

FEE EXEMPT

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

6 Attorneys for
7 City of Ontario

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

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

11
12 CHINO BASIN MUNICIPAL WATER
13 DISTRICT,
14
15 Plaintiff,
16 v.
17 CITY OF CHINO, et al.,
18 Defendants.

CASE NO. RCVRS 51010

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

**APPENDIX OF EVIDENCE IN
SUPPORT OF CITY OF ONTARIO'S
SUPPLEMENTAL BRIEF IN SUPPORT
OF OPPOSITION TO
WATERMASTER'S MOTION FOR
COURT APPROVAL OF CORRECTED
AND AMENDED FISCAL YEARS
2021/22 AND 2022/23 ASSESSMENT
PACKAGES**

VOL. 1: EXHIBITS 1-5

Date: August 14, 2026
Time: 10:00 a.m.
Department: R17


1 City of Ontario submits this appendix of evidence referenced in its Supplemental Brief in
 2 Support of Opposition to Watermaster’s Motion for Court Approval of Corrected and Amended
 3 Fiscal Years 2021/22 and 2022/23 Assessment Packages and Request for Judicial Notice, filed
 4 concurrently herewith.

Ex. No.	Description	Vol.
1.	Local Agency Agreement by and between Inland Empire Utilities Agency (“IEUA”) and Cucamonga County Water District, dated March 11, 2003	1
2.	Local Agency Agreement by and between IEUA and the City of Ontario, dated April 15, 2003	1
3.	Local Agency Agreement by and between IEUA and the City of Ontario and Jurupa Community Services District, dated January 12, 2004	1
4.	Watermaster’s Motion for Approval of Storage and Recovery Program Agreement (with Exhibit A only), filed May 12, 2004	1
5.	Order Approving Storage and Recovery Program Storage Agreement re Implementation of Dry Year Yield Storage Project, entered June 24, 2004	1
6.	Groundwater Storage Program Funding Agreement, Agreement No. 49960, dated March 1, 2003	2
7.	Order Concerning Groundwater Storage Program Funding Agreement – Agreement No. 49960, entered June 5, 2003	2
8.	Chino Basin Watermaster Rules and Regulations, updated 2022	2
9.	Minutes of the Watermaster Appropriative Pool – Special Meeting, held November 27, 2018.	2
10.	Order on the Motion to Approve Amendments to Appropriative Pool Pooling Plan, entered March 15, 2019	2
11.	Chino Basin Watermaster 2021/2022 Assessment Package (Production Year 2020/2021), approved November 18, 2021	2
12.	Chino Basin Watermaster Staff Report regarding the Fiscal Year 2021/22 Assessment Package, dated November 18, 2021	2

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Dated: July 10, 2026

STOEL RIVES LLP

By: 

ELIZABETH P. EWENS
MICHAEL B. BROWN

Attorneys for
City of Ontario

EXHIBIT 1

LOCAL AGENCY AGREEMENT

Dated as of March 11, 2003

By and Among

INLAND EMPIRE UTILITIES AGENCY,

and

CUCAMONGA COUNTY WATER DISTRICT

original

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LOCAL AGENCY AGREEMENT

This Agreement is entered into as of March 27, 2003, by and among the Inland Empire Utilities Agency ("IEUA"), a municipal water district duly organized and existing under the laws of the State of California, , and the Local Agency ("Local Agency"), Cucamonga County Water District, duly organized and existing under the laws of the State of California

WITNESSETH:

WHEREAS, 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; and

WHEREAS, Metropolitan was subsequently 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, DWR set forth the specific terms and conditions of the grant to Metropolitan; and

WHEREAS, 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, a Request for Proposals for Participation in Groundwater Storage Programs Using Proposition 13 Funds, RFP No. WRM-2 (the "RFP"); and

WHEREAS, 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 approved by Metropolitan's Board of Directors in 1996, and the Groundwater Storage Principles adopted in connection therewith by Metropolitan's Board of Directors in January 2000; and

WHEREAS, IEUA has entered into a Groundwater Storage Project Funding Agreement (the "Metropolitan Agreement") with Metropolitan, Three Valleys Municipal Water District and Chino Basin Watermaster whereby, among other things, funding will be provided to finance the facilities listed on Exhibit A hereto (the "Local Agency Facilities") which are necessary to enhance a groundwater storage program in the Chino Basin; and

WHEREAS, IEUA desires to pass through to the Local Agency any amounts received by IEUA under the Metropolitan Agreement which are allocable to the Local Agency Facilities for use by the Local Agency to construct the Local Agency Facilities; and

WHEREAS, in exchange for such amounts, the parties hereto intend that the Local Agency assume all obligations of IEUA under the Metropolitan Agreement and all obligations relating to the Local Agency Facilities, whether such obligations are imposed by Metropolitan, DWR or another entity, such obligations including but not limited to the obligations recited in Sections III, IV, V, VII, X, XI and XII of the Metropolitan Agreement;

NOW THEREFORE, the parties hereto do agree as follows:

Section 1. Definitions. All capitalized terms used herein and not otherwise defined shall have the meanings given in the Metropolitan Agreement.

Section 2. Effective Date; Termination Date. This Agreement shall become effective upon the Effective Date of the Metropolitan Agreement and shall terminate upon the termination of the Metropolitan Agreement.

Section 3. Funding of Local Agency Facilities. All amounts allocable to the Local Agency Facilities disbursed to IEUA under Section V of the Metropolitan Agreement shall be paid to Local Agency for construction of the Local Agency Facilities.

Section 4. Local Agency Duties Generally. Local Agency hereby accepts and agrees to perform all of IEUA's duties under the Metropolitan Agreement relating to the Local Agency Facilities, it being the intention of IEUA and Local Agency that Local Agency will be directly responsible for all aspects of constructing, operating and maintaining the Local Agency Facilities in accordance with the Metropolitan Agreement.

Section 5. Illustrative List of Local Agency Duties. Among the duties Local Agency shall perform are those set forth below in this Section. Such duties are merely illustrative of the duties Local Agency shall perform and do not limit Local Agency's responsibilities hereunder.

(a) Construction Duties. Local Agency shall perform all of IEUA's duties with respect to the construction of the Local Agency Facilities which are set forth in the Metropolitan Agreement. Such duties include but are not limited to (i) obtaining the Required Approvals applicable to the Local Agency Facilities pursuant to Section III(C) of the Metropolitan Agreement, (ii) providing for the planning and preconstruction requirements of Section IV(A) of the Metropolitan Agreement which relate to the Local Agency Facilities, (iii) providing for the construction of the Local Agency Facilities in accordance with Section IV(B) of the Metropolitan Agreement, and (iv) completing construction of the Local Agency Facilities in accordance with the timeline set forth in Section IV(B) of the Metropolitan Agreement including retaining and supervising qualified contractors.

(b) Cost Overruns. Local Agency agrees to pay for any cost overruns allocable to the Local Agency Facilities pursuant to Section V(B). In addition, Local Agency shall pay any amounts due to Metropolitan pursuant to Section V(B)(2) which are allocable to the Local Agency Facilities.

(c) Operation and Maintenance Duties. With respect to the Local Agency Facilities, Local Agency agrees to perform those certain duties listed in the Metropolitan Agreement, namely:

(i) Cause the Local Agency 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);

(ii) Provide for all repairs, renewals, and replacements necessary to the efficient operation of the Local Agency Facilities;

(iii) 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;

and

(iv) 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 of the Metropolitan Agreement.

(d) Delivery of Metropolitan Water. Watermaster and IEUA will allocate Metropolitan water supplied by Metropolitan's Storage Account (replenishment, injection or in lieu) through an annual operating plan to be approved by IEUA and Watermaster. To the extent that Local Agency is allocated Metropolitan in lieu water, rate and charges paid by the Local Agency for such in lieu deliveries shall be based upon IEUA rates and charges adopted by its Board of Directors for the Metropolitan Dry Year Storage Program from time-to-time.

(e) Groundwater and Pumping Responsibilities. Local Agency acknowledges that Metropolitan has the right to demand the pumping of stored water in the Chino groundwater basin. Local Agency shall provide for the pumping of stored water (on a pro rata basis determined by IEUA on the basis of all applicable groundwater pumpers that have agreements with IEUA similar to this Agreement) upon Metropolitan's request of a Stored Water Delivery, all in accordance with Section VII(C) of the Metropolitan Agreement, and consistent with Exhibit B hereto. Local Agency shall be reimbursed by Metropolitan for operation and maintenance expenses incurred when pumping stored water upon Metropolitan's demand, all in accordance with Section VII(D) of the Metropolitan Agreement.

(f) Recordkeeping, Reporting, Inspection and Audit Duties. Local Agency shall perform all of IEUA's recordkeeping, reporting, inspection and audit duties which relate to the Local Agency Facilities, all in accordance under Section X of the Metropolitan Agreement.

(g) Indemnity. Local Agency shall immediately reimburse IEUA for any amounts expended for compliance with Section XI of the Metropolitan Agreement which are allocable or which in any way relate to the Local Agency Facilities.

(h) Insurance. Local Agency shall be responsible for providing and paying for all insurance with respect to the Local Agency Facilities required by Section XII of the Metropolitan Agreement.

Section 6. Representations, Warranties and Covenants. Local Agency represents, warrants and covenants as follows:

(a) Power and Authority. That it is a 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 a party or by which it is bound.

(b) Authorization; Valid Obligation. That all proceedings required to be taken by or on behalf of Local Agency 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.

(c) No Litigation. To the best of Local Agency's 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 Chino 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.

(d) Compliance with Laws. In the performance of its obligations hereunder, Local Agency and its contractors and subcontractors will comply with all applicable laws, regulations and ordinances, including, without limitation, those listed in Section IX of the Metropolitan Agreement.

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

(e) Compliance with DWR Requirements. The Plans will comply with any DWR requirements, including any requirements set forth in the DWR Funding Letter. During the performance of its obligations herein, Local Agency will comply with any DWR requirements, including any requirements set forth in the DWR Funding Letter.

(f) No Construction. That construction of the Local Agency Facilities and related work (including planning activities) did not commence prior to the Effective Date.

(g) Capacity. Local Agency and its contractors, subcontractors and its 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.

(h) Oversight and Supervision of Construction. Local Agency will oversee and supervise all contractors and keep control of all work and provisions of services and materials in connection with the Program.

(i) Maintain Ownership of Program Property. Local Agency 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.

(j) Protection of Others' Rights. Local Agency 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 extractions of groundwater) to protect such rights.

Section 7. Miscellaneous.

(a) Headings. The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.

(b) Partial Invalidity. If any one or more of the covenants or agreements provided in this Agreement to be performed should be determined to be invalid or contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

(c) Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

(d) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

(e) Notices. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by Federal Express or another reputable commercial overnight courier that guarantees next day delivery and provides a receipt, or (d) by telefacsimile or telecopy, and such notices shall be addressed as follows:

If to IEUA: Inland Empire Utilities Agency
9400 Cherry Avenue, Bldg. A
Fontana, California 92335
Attention: Richard W. Atwater, General Manager

With a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Douglas Brown

If to Watermaster: Chino Basin Watermaster
8632 Archibald Avenue, Suite 109
Rancho Cucamonga, California 91730
Attention: John Rossi, Chief Executive Officer

If to Local Agency: Cucamonga County Water District
10440 Ashford Street
Rancho Cucamonga, CA 91729
Attention: Robert A. DeLoach, General Manager/CEO


or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed delivered when actually delivered, if such delivery is in person, upon deposit with the U.S. Postal Service, if such delivery is by certified mail, upon deposit with the overnight courier service, if such delivery is by an overnight courier service, and upon transmission, if such delivery is by telefacsimile or telecopy.

(f) Merger of Prior Agreements. This Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof.

(g) Time of the Essence. Time is of the essence in the performance of this Agreement.

IN WITNESS WHEREOF, IEUA has executed this Agreement with the approval of its governing body, Watermaster has executed this Agreement with the approval of its governing body, and Local Agency has executed this Agreement in accordance with the authorization of its governing body.

INLAND EMPIRE UTILITIES AGENCY

By: 
General Manager

CUCAMONGA COUNTY WATER DISTRICT

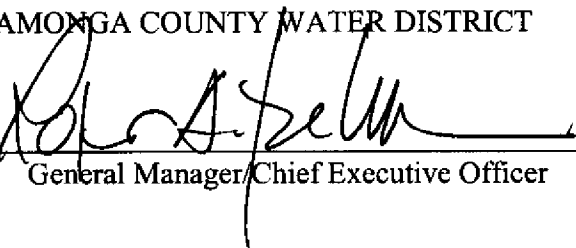
By: 
General Manager/Chief Executive Officer

EXHIBIT A

LOCAL AGENCY FACILITIES

CUCAMONGA COUNTY WATER DISTRICT

AMOUNT OF FUNDING CCWD WILL RECEIVE:

\$7,102,368

FOR THE FOLLOWING FACILITIES

NORTH CENTRAL IX TREATMENT PLANT - 1,500 gpm

Reservoir 3 - Apricot Street & Amethyst Avenue - northeast corner
Ion Exchange for Nitrates (plus other possible technologies - e.g. granular activated carbon for DBCPs)

WELLS TO BE TREATED:

15, 17, 31 (wells 13, 23, 26, 33 also available)

WATER LINES INSTALLED:

100 ft. 16" waterline on site
17,000 ft. 6" pipeline to connect treatment plant with existing non-reclaimable waste water (NRW) line

CCWD NEW WELLS TO BE INSTALLED:

RESERVOIR 1C SITE

East Avenue & I-15 Freeway
2 - 2,000 gpm wells

RESERVOIR 1B SITE

Cleveland Avenue & 7th Street
1 - 2,000 gpm well

EXHIBIT B

PERFORMANCE TARGETS

Example

Cucamonga County Water District

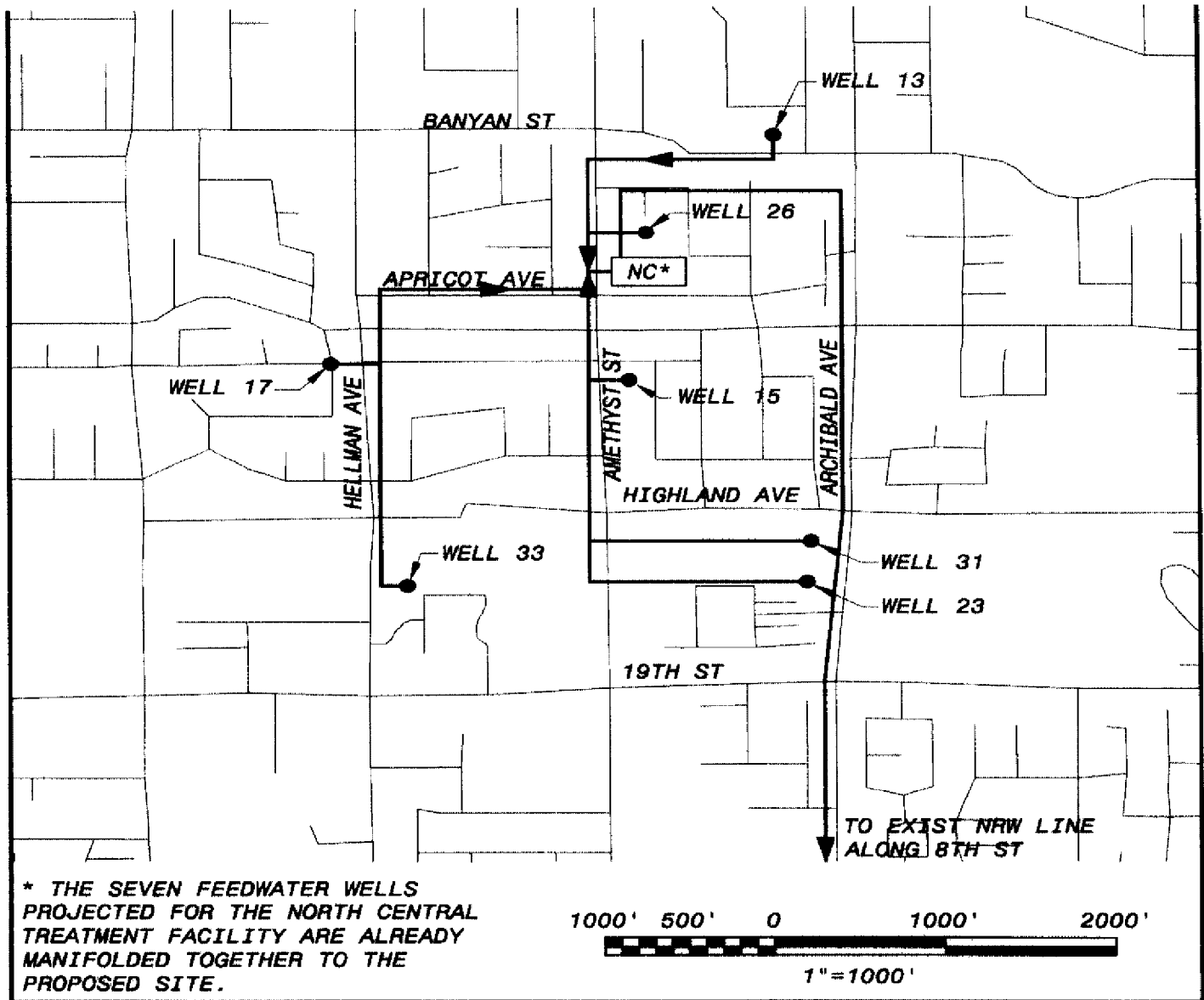
Dry Year Shift obligation of 9,620 AF over 12-month period

**9,620 AF reduced imported water reduction
9,620 AF pumped from MWD storage account
9,620 AF increase in CCWD overall local supply production
all three criteria must be met plus or minus 10 percent**

Failure to perform would result in CCWD being charged a rate equal to two times the Tier 2 MWD full service untreated rates or comparable rate in the future in effect at such time for each AF of the Dry Year Shift obligation not met

CUCAMONGA COUNTY WATER DISTRICT

North Central Water Treatment Facility



CUCAMONGA COUNTY WATER DISTRICT

New Wells to Be Installed

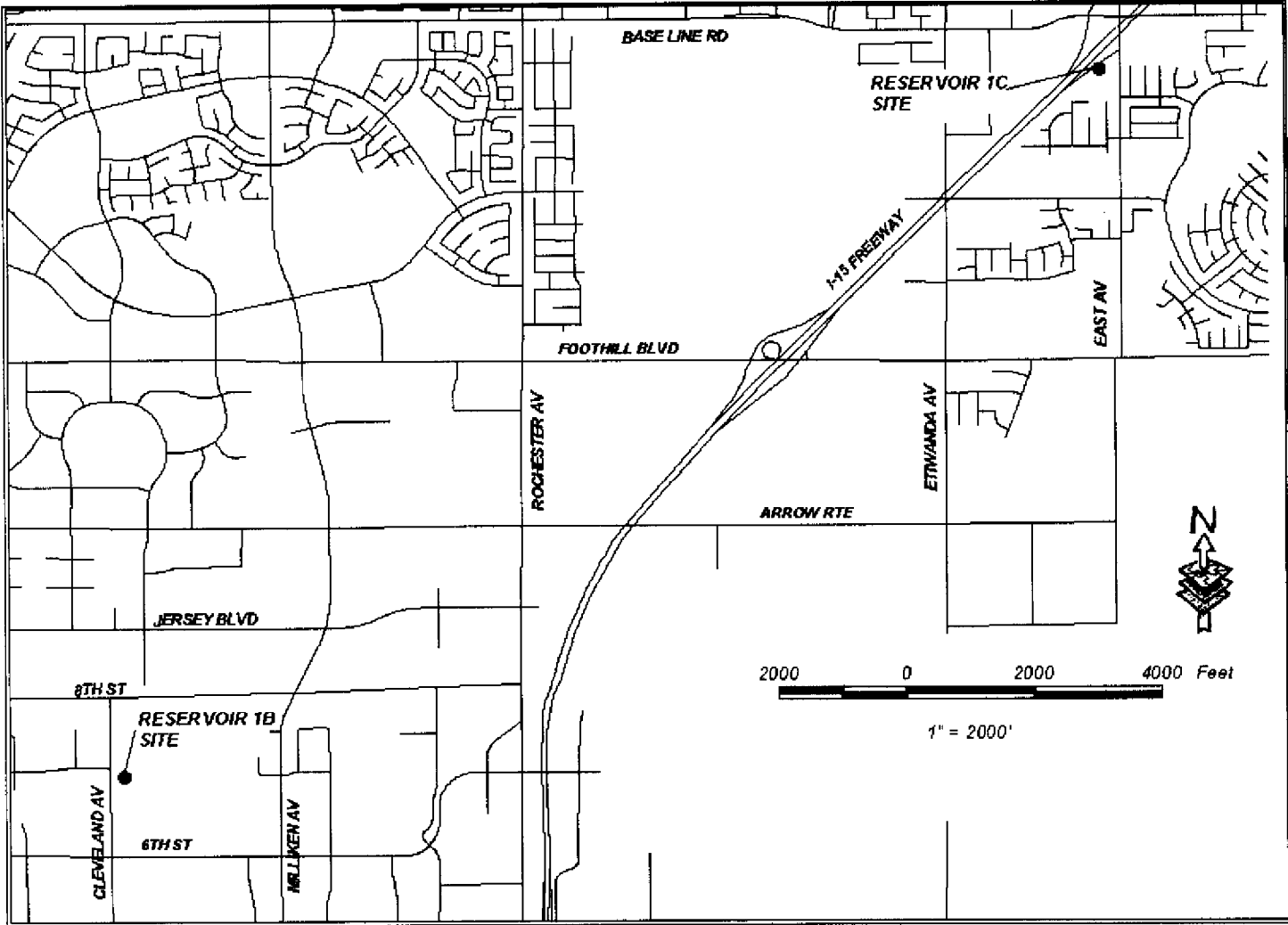


EXHIBIT B

PERFORMANCE TARGETS

Example

Cucamonga County Water District

Dry Year Shift obligation of 9,620 AF over 12-month period

9,620 AF reduced imported water reduction

9,620 AF pumped from MWD storage account

9,620 AF increase in CCWD overall local supply production

all three criteria must be met plus or minus 10 percent

Failure to perform would result in MVWD being charged a rate equal to two times the Tier 2 MWD full service untreated rates or comparable rate in the future in effect at such time for each AF of the Dry Year Shift obligation not met

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

December 6, 2002 DRAFT

**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 _____, 200__

Items that need to be added or resolved:

p.2 Section I.G. List of agreements currently in force

p.3 Section I.K. TVMWD CEQA compliance

p.6 Section IVId. Trust storage agreement language.

p. 16 SectionVI D. O&M costs covered by Met—add Brian's language.

p.23 SectionIX B. Description of watermaster

p.32 SectionXIII B. Does Rich still want to add penalty language for failure to maintain well capacity?

Exhibit F Review rewrite. Exhibit H: Need additional info on program facilities as noted.

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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. Deleted: s
- 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 ("**Funding Obligation**"). However, IEUA, TVMWD and Watermaster understand and acknowledge that \$9 million of these Program Construction Costs are being funded by Prop. 13 Funds. In the event that DWR fails to provide all or a part of such funds for eligible costs as required by the DWR Funding Letter, Metropolitan shall be entitled, at its option, to make up such shortfall through other funding sources (subject to any necessary approvals or authorizations for such funding) or to have the size of the Program reduced, as set forth in paragraph (2) below.
2. Subject to paragraph (3) below, if less than \$27.5 million is made available toward eligible Program Construction Costs pursuant to Metropolitan's Funding Obligation ("**Funding Shortfall**"), then the size of the Program shall be reduced in an appropriate manner as agreed upon

by the Operating Committee. Reductions in Program size may include reductions in Facilities constructed, Operational Capacity Thresholds and Maximum Storage Amount. However, in no event shall such Program reductions be greater in proportion than that which the Funding Shortfall bears to Funding Obligation. The Term of the Agreement and other operating terms will not be affected by any Funding Shortfall.

3. *The size of the Program shall not be reduced where the amount of eligible Program Construction Costs incurred by IEUA or TVMWD is less than the amount of funds made available by Metropolitan. Similarly, the size of the Program shall not be reduced where the Program Construction Costs incurred by IEUA or TVMWD that are determined to be ineligible for reimbursement under this Agreement.*

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.

Deleted: Of these Program Construction Costs, \$9 million is funded by Prop. 13 Funds. Metropolitan shall fund the payment of Program Construction Costs from the Prop. 13 Funds and from other funds provided by Metropolitan (which may include the proceeds of future grants awarded to Metropolitan for disbursement).

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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.

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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 33% 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 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 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 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.

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.

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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

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.

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

March 28, 2003 DRAFT

1021 E. Miramar Avenue
Claremont, CA 91711

To Watermaster: Chino Basin Watermaster
Chief Executive Officer
8632 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.

March 28, 2003 DRAFT

[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: _____
(Name)
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: _____
(Name)
General Counsel

Date: _____

CHINO BASIN WATERMASTER

By: _____
(Name)
Watermaster

Date: _____

APPROVED AS TO FORM:

By: _____
(Name)
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.

Water Account	Quantity of Water Transferred (Acre-feet)	Water Rate to be Paid when called under this Agreement for firm delivery	Responsibility for Costs: Electrical and Operation & Maintenance Costs	Losses
Trust Storage Account	4,739	Untreated replenishment rate at the time the water is called under this Agreement	IEUA	None
Trust Storage Account	X ¹	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

¹ 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.

Exhibit F

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 appropriative 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
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
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
	1	Eight St, btwn San Antonio Ave & Euclid 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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Inland Empire
UTILITIES AGENCY

**AMENDMENT NUMBER 1
TO
LOCAL AGENCY AGREEMENT
AND
CUCAMONGA VALLEY WATER DISTRICT
FOR
GROUNDWATER STORAGE AGREEMENT NO. 49960**

This Amendment is made and entered into this 1st day of September, 2004, by and between the Inland Empire Utilities Agency and Cucamonga Valley Water District of Rancho Cucamonga, California, encompassing all terms and conditions contained in the Local Agency Agreement, except as modified herein.

Revise the following:

1. All references identifying The Local Agency as "Cucamonga County Water District" (CCWD) shall be changed to reference "Cucamonga Valley Water District" (CVWD).
2. Page 5, Section 7, Paragraph (e), Notices, shall be amended to reflect IEUA's and Chino Basin Watermaster's new addresses as follows:

(e) If to IEUA: Inland Empire Utilities Agency
6075 Kimball Avenue, Building A
Chino, California 91710
Attention: Richard W. Atwater
Chief Executive Officer/General Manager

If to Watermaster: Chino Basin Watermaster
9641 San Bernardino Road,
Rancho Cucamonga, CA 91730
Sheri Rojo, Acting General Manager

3. Exhibits A and B are amended as attached.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be entered as of the day and year written above.

