Appendix W

Chino Basin Peace Agreement

PEACE AGREEMENT
CHINO BASIN

THIS AGREEMENT (Agreement) is dated the 29th day of June, 2000 regarding the Chino Groundwater Basin.

RECITALS

WHEREAS, disputes have arisen from time to time among and between water users within the Santa Ana River Watershed resulting in a judgment entered in Orange County Superior Court Case No. 117628, Orange County Water District v. City of Chino in 1969; and

WHEREAS, a complaint was filed on January 2, 1975, seeking an adjudication of water rights, injunctive relief and the imposition of a physical solution for the Chino Groundwater Basin (hereinafter Chino Basin); and

WHEREAS, a Judgment was entered in San Bernardino County Superior Court Case No. 164327 in Chino Basin Municipal Water District v. City of Chino, et al. in 1978, now designated No. RCV 51010 that adjudicated rights to the groundwater and storage capacity within the Chino Basin and established a physical solution; and

WHEREAS, the Parties intend that each Producer should be able to Produce both the quantity and quality of water to meet its water supply needs to the greatest extent possible from the water that underlies the Producer's area of benefit; and

WHEREAS, the Judgment provides the State of California is the largest owner of land overlying the Chino Basin, and provides that all future Production by the State, or its departments or agencies for overlying use on State-owned lands shall be considered as use by the Agricultural Pool; and

WHEREAS, Paragraph 16 of the Judgment authorized the appointment of a Watermaster for a term or terms of five (5) years; and

WHEREAS, Watermaster has the express powers and duties as provided in the Judgment or as "hereafter ordered or authorized by the Court in the exercise of the Court's continuing jurisdiction" subject to the limitations stated elsewhere in the Judgment; and

WHEREAS, Paragraph 41 of the Judgment provides that "Watermaster, with the advice of the Advisory and Pool Committees" has "discretionary powers in order to develop an optimum basin management program (OBMP) for Chino Basin"; and

WHEREAS, on February 19, 1998, in San Bernardino County Superior Court Case Number RCV 51010, the Court appointed a "Nine-member Board as Interim Watermaster for a twenty-six month period commencing March 1, 1998 and ending June 30, 2000" and "directed the Interim Watermaster to develop and submit the OBMP"; and

WHEREAS, a draft Programmatic Environmental Impact Report (PEIR) for the OBMP has been completed and distributed to the Parties as well as the State Clearinghouse and other interested Parties and the Inland Empire Utilities Agency (IEUA) is serving as "Lead Agency" for purposes of preparing and completing the PEIR as previously directed by the Court on November 18, 1999; and

WHEREAS, this Agreement facilitates the implementation of the OBMP which is subject to environmental review under the California Environmental Quality Act (CEQA) as previously directed by the Court; and

WHEREAS, disputes have arisen in regard to a number of matters pertaining to the power and authority of the Court and Watermaster under the Judgment, including but not limited to Watermaster power and authority regarding recharge, owning property, holding water rights, water Transfers,

storage, yield management, land use conversions, assessments, benefits, procedures and the adoption and implementation of the OBMP; and

WHEREAS, OCWD has filed a petition with the State Water Resources Control Board requesting a change of the Santa Ana River's "Fully Appropriated" status, and filed an application to appropriate up to five hundred seven thousand (507,000) acre-feet of such newly declared surplus water; and

WHEREAS, the Parties to this Agreement desire to resolve issues by consent under the express terms and conditions stated herein; and

WHEREAS, the Parties wish to preserve and maintain Watermaster's role under the Judgment without compromising the Parties' collective and individual "benefits of the bargain" under this Agreement; and

WHEREAS, the Parties intend that this Agreement shall enable the adoption and implementation of an OBMP consistent herewith, which will benefit the Basin and all Parties hereto;

NOW, THEREFORE, in consideration of the mutual promises specified herein and by conditioning their performance under this Agreement upon conditions precedent set forth in Article III, the Watermaster approval and Court Order of its terms, and for other good and valuable consideration, the Parties agree as follows:

I
DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. As used in this Agreement, these terms, including any grammatical variations thereof shall have the following meanings:

(a) "Agricultural Pool" shall have the meaning of Overlying (Agricultural) Pool as used in the Judgment and shall include all its members;

(b) "Appropriative Pool" shall have the meaning as used in the Judgment and shall include all its members;

(c) "Basin Water" means groundwater within Chino Basin which is part of the Safe Yield, Operating Safe Yield, or Replenishment Water in the Basin as a result of operations under the physical solution decreed in the Judgment. Basin Water does not include "Stored Water;"

(d) "Best Efforts" means reasonable diligence and reasonable efforts under the totality of the circumstances. Indifference and inaction do not constitute Best Efforts. Futile action(s) are not required.

(e) "CBWCD" means the Chino Basin Water Conservation District;

(f) "CEQA" means the California Environmental Quality Act, Public Resources Code Sections 21000 et seq; 14 California Code of Regulations 15000 et seq.;

(g) "Chino Basin" or "Basin" means the groundwater basin underlying the area shown on Exhibit "B" to the Judgment and within the boundaries described on Exhibit "K" to the Judgment;

(h) "Chino Basin Watershed" means the surface drainage area tributary to and overlying Chino Basin;

(i) "Chino I Desalter" also known as the SAWPA Desalter means the Desalter owned and operated by PC14 with a present capacity of eight (8) million gallons per day (mgd) and in existence on the Effective Date;

(j) "Chino I Desalter Expansion" means the planned expansion of the Chino I Desalter from its present capacity of eight (8) mgd to a capacity of up to fourteen (14) mgd, to be owned and operated by IEUA and WMWD acting through PC14;

(k) "Chino II Desalter" means a new Desalter not in existence on the Effective Date with a design capacity of ten (10) mgd, to be owned, constructed, and operated by IEUA and WMWD acting independently or in their complete discretion, acting through the PC14, constructed and operated consistent with the OBMP and to be located on the eastside of the Chino Basin;

(l) "Court" means the court exercising continuing jurisdiction under the Judgment;

(m) "Date of Execution" means the first day following the approval and execution of the Agreement by the last Party to do so;

(n) "Desalter" and "Desalters" means the Chino I Desalter, Chino I Desalter Expansion, the Chino II Desalter and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin Water, including extraction wells, transmission facilities for delivery of groundwater to the Desalter, Desalter treatment and delivery facilities for the desalted water including pumping and storage facilities, and treatment and disposal capacity in the SARI System;

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

(p) "Effective Date" means October 1, 2000, provided that all conditions precedent have been waived or satisfied;

(q) "Future Desalters" means enlargement of the Chino I Desalter to a capacity greater than the Chino I Expansion or enlargement of the Chino II Desalter and any other new Desalter facilities that may be needed to carry out the purposes of the OBMP over the term of this Agreement;

(r) "General law" means all applicable state and federal law;

(s) "Groundwater" means water beneath the surface of the ground and within the zone of saturation, i.e., below the existing water table;

(t) "IEUA" means the Inland Empire Utilities Agency, referred to in the Judgment as Chino Basin Municipal Water District;

(u) "In-lieu recharge" means taking supplies of Supplemental Water in lieu of pumping groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, as provided in Exhibit "H" Paragraph 11 of the Judgment;

(v) "Judgment" means the Judgment dated January 27, 1978, in San Bernardino County Case No. 164327 (redesignated as San Bernardino County Case No. RCV 51010) as amended by Order Approving Amendments to Judgment Dated December 1, 1995, and Order for Amendments to the Judgment Regarding Changes in Pooling Plans and Appropriative Pool Representation on the Advisory Committee, dated September 18, 1996 and other such amendments;

(w) "Jurupa Community Services District" (JCSD) means the Jurupa Community Services District and the Santa Ana River Water Company individually. Subject to the provisions of this

Agreement, the design and delivery obligations for the Chino II Desalter set forth in Section 7.3 regarding Jurupa Community Services District include both the Jurupa Community Services District and the Santa Ana River Water Company. Santa Ana River Water Company may exercise its discretion to receive its portion of the desalted water through an interconnection or at its own expense through an independent pipeline to connect to the Chino II Desalter or in any other method as the Jurupa Community Services District and the Santa Ana River Water Company may jointly agree. Nothing in this definition shall be construed as expanding the initial mgd capacity of the Chino II Desalter as provided in the facilities plan which is attachment "1" to the OBMP Implementation Plan (Exhibit "B" hereto). If it is necessary to meet Santa Ana River Water Company's demands and there is insufficient initial capacity in the Chino II Desalter to satisfy the demands of Santa Ana River Water Company for desalted water in the quantities as provided in the Revised Draft Water Supply Plan Phase I Desalting Project Facilities Report, Jurupa's and Ontario's entitlement to desalted water made available from the initial capacity of the Chino II Desalter shall abate pro-rata to accommodate the demand of Santa Ana River Water Company up to a maximum quantity of 1,300 acre feet per year.

(x) "Local Storage" means water held in a storage account pursuant to a Local Storage agreement between a party to the Judgment and Watermaster and consisting of: (i) a Producer's unproduced carry-over water or (ii) a party to the Judgment's Supplemental Water, up to a cumulative maximum of fifty thousand (50,000) acre-feet for all parties to the Judgment.

(y) "Material Physical Injury" means material injury that is attributable to the Recharge, Transfer, storage and recovery, management, movement or Production of water, or implemen-

tation of the OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence, increases in pump lift (lower water levels) and adverse impacts associated with rising groundwater. Material Physical Injury does not include "economic injury" that results from other than physical causes. Once fully mitigated, physical injury shall no longer be considered to be material;

(z) "Metropolitan Water District" means the Metropolitan Water District of Southern California;

(aa) "New Yield" means proven increases in yield in quantities greater than historical amounts from sources of supply including, but not limited to, capture of rising water, capture of available storm flow, operation of the Desalters (including the Chino I Desalter), induced Recharge and other management activities implemented and operational after June 1, 2000;

(bb) "Non-Agricultural Pool" shall have the meaning as used in the Judgment for the Overlying (Non-Agricultural Pool) and shall include all its members;

(cc) "OBMP Assessments" means assessments, other than the assessments levied as provided in Section 5.1(g), levied by Watermaster for the purpose of implementing the Optimum Basin Management Program (OBMP),, which shall be deemed Administrative Assessments under Paragraph 54 of the Judgment.

