Corrections, Youth Authority and Department of Fish and Game, is a significant producer of ground  
3 water from and the State is the largest owner of land overlying Chino Basin. The precise nature and  
4 scope of the claims and rights of the State need not be, and are not, defined herein. The State, through  
5 said departments, has accepted the Physical Solution herein decreed, in the interests of implementing the  
6 mandate of Section 2 of Article X of the California Constitution. For all purposes of this Judgment, all  
7 future production by the State or its departments or agencies for overlying use on State-owned lands shall  
8 be considered as agricultural pool use.

9  
10                   C. RIGHTS TO AVAILABLE GROUND WATER STORAGE CAPACITY

11           11.     Available Ground Water Storage Capacity. There exists in Chino Basin a substantial  
12 amount of available ground water storage capacity which is not utilized for storage or regulation of Basin  
13 Waters. Said reservoir capacity can appropriately be utilized for storage and conjunctive use of  
14 supplemental water with Basin Waters. It is essential that said reservoir capacity utilization for storage  
15 and conjunctive use of supplemental water be undertaken only under Watermaster control and regulation,  
16 in order to protect the integrity of both such Stored Water and Basin Water in storage and the Safe Yield  
17 of Chino Basin.

18  
19           12.     Utilization of Available Ground Water Capacity. Any person or public entity, whether a  
20 party to this action or not, may make reasonable beneficial use of the available ground water storage  
21 capacity of Chino Basin for storage of supplemental water; provided that no such use shall be made  
22 except pursuant to written agreement with Watermaster, as authorized by Paragraph 28. In the allocation  
23 of such storage capacity, the needs and requirements of lands overlying Chino Basin and the owners of  
24 rights in the Safe Yield or Operating Safe Yield of the Basin shall have priority and preference over  
25 storage for export.  
26  
27  
28

1 III. INJUNCTION

2 13. Injunction Against Unauthorized Production of Basin Water. Each party in each of the  
3 respective pools is enjoined, as follows:  
4

5 (a) Overlying Agricultural Pool. Each party in the Overlying (Agricultural) Pool, its  
6 officers, agents, employees, successors and assigns, is and they each are ENJOINED AND  
7 RESTRAINED from producing ground water from Chino Basin in any year hereafter in excess of  
8 such party's correlative share of the aggregate of 82,800 acre feet allocated to said Pool, except  
9 pursuant to the Physical Solution or a storage water agreement.

10 (b) Overlying Non-Agricultural Pool. Each party in the Overlying Non-Agricultural  
11 Pool, its officers, agents, employees, successors and assigns, is and they each are ENJOINED  
12 AND RESTRAINED from producing ground water of Chino Basin in any year hereafter in excess  
13 of such party's decreed rights in the Safe Yield, except pursuant to the provisions of the Physical  
14 Solution or a storage water agreement.

15 (c) Appropriative Pool. Each party in the Appropriative Pool, its officers, agents,  
16 employees, successors and assigns, is and they are each ENJOINED AND RESTRAINED from  
17 producing ground water of Chino Basin in any year hereafter in excess of such party's decreed  
18 share of Operating Safe Yield, except pursuant to the provisions of the Physical Solution or a  
19 storage water agreement.  
20

21 14. Injunction Against Unauthorized Storage or Withdrawal of Stored Water. Each party, its  
22 officers, agents, employees, successors and assigns is and they each are ENJOINED AND  
23 RESTRAINED from storing supplemental water in Chino Basin for withdrawal, or causing withdrawal of,  
24 water stored by that party, except pursuant to the terms of a written agreement with Watermaster and in  
25 accordance with Watermaster regulations. Any supplemental water stored or recharged in the Basin,  
26 except pursuant to such a Watermaster agreement, shall be deemed abandoned and not classified as  
27 Stored Water. This paragraph has no application, as such, to supplemental water spread or provided in  
28 lieu by Watermaster pursuant to the Physical Solution.



1 IV. CONTINUING JURISDICTION

2 15. Continuing Jurisdiction. Full jurisdiction, power and authority are retained and reserved  
3 to the Court as to all matters contained in this judgment, except:  
4

5 (a) The redetermination of Safe Yield, as set forth in Paragraph 6, during the first ten  
6 (10) years of operation of the Physical Solution;

7 (b) The allocation of Safe Yield as between the several pools as set forth in  
8 Paragraph 44 of the Physical Solution;

9 (c) The determination of specific quantitative rights and shares in the declared Safe  
10 Yield or Operating Safe Yield herein declared in Exhibits "D" and "E"; and  
11

12 (d) The amendment or modification of Paragraphs 7 (a) and (b) of Exhibit "H", during  
13 the first ten (10) years of operation of the Physical Solution, and thereafter only upon affirmative  
14 recommendation of at least 67% of the voting power (determined pursuant to the formula  
15 described in Paragraph 3 of Exhibit "H"), but not less than one-third of the members of the  
16 Appropriative Pool Committee representatives of parties who produce water within IEUA or  
17 WMWD; after said tenth year the formula set forth in said Paragraph 7 (a) and 7 (b) of Exhibit "H"  
18 for payment of the costs of replenishment water may be changed to 100% gross or net, or any  
19 percentage split thereof, but only in response to recommendation to the Court by affirmative vote  
20 of at least 67% of said voting power of the Appropriative Pool representatives of parties who  
21 produce ground water within IEUA or WMWD, but not less than one-third of their number. In  
22 such event, the Court shall act in conformance with such recommendation unless there are  
23 compelling reasons to the contrary; and provided, further, that the fact that the allocation of Safe  
24 Yield or Operating Safe Yield shares may be rendered moot by a recommended change in the  
25 formula for replenishment assessments shall not be deemed to be such a "compelling reason."  
26  
27  
28

1 Said continuing jurisdiction is provided for the purpose of enabling the Court, upon application of any  
2 party, the Watermaster, the Advisory Committee or any Pool Committee, by motion and, upon at least 30  
3 days' notice thereof, and after hearing thereon, to make such further or supplemental orders or directions  
4 as may be necessary or appropriate for interpretation, enforcement or carrying out of this Judgment, and  
5 to modify, amend or amplify any of the provisions of this Judgment.

## 6 V. WATERMASTER

### 7 A. APPOINTMENT

8  
9  
10 16. Watermaster Appointment. CBMWD, acting by and through a majority of its board of  
11 directors, is hereby appointed Watermaster, to administer and enforce the provisions of this Judgment  
12 and any subsequent instructions or orders of the Court hereunder. The term of appointment of  
13 Watermaster shall be for five (5) years. The Court will by subsequent orders provide for successive terms  
14 or for a successor Watermaster. Watermaster may be changed at any time by subsequent order of the  
15 Court, on its own motion, or on the motion of any party after notice and hearing. Unless there are  
16 compelling reasons to the contrary, the Court shall act in conformance with a motion requesting the  
17 Watermaster be changed if such motion is supported by a majority of the voting power of the Advisory  
18 Committee.

### 19 B. POWERS AND DUTIES

20  
21 17. Powers and Duties. Subject to the continuing supervision and control of the Court,  
22 Watermaster shall have and may exercise the express powers, and shall perform the duties, as provided  
23 in this Judgment or hereafter ordered or authorized by the Court in the exercise of the Court's continuing  
24 jurisdiction.

1           18.     Rules and Regulations.<sup>5</sup>

2                   (a) Upon recommendation by the Advisory Committee, Watermaster shall make  
3 and adopt, after public hearing, appropriate rules and regulations for conduct of Watermaster  
4 affairs, including, meeting schedules and procedures, and compensation of members of  
5 Watermaster. Thereafter, Watermaster may amend the rules from time to time upon  
6 recommendation, or with approval of the Advisory Committee after hearing noticed to active  
7 parties, except that compensation of Watermaster members shall be subject to Court Approval. A  
8 copy of the rules and regulations, and of amendments, shall be mailed to each active party.  
9

10                  (b) Under the rules, Watermaster members shall be paid up to \$125 for each day's  
11 attendance at meetings at the direction of the board, not to exceed eight meetings in each month.  
12 Compensation shall not be paid for junkets or attendance at conferences, seminars, or retreats at  
13 locations other than Watermaster headquarters. Members shall not be compensated for more than  
14 one meeting each day.

15                  (c) Under the rules, Watermaster members may be reimbursed for reasonable and  
16 necessary travel, meals, lodging and registration expenses incurred on Watermaster business.  
17 Mileage shall not be paid for travel to or from Watermaster meetings unless the individual must  
18 travel more than 50 miles per month. The Watermaster's budget shall include an appropriation for  
19 expense reimbursement. The Watermaster shall file a report on the expense reimbursement with  
20 the court as part of the Annual Report. The Report shall disclose total expense reimbursements  
21 and single expenditures for items of \$125.00 or more.  
22

23           19.     Acquisition of Facilities. Watermaster may purchase, lease, acquire and hold all  
24 necessary facilities and equipment; provided, that it is not the intent of the Court that Watermaster acquire  
25 any interest in real property or substantial capital assets.  
26

---

27 <sup>5</sup> Order dated March 31, 1999.  
28

1           20.     Employment of Experts and Agents. Watermaster may employ or retain such  
2 administrative, engineering, geologic, accounting, legal or other specialized personnel and consultants as  
3 may be deemed appropriate in the carrying out of its powers and shall require appropriate bonds from all  
4 officers and employees handling Watermaster funds. Watermaster shall maintain records for purposes of  
5 allocation of costs of such services as well as of all other expenses of Watermaster administration as  
6 between the several pools established by the Physical Solution.

7           21.     Measuring Devices. Watermaster shall cause parties, pursuant to uniform rules, to install  
8 and maintain in good operating condition, at the cost of each party, such necessary measuring devices or  
9 meters as Watermaster may deem appropriate. Such measuring devices shall be inspected and tested  
10 as deemed necessary by Watermaster, and the cost thereof shall constitute an expense of Watermaster.  
11

12           22.     Assessments. Watermaster is empowered to levy and collect all assessments provided  
13 for in the pooling plans and Physical Solution.  
14

15           23.     Investment of Funds. Watermaster may hold and invest any and all Watermaster funds  
16 in investments authorized from time to time for public agencies of the State of California.

17           24.     Borrowing. Watermaster may borrow from time to time amounts not exceeding the  
18 annual anticipated receipts of Watermaster during such year.  
19

20           25.     Contracts. Watermaster may enter into contracts for the performance of any powers  
21 herein granted; provided, however, that Watermaster may not contract with or purchase materials,  
22 supplies or services from IEUA, except upon the prior recommendation and approval of the Advisory  
23 Committee and pursuant to written order of the Court.

24           26.     Cooperation With Other Agencies. Subject to prior recommendation or approval of the  
25 Advisory Committee, Watermaster may act jointly or cooperate with agencies of the United States and the  
26 State of California or any political subdivisions, municipalities or districts or any person to the end that the  
27 purpose of the Physical Solution may be fully and economically carried out.  
28

1           27.     Studies. Watermaster may, with concurrence of the Advisory Committee or affected Pool  
2 Committee and in accordance with Paragraph 54 (b), undertake relevant studies of hydrologic conditions,  
3 both quantitative and qualitative, and operating aspects of implementation of the management program  
4 for Chino Basin.

5           28.     Ground Water Storage Agreements. Watermaster shall adopt, with the approval of the  
6 Advisory Committee, uniformly applicable rules and a standard form of agreement for storage of  
7 supplemental water, pursuant to criteria therefore set forth in Exhibit "I". Upon appropriate application by  
8 any person, Watermaster shall enter into such a storage agreement; provided that all such storage  
9 agreements shall first be approved by written order of the Court, and shall by their terms preclude  
10 operations which will have a substantial adverse impact on other producers.

11  
12           29.     Accounting for Stored Water. Watermaster shall calculate additions, extractions and  
13 losses and maintain an annual account of all Stored Water in Chino Basin, and any losses of water  
14 supplies or Safe Yield of Chino Basin resulting from such Stored Water.

15  
16           30.     Annual Administrative Budget. Watermaster shall submit to Advisory Committee an  
17 administrative budget and recommendation for each fiscal year on or before March 1. The Advisory  
18 Committee shall review and submit said budget and their recommendations to Watermaster on or before  
19 April 1, following. Watermaster shall hold a public hearing on said budget at its April quarterly meeting  
20 and adopt the annual administrative budget which shall include the administrative items for each pool  
21 committee. The administrative budget shall set forth budgeted items in sufficient detail as necessary to  
22 make a proper allocation of the expense among the several pools, together with Watermaster's proposed  
23 allocation. The budget shall contain such additional comparative information or explanation as the  
24 Advisory Committee may recommend from time to time. Expenditures within budgeted items may  
25 thereafter be made by Watermaster in the exercise of powers herein granted, as a matter of course. Any  
26 budget transfer in excess of 20% of a budget category during any budget year or modification of such  
27 administrative budget during any year shall be first submitted to the Advisory Committee for review and  
28 recommendation.

1           31.     Review Procedures. All actions, decisions or rules of Watermaster shall be subject to  
2 review by the Court on its own motion or on timely motion by any party, the Watermaster (in the case of a  
3 mandated action), the Advisory Committee, or any Pool Committee, as follows:

4                   (a)     Effective Date of Watermaster Action. Any action, decision or rule of  
5 Watermaster shall be deemed to have occurred or been enacted on the date on which written  
6 notice thereof is mailed. Mailing of copies of approved Watermaster minutes to the active parties  
7 shall constitute such notice to all parties.

8                   (b)     Noticed Motion. Any party, the Watermaster (as to any mandated action), the  
9 Advisory Committee, or any Pool Committee may, by a regularly noticed motion, apply to the  
10 Court for review of any Watermaster's action, decision or rule. Notice of such motion shall be  
11 served personally or mailed to Watermaster and to all active parties. Unless otherwise ordered  
12 by the Court, such motion shall not operate to stay the effect of such Watermaster action,  
13 decision or rule.

14                   (c)     Time for Motion. Notice of motion to review any Watermaster action, decision or  
15 rule shall be served and filed within ninety (90) days after such Watermaster action, decision or  
16 rule, except for budget actions, in which event said notice period shall be sixty (60) days.

17                   (d)     De Novo Nature of Proceedings. Upon the filing of any such motion, the Court  
18 shall require the moving party to notify the active parties, the Watermaster, the Advisory  
19 Committee, and each Pool Committee, of a date for taking evidence and argument, and on the  
20 date so designated shall review de novo the question at issue. Watermaster's findings or  
21 decision, if any, may be received in evidence at said hearing, but shall not constitute presumptive  
22 or prima facie proof of any fact in issue.

23                   (e)     Decision. The decision of the Court in such proceeding shall be an appealable  
24 supplemental order in this case. When the same is final, it shall be binding upon the  
25 Watermaster and all parties.  
26  
27  
28

1  
2  
3 C. ADVISORY AND POOL COMMITTEES

4 32. Authorization. Watermaster is authorized and directed to cause committees of producer  
5 representatives to be organized to act as Pool Committees for each of the several pools created under  
6 the Physical solution. Said Pool Committees shall, in turn, jointly form an Advisory Committee to assist  
7 Watermaster in performance of its functions under this judgment. Pool Committees shall be composed as  
8 specified in the respective pooling plans, and the Advisory Committee shall be composed of ten (10)  
9 voting representatives from each pool, as designated by the respective Pool Committee<sup>6</sup> **in accordance**  
10 **with each pool's pooling plan.** WMWD, **Three Valleys Municipal Water District (Successor to**  
11 **PVMWD)** and SBVMWD shall each be entitled to one non-voting representative on said Advisory  
12 Committee.

13  
14 33. Term and Vacancies. Members of any Pool Committee, shall serve for the term, and  
15 vacancies shall be filled, as specified in the respective pooling plan. Members of the Advisory Committee  
16 shall serve at the will of their respective Pool Committee.

17 34. Voting Power. The voting power on each Pool Committee shall be allocated as provided  
18 in the respective pooling plan. The voting power on the Advisory Committee shall be one hundred (100)  
19 votes allocated among the three pools in proportion to the total assessments paid to Watermaster during  
20 the preceding year; provided, that the minimum voting power of each pool shall be

21  
22 (a) Overlying Agricultural Pool 20,

23 (b) Overlying Non-Agricultural Pool 5, and

24 (c) Appropriative Pool 20.  
25  
26

27 <sup>6</sup> Order dated September 18, 1996.  
28

1 In the event any pool is reduced to its said minimum vote, the remaining votes shall be allocated between  
2 the remaining pools on said basis of assessments paid to Watermaster by each such remaining pool  
3 during the preceding year. The method of exercise of each pool's voting power on the Advisory  
4 Committee shall be as determined by the respective pool committees.

5 35. Quorum. A majority of the voting power of the Advisory Committee or any Pool  
6 Committee shall constitute a quorum for the transaction of affairs of such Advisory or Pool Committee;  
7 provided, that at least one representative of each Pool Committee shall be required to constitute a  
8 quorum of the Advisory Committee. No Pool Committee representative may purposely absent himself or  
9 herself, without good cause, from an Advisory Committee meeting to deprive it of a quorum. Action by  
10 affirmative vote of a majority of the entire voting power of any Pool Committee or the Advisory Committee  
11 shall constitute action by such committee. Any action or recommendation of a Pool Committee or the  
12 Advisory Committee shall be transmitted to Watermaster in writing, together with a report of any  
13 dissenting vote or opinion.  
14

15 36. Compensation. Pool or Advisory Committee members may receive compensation, to be  
16 established by the respective pooling plan, but not to exceed twenty-five dollars (\$25.00) for each  
17 meeting of such Pool or Advisory Committee attended, and provided that no member of a Pool or  
18 Advisory Committee shall receive compensation of more than three hundred (\$300.00) dollars for service  
19 on any such committee during any one year. All such compensation shall be a part of Watermaster  
20 administrative expense. No member of any Pool or Advisory Committee shall be employed by  
21 Watermaster or compensated by Watermaster for professional or other services rendered to such Pool or  
22 Advisory Committee or to Watermaster, other than the fee for attendance at meetings herein provided,  
23 plus reimbursement of reasonable expenses related to activities within the Basin.  
24

25 37. Organization.

26 (a) Organizational Meeting. At its first meeting in each year, each Pool Committee  
27 and the Advisory Committee shall elect a chairperson and a vice chairperson from its  
28



1 membership. It shall also select a secretary, a treasurer and such assistant secretaries and  
2 treasurers as may be appropriate, any of whom may, but need not, be members of such Pool or  
3 Advisory Committee.

4 (b) Regular Meetings. All Pool Committees and the Advisory Committee shall hold  
5 regular meetings at a place and time to be specified in the rules to be adopted by each Pool and  
6 Advisory Committee. Notice of regular meetings of any Pool or Advisory Committee, and of any  
7 change in time or place thereof, shall be mailed to all active parties in said pool or pools.  
8

9 (c) Special Meetings. Special meetings of any Pool or Advisory Committee may be  
10 called at any time by the Chairperson or by any three (3) members of such Pool or Advisory  
11 Committee by delivering notice personally or by mail to each member of such Pool or Advisory  
12 Committee and to each active party at least 24 hours before the time of each such meeting in the  
13 case of personal delivery, and 96 hours in the case of mail. The calling notice shall specify the  
14 time and place of the special meeting and the business to be transacted. No other business shall  
15 be considered at such meeting.  
16

17 (d) Minutes. Minutes of all Pool Committee, Advisory Committee and Watermaster  
18 meetings shall be kept at Watermaster's offices. Copies thereof shall be mailed or otherwise  
19 furnished to all active parties in the pool or pools concerned. Said copies of minutes shall  
20 constitute notice of any Pool or Advisory Committee action therein reported, and shall be  
21 available for inspection by any party.

22 (e) Adjournments. Any meeting of any Pool or Advisory Committee may be  
23 adjourned to a time and place specified in the order of adjournment. Less than a quorum may so  
24 adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously  
25 posted forthwith on or near the door of the place where the meeting was held.

26 38. Powers and Functions. The powers and functions of the respective Pool Committees  
27 and the Advisory Committee shall be as follows:  
28

1 (a) Pool Committees. Each Pool Committee shall have the power and responsibility  
2 for developing policy recommendations for administration of its particular pool, as created under  
3 the Physical Solution. All actions and recommendations of any Pool Committee which require  
4 Watermaster implementation shall first be noticed to the other two pools. If no objection is  
5 received in writing within thirty (30) days, such action or recommendation shall be transmitted  
6 directly to Watermaster for action. If any such objection is received, such action or  
7 recommendation shall be reported to the Advisory Committee before being transmitted to  
8 Watermaster.

9 (b) Advisory Committee. The Advisory Committee shall have the duty to study, and  
10 the power to recommend, review and act upon all discretionary determinations made or to be  
11 made hereunder by Watermaster.  
12

13 [1] Committee Initiative. When any recommendation or advice of the  
14 Advisory Committee is received by Watermaster, action consistent therewith may be  
15 taken by Watermaster; provided, that any recommendation approved by 80 votes or more  
16 in the Advisory Committee shall constitute a mandate for action by Watermaster  
17 consistent therewith. If Watermaster is unwilling or unable to act pursuant to  
18 recommendation or advice from the Advisory Committee (other than such mandatory  
19 recommendations), Watermaster shall hold a public hearing, which shall be followed by  
20 written findings and decision. Thereafter, Watermaster may act in accordance with said  
21 decision, whether consistent with or contrary to said Advisory Committee  
22 recommendation. Such action shall be subject to review by the Court, as in the case of  
23 all other Watermaster determinations.

24 [2] Committee Review. In the event Watermaster proposes to take  
25 discretionary action, other than approval or disapproval of a Pool Committee action or  
26 recommendation properly transmitted, or execute any agreement not theretofore within  
27 the scope of an Advisory Committee recommendation, notice of such intended action  
28

1 shall be served on the Advisory Committee and its members at least thirty (30) days  
2 before the Watermaster meeting at which such action is finally authorized.

3 (c) Review of Watermaster Actions. Watermaster (as to mandated action), the  
4 Advisory Committee or any Pool Committee shall be entitled to employ counsel and expert  
5 assistance in the event Watermaster or such Pool or Advisory Committee seeks Court review of  
6 any Watermaster action or failure to act. The cost of such counsel and expert assistance shall be  
7 Watermaster expense to be allocated to the affected pool or pools.  
8

## 9 VI. PHYSICAL SOLUTION

### 10 A. GENERAL

11  
12 39. Purpose and Objective. Pursuant to the mandate of Section 2 of Article X of the  
13 California Constitution, the Court hereby adopts and orders the parties to comply with a Physical Solution.  
14 The purpose of these provisions is to establish a legal and practical means for making the maximum  
15 reasonable beneficial use of the waters of Chino Basin by providing the optimum economic, long-term,  
16 conjunctive utilization of surface waters, ground waters and supplemental water, to meet the  
17 requirements of water users having rights in or dependent upon Chino Basin.  
18

19 40. Need for Flexibility. It is essential that this Physical solution provide maximum flexibility  
20 and adaptability in order that Watermaster and the Court may be free to use existing and future  
21 technological, social, institutional and economic options, in order to maximize beneficial use of the waters  
22 of Chino Basin. To that end, the Court's retained jurisdiction will be utilized, where appropriate, to  
23 supplement the discretion herein granted to the Watermaster.

24 41. Watermaster Control. Watermaster, with the advice of the Advisory and Pool  
25 Committees, is granted discretionary powers in order to develop an optimum basin management program  
26 for Chino Basin, including both water quantity and quality considerations. Withdrawals and supplemental  
27 water replenishment of Basin Water, and the full utilization of the water resources of Chino Basin, must  
28

1 be subject to procedures established by and administered through Watermaster with the advice and  
2 assistance of the Advisory and Pool Committees composed of the affected producers. Both the quantity  
3 and quality of said water resources may thereby be preserved and the beneficial utilization of the Basin  
4 maximized.

5 42. General Pattern of Operations. It is contemplated that the rights herein decreed will be  
6 divided into three (3) operating pools for purposes of Watermaster administration. A fundamental  
7 premise of the Physical Solution is that all water users dependent upon Chino Basin will be allowed to  
8 pump sufficient waters from the Basin to meet their requirements. To the extent that pumping exceeds  
9 the share of the Safe Yield assigned to the Overlying Pools, or the Operating Safe Yield in the case of the  
10 Appropriative Pool, each pool will provide funds to enable Watermaster to replace such overproduction.  
11 The method of assessment in each pool shall be as set forth in the applicable pooling plan.

## 13 B. POOLING

14 43. Multiple Pools Established. There are hereby established three (3) pools for  
15 Watermaster administration of, and for the allocation of responsibility for, and payment of, costs of  
16 replenishment water and other aspects of this Physical Solution.

17  
18 (a) Overlying (Agricultural) Pool. The first pool shall consist of the State of California  
19 and all overlying producers who produce water for other than industrial or commercial purposes.  
20 The initial members of the pool are listed in Exhibit "C".

21  
22 (b) Overlying (Non-agricultural) Pool The second pool shall consist of overlying  
23 producers who produce water for industrial or commercial purposes. The initial members of this  
24 pool are listed in Exhibit "D".

25 (c) Appropriative Pool. A third and separate pool shall consist of owners of  
26 appropriative rights. The initial members of the pool are listed in Exhibit "E".  
27  
28

Any party who changes the character of his use may, by subsequent order of the Court, be reassigned to the proper pool; but the allocation of Safe Yield under Paragraph 44 hereof shall not be changed. Any non-party producer or any person who may hereafter commence production of water from Chino Basin, and who may become a party to this physical solution by intervention, shall be assigned to the proper pool by the order of the Court authorizing such intervention.

44. Determination and Allocation of Rights to Safe Yield of Chino Basin. The declared Safe Yield of Chino Basin is hereby allocated as follows:

<u>Pool</u>	<u>Allocation</u>
Overlying (Agricultural) Pool	414,000 acre-feet in any five (5) consecutive years.
Overlying (Non-agricultural) Pool	7,366 acre-feet per year.
Appropriative Pool	49,834 acre-feet per year.

The foregoing acre foot allocations to the overlying pools are fixed. Any subsequent change in the Safe Yield shall be debited or credited to the Appropriative Pool. Basin Water available to the Appropriative Pool without replenishment obligation may vary from year to year as the Operating Safe Yield is determined by Watermaster pursuant to the criteria set forth in Exhibit "I".

