

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

Fee Exempt Per Gov. Code § 6103

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

FEE EXEMPT

8 Attorneys for MONTE VISTA WATER DISTRICT

9 NOSSAMAN LLP
10 777 S. Figueroa Street, 34th Floor
11 Los Angeles, CA 90017
12 Telephone: 213.612.7800
13 ffudacz@nossaman.com
14 gnicholls@nossaman.com

15 **FREDERIC A. FUDACZ (SBN 50546)**
16 **GINA R. NICHOLLS (SBN 270174)**

17 Attorneys for CITY OF ONTARIO

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 IN AND FOR THE COUNTY OF SAN BERNARDINO

20 CHINO BASIN MUNICIPAL WATER
21 DISTRICT

22 Plaintiff,

23 vs.

24 CITY OF CHINO, et al.,

25 Defendants.

Case No. RCV 51010

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

**MONTE VISTA WATER DISTRICT
AND CITY OF ONTARIO'S
OPPOSITION TO AGRICULTURAL
POOL MOTION TO AMEND ITS
POOLING PLAN IN THE
JUDGMENT**

Hearing on Agricultural Pool Motion to
Amend the Judgment:

Date: December 13, 2019

Time: 1:30 p.m.

Department: S-35

1 Monte Vista Water District (“Monte Vista”) and City of Ontario (“Ontario”), who are
2 members of the Appropriative Pool (collectively referred to as “Opposing AP Members”),
3 hereby submit this opposition (“Opposition”) to the Overlying (Agricultural) Pool’s (“Ag
4 Pool”) Motion Regarding Amendment of Pooling Plan for the Overlying (Agricultural) Pool,
5 Exhibit “F” of the Judgment (“Ag Pool Motion”) because the Ag Pool:

- 6 (1) gave little to no notice to the Opposing AP Members regarding the proposed
7 Judgement amendment,
- 8 (2) ignored the ‘Watermaster Pool process’, and
- 9 (3) the Ag Pool proposed Judgment amendment:
 - 10 (a) violates Sections 4.4, 5.4, 8.3, and 10.14 of the Peace Agreement,
 - 11 (b) amends the Peace Agreement, which requires mutual intent and written
12 consent of all parties to the Peace Agreement,
 - 13 (c) eliminates a significant portion of the mutuality of obligation supporting
14 the Peace Agreement, and
 - 15 (d) does not accurately reflect the language of Section 5.4(a) agreed to by
16 the parties to the Peace Agreement.

17 Based on this Opposition, the Opposing AP Members respectfully ask this Court to deny the Ag
18 Pool Motion; or, in the alternative, ‘call a timeout’ for a period of time sufficient to allow the
19 Opposing AP Members (and other Appropriative Pool members) time to fully understand,
20 discuss, and potentially respond to the proposed Ag Pool Judgment amendment and for the
21 Watermaster process to be completed, including Advisory Committee and Watermaster Board
22 consideration.

23 In its Motion, the Ag Pool asserts that the purpose of the Judgment amendment is to: (1)
24 “acknowledge and reflect the terms of the Peace Agreement”, and (2) “conform to the policies
25 and practices of the Pool”.¹ [Mtn. at 4:20-21.] Specifically, and relevant to this Opposition, the

26 _____
27 ¹ Contrary to this assertion, adding Section 5.4(a) of the Peace Agreement to its Pooling Plan can be done
28 administratively by the Ag Pool without any actions by the Advisory Committee, Watermaster Board, or
the Court. [Ag Pool Pooling Plan at ¶ 8.] However, the Ag Pool has chosen to amend the Judgment (Ag

1 proposed amendment copied, some, but not all language from Section 5.4(a) of the Peace
2 Agreement and pasted it into the Ag Pool Pooling Plan (i.e. the Judgment).