INLAND EMPIRE UTILITIES AGENCY:

CUCAMONGA VALLEY WATER DISTRICT:

Richard W. Atwater
Richard W. Atwater
Chief Executive Officer
General Manager

9/1/04
Date

Robert A. DeLoach
Robert A. DeLoach
General Manager/CEO

9/13/04
Date

EXHIBIT A
LOCAL AGENCY FACILITIES
CUCAMONGA VALLEY WATER DISTRICT

AMOUNT OF FUNDING CVWD WILL RECEIVE:

\$8,395,433

CVWD NEW WELLS TO BE INSTALLED:

RESERVOIR 1C SITE
East Avenue & I-15 Freeway
2 – 2,000 gpm wells

RESERVOIR 1B SITE
Cleveland Avenue & 7TH Street
2 – 2,000 gpm wells

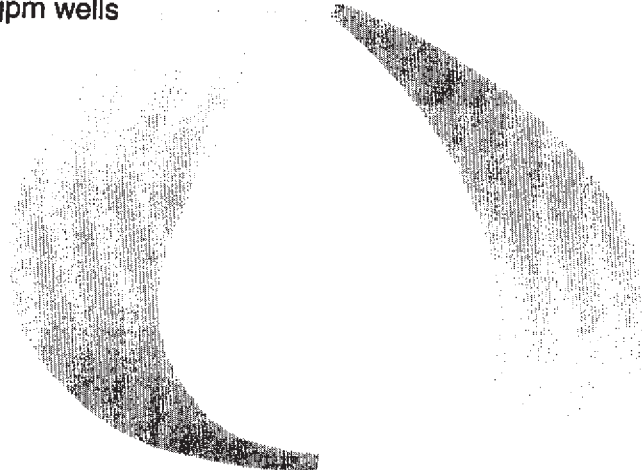


EXHIBIT B

PERFORMANCE TARGETS

Example

Cucamonga Valley Water District

Dry Year Shift obligation of 11, 353 AF over 12-month period

11,353 AF reduced imported water reduction

11,353 AF pumped from MWD storage account

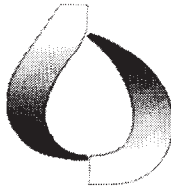
11,353 AF increase in CVWD overall local supply production

All three criteria must be met plus or minus 10 percent

Failure to perform would result in CVWD being charged a rate equal to two times the Tier 2 MWD full service untreated rates or comparable rate in the future in effect at such time for each AF of the Dry Year Shift obligation not met.

A.S.P.O.S.O.L.S

ORIGINAL



Inland Empire
UTILITIES AGENCY

**AMENDMENT NUMBER 2
TO
LOCAL AGENCY AGREEMENT
AND CUCAMONGA VALLEY WATER DISTRICT
FOR
GROUNDWATER STORAGE AGREEMENT NO. 49960**

This Amendment is made and entered into this 11th day of July 2005, by and between the Inland Empire Utilities Agency and Cucamonga Valley Water District of Rancho Cucamonga, California, encompassing all the terms and conditions contained in the Local Agency Agreement and Amendment Number 1, except as modified herein.

REVISE THE FOLLOWING:

1. Remove from Exhibit A, the Reservoir 3 IX – Apricot Street & Amethyst Avenue and replace with two additional Chino Basin Wells (Numbers 44 & 45) which shall be located at 9591 San Bernardino Road and 9673 San Bernardino Road, respectfully, in the city of Rancho Cucamonga. Exhibit A is hereby amended, as attached.

ALL OTHER PROVISIONS OF THE AGREEMENT REMAIN UNCHANGED.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be entered as of the day and year written above.

INLAND EMPIRE UTILITIES AGENCY:

CUCAMONGA VALLEY WATER DISTRICT:

Richard W. Atwater 6/6/05
Richard W. Atwater Date
Chief Executive Officer
General Manager

Robert A. DeLoach 7-11-05
Robert A. DeLoach Date
Chief Executive Officer
General Manager

EXHIBIT A

LOCAL AGENCY FACILITIES

CUCAMONGA VALLEY WATER DISTRICT

AMOUNT OF FUNDING CVWD WILL RECEIVE:

\$8,395,433

WELLS TO BE INSTALLED:

RESERVOIR 1C SITE

East Avenue & I-15

2 – 2,000 gpm wells

RESERVOIR 1B SITE

Cleveland Avenue & 7th Street

2 – 2,000 gpm wells

WELL NUMBER 44

9591 San Bernardino Road, Rancho Cucamonga

2,500 gpm well

WELL NUMBER 45

9673 San Bernardino Road, Rancho Cucamonga

2,500 gpm well

AMENDMENT NUMBER 3 TO LOCAL AGENCY AGREEMENT

By and Between

INLAND EMPIRE UTILITIES AGENCY

And

CUCAMONGA VALLEY WATER DISTRICT

THIS AGREEMENT entered into on the _____ day of April, 2014, by and among the Inland Empire Utilities Agency ("IEUA"), a municipal water district duly organized and existing under the laws of the State of California, and the Cucamonga Valley Water District, ("Local Agency"), of Rancho Cucamonga, California, encompassing all the terms and conditions in the Local Agency Agreement, shall be amended as follows:

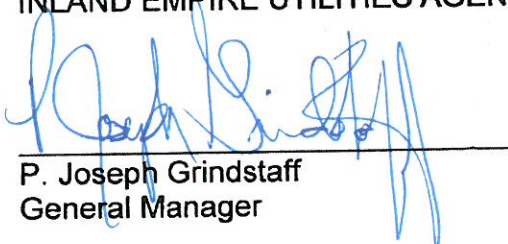
REPLACE EXHIBIT G WITH THE ATTACHED REVISED EXHIBIT G.

When a call is made by MWD, and the safety-net condition of 40,000 AFY of imported water deliveries applies, the Operating parties will make a reduction in the imported water deliveries, based on their pro-rata share of the imported water baseline.

ALL OTHER PROVISIONS OF THIS AGREEMENT REMAIN UNCHANGED.

IN WITNESS WHEREOF, the parties hereby have caused this Amendment to be entered into as of the day and year written below.

INLAND EMPIRE UTILITIES AGENCY CUCAMONGA VALLEY WATER DISTRICT



P. Joseph Grindstaff
General Manager



Martin Zvirbulis
General Manager

Exhibit G

Chino Basin Conjunctive Use Program (CUP) "Dry Year" Storage Project Performance Criteria

The intent of the below Performance Criteria is to allow Metropolitan to reduce imported water deliveries to the Operating Parties and replace it with stored Chino Basin groundwater, making available additional imported water supply for delivery to other Metropolitan member agencies.

Performance

Metropolitan may, on thirty (30) days' notice, require Program Agency to meet the objectives of the project as follows:

- 1) During the next 12 month period, IEUA and TVMWD through their agreements with Operating Parties will cause a reduction of imported water deliveries by 33,000 AF (+/- 10 percent), at the service connection, from the Imported Water Baseline.
- 2) At no time shall a Metropolitan call result in a reduction in imported water deliveries below 40,000 AF. As long as the imported water deliveries by the Operating Parties total less than or equal to 40,000 AF, performance will have been met.
- 3) If a Metropolitan CUP call is made during implementation of Metropolitan's Water Supply Allocation Plan (WSAP), the amount of the CUP call shall be adjusted for the purposes of the WSAP performance, such that the 40,000 AF performance objective for CUP is met. The Operating Parties will still be expected to comply with all provisions of the WSAP. For purposes of the CUP, the full call amount (without adjustment for WSAP performance) would be deducted from the Storage Account and billed for by Metropolitan.
- 4) Metropolitan will pay O&M, Power and Treatment credits only on Chino groundwater production over the Chino Groundwater Baseline.
- 5) Metropolitan will bill for, and the Storage Account will be reduced by 33,000 AF.
- 6) If Performance Criteria is not met, the Penalty Rate will be applied on any unmet reduction of imported water delivery at the service connection.
- 7) A partial call will be addressed through a pro rata performance.
- 8) Any Chino Basin Groundwater produced above the Chino Groundwater Baseline but below the 33,000 AF call amount will be moved to the Operating Parties' supplemental storage accounts.

Chino Groundwater Baseline

For the purposes of Performance, an Operating Party's Chino Groundwater Baseline shall be set at the beginning of the performance period as the lesser of the following:

- 1) The average physical production adjusted upward for in-lieu CUP storage and downward for CUP extraction certified by Chino Basin Watermaster in the three (3) previous years beginning with the prior fiscal year (i.e. the baseline for a call during fiscal year 2014-15 would average years 2010-11, 2011-12 and 2012-13 and would not include 2013-14) ; or,
- 2) The average sum of the Operating Safe Yield and Net Ag Re-Allocation pumping rights, as reported in columns titled "Assigned Share of Operating Safe Yield" and "Net Ag Pool Reallocation" of the table titled "Pool 3 Water Production Summary," of the Chino Basin Watermaster Annual Report or Annual Assessment Package, less any rights utilized to meet Chino Basin Desalter replenishment obligations, as shown in the Chino Basin Watermaster Annual Report or Annual Assessment Package, in the three (3) previous years beginning with the prior fiscal year.

Imported Water Baseline

The Imported Baseline shall be equal to the average imported water deliveries in the three (3) previous years beginning with the prior fiscal year. The imported water deliveries in each year is adjusted downward for in-lieu CUP storage and adjusted upward for CUP extraction.

In-Lieu Storage Guidelines

For in-lieu storage, the following criteria shall apply:

- 1) Certification of in-lieu CUP storage by an Operating Party shall be the lesser of the following:
 - a. Decrease in Chino groundwater production relative to the Chino Groundwater Baseline; or
 - b. Increase in imported water deliveries to the Operating Parties above the Imported Water Baseline by at least the certified amount. In the event that the increase in imported water deliveries is less than the decrease in Chino Basin groundwater production, the certified amount shall be equal to the increase in imported water deliveries.
- 2) Participation in in-lieu storage is optional. Therefore, in-lieu storage is based upon individual Operating Party performance.
- 3) No Operating Party may certify in-lieu storage during any fiscal year in which that Operating Party incurs a replenishment obligation. .

Operating Committee

Baseline Adjustments

The Operating Committee may mutually agree to adjust the Chino Groundwater Baseline or the Imported Water Baseline to account for changed conditions. 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 ability to deliver supplies, significant retail conservation, and/or dramatic increase in local supplies (recycled water, desalted groundwater, etc). Increases or decreases in total demand shall not result in a baseline adjustment unless it can be shown that the change is a result of significant retail conservation. Normal demand variations due to hydrologic or economic factors are not eligible for baseline adjustments. Any request for baseline adjustment must accompany sufficient documentation to allow the Operating Committee to evaluate the request. All baseline adjustment requests must be submitted before the storage/call year with the Annual Operating Plan.

Performance Targets

The Operating Committee may mutually agree to modify performance targets due to severe and unexpected conditions. It should be generally agreed that additional use and production of all local supplies available to the Operating Parties should not be restricted or cause IEUA , TVMWD or the Operating Parties to be out of compliance of a performance target. The Operating Committee may agree to adjust the imported water performance target due to severe and unexpected conditions, such as but not limited to the following:

- a. Significant loss in total local supply capacity (groundwater, desalter and recycled); and/or
OR
- b. Significant increase in total demand.

Any adjustment related to the performance targets does not apply to the requirements for receiving O&M, Power and Treatment credits or the amount deducted from the storage account. The full call amount would be deducted from the storage account and billed by Metropolitan regardless of any performance adjustment. Detailed documentation of the severe and unexpected conditions must be provided to allow the Operating Committee to evaluate the request.

Examples

The following examples demonstrate situations where non-performance penalties may be waived pursuant to Section XIII.B. of the Agreement.

Example 1 - Base Example

Call Amount	33,000 AF
Baseline Service Connection Deliveries	70,000 AF
Call Year Service Connection Deliveries	<u>40,000 AF</u>
Reduction at Service Connection	30,000 AF
Baseline Groundwater Production	80,000 AF
Call Year Groundwater Production	<u>95,000 AF</u>
Increase in Groundwater Production	<u>15,000 AF</u>

Performance is met because the actual service connection deliveries were equal to 40,000 AF. 33,000 AF is billed for and deducted from account. O&M, Power and Treatment credits are given on 15,000 AF and the remaining 18,000 AF that was paid for, but not pumped, will be moved to the Operating Parties' supplemental storage accounts.

Example 2 – Increase in Local Supply Capacity

Call Amount	33,000 AF
Baseline Service Connection Deliveries (-5,000AF)	65,000 AF
Call Year Service Connection Deliveries	<u>35,000 AF</u>
Reduction at Service Connection	30,000 AF
Baseline Groundwater Production (+5,000AF)	85,000 AF
Call Year Groundwater Production	<u>100,000 AF</u>
Increase in Groundwater Production	<u>15,000 AF</u>

*In this example, Agency A increases its local supply capacity by expanding a treatment plant by 5,000 AF. This would allow Agency A to increase its production. As a result, the Operating Committee agreed to increase the Baseline Groundwater Production by 5,000 AF and decrease the Imported Water Baseline by 5,000 AF.

Performance is met because the actual service connection deliveries reduction was 30,000 AF. 33,000 AF is billed for and deducted from account. O&M, Power and Treatment credits are given on 15,000 AF and the remaining 18,000 AF that was paid for, but not pumped, will be moved to the Operating Parties' supplemental storage accounts.

Example 3– Reduced Demands (-5,000 AF)

Call Amount	33,000 AF
Baseline Service Connection Deliveries (-3,000 AF)	67,000 AF
Call Year Service Connection Deliveries	<u>40,000 AF</u>
Reduction at Service Connection	27,000 AF
Baseline Groundwater Production (-2,000 AF)	78,000 AF
Call Year Groundwater Production	<u>95,000 AF</u>
Increase in Groundwater Production	<u>17,000 AF</u>

*In this example, the Operating Committee determined that the installation of ultra-low flow toilets in Agency A's service area would result in a demand reduction of 5,000 AF. This reduction was expected to change both the imported and groundwater baselines. As a result, Agency A's imported water baseline was adjusted down by 3,000 AF and the groundwater baseline was adjusted down by 2,000 AF by the Operating Committee.

Performance is met because the actual service connection deliveries were 40,000 AF. 33,000 AF is billed for and deducted from account. O&M, Power and Treatment credits are given on 17,000 AF and the remaining 16,000 AF that was paid for, but not pumped, will be moved to the Operating Parties' supplemental storage accounts.

Example 4 – Loss of Local Supply with Groundwater Baseline Adjustment of -5,000 AF and Imported Water +5,000 AF*

Call Amount	33,000 AF
Adjusted Baseline Service Connection Deliveries (+5,000 AF)	75,000 AF
Call Year Service Connection Deliveries	<u>45,000 AF</u>
Reduction at Service Connection	30,000 AF
Adjusted Baseline Groundwater Production (-5,000 AF)	75,000 AF
Call Year Groundwater Production	<u>90,000 AF</u>
Increase in Groundwater Production	15,000 AF

*In this example, Agency A has had six wells go out of service permanently. It will take at least 12 months to drill new wells. As a result of the outage, Agency A's total well capacity has been reduced by 5,000 AF. The Operating Committee agrees to a 5,000 AF baseline reduction on ground water and increase baseline imported water deliveries by 5,000 AF.

Performance is met because the actual service connection deliveries were reduced by 30,000 AF. 33,000 AF is billed for and deducted from account. O&M, Power and Treatment credits are given on 15,000 AF and the remaining 18,000 AF that was paid for, but not pumped, will be moved to the Operating Parties' supplemental storage accounts.

Example 5 – Water Supply Allocation Overlap

Call Amount	33,000 AF
WSAP Level 2	10%
Baseline Service Connection Deliveries	60,000 AF
WSAP Adjusted Baseline Service Connection Deliveries	55,000 AF *
Call Year Service Connection Deliveries	<u>40,000 AF</u>
Reduction at Service Connection	15,000 AF
Baseline Groundwater Production	80,000 AF
Call Year Groundwater Production	<u>100,000 AF</u>
Increase in Groundwater Production	20,000 AF

*For illustrative purposes only.

$$\text{Level 2 WSAP} = (\text{Total Demand} - \text{Local Supplies}) \times 90\% + \text{Adjustments}$$

Performance is met for CUP because the actual service connection deliveries were equal to 40,000 AF. 33,000 AF is billed for and deducted from account. Power and O&M credits are given on 20,000 AF and the remaining 13,000 AF that was paid for, but not pumped, will be moved to the Operating Parties' supplemental storage accounts. For the WSAP, it is assumed that the adjusted call amount is 15,000 AF.

Example 6 – 10 Percent Performance Range

Call amount	33,000 AF
Baseline Service Connection Deliveries	80,000 AF
Call Year Service Connection Deliveries	<u>50,000 AF</u>
Reduction at Service Connection	30,000 AF
Baseline Groundwater Production	80,000 AF
Call Year Groundwater Production	<u>100,000 AF</u>
Increase in Groundwater Production	20,000 AF

Performance is met because the Operating Parties reduced service connection deliveries by 30,000 AF, which is within +/- 10 percent of 33,000. 33,000 AF is billed for and deducted from account. O&M, Power and Treatment credits are given on 20,000 AF and the remaining 13,000 AF that was paid for, but not pumped, will be moved to the Operating Parties' supplemental storage accounts.

Example 7 – Non-Performance

Call amount	33,000 AF
Baseline Service Connection Deliveries	60,000 AF
Call Year Service Connection Deliveries	<u>45,000 AF</u>
Reduction at Service Connection	15,000 AF
Baseline Groundwater Production	80,000 AF
Call Year Groundwater Production	<u>95,000 AF</u>
Increase in Groundwater Production	15,000 AF

Performance is **not** met. The actual service connection deliveries are greater than 40,000 and the reduction in service connection deliveries are less than 33,000 +/- 10 percent. 33,000 AF is billed for and deducted from account. O&M, Power and Treatment credits are given on 15,000 AF and the remaining 18,000 AF that was paid for, but not pumped, will be moved to the Operating Parties' supplemental storage accounts. 5,000 AF is billed at the Penalty Rate of 2x Tier 2.

Example 8 – “Agency A” In-lieu Storage

Baseline Service Connection Deliveries	15,000 AF
Storage Year Service Connection Deliveries	<u>20,000 AF</u>
Increase at Service Connection	5,000 AF
Baseline Groundwater Production	20,000 AF
Storage Year Groundwater Production	<u>10,000 AF</u>
Decrease in Groundwater Production	10,000 AF

In this example, “Agency A” would be eligible for 5,000 AF of in-lieu storage. The increase in service connection deliveries (5,000 AF) are less than the decrease in groundwater production (10,000 AF).

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 2

LOCAL AGENCY AGREEMENT

Dated as of April 15, 2003

By and Among

INLAND EMPIRE UTILITIES AGENCY,

And

THE CITY OF ONTARIO

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EXHIBITS

Exhibit A City of Ontario - Local Agency Facilities.....A-1

Exhibit B City of Ontario - Performance Target.....B-1

LOCAL AGENCY AGREEMENT

This Agreement is entered into as of April 15th, 2003, by and among the Inland Empire Utilities Agency ("IEUA"), a municipal water district duly organized and existing under the laws of the State of California, and the City of Ontario, ("Local Agency"), a general law city, duly organized and validly existing under the laws of the State of California.

WITNESSETH:

WHEREAS, 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; and

WHEREAS, Metropolitan was subsequently 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, DWR set forth the specific terms and conditions of the grant to Metropolitan; and

WHEREAS, 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, a Request for Proposals for Participation in Groundwater Storage Programs Using Proposition 13 Funds, RFP No. WRM-2 (the "RFP"); and

WHEREAS, 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 approved by Metropolitan's Board of Directors in 1996, and the Groundwater Storage Principles adopted in connection therewith by Metropolitan's Board of Directors in January 2000; and

WHEREAS, IEUA has entered into a Groundwater Storage Project Funding Agreement (the "Metropolitan Agreement") with Metropolitan, Three Valleys Municipal Water District and Chino Basin Watermaster whereby, among other things, funding will be provided to finance the City of Ontario's facilities listed on Exhibit A hereto (the "Local Agency Facilities") which are necessary to enhance a groundwater storage program in the Chino Basin; and

WHEREAS, IEUA desires to pass through to the Local Agency funding received by IEUA under the Metropolitan Agreement which are allocable to the Local Agency Facilities for use by the Local Agency to construct the Local Agency Facilities; and

WHEREAS, in exchange for such funding, the parties hereto intend that the Local Agency assume all obligations of IEUA under the Metropolitan Agreement and all obligations relating to the Local Agency Facilities, whether such obligations are imposed by Metropolitan, DWR or another entity, such obligations including but not limited to the obligations recited in Sections III, IV, V, VII, X, XI and XII of the Metropolitan Agreement;

NOW THEREFORE, the parties hereto do agree as follows:

Section 1. Definitions. All capitalized terms used herein and not otherwise defined shall have the meanings given in the Metropolitan Agreement.

Section 2. Effective Date; Termination Date. This Agreement shall become effective upon the Effective Date of the Metropolitan Agreement and shall terminate 25 years following the effective date.

Section 3. IEUA Duties. In exchange for the Local Agency duties and obligations established under the provisions of this Agreement, IEUA shall reimburse the Local Agency an amount equal to \$5,674,168 for project related expenditures associated with the construction of one or more of the Local Agency Facilities listed on Exhibit A. IEUA acknowledges and agrees that the Local Agency Facilities shall be comprised of one or more of the facilities listed in Exhibit A. Payment by IEUA to the Local Agency shall be in accordance with the provisions of the Metropolitan Agreement.

Section 4. Local Agency Duties Generally. Local Agency hereby accepts and agrees to perform all of IEUA's duties under the Metropolitan Agreement relating to the Local Agency Facilities, it being the intention of IEUA and Local Agency that Local Agency will be directly responsible for all aspects of constructing, operating and maintaining the Local Agency Facilities in accordance with the Metropolitan Agreement. Local Agency shall only be required to increase its overall local groundwater production capacity in an amount equal to that percentage of 8,076 acre feet that equals the percentage of IEUA payment to the Local Agency of the \$5,674,168.

Section 5. Illustrative List of Local Agency Duties. Among the duties Local Agency shall perform are those set forth below in this Section. Such duties are merely illustrative of the duties Local Agency shall perform and do not limit Local Agency's responsibilities hereunder.

(a) Construction Duties. Local Agency shall perform all of IEUA's duties with respect to the construction of the Local Agency Facilities which are set forth in the Metropolitan Agreement. Such duties include but are not limited to (i) obtaining the Required Approvals applicable to the Local Agency Facilities pursuant to Section III(C) of the Metropolitan Agreement, (ii) providing for the planning and preconstruction requirements of Section IV(A) of the Metropolitan Agreement which relate to the Local Agency Facilities, (iii) providing for the construction of the Local Agency Facilities in accordance with Section IV(B) of the Metropolitan Agreement, and (iv) completing construction of the Local Agency Facilities in accordance with the timeline set forth in Section IV(B) of the Metropolitan Agreement including retaining and supervising qualified contractors.

(b) Cost Overruns. Local Agency agrees to pay for any cost overruns allocable to the Local Agency Facilities pursuant to Section V(B). In addition, Local Agency shall pay any amounts due to Metropolitan pursuant to Section V(B)(2) which is allocable to the Local Agency Facilities. Should bids for construction of the Local Agency Facilities exceed the Approved Budget by more than five percent (5%), IEUA will review such cost increase with the Local Agency to determine the appropriate way to proceed with the program and the Local Agency may authorize a cost share, to change the scope of the project, or to discontinue the project, all in accordance with Section V(B)(2) of the Metropolitan Agreement.

(c) Operation and Maintenance Duties. With respect to the Local Agency Facilities, Local Agency agrees to perform those certain duties listed in the Metropolitan Agreement, namely:

(i) Cause the Local Agency 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);

(ii) Provide for all repairs, renewals, and replacements necessary to the efficient operation of the Local Agency Facilities;

(iii) 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; and

(iv) 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 of the Metropolitan Agreement.

(d) Delivery of Metropolitan Water. Watermaster and IEUA will allocate Metropolitan water supplied by Metropolitan's Storage Account (replenishment, injection or in lieu) through an annual operating plan to be approved by IEUA and Watermaster. To the extent that Local Agency is allocated Metropolitan in lieu water, rate and charges paid by the Local Agency for such in lieu deliveries shall be based upon IEUA rates and charges adopted its Board of Directors for the Metropolitan Dry Year Storage Program from time-to-time.

(e) Groundwater and Pumping Responsibilities. Local Agency acknowledges and agrees that Metropolitan has the right to demand the pumping of stored water in the Chino groundwater basin in the maximum amount indicated herein. Local Agency shall reduce its imported water and provide for the pumping of stored water upon Metropolitan's request of a Stored Water Delivery, all in accordance with Section VII(C) of the Metropolitan Agreement, and consistent with Exhibit B hereto; provided, that the maximum amount in any given year shall not exceed that percentage of the amount in Exhibit B that equals the percentage of IEUA payment to the Local Agency of the \$5,674,168. Local Agency shall be reimbursed by Metropolitan for operation and maintenance expenses incurred when pumping stored water upon Metropolitan's demand, all in accordance with Section VII(D) of the Metropolitan Agreement.

(f) Recordkeeping, Reporting, Inspection and Audit Duties. Local Agency shall perform all of IEUA's recordkeeping, reporting, inspection and audit duties which relate to the Local Agency Facilities, all in accordance under Section X of the Metropolitan Agreement.

(g) Indemnity. Local Agency shall immediately reimburse IEUA for any amounts expended for compliance with Section XI of the Metropolitan Agreement which are allocable or which in any way relate to the Local Agency Facilities.

(h) Insurance. Local Agency shall be responsible for providing and paying for all insurance with respect to the Local Agency Facilities required by Section XII of the Metropolitan Agreement.

Section 6. Representations, Warranties and Covenants. Local Agency represents, warrants and covenants as follows:

(a) Power and Authority. That it is a general law city, 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 a party or by which it is bound.

(b) Authorization; Valid Obligation. That all proceedings required to be taken by or on behalf of Local Agency 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.

(c) No Litigation. To the best of Local Agency's 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 Chino 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.

(d) Compliance with Laws. In the performance of its obligations hereunder, Local Agency and its contractors and subcontractors will comply with all applicable laws, regulations and ordinances, including, without limitation, those listed in Section IX of the Metropolitan Agreement.

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

(e) Compliance with DWR Requirements. The Plans will comply with any DWR requirements, including any requirements set forth in the DWR Funding Letter. During the performance of its obligations herein, Local Agency will comply with any DWR requirements, including any requirements set forth in the DWR Funding Letter.

(f) No Construction. That construction of the Local Agency Facilities and related work (including planning activities) did not commence prior to the Effective Date.

With a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Douglas Brown

If to Watermaster: Chino Basin Watermaster
8632 Archibald Avenue, Suite 109
Rancho Cucamonga, California 91730
Attention: _____

If to Local Agency: City Of Ontario
303 B Street
Ontario, California 91763
Attention: Gregory Devereaux, City Manager

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed delivered when actually delivered, if such delivery is in person, upon deposit with the U.S. Postal Service, if such delivery is by certified mail, upon deposit with the overnight courier service, if such delivery is by an overnight courier service, and upon transmission, if such delivery is by telefacsimile or telecopy.

(f) Merger of Prior Agreements. This Agreement and the Exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof.

(g) Time of the Essence. Time is of the essence in the performance of this Agreement.

