

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

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FEE EXEMPT

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

6 Attorneys for Defendant and Appellant, MONTE VISTA WATER DISTRICT

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 IN AND FOR THE COUNTY OF SAN BERNARDINO
9

10 CHINO BASIN MUNICIPAL WATER
11 DISTRICT

12 Plaintiff,

13 vs.

14 CITY OF CHINO, et al.,

15 Defendants.

Case No. RCV 51010

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

**MONTE VISTA WATER
DISTRICT'S REPLY TO THE
AGRICULTURAL POOL'S
OPPOSITION TO MONTE VISTA'S
EX PARTE APPLICATION**

Continued Hearing on Application:

Date: February 20, 2019

Time: 1:30 p.m.

Department: S35

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20 Defendant and Appellant Monte Vista Water District ("Monte Vista") replies to the
21 Agricultural Pool's ("Ag Pool's") Opposition to Monte Vista's Ex Parte Application.

22 **I. In Violation of Section 916 and Both This Court and The Court of Appeal**
23 **Orders, Watermaster Moves This Court For an Order to Enforce 3**
24 **Specific Pages (Pages 15-18) Within This Court's 2017 Order.**

25 "It is the general rule that a perfected appeal divests the trial court of further
26 jurisdiction as to all questions, affecting the validity of the . . . order appealed from, and the
27 trial court during that period has no power to amend", correct, or enforce the order. [*Huskey v.*
28 *Berini* (1955) 135 Cal.App.2d 613, 617; citation omitted; see Code Civ. Proc. § 916(a).] "The

1 effect of an appeal is to remove the *subject matter* of the appeal from the jurisdiction of the
2 trial court.” [*Gantner v. Gantner* (1952) 38 Cal.2d 691, 692, aff’d, (1952) 39 Cal.2d 272;
3 citations omitted; citing to CCP § 946, repealed and replaced by CCP § 916; emphasis added.]

4 The “loss of jurisdiction is so complete that even the consent of the parties [cannot]
5 reinvest the superior court with jurisdiction over the *subject matter* of the appeal.” [*Huskey*,
6 38 Cal.2d at 616; citation omitted; discussing CCP § 946, repealed and replaced by CCP §
7 916; emphasis added.]

8 The Ag Pool erroneously asserts that “[n]either the appeal nor the limited remand strips
9 this Court of its jurisdiction, power and authority to hear *matters* contained in the [Restated]
10 Judgment” and “this Court may continue to hear motions from the Watermaster, and the Pools
11 and the parties, on *matters* contained in the Judgment.” [Ag Opp. at 5:1-3 and 13-14; citation
12 omitted; emphasis added.] First, that’s exactly what the perfecting of an appeal does - it strips
13 (or divests) this Court of its jurisdiction, power and authority to hear matters contained in the
14 Restated Judgment *that are the subject matter of the order appealed from, i.e. this Court’s*
15 *2017 Order*. [Code Civ. Proc. § 916(a); see *Huskey*, 38 Cal.2d at 617.]

16 Second, ‘yes,’ this Court may continue to hear motions on matters contained in the
17 Restated Judgment like it did on December 28th when it heard Watermaster’s (1) Motion for
18 Court Approval of 2018 Recharge Master Plan Update, Request for Court to Receive and File
19 Watermaster Semi-Annual OBMP Status Reports, and (2) Motion for Court to Re-Appoint
20 Nine-Member Watermaster Board for a Further Five-Year Term. This Court may continue to
21 hear such motions and any other motion by Watermaster, the Pools, or the parties *so long as*
22 *the motion does not move this Court to enforce the 2017 Order or any “matters embraced*
23 *therein or affected thereby”*. [Code Civ. Proc. § 916(a).]

24 Similar to above, the Ag Pool (and Watermaster) takes the position that this Court’s ‘ex
25 parte order’ “does not include an order precluding the filing of any other motion.” [Ag Opp. at
26 4:7; and 5:8-11; see also Watermaster Opp. at 5:11-13.] No it does not; nor does it need to
27 because the context in which the ‘ex parte order’ was issued is Section 916, which stays the
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1 proceedings in this Court upon the order appealed from (i.e. the 2017 Order). This Court does
2 not have subject matter jurisdiction to hear any other motion if the subject matter of such a
3 motion is embraced in or affected by the 2017 Order. [See Code Civ. Proc. § 916(a).]