3 More specifically, the highlighted language below identifies the language from Section
4 5.4(a) that was selectively inserted into the Ag Pool proposed Judgment amendment whereas
5 the un-highlighted identifies the language selectively omitted from the proposed Judgment
6 amendment:

7 During the terms of this Agreement, all assessments and expenses of
8 the Agricultural Pool including those of the Agricultural Pool
9 Committee shall be paid by the Appropriative Pool. This includes but
10 is not limited to OBMP Assessments, assessments pursuant to
11 Paragraphs 20, 21, 22, 30, 42, 51, 53, 54 both General Administrative
12 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.

13 In addition, the proposed Judgment amendment omits the entire introductory language of
14 Section 5.4.

15 Below is the proposed Ag Pool Judgment amendment with the selected language from
16 Section 5.4(a) highlighted for the Court's convenience:

17 7.5. Assessments. Pursuant to page 36, Section 5.4(a) of the
18 Peace Agreement, and for the term of same, all assessments and
19 expenses of the Pool including those of the Agricultural Pool
20 Committee shall be paid by the Appropriative Pool. This includes but
21 is not limited to replenishment obligations. However, in the event the
22 total Agricultural Pool Production exceeds 414,000 acre-feet in any
23 five consecutive year period as defined in the Judgment, the Pool shall
24 be responsible for its replenishment obligation pursuant to Paragraph
25 45 of the Judgment. All assessments in this pool pursuant to
26 Paragraph 45 (~~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:
[methods omitted from this Opposition].

27 _____
28 Pool Pooling Plan) to allegedly reconcile language within its Rules and Regulations and Section 5.4(a)
of the Peace Agreement - *versus simply amending its Rules and Regulations.*

1 **A. The Ag Pool Failed to Provide Adequate Notice and Ignored the Watermaster Pool**
2 **Process, Which is Critical to a Judgment Amendment That Will Impact the**
3 **Appropriative Pool Just as Much, If Not More, Than the Ag Pool**

4 The Ag Pool provided inadequate notice for the Appropriative Pool to review, fully
5 understand, and respond to the proposed Judgment amendment. Specifically, the amendment
6 was introduced and approved at an Ag Pool meeting on October 10th and its Motion was filed
7 **21 days** later on October 31st. [See Mtn. at 3:12-15; Egoscue Dec. at ¶ 6.]

8 Also on October 10th, the Judgment amendment was first introduced at an Appropriative
9 Pool meeting. Having just seen the proposed amendment, the Appropriative Pool made it clear
10 that it had no position at that time and reserved its comments. [See Mtn. at 3:18-20; Egoscue
11 Dec. at ¶ 9.]

12 On October 17th, the Amendment was “reported by the WM General Manager to the
13 Advisory Committee” and to the Watermaster Board on October 24th. [Mtn. at 4:11-14; Egoscue
14 Dec. at ¶ 12.] The Ag Pool Motion is silent as to what position, if any, was taken by either the
15 Advisory Committee or the Watermaster Board.² The Motion was filed October 31st.

16 In addition to the lack of notice, the Ag Pool ignored the ‘Watermaster Pool process’
17 described in Section 10.14 of the Peace Agreement. Specifically, Section 10.14 states in relevant
18 part:

19 (a) Any amendments and/or changes to this Agreement must be
20 in writing, signed by a duly authorized representative of the Parties
21 hereto, ***and must expressly state the mutual intent of the Parties to***
amend this Agreement as set forth herein. . . .

22 (b) The Parties hereby agree that no amendments and/or changes
23 may be made to this Agreement ***without the express written***
approval of each Party to this Agreement, provided that upon
24 request, no such approval shall be unreasonably withheld.

25 The Ag Pool chose not to obtain written consent of the parties to the Peace Agreement
26 and subsequently failed to obtain their mutual intent since there is no mutual consideration in
27 the proposed Judgment amendment. This lack of mutual intent and written consent is critical to

28 ² Notably, the Overlying (Non-Agricultural) Pool approved the proposed Judgment Amendment at its
October 10th meeting. [Ag Mtn. at 3:17-18; Egoscue Dec. at ¶ 8.]

