

**FEE EXEMPT**

1 RUTAN & TUCKER, LLP  
Jeremy N. Jungreis (State Bar No. 256417)  
2 jjungreis@rutan.com  
Scott C. Cooper (State Bar No. 339900)  
3 scooper@rutan.com  
18575 Jamboree Road, 9th Floor  
4 Irvine, CA 92612  
Telephone: 714-641-5100  
5 Facsimile: 714-546-9035

6 Attorneys for  
Cucamonga Valley Water District

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PURSUANT TO GOV. CODE, § 6103

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN BERNARDINO

11 CHINO BASIN MUNICIPAL WATER  
DISTRICT,

12 Plaintiff,

13 vs.

14 CITY OF CHINO, et al.,

15 Defendants.

Case No. RCVRS 51010

[ASSIGNED FOR ALL PURPOSES TO:  
HONORABLE GILBERT G. OCHOA]

**DECLARATION OF AMANDA COKER IN  
SUPPORT OF DEFENDANT  
CUCAMONGA VALLEY WATER  
DISTRICT'S SUPPLEMENTAL BRIEF IN  
SUPPORT OF WATERMASTER'S  
MOTION FOR COURT APPROVAL OF  
THE CORRECTED AND AMENDED  
FISCAL YEARS 2021/22 AND 2022/23  
ASSESSMENT PACKAGES AND  
OPPOSITION TO THE CITY OF  
ONTARIO'S CHALLENGE TO  
WATERMASTER'S APPROVAL OF THE  
CORRECTED AND AMENDED FISCAL  
YEARS 2021/22 AND 2022/23 ASSESSMENT  
PACKAGES**

Date: August 14, 2026  
Trial Date: 10:00am  
Dept: R17

**DECLARATION OF AMANDA COKER**

I, Amanda Coker, declare as follows:

1. I am the Deputy Director of Engineering for Cucamonga Valley Water District (“CVWD”), a party to this this action. I make this Declaration in support of CVWD’S SUPPLEMENTAL BRIEF IN SUPPORT OF WATERMASTER’S MOTION FOR COURT APPROVAL OF THE CORRECTED AND AMENDED FISCAL YEARS 2021/22 AND 2022/23 ASSESSMENT PACKAGES AND OPPOSITION TO THE CITY OF ONTARIO’S CHALLENGE TO WATERMASTER’S APPROVAL OF THE CORRECTED AND AMENDED FISCAL YEARS 2021/22 AND 2022/23 ASSESSMENT PACKAGES. I implement and oversee CVWD’s Chino Basin obligations, and I am the person at CVWD responsible for most of the interface between CVWD and the Chino Basin Watermaster (“Watermaster”). Prior to assuming my current duties, I worked in a similar position for the City of Chino beginning in 2016, where I engaged extensively on Chino Basin matters with Watermaster. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. CVWD is a retail water agency that serves customers using a combination of water sources, including: (a) imported water purchased from the Metropolitan Water District (“Metropolitan”) via the Inland Empire Utilities Agency (“IEUA”); (b) an annual right to extract groundwater as part of the “Safe Yield” of the Chino Basin; and (c) water stored in the Chino Basin for future use—such as through the Metropolitan/IEUA Dry Year Yield (“DYY”) Program. Imported water from Metropolitan that it obtains from the State Water Project in northern California is delivered to CVWD by IEUA, Metropolitan’s wholesale water distributor in the Chino Basin, at CVWD’s surface water treatment plant, and is, generally speaking, CVWD’s most expensive source of supply. Annual groundwater rights in the Chino Basin are limited, carefully regulated, and may be supplemented through replenishment water—which is generally charged to CVWD at the same cost as imported water.

3. CVWD intentionally uses imported water during normal and wet years to reduce stress on Chino Basin groundwater supplies and to preserve groundwater storage for droughts,

1 emergencies, or times when imported water deliveries from Metropolitan are reduced.  
2 Establishing a significant baseline of imported water usage is important to CVWD for ensuring  
3 access to imported water supplies during dry year allocations. This is because the amount of  
4 imported water an agency uses over time helps establish a higher baseline for future allocation  
5 years, when imported water access can be rationed by Metropolitan as a result of cutbacks on the  
6 State Water Project. The higher the baseline of annual imported water use an agency establishes,  
7 the more that agency is able to purchase from Metropolitan at the normal cost during years where  
8 Metropolitan does not have enough water to meet all demands. By buying imported water during  
9 normal and wet years, even at higher cost than other available options, CVWD reduces the risk of  
10 future shortages and cost overruns during drought years.

11       4.       After the 2015–2016 drought, CVWD adopted a deliberate strategy to increase its  
12 use of imported water to approximately 30,000 acre-feet per year beginning in Fiscal Years 2018  
13 and 2019. This approach was intended to allow CVWD to meet customer demand without over-  
14 pumping groundwater, to avoid costly replenishment obligations, and to build CVWD’s imported  
15 water baselines for future droughts.

16       5.       Following the drought in 2015-2016, there was a wet winter in 2016/17, leading to  
17 a request from MWD on June 23, 2017 to deliver excess supplies to be recharged into the Chino  
18 Basin under the DYY program. Recognizing CVWD’s unique ability to shift from high volumes  
19 of MWD imported water purchases to a corresponding high volume of stored imported water  
20 extraction by CVWD’s wells, CVWD was urged to make an operational change by Watermaster  
21 and IEUA. Specifically, CVWD was asked to pump Metropolitan’s stored water from the State  
22 Water Project in order to make sure the additional water added to the DYY program by  
23 Metropolitan in 2017 could and would be extracted by the end of the DYY Program amidst  
24 challenges with other DYY parties’ ability to perform their obligations under the DYY Program.  
25 This change sought by Metropolitan and IEUA ultimately resulted in the 2019 letter agreement.  
26 CVWD was willing to assist Watermaster, IEUA and Metropolitan by taking more stored  
27 imported water from the DYY accounts during the 2020-21 and 2021-22 production years, rather  
28 than imported water, because it dovetailed with CVWD’s existing strategy to increase CVWD’s

1 imported water baseline. Metropolitan treated the withdrawal of its stored imported water in the  
2 Chino Basin per the DYY Program the same as it treated the delivery of imported water to CVWD  
3 via a pipe for purposes of ensuring CVWD had a sufficiently large, imported water baseline.  
4 Moreover, assisting Metropolitan per their request would also support other DYY participating  
5 agencies who had indicated they were unable to withdraw the requisite amount of water to  
6 “perform” under the amended DYY Program Agreement prior to the end of the DYY Program in  
7 2028. Failure to collectively perform within the Chino Basin by withdrawing all stored  
8 Metropolitan water by 2028 would trigger significant penalties under the terms of the DYY  
9 Program. Attached hereto as Exhibit A is a true and correct copy of a letter CVWD dated August  
10 6, 2025 that CVWD sent to Watermaster regarding CVWD’s reliance on Metropolitan and IEUA  
11 in deciding to take stored DYY imported water rather than imported water through a pipeline. .

12         6.         CVWD cannot sustainably increase groundwater pumping beyond certain levels  
13 because groundwater rights in the Chino Basin are finite and are based on a percentage of the safe  
14 yield of the Chino Basin. Producing more groundwater than allowed either depletes stored  
15 reserves or requires CVWD to incur significant additional costs to replace or replenish that water.  
16 As a result, CVWD has never historically relied on groundwater production at the elevated levels  
17 now being proposed by Ontario for assessment, which significantly exceeds CVWD’s annual  
18 groundwater production right.

19         7.         The DYY Program allows Metropolitan to store imported water underground in the  
20 Chino Basin during wet years so that it can be recovered during dry years. The water stored in the  
21 DYY account is owned by Metropolitan. When local agencies produce DYY water, they are  
22 pumping Metropolitan-owned water which was transported from Northern California and  
23 delivered to the Chino Basin where it was percolated into the ground for later use. It is not native  
24 groundwater, and Metropolitan does not treat it as such. Withdrawals of DYY water stored by  
25 Metropolitan are credited by Metropolitan as the take of imported water—both in the calculation  
26 of Metropolitan’s readiness to serve charge (“RTS”) and in establishing a higher baseline of  
27 historic imported water for purposes of future cutbacks by Metropolitan when it has insufficient  
28 water from the State Water Project.

1           8.       In 2019, a Letter Agreement initiated by Metropolitan, the owner of the stored  
2 water in the DYY Program, authorized agencies such as CVWD to voluntarily pump water from  
3 the DYY storage account. When CVWD did so, it reduced its other imported water purchases  
4 from Metropolitan via pipeline from IEUA and instead withdrew Metropolitan's imported water  
5 through CVWD's groundwater wells. The water CVWD withdrew had been delivered by MWD  
6 to IEUA and recharged into the Basin in 2017 and 2018. Importantly, CVWD paid Metropolitan  
7 for the stored imported water CVWD withdrew per the 2019 Letter Agreement at the normal  
8 imported water rates, including volumetric charges and readiness-to-serve charges.

9           9.       CVWD's participation in the DYY Program did not increase its reliance on native  
10 groundwater or the Chino Basin's Safe Yield. Instead, it changed the way CVWD physically  
11 received imported water, from delivery of surface water supplies at its treatment plant via a  
12 pipeline, to withdrawal of Metropolitan-owned stored imported water from the ground via  
13 CVWD's wells. Had CVWD not participated in the DYY Program, it would have continued  
14 purchasing and using similar amounts of imported water through its surface water facilities, and  
15 CVWD had no basis to realize it was harming anyone by its voluntary takes. Indeed, CVWD  
16 believed it was helping the other DYY participants since some had indicated a future inability to  
17 timely perform to Metropolitan's specifications.

18           10.     In Production Year 2020-2021 (reflected in the FY 2021/2022 Assessment  
19 Package), CVWD purchased 20,500.0 AF of water from Metropolitan through IEUA for  
20 \$15,627,100.00 and withdrew an amount corresponding to the amount CVWD paid for Tier 1  
21 Metropolitan water from Watermaster's DYY storage account. When purchasing and withdrawing  
22 this water, CVWD's intent and understanding was that it was pumping imported DYY water, not  
23 native groundwater, and Metropolitan credited CVWD's withdrawals as if CVWD had taken  
24 imported water.

25           11.     In Production Year 2021-2022 (reflected in the FY 2022/2023 Assessment  
26 Package), CVWD purchased 17,912.7 AF of water from Metropolitan through IEUA for  
27 \$14,026,247 and withdrew an amount corresponding to the amount CVWD paid for Tier 1  
28 Metropolitan water from Watermaster's DYY storage account. When purchasing and withdrawing

1 this water, CVWD's intent and understanding was that it was pumping imported DYY water, not  
2 native groundwater.

3 12. In addition to purchasing this imported water from Metropolitan, CVWD's  
4 pumping of the DYY water was included in the Readiness to Serve ("RTS") charge imposed on  
5 users of imported water by IEUA. When accounting for an estimated RTS charge, CVWD will  
6 have paid approximately \$34,909,347.00 for the DYY water it withdrew due to purchase of DYY  
7 water for these two production years.

8 13. The RTS charge is a pass-through assessment imposed by IEUA on all parties who  
9 purchase imported water in the Chino Basin based on a 10-year rolling average of imported water  
10 purchases. For a given year, the total RTS charge, which is imposed on a pro rata basis based upon  
11 historic deliveries of imported water, does not change. Instead, the total charge is passed along to  
12 the individual parties who purchase imported water based on that party's pro-rata share of all  
13 imported water purchased. Because this RTS calculation properly includes CVWD's DYY  
14 withdrawals of Metropolitan's stored water as imported water, CVWD pays a higher proportional  
15 share of the RTS than it would if the DYY water was considered physical production of native  
16 groundwater. Therefore, if CVWD's DYY pumping was reclassified as simple production of  
17 groundwater, CVWD's proportional share of the RTS would have to be reduced. This would result  
18 in increased RTS charges for all other parties in the Basin who take imported water.

19 14. If CVWD's claimed DYY pumping was really just the physical production of  
20 groundwater, CVWD would have never purchased the DYY water from Metropolitan or paid a  
21 proportional share of RTS charges on this water.

22 15. If CVWD had not voluntarily participated in the DYY Program, it would have  
23 continued taking deliveries of similar amounts of imported water through a pipeline, with no  
24 increase in groundwater production. Treating DYY withdrawals differently from imported water  
25 deliveries, even though both are derived from the same source of supply the State Water Project,  
26 has the effect of creating duplicative charges on CVWD for the same imported water, thereby  
27 causing substantial financial and operational harm to CVWD and creating a large financial  
28 windfall for Ontario.

1           16.     If CVWD is now required to return that water to the DYY account, as Ontario  
2 requests, or if the same water is reclassified as groundwater production for DRO purposes, CVWD  
3 would be charged again, this time as if the water were native groundwater—even though CVWD  
4 already paid Metropolitan the full imported water charge for the exact same water. This results in  
5 CVWD paying twice for the same water, with a total additional cost to CVWD of \$26,653,347 if  
6 CVWD is required to “put the water back”, and Watermaster is required to recalculate CVWD’s  
7 Desalter Replenishment Obligation (DRO) as Ontario has requested. On that note, it is improper to  
8 include DYY water in DRO calculations because DYY withdrawals are exempt from DRO  
9 calculations per a 2019 amendment to the Peace II Agreement. A true and correct copy of the  
10 order of the Superior Court dated March 15, 2019 that amended the Peace II Agreement is  
11 enclosed herewith as Exhibit B.

12           17.     To date, CVWD has paid approximately \$34.9 million related to its participation in  
13 the DYY Program in 2021 and 2022. This amount reflects the cost of purchasing imported water  
14 from Metropolitan and related charges, but it is a conservative estimate because some of those  
15 charges continue for up to ten years after the water is purchased and has not yet been fully paid. If  
16 CVWD is now also required to pay additional groundwater assessments, replenishment costs to  
17 replenish the DYY storage account, and desalter replacement charges for that same water,  
18 CVWD’s total cost would rise to approximately \$61.6 million, even though the water was already  
19 purchased and paid for as imported water. CVWD had no way to know that they would be  
20 incurring these kinds of costs for simply attempting to assist Metropolitan and IEUA rather than  
21 taking imported water from a pipeline, which CVWD would have done instead if it had not  
22 withdrawn stored imported water via the 2019 Letter Agreement.

23           18.     Additionally, requiring CVWD to return water to the DYY account would  
24 substantially reduce CVWD’s stored water reserves. These reserves function as a savings account  
25 that protects customers during droughts and periods of reduced imported water availability.  
26 Depleting these reserves would undermine long-term water reliability for the community CVWD  
27 serves.

28           19.     Ontario’s demand that CVWD return 38,421.8 AF of imported water into

1 Metropolitan’s DYY storage account—in addition to 7,500 AF from FWC—would create  
2 significant hardship for other DYY parties who are, based upon the information I have obtained at  
3 recent IEUA meetings, and from recent communications, regarding the DYY Program, are unable  
4 to meet their requirements to fully “perform” by pumping out all DYY water prior to the end of  
5 the DYY Program in 2028 at the current DYY account balance at 63,808 AF. Ontario’s request  
6 that all DYY water extracted in FY2021 and FY2022 be “put back” in would increase the total  
7 amount in the Metropolitan DYY account to 109,721 AF—which will result in a violation of the  
8 2003 Funding Agreement with Metropolitan since the DYY Account is not allowed to exceed  
9 100,000 AF. A true and correct copy of the 2003 Funding Agreement is attached hereto as Exhibit  
10 C.

11           20.       Additionally, given the difficulty that DYY Program participants other than  
12 Cucamonga will experience in fully performing prior to the end of the program on March 1, 2028,  
13 the 45,913 AF previously withdrawn by Cucamonga and Fontana significantly benefitted the other  
14 DYY Parties as there is now less water in the DYY Account that they will need to withdraw prior  
15 to the end of the DYY Program, and they are less likely to incur penalties because of their failure  
16 to perform per the DYY Program Agreement (as amended).

17           21.       On February 26, 2026, the City of Chino, City of Upland, City of Chino Hills,  
18 Jurupa Community Services District, City of Pomona, and Monte Vista Water District sent a letter  
19 to IEUA requesting assistance in meeting their minimum production baselines under the DYY  
20 Program. A true and correct copy of that letter is attached hereto as Exhibit D.

21           22.       On February 4, 2026, the City of Ontario sent a letter to IEUA regarding Dry Year  
22 Yield Operating Changed Conditions and Variance, where Ontario requested that its performance  
23 baseline be reduced due to its inability to meet the Exhibit G performance criteria required under  
24 the DYY Program. A true and correct copy of this letter is attached hereto as Exhibit E.


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

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Executed on July 9, 2026, at Rancho Cucamonga, California.



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Amanda Coker

# **Exhibit “A”**

**John Bosler**  
Secretary/General Manager/CEO

August 6, 2025

Mr. Todd Corbin  
General Manager  
Chino Basin Watermaster  
9641 San Bernardino Road  
Rancho Cucamonga, CA 91730  
Email: tcorbin@cbwm.org

**Re: July 23<sup>rd</sup> Workshop on the Implementation of Dry Year Yield Appellate Court Ruling Comments**

Dear Mr. Corbin,

Cucamonga Valley Water District (“CVWD”) appreciates the opportunity to provide written comments on the workshop facilitated by the Chino Basin Watermaster (“Watermaster”) on July 23, 2025, and for the opportunity to discuss the implementation of the appellate court ruling which pertains to the Watermaster’s Dry Year Yield Program (“DYYP”). CVWD is a long-term participant in the DYYP, through our Local Agency Agreement with the Inland Empire Utilities Agency (“IEUA”) and has consistently met CVWD’s performance obligations throughout the history of the program and in accordance with eight contract amendments to the 2004 DYYP Agreement, and the 2019 Letter Agreement that provided additional clarity on obligations of the Parties participating in the DYYP. Although CVWD has been able to meet performance obligations throughout the duration of the DYYP because of investments it has made in accordance with its obligations under the DYYP, other participating DYYP agencies, such as the City of Ontario (“Ontario”) have been challenged with water quality/blending requirements and infrastructure concerns that have limited their ability to comply with DYYP calls by the Metropolitan Water District (“MWD”), and have ultimately led to several of the contract amendments and the 2019 Letter Agreement so as to allow the DYYP program to function as designed.

