

1 ELIZABETH P. EWENS (SB #213046)
elizabeth.ewens@stoel.com
2 MICHAEL B. BROWN (SB #179222)
michael.brown@stoel.com
3 JANELLE S.H. KRATTIGER (SB #299076)
janelle.krattiger@stoel.com
4 STOEL RIVES LLP
500 Capitol Mall, Suite 1600
5 Sacramento, CA 95814
Telephone: 916.447.0700
6 Facsimile: 916.447.4781

EXEMPT FROM FILING FEES
PURSUANT TO GOV. CODE, § 6103

7 Attorneys for Defendant
8 City of Ontario
9

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

12 CHINO BASIN MUNICIPAL WATER
13 DISTRICT,

14 Plaintiff,

15 v.

16 CITY OF CHINO, et al.,

17 Defendants.
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27
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CASE NO. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO
HONORABLE STANFORD E. REICHERT

DUPLICATE DECLARATION OF
CHRISTOPHER QUACH

1 LAW OFFICES OF CHARISSE L SMITH
CHARISSE L SMITH (SBN 213646)
2 csmith@clsmithlaw.com
8301 Utica Ave Ste 102
3 Rancho Cucamonga, CA 91730
Telephone: 909.257.0650
4 Facsimile: 909.257.0649

**EXEMPT FROM FILING FEE
PER GOV. CODE, § 6103**

5 Attorney for the CITY OF ONTARIO
6
7

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

10 CHINO BASIN MUNICIPAL WATER
DISTRICT,
11
Plaintiff,
12
vs.
13 CITY OF CHINO, ET AL.,
14
Defendants.
15

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

**DECLARATION OF CHRISTOPHER
QUACH**

[Concurrently Filed with Application;
Proposed Order]

Date: April 8, 2022
Time: 1:30 p.m.
Dept.: S35

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DECLARATION OF CHRISTOPHER QUACH

I, Christopher Quach, declare:

1. I am over 18 years of age, and I am employed as a Senior Associate Engineer for the Ontario Municipal Utilities Company. I am personally familiar with the Ontario Municipal Company's official and business records regularly maintained in its case file for the Chino Basin Municipal Water District v. City of Chino litigation and the negotiations stated herein. If called as a witness, I could and would competently testify to the following facts and circumstances based upon my personal knowledge, except as to those matters declared upon information and belief, and as to those matters, I am informed and believe them to be true.

2. On November 1, 2021, Ontario sent a letter to Mr. Kavounas, Watermaster General Manager, that outlined questions and comments to the draft Fiscal Year 2021/2022 Assessment Package. Ontario requested that Watermaster explain the basis for exempting 23,000 acre-feet (AF) of water produced from the Metropolitan Water District's (MWD) Chino Basin Conjunctive Use Program (CUP), also known as the Dry Year Yield Storage and Recovery Program (DYYP), as identified in the draft Fiscal Year 2021/2022 Assessment Package, from the Watermaster assessment and the Desalter Replenishment Obligation (DRO) assessment. Under the 1978 Chino Basin Judgement ("Judgement"), this production should have been assessed. Watermaster waived assessments for two Parties of the Chino Groundwater Basin, Cucamonga Valley Water District (CVWD) and Fontana Water Company (FWC), inconsistent with the Judgement. (A true and correct copy of the letter dated November 1, 2021, is attached hereto as Exhibit "A" and incorporated herein by reference.)

3. On November 18, 2021, Watermaster presented a staff report to the Watermaster Board in response to Ontario's November 1, 2021 letter. The Watermaster Board directed Watermaster Staff and legal counsel to evaluate the concerns raised by Ontario surrounding the DYYP and related applicability to Watermaster assessments.

4. On November 18, 2021, the Watermaster Board approved the Fiscal Year 2021/2022 Assessment Package. Ontario understood that resolution to the questions and

1 comments raised regarding the DYYP would not affect the ability to retroactively address the
2 Fiscal Year 2021-2022 Assessment Package. As stated in the Watermaster staff report on the
3 assessment of Ontario's issue, if warranted the assessment package could always be changed
4 retroactively.