1 a Judgment amendment (such as this) that will impact the Appropriative Pool just as much, if
2 not more, than the Ag Pool.³

3 Accordingly, the Opposing AP Members respectfully ask this Court to deny the Ag Pool
4 Motion; or, in the alternative, ‘call a timeout’ for a period of time to allow the Appropriative
5 Pool and its members time to fully understand, discuss, and potentially respond to the proposed
6 Ag Pool Judgment amendment. The bases for the Opposing AP Members potential response
7 are provided next.

8 **B. The Ag Pool Proposed Amendment (1) Violates Sections 4.4, 5.4, 8.3, and 10.14 of**
9 **the Peace Agreement, (2) Amends the Peace Agreement, Which Requires Mutual**
10 **Intent and Written Consent of all Parties to the Peace Agreement, and (3)**
11 **Eliminates the Mutuality of Obligation Supporting the Peace Agreement**

12 Contrary to the Ag Pool’s assertion that the “Peace Agreement was an agreement
13 between the Parties to the Judgment”, the Agreement was not an agreement among Parties to
14 the Judgment; rather, it was an agreement among the parties to the Peace Agreement only. [Mtn
15 at p.4, lines 26-27.] Specifically, the Peace Agreement was a settlement agreement among
16 disputing parties, not a settlement among all Parties to the Judgment.

17 Section 4.4 of the Peace Agreement is titled “Consent to Specified Changes to the
18 Judgment” and states that “[e]ach Party consents to the following modifications to the
19 Judgment.” There are three, and only three, modifications listed, and the addition of Section
20 5.4(a) of the Peace Agreement to the Judgment is not one of those modifications.

21 Accordingly, the Ag Pool’s addition of Section 5.4(a) to the list of Judgment changes in
22 Section 4.4 of the Peace Agreement is an amendment to the Peace Agreement. As quoted above,
23 Section 10.14 of the Agreement provides the requirements to amend the Peace Agreement,
24 which are ‘expressly stated mutual intent’, and ‘written consent’, of the parties to the Peace
25

26 ³ In addition to Section 10.14 of the Peace Agreement, Paragraph 38(a) of the Judgment establishes
27 criteria for pool notifications to other pools regarding recommended Watermaster actions. While Ag
28 Pool’s proposed Judgment Amendment is a Pool action and not a Watermaster action, paragraph 38(a)
establishes an expectation of notification and stakeholder participation, particularly of actions such as
this one that directly impacts another pool (i.e. the Appropriative Pool).

1 Agreement. [Peace I at § 10.14(a) and (b).]

2 In addition, Section 10.14 memorialized the parties' recognition "*that the terms and*
3 *conditions of this Agreement . . . have been arrived at through the collective negotiations by*
4 *the Parties.*" [Peace I at § 10.14(a); emphasis added.] The Ag Pool's attempt to hard-wire
5 Section 5.4(a) into the Judgment violates this language in section 10.14, which recognized that
6 the Agreement is a result of "collective negotiations by the Parties" and any amendment to the
7 Agreement requires the same Watermaster Pool negotiation process.

8 This is supported by the introductory language in Section 5.4 (not included in the Ag
9 Pool Motion or proposed amendment), which states that "the *Parties* expressly consent to
10 Watermaster's performance of the following actions, programs or procedures regarding
11 Assessments." The Peace Agreement defines "*Parties*" as parties to this Agreement – not to the
12 Judgment. [Peace Agreement at Sec. 1(gg).] In other words, Section 5.4(a) is the product of a
13 negotiation among the parties to the Peace Agreement, not all Parties to the Judgment.

14 Section 5.4(a) is part of the consideration in the Peace Agreement with interdependent
15 rights and obligations among the parties to the Agreement. Pulling Section 5.4.(a) out of the
16 Peace Agreement and hard-wiring it into the Judgment eliminates this interdependency and
17 mutual intent and, in the hierarchy of Watermaster enforcement documents,⁴ elevates Section
18 5.4(a) from the Peace Agreement to the Judgment.

