

TRACY J. EGOSCUE (SBN 190842)  
TARREN A. TORRES (SBN 275991)  
EGOSCUE LAW GROUP, INC.  
3834 Pine Ave.  
Long Beach, CA 90807  
Tel/Facsimile: (562) 988-5978  
[tracy@egoscuelaw.com](mailto:tracy@egoscuelaw.com)  
[tarren@egoscuelaw.com](mailto:tarren@egoscuelaw.com)

Attorneys for OVERLYING  
(AGRICULTURAL) POOL

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

CHINO BASIN MUNICIPAL WATER  
DISTRICT,

Plaintiff,

v.

CITY OF CHINO et al.,

Defendants.

Case No. RCVRS 51010

Assigned for All Purposes to the  
Honorable Stanford E. Reichert

AGRICULTURAL POOL'S  
SUPPLEMENTAL REQUEST FOR JUDICIAL  
NOTICE

Date: September 25, 2020  
Time: 1:30 p.m.  
Dept. S-35

**TO THE ABOVE ENTITLED COURT:**

The Chino Basin Watermaster Overlying (Agricultural) Pool (Agricultural Pool), under the provisions of Evidence Code sections 452 and 453, and California Rules of Court, Rule 3.1306(c), request that the Court take judicial notice of:

(1) The attached copy of the Appropriative Pool's RESPONSE TO AGRICULTURAL

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POOL'S MOTION TO AMENDMENT AGRICULTURAL POOL POOLING PLAN  
dated December 2, 2019, attached hereto as Exhibit A; and  
(2) The attached copy of Monte Vista Water District and City of Ontario's OPPOSITION  
TO AGRICULTURAL POOL MOTION TO AMEND ITS POOLING PLAN, dated  
December 2, 2019, attached hereto as Exhibit B.

Dated: September 18, 2020

EGOSCUE LAW GROUP, INC.

By: \_\_\_\_\_

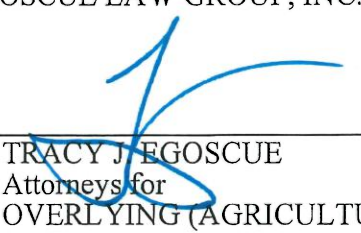
  
TRACY J. EGOSCUE  
Attorneys for  
OVERLYING (AGRICULTURAL) POOL

Exhibit A  
APPROPRIATIVE POOL'S  
RESPONSE TO AGRICULTURAL POOL'S  
MOTION TO AMENDMENT AGRICULTURAL  
POOL POOLING PLAN

1 JOHN J. SCHATZ, State Bar No. 141029  
Attorney at Law  
2 P.O. Box 7775  
Laguna Niguel, Ca. 92607-7775  
3 Telephone: (949) 683-0398  
jschatz13@cox.net  
4

FEE EXEMPT

5 Attorney for APPROPRIATIVE POOL  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNARDINO  
10

11 CHINO BASIN MUNICIPAL WATER  
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO et al,

16 Defendants,  
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Case No. RCVRS 51010

Assigned for All Purposes to the  
Honorable Stanford E. Reichert

**APPROPRIATIVE POOL RESPONSE TO  
NOTICE OF MOTION REGARDING  
AMENDMENT OF POOLING PLAN FOR  
THE OVERLYING (AGRICULTURAL)  
POOL, EXHIBIT "F" OF THE  
JUDGMENT; [PROPOSED] ORDER**

Date: December 13, 2019

Time: 1:30 p.m.

Dept. S-35

[Filed concurrently herewith: Declaration of  
John J. Schatz in support of Appropriative Pool  
Response To Motion Regarding Amendment Of  
Pooling Plan For The Overlying (Agricultural)  
Pool, Exhibit "F" Of The Judgment; [Proposed]  
Order]

25 The Chino Basin Appropriative Pool, whose members include parties to the Judgment  
26 previously entered in this matter, files this Response to the Agricultural Pool's Motion to Amend  
27 Exhibit "F" of the Judgment (Overlying (Agricultural) Pool Pooling Plan) for the purpose of  
28

JOHN SCHATZ  
Attorney at Law  
P.O. Box 7775  
Laguna Niguel, Ca. 92607-7775

1 clarity. This Response does not seek interpretation or definition of Section 5.4(a) of the Peace  
2 Agreement.

### 3 I. INTRODUCTION

4 The Ag Pool Motion states: “the amendment updates the Pooling Plan to reflect the terms of  
5 the Peace Agreement approved by this Court and to conform to the policies and practices of the  
6 Pool.” (Motion at 4:20-21.)

7 The Ag Pool Motion also states: “[t]he revisions to Section 5 of the Ag Pool Pooling Plan  
8 acknowledge and reflect the terms of the 2000 Peace Agreement. The Peace Agreement was an  
9 agreement between the Parties to the Judgment and the Court ordered Watermaster to proceed in  
10 accordance with same. Section 5.4(a) of the Peace Agreement establishes that, for the term of the  
11 Peace Agreement, all assessments and expenses of the Ag Pool shall be paid by the Appropriative  
12 Pool.” (Motion at 4:25-5:1-2.)

