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KIDMAN LAW LLP
2030 Main Street, Suite 1300
Irvine, CA 92614
Telephone: (714) 755-3100
Facsimile: (714) 755-3110
agagen@kidmanlaw.com

ARTHUR G. KIDMAN, CAL. BAR NO. 61719
ANDREW B. GAGEN, CAL. BAR NO. 212257

Attorneys for Defendant, MONTE VISTA WATER DISTRICT

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

CHINO BASIN MUNICIPAL WATER
DISTRICT

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants.

Case No. RCV 51010

Assigned For All Purposes to:
Hon. Stanford E. Reichert

**RESPONSES TO COURT-
AUTHORIZED QUESTIONS RE
COURT'S TENTATIVE RULING RE
WATERMASTER'S MOTION RE
2015 SAFE YIELD RESET
AGREEMENT**

Hearing on Motion:

Date: September 23, 2016

Time: 1:30 p.m.

Department: S35

The following responses to the court-authorized questions are submitted on behalf of
the following members of the Appropriative Pool:

1. Monte Vista Water District;
2. Cucamonga Valley Water District;
3. City of Pomona; and
4. City of Upland (collectively referred to as "Responding AP Members").

These Responding AP Members respect and support the questions submitted by Watermaster

1 and the other responding parties. Responding AP Members believe that briefing in response to
2 the questions will provide needed clarification to the Court's Tentative Ruling. Responding
3 AP Members also support Watermaster's offers to provide the Court with certain physical and
4 financial accounting.

5
6 Although asked in a different way, there is a common thread woven throughout the
7 court-authorized questions. For example, Question No. 1 filed by three of the responding
8 entities and all three questions filed by the City of Chino identify substantially the same issue.
9 Specifically, these questions regard the Safe Yield reset to 135,000 AFY relative to Desalter-
10 Induced Recharge as New Yield. Another common thread in the questions is the notion that
11 the 2015 Safe Yield Reset Agreement ("SYRA") represents a proposed settlement and
12 compromise of competing claims and interests; therefore, since the Court's Tentative Ruling
13 accepts some provisions of the SYRA, yet rejects other provisions, further direction is needed
14 in regard to the contractual and equitable implications of the Tentative Ruling.
15

16 RESPONSES TO COURT-AUTHORIZED QUESTIONS

17 *Questions Filed by Monte Vista Water District, Cucamonga Valley Water District, and*
18 *the Cities of Upland and Pomona ("Responding AP Members")*

19 **1. How will the Tentative Ruling that Desalter-Induced Recharge is not part**
20 **of Safe Yield (TR at pp. 30-34 passim) be reconciled with the Tentative Ruling that Safe**
21 **Yield is reset to 135,000 AFY (TR at p. 10 passim) since Desalter-Induced Recharge was**
22 **included in the calculation of 135,000 AFY (see, e.g., Ex. 1 to Wildermuth Decl. at p. 7-**
23 **14)?**
24

25 As noted above, this question no. 1 is substantially the same as question no. 1 asked by
26 the Overlying Agricultural Pool ("Ag Pool") and Watermaster and question nos. 1-3 asked by
27 the City of Chino. Responding AP Members respectfully request that the Court address these
28

1 questions.

2 **2. How will the portion of the Tentative Ruling that denied the motions to**
3 **amend the schedule for access to Re-Operation Water for Desalter replenishment (TR at**
4 **p. 10) be reconciled with the other portions of the Tentative Ruling that pertain to**
5 **Desalter replenishment?**
6

7 For the sake of clarification, “other portions” of the Tentative Ruling refer to (1) the
8 Court’s conclusion that “Peace II Agreement Paragraphs 6.2(a)(iii) and 7.1 provide that
9 through 2030 (the initial term of Peace I Agreement as set forth in 8.2) recharge attributable to
10 the Desalters is allocated for Desalter Production and not allocated as Safe Yield producible
11 (i.e., water available to be pumped without a replenishment obligation by purchase or
12 otherwise)” [TR at p.49]; and (2) the Court’s finding that “Peace I ¶ 7.5 defines replenishment
13 water for the Desalters includes New Yield, but not Safe Yield.” [*Id.*] Responding AP
14 Members respectfully request that the Court address this question, particularly since the
15 Tentative Ruling does not substantively address Watermaster’s motion to amend the schedule
16 for access to Re-Operation.
17