(dd) "OCWD" means the Orange County Water District;

(ee) "Operating Safe Yield" means the annual amount of groundwater which Watermaster shall determine, pursuant to criteria specified in Exhibit "I" to the Judgment, can be Produced from Chino Basin by the Appropriative Pool parties free of

Replenishment obligation under the Physical Solution. Watermaster shall include any New Yield in determining Operating Safe Yield;

(ff) "Overdraft" means a condition wherein the total annual Production from the Basin exceeds the Safe Yield thereof, as provided in the Judgment;

(gg) "Party or Parties" means a Party to this Agreement;

(hh) "Party or parties to the Judgment" means a party to the Judgment;

(ii) "Produce or Produced" means to pump or extract groundwater from the Chino Basin;

(jj) "Producer" means any person who Produces groundwater from the Chino Basin;

(kk) "Production" means the annual quantity, stated in acre feet, of water Produced from the Chino Basin;

(ll) "PC14" means Project Committee No. 14, members of SAWPA, composed of IEUA, WMWD, and OCWD, pursuant to Section 18 of the SAWPA Joint Exercise of Powers Agreement which now constitutes the executive Authority through which SAWPA acts with respect to the Chino I Desalter;

(mm) "Public Hearing" means a hearing of Watermaster after notice pursuant to Paragraphs 58 and 59 or other Paragraphs of the Judgment that may be applicable, to all parties to the Judgment and to any other person entitled to notice under the Judgment, this Agreement or general law;

(nn) "Recharge and Recharge Water" means introduction of water into the Basin, directly or indirectly, through injection, percolation, delivering water for use in-lieu of Production or other method. Recharge references the physical act of introducing water into the Basin. Recharge includes Replenishment Water but not all Recharge is Replenishment Water. This definition shall not be construed to limit or abrogate the authority of CBWCD under general law;

(oo) "Replenishment Water" means Supplemental Water used to Recharge the Basin pursuant to the physical solution, either directly by percolating or injecting the water into the Basin or indirectly by delivering the water for use in lieu of Production and use of Safe Yield or Operating Safe Yield;

(pp) "Recycled Wastewater" means water which, as a result of treatment of wastewater, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource, referred to as "reclaimed water" in the Judgment.

(qq) "Safe Yield" means the long-term average annual quantity of groundwater (excluding Replenishment Water or Stored Water but including return flow to the Basin from use of Replenishment or Stored Water) which can be Produced from the Basin under cultural conditions of a particular year without causing an undesirable result;

(rr) "Salt Credits" means an assignable credit that may be granted by the Regional Water Quality Control Board and computed by Watermaster from activities that result from removal of salt from the Basin, or that result in a decrease in the amount of salt entering the Basin;

(ss) "SAWPA" means the Santa Ana Watershed Project Authority;

(tt) "Sphere of Influence" has the same meaning as set forth in Government Code Section 56076;

(uu) "Storage and Recovery Program" means the use of the available storage capacity of the Basin by any person under the direction and control of Watermaster pursuant to a storage and recovery agreement but excluding "Local Storage", including the right to export water for use outside the Chino Basin and typically of broad and mutual benefit to the parties to the Judgment;

(vv) "Stored Water" means Supplemental Water held in storage, as a result of direct spreading, injection or in-lieu delivery, for subsequent withdrawal and use pursuant to agreement with Watermaster;

(ww) "Supplemental Water" means water imported to Chino Basin from outside the Chino Basin Watershed and recycled water;

(xx) "Transfer" means the assignment, lease, or sale of a right to Produce water to another Producer within the Chino Basin or to another person or entity for use outside the Basin in conformance with the Judgment, whether the Transfer is of a temporary or permanent nature;

(yy) "TVMWD" means Three Valleys Municipal Water District (referred to in the Judgment as Pomona Valley Municipal Water District);

(zz) "Watermaster" means Watermaster as the term is used in the Judgment;

(aaa) "Watermaster Resolution 88-3" means the resolution by the Chino Basin Watermaster establishing the procedure for trans-

ferring unallocated Safe Yield water from the Agricultural Pool to the Appropriative Pool, adopted on April 6, 1988 and rescinding Resolution 84-2 in its entirety;

(bbb) "WMWD" means Western Municipal Water District;

1.2 Rules of Construction.

(a) Unless the context clearly requires otherwise:

(i) The plural and singular forms include the other;

(ii) "Shall," "will," "must," and "agrees" are each mandatory;

(iii) "may" is permissive;

(iv) "or" is not exclusive;

(v) "includes" and "including" are not limiting; and

(vi) "between" includes the ends of the identified range.

(b) Headings at the beginning of Articles, paragraphs and subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement and shall not be used in construing it.

(c) The masculine gender shall include the feminine and neuter genders and vice versa.

(d) The word "person" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, water district and other entity of whatever nature.

(e) Reference to any agreement (including this Agreement), document, or instrument means such agreement, document, instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

(f) Except as specifically provided herein, reference to any law, statute, ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part and in effect from time to time, including any rules and regulations promulgated thereunder.

II
COMPLIANCE WITH CEQA

2.1 Commitments Shall be Consistent With CEQA Compliance. In executing this Agreement, the Parties agree that no commitment will be made to carry out any "project" under the OBMP and within the meaning of CEQA unless and until the environmental review and assessments required by CEQA for that defined "project" have been completed. Any future implementing actions in furtherance of Program Elements 2 through 9 that meet the definition of "project" under CEQA, shall be subject to further environmental documentation in the form of an exemption, a negative declaration, mitigated negative declaration, environmental impact report, supplemental EIR or subsequent EIR. Any challenge claiming a breach of this article shall be brought within the same period of time applicable to claims under Public Resources Code section 21000, et seq.

2.2 Reservation of Discretion. Execution of this Agreement is not intended to commit any Party to undertake a project without compliance with CEQA or to commit the Parties to a course of action, which would result in the present approval of a future project.

2.3 No Prejudice by Comment or Failure to Comment. Nothing in the PEIR, or a Party's failure to object or comment thereon, shall limit any Party's right to allege that "Material Physical Injury" will result or has resulted from the implementation of the OBMP, the storage, recovery, management, movement or Production of water as provided in Article V herein.

2.4 Acknowledgment that IEUA is the Lead Agency. IEUA has been properly designated as the "Lead Agency" for the purposes of preparing the PEIR as ordered by court on November 18, 1999.

III
CONDITIONS PRECEDENT

3.1 Performance Under Articles V, VI, and VII is Subject to Satisfaction of Conditions Precedent. Each Party's obligations under this Agreement are subject to the satisfaction of the following conditions on or before the dates specified below, unless satisfaction of a specified condition or conditions is waived in writing by all other Parties:

(a) The Parties' covenants and commitments set forth in Article V are expressly conditioned upon Watermaster's contemporaneous approval of this Agreement and the OBMP Implementation Plan by June 29, 2000 and upon an Order of the Court directing Watermaster to proceed in accordance with this, Agreement and only this Agreement, on or before July 13, 2000. Watermaster's approval of this Agreement and the OBMP Implementation Plan shall be in the form of a resolution substantially similar to Exhibit "A" attached hereto and it shall contain a commitment to adopt the requisite policies and procedures to implement the provisions set forth in Article V on or before December 31, 2000, unless an earlier date for performance is otherwise expressly provided herein.

(b) Appropriation by the California Legislature of at least $121,000,000 from the proceeds made available by the passage of Proposition 13 for the benefit of the SAWPA by October 1, 2000.

IV
MUTUAL COVENANTS

4.1 Joint Defense. The Parties shall proceed with reasonable diligence and use Best Efforts to jointly defend any lawsuit or administrative proceeding challenging the legality, validity, or enforceability of any term of this Agreement. However, nothing herein shall require the State of California to incur legal or administrative costs in support of such an effort.

4.2 No Opposition to the OBMP. No Party to this Agreement shall oppose Watermaster's adoption and implementation of the OBMP as provided in Exhibit B attached hereto in a manner consistent with this Agreement, or the execution of Memoranda of Agreement that incorporate the provisions which are substantially similar to those contained in Exhibit "C" attached hereto. Nothing herein shall be construed as limiting any Party's right of participation in all the functions of Watermaster as are provided in the Judgment or to preclude a party to the Judgment from seeking judicial review of Watermaster determinations pursuant to the Judgment or as otherwise provided in this Agreement.

4.3 Indemnification of the Agricultural Pool. The Parties shall indemnify and defend the State of California and the members of the Agricultural Pool against any lawsuit or administrative proceedings, without limitation, arising from Watermaster's adoption, approval, management, or implementation of a Storage and Recovery Program.

4.4 Consent to Specified Changes to the Judgment. Each Party consents to the following modifications to the Judgment.

(a) The Judgment shall be amended so that the last sentence of Paragraph 8 of the Judgment reads:

> All overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart therefrom for the term of the Peace Agreement except that the members of the Overlying (Non-Agricultural) Pool shall have the right to Transfer or lease their quantified Production rights within the Overlying (Non-Agricultural) Pool or to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000.