During fiscal year 16/17 and 17/18, MWD, the entity which “owns” the imported water stored in the DYYP storage account, made a request to Watermaster to deliver 45,000 acre-feet (AF) of imported water to the DYYP storage account due to a series of wet years and excess water availability in Northern California. Due to the past performance concerns associated with infrastructure limitations for certain agencies, including the City of Ontario, MWD agreed, via the 2019 Letter Agreement, to expand the terms for performance from the DYYP storage account to allow for voluntary extractions to avoid stranding MWD stored water at the end of the agreement term in 2028 and to give MWD an additional location to store excess water from Northern California. If water remained in the account after the 2028 expiration of the agreement, it would be billed to all of the DYYP participating parties at the MWD tier 1 rate. The 2019 Letter Agreement between MWD, Watermaster, Three Valleys Municipal Water District (TVMWD) and IEUA memorialized the shift in how MWD would administer the program so as to allow sufficient quantities of the DYYP stored water to be timely withdrawn from the account, notwithstanding the inability of some agencies, who had taken significant funds from MWD to construct DYYP facilities, to perform their obligations under the amended DYYP. The changes implemented via the 2019 Letter Agreement were seen as a benefit to all of the performing parties as it would allow participating agencies with sufficient pumping capacity to draw down the DYYP storage account, which would alleviate the need for agencies with pumping challenges to perform according to their otherwise applicable contractual obligation during a call by MWD.

Additionally, the Chino Basin was approaching expiration of a maximum groundwater storage limit on June 30, 2021, which included Chino Basin parties’ local storage in addition to MWD’s DYYP stored water. The 2019 Letter Agreement and associated voluntary take provision was a way to maintain storage below the limit and provide additional time while the Watermaster, and their consultants and attorneys, studied and obtained CEQA clearance and Court approval to raise the storage limit to accommodate increasing volumes of local storage, primarily consisting of excess carry over.

With the 2019 Letter Agreement executed by the four parties to the amended DYYP contract (MWD, Watermaster, TVMWD, and IEUA), CVWD in good faith proceeded with voluntary takes that were specifically authorized by the 2019 Letter Agreement,<sup>1</sup> by shifting importing water purchases to groundwater production. It is important to note that CVWD paid MWD for the voluntary takes, since DYYP stored water is owned by MWD and is in essence imported water, which means CVWD paid MWD Tier 1 volumetric rates plus the share of MWD Readiness to Serve (RTS) charges which are factored into the ten-year rolling average calculation. CVWD has paid MWD a total of \$15 million for water purchased through MWD under the DYYP plus CVWD's RTS share which has thus far resulted in an additional \$1.3 million with an estimated total of \$5.2 million over the ten-year period. That means the total cost to CVWD for participating during the two years in question is about \$20 million, inclusive of the credit provided by MWD but not factoring in pumping and transmission costs, which was offset by the O&M credit.

In FY2018 and FY2019, CVWD had a strategy to produce imported water in quantities of around 30,000 AF/Y to preserve its groundwater storage for drought years and increase its imported water baseline during MWD/IEUA allocation years. This strategy came at a cost and was an investment, whether purchasing imported water delivered as surface water or pumped from the DYYP storage account. CVWD's strategy can be seen going into effect FY2018 (CBWM Assessment Year 2019) and FY 2019. If the 2019 Letter Agreement did not exist, CVWD would have produced imported water in similar quantities as the two prior years before the Agreement allowed voluntary participation assessment years in question, resulting in the same production assessment.

Following CVWD and Fontana Water company's participation in voluntary takes from the DYYP, Ontario challenged the FY21/22 and FY22/23 Watermaster Assessment packages. The result of the ensuing litigation was a California Court of Appeals ("Court") disposition reversing the Superior Court's November 3, 2022, and August 23, 2023, orders. The superior court was directed to enter new orders and directed Watermaster to correct and amend its FY 2021/2022 and 2022/2023 Assessment Packages.

We are providing the following comments on CVWD's interpretation of the disposition and how that corresponds to implementation of the appellate court ruling.

- **Define Ontario's Financial Harm**

The court of appeals stated there was financial harm to the City of Ontario, but it is unclear what that harm is. Indeed, we can discern no possible harm to Ontario since any increased costs to Watermaster associated with implementing the DYYP would have been offset by MWD's annual administrative fees per Section VI.D.3 of the DYYP Agreement. All of the parties to the DYYP would greatly benefit from Ontario's clarification on the financial injury it has sustained as that is the very issue that Watermaster is tasked with addressing on remand through revision of the assessment packages. Further, it is difficult to conceive how Ontario could be financially harmed under the DYYP where Ontario cannot demonstrate it has the ability to meet its performance requirements under the DYYP.

- **If all water must be assessed, CDA production must be included**

The City of Ontario argued in its briefs and in its argument to the Court of Appeal that all water produced from the Basin should be included in the Watermaster production assessment, and that a cost shift resulted from the omission of DYYP production to those parties who did not voluntarily produce per the 2019 Letter Agreement. While CVWD does not agree that a cost shift occurred due to its participation in the DYYP, following the logic of the Ontario argument production from the Chino Basin Desalter Authority (CDA) should also be subject to production assessment—and CDA extractions should likely be retroactively assessed going back four years.<sup>2</sup> Omission of CDA production from the assessment calculation has resulted in a substantial shift in production assessments negatively impacting CVWD (and creating a windfall for Ontario and other CDA participants based on

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<sup>1</sup> Page 2 of the 2019 Letter Agreement states, in pertinent part "[b]y agreement of the parties, any water stored after June 1, 2017, would be purchased from the account by IEUA and Three Valleys when the parties pump over the groundwater baseline as defined in Exhibit G. A copy of Exhibit G is enclosed in this letter. This pumping could be the result of a response to a call for pumping made by Metropolitan or it could be through normal operational decisions made by the individual parties in a given year." CVWD was specifically authorized by the 2019 Letter Agreement to pump above and beyond the amounts listed in Exhibit G to DYYP Amendment 8, and CVWD promptly complied with its obligation to "submit a certification for extraction from the account" to IEUA.

<sup>2</sup> In its Opening Brief before the Court of Appeal, Ontario argued that "Watermaster's position--that it may pick and choose when to assess water produced from the Basin--invites gamesmanship. Water suppliers can easily categorize water in ways that would allow them to avoid paying normal assessments for production. By 'coloring the water something else'--*i.e.*, by stating that they produced 2,500 acre-feet of imported or stored groundwater rather than native groundwater--parties like FWC and CVWD can circumvent fees and improperly shift costs to others, as they have done here."

Ontario's previous arguments), and CVWD therefore requests that CDA production be assessed both within the revised FY 21/22 and 22/23 assessment packages and into the future with the upcoming assessment packages.

- **MWD and operating committee should weigh in on determining performance under the 2015 amendment**

Absent of the 2019 Letter Agreement, performance obligations under the DYYP revert to Amendment No. 8 to the Agreement for the Chino Basin Groundwater Storage Program approved in 2015 (2015 Amendment), with performance requirements specified in Exhibit G. CVWD asks that MWD and the DYYP Operating Committee provide guidance on performance under the 2015 Amendment. It is CVWD's understanding that MWD is the agency which determines if performance requirements are met, not Ontario, and MWD's determination is entitled to deference. Our analysis of Exhibit G of the 2015 Amendment results in performance being met under both the groundwater and imported water baselines with CVWD imported water purchases reduced below the 3-year baseline and groundwater pumping increased above the 3-year baseline, as evidenced by MWD certification. If performance is confirmed by MWD, production under the DYYP for the years in question was proper and should not be considered for retroactive assessment. Additionally, water stored in the DYYP belongs to MWD. MWD has sold that water to CVWD and the water has been produced. Consequently, there should be no recalculation of storage account balances considered.

- **2019 Letter Agreement is not invalid, should go through the WM process for approval**

While Ontario asserts that the Court of Appeals invalidated the 2019 Letter Agreement between IEUA, MWD, TVWD and Watermaster, this is not what the Court of Appeals decision actually says. Indeed, on remand, Watermaster is directed to evaluate the future viability and application of the 2019 Letter Agreement (see COA Opinion at p. 39), which would not be possible had the Court of Appeals actually invalidated the 2019 Letter Agreement as Ontario now contends. While the Court expressed concerns about the 2019 Letter Agreement and the manner of its approval, it was not invalidated by the Court.<sup>3</sup> CVWD believes that the intent and objectives of the 2019 Letter Agreement retain vitality through the remaining term of the DYYP through 2028, and it can be harmonized with the DYY Program Agreement as amended. CVWD therefore requests that the Watermaster route the 2019 Letter Agreement through the Watermaster process and ultimately seek Watermaster Board approval at the earliest opportunity.

- **MWD annual admin fee should be considered as payment for any assessments**

Additionally, as part of the DYYP agreement MWD paid substantial incentives to the DYYP parties for infrastructure in exchange and preparation to perform on call years. On top of that, the DYYP agreement includes provisions for MWD to pay an annual fee to CBWM towards administrative expenses, regardless of if water is recharged or produced from the program in any given year. CVWD contends that this administrative fee should cover any production assessments levied on DYYP withdrawals resulting from performance calls or voluntary takes. MWD has paid over \$3 million in administrative assessments thus far, with an additional \$800,000 estimated through the end of the term.

Thank you again for the opportunity to provide comments, we look forward to a resolution which acknowledges CVWD's good faith participation in the DYYP under the guidance of MWD, Watermaster, IEUA and TVMWD.

Sincerely,



John Bosler, PE  
General Manager/CEO  
Cucamonga Valley Water District

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<sup>3</sup> The Court of Appeals concluded "that Watermaster erred in its interpretation and application of the 2019 Letter Agreement ... [thus] our focus is on the interpretation and application of the 2019 Letter Agreement." (COA Opinion at p. 25.)

# **Exhibit “B”**

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3390 UNIVERSITY AVENUE, 5TH FLOOR  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

1 GENE TANAKA, Bar No, 101423  
2 Gene.Tanaka@bbkklaw.com  
3 BEST BEST & KRIEGER LLP  
4 2001 N. Main Street, Suite 390  
5 Walnut Creek, California 94596  
6 Tel.: (925) 977-3300  
7 Fax: (925) 977-1870

8 STEVE ANDERSON, Bar No. 186700  
9 Steve.Anderson@bbkklaw.com  
10 SARAH CHRISTOPHER FOLEY, Bar No. 277223  
11 Sarah.Foley@bbkklaw.com  
12 BEST BEST & KRIEGER LLP  
13 3390 University Avenue, 5th Floor  
14 Riverside, CA 92501  
15 Tel.: (951) 686-1450  
16 Fax: (951) 686-3083

17 Attorneys for Defendant and Appellant  
18 CUCAMONGA VALLEY WATER DISTRICT

19 [Other Attorneys on Next Page]

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 COUNTY OF SAN BERNARDINO

22 CHINO BASIN MUNICIPAL WATER  
23 DISTRICT,

24 Petitioner,

25 v.

26 CITY OF CHINO, et al.,

27 Defendants.

Exempt from Filing Fees  
Per Gov't Code § 6103

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO CIVIL DIVISION

MAR 15 2019

BY   
ASHLEY LAWLESS, DEPUTY

Case No. RCVRS 51010  
Judge: Stanford E. Reichert

~~[Proposed]~~ ORDER

[filed with Notice of Mot. and Mot. to  
Approve Amendments to Appropriative  
Pool Pooling Plan and Ct.-Approved  
Management Agreements; and Decl. of  
Sarah Christopher Foley]

Date: March 15, 2019  
Time: 1:30 p.m.  
Dept.: S35

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3390 UNIVERSITY AVENUE, 5TH FLOOR  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

- 1 THOMAS S. BUNN III, Bar No. 89502  
tombunn@lagerlof.com  
2 LAGERLOF SENEAL GOSNEY & KRUSE LLP  
301 N. Lake Avenue, 10th Floor  
3 Pasadena, CA 91101-5123  
4 Tel.: (626) 793-9400  
Fax: (626) 793-5900  
5 Attorneys for Defendant and Appellant City of Pomona  
6 ARTHUR G. KIDMAN, Bar No. 61719  
akidman@kidmanlaw.com  
7 ANDREW B. GAGEN, Bar No. 212257  
agagen@kidmanlaw.com  
8 KIDMAN GAGEN LAW LLP  
2030 Main Street, Suite. 1300  
9 Irvine, CA 92614  
10 Tel.: (714) 755-3100  
Fax: (714) 755-3110  
11 Attorneys for Defendant and Appellant Monte Vista Water District  
12 JIMMY L. GUTIERREZ, Bar No. 59448  
jimmy@city-attorney.com  
13 JIMMY L. GUTIERREZ, A LAW CORPORATION  
12616 Central Avenue  
14 Chino, CA 91710  
15 Tel.: (909) 591-6336  
Fax: (909) 717-1100  
16 Attorneys for Defendant and Appellee City of Chino  
17 ROBERT E. DONLAN, Bar No. 186185  
red@eslawfirm.com  
18 ELLISON SCHNEIDER HARRIS & DONLAN LLP  
2600 Capital Avenue, Suite 400  
19 Sacramento, CA 95816  
20 Tel.: (916) 447-2166  
Fax: (916) 447-3512  
21 Attorneys for Defendant and Appellee Jurupa Community Services District  
22 FREDERIC A. FUDACZ, Bar No. 50546  
ffudacz@nossaman.com  
23 NOSSAMAN LLP  
777 S. Figueroa Street, 34th Floor  
24 Los Angeles, CA 90017  
25 Tel.: (213) 612-7800  
Fax: (213) 612-7801  
26 Attorneys for Defendant and Appellee City of Ontario  
27  
28

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3390 UNIVERSITY AVENUE, 5TH FLOOR  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

~~PROPOSED~~ ORDER

On March 15, 2019, in Department S35 of the above-entitled Court, the Motion to Approve Amendments to Appropriative Pool Pooling Plan and Court-Approved Management Agreements by Defendants and Appellants Cucamonga Valley Water District, Monte Vista Water District, and City of Pomona and Defendants and Respondents City of Chino, Jurupa Community Services District, and City of Ontario ("Motion to Approve") came on for hearing, the Honorable Stanford E. Reichert, Judge presiding. The parties stated their appearances on the record.

After consideration of the papers filed in connection with the Motion to Approve and arguments of counsel, the Court hereby:

(1) Approves amendments to the Appropriative Pool Pooling Plan, ~~the Peace Agreement, and the Peace II Agreement~~ ("Appropriative Pool Pooling Plan" and CAMA Amendments") that are attached hereto, ~~and~~ *the amendments attached hereto.*

*2. Watermaster shall proceed in accordance with Resolution 2017-03 and the documents attached thereto.*

~~(2) Orders Watermaster to implement the Judgment in accordance with the Appropriative Pool Pooling Plan and CAMA Amendments that are attached hereto.~~

*3. Directing Watermaster to proceed to redetermine Safe Yield as set forth on pages 15-18 of the Court's April 28, 2017, order.*  
IT IS SO ORDERED.

Dated: \_\_\_\_\_, \_\_\_, 2019

Honorable Stanford E. Reichert  
Judge of the Superior Court

*4. Except as explicitly set forth above the motion is denied.*

*Date: 3-15-19*



IT IS SO ORDERED  
*Stanford E. Reichert*  
\_\_\_\_\_  
JUDGE  
STANFORD E. REICHERT

ATTACHMENT

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LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3390 UNIVERSITY AVENUE, 5TH FLOOR  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

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BEST BEST & KRIEGER LLP  
3390 UNIVERSITY AVENUE, 5TH FLOOR  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

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## Exhibit A

### Proposed Changes to Appropriative Pool Pooling Plan and CAMA

**1. Appropriative Pool Pooling Plan.** The introductory sentence to Exhibit H, ¶10 of the Judgment is amended to read as follows:

10. Unallocated Safe Yield Water. To the extent that, in any ~~year~~ *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:

**2. Early Transfer**

**A.** Section 1.1(o) of the Peace Agreement is amended to read as follows:

(o) "Early Transfer" means the reallocation of Safe Yield not Produced by the Agricultural Pool to the Appropriative Pool on an annual basis *after the allocations in subdivisions (a)(1) and (a)(2) of* ~~rather than according to the five year increment described in Paragraph 10 of Exhibit "H" of the Judgment;~~

**B.** Section 5.3(g) of the Peace Agreement is amended to read as follows:

(g) Watermaster shall approve an "Early Transfer" of water to the Appropriative Pool ~~in an amount not less than 32,800 acre-feet per year that is the expected approximate quantity of water not Produced by the Agricultural Pool on an annual basis~~ *The quantity of water subject to Early Transfer under this paragraph shall be the greater of (i) 32,800 acre feet of (ii) 32,800 acre feet plus the actual quantity of water not Produced by the Agricultural Pool for that Fiscal Year that is remaining after all the land use conversions are satisfied pursuant to 5.3(h) below.*

(i) The Early Transfer water shall be annually allocated among the members of the Appropriative Pool in accordance with their pro-rata share of the initial Safe Yield.

(ii) 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.

(iii) 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.

(iv) The parties to the Judgment and Watermaster shall Produce water in accordance with the Operating Safe Yield and shall procure sufficient quantities of Replenishment Water to satisfy over-Production requirements, whatever they may be, and avoid Material Physical Injury to any party to the Judgment or the Basin;

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(v) Nothing herein shall be construed as modifying the procedures or voting rights within or by the members of the Agricultural Pool.