18 **3. Should the Tentative Ruling that restores the priority access of Conversion**
19 **Claims (over Early Transfers) to unused Ag Pool water (TR p.22 passim) also restore**
20 **Conversion Claims to 1.3 AFY per acre of land use conversion in order to be consistent**
21 **with the 1995 Amendment to the Judgment?**
22

23 Responding AP Members respectfully request that the Court address this question
24 since, as part of the Peace I agreement, the parity of Early Transfers with Land Use
25 Conversion claims was negotiated in exchange for an increase in Land Use Conversion claims
26 from 1.3 AFY to 2.0 AFY per acre of converted agricultural land. If the Court is inclined to
27 unwind that portion of the Peace I agreement by nullifying this parity, then Responding AP
28

1 Members believe the Court must consider unwinding both sides of the bargain and restore the
2 Appropriative Pool's Land Use Conversion claims from 2.0 AFY to 1.3 AFY per acre of
3 converted agricultural land.

4 *Questions Filed by the Overlying Agricultural Pool*

5 1. Safe Yield and Desalter-induced Recharge

6
7 **Please clarify whether your tentative (Proposed Orders) considers the 135,000**
8 **AFY of Safe Yield reset as inclusive of the Desalter-Induced Recharge of 20,000 AFY. In**
9 **other words, does the Safe Yield include the 20,000 AFY induced as a result of the**
10 **pumping of the Desalters? The assumption being that the full Desalter production is**
11 **40,000 AFY with close to 50% being induced into the Chino Basin.**

12 This question no. 1 is substantially the same as question no. 1 asked by Responding AP
13 Members and Watermaster and question nos. 1-3 asked by the City of Chino. Responding AP
14 Members respectfully request that the Court address these questions.

15
16 2. Safe Storage Management Measures

17 **On Page 61 of 63, paragraph 6 under Section V., Safe Storage Management**
18 **Measures, the Court notes that from 2000 to 2014, the short term actual measured net**
19 **recharge was less total rights allocated to the Judgment Parties by as much as 130,000**
20 **AFY, and this water was accounted for in the Excess Carry-Over storage accounts.**
21 **(Proposed Orders, 61:9-11.) On Page 62 of 63 of the tentative (Proposed Orders) at line**
22 **16, the Court indicates that withdrawal of water from storage is already subject to**
23 **limitations, and references Watermaster Rules and Regulations section 8.1. (Proposed**
24 **Orders, 62:16-17.) By these references, is the Court indicating that (i) pursuant to the**
25 **Judgment and Peace Agreements, no water currently in storage (including Excess Carry**
26 **Over water or water stored without a storage agreement) may be pumped without**
27
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1 permission from Watermaster and a specific finding of no Material Physical Injury; and
2 (ii) that when/if all water currently in storage is used along with the allocated Safe Yield
3 production rights (predicted under the efficient market assumption by Wildermuth),
4 producing this water in storage will not result in unauthorized overdraft?
5

6 Responding AP Members respectfully request that the Court address this question since
7 the Safe Storage Management provisions of SYRA were negotiated as material compromises
8 among the Ag Pool and most members of the Appropriative Pool. Responding AP Members
9 note that Watermaster question no. 2 and Responding AP Members question no. 3 also raise
10 questions about possible imbalance of bargained compromises embodied in both SYRA and
11 the Court Approved Management Agreements ("CAMA").
12

