

1 NOSSAMAN LLP  
2 FREDERIC A. FUDACZ (SBN 50546)  
3 ffudacz@nossaman.com  
4 GINA R. NICHOLLS (SBN 270174)  
5 gnicholls@nossaman.com  
6 777 S. Figueroa Street, 34th Floor  
7 Los Angeles, CA 90017  
8 Telephone: 213.612.7800  
9 Facsimile: 213.612.7801

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6 Attorneys for CITY OF ONTARIO

7 *[Additional Parties on Following Pages]*

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

13 CHINO BASIN MUNICIPAL WATER  
14 DISTRICT,  
15 Plaintiff,  
16 vs.  
17 CITY OF CHINO, ET AL.,  
18 Defendants.

Case No: RCVRS 51010  
*Assigned for All Purposes to:  
Honorable Stanford E. Reichert*

**APPROPRIATIVE POOL MEMBER  
AGENCIES' RESPONSE TO  
AGRICULTURAL POOL'S BRIEFING  
RE: 1998 RULING AND SEPARATION  
OF POWERS, ETC.**

Date: May 28, 2021  
Time: 1:30 p.m.  
Department: S35

Motion Filed: October 23, 2020  
Motion Heard: November 13, 2020

1 Thomas S. Bunn III (CSB #89502)  
2 Lagerlof, LLP  
3 155 N. Lake Ave., 11th Floor  
4 Pasadena, CA 91101  
5 (626) 793-9400

6 Attorneys for CITY OF POMONA

7 Thomas H. McPeters, Esq. (SBN 034300)  
8 [THMcp@aol.com](mailto:THMcp@aol.com)  
9 700 E. Redlands Blvd., Suite U-297  
10 Redlands, CA 92373  
11 Telephone: (909) 253-7730  
12 Facsimile: (909) 253-7731

13 Attorney for SAN ANTONIO WATER COMPANY and FONTANA UNION WATER  
14 COMPANY

15 ARTHUR G. KIDMAN, CAL. BAR NO. 61719  
16 ANDREW B. GAGEN, CAL. BAR NO. 212257  
17 KIDMAN GAGEN LAW LLP  
18 2030 Main Street, Suite 1300  
19 Irvine, CA 92614  
20 Telephone: (714) 755-3100  
21 [agagen@kidmanlaw.com](mailto:agagen@kidmanlaw.com)

22 Attorneys for MONTE VISTA WATER DISTRICT and MONTE VISTA IRRIGATION  
23 COMPANY

24 BEST BEST & KRIEGER LLP  
25 GENE TANAKA, Bar No. 101423  
26 [Gene.Tanaka@bbklaw.com](mailto:Gene.Tanaka@bbklaw.com)  
27 STEVE ANDERSON, Bar No. 186700  
28 [Steve.Anderson@bbklaw.com](mailto:Steve.Anderson@bbklaw.com)  
2001 North Main St., Ste. 390  
Walnut Creek, CA 94596  
Telephone: (925) 977-3301

Attorneys for CUCAMONGA VALLEY WATER DISTRICT

*[Additional Parties on Following Pages]*

1 ELLISON SCHNEIDER HARRIS & DONLAN LLP  
2 ROBERT E. DONLAN (SNB 186185)

3 [red@eslawfirm.com](mailto:red@eslawfirm.com)  
4 SHAWNDA M. GRADY (SBN 289060)  
5 [sgrady@eslawfirm.com](mailto:sgrady@eslawfirm.com)

6 2600 Capitol Avenue, Suite 400  
7 Sacramento, CA 95816  
8 Telephone: (916) 447-2166

9 Attorneys for JURUPA COMMUNITY SERVICES DISTRICT

10 MARK D. HENSLEY, State Bar No. 142653  
11 CITY ATTORNEY, CITY OF CHINO HILLS

12 [mhensley@hensleylawgroup.com](mailto:mhensley@hensleylawgroup.com)  
13 ELIZABETH M. CALCIANO, State Bar No. 161080  
14 [ecalciano@hensleylawgroup.com](mailto:ecalciano@hensleylawgroup.com)

