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JOHN A. CLARKE, CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SOUTHERN CALIFORNIA WATER COMPANY Plaintiff, vs. CITY OF LA VERNE, CITY OF CLAREMONT, CITY OF POMONA, CITY OF UPLAND, POMONA COLLEGE, POMONA VALLEY PROTECTIVE ASSOCIATION, SAN ANTONIO WATER COMPANY, SIMPSON PAPER COMPANY, THREE VALLEYS MUNICIPAL WATER DISTRICT, WEST END CONSOLIDATED WATER COMPANY, and DOES 1 through 1,000, Inclusive, Respondents and Defendants.	**CASE NO.** KC029152 Assigned for All Purposes to Judge William O. McVittie Department O **(Complaint Filed, September 28, 1998)** **JUDGMENT**

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE, AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

ATTEST DEC 18 1998

JOHN A. CLARKE

Executive Officer/Clerk of the Superior Court of California, County of Los Angeles

By _____, Deputy

C. MORALES

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PRELIMINARY FINDINGS

A. Complaint.

The Southern California Water Company ("SCWC"), (or "Plaintiff"), and the City of La Verne ("La Verne"), City of Claremont ("Claremont"), City of Pomona ("Pomona"), City of Upland ("Upland"), Pomona College ("Pomona College"), Pomona Valley Protective Association ("PVPA"), San Antonio Water Company ("San Antonio"), Simpson Paper Company ("Simpson"), Three Valleys Municipal Water District ("TVMWD"), West End Consolidated Water Company ("West End"), collectively (Defendants) either:

i. account for essentially all of the current production of groundwater from or the replenishment to the Canyon Basin, the Upper Claremont Heights Basin, the Lower Claremont Heights Basin, the Pomona Basin, the Live Oak Basin and the Ganesha Basin ("Six Basins Area"), located in Los Angeles and San Bernardino Counties, and described in Exhibits "A,"and "B" attached hereto, and further defined in Judgment Section I(A) below; or

ii. are public agencies with an interest in the efficient and responsible management of groundwater resources within the Six Basins.

On or about September 28, 1998 the Plaintiff filed a complaint against Defendants and Does 1 through 1,000 requesting a declaration of their individual and collective rights to groundwater and a mandatory and prohibitory injunction requiring the reasonable use and equitable management of groundwater within the Six Basins pursuant to *Article X, Section 2 of the California Constitution*. The pleadings further allege that the Plaintiff and Defendants collectively claim substantially all rights of groundwater use, replenishment and storage within the Six Basins Area, that the available Safe Yield (as defined in Judgment Section I(A), below) is being exceeded and that the groundwater supply to the Six Basins Area is inadequate to meet the current and long term demands of Plaintiff and Defendants without the imposition of a physical solution. Plaintiff requests a determination of all groundwater rights, including replenishment and storage rights, of whatever nature within the boundaries of the Six Basins and request the imposition of an equitable physical solution.

B. **Answers and Cross-Complaints.** On or before November 13, 1998, Plaintiff and Defendants filed a stipulation for entry of judgment.

C. **Jurisdiction.** This Court has jurisdiction to enter judgment declaring and adjudicating the Plaintiff's and Defendants' ("the Parties") rights to the reasonable and beneficial use of groundwater by the Parties in the Six Basins Area pursuant to *Article X, Section 2 of the California Constitution* and to impose a complete physical solution. All pre-existing rights to groundwater within the Basin held or claimed by any Party (as defined in Section I(A) of the Judgment below) are hereby settled and defined as the production allocations and the other rights and obligations set forth under this judgment ("Judgment"). The respective allocations for each Party are expressly set forth in Exhibit "D."

D. **Parties.**

1. SCWC is an investor-owned public utility incorporated under the laws of the State of California. (*See Public Utilities Code Section 1001 et seq. and 2701 et seq.*) SCWC produces groundwater from the Six Basins and delivers it for use on land within its certificated service area that predominantly overlies some portion of the Six Basins, and otherwise is within the Counties of Los Angeles and San Bernardino.

2. Pomona is a charter city situated in the County of Los Angeles. Pomona produces groundwater from the Six Basins and delivers it for use on land within its incorporated boundaries, on land lying outside its incorporated boundaries within the County of Los Angeles and on City owned lands that predominantly overlie some portion of the Six Basins. Pomona owns and controls land in the Six Basins Area upon which it has historically diverted, for direct use and spreading, surface water from San Antonio Creek and Evey Canyon.

3. La Verne is a general law city situated in the County of Los Angeles. La Verne produces groundwater from the Six Basins and delivers it for use on land within its incorporated boundaries, on land lying outside its incorporated boundaries within the County of Los Angeles and on City owned lands that predominantly overlie some portion of the Six Basins.

4. Upland is a general law city situated in the County of San Bernardino. Upland produces groundwater from the Six Basins and delivers it for use on land within its incorporated boundaries some portion of which overlie the Six Basins. It possesses a majority of the shares of stock in San Antonio and West End.

5. San Antonio is a mutual water corporation incorporated under the laws of the State of California, with its principal place of business in San Bernardino County. San Antonio produces groundwater from the Six Basins and delivers it for use by its shareholders.

6. West End is a mutual water corporation, incorporated under the laws of the State of California, with its principal place of business in San Bernardino County. West End produces groundwater from the Six Basins and delivers it for use by its shareholders.

7. Claremont is a general law city situated in the County of Los Angeles. Claremont's incorporated boundaries and City owned lands overlie a portion of the Six Basins. The City has executed an agreement with SCWC with respect to its groundwater rights.

8. Pomona College is a California corporation, with a principal place of business in the County of Los Angeles. Pomona College owns land and groundwater production facilities that overlie the Six Basins Area and it has executed operating leases with SCWC regarding these facilities. Pomona College has executed an agreement with SCWC with respect to its groundwater rights.

9. Simpson is a Washington corporation, which is doing business in the State of California and the County of Los Angeles. Simpson produces groundwater from the Six Basins for its own use and also purchases water service from Pomona.

10. PVPA is a California corporation, operating on a non-profit basis for the mutual benefit of its members with its principal place of business in the County of Los Angeles. Shareholders of PVPA include Pomona, Pomona College, San Antonio, SCWC, Simpson, Upland and West End. PVPA owns the primary spreading grounds and recharge facilities for the Six Basins and owns other lands which also overlie the Six Basins. PVPA has undertaken ongoing studies and evaluation of groundwater conditions in the Six Basins Area.

11. TVMWD is a California Municipal Water District formed pursuant to the provisions of the municipal water district act and with the power to acquire, control, distribute, store, and spread water for beneficial purposes within its boundaries.

E. **Settlement Negotiations.**

1. **Importance of Groundwater.** Groundwater is an important water supply source for businesses, individuals and public agencies that overlie or extract groundwater from the Six Basins. The Parties have a mutual and collective interest in the efficient and reasonable use of groundwater and the coordinated management of water resources to ensure the prudent use of the resource. The Parties have a further collective interest in furthering the efficient and reasonable use of groundwater and the coordinated and comprehensive management of water resources to ensure that the common resource may be sustained and enhanced.

2. **Coordinated Study.** PVPA has conducted and continues to conduct technical studies of the Six Basins and has developed groundwater models of the Six Basins. To achieve the goals of coordinated basin management and to ensure and promote the sustainable and enhanced use of the groundwater resources of the Six Basins, the Parties joined in a collaborative process, reviewed prior groundwater production reports and hydrologic studies, other historical data and engaged in new technical studies to supplement the previous work of PVPA. Substantial engineering, hydrologic and geologic data not previously known have been collected and jointly analyzed and verified by the Parties. Included therein are estimates of production and reported production from the Six Basins and further refinement of PVPA's groundwater models. The results of these efforts provide the technical foundation for this Judgment.

3. **Overdraft.**

a. **Native Safe Yield.** The Native Safe Yield (as defined in Judgment, Section I(A), below) of the Six Basins Area has historically been augmented generally by the spreading activities conducted by PVPA, Pomona and La Verne and from return flows from water imported to the Six Basins Area through TVMWD. There is no precise estimate of the Native Safe Yield; however, without augmentation comprised of the substantial spreading operations conducted

by PVPA and others, and the return flows from imported water, the amount of groundwater comprising the Native Safe Yield is substantially less than the Safe Yield which is allocated to the parties pursuant to this Judgment.

b. **Safe Yield.** Safe Yield (as defined in Judgment, Section I(A), below) for all groundwater supplies within the Six Basins, including the benefits of historic augmentation is nineteen thousand three hundred (19,300) acre feet per year.

c. **Groundwater Production**. Reports filed with the State of California pursuant to *Water Code Section 4999 et seq.*, production records reported to PVPA by its members, and independent verification by the Parties all demonstrate that the cumulative groundwater production of the Parties from the Six Basins Area annually has been greater than twenty thousand (20,000) acre feet in each of the five years immediately preceding the filing of this action. Therefore, groundwater production has exceeded the available Safe Yield and *a fortiori* the Native Safe Yield in each of the last five years.

F. **Stipulation.** The Parties, whose production from the Six Basins cumulatively comprise essentially all of the groundwater production in the Six Basins Area, which have engaged in long-standing groundwater replenishment activities or otherwise have an interest in the efficient and coordinated management of groundwater, have stipulated to the entry of this Judgment. Each of the Parties stipulate that this Judgment is a physical solution (as defined in Judgment, Section I(A), below) which provides due consideration to the environment, the respective groundwater rights of the Parties, and that this Judgment will not cause substantial material injury to any Party under these circumstances of a lengthy period of overdraft and the competing claims to groundwater. The Parties further stipulate that the Judgment is a fair and equitable allocation of water in accordance with the provisions of *Article X, Section 2 of the California Constitution*.

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JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. INTRODUCTION

A. Definitions.

1. "**Base Annual Production Right**" means the average annual production , in acre-feet, for each Party for the twelve year period beginning on January 1 of 1985 and ending on December 31 of 1996 as set forth in Exhibit "D".

2. "**Carryover Rights**" means the maximum percentage of a Party's annual allocation of Operating Safe Yield production of which may be deferred until the following Year free of any Replacement Water Assessment.

3. "**Effective Date**" means January 1, 1999.

4. "**Four Basins or Four Basins Area**" means the following groundwater basins and the area overlying them: Canyon, Upper Claremont Heights, Lower Claremont Heights and Pomona as shown on Exhibit "A" and further described in Exhibit "B".

5. "**Groundwater**" means all water beneath the ground surface and contained within any one of the Six Basins except as provided in Article IIIA Section 1.

6. "**Imported Water**" means water that is not naturally tributary to the Six Basins Area and which is delivered to the Six Basins Area.

7. "**In Lieu Procedures**" means a method of either providing Replacement Water or water to be stored under a Storage and Recovery Agreement whereby a Party receives direct deliveries of Imported Water or water other than Replenishment Water in exchange for foregoing the production of an equivalent amount of such Party's share of the Operating Safe Yield.

8. "**Minimal Producers**" means any producer whose production is less than 25 acre feet each Year.

9. "**Native Groundwater**" means groundwater within the Six Basins Area that originates from the deep percolation of rainfall, natural stream flow or subsurface inflow, and

expressly excluding groundwater which originates from (a) the Parties' replenishment activities and (b) return flows from both imported water and the Parties' replenishment activities, and water described in Article IIIA Section 1.

10. **"Native Safe Yield"** means the amount of Native Groundwater, in acre feet, that can be extracted from the Six Basins Area on an annual basis without causing an undesirable result. Expressed as a formula: Native Safe Annual Yield = Annually Available Groundwater - (Replenishment Water + return flows from Imported Water and Replenishment Water).

11. **"Native Water"** means water which is naturally tributary to the Six Basins Area.

12. **"Non-party"** means any person or entity which is not a party to this Judgment.

13. **"Operating Plan"** means the plan, developed by Watermaster (as defined in Judgment, Article V below) for the Four Basins Area, by which the purpose and objectives of the Physical Solution will be implemented and realized.

14. **"Operating Safe Yield"** means the amount of groundwater, in acre feet, which the Watermaster shall determine can be produced from the Four Basins Area by the Parties during any single year, free of any replacement obligation under the Physical Solution herein. Because of the benefits created by coordinated management of groundwater provided by the Physical Solution, the Operating Safe Yield set by Watermaster may exceed the Safe Yield that would otherwise be available for production by the Parties. The Two Basins Area is excluded from the Operating Safe Yield allocated pursuant to this Judgment with its annual Safe Yield being equivalent to the amount of groundwater La Verne may reasonably produce from the Two Basins Area on an annual basis without causing substantial injury to any other Party.