13 The Ag Pool Motion to “conform the policies and practices of the Pool” is related to  
14 Watermaster’s Notice Of Motion And Motion For Court Approval Of Amendments to Restated  
15 Judgment Regarding Compensation Of Watermaster Pool and Advisory Committee Members that  
16 amends Judgment Paragraph 36 and will be heard by the Court on December 13, 2019. (Schatz  
17 Decl. ¶ 3.) The Ag Pool’s approach as evidenced by its Motion “to conform the policies and  
18 practices of the Pool” that includes Paragraph 36 compensation is to amend its Pooling Plan to  
19 recite only part of but not the entirety of Section 5.4(a) of the Peace Agreement that identifies the  
20 Appropriative Pool as the *source of revenue* to fund compensation and other Ag Pool expenses  
21 referenced in Section 5.4(a).

### 22 II. THE APPROPRIATIVE POOL IS OPPOSED TO THE AG POOL POOLING 23 PLAN AMENDMENT TO THE EXTENT IT CHANGES THE EFFECT, IMPORT OR 24 MEANING OF SECTION 5.4(A) IN THE PEACE AGREEMENT

25 During the Safe Yield reset legal dispute, the Ag Pool’s Opposition To Motion To  
26 Approve Amendments To Appropriative Pool Pooling Plan And Court-Approved Management  
27 Agreements; And Declaration Of Tracy J. Egoscue In Support Thereof, dated February 28, 2019  
28 (Ag Pool Opposition), stated: “[a]mong the changes proposed in the Motion are amendments to

1 the Peace Agreements. This Court's February 20, 2019 Order correctly noted that the purpose of  
2 the Court of Appeal's limited remand is for all the parties to the Judgment to participate in the  
3 process of amending the Restated Judgment and CAMA because the proposed amendments affect  
4 all the parties to the Judgment and "amendment of the provisions of [the Peace Agreement] is  
5 subject to the unanimous agreement of the parties thereto (Peace I agreement §10.14..)" (February  
6 20, 2019 Order at 2:25-3:2 and 4:12-14; emphasis added.) As contracts between the  
7 parties, amendments and/or changes to the Peace Agreements cannot be made without the express  
8 written approval of each party to the Peace Agreements (See Peace Agreement, §10.14  
9 [amendments require express written approval of each party]... (emphasis added). The Ag Pool  
10 signed the Peace Agreements on behalf of its members and is therefore a party to the  
11 Agreements". (Ag Pool Opposition at 8:2-13.)

12 The Appropriative Pool agrees with the Ag Pool that amendments and/or changes to the  
13 Peace Agreement cannot be made without express written approval of each party to the Peace  
14 Agreement. Any amendments and/or changes to the effect, import or meaning of the Peace  
15 Agreements as a consequence of elevating CAMA provisions including Section 5.4(a) of the  
16 Peace Agreement in the Ag Pool Pooling Plan amendment that is part of the Judgment would  
17 constitute a unilateral amendment to the Peace Agreement.

18 The Appropriative Pool is opposed to the Pooling Plan Amendment to the extent it amends  
19 and/or changes or may be asserted to amend and/or change the effect, import or meaning of  
20 Section 5.4(a) of the Peace Agreement or other CAMA provisions either because of incomplete  
21 recitation or because recitation of Section 5.4(a) or other CAMA provisions in the Judgment  
22 impose or is alleged to have greater force or effect because they are recited in the Judgment.

### 23 III. CONCLUSION

24 The Appropriative Pool agrees with the Ag Pool that there should be clarity for all  
25 stakeholders and the Court. (Motion at 5:10-11.) Clarity includes recognition and acknowledgment  
26 that any amendments and/or changes to the Peace Agreement require written approval of each  
27 party to the Peace Agreement. The Ag Pool has not obtained such written approval. The  
28 Appropriative Pool requests clarity so that the Pool and all stakeholders understand the Ag Pool's



JOHN SCHATZ  
Attorney at Law  
P.O. Box 7775  
Laguna Niguel, Ca. 92653-7775

1 proposed Judgment amendment does not require negotiated agreement by all parties to the Peace  
2 Agreement.

3 Any change to the effect, import or meaning of the Peace Agreements as a consequence of  
4 elevating Section 5.4(a) of the Peace Agreement to the Ag Pool Pooling Plan, via its proposed  
5 amendment, would constitute a unilateral amendment to the Peace Agreement. To the extent the  
6 proposed amendment changes the effect, import or meaning of Section 5.4(a) either because of  
7 incomplete recitation or because recitation of Section 5.4(a) in the Judgment may give it greater  
8 force or effect, the Appropriative Pool is opposed to the Ag Pool Pooling Plan Amendment.

9  
10 Dated: December 2, 2019

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12  
13 Respectfully,

14 JOHN J. SCHATZ  
15 ATTORNEY AT LAW

16 By:

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18  
19 JOHN J. SCHATZ  
20 Attorney for  
21 Chino Basin Appropriative Pool  
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25  
26  
27  
28

JOHN SCHATZ  
Attorney at Law  
P.O. Box 7775  
Laguna Niguel, Ca. 92607-7775

1 JOHN J. SCHATZ, State Bar No. 141029  
Attorney at Law  
2 P.O. Box 7775  
Laguna Niguel, Ca. 92607-7775  
3 Telephone: (949) 683-0398  
jschatz13@cox.net

FILE EXEMPT

4  
5 Attorney for APPROPRIATIVE POOL  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNARDINO  
10

11 CHINO BASIN MUNICIPAL WATER  
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO et al,

16 Defendants,  
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Case No. RCVRS 51010

Assigned for All Purposes to the  
Honorable Stanford E. Reichert

**DECLARATION OF JOHN J. SCHATZ IN  
SUPPORT OF APPROPRIATIVE POOL  
RESPONSE TO NOTICE OF MOTION  
REGARDING AMENDMENT OF  
POOLING PLAN FOR THE OVERLYING  
(AGRICULTURAL) POOL, EXHIBIT "F"  
OF THE JUDGMENT; [PROPOSED]  
ORDER**

Date: December 13, 2019

Time: 1:30 p.m.

