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6 **CHINO BASIN WATERMASTER**

7  
8 **BEFORE THE STATE WATER RESOURCES**  
9 **CONTROL BOARD**

10  
11 In the Matter of Water Right Applications  
31165 and 31370 of San Bernardino Valley  
12 Municipal Water District and Western  
Municipal Water District of Riverside  
13 County; Application 31174 of Orange  
County Water District; Application 31369  
14 of Chino Basin Watermaster; Application  
31371 of San Bernardino Valley Water  
15 Conservation District; and Application  
31372 and Wastewater Change Petition  
16 WW-0045 of the City of Riverside

**CHINO BASIN WATERMASTER  
CLOSING BRIEF**

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1 **I. INTRODUCTION**

2 The Santa Ana River Applications present the State Water Resources Control Board (“State  
3 Board”) with a unique situation. The Santa Ana River already has a well-developed and complex  
4 system for the integrated regional management of the watershed, and for the administration of the  
5 water rights to use the River and its tributaries. This system has evolved over many decades in  
6 response to the particular needs of the local region, and today is a model of integrated and  
7 comprehensive water resource management.

8 The State Board is thus faced with the choice of whether it will recognize and encourage  
9 integrated planning by acknowledging the existing system and tailoring the permits to work within  
10 that system, or whether it will choose to regard the existing system as secondary and create a new  
11 and separate system of water rights administration for the watershed. (RT Vol. I, 99:11-22.)

12 The Chino Basin Watermaster encourages the State Board to take this opportunity to aid in  
13 the evolution of integrated planning in the Santa Ana Watershed by tailoring its order and the  
14 resulting permits in such a way that the State Board will become a valuable new component to an  
15 already highly functional system. The discussion in this closing brief, and the proposed permit  
16 attached here as Exhibit “A,” are intended to suggest ways in which the State Board can accomplish  
17 this goal in a manner facilitating the State Board’s exercise of its statutory and common law duties.

18 **II. HEARING BACKGROUND**

19 **A. Procedural History of Application 31369**

20 On July 3, 2002, the State Board held a hearing on various Petitions for a Limited Revision  
21 of the Declaration of Fully Appropriated Stream Status of the Santa Ana River. State Board Order  
22 2002-0006 amended the Declaration of Fully Appropriated Stream Status for the purpose, inter alia,  
23 of accepting the Chino Basin Watermaster’s (“Watermaster”) water right application.  
24 Watermaster’s application was noticed by the State Board on July 31, 2003.

25 Application 31369 was protested by four entities: the California Department of Fish &  
26 Game, the United States Forest Service, the Cucamonga Valley Water District, and the East Valley  
27 Water District. All of these protests were resolved prior to the hearing.

28 Also prior to the hearing, Watermaster received stipulations from all non-applicant parties

1 that such parties would not present any evidence concerning Application 31369, nor would they  
2 cross-examine any witness offered in support of Application 31369. These stipulating parties were:  
3 the Center for Biological Diversity, Southern California Edison, United States Forest Service, East  
4 Valley Water District, City of Chino, and the Santa Ana River Mainstem Project Local Sponsors.  
5 Watermaster submitted these stipulations to the State Board via letter dated April 17, 2007.

6 **B. Hearing Key Issues**

7 On February 16, 2007, the State Board issued a Notice of Public Hearing. The Notice of  
8 Public Hearing specified six issues for consideration at the hearing:

9 *1. Is there water available for appropriation by each of the applicants? If so, when is water*  
10 *available and under what circumstances?*

11 *2. Will approval of any of the applications or the petition result in any significant adverse*  
12 *impacts to water quality, the environment or public trust resources? If so, what adverse impact or*  
13 *impacts would result from the project or projects? Can these impacts be avoided or mitigated to a*  
14 *level of non-significance? If so, how? What conditions, if any, should the State Board adopt to*  
15 *avoid or mitigate any potential adverse impacts on fish, wildlife, or other public trust resources that*  
16 *would otherwise occur as a result of approval of the applications and petition?*

17 *3. Is each of the proposed projects in the public interest? If so, what conditions, if any,*  
18 *should the State Board adopt in any permits that may be issued on the pending applications, or in*  
19 *any order that may be issued on the wastewater change petition, to best serve the public interest?*

20 *4. Will any of the proposed appropriations by the applicants and/or the proposed change in*  
21 *treated wastewater discharge by the petitioner cause injury to the prior rights of other legal users*  
22 *of water?*

23 *5. What should be the relative priority of right assigned to any permits that may be issued on*  
24 *the pending applications?*

25 *6. What effect, if any, will the projects have on groundwater and/or movement of any*  
26 *contaminated groundwater plumes? Can the effects be mitigated? If so, how?*

27 **C. Additional Question Presented at the Hearing Relevant to Application 31369**

28 At the hearing, input was requested from the parties as to how the State Board should  
administer its permitting authority where stream flows are erratic and flashy. Watermaster  
submitted responsive information to the State Board along with suggested permit terms addressing  
the erratic hydrology within the Chino Basin watershed. (CBWM Exh. 7-1.) These issues are  
further addressed in this closing brief.

**D. Stipulation of Applicants Regarding Key Issues 4 and 5**

On April 5, 2007, the applicants presented the State Board with a stipulation constituting a

1 full resolution of Key Issues 4 and 5. An executed copy of this stipulation is attached to this closing  
2 brief as Exhibit “B.” The stipulation contains a recitation of the water rights adjudication  
3 judgments pertaining to the Santa Ana River Watershed and the subsequent agreements that have  
4 been entered into pursuant to those judgments. The stipulation explains how these judgments and  
5 agreements work together to constitute a full resolution of the relative priorities to the water of the  
6 Santa Ana Watershed, and how the judgments and agreements provide satisfactory protections to all  
7 legal users of water in the watershed.

8 At the April 5, 2007 Pre-Hearing Conference, the Hearing Officer ordered that any party  
9 who objected to the stipulation should submit its objection within seven days, by April 12, 2007 at  
10 5:00 pm. If no objections were received, then Key Issues 4 and 5 would be eliminated as issues  
11 from the hearing. The Hearing Officer subsequently issued a letter ruling dated April 10, 2007,  
12 confirming this ruling.

13 No party objected to the stipulation and no party presented evidence concerning Key Issues  
14 4 and 5. (RT Vol. I, 2:21-24.)

15 **III. DESCRIPTION OF THE PROJECT (APPLICATION 31369)**

16 **A. Watermaster’s Project is an Implemented Project that Uses Pre-Existing**  
17 **Facilities Primarily Constructed for Flood Control Purposes.**

18 Application 31369 seeks the right to appropriate to underground storage 68,500 acre-feet per  
19 year (“AFY”) of ephemeral storm flows from four creek systems tributary to the Santa Ana River.<sup>1</sup>  
20 (CBWM Ex. 1-1, page 2 lines 8-17.) These creek systems include the San Antonio Creek System  
21 (including San Antonio Creek and Chino Creek), the Cucamonga Creek System (including  
22 Cucamonga Creek and Deer Creek), the Day Creek System, and the San Sevaine Creek System  
23 (including San Sevaine Creek, and Etiwanda Creek). (Id., CBWM Ex. 1-2 and 1-3.) This requested  
24 appropriation is in addition to two currently permitted appropriations under Permits 19895

25 \_\_\_\_\_  
26 <sup>1</sup> Watermaster withdrew without prejudice that portion of Application 31369 concerning 28,500 acre-feet of recycled  
27 water. As stated at the hearing, while Watermaster could not know in 2000 how the recycled water program in the  
28 Chino Basin would operate, the actual program as implemented does not involve any issues that would invoke the State  
Board’s jurisdiction. Control over the water is maintained at all times, and to the extent that recycled water is placed in  
the channels, those channels are used merely as a means of conveyance under Water Code § 7044. (RT Vol. I, 167:5-  
169:9; 180:13-181:5.)

1 (Application 28473) for 15,000 AFY, and 20753 (Application 28996) for 27,000 AFY, for a total  
2 appropriation by Watermaster of 110,500 AFY.

3 The area from which the water will be appropriated, and the place of use for the water  
4 appropriated, is the jurisdictional area of the Chino Basin Watermaster as defined in Exhibit A (by  
5 map) and Exhibit K (by legal description) of the stipulated judgment in the case *Chino Basin*  
6 *Municipal Water District v. City of Chino*, San Bernardino Superior Court Case No. RCV 51010.  
7 (CBWM Ex. 1-5; App. Joint Ex. 2-11; CBWM Ex. 1-2.)

8 The points of diversion are existing recharge basins spread throughout the Chino Basin, and  
9 built primarily for flood control purposes. (CBWM Ex. 1-1, page 2, lines 20-23.) Watermaster  
10 presented evidence at the hearing that the points of diversion are the same as those listed in  
11 Attachment 3b and Attachment 13 to Application 31369. (CBWM Ex. 1-3.)

12 The storm water recharge project described by Application 31369 is one component of  
13 Watermaster’s Recharge Master Plan. (CBWM Ex. 1-1, pages 6-8; CBWM Ex. 1-11 and 1-12.)  
14 The Recharge Master Plan implements Program Element Two of Watermaster’s Optimum Basin  
15 Management Program. (CBWM Ex. 1-1, page 4; CBWM Ex. 1-7 and 1-10; RT Vol. I, 133:19 –  
16 134:12.) Implementation of the Recharge Master Plan was called the Chino Basin Facilities  
17 Improvement Project (“CBFIP”). (CBWM Ex. 1-13.) The cost of the CBFIP was approximately  
18 \$44 million, and construction was completed in December 2005. (CBWM Ex. 1-15, page 2-1.)

19 **B. CEQA Compliance**

20 Watermaster’s Optimum Basin Management Program (“OBMP”), inclusive of all the  
21 OBMP Program Elements including Program Element Two and the storm water recharge project,  
22 was analyzed in the OBMP Programmatic Environmental Impact Report (“OBMP PEIR”). (CBWM  
23 Ex. 3-3.) The OBMP PEIR was certified by the Inland Empire Utilities Agency (“IEUA”) on July  
24 13, 2000, two months prior to the submittal of Application 31369. (CBWM Ex. 3-1, page 2, line 3  
25 and page 4, line 2.) Project level analysis for the CBFIP was conducted through the Initial Study  
26 for the Implementation of Storm Water and Imported Water Recharge at 20 Recharge Basins in the  
27 Chino Basin. (CBWM Ex. 3-4.) This Initial Study supported the adoption of a Finding of  
28 Consistency by IEUA on October 3, 2001. (CBWM Ex. 3-5.) The written testimony of Mr. Dodson



1 says that he performed supplemental investigations of the facts contained in the PEIR and the Initial  
2 Study, and that while these analyses were performed a number of years ago, the findings made in  
3 the PEIR and Initial Study are still accurate and can serve as a basis for decision with respect to  
4 Application 31369. (CBWM Ex. 3-1, page 13.) There was no objection to this testimony.

5 As additional background information, Watermaster submitted additional CEQA analyses  
6 that were prepared prior to the Initial Study for those recharge basins that were constructed post-  
7 CEQA. (CBWM Exhibits 3-6 through 3-14.)

### 8 **C. Operation of the Facilities**

9 The operation of the facilities is governed by a complex set of procedures described in the  
10 document titled Chino Basin Recharge Facilities Operation Procedures dated March 2006  
11 (“Operation Manual”). (CBWM Ex. 1-15.) The Operation Manual is a collaborative work of the  
12 Chino Basin Groundwater Recharge Coordinating Committee (“GRCC”) composed of the Chino  
13 Basin Watermaster, the Chino Basin Water Conservation District, the Inland Empire Utilities  
14 Agency, and the San Bernardino County Flood Control District. (CBWM Ex. 1-15, page 1-1.)

15 In general, the pattern of operations of the facilities for water conservation purposes  
16 involves the diversion and retention of as much storm water as possible into the facilities. (RT Vol.  
17 II, 12:17-18; 15:20.) Because of variability in the weather and the priority of the flood control  
18 function of the basins, it sometimes happens that water that is diverted is not able to be recharged.  
19 (Id., 16:1-9.) Any water that is diverted but which is not able to be recharged returns to the system.  
20 (Id., 16:13-20.) While for planning purposes Watermaster uses an average number of 18,000 acre-  
21 feet per year of water recharged, this number is an *average* and depends on Watermaster having the  
22 flexibility to divert and recharge as much of the storm water as possible. (CBWM Ex. 2-1, page 7,  
23 lines 3-6; RT Vol. II, 12:18; RT Vol. I, 143:6; RT Vol. I, 162:21-163:7.)

### 24 **IV. WATER AVAILABILITY**

25 When considering whether to approve an application to appropriate water, the State Board  
26 must determine whether unappropriated water is available to supply the project described in an  
27 application. (Water Code § 1375, subd. (d).) Unappropriated water includes water that has not  
28 been either previously appropriated or diverted for riparian use. (Water Code §§ 1201, 1202.))

1           **A.     Physical Availability**

2           Watermaster provided unequivocal and uncontested evidence that water is available to  
3 supply the project. Watermaster’s hydrologist, Mr. Wildermuth, presented testimony as to his  
4 model analysis regarding water availability. The model used for this analysis is known as the  
5 “waste load allocation model” because it is the model used by the Santa Ana Regional Water  
6 Quality Control Board in setting waste load allocations for the watershed, and was the model used  
7 by the Regional Board in formulating the 2004 Basin Plan Amendments. (CBWM Ex. 2-1, page 4,  
8 lines 14-20; RT Vol. II, 4:22-5:20.)