15. **"Overdraft"** means a condition wherein the total annual production from a groundwater basin exceeds the Safe Yield.

16. **"Party or Parties"** means any person(s) or entity(ies) named in this action, who has/have intervened in this case or has/have become subject to this Judgment through succession, stipulation, transfer, default, trial or otherwise.

17. **"Physical Solution"** means the efficient and equitable coordinated management of groundwater within the Six Basins Area to maximize the reasonable and beneficial use of groundwater resources in a manner that is consistent with the public interest, *Article X, Section 2 of the California Constitution,* and with due regard for the environment.

18. **"Producer"** means a person, firm, association, organization, joint venture, partnership, business, trust, corporation or public entity who, or which, produces or has a right to produce groundwater from the Six Basins Area.

19. **"Production"** means the process of pumping groundwater; also, the gross amount of groundwater pumped.

20. **"Replacement Water"** means imported water or water other than Replenishment Water supplied through in-lieu procedures that is acquired by the Watermaster or provided by a Party to replace production by such Party in excess of the amount of its share of the Operating Safe Yield, Carry-Over Rights and Storage and Recovery rights authorized by Watermaster.

21. **"Replacement Water Assessment"** means an assessment levied by Watermaster pursuant to Article XII A, Section 4 of this Judgment.

22. **"Replenishment"** means a program to spread or inject Replenishment Water into the Six Basins Area. A description of the current replenishment programs is attached hereto as Exhibit "E."

23. **"Replenishment Water"** means native water which augments the Native Safe Yield and thereby comprises a portion of the Operating Safe Yield pursuant to a historical replenishment program as described in Article VIB, Section 9 and Exhibit E.

24. **"Return Flows"** means water which percolates, infiltrates or seeps into the Six Basins after having been previously applied to some end use by one of the Parties or any user of water.

25. **"Safe Yield"** means the amount of groundwater, including Replenishment and return flows from Imported Water, that can be reasonably produced from the combined Two Basins

and the Four Basins Areas on an annual basis without causing an undesirable result, including but not limited to land subsidence, water quality degradation, and harm from high groundwater levels, i.e. 19,300 acre feet per year.

26. "Six Basins or Six Basins Area" means the Four Basins Area plus the Two Basins Area, as shown on Exhibit "A" and further described in Exhibit "B."

27. "Spreading" means a method of groundwater recharge whereby water is placed in permeable impoundments and allowed to percolate into a basin.

28. "Storage and Recovery" means a program administered under an agreement between the Watermaster and a Party to store water either directly by sinking, spreading or injecting or by in-lieu procedures, into the Four Basins, and subsequently recovering such water without regard to the limitations imposed by the Party's Base Annual Production Right.

29. "Storage and Recovery Agreement" means an agreement between Watermaster and a Party for Storage and Recovery of water by such Party. An acceptable pre-approved Storage and Recovery Agreement between Watermaster and Pomona is listed on Exhibit "F."

30. "Transfer" means temporary or permanent assignment, sale, contract or lease of any Party's Base Annual Production Right and its associated percentage of the Safe Yield, Carry-Over Rights or rights to recover water stored under a Storage and Recover Agreement to any other Party or a person that becomes a Party. A lease shall not be considered a "permanent transfer" unless both the Lessee and Lessor jointly agree to such characterization.

31. "Two Basins or Two Basins Area" means the Live Oak and Ganesha Basins and the areas overlying them, as shown on Exhibit "A" and further described in Exhibit "B."

32. "Water Shortage Emergency" means the substantial impairment, which cannot be promptly mitigated, of the ability of the Parties to provide sufficient water for human consumption, sanitation and fire protection because of: (a) a sudden occurrence such as storm, flood, fire, unexpected equipment outage; or (b) an extended period of drought.

33. "Watermaster" means the committee with the powers and duties defined in Article V of this Judgment.

34. **"Year"** means a calendar year.

B. **Exhibits.** Each exhibit is expressly incorporated herein and made part of this Judgment.

Exhibit A: Six Basin Map

Exhibit B: General Description of the Six Basins Area

Exhibit C: Memorandum of Agreement between Watermaster and PVPA

Exhibit D: Base Annual Production Rights of Parties

Exhibit E: Description of Replenishment Programs

Exhibit F: City of Pomona Storage and Recovery Agreement

Exhibit G: Initial Operating Plan

II. FINDINGS AND HYDROLOGIC CONDITIONS

A. **Safe Yield.** Prior to the imposition of this Physical Solution, the Safe Yield of the Six Basins is historically found to be 19,300 acre feet per year.

B. **Overdraft and Prescriptive Circumstances.** For a period in excess of five consecutive Years prior to the filing of the complaint herein, the Native Safe Yield and the Safe Yield have been exceeded by the aggregate Production therefrom and the Six Basins have been in a continuous state of Overdraft. The court finds that the Production constituting such Overdraft has been open, notorious, continuous, adverse, hostile, and under claim of right. The court further finds that the groundwater Production has exceeded the Native Safe Yield and the Safe Yield in each of the last five years and thus all the required elements necessary to establish prescription have been satisfied.

1. **Adversity.** The Native Safe Yield of the Six Basins Area has been continuously exceeded for decades. It is only through the ongoing Replenishment undertaken by PVPA, Pomona and La Verne coupled with the availability of and return flows from Imported Water that a further decline in water levels has been averted. An unmanaged downward decline in water levels is known to have severe adverse impacts on the rights of groundwater producers and groundwater quality, to cause land subsidence and to cause increased pump-lifts. Moreover, the Court finds that presently

estimated Safe Yield of 19,300 acre feet, with the full benefit of the Replenishment carried on by the Parties has been exceeded and if Production is not managed pursuant to this Physical Solution, severe adverse impacts will result.

2. **Continuity.** The Native Safe Yield has been continuously exceeded for at least two decades. For each of the last five Years the Safe Yield has been exceeded. The Court finds that cumulative total Production from the Six Basins Area for the Years 1993 through 1997 is as follows:

1993	21,020 acre feet
1994	20,313 acre feet
1995	22,959 acre feet
1996	23,584 acre feet
1997	21,902 acre feet

3. **Notice.** Each of the Parties with a Base Annual Production Right, or their agents, have filed groundwater production reports with the State Department of Water Resources pursuant to *Water Code Section 4999*. These reports are public records and are available for inspection by any member of the public. SCWC is an investor-owned public utility subject to regulation by the California Public Utilities Commission (PUC). Its records, reports and filings with the PUC regularly include information regarding the wells used and groundwater produced from the Six Basins Area. The PUC has held publicly noticed rate hearings which have been attended by the public and representatives from Claremont. Pomona, La Verne and Upland are all public entities and their groundwater production information are public records and open to public inspection upon reasonable notice. PVPA has frequently published reports which indicate the nature of its Replenishment and the volume of groundwater produced in the Six Basins Area. At least two settlement agreements have been entered between certain Parties on matters related to the adverse impacts of increased groundwater production. Both of these agreements were approved by a public entity and are public records. Moreover, the negotiations leading up to the entry of this Judgment were open to all persons claiming the right to produce groundwater by virtue of their owning overlying land or having corporate boundaries overlying the Six Basins Area. Regular meetings concerning these negotiations

have been held at the headquarters of TVMWD, a public agency, and were personally attended by representatives from each of the Parties. These meetings have taken place at regular intervals for more than twelve consecutive months and the contents of this Judgment and the status of groundwater conditions in the Six Basins Area has remained readily available. Accordingly, the Court finds that all persons claiming the right to produce had actual notice, constructive notice or could have easily determined upon reasonable diligence that the Six Basins Area was in Overdraft and of each Party's claim to groundwater. The circumstances of such Overdraft and water use are such that each of the Parties either: (i) had actual knowledge of such circumstances; or (ii) should have discovered such circumstances upon the exercise of reasonable diligence or (iii) received constructive notice of the adverse nature of such aggregate production through the public record filings with the State of California pursuant to *Water Code Section 4999* and through the various reports published by the Parties.

C. **High Groundwater Levels.** There are cienegas and springs in the Four Basins Area and there is a potential for groundwater to rise to the surface regardless of the replenishment, replacement or storage operations of the Watermaster and carried out by the Parties. Periodically, though not in the past twelve years, high groundwater levels have constituted an important causative factor, in creating damage in the Four Basins Area.

D. **Water Quality Problems.** Some of the Six Basins have experienced problems of high concentrations of nitrates and volatile organic compounds (VOC's) in groundwater. Potential sources of the nitrate are historical agricultural practices and individual wastewater disposal systems, most of which have been abandoned. The Two Basins Area and some of the Four Basins Area have been adversely impacted by high concentrations of nitrates and VOC's and may also require remediation.

III. DECLARATION OF RIGHTS AND RESPONSIBILITIES

A. General Provisions.

1. **Surface Water Rights.** Pomona and San Antonio have prior and paramount pre-1914 water rights, superior to the rights of any other party, to the surface water and supporting

subsurface flows historically and presently diverted therefrom in San Antonio and Evey Canyon, except as provided in Article VIB Section 9 and as referenced in Article IIIA Section 1d.

a. Historically, Pomona and San Antonio have diverted, and presently are diverting, surface waters and supporting subsurface flows from San Antonio Canyon.

b. Historically, Pomona has diverted, and presently is diverting, surface water and supporting subsurface flows from Evey Canyon.

c. Pomona and San Antonio are under no obligation to spread such waters.

d. Surface waters and supporting subsurface flows diverted in San Antonio and Evey Canyons at existing diversion locations are excluded from (i) the operation of this Judgment and (ii) the determination of Operating Safe Yield, except to the extent of the portion of such waters which are spread by Pomona at its Pedley Treatment Plant, which portion is governed by the provisions of Article VIB, Section 9.

e. The diversion and the use of surface waters and supporting subsurface flows shall not be subject to this Judgment.

f. The above-referenced surface waters and supporting subsurface flows shall not be subject to allocation among the Parties pursuant to this Judgment.

g. Surface waters and supporting subsurface flows may be used by Pomona and San Antonio to satisfy Replacement Water obligations as provided in Article VIB, Section 5.

2. Loss of Priorities. By reason of the long continued overdraft in the Six Basins, and in light of the complexity of determining appropriative priorities and the need for conserving and making maximum beneficial use of the water resources of the State, each and all of the Parties listed in Exhibit "D" are estopped and barred from asserting special priorities or preferences *inter se* to groundwater except as expressly provided herein. All the Parties' rights to groundwater are accordingly deemed and considered to be of equal priority unless otherwise expressly stated herein.

3. Limitations on Export. Other than the limitation on Pomona's use of 109 acre feet as further described in Exhibit "D", any Party's share of the Operating Safe Yield, including Carryover Rights and Transfers, may be produced and exported for use outside the Six Basins Area.

However, groundwater stored and recovered pursuant to a Storage and Recovery Agreement may be produced and exported only in accordance with the terms and conditions of the Storage and Recovery Agreement.

4. **No Abandonment of Rights.** It is in the interest of reasonable beneficial use of the Six Basins Area and its water supply, that no Party be encouraged to take and use more water in any Year than is actually required. Failure to produce all of the water to which a Party is entitled hereunder shall, in and of itself, not be deemed to be, or constitute an abandonment of such Party's right, in whole or in part.

5. **Pre-Existing Rights.** This Judgment controls each Party's rights to the Production, Replenishment, Storage and Recovery of groundwater and expressly supersedes other rights, claims or defenses arising from agreement, operation of law, prior use or a prior judgment to the extent that they are inconsistent with this Judgment. However, nothing in this Judgment shall alter or affect any rights or remedies that any Party may have under any contract or agreement with any other Party on matters which are not inconsistent with or are unrelated to the provisions of this Judgment or as provided in Article IVC herein.

6. **Physical Solution.** This Judgment represents a total and complete Physical Solution for the Six Basins Area and all basins included therein. Although prior hydrologic and physical conditions limited the Safe Yield to 19,300 acre feet per year, through the coordinated and equitable management of the Four Basins and Two Basins Areas provided under this Judgment, an Operating Safe Yield, Operating Plan and Base Annual Production Rights shall be independently established for the Four Basins Area. However, La Verne shall be entitled to produce groundwater from the Two Basins Area in addition to its equitable share of the Four Basins Operating Safe Yield, as provided in accordance with the terms of this Judgment.

