

FEE EXEMPT

1 SCOTT S. SLATER (State Bar No. 117317)
2 BRADLEY J. HERREMA (State Bar No. 228976)
3 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**
4 1020 State Street
5 Santa Barbara, CA 93101-2711
6 Telephone: 805.963.7000
7 Facsimile: 805.965.4333

8 Attorneys for
9 **CHINO BASIN WATERMASTER**

10
11
12
13
14
15
16
17
18
19
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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.

Case No. RCV 51010

[Assigned for All Purposes to the
Honorable STANFORD E. REICHERT]

**WATERMASTER'S QUESTIONS FOR
CLARIFICATION IN FINAL ORDERS
FOR WATERMASTER'S MOTION
REGARDING 2015 SAFE YIELD RESET
AGREEMENT, AMENDMENT OF
RESTATED JUDGMENT, PARAGRAPH 6**

DATE: September 23, 2016
TIME: 1:30 P.M.
DEPT.: S35

Pursuant to the Court's order at the September 23, 2016 hearing on Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, the Chino Basin Watermaster ("Watermaster") hereby submits this request that the Court consider and address the following questions in any final version of its [Proposed] Orders for Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6 ("Proposed Orders"), dated September 19, 2016.

QUESTIONS FOR CLARIFICATION IN FINAL ORDERS FOR WATERMASTER'S MOTION REGARDING 2015
SAFE YIELD RESET AGREEMENT, AMENDMENT OF RESTATED JUDGMENT, PARAGRAPH 6

1. **Desalter Production v. New Yield**

(a) The Judgment and the Court Approved Management Agreements define Safe Yield,¹ Operating Safe Yield,² and New Yield³ as groundwater that can be pumped or extracted. All Parties to the Judgment are expressly enjoined from Producing ground water from the Chino Basin other than as authorized.⁴ For example, Basin Reoperation, as controlled overdraft – Production without Replenishment – was authorized by the Court through a Judgment Amendment in 2007, to effectuate Hydraulic Control. However, the Court’s Proposed Orders state that New Yield means “water pumped or produced/pumped by the Desalters.” (Proposed Orders, 30:15-18.⁵) Watermaster observes that the literal meaning of this phrase could be to equate the entirety of the groundwater the Desalters “Produce” with “New Yield.” Pursuant to this literal interpretation, the Desalters could produce groundwater without offset by any other source of Basin yield or incurring any replenishment obligation. On the other hand, given conflicting language elsewhere in the Court’s Proposed Orders, does the Court instead mean that the groundwater Produced by the Desalters is composed of New Yield caused by Desalter Production (“Desalter-induced recharge”),⁶ Basin Re-Operation,⁷ and, to the extent these sources along with the others identified in Peace II Agreement paragraph 6.2(a) are insufficient to fully offset Desalter Production, then a replenishment assessment is required?

¹ Safe Yield is the long-term average annual quantity of ground water (excluding replenishment 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. (Restated Judgment, ¶ 4.(x).)

² Operating Safe Yield is the annual amount of ground water which Watermaster shall determine can be produced from Chino Basin by the Appropriate Pool parties free of replenishment obligation. (Restated Judgment, ¶ 4.(l).)

³ New Yield is also something can be produced because of programs post June 2000 that increase the quantity of inputs into the Basin above historical amounts. (Peace Agreement).

⁴ Restated Judgment, ¶ 13.

⁵ But see Proposed Rulings, 23:14-28 [“New Yield (with conditions) is source of water to replenish water pumped by the Desalters.”].

⁶ Proposed Rulings, 31:7-10; 49:17-19.

⁷ Proposed Rulings, 28:17 [“...Basin Re-Operation [court note: that is water pumped by the Desalters]...”]; but see Proposed Rulings, 8:10-13 [“In fact, the Desalters now have lowered the water table in the south end of the Basin so that ground water is now flowing from the Santa Ana River north into the Chino Basin. This is called Re-Operation water.”].

(b) Would the Court appreciate a clarification by way of an accounting of the physical consequences under both of the above interpretations?

2. SYRA Condition Precedent

(a) Paragraph 2.1 of the 2015 Safe Yield Reset Agreement (SYRA) includes an express condition precedent to the parties' agreement to Watermaster's actions under the Agreement, which is the Court's approval of the Agreement's entire suite of Safe Yield reset and accounting provisions as a settlement and compromise of all competing claims. Do the Court's Proposed Orders mean that, despite the limitations in paragraph 2.1, the Court will order some portions of the parties' compromise agreement (e.g., Stormwater recharge) but not others (e.g. Re-Operation)?