9           This analysis simulated the amount of water that would be available to Watermaster’s points  
10 of diversion over a 50-year period using historical precipitation and 1993 land use conditions.  
11 (CBWM Ex. 2-1, page 4, line 25 through page 5, line 3.) According to this analysis, the maximum  
12 amount of water that would be available at the points of diversion is approximately 160,000 acre-  
13 feet. (CBWM Ex. 2-1, figure 6; RT Vol. II, 6:24.) This amount is well in excess of the amount  
14 requested by Application 31369, and well in excess of the 110,500 acre-feet requested by  
15 Application 31369 in combination with Watermaster’s existing two permits. Watermaster’s  
16 evidence shows that under its simulated conditions, in five out of the last 50 years, more than  
17 110,500 acre-feet would have been available to Watermaster’s facilities. (RT Vol. II, 9:20-24.)  
18 Watermaster’s evidence further shows that had current (rather than 1993) land-use conditions been  
19 used, the analysis would have shown even more water available at the points of diversion. (CBWM  
20 Ex. 2-1, page 6, lines 13-17; RT Vol. II, 10:17-20.)

21           There was no opposition to any of the evidence presented by Watermaster, nor were any  
22 contrary facts entered into the record by any party.

23           **B.     Beneficial Use in an Erratic and Flashy System**

24           At the hearing, the Hearing Officer asked the applicants to address permitting issues as they  
25 relate to the erratic nature of stream flows in the Santa Ana Watershed. One aspect of this question  
26 concerns the ability to make beneficial use of the available water.

27           The erratic nature of the flow of the creek systems in the Chino Basin does not create an  
28 impediment to the beneficial use of the water appropriated because the Chino Basin contains

1 substantial groundwater storage assets, and all water diverted is intended to be recharged to  
2 underground storage.

3 Groundwater storage is an important component of the management of the Chino Basin. It  
4 is so important that two of the nine OBMP Program Elements concern groundwater storage  
5 management. (CBWM Ex. 1-7, Program Elements Eight and Nine.) The 1978 Chino Basin  
6 Judgment gives Watermaster the authority to control and regulate all use of the storage capacity of  
7 the Chino Basin. (CBWM Ex. 1-5, pp. 8-9.) The groundwater storage resources of the Chino Basin  
8 allow Watermaster to store any water recharged for use in subsequent years. All storm water  
9 recharged will be put to beneficial use by the parties to the Chino Basin Judgment.

10 Watermaster's evidence shows that with the completion of the (CBFIP) the facilities have  
11 the capacity to recharge the full amount of water requested under Application 31369 as well as its  
12 two existing permits. (RT Vol. I, 141-142; CBWM Ex. 1-13.) Construction of the CBFIP was  
13 completed in December 2005. (CBWM Ex. 1-15, page 2-1.) The evidence shows that after the  
14 completion of the CBFIP the capacity of the basins in total was anticipated to be 123,195 acre-feet  
15 per year. (Applicants Joint Ex. 2-19, Table ES-1; RT Vol. I, 141:20-142:16.) During the 05-06  
16 storm season, the Groundwater Recharge Coordinating Committee began to learn about the  
17 operational capabilities of the improved recharge basins and were able to finalize the Operation  
18 Manual. (CBWM Ex. 1-15.) The Operation Manual states that the initial performance of the  
19 facilities is likely to be less than anticipated, but as the facilities come in to full use, the duration of  
20 the maintenance cycles of the facilities is decreased, and "experience is gained towards optimizing  
21 the operation of these basins," the recharge capacity will increase and exceed the amount originally  
22 anticipated.<sup>2</sup> (CBWM Ex. 1-15, page 2-1.) The procedures described in the Operation Manual have  
23 not yet been fully tested since there has been almost no storm flow in the 06-07 storm season.  
24 (CBWM Ex. 1-16.)

25 Because of the flashy and erratic nature of the storm flow in the Chino Basin, the only

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26 <sup>2</sup> Note that the Operation Manual plans for the use of the recharge basins under average conditions and so allocates the  
27 recharge capacity between the three types of water to be recharged: storm water, recycled water, and imported  
28 supplemental water. However, in wet years when more storm water is available, Watermaster will reduce the amount of  
supplemental water that is imported and dedicate the recharge capacity to storm water with the goal of maximizing the  
recharge of storm water. (CBWM Ex. 1-1, 6:11-22.)

1 practical method of use for the water is as recharge to underground storage. However, storm water  
2 recharge always presents operational challenges because public safety considerations inherent in the  
3 flood control functions will always take precedence over recharge. While the erratic nature of the  
4 flows in the Chino Basin may thus create operational challenges for Watermaster, there is no reason  
5 why they should present a beneficial use limitation on the issuance of a permit for the full amount  
6 requested by Watermaster. In fact, Watermaster's evidence shows that any limitation on  
7 Watermaster's ability to divert storm flows when available will inhibit the ability to put the  
8 available water to beneficial use by recharging it in to the groundwater basin. (CBWM Ex. 2-1,  
9 page 7, lines 3-6; RT Vol. II, 12:18; RT Vol. I, 143:6; RT Vol. I, 162:21-163:7.)

10 **C. Previous State Board Decisions**

11 While the Santa Ana River watershed's flashy hydrology may be unique in relation to the  
12 perennial stream flows prevalent in northern California, the issue of high variability of available  
13 water is not. The State Board has dealt with the issue in its permitting capacity in many past  
14 decisions. In addressing the issue, however, the State Board has not constrained itself from  
15 permitting applications in such circumstances.

16 For example:

17 The available information relating to the applications and protests  
18 points to the conclusion that the flow of the sources from which the  
19 applicants seek to appropriate is erratic and uncertain, that  
20 unappropriated water nevertheless exists therein frequently and that  
21 such water, when it exists, may be taken and used beneficially in the  
22 manner proposed by the applicants, without injury to downstream  
23 users...the applications should therefore be approved and permits  
24 issued, subject to the usual terms and conditions.

25 (In the matter of Application 16326 by Crossley and Application 16327 by Crossley to appropriate  
26 water from two Unnamed Streams tributary to Secret Ravine in Placer County (1958) State Board  
27 902, slip copy at p. 10.)

28 Similarly, in Decision 1642, the State Board addressed the Monterey County Water  
Resources Agency's application to increase its storage rights in Nacimiento Reservoir. (*In the  
Matter of Application 30532* (2001) State Board D-1642.) The State Board found that water was  
available for the project in eight of the 43 years that the project had been in operation, and that in

1 those eight years there were 611 days when water in storage exceeded the licensed amount. (Id.,  
2 slip copy at p. 10.) On this basis, the State Board found sufficient water available to supply the  
3 project. (Id., slip copy at p. 13; see also *In the Matter of Application 22980 of Western Lake*  
4 *Properties, Inc., to Appropriate from Big Creek in Tuolumne County* (1968) State Board D-1320,  
5 slip copy at p. 6 [surplus water would be available in 6 out of 42 years].)

6 In Decision 1613, the State Board addressed an application by University Exchange  
7 Corporation to appropriate 490 acre-feet for use as a residential supply. (*In the Matter of*  
8 *Application 26813* (1986) State Board D-1613.) The Goleta Water District protested the application  
9 on public interest grounds, alleging that there may be inadequate water available in dry years. The  
10 State Board found that the amount of water available for appropriation would be inadequate for the  
11 proposed uses in many years, and would be dependant on a supplemental water supply. (Id §4.2.)  
12 Even with a supplemental supply, the State Board found that the volume of water needed by the  
13 proposed residential developments could only be met in 96% of the years, and that in the other 4%  
14 of the years the applicant would depend on a groundwater supply that would cause overdraft to the  
15 groundwater basin. (Id.) The State Board found that these factors were not significant and granted  
16 the permit for the full requested amount.

17 As the evidence at the hearing demonstrated, in order to achieve its average storm water  
18 recharge to underground storage, Watermaster must divert storm water whenever it is available.  
19 (CBWM Ex. 2-1, page 7, lines 3-6; RT Vol. II, 12:18; RT Vol. I, 143:6; RT Vol. I, 162:21-163:7.)  
20 The appropriation of storm water when available, though its reliability may be unpredictable, should  
21 be allowed despite the inability to rely on that supply for a firm amount of water in each year. (See  
22 *In the Matter of Application 22980 of Western Lake Properties, Inc., to Appropriate from Big Creek*  
23 *in Tuolumne County* (1968) State Board D-1320, slip copy at p. 4 [“In a proper case, the Board can  
24 approve an application to divert from a source with no firm yield remaining above diversions  
25 authorized in existing permits, when there is a reasonable expectation that variations in either the  
26 supply or the needs of prior rights will leave unappropriated water in the source in some months or  
27 some years, which water the applicant will be able to use, whenever it occurs.”].)

#### 28 **D. Other Appropriations**

1 Downstream from Watermaster’s points of diversion there are no other legal users of water  
2 other than the Orange County Water District (“OCWD”). Thus, so long as OCWD’s rights are  
3 satisfied, there will be no water rights limitation on the availability of water. In this regard,  
4 OCWD’s rights with respect to the Chino Basin are defined by the 1969 Stipulated Judgment in  
5 *Orange County Water District v. City of Chino*, Orange County Superior Court Case No. 117628.  
6 (Applicants Joint Ex. 2-1.)

7 Watermaster has historically appropriated as much storm water as it could, consistent with  
8 the 1969 Judgment. This, in fact, is the right decreed to the Chino Basin by that Judgment. The  
9 1969 Judgment says that the Upper Area parties have the right, “. . . to divert, pump, extract,  
10 conserve, store and use all surface and ground water supplies originating within Upper Area without  
11 interference or restraint by Lower Area claimants so long as the Lower Area receives the water to  
12 which it is entitled under this Judgment and there is compliance with all of its provisions.”  
13 (Applicants Joint Ex. 2-1, page 10.)

14 So long as OCWD receives the water to which it is entitled under the 1969 Judgment and so  
15 long as there is compliance with all of the Judgment’s provisions, OCWD’s rights do not act as a  
16 limitation on the availability of water for appropriation by Watermaster.

17 It is important to emphasize that within the parameters of the 1969 Judgment as quoted  
18 above, Watermaster’s right to divert storm flows within the Chino Basin is defined not by a limit on  
19 the number of acre-feet that may be utilized, but rather as a duty to deliver a certain minimum  
20 quantity of water to downstream users. The specification through Application 31369 of a specific  
21 acre-foot number to which Watermaster will be limited is thus, in itself, the imposition of a  
22 condition on Watermaster that does not exist under the 1969 Judgment. As discussed below, there  
23 are no resource-based justifications for the imposition of any conditions on Watermaster’s activities.  
24 The only justification for even the condition of a defined acre-foot right is that such a condition is a  
25 necessary feature of the Water Code’s water right system that Watermaster has accepted as an  
26 unavoidable consequence of making use of the State Board’s services.

27 **V. PUBLIC TRUST**

28 Watermaster presented uncontested and unequivocal evidence that its project will have no

1 impact on public trust resources and that there are no limiting conditions that can be put in to  
2 Watermaster’s permit that will have any benefit to public trust resources. As discussed below, this  
3 lack of impact is the result of the particular physical setting of the Chino Basin: all of the channels  
4 in the Chino Basin are concrete lined, and the only impact of the project outside of the Chino Basin  
5 is a small reduction in flow in and near Prado Basin, an area of the Santa Ana Watershed which has  
6 no shortage of water.

7 **A. Flow Analysis**

8 Watermaster diverts water from four creek systems that are tributary to the Santa Ana River.  
9 There is no natural base flow to these creeks, and so the only time water is present is during and  
10 immediately following storm events. (RT Vol. II, 108.) The travel time for water entering the four  
11 creek channels at the base of the San Gabriel mountains until it discharges to the Santa Ana River is  
12 about three to four hours. (RT Vol. II, 108:21.) The operation of the facilities can have the effect of  
13 delaying this travel time to between 12 to 24 hours, after which time the flow in the channels  
14 becomes negligible. (RT Vol. II, 108:8-11.) The reason for these short travel times is that the  
15 channels are concrete-lined with steep gradients. (RT Vol. II, 108:23-109:4.) Apart from these  
16 ephemeral flows, water in the channels is composed of some urban dry weather flow and treated  
17 waste water that is discharged below Watermaster’s points of diversion. (RT Vol. II, 108:8-12.)

18 Watermaster’s hydrologist provided testimony on flow duration curves for each of the four  
19 creek systems in the Chino Basin, as well as for the Santa Ana River mainstem. These flow  
20 duration curves are composite representations of the daily flows of each of the creek systems based  
21 upon 50 years of daily data. (CBWM Ex. 2-1 Figures 7-10; RT Vol. II, 110:12-111:1.) These flow  
22 duration curves simulate the impacts that Watermaster’s proposed appropriation would have had  
23 over the last 50 years of historical flow. According to Watermaster’s testimony, the changes in flow  
24 are generally small and infrequent. (CBWM Ex. 2-1, page 10, lines 15-21; RT Vol. II, 111:23-  
25 112:7; Id. at 112:22-24; Id. at 113:3-5.)