5 5. In an effort to exhaust all administrative remedies, on January 5, 2022,
6 Watermaster, Ontario, CVWD, and FWC met to discuss the DYYP issues and begin good faith
7 negotiations.

8 6. On January 24, 2022, Ontario, CVWD, and FWC met to discuss a draft settlement
9 term sheet and good faith negotiations are currently ongoing. Ontario is actively working with
10 Parties and Watermaster to reach a resolution.

11 7. On January 24, 2022, Ontario sent a letter to Mr. Kavounas, Watermaster General
12 Manager, detailing Ontario's concerns with Watermaster's administration of the DYYP. (A true
13 and correct copy of the letter dated January 24, 2022, is attached hereto as Exhibit "B" and
14 incorporated herein by reference.)

15 8. On January 27, 2022, Watermaster presented a staff report to the Watermaster
16 Board in response to Ontario's concerns as reiterated in the January 24, 2022 letter and in response
17 to the Watermaster Board's direction on November 18, 2021. However, when asked, Watermaster
18 general counsel stated that he was "not prepared to provide a legal opinion in this moment." It was
19 understood by Ontario that in order to comply with Watermaster Board direction on November 18,
20 2021, a report with legal counsel's opinion would be forthcoming.

21 9. On February 11, 2022, Ontario requested Watermaster general counsel approve an
22 extension to the 90-day period if determined necessary by Watermaster.

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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge.

Executed on this 17th day of February, 2022, at San Bernardino, California.



Christopher Quach, P.E.
Senior Associate Engineer
Ontario Municipal Utilities Company

EXHIBIT "A"

CITY OF



ONTARIO

303 EAST B STREET | ONTARIO, CALIFORNIA 91764

(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA DORST-PORADA
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

November 1, 2021

Peter Kavounas, General Manager
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730
Email: pkavounas@cbwm.org

Re: Questions and Comments on the Draft Fiscal Year 2021-2022 Assessment Package

Dear Peter:

The City of Ontario (Ontario) appreciates the opportunity to provide comments and submit questions on the draft Fiscal Year 2021-2022 Assessment Package.

The draft Fiscal Year 2021-2022 Assessment Package identifies a total of 23,000 AF of groundwater production produced from the storage account established for the Metropolitan Water District's (MWD) Chino Basin Conjunctive Use Program (CUP). The Chino Basin CUP and related Chino Basin Watermaster (Watermaster) storage agreements were approved through the Watermaster process in 2003 and 2004. The most recent Amendment No. 8 to the Chino Basin CUP is dated January 23, 2015 and included changes to the Exhibit G Operating Party Performance Criteria. The Operating Party Performance Criteria establishes, among other things, qualifying production as the measurement of a reduction to imported water deliveries and a corresponding replacement with the Chino Basin groundwater stored under this program. Ontario's understanding is that the storage and withdrawal of supplemental water under the Chino Basin CUP can only be done pursuant to a properly approved written agreement with Watermaster and shall not have an adverse impact on other produces.

Ontario requests that Watermaster explain the basis for exempting water produced from MWD's CUP, as identified in the draft Fiscal Year 2021-2022 Assessment Package, from the Watermaster assessment and the Desalter Replenishment Obligation (DRO) assessment. The exemption appears to be based, at least in part, on a March 20, 2019 letter agreement (2019 Letter) from the MWD and signed by Watermaster, Inland Empire Utilities Agency and Three

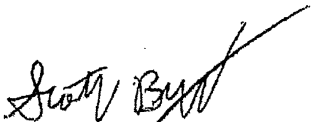
Valleys Municipal Water District with the subject line of "Chino Basin Groundwater Storage Actions and Voluntary Purchase Methodology". Specifically, Ontario would like responses to the following:

1. How did Watermaster evaluate the impacts of this significant change in the recovery of water originally stored under the Chino Basin CUP?
2. Explain and illustrate how the Exhibit G Performance Criteria is being met.
3. The 2019 Letter does not address the topic of Watermaster Assessments. The mechanics of this transaction appear to be more of a stored water purchase & transfer between MWD and individual Parties producing the water. Why is the production of this water not subject to the same assessments as other production by individual Parties?
4. When evaluating the 2019 Letter and the proposed changes, describe the Watermaster approval process. The contemplated changes in the 2019 Letter did not go through the Pools, Advisory Committee, or the Board. What was the basis for forgoing this process?
5. How was it determined that agencies who are not signatories to the Chino Basin CUP approved by Watermaster are allowed to participate in the recovery of water stored under this program?
6. How was it determined that broad based benefit was still being achieved?