13 *Questions Filed by Watermaster*

14 1. Desalter Production v. New Yield

15 (a) The Judgment and the Court Approved Management Agreements define
16 Safe Yield, [FN 1 omitted] Operating Safe Yield, [FN 2 omitted] and New Yield [FN 3
17 omitted] as groundwater that can be pumped or extracted. All Parties to the Judgment
18 are expressly enjoined from Producing groundwater from the Chino Basin other than as
19 authorized. [FN 4 omitted] For example, Basin Reoperation, as controlled overdraft -
20 Production without Replenishment - was authorized by the Court through a Judgment
21 Amendment in 2007, to effectuate Hydraulic Control. However, the Court's Proposed
22 Orders state that New Yield means "water pumped or produced/pumped by the
23 Desalters." (Proposed Orders, 30:15-18.) [FN 5 omitted] Watermaster observes that the
24 literal meaning of this phrase could be to equate the entirety of the groundwater the
25 Desalters "Produce" with "New Yield." Pursuant to this literal interpretation, the
26 Desalters could produce groundwater without offset by any other source of Basin yield or
27
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1 incurring any replenishment obligation. On the other hand, given conflicting language
2 elsewhere in the Court's Proposed Orders, does the Court instead mean that the
3 groundwater Produced by the Desalters is composed of New Yield caused by Desalter
4 Production ("Desalter-induced recharge"), [FN 6 omitted] Basin Re-Operation,[FN 7
5 omitted] and, to the extent these sources along with the others identified in Peace II
6 Agreement paragraph 6.2(a) are insufficient to fully offset Desalter Production, then a
7 replenishment assessment is required?

9 This question no. 1 is substantially the same as question no. 1 asked by Responding AP
10 Members and the Ag Pool and question nos. 1-3 asked by the City of Chino. Responding AP
11 Members respectfully request that the Court address these questions.

12 (b) Would the Court appreciate a clarification by way of an accounting of the
13 physical consequences under both of the above interpretations?
14

15 Responding AP Members support Watermaster's offer to provide the Court with an
16 accounting.

17 2. SYRA Condition Precedent

18 (a) Paragraph 2.1 of the 2015 Safe Yield Reset Agreement (SYRA) includes an
19 express condition precedent to the parties' agreement to Watermaster's actions under the
20 Agreement, which is the Court's approval of the Agreement's entire suite of Safe Yield
21 reset and accounting provisions as a settlement and compromise of all competing claims.
22 Do the Court's Proposed Orders mean that, despite the limitations in paragraph 2.1, the
23 Court will order some portions of the parties' compromise agreement (e.g., Stormwater
24 recharge) but not others (e.g Re-Operation)?
25

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

3 (c) If not, what are the further procedures that should be followed by
4 Watermaster and the Parties, if less than the entire suite of Safe Yield reset and
5 accounting provisions (e.g. Stormwater and Re-Operation) are approved?
6

7 Responding AP Members respond to subparts (a)-(c) together. Responding AP
8 Members agree with Watermaster's questions that SYRA was negotiated as an integrated
9 compromise among nearly all of the affected parties to the Restated Judgment and respectfully
10 request that the Court address these questions. Responding AP Members note that Ag Pool
11 and Responding AP Members questions no. 3 also raise questions about possible imbalance of
12 bargained compromises embodied in both SYRA and the CAMA.
13

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

19 Responding AP Members support Watermaster's offer to provide the Court with
20 accountings.
21

22 3. Priority of Land Use Conversion.

23 (a) § 3.1 of the Peace II Agreement provides that the Parties' obligations are
24 subject to express conditions precedent, including the amendments to Watermaster Rules
25 and Regulations § 6.3(c) and a further Order of the Court directing Watermaster to
26 proceed in accordance with the Peace II Measures. The Court expressly approved the
27 Peace II Measures, inclusive of Watermaster Resolution 07-05 and the stated change to
28

1 Watermaster Rules and Regulation 6.3, on December 20, 2007 referenced therein. The
2 Peace II Measures have been implemented by the Parties and administered by
3 Watermaster and reported upon annually to the Court in accordance with the December
4 20, 2007 Order. What effect would the Court's presently proposed determination, that
5 Watermaster had incorrectly interpreted and applied Watermaster Rules and
6 Regulation § 6.3 in its' apportionment of Agricultural Pool surplus water, have on the
7 further implementation of this Court's December 20, 2007 Order, its approval of the
8 Peace II Measures and the parties' respective obligations thereunder?

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

18 Responding AP Members respond to subparts (a) and (b) together. These questions are
19 similar to question no. 3 asked by Responding AP Members, and these Members respectfully
20 request that the Court address these questions.

22 4. Retroactive Application.