(b) Paragraph 6 of Exhibit "G" to the Judgment regarding the Overlying Non-Agricultural Pool shall be amended to read:

> Assignment. Rights herein decreed are appurtenant to that land and are only assignable with the land for overlying use thereon; provided, however, (a) that any appropriator who may, directly or indirectly, undertake to provide water service to such overlying lands may, by an appropriate agency agreement on a form approved by Watermaster, exercise said overlying right to the extent, but only to the extent necessary to provide water service to said overlying lands, and (b) the members of the pool shall have the right to Transfer or lease their quantified Production rights within the pool or to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000 for the term of the Peace Agreement.

(c) The 1995 Amendment to the Judgment shall be amended as follows: Section 10(b)(3)(i) shall now read:

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

Appendix 1 to the Judgment shall be construed to be consistent with this amendment. All other parts of the 1995 Amendment shall remain the same.

4.5 Construction of "Operating Yield" Under the Judgment. Exhibit I to the Judgment shall be construed to authorize Watermaster to include New Yield as a component of Operating Safe Yield.

4.6 Best Efforts to Obtain Funding for OBMP. Each Party shall use Best Efforts to obtain and support funding that is consistent with the OBMP and this Agreement. The Parties shall coordinate their individual efforts and report their progress to Watermaster no less than each quarter beginning on the Effective Date.

4.7 CBWCD. Watermaster shall provide for, arrange or approve the necessary revenue to fund Recharge activities listed in the OBMP and CBWCD shall not assume any legal duty or responsibility to conduct Recharge other than as is expressly set forth herein, as it may agree or as may be provided under general law or the Judgment.

V
WATERMASTER PERFORMANCE

5.1 Recharge and Replenishment. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding Recharge and Replenishment:

(a) All Recharge of the Chino Basin with Supplemental Water shall be subject to Watermaster approval.

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

(c) Watermaster shall administer, direct and conduct the Recharge of all water n a manner that is consistent with this Agreement, the OBMP and causes no Material Physical Injury to any party to the Judgment or the Chino Basin. Nothing herein shall be construed as committing a Party to provide Supplemental Water upon terms and conditions that are not deemed acceptable to that Party.

(d) Notwithstanding Section 5.1(c), CBWCD shall reserve its complete discretion to Recharge the Basin with water other than Supplemental Water as may be authorized by general law so long as the Recharge is in accordance with the limitations in the Judgment, if any and is in accordance with the provisions of Section 5.1(d)(i)-(v).

(i) Upon request by Watermaster CBWCD shall exercise Best Efforts to consult, coordinate and cooperate with Watermaster when recharging water into the Basin;

(ii) CBWCD shall provide Watermaster with reasonable notice in advance of any material change in its historic Recharge operations;

(iii) CBWCD shall not be required to provide funding for Recharge projects merely by virtue of its execution of this Agreement;

(iv) CBWCD shall Recharge the Basin in a manner that does not cause Material Physical Injury to any party to the Judgment or the Basin. Upon Watermaster's receipt of a written allegation that an existing or proposed CBWCD Recharge activity has or will cause Material Physical Injury to any party to the Judgment or the Basin, Watermaster shall hold a Public Hearing within a reasonable time. Watermaster shall provide notice and opportunity to be heard to interested parties to the Judgment including CBWCD. After hearing, Watermaster may approve, deny or condition the CBWCD's Recharge. Watermaster's decision shall be based upon the record and it shall be subject to the court's review;

(v) CBWCD's Recharge of the Basin coupled with an intent to store and recover water shall require a storage and recovery agreement.

(e) Watermaster shall exercise its Best Efforts to:

(i) protect and enhance the Safe Yield of the Chino Basin through Replenishment and Recharge;

(ii) ensure there is sufficient Recharge capacity for Recharge Water to meet the goals of the OBMP and the future water supply needs within the Chino Basin;

(iii) direct Recharge relative to Production in each area and sub-area of the Basin to achieve long term balance and to promote the goal of equal access to groundwater within all areas and sub-areas of the Chino Basin;

(iv) evaluate the potential or threat for any Material Physical Injury to any party to the Judgment or the Chino Basin, including, but not limited to, any Material Physical Injury that may result from any Transfer of water in storage or water rights which is proposed in place of physical Recharge of water to Chino Basin in accordance with the provisions of Section 5.3;

(v) establish and periodically update criteria for the use of water from different sources for Replenishment purposes;

(vi) ensure a proper accounting of all sources of Recharge to the Chino Basin;

(vii) Recharge the Chino Basin with water in any area where groundwater levels have declined to such an extent that there is an imminent threat of Material Physical Injury to any party to the Judgment or the Basin;

(viii) maintain long-term hydrologic balance between total Recharge and discharge within all areas and sub-areas;

(ix) coordinate, facilitate and arrange for the construction of the works and facilities necessary to implement the

quantities of Recharge identified in the OBMP Implementation Plan.

(f) Watermaster shall undertake Recharge, using water of the lowest cost and the highest quality, giving preference as far as possible to the augmentation and the Recharge of native storm water.

(g) In furtherance of its obligations under this Section, for a period of five years, commencing with Fiscal Year 2000-2001, and within each such Fiscal Year Watermaster shall arrange for the physical Recharge of Supplemental Water in the amount of an annual average of 6,500 acre-feet per year in one or more of the areas commonly known as the Montclair, Brooks and Upland spreading facilities.

(i) If for any reason at the end of the five year period, a cumulative total of 32,500 acre-feet of physical Recharge has not been accomplished under this subdivision, then Recharge shall continue at the above referenced locations at the average annual rate of 6,500 acre-feet until the full 32,500 acre-feet of physical Recharge has been accomplished;

(ii) The Recharged Supplemental Water shall increase the Operating Safe Yield under the Judgment. The cost and allocation of this Supplemental Water under this Section 5.1g shall be apportioned pro rata among the members of the Appropriative Pool under the Judgment according to the Producer's share of the initial Safe Yield;

(iii) The need to continue physical Recharge under this paragraph shall be evaluated by Watermaster after the conclusion of Fiscal Year 2004-2005. In evaluating further physical Recharge pursuant to this paragraph,

Watermaster shall take into account the provisions of this Article, the Judgment and the OBMP among all other relevant factors. Except as to Watermaster's determination of Material Physical Injury, the rights of each party to the Judgment to purchase or lease water to meet its over-Production obligation shall be unaffected by this provision;

(h) Watermaster shall not own Recharge projects, including but not limited to spreading grounds, injection wells, or diversion works. It shall never own real property. However, Watermaster may own water rights in trust for the benefit of the parties to the Judgment. Moreover, Watermaster shall arrange, facilitate and provide for Recharge by entering into contracts with appropriate persons, which may provide facilities and operations for physical Recharge of water as required by the Judgment and this Agreement, or pursuant to the OBMP. Any such contracts shall include appropriate terms and conditions, including terms for the location and payment of costs necessary for the operation and maintenance of facilities, if any.

(i) CBWCD's rights and obligations to obtain Replenishment Water are unaffected by the execution of this Agreement. Its obligation, rights and duties regarding Recharge may be set by arms length negotiation through separate agreement or as they otherwise exist under general law and the Judgment.

(j) Watermaster shall provide an annual accounting of the amount of Recharge and the location of the specific types of Recharge.

5.2 Storage and Recovery. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding the storage and recovery of water:

(a) In General.

(i) All storage capacity shall be subject to regulation and control by Watermaster;

(ii) No person shall store water in and recover water from the Chino Basin without an agreement with Watermaster;

(iii) Watermaster will ensure that any person, including but not limited to the State of California and the Department of Water Resources may make application to Watermaster to store and recover water from the Chino Basin as provided herein in a manner that is consistent with the OBMP and the law. Watermaster shall not approve an application to store and recover water if it is inconsistent with the terms of this Agreement or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any Party or the Basin caused by the storage and recovery of water shall be reasonably and fully mitigated as a condition of approval. In the event the Material Physical Injury cannot be mitigated, the request for storage and recovery must be denied.

(iv) This Agreement shall not be construed to limit the State or its department or agencies from using available storage capacity in the Basin in accordance with the provisions of this Section under a storage and recovery agreement with Watermaster.

(b) Local Storage.

(i) For a period of five years from the Effective Date, Watermaster shall ensure that: (a) the quantity of water

actually held in Local Storage under a storage agreement with Watermaster is confirmed and protected and (b) each party to the Judgment shall have the right to store its un-Produced carry-over water. Thereafter, a party to the Judgment may continue to Produce the actual quantity of carry-over water and Supplemental Water held in its storage account, subject only to the loss provisions set forth in this Section 5.2. This means a party to the Judgment may increase the total volume of carry-over water it holds in Local Storage up to five years after the Effective Date and as Watermaster may approve pursuant to a Local Storage agreement for Supplemental Water.

(ii) For a period of five years from the Effective Date, any party to the Judgment may make application to Watermaster for a Local Storage agreement, whereby it may store Supplemental Water in the Chino Basin.

(iii) Watermaster shall provide reasonable advance written notice to all interested parties of the proposed Local Storage agreement, prior to approving the agreement. The notice shall include the persons engaged in the Local Storage, the location of the Recharge and Production facilities and the potential for any Material Physical Injury, if any.

(iv) Watermaster shall approve the Local Storage agreement so long as: (1) the total quantity of Supplemental Water authorized to be held in Local Storage under all then existing Local Storage agreements for all parties to the Judgment does not exceed the cumulative total of 50,000 acre-feet; (2) the party to the Judgment making the request provides their own Recharge facilities for the purpose of placing the Supplemental Water into Local

Storage; (3) the agreement will not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed agreement with conditions that mitigate any threatened or potential Material Physical Injury.

(v) There shall be a rebuttable presumption that the Local Storage agreement for Supplemental Water does not result in Material Physical Injury to a party to the Judgment or the Basin.

(vi) In the event any party to the Judgment, or Watermaster, objects to a proposed Local Storage agreement for Supplemental Water and submits evidence that there may be a Material Physical Injury to any party to the Judgment or the Basin, Watermaster shall hold a Public Hearing and allow the objecting party to the Judgment a reasonable opportunity to be heard.