45. Annual Replenishment. Watermaster shall levy and collect assessments in each year, pursuant to the respective pooling plans, in amounts sufficient to purchase replenishment water to replace production by any pool during the preceding year which exceeds that pool's allocated share of Safe Yield in the case of the overlying pools, or Operating Safe Yield in the case of the Appropriative Pool. It is anticipated that supplemental water for replenishment of Chino Basin may be available at different rates to the various pools to meet their replenishment obligations. If such is the case, each pool will be assessed only that amount necessary for the cost of replenishment water to that pool, at the rate available to the pool, to meet its replenishment obligation.

1           46.     Initial Pooling Plans. The initial pooling plans, which are hereby adopted, are set forth in  
2 Exhibits "F", "G" and "H", respectively. Unless and until modified by amendment of the judgment pursuant  
3 to the Court's continuing jurisdiction, each such plan shall control operation of the subject pool.

4  
5                                   C. REPORTS AND ACCOUNTING

6           47.     Production Reports. Each party or responsible party shall file periodically with  
7 Watermaster, pursuant to Watermaster rules, a report on a form to be prescribed by Watermaster  
8 showing the total production of such party during the preceding reportage period, and such additional  
9 information as Watermaster may require, including any information specified by the affected Pool  
10 Committee.

11  
12           48.     Watermaster Report and Accounting. **Watermaster's Annual Report shall be filed by**  
13 **January 31 of each year. The Report shall apply to the preceding fiscal years' operation. The**  
14 **Report shall contain details as to operation of the Pools. A certified audit of assessments and**  
15 **expenditures pursuant to this Physical Solution, and a review of Watermaster activity.<sup>7</sup>**

16                                   D. REPLENISHMENT

17  
18           49.     Sources of Supplemental Water. Supplemental water may be obtained by Watermaster  
19 from any available source. Watermaster shall seek to obtain the best available quality of supplemental  
20 water at the most reasonable cost for recharge in the Basin. To the extent that costs of replenishment  
21 water may vary between pools, each pool shall be liable only for the costs attributable to its required  
22 replenishment. Available sources may include, but are not limited to:

23                   (a)     Reclaimed Water. There exist a series of agreements generally denominated the  
24                   Regional Waste Water Agreements between IEUA and owners of the major municipal sewer  
25

26  
27 <sup>7</sup> Order dated March 31, 1999.  
28

1 systems within the basin. Under those agreements, which are recognized hereby but shall be  
2 unaffected and unimpaired by this judgment, substantial quantities of reclaimed water may be  
3 made available for replenishment purposes. There are additional sources of reclaimed water  
4 which are, or may become, available to Watermaster for said purposes. Maximum beneficial use  
5 of reclaimed water shall be given high priority by Watermaster.

6 (b) State Water. State water constitutes a major available supply of supplemental  
7 water. In the case of State Water, Watermaster purchases shall comply with the water service  
8 provisions of the State's water service contracts. More specifically, Watermaster shall purchase  
9 State Water from MWD for replenishment of excess production within IEUA, WMWD and  
10 TVMWD, and from SBVMWD to replenish excess production within SBVMWD's boundaries in  
11 Chino Basin, except to the extent that MWD and SBVMWD give their consent as required by  
12 such State water service contracts.

13  
14 (c) Local Import. There exist facilities and methods for importation of surface and  
15 ground water supplies from adjacent basins and watersheds.

16  
17 (d) Colorado River Supplies. MWD has water supplies available from its Colorado  
18 River Aqueduct.

19 50. Methods of Replenishment. Watermaster may accomplish replenishment of  
20 overproduction from the Basin by any reasonable method, including:

21  
22 (a) Spreading and percolation or Injection of water in existing or new facilities,  
23 subject to the provisions of Paragraphs 19, 25 and 26 hereof.

24  
25 (b) In Lieu Procedures. Watermaster may make, or cause to be made, deliveries of  
26 water for direct surface use, in lieu of ground water production.

27 E. REVENUES  
28

1           51.     Production Assessment. Production assessments, on whatever basis, may be levied by  
2 Watermaster pursuant to the pooling plan adopted for the applicable pool.

3           52.     Minimal Producers. Minimal Producers shall be exempted from payment of production  
4 assessments, upon filing of production reports as provided in Paragraph 47 of this Judgment, and  
5 payment of an annual five dollar (\$5.00) administrative fee as specified by Watermaster rules.  
6

7           53.     Assessment Proceeds -- Purposes. Watermaster shall have the power to levy  
8 assessments against the parties (other than minimal pumpers) based upon production during the  
9 preceding period of assessable production, whether quarterly, semi-annually or annually, as may be  
10 determined most practical by Watermaster or the affected Pool Committee.

11           54.     Administrative Expenses. The expenses of administration of this Physical Solution shall  
12 be categorized as either (a) general Watermaster administrative expense, or (b) special project expense.  
13

14                   (a)     General Watermaster Administrative Expense shall include office rental, general  
15 personnel expense, supplies and office equipment, and related incidental expense and general  
16 overhead.  
17

18                   (b)     Special Project Expense shall consist of special engineering, economic or other  
19 studies, litigation expense, meter testing or other major operating expenses. Each such project  
20 shall be assigned a Task Order number and shall be separately budgeted and accounted for.  
21 General Watermaster administrative expense shall be allocated and assessed against the  
22 respective pools based upon allocations made by the Watermaster, who shall make such  
23 allocations based upon generally accepted cost accounting methods. Special Project Expense  
24 shall be allocated to a specific pool, or any portion thereof, only upon the basis of prior express  
25 assent and finding of benefit by the Pool Committee, or pursuant to written order of the Court.

26           55.     Assessments -- Procedure. Assessments herein provided for shall be levied and  
27 collected as follows:  
28



1 (a) Notice of Assessment. Watermaster shall give written notice of all applicable  
2 assessments to each party on or before ninety (90) days after the end of the production period to  
3 which such assessment is applicable.

4 (b) Payment. Each assessment shall be payable on or before thirty (30) days after  
5 notice, and shall be the obligation of the party or successor owning the water production facility at  
6 the time written notice of assessment is given, unless prior arrangement for payment by others  
7 has been made in writing and filed with Watermaster.

8  
9 (c) Delinquency. Any delinquent assessment shall bear interest at 10% per annum  
10 (or such greater rate as shall equal the average current cost of borrowed funds to the  
11 Watermaster) from the due date thereof. Such delinquent assessment and interest may be  
12 collected in a show-cause proceeding herein instituted by the Watermaster, in which case the  
13 Court may allow Watermaster its reasonable costs of collection, including attorney's fees.

14  
15 56. Accumulation of Replenishment Water Assessment Proceeds. In order to minimize  
16 fluctuation in assessment and to give Watermaster flexibility in purchase and spreading of replenishment  
17 water, Watermaster may make reasonable accumulations of replenishment water assessment proceeds.  
18 Interest earned on such retained funds shall be added to the account of the pool from which the funds  
19 were collected and shall be applied only to the purchase of replenishment water.

20 57. Effective Date. The effective date for accounting and operation under this Physical  
21 Solution shall be July 1, 1977, and the first production assessments hereunder shall be due after July 1,  
22 1978. Watermaster shall, however, require installation of meters or measuring devices and establish  
23 operating procedures immediately, and the cost of such Watermaster activity (not including the cost of  
24 such meters and measuring devices) may be recovered in the first administrative assessment in 1978.

VII. MISCELLANEOUS PROVISIONS

58. Designation of Address for Notice and Service. Each party shall designate the name and address to be used for purposes of all subsequent notices and service herein, either by its endorsement on the Stipulation for Judgment or by a separate designation to be filed within thirty (30) days after Judgment has been served. Said designation may be changed from time to time by filing a written notice of such change with the Watermaster. Any party desiring to be relieved of receiving notices of Watermaster or committee activity may file a waiver of notice on a form to be provided by Watermaster. Thereafter such party shall be removed from the Active Party list. Watermaster shall maintain at all times a current list of all active parties and their addresses for purposes of service. Watermaster shall also maintain a full current list of names and addresses of all parties or their successors, as filed herein. Copies of such lists shall be available, without cost, to any party, the Advisory Committee or any Pool Committee upon written request therefor.

59. Service of Documents. Delivery to or service upon any party or active party by the Watermaster, by any other party, or by the Court, of any item required to be served upon or delivered to such party or active party under or pursuant to the Judgment shall be made personally or by deposit in the United States mail, first class, postage prepaid, addressed to the designee and at the address in the latest designation filed by such party or active party.

60. Intervention After Judgment. Any non-party assignee of the adjudicated appropriative rights of any appropriator, or any other person newly proposing to produce water from Chino Basin, may become a party to this Judgment upon filing a petition in intervention. Said intervention must be confirmed by order of this Court. Such intervenor shall thereafter be a party bound by this judgment and entitled to the rights and privileges accorded under the Physical Solution herein, through the pool to which the Court shall assign such intervenor.

61. Loss of Rights. Loss, whether by abandonment, forfeiture or otherwise, of any right herein adjudicated shall be accomplished only (1) by a written election by the owner of the right filed with Watermaster, or (2) by order of the Court upon noticed motion and after hearing.

62. Scope of Judgment. Nothing in this Judgment shall be deemed to preclude or limit any party in the assertion against a neighboring party of any cause of action now existing or hereafter arising based upon injury, damage or depletion of water supply available to such party, proximately caused by nearby pumping which constitutes an unreasonable interference with such complaining party's ability to extract ground water.

63. Judgment Binding on Successors. This Judgment and all provisions thereof are applicable to and binding upon not only the parties to this action, but also upon their respective heirs, executors, administrators, successors, assigns, lessees and licensees and upon the agents, employees and attorneys in fact of all such persons.

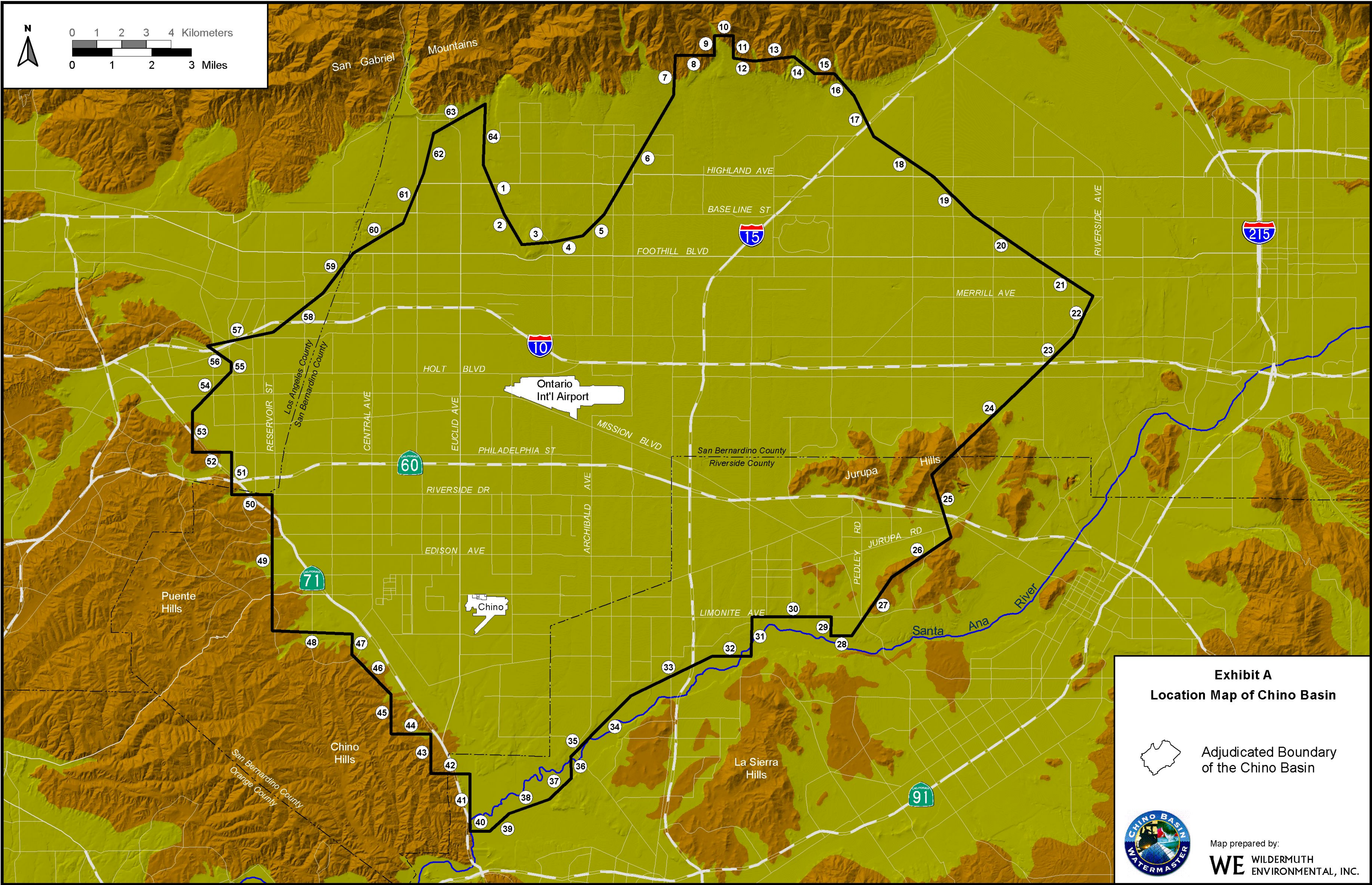
64. Costs. No party shall recover any costs in this proceeding from any other party.

Dated: January 1, 1978

Howard B. Weiner

Howard B. Weiner










**Exhibit B**  
**Hydrologic Map of Chino Basin**

 **Fault**  
(Solid where known; dashed where approximate; dotted where concealed; queried where unknown; big dots where barrier to groundwater flow)

 **Groundwater Divide**



Map prepared by:  
**WE** WILDERMUTH  
ENVIRONMENTAL, INC.



**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	STATE OF CALIFORNIA	Aphesssetche, Xavier
2	COUNTY OF SAN BERNARDINO	Arena Mutual Water Assn.
3	Abacherli, Dairy, Inc.	Armstrong Nurseries, Inc.
4	Abacherli, Frank	Arretche, Frank
5	Abacherli, Shirley	Arretche, Jean Pierre
6	Abbona, Anna	Arvidson, Clarence F.
7	Abbona, James	Arvidson, Florence
8	Abbona, Jim	Ashley, George W.
9	Abbona, Mary	Ashley, Pearl E.
10	Agliani, Amelia H.	Atlas Farms
11	Agman, Inc.	Atlas Ornamental Iron Works, Inc.
12	Aguerre, Louis B.	Aukeman, Carol
13	Ahmanson Trust Co.	Aukeman, Lewis
14	Akiyama, Shizuye	Ayers, Kenneth C., aka
15	Akiyama, Tomoo	Kelley Ayers
16	Akkerman, Dave	Bachoc, Raymond
17	Albers, J.N.	Baldwin, Edgar A.
18	Albers, Nellie	Baldwin, Lester
19	Alewyn, Jake J.	Banbury, Carolyn
20	Alewyn, Normalee	Bangma Dairy
21	Alger, Mary D.	Bangma, Arthur
22	Alger, Raymond	Bangma, Ida
23	Allen, Ben F.	Bangma, Martin
24	Allen, Jane F.	Bangma, Sam
25	Alta-Dena Dairy	Barba, Anthony B.
26	Anderson Farms	Barba, Frank
27	Anguiano, Sarah L.S.	Barcellos, Joseph
28	Anker, Gus	Barnhill, Maurine W.
	Barnhill, Paul	Boersma, Angie

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Bartel, Dale	Boersma, Berdina
2	Bartel, Ursula	Boersma, Frank
3	Bartel, Willard	Boersma, Harry
4	Barthelemy, Henry	Boersma, Paul
5	Barthelemy, Roland	Boersma, Sam
6	Bassler, Donald V., M.D.	Boersma, William L.
7	Bates, Lowell R.	Bohlander & Holmes, Inc.
8	Bates, Mildred L.	Bokma, Peter
9	Beahm, James W.	Bollema, Jacob
10	Beahm, Joan M.	Boonstoo, Edward
11	Bekendam, Hank	Bootsma, Jim
12	Bekendam, Pete	Borba, Dolene
13	Bello, Eugene	Borba, Dolores
14	Bello, Olga	Borba, Emily
15	Beltman, Evelyn	Borba, George
16	Beltman, Tony	Borba, John
17	Bergquist Properties, Inc.	Borba, John & Sons
18	Bevacqua, Joel A.	Borba, John Jr.
19	Bevacqua, Marie B.	Borba, Joseph A.
20	Bidart, Bernard	Borba, Karen E.
21	Bidart, Michael J.	Borba, Karen M.
22	Binnell, Wesley	Borba, Pete, Estate of
23	Black, Patricia E.	Borba, Ricci
24	Black, Victor	Borba, Steve
25	Bodger, John & Sons Co.	Borba, Tom
26	Boer, Adrian	Bordisso, Alleck
27	Boersma and Wind Dairy	Borges, Angelica M.
28	Borges, Bernadette	Bothof, Roger W.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Borges, John O.	Bouma, Cornie
2	Borges, Linda L.	Bouma, Emma
3	Borges, Manual Jr.	Bouma, Henry P.
4	Borges, Tony	Bouma, Martin
5	Bos, Aleid	Bouma, Peter G. & Sons Dairy
6	Bos, Gerrit	Bouma, Ted
7	Bos, John	Bouman, Helen
8	Bos, John	Bouman, Sam
9	Bos, Margaret	Bower, Mabel E.
10	Bos, Mary	Boys Republic
11	Bos, Mary Beth	Breedyk, Arie
12	Bos, Tony	Breedyk, Jessie
13	Bosch, Henrietta	Briano Brothers
14	Bosch, Peter T.	Briano, Albert
15	Boschma, Betty	Briano, Albert Trustee for
16	Boschma, Frank	Briano, Albert Frank
17	Boschma, Greta	Briano, Lena
18	Boschma, Henry	Brink, Russell N.
19	Bosma, Dick	Brinkerhoff, Margaret
20	Bosma, Florence G.	Brinkerhoff, Robert L.
21	Bosma, Gerrit	Britschgi, Florence
22	Bosma, Jacob J.	Britschgi, Magdalena Garetto
23	Bosma, Jeanette Thea	Britschgi, Walter P.
24	Bosman, Frank	Brommer, Marvin
25	Bosman, Nellie	Brookside Enterprizes, dba
26	Bosnyak, Goldie M.	Brookside Vineyard Co.
27	Bosnyak, Martin	Brothers Three Dairy
28	Brown, Eugene	Chino Corona Investment



**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Brun, Martha M.	Chino Water Co.
2	Brun, Peter Robert	Christensen, Leslie
3	Buma, Duke	Christensen, Richard G.
4	Buma, Martha	Christian, Ada R.
5	Bunse, Nancy	Christian, Harold F.
6	Bunse, Ronnie L.	Christy, Ella J.
7	Caballero, Bonnie L.	Christy, Ronald S.
8	Caballero, Richard F.	Cihigoyenetché, Jean
9	Cable Airport Inc.	Cihigoyenetché, Leona
10	Cadlini, Donald	Cihigoyenetché, Martin
11	Cadlini, Jesse R.	Clarke, Arthur B.
12	Cadlini, Marie Edna	Clarke, Nancy L.
13	Cambio, Anna	Clarke, Phyllis J.
14	Cambio, Charles, Estate of	Coelho, Isabel
15	Cambio, William V.	Coelho, Joe A. Jr.
16	Cardoza, Florence	Collins, Howard E.
17	Cardoza, Olivi	Collins, Judith F.
18	Cardoza, Tony	Collinsworth, Ester L.
19	Carnesi, Tom	Collinsworth, John E.
20	Carver, Robt M., Trustee	Collinsworth, Shelby
21	Cauffman, John R.	Cone Estate (05-2-00648/649)
22	Chacon Bros.	Consolidated Freightways Corp.
23	Chancon, Elvera P.	of Delaware
24	Chacon, Joe M.	Corona Farms Co.
25	Chacon, Robert M.	Corra, Rose
26	Chacon, Virginia L.	Costa, Dimas S.
27	Chez, Joseph C.	Costa, Laura
28	Costa, Myrtle	De Boer, L.H.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Costamagna, Antonio	De Boer, Sidney
2	Costamagna, Joseph	De Bos, Andrew
3	Cousyn, Claus B.	De Graaf, Anna Mae
4	Cramer, Carole F.	De Graaf, Gerrit
5	Cramer, William R.	De Groot, Dick
6	Crossroads Auto Dismantlers, Inc.	De Groot, Dorothy
7	Crouse, Beatrice I.	De Groot, Ernest
8	Crouse, Roger	De Groot, Henrietta
9	Crowley, Juanita C.	De Groot, Jake
10	Crowley, Ralph	De Groot, Pete Jr.
11	Cucamonga Vintners	De Haan, Bernadene
12	D'Astici, Teresa	De Haan, Henry
13	Da Costa, Cecilia B.	De Hoog, Adriana
14	Da Costa, Joaquim F.	De Hoog, Joe
15	Daloisio, Norman	De Hoog, Martin
16	De Berard Bros.	De Hoog, Martin L.
17	De Berard, Arthur, Trustee	De Hoog, Mitch
18	De Berard, Charles	De Hoog, Tryntje
19	De Berard, Chas., Trustee	De Jager, Cobi
20	De Berard, Helan J.	De Jager, Edward D.
21	De Berard, Robert	De Jong Brothers Dairy
22	De Berard, Robert Trustee	De Jong, Cornelis
23	De Bie, Adrian	De Jong, Cornelius
24	De Bie, Henry	De Jong, Grace
25	De Bie, Margaret M.	De Jong, Jake
26	De Bie, Marvin	De Jong, Lena
27	De Boer, Fred	De Leeuw, Alice
28	De Leeuw, Sam	Dirkse, Catherine

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	De Soete, Agnes	Dirkse, Charles C.
2	De Soete, Andre	Dixon, Charles E.
3	De Vries, Abraham	Dixon, Geraldine A.
4	De Vries, Case	Doesberg, Hendrica
5	De Vries, Dick	Doesburg, Theodorus, P.
6	De Vries, Evelyn	Dolan, Marion
7	De Vries, Henry, Estate of	Dolan, Michael H.
8	De Vries, Hermina	Dominguez, Helen
9	De Vries, Jack H.	Dominguez, Manual
10	De Vries, Jane	Donkers, Henry A.
11	De Vries, Janice	Donkers, Nellie G.
12	De Vries, John	Dotta Bros.
13	De Vries, John J.	Douma Brothers Dairy
14	De Vries, Neil	Douma, Betty A.
15	De Vries, Ruth	Douma, Fred A.
16	De Vries, Theresa	Douma, Hendrika
17	De Wit, Gladys	Douma, Herman G.
18	De Wit, Peter S.	Douma, Narleen J.
19	De Wyn, Evert	Douma, Phillip M.
20	De Zoete, Hattie V.	Dow Chemical Co.
21	Do Zoete, Leo A.	Dragt, Rheta
22	Decker, Hallie	Dragt, William
23	Decker, Henry A.	Driftwood Dairy Farm
24	Demmer, Ernest	Droogh, Case
25	Di Carlo, Marie	Duhalde, Marian
26	Di Carlo, Victor	Duhalde, Lauren
27	Di Tommaso, Frank	Duits, Henrietta
28	Duits, John	Excelsior Farms F.D.I.C.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Dunlap, Edna Kraemer,	Fagundes, Frank M.
2	Estate of	Fagundes, Mary
3	Durrington, Glen	Fernandes, Joseph Jr.
4	Durrington, William F.	Fernandes, Velma C.
5	Dusi, John Sr.	Ferraro, Ann
6	Dykstra, Dick	Ferreira, Frank J.
7	Dykstra, John	Ferreira, Joe C. Jr.
8	Dykstra, John & Sons	Ferreira, Narcie
9	Dykstra, Wilma	Fillippi, J. Vintage Co.
10	Dyt, Cor	Filippi, Joseph
11	Dyt, Johanna	Filippi, Joseph A.
12	E and S Grape Growers	Filippi, Mary E.
13	Eaton, Thomas, Estate of	Fitzgerald, John R.
14	Echeverria, Juan	Flameling Dairy Inc.
15	Echeverria, Carlos	Flamingo Dairy
16	Echeverria, Pablo	Foss, Douglas E.
17	Eilers, E. Myrle	Foss, Gerald R.
18	Eilers, Henry W.	Foss, Russel
19	El Prado Golf Course	Fred & John Troost No. 1 Inc.
20	Ellsworth, Rex C.	Fred & Maynard Troost No. 2 Inc.
21	Engelsma, Jake	Freitas, Beatriz
22	Engelsma, Susan	Freitas, Tony T.
23	Escojeda, Henry	Gakle, Louis L.
24	Etiwanda Grape Products Co.	Galleano Winery, Inc.
25	Euclid Ave. Investment One	Galleano, Bernard D.
26	Euclid Ave. Investment Four	Galleano, D.
27	Euclid Ave. Three Investment	Galleano, Mary M.
28	Garcia, Pete	Hansen, Raymond F.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Gardner, Leland V.	Hanson, Ardeth W.
2	Gardner, Lola M.	Harada, James T.
3	Garrett, Leonard E.	Harada, Violet A.
4	Garrett, Patricia T.	Haringa, Earl and Sons
5	Gastelluberry, Catherine	Haringa, Herman
6	Gastelluberry, Jean	Haringa, Rudy
7	Gilstrap, Glen E.	Haringa, William
8	Gilstrap, Marjorie J.	Harper, Cecilia de Mille
9	Godinho, John	Harrington, Winona
10	Godinho, June	Harrison, Jacqueline A.
11	Gonsalves, Evelyn	Hatanaka, Kenichi
12	Gonsalves, John	Heida, Annie
13	Gorzeman, Geraldine	Heida, Don
14	Gorzeman, Henry A.	Heida, Jim
15	Gorzeman, Joe	Heida, Sam
16	Govea, Julia	Helms, Addison D.
17	Goyenetché, Albert	Helms, Irma A.
18	Grace, Caroline E.	Hermans, Alma I.
19	Grace, David J.	Hermans, Harry
20	Gravatt, Glenn W.	Hettinga, Arthur
21	Gravatt, Sally Mae	Hettinga, Ida
22	Greydanus Dairy, Inc.	Hettinga, Judy
23	Greydanus, Rena	Hettinga, Mary
24	Griffin Development Co.	Hettinga, Wilbur
25	Haagsma, Dave	Heublein, Inc., Grocery Products
26	Haagsma, John	Group
27	Hansen, Mary D.	Hibma, Catherine M.
28	Hibma, Sidney	Hohberg, Harold C.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Hicks, Kenneth I.	Hohberg, Harold W.
2	Hicks, Minnie M.	Holder, Arthur B.
3	Higgins Brick Co.	Holder, Dorothy F.
4	Highstreet, Alfred V.	Holmes, A. Lee
5	Highstreet, Evada V.	Holmes, Frances P.
6	Hilarides, Bertha as Trustee	Hoogeboom, Gertrude
7	Hilarides, Frank	Hoogeboom, Pete
8	Hilarides, John as Trustee	Hoogendam, John
9	Hindelang, Tillie	Hoogendam, Tena
10	Hindelang, William	Houssels, J. K. Thoroughbred
11	Hobbs, Bonnie C.	Farm
12	Hobbs, Charles W.	Hunt Industries
13	Hobbs, Hazel I.	Idsinga, Ann
14	Hobbs, Orlo M.	Idsinga, William W.
15	Hoekstra, Edward	Imbach Ranch, Inc.
16	Hoekstra, George	Imbach, Kenneth E.
17	Hoekstra, Grace	Imbach, Leonard K.
18	Hoekstra, Louie	Imbach, Oscar K.
19	Hofer, Paul B.	Imbach, Ruth M.
20	Hofer, Phillip F.	Indaburu, Jean
21	Hofstra, Marie	Indaburu, Marceline
22	Hogeboom, Jo Ann M.	Iseli, Kurt H.
23	Hogeboom, Maurice D.	Ito, Kow
24	Hogg, David V.	J & B Dairy Inc.
25	Hogg, Gene P.	Jaques, Johnny C. Jr.
26	Hogg, Warren G.	Jaques, Mary
27	Hohberg, Edith J.	Jaques, Mary Lou
28	Jay Em Bee Farms	Knevelbaard, John

