

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

7 Attorneys for
City of Ontario

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

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN BERNARDINO

12 CHINO BASIN MUNICIPAL WATER
DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendants.

CASE NO. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO
HONORABLE STANFORD E. REICHERT

APPENDIX OF EVIDENCE IN SUPPORT
OF CITY OF ONTARIO'S COMBINED
REPLY BRIEF

VOL I: EXHIBITS 1 – 6

RE: APPLICATION FOR AN ORDER TO
EXTEND TIME UNDER JUDGMENT,
PARAGRAPH 31(C) TO CHALLENGE
WATERMASTER ACTION/DECISION
ON NOVEMBER 18, 2021 TO APPROVE
THE FY 2021/2022 ASSESSMENT
PACKAGE. IF SUCH REQUEST IS
DENIED, THIS FILING IS THE
CHALLENGE

Hearing:

Date: June 17, 2022

Time: 1:30 p.m.

Dept.: S35

1 City of Ontario (“Ontario”) submits this appendix of evidence referenced in its Combined
 2 Reply to the Oppositions of Watermaster, Fontana Water Company and Cucamonga Valley Water
 3 District, and Inland Empire Utilities Agency to the Application for an Order to Extend Time Under
 4 Judgment, Paragraph 31(c) to Challenge Watermaster Action/Decision on November 18, 2021 to
 5 Approve the FY 2021/2022 Assessment Package and Request for Judicial Notice, filed
 6 concurrently herewith.

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1.	Chino Basin Watermaster Restated Judgment, No. 51010	1
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3.	Report and Recommendation of Special Referee to Court Regarding: (1) Motion for Order That Audit Commissioned By Watermaster is Not a Watermaster Expense, and (2) Motion to Appoint a Nine-Member Watermaster Panel, dated December 12, 1997	1
4.	Court’s Ruling and Order, entered June 18, 2010	1
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6.	Order Post Appeal, entered June 29, 2012	1
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Dated: May 26, 2022

STOEL RIVES LLP


By: 
ELIZABETH P. EWENS
MICHAEL B. BROWN
JANELLE S.H. KRATTIGER
Attorneys for Defendant
City of Ontario

EXHIBIT 1

1 DONALD D. STARK
A Professional Corporation
2 Suite 201 Airport Plaza
2061 Business Center Drive
3 Irvine, California 92715
Telephone: (714) 752-8971
4

5 CLAYSON, ROTHROCK & MANN
601 South Main Street
6 Corona, California 91720
Telephone: (714) 737-1910
7 Attorneys for Plaintiff

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

11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

No. RCV 51010¹

14 v.

15 CITY OF CHINO, et al.

16 Defendants
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20 RESTATED JUDGMENT
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27 ¹ Original Judgment signed January 27, 1978, Case # 164327 by Judge Howard B. Weiner. File transferred August 1989, by order
of the Court and assigned new case number RCV 51010.
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1 DONALD D. STARK
A Professional Corporation
2 Suite 201 Airport Plaza
2061 Business Center Drive
3 Irvine, California 92715
Telephone: (714) 752-8971
4

5 CLAYSON, ROTHROCK & MANN
601 South Main Street
6 Corona, California 91720
Telephone: (714) 737-1910
7 Attorneys for Plaintiff

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO
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11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

No. RCV 51010²

14 v.

15 CITY OF CHINO, et al.

16 Defendants

JUDGMENT

17
18
19 I. INTRODUCTION

20 1. Pleadings, Parties and Jurisdiction. The complaint herein was filed on January 2, 1975,
21 seeking an adjudication of water rights, injunctive relief and the imposition of a physical solution. A first
22 amended complaint was filed on July 16, 1976. The defaults of certain defendants have been entered,
23 and certain other defendants dismissed. Other than defendants who have been dismissed or whose
24 defaults have been entered, all defendants have appeared herein. By answers and order of this Court,
25

26
27 ² Original Judgment signed January 27, 1978, Case # 164327 by Judge Howard B. Weiner. File transferred August 1989, by order
of the Court and assigned new case number RCV 51010.

1 the issues have been made those of a full inter se adjudication between the parties. This Court has
2 jurisdiction of the subject matter of this action and of the parties herein.

3 2. Stipulation For Judgment. Stipulation for entry of judgment has been filed by and on
4 behalf of a majority of the parties, representing a majority of the quantitative rights herein adjudicated.

5 3. Trial: Findings and Conclusions. Trial was commenced on December 16, 1977, as to the
6 non-stipulating parties, and findings of fact and conclusions of law have been entered disposing of the
7 issues in the case.

8 4. Definitions. As used in this Judgment, the following terms shall have the meanings
9 herein set forth:

10 (a) Active Parties. All parties other than those who have filed with Watermaster a
11 written waiver of service of notices, pursuant to Paragraph 58.

12 (b) Annual or Year -- A fiscal year, July 1 through June 30, following, unless the
13 context shall clearly indicate a contrary meaning.

14 (c) Appropriative Right -- The annual production right of a producer from the Chino
15 Basin other than pursuant to an overlying right.

16 (d) Basin Water -- Ground water within Chino Basin which is part of the Safe Yield,
17 Operating Safe Yield, or replenishment water in the Basin as a result of operations under the
18 Physical Solution decreed herein. Said term does not include Stored Water.

19 (e) CBMWD -- Plaintiff Chino Basin Municipal Water District.

20 (f) Chino Basin or Basin -- The ground water basin underlying the area shown as
21 such on Exhibit "B" and within the boundaries described in Exhibit "K".

22 (g) Chino Basin Watershed -- The surface drainage area tributary to and overlying
23 Chino Basin.

24 (h) Ground Water -- Water beneath the surface of the ground and within the zone of
25 saturation, i.e., below the existing water table.
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1 (i) Ground Water Basin -- An area underlain by one or more permeable formations
2 capable of furnishing substantial water storage.

3 (j) Minimal Producer -- Any producer whose production does not exceed **ten** acre-
4 feet per year.³

5 (k) MWD -- The Metropolitan Water District of Southern California.

6 (l) Operating Safe Yield -- The annual amount of ground water which Watermaster
7 shall determine, pursuant to criteria specified in Exhibit "I", can be produced from Chino Basin by
8 the Appropriative Pool parties free of replenishment obligation under the Physical Solution herein.

9 (m) Overdraft -- A condition wherein the total annual production from the Basin
10 exceeds the Safe Yield thereof.

11 (n) Overlying Right -- The appurtenant right of an owner of lands overlying Chino
12 Basin to produce water from the Basin for overlying beneficial use on such lands.

13 (o) Person. -- Any individual, partnership, association, corporation, governmental
14 entity or agency, or other organization.

15 (p) PVMWD -- Defendant Pomona Valley Municipal Water District.

16 (q) Produce or Produced -- To pump or extract ground water from Chino Basin.

17 (r) Producer -- Any person who produces water from Chino Basin.

18 (s) Production -- Annual quantity, stated in acre feet, of water produced.

19 (t) Public Hearing -- A hearing after notice to all parties and to any other person
20 legally entitled to notice.

21 (u) Reclaimed Water -- Water which, as a result of processing of waste water, is
22 suitable for a controlled use.

23 (v) Replenishment Water -- Supplemental water used to recharge the Basin
24 pursuant to the Physical Solution, either directly by percolating the water into the Basin or
25

26
27 ³ Order dated September 27, 2001.
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1 indirectly by delivering the water for use in lieu of production and use of safe yield or Operating
2 Safe Yield.

3 (w) Responsible Party — The owner, co-owner, lessee or other person designated by
4 multiple parties interested in a well as the person responsible for purposes of filing reports
5 hereunder.

6 (x) Safe Yield — The long-term average annual quantity of ground water (excluding
7 replenishment or stored water but including return flow to the Basin from use of replenishment or
8 stored water) which can be produced from the Basin under cultural conditions of a particular year
9 without causing an undesirable result.

10 (y) SBVMWD — San Bernardino Valley Municipal Water District.

11 (z) State Water — Supplemental Water imported through the State Water Resources
12 Development System, pursuant to Chapter 8, Division 6, Part 6 of the Water Code.

13 (aa) Stored Water — Supplemental water held in storage, as a result of direct
14 spreading, in lieu delivery, or otherwise, for subsequent withdrawal and use pursuant to
15 agreement with Watermaster.

16 (bb) Supplemental Water — Includes both water imported to Chino Basin from outside
17 Chino Basin Watershed, and reclaimed water.

18 (cc) WMWD — Defendant Western Municipal Water District of Riverside County.

19 5. List of Exhibits. The following exhibits are attached to this Judgment and made a part
20 hereof:

21
22 "A" -- "Location Map of Chino Basin" showing boundaries of Chino Basin Municipal Water
23 District, and other geographic and political features of Chino Basin.

24 "B" -- "Hydrologic Map of Chino Basin" showing hydrologic features of Chino Basin.

25 "C" – Table Showing Parties in Overlying (Agricultural) Pool.

26 "D" – Table Showing Parties in Overlying (Non-agricultural Pool and Their Rights.

27 "E" – Table Showing Appropriators and Their Rights.
28

1 "F" -- Overlying (Agricultural) Pool Pooling Plan.

2 "G" -- Overlying (Non-agricultural) Pool Pooling Plan.

3 "H" -- Appropriative Pool Pooling Plan.

4 "I" -- Engineering Appendix.

5 "J" -- Map of In Lieu Area No. 1.

6 "K" -- Legal Description of Chino Basin.

7
8 II. DECLARATION OF RIGHTS

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10 A. HYDROLOGY

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12 6. Safe Yield. The Safe Yield of Chino Basin is 140,000 acre feet per year.

13 7. Overdraft and Prescriptive Circumstances. In each year for a period in excess of five
14 years prior to filing of the First Amended Complaint herein, the Safe Yield of the Basin has been
15 exceeded by the annual production therefrom, and Chino Basin is and has been for more than five years
16 in a continuous state of over draft. The production constituting said overdraft has been open, notorious,
17 continuous, adverse, hostile and under claim of right. The circumstances of said overdraft have given
18 notice to all parties of the adverse nature of such aggregate over-production.

19 B. WATER RIGHTS IN SAFE YIELD

20
21 8. Overlying Rights. The parties listed in Exhibits "C" and "D", are the owners or in
22 possession of lands which overlie Chino Basin. As such, said parties have exercised overlying water
23 rights in Chino Basin. All overlying rights owned or exercised by parties listed in Exhibits "C" and "D",
24 have, in the aggregate, been limited by prescription except to the extent such rights have been preserved
25 by self-help by said parties. Aggregate preserved overlying rights in the Safe Yield for agricultural pool
26 use, including the rights of the State of California, total 82,800 acre feet per year. Overlying rights for
27 non-agricultural pool use total 7,366 acre feet per year and are individually decreed for each affected
28

1 party in Exhibit "D". No portion of the Safe Yield of Chino Basin exists to satisfy unexercised overlying
2 rights, and such rights have all been lost by prescription. However, uses may be made of Basin Water on
3 overlying lands which have no preserved overlying rights pursuant to the Physical Solution herein. All
4 overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart
5 therefrom ***for the term of the Peace Agreement except that the members of the Overlying (Non-***
6 ***Agricultural) Pool shall have the right to Transfer or lease their quantified Production rights (i)***
7 ***within the Overlying (Non-Agricultural) Pool; (ii) to Watermaster in conformance with the***
8 ***procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000;***
9 ***or (iii) in accordance with the Overlying (Non-Agricultural) Pool Pooling Plan set forth in Exhibit***
10 ***"G."***⁴

11 9. Appropriative Rights. The parties listed in Exhibit "E" are the owners of appropriative
12 rights, including rights by prescription, in the unadjusted amounts therein set forth, and by reason thereof
13 are entitled under the Physical Solution to share in the remaining Safe Yield, after satisfaction of overlying
14 rights and rights of the State of California, and in the Operating Safe Yield in Chino Basin, in the annual
15 shares set forth in Exhibit "E".

16 (a) Loss of Priorities. By reason of the long continued overdraft in Chino Basin, and
17 in light of the complexity of determining appropriative priorities and the need for conserving and
18 making maximum beneficial use of the water resources of the State, each and all of the parties
19 listed in Exhibit "E" are estopped and barred from asserting special priorities or preferences, inter
20 se. All of said appropriative rights are accordingly deemed and considered of equal priority.

21 (b) Nature and Quantity. All rights listed in Exhibit "E" are appropriative and
22 prescriptive in nature. By reason of the status of the parties, and the provisions of Section 1007
23 of the Civil Code, said rights are immune from reduction or limitation by prescription.
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27 ⁴ Order dated September 28, 2000 and Order dated April 19, 2001 further modified by Order dated December 21, 2007.
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1 10. Rights of the State of California. The State of California, by and through its Department
2 of Corrections, Youth Authority and Department of Fish and Game, is a significant producer of ground
3 water from and the State is the largest owner of land overlying Chino Basin. The precise nature and
4 scope of the claims and rights of the State need not be, and are not, defined herein. The State, through
5 said departments, has accepted the Physical Solution herein decreed, in the interests of implementing the
6 mandate of Section 2 of Article X of the California Constitution. For all purposes of this Judgment, all
7 future production by the State or its departments or agencies for overlying use on State-owned lands shall
8 be considered as agricultural pool use.

9
10 C. RIGHTS TO AVAILABLE GROUND WATER STORAGE CAPACITY

11 11. Available Ground Water Storage Capacity. There exists in Chino Basin a substantial
12 amount of available ground water storage capacity which is not utilized for storage or regulation of Basin
13 Waters. Said reservoir capacity can appropriately be utilized for storage and conjunctive use of
14 supplemental water with Basin Waters. It is essential that said reservoir capacity utilization for storage
15 and conjunctive use of supplemental water be undertaken only under Watermaster control and regulation,
16 in order to protect the integrity of both such Stored Water and Basin Water in storage and the Safe Yield
17 of Chino Basin.

18
19 12. Utilization of Available Ground Water Capacity. Any person or public entity, whether a
20 party to this action or not, may make reasonable beneficial use of the available ground water storage
21 capacity of Chino Basin for storage of supplemental water; provided that no such use shall be made
22 except pursuant to written agreement with Watermaster, as authorized by Paragraph 28. In the allocation
23 of such storage capacity, the needs and requirements of lands overlying Chino Basin and the owners of
24 rights in the Safe Yield or Operating Safe Yield of the Basin shall have priority and preference over
25 storage for export.

1 III. INJUNCTION

2 13. Injunction Against Unauthorized Production of Basin Water. Each party in each of the
3 respective pools is enjoined, as follows:

4
5 (a) Overlying Agricultural Pool. Each party in the Overlying (Agricultural) Pool, its
6 officers, agents, employees, successors and assigns, is and they each are ENJOINED AND
7 RESTRAINED from producing ground water from Chino Basin in any year hereafter in excess of
8 such party's correlative share of the aggregate of 82,800 acre feet allocated to said Pool, except
9 pursuant to the Physical Solution or a storage water agreement.

10 (b) Overlying Non-Agricultural Pool. Each party in the Overlying Non-Agricultural
11 Pool, its officers, agents, employees, successors and assigns, is and they each are ENJOINED
12 AND RESTRAINED from producing ground water of Chino Basin in any year hereafter in excess
13 of such party's decreed rights in the Safe Yield, except pursuant to the provisions of the Physical
14 Solution or a storage water agreement.

15 (c) Appropriative Pool. Each party in the Appropriative Pool, its officers, agents,
16 employees, successors and assigns, is and they are each ENJOINED AND RESTRAINED from
17 producing ground water of Chino Basin in any year hereafter in excess of such party's decreed
18 share of Operating Safe Yield, except pursuant to the provisions of the Physical Solution or a
19 storage water agreement.

20
21 14. Injunction Against Unauthorized Storage or Withdrawal of Stored Water. Each party, its
22 officers, agents, employees, successors and assigns is and they each are ENJOINED AND
23 RESTRAINED from storing supplemental water in Chino Basin for withdrawal, or causing withdrawal of,
24 water stored by that party, except pursuant to the terms of a written agreement with Watermaster and in
25 accordance with Watermaster regulations. Any supplemental water stored or recharged in the Basin,
26 except pursuant to such a Watermaster agreement, shall be deemed abandoned and not classified as
27 Stored Water. This paragraph has no application, as such, to supplemental water spread or provided in
28 lieu by Watermaster pursuant to the Physical Solution.

1 IV. CONTINUING JURISDICTION

2 15. Continuing Jurisdiction. Full jurisdiction, power and authority are retained and reserved
3 to the Court as to all matters contained in this judgment, except:

4 (a) The redetermination of Safe Yield, as set forth in Paragraph 6, during the first ten
5 (10) years of operation of the Physical Solution;

6 (b) The allocation of Safe Yield as between the several pools as set forth in
7 Paragraph 44 of the Physical Solution;

8 (c) The determination of specific quantitative rights and shares in the declared Safe
9 Yield or Operating Safe Yield herein declared in Exhibits "D" and "E"; and

10 (d) The amendment or modification of Paragraphs 7 (a) and (b) of Exhibit "H", during
11 the first ten (10) years of operation of the Physical Solution, and thereafter only upon affirmative
12 recommendation of at least 67% of the voting power (determined pursuant to the formula
13 described in Paragraph 3 of Exhibit "H"), but not less than one-third of the members of the
14 Appropriative Pool Committee representatives of parties who produce water within IEUA or
15 WMWD; after said tenth year the formula set forth in said Paragraph 7 (a) and 7 (b) of Exhibit "H"
16 for payment of the costs of replenishment water may be changed to 100% gross or net, or any
17 percentage split thereof, but only in response to recommendation to the Court by affirmative vote
18 of at least 67% of said voting power of the Appropriative Pool representatives of parties who
19 produce ground water within IEUA or WMWD, but not less than one-third of their number. In
20 such event, the Court shall act in conformance with such recommendation unless there are
21 compelling reasons to the contrary; and provided, further, that the fact that the allocation of Safe
22 Yield or Operating Safe Yield shares may be rendered moot by a recommended change in the
23 formula for replenishment assessments shall not be deemed to be such a "compelling reason."
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1 Said continuing jurisdiction is provided for the purpose of enabling the Court, upon application of any
2 party, the Watermaster, the Advisory Committee or any Pool Committee, by motion and, upon at least 30
3 days' notice thereof, and after hearing thereon, to make such further or supplemental orders or directions
4 as may be necessary or appropriate for interpretation, enforcement or carrying out of this Judgment, and
5 to modify, amend or amplify any of the provisions of this Judgment.

6
7 V. WATERMASTER

8
9 A. APPOINTMENT

10 16. Watermaster Appointment. CBMWD, acting by and through a majority of its board of
11 directors, is hereby appointed Watermaster, to administer and enforce the provisions of this Judgment
12 and any subsequent instructions or orders of the Court hereunder. The term of appointment of
13 Watermaster shall be for five (5) years. The Court will by subsequent orders provide for successive terms
14 or for a successor Watermaster. Watermaster may be changed at any time by subsequent order of the
15 Court, on its own motion, or on the motion of any party after notice and hearing. Unless there are
16 compelling reasons to the contrary, the Court shall act in conformance with a motion requesting the
17 Watermaster be changed if such motion is supported by a majority of the voting power of the Advisory
18 Committee.

19
20 B. POWERS AND DUTIES

21 17. Powers and Duties. Subject to the continuing supervision and control of the Court,
22 Watermaster shall have and may exercise the express powers, and shall perform the duties, as provided
23 in this Judgment or hereafter ordered or authorized by the Court in the exercise of the Court's continuing
24 jurisdiction.

1 18. Rules and Regulations.⁵

2 **(a) Upon recommendation by the Advisory Committee, Watermaster shall make**
3 **and adopt, after public hearing, appropriate rules and regulations for conduct of Watermaster**
4 **affairs, including, meeting schedules and procedures, and compensation of members of**
5 **Watermaster. Thereafter, Watermaster may amend the rules from time to time upon**
6 **recommendation, or with approval of the Advisory Committee after hearing noticed to active**
7 **parties, except that compensation of Watermaster members shall be subject to Court Approval. A**
8 **copy of the rules and regulations, and of amendments, shall be mailed to each active party.**

9
10 **(b) Under the rules, Watermaster members shall be paid up to \$125 for each day's**
11 **attendance at meetings at the direction of the board, not to exceed eight meetings in each month.**
12 **Compensation shall not be paid for junkets or attendance at conferences, seminars, or retreats at**
13 **locations other than Watermaster headquarters. Members shall not be compensated for more than**
14 **one meeting each day.**

15 **(c) Under the rules, Watermaster members may be reimbursed for reasonable and**
16 **necessary travel, meals, lodging and registration expenses incurred on Watermaster business.**
17 **Mileage shall not be paid for travel to or from Watermaster meetings unless the individual must**
18 **travel more than 50 miles per month. The Watermaster's budget shall include an appropriation for**
19 **expense reimbursement. The Watermaster shall file a report on the expense reimbursement with**
20 **the court as part of the Annual Report. The Report shall disclose total expense reimbursements**
21 **and single expenditures for items of \$125.00 or more.**

22
23 19. Acquisition of Facilities. Watermaster may purchase, lease, acquire and hold all
24 necessary facilities and equipment; provided, that it is not the intent of the Court that Watermaster acquire
25 any interest in real property or substantial capital assets.

26
27 ⁵ Order dated March 31, 1999.

1 20. Employment of Experts and Agents. Watermaster may employ or retain such
2 administrative, engineering, geologic, accounting, legal or other specialized personnel and consultants as
3 may be deemed appropriate in the carrying out of its powers and shall require appropriate bonds from all
4 officers and employees handling Watermaster funds. Watermaster shall maintain records for purposes of
5 allocation of costs of such services as well as of all other expenses of Watermaster administration as
6 between the several pools established by the Physical Solution.

7
8 21. Measuring Devices. Watermaster shall cause parties, pursuant to uniform rules, to install
9 and maintain in good operating condition, at the cost of each party, such necessary measuring devices or
10 meters as Watermaster may deem appropriate. Such measuring devices shall be inspected and tested
11 as deemed necessary by Watermaster, and the cost thereof shall constitute an expense of Watermaster.

12 22. Assessments. Watermaster is empowered to levy and collect all assessments provided
13 for in the pooling plans and Physical Solution.

14
15 23. Investment of Funds. Watermaster may hold and invest any and all Watermaster funds
16 in investments authorized from time to time for public agencies of the State of California.

17 24. Borrowing. Watermaster may borrow from time to time amounts not exceeding the
18 annual anticipated receipts of Watermaster during such year.

19
20 25. Contracts. Watermaster may enter into contracts for the performance of any powers
21 herein granted; provided, however, that Watermaster may not contract with or purchase materials,
22 supplies or services from IEUA, except upon the prior recommendation and approval of the Advisory
23 Committee and pursuant to written order of the Court.

24
25 26. Cooperation With Other Agencies. Subject to prior recommendation or approval of the
26 Advisory Committee, Watermaster may act jointly or cooperate with agencies of the United States and the
27 State of California or any political subdivisions, municipalities or districts or any person to the end that the
28 purpose of the Physical Solution may be fully and economically carried out.

1 27. Studies. Watermaster may, with concurrence of the Advisory Committee or affected Pool
2 Committee and in accordance with Paragraph 54 (b), undertake relevant studies of hydrologic conditions,
3 both quantitative and qualitative, and operating aspects of implementation of the management program
4 for Chino Basin.

5 28. Ground Water Storage Agreements. Watermaster shall adopt, with the approval of the
6 Advisory Committee, uniformly applicable rules and a standard form of agreement for storage of
7 supplemental water, pursuant to criteria therefore set forth in Exhibit "I". Upon appropriate application by
8 any person, Watermaster shall enter into such a storage agreement; provided that all such storage
9 agreements shall first be approved by written order of the Court, and shall by their terms preclude
10 operations which will have a substantial adverse impact on other producers.

11 29. Accounting for Stored Water. Watermaster shall calculate additions, extractions and
12 losses and maintain an annual account of all Stored Water in Chino Basin, and any losses of water
13 supplies or Safe Yield of Chino Basin resulting from such Stored Water.
14

15 30. Annual Administrative Budget. Watermaster shall submit to Advisory Committee an
16 administrative budget and recommendation for each fiscal year on or before March 1. The Advisory
17 Committee shall review and submit said budget and their recommendations to Watermaster on or before
18 April 1, following. Watermaster shall hold a public hearing on said budget at its April quarterly meeting
19 and adopt the annual administrative budget which shall include the administrative items for each pool
20 committee. The administrative budget shall set forth budgeted items in sufficient detail as necessary to
21 make a proper allocation of the expense among the several pools, together with Watermaster's proposed
22 allocation. The budget shall contain such additional comparative information or explanation as the
23 Advisory Committee may recommend from time to time. Expenditures within budgeted items may
24 thereafter be made by Watermaster in the exercise of powers herein granted, as a matter of course. Any
25 budget transfer in excess of 20% of a budget category during any budget year or modification of such
26 administrative budget during any year shall be first submitted to the Advisory Committee for review and
27 recommendation.
28

1 31. Review Procedures. All actions, decisions or rules of Watermaster shall be subject to
2 review by the Court on its own motion or on timely motion by any party, the Watermaster (in the case of a
3 mandated action), the Advisory Committee, or any Pool Committee, as follows:

4 (a) Effective Date of Watermaster Action. Any action, decision or rule of
5 Watermaster shall be deemed to have occurred or been enacted on the date on which written
6 notice thereof is mailed. Mailing of copies of approved Watermaster minutes to the active parties
7 shall constitute such notice to all parties.

8 (b) Noticed Motion. Any party, the Watermaster (as to any mandated action), the
9 Advisory Committee, or any Pool Committee may, by a regularly noticed motion, apply to the
10 Court for review of any Watermaster's action, decision or rule. Notice of such motion shall be
11 served personally or mailed to Watermaster and to all active parties. Unless otherwise ordered
12 by the Court, such motion shall not operate to stay the effect of such Watermaster action,
13 decision or rule.

14 (c) Time for Motion. Notice of motion to review any Watermaster action, decision or
15 rule shall be served and filed within ninety (90) days after such Watermaster action, decision or
16 rule, except for budget actions, in which event said notice period shall be sixty (60) days.

17 (d) De Novo Nature of Proceedings. Upon the filing of any such motion, the Court
18 shall require the moving party to notify the active parties, the Watermaster, the Advisory
19 Committee, and each Pool Committee, of a date for taking evidence and argument, and on the
20 date so designated shall review de novo the question at issue. Watermaster's findings or
21 decision, if any, may be received in evidence at said hearing, but shall not constitute presumptive
22 or prima facie proof of any fact in issue.

23 (e) Decision. The decision of the Court in such proceeding shall be an appealable
24 supplemental order in this case. When the same is final, it shall be binding upon the
25 Watermaster and all parties.
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1
2
3 C. ADVISORY AND POOL COMMITTEES

4 32. Authorization. Watermaster is authorized and directed to cause committees of producer
5 representatives to be organized to act as Pool Committees for each of the several pools created under
6 the Physical solution. Said Pool Committees shall, in turn, jointly form an Advisory Committee to assist
7 Watermaster in performance of its functions under this judgment. Pool Committees shall be composed as
8 specified in the respective pooling plans, and the Advisory Committee shall be composed of ten (10)
9 voting representatives from each pool, as designated by the respective Pool Committee⁶ **in accordance**
10 **with each pool's pooling plan.** WMWD, **Three Valleys Municipal Water District (Successor to**
11 **PVMWD)** and SBVMWD shall each be entitled to one non-voting representative on said Advisory
12 Committee.

13
14 33. Term and Vacancies. Members of any Pool Committee, shall serve for the term, and
15 vacancies shall be filled, as specified in the respective pooling plan. Members of the Advisory Committee
16 shall serve at the will of their respective Pool Committee.

17 34. Voting Power. The voting power on each Pool Committee shall be allocated as provided
18 in the respective pooling plan. The voting power on the Advisory Committee shall be one hundred (100)
19 votes allocated among the three pools in proportion to the total assessments paid to Watermaster during
20 the preceding year; provided, that the minimum voting power of each pool shall be

- 21
22 (a) Overlying Agricultural Pool 20,
23 (b) Overlying Non-Agricultural Pool 5, and
24 (c) Appropriative Pool 20.
25
26

27 ⁶ Order dated September 18, 1996.
28

1 In the event any pool is reduced to its said minimum vote, the remaining votes shall be allocated between
2 the remaining pools on said basis of assessments paid to Watermaster by each such remaining pool
3 during the preceding year. The method of exercise of each pool's voting power on the Advisory
4 Committee shall be as determined by the respective pool committees.

5 35. Quorum. A majority of the voting power of the Advisory Committee or any Pool
6 Committee shall constitute a quorum for the transaction of affairs of such Advisory or Pool Committee;
7 provided, that at least one representative of each Pool Committee shall be required to constitute a
8 quorum of the Advisory Committee. No Pool Committee representative may purposely absent himself or
9 herself, without good cause, from an Advisory Committee meeting to deprive it of a quorum. Action by
10 affirmative vote of a majority of the entire voting power of any Pool Committee or the Advisory Committee
11 shall constitute action by such committee. Any action or recommendation of a Pool Committee or the
12 Advisory Committee shall be transmitted to Watermaster in writing, together with a report of any
13 dissenting vote or opinion.

14
15 36. Compensation. Pool or Advisory Committee members may receive compensation, to be
16 established by the respective pooling plan, but not to exceed twenty-five dollars (\$25.00) for each
17 meeting of such Pool or Advisory Committee attended, and provided that no member of a Pool or
18 Advisory Committee shall receive compensation of more than three hundred (\$300.00) dollars for service
19 on any such committee during any one year. All such compensation shall be a part of Watermaster
20 administrative expense. No member of any Pool or Advisory Committee shall be employed by
21 Watermaster or compensated by Watermaster for professional or other services rendered to such Pool or
22 Advisory Committee or to Watermaster, other than the fee for attendance at meetings herein provided,
23 plus reimbursement of reasonable expenses related to activities within the Basin.

24
25 37. Organization.

26 (a) Organizational Meeting. At its first meeting in each year, each Pool Committee
27 and the Advisory Committee shall elect a chairperson and a vice chairperson from its
28

1 membership. It shall also select a secretary, a treasurer and such assistant secretaries and
2 treasurers as may be appropriate, any of whom may, but need not, be members of such Pool or
3 Advisory Committee.

4 (b) Regular Meetings. All Pool Committees and the Advisory Committee shall hold
5 regular meetings at a place and time to be specified in the rules to be adopted by each Pool and
6 Advisory Committee. Notice of regular meetings of any Pool or Advisory Committee, and of any
7 change in time or place thereof, shall be mailed to all active parties in said pool or pools.
8

9 (c) Special Meetings. Special meetings of any Pool or Advisory Committee may be
10 called at any time by the Chairperson or by any three (3) members of such Pool or Advisory
11 Committee by delivering notice personally or by mail to each member of such Pool or Advisory
12 Committee and to each active party at least 24 hours before the time of each such meeting in the
13 case of personal delivery, and 96 hours in the case of mail. The calling notice shall specify the
14 time and place of the special meeting and the business to be transacted. No other business shall
15 be considered at such meeting.
16

17 (d) Minutes. Minutes of all Pool Committee, Advisory Committee and Watermaster
18 meetings shall be kept at Watermaster's offices. Copies thereof shall be mailed or otherwise
19 furnished to all active parties in the pool or pools concerned. Said copies of minutes shall
20 constitute notice of any Pool or Advisory Committee action therein reported, and shall be
21 available for inspection by any party.

22 (e) Adjournments. Any meeting of any Pool or Advisory Committee may be
23 adjourned to a time and place specified in the order of adjournment. Less than a quorum may so
24 adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously
25 posted forthwith on or near the door of the place where the meeting was held.

26 38. Powers and Functions. The powers and functions of the respective Pool Committees
27 and the Advisory Committee shall be as follows:
28

1 (a) Pool Committees. Each Pool Committee shall have the power and responsibility
2 for developing policy recommendations for administration of its particular pool, as created under
3 the Physical Solution. All actions and recommendations of any Pool Committee which require
4 Watermaster implementation shall first be noticed to the other two pools. If no objection is
5 received in writing within thirty (30) days, such action or recommendation shall be transmitted
6 directly to Watermaster for action. If any such objection is received, such action or
7 recommendation shall be reported to the Advisory Committee before being transmitted to
8 Watermaster.

9 (b) Advisory Committee. The Advisory Committee shall have the duty to study, and
10 the power to recommend, review and act upon all discretionary determinations made or to be
11 made hereunder by Watermaster.

12
13 [1] Committee Initiative. When any recommendation or advice of the
14 Advisory Committee is received by Watermaster, action consistent therewith may be
15 taken by Watermaster; provided, that any recommendation approved by 80 votes or more
16 in the Advisory Committee shall constitute a mandate for action by Watermaster
17 consistent therewith. If Watermaster is unwilling or unable to act pursuant to
18 recommendation or advice from the Advisory Committee (other than such mandatory
19 recommendations), Watermaster shall hold a public hearing, which shall be followed by
20 written findings and decision. Thereafter, Watermaster may act in accordance with said
21 decision, whether consistent with or contrary to said Advisory Committee
22 recommendation. Such action shall be subject to review by the Court, as in the case of
23 all other Watermaster determinations.

24
25 [2] Committee Review. In the event Watermaster proposes to take
26 discretionary action, other than approval or disapproval of a Pool Committee action or
27 recommendation properly transmitted, or execute any agreement not theretofore within
28 the scope of an Advisory Committee recommendation, notice of such intended action

1 shall be served on the Advisory Committee and its members at least thirty (30) days
2 before the Watermaster meeting at which such action is finally authorized.

3 (c) Review of Watermaster Actions. Watermaster (as to mandated action), the
4 Advisory Committee or any Pool Committee shall be entitled to employ counsel and expert
5 assistance in the event Watermaster or such Pool or Advisory Committee seeks Court review of
6 any Watermaster action or failure to act. The cost of such counsel and expert assistance shall be
7 Watermaster expense to be allocated to the affected pool or pools.
8

9 VI. PHYSICAL SOLUTION

10 A. GENERAL

11
12 39. Purpose and Objective. Pursuant to the mandate of Section 2 of Article X of the
13 California Constitution, the Court hereby adopts and orders the parties to comply with a Physical Solution.
14 The purpose of these provisions is to establish a legal and practical means for making the maximum
15 reasonable beneficial use of the waters of Chino Basin by providing the optimum economic, long-term,
16 conjunctive utilization of surface waters, ground waters and supplemental water, to meet the
17 requirements of water users having rights in or dependent upon Chino Basin.
18

19 40. Need for Flexibility. It is essential that this Physical solution provide maximum flexibility
20 and adaptability in order that Watermaster and the Court may be free to use existing and future
21 technological, social, institutional and economic options, in order to maximize beneficial use of the waters
22 of Chino Basin. To that end, the Court's retained jurisdiction will be utilized, where appropriate, to
23 supplement the discretion herein granted to the Watermaster.

24 41. Watermaster Control. Watermaster, with the advice of the Advisory and Pool
25 Committees, is granted discretionary powers in order to develop an optimum basin management program
26 for Chino Basin, including both water quantity and quality considerations. Withdrawals and supplemental
27 water replenishment of Basin Water, and the full utilization of the water resources of Chino Basin, must
28

1 be subject to procedures established by and administered through Watermaster with the advice and
2 assistance of the Advisory and Pool Committees composed of the affected producers. Both the quantity
3 and quality of said water resources may thereby be preserved and the beneficial utilization of the Basin
4 maximized.

5 42. General Pattern of Operations. It is contemplated that the rights herein decreed will be
6 divided into three (3) operating pools for purposes of Watermaster administration. A fundamental
7 premise of the Physical Solution is that all water users dependent upon Chino Basin will be allowed to
8 pump sufficient waters from the Basin to meet their requirements. To the extent that pumping exceeds
9 the share of the Safe Yield assigned to the Overlying Pools, or the Operating Safe Yield in the case of the
10 Appropriative Pool, each pool will provide funds to enable Watermaster to replace such overproduction.
11 The method of assessment in each pool shall be as set forth in the applicable pooling plan.

13 B. POOLING

14
15 43. Multiple Pools Established. There are hereby established three (3) pools for
16 Watermaster administration of, and for the allocation of responsibility for, and payment of, costs of
17 replenishment water and other aspects of this Physical Solution.

18 (a) Overlying (Agricultural) Pool. The first pool shall consist of the State of California
19 and all overlying producers who produce water for other than industrial or commercial purposes.
20 The initial members of the pool are listed in Exhibit "C".

21
22 (b) Overlying (Non-agricultural) Pool. The second pool shall consist of overlying
23 producers who produce water for industrial or commercial purposes. The initial members of this
24 pool are listed in Exhibit "D".

25 (c) Appropriative Pool. A third and separate pool shall consist of owners of
26 appropriative rights. The initial members of the pool are listed in Exhibit "E".
27
28

1 Any party who changes the character of his use may, by subsequent order of the Court, be
2 reassigned to the proper pool; but the allocation of Safe Yield under Paragraph 44 hereof shall not be
3 changed. Any non-party producer or any person who may hereafter commence production of water from
4 Chino Basin, and who may become a party to this physical solution by intervention, shall be assigned to
5 the proper pool by the order of the Court authorizing such intervention.

6 44. Determination and Allocation of Rights to Safe Yield of Chino Basin. The declared Safe
7 Yield of Chino Basin is hereby allocated as follows:

8 <u>Pool</u>	9 <u>Allocation</u>
10 Overlying (Agricultural) Pool	414,000 acre-feet in any five (5) consecutive years.
11 Overlying (Non-agricultural) Pool	7,366 acre-feet per year.
12 Appropriative Pool	49,834 acre-feet per year.

13
14 The foregoing acre foot allocations to the overlying pools are fixed. Any subsequent change in
15 the Safe Yield shall be debited or credited to the Appropriative Pool. Basin Water available to the
16 Appropriative Pool without replenishment obligation may vary from year to year as the Operating Safe
17 Yield is determined by Watermaster pursuant to the criteria set forth in Exhibit "I".

18 45. Annual Replenishment. Watermaster shall levy and collect assessments in each year,
19 pursuant to the respective pooling plans, in amounts sufficient to purchase replenishment water to
20 replace production by any pool during the preceding year which exceeds that pool's allocated share of
21 Safe Yield in the case of the overlying pools, or Operating Safe Yield in the case of the Appropriative
22 Pool. It is anticipated that supplemental water for replenishment of Chino Basin may be available at
23 different rates to the various pools to meet their replenishment obligations. If such is the case, each pool
24 will be assessed only that amount necessary for the cost of replenishment water to that pool, at the rate
25 available to the pool, to meet its replenishment obligation.

1 46. Initial Pooling Plans. The initial pooling plans, which are hereby adopted, are set forth in
2 Exhibits “F”, “G” and “H”, respectively. Unless and until modified by amendment of the judgment pursuant
3 to the Court’s continuing jurisdiction, each such plan shall control operation of the subject pool.

4
5 C. REPORTS AND ACCOUNTING

6 47. Production Reports. Each party or responsible party shall file periodically with
7 Watermaster, pursuant to Watermaster rules, a report on a form to be prescribed by Watermaster
8 showing the total production of such party during the preceding reportage period, and such additional
9 information as Watermaster may require, including any information specified by the affected Pool
10 Committee.

11
12 48. Watermaster Report and Accounting. **Watermaster’s Annual Report shall be filed by**
13 **January 31 of each year. The Report shall apply to the preceding fiscal years' operation. The**
14 **Report shall contain details as to operation of the Pools. A certified audit of assessments and**
15 **expenditures pursuant to this Physical Solution, and a review of Watermaster activity.⁷**

16 D. REPLENISHMENT

17
18 49. Sources of Supplemental Water. Supplemental water may be obtained by Watermaster
19 from any available source. Watermaster shall seek to obtain the best available quality of supplemental
20 water at the most reasonable cost for recharge in the Basin. To the extent that costs of replenishment
21 water may vary between pools, each pool shall be liable only for the costs attributable to its required
22 replenishment. Available sources may include, but are not limited to:

23 (a) Reclaimed Water. There exist a series of agreements generally denominated the
24 Regional Waste Water Agreements between IEUA and owners of the major municipal sewer
25

26
27

 ⁷ Order dated March 31, 1999.

1 systems within the basin. Under those agreements, which are recognized hereby but shall be
2 unaffected and unimpaired by this judgment, substantial quantities of reclaimed water may be
3 made available for replenishment purposes. There are additional sources of reclaimed water
4 which are, or may become, available to Watermaster for said purposes. Maximum beneficial use
5 of reclaimed water shall be given high priority by Watermaster.

6 (b) State Water. State water constitutes a major available supply of supplemental
7 water. In the case of State Water, Watermaster purchases shall comply with the water service
8 provisions of the State's water service contracts. More specifically, Watermaster shall purchase
9 State Water from MWD for replenishment of excess production within IEUA, WMWD and
10 TVMWD, and from SBVMWD to replenish excess production within SBVMWD's boundaries in
11 Chino Basin, except to the extent that MWD and SBVMWD give their consent as required by
12 such State water service contracts.

13
14 (c) Local Import. There exist facilities and methods for importation of surface and
15 ground water supplies from adjacent basins and watersheds.

16
17 (d) Colorado River Supplies. MWD has water supplies available from its Colorado
18 River Aqueduct.

19 50. Methods of Replenishment. Watermaster may accomplish replenishment of
20 overproduction from the Basin by any reasonable method, including:

21
22 (a) Spreading and percolation or Injection of water in existing or new facilities,
23 subject to the provisions of Paragraphs 19, 25 and 26 hereof.

24
25 (b) In Lieu Procedures. Watermaster may make, or cause to be made, deliveries of
26 water for direct surface use, in lieu of ground water production.

27 E. REVENUES

1 51. Production Assessment. Production assessments, on whatever basis, may be levied by
2 Watermaster pursuant to the pooling plan adopted for the applicable pool.

3 52. Minimal Producers. Minimal Producers shall be exempted from payment of production
4 assessments, upon filing of production reports as provided in Paragraph 47 of this Judgment, and
5 payment of an annual five dollar (\$5.00) administrative fee as specified by Watermaster rules.
6

7 53. Assessment Proceeds -- Purposes. Watermaster shall have the power to levy
8 assessments against the parties (other than minimal pumpers) based upon production during the
9 preceding period of assessable production, whether quarterly, semi-annually or annually, as may be
10 determined most practical by Watermaster or the affected Pool Committee.

11 54. Administrative Expenses. The expenses of administration of this Physical Solution shall
12 be categorized as either (a) general Watermaster administrative expense, or (b) special project expense.
13

14 (a) General Watermaster Administrative Expense shall include office rental, general
15 personnel expense, supplies and office equipment, and related incidental expense and general
16 overhead.
17

18 (b) Special Project Expense shall consist of special engineering, economic or other
19 studies, litigation expense, meter testing or other major operating expenses. Each such project
20 shall be assigned a Task Order number and shall be separately budgeted and accounted for.
21 General Watermaster administrative expense shall be allocated and assessed against the
22 respective pools based upon allocations made by the Watermaster, who shall make such
23 allocations based upon generally accepted cost accounting methods. Special Project Expense
24 shall be allocated to a specific pool, or any portion thereof, only upon the basis of prior express
25 assent and finding of benefit by the Pool Committee, or pursuant to written order of the Court.
26

27 55. Assessments -- Procedure. Assessments herein provided for shall be levied and
28 collected as follows:

1 (a) Notice of Assessment. Watermaster shall give written notice of all applicable
2 assessments to each party on or before ninety (90) days after the end of the production period to
3 which such assessment is applicable.

4 (b) Payment. Each assessment shall be payable on or before thirty (30) days after
5 notice, and shall be the obligation of the party or successor owning the water production facility at
6 the time written notice of assessment is given, unless prior arrangement for payment by others
7 has been made in writing and filed with Watermaster.

8 (c) Delinquency. Any delinquent assessment shall bear interest at 10% per annum
9 (or such greater rate as shall equal the average current cost of borrowed funds to the
10 Watermaster) from the due date thereof. Such delinquent assessment and interest may be
11 collected in a show-cause proceeding herein instituted by the Watermaster, in which case the
12 Court may allow Watermaster its reasonable costs of collection, including attorney's fees.
13

14
15 56. Accumulation of Replenishment Water Assessment Proceeds. In order to minimize
16 fluctuation in assessment and to give Watermaster flexibility in purchase and spreading of replenishment
17 water, Watermaster may make reasonable accumulations of replenishment water assessment proceeds.
18 Interest earned on such retained funds shall be added to the account of the pool from which the funds
19 were collected and shall be applied only to the purchase of replenishment water.

20 57. Effective Date. The effective date for accounting and operation under this Physical
21 Solution shall be July 1, 1977, and the first production assessments hereunder shall be due after July 1,
22 1978. Watermaster shall, however, require installation of meters or measuring devices and establish
23 operating procedures immediately, and the cost of such Watermaster activity (not including the cost of
24 such meters and measuring devices) may be recovered in the first administrative assessment in 1978.
25
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VII. MISCELLANEOUS PROVISIONS

1
2
3 58. Designation of Address for Notice and Service. Each party shall designate the name and
4 address to be used for purposes of all subsequent notices and service herein, either by its endorsement
5 on the Stipulation for Judgment or by a separate designation to be filed within thirty (30) days after
6 Judgment has been served. Said designation may be changed from time to time by filing a written notice
7 of such change with the Watermaster. Any party desiring to be relieved of receiving notices of
8 Watermaster or committee activity may file a waiver of notice on a form to be provided by Watermaster.
9 Thereafter such party shall be removed from the Active Party list. Watermaster shall maintain at all times
10 a current list of all active parties and their addresses for purposes of service. Watermaster shall also
11 maintain a full current list of names and addresses of all parties or their successors, as filed herein.
12 Copies of such lists shall be available, without cost, to any party, the Advisory Committee or any Pool
13 Committee upon written request therefor.

14 59. Service of Documents. Delivery to or service upon any party or active party by the
15 Watermaster, by any other party, or by the Court, of any item required to be served upon or delivered to
16 such party or active party under or pursuant to the Judgment shall be made personally or by deposit in
17 the United States mail, first class, postage prepaid, addressed to the designee and at the address in the
18 latest designation filed by such party or active party.

19
20 60. Intervention After Judgment. Any non-party assignee of the adjudicated appropriate
21 rights of any appropriator, or any other person newly proposing to produce water from Chino Basin, may
22 become a party to this Judgment upon filing a petition in intervention. Said intervention must be
23 confirmed by order of this Court. Such intervenor shall thereafter be a party bound by this judgment and
24 entitled to the rights and privileges accorded under the Physical Solution herein, through the pool to which
25 the Court shall assign such intervenor.
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61. Loss of Rights. Loss, whether by abandonment, forfeiture or otherwise, of any right herein adjudicated shall be accomplished only (1) by a written election by the owner of the right filed with Watermaster, or (2) by order of the Court upon noticed motion and after hearing.

62. Scope of Judgment. Nothing in this Judgment shall be deemed to preclude or limit any party in the assertion against a neighboring party of any cause of action now existing or hereafter arising based upon injury, damage or depletion of water supply available to such party, proximately caused by nearby pumping which constitutes an unreasonable interference with such complaining party's ability to extract ground water.

63. Judgment Binding on Successors. This Judgment and all provisions thereof are applicable to and binding upon not only the parties to this action, but also upon their respective heirs, executors, administrators, successors, assigns, lessees and licensees and upon the agents, employees and attorneys in fact of all such persons.

64. Costs. No party shall recover any costs in this proceeding from any other party.

Dated: January 1, 1978

Howard B. Weiner

Howard B. Weiner

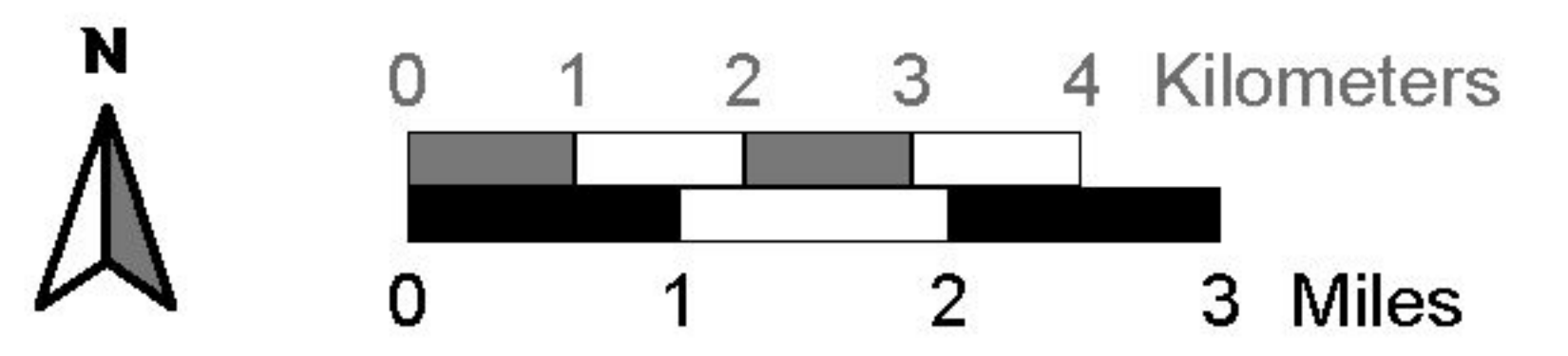
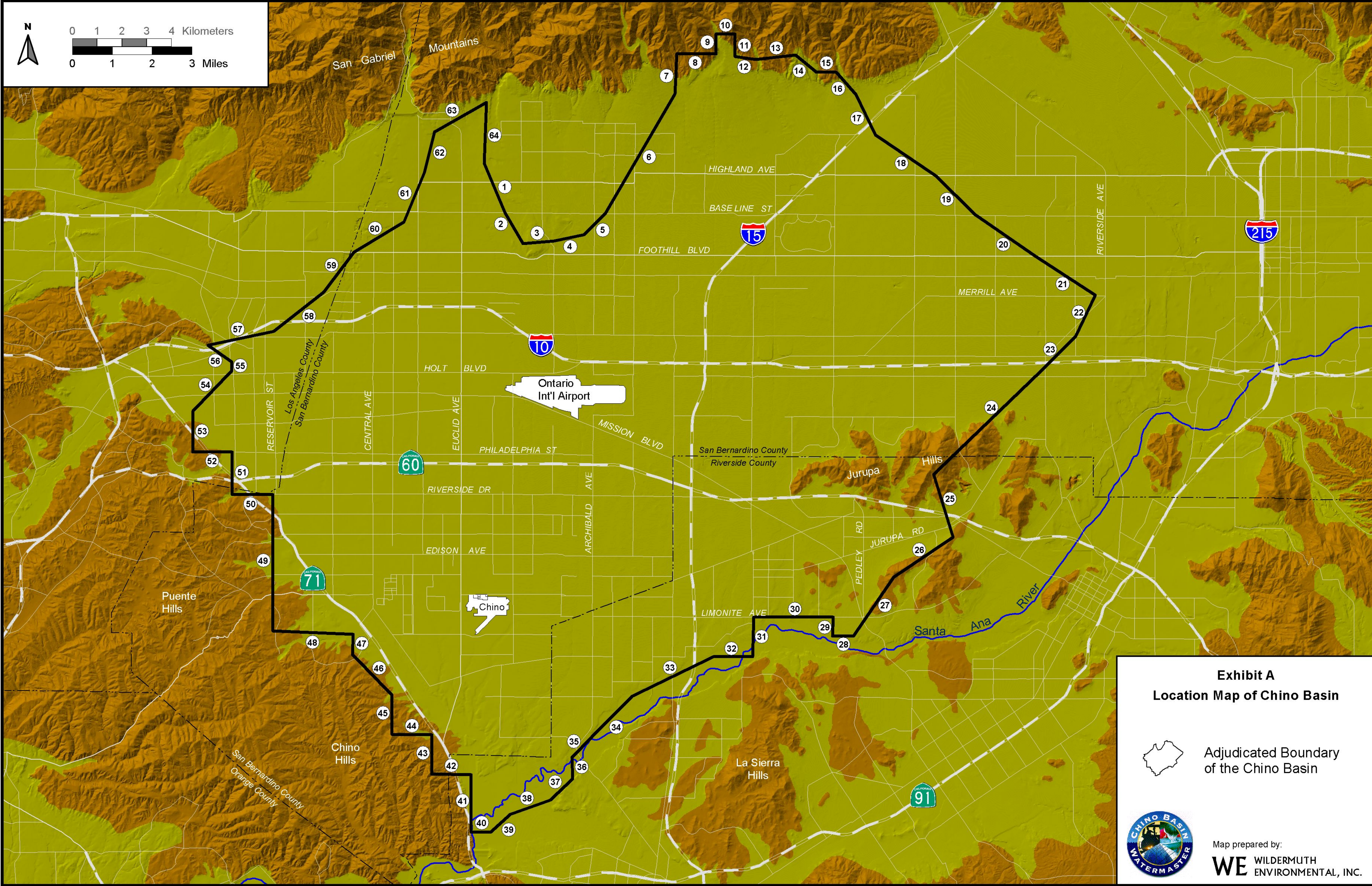


Exhibit A
Location Map of Chino Basin

 Adjudicated Boundary of the Chino Basin

 Map prepared by:
WE WILDERMUTH ENVIRONMENTAL, INC.