(vii) In the event more than one party to the Judgment submits a request for an agreement to store Supplemental Water pursuant to a Local Storage agreement, Watermaster shall give priority to the first party to file a bona fide written request which shall include the name of the party to the Judgment, the source, quantity and quality of the Supplemental Water, an identification of the party to the Judgment's access to or ownership of the Recharge facilities, the duration of the Local Storage and any other information Watermaster shall reasonably request. Watermaster shall not grant any person the right to store more than the then existing amount of available Local Storage. The amount of Local Storage available for the storage of Supplemental Water shall be determined by subtracting the previously approved and allocated quantity of storage capacity for Supplemental

Water from the cumulative maximum of 50,000 acre-feet.

(viii) Watermaster shall base any decision to approve or disapprove any proposed agreement upon the record.

(ix) Any party to the Judgment may seek judicial review of Watermaster's decision.

(x) Five years after the Effective Date, Watermaster shall have discretion to place reasonable limits on the further accrual of carry-over and Supplemental Water in Local Storage. However, Watermaster shall not limit the accrual of carry-over Local Storage for Fontana Union Mutual Water Company and Cucamonga County Water District when accruing carry-over storage pursuant to *Lease of Corporate Shares Coupled with Irrevocable Proxy, dated July 1, 1993 between Cucamonga County Water District and Fontana Water Resources Inc. and the Settlement Agreement Among Fontana Union Water Company, Kaiser Steel Reserves Inc., San Gabriel Valley Water Company and Cucamonga County Water Districts dated February 7, 1992*, to a quantity less than 25,000 acre-feet for the term of this Agreement.

(xi) Watermaster shall evaluate the need for limits on water held in Local Storage to determine whether the accrual of additional Local Storage by the parties to the Judgment should be conditioned, curtailed or prohibited if it is necessary to provide priority for the use of storage capacity for those Storage and Recovery Programs that provide broad mutual benefits to the parties to the Judgment as provided in this paragraph and Section 5.2(c) below;

(xii) Watermaster shall set the annual rate of loss from Local Storage for parties to the Judgment at zero until 2005. Thereafter the rate of loss from Local Storage for parties to the Judgment will be 2% until recalculated based upon the best available scientific information. Losses shall be deducted annually from each party to the Judgment's storage account;

(xiii) Watermaster shall allow water held in storage to be transferred pursuant to the provisions of Section 5.3 below. Storage capacity is not transferable by any party to the Judgment or any Party hereto.

(c) Storage and Recovery Program.

(i) Watermaster will ensure that no person shall store water in and recover water from the Basin, other than pursuant to a Local Storage agreement, without a storage and recovery agreement with Watermaster;

(ii) Watermaster shall prepare a list of basic information that a proposed applicant for a Storage and Recovery Program must submit to Watermaster prior to the execution of a storage and recovery agreement;

(iii) As a precondition of any project, program or contract regarding the use of Basin storage capacity pursuant to a Storage and Recovery Program, Watermaster shall first request proposals from qualified persons.

(iv) Watermaster shall be guided by the following criteria in evaluating any request to store and recover water from the Basin by a party to the Judgment or any person under a Storage and Recovery Program.

(a) The initial target for the cumulative quantity of water held in storage is 500,000 acre-feet in addition to the existing storage accounts;

(b) Watermaster shall prioritize its efforts to regulate and condition the storage and recovery of water developed in a Storage and Recovery Program for the mutual benefit of the parties to the Judgment and give first priority to Storage and Recovery Programs that provide broad mutual benefits;

(v) For the term of this Agreement, members of the Appropriative Pool and the Non-Agricultural Pool shall be exclusively entitled to the compensation paid for a Storage and Recovery Program irrespective of whether it be in the form of money, revenues, credits, proceeds, programs, facilities, or other contributions (collectively "compensation") as directed by the Non-Agricultural and the Appropriative Pools;

(vi) The compensation received from the use of available storage capacity under a Storage and Recovery Program, may be used to off-set the Watermaster's cost of operation, to reduce assessments on the parties to the Judgment within the Appropriative and Non-Agricultural Pools, and to defray the costs of capital projects as may be requested by the members of the Non-Agricultural Pools and the Appropriative Pool;

(xiii) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by storage and recovery of water, whether Local Storage and recovery or pursuant to a Storage and Recovery Program, shall be reasonably and fully mitigated as a condition of approval;

(ix) Watermaster reserves discretion to negotiate appropriate terms and conditions or to refuse to enter into a Storage and Recovery or to deny any request. However, with respect to persons not parties to the Judgment, Watermaster reserves complete discretion. Watermaster shall base any decision to approve or disapprove any proposed Storage and Recovery Program upon the record. However, it may not approve a proposed Storage and Recovery Program unless it has first imposed conditions to reasonably and fully mitigate any threatened or potential Material Physical Injury;

(x) Any party to the Judgment may seek review of the Watermaster's decision regarding a Storage and Recovery Program.

(d) The specific terms and conditions for the use of the facilities of CBWCD in connection with Local Storage or Storage and Recovery Programs shall be covered under separate agreements reached by arms length bargaining between Watermaster and CBWCD. Watermaster and any other Party shall not be entitled to the income received by CBWCD for use of its facilities in connection with Local Storage or Storage and Recovery Programs without the consent of CBWCD. Nothing in this Agreement shall be construed as preventing CBWCD from entering into an agreement with others for use of its facilities in a manner consistent with Section 5.1(d) i-v of this Agreement.

(e) Nothing herein shall be construed as prohibiting the export of Supplemental Water stored under a Storage and Recovery Program and pursuant to a storage and recovery agreement.

(f) Watermaster shall exercise Best Efforts to undertake the following measures:

(i) Complete the Short-term conjunctive use project, authorized by Watermaster and conducted by IEUA, TVMWD and MWD;

(ii) Evaluate and develop a seasonal peaking program for in-Basin use and dry year yield to reduce the Basin's demand on the Metropolitan Water District for imported water;

(iii) Evaluate and develop a dry year export program;

(iv) Evaluate and develop a seasonal peaking export program;

5.3 Transfers. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding the Transfer of water:

(a) Watermaster will ensure that any party to the Judgment may Transfer water in a manner that is consistent with this Agreement, the OBMP and the law. Watermaster shall not approve a Transfer if it is inconsistent with the terms of the Agreement, or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Transfer of water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Transfer must be denied.

(b) A party to the Judgment may make application to Watermaster to Transfer water as provided in the Judgment.

(i) Watermaster shall provide reasonable advance written notice to all the parties to the Judgment of a proposed Transfer, prior to approving the Transfer. The notice shall include the persons engaged in the Transfer, the location of the Production and Watermaster's analysis of the potential for Material Physical Injury, if any;

(ii) Watermaster shall approve the Transfer of water as provided in the Judgment so long as the individual Transfer does not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed Transfer with conditions that fully and reasonably mitigate any threatened or potential Material Physical Injury;

(iii) There shall be a rebuttable presumption that the Transfer and the Production by the transferee does not result in Material Physical Injury to a party to the Judgment or the Basin;

(iv) In the event any party to the Judgment, or Watermaster, objects to a proposed Transfer and submits evidence that there may be Material Physical Injury to any party to the Judgment or the Basin, Watermaster shall hold a Public Hearing and allow the objecting party to the Judgment a reasonable opportunity to be heard;

(v) Watermaster shall base any decision to approve or disapprove any proposed Transfer upon the record after considering potential impacts associated with the individual Transfer alone and without regard to impacts attributable to any other Transfers;

(vi) Any party to the Judgment may seek judicial review of the Watermaster's decision.

(c) Watermaster shall allow Producers to lease water rights to make up for the lessee's over-Production.

(d) Except as provided in Section 5.2, Producers shall not be required to file a storage and recovery or recapture plan except when Producing water transferred from a storage account.

(e) Watermaster shall approve the Transfer or lease of the quantified Production rights of Non-Agricultural Producers within the Non-Agricultural Pool subject to the provisions of paragraph (b) above. The right to Transfer within the pool includes the right to lease water to other members of the Non-Agricultural Overlying Pool. In addition, the parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter or for a Storage and Recovery Program.

(f) Consistent with the provisions of 88-3, Watermaster shall approve the Transfer of unallocated Safe Yield under-Produced by the Agricultural Pool in Fiscal Year 1998-99, for Transfer to the Appropriative Pool in Fiscal Year 1999-2000, 35,262.452 acre-feet consistent with Watermaster Resolution 88-3. This Transfer shall be in addition to the Early Transfer of the 32,800 acre-feet per year from the Agricultural Pool to the Appropriative Pool referenced below in 5.3(g).

(g) Watermaster shall approve an "Early Transfer" of water to the Appropriative Pool in an amount not less than 32,800 acre-feet per year that is the expected approximate quantity of water not Produced by the Agricultural Pool. The quantity of water sub-

ject to Early Transfer under this paragraph shall be the greater of (i) 32,800 acre-feet or (ii) 32,800 acre-feet plus the actual quantity of water not Produced by the Agricultural Pool for that Fiscal Year that is remaining after all the land use conversions are satisfied pursuant to 5.3(i) below.

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

(ii) The Transfer shall not limit the Production right of the Agricultural Pool under the Judgment to Produce up to 82,800 acre-feet of water in any year or 414,000 acre-feet in any five years as provided in the Judgment.

(iii) The combined Production of all parties to the Judgment shall not cause a Replenishment assessment on the members of the Agricultural Pool. The Agricultural Pool shall be responsible for any Replenishment obligation created by the Agricultural Pool Producing more than 414,000 acre-feet in any five-year period.

