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7 *[Additional Parties on Following Pages]*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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FOR THE COUNTY OF SAN BERNARDINO

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14 CHINO BASIN MUNICIPAL WATER
DISTRICT,

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Plaintiff,

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vs.

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CITY OF CHINO, ET AL.,

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Defendants.

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Case No: RCVRS 51010

*Assigned for All Purposes to:
Honorable Gilbert G. Ochoa*

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF OPPOSITION TO
APPROPRIATIVE POOL'S MOTION
FOR AWARD OF EXPENSES**

[Concurrently Filed with Opposition;
Declaration of J. Scott-Coe; Declaration of C.
Jones; Declaration of G. Nicholls]

Date: August 22, 2024

Time: 9:00 a.m.

Place: Dept. R17

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REQUEST FOR JUDICIAL NOTICE

The City of Ontario; Monte Vista Water District; Monte Vista Irrigation Company; and the City of Chino (collectively, the “Responding Parties”) hereby request that, in considering their Opposition to the Appropriative Pool’s (“AP’s”) Motion for Award of Expenses, along with the declarations in support of the Opposition, this Court take judicial notice of the following exhibits pursuant to Evidence Code section 450 et seq.:

1. **Exhibit A**: Relevant excerpts of the 2012 Restated Judgment entered by this Court in the above-captioned case, with its Exhibit “H,” the AP Pooling Plan.
2. **Exhibit B**: Notice of Motion and Motion of AP Member Agencies Re: Agricultural Pool (“Ag Pool”) Legal and Other Expenses, filed on September 18, 2020 in the above-captioned case.
3. **Exhibit C**: Relevant excerpts of the Declaration of John J. Schatz in Support of Motion of AP Member Agencies Re: Ag Pool Legal and Other Expenses, filed on October 16, 2020 in the above-captioned case.
4. **Exhibit D**: Minute Order entered by this Court on April 5, 2021 in the above-captioned case.
5. **Exhibit E**: Order entered by this Court on May 28, 2021 in the above-captioned case.
6. **Exhibit F**: Notice of Motion and Motion for Attorney’s Fees, filed by the Ag Pool on July 26, 2021 in the above-captioned case.
7. **Exhibit G**: Relevant excerpts of the Opposition to the Ag Pool’s Motion for Attorney’s Fees, filed by members of the AP and the AP on September 27, 2021 in the above-captioned case.
8. **Exhibit H**: Order entered by this Court on December 3, 2021 in the above-captioned case.
9. **Exhibit I**: City of Chino Corrected Motion for Reimbursement of Attorneys Fees and Expenses Paid to the Ag Pool, filed on January 4, 2022 in the above-captioned case.

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10. **Exhibit J:** Rebuttal Brief and Objections Re: Joint Statement Regarding Settlement Between the AP and the Ag Pool re: Peace Agreement 5.4(a), Which Does Not Settle the Reimbursement Motion, filed by the Responding Parties on April 1, 2022 in the above-captioned case.

11. **Exhibit K:** Relevant excerpts of the Court of Appeal’s Opinion filed on March 12, 2024 in Case No. E079052 (Superior Court Case No. RCVRS 51010).

12. **Exhibit L:** Court of Appeal’s Remittitur filed on May 17, 2024 in Case No. E079052 (Superior Court Case No. RCVRS 51010).

Evidence Code section 453 states that the “trial court shall take judicial notice of any matter specified in Section 452 if a party requests it” Section 452(c) provides for judicial notice of official acts of the legislative, executive, and judicial departments of a state. Section 452(d) provides for judicial notice of “[r]ecords of . . . any court of this state.” Section 452(h) provides that judicial notice may be taken of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

Pursuant to this authority, especially Evidence Code sections 453 and 452(d), which require judicial notice of court records, the Responding Parties respectfully request that the Court take judicial notice of Exhibits A through L attached hereto, all of which are court records.

Dated: August 1, 2024

NOSSAMAN LLP
FREDERIC A. FUDACZ
GINA R. NICHOLLS


By: 
Gina R. Nicholls
Attorneys for CITY OF ONTARIO

EXHIBIT A

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

11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

No. RCV 51010²

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15 v.

CITY OF CHINO, et al.

16 Defendants

JUDGMENT

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19 I. INTRODUCTION

20 1. Pleadings, Parties and Jurisdiction. The complaint herein was filed on January 2, 1975,
21 seeking an adjudication of water rights, injunctive relief and the imposition of a physical solution. A first
22 amended complaint was filed on July 16, 1976. The defaults of certain defendants have been entered,
23 and certain other defendants dismissed. Other than defendants who have been dismissed or whose
24 defaults have been entered, all defendants have appeared herein. By answers and order of this Court,
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27 ² Original Judgment signed January 27, 1978, Case # 164327 by Judge Howard B. Weiner. File transferred August 1989, by order
of the Court and assigned new case number RCV 51010.
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1 the issues have been made those of a full inter se adjudication between the parties. This Court has
2 jurisdiction of the subject matter of this action and of the parties herein.