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Johnson Bro's Egg Ranches, Inc.	Knudsen, Ejnar
2	Johnston, Ellwood W.	Knudsen, Karen M.
3	Johnston, George F. Co.	Knudsen, Kenneth
4	Johnston, Judith H.	Knudson, Robert
5	Jones, Leonard P.	Knudson, Darlene
6	Jongsma & Sons Dairy	Koel, Helen S.
7	Jongsma, Diana A.	Koetsier, Gerard
8	Jongsma, Dorothy	Koetsier, Gerrit J.
9	Jongsma, George	Koetsier, Jake
10	Jongsma, Harold	Koning, Fred W.
11	Jongsma, Henry	Koning, Gloria
12	Jongsma, John	Koning, J. W. Estate
13	Jongsma, Nadine	Koning, James A.
14	Jongsma, Tillie	Koning, Jane
15	Jordan, Marjorie G.	Koning, Jane C.
16	Jordan, Troy O.	Koning, Jennie
17	Jorritsma, Dorothy	Koning, John
18	Juliano, Albert	Koning, Victor A.
19	Kamper, Cornelis	Kooi Holstein Corporation
20	Kamstra, Wilbert	Koolhaas, Kenneth E.
21	Kaplan, Lawrence J.	Koolhaas, Simon
22	Kasbergen, Martha	Koolhaas, Sophie Grace
23	Kasbergen, Neil	Koopal, Grace
24	Kazian, Angelen Estate of	Koopal, Silas
25	Kingsway, Const. Corp.	Koopman, Eka
26	Klapps Market	Koopman, Gene T.
27	Kline, James K.	Koopman, Henry G.
28	Koopman, Ted	Leck, Arthur A.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Koopman, Tena	Leck, Evelyn M.
2	Koot, Nick	Lee, Harold E.
3	Koster, Aart	Lee, Helen J.
4	Koster, Frances	Lee, Henrietta C.
5	Koster, Henry B.	Lee, R. T. Construction Co.
6	Koster, Nellie	Lekkerkerk, Adriana
7	Kroes, Jake R.	Lekkerkerk, L. M.
8	Kroeze, Bros	Lekkerkerker, Nellie
9	Kroeze, Calvin E.	Lekkerkerker, Walt
10	Kroeze, John	Lewis Homes of California
11	Kroeze, Wesley	Livingston, Dorothy M.
12	Kruckenber, Naomi	Livingston, Rex E.
13	Kruckenber, Perry	Lokey, Rosemary Kraemer
14	L. D. S. Welfare Ranch	Lopes, Candida A.
15	Labrucherie, Mary Jane	Lopes, Antonio S.
16	Labrucherie, Raymond F.	Lopez, Joe D.
17	Lako, Samuel	Lourenco, Carlos, Jr.
18	Landman Corp.	Lourenco, Carmelina P.
19	Lanting, Broer	Lourenco, Jack C.
20	Lanting, Myer	Lourenco, Manual H.
21	Lass, Jack	Lourenco, Mary
22	Lass, Sandra L.	Lourenco, Mary
23	Lawrence, Cecelia, Estate of	Luiten, Jack
24	Lawrence, Joe H., Estate of	Luiz, John M.
25	Leal, Bradley W.	Luna, Christine I.
26	Leal, John C.	Luna, Ruben T.
27	Leal, John Craig	Lusk, John D. and Sons A California Corporation
28		
	Lyon, Gregory E.	Mickel, Louise



**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Lyon, Paula E.	Miersma, Dorothy
2	M & W Co. #2	Meirsma, Harry C.
3	Madole, Betty M.	Minaberry, Arnaud
4	Madole, Larry B.	Minaberry, Marie
5	Marquez, Arthur	Mistretta, Frank J.
6	Marquine, Jean	Mocho and Plaa Inc.
7	Martin, Lelon O.	Mocho, Jean
8	Martin, Leon O.	Mocho, Noeline
9	Martin, Maria D.	Modica, Josephine
10	Martin, Tony J.	Montes, Elizabeth
11	Martins, Frank	Montes, Joe
12	Mathias, Antonio	Moons, Beatrice
13	Mc Cune, Robert M.	Moons, Jack
14	Mc Masters, Gertrude	Moramarco, John A. Enterprise
15	Mc Neill, J. A.	Moreno, Louis W.
16	Mc Neill, May F.	Moss, John R.
17	Mees, Leon	Motion Pictures Associates, Inc.
18	Mello and Silva Dairy	Moynier, Joe
19	Mello and Sousa Dairy	Murphy, Frances V.
20	Mello, Emilia	Murphy, Myrl L.
21	Mello, Enos C.	Murphy, Naomi
22	Mello, Mercedes	Nanne, Martin Estate of
23	Mendondo, Catherine	Nederend, Betty
24	Mendondo, Dominique	Nederend, Hans
25	Meth. Hosp. – Sacramento	Norfolk, James
26	Metzger, R. S.	Norfolk, Martha
27	Metzger, Winifred	Notrica, Louis
28	Nyberg, Lillian N.	Ormonde, Viva

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Nyenhuis, Annie	Ortega, Adeline B.
2	Nyenhuis, Jim	Ortega, Bernard Dino
3	Occidental Land Research	Osterkamp, Joseph S.
4	Okumura, Marion	Osterkamp, Margaret A.
5	Okumura, Yuiche	P I E Water Co.
6	Oldengarm, Effie	Palmer, Eva E.
7	Oldengarm, Egbert	Palmer, Walter E.
8	Oldengarm, Henry	Parente, Luis S.
9	Oliviera, Manuel L.	Parente, Mary Borba
10	Oliviera, Mary M.	Parks, Jack B.
11	Olson, Albert	Parks, Laura M.
12	Oltmans Construction Co.	Patterson, Lawrence E. Estate of
13	Omlin, Anton	Payne, Clyde H.
14	Omlin, Elsie L.	Payne, Margo
15	Ontario Christian School Assn.	Pearson, Athelia K.
16	Oord, John	Pearson, William C.
17	Oostdam, Jacoba	Pearson, William G.
18	Oostdam, Pete	Pene, Robert
19	Oosten, Agnes	Perian, Miller
20	Oosten, Anthonia	Perian, Ona E.
21	Oosten, Caroline	Petrissans, Deanna
22	Oosten, John	Petrissans, George
23	Oosten, Marinus	Petrissans, Jean P.
24	Oosten, Ralph	Petrissans, Marie T.
25	Orange County Water District	Pickering, Dora M.
26	Ormonde, Manuel	(Mrs. A. L. Pickering)
27	Ormonde, Pete, Jr.	Pierce, John
28	Pierce, Sadie	Righetti, A. T.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Pietszak, Sally	Riley, George A.
2	Pine, Joe	Riley, Helen C.
3	Pine, Virginia	Robbins, Jack K.
4	Pires, Frank	Rocha, John M.
5	Pires, Marie	Rocha, Jose C.
6	Plaa, Jeanne	Rodrigues, John
7	Plaa, Michel	Rodrigues, Manuel
8	Plantenga, Agnes	Rodrigues, Manuel, Jr.
9	Plantenga, George	Rodrigues, Mary L.
10	Poe, Arlo D.	Rodriguez, Daniel
11	Pomona Cemetery Assn.	Rogers, Jack D.
12	Porte, Cecelia, Estate of	Rohrer, John A.
13	Porte, Garritt, Estate of	Rohrer, Theresa D.
14	Portsmouth, Vera McCarty	Rohrs, Elizabeth H.
15	Ramella, Mary M.	Rossetti, M. S.
16	Ramirez, Concha	Roukema, Angeline
17	Rearick, Hildegard H.	Roukema, Ed.
18	Rearick, Richard R.	Roukema, Nancy
19	Reinalda, Clarence	Roukema, Siebren
20	Reitsma, Greta	Ruderian, Max J.
21	Reitsma, Louis	Russell, Fred J.
22	Rice, Bernice	Rusticus, Ann
23	Rice, Charlie E.	Rusticus, Charles
24	Richards, Karin	Rynsburger, Arie
25		
26	(Mrs. Ronnie Richards)	Rynsburger, Berdena, Trust
27	Richards, Ronald L.	Rynsburger, Joan Adele
28	Ridder, Jennie Wassenaar	Rynsburger, Thomas
	S. P. Annex, Inc.	Scott, Frances M.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Salisbury, Elinor J.	Scott, Linda F.
2	Sanchez, Edmundo	Scott, Stanley A.
3	Sanchez, Margarita O.	Scritsmier, Lester J.
4	Santana, Joe Sr.	Serl, Charles A.
5	Santana, Palmira	Serl, Rosalie P.
6	Satragni, John B. Jr.	Shady Grove Dairy, Inc.
7	Scaramella, George P.	Shamel, Burt A.
8	Schaafsma Bros.	Shelby, Harold E.
9	Schaafsma, Jennie	Shelby, John A.
10	Schaafsma, Peter	Shelby, Velma M.
11	Schaafsma, Tom	Shelton, Alice A.
12	Schaap, Andy	Sherwood, Robert W.
13	Schaap, Ids	Sherwood, Sheila J.
14	Schaap, Maria	Shue, Eva
15	Schacht, Sharon C.	Shue, Gilbert
16	Schakel, Audrey	Sieperda, Anne
17	Schakel, Fred	Sieperda, James
18	Schmid, Olga	Sigrist, Hans
19	Schmidt, Madeleine	Sigrist, Rita
20	Schoneveld, Evert	Silveira, Arline L.
21	Schoneveld, Henrietta	Silveira, Frank
22	Schoneveld, John	Silveira, Jack
23	Schoneveld, John Allen	Silveira, Jack P. Jr.
24	Schug, Donald E.	Simas, Dolores
25	Schug, Shirley A.	Simas, Joe
26	Schuh, Bernatta M.	Singleton, Dean
27	Schuh, Harold H.	Singleton, Elsie R.
28	Sinnott, Jim	Staal, John

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Sinnott, Mildred B.	Stahl, Zippora P.
2	Slegers, Dorothy	Stampfl, Berta
3	Slegers, Hubert J.	Stampfl, William
4	Slegers, Jake	Stanley, Robert E.
5	Slegers, Jim	Stark, Everett
6	Slegers, Lenwood M.	Stellingwerf, Andrew
7	Slegers, Martha	Stellingwerf, Henry
8	Slegers, Tesse J.	Stellingwerf, Jenette
9	Smith, Edward S.	Stellingwerf, Shana
10	Smith, Helen D.	Stellingwerf, Stan
11	Smith, James E.	Stelzer, Mike C.
12	Smith, Keith J.	Sterk, Henry
13	Smith, Lester W.	Stiefel, Winifred
14	Smith, Lois Maxine	Stiefel, Jack D.
15	Smith, Marjorie W.	Stigall, Richard L.
16	Soares, Eva	Stigall, Vita
17	Sogioka, Mitsuyoshi	Stockman's Inn
18	Sogioka, Yoshimato	Stouder, Charlotte A.
19	Sousa, Sam	Stouder, William C.
20	Southern Pacific Land Co.	Struikmans, Barbara
21	Southfield, Eddie	Struikmans, Gertie
22	Souza, Frank M.	Struikmans, Henry Jr.
23	Souza, Mary T.	Struikmans, Henry Sr.
24	Spickerman, Alberta	Struikmans, Nellie
25	Spickerman, Florence	Swager, Edward
26	Spickerman, Rudolph	Swager, Gerben
27	Spyksma, John	Swager, Johanna
28	Swager, Marion	Terpstra, Theodore G.

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Swierstra, Donald	Teune, Tony
2	Swierstra, Fanny	Teunissen, Bernard
3	Sybrandy, Ida	Teunissen, Jane
4	Sybrandy, Simon	Thomas, Ethel M.
5	Sytsma, Albert	Thommen, Alice
6	Sytsma, Edith	Thommen, Fritz
7	Sytsma, Jennie	Tillema, Allie
8	Sytsma, Louie	Tillema, Harold
9	Te Velde, Agnes	Tillema, Klaas D.
10	Te Velde, Bay	Timmons, William R.
11	Te Velde, Bernard A.	Tollerup, Barbara
12	Te Velde, Bonnie	Tollerup, Harold
13	Te Velde, Bonnie G.	Trapani, Louis A.
14	Te Velde, George	Trimlett, Arlene R.
15	Te Velde, George, Jr.	Trimlett, George E.
16	Te Velde, Harm	Tristant, Pierre
17	Te Velde, Harriet	Tuinhout, Ale
18	Te Velde, Henry J.	Tuinhout, Harry
19	Te Velde, Jay	Tuinhout, Hilda
20	Te Velde, Johanna	Tuls, Elizabeth
21	Te Velde, John H.	Tuls, Jack S.
22	Te Velde, Ralph A.	Tuls, Jake
23	Te Velde, Zwaantina, Trustee	Union Oil Company of California
24	Ter Maaten, Case	United Dairyman's Co-op.
25	Ter Maaten, Cleone	Urquhart, James G.
26	Ter Maaten, Steve	Usle, Cathryn
27	Terpstra, Carol	Usle, Faustino
28		
	V & Y Properties	Van Hofwegen, Clara

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Vaile, Beryl M.	Van Hofwegen, Jessie
2	Valley Hay Co.	Van Klaveren, A.
3	Van Beek Dairy Inc.	Van Klaveren, Arie
4	Van Canneyt Dairy	Van Klaveren, Wilhelmina
5	Van Canneyt, Maurice	Van Klaveren, William
6	Van Canneyt, Wilmer	Van Leeuwen, Arie C.
7	Van Dam, Bas	Van Leeuwen, Arie C.
8	Van Dam, Isabelle	Van Leeuwen, Arlan
9	Van Dam, Nellie	Van Leeuwen, Clara G.
10	Van Den Berg, Gertrude	Van Leeuwen, Cornelia L.
11	Van Den Berg, Joyce	Van Leeuwen, Harriet
12	Van Den Berg, Marinus	Van Leeuwen, Jack
13	Van Den Berg, Marvin	Van Leeuwen, John
14	Van Der Linden, Ardith	Van Leeuwen, Letie
15	Van Der Linden, John	Van Leeuwen, Margie
16	Van Der Linden, Stanley	Van Leeuwen, Paul
17	Van Der Veen, Kenneth	Van Leeuwen, William A.
18	Van Diest, Anna T.	Van Ravenswaay, Donald
19	Van Diest, Cornelius	Van Ryn Dairy
20	Van Diest, Ernest	Van Ryn, Dick
21	Van Diest, Rena	Van Surksum, Anthonetta
22	Van Dyk, Bart	Van Surksum, John
23	Van Dyk, Jeanette	Van Veen, John
24	Van Foeken, Martha	Van Vliet, Effie
25	Van Foeken, William	Van Vliet, Hendrika
26	Van Hofwegen, Steve	Van Vliet, Hugo
27	Van Hofwegen, Adrian A.	Van Vliet, Klaas
28		
	Vande Witte, George	Vander Laan, Katie

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Vanden Berge, Gertie	Vander Laan, Martin Jr.
2	Vanden Berge, Gertie	Vander Laan, Tillie
3	Vanden Berge, Jack	Vander Leest, Anna
4	Vanden Berge, Jake	Vander Leest, Ann
5	Vanden Brink, Stanley	Vander Meer, Alice
6	Vander Dussen, Agnes	Vander Meer, Dick
7	Vander Dussen, Cor	Vander Poel, Hank
8	Vander Dussen, Cornelius	Vander Poel, Pete
9	Vander Dussen, Edward	Vander Pol, Irene
10	Vander Dussen, Geraldine Marie	Vander Pol, Margie
11	Vander Dussen, James	Vander Pol, Marines
12	Vander Dussen, John	Vander Pol, William P.
13	Vander Dussen, Nelvina	Vander Schaaf, Earl
14	Vander Dussen, Rene	Vander Schaaf, Elizabeth
15	Vander Dussen, Sybrand Jr.	Vander Schaaf, Henrietta
16	Vander Dussen, Sybrand Sr.	Vander Schaaf, John
17	Vander Dussen Trustees	Vander Schaaf, Ted
18	Vander Eyk, Case Jr.	Vander Stelt, Catherine
19	Vander Eyk, Case Sr.	Vander Stelt, Clarence
20	Vander Feer, Peter	Vander Tuig, Arlene
21	Vander Feer, Rieka	Vander Tuig, Sylvester
22	Vander Laan, Ann	Vander Veen, Joe A.
23	Vander Laan, Ben	Vandervlag, Robert
24	Vander Laan, Bill	Vander Zwan, Peter
25	Vander Laan, Corrie	Vanderford, Betty W.
26	Vander Laan, Henry	Vanderford, Claud R.
27	Vander Laan, James	Vanderham, Adrian
28	Vanderham, Cornelius	Vestal, J. Howard



**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Vanderham, Cornelius P.	Visser, Gerrit
2	Vanderham, Cory	Visser, Grace
3	Vanderham, E. Jane	Visser, Henry
4	Vanderham, Marian	Visser, Jess
5	Vanderham, Martin	Visser, Louie
6	Vanderham, Pete C.	Visser, Neil
7	Vanderham, Wilma	Visser, Sam
8	Vasquez, Eleanor	Visser, Stanley
9	Veenendaal, Evert	Visser, Tony D.
10	Veenendaal, John H.	Visser, Walter G.
11	Veiga, Dominick, Sr.	Von Der Ahe, Fredric T.
12	Verbree, Jack	Von Euw, George
13	Verbree, Tillie	Von Euw, Majorie
14	Verger, Bert	Von Lusk, a limited partnership
15	Verger, Betty	Voortman, Anna Marie
16	Verhoeven, Leona	Voortman, Edward
17	Verhoeven, Martin	Voortman, Edwin J.
18	Verhoeven, Wesley	Voortman, Gertrude Dena
19	Vermeer, Dick	Wagner, Richard H.
20	Vermeer, Jantina	Walker, Carole R.
21	Vernola Ranch	Walker, Donald E.
22	Vernola, Anthonietta	Walker, Wallace W.
23	Vernola, Anthony	Wardle, Donald M.
24	Vernola, Frank	Warner, Dillon B.
25	Vernola, Mary Ann	Warner, Minnie
26	Vernola, Pat F.	Wassenaar, Peter W.
27	Vestal, Frances Lorraine	Waters, Michael
28	Weeda, Adriana	Wiersma, Jake

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Weeda, Daniel	Wiersma, Otto
2	Weeks, O. L.	Wiersma, Pete
3	Weeks, Verona E.	Winchell, Verne H., Trustee
4	Weidman, Maurice	Wind, Frank
5	Weidman, Virginia	Wind, Fred
6	Weiland, Adaline I.	Wind, Hilda
7	Weiland, Peter J.	Wind, Johanna
8	Wesselink, Jules	Woo, Frank
9	West, Katharine R.	Woo, Sem Gee
10	West, Russel	Wybenga, Clarence
11	West, Sharon Ann	Wybenga, Gus
12	Western Horse Property	Wybenga, Gus K.
13	Westra, Alice	Wybenga, Sylvia
14	Westra, Henry	Wynja, Andy
15	Westra, Hilda	Wynja, Iona F.
16	Westra, Jake J.	Yellis, Mildred
17	Weststeyn, Freida	Yellis, Thomas E.
18	Weststeyn, Pete	Ykema-Harmsen Dairy
19	Whitehurst, Louis G.	Ykema, Floris
20	Whitehurst, Pearl L.	Ykema, Harriet
21	Whitmore, David L.	Yokley, Betty Jo
22	Whitmore, Mary A.	Yokley, Darrell A.
23	Whitney, Adolph M.	Zak, Zan
24	Wiersema, Harm	Zivelonghi, George
25	Wiersema, Harry	Zivelonghi, Margaret
26	Wiersma, Ellen H.	Zwaagstra, Jake
27	Wiersma, Gladys J.	Zwaagstra, Jessie M.
28		Zwart, Case

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

NON-PRODUCER WATER DISTRICTS

Chino Basin Municipal Water District  
Chino Basin Water Conservation District  
Pomona Valley Municipal Water District  
Western Municipal Water District of Riverside County

DEFAULTING OVERLYING AGRICULTURAL PRODUCERS

Cheryl L. Bain	Roy W. Lantis
Warren Bain	Sharon I. Lantis
John M. Barcelona	Frank Lorenz
Letty Bassler	Dagney H. MacDonald
John Brazil	Frank E. Martin
John S. Briano	Ruth C. Martin
Lupe Briano	Connie S. Mello
Paul A. Briano	Naldiro J. Mello
Tillie Briano	Felice Miller
Arnie B. Carlson	Ted Miller
John Henry Fikse	Masao Nerio
Phyllis S. Fikse	Tom K. Nerio
Lewellyn Flory	Toyo Nerio
Mary I. Flory	Yuriko Nerio
L. H. Glazer	Harold L. Rees
Dorothy Goodman	Alden G. Rose
Sidney D. Goodman	Claude Rouleau, Jr.
Frank Grossi	Patricia M. Rouleau
Harada Brothers	Schultz Enterprises
Ellen Hettinga	Albert Shaw

**EXHIBIT "C"**

**STIPULATING OVERLYING AGRICULTURAL PRODUCERS**

1	Hein Hettinga	Lila Shaw
2	Dick Hofstra, Jr.	Cathy M. Stewart
3	Benjamin M. Hughey	Marvin C. Stewart
4	Frieda L. Hughey	Betty Ann Stone
5	Guillaume Indart	John B. Stone
6	Ellwood B. Johnston, Trustee	Vantoll Cattle Co., Inc.
7	Perry Kruckenberg, Jr.	Catherine Verburg
8	Martin Verburg	
9	Donna Vincent	
10	Larry Vincent	
11	Cliff Wolfe & Associates	
12	Ada M. Woll	
13	Zarubica Co.	

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# EXHIBIT "D"

## OVERLYING NON-AGRICULTURAL RIGHTS

<u>Party</u>	<u>Total Overlying Non-Agricultural Rights (Acre-Feet)</u>	<u>Share of Safe Yield (Acre-Feet)</u>
Ameron Steel Producers, Inc.	125	97.858
County of San Bernardino (Airport)	171	133.870
Conrock Company	406	317.844
Kaiser Steel Corporation	3,743	2,930.274
Red Star Fertilizer	20	15.657
Southern California Edison Co.	1,255	982.499
Space Center, Mira Loma	133	104.121
Southern Service Co. dba Blue Seal Linen	24	18.789
Sunkist Growers, Inc.	2,393	1,873.402
Carlsberg Mobile Home Properties, Ltd '73	593	464.240
Union Carbide Corporation	546	427.446
Quaker Chemical Co.	<u>0</u>	<u>0.000</u>
Totals	9,409	7,366.000

**EXHIBIT "E"**

<b><u>APPROPRIATIVE RIGHTS</u></b>			
<u>Party</u>	<u>Appropriative Right (Acre Feet)</u>	<u>Share of Initial Operating Safe Yield (Acre-Feet)</u>	<u>Share of Operating Safe Yield (Percent)</u>
City of Chino	5,271.7	3,670.067	6.693
City of Norco	289.5	201.545	0.368
City of Ontario	16,337.4	11,373.816	20.742
City of Pomona	16,110.5	11,215.852	20.454
City of Upland	4,097.2	2,852.401	5.202
Cucamonga County Water District	4,431.0	3,084.786	5.626
Jurupa Community Services District	1,104.1	768.655	1.402
Monte Vista County Water District	5,958.7	4,148.344	7.565
West San Bernardino County Water District	925.5	644.317	1.175
Etiwanda Water Company	768.0	534.668	0.975
Feldspar Gardens Mutual Water Company	68.3	47.549	0.087
Fontana Union Water Company	9,188.3	6,396.736	11.666
Marygold Mutual Water Company	941.3	655.317	1.195
Mira Loma Water Company	1,116.0	776.940	1.417
Monte Vista Irrigation Company	972.1	676.759	1.234
Mutual Water Company of Glen Avon Heights	672.2	467.974	0.853
Park Water Company	236.1	164.369	0.300
Pomona Valley Water Company	3,106.3	2,162.553	3.944
San Antonio Water Company	2,164.5	1,506.888	2.748
Santa Ana River Water Company	1,869.3	1,301.374	2.373
Southern California Water Company	1,774.5	1,235.376	2.253
West End Consolidated Water Company	<u>1,361.3</u>	<u>947.714</u>	<u>1.728</u>
<b>TOTAL</b>	<b>78,763.8</b>	<b>55,834.000</b>	<b>100.000</b>

**EXHIBIT “F”**

**OVERLYING (AGRICULTURAL) POOL**

POOLING PLAN

1.     Membership in Pool. The State of California and all producers listed in Exhibit “C” shall be the initial members of this pool, which shall include all producers of water for overlying uses other than industrial or commercial purposes.
  
2.     Pool Meetings. The members of the pool shall meet annually, in person or by proxy, at a place and time to be designated by Watermaster for purposes of electing members of the Pool Committee and conducting any other business of the pool. Special meetings of the membership of the pool may be called and held as provided in the rules of the pool.
  