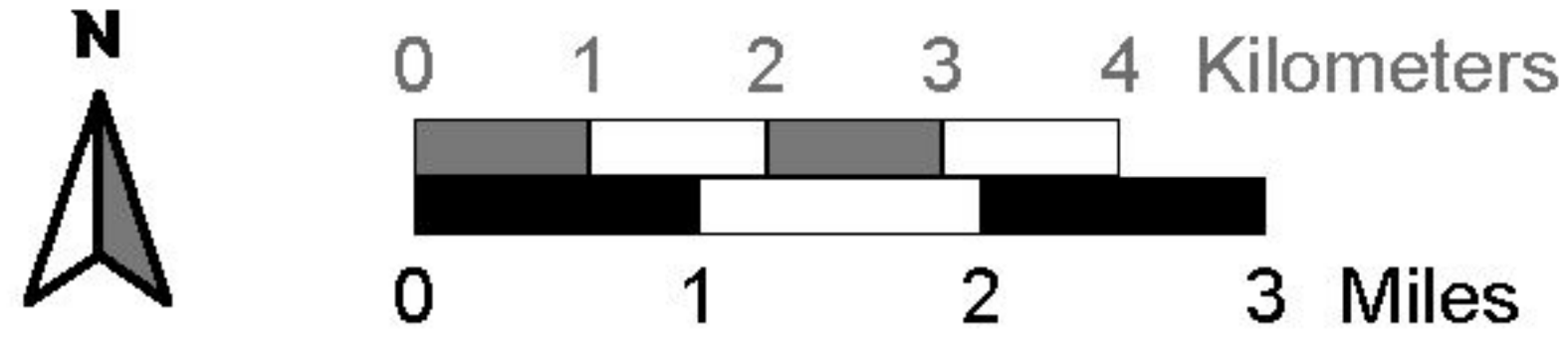


Exhibit B
Hydrologic Map of Chino Basin

- Fault**
 (Solid where known; dashed where approximate; dotted where concealed; queried where unknown; big dots where barrier to groundwater flow)
- Groundwater Divide**



Map prepared by:
WE WILDERMUTH ENVIRONMENTAL, INC.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	STATE OF CALIFORNIA	Aphessetche, Xavier
2	COUNTY OF SAN BERNARDINO	Arena Mutual Water Assn.
3	Abacherli, Dairy, Inc.	Armstrong Nurseries, Inc.
4	Abacherli, Frank	Arretche, Frank
5	Abacherli, Shirley	Arretche, Jean Pierre
6	Abbona, Anna	Arvidson, Clarence F.
7	Abbona, James	Arvidson, Florence
8	Abbona, Jim	Ashley, George W.
9	Abbona, Mary	Ashley, Pearl E.
10	Agliani, Amelia H.	Atlas Farms
11	Agman, Inc.	Atlas Ornamental Iron Works, Inc.
12	Aguerre, Louis B.	Aukeman, Carol
13	Ahmanson Trust Co.	Aukeman, Lewis
14	Akiyama, Shizuye	Ayers, Kenneth C., aka
15	Akiyama, Tomoo	Kelley Ayers
16	Akkerman, Dave	Bachoc, Raymond
17	Albers, J.N.	Baldwin, Edgar A.
18	Albers, Nellie	Baldwin, Lester
19	Alewyn, Jake J.	Banbury, Carolyn
20	Alewyn, Normalee	Bangma Dairy
21	Alger, Mary D.	Bangma, Arthur
22	Alger, Raymond	Bangma, Ida
23	Allen, Ben F.	Bangma, Martin
24	Allen, Jane F.	Bangma, Sam
25	Alta-Dena Dairy	Barba, Anthony B.
26	Anderson Farms	Barba, Frank
27	Anguiano, Sarah L.S.	Barcellos, Joseph
28	Anker, Gus	Barnhill, Maurine W.
	Barnhill, Paul	Boersma, Angie

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Bartel, Dale	Boersma, Berdina
2	Bartel, Ursula	Boersma, Frank
3	Bartel, Willard	Boersma, Harry
4	Barthelemy, Henry	Boersma, Paul
5	Barthelemy, Roland	Boersma, Sam
6	Bassler, Donald V., M.D.	Boersma, William L.
7	Bates, Lowell R.	Bohlander & Holmes, Inc.
8	Bates, Mildred L.	Bokma, Peter
9	Beahm, James W.	Bollema, Jacob
10	Beahm, Joan M.	Boonstoo, Edward
11	Bekendam, Hank	Bootsma, Jim
12	Bekendam, Pete	Borba, Dolene
13	Bello, Eugene	Borba, Dolores
14	Bello, Olga	Borba, Emily
15	Beltman, Evelyn	Borba, George
16	Beltman, Tony	Borba, John
17	Bergquist Properties, Inc.	Borba, John & Sons
18	Bevacqua, Joel A.	Borba, John Jr.
19	Bevacqua, Marie B.	Borba, Joseph A.
20	Bidart, Bernard	Borba, Karen E.
21	Bidart, Michael J.	Borba, Karen M.
22	Binnell, Wesley	Borba, Pete, Estate of
23	Black, Patricia E.	Borba, Ricci
24	Black, Victor	Borba, Steve
25	Bodger, John & Sons Co.	Borba, Tom
26	Boer, Adrian	Bordisso, Alleck
27	Boersma and Wind Dairy	Borges, Angelica M.
28	Borges, Bernadette	Bothof, Roger W.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Borges, John O.	Bouma, Cornie
2	Borges, Linda L.	Bouma, Emma
3	Borges, Manual Jr.	Bouma, Henry P.
4	Borges, Tony	Bouma, Martin
5	Bos, Aleid	Bouma, Peter G. & Sons Dairy
6	Bos, Gerrit	Bouma, Ted
7	Bos, John	Bouman, Helen
8	Bos, John	Bouman, Sam
9	Bos, Margaret	Bower, Mabel E.
10	Bos, Mary	Boys Republic
11	Bos, Mary Beth	Breedyk, Arie
12	Bos, Tony	Breedyk, Jessie
13	Bosch, Henrietta	Briano Brothers
14	Bosch, Peter T.	Briano, Albert
15	Boschma, Betty	Briano, Albert Trustee for
16	Boschma, Frank	Briano, Albert Frank
17	Boschma, Greta	Briano, Lena
18	Boschma, Henry	Brink, Russell N.
19	Bosma, Dick	Brinkerhoff, Margaret
20	Bosma, Florence G.	Brinkerhoff, Robert L.
21	Bosma, Gerrit	Britschgi, Florence
22	Bosma, Jacob J.	Britschgi, Magdalena Garetto
23	Bosma, Jeanette Thea	Britschgi, Walter P.
24	Bosman, Frank	Brommer, Marvin
25	Bosman, Nellie	Brookside Enterprizes, dba
26	Bosnyak, Goldie M.	Brookside Vineyard Co.
27	Bosnyak, Martin	Brothers Three Dairy
28	Brown, Eugene	Chino Corona Investment

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Brun, Martha M.	Chino Water Co.
2	Brun, Peter Robert	Christensen, Leslie
3	Buma, Duke	Christensen, Richard G.
4	Buma, Martha	Christian, Ada R.
5	Bunse, Nancy	Christian, Harold F.
6	Bunse, Ronnie L.	Christy, Ella J.
7	Caballero, Bonnie L.	Christy, Ronald S.
8	Caballero, Richard F.	Cihigoyenette, Jean
9	Cable Airport Inc.	Cihigoyenette, Leona
10	Cadlini, Donald	Cihigoyenette, Martin
11	Cadlini, Jesse R.	Clarke, Arthur B.
12	Cadlini, Marie Edna	Clarke, Nancy L.
13	Cambio, Anna	Clarke, Phyllis J.
14	Cambio, Charles, Estate of	Coelho, Isabel
15	Cambio, William V.	Coelho, Joe A. Jr.
16	Cardoza, Florence	Collins, Howard E.
17	Cardoza, Olivi	Collins, Judith F.
18	Cardoza, Tony	Collinsworth, Ester L.
19	Carnesi, Tom	Collinsworth, John E.
20	Carver, Robt M., Trustee	Collinsworth, Shelby
21	Cauffman, John R.	Cone Estate (05-2-00648/649)
22	Chacon Bros.	Consolidated Freightways Corp.
23	Chancon, Elvera P.	of Delaware
24	Chacon, Joe M.	Corona Farms Co.
25	Chacon, Robert M.	Corra, Rose
26	Chacon, Virginia L.	Costa, Dimas S.
27	Chez, Joseph C.	Costa, Laura
28	Costa, Myrtle	De Boer, L.H.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Costamagna, Antonio	De Boer, Sidney
2	Costamagna, Joseph	De Bos, Andrew
3	Cousyn, Claus B.	De Graaf, Anna Mae
4	Cramer, Carole F.	De Graaf, Gerrit
5	Cramer, William R.	De Groot, Dick
6	Crossroads Auto Dismantlers, Inc.	De Groot, Dorothy
7	Crouse, Beatrice I.	De Groot, Ernest
8	Crouse, Roger	De Groot, Henrietta
9	Crowley, Juanita C.	De Groot, Jake
10	Crowley, Ralph	De Groot, Pete Jr.
11	Cucamonga Vintners	De Haan, Bernadena
12	D'Astici, Teresa	De Haan, Henry
13	Da Costa, Cecilia B.	De Hoog, Adriana
14	Da Costa, Joaquim F.	De Hoog, Joe
15	Daloisio, Norman	De Hoog, Martin
16	De Berard Bros.	De Hoog, Martin L.
17	De Berard, Arthur, Trustee	De Hoog, Mitch
18	De Berard, Charles	De Hoog, Tryntje
19	De Berard, Chas., Trustee	De Jager, Cobi
20	De Berard, Helan J.	De Jager, Edward D.
21	De Berard, Robert	De Jong Brothers Dairy
22	De Berard, Robert Trustee	De Jong, Cornelis
23	De Bie, Adrian	De Jong, Cornelius
24	De Bie, Henry	De Jong, Grace
25	De Bie, Margaret M.	De Jong, Jake
26	De Bie, Marvin	De Jong, Lena
27	De Boer, Fred	De Leeuw, Alice
28	De Leeuw, Sam	Dirkse, Catherine

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	De Soete, Agnes	Dirkse, Charles C.
2	De Soete, Andre	Dixon, Charles E.
3	De Vries, Abraham	Dixon, Geraldine A.
4	De Vries, Case	Doesberg, Hendrica
5	De Vries, Dick	Doesburg, Theodorus, P.
6	De Vries, Evelyn	Dolan, Marion
7	De Vries, Henry, Estate of	Dolan, Michael H.
8	De Vries, Hermina	Dominguez, Helen
9	De Vries, Jack H.	Dominguez, Manual
10	De Vries, Jane	Donkers, Henry A.
11	De Vries, Janice	Donkers, Nellie G.
12	De Vries, John	Dotta Bros.
13	De Vries, John J.	Douma Brothers Dairy
14	De Vries, Neil	Douma, Betty A.
15	De Vries, Ruth	Douma, Fred A.
16	De Vries, Theresa	Douma, Hendrika
17	De Wit, Gladys	Douma, Herman G.
18	De Wit, Peter S.	Douma, Narleen J.
19	De Wyn, Evert	Douma, Phillip M.
20	De Zoete, Hattie V.	Dow Chemical Co.
21	Do Zoete, Leo A.	Dragt, Rheta
22	Decker, Hallie	Dragt, William
23	Decker, Henry A.	Driftwood Dairy Farm
24	Demmer, Ernest	Droogh, Case
25	Di Carlo, Marie	Duhalde, Marian
26	Di Carlo, Victor	Duhalde, Lauren
27	Di Tommaso, Frank	Duits, Henrietta
28	Duits, John	Excelsior Farms F.D.I.C.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Dunlap, Edna Kraemer,	Fagundes, Frank M.
2	Estate of	Fagundes, Mary
3	Durrington, Glen	Fernandes, Joseph Jr.
4	Durrington, William F.	Fernandes, Velma C.
5	Dusi, John Sr.	Ferraro, Ann
6	Dykstra, Dick	Ferreira, Frank J.
7	Dykstra, John	Ferreira, Joe C. Jr.
8	Dykstra, John & Sons	Ferreira, Narcie
9	Dykstra, Wilma	Fillippi, J. Vintage Co.
10	Dyt, Cor	Filippi, Joseph
11	Dyt, Johanna	Filippi, Joseph A.
12	E and S Grape Growers	Filippi, Mary E.
13	Eaton, Thomas, Estate of	Fitzgerald, John R.
14	Echeverria, Juan	Flameling Dairy Inc.
15	Echeverria, Carlos	Flamingo Dairy
16	Echeverria, Pablo	Foss, Douglas E.
17	Eilers, E. Myrle	Foss, Gerald R.
18	Eilers, Henry W.	Foss, Russel
19	El Prado Golf Course	Fred & John Troost No. 1 Inc.
20	Ellsworth, Rex C.	Fred & Maynard Troost No. 2 Inc.
21	Engelsma, Jake	Freitas, Beatriz
22	Engelsma, Susan	Freitas, Tony T.
23	Escojeda, Henry	Gakle, Louis L.
24	Etiwanda Grape Products Co.	Galleano Winery, Inc.
25	Euclid Ave. Investment One	Galleano, Bernard D.
26	Euclid Ave. Investment Four	Galleano, D.
27	Euclid Ave. Three Investment	Galleano, Mary M.
28	Garcia, Pete	Hansen, Raymond F.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Gardner, Leland V.	Hanson, Ardeth W.
2	Gardner, Lola M.	Harada, James T.
3	Garrett, Leonard E.	Harada, Violet A.
4	Garrett, Patricia T.	Haringa, Earl and Sons
5	Gastelluberry, Catherine	Haringa, Herman
6	Gastelluberry, Jean	Haringa, Rudy
7	Gilstrap, Glen E.	Haringa, William
8	Gilstrap, Marjorie J.	Harper, Cecilia de Mille
9	Godinho, John	Harrington, Winona
10	Godinho, June	Harrison, Jacqueline A.
11	Gonsalves, Evelyn	Hatanaka, Kenichi
12	Gonsalves, John	Heida, Annie
13	Gorzeman, Geraldine	Heida, Don
14	Gorzeman, Henry A.	Heida, Jim
15	Gorzeman, Joe	Heida, Sam
16	Govea, Julia	Helms, Addison D.
17	Goyenette, Albert	Helms, Irma A.
18	Grace, Caroline E.	Hermans, Alma I.
19	Grace, David J.	Hermans, Harry
20	Gravatt, Glenn W.	Hettinga, Arthur
21	Gravatt, Sally Mae	Hettinga, Ida
22	Greydanus Dairy, Inc.	Hettinga, Judy
23	Greydanus, Rena	Hettinga, Mary
24	Griffin Development Co.	Hettinga, Wilbur
25	Haagsma, Dave	Heublein, Inc., Grocery Products
26	Haagsma, John	Group
27	Hansen, Mary D.	Hibma, Catherine M.
28	Hibma, Sidney	Hohberg, Harold C.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Hicks, Kenneth I.	Hohberg, Harold W.
2	Hicks, Minnie M.	Holder, Arthur B.
3	Higgins Brick Co.	Holder, Dorothy F.
4	Highstreet, Alfred V.	Holmes, A. Lee
5	Highstreet, Evada V.	Holmes, Frances P.
6	Hilarides, Bertha as Trustee	Hoogeboom, Gertrude
7	Hilarides, Frank	Hoogeboom, Pete
8	Hilarides, John as Trustee	Hoogendam, John
9	Hindelang, Tillie	Hoogendam, Tena
10	Hindelang, William	Houssels, J. K. Thoroughbred
11	Hobbs, Bonnie C.	Farm
12	Hobbs, Charles W.	Hunt Industries
13	Hobbs, Hazel I.	Idsinga, Ann
14	Hobbs, Orlo M.	Idsinga, William W.
15	Hoekstra, Edward	Imbach Ranch, Inc.
16	Hoekstra, George	Imbach, Kenneth E.
17	Hoekstra, Grace	Imbach, Leonard K.
18	Hoekstra, Louie	Imbach, Oscar K.
19	Hofer, Paul B.	Imbach, Ruth M.
20	Hofer, Phillip F.	Indaburu, Jean
21	Hofstra, Marie	Indaburu, Marceline
22	Hogeboom, Jo Ann M.	Iseli, Kurt H.
23	Hogeboom, Maurice D.	Ito, Kow
24	Hogg, David V.	J & B Dairy Inc.
25	Hogg, Gene P.	Jaques, Johnny C. Jr.
26	Hogg, Warren G.	Jaques, Mary
27	Hohberg, Edith J.	Jaques, Mary Lou
28	Jay Em Bee Farms	Knevelbaard, John

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Johnson Bro's Egg Ranches, Inc.	Knudsen, Ejnar
2	Johnston, Ellwood W.	Knudsen, Karen M.
3	Johnston, George F. Co.	Knudsen, Kenneth
4	Johnston, Judith H.	Knudson, Robert
5	Jones, Leonard P.	Knudson, Darlene
6	Jongsma & Sons Dairy	Koel, Helen S.
7	Jongsma, Diana A.	Koetsier, Gerard
8	Jongsma, Dorothy	Koetsier, Gerrit J.
9	Jongsma, George	Koetsier, Jake
10	Jongsma, Harold	Koning, Fred W.
11	Jongsma, Henry	Koning, Gloria
12	Jongsma, John	Koning, J. W. Estate
13	Jongsma, Nadine	Koning, James A.
14	Jongsma, Tillie	Koning, Jane
15	Jordan, Marjorie G.	Koning, Jane C.
16	Jordan, Troy O.	Koning, Jennie
17	Jorritsma, Dorothy	Koning, John
18	Juliano, Albert	Koning, Victor A.
19	Kamper, Cornelis	Kooi Holstein Corporation
20	Kamstra, Wilbert	Koolhaas, Kenneth E.
21	Kaplan, Lawrence J.	Koolhaas, Simon
22	Kasbergen, Martha	Koolhaas, Sophie Grace
23	Kasbergen, Neil	Koopal, Grace
24	Kazian, Angelen Estate of	Koopal, Silas
25	Kingsway, Const. Corp.	Koopman, Eka
26	Klapps Market	Koopman, Gene T.
27	Kline, James K.	Koopman, Henry G.
28	Koopman, Ted	Leck, Arthur A.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Koopman, Tena	Leck, Evelyn M.
2	Koot, Nick	Lee, Harold E.
3	Koster, Aart	Lee, Helen J.
4	Koster, Frances	Lee, Henrietta C.
5	Koster, Henry B.	Lee, R. T. Construction Co.
6	Koster, Nellie	Lekkerkerk, Adriana
7	Kroes, Jake R.	Lekkerkerk, L. M.
8	Kroeze, Bros	Lekkerkerker, Nellie
9	Kroeze, Calvin E.	Lekkerkerker, Walt
10	Kroeze, John	Lewis Homes of California
11	Kroeze, Wesley	Livingston, Dorothy M.
12	Kruckenberg, Naomi	Livingston, Rex E.
13	Kruckenberg, Perry	Lokey, Rosemary Kraemer
14	L. D. S. Welfare Ranch	Lopes, Candida A.
15	Labrucherie, Mary Jane	Lopes, Antonio S.
16	Labrucherie, Raymond F.	Lopez, Joe D.
17	Lako, Samuel	Lourenco, Carlos, Jr.
18	Landman Corp.	Lourenco, Carmelina P.
19	Lanting, Broer	Lourenco, Jack C.
20	Lanting, Myer	Lourenco, Manual H.
21	Lass, Jack	Lourenco, Mary
22	Lass, Sandra L.	Lourenco, Mary
23	Lawrence, Cecelia, Estate of	Luiten, Jack
24	Lawrence, Joe H., Estate of	Luiz, John M.
25	Leal, Bradley W.	Luna, Christine I.
26	Leal, John C.	Luna, Ruben T.
27	Leal, John Craig	Lusk, John D. and Sons A California Corporation
28		
	Lyon, Gregory E.	Mickel, Louise

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Lyon, Paula E.	Miersma, Dorothy
2	M & W Co. #2	Meirsma, Harry C.
3	Madole, Betty M.	Minaberry, Arnaud
4	Madole, Larry B.	Minaberry, Marie
5	Marquez, Arthur	Mistretta, Frank J.
6	Marquine, Jean	Mocho and Plaa Inc.
7	Martin, Lelon O.	Mocho, Jean
8	Martin, Leon O.	Mocho, Noeline
9	Martin, Maria D.	Modica, Josephine
10	Martin, Tony J.	Montes, Elizabeth
11	Martins, Frank	Montes, Joe
12	Mathias, Antonio	Moons, Beatrice
13	Mc Cune, Robert M.	Moons, Jack
14	Mc Masters, Gertrude	Moramarco, John A. Enterprise
15	Mc Neill, J. A.	Moreno, Louis W.
16	Mc Neill, May F.	Moss, John R.
17	Mees, Leon	Motion Pictures Associates, Inc.
18	Mello and Silva Dairy	Moynier, Joe
19	Mello and Sousa Dairy	Murphy, Frances V.
20	Mello, Emilia	Murphy, Myrl L.
21	Mello, Enos C.	Murphy, Naomi
22	Mello, Mercedes	Nanne, Martin Estate of
23	Mendondo, Catherine	Nederend, Betty
24	Mendondo, Dominique	Nederend, Hans
25	Meth. Hosp. – Sacramento	Norfolk, James
26	Metzger, R. S.	Norfolk, Martha
27	Metzger, Winifred	Notrica, Louis
28	Nyberg, Lillian N.	Ormonde, Viva

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Nyenhuis, Annie	Ortega, Adeline B.
2	Nyenhuis, Jim	Ortega, Bernard Dino
3	Occidental Land Research	Osterkamp, Joseph S.
4	Okumura, Marion	Osterkamp, Margaret A.
5	Okumura, Yuiche	P I E Water Co.
6	Oldengarm, Effie	Palmer, Eva E.
7	Oldengarm, Egbert	Palmer, Walter E.
8	Oldengarm, Henry	Parente, Luis S.
9	Oliviera, Manuel L.	Parente, Mary Borba
10	Oliviera, Mary M.	Parks, Jack B.
11	Olson, Albert	Parks, Laura M.
12	Oltmans Construction Co.	Patterson, Lawrence E. Estate of
13	Omlin, Anton	Payne, Clyde H.
14	Omlin, Elsie L.	Payne, Margo
15	Ontario Christian School Assn.	Pearson, Athelia K.
16	Oord, John	Pearson, William C.
17	Oostdam, Jacoba	Pearson, William G.
18	Oostdam, Pete	Pene, Robert
19	Oosten, Agnes	Perian, Miller
20	Oosten, Anthonia	Perian, Ona E.
21	Oosten, Caroline	Petrissans, Deanna
22	Oosten, John	Petrissans, George
23	Oosten, Marinus	Petrissans, Jean P.
24	Oosten, Ralph	Petrissans, Marie T.
25	Orange County Water District	Pickering, Dora M.
26	Ormonde, Manuel	(Mrs. A. L. Pickering)
27	Ormonde, Pete, Jr.	Pierce, John
28	Pierce, Sadie	Righetti, A. T.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Pietszak, Sally	Riley, George A.
2	Pine, Joe	Riley, Helen C.
3	Pine, Virginia	Robbins, Jack K.
4	Pires, Frank	Rocha, John M.
5	Pires, Marie	Rocha, Jose C.
6	Plaa, Jeanne	Rodrigues, John
7	Plaa, Michel	Rodrigues, Manuel
8	Plantenga, Agnes	Rodrigues, Manuel, Jr.
9	Plantenga, George	Rodrigues, Mary L.
10	Poe, Arlo D.	Rodriguez, Daniel
11	Pomona Cemetery Assn.	Rogers, Jack D.
12	Porte, Cecelia, Estate of	Rohrer, John A.
13	Porte, Garritt, Estate of	Rohrer, Theresa D.
14	Portsmouth, Vera McCarty	Rohrs, Elizabeth H.
15	Ramella, Mary M.	Rossetti, M. S.
16	Ramirez, Concha	Roukema, Angeline
17	Rearick, Hildegard H.	Roukema, Ed.
18	Rearick, Richard R.	Roukema, Nancy
19	Reinalda, Clarence	Roukema, Siebren
20	Reitsma, Greta	Ruderian, Max J.
21	Reitsma, Louis	Russell, Fred J.
22	Rice, Bernice	Rusticus, Ann
23	Rice, Charlie E.	Rusticus, Charles
24	Richards, Karin	Rynsburger, Arie
25	(Mrs. Ronnie Richards)	Rynsburger, Berdena, Trust
26	Richards, Ronald L.	Rynsburger, Joan Adele
27	Ridder, Jennie Wassenaar	Rynsburger, Thomas
28	S. P. Annex, Inc.	Scott, Frances M.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Salisbury, Elinor J.	Scott, Linda F.
2	Sanchez, Edmundo	Scott, Stanley A.
3	Sanchez, Margarita O.	Scritsmier, Lester J.
4	Santana, Joe Sr.	Serl, Charles A.
5	Santana, Palmira	Serl, Rosalie P.
6	Satragni, John B. Jr.	Shady Grove Dairy, Inc.
7	Scaramella, George P.	Shamel, Burt A.
8	Schaafsma Bros.	Shelby, Harold E.
9	Schaafsma, Jennie	Shelby, John A.
10	Schaafsma, Peter	Shelby, Velma M.
11	Schaafsma, Tom	Shelton, Alice A.
12	Schaap, Andy	Sherwood, Robert W.
13	Schaap, Ids	Sherwood, Sheila J.
14	Schaap, Maria	Shue, Eva
15	Schacht, Sharon C.	Shue, Gilbert
16	Schakel, Audrey	Sieperda, Anne
17	Schakel, Fred	Sieperda, James
18	Schmid, Olga	Sigrist, Hans
19	Schmidt, Madeleine	Sigrist, Rita
20	Schoneveld, Evert	Silveira, Arline L.
21	Schoneveld, Henrietta	Silveira, Frank
22	Schoneveld, John	Silveira, Jack
23	Schoneveld, John Allen	Silveira, Jack P. Jr.
24	Schug, Donald E.	Simas, Dolores
25	Schug, Shirley A.	Simas, Joe
26	Schuh, Bernatta M.	Singleton, Dean
27	Schuh, Harold H.	Singleton, Elsie R.
28	Sinnott, Jim	Staal, John

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Sinnott, Mildred B.	Stahl, Zippora P.
2	Slegers, Dorothy	Stampfl, Berta
3	Slegers, Hubert J.	Stampfl, William
4	Slegers, Jake	Stanley, Robert E.
5	Slegers, Jim	Stark, Everett
6	Slegers, Lenwood M.	Stellingwerf, Andrew
7	Slegers, Martha	Stellingwerf, Henry
8	Slegers, Tesse J.	Stellingwerf, Jenette
9	Smith, Edward S.	Stellingwerf, Shana
10	Smith, Helen D.	Stellingwerf, Stan
11	Smith, James E.	Stelzer, Mike C.
12	Smith, Keith J.	Sterk, Henry
13	Smith, Lester W.	Stiefel, Winifred
14	Smith, Lois Maxine	Stiefel, Jack D.
15	Smith, Marjorie W.	Stigall, Richard L.
16	Soares, Eva	Stigall, Vita
17	Sogioka, Mitsuyoshi	Stockman's Inn
18	Sogioka, Yoshimato	Stouder, Charlotte A.
19	Sousa, Sam	Stouder, William C.
20	Southern Pacific Land Co.	Struikmans, Barbara
21	Southfield, Eddie	Struikmans, Gertie
22	Souza, Frank M.	Struikmans, Henry Jr.
23	Souza, Mary T.	Struikmans, Henry Sr.
24	Spickerman, Alberta	Struikmans, Nellie
25	Spickerman, Florence	Swager, Edward
26	Spickerman, Rudolph	Swager, Gerben
27	Spyksma, John	Swager, Johanna
28	Swager, Marion	Terpstra, Theodore G.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Swierstra, Donald	Teune, Tony
2	Swierstra, Fanny	Teunissen, Bernard
3	Sybrandy, Ida	Teunissen, Jane
4	Sybrandy, Simon	Thomas, Ethel M.
5	Sytsma, Albert	Thommen, Alice
6	Sytsma, Edith	Thommen, Fritz
7	Sytsma, Jennie	Tillema, Allie
8	Sytsma, Louie	Tillema, Harold
9	Te Velde, Agnes	Tillema, Klaas D.
10	Te Velde, Bay	Timmons, William R.
11	Te Velde, Bernard A.	Tollerup, Barbara
12	Te Velde, Bonnie	Tollerup, Harold
13	Te Velde, Bonnie G.	Trapani, Louis A.
14	Te Velde, George	Trimlett, Arlene R.
15	Te Velde, George, Jr.	Trimlett, George E.
16	Te Velde, Harm	Tristant, Pierre
17	Te Velde, Harriet	Tuinhout, Ale
18	Te Velde, Henry J.	Tuinhout, Harry
19	Te Velde, Jay	Tuinhout, Hilda
20	Te Velde, Johanna	Tuls, Elizabeth
21	Te Velde, John H.	Tuls, Jack S.
22	Te Velde, Ralph A.	Tuls, Jake
23	Te Velde, Zwaantina, Trustee	Union Oil Company of California
24	Ter Maaten, Case	United Dairyman's Co-op.
25	Ter Maaten, Cleone	Urquhart, James G.
26	Ter Maaten, Steve	Usle, Cathryn
27	Terpstra, Carol	Usle, Faustino
28	V & Y Properties	Van Hofwegen, Clara

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Vaile, Beryl M.	Van Hofwegen, Jessie
2	Valley Hay Co.	Van Klaveren, A.
3	Van Beek Dairy Inc.	Van Klaveren, Arie
4	Van Canneyt Dairy	Van Klaveren, Wilhelmina
5	Van Canneyt, Maurice	Van Klaveren, William
6	Van Canneyt, Wilmer	Van Leeuwen, Arie C.
7	Van Dam, Bas	Van Leeuwen, Arie C.
8	Van Dam, Isabelle	Van Leeuwen, Arlan
9	Van Dam, Nellie	Van Leeuwen, Clara G.
10	Van Den Berg, Gertrude	Van Leeuwen, Cornelia L.
11	Van Den Berg, Joyce	Van Leeuwen, Harriet
12	Van Den Berg, Marinus	Van Leeuwen, Jack
13	Van Den Berg, Marvin	Van Leeuwen, John
14	Van Der Linden, Ardith	Van Leeuwen, Letie
15	Van Der Linden, John	Van Leeuwen, Margie
16	Van Der Linden, Stanley	Van Leeuwen, Paul
17	Van Der Veen, Kenneth	Van Leeuwen, William A.
18	Van Diest, Anna T.	Van Ravenswaay, Donald
19	Van Diest, Cornelius	Van Ryn Dairy
20	Van Diest, Ernest	Van Ryn, Dick
21	Van Diest, Rena	Van Surksum, Anthonetta
22	Van Dyk, Bart	Van Surksum, John
23	Van Dyk, Jeanette	Van Veen, John
24	Van Foeken, Martha	Van Vliet, Effie
25	Van Foeken, William	Van Vliet, Hendrika
26	Van Hofwegen, Steve	Van Vliet, Hugo
27	Van Hofwegen, Adrian A.	Van Vliet, Klaas
28	Vande Witte, George	Vander Laan, Katie

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Vanden Berge, Gertie	Vander Laan, Martin Jr.
2	Vanden Berge, Gertie	Vander Laan, Tillie
3	Vanden Berge, Jack	Vander Leest, Anna
4	Vanden Berge, Jake	Vander Leest, Ann
5	Vanden Brink, Stanley	Vander Meer, Alice
6	Vander Dussen, Agnes	Vander Meer, Dick
7	Vander Dussen, Cor	Vander Poel, Hank
8	Vander Dussen, Cornelius	Vander Poel, Pete
9	Vander Dussen, Edward	Vander Pol, Irene
10	Vander Dussen, Geraldine Marie	Vander Pol, Margie
11	Vander Dussen, James	Vander Pol, Marines
12	Vander Dussen, John	Vander Pol, William P.
13	Vander Dussen, Nelvina	Vander Schaaf, Earl
14	Vander Dussen, Rene	Vander Schaaf, Elizabeth
15	Vander Dussen, Sybrand Jr.	Vander Schaaf, Henrietta
16	Vander Dussen, Sybrand Sr.	Vander Schaaf, John
17	Vander Dussen Trustees	Vander Schaaf, Ted
18	Vander Eyk, Case Jr.	Vander Stelt, Catherine
19	Vander Eyk, Case Sr.	Vander Stelt, Clarence
20	Vander Feer, Peter	Vander Tuig, Arlene
21	Vander Feer, Rieka	Vander Tuig, Sylvester
22	Vander Laan, Ann	Vander Veen, Joe A.
23	Vander Laan, Ben	Vandervlag, Robert
24	Vander Laan, Bill	Vander Zwan, Peter
25	Vander Laan, Corrie	Vanderford, Betty W.
26	Vander Laan, Henry	Vanderford, Claud R.
27	Vander Laan, James	Vanderham, Adrian
28	Vanderham, Cornelius	Vestal, J. Howard

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Vanderham, Cornelius P.	Visser, Gerrit
2	Vanderham, Cory	Visser, Grace
3	Vanderham, E. Jane	Visser, Henry
4	Vanderham, Marian	Visser, Jess
5	Vanderham, Martin	Visser, Louie
6	Vanderham, Pete C.	Visser, Neil
7	Vanderham, Wilma	Visser, Sam
8	Vasquez, Eleanor	Visser, Stanley
9	Veenendaal, Evert	Visser, Tony D.
10	Veenendaal, John H.	Visser, Walter G.
11	Veiga, Dominick, Sr.	Von Der Ahe, Fredric T.
12	Verbree, Jack	Von Euw, George
13	Verbree, Tillie	Von Euw, Majorie
14	Verger, Bert	Von Lusk, a limited partnership
15	Verger, Betty	Voortman, Anna Marie
16	Verhoeven, Leona	Voortman, Edward
17	Verhoeven, Martin	Voortman, Edwin J.
18	Verhoeven, Wesley	Voortman, Gertrude Dena
19	Vermeer, Dick	Wagner, Richard H.
20	Vermeer, Jantina	Walker, Carole R.
21	Vernola Ranch	Walker, Donald E.
22	Vernola, Anthonietta	Walker, Wallace W.
23	Vernola, Anthony	Wardle, Donald M.
24	Vernola, Frank	Warner, Dillon B.
25	Vernola, Mary Ann	Warner, Minnie
26	Vernola, Pat F.	Wassenaar, Peter W.
27	Vestal, Frances Lorraine	Waters, Michael
28	Weeda, Adriana	Wiersma, Jake

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Weeda, Daniel	Wiersma, Otto
2	Weeks, O. L.	Wiersma, Pete
3	Weeks, Verona E.	Winchell, Verne H., Trustee
4	Weidman, Maurice	Wind, Frank
5	Weidman, Virginia	Wind, Fred
6	Weiland, Adaline I.	Wind, Hilda
7	Weiland, Peter J.	Wind, Johanna
8	Wesselink, Jules	Woo, Frank
9	West, Katharine R.	Woo, Sem Gee
10	West, Russel	Wybenga, Clarence
11	West, Sharon Ann	Wybenga, Gus
12	Western Horse Property	Wybenga, Gus K.
13	Westra, Alice	Wybenga, Sylvia
14	Westra, Henry	Wynja, Andy
15	Westra, Hilda	Wynja, Iona F.
16	Westra, Jake J.	Yellis, Mildred
17	Weststeyn, Freida	Yellis, Thomas E.
18	Weststeyn, Pete	Ykema-Harmsen Dairy
19	Whitehurst, Louis G.	Ykema, Floris
20	Whitehurst, Pearl L.	Ykema, Harriet
21	Whitmore, David L.	Yokley, Betty Jo
22	Whitmore, Mary A.	Yokley, Darrell A.
23	Whitney, Adolph M.	Zak, Zan
24	Wiersema, Harm	Zivelonghi, George
25	Wiersema, Harry	Zivelonghi, Margaret
26	Wiersma, Ellen H.	Zwaagstra, Jake
27	Wiersma, Gladys J.	Zwaagstra, Jessie M.
28		Zwart, Case

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

NON-PRODUCER WATER DISTRICTS

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- Chino Basin Municipal Water District
- Chino Basin Water Conservation District
- Pomona Valley Municipal Water District
- Western Municipal Water District of Riverside County

DEFAULTING OVERLYING AGRICULTURAL PRODUCERS

- | | |
|-------------------|---------------------|
| Cheryl L. Bain | Roy W. Lantis |
| Warren Bain | Sharon I. Lantis |
| John M. Barcelona | Frank Lorenz |
| Letty Bassler | Dagney H. MacDonald |
| John Brazil | Frank E. Martin |
| John S. Briano | Ruth C. Martin |
| Lupe Briano | Connie S. Mello |
| Paul A. Briano | Naldiro J. Mello |
| Tillie Briano | Felice Miller |
| Arnie B. Carlson | Ted Miller |
| John Henry Fikse | Masao Nerio |
| Phyllis S. Fikse | Tom K. Nerio |
| Lewellyn Flory | Toyo Nerio |
| Mary I. Flory | Yuriko Nerio |
| L. H. Glazer | Harold L. Rees |
| Dorothy Goodman | Alden G. Rose |
| Sidney D. Goodman | Claude Rouleau, Jr. |
| Frank Grossi | Patricia M. Rouleau |
| Harada Brothers | Schultz Enterprises |
| Ellen Hettinga | Albert Shaw |

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Hein Hettinga	Lila Shaw
2	Dick Hofstra, Jr.	Cathy M. Stewart
3	Benjamin M. Hughey	Marvin C. Stewart
4	Frieda L. Hughey	Betty Ann Stone
5	Guillaume Indart	John B. Stone
6	Ellwood B. Johnston, Trustee	Vantoll Cattle Co., Inc.
7	Perry Kruckenberg, Jr.	Catherine Verburg
8	Martin Verburg	
9	Donna Vincent	
10	Larry Vincent	
11	Cliff Wolfe & Associates	
12	Ada M. Woll	
13	Zarubica Co.	

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EXHIBIT "D"

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OVERLYING NON-AGRICULTURAL RIGHTS

<u>Party</u>	<u>Total Overlying Non-Agricultural Rights (Acre-Feet)</u>	<u>Share of Safe Yield (Acre-Feet)</u>
Ameron Steel Producers, Inc.	125	97.858
County of San Bernardino (Airport)	171	133.870
Conrock Company	406	317.844
Kaiser Steel Corporation	3,743	2,930.274
Red Star Fertilizer	20	15.657
Southern California Edison Co.	1,255	982.499
Space Center, Mira Loma	133	104.121
Southern Service Co. dba Blue Seal Linen	24	18.789
Sunkist Growers, Inc.	2,393	1,873.402
Carlsberg Mobile Home Properties, Ltd '73	593	464.240
Union Carbide Corporation	546	427.446
Quaker Chemical Co.	<u>0</u>	<u>0.000</u>
Totals	9,409	7,366.000

EXHIBIT "E"

APPROPRIATIVE RIGHTS

<u>Party</u>	<u>Appropriative Right (Acre Feet)</u>	<u>Share of Initial Operating Safe Yield (Acre-Feet)</u>	<u>Share of Operating Safe Yield (Percent)</u>
City of Chino	5,271.7	3,670.067	6.693
City of Norco	289.5	201.545	0.368
City of Ontario	16,337.4	11,373.816	20.742
City of Pomona	16,110.5	11,215.852	20.454
City of Upland	4,097.2	2,852.401	5.202
Cucamonga County Water District	4,431.0	3,084.786	5.626
Jurupa Community Services District	1,104.1	768.655	1.402
Monte Vista County Water District	5,958.7	4,148.344	7.565
West San Bernardino County Water District	925.5	644.317	1.175
Etiwanda Water Company	768.0	534.668	0.975
Feldspar Gardens Mutual Water Company	68.3	47.549	0.087
Fontana Union Water Company	9,188.3	6,396.736	11.666
Marygold Mutual Water Company	941.3	655.317	1.195
Mira Loma Water Company	1,116.0	776.940	1.417
Monte Vista Irrigation Company	972.1	676.759	1.234
Mutual Water Company of Glen Avon Heights	672.2	467.974	0.853
Park Water Company	236.1	164.369	0.300
Pomona Valley Water Company	3,106.3	2,162.553	3.944
San Antonio Water Company	2,164.5	1,506.888	2.748
Santa Ana River Water Company	1,869.3	1,301.374	2.373
Southern California Water Company	1,774.5	1,235.376	2.253
West End Consolidated Water Company	<u>1,361.3</u>	<u>947.714</u>	<u>1.728</u>
TOTAL	78,763.8	55,834.000	100.000

EXHIBIT "F"

OVERLYING (AGRICULTURAL) POOL

POOLING PLAN

1. Membership in Pool. The State of California and all producers listed in Exhibit "C" shall be the initial members of this pool, which shall include all producers of water for overlying uses other than industrial or commercial purposes.

2. Pool Meetings. The members of the pool shall meet annually, in person or by proxy, at a place and time to be designated by Watermaster for purposes of electing members of the Pool Committee and conducting any other business of the pool. Special meetings of the membership of the pool may be called and held as provided in the rules of the pool.

3. Voting. All voting at meetings of pool members shall be on the basis of one vote for each 100 acre feet or any portion thereof of production from Chino Basin during the preceding year, as shown by the records of Watermaster.

4. Pool Committee. The Pool Committee for this pool shall consist of not less than nine (9) representatives selected at large by members of the pool. The exact number of members of the Pool Committee in any year shall be as determined by majority vote of the voting power of members of the pool in attendance at the annual pool meeting. Each member of the Pool Committee shall have one vote and shall serve for a two-year term. The members first elected shall classify themselves by lot so that approximately one-half serve an initial one-year term. Vacancies during any term shall be filled by a majority of the remaining members of the Pool Committee.

5. Advisory Committee Representatives. The number of representatives of the Pool Committee on the Advisory Committee shall be as provided in the rules of the pool from time to time but not exceeding ten (10). The voting power of the pool on the Advisory Committee shall be apportioned and exercised as determined from time to time by the Pool Committee.

6. Replenishment Obligation. The pool shall provide funds for replenishment of any production by persons other than members of the Overlying Non-Agricultural Pool or Appropriator Pool,

in excess of the pool's share of Safe Yield. During the first five (5) years of operations of the Physical Solution, reasonable efforts shall be made by the Pool Committee to equalize annual assessments.

7. Assessments. All assessments in this pool (whether for replenishment water cost or for pool administration or the allocated share of Watermaster administration) shall be in an amount uniformly applicable to all production in the pool during the preceding year or calendar quarter. Provided, however, that the Agricultural Pool Committee, may recommend to the Court modification of the method of assessing pool members, inter se, if the same is necessary to attain legitimate basin management objectives, including water conservation and avoidance of undesirable socio-economic consequences. Any such modification shall be initiated and ratified by one of the following methods:

(a) Excess Production. - In the event total pool production exceeds 100,000 acre feet in any year, the Pool Committee shall call and hold a meeting, after notice to all pool members, to consider remedial modification of the assessment formula.

(b) Producer Petition. - At any time after the fifth full year of operation under the Physical Solution, a petition by ten percent (10%) of the voting power or membership of the Pool shall compel the holding of a noticed meeting to consider revision of said formula of assessment for replenishment water.

In either event, a majority action of the voting power in attendance at such pool members' meeting shall be binding on the Pool Committee.

8. Rules. - The Pool Committee shall adopt rules for conducting meetings and affairs of the committee and for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

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EXHIBIT "G"

OVERLYING (NON-AGRICULTURAL) POOL

POOLING PLAN

1. Membership in Pool. The initial members of the pool, together with the decreed share of the Safe Yield of each, are listed in Exhibit "D". Said pool includes producers of water for overlying industrial or commercial non-agricultural purposes, or such producers within the Pool who may hereafter take water pursuant to Paragraph 8 hereof.

2. Pool Committee. The Pool Committee for this pool shall consist of one representative designated by each member of the pool. Voting on the committee shall be on the basis of one vote for each member, unless a volume vote is demanded, in which case votes shall be allocated as follows:

The volume voting power on the Pool Committee shall be 1,484 votes. Of these, 742 votes shall be allocated on the basis of one vote for each ten (10) acre feet or fraction thereof of decreed shares in Safe Yield. (See Exhibit "D"). The remaining 742 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year.⁸

Affirmative action of the Committee shall require a majority of the voting power of the members in attendance, provided that it includes concurrence by at least one-third of its total members.⁹

3. Advisory Committee Representatives. At least three (3) members of the Pool Committee shall be designated by said committee to serve on the Advisory Committee. The exact number of such representatives at any time shall be as determined by the Pool Committee. The voting power of the pool shall be exercised in the Advisory Committee as a unit, based upon the vote of a majority of said representatives.

⁸ Or production assessments paid under Water Code Section 72140 et seq., as to years prior to the second year of operation under the Physical Solution hereunder.

⁹ Order dated October 8, 2010.

4. Replenishment Obligation. The pool shall provide funds for replenishment of any production in excess of the pool's share of Safe Yield in the preceding year.

5. Assessments.¹⁰

(a) Replenishment Assessments. Each member of this pool shall pay an assessment equal to the cost of replenishment water times the number of acre feet of production by such producer during the preceding year in excess of (a) his decreed share of the Safe Yield, plus (b) any carry-over credit under Paragraph 7 hereof.

(b) Administrative Assessments. In addition, the cost of the allocated share of Watermaster administration expense shall be recovered on an equal assessment against each acre foot of production in the pool during such preceding fiscal year or calendar quarter; and in the case of Pool members who take substitute ground water as set forth in Paragraph 8 hereof, such producer shall be liable for its share of administration assessment, as if the water so taken were produced, up to the limit of its decreed share of Safe Yield.

(c) Special Project OBMP Assessment. Each year, every member of this Pool will dedicate ten (10) percent of their annual share of Operating Safe Yield to Watermaster or in lieu thereof Watermaster will levy a Special Project OBMP Assessment in an amount equal to ten percent of the Pool member's respective share of Safe Yield times the then-prevailing MWD Replenishment Rate.

6. Assignment. Rights herein decreed are appurtenant to *that* land and are only assignable with the land for overlying use thereon; provided, however, (a) that any appropriator who may, directly or indirectly, undertake to provide water service to such overlying lands may, by an appropriate agency agreement on a form approved by Watermaster, exercise said overlying right to the extent, but only to the extent necessary to provide water service to said overlying lands, and (b) *the members of the pool shall have the right to Transfer or lease their quantified production rights within the pool or to*

¹⁰ Order dated December 21, 2007.

Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000 for the term of the Peace Agreement.¹¹

7. Carry-over. Any member of the pool who produces less than its assigned water share of Safe Yield may carry such unexercised right forward for exercise in subsequent years. The first water produced during any such subsequent year shall be deemed to be an exercise of such carry-over right. In the event the aggregate carry-over by any pool member exceeds its share of Safe Yield, such member shall, as a condition of preserving such surplus carryover, execute a storage agreement with Watermaster.

8. Substitute Supplies. To the extent that any Pool member, at the request of Watermaster and with the consent of the Advisory Committee, takes substitute surface water in lieu of producing ground water otherwise subject to production as an allocated share of Safe Yield, said party shall nonetheless remain a member of this Pool.

9. Physical Solution Transfers. **All overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart therefrom except that for the term of the Peace Agreement the members of the Overlying (Non-Agricultural) Pool shall have the discretionary right to Transfer or lease their quantified Production rights and carry-over water held in storage accounts in quantities that each member may from time to time individually determine as Transfers in furtherance of the Physical Solution: (i) within the Overlying (Non-Agricultural) Pool; (ii) to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000; (iii) in conformance with the procedures described in Paragraph I of the Purchase and Sale Agreement for the Purchase of Water by Watermaster from Overlying (Non-Agricultural Pool dated June 30, 2007; or (iv) to Watermaster and thence to members of the Appropriative Pool in accordance with the following guidelines and those procedures Watermaster may further provide in Watermaster's Rules and Regulations:**

¹¹ Order dated September 28, 2000 and Order dated April 19, 2001.

(a) By December 31 of each year, the members of the Overlying (Non-Agricultural) Pool shall notify Watermaster of the amount of water each member shall make available in their individual discretion for purchase by the Appropriators. By January 31 of each year, Watermaster shall provide a Notice of Availability of each Appropriator's pro-rata share of such water;

(b) Except as they may be limited by paragraph 9(e) below, each member of the Appropriative Pool will have, in their discretion, a right to purchase its pro-rata share of the supply made available from the Overlying (Non-Agricultural) Pool at the price established in 9(d) below. Each Appropriative Pool member's pro-rata share of the available supply will be based on each Producer's combined total share of Operating Safe Yield and the previous year's actual Production by each party;

(c) If any member of the Appropriative Pool fails to irrevocably commit to their allocated share by March 1 of each year, its share of the Overlying (Non-Agricultural) Pool water will be made available to all other members of the Appropriative Pool according to the same proportions as described in 9(b) above and at the price established in Paragraph 9(d) below. Each member of the Appropriative Pool shall complete its payment for its share of water made available by June 30 of each year.

(d) Commensurate with the cumulative commitments by members of the Appropriative Pool pursuant to (b) and (c) above, Watermaster will purchase the surplus water made available by the Overlying (Non-Agricultural) Pool water on behalf of the members of the Appropriative Pool on an annual basis at 92% of the then-prevailing "MWD Replenishment Rate" and each member of the Appropriative Pool shall complete its payment for its determined share of water made available by June 30 of each year.

(e) Any surplus water cumulatively made available by all members of the Overlying (Non-Agricultural) Pool that is not purchased by Watermaster after completion of the process set forth herein will be pro-rated among the members of the Pool in proportion to the total quantity offered for transfer in accordance with this provision and may be retained by the

Overlying (Non-Agricultural) Pool member without prejudice to the rights of the members of the Pool to make further beneficial use or transfer of the available surplus.

(f) Each Appropriator shall only be eligible to purchase their pro-rata share under this procedure if the party is: (i) current on all their assessments; and (ii) in compliance with the OBMP.

(g) The right of any member of the Overlying (Non-Agricultural) Pool to transfer water in accordance with this Paragraph 9(a)-(c) in any year is dependent upon Watermaster making a finding that the member of the Overlying (Non-Agricultural) Pool is using recycled water where it is both physically available and appropriate for the designated end use in lieu of pumping groundwater.

(h) Nothing herein shall be construed to affect or limit the rights of any Party to offer or accept an assignment as authorized by the Judgment Exhibit "G" paragraph 6 above, or to affect the rights of any Party under a valid assignment.

910. Rules. The Pool Committee shall adopt rules for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

EXHIBIT "H"
APPROPRIATIVE POOL
POOLING PLAN

1. Qualification for Pool. Any city, district or other public entity and public utility -- either regulated under Public Utilities Commission jurisdiction, or exempt therefrom as a non-profit mutual water company (other than those assigned to the Overlying (Agricultural) Pool) -- shall be a member of this pool. All initial members of the pool are listed in Exhibit "E", together with their respective appropriative rights and acre foot allocation and percentage shares of the initial and subsequent Operating Safe Yield.

2. Pool Committee. The Pool Committee shall consist of one (1) representative appointed by each member of the Pool.

3. Voting. The total voting power on the Pool Committee shall be 1,000 votes. Of these, 500 votes shall be allocated in proportion to decreed percentage shares in Operating Safe Yield. The remaining 500 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year. Routine business of the Pool Committee may be conducted on the basis of one vote per member, but upon demand of any member a weighted vote shall be taken. Affirmative action of the Committee shall require a majority of the voting power of members in attendance, provided that it includes concurrence by at least one-third of its total members.

4. Advisory Committee Representatives. **Members of the Pool Committee shall be designated to represent this pool on the Advisory Committee *on the following basis: Each major appropriator, i.e., the owner of an adjudicated appropriative right in excess of 3,000 acre feet, or each appropriator that produces in excess of 3,000 acre feet based upon the prior year's production, shall be entitled to one representative. Two additional representatives of the Appropriative Pool on the Advisory Committee shall be elected at large by the remaining members of the pool. The voting power of the Appropriative Pool on the Advisory Committee shall be apportioned between the major appropriator representatives in proportion to their respective voting power in the Pool Committee. The two representatives of the remaining appropriators shall exercise equally the voting power proportional to the Pool Committee voting power of said***

remaining appropriators; provided, however, that if any representative fails to attend an Advisory Committee meeting, the voting power of that representative shall be allocated among the representatives of the Appropriative Pool in attendance in the same proportion as their respective voting powers.¹²

5. Replenishment Obligation. The pool shall provide funds for purchase of replenishment water to replace any production by the pool in excess of Operating Safe Yield during the preceding year.

6. Administrative Assessment. Costs of administration of this pool and its share of general Watermaster expense shall be recovered by a uniform assessment applicable to all production during the preceding year.

7. Replenishment Assessment. The cost of replenishment water required to replace production from Chino Basin in excess of Operating Safe Yield in the preceding year shall be allocated and recovered as follows:

(a) For production, other than for increased export,

within CBMWD or WMWD:

(1) Gross Assessment. 15% of such replenishment water costs shall be recovered by a uniform assessment against all production of each appropriator producing in said area during the preceding year.

(2) Net Assessment. The remaining 85% of said costs shall be recovered by a uniform assessment on each acre foot of production from said area by each such appropriator in excess of his allocated share of Operating Safe Yield during said preceding year.

(b) For production which is exported for use outside Chino Basin in excess of maximum export in any year through 1976, such increased export production shall be assessed against the exporting appropriator in an amount sufficient to purchase replenishment water from CBMWD or WMWD in the amount of such excess.

¹² Order dated September 18, 1996.

(c) For production within SBVMWD or PVMWD:

By an assessment on all production in excess of an appropriator's share of Operating Safe Yield in an amount sufficient to purchase replenishment water through SBVMWD or MWD in the amount of such excess.

8. Socio-Economic Impact Review. The parties have conducted certain preliminary socio-economic impact studies. Further and more detailed socio-economic impact studies of the assessment formula and its possible modification shall be undertaken for the Appropriator Pool by Watermaster no later than ten (10) years from the effective date of this Physical Solution, or whenever total production by this pool has increased by 30% or more over the decreed appropriative rights, whichever is first.

9. Facilities Equity Assessment. Watermaster may, upon recommendation of the Pool Committee, institute proceedings for levy and collection of a Facilities Equity Assessment for the purposes and in accordance with the procedures which follow:

(a) Implementing Circumstances. - There exist several sources of supplemental water available to Chino Basin, each of which has a differential cost and quantity available. The optimum management of the entire Chino Basin water resource favors the maximum use of the lowest cost supplemental water to balance the supplies of the Basin, in accordance with the Physical Solution. The varying sources of supplemental water include importations from MWD and SBVMWD, importation of surface and ground water supplies from other basins in the immediate vicinity of Chino Basin, and utilization of reclaimed water. In order to fully utilize any of such alternate sources of supply, it will be essential for particular appropriators having access to one or more of such supplies to have invested, or in the future to invest, directly or indirectly, substantial funds in facilities to obtain and deliver such water to an appropriate point of use. To the extent that the use of less expensive alternative sources of supplemental water can be maximized by the inducement of a Facilities Equity Assessment, as herein provided, it is to the long-term benefit of the entire basin that such assessment be authorized and levied by Watermaster.

(b) Study and Report. - At the request of the Pool Committee, Watermaster shall undertake a survey study of the utilization of alternate supplemental supplies by

members of the Appropriative Pool which would not otherwise be utilized and shall prepare a report setting forth the amount of such alternative supplies being currently utilized, the amount of such supplies which could be generated by activity within the pool, and the level of cost required to increase such uses and to optimize the total supplies available to the basin. Said report shall contain an analysis and recommendation for the levy of a necessary Facilities Equity Assessment to accomplish said purpose.

(c) Hearing. - If the said report by Watermaster contains a recommendation for imposition of a Facilities Equity Assessment, and the Pool Committee so requests, Watermaster shall notice and hold a hearing not less than 60 days after distribution of a copy of said report to each member of the pool, together with a notice of the hearing date. At such hearing, evidence shall be taken with regard to the necessity and propriety of the levy of a Facilities Equity Assessment and full findings and decision shall be issued by Watermaster.

(d) Operation of Assessment. - If Watermaster determines that it is appropriate that a Facilities Equity Assessment be levied in a particular year, the amount of additional supplemental supplies which should be generated by such assessment shall be estimated. The cost of obtaining such supplies, taking into consideration the investment in necessary facilities shall then be determined and spread equitably among the producers within the pool in a manner so that those producers not providing such additional lower cost supplemental water, and to whom a financial benefit will result, may bear a proportionate share of said costs, not exceeding said benefit; provided that any producer furnishing such supplemental water shall not thereby have its average cost of water in such year reduced below such producer's average cost of pumping from the Basin. In so doing, Watermaster shall establish a percentage of the total production by each party which may be produced without imposition of a Facilities Equity Assessment. Any member of the pool producing more water than said percentage shall pay such Facilities Equity Assessment on any such excess production. Watermaster is authorized to transmit and pay the proceeds of such Facilities Equity Assessment to those producers who take less than their share of Basin water by reason of furnishing a higher percentage of their requirements through use of supplemental water.

10. Unallocated Safe Yield Water. To the extent that, in any five years, any portion of the share of Safe Yield allocated to the Overlying (Agricultural) Pool is not produced, such water shall be available for reallocation to members of the Appropriative Pool, as follows:

(a) Priorities. - Such allocation shall be made in the following sequence:

(1) to supplement, in the particular year, water available from Operating Safe Yield to compensate for any reduction in the Safe Yield by reason of recalculation thereof after the tenth year of operation hereunder.

(2) pursuant to conversion claims as defined in Subparagraph (b) hereof.

(3) as a supplement to Operating Safe Yield, without regard to reductions in Safe Yield.

(b) Conversion Claims.¹³ The following procedures may be utilized by any appropriator:

1) **Record of Unconverted Agricultural Acreage. Watermaster shall maintain on an ongoing basis a record with appropriate related maps of all agricultural acreage within the Chino Basin subject to being converted to appropriative water use pursuant to the provisions of this subparagraph. An initial identification of such acreage as of June 30, 1995 is attached hereto as Appendix 1.**

(2) **Record of Water Service Conversion. Any appropriator who undertakes to permanently provide water service to lands *subject to conversion* may report such intent to change water service to Watermaster. Watermaster *should* thereupon verify such change in water service and shall maintain a record and account for each appropriator of the total acreage involved. *Should, at any time, converted acreage return to water service from the Overlying (Agricultural) Pool, Watermaster shall return such acreage to unconverted status***

¹³ Order dated November 17, 1995.

and correspondingly reduce or eliminate any allocation accorded to the appropriator involved.

(3) Allocation of Safe Yield Rights

(i) For the term of the Peace Agreement in any year in which sufficient unallocated Safe Yield from the Overlying (Agricultural) Pool is available for such conversion claims, Watermaster shall allocate to each appropriator with a conversion claim 2.0 acre feet of unallocated Safe Yield water for each converted acre for which conversion has been approved and recorded by the Watermaster.¹⁴

(ii) In any year in which the unallocated Safe Yield water from the Overlying (Agricultural) Pool is not sufficient to satisfy all outstanding conversion claims pursuant to subparagraph (i) herein above, Watermaster shall establish allocation percentages for each appropriator with conversion claims. The percentages shall be based upon the ratio of the total of such converted acreage approved and recorded for each appropriators's account in comparison to the total of converted acreage approved and recorded for all appropriators. Watermaster shall apply such allocation percentage for each appropriator to the total unallocated Safe Yield water available for conversion claims to derive the amount allocable to each appropriator.

(4) Notice and Allocation. Notice of the special allocation of Safe Yield water pursuant to conversion claims shall be given to each appropriator and shall be treated for purposes of this Physical Solution as an addition to such appropriator's share of the Operating Safe Yield for the particular year only.

¹⁴ Order dated September 28, 2000 and Order dated April 19, 2001.

(5) Administrative Costs. Any costs of Watermaster attributable to the administration of such special allocations and conversion claims shall be assessed against the appropriators participating in such reporting, apportioned in accordance with the total amount of converted acreage held by each appropriator participating in the conversion program.

11. In Lieu Procedures. There are, or may develop, certain areas within Chino Basin where good management practices dictate that recharge of the basin be accomplished, to the extent practical, by taking surface supplies of supplemental water in lieu of ground water otherwise subject to production as an allocated share of Operating Safe Yield.

(a) Method of Operation. - An appropriator producing water within such designated in lieu area who is willing to abstain for any reason from producing any portion of such producer's share of Operating Safe Yield in any year may offer such unpumped water to Watermaster. In such event, Watermaster shall purchase said water in place, in lieu of spreading replenishment water, which is otherwise required to make up for over production. The purchase price for in lieu water shall be the lesser of:

- (1) Watermaster's current cost of replenishment water, whether or not replenishment water is currently then obtainable, plus the cost of spreading; or
- (2) The cost of supplemental surface supplies to the appropriator, less
 - a. said appropriator's average cost of ground water production, and
 - b. the applicable production assessment were the water produced.

Where supplemental surface supplies consist of MWD or SBVMWD supplies, the cost of treated, filtered State water from such source shall be deemed the cost of supplemental surface supplies to the appropriator for purposes of such calculation.

In any given year in which payments may be made pursuant to a Facilities Equity Assessment, as to any given quantity of water the party will be entitled to payment under this section or pursuant to the Facilities Equity Assessment, as the party elects, but not under both.

(b) Designation of In Lieu Areas. - The first in lieu area is designated as the "In Lieu Area No. 1" and consists of an area wherein nitrate levels in the ground water generally exceed 45 mg/l, and is shown on Exhibit "J" hereto. Other in lieu areas may be designated by subsequent order of Watermaster upon recommendation or approval by Advisory Committee. Said in lieu areas may be enlarged, reduced or eliminated by subsequent orders; provided, however, that designation of In Lieu Areas shall be for a minimum fixed term sufficient to justify necessary capital investment. In Lieu Area No. 1 may be enlarged, reduced or eliminated in the same manner, except that any reduction of its original size or elimination thereof shall require the prior order of Court.

12. Carry-over. Any appropriator who produces less than his assigned share of Operating Safe Yield may carry such unexercised right forward for exercise in subsequent years. The first water produced during any such subsequent year shall be deemed to be an exercise of such carry-over right. In the event the aggregate carry-over by any appropriator exceeds its share of Operating Safe Yield, such appropriator shall, as a condition of preserving such surplus carry-over, execute a storage agreement with Watermaster. Such appropriator shall have the option to pay the gross assessment applicable to such carry-over in the year in which it accrued.

13. Assignment, Transfer and Lease. Appropriative rights, and corresponding shares of Operating Safe Yield, may be assigned or may be leased or licensed to another appropriator for exercise in a given year. Any transfer, lease or license shall be ineffective until written notice thereof is furnished to and approved as to form by Watermaster, in compliance with applicable Watermaster rules. Watermaster shall not approve transfer, lease or license of a right for exercise in an area or under conditions where such production would be contrary to sound basin management or detrimental to the rights or operations of other producers.

14. Rules. The Pool Committee shall adopt rules for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

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EXHIBIT "I"

ENGINEERING APPENDIX

1. Basin Management Parameters. In the process of implementing the physical solution for Chino Basin, Watermaster shall consider the following parameters:

(a) Pumping Patterns. - Chino Basin is a common supply for all persons and agencies utilizing its waters. It is an objective in management of the Basin's waters that no producer be deprived of access to said waters by reason of unreasonable pumping patterns, nor by regional or localized recharge of replenishment water, insofar as such result may be practically avoided.

(b) Water Quality. - Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster.

(c) Economic Considerations. - Financial feasibility, economic impact and the cost and optimum utilization of the Basin's resources and the physical facilities of the parties are objectives and concerns equal in importance to water quantity and quality parameters.

2. Hydraulic Control and Re-Operation. In accordance with the purpose and objective of the Physical Solution to "establish a legal and practical means for making the maximum reasonable beneficial use of the waters of the Chino Basin" (paragraph 39) including but not limited to the use and recapture of reclaimed water (paragraph 49(a)) and the identified Basin Management Parameters set forth above, Watermaster will manage the Basin to secure and maintain Hydraulic Control through controlled overdraft.

(a) **Hydraulic Control.** "Hydraulic Control" means the reduction of groundwater discharge from the Chino North Management Zone to the Santa Ana River to de minimus quantities. The Chino North Management Zone is more fully described and set forth in Attachment I-1 to this Engineering Appendix. By obtaining Hydraulic Control, Watermaster will ensure that the water management activities in the Chino North Management Zone do not cause

materially adverse impacts to the beneficial uses of the Santa Ana River downstream of Prado Dam.

(b) **Re-Operation.** “Re-Operation” means the controlled overdraft of the Basin by the managed withdrawal of groundwater for the Desalters and the potential increase in the cumulative un-replenished Production from 200,000 acre-feet authorized by paragraph 3 below, to 600,000 acre feet for the express purpose of securing and maintaining Hydraulic Control as a component of the Physical Solution.

[1] The increase in the controlled overdraft herein is separate from and in addition to the 200,000 acre-feet of accumulated overdraft authorized in paragraph 3(a) and 3(b) below over the period of 1978 through 2017.

[2] “Desalters” means the Chino I Desalter, the Chino I Expansion, the Chino II Desalter and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin water, including extraction wells and transmission facilities for delivery of groundwater to the Desalter. Desalter treatment and delivery facilities for the desalted water include pumping and storage facilities and treatment and disposal capacity in the Santa Ana Regional Interceptor.

[3] The groundwater Produced through controlled overdraft pursuant to Re-Operation does not constitute New Yield or Operating Safe Yield and it is made available under the Physical Solution for the express purpose of satisfying some or all of the groundwater Production by the Desalters until December 31, 2030. (“Period of Re-Operation”).

[4] The operation of the Desalters, the Production of groundwater for the Desalters and the use of water produced by the Desalters pursuant to Re-Operation are

subject to the limitations that may be set forth in Watermaster Rules and Regulations for the Desalters.

(5) Watermaster will update its Recharge Master Plan and obtain Court approval of its update, to address how the Basin will be contemporaneously managed to secure and maintain Hydraulic Control and operated at a new equilibrium at the conclusion of the period of Re-Operation. The Recharge Master Plan shall contain recharge projections and summaries of the projected water supply availability as well as the physical means to accomplish recharge projections. The Recharge Master Plan may be amended from time to time with Court approval.

(6) Re-Operation and Watermaster's apportionment of controlled overdraft in accordance with the Physical Solution will not be suspended in the event that Hydraulic Control is secured in any year before the full 400,000 acre-feet has been Produced without Replenishment, so long as: (i) Watermaster has prepared, adopted and the Court has approved a contingency plan that establishes conditions and protective measures that will avoid unreasonable and unmitigated material physical harm to a party or to the Basin and that equitably distributes the cost of any mitigation attributable to the identified contingencies; and (ii) Watermaster is in substantial compliance with a Court approved Recharge Master Plan.¹⁵

3. Operating Safe Yield. Operating Safe Yield in any year shall consist of the Appropriate Pool's share of Safe Yield of the Basin, plus any controlled overdraft of the Basin which Watermaster may authorize. In adopting the Operating Safe Yield for any year, Watermaster shall be limited as follows:

(a) Accumulated Overdraft. - During the operation of this Judgment and Physical Solution, the overdraft accumulated from and after the effective date of the Physical Solution and

¹⁵ Order dated December 21, 2007.

resulting from an excess of Operating Safe Yield over Safe Yield shall not exceed 200,000 acre feet.

