

1 Jimmy L. Gutierrez (SBN 59448)
JIMMY L. GUTIERREZ LAW CORPORATION
2 12616 Central Avenue
Chino, California 91710
3 Telephone: (909) 591-6336

FEE EXEMPT PER GOV. CODE § 6103

4 Attorney for the City of Chino
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**
10

11 CHINO BASIN MUNICIPAL WATER
DISTRICT,

12
13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendants.
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CASE NUMBER: RCV 51010

*[Assigned for All Purposes to Honorable
Stanford E. Reichert, Dept. S35]*

**CITY OF CHINO'S OPPOSITION TO
CHINO BASIN WATERMASTER'S
MOTION REGARDING 2020 SAFE
YIELD RESET, AMENDMENT OF
RESTATED JUDGMENT,
PARAGRAPH 6**

Date: June 26, 2020

Time: 1:30 p.m.

Dept.: S35

*[Filed concurrently with the Declarations
of David Crosley and Eric Fordham]*

(FEE- EXEMPT PER GOVERNMENT CODE § 6103)

23 The City of Chino (hereafter "Chino") opposes the Watermaster's Motion to reset the
24 Safe Yield amount at this time, because further investigation and collaboration is necessary to
25 complete the Safe Yield process. Completing that process means allowing the City of Chino,
26 and others, the information they have requested and access to the Chino Valley Model
27 (CVM) to produce net recharge estimates based upon reasonable scenarios, other than the one
28 sole scenario modeled by Watermaster's engineer, WEI and an uncertainty analysis.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Sadly, our current reality as the community of interested parties in the Chino Basin is
4 that we have only one estimate about the amount of the net recharge of the basin for the next
5 ten (10) years and one request that the Safe Yield of the basin be set at the same amount of
6 that single estimate of net recharge. Worse, the estimate of net recharge is biased toward a
7 smaller estimate of the basin's net recharge.

8 In addition, the discussion about the proper level of the Safe Yield of the Chino Basin
9 for the next ten (10) years has not been permitted to take place among the Parties who are
10 most knowledgeable about what is good for the basin and who are vested with the right to
11 produce water from the basin for the benefit of the residents and businesses overlying the
12 basin who rely on it for their water.

13 The principle of the Safe Yield and the Physical Solution, anchored in the Judgement,
14 is that the ground water of the Chino basin is to be utilized for the benefit of the residents and
15 businesses overlying the basin. The principle is a broad and dynamic one. It is not a narrow
16 or technical one. The purpose of the principle is to produce basin water in an amount that best
17 fulfills the needs of the basin's beneficiaries with no undesirable result or no unmitigated
18 undesirable result.

19 The application of this principle requires wisdom that can only be achieved through
20 the use of the best available evidence together with a robust dialogue involving the Parties to
21 the Judgment.

22 The City of Chino ("Chino"), for one, has been denied access to the Chino Valley
23 Model ("CVM") in order to produce estimates of the basin's net recharge based upon
24 reasonable scenarios different from the single scenario used by the Watermaster engineer.
25 One such scenario would be based on the hydrological data set required by the Court's April
26 28, 2017 Order ("2017 Order").

27 However, Watermaster has failed to produce an estimate of the basin's net recharge
28 based upon the hydrological data set described in the 2017 Order. Watermaster also

1 has refused to perform an uncertainty analysis, which is a standard engineering practice
2 utilized to identify the uncertainties inherent in every model so as to lead to the most accurate
3 estimate of the net recharge of the basin.

4 Without access to the CVM, dialogue regarding the proper Safe Yield has been
5 thwarted, thereby denying Chino and others the opportunity to provide meaningful input
6 about the accuracy of the pivotal issue - the basin's net recharge.

7 Watermaster's motion extols its compliance with the Court's April 28, 2017 Order and
8 the Reset Technical Memorandum, but merely argues that resetting the Safe Yield at 131,000
9 AFY is warranted. Watermaster does not attempt to argue that its engineer's estimate of the
10 basin's net recharge is perfect or free of uncertainties. In addition, Watermaster asserts:
11 *"There is substantial uncontroverted evidence that Watermaster has meticulously followed*
12 *the Court ordered methodology and further supports Watermaster's request to reset the Safe*
13 *Yield to 131,000 AFY."* [Motion, 6:11-13].