3.     Voting. All voting at meetings of pool members shall be on the basis of one vote for each 100 acre feet or any portion thereof of production from Chino Basin during the preceding year, as shown by the records of Watermaster.
  
4.     Pool Committee. The Pool Committee for this pool shall consist of not less than nine (9) representatives selected at large by members of the pool. The exact number of members of the Pool Committee in any year shall be as determined by majority vote of the voting power of members of the pool in attendance at the annual pool meeting. Each member of the Pool Committee shall have one vote and shall serve for a two-year term. The members first elected shall classify themselves by lot so that approximately one-half serve an initial one-year term. Vacancies during any term shall be filled by a majority of the remaining members of the Pool Committee.
  
5.     Advisory Committee Representatives. The number of representatives of the Pool Committee on the Advisory Committee shall be as provided in the rules of the pool from time to time but not exceeding ten (10). The voting power of the pool on the Advisory Committee shall be apportioned and exercised as determined from time to time by the Pool Committee.
  
6.     Replenishment Obligation. The pool shall provide funds for replenishment of any production by persons other than members of the Overlying Non-Agricultural Pool or Appropriator Pool,

in excess of the pool's share of Safe Yield. During the first five (5) years of operations of the Physical Solution, reasonable efforts shall be made by the Pool Committee to equalize annual assessments.

7. Assessments. All assessments in this pool (whether for replenishment water cost or for pool administration or the allocated share of Watermaster administration) shall be in an amount uniformly applicable to all production in the pool during the preceding year or calendar quarter. Provided, however, that the Agricultural Pool Committee, may recommend to the Court modification of the method of assessing pool members, inter se, if the same is necessary to attain legitimate basin management objectives, including water conservation and avoidance of undesirable socio-economic consequences. Any such modification shall be initiated and ratified by one of the following methods:

(a) Excess Production. - In the event total pool production exceeds 100,000 acre feet in any year, the Pool Committee shall call and hold a meeting, after notice to all pool members, to consider remedial modification of the assessment formula.

(b) Producer Petition. - At any time after the fifth full year of operation under the Physical Solution, a petition by ten percent (10%) of the voting power or membership of the Pool shall compel the holding of a noticed meeting to consider revision of said formula of assessment for replenishment water.

In either event, a majority action of the voting power in attendance at such pool members' meeting shall be binding on the Pool Committee.

8. Rules. - The Pool Committee shall adopt rules for conducting meetings and affairs of the committee and for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

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**EXHIBIT "G"**

**OVERLYING (NON-AGRICULTURAL) POOL**

**POOLING PLAN**

1.     Membership in Pool. The initial members of the pool, together with the decreed share of the Safe Yield of each, are listed in Exhibit "D". Said pool includes producers of water for overlying industrial or commercial non-agricultural purposes, or such producers within the Pool who may hereafter take water pursuant to Paragraph 8 hereof.

2.     Pool Committee. The Pool Committee for this pool shall consist of one representative designated by each member of the pool. Voting on the committee shall be on the basis of one vote for each member, unless a volume vote is demanded, in which case votes shall be allocated as follows:

The volume voting power on the Pool Committee shall be 1,484 votes. Of these, 742 votes shall be allocated on the basis of one vote for each ten (10) acre feet or fraction thereof of decreed shares in Safe Yield. (See Exhibit "D"). The remaining 742 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year.<sup>8</sup>

**Affirmative action of the Committee shall require a majority of the voting power of the members in attendance, provided that it includes concurrence by at least one-third of its total members.<sup>9</sup>**

3.     Advisory Committee Representatives. At least three (3) members of the Pool Committee shall be designated by said committee to serve on the Advisory Committee. The exact number of such representatives at any time shall be as determined by the Pool Committee. The voting power of the pool shall be exercised in the Advisory Committee as a unit, based upon the vote of a majority of said representatives.

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<sup>8</sup> Or production assessments paid under Water Code Section 72140 et seq., as to years prior to the second year of operation under the Physical Solution hereunder.

<sup>9</sup> Order dated October 8, 2010.

4. Replenishment Obligation. The pool shall provide funds for replenishment of any production in excess of the pool's share of Safe Yield in the preceding year.

5. Assessments.<sup>10</sup>

(a) Replenishment Assessments. Each member of this pool shall pay an assessment equal to the cost of replenishment water times the number of acre feet of production by such producer during the preceding year in excess of (a) his decreed share of the Safe Yield, plus (b) any carry-over credit under Paragraph 7 hereof.

(b) Administrative Assessments. In addition, the cost of the allocated share of Watermaster administration expense shall be recovered on an equal assessment against each acre foot of production in the pool during such preceding fiscal year or calendar quarter; and in the case of Pool members who take substitute ground water as set forth in Paragraph 8 hereof, such producer shall be liable for its share of administration assessment, as if the water so taken were produced, up to the limit of its decreed share of Safe Yield.

(c) Special Project OBMP Assessment. Each year, every member of this Pool will dedicate ten (10) percent of their annual share of Operating Safe Yield to Watermaster or in lieu thereof Watermaster will levy a Special Project OBMP Assessment in an amount equal to ten percent of the Pool member's respective share of Safe Yield times the then-prevailing MWD Replenishment Rate.

6. Assignment. Rights herein decreed are appurtenant to *that* land and are only assignable with the land for overlying use thereon; provided, however, (a) that any appropriator who may, directly or indirectly, undertake to provide water service to such overlying lands may, by an appropriate agency agreement on a form approved by Watermaster, exercise said overlying right to the extent, but only to the extent necessary to provide water service to said overlying lands, and (b) *the members of the pool shall have the right to Transfer or lease their quantified production rights within the pool or to*

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<sup>10</sup> Order dated December 21, 2007.

***Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000 for the term of the Peace Agreement.***<sup>11</sup>

7. Carry-over. Any member of the pool who produces less than its assigned water share of Safe Yield may carry such unexercised right forward for exercise in subsequent years. The first water produced during any such subsequent year shall be deemed to be an exercise of such carry-over right. In the event the aggregate carry-over by any pool member exceeds its share of Safe Yield, such member shall, as a condition of preserving such surplus carryover, execute a storage agreement with Watermaster.

8. Substitute Supplies. To the extent that any Pool member, at the request of Watermaster and with the consent of the Advisory Committee, takes substitute surface water in lieu of producing ground water otherwise subject to production as an allocated share of Safe Yield, said party shall nonetheless remain a member of this Pool.

9. Physical Solution Transfers. All overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart therefrom except that for the term of the Peace Agreement the members of the Overlying (Non-Agricultural) Pool shall have the discretionary right to Transfer or lease their quantified Production rights and carry-over water held in storage accounts in quantities that each member may from time to time individually determine as Transfers in furtherance of the Physical Solution: (i) within the Overlying (Non-Agricultural) Pool; (ii) to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000; (iii) in conformance with the procedures described in Paragraph I of the Purchase and Sale Agreement for the Purchase of Water by Watermaster from Overlying (Non-Agricultural Pool dated June 30, 2007; or (iv) to Watermaster and thence to members of the Appropriative Pool in accordance with the following guidelines and those procedures Watermaster may further provide in Watermaster's Rules and Regulations:

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<sup>11</sup> Order dated September 28, 2000 and Order dated April 19, 2001.

(a) By December 31 of each year, the members of the Overlying (Non-Agricultural) Pool shall notify Watermaster of the amount of water each member shall make available in their individual discretion for purchase by the Appropriators. By January 31 of each year, Watermaster shall provide a Notice of Availability of each Appropriator's pro-rata share of such water;

(b) Except as they may be limited by paragraph 9(e) below, each member of the Appropriative Pool will have, in their discretion, a right to purchase its pro-rata share of the supply made available from the Overlying (Non-Agricultural) Pool at the price established in 9(d) below. Each Appropriative Pool member's pro-rata share of the available supply will be based on each Producer's combined total share of Operating Safe Yield and the previous year's actual Production by each party;

(c) If any member of the Appropriative Pool fails to irrevocably commit to their allocated share by March 1 of each year, its share of the Overlying (Non-Agricultural) Pool water will be made available to all other members of the Appropriative Pool according to the same proportions as described in 9(b) above and at the price established in Paragraph 9(d) below. Each member of the Appropriative Pool shall complete its payment for its share of water made available by June 30 of each year.

(d) Commensurate with the cumulative commitments by members of the Appropriative Pool pursuant to (b) and (c) above, Watermaster will purchase the surplus water made available by the Overlying (Non-Agricultural) Pool water on behalf of the members of the Appropriative Pool on an annual basis at 92% of the then-prevailing "MWD Replenishment Rate" and each member of the Appropriative Pool shall complete its payment for its determined share of water made available by June 30 of each year.

(e) Any surplus water cumulatively made available by all members of the Overlying (Non-Agricultural) Pool that is not purchased by Watermaster after completion of the process set forth herein will be pro-rated among the members of the Pool in proportion to the total quantity offered for transfer in accordance with this provision and may be retained by the

Overlying (Non-Agricultural) Pool member without prejudice to the rights of the members of the Pool to make further beneficial use or transfer of the available surplus.

(f) Each Appropriator shall only be eligible to purchase their pro-rata share under this procedure if the party is: (i) current on all their assessments; and (ii) in compliance with the OBMP.

(g) The right of any member of the Overlying (Non-Agricultural) Pool to transfer water in accordance with this Paragraph 9(a)-(c) in any year is dependent upon Watermaster making a finding that the member of the Overlying (Non-Agricultural) Pool is using recycled water where it is both physically available and appropriate for the designated end use in lieu of pumping groundwater.

(h) Nothing herein shall be construed to affect or limit the rights of any Party to offer or accept an assignment as authorized by the Judgment Exhibit "G" paragraph 6 above, or to affect the rights of any Party under a valid assignment.

910. Rules. The Pool Committee shall adopt rules for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

**EXHIBIT "H"**  
**APPROPRIATIVE POOL**  
POOLING PLAN

1. Qualification for Pool. Any city, district or other public entity and public utility -- either regulated under Public Utilities Commission jurisdiction, or exempt therefrom as a non-profit mutual water company (other than those assigned to the Overlying (Agricultural) Pool) -- shall be a member of this pool. All initial members of the pool are listed in Exhibit "E", together with their respective appropriative rights and acre foot allocation and percentage shares of the initial and subsequent Operating Safe Yield.

2. Pool Committee. The Pool Committee shall consist of one (1) representative appointed by each member of the Pool.

3. Voting. The total voting power on the Pool Committee shall be 1,000 votes. Of these, 500 votes shall be allocated in proportion to decreed percentage shares in Operating Safe Yield. The remaining 500 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year. Routine business of the Pool Committee may be conducted on the basis of one vote per member, but upon demand of any member a weighted vote shall be taken. Affirmative action of the Committee shall require a majority of the voting power of members in attendance, provided that it includes concurrence by at least one-third of its total members.

4. Advisory Committee Representatives. **Members of the Pool Committee shall be designated to represent this pool on the Advisory Committee *on the following basis:* Each major appropriator, i.e., the owner of an adjudicated appropriative right in excess of 3,000 acre feet, or each appropriator that produces in excess of 3,000 acre feet based upon the prior year's production, shall be entitled to one representative. Two additional representatives of the Appropriative Pool on the Advisory Committee shall be elected at large by the remaining members of the pool. The voting power of the Appropriative Pool on the Advisory Committee shall be apportioned between the major appropriator representatives in proportion to their respective voting power in the Pool Committee. The two representatives of the remaining appropriators shall exercise equally the voting power proportional to the Pool Committee voting power of said**

remaining appropriators; provided, however, that if any representative fails to attend an Advisory Committee meeting, the voting power of that representative shall be allocated among the representatives of the Appropriative Pool in attendance in the same proportion as their respective voting powers.<sup>12</sup>

5. Replenishment Obligation. The pool shall provide funds for purchase of replenishment water to replace any production by the pool in excess of Operating Safe Yield during the preceding year.

6. Administrative Assessment. Costs of administration of this pool and its share of general Watermaster expense shall be recovered by a uniform assessment applicable to all production during the preceding year.

7. Replenishment Assessment. The cost of replenishment water required to replace production from Chino Basin in excess of Operating Safe Yield in the preceding year shall be allocated and recovered as follows:

(a) For production, other than for increased export,  
within CBMWD or WMWD:

(1) Gross Assessment. 15% of such replenishment water costs shall be recovered by a uniform assessment against all production of each appropriator producing in said area during the preceding year.

(2) Net Assessment. The remaining 85% of said costs shall be recovered by a uniform assessment on each acre foot of production from said area by each such appropriator in excess of his allocated share of Operating Safe Yield during said preceding year.

(b) For production which is exported for use outside Chino Basin in excess of maximum export in any year through 1976, such increased export production shall be assessed against the exporting appropriator in an amount sufficient to purchase replenishment water from CBMWD or WMWD in the amount of such excess.

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<sup>12</sup> Order dated September 18, 1996.

(c) For production within SBVMWD or PVMWD:

By an assessment on all production in excess of an appropriator's share of Operating Safe Yield in an amount sufficient to purchase replenishment water through SBVMWD or MWD in the amount of such excess.

8. Socio-Economic Impact Review. The parties have conducted certain preliminary socio-economic impact studies. Further and more detailed socio-economic impact studies of the assessment formula and its possible modification shall be undertaken for the Appropriator Pool by Watermaster no later than ten (10) years from the effective date of this Physical Solution, or whenever total production by this pool has increased by 30% or more over the decreed appropriative rights, whichever is first.

9. Facilities Equity Assessment. Watermaster may, upon recommendation of the Pool Committee, institute proceedings for levy and collection of a Facilities Equity Assessment for the purposes and in accordance with the procedures which follow:

(a) Implementing Circumstances. - There exist several sources of supplemental water available to Chino Basin, each of which has a differential cost and quantity available. The optimum management of the entire Chino Basin water resource favors the maximum use of the lowest cost supplemental water to balance the supplies of the Basin, in accordance with the Physical Solution. The varying sources of supplemental water include importations from MWD and SBVMWD, importation of surface and ground water supplies from other basins in the immediate vicinity of Chino Basin, and utilization of reclaimed water. In order to fully utilize any of such alternate sources of supply, it will be essential for particular appropriators having access to one or more of such supplies to have invested, or in the future to invest, directly or indirectly, substantial funds in facilities to obtain and deliver such water to an appropriate point of use. To the extent that the use of less expensive alternative sources of supplemental water can be maximized by the inducement of a Facilities Equity Assessment, as herein provided, it is to the long-term benefit of the entire basin that such assessment be authorized and levied by Watermaster.

(b) Study and Report. - At the request of the Pool Committee, Watermaster shall undertake a survey study of the utilization of alternate supplemental supplies by



members of the Appropriative Pool which would not otherwise be utilized and shall prepare a report setting forth the amount of such alternative supplies being currently utilized, the amount of such supplies which could be generated by activity within the pool, and the level of cost required to increase such uses and to optimize the total supplies available to the basin. Said report shall contain an analysis and recommendation for the levy of a necessary Facilities Equity Assessment to accomplish said purpose.

(c) Hearing. - If the said report by Watermaster contains a recommendation for imposition of a Facilities Equity Assessment, and the Pool Committee so requests, Watermaster shall notice and hold a hearing not less than 60 days after distribution of a copy of said report to each member of the pool, together with a notice of the hearing date. At such hearing, evidence shall be taken with regard to the necessity and propriety of the levy of a Facilities Equity Assessment and full findings and decision shall be issued by Watermaster.

(d) Operation of Assessment. - If Watermaster determines that it is appropriate that a Facilities Equity Assessment be levied in a particular year, the amount of additional supplemental supplies which should be generated by such assessment shall be estimated. The cost of obtaining such supplies, taking into consideration the investment in necessary facilities shall then be determined and spread equitably among the producers within the pool in a manner so that those producers not providing such additional lower cost supplemental water, and to whom a financial benefit will result, may bear a proportionate share of said costs, not exceeding said benefit; provided that any producer furnishing such supplemental water shall not thereby have its average cost of water in such year reduced below such producer's average cost of pumping from the Basin. In so doing, Watermaster shall establish a percentage of the total production by each party which may be produced without imposition of a Facilities Equity Assessment. Any member of the pool producing more water than said percentage shall pay such Facilities Equity Assessment on any such excess production. Watermaster is authorized to transmit and pay the proceeds of such Facilities Equity Assessment to those producers who take less than their share of Basin water by reason of furnishing a higher percentage of their requirements through use of supplemental water.

10. Unallocated Safe Yield Water. To the extent that, in any five years, any portion of the share of Safe Yield allocated to the Overlying (Agricultural) Pool is not produced, such water shall be available for reallocation to members of the Appropriative Pool, as follows:

(a) Priorities. - Such allocation shall be made in the following sequence:

(1) to supplement, in the particular year, water available from Operating Safe Yield to compensate for any reduction in the Safe Yield by reason of recalculation thereof after the tenth year of operation hereunder.

(2) pursuant to conversion claims as defined in Subparagraph (b) hereof.

(3) as a supplement to Operating Safe Yield, without regard to reductions in Safe Yield.

(b) Conversion Claims.<sup>13</sup> The following procedures may be utilized by any appropriator:

1) **Record of Unconverted Agricultural Acreage. Watermaster shall maintain on an ongoing basis a record with appropriate related maps of all agricultural acreage within the Chino Basin subject to being converted to appropriative water use pursuant to the provisions of this subparagraph. An initial identification of such acreage as of June 30, 1995 is attached hereto as Appendix 1.**

(2) **Record of Water Service Conversion. Any appropriator who undertakes to permanently provide water service to lands *subject to conversion* may report such intent to change water service to Watermaster. Watermaster *should* thereupon verify such change in water service and shall maintain a record and account for each appropriator of the total acreage involved. *Should, at any time, converted acreage return to water service from the Overlying (Agricultural) Pool, Watermaster shall return such acreage to unconverted status***

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<sup>13</sup> Order dated November 17, 1995.

*and correspondingly reduce or eliminate any allocation accorded to the appropriator involved.*

**(3) Allocation of Safe Yield Rights**

**(i) *For the term of the Peace Agreement in any year in which sufficient unallocated Safe Yield from the Overlying (Agricultural) Pool is available for such conversion claims, Watermaster shall allocate to each appropriator with a conversion claim 2.0 acre feet of unallocated Safe Yield water for each converted acre for which conversion has been approved and recorded by the Watermaster.***<sup>14</sup>

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

**(4) Notice and Allocation. Notice of the special allocation of Safe Yield water pursuant to conversion claims shall be given to each appropriator and shall be treated for purposes of this Physical Solution as an addition to such appropriator's share of the Operating Safe Yield for the particular year only.**

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<sup>14</sup> Order dated September 28, 2000 and Order dated April 19, 2001.

**(5) Administrative Costs. Any costs of Watermaster attributable to the administration of such special allocations and conversion claims shall be assessed against the appropriators participating in such reporting, apportioned in accordance with the total amount of converted acreage held by each appropriator participating in the conversion program.**

11. In Lieu Procedures. There are, or may develop, certain areas within Chino Basin where good management practices dictate that recharge of the basin be accomplished, to the extent practical, by taking surface supplies of supplemental water in lieu of ground water otherwise subject to production as an allocated share of Operating Safe Yield.

(a) Method of Operation. - An appropriator producing water within such designated in lieu area who is willing to abstain for any reason from producing any portion of such producer's share of Operating Safe Yield in any year may offer such unpumped water to Watermaster. In such event, Watermaster shall purchase said water in place, in lieu of spreading replenishment water, which is otherwise required to make up for over production. The purchase price for in lieu water shall be the lesser of:

- (1) Watermaster's current cost of replenishment water, whether or not replenishment water is currently then obtainable, plus the cost of spreading; or
- (2) The cost of supplemental surface supplies to the appropriator, less
  - a. said appropriator's average cost of ground water production, and
  - b. the applicable production assessment were the water produced.

Where supplemental surface supplies consist of MWD or SBVMWD supplies, the cost of treated, filtered State water from such source shall be deemed the cost of supplemental surface supplies to the appropriator for purposes of such calculation.

In any given year in which payments may be made pursuant to a Facilities Equity Assessment, as to any given quantity of water the party will be entitled to payment under this section or pursuant to the Facilities Equity Assessment, as the party elects, but not under both.

(b) Designation of In Lieu Areas. - The first in lieu area is designated as the "In Lieu Area No. 1" and consists of an area wherein nitrate levels in the ground water generally exceed 45 mg/l, and is shown on Exhibit "J" hereto. Other in lieu areas may be designated by subsequent order of Watermaster upon recommendation or approval by Advisory Committee. Said in lieu areas may be enlarged, reduced or eliminated by subsequent orders; provided, however, that designation of In Lieu Areas shall be for a minimum fixed term sufficient to justify necessary capital investment. In Lieu Area No. 1 may be enlarged, reduced or eliminated in the same manner, except that any reduction of its original size or elimination thereof shall require the prior order of Court.

12. Carry-over. Any appropriator who produces less than his assigned share of Operating Safe Yield may carry such unexercised right forward for exercise in subsequent years. The first water produced during any such subsequent year shall be deemed to be an exercise of such carry-over right. In the event the aggregate carry-over by any appropriator exceeds its share of Operating Safe Yield, such appropriator shall, as a condition of preserving such surplus carry-over, execute a storage agreement with Watermaster. Such appropriator shall have the option to pay the gross assessment applicable to such carry-over in the year in which it accrued.

13. Assignment, Transfer and Lease. Appropriative rights, and corresponding shares of Operating Safe Yield, may be assigned or may be leased or licensed to another appropriator for exercise in a given year. Any transfer, lease or license shall be ineffective until written notice thereof is furnished to and approved as to form by Watermaster, in compliance with applicable Watermaster rules. Watermaster shall not approve transfer, lease or license of a right for exercise in an area or under conditions where such production would be contrary to sound basin management or detrimental to the rights or operations of other producers.

14. Rules. The Pool Committee shall adopt rules for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

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## EXHIBIT "I"

### **ENGINEERING APPENDIX**

1. Basin Management Parameters. In the process of implementing the physical solution for Chino Basin, Watermaster shall consider the following parameters:

(a) Pumping Patterns. - Chino Basin is a common supply for all persons and agencies utilizing its waters. It is an objective in management of the Basin's waters that no producer be deprived of access to said waters by reason of unreasonable pumping patterns, nor by regional or localized recharge of replenishment water, insofar as such result may be practically avoided.

(b) Water Quality. - Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster.

(c) Economic Considerations. - Financial feasibility, economic impact and the cost and optimum utilization of the Basin's resources and the physical facilities of the parties are objectives and concerns equal in importance to water quantity and quality parameters.

**2. Hydraulic Control and Re-Operation.** In accordance with the purpose and objective of the Physical Solution to "establish a legal and practical means for making the maximum reasonable beneficial use of the waters of the Chino Basin" (paragraph 39) including but not limited to the use and recapture of reclaimed water (paragraph 49(a) ) and the identified Basin Management Parameters set forth above, Watermaster will manage the Basin to secure and maintain Hydraulic Control through controlled overdraft.

(a) **Hydraulic Control.** "Hydraulic Control" means the reduction of groundwater discharge from the Chino North Management Zone to the Santa Ana River to de minimus quantities. The Chino North Management Zone is more fully described and set forth in Attachment I-1 to this Engineering Appendix. By obtaining Hydraulic Control, Watermaster will ensure that the water management activities in the Chino North Management Zone do not cause

materially adverse impacts to the beneficial uses of the Santa Ana River downstream of Prado Dam.

(b) **Re-Operation.** “Re-Operation” means the controlled overdraft of the Basin by the managed withdrawal of groundwater for the Desalters and the potential increase in the cumulative un-replenished Production from 200,000 acre-feet authorized by paragraph 3 below, to 600,000 acre feet for the express purpose of securing and maintaining Hydraulic Control as a component of the Physical Solution.

[1] The increase in the controlled overdraft herein is separate from and in addition to the 200,000 acre-feet of accumulated overdraft authorized in paragraph 3(a) and 3(b) below over the period of 1978 through 2017.

[2] “Desalters” means the Chino I Desalter, the Chino I Expansion, the Chino II Desalter and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin water, including extraction wells and transmission facilities for delivery of groundwater to the Desalter. Desalter treatment and delivery facilities for the desalted water include pumping and storage facilities and treatment and disposal capacity in the Santa Ana Regional Interceptor.

[3] The groundwater Produced through controlled overdraft pursuant to Re-Operation does not constitute New Yield or Operating Safe Yield and it is made available under the Physical Solution for the express purpose of satisfying some or all of the groundwater Production by the Desalters until December 31, 2030. (“Period of Re-Operation”).

[4] The operation of the Desalters, the Production of groundwater for the Desalters and the use of water produced by the Desalters pursuant to Re-Operation are

subject to the limitations that may be set forth in Watermaster Rules and Regulations for the Desalters.

(5) Watermaster will update its Recharge Master Plan and obtain Court approval of its update, to address how the Basin will be contemporaneously managed to secure and maintain Hydraulic Control and operated at a new equilibrium at the conclusion of the period of Re-Operation. The Recharge Master Plan shall contain recharge projections and summaries of the projected water supply availability as well as the physical means to accomplish recharge projections. The Recharge Master Plan may be amended from time to time with Court approval.

(6) Re-Operation and Watermaster's apportionment of controlled overdraft in accordance with the Physical Solution will not be suspended in the event that Hydraulic Control is secured in any year before the full 400,000 acre-feet has been Produced without Replenishment, so long as: (i) Watermaster has prepared, adopted and the Court has approved a contingency plan that establishes conditions and protective measures that will avoid unreasonable and unmitigated material physical harm to a party or to the Basin and that equitably distributes the cost of any mitigation attributable to the identified contingencies; and (ii) Watermaster is in substantial compliance with a Court approved Recharge Master Plan.<sup>15</sup>

3. Operating Safe Yield. Operating Safe Yield in any year shall consist of the Appropriative Pool's share of Safe Yield of the Basin, plus any controlled overdraft of the Basin which Watermaster may authorize. In adopting the Operating Safe Yield for any year, Watermaster shall be limited as follows:

(a) Accumulated Overdraft. - During the operation of this Judgment and Physical Solution, the overdraft accumulated from and after the effective date of the Physical Solution and

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<sup>15</sup> Order dated December 21, 2007.



resulting from an excess of Operating Safe Yield over Safe Yield shall not exceed 200,000 acre feet.

(b) Quantitative Limits. - In no event shall Operating Safe Yield in any year be less than the Appropriative Pool's share of Safe Yield, nor shall it exceed such share of Safe Yield by more than 10,000 acre feet. The initial Operating Safe Yield is hereby set at 54,834 acre feet per year. Operating Safe Yield shall not be changed upon less than five (5) years' notice by Watermaster. Nothing contained in this paragraph shall be deemed to authorize, directly or indirectly, any modification of the allocation of shares in Safe Yield to the overlying pools, as set forth in Paragraph 44 of the Judgment.