3. **Conversion Claims.** Subparagraph (b)(3)(i) of Exhibit H, ¶ 10 of the Judgment is amended to read as follows:

(i) For the term of the Peace Agreement *and any extension thereof*, 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.

4. **Controlled Overdraft.** Pursuant to section 7.2(e)(ii) of the Peace II Agreement, 175,000 acre-feet of controlled overdraft (Re-Operation water) will be allocated to Desalter replenishment over a 17-year period, beginning in 2013-14 and ending in 2029-30, according to the schedule attached as Exhibit A.

5. **New Yield.** Section 7.1 of the Peace II Agreement, entitled "New Yield Attributable to Desalters," is deleted. It is replaced by new section 6.2(b)(ii) as set forth in section 6 below.

6. **Desalter Replenishment.** Section 6.2(b) of the Peace II Agreement is amended to read as follows:

(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 8(e) 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 6.2(a), the OBMP Special Assessment levied by Watermaster will be distributed as provided in section 9.2 below. The Special OBMP Assessment will be assessed pro-rata on each member's share of Safe Yield, followed by

(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:*

(1) *85% of the total (8,500 afy) will be allocated according to the Operating Safe Yield percentage of each Appropriative Pool member; and*

(2) *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.*

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

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

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

*(iii) (ii)-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. pro-rata based on each Producer's combined total share of Operating Safe Yield and the previous year's actual production. Desalter Production is excluded from this calculation. A sample calculation of the allocation of the remaining desalter obligation is shown in Exhibit \_\_ to this Peace II Agreement. However, if there is a material reduction in the net cost of Desalter product water to the purchasers of product water, Watermaster may re-evaluate whether to continue the exclusion of Desalter Production but only after giving due regard to the contractual commitment of the parties.*

*(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%).*

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(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 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)), 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) ~~(iii)~~ *The quantification of any Party's share of Operating Safe Yield does not include either land use conversions or Early Transfers.*

7. **Allocation of Non-Agricultural Pool OBMP Special Assessment.** The introductory sentence of section 9.2(a) of the Peace II Agreement is amended to read as follows:

a. For a period of ten years from the effective date of the Peace II Measures, any water (or financial equivalent) that may be contributed from the Overlying (Non-Agricultural) Pool in accordance with paragraph 8(e)-5(c) of Exhibit G to the Judgment (as amended) will be apportioned among the members of the Appropriative Pool in each year as follows:

LAW OFFICES OF  
 BEST BEST & KRIEGER LLP  
 3390 UNIVERSITY AVENUE, 5TH FLOOR  
 P.O. BOX 1028  
 RIVERSIDE, CALIFORNIA 92502

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**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** Non-Agricultural Pool Assessment	(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)
	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** Non-Agricultural Pool Assessment	(12,500.000)	(12,500.000)	(12,500.000)	(5,000.000)	(5,000.000)	(5,000.000)	(5,000.000)	(5,000.000)
	(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

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- 9 -

[Redacted] Order

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**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

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**Attachment: Peace II Agreement, Section 6.2 (b)(iii)**  
**Allocation of Appropriative Pool Remaining Desalter Replenishment Obligation (RDRO)**

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

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 Package 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	(799.499)	0.000	(8,764)	18,018.347	842.427
Manlygold 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	(131.480)	0.000	0.000	(5,771.667)	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	(6,428.101)	(1,859.193)	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)	(1,338.973)	0.000	92.652	105,876.384	6,742.552

04342.0010831742245.1

Order

# **Exhibit “C”**

**AGREEMENT NO. 49960**  
**GROUNDWATER STORAGE PROGRAM**  
**FUNDING AGREEMENT**

**BY AND AMONG**

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

**AND**

**INLAND EMPIRE UTILITIES AGENCY**

**AND**

**THREE VALLEYS MUNICIPAL WATER DISTRICT**

**AND**

**CHINO BASIN WATERMASTER**

**DATED AS OF \_\_\_\_\_, 2003**

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## GROUNDWATER STORAGE PROGRAM FUNDING AGREEMENT

**THIS GROUNDWATER STORAGE PROGRAM FUNDING AGREEMENT** (this “Agreement”), dated as of March 1, 2003, is entered into by and among **THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA** (“**Metropolitan**”), a public entity of the State of California, **INLAND EMPIRE UTILITIES AGENCY**, a municipal water district of the State of California (“**IEUA**”), **THREE VALLEYS MUNICIPAL WATER DISTRICT**, a municipal water district of the State of California (“**TVMWD**”) and **CHINO BASIN WATERMASTER**, an entity established by the Superior Court of the State of California as described in Recital F below (“**Watermaster**”).

### I. RECITALS

- A. In March 2000, California voters approved Proposition 13 (“**Prop. 13**”) authorizing the State of California to sell \$1.97 billion in general obligation bonds for water related projects throughout the State. The Governor’s Budget Act for 2000, Chapter 52, Statutes of 2000, appropriated to the California Department of Water Resources (“**DWR**”) local assistance grants for groundwater storage and supply reliability projects in the amount of \$161,544,000 by budget item 3860-01-6027, payable from the Interim Reliable Water Supply and Water Quality Infrastructure and Managed Subaccount.
- B. Metropolitan subsequently was selected by DWR as a grant recipient for \$45 million (the “**Prop. 13 Funds**”) to be used for groundwater storage projects within its service area. In a letter dated October 13, 2000 (the “**DWR Funding Letter**”) (see Exhibit A attached hereto), DWR set forth the specific terms and conditions of the grant to Metropolitan.
- C. On September 20, 2000, Metropolitan sent a letter to its twenty-six member public agencies (consisting of cities, municipal water districts and a county water authority within its 5,155 square-mile service area covering portions of Los Angeles, Orange, San Diego, Riverside, San Bernardino and Ventura Counties), requesting a list of groundwater storage projects to be considered for Prop. 13 Funding. On November 1, 2000, Metropolitan delivered to those member public agencies that indicated an interest in the Prop. 13 groundwater storage programs the Request for Proposals for Participation in Groundwater Storage Programs Using Proposition 13 Funds, RFP No. WRM-2 (the “**RFP**”) (see Exhibit B attached hereto). Metropolitan subsequently conducted a Pre-Submittal Workshop, open to the public, on November 8, 2000, to address any concerns or questions regarding the RFP.
- D. Metropolitan anticipated that programs funded by the Prop. 13 Funds would store water (by various methods) that Metropolitan imports from the State Water Project and the Colorado River. This stored water would be pumped by the member agency (or a sub-agency) with a corresponding reduction in surface water

deliveries from Metropolitan. As a result, Metropolitan would have a greater amount of water to distribute within its service area. In addition, such groundwater storage programs are part of a larger effort to meet water supply demands in Southern California, as specifically set forth in the Integrated Water Resources Plan (“IRP”) approved by Metropolitan’s Board of Directors in 1996, and the Groundwater Storage Principles (see Appendix A of Exhibit B attached hereto) adopted in connection therewith by Metropolitan’s Board of Directors in January 2000.

- E. IEUA and TVMWD are both municipal water districts formed in 1950 and have been member agencies of Metropolitan since their formation. IEUA was formerly known as Chino Basin Municipal Water District. IEUA serves a portion of San Bernardino County and has one or more designated representatives on Metropolitan’s Board of Directors. TVMWD was formerly known as Pomona Valley Municipal Water District. TVMWD serves a portion of Los Angeles County and has one or more designated representatives on Metropolitan’s Board of Directors.
- F. The Watermaster was established under the Judgment in the Superior Court of California for County of San Bernardino, entitled, “Chino Basin Municipal Water District v. City of Chino, et al.,” entered into on January 27, 1978 (“**Judgment**”). The Watermaster is responsible for managing the Chino Groundwater Basin (“Chino Basin”) in the most beneficial manner and for equitably administering and enforcing the provisions of the Judgment.
- G. Metropolitan has the following storage agreements with IEUA and Chino Basin Watermaster beginning in 1979:
1. Cyclic Storage Agreement approved by the Court in January 1979.
  2. The MWD Trust Storage Agreement approved by the Court in August 1986.
  3. The Short-Term Conjunctive Use Agreement (CB-5) approved in September 1993.
- H. On January 19, 2001, the Proposal for Chino Basin Groundwater Storage Project (the “**Proposal**”) was submitted by IEUA for Metropolitan’s consideration (see Exhibit C attached hereto). On April 10, 2001, Metropolitan notified IEUA that the program described in its Proposal had been selected for further consideration (see Exhibit D attached hereto) and that it was eligible for up to \$9 million of the Prop. 13 Funds. The Program is also eligible for disbursement of up to \$ 18.5 million of other funds administered by Metropolitan. The Prop. 13 Funds plus the Metropolitan funds specifically allocated to the proposed Program are referred to herein as the “**Program Funds**.”
- I. During further development of the Program, the City of Pomona was identified as a participating retail agency (Operating Party) for implementation of the Program. The City of Pomona is a sub-agency of TVMWD, and TVMWD has therefore joined this Agreement.

- J. Accordingly, the parties hereto (each a “Party” and, collectively, the “Parties”) desire to enter into a mutually beneficial agreement for a groundwater storage program funded by Program Funds that will achieve reasonable and beneficial conjunctive use of Metropolitan’s water supply to provide 33,000 acre-feet of additional pumping capacity in the Chino Basin in accordance with this Agreement and the Groundwater Storage Principles referenced above. This Agreement describes the terms of the Program agreed to among Metropolitan, the Watermaster, IEUA, and TVMWD which includes the terms for the storage and delivery of stored water from Metropolitan, the construction of groundwater production facilities, and the funding of such facilities. All of the elements together as described in this Agreement shall constitute the “Program”.
- K. Pursuant to the provisions of California Environmental Quality Act (CEQA) and the State CEQA Guidelines, IEUA, acting as lead agency, prepared and processed a Final Program Environmental Impact Report (Final PEIR) for the Chino Basin Watermaster Optimum Basin Management Program (OBMP) which included conjunctive use Storage and Recovery Program of 500,000 acre-feet (the “**Storage and Recovery Program**”). Among other things, the Final PEIR evaluated the environmental effects associated with the construction activities that are tied to and funded by this Agreement. On July 12, 2000, IEUA certified the Final PEIR and approved the OBMP.
- L. Subsequent to certification of the Final PEIR, IEUA found that it needed to make minor modifications to the proposed construction activities. IEUA determined that these modifications would not result in any significant new environmental effects, substantially increase the severity of previously identified effects, or require any new mitigation measures beyond those examined by and proposed in the Final PEIR. IEUA prepared a Finding of Consistency (i.e., Addendum) documenting this determination, which it certified on December 18, 2002.
- M. TVMWD and Metropolitan, acting as responsible agencies, have reviewed the information contained in the Final PEIR and Finding of Consistency, and have adopted IEUA’s findings concerning the environmental effects associated with the construction activities that are tied to and funded by this Agreement.
- N. As of the date of this Agreement, no legal action has been filed challenging the Final PEIR, the Finding of Consistency, or any determination and approvals issued by IEUA, TVMWD or Metropolitan that relate to the Program or this Agreement.
- O. IEUA and Watermaster are funding a \$45 million Recharge Master Plan capital improvement program, separate and apart from this agreement, that will increase significantly the ability for Metropolitan to store water through direct replenishment into Metropolitan’s storage account. Under the OBMP the parties to the Judgment have agreed to expand the existing Chino I Desalter from 8 mgd

to 14 mgd and build the Chino II Desalter at a capacity of 10 mgd to produce and treat approximately 25,000 AF per year of poor quality water to minimize downstream water quality impacts on the Orange County Water District (OCWD) consistent with the OBMP Program Environmental Impact Report and Chino I expansion/Chino II Desalter Environmental Impact Report and the Memorandum of Understanding with OCWD.

**NOW, THEREFORE,** in consideration of the foregoing Recitals, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

**II. EFFECTIVE DATE AND TERM**

**A. Effective Date**

Upon execution by all Parties, this Agreement shall be deemed effective as of March 1, 2003 (the “**Effective Date**”).

**B. Termination Date**

This Agreement shall initially terminate on the date which is twenty-five years after the Effective Date, unless sooner terminated in accordance herewith (the “**Initial Termination Date**”). Notwithstanding the foregoing, this Agreement will renew for a five-year period commencing on the Initial Termination Date, and each fifth anniversary thereof (each, a “**Renewal Date**”), if written consent of all parties is filed with Metropolitan at least 90 days prior to each termination date. This Agreement shall absolutely terminate and be of no further force or effect on the date that is fifty years after the Effective Date (the “**Final Termination Date**”).

**III. CONDITIONS PRECEDENT TO FUNDING OBLIGATION AND PROGRAM IMPLEMENTATION**

Metropolitan’s funding obligations with respect to construction of the Facilities (as set forth in Article V below) are subject to the satisfaction of the following conditions precedent, or waiver of the condition(s) precedent, by Metropolitan:

**A. CEQA.**

Any and all environmental reviews and supporting documentation (“**CEQA Documents**”) required to implement the Program and/or this Agreement shall have been completed, certified and approved by the Parties in accordance with CEQA and its guidelines. Further, the time period for commencing a legal action challenging any of these CEQA Documents, or challenging any certifications, findings, determinations, approvals or authorizations that are related to or based

upon such CEQA Documents, shall have lapsed with no such legal action having been filed.

**B. DWR Commitment**

The conditions necessary to receive Prop. 13 Funds under the DWR Funding Letter shall have been satisfied, and DWR shall be committed to disbursing the Prop. 13 Funds to Metropolitan in accordance with the DWR Funding Letter, the Schedule and the Budget.

**C. Permits and Approvals**

Any authorizations, consents, licenses, permits and approvals from any Governmental Authority (as defined hereafter) or person as may be required by applicable law to construct and operate the Program (including, without limitation, the approvals or consents from other groundwater users in the Chino Basin, or parties whose approval is required by any judgment in an adjudicated basin, and approval and recognition of this Agreement by the San Bernardino Superior Court with continuing jurisdiction over the Judgment (collectively, the “**Required Approvals**”) shall have been obtained. IEUA shall have delivered reasonably satisfactory evidence of such Required Approvals to Metropolitan. None of the Required Approvals shall impose any condition to such approval that a Party finds unacceptable, and any acceptable conditions to the Required Approvals shall have been satisfied or waived by the person imposing such condition or will be satisfied by the Program as then contemplated.

“**Governmental Authority**” means any federal, state, local or other governmental, regulatory or administrative agency, governmental commission, department, board, subdivision, court, tribunal, or other governmental arbitrator, arbitral body or other authority.

**D. No Litigation**

IEUA, TVMWD, and Watermaster shall have certified that, except as disclosed in writing to Metropolitan and accepted by Metropolitan in its reasonable discretion, there is no litigation, including any arbitration, investigation or other proceeding, pending before any court, arbitrator or Governmental Authority, nor any such litigation threatened, nor any decree, order or injunction issued by any court, arbitrator or Governmental Authority and remaining in effect, which relates to Program Funds or the Program or which prevents or hinders (or seeks to prevent or hinder) implementation of the Program, or which raises a question as to the validity of this Agreement, or any of the other Program agreements.

The date upon which each of the foregoing conditions has been satisfied or waived by Metropolitan, as set forth in a written notice from Metropolitan to IEUA, shall be the “**Funding Obligation Date.**”

#### IV. PROGRAM PLANNING AND CONSTRUCTION

##### A. Planning

###### 1. General Description of Program

The Program includes the following components:

- a. Metropolitan shall have the right to: (1) deliver and store imported water supplies in the Chino Basin at up to a rate of 25,000 acre-feet per year and up to 100,000 AF in storage at any time (“**Maximum Storage Amount**”), subject to higher amounts if approved in advance by the Chino Basin Watermaster, and (2) cause Chino Basin stored water to be produced at a rate of 33,000 AF per year, pursuant to the Exhibit G “Performance Criteria” of this Agreement, the Chino Basin Judgment and the Watermaster Rules and Regulations. Watermaster will provide for rights to store and extract water from the Chino Basin.
- b. The proposed groundwater storage Program consists of the facilities described in Exhibit H (the “**Facilities**”). The agencies within the service areas of IEUA and TVMWD responsible for operating the respective Facilities (“**Operating Parties**”) are also listed in Exhibit H. IEUA and TVMWD will enter into agreements with the **Operating Parties** within their respective service areas that will require such **Operating Parties** to operate and maintain the Facilities.
- c. Water provided for storage by Metropolitan hereunder (“**Program Water**”) will be untreated water, as defined in Section 4104 of Metropolitan’s Administrative Code. Water stored by spreading or injection in the Chino Basin must meet the applicable water quality requirements as required by the Watermaster and any other regulatory agency with jurisdiction over the Chino Basin.
- d. Metropolitan will fund the construction of the Facilities in accordance with this Agreement.

###### 2. Operational Capacity Thresholds

The Program “**Operational Capacity Thresholds**” are:

- a. *Storage.* Water can be stored in the following ways: (1) spreading, (2) injection, (3) in-lieu deliveries (pursuant to the administration procedures described in Exhibit F) and transfer from existing Metropolitan storage accounts consistent with the Chino Basin

Judgment. Metropolitan can store water in the Chino Basin at a rate of 25,000 AF per year, unless a greater amount is approved by the Watermaster.

- b. *Extraction.* At a minimum, the Facilities, when combined with the existing groundwater production capacity of the Operating Parties as defined in Exhibit H, if necessary, shall be designed to have the capacity to extract water from the Chino Basin at a rate of 33,000 AF per year. Prior to the completion of all Facilities, the minimum extraction capacity shall be a pro rata portion of the extraction capacity based on the Facilities then completed.