IN WITNESS WHEREOF, IEUA has executed this Agreement with the approval of its governing body, Watermaster has executed this Agreement with the approval of its governing body, and Local Agency has executed this Agreement in accordance with the authorization of its governing body.

INLAND EMPIRE UTILITIES AGENCY

By: 
~~President~~

CITY OF ONTARIO


By: 
Gregory C. Devereaux
City Manager

EXHIBIT A

CITY OF ONTARIO

LOCAL AGENCY FACILITIES

1. Ion-Exchange Facility located at John Galvin Park, south side of Forth Street between Cucamonga Avenue and Grove Avenue.
2. Three Aquifer Storage and Recovery Wells located at three of the five following locations:
 - 2.1 North side of Concoors Avenue, wesst of Milliken Avenue.
 - 2.2 Southeast corner of Grove Avenue and 7th Street.
 - 2.3 Memorial Grove Park near the intersection of Grove Avenue and "G" Street.
 - 2.4 Northeast corner of Jurupa Street and Dupont Street.
 - 2.5 Northeast corner of Belmont Street and Grove Avenue.

EXHIBIT B

PERFORMANCE TARGETS

CITY OF ONTARIO

Dry Year Shift obligation of 8,076 AF over 12-month period

8,076 AF reduced imported water reduction
8,076 AF pumped from Metropolitan Water District storage account
8,076 AF increase in City of Ontario's overall local supply production
all three criteria must be met plus or minus 10 percent

Failure to perform would result in City of Ontario being charged a rate equal to two times the Metropolitan Tier 2 rates in effect at such time for each acre-foot of the Dry Year Shift obligation not met.

EXHIBIT 3

COPY

LOCAL AGENCY AGREEMENT

Dated as of January 12, 2004

By and Among

INLAND EMPIRE UTILITIES AGENCY,

And

THE CITY OF ONTARIO AND JURUPA COMMUNITY SERVICES DISTRICT

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EXHIBITS

Exhibit A	Local Agency Facilities	A-1
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LOCAL AGENCY AGREEMENT

This Agreement is entered into as of January ____, 2004, by and among the Inland Empire Utilities Agency ("IEUA"), a municipal water district duly organized and existing under the laws of the State of California, and the City of Ontario and Jurupa Community Services District (the latter two collectively the "Local Agencies"), a General Law City, and a Community Services District, respectively, both of which are duly organized and existing under the laws of the State of California.

WITNESSETH:

WHEREAS, 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 Sub account; and,

WHEREAS, Metropolitan was subsequently 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, DWR set forth the specific terms and conditions of the grant to Metropolitan; and,

WHEREAS, 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, a Request for Proposals for Participation in Groundwater Storage Programs Using Proposition 13 Funds, RFP No. WRM-2 (the "RFP"); and,

WHEREAS, 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 approved by Metropolitan's Board of Directors in 1996, and the Groundwater Storage Principles

adopted in connection therewith by Metropolitan's Board of Directors in January 2000;
and,

WHEREAS, IEUA has entered into a Groundwater Storage Project Funding Agreement (the "Metropolitan Agreement") with Metropolitan, Three Valleys Municipal Water District and Chino Basin Watermaster whereby, among other things, funding will be provided to finance the facilities listed on Exhibit "A" hereto (the "Local Agency Facilities") which are necessary to enhance a groundwater storage program in the Chino Basin; and,

WHEREAS, IEUA desires to pass through to the Local Agencies any amounts received by IEUA under the Metropolitan Agreement which are allocable to the Local Agency Facilities for use by the Local Agencies to construct the Local Agency Facilities; and

WHEREAS, in exchange for such amounts, the Parties hereto intend that the Local Agencies assume the obligations specified herein of IEUA under the Metropolitan Agreement and all obligations relating to the Local Agency Facilities, whether such obligations are imposed by Metropolitan, DWR or another entity;

NOW THEREFORE, the Parties hereto do agree as follows:

Section 1. Definitions. All capitalized terms used herein and not otherwise defined shall have the meanings given in the Metropolitan Agreement.

Section 2. Effective Date; Termination Date. This Agreement shall become effective upon the Effective Date of the Metropolitan Agreement and shall terminate upon the termination of the Metropolitan Agreement.

Section 3. Funding of Local Agency Facilities. All amounts allocable to the Local Agency Facilities disbursed to IEUA under Section V of the Metropolitan Agreement shall be paid to the Local Agencies for construction of the Local Agency Facilities.

Section 4. IEUA Duties. As between IEUA and the Local Agencies, IEUA shall have the following duties included in the Metropolitan Agreement relating to the Local Agency Facilities:

- (a) CEQA. To the extent IEUA determines the Local Agency Facilities listed in Exhibit "A" hereto are not adequately addressed in IEUA's Final Program Environmental Impact Report for the Chino Basin Watermaster Optimum Basin Management Program certified by IEUA on July 12, 2000, or Finding of Consistency (Addendum) certified by IEUA on December 18, 2002, IEUA shall undertake additional environmental review pursuant to the California Environmental Quality Act (CEQA) and prepare, adopt and certify a

- Finding of Consistency or other document(s) as appropriate under CEQA.
- (b) Permits and Approvals. IEUA shall be responsible for delivering to Metropolitan the Required Approvals specified in Section III.C. of the Metropolitan Agreement following coordination with and understandings between IEUA and the Local Agencies with respect to any Required Approvals which will be secured by the Local Agencies in connection with the construction and operation of the Local Agency Facilities.
 - (c) No Litigation. IEUA shall be responsible for the no litigation certification to Metropolitan described in Section III.D. of the Metropolitan Agreement.

Section 5. Local Agencies Duties. As between IEUA and the Local Agencies, the Local Agencies shall have the following duties included in the Metropolitan Agreement relating to the Local Facilities.

- (a) Program Planning. The Local Agencies shall provide to IEUA the Plans, Schedule and Budget as provided for in, and consistent with, Section IV.A.3 of the Metropolitan Agreement for the Local Agency Facilities listed in Exhibit "A" hereto within a sufficient amount of time to enable IEUA to deliver these items to Metropolitan by September 1, 2004. In the event of disapproval of these items by Metropolitan or DWR (Section IV.A.4.c. of the Metropolitan Agreement), the Local Agencies and IEUA shall agree upon the correction of any deficiencies prior to IEUA meeting with Metropolitan. The Local Agencies shall have responsibility for the items specified in Section IV.A.3.d. & e. of the Metropolitan Agreement.
- (b) Construction. The Local Agencies shall perform all of IEUA's duties included in Section IV.B. of the Metropolitan Agreement with respect to the construction of the Local Agency Facilities listed in Exhibit "A" hereto. The Local Agencies may let contracts for the Local Agency Facilities through addendum or change order consistent with their and IEUA's enabling authorities.
- (c) Project Construction Funding. The Local Agencies agree to pay for any cost overruns (Section V.B. of the Metropolitan Agreement) allocable to the Local Agency Facilities listed in Exhibit "A" hereto subject to prior consultation with IEUA and approval by the Local Agencies. The Local Agencies shall provide IEUA with the information and certifications necessary for IEUA to submit an Invoice pursuant to Section V.C. of the Metropolitan Agreement.
- (d) Operation and Maintenance of Local Agency Facilities. With respect to the Local Agency Facilities listed in Exhibit "A" hereto, the Local Agencies shall be responsible for performing the duties set forth in Section VI.B. of the Metropolitan Agreement.

- (e) Delivery of Metropolitan Water. Watermaster and IEUA will allocate Metropolitan water supplied by Metropolitan's Storage Account (replenishment, injection or in lieu) through an annual operating plan to be approved by IEUA and Watermaster. To the extent the Local Agencies are allocated Metropolitan in lieu water, rate and charges paid by the Local Agencies for such in lieu deliveries shall be based upon IEUA rates and charges adopted its Board of Directors for the Metropolitan Dry Year Storage Program from time-to-time.
- (f) Groundwater and Pumping Responsibilities. The Local Agencies acknowledge that Metropolitan has the right to demand the pumping of stored water in the Chino groundwater basin. The Local Agencies shall provide for the pumping of stored water (on a pro rata basis determined by IEUA on the basis of all applicable groundwater pumpers that have agreements with IEUA similar to this Agreement) upon Metropolitan's request of a Stored Water Delivery, all in accordance with Section VII(C) of the Metropolitan Agreement, and consistent with Exhibit "B" hereto. The Local Agencies shall be reimbursed by Metropolitan for operation and maintenance expenses incurred when pumping stored water upon Metropolitan's demand, all in accordance with Section VII(D) of the Metropolitan Agreement.
- (g) Record Keeping, Reporting, Inspection and Audit Duties. The Local Agencies shall perform all of IEUA's record keeping, reporting, inspection and audit duties, which relate to the Local Agency Facilities, all in accordance under Section X of the Metropolitan Agreement.
- (h) Indemnity. The Local Agencies shall immediately reimburse IEUA for any amounts expended for compliance with Section XI of the Metropolitan Agreement which are allocable or which in any way relate to the Local Agency Facilities to the extent such indemnification is directly related to the Local Agencies' duties expressly specified in this Agreement.
- (i) Insurance. The Local Agencies shall be responsible for providing and paying for all insurance with respect to the Local Agency Facilities required by Section XII of the Metropolitan Agreement.

Section 6. Representations, Warranties and Covenants. The Local Agencies represent, warrant and covenant as follows:

- (a) Power and Authority. That the City of Ontario is a general law city and Jurupa Community Services District is a Community Services District, duly organized and validly existing under the laws of the State of California; that they have all necessary power and authority to enter into this Agreement and to perform their obligations hereunder on the terms set forth in this Agreement, and that the

execution and delivery hereof by them and the performance of their obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which they are a party or by which they are a party or by which they are bound.

- (b) Authorization; Valid Obligation. That all proceedings required to be taken by or on behalf of the Local Agencies to authorize them to make, deliver and carry out the terms of this Agreement have been duly and properly taken, and that this Agreement is their 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.
- (c) No Litigation. To the best of the Local Agencies' knowledge, there is no litigation, proceeding or investigation pending or threatened, to which they are 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 their ability to perform their obligations under this Agreement, or which raises a question as to the validity of this Agreement, or any action to be taken hereunder.
- (d) Compliance with Laws. In the performance of their obligations hereunder, the Local Agencies and their contractors and subcontractors will comply with all applicable laws, regulations and ordinances, including, without limitation, those listed in Section IX of the Metropolitan Agreement.
The Local Agencies and their 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. The Local Agencies and their contractors will include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts let for the construction of the Local Agency Facilities.
- (e) No Construction. Construction of the Local Agency Facilities and related work (including planning activities), for purposes of Prop. 13 Funds eligibility, did not commence prior to the Effective Date.
- (f) Capacity. The Local Agencies and their 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.
- (g) Oversight and Supervision of Construction. The Local Agencies will oversee and supervise all contractors and keep control of all work and provisions of services and materials in connection with the Program.

- (h) Maintain Ownership of Program Property. The Local Agencies 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.

Section 7. Miscellaneous.

- (a) Headings. The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.
- (b) Partial Invalidity. If any one or more of the covenants or agreements provided in this Agreement to be performed should be determined to be invalid or contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.
- (c) Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.
- (d) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.
- (e) Notices. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by Federal Express or another reputable commercial overnight courier that guarantees next day delivery and provides a receipt, or (d) by telefacsimile or telecopy, and such notices shall be addressed as follows:

If to IEUA:

Inland Empire Utilities Agency
~~9400 Cherry Avenue, Bldg. A~~
~~Fontana, California 92335~~
Attention: Treasurer

New Address:

6075 Kimball Avenue
Chino, CA 91710

With a copy to:

Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Douglas Brown

If to Watermaster: Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, California 91730
Attention: John Rossi

If to Local Agency: Jurupa Community Services District
11201 Harrel Street
Mira Loma, California 91752
Attention: Carole A. McGreevy

With a copy to: John J. Schatz, Esq.
P.O. Box 7775
Laguna Niguel, California 92607

If to Local Agency: City of Ontario

Attention: _____

With a copy to: _____

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed delivered when actually delivered, if such delivery is in person, upon deposit with the U.S. Postal Service, if such delivery is by certified mail, upon deposit with the overnight courier service, if such delivery is by an overnight courier service, and upon transmission, if such delivery is by telefacsimile or telecopy.

- (f) Merger of Prior Agreements. This Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof.
- (g) Time of the Essence. Time is of the essence in the performance of this Agreement.

IN WITNESS WHEREOF, IEUA has executed this Agreement with the approval of its governing body, Watermaster has executed this Agreement with the approval of its governing body, and Local Agency has executed this Agreement in accordance with the authorization of its governing body.

INLAND EMPIRE UTILITIES AGENCY

By: *John L. Anderson*
President

JURUPA COMMUNITY SERVICES DISTRICT

By: *Kenneth J. McLaughlin*
Kenneth J. McLaughlin, President

CITY OF ONTARIO

By: _____

EXHIBIT A

LOCAL AGENCY FACILITIES

City Of Ontario

Central Ion Exchange Nitrate Removal Facility at Cucamonga Avenue between Fourth Street and I Street.

5 Wells at Conours & Milliken Ave; 1335 Holt Blvd, G Street & Dupont Ave; Jurupa Street & Dupont Ave.

Jurupa Community Services District

Roger D. Teagarden Ion Exchange Water Treatment Facility, 4150 Etiwanda Avenue, Mira Loma.

EXHIBIT B

PERFORMANCE TARGET

Jurupa Community Services District:

Dry Year Shift obligation of 2,000 AF over 12-month period

2,000 AF reduced imported water reduction

2,000 AF pumped from MWD storage account

2,000 AF increase in JCSD overall local supply production

all three criteria must be met plus or minus 10 percent

Failure to perform would result in JCSD being charged a rate equal to two times the Tier 2 rates in effect at such time for each AF of the Dry Year Shift obligation not met.

EXHIBIT 4

COPY

1 Scott S. Slater (State Bar No. 117317)
2 Michael T. Fife (State Bar No. 203025)
3 HATCH & PARENT, A LAW CORPORATION
4 21 East Carrillo Street
5 Santa Barbara, CA 93101
6 Telephone No. (805) 963-7000
7 Facsimile No. (805) 965-4333

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT

MAY 12 2004

Attorneys For
CHINO BASIN WATERMASTER

BY Wanda Lewis
DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION

11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

Case No. RCV 51010

13 Plaintiff,

[Assigned for All Purposes to the Hon. J. Michael
Gunn]

14 vs.

NOTICE OF MOTION FOR APPROVAL OF
STORAGE AND RECOVERY PROGRAM
AGREEMENT

15 CITY OF CHINO, et al.,

16 Defendants.

Hearing Date: June 24, 2004
Hearing Time: 1:30
Dept: R8

18 PLEASE TAKE NOTICE that on June 24, 2004, at 1:30, the CHINO BASIN
19 WATERMASTER will request the Court to approve the Dry Year Yield Storage Agreement
20 pursuant to paragraph 28 of the Judgment. This Motion will be based upon this Notice and the
21 accompanying Motion and Points and Authorities and attached Exhibits.
22

23 Dated: May 11, 2004

HATCH & PARENT, A LAW CORPORATION

24 By: Michael T. Fife

25 Scott S. Slater
26 Michael T. Fife
27 Attorneys for
28 CHINO BASIN WATERMASTER

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

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5 Santa Barbara, CA 93101
6 Telephone No. (805) 963-7000
7 Facsimile No. (805) 965-4333

8 Attorneys For
9 CHINO BASIN WATERMASTER

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN BERNARDINO - RANCHO CUCAMONGA DIVISION

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 vs.

17 CITY OF CHINO, et al.,

18 Defendants.

Case No. RCV 51010

[Assigned for All Purposes to the Hon. J. Michael
Gunn]

MOTION FOR APPROVAL OF
STORAGE AND RECOVERY PROGRAM
AGREEMENT; POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION

Hearing Date: June 24, 2004
Hearing Time: 1:30
Dept: R8

19
20 I.

21 INTRODUCTION

22 This motion is filed pursuant to paragraph 28 of the Judgment to request this Court to
23 approve the proposed *Storage And Recovery Program Storage Agreement Between Chino Basin*
24 *Watermaster, Inland Empire Utilities Agency and Three Valleys Municipal Water District*
25 *Regarding Implementation of The Dry Year Yield Project* ("Agreement"). By approving the
26 Agreement, the Court will authorize Watermaster to continue implementing the Optimum Basin
27 Management Program's ("OBMP") Storage and Recovery Program in accordance with the Peace
28 Agreement and prior orders of this Court.

1 This request for approval completes the process of approval for the long anticipated Dry
2 Year Yield Project contemplated by the OBMP Implementation Plan and the Peace Agreement
3 and initiated by the Dry Year Yield Funding Agreement (Agreement No. 49960) between
4 Watermaster, the Metropolitan Water District of Southern California ("Metropolitan"), and two
5 of its member agencies, the Inland Empire Utilities Agency ("IEUA"), and Three Valleys
6 Municipal Water District ("TVM WD"). A true and correct copy of the Agreement is attached to
7 this motion as Exhibit "A."

8 The Agreement had its genesis in Watermaster processes during the consideration of the
9 OBMP. Subsequently, a potential Dry-Year Yield Project was referenced in the OBMP
10 Implementation Plan and envisioned by the Peace Agreement. Accordingly, the Dry-Year Yield
11 Project embodied in this Agreement has been fully vetted through the traditional Watermaster
12 processes, thoroughly examined by the parties to the Judgment and unanimously supported and
13 approved by all the various Pools, the Advisory Committee and the Watermaster Board. Ample
14 notice and opportunity to be heard has been afforded all parties to the Judgment and the public
15 generally. As of this filing with the Court, no objection to Watermaster's execution of the
16 Agreement has been lodged with Watermaster or the Court.

17 The quantity of storage capacity assigned under this Agreement is well within the
18 presumptive safe harbor of the defined Safe Storage Capacity and no information has been
19 presented by any person, nor has Watermaster's review and analysis disclosed, any Material
20 Physical Injury that will be caused by the activities being carried out under the Agreement. In
21 light of the broad support for the Dry Year Yield Project among all Parties to the Judgment, the
22 absence of any known opposition and no factual evidence of actual or threatened Material
23 Physical Injury, Watermaster respectfully requests the Court approve the Agreement.

24 II.

25 BACKGROUND

26 A. Project Description

27 The Agreement authorizes IEUA, TVM WD and many of their various retail agencies, all
28 of which are parties to the Judgment, to participate in the use of a portion of the vacant Basin

1 storage space. The key elements of the Agreement are that IEUA and TVMWD will never store
2 more than 100,000 acre-feet of Supplemental Water in the Basin pursuant to the Agreement.
3 (Agreement, Part II) The annual deliveries to the Basin will never be more than 25,000 acre-feet
4 in any year, without the express prior written approval of Watermaster. (Agreement, Part V.).
5 The primary method of delivery of the Supplemental Water into the Basin will be through in-lieu
6 recharge. That is, retail water purveyors that are parties to the Judgment will forebear from
7 producing native groundwater that is otherwise within their right to produce while receiving
8 expanded deliveries of Supplemental Water from Metropolitan.

9 Through this Agreement, IEUA and TVMWD will obtain an added reliable local water
10 supply that will be held in storage in the Basin and that will be used to reduce dependency upon
11 the purchase and physical delivery of Supplemental Water in times of drought. When
12 Metropolitan elects to reduce deliveries to IEUA and TVMWD, they in turn will request their
13 retail water purveyors to increase groundwater extractions to the extent of the annual and term
14 maximums provided in the Agreement.

15 **B. Public Interest in Pursuing Groundwater Storage**

16 The Conjunctive Use and Groundwater Storage Projects generally have gained
17 considerable support in the published legal commentary. (Foley-Gannon, *Institutional*
18 *Arrangements for Use in Water Management in California and Analysis of Legal Reform*
19 *Alternatives* (2000) 6 Hastings W.NW-J of Env'tl L. Policy 273; Victor Gleason, *Water Projects*
20 *Go Underground* (1975) 5 Ecology L.Q. 625, 633. Storage space in a groundwater aquifer is
21 considered to be a public resource. (West and Central Basin Water Replenishment District v.
22 Southern California Water Company, (2003) 109 Cal.App.4th 891, *modified* 110 Cal.App.4th
23 352, *review denied*.) Groundwater storage projects are generally hailed as environmentally benign
24 and substantially superior to surface storage options.

25 Groundwater storage avoids the potentially destructive surface water impoundments that
26 often interfere with aquatic habitat. With proper management, losses from storage can be
27 minimized and the dramatic evaporation losses associated with many surface bodies of water are
28 not an issue.

1 Recharge for purposes of carrying out a storage project can also serve to at least
2 temporarily reduce pump lifts and the economic costs of producing groundwater. It was for
3 these and other reasons that the Judgment in this case delegated responsibility for administering
4 groundwater storage to Watermaster.

5 **C. Judgment**

6 The Judgment provides that no use shall be made of the storage capacity of Chino Basin
7 except pursuant to written agreement with Watermaster. (Judgment, ¶ 12, p. 9.) “It is essential
8 that said reservoir capacity utilization for storage and conjunctive use of supplemental water be
9 undertaken only under Watermaster control and regulation, in order to protect the integrity of
10 both such Stored Water and Basin Water in storage and the Safe Yield of Chino Basin.” (*Id.*, ¶
11 11, p. 8.) Agreements for storage “shall first be approved by written order of the Court” and
12 must include terms that will “preclude operations which will have a substantial adverse impact
13 on other producers.” (*Id.*, ¶ 28, p. 15.)

14 The Judgment provides that any agreement authorized by Watermaster for storage of
15 supplemental water in the available storage capacity of the Basin shall include:

- 16 1. The quantities and term of the storage right.
- 17 2. A statement of the priority or relation of said right, as against overly ing or Safe
18 Yield uses, and other storage rights.
- 19 3. The procedure for establishing delivery rates, schedules and procedures which
20 may include spreading or injection, or in lieu deliveries of supplemental water for
21 direct use.
- 22 4. The procedures for calculation of losses and annual accounting for water in storage
23 by Watermaster.
- 24 5. The procedures for establishment and administration of withdrawal schedules,
25 locations and methods.

26 (Judgment, Exh. “I,” ¶ 3, p. 80-81.)

27 A Judgment that expressly reserves continuing jurisdiction over groundwater storage is
28 valid. (West and Central Basin Water Replenishment District v. Southern California Water

1 Company, (2003) 109 Cal.App.4th 891, *modified* 110 Cal.App.4th 352, *review denied*.) Unlike
2 the Judgments in some other adjudications, the Judgment in the instant case is distinguishable in
3 that it provides extensive discussion of the rules that are applicable to storage and recovery of
4 water. Approximately 22 years later, Watermaster’s authority to regulate and administer storage
5 was buttressed by the Peace Agreement.

6 **D. Peace Agreement**

7 The Peace Agreement was executed by the parties to the Judgment in June of 2000.
8 Consistent with the Judgment, Section 5.2(a)(i) confirms and acknowledges that the Parties to the
9 Judgment cede to Watermaster the right to regulate and control the storage of water in the Basin.
10 No person may store and recover water from the Basin without having first obtained an
11 agreement with Watermaster. (Section 5.2(a)(ii).) As a matter of contract, the Parties to the
12 Judgment are bound by their Agreement.

13 **E. Watermaster Rules and Regulations**

14 Watermaster’s Rules and Regulations (“Rules”) mirror and implement the Judgment and
15 Peace Agreement requirements. They require that Watermaster, “ensure that no person shall
16 store water in, and recover water from the Basin, other than pursuant to a Local Storage
17 Agreement, without a Storage and Recovery Agreement with Watermaster.” (Rules, § 8.3(a), p.
18 52.) They also require that before storage agreements entered into under the Storage and
19 Recovery Program become effective, Watermaster must receive Court approval of the Storage
20 Agreement. (*Id.*, at § 8.1(c).) The Rules include the same five requirements noted above
21 regarding the content of the Storage Agreement. Additionally, the Rules provide that the
22 quantities and term of the storage right shall specifically exclude credit for return flows. (*Id.* at §
23 8.1(h), p. 47-48.)

24 The Rules further provide that “Watermaster shall calculate additions, extractions and
25 losses of all Stored Water in Chino Basin, and any losses of water supplies or Safe Yield of Chino
26 Basin resulting from such Stored Water, and keep and maintain for public record, an annual
27 accounting thereof.” (Rules, § 8.1(i), p. 48.) Watermaster “shall not approve a Recapture Plan if
28 it is inconsistent with the terms of Peace Agreement or will cause Material Physical Injury to any

1 party to the Judgment or the Basin. Any potential or threatened recapture of water by any
2 person shall be fully and reasonably mitigated as a condition of approval. In the event the
3 Material Physical Injury cannot be fully and reasonably mitigated, the request for Recapture
4 must be denied.” (Rules, § 8.1(j), p.48.)

5 Finally, the Rules provide that “[r]ecapture of water held in a storage account will
6 generally be approved by Watermaster as a component of and coincident with a Groundwater
7 Storage Agreement for Qualifying Storage. However, an Applicant for Qualifying Storage may
8 request, and Watermaster may approve, a Groundwater Storage Agreement where the plan for
9 recovery is not yet known. In such cases, the Applicant may request Watermaster approval of
10 the Qualifying Storage only and subsequently submit and process an independent Application
11 for Recapture under the provisions of Article X.” (Rules, §8.1(d.), p. 43.)

12 **F. Existing Storage Accounts in Chino Basin - The Pre-Agreement Storage**
13 **Baseline**

14 Existing storage in the Chino Basin is utilized under the direction and control of
15 Watermaster. There are three types of storage accounts that currently exist within the Chino
16 Basin. The largest use of storage space is for storage of Excess Carry-Over water. Under the
17 Judgment, both Appropriative Pool members as well as Overlying (Non-Agricultural) Pool
18 members may carry-over water unproduced in one year for production in the subsequent year.
19 For Appropriative Pool members, this authorization can be found in the Appropriative Pool
20 Pooling Plan, Judgment, Exhibit “H,” ¶ 12, p.77. For the Overlying (Non-Agricultural) Pool
21 members, this authorization can be found in the Overlying (Non-Agricultural) Pool Pooling Plan,
22 Judgment, Exhibit “G,” ¶ 7, pp. 66-67. For both, if the amount of water carried over exceeds the
23 party’s production right, then the party must, as a condition of preserving such surplus carry-
24 over, execute a storage agreement with Watermaster. According to Watermaster’s 26th Annual
25 Report, at the end of Watermaster’s 2002-2003 fiscal year, Appropriative Pool members held
26 71,328.595 acre-feet in Excess Carry-Over Storage. (26th Annual Report Appendix K-1.)
27 Similarly, Overlying (Non-Agricultural) Pool members held 36,850.022 acre-feet in Excess Carry-
28 Over Storage. (26th Annual Report Appendix L-1.)

1 The second major use of storage in the Chino Basin is for Local Storage of Supplemental
2 Water. According to Watermaster's 26th Annual Report, at the end of Watermaster's 2002-2003
3 fiscal year, there was 81,179.810 acre-feet held in such Local Storage. (26th Annual Report
4 Appendix K-1.) This amount follows an initial quantification of 93,862.143 acre-feet of
5 groundwater in Local Storage on May 24, 2001 pursuant to Watermaster's Rules and
6 Regulations. (Rules, § 8.1(f)(iv)(c), pp.45-46.)