(b) Quantitative Limits. - In no event shall Operating Safe Yield in any year be less than the Appropriative Pool's share of Safe Yield, nor shall it exceed such share of Safe Yield by more than 10,000 acre feet. The initial Operating Safe Yield is hereby set at 54,834 acre feet per year. Operating Safe Yield shall not be changed upon less than five (5) years' notice by Watermaster. Nothing contained in this paragraph shall be deemed to authorize, directly or indirectly, any modification of the allocation of shares in Safe Yield to the overlying pools, as set forth in Paragraph 44 of the Judgment.

4. Ground Water Storage Agreements. Any agreements authorized by Watermaster for storage of supplemental water in the available ground water storage capacity of Chino Basin shall include, but not be limited to:

(a) The quantities and term of the storage right.

(b) A statement of the priority or relation of said right, as against overlying or Safe Yield uses, and other storage rights.

(c) The procedure for establishing delivery rates, schedules and procedures which may include:

[1] spreading or injection, or

[2] in lieu deliveries of supplemental water for direct use.

(d) The procedures for calculation of losses and annual accounting for water in storage by Watermaster.

(e) The procedures for establishment and administration of withdrawal schedules, locations and methods.

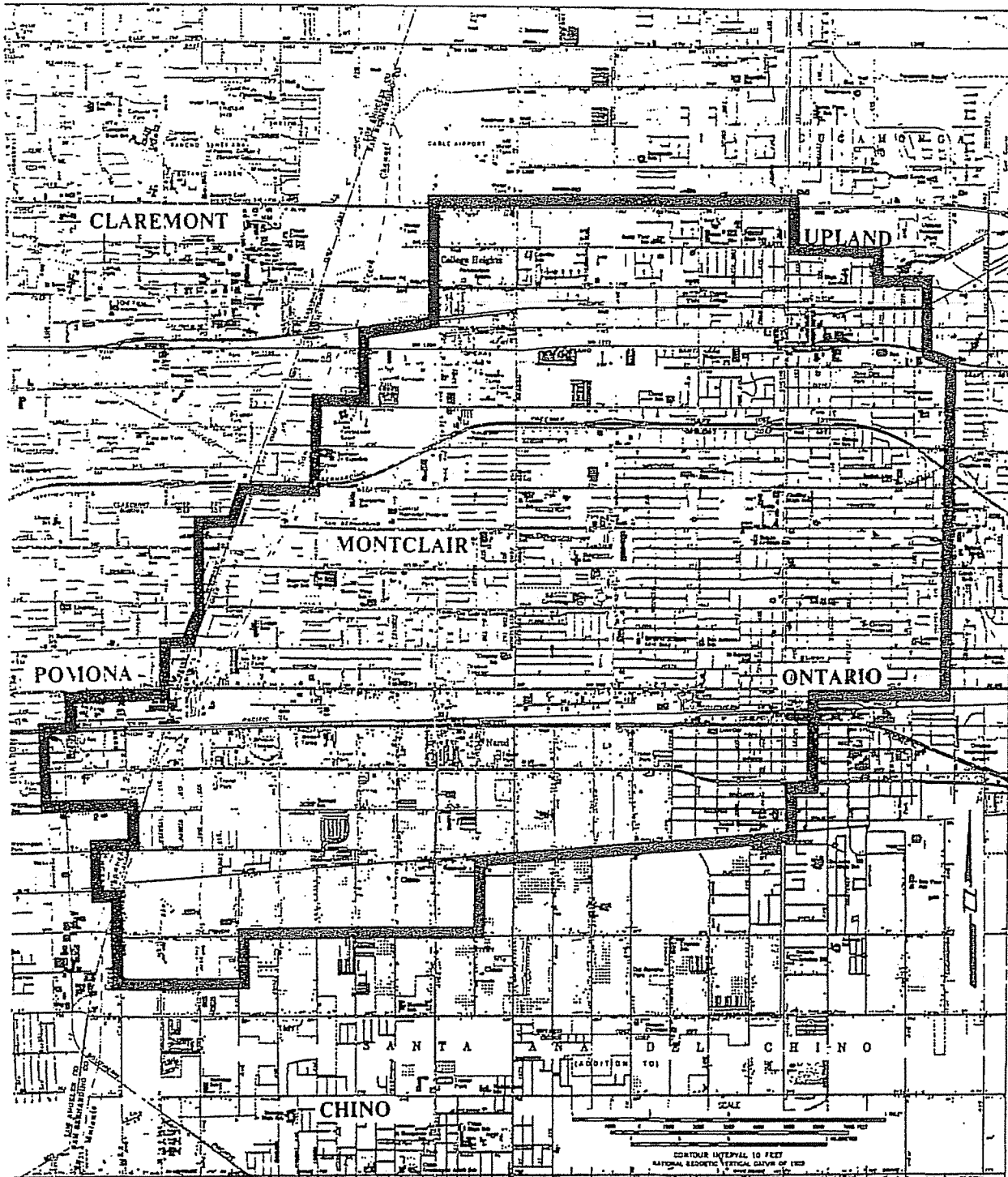
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CHINO BASIN
IN LIEU AREA NO. 1

EXHIBIT "J"

EXHIBIT "K"
LEGAL DESCRIPTION
OF CHINO BASIN

Preamble

All of the townships and ranges referred to in the following legal description are the San Bernardino Base and Meridian. Certain designated sections are implied as the System of Government Surveys may be extended where not established. Said sections are identified as follows:

Section 20, T1N, R8W is extended across Rancho Cucamonga;

Section 36, T1N, R8W is extended across the City of Upland;

Sections 2,3, and 4, T1S, R7W are extended across Rancho Cucamonga;

Section 10, T1S, R8W is extended across the City of Claremont;

Sections 19, 20, 21, 30, 31 and 32, T1S, R8W are extended across the City of Pomona;

Sections 4, 5, and 28, T2S, R8W are extended across Rancho Santa Ana Del Chino;

Sections 15 and 16, T3S, R7W are extended across Rancho La Sierra; and

Sections 17 and 20, T3S, R7W are extended across Rancho El Rincon.

Description

Chino Basin is included within portions of the Counties of San Bernardino, Riverside and Los Angeles, State of California, bounded by a continuous line described as follows:

EXHIBIT "K"

BEGINNING at the Southwest corner of Lot 241 as shown on Map of Ontario Colony Lands, recorded in Map Book 11, page 6, Office of the County Recorder of San Bernardino County, said corner being the Point of Beginning;

1. Thence Southeasterly to the Southeast corner of Lot 419 of said Ontario Colony Lands;
2. Thence Southeasterly to a point 1300 feet North of the South line and 1300 feet East of the West line of Section 4, T1S, R7W;
3. Thence Easterly to a point on the East line of Section 4, 1800 feet North of the Southeast corner of said Section 4;
4. Thence Easterly to the Southeast corner of the Southwest quarter of the Northeast quarter of Section 3, T1S, R7W;
5. Thence Northeasterly to a point on the North line of Section 2, T1S, R7W, 1400 feet East of the West line of said Section 2;
6. Thence Northeasterly to the Southwest corner of Section 18, T1N, R6W;
7. Thence Northerly to the Northwest corner of said Section 18;
8. Thence Easterly to the Northeast corner of said Section 18;

9. Thence Northerly to the Northwest corner of the Southwest Quarter of Section 8, T1N, R6W;
10. Thence Easterly to the Northeast corner of said Southwest quarter of said Section 8;
11. Thence Southerly to the Southeast corner of said Southwest Quarter of said Section 8;
12. Thence Easterly to the Northeast corner of Section 17, T1N, R6W;
13. Thence Easterly to the Northeast corner of Section 16, T1N, R6W;
14. Thence Southeasterly to the Northwest corner of the Southeast quarter of Section 15, T1N, R6W;
15. Thence Easterly to the Northeast corner of said Southeast quarter of said Section 15;
16. Thence Southeasterly to the Northwest corner of the Northeast quarter of Section 23, T1N, R6W;
17. Thence Southeasterly to the Northwest corner of Section 25, T1N, R6W;
18. Thence Southeasterly to the Northwest corner of the Northeast quarter of Section 31, T1N, R5W;
19. Thence Southeasterly to the Northeast corner of the Northwest quarter of Section 5, T1S, R5W;
20. Thence Southeasterly to the Southeast corner of Section 4, T1S, R5W;
21. Thence Southeasterly to the Southeast corner of the Southwest quarter of Section 11, T1S, R5W;
22. Thence Southwesterly to the Southwest corner of Section 14, T1S, R5W;

23. Thence Southwest to the Southwest corner of Section 22, T1S, R5W;
24. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 6, T2S, R5W;
25. Thence Southeasterly to the Northeast corner of Section 18, T2S, R5W;
26. Thence Southwesterly to the Southwest corner of the Southeast quarter of Section 13, T2S, R6W;
27. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 26, T2S, R6W;
28. Thence Westerly to the Southwest corner of the Northwest quarter of said Section 26;
29. Thence Northerly to the Northwest corner of said Section 26;
30. Thence Westerly to the Southwest corner of Section 21, T2S, R6W;
31. Thence Southerly to the Southeast corner of Section 29, T2S, R6W;
32. Thence Westerly to the Southeast corner of Section 30, T2S, R6W;
33. Thence Southwesterly to the Southwest corner of Section 36, T2S, R7W;
34. Thence Southwesterly to the Southeast corner of Section 3, T3S, R7W;
35. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 10, T3S, R7W;

36. Thence Southerly to the Northeast corner of the Northwest quarter of Section 15, T3S, R7W;
37. Thence Southwesterly to the Southeast corner of the Northeast quarter of Section 16, T3S, R7W;
38. Thence Southwesterly to the Southwest corner of said Section 16;
39. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 20, T3S, R7W;
40. Thence Westerly to the Southwest corner of the Northwest quarter of said Section 20;
41. Thence Northerly to the Northwest corner of Section 17, T3S, R7W;
42. Thence Westerly to the Southwest corner of Section 7, T3S, R7W;
43. Thence Northerly to the Southwest corner of Section 6, T3S, R7W;
44. Thence Westerly to the Southwest corner of Section 1, T3S, R8W;
45. Thence Northerly to the Southeast corner of Section 35, T2S, R8W;
46. Thence Northwesterly to the Northwest corner of said Section 35;
47. Thence Northerly to the Southeast corner of Lot 33, as shown on Map of Tract 3193, recorded in Map Book 43, pages 46 and 47, Office of the County Recorder of San Bernardino County;
48. Thence Westerly to the Northwest corner of the Southwest quarter of Section 28, T2S, R8W;

49. Thence Northerly to the Southwest corner of Section 4, T2S, R8W;
50. Thence Westerly to the Southwest corner of Section 5, T2S, R8W;
51. Thence Northerly to the Southwest corner of Section 32, T1S, R8W;
52. Thence Westerly to the Southwest corner of Section 31, T1S, R8W;
53. Thence Northerly to the Southwest corner of Section 30, T1S, R8W;
54. Thence Northeasterly to the Southwest corner of Section 20, T1S, R8W;
55. Thence Northerly to the Northwest corner of the Southwest quarter of the Southwest quarter of said Section 20;
56. Thence Northwesterly to the Northeast corner of the Southeast quarter of the Southeast quarter of the Northwest quarter of Section 19, T1S, R8W;
57. Thence Easterly to the Northwest corner of Section 21, T1S, R8W;
58. Thence Northeasterly to the Southeast corner of the Southwest quarter of the Southwest quarter of Section 10, T1S, R8W;
59. Thence Northeasterly to the Southwest corner of Section 2, T1S, R8W;

60. Thence Northeasterly to the Southeast corner of the Northwest quarter of the Northwest quarter of Section 1, T1S, R8W;
61. Thence Northerly to the Northeast corner of the Northwest quarter of the Northeast quarter of Section 36, T1N, R8W;
62. Thence Northerly to the Southeast corner of Section 24, T1N, R8W;
63. Thence Northeasterly to the Southeast corner of the Northwest quarter of the Northwest quarter of Section 20, T1N, R7W; and
64. Thence Southerly to the Point of Beginning.

Sections Included

Said perimeter description includes all or portions of the following Townships, Ranges and Sections of San Bernardino Base and Meridian:

T1N, R5W - Sections: 30, 31 and 32

T1N, R6W - Sections: 8, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35
and 36

T1N, R7W - Sections: 19, 20, 24, 25, 26, 29, 30, 31, 32, 35 and 36

T1N, R8W - Sections: 25 and 36

T1S, R5W - Sections: 4, 5, 6, 7, 8, 9, 10, 11, 14, 15,16, 17, 18, 19, 20, 21, 22, 28, 29,30, 31 and 32

T1S, R6W - Sections: 1 through 36, inclusive

T1S, R7W - Sections: 1 through 36, inclusive

T1S, R8W - Sections: 1, 2, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,
32, 33, 34, 35 and 36

T2S, R5W - Sections: 6, 7 and 18

T2S, R6W - Sections: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,
26, 29, 30 and 31

T2S, R7W - Sections: 1 through 36, inclusive

T2S, R8W - Sections: 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 35 and
36

T3S, R7W - Sections: 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17 and 20

T3S, R8W - Sections: 1.

SB 565248 v1:038350.0001

EXHIBIT 2

**CHINO BASIN WATERMASTER
RULES AND REGULATIONS**

2019 Update to June 2001 version

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**ARTICLE I
GENERAL PROVISIONS**

1.0 Title.

This document shall be known and may be referred to as the "2019 Update to the 2001 Chino Basin Watermaster Rules and Regulations" adopted pursuant to the Judgment.

1.1 Definitions.

As used in these Rules and Regulations, these terms, including any grammatical variations thereof shall have the following meanings.

- (a) "Active Parties" means all parties to the Judgment other than those who have filed a written waiver of service of notices with Watermaster, pursuant to Paragraph 58 of the Judgment. [Judgment ¶ 4(a).]
- (b) "Adjusted Physical Production" shall have the definition given in section 7.5(b)(iv).
- (c) "Agricultural Pool" shall have the meaning of Overlying (Agricultural) Pool as used in the Judgment and shall include all its members. [Peace Agreement § 1.1(a).]
- (d) "Agricultural Pool Committee" shall mean the designated representatives and alternates who serve on behalf of the Agricultural Pool.
- (e) "Annual or Year" means a fiscal year, July 1 through June 30 following, unless the context shall clearly indicate a contrary meaning. [Judgment ¶ 4(b).]
- (f) "Annual Production Right" means the total amount of water available to the Appropriative Pool in any year from all available sources (e.g., Carry-Over Water, assigned share of Operating Safe Yield, Transfers, New Yield, water Recaptured from Storage, land-use conversions, Early Transfer) which Watermaster shall determine can be Produced by the members of the Appropriative Pool free of a Replenishment Obligation.
- (g) "Answer" means the written response that may be filed to a Complaint or the reply to a Contest pursuant to the provisions of Article X.
- (h) "Applicant" means a person that files an Application for Watermaster approval of an action pursuant to Article X.
- (i) "Application" means a request filed by any person pursuant to the provisions of Article X, seeking (i) Watermaster approval of Recharge, Transfer, Recapture or Qualifying Storage operations or activities or (ii) for Watermaster approval of a credit or reimbursement.

- (j) "Appropriative Pool" shall have the meaning as used in the Judgment and shall include all its members. [Peace Agreement § 1.1(b).]
- (k) "Basin Water" means Groundwater within the Chino Basin which is part of the Safe Yield, Operating Safe Yield, New Yield), or Replenishment Water in the Basin as a result of operations under the Physical Solution decreed in the Judgment. Basin Water does not include "Stored Water" under the Judgment and the Peace Agreement. [Judgment ¶ 4(d).]
- (l) "Best Efforts" means reasonable diligence and reasonable efforts under the totality of the circumstances. [Peace Agreement § 1.1(d).] Note: a rule of construction applies to this definition. See section 1.2(e) below.
- (m) "CBWCD" means the Chino Basin Water Conservation District. [Peace Agreement § 1.1(e).]
- (n) "Carry-Over Right" means the annual unpumped share of Safe Yield and Operating Safe Yield that is reserved to be pumped first the following year by the members of the Non-Agricultural Pool and the Appropriative Pool respectively. [Based on the Judgment Exhibit "G" ¶ 7 and Exhibit "H" ¶ 12.]
- (o) "Carry-Over Water" means the un-Produced water in any year that may accrue to a member of the Non-Agricultural Pool or the Appropriative Pool and that is Produced first each subsequent Fiscal Year or stored as Excess Carry-Over. (Judgment Exhibit H ¶ 12.)
- (p) "CEQA" means the California Environmental Quality Act, Public Resources Code Sections 21000 et seq; 14 California Code of Regulations 15000 et seq. [Peace Agreement § 1.1(f).]
- (q) "Chino Basin" or "Basin" means the Groundwater basin underlying the area shown on Exhibit "B" to the Judgment and within the boundaries described on Exhibit "K" to the Judgment. [Judgment ¶ 4(f) and Peace Agreement § 1.1(g).]
- (r) "Chino Basin Watershed" means the surface drainage area tributary to and overlying Chino Basin. [Judgment ¶ 4(g) and Peace Agreement § 1.1(h).]
- (s) "Chino I Desalter," also known as the SAWPA Desalter, means the Desalter owned and operated by PC 14 with a present capacity of approximately eight (8) million gallons per day (mgd) and in existence on the Effective Date. [Peace Agreement § 1.1(i).]

- (t) "Chino I Desalter Expansion" means the planned expansion of the Chino I Desalter from its present capacity of approximately eight (8) mgd to a capacity of up to fourteen (14) mgd. [Peace Agreement § 1.1(j).]
- (u) "Chino II Desalter" means a new Desalter not in existence on the Effective Date with a design capacity of approximately ten (10) mgd, to be constructed and operated consistent with the OBMP and to be located on the eastside of the Chino Basin. [Peace Agreement § 1.1(k).]
- (v) "Chino North Management Zone" means the Chino North Management Zone, as it is illustrated in the 2004 Basin Plan amendment (Regional Water Quality Control Board Resolution R8-2004-0001, "Resolution Amending the Water Quality Control Plan for the Santa Ana River Basin to Incorporate an Updated Total Dissolved Solids (TDS) and Nitrogen Management Plan for the Santa Ana Region Including Revised Groundwater Subbasin Boundaries, Revised TDS and Nitrate-Nitrogen Quality Objectives for Groundwater, Revised TDS and Nitrogen Wasteload Allocations, and Revised Reach Designations, TDS and Nitrogen Objectives and Beneficial Uses for Specific Surface Waters").
- (w) "Committee(s)" means any of the Pool Committees or the Watermaster Advisory Committee as the context may compel.
- (x) "Complainant" means a party to the Judgment that files a Complaint pursuant to Article X.
- (y) "Complaint" means a claim filed by a party to the Judgment with Watermaster pursuant to the provisions of Article X.
- (z) "Contest" means an objection filed by a party to the Judgment pursuant to the provisions of Article X.
- (aa) "Contestant" means a party to the Judgment that files a Contest pursuant to the provisions of Article X.
- (bb) "Court" means the court exercising continuing jurisdiction under the Judgment. [Peace Agreement § 1.1(1).]
- (cc) "Court's Findings and Order, dated March 15, 2019" shall mean the Court's Findings and Order Regarding Amendments to Restated Judgment, Peace Agreement, Peace II Agreement, and Re-Operation Schedule, dated March 15, 2019.

- (dd) "Date of Execution" means the first day following the approval and execution of the Peace Agreement by the last Party to do so which date is August 1, 2000. [Peace Agreement § 1.1(m).]
- (ee) "Desalter" and "Desalters" means the Chino I Desalter, Chino I Desalter Expansion, the Chino II Desalter, related facilities and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin Water, including extraction wells, transmission facilities for delivery of groundwater to the Desalter, Desalter treatment and delivery facilities for the desalted water including pumping and storage facilities, and treatment and disposal capacity in the SARI System. [Peace Agreement § 1.1(n).]
- (ff) "Early Transfer" means the reallocation of Safe Yield in accordance with the Peace Agreement where water from the Agricultural Pool is made available to the Appropriative Pool on an annual basis. [Peace Agreement § 1.1(o).]
- (gg) "Effective Date" refers to the Effective Date of the Peace Agreement and means October 1, 2000. [Peace Agreement § 1.1(p).]
- (hh) "Excess Carry-Over Water" means Carry-Over Water which in aggregate quantities exceeds a party's share of Safe Yield in the case of the Non-Agricultural Pool, or the assigned share of Operating Safe Yield in the case of the Appropriative Pool, in any year.
- (ii) "Future Desalters" means enlargement of the Chino I Desalter to a capacity greater than the Chino I Expansion or enlargement of the Chino II Desalter and any other new Desalter facilities that may be needed to carry out the purposes of the OBMP over the term of the Peace Agreement. [Peace Agreement § 1.1(q).]
- (jj) "General law" means all applicable state and federal laws. [Peace Agreement § 1.1(r).]
- (kk) "Groundwater" means all water beneath the surface of the ground. [Judgment ¶ 4(h) and Peace Agreement § 1.1(s).]
- (ll) "Groundwater Storage Agreement" means either a Local Storage Agreement or an agreement in connection with a Storage and Recovery Program.
- (mm) "Hydraulic Control" means the reduction of groundwater discharge from the Chino North Management Zone to the Santa Ana River to de minimus quantities. [Peace II Agreement § 1.1(b).]
- (nn) "Hydrologic Balance" means the maintenance of total inflow at a level generally equivalent to total outflow as measured over an appreciable period of time that is

sufficient to account for periodic changes in climate and watershed, basin and land management conditions.

- (oo) "IEUA" means the Inland Empire Utilities Agency, referred to in the Judgment as Chino Basin Municipal Water District. [Peace Agreement § 1.1(t).]
- (pp) "In-lieu Recharge" means taking supplies of Supplemental Water in lieu of pumping groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, as provided in Exhibit "H" Paragraph 11 of the Judgment. [Peace Agreement § 1.1(u).]
- (qq) "Judgment" means the Judgment dated January 27, 1978, in San Bernardino County Case No. 164327 (redesignated as San Bernardino County Case No. RCV RS51010) as restated pursuant to Order Adopting Restated Judgment, dated September 27, 2012, amended pursuant to Order Approving Amendments to Restated Judgment and Rules and Regulations Regarding Compensation of Watermaster Board Members, dated August 22, 2014, Orders for Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, dated April 28, 2017, Court's Findings and Order, dated March 15, 2019, and other such amendments. [See Peace Agreement § 1.1(v).]
- (rr) "Leave Behind" means a contribution to the Basin from water held in storage within the Basin under a Storage and Recovery Agreement that may be established by Watermaster from time to time that may reflect any or all of the following: (i) actual losses; (ii) equitable considerations associated with Watermaster's management of storage agreements; and (iii) protection of the long-term health of the Basin against the cumulative impacts of simultaneous recovery of groundwater under all storage agreements. [Peace II Agreement § 1.1(c).]
- (ss) "Local Imported Water" is water from any origin, native or foreign which was not available for use or included in the calculation of Safe Yield of the Chino Basin at the time the Judgment was entered. [Based on Judgment 49(c).] Local Imported Water is reported by Watermaster in its annual report.
- (tt) "Local Storage" means water held in a storage account pursuant to a Local Storage Agreement between a party to the Judgment and Watermaster. Local Storage accounts may consist of: (i) a Producer's unproduced Excess Carry-Over Water or (ii) a party to the Judgment's Supplemental Water, up to a cumulative maximum of one hundred thousand (100,000) acre-feet for all parties to the Judgment stored in the Basin on or after July 1, 2000 or (iii) that amount of Supplemental Water previously stored in the Basin on or before July 1, 2000 and quantified in accordance with the provisions and procedures set forth in Section 7.2 of these Rules and Regulations, or (iv) that amount of water which is or may be stored in

the Basin pursuant to a Storage Agreement with Watermaster which exists and has not expired before July 1, 2010. [Peace Agreement § 1.1(x).]

- (uu) "Local Storage Agreement" means a Groundwater Storage Agreement for Local Storage.
- (vv) "Material Physical Injury" means material injury that is attributable to the Recharge, Transfer, Storage and Recovery, management, movement or Production of water, or implementation of the OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence, increases in pump lift (lower water levels) and adverse impacts associated with rising Groundwater. Material Physical Injury does not include "economic injury" that results from other than physical causes. Once fully mitigated, physical injury shall no longer be considered to be material. [Peace Agreement § 1.1(y).]
- (ww) "Metropolitan Water District" or "MWD" means the Metropolitan Water District of Southern California. [Peace Agreement § 1.1(z).]
- (xx) "Minimal Producer" means any producer whose Production does not exceed ten (10) acre-feet per year. [Judgment ¶ 4(j).]
- (yy) "New Yield" means proven increases in yield in quantities greater than historical amounts from sources of supply including, but not limited to, capture of rising water, capture of available storm flow, operation of the Desalters and related facilities, induced Recharge and other management activities implemented and operational after June 1, 2000. [Peace Agreement § 1.1(aa).]
- (zz) "Non-Agricultural Pool" shall have the meaning as used in the Judgment for the Overlying (Non-Agricultural) Pool and shall include all its members. [Peace Agreement § 1.1(bb).]
- (aaa) "OBMP" means the Optimum Basin Management Program, which consists of the OBMP Phase I Report and the OBMP Implementation Plan, which shall be implemented consistent with the provisions of Article V of the Peace Agreement. [July 13, 2000 Court Order.]
- (bbb) "OBMP Assessments" means assessments levied by Watermaster for the purpose of implementing the OBMP. [Peace Agreement § 1.1(cc).] Note: a rule of construction applies to this definition. See section 1.2(f) below.
- (ccc) "OBMP Implementation Plan" means Exhibit "B" to the Peace Agreement, as supplemented by the 2007 Supplement thereto.
- (ddd) "OCWD" means the Orange County Water District. [Peace Agreement § 1.1(dd).]

- (eee) "Operating Safe Yield" means the annual amount of Groundwater which Watermaster shall determine, pursuant to criteria specified in Exhibit "I" to the Judgment, can be Produced from Chino Basin by the Appropriative Pool parties free of Replenishment obligation under the Physical Solution. [Judgment ¶ 4(1) and Peace Agreement § 1.1(ee).]
- (fff) "Overdraft" means a condition wherein the total annual Production from the Basin exceeds the Safe Yield thereof, as provided in the Judgment. [Judgment ¶ 4(m) and Peace Agreement § 1.1(ff).]
- (ggg) "Overlying Right" means the appurtenant right of an owner of lands overlying Chino Basin to Produce water from the Basin for overlying beneficial use on such lands. [Judgment ¶ 4(n).]
- (hhh) "PC 14" means Project Committee No. 14, members of SAWPA, composed of IEUA, WMWD, and OCWD, pursuant to Section 18 of the SAWPA Joint Exercise of Powers Agreement which now constitutes the executive Authority through which SAWPA acts with respect to the Chino I Desalter and other facilities, programs and projects. [Peace Agreement § 1.1(ll).]
- (iii) "Party" or "Parties" means a Party to the Peace Agreement or Peace II Agreement. [Peace Agreement § 1.1(gg); Peace II Agreement § 1.1(e).]
- (jjj) "Party" or "parties to the Judgment" means a party to the Judgment. [Peace Agreement § 1.1(hh).]
- (kkk) "Peace Agreement" means the agreement dated June 29, 2000 among various parties to the Judgment identified therein and approved by Watermaster, as amended by the First Amendment to Peace Agreement dated September 2, 2004, the Second Amendment to Peace Agreement, dated September 21, 2007, and as shown in Attachment A to the Court's Findings and Order, dated March 15, 2019.
- (lll) "Peace II Agreement" means the agreement dated September 21, 2007 among various parties to the Judgment identified therein and approved by Watermaster, as amended as shown in Attachment A to the Court's Findings and Order, dated March 15, 2019.
- (mmm) "Person" means any individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, water district and other entity of whatever nature including but not limited to the State of California and the Department of Water Resources. [Judgment ¶ 4(o).]

- (nnn) "Physical Solution" shall have the meaning of the Physical Solution as described in the Judgment.
- (ooo) "Produce" or "Produced" means to pump or extract groundwater from the Chino Basin. [Judgment ¶ 4(q) and Peace Agreement § 1.1(ii).]
- (ppp) "Producer" means any person who Produces water from the Chino Basin. [Judgment ¶ 4(r) and Peace Agreement § 1.1(jj).]
- (qqq) "Production" means the annual quantity, stated in acre-feet, of water Produced from the Chino Basin. [Judgment ¶ 4(s) and Peace Agreement § 1.1(kk).]
- (rrr) "Public Hearing" means a hearing of Watermaster held pursuant to the Judgment other than as provided in Article X herein.
- (sss) "Qualifying Storage" means the storage of Supplemental Water, Excess Carry-Over Water after July 1, 2010 or to participate in a Storage and Recovery Program.
- (ttt) "Qualifying Storage Agreement" means an agreement with Watermaster to store Supplemental Water, Excess Carry-Over Water after July 1, 2010 or to store water by participation in a Storage and Recovery Program.
- (uuu) "Recapture" and "Recover" means the withdrawal of water stored in the Basin under a Groundwater Storage Agreement.
- (vvv) "Recharge" and "Recharge Water" means the introduction of water into the Basin, directly or indirectly, through injection, percolation, delivering water for use in-lieu of Production or other method. Recharge references the physical act of introducing water into the Basin. Recharge includes Replenishment Water but not all Recharge is Replenishment Water. [Peace Agreement § 1.1(nn).] Note: a rule of construction applies to this definition. See section 1.2(g) below.
- (www) "Recycled Water" means water which, as a result of treatment of wastewater, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource, referred to as "reclaimed water" in the Judgment. [Judgment ¶ 4(u) and Peace Agreement § 1.1(pp).]
- (xxx) "Re-Operation" means the controlled overdraft of the Basin by the managed withdrawal of groundwater Production for the Desalters and the potential increase in the cumulative un-replenished Production from 200,000 acre-feet authorized by paragraph 3 of the Engineering Appendix Exhibit I to the Judgment, to 600,000 acre-feet for the express purpose of securing and maintaining Hydraulic Control as a component of the Physical Solution. [Peace II Agreement § 1.1(d).] The Court-

approved schedule for access to Re-Operation water during the period of 2013-14 through 2029-30 is attached hereto as Exhibit "B."

- (yyy) "Reset Technical Memorandum" means the memorandum attached hereto and incorporated herein as Exhibit "A," which sets forth the methodology pursuant to which the Safe Yield is evaluated or reset.
- (zzz) "Replenishment Obligation" means the quantity of water that Watermaster must purchase to replace Production by any Pool during the preceding Fiscal Year which exceeds that Pool's allocated share of Safe Yield or Operating Safe Yield in the case of the Appropriative Pool. The quantity of a Producer's Over-Production and the Replenishment Obligation is determined after Watermaster takes into account any Transfers of water or any Recovery from storage in the same year, and takes into account the Appropriative Pool obligation as a result of the implementation of the Peace Agreement, if any. [Judgment ¶ 45.]
- (aaaa) "Replenishment Water" means Supplemental Water used to Recharge the Basin pursuant to the Physical Solution, either directly by percolating the water into the Basin or indirectly by delivering the water for use in-lieu of Production and use of Safe Yield or Operating Safe Yield. [Judgment ¶ 4(v) and Peace Agreement § 1.1(oo).]
- (bbbb) "Responsible Party" means the owner, co-owner, lessee or other person(s) designated by multiple parties interested in a well as the person responsible for purposes of filing reports with Watermaster pursuant to the Judgment ¶ 4(w). [Judgment, ¶ 4(w).]
- (cccc) "Rules and Regulations" means this 2019 Update to the 2001 Chino Basin Watermaster Rules and Regulations as authorized pursuant to the Judgment, adopted by the Watermaster on October 24, 2019 and as they may be amended from time to time. They are to be distinguished from the previous Watermaster Rules and Regulations and the Uniform Groundwater Rules and Regulations that were repealed and replaced by the same action adopting and approving these Rules and Regulations.
- (dddd) "Safe Yield" means the long-term average annual quantity of groundwater (excluding Replenishment Water or Stored Water but including return flow to the Basin from use of Replenishment or Stored Water) which can be Produced from the Basin under cultural conditions of a particular year without causing an undesirable result. [Judgment ¶ 4(x) and Peace Agreement § 1.1(qq).]
- (eeee) "SAWPA" means the Santa Ana Watershed Project Authority. [Peace Agreement § 1.1(ss).]

- (ffff) "Sphere of Influence" has the same meaning as set forth in Government Code Section 56076.
- (gggg) "Storage and Recovery Program" means the use of the available storage capacity of the Basin by any person under the direction and control of Watermaster pursuant to a Court approved Groundwater Storage Agreement but excluding "Local Storage," including the right to export water for use outside the Chino Basin and typically of broad and mutual benefit to the parties to the Judgment. [Peace Agreement §1.1(uu).]
- (hhhh) "Stored Water" means Supplemental Water held in storage, as a result of direct spreading, injection or in-lieu delivery, for subsequent withdrawal and use pursuant to a Groundwater Storage Agreement with Watermaster. [Judgment ¶ 4(aa) and Peace Agreement § 1.1(vv).]
- (iiii) "Supplemental Water" means water imported to Chino Basin from outside the Chino Basin Watershed and Recycled Water. [Judgment ¶ 4(bb) and Peace Agreement § 1.1(wv).]
- (jjjj) "Transfer" means the assignment (excepting an assignment by a member of the Non-Agricultural Pool or the Agricultural Overlying Pool), lease, or sale of a right to Produce water to another Producer within the Chino Basin or to another person or entity for use outside the Basin upon the person's intervention in conformance with the Judgment. [Peace Agreement § 1.1(xx).]
- (kkkk) "TVMWD" means Three Valleys Municipal Water District (referred to in the Judgment as Pomona Valley Municipal Water District). [Peace Agreement § 1.1(yy).]
- (llll) "Uniform Groundwater Rules and Regulations" (UGRR) means the Uniform Groundwater Rules and Regulations that were in effect on December 31, 2000.
- (mmmm) "Watermaster" means Watermaster as the term is used in the Judgment. [Peace Agreement § 1.1 (zz).]
- (nnnn) "WMWD" means Western Municipal Water District. [Judgment ¶ 4(cc) and Peace Agreement § 1.1(bbb).]

1.2 Rules of Construction

- (a) Unless the context clearly requires otherwise:
 - (i) The plural and singular forms include the other;
 - (ii) "Shall," "will," "must," and "agrees" are each mandatory;

- (iii) "may" is permissive;
 - (iv) "or" is not exclusive;
 - (v) "includes" and "including" are not limiting; and
 - (vi) "between" includes the ends of the identified range.
- (b) The masculine gender shall include the feminine and neuter genders and vice versa.
 - (c) Reference to any agreement, document, instrument, or report means such agreement, document, instrument or report as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof
 - (d) Except as specifically provided herein, reference to any law, statute, ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part and in effect from time to time, including any rules and regulations promulgated thereunder. [Peace Agreement § 1.2.]
 - (e) "Best Efforts" as defined in section 1.1 (k) above, shall be construed to mean that indifference and inaction do not constitute Best Efforts. However, futile action(s) are not required. [Peace Agreement § 1.1(d).]
 - (f) OBMP Assessments as defined in section 1.1(zz) above, shall be deemed Administrative Expenses under Paragraph 54 of the Judgment. OBMP Assessments do not include assessments levied as provided in Section 5.1(g) of the Peace Agreement. Upon the expiration of the Peace Agreement, no conclusion of "general benefit" may be drawn based upon the manner in which the assessments have been made during the term of the Peace Agreement. [Peace Agreement § 1.1(cc).]
 - (g) The definition of the terms Recharge and Recharge Water in section 1.1(ttt) above, shall not be construed to limit or abrogate the authority of CBWCD under general law. [Peace Agreement § 1.1(nn).]
 - (h) The right of a party to receive a credit if Watermaster compels a Groundwater Production facility to be shut down and/or moved under section 4.5 below, shall not be construed in determining the extent of Watermaster's authority under the Judgment, if any, to compel the shut-down of a well.
 - (i) These Rules and Regulations should not be construed as placing any limitation on the export of Supplemental Water other than as may be provided in the Judgment, except as may be necessary as a condition to prevent Material Physical Injury (see specifically section 8.3 below).

- 1.3 Consistency with Judgment, Peace Agreement, and Peace II Agreement. These Rules and Regulations shall be construed consistent with the Judgment, the Peace Agreement, and the Peace II Agreement. In the event of a conflict between these Rules and Regulations and the Judgment, the Peace Agreement, or the Peace II Agreement, the Judgment, the Peace Agreement, and Peace II Agreement shall prevail. In the event of a conflict between the Peace Agreement, or the Peace II Agreement and the Judgment, the Judgment shall control.
- 1.4 No Prejudice. No provision of these Rules and Regulations shall be used to construe the power and authority of the Advisory Committee or the Watermaster Board inter-se under the Judgment.
- 1.5 Amendment of Rules. These Rules and Regulations may be amended by Watermaster only upon the prior approval of the Watermaster Advisory Committee.
- 1.6 Repeal of Existing Rules and Regulations. Watermaster's existing Rules and Regulations and the Uniform Groundwater Rules and Regulations shall be repealed upon the adoption of this 2019 Update to the 2001 Chino Basin Watermaster Rules and Regulations. However, all other rules and regulations, which includes the Rules for the Advisory Committee and for each of the three Pools, shall remain in effect.

ARTICLE II ADMINISTRATION

- 2.0 Principal Office. The principal office of Watermaster shall be the Chino Basin Watermaster business office, currently located at 9641 San Bernardino Road, Rancho Cucamonga, California 91730, telephone number 909-484-3888, fax number 909-484-3890, and e-mail info@cbwm.org, or at such other location or locations as may be designated from time to time by Watermaster Resolution and filed with the Court.
- 2.1 Records. The minutes of Watermaster meetings shall be open to inspection and maintained at the principal office. [Based on Judgment ¶ 37(d).] Copies of minutes may be obtained upon payment of the duplication costs thereof. Copies of other records may be obtained on the payment of the duplication costs thereof and pursuant to Watermaster policy. Watermaster shall maintain a website (presently www.cbwm.org). Watermaster Staff shall publish those records and other matters that it deems to be of interest to the parties to the Judgment, the general public or the Court on its website.
- 2.2 Regular Meetings. Regular meetings shall be held at the principal office of Watermaster pursuant to Watermaster policy at such time(s) as may be contained in the necessary notice(s) thereof [Based on Judgment ¶ 37 (b).] As a matter of policy, Watermaster shall generally operate in accordance with the provisions of the California Open Meetings Law (Brown Act). However, in the event of conflict, the procedures set forth in these Rules and Regulations shall control.
- 2.3 Special Meetings. Special meetings may be called at any time by a majority of the Watermaster Board by delivering notice thereof at least twenty-four (24) hours before the time of each such meeting in the case of personal delivery (including faxes and electronic mail), and ninety-six (96) hours in the case of mail. [Based on Judgment ¶ 37 (c).]
- 2.4 Adjournment. Any meeting may be adjourned to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously posted forthwith on or near the door of the place where the meeting was held. [Based on Judgment ¶ 37 (e).]
- 2.5 Public Meetings/Hearings. All meetings, whether regular or special, shall be open to the public unless they are properly designated as a confidential session. Whenever a Public Hearing shall be required therein, written notice of such public hearing containing the time, date and place of Public Hearing, together with the matter to be heard thereat, shall be given to all Active Parties and each such person who has requested, in writing, notice of such meeting, at least ten (10) days prior to said Public Hearing. At such Public Hearing, evidence shall be taken with regard to only the matters noticed, unless a sufficient urgency shall exist to the contrary, and full findings and decisions shall be issued and made available for public inspection. Notwithstanding the provisions of this section 2.5, the provisions of Article X shall control when applicable.

2.6 Confidential Sessions.

- (1) The Watermaster Board may hold confidential sessions authorized by this Rule .A confidential session may be held by the Watermaster Board and, at a minimum, the chairs of the three Pools (Appropriative, Agricultural and Non-Agricultural) to, in a manner consistent with the Judgment:
 - (i) meet with counsel to discuss or act on pending or threatened litigation involving Watermaster; or
 - (ii) discuss personnel matters of Watermaster employees involving individual employees; or
 - (iii) discuss contract negotiations involving Watermaster.
- (2) Minutes shall not be taken for confidential sessions of the Watermaster Board, but a confidential memorandum shall be prepared to describe attendance and votes on decisions.
- (3) Notice of confidential sessions of the Watermaster Board shall be as provided in section 2.7.
- (4) A report on any action taken at the confidential session of the Watermaster Board shall be given both immediately following the conclusion of the confidential session and at the next regular meeting of the Watermaster Board.
- (5) The Advisory Committee may hold a confidential session on any matter authorized by its own resolution.

2.7 Notice. Notices shall be given in writing to all Active Parties and each such person who has requested notice in writing, and shall specify the time and place of the meeting and the business to be transacted at the meeting. Notice may be provided by either facsimile or electronic mail delivery if the party so consents to such delivery. [Based on Judgment ¶ 37(c).] Delivery of notice shall be deemed made on the date personally given or within ninety-six (96) hours of deposit thereof in the United States mail, first class, postage prepaid, addressed to the designee and at the address in the latest designation filed by such person. Copies of all notices shall be published on the Watermaster website. Watermaster will maintain a current list of the names of active parties and their addresses for the purpose of providing service, and will maintain a current list of the names and addresses of all parties to the Judgment. [Judgment ¶ 58.]

2.8 Quorum. A majority of the Board acting as Watermaster shall constitute a quorum for the transaction of the affairs or business. [Based on Judgment ¶ 35.]

- 2.9 Voting Procedures. Only action by affirmative vote of a majority of the members of the Watermaster Board present and acting as Watermaster shall be effective. All actions may be adopted by voice vote, but upon demand of any member of a Board acting as Watermaster, the roll shall be called and the ayes and noes recorded in the minutes of the proceedings. Every member of a Board acting as Watermaster, in attendance, unless disqualified by reason of an opinion of the Watermaster counsel that the member of the board has a conflict of interest, shall be required to vote.
- 2.10 Conflict of Interest. Watermaster is an interest based governing structure in which various interests must be represented in decision-making. It is expected and preferred that each interest be allowed to participate in Watermaster decisions except as provided in these Rules and Regulations. Each member of the Watermaster Board or the Advisory Committee shall vote on matters before the Board or Advisory Committee unless that member has a conflict of interest as described in this Rule or other provision of general law. No member of the Watermaster Board or Advisory Committee may vote, participate in meetings or hearings pertaining to, or otherwise use his or her position to influence a Watermaster decision in which he knows or has reason to know he has both a direct personal and financial interest.
- (a) Subject to the qualification provided for in section 2.10(b) herein, a member of the Watermaster Board or Advisory Committee is deemed to have a direct personal and financial interest in a decision where it is reasonably foreseeable that the decision will have a material effect on the Watermaster member, members of his or her immediate family, or the Watermaster member's other business, property, and commercial interests.
- (b) To be classified as a direct personal and financial interest, the particular matter must be distinguishable from matters of general interest to the respective pool (Appropriative, Non-Agricultural, or Agricultural) or party to the Judgment, which the Watermaster member has been appointed to represent on the Watermaster Board or Advisory Committee. The member must stand to personally gain discrete and particular advantage from the outcome of the decision beyond that generally realized by any other person or the interests he or she represents. Moreover, Watermaster representatives are expressly intended to act in a representative capacity for their constituents. A member of the Board or Advisory Committee shall not be considered to have a discrete and particular financial advantage unless a decision may result in their obtaining a financial benefit that is not enjoyed by any other person. In those instances where the Board member or Advisory Committee member does have a conflict of interest, that respective interest may be represented by that interest's designated alternate and the Board or Advisory Committee member with the identified conflict of interest may address the Board or Committee or participate in the hearing or meeting as a party to the Judgment.

- 2.11 Minutes. The secretary (or in the absence thereof any person so designated at said meeting) shall cause the preparation and subscription of the minutes of each meeting and make available a copy thereof to all Active Parties and each person who has filed a request for copies of all minutes or notices in writing. The minutes shall constitute notice of all actions therein reported. Unless a reading of the minutes is ordered by a majority of the members of the Board acting as Watermaster, minutes may be approved without reading. [Based on Judgment ¶ 37(d).] Watermaster shall publish a copy of its minutes on the Watermaster website.
- 2.12 Rules of Order. Except as may be provided herein, the procedures of the conduct of any meeting shall be governed by the latest revised edition of Roberts' Rules of Order. However, such rules, adopted to expedite the transaction of the business in an orderly fashion, are deemed to be procedural only and failure to strictly observe such rules shall not affect the jurisdiction or invalidate any action taken at a meeting that is otherwise held in conformity with law.
- 2.13 Compensation. Members of Watermaster shall receive compensation from Watermaster for attendance at meetings, regular or special, in an amount as approved by the Court, together with reasonable expenses related to the respective activities thereof, subject to applicable provisions of law. A Watermaster Board member has three Options with regard to payment of compensation. Option 1 is have the payment payable directly to the Board member under the Board member's name; Option 2 is to have the payment payable directly to the Board member's employer/agency; and Option 3 is for the Board member to waive the compensation payment. Option 1 or 2 requires completion and submission of a signed W •9 form. [Based on Judgment ¶ 18 (as amended).]
- 2.14 Employment of Experts and Agents. Watermaster may employ or retain such administrative, engineering, geologic, accounting, legal or other specialized personnel and consultants as it may deem appropriate and shall require appropriate bonds from all officers and employees handling Watermaster funds. Watermaster shall maintain records for purposes of allocating costs of such services as well as of all other expenses of Watermaster administration as between the several pools established by the Physical Solution of the Judgment. No member of the Watermaster Advisory Committee or any Pool Committee may be employed or compensated by Watermaster for professional or other services rendered to such committee or to Watermaster other than as provided in section 2.13 above. [Based on Judgment ¶ 20.]
- 2.15 Acquisition of Facilities. Watermaster may purchase, lease, acquire and hold all necessary facilities and equipment; provided, that it is not the intent of the Judgment that Watermaster acquire any interest in real property or substantial capital assets. [Judgment ¶ 19 and Peace Agreement § 5.1(h).]
- 2.16 Investment of Funds. Watermaster may hold and invest all Watermaster funds in investments authorized from time to time for public agencies of the State of California,

taking into consideration the need to increase the earning power of such funds and to safeguard the integrity thereof. [Based on Judgment ¶ 23.]

- 2.17 Borrowing. Watermaster may borrow from time to time, amounts not to exceed the annual anticipated receipts of Watermaster during such year. [Judgment ¶ 24.]
- 2.18 Contracts. Watermaster may enter into contracts and agreements for the performance of any of its powers pursuant to the Judgment.
- 2.19 Cooperation with Other Agencies. Watermaster may, subject to the prior recommendation of the Advisory Committee, act jointly or cooperate with agencies of the United States of America, and the State of California or any political subdivisions, municipalities, districts or any person to the end that the purpose of the Physical Solution of the Judgment may be fully and economically carried out. [Based on Judgment ¶ 26.]
- 2.20 Annual Administrative Budget. Watermaster shall submit to the Advisory Committee, after Pool Committee review and approval, an administrative budget and recommendation for action for each subsequent Fiscal Year on or before March 1. The Advisory Committee shall review and submit the budget and their recommendations to Watermaster on or before April 1, next following. Watermaster shall hold a public hearing on the budget which was approved by Advisory Committee at an April meeting of each year and adopt the annual administrative budget which shall include the administrative items for each committee. The administrative budget shall set forth budgeted items in sufficient detail as necessary to make a proper allocation of expenses among the several pools, together with Watermaster's proposed allocation. The budget shall contain such additional comparative information or explanation as the Advisory Committee may recommend from time to time. Expenditures within the budgeted items may thereafter be made by Watermaster in the exercise of its powers, as matter of course. Any budget transfer in excess of 20% of a budget category, or modification of the administrative budget during any year shall be first submitted to the Advisory Committee for review and recommendation. [Based on Judgment ¶ 30.]
- 2.21 Annual Report. Watermaster shall prepare and make available an annual report, which shall be filed on or before January 31 of each year and shall contain details as to the operation of each of the pools, a certified audit of all assessments and expenditures pursuant to the Physical Solution of the Judgment and a review of Watermaster activities. [Based on Judgment ¶ 48.] The annual report shall generally include an update on the status of the parties' efforts to implement the OBMP. On a biannual basis, the annual report shall include an engineering appendix which contains a more specific "state of the Basin" report including an update on the status of individual OBMP related activities such as monitoring results and Watermaster's analysis of Hydrologic Balance. The annual report shall also include a compilation of any amendments to these Rules and Regulations made by Watermaster during the prior twelve (12) months and serve as notice to the Court of the amendments.

- 2.22 Studies. Watermaster may, with concurrence of the Advisory Committee or affected Pool Committee and in accordance with Paragraph 54(b) of the Judgment, undertake relevant studies of hydrologic conditions, both quantitative and qualitative, and operating aspects of implementation of the Chino Basin OBMP. [Judgment ¶ 27.]
- 2.23 Demonstrated CEQA Compliance. Watermaster shall not approve any request made under the Judgment or these Rules and Regulations where the proposed action also constitutes a "project" within the meaning of CEQA unless the Watermaster finds that the person requesting Watermaster approval has demonstrated CEQA compliance.
- 2.24 Notice of Litigation. Watermaster shall provide reasonable notice to the parties to the Judgment of any threatened or existing litigation affecting Watermaster or that challenges the legality, validity, or enforceability of the Judgment, the Peace Agreement, the OBMP Implementation Plan or the Rules and Regulations.
- 2.25 Defense of Judgment. Watermaster shall reasonably defend the Judgment, the Peace Agreement, the Peace II Agreement, the OBMP Implementation Plan, and these Rules and Regulations against challenges brought by persons who are not parties to the Judgment. These costs incurred by Watermaster in defending the Judgment, the Peace Agreement, the Peace II Agreement, the OBMP Implementation Plan, and these Rules and Regulations shall be considered a Watermaster general administrative expense. However, the State of California shall not be obligated to reimburse Watermaster for any legal or administrative costs incurred in such defense. [Based on Peace Agreement § 4.1.]
- 2.26 Written Reports. All reports required to be provided by Watermaster under these Rules and Regulations shall be provided in written form unless the context requires otherwise.
- 2.27 Interventions. Watermaster will receive and make recommendations regarding petitions for intervention and accumulate them for filing with the Court from time to time. [Judgment ¶ 60 and Order re Intervention Procedures, July 14, 1978.]
- 2.28 Advisory Committee and Pool Administration. Administration of each of the three Pools is not governed by these Rules and Regulations. Each of these entities has its own rules and shall thereby be governed by those rules. The Advisory Committee shall also be governed by its own rules and procedures. However, when these Rules and Regulations make express reference to the Advisory Committee and the context requires such a construction, these Rules and Regulations shall control.

ARTICLE III MONITORING

- 3.0 Scope. Watermaster will carry out the monitoring activities described under Program Element 1 of the OBMP and, as described in the OBMP Implementation Plan. Monitoring procedures not described by this Article III, shall be implemented through the development of appropriate Watermaster policies and procedures as necessary. Any such policies and procedures adopted by resolution or minute action shall be reported to the Court in Watermaster's annual report.
- 3.1 Meters. This section sets forth Watermaster's rules and procedures for monitoring Groundwater Production by metering.
- (a) Reporting. Any person Producing in excess of ten (10) acre-feet per year shall install and maintain in good operating condition, at the cost of each such person except as provided in (b) below, such meters as Watermaster may deem necessary. Any such measuring device shall be subject to regular inspection and testing as the Watermaster may, from time to time, require, but at a minimum every two years. [Judgment ¶ 21.]
 - (b) Watermaster shall provide a meter testing service with a complete line of carefully calibrated test equipment. Any Producer may request an evaluation of any or all of its water meters at any time. Watermaster shall only pay for tests initiated by Watermaster and for all tests on meters owned by Watermaster
 - (c) Agricultural Pool Meters.
 - (i) Any assessment levied by Watermaster on the members of the Agricultural Pool to fund the installation of meters which is set forth in the Judgment, paragraph 21 regarding metering, shall be paid by the Appropriative Pool. Members of the Agricultural Pool, shall have no obligation to pay for or assume any duty with regard to the installation of meters. The obligation to install and maintain and replace meters on wells owned or operated by members of the Agricultural Pool shall be that of the Watermaster. [Peace Agreement § 5.6(a).]
 - (ii) Agricultural Pool meters shall be installed within thirty-six (36) months of the Date of Execution. Watermaster shall be responsible for providing the meter, as well as paying the cost of any installation, maintenance, inspection, testing, calibrating and repairing. The members of the Agricultural Pool shall provide reasonable access during business hours to a location reasonably appropriate for installation, inspection, testing, calibrating and repairing of a meter. [Peace Agreement § 5.6(b).] However, the State of California reserves its right to continue to install, operate,

maintain, inspect, test and repair its own meters on wells owned or operated by the State, unless it consents to installation by Watermaster in which case Watermaster assumes the cost. [Peace Agreement § 5.6(c).]

- (iii) Watermaster shall test every Agricultural Pool meter other than those owned by the State of California on an active well under Watermaster's jurisdiction at least once every two years.

- 3.2 Reporting by Producers. Each party, or Responsible Party Producing water from the Basin, shall file with Watermaster on forms provided therefore, a quarterly report of the total water Production of that Producer during the preceding calendar quarter, together with such additional information as Watermaster and/or the affected Pool Committee may require. The report shall be due on the 15th day of the month next succeeding the end of each respective calendar quarter, i.e., April 15, July 15, October 15 and January 15, except for minimal Producers, whose reports are due annually by July 15. [Judgment ¶ 47.] Watermaster shall annually estimate the quantity of water Produced by "minimal producers" by any reasonable means, including but not limited to the use of a water duty factor dependent upon the type of use and/or acreage.
- 3.3 Error Corrections. All reports or other information submitted to Watermaster by the parties shall be subject to a four-year limitations period regarding the correction of errors contained in such submittals. In addition, all information generated by Watermaster shall be subject to the same four-year limitations period. All corrections to errors shall apply retroactively for no more than four years.

ARTICLE IV
ASSESSMENTS, REIMBURSEMENTS AND CREDITS

- 4.0 Scope. This Article sets forth Watermaster's rules and procedures regarding, assessments, reimbursements and credits.
- 4.1 Assessments. Watermaster shall levy assessments against the parties (other than Minimal Producers complying herewith) based upon Production during the preceding Production period. The assessment shall be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool. [Based on Judgment ¶ 53.] Assessments shall cover the cost of Replenishment Water and the expenses of Watermaster administration which shall be categorized as either (a) general, or (b) special project expense.
- (a) General Administrative Watermaster Expense shall include office rental, general personnel expense, supplies and office equipment and related incidental expense and general overhead. [Judgment ¶ 54(a).]
 - (b) Special Project Expense shall consist of special engineering, economic or other studies, litigation expense, meter testing or other major operating expenses. Each such project shall be assigned a task order number and shall be separately budgeted and accounted for. [Judgment ¶ 54(b).]
 - (c) General Watermaster administrative expense shall be allocated and assessed against the respective pools based upon allocations made by the Watermaster, who shall make such allocations based upon generally-accepted cost accounting methods. [Judgment ¶ 54.]
 - (d) Special project expense shall be allocated to a specific pool, or any portion thereof, only upon the basis of prior express assent and finding of benefit by the appropriate Pool Committee, or pursuant to written order of the Court. [Judgment ¶ 54.]
 - (e) Minimal Producers shall be exempted from payment of assessments upon filing of the Production reports referred to in section 3.2 hereof and payment of an annual five dollar (\$5.00) administrative fee with the annual Production report. [Based on Judgment ¶ 52.] In addition, any Minimal Producer who is a member of the Appropriative Pool or the Non-Agricultural Pool and who has no quantified right to Produce water, shall pay a replenishment assessment upon the water that it Produces.
 - (f) Notwithstanding the foregoing, Watermaster shall levy assessments for the 6,500 acre-feet per year as provided in section 5.1(g) of the Peace Agreement and the cost and allocation of this Supplemental Water shall be apportioned pro rata among the members of the Appropriative Pool under the Judgment according to the Producer's assigned share of Operating Safe Yield. [Peace Agreement § 5.1(g)(ii) (inclusion

of word "Operating" to correct mis-phrasing of Peace Agreement as required by the context in the Peace Agreement).]

- 4.2 OBMP Assessments. Watermaster Assessments for implementation of the OBMP shall be considered a Watermaster Administrative Expense pursuant to paragraph 54 of the Judgment.
- 4.3 Assessment - Procedure. Assessments shall be levied and collected as follows:
- (a) Notice of Assessment. Watermaster shall give written notice of all applicable assessments to each party as provided in the Judgment not later than October 31 of each year [Judgment ¶ 55(a).];
 - (b) Payment. Each assessment shall be payable on or before thirty (30) days after the date of invoice, and shall be the primary obligation of the party or successor owning the water Production facility at the time written notice of assessment is given, even though prior arrangement for payment by others has been made in writing and filed with Watermaster [Judgment ¶ 55(b).]; and
 - (c) Delinquency. Any delinquent assessment shall incur a late charge of ten (10%) percent per annum (or such greater rate as shall equal the average current cost of borrowed funds to the Watermaster) from the due date thereof. Delinquent assessments and late charge may be collected in a show-cause proceeding instituted by the Watermaster, in which case the Court may allow Watermaster's reasonable cost of collection, including attorney's fees. [Judgment ¶ 55(c).]
- 4.4 Assessment Adjustments. The Watermaster shall make assessment adjustments in whole or in part for assessments to any Producer as a result of erroneous Production reports or otherwise as necessary for the reporting period as either a credit or debit in the next occurring assessment package unless otherwise decided by Watermaster.
- (a) All assessments will be based on the assumption that appropriate, timely filed and pending Applications will be approved by Watermaster. If any such Applications are not approved, a supplemental assessment may be levied.
 - (b) Assessment adjustments may be necessary due to overstated Production, understated Production, or errors in the assessment package discovered after the assessments have been approved.
 - (c) Watermaster may cause an investigation and report to be made concerning questionable reports of Production from the Basin.
 - (d) Watermaster may seek to collect delinquent assessments and interest in a show-cause proceeding in which case the Court may allow Watermaster its reasonable

costs of collection, including attorney's fees. [Judgment ¶ 55(c).] Alternately, Watermaster may bring suit in a court having jurisdiction against any Producer for the collection of any delinquent assessments and interest thereon. The court, in addition to any delinquent assessments, may award interest and reasonable costs including attorney's fees.

4.5 Credits Against OBMP Assessments and Reimbursements. Watermaster shall exercise reasonable discretion in making its determination regarding credits against OBMP Assessments and reimbursements, considering the importance of the project or program to the successful completion of the OBMP, the available alternative funding sources, and the professional engineering and design standards as may be applicable under the circumstances. However, Watermaster shall not approve such a request for reimbursement or credit against future OBMP Assessments under this section where the Producer or party to the Judgment was otherwise legally compelled to make the improvement. [Peace Agreement § 5.4(d).]

- (a) Any party to the Judgment may make Application for credits against OBMP assessments or for reimbursement by filing a timely Application pursuant to the provisions of this section and Article X of these Rules and Regulations.
- (b) A party to the Judgment is eligible to be considered for credits or reimbursement for those documented capital, operations and maintenance expenses, including the cost of shutting down and/or relocating Groundwater Production facilities, that are reasonably incurred in the implementation of any project or program that carries out the purposes of the OBMP and specifically relates to the prevention of subsidence in the Basin, upon approval of the request by Watermaster. [Peace Agreement § 5.4(d), as amended.] The purposes of the OBMP shall be those goals set forth in the Phase I Report as implemented through the OBMP Implementation Plan in a manner consistent with the Peace Agreement. [July 13, 2000 Court Order.]
- (c) Any Producer that Watermaster compels to shut down and/or move a Groundwater Production facility that is in existence on August 1, 2000 shall have the right to receive a credit against future Watermaster assessments or reimbursement up to the reasonable cost of the replacement Groundwater Production facility, including the legal rate of interest on California Judgments. [Peace Agreement § 5.4(e).] In its sole discretion, Watermaster may determine to issue full reimbursement upon approval of the Application or to issue a credit against future Watermaster assessments. However, in the event Watermaster elects to provide a credit in lieu of reimbursement, it must have fully compensated the Producer for the reasonable cost of the replacement Groundwater Production facility through any combination of credits and reimbursements within five years from the date of the Application, unless the Producer consents in writing to a longer period. Note: this section is subject to a rule of construction. See section 1.2(h) above.