15 HENSLEY LAW GROUP  
16 2600 W. Olive Avenue, Suite 500  
17 Burbank, CA 91505  
18 Tel: (818) 333-5120; Fax: (818) 333-5121

19 Attorneys for CITY OF CHINO HILLS

20 Jimmy L. Gutierrez  
21 Jimmy L. Gutierrez Law Corporation  
22 12616 Central Avenue  
23 Chino, CA 91710  
24 909 591 6336 Office  
25 909 717 1100 Mobile  
26 [Jimmy@City-Attorney.com](mailto:Jimmy@City-Attorney.com)

27 Attorneys for CITY OF CHINO

1 **I. INTRODUCTION**

2 Nothing in the Agricultural Pool’s briefing dated May 14, 2021 (“Ag Pool Brief”)  
3 precludes the Court’s tentative ruling (stated below) on the Motion of the Appropriative Pool  
4 Member Agencies Re: Agricultural Pool Legal and Other Expenses (“Motion”):

5 [T]o be payable by the Appropriative Pool under Section 5.4(a) of the Peace Agreement,  
6 expenses incurred by the Agricultural Pool must be:  
7 (1) for actions, programs, or projects initiated by Watermaster; and  
8 (2) within a budget pre-approved following review through the Pool process including  
9 submission to and approval by the Advisory Committee to the Watermaster; and  
10 (3) consistent with the Peace Agreement and legitimate Ag Pool functions pursuant to  
11 Section 38 of the Restated Judgement; and  
12 (4) reasonable[.]

The court also recognizes a certain fundamental unfairness in charging Appropriative Pool  
Member Agencies for bills they have not seen because the Agricultural Pool members  
claim they are privileged.

The court would order reimbursements to parties who paid assessments above the budget  
previously approved by the Advisory Committee to the Watermaster. . . .  
(Minute Order, Apr. 5, 2021.) The Court’s tentative ruling correctly addresses only the specific  
issue presented by the Motion, i.e., the appropriate interpretation of Section 5.4(a) of the Peace  
Agreement. The Ag Pool Brief continues to protest this interpretation while failing to present any  
argument that would compel a different conclusion.

The Ag Pool’s submittal goes well beyond the identified scope of the additional briefing.  
The Court requested briefing “regarding the Order made by the Court on 2/19/98 [the “1998  
Ruling”].” (Minute Order, Apr. 30, 2021.) Throughout 15 pages of briefing, the Ag Pool Brief  
fails to explain any importance of the 1998 Ruling to the Court’s tentative ruling. While ranging  
far afield from the Court’s requested scope of briefing in an effort to relitigate its opposition to the  
Motion, the Ag Pool Brief fails to address many of the arguments presented in the Motion. For  
example, the Ag Pool continues to ignore that unlimited fee-shifting (“‘all’ means ‘all’” according  
to the Ag Pool) violates fundamental principles of contract interpretation and public policy.

Contrary to sweeping assertions made in the Ag Pool Brief, the Court’s tentative ruling  
poses no threat to good governance of the Chino Basin. The issue at hand is not so dramatic.  
Members of the Appropriative Pool (“AP Member Agencies”) filed the Motion to resolve a

1 payment dispute arising from the Ag Pool's interpretation of Section 5.4(a) of the Peace  
2 Agreement. This is a narrow contractual dispute. The Chino Basin Restated Judgment  
3 ("Judgment") does not contemplate one Pool paying another Pool's expenses. If the Ag Pool paid  
4 its own expenses like the other Pools, there would be no occasion for this Motion.