7 Under the Peace Agreement, for a period of five years from the Effective Date of the
8 Peace Agreement (October 1, 2000), Watermaster shall ensure that: (a) the quantity of water
9 actually held in Local Storage under a storage agreement with Watermaster is confirmed and
10 protected and (b) each party to the Judgment shall have the right to store its Un-Produced Carry-
11 Over Water. (Peace Agreement, § 5.2(b)(i).) With certain exceptions described in the Peace
12 Agreement, five years from the Effective Date Watermaster has discretion to place reasonable
13 limits on the further accrual of carry-over and Supplemental Water in Local Storage. (Peace
14 Agreement, § 5.2(b)(x).) All Parties to the Judgment have acknowledged and agreed that
15 Watermaster has discretion in addressing the future limitations on the use of Basin storage
16 capacity.

17 The third type of storage accounts in the Chino Basin are accounts held by non-parties to
18 the Judgment. At the present time, the only such party is Metropolitan. Metropolitan currently
19 has three separate storage accounts in the Chino Basin. Metropolitan's primary storage account
20 in the Chino Basin is its Cyclic Storage Account. This account was created by the Cyclic Storage
21 Agreement dated December 4, 1978, and which was approved by the Court in January 1979.
22 This account currently holds 32,700 acre-feet of water. The purpose of the account is to allow
23 for the pre-delivery of replenishment water to the Basin. The Cyclic Storage Agreement has been
24 extended several times with the most recent Seventh Amendment extending the term of the
25 Agreement until December 31, 2007. The Seventh Amendment was approved by the Court on
26 September 4, 2003. Under the terms of the Seventh Amendment to the Cyclic Storage Agreement
27 it is anticipated that new water will not be placed into this account and that the existing amount
28 stored will be gradually removed until the account is empty.

1 Finally, Metropolitan has two other accounts, one created by the Metropolitan Trust
2 Storage Agreement which was approved by the Court in August of 1986, and the other the Short-
3 Term Conjunctive Use Agreement (CB-5) which was approved in September of 1993. There is
4 no water currently stored under the Short-Term Conjunctive Use Agreement and the Funding
5 Agreement specifies that this storage account will be abolished. At the time of entering into the
6 Funding Agreement there was 4,739 acre-feet of water stored in the Trust Storage Account. Per
7 Metropolitan's rights under the Trust Storage Agreement, it has been putting water into storage
8 in this account over the past several months. There is currently approximately 13,100 acre-feet
9 in this account. Under the terms of the Funding Agreement and the Agreement currently before
10 the Court for approval, the Trust Storage Account will be abolished and all water currently
11 stored in that account will be transferred into the Dry Year Yield account and will be subject to
12 all the terms and conditions placed on that account through the Agreement.

13 A summary of these quantities of water held in storage and as reported to the Court in
14 Watermaster's most recent Annual Report is provided below:

<i>Type of Storage Account</i>	<i>Cumulative Quantity in Storage as Per 2002-03 Annual Report</i>
18 Excess Carry-Over Water: Appropriators	71,328.595 acre-feet
19 Excess Carry-Over Water: Non-Ag Overlying 20 Owners	36,850.022 acre-feet
21 Local Storage of Supplemental Water	81,179.810 acre-feet
22 MWD Cyclic Storage Agreement	32,700 acre-feet
23 MWD Trust Storage Agreement	4,739 acre-feet
24 Cumulative Total	226,797.43

25 **G. The Presumptive Safe Harbor for Use of Safe Storage Capacity**

26 Watermaster is to be guided by specific criteria in evaluating any request for a Storage and
27 Recovery Program. (Peace Agreement 5.2(c)(iv).) Among these criteria is the indication that
28

1 Watermaster is to target the use of 500,000 acre-feet of available capacity *in excess* of the
2 quantity of water held in storage on the Date of Execution.

3 The OBMP Implementation Plan then defines the Operational Storage Capacity of the
4 Basin at approximately 5,300,000 acre-feet and introduces the concept of Safe Storage and Safe
5 Storage Capacity. (Peace Agreement Exhibit B, OBMP Implementation Plan: Program Element
6 8.) In relevant part, Safe Storage is defined as “an estimate of the maximum storage in the Basin
7 that will *not* cause significant water quality and high groundwater related problems.”

8 “Safe Storage Capacity” was quantified at about 500,000 acre-feet, (Peace Agreement
9 Exhibit B, OBMP Implementation Plan: Program Element 8) *inclusive of water in existing storage*
10 *accounts*. Storage in excess of the safe storage was thought to “preemptively require mitigation,
11 that is, mitigation must be defined and resources committed to mitigation prior to allocation and
12 use.” Thus, the OBMP Implementation Plan established both a safe harbor for storage and
13 recovery within the Safe Storage Capacity within the Basin but only for so long as cumulative
14 storage under all accounts did not exceed 500,000 acre-feet.

15 The existence of the safe harbor did not diminish Watermaster’s obligations to fulfill its
16 commitment to *target* 500,000 acre-feet in excess of the quantities held in storage, it simply
17 meant there would be a significant likelihood that some form of “preemptive mitigation” would
18 be required as a condition of project approval for later Storage and Recovery projects. Thus,
19 while the Storage and Recovery Program is targeted to be a 500,000 acre-foot program, some level
20 of mitigation may be required for some portion of the storage depending on the amount of the
21 Safe Storage Capacity that is consumed by the other storage accounts in the Basin and depending
22 on the utilization of basin management options that may expand the Safe Storage Capacity. As
23 future storage proposals increase the amount of water in storage to the point where the total
24 approaches the limit of safe storage, more analysis of the potential effects of additional storage
25 will be required.

26 The Implementation Plan also committed Watermaster to perform an engineering analysis
27 to continue to determine and refine the accuracy of the prior estimates. Watermaster completed
28

1 this analysis in September 2003 and the Final Technical Memorandum which describes this
2 further analysis was filed with the Court on March 8, 2004.

3 The September 2003 Final Technical Memorandum was a report on the development of a
4 new Chino Basin groundwater model (hereafter, the "2003 Watermaster Model") by Wildermuth
5 Environmental, Inc.¹ This work was performed as a part of the technical analysis of the Dry
6 Year Yield Project and is discussed in further detail below. The 2003 Watermaster Model
7 indicates that the Safe Storage in the Chino Basin is actually about 6,480,000 acre-feet and that
8 the Operational Storage Requirement is about 5,980,000. Thus, while Watermaster's subsequent
9 analysis determined that the initial estimates of Safe Storage and the Operational Storage
10 Requirement were too low, the Safe Storage Capacity of the Basin was maintained at 500,000
11 acre-feet.

12 At the time Watermaster initiated review of the Application to enter a Storage and
13 Recovery Agreement (described in detail below), Watermaster held approximately 226,797 acre-
14 feet in storage with Safe Storage Capacity at approximately 273,203 acre-feet. The Application
15 for use of a maximum of 100,000 acre-feet was well within the presumptive safe harbor of the
16 Safe Storage Capacity established by the Peace Agreement and the Implementation Plan on the
17 basis of the estimates of Safe Storage Capacity that prevailed at the time the Implementation Plan
18 was approved by the Court as well as the more recent refinement by Watermaster.

19 II.

20 THE PROPOSED AGREEMENT

21 The Agreement seeks to use a maximum of 100,000 acre-feet of the target 500,000 acre-
22 feet of storage capacity. The Project was initiated through Metropolitan and is funded through a
23

24 ¹ The Final Technical Memorandum included not just an analysis of storage issues, but
25 also included two other elements: an analysis and recommendation concerning Supplemental
26 Water Recharge and an evaluation of the cumulative effects of transfers. The analysis of transfers
27 is relevant to the discussion of storage in so far as the ability of under-producing parties to
28 transfer water to over-producing parties has prevented an unnecessary over-accumulation of
water in storage as would happen if under-producing parties were required to store all of their
non-produced water, and the over-producing parties were required to import supplemental water
for replenishment. "Some of these transfers have resulted in an avoidance of a replenishment
obligation, or the physical recharge of water, for the Producer undertaking to lease or purchase
the water." (Final Technical Memorandum 3-1.)

1 combination of Proposition 13 grant funds and funding from Metropolitan. The details of the
2 financial aspects of the Dry-Year Yield Project authorized under this Agreement, including
3 allocation of benefits to the specific Chino Basin participants, was described in Watermaster's
4 *Motion for Approval of Metropolitan Dry Year Yield Funding Agreement* which was filed with the
5 Court on May 7, 2003. On June 5, 2003, the Court found that the weight of evidence supports
6 Watermaster's finding that the DYY Project, as described in the Funding Agreement, will provide
7 broad mutual benefits and that Watermaster's approval of the Funding Agreement is consistent
8 with its responsibilities under the Peace Agreement, which, in turn, facilitates implementation of
9 the court-approved OBMP. (June 5, 2003 Order, p.6.)

10 Participants in the DYY Project include the cities of Chino, Chino Hills, Ontario,
11 Pomona, Upland and Cucamonga Valley Water District, Jurupa Community Services District,
12 and Monte Vista Water District, all of which are parties to the Judgment and retail water
13 purveyors within the IEUA and TVMWD service areas. The Fontana Water Company is
14 currently involved in negotiations with IEUA and will decide at a later time whether to opt-in to
15 the project.

16 As a part of the project, funding has been allocated to each of the participating entities in
17 order to construct facilities that will improve the production capabilities of each entity. Water is
18 anticipated to be delivered primarily through in lieu procedures into storage, and delivered out of
19 storage by way of the improved production capacity of each of the agencies. Each agency owns
20 the facilities that are funded through the project, and when the facilities are not needed for
21 delivery of water out of storage, the agency can use the facilities at that agency's discretion.

22 As summarized above, the operational structure of the project is that Supplemental Water
23 can be delivered into storage at a maximum rate of 25,000 acre-feet per year. Watermaster, in its
24 discretion, may approve a higher delivery rate, however such approval does not alter the
25 maximum storage amount of 100,000 acre-feet. Water can be withdrawn from storage at a
26 maximum rate of 33,000 acre-feet over a twelve month period.

27 The distribution of these quantities of water throughout the Basin is governed by the
28 "Local Agency Agreements" between IEUA and TVMWD and each of the participating local

1 agencies. Each of the Local Agency Agreements describes the performance targets to which that
2 local agency has committed itself in exchange for its share of the benefits available under the
3 Funding Agreement. Executed copies of the Local Agency Agreements are attached to the
4 Agreement as Exhibit "B."

5 As is evident by the magnitude of the delivery and withdrawal parameters, the DYY
6 Project is anticipated to be a long-term, multi-year project that will allow for rational regional
7 water supply planning by allowing for increased imports to the Chino Basin during wet years,
8 and reduced imports during dry years. However, because of the long-term nature of the project,
9 it is not possible to determine in advance all of the operational details of the project. Thus, in
10 order to manage the year to year operation of the project, an Operating Committee will be formed
11 whose purpose will be to formulate an Annual Operating Plan to describe anticipated deliveries
12 and withdrawals from storage for that particular year. The Operating Committee will be
13 composed of one representative from each of Watermaster, IEUA, TVM WD, and two
14 representatives from Metropolitan. Before it can be effective, this Annual Operating Plan must
15 be approved by Watermaster.

16 To assure a prompt and efficient administration of the Agreement, the Operating
17 Committee has met and has begun the process of developing an Annual Operating Plan. The
18 current working draft of the Annual Operating Plan was submitted to the Watermaster parties for
19 review in October. A copy of this Annual Operating Plan is attached to this pleading as Exhibit
20 "B."

21 III.

22 FUNDING AGREEMENT APPROVAL PROCESS

23 On May 7, 2003, Watermaster filed a *Motion for Approval of Metropolitan Dry Year Yield*
24 *Funding Agreement*. Pursuant to this motion, Watermaster requested the Court to find that the
25 terms of the Funding Agreement are consistent with Watermaster's responsibilities under the
26 Peace Agreement.

27 The motion specified that the approval requested from the Court pertained only to the
28 terms of the Funding Agreement itself, and was not concerned with the analysis of the storage

1 account to be created pursuant to the Funding Agreement. (May 7, 2003 Motion, p.8.)
2 Accordingly, the standard of review employed by the Court in its consideration of the motion
3 was whether the Funding Agreement is consistent with Section 5.2(c)(iv)(b) of the Peace
4 Agreement which mandates that Watermaster will prioritize its efforts to regulate and condition
5 the storage and recovery of water developed in the Storage and Recovery Program for the mutual
6 benefit of the parties to the Judgment and to give first priority to Storage and Recovery
7 proposals that provide broad mutual benefits. On the basis of this standard, the Court found that
8 the weight of evidence supports Watermaster's finding that the DYY Project, as described in the
9 Funding Agreement, will provide broad mutual benefits and that Watermaster's approval of the
10 Funding Agreement is consistent with its responsibilities under the Peace Agreement, which, in
11 turn, facilitates implementation of the court-approved OBMP. (June 5, 2003 Order Concerning
12 Groundwater Storage Program Funding Agreement – Agreement No. 49960, p.6.)

13 **IV.**

14 **WATERMASTER APPROVAL OF THE APPLICATION**

15 **A. Submission of the Application**

16 On April 2, 2003, IEUA submitted an Application under Article X of Watermaster's
17 Rules and Regulations for a storage account in the amount of 100,000 acre-feet in order to
18 implement the terms of the Funding Agreement. This Application consisted of a Rules and
19 Regulations Form 6 Application by a Party to the Judgment to Participate in a Storage and
20 Recovery Program, and a Form 4 Application to Recapture Water in Storage. A copy of this
21 Application is attached here as Exhibit "C."

22 Metropolitan's rights and duties with regard to the storage and recovery of water in the
23 Chino Basin are as described in the Funding Agreement. Under the Funding Agreement, the
24 specific activities necessary in order to uphold the Chino Basin parties' commitments under the
25 Funding Agreement are left to the discretion of the Chino Basin parties. In other words, specific
26 operational details such as the *manner* of allocation of delivered water and the location and
27 specific rate of withdrawal of water from storage are left to the discretion of Watermaster, IEUA,
28 TVMWD and the participating local agencies. In addition, it is the responsibility of

1 Watermaster, IEUA, TVMWD and the local agencies, and not Metropolitan, to ensure that the
2 project is operated in a manner that does not cause Material Physical Injury to any party or to
3 the Basin. For this reason it is appropriate for a party to the Judgment, rather than
4 Metropolitan, to be the Article X Applicant.

5 Pursuant to Watermaster's Rules and Regulations, Watermaster produced a summary and
6 analysis of this Application, and provided Notice to the parties of the Application on April 30,
7 2003. This Summary and Analysis contained a summary analysis of the potential for Material
8 Physical Injury of the Application and contemplated that a more complete Material Physical
9 Injury analysis would be provided prior to consideration of the Application by Watermaster. A
10 copy of Watermaster's Notice of the Application, as well as a copy of Watermaster's Summary
11 and Analysis is attached here as Exhibit "D."

12 A proposed Applicant for a Storage and Recovery Program must submit the information
13 set forth in Rules Article X to Watermaster prior to Watermaster's consideration of the
14 Application. (Rules, § 8.3(b).) The Rules § 10.7 specifies the information to be included in a
15 Storage and Recovery Application. The required information includes the following:

- 16 1. The identity of the person that will recharge, store and recover the water, and the
17 ultimate place of use. The Application identifies IEUA and TVMWD as the
18 persons that "will provide imported water for storage and recovery via direct
19 replenishment, injection or in lieu." The ultimate place of use is identified in
20 IEUA's completed Form 4: "Within service area of agencies participating in
21 Metropolitan Funding Agreement (see attached shift obligation schedule)."
- 22 2. The quantity of water to be stored and recovered. The Application references the
23 Funding Agreement and notes that the amount of water to be placed in storage and
24 subsequently recovered will be administered through the Operating Committee.
- 25 3. The proposed schedule for the recharge of water for storage. The Application
26 indicates that the schedule for recharge will be specified within the Annual
27 Operating Plan, consistent with the Funding Agreement.

- 1 4. The proposed schedule and method for recovery. The Application indicates that
- 2 recovery of water from the storage account will be consistent with the Funding
- 3 Agreement and the Annual Operating Plan.
- 4 5. The location of the recharge facilities. The Application states that to the extent
- 5 that physical recharge is utilized, the recharge locations will be the recharge
- 6 facilities developed through Watermaster's Recharge Master Plan.
- 7 6. The location of the production facilities. The Application states that new
- 8 production facilities have received CEQA certification and are fully described in
- 9 Exhibit H of the Funding Agreement.
- 10 7. The water levels and water quality of the groundwater in the areas likely to be
- 11 affected by the storage and recovery. The Application references the CEQA
- 12 analysis performed for the project and makes specific reference to the Dry Year
- 13 Yield Modeling Report which is described in greater detail below in section C.

14 In addition, the Rules state that, "[a]ny person may file an Application for approval of

15 its Recovery of water held in storage." (Rules, § 10.8.) A recapture Application is to include the

16 following:

- 17 1. The identity of the person that recharged and stored the water. The Application's
- 18 Form 4 identifies the person to store the water as IEUA and TVMWD on behalf
- 19 of Metropolitan.
- 20 2. The identity of the person that will recover the water and the ultimate place of
- 21 use. Under the Application, the participating local agencies are the parties who
- 22 will recover the water, and the ultimate place of use os accordingly identified as
- 23 within the service areas of such agencies.
- 24 3. The quantity of water to be recovered. The Application's Form 4 identifies the
- 25 quantity of water to be recaptured as 100,000 acre-feet and the projected rate of
- 26 recapture to be a maximum of 33,000 acre-feet per year.

27

28

- 1 4. The proposed schedule for recovery. The Application's Form 4 does not address
2 the proposed schedule for recovery as this will not be known until water has been
3 first stored in the storage account.
- 4 5. The location of the production facilities through which the water will be
5 recovered. The location of the recapture facilities is identified primarily as the
6 facilities that will be funded for construction through the Funding Agreement,
7 though flexibility is allowed for the local agency to use its existing facilities if
8 necessary.
- 9 6. The existing water levels and water quality of the groundwater in areas likely to be
10 affected by the recovery. Again, the Application references the environmental
11 analysis for the project with specific reference to the Dry Year Yield Modeling
12 Report discussed below.

13 **B. CEQA Analysis**

14 The OBMP Programmatic Environmental Impact Report ("PEIR") was prepared in 2000
15 by Tom Dodson and Associates for IEUA as the lead agency. One of the alternatives considered
16 by the PEIR is what is known as the Conjunctive Use Alternative. (PEIR, Chapter 5.3.) The
17 Conjunctive Use Alternative considered by the PEIR included the following elements:

- 18 1. No maximum limit would be placed upon local storage accounts for a period of
19 five years.
- 20 2. The need for storage limits will be re-evaluated at the end of five years based upon
21 the ability of the parties to use such storage and the need for a regional storage
22 program.
- 23 3. Storage is not assignable.
- 24 4. All water in local storage and other storage accounts will incur losses at a rate of
25 2% beginning in fiscal year 2002/03 (this element was altered through the Peace
26 Agreement).
- 27 5. The storage loss rate and safe yield will be estimated in the year 2012/13 and
28 every ten years thereafter (this element was altered through the Peace Agreement).

- 1 6. Watermaster will develop a regional Conjunctive Use Program.
- 2 7. The regional Conjunctive Use Program will provide benefits to all producers in the
- 3 Basin, the people of California and the nation.
- 4 8. Storage committed to conjunctive-use programs may consist of two parts, storage
- 5 within the safe storage capacity and storage in excess of safe storage. Storage in
- 6 excess of safe storage capacity will preemptively require mitigation.
- 7 9. The initial target storage for Watermaster's Conjunctive Use Program will be
- 8 150,000 to 300,000 acre-feet within the safe storage capacity.
- 9 10. Cyclic storage will be folded into conjunctive-use storage.

10 (PEIR, 5-4; *see also* OBMP Phase I Report 4-37.)

11 The PEIR described the following steps that were envisioned in order to implement the
12 Conjunctive Use Alternative:

- 13 1. Completion of an existing short-term conjunctive-use project.
- 14 2. Identification of a seasonal peaking program for in Basin use and a Dry Year
- 15 Program to reduce the demand on Metropolitan to 10% of normal summer demand
- 16 (requiring 150,000 acre-feet of storage).
- 17 3. Establishment of a Dry-Year Export Program.
- 18 4. Establishment of a seasonal Peaking Export Program.

19 (Id.)

20 The PEIR followed the analysis contained in the OBMP and accepted the Safe Storage
21 capacity in the Basin at 500,000 acre-feet. The PEIR further assumed that with approximately
22 200,000 acre-feet of water already in storage through the total of all storage accounts, that the
23 remaining available safe storage in the Basin was 300,000 acre-feet of storage capacity. (PEIR, 5-
24 5.) It was for this reason that the PEIR evaluated a program of between 150 - 300,000 acre-feet.
25 (PEIR, 3-28.) The PEIR concludes that, “[f]or an expanded conjunctive use program of up to
26 300,000 acre-feet, it is not anticipated that significant mitigation would be required due to water
27 quality or rising water concerns.” (PEIR, 5-5.) Additional storage projects above this amount are
28 possible, though further analysis of potential impacts will be required.

1 One of the primary water quality impacts considered by the PEIR is impacts on the
2 vadose zone. (See PEIR 4-114.) However, the PEIR also concludes that the details of any
3 specific Conjunctive Use Program were too uncertain at that time in order to be able to consider
4 the site specific impacts that would be associated from operational details such as the physical
5 recharge of water in specific locations, the construction of specific facilities and the actual
6 withdrawal of water at definitive times and locations. (See PEIR Chapter 4.) The PEIR was
7 certified by IEUA on July 12, 2000.

8 During development of the specific DYY Project as proposed, subsequent environmental
9 analysis was performed by Dodson and Associates with IEUA as lead agency. This analysis
10 resulted in Findings of Consistency. IEUA certified the Findings of Consistency on December
11 28, 2002. Accordingly, the Implementation Plan, the PEIR and the Findings of Consistency all
12 adopted and relied upon the concept of Safe Storage Capacity as the basis for finding no
13 significant environmental impacts and no Material Physical Injury to the Basin or any person.

14 **C. Supplemental Watermaster Analysis of Reasonably Foreseeable**
15 **Management Conditions**

16 One component in the development of the DYY Project was an advance payment of \$1.6
17 million by Metropolitan to be used to perform preliminary engineering work and environmental
18 analysis of the proposed project. A portion of these funds were used to conduct the CEQA
19 analysis which led to the Findings of Consistency described above. However, given the potential
20 that Watermaster, at the request of the Parties to the Judgment, may elect to pursue different
21 management strategies, another portion of these funds were used to develop a new Chino Basin
22 groundwater model – known as the 2003 Watermaster Model – that would allow Watermaster to
23 evaluate the impact of the DYY Project under an alternative management scenario.

24 The 2003 Watermaster Model was used to provide a supplemental evaluation of the prior
25 CEQA analysis of the Storage and Recovery Program and specifically evaluated the magnitude of
26 groundwater level and storage changes throughout the Chino Basin, the change in direction and
27 speed of specific known water quality anomalies, and the storage losses from the DYY Project in
28 the event Watermaster sought to modify its Basin management strategy for the next 25 years.

1 As implementation of the OBMP has progressed since the completion of the Peace
2 Agreement in June of 2000, Watermaster has gained further information about the Basin from its
3 extensive monitoring efforts conducted under Program Element 1 of the OBMP. Most
4 important, however, the concept of hydraulic control, which is a fundamental background
5 concept in every Program Element of the OBMP, has come to the forefront of Watermaster's
6 management approach to the Basin. The maintenance of the Safe Yield through the prevention of
7 rising water in the Southern end of the Basin is the most basic expression of the need to achieve
8 and maintain hydraulic control and is the primary motivation for the desalter component of the
9 OBMP. Hydraulic control has also become an explicit focus of Watermaster due to water quality
10 concerns raised by the Orange County Water District and the Regional Water Quality Control
11 Board.²

12 In conducting its analysis of the potential for Material Physical Injury over the 25 year
13 term of the Agreement, Watermaster prudently chose to evaluate how the DYY Project will
14 integrate with other Basin management concepts. The emphasis on hydraulic control suggests
15 that at some point in the future the parties may find it beneficial to manage water levels in the
16 Southern end of the Basin at a lower level than currently maintained. Achievement of such a shift
17 would require further study, and would require approval through the full Watermaster process as
18 well as approval from the Court. While the maintenance of hydraulic control clearly falls within
19 the current Court authorization for implementation of the OBMP, a deliberate lowering of water
20 levels would certainly require implementation steps demanding specific Court authorization.

21 While such a management scenario has not yet been presented to either the Watermaster
22 parties or the Court, it is incumbent upon Watermaster to consider such a possibility when
23 projecting the full range of possible impacts from the DYY Project. This full analysis of the
24 potential for Material Physical Injury from the operation of the 100,000 Dry Year Yield Project
25

26
27 ² While the recent Basin Plan Amendment adopted by the Regional Water Quality
28 Control Board makes the maintenance of hydraulic control an explicit requirement under the
amendment's "maximum benefit" component, the continued use of the traditional
"antidegradation" standard will also implicate hydraulic control if the Chino Basin loses hydraulic
control and low quality rising water enters the Santa Ana River.

1 under reasonably foreseeable management conditions was performed by Wildermuth
2 Environmental and Black and Veatch, and the final product is titled, *Chino Basin Dry Year Yield*
3 *Program Modeling Report* (“Report”). This Report was completed and made available to the
4 parties in July 2003.

5 On July 23, 2003 Watermaster re-served its Notice of the Application and provided
6 notice of the availability of the Report. Copies of the Report were sent directly to the Special
7 Referee and her Technical Expert, as well as the technical advisor to the Agricultural Pool, Mr.
8 Frank Bromenschenkel. Additional copies of the Report were provided to any party who
9 requested one. As part of this Notice of Availability, Watermaster also provided another copy
10 of the previously noticed Application in order to ensure that all parties understood the
11 relationship between the Report and the Application. A copy of the Notice of Availability of
12 the Report is attached here as Exhibit “E.”

13 The 2003 Watermaster Model suggests that in order to maintain hydraulic control, the
14 Southern end of the Basin should be operated at a lower groundwater level than the level where it
15 is currently operated. Watermaster has not yet presented a proposal to the parties or the Court
16 in order to implement such a shift in management of water levels, and approval through the
17 normal Watermaster process, including Court approval, would be required before such a shift
18 could be implemented. However, Watermaster believes that the need to maintain hydraulic
19 control of the Basin will likely demand such a shift. Thus it is necessary in order to properly
20 analyze the impact of the DYY Project over the next 25 years, to consider the project in light of
21 this approach.