4 In flagrant violation of Section 916 and both this Court and the Court of Appeal orders,
5 Watermaster moves this Court for an order to enforce 3 specific pages (pages 15-18) within
6 this Court's 2017 Order. [See Watermaster Notice of Mtn. at 1:4-5 and 8-9; Watermaster Mtn.
7 at 5:22-26; 8:3 – 9:2; 10:1-10 and 14-15; and 13:20 – 14:2.] Under Section 916, this Court
8 lacks subject matter jurisdiction to enforce any pages within its 2017 Order while it's on
9 appeal.

10 **II. Watermaster's Pretext that it Cannot Implement the 2018 Amendments**
11 **and the Ag Pool's Position to Withhold its Approval Unless This Court**
12 **Enforces Pages 15-18 in its 2017 Order Do not Supersede Section 916 and**
13 **Both the Court of Appeal and this Court's Order.**

14 The purpose of Section 916 is "to protect the appellate court's jurisdiction by
15 preserving the status quo until the appeal is decided. The [automatic stay] prevents the trial
16 court from rendering an appeal futile by altering the appealed judgment or order by conducting
17 other proceedings that may affect it." [*Varian Medical Systems, Inc. v. Delfino* (2005) 35
18 Cal.4th 180, 189; citation omitted; brackets in original.]

19 The Ag Pool asserts that the "Appeal Parties Motion [cannot] be implemented by
20 Watermaster without the provisions of the Watermaster Motion . . . to recalculate Safe Yield
21 in the manner expressly approved by the Court on **pages 15-18 of the Court's April 28, 2017**
22 **Order.**" [Ag Opp. at 7:10-15; citation omitted; emphasis added.] But such provisions and
23 Court order would render Monte Vista's appeal futile by conducting proceedings
24 (Watermaster's Motion) that enforce 3 pages of this Court's 2017 Order while it's on appeal.
25 [See *Delfino*, 35 Cal.4th at 189.] Similarly, the Ag Pool has taken the position to withhold its
26 approval of the 2018 Amendments unless this Court enforcing pages 15-18 of its 2017 Order,
27 but such a position does not supersede Section 916 and this Court and the Court of Appeal
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1 orders. [See Ag. Opp. at 3:25-26; 8:7-11.]

2 Contrary to Ag Pool’s position, the 2018 Amendments propose to change the Peace
3 Agreement by reallocating “Safe Yield *not Produced by the Agricultural Pool* to the
4 Appropriative Pool on an annual basis . . . after all the land use conversions are satisfied”.

5 [The 2018 Amendments are attached as Exh. A to Ag Opp., Egoscue Dec., Exh. G; emphasis
6 added.] That is the only proposed change to the Peace Agreement – to reallocate *unused Ag*
7 *rights* to the members of the Appropriative Pool.

8 Although the Ag Pool accurately paraphrases the Peace Agreement, which states that
9 the Agreement may not be amended and/or changed “without the express written approval of
10 each Party to [the] Agreement” including the Ag Pool, the Agreement also states that “*such*
11 *approval shall not be unreasonably withheld.*” [Peace Agreement, ¶ 10.14(b); emphasis
12 added.] According to this emphasized language, the Ag Pool may not rely on Paragraph 10.14
13 to arbitrarily withhold its approval of the 2018 Amendments. Instead, the Ag Pool must
14 reasonably justify its ‘withheld approval’ of the proposed amendment to the Peace Agreement.
15 Such reasonable justification will be difficult to articulate since the proposed amendment to
16 the Peace Agreement simply reallocates *unused Ag Pool rights* among the Appropriative Pool
17 members.

18 **III. This Court’s 2017 Order is Automatically Stayed Under Both Section 916**
19 **of the Code of Civil Procedure and Paragraph 31 of the Restated**
20 **Judgment**

21 In two sentences the Ag Pool erroneously asserts that this Court’s 2017 Order “is a
22 prohibitory injunction is self-executing and is not stayed by an appeal” and Paragraph 31 of
23 the Judgment does not apply to the 2017 Order. [Ag Opp. at 5:20-25; citation omitted.] To be
24 equally brief: For a detailed discussion regarding both the mandatory (not prohibitory) effect
25 of this Court’s 2017 Order and applicability of Paragraph 31(e), Monte Vista invites this Court
26 to review Appellant’s Motion to Confirm the Stay, filed August 10, 2017.