5 This unique mechanism whereby the AP is responsible for payment of certain Ag Pool  
6 expenses is rife with potential for abuse. In recent years, it has been abused by the Ag Pool. The  
7 Ag Pool Brief admits that it used AP funds to prosecute Storage Contests against AP members.  
8 (Ag Pool Brief, 14:10-22.) The Ag Pool used AP funding in contravention of the specific and  
9 express requirement of the Watermaster Regulations that each party bears its own costs for  
10 Storage Contests. (Regulations, § 10.26.) Also, the Ag Pool has sought to require the AP to pay  
11 its mediation and other expenses in connection with the instant Motion. Unless restrained by this  
12 Court's reasonable interpretation of Section 5.4(a), the Ag Pool will continue to insist on an  
13 insupportably broad reading of that section to prosecute the Storage Contests and other  
14 adversarial proceedings against the AP, at the AP's expense, all under the veil of asserted  
15 privilege. It is difficult to imagine a greater imbalance of power and abuse of Section 5.4(a).

16 The Motion has nothing to do with whether the Ag Pool can hire an attorney to represent  
17 it. The Motion does not challenge the Ag Pool's ability to retain counsel. The Ag Pool has the  
18 same authority as the other Pools to hire an attorney and pay legal fees via assessments.

19 The Ag Pool is not the Watermaster and does not serve as the guardian of the "health and  
20 stability of the Basin itself." (Ag Pool Brief, 14:19.) They are stakeholders just like the other  
21 Pools and their members. The Ag Pool has the highest priority water rights under the Judgment,  
22 which will continue to be protected. The Ag Pool will continue to exist and function as part of  
23 the governance structure of the Basin, even as the amount of their pumping continues to diminish  
24 due to changing agricultural circumstances. To continue their important role in Basin  
25 governance, the Ag Pool does not need (and cannot lawfully contract for) an unaccountable war  
26 chest for legal expenses, funded by the AP.

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1           The Court’s tentative ruling appropriately interprets Section 5.4(a) as having reasonable  
2 and legally appropriate limits on fee-shifting, and would uphold the Peace Agreement and its  
3 interpretation by the Pools in the 2009 Memorandum of the Joint Special Pool Committee (“2009  
4 Memo”).

5 **II.     THE 1998 RULING IS IRRELEVANT TO THE MEANING OF THE PEACE**  
6 **AGREEMENT, § 5.4(A)**

7           The Ag Pool Brief struggles to explain the importance of the 1998 Ruling and the 1997  
8 Report of Special Referee Schneider, referenced and incorporated therein (“Report”). The  
9 difficulty is understandable, because there is no importance to the Motion. To the extent the  
10 Ruling and Report address Basin governance, they support the 2009 Memo and the Court’s  
11 tentative ruling regarding the role of the Advisory Committee.

12 **A.     The 1998 Ruling Does Not Explain Section 5.4(a).**

13           The 1998 Ruling predates the execution of the Peace Agreement by more than a year. The  
14 issues resolved by the Ruling are even older. The Ruling and the Report focus generally on the  
15 composition of the Watermaster and the relationship between the Watermaster and the Advisory  
16 Committee. The specific issues addressed by the Ruling include a 1997 motion to appoint a nine-  
17 member Watermaster Board and to determine whether the cost of an audit constituted a  
18 Watermaster expense. These issues have nothing to do with the meaning of Section 5.4(a) of the  
19 Peace Agreement.

20           The 1998 Ruling cannot and does not address the meaning of the Peace Agreement, which  
21 was entered in 2000. The Ruling could not have interpreted the terms of an agreement that did  
22 not exist at the time. Accordingly, the Court need not consider the Ruling.<sup>1</sup>

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<sup>1</sup> Even if the Court were to consider the 1998 Ruling, the Court’s tentative ruling on the Motion is not inconsistent with the Report’s description of the respective roles and duties of the Pools, the Advisory Committee, and Watermaster Board. As also noted in the Report, “any disputed direction from a Pool to the Watermaster would be made through the Advisory Committee.” (Report, 16:10-13.)