26 Watermaster also provided evidence that even these small changes in flow would be  
27 eliminated under ultimate land use conditions since urbanization downstream of Watermaster’s  
28 points of diversion will result in higher flows reaching the Santa Ana River and that these higher

1 flows will offset the amount that Watermaster recharges into the groundwater basin. (RT Vol. II,  
2 12:7-11.)

3 Finally, Watermaster provided evidence about the cumulative effect of its appropriations in  
4 combination with other Upper Basin applicants' diversions. Flow duration curves were presented  
5 which simulated the change in flow at Riverside Narrows and at Prado Dam. (CBWM Ex. 2-1  
6 Figures 11-12; CBWM Ex. 2-9.) The flow duration curve at Prado Dam simulates the impact of the  
7 diversions by Muni/Western, the City of Riverside, and the Chino Basin Watermaster. (CBWM Ex.  
8 2-9; RT Vol. II, 115:21-24.) These impacts were characterized as not significant within the context  
9 of the overall flow of the Santa Ana River. (CBWM Ex. 2-1, page 10, lines 22-24; RT Vol. II,  
10 116:13-16.)

11 There was no opposition to any of the evidence presented by Watermaster, nor were any  
12 contrary facts entered into the record by any party.

13 **B. CEQA Analysis**

14 Watermaster's storm water recharge project was analyzed by the OBMP PEIR and found to  
15 have no negative impacts. Subsequently a project level Initial Study was performed that resulted in  
16 a Finding of Consistency for the project.

17 With respect to public trust resources, both the OBMP PEIR and the Initial Study found that  
18 the channels in the Chino Basin are primarily concrete-lined flood control channels so that there are  
19 no public trust resources in this area to consider. (CBWM Ex.3-1 page 5:14; CBWM Ex. 3-3 pp. 4-  
20 308 to 4-344 (section 4.8); CBWM Ex. 3-1 page 7:5-10; CBWM Ex. 3-4.) Because of this, the  
21 analysis of public trust impacts of the recharge project focused on potential impacts at Prado  
22 reservoir. (CBWM Ex 3-1 page 5:16.) The analysis found that Watermaster will divert substantially  
23 less than the projected increased flows reaching Prado, so that the net effect will merely be a  
24 smaller increase in flows than would otherwise be the case, with no adverse impact on public trust  
25 resources. (CBWM Ex.3-1 page 5:17-23; CBWM Ex. 3-3 pp. 4-308 to 4-344 (section 4.8).)

26 There was no opposition to the written testimony concerning Watermaster's CEQA  
27 compliance. Because there were no questions to be put to Watermaster's witness concerning such  
28 compliance, at the April 20, 2007 Pre-Hearing Conference Call the Hearing Officer permitted



1 Watermaster to rely solely on the written testimony of this witness. There was no opposition to this  
2 by any party.

3 **C. Supplemental Analysis Regarding Special Species of Concern**

4 For the purpose of the hearing on Application 31369, Watermaster performed supplemental  
5 analyses with regard to special status species that seemed of particular interest to the State Board  
6 and other hearing parties. Watermaster presented the testimony of the leading experts familiar with  
7 the species of concern in the areas that might be affected by the diversions under Application  
8 31369: the four creek systems as they pass through the Chino Basin, Reach Three of the Santa Ana  
9 River and the Prado Wetlands.

10 With respect to the four creek systems as they pass through the Chino Basin, Watermaster's  
11 evidence demonstrated that there is no habitat for any species within the stream channels from  
12 which Watermaster diverts. There is neither riparian habitat nor habitat for the Santa Ana sucker  
13 within these areas. (CBWM Ex. 4-1, 3:7-12; RT Vol. II, 146:10-23; CBWM Ex. 6-1, 3:13-23; RT  
14 Vol. II, 154:5-14, 156:13-16.) Furthermore, the United States Fish and Wildlife Service's  
15 designation of critical habitat for the San Bernardino Kangaroo Rat within the northern portion of  
16 the Chino Basin specifically excludes Watermaster's northernmost diversion facilities, and there is  
17 no designated critical habitat for any species south of this point. (CBD Ex. 2; RT Vol. II, 148:7-  
18 149-5.) Watermaster presented evidence that there is no potential for Watermaster's appropriations  
19 to impact habitat upstream from its points of diversion. (RT Vol. II, 149:6-11.) There was no  
20 opposition to this evidence, nor were any contrary facts entered in to the record by any party.

21 1. Riparian Habitat and Avian Species

22 With respect to Reach Three and Prado Wetlands, Mr. Tony Bomkamp testified that  
23 Watermaster's diversions will have no impact on riparian habitat. (CBWM Ex. 4-1, 8:21-10:4; RT  
24 Vol. II, 150:24.) Mr. Bomkamp performed a water budget analysis which calculated the amount of  
25 water required by the riparian species within Reach Three and Prado Wetlands and then compared  
26 this amount with the amount of water actually available in these areas. (RT Vol. II, 122:10 –  
27 124:23.) This methodology was utilized by Mr. Bomkamp for his analysis of both the City of  
28 Riverside's project and well as for the Chino Basin in order to provide an analysis of the cumulative

1 effect of both of these projects. (RT Vol. II, 144:18-21; 149:19-23.)

2 The analysis focused on the water needs of the willow because the water needs of this  
3 species are larger than any other relevant species in the study area. (RT Vol. II, 145:18-146:1.) It  
4 also focused on the habitat needs of the Least Bell's vireo with respect to this riparian habitat  
5 because the vireo serves as an umbrella species for all other avian species of concern in the study  
6 area. (RT Vol. II, 145:5-14.) The evidence shows that in the area of Reach Three above the Prado  
7 Wetlands, there is approximately 18 times more water present than is required by the riparian  
8 habitat. (RT Vol. II, 124:21-23.) With respect to the Prado Wetlands, the evidence shows that even  
9 with both the Riverside and the Chino Basin diversions, there is still, on average, more than 260,000  
10 acre-feet of water in excess of that needed by the riparian habitat. (RT Vol. II, 126:6-13.)  
11 Consequently, Watermaster's proposed project will have no impact on the Least Bell's vireo nor  
12 any other special status avian species. (RT Vol. II, 126:16-19; 145:2-146:9.) Because there is such  
13 a large amount of treated effluent in the Santa Ana River system, the timing of the storm flows does  
14 not have a significant effect on this analysis. (RT Vol. II, 151:11-22.)

15 The evidence shows that the conclusion regarding lack of impacts will be true even when  
16 Watermaster's appropriations reach the full amount requested. This is because when there is  
17 increased water available in the Chino Basin, there is also increased water throughout the Santa Ana  
18 Watershed, and even though Watermaster's appropriations may increase, the flows in Reach Three  
19 and Prado will also be increasing and Watermaster's percentage impact on the overall flows will  
20 actually decrease. (RT Vol. II, 150:6-24.) Similarly, in dry years Watermaster's appropriations will  
21 have a decreased percentage impact because in such years the flows in Reach Three and Prado are  
22 fed almost exclusively by wastewater discharges. (RT Vol. II, 151:2-22.)

23 Watermaster's evidence shows that even if Watermaster were to divert and recharge all of  
24 the flows in the creek systems, that there will be no adverse impact on Reach Three or the Prado  
25 Wetlands. (RT Vol. II, 151:23-152:14.) Watermaster's evidence shows that there are no limitations  
26 that can be placed on Watermaster's appropriations that will have any benefit to riparian habitat or  
27 avian species. (Id.)

28 There was no opposition to any of this evidence, nor were there any questions from staff.

1 (RT Vol. II, 157:24 – 158:4.) No party introduced any contrary evidence in to the record.

2 2. Santa Ana Sucker

3 With respect to the Santa Ana Sucker, Reach Three and the Prado Wetlands do not provide  
4 suitable habitat. (CBWM Ex. 6-1, 3:24-4:1; RT Vol. II, 157:2-14.) Dr. Jonathan Baskin testified  
5 that Reach Three was generally poor habitat for the Santa Ana Sucker because it is more than 90%  
6 sand substrate. (RT Vol. II, 141:11-16.) Dr. Baskin further testified that flows in Reach Three are  
7 currently higher than is suitable for the Santa Ana Sucker. (RT Vol. II, 142:6-16.) Prado Basin is  
8 also not suitable habitat because of the predominance of standing water which is contrary to the  
9 habitat needs of the sucker. (RT Vol. II, 139:20-22.)

10 Dr. Jeffrey Beehler, administrator of the Santa Ana Watershed Project Authority’s Santa  
11 Ana Sucker Conservation Team, testified that Watermaster’s project will not cause any direct  
12 impact to the Santa Ana Sucker by, for example, drawing suckers in to Watermaster’s diversion  
13 facilities. (RT Vol. II, 153:20-154:8.) This is because the sucker does not inhabit the concrete  
14 channels within the Chino Basin. (Id.)

15 The testimony analyzed the mouths of the four creek systems where the concrete-lined  
16 portions end, and found that none of them offer suitable sucker habitat. Chino Creek and  
17 Cucamonga Creek both are low gradient, rip-rapped channels with silty bottoms that empty directly  
18 into Prado Basin. (RT Vol. II, 155:8-13.) Prado Basin acts as a barrier against the suckers because it  
19 is standing water that is habitat for a number of invasive species which prey on the sucker. (RT Vol.  
20 II, 155:12-16.) This testimony is consistent with the analysis provided by Dr. Baskin. (RT Vol. II  
21 142:17-24.) The short unlined area at the mouth of Day Creek was also shown to be relatively flat  
22 and silty, with unreliable flows. (RT Vol. II, 155:20 -156:4.) Similarly, the short unlined area at the  
23 mouth of San Sevaine Creek was also shown to be flat, sandy and containing large barriers to fish  
24 movement. (RT Vol. II, 156:6-12.)

25 Watermaster’s project will not adversely affect the sucker in Reach Three itself. (CBWM  
26 Ex. 6-1, 4:8-10; RT Vol. II, 156:13-157:14.) This is because the limiting factor for the sucker  
27 within the Santa Ana River is sufficient habitat and not the availability of adequate flows, and  
28 Watermaster’s project will not affect the availability of habitat. (CBWM Ex. 6-1, 4:3-7; RT Vol. II,

1 156:20-22, 157:6-14.)

2 Based on the lack of impacts from Watermaster’s appropriations under Application 31369,  
3 Watermaster’s evidence shows that there are no limitations that can be placed on Watermaster’s  
4 appropriations that will have any benefit to the Santa Ana Sucker. (RT Vol. II 157:15-19.)

5 There was no opposition to any of this evidence, nor were there any questions from staff.  
6 (RT Vol. II, 157:24 – 158:4.) No party introduced any contrary evidence into the record.

7 **D. Public Trust in an Erratic and Flashy System**

8 One aspect of the Hearing Officer’s concern over the erratic and flashy nature of the system  
9 was how to formulate permit terms that would be protective of the public trust. (RT Vol. I, 254:1-  
10 23.) This concern is founded on the assumption that some measure of limitation on the  
11 appropriation by the permittee may be appropriate in order to protect public trust values; the  
12 difficulty of formulating a permit term in an erratic system only manifests itself if it is necessary to  
13 find a way to define how much water *cannot* be diverted. As shown by Watermaster’s evidence, this  
14 issue does not arise in the Chino Basin. In any given year, Watermaster can divert and recharge all  
15 of the storm water in the system, and this activity will not harm public trust values, and may even  
16 create a public trust benefit. Since there are no permit terms that will be protective of the public  
17 trust with respect to the Chino Basin, the issue of how to formulate such terms with regard to the  
18 erratic nature of the stream flows does not arise.

19 **VI. PUBLIC INTEREST**

20 The State Board is to allow the appropriation for beneficial purposes of unappropriated  
21 water under such terms and conditions as in its judgment will best develop, conserve, and utilize in  
22 the public interest the water sought to be appropriated. (Water Code § 1253.) In determining  
23 whether an appropriation of water is in the public interest, the State Board shall give consideration  
24 to any general or coordinated plan looking toward the control, protection, development, utilization  
25 and conservation of the water resources of the State. (Water Code § 1256.)

26 The storm water recharge project described in Application 31369 is one component of  
27 Watermaster’s Recharge Master Plan. (CBWM Ex. 1-1, pp. 6-7.) The Recharge Master Plan  
28 implements Program Element Two of Watermaster’s OBMP. The OBMP is a comprehensive and

1 integrated groundwater management program for the Chino Basin that functions as the Physical  
2 Solution under the 1978 Judgment. When implementation of the OBMP began in 2000, the Santa  
3 Ana Watershed Project Authority named the program “Integrated Project of the Year.” (CBWM  
4 Ex. 1-1, p. 5.)

5 As its name indicates, the purpose of the OBMP is to provide a management program for the  
6 Chino Basin that will optimize the use of the Basin for the wide variety of beneficial uses there.  
7 The water appropriated under Application 31369 will be recharged into the Chino Basin and put to  
8 use for municipal, agricultural and industrial uses by the 800,000 people who live and work in the  
9 Basin area. (RT Vol. II, 21:24-22:8.)

10 In addition, in acting upon an application to appropriate water, the State Board shall  
11 consider water quality control plans which have been established pursuant to Division Seven of the  
12 Water Code. (Water Code § 1258.)