7. **Portability Between the Two Basins and Four Basins Areas.** A Party's right to produce, store or recover groundwater accruing under this Judgment in the Four Basins Area may not be transferred, exchanged or exercised in the Two Basins Area. A Party's right to produce, store or

recover groundwater accruing under this Judgment in the Two Basins Area may not be transferred, exchanged or exercised in the Four Basins Area.

B. Rights of the Parties to Produce Groundwater from the Four Basins.

1. Declaration of Rights. The Parties listed in Exhibit "D" are the owners of appropriative rights, including rights by prescription, and exercised and unexercised overlying rights of equal priority, and each Party shall be entitled to produce groundwater under the Physical Solution and to share in the Operating Safe Yield of the Four Basins according to the percentages set forth in Exhibit "D" as Base Annual Production Rights in a manner consistent with the provisions of this Judgment.

2. Carryover Rights. Any Party that produces less than its share of the Operating Safe Yield in any Year shall have the right to carry the unproduced portion forward to be produced in the following year subject to the following limitations: (a) the first water produced in any Year shall be deemed to be an exercise of any Carryover Right; (b) a Party's Carryover Right cannot exceed 25 (twenty-five) per cent of such Party's share of the current Operating Safe Yield for the prior Year; and (c) Carryover Rights may be lost in the event replenishment is discontinued or curtailed as provided below in Article IIIB, Section 7.

3. Transferability of Rights. Subject to the limitations set forth in this Judgment, a Base Annual Production Right and its associated percentage of the Operating Safe Yield, as well as any Carryover Rights and water stored under a Storage and Recovery Agreement, may be transferred, in whole or in part, among existing Parties or to any other person that becomes a Party on either a temporary or permanent basis provided that no Party is substantially injured by the Transfer. Production pursuant to any such Transfer shall be subject to the limitations on carryover and portability set forth in Article IIIB, Section 4. Any such Transfer shall become effective upon being recorded with Watermaster. Watermaster shall revise Exhibit "D" annually, to reflect any permanent Transfers. The permanent Transfer of any Party's full Base Annual Production Right shall require Watermaster approval. Upon Watermaster approval the permanent Transfer of a Party's full Base Annual Production Right may require an adjustment in the Party representatives to the Watermaster

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93101-2782

and the number of votes of the Party's representatives as provided in Article V. Notwithstanding the provision of this Article IIIB, Section 3, Pomona shall not be entitled to Transfer 109 acre feet of its Base Annual Production Right and its associated percentage of Operating Safe Yield.

4. **Portability of Rights Among the Four Basins.** Any Party with a Base Annual Production Right, shall have the right to produce its share of the Operating Safe Yield of the Four Basins, including any Carryover Rights or Transfers, from any or all of the Four Basins, subject to the following conditions.

a. **No Substantial Injury**. Any groundwater production from a "new" location shall not cause substantial injury to another Party.

b. **Advance Written Notice to Watermaster.** Any Party that intends to undertake any of the following actions shall provide thirty (30) days' advance written notice to the Watermaster: (i) acquire, construct or operate a "new" groundwater production facility in any one of the Four Basins in which it is then producing groundwater; (ii) change the point of extraction from an existing groundwater production facility to a "new" groundwater production facility where the old and the new groundwater production facilities are both within the Canyon or Upper Claremont Heights or Lower Claremont Heights Basins; (iii) change the point of extraction from an existing groundwater production facility on one side of the Indian Hill Fault to a "new" facility on the other side of the Indian Hill Fault.

c. **Prior Watermaster Approval.** Any Party that changes the point of extraction from an existing groundwater production facility on one side of the Indian Hill Fault to a "new" facility located on the other side of the Indian Hill Fault and increases the cumulative rate of annual extraction therefrom by more than 2,000 acre feet per year shall be required to obtain the prior written approval of the Watermaster.

d. **New Facility Defined.** "New" as used in this Section 4 means either (i) an increase or enlargement in the pre-existing design capacity of a groundwater production facility or (ii) a movement in the location of a groundwater extraction facility by more than three hundred (300) feet or from one legal parcel to another legal parcel.

e. **Procedure for Resolution of Disputes.** The Watermaster shall make all necessary determinations and resolve all disputes arising under this Article IIIB, Section 4 in accordance with the provisions of Article VIII.

5. **Rights to Unused Groundwater Storage Capacity.** From time to time there may exist in the Four Basins, unused storage capacity. Parties holding Base Annual Production Rights pursuant to this Judgment and TVMWD for the sole purpose of storing Imported Water, shall have the exclusive rights to use such storage capacity, and subject to the complete discretion of the Watermaster, may sink, spread or inject water into the Four Basins Area pursuant to a Storage and Recovery Agreement.

6. **Priorities for Use of Groundwater Storage Capacity.** In directing spreading and controlling the use of groundwater storage capacity, the Watermaster shall give first priority to Replenishment Water; second priority to Carryover Rights; third priority to Storage and Recovery of water which is naturally tributary to the Six Basins Area; fourth priority to Storage and Recovery of Imported Water, and fifth priority to Storage and Recovery of other water.

7. **Loss of Stored and Carryover Water.** After providing notice and opportunity to be heard to any affected Party pursuant to Article IXA, if the Watermaster reasonably determines that Replenishment had to be terminated or curtailed in any year, or that Replenishment Water was rejected because of insufficient storage capacity, some or all of a Party's unproduced Carryover Rights or Storage and Recovery rights may be deemed lost. The amount of water subject to loss shall be equal to that quantity of Replenishment Water which was curtailed or rejected solely because of insufficient storage capacity in the Four Basins.

The burden of a determination by Watermaster that rejected recharge has occurred and that there shall be a loss of stored and Carryover water, shall be shared proportionately by each Party to the extent the quantity of water held by each Party at the time of the loss bears to the total quantity of water within each of the classification. Any losses shall be charged first to the storage of other water, then to the storage of Imported Water, then to the storage of Native Water, then to Carryover Water as expressly set forth below.

a. Highest priority shall be given to Replenishment Water.

b. Second priority against loss shall be given to Carryover Water.

c. Third priority against loss shall be given to storage of Native Water.

d. Fourth priority against loss shall be given to storage of Imported Water.

e. Fifth priority against loss shall be given to storage of other water.

8. **Consideration of Groundwater Levels.** Watermaster shall make every reasonable effort to establish water operations limits so that the spreading of Replenishment or Replacement water, groundwater storage pursuant to a Storage and Recovery Agreement, or the determination of Operating Safe Yield shall not cause high groundwater levels that result in material damage to overlying property (not including sand and gravel excavations or operations) or cause groundwater to surface above the undisturbed natural terrain.

C. **The Parties' Rights to Groundwater and Storage in the Two Basins.**

1. **Declaration of Rights.** In recognition of the remediation efforts that are likely to be necessary to maximize groundwater production from the Two Basins; because of the detected high nitrate concentrations and in recognition that La Verne is uniquely situated to remedy these water quality conditions and exploit future opportunities; because of the minimal hydrologic communication between the Four Basins and Two Basins, and in furtherance of a complete and total physical solution for the Six Basins Area, La Verne shall have the right to produce as much groundwater as it may reasonably withdraw from the Two Basins Area on an annual basis so long as it does not substantially injure the rights of any other Party.

2. **Storage and Recovery.** La Verne has the sole right to use available storage capacity in the Two Basins in its complete discretion for the Storage and Recovery of groundwater so long as it does not cause substantial injury to any other Party. La Verne shall not be required to obtain a Storage and Recovery Agreement from the Watermaster for Storage and Recovery programs carried out within the Two Basins Area provided that (i) such production or use of storage capacity shall not cause substantial injury to any other Party and (ii) La Verne provides 60 (sixty) days' advance written notice to Watermaster before initiating such a Storage and Recovery program.

3. **Transferability of Rights.** Subject to the limitations set forth in Article III A, Section 7, La Verne's right to produce groundwater from the Two Basins Area may be transferred, in whole or in part, among existing Parties or to any other person that becomes a Party, on either a temporary or permanent basis provided that no Party is substantially injured by the Transfer. The permanent Transfer of the right to produce groundwater from the Two Basins Area shall not be effective until approved by Watermaster.

D. Rights and Responsibilities of PVPA.

1. **Spreading Operations.** PVPA and the other Parties have negotiated a Supplemental Memorandum of Agreement, attached hereto as Exhibit "C". This Supplemental Memorandum of Agreement and all modifications or amendments thereto shall include a provision for Watermaster's indemnity of PVPA for all Replenishment activities undertaken by PVPA at the direction of the Watermaster. Within sixty (60) days of entry of this Judgment, Watermaster and PVPA shall execute the Agreement. Upon execution, the Agreement shall become part of the Physical Solution. PVPA shall not be required to execute a Storage and Recovery Agreement with Watermaster for its Replenishment activities carried out under the direction of the Watermaster. The Spreading operations conducted by PVPA may result in incidental Replenishment to the Two Basins Area and none of the Parties have a right to object thereto. This Replenishment is authorized under the Judgment.

2. **Waiver of Claims Against PVPA .** The Parties expressly waive any and all claims against PVPA arising from facts, conditions or occurrences in existence before the Effective Date and arising from PVPA's spreading operations including but not limited to water quality degradation, subsurface infiltration, high groundwater or groundwater Overdraft within the Six Basins Area.

E. Non-parties.

1. **Minimal Producers.** Minimal producers are not bound or affected by this Judgment. No person may produce twenty-five acre feet or more in any Year without becoming a Party.

2. **Parties' Rights Versus Non-parties Reserved.** The Parties expressly reserve all rights, without limitation, concerning any and all claims raised by persons not a Party to this Judgment as provided in Article IV C Section 1.

IV. REMEDIES

A. Injunctions.

1. **Injunction Against Unauthorized Production.** Each and every Party, its officers, agents, employees, successors and assigns is enjoined and restrained from producing water from the Six Basins except as authorized herein.

2. **Injunction Against Unauthorized Storage.** Each and every Party, its officers, agents, employees, successors and assigns is enjoined and restrained from storing water in the Six Basin Area except as authorized herein.

3. **Injunction Against Unauthorized Replenishment.** Each and every Party, its officers, agents, employees, successors and assigns is enjoined and restrained from replenishing water in the Six Basin Area except as authorized herein.

B. Continuing Jurisdiction

1. **Jurisdiction Reserved.** Full jurisdiction, power and authority are retained by and reserved to the Court upon the application of any Party, by a motion noticed in accordance with the review procedures of Article XIA, Section 6 hereof, to make such further or supplemental order or directions as may be necessary or appropriate for interpretation, enforcement or implementation of this Judgment, and to modify, amend or amplify any of the provisions of this Judgment or to add to the provisions thereof consistent with the rights herein decreed; provided that nothing in this paragraph shall authorize a reduction of the Base Annual Production Right of any Party except pursuant to a Transfer.

2. **Intervention After Judgment.** Any Non-party who proposes to produce Groundwater from the Six Basins Area in an amount equal to or greater than 25 acre feet per Year, may seek to become a Party to this Judgment through (a) a stipulation for intervention entered into with Watermaster or (b) any Party or Watermaster filing a complaint against the Non-party requesting

that the Non-party be joined in and bound by this Judgment. Watermaster may execute said Stipulation on behalf of the other Parties herein, but such stipulation shall not preclude a Party from opposing such intervention at the time of the Court hearing thereon. A stipulation for intervention must thereupon be filed with the Court, which will consider an order confirming said intervention following thirty (30) days' notice to the Parties. Thereafter, if approved by the Court, such intervenor shall be a Party bound by this Judgment and entitled to the rights and privileges accorded under the Physical Solution herein, including a Base Annual Production Right in an amount equal to its average annual production in the twelve-year period beginning on January 1, of 1985 and ending on December 31, 1996, or any Base Annual Production Right it may obtain by a transfer.

C. **Reservation of Other Remedies.**

1. **Claims By and Against Non-parties.** Nothing in this Judgment shall expand or restrict the rights, remedies or defenses available to any Party in raising or defending against claims made by any Non-party. Any Party shall have the right to initiate an action against any Non-party to enforce or compel compliance with the provisions of this Judgment.