1 As the Court appropriately concluded, the meaning of section 5.4(a) is informed by the  
2 2009 Memo, which articulates the process the Pools agreed upon for payment of certain Ag Pool  
3 expenses in resolving a similar, prior dispute between the Ag Pool and the AP. The joint  
4 resolution of the Pools set forth in the 2009 Memo states that the annual proposed budget must be  
5 (1) reviewed through the Pool process and (2) “approved and submitted by the Advisory  
6 Committee to the Watermaster.” The Court’s tentative ruling correctly would adopt this process  
7 for Ag Pool expenses payable by the AP under Section 5.4(a), as outlined by the Pools in the  
8 2009 Memo.

9 The requirement for budget pre-approval by the Advisory Committee of the Ag Pool  
10 budget, to the extent payable by the AP, preserves the Watermaster’s asserted role as “mailman.”  
11 It does not give the AP a “veto” over the Ag Pool’s budget. The Ag Pool has the same authority  
12 as the other Pools to pay its own expenses via assessments. Also, the Ag Pool has recourse under  
13 the Judgment by seeking relief from this Court.

14 **B. Res Judicata and Collateral Estoppel Do Not Apply.**

15 The Ag Pool Brief stretches the related doctrines of res judicata (“claim preclusion”) and  
16 collateral estoppel (“issue preclusion”) beyond all recognition, in an effort to tie the hands of this  
17 Court and the Watermaster. The Ag Pool Brief asserts both doctrines in vague terms, making it  
18 difficult to ascertain how either doctrine applies. In any event, the Ag Pool’s argument depends  
19 on a faulty premise that the 1998 Ruling, which confirmed that the cost of an audit constituted a  
20 valid Watermaster expense in the era pre-Peace Agreement, somehow prevents the Court from  
21 reasonably interpreting Section 5.4(a) of the Peace Agreement today.

22 The doctrine of collateral estoppel is an aspect of the concept of res judicata that  
23 “precludes relitigation of issues argued and decided in prior proceedings.” (*Lucido v. Superior*  
24 *Court* (1990) 51 Cal.3d 335, 341.) The doctrine applies “only if several threshold requirements  
25 are fulfilled. [1] First, the issue sought to be precluded from relitigation must be identical to that  
26 decided in a former proceeding. [2] Second, this issue must have been actually litigated in the  
27 former proceeding. [3] Third, it must have been necessarily decided in the former proceeding. [4]

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1 Fourth, the decision in the former proceeding must be final and on the merits. [5] Finally, the  
2 party against whom preclusion is sought must be the same as, or in privity with, the party to the  
3 former proceeding.” (*Ibid.*; *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37  
4 Cal. 4th 921.) The party asserting estoppel bears the burden of establishing all these  
5 requirements. (*Lucido, supra*, 51 Cal.3d at p. 341.) Even if all the elements of estoppel were  
6 satisfied, and they are not, the Court still could exercise its discretion not to apply the doctrine.  
7 (See *Owens v. Cnty. of Los Angeles* (2013) 220 Cal.App.4th 107, 121.)

8         The Ag Pool Brief conflates the issues presented in the Motion with Watermaster’s 1990s-  
9 era effort to confirm that a particular audit expense was proper and payable as a valid  
10 Watermaster expense. In doing so, the Ag Pool Brief incorrectly over-simplifies both matters as  
11 an “attempt to prevent a non-discretionary assessment by the Watermaster.” (12:22-23.) The two  
12 matters are completely different. It is obvious that the audit expense for which the Chino Basin  
13 Municipal Water District (then-serving as Watermaster) sought reimbursement had nothing to do  
14 with the Peace Agreement. The Peace Agreement – a contractual agreement among the parties –  
15 did not exist at the time. The audit expense arose in a unique context of restructuring the  
16 governance of the Chino Basin in the 1990s. It had nothing to do with Watermaster’s  
17 performance or implementation of the Peace Agreement, nor any interpretation of the Peace  
18 Agreement as between the Ag Pool and the AP Member Agencies. The parties are different. The  
19 two matters, and the issues and positions taken, are different. Neither *res judicata* nor collateral  
20 estoppel applies here.