(b) Have the required procedures been followed by Watermaster under the Restated Judgment and Court Approved Management Agreements that would enable the Court to order the performance of individual portions of the Agreement regardless of Paragraph 2.1?

(c) If not, what are the further procedures that should be followed by Watermaster and the Parties, if less than the entire suite of Safe Yield reset and accounting provisions (e.g. Stormwater and Re-Operation) are approved?

(c) Would the Court appreciate a clarification by way of a Watermaster accounting of the financial and physical consequences attributable to the incremental impact of the Court's accepting some but not all of the SYRA provisions? If so, Watermaster would require further direction from the Court as to which elements of the SYRA should be analyzed.

3. Priority of Land Use Conversion.

(a) § 3.1 of the Peace II Agreement provides that the Parties' obligations are subject to express conditions precedent, including the amendments to Watermaster Rules and Regulations § 6.3(c) and a further Order of the Court directing Watermaster to proceed in accordance with the Peace II Measures. The Court expressly approved the Peace II Measures, inclusive of Watermaster Resolution 07-05 and the stated change to Watermaster Rules and Regulation 6.3, on December 20, 2007 referenced therein. The Peace II Measures have been implemented by the Parties and administered by Watermaster and reported upon annually to the Court in accordance

1 with the December 20, 2007 Order. What effect would the Court's presently proposed
2 determination, that Watermaster had incorrectly interpreted and applied Watermaster Rules and
3 Regulation § 6.3 in its' apportionment of Agricultural Pool surplus water, have on the further
4 implementation of this Court's December 20, 2007 Order, its approval of the Peace II Measures
5 and the parties' respective obligations thereunder?

6 (b) If sections 6.3(a) and 6.3(c) of the Watermaster Rules and Regulations are to be
7 construed along with Paragraph 10 of Exhibit "H" to the Restated Judgment (see Tentative
8 Orders, 59:5-17), in the manner desired by the Court, what should Watermaster do if, as has been
9 the case in all years since 2000, the total quantity of the water used by the Overlying
10 (Agricultural) Pool, that which is necessary to supplement the reduction in the Safe Yield, Land
11 Use Conversion Claims, and the Early Transfer quantities collectively exceeds 82,800 acre-feet in
12 a particular Production year?

13 **4. Retroactive Application.**

14 The Court's Proposed Orders would adopt Paragraph 4.8 of the 2015 Safe Yield Reset
15 Agreement (Proposed Orders, 13:20-25), which provides that there will be no retroactive
16 accounting changes by Watermaster for Production years prior to July 1, 2014. What is the
17 impact of the Proposed Orders, should they become final, if any, on the Court approval of
18 Resolution 2010-04 and other orders, which may have relied upon or incorporated the
19 methodology for allocation of surplus Agricultural Pool water as set forth in the Watermaster
20 Rules and Regulations § 6.3?

21 Dated: October 7, 2016

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

22 By: 

23 SCOTT S. SLATER
24 BRADLEY J. HERREMA
25 ATTORNEYS FOR
26 CHINO BASIN WATERMASTER
27

28 038350\0036\15115871.1

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 October 7, 2016, I served the following:

1. WATERMASTER'S QUESTIONS FOR CLARIFICATION IN FINAL ORDERS FOR WATERMASTER'S MOTION REGARDING 2015 SAFE YIELD RESET AGREEMENT, AMENDMENT OF RESTATED JUDGEMENT, PARAGRAPH 6

/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

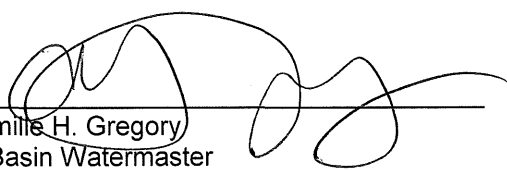
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 7, 2016 in Rancho Cucamonga, California.