14 But, a casual reading of the Wildermuth Declaration [¶11] reveals that Watermaster's
15 engineer used hydrological data of a period different from the period ordered by the court,
16 which, if used, would have produced a higher estimate of the basin's net recharge than the
17 one being recommended. The Court ordered Watermaster to use hydrological data from 1921
18 to the date of the reset evaluation. [2017 Order, p 16]. Instead, Watermaster's engineer used
19 data from 1950 to 2011 without prior permission from the Court. This is a violation of the
20 Court's Order that Watermaster unabashedly admits. [Motion, 11:13-19]. The hydrological
21 data utilized by Watermaster's Engineer is biased toward a smaller net recharge of the basin.

22 Watermaster also attempts to impress the Court with the argument that it provided the
23 stakeholders the opportunity to be thoroughly and meaningfully engaged in the three-year,
24 Watermaster-controlled process to reset the Safe Yield. Not really. The stakeholders were
25 allotted less than two months to consider the 2020 Safe Yield Recalculation Final Report
26 prepared by Wildermuth Environmental Inc ("WEI Report"), to digest the WEI Report, and
27 to request information to support a meaningful dialogue about the accuracy of the estimated
28 net recharge of the basin and the recommended Safe Yield of the basin for the

1 ensuing decade. During the three-year period that Watermaster allocated to the safe yield
2 process, Watermaster did not submit the WEI Report to the stakeholders until April 2, 2020
3 and then rushed its approval to the Watermaster Board on May 22, 2020.

4 The opportunity for a meaningful dialogue about the accuracy of the amount of net
5 recharge and the proper Safe Yield has not been afforded to Chino and others. Furthermore,
6 Watermaster has refused to provide further analysis that would reveal the magnitude of the
7 error in the estimated net recharge of the basin that resulted from the use of a preferred
8 hydrological data set.

9 Thus, Chino requests the Court to remand the Safe Yield process, direct Watermaster
10 to produce an estimate of the Basin's projected net recharge based on the Court ordered data,
11 provide Chino the information it has requested including access to the CVM, and instruct
12 Watermaster to engage Chino and the other Parties in a meaningful dialogue about the
13 accuracy of the basin's net recharge and the proper Safe Yield prior to seeking a court order
14 that would set the Safe Yield of the basin for the next decade.

15 16 **II. WATERMASTER CURTAILED THE SAFE YIELD EVALUATION PROCESS**

17
18 The record reveals that Watermaster has controlled the entire process leading to its
19 recommendation to reset the Safe Yield amount from 135,000 afy to 131,000 afy.

20 Yet, Watermaster did not provide adequate time, information and opportunity to the
21 Parties to meaningfully participate in the Safe Yield evaluation process guaranteed by the
22 2017 Order. Paragraph 4.7 of Section A of Part II of the Court's Order assures the Pools are
23 granted "*reasonable opportunity, no less frequently than annually, for peer review of the*
24 *collection of data and the application of the data collected in regard to the activities*
25 *described in Paragraphs 4.4, 4.5 and 4.6 above.*" Paragraph 4.4 provides for the evaluation
26 of the Safe Yield pursuant to the methodology in the Reset Technical Memorandum based
27 upon long-term hydrology including data from 1921 and permits the incorporation of future
28 advances in hydrological science. Furthermore, the Reset Technical

1 Memorandum provides for using “the groundwater flow model to redetermine the net
2 recharge to the Chino Basin” but imposes no limit on the number of times the model is used.

3 Watermaster did not provide adequate time to the Parties to the Judgment to fully and
4 fairly engage in the Safe Yield process required by the Court’s 2017 Order. With full
5 knowledge that the Court wanted to approve the Safe Yield by June 30, 2020, Watermaster
6 did not produce its engineer’s report with an estimated net recharge of the basin to the Parties
7 until April 2, 2020. The “2020 Safe Yield Recalculation Final Report” dated April 2, 2020
8 (“WEI Report”) was prepared by Watermaster’s engineer, Wildermuth Environmental, Inc.
9 Delivery of the WEI Report on such a late date in the process left insufficient time for the
10 Parties to consider its extremely technical nature, to understand the process and data used to
11 arrive at an estimate of the net recharge of the basin, to seek clarification about the data and
12 process by which WEI made an estimate of the net recharge of the basin, to model other
13 scenarios about the basin’s net recharge, to perform an uncertainty analysis, and to develop
14 recommendations for the proper Safe Yield amount.