2. **Claims Between Parties on Matters Unrelated to the Judgment.** Nothing in this Judgment shall either expand or restrict the rights or remedies of the Parties concerning subject matter which is unrelated to the quantity and quality of groundwater allocated and equitably managed pursuant to this Judgment other than as provided in Article IIIA, Section 1.

3. **Groundwater Levels.** Except as expressly provided herein, nothing in this Judgment shall either expand or restrict the rights or remedies at law that any Party may have against any other Party for money damages to real or personal property resulting from high groundwater or defenses thereto for events or occurrences after the Effective Date.

V. WATERMASTER

A. **Composition, Voting and Compensation.** The Watermaster shall be a committee composed of one representative of each of the following Parties, and each representative shall have the authority to cast the indicated number of votes on any question before the committee:

City of La Verne	5 votes

City of Pomona	5 votes
City of Upland	5 votes
Southern California Water Company	5 votes
City of Claremont	2 votes
TVMWD	2 votes
PVPA	2 votes
~~Simpson Paper~~	~~1 vote~~
Pomona College	1 vote
San Antonio	1 vote

Committee representatives having the combined authority to cast twenty votes shall constitute a quorum for the transaction of affairs of Watermaster and seventeen affirmative votes shall be required to constitute action by Watermaster. Representatives shall be compensated for their services by their respective appointing authorities. Representatives may be reimbursed by Watermaster for out of pocket expenses incurred on authorized Watermaster business.

B. Nomination and Appointment Process. Each of the Parties named in Article VA, above, shall within thirty (30) days of entry of this Judgment submit to the Court its nominees for its representative member of the Watermaster Committee and one alternate and the Court shall in the ordinary course confirm the same by an appropriate order of appointment. Once appointed representatives and their alternates shall normally serve until a replacement is designated by the Party or until removed by the Court. If a representative or alternate is no longer willing or able to serve for any reason the Party represented by such member or alternate shall promptly submit a replacement for the member or their alternate. There shall be no need for replacement representative members or alternates to be approved by the Court. In its annual report to the Court, Watermaster shall update the list of its representative members and alternates.

C. Succession. For the purpose of determining whether a permanent Transfer of a Base Annual Production Right shall affect whether a Party shall have a Representative on the Watermaster Committee and the number of votes held by the representative, the following guidelines shall apply:

1. **Partial Succession.** The permanent Transfer of less than any Party's full Base Annual Production Right shall be considered a "partial" succession. A partial succession shall not create any new or additional voting rights in the successor Party or require any modifications to the rules and procedures under this Article V. The full Base Annual Production Right of any Party shall be equal to the entire quantity of the Base Annual Production Right for that Party set forth in Exhibit D on the Effective Date.

2. **Non-Party Successor.** A permanent Transfer of the full Base Annual Production Right of any Party to a Non-Party shall automatically include the authority to cast the number of votes held by the Party. In addition, the Non-Party shall succeed to all other rights and responsibilities of their predecessor Party under this Judgment.

3. **Party Successor.** A permanent Transfer of the full Base Annual Production Right between Parties shall automatically include the authority to cast a number of votes equal to the greater of: (a) the number of votes indicated for the acquiring Party on the Effective Date or (b) the number of votes indicated for the Party whose Base Annual Production Right has been acquired at the time the Transfer is approved by the Watermaster. The number of votes equal to the lesser of 3(a) or 3(b) shall be extinguished. The acquisition of one Party's full Base Annual Production Right by another Party shall not cause a change in the number of votes required to constitute a quorum or to take an action under this Article. However, in the event more than two votes are eliminated, any Party or the Watermaster upon its own motion, may petition the Court to revise the required number of votes to constitute a quorum or to take action under this Judgment.

D. Powers and Duties. Subject to the continuing supervision and control of the Court and the limitations set forth in this Judgment, Watermaster shall have and may exercise the following express powers, and shall perform the following duties, together with any specific powers, authority and duties granted or imposed elsewhere in this Judgment or hereafter ordered or authorized by the Court in the exercise of its continuing jurisdiction:

1. Developing, Maintaining and Implementing the Operating Plan.

2. Adopting Rules, Regulations, Procedures, Criteria and Time Schedules.

3. Acquiring or Investing in Facilities or Facility Improvements.

4. Acquiring or Investing in Monitoring Facilities.

5. Inspecting and Testing Measuring Devices.

6. Levying Assessments

7. Requiring the Acquisition of and Recharge of Replacement Water.

8. Contracting for Necessary Services. (Including the execution of agreements regarding spreading and groundwater modeling.)

9. Employing Agents, Experts and Legal Counsel provided that Watermaster shall not contract with or otherwise engage a Party with a Base Annual Production Right to perform directly or indirectly, administrative services. However, this limitation shall not apply to spreading services under Exhibit C, and meter reading.

10. Adopting an annual budget for monitoring and reporting legal and administrative costs.

11. Managing Watermaster Funds.

12. Cooperating with Federal, State and Local Agencies.

13. Entering and Administering Storage and Recovery Agreements.

14. Maintaining a Notice List.

15. Reporting Annually to the Court.

16. Engaging in Dispute Resolution.

17. Prosecuting litigation against Non-parties in furtherance of the Judgment.

18. Limiting groundwater production to Operating Safe Yield during a Water Shortage Emergency.

E. **Organization and Meetings.** At its first meeting in each Year Watermaster shall elect a chair, vice chair, secretary and treasurer and such other officers as may be appropriate. Watermaster shall hold regular meetings at places and times specified in its rules and regulations, and may hold such special meetings as may be required. Watermaster shall provide notices of all regular and special meetings to all parties and any person requesting notice in writing. Any meeting may be adjourned

to a time and place specified in the order of adjournment. Meetings shall be conducted to the extent practicable in accordance with the provisions of the California Open Meetings Law ("Brown Act") *California Government Code Section 54950*, et seq as it may be amended from time to time.

F. **Limits on Assessments.** Watermaster shall not have the authority to levy assessments beyond those specifically described herein.

VI. PHYSICAL SOLUTION FOR THE SIX BASINS AREA

A. General Purposes and Objectives.

1. Physical Solution is Consistent With the Public Interest. The Physical Solution is consistent with each Party's full enjoyment and the reasonable exercise of its respective water rights will not materially injure the interests of any Parties and will promote coordinated groundwater management with due regard for the environment and it is therefore consistent with the public interest and the reasonable and beneficial use of water.

2. Balance of Equities. This Physical Solution constitutes a legal and practical means for balancing the needs of the Parties for a reliable water supply, providing an appropriate incentive for remediation of poor water quality conditions, managing the available groundwater storage capacity to protect against loss of available groundwater and against damage from high groundwater levels with due regard for the environment .

3. Flexibility. It is essential that this Physical Solution provides maximum flexibility so that the Watermaster and the Court may be free to adapt and accommodate future changed conditions or new institutional or technological considerations. To that end the Court's retained jurisdiction may be utilized to augment or adjust the Physical Solution without adjustment to a Party's Base Annual Production Right.

B. Guidelines for Operation of Four Basins Area.

All production, replenishment, replacement, and Storage and Recovery of water in the Four Basins Area must be conducted pursuant to the Operating Plan adopted by Watermaster in accordance with the principles and procedures contained in this Judgment. The following general pattern of operations is contemplated:

1. **Replenishment.** Groundwater will be replenished pursuant to Exhibit "E" or under any other replenishment program or activity to the extent water which is naturally tributary to the Six Basin Area, is available for that purpose and can safely be spread.

2. **Storage and Recovery.** Other Native Water, imported water or other water may be stored and recovered pursuant to Storage and Recovery Agreements.

3. **Operating Safe Yield.** Watermaster will annually, not later than September 15, establish the Operating Safe Yield for the Four Basins for the following Year, taking into consideration the amount of water in storage and the need to control water table elevations. Watermaster shall review the condition of the Four Basins at least quarterly during the Year and may make any appropriate adjustments of the Operating Safe Yield.

4. **Production.** In any Year, each Party will be free to produce its share of the Operating Safe Yield, including any Carryover Rights or Transfers, plus any water authorized to be recovered pursuant to a Storage and Recovery Agreement. Except upon Transfer, no change shall be made to any Party's Base Annual Production Rights.

5. **Replacement Water.** Notwithstanding any limitation contained in this Judgment, a Party may produce and export water from the Four Basins in excess of its Base Annual Production Right and its share of the Operating Safe Yield, plus unused Carryover rights and recoverable groundwater pursuant to an approved Storage and Recovery Agreement, subject to the requirement to provide Replacement Water in the manner set forth herein.

a. **Obligation to Provide Replacement Water.** To the extent a Party's production in the Four Basins or in any basin exceeds that Party's share of the Operating Safe Yield, plus unused Carryover rights and recoverable groundwater pursuant to an approved Storage and Recovery Agreement, the Party shall arrange for delivery of Replacement Water in an amount equal to the Party's excess production by any of the following: (i) acquiring Replacement Water directly from TVMWD except Upland which may also acquire Replacement Water from the Inland Empire Utilities Agency ("the Empire"); (ii) arranging for delivery of a Native water supply other than Replenishment Water; or (iii) paying a Replacement Water Assessment to Watermaster for the

purpose of acquiring Replacement Water directly from TVMWD except as to Upland for which Watermaster may acquire replacement water from the Empire.

b. In Lieu Procedures. Replacement Water may be supplied through In-Lieu Procedures, spreading or other method at a place, time and manner, acceptable to Watermaster, for a price and upon terms to be determined by TVMWD except as to Upland for which the price and terms may be determined by the Empire.

c. Replacement Water Assessment. Watermaster will use Replacement Water Assessment proceeds to acquire Replacement Water from TVMWD, or as to Upland, the Empire.

6. Development, Maintenance and Implementation of the Operating Plan. Watermaster is directed to maintain and implement the Operating Plan such that Production, Replenishment and Storage and Recovery of water are consistent with and implement the purpose and objectives of the Physical Solution herein. The Operating Plan shall include rules, regulations, procedures, criteria and time schedules, as appropriate, for at least the following elements:

a. Establishing and adjusting the Operating Safe Yield.

b. Replenishment.

c. Execution of supplemental agreements with PVPA regarding spreading grounds and the funding thereof.

d. Acquisition and delivery of Replacement Water.

e. Standard terms and conditions of Storage Agreements.

f. Replenishment, replacement and storage limits needed to protect against high groundwater levels.

g. Remediation of water quality problems.

h. Monitoring systems and protocols, including such for groundwater levels.

i. Monitoring, reporting and verification programs.

j. Transfers.

k. Annual budgets.

l. Financial management.

m. Reporting to the Court.

n. Levying Assessments.

7. **Initial Operating Plan.** Within six months of the effective date of this Judgment Watermaster shall submit to the Court for approval an initial Operating Plan. An outline of the Initial Operating Plan is attached as Exhibit "G."

8. **Annual Review of the Operating Plan.** Watermaster shall review the Operating Plan at least annually and, subsequent to each such review, submit to the Court for its approval any proposed amendments or revisions.