The 2019 Letter fundamentally changed the recovery side of this Watermaster approved storage and recovery program without obtaining an approved written agreement through the Watermaster process. Additionally, the implications of these changes were not represented and/or evaluated to determine the impacts on individual parties.

Ontario appreciates the opportunity to provide comments on the draft Fiscal Year 2021-2022 Assessment Package and looks forward to working collaboratively with Watermaster and the various stakeholders towards a resolution of these concerns.

Sincerely,



Scott Burton, P.E.
Utilities General Manager

CC: Appriative Pool Parties

EXHIBIT "B"

CITY OF



ONTARIO

303 EAST B STREET | ONTARIO, CALIFORNIA 91764

(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA DORST-PORADA
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

January 24, 2022

Peter Kavounas, General Manager
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730
Email: pkavounas@cbwm.org

SENT VIA EMAIL AND CERTIFIED US MAIL

Re: Dry Year Yield Program

Dear Peter,

The City of Ontario (Ontario) appreciates the recent Watermaster Board direction to staff and legal counsel to evaluate the concerns raised by Ontario surrounding the Dry Year Yield Storage and Recovery Program (DYYP) and related applicability to Watermaster assessments. In awaiting this legal report back to the Board, Ontario remains concerned that Watermaster is administering an unauthorized change to the DYYP that is inconsistent with the storage agreement approved by Watermaster and ordered by the Court. This has resulted in a material change to the DYYP, adversely impacts Ontario, and has the potential to further impact Parties to the Judgment in the future. The subject changes are identified in a March 20, 2019 letter agreement (2019 Letter) signed by the Metropolitan Water District (MWD), Watermaster's General Manager, and two MWD member agencies on the Watermaster Board. This was done independent of any formal Watermaster Pool/Advisory/Board approval process, which is unacceptable. The purpose of this letter is to expand on the significance of this issue and provide Watermaster with the opportunity to correct the matter as soon as possible.

Background

Ontario submitted comments and questions on the Draft Fiscal Year 2021-2022 Assessment Package to the Watermaster General Manager in a letter dated November 1, 2021. Ontario's letter discussed the 2019 Letter with the subject line of "Chino Basin Groundwater Storage Actions and Voluntary Purchase Methodology." While Ontario appreciates Watermaster's Staff Reports released on November 16, 2021

and January 7, 2022 regarding this matter, Ontario's concerns remain foundationally in the execution of the 2019 Letter, how it fundamentally changed the recovery aspect of the DYYP, how it is not consistent with the 2004 Court-approved agreements and that it did not go through the formal Watermaster approval process similar to other material DYYP amendments.

The DYYP consists of three sets of agreements ordered by the Court: The 2003 Funding Agreement, the 2004 Storage Agreement, and the Local Agency Agreements such as the one executed by the City of Ontario. The intent of the program is to provide greater water supply reliability by storing water in advance of dry periods and pumping the stored water in lieu of receiving imported water during droughts. The Court found that the DYYP as described in the Funding Agreement provides broad mutual benefit to the parties to the Judgment.

The Court-ordered Funding Agreement indicates that "the specific location and operation of the facilities necessary to accomplish this commitment must still be analyzed by Watermaster..." and "This approval will take the form of Watermaster approval of the Local Agency Agreements..." Consistent with the Funding Agreement, the Local Agency Agreements define each agencies' facilities and annual recovery capacity, including performance targets of an imported water shift and program water extraction for each participating agency.