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1 **IV. This Court Considered The Court of Appeal’s Jurisdiction When It Took**
2 **The Ag Pool’s Petition Off Calendar**

3 Contrary to Ag Pool’s assertion, Monte Vista did not misrepresent this Court’s
4 reasoning for taking the Ag Pool’s Petition off calendar. During this Court’s explanation for
5 why it did so, this Court provided two reasons regarding lack of urgency, but added a third
6 when it stated: “there’s also a question -- a serious question in the Court’s mind with respect to
7 ***how [the Ag Pool’s] writ would fit in with the Court of Appeal decisions and jurisdiction.***”
8 [Ag Opp., Egoscue Dec., Exh. C, 15:6-9.]

9 Consistent with Monte Vista’s initial representation, this Court considered the Court of
10 Appeal’s jurisdiction when this Court took the Ag Pool’s Petition off calendar. For the same
11 reason, Monte Vista requests that this Court issue an order either to take Watermaster’s
12 Motion off calendar or strike Watermaster’s request in its Motion for this Court to enforce
13 pages 15-18 of this Court’s 2017 Order.

14 **V. Monte Vista Has Demonstrated Good Cause for This Court to Grant Relief**
15 **on an Ex Parte Basis**

16 Ag Pool erroneously asserts that Monte Vista did not demonstrate irreparable harm.
17 [Opp. at 6:12-15, 8:13-16.] In addition to the good cause for ex parte relief, including
18 irreparable harm and prejudice to Monte Vista described on pages 4-6 of Monte Vista’s
19 Application, good cause exists because, as stated in Watermaster’s Motion, “***Watermaster has***
20 ***already begun the process of the next Safe Yield reset . . .*** and the Court’s confirmation that
21 ***Watermaster should proceed in compliance with pages 15-18*** of the Court’s April 28, 2017
22 Order will provide clarity and certainty for that process.” [Watermaster Mtn. at 8:20-24;
23 citation omitted; emphasis added.] The additional irreparable harm to Monte Vista is that
24 Watermaster’s actions to begin the Safe Yield reset process for 2020, which is the primary
25 subject matter of pages 15-18 of this Court’s 2017 Order, will moot Monte Vista’s rights on
26 appeal, which is a harm that cannot be undone.

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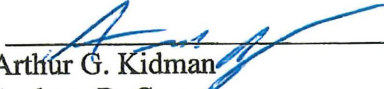
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VI. Prayer for Relief

Monte Vista respectfully requests that the Court protect the appellate court's jurisdiction and preserve the status quo by issuing an order *either* to take Watermaster's Motion, in its entirety, off calendar, *or* to strike Watermaster's request in its Motion for this Court to enforce pages 15-18 of this Court's 2017 Order, *or* stay both the entire briefing schedule and March 15th hearing in this Court's 'ex parte order' dated December 28, 2018, until the Court of Appeal responds to Watermaster's violation of its November 6th 'order for limited remand'.

Dated: February 7, 2019

KIDMAN GAGEN LAW LLP

By: 
Arthur G. Kidman
Andrew B. Gagen
Attorneys for Defendant,
MONTE VISTA WATER DISTRICT

CHINO BASIN WATERMASTER

Case No. RCVRS 51010

Chino Basin Municipal Water District v. City of Chino, et al.

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 February 7, 2019 served the following:

1. MONTE VISTA WATER DISTRICT'S REPLY TO THE AGRICULTURAL POOL'S OPPOSITION TO MONTE VISTA'S EX PARTE APPLICATION

/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 February 7, 2019 in Rancho Cucamonga, California.