15 After the release of the WEI Report, all of the members of the Appropriative Pool
16 including Chino, the Appropriative Pool’s consultant, Tom Harder, and the Appropriative
17 Pool’s general counsel, John Schatz, worked under the press of time to study the contents of
18 the WEI Report and met several times in April for that purpose. In an effort to catch up to
19 WEI, they developed a number of pertinent questions about the WEI Report. On April 23,
20 2020, Tom Harder submitted a 14-page letter with 89 comments that he developed in
21 consultation with the members of the Appropriative Pool including the comments developed
22 by Chino.

23 Next, without written responses to Tom Harder’s comments, Watermaster held a
24 workshop on April 29, 2020 about the WEI Report with the Parties to the Judgment. During
25 the workshop, Tom Harder, Eric Fordham, representatives of the State of California and
26 others asked questions about the WEI Report, the data and process used by WEI to produce
27 its one sole estimate of the basin’s net recharge and access to the CVM.

28 After the April 29, 2020 workshop, Monte Vista Water District submitted a letter

1 dated April 30, 2020 to Jeff Pierson, Chair of the Watermaster Board requesting adequate
2 time and opportunity to review the WEI Report, to fully participate in the Safe Yield Reset
3 process, to submit policy-level considerations into the Safe Yield reset process and to have
4 the WEI Report “reframed as a presentation of technical information for use in the 2020 Safe
5 Yield Reset process, not as the completion of that process.” [Exhibit E, Kavounas
6 Declaration]. The request was not acted upon.

7 Then, on the evening of May 8, 2020, Watermaster posted responses to the comments
8 and requests in Tom Harder’s April 23, 2020 letter on Watermaster’s website. On the same
9 evening, Watermaster posted responses to the questions and requests from the April 29, 2020
10 workshop on Watermasters’ website.

11 However, Watermaster’s responses were insufficient and defensive on crucial issues.

12 For example, Watermaster denied access to the CVM. In Comment No 13, Rick
13 Rees, consultant for the State of California, and Marilyn Levine, attorney for the State of
14 California stated that they had not received the model files. Ms. Levin asked: “*Will you be*
15 *releasing the model files that were requested?*” Watermaster stated that it would not.

16 Then, Watermaster attempted to justify its refusal. In part, Watermaster wrote:

17 *No. Watermaster will not be releasing the model files unless instructed by the*
18 *Court. Watermaster has a duty to administer the decree and has a responsibility for*
19 *recalculating Safe Yield as described in the Judgment and in the Court’s Order of*
20 *April 28, 2017. The CVM is Watermaster’s proprietary model.*

21 *Release of the model could lead to parties and individuals changing inputs into*
22 *the model that enable advocacy to be injected into the modeling process.*

23 *The Parties are not disadvantaged by not having the model files.*

24 *Watermaster’s assurances regarding transparency and open access are*
25 *buttressed by the Court’s oversight pursuant to its continuing jurisdiction over Safe*
26 *Yield.*

27 Watermaster’s refusal and justification lack merit and are defensive in nature.
28 Paragraph 4.4 of the 2017 Order and Method 4 of the Reset Technical Memorandum permit

1 the Parties to access the model. Nothing therein grants exclusive control over the CVM to
2 anyone including Watermaster. Furthermore, it is readily apparent that the Court envisioned
3 an open dialogue among the stakeholders in the Basin to provide input on the seminal issue of
4 the basin's Safe Yield. Allowing Watermaster to block the use of the CVM developed for
5 this purpose frustrates the Court's greater vision and intent.

6 After reading Watermaster's responses to the comments, Chino realized Watermaster
7 was not going to provide access to the CVM model that would enable Chino to obtain and
8 offer alternatives about the projected net recharge of the basin and the Safe Yield. Thus,
9 Chino is left without any evidence to support or oppose the proposed amount of the Safe
10 Yield. For this reason, Chino submitted a letter dated May 21, 2020 to the Watermaster
11 Board explaining its inability to make a recommendation and preserving its options for a
12 further dialogue about the Safe Yield. [Kavounas Declaration, Exhibit F].