13 On September 30, 2004, the State Board approved the most recent set of amendments to the  
14 Santa Ana Region Basin Plan. These amendments included an innovative program to encourage the  
15 use of recycled water in selected places within the Santa Ana Watershed, most notably in the Chino  
16 Basin. The central feature of these amendments is the inclusion of what are known as the  
17 “Maximum Benefit Standards” which provide for greater assimilative capacity in the Chino Basin  
18 thereby allowing for increased recycled water use and recharge. (CBWM Ex. 1-8: Attachment to  
19 Resolution No. R8-2004-0001, pp.52-53; CBWM Ex. 1-1. pp.5:10-6:22.) In exchange for the  
20 ability to utilize the Maximum Benefit Standards, the parties in the Chino Basin committed to  
21 implement a suite of water quality improvement measures. One of the measures specifically  
22 identified is the storm water recharge project that is the subject of Application 31369. (CBWM Ex.  
23 1-8: Attachment to Resolution No. R8-2004-0001, page 58, item numbered “5”; *see also* Water  
24 Code § 1257). In order to recharge recycled water, Watermaster must recharge a prescribed amount  
25 of storm water to meet blending requirements. (CBWM Ex. 1-1, p. 6; CBWM Ex. 1-8; CBWM Ex.  
26 2-7; CBWM Ex. 2-4; RT Vol. III, 23:22-24:7.) Without the recharge of storm water, Watermaster’s  
27 recharge of recycled water will be limited unless Watermaster can import an amount of water that  
28 will have an equivalent function as a dilutant. Such a scenario will require additional importation of

1 water from the Bay-Delta through the State Water Project. (CBWM Ex. 1-1, p. 9; RT Vol. III,  
2 22:17-23-:1; see CBWM Ex. 2-1, p. 11.) It cannot be in the public interest to compel a community  
3 to unnecessarily forego the use of available local resources and to instead increase its reliance on  
4 imported supplies whose reliability may be in question.

5 Watermaster provided unequivocal evidence that any permit conditions that limit  
6 Watermaster's flexibility will have a negative impact on the public interest values of Watermaster's  
7 project. (RT Vol. III, 22:17-23:1; 24:8-14.) There was no opposition to any of this evidence. No  
8 party introduced contrary evidence into the record.

9 **VII. GROUNDWATER QUALITY**

10 **A. Watermaster's Project Will Have a Beneficial Impact on Groundwater Quality**  
11 **in the Chino Basin**

12 Watermaster presented uncontested and unequivocal evidence that Watermaster's recharge  
13 of increased amounts of storm water to the Chino Basin will improve groundwater quality within  
14 the Basin. (CBWM Ex. 1-1, p. 7; CBWM Ex. 1-12, p. ES-2.) The Initial Study for the storm water  
15 recharge project found that the recharge of high quality storm water into the Chino Basin will have  
16 a beneficial impact on the groundwater quality in the Basin. (CBWM Ex. 3-4, page 49; CBWM Ex.  
17 3-1, page 6, line 16.) Watermaster's extensive water quality monitoring activities have  
18 demonstrated this to be the case. (CBWM Ex. 3-1, p. 11; see CBWM Ex. 2-7, p. 6-1.)

19 **B. Watermaster's Project Will Not Have Any Effect on the Movement of any**  
20 **Contaminated Groundwater Plumes**

21 Watermaster presented uncontested and unequivocal evidence that its recharge of storm  
22 water under Application 31369 will not cause the plumes of contamination in the Chino Basin to  
23 move differently than they are already moving. Watermaster has conducted extensive modeling of  
24 the movement of the contaminant plumes within Chino Basin. (CBWM Ex. 2-1, p. 18, Figures 14,  
25 15; CBWM Ex. 2-3; RT Vol. III, 71:9-20.) This analysis demonstrates that plume movement within  
26 the Basin will be virtually the same with or without Watermaster's anticipated recharge under  
27 Application 31369. (CBWM Ex. 2-1, pp. 18, 19; RT Vol. III, 75:19-22, 78:14-19.)  
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1           **C.     Watermaster and the RWQCB Are Already Addressing All the Plumes in the**  
2           **Chino Basin.**

3           Pursuant to Program Element Six of the OBMP, Watermaster works closely with the  
4 RWQCB to address the plumes of contamination in the Chino Basin. (RT Vol. III, 77:5-78:13.) In  
5 addition to Watermaster’s oversight of these plumes pursuant to the OBMP, the remediation of each  
6 plume in the Basin is the subject of remediation effort under additional state or federal supervision.  
7 (CBWM Ex. 7-1, Exhibit “B”; see also CBWM Ex. 2-1, pp. 12-18.) A summary of efforts currently  
8 underway to remediate the plumes in the Chino Basin was attached as Exhibit “B” to CBWM Ex. 7-  
9 1. A copy is also attached to this closing brief as Exhibit “C.”

10       **VIII. PROPOSED FINDINGS**

- 11       1.     There is adequate water available for appropriation under Application 31369 in combination  
12 with Watermaster’s existing Permits 19895 and 20753.
- 13       2.     There is no water availability basis for limiting or conditioning Watermaster’s appropriation.
- 14       3.     The appropriated water will be put to beneficial use.
- 15       4.     There is no beneficial use basis for limiting or conditioning Watermaster’s appropriation.
- 16       5.     The water is available year round, though it occurs in the greatest quantities during the  
17 winter and spring months. The conditions under which the water is available for appropriation  
18 relate almost exclusively to precipitation conditions, though also to flood control operations.
- 19       6.     There is no basis for limiting Watermaster’s season of use.
- 20       7.     Approval of Application 31369 will not result in any adverse impacts to water quality, the  
21 environment or public trust resources.
- 22       8.     There is no public trust basis for limiting or conditioning Watermaster’s appropriation.
- 23       9.     The project proposed by Application 31369 is in the public interest, and any limitations  
24 imposed on Watermaster’s ability to divert and recharge storm water will detract from the public  
25 interest.
- 26       10.    The rights of other users of water and the priority of those rights are fully defined in the  
27 judgments and agreements described in the Stipulation of Applicants on file with the State Board.
- 28       11.    The Santa Ana Watershed has a well-developed and complex system for the integrated

1 regional management of the Santa Ana River, and for the administration of the rights of the parties  
2 of the watershed to use the River and its tributaries.

3 12. In the Santa Ana Watershed, the most effective manner by which the State Board can fulfill  
4 its statutory and common law duties is to give a high level of deference to the existing judgments  
5 and agreements.

6 13. The project proposed by Application 31369 will have a beneficial impact on the  
7 groundwater of the Chino Basin.

8 14. The project proposed by Application 31369 will not have any negative impact on the  
9 movement of any contaminated groundwater plumes.

10 15. There is no water quality basis in the record for limiting or conditioning Watermaster's  
11 appropriation.

12 16. Continued implementation of OBMP Program Element Six is adequate to provide water  
13 quality protections within the Chino Basin.

14 17. Because of the erratic nature of storm flows in the Santa Ana Watershed, it is appropriate to  
15 utilize a modified approach to defining the period of development and use.

16 18. The Optimum Basin Management Program constitutes an integrated and comprehensive  
17 management plan for the water resources of the Chino Basin.

18 **IX. PROPOSED PERMIT TERMS**

19 Attached to this closing brief as Exhibit "A," is a proposed permit that is based on the  
20 discussion contained in this closing brief and upon the model provided by Watermaster's two  
21 existing permits. The proposed permit is composed primarily of standard State Board permit terms,  
22 though in some respects these standard permit terms have been modified in an attempt to tailor the  
23 permit to the particular conditions of the Santa Ana Watershed and in an attempt to integrate the  
24 permit in to the existing integrated regional management of the watershed. The discussion below  
25 provides an explanation for each of the areas where the proposed permit deviates from standard  
26 State Board permit terms.

27 **A. Deference to the Existing Integrated Regional Management of the Santa Ana**  
28 **Watershed (Proposed Permit Terms 12 and 13)**



1           1.       Policy Background

2           Pursuant to the California Supreme Court’s decision in *National Audubon Society v.*  
3 *Superior Court* (1983) 33 Cal.3d 419, superior courts and the State Board have concurrent original  
4 jurisdiction in cases involving water issues. (*Id.* at 451.) However, under the rule of exclusive  
5 concurrent jurisdiction, when two tribunals have concurrent jurisdiction over the subject matter and  
6 all parties involved in litigation, the first to assume jurisdiction has exclusive and continuing  
7 jurisdiction over the subject matter and all parties involved until such time as all necessary related  
8 matters have been resolved. (See *Plant Instruction Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d  
9 781, 786-87 In the present case the Superior Court, through the 1969 Judgment, retained this  
10 “exclusive and continuing jurisdiction.”

11           Any decision of the State Board as to the Applications at issue in this proceeding may not  
12 conflict with the provisions of the 1969 Judgment. In *Environmental Defense Fund Inc. v. East Bay*  
13 *Municipal Utility District* (1980) 26 Cal.3d 183, the Supreme Court faced a situation on the  
14 American River where both a Superior Court and the State Board were exercising jurisdiction. In  
15 that case the court held that even though the State Board had retained jurisdiction to consider the  
16 diversion point of an appropriation, the Superior Court could exercise jurisdiction over claims  
17 involving reasonable use of water under Article X, Section 2 of the California Constitution. (*Id.* at  
18 199-200.) Here even though the State Board has authority to permit applications to appropriate  
19 surface waters, it can not deprive the Superior Court of its exclusive retained jurisdiction over the  
20 allocation of waters between the parties to the 1969 Judgment.

21           In the judicial adjudication involving all of the waters of Putah Creek, the State Board has  
22 addressed the issue of how to exercise its jurisdiction concurrently with the Superior Court. In *In*  
23 *the Matter of Modification of Appropriative Water Rights Subject to Condition 12* (1996) State  
24 Board Order WR 96-002, the State Board faced a situation on Putah Creek where the Superior  
25 Court was adjudicating the water rights of over 2,000 water users. After months of negotiations, the  
26 parties reached an agreement as to how to exercise their water rights. The State Board found that:

27                           In the coordinated actions in the Sacramento County Superior Court,  
28                           both the SWRCB and the court have concurrent jurisdiction over the  
                              post-1914 appropriative water rights issued by the SWRCB. The

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SWRCB is requested to amend the terms and conditions in appropriative rights to give effect to the terms of the Agreement...

In order to avoid the possibility that post-1914 appropriative rights could be subjected to inconsistent mandates from the SWRCB and the court, the SWRCB should review any and all orders of the court implementing the provisions of the Agreement. If it appears that the order of the court and the SWRCB impose inconsistent mandates on appropriative water rights, the SWRCB should consider amending the requirements set forth by this order. (*Id.* at 48-49.)

In the present matter, as the existing framework created by the 1969 Judgment has served the parties well in the nearly 40 years since its issuance, the State Board’s decision as to the applications at issue should be consistent with the terms of the 1969 Judgment.

As the Board noted in *Solano Irrigation Districts v. All Appropriative Water Rights Holders in Upper Basin* (1994) Cal. Env. Lexis 8, June 2, 1994, a matter also involving Putah Creek, it is a difficult situation where both the State Board and a court have jurisdiction over a stream system.

However, the State Board added:

Having expressed this reservation, the SWRCB hastens to add that it is also sensitive to the problem presented by its concurrent jurisdiction with the Court and will make earnest effort to avoid conflict with the decision of the Court whenever possible. (*Id.* at 61.)

2. Permit Terms Recognizing Existing Institutional Framework

The April 5, 2007 Stipulation of the Applicants represents a summation of the complex and highly developed institutional framework that exists in the Santa Ana Watershed for the administration of water rights. This system has been evolving over several decades and integrates the management of both surface and groundwater. The system also incorporates water quality considerations in to the water rights decision-making process.

This system, administered by three separate watermaster bodies, forms the foundation upon which Integrated Regional Water Management (“IRWM”) in the Santa Ana Watershed occurs. Joint testimony was presented on behalf of all applicants that the State Board should take this opportunity to demonstrate its support for IRWM by encouraging the process that has evolved in the Santa Ana Watershed. (Joint Exhibit 1-1, pp. 9-10; RT Vol. I, 99:11-22.)

The State Board should recognize and encourage the system that has developed in the Santa Ana Watershed through the inclusion in all permits of Standard Permit Terms 23 and/or 24, and N.



1 *Bernardino County No. 164327<sup>3</sup>, and the stipulated judgment in Orange County Water District v.*  
2 *City of Chino Case No. 117628, insofar as such adjudicated rights are maintained.*

3 Standard Permit Term 24 allows the State Board to incorporate private agreements among  
4 the parties. The State Board should utilize both these approaches and incorporate the April 5, 2007  
5 stipulation in its entirety and as an operative term into each of the parties' permits.

6 Finally, under Permit Term N, the State Board should acknowledge that the Santa Ana River  
7 Watermaster, and the two additional local Watermasters, already administer a complex system of  
8 water rights. Permit Term N recognizes that in adjudicated areas such administration can serve as a  
9 logical and efficient extension of the administration by the State Board. The State Board should  
10 take advantage of this precedent and become, as Mr. Dendy testified, a "partner" in the existing  
11 process in the Santa Ana Watershed. (RT Vol. I, 11-22.) The State Board should acknowledge the  
12 primary responsibility for administration of water rights in the watershed by the three existing  
13 Watermaster entities and should reserve for itself an oversight role that will come in to play only if  
14 the existing system should somehow fail.