By: Camille H. Gregory
Chino Basin Watermaster

BRIAN GEYE
CA SPEEDWAY CORPORATION
9300 CHERRY AVE
FONTANA, CA 92335

BOB KUHN
THREE VALLEYS MWD
669 HUNTERS TRAIL
GLENORA, CA 91740

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

STEVE ELIE
IEUA
17017 ESTORIL STREET
CHINO HILLS, CA 91709

GINO L. FILIPPI
CBWM BOARD MEMBER
305 N. 2ND AVE., PMB #101
UPLAND, CA 91786

PAUL HOFER
CBWM BOARD MEMBER
11248 S TURNER AVE
ONTARIO, CA 91761

DON GALLEANO
WMWD
4220 WINEVILLE ROAD
MIRA LOMA, CA 91752

ALLEN HUBSCH
LOEB & LOEB LLP
10100 SANTA MONICA BLVD.
SUITE 2200
LOS ANGELES, CA 90067

BOB FEENSTRA
2720 SPRINGFIELD ST,
ORANGE, CA 92867

JEFF PIERSON
UNITEX MANAGEMENT CORP.
PO BOX 1440
LONG BEACH, CA 90801-1440

Members:

Agnes Cheng	agnes.cheng@cc.sbcounty.gov
Al Lopez	alopez@wmwd.com
Alfonso Ruiz Jr.	Alfonso.Ruiz@gerdau.com
Alonso Jurado	ajurado@cbwm.org
Amanda Coker	acoker@cityofchino.org
Amer Jakher	AJakher@cityofchino.org
Amy Bonczewski	ABonczewski@ontarioca.gov
Andrea Olivas	aolivas@jcsd.us
Andrew Silva	Andrew.Silva@cao.sbcounty.gov
Andy Campbell	acampbell@ieua.org
Andy Malone	amalone@weewater.com
Anna Truong Nelson	atruongnelson@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
Bob Bowcock	bbowcock@irmwater.com
Bob DiPrimio	rjdiprimio@sgvwater.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
Braden Yu	bradeny@cvwdwater.com
Brandon Howard	brahoward@niagarawater.com
Brenda Fowler	balee@fontanawater.com
Brent Yamasaki	byamasaki@mwdh2o.com
Brian Geye	bgeye@autoclubspeedway.com
Brian Lee (blee@sawaterco.com)	blee@sawaterco.com
Brian Thomas	bkthomas@jcsd.us
Cameron Andreasen	memphisbelle38@outlook.com
Camille Gregory	cgregory@cbwm.org
Carmen Sierra	carmens@cvwdwater.com
Carol Bennett	cbennett@tkeengineering.com
Carol Boyd	Carol.Boyd@doj.ca.gov
Carolina Sanchez	csanchez@weewater.com
Casey Costa	ccosta@chinodesalter.org
Cassandra Hooks	chooks@niagarawater.com
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
Chris Diggs	Chris_Diggs@ci.pomona.ca.us
Christofer Coppinger	ccoppinger@geoscience-water.com
Christopher R. Guillen	cguillen@bhfs.com

Chuck Hays	chays@fontana.org
Cindy Cisneros	cindyc@cvwdwater.com
Cindy Li	Cindy.li@waterboards.ca.gov
Clarence Mansell	cmansell@wvwd.org
Courtney Jones	cjjones@ontarioca.gov
Craig Miller	CMiller@wmwd.com
Craig Stewart	craig.stewart@woodplc.com
Cris Fealy	cifealy@fontanawater.com
Curtis Stubbings	Curtis_Stubbings@praxair.com
Dan Arrighi	darrighi@sgvwater.com
Danielle Soto	danielle_soto@CI.POMONA.CA.US
Darron Poulsen	darron_poulsen@ci.pomona.ca.us
Daryl Grigsby	daryl_grigsby@ci.pomona.ca.us
Dave Argo	daveargo46@icloud.com
Dave Crosley	DCrosley@cityofchino.org
David De Jesus	ddejesus@tvmwd.com
David Huynh	dhuynh@cbwm.org
David Lovell	dlovell@dpw.sbcounty.gov
David Penrice	dpenrice@acmwater.com
Dennis Dooley	ddooley@angelica.com
Dennis Mejia	dmejia@ontarioca.gov
Dennis Williams	dwilliams@geoscience-water.com
Diana Frederick	diana.frederick@cdcr.ca.gov
Diana Keros	dkeros@chinohills.org
Don Galleano	dongalleano@icloud.com
Earl Elrod	earl.elrod@verizon.net
Ed Means	edmeans@roadrunner.com
Edgar Tellez Foster	etellezfoster@cbwm.org
Eduardo Espinoza	EduardoE@cvwdwater.com
Eldon Horst (ehorst@jcsd.us)	ehorst@jcsd.us
Eric Fordham	eric_fordham@geopentech.com
Eric Garner	eric.garner@bbklaw.com
Eric Grubb	ericg@cvwdwater.com
Eric Tarango	edtarango@fontanawater.com
Erika Clement	Erika.clement@sce.com
Eunice Ulloa	eulloa@cityofchino.org
Evette Ounanian	EvetteO@cvwdwater.com
Felix Hamilton	felixhamilton.chino@yahoo.com
Frank Brommenschenkel	frank.brommen@verizon.net
Frank Yoo	FrankY@cbwm.org
Gabby Garcia	ggarcia@mvwd.org
Gailyn Watson	gwatson@airports.sbcounty.gov
Garrett Rapp	grapp@weewater.com
Geoffrey Kamansky	gkamansky@niagarawater.com
Geoffrey Vanden Heuvel	geoffreyvh60@gmail.com
Gerald Yahr	yahrj@koll.com
Giannina Espinoza	giannina.espinoza@cmc.com
Gina Nicholls	gnicholls@nossaman.com
Gino L. Filippi	Ginoffvine@aol.com
Grace Cabrera	grace_cabrera@ci.pomona.ca.us
Greg Woodside	gwoodside@ocwd.com
Halla Razak	hrazak@ieua.org
Henry DeHaan	Hdehaan1950@gmail.com