13 The net result of the Watermaster controlled Safe Yield process is that neither Chino
14 nor any other Party has the capability of offering any evidentiary supported recommendation
15 about the basin's net recharge nor the Safe Yield for the next decade.

17 **III. WATERMASTER'S ENGINEER PRODUCED A BIASED ESTIMATE OF** 18 **THE BASIN'S NET RECHARGE**

19 The declaration of Mark Wildermuth submitted with Watermaster's Motion reveals that
20 he produced only one estimate of the net recharge of the Basin and he only tested that one
21 amount for undesirable results. Finding no undesirable result to the Basin for the net recharge
22 estimate of 131,000 AFY, he recommends that amount as the correct and only Safe Yield
23 amount for the basin.

24 We do not know what other estimates would be produced by the CVM – nor do we
25 know whether they too would show no undesirable result to the basin.

26 The idea of producing other estimates with the CVM is not even addressed. Thus, we
27 are left with one estimate and prevented from determining whether the recommended
28 estimate is correct for the Basin. Watermaster's refusal to allow the use of the

1 CVM to produce other estimates of the Basin's net recharge exacerbates its use of
2 unauthorized hydrological data that is biased toward a smaller net recharge.

3 Watermaster's Engineer has used the CVM to produce an estimate of the Basin's net
4 recharge that is not based on the long-term hydrology using data from 1921 to the present.
5 Instead, the current estimate from the CVM is based upon hydrology from 1950 to 2011.
6 [Paragraph 11, Wildermuth Declaration]. However, Part II, A, Section 4.4 at page 16 of the
7 Court's 2017 Order compels the use of a different data set. It directs as follows:

8 **"The reset will rely upon long-term hydrology and will include data from 1921 to**
9 **the date of the reset evaluation."**

10 The Order was not followed. This violation compels an estimate from the CVM based
11 upon the data required by the 2017 Order, as well as other scenarios and an uncertainty
12 analysis.

13 The 1950-2011 hydrological data used by the Watermaster Engineer is not the same as
14 the 1921-2019 hydrological data required by the 2017 Order. The suggestion that the
15 unauthorized hydrological data shows the same average precipitation as that of the required
16 hydrological data is misleading. Due to the nature of the precipitation during the 1950-2011
17 period, less water was absorbed by the basin. Thus, the use of that data causes the CVM to
18 calculate a smaller net recharge.

19 20 **IV. CONCLUSION**

21 The estimate of the basin's net recharge and the recommended Safe Yield is based
22 upon a process that is flawed. It is flawed because only a single set of hydrological data was
23 used. It is flawed because the data set used was other than what the 2017 Order requires.

24 It is also flawed, because Watermaster has refused to provide Chino and others the
25 information they requested including access to the CVM. It is flawed, because Watermaster
26 has refused to permit the Parties to fairly and thoroughly present their views about the
27 estimate of the Basin's net recharge and recommendations about the correct Safe Yield of the
28 Basin for the ensuing decade.

1 Finally, it is flawed because Watermaster's justification for refusing the Parties access
2 to the CVM demonstrates a distrust of the Parties' intentions. Watermaster's distrust emerges
3 from its response to Comment 13 by the State of California that, like Chino, requests access
4 to the CVM. Watermaster wrote:

5 *Release of the model could lead to parties and individuals changing inputs into the*
6 *model that enable advocacy to be injected into the modeling process.*

7 Advocacy? Why that word? Does it reveal advocacy in the process to date?

8 Watermaster is mistaken. Chino and others seek the use of the CVM, for which they
9 have paid, for the sole purpose of examining and determining the correct amount of net
10 recharge of the Basin for the ensuing decade. Chino and others have a duty to their residents
11 and customers to set the Safe Yield correctly in order to assure them of the full benefit of the
12 Basin Water.

13 Given the failure to process the best evidence on the subject of the Safe Yield, Chino
14 asks the Court to postpone its ruling and remand the process with appropriate guidance
15 including Chino's suggestions.