- (d) An Application to Watermaster for reimbursement or a credit against OBMP Assessments shall be considered timely, if and only if the Application has been approved by Watermaster in advance of construction or the offer by a party to dedicate the facility to carry out the purposes of the OBMP as described in (b) above. [Based on Peace Agreement § 5.4(d).]
- 4.6 Agricultural Pool Assessments and Expenses. During the term of the Peace Agreement, all Assessments and expenses of the Agricultural Pool including those of the Agricultural Pool Committee shall be paid by the Appropriative Pool. This includes but is not limited to OBMP Assessments, assessments pursuant to paragraphs 20, 21, 22, 30, 42, 51, 53, 54 (both general administrative expenses and special project expenses), 55, and Exhibit F (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. [Peace Agreement § 5.4(a).]
- 4.7 Replenishment Assessments. Watermaster shall levy and collect assessments in each year, pursuant to the respective pooling plans, in the amount of the Replenishment Obligation (including any Desalter Replenishment) for any pool during the preceding year. [Based on Judgment ¶ 51.]
- 4.8 Desalter Replenishment Assessments and Credits. The price of Desalted water to a purchaser of Desalted water does not include the cost of Replenishment. The source of Replenishment shall be those provided in Article VII herein, Article VII of the Peace Agreement, and Article VI of the Peace II Agreement. However, a purchaser of Desalted water may elect to obtain a reduced Assessment levied by Watermaster by dedicating by Transfer, or assignment, some or all of its Production rights to Watermaster for the purpose of satisfying Desalter Replenishment. The amount of the credit granted by Watermaster shall be equal to the value of the cost of Replenishment Water then available from the MWD as interruptible, untreated water or the then prevailing value of the avoided Replenishment Obligation, whichever is less. For purposes of determining Replenishment assessments, water Produced by the Desalters shall be considered Production by the Appropriative Pool.
- 4.9 Consistency with Peace Agreement. The procurement of Replenishment Water and the levy of Assessments shall be consistent with the provisions of section 5.4(a) of the Peace Agreement.
- 4.10 OBMP Committee. Watermaster shall establish a subcommittee (OBMP Committee) for the purpose of coordinating fund raising efforts in furtherance of the OBMP.
- (a) The subcommittee shall hold a regularly scheduled meeting a minimum of once every quarter.

- (b) Prior to each subcommittee meeting, Watermaster shall prepare a summary of the funds, loans or grants secured for the purpose of implementing the OBMP over the past three months and distribute any information it may possess regarding the availability of other potential funds, loans or grants.

**ARTICLE V
PHYSICAL SOLUTION**

- 5.0 Scope. This Article generally sets forth the standards for Watermaster implementation of the Physical Solution established by the Judgment, including the application of these standards to Watermaster conduct and decisions under the Judgment, these Rules and Regulations and the OBMP.
- 5.1 Physical Solution. It is essential that this Physical Solution provide maximum flexibility and adaptability to use existing future, technological, social, institutional and economic options to maximize beneficial use of the waters of the Chino Basin. [Judgment ¶ 40.]
- 5.2 Watermaster Control. Watermaster, with the advice of the Advisory and Pool Committees, is granted discretionary powers in order to develop its OBMP. [Based on Judgment ¶ 41.]
- 5.3 Basin Management Parameters. Watermaster shall consider the following parameters in implementing the Physical Solution under Articles VI - X of these Rules and Regulations:
- (a) Pumping Patterns. Chino Basin is a common supply for all persons and agencies utilizing its waters. It is an objective in management of the Basin's waters that no Producer be deprived of access to said waters by reason of unreasonable pumping patterns, nor by regional or localized Recharge of Replenishment Water, insofar as such result may be practically avoided. [Judgment Exhibit "I".]
 - (b) Water Quality. Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster. [Judgment Exhibit "I".]
 - (c) Economic Considerations. Financial feasibility, economic impact and the cost of optimum use of the Basin's resources and the physical facilities of the parties are objectives and concerns equal in importance to water quantity and quality parameters. [Judgment Exhibit "I".]

ARTICLE VI
SAFE YIELD AND OPERATING SAFE YIELD

- 6.0 Scope. This Article sets forth the rules and procedures that are applicable to Watermaster's regulation, control, and management of Safe Yield and Operating Safe Yield.
- 6.1 Annual Production Right. The Annual Production Right shall be calculated by Watermaster pursuant to the Judgment and the Peace Agreement.
- 6.2 New Yield. The Judgment provides that Safe Yield may need to be periodically adjusted based on more accurate and updated data and based on evidence of increased capture of native water and increased return flow from use of Replenishment or Stored Water. Safe Yield can only be re-determined periodically when long-term data or evidence is developed in support thereof. In order to encourage maximization of Basin Water under the Physical Solution, New Yield shall be accounted for by Watermaster in interim periods between re-determinations of Safe Yield.
- (a) Proven increases in yield in quantities greater than the historical level of contribution from certain Recharge sources may result from changed conditions including, but not limited to, the increased capture of rising water, increased capture of available storm flow, and other management activities. These increases are considered New Yield.
 - (b) To the extent the New Yield arises from conditions, programs or projects implemented and operational after July 1, 2000, it is available for allocation by Watermaster as a component of the Annual Production Right for each member of the Appropriative Pool.
 - (c) As part of the documentation for the assessments and annual report for each year, Watermaster will provide a summary and analysis of the historical recharge and whether there are changed conditions that have resulted in a quantity of New Yield.
 - (d) Except as described in section 6.2(f) below, pursuant to the Peace Agreement and the Peace II Agreement, any New Yield shall first be assigned to offsetting Desalter Replenishment Obligations in the immediately following year and as reasonably required to satisfy expected future Replenishment Obligations arising from the Desalter. If there is water in the Watermaster Desalter Replenishment Account to satisfy the Desalter Replenishment Obligation for the year, the New Yield shall be made available to the Appropriative Pool to satisfy a Replenishment Obligation consistent with section 7.5(a)(3) herein.
 - (e) New Yield is expected to result from a variety of conditions, including but not limited to enhanced Basin management, increased stormwater Recharge, induced Recharge from operation of the Desalters, injection, and changes in land use

patterns. Watermaster has established an initial baseline quantity of stormflow Recharged in the Basin under historical conditions in the amount of 5,600 acre-feet per year. Any party to the Judgment may request Watermaster to re-examine this initial estimate of the baseline quantity and to adjust the quantity in accordance with best available technology and substantial evidence.

- (f) The storm flow component of Recharge determined by Watermaster to be part of New Yield shall be allocated to the Appropriators according to their percentages of Safe Yield under the Judgment. Notwithstanding section 7.5(c) of the Peace Agreement, those amounts will continue to be dedicated in those percentages to the Appropriators if that storm flow Recharge is subsequently determined to be Safe Yield. [First Amendment to Peace Agreement, ¶ 2.]

6.3 Accounting of Unallocated Agricultural Portion of Safe Yield.

- (a) In each year, the 82,800 acre-feet being that portion of the Safe Yield made available to the Agricultural Pool under the Judgment, shall be made available in the following sequence:
 - (i) To the Agricultural Pool to satisfy all demands for overlying Agricultural Pool lands;
 - (ii) To supplement, in the particular year, water available from Operating Safe Yield to compensate for any reduction in the Safe Yield by reason of recalculation thereof;
 - (iii) To land use conversions that were completed prior to October 1, 2000;
 - (iv) To land use conversions that have been completed after October 1, 2000; and
 - (v) To the Early Transfer of the quantity of water not Produced by the Agricultural Pool that is remaining after all the land use conversions are satisfied pursuant to section 5.3(h) of the Peace Agreement from the Agricultural Pool to the Appropriative Pool in accordance with their pro-rata assigned share of Operating Safe Yield.
- (b) In the event actual Production by the Agricultural Pool exceeds 414,000 acre-feet in any five years, the Agricultural Pool shall procure sufficient quantities of Replenishment Water to satisfy over-Production obligations, whatever they may be.

6.4 Conversion Claims. The following procedures may be utilized by any Appropriator:

- (a) Record of Unconverted Agricultural Acreage. Watermaster shall maintain on an ongoing basis a record, with appropriate related maps, of all agricultural acreage within the Chino Basin subject to being converted to appropriative water use pursuant to the provisions of this subparagraph.
- (b) Record of Water Service Conversion. Any Appropriator who undertakes to permanently provide water service to any portion of a legal parcel subject to conversion shall report such change to Watermaster. Watermaster shall ensure that when a partial conversion occurs, that the water use on the acreage is properly metered. For all or any portion of the legal parcel that is proposed for conversion, Watermaster shall thereupon verify such change in water service and shall maintain a record and account for each Appropriator of the total acreage involved. Should, at any time, all or any portion of the converted acreage return to agricultural overlying use, Watermaster shall return such acreage that returns to agricultural use to unconverted status and correspondingly reduce or eliminate any allocation accorded to the Appropriator involved.

6.5 Recalculation of Safe Yield.

- (a) Initial Safe Yield Reset. Effective July 1, 2010 and continuing until June 30, 2020, the Safe Yield for the Basin is reset at 135,000 AFY. For all purposes arising under the Judgment, the Peace Agreements and the OBMP Implementation Plan, the Safe Yield shall be 135,000 AFY, without exception, unless and until Safe Yield is reset in accordance with the procedures set forth in this Section 6.5, and determined by the Court pursuant to its retained continuing jurisdiction.
- (b) Scheduled Reset. Watermaster will initiate a process to evaluate and reset the Safe Yield by July 1, 2020 as further provided in this Section 6.5. Subject to the provisions of Section 6.5(c) below, the Safe Yield, as it is reset effective July 1, 2020 will continue until June 30, 2030. Watermaster will initiate the reset process no later than January 1, 2019, in order to ensure that the Safe Yield, as reset, may be approved by the court no later than June 30, 2020. Consistent with the provisions of the OBMP Implementation Plan, thereafter Watermaster will conduct a Safe Yield evaluation and reset process no less frequently than every ten years. This Section 6.5(b) is deemed to satisfy Watermaster's obligation, under Paragraph 3.(b) of Exhibit "I" to the Judgment, to provide notice of a potential change in Operating Safe Yield.
- (c) Interim Correction. In addition to the scheduled reset set forth in Section 6.5(b) above, the Safe Yield may be reset in the event that, with the recommendation and advice of the Pools and Advisory Committee and in the exercise of prudent management discretion described in Section 6.5(e)(iii), below, Watermaster recommends to the court that the Safe Yield must be changed by an amount greater (more or less) than 2.5% of the then-effective Safe Yield.

- (d) Safe Yield Reset Methodology. The Safe Yield shall be subsequently evaluated pursuant to the methodology set forth in the Reset Technical Memorandum. The reset will rely upon long-term hydrology and will include data from 1921 to the date of the reset evaluation. The long-term hydrology will be continuously expanded to account for new data from each year, through July 2030, as it becomes available. This methodology will thereby account for short-term climatic variations, wet and dry. Based on the best information practicably available to Watermaster, the Reset Technical Memorandum sets forth a prudent and reasonable professional methodology to evaluate the then prevailing Safe Yield in a manner consistent with the Judgment, the Peace Agreements, and the OBMP Implementation Plan. In furtherance of the goal of maximizing the beneficial use of the waters of the Chino Basin, Watermaster, with the recommendation and advice of the Pools and Advisory Committee, may supplement the Reset Technical Memorandum's methodology to incorporate future advances in best management practices and hydrologic science as they evolve over the term of this order.
- (e) Annual Data Collection and Evaluation. In support of its obligations to undertake the reset in accordance with the Reset Technical Memorandum and this Section 6.5, Watermaster shall annually undertake the following actions:
- (i) Ensure that, unless a Party to the Judgment is excluded from reporting, all production by all Parties to the Judgment is metered, reported, and reflected in Watermaster's approved Assessment Packages;
 - (ii) Collect data concerning cultural conditions annually with cultural conditions including, but not limited to, land use, water use practices, production, and facilities for the production, generation, storage, recharge, treatment, or transmission of water;
 - (iii) Evaluate the potential need for prudent management discretion to avoid or mitigate undesirable results including, but not limited to, subsidence, water quality degradation, and unreasonable pump lifts. Where the evaluation of available data suggests that there has been or will be a material change from existing and projected conditions or threatened undesirable results, then a more significant evaluation, including modeling, as described in the Reset Technical Memorandum, will be undertaken; and,
 - (iv) As part of its regular budgeting process, develop a budget for the annual data collection, data evaluation, and any scheduled modeling efforts, including the methodology for the allocation of expenses among the Parties to the Judgment. Such budget development shall be consistent with section 5.4(a) of the Peace Agreement.

- (f) Modeling. Watermaster shall cause the Basin model to be updated and a model evaluation of Safe Yield, in a manner consistent with the Reset Technical Memorandum, to be initiated no later than January 1, 2024, in order to ensure that the same may be completed by June 30, 2025.
- (g) Peer Review. The Pools shall be provided with reasonable opportunity, no less frequently than annually, for peer review of the collection of data and the application of the data collected in regard to the activities described in Section 6.5(d), (e), and (f) above.
- (h) No Retroactive Accounting. Notwithstanding that the initial Safe Yield reset, described in Section 6.5(a) above, shall be effective as of July 1, 2010, Watermaster will not, in any manner, including through the approval of its Assessment Packages, seek to change prior accounting of the prior allocation of Safe Yield and Operating Safe Yield among the Parties to the Judgment for Production Years prior to July 1, 2014.

ARTICLE VII RECHARGE

7.0 Scope. This Article sets forth the standards that are applicable to Watermaster's review of Recharge actions by all persons that may be subject to the Judgment as well as Watermaster's efforts to administer, direct, and arrange for Recharge in accordance with the Judgment.

7.1 In General

- (a) Watermaster shall administer, direct and arrange for the Recharge of all water in a manner pursuant to the Judgment, the Peace and Peace II Agreements and the OBMP in a manner that causes no Material Physical Injury to any party to the Judgment or the Chino Basin. Nothing herein shall be construed as committing a Party to provide Supplemental Water upon terms and conditions that are not deemed acceptable to that party. This means that no party to the Judgment shall be individually and independently obligated to purchase or acquire Supplemental Water on behalf of another party to the Judgment. [Peace Agreement § 5.1(e).] Applications to engage in Recharge activities shall be processed in accordance with the provisions of Article X using the forms provided by Watermaster attached hereto as Appendix 1.
- (b) Watermaster shall exercise its Best Efforts to:
 - (i) Protect and enhance the Safe Yield of the Chino Basin through Replenishment and Recharge [Peace Agreement § 5.1(e).];
 - (ii) Ensure there is sufficient Recharge capacity for Recharge water to meet the goals of the OBMP and the future water supply needs within the Chino Basin [Peace Agreement § 5.1(e).];
 - (iii) Evaluate the long term Hydrologic Balance within all areas and subareas of the Chino Basin;
 - (iv) Make its initial report on the then existing state of Hydrologic Balance by July 1, 2003, including any recommendations on Recharge actions which may be necessary under the OBMP. Thereafter Watermaster shall make written reports on the long term Hydrologic Balance in the Chino Basin every two years;
 - (v) Use and consider the information provided in the reports under (iv) above, when modifying or updating the Recharge Master Plan and in implementing the OBMP;

- (vi) Evaluate the potential or threat for any Material Physical Injury to any party to the Judgment or the Chino Basin, including, but not limited to, any Material Physical Injury that may result from any Transfer of water in storage or water rights which is proposed in place of physical Recharge of water to Chino Basin in accordance with the provisions of section 5.3 of the Peace Agreement [Peace Agreement § 5.1(e).];
 - (vii) Cooperate with owners of existing Recharge facilities to expand/improve/preserve Recharge facilities identified in the Recharge Master Plan; arrange for the construction of the works and facilities necessary to implement the quantities of Recharge identified in the OBMP Implementation Plan [Peace Agreement § 5.1(e)(ix)] and cooperate with appropriate entities to construct and operate the new Recharge facilities that are identified in the Recharge Master Plan;
 - (viii) Ensure that its Recharge efforts under the Recharge Master Plan are consistent with the Judgment, and the Peace Agreement;
 - (ix) Establish and periodically update criteria for the use of water from different sources for Replenishment purposes [Peace Agreement § 5.1(e)(v).];
 - (x) Ensure a proper accounting of all sources of Recharge to the Chino Basin [Peace Agreement § 5.1(e)(vi).];
 - (xi) Recharge the Chino Basin with water in any area where Groundwater levels have declined to such an extent that there is an imminent threat of Material Physical Injury to any party to the Judgment or the Basin [Peace Agreement § 5.1(e)(vii).];
 - (xii) Maintain long-term Hydrologic Balance between total Recharge and discharge within all areas and sub-areas [Peace Agreement § 5.1(e)(viii).]; and
 - (xiii) Use water of the lowest cost and the highest quality, giving preference as far as possible to the augmentation and the Recharge of native storm water. [Peace Agreement § 5.1(f).]
- (c) Recharge Master Plan. The Recharge Master Plan will address how the Basin will be contemporaneously managed to secure and maintain Hydraulic Control and subsequently operated at a new equilibrium at the conclusion of the period of Re-Operation. The Recharge Master Plan will be jointly approved by IEUA and Watermaster and shall contain recharge estimations and summaries of the projected water supply availability as well as the physical means to accomplish the recharge projections. Specifically, the Recharge Master Plan will reflect an appropriate

schedule for planning, design, and physical improvements as may be required to provide reasonable assurance that following the full beneficial use of the groundwater withdrawn in accordance with the Basin Re-Operation and authorized controlled overdraft, that sufficient Replenishment capability exists to meet the reasonable projections of Desalter Replenishment obligations. With the concurrence of IEUA and Watermaster, the Recharge Master Plan will be updated and amended as frequently as necessary with Court approval and not less than every five (5) years. [Peace II Agreement § 8.1.]

- (i) Coordination. The members of the Appropriative Pool will coordinate the development of their respective Urban Water Management Plans and Water Supply Master Plans with Watermaster as follows. [Peace II Agreement § 8.2.]
 - a) Each Appropriator that prepares an Urban Water Management Plan and Water Supply Plans will provide Watermaster with copies of its existing and proposed plans.
 - b) Watermaster will use the Urban Water Management Plans in evaluating the adequacy of the Recharge Master Plan and other OBMP Implementation Plan program elements.
 - c) Each Appropriator will provide Watermaster with a draft in advance of adopting any proposed changes to its Urban Water Management Plans and in advance of adopting any material changes to their Water Supply Master Plans respectively in accordance with the customary notification routinely provided to other third parties to offer Watermaster a reasonable opportunity to provide informal input and informal comment on the proposed changes.
 - d) Any Party that experiences the loss or the imminent threatened loss of a material water supply source will provide reasonable notice to Watermaster of the condition and the expected impact, if any, on the projected groundwater use.
- (ii) In preparation of the Recharge Master Plan, Watermaster will consider whether existing groundwater production facilities owned or controlled by producers within Management Zone 1 may be used in connection with an aquifer storage and recovery ("ASR") project so as to further enhance recharge in specific locations and to otherwise meet the objectives of the Recharge Master Plan. [Peace II Agreement § 8.4(d)(2).]

- (d) Watermaster shall not own Recharge projects, including but not limited to spreading grounds, injection wells, or diversion works. [Peace Agreement § 5.1(h).]
- (e) Watermaster may own and hold water rights in trust for the benefit of the parties to the Judgment. Subject to this exception, Watermaster shall not own land or interests in real property. [Peace Agreement § 5.1(h).] Watermaster shall obtain Court approval prior to acquiring any water rights in trust for the benefit of the parties to the Judgment. In addition, Watermaster shall conform all existing permits to ensure that title is held in trust for the benefit of the parties to the Judgment.
- (f) Watermaster shall arrange, facilitate and provide for Recharge by entering into contracts with appropriate persons, which may provide facilities and operations for physical Recharge of water as required by the Judgment and the Peace Agreement, or pursuant to the OBMP. Any such contracts shall include appropriate terms and conditions, including terms for the location and payment of costs necessary for the operation and maintenance of facilities, if any. [Peace Agreement § 5.1(h).]
- (g) Watermaster shall provide an annual accounting of the amount of Recharge and the location of the specific types of Recharge. [Peace Agreement § 5.1(j).]

7.2 Recharge of Supplemental Water. All Recharge of the Chino Basin with Supplemental Water shall be subject to Watermaster approval obtained by Application made to Watermaster in accordance with provisions of Article X. [Peace Agreement § 5.1(a).] In reviewing any such Application, Watermaster shall comply with the following.

- (a) Watermaster will ensure that any person may make Application to Watermaster to Recharge the Chino Basin with Supplemental Water pursuant to Article X, including the exercise of the right to offer to sell In-Lieu Recharge Water to Watermaster as provided in the Judgment and the Peace Agreement in a manner that is consistent with the OBMP and the law. [Peace Agreement § 5.1(b).]
- (b) Watermaster shall not approve an Application by any party to the Judgment under Article X if it is inconsistent with the terms of the Peace Agreement, or will cause any Material Physical Injury to any party to the Judgment or the Basin. [Peace Agreement § 5.1(b).]
- (c) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Recharge of Supplemental Water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Recharge of Supplemental Water must be denied. [Peace Agreement § 5.1(b).]

- (d) Absent a clear showing as to peculiar circumstances or changes, Recharge of the Chino Basin with Supplemental Water conducted through spreading grounds shall be assessed: (i) a 1.5% evaporation loss if the Recharge occurs in November through March; or (ii) a 4.2% evaporation loss if the Recharge occurs in April through October. Such loss shall be a one-time adjustment applicable to the Party engaging in Recharge. Losses for Recharge through injection wells shall be determined on a case by case basis. [Judgment at ¶41.]

7.3 Recharge of 6,500 Acre-Feet of Supplemental Water in Management Zone 1. Consistent with its overall obligations to manage the Chino Basin to ensure hydrologic balance within each management zone, for the duration of the Peace Agreement (until June of 2030), Watermaster will ensure that a minimum of 6,500 acre-feet of wet water recharge occurs within Management Zone 1 on an annual basis. However, to the extent that water is unavailable for recharge or there is no replenishment obligation in any year, the obligation to recharge 6,500 acre-feet will accrue and be satisfied in subsequent years. [Peace II Agreement § 8.4(d).]

- (a) Watermaster will implement this measure in a coordinated manner so as to facilitate compliance with other agreements among the parties, including but not limited to the Dry-Year Yield Agreements.
- (b) Five years from the effective date of the Peace II Measures, Watermaster will cause an evaluation of the minimum recharge quantity for Management Zone 1. After consideration of the information developed, the observed experiences in complying with the Dry Year Yield Agreements as well as any other pertinent information, Watermaster may increase the minimum requirement for Management Zone 1 to quantities greater than 6,500 acre-feet per year. In no circumstance will the commitment to recharge 6,500 acre-feet be reduced for the duration of the Peace Agreement. [Peace II Agreement § 8.4(e).]

7.4 Sources of Replenishment Water. Supplemental Water may be obtained by Watermaster from any available source. Watermaster shall, however, seek to obtain the best available quality of Supplemental Water at the most reasonable cost for recharge in the Basin. It is anticipated that Supplemental Water for Replenishment of Chino Basin may be available at different rates to the various pools to meet their Replenishment Obligations. If such is the case, each pool will be assessed only that amount necessary for the cost of Replenishment Water to that pool, at the rate available to the pool, to meet its Replenishment Obligation. In this connection, available resources may include, but are not limited to:

- (a) Maximum beneficial use of Recycled Water, which shall be given a high priority by Watermaster [Judgment ¶ 49(a).];

- (b) State Project Water subject to applicable service provisions of the State's water service contracts [Judgment ¶ 49(b).];
- (c) Local Imported Water through facilities and methods for importation of surface and Groundwater supplies from adjacent basins and watersheds [Judgment ¶ 49(c).]; and
- (d) Available supplies of Metropolitan Water District water from its Colorado River Aqueduct. [Judgment ¶ 49(d).]

7.5 Desalter Replenishment. Notwithstanding the provisions of section 7.4, above, for the initial term of the Peace Agreement, the Replenishment obligation attributable to Desalter production in any year will be determined by Watermaster as follows [Peace Agreement § 7.5; Peace II Agreement § 6.2.]:

- (a) Watermaster will calculate the total Desalter Production for the preceding year and then apply a credit against the total quantity from:
 - (i) the Watermaster Desalter replenishment account composed of 25,000 acre-feet of water abandoned by Kaiser Ventures pursuant to the "Salt Offset Agreement" dated October 21, 1993, between Kaiser Ventures and the RWQCB, and other water previously dedicated by the Appropriative Pool [Peace Agreement § 7.5(a).];
 - (ii) dedication of water from the Overlying (Non-Agricultural) Pool Storage Account or from any contribution arising from an annual authorized Physical Solution Transfer in accordance with amended Exhibit G to the Judgment;
 - (iii) New Yield that may be made available to Watermaster through a combination of management programs, actions or facilities, other than the Stormwater component of New Yield, as determined on an annual basis [Peace Agreement § 7.5(b).];
 - (iv) any declared losses from storage in excess of actual losses enforced as a "Leave Behind";
 - (v) Safe Yield that may be contributed by the parties [Peace Agreement § 7.5(c).];
 - (vi) any Production of groundwater attributable to the controlled overdraft authorized pursuant to Exhibit I to the Judgment, as amended.
- (b) To the extent available credits are insufficient to fully offset the quantity of groundwater production attributable to the Desalters, Watermaster will use water

or revenue obtained by levying the following assessments among the members of the Overlying (Non-Agricultural) Pool and the Appropriative Pool to meet any remaining replenishment obligation as follows.

- (i) A Special OBMP Assessment against the Overlying (Non-Agricultural) Pool as more specifically authorized and described in amendment to Exhibit "G" paragraph 5 (c) to the Judgment will be dedicated by Watermaster to further off-set replenishment of the Desalters. However, to the extent there is no remaining replenishment obligation attributable to the Desalters in any year after applying the off-sets set forth in 7.5(a), the OBMP Special Assessment levied by Watermaster will be distributed as provided in Section 9.2 of the Peace II Agreement. The Special OBMP Assessment will be assessed pro-rata on each member's share of Safe Yield.
- (ii) The members of the Appropriative Pool will contribute a total of 10,000 afy toward Desalter replenishment, allocated among Appropriative Pool members as follows:
 - 85% of the total (8,500 afy) will be allocated according to the Operating Safe Yield percentage of each Appropriative Pool member; and
 - 15% of the total (1,500 afy) will be allocated according to each land use conversion agency's percentage of the total land use conversion claims, based on the actual land use conversion allocations of the year.

The annual desalter replenishment obligation contribution of each Appropriative Pool member will be calculated using the following formula:

$$\begin{aligned} \text{Desalter replenishment obligation contribution} &= (8,500 * \% \\ &\text{Appropriator's share of total initial 49,834 afy Operating Safe Yield}) \\ &+ (1,500 * \% \text{ Appropriator's proportional share of that year's total} \\ &\text{conversion claims}) \end{aligned}$$

A sample calculation of the desalter replenishment obligation contribution for each Appropriative Pool member is shown on Exhibit 4 to the Peace II Agreement, as amended.

- (iii) A Replenishment Assessment against the Appropriative Pool for any remaining Desalter replenishment obligation after applying both 6(b)(i) and 6(b)(ii), allocated pro-rata to each Appropriative Pool member according to the combined total of the member's share of Operating Safe Yield and the member's Adjusted Physical Production, as defined below. Desalter

Production is excluded from this calculation. A sample calculation of the allocation of the remaining desalter obligation is shown in Exhibit 4 to the Peace II Agreement.¹

- (iv) Adjusted Physical Production is the Appropriative Pool member's total combined physical production (i.e., all groundwater pumped or produced by the Appropriative Pool member's groundwater wells in the Chino Basin, including water transferred from the Non- Agricultural Pool under Exhibit G, ¶9 of the Judgment), with the following adjustments:
- (1) In the case of assignments among Appropriative Pool members, or between Appropriative Pool members and Non-Agricultural Pool members under Exhibit G, ¶6 of the Judgment, resulting in pumping or production by one party to the Judgment for use by another party to the Judgment, the production for purposes of Adjusted Physical Production shall be assigned to the party making beneficial use of the water, not the actual producer.
 - (2) Production offset credits pursuant to voluntary agreements under section 5.3(i) of the Peace Agreement are calculated at 50% of the total voluntary agreement credit in the determination of Adjusted Physical Production for an Appropriative Pool member participating in a voluntary agreement for that year. In the determination of Adjusted Physical Production, the voluntary agreement credit is subtracted from physical production. Reduction of the voluntary agreement credit from 100% to 50% is applicable only to the calculation of the Adjusted Physical Production hereunder; but in all other applications, the voluntary agreement credit shall remain unchanged (i.e. remain at 100%).
 - (3) Production associated with approved storage and recovery programs (e.g., Dry Year Yield recovery program with MWD) is not counted in Adjusted Physical Production, except for in-lieu participation in such programs: in-lieu put quantities shall be added to physical production, and in-lieu take quantities shall be subtracted from physical production.
 - (4) Metered pump-to-waste Production that is determined by Watermaster to be subsequently recharged to the groundwater basin is deducted from physical production; unmetered pump-to-waste production that is determined by Watermaster not to be

¹ This sample calculation is attached hereto as Exhibit "C."

subsequently recharged to the groundwater basin is added to physical production.

(5) The Appropriative Pool may approve, by unanimous vote, the inclusion of other items in the determination of Adjusted Physical Production, with the exception of Non- Agricultural Pool water assigned or transferred under Exhibit G, ¶6 or ¶10 of the Judgment.

(v) Any member of the Non-Agricultural Pool that is also a member of the Appropriative Pool may elect to transfer (a) some or all of the annual share of Operating Safe Yield of the transferor in and for the year in which the transfer occurs (except that such transfer shall exclude any dedication to the Watermaster required by section 6.2(b)(1) of the Peace II Agreement), and (b) any quantity of water held in storage by the transferor (including without limitation carryover and excess carryover) to any member of the Appropriative Pool, in either case at any price that the transferor and transferee may deem appropriate and for the purpose of satisfying the transferee's desalter replenishment obligation. The transferee's desalter replenishment obligation shall be credited by the number of acre-feet so transferred.

(vi) For the purposes of this section 7.5(b), the quantification of any Party's share of Operating Safe Yield does not include either land use conversions or Early Transfers.

7.6 Method of Replenishment. Watermaster may accomplish Replenishment by any reasonable method, including spreading and percolation, injection of water into existing or new facilities, in-lieu procedures and acquisition of unproduced water from members of the Non-Agricultural and Appropriative Pools. [Judgment ¶ 50.]

7.7 Accumulations. In order to minimize fluctuations in assessments and to give Watermaster flexibility in the purchase and spreading of Replenishment Water, Watermaster may make reasonable accumulations of Replenishment Water assessment proceeds. Interest earned on such retained funds shall be added to the account of the pool from which the funds were collected and shall be applied only to the purchase of Replenishment Water. [Judgment ¶ 56.]

7.8 In-Lieu and Other Negotiated Procedures. To the extent good management practices dictate that recharge of the Basin be accomplished by taking surface supplies of Supplemental Water in lieu of Groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, the following in-lieu procedures or other additional procedures as may be negotiated by Watermaster and approved by the Watermaster Advisory Committee shall prevail [Judgment Exhibit "H" ¶ 11.]:

- (a) Designation of In-Lieu Areas. In-lieu areas may be designated by order of Watermaster upon recommendation or approval of the Watermaster Advisory Committee. Watermaster has previously designated the entire Chino Basin as an in-lieu area. In-lieu areas may be enlarged, reduced or eliminated by subsequent order; provided, however, that designation of an in-lieu area shall be for a minimum fixed term sufficient to justify necessary capital investment. However, should in-lieu Area No.1, which has been established by the Court, be reduced or eliminated, it shall require prior order of the Court.

- (b) Method of Operation. Any member of the Appropriative Pool Producing water within a designated in-lieu area who is willing to abstain for any reason from Producing any portion of its share of Operating Safe Yield in any year, may offer such unpumped water to Watermaster on a form to be provided therefor. In such event, Watermaster shall purchase said water in place, in lieu of spreading Replenishment Water, which may be otherwise required to make up for over Production. The purchase price for in-lieu water shall be the lesser of:
 - (i) Watermaster's current cost of Replenishment Water, plus the cost of spreading; or
 - (ii) The cost of supplemental surface supplies to the Appropriator, less
 - a) said Appropriator's average cost of Groundwater Production, and
 - b) the applicable Production assessment where the water is Produced.

**ARTICLE VIII
STORAGE**

8.0 Scope. This Article sets forth Watermaster's obligations and responsibilities regarding the management, regulation and control of storage within the Basin.

8.1 In General.

- (a) Watermaster Control. A substantial amount of available Groundwater storage capacity exists in the Basin that is not used for storage or regulation of Basin Waters. It is essential that the use of storage capacity of the Basin be undertaken only under Watermaster control and regulation so as to protect the integrity of the Basin. Watermaster will exercise regulation and control of storage primarily through the execution of Groundwater Storage Agreements. [Judgment ¶ 11.]
- (b) Categories of Groundwater Storage Agreements. There are different categories of storage and different types of Groundwater Storage agreements. Only those Groundwater Storage agreements defined as "Qualifying Storage agreements" require new Watermaster approval. The agreements identified in section 8.1(f)(iii) herein do not require new Watermaster approval. Qualifying Storage agreements will be processed by Watermaster in accordance with the forms provided by Watermaster and attached hereto as Appendix 1.
- (c) Court Notification and Approval. Before it is effective, any Storage and Recovery Agreement entered into pursuant to a Storage and Recovery Program shall first receive Court Approval. With respect to all other Groundwater Storage Agreements, Watermaster shall notify the Court after approval.
- (d) Relationship Between Recapture and Storage. Recapture of water held in a storage account will generally be approved by Watermaster as a component of and coincident with a Groundwater Storage Agreement for Qualifying Storage. However, an Applicant for Qualifying Storage may request, and Watermaster may approve, a Groundwater Storage Agreement where the plan for recovery is not yet known. In such cases, the Applicant may request Watermaster approval of the Qualifying Storage only and subsequently submit and process an independent Application for Recapture under the provisions of Article X.
- (e) Storage of Safe Yield as Carry-Over Water. Any member of the Appropriative Pool or member of the Non-Agricultural Pool who Produces less than its assigned share of Operating Safe Yield or Safe Yield, respectively, may carry such unexercised right forward for exercise in subsequent years. Watermaster shall be required to keep an accounting of Carry-Over Water in connection with said Carry-Over Rights. The first water Produced in any subsequent year, shall be deemed to be in exercise of that Carry-Over Right. If the aggregate remaining Carry-Over Water

available to any member of the Appropriative Pool, or member of the Non-Agricultural Pool with Safe Yield, in a given year exceeds its assigned share of Operating Safe Yield after its demands are met, such Producer shall, as a condition of preserving such Excess Carry-Over Water execute a Local Storage Agreement with Watermaster. A member of the Appropriative Pool shall have the option to pay the gross assessment applicable to said Carry-Over Right in the year in which it occurred. [Judgment Exhibit "G," and Exhibit "H" ¶ 12.]

(f) Storage of Supplemental Water. The rules and procedures for the storage of Supplemental Water are set forth as follows.

(i) Supplemental Water. Each party, its officers, agents, employees, successors, and assigns, has been enjoined and restrained from storing Supplemental Water in Chino Basin for withdrawal, or causing withdrawal of water stored, except pursuant to the terms of a Groundwater Storage Agreement with Watermaster. Any Supplemental Water recharged by any person within Chino Basin, except pursuant to these Rules and Regulations and a Groundwater Storage Agreement, is deemed abandoned and shall not be considered Stored Water. [Judgment ¶ 14.]

(ii) Application for Storage of Supplemental Water. Watermaster will ensure that any person, including but not limited to the State of California and the Department of Water Resources may make Application to Watermaster to store and Recover water from the Chino Basin as provided herein in a manner that is consistent with the OBMP and the law. Watermaster shall not approve an Application to store and Recover water if it is inconsistent with the terms of the Peace Agreement or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the storage and Recovery of water shall be reasonably and fully mitigated as a condition of approval. In the event the Material Physical Injury cannot be mitigated, the request for storage and Recovery must be denied. [Peace Agreement § 5.2(a)(iii).] Applications for the storage of Supplemental Water shall be processed in accordance with the provisions of Article X.

(iii) Pre-existing Groundwater Storage Agreements. In accordance with the Peace Agreement, pre-existing Groundwater Storage Agreements are revived and extended as follows:

a) Any Local Storage Agreement that would have expired pursuant to its terms on or before July 1, 2000 and which is determined to have water in storage account is revived and extended by these Rules and Regulations until July 1, 2010 subject to the limitations set forth in these Rules and Regulations; and

- b) In addition, a Producer that has a Local Storage Agreement for Supplemental Water that will expire after July 1, 2000 pursuant to its terms and that has Supplemental Water in a storage account as of its original date of termination, shall be revived and extended by these Rules and Regulations to July 1, 2010. The extension shall only be valid for that quantity of Supplemental Water that is then in the storage account at the end of the term set forth in the Local Storage Agreement.
- (iv) Quantification of Supplemental Water Held in Local Storage on July 1, 2000.
- a) Quantification of Groundwater Held in Local Storage. Upon the request of any Producer, Watermaster shall quantify the amount of Groundwater held in Local Storage by that Producer. Groundwater held in Local Storage by a party to the Judgment, the majority of whose stock is owned by another party to the Judgment, may be treated as the Stored Water of the majority shareholder for purposes of quantification of the amount of such Groundwater as Supplemental Water under this section 8.1(f)(iv) only.
 - b) Limitations. Watermaster's quantification of Groundwater in Local Storage pursuant to a Local Storage Agreement as of July 1, 2000 as Supplemental Water and Supplemental Water held in Local Storage as provided in section 8.1(f)(iii) above shall not be subject to the 100,000 acre-foot limitation on Supplemental Water held in Local Storage set forth in the Peace Agreement, section 5.2(b)(iv)(1), as amended, and these Rules and Regulations. However, all other Supplemental Water held in a Local Storage Account not quantified as such by Watermaster by May 31, 2001 shall be conclusively presumed to be Basin Water which shall also be subject to a Local Storage Agreement. While a party that obtains a quantification of Supplemental Water pursuant to this section is exempt from the 100,000 acre-foot limitation on the cumulative quantity of Supplemental Water that may be held in Local Storage, the exemption is limited. First, a party that obtains a Watermaster determination that quantifies some quantity of Groundwater as Supplemental Water pursuant to this Section shall not be entitled to replace the Supplemental Water Produced from Local Storage with new Supplemental Water without regard to the 100,000 acre-foot limitation on Local Storage of Supplemental Water. This means that the 100,000 acre-foot limitation applies to all Supplemental Water that is physically Recharged and stored in the Basin under a Local

Storage Agreement after July 1, 2000. A Producer shall not have the right to replace the Groundwater quantified as Supplemental Water under this Section with other Supplemental Water following its initial Transfer or Recapture from Local Storage. Second, the recovery of the Supplemental Water stored under this provision by any Producer shall not cause Material Physical Injury to any party to the Judgment or the Basin.

- c) Calculation. For users of Supplemental Water, the quantity of Supplemental Water held by a Producer in Local Storage as of July 1, 2000 is deemed to be the lesser of:
- 1) the quantity of water held by the Producer in Local Storage;
or
 - 2) the quantity of Supplemental Water used by the Producer prior to July 1, 2000.

(g) Rules and Procedures in General.

- (i) Any person desiring to store Supplemental Water in the Basin shall make appropriate Application therefor with the Watermaster pursuant to the provisions of this Article and Article X. Supplemental Water stored or Recharged in the Basin, except pursuant to a Groundwater Storage Agreement with Watermaster, shall be deemed abandoned and not classified as Stored Water. [Judgment ¶ 14.]
- (ii) Guidelines and Criteria. Any person, whether a party to the Judgment or not, may make reasonable beneficial use of the available groundwater storage capacity of Chino Basin for storage of Water pursuant to written agreement with the Watermaster as provided herein. [Judgment ¶ 12.]
- (iii) In the allocation of storage capacity, the needs and requirements of lands overlying Chino Basin and the owners of rights in the Safe Yield or Operating Safe Yield of the Basin shall have priority and preference over storage for export. [Judgment ¶ 12.]
- (iv) It is an objective in management of the Basin's waters that no Producer shall be deprived of access to the Basin's waters by reason of unreasonable pumping patterns, nor by regional or localized Recharge of Replenishment Water, insofar as such result may be practically avoided. [Judgment Exhibit "I" ¶ 1(a).]

- (v) Maintenance and improvement of water quality shall be given prime consideration. [Judgment Exhibit "I" ¶ 1(b).]
 - (vi) Financial feasibility, economic impact and the cost and optimum utilization of the Basin's resources and the physical facilities of the parties to the Judgment shall be considered equal in importance to water quantity and quality parameters. [Judgment Exhibit "I" ¶ 1(c).]
- (h) Contents of Groundwater Storage Agreements. Each Groundwater Storage Agreement shall include but not be limited to the following components [Judgment Exhibit "I" ¶ 3.]:
- (i) The quantities and the term of the storage right, which shall specifically exclude credit for any return flows;
 - (ii) A statement of the priorities of the storage right as against overlying, Safe Yield uses, and other storage rights;
 - (iii) The delivery rates, together with schedules and procedures for spreading, injection or in-lieu deliveries of Supplemental Water for direct use;
 - (iv) The calculation of storage water losses and annual accounting for water in storage; and
 - (v) The establishment and administration of withdrawal schedules, locations and methods.
- (i) Accounting. Watermaster shall calculate additions, extractions and losses of all Stored Water in Chino Basin, and any losses of water supplies or Safe Yield of Chino Basin resulting from such Stored Water, and keep and maintain for public record, an annual accounting thereof. [Judgment ¶ 29.]
- (j) No Material Physical Injury. Watermaster will ensure that any party to the Judgment may Recapture water in a manner consistent with the Peace Agreement, the OBMP, the Judgment and these Rules and Regulations. Watermaster shall not approve a Recapture plan if it is inconsistent with the terms of Peace Agreement or will cause Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Recapture of water by any person shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Recapture must be denied.

8.2 Local Storage: Special Considerations. Under a Local Storage Agreement with Watermaster, every party to the Judgment shall be permitted to store its Excess Carry-Over Water and Supplemental Water in the Chino Basin according to the following provisions:

- (a) Until July 1, 2010, Watermaster shall ensure that: (a) the quantity of water actually held in local storage under a Local Storage Agreement with Watermaster is confirmed and protected and (b) each party to the Judgment shall have the right to store its Excess Carry-Over Water. Thereafter, a party to the Judgment may continue to Produce the actual quantity of Excess Carry-Over Water and Supplemental Water held in its storage account, subject only to the loss provisions set forth herein. All Producers with a Local Storage Agreement for either Excess Carry-Over Water or Supplemental water shall be deemed to have received an extension of the applicable term in each of their respective Local Storage Agreements as provided in section 8.1(f)(iii)(a)-(b) above. However, such extensions shall be subject to the limitations set forth herein; e.g. the requirement that Local Storage does not cause Material Physical Injury, and the 100,000 acre-foot limitation on the cumulative total of Supplemental Water that may be placed in Local Storage after July 1, 2000. However, a Producer that obtains a determination regarding a request for classification of some quantity of Groundwater as Supplemental Water pursuant to section 8.1 above, shall also be deemed to have received an extension of their Local Storage Agreement until July 1, 2010, but only for that Supplemental Water actually stored in the Basin as of July 1, 2000. A Producer shall not have the right to replace the Groundwater classified as Supplemental Water pursuant to section 8.1 with other Supplemental Water following its initial Production from Local Storage without regard to the 100,000 acre-foot limitation.
- (b) Until July 1, 2010 or for such additional period as Watermaster, in its discretion, may establish, any party to the Judgment may make Application to Watermaster for a Local Storage Agreement pursuant to the provisions of this Article and Article X, whereby it may store Supplemental Water in the Chino Basin. [Peace Agreement § 5.2(b)(ii).]
- (c) In accordance with Article X, Watermaster shall provide written notice to all interested parties of the proposed Local Storage Agreement prior to approving the agreement.
- (d) Watermaster shall approve the storage of Supplemental Water under a Local Storage Agreement so long as: (1) the total quantity of Supplemental Water authorized to be held in Local Storage under all then-existing Local Storage Agreements, other than amounts classified as Supplemental Water under the procedure set forth in section 8.1 above, for all parties to the Judgment does not exceed the cumulative total of 100,000 acre-feet; (2) the party to the Judgment making the request provides their own Recharge facilities for the purpose of placing

the Supplemental Water into Local Storage; (3) the agreement will not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed agreement with conditions that mitigate any threatened or potential Material Physical Injury. [Peace Agreement § 5.2(b)(iv); Second Amendment to Peace Agreement.]

- (e) There shall be a rebuttable presumption that the Local Storage Agreement for Supplemental Water does not result in Material Physical Injury to a party to the Judgment or the Basin. [Peace Agreement § 5.2(b)(v).]
- (f) In the event more than one party to the Judgment submits a request for an agreement to store Supplemental Water pursuant to a Local Storage Agreement, Watermaster shall give priority to the first party to file a bona fide written request which shall include the name of the party to the Judgment, the source, quantity and quality of the Supplemental Water, an identification of the party to the Judgment's access to or ownership of the Recharge facilities, the duration of the Local Storage and any other information Watermaster shall reasonably request. Watermaster shall not grant any person the right to store more than the then-existing amount of available Local Storage. The amount of Local Storage available for the storage of Supplemental Water shall be determined by subtracting the previously approved and allocated quantity of storage capacity for Supplemental Water from the cumulative maximum of 100,000 acre-feet. [Peace Agreement § 5.2(b)(vii), Second Amendment to Peace Agreement.] This means Watermaster shall not approve requests for the storage of Supplemental Water in excess of the cumulative total of 100,000 acre-foot limitation. Priorities among the parties to the Judgment shall be on the basis that the completed Applications filed first in time under the provisions of Article X shall have a priority in right up to the amount of the quantity approved by Watermaster.
- (g) Any Producer that does not have a Local Storage Agreement extended by the terms of section 8.1 above, may file an Application with Watermaster for a Local Storage Agreement to place Excess Carry-Over Water in a Local Storage account. The Excess Carry-Over Water may be held in Local Storage without regard to the 100,000 acre-foot cumulative limitation on Supplemental Water until July 1, 2010. Thereafter, or at such later date that Watermaster may, in its discretion, establish, Producers shall obtain a Local Storage Agreement with Watermaster to store Excess Carry-Water in a Local Storage Account.
- (h) After July 1, 2010, Watermaster shall have discretion to place reasonable limits on the further accrual of Excess Carry-Over Water and Supplemental Water in Local Storage. However, Watermaster shall not limit the accrual of Excess Carry-Over Water for Fontana Union Mutual Water Company and Cucamonga County Water District when accruing Excess Carry-Over Water in Local Storage pursuant to the Settlement Agreement Among Fontana Union Water Company, Kaiser Steel

Resources Inc., San Gabriel Valley Water Company and Cucamonga County Water District dated February 7, 1992, to a quantity less than 25,000 acre-feet for the term of the Peace Agreement. [Peace Agreement § 5.2(b)(x).]

- (i) Watermaster shall evaluate the need for limits on water held in Local Storage to determine whether the accrual of additional Local Storage by the parties to the Judgment should be conditioned, curtailed or prohibited if it is necessary to provide priority for the use of storage capacity for those Storage and Recovery Programs that provide broad mutual benefits to the parties to the Judgment as provided in this paragraph and section 5.2(c) of the Peace Agreement. [Peace Agreement § 5.2(b)(xi).]
- (j) Watermaster will impose a uniform loss against all water in storage in an amount of 2 (two) percent where the Party holding the storage account: (i) has previously contributed to the implementation of the OBMP as a Party to the Judgment, is in compliance with their continuing covenants under the Peace and Peace II Agreements or in lieu thereof they have paid or delivered to Watermaster “financial equivalent” consideration to offset the cost of past performance prior to the implementation of the OBMP and (ii) promised continued future compliance with Watermaster’s Rules and Regulations. Where a Party has not satisfied the requirements of subsection (j)(i) and (j)(ii) herein, Watermaster will assess a 6 (six) percent loss. Following a Watermaster determination that Hydraulic Control has been achieved, Watermaster will assess losses of less than 1 (one) percent where the Party satisfies subsection (j)(i) and (j)(ii). [Peace II Agreement § 7.4.]
- (k) Watermaster shall allow water held in storage to be Transferred pursuant to the provisions of section 5.3 of the Peace Agreement as provided in Article X. Storage capacity is not Transferable. [Peace Agreement § 5.2(b)(xiii).]
- (l) Monetary payment shall not be accepted as a form of mitigation for Material Physical Injury where the injury is not confined to a specific party or parties. Where the Material Physical Injury is confined to a specific party or parties, monetary payment may be accepted as a form of mitigation, if acceptable to the affected party or parties.
- (m) Applicants for Local Storage of Supplemental Water agreements shall submit such Application prior to initiation of the placement of the Supplemental Water into storage except as provided in sections 8.1 and 8.2 above.
- (n) Any Supplemental Water stored or recharged in the Basin, except pursuant to a Local Storage Agreement for Supplemental Water with Watermaster, shall be deemed abandoned and not classified as Stored Water. [Judgment ¶ 14.]

8.3 Groundwater Storage and Recovery Program; Special Considerations. The parties, through Watermaster, may initiate a regional Storage and Recovery (sometimes called "conjunctive use") Program, for the mutual benefit of the Appropriators and the Non-Agricultural Pool in the Chino Basin according to the following provisions:

- (a) Watermaster will ensure that no person shall store water in, and recover water from the Basin, other than pursuant to a Local Storage Agreement, without a Storage and Recovery agreement with Watermaster [Peace Agreement § 5.2(c)(i).];
- (b) A proposed Applicant for a Storage and Recovery Program must submit the information set forth in Article X to Watermaster prior to Watermaster's consideration of an Application for a Storage and Recovery agreement;
- (c) As a precondition of any project, program or contract regarding the use of Basin storage capacity pursuant to a Storage and Recovery Program, Watermaster shall first request proposals from qualified persons [Peace Agreement § 5.2(c)(iii).];
- (d) Watermaster shall be guided by the following criteria in evaluating any request to store and recover water from the Basin by a party to the Judgment or any person under a Storage and Recovery Program.
 - (i) The initial target for the cumulative quantity of water held in storage is 500,000 acre-feet in addition to the existing storage accounts. The 500,000 acre-feet target may be comprised of any combination of participants and is in excess of up to an additional 100,000 acre-feet of Supplemental Water and Excess Carry-Over Rights that may be stored under Local Storage Agreements.
 - (ii) Watermaster shall prioritize its efforts to regulate and condition the storage and recovery of water developed in a Storage and Recovery Program for the mutual benefit of the parties to the Judgment and give first priority to Storage and Recovery Programs that provide broad mutual benefits. [Peace Agreement § 5.2(c)(iv).];
- (e) The members of the Appropriative Pool and the Non-Agricultural Pool shall be exclusively entitled to the compensation paid for a Storage and Recovery Program irrespective of whether it be in the form of money, revenues, credits, proceeds, programs, facilities, or other contributions (collectively "compensation") with the benefits of such compensation to be spread as broadly as possible as directed by the Non-Agricultural and the Appropriative Pools [Peace Agreement § 5.2(c)(v).];
- (f) The compensation received from the use of available storage capacity under a Storage and Recovery Program, may be used to offset the Watermaster's cost of operation, to reduce any assessments on the parties to the Judgment within the

Appropriative and Non-Agricultural Pools, and to defray the costs of capital projects as may be requested by the members of the Non-Agricultural Pools and the Appropriative Pool [Peace Agreement § 5.2(c)(vi).];

- (g) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by storage and recovery of water, whether Local Storage and recovery or pursuant to a Storage and Recovery Program, shall be reasonably and fully mitigated as a condition of approval [Peace Agreement §§ 5.2(a)(iii) and 5.2(c)(viii) (labeled “(xiii)”)];
- (h) Watermaster reserves discretion to negotiate appropriate terms and conditions or to deny any request to enter into a Storage and Recovery Program Agreement. With respect to persons who are not parties to the Judgment, Watermaster reserves complete discretion to ensure that maximum compensation, as defined in section (e) above, is received. Watermaster shall base any decision to approve or disapprove any proposed Storage and Recovery Program Agreement upon the record as provided in Article X. However, it may not approve a proposed Storage and Recovery Program Agreement unless it has first imposed conditions to reasonably and fully mitigate any threatened or potential Material Physical Injury [Peace Agreement § 5.2(c)(ix).];
- (i) Any party to the Judgment may seek review of the Watermaster's decision regarding a Storage and Recovery Program Agreement as provided in Article X;
- (j) Nothing herein shall be construed as prohibiting the export of Supplemental Water stored under a Storage and Recovery Program and pursuant to a Storage and Recovery Agreement; and
- (k) The Parties shall indemnify and defend the State of California and the members of the Agricultural Pool against any lawsuit or administrative proceedings, without limitation, arising from Watermaster's adoption, approval, management, or implementation of a Storage and Recovery Program.
- (l) Any losses from storage assessed as a Leave Behind in excess of actual losses (“dedication quantity”) will be dedicated by Watermaster towards groundwater Production by the Desalters to thereby avoid a Desalter replenishment obligation that may then exist in the year of recovery. Any dedication quantity which is not required to offset Desalter Production in the year in which the loss is assessed, will be made available to the members of the Appropriative Pool. The dedication quantity will be pro-rated among the members of the Appropriative Pool in accordance with each Producer’s combined total share of Operating Safe Yield and the previous year’s actual production. However, before any member of the Appropriative Pool may receive a distribution of any dedication quantity, they must

be in full compliance with the 2007 Supplement to the OBMP Implementation Plan and current in all applicable Watermaster assessments. [Peace II Agreement § 7.5.]

8.4 Recapture.

- (a) All Recapture of water held in a storage account under a Groundwater Storage Agreement shall be subject to the requirement that the Recovery of the water not result in Material Physical Injury to a party to the Judgment or the Basin.
- (b) Recapture of water held in a Local Storage Account that pre-exists the adoption of these Rules and Regulations and that was extended by Watermaster in accordance with Article V of the Peace Agreement and these Rules and Regulations until July 1, 2005, shall be in accordance with the provisions of the plan for Recapture previously approved by Watermaster. Any amendments to an approved Recapture plan shall require additional Watermaster's approval under the provisions of Article X .
- (c) A person with an approved plan for Recapture shall have the right to process amendments to the previously approved plan in accordance with the provisions of Article X.

ARTICLE IX TRANSFERS

- 9.0 Scope. Any Transfer shall be made only in accordance with the Judgment, the Peace Agreement section 5.3, the Peace II Agreement, the OBMP and this Article IX.
- 9.1 In General. Watermaster will ensure that any party to the Judgment may Transfer water in a manner that is consistent with the Judgment, the Peace and Peace II Agreements, the OBMP and the law. Watermaster shall approve a Transfer if it is consistent with the terms of the Peace Agreement and Peace II Agreement, and will not cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Transfer of water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Transfer must be denied. Upon receipt of written request by Watermaster, a party to the Judgment shall exercise Best Efforts to provide Watermaster with a preliminary projection of any anticipated Transfer of Production within the Year.
- 9.2 Application to Transfer. A party to the Judgment may make Application to Watermaster to Transfer water as provided in the Judgment under the procedures set forth in Article X.
- (a) Watermaster shall provide reasonable advance written notice to all the Active Parties of a proposed Transfer, prior to approving the Transfer as provided in Article X.
 - (b) Watermaster shall approve the Transfer of water as provided in the Judgment so long as the individual Transfer does not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed Transfer with conditions that fully and reasonably mitigate any threatened or potential Material Physical Injury.
 - (c) There shall be a rebuttable presumption that the Transfer and the Production by the transferee does not result in Material Physical Injury to a party to the Judgment or the Basin.
 - (d) Watermaster shall base any decision to approve or disapprove any proposed Transfer upon the record after considering potential impacts associated with the individual Transfer alone and without regard to impacts attributable to any other Transfers. [Peace Agreement § 5.3(b)(v).] However, nothing herein shall be construed as impairing or restraining Watermaster's duty and discretion with regard to cumulative impacts in the context of section 9.3.

- (e) Transfers which occur between the same parties in the same year shall be considered as a single Transfer for the purpose of determining Material Physical Injury.

9.3 Integrated Watermaster Review. In reviewing Transfers under these Rules and Regulations, Watermaster shall exercise reasonable discretion. Watermaster shall review each proposed Transfer based upon the record before it and considering the potential impacts of the proposed Transfer alone. However, Watermaster shall also consider the cumulative impacts of Transfers generally when carrying out its responsibilities to implement the OBMP and Recharge and monitoring programs authorized by these Rules and Regulations or the Judgment.

- (a) Watermaster will evaluate the cumulative physical impact of Transfers on the Basin, if any, by July 1, 2003, and a minimum of once every two years thereafter.
- (b) Watermaster will take the results of its evaluation into account when carrying out its obligations under section 7.1 of these Rules and Regulations.

9.4 Transfer of Non-Agricultural Pool Production Rights. Watermaster shall approve the Transfer or lease of the quantified Production rights of Non-Agricultural Producers within the Non-Agricultural Pool subject to the provisions of section 9.2(b) above. The members of the Overlying (Non-Agricultural) Pool shall have the discretionary right to Transfer or lease their quantified Production rights and carry-over water held in storage accounts in quantities that each member may from time to time individually determine as Transfers in furtherance of the Physical Solution:

- (a) within the Overlying (Non-Agricultural) Pool;
- (b) to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000; or
- (c) to Watermaster and thence to members of the Appropriative Pool in accordance with the following guidelines set forth in the Overlying (Non-Agricultural) Pool Pooling Plan:
 - (i) By December 31 of each year, the members of the Overlying (Non-Agricultural) Pool shall notify Watermaster of the amount of water each member shall make available in their individual discretion for purchase by the Appropriators. The Pool Committee of the Overlying (Non-Agricultural) Pool may, by affirmative action of its members from time to time, establish a price for such water or a method pursuant to which such price will be established. By January 31 of each year, Watermaster shall provide a Notice of Availability of each Appropriator's pro-rata share of such water;

- (ii) Except as they may be limited by paragraph 9.4(v) below, each member of the Appropriative Pool will have, in their discretion, a right to purchase its pro-rata share of the supply made available from the Overlying (Non-Agricultural) Pool at the price at which the water is being offered. Each Appropriative Pool member's pro-rata share of the available supply will be based on each Producer's combined total share of Operating Safe Yield and the previous year's actual Production by each party;
- (iii) If any member of the Appropriative Pool fails to irrevocably commit to their allocated share by March 1 of each year, its share of the Overlying (Non-Agricultural) Pool water will be made available to all other members of the Appropriative Pool according to the same proportions as described in 9.3(ii) above and at the price at which the water is being offered. Each member of the Appropriative Pool shall complete its payment for its share of water made available by June 30 of each year.
- (iv) Commensurate with the cumulative commitments by members of the Appropriative Pool pursuant to (ii) and (iii) above, Watermaster will purchase the surplus water made available by the Overlying (Non-Agricultural) Pool water on behalf of the members of the Appropriative Pool on an annual basis at which the water is being offered and each member of the Appropriative Pool shall complete its payment for its determined share of water made available by June 30 of each year.
- (v) Any surplus water cumulatively made available by all members of the Overlying (Non-Agricultural) Pool that is not purchased by Watermaster after completion of the process set forth herein will be pro-rated among the members of the Pool in proportion to the total quantity offered for transfer in accordance with this provision and may be retained by the Overlying (Non-Agricultural) Pool member without prejudice to the rights of the members of the Pool to make further beneficial use or transfer of the available surplus.
- (vi) Each Appropriator shall only be eligible to purchase their pro-rata share under this procedure if the party is: (i) current on all their assessments; and (ii) in compliance with the OBMP.
- (vii) The right of any member of the Overlying (Non-Agricultural) Pool to transfer water in accordance with this Paragraph 9.3(i)-(iii) in any year is dependent upon Watermaster making a finding that the member of the Overlying (Non-Agricultural) Pool is using recycled water where it is both physically available and appropriate for the designated end use in lieu of pumping groundwater.