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

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

(h) The amount of water rights converted for agricultural land to urban use is presently 2.6 acre-feet per acre, with 1.3 acre-feet

per acre being allocated collectively to all members of the Appropriative Pool with an initial share of Safe Yield and 1.3 acre-feet per acre being allocated to that appropriator providing service for that urban use. The rate of 2.6 acre-feet per acre shall be changed to a total of 2.0 acre-feet per acre, all of which shall be allocated upon the conversion of the land to that party to the Judgment which is an a member of the Appropriative Pool, on the Effective Date of this Agreement, and whose Sphere of Influence or authorized service area contains the land (purveyor). Upon such conversion of water rights, the purveyor will pledge that amount of water needed for such urban land use, when such urban land use is established, up to 2 acre-feet of water per acre of land per year will be made available for service for such converted land by purveyor under its then-existing standard laws, regulations, rules and policies, or for service arranged by such purveyor, subject only to prohibition of such service by a federal, state agency or court with jurisdiction to enforce such prohibition. The owner of such converted land shall have the right to enforce such pledge by specific performance or writ of mandate under the terms of this Agreement. No monetary damages shall be awarded.

(i) The members of the Agricultural Pool, including the State of California, shall have the right to engage in a voluntary agreement with an appropriator which has a service area contiguous to or inclusive of the agricultural land, to provide the required water to the overlying land on behalf of the member of the Agricultural Pool unless otherwise prohibited by general law. The appropriator providing service shall be entitled to a credit to off-set Production to the extent it is serving the overlying land up to the amount of the historical maximum annual quantity of water previously used on the property.

5.4 Assessments, Credits, and Reimbursements. After the Effective Date and until the termination of this Agreement, the Parties expressly

consent to Watermaster's performance of the following actions, programs or procedures regarding Assessments.

(a) During the term of this Agreement, all assessments and expenses of the Agricultural Pool including those of the Agricultural Pool Committee shall be paid by the Appropriative Pool. This includes but is not limited to OBMP Assessments, assessments pursuant to Paragraphs 20, 21, 22, 30, 42, 51, 53, 54 both General Administrative Expenses and Special Project Expenses, 55, and Exhibit F (Overlying Agricultural Pool Pooling Plan) of the Judgment except however in the event the total Agricultural Pool Production exceeds 414,000 acre-feet in any five consecutive year period as defined in the Judgment, the Agricultural Pool shall be responsible for its Replenishment obligation pursuant to Paragraph 45 of the Judgment.

(b) The City of Pomona (Pomona) shall be allowed a credit of up to $2 (two) million against OBMP Assessments for its installation and operation and maintenance of its existing anion exchange project, which is hereby determined to further the purposes of the OBMP. Pomona's construction and operation of its anion exchange project was not legally compelled and Pomona had no legal duty to construct the project. For the 30 (thirty) year initial Term of this Agreement, Pomona's OBMP Assessment shall be credited $66,667 per year, not to exceed Pomona's total BMP Assessment attributable to the project's Production for that year. Extension of the Term of this Agreement shall not extend the period of credit.

(c) Kaiser Ventures (Kaiser) in recognition of its contribution of 25,000 acre-feet to offset Replenishment obligations for the Desalters shall be allowed a credit of up to $900,000 (nine hundred thousand dollars) against OBMP Assessments for the Desalters and related facilities. For the 30 (thirty) year initial

Term of this Agreement, Kaiser's OBMP Assessment shall be credited up to $30,000 (thirty thousand dollars) per year, not to exceed Kaiser's OBMP Assessment attributable to Desalters and related facilities. Extension of the Term of this Agreement shall not extend the period of credit. In the event Kaiser Transfers its water rights appurtenant to its overlying land which it owns on the date of execution, the purchaser (Kaiser's successor in interest) shall be entitled one-half (½) of the annual credit.

(d) Watermaster shall adopt reasonable procedures to evaluate requests for OBMP credits against future OBMP Assessments or for reimbursement. Any Producer or party to the Judgment, including but not limited to the State of California, may make application to Watermaster for reimbursement or credit against future OBMP Assessments for any capital or operations and maintenance expenses incurred in the implementation of any project or program, including the cost of relocating groundwater Production facilities, that carries out the purposes of the OBMP including but not limited to those facilities relating to the prevention of subsidence in the Basin, in advance of construction or that is prospectively dedicated to service of the stated goals of the OBMP. Watermaster shall exercise reasonable discretion in making its determination, considering the importance of the project or program to the successful completion of the OBMP, the available alternative funding sources, and the professional engineering and design standards as may be applicable under the circumstances. However, Watermaster shall not approve such a request for reimbursement or credit against future BMP Assessments under this section where the Producer or party to the Judgment was otherwise legally compelled to make the improvement.

(e) Any Producer that Watermaster compels to move a groundwater Production facility that is in existence on the Date of

Execution shall have the right to receive a credit against future Watermaster assessments or reimbursement up to the reasonable cost of the replacement groundwater Production facility.

(f) The procurement of Replenishment Water and the levy of assessments shall be consistent with the provisions of Section 5.4(a) above.

5.5 Salt Credits. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding Salt Credits. Watermaster shall assign to the members of the Appropriative Pool, salt credits under the OBMP other than those that were previously allocated for the existing Chino I Desalter, or are attributable to a project or program undertaken by the State of California for the benefit of its overlying land and that carry out the purposes of the OBMP.

5.6 Metering. After the Effective Date and until the termination of this Agreement, the Parties expressly consent to Watermaster's performance of the following actions, programs or procedures regarding metering:

(a) With respect to the obligation to install meters, which is set forth in the Judgment Paragraph 21, any Assessment levied by Watermaster on the members of the Agricultural Pool, regarding metering shall be paid by the Appropriative Pool. Members of the Agricultural Pool, shall have no obligation to install meters hereafter. The obligation to install meters on wells owned or operated by members of the Agricultural Pool, shall become that of the Watermaster.

(b) Agricultural Pool meters shall be installed within thirty-six months of the Date of Execution. Watermaster shall be responsible for providing the meter, as well as the cost of any installation, maintenance, inspection, testing and repairing.

The members of the Agricultural Pool, shall provide reasonable access during business hours to a location reasonably appropriate for installation, inspection, and repairing of a meter.

(c) The State of California reserves its right to continue to install, operate, maintain, inspect, test and repair its own meters on wells owned or operated by the State, unless it consents to installation by Watermaster in which case Watermaster assumes the cost.

VI
COVENANTS BY THE MEMBERS OF THE AGRICULTURAL POOL

6.1 Best Efforts to Support Storage and Recovery. The members and representatives of the Agricultural Pool shall exercise Best Efforts to support the development of any Storage and Recovery Project, once it has been approved by Watermaster, so long as there is no Material Physical Injury to a member of the Agricultural Pool or the Basin.

6.2 Covenant of Good Faith and Fair Dealing. The members and representatives of the Agricultural Pool, including the State of California in its capacity as a member and owner of overlying land within the Agricultural Pool, shall be bound by the covenant of good faith and fair dealing, and not oppose or undermine the efforts of Watermaster to secure the development of a Storage and Recovery Program, so long as there is no potential or threatened Material Physical Injury to a member of the Agricultural Pool or the Basin.

6.3 Waiver of Compensation. For the term of this Agreement, the members and representatives of the Agricultural Pool shall waive any claims or rights they might raise or possess, and shall not be entitled, to any compensation from a Storage and Recovery Program irrespective of whether it be in the form of money, revenues, credits,

proceeds, programs, facilities, or other contributions (compensation). Further, the members of the Appropriative Pool and the Non-Agricultural Overlying Pool shall have the exclusive rights to any such compensation. This Section shall not apply to the charges adopted by CBWCD for storage and recovery purposes. This paragraph shall not be construed as a limitation on the ability of the State of California to make application to the Watermaster for a Storage and Recovery Program pursuant to Section 5.2.

VII
DESALTERS

7.1 Need for Desalters. The OBMP requires construction and operation of Desalters. The Desalters shall be owned, operated and maintained by IEUA and WMWD acting independently or in their complete discretion, acting through PC14 consistent with the terms of this Agreement.

7.2 Ownership and Operation.

(a) Chino I Desalter.

(i) The existing "Chino I Desalter," also known as the "SAWPA Desalter," consisting of extraction wells, transmission facilities for delivery of groundwater to the Chino I Desalter, Desalter treatment and delivery facilities for product water, including pumping and storage facilities, and treatment and disposal capacity in the SARI System, is owned and operated by SAWPA, which has created "The Project Committee No. 14 (PC14)" comprised of SAWPA members, IEUA, WMWD, and OCWD, pursuant to "Project Agreement No. 14" dated April 2, 1991, to exercise all the powers and responsibilities of Section 18 of the SAWPA Joint Exercise of Powers Agreement, which now constitutes

the executive authority through which SAWPA acts with respect to the Chino I Desalter and to fund repayment for any loans for construction and operation and maintenance of such Desalter and a "Financing Agreement" dated April 1, 2000.

(ii) The Chino I Desalter is operated pursuant to (a) "take or pay" agreements with the purchasers of water made available from such Desalter; (b) an agreement with the Metropolitan Water District (MWD) subsidizing that Desalter to reduce the cost of the water made available by that Desalter compared to the alternative cost of uninterruptible treated imported water available from MWD; and (c) an agreement with the Watermaster, all Pools of Producers from the Chino Basin, Kaiser Ventures, Inc., formerly known as Kaiser Resources, Inc. (Kaiser) and the California Regional Water Quality Control Board, Santa Ana Region (RWQB), regarding provision of certain water with which to satisfy the Replenishment obligation for operating the Desalter.

(b) Chino II Desalter and Chino I Expansion.

IEUA and WMWD acting independently or in their complete discretion through PC14 must own and operate the Chino II Desalter and the Chino I Expansion in the same manner as the Chino I Desalter, except as otherwise provided in this Agreement.

(c) Future Desalters.