Hope Smythe
James Curatalo
James Jenkins
James McKenzie
Jane Anderson
Janelle Granger
Janine Wilson
Jasmin A. Hall
Jason Marseilles
Jean Perry
Jeanina M. Romero
Jeff Edwards
Jeffrey L. Pierson
Jennifer Hy-Luk
Jesse White - Gerdau
Jessie Ruedas
Jim Taylor
Jim W. Bowman
Jimmy Medrano (Jaime.medrano2@cdcr.ca.gov)

Joanne Chan
Joe Graziano
Joe Joswiak
Joel Ignacio
John Abusham
John Bosler
John Huitsing
John Lopez and Nathan Cole
John Mendoza
John Partridge
John Robles (jrobles@ci.upland.ca.us)

John Thornton
Jorge Vela
Jose Galindo
Joseph P. LeClaire
Josh Swift
Joshua Aguilar
Julie Saba
Justin Brokaw
Justin Nakano
Karen Johnson
Kassie M. Goodman
Kathleen Brundage
Kathy Tiegs
Kati Parker
Kati Parker
Katie Gienger
Keith Person
Kelly Berry
Ken Waring
Kevin Blakeslee
Kevin Sage

hsmythe@waterboards.ca.gov
jamesc@cvwdwater.com
cnomgr@airports.sbcounty.gov
jmckenzie@dpw.sbcounty.gov
janderson@jcsd.us
jgranger@niagarawater.com
JWilson@cbwm.org
jhall@ieua.org
jmarseilles@ieua.org
JPerry@wmwd.com
jromero@ontarioca.gov
Jeffrey.Edwards@genon.com
jpierson@intexcorp.com
jhyluk@ieua.org
Jesse.White@cmc.com
Jessie@thejclawfirm.com
jim_taylor@ci.pomona.ca.us
jbowman@ontarioca.gov

Jaime.medrano2@cdcr.ca.gov
jchan@wvwd.org
jgraz4077@aol.com
JJoswiak@cbwm.org
jignacio@ieua.org
john.abusham@nrg.com
johnb@cvwdwater.com
johnhuitsing@gmail.com
customerservice@sarwc.com
jmendoza@tvmwd.com
jpartridge@angelica.com

jrobles@ci.upland.ca.us
JThorntonPE@H2OExpert.net
Jvela@dpw.sbcounty.gov
jose_a_galindo@praxair.com
jleclaire@dbstephens.com
jmswift@fontanawater.com
jaguilar@ieua.org
jsaba@jcsd.us
jbrokaw@marygoldmutualwater.com
JNakano@cbwm.org
kejwater@aol.com
kgoodman@bhfs.com
kathleen.brundage@californiasteel.com
Kathyt@cvwdwater.com
kparker@ieua.org
katiandcraig@verizon.net
kgienger@ontarioca.gov
keith.person@waterboards.ca.gov
KBerry@sawpa.org
kwarning@jcsd.us
kblakeslee@dpw.sbcounty.gov
Ksage@IRMwater.com