19 This, in addition to amending Section 4.4, is a premature attempt to dictate modified
20 terms for any extension of the Peace Agreement under Section 8.3 of the Agreement.
21 Specifically, Section 8.3 of the Peace Agreement states in relevant part: "Meet and Confer. The
22 Parties agree to meet and confer during the 25th year of this Agreement to discuss any new or
23 modified terms which may be requested or required by each Party in order to continue the term
24 of this Agreement." This attempt is premature because the 'meet and confer' provision in
25 Section 8.3 does not occur before the 25th year of the Peace Agreement, which is 2025.

26 In addition, by hard-wiring portions of Section 5.4(a) into the Judgment and omitting the

27 _____
28 ⁴ The hierarchy from highest to lowest is the Judgment, Court Approved Management Agreements
(including the Peace Agreement), and Rules and Regulations.

1 introductory language of Section 5.4, the Appropriative Pool may become responsible for Ag
2 Pool expenses not contemplated in the Peace Agreement (such as Ag Pool Consultants or other
3 discretionary expenses not approved through the Watermaster budget process or not consistent
4 with the Judgment paragraphs referenced in Section 5.4(a)). The proposed Ag Pool amendment
5 would validate a blank check for Ag Pool expenses.

6 Lastly, if the Ag Pool hard-wires Section 5.4(a) into the Judgment and a dispute over
7 expenses occurs thereafter, the Appropriative Pool is now forced to litigate the dispute in court
8 versus attempting to resolve the dispute among the Peace Agreement parties through dispute
9 resolution as contemplated by Section 9 of the Peace Agreement.⁵ This is another piece of
10 consideration torn away by this seemingly innocuous Amendment to the Ag Pool Pooling Plan.

11 It is quite clear that amending the Judgment to hard-wire Section 5.4.(a) violates Sections
12 4.4, 5.4, 8.3, and 10.14 of the Peace Agreement. A Judgment amendment to incorporate any
13 provision within the Peace Agreement, other than those provisions listed in Section 4.4, requires
14 an amendment to the Peace Agreement, which requires both mutual intent and written consent
15 of all Parties to the Peace Agreement. The Ag Pool has ignored both requirements, and both
16 requirements are critical to a Judgment Amendment (such as this) that will impact the
17 Appropriative Pool just as much, if not more, than the Ag Pool.

18 **C. Conclusion**

19 Based on the foregoing, the Opposing AP Members respectfully ask this Court to deny
20 the Ag Pool Motion; or, in the alternative, ‘call a timeout’ for a period of time sufficient to allow
21 the Appropriative Pool and its members, as well as the Advisory Committee and Watermaster,
22 time to fully understand, discuss, and potentially respond to the proposed Ag Pool Judgment
23 Amendment. In addition, Section 9 of the Peace Agreement provides for a dispute resolution
24 when there is a “default” or “exclusion” by any party to the Agreement. During a timeout, the
25 Court may order the two Pools to meet and confer under Section 9. If the Ag Pool Motion truly
26 is intended to “update” and “conform”, no prejudice will befall the Ag Pool during this


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28 ⁵ Section 9 of the Peace Agreement provides for a dispute resolution when there is a “default” or
“exclusion” by any party to the Agreement.

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timeout/continuance.


Dated: December 2, 2019

KIDMAN GAGEN LAW LLP

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

Dated: December 2, 2019

NOSSMAN LLP

By: 
Frederic A. Fudacz
Gina R. Nicholls
Attorneys for CITY OF ONTARIO

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 December 2, 2019 served the following:

1. MONTE VISTA WATER DISTRICT AND CITY OF ONTARIO'S OPPOSITION TO AGRICULTURAL POOL MOTION TO AMEND ITS POOLING PLAN IN THE JUDGMENT

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.

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 December 2, 2019 in Rancho Cucamonga, California.