16
17 Dated: June 15, 2020

JIMMY L. GUTIERREZ LAW CORPORATION

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19 By: _____

20 Jimmy L. Gutierrez
21 Attorney for City of Chino
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25
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27
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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 June 15, 2020 I served the following:

1. CITY OF CHINO'S OPPOSITION TO CHINO BASIN WATERMASTER'S MOTION REGARDING 2020 SAFE YIELD RESET, AMENDMENT OF RESTATED JUDGMENT, 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

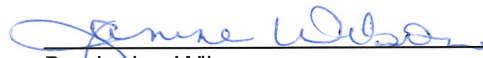
/ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/ 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 June 15, 2020 in Rancho Cucamonga, California.


By: Janine Wilson
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
INTEX PROPERTIES 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
Al Lopez
Alan Frost
Alberto Mendoza
Alfonso Ruiz
Allen W. Hubsch
Alonso Jurado
Amanda Coker
Amer Jakher
Amy Bonczewski
Andrea Olivas
Andrew Gagen
Andrew Silva
Andy Campbell
Andy Malone
Angelica Todd
Anna Nelson
April Robitaille
April Woodruff
Arnold Rodriguez
Art Bennett
Arthur Kidman
Ashok Dhingra
Ben Lewis
Ben Peralta
Benjamin M. Weink (ben.weink@tetrattech.com)

agnes.cheng@cc.sbcounty.gov
alopez@wmwd.com
Alan.Frost@dpw.sbcounty.gov
Alberto.Mendoza@cmc.com
alfonso.ruiz@cmc.com
ahubsch@loeb.com
ajurado@cbwm.org
acoker@cityofchino.org
AJakher@cityofchino.org
ABonczewski@ontarioca.gov
aolivas@jcsd.us
agagen@kidmanlaw.com
Andrew.Silva@cao.sbcounty.gov
acampbell@ieua.org
amalone@weewater.com
angelica.todd@ge.com
atruongnelson@cbwm.org
arobitaille@bhfs.com
awoodruff@ieua.org
jarodriguez@sarwc.com
citycouncil@chinohills.org
akidman@kidmanlaw.com
ash@akdconsulting.com
benjamin.lewis@gswater.com
bperalta@tvmwd.com

ben.weink@tetrattech.com
banderson@jcsd.us
bbowcock@irmwater.com
rjdiprimio@sgvwater.com
bobfeenstra@gmail.com
bgkuhn@aol.com
bkuhn@tvmwd.com
Bob.Page@rov.sbcounty.gov
bherrema@bhfs.com
bradeny@cvwdwater.com
brahoward@niagarawater.com
balee@fontanawater.com
byamasaki@mwdh2o.com
bdickinson65@gmail.com
bgeye@autoclubspeedway.com
blee@sawaterco.com
memphisbelle38@outlook.com
carmens@cvwdwater.com
cbennett@tkeengineering.com
Carol.Boyd@doj.ca.gov
csanchez@weewater.com
ccosta@chinodesalter.org
chooks@niagarawater.com
cirvine@DowneyBrand.com
cblais@ci.norco.ca.us

Betty Anderson
Bob Bowcock
Bob DiPrimio
Bob Feenstra
Bob Kuhn
Bob Kuhn
Bob Page
Brad Herrema
Braden Yu
Brandon Howard
Brenda Fowler
Brent Yamasaki
Brian Dickinson
Brian Geye
Brian Lee
Cameron Andreasen
Carmen Sierra
Carol Bennett
Carol Boyd
Carolina Sanchez
Casey Costa
Cassandra Hooks
Catharine Irvine
Chad Blais

Charles Field
Charles Linder
Charles Moorrees
Chino Hills City Council (citycouncil@chinohills.org)

cdfield@att.net
Charles.Linder@nrgenergy.com
cmoorrees@sawaterco.com

Chris Berch
Chris Diggs
Christiana Daisy
Christofer Coppinger
Christopher M. Sanders
Christopher Quach
Christopher R. Guillen
Chuck Hays
Cindy Cisneros
Cindy Li
Cinthia Heredia
Clarence Mansell
Courtney Jones
Craig Miller
Craig Stewart
Cris Fealy
Dan Arrighi
Dan McKinney
Daniel Bobadilla (dbobadilla@chinohills.org)