9. **Replenishment.** PVPA and Pomona historically augmented the Native Safe Yield within the Four Basins Area through replenishment programs or activities. For many years these replenishment programs or activities have resulted in the spreading and percolation of native waters originating in the San Antonio Canyon and Evey Canyon. To the extent such waters have been historically spread, they comprise a portion of the Safe Yield and Operating Safe Yield subject to management under this Physical Solution.

a. All Replenishment shall be at the direction of the Watermaster.

b. At the direction and sole discretion of the Watermaster PVPA shall, pursuant to the Memorandum of Agreement set forth in Exhibit "C" or any subsequent amendments thereto, continue to spread such native waters as it receives.

c. Unless it is acting for the benefit of another Party pursuant to a Storage and Recovery Agreement approved by the Watermaster, except for Replacement Water, all water PVPA spreads, sinks or injects shall be considered Replenishment and shall comprise a portion of the Operating Safe Yield.

d. Although Pomona has no continuing obligation to spread or replenish, all waters spread in excess of its "historical replenishment" shall not be considered Replenishment and a part of the Operating Safe Yield of the Four Basins Area. The "historical replenishment" of Pomona shall be equal to a twelve (12) year annual average for the twelve (12) years immediately preceding the filing of the complaint

(1985-1996), which is determined to be one-hundred and thirty) acre feet. All water Pomona spreads, sinks or injects, or causes to be spread, sunk or injected (collectively augmentation) in excess of the historical replenishment shall not be considered a portion of the Operating Safe Yield, and shall not be allocated among the Parties pursuant to their Base Annual Production Rights. Pomona shall be entitled to produce such excess quantity in addition to its Base Annual Production Right under a pre-approved Storage and Recovery Agreement as provided in Article VIA, Section 10 in a form substantially similar to Exhibit F hereto, which is ordered to be executed by Watermaster and Pomona within sixty (60) days from the Effective Date. Measurement of Pomona's rights to recover water under any Storage and Recovery Agreement shall be administered as follows:

i. Pomona shall be entitled to recover the amount by which its augmentation of water over the twelve (12) year period ending with the current year exceeds 1,560 acre feet.

ii. If less than twelve (12) years have elapsed since the effective date of this Judgment, Pomona shall have the right to recover the amount by which the total number of acre feet of groundwater augmented by Pomona exceeds one hundred thirty (130) acre feet times the number of years elapsed.

iii. The amount in excess of Pomona's historical replenishment may be recovered by Pomona as provided in the Storage and Recovery Agreement.

10. **Storage and Recovery Pursuant to Storage and Recovery Agreements.** Watermaster may enter a Storage and Recovery Agreement with any Party holding a Base Annual Production Right or TVMWD so long as the Storage and Recovery of groundwater will not cause an unreasonably high groundwater table and physical damage. A Storage and Recovery Agreement shall contain uniform terms and conditions as set forth in the Operating Plan and may also contain

special terms and conditions as deemed appropriate by Watermaster. Water that may be stored pursuant to a Storage Agreement includes any water other than Replenishment Water including augmentation in excess of historical replenishment as expressly set forth under Article VIB, Section 9.

11. **Special Projects.** Any Party may propose for Watermaster approval, special projects including projects for controlling water levels or for remediation of water quality problems. Any such proposal shall be accompanied by an analysis that identifies the benefits of the project as well as any potential adverse impacts on any Party and any proposed mitigation measures. After notice to all Parties, if any Party files a written objection to the proposed project, Watermaster shall hold a hearing to determine whether the objections to the proposed project can be resolved. If there are no objections or if objections are resolved to the satisfaction of the Parties or if Watermaster determines that the objections are without merit, then Watermaster shall approve the proposed project. Groundwater produced under authorization as a Special Project shall not be eligible for the accrual of Carryover Rights unless authorized by Watermaster.

12. **Temporary Surplus Groundwater.** From time to time it may be in the best interest of the Parties, for the control of high groundwater, water quality remediation or other reasons, to produce groundwater over and above the then declared Operating Safe Yield. Therefore, from time to time, the Watermaster may declare a Temporary Surplus of groundwater to be available for production. The Parties' rights to the Temporary Surplus shall be in the same percentages as the Base Annual Production Right bears to the Operating Safe Yield. A Party's rights to temporary surplus shall not be eligible for the accrual of Carryover Rights set forth in Article IIIB, Section 2.

C. **Guidelines for Operation of the Two Basins Area.** All Production, Replenishment and Storage and Recovery rights for groundwater in the Two Basins Area are reserved to La Verne. However, La Verne's Production, Replenishment and Storage and Recovery of groundwater must not substantially injure other Parties.

1. **Replenishment.** La Verne shall have sole and complete discretion in the operation of Replenishment programs in the Two Basins Area provided that no other Party is substantially

injured by the program. La Verne shall provide written notice to Watermaster sixty (60) days in advance of any Replenishment program being undertaken.

2. **Storage and Recovery.** La Verne shall have sole and complete discretion in the operation of a Storage and Recovery program in the Two Basins Area provided that no other Party is substantially injured by the program. La Verne shall provide written notice to Watermaster sixty (60) days in advance of any Storage and Recovery program being undertaken. La Verne shall annually report the quantity of groundwater stored pursuant to a Storage and Recovery Program in the Two Basins Area.

3. **Production**. La Verne shall have sole and complete discretion to produce groundwater from the Two Basins Area provided that no other Party is substantially injured by such production. La Verne shall report its groundwater production to the Watermaster on a monthly basis.

VII. ASSESSMENTS

A. Ground Rules

1. **Authorization.** Subject to the continuing supervision of the Court and the limitations set forth in the Judgment, Watermaster is authorized to levy assessments to fund Replacement Water acquisition costs, administrative costs and other costs determined by Watermaster to be necessary for the implementation of the physical solution.

2. **Assessment Spread.** Excluding Replacement Water Assessments, all assessments levied by the Watermaster shall be spread such that Claremont, Pomona College and TVMWD (collectively, the "Minor Parties") shall each individually be assessed three and one half (3.5) percent of the total assessment , and eighty-nine and one half (89.5) percent of the total assessment is spread among La Verne, Pomona, Upland, San Antonio, West End, ~~Simpson~~ and SCWC (collectively, the "Major Parties") in proportion to their then-current holdings of Base Annual Production Rights, provided that for assessments other than for Replacement Water or administration (a) the total amount spread among Minor Parties shall not exceed sixty-thousand $60,000, escalated, in any year without their unanimous consent and (b) the total amount spread among the Major Parties in any year shall not exceed ten dollars ($10.00), escalated, per acre foot of their Base Annual Production Rights

without their unanimous consent. "Escalated" shall mean an annual adjustment in the specified dollar value based upon the Consumer Price Index for Southern California in the immediately preceding Year. No escalation adjustment shall be made until the Judgment has been in effect for twelve consecutive calendar months. PVPA shall not have any obligation to pay any assessments.

3. **Administrative Assessment.** Watermaster is authorized to levy an annual assessment that is sufficient to fund the costs of administering the Judgment. The administrative assessment shall not exceed the cost of Watermaster's administrative budget and shall be due and payable according to a schedule established by Watermaster. The administrative assessment for the first Year following entry of Judgment shall be $8.00 per AF and shall be due and payable on January 15, 1999. Late payment shall bear an interest penalty to be established annually by Watermaster. (escalated?)

4. **Replacement Water Assessments.** To the extent Watermaster must acquire and recharge the groundwater with Replacement Water pursuant to the terms of this Judgment, in order to fund the costs thereof, Watermaster is authorized to levy Replacement Water Assessments. Replacement Water Assessments levied against any Party shall be sufficient to pay the costs to replace such Party's production in excess of the sum of such Party's share of the Operating Safe Yield, any Carryover Right or Transfers and any storage recovery, Production of Temporary Surplus or pursuant to Special Project authorization, during the prior Year, minus any Replacement Water provided to Watermaster by the Party. Any Replacement Water Assessment shall be paid within sixty (60) days from the date of the written invoice from Watermaster.

VIII. DISPUTE RESOLUTION

A. **Entity for Resolution of Dispute.** All disputes arising under this Judgment initially shall be submitted to Watermaster for resolution in accordance with the provisions of this Article.

B. **Determination Regarding Substantial Injury.** Any Party having a right to be protected against "substantial injury" caused by any other Party; the right to proceed so long as not causing substantial injury to another party; or any other claim, right or remedy against any other Party arising under the provisions of this Judgment may file a written request with the Watermaster to hold a hearing.

C. **Notice and Hearing.** Upon receipt of the written request, Watermaster shall provide written notice to each Party which generally describes the nature of the dispute. Thereafter, Watermaster shall cause an item to be placed on the agenda for the next regularly scheduled meeting of the Watermaster or if requested by the moving Party, call a special meeting for the purpose of providing a full hearing of the dispute and providing the interested Parties with notice and opportunity to be heard. No later than 30 days following the conclusion of the hearing(s) Watermaster shall issue a written decision which is dispositive of the dispute and which is supported by written findings. Any Party may seek review of an adverse decision of the Watermaster in accordance with the provisions of Article IX.

IX. ADDITIONAL PROVISIONS

A. Procedure

1. **Designation of Address for Notice and Service.** Each Party shall designate the name and address to be used for purposes of all subsequent notices and service herein, either by its endorsement on the Stipulation for Judgment or by a separate designation to be filed within thirty (30) days after Judgment has been entered. Said designation may be changed from time to time by filing a written notice of such change with Watermaster. Any Party desiring to be relieved of receiving notices of Watermaster activity may file a waiver of notice on a form to be provided by Watermaster. Watermaster shall maintain at all times a current list of Parties to whom notices are to be sent and their address for purposes of service. Watermaster shall also maintain a full current list of names and addresses of all Parties or their successors, as filed herein. Copies of such lists shall be available to any person. If no designation is made, a Party's designee shall be deemed to be, in order of priority: (i) the Party's attorney of record; (ii) if the Party does not have an attorney of record, the Party itself at the address on the Watermaster list.

2. **Service of Documents.** Delivery to or service upon any Party by Watermaster, by any other Party, or by the Court, of any document required to be served upon or delivered to a Party under or pursuant to this Judgment shall be deemed made if made by deposit thereof (or by copy thereof)

in the mail, first class postage prepaid, addressed to the designee of the Party and at the address shown in the latest designation filed by that Party.

3. **Recordation of Notice.** Within sixty (60) days following entry of this Judgment, Watermaster shall record in the office of the County Recorder of the Los Angeles and San Bernardino Counties a notice substantially complying with the notice content requirements set forth in *Section 2529 of the California Water Code* as it exists on the Effective Date.

4. **Judgment Binding on Successors.** Subject to specific provisions hereinbefore contained, this Judgment and all provisions thereof are applicable to and binding upon and inure to the benefit of not only the Parties to this action, but also to their respective heirs, executors, administrators, successors, assigns, lessees, licensees and to the agents, employees and attorneys in fact of any such Persons.

5. **Costs.** No Party stipulating to this Judgment shall recover any costs or attorneys fees in this proceeding from another stipulating Party. In any future proceedings, the costs of notice or service, shall be levied in accordance with the provisions of Article XIA, Section 6.

6. **Review Procedures.** Any action, decision, rule or procedure of Watermaster pursuant to this Judgment shall be subject to review by the Court on its own motion or on timely motion by any Party, as follows:

a. **Effective Date of Watermaster Action.** Any order, decision or action of Watermaster pursuant to this Judgment on noticed specific agenda items shall be deemed to have occurred on the date of the order, decision or action.

b. **Notice of Motion.** Any Party may, by a regularly noticed motion, petition the Court for review of Watermaster's action or decision pursuant to this Judgment. The motion shall be deemed to be filed when a copy, conformed as filed with the Court, has been delivered to Watermaster together with the service fee established by Watermaster sufficient to cover the cost to photocopy and mail the motion to each Party. Watermaster shall prepare copies and mail a copy of the motion to each Party or its designee according to the official service list which shall be maintained by Watermaster according to Article XIA, Section 1, a Party's obligation to serve notice

of a motion upon the Parties is deemed to be satisfied by filing the motion as provided herein. Unless ordered by the Court, any such petition shall not operate to stay the effect of any Watermaster action or decision which is challenged.

c. **Time for Motion.** A motion to review any Watermaster action or decision shall be filed within ninety (90) days after such Watermaster action or decision, except that motions to review Watermaster Assessments hereunder shall be filed within thirty (30) days of mailing of notice of the Assessment.

d. **De Novo Nature of Proceeding.** Upon filing of a petition to review Watermaster action, the Watermaster shall notify the Parties of a date when the Court will take evidence and hear argument. The Court's review shall be de novo and the Watermaster decision or action shall have no evidentiary weight in such proceeding.

e. **Payment of Assessments.** Payment of Assessments levied by Watermaster hereunder shall be made when due, notwithstanding any motion for review of Watermaster action, decision, rules or procedures, including review of Watermaster Assessments.

B. **Entry of Judgment.** The Clerk shall enter this Judgment.

Dated: DEC 18 1998 1998.