### 3. Submission of Plans, Schedule and Budget

On or before September 1, 2004, IEUA shall deliver to Metropolitan the engineering and construction plans and specifications (the “**Plans**”), a construction schedule (the “**Schedule**”) and a construction budget (the “**Budget**”) for the Facilities. At a minimum:

- a. The Plans shall describe in reasonable detail the construction and design of the Facilities, and shall conform to any requirements of DWR;
- b. The Schedule shall state the date of construction commencement, the anticipated completion date (which shall occur no later than March 8, 2008, ), key milestone dates in the interim (each a “**Milestone Date**”) including timing of discrete program elements (“**Discrete Program Elements**”) and major tasks (“**Tasks**”) within them; and
- c. The Budget shall contain an itemized summary of Program costs including costs of the contractors, consultants, and other service providers, and all materials anticipated to be purchased in connection with the Program. For the purpose of Metropolitan’s payment of invoices from Program Funds (“**Invoice**”) pursuant to Section V(D), the Budget shall be divided into phases corresponding to the Milestone Dates, Discrete Program Elements and Tasks set forth in the Schedule.

### 4. Review and Approval of Schedule and Budget

- a. Metropolitan shall review and approve or disapprove, by written notice to IEUA, the Schedule and Budget for the Facilities within ten (10) business days after Metropolitan’s receipt thereof (once so approved, the “**Approved Budget**” and the “**Approved Schedule**”). If Metropolitan has not acted on the schedule or budget within ten (10)

business days after Metropolitan's receipt, the schedule or budget shall be deemed approved.

- b. For all Facilities funded in whole or part with Prop. 13 funds, all Metropolitan approvals shall be conditional upon DWR approvals. IEUA acknowledges and agrees that Metropolitan intends to submit the Schedule and Budget to the DWR for its review and approval, and Metropolitan shall disapprove the Schedule and/or Budget upon DWR's disapproval of the Schedule and/or Budget.
- c. If Metropolitan (or DWR, if applicable) disapproves of the Schedule and/or Budget, Metropolitan shall specify the reasons for the disapproval in its disapproval notice to IEUA. Metropolitan shall thereafter promptly meet with IEUA to correct any deficiencies to the Schedule and/or Budget such that the Schedule and Budget are reasonably acceptable to Metropolitan, DWR (if applicable) and IEUA.
- d. Notwithstanding any requirements of DWR as noted in clause (b) above, or any other terms or conditions set forth herein, neither DWR nor Metropolitan shall have any responsibility for reviewing or approving the Plans, and IEUA assumes all responsibility for the proper design, planning, and specifications of the Facilities.
- e. IEUA, may, as warranted, update the Approved Schedule and Approved Budget for the Facilities to reflect changes as necessary. However, under no condition may the Completion Date exceed March 8, 2008, or the total budget exceed the specified amount allocated as Program Funds unless such overages shall be the responsibility of IEUA. Review and approval of the proposed update shall follow the above procedure.

**B. Construction**

1. Contracting

IEUA shall retain, or cause to be retained through agreements with the Operating Parties, qualified contractor(s) and consultants to design and construct the Facilities. All contracts let for project construction shall be let by competitive bid procedures that assure award of the contract to the lowest responsible bidder, except as may be otherwise authorized under the enabling authority for IEUA and/or the California Public Contract Code.

## 2. Construction Supervision and Responsibility

- a. *Diligent Prosecution of Facility Construction.* IEUA agrees to faithfully and diligently complete, or cause to be completed, the construction of the Facilities in accordance with the Plans, Approved Budget and Approved Schedule.
- b. *Supervision.* As among Metropolitan, IEUA, TVMWD, and the Watermaster, IEUA shall be responsible for all work in connection with the construction of the Facilities and for persons engaged in the performance of such work.
- c. *Compliance with Laws.* IEUA shall ensure that all construction in connection with the Program complies with any applicable federal, state and local laws, rules and regulations, including, without limitation, environmental, procurement and safety laws, rules, regulations and ordinance.
- d. *Contracting Disputes.* IEUA shall be responsible for any and all disputes arising out of its contracts for work on the Program, including, without limitation, any bid disputes and payment disputes with contractors or subcontractors. Metropolitan will not mediate disputes between IEUA, TVMWD, their Operating Parties and any other entity in connection herewith.

## 3. Inspection Right

During reasonable business hours, Metropolitan and/or the DWR, with respect to Facilities funded with Prop. 13 Funds (and any of their designated representatives or agents), may enter upon the Program site and inspect the on-going and/or completed construction activities.

Metropolitan agrees to exercise commercially reasonable efforts to deliver advance written notice to IEUA of any such visit to the Program site (it being acknowledged, however, by IEUA that the DWR may inspect the Program site at any and all reasonable times without prior notice pursuant to the terms of the DWR Funding Letter).

## 4. Completion of Construction

- a. *Completion Date.* IEUA shall assure that Completion of the Facilities occurs not later than March 8, 2008. **“Completion”** means (x) performance of the construction in a good and workmanlike manner, free and clear of mechanics’, materialmens’ and other liens or security interests, claims or encumbrances relating to such construction, subject only to completion of punch list items which do not materially interfere with the use or

functionality of the Facilities, and (y) the payment of all costs to the persons entitled thereto less retainage or reserves for punch list items.

- b. *Completion Notification and Certification.* IEUA shall notify Metropolitan within ten business days after Completion of Facilities by each Operating Party. Such notification shall include a certification from the IEUA, the general contractor (if applicable) and a California Registered Civil Engineer affirming Completion and that the Facilities: (i) are as described in Exhibit H; (ii) have been constructed substantially in accordance with the Plans; (iii) have been adequately tested and meet the Operational Capacity Thresholds; and (iv) are otherwise sufficient to achieve the goals of the Program (as stated in Exhibit H).

5. Ownership of Project

Metropolitan will have no ownership interest in the Facilities. The Operating Parties shall have sole ownership and control of the Facilities, and the real property interests in connection therewith, subject to the rights and obligations of the Parties under this Agreement.

**V. PROJECT CONSTRUCTION FUNDING (NOT INCLUDING OPERATION AND MAINTENANCE/ENERGY COST FUNDING)**

**A. Metropolitan Funding Obligation; Shortfalls**

- 1. After the Funding Obligation Date, subject to and in accordance with the terms and conditions of Section V(C) below, Metropolitan hereby agrees to fund the payment of eligible costs for constructing the Facilities in accordance with the Approved Budget (the “**Program Construction Costs**”) in an amount not to exceed \$27.5 million, inclusive of design and construction of Facilities and the costs to comply with CEQA. Of these Program Construction Costs, \$9 million is being funded by Prop 13 Funds.

**B. Cost Overruns**

- 1. IEUA agrees to pay, and Metropolitan shall have no liability for, any costs of constructing the Facilities in excess of the amounts set forth in the applicable Approved Budget (on line-item and aggregate bases); provided, however, that upon written request from IEUA, Metropolitan shall approve, conditional upon DWR approval, reallocation of any demonstrated costs savings from one line-item of the Approved Budget to

another line item in order to cover any cost overruns for the \$9 million funded by Prop. 13 Funds for specific Program facilities.

2. Should bids for construction of the Program Facilities exceed the Approved Budget by more than 5%, IEUA may review such cost increase with Metropolitan to determine the appropriate way to proceed with the Program. Metropolitan and IEUA may mutually agree to a cost share, a change in scope of the Program, or to discontinue the Program.
3. IEUA agrees to reimburse Metropolitan for any of its costs intended to be reimbursed with Prop. 13 Funds that are disapproved by DWR, within thirty (30) days of receipt of invoice from Metropolitan for such reimbursement. IEUA agrees to pay interest computed at an annual rate equal to that earned by Surplus Money Investment Fund (SMIF) rate as provided for in Government Code Sections 16480 et seq., calculated monthly, on any outstanding amounts so invoiced by Metropolitan, beginning thirty days after the date such invoice is received until paid.

### **C. Disbursement Protocol**

#### **1. Invoice Payment.**

Commencing on the Funding Obligation Date, and continuing not more often than monthly thereafter, IEUA may submit for Metropolitan's consideration and payment from the Program Funds an Invoice for costs incurred. Each Invoice shall set forth in reasonable detail those Program Construction Costs that have been incurred since submittal of the prior Invoice and shall reference Discrete Program Elements and Tasks as outlined in the Approved Budget and Schedule. Each Invoice shall be accompanied by a Progress Report pursuant to Section X (B)(1). Work accomplished on each Discrete Program Element shall be briefly described, and the percent complete shall be presented with the percent and actual amounts expended to date on each Discrete Program Element. Metropolitan shall review and approve or disapprove (in part or whole) the Invoice and provide payment of Program Funds to IEUA for all approved portions of the Invoice within 30 days of receipt. If Metropolitan disapproves any portion of an Invoice, it shall state its reasons for such disapproval in writing and cooperate in good faith with IEUA, to promptly achieve a mutually acceptable revision to the disallowed portion of the Invoice. Metropolitan agrees to pay interest at the rate and in the manner specified in Section V(B)(2) on approved portions of invoices paid more than thirty (30) days after receipt of such invoice by Metropolitan.

2. Certification of Expenditures

With each Invoice submitted for Program Construction Costs, IEUA shall also provide its written certification and a written certification from the general contractor, if any, affirming that invoiced amounts were utilized exclusively for construction of the Facilities in accordance with the Plans and Approved Budget. Such certification shall be accompanied by evidence of payment for services and/or materials delivered in connection with the construction of the Facilities.

3. Disbursement of Program Funds

Upon Metropolitan's payment of Program Funds pursuant to an Invoice, Metropolitan shall have fulfilled its obligation with respect to such payment, and shall have no obligations to ensure disbursement to the appropriate Party(ies) entitled thereto.

## VI. OPERATING COMMITTEE

### A. Operating Committee

1. Composition of Committee.

A committee (the "**Operating Committee**") shall be established for the specific purposes specified herein. The Operating Committee shall have five members, two representatives from Metropolitan and three representatives chosen by IEUA, TVMWD, and Watermaster in any manner determined by IEUA, TVMWD, and Watermaster. The local agencies listed in Exhibit H may also attend meetings of the Operating Committee. With respect to any matter on which the Operating Committee cannot reach unanimous agreement, the Operating Committee shall submit such matter for determination by a consultant and/or arbitration panel in accordance with Section XIII(A).

2. Meeting of Operating Committee

The Operating Committee shall meet:

- a. as reasonably often as necessary to implement operations and take other needed action pursuant to this Agreement. Such tasks will include preparation of Operating Committee's certification to Watermaster regarding monthly storage achieved utilizing methodology specified in Exhibit F (Accounting Methodology).
- b. within thirty days after the execution of this Agreement; and thereafter at least sixty days prior to the end of each fiscal year

(which fiscal year shall run from July 1 through June 30) to develop Program Annual Operating Plan for the subsequent year and to review need for adjustments to Electrical Costs and Operation and Maintenance Costs; and

- c. by August 31 of each year review prior fiscal year performance for storage and/or extraction in conformance with the Annual Operating Plan and Exhibit G, Performance Criteria; and for assessment of per-acre-foot Electrical Costs and Operation and Maintenance Costs to be paid by Metropolitan.

### 3. Annual Operating Plan

- a. The Annual Operating Plan shall provide an estimated schedule and location for all storage and extraction under this Agreement and in conformance with Exhibit G (Performance Criteria) on a monthly basis for the upcoming fiscal year and documentation of adequate available capacity with respect to the Program Facilities capacity to accommodate Metropolitan's rights pursuant to Section VII hereof. Initial operation of the Metropolitan Storage Account prior to completion of Facilities funded under this Agreement shall be accomplished under the Annual Operating Plan. Until all Facilities are completed, partial performance shall be pro rata according to the proportion of Facilities listed in Exhibit H which are then complete.
- b. The Annual Operating Plan shall provide sufficient information to allow the Operating Committee and Watermaster to assess potential impacts from the Program on the Chino Basin and the Judgment Parties, such as : (1) current and projected water levels in the basin; and (2) short-term and long-term projections of Chino Basin water supply and water quality. The Operating Committee and the Watermaster may request additional information from the Operating Parties.
- c. Consistent with Section VIII(A) below, the Annual Operating Plan shall not limit Metropolitan's ability to modify its call for extraction or storage of water upon fifteen (15) days advance notice as provided in Sections VII(A) and VII(C). Watermaster reserves the right to approve the location and amount of storage and extraction pursuant to this Agreement, in accordance with the Judgment, OBMP and its policies applicable to the Judgment Parties.
- d. Storage and extraction operations under this Agreement shall be in accordance with the provisions of the Annual Operating Plan as

adopted or as amended to accommodate changed circumstances or new information. The Annual Operating Plan may be amended: (1) at the request of a member of the Operating Committee and with the concurrence of the Operating Committee and approval of the Watermaster (2) as a requirement of the Watermaster in the implementation of the Judgment and OBMP with specific adjustments proposed by consensus of the Operating Committee and approved by the Watermaster.

#### 4. Specific Duties

Without limiting the foregoing, the Operating Committee shall:

- a. Properly account for the amounts of all water stored and extracted and submit a report of these amounts achieved for the Metropolitan Storage Account to Watermaster and Metropolitan on a monthly basis but not more than two months in arrears. At the end of the fiscal year, an annual reconciliation shall be performed of storage and extraction, and any adjustments to the monthly submittals shall be submitted to the Watermaster and to Metropolitan in a timely manner for consideration in the preparation of the Watermaster's annual assessment package.
- b. Within two months following formal issuance of Watermaster's annual report, perform an annual reconciliation of Metropolitan and IEUA's and TVMWD's records with Watermaster's annual report and Metropolitan's water billing inclusive of credits for the Operation and Maintenance Costs and Electrical Costs, and prepare any needed paperwork for adjustments to the billing.
- c. Consistent with Section VIII(A) below, confirm that sufficient excess operable production capacity was maintained for the conjunctive use Program during the prior year, unless different criteria are agreed upon by the Operating Committee.
- d. Prepare and deliver to the Parties, on or before September 1 of each year, a written annual report outlining the Program Annual Operating Plan for the subsequent year, and the Operating Committee's actions during the prior year (the "**Operating Committee Annual Report**").
- e. Every five years, commencing upon the Completion Date, the Operating Committee shall review the maintenance charge set forth in Section VI(D)(1) of this Agreement. To such end, the Operating Committee shall conduct a survey of operation and maintenance costs with respect to facilities within the Program

Basin and which are comparable to the Facilities. Based on such survey and other information the Operating Committee deems relevant, the Operating Committee shall approve a new Operation and Maintenance Cost for the next five-year period.

- f. Every year commencing upon Completion Date, determine the electrical power unit rates(s) (dollars per AF of Stored Water Deliveries) for the respective Operating Party(ies) to extract water. The electrical power cost to extract Program Water (the “Electrical Costs”) shall be equal to Stored Water Deliveries (as defined in Section VII(C) below) for the applicable period multiplied by the applicable electrical power unit rate(s) for the Operating Party(ies) that extracted the water. The Operating Committee shall ensure that the electrical power unit rate per acre-foot of extracted water calculated for each Operating Party is reflective of actual energy costs.

#### **B. IEUA and TVMWD Obligations**

Subject to Section VI(C), IEUA and TVMWD hereby agree to do, or to cause through agreements with the Operating Parties in their respective service areas, the following:

1. Cause the Facilities to be operated and maintained in as good and efficient condition as upon their construction, ordinary and reasonable wear and depreciation excepted, and otherwise in accordance with industry standards (and DWR standards and requirements, if any);
2. Provide for all repairs, renewals, and replacements necessary to the efficient operation of the Facilities;
3. To the extent existing facilities are utilized for the Program, provide for all repairs, renewals, and replacements necessary to the efficient operation of such existing facilities;
4. Certify the amount of water in the Metropolitan Storage Account pursuant to the Operating Committee accounting; and
5. Upon call by Metropolitan for Stored Water Delivery, operate Facilities, combined with the existing infrastructure, at Operational Capacity Thresholds necessary to meet performance targets as outlined in Exhibit G.

#### **C. Watermaster Obligations**

Watermaster hereby agrees to:

1. Maintain records of the amounts of all water stored in and extracted from the Chino Basin pursuant to this Agreement and consistent with the Judgment and Rules and Regulations, and provide to Metropolitan an amount specified in an account to be designated as the **Metropolitan Storage Account**. Watermaster will maintain a monthly statement regarding the account as information becomes available and will document in its annual report all water stored in and withdrawn from the Metropolitan Storage Account. Watermaster shall account for Metropolitan stored water as follows:
  - a. The amount of any water stored in the Chino Basin on behalf of Metropolitan prior to the Effective Date of this Agreement shall be credited to the Metropolitan Storage Account on the Effective Date pursuant to the procedure set forth in Exhibit E.
  - b. Watermaster shall credit water which Metropolitan delivers for storage to the Metropolitan Storage Account on an acre-foot for acre-foot basis, less any losses assessed.
  - c. Losses assessed by Watermaster against the Metropolitan Storage Account will be equivalent to losses assessed Judgment parties for participation in the Storage and Recovery Program.
  - d. Watermaster shall debit the Metropolitan Storage Account one acre-foot for each acre-foot of water produced from the account. Watermaster accounting for water produced from the Metropolitan Storage Account shall specify quantities produced by each Operating Party.
  - e. Watermaster shall obtain from Operating Committee on a monthly basis its report of the amount of storage achieved using the methodology specified in Section VII(B) and Exhibit F of this Agreement.
2. Report the total active and inactive annual extraction capacity of the Operating Parties in the Watermaster's annual report.