citycouncil@chinohills.org
cberch@jcsd.us
Chris_Diggs@ci.pomona.ca.us
cdaisy@ieua.org
ccoppinger@geoscience-water.com
cms@eslawfirm.com
cquach@ontarioca.gov
cguillen@bhfs.com
chays@fontana.org
cindyc@cvwdwater.com
Cindy.li@waterboards.ca.gov
Cinthia.Heredia@cmc.com
cmansell@wwwd.org
cjjones@ontarioca.gov
CMiller@wmwd.com
craig.stewart@woodplc.com
cifealy@fontanawater.com
darrighi@sgvwater.com
dmckinney@douglascountylaw.com

Dave Argo
Dave Crosley
David Aladjem
David De Jesus
David Doublet
David Huynh
David Penrice
Dennis Dooley
Dennis Mejia
Dennis Williams
Diana Frederick
Don Galleano
Ed Means
Edgar Tellez Foster
Eduardo Espinoza
Edward Kolodziej
Elizabeth Skrzat
Eric Fordham
Eric Garner
Eric Grubb
Eric Papathakis
Eric Tarango
Erika Clement
Eunice Ulloa
Evette Ounanian
Felix Hamilton
Frank Brommenschenkel
Frank Yoo

dbobadilla@chinohills.org
daveargo46@icloud.com
DCrosley@cityofchino.org
daladjem@downeybrand.com
ddejesus@tvmwd.com
ddoublet@dpw.sbcounty.gov
dhuynh@cbwm.org
dpenrice@acmwater.com
ddooley@angelica.com
dmejia@ontarioca.gov
dwilliams@geoscience-water.com
diana.frederick@cdcr.ca.gov
dongalleano@icloud.com
edmeans@roadrunner.com
etellezfoster@cbwm.org
EduardoE@cvwdwater.com
edward.kolodziej@ge.com
ESkrzat@cbwcd.org
eric_fordham@geopentech.com
eric.garner@bbklaw.com
ericg@cvwdwater.com
Eric.Papathakis@cdcr.ca.gov
edtarango@fontanawater.com
Erika.clement@sce.com
eulloa@cityofchino.org
EvetteO@cvwdwater.com
felixhamilton.chino@yahoo.com
frank.brommen@verizon.net
FrankY@cbwm.org

Fred Fudacz	ffudacz@nossaman.com
Fred Galante	fgalante@awattorneys.com
Gabby Garcia	ggarcia@mvwd.org
Gailyn Watson	gwatson@airports.sbcounty.gov
Garrett Rapp	grapp@weiwater.com
Gene Tanaka	Gene.Tanaka@bbklaw.com
Geoffrey Kamansky	gkamansky@niagarawater.com
Geoffrey Vanden Heuvel	geoffreyvh60@gmail.com
Gerald Yahr	yahrj@koll.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
Irene Islas	irene.islas@bbklaw.com
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 L. Bishop	jason.bishop@cdcr.ca.gov
Jason Marseilles	jmarseilles@ieua.org
Jason Pivovaroff - Western Municipal Water District	JPivovaroff@wmwd.com
Jean Cihigoyenette	Jean@thejclawfirm.com
Jean Perry	JPerry@wmwd.com
Jeanina M. Romero	jromero@ontarioca.gov
Jeff Evers	jevers@niagarawater.com
Jeffrey L. Pierson	jpierson@intexcorp.com
Jennifer Hy-Luk	jhyluk@ieua.org
Jessie Ruedas	Jessie@thejclawfirm.com
Jim Markman	jmarkman@rwglaw.com
Jim W. Bowman	jbowman@ontarioca.gov
Jimmy Gutierrez - Law Offices of Jimmy Gutierrez	jimmylaredo@gmail.com
Jimmy Medrano	Jaime.medrano2@cdcr.ca.gov
jimmy@city-attorney.com	jimmy@city-attorney.com
Joanne Chan	jchan@wvwd.org
Joao Feitoza	joao.feitoza@cmc.com
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 Harper	jrharper@harperburns.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 Schatz	jschatz13@cox.net
John Thornton	JThorntonPE@H2OExpert.net