By: Camille H. Gregory
Chino Basin Watermaster

MICHAEL CAMACHO
6055 ZIRCON AVE.
RANCHO CUCAMONGA, CA 91701

KEN WILLIS
LEAGUE OF CA HOMEOWNERS
1425 WEST FOOTHILL BLVD, SUITE 220
UPLAND, CA 91786

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

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

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

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

BOB KUHN
669 HUNTERS TRAIL
GLEN DORA, CA 91740

CHARLES FIELD
4415 FIFTH STREET
RIVERSIDE, CA 92501

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

GLEN DURRINGTON
5512 FRANCIS ST
CHINO, CA 91710

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

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

Members:

Agnes Cheng	agnes.cheng@cc.sbcounty.gov
Al Lopez	alopez@wmwd.com
Alfonso Ruiz Jr.	Alfonso.Ruiz@gerdau.com
Andrea Olivas	aolivas@jcsd.us
Andrew Silva	Andrew.Silva@cao.sbcounty.gov
Andy Campbell	acampbell@ieua.org
Andy Malone	amalone@weiwater.com
Ankita Patel	apatel@niagarawater.com
Anna Truong	ATruong@cbwm.org
April Robitaille	arobitaille@bhfs.com
April Woodruff	awoodruff@ieua.org
Arnold "AJ" Gerber	agerber@parks.sbcounty.gov
Arnold Rodriguez	jarodriguez@sarwc.com
Art Bennett	citycouncil@chinohills.org
Ashok Dhingra	ash@akdconsulting.com
Ben Lewis	benjamin.lewis@gswater.com
Ben Peralta	bperalta@tvmwd.com
Bill Thompson	bthompson@ci.norco.ca.us
Bob Bowcock	bbowcock@irmwater.com
Bob Feenstra	bobfeenstra@gmail.com
Bob Kuhn	bgkuhn@aol.com
Bob Kuhn	bkuhn@tvmwd.com
Bob Page	bpage@cao.sbcounty.gov
Brad Herrema	bherrema@bhfs.com
Brandon Howard	brahoward@niagarawater.com
Brenda Fowler	balee@fontanawater.com
Brenda Trujillo	brendatrujillo@chinohills.org
Brent Yamasaki	byamasaki@mwdh2o.com
Brian Geye	bgeye@autoclubspeedway.com
Brian Hess	bhess@niagarawater.com
Camille Gregory	cgregory@cbwm.org
Carol Bennett	cbennett@tkeengineering.com
Carol Boyd	Carol.Boyd@doj.ca.gov
Carolina Sanchez	csanchez@weiwater.com
Casey Costa	ccosta@chinodesalter.org
Chad Blais	cblais@ci.norco.ca.us
Charles Field	cdfield@att.net
Charles Linder	Charles.Linder@nrenergy.com
Charles Moorrees	cmoorrees@sawaterco.com
Chino Hills City Council	citycouncil@chinohills.org
Chris Berch	CBerch@ieua.org
Chuck Hays	chays@fontana.org
Cindy Cisneros	cindyc@cvwdwater.com
Cindy LaCamera	clacamera@mwdh2o.com
Cindy Li	Cindy.li@waterboards.ca.gov
Craig Miller	CMiller@wmwd.com
Craig Stewart	Craig.Stewart@amec.com
Cris Fealy	cifealy@fontanawater.com
Curtis Paxton	cpaxton@chinodesalter.org
Curtis Stubbings	Curtis_Stubbings@praxair.com
Dan Arrighi	darrighi@sgvwater.com

Dan Chadwick
Dana Porche
Danielle Soto
Darron Poulsen
Daryl Grigsby
Dave Argo
Dave Crosley
David D DeJesus
David De Jesus
David Huskey
David Lovell
David Penrice
David Ringel
David Starnes
Dennis Dooley
Dennis Mejia
Dennis Williams
Diana Frederick
Don Cutler
Don Galleano
Earl Elrod
Eric Fordham
Eric Garner
Eric Leuze
Eric Tarango
Erika Clement
Eunice Ulloa
Felix Hamilton
Frank Brommenschenkel
Frank LoGuidice
Frank Yoo
Gabby Garcia
Gailyn Watson
Geoffrey Kamansky
Geoffrey Vanden Heuvel
Gerald Yahr
Giannina Espinoza
Gil Aldaco
Gloria Rivera
Grace Cabrera
Greg Woodside
Henry DeHaan
James Curatalo
James Jenkins
James McKenzie
Jane Anderson
Janine Wilson
Jasmin A. Hall
Jason Marseilles
Jason Pivovarovoff
Jean Perry
Jeanina M. Romero
Jeannette Vagnozzi