- (viii) Nothing herein shall be construed to affect or limit the rights of any Party to offer or accept an assignment as authorized by the Judgment Exhibit “G” paragraph 6 above, or to affect the rights of any Party under a valid assignment.
- (d) In addition, the parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter or for a Storage and Recovery Program.
- (e) Any member of the Non-Agricultural Pool (including without limitation any member of the Non-Agricultural Pool that is also a member of the Appropriative Pool) may elect to transfer (a) some or all of the annual share of Operating Safe Yield of the transferor in and for the year in which the transfer occurs (except that such transfer shall exclude any dedication to Watermaster required by Section 5(c) of Exhibit “G” to the Judgment), and (b) any quantity of water held in storage by the transferor (including without limitation carryover and excess carryover) to any member of the Appropriative Pool, in either case at any price that the transferor and transferee may deem appropriate and for the purpose of satisfying the transferee’s desalter replenishment obligation. Any such transfer shall be effective upon delivery by the transferor or transferee to Watermaster staff of written notice of such transfer in the form attached hereto as Form 12. The transferee’s desalter replenishment obligation shall be credited by the number of acre feet so transferred.

9.5 Early Transfer.

- (a) Pursuant to the Peace Agreement, Watermaster approved an Early Transfer of the quantity of water not Produced by the Agricultural Pool that is remaining after all the land use conversions are satisfied pursuant to section 5.3(h) of the Peace Agreement to the Appropriative Pool. The quantity of water subject to Early Transfer under this section shall be the quantity of water not Produced by the Agricultural Pool that is remaining after all the land use conversions are satisfied pursuant to section 5.3(h) of the Peace Agreement.
 - (i) The Transfer shall not limit the Production right of the Agricultural Pool under the Judgment to Produce up to 82,800 acre-feet of water in any year or 414,000 acre-feet in any five years as provided in the Judgment. [Peace Agreement § 5.3(g)(ii).]
 - (ii) The combined Production of all parties to the Judgment shall not cause a Replenishment assessment on the members of the Agricultural Pool. The Agricultural Pool shall be responsible for any Replenishment obligation created by the Agricultural Pool Producing more than 414,000 acre-feet in any five-year period. [Peace Agreement § 5.3(g)(iii).]

- (iii) Nothing herein shall be construed as modifying the procedures or voting rights within or by the members of the Agricultural Pool. [Peace Agreement § 5.3(g)(v).]
- (b) The amount of water converted from agricultural use to urban use prior to execution of the Peace Agreement was 2.6 acre-feet per acre, with 1.3 acre-feet per acre being allocated collectively to all members of the Appropriative Pool with an assigned share of Operating Safe Yield and 1.3 acre-feet per acre being allocated to that Appropriator providing service for that urban use. The rate of 2.6 acre-feet per acre shall be changed to a total of 2.0 acre-feet per acre, all of which shall be allocated upon the conversion of the land use to that party to the Judgment which is a member of the Appropriative Pool, on the Effective Date of the Peace Agreement, and whose Sphere of Influence or authorized service area contains the land ("purveyor"). Upon such conversion of water use the purveyor will pledge that the amount of water needed for such urban land use, when such urban land use is established, up to 2.0 acre-feet of water per acre of land per year will be made available for service for such converted land by purveyor under its then existing standard laws, regulations, rules and policies, or for service arranged by such purveyor, subject only to prohibition of such service by a federal, state agency or court with jurisdiction to enforce such prohibition. The owner of such converted land shall have the right to enforce such pledge by specific performance or writ of mandate under the terms of the Peace Agreement. No monetary damages shall be awarded.

9.6 Voluntary Agreement. The members of the Agricultural Pool, including the State of California, shall have the right to engage in a voluntary agreement with an Appropriator which has a service area contiguous to or inclusive of the agricultural land, to provide water allocated from the Agricultural Pool to the overlying land for agricultural use on behalf of the member of the Agricultural Pool unless otherwise prohibited by general law. The Appropriator providing service shall be entitled to a pumping credit to offset Production pursuant to the Peace Agreement section 5.3(i). This provision will be construed as permitting Watermaster to accept new voluntary agreements only to the extent that such voluntary agreements occur within areas eligible for conversion as described in Attachment 1 to the Judgment, previously added to the Judgment as an amendment of the Order of the Court dated November 17, 1995.

9.7 Assignment of Overlying Rights. In addition to the Voluntary Agreement under section 9.6 above, should an Appropriator take an assignment of rights from a Non-Agricultural Pool member, the agreement shall provide that the Appropriator may undertake to provide water service to such overlying land, but only to the extent necessary to provide water service to said overlying lands. Watermaster shall make available to members of the Non-Agricultural Pool and/or Appropriative Pool, a standard form which shall be completed and filed with Watermaster. Any assignment, lease and/or license shall be ineffective

unless provided on the standard form approved by Watermaster and filed with Watermaster. [Based on Judgment Exhibit "H" ¶ 13; Exhibit "G" ¶ 6.]

ARTICLE X
APPLICATIONS, CONTESTS AND COMPLAINTS

- 10.0 Purpose. This Article sets forth the Watermaster rules and procedures for processing requests by a person for: (i) Watermaster approval of Recharge and Transfer; (ii) Qualifying Storage and Recapture; (iii) amendments to previously approved Applications; (iv) reimbursement or a credit for costs incurred by a party to the Judgment in furtherance of the OBMP; and (v) a Complaint for redress arising from an alleged Material Physical Injury to a party to the Judgment or the Basin. However, the procedures described in this Article X shall not be construed to apply to Watermaster actions, decisions, or rules other than as expressly set forth herein. All proceedings hereunder shall be conducted in an expeditious manner.
- 10.1 Notice and Opportunity to be Heard. Watermaster shall provide reasonable notice and opportunity to be heard to any person requesting Watermaster review or approval of any matter arising under this Article.
- 10.2 Judicial Review.
- (a) The Complaint procedures set forth in this Article X are not intended to constitute an exclusive remedy or constitute a requirement that a party to the Judgment exhaust this discretionary remedy. However, a party to the Judgment may elect to avail itself of the procedures set forth herein by filing a Complaint and requesting relief from any actual or threatened Material Physical Injury to any person or to the Basin where the alleged injury arises from the Recharge, Transfer or Qualifying Storage or Recapture of water by any person other than Watermaster.
- (b) Once a party to the Judgment elects to pursue redress under the provisions of this Article, it shall exhaust this process until conclusion unless there is a sudden, unexpected event or emergency that causes a need for immediate judicial review or in the event that the Watermaster has failed to take action on a longstanding request. Thus, other than in the event of an emergency or where Watermaster has engaged in undue delay, a party to the Judgment may not seek judicial review of a Watermaster action on a pending Application or Complaint until the Watermaster Board has taken final action under the provisions of this Article. However, the procedures described in this Article X shall not preclude any party from seeking judicial review of any action, decision or rule of Watermaster in accordance with paragraph 31 of the Judgment.
- 10.3 Applications for Watermaster Approval: In General. Any party to the Judgment requesting approval by Watermaster for the Recharge, Transfer, Qualifying Storage or Recapture of water in the Basin, or reimbursements or credits against OBMP Assessments, or any person requesting approval of an agreement to participate in a Storage and Recovery Program, may make Application to Watermaster as provided in these Rules and Regulations.

- (a) Requests for Watermaster approval shall be processed by Application to the Watermaster.
- (b) All Applications shall be submitted to Watermaster in compliance with the requirements set forth in this Article. Approved forms for use by persons requesting Watermaster approval pursuant to this section are attached hereto as Appendix 1. Watermaster shall have no obligation to process incomplete Applications.
- (c) No person shall obtain a right to engage in the activities subject to an Application to Watermaster under these Rules and Regulations or the Judgment unless and until the proposed action is approved by Watermaster as provided herein.
- (d) Upon approval by Watermaster, the person shall have the right to proceed in accordance with the terms and conditions of the Watermaster approval. The rights of a party shall be construed consistent with the Judgment and subject to the terms and conditions set forth in Watermaster's approval.

10.4 Recharge Applications. Any party to the Judgment may make a request for Watermaster approval to engage in Recharge by submitting an Application to Watermaster that includes the following information.

- (a) The identity of the person proposing to engage in Recharge;
- (b) The quantity of water to be Recharged;
- (c) The quality of water to be Recharged;
- (d) The duration of the Recharge;
- (e) The method of the Recharge; and
- (f) The facilities to be used in the Recharge, and their location.

10.5 Transfer Applications. Any party to the Judgment may request Watermaster's approval for a Transfer by submitting an Application to Watermaster. A party to the Judgment that Produces water may in the same Fiscal Year request approval of a Transfer to offset all or a portion of its Replenishment Obligation, subject to the Watermaster's authority to approve or reject the Application under the provisions of this Article. An Application for Transfer shall include the following information:

- (a) The identity of the transferee and transferor;
- (b) The maximum quantity of water to be Transferred;
- (c) The duration of the Recovery of the quantity of water Transferred;

- (d) The location of the Production facilities from which the water will be Transferred, if known;
- (e) The location of the Production facilities from which the Transferred water will be Recaptured and Produced, if known; and
- (f) The rate of extraction at which the Transferred water will be Recaptured and Produced.

10.6 Qualifying Storage Agreements. A party to the Judgment may request Watermaster's approval of a Local Storage Agreement to store Supplemental Water, or, after July 1, 2005, a party to the Judgment may request Watermaster's approval of the accumulation of Excess Carry-Over Water in the event the party's aggregate Carry-Over Water exceeds its share of assigned Operating Safe Yield or Safe Yield. Prior to July 1, 2005, a party to the Judgment shall also be required to obtain a Local Storage Agreement to store Excess Carry-Over Water, and Watermaster shall approve such agreements under uniform terms and conditions. In addition, so long as there is then less than 100,000 acre-feet of Supplemental Water that was placed in Local Storage after July 1, 2000, a party to the Judgment's request to store Supplemental Water under a Local Storage Agreement shall be approved by Watermaster. The Applicant may include a plan for Recapture within the request for approval of the Qualifying Storage or subsequently identify the proposed plan for Recapture under an independent Application for Recapture or combine the request for subsequent approval in an Application for Transfer.

- (a) Any party to the Judgment may file an Application to store Supplemental Water pursuant to a Local Storage Agreement. The Application shall include the following information:
 - (i) The identity of the person(s) that will Recharge, Store and Recover the water;
 - (ii) The quantity of Supplemental Water to be Stored and Recovered;
 - (iii) The proposed schedule and method for the Recharge of water for Storage, if any;
 - (iv) The proposed schedule for Recovery, if any;
 - (v) The location of the Recharge facilities through which the Stored water will be Recharged, if any;
 - (vi) The location of the Production facilities through which the Stored water will be Recovered, if known; and

- (vii) The water levels and water quality of groundwater in the areas likely to be affected by the storage and Recovery.
- (b) Each Producer shall have the right to store its un-Produced Carry-Over Water in the Basin. Excess Carry-Over Water placed into Local Storage after July 1, 2005 shall require a Local Storage Agreement with Watermaster. A Producer may file an Application prior to July 1, 2005 for a Local Storage Agreement for Excess Carry-Over Water that will be placed into Local Storage after July 1, 2005. Such an Application shall include the following information:
 - (i) The identity of the person(s) that will store and Recover the Carry-Over Water;
 - (ii) The quantity of Carry-Over Water to be stored and Recovered;
 - (iii) The proposed schedule for the Recovery, to the extent known;
 - (iv) The location of the Production facilities through which the stored Carry-Over Water will be Recovered, to the extent known; and
 - (v) The water levels and water quality of Groundwater in the areas likely to be affected by the Production of the stored Carry-Over Water.

10.7 Storage and Recovery Program. Any person may request Watermaster's approval of an Agreement to participate in a Storage and Recovery Program by submitting an Application to Watermaster that, at a minimum, includes the following information:

- (a) The identity of the person(s) that will Recharge, store and Recover the water as well as its ultimate place of use;
- (b) The quantity of water to be Stored and Recovered;
- (c) The proposed schedule for the Recharge of water for storage, if any;
- (d) The proposed schedule and method for Recovery;
- (e) The location of the Recharge facilities through which the Stored Water will be Recharged;
- (f) The location of the Production facilities through which the Stored Water will be Recovered;
- (g) The water levels and water quality of the Groundwater in the areas likely to be affected by the Storage and Recovery, if known; and

- (h) Any other information that Watermaster requires to be included.
- 10.8 Recapture. Any person may file an Application for approval of its Recovery of water held in storage. Recapture of water may be approved by Watermaster as a component of and coincident with a request for approval of Qualifying Storage or a Transfer. However, an Applicant for Qualifying Storage may request, and Watermaster may approve, a Groundwater Storage Agreement where the plan for Recovery is not yet known. An Application for Recapture shall include the following information:
- (a) The identity of the person(s) that Recharged and stored the water;
 - (b) The identity of the person(s) that will Recover the water as well as its ultimate place of use;
 - (c) The quantity of water to be Recovered;
 - (d) The proposed schedule for Recovery;
 - (e) The location of the Production facilities through which the Stored Water will be Recovered;
 - (f) The existing water levels and water quality of the Groundwater in the areas likely to be affected by the Recovery; and
 - (g) Any other information that Watermaster requires to be included.
- 10.9 Credits Against OBMP Assessments and Reimbursements. Any Producer, including the State of California, may make Application to Watermaster to obtain a credit against OBMP Assessments or for reimbursements by filing an Application that includes the following information:
- (a) The identity of the party to the Judgment;
 - (b) The specific purposes of the OBMP satisfied by the proposed project;
 - (c) The time the project is proposed to be implemented and a schedule for completion;
 - (d) The projected cumulative project costs; and
 - (e) The specific capital or operations and maintenance expenses incurred in the implementation of any project or program, including the cost of relocating Groundwater Production facilities.
- 10.10 Watermaster Summary and Notification of a Pending Application. Upon Watermaster's receipt of an Application for Recharge, Transfer, Storage, Recapture or for a credit or

reimbursement, Watermaster shall prepare a written summary and an analysis (which will include an analysis of the potential for Material Physical Injury) of the Application and provide Active Parties with a copy of the written summary and advance notice of the date of Watermaster's scheduled consideration and possible action on any pending Applications. The notice shall be accompanied by the Watermaster summary and analysis and it shall reasonably describe the contents of the Application and the action requested by the Applicant. Watermaster shall provide the following minimum notice to the Active Parties:

- (a) Applications for Recharge: 30 (thirty) days.
- (b) Applications for Transfer: 30 (thirty) days.
- (c) Applications for Storage and Recovery: 90 (ninety) days.
- (d) Local Storage Agreement or Recapture: 30 (thirty) days.

10.11 All Applications Considered by Pool Committees. All Applications shall be considered by the Pool Committees. Following its completion of the summary and analysis and the issuance of the required notice as provided in section 10.10, Watermaster Staff shall place the Application on the first available Pool Committee Agenda for each of the respective Pool Committees for consideration, discussion, recommendations or proposed conditions. The Application shall not be considered by the Advisory Committee until at least twenty-one (21) days after the last of the three Pool Committee meetings to consider the matter.

10.12 Watermaster Investigations of Applications. Watermaster may, in its discretion, cause an investigation of the Groundwater or the portion of the Basin affected by a pending Application. Any party to the proceeding may be requested to confer and cooperate with the Watermaster, its staff or consultants to carry out such investigations.

10.13 Contesting an Application. Following consideration of an Application by each Pool Committee, a Contest to the Application may be filed by any party to the Judgment. Contests to Applications filed by parties to the Judgment or other persons requesting Watermaster's approval pursuant to this Article shall be submitted in writing a minimum of fourteen (14) days prior to the date scheduled for Advisory Committee consideration and possible action. The Contest shall describe the basis for the Contest and the underlying facts and circumstances. Watermaster shall provide notice of the Contest to the Active Parties.

10.14 Contents of a Contest.

- (a) Each Contest shall include the name and address of the Contestant and show that the Contestant has read either the application or the related notice.

- (b) If the Contest is based upon the allegation that the proposed action may result in Material Physical Injury to a party to the Judgment or the Basin, there shall be an allegation of the specific injury to the Contestant or to the Basin which may result from the proposed action and an identification of any then available evidence to support the allegation. If the Contest identifies documentary evidence other than Watermaster records or files, the Contestant shall serve copies of the documentary evidence on Watermaster and the Applicant seven (7) days prior to the hearing. If relevant to the Contest, the Contestant shall provide Watermaster with the location of the Contestant's extraction and place of use. The location shall be described with sufficient accuracy so that the position thereof relative to the proposed action may be determined. If relevant to the Contest, the Contestant shall describe the Contestant's purpose of use.
 - (c) If a Contest is based upon other grounds it shall summarize the grounds of the Contest.
 - (d) The Contest shall set forth any conditions or amendments to the proposed action which, if agreed upon, would result in withdrawal of the Contest.
 - (e) If Watermaster finds the Contest fails to comply with this provision, it may reject the Contest and deny the request for hearing if the Contestant fails to correct the defect and file a proper Contest within five (5) business days of the Watermaster's rejection. In any instance where a rebuttable presumption is applicable, the Watermaster shall include a statement in the rejection of the Contest that the Contestant has failed to reference any potential substantial evidence to overcome the presumption of no Material Physical Injury.
- 10.15 Extensions of Time and Continuance for Good Cause. An Applicant or Contestant may request an extension of time to file a Contest and Answer or for a continuance of a scheduled hearing and the request may be granted by Watermaster staff where good cause exists.
- 10.16 Applicant May Answer the Contest. An Applicant or project proponent may elect to file a written Answer to any Contest.
- (a) Contents. An Answer shall be responsive to the allegations contained in the Contest.
 - (b) Time for Filing. Answers shall be filed at least seven (7) days prior to the scheduled hearing. If the Applicant intends to rely on documentary evidence other than Watermaster records or files, the Applicant shall serve copies of the documentary evidence upon Watermaster and the Contestant a minimum of three (3) days prior to the hearing.

10.17 Uncontested Applications by Parties to the Judgment.

- (a) The Advisory Committee and Board shall consider and may approve any uncontested Application. No hearing shall be required for an uncontested Application by a party to the Judgment unless there is good cause to hold a hearing. Where good cause appears, the Advisory Committee and the Board may deny, condition, or continue an uncontested Application. However, Watermaster shall not deny an Application until it has referred the matter to a hearing officer. In the case of a proposed denial or conditional approval, and upon the request of the Applicant, Watermaster shall schedule an appropriate and timely hearing in general conformity with this Article X.
- (b) An uncontested Application shall be considered at the first regularly scheduled meeting of the Advisory Committee following the expiration of the Contest period.
- (c) The Advisory Committee shall consider the Application, the staff Summary and Analysis and staff report and any rebuttable presumption that may be applicable and make any determinations under the Judgment in accordance with the provisions of section 10.25 herein.
- (d) Following consideration by the Advisory Committee, the matter shall be transmitted to the Board for consideration. The Board shall also consider the Application, the staff summary and Analysis and staff report and any rebuttable presumption that may be applicable, as well as the Advisory Committee action consistent with the Judgment. The Board's determination shall be made in accordance with the provisions of section 10.25 herein.
- (e) In each case where Watermaster the Advisory Committee or Board denies or conditions an uncontested Application made by a party to the Judgment, it must support its determination by substantial evidence and act in a manner that is consistent with the Judgment and the Peace Agreement.

10.18 Contested Applications. In each case where a Contest is filed, the matter shall be set for hearing by Watermaster staff in coordination with the hearing officer and the parties to the proceeding.

10.19 Applications by Persons not Parties to the Judgment. In its sole discretion, Watermaster may review, consider, process and decide upon Applications made by persons not parties to the Judgment. However, Watermaster may not approve or conditionally approve such an Application without first holding a hearing in accordance with this Article X.

10.20 Complaints in General. Any party to the Judgment may file a Complaint with Watermaster alleging that the conduct of another person is causing or will cause Material Physical Injury in violation of these Rules and Regulations, the Judgment and the Peace Agreement.

- (a) The Complaint shall identify the name of the Complainant, the specific action or conduct that is causing or will or may cause Material Physical Injury, and any recommended mitigation measures or conditions that might avoid or reduce the alleged Material Physical Injury.
- (b) Upon receipt of the Complaint by Watermaster, it shall prepare a summary of the allegations and serve the summary along with a notice of the Complaint to the parties to the Judgment within 30 (thirty) days from filing.
- (c) Any party to the Judgment may file an Answer to the Complaint within 14 (fourteen) days of the date of the notice of Complaint or other time as may be prescribed in the Watermaster notice of the Complaint.
- (d) Watermaster shall schedule a hearing on the Complaint within 30 (thirty) days of the notice of the Complaint.
- (e) A party to the Judgment's failure to appear or Contest a hearing on the approval of an Application of any matter before Watermaster shall not be a bar to the party's right to file a Complaint as provided herein. However, a party shall not be permitted to file a Complaint if it knew or should have known of a particular harm that that party would suffer and had a reasonable opportunity to object at the time of the original approval process but did not file such a Contest.
- (f) Any party to the Judgment may request an extension of time to file an Answer or to continue the hearing, which may be granted for good cause by Watermaster.
- (g) Any party to a Complaint proceeding that intends to rely upon documentary evidence at the hearing, other than Watermaster documents or files, shall serve copies of the evidence upon Watermaster and the other parties to the proceeding a minimum of seven (7) days in advance of the hearing.
- (h) Watermaster may, in its discretion, cause an investigation of the injury alleged to exist by the pending Complaint. Any party to the proceeding may be requested to confer and cooperate with the Watermaster, its staff or consultants to carry out such investigations.

10.21 All Complaints Considered by Pool Committees. All Complaints shall be considered by the Pool Committees. Following consideration by the respective Pool Committees, if the Complaint is not dismissed any person(s) directly impacted by the Complaint may file an Answer in accordance with the provisions of section 10.16 and the Complaint shall be set for hearing.

10.22 Designation of Hearing Officer for Applications, Contests and Complaints. The Watermaster Board shall develop and maintain a panel of five individuals that have

technical expertise and some familiarity with the Basin. The hearing officer shall be selected by the mutual agreement of each side. If mutual agreement cannot be reached, each side to any hearing on an Application or Complaint shall rank their preferred hearing officer from one (1) to five (5). The panel member receiving the highest total score shall be selected by the Watermaster Board as the Hearing Officer, unless he or she is unable to serve in which case the panel member receiving the next highest rank shall be selected. Ties shall be broken by vote of the Watermaster Board. Watermaster may add or remove new members to the five member panel from time to time or as circumstances may warrant. There shall be only two sides in any hearing and intervenors shall be assigned to a side.

10.23 Duty of the Hearing Officer. The hearing officer shall conduct the hearings in accordance with the provisions of this Article. It shall be the responsibility of the hearing officer to compile the record, develop proposed findings and recommendations supported by substantial evidence in the record within thirty days of the hearing and transmit the record to the Advisory Committee and thereafter the Watermaster Board for further action. The hearing officer shall have and shall exercise the power to regulate all proceedings in any matter before it, and to take and do all acts and measures necessary or proper for the efficient performance of its duties.

10.24 Procedure at Hearings on Applications, Contests and Complaints

- (a) Parties Recognized at Hearing. Only the Applicant(s), Contestant(s), Watermaster staff and other party or parties to the Judgment which the hearing officer, in its discretion, allows to intervene as Applicant or Contestant, may be allowed to appear at the hearing.
- (b) Appearances. Persons appearing on their own behalf shall identify themselves at the beginning of the hearing. When a person is represented by an agent or attorney, such agent or attorney shall likewise enter an appearance before the hearing officer and thereafter will be recognized as fully controlling the case on behalf of that party to the proceeding.
- (c) Conduct of Hearings. Hearings shall be open to the public. The hearing officer has and shall exercise the power to regulate all proceedings in any manner before it, and to do all acts and take all measures necessary or proper for the efficient performance of its duties. The hearing officer may rule on the admissibility of evidence and may exercise such further and incidental authority as necessary for the conduct of the proceedings.
- (d) Evidence. The hearing need not be conducted according to technical rules of evidence and witnesses. Any relevant, non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used for the purpose of

supplementing or explaining any direct evidence but shall not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions.

- (e) Rebuttable Presumption. A rebuttable presumption under these Rules and Regulations means that the presumption shall be sufficient to approve an Application, unless a party to the Judgment opposing the Application produces substantial evidence to rebut the presumption. Once the party to the Judgment opposing the Application produces substantial evidence in support of their contention that an action may cause Material Physical Injury to a party to the Judgment or the Basin, the presumption shall be deemed rebutted.
- (f) Official Notice. Before or after submission of a matter for decision, official notice may be taken by the Hearing Officer of such facts as may be judicially noticed by the courts of this State.
- (g) Evidence by Reference. Public records of Watermaster which are relevant to the subject of the hearing and books, reports or other papers and pleadings which have been prepared by Watermaster and submitted previously to the Court, may in the discretion of the hearing officer, be received into evidence as exhibits without the need of supplying copies to Watermaster or other parties to the proceeding.
- (h) Examination of Witnesses. Each party to the proceeding shall have the right to call and examine witnesses and introduce exhibits. Watermaster staff and consultants may participate in the hearing as appropriate, using their technical knowledge and experience for the primary purpose of developing a full, fair and accurate record, including the questioning of any witness or the agents for any party to the proceeding
- (i) Order of Procedure. There shall be an opening statement by Watermaster staff, summarizing the subject matter and purpose of the hearing and the procedures to be followed. The designated hearing officer will then ask all persons wishing to participate in the hearing to identify themselves. Staff shall present any written reports, or summary of any findings resulting from an investigation of the Application or the Complaint. The Applicant or the Complainant shall then proceed in the case in chief, followed by the Contestant(s) or the Respondents. The Applicant and the Complainant will then be afforded an opportunity to present any responsive evidence. The hearing officer may allow further response as the interests of justice may require. Questions from the hearing officer or Watermaster staff shall be appropriate at any time.
- (j) Opening Statements and Closing Briefs. Prior to presenting their case, any party to the proceeding may file a written opening statement, or may make an oral opening statement, the length of which may be prescribed by the hearing officer. At the

close of the hearing, if the hearing officer deems it advisable, time will be allowed for the filing of written briefs.

- (k) Record. The record of the hearing shall consist of all documents submitted for consideration as well as all testimony presented. Tape recordings of all testimony shall be made. Any party, at that party's sole expense, may have a court reporter present at the hearing.
- (l) Completion of Record. The Hearing Officer may request assistance from Watermaster staff and general counsel in completing the record, proposed findings and recommendations. The Hearing Officer shall transmit his or her proposed findings to the Advisory Committee within thirty days of the close of the hearing. The proposed findings of the hearing officer shall be based upon substantial evidence in the record.

10.25 Watermaster Determinations.

- (a) Watermaster shall consider and may approve, deny, or condition any contested Application. Prior to rendering a determination on a contested Application or a Complaint, both the Advisory Committee or the Board may also each remand the matter for further findings by the hearing officer a maximum of one time each. The hearing officer shall conduct any additional hearings and complete its review and rehearing and transmit its subsequent report to the Advisory Committee within thirty days from the date of notice from Watermaster of the need for additional findings.
- (b) A contested Application or a Complaint shall be considered at the first regularly scheduled meeting of the Advisory Committee following the transmittal of the record, proposed findings of fact and recommendations by the hearing officer and no later than 30 days from the date of the hearing. The Advisory Committee shall consider the Application, the staff summary and analysis and staff report, any rebuttable presumption, the Contest, Answer, the record, proposed findings of fact and any recommendations of the hearing officer. The Advisory Committee may amend, modify, accept or reject the report of the hearing officer, or it may direct the hearing officer to conduct a re-hearing to receive additional evidence, direct the filing of additional briefs or request oral argument.
 - (i) The findings and decision adopted by the Advisory Committee shall be supported by citations to substantial evidence in the record.
 - (ii) If the Advisory Committee fails to base its decision on substantial evidence in the record or fails to consider the proposed findings of fact developed by the Hearing Officer, subject to the right of the Advisory Committee to remand for further findings, any Advisory Committee mandate shall not be

binding on the Watermaster Board. This provision shall not be considered in construing the power of the Watermaster Board or the Advisory Committee that may exist under the Judgment.

- (c) Following consideration by the Advisory Committee, the matter shall be transmitted to the Board for consideration within the next thirty (30) days. The Board shall also consider the Application, the staff summary, analysis and staff report, any rebuttable presumption that may be applicable, the Contest, the Answer, the record, the proposed findings of fact and recommendations of the hearing officer, as well as the Advisory Committee action consistent with the Judgment. The Watermaster Board may amend, modify, accept or reject the report of the hearing officer, or it may direct the hearing officer to conduct a re-hearing to receive additional evidence, direct the filing of additional briefs or request oral argument. If the Board directs the hearing officer to conduct a re-hearing, then the proposed findings of fact and any recommendations shall be transmitted to the Advisory Committee for re-consideration prior to transmittal to the Board.
- (d) Watermaster Action. In acting upon a Complaint, or by approving, denying or conditioning in whole or in part any Application under this Article, the determinations made by the Watermaster Advisory Committee and Board shall be based upon substantial evidence in the record developed by the hearing officer and then before the Advisory Committee and Board. In making such determinations, the Advisory Committee and Board shall act in a manner consistent with the Judgment, the Peace Agreement and these Rules and Regulations. Each shall support its determinations by written findings. Each shall consider all relevant evidence presented and give due consideration to the policies and purposes set forth in the Judgment as well as Article X, section 2 of the Peace Agreement and the OBMP Implementation Plan.
- (e) No Restriction on Rights to Judicial Review Following Determination by Watermaster. Nothing herein shall be construed as imposing any limitation on any party's rights to seek judicial review of a Watermaster decision under this Article pursuant to paragraph 31 of the Judgment once Watermaster has rendered a decision on the respective Application or, in the case of a Complaint, to seek judicial review of a Watermaster decision where a party to the Judgment has elected to pursue Watermaster review of an action under this Article.
- (f) Emergency Review. In the event of a sudden, unforeseen and unexpected emergency impacting the health, safety and welfare of a party to the Judgment or the Basin, the party to the Judgment may seek immediate judicial review in accordance with the provisions of the Judgment and the Local Rules.
- (g) Undue Delay. Absent a Watermaster determination that extraordinary circumstances exist, Watermaster shall render its final decision on any Application

filed under this Article within 180 days from the date the Application is deemed complete by Watermaster Staff. In the event Watermaster fails to offer a satisfactory response to repeated requests by a party to the Judgment to approve, deny or condition an Application or to rule on a Complaint, a party to the Judgment may request judicial review of the matter prior to the final Watermaster action.

- (h) Effective Date of Watermaster Action.
 - (i) For purposes of judicial review, any action determination or rule of Watermaster shall be the date on which the decision is filed.
 - (ii) For the purposes of determining the date on which an approved Application pursuant to Article X shall be considered effective, the approval shall relate back to date the completed Application is filed.

10.26 Application, Contests, Complaints Fees and Expenses.

- (a) Each party to the proceeding shall bear its own costs and expenses associated with the proceeding.
- (b) Watermaster's summary and analysis and participation in any hearing under this Article X shall be considered a general Watermaster administrative expense.
- (c) Upon request by the Agricultural Pool, Non-Agricultural Pool, or Appropriative Pool, the parties shall renegotiate this section 10.26. This renegotiation shall consider, but shall not be limited to, the adoption of a Court-approved resolution to address potential costs, fees and procedures incurred by parties to the Judgment and Watermaster in resolving frivolous and repetitiously unsuccessful similar contests.
- (d) Nothing herein shall be construed as precluding the right or claim by any party to the Judgment to request a reviewing Court under paragraph 31 of the Judgment to award litigation fees and costs to the extent such fees and costs may be available under general law.

EXHIBIT A



Reset Technical Memorandum

To:	Peter Kavounas, General Manager of the Chino Basin Watermaster
From:	Mark Wildermuth and Andy Malone
Date:	August 10, 2015
Subject:	Methodology to Reset Safe Yield Using Long-Term Average Hydrology and Current and Projected Future Cultural Conditions
Job No.:	007-014-076

The Safe Yield of the Chino Basin is defined within the Judgment as:

The *long-term average* annual quantity of ground water (excluding replenishment or stored water but including return flow to the Basin from use of replenishment or stored water) which can be produced from the Basin under *cultural conditions* of a particular year without causing an undesirable result. (emphasis added)

The “long-term average annual quantity of ground water which can be produced from the Basin” is directly related to the long-term average hydrologic conditions, such as precipitation. The “cultural conditions” refer to the overlying land uses and water-management practices that affect the net recharge to the Basin, including but not limited to, impervious cover, channel lining, land use conversions from agricultural to urban uses, installation and operation of the Chino Desalter well fields, construction of recharge basins and the location and magnitude of groundwater pumping, etc.

The Judgment additionally provides for a Physical Solution to provide maximum flexibility and adaptability in order that Watermaster and the Court may be free to use existing and future technological, social, institutional and economic options, in order to maximize beneficial use of the waters of Chino Basin. (Restated Judgment, ¶ 40).

Subject to these requirements, Watermaster developed an optimum basin management program [OBMP] that both preserved the quantity of the Basin’s waters and maximized their beneficial use. (Restated Judgment, ¶ 41).

Watermaster’s OBMP Implementation Plan called for an initial redetermination of Basin’s Safe Yield in 2010/2011, using monitoring data that would be gathered for the first time during 2000/01 through 2009/10. (OBMP Implementation Plan, pages 44-45

[Program Element 8 – Develop and Implement Groundwater Storage Management Program, Program Element 9 – Develop and Implement Storage and Recovery Programs]). This requirement is additionally carried forward in Section 6.5 of Watermaster’s Rules and Regulations, which states that the “Safe Yield shall be recalculated in year 2010/11 based upon data from the ten-year period 2000/01 to 2009/10.”

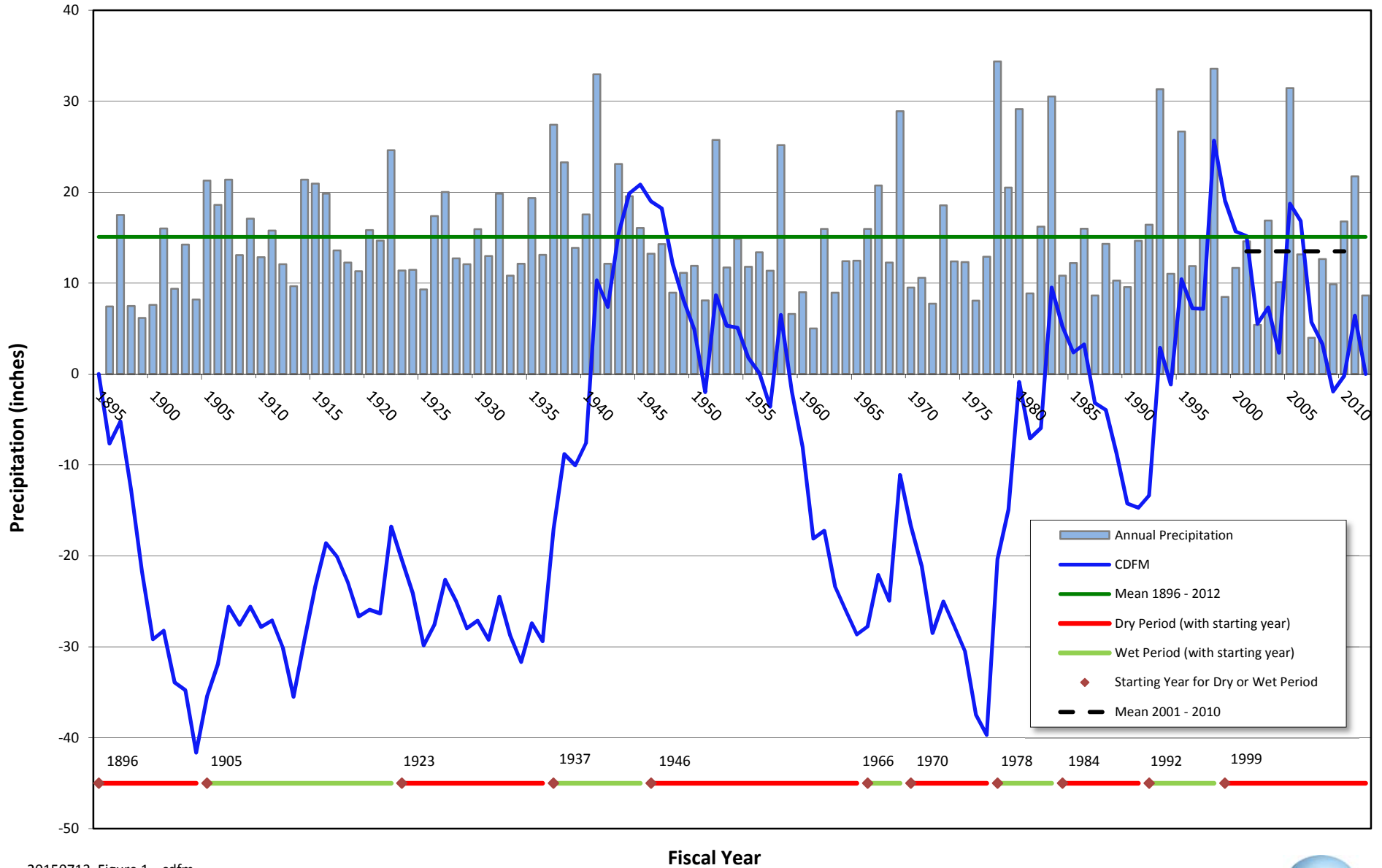
The methodology to redetermine the Safe Yield for 2010/11 and the recommended methodology for future Safe Yield evaluations is listed below. This methodology is consistent with professional custom, standard and practice, and the definition of Safe Yield in the Judgment and the Physical Solution.

1. Use the data collected during 2000/01 to 2009/10 (and in the case of subsequent resets newly collected data) in the re-calibration process for the Watermaster’s groundwater-flow model.
2. Use a long-term historical record of precipitation falling on current and projected future land uses to estimate the long-term average net recharge to the Basin.
3. Describe the current and projected future cultural conditions, including, but not limited to the plans for pumping, stormwater recharge and supplemental-water recharge.
4. With the information generated in [1] through [3] above, use the groundwater-flow model to redetermine the net recharge to the Chino Basin taking into account the then existing current and projected future cultural conditions.
5. Qualitatively evaluate whether the groundwater production at the net recharge rate estimated in [4] above will cause or threaten to cause "undesirable results" or "Material Physical Injury". If groundwater production at net recharge rate estimated in [4] above will cause or threaten to cause "undesirable results" or "Material Physical Injury" then Watermaster will identify and implement prudent measures necessary to mitigate "undesirable results" or "Material Physical Injury", set the value of Safe Yield to ensure there is no "undesirable results" or "Material Physical Injury", or implement a combination of mitigation measures and a changed Safe Yield.



Figure 1 Annual Precipitation Over the Chino Basin and Cumulative Departure from Mean (CDFM)
Precipitation

Based on Monthly Precipitation Estimates from PRISM



20150713 Figure 1-- cdfm
 Created 03/05/2013
 Printed 7/13/2015



EXHIBIT B

Attachment: Peace Agreement, Section 7.2 (e)(ii)

Schedule for Use of Re-Operation Water**, and
 Calculation of Remaining Desalter Replenishment Obligation (DRO)
 Production from 2017-18 through 2029-30 is estimated

Production Year	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Peace I Desalter Production	29,227.997	29,541.300	27,008.810	26,275.588	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000
Peace II Desalter Production	14.555	448.690	1,154.052	1,527.215	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000
Appropriative Pool DRO Contribution	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)
Re-Operation Water**	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)
Non-Agricultural Pool Assessment	0.000	0.000	0.000	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)
Remaining DRO	6,742.552	7,489.990	5,662.862	4,567.803	16,765.000	16,765.000	16,765.000	16,765.000	16,765.000

Production Year	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30
Peace I Desalter Production	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000
Peace II Desalter Production	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000
Appropriative Pool "DRO Contribution	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)
Re-Operation Water**	(12,500.000)	(12,500.000)	(12,500.000)	(5,000.000)	(5,000.000)	(5,000.000)	(5,000.000)	(5,000.000)
Non-Agricultural Pool Assessment	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)
Remaining DRO	16,765.000	16,765.000	16,765.000	24,265.000	24,265.000	24,265.000	24,265.000	24,265.000

EXHIBIT C

Attachment: Peace II Agreement, Section 6.2(b)(ii)

Allocation of Appropriative Pool Desalter Replenishment Obligation (DRO) Contributions (by agency)

Production Year 2013-14 Desalter Replenishment Obligation (DRO) Contribution:

10,000.000 AF

Appropriative Pool Party	Production Year 2013/14 Common Data (Headings from Approved 2014/2015 Assessment Package)			Methodology for 85/15 split between shares of Operating Safe Yield and % of Land Use Conversions		
	a	b	c = %b	d = (DRO Contrib*.85)*a	e = (DRO Contrib*.15)*c	f = d + e
	Percent of Operating Safe Yield (Column 2A)	Land Use Conversions (Page 12A)*	Percent of Land Use Conversions	85% DRO Contribution Based on Percent of Operating Safe Yield	15% DRO Contribution Based on Percent of Land Use Conversions	Desalter Replenishment Obligation Contribution
Arrowhead Mtn Spring Water Co	0.000%	0.000	0.000%	0.000	0.000	0.000
Chino Hills, City of	3.851%	1,133.906	4.334%	327.335	65.013	392.348
Chino, City of	7.357%	7,623.064	29.138%	625.345	437.074	1,062.419
Cucamonga Valley Water District	6.601%	598.364	2.287%	561.085	34.308	595.393
Fontana Union Water Company	11.657%	0.000	0.000%	990.845	0.000	990.845
Fontana Water Company	0.002%	834.000	3.188%	0.170	47.818	47.988
Fontana, City of	0.000%	0.000	0.000%	0.000	0.000	0.000
Golden State Water Company	0.750%	0.000	0.000%	63.750	0.000	63.750
Jurupa Community Services District	3.759%	13,876.196	53.040%	319.515	795.602	1,115.117
Marygold Mutual Water Company	1.195%	0.000	0.000%	101.575	0.000	101.575
Monte Vista Irrigation Company	1.234%	0.000	0.000%	104.890	0.000	104.890
Monte Vista Water District	8.797%	55.075	0.211%	747.745	3.158	750.903
Niagara Bottling, LLC	0.000%	0.000	0.000%	0.000	0.000	0.000
Nicholson Trust	0.007%	0.000	0.000%	0.595	0.000	0.595
Norco, City of	0.368%	0.000	0.000%	31.280	0.000	31.280
Ontario, City of	20.742%	2,041.095	7.802%	1,763.070	117.028	1,880.098
Pomona, City of	20.454%	0.000	0.000%	1,738.590	0.000	1,738.590
San Antonio Water Company	2.748%	0.000	0.000%	233.580	0.000	233.580
San Bernardino, County of (Shooting Park)	0.000%	0.000	0.000%	0.000	0.000	0.000
Santa Ana River Water Company	2.373%	0.000	0.000%	201.705	0.000	201.705
Upland, City of	5.202%	0.000	0.000%	442.170	0.000	442.170
West End Consolidated Water Co	1.728%	0.000	0.000%	146.880	0.000	146.880
West Valley Water District	1.175%	0.000	0.000%	99.875	0.000	99.875
	100.000%	26,161.700	100.000%	8,500.000	1,500.000	10,000.000

Attachment: Peace II Agreement, Section 6.2 (b)(iii)

Allocation of Appropriative Pool Remaining Desalter Replenishment Obligation (RDRO)

Production Year 2013-14:	acre-feet
CDA Production - Peace I Allocation	29,227.997
CDA Production - Peace II Allocation	14.555
Total Desalter Replenishment Obligation (Total DRO):	29,242.552
Desalter Replenishment Obligation Contribution (DROC)	(10,000.000)
Re-Operation Water	(12,500.000)
RDRO	6,742.552

Appropriative Pool Party	Operating Safe Yield	Production Year 2013/14 Common Data (From Approved 2014/2015 Assessment Package - Appendix A)						Methodology for Calculation of Adjusted Physical Production (APP)	Methodology for Calculation of "RDRO"
	a	b	c	d	e	f	APP = [b+(c*50%)+d+e+f]	Individual Party RDRO = ((a+APP)/(Total a + Total APP)) * RDRO	
	Assessment Paackage Page 2A: Column 2D	Physical Production	Voluntary Agreements (w/Ag)	Assignments (w/Non-Ag)	Storage and Recovery Programs	Other Adjustments	*Note: APP for City of Chino does not include "Other Adjustments" for this period		
Arrowhead Mtn Spring Water Co	0.000	379.111	0.000	0.000	0.000	0.000	379.111	15.905	
Chino Hills, City of	2,111.422	2,150.925	(286.221)	0.000	0.000	5,359.300	7,367.115	397.669	
Chino, City of	4,033.857	6,725.430	(6,686.440)	(104.278)	0.000	65.288	3,277.932	306.764	
Cucamonga Valley Water District	3,619.454	16,121.550	0.000	0.000	0.000	0.000	16,121.550	828.227	
Fontana Union Water Company	6,391.736	0.000	0.000	0.000	0.000	0.000	0.000	268.163	
Fontana Water Company	1.000	15,377.579	0.000	0.000	0.000	0.000	15,377.579	645.203	
Fontana, City of	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	
Golden State Water Company	411.476	736.362	0.000	0.000	0.000	0.000	736.362	48.157	
Jurupa Community Services District	2,061.118	18,406.630	0.000	(379.499)	0.000	(8.784)	18,018.347	842.427	
Marygold Mutual Water Company	655.317	1,314.734	0.000	0.000	0.000	0.000	1,314.734	82.653	
Monte Vista Irrigation Company	676.759	0.000	0.000	0.000	0.000	0.000	0.000	28.393	
Monte Vista Water District	4,823.954	12,521.892	(151.480)	0.000	0.000	(5,371.667)	7,074.485	499.195	
Niagara Bottling, LLC	0.000	1,342.588	0.000	0.000	0.000	0.000	1,342.588	56.328	
Nicholson Trust	4.000	0.000	0.000	0.000	0.000	0.000	0.000	0.168	
Norco, City of	201.545	0.000	0.000	0.000	0.000	0.000	0.000	8.456	
Ontario, City of	11,373.816	21,980.342	(4,428.101)	(1,855.196)	0.000	0.000	17,911.096	1,228.639	
Pomona, City of	11,215.852	12,909.293	0.000	0.000	0.000	0.000	12,909.293	1,012.163	
San Antonio Water Company	1,506.888	1,159.242	0.000	0.000	0.000	0.000	1,159.242	111.857	
San Bernardino, County of (Shooting Park)	0.000	16.390	0.000	0.000	0.000	0.000	16.390	0.688	
Santa Ana River Water Company	1,301.374	0.000	0.000	0.000	0.000	48.515	48.515	56.634	
Upland, City of	2,852.401	2,822.046	0.000	0.000	0.000	0.000	2,822.046	238.070	
West End Consolidated Water Co	947.714	0.000	0.000	0.000	0.000	0.000	0.000	39.761	
West Valley Water District	644.317	0.000	0.000	0.000	0.000	0.000	0.000	27.032	
	54,834.000	113,964.114	(11,552.242)	(2,338.973)	0.000	92.652	105,876.384	6,742.552	

EXHIBIT 3

exhib
12/12/13

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO
WEST DISTRICT

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CHINO BASIN MUNICIPAL WATER DISTRICT,
Plaintiff
v.
CITY OF CHINO, et al.,
Defendants.

Case No. RCV 51010
(Specially Assigned to the Honorable J. Michael Gunn)

REPORT AND RECOMMENDATION
OF SPECIAL REFEREE TO COURT
REGARDING: (1) MOTION FOR
ORDER THAT AUDIT
COMMISSIONED BY
WATERMASTER IS NOT A
WATERMASTER EXPENSE, AND
(2) MOTION TO APPOINT A NINE-
MEMBER WATERMASTER BOARD

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TABLE OF REFERENCED BRIEFS¹

1. City of Ontario:

Notice of Motion and Motion of Advisory Committee, and the City of Ontario, for the Appointment of the Honorable Don A. Turner as Interim Watermaster and to Modify Paragraph 18 of the Judgment to Provide for Compensation to the Interim Watermaster; Memorandum of Points and Authorities; Declarations of Traci Stewart, Mary Staula, Michelle Lauffer, and Robert E. Dougherty in Support Thereof (filed with Court on 3/25/97) referenced as "City of Ontario Brief"

2. Advisory Committee:

Notice of Motion and Motion for Appointment of Nine Member Board as Watermaster; Memorandum of Points and Authorities in Support Thereof; Declaration of Traci Stewart (filed with Court on 2/3/97) referenced as "Advisory Committee Brief 1"

3. Advisory Committee:

Notice of Motion and Motion for Order of Court that Audit Commissioned by the Chino Basin Municipal Water District Board is not a Watermaster Expense; Declaration of Traci Stewart (filed with Court on 1/28/97) referenced as "Advisory Committee Brief 2"

4. Chino Basin Municipal Water District:

Opposition to Motion for Order of Court that Audit Commissioned by the Chino Basin Municipal Water District Board is not a Watermaster Expense; Declarations of Larry Rudder, George Borba and Bill Hill in Support Thereof (filed with Court on 2/24/97) referenced as "CBMWD Brief 1"

5. Monte Vista Water District:

Referee's Requested Brief Regarding Identified Issues; Declaration of Langdon Wood Owen in Support of Monte Vista Water District's Brief (submitted to Special Referee on 8/18/97) referenced as "MVWD Brief 2"

6. Chino Basin Municipal Water District:

Memorandum of Points and Authorities re: Motion to Appoint Nine Member Watermaster Board (submitted to Special Referee on 8/18/97) referenced as "CBMWD Brief 3"

7. Jurupa Community Services District:

Jurupa Community Services District's Response to Special Referee Anne Schneider's July 18, 1997 Request for Briefs with respect to Specified Issues (submitted to Special Referee on 8/18/97) referenced as "Jurupa Brief"

¹Numerous briefs were prepared by the parties and filed with the Court or submitted to the Special Referee. Abbreviated references to these briefs are contained in the Written Report and Recommendation by the Special Referee. This index provides the complete titles of the referenced briefs.

8. Chino Basin Municipal Water District:
Opposition to Motion for Appointment of Nine Member Board as Watermaster;
Memorandum of Points and Authorities in Support Thereof (filed with Court on 3/4/97)
referenced as "CBMWD Brief 2"

9. Monte Vista Water District:
Memorandum of Points and Authorities of Monte Vista Water District in Partial Opposition
to Chino Basin Watermaster's Motion for Appointment of Nine-Member Board as Watermaster;
Declaration of P. Joseph Grindstaff (filed with Court on 3/5/97) referenced as "MVWD Brief 1"

1 **I. INTRODUCTION**

2 **A. Scope of Reference and Restatement of Issues**

3 On April 29, 1997, the Honorable J. Michael Gunn, pursuant to California Code of Civil
4 Procedure Section 639(d), ordered a special reference for the purpose of receiving written
5 recommendations from the appointed Special Referee, Anne J. Schneider, regarding the facts and law
6 relative to particular matters which had been raised by the parties to the January 2, 1978¹ Judgment
7 in the matter of *Chino Basin Municipal Water District v. City of Chino* (Case No. RCV 51010)
8 (Ruling and Order of Special Reference, April 29, 1997 [hereinafter "Order of Special Reference"]).

9 The special reference was made as a result of the following motions which remain before the Court:

10 (1) Motion for Order That Audit Commissioned by Watermaster Is Not a Watermaster Expense; and
11 (2) Motion to Appoint Nine-Member Watermaster Board. After reviewing the motions and
12 opposition thereto and conducting a hearing regarding the same, the Order of Special Reference
13 requests that the Special Referee address the following:

- 14 1. The Special Referee shall consider the Motion for Order that Audit
15 Commissioned by Watermaster is not a Watermaster expense and make a
16 recommendation as to how to proceed with resolving the motion. The Special
17 Referee is specifically requested to consider and give an opinion on the
18 meaning of Paragraph 38(b) of the Judgment and its relationship to Paragraph
19 41 of the Judgment.
- 20 2. The Special Referee shall consider the Motion to Appoint a Nine-Member
21 Watermaster Board and make a recommendation as to how to proceed with
22 resolving the motion. The Special Referee is specially requested to consider
23 the checks and balances contained in the 1978 Judgment and to consider the
24 advantages and disadvantages of a public entity watermaster versus a private
25 entity watermaster.

26 (Order of Special Reference at 10.)

27 The thrust of these issues is to question the roles of the Watermaster and the Advisory
28 Committee and how those roles are related to one another. The recommendations of the Special
29 Referee are intended to clarify each of the respective roles as well as the relationship between those
30 roles in order to give guidance for the future as well as to respond to the immediate motions brought

31 ¹The January 2, 1978 Judgment (hereinafter "Judgment") is an adjudication of groundwater
32 and storage rights in the Chino Basin and a bound copy of the Judgment is in the current file of the
33 Court, which has continuing jurisdiction over the Judgment.

1 before the Court.

2 **B. Report on Briefing and Hearing**

3 After receiving notice of the special reference the Special Referee conducted a conference call
4 to ascertain recommendations from the parties as to how to proceed. It was determined that
5 additional briefing was necessary and that a subsequent opportunity to be heard would be granted to
6 the parties in order to fully understand the issues presented. On July 18, 1997, the Special Referee
7 provided the parties with additional issues to be briefed and a briefing schedule. The parties
8 presented their initial briefs on August 18, 1997, and reply briefs on September 8, 1997. On October
9 21, 1997, a hearing was conducted at the office of the Watermaster staff, during which additional
10 questions were raised and discussed. Counsel for certain parties and the parties themselves had an
11 opportunity to fully discuss all issues raised during the October 21 hearing.² The original transcript
12 from this proceeding is hereby made a part of this recommendation and lodged with the Court.³

13 **C. Urgency of Resolution**

14 It has become apparent that the resolution of the motion to appoint a nine-member
15 Watermaster board must be resolved as expeditiously as possible. Chino Basin is suffering from both
16 overdraft and water quality issues that continue to remain unresolved as a result of conflicts between
17 the parties and the discrepancy of opinion with regard to the Watermaster's and the Advisory
18 Committee's roles. The Court has recognized the urgency of the issues presented by the motion to
19 appoint a new Watermaster (Order of Special Reference at 6) and the parties agree that the "process
20 has ground to a halt" (TR 136:25). The urgency appears to stem from the poor condition of the basin
21 itself, the inability of the Watermaster and the Advisory Committee to resolve essential issues, and
22 the inability of the Watermaster to move forward in light of the interim appointment of the California
23 Department of Water Resources (hereinafter "DWR"). Although the Court can resolve the issue with

24
25 ²On November 10, 1997, Special Referee received the Declaration of Gerald S. Thibeault,
26 Executive Officer of the Regional Water Quality Control Board, from counsel for Monte Vista Water
27 District. This declaration has not been considered by the Special Referee as the matter had been
28 submitted at the close of the October 21 hearing.

³All references to the transcript from the hearing conducted on October 21, 1997, shall be
"TR page:line."

1 regard to the appointment of a new Watermaster, the underlying issues as to the condition of the
2 basin and the proper roles of the Watermaster and Advisory Committee are not so easily resolved.
3 Extensive discussion, however, between the parties and the Special Referee occurred during the
4 October hearing regarding the respective roles of the Advisory Committee and Watermaster which
5 will be further explicated herein and which should assist further cooperative resolution of the
6 impending issues regarding Chino Basin management, as well as provide assistance to the Court as
7 the ultimate "check" on the parties.

8 **D. Brief Factual Background**

9 Since issuance of the Judgment in 1978, the Chino Basin Municipal Water District (hereinafter
10 "CBMWD") has been the Watermaster for the Chino Basin. Over the past few years it appears that
11 the Advisory Committee has assumed the task of directing the performance of the Director of
12 Watermaster services, currently Traci Stewart, with respect to Watermaster functions. (Order of
13 Special Reference at 6. *See also* Advisory Committee Brief 1 at 1-2, CBMWD Brief 2 at 2, MVWD
14 Brief 2 at 2.) Mr. Markman, spokesman for the moving parties, explained:

15 . . . the advisory committee and the watermaster entered into an agreement, as you
16 know, the famous facilities and services agreement which essentially delegated over
17 to the advisory committee supervision of the staff to do all this stuff. And that
18 operated that way for a while. Then we had staff operating under direction of the
19 advisory committee by contract, and we had a lawyer . . . in the middle trying to work
20 with the staff directed by the advisory committee but still theoretically under the
21 direction of Chino Basin Municipal Water District, all of which created chaos.

19 (TR at 42:19 to 43:5.)

20 In December 1996, CBMWD discovered fraudulent checks had been drawn upon the
21 Watermaster's account. (Order of Special Reference at 2.) By that time, it appeared there was no
22 longer any cooperation between the Advisory Committee and the Watermaster. Additional concerns
23 were expressed regarding Watermaster expenditures which had been directed by the Advisory
24 Committee and reluctantly processed by CBMWD as the Watermaster. (City of Ontario Brief, Decl.
25 of T. Stewart and M. Lauffer.) Accordingly, CBMWD requested a special audit be conducted, which
26 the Advisory Committee refused to approve.

27 The parties appear to agree that there have been no significant disputes between the
28 Watermaster and the Advisory Committee until recently. (TR at 126:12 to 133:6.) When a dispute

1 arose as to whether a special audit should be conducted or not, the Advisory Committee was acting
2 as the *de facto* Watermaster. Subsequently, when at CBMWD's and others' request the Watermaster
3 staff had a special audit conducted, the Advisory Committee brought a motion as the *de facto*
4 Watermaster seeking Court determination that the special audit was not a proper Watermaster
5 expense. At the same time, the Advisory Committee sought a Court order changing the Watermaster.

6 One hearing participant (Mr. Teal, City of Ontario) described the historical relationship of
7 the Advisory Committee and Watermaster up until the issue of replacing the Watermaster arose:

8 I've been involved in this process since 1978 and beyond, and one of the things that
9 needs to be recognized is that throughout the 18 years prior to 1996, the pools and
10 the advisory committee essentially, on 98 percent or more of the actions, have been
11 a hundred percent consensus. . . . And one of the reasons why we were able to reach
12 consensus . . . was that we were very intimately involved in protecting each other's
13 interests. . . . We were very careful in protecting everyone's interest, mainly because
14 we all had a fear that if we didn't, then this adjudication would not work, that we
15 would be back in court. And everybody had a fear that suddenly this Pandora's box
16 would be opened again. And none of us wanted that because we all had something
17 to lose. . . . What has stalled the [Optimum Basin Management Program] process, of
18 course, is we all got hung up on who the new watermaster was going to be. Well, for
19 18 years basically the watermaster functioned as the advisory group, and we did it
20 through consensus building because, again, we were all afraid that the judgment
21 wouldn't work if we didn't build a consensus.

22 (TR at 126:12 to 129:6.)

23 The parties appear to concur that the only time the Watermaster has disagreed with a
24 recommendation of the Advisory Committee has lead to the current motion to appoint a new
25 Watermaster. (TR at 64:4 to 67:20.) The underlying issue that triggered the current motion appears
26 to have been the participation of the Watermaster in the question of payment for the groundwater put
27 through a "desalter" facility.⁴ Mr. Kidman, the spokesperson for the opposing parties, stated:

28 There was a proposal by one member of the watermaster board at that time, Chino
Basin Municipal Water District, that said that they would support moving forward
with that, allowing that production [of groundwater to be run through the desalter]
to take place without assessment under the watermaster. It was that attempt at

⁴It seems the motion to elect a nine-member board Watermaster stems from the Watermaster
not agreeing with the Advisory Committee with regard to the special audit. The parties have
indicated the initialization of the special audit triggered the filing of the motion to change the
Watermaster. However, the first motion to change the Watermaster stemmed from the desalter
project, as explained. That initial motion was a request to have the Advisory Committee act as the
Watermaster.

1 independence that brought this whole house of cards down around all of us.