Dept. S-35

- 22 1. I, John J. Schatz, am an attorney licensed to practice in the State of California. Based upon  
23 my knowledge and experience, I can competently attest to the following facts.  
24 2. I am counsel for the Appropriative Pool and this Declaration is made in support of the  
25 Appropriative Pool's Response To Notice Of Motion Regarding Amendment of Pooling  
26 Plan For The Overlying (Agricultural) Pool, Exhibit "F" Of the Judgment; [Proposed  
27 Order].  
28



JOHN SCHATZ  
Attorney at Law  
P.O. Box 775  
Laguna Niguel, Ca. 92657-0775

1 3. I attended the October 10, 2019 Appropriative Pool meeting. The meeting agenda included  
2 three related items; Business Item II.A. Restated Judgment Amendment – Watermaster  
3 Motion To Amend ¶ 36; Business Item II.B. Restated Judgment Amendment – Overlying  
4 (Agricultural) Pool Pooling Plan; and, Business Item II.C Overlying (Agricultural) Pool  
5 Rules and Regulations Amendment (Information Only).

6 4. The agenda for the October 10, 2019 Appropriative Pool meeting is attached as **Exhibit A**.  
7 I declare under penalty of perjury that the foregoing is true and correct. Executed this 2<sup>nd</sup>  
8 day of December 2019, in the City of Laguna Niguel and County of Orange, State of  
9 California.

10 By:

11 

12  
13 JOHN J. SCHATZ

**EXHIBIT A**

**OCTOBER 10, 2019 APPROPRIATIVE POOL MEETING AGENDA**

**CHINO BASIN WATERMASTER  
APPROPRIATIVE POOL MEETING**

9:00 a.m. – October 10, 2019

*Mr. Van Jew, Chair*

*Mr. John Bosler, Vice-Chair*

**At The Offices Of**

**Chino Basin Watermaster**

9641 San Bernardino Road

Rancho Cucamonga, CA 91730

**AGENDA**

**CALL TO ORDER**

**AGENDA - ADDITIONS/REORDER**

**I. CONSENT CALENDAR**

**Note:** All matters listed under the Consent Calendar are considered to be routine and non-controversial and will be acted upon by one motion in the form listed below. There will be no separate discussion on these items prior to voting unless any members, staff, or the public requests specific items be discussed and/or removed from the Consent Calendar for separate action.

**A. MINUTES**

Approve as presented:

1. Minutes of the Appropriative Pool Meeting held September 12, 2019 (*Page 1*)

**B. FINANCIAL REPORTS**

Receive and file as presented:

1. Cash Disbursements for the month of August 2019 (*Page 15*)
2. Watermaster VISA Check Detail for the month of August 2019 (*Page 27*)
3. Combining Schedule for the Period August 1, 2019 through August 31, 2019 (*Page 31*)
4. Treasurer's Report of Financial Affairs for the Period August 1, 2019 through August 31, 2019 (*Page 35*)
5. Budget vs. Actual Report for the Period August 1, 2019 through August 31, 2019 (*Page 39*)

**C. APPLICATION FOR RECHARGE – JURUPA COMMUNITY SERVICES DISTRICT (*Page 57*)**

Recommend Advisory Committee to recommend to the Watermaster Board to approve Jurupa Community Services District's Application for Recharge and direct Watermaster staff to account for this supplemental water recharged in Jurupa Community Services District's existing Local Supplemental Storage account.

**II. BUSINESS ITEMS**

**A. RESTATED JUDGMENT AMENDMENT – WATERMASTER MOTION TO AMEND ¶ 36**

Staff report will be distributed separately. (*Page 65*)

**B. RESTATED JUDGMENT AMENDMENT – OVERLYING (AGRICULTURAL) POOL POOLING PLAN**

Provide advice and assistance regarding the amendments to Ag Pool Pooling Plan. (*Page 67*)

**C. OVERLYING (AGRICULTURAL) POOL RULES AND REGULATIONS AMENDMENT (INFORMATION ONLY) (*Page 73*)**

**D. RULES AND REGULATIONS 2019 UPDATE**

Staff report will be distributed separately. *(Page 85)*

**III. REPORTS/UPDATES**

**A. LEGAL COUNSEL REPORT**

1. 2019-1 OBMP Semi-Annual Status Report Court Filing

**B. ENGINEER REPORT**

1. GLMC Activities
2. Safe Yield Recalculation
3. Miscellaneous Requests for Watermaster Data/Information

**C. CFO REPORT**

None

**D. GM REPORT**

1. Status report: OBMP Update
2. Status report: Storage Management Plan
3. Other

**IV. INFORMATION**

1. Cash Disbursements for September 2019 *(Page 87)*
2. Recharge Investigations and Projects Committee (RIPCom) *(Page 97)*
3. Plumes Status Reports *(Page 123)*
4. Ground-Level Monitoring Status Reports *(Page 189)*

**V. POOL MEMBER COMMENTS**

**VI. CONFIDENTIAL SESSION - POSSIBLE ACTION**

A Confidential Session may be held during the Pool Committee meeting for the purpose of discussion and possible action.