dchadwick@fontana.org
dporche@cbwcd.org
danielle_soto@CI.POMONA.CA.US
darron_poulsen@ci.pomona.ca.us
daryl_grigsby@ci.pomona.ca.us
daveargo46@icloud.com
DCrosley@cityofchino.org
tvmwddiv2rep@gmail.com
ddejesus@tvmwd.com
David.Huskey@cdcr.ca.gov
dlovell@dpw.sbcounty.gov
dpenrice@acmwater.com
david.j.ringel@us.mwhglobal.com
david.starnes@mcmcn.net
ddooley@angelica.com
dmejia@ci.ontario.ca.us
dwilliams@geoscience-water.com
diana.frederick@cdcr.ca.gov
dcutler@jcsd.us
donald@galleanowinery.com
earl.elrod@verizon.net
eric_fordham@geopentech.com
eric.garner@bbklaw.com
Eric.Leuze@nrgenergy.com
edtarango@fontanawater.com
Erika.clement@sce.com
eulloa@cbwcd.org
felixhamilton.chino@yahoo.com
frank.brommen@verizon.net
faloguidice@sgvwater.com
FrankY@cbwm.org
ggarcia@mvwd.org
gwatson@airports.sbcounty.gov
gkamansky@niagarawater.com
GeoffreyVH@juno.com
yahrj@koll.com
gia.espinoza@gerdau.com
galdaco@cityofchino.org
gloriar@cvwdwater.com
grace_cabrera@ci.pomona.ca.us
gwoodside@ocwd.com
hpdehaan@verizon.net
jamesc@cvwdwater.com
cnomgr@airports.sbcounty.gov
jmckenzie@dpw.sbcounty.gov
janderson@jcsd.us
JWilson@cbwm.org
jhall@ieua.org
jmarseilles@ieua.org
jpivovarovoff@ieua.org
JPerry@wmwd.com
jromero@ci.ontario.ca.us
jvagnozzi@ci.upland.ca.us

Jeffrey Bruny	jeffrey.bruny@NOV.com
Jeffrey L. Pierson	jpierson@intexcorp.com
Jesse White	jesse.white@gerdau.com
Jessie Ruedas	Jessie@thejclawfirm.com
Jesus Placentia	jplasencia@cityofchino.org
Jill Willis	jnwillis@bbklaw.com
Jim Bowman	jbowman@ci.ontario.ca.us
Jim Taylor	jim_taylor@ci.pomona.ca.us
Jo Lynne Russo-Pereyra	jolynner@cvwdwater.com
Joe Graziano	jgraz4077@aol.com
Joe Grindstaff	jgrindstaff@ieua.org
Joe Joswiak	JJoswiak@cbwm.org
Joe P LeClaire	leclairejp@cdmsmith.com
Joel Ignacio	jignacio@ieua.org
John Abusham	john.abusham@nrg.com
John Bosler	johnb@cvwdwater.com
John Huitsing	johnhuitsing@gmail.com
John Lopez and Nathan Cole	customerservice@sarwc.com
John V. Rossi	jrossi@wmwd.com
Jon Lambeck	jlambeck@mwdh2o.com
Jose Alire	jalire@cityofchino.org
Jose Galindo	jose_a_galindo@praxair.com
Josh Swift	jmswift@fontanawater.com
Julie Cavender	julie.cavender@cdcr.ca.gov
Julie Saba	jsaba@jcsd.us
Justin Brokaw	jbrokaw@marygoldmutualwater.com
Justin Nakano	JNakano@cbwm.org
Justin Scott Coe	jscottcoe@mvwd.org
Karen Johnson	kejwater@aol.com
Kathleen Brundage	kathleen.brundage@californiasteel.com
Kathy Kunysz	kkunysz@mwdh2o.com
Kathy Tiegs	Kathyt@cvwdwater.com
Katie Gienger	kgienger@ontarioca.gov
Keith Person	keith.person@waterboards.ca.gov
Kelly Berry	KBerry@sawpa.org
Ken Jeske	kjeske1@gmail.com
Ken Waring	kwaring@jcsd.us
Kevin Blakeslee	kblakeslee@dpw.sbcounty.gov
Kevin Sage	Ksage@IRMwater.com
Kurt Berchtold	kberchtold@waterboards.ca.gov
Kyle Snay	kylesnay@gswater.com
Landon Kern	lkern@cityofchino.org
Laura Mantilla	lmantilla@ieua.org
Lawrence Dimock	lawrence.dimock@cdcr.ca.gov
Lee Moore	Lee.Moore@nrgenergy.com
Linda Jadeski	ljadeski@wwwd.org
Linda Minky	LMinky@BHFS.com
Lisa Hamilton	lisa.hamilton@amecfw.com
Lisa Lemoine	LLemoine@wmwd.com
Lisa Snider	lsnider@ieua.org
Marco Tule	marco.tule@nrg.com
Maribel Sosa	Maribel_Sosa@ci.pomona.ca.us
Mark Wiley	mwiley@chinohills.org