2 (TR at 66:13-19.) Mr. Markman, spokesperson for the moving parties, concurred, stating: "I agree
3 that frames the issue perfectly." (TR at 66:21-22.) Mr. Grindstaff, Monte Vista Water District,
4 added further detail:

5 The entire reason we're sitting here today is because during the process of getting
6 water for the desalter, . . . one of the members of the watermaster board came to a
7 meeting of the ag pool and said, If we can't get water for this desalter, then I want to
8 work with you in the ag pool, and we're going to have enough votes so it won't be
9 a mandated action. . . That was the major issue, in fact, when the first motion was
made to replace watermaster was that someone from watermaster had the nerve to
actually come into the basin and say we're going to take an action or we're going to
work with somebody to take an action that might be opposed by a majority of the
advisory committee.

10 (TR at 64:18 to 65:7.)

11 The remarkable placidity of the Watermaster over the 18-year period from 1978 to 1996, appears in
12 large part to be attributable to the fact that there have been extensive negotiations to achieve
13 consensus on issues. (TR at 126:12 to 127:16.) It may also not have been clearly understood that
14 the Watermaster can disagree with either mandatory or other recommendations of the Advisory
15 Committee.⁵

16 In an attempt to resolve the continuing deadlock between the Advisory Committee and the
17 CBMWD and to obtain additional time for the special reference, the Court appointed DWR as interim
18 Watermaster "subject to the [DWR's] acceptance and agreement on mutually acceptable terms."
19 (Order of Special Reference at 9.) Further, the Court ordered the Advisory Committee and CBMWD
20 to jointly negotiate terms and conditions and present them for approval to the Court no later than
21 June 18, 1997. (*Id.*) DWR was to act as interim Watermaster until the Court had acted upon the
22 report of the Special Referee. The parties have not been able to come to a resolution with regard to
23 the interim appointment of DWR. (TR at 14:4-11.) The negotiation process with DWR continues,

24
25 ⁵It is unclear from the record how much influence legal counsel's advice had. The advice to
26 the Watermaster from legal counsel (which has since been recused) was that the Watermaster had no
27 recourse if the Advisory Committee acted by 80% vote. (CBMWD Brief 1, Decl. of L. Rudder ¶¶ 6
28 and 10.) It seems legal counsel at that time specifically indicated to Watermaster services staff that
an 80% or greater vote by the Advisory Committee was a mandate and there was no advice that such
a mandate could be appealed to the Court pursuant to the Judgment. (*Id.*)

1 but with no certainty that it will be finalized. (TR at 17-18.) In the meantime, CBMWD continues
2 to be recognized as an interim Watermaster (TR at 14), notwithstanding the fact that essentially all
3 Watermaster functions currently appear to be under Advisory Committee control.

4 The Advisory Committee (as the *de facto* Watermaster), in February 1997, brought its motion
5 to remove CBMWD as Watermaster and replace CBMWD with a nine-member Watermaster board.
6 The Judgment provides for particular procedures in the event the Advisory Committee or another
7 party wishes to replace the Watermaster. The procedural requirements have been met by the
8 Advisory Committee. (Advisory Committee Brief 1.) In addition, the Advisory Committee sought
9 an order from the Court declaring the special audit conducted by CBMWD was not a proper
10 Watermaster expense. (Advisory Committee Brief 2.)

11 II. COMPELLING REASON ANALYSIS

12 A. The Court is Required to Make a New Watermaster Appointment Upon Motion 13 Supported by a Majority of the Advisory Committee Unless "There is a 14 Compelling Reason to the Contrary"

14 The Judgment is clear with regard to the process by which the Watermaster may be replaced.
15 The Judgment provides as follows:

16 Watermaster may be changed at any time by subsequent order of the court, on its own
17 motion, or on the motion of any party after notice and hearing. Unless there are
18 compelling reasons to the contrary, the court shall act in conformance with a motion
19 requesting the Watermaster be changed if such motion is supported by a majority of
20 the voting power of the Advisory Committee.

19 (Judgment at ¶ 16, emphasis added.) In light of the fact that all parties agree the Advisory Committee
20 has moved the Court to replace the Watermaster with a majority vote, the inquiry is limited to
21 whether there is "compelling reason to the contrary." During the subsequent briefing requested by
22 the Special Referee as well as the hearing conducted in October, the parties opposed to the
23 appointment of the nine-member board as Watermaster provided the following reasons as bases for
24 denying the motion to appoint the nine-member board:

25 1. The purpose and objective of the Judgment overrides all other considerations (citing
26 Judgment ¶¶ 15-17, 39-41) and the replacement nine-member board undermines the purpose and
27 objective of the Judgment itself. The purpose and objective of the Judgment is basin management.
28 (MVWD Brief 2 at 6.) A "producer panel" Watermaster would violate the structure of the Judgment

1 as it has always been the intention of all parties that the Watermaster be independent, neutral, and
2 objective. (MVWD Brief 2 at 7-8 and Decl. of L. Owen.)

3 2. Appointing the basin producers as the Watermaster eliminates the “checks and
4 balances” between Watermaster and the Advisory and Pool Committees. (MVWD Brief at 7.)

5 3. The Judgment does not contemplate a Watermaster consisting of more than one public
6 or private entity. There would be a morass of bureaucracy if numerous entities, consisting of
7 numerous boards of directors, had to coordinate their voting and meetings to act effectively
8 (especially to run the day-to-day business). (MVWD Brief 2 at 8.)

9 4. The most compelling reason to deny the motion is the present condition of the
10 groundwater of the Chino Basin. (CBMWD Brief 3 at 2, Decl. of J. Grindstaff.) The present
11 condition of Chino Basin is “deplorable.” (*Id.*)

12 5. The purpose of vesting Watermaster with the discretionary power to develop the
13 fundamentally important program (the Optimum Basin Management Program for Chino Basin) with
14 only the advice of the Advisory Committee was to promote objectivity and avoid the inherent self-
15 interest and bias of the Advisory Committee members. (Jurupa Brief at 3.) A Watermaster board
16 controlled by northern basin interests who have unimpaired water quality compared to southern basin
17 entities whose water quality is impaired will create self interest and bias in implementing Article X,
18 Section 2 of the California Constitution. (Jurupa Brief at 5.)

19 6. There is evidence of a pattern of mismanagement policies and procedures for
20 expenditures not being followed by the Watermaster, the basin being overdrawn and the quality of
21 the water greatly diminished. (CBMWD Brief 2 at 3-4; *see also* Order of Special Reference.)

22 The term “compelling reasons” must be interpreted based upon the understanding and intent
23 of the Court and not that of the parties. (Russell v. Superior Court (1957) 252 Cal.App.2d 1, 8.)
24 Implied in such a requirement that “compelling reasons” be established is that the Court find reasons
25 which “force” or “compel” the Court to deny the motion based on the ordinary and popular sense of
26 the term.

27 ////

28 ////

1 **B. The Most Compelling Reason Not to Appoint the Nine-Member Board as**
2 **Watermaster Asserted by Parties Opposing the Motion is that the Advisory**
3 **Committee Would Control the Watermaster and the Watermaster will not**
4 **Carry Out the Separate Functions Given to it Under the Judgment**

5 Parties opposing the appointment of a nine-member Watermaster board rely heavily on the
6 proposition that the Judgment provides for inherent "checks and balances" between the Advisory
7 Committee and the Watermaster which would be eliminated by the appointment of the suggested
8 nine-member Watermaster board. As stated during the hearing, the question is whether "the tyranny
9 of the majority govern[s] under this judgment, or is it necessary that under those areas that are clearly
10 discretionary — is it necessary to have some independent checks and balances?" (TR at 78:14-18.)
11 The implicit question is whether appointment of the nine-member board will allow the Advisory
12 Committee to continue to govern the Chino Basin.

13 Six members of the nine-member board would be three appropriative pool members and three
14 overlying pool members, two from the overlying (agricultural) pool and one from the overlying
15 (nonagricultural) pool. (TR at 87:22-25.) The other three seats are proposed for nonpumper water
16 districts (CBMWD, Western Municipal Water District, and Three Valleys Municipal Water District).

17 The parties in opposition to the motion contend the nine-member board would not be
18 independent and that the producer majority cannot be expected to administer the Judgment
19 objectively, since they have financial interests in producing water as inexpensively as possible from
20 the basin. (TR at 139:23 to 141:4.) Alternative vote-counting was suggested, however: Producers
21 who draw water from the northern portion of the basin will have three votes on the proposed nine-
22 member board and those three votes could well combine with the votes of the one member from the
23 overlying (nonagricultural) pool, the one member from Three Valleys Municipal Water District, and
24 the one member from Western Municipal Water District. Therefore, an alternative majority was also
25 postulated which would be able to control the proposed nine-member board.⁶ (TR 87:22 to 88:14.)

26 ⁶Mr. Kidman suggested a further consideration that could affect voting patterns of the nine-
27 member board, one that could at some point precipitate the need for modification of the Judgment:

28 One of the problems in the judgment . . . is that there is a strong tendency for the rich

(continued...)

1 The parties opposed to the appointment of the nine-member board do not provide direct
2 evidence that the nine-member board will fail to be independent of the Advisory Committee.
3 Although they assert that the nine-member board would not disagree with the Advisory Committee,
4 that there would be "a natural tendency for the producer members of the Watermaster committee to
5 follow the directions and the positions of those who appoint them and those who they represent" (TR
6 at 90:12-15), it was conceded that it was conceivable that the nine-member board configuration
7 would disagree with the Advisory Committee. (TR at 90:19-22.) In fact, it was also suggested that
8 the inclusion of two more nonproducer public agencies (Western Municipal and Three Valleys
9 Municipal Water Districts), along with CBMWD, will improve the current situation (TR at 85:9-17)
10 and that these public agencies provide protections from minority views. It was also suggested that
11 these three public agencies are in the best position to seek assistance from the Court. (TR at 86:10-
12 17.)

13 Overall, because there is no evidence with regard to how the nine-member board would vote
14 and whether their pecuniary interests would control their voting, there is no evidence to indicate that
15 any "checks and balances" of the Judgment would be compromised by the nine-member board
16 Watermaster. The parties seem to agree that the best way to ensure that the essential function of the
17 Watermaster will be carried out was not so much dependent on who the Watermaster may be as on
18

19 ⁶(...continued)

20 to get richer and the poor to get poorer. That is, representation on the advisory
21 committee and so on gets to be established according to . . . how many water rights
22 a party holds and to how much water a party produces or overproduces. And it's that
23 second part especially that allows the rich to get richer and the poor to get poorer
24 because those entities that are in a part of the basin where they can't produce because
25 water quality is not suitable get fewer votes as a result and those that happen to be in
26 a sweet part of the basin, where they can even overproduce their water right if they
27 wanted to and take advantage of the underproduction of the others, get more votes.
The system gets stacked against the parties that are in the lower-quality part of the
basin. And appointing a watermaster panel that's composed of a majority, numerical
majority, of producers, given the way the voting rights are stacked, is hardly a
solution . . . that gives some people, who would like to see cleanup occur, confidence
that it will.

28 (TR at 141:22 to 142:18.)

1 additional court oversight and guidance. Mr. Kidman, representing opposing parties, stated:

2 Could it work? Possibly. You asked that. I think so. It could work. The best way
3 to make sure it worked is to make sure that we have an order that does outline what
4 the really essential functions of the watermaster will be and specifically charges
5 whoever is appointed to carry them out and establishes report-back procedures,
6 opportunities where those that may disagree that everything is just fine have the ability
7 to come in and . . . make sure their position is heard as to whether or not everything
8 is going just fine.

9 (TR at 141:11-21.)

10 Finally, opposing parties did not provide an alternative at the hearing.⁷ (TR at 139:16 to
11 141:21.) Given the proposed composition of the nine-member board and the concerns raised by
12 parties in opposition to the appointment, it seems prudent and necessary to provide a gauge upon
13 which this Court can determine whether the nine-member board is properly carrying out its
14 Watermaster roles in the event the Court grants the motion.

15 **III. WATERMASTER ROLES AND REVIEW OF WATERMASTER ACTIONS**

16 **A. Introduction**

17 There are four general categories of Watermaster actions identified in the Judgment: There
18 are Watermaster functions to administer the Physical Solution and to serve the Court in that regard;
19 there is one action under Paragraph 41 explicitly identified as “discretionary”; there are numerous
20 actions which the Watermaster is directed to take upon recommendation or advice of the Advisory
21 Committee or with Advisory Committee approval; and there are all other actions which do not fall
22 within one of these three categories. These categories are important for purposes of determining
23 which processes provided in the Judgment for review of Watermaster actions apply to a particular
24 action. There are two Court review processes available: Paragraph 31 provides for review by the
25 Court of all Watermaster actions, decisions, or rules; and Paragraph 15 provides for motions to the
26 Court for “further or supplemental orders or directions” or to “modify, amend or amplify” the
27 Judgment. There are also two procedural routes, discussed *infra*, that provide for Advisory
28

⁷There has been some suggestion in the briefing and in closing remarks during the hearing that a five-member board consisting of two members from CBMWD, one from Three Valleys Municipal Water District, one from Western Municipal Water District, and one from some other entity such as DWR should be considered. (TR at 144:18-23.) This suggestion is incomplete and would require additional consideration by the parties which may further delay appointment of a new Watermaster.

1 Committee review and can lead to Court review: the Paragraph 38(b), 38(b)[2], 38(c) process; and
2 the 38(b)[1], 38(c) process.

3 By analyzing the Judgment in terms of these categories of Watermaster action and avenues
4 of review, it is possible to assess how appropriately to handle issues not explicitly covered by the
5 Judgment, such as the special audit costs. In the case of the special audit, that action of the
6 Watermaster to incur the expense is not an action to carry out the Physical Solution, does not fall
7 within the explicit "discretionary" category, and is not covered by any provision explicitly requiring
8 Advisory Committee recommendation or approval; therefore, it is within the "other action" category.
9 As such, it is reviewable by the Court upon a Paragraph 31 motion, it does not fall within the purview
10 of Paragraph 38(b), or the Subparagraph 38(b)[1] Advisory Committee mandate process, and does
11 not require further order of the Court or any change in the Judgment such as the Paragraph 15
12 process would provide.

13 **B. The Watermaster Has Duties and Powers to Administer and Enforce the**
14 **Provisions of the Judgment and, Pursuant to the Judgment and Further**
Direction of the Court, to Administer and Implement the Physical Solution

15 The Watermaster is appointed "to administer and enforce the provisions of this Judgment and
16 any subsequent instructions or orders of the Court hereafter." (Judgment at ¶ 16.) The
17 Watermaster's powers and duties are defined explicitly and exclusively with relationship to the Court,
18 not the Advisory or Pool Committees:

19 17. Powers and Duties. Subject to the continuing supervision and control of the
20 Court, Watermaster shall have and may exercise the express powers, and shall
21 perform the duties, as provided in this Judgment or hereafter ordered or authorized
by the Court in the exercise of the Court's continuing jurisdiction.

22 This special relationship between the Court and Watermaster is most fully described in the
23 Physical Solution provisions of the Judgment and provisions related to carrying out the Physical
24 Solution. The Court expressly:

- 25 • Adopted an order to parties "to comply with the Physical Solution." (Judgment at
26 ¶ 39.)
- 27 • Appointed the Watermaster "to administer and enforce" the Judgment. (Judgment at
28 ¶ 60.)

1 Under the Judgment, the Watermaster's duties and powers that are subject to the Court's
2 continuing jurisdiction (Judgment at ¶ 17) are extensive:

- 3 • The Watermaster can seek Court review by motion requesting the Court under its
4 continuing jurisdiction to “. . . make such further or supplemental orders or directions
5 as may be necessary or appropriate for interpretation, enforcement or carrying out of
6 this Judgment, and to modify, amend or amplify any of the provisions of this
7 Judgment.” (Judgment at ¶ 15.)
- 8 • Subject to that continuing supervision and control of the Court, “. . . Watermaster
9 shall have and may exercise the express powers, and shall perform the duties, as
10 provided in this Judgment or hereafter ordered or authorized by the Court in the
11 exercise of the Court's continuing jurisdiction.” (Judgment at ¶ 17.)
- 12 • The Watermaster is to be assisted in performing its functions under the Judgment by
13 pool Committees, representing the pools created under the Physical Solution, and the
14 Advisory Committee. (Judgment at ¶ 32.)
- 15 • The purpose of the Physical Solution provisions “. . . is to establish a legal and
16 practical means for making the maximum reasonable beneficial use of the waters of
17 Chino Basin by providing the optimum economic, long-term, conjunctive utilization
18 of surface waters, ground waters and supplemental water, to meet the requirements
19 of water users having rights in or dependent upon Chino Basin.” (Judgment at ¶ 39.)
20 Maximizing the beneficial use of Chino Basin waters makes it “essential that this
21 Physical Solution provide maximum flexibility and adaptability in order that
22 Watermaster and the Court may be free to use existing and future technological,
23 social, institutional and economic options . . .” (Judgment at ¶ 40.)
- 24 • Groundwater “. . . reservoir capacity utilization for storage and conjunctive use of
25 supplemental water [must] be undertaken only under Watermaster control and
26 regulation, in order to protect the integrity of both such Stored Water and Basin
27 Water in storage and the Safe Yield of Chino Basin.” (Judgment at ¶ 11.)⁶
- 28 • With Advisory and Pool Committee advice and assistance, the Watermaster is to
establish the procedures and administer the withdrawal and supplemental water
replenishment of basin water as required to accomplish “full utilization of the water

21 ⁶The Judgment enjoins storage or withdrawal of stored water “except pursuant to the terms
22 of a written agreement with Watermaster and [that] is [in] accordance with Watermaster regulations.”
23 (Judgment ¶ 14.) The Court must first approve, by written order, the Watermaster's execution of
24 “Ground Water Storage Agreements.” (Judgment ¶ 28.) The Advisory Committee's role is limited
25 to giving its approval before the Watermaster can adopt “uniformly applicable rules and a standard
26 form of agreement for storage of supplemental water.” (*Id.*) However, groundwater storage rules
27 and the standard form of agreement must be “uniformly applicable”, which intrinsically leaves to the
28 Watermaster the decision to execute agreements and, ultimately, to the Court (and notably not the
Advisory Committee) the authority to approve those agreements. The Judgment's injunction against
unauthorized production (Judgment ¶ 13) and injunction against unauthorized storage or withdrawal
of stored water (Judgment ¶ 14) are integral parts of the Judgment's Physical Solution, and the
requirement for direct Court approval of Watermaster storage agreements is another manifestation
of the Watermaster's and Court's special relationship.

resources of Chino Basin,” which encompasses preservation of both the water quantity and quality of basin resources. (Judgment at ¶ 41.)

- Watermaster is required to undertake socioeconomic impact studies of the assessment formula (set forth in Exhibit H to the Judgment) and its possible modification for the appropriator pool no later than ten years from the “effective date of this Physical Solution.” (Judgment at Exhibit H, ¶ 8.)⁹

Exhibit I to the Judgment, the “Engineering Appendix,” sets forth the parameters the Watermaster “shall consider . . . in the process of implementing the physical solution for Chino Basin”:

1. Basin Management Parameters. In the process of implementing the physical solution for Chino Basin, Watermaster shall consider the following parameters:

(a) Pumping Patterns. Chino Basin is a common supply for all persons and agencies utilizing its waters. It is an objective in management of the Basin’s waters that no producer be deprived of access to said waters by reason of unreasonable pumping patterns, nor by regional or localized recharge of replenishment water, insofar as such result may be practically avoided.

(b) Water Quality. Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster.

(c) Economic Considerations. Financial feasibility, economic impact and the cost and optimum utilization of the Basin’s resources and the physical facilities of the parties are objectives and concerns equal in importance to water quantity and quality parameters.

(Judgment at Exh. I, ¶ 1.)

The Watermaster’s special relationship to the Court in carrying out the Physical Solution also was discussed at the hearing. The parties during the hearing described the Watermaster as an “arm of the Court” and as such can take matters to the Court, funded by all the producers, to address anything that may alarm the Watermaster. (TR at 40:11-21.) This role is described as being separate from the ministerial or day-to-day activities of the Watermaster. (TR at 75:1-15.) This role is further described as one of a public advocate, to ensure independent review of what is occurring in the basin. (TR at 81:10-15.) When asked whether the role of the Watermaster was to be a “steward of a basin resource including water quality,” the response was “yes”, including that the Watermaster should

⁹We do not have information on whether this Watermaster task has been accomplished, but the 15 percent/85 percent assessment formula appears not to have been changed. (TR at 29:22-25.)

1 ensure that there is not a waste or unreasonable use of basin water. (TR at 83-84.) Accordingly, the
2 parties agree that the Watermaster is a steward of Chino Basin groundwater resources and this role
3 may involve taking positions adverse to the Advisory Committee. (See TR at 110-111.)

4 **C. Only One Watermaster Function Is Explicitly Identified as “Discretionary,” to**
5 **“Develop an Optimum Basin Management Program” for the Chino Basin**

6 Although there is reference in Subparagraph 38(b)[2] to “any discretionary action” of
7 Watermaster, there in fact is only one area in which the Watermaster is explicitly granted
8 “discretionary powers” under the Judgment, and that is to develop an Optimum Basin Management
9 Program. (Judgment at ¶ 41.)

10 The “any discretionary action” phrase in Subparagraph 38(b)[2] implies that there are
11 Watermaster actions in addition to development of the Optimum Basin Management Program that
12 are also “discretionary actions.” The “any discretionary [Watermaster] action” phrase in
13 Subparagraph 38(b)[2] appears to serve as a “catch-all” provision, intended to ensure that the
14 Advisory Committee will have notice if the Watermaster ever proposes to take an action which has
15 “slipped through the cracks” and is not otherwise expressly subject to Advisory Committee or Pool
16 Committee review. Paragraph 40 raises the prospect of the Watermaster taking an action which
17 could be described as “any discretionary action”:

18 40. Need for Flexibility. It is essential that this Physical Solution provide maximum
19 flexibility and adaptability in order that Watermaster and the Court may be free to use
20 existing and future technological, social, institutional and economic options, in order
21 to maximize beneficial use of the waters of Chino Basin. To that end, the Court’s
retained jurisdiction will be utilized, where appropriate, to supplement the discretion
herein granted to the Watermaster.

22 The Court might “supplement the [Watermaster’s] discretion” under Paragraph 40, and leave to the
23 Watermaster the decision as to how to exercise that supplemental discretion. Any “discretionary
24 action” the Watermaster might take in that context would be subject to the Paragraph 38(b)[2]
25 process. Other than when the Court might supplement the Watermaster’s discretion, every
26 conceivable Watermaster action appears to have been anticipated in the Judgment and Advisory or
27 Pool Committee participation provided for.

28 The overall process of developing an Optimum Basin Management Program is, essentially,

1 a collaborative process that involves the Watermaster, Advisory Committee, Pool Committees, and
2 the Court. However, since the power to develop an Optimum Basin Management Program is granted
3 to the Watermaster with only the advice of the Advisory and Pool Committees, the Watermaster's
4 role can fairly be described as providing impetus for that collaborative process and carrying it through
5 to completion.

6 **D. Numerous Watermaster Functions Under the Judgment Explicitly Require
7 Advisory Committee Approval or are Required to be Undertaken Upon
8 Recommendation or Advice of the Advisory Committee, and Are Not Identified
9 As "Discretionary"**

10 **1. Advisory Committee Recommendation or Advice**

11 The Watermaster can take certain actions only upon the recommendation or advice of the
12 Advisory Committee.

- 13 • The Watermaster shall make and adopt rules and regulations upon the
14 recommendation of the Advisory Committee. (Judgment at ¶ 18.)
- 15 • Subject to prior recommendation or approval of the Advisory Committee, the
16 Watermaster may act jointly or cooperatively with other agencies of the United States
17 or the State of California to carry out the Physical Solution. (Judgment at ¶ 26.)
- 18 • The Watermaster may, with the concurrence of the Advisory Committee or the
19 affected Pool Committee and in accordance with Paragraph 54(b), conduct studies
20 related to implementation of the management program for the Chino Basin.
21 (Judgment at ¶ 27.)
- 22 • Watermaster shall submit an administrative budget recommendation to the Advisory
23 Committee, who shall review and submit its recommendations back to the
24 Watermaster, and thence a hearing shall be held to adopt the administrative budget
25 for the year. (Judgment at ¶ 30.)
- 26 • Watermaster is to implement Pool Committee policy recommendations for
27 administration of the particular pools. (Judgment at ¶ 38(a).)
- 28 • Watermaster must act consistent with an Advisory Committee recommendation that
has been approved by 80 or more votes, but has the right to bring the issue before the
Court. (Judgment at ¶¶ 38(b)[1] and 38(c).)
- As to the Optimum Basin Management Program itself, the Advisory Committee can
"act upon all discretionary [Watermaster] determinations," as well as "study,"
"recommend," and "review" them. (Judgment at ¶ 38(b).)
- Watermaster must give notice and conduct a meeting prior to executing an agreement
not within the scope of an Advisory Committee recommendation. (Judgment at
¶ 38(b)[2].)
- The "respective pooling plans" direct how the Watermaster shall levy and collect

1 annual replenishment assessments (Judgment at ¶ 45) and production assessments.
2 (Judgment at ¶ 51.)

- 3 • The Watermaster “may accomplish replenishment of overproduction from the Basin
4 by any reasonable method,” subject to Paragraph 19’s direction that the Watermaster
5 not acquire real property interests or “substantial capital assets,” Paragraph 25’s
6 limitation on the Watermaster’s authority to enter into contracts involving the Chino
7 Basin Municipal Water District, and Paragraph 26’s provision that the Watermaster’s
8 authority to act jointly or cooperate with other entities to “fully and economically”
9 carry out the Physical Solution is “subject to prior recommendation or approval of the
10 Advisory Committee.” (Judgment at ¶ 50.)
- 11 • The parties agree that one of the Watermaster’s duties is to carry out the direction of
12 the Advisory Committee as provided in the Judgment. (TR at 109:24.)

9 2. Pool Committee Requirements

10 The Pool Committees also can require Watermaster implementation of their “actions and
11 recommendations.” (Judgment at ¶ 38(a).) For most purposes, these need not be considered
12 separately from Advisory Committee recommendations and advice, since any disputed direction from
13 a Pool to the Watermaster would be made through the Advisory Committee. However, the Pool
14 Committees have extensive authority as to the allocation and approval of “special project expenses”
15 incurred in administration of the Physical Solution.¹⁰ Judgment Paragraph 54 provides in part:

16 (b) Special Project Expense shall consist of special engineering or other studies,
17 litigation expense, meter testing or other major operating expenses. Each such project
18 shall be assigned a Task Order number and shall be separately budgeted and
19 accounted for.

20 . . . Special Project Expense shall be allocated to a specific pool, or any portion
21 thereof, only upon the basis of prior express assent and finding of benefit by the Pool
22 Committee, or pursuant to written order of the Court.¹¹

23 (Judgment at ¶ 54.) These provisions will be central in development of implementation and financing
24 elements of the Optimum Basin Management Program.

25 ///

26 ¹⁰The Watermaster is directed to allocate and assess “general Watermaster administrative
27 expenses” to the respective pools “as based upon generally accepted cost accounting methods.”
28 (Judgment at ¶ 54.) This Watermaster function fits within the “other action” category.

¹¹The Paragraph 54 “pursuant to written order of the Court” language implies that the
Watermaster could, through the Paragraph 15 motion procedure, propose a special project expense
be undertaken and obtain Court approval for allocation of the costs of the expense.

1 **E. Many Other Watermaster Functions under the Judgment Do Not Require**
2 **Advisory Committee Approval or Recommendation, and Are Not Identified as**
3 **“Discretionary”**

4 **1. Watermaster Functions in the Normal Course of Business**

5 The Judgment expressly sets forth particular functions of the Watermaster which delineate
6 the day-to-day affairs of the Watermaster:

- 7 • Watermaster may acquire facilities and equipment other than any interest in real
8 property or substantial capital assets. (Judgment at ¶ 19.)
- 9 • Watermaster may employ or retain administrative, engineering, geologic, accounting,
10 legal or specialized personnel and consultants as deemed appropriate. (Judgment at
11 ¶ 20.)
- 12 • Watermaster shall require the parties to install and maintain in good operating
13 condition necessary measuring devices. (Judgment at ¶ 21.)
- 14 • Watermaster is to levy and collect all assessments as provided for in the pooling plans
15 and Physical Solution. (Judgment at ¶ 22.)
- 16 • Watermaster may invest funds in investments which are authorized for public
17 agencies. (Judgment at ¶ 23.)
- 18 • Watermaster may borrow money. (Judgment at ¶ 24.)
- 19 • Watermaster may enter into contracts (other than with CBMWD) without the prior
20 recommendation and approval of the Advisory Committee and written order of the
21 Court for the performance of any powers granted in the Judgment. (Judgment at
22 ¶ 25.)
- 23 • Watermaster conducts the accounting for the stored water in Chino Basin. (Judgment
24 at ¶ 29.)

25 In addition, Watermaster is specifically required to levy and collect assessments each year pursuant
26 to the respective pooling plans in amounts sufficient to purchase replenishment water to replace
27 production by any pool during the preceding year which exceeds that pool's allocated share of safe
28 yield or operating safe yield. (Judgment at ¶ 45.) Watermaster shall also file an annual report
29 containing details as to operation of each of the pools and a certified audit of all assessments and
30 expenditures and a review of Watermaster's activities. (Judgment at ¶ 48.)

31 **2. Watermaster Functions Related to Administering the Pool Committees**

32 The Watermaster was directed to cause producer representatives to be organized to act as
33 Pool Committees for each of the pools created under the Physical Solution. The Pool Committees'
34 responsibility is to develop policy recommendations for administration of the particular pools, which

1 are transmitted to the Watermaster for action. Basically:

- 2 ● The Watermaster administers the three “operating pools” to carry out the
3 “fundamental premise of the Physical Solution . . . that all water users dependent upon
4 Chino Basin will be allowed to pump sufficient waters from the basin to meet their
5 requirements . . . , and each pool will provide funds to enable Watermaster to replace
6 such overproduction.” (Judgment at ¶ 42.)
- 7 ● The Watermaster administers the three pools which are responsible for and must pay
8 for the “. . . cost of replenishment water and other aspects of this Physical Solution.”
9 (Judgment at ¶ 43.)
- 10 ● The Watermaster can levy and collect annual replenishment assessments (Judgment
11 at ¶ 45) and production assessments (Judgment at ¶ 51).

12 3. Watermaster Functions Related to Administering the Physical Solution

13 Watermaster functions particularly related to administering the Physical Solution include:

- 14 ● The Watermaster is directed to “seek to obtain the best available quality of
15 supplemental water at the most reasonable cost for recharge in the Basin” (Judgment
16 at ¶ 49) and to “accomplish replenishment of overproduction from the Basin by any
17 reasonable method . . .” (Judgment at ¶ 50).
- 18 ● The Watermaster has the power to “institute proceedings for levy and collection of
19 a Facilities Equity Assessment” upon recommendation of the Pool Committee, and
20 the Judgment suggests that: “To the extent that the use of less expensive alternative
21 sources of supplemental water can be maximized by the inducement of a Facilities
22 Equity Assessment . . . it is to the long-term benefit of the entire basin that such
23 assessment be authorized and levied by Watermaster.” (Judgment at Exh. H, ¶ 9(a).)

24 F. The Judgment Provides for Specific Notice and Review Processes

25 1. The Paragraphs 38(b), 38(b)[2], and 38(c) Process

26 Judgment Paragraphs 38(b), 38 (b)[2], and (c) provide:

27 (b) Advisory Committee. The Advisory Committee shall have the duty to study, and
28 the power to recommend, review and act upon all discretionary determinations made
or to be made hereunder by Watermaster.

[2] Committee Review. In the event Watermaster proposes to take any
discretionary action . . . notice of such intended action shall be served on the
Advisory Committee and its members at least thirty (30) days before the
Watermaster meeting at which such action is finally authorized.

(c) Review of Watermaster Actions. Watermaster (as to mandated action), the
Advisory Committee or any pool committee shall be entitled to employ counsel and
expert assistance in the event Watermaster or such pool or Advisory Committee seeks
court review of any Watermaster action or failure to act. . .

(Judgment at ¶¶ 38(b), (b)[2], and (c).) This Advisory Committee review process by its terms covers
only “discretionary determinations made or to be made hereunder by Watermaster”; it does not

1 necessarily cover all other actions of the Watermaster that are not identified as “discretionary
2 determinations.” Subparagraph 38(b)[2] provides that “any discretionary action” (with two
3 exceptions which are not relevant)¹² requires notice to the Advisory Committee; the Advisory
4 Committee, upon receiving notice, would presumably directly seek Court review under Paragraph
5 31.

6 **2. Subparagraphs 38(b)[1] and 38(c) Process**

7 **a. Application of 38(b)[1] Process**

8 Judgment Subparagraphs 38(b)[1] and 38(c) provide:

9 [1] Committee Initiative. When any recommendation or advice of the
10 Advisory Committee is received by Watermaster, action consistent therewith
11 may be taken by Watermaster; provided, that any recommendation approved
12 by 80 votes or more of the Advisory Committee shall constitute a mandate for
13 action by Watermaster consistent therewith. If Watermaster is unwilling or
14 unable to act pursuant to recommendation or advice from Advisory
15 Committee (other than such mandatory recommendations), Watermaster shall
16 hold a public hearing, which shall be followed by written findings and
17 decision. Thereafter, Watermaster may act in accordance with said decision,
18 whether consistent with or contrary to said Advisory Committee
19 recommendation. Such action shall be subject to review by the court, as in the
20 case of all other Watermaster determinations.

21 (c) Review of Watermaster Actions. Watermaster (as to mandated action), the
22 Advisory Committee or any pool committee shall be entitled to employ counsel and
23 expert assistance in the event Watermaster or such pool or Advisory Committee seeks
24 court review of any Watermaster action or failure to act. . .

25 The Subparagraph 38(b)[1] Advisory Committee mandate procedure applies expressly to
26 situations in which “any recommendation or advice of the Advisory Committee is received by
27 Watermaster.” In situations where the Advisory Committee has already given recommendations and
28 advice, it can thus insist, or mandate, that its recommendations or advice be taken if it has 80 or more

23 ¹²Subparagraph 38(b)[2] requires Watermaster to give notice to the Advisory Committee of
24 “any discretionary action, other than approval or disapproval of a Pool committee action or
25 recommendation properly transmitted.” (Judgment at ¶ 38(b)[2], emphasis added.) It must also
26 notify the Advisory Committee under this subparagraph if it proposes to execute any agreement not
27 theretofore within the scope of an Advisory Committee recommendation since the Watermaster
28 generally can “cooperate” with other agencies only upon “prior recommendation or approval of the
Advisory Committee.” (Judgment at ¶ 26.) A Pool Committee action or recommendation that was
“properly transmitted” would already have been noticed to the other two pools and would have had
Advisory Committee review if “any objections” had been raised. (Judgment at ¶ 38(a).)

1 votes.¹³

2 **b. The Ramifications of Paragraph 38(c)**

3 The Judgment fully anticipates that the Watermaster and Advisory Committee will not agree
4 at all times. (TR at 40:14 *et seq.*) Subparagraph 38(b)[1] makes it clear that the Watermaster may
5 or may not decide to take action that is consistent with the recommendation or advice of the Advisory
6 Committee. Except when an Advisory Committee recommendation is “mandatory” (i.e., is approved
7 by 80 or more of 100 votes), a procedure is provided for the Watermaster to take independent action.
8 (Judgment at ¶ 38(b)[1].) Even where the Advisory Committee recommendation is “mandatory”, the
9 Judgment anticipates that the Watermaster might still disagree. In such an event, the Watermaster
10 can “employ counsel and expert assistance” (as a Watermaster expense) (Judgment ¶ 38(c)), and “as
11 to any mandated action” may apply to the Court for review. (Judgment ¶ 31(b).)

12 When the Watermaster brings a motion to the Court to review a “mandated action”, its legal
13 and expert costs in seeking Court review are a “Watermaster expense to be allocated to the affected
14 pool or pools.” (Judgment at ¶ 38(c).) The Advisory and Pool Committees enjoy the same benefit
15 when they seek Court review of “any Watermaster’s action, decision or rule.” (*Id.*) However, when
16 any individual party exercises its right to seek Court review, it must shoulder its own legal and expert

17 _____
18 ¹³Judge Turner, in his 1989 Order, stated:

19 The Advisory Committee takes actions on all matters considered by the various pools
20 and submits its recommendations to the Watermaster. The Advisory Committee is
21 the policy making group for the basin. Any action approved by 80% or more of the
22 Advisory Committee constitutes a mandate for action by the Watermaster consistent
23 therewith.

24 (Statement of Decision and Order Re Motion for Review of Watermaster Actions and Decisions Filed
25 by Cities of Chino and Norco and San Bernardino County Waterworks District No. 8 [hereinafter
26 “Judge Turner Order”] at 3:4-9.) This statement was made in Judge Turner’s introductory remarks
27 to his Order and thus is properly characterized as dicta. As discussed herein, the Advisory
28 Committee, Pool Committee, and Watermaster roles in terms of policy decision is perhaps best
described as collaborative. There is no question the Advisory Committee is implicitly intended to
propose policy, but it does not have an exclusive role in that regard. Further, it is clear that the
mandate by 80% or more votes of the Advisory Committee can be appealed to the Court by the
Watermaster, and applies only where the Watermaster action is to be subject to recommendations or
advice of the Advisory Committee.

1 costs. This is viewed by several parties to be a significant factor that should be weighed in
2 considering the independence of the Watermaster. (TR at 41:9-23, 43:15-20, 75:10-16, 76:5 to 77,
3 and 100:11-18.) They argue that the Watermaster can bring before the Court issues which may not
4 be raised by a party (for financial or other reasons). (*Id.*)

5 Of course, the Watermaster must first agree to speak for the party by bringing a motion to
6 the court consistent with the party's interests for this function to have value. As discussed *supra*, the
7 Watermaster apparently has not historically played this role. Further, the Watermaster can only bring
8 a motion on "mandated" actions (unless the Watermaster seeks review of the Judgment by way of
9 Paragraph 15), hence a party would still have to bring its own motion on other, non-mandated
10 Watermaster actions, unless a Pool Committee or Advisory Committee brought the matter to the
11 Court's attention.

12 3. Court Review Under Paragraph 31

13 Paragraph 31 provides for review of all Watermaster actions, decisions or rules:

14 31. Review Procedures. All actions, decisions or rules of Watermaster shall be
15 subject to review by the court on its own motion or on timely motion by any party,
16 the Watermaster (in the case of a mandated action), the Advisory Committee, or any
17 pool committee as follows:

18 (b) Noticed Motion. Any party, the Watermaster (as to any mandated
19 action), the Advisory Committee or any pool committee may, by a regularly
20 noticed motion, apply to the court for review of any Watermaster's action,
21 decision or rule . . .

22 (Judgment at ¶¶ 31 and 31(b).) The Paragraph 31 review is not limited to whether a Watermaster
23 action is "discretionary" or whether such action was the subject of Watermaster recommendations
24 or advice; Paragraph 31 review could therefore be pursued whether or not a Paragraph 38(b)[1]
25 Advisory Committee mandate were involved.

26 The Paragraph 31 review procedure would apply to "other actions" of Watermaster, such as
27 the special audit. The costs of the special audit were properly reviewable under the Section 31
28 procedure, although not subject to the Paragraph 38(b)[1] Advisory Committee mandate or the
Paragraph 38(b) study, recommendation, review and action process for "discretionary"
determinations.

4. Court Review Under Paragraph 15

1 An independent review process is provided by the Judgment. Paragraph 15 of the Judgment
2 provides for continuing jurisdiction, such that full jurisdiction, power and authority are retained and
3 reserved to the Court as to all matters except: (1) the redetermination of safe yield during the first
4 ten years of operation of the Physical Solution, (2) the allocation of safe yield as set forth in
5 Paragraph 44, (3) the determination of specific quantitative rights and shares of the declared safe yield
6 or operating safe yield, and (4) the amendment or modification of Paragraphs 7(a) and (b) of Exhibit
7 H during the first ten years of operation of the Physical Solution. As indicated in Paragraph 15:

8 Continuing jurisdiction is provided for the purpose of enabling the Court, upon
9 application of any party, the Watermaster, the Advisory Committee or any Pool
10 Committee, by motion and, upon at least 30 days' notice thereof, and after hearing
11 thereon, to make such further or supplemental orders or directions as may be
12 necessary or appropriate for interpretation, enforcement or carrying out of this
13 Judgment, and to modify, amend or amplify any of the provisions of this Judgment.

14 (Judgment at ¶ 15.)

15 This review provision does not limit any party, the Watermaster, the Advisory Committee or
16 a Pool Committee in seeking review of any action or failure to act. This provision allows the
17 Watermaster, any party, a Pool Committee or the Advisory Committee to bring to the attention of
18 the Court any contention it may have with regard to the Physical Solution or the Judgment itself as
19 well as day-to-day affairs conducted by the Watermaster. In addition, it grants the Watermaster the
20 right to bring to the attention of the Court any activity of the Pool Committee or Advisory Committee
21 which it deems inappropriate.

22 IV. STATUS OF THE "OPTIMUM BASIN MANAGEMENT PROGRAM"

23 A. The Court Recommended in 1989 That Within Two Years of that Date the 24 Watermaster Prepare an Integrated Optimum Basin Management Program 25 Document

26 The Watermaster is granted discretionary power to develop an Optimum Basin Management
27 Program which includes both water quantity and quality considerations (Judgment at ¶ 41), indicating
28 that the Judgment contemplated the resolution of the continuing water quality problems in the Chino
Basin. In 1989, three members of both the Appropriate Pool and the Advisory Committee brought
a "Motion for Review of Watermaster Actions and Decisions," pointing out "... a great many areas
in which they considered the activities of the Watermaster less than perfect." (Judge Turner Order

1 at 4.) Judge Turner "recommended" that the Watermaster produce the Optimum Basin Management
2 Program within two years. (Judge Turner Order at 10; *see also* TR at 130:16-20.) Judge Turner's
3 1989 Order states:

4 The Moving Parties contend that the Watermaster has failed to develop an adequate
5 Optimum Basin Management Plan (OBMP). The Watermaster, on the other hand,
6 says that it has an excellent working OBMP although it has not been reduced to a
7 single document. . . . As indicated above, there are studies under way trying to at least
8 define the problem and work out possible solutions. The Court finds no defect in the
9 OBMP, although the Court does recommend that within two years the OBMP be
10 reduced to a single integrated document approved by the Advisory Committee.

11 (Judge Turner Order at pp. 8-10.)

12 Judge Turner recognized the pervasive water quality problems with regard to nitrate buildup
13 from dairy farms and agricultural activities. (Judge Turner Order at 9.) Judge Turner also noted that
14 the fundamental idea behind the Judgment was to guarantee sufficient water for all legitimate users
15 and that the water be of good quality. (Judge Turner Order at 4.) Judge Turner relied on the Santa
16 Ana River nitrate management study to provide assistance in evaluating the nitrate problem (Judge
17 Turner Order at 5) and recognized there was no easy solution. (Judge Turner Order at 9.) Although
18 Judge Turner ordered that the Optimum Basin Management Program be placed into one document
19 and contemplated that the ongoing efforts regarding the nitrate problems would at least partially
20 resolve the water quality issues raised, this has not been the case.

21 The parties have presented sufficient evidence to indicate that the water quality in the Chino
22 Basin has dramatically worsened over the last ten years. The Chino Basin has been identified as the
23 single area with the most critical water quality problem in the Santa Ana River watershed. (MVWD
24 Brief 1, Decl. of J. Grindstaff ¶ 9.) According to the 1990 nitrogen-TDS study, by the year 2000,
25 contamination was expected to have spread over much of the basin. However, the Advisory
26 Committee has been informed that the contamination is worse than projected, and the basin has
27 already achieved the level of contamination projected for the year 2000. (*Id.* at ¶ 16.)

28 All parties seem to agree that water quality is a central matter of dispute. (TR at 82.) The
parties acknowledge that for completion of the Optimum Basin Management Program it is important
to look at what has been done and what problems remain (TR at 118:9-15). There are some basic
critical issues that need to be resolved in terms of basin cleanup, issues which are related to the

1 transition of land use from agriculture to urban uses (TR at 31:19-23), and issues related to how
2 contamination of the lower end of the basin is impacting producers (TR at 32:1-4). There seems to
3 be no disagreement that the key issue is how to clean up the lower part of the basin, and how to
4 allocate the multi-million dollar cost of that cleanup. (TR at 33:7-11, 34:23 to 35:3 and 35:11-22.)
5 As Mr. Koopman, representing the overlying (agricultural) pool noted: "Our water is going bad
6 faster than anybody ever imagined." (TR at 146:2-3.)

7 **B. No Optimum Basin Management Program Has Been Developed, Although**
8 **Extensive Planning Studies Have Been Undertaken and Efforts Have Been**
9 **Made to Address Implementation Issues**

10 **1. The "Task Force Plan" Is Not the Optimum Basin Management**
11 **Program**

12 One of the questions addressed at the hearing was whether there is an "optimum basin
13 management program" in existence at this time. Various parties addressed that question and the
14 answer was that there is not a single document that is the "Optimum Basin Management Plan." (TR
15 at 1:18 to 26:18.) The "Chino Basin Water Resources Management Task Force, Chino Basin Water
16 Resources Management Study Final Summary Report (September 1995)" ("Task Force Plan" or
17 "Plan") was identified as a document that had been prepared as an initial step in the development of
18 a management plan for the Chino Basin. (TR at 21:10 to 22:21.)

19 The Task Force Plan is the "culmination of a planning effort" by the Santa Ana Watershed
20 Project Authority (SAWPA), CBMWD, Western Municipal Water District (WMWD), Metropolitan
21 Water District of Southern California (Metropolitan) and the Chino Basin Watermaster. (Plan at 1-
22 1.) The impetus for developing the Plan is identified as the Chino Basin Judgment, paragraph 41, and
23 Judge Turner's Order. (Plan at pp. 1-2.) SAWPA initiated the effort in 1988, and a "Chino Basin
24 Groundwater Management Task Force" ("Task Force") was created January 1, 1990, by "Project
25 Agreement No. 13" between CBMWD and WMWD "as member agencies of SAWPA." Its purpose
26 was "to formulate an operational plan for managing the overall water resources of the Chino Basin."
27 (*Id.*) Apparently, "Project Agreement No. 13" created a 25-member Task Force made up of 21
28 representatives of the Advisory Committee and one representative each from SAWPA, Metropolitan,
CBMWD and WMWD, and an engineering committee of 9 members, 5 of whom were representatives

1 of the Advisory Committee. (Plan at 1-3 to 1-4.) It is not clear to what extent or whether CBMWD
2 participated in the development of the Plan in its role as Watermaster, rather than in its role as a
3 member of SAWPA.

4 It is clear, however, that the Task Force Plan does not itself constitute the “optimum basin
5 management program” that the Watermaster is directed to develop by Judgment Paragraph 41. The
6 Task Force Plan and even its transmittal letter, make it clear that the effort it reflects does not
7 constitute the “optimum basin management program”:

8 The recommended plan thus provides the Task Force with the initial direction it will
9 need to move forward with the additional planning studies required to formulate and
adopt a final overall basin management plan for the Chino Basin.

10 (Letter dated September 22, 1995 from Dennis Smith, Montgomery Watson, to Mr. Mark Norton,
11 SAWPA Project Manager.) The Task Force Plan’s final recommendations reflect the fact that the
12 Plan is not the “optimum basin management program”:

13 Because there are many overlapping issues, and sometimes conflicting objectives
14 between the programs, it is recommended there be some continuing method of
15 coordinating the various programs to ensure consistency with the direction for the
16 preferred [plan] . . . developed under this study. This can be accomplished through
17 the preparation of an Implementation Plan, developed under the direction of and/or
with input from a task force or committee representing similar interests as the Chino
Basin Water Resources Management Study Task Force. It is desirable that such an
effort proceed relatively soon to help guide implementation of the various elements
that are already under active planning.

18 (Plan at 6-11.)

19 The Task Force viewed the Watermaster’s role as limited:

20 Some actions such as revising storage rules and regulations and expanding
21 replenishment facilities and operations can be accomplished principally through the
22 Watermaster. However, implementation of many of the other elements can most
23 effectively be achieved only through a combination of voluntary cooperation and new
24 agreements and/or institutional and financial arrangements. . . significant development
25 work has been ongoing for a number of years (e.g. the current Chino Desalter
Program; Chino Basin MWD’s development work together with the local agencies
toward a water reclamation program; and all of Metropolitan’s efforts toward a
Conjunctive Storage Program). Each of these efforts is expected to continue, and
involve some of the same agencies as well as the Watermaster in different
combinations.

26 (*Id.*)

27 There is a sense of urgency that pervades the Task Force Plan. Although not all agreed that
28 a “tragedy of the commons” scenario is facing the Chino Basin, the Task Force Plan’s forecast

1 | certainly suggests exactly that prognosis:

2 | . . . if projects are left to be implemented only by individual water agencies as needed
3 | to meet water supply requirements, and the full burden of costs are born by the
4 | individual purveyor, implementation will likely be postponed as long as possible,
5 | and/or other options developed where possible. An obvious example would be for
6 | a water purveyor to seek new well locations further north in the basin, and/or deepen
7 | existing wells. Such near term solutions are understandable and justified from a local
8 | agency perspective, but can have adverse long term implications to overall basin
9 | management. Moving production further north will tend to have an adverse impact
10 | on basin yield, while deepening pumping wells tends to accelerate downward
11 | migration of constituents. In either case, the beneficial impact of removing and
12 | exporting greater quantities of salt and nitrate are not realized, and long term water
13 | trends would be more adverse than projected under this study. Therefore to facilitate
14 | development of the projects included in the plans, implementation strategies should
15 | consider various institutional, legal and financial incentives, as has been done with the
16 | Chino Desalter program. . . .

10 | (Plan at 6-5.)

11 | The issues, according to the Task Force Plan, encompass both water quality and water
12 | quantity. The water quantity problem is discussed in considerable detail, and is characterized as “an
13 | unacceptable condition”:

14 | The projected long-term declines in storage and water levels is clearly an unacceptable
15 | condition, in addition to the fact that the physical solution to maintaining water levels
16 | within the Chino Basin under the judgment is not being met.

16 | (Plan at 3-8.) The projected calculated decline in storage for the 1990 to 2040 period is 1.645 million
17 | acre feet with maximum water level declines of 140 feet in the southeastern part of the basin.
18 | Modeled declines are 1.2 million acre feet. (Plan at 3-5.) The Task Force Plan calls into question
19 | the adequacies of current basin replenishment efforts. (Plan at 3-9; Judgment, ¶¶ 42, 45.) As to the
20 | future: “All four alternative plans would result in a long-term decline in storage in the basin. . . .
21 | Thus the basin would be underreplenished. . . .” (Plan at 6-1.)

22 | No complete resolution of water quality problems is suggested. Instead, the Task Force Plan
23 | notes:

24 | The Chino Basin has experienced on-going water quality degradation for many years.
25 | This degradation is demonstrated by increasing salinity and nitrate concentrations in
26 | pumped groundwater. This trend is expected to continue in the future.

26 | (Plan at ES-3.)

27 | The water quality problem is daunting:

28 | It is also apparent from reviewing the water quality projections that a major

1 commitment to extraction and treatment of degraded groundwater is needed under
2 all four plans just to maintain the overall basin quality near current levels due to the
3 long-term continuing negative (net increase) salt and nitrogen balance resulting
4 primarily from past and continuing agricultural land use practices.

5 (Plan at 6-5.)

6 **2. The Next Phase of the Task Force Plan Work, to Develop an 7 Implementation Plan, Has Not Been Pursued**

8 The Task Force Plan identifies a "Phase III" in which a "... a Final Management Plan will be
9 selected for implementation." (Plan at 1-3.) The anticipated task to develop that final plan included
10 developing "operating plan details," a "financial plan," as well as an "Implementation Plan." (*Id.*)
11 The Plan states: "Phase III will be undertaken after the Task Force has reached agreement on the
12 best management approach for the Chino Basin." (*Id.*) According to one hearing participant, Mr.
13 Grindstaff of Monte Vista Water District:

14 It [Task Force Plan] was adopted, but it had alternatives in it, and the next stage was
15 to actually develop a plan that we would follow. And the advisory committee voted
16 against funding the development of an Implementation Plan.

17 (TR at 23:8-12.) Mr. Ed James, who was chief of Watermaster services at the time of the Task Force
18 Plan, concurred:

19 ... the study was to comply with Judge Turner's request, and it looked at the ideas
20 and we looked at water quality and various management schemes. ... The problem
21 is, the program ended in 1994, and since then we have not implemented the next
22 phase. And that's kind of where we are at this point.

23 (TR at 23:19 to 24:4.)

24 **3. Implementation Actions Have Been Identified**

25 The Task Force Plan suggested that an Implementation Plan would include both water supply
26 and water quality elements. "Preferred plan" elements included:

- 27 ● At least 5% water conservation.
- 28 ● Retaining production in the southern half of the basin and/or increasing production
to the maximum extent possible as agricultural pool production is reduced.
- Limit continued accumulation of local storage accounts by underproducers in order
to decrease their replenishment obligation and the accumulation of storage and
possibly cap local storage accounts, and provide incentives to reduce excess storage
accounts that exist now.

- 1 ● Expand spreading capabilities in order to meet future replenishment obligations.
- 2 ● Expand reclaimed water use.
- 3 ● Increase production of high nitrate and high TDS groundwater with treatment and
- 4 removal facilities (desalters).
- 5 ● Consider a conjunctive storage program agreement with Metropolitan up to an
- 6 additional 300,000 acre feet in the basin.

6 (Plan at pp. 6-6 to 6-9.)

7 The Judgment includes guidance as to what should be included in an Optimum Basin
8 Management Program. The purpose and objective of the Physical Solution is to:

9 . . . establish a legal and practical means for making the maximum reasonable
10 beneficial use of the waters of Chino Basin by providing the optimum economic, long-
11 term conjunctive utilization of surface waters, ground waters and supplemental
12 water. . . .

12 (Judgment, ¶ 39.) With the flexibility to “. . . be free to use existing and future technological, social,
13 institutional and economic options. . .” (Judgment ¶ 40), the Watermaster is directed to consider
14 certain “basin management parameters” in implementing the Physical Solution; these “basin
15 management parameters” are set forth in Judgment Exhibit I, the “Engineering Appendix.” Those
16 parameters include:

- 17 ● Pumping patterns should be such that “. . . no producer be deprived of access to said
- 18 waters by reason of unreasonable pumping patterns, nor by regional or localized
- 19 recharge of replenishment water, insofar as such result may be practically avoided.”
- 20 (Judgment, Exhibit I, ¶ 1(a).)
- 21 ● “Maintenance and improvement of water quality is a prime consideration and function
- 22 of management decisions by Watermaster.” (Judgment Exhibit I, ¶ 1(b).)
- 23 ● “Financial feasibility, economic impact and the cost and optimum utilization of the
- 24 Basin’s resources and the physical facilities of the parties are objectives and concerns
- 25 equal in importance to water quantity and quality parameters.” (Judgment, Exhibit
- 26 I, ¶ 1(c).)

24 This is not a comprehensive list. An initial task for the new Watermaster logically would be
25 to develop a scope of the contents of the Optimum Basin Management Program.¹⁴

27 ¹⁴Judgment Exhibit H, Paragraph 8, directs the Watermaster to undertake socioeconomic
28 impact studies by no later than ten years from the date of the Judgment. This work has apparently
(continued...)

1 **4. The Parties Stated at the Hearing That They Could Agree to a Scope of**
2 **an Optimum Basin Management Program**

3 The parties at the hearing indicated (haltingly) that they could at least agree on what needs
4 to be included in the Optimum Basin Management Program. (TR at 30:3 to 31:12.) There was also
5 extended discussion of the varying views of the basin management planning process status, as well
6 as the dynamic nature of the planning process itself. Mr. Teal for the City of Ontario expressed the
7 concern that:

8 . . . one of the impressions here that's been left is that somehow the basin management
9 process is in chaos, when in fact there is some very critical issues that need to be
10 resolved in terms of basin cleanup and the transition from agricultural to urban. And
11 so in fact the basin hasn't really been in chaos. We consider the basin management
12 planning process to be a dynamic process, to be an ongoing process, as we develop
13 a better model of the basin to better identify what are the losses, how is the
14 contamination of the lower end of the basin, how is that impacting the producers.
15 There is very critical economic issues here that need to be recognized.

16 (TR at 31:17 to 32:5.) In Mr. Teal's view, the Task Force Plan:

17 . . . was to start the process of that basin management planning so that we could
18 identify what the problem is and we feel we've identified the contamination problem.
19 We have a working model now. We know generally that, yes, there are losses to the
20 basin, and we need to correct that through storage limits. And. . . we think we have
21 a plan now for storage limits. We need to now develop a plan of how we are going
22 to clean up the lower part of the basin, which is going to cost multiple millions of
23 dollars.

24 (TR at 33:2-11; *see also* TR 127:11 to 133:6.)

25 **5. The Parties Indicated at the Hearing That They Would Not Oppose**
26 **Independent Legal and Technical Oversight on Behalf of the Court of**
27 **the Watermaster's Efforts to Scope and Produce the Optimum Basin**
28 **Management Program**

 In response to the suggestion that the Court require a process to assure that the necessary
planning is indeed occurring and that the Optimum Basin Management Program will be produced
within a reasonable amount of time, no matter who the Watermaster may be, Mr. Markman,
representing the moving parties, stated:

¹⁴(...continued)
not been done (TR at 29:20-25) and should be considered in the scoping process.

1 I think if the referee wants to recommend to the court that as part of your package
2 someone with a fresh look comes in and looks at the process — — where it is and
3 what it needs to accomplish and how it can move — — as a report to the court, I
4 don't think we would resist that. We're not hiding the ball. And that might be helpful
5 to the new Watermaster board as well.

6 (TR at 28:21 to 29:3.) Mr. Kidman, representing the opposing parties, agreed: "A plan and a time
7 frame both ought to be mandated." (TR at 29:5-6.)

8 **V. IN THE EXERCISE OF ITS CONTINUING JURISDICTION, THE COURT CAN
9 ORDER THE WATERMASTER TO EXERCISE ITS POWER TO PREPARE A
10 COMPLETE OPTIMUM BASIN MANAGEMENT PROGRAM AND TO PERFORM
11 THAT DUTY PURSUANT TO A PROCESS AND IN ACCORDANCE WITH A
12 SCHEDULE SET BY THE COURT**

13 The Court retained and reserved continuing jurisdiction "... for the purpose of enabling the
14 Court, upon application of any party, the Watermaster, the Advisory Committee or any Pool
15 Committee . . . to make such further or supplemental orders or directions as may be necessary or
16 appropriate . . ." to interpret, enforce or carry out the Judgment or to modify, amend or amplify the
17 Judgment provisions. (Judgment at ¶ 15.) The Court is authorized to exercise its retained jurisdiction
18 "... where appropriate, to supplement the discretion herein granted to the Watermaster." (Judgment
19 at ¶ 40.) Further, the Court can act on its own motion to review "all actions, decisions or rules of
20 Watermaster." (Judgment at ¶ 31.) Paragraph 17 further describes the Watermaster's powers and
21 duties as subject to the Court's continuing supervision and control, and directs that the Watermaster
22 shall have the powers and duties "... as provided in this Judgment or hereafter ordered or authorized
23 by the Court in the exercise of the Court's continuing jurisdiction." (Judgment at ¶ 17.) If the
24 Watermaster does not act, presumably the Court has the authority under Paragraphs 17, 31 and 40
25 to issue necessary supplemental orders directing the Watermaster to carry out the Physical Solution
26 under the Judgment. Basically, at the time the Court appoints a new Watermaster, the Court's
27 authority to "make such further or supplemental orders or directions as may be necessary or
28 appropriate for interpretation . . . or carrying out of this Judgment . . ." and to "... supplement the
discretion herein granted to the Watermaster . . ." encompasses clarification of the Watermaster's
roles and explicit direction to the Watermaster to prepare the Optimum Basin Management Program
within a limited period of time.