22 The Report describes the development and application of a series of simulation models to
23 project the impacts of storing and removing 100,000 acre-feet of water. The impacts evaluated in
24 the Report include groundwater-level impacts during the put, hold, and take periods; the losses of
25 water from increases in groundwater storage; and the change in direction and speed of known
26 water quality anomalies. The time period used in the analysis consists of the 25-year period
27 from October 2003 through September 2028. This period corresponds approximately to the 25-
28 year period of the Funding Agreement. The Report concludes that there will be no Material

1 Physical Injury from the 100,000 acre-foot DYY Project to either a party to the Judgment or to
2 the Basin if Watermaster were to elect to pursue this management strategy. (Report, 7-9 and 7-
3 10.)

4 In summary, the Agreement will not cause Material Physical Injury under either (a)
5 existing conditions because it is being operated within the Safe Storage Capacity of the Basin or
6 (b) modified conditions whereby Watermaster manages water levels at a lower equilibrium and
7 increases its hydraulic control.

8 **D. Approval of the Application**

9 At the August 2003 Pool Committee meetings, the Application and Watermaster's
10 analysis were considered. Watermaster's staff report recommended approval of the Application
11 conditioned upon yearly approval of the Annual Operating Plan as described in the Funding
12 Agreement. All pools recommended unanimously that the Advisory Committee and Board
13 approve the Application conditioned as described in the staff report. A copy of the staff report
14 is attached here as Exhibit "F."

15 In order to provide all parties an opportunity to fully consider the Application along
16 with the completed Report, the Application was not considered by the Advisory Committee and
17 Board until their October meetings. There were no contests to the Application, and thus,
18 pursuant to the Rules and Regulations, Watermaster was permitted to approve or conditionally
19 approve the Application without holding a hearing.

20 On October 23, 2003, the Advisory Committee and Board considered the Application
21 and adopted the findings and recommendation of the staff report to approve the Application
22 conditioned upon yearly approval of the Annual Operating Plan. As described below in Part VI,
23 this conditionality was incorporated as an explicit term of the Agreement. This approval was
24 based upon the Application, which incorporated the analyses of the PEIR and Findings of
25 Consistency, and upon the completed Report. A copy of the Advisory Committee and Board
26 staff report is attached here as Exhibit "G."

V.

DESCRIPTION OF THE PROPOSED STORAGE AGREEMENT

The Agreement submitted here for approval is between Watermaster, IEUA and TVM WD and will create a storage account for the purpose of implementing the Dry Year Yield Project. Both IEUA and TVM WD are member agencies of MWD and the boundaries of the retail service agencies lie within either IEUA or TVM WD. It is true that Jurupa Community Services District will also participate but it is not necessary to include Western Municipal Water District in the Agreement since Jurupa Community Services District, which is located within Western's service area, is participating in the project through a special agreement with the City of Ontario. This accommodation was made necessary because there are not currently any Metropolitan connections within the Jurupa service area.

The Agreement contains a lengthy set of recitals to establish the context for its approval and execution. It is necessary to include this level of background detail in the Agreement itself because of the complexity of the project and the extended analysis and approval process for the Agreement. Because of the need to complete the financial arrangements for the project in a timely fashion to take advantage of the availability of Proposition 13 funding, while at the same time allow for an extended process of technical analysis and review by the parties to the Judgment, the approval process was bifurcated into two phases. The current motion is the completion of the second phase of this process. This complexity in combination with the fact that this project is the first implemented under the Storage and Recovery Program created by the Peace Agreement, necessitates an enhanced level of clarification regarding background and context.

The Agreement contains a set of definitions that are consistent with the Judgment and the Peace Agreement. Most notably, the Agreement carries forward the definition of Material Physical Injury adopted in the Peace Agreement and maintained in Watermaster's Rules and Regulations. The definition recites that it is the intention of the Agreement to utilize the same definition of Material Physical Injury as is used in the Peace Agreement.

Following the definitions are the specific Agreement terms that will govern IEUA and TVM WD's use and operation of the storage account. The specific terms of the Agreement are

1 described in greater detail below in Part VII of this pleading, but in general they carry forward the
2 commitments made by IEUA and TVMWD in the Funding Agreement regarding the acceptance
3 of water into the Basin for storage and the delivery of water out of storage upon request by
4 Metropolitan. The terms additionally ensure Watermaster discretion to regulate and control the
5 storage of water through the Agreement and will ensure that IEUA and TVMWD implement the
6 DYY Project in a manner that is consistent with the Judgment, further Orders from this Court,
7 the Peace Agreement, and Watermaster's Rules and Regulations.

8 **VI.**

9 **WATERMASTER APPROVAL OF THE STORAGE AGREEMENT**

10 At the March 11, 2004 Joint Appropriative Pool and Overlying (Non-Agricultural) Pool
11 meeting both pools unanimously approved the Agreement. At the March 16, 2004 Overlying
12 (Agricultural) Pool meeting that pool also unanimously approved the Agreement. Finally, at the
13 March 25, 2004 Advisory Committee and Board meetings, the Agreement was also unanimously
14 approved and counsel was directed to transmit the Agreement to the Court for final approval.

15 **VII.**

16 **COURT APPROVAL OF THE DRY YEAR YIELD STORAGE AND RECOVERY**
17 **AGREEMENT**

18 Pursuant to the Judgment paragraph 28, storage agreements must be approved by written
19 order of the Court. Part II.A. of this pleading describes the elements that must be contained in a
20 storage agreement in order to receive approval by the Court. The primary list of these
21 requirements is found in the Judgment's Engineering Appendix, Exhibit "I" ¶ 3.

22 **A. Judgment Engineering Appendix, Exhibit "I"**

23 As required by the Judgment Exhibit "I" ¶ 3(a), p.80, the agreement terms begin in Part II
24 of the Agreement with a recitation of the quantity of the storage right. The quantity of the
25 storage right for the Dry Year Yield Project is 100,000 acre-feet. Part II of the Agreement further
26 specifies that the purpose of this storage right is specifically to implement the Funding
27 Agreement. To complete the satisfaction of Exhibit "I" ¶ 3(a), Part XII of the Agreement
28 specifies that the Agreement shall be coterminous with the Funding Agreement.

1 As required by the Judgment Exhibit "I" ¶ 3(b), Part VIII of the Agreement contains a
2 statement of the priority or relation of the storage right as against production rights and other
3 storage rights in the Basin. To do this, the Agreement contains the blanket requirement that
4 IEUA and TVMWD will fully protect and preserve the rights of overlying landowners, other
5 groundwater users or water right holders, and more broadly parties whose approval is required
6 by the 1978 Judgment and the Watermaster. In order to protect these rights, IEUA and
7 TVMWD will take all necessary actions, including groundwater monitoring and mitigation and/or
8 limiting extraction of groundwater to protect such rights.

9 Exhibit "I" ¶ 3(c) next requires that the Agreement describe the procedure for establishing
10 delivery rates, schedules and procedures which may include spreading or injection, or in lieu
11 deliveries of supplemental water for direct use. Note that the Judgment recognizes that it may
12 not be possible to specify the deliver rates, schedules and procedures in advance, and so only
13 requires that the Agreement describe the procedure for establishing such details. In conformance
14 with this requirement, the Agreement first describes the broad parameters of the delivery
15 maximum. Part V of the Agreement specifies that the delivery maximum shall be 25,000 acre-feet
16 per year. The Agreement preserves Watermaster's discretion to approve a higher delivery rate in
17 order to maintain operational flexibility, but it also is clear that an approval of a higher delivery
18 rate does not alter the storage right under the Agreement.

19 Beyond this broad numerical parameter, the Agreement carries forward the concept of the
20 Annual Operating Plan from the Funding Agreement. Part IV.C. of the Agreement requires that
21 the Annual Operating Plan shall provide an estimated schedule and location for all delivery of
22 water into and out of storage on a monthly basis for the upcoming fiscal year. The estimated
23 schedule and location for the delivery and extraction of water in the Annual Operating Plan must
24 be of sufficient detail in order to allow Watermaster to assess the potential for Material Physical
25 Injury to be caused to a party or to the Basin. (Agreement, Part IV.C.) The Agreement not only
26 prohibits Watermaster from approving an Annual Operating Plan that will cause Material
27 Physical Injury, it also prohibits Watermaster from approving an Annual Operating Plan that
28

1 does not provide sufficient detail to allow for a proper assessment of the potential for Material
2 Physical Injury. (Agreement, Part IV.C. and F.)

3 In satisfaction of Judgment Exhibit "I" ¶ 3(d), Part X of the Agreement specifies that
4 Watermaster will maintain records of the amounts of water stored in and extracted from the Basin
5 pursuant to the Agreement and further recites the fact that Watermaster will not approve
6 additional such storage agreements if such approval(s) would result in more than 500,000 acre-
7 feet of water being stored within the Basin at any time. Furthermore, Part X of the Agreement
8 specifies that Watermaster's accounting will include an assignment of losses from the storage
9 account and specifies that the procedure utilized to calculate such losses will be the same
10 procedure used to calculate losses from other storage accounts within the Storage and Recovery
11 Program.

12 Finally, Judgment Exhibit "I" ¶ 3(e) requires a description of the procedure for the
13 establishment and administration of withdrawal schedules, locations and methods. The role of
14 the Annual Operating Plan in satisfying this requirement has already been described above. In
15 addition, Part VI of the Agreement specifies that the delivery maximum shall be the lesser of
16 33,000 acre-feet or the amount of water remaining in the storage account. This term of the
17 Agreement ensures a maximum withdrawal rate of 33,000 acre-feet and also ensures that the
18 storage account can only be operated in a "put then take" manner as opposed to a "take then
19 put" manner. This is because under Part VI of the Agreement, it is not possible to remove from
20 the storage account more than has already been placed into the storage account.

21 **B. Other Agreement Requirements**

22 In addition to the primary Judgment requirements described in the Judgment's Exhibit
23 "I," there are other miscellaneous requirements for storage agreements.

24 One such requirement is the requirement contained in Watermaster's Rules and
25 Regulations, that the granting of a storage right shall specifically exclude credit for any return
26 flow. (Rules, § 8.1(h)(i).) The Agreement fulfills this requirement in Part X of the Agreement
27 where it is specified that Watermaster's accounting shall not include any credit for return flows
28 from the use of water extracted from storage.

1 The Judgment contains a very broad requirement that the use of the storage space in the
2 Chino Basin should be undertaken only under Watermaster control and regulation, in order to
3 protect the integrity of both such Stored Water and Basin Water in storage and the Safe Yield of
4 the Chino Basin. (Judgment, ¶11, p.8.) The Agreement follows this requirement in Part VII
5 where IEUA and TVMWD acknowledge Watermaster's authority to control and regulate the use
6 of the storage account in accordance with the Judgment and the Peace Agreement. Watermaster,
7 however, agrees that its regulation of the storage account shall be conducted in a non-
8 discriminatory manner. This means that Watermaster's regulation of this storage account shall be
9 consistent with its regulation of other storage accounts created for the Storage and Recovery
10 Program. Furthermore, Watermaster shall not impose policies upon this storage account that
11 would materially alter the benefits or obligations for Metropolitan under the Funding Agreement.

12 The Judgment also requires that in the allocation of storage capacity, the needs and
13 requirements of lands overlying Chino basin and the owners of rights in the Safe Yield or
14 Operating Safe Yield of the Basin shall have priority and preference over storage for export.
15 (Judgment, ¶ 12, p. 9.) This requirement does not necessarily go to a specific requirement for the
16 content of a storage agreement, but rather addresses more broadly the allocation of storage space.
17 The allocation of 100,000 acre-feet of storage space for the DYY Project has been done as part of
18 the Storage and Recovery Program created by the Peace Agreement.

19 Specifically, the allocation of a portion of the Storage and Recovery Program for this
20 Project was a part of the consideration underlying the Peace Agreement made available to the
21 members of the Appropriative Pool and the Non-Agricultural Pool. (Peace Agreement Section
22 5.2(c)(v). Moreover, a DYY Project was an express priority for Watermaster to pursue. (Peace
23 Agreement Section 5.2(f)(ii) and (iii).) The identification of Safe Storage Capacity was
24 previously approved by this Court when it approved the OBMP Implementation Plan and
25 ordered Watermaster to proceed in accordance with its terms. (July 13, 2000 Order Concerning
26 Adoption of OBMP)

27 In addition, under the Funding Agreement, the only mechanism provided for the delivery
28 of water out of storage is an in lieu procedure whereby a given producer increases its extraction of

1 groundwater and Metropolitan reduces its delivery of imported water. (Funding Agreement Part
2 VII.C.) Thus, since it is not contemplated that this storage account will be used for physical
3 export, the requirement of the Judgment ¶ 12 has no application.

4 The Judgment ¶ 28 requires that all storage agreements shall by their terms preclude
5 operations which will have a substantial adverse impact on other Producers. This requirement is
6 similar to the requirement contained in the Peace Agreement and Watermaster's Rules and
7 Regulations that Watermaster ensure that no Material Physical Injury is caused to any party or
8 the Basin. Thus, through Part III of the Agreement, Watermaster references the broad
9 requirement that the storage of water under the Agreement must not cause either Material
10 Physical Injury or a substantial adverse impact to any party or to the Basin.

11 The facilities to be used for this Project have been identified and analyzed by
12 Watermaster. This Project fits within the established boundaries of the Safe Storage Capacity of
13 the Basin and Watermaster has thoroughly evaluated the implementation of the Project under
14 existing and alternative Basin management scenarios. None of this analysis has revealed any
15 issues of concern and no Party has filed a Contest to any aspect of the DYY Project as
16 authorized under the Agreement.

17 In effect, Watermaster itself will maintain continuing jurisdiction over the DYY Project
18 because the Agreement requires that any material changes to the Project will trigger a further
19 Watermaster approval. Moreover, the Annual Operating Plan is subject to a yearly Watermaster
20 approval which will provide parties the opportunity to object if future operations reveal impacts
21 that have not yet been detected.

22 **C. Additional Terms**

23 In addition to specifically described requirements discussed above, the Agreement also
24 contains terms which will ensure that the Agreement is protective of Basin resources. For
25 example, Part IX of the Agreement specifically prohibits the assignment of storage capacity.
26 This is important to ensure that the terms and conditions established for this storage account are
27 not circumvented through transfer to a party which may not be similarly situated to IEUA and
28 TVM WD.

1 Part XI of the Agreement specifies that Metropolitan's Trust Storage Agreement shall be
2 canceled upon Court approval of the Agreement. This term does not pertain to IEUA or
3 TVMWD, but it makes clear that there shall not exist more storage rights than are contemplated
4 by the parties.

5 The Agreement specifies that any conflicts under the Agreement shall be resolved by the
6 Court where the Court is defined as that Court maintaining continuing jurisdiction over the
7 Judgment and Watermaster. This term is important to ensure the continuing authority of the
8 Court and ensure that its supervisory role under the Judgment is not diminished.

9 Finally, as described above, the Agreement ensures that the project will be operated in an
10 integrated manner with other Basin management activities. The Agreement requires that
11 Watermaster shall not approve an Annual Operating Plan that conflicts with other OBMP
12 projects or programs, including, but not limited to, the Interim or Long Term Plan for the
13 Management of Subsidence in Management Zone 1, the maintenance of hydraulic control or the
14 operation of the Chino Basin desalters as such programs may be amended and approved by
15 Watermaster in accordance with the Judgment and the Peace Agreement. (Agreement, Part IV.F.)

16 **VIII.**

17 **CONCLUSION**

18 Watermaster's approval of the Agreement conforms to the Judgment requirement that
19 any storage agreement by its terms must mitigate any Material Physical Injury as a condition of
20 approval. Although the Agreement will use only a portion of the remaining Safe Storage
21 Capacity within the Basin, Watermaster has further buttressed its finding of No Material
22 Physical Injury by conducting an exhaustive technical analysis of the expected operation of the
23 storage account over the term of the Funding Agreement.

24 Having followed a rather lengthy and open Watermaster process, no Party to the
25 Judgment has contested the accuracy of the conclusions reached by Watermaster, including the
26 finding of no Material Physical Injury. The Application and Agreement have been approved
27 unanimously by each of the Pool Committees, the Advisory Committee and the Board.

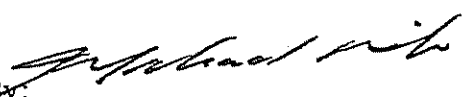
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Based on the foregoing, Watermaster respectfully requests the Court approve the Storage Agreement so that it may be executed by Watermaster, IEUA and TVMWD.

Dated: May 11, 2004

HATCH & PARENT, A LAW CORPORATION

By: 

Scott S. Slater
Michael T. Fife
Attorneys for
CHINO BASIN WATERMASTER

HATCH & PARENT, A LAW CORPORATION
21 East Camillo Street
Santa Barbara, CA 93101

CHINO BASIN WATERMASTER
Case No. RCV 51010
Chino Basin Municipal Water District v. The City of Chino

PROOF OF SERVICE

I declare that:

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

On May 12, 2004 I served the following:

NOTICE OF MOTION FOR APPROVAL OF STORAGE AND RECOVERY PROGRAM AGREEMENT; MOTION FOR APPROVAL OF STORAGE AND RECOVERY PROGRAM AGREEMENT; POINTS AND AUTHORITIES IN SUPPORT OF MOTION

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

See attached service list:
Mailing List 1

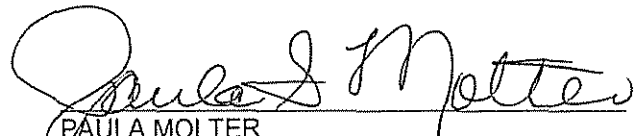
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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

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

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

Executed on MAY 12, 2004 in Rancho Cucamonga, California.


PAULA MOLTER
Chino Basin Watermaster

Members:

A.W." Butch" Araiza (butcharaiza@mindspring.com) butcharaiza@mindspring.com
Andy Malone (amalone@wildh2o.com) amalone@wildh2o.com
Anne Schneider (ajs@eslawfirm.com) ajs@eslawfirm.com
April Woodruff (awoodruff@ieua.org) awoodruff@ieua.org
Arnold Rodriguez (jarodriguez@sarwc.com) jarodriguez@sarwc.com
Art Kidman (akidman@mkblawyers.com) akidman@mkblawyers.com
Barbara Swanson Barbara_Swanson@yahoo.com
Barret Kehl (CBWCD.email@verizon.net) CBWCD.email@verizon.net
Bill Rice (brice@rb8.swrcb.ca.gov) brice@rb8.swrcb.ca.gov
Bill Stafford (marygold@goldcom.com) marygold@goldcom.com
Bob Feenstra (feenstra@milkproducers.org) feenstra@milkproducers.org
Bob G Kuhn (bgkuhn@aol.com) bgkuhn@aol.com
Bonnie Tazza (bonniet@cvwdwater.com) bonniet@cvwdwater.com
Boyd Hill (bhill@mkblawyers.com) bhill@mkblawyers.com
Brenda Fowler (balee@fontanawater.com) balee@fontanawater.com
Brenda Torres-Rosales (btorres@hatchparent.com) btorres@hatchparent.com
Brian Hess (bhess@niagarawater.com) bhess@niagarawater.com
Carole McGreevy (cmcgreevy@jcsd.us) cmcgreevy@jcsd.us
Chris Swanberg (chris.swanberg@corr.ca.gov) chris.swanberg@corr.ca.gov
Cindi LaCamera (clacamera@mwdh2o.com) clacamera@mwdh2o.com
Craig Stewart (cstewart@geomatrix.com) cstewart@geomatrix.com
Curtis Aaron (caaron@fontana.org) caaron@fontana.org
Dan Arrighi (darrighi@sgvwater.com) darrighi@sgvwater.com
Dan McKinney (dmckinney@rhlaw.com) dmckinney@rhlaw.com
Dan Rodriguez (dan_rodriguez@ci.pomona.ca.us) dan_rodriguez@ci.pomona.ca.us
Danni Maurizio DMaurizio@CBWM.ORG
Dave Argo (argodg@bv.com) argodg@bv.com
Dave Crosley (DCrosley@cityofchino.org) DCrosley@cityofchino.org
Dave Hill (dhill@ieua.org) dhill@ieua.org
Dave Ringel (david.ringel@mwhglobal.com) david.ringel@mwhglobal.com
David B Anderson (danders@water.ca.gov) danders@water.ca.gov
David D DeJesus (davidcicgm@aol.com) davidcicgm@aol.com
Diane Sanchez (dianes@water.ca.gov) dianes@water.ca.gov
Don Harriger (dharriger@wmwd.com) dharriger@wmwd.com
Duffy Blau (Duffy954@aol.com) Duffy954@aol.com
Eric Garner (elgarner@bbklaw.com) elgarner@bbklaw.com
Erick Vaughn (stafengr@aol.com) stafengr@aol.com
Frank Brommenschenkel (frank.brommen@verizon.net) frank.brommen@verizon.net
Fred Fudacz (ffudacz@nossaman.com) ffudacz@nossaman.com
Fred Lantz (flantz@ci.burbank.ca.us) flantz@ci.burbank.ca.us
Garth Morgan (gmorgan@ieua.org) gmorgan@ieua.org
Gene Koopman (GTKoopman@aol.com) GTKoopman@aol.com
Gene Tanaka (gtanaka@bbklaw.com) gtanaka@bbklaw.com
Gerald Black (gjblack@FontanaWater.com) gjblack@FontanaWater.com
Geraldyn Skapik (gskapik@bwsllaw.com) gskapik@bwsllaw.com
Gerard Thibeault (gthibeault@rb8.swrcb.ca.gov) gthibeault@rb8.swrcb.ca.gov
Gordon P. Treweek GTreweek@CBWM.ORG

Grace Cabrera (grace_cabrera@ci.pomona.ca.us) grace_cabrera@ci.pomona.ca.us
Henry Pepper (henry_pepper@ci.pomona.ca.us) henry_pepper@ci.pomona.ca.us
James Jenkins (cnomgr@airports.sbcounty.gov) cnomgr@airports.sbcounty.gov
James P Morris (jpmorris@bbklaw.com) jpmorris@bbklaw.com
Janine Wilson Janine@CBWM.ORG
Jarlath Oley (joley@mwdh2o.com) joley@mwdh2o.com
Jean Cihigoyenette (Jean_CGC@hotmail.com) Jean_CGC@hotmail.com
Jeffrey L. Pierson (jpierson@intexcorp.com) jpierson@intexcorp.com
Jerry A. King (jking@psomas.com) jking@psomas.com
Jess Senecal (JessSenecal@lagerlof.com) JessSenecal@lagerlof.com
Jim Bryson (jtbryson@fontanawater.com) jtbryson@fontanawater.com
Jim Erickson (jeeinc@aol.com) jeeinc@aol.com
Jim Erickson (Jim@city-attorney.com) Jim@city-attorney.com
Jim Hill (jhill@cityofchino.org) jhill@cityofchino.org
Jim Markman (jmarkman@rwglaw.com) jmarkman@rwglaw.com
Jim Moody (jmoody@ci.upland.ca.us) jmoody@ci.upland.ca.us
Jim Taylor (jim_taylor@ci.pomona.ca.us) jim_taylor@ci.pomona.ca.us
Jimmy Gutierrez (jimmy@city-attorney.com) jimmy@city-attorney.com
Joe Graziano (jgraz4077@aol.com) jgraz4077@aol.com
Joe Grindstaff (jgrindstaff@sawpa.org) jgrindstaff@sawpa.org
Joe P LeClaire (jleclaire@wildh2o.com) jleclaire@wildh2o.com
Joe Scalmanini (jsca@lsce.com) jsca@lsce.com
Joe Schenk (jschenk@ci.Norco.ca.us) jschenk@ci.Norco.ca.us
John Hayball (john.hayball@sce.com) john.hayball@sce.com
John Schatz (jschatz13@cox.net) jschatz13@cox.net
John V. Rossi JRossi@CBWM.ORG
John Vega (johnv@cvwdwater.com) johnv@cvwdwater.com
Judy Schurr (jschurr@earthlink.net) jschurr@earthlink.net
Julie Saba (jsaba@ieua.org) jsaba@ieua.org
Kathy Tiegs (ktiegs@ieua.org) ktiegs@ieua.org
Ken Jeske (kjeske@ci.ontario.ca.us) kjeske@ci.ontario.ca.us
Ken Kules (kkules@mwdh2o.com) kkules@mwdh2o.com
Linda Estrada (linda_estrada@ci.pomona.ca.us) linda_estrada@ci.pomona.ca.us
Lisa A Hamilton P.G. (Lisa.Hamilton@corporate.ge.com) Lisa.Hamilton@corporate.ge.com

Members:

Marilyn Levin (marilyn.levin@doj.ca.gov) marilyn.levin@doj.ca.gov
Mark Gage (mgage@geomatrix.com.) mgage@geomatrix.com.
Mark Kinsey (mkinsey@mvwd.org) mkinsey@mvwd.org
Mark Ward (mark_ward@ameron-intl.com) mark_ward@ameron-intl.com
Mark Wildermuth (mwildermuth@wildh2o.com) mwildermuth@wildh2o.com
Martha Davis (mdavis@ieua.org) mdavis@ieua.org
Martin Rauch (martin@rauchcc.com) martin@rauchcc.com
Maxine Maritz (mmaritz@bwsllaw.com) mmaritz@bwsllaw.com
Michael Fife (Mfife@hatchparent.com) Mfife@hatchparent.com
Michelle Staples (mstaples@jdplaw.com) mstaples@jdplaw.com
Mike Del Santo (mike_delsanto@catellus.com) mike_delsanto@catellus.com
Mike Maestas (mmaestas@chinohills.org) mmaestas@chinohills.org
Mike McGraw (mjmcgraw@FontanaWater.com) mjmcgraw@FontanaWater.com
Mike Thies (mthies@spacecenterinc.com) mthies@spacecenterinc.com
Mohamed El-Amamy (melamamy@ci.ontario.ca.us.) melamamy@ci.ontario.ca.us.
Nathan deBoom (nathan@milkproducers.org) nathan@milkproducers.org
Pam Wilson (pwilson@hatchparent.com) pwilson@hatchparent.com
Paul Hofer (farmwatchtoo@aol.com) farmwatchtoo@aol.com
Paula Lantz (paula_lantz@ci.pomona.ca.us) paula_lantz@ci.pomona.ca.us
Paula Molter PMolter@CBWM.ORG
Peter Von Haam (peter.vonhaam@doj.ca.gov) peter.vonhaam@doj.ca.gov
Phil Krause (pkrause@parks.sbcounty.gov) pkrause@parks.sbcounty.gov
Phil Rosentrater (prostrater@wmwd.com) prostrater@wmwd.com
Raul Garibay (raul_garibay@ci.pomona.ca.us) raul_garibay@ci.pomona.ca.us
Ray Wellington (rwellington@tstonramp.com) rwellington@tstonramp.com
Richard Atwater (Atwater@ieua.org) Atwater@ieua.org
Rick Hansen (rhansen@tvmwd.com) rhansen@tvmwd.com
Rick Rees (rrees@geomatrix.com) rrees@geomatrix.com
Rita Kurth (ritak@cvwdwater.com) ritak@cvwdwater.com
Robert DeLoach (robertd@cvwdwater.com) robertd@cvwdwater.com
Robert Dougherty (RED@covcrowe.com) RED@covcrowe.com
Robert Neufeld (N78098@aol.com) N78098@aol.com
Robert Rauch (robert.rauchcc@verizon.net) robert.rauchcc@verizon.net
Robert W Bowcock (bobbowcock@aol.com) bobbowcock@aol.com
Robert W. Nicholson (rwnicholson@sgvwater.com) rwnicholson@sgvwater.com
Ron Craig (RonC@rbf.com) RonC@rbf.com
Ron Small (ron.small@dgs.ca.gov) ron.small@dgs.ca.gov
Sandy Lopez (slopez@ci.ontario.ca.us) slopez@ci.ontario.ca.us
Scott Burton (sburton@ci.ontario.ca.us) sburton@ci.ontario.ca.us
Sharon Joyce (SJoyce@executive.corr.ca.gov) SJoyce@executive.corr.ca.gov