Judge of the Superior Court

WILLIAM J. McVITTIE

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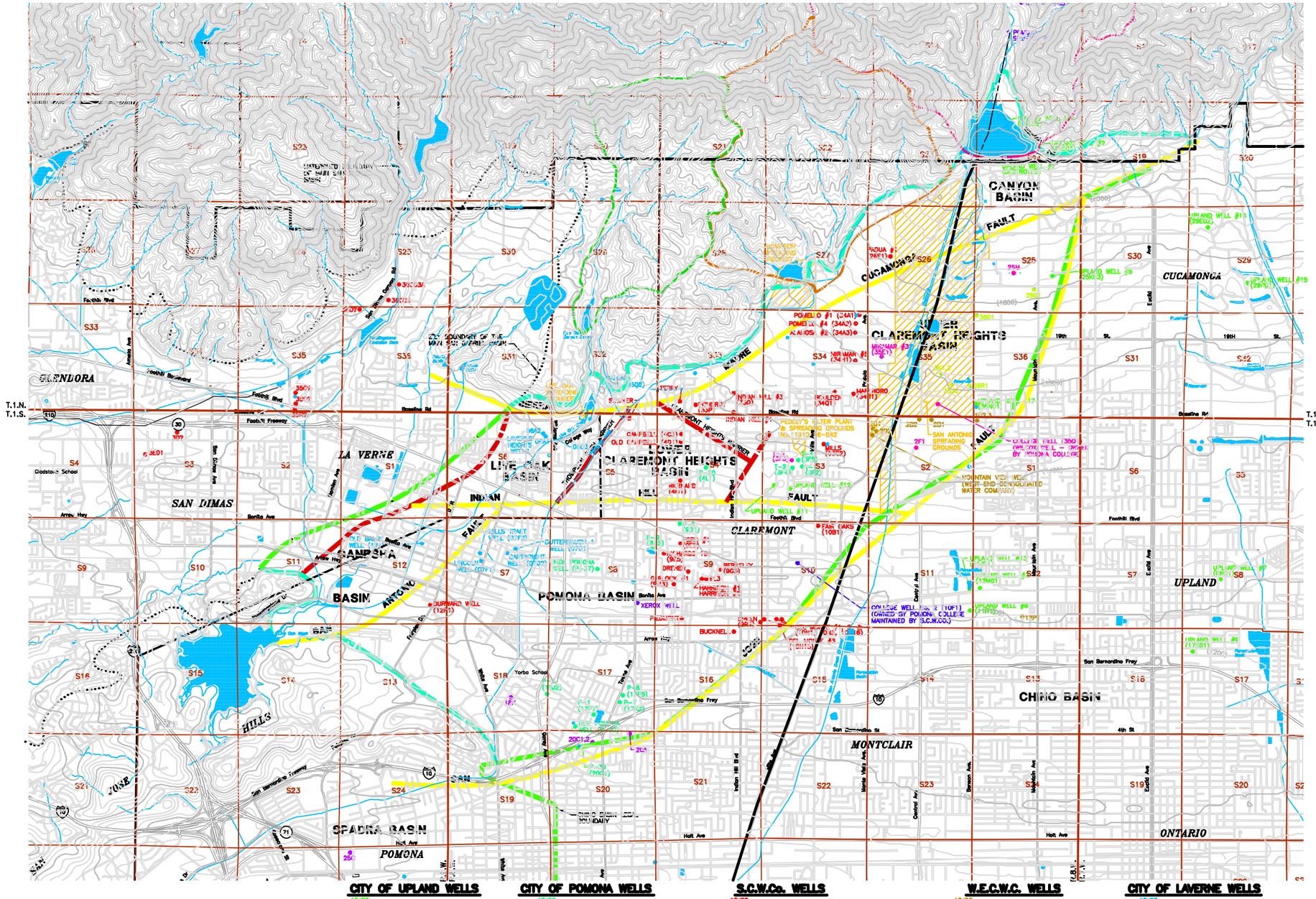
93101-2782



LEGEND

- THOMPSON CREEK WATERSHED BOUNDARY
- LIVE OAK WATERSHED BOUNDARY
- SAN ANTONIO WATERSHED BOUNDARY
- FAULT LINE
- LEGAL BOUNDARY OF ADJACENT BASIN
- GEOLOGIC FEATURE
- ALLUVIUM BOUNDARY
- MAIN SAN GABRIEL BASIN WATERSHED BOUNDARY
- MAIN SAN GABRIEL BASIN
- GROUNDWATER RECHARGE FACILITY

SCALE: 1" = 2000'

CITY OF UPLAND WELLS

18J02 — WELL AND NUMBER

STATE ID #	CITY ID #
24L1	UPLAND WELL #1 (DESTROYED)
24E02	UPLAND WELL #1A
24E01	UPLAND WELL #2
12M01	UPLAND WELL #3 (INACTIVE)
25K03	UPLAND WELL #5
8N01	UPLAND WELL #7
11R1	UPLAND WELL #8 (INACTIVE)
17E01	UPLAND WELL #9
34J3	UPLAND WELL #11 (DESTROYED)
3MI	UPLAND WELL #12 (DESTROYED)
11J01	UPLAND WELL #13 (INACTIVE)
29P01	UPLAND WELL #15
29E02	UPLAND WELL #16
36N01	UPLAND WELL #17

CITY OF POMONA WELLS

18J02 — WELL AND NUMBER

STATE ID #	CITY ID #
17P7	P-1
18J2	P-3
17K2	P-7
17P5	P-8
8K2	P-9
9D1	P-13
4L1	P-20
17P3	P-32
20C1	P-33
8F1	P-37
3F2	T-1
3F4	T-2
3F3	T-3
3F5	T-4

S.C.W.Co. WELLS

18J02 — WELL AND NUMBER

STATE ID #	COMPANY ID #
34A3	ALAMOSA #2
9G3	BERKELEY
4M1	BERNARD
34Q1	BOULDER
4C3	CAMPBELL
35Q1	COLLEGE WELL
10N1	DEL MONTE #1
10N3	DEL MONTE #2
10N15	DEL MONTE #3
10N16	DEL MONTE #4
9F	DREHER
12R1	DURWARD WELL
10B1	FAIR OAKS
9E2	FORD #1
9N3	GARLOCK #1
9R1	GREEN
9L3	HARRISON #1
9L2	HARRISON #2
33Q	INDIAN HILL #3
34R1	MARLBORO
3G2	MILLS #1
35E1	MIRAMAR #3
34H1	MIRAMAR #5
28E1	PADUA #1
34A1	POMELLO #1
34A2	POMELLO #4
33P	POMEROY
9E5	RICHARDS 160

W.E.C.W.C. WELLS

18J02 — WELL AND NUMBER

STATE ID #	COMPANY ID #
25Q2	CANYON RIDGE WELL (DESTROYED)
1D2,3	LEMON HEIGHTS #4
2D1	ML VIEW #1
2D2	ML VIEW #2 (DESTROYED)
2F1	ML VIEW #4
12P1	WEST END WELL #1 (INACTIVE)
2B1	WEST END WELL #3
2B2	WEST END WELL #4
25N1	UPLAND-FOOTHILL #1 (DESTROYED)
25L1,2	UPLAND-FOOTHILL #3

CITY OF LAVERNE WELLS

18J02 — WELL AND NUMBER

STATE ID #	CITY ID #
07O2	CARTWRIGHT
07F1	LINCOLN
05D2	MALONE 2 (INACTIVE)
07F2	MILLS TRACT
12A	OLD BALDY
06A2	LAVERNE HEIGHTS 1
06A1	LAVERNE HEIGHTS 2
05O3	LAVERNE HEIGHTS 3
07G1	BUTTERBAUGH 1 (DESTROYED)

S.A.W.C. WELLS

18J02 — WELL AND NUMBER

STATE ID #	COMPANY ID #
25G1	SAWC WELL #17 (INACTIVE)
35R1	SAWC WELL #25 (INACTIVE)
35J3	SAWC WELL #26
3K1,2	SAWC WELL #27 (INACTIVE)
36D1	SAWC WELL #28 (INACTIVE)

SIMPSON PAPER CO.

18J02 — WELL AND NUMBER

STATE ID #	COMPANY ID #
18K	WELL 5
20A	WELL 1
20C1	WELL 2A
20C2	WELL 2B
25C	WELL 3

KEY MONITORING WELLS

18J02 — WELL AND NUMBER

STATE ID #	COMPANY ID #
12N01	UPLAND WELL #3
2F1	ML VIEW #4
35E1	MIRAMAR #3
35Q1	COLLEGE WELL No. 1
3F3	T-3

POMONA COLLEGE

18J02 — WELL AND NUMBER

STATE ID #	COMPANY ID #
35Q1	COLLEGE WELL No. 1
10F1	COLLEGE WELL No. 2

PREPARED BY:

CIVILTEC engineering inc.
(626) 357-0566

SIX BASINS AREA

FINAL BOUNDARY MAP

DESIGN: JM/MR	CHECKED: WDB	SCALE: 1" = 2000'
DRAWN: PWH	J.N. 97106	SHEET 1 OF 1

EXHIBIT "A"

EXHIBIT B

DESCRIPTION OF SIX BASINS AREA

The Six Basins Area lies between the San Jose Hills on the south, the Chino Basin on the east, the San Gabriel Mountains on the north and the Main San Gabriel Basin on the west. The boundaries of the Main San Gabriel Basin are set forth in the Judgment in the case of the *Upper San Gabriel Valley Municipal Water District vs. City of Alhambra, et al.*, Superior Court of the State of California, Los Angeles County, Case No. 924128, and the boundaries of the Chino Basin are set forth in the Judgment in the case of *Chino Basin Municipal Water District vs. City of Chino, et al, Superior Court for the State of California*, San Bernardino County, Case No. 164327. The Area consists of six interconnected groundwater basins. Each basin consists of all alluvium or other water-bearing formations lying beneath the surface of the basin. The approximate boundaries of the surface of each basin are shown on EXHIBIT A and are described generally as follows:

Canyon Basin. The surface of the Canyon Basin is bounded on the south and east by the surface trace of the Sierra Madre/Cucamonga Fault and on the north and west by the surface trace of the bedrock/alluvium interface between(a) the point of intersection in Township 1 North, Range 8 West, Section 31, SBB&M, of the Sierra Madre/Cucamonga Fault with easterly boundary of the Main San Gabriel Basin and (b) the point of intersection in Township 1 North, Range 8 West, Section 20, SBB&M, of the Sierra Madre/Cucamonga Fault with the San Gabriel Mountains. The northernmost extent of the bedrock/alluvium interface is assumed to be at the southern boundary of Township 1 North, Range 8 West, Section 13, SBB&M in San Antonio Canyon.

Upper Claremont Heights Basin. The surface of the Upper Claremont Heights Basin is bounded on the south by the surface trace of the Indian Hill Fault, on the east by the westerly boundary of the Chino Basin, on the north by the surface trace of the Sierra Madre/Cucamonga Fault and on the west by the surface trace of the Claremont Heights Barrier.

Lower Claremont Heights Basin. The surface of the Lower Claremont Heights Basin is bounded on the south by the surface trace of the Indian Hill Fault, on the east by the surface trace of the Claremont Heights Barrier, on the north by the surface trace of the Sierra Madre/Cucamonga Fault on the west by the surface trace of the Thompson Wash Barrier.

Live Oak Basin. The surface of the Live Oak Basin is bounded on the south by the surface trace of the Indian Hill Fault, on the east by the surface trace of the Thompson Wash Barrier, on the north by the surface trace of the Sierra Madre/Cucamonga Fault and on the west by the easterly boundary of the Main San Gabriel Basin.

Ganesha Basin. The surface of the Ganesha Basin is bounded on the south and east by the surface of the San Antonio Fault, on the north surface trace of the Indian Hill Fault, and on the west by easterly boundary of the Main San Gabriel Basin and by the surface trace of the bedrock/alluvium interface between (a) the point of intersection in Township 1 South, Range 9 West, Section 11, SBB&M, of the easterly boundary of the Main San Gabriel Basin with the San Jose Hills and (b)

the point of intersection in Township 1 South, Range 9 West, Section 14, SBB&M, of the surface trace of the San Antonio Fault with the San Jose Hills.

Pomona Basin. The surface of the Pomona Basin is bounded on the south by the surface trace of the bedrock/alluvium boundary between (a) the intersection in Township 1 South, Range 9 West, Section 14, SBB&M, of the surface trace of the San Antonio Fault with the San Jose Hills and (b) the intersection in Township 1 South, Range 8 West, Section 19, SBB&M, of the boundary of the Chino Basin, on the north by the surface trace of the Indian Hill Fault on the west by the surface of the San Antonio Fault.