The Court's Order in this instance, however, would not remove such Watermaster activities

1 from the Advisory Committee's review. The recommended Court orders as set forth *infra*, are
2 logically characterized as within the "discretionary powers to develop an Optimum Basin
3 Management Program" (Judgment at ¶ 41), or as a "supplement to the discretion herein granted"
4 (Judgment at ¶ 40). If further Order of this Court were to direct that the Watermaster should
5 prepare the Optimum Basin Management Program without being subject to Advisory Committee
6 review and action, the issue of modification of the Judgment would be raised. Changing the
7 relationship of the Advisory Committee and the Watermaster with respect to the Watermaster's
8 development of the Optimum Basin Management Program under its discretionary powers, and the
9 Advisory Committee's power to review and act upon all discretionary determinations made by the
10 Watermaster, would constitute a Judgment modification. As discussed *supra*, there is no motion
11 before the Court to make such a modification, and the Court cannot modify the Judgment on its own
12 motion. However, the recommended Order of the Court in the matter at bar does not envision a
13 change in the structural relationship between the Watermaster and Advisory Committee, but rather
14 a clarification of the roles of the Watermaster, and explicit direction to the Watermaster to prepare
15 the Optimum Basin Management Program within a limited period of time.

16 VI. RECOMMENDATION FOR INTERIM APPOINTMENT

17 A. The Special Referee Recommends that the Court Appoint the Nine-Member 18 Board as Watermaster, for an Interim Period of 24 Months, Commencing January 1, 1998

19 The principal motion before the Court is to appoint the nine-member board as Watermaster.
20 Opposing parties fear that the nine-member board will be controlled by the Advisory Committee; this
21 may occur, but this predilection is not sufficient basis for concluding that there is a compelling reason
22 not to appoint the nine-member board as Watermaster at this time. The events leading up to the
23 motion and the stalemate that has ensued speak loudly, however, to the need for additional Court
24 guidance and oversight of the Watermaster and its Optimum Basin Management Program and
25 process.

26 The court has retained jurisdiction to supplement the discretion granted to the Watermaster
27 under the Judgment, and it is the recommendation of the Special Referee that the Court exercise its
28 retained jurisdiction to issue the orders recommended herein. The important independent functions

1 of the Watermaster envisioned in the Judgment do not appear effectively to have been carried out by
2 the existing Watermaster and may not be effectively carried out by the nine-member board.

3 However, it is crucial to break the current deadlock; continuing at loggerheads will not
4 address the problems that have arisen since the Advisory Committee essentially usurped the role of
5 the Watermaster as to day-to-day activities, nor will it further preparation of the Optimum Basin
6 Management Program. The fact that the Watermaster has not prepared the Optimum Basin
7 Management Program reflects systemic failure of the Judgment and its Physical Solution, and that
8 failure must weigh heavily in the decision to appoint a new Watermaster.

9 It is the Special Referee's recommendation that the Court appoint the nine-member board as
10 Watermaster, but only for an interim, two-year period. Further, the nine-member board should be
11 required to prepare the Optimum Basin Management Program before the end of the interim period.
12 The proposed requirements and schedule are intended to provide the Court with a means to gauge
13 the success of the new Watermaster. If the nine-member board functions successfully, it will have
14 provided the Court with an Optimum Basin Management Program before the end of the two-year
15 period.

16 **B. The Special Referee Recommends that the Court Set Aside its Order Appointing**
17 **DWR as Interim Watermaster, but Direct the Nine-Member Board to Provide**
18 **a Report to the Court by June 1, 1998, on All Aspects of Appointment of DWR**
to Serve as Watermaster, Should it Become Necessary to Replace the Nine-
Member Board with DWR after the Interim 24-Month Period

19 If the Court agrees with the recommendation to appoint the nine-member board, the current
20 interim appointment of DWR should be set aside. The Court's Order appointing DWR as interim
21 Watermaster required that the Advisory Committee and Chino Basin Municipal Water District first
22 enter into an agreement with DWR. (Order of Special Reference at p. 9.) That has not been
23 accomplished. (TR at 14:8 to 18:25.)

24 Mr. Kidman, representing parties who oppose the motion to appoint the nine-member board,
25 professed to speak for the "whole basin" against appointment of DWR:

26 . . . I don't think that there's anybody in the whole basin that's very interested in
27 seeing a loss of local control or at least some measure of maintaining local control.
28 And having a state receiver, in effect, appointed is not something that any of us are
really looking forward to.

1 (TR at 19:7-12.) Notwithstanding that sentiment, DWR already serves as watermaster for several
2 groundwater basins. Its appointment offers a neutral, proven option to carry out Watermaster
3 functions in the Chino Basin. Because of the uncertainty as to whether the nine-member board will
4 successfully fulfill the Watermaster's duties under the Judgment and exercise its powers for the
5 benefit of the entire Chino Basin, it is prudent to have identified an available and competent
6 replacement which could immediately be appointed, if necessary, in two years. Although a "private
7 entity" Watermaster is not prohibited by any provision of the Judgment, identifying an acceptable
8 private entity is problematic.

9 Further, the Judgment provides that the Court may change the Watermaster on its own motion
10 or on the motion of any party, but, absent compelling reasons to the contrary, the Court must "act
11 in conformance with" a motion to appoint a new Watermaster that is supported by only a "majority
12 of the voting power of the Advisory Committee." (Judgment at ¶ 16.) If the nine-member board
13 appointment is determined by the Court after the two years not to have been successful, the Court
14 could on its own motion immediately appoint DWR as Watermaster. If a majority of the voting
15 power of the Advisory Committee were to then propose an alternative appointment, it would be up
16 to the Court to decide if continuing disruption caused by experimenting with another Advisory
17 Committee-proposed Watermaster would constitute "compelling reason" not to act in conformity
18 with any such further Advisory Committee proposal.

19 VII. RECOMMENDATION FOR COURT OVERSIGHT AND SCHEDULE

20 The Special Referee Recommends:

- 21 1. That the Court order that the parties submit recommendations to the
22 Watermaster as to the scope and level of detail of the Optimum Basin
23 Management Program by March 1, 1998, and that the Watermaster file a
24 written recommendation with the Court by April 1, 1998;
- 25 2. That the Court direct the Special Referee to review the Watermaster's
26 Optimum Basin Management Program scoping recommendations for technical
27 and legal sufficiency, that the Special Referee use an independent technical
28 expert as necessary, and that the Special Referee provide timely written
assessments to the Court on the Watermaster's progress;
3. That the Court order that the Watermaster exercise its discretionary powers to
develop the Optimum Basin Management Program which encompasses the
Implementation Plan elements recommended by the Task Force and submit the
Optimum Basin Management Program to the Court by no later than July 1,

1 1999, or show cause as to why it cannot do so; and

- 2 4. That the Court hold a hearing to consider whether to approve and order full
3 implementation of the Optimum Basin Management Program or consider why
4 the Optimum Basin Management Program has not been completed and filed
with the Court, and that a status report shall be provided to the Court by all
parties as to the continuance of the nine-member board as Watermaster.

5 The Advisory Committee is not envisioned by the Judgment as the “lead” in developing the
6 Optimum Basin Management Program, but rather as an active participant with important oversight
7 roles. The Special Referee recommendation is intended to compel the Watermaster to newly assert
8 itself to provide the impetus needed to develop the Optimum Basin Management Program and to take
9 the lead role as the Judgment intended. The Watermaster has not, to date, carried out that role. The
10 Advisory Committee has, in effect, usurped that role through the Task Force Plan process.¹⁵ From
11 a practical standpoint, the Judgment can perhaps best be interpreted as anticipating that development
12 of the Optimum Basin Management Program will largely be a collaborative process. Of course, the
13

14 ¹⁵The Advisory Committee position implicitly is that it should prepare the Optimum Basin
15 Management Program or the essentially equivalent Implementation Plan. The Task Force Plan
16 recommended that:

17 . . . there be some continuing method of coordinating the various programs to ensure
18 consistency with the direction for the Preferred Water Resources Management
19 developed under this study. This can be accomplished through the preparation of an
Implementation Plan. . .

20 (Plan at pp. 6-11.) The Task Force further suggests that an Implementation Plan can be “. . .
21 developed under the direction of and/or with input from a task force or committee representing
22 similar interests as a Task Force.” (*Id.*) Given the makeup of the Task Force, this is tantamount to
23 suggesting that the Advisory Committee develop the Implementation Plan. The question of whether
the Watermaster should even be the entity to develop the Optimum Basin Management Program was
24 raised in the course of the hearing. Mr. Markman suggested that “an independent watermaster” might
perform certain review functions:

25 It [the Watermaster] is a cog in the process that ultimately brings these issues to the
26 Court. We think it is useful to have a watermaster review the optimum basin
27 management plan. And if it agrees with the minority that opposes that plan, it has two
ways of bringing the matter up to the Court, depending on what the vote was, and
paying for legal counsel to support that position.

28 (TR at 43:11-19.)

1 Court ultimately resolves all issues regarding the Optimum Basin Management Program and
2 implementation of the Physical Solution generally. (Judgment at ¶ 15.)

3 As discussed herein, the provisions related to the Physical Solution define the most important
4 aspect of the Watermaster's special relationship with the Court. Developing the Optimum Basin
5 Management Program to guide implementation of the Physical Solution is, in turn, the most important
6 Watermaster task in carrying out the Physical Solution for the long term.

7 The purpose of the recommended Court oversight and schedule is to provide the Court with
8 a means to gauge the nine-member board's efforts to develop the Optimum Basin Management
9 Program. The particular elements of the program are discussed *supra*, and include both water
10 quantity and water quality actions. Although at the time the Judgment was entered, the full extent
11 of the quantity and quality challenges may not have been fully appreciated, the concept was clearly
12 set forth in the Judgment that the Watermaster would develop an Optimum Basin Management
13 Program that would include both water quantity and quality considerations: "Both the quantity and
14 quality of said water resources may thereby be preserved and the beneficial utilization of the Basin
15 maximized." (Judgment at ¶ 41.) As the Judgment intended and the Task Force Plan confirmed, the
16 full range of problems to be addressed includes every aspect of groundwater basin management,
17 including all implementation and financing decisions.

18 **VIII. RECOMMENDATION FOR PAYMENT OF COSTS OF SPECIAL AUDIT**

19 The Special Referee recommends that the Court find that the special audit is a Watermaster
20 expense. The audit conducted by CBMWD, acting as the Watermaster, is not explicitly defined in
21 the Judgment as a discretionary act, nor is it an action that is explicitly recognized as subject to
22 Advisory Committee recommendation or approval. The record reflects that the special audit was
23 conducted in response to substantial increases in annual budget expenditures, allegations of fraud or
24 theft, and CBMWD recognition that it had lost all control over the Watermaster services staff. It also
25 appears that the special audit was conducted to gain some understanding of what activities were then
26 occurring at the Watermaster staff level. The recommendation of the Special Referee is that the
27 Court find that the special audit was made in the general course of business and was a proper
28 Watermaster expense.

1 IX. CONCLUSION

2 The Special Referee strongly urges that the Watermaster and Advisory Committee were
3 intended to serve separate functions and that they should not be allowed to merge. The intention of
4 the recommendations is to prevent this merger, fully recognizing the risks inherent in the nine-member
5 board appointment. Continued Court review and supervision is imperative.

6

7 DATED: December 12, 1997

Respectfully submitted,

8

9


ANNE J. SCHNEIDER, Special Referee

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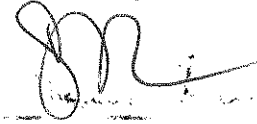
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EXHIBIT 4

JUN 18 2010



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

CHINO BASIN MUNICIPAL WATER
DISTRICT,
Plaintiff,
vs.
CITY OF CHINO, et al.,
Defendants

CASE NO. RCV 51010

[TENTATIVE]
RULING AND ORDER

Date: June 18, 2010
Dept: C-1
Time: 10:30 a.m.

The motion of the Nonagricultural Pool (Overlying) Committee (joined by California Steel Industries) is denied for the reasons set forth herein.

REQUEST FOR JUDICIAL NOTICE

The Court grants the request for judicial notice as follows:

- 1) judgment of January 27, 1978, as amended;
- 2) the order concerning the motion for approval of the peace II documents entered December 21, 2007;
- 3) watermaster compliance with December 21, 2007 order conditions one and two filed on or about May 1, 2008;
- 4) order granting final approval of watermaster rules and regulations, approving

1 intervention of CCG Ontario, continuance of hearing re status report, filing of
2 motions to amend judgment entered on or about July 19, 2001.

3 The court grants the joinder of California Steel Industries, Inc., in the motion.
4

5 **RULINGS AND ORDER: PURCHASE AND SALE AGREEMENT**

6 The pertinent paragraphs of the purchase and sale agreement which are the
7 subject matter of this motion are as follows:

8 **C: “Notice.** Within 24 months of the final Court approval of this
9 Agreement (“Effective Date”), and only with the prior approval of the
10 Appropriative Pool, Watermaster will provide written **Notice of Intent**
11 **to Purchase** the Non-Agricultural (Overlying) Pool water pursuant to
12 Section 5.3(a) of the Peace Agreement, which therein identifies whether
13 such payment will be in connection with Desalter Replenishment or a
14 Storage and Recovery Program.

15
16 **H. Early termination.** This agreement will expire and be of no further
17 force and effect if: Watermaster does not issue its **Notice of Intent to**
18 **Purchase** in accordance with Paragraph D above within twenty-four
19 (24) months of Court approval. Upon Watermaster’s failure to satisfy
20 the condition subsequent, the rights of the Non-Agricultural (Overlying)
21 Pool will remain unaffected and without prejudice as a result of their
22 having executed this Agreement except that in the event of Early
23 Termination, the Storage Transfer Quantity, will then be made available
24 for purchase by Watermaster and thence the members of the
25 Appropriative Pool in accordance with Paragraph 9.(iv) of Amended
26 Exhibit G, the Overlying (Non-Agricultural) Pool, Pooling Plan,
27 including the requirement of a ten per cent dedication towards Desalter
28 replenishment. (Bold type in original.)

1 The purchase and sale agreement had one signature by a representative of the
2 nonagricultural overlying pool.

3
4 Initial Matters Not Subject To Dispute

5 There is no dispute that December 21, 2009, was the deadline for the written
6 notice of intent to purchase.¹

7 There is also no dispute that the purchase and sale agreement had no further
8 specification with respect to the written notice of intent to purchase.

9 The non-agricultural pool characterizes the motion to have the court find and
10 declare pursuant to §31 of the judgment that:

11 1. watermaster on behalf of the appropriative pool did not deliver to the
12 members of the non-agricultural pool a notice of intent to purchase in the time and
13 in the manner required by the purchase and sale agreement for the purchase of water
14 by watermaster from the overlying (non-agricultural) pool dated September 27, 2007;
15 and

16 2. all of the water subject thereto should be restored to the accounts of the
17 members of the non-agricultural (overlying) pool.

18 The court characterizes the motion as whether the appropriative pool, through
19 watermaster, complied with paragraphs C and H of the purchase and sale agreement.

20
21
22 .1. The notice of intent to purchase
23 Page 43, Exhibit X (to the Bowcock declaration) contains the document
24 entitled "Notice of Intent to Purchase" which states:

25 Pursuant to Section C of the *Purchase and Sale Agreement for the*
26 *Purchase of Water by Watermaster from Overlying (Non-Agricultural) Pool,*
27

28 ¹ Except for quotations, the court is not following the convention of capitalization from the moving and opposing papers. The court considers the convention to be unnecessary.

1 Watermaster hereby provides notice to the Overlying (Non-
2 Agricultural) Pool that Watermaster intends to tender purchase of
3 the Storage Transfer Quantity pursuant to the terms of the
4 Purchase and Sale Agreement for the following uses: 36,000 acre
5 feet for use in a Storage and Recovery Agreement, and 2652 acre-
6 feet for use as Desalter replenishment.

7
8 On August 13, 2009, the Appropriative Pool provided approval
9 for the issuance of this notice. The date of issuance of this notice
10 is December 18, 2009.

11 asdBackground of the purchase and sale agreement

12 Initially, allocated specific quantities of water were tied to the land and could
13 not be sold. However, since 1978, changes in the non-agricultural pool resulted in
14 lower water demands and a large amount of unused non-agricultural pool water in
15 storage. The peace agreement (peace I) deleted the requirement tying the water
16 quantities to the land and allowed transfer of non-agricultural pool water outside of
17 the non-agricultural pool. There was a limitation on the transfers: 1) watermaster's
18 acquisition of the water for desalter replenishment; or 2) use in a storage and
19 recovery program.

20 The problem is that the modest amendment from the initial peace agreement
21 did not have a meaningful impact on the accumulation of groundwater in storage.
22 As of July 2007, more than 52,000 acre-feet had accumulated in the non-agricultural
23 pool members' storage accounts. Therefore, the court approved further amendment
24 to the judgment authorizing certain "physical solution transfers," and approved the
25 purchase and sale agreement allowing the non-agricultural pool to sell all of its water
26 in storage at a defined price, generally equivalent to the prevailing market price.

27 Under the "physical solution transfers," and the purchase and sale agreement,
28 the non-agricultural pool had to dedicate 10% of any transferred quantity of water to

1 watermaster for the purpose of desalter replenishment.

2 Therefore a new amendment to the judgment (apparently from July 2007) for
3 the first time allowed the non-agricultural pool members to transfer their surplus
4 water on a yearly basis to watermaster and then to the appropriative pool for the
5 individual use of the members of the appropriative pool.

6 Under the purchase and sale agreement, the non-agricultural pool members
7 agreed to sell all of their water in storage to watermaster in a manner consistent with
8 the peace I agreement section 5.3(e) for use as either 1) water for desalter
9 replenishment, or 2) for use in a storage and recovery agreement.

10 As part of the purchase and sale agreement, the requirement for a written
11 notice of intent to purchase was part of a larger context referred to as the peace II
12 agreement.

13 Because the appropriative pool needed time to consider whether to buy the
14 full amount of water in storage, as well as time to consider how best to pay for the
15 water and the uses to which the water could be put, section C of the agreement
16 contained a condition that required watermaster to provide written notice of intent to
17 purchase the water within a specified period of time.

18 If the appropriative pool did not provide the notice of intent to purchase by
19 December 21, 2009, the secondary option provided that the nonagricultural storage
20 water will be available on the terms therein for purchase by the appropriative pool at
21 92% of the current MWD of Southern California replenishment rate. If this option
22 went into effect, the nonagricultural pool would receive an incremental benefit of
23 \$112 per acre foot. If a proposed auction resulted in prices up to \$1000 per acre foot
24 as watermaster CEO Manning is claimed to have asserted at one time, then the
25 appropriative pool might realize the benefit of about \$663 per acre foot, or about
26 \$25,500,000 in the aggregate.

27 Back in 2007, when the court approved the peace II measures, it was very
28 important to the court that the updated recharge master plan be completed. The

1 completion of the recharge master plan update is the final condition subsequent that
2 must be satisfied under the December 21, 2007, court order.

3 To raise money for the recharge master plan, watermaster wanted to offer
4 third parties an opportunity to participate in a storage and recovery program using
5 the purchased water.

6 The watermaster board selected an auction of the stored water and associated
7 storage capacity as a fair and transparent method to obtain the highest possible
8 return that also had conditions to avoid any material physical injury (pursuant to the
9 judgment).

10 On August 11, 2009, the court approved watermaster's proposed auction for
11 the water that watermaster bought from the non-agricultural pool and a
12 corresponding amount of storage capacity and then to use the money from the
13 auction to fund the recharge master plan.

14 However, the auction never took place, for reasons not relevant to this
15 motion.

16 ///

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25
26 2. Substance and structure of watermaster administration

27 The parties to the judgment are broken down into three groups, with the
28 following subgroups and representation:

	Total number of members	Members on the pool committee	Number of representatives on the 9 member watermaster board	Number of representatives on the advisory 39 member committee
Agricultural pool	100+	7	2	7
Nonagricultural (overlying) Pool ²	19	19	1	3
Appropriative Pool	Not specified	Not specified	3	26
			One member appointed from each of the following entities: ↓	
1. Three Valleys Municipal Water District; 2. Western Municipal Water District; 3. Chino Basin Municipal Water District				

According to the §38 of the judgment, each pool has a pool committee, and the purpose of the pool committee is “the power and responsibility for developing policy recommendations for the administration of its particular pool.”

Watermaster has a full-time staff of about 10 individuals. The role and function of watermaster staff is to perform administrative tasks on behalf of the pool committees.

THE AGRICULTURAL POOL

The agricultural pool has water allocated as a group, not as individuals. The 1978 judgment envisions that agricultural pool production would diminish as agricultural land was converted to municipal use. The judgment has a detailed procedure to transfer unproduced agricultural pool water to the appropriative pool. It appears to the court that the agricultural pool initially consisted largely of dairy

² The City of Ontario is a member of both the nonagricultural (overlying pool) and a member of the appropriative pool. It is the largest holder of nonagricultural pool rights, and it is also the largest appropriator in the basin. It is the chairman of the appropriative pool.

1 farms.

2
3 THE APPROPRIATIVE POOL

4 This group has specific allocated quantities of water by party. Any
5 appropriator who produces less than his assigned right may carry such unpumped
6 water forward for use in subsequent years. The appropriative rights may be assigned,
7 leased, or licensed to another appropriator for exercise any given year.

8 However, a limitation on the appropriative pool is that if safe yield is reduced,
9 any shortfall is debited (i.e., subtracted) from the appropriative Pool. If there is such
10 a reduction, the appropriative pool will have to be reduced to zero before either of
11 the other two overlying pools would be affected.

12 Water companies are members of members of the appropriative pool. The
13 Chino Basin is a key component of their water supply.

14 The members of the appropriative pool appoint individuals whose sole or
15 principal job is water supply, and these individuals serve as representatives on the
16 appropriative committee. These representatives follow watermaster matters closely,
17 communicate frequently, and attend all or almost all watermaster meetings.

18
19 THE NON-AGRICULTURAL POOL

20 The nonagricultural pool has individual allocated specific quantities of water
21 per party. They can carry over unproduced water for use in future years.

22 The nonagricultural pool committee is composed of all members of the
23 nonagricultural pool unlike the agricultural pool which has over 100 members.

24 Each member of the pool committee votes individually. The nonagricultural
25 pool contends that no member of the pool has delegated authority to vote, or any
26 other right or power, to any other member of the nonagricultural pool. The
27 nonagricultural pool contends that there is no appointed agent for giving or receiving
28 notices.

1 Each member of the nonagricultural pool at present is an entity (as opposed to
2 a natural person). Therefore, each member of the nonagricultural pool has appointed
3 individuals to represent the member on the nonagricultural pool committee.

4 Examples of members of the nonagricultural pool are an automobile racetrack,
5 a company that owns and operates a mobile home park, and a company that
6 manufactures steel. For these companies, water is a utility like electricity or phone
7 service.

8 The members of the non-agricultural pool therefore appoint representatives to
9 the nonagricultural pool committee. These individuals are generally regular operating
10 personnel for whom responsibility for water consumption is only a small aspect of
11 their jobs. Therefore, attendance of nonagricultural pool members (who by
12 definition are also nonagricultural pool committee members) at meetings has been
13 sporadic at best over the last two years.

14 Appropriate pool and nonagricultural pool meetings were scheduled at the
15 same time and at watermaster's offices, so watermaster staff and counsel were aware
16 of the sporadic attendance of the nonagricultural pool members at pool committee
17 meetings.

18 The purchase and sale agreement applied only to pre-June 30, 2007, water in
19 storage. Only 10 of the 19 members of the nonagricultural pool had pre-June 30,
20 2007, water in storage. Most of these members did not attend any pool meetings
21 during the two-year period specified in the purchase and sale agreement.

22 23 24 3. Facts regarding the purchase and sale agreement

25 According to the declaration of Robert Bowcock³, the peace II option price
26

27 ³ Since approximately 2000, Mr. Bowcock has been the designated representative of Vulcan Materials Co. (a member of
28 the non-agricultural (overlying) pool committee) in matters relating to the nonagricultural pool. From 2003 to the
present, Mr. Bowcock has been chairman of the non-agricultural pool, and the sole representative of the nonagricultural
pool on the 9 member watermaster board, and only 1 of 3 representatives of the nonagricultural pool on the 36 member
watermaster advisory committee.

1 was about \$215 per acre foot, payable in 4 annual installments. In September 2007,
2 when the peace II option was given, the option price represented about an 8%
3 discount from the MWD replenishment rate then in effect. The MWD
4 replenishment rate in December 2007 was \$335 per acre foot. If the appropriative
5 pool had exercised the peace II option in December 2007 (the day after it became
6 effective), the appropriative pool would have realized an immediate benefit of
7 \$700,000-\$800,000.

8 Again according to the Bowcock declaration, the MWD replenishment rate
9 was \$258 per acre foot on January 1, 2008, \$294 per acre foot on January 1, 2009,
10 and \$366 per acre foot on September 1, 2009. By September 1, 2009, the fixed
11 option price of the nonagricultural storage water was a 41% discount from the MWD
12 replenishment rate. If the appropriative pool had exercised the peace II option on
13 September 1, 2009, the appropriative pool could have realized a benefit of about
14 \$5,800,000.

15 16 17 4. Attempted auction

18 In 2008 and 2009, it became clear to the appropriative pool that ongoing
19 drought conditions and regulatory restrictions on water exports from the
20 Sacramento-San Joaquin Bay Delta, which is a primary MWD source, and that the
21 ability to obtain replenishment water from the MWD would be severely limited. In
22 particular, because MWD projected that replenishment water would be available only
23 3 out of 10 years (instead of the previous projection of 7 out of 10 years),
24 watermaster's engineer explained that significant enhancements to watermaster's
25 recharge facilities would be required.

26 One of the conditions of the approval of peace II was for watermaster to
27 prepare an updated recharge master plan that describes how recharge will occur, on a
28 long-term basis, within the basin. The only method by which watermaster funds

1 operation and maintenance, as well as administrative costs and capital improvements
2 such as the recharge master plan, is through a system of assessments, or a tax on all
3 groundwater production in the appropriative pool. Under this system of
4 assessments, the appropriative pool is responsible for almost all of the costs
5 associated with improving the recharge facilities in accordance with recharge master
6 plan, even though such improvements will provide a benefit to all producers in the
7 Chino Basin. When the appropriative pool became aware of the significant costs
8 associated with these improvements, the appropriative pool began to discuss various
9 funding mechanisms.

10 Ultimately the appropriative pool determined that monetizing the purchased
11 non-agricultural pool water in storage through an auction of that water could
12 produce a viable source of funding for the significant costs of recharge
13 enhancements. According to the DeLoach declaration, absent such a funding
14 mechanism, the cost of the recharge enhancements would ultimately be borne by the
15 public ratepayers.

16 Again, according to the Bowcock declaration, in 2008 Bowcock heard that the
17 appropriative pool was going to auction the nonagricultural storage water. At one or
18 more of the pool, advisory, and board meetings that Bowcock attended, watermaster
19 staff, counsel, or both stated the auction process would allow the non-agricultural
20 storage water to be physically transported outside of the Chino Basin for
21 consumption elsewhere. Watermaster CEO Ken Manning said that watermaster and
22 the appropriative pool were targeting outside investors from such places as Colorado,
23 Texas, and New York City. The appropriative pool had established a minimum bid
24 of \$600 per acre foot, and Manning is claimed to have said he expected to receive
25 bids up to \$1000 per acre foot representing a potential profit to the appropriative
26 pool of about \$30,000,000. Watermaster staff or counsel said that a portion of the
27 proceeds would be used by the appropriative pool to pay the option price under the
28 peace II option agreement. The auction was scheduled to occur on November 4,

1 2009.

2 According to the declaration of Robert DeLoach,⁴ Bowcock was the sole
3 representative of the nonagricultural pool during the peace II negotiations. Bowcock
4 advanced the idea of selling the non-agricultural pool's water and further enhancing
5 its ability to transfer water outside of the pool for compensation. Bowcock
6 engineered and advocated the plan by which the appropriative pool would be able to
7 purchase the water in storage at "market price," which is the price that the
8 appropriative pool parties would sell or lease water between each other. That price
9 was widely recognized to be 92% of the then-current replenishment rate established
10 by the Metropolitan Water District of Southern California (MWD). Because
11 watermaster typically purchases imported water from MWD, its rate is used as a
12 benchmark for purposes of valuing other purchase or lease water supplies available
13 within or to the Chino Groundwater Basin. In exchange for the ability to sell the
14 water in storage to the appropriative pool at market price, the nonagricultural pool
15 agreed to dedicate 10% of the water to desalter replenishment. The parties also
16 negotiated mechanism whereby the nonagricultural pool would on an annual basis
17 make unused water available for purchase by the appropriative pool at market price

18 However, the auction never took place for reasons not relevant to this motion.
19
20

21 5. Watermaster staff reports, appropriative pool meetings, nonagricultural
22 pool meetings, advisory committee meetings, watermaster board meetings

23 Chino Basin watermaster staff prepared a report dated August 13, 2009, to
24 pool members with the subject line: notice of intent to purchase.⁵ The memo states
25

26
27 ⁴ Mr. DeLoach is the general manager and chief executive officer of Cucamonga Valley Water District (member of the
28 appropriative pool). He was actively involved in the negotiation of peace I and peace II. In 2005, he was vice chair of
the appropriative pool. In 2006, he was chair of the appropriative pool. In 2008, he was chair of the advisory
committee. In 2009, he was vice chair of the advisory committee. Since January 2010, he has again been chair of the
advisory committee.

⁵ Bowcock declaration, exhibit H.

1 that "watermaster staff has prepared a form of the notice to satisfy the requirements
2 of section C." The memo of proceeds to state that "staff has proposed that the date
3 of the notice be December 18, 2009, as that is the last business day before the
4 deadline for the notice. Given that the current date of the auction is unknown, the
5 date will provide maximum opportunity for the [appropriative] pool to receive the
6 proceeds of the auction prior to the required payment date and will provide
7 maximum flexibility in the event the auction is not completed as anticipated." The
8 staff report further provides that section D of the purchase and sale agreement
9 requires the payment schedule to the nonagricultural pool will commence 30 days
10 after the notice of intent to purchase ("payment date"). The recommendation was to
11 consider and approve form of notice of intent to purchase.

12 Exhibit I to the Bowcock declaration is the minutes from the joint
13 appropriative and non-agricultural pool meeting for August 13, 2009. The minutes
14 state that the notice of intent was approved. In the form notice of intent, attached to
15 the staff report (exhibit H), there is a blank to be filled in for the date "the
16 appropriative pool provided approval for the issuance of this notice." The notice
17 states that the date of issuance of the notice itself is December 18, 2009.

18 Present at the August 13, 2009, meeting were, on behalf of the nonagricultural
19 pool, Kevin Sage (an alternate for Bowcock) on behalf of Vulcan Materials and
20 Mohammed El Amamy on behalf of the City of Ontario. There was actually 38,652
21 acre-feet in the nonagricultural account as of June 30, 2007. For the appropriative
22 committee, a motion carried to place 2652 acre-feet toward an account dedicated to
23 desalter replenishment and 36,000 acre-feet toward the auction process.

24 Also at the August 13, 2009, meeting, a motion carried to approve the notice
25 of intent. The business item minute II.A. states that "non-ag noted this was for
26 information only." The court concludes that this notation was with respect to both
27 of the carried motions.

28 Bowcock declaration exhibit J is the Chino Basin watermaster staff report

1 dated August 27 also with a subject line: "notice of intent to purchase." The report is
2 essentially the same as the August 13 report. However, now the staff
3 recommendation is for approval of the notice of intent to purchase as directed by the
4 appropriative pool. The staff report now has the notice of intent attached with the
5 date filled in for August 13, 2009 as follows: "on August 13, 2009, the appropriative
6 pool provided approval for the issuance of this notice. The date of issuance of this
7 notice is December 18, 2009."

8 Exhibit K to the Bowcock declaration is the watermaster board meeting
9 minutes for August 27, 2009. Kevin Sage on behalf of Vulcan Materials Company
10 was present at this meeting. The motion carried to approve the notice of intent to
11 purchase 36,000 acre-feet for use in a storage and recovery agreement and refer 2652
12 acre-feet back to the appropriative pool for further consideration as a separate
13 motion.

14 The Bowcock declaration states the minutes show that the use of the
15 nonagricultural storage water, as proposed by the appropriative pool, was rejected by
16 the watermaster board.

17 However, the court disagrees with Bowcock's interpretation. The court
18 concludes notice of intent itself was approved, and there was no further modification
19 of it. The next watermaster staff report, dated October 1, 2009, to the appropriative
20 pool, has a subject line of "auction water disposition." This report addresses the
21 2652 acre-feet, but there is no further discussion of a notice of intent. The
22 conclusion was to recommend use the water for desalter replenishment.

23 There are additional exhibits with staff reports, and pool meeting and board
24 minutes, but the court does not find them relevant except as discussed specifically
25 below.

26 The staff report dated November 5, 2009, (Bowcock declaration exhibit N), to
27 the appropriative pool has a subject line: "proposed plan regarding disposition of
28 water purchased from nonagricultural pool." The last paragraph of this staff report

1 reads as follows: “staff recommends that the appropriate pool direct watermaster to
2 issue the notice of intent prior to December 21, 2009, and place the water purchased
3 in storage pursuant to the proposed plan.”

4 Attached to this November 5, 2009 staff report is the “plan regarding
5 disposition of water purchased from the nonagricultural pool pursuant to the peace
6 II purchase and sale agreement.” This is dated November 5, 2009, but it refers to the
7 auction possibly taking place on November 4, 2009, the day before. The content of
8 this document is normally referred to in the motion as plan B.

9 Bowcock (paragraph 21) describes the meetings in which watermaster staff
10 and watermaster counsel were not asked to leave confidential meetings of the
11 appropriate pool. Bowcock also says that he heard watermaster Council Michael
12 Fife and current chair of the appropriate pool, Mark Kinsey, say that they would
13 give written notice of intent to purchase to the nonagricultural pool on the last
14 possible date, or words to that effect.

15
16
17 6. Notice issue arises

18 On January 7, 2010, during a public meeting of the appropriate pool at
19 which watermaster staff was present, David Penrice, chief executive officer of Aqua
20 Capital Management (nonagricultural pool member) asked watermaster staff whether
21 and when the written notice of intent to purchase had been provided.

22 Although the characterization of how Manning and Fife conducted themselves
23 at this meeting is in dispute, there is no dispute that after this January 7, 2010
24 meeting, Fife gave to Penrice pages of the agenda package from the August 27
25 meeting of the watermaster board.

26 Then the chair of the nonagricultural pool committee, Bowcock, called a
27 special meeting of the nonagricultural pool committee by conference call on January
28 18, and asked watermaster staff and counsel to explain the circumstances relating to

1 the written notice of intent to purchase. A transcript of the conference call is
2 attached to the Bowcock declaration as exhibit R. In that conference call,
3 watermaster counsel Fife stated, "the August 27, 2009 notice satisfied the terms of
4 the purchase and sale agreement but there is also so much more."

5 The following members of the non-agricultural pool have stated in declarations
6 that they never received the notice of intent to purchase:

7 a. Curtis Stabbings, business director for NAIG West region, Praxair;

8 b. Robert Lawhn, the director, Compliance & Las Vegas Services, RRI
9 Energy Etiwanda;

10 c. Stephen Arbelbide, the senior environmental engineer with California
11 Steel Industries;

12 d. Brian Geye, the senior director of track administration for Auto Club
13 Speedway;

14 e. David Starnes, state facilities manager for Mobile Community
15 Management Company; Swan Lake Mobile Home Park is a member of the non-
16 agricultural pool committee, and he is the designated representative from Swan
17 Lake to the nonagricultural pool.

18 f. Mark Ward, the planning supervisor of Ameron.

19 g. Robert Bowcock, the designated representative of Vulcan Materials
20 Company in matters relating to the nonagricultural pool, and the sole
21 representative of the nonagricultural pool on the nine-member watermaster
22 board; since about 2002, Kevin Sage has been his alternate as a designated
23 representative of Vulcan.

24
25
26 7. Payment and return of payment

27 On or about January 15, 2010, watermaster staff tendered to Bowcock checks
28 made payable to various members of the nonagricultural pool, as the first installment

1 on the auction price for the nonagricultural storage water. Bowcock returned all the
2 checks on or about January 15, 2010.

3
4
5 8. LEGAL ARGUMENTS, CONCLUSIONS, FINDINGS
6

7
8 9. Characterization of the purchase and sale agreement

9 The court does not accept the arguments of the nonagricultural pool and
10 concludes that the purchase and sale agreement as set forth in ¶C is not option, for
11 the following reasons:

12 A. ¶H of the purchase and sale agreement calls the written notice of intent
13 and payment pursuant thereto a condition subsequent. The court so
14 finds.

15 B. The court concludes that the contract language itself must govern the
16 interpretation of the contract, even though there are many
17 characterizations of the rights under the contract as an option. Some of
18 those characterizations are as follows:

- 19 i. The watermaster brief submitted in February 1, 2008
20 (watermaster exhibit 17) refers to watermaster having an option
21 to purchase the nonagricultural pool water.
- 22 ii. According to the minutes for the January 2009 watermaster
23 board meeting, watermaster counsel Scott Slater referred to the
24 purchase and sale agreement as providing an option for
25 watermaster to buy water and use it for either a storage and
26 recovery agreement or in connection with desalter replenishment.
27 (Bowcock reply declaration, ¶11, Exhibit A.)
- 28 iii. The January 14, 2010, cover letter for the attempted payment

1 states that the appropriators have exercised option to purchase
2 the stored water.

3 C. The purchase and sale agreement was a part of an expansive negotiation
4 between represented parties as part of the peace II agreement. The
5 court must conclude that the specific words of the purchase and sale
6 agreement were carefully considered, negotiated, and agreed upon.

7 D. Reference to ¶C as an option was only a short-hand description of the
8 rights and obligations under the purchase and sale agreement, and
9 cannot vary actual wording of the contract.

10 E. *Hayward Lumber and Investment Company v. Construction products Corporation*
11 (1953) 117 Cal.App.2d 221, cited by the nonagricultural pool
12 committee, does not apply to the instant case for the following reasons.

13 i. That case is not deal with the complex relationships that have
14 grown in the instant case over more than 30 years.

15 ii. The instant case contains an affirmative, clear written notice of
16 intent to purchase which the court finds to be sufficient
17 compliance with the purchase and sale agreement.

18 iii. *Hayward* dealt with an option, and the court finds that pursuant
19 to ¶H the written notice of intent was a condition subsequent.

20 F. *Ebrlich v. Granoff* (1980) 109 Cal.App.3d 920, also cited by the
21 nonagricultural pool committee, does not apply to the instant case for
22 the reasons set forth with respect to *Hayward*.

23 G. *Riverside Fence Co., Inc. v. Novak* (1969) 273 Cal.App.2d 656, cited by
24 watermaster, also does not apply to the instant case for the reasons set
25 forth with respect to *Hayward*.

26 H. The court did not find any of the cited cases useful because of the
27 reasons set forth with respect to *Hayward*.

28 I. Although watermaster cites Civil Code §1582 regarding acceptances of

1 offers, this Civil Code is inapplicable because it deals with formation of
2 contracts not the providing of notice pursuant to the specific terms of
3 the purchase and sale agreement.
4

5
6 10. The August 13, 2009, appropriative pool and nonagricultural pool
7 meeting

8 On August 13, 2009, the appropriative pool approved a written notice of
9 intent to purchase.

10 Watermaster argues that the presence of the non-agricultural pool at this
11 meeting would be a basis for service of the written notice. The court does not make
12 such a finding because the attached notice of intent was incomplete with the date of
13 approval left blank.

14 This written notice of intent was then transmitted to the advisory committee
15 and to the watermaster board for action on August 27, 2009.
16

17
18 11. The August 27, 2009 board and advisory committee meetings

19 Watermaster argues that the notice of intent to purchase was prominently
20 displayed on the board agenda for the August 27, 2009 meeting as item II.A., and the
21 agenda item was entitled “consider approval of notice of intent to purchase as
22 directed by the appropriative pool.” The board approved the notice of intent, and
23 Bowcock, a member of the nonagricultural pool, voted in favor of the approval.⁶

24 Watermaster argues that the minutes for this August 27, 2009 board meeting
25 were electronically distributed to interested parties, and the minutes of the board
26

27 ⁶ Watermaster suggests that whether and to what extent the nonagricultural pool representative communicated this
28 action other members of the pool is a relevant subject for further discovery. The court finds no basis for this, because
communication of board approval is not relevant to the motion. The question for the court is whether the notice of
intent was “provided” to the members of the nonagricultural and the condition subsequent defined in ¶H was
performed.

1 meeting were maintained on the watermaster website. The court finds this sufficient
2 compliance with the purchase and sale agreement for the following reasons:

3 A. All that the purchase and sale agreement required was that watermaster
4 “provide written notice of intent to purchase the nonagricultural
5 (overlying) pool water.”

6 B. There is no specification as to how or to whom the notice of intent be
7 provided.

8 C. There is no question that there was a written notice of intent, and the
9 written notice of intent for the August 27, 2009 watermaster board
10 meeting was complete.

11 D. Present at the August 27, 2009, watermaster board meeting was Kevin
12 Sage, Vulcan Materials Company, the nonagricultural pool.

13 E. Written notice of intent was provided to Mr. Sage at that time.

14 F. The court finds that providing the notice to Mr. Sage at the meeting was
15 sufficient to provide written notice to the nonagricultural pool for the
16 following reasons:

17 i. Only one individual signed the purchase and sale agreement on
18 behalf of the nonagricultural pool. Watermaster points out that
19 the peace agreement was executed by the pool representative Mr.
20 Arbelbide on behalf of the entire pool, and that Bowcock
21 executed the purchase and sale agreement on behalf of the pool.

22 ii. Providing the written notice of intent to one individual is
23 sufficient because only one individual signed the purchase and
24 sale agreement on behalf of the nonagricultural pool.

25 iii. Therefore the court rejects the argument of the nonagricultural
26 pool that a single individual could not be provided notice on
27 behalf of the entire nonagricultural pool.

28 a. Although the non-agricultural pool contends there was

1 never any delegated authority to individual members, their
2 actions refute that contention. Those actions are: having only
3 one representative execute the peace agreement on behalf of the
4 entire pool and having only one representative execute the
5 purchase and sale agreement on behalf of the entire pool.

6 b. In all of the many exhibits, declarations, and pages of
7 argument submitted to the court, there is no express delegation
8 of authority by any individual member of the non-agricultural
9 pool to sign any agreement. Therefore the court must conclude
10 that the delegation of authority exists by either informal
11 agreement or custom and practice. Part of that informal
12 agreement or custom and practice must include allowing
13 watermaster and the appropriate pool to provide written notice
14 to a single individual of the nonagricultural pool.

15 iv. The court notes that nonagricultural pool committee's argument
16 that if watermaster had given clear and unambiguous written
17 notice, the pleadings will not now constitute 100 pages, and the
18 exhibits over 1000 pages. However, the court still finds
19 compliance with the terms of the purchase and sale agreement.

20 G. The court does not find that the question of the allocation between
21 storage and recovery on the one hand and desalter replenishment on
22 the other invalidated the board's approval of the notice of intent. The
23 question for the court is whether there was notice of intent to purchase
24 provided to the nonagricultural pool, and the court has found notice
25 was provided for the reasons set forth above.
26
27

28 12. Posting the agenda on the watermaster website

1 The nonagricultural pool contends that posting the agenda on the watermaster
2 web site was also insufficient to comply with the terms of the purchase and sale
3 agreement. The court rejects this contention because the question is one of
4 providing written notice of intent to buy the nonagricultural pool water, and the
5 court finds such notice was provided for the reasons stated herein.

6 The court finds that posting the agenda on the watermaster site was an
7 additional means of providing written notice of intent to purchase nonagricultural
8 pool water pursuant to the purchase and sale agreement.

9 The court has analyzed the following contentions and found them to be
10 insufficient to refute a factual conclusion of that written notice pursuant was
11 provided under the terms of the purchase and sale agreement:

- 12 A. The very minimal and sporadic attendance of nonagricultural pool
13 members at any of the nonagricultural pool meetings.
- 14 B. As of August 2009, only about 10 members of the nonagricultural pool
15 were included on the e-mail service list.
- 16 C. The watermaster website does not provide any indication that there was
17 any significant action taken with respect to the purchase and sale
18 agreement or any special or unusual documents contained in the agenda
19 package.
- 20 D. After going through the watermaster FTP site, the watermaster website
21 link to the agenda documents refers to 18.38 MB of information which
22 results in a printed document of 130 pages of which page 43 is the
23 notice of intent.
- 24 E. The single sheet of paper lying beneath so many levels of computer
25 links is given no prominence to alert the contracting parties of its legal
26 significance
- 27 F. It is an insufficient compliance with the option requirement through a
28 single sheet of paper among 130 others, under several levels of an FTP

1 website, and considering that millions of dollars were at stake.

2 G. This notice is in the present tense. It gives a postdated effective date:
3 December 18, 2009. The court finds that the analysis of the tenses does
4 not resolve the legal question as to providing the written notice.

5 H. The presence of the agenda package on the watermaster website after
6 the meeting does not constitute constructive notice.

7 I. The August 13 agenda package was not delivered by e-mail because the
8 file was so big. Also, there was nothing to distinguish it from the
9 ordinary blitz of e-mails. It was a generic e-mail. Also only about half
10 of the 10 members of the nonagricultural pool who are entitled to
11 receive the written notice of intent to purchase were included on
12 watermaster's e-mail list in August of 2009.

13 J. The August 27 board minutes were not delivered by e-mail because the
14 file was too big.

15
16
17 13. Provide v. Deliver

18 Watermaster makes an argument with respect to the definition of "provide" as
19 far as the definition does not include "delivery." While the authority under Webster's
20 dictionary is not legal authority, the court understands and accepts the distinction.

21 Watermaster points out that the peace agreement was executed by the pool
22 representative Mr. Arbelbide on behalf of the entire pool, and that Bowcock
23 executed the purchase and sale agreement on behalf of the pool. Watermaster also
24 argues that the notice was published and made generally available for all parties in the
25 same manner that watermaster provides for meetings, court filings, water
26 transactions, etc.

27 The nonagricultural pool contends that written notice was required by the
28 peace II option agreement, and delivery of written notice by US Mail was required by

1 the judgment.

2 For reasons stated above, the court finds that written notice of intent was
3 provided pursuant to the purchase and sale agreement terms:

- 4 A. directly to Sage when he was at the August 27, 2009 watermaster board
5 meeting, and because one individual (Bowcock) signed the purchase and
6 sale agreement on behalf of the nonagricultural pool, direct notice to
7 one individual on behalf of the nonagricultural pool was sufficient; and
8 B. direct notice to one individual on behalf of the nonagricultural pool
9 with sufficient because the peace agreement was executed by the pool
10 representative Mr. Arbelbide on behalf of the entire pool, and that
11 Bowcock executed the purchase and sale agreement on behalf of the
12 pool; and
13 C. written notice was provided through the agenda package posted on the
14 watermaster web site.

15 The court also makes the findings set forth in this decision, notwithstanding
16 the arguments made by the nonagricultural pool, for the following reasons:

- 17 A. The unique circumstances of this case over the course of more than 30
18 years.
19 B. The notice pursuant to the purchase and sale agreement has a
20 qualitative difference than the notice provided regarding meetings, court
21 filings, water transactions, etc.
22 C. The notice was defined a specific provision in a specific contract with a
23 specific deadline.

24
25
26 14. The November 5, 2009, staff report

27 The nonagricultural pool committee has an extensive argument regarding the
28 staff report of November 5, 2009. The staff report is dated November 5, 2009,

1 addressed to the appropriative pool, with a subject line: “proposed plan regarding
2 disposition of water purchased from nonagricultural pool.” There are 4 paragraphs
3 in the staff report.

4 The first paragraph recites some history and states that “watermaster, at the
5 direction of the appropriative pool, is to issue a notice of intent to purchase the
6 nonagricultural pool within 24 months”

7 The second paragraph identifies plan B as the attachment.

8 The third paragraph talks about watermaster holding water in trust.⁷ The
9 fourth paragraph states: “staff recommends that the appropriative pool direct
10 watermaster to issue the notice of intent to purchase prior to December 21, 2009,
11 and place the water purchased in storage pursuant to the proposed plan [B].”

12 The nonagricultural pool argues that the statements in this November 5, 2009,
13 staff report prove and confirm that the notice of intent had not been provided as of
14 November 5, 2009. The nonagricultural pool also points out that Bowcock and Sage
15 also state that watermaster counsel and members of the appropriative pool
16 confirmed publicly in the fall of 2009 that the notice of intent to purchase had not
17 been given and would not begin until a last possible date.

18 The court rejects this argument for the following reasons:

- 19 A. An interpretation by watermaster staff is not binding.
- 20 B. The court has concluded that the written notice of intent was provided
21 pursuant to the purchase and sale agreement previously.
- 22 C. The staff report cannot be a conclusion of law.
- 23 D. The particular reference to the purchase and sale agreement is
24 ambiguous with respect to whether it is a statement of current
25 intention, current status, or future conduct.
- 26 E. There is no evidence about how the staff report was prepared, who
27 prepared it, on what basis it was making any conclusions, and why the
28

⁷ This comment about holding water in trust became the subject of discussion not relevant to the motion.

1 last paragraph was inserted.

2 F. There is no evidence that the watermaster staff was conscientiously
3 monitoring the appropriative pool's actions.

4 G. The court can just as easily draw the conclusion that the last paragraph
5 was simply a repetition of previous staff reports without any reference,
6 basis, or consideration regarding actual facts.

7 H. The notice was actually approved by the board in August, but the
8 wording on the notice of intent to purchase makes its effective date
9 December 18, 2009. The statements by watermaster counsel Fife and
10 members of the appropriative pool that the notice of intent to purchase
11 would be given at the last possible date is still consistent with the
12 wording of the notice of intent.

13 I. The plan B (an alternative financing plan) is also ambiguous with
14 respect to any dates for providing the written notice of intent.

15 i. It states that the watermaster, under the direction of the
16 appropriative pool, will send notice.

17 ii. Even though it is dated November 5, the plan B specification
18 paragraphs it is unclear to the court if they ever came into
19 effect.

20
21
22 15. *Non-agricultural pool's failure to object (silence)*

23 The court however cannot conclude that the nonagricultural pool's silence on
24 the issue of providing notice of intent be deemed consent for the following reasons:

25 A. Based on the declarations and evidence presented, there is no
26 foundation for the court to conclude that all the members of the
27 nonagricultural pool knew there was a notice of intent document in the
28 agenda package for the August 27, 2009 board meeting. Without any

1 underlying knowledge, there is no basis for the members to object.

2 B. Although silence implies consent (*qui tacet consentire videtur*) there has to
3 be a basis for knowledge about what action about which person is
4 remaining silent. For all but Mr. Sage of the nonagricultural pool who
5 actually attended the board meeting on August 27, 2009, there is no
6 basis to conclude any of the other nonagricultural pool members
7 actually received the notice of intent.

8 i. However, as the court has found previously, the question is not
9 one of receipt, but whether the written notice of intent was
10 provided. The court has found the written notice of intent was
11 provided to the members of the nonagricultural pool

12 ii. The question of whether the notice of provided is a qualitative
13 one, not a quantitative one. The court finds that requirements of
14 the purchase and sale agreement were met.

15
16
17 16. The November 19, 2009, advisory committee and board meetings

18 Watermaster points out that at the November 19, 2009 advisory committee
19 and board meetings, the watermaster CFO gave a presentation concerning a special
20 assessment to be levied under plan B, and watermaster staff briefed the advisory
21 committee and the board about water that had Artie been purchased from the
22 nonagricultural pool. Water master staff gave out a handout showing the plan B cost
23 to each appropriate pool member. A member of the nonagricultural pool was
24 present at these presentations.

25 Even though there was only one member of the nonagricultural pool present
26 for these presentations, the court finds these presentations to be further evidence of
27 the nonagricultural pool being provided with written notice of the intent for the
28 reasons set forth above.

1 The implication of these facts is that the nonagricultural pool therefore had
2 been provided with written notice of intent, and watermaster further argues that
3 there was not any contention regarding insufficiency of the notice. This again is the
4 “silence implies consent” argument. For the reasons stated above, the court does not
5 accept this argument.⁸

6
7
8 17. Section 2.7 of the Rules and Regulations

9 The court concludes that section 2.7 of the rules and regulations does not
10 apply to the purchase and sale agreement for the following reasons:

- 11 A. Section 2.7 is substantially identical to sections 58 and 59 of the
12 judgment, and the judgment governs the administration of the three
13 pools, not how contract notices are to be provided.
- 14 B. By its own terms, the section only applies to notice regarding the time
15 and place of board meetings.
- 16 C. Even with respect to the notice of board meetings, section 2.7 requires
17 consent for facsimile or electronic mail delivery, and watermaster has
18 not provided any consent by members of the nonagricultural pool.
- 19 D. The court's determination whether the written notice was provided is
20 based upon contract principles and the unique facts of this case.

21
22
23 18. The judgment

24 Section 31(a) of the judgment states that “any action, decision or rule of
25 watermaster shall be deemed to have occurred or been enacted on the date on which
26

27
28 ⁸ Watermaster again suggests that whether and to what extent the nonagricultural the pool representative communicated this report other members of the pool is a relevant subject for further discovery. The court finds no basis for this, because communication of board approval is not relevant to the motion. The question for the court is whether written notice of intent to purchase was provided to the nonagricultural pool.

1 written notice thereof is mailed.”

2 The court also finds that this provision of the judgment does not apply here
3 because:

4 A. The written notice of intent by watermaster on behalf of the
5 appropriative pool would not be “an action, decision, or rule” on behalf
6 of watermaster.

7 B. This provision of the judgment does not govern this type of post-
8 judgment contractual relationship between the parties.

9
10
11 19. Reasonable notice/substantial performance

12 For the reasons set forth above, the court need not reach the issues of
13 reasonable notice and substantial performance. The court finds that the
14 appropriative pool complied ¶C and ¶H of the purchase and sale agreement.

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16
17 20. Estoppel

18 For the reasons set forth above, the court finds no basis for estoppel in this
19 matter.

20 Furthermore the purchase and sale agreement itself provides for an alternative
21 if the written notice of intent was not provided.

22
23 21. Timeliness of the motion

24 The basis of watermaster's argument that the motion is untimely is based upon
25 the August 27, 2009 notice of intent. With the effective date of December 18, 2009,
26 the court finds the motion timely.

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22. Accusations and attacks

In its ruling, the court does not consider any of the cross-attacks on the parties, but rather makes its ruling strictly in accordance with the principles of contract law based upon the unique circumstances of this case.

The court reserves any rulings regarding the role of watermaster, it is counsel, or any of the other collateral problems raised through the motion.

The court recognizes that its ruling may affect other aspects of the heavily negotiated peace II package and the millions of dollars at stake.

23. Final ruling and order

For the reasons set forth herein, the motion of the nonagricultural pool committee and joinder therein is denied.

Dated: June 18, 2010

STANFORD E. REICHERT

Stanford E. Reichert, Judge

CHINO BASIN WATERMASTER

Case No. RCV 51010

Chino Basin Municipal Water District v. The City of Chino

PROOF OF SERVICE

I declare that:

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

On June 18, 2010 I served the following:

1) **RULING AND ORDER**

BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:

See attached service list: Mailing List 1

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

BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

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

Executed on June, 18, 2010 in Rancho Cucamonga, California.