1. Appropriative Pool Strategic Planning Discussion

**VII. FUTURE MEETINGS AT WATERMASTER**

10/10/19	Thu	9:00 a.m.	Appropriative Pool
10/10/19	Thu	11:00 a.m.	Non-Agricultural Pool
10/10/19	Thu	1:30 p.m.	Agricultural Pool
10/17/19	Thu	8:00 a.m.	Appropriative Pool Strategic Planning (Confidential Session Only)
10/17/19	Thu	9:00 a.m.	Advisory Committee
10/17/19	Thu	9:30 a.m.	OBMP Update – Listening Session 7
10/24/19	Thu	9:00 a.m.	Recharge Investigations and Projects Committee (RIPCom)
10/24/19	Thu	11:00 a.m.	Watermaster Board
10/29/19	Tue	1:00 p.m.	2019/20 Assessment Package Workshop

**ADJOURNMENT**

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. APPROPRIATIVE POOL RESPONSE TO NOTICE OF MOTION REGARDING AMENDMENT OF POOLING PLAN FOR THE OVERLYING (AGRICULTURAL) POOL, EXHIBIT "F" OF THE JUDGMENT; [PROPOSED] ORDER
2. DECLARATION OF JOHN J. SCHATZ IN SUPPORT OF APPROPRIATIVE POOL RESPONSE TO NOTICE OF MOTION REGARDING AMENDMENT OF POOLING PLAN FOR THE OVERLYING (AGRICULTURAL) POOL, EXHIBIT "F" OF THE JUDGMENT; [PROPOSED] ORDER

/ 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 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	cbblais@ci.norco.ca.us
Charles Field	cdfield@att.net
Charles Linder	Charles.Linder@nrenergy.com
Charles Moorrees	cmoorrees@sawaterco.com
Chino Hills City Council	citycouncil@chinohills.org
Chris Berch (cberch@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@wwwd.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
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@weiwater.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@hossaman.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)	

Karen Johnson	jscottcoe@mvwd.org
Kassie M. Goodman	kejwater@aol.com
Kathleen Brundage	kgoodman@bhfs.com
Kathy Tiegs	kathleen.brundage@californiasteel.com
Katie Gienger	Kathyt@cvwdwater.com
Keith Person	kgienger@ontarioca.gov
Kelly Berry	keith.person@waterboards.ca.gov
Ken Waring	KBerry@sawpa.org
Kevin Blakeslee	kwaring@jcsd.us
Kevin Sage	kblakeslee@dpw.sbcounty.gov
Kimberly E. Leefatt	Ksage@IRMwater.com
Kirby Brill	kleefatt@bhfs.com
Kristen Weger	kbrill@ieua.org
Kyle Snay	kweger@cbwcd.org
Laura Mantilla	kylesnay@gswater.com
Lauren Harold	lmantilla@ieua.org
Linda Jadeski	lharold@liprop.com
	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	mkkinsey@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@sdca.org
Nadeem Majaj	nmajaj@chinohills.org
Nadia Aguirre	naguirre@tvmwd.com
Nadia Loukeh	nloukeh@wvwd.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	rwilkins@autoclubspeedway.com
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
Ron Craig	Rcraig21@icloud.com
Ron LaBrucherie, Jr.	ronLaBrucherie@gmail.com



Ronald C. Pietersma  
Rosemary Hoerning  
Ryan Shaw  
Sam Nelson  
Sandra S. Rose  
Sarah Schneider  
Scott Burton  
Scott Slater  
sdeshmukh@ieua.org  
Seth J. Zielke  
Shaun Stone  
Skylar Stephens  
Sonya Barber  
Sonya Bloodworth  
Sophie Akins  
Steve Riboli  
Steve Smith  
Steve W. Ledbetter, PE  
Steven Andrews Engineering  
Steven J. Elie  
Steven J. Elie  
Steven Popelar  
Susan Palmer  
Sylvie Lee  
Taya Victorino  
Teri Layton  
Terry Catlin  
Tim Barr  
Tim Kellett  
Toby Moore  
Todd Minten  
Tom Cruikshank  
Tom DiCiolli  
Tom Harder  
Tom Haughey  
Tom O'Neill  
Toni Medell  
Tony Long  
Van Jew  
Veva Weamer  
Victor Preciado  
Vivian Castro  
W. C. "Bill" Kruger  
WestWater Research, LLC  
William Urena

rcpietersma@aol.com  
rhoerning@ci.upland.ca.us  
RShaw@wmwd.com  
snelson@ci.norco.ca.us  
directorrose@mvwd.org  
sarah.schneider@amec.com  
sburton@ontarioca.gov  
sslater@bhfs.com  
sdeshmukh@ieua.org  
sjzielke@fontanawater.com  
SStone@ontarioca.gov  
SStephens@sdewa.org  
sbarber@ci.upland.ca.us  
sbloodworth@wmwd.com  
Sophie.Akins@cc.sbcounty.gov  
steve.riboli@sanantoniowinery.com  
ssmith@ieua.org  
sledbetter@tkeengineering.com  
sandrews@sandrewsengineering.com  
selie@ieua.org  
s.elie@mpglaw.com  
spopelar@jcsd.us  
spalmer@kidmanlaw.com  
slee@ieua.org  
tayav@cvwdwater.com  
tlayton@sawaterco.com  
tlcatlin@wfajpa.org  
tbarr@wmwd.com  
tkellett@tvmwd.com  
TobyMoore@gswater.com  
tminten@chinodesalter.org  
tcruikshank@liprop.com  
thomas.diciolli@genon.com  
tharder@thomashardercompany.com  
Thaughey@cityofchino.org  
toneill@chinodesalter.org  
mmedel@mbakerintl.com  
tlong@angelica.com  
vjew@mvwd.org  
vweamer@weiwater.com  
Victor\_Preciado@ci.pomona.ca.us  
vcastro@cityofchino.org  
citycouncil@chinohills.org  
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
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@bmblawoffice.com