Kirby Brill - Inland Empire Utilities Agency (kbrill@ieua.org)

	kbrill@ieua.org
KRISTEN WEGER	kweger@cbwcd.org
Kyle Snay	kylesnay@gswater.com
Laura Mantilla	lmantilla@ieua.org
Linda Jadeski	ljadeski@wwd.org
Linda Minky	LMinky@BHFS.com
Lisa Lemoine	LLemoine@wmwd.com
Marco Tule	marco.tule@nrg.com
Mark Wiley	mwiley@chinohills.org
Marsha Westropp	MWestropp@ocwd.com
Mathew C. Ballantyne	mballantyne@cityofchino.org
Matthew H. Litchfield	mlitchfield@tvmwd.com
Mike Blazevic	mblazevic@weewater.com
Mike Maestas	mikem@cvwdwater.com

Members:

Maria Mendoza-Tellez	MMendoza@weewater.com
Maribel Sosa (msosa@ci.pomona.ca.us)	msosa@ci.pomona.ca.us
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
Martin Rauch	martin@rauchcc.com
May Atencio	matencio@fontana.org
Melanie Otero	melanie_otero@ci.pomona.ca.us
Melissa L. Walker	mwalker@dpw.sbcounty.gov
Michael Adler	michael.adler@mcmcnet.net
Michael Camacho	MCamacho@pacificaservices.com
Michael P. Thornton	mthornton@tkeengineering.com
Moore, Toby	TobyMoore@gswater.com
MWDProgram@sdewa.org	MWDProgram@sdewa.org
Nadeem Majaj	nmajaj@chinohills.org
Nadia Loukeh	nloukeh@wvwd.org
Nadia Picon-Aguirre	naguirre@wvwd.org
Natalie Costaglio	natalie.costaglio@mcmcnet.net
Nathan deBoom	n8deboom@gmail.com
Neetu Gupta	ngupta@ieua.org
Nicole Escalante	NEscalante@ontarioca.gov
Noah Golden-Krasner	Noah.goldenkrasner@doj.ca.gov
Patty Jett	pjett@spacecenterinc.com
Paul Deutsch	paul.deutsch@woodplc.com
Paul Hofer	farmwatchtoo@aol.com
Paul Hofer	farmerhofer@aol.com
Paul S. Leon	pleon@ontarioca.gov
Paula Lantz	paula_lantz@ci.pomona.ca.us
Penny Alexander-Kelley	Palexander-kelley@cc.sbcounty.gov
Pete Hall	pete.hall@cdcr.ca.gov
Pete Hall	rpetehall@gmail.com
Pete Vicario	PVicario@cityofchino.org
Peter Hettinga	peterhettinga@yahoo.com
Peter Kavounas	PKavounas@cbwm.org
Peter Rogers	progers@chinohills.org
Peter Thyberg	Peter.Thyberg@cdcr.ca.gov
Praseetha Krishnan (praseethak@cvwdwater.com)	praseethak@cvwdwater.com
Rachel Avila	R.Avila@MPGLAW.com
Rachel Ortiz	rortiz@nossaman.com
Ramsey Haddad	ramsey.haddad@californiasteel.com
Randall McAlister	randall.mcalister@ge.com
Raul Garibay	raul_garibay@ci.pomona.ca.us
Ray Wilkings	rwilking@autoclubspeedway.com
Rene Salas	Rene_Salas@ci.pomona.ca.us
Rick Darnell	Richard.Darnell@nrgenergy.com
Rick Rees	richard.rees@woodplc.com
Rita Pro	rpro@cityofchino.org
Robert C. Hawkins	RHawkins@earthlink.net