IEUA and WMWD acting independently or in their complete discretion through PC14 must own and operate Future Desalters, if and only if, they can secure funding from state,

federal or sources other than the Parties to pay the capital costs required to construct Future Desalters.

7.3 Design and Construction of Chino II Desalter, Chino I Expansion and Future Desalters.

(a) IEUA and WMWD acting independently or in their complete discretion, acting through PC14 shall design and construct the Chino II Desalter on the eastside of the Chino Basin and expand the capacity of the Chino I Desalter already in existence on the Date of Execution, from 8 mgd up to 14 million gallons per day.

(b) The Chino II Desalter shall have an initial capacity of 10 mgd and shall be designed to deliver water to Jurupa Community Services District, the City of Ontario, and if requested, others subject to the limitations of available funding. The existing capacity of the Chino I Desalter shall be expanded by a minimum of 2 mgd and up to 6 mgd, depending on the rate of development and availability of funding and shall be designed to deliver water to the Cities of Chino, Chino Hills and the State of California as provided in this Section.

(c) There is no minimum initial capacity established for Future Desalters as the size and timing of Future Desalters are dependent upon variables not presently subject to reliable estimates.

(i) It is contemplated by the Parties that Future Desalters, and a further expansion of the Chino I Desalter to a capacity greater than the Chino I Expansion or the Chino II Desalter to a capacity greater than 10 mgd may occur;

(ii) IEUA and WMWD shall design and construct Future Desalters, whether acting independently, or in their complete discretion, through PC14, provided that their

obligation shall be conditioned upon their ability to secure funding from the state or federal sources other than the Parties to pay the capital costs of construction. Absent such funding, the IEUA and WMWD, acting independently or, in their complete discretion, acting through PC14, shall have no obligation to construct Future Desalters;

(d) The specific location of wells to supply the Chino II Desalter and Future Desalters shall be determined with Watermaster approval and shall be in a location, which is consistent with and shall carry out the purpose of the OBMP. The design and construction of the Chino II Desalter, Chino I Expansion, and Future Desalters shall be in accordance with the OBMP and subject to Watermaster approval. Watermaster approval shall not be unreasonably withheld and shall insure that the operation of the Desalters will implement the OBMP and not result in Material Physical Injury to any party to the Judgment or the Basin.

(e) Wells operated in connection with the Desalters shall be designed and constructed to Produce water with high total dissolved solids (TDS) and be located in areas consistent with the purposes of the OBMP.

7.4 Funding.

(a) The capital costs of the Chino I Desalter are not affected by this Agreement.

(b) The capital costs of designing and constructing the Chino II Desalter and the Chino I Desalter Expansion shall be partially derived from Proposition 13 funds. The Parties shall exercise their Best Efforts to secure said funds from the appropriate state agencies. However, all unmet capital, operation and main-

tenance costs relative to the Chino II Desalter shall be paid from the following sources and in the following order of priority:

(i) The net amount of funding received by SAWPA from its existing preliminary gross allocation of $87,000,000 from the $235,000,000 Proposition 13 bond funding provided for the Santa Ana River Watershed sub-account, which currently includes $20,000,000-30,000,000 earmarked for the Chino II Desalter and $5,000,000 for the Chino I Desalter Expansion;

(ii) All other eligible Proposition 13 bond funding;

(iii) All other available federal, state or SAWPA funding;

(iv) MWD subsidies or other funding without committing the storage space of the Chino Basin under any storage and recovery or conjunctive use agreement, such as that secured pursuant to Agreement Number 7658, between MWD, SAWPA, IEUA, WMWD and OCWD dated December 7, 1995, and entitled "Chino Basin Desalinization Program, Phase I, Joint Participation Agreement for Recovery and Utilization of Contaminated Groundwater;"

(v) Revenue derived from the sale of water made available from the Desalters; and

(vi) Any additional revenue arranged by IEUA and WMWD acting independently or in their complete discretion, acting through PC14, pursuant to an agreement substantially similar to or an amendment of the SAWPA PC14 Agreement entered into on or about April 2, 1991.

(c) IEUA's and WMWD's obligation to construct Future Desalters whether acting independently, or in their complete discretion, through PC14, shall be conditioned upon their ability to secure state or federal funding to pay for the capital costs related to such construction. Absent such state and/or federal funding, the IEUA and WMWD, acting independently or, in their complete discretion, acting through PC14, shall have no obligation to construct Future Desalters.

(i) If, after the earlier of ten years, or the conversion of 20,000 acres of agricultural land, Watermaster, in its discretion, determines that Future Desalters are necessary to implement the OBMP, IEUA or WMWD, acting independently or in their complete discretion acting through PC14, shall have a period up to thirty-six (36) months to secure sufficient funding from State or Federal sources to pay for all the capital costs required to construct "Future Desalters;"

(ii) If IEUA and WMWD acting independently or, in their complete discretion, acting through PC14 cannot secure the necessary funding, the Parties, other than the Agricultural Pool, will exercise their Best Efforts to negotiate new terms and conditions so as to accomplish the implementation of this portion of the OBMP;

(iii) If, however, the Parties, other than the Agricultural Pool, are unable to negotiate new terms to this Agreement within twenty-four (24) months from the initiation of negotiations, the Parties may appoint a mutually agreed upon mediator. Failing an agreement, the Parties reserve all legal rights and remedies, provided that the Agricultural Pool shall not be liable for the costs of the Future Desalters. The remainder of this Agreement shall remain in full force and effect.

7.5 Replenishment Water. Replenishment for the Desalters shall be provided from the following sources in the following order of priority.

(a) Watermaster Desalter Replenishment account composed of 25,000 acre-feet of water abandoned by Kaiser pursuant to the "Salt Offset Agreement" dated October 21, 1993, between Kaiser and the RWQB, and other water previously dedicated by the Appropriative Pool.

(b) New Yield of the Basin, unless the water Produced and treated by the Desalters is dedicated by a purchaser of the desalted water to offset the price of desalted water to the extent of the dedication;

(c) Safe Yield of the Basin, unless the water Produced and treated by the Desalters is dedicated by a purchaser of the desalted water to offset the price of desalted water to the extent of the dedication;

(d) Additional Replenishment Water purchased by Watermaster, the costs of which shall be levied as an Assessment by Watermaster.

7.6 Sale of Water.

(a) The terms and conditions for the purchase and sale of water from the Chino I Desalter shall be as provided by separate agreement.

(b) The terms and conditions for the purchase and sale of desalted water from the Chino II Desalter and Chino I Expansion are as follows.

(i) Members of the Appropriative Pool and the State of California shall have the first priority right to purchase desalted water developed by Chino II and Chino I Expansion on an equal basis, pursuant to a water supply contract, which is not a "take or pay" contract but contains a minimum annual quantity of water available to be purchased and is consistent with the provisions of this Agreement.

(ii) OCWD shall have the second priority right to purchase desalted water from the Chino II Desalter and the Chino I Expansion provided that IEUA and WMWD have elected to act through PC14.

(iii) If the members of the Appropriative pool, the State of California and the OCWD do not contract for the delivery of all desalted water made available by Chino II Desalter and the Chino I Expansion, other persons may purchase the water.

(c) The terms and conditions for the purchase and sale of desalted water from Future Desalters are contingent upon IEUA and WMWD acting independently or, in their complete discretion, acting through PC14, securing sufficient funding to pay the capital costs of transporting the desalted water from the Chino II Desalter and Chino I Expansion to other parties to the Judgment that are members of the Appropriative Pool and that desire to purchase desalted water. If sufficient funding is acquired, then other parties to the Judgment that are members of the Appropriative Pool shall have the right to purchase desalted water under the terms and conditions provided in this Article.

(d) The price of desalted water to the parties to the Judgment that are members of the Appropriative Pool, the State of California

and OCWD when purchasing water pursuant to Section 7.6(b)2 above, shall be the actual cost of providing the water but shall not exceed $375.00 per acre foot, as adjusted by the purchase and sale agreement between IEUA, WMWD, PC14 and the purchasing party, but in no event shall such adjustment exceed the annual consumer's price index for the LA/Anaheim/ Riverside Area or the percent increase in the MWD treated water rates, or its equivalent, whichever is less as measured from the Effective Date.

(i) If a party to the Judgment elects to Produce water for the Chino II Desalter, the Chino I Expansion or Future Desalters they shall be entitled to a credit against the purchase price in an amount equivalent to the cost of alternative Replenishment Water then available from MWD as interruptible, untreated water or the then prevailing value of the avoided Replenishment obligation, whichever is less;

(ii) If the purchaser is a person other than a party to the Judgment, the price shall be no less than the cost of the alternative water supplies with comparable reliability and quality or if no purchasers are identified then at the highest price that may be attained under the circumstances;

(iii) Fifty percent of any annual revenues received by the Project 14 Committee in excess of the actual ongoing operation, maintenance and Replenishment expenses which revenues are derived from sales of water to any person not a Producer under the Judgment, or the OCWD, shall be provided to Watermaster for use as an off-set against any future assessments against the Parties by Watermaster.

(e) The term of such Water Supply Contract shall be not less than 30 years if requested by a Party to this Agreement.

VIII
TERM

8.1 Commencement. This Agreement shall become effective on the Effective Date and shall expire on the Termination Date.

8.2 Expiration. Unless extended pursuant to paragraph 8.3, this Agreement shall expire and thereupon terminate on December 31 of the thirtieth (30th) calendar year starting on January 1, of the first calendar year following the Effective Date.

8.3 Meet and Confer. The Parties agree to meet and confer during the 25th year of this Agreement to discuss any new or modified terms which may be requested or required by each Party in order to continue the term of this Agreement. However, no Party shall be required to modify or amend a term of this Agreement as a precondition to exercising their right to one thirty (30) year extension as provided in 8.4 below.