Marsha Westropp
Martin Zvirbulis
Mathew C. Ballantyne
Matthew H. Litchfield
Michael Sigsbee
Mike Maestas

MWestropp@ocwd.com
martinz@cvwdwater.com
mballantyne@cityofchino.org
mlitchfield@wwd.org
msigsbee@ci.ontario.ca.us
mikem@cvwdwater.com

Members:

Maria Flores	mflores@ieua.org
Maria Mendoza-Tellez	MMendoza@weewater.com
Marilyn Levin	marilyn.levin@doj.ca.gov
Mario Garcia	mgarcia@tvmwd.com
Mark Kinsey	mkinsey@mvwd.org
Mark Wildermuth	mwildermuth@weewater.com
Marla Doyle	marla_doyle@ci.pomona.ca.us
Martha Davis	mdavis@ieua.org
Martin Rauch	martin@rauchcc.com
Meg McWade	meg_mcwade@ci.pomona.ca.us
Melanie Otero	melanie_otero@ci.pomona.ca.us
Melissa L. Walker	mwalker@dpw.sbcounty.gov
Michael Adler	michael.adler@mcmcn.net
Michael Camacho	MCamacho@pacificaservices.com
Michael Cruikshank	MCruikshank@DBStephens.com
Michael P. Thornton	mthornton@tkeengineering.com
Michael T Fife	MFife@bhfs.com
Michael Thompson	michael.thompson@cdcr.ca.gov
Mike Sigsbee	msigsbee@ci.ontario.ca.us
Monica Heredia	mheredia@chinohills.org
Moore, Toby	TobyMoore@gswater.com
Nadeem Majaj	nmajaj@chinohills.org
Nadia Picon-Aguirre	naguirre@wvwd.org
Nathan deBoom	n8deboom@gmail.com
Neetu Gupta	ngupta@ieua.org
Noah Golden-Krasner	Noah.goldenkrasner@doj.ca.gov
Pam Sharp	PSharp@chinohills.org
Pam Wilson	pwilson@bhfs.com
Patty Jett	pjett@spacecenterinc.com
Paul Deutsch	paul.deutsch@amec.com
Paul Hofer	farmwatchtoo@aol.com
Paul Hofer	farmerhofer@aol.com
Paul Leon	pleon@ci.ontario.ca.us
Paula Lantz	paula_lantz@ci.pomona.ca.us
Peggy Asche	peggy@wvwd.org
Penny Alexander-Kelley	Pallexander-kelley@cc.sbcounty.gov
Pete Hall	pete.hall@cdcr.ca.gov
Pete Hall	rpetehall@gmail.com
Peter Hettinga	peterhettinga@yahoo.com
Peter Kavounas	PKavounas@cbwm.org
Peter Rogers	progers@chinohills.org
Peter Thyberg	Peter.Thyberg@cdcr.ca.gov
Rachel Avila	R.Avila@MPGLAW.com
Ramsey Haddad	ramsey.haddad@californiasteel.com
Randall McAlister	randall.mcalister@ge.com
Raul Garibay	raul_garibay@ci.pomona.ca.us
Ray Wilkings	rwilkins@autoclubspeedway.com
Rene Salas	Rene_Salas@ci.pomona.ca.us
Rick Darnell	Richard.Darnell@nrgenergy.com
Rick Hansen	rhansen@tvmwd.com
Rick Rees	Richard.Rees@amec.com