23 The Court's Proposed Orders would adopt Paragraph 4.8 of the 2015 Safe Yield
24 Reset Agreement (Proposed Orders, 13:20-25), which provides that there will be no
25 retroactive accounting changes by Watermaster for Production years prior to July 1,
26 2014. What is the impact of the Proposed Orders, should they become final, if any, on
27 the Court approval of Resolution 2010-04 and other orders, which may have relied upon
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1 or incorporated the methodology for allocation of surplus Agricultural Pool water as set
2 forth in the Watermaster Rules and Regulations § 6.3?

3 Responding AP Members support Watermaster's question and respectfully request that
4 the Court address this question.
5

6 *Questions Filed by the City of Chino*

7 **1. Under Attachment "2" to the Watermaster Motion entitled "Safe Yield**
8 **Reset Implementation Desalter Replenishment Accounting Illustration", how will**
9 **Watermaster account for the quantities of water listed in Column G2 of Attachment**
10 **"2"?**

11 This question is substantially the same as question no. 1 asked by the Ag Pool,
12 Watermaster, and Responding AP Members. Responding AP Members respectfully request
13 that the Court address these questions.
14

15 **2. Under Attachment "2" to the Watermaster Motion entitled "Safe Yield**
16 **Reset Implementation Desalter Replenishment Accounting Illustration", will**
17 **Watermaster account for the quantities of water listed in Column G of Attachment "2"**
18 **by deducting the annual amounts of water in Column G from the annual safe yield of the**
19 **basin?**

20 This question is substantially the same as question no. 1 asked by the Ag Pool,
21 Watermaster, and Responding AP Members. Responding AP Members respectfully request
22 that the Court address these questions.
23

24 **3. Under Attachment "2" to the Watermaster Motion entitled "Safe Yield**
25 **Reset Implementation Desalter Replenishment Accounting Illustration", will**
26 **Watermaster account for the quantities of water listed in Column G of Attachment "2"**
27 **by deducting the annual amounts of water in Column G from unallocated water in the**
28

1 basin?

2 This question is substantially the same as question no. 1 asked by the Ag Pool,
3 Watermaster, and Responding AP Members. Responding AP Members respectfully request
4 that the Court address these questions.
5

6
7 Dated: October 26, 2016

KIDMAN LAW LLP

8
9 By: 

Arthur G. Kidman

Andrew B. Gagen

Attorneys for Defendant,

MONTE VISTA WATER DISTRICT
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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 28, 2016 I served the following:

1. RESPONSES TO COURT-AUTHORIZED QUESTIONS RE COURT'S TENTATIVE RULING RE WATERMASTER'S MOTION RE 2015 SAFE YIELD AGREEMENT

/ 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 October 28, 2016 in Rancho Cucamonga, California.



By: Camille Gregory
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
LOEB & LOEB LLP
10100 SANTA MONICA BLVD.
SUITE 2200
LOS ANGELES, CA 90067

BOB FEENSTRA
2720 SPRINGFIELD ST,
ORANGE, CA 92867

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
Brian Thomas (bkthomas@jcsd.us)	bkthomas@jcsd.us
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@nrgenergy.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
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 Galleano
Earl Elrod
Eric Fordham
Eric Garner
Eric Leuze
Eric Tarango
Erika Clement
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Felix Hamilton
Frank Brommenschenkel
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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 Pivovarov
Jean Perry
Jeanina M. Romero
Jeannette Vagnozzi

darrighi@sgvwater.com
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@mcmcnnet.net
ddooley@angelica.com
dmejia@ci.ontario.ca.us
dwilliams@geoscience-water.com
diana.frederick@cdcr.ca.gov
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
jpivovarov@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
Joanne Chan (jchan@wwwd.org)	jchan@wwwd.org
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
Marsha Westropp
Martin Zvirbulis
Mathew C. Ballantyne
Matthew H. Litchfield
Michael Sigsbee
Mike Maestas

mwiley@chinohills.org
MWestropp@ocwd.com
martinz@cvwdwater.com
mballantyne@cityofchino.org
mlitchfield@wwwd.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@wwwd.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
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@sdewa.org
Susan Collet	scollett@jcsd.us
Sylvie Lee	slee@ieua.org
Tara Rolfe, PG	TRolfe@weewater.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
Veva Weamer	vweamer@weewater.com
Vicki Hahn	vhahn@tvmwd.com
Vicky Rodriguez	vrodriagu@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	ahubsch@loeb.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