4. Ground Water Storage Agreements. Any agreements authorized by Watermaster for storage of supplemental water in the available ground water storage capacity of Chino Basin shall include, but not be limited to:

- (a) The quantities and term of the storage right.
- (b) A statement of the priority or relation of said right, as against overlying or Safe Yield uses, and other storage rights.
- (c) The procedure for establishing delivery rates, schedules and procedures which may include:
  - [1] spreading or injection, or
  - [2] in lieu deliveries of supplemental water for direct use.
- (d) The procedures for calculation of losses and annual accounting for water in storage by Watermaster.
- (e) The procedures for establishment and administration of withdrawal schedules, locations and methods.

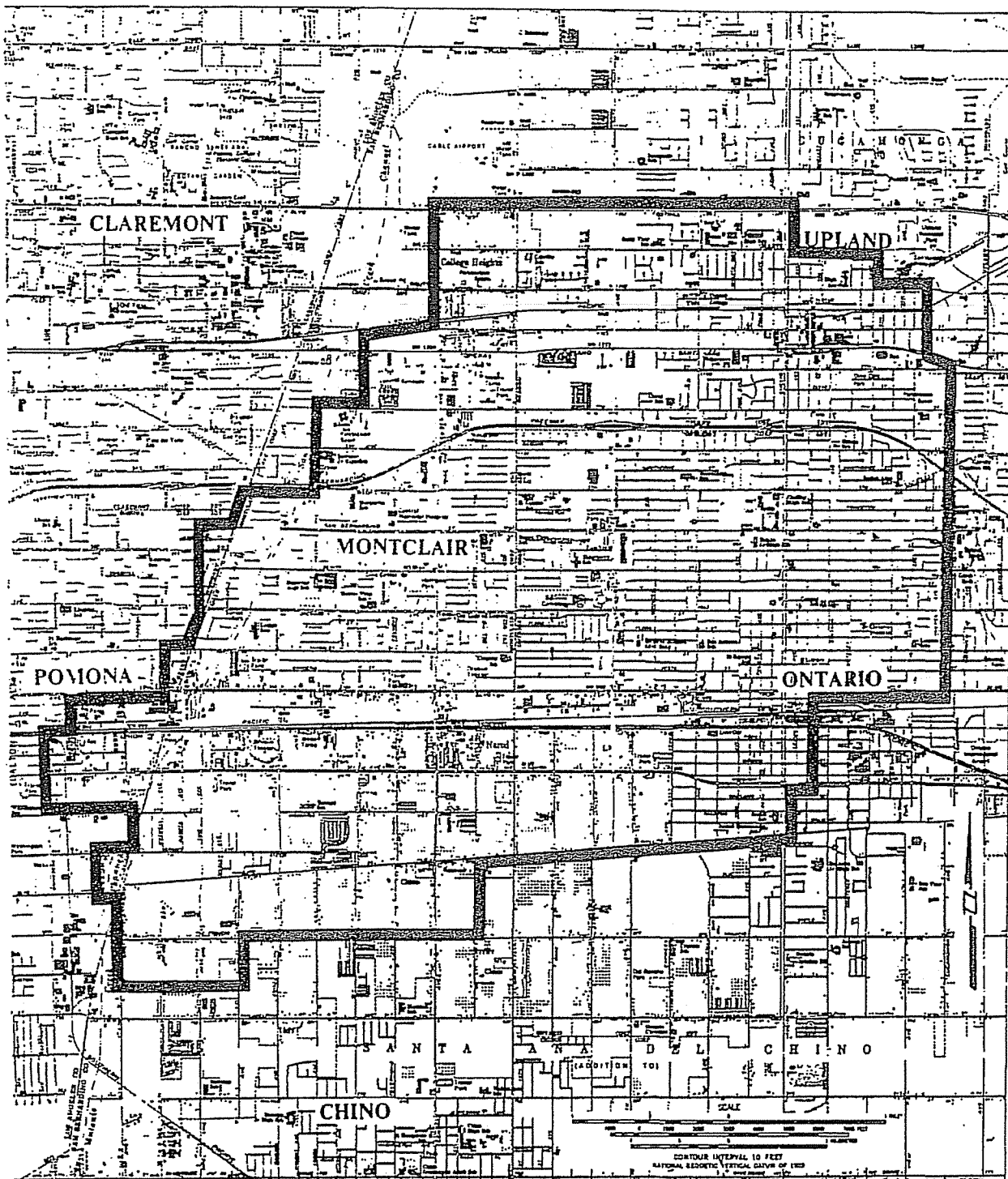
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CHINO BASIN  
IN LIEU AREA NO. 1

EXHIBIT "J"

**EXHIBIT “K”  
LEGAL DESCRIPTION  
OF CHINO BASIN**

Preamble

All of the townships and ranges referred to in the following legal description are the San Bernardino Base and Meridian. Certain designated sections are implied as the System of Government Surveys may be extended where not established. Said sections are identified as follows:

Section 20, T1N, R8W is extended across Rancho Cucamonga;

Section 36, T1N, R8W is extended across the City of Upland;

Sections 2,3, and 4, T1S, R7W are extended across Rancho Cucamonga;

Section 10, T1S, R8W is extended across the City of Claremont;

Sections 19, 20, 21, 30, 31 and 32, T1S, R8W are extended across the City of Pomona;

Sections 4, 5, and 28, T2S, R8W are extended across Rancho Santa Ana Del Chino;

Sections 15 and 16, T3S, R7W are extended across Rancho La Sierra; and

Sections 17 and 20, T3S, R7W are extended across Rancho El Rincon.

Description

Chino Basin is included within portions of the Counties of San Bernardino, Riverside and Los Angeles, State of California, bounded by a continuous line described as follows:

EXHIBIT "K"

BEGINNING at the Southwest corner of Lot 241 as shown on Map of Ontario Colony Lands, recorded in Map Book 11, page 6, Office of the County Recorder of San Bernardino County, said corner being the Point of Beginning;

1. Thence Southeasterly to the Southeast corner of Lot 419 of said Ontario Colony Lands;
2. Thence Southeasterly to a point 1300 feet North of the South line and 1300 feet East of the West line of Section 4, T1S, R7W;
3. Thence Easterly to a point on the East line of Section 4, 1800 feet North of the Southeast corner of said Section 4;
4. Thence Easterly to the Southeast corner of the Southwest quarter of the Northeast quarter of Section 3, T1S, R7W;
5. Thence Northeasterly to a point on the North line of Section 2, T1S, R7W, 1400 feet East of the West line of said Section 2;
6. Thence Northeasterly to the Southwest corner of Section 18, T1N, R6W;
7. Thence Northerly to the Northwest corner of said Section 18;
8. Thence Easterly to the Northeast corner of said Section 18;

9. Thence Northerly to the Northwest corner of the Southwest Quarter of Section 8, T1N, R6W;
10. Thence Easterly to the Northeast corner of said Southwest quarter of said Section 8;
11. Thence Southerly to the Southeast corner of said Southwest Quarter of said Section 8;
12. Thence Easterly to the Northeast corner of Section 17, T1N, R6W;
13. Thence Easterly to the Northeast corner of Section 16, T1N, R6W;
14. Thence Southeasterly to the Northwest corner of the Southeast quarter of Section 15, T1N, R6W;
15. Thence Easterly to the Northeast corner of said Southeast quarter of said Section 15;
16. Thence Southeasterly to the Northwest corner of the Northeast quarter of Section 23, T1N, R6W;
17. Thence Southeasterly to the Northwest corner of Section 25, T1N, R6W;
18. Thence Southeasterly to the Northwest corner of the Northeast quarter of Section 31, T1N, R5W;
19. Thence Southeasterly to the Northeast corner of the Northwest quarter of Section 5, T1S, R5W;
20. Thence Southeasterly to the Southeast corner of Section 4, T1S, R5W;
21. Thence Southeasterly to the Southeast corner of the Southwest quarter of Section 11, T1S, R5W;
22. Thence Southwesterly to the Southwest corner of Section 14, T1S, R5W;

23. Thence Southwest to the Southwest corner of Section 22, T1S, R5W;
24. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 6, T2S, R5W;
25. Thence Southeasterly to the Northeast corner of Section 18, T2S, R5W;
26. Thence Southwesterly to the Southwest corner of the Southeast quarter of Section 13, T2S,  
R6W;
27. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 26, T2S, R6W;
28. Thence Westerly to the Southwest corner of the Northwest quarter of said Section 26;
29. Thence Northerly to the Northwest corner of said Section 26;
30. Thence Westerly to the Southwest corner of Section 21, T2S, R6W;
31. Thence Southerly to the Southeast corner of Section 29, T2S, R6W;
32. Thence Westerly to the Southeast corner of Section 30, T2S, R6W;
33. Thence Southwesterly to the Southwest corner of Section 36, T2S, R7W;
34. Thence Southwesterly to the Southeast corner of Section 3, T3S, R7W;
35. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 10, T3S, R7W;



36. Thence Southerly to the Northeast corner of the Northwest quarter of Section 15, T3S, R7W;
37. Thence Southwesterly to the Southeast corner of the Northeast quarter of Section 16, T3S, R7W;
38. Thence Southwesterly to the Southwest corner of said Section 16;
39. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 20, T3S, R7W;
40. Thence Westerly to the Southwest corner of the Northwest quarter of said Section 20;
41. Thence Northerly to the Northwest corner of Section 17, T3S, R7W;
42. Thence Westerly to the Southwest corner of Section 7, T3S, R7W;
43. Thence Northerly to the Southwest corner of Section 6, T3S, R7W;
44. Thence Westerly to the Southwest corner of Section 1, T3S, R8W;
45. Thence Northerly to the Southeast corner of Section 35, T2S, R8W;
46. Thence Northwesterly to the Northwest corner of said Section 35;
47. Thence Northerly to the Southeast corner of Lot 33, as shown on Map of Tract 3193, recorded in Map Book 43, pages 46 and 47, Office of the County Recorder of San Bernardino County;
48. Thence Westerly to the Northwest corner of the Southwest quarter of Section 28, T2S, R8W;

49. Thence Northerly to the Southwest corner of Section 4, T2S, R8W;
50. Thence Westerly to the Southwest corner of Section 5, T2S, R8W;
51. Thence Northerly to the Southwest corner of Section 32, T1S, R8W;
52. Thence Westerly to the Southwest corner of Section 31, T1S, R8W;
53. Thence Northerly to the Southwest corner of Section 30, T1S, R8W;
54. Thence Northeasterly to the Southwest corner of Section 20, T1S, R8W;
55. Thence Northerly to the Northwest corner of the Southwest quarter of the Southwest quarter of said Section 20;
56. Thence Northwesterly to the Northeast corner of the Southeast quarter of the Southeast quarter of the Northwest quarter of Section 19, T1S, R8W;
57. Thence Easterly to the Northwest corner of Section 21, T1S, R8W;
58. Thence Northeasterly to the Southeast corner of the Southwest quarter of the Southwest quarter of Section 10, T1S, R8W;
59. Thence Northeasterly to the Southwest corner of Section 2, T1S, R8W;

60. Thence Northeasterly to the Southeast corner of the Northwest quarter of the Northwest quarter of Section 1, T1S, R8W;
61. Thence Northerly to the Northeast corner of the Northwest quarter of the Northeast quarter of Section 36, T1N, R8W;
62. Thence Northerly to the Southeast corner of Section 24, T1N, R8W;
63. Thence Northeasterly to the Southeast corner of the Northwest quarter of the Northwest quarter of Section 20, T1N, R7W; and
64. Thence Southerly to the Point of Beginning.

Sections Included

Said perimeter description includes all or portions of the following Townships, Ranges and Sections of San Bernardino Base and Meridian:

T1N, R5W - Sections: 30, 31 and 32

T1N, R6W - Sections: 8, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35  
and 36

T1N, R7W - Sections: 19, 20, 24, 25, 26, 29, 30, 31, 32, 35 and 36

T1N, R8W - Sections: 25 and 36

T1S, R5W - Sections: 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31 and 32

T1S, R6W - Sections: 1 through 36, inclusive

T1S, R7W - Sections: 1 through 36, inclusive

T1S, R8W - Sections: 1, 2, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,  
32, 33, 34, 35 and 36

T2S, R5W - Sections: 6, 7 and 18

T2S, R6W - Sections: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,  
26, 29, 30 and 31

T2S, R7W - Sections: 1 through 36, inclusive

T2S, R8W - Sections: 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 35 and  
36

T3S, R7W - Sections: 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17 and 20

T3S, R8W - Sections: 1.

SB 565248 v1:038350.0001

**EXHIBIT C**

***PEACE AGREEMENT***

***CHINO BASIN***

***JUNE 29, 2000***



## TABLE OF CONTENTS

	Page
RECITALS .....	1
I. DEFINITIONS AND RULES OF CONSTRUCTION .....	3
1.1 Definitions .....	3
1.2 Rules of Construction .....	12
II. COMPLIANCE WITH CEQA .....	13
2.1 Commitments Shall be Consistent With CEQA Compliance .....	13
2.2 Reservation of Discretion .....	14
2.3 No Prejudice by Comment or Failure to Comment .....	14
2.4 Acknowledgment that IEUA is the Lead Agency .....	14
III. CONDITIONS PRECEDENT .....	14
3.1 Performance Under Articles V, VI, and VII is Subject to Satisfaction of Conditions Precedent .....	14
IV. MUTUAL COVENANTS .....	15
4.1 Joint Defense .....	15
4.2 No Opposition to the OBMP .....	15
4.3 Indemnification of the Agricultural Pool .....	16
4.4 Consent to Specified Changes to the Judgment .....	16
4.5 Construction of "Operating Yield" Under the Judgment .....	17
4.6 Best Efforts to Obtain Funding for OBMP .....	17
4.7 CBWCD .....	18
V. WATERMASTER PERFORMANCE .....	18
5.1 Recharge and Replenishment .....	18
5.2 Storage and Recovery .....	23

	<u>Page</u>
5.3 Transfers .....	31
5.4 Assessments, Credits, and Reimbursements .....	36
5.5 Salt Credits .....	38
5.6 Metering .....	38
 VI. COVENANTS BY THE MEMBERS OF THE AGRICUL- TURAL POOL .....	 39
6.1 Best Efforts to Support Storage and Recovery .....	39
6.2 Covenant of Good Faith and Fair Dealing .....	39
6.3 Waiver of Compensation .....	40
 VII. DESALTERS .....	 40
7.1 Need for Desalters .....	40
7.2 Ownership and Operation .....	40
7.3 Design and Construction of Chino II Desalter, Chino I Expansion and Future Desalters .....	 42
7.4 Funding .....	44
7.5 Replenishment Water .....	46
7.6 Sale of Water .....	47
 VIII. TERM .....	 49
8.1 Commencement .....	49
8.2 Expiration .....	49
8.3 Meet and Confer .....	50
8.4 Independent Right to Extend .....	50
8.5 Force Majeure .....	50
8.6 Only One Mandatory Extension .....	51
8.7 Effect of Termination .....	51
8.8 Rescission of Resolutions 84-2 and 88-3 .....	51
8.9 Mediation Upon Failure to Secure Capital Funding for Future Desalters .....	 52
8.10 Parties Rights Unaffected Upon Termination .....	52

	<u>Page</u>
IX	CONFLICTS ..... 53
9.1	Events Constituting a Default by a Party ..... 53
9.2	Remedies Upon Default ..... 53
9.3	Dispute Resolution ..... 55
X.	GENERAL PROVISIONS ..... 57
10.1	Supersedence ..... 57
10.2	Applicability to Others ..... 57
10.3	Admissions by Parties ..... 57
10.4	Construction of Agreement ..... 57
10.5	Each Party Bears Own Costs ..... 58
10.6	Waiver of Breach ..... 58
10.7	Awareness of Contents/Legal Effect ..... 58
10.8	Agreement Binding On All ..... 58
10.9	Counterparts ..... 59
10.10	Captions ..... 59
10.11	Choice of Law ..... 59
10.12	Authority to Enter into This Agreement ..... 59
10.13	Notice ..... 59
10.14	Amendments and/or Changes to Agreement ..... 60
XI.	ACKNOWLEDGMENTS: CONFIRMATION OF RIGHTS ..... 60

# **PEACE AGREEMENT CHINO BASIN**

THIS AGREEMENT (Agreement) is dated the 29th day of June, 2000 regarding the Chino Groundwater Basin.

## **RECITALS**

**WHEREAS**, disputes have arisen from time to time among and between water users within the Santa Ana River Watershed resulting in a judgment entered in Orange County Superior Court Case No. 117628, Orange County Water District v. City of Chino in 1969; and

**WHEREAS**, a complaint was filed on January 2, 1975, seeking an adjudication of water rights, injunctive relief and the imposition of a physical solution for the Chino Groundwater Basin (hereinafter Chino Basin); and

**WHEREAS**, a Judgment was entered in San Bernardino County Superior Court Case No. 164327 in Chino Basin Municipal Water District v. City of Chino, et al. in 1978, now designated No. RCV 51010 that adjudicated rights to the groundwater and storage capacity within the Chino Basin and established a physical solution; and

**WHEREAS**, the Parties intend that each Producer should be able to Produce both the quantity and quality of water to meet its water supply needs to the greatest extent possible from the water that underlies the Producer's area of benefit; and

**WHEREAS**, the Judgment provides the State of California is the largest owner of land overlying the Chino Basin, and provides that all future Production by the State, or its departments or agencies for overlying use on State-owned lands shall be considered as use by the Agricultural Pool; and

**WHEREAS**, Paragraph 16 of the Judgment authorized the appointment of a Watermaster for a term or terms of five (5) years; and

**WHEREAS**, Watermaster has the express powers and duties as provided in the Judgment or as "hereafter ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction" subject to the limitations stated elsewhere in the Judgment; and

**WHEREAS**, Paragraph 41 of the Judgment provides that "Watermaster, with the advice of the Advisory and Pool Committees" has "discretionary powers in order to develop an optimum basin management program (OBMP) for Chino Basin"; and

**WHEREAS**, on February 19, 1998, in San Bernardino County Superior Court Case Number RCV 51010, the Court appointed a "Nine-member Board as Interim Watermaster for a twenty-six month period commencing March 1, 1998 and ending June 30, 2000" and "directed the Interim Watermaster to develop and submit the OBMP"; and

**WHEREAS**, a draft Programmatic Environmental Impact Report (PEIR) for the OBMP has been completed and distributed to the Parties as well as the State Clearinghouse and other interested Parties and the Inland Empire Utilities Agency (IEUA) is serving as "Lead Agency" for purposes of preparing and completing the PEIR as previously directed by the Court on November 18, 1999; and

**WHEREAS**, this Agreement facilitates the implementation of the OBMP which is subject to environmental review under the California Environmental Quality Act (CEQA) as previously directed by the Court; and

**WHEREAS**, disputes have arisen in regard to a number of matters pertaining to the power and authority of the Court and Watermaster under the Judgment, including but not limited to Watermaster power and author-

ity regarding recharge, owning property, holding water rights, water Transfers, storage, yield management, land use conversions, assessments, benefits, procedures and the adoption and implementation of the OBMP; and

**WHEREAS**, OCWD has filed a petition with the State Water Resources Control Board requesting a change of the Santa Ana River's "Fully Appropriated" status, and filed an application to appropriate up to five hundred seven thousand (507,000) acre-feet of such newly declared surplus water; and

**WHEREAS**, the Parties to this Agreement desire to resolve issues by consent under the express terms and conditions stated herein; and

**WHEREAS**, the Parties wish to preserve and maintain Watermaster's role under the Judgment without compromising the Parties' collective and individual "benefits of the bargain" under this Agreement; and

**WHEREAS**, the Parties intend that this Agreement shall enable the adoption and implementation of an OBMP consistent herewith, which will benefit the Basin and all Parties hereto;

**NOW, THEREFORE**, in consideration of the mutual promises specified herein and by conditioning their performance under this Agreement upon conditions precedent set forth in Article III, the Watermaster approval and Court Order of its terms, and for other good and valuable consideration, the Parties agree as follows:

## **I**

### **DEFINITIONS AND RULES OF CONSTRUCTION**

- 1.1 Definitions. As used in this Agreement, these terms, including any grammatical variations thereof shall have the following meanings:



- (a) "Agricultural Pool" shall have the meaning of Overlying (Agricultural) Pool as used in the Judgment and shall include all its members;
- (b) "Appropriative Pool" shall have the meaning as used in the Judgment and shall include all its members;
- (c) "Basin Water" means groundwater within Chino Basin which is part of the Safe Yield, Operating Safe Yield, or Replenishment Water in the Basin as a result of operations under the physical solution decreed in the Judgment. Basin Water does not include "Stored Water;"
- (d) "Best Efforts" means reasonable diligence and reasonable efforts under the totality of the circumstances. Indifference and inaction do not constitute Best Efforts. Futile action(s) are not required.
- (e) "CBWCD" means the Chino Basin Water Conservation District;
- (f) "CEQA" means the California Environmental Quality Act, Public Resources Code Sections 21000 et seq; 14 California Code of Regulations 15000 et seq.;
- (g) "Chino Basin" or "Basin" means the groundwater basin underlying the area shown on Exhibit "B" to the Judgment and within the boundaries described on Exhibit "K" to the Judgment;
- (h) "Chino Basin Watershed" means the surface drainage area tributary to and overlying Chino Basin;

- (i) “Chino I Desalter” also known as the SAWPA Desalter means the Desalter owned and operated by PC14 with a present capacity of eight (8) million gallons per day (mgd) and in existence on the Effective Date;
- (j) “Chino I Desalter Expansion” means the planned expansion of the Chino I Desalter from its present capacity of eight (8) mgd to a capacity of up to fourteen (14) mgd, to be owned and operated by IEUA and WMWD acting through PC14;
- (k) “Chino II Desalter” means a new Desalter not in existence on the Effective Date with a design capacity of ten (10) mgd, to be owned, constructed, and operated by IEUA and WMWD acting independently or in their complete discretion, acting through the PC14, constructed and operated consistent with the OBMP and to be located on the eastside of the Chino Basin;
- (l) “Court” means the court exercising continuing jurisdiction under the Judgment;
- (m) “Date of Execution” means the first day following the approval and execution of the Agreement by the last Party to do so;
- (n) “Desalter” and “Desalters” means the Chino I Desalter, Chino I Desalter Expansion, the Chino II Desalter and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin Water, including extraction wells, transmission facilities for delivery of groundwater to the Desalter, Desalter treatment and delivery facilities for the desalted water including pumping and storage facilities, and treatment and disposal capacity in the SARI System;

- (o) “Early Transfer” means the reallocation of Safe Yield not Produced by the Agricultural Pool to the Appropriative Pool on an annual basis rather than according to the five year increment described in Paragraph 10 of Exhibit “H” of the Judgment;
- (p) “Effective Date” means October 1, 2000, provided that all conditions precedent have been waived or satisfied;
- (q) “Future Desalters” means enlargement of the Chino I Desalter to a capacity greater than the Chino I Expansion or enlargement of the Chino II Desalter and any other new Desalter facilities that may be needed to carry out the purposes of the OBMP over the term of this Agreement;
- (r) “General law” means all applicable state and federal law;
- (s) “Groundwater” means water beneath the surface of the ground and within the zone of saturation, i.e., below the existing water table;
- (t) “IEUA” means the Inland Empire Utilities Agency, referred to in the Judgment as Chino Basin Municipal Water District;
- (u) “In-lieu recharge” means taking supplies of Supplemental Water in lieu of pumping groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, as provided in Exhibit “H” Paragraph 11 of the Judgment;
- (v) “Judgment” means the Judgment dated January 27, 1978, in San Bernardino County Case No. 164327 (redesignated as San Bernardino County Case No. RCV 51010) as amended by Order Approving Amendments to Judgment Dated December 1, 1995, and Order for Amendments to the Judgment Regard-

ing Changes in Pooling Plans and Appropriative Pool Representation on the Advisory Committee, dated September 18, 1996 and other such amendments;

- (w) “Jurupa Community Services District” (JCSD) means the Jurupa Community Services District and the Santa Ana River Water Company individually. Subject to the provisions of this Agreement, the design and delivery obligations for the Chino II Desalter set forth in Section 7.3 regarding Jurupa Community Services District include both the Jurupa Community Services District and the Santa Ana River Water Company. Santa Ana River Water Company may exercise its discretion to receive its portion of the desalted water through an interconnection or at its own expense through an independent pipeline to connect to the Chino II Desalter or in any other method as the Jurupa Community Services District and the Santa Ana River Water Company may jointly agree. Nothing in this definition shall be construed as expanding the initial mgd capacity of the Chino II Desalter as provided in the facilities plan which is attachment “1” to the OBMP Implementation Plan (Exhibit “B” hereto). If it is necessary to meet Santa Ana River Water Company’s demands and there is insufficient initial capacity in the Chino II Desalter to satisfy the demands of Santa Ana River Water Company for desalted water in the quantities as provided in the Revised Draft Water Supply Plan Phase I Desalting Project Facilities Report, Jurupa’s and Ontario’s entitlement to desalted water made available from the initial capacity of the Chino II Desalter shall abate pro-rata to accommodate the demand of Santa Ana River Water Company up to a maximum quantity of 1,300 acre feet per year.
- (x) “Local Storage” means water held in a storage account pursuant to a Local Storage agreement between a party to the

Judgment and Watermaster and consisting of: (i) a Producer's unproduced carry-over water or (ii) a party to the Judgment's Supplemental Water, up to a cumulative maximum of fifty thousand (50,000) acre-feet for all parties to the Judgment.

- (y) "Material Physical Injury" means material injury that is attributable to the Recharge, Transfer, storage and recovery, management, movement or Production of water, or implementation of the OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence, increases in pump lift (lower water levels) and adverse impacts associated with rising groundwater. Material Physical Injury does not include "economic injury" that results from other than physical causes. Once fully mitigated, physical injury shall no longer be considered to be material;
- (z) "Metropolitan Water District" means the Metropolitan Water District of Southern California;
- (aa) "New Yield" means proven increases in yield in quantities greater than historical amounts from sources of supply including, but not limited to, capture of rising water, capture of available storm flow, operation of the Desalters (including the Chino I Desalter), induced Recharge and other management activities implemented and operational after June 1, 2000;
- (bb) "Non-Agricultural Pool" shall have the meaning as used in the Judgment for the Overlying (Non-Agricultural Pool) and shall include all its members;
- (cc) "OBMP Assessments" means assessments, other than the assessments levied as provided in Section 5.1(g), levied by Watermaster for the purpose of implementing the Optimum

Basin Management Program (OBMP),, which shall be deemed Administrative Assessments under Paragraph 54 of the Judgment.