Shirley Green (western@wmwd.com) western@wmwd.com
Steve Arbelbide (sarbelbide@californiasteel.com) sarbelbide@californiasteel.com
Steve Kennedy (skennedy@bbmblaw.com) skennedy@bbmblaw.com
Tej Pahwa (tpahwa@dtsc.ca.gov) tpahwa@dtsc.ca.gov
Terry Catlin (tcattin@sunkistgrowers.com) tcattin@sunkistgrowers.com
Thomas Clifton (clifton@mckeownlaw.com) clifton@mckeownlaw.com
Thomas S Bunn (TomBunn@Lagerlof.com) TomBunn@Lagerlof.com
Timothy Ryan (tjryan@sgvwater.com) tjryan@sgvwater.com
Tom Love (TLove@ieua.org) TLove@ieua.org
Tom McPeters (THMcP@aol.com) THMcP@aol.com
Tracy Tracy (ttracy@mvwd.org) ttracy@mvwd.org
Vic Barrion (vabarrion@yahoo.com) vabarrion@yahoo.com
Virginia Grebbien (vgrebbien@ocwd.com) vgrebbien@ocwd.com
Wayne Davison (ciwcpm@earthlink.net) ciwcpm@earthlink.net
William J Brunick (bbrunick@bbmblaw.com) bbrunick@bbmblaw.com
WM Admin Staff

RICHARD ANDERSON
1365 W. FOOTHILL BLVD
SUITE 1
UPLAND, CA 91786

RODNEY BAKER
COUNSEL FOR EGGWEST &
JOHNSON
PO BOX 438
COULTERVILLE, CA 95311-0438

PATRICK BAUER
ARROWHEAD WATER COMPANY
5772 JURUPA RD
ONTARIO, CA 91761-3672

BOB BEST
NAT'L RESOURCE CONS SVCS
25864 BUSINESS CENTER DR K
REDLANDS, CA 92374

BRUCE CASH
UNITED WATER MGMT CO INC
1905 BUSINESS CENTER DR
SUITE 100
SAN BERNARDINO, CA 92408

STEVE CORTNER
VULCAN MATERIALS COMPANY
PO BOX 39756
LOS ANGELES, CA 90039

DAVID B. COSGROVE
RUTAN & TUCKER
611 ANTON BLVD
SUITE 1400
COSTA MESA, CA 92626

JENNY DE BOER
9155 RIVERSIDE DR
ONTARIO, CA 91761

JOE DELGADO
BOYS REPUBLIC
3493 GRAND AVENUE
CHINO HILLS, CA 91709

GLEN DURRINGTON
5512 FRANCIS ST
CHINO, CA 91710

DICK DYKSTRA
10129 SCHAEFER
ONTARIO, CA 91761-7973

RALPH FRANK
755 LAKEFIELD RD #E
WESTLAKE VILLAGE, CA 91361

CARL FREEMAN
L.D. KING
2151 CONVENTION CENTRE WAY
ONTARIO, CA 91764

MARK GAGE P E
GEOMATRIX CONSULTANTS INC
2101 WEBSTER ST #1200
OAKLAND, CA 94612

JIM GALLAGHER
SOUTHERN CALIFORNIA WATER CO
2143 CONVENTION CENTER WAY
SUITE 110
ONTARIO, CA 91764

DON GALLEANO
4231 WINEVILLE RD
MIRA LOMA, CA 91752-1412

PETER HETTINGA
14244 ANON CT
CHINO, CA 91710

PETE HALL
PO BOX 519
TWIN PEAKS, CA 92391

LISA HAMILTON
GE/MGR ENV REMEDIATION PRGM
640 FREEDOM BUSINESS CTR
KING OF PRUSSIA, PA 19406

CARL HAUGE
SWRCB
PO BOX 942836
SACRAMENTO, CA 94236-0001

JOHN HUI TSING
MILK PRODUCERS COUNCIL
5370 SCHAEFER
SUITE A
CHINO, CA 91710

CLARK IDE
OCWD GENERAL COUNSEL
PO BOX 8300
FOUNTAIN VALLEY, CA 92728-8300

ANNESLEY IGNATIUS
COUNTY OF SAN BERNARDINO FCD
825 E 3RD ST
SAN BERNARDINO, CA 92415-0835

W. C. "BILL" KRUGER
CITY OF CHINO HILLS
2001 GRAND AVE
CHINO HILLS, CA 91709

SHARON JOYCE
STATE OF CA CDC
1515 S STREET, ROOM 314-F
SACRAMENTO, CA 95814

PATRICK KING
CONSULTANT TO SENATOR SOTO
822 N EUCLID AVE
ONTARIO, CA 91762

KRONICK ET AL
KRONICK MOSKOVITZ TIEDEMANN
& GIRARD
400 CAPITOL MALL, 27TH FLOOR
SACRAMENTO, CA 95814-4417

RONALD LA BRUCHERIE
12953 S BAKER AVE
ONTARIO, CA 91761-7903

MARILYN LEVIN
300 S SPRING ST
11TH FLOOR N TOWER
LOS ANGELES, CA 90013-1232

CARLOS LOZANO
STATE OF CA YTS
15180 S EUCLID
CHINO, CA 91710

ALAN MARKS
COUNSEL – COUNTY OF SAN
BERNARDINO
157 W 5TH STREET
SAN BERNARDINO, CA 92415

SANDY OLSON
WALNUT VALLEY WATER DISTRICT
271 BREA CANYON RD
WALNUT, CA 91789

MARY PARENTE
8559 EDISON AVE
CHINO, CA 91710-9242

ROBB QUINCY
CITY OF HESPERIA
15776 MAIN ST
HESPERIA, CA 92345

RICK REES
GEOMATRIX
2450 EAST RINCON STREET
CORONA, CA 92879

ROBERT REITER
SAN BERNARDINO VALLEY MWD
PO BOX 5906
SAN BERNARDINO, CA 92412-5906

LES RICHTER
CALIFORNIA SPEEDWAY
PO BOX 9300
FONTANA, CA 92334-9300

DAVID RINGEL
MONTGOMERY WATSON
PO BOX 7009
PASADENA, CA 91109-7009

DONALD SCHROEDER
CBWM BOARD
3700 MINTERN
RIVERSIDE, CA 92509

DAVID SCRIVEN
KRIEGER & STEWART
ENGINEERING
3602 UNIVERSITY AVE
RIVERSIDE, CA 92501

SENATOR NELL SOTO
STATE CAPITOL
ROOM NO 4066
SACRAMENTO, CA 95814

BILL STAFFORD
MARYGOLD MUTUAL WATER CO
9725 ALDER ST
BLOOMINGTON, CA 92316-1637

DAVID STARNES
MOBILE COMMUNITY MGMT CO
1801 E EDINGER AVE, SUITE 230
SANTA ANA, CA 92705

CRAIG STEWART
GEOMATRIX CONSULTANTS INC
330 W BAY ST, SUITE 140
COSTA MESA, CA 92629

KEVIN SULLIVAN
LOS SERRANOS COUNTRY CLUB
15656 YORBA AVE
CHINO HILLS, CA 91709

CHRIS SWANBERG
DEPT OF CORRECTIONS – LEGAL
AFFAIRS DIVISION
PO BOX 942883
SACRAMENTO, CA 94283-0001

SWRCB
PO BOX 2000
SACRAMENTO, CA 95809-2000

MICHAEL THIES
SPACE CENTER MIRA LOMA INC
3401 S ETIWANDA AVE, BLDG 503
MIRA LOMA, CA 91752-1126

JOHN THORNTON
PSOMAS AND ASSOCIATES
3187 RED HILL AVE, SUITE 250
COSTA MESA, CA 92626

R.E. THRASH III
PRAXAIR
5705 AIRPORT DR
ONTARIO, CA 91761

GEOFFREY VANDEN HEUVEL
CBWM BOARD MEMBER
7551 KIMBALL AVE
CHINO, CA 91710

SYBRAND VANDER DUSSEN
10573 EDISON AVE
ONTARIO, CA 91761

SYP VANDER DUSSEN
14380 EUCLID
CHINO, CA 91710

JOHN ANDERSON
CBWM BOARD ALTERNATE
12455 HOLLY AVE
CHINO, CA 91710-2633

STEVE ARBELBIDE
417 PONDEROSA TR
CALIMESA, CA 92320

VIC BARRION
11559 PEMBROOKE
LOMA LINDA, CA 92354

ERIC WANG
SUNKIST GROWERS
760 E SUNKIST ST
ONTARIO, CA 91761

ROBERT NEUFELD
CBWM BOARD CHAIRMAN
14111 SAN GABRIEL CT
RANCHO CUCAMONGA, CA 91739

SUSAN TRAGER
LAW OFFICES OF SUSAN M. TRAGER
19712 MACARTHUR BLVD
SUITE 120
IRVINE, CA 92612

Exhibit
A

**STORAGE AND RECOVERY PROGRAM
STORAGE AGREEMENT
BETWEEN CHINO BASIN WATERMASTER, INLAND EMPIRE
UTILITIES AGENCY AND THREE VALLEYS MUNICIPAL WATER
DISTRICT REGARDING IMPLEMENTATION OF THE DRY YEAR
YIELD PROJECT**

This Storage Agreement is entered into on this _____ day of _____, 2004 between the Chino Basin Watermaster ("Watermaster"), the Inland Empire Utilities Agency ("IEUA"), and Three Valleys Municipal Water District ("TVMWD").

WHEREAS, the parties to the Judgment executed the Peace Agreement on June 29, 2000 and Watermaster resolved to implement the Judgment in accordance with its terms.

WHEREAS, Exhibit B to the Peace Agreement was the Implementation Plan: Optimum Basin Management Program ("Implementation Plan") and the Court ordered Watermaster to proceed in accordance with the Peace Agreement and Implementation Plan in its Order of July 13, 2000. (July 13, 2000 Order, p.4.)

WHEREAS, Program Element 8 of the Implementation Plan set for a plan for the development of groundwater storage and Element 9 of the Implementation Plan set forth a plan for developing and implementing a Storage and Recovery Program.

WHEREAS, page 38 of the Implementation Plan set forth the baseline against which storage activities would be evaluated and that "Safe Storage is an estimate of the maximum storage in the Basin that will not cause significant water quality and high groundwater related problems."

WHEREAS, page 38 of the Implementation Plan set forth the baseline for "Safe Storage Capacity" within which Watermaster could safely approve further storage and recovery without causing water quality degradation and high groundwater related problems and estimated the quantity of Safe Storage Capacity at 500,000 acre-feet, "including water in the existing storage accounts."

WHEREAS, Watermaster's annual report for 2002 listed a total quantity of water in storage to be 226,797.43 acre-feet leaving 273202.57 of Safe Storage.

WHEREAS, the IEUA certified the Programmatic Environmental Impact Report ("PEIR") for Watermaster's Optimum Basin Management Program on July 12, 2000. This PEIR analyzed the impacts associated with a 100,000-300,000 acre-foot storage and recovery program and found no significant impacts from such a program.

WHEREAS, Watermaster, IEUA and TVMWD have entered into an agreement with the Metropolitan Water District of Southern California (“Metropolitan”) titled Groundwater Storage Program Funding Agreement No. 49960 (“Funding Agreement”) attached hereto as Exhibit “A.”

WHEREAS, on June 5, 2003 the Court retaining continuing jurisdiction over the case *Chino Basin Municipal Water District v. City of Chino* San Bernardino Superior Court Case No. RCV 51010, determined that the terms of the Funding Agreement satisfy the requirements of the Peace Agreement section 5.2(c). The Funding Agreement called for a maximum quantity of 100,000 AF to be in storage at any time.

WHEREAS, the Funding Agreement required further agreements with members of the Appropriative Pool and compliance with the Watermaster’s Rules and Regulations, namely the filing and approval of an Application for approval of a Storage and Recovery Program pursuant to Article 10.7 and Watermaster’s subsequent execution of a Storage Agreement in accordance with the Judgment.

WHEREAS, an applicant for approval of a Storage and Recovery Agreement must comply with the approved forms in accordance with Appendix 1 to the Rules and Regulations and the proposed forms require the statement of compliance with the requirements of the California Environmental Quality Act.

WHEREAS, IEUA certified a Finding of Consistency of the specific project contemplated by the Funding Agreement on December 18, 2002 that would be implemented through a Storage and Recovery Agreement with Watermaster.

WHEREAS, IEUA has submitted an Application for a storage account pursuant to Article X of Watermaster’s Rules and Regulations for the storage and recovery of up to 100,000 acre-feet of water, within the Safe Storage Capacity as defined in the Court Approved Implementation Plan.

WHEREAS, the Cities of Chino, Chino Hills, Ontario, Pomona, and Upland and Cucamonga Valley Water District, Inland Empire Utilities Agency, Monte Vista Water District, Jurupa Community Services District and Three Valleys Municipal Water District have executed Local Agency Agreements (“Participating Appropriators”) whereby they would use facilities owned or controlled by them to implement the Storage and Recovery of Water as contemplated by the Funding Agreement.

WHEREAS, the Local Agency Agreements were uniform but for the facilities identified and an example of the approved form of a Local Agency Agreement is attached hereto as Exhibit “B.”

WHEREAS, Watermaster caused extensive additional analysis of the Application to be completed in the event that Watermaster at the request of the parties to the Judgment and in its subsequent exercise of discretion, elected to adopt an operational plan for the Basin that attempts to secure greater hydraulic control of groundwater to avoid waste of water to the Santa Ana River.

WHEREAS, the additional analysis completed at the direction of Watermaster demonstrated that there would be no Material Physical Injury that results from the execution of the Storage and Recovery Agreement in the event, that at the request of the Parties to the Judgment Watermaster elects to approve a basin management plan that increases hydraulic control.

WHEREAS, no person shall store water in, and recover water from the Chino Groundwater Basin through the Storage and Recovery Program, without a Storage and Recovery agreement with Watermaster.

WHEREAS, the Application has been approved unanimously by all Pools, the Advisory Committee and the Board and no opposition was expressed to the proposed application for a Storage and Recovery Agreement. The date of approval by the Advisory Committee and Board was October 23, 2003 and Watermaster is prepared to execute a Storage and Recovery Agreement in accordance with the Judgment.

NOW IT IS HEREBY AGREED THAT:

I. Definitions.

- A. "Court" shall mean the Court maintaining jurisdiction of the 1978 Judgment.
- B. "1978 Judgment" or "Judgment" shall mean the stipulated judgment in the case *Chino Basin Municipal Water District v. City of Chino* San Bernardino Superior Court Case No. RCV 51010.
- C. "Material Physical Injury" shall mean material injury that is attributable to the recharge, transfer, storage and recovery, management, movement or production of water, or implementation of the OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence, increases in pump lift (lower water levels) and adverse impacts associated with rising groundwater. Material Physical Injury does not include "economic injury" that results from other than physical causes. Once fully mitigated, physical injury shall no longer be considered to be material. It is the intention of this definition that the term "Material Physical Injury" have the same meaning as used in the Peace Agreement section 1.1(y) and Watermaster's Rules and Regulations section 1.1(uu).
- D. "Peace Agreement" shall mean the agreement dated June 29, 2000 among the various parties to the Judgment identified therein and approved by Watermaster as it existed on that date and without regard to any subsequent amendment thereto unless such amendments are approved by each party to the Peace Agreement, Watermaster and the Court.
- E. "Storage and Recovery Program" shall mean the use of the available storage capacity

of the Basin by any person under the direction and control of Watermaster pursuant to a storage and recovery agreement but excluding "Local Storage," including the right to export water for use outside the Chino Basin and typically of broad and mutual benefit to the parties to the Judgment. It is the intention of this definition that the term "Storage and Recovery Program" shall have the same meaning as used in the Peace Agreement section 1.1(uu) and Watermaster's Rules and Regulations section 1.1(af).

II. Storage Right. Subject to the terms of this Agreement, IEUA and TVMWD may store up to 100,000 acre-feet of Supplemental Water within the Safe Storage Capacity of the Chino Basin for the sole purpose of implementing the terms of the Funding Agreement and as further provided in the Local Agency Agreements.

III. No Material Physical Injury. The Storage and Recovery of Supplemental Water stored under this Agreement will not cause Material Physical Injury or a substantial adverse impact to any party to the 1978 Judgment or to the Basin itself.

A. Facilities. The facilities used to store and recover Supplemental Water will be as described in the Local Agency Agreements between IEUA, TVMWD and the Participating Appropriators.

1. Ownership and control of the storage and recovery facilities will be maintained by the members of the Participating Appropriators or their designees.

2. Any modification of facilities that is materially different from those contemplated by the Local Agency Agreements will require the filing of a new application in accordance with the provisions of Article X, Section 10.7 of the Rules and Regulations.

3. Watermaster reserves continuing review of the Storage and Recovery of Supplemental Water pursuant to the Annual Operating Plan under Article IV hereof, to consider any site specific concerns.

B. Safe Storage Capacity. The storage of Supplemental Water under this Agreement, when combined with other available water held in all existing storage accounts will not exceed the cumulative maximum of 500,000 acre-feet at any time without further approval of Watermaster and the Court.

IV. Annual Operating Plan.

A. IEUA, TVMWD and Watermaster shall participate on the Operating Committee composed of IEUA, Watermaster, Three Valleys Municipal Water District ("Three Valleys"), and Metropolitan as defined by the Funding Agreement.

- B. Pursuant to the Funding Agreement, use of the storage account will be according to the terms described in each Annual Operating Plan.
 - C. The Annual Operating Plan shall provide sufficient information to allow the Operating Committee and Watermaster to assess potential impacts from the Storage and Recovery of Supplemental Water under this Agreement 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. Watermaster shall not approve an Annual Operating Plan that does not, in Watermaster's discretionary judgment, provide sufficient detail to allow Watermaster to assess the potential for Material Physical Injury to be caused by the Storage and Recovery of Supplemental Water.
 - D. The Annual Operating Plan shall provide an estimated schedule and location for all Storage and Recovery of Supplemental Water under this Storage Agreement on a monthly basis for the upcoming fiscal year.
 - E. The Initial Annual Operating Plan shall not become effective until approved by Watermaster.
 - F. Watermaster shall not approve an Annual Operating Plan that may cause Material Physical Injury, nor shall Watermaster approve an Annual Operating Plan that conflicts with other OBMP projects or programs, including, but not limited to, the Interim or Long Term Plan for the Management of Subsidence in Management Zone 1, the maintenance of hydraulic control or the operation of the Chino Basin desalters as such programs may be amended and approved by Watermaster in accordance with the Judgment and the Peace Agreement.
 - G. Neither IEUA, TVMWD nor Watermaster will approve an Annual Operating Plan that will conflict with Watermaster's responsibilities to provide for the replenishment needs of the Chino Basin.
 - H. Any substantial variance from the terms of the Annual Operating Plan shall require further Watermaster approval.
- V. Delivery Maximum. The maximum rate of placement of water into storage by IEUA and TVMWD through the Participating Appropriator's facilities shall be 25,000 acre-feet in any year, unless Watermaster in its discretion authorizes additional annual deliveries up to the cumulative maximum of 100,000 acre-feet.
- VI. Withdrawal Maximum. The maximum rate of recapture of water from storage by IEUA and TVMWD through the Participating Appropriator's facilities shall be the lesser of (a) 33,000 acre-feet per year, or (b) the amount of water remaining in the IEUA and TVMWD Storage and Recovery

account.

VII. Regulation of Water in Storage. IEUA and TVMWD acknowledge that any Storage and Recovery of Supplemental Water under this Agreement shall occur only under Watermaster's control and regulation in accordance with the Judgment and the Peace Agreement. However, Watermaster agrees that the Watermaster's Storage and Recovery Policies shall be applied to water stored pursuant to 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. Watermaster shall not impose any policies upon the water stored pursuant to this Agreement, whether or not imposed on other parties, that would materially alter the benefits provided to or the obligations imposed upon Metropolitan under the Funding Agreement. Without limiting the foregoing, Watermaster shall not impose any policies that would create any significant discrepancies between the amount of water placed into storage and the amount of water that is available for recapture.

VIII. Priority of Rights. IEUA and TVMWD will fully protect and preserve the rights of overlying landowners, other groundwater users or water right holders, parties whose approval is required by the 1978 Judgment and the Watermaster, and will take the necessary actions (including groundwater monitoring and mitigation and/or limiting extraction of groundwater) to protect such rights.

IX. Non-Assignment of Storage Capacity. IEUA and TVMWD's rights under this Agreement, inclusive of any claim to storage capacity, is not assignable. However, Supplemental Water recovered from storage may be assigned, sold, leased or transferred as herein or subsequently approved.

X. Losses and Accounting for Stored Water. Watermaster shall maintain records of the amounts of all water stored in and extracted from the Chino Basin pursuant to this Agreement and all other Storage Agreements and will not approve additional Storage Agreements if such approval(s) will result in more than 500,000 acre-feet of water being stored within the Basin at any time without further approval of Watermaster and the Court. Watermaster's accounting shall not include any credit for return flows from the use of water extracted from storage. Watermaster's accounting will include the assignment of losses according to a procedure utilized for all water stored in the Storage and Recovery Program.

XI. Cancellation of that Certain Agreement Between Watermaster and Metropolitan Water District, commonly referred to as the "MWD Trust Storage Agreement" dated May 7, 1986. Upon Court approval of this Agreement, the MWD Trust Agreement dated May 7, 1986 is hereby terminated in its entirety and of no further force and effect. Upon cancellation, any Supplemental Water then held in storage under the Trust Agreement at the date of cancellation will be deemed transferred and preserved for storage and recovery under the terms of this Agreement.

XII. Term. This Storage Agreement shall be effective upon approval of the Court and shall remain in effect until expiration of the Funding Agreement pursuant to part II.B. of the Funding

Agreement.

XIII. Conflicts. Conflicts under this Agreement shall be resolved by the Court. Conflicts under this Agreement shall be submitted to the Court pursuant to paragraph 15 of the 1978 Judgment.

CHINO BASIN WATERMASTER

By: _____

Dated: _____

Approved as to Form:

**INLAND EMPIRE UTILITIES
AGENCY**

By: _____

Dated: _____

Approved as to Form:

**THREE VALLEYS MUNICIPAL
WATER DISTRICT**

By: _____

Dated: _____

Approved as to Form:

CHINO BASIN WATERMASTER
Case No. RCV 51010
Chino Basin Municipal Water District v. The City of Chino

PROOF OF SERVICE

I declare that:

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

On May 12, 2004 I served the following:

NOTICE OF MOTION FOR APPROVAL OF STORAGE AND RECOVERY PROGRAM AGREEMENT; MOTION FOR APPROVAL OF STORAGE AND RECOVERY PROGRAM AGREEMENT; POINTS AND AUTHORITIES IN SUPPORT OF MOTION

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

See attached service list:
Mailing List 1

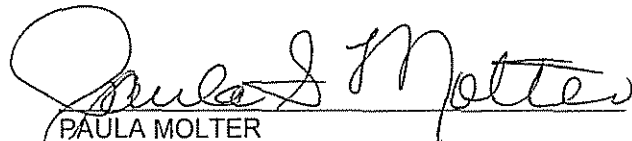
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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

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

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

Executed on MAY 12, 2004 in Rancho Cucamonga, California.