#### **D. Metropolitan Obligations**

In accordance with the procedures set forth in clause (E) below, Metropolitan hereby agrees to:

1. Pay costs of operating and maintaining the Facilities at the unit rate (dollars per AF of Stored Water Deliveries) determined by the Operating Committee for the Operating Party(ies) that extracted water as adjusted when and as required by Section VI(A)(4)(e) (the "**Operation and**

**Maintenance Costs**”). Operation and Maintenance Costs will include a dollar per AF amount for each AF produced by an Operating Party from Metropolitan’s Storage Account through the funded ion exchange facilities equal to the Operating Party’s variable costs of treating Metropolitan’s State Water Project surface deliveries (expressed as dollar per AF of treating such water). Such variable costs shall exclude capital, debt service, or replacement costs and include only variable operating and maintenance costs at the Water Facilities Authority Treatment Plant, CCWD Lloyd Michael Filtration Plant, or the Miramar Treatment Plant. The dollar per AF cost shall be calculated by dividing the variable costs by the quantity of water produced by the treatment plants. The dollar per acre-foot shall be determined by the Operating Committee pursuant to Section VI(A)(4)(e);

2. Pay the Electrical Costs as determined in Section VI(A)(4)(f) to extract water from the basin, if any, equal to **Stored Water Deliveries** (as defined in Section VII(C) below) for the applicable period for the Operating Party(ies) that extracted the water; and
3. From and after the first full year in which water is stored in the Program Basin on Metropolitan’s behalf, and on or prior to July 1 of each subsequent year, pay an administrative fee in an annual amount of \$132,000 to the Watermaster (as such amount is adjusted on each anniversary of the execution of this Agreement by the lesser of 2.5% or the Retail Consumer Price Index for the City of Los Angeles published by the Engineering News Record), for the incremental costs and expenses of administering the Program during such year. Such administrative fee is subject to adjustment from time to time as approved by the Operating Committee.

**E. Payment of Operation and Maintenance Costs and Electrical Costs**

1. Amounts owing by Metropolitan pursuant to Section VI(D) for Operation and Maintenance Costs and Electrical Costs shall be paid through a credit to Metropolitan’s monthly invoice for the Stored Water Delivery to TVMWD or IEUA, as applicable, pursuant to Section VII(D). Upon the credit to Metropolitan’s invoice for the Operation and Maintenance Costs and Electrical Costs, Metropolitan will have satisfied its funding obligations with respect thereto.

**F. Annual Reconciliation**

1. Reconciliation of Metropolitan Storage Account and Costs.

As noted in Section VI(A)(4)(a) above, the Operating Committee will conduct an annual reconciliation of the prior year’s credits and debits to

the Metropolitan Storage Account. If such reconciliation reveals that the actual amount of water delivered by Metropolitan for storage pursuant to Section VII(A)(1), or the actual amount of Stored Water Deliveries, as defined in Section VII(C) below, during the prior year were not accurately accounted for, then the Operating Committee shall reflect this in its year-end assessment of storage and extraction provided to the Watermaster. The Watermaster shall determine the manner in which any credits or debits to the Metropolitan Storage Account shall be made.

The Operating Committee shall complete its reporting and processing of any prior year adjustments to the Metropolitan water invoice within two months of the formal issuance of the Watermaster's annual report, as provided in Section VI(A)(4)(b).

## **VII. GROUNDWATER STORAGE AND EXTRACTION**

### **A. Metropolitan's Storage Account Rights**

1. During any fiscal year of the term of this Agreement, Metropolitan may deliver up to 25,000 AF of Program Water for storage in the Program Basin with an equivalent amount to be accounted for in the Metropolitan Storage Account pursuant hereto; provided, however, that total Program Water stored on behalf of Metropolitan in the Program Basin, pursuant to this Agreement, shall never exceed the Maximum Storage Amount unless approved by the Watermaster. Deliveries shall be subject to the prior approval of the Watermaster pursuant to the policies described in subsection 5 below. Metropolitan shall not be obligated to pay any fees associated with basin utilization.
2. Metropolitan may make such deliveries to IEUA or TVMWD on fifteen (15) days advance notice to such Party and Watermaster. Watermaster will credit the Metropolitan Storage Account by the amount of Program Water delivered to IEUA or TVMWD.
3. Upon notification by Metropolitan pursuant to Section VII(A)(2), IEUA or TVMWD and Watermaster may either: (a) directly store the amount of any such delivery of Program Water in the Chino Basin (e.g., by injection or spreading); or (b) store the amount of any such delivery of Program Water in the Chino Basin by in lieu storage, i.e., by reducing pumping from the Chino Basin by the amount of such delivery.
4. The quantity of Program Water delivered to the Metropolitan Storage Account in any given month shall be determined in accordance with the accounting methodology set forth in Exhibit F.

5. The Watermaster's Storage and Recovery Policies shall be applied to Program Water stored under this Agreement in a non-discriminatory manner consistent with the application of such policies to any other participant in the Storage and Recovery Program, including all parties to the Judgment. Furthermore, the Watermaster shall not impose any policies upon the Program Water, whether or not imposed on other parties, that would materially alter the benefits provided to or the obligations imposed upon Metropolitan under this Agreement. Without limiting the foregoing, the Watermaster shall not impose any policies that would create any significant discrepancies between the amount of Program Water delivered by Metropolitan for storage in the Program Basin and the amount of Program Water that Metropolitan is entitled to extract from such basin pursuant to this Agreement.

**B. Certification of Deliveries to Metropolitan Water Account**

1. Metropolitan shall deliver available Program Water to IEUA or TVMWD at the appropriate service connection for storage in the Metropolitan Storage Account consistent with the Annual Operating Plan. In any month where imported water is delivered to the Chino Basin through a Metropolitan service connection, the Party receiving Program Water shall certify the facts concerning the quantities of such deliveries to Metropolitan and Watermaster in writing or electronically in a format satisfactory to Metropolitan by a responsible officer of such Party.
2. Metropolitan will credit the appropriate IEUA or TVMWD invoice at the applicable rate for each acre-foot of water certified by such Party for that service connection.
3. Certifications of Program Water for a given billing period must be received by Metropolitan before 3:30 p.m. on the third working day after the end of the month to receive credit on the bill for that billing period or any preceding billing period.
4. No certification received after six months following the end of any month in which a credit for Program Water is claimed will be accepted.

**C. Extraction of Stored Water**

1. In lieu of providing all or some of its regular surface water deliveries to IEUA or TVMWD, Metropolitan may, on fifteen (15) days advance notice, deliver water to such Party on the first of the following month by requesting such Party to debit the Metropolitan Water Account (each such delivery being a "**Stored Water Delivery**"); provided, however, that unless permitted by Watermaster, such Stored Water Deliveries shall not, in any fiscal year exceed the lesser of (a) 33% of the Maximum Storage

Amount or (b) the amount then remaining in the Metropolitan Storage Account. Metropolitan's regular surface water deliveries to IEUA and TVMWD will be reduced by the amount of such Stored Water Delivery. During an emergency or unforeseen operational condition, IEUA and TVMWD will use their best efforts in responding to Metropolitan's request for a Stored Water Delivery.

- 2 IEUA and TVMWD, as applicable, shall pump the amount of the Stored Water Delivery from the Chino Basin in lieu of receiving its regular surface water deliveries in accordance with specific direction from the Watermaster.
- 3 IEUA and TVMWD shall have twelve months to comply with Metropolitan's extraction request in accordance with the performance criteria described in Exhibit "G" to this Agreement.

**D. Payment for Extraction of Stored Water**

Upon call by Metropolitan for Stored Water Delivery, Metropolitan shall invoice IEUA or TVMWD for the amount reported as extracted by the Operating Committee pursuant to Section VI(A)(4)(a), and such Party shall pay to Metropolitan the then applicable full-service rate (or its equivalent, as determined by Metropolitan in its reasonable discretion) as if such Stored Water Deliveries were surface water deliveries through its service connection. The invoice from Metropolitan shall include credits for the Operation and Maintenance Costs and the Electrical Costs associated with the Stored Water Delivery. Where prior storage accounts are credited to the Metropolitan Water Account pursuant to Section VI(C)(1)(a), this water shall constitute the Stored Water Delivery prior to any water credited to the Metropolitan Water Account after the Effective Date, and shall be paid for at the appropriate rate indicated in Exhibit E.

**VIII. OTHER USES OF FACILITIES**

**A. Allowed Use**

IEUA and TVMWD may use Program Facilities for purposes unrelated to the Program so long as such use does not interfere with the Program and the excess operable production capacity is maintained as necessary for performance under this Program, unless monthly operable production capacity on other than a monthly basis is agreed to by the Operating Committee.

- B. IEUA and Watermaster shall certify to the Operating Committee that there will exist at all times excess operable production capacity in the Chino Basin of at least an annual extraction of 33,000AF or 3.3% of Maximum Storage Amount for performance under this conjunctive use Program.

**IX. REPRESENTATIONS, WARRANTIES AND AFFIRMATIVE COVENANTS OF PARTIES**

**A. Of IEUA and TVMWD**

IEUA and TVMWD respectively represent, warrant and covenant as follows:

1. Power and Authority

That it is a municipal water district, duly organized and validly existing under the laws of the State of California; that it has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement, and that the execution and delivery hereof by it and the performance of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which it is a party or by which it is bound.

2. Authorization; Valid Obligation

That all proceedings required to be taken by or on behalf of such Party to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken, and that this Agreement is its valid and binding obligation enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

3. No Litigation

To the best of its knowledge, there is no litigation, proceeding or investigation pending or threatened, to which it is or would be a party, or which does or would bind or relate to the Program Basin, directly or indirectly, which, individually or in the aggregate, if adversely determined, might materially and adversely affect its ability to perform its obligations under this Agreement, or which raises a question as to the validity of this Agreement, or any action to be taken hereunder.

4. Compliance with Laws

In the performance of its obligations hereunder, such Party and its contractors and subcontractors will comply with all applicable laws, regulations and ordinances, including, without limitation:

- a. the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), and the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.);
- b. Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.5) and the regulations or standards adopted by the DWR relating thereto;
- c. the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103;
- d. Section 3700 of the California Labor Code, requiring every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that code, and such Party affirms that it will comply with such provisions before commencing the construction of the Facilities and will exercise best efforts to make the its contractors and subcontractors aware of this provision;
- e. the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace; and
- f. the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant thereto.

Such party and its contractors and subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Such Party and its contractors will include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts let for the construction of the Facilities.

5. Compliance with DWR Requirements

The Plans comply with any DWR requirements, including any requirements set forth in the DWR Funding Letter. During the performance of its obligations herein, such Party will comply with any DWR requirements, including any requirements set forth in the DWR Funding Letter.

6. No Construction

That construction of the Facilities and related work (including planning activities) did not commence prior to the Effective Date.

7. Capacity

Such Party and its contractors, subcontractors and their respective agents will at all times act in an independent capacity and not purport to act as, or represent to others that they are, officers, employees, representatives or agents of Metropolitan, DWR or the State of California.

8. Oversight and Supervision of Construction

Such Party will oversee and supervise all contractors and keep control of all work and provisions of services and materials in connection with the Program.

9. Maintain Ownership of Program Property

Such Party will not sell, abandon, lease, transfer, exchange, mortgage, hypothecate or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Program.

10. Protection of Others' Rights

Such Party will fully protect and preserve the rights of overlying landowners, other groundwater users or water rights holders, parties whose approval is required by any judgment in an adjudicated basin, and all groundwater management agencies or other applicable regulatory agencies, and will take the necessary actions (including groundwater monitoring and mitigation and/or limiting extraction of groundwater) to protect such rights.

**B. Of Watermaster**

Watermaster and its contractors, subcontractors and their respective agents will at all times act in an independent capacity and not purport to act as, or represent to others that they are, officers, employees, representatives or agents of Metropolitan, DWR or the State of California. Watermaster represents, warrants and covenants as follows:

1. Power and Authority

That Watermaster is a court-appointed entity created through the Judgement, duly organized and validly existing under the laws of the State

of California; that it has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement, and that the execution and delivery hereof by Watermaster and the performance by Watermaster of Watermaster's obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which Watermaster is a party or by which Watermaster is bound.

2. Authorization; Valid Obligation

That all proceedings required to be taken by or on behalf of Watermaster to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken, and that this Agreement is a valid and binding obligation of Watermaster enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

3. No Litigation

To the best of Watermaster's knowledge, there is no litigation, proceeding or investigation pending or threatened, to which Watermaster is or would be a party, or which does or would bind or relate to the Chino Basin, directly or indirectly, which, individually or in the aggregate, if adversely determined, might materially and adversely affect the ability of Watermaster to perform its obligations under this Agreement, or which raises a question as to the validity of this Agreement, or any action to be taken hereunder.

4. Compliance with Laws

In the performance of its obligations hereunder, Watermaster will comply with all applicable laws, regulations and ordinances, including, without limitation:

- a. the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), and the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.);
- b. Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.5) and the regulations or standards adopted by the DWR relating thereto;

- c. the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 810.3;
- d. Section 3700 of the California Labor Code, requiring every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that code, and Watermaster affirms that it will comply with such provisions before commencing the construction of the Facilities and will exercise best efforts to make the its contractors and subcontractors aware of this provision;
- e. the Drug-Free Workplace Act of 1990 (Government Code 8.350 et seq.) and have or will provide a drug-free workplace; and
- f. the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant thereto.

Watermaster will give written notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreement.

5. Compliance with DWR Funding Letter

During the performance of its obligations herein, Watermaster will comply with the terms and provisions of the DWR Funding Letter (Exhibit A), as applicable.

6. Capacity

Watermaster and its contractors, subcontractors and their respective agents will at all times act in an independent capacity and not purport to act as, or represent to others that they are, officers, employees, representatives or agents of Metropolitan, DWR or the State of California.

**C. Of Metropolitan**

Metropolitan represents, warrants and covenants as follows:

1. Power and Authority

That Metropolitan is a public agency and quasi-municipal corporation, duly organized and validly existing under the laws of the State of California; that it has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth

in this Agreement, and that the execution and delivery hereof by Metropolitan and the performance by Metropolitan of Metropolitan's obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which Metropolitan is a party or by which Metropolitan is bound.

2. Authorization; Valid Obligation

That all proceedings required to be taken by or on behalf of Metropolitan to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken, and that this Agreement is a valid and binding obligation of Metropolitan enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

3. No Litigation

To the best of Metropolitan's knowledge, there is no litigation, proceeding or investigation pending or threatened, to which Metropolitan is or would be a party, directly or indirectly, which, individually or in the aggregate, if adversely determined, might materially and adversely affect the ability of Metropolitan to perform its obligations under this Agreement, or which raises a question as to the validity of this Agreement, or any action to be taken hereunder.

**X. RECORD KEEPING, REPORTING, INSPECTION AND AUDIT**

**A. Record Keeping**

1. IEUA shall maintain audit and accounting procedures and written accounts with respect to the Program that are in accordance with generally accepted accounting principles and practices, consistently applied. IEUA shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of Program Funds.
2. IEUA and its respective contractors and subcontractors shall maintain copies of all contracts, agreements, and other documents relating to the Program for a minimum of three years following Program completion.
3. IEUA and TVMWD shall keep on file, for the useful life of the Facilities, as-built plans and the specifications of the Facilities. Such documents shall be made available for inspection by the State, Metropolitan, and upon reasonable notice.

4. IEUA shall require its contractors and subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices, consistently applied.

## **B. Reporting**

### **1. Construction Progress Reports**

During construction of the Facilities, a monthly progress report shall accompany each Invoice submitted by IEUA to Metropolitan (each a “**Progress Report**”), certified by a designated official of such Party, providing in reasonable detail, a description of (a) the work accomplished during the invoice period and the percent complete on each Discrete Program Element (b) and the amount of Program Construction Funds expended on each Discrete Program Element and Tasks, the purposes of those expenditures, the total amount expended and remaining of the budget for that Discrete Program Element. In the absence of a monthly Invoice, IEUA shall deliver the Progress Report detailing progress and expenditures for the month, and reporting on status of construction activities within 30-days after the month.

### **2. O&M Reports**

Commencing on the first day of the month which is ninety days following the Completion Date, and unless otherwise determined by the Operating Committee, on a semi-annual basis thereafter throughout the term of this Agreement, IEUA and TVMWD shall deliver to Metropolitan and the Operating Committee a report (an “**O&M Report**”) summarizing the operational and maintenance activities conducted in connection with the Program during the prior period.

## **C. Inspection**

Metropolitan and the DWR may inspect the aforementioned books, records and any other Program-related information at any time, upon reasonable advance notice to IEUA or TVMWD, as applicable.

## **D. Audit Rights and Obligations**

1. Pursuant to California Government Code Section 8546.7, IEUA and its contractors and subcontractors shall be subject to the examination and audit by the State Auditor for a period of three years after Program completion. IEUA agrees that, IEUA and its contractors and subcontractors shall be subject to examination and audit by Metropolitan and DWR for such period.

2. Within thirty days after the Completion of a Program Facility, IEUA shall, at its expense, cause an audit of all Program Construction Costs and expenses with respect to such Facility to be conducted by an independent certified public accountant and deliver to Metropolitan a report prepared by such accountant in connection therewith.

## **XI. INDEMNITY**

### **A. General Indemnity**

Each Party hereto shall indemnify, defend and hold harmless the other Party and its elected officials, officers and employees from and against any and all lawsuits, actions, causes of action, claims and damages and any and all court costs and attorneys' fees related thereto ("**Claims**"), in any way arising out of or connected with the performance or nonperformance of the indemnifying Party's duties or the discharge of or failure to discharge that Party's obligations hereunder to the maximum extent permitted by law.

### **B. IEUA Specific Indemnity**

Without limiting the foregoing indemnity, IEUA hereby agrees to indemnify, defend and hold harmless TVMWD, Metropolitan and Watermaster, their elected officials, officers and employees from and against any and all Claims, in any way arising out of or connected with the Program, including any Claims by DWR or any other branch, agency or department of the State of California in connection with the Program (except for a breach of the DWR Funding Letter attributable to Metropolitan) or breach of its obligations hereunder, or otherwise to the extent of such Party's responsibility hereunder or to the extent that such Party caused or exacerbated such or other Claim(s).