MEMORANDUM OF AGREEMENT
BETWEEN THE POMONA VALLEY PROTECTIVE ASSOCIATION
AND WATERMASTER OF THE SIX BASINS RELATING TO
WATER SPREADING AND RELATED ACTIVITIES

THE AGREEMENT, made, entered into, and executed as of this ___ day of _____, 1999, by and between the Pomona Valley Protective Association ("PVPA"), and Watermaster of the Six Basins ("Watermaster"), relating to water spreading and related activities in connection with the Canyon Basin, the Upper Claremont Height Basin, the Lower Claremont Heights Basin, the Live Oak Basin, the Ganesha Basin and the Pomona Basin (collectively, the "Six Basins").

RECITALS

WHEREAS, the rights to groundwater in connection with the Six Basins were adjudicated by the court in an action entitled "*Southern California Water Company v. City of La Verne, et al,*" Case No. KC029152 in the Superior Court of the State of California, County of Los Angeles, (the "Judgment"); and

WHEREAS, the Judgment requires the Watermaster to determine annually an Operating Safe Yield of the Six Basins and to develop an Operating Plan, which will include the monitoring and direction of all production, replenishment, replacement and storage of groundwater in the Six Basins; and

WHEREAS, PVPA, a California corporation, formed in 1910 by various water interests in Pomona Valley, engages in water conservation activities for the benefit of its shareholders, which include the City of Upland, Southern California Water Company, the City of Pomona, Simpson Paper Co., Pomona College, the San Antonio Water Company, and the West End Water Company; and

WHEREAS, PVPA owns certain real property in and around the Six Basins area primarily consisting of two spreading grounds: the San Antonio Spreading Grounds and the Thompson Creek Spreading Grounds together with appurtenant diversion and conveyance facilities (the "Spreading Grounds" herein); and

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WHEREAS, in connection with its water conservation activities, PVPA has conducted several technical studies of the Six Basins including the development of a numerical groundwater model which assists in the prediction of the Six Basins' response to PVPA's spreading activities, and is used to control the groundwater resources for the Six Basins and to mitigate high groundwater in the Six Basins; and

WHEREAS, the parties to the Judgment have conducted additional studies including the enhancement and refinement of the PVPA groundwater model.

NOW, THEREFORE, in consideration of mutual promises, agreements, and covenants of Watermaster and PVPA collectively referred to herein as "the Parties" agree as follows:

I. DEFINITIONS

A. The Judgment defines certain important terms. Except as to the definitions provided in this Agreement, the terms used in this Agreement which have been defined in the Judgment shall have the meaning set forth in the Judgment and the definitions set forth in the Judgment are incorporated herein by this reference

B. "Emergency" shall mean a sudden event which threatens life or property.

C. "Models" shall mean the spreadsheet and the basin wide models used by PVPA in development of an Operating Plan and any subsequent version or improvement thereof.

D. "Parties" written with an upper case P, refer to the Watermaster and to PVPA. Parties written with a lower case p, refer to the parties to the Judgment as defined therein.

II. SPREADING GROUNDS AND SPREADING OPERATIONS

A. Watermaster Direction and PVPA Reservation. PVPA shall use and operate the Spreading Grounds primarily for the spreading of replenishment, replacement and storage water under the direction of the Watermaster Plan. PVPA reserves the right to use the Spreading Grounds for other lawful activities consistent with its water spreading activities so long as doing so does not impair PVPA's ability to spread replenishment water in quantities substantially comparable to historic quantities.

B. Impossibility and related defenses. PVPA shall not be liable, in breach or in default of the Agreement if PVPA is unable, either temporarily or permanently, to perform its obligations

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under the Agreement for reasons beyond PVPA's reasonable control, including but not limited to, acts of God, eminent domain, impossibility or impracticability of performance, interference of a third party and natural disasters, including without limitation, floods, earthquakes, and fires.

C. PVPA Discretion. PVPA shall have discretion to make operational decisions in discharging its obligation hereunder within the scope of Watermaster direction.

D. Common conditions of spreading. In addition to the direction of Watermaster PVPA shall spread replenishment, replacement or storage waters subject to the following conditions.

1. Cessation of Spreading for Emergencies. PVPA reserves the right to cease spreading at any time, without prior notice to Watermaster if, in the discretion of PVPA, such action shall be warranted by, and in connection with, any emergency condition. PVPA will give Watermaster immediate notice of any such cessation.

2. Water Quality. PVPA bears no responsibility for the quality of replenishment, replacement or storage water or the impacts of spreading such water upon water quality of the Six Basins.

3. High Groundwater. PVPA bears no responsibility for high groundwater due to any spreading of replenishment, replacement or storage water.

4. Rejected water. PVPA bears no responsibility for loss of replenishment, replacement or storage water which is rejected or otherwise lost.

5. Measurement and Reporting. Watermaster shall provide adequate measuring devices to measure the spreading of replenishment, replacement and storage waters and any such water rejected or lost. PVPA will keep, maintain and furnish to Watermaster on a monthly basis, records of the quantities of replenishment waters spread and rejected.

6. Record of Deliveries and Spreading. Watermaster shall keep, maintain and furnish to PVPA records of the quantities and quality of replacement or storage waters delivered within 30 days following delivery of such waters. PVPA shall keep, maintain, and furnish to Watermaster the quantities of replacement and storage waters spread within 30 days following delivery of such water together with an estimate of the quantities of water bypassing the spreading facilities, if any.

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7. Compensation. Subject to review by the court under its continuing jurisdiction in Case No. KC029152, Watermaster shall pay PVPA's actual, reasonable and necessary costs incurred by PVPA in spreading replenishment, replacement and storage water. PVPA will bill Watermaster such costs on a quarterly basis and such bill will include a reasonably detailed accounting of such costs under generally accepted accounting principles (GAAP). Payment is due upon billing. PVPA's costs may be subject to review or audit by an outside accounting firm selected and paid by Watermaster (within thirty days following billing). Within thirty (30) days following billing, Watermaster shall either contest the billing or accept said billing.

E. Replenishment water. In addition to the above, PVPA shall spread replenishment water as it becomes available. PVPA has no control over the availability of replenishment waters and is under no obligation to spread any specific quantity of replenishment water.

F. Replacement Water. In addition to the above, PVPA shall spread Replacement Water on the Spreading Grounds under the following terms and conditions. Pursuant to the Judgment, only qualified parties under the Judgment may store water in the Six Basins upon entry into a Storage and Recovery Agreement with Watermaster. Upon request, PVPA shall spread storage water under the following terms and conditions:

1. Terms of Delivery. Watermaster shall deliver and PVPA shall spread storage water under the same terms and conditions as replacement waters.

2. Replacement Water Flows. PVPA will assist Watermaster in determining the allowable daily rates and the duration of replacement water deliveries, based upon conditions existing from time to time, including any unused capacity available at and in PVPA spreading facilities.

3. Notice of New or Changed Replacement Water Flows. Watermaster, at least seven (7) days prior to any anticipated delivery of replacement water, shall notify PVPA that water will be available for transport and spreading and shall give PVPA at least forty-eight (48) hours notice of any anticipated change in previously established flow rates of delivery for such water.

4. Spreading Grounds Limitations. PVPA may require changes in delivery flow rates when, in PVPA's opinion, continued spreading (in whole or in part) cannot be carried out

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hereunder due to operational and/or maintenance problems, including, but not limited to, trespassing, insect infestations, scarification, weed abatement, and/or construction in or at PVPA's conveyance and spreading facilities. When it is reasonable to do so, PVPA will give Watermaster at least twenty-four (24) hours' notice of any such changes.

III. OWNERSHIP AND IMPROVEMENTS OF SPREADING GROUNDS

A. No Dedication. Nothing in this Agreement shall be construed as a dedication of the PVPA Spreading Grounds or its facilities to Watermaster, the other parties to the Judgment, or to the public use or benefit. The spreading grounds and appurtenant facilities are, and remain, the sole property of PVPA. PVPA may sell, lease, or otherwise dispose of portions of its spreading grounds at its own discretion but not inconsistent with this Agreement.

B. Spreading Grounds Improvements. Nothing in this Agreement obligates or otherwise requires PVPA to construct new or additional facilities in connection with its spreading operations. PVPA may at its discretion construct new or additional facilities. Watermaster may propose improvements to PVPA's spreading grounds and facilities at its own expense.

C. Condemnation. Watermaster agrees to and does waive and disclaim any interest in any award or settlement which may be made in any proceeding in eminent domain concerning all or part of the Spreading Grounds whether the taking be total or partial, or for easement purposes. If the taking be such as to render the Spreading Grounds totally unfit and unsuitable for the above use, then, pursuant to Paragraph II, ~~A~~ B, PVPA is not in default or breach.

IV. GROUNDWATER MODEL

A. License for use. PVPA grants Watermaster a license to use its Spreadsheet Models pursuant to the terms and conditions of this agreement for the development of an Operating Plan. In developing the initial operating plan, Watermaster has used PVPA's Groundwater Models. In developing subsequent operating plans or revising such plans, Watermaster shall use PVPA's Groundwater Models and any subsequent version or improvement thereof, or other criteria at Watermaster's discretion.

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1. Custody of the PVPA's Groundwater Models. Watermaster shall have physical custody of a copy of the model. However, PVPA shall have the right to access the Models for any purpose which is not inconsistent with the Judgment or the direction of the Watermaster.

2. Updates to Model.

Said license shall include, following consultation with PVPA, the right to make changes, modifications, improvements, updates, or refinements in or to PVPA's Groundwater Model at the sole expense of Watermaster and without any contribution from PVPA.

B. Terms and Conditions. For daily operations, Watermaster shall be responsible for keeping, maintaining and reporting on the data base necessary for use of PVPA's Groundwater Models. Watermaster shall collect water level and quality data necessary, including key well levels and rainfall data, to use the Groundwater Models to implement the Physical Solution. Watermaster shall provide this data to PVPA by the fifteenth day of each month. PVPA shall provide Watermaster readings of replenishment water spread, on a daily basis. PVPA then shall provide Watermaster with a monthly report on available storage and water levels of monitoring wells.

1. Compensation. PVPA grants Watermaster this license at no cost other than the continuing costs which may be incurred by PVPA as a result of Watermaster operating the Models.

2. No Warranty. PVPA makes no warranty and disclaims all warranties regarding PVPA's Groundwater Model and its subsequent updates or improvements.

3. Field Conditions. PVPA shall report to Watermaster any field conditions that may have an impact on Spreading Operations.

V. INDEMNIFICATION

A. Watermaster Obligations. To the extent which is allowed by law, Watermaster shall indemnify and hold harmless, PVPA, its officers, directors, employees, agents, and representatives against any and all claims, demands, costs, and/or liabilities due to, or arising from any act or omission by PVPA, its officers, directors, employees, or agents arising from any activities not connected with the spreading of water under the direction of Watermaster.

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VI. INSURANCE

A. Subject to the above, PVPA shall obtain and maintain during the term of this Agreement the following insurance policies:

1. General Liability Insurance: PVPA shall maintain general liability insurance for bodily injury, property damage, personal injury, errors and omissions, and if practicable, flooding. The insurance shall be on an occurrence basis. The policy limits shall be at least $1,000,000.

2. Property: PVPA shall obtain insurance to provide for replacement of real and personal property owned by PVPA in the event of loss by fire, flood or vandalism. This insurance shall be provided on an occurrence basis and the policy limits shall be at least $1,000,000.

VII. MISCELLANEOUS PROVISIONS

A. Effective Date. This Agreement shall not be effective until executed by the Parties and approved by the court upon motion of Watermaster in said action in Case No. KC029152.

B. Written Amendments. This Agreement may only be modified, amended, or supplemented by a subsequent writing executed by each Party hereto and approved by the Court with jurisdiction in Case No. KC029152.

C. Choice of Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

D. Delivery of Notices. All notices permitted or required under this Agreement shall be addressed to the representative Parties at the following address, or such other address as the respective Parties may provide in writing for this purpose:

PVPA:	President Pomona Valley Protective Association 414 Yale Avenue, Suite H Claremont, California 91711
Six Basins Watermaster	As may be designated by Watermaster

HATCH AND PARENT
21 EAST CARRILLO STREET
SANTA BARBARA, CA
93101-2782

Such Notices shall be deemed made when personally delivered or, when mailed, forty-eight (48) hours after deposit in the U.S. mail, first class postage pre-paid and addressed to the Party at its applicable address.