15 Proposed Permit Terms 12 and 13 accomplish this goal by incorporating the Stipulation of  
16 the Parties in to the permit as an operative element, and by establishing the Santa Ana Watermaster  
17 as the primary entity to which the permittees will report. Watermaster recommends that these permit  
18 elements be incorporated into each of the Applicant's permits.

19 **B. Incorporation of Existing OBMP Program Elements (Proposed Permit Terms**  
20 **10, 11 and 13)**

21 Permit terms included in Watermaster's existing two permits require the installation of  
22 adequate measuring devices prior to the diversion of water (Permit 19895, Term 15; Permit 20753,  
23 Term 14) and specify that allowed diversions under the permits may be altered if necessary in order  
24 to meet the water quality objectives contained in a water quality control plan (Permit 19895 Term  
25 13; Permit 20753, Term 12).

26 As described in the written testimony of Mr. Malone, Watermaster has an extensive  
27 monitoring program under OBMP Program Element One through which Watermaster gathers a

28 <sup>3</sup> Case No. 164327 has subsequently been renumbered by the San Bernardino Superior Court as Case No. RCV 51010.

1 wide variety of types of data about all aspects of the water resources of the Chino Basin. (CBWM  
2 Ex. 5-1.) Watermaster already has a detailed set of monitoring activities relating to the diversion  
3 and recharge of water at the recharge basins. (CBWM Ex. 5-1, pp. 19-22.) These monitoring  
4 activities include both water quantity and water quality parameters.

5 OBMP Program Element Six (Develop and Implement Cooperative Programs with the  
6 Regional Board and Other Agencies to Improve Basin Management) relates directly to water quality  
7 issues, and specifically relates to the Regional Board Water Quality Control Board. Additionally, as  
8 described at length above, the storm water recharge project described by Application 31369 is  
9 specifically identified in the most recent Basin Plan for the Santa Ana Region as a mitigation  
10 measure for the use of recycled water. Since a management program already exists, it will be more  
11 effective for the permit to simply reference these existing activities rather than trying to create  
12 something new.

13 The State Board can rely upon these existing management elements without involving itself  
14 in enforcement issues because ultimately enforcement of the OBMP commitments remains with the  
15 court overseeing Watermaster. (RT Vol. I, 133:8-14; CBWM Ex. 1-5; CBWM Ex. 1-9; CBWM Ex.  
16 1-10.)

17  
18 **C. Permit Terms Responsive to Erratic and Flashy Nature of Creek System**

19 **1. Diversion Quantity (Proposed Permit Term 5)**

20 The evidence shows that Watermaster is capable of diverting and recharging the storm water  
21 when it is available. Watermaster's testimony demonstrated the overwhelming positive features of  
22 recharging as much of the available storm water as possible. However, the number of variables  
23 involved in predicting how much of any given storm event will be able to be recharged is virtually  
24 impossible. The permit should acknowledge this reality and not attempt to define limits beyond the  
25 gross quantity of water to be diverted and the potential diversion rate of the facilities. Beyond this,  
26 Watermaster should be left with the flexibility to make best efforts to recharge as much of this water  
27 as possible. This is true especially since any water that is not able to be recharged simply returns to  
28 the channel from which it was diverted a very short time later. (RT Vol. II, 108:17-109:11.)

1           2.       Modified Period of Use and Development (Proposed Permit Term 7)

2           The question of the erratic and flashy nature of the Santa Ana Watershed was put to the  
3 hearing participants in the context of a challenge with regard to the formulation of permitting terms.  
4 With respect to the Chino Basin, the issue of the erratic nature of the flows should not pose an issue  
5 with regard to the formulation of a permit because there are neither beneficial use nor public trust  
6 concerns with Watermaster’s diversion activities, even if Watermaster is simply given the discretion  
7 and the flexibility to divert and recharge as much water as it can, whenever it is available. Rather,  
8 the challenge of the erratic availability of water presents a challenge with regard to defining the  
9 manner in which Watermaster may perfect its permit into a license.

10           In a more traditional stream system, an applicant receives a permit and then proceeds to  
11 construct a project to appropriate water. A limited period of development and use is imposed on the  
12 applicant so that water resources are not inappropriately tied-up and kept from being put to  
13 maximum beneficial use. With respect to the Chino Basin, this concern does not exist.  
14 Watermaster’s project is a project proposed on behalf of the universe of potential water users, and it  
15 is a project that has already been implemented.

16           Application 31369 requests the ability to divert and recharge 68,500 acre-feet per year. This  
17 amount, when combined with Watermaster’s existing permits, will give Watermaster the right to  
18 divert and recharge 110,500 acre-feet per year. Watermaster did not apply for the maximum amount  
19 that its evidence shows will be available. (CBWM Ex. 2-1, Figure 6.) Rather, Watermaster  
20 formulated its request based on a reasonable expectation about the capacity of its facilities and a  
21 reasonable expectation about precipitation conditions. However, it is impossible to know when  
22 there will again be sufficient water available in the system to allow Watermaster to appropriate the  
23 full amount of its permit and subsequently apply for a license for the full permitted amount.  
24 Watermaster should not be held subject to the vagaries of the weather patterns when there is no  
25 benefit that will be derived from such a limitation.

26           Proposed Permit Term 7 resolves this problem by allowing Watermaster to request a license  
27 on its permit when it can make a credible demonstration that the facilities have the capacity to  
28 appropriate the full amount of the permit. Because it is likely that such a demonstration will require

1 some level of operation during high flow periods, the proposed permit term gives Watermaster a 50-  
2 year period in which to make this demonstration. 50 years was chosen because this is the statistical  
3 period modeled in Watermaster's water availability analysis, which analysis showed that over the  
4 course of such a period there is a 10% chance that water will be available in sufficient quantity to  
5 satisfy the full amount of Watermaster's requested appropriation.

6 3. Administration of Rights and Coordination Between Legal Users of Water (Proposed  
7 Permit Term 12)

8 Ultimately, the incorporation of the existing system of management and administration is the  
9 best way for the State Board to craft permit terms that take account of the flashy and erratic nature  
10 of the system. (*See* Water Code § 380.) The existing system evolved in response to the particular  
11 conditions in the Santa Ana Watershed, including the erratic and flashy nature of the River and its  
12 tributaries. This system can be incorporated into the permit by incorporation of the Stipulation of  
13 the Applicants as an operative terms as recommended in Proposed Permit Term 12.

14 ///

15 ///

16 ///

17 **X. CONCLUSION**

18 Watermaster's Application 31369 should be granted as requested without conditions except  
19 as discussed herein.

20 Dated: June 6, 2007

HATCH & PARENT

21  
22  
23 By: /s/ Michael T. Fife  
MICHAEL T. FIFE  
BRADLEY J. HERREMA  
Attorneys for Attorneys For  
24 CHINO BASIN WATERMASTER  
25  
26  
27  
28

**[PROPOSED]**

State of California

State Water Resources Control Board  
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT \_\_\_\_\_

Application 31369 of the Chino Basin Watermaster (9641 San Bernardino Road, Rancho Cucamonga, CA 91730) filed on September 21, 2000, has been approved by the State Water Resources Control Board subject to the limitations and conditions of this Permit.

Chino Basin Watermaster is hereby authorized to divert and use water as follows:

1. Source:

San Antonio Creek System (including San Antonio Creek and Chino Creek), Cucamonga Creek System (including Cucamonga Creek, West Cucamonga Creek and Deer Creek), Day Creek System, San Sevaine Creek System (including San Sevaine Creek, West Fontana Channel, Declaz Channel, and Etiwanda Creek).

All creeks are tributary to the Santa Ana River.

2. Location of Points of Diversion:

SEE ADDENDUM

Counties of San Bernardino and Riverside.

3. Purpose of use:

Recharge to storage in the Chino Groundwater Basin for the purpose of supply augmentation and for blending with recycled water. End uses of recharged water include: Municipal, Irrigation, Stockwatering, and Industrial

4. Place of use:

The jurisdictional area of the Chino Basin Watermaster as defined in Exhibit A (by map) and Exhibit K (by legal description) of the stipulated judgment in the case *Chino Basin Municipal Water District v. City of Chino*, San Bernardino Superior Court Case No. RCV 51010.



5. The water appropriated shall be limited to a quantity of 68,500 acre-feet per year at a maximum rate of 115,570 cubic feet per second distributed throughout the points of diversion as described in the ADDENDUM, from January 1 to December 31. Watermaster will make best efforts to recharge all water appropriated into the Chino Groundwater Basin.
6. The amount authorized for appropriation may be reduced in the license if investigation warrants.
7. Chino Basin Watermaster may request a license to be issued when Watermaster is able to demonstrate that operationally and physically the facilities have the capability to appropriate the full amount of the permit. Such a demonstration shall not depend on an actual appropriation of that amount of water so long as the reason such an appropriation has not occurred is solely because of precipitation conditions or flood control operational decisions. Chino Basin Watermaster shall complete this demonstration within 50 years of the issuance of this permit.
8. Progress reports shall be submitted promptly by Chino Basin Watermaster when requested by the State Water Resources Control Board until a license is issued.
9. Chino Basin Watermaster shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.
10. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the public interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Resources Control Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of the Chino Basin without unreasonable draft on the source. The Chino Basin Watermaster may be required to implement or facilitate the implementation of a water conservation plan, and operate efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. It is recognized by this permit that such measures are already underway by the Chino Basin Watermaster, the parties to the stipulated judgment in the case *Chino Basin Municipal Water District v. City of Chino*, San Bernardino Superior Court Case No. RCV 51010, and pursuant to the Chino Basin Watermaster's Optimum Basin Management Program ("OBMP"). No action will be taken pursuant to this paragraph unless the State Water Resources Control Board

determines, after notice to the affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Resources Control Board may be exercised by imposing further limitations on the diversion and use of water by the Chino Basin Watermaster in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to the affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

11. The Chino Basin Watermaster shall continue to implement its water quality program under OBMP Program Element Six (Develop and Implement Cooperative Programs with the Regional Board and Other Agencies to Improve Basin Management).

This permit shall be construed to allow the Chino Basin Watermaster to comply with the terms of the 2004 Santa Ana Regional Water Quality Control Board's resolution R802004-0001 that amended the Water Quality Control Plan for the Santa Ana Region with respect to the requirement to recharge stormwater into the groundwater basin and as reflected in permit R8-2005-0033 Water Recycling Requirements for Inland Empire Utilities Agency and Chino Basin Watermaster, Phase I Chino Basin Recycled Water Groundwater Recharge Project, and similar permits that may be issued regarding the recharge of recycled water and as these permits may from time to time be amended.

12. Rights under this permit are, and shall be, specifically subject to existing rights determined by the judgments and agreements as described by that "Stipulation of the Applicants" on file with the State Water Resources Control Board and made a part of the official record relating to this permit through submission to the State Water Resources Control Board by Watermaster, et al. on April 5, 2007.

Diversion of water under this permit shall be subject to regulation by the court maintaining continuing jurisdiction over the case *Chino Basin Municipal Water District v. City of Chino*, San Bernardino Superior Court Case No. 51010, and by the watermaster appointed to enforce the terms of the stipulated judgment in the case *Orange County Water District v. City of Chino*, Orange County Superior Court Case No. 117628.

The terms of this permit shall be construed as consistent with the judgments and agreements as described in the Stipulation of the Applicants, and as those judgments and agreements may be amended from time to time. Provided, however, that enforcement of such judgments and agreements shall be solely the responsibility of the watermasters and courts associated with such judgments and agreements.

13. The Chino Basin Watermaster shall continue to implement its comprehensive monitoring program under Program Element One of the OBMP. Watermaster shall provide its recharge and production monitoring data to the Santa Ana Watermaster on an

annual basis. Watermaster will ensure that if the State Water Resources Control Board requires the reporting of any such data either under this permit or under any license granted based on this permit, that such reporting is provided to the Board by the Santa Ana River Watermaster.