# Exhibit B

MONTE VISTA WATER DISTRICT  
AND CITY OF ONTARIO'S  
OPPOSITION TO AGRICULTURAL POOL'S  
MOTION TO AMENDMENT AGRICULTURAL  
POOL POOLING PLAN

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

*Fee Exempt Per Gov. Code § 6103*

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

**FREE EXEMPT**

Attorneys for MONTE VISTA WATER DISTRICT

NOSSAMAN LLP  
777 S. Figueroa Street, 34th Floor  
Los Angeles, CA 90017  
Telephone: 213.612.7800  
ffudacz@nossaman.com  
gnicholls@nossaman.com

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

Attorneys for CITY OF ONTARIO

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

**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".<sup>1</sup> [Mtn. at 4:20-21.] Specifically, and relevant to this Opposition, the

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26 <sup>1</sup> Contrary to this assertion, adding Section 5.4(a) of the Peace Agreement to its Pooling Plan can be done  
27 administratively by the Ag Pool without any actions by the Advisory Committee, Watermaster Board, or  
28 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)  
27 shall be in an amount uniformly applicable to all production in the  
28 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].

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 10<sup>th</sup>, 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 17<sup>th</sup>, the Amendment was “reported by the WM General Manager to the  
13      Advisory Committee” and to the Watermaster Board on October 24<sup>th</sup>. [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.<sup>2</sup> The Motion was filed October 31<sup>st</sup>.

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***  
22                   ***amend this Agreement*** as set forth herein. . . .

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

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

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<sup>2</sup> Notably, the Overlying (Non-Agricultural) Pool approved the proposed Judgment Amendment at its  
October 10<sup>th</sup> 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.<sup>3</sup>

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 <sup>3</sup> 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,<sup>4</sup> 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

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28 <sup>4</sup> 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 Judgement 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.<sup>5</sup> 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

---

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

1 timeout/continuance.  
2

3 Dated: December 2, 2019

KIDMAN GAGEN LAW LLP

4  
5 By: 

Arthur G. Kidman

Andrew B. Gagen

Attorneys for MONTE VISTA  
WATER DISTRICT

6  
7  
8  
9 Dated: December 2, 2019

NOSSMAN LLP

10  
11 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

/ 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 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  
GLEN DORA, 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@sgwater.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@wwwd.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
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@weiwater.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	jarseilles@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@wwwd.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	kwaring@jcsd.us
Kevin Blakeslee	kblakeslee@dpw.sbcounty.gov
Kevin Sage	Ksage@IRMwater.com
Kimberly E. Leefatt	kleefatt@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@wwwd.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@weiwater.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@sgywater.com
May Atencio	matencio@fontana.org
Melissa L. Walker	mwalker@dpw.sbcounty.gov
Michael Adler	michael.adler@mcmcnnet.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@sdca.org
Nadeem Majaj	nmajaj@chinohills.org
Nadia Aguirre	naguirre@tvmwd.com
Nadia Loukeh	nloukeh@wvwd.org
Natalie Costaglio	natalie.costaglio@mcmcnnet.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	rwilkins@autoclubspeedway.com
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
Ron Craig	Rcraig21@icloud.com
Ron LaBrucherie, Jr.	ronLaBrucherie@gmail.com



Ronald C. Pietersma  
Rosemary Hoerning  
Ryan Shaw  
Sam Nelson  
Sandra S. Rose  
Sarah Schneider  
Scott Burton  
Scott Slater  
sdeshmukh@ieua.org  
Seth J. Zielke  
Shaun Stone  
Skylar Stephens  
Sonya Barber  
Sonya Bloodworth  
Sophie Akins  
Steve Riboli  
Steve Smith  
Steve W. Ledbetter, PE  
Steven Andrews Engineering  
Steven J. Elie  
Steven J. Elie  
Steven Popelar  
Susan Palmer  
Sylvie Lee  
Taya Victorino  
Teri Layton  
Terry Catlin  
Tim Barr  
Tim Kellett  
Toby Moore  
Todd Minten  
Tom Cruikshank  
Tom DiCiolli  
Tom Harder  
Tom Haughey  
Tom O'Neill  
Toni Medell  
Tony Long  
Van Jew  
Veva Weamer  
Victor Preciado  
Vivian Castro  
W. C. "Bill" Kruger  
WestWater Research, LLC  
William Urena