The Local Agency Agreements are the foundation of the storage and recovery program storage application, subsequent analysis, approvals, and ultimately the Court-approved Storage Agreement. As stated in the 2003 Court Order, "until Watermaster and this Court approve the Local Agency Agreements and Storage and Recovery Application ... the storage and recovery program cannot be undertaken." Additionally, per the Watermaster Storage Agreement, "Any modification of facilities that is materially different than those contemplated by the Local Agency Agreements will require the filing of a new application." The intent of the performance criteria per Amendment No. 8 to the Groundwater Storage Program Funding Agreement, Exhibit G is "to reduce imported water deliveries to the Operating Parties and replace it with stored Chino Basin groundwater..." (underline added for emphasis). Recovery of water under the 2019 Letter is inconsistent with the Local Agency Agreements and is therefore inconsistent with the Court Orders and should be determined as impermissible by Watermaster as an arm of the Court. In addition, it seems to remove the DYYP performance criteria that historically served as the basis for Watermaster to waive assessments.

During the initial project development there were amendments to the Funding Agreement that pertained to the completion timing of facilities and changes in sources of funds. The only material change to the DYYP occurred with the 2015 Amendment No. 8 to the Funding Agreement, which was universally approved through the Watermaster process after the Operating Parties approved amendments to the Local Agency Agreements with the same changes to the Exhibit G Performance Criteria. While Amendment No. 8 made material changes to the program, they were nowhere near as significant as those found in the 2019 Letter which changed the amount of water each agency was able to recover, as well as when and how that water was recovered. The 2019 Letter was not accompanied by corresponding changes to the Local Agency Agreements, was not approved through the Watermaster process, and also allowed Parties without Local Agency Agreements to participate in the DYYP.

Ontario's Concerns

Watermaster is allowing the recovery of water from the DYYP storage account that is not consistent with the storage agreement approved via the Watermaster process and ordered by the Court in 2004. The 2019 Letter fundamentally changed the recovery side of this Watermaster approved storage and recovery program. The 2019 Letter changed the application of the Exhibit G Performance Criteria and allowed for water to be recovered outside of the Local Agency Agreements (in terms of agency, location, and quantity) without a corresponding shift off of imported water. In effect, this is production of supplemental water from storage and must be treated as such under the provisions of the Judgement and Peace Agreements.

Regarding assessments, the Judgment requires virtually all production to be assessed in order to pay for Watermaster activities in a shared fashion based on beneficial use of the Basin. Waiving assessments on some production inherently places a greater expense on the remaining production that is factored into assessments. Court approval of the Funding Agreement and Storage Agreement (and subsequent Local Agency Agreements) does not explicitly define how assessments shall be handled, but Watermaster has historically waived assessments (or assessed during in-lieu put) on water produced under the approved DYYP without objection. What is different now is that the 2019 Letter fundamentally changed the DYYP as approved by the Court, as approved by the Parties through the Local Agency Agreements, and as approved through the Watermaster process. Table 1 below shows the program as it was approved by the Court and as it has been modified by the 2019 Letter. Watermaster is not authorized by the Court or otherwise to allow DYYP water to be recovered in this manner or to exempt this production from pumping assessments. Watermaster must administer assessments consistent with the Judgment and Court Orders.

Table 1 - DYY Performance Criteria 2004 vs Draft FY 2021/22 Assessment Package

Appropriator	2004 - Original DYY Agreement		FY 2021/22 Assessment Package	
	Req. IW Shift (AF)	Req. DYY GW Take (AF)	Req. IW Shift (AF)	DYY Claim (AF)
City of Chino	1,159	1,159	0	0
City of Chino Hills	1,448	1,448	0	0
City of Ontario	8,076	8,076	0	0
City of Pomona	2,000	2,000	0	0
City of Upland	3,001	3,001	0	0
Cucamonga Valley Water District	11,353	11,353	0	20,500
Fontana Water Company	No Local Agency Agreement		0	2,500
Jurupa Community Services District	2,000	2,000	0	0
Monte Vista Water District	3,963	3,963	0	0
Total	33,000	33,000	0	23,000

Notes:

1. Operating Plan Varies year to year
2. Voluntary Claim is any pumping above Groundwater Baseline and below Physical Production

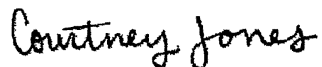
Additionally, the 2019 Letter impacted the broad-based benefit of the program, which is to provide greater water supply reliability by storing water in advance of dry periods and pumping the stored water in lieu of receiving imported water during droughts. Considering the current drought predicament, a participating agency's ability to access imported water has been greatly impacted by allowing the DYYP storage account to be drained outside of its originally intended purpose. This impact is further illustrated by MWD's urgent introduction in January 2022 of two newly proposed imported water delivery deferment programs that similarly seek to accomplish the original intent of the DYYP, a corresponding shift from imported water to groundwater.