14. This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code). In respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of the sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

**CHINO BASIN WATERMASTER  
APPLICATION 31369 POINTS OF DIVERSION**

Spreading Facility	Basin Type	Diversion Name	Easting <sup>2</sup>	Northing <sup>2</sup>	Point is Within	Section	Township	Range	Base and Diversion Meridian	Name	Conduit	Stormwater Recharge Rate of Diversion (cfs)	Annual Amount (acre-Hr/yr)	Spreading Area (Acres)
<b>Chino Creek (San Antonio Creek) System</b>														
College Heights	FB	San Antonio Creek Inlet	6653870	1861320.7	NW 1/4 of NW 1/4 of	11	01S	08W	S.B.B.M.	San Antonio Creek Inlet	3 - 5' x 5' reinforced concrete culvert, 150' long, 2% slope	290	420	10
Upland Basin	FT	Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies	690	2,500	32
Montclair 1	Bksh	San Antonio Creek Inlet	6652040.1	1855859.9	NE 1/4 of NE 1/4 of	15	01S	08W	S.B.B.M.	San Antonio Creek Inlet	48" reinforced concrete pipe, 80% slope	1,400	1,870	9
		Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies			
Montclair 2	FT	Outlet from Montclair 1	6651927.8	1854846.5	NE 1/4 of NE 1/4 of	15	01S	08W	S.B.B.M.	Outlet from Montclair 1	Concrete spillway	2,220	1,300	13
		Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies			
Montclair 3	Bksh	San Antonio Creek Inlet	6651423.5	1853334.9	NW 1/4 of SE 1/4 of	15	01S	08W	S.B.B.M.	San Antonio Creek Inlet (proposed)	3 - 5' x 5' reinforced concrete culvert, 150' long, 2% slope	2,390	680	5
		Outlet from Montclair 2	6651675.5	1853570.8	NW 1/4 of NE 1/4 of	15	01S	08W	S.B.B.M.	Outlet from Montclair 2	Concrete spillway			
		Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies			
Montclair 4	FT	Outlet from Montclair 3	6651331	1852356.3	NW 1/4 of SE 1/4 of	15	01S	08W	S.B.B.M.	Outlet from Montclair 3	Concrete spillway	2,400	1,070	8
		Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies			
Brooks	FT	San Antonio Creek Inlet	6647789.6	1845097.3	NW 1/4 of NW 1/4 of	27	01S	08W	S.B.B.M.	San Antonio Creek Inlet (proposed)	Trapezoidal channel, b=4', z = 1, d=6', 5% slope, diverted completely	1,860	3,660	14
		Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies			
<b>Cucamonga Creek System</b>														
8th Street	FT	Misc Existing Urban Storm Drains	6673019.3	1856071.8	NE 1/4 of NE 1/4 of	17	01S	07W	S.B.B.M.	West Cucamonga Creek Inlet		2,910	2,680	19
7th Street	FT	Outlet from 8th Street Basin	6673030.1	1854979	NE 1/4 of NE 1/4 of	17	01S	07W	S.B.B.M.	Outlet from 8th Street Basin	80' wide spillway & 3 - 10' x 5' reinforced concrete culvert, 110' long	2,880	370	8
Ely Basin	FT	West Cucamonga Creek Inlet	6676982.7	1835570.1	SW 1/4 of SE 1/4 of	33	01S	07W	S.B.B.M.	West Cucamonga Creek Inlet	Trapezoidal Channel, b = 36', z = 16', 5% slope, diverted complete	6,030	5,770	43
		Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies			
Grove Street	FT	Misc Existing Urban Storm Drains	Varies	Varies	SW 1/4 of SE 1/4 of	33	01S	07W	S.B.B.M.	Misc Existing Urban Storm Drains	varies	1,140	1,530	17
Turner No. 1	FB	Cucamonga Creek Inlet	6682542.5	1850672.8	NW 1/4 of NE 1/4 of	22	01S	07W	S.B.B.M.	Cucamonga Creek Inlet	8' x 4 reinforced concrete culvert, 40' long, 5% slope	310	1,210	10
Turner No. 2,3,4	Bksh	Deer Creek Inlet	6684634.1	1850133.6	NE 1/4 of NE 1/4 of	22	01S	07W	S.B.B.M.	Deer Creek Inlet (proposed)	3 - 5' x 5' reinforced concrete culvert, 150' long 2% slope	650	2,490	30
		Outlet from Turner 589								Misc Existing Urban Storm Drains				
Turner No. 5,8,9	Bksh	Deer Creek Inlet	6686169	1850180.3	NE 1/4 of nw 1/4 of	23	01S	07W	S.B.B.M.	Deer Creek Inlet (proposed)	3 - 5' x 5' reinforced concrete culvert, 150' long 2% slope	630	3,780	
		Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies			26
<b>Day Creek System</b>														
Lower Day	Bksh	Day Creek Inlet	6700373.3	1871850	NE 1/4 of NE 1/4 of	31	01N	06W	S.B.B.M.	Day Creek Inlet	96" reinforced concrete pipe, 360' long, 4% slope	140	920	18
		Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies			
Etiwanda Percolation Ponds (aka Etiwanda Basins)	FT	Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies	1,560	2,540	20
Wineville	FT	Day Creek Inlet	6700368.6	1838840.8	SE 1/4 of NE 1/4 of	31	01S	06W	S.B.B.M.	Day Creek Inlet	60' wide concrete channel diverted completely into basin	12,000	4,100	70
		Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies			
Riverside	FT	Wineville Outlet	6699249.7	1837568	SE 1/4 of NE 1/4 of	31	01S	06W	S.B.B.M.	Wineville Outlet	104' wide spillway & 72' RCP diverted completely into basin	4,440	4,800	59
		Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies			
Etiwanda Debris Basin	FT	Outlet from Etiwanda Spreading Area	6709726	1877535.3	SW 1/4 of SE 1/4 of	21	01N	06W	S.B.B.M.	Outlet from Etiwanda Spreading Area	Natural channel diverted completely through basin	4,620	2,300	40
<b>San Sevaine Creek System</b>														
San Sevaine No. 1	FT	San Sevaine Creek Inlet	6715443.4	1877470.9	NE 1/4 of NE 1/4 of	27	01N	06W	S.B.B.M.	San Sevaine Creek Inlet	Natural channel diverted completely through basin	6,750	1,860	20
San Sevaine No. 2	FT	Outlet from San Sevaine 1	6715806.1	1876823.8	NE 1/4 of NE 1/4 of	27	01N	06W	S.B.B.M.	Outlet from San Sevaine 1	150' wide spillway	6,630	250	12
Rich Basin	FT	Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies	3,420	1,340	8
San Sevaine No. 3	FT	Outlet from Rich Basin	6719851.8	1880432	SW 1/4 of NE 1/4 of	23	01N	06W	S.B.B.M.	Outlet from Rich Basin	Concrete channel diverted completely into basin	11,010	1,780	12
		Outlet from San Sevaine 2	6715774.2	1879134.1	SE 1/4 of NE 1/4 of	27	01N	06W	S.B.B.M.	Outlet from San Sevaine 2	150' wide spillway			
		Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies			
San Sevaine No. 4	FT	Outlet from San Sevaine 3	6715757.2	1875498.7	SE 1/4 of NE 1/4 of	27	01N	06W	S.B.B.M.	Outlet from San Sevaine 3	150' wide spillway	10,830	300	6
San Sevaine No. 5	FT	Outlet from San Sevaine 4	6715623.9	1874877.6	SE 1/4 of NE 1/4 of	27	01N	06W	S.B.B.M.	Outlet from San Sevaine 4	150' wide spillway	10,800	500	127
Victoria Basin	Bksh	Inlet from Etiwanda Creek	6711701.1	1870738.9	SW 1/4 of NW of	34	01N	06W	S.B.B.M.	Inlet from Etiwanda Creek	2 - 5' x 5' reinforced concrete culvert, 120' long 2% slope	740	2,000	15
		Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies			
Banana Basin	FT	Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies	1,230	1,560	8
Hickory Basin	FT	Outlet from Banana Basin	6713257.7	1857072.2	SE 1/4 of SW 1/4 of	10	01S	06W	S.B.B.M.	Outlet from Banana Basin	varies	1,200	1,980	11
Jurupa Basin	Bksh	Inlet from San Sevaine Channel	6708521.7	1841430.5	SW 1/4 of SE 1/4 of	28	01S	06W	S.B.B.M.	Inlet from San Sevaine Channel	3 - 5' x 5' reinforced concrete culvert, 150' long, 2% slope	3,000	7,600	50
		Misc Existing Urban Storm Drains	Varies	Varies						Misc Existing Urban Storm Drains	varies			
Former RP3 Site	FT	Inlet from Decler Channel	6721780.9	1838204.8	SE 1/4 of NE 1/4 of	35	01S	06W	S.B.B.M.	Inlet from Decler Channel	25' wide concrete channel diverted completely into basin	3,300	3,573	30
Decler Basin	FT	Inlet from Decler Channel	6713196.3	1834901.3	NE 1/4 of NW 1/4 of	3	02S	06W	S.B.B.M.	Inlet from Decler Channel	25' wide concrete channel diverted completely into basin	3,240	1,787	9
<b>Totals</b>												<b>115,570</b>	<b>68,500</b>	

Note (1) - FT is a flow-through basin where all inflows are unregulated and completely diverted into the basin; FB is a flow-by basin where inflows are controlled by either managable inlet works or by flow magnitude. Both is a combination flow-through and flow-by basin.  
Note (2) - Eastings/Northings are California Stateplane coordinates (Units: Feet, Zone: 6, Datum: NAD83)

Note (1) - Misc existing storm drains consists of reinforced concrete boxes, reinforced concrete pipes and composites

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BEFORE THE  
STATE WATER RESOURCES CONTROL BOARD

San Bernardino Valley Municipal Water District, Western Municipal Water District of Riverside County, Orange County Water District, Chino Basin Watermaster, San Bernardino Valley Water Conservation District, and City of Riverside,

WATER RIGHT HEARING ON  
APPLICATION NOS. 31165, 31370, 31174,  
31369, 31371, 31372

**STIPULATION OF APPLICANTS**

Applicants.

Date: May 2, 2007  
Time: 9:00 a.m.  
Dept: Cal EPA Building, Coastal Hearing Room

Applicants San Bernardino Valley Municipal Water District ("Muni") and Western Municipal Water District of Riverside County ("Western") (Application Nos. 31165 and 31370), Orange County Water District ("OCWD") (Application No. 31174), Chino Basin Watermaster (Application No. 31369), San Bernardino Valley Water Conservation District ("Conservation District") (Application No. 31371), and City of Riverside (Application No. 31372 and Wastewater Change Petition WW-0045) (collectively, the "Parties"), hereby enter the following Stipulation to resolve Issue Numbers 4 and 5, as set forth on page 10 of the February 16, 2007 Notice of Public Hearing and Pre-hearing Conference on Water Right Applications and Wastewater Change Petition:

1. The priority of rights as among all legal users of water from the Santa Ana River, including all applicants in the current proceedings, was the subject of several cases, all litigated and resolved as set forth below.

2. The first such case was *Orange County Water District v. City of Chino et al.* (Orange County Superior Court No. 117628) (the "*Orange County Judgment*"), in which judgment was entered on April 17, 1969. A general description of the case and the key elements

1 of that judgment, which is excerpted from the 35th Annual Report of the Santa Ana River  
2 Watermaster dated April 30, 2006, is attached hereto as Exhibit A; reference should be made to  
3 the actual *Orange County* Judgment on file with the Orange County Superior Court for particular  
4 details of the case and rights and obligations of the parties thereunder.

5 3. The continuing vitality of the *Orange County* Judgment has been recognized and  
6 reaffirmed in various documents which also served as the vehicles by which any upstream  
7 diverters which had concerns over OCWD's application either agreed not to protest or dismissed  
8 their protests against OCWD's application. Those agreements are:

9 (a) *Memorandum of Understanding to Affirm and Preserve Existing Rights in*  
10 *the Santa Ana River Watershed*, between and among Inland Empire Utilities Agency, Orange  
11 County Water District, San Bernardino Valley Municipal Water District and Western Municipal  
12 Water District of Riverside County, November 16, 1999;

13 (b) *Santa Ana River and Chino Basin Water Right Accord*, September 15,  
14 2000.

15 (c) *Agreement Between Orange County Water District and City of San*  
16 *Bernardino Concerning Water Rights*, September 1, 2004;

17 (d) *Agreement Between Orange County Water District and East Valley Water*  
18 *District Concerning Water Rights*, June 23, 2006; and

19 (e) *Agreement Between Orange County Water District and City of Riverside*  
20 *Concerning Water Rights*, July 24, 2006.

21 4. The second such case was *Western Municipal Water District of Riverside County*  
22 *et al. v. East San Bernardino County Water District, et al.* (Riverside County Superior Court  
23 No. 78426) (the "*Western* Judgment"), in which judgment was also entered on April 17, 1969,  
24 simultaneously and in conjunction with the *Orange County* Judgment. A general description of  
25 the case and the key elements of that judgment is attached hereto as Exhibit B; reference should  
26 be made to the actual *Western* Judgment on file with the Riverside County Superior Court for  
27 particular details of the case and rights and obligations of the parties thereunder.  
28

1           5.       The third such case was *Big Bear Municipal Water District v. North Fork Water*  
2 *Company*, et al. (San Bernardino County Superior Court No. 165493) (the “*Big Bear Judgment*”),  
3 in which judgment was entered on February 7, 1977.

4           6.       Certain of the Parties have also entered into settlement agreements to clarify their  
5 respective priorities to use the waters of the Santa Ana River:

6               (a)     *Settlement Agreement Relating to the Diversion of Water from the Santa*  
7 *Ana River System*, dated July 21, 2004 (the “*Seven Oaks Accord*”); and

8               (b)     *Settlement Agreement Among San Bernardino Valley Water Conservation*  
9 *District, San Bernardino Valley Municipal Water District and Western Municipal Water District*  
10 *of Riverside County*, dated August 2005 (the “*Conservation District Agreement*”).

11          7.       The fourth such case was *Chino Basin Municipal Water District v. City of Chino et*  
12 *al.* (San Bernardino County Superior Court Case No. RCV 51010) (the “*Chino Basin Judgment*”),  
13 in which judgment was entered on January 30, 1978.

14          8.       The effect of the *Orange County Judgment* was to divide the waters of the Santa  
15 Ana River between the Lower Area and the Upper Area, as those areas were defined in the  
16 *Orange County Judgment*, in the manner set forth in that judgment.