E. Successors and Assigns. This Agreement is binding on and shall inure to the benefit of the Parties, their respective successors in interest and assigns.

F. Assignment. No Party shall have the right to assign it rights or delegate any of its obligations hereunder without the express written consent of the other Party.

G. Construction. Each Party and/or its respective counsel has taken part in the negotiation, drafting, and preparation of this Agreement, and, therefore, any ambiguity or uncertainty in this Agreement shall not be construed against any Party. To ensure that this Agreement is not construed against any Party, the Parties expressly agree that any common law or statutory provision providing that an ambiguous or uncertain term will be construed against the drafter of an Agreement is waived and shall not apply to the construction of this Agreement.

H. Entire Agreement. This Agreement embodies the entire and final Agreement and understanding of the Parties pertaining to the subject matter of this Agreement, and supersedes all prior Agreements, understandings, negotiations, representations, and discussions pertaining to that subject matter, whether verbal or written, of the Parties. The Parties acknowledge that there are no representations, promises, warrantees, conditions, or obligations of any Party, or counsel (or any Party), pertaining to that subject matter other than is contained in this Agreement, and that no Party has executed this agreement in reliance on any representation, promise, warranty, condition, or obligation, other than is contained in this Agreement.

I. Execution. The Parties to this Agreement acknowledge that they have executed this Agreement voluntarily and without any duress or undue influence. The Parties further acknowledge that they (1) have been represented by counsel of their own choice in connection with the negotiation and execution of this Agreement, or have been advised to seek independent counsel of their own choice prior to executing this agreement; (2) have read this Agreement in its entirety; and (3) have entered into this Agreement of their own volition and not as a result of any representations or advice by other Party or counsel for any other Party.

J. Counter Parts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This agreement shall become effective and binding immediately upon its execution by both Parties. This Agreement consists of nine (9) pages, including the signature page.

K. Termination. Upon motion made by either Party to this Agreement in accordance with the procedures set forth in Article IX, Section A of the Judgment and approval of the Court, this Agreement shall be terminated.

DATED: _____ WATERMASTER

_____

By:

DATED: _____ POMONA VALLEY PROTECTIVE ASSOCIATION

_____

By:

HATCH AND PARENT
1 EAST CARRILLO STREET
SANTA BARBARA, CA
93101-2782

EXHIBIT D

BASE ANNUAL GROUNDWATER PRODUCTION IN EACH BASIN, 1985- 1996
AND TOTAL BASE ANNUAL GROUNDWATER PRODUCTION, 1985- 1996
FOR EACH PARTY, AND EACH PARTY'S PERCENTAGE OF THE AGGREGATE OPERATING SAFE
YIELD FOR THE CANYON, UPPER CLAREMONT HEIGHTS, LOWER CLAREMONT HEIGHTS AND POMONA BASINS

Party	Base Annual Production, Acre Feet per Year					Percentage of Aggregate Operating Safe Yield
	Canyon Basin Basin	Upper Claremont Heights Basin	Lower Claremont Heights Basin	Pomona Basin	Total	
City of La Verne	0	0	0	1,492	1,492	7.731
City of Pomona*	0	1,234	961	1,128	3,323	17.218
Simpson Paper	0	0	0	691	691	3.580
Southern Cal. Water Co.	56	2,895	107	3,647	6,705	34.741
City of Claremont	0	267	0	268	535	2.772
Pomona College	0	357	0	0	357	1.850
City of Upland	408	1,434	0	0	1,842	9.544
West End Consolidated Water Company	0	2,972	0	0	2,972	15.399
San Antonio Water Company	0	1,383	0	0	1,383	7.166
TOTAL	464	10,542	1,068	7,226	19,300	100.000%

* Pomona shall have the right to produce an additional 109 acre feet of groundwater per year subject to the following:

(a) Pomona shall provide at least 436 acre feet of recycled water to the property presently designated by the Los Angeles County Assessor as Assessor's Parcel Nos. 834-800-8001, 834-800-8002, 834-800-8009, 834-800-5013 and 834-800-6001.

(b) Pomona's additional production right shall be added to its Base Annual Production Right and shall be subject to all provisions of the Judgment relating to Base Annual Production Rights; provided however, such additional right shall not be subject to transfer or the water produced delivered for use outside the Pomona service area.

(c) To the extent in any year Pomona provides less than 436 acre feet of recycled water to the above described property, the additional right of Pomona shall be reduced to an amount equal to one fourth (1/4) of the amount of recycled water provided. However, no reduction shall occur to the extent the failure to deliver recycled water is the result of sudden occurrences such as storms, floods, fires, earthquakes, accidents or unexpected equipment outage) or acts or omissions of the Los Angeles County Sanitation District which impair the ability of Pomona to make recycled water deliveries.

EXHIBIT E

DESCRIPTION OF REPLENISHMENT PROGRAMS

San Antonio Spreading Grounds

Owned and operated by the Pomona Valley Protective Association (PVPA), this private facility is comprised of 600 acres of spreading grounds on both the east and west sides of San Antonio channel. The grounds consist of ditches, check levees, gates, metering stations, shallow basins and deep basins. The primary source of water for this facility is from San Antonio Creek by way of controlled releases from San Antonio Dam which is owned and operated by the U.S. Army Corps of Engineers. Water is released from the dam directly into San Antonio Flood Control Channel. Upon entering the channel, water is diverted into an underground basin where control gates allow regulated flow onto the spreading grounds. Additional sources of water include uncontrolled surface flows from adjacent properties in San Bernardino and Los Angeles Counties. The Corps coordinates its releases with PVPA. Four metering stations are used for flow measurements, and a series of ditches, check levees, gates and appurtenances allow the water to be directed into shallow and deep basins. Since 1896, PVPA has regularly spread water at its facility.

Thompson Creek Spreading Grounds

Owned and maintained by PVPA, this private facility is comprised of approximately 53 acres of spreading grounds south of Thompson Creek Dam and east of Thompson Creek. PVPA operates this facility with the cooperation of the Los Angeles County Flood Control District. The grounds consist of ditches, check levees, gates, shallow and deep basins. The sources of water for this facility are Cobal, Williams, Palmer, and Padua Creeks which are diverted to the grounds by PVPA with the cooperation of the Los Angeles County Department of Public Works through the Palmer Diversion. Surface runoff is diverted onto the grounds by way of Chicken Creek through a diversion located directly north of the grounds. PVPA's facility can also receive water from Thompson Creek Dam when the reservoir exceeds the elevation of 1625 feet above sea level. Since 1918, PVPA has spread water at this facility.

Pomona Spreading Grounds

Owned and operated by the City of Pomona, this facility is comprised of 8 acres of spreading grounds adjacent to the City's Pedley Water Treatment Plant. The City acquired this property in October 1926. The present deep basin configuration of the facility was completed in 1957. The source of water for this facility is San Antonio Creek water delivered through the Loop Merserve Canyon Water Company pipeline and Evey Canyon water. This facility also receives some local runoff. Water has been spread in this vicinity on and off since about 1897.

Live Oak Spreading Grounds

Owned and operated by the Los Angeles County Department of Public Works, this facility consists of approximately 5 acres of spreading grounds. Approximately 1.5 acres north of Baseline Road and 3.5 acres south of route 30 freeway extension. The source of water for this facility is controlled releases from Live Oak Dam and Live Oak Debris Basin. This facility was first used in the 1961-62 water year.

WATER STORAGE AND RECOVERY AGREEMENT

1. IDENTIFICATION

THIS AGREEMENT dated _____ by and between the CITY OF POMONA, a chartered municipal corporation (Pomona), and the SIX BASINS WATERMASTER, a court appointed entity established by the Los Angeles County Superior Court (Watermaster), and is based upon the following recitals.

2. RECITALS

2.1 Water rights have been adjudicated in the Six Basins Area according to the Judgment in Los Angeles County Superior Court Case No. KC 029152, entitled Southern California Water Company v. the City of La Verne.

2.2 Said Judgment establishes the Watermaster as the court empowered entity responsible for managing the Six Basins Area. Under the provisions of Paragraph VI.B.10 of the Judgment, Watermaster is authorized to enter into Storage and Recovery Agreements with any party holding a base annual production right.

2.3 Pomona is a party holding a base annual production right. In addition, Pomona has historically replenished the Six Basins Area. While Pomona is under no obligation to replenish the Six Basins Area, to the extent that it does augment groundwater supplies in excess of its historical replenishment as provided in Paragraph VI.B.9 of the Judgment, Pomona is authorized to recover such water.

2.4 Spreading and injecting or otherwise recharging groundwater in the Six Basins Area is restricted according to Paragraph IV.B of the Judgment; however, pursuant to Paragraph VI.B.10,

Watermaster is authorized to enter into storage and recovery agreements for the utilization of groundwater storage capacity and for subsequent recovery use or credit by the storing entity.

2.5 Pomona and Water master desire to enter into an agreement for the storage and recovery of water.

3. AGREEMENTS

In consideration for the mutual promises and conditions contained herein and for other valuable consideration, the parties agree as follows:

3.1 Pomona may, subject to the conditions hereinafter set forth, spread and cause to be spread water which would be stored for Pomona's account. The amount of water stored and recovered shall be all amounts it has spread or caused to be spread in the Six Basins Area in excess of 130 acre feet annually as specifically provided in Paragraph VI.B.9 of the Judgment. Without limitation on accumulations, Pomona shall acquire and retain ownership of all such storage in excess of the historical replenishment of 130 acre feet per year until such water is produced by Pomona or transferred as a credit toward any Replacement Water obligation.

3.2 Pomona shall issue a report to Watermaster on a quarterly basis indicating the amount of water which Pomona has spread. The report shall be due the last day of the month next following the end of the relevant quarter.

3.3 Recovery of water by Pomona shall be accounted for as follows:

3.3.1 The first water Pomona produces in a calendar year shall be the carryover of unused rights in accordance with Paragraph III.B.2.

3.3.2 The next such water produced shall be Pomona's Base Annual Production Right.

3.3.3 The next such water produced shall be water stored pursuant to this storage and Recovery Agreement.

3.4 This Agreement shall be effective upon court approval of the Judgment in the above-referenced case.

3.5 Any notices required hereunder may be given by mail postage prepaid and addressed as follows:

TO WATERMASTER:

TO CITY OF POMONA:

Henry Pepper, Director of Utilities
Public Works Department
City of Pomona
505 S. Garey Avenue
Pomona, CA 91769-0660

EXECUTED this _____ day of _____, 1998, at _____, CA.

CITY OF POMONA

By: _____

WATERMASTER

By: _____

EXHIBIT G

INITIAL OPERATING PLAN

1. **Replenishment.** PVPA shall continue to replenish the basin as it has historically done. PVPA shall curtail replenishment when the Index Water Level is at 1455 or higher, where the Index Water Level is the average of the water level elevations above Mean Sea Level for the following five Key Wells:

Upland-Foothill No. 3 (Owner: WECWC)
Mountain View No. 4 (Owner: WECWC)
Miramar No. 3 (Owner: SCWC)
College No. 1 (Owner: Pomona College)
Tunnel Well No. 3 (Owner: Pomona)

On the second Monday of each month owners of the Key Wells shall measure and report to Watermaster and to PVPA the water level elevations in the Key Wells. Water level elevations shall be measured using protocols specified by Watermaster.

2. **Production Measurement and Reporting.** Within 180 days following Entry of Judgment each producer shall have installed on all of its producing wells a calibrated device to measure production. Such devices shall conform to, and be regularly calibrated in accordance with, specifications developed by Watermaster. Each producer shall record the monthly production from each well in acre feet and shall report such monthly production for each well and the total for all wells for the month and for the year to date to Watermaster by not later than the third working day following the end of the month.

3. **Operating Safe Yield.** The initial Operating Safe Yield of the Four Basins is 24,000 acre feet per year.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 21 East Carrillo Street, Santa Barbara, California 93101-2782. On December 21, 1998, I served the within document:

NOTICE OF ENTRY OF JUDGMENT

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Barbara, California as set forth below.

☐ by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

SEE ATTACHED LIST

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

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

Executed on December 21, 1998, at Santa Barbara, California.

Gina Lane

GINA M. LANE

HATCH AND PARENT
EAST CARRILLO STREET
SANTA BARBARA, CA
93101-2782

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