- (dd) “OCWD” means the Orange County Water District;
- (ee) “Operating Safe Yield” means the annual amount of groundwater which Watermaster shall determine, pursuant to criteria specified in Exhibit “I” to the Judgment, can be Produced from Chino Basin by the Appropriative Pool parties free of Replenishment obligation under the Physical Solution. Watermaster shall include any New Yield in determining Operating Safe Yield;
- (ff) “Overdraft” means a condition wherein the total annual Production from the Basin exceeds the Safe Yield thereof, as provided in the Judgment;
- (gg) “Party or Parties” means a Party to this Agreement;
- (hh) “Party or parties to the Judgment” means a party to the Judgment;
- (ii) “Produce or Produced” means to pump or extract groundwater from the Chino Basin;
- (jj) “Producer” means any person who Produces groundwater from the Chino Basin;
- (kk) “Production” means the annual quantity, stated in acre feet, of water Produced from the Chino Basin;
- (ll) “PC14” means Project Committee No. 14, members of SAWPA, composed of IEUA, WMWD, and OCWD, pursuant



to Section 18 of the SAWPA Joint Exercise of Powers Agreement which now constitutes the executive Authority through which SAWPA acts with respect to the Chino I Desalter;

- (mm) “Public Hearing” means a hearing of Watermaster after notice pursuant to Paragraphs 58 and 59 or other Paragraphs of the Judgment that may be applicable, to all parties to the Judgment and to any other person entitled to notice under the Judgment, this Agreement or general law;
- (nn) “Recharge and Recharge Water” means introduction of water into the Basin, directly or indirectly, through injection, percolation, delivering water for use in-lieu of Production or other method. Recharge references the physical act of introducing water into the Basin. Recharge includes Replenishment Water but not all Recharge is Replenishment Water. This definition shall not be construed to limit or abrogate the authority of CBWCD under general law;
- (oo) “Replenishment Water” means Supplemental Water used to Recharge the Basin pursuant to the physical solution, either directly by percolating or injecting the water into the Basin or indirectly by delivering the water for use in lieu of Production and use of Safe Yield or Operating Safe Yield;
- (pp) “Recycled Wastewater” means water which, as a result of treatment of wastewater, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource, referred to as “reclaimed water” in the Judgment.
- (qq) “Safe Yield” means the long-term average annual quantity of groundwater (excluding Replenishment Water or Stored Water but including return flow to the Basin from use of

Replenishment or Stored Water) which can be Produced from the Basin under cultural conditions of a particular year without causing an undesirable result;

- (rr) "Salt Credits" means an assignable credit that may be granted by the Regional Water Quality Control Board and computed by Watermaster from activities that result from removal of salt from the Basin, or that result in a decrease in the amount of salt entering the Basin;
- (ss) "SAWPA" means the Santa Ana Watershed Project Authority;
- (tt) "Sphere of Influence" has the same meaning as set forth in Government Code Section 56076;
- (uu) "Storage and Recovery Program" means the use of the available storage capacity of the Basin by any person under the direction and control of Watermaster pursuant to a storage and recovery agreement but excluding "Local Storage", including the right to export water for use outside the Chino Basin and typically of broad and mutual benefit to the parties to the Judgment;
- (vv) "Stored Water" means Supplemental Water held in storage, as a result of direct spreading, injection or in-lieu delivery, for subsequent withdrawal and use pursuant to agreement with Watermaster;
- (ww) "Supplemental Water" means water imported to Chino Basin from outside the Chino Basin Watershed and recycled water;
- (xx) "Transfer" means the assignment, lease, or sale of a right to Produce water to another Producer within the Chino Basin or to another person or entity for use outside the Basin in con-

formance with the Judgment, whether the Transfer is of a temporary or permanent nature;

(yy) “TVMWD” means Three Valleys Municipal Water District (referred to in the Judgment as Pomona Valley Municipal Water District);

(zz) “Watermaster” means Watermaster as the term is used in the Judgment;

(aaa) “Watermaster Resolution 88-3” means the resolution by the Chino Basin Watermaster establishing the procedure for transferring unallocated Safe Yield water from the Agricultural Pool to the Appropriative Pool, adopted on April 6, 1988 and rescinding Resolution 84-2 in its entirety;

(bbb) “WMWD” means Western Municipal Water District;

## 1.2 Rules of Construction.

(a) Unless the context clearly requires otherwise:

(i) The plural and singular forms include the other;

(ii) “Shall,” “will,” “must,” and “agrees” are each mandatory;

(iii) “may” is permissive;

(iv) “or” is not exclusive;

(v) “includes” and “including” are not limiting; and

(vi) “between” includes the ends of the identified range.

- (b) Headings at the beginning of Articles, paragraphs and subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement and shall not be used in construing it.
- (c) The masculine gender shall include the feminine and neuter genders and vice versa.
- (d) The word "person" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, water district and other entity of whatever nature.
- (e) Reference to any agreement (including this Agreement), document, or instrument means such agreement, document, instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.
- (f) Except as specifically provided herein, reference to any law, statute, ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part and in effect from time to time, including any rules and regulations promulgated thereunder.

## II COMPLIANCE WITH CEQA

- 2.1 Commitments Shall be Consistent With CEQA Compliance. In executing this Agreement, the Parties agree that no commitment will be made to carry out any "project" under the OBMP and within the meaning of CEQA unless and until the environmental review and assessments required by CEQA for that defined "project" have been

completed. Any future implementing actions in furtherance of Program Elements 2 through 9 that meet the definition of "project" under CEQA, shall be subject to further environmental documentation in the form of an exemption, a negative declaration, mitigated negative declaration, environmental impact report, supplemental EIR or subsequent EIR. Any challenge claiming a breach of this article shall be brought within the same period of time applicable to claims under Public Resources Code section 21000, et seq.

2.2 Reservation of Discretion. Execution of this Agreement is not intended to commit any Party to undertake a project without compliance with CEQA or to commit the Parties to a course of action, which would result in the present approval of a future project.

2.3 No Prejudice by Comment or Failure to Comment. Nothing in the PEIR, or a Party's failure to object or comment thereon, shall limit any Party's right to allege that "Material Physical Injury" will result or has resulted from the implementation of the OBMP, the storage, recovery, management, movement or Production of water as provided in Article V herein.

2.4 Acknowledgment that IEUA is the Lead Agency. IEUA has been properly designated as the "Lead Agency" for the purposes of preparing the PEIR as ordered by court on November 18, 1999.

### **III CONDITIONS PRECEDENT**

3.1 Performance Under Articles V, VI, and VII is Subject to Satisfaction of Conditions Precedent. Each Party's obligations under this Agreement are subject to the satisfaction of the following conditions on or before the dates specified below, unless satisfaction of a specified condition or conditions is waived in writing by all other Parties:

- (a) The Parties' covenants and commitments set forth in Article V are expressly conditioned upon Watermaster's contemporaneous approval of this Agreement and the OBMP Implementation Plan by June 29, 2000 and upon an Order of the Court directing Watermaster to proceed in accordance with this Agreement and only this Agreement, on or before July 13, 2000. Watermaster's approval of this Agreement and the OBMP Implementation Plan shall be in the form of a resolution substantially similar to Exhibit "A" attached hereto and it shall contain a commitment to adopt the requisite policies and procedures to implement the provisions set forth in Article V on or before December 31, 2000, unless an earlier date for performance is otherwise expressly provided herein.
- (b) Appropriation by the California Legislature of at least \$121,000,000 from the proceeds made available by the passage of Proposition 13 for the benefit of the SAWPA by October 1, 2000.

#### IV MUTUAL COVENANTS

- 4.1 Joint Defense. The Parties shall proceed with reasonable diligence and use Best Efforts to jointly defend any lawsuit or administrative proceeding challenging the legality, validity, or enforceability of any term of this Agreement. However, nothing herein shall require the State of California to incur legal or administrative costs in support of such an effort.
- 4.2 No Opposition to the OBMP. No Party to this Agreement shall oppose Watermaster's adoption and implementation of the OBMP as provided in Exhibit B attached hereto in a manner consistent with this Agreement, or the execution of Memoranda of Agreement that incorporate the provisions which are substantially similar to those



contained in Exhibit "C" attached hereto. Nothing herein shall be construed as limiting any Party's right of participation in all the functions of Watermaster as are provided in the Judgment or to preclude a party to the Judgment from seeking judicial review of Watermaster determinations pursuant to the Judgment or as otherwise provided in this Agreement.

4.3 Indemnification of the Agricultural Pool. The Parties shall indemnify and defend the State of California and the members of the Agricultural Pool against any lawsuit or administrative proceedings, without limitation, arising from Watermaster's adoption, approval, management, or implementation of a Storage and Recovery Program.

4.4 Consent to Specified Changes to the Judgment. Each Party consents to the following modifications to the Judgment.

- (a) The Judgment shall be amended so that the last sentence of Paragraph 8 of the Judgment reads:

All overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart therefrom for the term of the Peace Agreement except that the members of the Overlying (Non-Agricultural) Pool shall have the right to Transfer or lease their quantified Production rights within the Overlying (Non-Agricultural) Pool or to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000.

- (b) Paragraph 6 of Exhibit "G" to the Judgment regarding the Overlying Non-Agricultural Pool shall be amended to read:

Assignment. Rights herein decreed are appurtenant to that land and are only assignable with the land for over-

lying use thereon; provided, however, (a) that any appropriator who may, directly or indirectly, undertake to provide water service to such overlying lands may, by an appropriate agency agreement on a form approved by Watermaster, exercise said overlying right to the extent, but only to the extent necessary to provide water service to said overlying lands, and (b) the members of the pool shall have the right to Transfer or lease their quantified Production rights within the pool or to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000 for the term of the Peace Agreement.

- (c) The 1995 Amendment to the Judgment shall be amended as follows: Section 10(b)(3)(i) shall now read:

“For the term of the Peace Agreement, in any year in which sufficient unallocated Safe Yield from the Overlying (Agricultural) Pool is available for such conversion claims, Watermaster shall allocate to each appropriator with a conversion claim, 2.0 acre-feet of unallocated Safe Yield water for each converted acre for which conversion has been approved and recorded by the Watermaster.”

Appendix 1 to the Judgment shall be construed to be consistent with this amendment. All other parts of the 1995 Amendment shall remain the same.

- 4.5 Construction of “Operating Yield” Under the Judgment. Exhibit I to the Judgment shall be construed to authorize Watermaster to include New Yield as a component of Operating Safe Yield.
- 4.6 Best Efforts to Obtain Funding for OBMP. Each Party shall use Best Efforts to obtain and support funding that is consistent with the

OBMP and this Agreement. The Parties shall coordinate their individual efforts and report their progress to Watermaster no less than each quarter beginning on the Effective Date.

- 4.7 CBWCD. Watermaster shall provide for, arrange or approve the necessary revenue to fund Recharge activities listed in the OBMP and CBWCD shall not assume any legal duty or responsibility to conduct Recharge other than as is expressly set forth herein, as it may agree or as may be provided under general law or the Judgment.

## V

### WATERMASTER PERFORMANCE

- 5.1 Recharge and Replenishment. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding Recharge and Replenishment:
- (a) All Recharge of the Chino Basin with Supplemental Water shall be subject to Watermaster approval.
  - (b) Watermaster will ensure that any person may make application to Watermaster to Recharge the Chino Basin with Supplemental Water, including the exercise of the right to offer to sell in-lieu Recharge water to Watermaster as provided in the Judgment and the Agreement in a manner that is consistent with the OBMP and the law. Watermaster shall not approve an application by any party to the Judgment if it is inconsistent with the terms of the Agreement, or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any Party or the Basin caused by the Recharge of Supplemental Water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and

reasonably mitigated, the request for Recharge of Supplemental Water must be denied.

- (c) Watermaster shall administer, direct and conduct the Recharge of all water in a manner that is consistent with this Agreement, the OBMP and causes no Material Physical Injury to any party to the Judgment or the Chino Basin. Nothing herein shall be construed as committing a Party to provide Supplemental Water upon terms and conditions that are not deemed acceptable to that Party.
- (d) Notwithstanding Section 5.1(c), CBWCD shall reserve its complete discretion to Recharge the Basin with water other than Supplemental Water as may be authorized by general law so long as the Recharge is in accordance with the limitations in the Judgment, if any and is in accordance with the provisions of Section 5.1(d)(i)-(v).
  - (i) Upon request by Watermaster CBWCD shall exercise Best Efforts to consult, coordinate and cooperate with Watermaster when recharging water into the Basin;
  - (ii) CBWCD shall provide Watermaster with reasonable notice in advance of any material change in its historic Recharge operations;
  - (iii) CBWCD shall not be required to provide funding for Recharge projects merely by virtue of its execution of this Agreement;
  - (iv) CBWCD shall Recharge the Basin in a manner that does not cause Material Physical Injury to any party to the Judgment or the Basin. Upon Watermaster's receipt of a written allegation that an existing or proposed

CBWCD Recharge activity has or will cause Material Physical Injury to any party to the Judgment or the Basin, Watermaster shall hold a Public Hearing within a reasonable time. Watermaster shall provide notice and opportunity to be heard to interested parties to the Judgment including CBWCD. After hearing, Watermaster may approve, deny or condition the CBWCD's Recharge. Watermaster's decision shall be based upon the record and it shall be subject to the court's review;

- (v) CBWCD's Recharge of the Basin coupled with an intent to store and recover water shall require a storage and recovery agreement.
- (e) Watermaster shall exercise its Best Efforts to:
- (i) protect and enhance the Safe Yield of the Chino Basin through Replenishment and Recharge;
  - (ii) ensure there is sufficient Recharge capacity for Recharge Water to meet the goals of the OBMP and the future water supply needs within the Chino Basin;
  - (iii) direct Recharge relative to Production in each area and sub-area of the Basin to achieve long term balance and to promote the goal of equal access to groundwater within all areas and sub-areas of the Chino Basin;
  - (iv) evaluate the potential or threat for any Material Physical Injury to any party to the Judgment or the Chino Basin, including, but not limited to, any Material Physical Injury that may result from any Transfer of water in storage or water rights which is proposed in place of

physical Recharge of water to Chino Basin in accordance with the provisions of Section 5.3;

- (v) establish and periodically update criteria for the use of water from different sources for Replenishment purposes;
  - (vi) ensure a proper accounting of all sources of Recharge to the Chino Basin;
  - (vii) Recharge the Chino Basin with water in any area where groundwater levels have declined to such an extent that there is an imminent threat of Material Physical Injury to any party to the Judgment or the Basin;
  - (viii) maintain long-term hydrologic balance between total Recharge and discharge within all areas and sub-areas;
  - (ix) coordinate, facilitate and arrange for the construction of the works and facilities necessary to implement the quantities of Recharge identified in the OBMP Implementation Plan.
- (f) Watermaster shall undertake Recharge, using water of the lowest cost and the highest quality, giving preference as far as possible to the augmentation and the Recharge of native storm water.
- (g) In furtherance of its obligations under this Section, for a period of five years, commencing with Fiscal Year 2000-2001, and within each such Fiscal Year Watermaster shall arrange for the physical Recharge of Supplemental Water in the amount of an annual average of 6,500 acre-feet per year in one or more of



the areas commonly known as the Montclair, Brooks and Upland spreading facilities.

- (i) If for any reason at the end of the five year period, a cumulative total of 32,500 acre-feet of physical Recharge has not been accomplished under this subdivision, then Recharge shall continue at the above referenced locations at the average annual rate of 6,500 acre-feet until the full 32,500 acre-feet of physical Recharge has been accomplished;
- (ii) The Recharged Supplemental Water shall increase the Operating Safe Yield under the Judgment. The cost and allocation of this Supplemental Water under this Section 5.1g shall be apportioned pro rata among the members of the Appropriative Pool under the Judgment according to the Producer's share of the initial Safe Yield;
- (iii) The need to continue physical Recharge under this paragraph shall be evaluated by Watermaster after the conclusion of Fiscal Year 2004-2005. In evaluating further physical Recharge pursuant to this paragraph, Watermaster shall take into account the provisions of this Article, the Judgment and the OBMP among all other relevant factors. Except as to Watermaster's determination of Material Physical Injury, the rights of each party to the Judgment to purchase or lease water to meet its over-Production obligation shall be unaffected by this provision;
- (h) Watermaster shall not own Recharge projects, including but not limited to spreading grounds, injection wells, or diversion works. It shall never own real property. However, Watermaster may own water rights in trust for the benefit of the

parties to the Judgment. Moreover, Watermaster shall arrange, facilitate and provide for Recharge by entering into contracts with appropriate persons, which may provide facilities and operations for physical Recharge of water as required by the Judgment and this Agreement, or pursuant to the OBMP. Any such contracts shall include appropriate terms and conditions, including terms for the location and payment of costs necessary for the operation and maintenance of facilities, if any.

- (i) CBWCD's rights and obligations to obtain Replenishment Water are unaffected by the execution of this Agreement. Its obligation, rights and duties regarding Recharge may be set by arms length negotiation through separate agreement or as they otherwise exist under general law and the Judgment.
- (j) Watermaster shall provide an annual accounting of the amount of Recharge and the location of the specific types of Recharge.

5.2 Storage and Recovery. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding the storage and recovery of water:

- (a) In General.
  - (i) All storage capacity shall be subject to regulation and control by Watermaster;
  - (ii) No person shall store water in and recover water from the Chino Basin without an agreement with Watermaster;
  - (iii) Watermaster will ensure that any person, including but not limited to the State of California and the Department

of Water Resources may make application to Watermaster to store and recover water from the Chino Basin as provided herein in a manner that is consistent with the OBMP and the law. Watermaster shall not approve an application to store and recover water if it is inconsistent with the terms of this Agreement or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any Party or the Basin caused by the storage and recovery of water shall be reasonably and fully mitigated as a condition of approval. In the event the Material Physical Injury cannot be mitigated, the request for storage and recovery must be denied.

- (iv) This Agreement shall not be construed to limit the State or its department or agencies from using available storage capacity in the Basin in accordance with the provisions of this Section under a storage and recovery agreement with Watermaster.

(b) Local Storage.

- (i) For a period of five years from the Effective Date, Watermaster shall ensure that: (a) the quantity of water actually held in Local Storage under a storage agreement with Watermaster is confirmed and protected and (b) each party to the Judgment shall have the right to store its un-Produced carry-over water. Thereafter, a party to the Judgment may continue to Produce the actual quantity of carry-over water and Supplemental Water held in its storage account, subject only to the loss provisions set forth in this Section 5.2. This means a party to the Judgment may increase the total volume of carry-over water it holds in Local Storage up to five years after the

Effective Date and as Watermaster may approve pursuant to a Local Storage agreement for Supplemental Water.

- (ii) For a period of five years from the Effective Date, any party to the Judgment may make application to Watermaster for a Local Storage agreement, whereby it may store Supplemental Water in the Chino Basin.
- (iii) Watermaster shall provide reasonable advance written notice to all interested parties of the proposed Local Storage agreement, prior to approving the agreement. The notice shall include the persons engaged in the Local Storage, the location of the Recharge and Production facilities and the potential for any Material Physical Injury, if any.
- (iv) Watermaster shall approve the Local Storage agreement so long as: (1) the total quantity of Supplemental Water authorized to be held in Local Storage under all then existing Local Storage agreements for all parties to the Judgment does not exceed the cumulative total of 50,000 acre-feet; (2) the party to the Judgment making the request provides their own Recharge facilities for the purpose of placing the Supplemental Water into Local Storage; (3) the agreement will not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed agreement with conditions that mitigate any threatened or potential Material Physical Injury.
- (v) There shall be a rebuttable presumption that the Local Storage agreement for Supplemental Water does not

result in Material Physical Injury to a party to the Judgment or the Basin.

- (vi) In the event any party to the Judgment, or Watermaster, objects to a proposed Local Storage agreement for Supplemental Water and submits evidence that there may be a Material Physical Injury to any party to the Judgment or the Basin, Watermaster shall hold a Public Hearing and allow the objecting party to the Judgment a reasonable opportunity to be heard.
- (vii) In the event more than one party to the Judgment submits a request for an agreement to store Supplemental Water pursuant to a Local Storage agreement, Watermaster shall give priority to the first party to file a bona fide written request which shall include the name of the party to the Judgment, the source, quantity and quality of the Supplemental Water, an identification of the party to the Judgment's access to or ownership of the Recharge facilities, the duration of the Local Storage and any other information Watermaster shall reasonably request. Watermaster shall not grant any person the right to store more than the then existing amount of available Local Storage. The amount of Local Storage available for the storage of Supplemental Water shall be determined by subtracting the previously approved and allocated quantity of storage capacity for Supplemental Water from the cumulative maximum of 50,000 acre-feet.
- (viii) Watermaster shall base any decision to approve or disapprove any proposed agreement upon the record.

- (ix) Any party to the Judgment may seek judicial review of Watermaster's decision.
- (x) Five years after the Effective Date, Watermaster shall have discretion to place reasonable limits on the further accrual of carry-over and Supplemental Water in Local Storage. However, Watermaster shall not limit the accrual of carry-over Local Storage for Fontana Union Mutual Water Company and Cucamonga County Water District when accruing carry-over storage pursuant to *Lease of Corporate Shares Coupled with Irrevocable Proxy, dated July 1, 1993 between Cucamonga County Water District and Fontana Water Resources Inc. and the Settlement Agreement Among Fontana Union Water Company, Kaiser Steel Reserves Inc., San Gabriel Valley Water Company and Cucamonga County Water Districts dated February 7, 1992*, to a quantity less than 25,000 acre-feet for the term of this Agreement.
- (xi) Watermaster shall evaluate the need for limits on water held in Local Storage to determine whether the accrual of additional Local Storage by the parties to the Judgment should be conditioned, curtailed or prohibited if it is necessary to provide priority for the use of storage capacity for those Storage and Recovery Programs that provide broad mutual benefits to the parties to the Judgment as provided in this paragraph and Section 5.2(c) below;
- (xii) Watermaster shall set the annual rate of loss from Local Storage for parties to the Judgment at zero until 2005. Thereafter the rate of loss from Local Storage for parties to the Judgment will be 2% until recalculated based upon the best available scientific information. Losses



shall be deducted annually from each party to the Judgment's storage account;

- (xiii) Watermaster shall allow water held in storage to be transferred pursuant to the provisions of Section 5.3 below. Storage capacity is not transferable by any party to the Judgment or any Party hereto.

(c) Storage and Recovery Program.

- (i) Watermaster will ensure that no person shall store water in and recover water from the Basin, other than pursuant to a Local Storage agreement, without a storage and recovery agreement with Watermaster;
- (ii) Watermaster shall prepare a list of basic information that a proposed applicant for a Storage and Recovery Program must submit to Watermaster prior to the execution of a storage and recovery agreement;
- (iii) As a precondition of any project, program or contract regarding the use of Basin storage capacity pursuant to a Storage and Recovery Program, Watermaster shall first request proposals from qualified persons.
- (iv) Watermaster shall be guided by the following criteria in evaluating any request to store and recover water from the Basin by a party to the Judgment or any person under a Storage and Recovery Program.
  - (a) The initial target for the cumulative quantity of water held in storage is 500,000 acre-feet in addition to the existing storage accounts;

- (b) Watermaster shall prioritize its efforts to regulate and condition the storage and recovery of water developed in a Storage and Recovery Program for the mutual benefit of the parties to the Judgment and give first priority to Storage and Recovery Programs that provide broad mutual benefits;
- (v) For the term of this Agreement, members of the Appropriative Pool and the Non-Agricultural Pool shall be exclusively entitled to the compensation paid for a Storage and Recovery Program irrespective of whether it be in the form of money, revenues, credits, proceeds, programs, facilities, or other contributions (collectively "compensation") as directed by the Non-Agricultural and the Appropriative Pools;
- (vi) The compensation received from the use of available storage capacity under a Storage and Recovery Program, may be used to off-set the Watermaster's cost of operation, to reduce assessments on the parties to the Judgment within the Appropriative and Non-Agricultural Pools, and to defray the costs of capital projects as may be requested by the members of the Non-Agricultural Pools and the Appropriative Pool;
- (xiii) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by storage and recovery of water, whether Local Storage and recovery or pursuant to a Storage and Recovery Program, shall be reasonably and fully mitigated as a condition of approval;
- (ix) Watermaster reserves discretion to negotiate appropriate terms and conditions or to refuse to enter into a Storage

and Recovery or to deny any request. However, with respect to persons not parties to the Judgment, Watermaster reserves complete discretion. Watermaster shall base any decision to approve or disapprove any proposed Storage and Recovery Program upon the record. However, it may not approve a proposed Storage and Recovery Program unless it has first imposed conditions to reasonably and fully mitigate any threatened or potential Material Physical Injury;

- (x) Any party to the Judgment may seek review of the Watermaster's decision regarding a Storage and Recovery Program.
- (d) The specific terms and conditions for the use of the facilities of CBWCD in connection with Local Storage or Storage and Recovery Programs shall be covered under separate agreements reached by arms length bargaining between Watermaster and CBWCD. Watermaster and any other Party shall not be entitled to the income received by CBWCD for use of its facilities in connection with Local Storage or Storage and Recovery Programs without the consent of CBWCD. Nothing in this Agreement shall be construed as preventing CBWCD from entering into an agreement with others for use of its facilities in a manner consistent with Section 5.1(d) i-v of this Agreement.
- (e) Nothing herein shall be construed as prohibiting the export of Supplemental Water stored under a Storage and Recovery Program and pursuant to a storage and recovery agreement.
- (f) Watermaster shall exercise Best Efforts to undertake the following measures:

- (i) Complete the Short-term conjunctive use project, authorized by Watermaster and conducted by IEUA, TVMWD and MWD;
- (ii) Evaluate and develop a seasonal peaking program for in-Basin use and dry year yield to reduce the Basin's demand on the Metropolitan Water District for imported water;
- (iii) Evaluate and develop a dry year export program;
- (iv) Evaluate and develop a seasonal peaking export program;

5.3 Transfers. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding the Transfer of water:

- (a) Watermaster will ensure that any party to the Judgment may Transfer water in a manner that is consistent with this Agreement, the OBMP and the law. Watermaster shall not approve a Transfer if it is inconsistent with the terms of the Agreement, or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Transfer of water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Transfer must be denied.
- (b) A party to the Judgment may make application to Watermaster to Transfer water as provided in the Judgment.