17          9.       The effect of the *Western Judgment* was to allocate the waters of the San  
18 Bernardino Basin, Colton Basin and Riverside Basin Areas, i.e., the “Upper Area” except for  
19 Chino Basin, consistent with the requirements of the *Orange County Judgment*.

20          10.       The effect of the *Big Bear Judgment* was to implement a physical solution that  
21 allows for the maintenance of high levels of water in Big Bear Lake for recreational purposes  
22 without interfering with downstream water rights..

23          11.       The effect of the *Chino Basin Judgment* was to allocate the waters of the Chino  
24 Basin among the parties to that judgment, which are all located within that basin, consistent with  
25 the requirements of the *Orange County Judgment*.

1           12.     The relative priority of OCWD to divert water from the Santa Ana River is  
2 established by the *Orange County* Judgment and affirmed in the agreements identified in  
3 paragraph 3 above.

4           13.     The relative priority of Chino Basin Watermaster to divert water from the Chino  
5 Basin is established by Inland Empire Utilities Agency's rights and obligations under the *Orange*  
6 *County* Judgment, the *Chino Basin* Judgment, and the agreements identified in paragraphs 3(a)  
7 and 3(b) above.

8           14.     The relative priority of the City of Riverside to change the point of discharge,  
9 place of use and purpose of use of its wastewater discharge is established by the *Orange County*  
10 Judgment, the *Western* Judgment, and the agreement identified in paragraph 3(e) above.

11           15.     The effect of the judgments and agreements identified in paragraphs 2, 3(a), 4, 5  
12 and 6 above has been to create, upon action by the State Water Resources Control Board to  
13 approve Application Nos. 31165, 31370 and 31371, the following relative priorities among the  
14 Parties that divert and use water from the mainstem of the Santa Ana River in the Upper Area,  
15 consistent with the requirements of the *Orange County*, *Western*, and *Big Bear* Judgments:

16                   (a)     The City of Redlands, East Valley Water District, Bear Valley Mutual  
17 Water Company, Lugonia Water Company, North Fork Water Company and Redlands Water  
18 Company would have first priority to divert up to 88 cubic feet per second.

19                   (b)     The Conservation District would have a second priority to divert and  
20 spread pursuant to License Nos. 2831 and 2832.

21                   (c)     Muni/Western's diversion and storage of water that is the subject of  
22 Application No. 31165 would have a third priority.

23                   (d)     The Conservation District's diversion of water that is the subject of  
24 Application No. 31371 would have a fourth priority.

25                   (e)     Muni/Western's diversion and storage of water that is the subject of  
26 Application No. 31370 would have a fifth priority.

27 The priorities described in paragraphs 14(c) through 14(e) above are subject to the provisions of  
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paragraphs 5(e) and 5(f) of Exhibit A of the Conservation District Agreement.

16. The Parties do not intend this Stipulation to modify or amend the terms of any of the judgments or agreements referenced above. In the event that there is any inconsistency between the terms of those judgments or agreements and the descriptions of those judgments or agreements in this Stipulation, the terms of the judgments or agreements shall control.

17. Given that the foregoing proceedings have included all legal users of water in the Santa Ana River, the above constitutes a full resolution of the water right priorities among the Parties and is fully protective of other legal users of water. Accordingly, the Parties request that the SWRCB accept this stipulation as a full resolution of Issues 4 and 5 concerning relative water rights priorities and protection of other legal users of water at the April 5, 2007 Pre-Hearing Conference.


DATED: April 5, 2007

DOWNEY BRAND LLP

By:   
David R.E. Aladjem  
Attorneys for Applicants  
San Bernardino Valley Municipal Water  
District and Western Municipal Water District  
of Riverside County

DATED: April 5, 2007

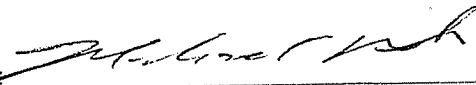
PILLSBURY WINTHROP SHAW PITTMAN LLP

By:   
Christopher J. McNevin  
Attorneys for Applicant  
Orange County Water District

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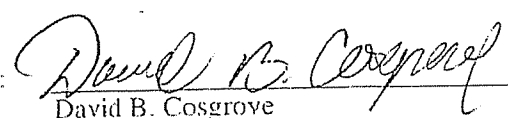
DATED: April 5, 2007

HATCH & PARENT

By:   
Michael T. File  
Attorneys for Applicant  
Chino Basin Watermaster

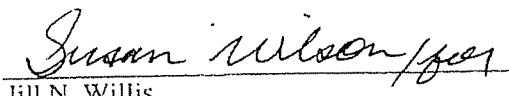
DATED: April 5, 2007

RUTAN & TUCKER LLP

By:   
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Attorneys for Applicant  
San Bernardino Valley Water Conservation  
District

DATED: April 5, 2007

BEST BEST & KRIEGER LLP

By:   
Jill N. Willis  
Attorneys for Applicant  
City of Riverside

ORDER

IT IS SO ORDERED:

April \_\_, 2007.

\_\_\_\_\_  
Arthur G. Baggett, Jr.  
Hearing Officer

**EXHIBIT A**

## CHAPTER IV

### HISTORY AND SUMMARY OF THE JUDGMENT in the case of Orange County Water District v City of Chino, et al. (Case No. 117628-County of Orange)

#### History of Litigation

The complaint in the case was filed by Orange County Water District on October 18, 1963, seeking an adjudication of water rights against substantially all water users in the area tributary to Prado Dam within the Santa Ana River Watershed, but excluding the area tributary to Lake Elsinore. Thirteen cross-complaints were filed in 1968, extending the adjudication to include substantially all water users in the area downstream from Prado Dam. With some 4,000 parties involved in the case (2,500 from the Upper Area and 1,500 from the Lower Area), it became obvious that every effort should be made to arrive at a settlement and physical solution in order to avoid enormous and unwieldy litigation.

Efforts to arrive at a settlement and physical solution were pursued by public officials, individuals, attorneys, and engineers. Attorneys for the parties organized in order to facilitate settlement discussions and, among other things, provided guidance for the formation and activities of an engineering committee to provide information on the physical facts.

An initial meeting of the engineers representing the parties was held on January 10, 1964. Agreement was reached that it would be beneficial to undertake jointly the compilation of basic data. Liaison was established with the Department of Water Resources, State of California, to expedite the acquisition of data. Engineers representing the parties were divided into subcommittees which were given the responsibility of investigating such things as the boundary of the Santa Ana River Watershed and its subareas, standardization of the terminology, the location and description of wells and diversion facilities, waste disposal and transfer of water between subareas.

In response to a request from the attorneys' committee at a meeting held April 17, 1964, on April 30, 1964, the joint engineering committee prepared a list of preliminary engineering studies directed toward settlement of the Santa Ana River water rights litigation. Special assignments were made to individual engineers on selected items requested by the attorneys' committee.

The attorneys and engineers for the defendants then commenced a series of meetings separate from the representatives of the plaintiffs in order to consolidate their positions and to determine a course of action. On October 7, 1964, engineers for the defendants presented the results of the studies made by the joint engineering committee. The defendants' attorneys requested that additional information be provided on the methods

of measuring flow at Prado Dam, the historical supply and disposal of water passing Prado Dam, segregation of flow into components, and determination of the amount of supply which was usable by the downstream area. On December 11, 1964, the supplemental information was presented to the defendants' attorneys.

During 1965, engineers and attorneys for the defendants held numerous conferences and conducted additional studies in an attempt to determine their respective positions in the case. Early in 1966, the plaintiff and defendants exchanged drafts of possible principles for settlement. Commencing March 22 and ending April 13, 1966, four meetings were held by the engineers to discuss the draft of principles for settlement.

On February 25, 1968, the defendants submitted a request to the Court that the Order of Reference be issued requesting the California Department of Water Resources to determine the physical facts. On May 9, 1968, the plaintiffs' attorney submitted motions opposing the Order of Reference and requested that a preliminary injunction be issued. In the meantime, every effort was being made to come to an agreement on the Stipulated Judgment. Commencing on February 28, 1968 and extending until May 14, 1968, six meetings were held to determine the scope of physical facts on which agreement could be reached so that if an Order of Reference were to be approved by the Court, the work under the proposed reference would not repeat the extensive basic data collection and compilation which had already been completed and on which engineers for both plaintiffs and defendants had reached substantial agreement. Such basic data were compiled and published in two volumes under date of May 14, 1968 entitled "Appendix A, Basic Data."

On May 21, 1968, an outline of a proposal for settlement of the case was prepared and a committee of attorneys and engineers for the parties commenced preparation of the settlement documents. On June 16, 1968, the Court held a hearing on the motions it had received requesting a preliminary injunction and an Order of Reference. The parties requested that the Court delay the preliminary hearings on these motions in view of the efforts toward settlement that were underway. The plaintiff, however, was concerned regarding the necessity of bringing the case to trial within the statutory limitation and, accordingly, on July 15, 1968, submitted a motion to set the complaint in the case for trial. On October 15, 1968, the trial was commenced and was adjourned after one-half day of testimony on behalf of the plaintiff. Thereafter, the parties filed with the Court the necessary Settlement Documents including a Stipulation for Judgment. The Court entered the Judgment on April 17, 1969, along with Stipulations and Orders dismissing all defendants and cross-defendants except for the four major public water districts overlying, in aggregate, substantially all of the major areas of water use in the watershed. The districts, the locations of which are shown on Plate 1, "Santa Ana River Watershed", are as follows:

- (1) Orange County Water District (OCWD), representing all lower basin entities located within Orange County downstream of Prado Dam.

- (2) Western Municipal Water District (WMWD), representing middle basin entities located within Riverside County on both sides of the Santa Ana River primarily upstream from Prado Dam.
- (3) Inland Empire Utilities Agency (IEUA), formerly Chino Basin Municipal Water District (CBMWD), located in the San Bernardino County Chino Basin area, representing middle basin entities within its boundaries and located primarily upstream from Prado Dam.
- (4) San Bernardino Valley Municipal Water District (SBVMWD), representing all entities within its boundaries, and embraced within the upper portion of the Riverside Basin area, the Colton Basin area (being an upstream portion of the middle basin) and the San Bernardino Basin area, being essentially the upper basin.

### Summary of Judgment

**Declaration of Rights.** The Judgment sets forth a declaration of rights. Briefly stated, the Judgment provides that the water users in the Lower Area have rights, as against the water users in the Upper Area, to receive certain average and minimum annual amounts of non-storm flow ("base flow") at Prado Dam, together with the right to all storm flow reaching Prado Dam. The amount of the Lower Area entitlement is variable based on the quality of the water received by the Lower Area. Water users in the Upper Area have the right as against the water users in the Lower Area to divert, pump, extract, conserve, store and use all surface and groundwater supplies originating within the Upper Area, so long as the Lower Area receives the water to which it is entitled under the Judgment and there is compliance with all of its provisions.

**Physical Solution.** The Judgment also sets forth a comprehensive "physical solution" for satisfying the rights of the Lower Area. To understand the physical solution it is necessary to understand the following terms that are used in the Judgment:

Storm Flow -- That portion of the total flow which originates from precipitation and runoff and which passes a point of measurement (either Riverside Narrows or Prado Dam) without having first percolated to groundwater storage in the zone of saturation, calculated in accordance with procedures referred to in the Judgment.

Base Flow - That portion of the total surface flow passing a point of measurement (either Riverside Narrows or Prado Dam) which remains after deduction of storm flow, nontributary flows, exchange water purchased by OCWD, and certain other flows as determined by the Watermaster.

Adjusted Base Flow - Actual base flow in each year adjusted for water quality pursuant to formulas specified in the Judgment. The adjustment of Base Flow for water quality is intended to provide an incentive to the Upper Area to maintain a

better quality of water in the river. When the total dissolved solids (TDS) is lower than a specified value at one of the measuring points, the water quantity obligation is lower. When the TDS is higher than a specified value, the water quantity obligation is higher. This is the first comprehensive adjudication in Southern California in which the quality of water is taken into consideration in the quantification of water rights.

Credits and Debits - Under the accounting procedures provided for in the Judgment, credits accrue to SBVMWD in any year when the Adjusted Base Flow exceeds 15,250 acre-feet at Riverside Narrows and jointly to IEUA and WMWD when the Adjusted Base Flow exceeds 42,000 acre-feet at Prado Dam. Debits accrue in any year when the Adjusted Base Flows falls below those levels. Credits or debits accumulate year to year.

**Obligation at Riverside Narrows.** SBVMWD has an obligation to assure an average annual Adjusted Base Flow of 15,250 acre-feet at Riverside Narrows, subject to the following:

- (1) A minimum Base Flow of 13,420 acre-feet plus one-third of any cumulative debit.
- (2) After October 1, 1986, if no cumulative debit exists, the minimum Base Flow shall be 12,420 acre-feet.
- (3) Prior to 1986, if the cumulative credits exceed 10,000 acre-feet, the minimum Base Flow shall be 12,420 acre-feet.
- (4) All cumulative debits shall be removed by the discharge of a sufficient Base Flow at Riverside Narrows at least once in any ten consecutive years following October 1, 1976. Any cumulative credits shall remain on the books of account until used to offset any subsequent debits or until otherwise disposed of by SBVMWD.
- (5) The Base Flow at Riverside Narrows shall be adjusted using weighted average annual TDS in such Base Flow in accordance with the formula set forth in the Judgment.