Janine Wilson
Chino Basin Watermaster

MICHAEL CAMACHO
6055 ZIRCON AVE.
RANCHO CUCAMONGA, CA 91701

KEN WILLIS
1425 WEST FOOTHILL BLVD.
SUITE 220
UPLAND, CA 91786

ROBERT BOWCOCK
INTEGRATED RESOURCES MGMNT
405 N. INDIAN HILL BLVD
CLAREMONT, CA 91711-4724

MICHAEL WHITEHEAD
P.O. BOX 6010
EL MONTE, CA 91734

GEOFFREY VANDEN HEUVEL
CBWM BOARD MEMBER
8315 MERRILL AVENUE
CHINO, CA 91710

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

BOB KUHN
669 HUNTERS TRAIL
GLEN DORA, CA 91740

CHARLES FIELD
4415 FIFTH STREET
RIVERSIDE, CA 92501

TOM HAUGHEY
CITY OF CHINO
PO BOX 667
CHINO, CA 91708-0667

MARK KINSEY
10575 CENTRAL AVE.
P.O. BOX 71
MONTCLAIR, CA 91763

ROBERT DELOACH
10440 ASHFORD ST.
P.O. BOX 638
RANCHO CUCAMONGA, CA 91729

BOB FEENSTRA
P.O. BOX 17482
ANAHEIM HILLS, CA 92817

GLEN DURRINGTON
5512 FRANCIS ST
CHINO, CA 91710

Members:

Alfred E. Smith	asmith@nossaman.com
Allen W. Hubsch	allen.hubsch@hoganiovells.com
Amy Steinfeld	asteinfeld@bhfs.com
Andrew Lazenby	lazenbyag@bv.com
Art Kidman	akidman@mkblawyers.com
Barbara Swanson	Barbara_Swanson@yahoo.com
Beth Barry	bethb@cvwdwater.com
Bob Feenstra	bobfeenstra@gmail.com
Carol	marie@tragerlaw.com
Carol Davis	cdavis@lagerlof.com
Chris Swanberg	chris.swanberg@corr.ca.gov
Dan McKinney	dmckinney@rhlaw.com
Eric Garner	elgarner@bbklaw.com
Fred Fudacz	ffudacz@nossaman.com
Jean Cihigoyenette	Jean_CGC@hotmail.com
jeeinc@aol.com	jeeinc@aol.com
Jennifer Novak	jennifer.novak@doj.ca.gov
Jill Willis	jrwillis@bbklaw.com
Jim Markman	jmarkman@rwglaw.com
Jim@city-attorney.com	Jim@city-attorney.com
jimmy@city-attorney.com	jimmy@city-attorney.com
John Cotti	jcotti@localgovlaw.com
John Schatz	jschatz13@cox.net
Joseph S. Aklufi	AandWLaw@aol.com
Kuperberg, Joel	jkuperberg@rutan.com
Marguerite P Battersby	pbattersby@sheppardmullin.com
Mark Hensley	mhensley@localgovlaw.com
Michelle Staples	mstaples@jdplaw.com
Rodney Baker	rodbaker03@yahoo.com
smt@tragerlaw.com	smt@tragerlaw.com
Steve Kennedy	skennedy@bbmblaw.com
Steven K. Beckett	skbeckett@bbmblaw.com
Steven Lee	slee@rhlaw.com
Steven R. Orr	sorr@rwglaw.com
Tom Bunn	TomBunn@Lagerlof.com
Tom McPeters	THMcP@aol.com
Tram Tran	ttran@mkblawyers.com
William J. Brunick	bbrunick@bbmblaw.com
William P. Curley	wcurley@rwglaw.com

Members:

Al Lopez	lopezsixto@netzero.net
Alice Shiozawa	afshioza@gswater.com
Andy Campbell	acampbell@ieua.org
Andy Malone	amalone@wildermuthenvironmental.com
Anthony La	ala@ci.upland.ca.us
April Woodruff	awoodruff@ieua.org
Arnold Rodriguez	jarodriguez@sarwc.com
Ashok Dhingra	ash@akdconsulting.com
Ben Lewis	benjamin.lewis@gswater.com
Ben Pak	bpak@cbwm.org
Bill Kruger	citycouncil@chinohills.org
Bill Thompson	bthompson@ci.norco.ca.us
Bob Bowcock	bbowcock@irmwater.com
Bob Bowcock	bbowcock@irmwater.com
Bob Feenstra	bobfeenstra@gmail.com
Bob Kuhn	bgkuhn@aol.com
Bob Lawhn	rlawhn@rrienergy.com
Bonnie Tazza	bonniet@cvwdwater.com
Brenda Fowler	balee@fontanawater.com
Brian Geye	bgeye@autoclubspeedway.com
Brian Hess	bhess@niagarawater.com
Carl Hauge	chauge@water.ca.gov
Charles Field	cdfield@att.net
Charles Moorrees	cmoorrees@sawaterco.com
Chris Berch	CBerch@ieua.org
Cindy Cisneros	Cindy_Cisneros@ci.pomona.ca.us
Cindy LaCamera	clacamera@mwdh2o.com
Craig Stewart	Craig.Stewart@amec.com
Curtis Stubbings	Curtis_Stubbings@praxair.com
Dan Arrighi	darrighi@sgvwater.com
Dan Hostetler	dghostetler@csupomona.edu
Dave Argo	argodg@bv.com
Dave Crosley	DCrosley@cityofchino.org
David D DeJesus	tvnwddiv2rep@gmail.com
David D DeJesus	davidcicgm@aol.com
David Penrice	dpenrice@acmwater.com
David Ringel	david.j.ringel@us.mwhglobal.com
David Starnes	david.starnes@mcmcn.net
Dennis Poulsen	dpoulsen@californiasteel.com
Dennis Williams	dwilliams@geoscience-water.com
Diana Sturgeon	dsturgeon@chinohills.org
Don Cutler	dcutler@jcsd.us
Don Galleano	donald@galleanowinery.com
Donna Stokes	dstokes@cityofchino.org
Earl Elrod	earl.elrod@verizon.net
Edward Gonsman	Edward.Gonsman@cdcr.ca.gov
Eldon Horst	ehorst@jcsd.us
Eunice Ulloa	eulloa@cbwcd.org
Frank Brommenschkel	frank.brommen@verizon.net
Frank LoGuidice	faloguidice@sgvwater.com
Gene Koopman	GTKoopman@aol.com
Geoff Willis	gwillis@sheppardmullin.com
Geoffrey Vanden Heuvel	GeoffreyVH@juno.com
Gerald Yahr	yahrj@koll.com
Gerard Thibeault	gthibeault@rb8.swrcb.ca.gov
Geye, Brian	BGeye@autoclubspeedway.com
Grace Cabrera	grace_cabrera@ci.pomona.ca.us
Greg Woodside	gwoodside@ocwd.com
Ida Martinez	idam@cvwdwater.com
Isabel Martinez	imartinez_wfa@verizon.net
Jack Safely	jsafely@wmwd.com
James Jenkins	cnomgr@airports.sbcounty.gov

James McKenzie	jmckenzie@dpw.sbcounty.gov
Jeff Pierson	jpierson@unitexcorp.com
Jeffrey L. Pierson	jpierson@intexcorp.com
Jill Willis	jnwillis@bbklaw.com
Jim Hill	jhill@cityofchino.org
Jim Taylor	jim_taylor@ci.pomona.ca.us
Joe Graziano	jgraz4077@aol.com
Joe P LeClaire	jleclaire@wildermuthenvironmental.com
John Anderson	janderson@ieua.org
John Bosler	JohnBo@cvwdwater.com
John Huitsing	johnhuitsing@gmail.com
John Kennedy	jkennedy@ocwd.com
John Mura	jmura@chinohills.org
John Rossi	jrossi@wmwd.com
Jon Lambeck	jlambeck@mwdh2o.com
Jorge Rosa Jr.	Jorge.Rosa@sce.com
Julie Velez	JVelez@sdewa.org
Justin Brokaw	jbrokaw@hughes.net
Karen Johnson	kejwater@aol.com
Kathy Kunysz	kkunysz@mwdh2o.com
Kathy Tiegs	Kathyt@cvwdwater.com
Ken Eke	keke@dpw.co.san-bernardino.ca.us
Ken Jeske	kjeske@eee.org
Ken Kules	kkules@mwdh2o.com
Ken Manning	KManning@CBWM.ORG
Ken Waring	kwarling@jcsd.us
Kenneth Willis	kwillis@homeowners.org
Kevin Blakeslee	kblakeslee@dpw.sbcounty.gov
Kevin Sage	Ksage@IRMwater.com
Kurt Berchtold	kberchtold@rb8.swrcb.ca.gov
Kyle Snay	kylesnay@gswater.com
Lindsay Gomez	lgomez@wildermuthenvironmental.com
Lisa Hamilton	Lisa.Hamilton@corporate.ge.com
Marguerite P Battersby	pbattersby@sheppardmullin.com
Maribel Sosa	Maribel_Sosa@ci.pomona.ca.us
Mark Norton	mnorton@sawpa.org
Marsha Westropp	MWestropp@ocwd.com
Martin Zvirbulis	martinz@cvwdwater.com
Michael Whitehead	mwhitehead@sgvwater.com
Michelle Lauffer	milauffer@jcsd.us
Mike Thies	mthies@spacecenterinc.com
Neil Miller	neil_miller@ci.pomona.ca.us
W. C. "Bill" Kruger	wkrugers@earthlink.net
W. C. "Bill" Kruger	citycouncil@chinohills.org

Members:

Manuel Carrillo	Manuel.Carrillo@SEN.CA.GOV
Maria Linzay	mlinzay@ci.upland.ca.us
Maria Mendoza	mmendoza@wildermuthenvironmental.com
Maribel Sosa	Maribel_Sosa@ci.pomona.ca.us
Mark Kinsey	mkkinsey@mvwd.org
Mark Ward	mark_ward@ameron-intl.com
Mark Wildermuth	mwildermuth@wildermuthenvironmental.com
Marla Doyle	marla_doyle@ci.pomona.ca.us
Marsha Westropp	MWestropp@ocwd.com
Martha Davis	mdavis@ieua.org
Martin Rauch	martin@rauchcc.com
Martin Zvirbulis	martinz@cvwdwater.com
Marv Shaw	mshaw@ci.ontario.ca.us
Masha Klachko Blair	mklachko-blair@bhfs.com
Maynard Lenhert	directorlenhert@mvwd.org
Melanie Otero	melanie_otero@ci.pomona.ca.us
Michael Camacho	mcamacho@pacificaservices.com
Michael T Fife	MFife@bhfs.com
Mike Maestas	mmaestas@chinohills.org
Mindy Sanchez	msanchez@ieua.org
Mohamed El-Amamy	melamamy@ci.ontario.ca.us.
Nate Mackamul	Nate.Mackamul@cdcr.ca.gov
Nathan deBoom	n8deboom@gmail.com
Pam Sharp	PSharp@chinohills.org
Pam Wilson	pwilson@bhfs.com
Pat Glover	pglover@cityofchino.org
Patrick Mead	pmead@dpw.sbcounty.gov
Patrick Sheilds	psheilds@ieua.org
Paul Deutsch (paul.deutsch@amec.com)	paul.deutsch@amec.com
Paul Hofer	farmwatchtoo@aol.com
Paul Schenk	pschenk@ldking.com
Peggy Asche	peggy@wvwd.org
Pete Hall	r.pete.hall@cdcr.ca.gov
Peter Hettinga	peterhettinga@yahoo.com
Phil Krause	pkrause@parks.sbcounty.gov
Phil Rosentrater	prosentrater@wmwd.com
Randy Lee	rlee@ieua.org
Raul Garibay	raul_garibay@ci.pomona.ca.us
Rick Hansen	rhansen@tvmwd.com
Rick Rees	Richard.Rees@amec.com
Rob Vanden Heuvel	Robert.t.van@gmail.com
Robert C. Hawkins	RHawkins@earthlink.net
Robert Cayce	rcayce@airports.sbcounty.gov
Robert DeLoach	robertd@cvwdwater.com
Robert Neufeld	rneufeld@sbvwcd.dst.ca.us
Robert Nobles	Robert.Nobles@cdcr.ca.gov
Robert Tock	rtock@jcsd.us
Robert Young	rkyoung@fontanawater.com
Roger Han	roger_han@praxair.com
Ron Craig	RonC@rbf.com
Sam Fuller	samf@sbvmwd.com
Sandra S. Rose	directorrose@mvwd.org
Sandy Lopez	slopez@ci.ontario.ca.us
Sarah Kerr	skerr@ci.ontario.ca.us.
Sarah Schneider (sarah.schneider@amec.com)	sarah.schneider@amec.com
Scott Burton	sburton@ci.ontario.ca.us
Scott Slater	sslater@bhfs.com
Shaun Stone	sstone@ci.upland.ca.us
Sherrie Schnelle	sschnelle@chinohills.org
Sondra Elrod	selrod@ieua.org
Sonya Bloodworth	sbloodworth@wmwd.com

Steve Arbelbide
Steve Nix
Steve Riboli
Ted Leaman
Terry Catlin
Tim Hampton
Tim Skrove
Toby Moore
Tom Cruikshank
Tom Harder
Tom Haughey
Tom Love
Toni Medel
Tracy Tracy
Umesh Shah
Van Jew
Vicki Hahn
William P. Curley
WM Admin Staff

sarbelbide@californiasteel.com
snix@chinohills.org
steve.riboli@sanantoniowinery.com
tleaman@sunkistgrowers.com
tcatlin@verizon.net
tim_hampton@ci.pomona.CA.US
tskrove@mw dh2o.com
TobyMoore@gswater.com
tcruikshank@spacecenterinc.com
thomas_harder@att.net
tom@haugheyinsurance.com
TLove@ieua.org
mmedel@RBF.com
ttracy@mvwd.org
ushah@jcsd.us
vjew@mvwd.org
vhahn@tvmwd.com
wcurley@rwglaw.com

EXHIBIT 5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

v.

CITY OF CHINO et al.,

Defendants;

NON-AGRICULTURAL POOL
(OVERLYING) COMMITTEE et al.,

Movants and Appellants,

CHINO BASIN WATERMASTER et al.,

Objectors and Respondents.

E051653

(Super.Ct.No. RCVRS51010)

OPINION

APPEAL from the Superior Court of San Bernardino County. Stanford E.

Reichert, Judge. Reversed.

Hogan Lovells US and Allen W. Hubsch for Movant and Appellant Non-Agricultural Pool (Overlying) Committee.

Sheppard, Mullin, Richter & Hampton and Karin Dougan Vogel for Movant and Appellant California Steel Industries, Inc.

Brownstein Hyatt Farber Schreck, Scott S. Slater, Michael T. Fife, and Ryan C. Drake for Objector and Respondent Chino Basin Watermaster.

John J. Schatz for Objector and Respondent Appropriative Pool.

The key question in this case is as much factual as it is legal: Did the Chino Basin Watermaster (the Watermaster) give notice of its intent to purchase certain water? Approximately \$4.3 million turns on the answer. The question is complicated by the fact that the purchase was somewhat incestuous — a representative of the seller participated in the administration of the Watermaster, and thus in the Watermaster’s planning and decisionmaking regarding the purchase.

The Watermaster is an entity created by a 1978 judgment. That judgment also awarded water rights to various holders and divided those holders into three “pools.” One of these is the “Overlying (Non-agricultural) Pool” (the Nonagricultural Pool). Each pool has one or more representatives on the Watermaster’s board of directors (the Watermaster Board or the Board).

In 2007, the Watermaster entered into an agreement to purchase water totaling 38,652 acre-feet (af) from the Nonagricultural Pool. The agreement required the Watermaster to give written notice of its intent to purchase by December 2009.

The chair of the Nonagricultural Pool also sat on the Watermaster Board. Thus, he was well aware that the Watermaster was planning to buy the water. In connection with a

board meeting on August 27, 2009, he was provided with an agenda package, including a copy of a written notice of intent to purchase that Watermaster staff had prepared.

Moreover, he was present at the August 27 board meeting, when the Board voted to purchase 36,000 af for storage and recovery purposes and to consider what to do with the remaining 2,652 af. Finally, in connection with a Nonagricultural Pool meeting on November 19, 2009, he was provided with, and he was briefed on, the Watermaster's "Plan B" for the purchase and use of the water.

In 2010, however, when the Watermaster tendered payment for the water, the Nonagricultural Pool refused to accept it, claiming that the Watermaster had not given notice.

The trial court ruled that the Watermaster did give notice, by means of the agenda packages and the related discussions at the August 27 and November 19 meetings.

The Nonagricultural Pool¹ and one of its members, California Steel Industries, Inc. (California Steel), appeal. They contend that:

¹ Technically, the appellant is the "Non-Agricultural (Overlying) Pool Committee," not the Nonagricultural Pool.

Each pool has its own pool committee. The judgment allows each pool committee, as well as each individual pool member, to seek court review of the Watermaster's actions.

In the case of the Nonagricultural Pool, however, every member of the pool is also a member of the pool committee. Accordingly, we see no meaningful distinction between the Nonagricultural Pool and the Nonagricultural Pool Committee.

1. The trial court erred by finding that the purchase and sale agreement did not create an option. (This matters because, at least according to appellants, an option must be exercised in strict accordance with its terms.)

2. The trial court erred by finding that the Watermaster gave notice, because:

a. The notice never became final.

b. The Watermaster did not give notice in the manner specified in the judgment.

c. The Watermaster did not give notice to individual members of the Nonagricultural Pool.

d. Participants in meetings did not actually receive an agenda package; they merely received an email saying that the agenda package was available online.

e. Plan B proposed a procedure that was inconsistent with the purchase and sale agreement.

We agree that the notice never became final. Or, to put it another way, everything that was communicated to the Nonagricultural Pool (or its representatives) about giving notice or purchasing the water came with the caveat that the Watermaster had not yet definitively decided to do either; thus, these communications did not constitute notice of intent to purchase.

We also agree that the purchase and sale agreement, as a matter of law, did create an option. Thus, we cannot apply the doctrine of substantial performance, nor can we

exercise our equitable power to prevent a forfeiture. We need not reach appellants' other contentions. We must reverse the trial court's order.

I

FACTUAL BACKGROUND

A. *The Judgment.*

This action was originally filed in 1975. It sought an adjudication of water rights in the Chino Basin. It was resolved by a judgment entered in 1978.

The judgment provided: "Service of documents. Delivery to or service upon any party . . . of any item required to be served upon or delivered . . . under or pursuant to the Judgment shall be made personally or by deposit in the United States mail, first class, postage prepaid" (Underscoring omitted.)

The judgment established the Watermaster. It also established three "pools" of parties with water rights:

1. The Appropriative Pool, consisting of public entities and public and private water companies.
2. The Nonagricultural Pool, consisting of industrial and commercial businesses.
3. The Agricultural Pool, consisting of agricultural businesses, particularly dairy farms.

Each pool was given the right to a specified amount of water annually. The Nonagricultural Pool's water rights could not be transferred. However, it had the right to

carry over any unused water in storage. Over the years, the fact that the Nonagricultural Pool was accumulating water, rather than putting it to use, came to be a source of friction.

B. *The Purchase and Sale Agreement.*

In 2000, the parties to the judgment entered into, and the trial court approved, the so-called “Peace Agreement.” Among other things, the Peace Agreement allowed the Nonagricultural Pool to transfer water to the Watermaster for purposes of either (1) a storage and recovery program² or (2) desalter replenishment. Even after the Peace Agreement, however, the Nonagricultural Pool continued to accumulate water in storage, which continued to cause friction.

In 2007, the parties entered into, and the trial court approved, the “Peace II Agreement.” One component of the Peace II Agreement was an agreement for the Nonagricultural Pool to sell water to the Watermaster (the purchase and sale agreement).

The purchase and sale agreement provided that the amount of water to be sold was the Nonagricultural Pool’s stored water as of June 30, 2007, minus various deductions. When parties to the judgment sold water to each other, they customarily priced it at 92 percent of the replenishment rate of the Metropolitan Water District of Southern California (the interparty rate). The purchase and sale agreement fixed the price of the water at the interparty rate as of 2007.

² A storage and recovery program was defined as “the use of the available storage capacity of the [Chino] Basin by any person . . . , including the right to export water for use outside the Chino Basin and typically of broad and mutual benefit to the parties to the Judgment[.]”

The “Notice” provision (paragraph C) of the purchase and sale agreement stated:

“Within twenty-four months of the final Court approval of this Agreement . . . , and only with the prior approval of the Appropriative Pool, Watermaster will provide written Notice of Intent to Purchase the [Nonagricultural] Pool water . . . , which therein identifies whether such payment will be in connection with Desalter Replenishment or a Storage and Recovery Program.”³ (Boldface omitted.)

The “Early Termination” provision (paragraph H) stated:

“This Agreement will expire and be of no further force and effect if: Watermaster does not issue its Notice of Intent to Purchase . . . within twenty-four (24) months of Court approval. Upon Watermaster’s failure to satisfy the condition subsequent, . . . the [water] will then be made available for purchase by Watermaster and thence the members of the Appropriative Pool” (Boldface omitted.) However, any such purchase would be at the then-current interparty rate.

The trial court approved the Peace II Agreement on December 21, 2007.

Accordingly, the deadline for giving notice under the purchase and sale agreement was December 21, 2009.

Between 2007 and 2009, water prices in Southern California increased substantially. This meant that the interparty rate went up. If the Watermaster were to

³ It appears to be conceded that the ultimate purchaser was intended to be the Appropriative Pool and that the Watermaster was acting only as a go-between — possibly to maintain consistency with the provision of the Peace Agreement that the Nonagricultural Pool could transfer water only to the Watermaster.

purchase the water from the Nonagricultural Pool at the 2009 interparty rate, rather than the 2007 interparty rate, it would cost roughly \$4.3 million more.

Meanwhile, however, the market rate for water went up even higher. Accordingly, in the first half of 2009, there were discussions about selling the water at auction. The idea was to use part of the auction proceeds to pay for the water and to use the excess auction proceeds — estimated at up to \$30 million — to pay for needed facilities improvements.

In June 2009, the Watermaster Board decided to hold the auction. In August 2009, the trial court approved the proposed auction.

C. *Watermaster Structure and Governance.*

The Watermaster, as currently constituted, is an entity, governed by a board of directors. The Watermaster Board has nine members, including representatives of each of the three pools. The Nonagricultural Pool — the smallest pool — has just one seat.

At all relevant times, the Nonagricultural Pool's seat has been held by Vulcan Materials Company (Vulcan). Robert Bowcock is Vulcan's designated representative; Kevin Sage is his designated alternate. Bowcock is also the chair of the Nonagricultural Pool.

Around 2002, the Nonagricultural Pool began holding joint meetings with the Appropriative Pool (joint pool meetings). Generally, either Sage or Bowcock attended these meetings, but he would be the only representative of the Nonagricultural Pool (or, at most, one of two) who was present.

Agendas for Board and joint pool meetings — including the package of supporting documentation — were too large to distribute by email. For example, the agenda package for the August 27, 2009, Watermaster board meeting took up 39.5MB, or 144 printed pages. Accordingly, participants would receive an email notifying them that the agenda was available on the Watermaster’s website. However, members of the Board also received a hard copy of the Board’s agenda package by mail.

D. *The August 13, 2009, Joint Pool Meeting.*

On August 13, 2009, Sage attended a joint pool meeting. The agenda package for the meeting included a “Notice of Intent to Purchase” (capitalization omitted), along with a staff report.

The notice stated:

“Pursuant to Section C of the Purchase and Sale Agreement . . . , Watermaster hereby provides notice to the [Nonagricultural] Pool that Watermaster intends to . . . purchase [water] for use in a Storage and Recovery Agreement.

“On _____ the Appropriative Pool provided approval for the issuance of this notice. The date of issuance of this notice is December 18, 2009.” (Italics omitted.)

At the meeting, the Watermaster’s legal counsel explained, “[T]he primary issue is that the notice has to identify how the water will be used.” Previously, it had been assumed that 36,000 af of water would be sold at auction; as it turned out, however, 38,652 af was actually available.

After a discussion, the Appropriative Pool voted to use the extra 2,652 af for desalter replenishment, to amend the notice accordingly, and to approve the notice as amended.

E. *The August 27, 2009, Watermaster Board Meeting.*

On August 27, 2009, there was a Watermaster board meeting. Sage attended the meeting.

The agenda package for this meeting, too, included a “Notice of Intent to Purchase” (capitalization omitted), along with a staff report. The notice — as amended and approved by the Appropriative Pool — stated:

“Pursuant to Section C of the Purchase and Sale Agreement . . . , Watermaster hereby provides notice to the [Nonagricultural] Pool that Watermaster intends to . . . purchase [water] . . . for the following uses: 36,000 acre-feet for use in a Storage and Recovery Agreement, and 2,652 acre-feet for use as Desalter [R]eplenishment.

“On August 13, 2009, the Appropriative Pool provided approval for the issuance of this notice. The date of issuance of this notice is December 18, 2009.” (Italics omitted.)

At the meeting, the Watermaster chief executive officer (CEO) noted that the Appropriative Pool had decided to use 2,652 af for desalter replenishment. He added, however, that the Fontana Water Company (a member of the Appropriative Pool) had requested reconsideration of whether the 2,652 af could be used for basin replenishment instead.

The Board voted “to approve the Intent to Purchase to [*sic*] 36,000 acre-feet for use in a Storage and Recovery Agreement, and refer the 2,652 acre-feet back to the Appropriative Pool for further consideration and a separate motion” (Boldface and italics omitted.)

The agenda package for the next board meeting included the minutes of the August 27 meeting. At that meeting, the minutes of the August 27 meeting were approved.

F. *The October 1, 2009, Joint Pool Meeting.*

On October 1, 2009, there was a joint pool meeting. Sage attended the meeting.

The agenda package for the meeting included a staff report recommending that the 2,652 af be used for desalter replenishment. The report explained that “there are essentially three options for disposition of this water” and that none of these would permit the water to be used for basin replenishment. The first two options were to purchase the water pursuant to the purchase and sale agreement and to use it in either a storage and recovery program (the first option) or for desalter replenishment (the second option). The third option was to proceed under the “Early Termination” provision. However, “[i]f the Notice . . . is not issued by December 21, 2009,” the report stated, the Nonagricultural Pool members would not be required to provide the water to Appropriative Pool members, and even if they did, the Appropriative Pool members would not be required to use it for basin replenishment.

There was a discussion about the use of the 2,652 af, but the matter was tabled for 30 days.

G. *The November 5, 2009, Joint Pool Meeting.*

Meanwhile, it appeared that potential bidders at the auction were concerned about the practicality of delivering the water. Hence, on October 30, 2009, the Watermaster postponed the auction indefinitely. This made it necessary to find some other way of raising the funds to pay for the water.

On November 5, 2009, there was another joint pool meeting. Sage attended the meeting.

The agenda package for the meeting included a copy of what the parties call “Plan B.” Over time, there were several different versions of Plan B. In general, however, Plan B provided that, in lieu of using the proceeds of the auction to pay for the water, the Appropriative Pool would supply the purchase money and would decide later how the water was to be used.

At the meeting, the matter was discussed in closed session (i.e., without Sage). In the closed session, the Appropriative Pool amended Plan B, then approved Plan B as amended.

H. *The November 19, 2009, Board Meeting.*

On November 19, 2009, there was a Watermaster board meeting.⁴ Sage attended the meeting.

⁴ The agenda gives an incorrect date for the meeting (October 22, 2009). Bowcock’s declaration likewise gives an incorrect date for the meeting (November 29, 2009).

The agenda for the meeting indicated that there would be a report on “Implementation of Plan B for Purchase of . . . Non-Agricultural Pool Water.” The agenda package included a copy of Plan B. This Plan B was different from the version of Plan B that had been in the agenda package for the November 5 joint pool meeting. Thus, presumably, it represented Plan B as amended and approved by the Appropriative Pool.

This version of Plan B provided: “By December 21, 2009, Watermaster, under the direction of the Appropriative Pool, will send the Notice of Intent to Purchase pursuant to the Purchase and Sale Agreement.” It further provided that, to pay for the water, the Watermaster would levy a special assessment on the members of the Appropriative Pool. “Watermaster shall hold the Purchased Water . . . in trust for the members of the Appropriative Pool” “If . . . the Purchased Water . . . is sold pursuant to a Storage and Recovery Program, at auction or otherwise,” the proceeds would be used to reimburse the members of the Appropriative Pool for the special assessment. “If the . . . Purchased Water . . . has not been utilized in a Storage and Recovery Program or Desalter Replenishment within 3 years . . . , then the Appropriative Pool may elect to distribute the water according to the same formula used to allocate [the special assessment].”

At the meeting, the Watermaster’s legal counsel explained that Plan B was “a proposal through which the members of the Appropriative Pool would make arrangements to acquire the water . . . and then conduct an auction in the spring.” However, he also “stated that Plan B is now being implemented” According to the

minutes of the meeting, “[a] discussion regarding holding the water auction in the spring and the philosophy of Plan B ensued.”

The matter was on the agenda only as a report, not a business item, and the Board did not approve or take any other action regarding Plan B.⁵

The Watermaster’s rules provided, “Watermaster shall obtain Court approval prior to acquiring any water rights in trust for the benefit of the parties to the Judgment.”

I. *The January 7, 2010, Joint Pool Meeting.*

On January 7, 2010, at a joint pool meeting, a member of the Nonagricultural Pool asked whether the Watermaster had given notice of intent to purchase, and if so, when. The Watermaster CEO replied, “We will have to get back to you.” After the meeting, the Watermaster CEO and legal counsel took the position that notice had been given by way of the agenda package for the August 27 board meeting.

On or about January 17, 2010, the Watermaster tendered the first payment for the water to the members of the Nonagricultural Pool. The Nonagricultural Pool members refused to accept it.

⁵ Also on November 19, 2009, there was an advisory committee meeting, which Sage also attended. Plan B was also in the agenda package for this meeting, and at the meeting, legal counsel gave a similar presentation on Plan B.

II

STANDARD OF REVIEW

“‘[T]he applicable standards of appellate review of a judgment based on affidavits or declarations are the same as for a judgment following oral testimony: We must accept the trial court’s resolution of disputed facts when supported by substantial evidence; we must presume the court found every fact and drew every permissible inference necessary to support its judgment, and defer to its determination of credibility of the witnesses and the weight of the evidence.’ [Citation.]” (*Fininen v. Barlow* (2006) 142 Cal.App.4th 185, 189-190.)

However, “[w]hen the facts are undisputed, the legal significance of those facts is a question of law, and a reviewing court is free to draw its own conclusions independent of the ruling by the trial court. [Citation.]” (*Reycraft v. Lee* (2009) 177 Cal.App.4th 1211, 1217 [Fourth Dist., Div. Two].)

“Our review of the trial court’s interpretation of a contract generally presents a question of law for this court to determine anew. [Citation.] ‘The trial court’s determination of whether an ambiguity exists is a question of law, subject to independent review on appeal. [Citation.] The trial court’s resolution of an ambiguity is also a question of law if no parol evidence is admitted or if the parol evidence is not in conflict. However, where the parol evidence is in conflict, the trial court’s resolution of that conflict is a question of fact and must be upheld if supported by substantial evidence.’

[Citation.]” (*DVD Copy Control Assn., Inc. v. Kaleidescape, Inc.* (2009) 176 Cal.App.4th 697, 713.)

III

THE WATERMASTER FAILED TO GIVE TIMELY NOTICE

A. *The August 27, 2009, Watermaster Board Meeting.*

The trial court found that the agenda package for the August 27 board meeting, when combined with Sage’s participation in the meeting, constituted notice.

For purposes of this opinion, we will assume, without deciding, that:

1. The Watermaster did not have to give notice in the manner specified in the 1978 judgment.

2. The Watermaster did not have to give notice to individual members of the Nonagricultural Pool; notice to Sage (or Bowcock) constituted notice to Vulcan, and notice to Vulcan constituted notice to the entire Nonagricultural Pool.

3. Including a document in an agenda package was sufficient to give Sage (or Bowcock) written notice of it.

Even after we indulge all these assumptions, we conclude that there is a fundamental problem with the trial court’s finding. For a given communication to constitute notice, at a minimum, it had to appear that the Watermaster intended to give notice — to apprise the Nonagricultural Pool that it was going to purchase the water. (See *McNeese v. McNeese* (1923) 190 Cal. 402, 405 [notice of rescission]; *Whitney Inv. Co. v. Westview Dev. Co.* (1969) 273 Cal.App.2d 594, 603 [Fourth Dist., Div. Two])

[notice to cancel or terminate contract].) A person entitled to notice ““““is not required to be clairvoyant.”””” (*Stevens v. Department of Corrections* (2003) 107 Cal.App.4th 285, 292.) But no reasonable person who received the agenda package and participated in the meeting would have understood that the Watermaster was, in fact, giving notice of intent to purchase.

The agenda package included a copy of the notice. Moreover, the notice had already been approved by the Appropriative Pool. However, the agenda package also clearly indicated that the notice was not intended to be effective unless and until it was approved by the Board. It was accompanied by a staff report, which stated, “Watermaster staff has prepared a form of the Notice” It added, “Staff recommends approval of the Notice”

The only reasonable interpretation of the agenda package was that Watermaster staff was not *giving* notice; it was leaving it up to the Board to decide whether to give notice or not. In other words, the decision to give notice had not yet been made. Thus, the agenda package alone could not be deemed notice.

Moreover, at the August 27 meeting, the board *did not approve the notice*.⁶ It voted to approve the *purchase* of 36,000 af for storage and recovery purposes, but it did *not* approve the purchase of the additional 2,652 af. Because the notice recited that the

⁶ In its statement of facts, the Watermaster asserts: “On August 27, 2009, the Watermaster Board approved the Notice” The only evidence that it cites in support of this assertion, however, is the notice itself.

Watermaster was purchasing both, this could hardly be deemed approval of the *notice*. Moreover, the purchase and sale agreement expressly provided for a sale of “all” (or the “total quantity”) of the water. It did not allow the Watermaster to buy just some of the water.⁷

In hindsight, the Watermaster tries to recharacterize the Board’s action as a decision to purchase *all* of the water, while postponing the decision on how to *allocate* the 2,652 af. However, that is simply not what the minutes of the meeting say. Moreover, that is not what Watermaster staff understood the Board to have done. In its report for the October 1 joint pool meeting, Watermaster staff evaluated three possible options for the use of the 2,652 af. One was simply not to give timely notice; the staff concluded that, in that event, the 2,652 af would remain the property of the members of the Nonagricultural Pool. Manifestly, the staff did not believe the Board had already decided to purchase the 2,652 af.

Finally, the notice had to specify whether the water would be used for a storage and recovery program or for desalter replenishment. At the August 27 meeting, the Board specifically postponed the decision on how to use the 2,652 af. Thus, even assuming the Board did in fact decide to purchase all of the water, it was not yet in a position to give notice as required.

⁷ Watermaster staff later expressed doubt that the Watermaster could buy just some of the water.

Indeed, despite the best efforts of Watermaster staff, the Watermaster Board never *did* decide how to use the 2,652 af. As California Steel aptly observes, “the fate of the . . . [w]ater was an ever-moving target.” On August 27, the Watermaster Board referred the question back to the Appropriative Pool. In connection with the October 1 joint pool meeting, Watermaster staff recommended that the 2,652 af be used for desalter replenishment. At that meeting, however, the Appropriative Pool tabled the matter for 30 days.

Thereafter, the Watermaster canceled the auction, and the Appropriative Pool came up with Plan B. At that point, the question of what to do with the 2,652 af became moot.

We conclude that there is no substantial evidence to support the trial court’s finding that the Watermaster gave notice by way of the August 27 agenda packet and meeting.

B. *The November 19, 2009, Watermaster Board Meeting.*

Alternatively, the trial court found that Plan B, along with the discussion of it that took place at the November 19 Watermaster board meeting, also constituted notice.

Once again, however, this fell short of apprising the Nonagricultural Pool that the Watermaster did, in fact, intend to give notice. First and foremost, Plan B itself stated, “By December 21, 2009, Watermaster, under the direction of the Appropriative Pool, *will send* the Notice of Intent to Purchase pursuant to the Purchase and Sale Agreement.” (Italics added.) This indicated that Plan B itself was not intended to serve as notice;

notice (if any) would be given some time in the future. Moreover, at the November 19 meeting, the Board was not asked to approve — and did not approve — Plan B.

Admittedly, Sage may have known that the *Appropriative Pool* had approved Plan B. Even if so, this did not mean that the *Watermaster* was necessarily going to proceed to purchase the water. The *Watermaster* was not simply acting as the *Appropriative Pool*'s agent; giving notice was not simply a ministerial act on the part of the *Watermaster*. The *Watermaster* could not give notice unless the *Appropriative Pool* so directed; however, the purchase and sale agreement did not *require* the *Watermaster* to give notice if the *Appropriative Pool* *did* so direct. The purchase and sale agreement specifically provided for the possibility that, even though the *Appropriative Pool* wanted to purchase, the *Watermaster* might not give timely notice. In that event, the *Appropriative Pool* would have to purchase, if at all, under the early termination provision.

Once the plans shifted from an auction to Plan B, the *Watermaster*'s cooperation was even less assured. Plan B required the *Watermaster* to take significant actions beyond merely giving notice (e.g., levying a special assessment). Thus, it was impracticable without the *Watermaster*'s assent and approval.

In addition, as the *Nonagricultural Pool* points out, there was a significant inconsistency between Plan B and the purchase and sale agreement. The purchase and sale agreement required any notice of intent to purchase to specify whether the water was being purchased for a storage and recovery program or for desalter replenishment. By contrast, Plan B provided: "If the [purchased] water . . . has not been utilized in a Storage

and Recovery Program or Desalter Replenishment within 3 years . . . , then the Appropriative Pool may elect to distribute the water”

As this implied, a distribution of water directly to the members of the Appropriative Pool would not qualify as a storage and recovery plan. It would not have “broad and mutual benefit to the parties,” as the definition of a storage and recovery plan required. Moreover, even assuming it could so qualify, under Plan B, it might not be known for up to three years whether the water would be used for a storage or recovery plan or for desalter replenishment; thus, it would be impossible to give timely notice specifying either use.

In our view, the question is not whether Plan B deviated from the required *form* of notice. Rather, it is whether a reasonable person would have understood Plan B as intended to serve as notice *at all*. And the answer is no. A reasonable person would have understood it to be exactly what the Watermaster’s legal counsel called it — a “proposal” by the Appropriative Pool. Before it could go into effect, and hence before the Watermaster could give notice, at least three things would have to happen. First, the Watermaster would have to approve Plan B. Second, the parties (including the Nonagricultural Pool) would have to negotiate some way around the requirement that the notice specify whether the water would be used for a storage and recovery program or for desalter replenishment. Third, because the Watermaster could not hold water in trust without court approval, the trial court would have to approve Plan B. But none of this ever happened.

The Appropriative Pool argues, “[T]here is no reason why Watermaster or the Appropriative Pool would have desired to pay \$4.3 million more for the water by not providing notice in a manner consistent with the Agreement.” Actually, one reason is readily inferable from the record: In the wake of the postponement of the auction, the parties had not yet found a way to restructure the purchase in a manner that was consistent with the purchase and sale agreement and with the Watermaster’s rules. In any event, whatever the reason, this was a possibility that the parties evidently contemplated and for which the purchase and sale agreement specifically provided.

In sum, then, there is also no substantial evidence to support the trial court’s finding that the Watermaster gave notice by way of the November 19 agenda packet and meeting.

IV

THE PURCHASE AND SALE AGREEMENT CREATED AN OPTION

The trial court ruled that the purchase and sale agreement did not create an option. It reasoned that the purchase and sale agreement itself referred to the notice requirement as a “condition subsequent.” Appellants contend that this was error.

In part III, *ante*, we concluded that the Watermaster did not give timely notice of intent to purchase. This is true even if the doctrine of substantial performance applies to the *form* of the notice; nothing that the Watermaster said or did prior to December 21, 2009, constituted even minimally substantial performance of the notice requirement. In the trial court, however, the Watermaster argued that the doctrine of substantial

performance applied to the *timeliness* of the notice and, hence, that it gave notice belatedly, but effectively, in January 2010, by asserting that it had already given notice and by tendering payment. We reach the question of whether the purchase and sale agreement gave rise to an option, because it is relevant to whether we can apply the doctrine of substantial performance to the timeliness of the notice.

“[A]n option to purchase . . . is ‘a unilateral agreement. The optionor offers to sell the subject property at a specified price or upon specified terms and agrees, in view of the payment received, that he will hold the offer open for the fixed time. Upon the lapse of that time the matter is completely ended and the offer is withdrawn. If the offer be accepted upon the terms and in the time specified, then a bilateral contract arises’ [Citation.]” (*Steiner v. Thexton* (2010) 48 Cal.4th 411, 418.) “[E]ven if an option has not yet ripened into a purchase contract, it may nonetheless be irrevocable for the negotiated period of time if sufficient bargained-for consideration is present.” (*Id.* at p. 420.)

“[T]he label is not dispositive. Rather, we look through the agreement’s form to its substance. [Citation.]” (*Steiner v. Thexton, supra*, 48 Cal.4th at p. 418.) “It is established that express terms such as ‘option’ . . . are not dispositive in the interpretation of a real estate contract. [Citation.] ‘Whether any particular document is . . . an “option” or “an agreement of sale” depends on the nature and terms of the document and the obligation of the parties, regardless of how the parties may label or identify the document. The test is whether . . . there is a mutuality of obligation. If both parties are obligated to perform, it is an agreement of sale; if only one party (the optionor-offeror) is obligated to

perform, it is merely an option.’ [Citation.] ‘When deciding whether a particular contract is bilateral or unilateral, the courts favor an interpretation that makes the contract bilateral. A bilateral contract immediately and fully protects both parties by binding each to its terms on its execution.’ [Citation.]” (*Allen v. Smith* (2002) 94 Cal.App.4th 1270, 1279.)

As a general rule, an option can be exercised only in the manner specified in the option contract. “It is well settled that when the provisions of an option contract prescribe the particular manner in which the option is to be exercised, they must be strictly followed. [Citations.]” (*Palo Alto Town & Country Village, Inc. v. BBTC Company* (1974) 11 Cal.3d 494, 498.) This is because “[a]n option is a contract establishing an irrevocable offer. As with other offers, the offeror may prescribe the mode of acceptance. [Citations.] Where the mode of acceptance is prescribed it must be strictly followed.” (*Jenkins v. Tuneup Masters* (1987) 190 Cal.App.3d 1, 7.)

In particular, an option must be exercised within the contractually specified time. “ . . . [T]ime is of the essence of an option to purchase within a specified time, without being expressly made so by the contract. . . . “A limitation of the time for which a standing offer is to run is equivalent to the withdrawal of the offer at the end of the time named. The rule that in equity time is not of the essence of a contract does not apply to a mere offer to make a contract. An acceptance after the time limited in the offer will not bind the person making the offer, unless he assents to the acceptance so made after it is made.”” (*Rosenauro v. Pacelli* (1959) 174 Cal.App.2d 673, 677.) “To hold otherwise

would give the optionee, not the option he bargained for, but a longer and therefore more extensive option.” (*Holiday Inns of America, Inc. v. Knight* (1969) 70 Cal.2d 327, 330.) For these reasons, “it would be inappropriate to grant relief [from forfeiture] under Civil Code section 3275 to permit exercise of an option after the option period had expired.” (*Simons v. Young* (1979) 93 Cal.App.3d 170, 185 [Fourth Dist., Div. Two]; accord, *Bekins Moving & Storage Co. v. Prudential Ins. Co.* (1985) 176 Cal.App.3d 245, 253; *Hendren v. Yonash* (1966) 243 Cal.App.2d 672, 677-678.)

Here, the purchase and sale agreement had all of “the classic feature[s] of an option.” (*Steiner v. Thexton, supra*, 48 Cal.4th at p. 418.) First, it obligated the Nonagricultural Pool to hold open an offer to sell at a fixed price for a fixed time. (See *ibid.*) Second, the Watermaster had the power to accept the offer, by giving timely notice; however, the Watermaster had no *obligation* to give notice, nor, indeed, to do anything else. (See *id.* at pp. 418-419.)

It has been said that “[t]he test of whether an instrument is an option or a contract of sale is whether there is such an obligation on the part of the optionee to buy that it can be enforced by specific performance.’ [Citations.]” (*Welk v. Fainbarg* (1967) 255 Cal.App.2d 269, 276 [Fourth Dist., Div. Two].) Here, unless and until the Watermaster gave notice, the Nonagricultural Pool could not compel the Watermaster either to give notice or to purchase the water.

The trial court relied on the fact that the purchase and sale agreement itself referred to the giving of notice as a “condition subsequent.” Similarly, the purchase and

sale agreement stated in seemingly mandatory terms that “Watermaster *will provide* written Notice,” “Watermaster *will pay*,” and “Watermaster *will take possession* of the water” (Italics added.) It then provided, in language consistent with a condition subsequent, “*Early Termination. This Agreement will expire* and be of no further force and effect if[] Watermaster does not issue its Notice of Intent to Purchase within twenty-four (24) months of Court approval.” (Italics added, boldface omitted.)

As already noted, however, the labels attached by the parties are not controlling.⁸ “A condition subsequent is one referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party” (Civ. Code, § 1438.) Here, the Nonagricultural Pool had no enforceable obligation to deliver any water unless and until the Watermaster gave notice. Likewise, the Watermaster had no enforceable

⁸ The Nonagricultural Pool relies on the fact that the Watermaster has repeatedly referred to the purchase and sale agreement as creating an “option” — including in court filings. What is sauce for the goose, however, is sauce for the gander. These references, too, are a mere label attached by one of the parties; as such, they are not controlling.

The Nonagricultural Pool cites the rule that “when a contract is ambiguous, a construction given to it by the acts and conduct of the parties with knowledge of its terms, before any controversy has arisen as to its meaning, is entitled to great weight, and will, when reasonable, be adopted and enforced by the court.” (*Crestview Cemetery Assn. v. Dieden* (1960) 54 Cal.2d 744, 753.) Here, however, the proffered evidence does not consist of acts or conduct; rather, it consists of mere legal conclusions, which cannot serve as substantial evidence. (*Downer v. Bramet* (1984) 152 Cal.App.3d 837, 841-842 [Fourth Dist., Div. Two].)

Finally, the Watermaster’s references to an “option” in court filings do not rise to the level of judicial estoppel. It does not appear that this characterization was relevant to any issue then before the court; a fortiori, it does not appear that the court relied on it or accepted it as true. (See generally *People v. Castillo* (2010) 49 Cal.4th 145, 155.)

obligation to do anything unless and until it gave notice. Thus, notice was, properly speaking, a condition precedent, not a condition subsequent. This was perfectly consistent with an option. (See *Palo Alto Town & Country Village, Inc. v. BBTC Company, supra*, 11 Cal.3d at p. 503 [“from the viewpoint of the optionor, an option is a binding contract subject to the performance of a condition precedent by the optionee”].)

The Supreme Court has given the following example of the difference between an option agreement and a bilateral agreement subject to a condition subsequent: “[A] common form of real estate contract binds both parties at the outset (rendering the transaction a bilateral contract) while including a contingency, such as a loan or inspection contingency, that allows one or both parties to withdraw should the contingency fail. However, withdrawal from such a contract is permitted *only* if the contingency fails.” (*Steiner v. Thexton, supra*, 48 Cal.4th at p. 419.) A loan or inspection contingency is outside the control of the parties. Here, the only “contingency” was giving notice, and the Watermaster had total discretion to give notice or not.

The Watermaster argues that the purchase and sale agreement has already been partially performed: “[T]he Appropriative Pool consented to the alienability of the surplus Non-Agricultural Pool water . . . , and this element of consideration became binding on the Appropriative Pool” This is irrelevant to whether the Watermaster’s right to purchase additional water upon notice constituted an option. An option is revocable unless it is given for consideration, in which case it becomes irrevocable. Thus, almost by definition, an *irrevocable* option has already been partially performed —

by the buyer. Such partial performance, however, sheds no light on whether the buyer's resulting right to purchase constitutes an option.

More generally, as the Nonagricultural Pool points out, a given *contract* is not necessarily 100 percent bilateral or 100 percent an option. An otherwise bilateral contract may contain an option *provision*. The most common example would be a lease with an option to buy: both parties must at least partially perform the lease aspect before the option aspect can come into play. Here, the Peace II Agreement constituted a package of various interrelated agreements; the purchase and sale agreement was merely one of these. We may assume that the Peace II Agreement includes various bilateral agreements that have been partially or fully performed. We nevertheless conclude that the Watermaster's right to purchase water, on notice, constituted an option.

Accordingly, the doctrines of substantial performance and relief from forfeiture do not apply.

V

WAIVER/ESTOPPEL

In the trial court, the Watermaster argued that, even if it failed to give proper notice, the Nonagricultural Pool waived and/or became estopped to object to the defect.

In this appeal, the Watermaster asserts that the trial court never reached the question of estoppel. However, it does not argue that we should uphold the challenged order on a theory of either waiver or estoppel. It never even suggests that we should remand with directions to the trial court determine whether waiver or estoppel applies.

Actually, the trial court specifically ruled: “[T]he court finds no basis for estoppel in this matter.” The Watermaster does not argue that this ruling was erroneous. We deem any challenge to it forfeited.

VI

DISPOSITION

The order appealed from is reversed. The trial court is directed to enter a new order to the effect that the Watermaster did not give timely or effective notice of intent to purchase. Appellants are awarded costs on appeal against respondents.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
Acting P.J.

We concur:

MILLER
J.

CODRINGTON
J.

EXHIBIT 6

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JUN 29 2012

BY [Signature]
DEPUTY

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

CHINO BASIN MUNICIPAL WATER)
DISTRICT,)
Plaintiff,)
vs.)
CITY OF CHINO, et al.,)
Defendants)

CASE NO. RCV 51010
[ORDER POST APPEAL

Pursuant to the order of the Court of Appeal of the State of California, Fourth
Appellate District, Division Two, the court orders that Watermaster did not give
timely or effective notice of intent to purchase.

Dated: 6-29-12

[Signature]
Stanford E. Reichert, Judge

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

San Bernardino District - Civil
303 West Third Street

San Bernardino CA 924150210

CASE NO: RCVRS51010

BROWNSTEIN HYATT FARBER SCHRECK, LLP
21 EAT CARRILLO STREET
SANTA BARBARA CA 93101

I M P O R T A N T C O R R E S P O N D E N C E

From the above entitled court, enclosed you will find:

ORDER POST APPEAL

CERTIFICATE OF SERVICE BY MAIL

I hereby declare that I am over the age of 18 years, a resident of San Bernardino County, State of California, and not a party to nor interested in the above-entitled case. I am a Deputy Court Executive Officer of the said County and on the date shown below I served the above named document by enclosing it in an envelope addressed to the interested party, for collection and mailing this date, following ordinary business practice.

Executed on 06/29/12 at San Bernardino, CA.

By: NICOLE TAYLOR

M A I L I N G C O V E R S H E E T

CHINO BASIN WATERMASTER
Case No. RCV 51010
Chino Basin Municipal Water District v. The City of Chino

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.

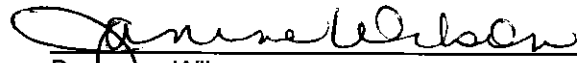
On July 9, 2012 I served the following:

1. ORDER POST APPEAL

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

Executed on July 9, 2012 in Rancho Cucamonga, California.


By: Janine Wilson
Chino Basin Watermaster

BRIAN GEYE
AUTO SPEEDWAY
9300 CHERRY AVE
FONTANA, CA 92335

JAMES CURATALO
P.O. BOX 638
RANCHO CUCAMONGA, CA 91729-
0638

ROBERT BOWCOCK
INTEGRATED RESOURCES MGMNT
405 N. INDIAN HILL BLVD
CLAREMONT, CA 91711-4724

STEVE ELIE
IEUA
16405 DOMANI TERRACE
CHINO HILLS, CA 91709

GEOFFREY VANDEN HEUVEL
CBWM BOARD MEMBER
8315 MERRILL AVENUE
CHINO, CA 91710

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

BOB KUHN
669 HUNTERS TRAIL
GLEN DORA, CA 91740

CHARLES FIELD
4415 FIFTH STREET
RIVERSIDE, CA 92501

BILL KRUGER
14000 CITY CENTER DRIVE
CHINO HILLS, CA 91709

JEFF PIERSON
PO BOX 1440
LONG BEACH, CA 90801-1440

GLEN DURRINGTON
5512 FRANCIS ST
CHINO, CA 91710

BOB FEENSTRA
2720 SPRINGFIELD ST,
ORANGE, CA 92867

Members:

Allen W. Hubsch	allen.hubsch@hoganlovells.com
Andrew Lazenby	lazenbyag@bv.com
Art Kidman	akidman@mkblawyers.com
Barbara Swanson	Barbara_Swanson@yahoo.com
Beth Barry	bethb@cvwdwater.com
Carol Davis	cdavis@lagerlof.com
Chris Swanberg	chris.swanberg@corr.ca.gov
Dan McKinney	dmckinney@douglascountylaw.com
Fred Fudacz	ffudacz@nossaman.com
Jean Cihigoyenetché	Jean_CGC@hotmail.com
jeeinc@aol.com	jeeinc@aol.com
Jill Willis	jnwillis@bbklaw.com
Jim Markman	jmarkman@rwglaw.com
Jim@city-attorney.com	Jim@city-attorney.com
jimmy@city-attorney.com	jimmy@city-attorney.com
John Cotti	jcotti@localgovlaw.com
John Schatz	jschatz13@cox.net
Joseph S. Aklufi	AandWLaw@aol.com
Karin Vogel	KVogel@sheppardmullin.com
Kuperberg, Joel	jkuperberg@rutan.com
Marguerite P Battersby	pbattersby@sheppardmullin.com
Mark Hensley	mhensley@localgovlaw.com
Michelle Staples	mstaples@jdplaw.com
Randy Visser	RVisser@sheppardmullin.com
Rodney Baker	rodbaker03@yahoo.com
Steve Kennedy	skennedy@bmblawoffice.com
Steven R. Orr	sorr@rwglaw.com
Tom Bunn	TomBunn@Lagerlof.com
Tom McPeters	THMcP@aol.com
Tracy J. Egoscue	tracy@egoscuelaw.com
William J Brunick	bbrunick@bmblawoffice.com
William P. Curley	wcurley@rwglaw.com

Members:

Al Lopez
Alice Shiozawa
Andy Campbell
Andy Malone
Annette Gonzales
Anthony La
April Robitaille
April Woodruff
Arnold Rodriguez
Ashok Dhingra
Ben Lewis
Bill Kruger
Bill Thompson
Bob Bowcock
Bob Feenstra
Bob Kuhn
Bob Lawhn
Bonnie Tazza
Brad Herrema
Brenda Fowler
Brian Dickinson
Brian Geye
Brian Hess
Carl Hauge
Carol Bennett
Carol Boyd
Charles Field
Charles Moorrees
Cheyanne Reseck-Francis
Chris Berch
Chuck Hays
Cindy Cisneros
Cindy LaCamera
Craig Miller
Craig Stewart
Curtis Aaron
Curtis Paxton
Curtis Stubbings
Dan Arrighi
Dan Hostetler
Danielle Soto
Daryl Grigsby
Dave Argo
Dave Crosley
David D DeJesus
David D DeJesus
David Penrice
David Ringel
David Starnes
Debbie Espe
Dennis Mejia
Dennis Poulsen
Dennis Williams
Diana Sturgeon
Don Cutler
Don Galleano
Earl Elrod
Ed Diggs
Edward Gonsman
Eldon Horst
Eric Fordham
Eric Garner
lopezsixto@netzero.net
afshioza@gswater.com
acampbell@ieua.org
amalone@wildermuthenvironmental.com
agonzales@ci.ontario.ca.us
ala@ci.upland.ca.us
arobitaille@bhfs.com
awoodruff@ieua.org
jarodriguez@sarwc.com
ash@akdconsulting.com
benjamin.lewis@gswater.com
citycouncil@chinohills.org
bthompson@ci.norco.ca.us
bbowcock@irmwater.com
bobfeenstra@gmail.com
bgkuhn@aol.com
rlawhn@rrienergy.com
bonniet@cvwdwater.com
bherrema@bhfs.com
balee@fontanawater.com
bdickinson@chinodesalter.org
bgeye@autoclubspeedway.com
bhess@niagarawater.com
chauge@water.ca.gov
cbennett@tkeengineering.com
Carol.Boyd@doj.ca.gov
cdfield@att.net
cmoorrees@sawaterco.com
cheyanne.reseck.francis@ieua.org
CBerch@ieua.org
chays@fontana.org
cindyc@cvwdwater.com
clacamera@mwdh2o.com
cmiller@ieua.org
Craig.Stewart@amec.com
brutus76@att.net
cpaxton@chinodesalter.org
Curtis_Stubbings@praxair.com
darrighi@sgwater.com
dghostetler@csupomona.edu
danielle_soto@CI.POMONA.CA.US
daryl_grigsby@ci.pomona.ca.us
argodg@bv.com
DCrosley@cityofchino.org
tvmwddiv2rep@gmail.com
davidcicgm@aol.com
dpenrice@acmwater.com
david.j.ringel@us.mwhglobal.com
david.starnes@mcmcnnet.net
despe@sdcwa.org
dmejia@ci.ontario.ca.us
dpoulsen@californiasteel.com
dwilliams@geoscience-water.com
dsturgeon@chinohills.org
dcutler@jcsd.us
donald@galleanowinery.com
earl.elrod@verizon.net
edd@cvwdwater.com
Edward.Gonsman@cdcr.ca.gov
ehorst@jcsd.us
eric_fordham@geopentech.com
eric.garner@bbklaw.com

Eunice Ulloa	eulloa@cbwcd.org
Frank Brommenschkel	frank.brommen@verizon.net
Frank LoGuidice	faloguidice@sgwater.com
Gene Koopman	GTKoopman@aol.com
Geoffrey Kamansky	gkamansky@niagarawater.com
Geoffrey Vanden Heuvel	GeoffreyVH@juno.com
Gerald Yahr	yahrj@koll.com
Geye, Brian	BGeye@autoclubspeedway.com
Gloria Rivera	gloriar@cvwdwater.com
Grace Cabrera	grace_cabrera@ci.pomona.ca.us
Greg Woodside	gwoodside@ocwd.com
Helen Arens	Helen.Arens@doj.ca.gov
Ida Martinez	idam@cvwdwater.com
Ines Contreras	IContreras@wmwd.com
Isabel Martinez	imartinez_wfa@verizon.net
Jack Safely	jsafely@wmwd.com
James Curatalo	jamesc@cvwdwater.com
James Jenkins	cnomgr@airports.sbcounty.gov
James McKenzie	jmckenzie@dpw.sbcounty.gov
Jean Perry	JPerry@wmwd.com
Jeff Pierson	jpierson@unitexcorp.com
Jeffrey L. Pierson	jpierson@intexcorp.com
Jill Willis	jnwillis@bbklaw.com
Jim Taylor	jim_taylor@ci.pomona.ca.us
Jo Lynne Russo-Pereyra	jolynner@cvwdwater.com
Joe Graziano	jgraz4077@aol.com
Joe P LeClaire	jleclaire@wildermuthenvironmental.com
John Bosler	JohnBo@cvwdwater.com
John Dickson	john.dickson@cdcr.ca.gov
John Huitsing	johnhuitsing@gmail.com
John Kennedy	jkennedy@ocwd.com
John Rossi	jrossi@wmwd.com
John Salmon	jsalmon@mkblawyers.com
Jon Lambeck	jlambeck@mwdh2o.com
Jorge Rosa Jr.	Jorge.Rosa@sce.com
Julie Cavender	julie.cavender@cdcr.ca.gov
Julie Saba	jsaba@jcsd.us
Justin Brokaw	jbrokaw@hughes.net
Justin Scott Coe	jscottcoe@mvwd.org
Karen Johnson	kejwater@aol.com
Kathy Kunysz	kkunysz@mwdh2o.com
Kathy Tieg	Kathyt@cvwdwater.com
Ken Eke	keke@dpw.sbcounty.gov
Ken Jeske	kjcwater@hotmail.com
Ken Kules	kkules@mwdh2o.com
Ken Waring	kwaring@jcsd.us
Kevin Austin	kaustin@californiasteel.com
Kevin Blakeslee	kblakeslee@dpw.sbcounty.gov
Kevin Sage	Ksage@IRMwater.com
Kim Morris	kmorris@fontana.org
Kurt Berchtold	kberchtold@waterboards.ca.gov
Kyle Snay	kylesnay@gswater.com
Linda Minky	LMinky@BHFS.com
Lindsay Gomez	lgomez@wildermuthenvironmental.com
Lisa Hamilton	Lisa.Hamilton@corporate.ge.com
Marguerite P Battersby	pbattersby@sheppardmullin.com
Maribel Sosa	Maribel_Sosa@ci.pomona.ca.us
Marsha Westropp	MWestropp@ocwd.com
Martin Zvirbulis	martinz@cvwdwater.com
Michelle Lauffer	milauffer@jcsd.us
Mike Thies	mthies@spacecenterinc.com
Neil Miller	neil_miller@ci.pomona.ca.us
W. C. "Bill" Kruger	wkrugers@earthlink.net

Members:

Manuel Carrillo	Manuel.Carrillo@SEN.CA.GOV
Maria Mendoza	mmendoza@wildermuthenvironmental.com
Marilyn Levin	marilyn.levin@doj.ca.gov
Mario Garcia	mgarcia@tvmwd.com
Mark Kinsey	mkinsey@mvwd.org
Mark Ward	mark_ward@ameron-intl.com
Mark Wildermuth	mwildermuth@wildermuthenvironmental.com
Marla Doyle	marla_doyle@ci.pomona.ca.us
Martha Davis	mdavis@ieua.org
Martin Rauch	martin@rauchcc.com
Maynard Lenhart	directorlenhart@mvwd.org
Melanie Otero	melanie_otero@ci.pomona.ca.us
Michael Camacho	MCamacho@pacificaservices.com
Michael P. Thornton (mthornton@tkeengineering.com)	mthornton@tkeengineering.com
Michael T Fife	MFife@bhfs.com
Mike Maestas	mmaestas@chinohills.org
Mike Sigsbee	msigsbee@ci.ontario.ca.us
Mike Williams	mwilliams@airports.sbcounty.gov
Mindy Sanchez	msanchez@ieua.org
Moore, Toby	TobyMoore@gswater.com
Nadeem Majaj	nmajaj@chinohills.org
Nathan deBoom	n8deboom@gmail.com
Pam Sharp	PSharp@chinohills.org
Pam Wilson	pwilson@bhfs.com
Pat Glover	pglover@cityofchino.org
Paul Deutsch	paul.deutsch@amec.com
Paul Hofer	farmwatchtoo@aol.com
Paula Lantz	paula_lantz@ci.pomona.ca.us
Peggy Asche	peggy@wwd.org
Pete Hall	rpetehall@gmail.com
Peter Hettinga	peterhettinga@yahoo.com
Peter Rogers	citycouncil@chinohills.org
Phil Krause	pkrause@parks.sbcounty.gov
Phil Rosentrater	prosentrater@wmwd.com
Randy Lee	rlee@ieua.org
Raul Garibay	raul_garibay@ci.pomona.ca.us
Rick Hansen	rhansen@tvmwd.com
Rick Rees	Richard.Rees@amec.com
Rita Pro	rpro@cityofchino.org
Rob Vanden Heuvel	Robert.t.van@gmail.com
Robert C. Hawkins	RHawkins@earthlink.net
Robert Cayce	rcayce@airports.sbcounty.gov
Robert DeLoach	robertadeloach1@gmail.com
Robert Neufeld	robneu1@yahoo.com
Robert Nobles	Robert.Nobles@cdcr.ca.gov
Robert Tock	rtock@jcsd.us
Robert Wagner	rwagner@wbecorp.com
Robert Young	rkyoung@fontanawater.com
Roger Han	roger_han@praxair.com
Ron Craig	RonC@rbf.com
Rosemary Hoerning	rhoerning@ci.upland.ca.us
Ryan Shaw	rshaw@ieua.org
Sam Fuller	samf@sbvmwd.com
Sandra S. Rose	directorrose@mvwd.org
Sandy Lopez	slopez@ci.ontario.ca.us
Sarah Kerr	skerr@ci.ontario.ca.us
Sarah Schneider	sarah.schneider@amec.com
Scott Burton	sburton@ci.ontario.ca.us
Scott Slater	sslater@bhfs.com
Seth Zielke	sjzielke@fontanawater.com
Shaun Stone	sstone@ci.upland.ca.us

Sheri Rojo
Sherrie Schnelle
Sondra Elrod
Sonya Barber
Sonya Bloodworth
Steve Nix
Steve Riboli
Steven J. Elie
Steven J. Elie
Terry Catlin
Tim Hampton
Tim Mim Mack
Todd Corbin
Tom Cruikshank
Tom Harder
Tom Haughey
Tom Love
Tom O'Neill
Toni Medel
Tracy Tracy
Van Jew
Vicki Hahn
Watermaster Admin Staff
William P. Curley

smrojo@aol.com
Sschnelle@chinohills.org
selrod@ieua.org
sbarber@ci.upland.ca.us
sbloodworth@wmwd.com
snix@chinohills.org
steve.riboli@sanantoniowinery.com
selie@ieua.org
s.elie@mpglaw.com
tcatlin@wfajpa.org
tim_hampton@ci.pomona.ca.us
tmimmack@ci.ontario.ca.us
tcorbin@jcsd.us
tcruikshank@spacecenterinc.com
tharder@thomashardercompany.com
tom@haugheyinsurance.com
TLove@ieua.org
toneill@ci.ontario.ca.us
mmedel@rbf.com
ttracy@mvwd.org
vjew@mvwd.org
vhahn@tvmwd.com

wcurley@rwglaw.com