PAULA MOLTER
Chino Basin Watermaster

Members:

A.W." Butch" Araiza (butcharaiza@mindspring.com) butcharaiza@mindspring.com
Andy Malone (amalone@wildh2o.com) amalone@wildh2o.com
Anne Schneider (ajs@eslawfirm.com) ajs@eslawfirm.com
April Woodruff (awoodruff@ieua.org) awoodruff@ieua.org
Arnold Rodriguez (jarodriguez@sarwc.com) jarodriguez@sarwc.com
Art Kidman (akidman@mkblawyers.com) akidman@mkblawyers.com
Barbara Swanson Barbara_Swanson@yahoo.com
Barret Kehl (CBWCD.email@verizon.net) CBWCD.email@verizon.net
Bill Rice (brice@rb8.swrcb.ca.gov) brice@rb8.swrcb.ca.gov
Bill Stafford (marygold@goldcom.com) marygold@goldcom.com
Bob Feenstra (feenstra@milproducers.org) feenstra@milproducers.org
Bob G Kuhn (bgkuhn@aol.com) bgkuhn@aol.com
Bonnie Tazza (bonniet@cvwdwater.com) bonniet@cvwdwater.com
Boyd Hill (bhill@mkblawyers.com) bhill@mkblawyers.com
Brenda Fowler (balee@fontanawater.com) balee@fontanawater.com
Brenda Torres-Rosales (btorres@hatchparent.com) btorres@hatchparent.com
Brian Hess (bhess@niagarawater.com) bhess@niagarawater.com
Carole McGreevy (cmcgreevy@jcsd.us) cmcgreevy@jcsd.us
Chris Swanberg (chris.swanberg@corr.ca.gov) chris.swanberg@corr.ca.gov
Cindi LaCamera (clacamera@mwdh2o.com) clacamera@mwdh2o.com
Craig Stewart (cstewart@geomatrix.com) cstewart@geomatrix.com
Curtis Aaron (caaron@fontana.org) caaron@fontana.org
Dan Arrighi (darrighi@sgvwater.com) darrighi@sgvwater.com
Dan McKinney (dmckinney@rhlaw.com) dmckinney@rhlaw.com
Dan Rodriguez (dan_rodriguez@ci.pomona.ca.us) dan_rodriguez@ci.pomona.ca.us
Danni Maurizio DMaurizio@CBWM.ORG
Dave Argo (argodg@bv.com) argodg@bv.com
Dave Crosley (DCrosley@cityofchino.org) DCrosley@cityofchino.org
Dave Hill (dhill@ieua.org) dhill@ieua.org
Dave Ringel (david.ringel@mwhglobal.com) david.ringel@mwhglobal.com
David B Anderson (danders@water.ca.gov) danders@water.ca.gov
David D DeJesus (davidcicgm@aol.com) davidcicgm@aol.com
Diane Sanchez (dianes@water.ca.gov) dianes@water.ca.gov
Don Harriger (dharriger@wmwd.com) dharriger@wmwd.com
Duffy Blau (Duffy954@aol.com) Duffy954@aol.com
Eric Garner (elgarner@bbklaw.com) elgarner@bbklaw.com
Erick Vaughn (stafengr@aol.com) stafengr@aol.com
Frank Brommenschenkel (frank.brommen@verizon.net) frank.brommen@verizon.net
Fred Fudacz (ffudacz@nossaman.com) ffudacz@nossaman.com
Fred Lantz (flantz@ci.burbank.ca.us) flantz@ci.burbank.ca.us
Garth Morgan (gmorgan@ieua.org) gmorgan@ieua.org
Gene Koopman (GTKoopman@aol.com) GTKoopman@aol.com
Gene Tanaka (gtanaka@bbklaw.com) gtanaka@bbklaw.com
Gerald Black (gjblack@FontanaWater.com) gjblack@FontanaWater.com
Geralyn Skapik (gskapik@bwslaw.com) gskapik@bwslaw.com
Gerard Thibeault (gthibeault@rb8.swrcb.ca.gov) gthibeault@rb8.swrcb.ca.gov
Gordon P. Treweek GTreweek@CBWM.ORG

Grace Cabrera (grace_cabrera@ci.pomona.ca.us) grace_cabrera@ci.pomona.ca.us

Henry Pepper (henry_pepper@ci.pomona.ca.us) henry_pepper@ci.pomona.ca.us

James Jenkins (cnomgr@airports.sbcounty.gov) cnomgr@airports.sbcounty.gov

James P Morris (jpmorris@bbklaw.com) jpmorris@bbklaw.com

Janine Wilson Janine@CBWM.ORG

Jarlath Oley (joley@mwdh2o.com) joley@mwdh2o.com

Jean Cihigoyenette (Jean_CGC@hotmail.com) Jean_CGC@hotmail.com

Jeffrey L. Pierson (jpierson@intexcorp.com) jpierson@intexcorp.com

Jerry A. King (jking@psomas.com) jking@psomas.com

Jess Senecal (JessSenecal@lagerlof.com) JessSenecal@lagerlof.com

Jim Bryson (jtbryson@fontanawater.com) jtbryson@fontanawater.com

Jim Erickson (jeeinc@aol.com) jeeinc@aol.com

Jim Erickson (Jim@city-attorney.com) Jim@city-attorney.com

Jim Hill (jhill@cityofchino.org) jhill@cityofchino.org

Jim Markman (jmarkman@rwglaw.com) jmarkman@rwglaw.com

Jim Moody (jmoody@ci.upland.ca.us) jmoody@ci.upland.ca.us

Jim Taylor (jim_taylor@ci.pomona.ca.us) jim_taylor@ci.pomona.ca.us

Jimmy Gutierrez (jimmy@city-attorney.com) jimmy@city-attorney.com

Joe Graziano (jgraz4077@aol.com) jgraz4077@aol.com

Joe Grindstaff (jgrindstaff@sawpa.org) jgrindstaff@sawpa.org

Joe P LeClaire (jleclaire@wildh2o.com) jleclaire@wildh2o.com

Joe Scalmanini (jscal@lsce.com) jscal@lsce.com

Joe Schenk (jschenk@ci.Norco.ca.us) jschenk@ci.Norco.ca.us

John Hayball (john.hayball@sce.com) john.hayball@sce.com

John Schatz (jschatz13@cox.net) jschatz13@cox.net

John V. Rossi JRossi@CBWM.ORG

John Vega (johnv@cvwdwater.com) johnv@cvwdwater.com

Judy Schurr (jschurr@earthlink.net) jschurr@earthlink.net

Julie Saba (jsaba@ieua.org) jsaba@ieua.org

Kathy Tiegs (ktiegs@ieua.org) ktiegs@ieua.org

Ken Jeske (kjeske@ci.ontario.ca.us) kjeske@ci.ontario.ca.us

Ken Kules (kkules@mwdh2o.com) kkules@mwdh2o.com

Linda Estrada (linda_estrada@ci.pomona.ca.us) linda_estrada@ci.pomona.ca.us

Lisa A Hamilton P.G. (Lisa.Hamilton@corporate.ge.com) Lisa.Hamilton@corporate.ge.com

Members:

Marilyn Levin (marilyn.levin@doj.ca.gov) marilyn.levin@doj.ca.gov
Mark Gage (mgage@geomatrix.com.) mgage@geomatrix.com.
Mark Kinsey (mkinsey@mvwd.org) mkinsey@mvwd.org
Mark Ward (mark_ward@ameron-intl.com) mark_ward@ameron-intl.com
Mark Wildermuth (mwildermuth@wildh2o.com) mwildermuth@wildh2o.com
Martha Davis (mdavis@ieua.org) mdavis@ieua.org
Martin Rauch (martin@rauchcc.com) martin@rauchcc.com
Maxine Maritz (mmaritz@bwslaw.com) mmaritz@bwslaw.com
Michael Fife (Mfife@hatchparent.com) Mfife@hatchparent.com
Michelle Staples (mstaples@jdplaw.com) mstaples@jdplaw.com
Mike Del Santo (mike_delsanto@catellus.com) mike_delsanto@catellus.com
Mike Maestas (mmaestas@chinohills.org) mmaestas@chinohills.org
Mike McGraw (mjmccgraw@FontanaWater.com) mjmccgraw@FontanaWater.com
Mike Thies (mthies@spacecenterinc.com) mthies@spacecenterinc.com
Mohamed El-Amamy (melamamy@ci.ontario.ca.us.) melamamy@ci.ontario.ca.us.
Nathan deBoom (nathan@milkproducers.org) nathan@milkproducers.org
Pam Wilson (pwilson@hatchparent.com) pwilson@hatchparent.com
Paul Hofer (farmwatchtoo@aol.com) farmwatchtoo@aol.com
Paula Lantz (paula_lantz@ci.pomona.ca.us) paula_lantz@ci.pomona.ca.us
Paula Molter PMolter@CBWM.ORG
Peter Von Haam (peter.vonhaam@doj.ca.gov) peter.vonhaam@doj.ca.gov
Phil Krause (pkrause@parks.sbcounty.gov) pkrause@parks.sbcounty.gov
Phil Rosentrater (prostrater@wmwd.com) prostrater@wmwd.com
Raul Garibay (raul_garibay@ci.pomona.ca.us) raul_garibay@ci.pomona.ca.us
Ray Wellington (rwellington@tstonramp.com) rwellington@tstonramp.com
Richard Atwater (Atwater@ieua.org) Atwater@ieua.org
Rick Hansen (rhansen@tvmwd.com) rhansen@tvmwd.com
Rick Rees (rrees@geomatrix.com) rrees@geomatrix.com
Rita Kurth (ritak@cvwdwater.com) ritak@cvwdwater.com
Robert DeLoach (robertd@cvwdwater.com) robertd@cvwdwater.com
Robert Dougherty (RED@covcrowe.com) RED@covcrowe.com
Robert Neufeld (N78098@aol.com) N78098@aol.com
Robert Rauch (robert.rauchcc@verizon.net) robert.rauchcc@verizon.net
Robert W Bowcock (bobbowcock@aol.com) bobbowcock@aol.com
Robert W. Nicholson (rwnicholson@sgvwater.com) rwnicholson@sgvwater.com
Ron Craig (RonC@rbf.com) RonC@rbf.com
Ron Small (ron.small@dgs.ca.gov) ron.small@dgs.ca.gov
Sandy Lopez (slopez@ci.ontario.ca.us) slopez@ci.ontario.ca.us
Scott Burton (sburton@ci.ontario.ca.us) sburton@ci.ontario.ca.us
Sharon Joyce (SJoyce@executive.corr.ca.gov) SJoyce@executive.corr.ca.gov

Shirley Green (western@wmwd.com, western@wmwd.com
Steve Arbelbide (sarbelbide@californiasteel.com) sarbelbide@californiasteel.com
Steve Kennedy (skennedy@bbmblaw.com) skennedy@bbmblaw.com
Tej Pahwa (tpahwa@dtsc.ca.gov) tpahwa@dtsc.ca.gov
Terry Catlin (tcatlin@sunkistgrowers.com) tcatlin@sunkistgrowers.com
Thomas Clifton (clifton@mckeownlaw.com) clifton@mckeownlaw.com
Thomas S Bunn (TomBunn@Lagerlof.com) TomBunn@Lagerlof.com
Timothy Ryan (tjryan@sgvwater.com) tjryan@sgvwater.com
Tom Love (TLove@ieua.org) TLove@ieua.org
Tom McPeters (THMcP@aol.com) THMcP@aol.com
Tracy Tracy (ttracy@mvwd.org) ttracy@mvwd.org
Vic Barrion (vabarrion@yahoo.com) vabarrion@yahoo.com
Virginia Grebbien (vgrebbien@ocwd.com) vgrebbien@ocwd.com
Wayne Davison (ciwcpm@earthlink.net) ciwcpm@earthlink.net
William J Brunick (bbrunick@bbmblaw.com) bbrunick@bbmblaw.com
WM Admin Staff

RICHARD ANDERSON
1365 W. FOOTHILL BLVD
SUITE 1
UPLAND, CA 91786

RODNEY BAKER
COUNSEL FOR EGGWEST &
JOHNSON
PO BOX 438
COULTERVILLE, CA 95311-0438

PATRICK BAUER
ARROWHEAD WATER COMPANY
5772 JURUPA RD
ONTARIO, CA 91761-3672

BOB BEST
NAT'L RESOURCE CONS SVCS
25864 BUSINESS CENTER DR K
REDLANDS, CA 92374

BRUCE CASH
UNITED WATER MGMT CO INC
1905 BUSINESS CENTER DR
SUITE 100
SAN BERNARDINO, CA 92408

STEVE CORTNER
VULCAN MATERIALS COMPANY
PO BOX 39756
LOS ANGELES, CA 90039

DAVID B. COSGROVE
RUTAN & TUCKER
611 ANTON BLVD
SUITE 1400
COSTA MESA, CA 92626

JENNY DE BOER
9155 RIVERSIDE DR
ONTARIO, CA 91761

JOE DELGADO
BOYS REPUBLIC
3493 GRAND AVENUE
CHINO HILLS, CA 91709

GLEN DURRINGTON
5512 FRANCIS ST
CHINO, CA 91710

DICK DYKSTRA
10129 SCHAEFER
ONTARIO, CA 91761-7973

RALPH FRANK
755 LAKEFIELD RD #E
WESTLAKE VILLAGE, CA 91361

CARL FREEMAN
L.D. KING
2151 CONVENTION CENTRE WAY
ONTARIO, CA 91764

MARK GAGE P E
GEOMATRIX CONSULTANTS INC
2101 WEBSTER ST #1200
OAKLAND, CA 94612

JIM GALLAGHER
SOUTHERN CALIFORNIA WATER CO
2143 CONVENTION CENTER WAY
SUITE 110
ONTARIO, CA 91764

DON GALLEANO
4231 WINEVILLE RD
MIRA LOMA, CA 91752-1412

PETER HETTINGA
14244 ANON CT
CHINO, CA 91710

PETE HALL
PO BOX 519
TWIN PEAKS, CA 92391

LISA HAMILTON
GE/MGR ENV REMEDIATION PRGM
640 FREEDOM BUSINESS CTR
KING OF PRUSSIA, PA 19406

CARL HAUGE
SWRCB
PO BOX 942836
SACRAMENTO, CA 94236-0001

JOHN HUIJSING
MILK PRODUCERS COUNCIL
5370 SCHAEFER
SUITE A
CHINO, CA 91710

CLARK IDE
OCWD GENERAL COUNSEL
PO BOX 8300
FOUNTAIN VALLEY, CA 92728-8300

ANNESLEY IGNATIUS
COUNTY OF SAN BERNARDINO FCD
825 E 3RD ST
SAN BERNARDINO, CA 92415-0835

W. C. "BILL" KRUGER
CITY OF CHINO HILLS
2001 GRAND AVE
CHINO HILLS, CA 91709

SHARON JOYCE
STATE OF CA CDC
1515 S STREET, ROOM 314-F
SACRAMENTO, CA 95814

PATRICK KING
CONSULTANT TO SENATOR SOTO
822 N EUCLID AVE
ONTARIO, CA 91762

KRONICK ET AL
KRONICK MOSKOVITZ TIEDEMANN
& GIRARD
400 CAPITOL MALL, 27TH FLOOR
SACRAMENTO, CA 95814-4417

RONALD LA BRUCHERIE
12953 S BAKER AVE
ONTARIO, CA 91761-7903

MARILYN LEVIN
300 S SPRING ST
11TH FLOOR N TOWER
LOS ANGELES, CA 90013-1232

CARLOS LOZANO
STATE OF CA YTS
15180 S EUCLID
CHINO, CA 91710

ALAN MARKS
COUNSEL – COUNTY OF SAN
BERNARDINO
157 W 5TH STREET
SAN BERNARDINO, CA 92415

SANDY OLSON
WALNUT VALLEY WATER DISTRICT
271 BREA CANYON RD
WALNUT, CA 91789

MARY PARENTE
8559 EDISON AVE
CHINO, CA 91710-9242

ROBB QUINCY
CITY OF HESPERIA
15776 MAIN ST
HESPERIA, CA 92345

RICK REES
GEOMATRIX
2450 EAST RINCON STREET
CORONA, CA 92879

ROBERT REITER
SAN BERNARDINO VALLEY MWD
PO BOX 5906
SAN BERNARDINO, CA 92412-5906

LES RICHTER
CALIFORNIA SPEEDWAY
PO BOX 9300
FONTANA, CA 92334-9300

DAVID RINGEL
MONTGOMERY WATSON
PO BOX 7009
PASADENA, CA 91109-7009

DONALD SCHROEDER
CBWM BOARD
3700 MINTERN
RIVERSIDE, CA 92509

DAVID SCRIVEN
KRIEGER & STEWART
ENGINEERING
3602 UNIVERSITY AVE
RIVERSIDE, CA 92501

SENATOR NELL SOTO
STATE CAPITOL
ROOM NO 4066
SACRAMENTO, CA 95814

BILL STAFFORD
MARYGOLD MUTUAL WATER CO
9725 ALDER ST
BLOOMINGTON, CA 92316-1637

DAVID STARNES
MOBILE COMMUNITY MGMT CO
1801 E EDINGER AVE, SUITE 230
SANTA ANA, CA 92705

CRAIG STEWART
GEOMATRIX CONSULTANTS INC
330 W BAY ST, SUITE 140
COSTA MESA, CA 92629

KEVIN SULLIVAN
LOS SERRANOS COUNTRY CLUB
15656 YORBA AVE
CHINO HILLS, CA 91709

CHRIS SWANBERG
DEPT OF CORRECTIONS – LEGAL
AFFAIRS DIVISION
PO BOX 942883
SACRAMENTO, CA 94283-0001

SWRCB
PO BOX 2000
SACRAMENTO, CA 95809-2000

MICHAEL THIES
SPACE CENTER MIRA LOMA INC
3401 S ETIWANDA AVE, BLDG 503
MIRA LOMA, CA 91752-1126

JOHN THORNTON
PSOMAS AND ASSOCIATES
3187 RED HILL AVE, SUITE 250
COSTA MESA, CA 92626

R.E. THRASH III
PRAXAIR
5705 AIRPORT DR
ONTARIO, CA 91761

GEOFFREY VANDEN HEUVEL
CBWM BOARD MEMBER
7551 KIMBALL AVE
CHINO, CA 91710

SYBRAND VANDER DUSSEN
10573 EDISON AVE
ONTARIO, CA 91761

SYP VANDER DUSSEN
14380 EUCLID
CHINO, CA 91710

JOHN ANDERSON
CBWM BOARD ALTERNATE
12455 HOLLY AVE
CHINO, CA 91710-2633

STEVE ARBELBIDE
417 PONDEROSA TR
CALIMESA, CA 92320

VIC BARRION
11559 PEMBROOKE
LOMA LINDA, CA 92354

ERIC WANG
SUNKIST GROWERS
760 E SUNKIST ST
ONTARIO, CA 91761

ROBERT NEUFELD
CBWM BOARD CHAIRMAN
14111 SAN GABRIEL CT
RANCHO CUCAMONGA, CA 91739

SUSAN TRAGER
LAW OFFICES OF SUSAN M. TRAGER
19712 MACARTHUR BLVD
SUITE 120
IRVINE, CA 92612

A

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**

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 33% 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 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 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 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.

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
8632 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: 6-12-03


APPROVED AS TO FORM:

**Jeffrey Kightlinger
General Counsel**

By: 
Sydney Bennion
Assistant General Counsel

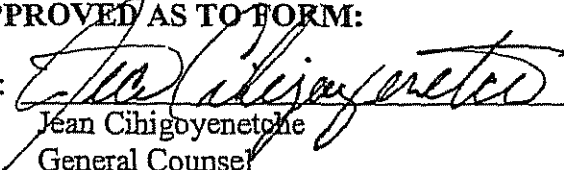
Date: 6/6/03

INLAND EMPIRE UTILITIES AGENCY

By: 
Richard Atwater
General Manager

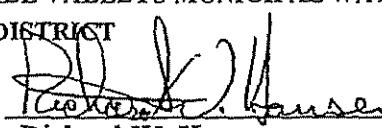
Date: JUNE 19, 2003

APPROVED AS TO FORM:

By: 
Jean Cihigoyenetche
General Counsel

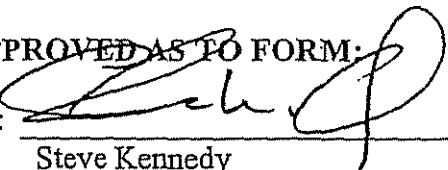
Date: 5-21-03

**THREE VALLEYS MUNICIPAL WATER
DISTRICT**

By: 
Richard W. Hansen
General Manager/Chief Engineer

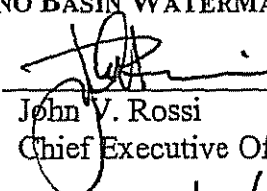
Date: 6/19/03

APPROVED AS TO FORM:

By: 
Steve Kennedy
District Counsel


Date: 6/4/03

CHINO BASIN WATERMASTER

By: 
John V. Rossi
Chief Executive Officer

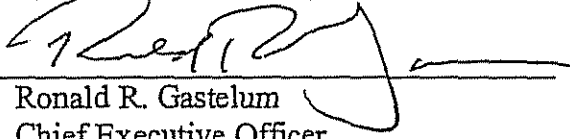
Date: 6/19/03

APPROVED AS TO FORM:

By: 
Michael Fife
General Counsel

Date: 6-3-03

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

By: 

Ronald R. Gastelum
Chief Executive Officer

Date: 6/19/03

EXHIBIT A

DWR FUNDING LETTER

DEPARTMENT OF WATER RESOURCES

416 NINTH STREET, P.O. BOX 942836
ACRAMENTO, CA 94236-0001
(16) 653-5791



OCT 13 2000

Mr. Phillip J. Pace, Chairman
Board of Directors
Metropolitan Water District of
Southern California
Post Office Box 54153
Los Angeles, California 90054-0153

Interim Water Supply Construction Grant Commitment Safe Drinking Water, Clean Water,
Watershed Protection and Flood Protection Act (Proposition 13, Chapter 9, Article 4)

Dear Mr. Pace:

The Governor's Budget Act for 2000, Chapter 52, Statutes of 2000, appropriated to the Department of Water Resources local assistance grant funds 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 Management Subaccount. The Metropolitan Water District's Southern California Water Supply Reliability Projects Program has been selected for funding from this appropriation. This letter agreement serves as our commitment of \$45 million for these projects.

This letter sets forth the terms and conditions under which the transfer of funds will be made from DWR to MWD. Before the funds can be transferred your agency must complete the following:

- Submit to DWR a formally adopted resolution of your governing body, accepting the grant, designating a representative to sign this letter agreement, and designating a project director to be your agency's representative for the administration of the project and liaison with DWR for submission of required documents.
- Sign and date both originals of this agreement and return one signed original to:

Division of Planning and Local Assistance
Department of Water Resources
Post Office Box 942836
Sacramento, California 94236-0001
Attention: Linda Buchanan Herzberg

- Provide to DWR a copy of all memoranda of understanding or other cooperative agreements between your agency and all other participating agencies for the program.



OCT 13 2000
Page 2

- Provide to DWR an itemized budget projection of project costs and an invoice, on your letterhead, stating the purpose of the funds as outlined in this letter agreement. In addition, please provide a summary of the sources and amounts of other funding for the program in addition to the grant provided by this letter agreement.
- Provide to DWR a detailed description of the proposed projects, including a narrative description that details the purpose and defines the scope of each project. Include with your description a detailed list of project components to be funded by this grant and a time line for completion with major benchmarks noted. In addition, attach a map indicating the locations of the projects.

By signature of this letter agreement the Metropolitan Water District of Southern California agrees to comply with the following terms and conditions for completion of your project:

1. Your agency agrees to faithfully and expeditiously perform or cause to be performed all project work, to apply State funds received only to eligible project costs and to expeditiously commence and to continue efficient and economical operation of the projects in accordance with applicable law. You further agree to provide for all repairs, renewals, and replacements necessary to the efficient operation of the projects; and to maintain them in as good and efficient condition as upon their construction, ordinary and reasonable wear and depreciation excepted.
2. Your agency, its contractors, subcontractors, and their respective agents and employees required for performing any work in connection with the projects shall act in an independent capacity and not as officers, employees or agents of the State.
3. Your agency is solely responsible for design, construction, operation and maintenance of the projects.
4. Your agency shall be responsible for obtaining any and all permits, licenses and approvals required for the design, construction or operation of the projects. You shall also be responsible for observing and complying with any applicable federal, State and local laws, rules or regulations affecting such work, specifically including, but not limited to, environmental, procurement and safety laws, rules, regulations and ordinances.

5. Your agency must comply with all applicable requirements of the California Environmental Quality Act and the National Environmental Policy Act and complete appropriate environmental documentation including, but not limited to, any required environmental impact reports, environmental impact statements, negative declarations, mitigation agreements and environmental permits, prior to beginning construction.
6. Your agency, its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.), the provisions of 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 awarding State Agency to implement such article. Your agency, its contractors and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Your agency shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts let for the construction of the project.
7. Your agency agrees, unless exempted, to comply with the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103.
8. Your agency shall comply with the provisions of 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 you affirm that the agency will comply with such provisions before commencing the construction of the projects and will make the agency's contractors and subcontractors aware of this provision.
9. Your agency, its contractors or subcontractors agree to comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace.
10. Your agency agrees to comply with 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 to the ADA.

11. Your agency shall be responsible for work and for persons or entities engaged in work, including, but not limited to, subcontractors, suppliers and providers of services. You shall give personal supervision to any work required for the projects or employ a competent representative with the authority to act for your agency. Your agency shall give attention to completion of the projects, and shall keep work under control.
12. Your agency shall be responsible for any and all disputes arising out of its contracts for work on the projects, including but not limited to bid disputes and payment disputes with your contractors and subcontractors. The State will not mediate disputes between your agency and any other entity concerning responsibility for performance of work.
13. 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 your agency's enabling authority.
14. Procurement of necessary supplies or equipment shall be undertaken in such a manner as to encourage fair and competitive treatment of potential suppliers.
15. During project planning and construction, your agency shall provide semiannual progress reports detailing the activities completed for the reporting period, the amount of funds expended and the purpose of those expenditures. The first report shall be due six months from the date of your agency's signature on this letter agreement. Subsequent reports shall be due every six months thereafter.
16. The Southern California Water Supply Reliability Projects Program shall be completed not later than March 8, 2009.
17. Upon completion of each project your agency shall provide for a final inspection and a written certification by a California Registered Civil Engineer that the project has been completed in accordance with final plans and specifications and any modifications thereto. Such certification shall be submitted to the State with a copy of the final report of project expenditures required in Item 18 below. You shall keep on file, for the useful life of the projects, As Built plans and specifications for each project. Such documents shall be made available for inspection by the State upon reasonable notice.
18. Upon program completion your agency shall furnish to the State, within 60 days, a final statement of incurred eligible costs.

OCT 13 2000

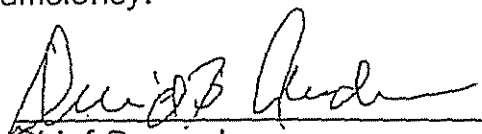
19. Within a period of 60 days from program completion, your agency shall remit to the State any unexpended funds that were disbursed that were not needed to pay eligible project costs.
20. Your agency shall account for the money disbursed separately from all other agency funds. You shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices consistently applied. You shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds. Your agency shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by the State at any and all reasonable times, upon reasonable notice.
21. All money disbursed for your program shall be deposited, administered, and accounted for pursuant to the provisions of law applicable to your agency.
22. During regular office hours, each of the parties to this letter agreement and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to the projects. Each of the parties shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to these projects.
23. Pursuant to Government Code Section 8546.7, your agency and its subcontractors shall be subject to the examination and audit of the State for a period of three years after program completion. All of your records or those of your subcontractors shall be preserved for this purpose for at least three years after program completion.
24. The State reserves the right to conduct an audit at any time between the execution of this letter agreement and the completion of the program, with the costs of such audit borne by the State. Within 60 days of program completion, the State shall require your agency to conduct, at your agency's expense, a final financial and compliance audit of revenue and expenditures. Such audit shall be conducted and a report prepared by an independent Certified Public Accountant in compliance with generally accepted auditing standards and California government auditing standards. Upon its completion, said report shall be submitted to the State for review and acceptance.
25. The State shall withhold 10 percent of the total program funding until the audit report, required in Item 24 above, is received and accepted by the State.


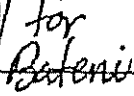
- 26. The State shall have the right to inspect the work being performed at any and all reasonable times during project construction. This right shall extend to any subcontracts, and your agency shall include provisions ensuring such access in all its contracts or subcontracts entered into for completion of the projects.
- 27. Your agency shall 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 any of the projects, or with your agency's service of water, without prior approval of the State.
- 28. Your agency agrees to indemnify the State and its officers, agents, and employees against and to hold the same free and harmless from any and all claims, demands, damages, losses, costs, expenses, or liability due or incident to, either in whole or in part, and whether directly or indirectly, arising out of the program.

Your expeditious handling of this letter agreement is appreciated. If you have any questions, please contact Linda Buchanan Herzberg at (916) 327-1663.


Sincerely,

Approved as to Legal Form
and Sufficiency:

By: 
Chief Counsel
Department of Water Resources

 for 
Acting Chief
Division of Planning and Local Assistance

Metropolitan Water District of Southern California

By:  Date: 11/14/2000
Title: General Manager

Enclosure

cc: (See attached list.)

Ms. Linda Adams
Chief Deputy Assembly Relations
Governor's Office, First Floor
Sacramento, California 95814

Honorable Richard G. Polanco
Member of the Senate
State Capitol, Room 313
Sacramento, California 95814

Honorable Jim Costa
Member of the Senate
State Capitol, Room 5100
Sacramento, California 95814

Honorable Robert M. Hertzberg
Speaker of the Assembly
State Capitol, Room 320
Sacramento, California 95814

Honorable Thomas Calderone
Member of the Assembly
State Capitol, Room 2148
Sacramento, California 95814

Honorable Antonio Villaraigosa
Member of the Assembly
State Capitol, Room 219
Sacramento, California 95814

Mr. Robert Harding
Senior Engineer
Water Resource Management
Metropolitan Water District of
Southern California
700 North Alameda Street
Los Angeles, California 90012

Mr. Ronald R. Gastelum
General Manager
Metropolitan Water District of
Southern California
Post Office Box 54153
Los Angeles, California 90054-0153

EXHIBIT 5

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT

JUN 24 2004

BY Wanda Lewis
DEPUTY

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants

CASE NO. RCV 51010

ORDER APPROVING STORAGE AND
RECOVERY PROGRAM
STORAGE AGREEMENT RE
IMPLEMENTATION OF DRY YEAR
YIELD STORAGE PROJECT

Date: June 24, 2004

Dept: R8

Time: 1:30 p.m.