Jose Galindo
Josh Swift
Joshua Aguilar
Julie Saba
Justin Brokaw
Justin Nakano
Justin Scott-Coe Ph. D.
Karen Johnson
Kathleen Brundage
kberchtold@gmail.com
Keith Kramer
Keith Person
Kelly Berry
Ken Waring
Kevin O'Toole
Kevin Sage
Kimberly E. Leefatt
Kyle Snay
Larry Cain
Larry Rothman
Laura Mantilla
Lauren Harold
Linda Jadeski
Lisa Lemoine
Liz Hurst
Marco Tule
Maria Mendoza-Tellez
Maribel Sosa
Marilyn Levin
Mark D. Hensley
Mark Wildermuth
Mark Wiley
Martin Cihigoyenetché
Martin Rauch
Martin Zvirbulis
Mathew C. Ballantyne
Matthew H. Litchfield
May Atencio
Melissa L. Walker
Michael Adler
Michael Camacho
Michael Camacho
Michael P. Thornton
Michelle Licea
Michelle Staples - Jackson Tidus
Mike Blazevec
Mike Maestas
Moore, Toby
MWDProgram
Nadia Aguirre
Nadia Loukeh
Natalie Costaglio
Nathan deBoom

jose_a_galindo@praxair.com
jmswift@fontanawater.com
jaguilar@ieua.org
jsaba@jcsd.us
jbrokaw@marygoldmutualwater.com
JNakano@cbwm.org
jscottcoe@mvwd.org
kejwater@aol.com
kathleen.brundage@californiasteel.com
kberchtold@gmail.com
kkramer@fontana.org
keith.person@waterboards.ca.gov
KBerry@sawpa.org
kwaring@jcsd.us
kotoole@ocwd.com
Ksage@IRMwater.com
kleefatt@bhfs.com
kylesnay@gswater.com
larry.cain@cdcr.ca.gov
lawrence.rothman@cmc.com
lmantilla@ieua.org
lharold@liprop.com
ljadeski@wvwd.org
LLemoine@wmwd.com
ehurst@ieua.org
marco.tule@nrg.com
MMendoza@weewater.com
msosa@ci.pomona.ca.us
marilyn.levin@doj.ca.gov
mhensley@hensleylawgroup.com
mwildermuth@weewater.com
mwiley@chinohills.org
marty@thejclawfirm.com
martin@rauchcc.com
mezvirbulis@sgwwater.com
mballantyne@cityofchino.org
mlitchfield@tvmwd.com
matencio@fontana.org
mwalker@dpw.sbcounty.gov
michael.adler@mcmcn.net
Mcamacho@pacificaservices.com
mcamacho@ieua.org
mthornton@tkeengineering.com
mlicea@mvwd.org
mstaples@jacksontidus.law
mblazevec@weewater.com
mikem@cvwdwater.com
TobyMoore@gswater.com
MWDProgram@sdca.org
naguirre@tvmwd.com
nloukeh@wvwd.org
natalie.costaglio@mcmcn.net
n8deboom@gmail.com

Neetu Gupta
Nick Jacobs
Nicole Escalante
Noah Golden-Krasner
Pam Wilson - Brownstein Hyatt Farber Schreck

Paul Hofer
Paul Hofer
Paul S. Leon
Paul.deutsch@tetrattech.com
Penny Alexander-Kelley

Pete Hall
Pete Hall
Pete Vicario
Peter Hettinga
Peter Kavounas
Peter Rogers
Praseetha Krishnan

Rachel Avila
Rachel Ortiz
Ramsey Haddad

Randy Visser

Ray Wilkings

Rick Darnell

Rick Rees

Rita Pro

Robert C. Hawkins

Robert DeLoach

Robert E. Donlan

Robert Neufeld

Robert Stockton

Robert Wagner

Robert_DeLoach@ci.pomona.ca.us

Ron Craig

Ron LaBrucherie, Jr.