21 **III. AG POOL HAD AMPLE DUE PROCESS**

22         Due process principles call for notice and opportunity to be heard before governmental  
23 deprivation of a significant property interest. (*City of Santa Monica v. Gonzalez* (2008) 43  
24 Cal.4th 905, 927.) The Ag Pool has been given ample due process in connection with the  
25 reimbursement of funds paid by AP members. Reimbursement is not a new issue.  
26 Reimbursements were requested in the Motion and the proposed order lodged therewith.  
27 (Motion, filed 9/18/20, at 20:14-15; Proposed Order, lodged on 9/18/20 [proposing an order that

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1 the “AP is entitled to a refund of any such expenses already paid.”.) The relevant amounts for  
2 Fiscal Year 2019-2020 were presented to within a few hundred dollars in the moving papers.  
3 (Motion, filed 9/18/20, at 11:19-21 and fn.2; Declaration of S. Burton, filed 9/18/20 and re-filed  
4 9/21/20, at ¶¶ 5, 13.) The requested reimbursement amounts were confirmed to the penny during  
5 the hearing conducted by the Court on April 30, 2021. The same exact amounts are reiterated in  
6 the Declaration of John Schatz filed herewith. The Motion has been fully briefed, sent to  
7 mediation, rebriefed by the Ag Pool, and will have been heard by the Court on at least three  
8 occasions. The Ag Pool has had ample due process.

9 **IV. CONCLUSION**

10 The Court’s tentative ruling will not destroy the role of the Ag Pool or upset the  
11 governance of Chino Basin. Only a small portion of the Ag Pool’s budget is at issue, and that  
12 represents only a tiny fraction of Watermaster’s overall budget. The Motion does not challenge  
13 the Ag Pool’s ability to retain counsel; the Ag Pool has the same authority as the other Pools to  
14 hire an attorney and pay legal fees via assessments. Contract law, public policy, and fundamental  
15 principles of fairness prevent public water suppliers and the ratepaying public from paying  
16 unlimited legal expenses with no accountability.

17  
18 Dated: May 21, 2021

NOSSAMAN LLP  
FREDERIC A. FUDACZ  
GINA R. NICHOLLS

19  
20  
21 By:   
22 Frederic A. Fudacz  
Attorneys for CITY OF ONTARIO

23  
24 [SIGNATURES CONTINUE ON FOLLOWING PAGES]

1 Dated: May 21, 2021 Lagerlof, LLP

2

3

By: Thomas S. Bunn III

4

Thomas S. Bunn III  
Attorneys for CITY OF POMONA

5

6

Dated: May 21, 2021 Thomas H. McPeters, Esq.

7

8

By: Thomas H. McPeters

9

Thomas H. McPeters  
Attorney for SAN ANTONIO WATER COMPANY and FONTANA  
UNION WATER COMPANY

10

11

12

Dated: May 21, 2021 KIDMAN GAGEN LAW LLP

13

14

By: Arthur G. Kidman / by Gagen

15

Arthur G. Kidman  
Andrew B. Gagen  
Attorneys for MONTE VISTA WATER DISTRICT and MONTE  
VISTA IRRIGATION COMPANY

16

17

18

Dated: May 21, 2021 BEST BEST & KRIEGER LLP

19

20

By: Gene Tanaka / by Anderson

21

Gene Tanaka  
Steve Anderson  
Attorneys for CUCAMONGA VALLEY  
WATER DISTRICT

22

23

24

25

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

26

27

28

1  
2  
3  
4  
5  
6  
7  
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20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: May 21, 2021

ELLISON SCHNEIDER HARRIS & DONLAN LLP

By: Shawnda M. Grady, per car

Shawnda M. Grady

Attorneys for JURUPA COMMUNITY SERVICES DISTRICT

Dated: May 21, 2021

HENSLEY LAW GROUP

By: Elizabeth M. Calciano

Elizabeth M. Calciano

Attorneys for CITY OF CHINO HILLS

Dated: May 21, 2021

JIMMY L. GUTIERREZ LAW CORPORATION

By: Jimmy L. Gutierrez, per car

Jimmy L. Gutierrez

Attorneys for CITY OF CHINO

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 May 21, 2021 I served the following:

1. APPROPRIATIVE POOL MEMBER AGENCIES' RESPONSE TO AGRICULTURAL POOL'S BRIEFING RE: 1998 RULING AND SEPARATION OF POWERS, ETC.