8.4 Independent Right to Extend. The term of this Agreement may be extended for a period of an additional thirty (30) years, upon the unilateral election of either the Appropriative or Agricultural Pool, (as a Pool only and not the individual members of either Pool) acting in accordance with Watermaster procedures under the Judgment, prior to the end of the twenty-fifth (25^{th}) year. The election shall be made in writing with a copy to be sent to the Watermaster and all Parties to this Agreement. In the event an election is made to continue this Agreement, the Agreement shall continue for the extended term on the same terms and conditions as existed during the first thirty (30) years of the Agreement.

8.5 Force Majeure.

(a) If the performance, in whole or in part, of the obligations of the respective Parties is prevented by act or failure to act of any agency other than a Party to this Agreement, court or any other person, by natural disaster or catastrophic event (such as earthquake, fire, drought or flood), contamination, war, strikes, lockouts, acts of God, or acts of civil or military authority, by the operation of applicable law, or by any other cause beyond the control of the affected Party or Parties, whether similar to the causes specified herein or not, the obligation of the affected Party or Parties to perform an act or actions under this Agreement shall be suspended from the time and to the extent that the performance thereof is prevented, but reasonable diligence shall be observed by the affected Party or Parties, so far as it lies in their power, in performing such respective obligations in whole or in part under this Agreement.

(b) In the event performance is prevented as described above, the Parties agree actively to cooperate and use their Best Efforts to resume performance.

8.6 Only One Mandatory Extension. In no event shall a Party be required to extend performance under this Agreement beyond the first two terms of this Agreement, irrespective of the existence of force majeure. Any further extensions under this Agreement shall be consensual among the Parties to such an agreement.

8.7 Effect of Termination. Upon termination of this Agreement further performance by the Parties under the Agreement shall be excused. Performance under the Agreement shall not be the cause of any action or claim other than as expressly provided herein. Other than as provided in paragraph 8.8, upon termination of this Agreement, the legal rights, remedies, responsibilities and authorities of all Parties regarding the Judgment, interpretation of the Judgment and the powers and authority of Watermaster or the Court, in existence on the

Date of Execution, whatever they may be, are expressly reserved and shall be as they existed on the Date of Execution, provided that such rights and remedies shall not be a basis to challenge a Party's performance under this Agreement.

8.8 Rescission of Resolutions 84-2 and 88-3. Upon termination of this Agreement, the members of the Appropriative Pool shall have no obligation to pay the Watermaster Assessments for the members of the Agricultural Pool. The provisions of Resolution 84-2 and 88-3 shall be rescinded and except as provided for in Section V above,

pertaining to "Early Transfers" of Safe Yield during the term of this Agreement, the members of the Appropriative Pool shall not be entitled to further Early Transfers of water from the Agricultural Pool. Upon the termination of this Agreement, the Parties agree that no further Early Transfers of unallocated Safe Yield shall occur. The determination of the Safe Yield as provided for in the Judgment at Paragraph 44 shall be construed to mean that the Appropriative Pool shall receive no Transfers of unallocated Safe Yield from the Agricultural Pool for a period of five (5) consecutive years after the termination of this Agreement, at which time the Appropriative Pool shall receive the difference between 414,000 acre-feet allocated to the Agricultural Pool and the actual water used by the Agricultural Pool for the first five consecutive calendar years immediately following the termination of this Agreement.

8.9 Mediation Upon Failure to Secure Capital Funding for Future Desalters. If IEUA or WMWD have not acquired the funding within thirty-six (36) months of the date of the Watermaster determination regarding the need for the Future Desalters as provided in Article VII, then the members of the Appropriative Pool, Non-Agricultural Pool and IEUA and WMWD will exercise Best Efforts to negotiate new terms and conditions for the capital costs for any such Future Desalters.

8.10 Parties Rights Unaffected Upon Termination. Each Party's rights shall be unaffected by their having approved, executed or implemented this Agreement pursuant to their mutual consent other than as provided is Section 8.8.

IX
CONFLICTS

9.1 Events Constituting a Default by a Party. Each of the following constitutes a "default" by a Party under this Agreement.

(a) A Party fails to perform or observe any term, covenant, or undertaking in this Agreement that it is to perform or observe and such failure continues for ninety (90) days from a Notice of Default being sent in the manner prescribed in Section 10.13.

9.2 Remedies Upon Default. In the event of a default, each Party shall have the following rights and remedies:

(a) Specific Performance. Each Party agrees and recognizes that the rights and obligations set forth in this Agreement are unique and of such a nature as to be inherently difficult or impossible to value with money. If one Party does not perform in accordance with the specific wording of any of the provisions in this Agreement applicable to that Party, defaults, or otherwise breaches this Agreement, an action at law for damages or other remedies at law would be wholly inadequate to protect the unique rights and interests of the other Party to the Agreement. Accordingly, in any court controversy con-

cerning this Agreement, the Agreement's provisions will be enforceable in a court of equity by specific performance. This specific performance remedy is not exclusive and is in addition to any other remedy available to the Parties to enforce the terms of this Agreement.

(b) Injunction. Each Party agrees and recognizes that the rights and obligations set forth in this Agreement are material to another Party and of such a nature that there will be substantial reliance upon the terms of this Agreement. If one Party does not perform in accordance with specific wording of any of the provisions of this Agreement applicable to that Party, defaults, or otherwise breaches this Agreement, an action at law for damages or other remedies at law would be wholly inadequate to prevent substantial and irreparable harm to another Party to the Agreement. Accordingly, in any court controversy concerning this Agreement, the Agreement's provisions will be enforceable in a court of equity by mandatory and prohibitory injunction. This mandatory and prohibitory injunction remedy is not exclusive and is in addition to any other remedy available to the Parties to enforce the terms of this Agreement.

(c) Cumulative Rights and Remedies. The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any right or remedy, the non-breaching Party does not thereby waive that right or remedy. Furthermore, no single or partial exercise of any right, power, or privilege precludes any further exercise of a right, power, or privilege granted by this Agreement or otherwise.

(d) Attorneys' Fees. In any adversarial proceedings between the Parties other than the dispute resolution procedure set forth below and under the Judgment, the prevailing Party shall be entitled to recover their costs, including reasonable attorneys' fees. If there is no clear prevailing Party, the Court shall determine the prevailing Party and provide for the award of costs and reasonable attorneys' fees. In considering the reasonableness of either Party's request for attorneys' fees as a prevailing Party, the Court shall consider the quality, efficiency, and value of the legal services and similar/prevailing rate for comparable legal services in the local community.

9.3 Dispute Resolution.

(a) Scope of Dispute Resolution. Disputes (Disputes) between the Parties other than those constituting a "Default", or "Exclusion" (defined below), shall be resolved pursuant to the provisions of this Section.

(b) Exclusions:

(i) Emergency. An emergency event which, if not promptly resolved may result in imminent danger to the public health, safety or welfare shall not be subject to dispute resolution.

(ii) Complete Discretion. Those matters reserved to the complete discretion of a Party under this Agreement shall not be subject to dispute resolution.

(iii) Review Under the Judgment Unaffected. The rights and remedies of the parties to the Judgment to seek review of Watermaster actions shall not be subject to dispute resolution.

(c) Disputes.

(i) Each Party to this Agreement may submit any Dispute related to or arising under this Agreement to non-binding mediation by delivering a Notice of Dispute to the other Party;

(ii) The written Notice of Dispute prepared by the Party shall be delivered to the other Party in accordance with Section 10.13. The Notice of Dispute shall clearly describe the basis of the dispute and the Sections of the Agreement under which the Dispute arises;

(iii) The non-binding mediation shall be conducted by Judicial Arbitration Mediation Services (JAMS) or an equivalent mediation service agreed to by the Parties;

(iv) Unless otherwise agreed, a mediator shall be appointed within forty-five (45) days of the date the Notice of Dispute is delivered to hear the dispute and provide a written determination. The mediator shall be chosen jointly by the Parties. If the Parties cannot agree, the Court shall appoint the mediator. Employees or agents of Watermaster or any Party are ineligible to serve as the mediator;

(v) The mediation shall be held within ninety (90) days of the date the Notice of Dispute is delivered;

(vi) Any statute of limitations applicable to any claims, rights, causes of action, suits, or liabilities of whatever kind or nature, in law, equity or otherwise, whether known or unknown, shall be tolled during the mediation process. For purposes of this Section, the mediation process shall commence upon the service of a Notice of

Dispute to the other Party pursuant to Section 9.3c(i) above. For purposes of this Section, the mediation process shall be deemed complete ten (10) days after service of the mediator's written notice of the conclusion of the mediation;

X
GENERAL PROVISIONS

10.1 Supersedence. Upon execution of this Agreement, any and all existing agreements or contracts between the Parties concerning the precise subject matter of this Agreement are hereby rescinded to the extent that they conflict with express terms herein.

10.2 Applicability to Others.

(a) After the Date of Execution, each Party agrees that any other agreement or contract relating to the subject matter of this Agreement, or the Judgment, to which it is a party, shall be consistent with the provisions of this Agreement, unless all other Parties consent to the inconsistent agreement or contract.

(b) After the Date of Execution, each Party reserves complete discretion to enter into other agreements or contracts on subject matter not covered by the terms of this Agreement.

10.3 Admissions by Parties. Nothing in this Agreement constitutes an admission of liability by any Party hereto for any prior or past acts that preceded the Date of Execution. This Agreement and any documents prepared in connection herewith may not be used as evidence in any litigation, except as necessary to interpret or enforce the terms of this Agreement.

10.4 Construction of Agreement. Each Party, with the assistance of competent legal counsel, has participated in the drafting of this Agreement and any ambiguity should not be construed for or against any Party on account of such drafting.

10.5 Each Party Bears Own Costs. Each Party is to bear its own costs, expenses, and attorneys' fees arising out of or in connection with the subject matter of this Agreement and the negotiation, drafting, and execution of this Agreement. Each of the Parties understands that this Agreement includes all claims for loss, expense and attorneys' fees, taxable or otherwise, incurred by it or arising out of any matters leading up to the execution of this Agreement.