rcpietersma@aol.com  
rhoerning@ci.upland.ca.us  
RShaw@wmwd.com  
snelson@ci.norco.ca.us  
directorrose@mvwd.org  
sarah.schneider@amec.com  
sburton@ontarioca.gov  
sslater@bhfs.com  
sdeshmukh@ieua.org  
sjzielke@fontanawater.com  
SStone@ontarioca.gov  
SStephens@sdca.org  
sbarber@ci.upland.ca.us  
sbloodworth@wmwd.com  
Sophie.Akins@cc.sbcounty.gov  
steve.riboli@sanantoniowinery.com  
ssmith@ieua.org  
sledbetter@tkeengineering.com  
sandrews@sandrewsengineering.com  
selie@ieua.org  
s.elie@mpglaw.com  
spopelar@jcsd.us  
spalmer@kidmanlaw.com  
slee@ieua.org  
tayav@cvwdwater.com  
tlayton@sawaterco.com  
tlcatlin@wfajpa.org  
tbarr@wmwd.com  
tkellett@tvmwd.com  
TobyMoore@gswater.com  
tminten@chinodesalter.org  
tcruikshank@liprop.com  
thomas.diciolli@genon.com  
tharder@thomashardercompany.com  
Thaughey@cityofchino.org  
toneill@chinodesalter.org  
mmedel@mbakerintl.com  
tlong@angelica.com  
vjew@mvwd.org  
vweamer@weiwater.com  
Victor\_Preciado@ci.pomona.ca.us  
vcastro@cityofchino.org  
citycouncil@chinohills.org  
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
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@bmblawoffice.com

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 September 18, 2020 I served the following:

1. AGRICULTURAL POOL'S SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE

/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 September 18, 2020 in Rancho Cucamonga, California.

  
By: Vanessa Aldaz  
Chino Basin Watermaster

BRIAN GEYE  
CA SPEEDWAY CORPORATION  
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

STEVE ELIE  
IEUA  
17017 ESTORIL STREET  
CHINO HILLS, CA 91709

JEFF PIERSON  
2 HEXAM  
IRVINE, CA 92603

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:

Adrianna.Ortiz@airports.sbcount	Adrianna.Ortiz@airports.sbcounty.gov
Agnes Cheng	agnes.cheng@cc.sbcounty.gov
Al Lopez	alopez@wmwd.com
Alan Frost	Alan.Frost@dpw.sbcounty.gov
Alberto Mendoza	Alberto.Mendoza@cmc.com
Alfonso Ruiz	alfonso.ruiz@cmc.com
Allen W. Hubsch	ahubsch@loeb.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 Gagen	agagen@kidmanlaw.com
Andy Campbell	acampbell@ieua.org
Andy Malone	amalone@weewater.com
Angelica Todd	angelica.todd@ge.com
Anna Nelson	atruongnelson@cbwm.org
April Robitaille	arobitaille@bhfs.com
Arnold Rodriguez	jarodriguez@sarwc.com
Art Bennett	citycouncil@chinohills.org
Arthur Kidman	akidman@kidmanlaw.com
Ashok Dhingra	ash@akdconsulting.com
Ben Lewis	benjamin.lewis@gswater.com
Ben Peralta	bperalta@tvmwd.com
Benjamin M. Weink	ben.weink@tetrattech.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 Dickinson	bdickinson65@gmail.com
Brian Geye	bgeye@autoclubspeedway.com
Brian Lee	blee@sawaterco.com
Cameron Andreasen	memphisbelle38@outlook.com
Carmen Sierra	carmens@cvwdwater.com
Carol Boyd	Carol.Boyd@doj.ca.gov
Carolina Sanchez	csanchez@weewater.com
Casey Costa	ccosta@chinodesalter.org
Cassandra Hooks	chooks@niagarawater.com
Catharine Irvine	cirvine@DowneyBrand.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
Chris Diggs	Chris_Diggs@ci.pomona.ca.us
Christiana Daisy	cdaisy@ieua.org
Christofer Coppinger	ccoppinger@geoscience-water.com
Christopher M. Sanders	cms@eslawfirm.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
Cinthia Heredia	Cinthia.Heredia@cmc.com
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
Dan Arrighi	darrighi@sgvwater.com
Dan McKinney	dmckinney@douglascountylaw.com
Daniel Bobadilla	dbobadilla@chinohills.org
Dave Argo	daveargo46@icloud.com
Dave Crosley	DCrosley@cityofchino.org
David Aladjem	daladjem@downeybrand.com
David De Jesus	ddejesus@tvmwd.com
David Doublet	ddoublet@dpw.sbcounty.gov
David Huynh	dhuynh@cbwm.org
David LeValley	David.LeValley@linde.com
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
Don Galleano	dongalleano@icloud.com
Ed Means	edmeans@roadrunner.com
Edgar Tellez Foster	etellezfoster@cbwm.org
Eduardo Espinoza	EduardoE@cvwdwater.com
Edward Kolodziej	edward.kolodziej@ge.com
Elizabeth M. Calciano	ecalciano@hensleylawgroup.com
Elizabeth Skrzat	ESkrzat@cbwcd.org
Eric Fordham	eric_fordham@geopentech.com
Eric Garner	eric.garner@bbklaw.com
Eric Grubb	ericg@cvwdwater.com
Eric Papathakis	Eric.Papathakis@cdcr.ca.gov
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
Fred Fudacz	ffudacz@nossaman.com
Fred Galante	fgalante@awattorneys.com
Gabby Garcia	ggarcia@mvwd.org