**Obligation at Prado Dam.** IEUA and WMWD have a joint obligation to assure an average annual Adjusted Base Flow of 42,000 acre-feet at Prado Dam, subject to the following:

- (1) Minimum Base Flow at Prado shall not be less than 37,000 acre-feet plus one-third of any cumulative debit.
- (2) After October 1, 1986, if no cumulative debit exists, the minimum Base Flow quantity shall be 34,000 acre-feet.

- (3) Prior to 1986, if the cumulative credit exceeds 30,000 acre-feet, the minimum Base Flow shall be 34,000 acre-feet.
- (4) Sufficient quantities of Base Flow shall be provided at Prado to discharge completely any cumulative debits at least once in any ten consecutive years following October 1, 1976. Any cumulative credits shall remain on the books of account until used to offset any debits, or until otherwise disposed of by IEUA and WMWD.
- (5) The Base Flow at Prado during any year shall be adjusted using the weighted average annual TDS in the total flow at Prado (Base Flow plus Storm Flow) in accordance with the formula set forth in the Judgment.

**Other Provisions.** SBVMWD, IEUA and WMWD are enjoined from exporting water from the Lower Area to the Upper Area, directly or indirectly. OCWD is enjoined from exporting or "directly or indirectly causing water to flow" from the Upper Area to the Lower Area. Any inter-basin acquisition of water rights will have no effect on Lower Area entitlements. OCWD is prohibited from enforcing two prior judgments so long as the Upper Area Districts are in compliance with the physical solution. The composition of the Watermaster and the nomination and appointment process for members are described along with a definition of the Watermaster's duties and a formula for sharing its costs. The court retains continuing jurisdiction over the case. There are provisions for appointment of successor parties and rules for dealing with future actions that might conflict with the physical solution.

#### **History of the Watermaster Committee Membership**

The Santa Ana River Watermaster is a committee composed of five members nominated by the parties and appointed by the court. SBVMWD, IEUA (formerly CBMWD), and WMWD nominate one member each and OCWD nominates two. The Watermaster members annually elect a Chairman, Secretary, and Treasurer.

The original five members were appointed at the time of entry of the judgment. They prepared a *pro forma* annual report for the 1969-70 Water Year. The first annual report required by the judgment was prepared for the 1970-71 Water Year and reports have been prepared annually since then.

The membership of the Watermaster has changed over the years. The historical listing of members and officers shown in Table 8 reflects the signatories to each annual report.



TABLE 8

## HISTORY OF THE WATERMASTER COMMITTEE MEMBERSHIP

Water Year	SBVMWD	IEUA	WMWD	OCWD	OCWD
1969-70	Clinton O. Henning	William J. Carroll	Albert A. Webb, Secretary	Max Bookman, Chairman	John M. Toups
1970-71 through 1973-74	James C. Hanson	William J. Carroll	Albert A. Webb, Secretary	Max Bookman, Chairman	John M. Toups
1974-75 through 1977-78	James C. Hanson	William J. Carroll	Donald L. Harriger	Max Bookman, Chairman	John M. Toups, Secretary
1978-79 through 1981-82	James C. Hanson	William J. Carroll	Donald L. Harriger	Max Bookman, Chairman	William R. Mills, Jr., Secretary
1982-83 through 1983-84	James C. Hanson	William J. Carroll	Donald L. Harriger	Harvey O. Banks, Chairman	William R. Mills, Jr., Secretary
1984-85 through 1988-89	Robert L. Reiter	William J. Carroll	Donald L. Harriger	Harvey O. Banks, Chairman	William R. Mills, Jr., Secretary
1989-90 through 1994-95	Robert L. Reiter, Secretary/Treasurer	William J. Carroll	Donald L. Harriger	Harvey O. Banks, Chairman	William R. Mills, Jr., Secretary
1995-96	Robert L. Reiter, Secretary/Treasurer	William J. Carroll, Chairman	Donald L. Harriger	Harvey O. Banks, Chairman	William R. Mills, Jr.
1996-97	Robert L. Reiter, Secretary/Treasurer	William J. Carroll	Donald L. Harriger	Bill B. Dendy	William R. Mills, Jr.
1997-98	Robert L. Reiter, Secretary/Treasurer	Robb D. Quincey	Donald L. Harriger	Bill B. Dendy	William R. Mills, Jr., Chairman
1998-99 through 2000-01	Robert L. Reiter, Secretary/Treasurer	Richard W. Atwater	Donald L. Harriger	Bill B. Dendy	William R. Mills, Jr., Chairman
2001-02 through 2002-03	Robert L. Reiter, Secretary/Treasurer	Richard W. Atwater	Donald L. Harriger, Chairman	Bill B. Dendy	William R. Mills, Jr., Chairman
2003-04 through 2004-05	Robert L. Reiter, Chairman/Treasurer	Richard W. Atwater	John V. Rossi	Bill B. Dendy, Secretary	Virginia L. Grebblien

# **EXHIBIT B**

## EXHIBIT B

The *Western* Judgment, entered simultaneously with the *Orange County* Judgment, settled rights within the upper SAR watershed in part to ensure that those resources upstream of Riverside Narrows would be sufficient to meet the flow obligations of the *Orange County* Judgment at Riverside Narrows (*Western Municipal Water District of Riverside County v. East San Bernardino County Water District*, Superior Court of Riverside County, Case No. 78426 [April 17, 1969]). Toward this end, the *Western* Judgment generally provides for:

- A determination of safe yield of the San Bernardino Basin Area (SBBA);
- Establishment of specific amounts that can be extracted from the SBBA by plaintiff parties equal in aggregate to 27.95 percent of safe yield;
- An obligation of Muni to provide replenishment for any extractions from the SBBA by non-plaintiffs in aggregate in excess of 72.05 percent of safe yield;
- An obligation of Western to replenish the Colton and Riverside basins if extractions for use in Riverside County in aggregate exceed certain specific amounts; and
- An obligation of Muni to replenish the Colton and Riverside basins if water levels are lower than certain specific water level elevations in specified wells.

Like the *Orange County* Judgment, the *Western* Judgment identifies regional representative agencies to be responsible, on behalf of the numerous parties bound thereby, for implementing the replenishment obligations and other requirements of the judgment. The representative entities for the *Western* Judgment are Muni and Western. Muni and Western are principally responsible for providing replenishment of the groundwater basins if extractions exceed amounts specified in the Judgment or as determined by the Watermaster. For purposes of this replenishment obligation, Muni acts on behalf of all defendants dismissed from the *Western* Judgment, and similarly, Western acts on behalf of the Plaintiffs and other dismissed parties within Western. Plaintiff parties with specific rights to produce 27.95 percent of the safe yield from the SBBA are the City of Riverside, Riverside Highland Water Company, Meeks & Daley Water Company, and the Regents of the University of California. The *Western* Judgment is administered by the two-person Western-San Bernardino Watermaster Committee: one person nominated each by Muni and Western, and both appointed by the court.

Like the *Orange County* Judgment, the *Western* Judgment contemplates that the parties to the Judgment will undertake "new conservation" which is defined as any increase in replenishment from natural precipitation which results from operation of works and facilities not in existence as of 1969. The *Western* Judgment specifies that the parties to the Judgment have the right to participate in any new conservation projects and, provided their appropriate shares of costs are paid, rights under the Judgment are increased by the respective shares in new conservation, in proportion to each party's share of the safe yield under the *Western* Judgment.

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to  
3 the within action. My business address is Downey Brand LLP, 555 Capitol Mall, Tenth Floor,  
4 Sacramento, California, 95814-4686. On April 5, 2007, I served the within document(s):

5 **STIPULATION OF APPLICANTS**

- 6  **BY ELECTRONIC MAIL:** by transmitting via electronic mail the document(s)  
7 listed above to the electronic notification address(es) set forth in the attached  
8 service list on this date. Parties whose e-mail addresses are listed on the attached  
9 agreed to accept electronic service, pursuant to the rules specified in the hearing  
10 notice issued by the Board.  
11  **BY HAND:** by personally delivering the document(s) listed above to the person(s)  
12 at the address(es) set forth below.  
13  **BY MAIL:** by placing the document(s) listed above in a sealed envelope with  
14 postage thereon fully prepaid, in the United States mail at Sacramento, California  
15 addressed as set forth below.  
16  **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an  
17 overnight delivery service company for delivery to the addressee(s) on the next  
18 business day.  
19  **BY PERSONAL DELIVERY:** by causing personal delivery by \_\_\_\_\_ of  
20 the document(s) listed above to the person(s) at the address(es) set forth below.

21 **SEE ATTACHED SERVICE LIST**

22 I am readily familiar with the firm's practice of collection and processing correspondence  
23 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
24 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
25 motion of the party served, service is presumed invalid if postal cancellation date or postage  
26 meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on April 5, 2007, at Sacramento, California.

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Terri D. Kuntz

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## Chino Basin Water Quality Anomaly Remediation Activities

**Plume:** Chino Airport

**Character:** VOCs

**Remediation Status:** Subject of RWQCB Cleanup and Abatement Order 90-134. Plume is currently being characterized and a draft remediation plan is expected by the end of 2007.

**Oversight Agency:** RWQCB

**Plume:** California Institute for Men

**Character:** VOCs

**Remediation Status:** CIM, who is voluntarily performing the cleanup, has been working with the RWQCB to remediate the groundwater contamination. Plume has been characterized and is currently being remediated.

**Oversight Agency:** RWQCB

**Plume:** General Electric Flatiron Facility

**Character:** VOCs

**Remediation Status:** General Electric, who is voluntarily performing the cleanup, has been working with the RWQCB to remediate the groundwater contamination. No Cleanup and Abatement Order has as of yet been issued. Plume is characterized and remediation is in place to contain it.

**Oversight Agency:** RWQCB

**Plume:** General Electric Test Cell Facility

**Character:** VOCs

**Remediation Status:** Subject to Hazardous Materials Division of San Bernardino County Environmental Health Services and the DTSC Docket Numbers 88/89-009C0 and 97/98-014, respectively, for soil remediation. Closure was requested on May 11, 2004 with regard to the soil remediation. General Electric, who is voluntarily performing the cleanup, has been working with the RWQCB for the past 8 years, to characterize and remediate the groundwater contamination. No Cleanup and Abatement Order has been issued. The plume is characterized and a draft remediation plan has been submitted to the RWQCB.

**Oversight Agencies:** San Bernardino County; DTSC; RWQCB

**Plume:** Kaiser Steel Fontana Site

**Character:** TDS/TOC

**Remediation Status:** Subject of RWQCB Cleanup and Abatement Order 87-121, as amended by Order 91-40. Thereafter, Kaiser and the RWQCB entered into a 1993 settlement agreement whereby Kaiser is required to mitigate any adverse impacts caused by its plume on existing and otherwise useable municipal wells. Pursuant to the settlement, the RWQCB rescinded its earlier order 91-40 and Kaiser was granted capacity in the Chino II Desalter to intercept and remove the Kaiser plume from the Chino Basin.

**Oversight Agency:** RWQCB

**Plume:** Milliken Sanitary Landfill

**Character:** VOCs

**Remediation Status:** Subject of RWQCB Order No. 81-003. Plume has been characterized and no active remediation plan has been developed.

**Oversight Agency:** RWQCB

**Plume:** Upland Sanitary Landfill

**Character:** VOCs

**Remediation Status:** The closed Upland Landfill is regulated under RWQCB Order No 98-99-07 dated Dec. 7, 1998. In a compliance with the Order, a Post-Closure Monitoring and Maintenance Plan (PCMMP) has been prepared and submitted. The PCMMP was revised in 2001, after completion of the final cover improvements, and is currently in place.

**Oversight Agency:** RWQCB

**Plume:** Ontario International Airport (VOC Anomaly – South of Ontario Airport)

**Character:** VOC

**Remediation Status:** The plume is currently being voluntarily investigated by a group of potentially responsible parties including Boeing, Aerojet, Northrop Grumman, General Electric and the Department of Defense. Investigative or Cleanup and Abatement Orders will likely be issued in the future. Watermaster is assisting the RWQCB in its preparation of these orders. The remediation of the plume will then likely be accomplished through existing Chino Basin Desalter I facilities, owned by the Chino Desalter Authority.

**Oversight Agency:** RWQCB.

**Plume:** Stringfellow NPL Site

**Character:** VOCs, perchlorate, NDMA, heavy metals

**Remediation Status:** The Stringfellow Site is the subject of USEPA Records of Decision EPA/ROD/R09-84/007, EPA/ROD/R09-83/005, EPA/ROD/R09-87/016, and EPA/ROD/R09-90/048. Pursuant to these decisions, the original disposal area is sealed; remediation is in progress focusing on source control, installation of pretreatment facilities and groundwater cleanup. There are approximately 70 extraction wells throughout the length of the plume that have been effective in stopping plume migration and removing contamination. DTSC assumed responsibility for the cleanup of the site in 2001. DTSC is currently conducting a supplemental feasibility study to address, in particular, soil remediation in the source area. This study will form the basis for decisions about long term remedies for the site. A risk investigation/feasibility study that is currently being conducted for perchlorate will result in a fifth USEPA Record of Decision. The RWQCB originally initiated orders and studies in the 1970s and 1980s, and gives input as a stakeholder, but the Records of Decision direct clean-up.

**Oversight Agencies:** USEPA; DTSC; RWQCB