Robert DeLoach	robertadeloach1@gmail.com
Robert Neufeld	robneu1@yahoo.com
Robert Stockton	bstockton@wmwd.com
Robert Wagner	rwagner@wbecorp.com
Rogelio Matta	rmatta@fontana.org
Ron Craig - Michael Baker International (Rcraig21@icloud.com)	Rcraig21@icloud.com
Ron LaBrucherie, Jr.	ronLaBrucherie@gmail.com
Ronald C. Pietersma	rcpietersma@aol.com
Rosemary Hoerning	rhoerning@ci.upland.ca.us
Ryan Shaw	RShaw@wmwd.com
Sam Nelson (snelson@ci.norco.ca.us)	snelson@ci.norco.ca.us
Sandra S. Rose	directorrose@mvwd.org
Sarah Schneider	sarah.schneider@amec.com
Scott Burton	sburton@ontarioca.gov
Scott Runyan	srunyan@cc.sbcounty.gov
Scott Slater	sslater@bhfs.com
Seth J. Zielke	sjzielke@fontanawater.com
Shaun Stone	sstone@ieua.org
Skylar Stephens (SStephens@sdcwa.org)	SStephens@sdcwa.org
Sonya Barber	sbarber@ci.upland.ca.us
Sonya Bloodworth	sbloodworth@wmwd.com
Sophie Akins	Sophie.Akins@cc.sbcounty.gov
Steve Riboli	steve.riboli@sanantoniowinery.com
Steve Smith	ssmith@ieua.org
Steven J. Elie	selie@ieua.org
Steven J. Elie	s.elie@mpglaw.com
Steven Popelar	spopelar@jcsd.us
Susan Palmer	spalmer@kidmanlaw.com
Sylvie Lee	slee@ieua.org
Taya Victorino	tayav@cvwdwater.com
Teri Layton	tlayton@sawaterco.com
Terry Catlin	tlcatlin@wfajpa.org
Tim Barr	tbarr@wmwd.com
Toby Moore	TobyMoore@gswater.com
Todd Minten	tminten@chinodesalter.org
Tom Cruikshank	tcruikshank@spacecenterinc.com
Tom DiCiolli	thomas.diciolli@genon.com
Tom Harder	tharder@thomashardercompany.com
Tom Haughey	Thaughey@cityofchino.org
Tom O'Neill (toneill@chinodesalter.org)	toneill@chinodesalter.org
Toni Medell	mmedel@mbakerintl.com
Tony Long	tlong@angelica.com
Van Jew	vjew@mvwd.org
Veva Weamer	vweamer@weewater.com
Vicki Hahn	vhahn@tvmwd.com
Victor Preciado - City of Pomona (Victor_Preciado@ci.pomona.ca.us)	Victor_Preciado@ci.pomona.ca.us
Vivian Castro (vcastro@cityofchino.org)	vcastro@cityofchino.org
W. C. "Bill" Kruger	citycouncil@chinohills.org

WestWater Research, LLC
William Urena

research@waterexchange.com
wurena@angelica.com

Members:

Allen W. Hubsch	ahubsch@loeb.com
Andrew Gagen	agagen@kidmanlaw.com
Arthur Kidman	akidman@kidmanlaw.com
Catharine Irvine	cirvine@DowneyBrand.com
Christopher M. Sanders	cms@eslawfirm.com
Dan McKinney	dmckinney@douglascountylaw.com
David Aladjem	daladjem@downeybrand.com
Elizabeth P. Ewens	epe@eslawfirm.com
Fred Fudacz	ffudacz@nossaman.com
Fred Galante	fgalante@awattorneys.com
Gene Tanaka	Gene.Tanaka@bbklaw.com
Irene Islas	irene.islas@bbklaw.com
Jean Cihigoyenetché	Jean@thejclawfirm.com
Jim Markman	jmarkman@rwglaw.com
Jimmy Gutierrez - Law Offices of Jimmy Gutierrez (jimmylaredo@gmail.com)	jimmylaredo@gmail.com
jimmy@city-attorney.com	jimmy@city-attorney.com
Joel Kuperberg	jkuperberg@rutan.com
John Harper	jrharper@harperburns.com
John Schatz	jschatz13@cox.net
Mark D. Hensley	mhensley@hensleylawgroup.com
Martin Cihigoyenetché	marty@thejclawfirm.com
Michelle Staples	mstaples@jdtplaw.com
Nick Jacobs	njacobs@somachlaw.com
Randy Visser	RVisser@sheppardmullin.com
Robert E. Donlan	red@eslawfirm.com
Rodney Baker	rodbaker03@yahoo.com
Sarah Foley	Sarah.Foley@bbklaw.com
Shawnda M. Grady	sgrady@eslawfirm.com
Steve Anderson	Steve.Anderson@bbklaw.com
Steve Kennedy	skennedy@bmklawplc.com
Steve M. Anderson	steve.anderson@bbklaw.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@bmbllawoffice.com