- (i) Watermaster shall provide reasonable advance written notice to all the parties to the Judgment of a proposed Transfer, prior to approving the Transfer. The notice shall include the persons engaged in the Transfer, the location of the Production and Watermaster's analysis of the potential for Material Physical Injury, if any;
- (ii) Watermaster shall approve the Transfer of water as provided in the Judgment so long as the individual Transfer does not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed Transfer with conditions that fully and reasonably mitigate any threatened or potential Material Physical Injury;
- (iii) There shall be a rebuttable presumption that the Transfer and the Production by the transferee does not result in Material Physical Injury to a party to the Judgment or the Basin;
- (iv) In the event any party to the Judgment, or Watermaster, objects to a proposed Transfer and submits evidence that there may be Material Physical Injury to any party to the Judgment or the Basin, Watermaster shall hold a Public Hearing and allow the objecting party to the Judgment a reasonable opportunity to be heard;
- (v) Watermaster shall base any decision to approve or disapprove any proposed Transfer upon the record after considering potential impacts associated with the individual Transfer alone and without regard to impacts attributable to any other Transfers;

- (vi) Any party to the Judgment may seek judicial review of the Watermaster's decision.
- (c) Watermaster shall allow Producers to lease water rights to make up for the lessee's over-Production.
- (d) Except as provided in Section 5.2, Producers shall not be required to file a storage and recovery or recapture plan except when Producing water transferred from a storage account.
- (e) Watermaster shall approve the Transfer or lease of the quantified Production rights of Non-Agricultural Producers within the Non-Agricultural Pool subject to the provisions of paragraph (b) above. The right to Transfer within the pool includes the right to lease water to other members of the Non-Agricultural Overlying Pool. In addition, the parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter or for a Storage and Recovery Program.
- (f) Consistent with the provisions of 88-3, Watermaster shall approve the Transfer of unallocated Safe Yield under-Produced by the Agricultural Pool in Fiscal Year 1998-99, for Transfer to the Appropriative Pool in Fiscal Year 1999-2000, 35,262.452 acre-feet consistent with Watermaster Resolution 88-3. This Transfer shall be in addition to the Early Transfer of the 32,800 acre-feet per year from the Agricultural Pool to the Appropriative Pool referenced below in 5.3(g).
- (g) Watermaster shall approve an "Early Transfer" of water to the Appropriative Pool in an amount not less than 32,800 acre-feet per year that is the expected approximate quantity of water not Produced by the Agricultural Pool. The quantity of water sub-



ject to Early Transfer under this paragraph shall be the greater of (i) 32,800 acre-feet or (ii) 32,800 acre-feet plus the actual quantity of water not Produced by the Agricultural Pool for that Fiscal Year that is remaining after all the land use conversions are satisfied pursuant to 5.3(i) below.

- (i) The Early Transfer water shall be annually allocated among the members of the Appropriative Pool in accordance with their pro-rata share of the initial Safe Yield.
- (ii) The Transfer shall not limit the Production right of the Agricultural Pool under the Judgment to Produce up to 82,800 acre-feet of water in any year or 414,000 acre-feet in any five years as provided in the Judgment.
- (iii) The combined Production of all parties to the Judgment shall not cause a Replenishment assessment on the members of the Agricultural Pool. The Agricultural Pool shall be responsible for any Replenishment obligation created by the Agricultural Pool Producing more than 414,000 acre-feet in any five-year period.
- (iv) The parties to the Judgment and Watermaster shall Produce water in accordance with the Operating Safe Yield and shall procure sufficient quantities of Replenishment Water to satisfy over-Production requirements, whatever they may be, and avoid Material Physical Injury to any party to the Judgment or the Basin;
- (v) Nothing herein shall be construed as modifying the procedures or voting rights within or by the members of the Agricultural Pool.

- (h) The amount of water rights converted for agricultural land to urban use is presently 2.6 acre-feet per acre, with 1.3 acre-feet per acre being allocated collectively to all members of the Appropriative Pool with an initial share of Safe Yield and 1.3 acre-feet per acre being allocated to that appropriator providing service for that urban use. The rate of 2.6 acre-feet per acre shall be changed to a total of 2.0 acre-feet per acre, all of which shall be allocated upon the conversion of the land to that party to the Judgment which is an a member of the Appropriative Pool, on the Effective Date of this Agreement, and whose Sphere of Influence or authorized service area contains the land (purveyor). Upon such conversion of water rights, the purveyor will pledge that amount of water needed for such urban land use, when such urban land use is established, up to 2 acre-feet of water per acre of land per year will be made available for service for such converted land by purveyor under its then-existing standard laws, regulations, rules and policies, or for service arranged by such purveyor, subject only to prohibition of such service by a federal, state agency or court with jurisdiction to enforce such prohibition. The owner of such converted land shall have the right to enforce such pledge by specific performance or writ of mandate under the terms of this Agreement. No monetary damages shall be awarded.
- (i) The members of the Agricultural Pool, including the State of California, shall have the right to engage in a voluntary agreement with an appropriator which has a service area contiguous to or inclusive of the agricultural land, to provide the required water to the overlying land on behalf of the member of the Agricultural Pool unless otherwise prohibited by general law. The appropriator providing service shall be entitled to a credit to off-set Production to the extent it is serving the overlying land up to the amount of the historical maximum annual quantity of water previously used on the property.

5.4 Assessments, Credits, and Reimbursements. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding Assessments.

- (a) During the term of this Agreement, all assessments and expenses of the Agricultural Pool including those of the Agricultural Pool Committee shall be paid by the Appropriate Pool. This includes but is not limited to OBMP Assessments, assessments pursuant to Paragraphs 20, 21, 22, 30, 42, 51, 53, 54 both General Administrative Expenses and Special Project Expenses, 55, and Exhibit F (Overlying Agricultural Pool Pooling Plan) of the Judgment except however in the event the total Agricultural Pool Production exceeds 414,000 acre-feet in any five consecutive year period as defined in the Judgment, the Agricultural Pool shall be responsible for its Replenishment obligation pursuant to Paragraph 45 of the Judgment.
- (b) The City of Pomona (Pomona) shall be allowed a credit of up to \$2 (two) million against OBMP Assessments for its installation and operation and maintenance of its existing anion exchange project, which is hereby determined to further the purposes of the OBMP. Pomona's construction and operation of its anion exchange project was not legally compelled and Pomona had no legal duty to construct the project. For the 30 (thirty) year initial Term of this Agreement, Pomona's OBMP Assessment shall be credited \$66,667 per year, not to exceed Pomona's total BMP Assessment attributable to the project's Production for that year. Extension of the Term of this Agreement shall not extend the period of credit.
- (c) Kaiser Ventures (Kaiser) in recognition of its contribution of 25,000 acre-feet to offset Replenishment obligations for the

Desalters shall be allowed a credit of up to \$900,000 (nine hundred thousand dollars) against OBMP Assessments for the Desalters and related facilities. For the 30 (thirty) year initial Term of this Agreement, Kaiser's OBMP Assessment shall be credited up to \$30,000 (thirty thousand dollars) per year, not to exceed Kaiser's OBMP Assessment attributable to Desalters and related facilities. Extension of the Term of this Agreement shall not extend the period of credit. In the event Kaiser Transfers its water rights appurtenant to its overlying land which it owns on the date of execution, the purchaser (Kaiser's successor in interest) shall be entitled one-half (1/2) of the annual credit.

- (d) Watermaster shall adopt reasonable procedures to evaluate requests for OBMP credits against future OBMP Assessments or for reimbursement. Any Producer or party to the Judgment, including but not limited to the State of California, may make application to Watermaster for reimbursement or credit against future OBMP Assessments for any capital or operations and maintenance expenses incurred in the implementation of any project or program, including the cost of relocating groundwater Production facilities, that carries out the purposes of the OBMP including but not limited to those facilities relating to the prevention of subsidence in the Basin, in advance of construction or that is prospectively dedicated to service of the stated goals of the OBMP. Watermaster shall exercise reasonable discretion in making its determination, considering the importance of the project or program to the successful completion of the OBMP, the available alternative funding sources, and the professional engineering and design standards as may be applicable under the circumstances. However, Watermaster shall not approve such a request for reimbursement or credit against future BMP Assessments under this section where the

Producer or party to the Judgment was otherwise legally compelled to make the improvement.

- (e) Any Producer that Watermaster compels to move a groundwater Production facility that is in existence on the Date of Execution shall have the right to receive a credit against future Watermaster assessments or reimbursement up to the reasonable cost of the replacement groundwater Production facility.
- (f) The procurement of Replenishment Water and the levy of assessments shall be consistent with the provisions of Section 5.4(a) above.

5.5 Salt Credits. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding Salt Credits. Watermaster shall assign to the members of the Appropriative Pool, salt credits under the OBMP other than those that were previously allocated for the existing Chino I Desalter, or are attributable to a project or program undertaken by the State of California for the benefit of its overlying land and that carry out the purposes of the OBMP.

5.6 Metering. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding metering:

- (a) With respect to the obligation to install meters, which is set forth in the Judgment Paragraph 21, any Assessment levied by Watermaster on the members of the Agricultural Pool, regarding metering shall be paid by the Appropriative Pool. Members of the Agricultural Pool, shall have no obligation to install meters hereafter. The obligation to install meters on wells

owned or operated by members of the Agricultural Pool, shall become that of the Watermaster.

- (b) Agricultural Pool meters shall be installed within thirty-six months of the Date of Execution. Watermaster shall be responsible for providing the meter, as well as the cost of any installation, maintenance, inspection, testing and repairing. The members of the Agricultural Pool, shall provide reasonable access during business hours to a location reasonably appropriate for installation, inspection, and repairing of a meter.
- (c) The State of California reserves its right to continue to install, operate, maintain, inspect, test and repair its own meters on wells owned or operated by the State, unless it consents to installation by Watermaster in which case Watermaster assumes the cost.

## VI

### COVENANTS BY THE MEMBERS OF THE AGRICULTURAL POOL

- 6.1 Best Efforts to Support Storage and Recovery. The members and representatives of the Agricultural Pool shall exercise Best Efforts to support the development of any Storage and Recovery Project, once it has been approved by Watermaster, so long as there is no Material Physical Injury to a member of the Agricultural Pool or the Basin.
- 6.2 Covenant of Good Faith and Fair Dealing. The members and representatives of the Agricultural Pool, including the State of California in its capacity as a member and owner of overlying land within the Agricultural Pool, shall be bound by the covenant of good faith and fair dealing, and not oppose or undermine the efforts of Watermaster to secure the development of a Storage and Recovery Program, so



long as there is no potential or threatened Material Physical Injury to a member of the Agricultural Pool or the Basin.

- 6.3 Waiver of Compensation. For the term of this Agreement, the members and representatives of the Agricultural Pool shall waive any claims or rights they might raise or possess, and shall not be entitled, to any compensation from a Storage and Recovery Program irrespective of whether it be in the form of money, revenues, credits, proceeds, programs, facilities, or other contributions (compensation). Further, the members of the Appropriative Pool and the Non-Agricultural Overlying Pool shall have the exclusive rights to any such compensation. This Section shall not apply to the charges adopted by CBWCD for storage and recovery purposes. This paragraph shall not be construed as a limitation on the ability of the State of California to make application to the Watermaster for a Storage and Recovery Program pursuant to Section 5.2.

## VII DESALTERS

- 7.1 Need for Desalters. The OBMP requires construction and operation of Desalters. The Desalters shall be owned, operated and maintained by IEUA and WMWD acting independently or in their complete discretion, acting through PC14 consistent with the terms of this Agreement.
- 7.2 Ownership and Operation.
- (a) Chino I Desalter.
    - (i) The existing "Chino I Desalter," also known as the "SAWPA Desalter," consisting of extraction wells, transmission facilities for delivery of groundwater to the Chino I Desalter, Desalter treatment and delivery facil-

ities for product water, including pumping and storage facilities, and treatment and disposal capacity in the SARI System, is owned and operated by SAWPA, which has created "The Project Committee No. 14 (PC14)" comprised of SAWPA members, IEUA, WMWD, and OCWD, pursuant to "Project Agreement No. 14" dated April 2, 1991, to exercise all the powers and responsibilities of Section 18 of the SAWPA Joint Exercise of Powers Agreement, which now constitutes the executive authority through which SAWPA acts with respect to the Chino I Desalter and to fund repayment for any loans for construction and operation and maintenance of such Desalter and a "Financing Agreement" dated April 1, 2000.

- (ii) The Chino I Desalter is operated pursuant to (a) "take or pay" agreements with the purchasers of water made available from such Desalter; (b) an agreement with the Metropolitan Water District (MWD) subsidizing that Desalter to reduce the cost of the water made available by that Desalter compared to the alternative cost of uninterruptible treated imported water available from MWD; and (c) an agreement with the Watermaster, all Pools of Producers from the Chino Basin, Kaiser Ventures, Inc., formerly known as Kaiser Resources, Inc. (Kaiser) and the California Regional Water Quality Control Board, Santa Ana Region (RWQB), regarding provision of certain water with which to satisfy the Replenishment obligation for operating the Desalter.

(b) Chino II Desalter and Chino I Expansion.

IEUA and WMWD acting independently or in their complete discretion through PC14 must own and operate the Chino II

Desalter and the Chino I Expansion in the same manner as the Chino I Desalter, except as otherwise provided in this Agreement.

(c) Future Desalters.

IEUA and WMWD acting independently or in their complete discretion through PC14 must own and operate Future Desalters, if and only if, they can secure funding from state, federal or sources other than the Parties to pay the capital costs required to construct Future Desalters.

7.3 Design and Construction of Chino II Desalter, Chino I Expansion and Future Desalters.

- (a) IEUA and WMWD acting independently or in their complete discretion, acting through PC14 shall design and construct the Chino II Desalter on the eastside of the Chino Basin and expand the capacity of the Chino I Desalter already in existence on the Date of Execution, from 8 mgd up to 14 million gallons per day.
- (b) The Chino II Desalter shall have an initial capacity of 10 mgd and shall be designed to deliver water to Jurupa Community Services District, the City of Ontario, and if requested, others subject to the limitations of available funding. The existing capacity of the Chino I Desalter shall be expanded by a minimum of 2 mgd and up to 6 mgd, depending on the rate of development and availability of funding and shall be designed to deliver water to the Cities of Chino, Chino Hills and the State of California as provided in this Section.

- (c) There is no minimum initial capacity established for Future Desalters as the size and timing of Future Desalters are dependent upon variables not presently subject to reliable estimates.
  - (i) It is contemplated by the Parties that Future Desalters, and a further expansion of the Chino I Desalter to a capacity greater than the Chino I Expansion or the Chino II Desalter to a capacity greater than 10 mgd may occur;
  - (ii) IEUA and WMWD shall design and construct Future Desalters, whether acting independently, or in their complete discretion, through PC14, provided that their obligation shall be conditioned upon their ability to secure funding from the state or federal sources other than the Parties to pay the capital costs of construction. Absent such funding, the IEUA and WMWD, acting independently or, in their complete discretion, acting through PC14, shall have no obligation to construct Future Desalters;
- (d) The specific location of wells to supply the Chino II Desalter and Future Desalters shall be determined with Watermaster approval and shall be in a location, which is consistent with and shall carry out the purpose of the OBMP. The design and construction of the Chino II Desalter, Chino I Expansion, and Future Desalters shall be in accordance with the OBMP and subject to Watermaster approval. Watermaster approval shall not be unreasonably withheld and shall insure that the operation of the Desalters will implement the OBMP and not result in Material Physical Injury to any party to the Judgment or the Basin.
- (e) Wells operated in connection with the Desalters shall be designed and constructed to Produce water with high total

dissolved solids (TDS) and be located in areas consistent with the purposes of the OBMP.

#### 7.4 Funding.

- (a) The capital costs of the Chino I Desalter are not affected by this Agreement.
- (b) The capital costs of designing and constructing the Chino II Desalter and the Chino I Desalter Expansion shall be partially derived from Proposition 13 funds. The Parties shall exercise their Best Efforts to secure said funds from the appropriate state agencies. However, all unmet capital, operation and maintenance costs relative to the Chino II Desalter shall be paid from the following sources and in the following order of priority:
  - (i) The net amount of funding received by SAWPA from its existing preliminary gross allocation of \$87,000,000 from the \$235,000,000 Proposition 13 bond funding provided for the Santa Ana River Watershed sub-account, which currently includes \$20,000,000-30,000,000 earmarked for the Chino II Desalter and \$5,000,000 for the Chino I Desalter Expansion;
  - (ii) All other eligible Proposition 13 bond funding;
  - (iii) All other available federal, state or SAWPA funding;
  - (iv) MWD subsidies or other funding without committing the storage space of the Chino Basin under any storage and recovery or conjunctive use agreement, such as that secured pursuant to Agreement Number 7658, between MWD, SAWPA, IEUA, WMWD and OCWD dated

December 7, 1995, and entitled "Chino Basin Desalination Program, Phase I, Joint Participation Agreement for Recovery and Utilization of Contaminated Groundwater;"

- (v) Revenue derived from the sale of water made available from the Desalters; and
  - (vi) Any additional revenue arranged by IEUA and WMWD acting independently or in their complete discretion, acting through PC14, pursuant to an agreement substantially similar to or an amendment of the SAWPA PC14 Agreement entered into on or about April 2, 1991.
- (c) IEUA's and WMWD's obligation to construct Future Desalters whether acting independently, or in their complete discretion, through PC14, shall be conditioned upon their ability to secure state or federal funding to pay for the capital costs related to such construction. Absent such state and/or federal funding, the IEUA and WMWD, acting independently or, in their complete discretion, acting through PC14, shall have no obligation to construct Future Desalters.
- (i) If, after the earlier of ten years, or the conversion of 20,000 acres of agricultural land, Watermaster, in its discretion, determines that Future Desalters are necessary to implement the OBMP, IEUA or WMWD, acting independently or in their complete discretion acting through PC14, shall have a period up to thirty-six (36) months to secure sufficient funding from State or Federal sources to pay for all the capital costs required to construct "Future Desalters;"



- (ii) If IEUA and WMWD acting independently or, in their complete discretion, acting through PC14 cannot secure the necessary funding, the Parties, other than the Agricultural Pool, will exercise their Best Efforts to negotiate new terms and conditions so as to accomplish the implementation of this portion of the OBMP;
- (iii) If, however, the Parties, other than the Agricultural Pool, are unable to negotiate new terms to this Agreement within twenty-four (24) months from the initiation of negotiations, the Parties may appoint a mutually agreed upon mediator. Failing an agreement, the Parties reserve all legal rights and remedies, provided that the Agricultural Pool shall not be liable for the costs of the Future Desalters. The remainder of this Agreement shall remain in full force and effect.

7.5 Replenishment Water. Replenishment for the Desalters shall be provided from the following sources in the following order of priority.

- (a) Watermaster Desalter Replenishment account composed of 25,000 acre-feet of water abandoned by Kaiser pursuant to the "Salt Offset Agreement" dated October 21, 1993, between Kaiser and the RWQB, and other water previously dedicated by the Appropriative Pool.
- (b) New Yield of the Basin, unless the water Produced and treated by the Desalters is dedicated by a purchaser of the desalted water to offset the price of desalted water to the extent of the dedication;
- (c) Safe Yield of the Basin, unless the water Produced and treated by the Desalters is dedicated by a purchaser of the desalted

water to offset the price of desalted water to the extent of the dedication;

- (d) Additional Replenishment Water purchased by Watermaster, the costs of which shall be levied as an Assessment by Watermaster.

#### 7.6 Sale of Water.

- (a) The terms and conditions for the purchase and sale of water from the Chino I Desalter shall be as provided by separate agreement.
- (b) The terms and conditions for the purchase and sale of desalted water from the Chino II Desalter and Chino I Expansion are as follows.
  - (i) Members of the Appropriative Pool and the State of California shall have the first priority right to purchase desalted water developed by Chino II and Chino I Expansion on an equal basis, pursuant to a water supply contract, which is not a "take or pay" contract but contains a minimum annual quantity of water available to be purchased and is consistent with the provisions of this Agreement.
  - (ii) OCWD shall have the second priority right to purchase desalted water from the Chino II Desalter and the Chino I Expansion provided that IEUA and WMWD have elected to act through PC14.
  - (iii) If the members of the Appropriative pool, the State of California and the OCWD do not contract for the delivery of all desalted water made available by Chino

II Desalter and the Chino I Expansion, other persons may purchase the water.

- (c) The terms and conditions for the purchase and sale of desalted water from Future Desalters are contingent upon IEUA and WMWD acting independently or, in their complete discretion, acting through PC14, securing sufficient funding to pay the capital costs of transporting the desalted water from the Chino II Desalter and Chino I Expansion to other parties to the Judgment that are members of the Appropriative Pool and that desire to purchase desalted water. If sufficient funding is acquired, then other parties to the Judgment that are members of the Appropriative Pool shall have the right to purchase desalted water under the terms and conditions provided in this Article.
- (d) The price of desalted water to the parties to the Judgment that are members of the Appropriative Pool, the State of California and OCWD when purchasing water pursuant to Section 7.6(b)2 above, shall be the actual cost of providing the water but shall not exceed \$375.00 per acre foot, as adjusted by the purchase and sale agreement between IEUA, WMWD, PC14 and the purchasing party, but in no event shall such adjustment exceed the annual consumer's price index for the LA/Anaheim/Riverside Area or the percent increase in the MWD treated water rates, or its equivalent, whichever is less as measured from the Effective Date.
- (i) If a party to the Judgment elects to Produce water for the Chino II Desalter, the Chino I Expansion or Future Desalters they shall be entitled to a credit against the purchase price in an amount equivalent to the cost of alternative Replenishment Water then available from MWD as interruptible, untreated water or the then pre-

vailing value of the avoided Replenishment obligation, whichever is less;

- (ii) If the purchaser is a person other than a party to the Judgment, the price shall be no less than the cost of the alternative water supplies with comparable reliability and quality or if no purchasers are identified then at the highest price that may be attained under the circumstances;
  - (iii) Fifty percent of any annual revenues received by the Project 14 Committee in excess of the actual ongoing operation, maintenance and Replenishment expenses which revenues are derived from sales of water to any person not a Producer under the Judgment, or the OCWD, shall be provided to Watermaster for use as an off-set against any future assessments against the Parties by Watermaster.
- (e) The term of such Water Supply Contract shall be not less than 30 years if requested by a Party to this Agreement.

## VIII TERM

- 8.1 Commencement. This Agreement shall become effective on the Effective Date and shall expire on the Termination Date.
- 8.2 Expiration. Unless extended pursuant to paragraph 8.3, this Agreement shall expire and thereupon terminate on December 31 of the thirtieth (30th) calendar year starting on January 1, of the first calendar year following the Effective Date.

8.3 Meet and Confer. The Parties agree to meet and confer during the 25th year of this Agreement to discuss any new or modified terms which may be requested or required by each Party in order to continue the term of this Agreement. However, no Party shall be required to modify or amend a term of this Agreement as a precondition to exercising their right to one thirty (30) year extension as provided in 8.4 below.

8.4 Independent Right to Extend. The term of this Agreement may be extended for a period of an additional thirty (30) years, upon the unilateral election of either the Appropriative or Agricultural Pool, (as a Pool only and not the individual members of either Pool) acting in accordance with Watermaster procedures under the Judgment, prior to the end of the twenty-fifth (25<sup>th</sup>) year. The election shall be made in writing with a copy to be sent to the Watermaster and all Parties to this Agreement. In the event an election is made to continue this Agreement, the Agreement shall continue for the extended term on the same terms and conditions as existed during the first thirty (30) years of the Agreement.

8.5 Force Majeure.

- (a) If the performance, in whole or in part, of the obligations of the respective Parties is prevented by act or failure to act of any agency other than a Party to this Agreement, court or any other person, by natural disaster or catastrophic event (such as earthquake, fire, drought or flood), contamination, war, strikes, lockouts, acts of God, or acts of civil or military authority, by the operation of applicable law, or by any other cause beyond the control of the affected Party or Parties, whether similar to the causes specified herein or not, the obligation of the affected Party or Parties to perform an act or actions under this Agreement shall be suspended from the time and to the extent that the performance thereof is prevented, but reasonable diligence

shall be observed by the affected Party or Parties, so far as it lies in their power, in performing such respective obligations in whole or in part under this Agreement.

- (b) In the event performance is prevented as described above, the Parties agree actively to cooperate and use their Best Efforts to resume performance.

- 8.6 Only One Mandatory Extension. In no event shall a Party be required to extend performance under this Agreement beyond the first two terms of this Agreement, irrespective of the existence of force majeure. Any further extensions under this Agreement shall be consensual among the Parties to such an agreement.
- 8.7 Effect of Termination. Upon termination of this Agreement further performance by the Parties under the Agreement shall be excused. Performance under the Agreement shall not be the cause of any action or claim other than as expressly provided herein. Other than as provided in paragraph 8.8, upon termination of this Agreement, the legal rights, remedies, responsibilities and authorities of all Parties regarding the Judgment, interpretation of the Judgment and the powers and authority of Watermaster or the Court, in existence on the Date of Execution, whatever they may be, are expressly reserved and shall be as they existed on the Date of Execution, provided that such rights and remedies shall not be a basis to challenge a Party's performance under this Agreement.
- 8.8 Rescission of Resolutions 84-2 and 88-3. Upon termination of this Agreement, the members of the Appropriative Pool shall have no obligation to pay the Watermaster Assessments for the members of the Agricultural Pool. The provisions of Resolution 84-2 and 88-3 shall be rescinded and except as provided for in Section V above,



pertaining to “Early Transfers” of Safe Yield during the term of this Agreement, the members of the Appropriative Pool shall not be entitled to further Early Transfers of water from the Agricultural Pool. Upon the termination of this Agreement, the Parties agree that no further Early Transfers of unallocated Safe Yield shall occur. The determination of the Safe Yield as provided for in the Judgment at Paragraph 44 shall be construed to mean that the Appropriative Pool shall receive no Transfers of unallocated Safe Yield from the Agricultural Pool for a period of five (5) consecutive years after the termination of this Agreement, at which time the Appropriative Pool shall receive the difference between 414,000 acre-feet allocated to the Agricultural Pool and the actual water used by the Agricultural Pool for the first five consecutive calendar years immediately following the termination of this Agreement.