Garrett Rapp	grapp@weewater.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 Marseilles	jmarseilles@ieua.org
Jason Pivovaroff	JPivovaroff@wmwd.com
Jean Cihigoyenetché	Jean@thejclawfirm.com
Jean Perry	JPerry@wmwd.com
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@wmwd.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	jlopez@sarwc.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 A Galindo	Jose.A.Galindo@linde.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
Karen Johnson	kejwater@aol.com
Kathleen Brundage	kathleen.brundage@californiasteel.com
Keith Kramer	kkramer@fontana.org
Keith Person	keith.person@waterboards.ca.gov
Kelly Berry	KBerry@sawpa.org
Ken Waring	kwaring@jcsd.us
Kevin O'Toole	kotoole@ocwd.com
Kevin Sage	Ksage@IRMwater.com
Kimberly E. Leefatt	kleefatt@bhfs.com
Kristina Robb	KRobb@cc.sbcounty.gov
Kurt Berchtold	kberchtold@gmail.com
Kyle Snay	kylesnay@gswater.com
Larry Cain	larry.cain@cdcr.ca.gov
Larry Rothman	lawrence.rothman@cmc.com
Laura Mantilla	lmantilla@ieua.org
Lauren Harold	lharold@linklogistics.com
Linda Jadeski	ljadeski@wvwd.org
Lisa Lemoine	LLemoine@wmwd.com
Liz Hurst	ehurst@ieua.org
Marco Tule	marco.tule@nrg.com
Maria Mendoza-Tellez	MMendoza@weiwater.com
Maribel Sosa	msosa@ci.pomona.ca.us
Marilyn Levin	marilyn.levin@doj.ca.gov
Mark D. Hensley	mhensley@hensleylawgroup.com
Mark Wildermuth	mwildermuth@weiwater.com
Mark Wiley	mwiley@chinohills.org
Martin Cihigoyenetché	marty@thejclawfirm.com
Martin Rauch	martin@rauchcc.com
Martin Zvirbulis	mezvirbulis@sgvwater.com
Mathew C. Ballantyne	mballantyne@cityofchino.org
Matthew H. Litchfield	mlitchfield@tvmwd.com
May Atencio	matencio@fontana.org
Melissa L. Walker	mwalker@dpw.sbcounty.gov
mgarcia@ieua.org	mgarcia@ieua.org
Michael Adler	michael.adler@mcmcn.net
Michael Camacho	mcamacho@ieua.org
Michael Camacho	MCamacho@pacificaservices.com
Michael P. Thornton	mthornton@tkeengineering.com
Michelle Licea	mlicea@mvwd.org
Michelle Staples	mstaples@jacksontidus.law
Mike Blazevic	mblazevic@weiwater.com
Mike Maestas	mikem@cvwdwater.com
Moore, Toby	TobyMoore@gswater.com
MWDProgram	MWDProgram@sdcw.org
Nadia Aguirre	naguirre@tvmwd.com
Nadia Loukeh	nloukeh@wvwd.org
Natalie Costaglio	natalie.costaglio@mcmcn.net
Nathan deBoom	n8deboom@gmail.com
Neetu Gupta	ngupta@ieua.org
Nick Jacobs	njacobs@somachlaw.com
Nicole Escalante	NEscalante@ontarioca.gov
Noah Golden-Krasner	Noah.goldenkrasner@doj.ca.gov