Rick Zapien	rzapien@cbwm.org
Rita Pro	rpro@cityofchino.org
Rob Vanden Heuvel	robert.t.van@gmail.com
Robert C. Hawkins	RHawkins@earthlink.net
Robert Craig	rcraig@jcsd.us
Robert DeLoach	robertadeloach1@gmail.com
Robert Neufeld	robneu1@yahoo.com
Robert Stockton	bstockton@wmwd.com
Robert Tock	rtock@jcsd.us
Robert Wagner	rwagner@wbecorp.com
Rogelio Matta	rmatta@fontana.org
Roger Florio	roger.florio@ge.com
Roger Han	roger_han@praxair.com
Ron Craig	ronc@mbakerintl.com
Ron LaBrucherie, Jr.	ronLaBrucherie@gmail.com
Rosemary Hoerning	rhoerning@ci.upland.ca.us
Ryan Shaw	RShaw@wmwd.com
Sandra S. Rose	directorrose@mvwd.org
Sarah Schneider	sarah.schneider@amec.com
Scott Burton	sburton@ci.ontario.ca.us
Scott Runyan	srunyan@cc.sbcounty.gov
Scott Slater	sslater@bhfs.com
Shaun Stone	sstone@ieua.org
Sheri Rojo	smrojo@aol.com
Sonya Barber	sbarber@ci.upland.ca.us
Sonya Bloodworth	sbloodworth@wmwd.com
Sophie Akins	Sophie.Akins@cc.sbcounty.gov
Stella Gasca	sgasca@ci.ontario.ca.us
Stephanie Riley	sriley@ieua.org
Steve Riboli	steve.riboli@sanantoniowinery.com
Steve Smith	ssmith@ieua.org
Steven J. Elie	selie@ieua.org
Steven J. Elie	s.elie@mpglaw.com
Suki Chhokar	schhokar@sdca.org
Susan Collet	scollett@jcsd.us
Sylvie Lee	slee@ieua.org
Tara Rolfe, PG	TRolfe@weiwater.com
Taya Victorino	tayav@cvwdwater.com
Teri Layton	tlayton@sawaterco.com
Terry Catlin	tlcatlin@wfajpa.org
Tim Barr	tbarr@wmwd.com
Todd Corbin	tcorbin@jcsd.us
Todd Minten	tminten@chinodesalter.org
Tom Cruikshank	tcruikshank@spacecenterinc.com
Tom Harder	tharder@thomashardercompany.com
Tom Haughey	tom@haugheyinsurance.com
Tom O'Neill	toneill@ci.ontario.ca.us
Tom Thomas	tthomas@insuranceinc.com
Toni Medel	mmedel@rbf.com
Van Jew	vjew@mvwd.org
Vicki Hahn	vhahn@tvmwd.com
Vicky Rodriguez	vrodrigu@ci.ontario.ca.us
Vivian Castro	VCastro@cbwcd.org

W. C. "Bill" Kruger
William Urena

citycouncil@chinohills.org
wurena@angelica.com

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
Fred Fudacz	ffudacz@nossaman.com
Jean Cihigoyenetché	Jean@thejclawfirm.com
Jill Willis	jnwillis@bbklaw.com
Jim Markman	jmarkman@rwglaw.com
jimmy@city-attorney.com	jimmy@city-attorney.com
Joel Kuperberg	jkuperberg@rutan.com
John Harper	jrharper@harperburns.com
John Schatz	jschatz13@cox.net
Kimberly Hall Barlow	khhb@jones-mayer.com
Mark D. Hensley	mhensley@hensleylawgroup.com
Martin Cihigoyenetché	marty@thejclawfirm.com
Michelle Staples	mstaples@jdtplaw.com
Nick Jacobs	njacobs@somachlaw.com
Paeter E. Garcia	paeter.garcia@bbklaw.com
Paige H. Gosney	pgosney@jdtplaw.com
Randy Visser	RVisser@sheppardmullin.com
Robert E. Donlan	red@eslawfirm.com
Rodney Baker	rodbaker03@yahoo.com
Steve Kennedy	skennedy@bmklawplc.com
Tarquin Preziosi	tp@jones-mayer.com
Timothy Ryan	tjryan@sgvwater.com
Tom Bunn	TomBunn@Lagerlof.com
Tom McPeters	THMcP@aol.com
Tracy J. Egoscue	tracy@egoscuelaw.com
Trish Geren	tgeren@sheppardmullin.com
William J Brunick	bbrunick@bmblawoffice.com