### **C. TVMWD Specific Indemnity**

Without limiting the foregoing indemnity, TVMWD hereby agrees to indemnify, defend and hold harmless IEUA, Metropolitan and Watermaster, their elected officials, officers and employees from and against any and all Claims, in any way arising out of or connected with the Program, including any Claims by DWR or any other branch, agency or department of the State of California in connection with the Program (except for a breach of the DWR Funding Letter attributable to Metropolitan) or breach of its obligations hereunder, or otherwise to the extent of such Party's responsibility hereunder or to the extent that such Party caused or exacerbated such or other Claim(s).

### **D. Watermaster Specific Indemnity**

Without limiting the indemnity in clause(A) above, Watermaster hereby agrees to indemnify, defend and hold harmless Metropolitan and IEUA and TVMWD, and

their elected officials, officers and employees from and against any and all Claims, in any way arising out of or connected with the Program, including any Claims by DWR or any other branch, agency or department of the State of California in connection with the Program (except for a breach of the DWR Funding Letter attributable to Metropolitan or IEUA's and TVMWD's breach of its obligations hereunder), or otherwise to the extent of Watermaster's responsibility hereunder or to the extent that it caused or exacerbated such Claim(s).

**E. Metropolitan Specific Indemnity**

Without limiting the indemnity in clause (A) above, Metropolitan hereby agrees to indemnify, defend and hold harmless IEUA and TVMWD and Watermaster, their elected officials, officers and employees from and against any and all Claims arising out of or connected with a failure under or breach of the DWR Funding Letter by Metropolitan, or otherwise to the extent of Metropolitan's responsibility hereunder or to the extent that it caused or exacerbated such or other Claim(s).

**XII. INSURANCE**

**A. General Required Coverages**

IEUA and TVMWD through agreement with their respective Operating Parties shall procure, pay for and keep in full force and effect, at all times during the term of this Agreement the following insurance (to the extent not already maintained by IEUA and TVMWD or their respective Operating Parties):

1. Commercial general liability insurance insuring IEUA and TVMWD against liability for personal injury, bodily injury, death and damage to property (including the Facilities) arising from IEUA's and TVMWD's performance under this Agreement. Said insurance shall include coverage in an amount equal to at least Five Million Dollars (\$5,000,000), and shall contain "blanket contractual liability" and "broad form property damage" endorsements insuring IEUA's and TVMWD's performance of its obligations to indemnify Metropolitan as set forth herein (the "**CGL Insurance**"); and
2. Pursuant to Section 3700 of the California Labor Code, workers' compensation insurance with employer's liability in the amounts required by any applicable laws (the "**Workers' Compensation Insurance**").
3. IEUA and TVMWD will provide proof of automobile liability insurance as required by the State of California Department of Motor Vehicles.

**B. Specific Policy Requirements**

Each policy of insurance required to be carried pursuant to this Agreement: (1) shall, except with respect to Worker's Compensation Insurance, name Metropolitan as an additional insured; (2) shall be in a form reasonably satisfactory to Metropolitan; (3) shall be carried with companies reasonably acceptable to Metropolitan; (4) shall provide that such policy shall not be subject to cancellation, lapse or change except after at least thirty (30) days prior written notice to Metropolitan, and (5) shall, except with respect to the Environmental Liability Insurance required under clause (D) below, be on an "occurrence" basis and not on a "claims-made" basis.

**C. Deductibles/Self-Insurance.**

The insurance required by this Section XII may contain deductibles or self-insured retentions. IEUA and TVMWD through agreement with their respective Operating Parties shall be solely responsible for any such deductibles and/or self-insured retentions applicable to the coverages specified in Section XII(A). Metropolitan, at its option, may require IEUA and TVMWD to secure a surety bond or an irrevocable and unconditional letter of credit in order to ensure payment of such deductibles or self-insured retention. Insurance policies that contain deductibles or self-insured retentions in excess of \$25,000 per occurrence shall not be acceptable without the prior approval of Metropolitan.

## 1. Insurance Certificates.

Metropolitan reserves the right to require certified complete copies of any insurance certificates required by this Agreement but the receipt of such certificates shall not confer responsibility upon Metropolitan as to sufficiency of coverage.

## 2. Acceptability of Insurers

All insurance required by this Agreement shall be placed with insurers admitted to transact business in the State of California for the applicable class of insurance, as required by §700 of the California Insurance Code. Each insurer shall have a current Best Insurance Guide rating of not less than AVII, unless a lower rating is approved in writing by Metropolitan. Similarly, each self-insurer (including, if applicable, IEUA, TVMWD and/or its Operating Parties) shall have a self-insured liability program that is based upon excess liability policies rated at AVII or higher, unless otherwise approved in writing by Metropolitan.

**D. Environmental Liability Insurance**

1. If IEUA, TVMWD and Metropolitan agree to procure environmental liability insurance, IEUA and TVMWD shall obtain and Metropolitan shall pay 50% of the cost of the policy of environmental liability insurance that, at a minimum, shall cover: (1) the costs of on-site and off-site clean-up of pollution conditions relating to or arising from the Program (including natural resource damages, changes in water quality regulatory requirements and/or changes in the quality of water in the basin below original water quality readings); and (2) losses resulting from tort claims for bodily injury and property damage resulting from pollution conditions relating to or arising from the Program. Such insurance shall have limits of liability and terms and conditions (including premiums) reasonably approved by Metropolitan. Notwithstanding the foregoing, if Metropolitan reasonably agrees that, despite IEUA's and TVMWD's good faith and diligent efforts to obtain such environmental liability insurance, the coverage required herein is not available on commercially reasonable terms, IEUA and TVMWD shall obtain the coverage that most closely approximates the coverage required herein that is available on commercially reasonable terms or consider other risk financing alternatives. Metropolitan shall pay 50% of the cost of any such alternative coverage or risk financing alternative selected by IEUA and TVMWD, provided that the terms and conditions (including premiums) have been reasonably approved by Metropolitan.
2. For purposes of this Section XII(B), the "costs" of environmental liability insurance, alternative coverage or risk financing alternatives to be shared by the parties as provided in the prior paragraph shall include (1) insurance premiums and other up-front or periodic costs of coverage; (2) deductibles payable in connection with claims; and (3) any out-of-pocket costs (including court costs, attorneys' fees and other litigation expenses) incurred in connection with enforcement or collection under the policy, alternative coverage or other risk financing alternative.

**XIII. DISPUTE RESOLUTION; DEFAULTS AND REMEDIES****A. Dispute Resolution**

If any dispute arises between or among the Parties regarding interpretation or implementation of this Agreement (or the Operating Committee is unable to reach agreement on a matter being considered by it), the Parties will endeavor to resolve the dispute by using the services of a mutually acceptable consultant. The fees and expenses of the consultant shall be shared equally by the Parties. Except for disputes relating to exercises of Metropolitan discretion pursuant to Sections V(C); VII(A); VII(C); VII(D); XII(A) and XIII(B), if a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to all

Parties (or, in the case of the Operating Committee, to the members thereof), and unless the Parties (or members of the Operating Committee) otherwise agree, such dispute shall be settled by arbitration in accordance with the Rules of the American Arbitration Association in the County of Los Angeles, California. The arbitration panel acting pursuant to said rules may order any legal or equitable relief permitted by California law, including, without limitation, (1) declaratory and injunctive relief, (2) **SPECIFIC PERFORMANCE OF THE TERMS, CONDITIONS AND OBLIGATIONS OF THIS AGREEMENT**, (3) monetary liability, or (4) any other relief (including, without limitation, termination of this Agreement, as set forth in Section XIII(B) below) consistent with the purposes of this Agreement and applicable to the matter. The arbitration panel shall also be empowered to make final and binding determinations with respect to matters before the Operating Committee, where the members of the Committee were unable to reach agreement. Judgment upon the award rendered by the arbitration panel may be entered and enforced by any court having jurisdiction thereof.

## **B. Defaults and Remedies**

1. Should IEUA or TVMWD, each acting through agreement with its respective Operating Parties, fail to fully perform in the extraction of Program Water from the Metropolitan Water Storage Account in accordance with Exhibit G in response to a call from Metropolitan that has been approved by the Watermaster, and upon a determination by the Operating Committee that full performance could and should have occurred, then Metropolitan shall invoice to IEUA or to TVMWD, as appropriate, water delivered equal to the quantity in acre-feet of non-performance at two times the Tier 2 full service water rate (or its equivalent, as determined by Metropolitan in its reasonable discretion) currently then in effect (“**Nonperformance Penalty**”).
2. Should the Operating Committee in its review of incomplete performance, as specified in paragraph B (1) above, determine that unanticipated operational or water quality considerations precluded full performance, the Operating Committee shall not recommend to Metropolitan that the Nonperformance Penalty be assessed. In such case, IEUA or TVMWD, whichever is the responsible Member Agency, shall work with the nonperforming Operating Party to promptly set out a mutually agreeable course of action and schedule to correct the deficiency and present such to the Operating Committee for its concurrence. Future nonperformance outside of the agreed-upon schedule (provided that the Operating Committee has concurred with such schedule) would be subject to the Nonperformance Penalty.

**C. Termination**

1. Notwithstanding anything to the contrary herein, upon a breach of any provision of this Agreement by IEUA, TVMWD or Watermaster or any of them, Metropolitan may terminate this Agreement as to the breaching Party, by written notice to IEUA, TVMWD and Watermaster. Upon such termination, the breaching Party shall be required to reimburse Metropolitan for all Program Funds advanced to such Party by Metropolitan pursuant to this Agreement. Further, Metropolitan may require the breaching Party to purchase in equal installments over a 5-year period, at Metropolitan's then applicable full-service rate (or its equivalent, as determined by Metropolitan in its reasonable discretion), the balance of any water then identified in the Metropolitan Water Account. Upon full reimbursement and payment of the amounts required pursuant to this Section XIII(C), this Agreement shall be fully terminated as to the breaching Party.
2. Notwithstanding anything to the contrary herein, upon a breach of any provision of this Agreement by Metropolitan, IEUA and TVMWD may terminate its participation in this Agreement by written notice to Metropolitan. Upon such termination, the terminating Party shall be responsible to purchase in equal installments over a 5 year period, at Metropolitan's then applicable full-service rate (or its equivalent as determined by Metropolitan in its reasonable discretion), the balance of any water then identified in the Metropolitan Storage Account.

**D. Remedies Are Cumulative**

The rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same breach or any other breach by the other Party.

**XIV. FORCE MAJEURE EVENTS****A. Excuse to Performance**

In addition to specific provisions of the Agreement, lack of performance by any Party shall not be deemed to be a breach of this Agreement, where delays or defaults are due to acts of God, or the elements, accident, casualty, labor disturbances, unavailability or delays in delivery of any product, labor, fuel, service or materials, failure or breakdown of equipment, strikes, lockouts, or other labor disturbances, acts of the public enemy, orders or inaction of any kind from the government of the United States, the State of California, or any other governmental, military or civil authority (other than Metropolitan, IEUA, TVMWD or Watermaster), war, insurrections, riots, epidemics, landslides,

lightning, droughts, floods, fires, earthquakes, arrests, civil disturbances, explosions, freight embargoes, lack of transportation, breakage or accidents to vehicles, or any other inability of any Party, whether similar or dissimilar to those enumerated or otherwise, which are not within the control of the Party claiming such inability or disability, which such Party could not have avoided by exercising due diligence and care and with respect to which such Party shall use all reasonable efforts that are practically available to it in order to correct such condition (such conditions being herein referred to as “**Force Majeure Events**”).

**B. Responding to Force Majeure Events**

The Parties agree that in the event of a Force Majeure Event which substantially interferes with the implementation of this Agreement, the Parties will use their best efforts to negotiate an interim or permanent modification to this Agreement which responds to the Force Majeure Event and maintains the principles pursuant to which this Agreement was executed.

**XV. MISCELLANEOUS**

**A. Entire Agreement**

This Agreement constitutes the entire agreement between the Parties pertaining to the matters provided for herein and, except as herein provided, supersedes all prior and/or contemporaneous agreements and understanding, whether written or oral, between the Parties relating to the matters provided for herein.

**B. Interpretation**

The Parties have participated in the drafting of this Agreement and the Agreement shall not be construed for or against any Party. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Parties hereto and Section 1654 of the Civil Code has no application to interpretation of this Agreement. In addition, this Agreement shall be construed to the maximum extent possible in conformance with Prop. 13, the DWR Funding Letter, the IRP, the Groundwater Storage Principles, the RFP, and the Proposal. Notwithstanding anything to the contrary herein, to the extent this Agreement conflicts with the RFP and/or Proposal, this Agreement shall control.

**C. Further Assurances**

Each Party, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

**D. Counterparts**

This Agreement, and any document or instrument entered into, given or made pursuant to this Agreement or authorized hereby, and any amendment or supplement thereto may be executed in two or more counterparts, and by each party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document. Any signature page of this Agreement or of such an amendment, supplement, document or instrument may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another counterpart identical in form thereto but having attached to it one or more additional signature pages. In proving this Agreement or any such amendment, supplement, document or instrument, it shall not be necessary to produce or account for more than one counterpart thereof signed by the Party against whom enforcement is sought.

**E. Assignment**

No Party shall transfer this Agreement, in whole or in part, or any of its interests hereunder, to any other person or entity, without the prior written consent of the other Parties. Any attempt to transfer or assign this Agreement, or any privilege hereunder, without such written consent shall be void and confer no right on any person or entity that is not a Party to this Agreement. Nothing contained herein shall prevent the Parties from subcontracting for the performance of obligations hereunder, provided, however, no such subcontracting shall relieve the Parties from the performance of their respective obligations hereunder.

**F. Venue**

Any legal actions initiated pursuant to this Agreement or otherwise with respect to its subject matter must be instituted in the Superior Court of the County of Los Angeles, State of California, or in the Federal District Court in the Central District of California.

**G. Governing Law; Attorneys Fees and Costs**

The laws of the State of California shall govern the interpretation and enforcement of this Agreement. The non-prevailing party in any claim, suit or other action, including use of the dispute resolution as provided for in Section XIII(A), brought by such party shall pay to the prevailing party the costs of such prevailing party's attorneys fees and expenses and all other costs and expenses incurred by the prevailing party in defense of such action.

**H. Notice**

Formal written notices, demands, correspondence and communications between the Parties authorized by this Agreement shall be sufficiently given if personally served or dispatched by registered or certified mail, first-class, postage prepaid, return receipt requested, to the Parties as follows:

To IEUA: Inland Empire Utilities Agency  
General Manager  
P.O. Box 697  
Rancho Cucamonga, CA 91729

To TVMWD: Three Valleys Municipal Water District  
General Manager  
1021 E. Miramar Avenue  
Claremont, CA 91711

To Watermaster: Chino Basin Watermaster  
Chief Executive Officer  
86.32 Archibald Avenue, Suite 109  
Rancho Cucamonga, CA 91730

To Metropolitan: The Metropolitan Water District  
of Southern California  
Chief Executive Officer  
700 No. Alameda Street  
Los Angeles, California 90012

Such written notices, demands, correspondence and communications may be sent in the same manner to such other persons and addresses as either Party may, from time to time, reasonably designate by mail as provided in this Section. Notice shall be deemed given when received by mail or when personally served.

**I. Successors**

This Agreement shall bind and inure to the benefit of the Parties, and their respective successors and assigns.

**J. Severability**

Should any provisions of this Agreement prove to be invalid or illegal, such invalidity or illegality shall in no way affect, impair or invalidate any other provisions hereof, and such remaining provisions shall remain in full force and effect; provided, however, if the illegality or invalidity of any provision

undermines the intent of the Parties, then the Parties shall attempt in good faith to amend the agreement in order to fulfill the intent of the Parties. If the Parties are unable to so amend the Agreement, then the Agreement shall terminate and be of no further force or effect.

**K. Time is of the Essence**

Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

**L. Amendment**

This Agreement may be amended only in writing duly executed by the Parties hereto. Notwithstanding the foregoing, individual items listed in Exhibit H are subject to adjustment pursuant to the procedure set forth in Exhibit H.

*[Remainder of Page Intentionally Blank – Signature Pages Follow]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first set forth above.

**THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA**

By: \_\_\_\_\_  
Ronald R. Gastelum  
Chief Executive Officer

Date: \_\_\_\_\_

**APPROVED AS TO FORM:  
Jeffrey Kightlinger  
General Counsel**

By: \_\_\_\_\_  
Sydney Bennion  
Assistant General Counsel

Date: \_\_\_\_\_

**INLAND EMPIRE UTILITIES AGENCY**

By: \_\_\_\_\_  
Richard Atwater  
General Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
(Name)  
General Counsel

Date: \_\_\_\_\_

**THREE VALLEYS MUNICIPAL WATER  
DISTRICT**

By: \_\_\_\_\_  
(Name)  
General Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Steve Kennedy  
District Counsel

Date: \_\_\_\_\_

**CHINO BASIN WATERMASTER**

By: \_\_\_\_\_  
John Rossi  
Watermaster

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Michael Fife  
General Counsel

Date: \_\_\_\_\_

**EXHIBIT A**

**DWR FUNDING LETTER**

# **Exhibit B**

## **REQUEST FOR PROPOSAL**

# **Exhibit C**

## **THE PROPOSAL**

# **Exhibit D**

## **METROPOLITAN AWARD LETTER**

# **Exhibit E**

## **PROCEDURE FOR INITIAL CALCULATION OF METROPOLITAN STORAGE ACCOUNT**

Exhibit E is to itemize a pre-existing storage account to be rolled over into the conjunctive use Program Metropolitan Storage Account. This rollover water is to be called and sold to IEUA on a first in/first out basis. The applicable water rate to be paid for each rolled over account is specified in this exhibit, as is the responsibility for extraction costs, facility maintenance fees, etc.