Ronald C. Pietersma

Rosemary Hoerning

Ryan Shaw

Sally H. Lee

Sam I. Gershon

Sam Nelson

Sam Rubenstein (srubenstein@wpcarey.com)

Sandra S. Rose

Sarah Foley

Sarah Schneider

Scott Burton

Scott Slater

sdeshmukh@ieua.org

Seth J. Zielke

Shaun Stone

Shawnda M. Grady

Skylar Stephens

ngupta@ieua.org
njacobs@somachlaw.com
NEscalante@ontarioca.gov
Noah.goldenkrasner@doj.ca.gov

pwilson@bhfs.com
farmwatchtoo@aol.com
farmerhofer@aol.com
pleon@ontarioca.gov
Paul.deutsch@tetrattech.com
Palexander-kelley@cc.sbcounty.gov
pete.hall@cdcr.ca.gov
rpetehall@gmail.com

PVicario@cityofchino.org
peterhettinga@yahoo.com
PKavounas@cbwm.org
progers@chinohills.org
praseethak@cvwdwater.com
R.Avila@MPGLAW.com
rortiz@nossaman.com

ramsey.haddad@californiasteel.com
RVisser@sheppardmullin.com
rwilkins@autoclubspeedway.com
Richard.Darnell@nrgenergy.com

richard.rees@woodplc.com
rpro@cityofchino.org
RHawkins@earthlink.net

robertadeloach1@gmail.com
red@eslawfirm.com

robneu1@yahoo.com
bstockton@wmwd.com

rwagner@wbecorp.com
Robert_DeLoach@ci.pomona.ca.us

Rcraig21@icloud.com
ronLaBrucherie@gmail.com

rcpietersma@aol.com
rhoerning@ci.upland.ca.us

RShaw@wmwd.com
shlee@ieua.org

sam.gershon@webbassociates.com
snelson@ci.norco.ca.us

srubenstein@wpcarey.com
directorrose@mvwd.org

Sarah.Foley@bbklaw.com
sarah.schneider@amec.com

sburton@ontarioca.gov
sslater@bhfs.com

sdeshmukh@ieua.org
sjzielke@fontanawater.com

stones@emwd.org
sgrady@eslawfirm.com

SStephens@cdcwa.org

Sonya Barber
Sonya Zite (szite@wmwd.com)
Steve Kennedy
Steve M. Anderson
Steve Riboli
Steve Smith
Steve W. Ledbetter, PE
Steven Andrews Engineering
Steven J. Elie
Steven J. Elie
Steven Popelar
Susan Palmer
Sylvie Lee
Tamer Ahmed
Taya Victorino
Teri Layton
Terry Bettencourt
Terry Catlin
Tim Barr
Tim Kellett
Timothy Ryan
Toby Moore (TobyMoore@gswater.com)
Todd Minten
Tom Bunn
Tom Cruikshank - Link Industrial Properties

Tom Harder
Tom Haughey
Tom McPeters
Tom O'Neill
Toni Medell
Tony Long
Tracy J. Egoscue
Trish Geren
Van Jew
Vanessa Aldaz
Vanessa Campos
Veva Weamer
Victor Preciado
Vivian Castro
WestWater Research, LLC
William J Brunick
William Urena

sbarber@ci.upland.ca.us
szite@wmwd.com
skennedy@bmklawplc.com
steve.anderson@bbklaw.com
steve.riboli@sanantoniowinery.com
ssmith@ieua.org
sledbetter@tkeengineering.com
sandrews@sandrewsengineering.com
s.elie@mpglaw.com
selie@ieua.org
spopelar@jcsd.us
spalmer@kidmanlaw.com
slee@ieua.org
tamer.ahmed@cdcr.ca.gov
tayav@cvwdwater.com
tlayton@sawaterco.com
miles.bettencourt@cdcr.ca.gov
tlcatlin@wfajpa.org
tbarr@wmwd.com
tkellett@tvmwd.com
tjryan@sgvwater.com
TobyMoore@gswater.com
tminten@chinodesalter.org
TomBunn@Lagerlof.com

tcruikshank@liprop.com
tharder@thomashardercompany.com
Thaughey@cityofchino.org
THMcP@aol.com
toneill@chinodesalter.org
mmedel@mbakerintl.com
tlong@angelica.com
tracy@egoscuelaw.com
tgeren@sheppardmullin.com
vjew@mvwd.org
valdaz@cbwm.org
VCampos@ontarioca.gov
vweamer@weiwater.com
Victor_Preciado@ci.pomona.ca.us
vcastro@cityofchino.org
research@waterexchange.com
bbrunick@bmblawoffice.com
wurena@angelica.com