/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 May 21, 2021 in Rancho Cucamonga, California.



By: Janine Wilson  
Chino Basin Watermaster

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

JEFF PIERSON  
2 HEXAM  
IRVINE, CA 92603

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

## Members:

|                   |                                  |
|-------------------|----------------------------------|
| 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                 |
| Alma Heustis      | alma.heustis@californiasteel.com |
| Alonso Jurado     | ajurado@cbwm.org                 |
| Amanda Coker      | acoker@cityofchino.org           |
| Amanda Meere      | Amanda.Meere@cao.sbcounty.gov    |
| Amer Jakher       | AJakher@cityofchino.org          |
| Amy Bonczewski    | ABonczewski@ontarioca.gov        |
| Andrew Gagen      | agagen@kidmanlaw.com             |
| Andy Campbell     | acampbell@ieua.org               |
| Andy Malone       | amalone@westyost.com             |
| Angelica Todd     | angelica.todd@ge.com             |
| Angelo Simoes     | Angelo.Simoes@linde.com          |
| Anna Nelson       | atruongnelson@cbwm.org           |
| April Robitaille  | arobitaille@bhfs.com             |
| Armando Martinez  | armartinez@fontana.org           |
| 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                |
| Betty Folsom      | bfolsom@jcsd.us                  |
| Bill Schwartz     | bschwartz@mvwd.org               |
| Bob Bowcock       | bbowcock@irmwater.com            |
| Bob DiPrimio      | rjdiprimio@sgwater.com           |
| Bob Feenstra      | bobfeenstra@gmail.com            |
| Bob Kuhn          | bkuhn@tvmwd.com                  |
| Bob Kuhn          | bgkuhn@aol.com                   |
| Bob Page          | Bob.Page@rov.sbcounty.gov        |
| Brad Herrema      | bherrema@bhfs.com                |
| Braden Yu         | bradeny@cvwdwater.com            |
| Braden Yu         | Byu@ci.upland.ca.us              |
| 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@westyost.com            |
| Casey Costa       | ccosta@chinodesalter.org         |
| Cassandra Hooks   | chooks@niagarawater.com          |
| Catharine Irvine  | cirvine@DowneyBrand.com          |

|                          |                                 |
|--------------------------|---------------------------------|
| Chad Blais               | cblais@ci.norco.ca.us           |
| Chander Letulle          | cletulle@jcsd.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               |
| Cindy Cisneros           | cindyc@cvwdwater.com            |
| Cindy Li                 | Cindy.li@waterboards.ca.gov     |
| Cinthia Heredia          | Cinthia.Heredia@cmc.com         |
| 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        |
| Dan Arrighi              | darrighi@sgvwater.com           |
| Dan McKinney             | dmckinney@douglascountylaw.com  |
| Daniel Bobadilla         | dbobadilla@chinohills.org       |
| Danny Kim                | dkim@linklogistics.com          |
| 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 Penrice            | dpenrice@acmwater.com           |
| Dawn Martin              | Dawn.Martin@cc.sbcounty.gov     |
| Denise Garzaro           | dgarzaro@ieua.org               |
| 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           |