Pam Wilson	<a href="mailto:pwilson@bhfs.com">pwilson@bhfs.com</a>
Paul Deutsch	<a href="mailto:Paul.deutsch@tetrattech.com">Paul.deutsch@tetrattech.com</a>
Paul Hofer	<a href="mailto:farmwatchtoo@aol.com">farmwatchtoo@aol.com</a>
Paul Hofer	<a href="mailto:farmerhofer@aol.com">farmerhofer@aol.com</a>
Paul S. Leon	<a href="mailto:pleon@ontarioca.gov">pleon@ontarioca.gov</a>
Penny Alexander-Kelley	<a href="mailto:Pallexander-kelley@cc.sbcounty.gov">Pallexander-kelley@cc.sbcounty.gov</a>
Pete Hall	<a href="mailto:pete.hall@cdcr.ca.gov">pete.hall@cdcr.ca.gov</a>
Pete Hall	<a href="mailto:rpetehall@gmail.com">rpetehall@gmail.com</a>
Pete Vicario	<a href="mailto:PVicario@cityofchino.org">PVicario@cityofchino.org</a>
Peter Hettinga	<a href="mailto:peterhettinga@yahoo.com">peterhettinga@yahoo.com</a>
Peter Kavounas	<a href="mailto:PKavounas@cbwm.org">PKavounas@cbwm.org</a>
Peter Rogers	<a href="mailto:progers@chinohills.org">progers@chinohills.org</a>
Praseetha Krishnan	<a href="mailto:praseethak@cvwdwater.com">praseethak@cvwdwater.com</a>
Rachel Avila	<a href="mailto:R.Avila@MPGLAW.com">R.Avila@MPGLAW.com</a>
Rachel Ortiz	<a href="mailto:rortiz@nossaman.com">rortiz@nossaman.com</a>
Ramsey Haddad	<a href="mailto:ramsey.haddad@californiasteel.com">ramsey.haddad@californiasteel.com</a>
Randy Visser	<a href="mailto:RVisser@sheppardmullin.com">RVisser@sheppardmullin.com</a>
Ray Wilkings	<a href="mailto:rwilkings@autoclubspeedway.com">rwilkings@autoclubspeedway.com</a>
Rick Darnell	<a href="mailto:Richard.Darnell@nrgenergy.com">Richard.Darnell@nrgenergy.com</a>
Rick Rees	<a href="mailto:richard.rees@woodplc.com">richard.rees@woodplc.com</a>
Rita Pro	<a href="mailto:rpro@cityofchino.org">rpro@cityofchino.org</a>
Robert C. Hawkins	<a href="mailto:RHawkins@earthlink.net">RHawkins@earthlink.net</a>
Robert DeLoach	<a href="mailto:robertadeloach1@gmail.com">robertadeloach1@gmail.com</a>
Robert E. Donlan	<a href="mailto:red@eslawfirm.com">red@eslawfirm.com</a>
Robert Neufeld	<a href="mailto:robneu1@yahoo.com">robneu1@yahoo.com</a>
Robert Wagner	<a href="mailto:rwagner@wbecorp.com">rwagner@wbecorp.com</a>
Ron Craig	<a href="mailto:Rcraig21@icloud.com">Rcraig21@icloud.com</a>
Ron LaBrucherie, Jr.	<a href="mailto:ronLaBrucherie@gmail.com">ronLaBrucherie@gmail.com</a>
Ronald C. Pietersma	<a href="mailto:rcpietersma@aol.com">rcpietersma@aol.com</a>
Rosemary Hoerning	<a href="mailto:rhoerning@ci.upland.ca.us">rhoerning@ci.upland.ca.us</a>
Ryan Shaw	<a href="mailto:RShaw@wmwd.com">RShaw@wmwd.com</a>
Sally H. Lee	<a href="mailto:shlee@ieua.org">shlee@ieua.org</a>
Sam Nelson	<a href="mailto:snelson@ci.norco.ca.us">snelson@ci.norco.ca.us</a>
Sam Rubenstein	<a href="mailto:srubenstein@wpcarey.com">srubenstein@wpcarey.com</a>
Sandra S. Rose	<a href="mailto:directorrose@mvwd.org">directorrose@mvwd.org</a>
Sarah Foley	<a href="mailto:Sarah.Foley@bbklaw.com">Sarah.Foley@bbklaw.com</a>
Sarah Schneider	<a href="mailto:sarah.schneider@amec.com">sarah.schneider@amec.com</a>
Scott Burton	<a href="mailto:sburton@ontarioca.gov">sburton@ontarioca.gov</a>
Scott Slater	<a href="mailto:sslater@bhfs.com">sslater@bhfs.com</a>
Seth J. Zielke	<a href="mailto:sjzielke@fontanawater.com">sjzielke@fontanawater.com</a>
Shawnda M. Grady	<a href="mailto:sgrady@eslawfirm.com">sgrady@eslawfirm.com</a>
Shivaji Deshmukh	<a href="mailto:sdeshmukh@ieua.org">sdeshmukh@ieua.org</a>
Skylar Stephens	<a href="mailto:SStephens@sdca.org">SStephens@sdca.org</a>
Sonya Barber	<a href="mailto:sbarber@ci.upland.ca.us">sbarber@ci.upland.ca.us</a>
Sonya Zite	<a href="mailto:szite@wmwd.com">szite@wmwd.com</a>
Steve Kennedy	<a href="mailto:skennedy@bmklawplc.com">skennedy@bmklawplc.com</a>
Steve M. Anderson	<a href="mailto:steve.anderson@bbklaw.com">steve.anderson@bbklaw.com</a>
Steve Riboli	<a href="mailto:steve.riboli@sanantoniowinery.com">steve.riboli@sanantoniowinery.com</a>
Steve Smith	<a href="mailto:ssmith@ieua.org">ssmith@ieua.org</a>
Steve W. Ledbetter, PE	<a href="mailto:sledbetter@tkeengineering.com">sledbetter@tkeengineering.com</a>
Steven Andrews Engineering	<a href="mailto:sandrews@sandrewsengineering.com">sandrews@sandrewsengineering.com</a>
Steven J. Elie	<a href="mailto:s.elie@mpglaw.com">s.elie@mpglaw.com</a>
Steven J. Elie	<a href="mailto:selie@ieua.org">selie@ieua.org</a>

Steven Popelar	spopelar@jcsd.us
Susan Palmer	spalmer@kidmanlaw.com
Sylvie Lee	slee@ieua.org
Tamer Ahmed	tamer.ahmed@cdcr.ca.gov
Tammi Ford	tford@wmwd.com
Taya Victorino	tayav@cvwdwater.com
Teri Layton	tlayton@sawaterco.com
Terry Bettencourt	miles.bettencourt@cdcr.ca.gov
Terry Catlin	tlcatlin@wfajpa.org
Tim Barr	tbarr@wmwd.com
Tim Kellett	tkellett@tvmwd.com
Timothy Ryan	tjryan@sgvwater.com
Toby Moore	TobyMoore@gswater.com
Todd Minten	tminten@sbcglobal.net
Tom Barnes - ESA Water (tbarnes@esassoc.com)	tbarnes@esassoc.com
Tom Bunn	TomBunn@Lagerlof.com
Tom Cruikshank - Link Industrial Properties (tcruikshank@linklogistics.com)	tcruikshank@linklogistics.com
Tom Harder	tharder@thomashardercompany.com
Tom Haughey	Thaughey@cityofchino.org
Tom McPeters	THMcP@aol.com
Tom O'Neill	toneill@chinodesalter.org
Toni Medell	mmedel@mbakerintl.com
Tony Long	tlong@angelica.com
Tracy J. Egoscue	tracy@egoscuelaw.com
Trish Geren	tgeren@sheppardmullin.com
Van Jew	vjew@mvwd.org
Vanessa Aldaz	valdaz@cbwm.org
Vanessa Campos	VCampos@ontarioca.gov
Veva Weamer	vweamer@weiwater.com
Victor Preciado	Victor_Preciado@ci.pomona.ca.us
Vivian Castro	vcastro@cityofchino.org
WestWater Research, LLC	research@waterexchange.com
William J Brunick	bbrunick@bmblawoffice.com
William Urena	wurena@angelica.com