10.6 Waiver of Breach. No waiver or indulgence of any breach or series of breaches of this Agreement shall be deemed or construed as a waiver of any other breach of the same or any other provision hereof or affect the enforceability of any part or all of this Agreement. No waiver shall be valid unless executed in writing by the waiving Party.

10.7 Awareness of Contents/Legal Effect. The Parties expressly declare and represent that they have read the Agreement and that they have consulted with their respective counsel regarding the meaning of the terms and conditions contained herein. The Parties further expressly declare and represent that they fully understand the content and effect of this Agreement and they approve and accept the terms and conditions contained herein, and that this Agreement is executed freely and voluntarily.

10.8 Agreement Binding On All. This Agreement shall be binding upon and shall inure to the benefit of each of the Parties, and each of their respective agents, employees, directors, officers, attorneys, representatives, principals, shareholders, sureties, parents, subsidiaries, affiliates, successors, predecessors, assigns, trustees or receivers appointed to administer their assets, and attorneys of any

and all such individuals and entities. All the covenants contained in this Agreement are for the express benefit of each and all such persons described in this Section. This Agreement is not intended to benefit any third parties.

10.9 Counterparts. This Agreement may be executed in counterparts. This Agreement shall become operative as soon as one counterpart hereof has been executed by each Party. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of all Parties do not appear on the same page.

10.10 Captions. The captions contained herein are included solely for convenience and shall not be construed as part of this Agreement or as full or accurate descriptions of the terms hereof.

10.11 Choice of Law. This Agreement shall be construed and enforced pursuant to the laws of the State of California.

10.12 Authority to Enter into This Agreement. Each Party represents and warrants that its respective obligations herein are legal and binding obligations of such Party; that each Party is fully authorized to enter into this Agreement, and that the person signing this Agreement hereinafter for each Party has been duly authorized to sign this Agreement on behalf of said Party.

10.13 Notice.

(a) Any notice required under this Agreement shall be written and shall be served either by personal delivery, mail or fax.

(b) In the case of service by personal delivery or fax, no additional time, in days, shall be added to the time in which a right may be exercised or an act may be done.

(c) In the case of service by mail, notice must be deposited in a post office, mailbox, sub post-office, substation, or mail

chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the representative(s) of the Party on whom it is to be served, at their place of business. The service is complete at the time of deposit. Any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of notice by mail shall be extended five days. Any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of notice by Express mail or other method of delivery providing for overnight delivery shall be extended by two court days.

10.14 Amendments and/or Changes to Agreement.

(a) Any amendments and/or changes to this Agreement must be in writing, signed by a duly authorized representative of the Parties hereto, and must expressly state the mutual intent of the Parties to amend this Agreement as set forth herein. The Parties to this Agreement recognize that the terms and conditions of this Agreement, which are set forth herein in the Sections preceding this Section have been arrived at through the collective negotiations by the Parties.

(b) The Parties hereby agree that no amendments and/or changes may be made to this Agreement without the express written approval of each Party to this Agreement, provided that upon request, no such approval shall be unreasonably withheld.

XI
ACKNOWLEDGMENTS: CONFIRMATION OF RIGHTS

11.1 Each Party's rights to water it presently holds in storage with Watermaster are confirmed and protected.

11.2 The Parties confirm that in addition to the benefits received by the State under this Agreement, including an exemption from the payment of Watermaster Assessments as a member of the Agricultural Pool, the rights of the State of California under the Judgment to Produce water are not modified or altered by this Agreement. For all purposes of the Judgment all future Production by the State or its departments or agencies, including but not limited to the Department of Corrections, Department of Fish and Game, Youth Authority, Department of Parks and Recreation, Department of Toxic Substances Control, and Department of Transportation as set forth in Paragraph 10 of the Judgment, for overlying use on State-owned lands, shall be considered use by the Agricultural Pool. This Agreement is not intended to limit the State or its departments or agencies including but not limited to, the Department of Corrections, Department of Fish and Game, Youth Authority, Department of Parks and Recreation, Department of Toxic Substances Control, and Department of Transportation from exercising the State's rights of future Production for overlying use on State-owned lands as set forth in Paragraph 10 of the Judgment. The Parties agree that they will not oppose the State's exercise of its rights pursuant to the Judgment. The State of California is not executing this Agreement on behalf of the State Water Resources Control Board, the Department of Water Resources, Department of Toxic Substances Control, or the California Regional Water Quality Control Board or the Department of Fish and Game except as stated above. Nothing in this Agreement shall be construed in any way as modifying, altering or limiting the regulatory and trustee obligations, legal rights or duties of any State Agencies, including the Department of Fish and Game, the State Water Resources Control, the California Regional Water Quality Control Boards, the Department of Toxic Substances Control and

Department of Water Resources. This Agreement does not limit in any way, and expressly recognizes the rights and ability of the Department of Water Resources to make application to Watermaster to use groundwater storage space in the Chino Basin as described in Water Code Section 11258 and as provided in Section 5.2(c) herein.

11.3 Nothing in this Agreement shall be construed as modifying, altering, or limiting CBWCD from carrying out its obligations under general law.

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date written below:

DATED: **CITY OF ONTARIO**

By_____

DATED: **CITY OF POMONA**

By_____

DATED: **CITY OF UPLAND**

By_____

[Signatures continued on following pages]

DATED:

STATE OF CALIFORNIA

By_____

DATED:

CITY OF CHINO

By_____

DATED:

CUCAMONGA COUNTY WATER DISTRICT

By_____

DATED:

MONTE VISTA WATER DISTRICT

By_____

DATED:

FONTANA UNION WATER COMPANY

By_____

[Signatures continued on following pages]

DATED:

CITY OF CHINO HILLS

By_____

DATED:

JURUPA COMMUNITY SERVICES DISTRICT

By_____

DATED:

AGRICULTURAL POOL

By_____

DATED:

APPROPRIATIVE POOL

By_____

DATED:

NON-AGRICULTURAL POOL

By_____

[Signatures continued on following pages]

DATED:

INLAND EMPIRE UTILITY AGENCY

By_____

DATED:

THREE VALLEYS MUNICIPAL WATER DISTRICT

By_____

DATED:

KAISER VENTURES, INC.

By_____
DATED:

WESTERN MUNICIPAL WATER DISTRICT

By_____

[Signatures continued on following pages]

DATED:

SAN ANTONIO WATER COMPANY

By_____

DATED:

CHINO BASIN WATER CONSERVATION DISTRICT

By_____

DATED:

[Signatures continued on following pages]

TABLE OF CONTENTS

Page

RECITALS 1

I. DEFINITIONS AND RULES OF CONSTRUCTION 3
- 1.1 Definitions 3
- 1.2 Rules of Construction 12

II. COMPLIANCE WITH CEQA 13
- 2.1 Commitments Shall be Consistent With CEQA Compliance 13
- 2.2 Reservation of Discretion 14
- 2.3 No Prejudice by Comment or Failure to Comment 14
- 2.4 Acknowledgment that IEUA is the Lead Agency 14

III. CONDITIONS PRECEDENT 14
- 3.1 Performance Under Articles V, VI, and VII is Subject to Satisfaction of Conditions Precedent 14

IV. MUTUAL COVENANTS 15
- 4.1 Joint Defense 15
- 4.2 No Opposition to the OBMP 15
- 4.3 Indemnification of the Agricultural Pool 16
- 4.4 Consent to Specified Changes to the Judgment 16
- 4.5 Construction of "Operating Yield" Under the Judgment 17
- 4.6 Best Efforts to Obtain Funding for OBMP 17
- 4.7 CBWCD 18

V. WATERMASTER PERFORMANCE 18
- 5.1 Recharge and Replenishment 18
- 5.2 Storage and Recovery 23

Page

5.3 Transfers 31
5.4 Assessments, Credits, and Reimbursements 36
5.5 Salt Credits 38
5.6 Metering 38

VI. COVENANTS BY THE MEMBERS OF THE AGRICULTURAL POOL 39
6.1 Best Efforts to Support Storage and Recovery 39
6.2 Covenant of Good Faith and Fair Dealing 39
6.3 Waiver of Compensation 40

VII. DESALTERS 40
7.1 Need for Desalters 40
7.2 Ownership and Operation 40
7.3 Design and Construction of Chino II Desalter, Chino I Expansion and Future Desalters 42
7.4 Funding 44
7.5 Replenishment Water 46
7.6 Sale of Water 47

VIII. TERM 49
8.1 Commencement 49
8.2 Expiration 49
8.3 Meet and Confer 50
8.4 Independent Right to Extend 50
8.5 Force Majeure 50
8.6 Only One Mandatory Extension 51
8.7 Effect of Termination 51
8.8 Rescission of Resolutions 84-2 and 88-3 51
8.9 Mediation Upon Failure to Secure Capital Funding for Future Desalters 52
8.10 Parties Rights Unaffected Upon Termination 52

		Page
IX	CONFLICTS	53
9.1	Events Constituting a Default by a Party	53
9.2	Remedies Upon Default	53
9.3	Dispute Resolution	55
X.	GENERAL PROVISIONS	57
10.1	Supersedence	57
10.2	Applicability to Others	57
10.3	Admissions by Parties	57
10.4	Construction of Agreement	57
10.5	Each Party Bears Own Costs	58
10.6	Waiver of Breach	58
10.7	Awareness of Contents/Legal Effect	58
10.8	Agreement Binding On All	58
10.9	Counterparts	59
10.10	Captions	59
10.11	Choice of Law	59
10.12	Authority to Enter into This Agreement	59
10.13	Notice	59
10.14	Amendments and/or Changes to Agreement	60
XI.	ACKNOWLEDGMENTS: CONFIRMATION OF RIGHTS	60