Conclusion

The 2019 Letter fundamentally changed the recovery side of this Court-ordered and Watermaster approved storage and recovery program without the necessary approvals. The implications of these changes were not represented and/or evaluated to determine the material physical impacts on individual parties and the Chino Basin. Watermaster signed off on a material change to the recovery of water under the DYYP which is inconsistent with the Court Order and without formal review and approval through the Watermaster process. This sets an alarming precedence for future Watermaster lead endeavors and infringes upon Ontario's rights and protections under the Judgment and related Court Orders that Watermaster is charged with administering. Ontario is requesting that Watermaster cease any further implementation of the 2019 Letter and amend assessment packages as applicable.

Ontario looks forward to working collaboratively with Watermaster and impacted parties towards a resolution of these concerns.

Sincerely,



Courtney Jones, P.E.
Water Resources and Regulatory Affairs Director

CC: Chino Basin Watermaster Board
Eduardo Espinoza, Appropriative Pool Chair
Brian Geye, Non-Agricultural Pool Chair
Bob Feenstra, Agricultural Pool Chair

CHINO BASIN WATERMASTER

Case No. RCVRS 51010

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

PROOF OF SERVICE

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On February 17, 2022 served the following:

1. DECLARATION OF CHRISTOPHER QUACH

- 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: Master Email Distribution List
- BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.
- BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.
- BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 17, 2022 in Rancho Cucamonga, California.



By: Janine Wilson
Chino Basin Watermaster

PAUL HOFER
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	amandac@cvwdwater.com
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
Beth.McHenry	Beth.McHenry@hoferranch.com
Betty Anderson	banderson@jcsd.us
Betty Folsom	bfolsom@jcsd.us
Bill Schwartz	bschwartz@mvwd.org
Bob Bowcock	bbowcock@irmwater.com
Bob DiPrimio	rjdiprimio@sgvwater.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	Byu@ci.upland.ca.us
Bradley Jensen	bradley.jensen@cao.sbcounty.gov
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
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
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 Huynh	dhuynh@cbwm.org
Dawn Martin	Dawn.Martin@cc.sbccounty.gov
Denise Garzaro	dgarzaro@ieua.org
Dennis Mejia	dmejia@ontarioca.gov
Dennis Williams	dwilliams@geoscience-water.com
Diana Frederick	diana.frederick@cdcr.ca.gov
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
Gabriela Garcia	ggarcia@cbwm.org
Garrett Rapp	grapp@westyost.com

Gene Tanaka
Geoffrey Kamansky
Geoffrey Vanden Heuvel
Gerald Yahr
Gidti Ludesirishoti
Gina Nicholls
Gino L. Filippi
Gracie Torres
Grant Mann
Greg Woodside
Gregor Larabee
Henry DeHaan
Irene Islas
James Curatalo
James Jenkins
James McKenzie
Jane Anderson
Janine Wilson
Jasmin A. Hall
Jason Marseilles
Jason Pivovarovff
Jayne Joy
Jean Cihigoyenetche
Jeff Evers
Jeff Mosher
Jeffrey L. Pierson
Jennifer Hy-Luk
Jeremy N. Jungries
Jessie Ruedas
Jim Markman
Jim W. Bowman
Jimmy Gutierrez - Law Offices of Jimmy Gutierrez