|  |                              |
|--|------------------------------|
| 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@westyost.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           |
| Gregor Larabee                                   | Gregor.Larabee@cdcr.ca.gov   |
| 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            |
| Janine Wilson                                    | JWilson@cbwm.org             |
| Jasmin A. Hall                                   | jhall@ieua.org               |
| Jason Marseilles                                 | jmarseilles@ieua.org         |
| Jason Pivovaroff                                 | JPivovaroff@wmwd.com         |
| Jean Cihigoyenetche                              | Jean@thejclawfirm.com        |
| Jeff Evers                                       | jevers@niagarawater.com      |
| Jeff Mosher                                      | jmosher@sawpa.org            |
| Jeffrey L. Pierson                               | jpiereson@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                                     | jjignacio@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                     |
| Justin Brokaw           | jbrokaw@marygoldmutualwater.com       |
| Justin Nakano           | JNakano@cbwm.org                      |
| Justin Scott-Coe Ph. D. | jscottcoe@mwwd.org                    |
| Karen Williams          | kwilliams@sawpa.org                   |
| Kathleen Brundage       | kathleen.brundage@californiasteel.com |
| Keith Kramer            | kkramer@fontana.org                   |
| Keith Person            | keith.person@waterboards.ca.gov       |
| 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 Brochard           | KBrochard@rwglaw.com                  |
| Kyle Snay               | kylesnay@gswater.com                  |
| Larry Cain              | larry.cain@cdcr.ca.gov                |
| 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 Ayala             | mayala@jcsd.us                        |
| Maria Mendoza           | mmendoza@westyost.com                 |
| Maribel Sosa            | msosa@ci.pomona.ca.us                 |
| Marilyn Levin           | marilyn.levin@doj.ca.gov              |
| Mark D. Hensley         | mhensley@hensleylawgroup.com          |
| Mark Wildermuth         | mwildermuth@westyost.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 A. Blazevic     | mblazevic@westyost.com                |
| 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@mwwd.org                       |
| Michelle Staples        | mstaples@jacksontidus.law             |
| Mike Gardner            | mgardner@wmwd.com                     |
| Mike Maestas            | mikem@cvwdwater.com                   |
| Moore, Toby             | TobyMoore@gswater.com                 |
| MWDProgram              | MWDProgram@sdca.org                   |
| Nadia Aguirre           | naguirre@tvmwd.com                    |
| Natalie Costaglio       | natalie.costaglio@mcmcnnet.net        |
| Nathan deBoom           | n8deboom@gmail.com                    |

|                        |                                   |
|------------------------|-----------------------------------|
| Neetu Gupta            | ngupta@ieua.org                   |
| Nichole Horton         | Nichole_Horton@ci.pomona.ca.us    |
| Nick Jacobs            | njacobs@somachlaw.com             |
| Nicole deMoet          | ndemoet@ci.upland.ca.us           |
| Nicole Escalante       | NEscalante@ontarioca.gov          |
| Noah Golden-Krasner    | Noah.goldenkrasner@doj.ca.gov     |
| Parker Simon           | psimon@bhfs.com                   |
| Paul Deutsch           | Paul.deutsch@tetrattech.com       |
| Paul Hofer             | farmerhofer@aol.com               |
| Paul Hofer             | farmwatchtoo@aol.com              |
| Paul S. Leon           | pleon@ontarioca.gov               |
| Penny Alexander-Kelley | Palexander-kelley@cc.sbcounty.gov |
| Pete Hall              | rpetehall@gmail.com               |
| Pete Hall              | pete.hall@cdcr.ca.gov             |
| 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               |
| Randy Visser           | RVisser@sheppardmullin.com        |
| Richard Anderson       | horsfly1@yahoo.com                |
| Rick Darnell           | Richard.Darnell@nrgenergy.com     |
| Rick Rees              | richard.rees@woodplc.com          |
| Rickey S. Manbahal     | smanbahal@wwwd.org                |
| Rita Pro               | rpro@cityofchino.org              |
| Robert C. Hawkins      | RHawkins@earthlink.net            |
| Robert DeLoach         | robertadeloach1@gmail.com         |
| Robert E. Donlan       | red@eslawfirm.com                 |
| Robert Neufeld         | robneu1@yahoo.com                 |
| Robert Wagner          | rwagner@wbecorp.com               |
| Ron Craig              | Rcraig21@icloud.com               |
| Ron LaBrucherie, Jr.   | ronLaBrucherie@gmail.com          |
| Ronald C. Pietersma    | rcpietersma@aol.com               |
| Ruben Llamas           | rllamas71@yahoo.com               |
| Ryan Shaw              | RShaw@wmwd.com                    |
| Sally H. Lee           | shlee@ieua.org                    |
| Sam Nelson             | snelson@ci.norco.ca.us            |
| Sam Rubenstein         | srubenstein@wpcarey.com           |
| Sandra S. Rose         | directorrose@mvwd.org             |
| Sarah Foley            | Sarah.Foley@bbklaw.com            |
| Sarah Schneider        | sarah.schneider@amec.com          |
| Scott Burton           | sburton@ontarioca.gov             |
| Scott Slater           | sslater@bhfs.com                  |
| Seth J. Zielke         | sjzielke@fontanawater.com         |
| Shawnda M. Grady       | sgrady@eslawfirm.com              |
| Shivaji Deshmukh       | sdeshmukh@ieua.org                |
| Skylar Stephens        | SStephens@sdca.org                |
| Sonya Barber           | sbarber@ci.upland.ca.us           |
| Sonya Zite             | szite@wmwd.com                    |
| Stephanie Reimer       | SReimer@mvwd.org                  |
| Stephen Deitsch        | stephen.deitsch@bbklaw.com        |