///

Background

On July 13, 2000, this Court ordered Chino Basin Watermaster ("Watermaster") to adopt the goals and plans of the Optimum Basin Management Program ("OBMP") Phase I Report, dated August 19, 1999, (Phase I Report) and to implement them through the Implementation Plan for the OBMP for the Chino Basin ("Implementation Plan"), in a manner consistent with the Chino Basin Peace Agreement, dated June 29, 2000, ("Peace Agreement") and the Implementation Plan. The goals of the Phase I

1 Report include the development of conjunctive-use programs, to optimize the use of
2 the Chino Basin for in-basin producers and the people of California. (Phase I Report,
3 p. 3-3.) In furtherance of this goal, the Implementation Plan provides for the
4 development of storage and recovery programs.

5 In carrying out the Implementation Plan, Watermaster negotiated a Dry Year
6 Yield Program ("DYY Program") for Chino Basin. On June 5, 2003, this Court found
7 that the DYY Program, as described in the Groundwater Storage Program Funding
8 Agreement No. 49960 ("Funding Agreement"), will provide broad mutual benefits to the
9 parties to the Judgment and is consistent with Watermaster's responsibilities under
10 the Peace Agreement, which facilitates implementation of the OBMP. Watermaster
11 now seeks court approval of the "Storage And Recovery Program Storage Agreement
12 Between Chino Basin Watermaster, Inland Empire Utilities Agency and Three Valleys
13 Municipal Water District Regarding Implementation of the Dry Year Yield Project"
14 ("DYY Storage Agreement"). The DYY Storage Agreement authorizes Inland Empire
15 Utilities Agency, Three Valleys Municipal Water District and many of their retail
16 agencies to participate with Metropolitan Water District of Southern California
17 ("MWD") in the use of a maximum of 100,000 acre-feet of storage space in Chino
18 Basin, through in-lieu recharge.

19 Discussion

20 "[F]ull jurisdiction, power and authority are retained and reserved to the Court"
21 to enable the Court "to make such further or supplemental order or directions as may
22 be necessary or appropriate" to interpret, enforce or carry out the Judgment.
23 (Judgment, ¶ 15.) Subsurface storage space in a groundwater basin is a public
24 resource, which must be put to beneficial use under Article X, section 2 of the
25 California Constitution. (*Central and West Basin Water Replenishment District v.*
26 *Southern California Water Company* (2003) 109 Cal.App.4th 891, 905, mod. 110
27 Cal.App.4th 352.)

1 Groundwater storage in Chino Basin is directed and controlled by
2 Watermaster. The Judgment provides that no use shall be made of the storage
3 capacity of Chino Basin except pursuant to written agreement with Watermaster.
4 (Judgment, ¶ 12.) The Judgment further provides that the reservoir capacity of the
5 Basin may be utilized for storage and conjunctive use of supplemental water, if
6 undertaken under Watermaster control and regulation. (Judgment, ¶ 11.) Finally, the
7 Judgment provides that agreements for storage "shall first be approved by written
8 order of the Court" and must include terms that will "preclude operations which will
9 have a substantial adverse impact on other producers." (Judgment, ¶ 28.)

10 Currently, there are three types of storage accounts: Excess Carry-Over
11 Storage, Local Storage of Supplemental Water, and Non-Party Storage Accounts.
12 According to Watermaster's 26th Annual Report, at the end of fiscal 2002-2003 there
13 were 108,178.61 acre-feet in Excess Carry-Over Storage and 81,179.810 acre-feet in
14 Local Storage of Supplemental Water. Non-Party Storage consists of MWD's three
15 existing storage accounts: Cyclic Storage Account (32,700 acre-feet), Trust Storage
16 Account (13,100 acre-feet), and Short-Term Conjunctive Use Account (no water
17 currently stored.) A fourth account will be created under the DYY Storage Agreement.
18 Once the DYY Storage Account is created, the Trust Storage Account will be closed
19 and water currently stored in that account will be transferred to the DYY Storage
20 Account and accounted for in that account. In addition, Watermaster anticipates that
21 no new water will be placed into the Cyclic Storage Account and the existing stored
22 water will be gradually removed, until it is empty.

23 The Implementation Plan provides that the amount of storage that can safely be
24 used by producers and Watermaster is about 500,000 acre-feet, including water in
25 existing storage accounts. Storage in excess of this amount will preemptively require
26 mitigation. (Implementation Plan, p. 38.) Under the terms of the DYY Storage
27 Agreement, there will be no more than 100,000 acre-feet of supplemental water stored
28 in the Basin. Existing storage is approximately 235,000 acre-feet. Hence, the

1 proposed storage is well within the estimated safe storage capacity of the Basin, as
2 defined in the Implementation Plan.

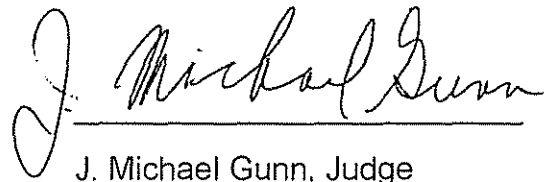
3 The DYY Storage Agreement calls for the development of Annual Operating
4 Plans, which will provide estimated schedules and locations for the delivery of all
5 water into and out of storage, on a monthly basis, for the upcoming fiscal year. The
6 Annual Operating Plan is to be submitted to Watermaster for approval and is to have
7 sufficient detail to allow Watermaster to assess the potential for any adverse impacts
8 on producers. Pursuant to Judgment paragraph 28, Watermaster may not approve an
9 Annual Operating Plan that will have a substantial adverse impact on producers.

10 No contests were filed to the application for approval of the DYY Storage
11 Agreement. All three pools unanimously approved the DYY Storage Agreement on
12 March 16, 2004. The Advisory Committee and Board of Directors unanimously
13 approved the DYY Storage Agreement on March 25, 2004.

14 Good cause appearing therefore, the Court finds that the DYY Storage
15 Agreement is consistent with the Judgment and Implementation Plan, and is unlikely to
16 have any adverse impacts on a party to the Judgment. Watermaster's Motion for
17 Approval of the DYY Storage Agreement is hereby GRANTED; the DYY Storage
18 Agreement is hereby approved for the storage of a maximum of 100,000 acre feet.
19 Starting with the OBMP quarterly status report covering the time period ending June
20 30, 2004, Watermaster shall include a report of operations under the DYY Storage
21 Agreement.

22 ///

23 Dated: June 24, 2004


J. Michael Gunn, Judge

24
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28

CHINO BASIN WATERMASTER

Case No. RCV 51010

Chino Basin Municipal Water District v. The City of Chino

PROOF OF SERVICE

I declare that:

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

On June 24, 2004 I served the following:

ORDER APPROVING STORAGE AND RECOVERY PROGRAM STORAGE AGREEMENT RE IMPLEMENTATION OF DRY YEAR YIELD STORAGE PROJECT

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

See attached service list:
Mailing List 1

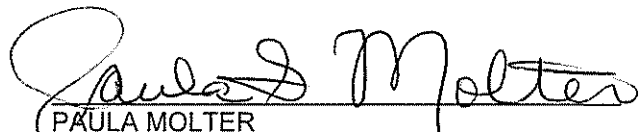
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BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

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

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

Executed on June 24, 2004 in Rancho Cucamonga, California.


PAULA MOLTER
Chino Basin Watermaster

RICHARD ANDERSON
1365 W. FOOTHILL BLVD
SUITE 1
UPLAND, CA 91786

RODNEY BAKER
COUNSEL FOR EGGWEST &
JOHNSON
PO BOX 438
COULTERVILLE, CA 95311-0438

PATRICK BAUER
ARROWHEAD WATER COMPANY
5772 JURUPA RD
ONTARIO, CA 91761-3672

BOB BEST
NAT'L RESOURCE CONS SVCS
25864 BUSINESS CENTER DR K
REDLANDS, CA 92374

BRUCE CASH
UNITED WATER MGMT CO INC
1905 BUSINESS CENTER DR
SUITE 100
SAN BERNARDINO, CA 92408

STEVE CORTNER
VULCAN MATERIALS COMPANY
PO BOX 39756
LOS ANGELES, CA 90039

DAVID B. COSGROVE
RUTAN & TUCKER
611 ANTON BLVD
SUITE 1400
COSTA MESA, CA 92626

JENNY DE BOER
9155 RIVERSIDE DR
ONTARIO, CA 91761

JOE DELGADO
BOYS REPUBLIC
3493 GRAND AVENUE
CHINO HILLS, CA 91709

GLEN DURRINGTON
5512 FRANCIS ST
CHINO, CA 91710

DICK DYKSTRA
10129 SCHAEFER
ONTARIO, CA 91761-7973

RALPH FRANK
755 LAKEFIELD RD #E
WESTLAKE VILLAGE, CA 91361

CARL FREEMAN
L.D. KING
2151 CONVENTION CENTRE WAY
ONTARIO, CA 91764

MARK GAGE P E
GEOMATRIX CONSULTANTS INC
2101 WEBSTER ST #1200
OAKLAND, CA 94612

JIM GALLAGHER
SOUTHERN CALIFORNIA WATER CO
2143 CONVENTION CENTER WAY
SUITE 110
ONTARIO, CA 91764

DON GALLEANO
4231 WINEVILLE RD
MIRA LOMA, CA 91752-1412

PETER HETTINGA
14244 ANON CT
CHINO, CA 91710

PETE HALL
PO BOX 519
TWIN PEAKS, CA 92391

LISA HAMILTON
GE/MGR ENV REMEDIATION PRGM
640 FREEDOM BUSINESS CTR
KING OF PRUSSIA, PA 19406

CARL HAUGE
SWRCB
PO BOX 942836
SACRAMENTO, CA 94236-0001

SUSAN TRAGER
LAW OFFICES OF SUSAN M. TRAGER
19712 MACARTHUR BLVD
SUITE 120
IRVINE, CA 92612

CLARK IDE
OCWD GENERAL COUNSEL
PO BOX 8300
FOUNTAIN VALLEY, CA 92728-8300

ANNESLEY IGNATIUS
COUNTY OF SAN BERNARDINO FCD
825 E 3RD ST
SAN BERNARDINO, CA 92415-0835

W. C. "BILL" KRUGER
CITY OF CHINO HILLS
2001 GRAND AVE
CHINO HILLS, CA 91709

SHARON JOYCE
STATE OF CA CDC
1515 S STREET, ROOM 314-F
SACRAMENTO, CA 95814

PATRICK KING
CONSULTANT TO SENATOR SOTO
822 N EUCLID AVE
ONTARIO, CA 91762

KRONICK ET AL
KRONICK MOSKOVITZ TIEDEMANN
& GIRARD
400 CAPITOL MALL, 27TH FLOOR
SACRAMENTO, CA 95814-4417

RONALD LA BRUCHERIE
12953 S BAKER AVE
ONTARIO, CA 91761-7903

MARILYN LEVIN
300 S SPRING ST
11TH FLOOR N TOWER
LOS ANGELES, CA 90013-1232

CARLOS LOZANO
STATE OF CA YTS
15180 S EUCLID
CHINO, CA 91710

ALAN MARKS
COUNSEL – COUNTY OF SAN
BERNARDINO
157 W 5TH STREET
SAN BERNARDINO, CA 92415

SANDY OLSON
WALNUT VALLEY WATER DISTRICT
271 BREA CANYON RD
WALNUT, CA 91789

MARY PARENTE
8559 EDISON AVE
CHINO, CA 91710-9242

ROBB QUINCY
CITY OF HESPERIA
15776 MAIN ST
HESPERIA, CA 92345

RICK REES
GEOMATRIX
2450 EAST RINCON STREET
CORONA, CA 92879

ROBERT REITER
SAN BERNARDINO VALLEY MWD
PO BOX 5906
SAN BERNARDINO, CA 92412-5906

LES RICHTER
CALIFORNIA SPEEDWAY
PO BOX 9300
FONTANA, CA 92334-9300

DAVID RINGEL
MONTGOMERY WATSON
PO BOX 7009
PASADENA, CA 91109-7009

DONALD SCHROEDER
CBWM BOARD
3700 MINTERN
RIVERSIDE, CA 92509

DAVID SCRIVEN
KRIEGER & STEWART
ENGINEERING
3602 UNIVERSITY AVE
RIVERSIDE, CA 92501

SENATOR NELL SOTO
STATE CAPITOL
ROOM NO 4066
SACRAMENTO, CA 95814

BILL STAFFORD
MARYGOLD MUTUAL WATER CO
9725 ALDER ST
BLOOMINGTON, CA 92316-1637

DAVID STARNES
MOBILE COMMUNITY MGMT CO
1801 E EDINGER AVE, SUITE 230
SANTA ANA, CA 92705

CRAIG STEWART
GEOMATRIX CONSULTANTS INC
330 W BAY ST, SUITE 140
COSTA MESA, CA 92629

KEVIN SULLIVAN
LOS SERRANOS COUNTRY CLUB
15656 YORBA AVE
CHINO HILLS, CA 91709

CHRIS SWANBERG
DEPT OF CORRECTIONS – LEGAL
AFFAIRS DIVISION
PO BOX 942883
SACRAMENTO, CA 94283-0001

SWRCB
PO BOX 2000
SACRAMENTO, CA 95809-2000

MICHAEL THIES
SPACE CENTER MIRA LOMA INC
3401 S ETIWANDA AVE, BLDG 503
MIRA LOMA, CA 91752-1126

JOHN THORNTON
PSOMAS AND ASSOCIATES
3187 RED HILL AVE, SUITE 250
COSTA MESA, CA 92626

R.E. THRASH III
PRAXAIR
5705 AIRPORT DR
ONTARIO, CA 91761

GEOFFREY VANDEN HEUVEL
CBWM BOARD MEMBER
7551 KIMBALL AVE
CHINO, CA 91710

SYBRAND VANDER DUSSEN
10573 EDISON AVE
ONTARIO, CA 91761

SYP VANDER DUSSEN
14380 EUCLID
CHINO, CA 91710

JOHN ANDERSON
CBWM BOARD ALTERNATE
12455 HOLLY AVE
CHINO, CA 91710-2633

STEVE ARBELBIDE
417 PONDEROSA TR
CALIMESA, CA 92320

VIC BARRION
11559 PEMBROOKE
LOMA LINDA, CA 92354

ERIC WANG
SUNKIST GROWERS
760 E SUNKIST ST
ONTARIO, CA 91761

ROBERT NEUFELD
CBWM BOARD CHAIRMAN
14111 SAN GABRIEL CT
RANCHO CUCAMONGA, CA 91739

Members:

A.W." Butch" Araiza (butcharaiza@mindspring.com) butcharaiza@mindspring.com
Andy Malone (amalone@wildh2o.com) amalone@wildh2o.com
Anne Schneider (ajs@eslawfirm.com) ajs@eslawfirm.com
April Woodruff (awoodruff@ieua.org) awoodruff@ieua.org
Arnold Rodriguez (jarodriguez@sarwc.com) jarodriguez@sarwc.com
Art Kidman (akidman@mkblawyers.com) akidman@mkblawyers.com
Barbara Swanson Barbara_Swanson@yahoo.com
Barret Kehl (CBWCD.email@verizon.net) CBWCD.email@verizon.net
Bill Rice (brice@rb8.swrcb.ca.gov) brice@rb8.swrcb.ca.gov
Bill Stafford (bills@goldcom.com) bills@goldcom.com
Bob Feenstra (feenstra@milkproducers.org) feenstra@milkproducers.org
Bob G Kuhn (bgkuhn@aol.com) bgkuhn@aol.com
Bonnie Tazza (bonniet@cvwdwater.com) bonniet@cvwdwater.com
Boyd Hill (bhill@mkblawyers.com) bhill@mkblawyers.com
Brenda Fowler (balee@fontanawater.com) balee@fontanawater.com
Brian Hess (bhess@niagarawater.com) bhess@niagarawater.com
Carole McGreevy (cmcgreevy@jcsd.us) cmcgreevy@jcsd.us
Chris Swanberg (chris.swanberg@corr.ca.gov) chris.swanberg@corr.ca.gov
Cindi LaCamera (clacamera@mwdh2o.com) clacamera@mwdh2o.com
Craig Stewart (cstewart@geomatrix.com) cstewart@geomatrix.com
Curtis Aaron (caaron@fontana.org) caaron@fontana.org
Dan Arrighi (darrighi@sgvwater.com) darrighi@sgvwater.com
Dan McKinney (dmckinney@rhlaw.com) dmckinney@rhlaw.com
Dan Rodriguez (dan_rodriguez@ci.pomona.ca.us) dan_rodriguez@ci.pomona.ca.us
Danni Maurizio DMaurizio@CBWM.ORG
Dave Argo (argodg@bv.com) argodg@bv.com
Dave Crosley (DCrosley@cityofchino.org) DCrosley@cityofchino.org
Dave Hill (dhill@ieua.org) dhill@ieua.org
Dave Ringel (david.ringel@mwhglobal.com) david.ringel@mwhglobal.com
David B Anderson (danders@water.ca.gov) danders@water.ca.gov
David D DeJesus (davidcicgm@aol.com) davidcicgm@aol.com
Diane Sanchez (dianes@water.ca.gov) dianes@water.ca.gov
Don Harriger (dharriger@wmwd.com) dharriger@wmwd.com
Duffy Blau (Duffy954@aol.com) Duffy954@aol.com
Eric Garner (elgarner@bbklaw.com) elgarner@bbklaw.com
Erick Vaughn (stafengr@aol.com) stafengr@aol.com
Frank Brommenschenkel (frank.brommen@verizon.net) frank.brommen@verizon.net
Fred Fudacz (ffudacz@nossaman.com) ffudacz@nossaman.com
Fred Lantz (flantz@ci.burbank.ca.us) flantz@ci.burbank.ca.us
Garth Morgan (gmorgan@ieua.org) gmorgan@ieua.org
Gene Koopman (GTKoopman@aol.com) GTKoopman@aol.com
Gene Tanaka (gtanaka@bbklaw.com) gtanaka@bbklaw.com
Gerald Black (gjblack@FontanaWater.com) gjblack@FontanaWater.com
Geralyn Skapik (gskapik@bwsllaw.com) gskapik@bwsllaw.com
Gerard Thibeault (gthibeault@rb8.swrcb.ca.gov) gthibeault@rb8.swrcb.ca.gov
Gordon P. Treweek GTreweek@CBWM.ORG
Grace Cabrera (grace_cabrera@ci.pomona.ca.us) grace_cabrera@ci.pomona.ca.us

Henry Pepper (henry_pepper@ci.pomona.ca.us) henry_pepper@ci.pomona.ca.us
James Jenkins (cnomgr@airports.sbcounty.gov) cnomgr@airports.sbcounty.gov
James P Morris (jpmorris@bbklaw.com) jpmorris@bbklaw.com
Janine Wilson Janine@CBWM.ORG
Jarlath Oley (joley@mwdh2o.com) joley@mwdh2o.com
Jean Cihigoyenette (Jean_CGC@hotmail.com) Jean_CGC@hotmail.com
Jeffrey L. Pierson (jpierson@intexcorp.com) jpierson@intexcorp.com
Jerry A. King (jking@psomas.com) jking@psomas.com
Jess Senecal (JessSenecal@lagerlof.com) JessSenecal@lagerlof.com
Jim Bryson (jtbryson@fontanawater.com) jtbryson@fontanawater.com
Jim Erickson (jeeinc@aol.com) jeeinc@aol.com
Jim Erickson (Jim@city-attorney.com) Jim@city-attorney.com
Jim Hill (jhill@cityofchino.org) jhill@cityofchino.org
Jim Markman (jmarkman@rwglaw.com) jmarkman@rwglaw.com
Jim Moody (jmoody@ci.upland.ca.us) jmoody@ci.upland.ca.us
Jim Taylor (jim_taylor@ci.pomona.ca.us) jim_taylor@ci.pomona.ca.us
Jimmy Gutierrez (jimmy@city-attorney.com) jimmy@city-attorney.com
Joe Graziano (jgraz4077@aol.com) jgraz4077@aol.com
Joe Grindstaff (jgrindstaff@sawpa.org) jgrindstaff@sawpa.org
Joe P LeClaire (jleclaire@wildh2o.com) jleclaire@wildh2o.com
Joe Scalmanini (jscal@lsce.com) jscal@lsce.com
Joe Schenk (jschenk@ci.Norco.ca.us) jschenk@ci.Norco.ca.us
John Hayball (john.hayball@sce.com) john.hayball@sce.com
John Huitsing (johnh@milkproducers.org) johnh@milkproducers.org
John Schatz (jschatz13@cox.net) jschatz13@cox.net
John Vega (johnv@cvwdwater.com) johnv@cvwdwater.com
Judy Schurr (jschurr@earthlink.net) jschurr@earthlink.net
Julie Saba (jsaba@ieua.org) jsaba@ieua.org
Kathy Tiegs (ktiegs@ieua.org) ktiegs@ieua.org
Ken Jeske (kjeske@ci.ontario.ca.us) kjeske@ci.ontario.ca.us
Ken Kules (kkules@mwdh2o.com) kkules@mwdh2o.com
Kimberly Arce (KArce@HatchParent.com) KArce@HatchParent.com
Linda Estrada (linda_estrada@ci.pomona.ca.us) linda_estrada@ci.pomona.ca.us
Lisa A Hamilton P.G. (Lisa.Hamilton@corporate.ge.com) Lisa.Hamilton@corporate.ge.com
Robert W Bowcock (rbowcock@irmwater.com) rbowcock@irmwater.com

Members:

Marilyn Levin (marilyn.levin@doj.ca.gov) marilyn.levin@doj.ca.gov
Mark Gage (mgage@geomatrix.com.) mgage@geomatrix.com.
Mark Kinsey (mkinsey@mvwd.org) mkinsey@mvwd.org
Mark Ward (mark_ward@ameron-intl.com) mark_ward@ameron-intl.com
Mark Wildermuth (mwildermuth@wildh2o.com) mwildermuth@wildh2o.com
Martha Davis (mdavis@ieua.org) mdavis@ieua.org
Martin Rauch (martin@rauchcc.com) martin@rauchcc.com
Maxine Maritz (mmaritz@bwslaw.com) mmaritz@bwslaw.com
Michael Fife (Mfife@hatchparent.com) Mfife@hatchparent.com
Michelle Staples (mstaples@jdpplaw.com) mstaples@jdpplaw.com
Mike Del Santo (mike_delsanto@catellus.com) mike_delsanto@catellus.com
Mike Maestas (mmaestas@chinohills.org) mmaestas@chinohills.org
Mike McGraw (mjmccgraw@FontanaWater.com) mjmccgraw@FontanaWater.com
Mike Thies (mthies@spacecenterinc.com) mthies@spacecenterinc.com
Mohamed El-Amamy (melamamy@ci.ontario.ca.us.) melamamy@ci.ontario.ca.us.
Nathan deBoom (nathan@milkproducers.org) nathan@milkproducers.org
Pam Wilson (pwilson@hatchparent.com) pwilson@hatchparent.com
Paul Hofer (farmwatchtoo@aol.com) farmwatchtoo@aol.com
Paula Lantz (paula_lantz@ci.pomona.ca.us) paula_lantz@ci.pomona.ca.us
Paula Molter PMolter@CBWM.ORG
Peter Von Haam (peter.vonhaam@doj.ca.gov) peter.vonhaam@doj.ca.gov
Phil Krause (pkrause@parks.sbcounty.gov) pkrause@parks.sbcounty.gov
Phil Rosentrater (prosentrater@wmwd.com) prosentrater@wmwd.com
Raul Garibay (raul_garibay@ci.pomona.ca.us) raul_garibay@ci.pomona.ca.us
Ray Wellington (rwellington@sawaterco.com) rwellington@sawaterco.com
Richard Atwater (Atwater@ieua.org) Atwater@ieua.org
Rick Hansen (rhansen@tvmwd.com) rhansen@tvmwd.com
Rick Rees (rrees@geomatrix.com) rrees@geomatrix.com
Rita Kurth (ritak@cvwdwater.com) ritak@cvwdwater.com
Robert DeLoach (robertd@cvwdwater.com) robertd@cvwdwater.com
Robert Dougherty (RED@covcrowe.com) RED@covcrowe.com
Robert Neufeld (N78098@aol.com) N78098@aol.com
Robert Rauch (robert.rauchcc@verizon.net) robert.rauchcc@verizon.net
Robert W Bowcock (bbowcock@irmwater.com) bbowcock@irmwater.com
Robert W. Nicholson (rwnicholson@sgvwater.com) rwnicholson@sgvwater.com
Ron Craig (RonC@rbf.com) RonC@rbf.com
Ron Small (ron.small@dgs.ca.gov) ron.small@dgs.ca.gov
Sandy Lopez (slopez@ci.ontario.ca.us) slopez@ci.ontario.ca.us
Scott Burton (sburton@ci.ontario.ca.us) sburton@ci.ontario.ca.us
Sharon Joyce (SJoyce@executive.corr.ca.gov) SJoyce@executive.corr.ca.gov

Shirley Green (western@wmwd.com) western@wmwd.com
Steve Arbelbide (sarbelbide@californiasteel.com) sarbelbide@californiasteel.com
Steve Kennedy (skennedy@bbmblaw.com) skennedy@bbmblaw.com
Steven Lee (slee@rhlaw.com) slee@rhlaw.com
Tej Pahwa (tpahwa@dtsc.ca.gov) tpahwa@dtsc.ca.gov
Terry Catlin (tcatlin@msn.com) tcatlin@msn.com
Thomas Clifton (clifton@mckeownlaw.com) clifton@mckeownlaw.com
Thomas S Bunn (TomBunn@Lagerlof.com) TomBunn@Lagerlof.com
Timothy Ryan (tjryan@sgvwater.com) tjryan@sgvwater.com
Tom Love (TLove@ieua.org) TLove@ieua.org
Tom McPeters (THMcP@aol.com) THMcP@aol.com
Tracy Tracy (ttracy@mvwd.org) ttracy@mvwd.org
Vic Barrion (vabarrion@yahoo.com) vabarrion@yahoo.com
Virginia Grebbien (vgrebbien@ocwd.com) vgrebbien@ocwd.com
Wayne Davison (ciwcpm@earthlink.net) ciwcpm@earthlink.net
William J Brunick (bbrunick@bbmblaw.com) bbrunick@bbmblaw.com
WM Admin Staff

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. APPENDIX OF EVIDENCE IN SUPPORT OF CITY OF ONTARIO'S SUPPLEMENTAL BRIEF IN SUPPORT OF OPPOSITION TO WATERMASTER'S MOTION FOR COURT APPROVAL OF CORRECTED AND AMENDED FISCAL YEARS 2021/22 AND 2022/23 ASSESSMENT PACKAGES
VOL. 1: EXHIBITS 1-5

/ 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.



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

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	jeverson@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 Cihigoyenetcher	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