Gene.Tanaka@bbklaw.com
gkamansky@niagarawater.com
geoffreyvh60@gmail.com
yahrj@koll.com
GidtiL@cvwdwater.com
gnicholls@nossaman.com
Ginoffvine@aol.com
gtorres@wmwd.com
GMann@dpw.sbcounty.gov
gwoodside@ocwd.com
Gregor.Larabee@cdcr.ca.gov
Hdehaan1950@gmail.com
irene.islas@bbklaw.com
jamesc@cvwdwater.com
cnomgr@airports.sbcounty.gov
jmckenzie@dpw.sbcounty.gov
janderson@jcsd.us
JWilson@cbwm.org
jhall@ieua.org
jmarseilles@ieua.org
JPivovarovff@wmwd.com
Jayne.Joy@waterboards.ca.gov
Jean@thejclawfirm.com
jevers@niagarawater.com
jmosher@sawpa.org
jpierson@intexcorp.com
jhyluk@ieua.org
jjungreis@rutan.com
Jessie@thejclawfirm.com
jmarkman@rwglaw.com
jbowman@ontarioca.gov

jimmylaredo@gmail.com
Jimmy@City-Attorney.com
Jaime.medrano2@cdcr.ca.gov
JiwonS@cvwdwater.com
jchan@wwwd.org
joao.feitoza@cmc.com
jroberto@tvmwd.com
jgraz4077@aol.com
JJoswiak@cbwm.org
jignacio@ieua.org
john.abusham@nrg.com
johnb@cvwdwater.com
jrharper@harperburns.com
johnhuitsing@gmail.com
jlopez@sarwc.com
customerservice@sarwc.com
jmendoza@tvmwd.com
jpartridge@angelica.com
jschatz13@cox.net
JThorntonPE@H2OExpert.net
Jose.A.Galindo@linde.com

Jimmy L. Gutierrez
Jimmy Medrano
Jiwon Seung
Joanne Chan
Joao Feitoza
Jody Roberto
Joe Graziano
Joe Joswiak
Joel Ignacio
John Abusham
John Bosler
John Harper
John Huitsing
John Lopez
John Lopez and Nathan Cole
John Mendoza
John Partridge
John Schatz
John Thornton
Jose A Galindo

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@mvwd.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
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
Laura Yraceburu	lyraceburu@bhfs.com
Lauren Harold	lharold@linklogistics.com
Linda Jadeski	ljadeski@vwwd.org
Lisa Lemoine	LLemoine@wmwd.com
Liz Hurst	ehurst@ieua.org
Marcella Correa	MCorrea@rwglaw.com
Marco Tule	mtule@ieua.org
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
Melanie Trevino	Mtrevino@jcsd.us
Michael A. Blazevic	mblazevic@westyost.com
Michael Adler	michael.adler@mcmcn.net
Michael P. Thornton	mthornton@tkeengineering.com
Michelle Licea	mlicea@mvwd.org
Michelle Staples	mstaples@jacksontidus.law
Mike Gardner	mgardner@wmwd.com
Mike Maestas	mikem@cvwdwater.com
Miriam Garcia	mgarcia@ieua.org
Moore, Toby	TobyMoore@gswater.com
MWDProgram	MWDProgram@sdca.org
Nadia Aguirre	naguirre@tvmwd.com
Natalie Costaglio	natalie.costaglio@mcmcn.net
Nathan deBoom	n8deboom@gmail.com
Neetu Gupta	ngupta@ieua.org

Nichole Horton	Nichole.Horton@pomonaca.gov
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@woodplc.com
Paul Hofer	farmerhofer@aol.com
Paul Hofer	farmwatchtoo@aol.com
Paul S. Leon	pleon@ontarioca.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
Rachel Avila	R.Avila@MPGLAW.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@wwd.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
Ruby Favela	rfavela@cbwm.org
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
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@sdcwa.org
slee@tvmwd.com	slee@tvmwd.com
Sonya Barber	sbarber@ci.upland.ca.us
Sonya Zite	szite@wmwd.com
Stephanie Gutierrez	Stephanie.Gutierrez@cc.sbcounty.gov
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
Tammi Ford	tford@wmwd.com
Tariq Awan	Tariq.Awan@cdcr.ca.gov
Taya Victorino	tayav@cvwdwater.com
Teri Layton	tlayton@sawaterco.com
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	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
Vanny Khu	VKhu@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@emeraldus.com