By: Camille 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

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

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

Members:

Agnes Cheng	agnes.cheng@cc.sbcounty.gov
Al Lopez	alopez@wmwd.com
Alfonso Ruiz	alfonso.ruiz@cmc.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 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
Betty Anderson	banderson@jcsd.us
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	Bob.Page@rov.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
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@jcsd.us)	cberch@jcsd.us
Chris Diggs	Chris_Diggs@ci.pomona.ca.us
Christiana Daisy - Inland Empire Utilities Agency (cdaisy@ieua.org)	cdaisy@ieua.org

Christofer Coppinger	ccoppinger@geoscience-water.com
Christopher Quach	cquach@ontarioca.gov
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@sgwater.com
Dave Argo	daveargo46@icloud.com
Dave Crosley	DCrosley@cityofchino.org
David De Jesus	ddejesus@tvmwd.com
David Huynh	dhuynh@cbwm.org
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
Ed Means	edmeans@roadrunner.com
Edgar Tellez Foster	etellezfoster@cbwm.org
Eduardo Espinoza	EduardoE@cvwdwater.com
Elizabeth Skrzat (ESkrzat@cbwcd.org)	ESkrzat@cbwcd.org
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
Greg Woodside	gwoodside@ocwd.com
Henry DeHaan	Hdehaan1950@gmail.com
Hope Smythe	hsmythe@waterboards.ca.gov
James Curatalo	jamesc@cvwdwater.com
James Jenkins	cnomgr@airports.sbcounty.gov
James McKenzie	jmckenzie@dpw.sbcounty.gov

Jane Anderson	janderson@jcsd.us
Janelle Granger	jgranger@niagarawater.com
Janine Wilson	JWilson@cbwm.org
Jasmin A. Hall	jhall@ieua.org
Jason Marseilles	jmarseilles@ieua.org
Jason Pivovaroff - Western Municipal Water District (JPivovaroff@wmwd.com)	JPivovaroff@wmwd.com
Jean Perry	JPerry@wmwd.com
Jeanina M. Romero	jromero@ontarioca.gov
Jeff Edwards	Jeffrey.Edwards@genon.com
Jeffrey L. Pierson	jpierson@intexcorp.com
Jennifer Hy-Luk	jhyluk@ieua.org
Jesse White	Jesse.White@cmc.com
Jessie Ruedas	Jessie@thejclawfirm.com
Jim W. Bowman	jbowman@ontarioca.gov
Jimmy Medrano	Jaime.medrano2@cdcr.ca.gov
Joanne Chan	jchan@wvwd.org
Joe Graziano	jgraz4077@aol.com
Joe Joswiak	JJoswiak@cbwm.org
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 Mendoza	jmendoza@tvmwd.com
John Partridge	jpartridge@angelica.com
John Thornton	JThorntonPE@H2OExpert.net
Jorge Vela	Jvela@dpw.sbcounty.gov
Jose Galindo	jose_a_galindo@praxair.com
Josh Swift	jmswift@fontanawater.com
Joshua Aguilar	jaguilar@ieua.org
Julie Saba	jsaba@jcsd.us
Justin Brokaw	jbrokaw@marygoldmutualwater.com
Justin Nakano	JNakano@cbwm.org
Justin Scott-Coe Ph. D. (jscottcoe@mvwd.org)	jscottcoe@mvwd.org
Karen Johnson	kejwater@aol.com
Kassie M. Goodman	kgoodman@bhfs.com
Kathleen Brundage	kathleen.brundage@californiasteel.com
Kathy Tiegs	Kathyt@cvwdwater.com
Katie Gienger	kgienger@ontarioca.gov
Keith Person	keith.person@waterboards.ca.gov
Kelly Berry	KBerry@sawpa.org
Ken Waring	kwarling@jcsd.us
Kevin Blakeslee	kblakeslee@dpw.sbcounty.gov
Kevin Sage	Ksage@IRMwater.com
Kimberly E. Leefatt	kleeftatt@bhfs.com
Kirby Brill	kbrill@ieua.org
Kristen Weger	kweger@cbwcd.org
Kyle Snay	kylesnay@gswater.com
Laura Mantilla	lmantilla@ieua.org
Lauren Harold	lharold@liprop.com
Linda Jadeski	ljadeski@wvwd.org