<b>Water Account</b>	<b>Quantity of Water Transferred (Acre-feet)</b>	<b>Water Rate to be Paid when called under this Agreement for firm delivery</b>	<b>Responsibility for Costs: Electrical and Operation &amp; Maintenance Costs</b>	<b>Losses</b>
Trust Storage Account	4,739	Untreated replenishment rate at the time the water is called under this Agreement	IEUA	None
Trust Storage Account	X <sup>1</sup>	Untreated firm rate at the time the water is called under this Agreement	Metropolitan	Losses assigned at same rate as to other storage water in Chino Basin

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<sup>1</sup> Acre-feet of water stored by Metropolitan in the Chino Basin with the authorization of the Watermaster during the period beginning March 1, 2003 through the Effective Date.

## ACCOUNTING METHODOLOGY

### Annual Operating Plan

Commencing upon the Effective Date of this Agreement and thereafter prior to the beginning of each fiscal year, the Operating Committee will develop an Annual Operating Plan to forecast IEUA's and TVMWD's operations for the coming year in terms of groundwater production and imported water delivery absent the Program, as well as intended storage through in-lieu deliveries, injection and direct spreading, and extraction. Deliveries to the Metropolitan Storage Account through in-lieu deliveries, injection, or direct spreading will be determined using methodologies detailed in this Exhibit F.

The Annual Operating Plan must reflect IEUA's and TVMWD's monthly operations in terms of groundwater production and imported water deliveries absent the Program. If water is to be stored through direct injection or spreading or in-lieu deliveries, the Annual Operating Plan must indicate the months when the deliveries to the Chino Basin are expected to occur. If water is to be extracted, the operating schedule must reflect the amount of imported water that will be delivered from the Metropolitan Storage Account each month.

Upon call by Metropolitan for storage or extraction, the Operating Committee shall prepare a revision to the Annual Operating Plan for submission to Metropolitan, IEUA, TVMWD, and Watermaster, which would indicate the revised monthly storage or extraction amounts for the Metropolitan Storage Account. Metropolitan shall invoice for extracted Stored Water Delivery on a monthly basis at the firm water rate minus pumping and Operations and Maintenance Costs, according to the revised Annual Operating Plan. Any adjustments to the quantities billed shall be made during the year-end reconciliation.

### Calculation of Storage and Extraction

IEUA and TVMWD shall account for all water stored and extracted in the Chino Basin by their respective subagencies and each submit its certification of these total amounts and the subset of these amounts achieved for the Metropolitan Storage Account. IEUA and TVMWD shall each submit this certification to Metropolitan and the Watermaster on a monthly basis. At the end of each fiscal year, IEUA and TVMWD shall perform an annual assessment of total storage and extraction and the subset achieved for the Metropolitan Storage Account. Any adjustments to the monthly submittals shall be provided by IEUA to Metropolitan and to the Watermaster in a timely manner for consideration in the preparation of the Watermaster's annual report.

All accounting for the Metropolitan Storage Account shall conform to the following unless otherwise agreed by Metropolitan, IEUA, TVMWD, and Watermaster:

- a. Initial storage balance upon execution of this Agreement shall be consistent with Exhibit E “Procedure for Initial Calculation of Metropolitan Storage Account”. This initial storage balance is firm water to be billed at the rate designated in Exhibit E upon its extraction. This water, when extracted, shall be part of IEUA’s firm water allocation pursuant to the rate structure. This water shall be first in, and first out of the Metropolitan Storage Account.
- b. All other water delivered to the Metropolitan Storage Account shall be “new wet-water storage” to the Chino Basin, and not accomplished through an accounting transfer of pre-existing storage. New storage is achieved through demonstrated in-lieu delivery spreading, or injection of imported water supplied by Metropolitan.
- c. Monthly amounts certified by IEUA or TVMWD as in-lieu storage cannot exceed:
  1. extraction capacity available within IEUA’s or TVMWD’s service area in the month certified, and
  2. amount of firm water purchased by IEUA or TVMWD from Metropolitan in the month certified.

In-lieu storage amount will be equal to the difference between the amount pumped during the year and the sum of the pumping rights, but in no case shall be larger than the quantity of water purchased from Metropolitan or the pumping capacity.

Within two months following the formal issuance of Watermaster’s annual report, the Operating Committee shall perform an annual reconciliation of Metropolitan and IEUA’s and TVMWD’s records with the Watermaster report with respect to total storage and/or extraction from the Metropolitan Storage Account and Metropolitan’s water billing inclusive of credits for the Operation and Maintenance Costs and Electrical Costs, and prepare any needed paperwork for adjustments to the billing.

# Exhibit G

## Chino Basin Conjunctive Use “Dry Year” Storage Project Performance Criteria

Metropolitan may, on fifteen (15) days notice, require Program Agency to meet the objectives of the project as follows:

- 1) IEUA and TVMWD agree to reduce imported water deliveries by approximately 33,000 AF from the preceding 12 month period during the next 12 month period; and
- 2) IEUA, TVMWD and Chino Basin Watermaster through their agreements with Operating Parties will cause to be pumped during the next 12 months 33,000 AF from the Metropolitan Storage Account; and
- 3) Chino Basin pumping by the Operating Parties in the Dry Year program within the Chino Basin appropriate pool will increase over the previous year by 33,000 AF.

All three performance targets do not need to be met precisely ( + or – 10 percent.) As an example, IEUA and TVMWD would meet the objectives of the program if all three of the following occurred:

30,000 AF	Reduced imported full service deliveries when compared to the preceding 12 months.
31,000 AF	Pump from Metropolitan Storage Account.
34,000 AF	Increase pumping by Operating Parties, when compared to the preceding year.

However, the Operating Committee may mutually agree that performance targets are met even though a performance target is not met (a scenario when retail conservation were to exceed 15 – 25 percent or if other local supplies were developed, e.g., dramatic increase in recycled water use, may reduce the opportunity for the retail agencies to pump 33,000 AF from the Metropolitan Storage Account.) In this case, the Operating Committee would need to agree on the variance procedures for accepting a modified performance target after the episode. It should be generally agreed that additional use and production of all local supplies native to the Chino Basin area should not be restricted or cause IEUA, TVMWD or Chino Basin Watermaster (or the Operating Parties) to be out of compliance of the performance target. It should also be agreed that if IEUA and TVMWD retailers demand firm water from Metropolitan over the twelve month period, the pumped water would come from the Metropolitan Storage Account up to 33,000AF.

The objective of the program is to provide 33,000 acre-feet of additional pumping capacity in the Chino Basin for dry year use, to allow Metropolitan, IEUA and TVMWD the flexibility to utilize the Facilities in the most efficient manner possible (including normal year and wet years) and to ensure that upon a call of Metropolitan’s stored water, Facilities will be used to provide an additional supply of water to meet IEUA’s and TVMWD’s needs. A partial call will be addressed through a pro rata performance of all three objectives .

## Exhibit H

### DESCRIPTION OF PROGRAM FACILITIES & OPERATING PARTIES

[NOTE: Need to include updated list of Operating Parties, the Facilities to be constructed, operated and maintained by each, the yield to be produced by each, and the funding amount and source allocated to each. IEUA to provide final version of exhibit.]

Agency	Facility Name	Location
<b>Ion Exchange Nitrate Removal Facility</b>		
City of Chino	Southwest A	Phillips Blvd & Central Ave
	Southwest A alternative	Benson Ave, south of Francis St
	Northwest B	Palo Verde St & Benson Ave
City of Chino Hills	Southwest C	State St & Ramona Ave
	Southwest D	Chino Hills Pkwy & Ramona Ave
CCWD	North Central	Apricot St & Amethyst Ave
MVWD	Southwest B	Monte Vista Ave, btwn Phillips Blvd & Grand Ave
	Northwest B	Palo Verde St & Benson Ave
City of Ontario	Central	Cucamonga Ave, btwn Fourth St & I St
City of Pomona	West	First St & San Lorenzo St
City of Upland	Northwest A	Ninth Ave, west of Mountain Ave
<b>Well Facilities</b>		
	<b>Quantity</b>	
CCWD	2	East Ave & I-15 Fwy
MVWD	1	Monte Vista Ave & Richton St
City of Ontario*	1	Monte Vista Ave & Richton St
	1	Seventh St & Grove Ave
	1	1150 Hellman Ave
	1	Concours & Milliken Ave
	1	1335 Holt Blvd
	1	G St & Grove Ave
	1	Belmont St & Grove Ave
	1	Jurupa St & Dupont Ave
SAWC	1	Eight St, btwn San Antonio Ave & Euclid Ave

\*City of Ontario will select four of the seven listed well sites

The foregoing list is a preliminary list based on reasonable expectations of the Parties as of the Effective Date. Individual items on this Exhibit H may be adjusted from time to time by written notice from IEUA or TVMWD, as applicable, and Watermaster to Metropolitan. Each such notice shall specify the items to be adjusted and the amount of adjustment and shall certify to Metropolitan that after making such adjustment the Operational Capacity Thresholds continue to be met. Each notice which meets the requirements of this paragraph shall modify this Exhibit H to the extent provided in the notice.

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# **Exhibit “D”**



February 26, 2026

Michael Hurley, Director, Planning & Resources  
o.b.o. Dry Year Yield Program Operating Committee  
Inland Empire Utilities Agency  
P.O. Box 9020  
Chino Hills, CA 91709  
[mhurley@ieua.org](mailto:mhurley@ieua.org)

**Re: Dry Year Yield Performance**

Dear Members of the Dry Year Yield Program Operating Committee,

The undersigned Local Agency participants in the Dry Year Yield Program (collectively, “Agencies”) submit this letter to communicate our shared position regarding DYY Program performance during the current and future call years.

Our Agencies are committed to performing under dry year conditions as originally envisioned by the DYY Program. We also are committed to ensuring that Metropolitan Water District receives its full benefit from the DYY Program, including the extraction of all the water in the DYY Program account without any risk of abandonment. Current wet-year conditions create challenges for some DYY Operating Parties to perform by lowering demands and forcing some agencies to forgo full use of wet-year local supplies.

Therefore, our Agencies request that MWD reconsider 2026 as a call year due to hydrological (State-wide and local) conditions. We encourage call years to begin during an overall dry year and be spread to allow for a manageable amount per year. In return, our Agencies pledge to support giving MWD enforceable assurance that MWD will not abandon its DYY Program water if they remove this call and the DYY Program account balance is not zeroed out by 2028.

Consistent with the above request, our Agencies also support the DYY Operating Committee adjusting performance using existing criteria under Exhibit “G” of the 2003 DYY Groundwater Storage Program Funding Agreement, as amended. The Committee is empowered to consider adjustments in response to real-time conditions experienced by the Operating Parties (e.g., wells taken out of service, significant conservation, increase in local supplies). We are aware that certain Operating Parties have already submitted information to the Committee concerning their

*Re: Dry Year Yield Performance  
February 26, 2026*

individual circumstances meeting one or more of these criteria. We also understand that making such adjustments may require extension of the Agreement past its current termination in 2028, which as stated above we support.

Finally, our Agencies urge all DYY parties to begin working together immediately to develop a regional DYY performance solution that supports each other's performance for the future call by MWD. This solution would include added DYY Program performance assistance from agencies with additional performance capacity for the balance of the DYY Program term. The Agencies view a basin-wide, coordinated approach to DYY Program performance as also being consistent with the objectives of the original 2003 DYY Groundwater Storage Program Funding Agreement, as amended, and as providing flexibility for Agencies that may lack sufficient system capacity and/or supply demand to fully perform their DYY obligation in a given call year. We understand that implementation of a regional performance solution would require mutual agreement by all DYY parties, approval through the Watermaster process, and Court-ordered implementation.

Regarding historical DYY Program operations that are subject to ongoing litigation, our Agencies implore all parties to the litigation to reach settlement. As non-litigants, we express no opinion on the proper Court Order coming out of the Court of Appeal ruling. However, we are concerned that re-populating the DYY Program storage account would further complicate future DYY Program performance. We stand committed to assisting the litigants in achieving settlement.

Thank you for considering these comments.

Sincerely,



Hye Jin Lee, Director of Public Works  
City of Chino



Richard Gonzales, Dep. Director of Utilities  
City of Upland



Benjamin Montgomery, City Manager  
City of Chino Hills



Chris Berch, General Manager  
Jurupa Community Services District



Chris Diggs, Director, Water Resources  
City of Pomona



Justin Scott-Coe, General Manager  
Monte Vista Water District

cc: Sylvie Lee, Chief Water Resources Officer, Three Valleys Municipal Water District  
[slee@tvmwd.com](mailto:slee@tvmwd.com)  
Eddie Lin, Manager of Water Resources, Inland Empire Utilities Agency  
[elin@ieua.org](mailto:elin@ieua.org)

# **Exhibit “E”**



PAUL S. LEON  
MAYOR

SHEILA MAUTZ  
CITY CLERK

ALAN D. WAPNER  
MAYOR PRO TEM

February 4, 2026

JAMES R. MILHISER  
TREASURER

JIM W. BOWMAN  
DEBRA PORADA  
DAISY MACIAS  
COUNCIL MEMBERS

SCOTT OCHOA  
CITY MANAGER

## VIA EMAIL

Dry Year Yield Operating Committee  
Email: [RFavelaQuintero@cbwm.org](mailto:RFavelaQuintero@cbwm.org)

### **Subject: Dry Year Yield Operating Changed Conditions and Variance**

Dear Committee Members,

The City of Ontario remains committed to performing during the upcoming Dry Year Yield Program call years. However, material changes in conditions warrant a review under the governing agreements. Over the past two decades, the City has continued to develop our local water supply, including the development of the Chino Desalter Authority (CDA), increased recycled water use, and substantial reductions in per-capita water use despite continued population growth. In light of these changes, the City respectfully requests that the Operating Committee review the changed conditions further outlined below and consider reasonable adjustments to Ontario's groundwater baseline by February 25, 2026.

As stated in the 2003 Funding Agreement, an amendment to the Annual Operating Plan can be made to "accommodate changed circumstances or new information", which may include "a scenario when retail conservation were to exceed 15-25% or if other local supplies were developed, e.g., dramatic increase in recycled water use... The Operating Committee would need to agree on the variance procedure for accepting a modified performance target after the episode." Furthermore, the reference is carried forward in the 2015 DYY Amendment 8, "The Operating Committee may adjust the baselines due to factors such as new production wells, wells taken out of service, planned outages that would significantly affect [the] ability to deliver supplies, significant retail conservation, and/or dramatic increase in local supplies (recycled water, desalted groundwater, etc.)."

Taken together, these agreements expressly contemplate and provide a framework for modifying performance targets to address material changes that were anticipated at the time of adoption. Accordingly, Ontario requests consideration of the following changed conditions since the inception of the DYY Program as justification for a baseline adjustment or variance:

- Chino Desalter Authority (CDA) supply increased from 0AFY to approximately 8,500AFY

- Recycled water supply, excluding agriculture, increased from approximately 1,000AFY to approximately 5,500AFY
- Per-capita water use has declined by approximately 20%, despite a population growth of roughly 20,000 over the last decade.
- Imported water use and groundwater production from Ontario wells have each decreased by nearly 40%, reflecting reduced demand and increased use of recycled water and desalter water.
- Imported water baseline decreased from approximately 12,500AFY to approximately 5,500AFY

Ontario believes that similar changed conditions exist for many participating agencies and respectfully requests that the Operating Committee consider these matters at its earliest opportunity. As provided in the governing agreements, the Annual Operating Plan shall not limit MWD's ability to modify its call for extraction of water upon advance notice.

It is also important to note that the CDA supply and recycled water supply are local resources developed in accordance with regional and state water resource objectives and regulatory mandates. Ontario believes there are opportunities for both MWD and the local participating agencies to achieve the original program objectives while appropriately recognizing these changing conditions. Ontario appreciates the Operating Committee's consideration of this request.

Sincerely,



Chad Nishida, P.E.  
Water Resources Manager  
City of Ontario

cc: Scott Burton – General Manager, Ontario Municipal Utilities Company  
Courtney Jones – Assistant General Manager, Ontario Municipal Utilities Company  
Todd Corbin – General Manager, Chino Basin Watermaster  
Edgar Tellez Foster – Water Resources Management and Planning Director, Chino Basin Watermaster  
Michael Hurley – Director of Planning and Resources, Inland Empire Utilities Agency  
Eddie Lin – Manager of Water Resources, Inland Empire Utilities Agency

CHINO BASIN WATERMASTER

Case No. RCVRS 51010

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

**PROOF OF SERVICE**

I declare that:

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

On July 10, 2026, I served the following:

1. DECLARATION OF AMANDA COKER IN SUPPORT OF DEFENDANT CUCAMONGA VALLEY WATER DISTRICT'S SUPPLEMENTAL BRIEF IN SUPPORT OF WATERMASTER'S MOTION FOR COURT APPROVAL OF THE CORRECTED AND AMENDED FISCAL YEARS 2021/22 AND 2022/23 ASSESSMENT PACKAGES AND OPPOSITION TO THE CITY OF ONTARIO'S CHALLENGE TO WATERMASTER'S APPROVAL OF THE CORRECTED AND AMENDED FISCAL YEARS 2021/22 AND 2022/23 ASSESSMENT PACKAGES

/ X / BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by the United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:

**See attached service list:** Mailing List 1

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

/ \_\_\_ / BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

/ X / BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

**See attached service list:** Master Email Distribution List

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

Executed on July 10, 2026, in Rancho Cucamonga, California.