8.9 Mediation Upon Failure to Secure Capital Funding for Future Desalters. If IEUA or WMWD have not acquired the funding within thirty-six (36) months of the date of the Watermaster determination regarding the need for the Future Desalters as provided in Article VII, then the members of the Appropriative Pool, Non-Agricultural Pool and IEUA and WMWD will exercise Best Efforts to negotiate new terms and conditions for the capital costs for any such Future Desalters.

8.10 Parties Rights Unaffected Upon Termination. Each Party’s rights shall be unaffected by their having approved, executed or implemented this Agreement pursuant to their mutual consent other than as provided in Section 8.8.

## IX CONFLICTS

9.1 Events Constituting a Default by a Party. Each of the following constitutes a "default" by a Party under this Agreement.

- (a) A Party fails to perform or observe any term, covenant, or undertaking in this Agreement that it is to perform or observe and such failure continues for ninety (90) days from a Notice of Default being sent in the manner prescribed in Section 10.13.

9.2 Remedies Upon Default. In the event of a default, each Party shall have the following rights and remedies:

- (a) Specific Performance. Each Party agrees and recognizes that the rights and obligations set forth in this Agreement are unique and of such a nature as to be inherently difficult or impossible to value with money. If one Party does not perform in accordance with the specific wording of any of the provisions in this Agreement applicable to that Party, defaults, or otherwise breaches this Agreement, an action at law for damages or other remedies at law would be wholly inadequate to protect the unique rights and interests of the other Party to the Agreement. Accordingly, in any court controversy concerning this Agreement, the Agreement's provisions will be enforceable in a court of equity by specific performance. This specific performance remedy is not exclusive and is in addition to any other remedy available to the Parties to enforce the terms of this Agreement.

- (b) Injunction. Each Party agrees and recognizes that the rights and obligations set forth in this Agreement are material to another Party and of such a nature that there will be substantial

reliance upon the terms of this Agreement. If one Party does not perform in accordance with specific wording of any of the provisions of this Agreement applicable to that Party, defaults, or otherwise breaches this Agreement, an action at law for damages or other remedies at law would be wholly inadequate to prevent substantial and irreparable harm to another Party to the Agreement. Accordingly, in any court controversy concerning this Agreement, the Agreement's provisions will be enforceable in a court of equity by mandatory and prohibitory injunction. This mandatory and prohibitory injunction remedy is not exclusive and is in addition to any other remedy available to the Parties to enforce the terms of this Agreement.

- (c) Cumulative Rights and Remedies. The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any right or remedy, the non-breaching Party does not thereby waive that right or remedy. Furthermore, no single or partial exercise of any right, power, or privilege precludes any further exercise of a right, power, or privilege granted by this Agreement or otherwise.
- (d) Attorneys' Fees. In any adversarial proceedings between the Parties other than the dispute resolution procedure set forth below and under the Judgment, the prevailing Party shall be entitled to recover their costs, including reasonable attorneys' fees. If there is no clear prevailing Party, the Court shall determine the prevailing Party and provide for the award of costs and reasonable attorneys' fees. In considering the reasonableness of either Party's request for attorneys' fees as a prevailing Party, the Court shall consider the quality, efficiency, and

value of the legal services and similar/prevaling rate for comparable legal services in the local community.

### 9.3 Dispute Resolution.

- (a) Scope of Dispute Resolution. Disputes (Disputes) between the Parties other than those constituting a “Default”, or “Exclusion” (defined below), shall be resolved pursuant to the provisions of this Section.
- (b) Exclusions:
  - (i) Emergency. An emergency event which, if not promptly resolved may result in imminent danger to the public health, safety or welfare shall not be subject to dispute resolution.
  - (ii) Complete Discretion. Those matters reserved to the complete discretion of a Party under this Agreement shall not be subject to dispute resolution.
  - (iii) Review Under the Judgment Unaffected. The rights and remedies of the parties to the Judgment to seek review of Watermaster actions shall not be subject to dispute resolution.
- (c) Disputes.
  - (i) Each Party to this Agreement may submit any Dispute related to or arising under this Agreement to non-binding mediation by delivering a Notice of Dispute to the other Party;

- (ii) The written Notice of Dispute prepared by the Party shall be delivered to the other Party in accordance with Section 10.13. The Notice of Dispute shall clearly describe the basis of the dispute and the Sections of the Agreement under which the Dispute arises;
- (iii) The non-binding mediation shall be conducted by Judicial Arbitration Mediation Services (JAMS) or an equivalent mediation service agreed to by the Parties;
- (iv) Unless otherwise agreed, a mediator shall be appointed within forty-five (45) days of the date the Notice of Dispute is delivered to hear the dispute and provide a written determination. The mediator shall be chosen jointly by the Parties. If the Parties cannot agree, the Court shall appoint the mediator. Employees or agents of Watermaster or any Party are ineligible to serve as the mediator;
- (v) The mediation shall be held within ninety (90) days of the date the Notice of Dispute is delivered;
- (vi) Any statute of limitations applicable to any claims, rights, causes of action, suits, or liabilities of whatever kind or nature, in law, equity or otherwise, whether known or unknown, shall be tolled during the mediation process. For purposes of this Section, the mediation process shall commence upon the service of a Notice of Dispute to the other Party pursuant to Section 9.3c(i) above. For purposes of this Section, the mediation process shall be deemed complete ten (10) days after service of the mediator's written notice of the conclusion of the mediation;

## X GENERAL PROVISIONS

- 10.1 Supersedence. Upon execution of this Agreement, any and all existing agreements or contracts between the Parties concerning the precise subject matter of this Agreement are hereby rescinded to the extent that they conflict with express terms herein.
- 10.2 Applicability to Others.
- (a) After the Date of Execution, each Party agrees that any other agreement or contract relating to the subject matter of this Agreement, or the Judgment, to which it is a party, shall be consistent with the provisions of this Agreement, unless all other Parties consent to the inconsistent agreement or contract.
  - (b) After the Date of Execution, each Party reserves complete discretion to enter into other agreements or contracts on subject matter not covered by the terms of this Agreement.
- 10.3 Admissions by Parties. Nothing in this Agreement constitutes an admission of liability by any Party hereto for any prior or past acts that preceded the Date of Execution. This Agreement and any documents prepared in connection herewith may not be used as evidence in any litigation, except as necessary to interpret or enforce the terms of this Agreement.
- 10.4 Construction of Agreement. Each Party, with the assistance of competent legal counsel, has participated in the drafting of this Agreement and any ambiguity should not be construed for or against any Party on account of such drafting.



- 10.5 Each Party Bears Own Costs. Each Party is to bear its own costs, expenses, and attorneys' fees arising out of or in connection with the subject matter of this Agreement and the negotiation, drafting, and execution of this Agreement. Each of the Parties understands that this Agreement includes all claims for loss, expense and attorneys' fees, taxable or otherwise, incurred by it or arising out of any matters leading up to the execution of this Agreement.
- 10.6 Waiver of Breach. No waiver or indulgence of any breach or series of breaches of this Agreement shall be deemed or construed as a waiver of any other breach of the same or any other provision hereof or affect the enforceability of any part or all of this Agreement. No waiver shall be valid unless executed in writing by the waiving Party.
- 10.7 Awareness of Contents/Legal Effect. The Parties expressly declare and represent that they have read the Agreement and that they have consulted with their respective counsel regarding the meaning of the terms and conditions contained herein. The Parties further expressly declare and represent that they fully understand the content and effect of this Agreement and they approve and accept the terms and conditions contained herein, and that this Agreement is executed freely and voluntarily.
- 10.8 Agreement Binding On All. This Agreement shall be binding upon and shall inure to the benefit of each of the Parties, and each of their respective agents, employees, directors, officers, attorneys, representatives, principals, shareholders, sureties, parents, subsidiaries, affiliates, successors, predecessors, assigns, trustees or receivers appointed to administer their assets, and attorneys of any and all such individuals and entities. All the covenants contained in this Agreement are for the express benefit of each and all such persons described in this Section. This Agreement is not intended to benefit any third parties.

- 10.9 Counterparts. This Agreement may be executed in counterparts. This Agreement shall become operative as soon as one counterpart hereof has been executed by each Party. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of all Parties do not appear on the same page.
- 10.10 Captions. The captions contained herein are included solely for convenience and shall not be construed as part of this Agreement or as full or accurate descriptions of the terms hereof.
- 10.11 Choice of Law. This Agreement shall be construed and enforced pursuant to the laws of the State of California.
- 10.12 Authority to Enter into This Agreement. Each Party represents and warrants that its respective obligations herein are legal and binding obligations of such Party; that each Party is fully authorized to enter into this Agreement, and that the person signing this Agreement hereinafter for each Party has been duly authorized to sign this Agreement on behalf of said Party.
- 10.13 Notice.
- (a) Any notice required under this Agreement shall be written and shall be served either by personal delivery, mail or fax.
  - (b) In the case of service by personal delivery or fax, no additional time, in days, shall be added to the time in which a right may be exercised or an act may be done.
  - (c) In the case of service by mail, notice must be deposited in a post office, mailbox, sub post-office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the representative(s) of the Party

on whom it is to be served, at their place of business. The service is complete at the time of deposit. Any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of notice by mail shall be extended five days. Any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of notice by Express mail or other method of delivery providing for overnight delivery shall be extended by two court days.

10.14 Amendments and/or Changes to Agreement.

- (a) Any amendments and/or changes to this Agreement must be in writing, signed by a duly authorized representative of the Parties hereto, and must expressly state the mutual intent of the Parties to amend this Agreement as set forth herein. The Parties to this Agreement recognize that the terms and conditions of this Agreement, which are set forth herein in the Sections preceding this Section have been arrived at through the collective negotiations by the Parties.
- (b) The Parties hereby agree that no amendments and/or changes may be made to this Agreement without the express written approval of each Party to this Agreement, provided that upon request, no such approval shall be unreasonably withheld.

**XI**  
**ACKNOWLEDGMENTS:**  
**CONFIRMATION OF RIGHTS**

- 11.1 Each Party's rights to water it presently holds in storage with Watermaster are confirmed and protected.

11.2 The Parties confirm that in addition to the benefits received by the State under this Agreement, including an exemption from the payment of Watermaster Assessments as a member of the Agricultural Pool, the rights of the State of California under the Judgment to Produce water are not modified or altered by this Agreement. For all purposes of the Judgment all future Production by the State or its departments or agencies, including but not limited to the Department of Corrections, Department of Fish and Game, Youth Authority, Department of Parks and Recreation, Department of Toxic Substances Control, and Department of Transportation as set forth in Paragraph 10 of the Judgment, for overlying use on State-owned lands, shall be considered use by the Agricultural Pool. This Agreement is not intended to limit the State or its departments or agencies including but not limited to, the Department of Corrections, Department of Fish and Game, Youth Authority, Department of Parks and Recreation, Department of Toxic Substances Control, and Department of Transportation from exercising the State's rights of future Production for overlying use on State-owned lands as set forth in Paragraph 10 of the Judgment. The Parties agree that they will not oppose the State's exercise of its rights pursuant to the Judgment. The State of California is not executing this Agreement on behalf of the State Water Resources Control Board, the Department of Water Resources, Department of Toxic Substances Control, or the California Regional Water Quality Control Board or the Department of Fish and Game except as stated above. Nothing in this Agreement shall be construed in any way as modifying, altering or limiting the regulatory and trustee obligations, legal rights or duties of any State Agencies, including the Department of Fish and Game, the State Water Resources Control, the California Regional Water Quality Control Boards, the Department of Toxic Substances Control and Department of Water Resources. This Agreement does not limit in any way, and expressly recognizes the rights and ability of the Department of Water Resources to make application to

Watermaster to use groundwater storage space in the Chino Basin as described in Water Code Section 11258 and as provided in Section 5.2(c) herein.

- 11.3 Nothing in this Agreement shall be construed as modifying, altering, or limiting CBWCD from carrying out its obligations under general law.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED:

7/31/00

**CITY OF ONTARIO**

By 

DATED:

**CITY OF POMONA**

By \_\_\_\_\_

DATED:

**CITY OF UPLAND**

By \_\_\_\_\_

[Signatures continued on following pages]

Watermaster to use groundwater storage space in the Chino Basin as described in Water Code Section 11258 and as provided in Section 5.2(c) herein.

- 11.3 Nothing in this Agreement shall be construed as modifying, altering, or limiting CBWCD from carrying out its obligations under general law.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED:

**CITY OF ONTARIO**

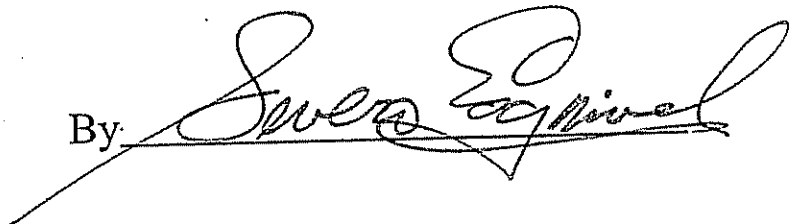
By \_\_\_\_\_

DATED:

**CITY OF POMONA**

7-31-2000

By \_\_\_\_\_

A handwritten signature in dark ink, appearing to read "Steven Espinoza", is written over a horizontal line.

DATED:

**CITY OF UPLAND**

By \_\_\_\_\_

[Signatures continued on following pages]



Watermaster to use groundwater storage space in the Chino Basin as described in Water Code Section 11258 and as provided in Section 5.2(c) herein.

- 11.3 Nothing in this Agreement shall be construed as modifying, altering, or limiting CBWCD from carrying out its obligations under general law.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED:

**CITY OF ONTARIO**

By \_\_\_\_\_

DATED:

**CITY OF POMONA**

By \_\_\_\_\_

DATED: 7/24/00

**CITY OF UPLAND**

By Robert R. Nelson

[Signatures continued on following pages]

DATED: 8/1/00

STATE OF CALIFORNIA

By Marilyn H. Levin

DATED:

CITY OF CHINO

By \_\_\_\_\_

DATED:

07/31/00

CUCAMONGA COUNTY  
WATER DISTRICT

By James M. Wilson

DATED:

MONTE VISTA WATER  
DISTRICT

By \_\_\_\_\_

DATED: 7-27-00

FONTANA UNION WATER  
COMPANY

By Donald J. Black

[Signatures continued on following pages]

DATED:

STATE OF CALIFORNIA

By \_\_\_\_\_

DATED:

CITY OF CHINO

By Ludie M. Villa

DATED:

CUCAMONGA COUNTY  
WATER DISTRICT

By \_\_\_\_\_

DATED:

MONTE VISTA WATER  
DISTRICT

By \_\_\_\_\_

DATED:

FONTANA UNION WATER  
COMPANY

By \_\_\_\_\_

[Signatures continued on following pages]

DATED:

STATE OF CALIFORNIA

By \_\_\_\_\_

DATED:

CITY OF CHINO

By \_\_\_\_\_

DATED:

CUCAMONGA COUNTY  
WATER DISTRICT

By \_\_\_\_\_

DATED: 7/31/00

MONTE VISTA WATER  
DISTRICT

By Maureen J. [Signature]

DATED:

FONTANA UNION WATER  
COMPANY

By \_\_\_\_\_

[Signatures continued on following pages]

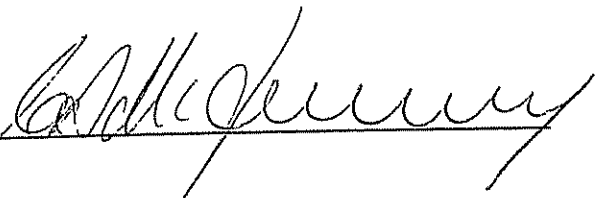
DATED:

**CITY OF CHINO HILLS**

By \_\_\_\_\_

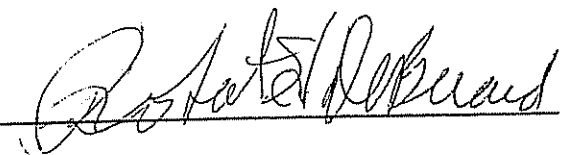
DATED:

**JURUPA COMMUNITY  
SERVICES DISTRICT**

By 

DATED:

**AGRICULTURAL POOL**

By 

DATED:

**APPROPRIATIVE POOL**

By \_\_\_\_\_

DATED: 7/27/00

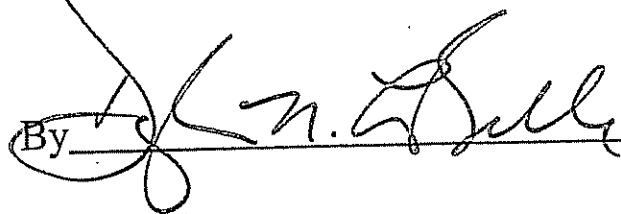
**NON-AGRICULTURAL POOL**

By 

[Signatures continued on following pages]

DATED: 7/31/00

CITY OF CHINO HILLS

By 

DATED:

JURUPA COMMUNITY  
SERVICES DISTRICT

By \_\_\_\_\_

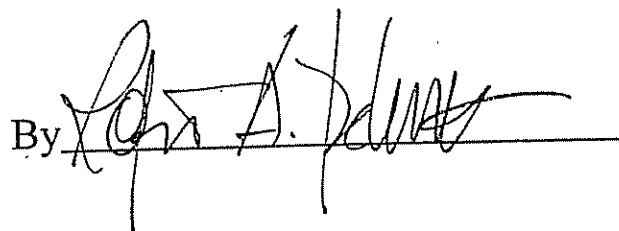
DATED:

AGRICULTURAL POOL

By \_\_\_\_\_

DATED:

APPROPRIATIVE POOL

By 

DATED:

NON-AGRICULTURAL POOL

By \_\_\_\_\_

[Signatures continued on following pages]



DATED:

July 31, 2000

**INLAND EMPIRE UTILITY  
AGENCY**

By John L. Anderson

DATED:

**THREE VALLEYS  
MUNICIPAL WATER  
DISTRICT**

By \_\_\_\_\_

DATED:

**KAISER VENTURES, INC.**

By \_\_\_\_\_

DATED:

**WESTERN MUNICIPAL  
WATER DISTRICT**

By \_\_\_\_\_

[Signatures continued on following pages]

DATED:

INLAND EMPIRE UTILITY  
AGENCY

By \_\_\_\_\_

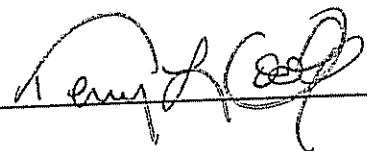
DATED:

THREE VALLEYS  
MUNICIPAL WATER  
DISTRICT

By \_\_\_\_\_

DATED: 7/31-00

KAISER VENTURES, INC.

By  \_\_\_\_\_

DATED:

WESTERN MUNICIPAL  
WATER DISTRICT

By \_\_\_\_\_

[Signatures continued on following pages]

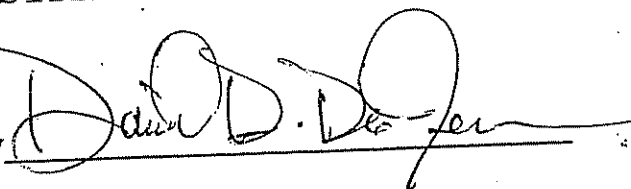
DATED:

INLAND EMPIRE UTILITY  
AGENCY

By \_\_\_\_\_

DATED:

THREE VALLEYS  
MUNICIPAL WATER  
DISTRICT

By 

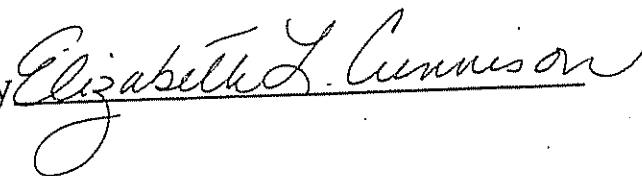
DATED:

KAISER VENTURES, INC.

By \_\_\_\_\_

DATED:

WESTERN MUNICIPAL  
WATER DISTRICT

By 

[Signatures continued on following pages]

DATED: 7/31/00

SAN ANTONIO WATER  
COMPANY

By Tom Thomas

DATED:

CHINO BASIN WATER  
CONSERVATION DISTRICT

By \_\_\_\_\_

DATED:

[Signatures continued on following pages]

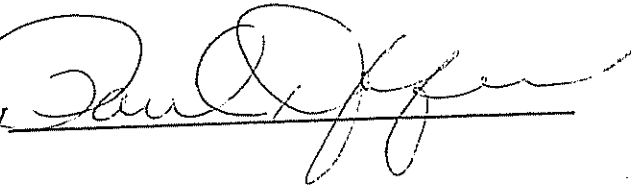
DATED:

**SAN ANTONIO WATER  
COMPANY**

By \_\_\_\_\_

DATED: 7/28/2000

**CHINO BASIN WATER  
CONSERVATION DISTRICT**

By  \_\_\_\_\_

DATED:

[Signatures continued on following pages]

# EXHIBIT A



WATERMASTER RESOLUTION  
NO. 2000-\_\_

**RESOLUTION OF THE CHINO BASIN WATERMASTER TO ADOPT THE GOALS AND PLANS OF THE PHASE I REPORT AS IMPLEMENTED BY THE OBMP IMPLEMENTATION PLAN, CONSISTENT WITH THE PEACE AGREEMENT AS ITS OBMP ("OBMP"), TO ADOPT THE REQUISITE POLICIES AND PROCEDURES TO IMPLEMENT THE PROVISIONS SET FORTH IN ARTICLE V OF THE PEACE AGREEMENT ON OR BEFORE DECEMBER 31, 2000, AND TO APPROVE THE "PEACE AGREEMENT."**

WHEREAS, the Judgment in the Chino Basin Adjudication, *Chino Basin Municipal Water District v. City of Chino, et al.*, San Bernardino Superior Court No. 164327, created the Watermaster and directed it to perform the duties as provided in the Judgment or ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction; and

WHEREAS, the Judgment directs Watermaster to develop an OBMP subject to the limitations contained in the Judgment; and

WHEREAS, Watermaster and prepared and submitted a Phase I Report regarding the OBMP to the Court; and

WHEREAS, the Court ordered the Inland Empire Utilities Agency (IEUA) to act as "lead agency" for the purposes of preparing any applicable environmental review for the OBMP in the form of a Programmatic Environmental Impact Report (PEIR) and the Court is exercising continuing jurisdiction over this matter; and

WHEREAS, the parties developed a Memorandum of Principles which articulated a framework of an agreement which the Watermaster Board

articulated a framework of an agreement which the Watermaster Board unanimously approved on May 26, 2000; and

WHEREAS, the parties have reduced the principles into a more definitive agreement and an OBMP Implementation Plan.

WHEREAS, the goals and plans in the Phase I Report implemented consistent with the OBMP Implementation Plan and the Peace Agreement constitute the OBMP; and

WHEREAS, the IEUA has prepared and circulated a draft PEIR and held a public meeting to take public comment on the OBMP on June 28, 2000; and

WHEREAS, the parties to the Peace Agreement and the parties to the Judgment have requested Watermaster to approve the Peace Agreement and the OBMP Implementation Plan and to implement the goals and plans contained in the OBMP Phase I Report in a manner consistent with the Peace Agreement and the OBMP Implementation Plan.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND DETERMINED THAT:

1. The goals and plans in the Phase I Report and their implementation as provided in and consistent with the Implementation Plan and the Peace Agreement are in furtherance of the physical solution set forth in the Judgment and Article X, Section 2 of the California Constitution.

2. Although not a signatory, the Chino Basin Watermaster Board supports and approves the Peace Agreement negotiated by the parties thereto.
3. Subject to the satisfaction of all conditions precedent set forth in the Peace Agreement and the unanimous approval of the Peace Agreement by the Parties thereto no later than August 1, 2000:
  - a. Watermaster adopts the goals and plans of the Phase I Report consistent with the Implementation Plan and the Peace Agreement.
  - b. The Watermaster will proceed in accordance with the OBMP Implementation Plan and the Peace Agreement.
  - c. Watermaster will comply with the conditions described in Article V of the Peace Agreement labeled, "Watermaster Performance" and Watermaster shall adopt all necessary policies and procedures in order to implement the provisions set forth in Article V on or before December 31, 2000, unless an earlier date is specified in the Peace Agreement or the OBMP Implementation Plan.
4. The Watermaster Board will transmit a request to the Court to issue an Order authorizing and directing Watermaster to proceed in accordance with this Resolution.
5. In approving this Agreement, Watermaster is not committing to carry-out any project within the meaning of CEQA unless and until environmental review and assessments required by CEQA

for that defined "project" have been completed. Any future actions that meet the definition of a "project" under CEQA shall be subject to environmental documentation.

CHINO BASIN WATERMASTER  
Case No. RCV 51010  
Chino Basin Municipal Water District v. The City of Chino

PROOF OF SERVICE

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On April 26, 2016 I served the following:

1. AMENDED NOTICE OF RELATED CASE

/ 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 April 26, 2016 in Rancho Cucamonga, California.



---

By: Anna Truong  
Chino Basin Watermaster

BRIAN GEYE  
AUTO CLUB SPEEDWAY  
9300 CHERRY AVE  
FONTANA, CA 92335

BOB KUHN  
THREE VALLEYS MWD  
669 HUNTERS TRAIL  
GLEN DORA, CA 91740

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

STEVE ELIE  
IEUA  
3674 WHIRLAWAY LANE  
CHINO HILLS, CA 91709

TOM THOMAS  
CITY OF UPLAND  
353 EMERSON STREET  
UPLAND, CA 91784

PAUL HOFER  
11248 S TURNER AVE  
ONTARIO, CA 91761

DON GALLEANO  
WMWD  
4220 WINEVILLE ROAD  
MIRA LOMA, CA 91752

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

JAMES CURATALO  
CUCAMONGA VALLEY WATER DIST  
PO BOX 638  
RANCHO CUCAMONGA, CA 91729

JEFF PIERSON  
PO BOX 1440  
LONG BEACH, CA 90801-1440

ALLEN HUBSCH  
HOGAN LOVELLS US LLP  
1999 AVENUE OF THE STARS  
SUITE 100  
LOS ANGELES, CA 90067

BOB FEENSTRA  
2720 SPRINGFIELD ST,  
ORANGE, CA 92867

## Members:

Allen W. Hubsch	allen.hubsch@hoganlovells.com
Andrew Gagen	agagen@kidmanlaw.com
Andrew Lazenby	lazenbyag@bv.com
Arthur Kidman	akidman@kidmanlaw.com
Catharine Irvine	cirvine@DowneyBrand.com
Chris Swanberg	chris.swanberg@corr.ca.gov
Dan McKinney	dmckinney@douglascountylaw.com
David Aladjem	daladjem@downeybrand.com
Eddy Beltran	ebeltran@kidmanlaw.com
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