Lisa Lemoine
Liz Hurst
Marco Tule
Mark Wiley
Marsha Westropp
Mathew C. Ballantyne
Matthew H. Litchfield
Mike Blazevic
Mike Maestas

LLemoine@wmwd.com
ehurst@ieua.org
marco.tule@nrg.com
mwiley@chinohills.org
MWestropp@ocwd.com
mballantyne@cityofchino.org
mlitchfield@tvmwd.com
mblazevic@weewater.com
mikem@cvwdwater.com

Members:

Maria Mendoza-Tellez	MMendoza@weewater.com
Maribel Sosa	msosa@ci.pomona.ca.us
Marilyn Levin	marilyn.levin@doj.ca.gov
Mark Kinsey	mkinsey@mvwd.org
Mark Wildermuth	mwildermuth@weewater.com
Martin Rauch	martin@rauchcc.com
Martin Zvirbulis	mezvirbulis@sgvwater.com
May Atencio	matencio@fontana.org
Melissa L. Walker	mwalker@dpw.sbcounty.gov
Michael Adler	michael.adler@mcmcn.net
Michael Camacho	MCamacho@pacificaservices.com
Michael Camacho	mcamacho@ieua.org
Michael P. Thornton	mthornton@tkeengineering.com
Michelle Licea	mlicea@mvwd.org
Moore, Toby	TobyMoore@gswater.com
MWDProgram	MWDProgram@sdcwa.org
Nadeem Majaj	nmajaj@chinohills.org
Nadia Aguirre	naguirre@tvmwd.com
Nadia Loukeh	nloukeh@wwwd.org
Natalie Costaglio	natalie.costaglio@mcmcn.net
Nathan deBoom	n8deboom@gmail.com
Neetu Gupta	ngupta@ieua.org
Nicole Escalante	NEscalante@ontarioca.gov
Noah Golden-Krasner	Noah.goldenkrasner@doj.ca.gov
Paul Deutsch	paul.deutsch@woodplc.com
Paul Hofer	farmwatchtoo@aol.com
Paul Hofer	farmerhofer@aol.com
Paul S. Leon	pleon@ontarioca.gov
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
Praseetha Krishnan	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
Ray Wilkings	rwilking@autoclubspeedway.com
Rick Darnell	Richard.Darnell@nrenergy.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
Ron Craig	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
Sandra S. Rose	directorrose@mvwd.org
Sarah Schneider	sarah.schneider@amec.com
Scott Burton	sburton@ontarioca.gov
Scott Slater	sslater@bhfs.com
sdeshmukh@ieua.org	sdeshmukh@ieua.org
Seth J. Zielke	sjzielke@fontanawater.com
Shaun Stone	SStone@ontarioca.gov
Skylar Stephens	SStephens@sdca.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
Steve W. Ledbetter, PE	sledbetter@tkeengineering.com
Steven Andrews Engineering	sandrews@sandrewsengineering.com
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
Tim Kellett	tkellett@vmwd.com
Toby Moore	TobyMoore@gswater.com
Todd Minten	tminten@chinodesalter.org
Tom Cruickshank	tcruickshank@liprop.com
Tom DiCiolli	thomas.diciolli@genon.com
Tom Harder	tharder@thomashardercompany.com
Tom Haughey	Thaughey@cityofchino.org
Tom O'Neill	toneill@chinodesalter.org
Toni Medell	mmedel@mbakerintl.com
Tony Long	tlong@angelica.com
Van Jew	vjew@mvwd.org
Veva Weamer	vweamer@weewater.com
Victor Preciado	Victor_Preciado@ci.pomona.ca.us
Vivian Castro	vcastro@cityofchino.org
W. C. "Bill" Kruger	citycouncil@chinohills.org
WestWater Research, LLC	research@waterexchange.com
William Urena	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
Eric Papathakis	Eric.Papathakis@cdcr.ca.gov
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
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
Sarah Foley	Sarah.Foley@bbklaw.com
Shawnda M. Grady	sgrady@eslawfirm.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