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By: Ruby Favela Quintero  
Chino Basin Watermaster

PAUL HOFER  
11248 S TURNER AVE  
ONTARIO, CA 91761

JEFF PIERSON  
2 HEXHAM  
IRVINE, CA 92603

## **Ruby Favela Quintero**

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**Contact Group Nam01 - Master Email List**

## Members:

Aimee Zhao	azhao@ieua.org
Alan Frost	Alan.Frost@dpw.sbcounty.gov
Alberto Mendoza	Alberto.Mendoza@cmc.com
Alejandro R. Reyes	arreyes@sgvwater.com
Alex Padilla	Alex.Padilla@wsp.com
Alexis Mascarinas	AMascarinas@ontarioca.gov
Alfonso Ruiz	alfonso.ruiz@cmc.com
Alonso Jurado	ajurado@cbwm.org
Alyssa Coronado	acoronado@sarwc.com
Amanda Coker	amandac@cvwdwater.com
Andrew Gagen	agagen@kidmanlaw.com
Andy Campbell	acampbell@ieua.org
Andy Malone	amalone@westyost.com
Angelica Todd	angelica.todd@ge.com
Anna Nelson	atruongnelson@cbwm.org
Anthony Alberti	aalberti@sgvwater.com
April Robitaille	arobitaille@bhfs.com
Art Bennett	citycouncil@chinohills.org
Arthur Kidman	akidman@kidmanlaw.com
Ashley Zapp	ashley.zapp@cmc.com
Ashok Dhingra	ash@akdconsulting.com
Ben Lewis	benjamin.lewis@gswater.com
Ben Orosco	Borosco@cityofchino.org
Ben Roden	BenR@cvwdwater.com
Benjamin M. Weink	ben.weink@tetrattech.com
Benjamin Markham	bmarkham@bhfs.com
Beth.McHenry	Beth.McHenry@hoferranch.com
Bill Schwartz	bschwartz@mwwd.org
Bill Velto	bvelto@uplandca.gov
Board Support Team IEUA	BoardSupportTeam@ieua.org
Bob Bowcock	bbowcock@irmwater.com
Bob DiPrimio	rjdiprimio@sgvwater.com
Bob Feenstra	bobfeenstra@gmail.com
Bob Kuhn	bkuhn@tvmwd.com
Bob Kuhn	bgkuhn@aol.com
Bob Page	Bob.Page@rov.sbcounty.gov
Brad Herrema	bherrema@bhfs.com
Bradley Jensen	bradley.jensen@cao.sbcounty.gov
Brandi Belmontes	BBelmontes@ontarioca.gov
Brandi Goodman-Decoud	bgdecoud@mwwd.org
Brandon Howard	brahoward@niagarawater.com
Brenda Fowler	balee@fontanawater.com
Brent Yamasaki	byamasaki@mwdh2o.com
Brian Dickinson	bdickinson65@gmail.com
Brian Geye	bgeye@autoclubspeedway.com
Brian Hamilton	bhamilton@downeybrand.com
Brian Lee	blee@sawaterco.com
Bryan Smith	bsmith@jcsd.us
Carmen Sierra	carmens@cvwdwater.com
Carol Boyd	Carol.Boyd@doj.ca.gov
Carolina Sanchez	csanchez@westyost.com

Casey Costa	ccosta@chinodesalter.org
Cassandra Hooks	chooks@niagarawater.com
Chad Nishida	CNishida@ontarioca.gov
Chander Letulle	cletulle@jcsd.us
Charles Field	cdfield@att.net
Charles Moorrees	cmoorrees@sawaterco.com
Chris Berch	cberch@jcsd.us
Chris Diggs	chris.diggs@pomonaca.gov
Christen Miller	Christen.Miller@cao.sbcounty.gov
Christensen, Rebecca A	rebecca_christensen@fws.gov
Christopher M. Sanders	cms@eslawfirm.com
Christopher R. Guillen	cguillen@bhfs.com
Cindy Cisneros	cindyc@cvwdwater.com
Cindy Li	Cindy.li@waterboards.ca.gov
City of Chino, Administration Department	administration@cityofchino.org
Courtney Jones	cjjones@ontarioca.gov
Craig Miller	CMiller@wmwd.com
Craig Stewart	craig.stewart@wsp.com
Cris Fealy	cifealy@fontanawater.com
Curtis Burton	CBurton@cityofchino.org
Dan McKinney	dmckinney@douglascountylaw.com
Dana Reeder	dreeder@downeybrand.com
Daniel Bobadilla	dbobadilla@chinohills.org
Daniela Uriarte	dUriarte@cbwm.org
Danny Kim	dkim@linklogistics.com
Dave Argo	daveargo46@icloud.com
Dave Crosley	DCrosley@cityofchino.org
Dave Schroeder	DSchroeder@cbwcd.org
David Barnes	DBarnes@geoscience-water.com
David De Jesus	ddejesus@tvmwd.com
Dawn Varacchi-Ives	dawn.varacchi@geaerospace.com
Deanna Fillon	dfillon@DowneyBrand.com
Denise Garzaro	dgarzaro@ieua.org
Dennis Mejia	dmejia@ontarioca.gov
Dennis Williams	dwilliams@geoscience-water.com
Derek Hoffman	dhoffman@fennemorelaw.com
Derek LaCombe	dlacombe@ci.norco.ca.us
Ed Diggs	ediggs@uplandca.gov
Ed Means	edmeans@icloud.com
Eddie Lin	elin@ieua.org
Eddie Oros	eoros@bhfs.com
Edgar Tellez Foster	etellezfoster@cbwm.org
Eduardo Espinoza	EduardoE@cvwdwater.com
Elena Rodrigues	erodrigues@wmwd.com
Elizabeth M. Calciano	ecalciano@hensleylawgroup.com
Elizabeth P. Ewens	elizabeth.ewens@stoel.com
Elizabeth Willis	ewillis@cbwcd.org
Eric Fordham	eric_fordham@geopentech.com
Eric Garner	eric.garner@bbklaw.com
Eric Grubb	ericg@cvwdwater.com
Eric Lindberg PG,CHG	eric.lindberg@waterboards.ca.gov
Eric N. Robinson	erobinson@kmtg.com

Eric Papathakis	Eric.Papathakis@cdcr.ca.gov
Eric Tarango	edtarango@fontanawater.com
Erick Jimenez	Erick.Jimenez@nucor.com
Erik Vides	evides@cbwm.org
Erika Clement	Erika.clement@sce.com
Eunice Ulloa	eulloa@cityofchino.org
Evette Ounanian	EvetteO@cvwdwater.com
Frank Yoo	FrankY@cbwm.org
Fred Fudacz	ffudacz@nossaman.com
Fred Galante	fgalante@awattorneys.com
G. Michael Milhiser	directormilhiser@mwwd.org
G. Michael Milhiser	Milhiser@hotmail.com
Garrett Rapp	grapp@westyost.com
Geoffrey Kamansky	gkamansky@niagarawater.com
Geoffrey Vanden Heuvel	geoffreyvh60@gmail.com
Gerald Yahr	yahrj@koll.com
Gina Gomez	ggomez@ontarioca.gov
Gina Nicholls	gnicholls@nossaman.com
Gino L. Filippi	Ginoffvine@aol.com
Gracie Torres	gtorres@wmwd.com
Grant Mann	GMann@dpw.sbcounty.gov
Greg Zarco	Greg.Zarco@airports.sbcounty.gov
Ha T. Nguyen	ha.nguyen@stoel.com
Heather Placencia	heather.placencia@parks.sbcounty.gov
Henry DeHaan	Hdehaan1950@gmail.com
Hvianca Hakim	HHakim@linklogistics.com
Hye Jin Lee	HJLee@cityofchino.org
Imelda Cadigal	Imelda.Cadigal@cdcr.ca.gov
Irene Islas	irene.islas@bbklaw.com
Ivy Capili	ICapili@bhfs.com
James Curatalo	jamesc@cvwdwater.com
Jasmin A. Hall	jhall@ieua.org
Jason Marseilles	jmarseilles@ieua.org
Jean Cihigoyenetche	Jean@thejclawfirm.com
Jeff Evers	jevers@niagarawater.com
Jeffrey L. Pierson	jpierson@intexcorp.com
Jennifer Hy-Luk	jhyluk@ieua.org
Jeremy N. Jungries	jjungreis@rutan.com
Jesse Pompa	jpompa@jcsd.us
Jessie Ruedas	Jessie@thejclawfirm.com
Jill Keehnen	jill.keehnen@stoel.com
Jim Markman	jmarkman@rwglaw.com
Jim Van de Water	jimvdw@thomashardercompany.com
Jim W. Bowman	jbowman@ontarioca.gov
Jimmie Moffatt	jimmie@cvwdwater.com
Jimmy Gutierrez - Law Offices of Jimmy Gutierrez	jimmylaredo@gmail.com
Jimmy L. Gutierrez	Jimmy@City-Attorney.com
Jimmy Medrano	Jaime.medrano2@cdcr.ca.gov
Jiwon Seung	JiwonS@cvwdwater.com
Joanne Chan	jchan@wwd.org
Joao Feitoza	joao.feitoza@cmc.com
Jody Roberto	jroberto@tvmwd.com

Joe Graziano	jgraz4077@aol.com
Joel Ignacio	jignacio@ieua.org
John Bosler	johnb@cvwdwater.com
John Harper	jrharper@harperburns.com
John Hughes	jhughes@mvwd.org
John Huitsing	johnhuitsing@gmail.com
John Lopez	jlopez@sarwc.com
John Lopez and Nathan Cole	customerservice@sarwc.com
John Mendoza	jmendoza@tvmwd.com
John Partridge	jpartridge@angelica.com
John Russ	jruss@ieua.org
John Schatz	jschatz13@cox.net
Jonathan Chang	jonathanchang@ontarioca.gov
Jordan Garcia	kgarcia@cbwm.org
Jose A Galindo	Jose.A.Galindo@linde.com
Jose Ventura	jose.ventura@linde.com
Josh Swift	jmswift@fontanawater.com
Joshua Aguilar	jaguilar1@wmwd.com
Justin Brokaw	jbrokaw@marygoldmutualwater.com
Justin Castruita	jacastruita@fontanawater.com
Justin Nakano	JNakano@cbwm.org
Justin Scott-Coe Ph. D.	jscottcoe@mvwd.org
Kaitlyn Dodson-Hamilton	kaitlyn@tdaenv.com
Karen Williams	kwilliams@sawpa.org
Kassandra Lopez	klopez@cbwcd.org
Kati Parker	kparker@katithewaterlady.com
Keith Lemieux	klemieux@awattorneys.com
Kelly Alhadef-Black	kelly.black@lewisbrisbois.com
Kelly Ridenour	KRIDENOUR@fennemorelaw.com
Ken Waring	kwaring@jcsd.us
Kevin Alexander	kalexander@ieua.org
Kevin O'Toole	kotoole@ocwd.com
Kevin Sage	Ksage@IRMwater.com
Kirk Richard Dolar	kdolar@cbwm.org
Kurt Berchtold	kberchtold@gmail.com
Kyle Brochard	KBrochard@rwglaw.com
Kyle Snay	kylesnay@gswater.com
Laura Roughton	lroughton@wmwd.com
Laura Yraceburu	lyraceburu@bhfs.com
Lee McElhaney	lmcElhaney@bmklawplc.com
Lewis Callahan	Lewis.Callahan@cdcr.ca.gov
Linda Jadeski	ljadeski@wvwd.org
Liz Hurst	ehurst@ieua.org
Mallory Gandara	MGandara@wmwd.com
Manny Martinez	DirectorMartinez@mvwd.org
Marcella Correa	MCorrea@rwglaw.com
Marco Tule	mtule@ieua.org
Maria Ayala	mayala@jcsd.us
Maria Insixiengmay	Maria.Insxiengmay@cc.sbcounty.gov
Maria Mendoza	mmendoza@westyost.com
Maribel Sosa	Maribel.Sosa@pomonaca.gov
Marilyn Levin	Marilynhlevin@gmail.com
Marissa Turner	mtturner@tvmwd.com

Mark D. Hensley	mhensley@hensleylawgroup.com
Mark Wiley	mwiley@chinohills.org
Marlene B. Wiman	mwiman@nossaman.com
Martin Cihigoyenetche	marty@thejclawfirm.com
Martin Rauch	martin@rauchcc.com
Martin Zvirbulis	mezvirbulis@sgvwater.com
Matthew H. Litchfield	mlitchfield@tvmwd.com
Maureen Snelgrove	Maureen.snelgrove@airports.sbcounty.gov
Maureen Tucker	mtucker@awattorneys.com
Mauser, Anna (NCSI)	anna.mauser@nucor.com
Megan Sims	mnsims@sgvwater.com
Meredith Nikkel	mnikkel@downeybrand.com
Michael Adler	michael.adler@mcmcnnet.net
Michael B. Brown, Esq.	michael.brown@stoel.com
Michael Blay	mblay@uplandca.gov
Michael Cruikshank	mcrruikshank@wsc-inc.com
Michael Fam	mfam@dpw.sbcounty.gov
Michael Hurley	mhurley@ieua.org
Michael Maeda	michael.maeda@cdcr.ca.gov
Michael Mayer	Michael.Mayer@dpw.sbcounty.gov
Michael P. Thornton	mthornton@tkeengineering.com
Michele Hinton	mhinton@fennemorelaw.com
Michelle Licea	mlicea@mvwd.org
Mikayla Coleman	mikayla@cvstrat.com
Mike Gardner	mgardner@wmwd.com
Mike Maestas	mikem@cvwdwater.com
Miriam Garcia	mgarcia@ieua.org
Monica Nelson	mnelson@ieua.org
Moore, Toby	TobyMoore@gswater.com
MWDProgram	MWDProgram@sdca.org
Nabil B. Saba	Nabil.Saba@gswater.com
Nadia Aguirre	naguirre@tvmwd.com
Natalie Costaglio	natalie.costaglio@mcmcnnet.net
Natalie Gonzaga	ngonzaga@cityofchino.org
Nathan deBoom	n8deboom@gmail.com
Neetu Gupta	ngupta@ieua.org
Nicholas Miller	Nicholas.Miller@parks.sbcounty.gov
Nichole Horton	Nichole.Horton@pomona.gov
Nick Jacobs	njacobs@somachlaw.com
Nicole deMoet	ndemoet@uplandca.gov
Nicole Escalante	NEscalante@ontarioca.gov
Noah Golden-Krasner	Noah.goldenkrasner@doj.ca.gov
Norberto Ferreira	nferreira@uplandca.gov
Paul Hofer	farmerhofer@aol.com
Paul Hofer	farmwatchtoo@aol.com
Paul S. Leon	pleon@ontarioca.gov
Pete Vicario	PVicario@cityofchino.org
Peter Dopulos	peterdopulos@gmail.com
Peter Dopulos	peter@egoscuelaw.com
Peter Hettinga	peterhettinga@yahoo.com
Peter Rogers	progers@chinohills.org
Rebekah Walker	rwalker@jcsd.us
Richard Anderson	horsfly1@yahoo.com

Richard Rees	richard.rees@wsp.com
Robert DeLoach	robertadeloach1@gmail.com
Robert E. Donlan	rdonlan@wjhattorneys.com
Robert Neufeld	robneu1@yahoo.com
Robert S.	RobertS@cbwcd.org
Robert Wagner	rwagner@wbecorp.com
Ron Craig	Rcraig21@icloud.com
Ron LaBrucherie, Jr.	ronLaBrucherie@gmail.com
Ronald C. Pietersma	rcpietersma@aol.com
Ruben Llamas	rllamas71@yahoo.com
Ruby Favela	rfavela@cbwm.org
Ryan Shaw	RShaw@wmwd.com
Sam Nelson	snelson@ci.norco.ca.us
Sam Rubenstein	srubenstein@wpcarey.com
Sandra S. Rose	directorrose@mvwd.org
Scott Burton	sburton@ontarioca.gov
Scott Cooper	scooper@rutan.com
Scott Slater	sslater@bhfs.com
Seth J. Zielke	sjzielke@fontanawater.com
Shawnda M. Grady	sgrady@wjhattorneys.com
Sherry Ramirez	SRamirez@kmtg.com
Sonya Barber	sbarber@ci.upland.ca.us
Sonya Zite	szite@wmwd.com
Stephanie Reimer	SReimer@mvwd.org
Stephen Deitsch	stephen.deitsch@bbklaw.com
Stephen Parker	sparker@uplandca.gov
Steve Kennedy	skennedy@bmklawplc.com
Steve M. Anderson	steve.anderson@bbklaw.com
Steve Riboli	steve.riboli@riboliwines.com
Steve Smith	ssmith@ieua.org
Steven Andrews	sandrews@sandrewsengineering.com
Steven J. Elie	s.elie@mpglaw.com
Steven J. Elie	selie@ieua.org
Steven Popelar	spopelar@jcsd.us
Steven Raughley	Steven.Raughley@isd.sbcounty.gov
Susan Palmer	spalmer@kidmanlaw.com
Sylvie Lee	slee@tvmwd.com
Tammi Ford	tford@wmwd.com
Tariq Awan	Tariq.Awan@cdcr.ca.gov
Taya Victorino	tayav@cvwdwater.com
Teri Layton	tlayton@sawaterco.com
Terri Whitman	TWhitman@kmtg.com
Terry Watkins	Twatkins@geoscience-water.com
Thomas S. Bunn	tombunn@lagerlof.com
Tim Barr	tbarr@wmwd.com
Timothy Ryan	tjryan@sgvwater.com
Todd Corbin	tcorbin@cbwm.org
Tom Barnes	tbarnes@esassoc.com
Tom Cruikshank	tcruikshank@linklogistics.com
Tom Dodson	tda@tdaenv.com
Tom Harder	tharder@thomashardercompany.com
Tom O'Neill	toneill@chinodesalter.org
Tony Long	tlong@angelica.com

Toyasha Sebbag	tsebbag@cbwcd.org
Tracy J. Egoscue	tracy@egoscuelaw.com
Trevor Leja	Trevor.Leja@cao.sbcounty.gov
Veva Weamer	vweamer@westyost.com
Victor Preciado	victor.preciado@pomona.gov
Vivian Castro	vcastro@cityofchino.org
Wade Fultz	Wade.Fultz@cmc.com
WestWater Research, LLC	research@waterexchange.com
William Brunick	bbrunick@bmklawplc.com
William McDonnell	wmcdonnell@ieua.org
William Urena	wurena@emeraldus.com