|                            |                                   |
|----------------------------|-----------------------------------|
| Steve Kennedy              | skennedy@bmklawplc.com            |
| Steve M. Anderson          | steve.anderson@bbklaw.com         |
| Steve Nix                  | snix@ci.upland.ca.us              |
| Steve Riboli               | steve.riboli@sanantoniowinery.com |
| Steve Smith                | ssmith@ieua.org                   |
| Steve W. Ledbetter, PE     | sledbetter@tkeengineering.com     |
| Steven Andrews Engineering | sandrews@sandrewsengineering.com  |
| Steven Flower              | sflower@rwglaw.com                |
| Steven J. Elie             | selie@ieua.org                    |
| Steven J. Elie             | s.elie@mpglaw.com                 |
| Steven Popelar             | spopelar@jcsd.us                  |
| Steven Raughley            | Steven.Raughley@cao.sbcounty.gov  |
| 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@sgwwater.com               |
| Toby Moore                 | TobyMoore@gswater.com             |
| Todd Minten                | tminten@sbcglobal.net             |
| Tom Barnes                 | tbarnes@esassoc.com               |
| Tom Bunn                   | TomBunn@Lagerlof.com              |
| Tom Cruikshank             | tcruikshank@linklogistics.com     |
| Tom Harder                 | tharder@thomashardercompany.com   |
| Tom McPeters               | THMcP@aol.com                     |
| Tom O'Neill                | toneill@chinodesalter.org         |
| Toni Medell                | mmedel@mbakerintl.com             |
| Tony Long                  | tlong@angelica.com                |
| Toyasha Sebbag             | tsebbag@cbwcd.org                 |
| Tracy J. Egoscue           | tracy@egoscuelaw.com              |
| Van Jew                    | vjew@wvwd.org                     |
| Vanessa Aldaz              | valdaz@cbwm.org                   |
| Vanessa Campos             | VCampos@ontarioca.gov             |
| Veronica Tristan           | vtristan@jcsd.us                  |
| Veva Weamer                | vweamer@westyost.com              |
| Victor Preciado            | Victor_Preciado@ci.pomona.ca.us   |
| Vivian Castro              | vcastro@cityofchino.org           |
| Wade Fultz                 | Wade.Fultz@cmc.com                |
| WestWater Research, LLC    | research@waterexchange.com        |
| William J Brunick          | bbrunick@bmblawoffice.com         |
| William Urena              | wurena@angelica.com               |