3 2. Stipulation For Judgment. Stipulation for entry of judgment has been filed by and on
4 behalf of a majority of the parties, representing a majority of the quantitative rights herein adjudicated.

5 3. Trial; Findings and Conclusions. Trial was commenced on December 16, 1977, as to the
6 non-stipulating parties, and findings of fact and conclusions of law have been entered disposing of the
7 issues in the case.

8 4. Definitions. As used in this Judgment, the following terms shall have the meanings
9 herein set forth:

10 (a) Active Parties. All parties other than those who have filed with Watermaster a
11 written waiver of service of notices, pursuant to Paragraph 58.

12 (b) Annual or Year — A fiscal year, July 1 through June 30, following, unless the
13 context shall clearly indicate a contrary meaning.

14 (c) Appropriative Right — The annual production right of a producer from the Chino
15 Basin other than pursuant to an overlying right.

16 (d) Basin Water — Ground water within Chino Basin which is part of the Safe Yield,
17 Operating Safe Yield, or replenishment water in the Basin as a result of operations under the
18 Physical Solution decreed herein. Said term does not include Stored Water.

19 (e) CBMWD — Plaintiff Chino Basin Municipal Water District.

20 (f) Chino Basin or Basin — The ground water basin underlying the area shown as
21 such on Exhibit "B" and within the boundaries described in Exhibit "K".

22 (g) Chino Basin Watershed — The surface drainage area tributary to and overlying
23 Chino Basin.

24 (h) Ground Water — Water beneath the surface of the ground and within the zone of
25 saturation, i.e., below the existing water table.
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1 (i) Ground Water Basin — An area underlain by one or more permeable formations
2 capable of furnishing substantial water storage.

3 (j) Minimal Producer — Any producer whose production does not exceed **ten** acre-
4 feet per year.³

5 (k) MWD — The Metropolitan Water District of Southern California.

6 (l) Operating Safe Yield — The annual amount of ground water which Watermaster
7 shall determine, pursuant to criteria specified in Exhibit "I", can be produced from Chino Basin by
8 the Appropriative Pool parties free of replenishment obligation under the Physical Solution herein.

9 (m) Overdraft — A condition wherein the total annual production from the Basin
10 exceeds the Safe Yield thereof.

11 (n) Overlying Right — The appurtenant right of an owner of lands overlying Chino
12 Basin to produce water from the Basin for overlying beneficial use on such lands.

13 (o) Person. -- Any individual, partnership, association, corporation, governmental
14 entity or agency, or other organization.

15 (p) PVMWD — Defendant Pomona Valley Municipal Water District.

16 (q) Produce or Produced — To pump or extract ground water from Chino Basin.

17 (r) Producer — Any person who produces water from Chino Basin.

18 (s) Production — Annual quantity, stated in acre feet, of water produced.

19 (t) Public Hearing — A hearing after notice to all parties and to any other person
20 legally entitled to notice.

21 (u) Reclaimed Water — Water which, as a result of processing of waste water, is
22 suitable for a controlled use.

23 (v) Replenishment Water — Supplemental water used to recharge the Basin
24 pursuant to the Physical Solution, either directly by percolating the water into the Basin or
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27 ³ Order dated September 27, 2001.
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1 indirectly by delivering the water for use in lieu of production and use of safe yield or Operating
2 Safe Yield.

3 (w) Responsible Party — The owner, co-owner, lessee or other person designated by
4 multiple parties interested in a well as the person responsible for purposes of filing reports
5 hereunder.

6 (x) Safe Yield — The long-term average annual quantity of ground water (excluding
7 replenishment or stored water but including return flow to the Basin from use of replenishment or
8 stored water) which can be produced from the Basin under cultural conditions of a particular year
9 without causing an undesirable result.

10 (y) SBVMWD — San Bernardino Valley Municipal Water District.

11 (z) State Water — Supplemental Water imported through the State Water Resources
12 Development System, pursuant to Chapter 8, Division 6, Part 6 of the Water Code.

13 (aa) Stored Water — Supplemental water held in storage, as a result of direct
14 spreading, in lieu delivery, or otherwise, for subsequent withdrawal and use pursuant to
15 agreement with Watermaster.

16 (bb) Supplemental Water — Includes both water imported to Chino Basin from outside
17 Chino Basin Watershed, and reclaimed water.

18 (cc) WMWD — Defendant Western Municipal Water District of Riverside County.

19 5. List of Exhibits. The following exhibits are attached to this Judgment and made a part
20

21 hereof:

22 "A" -- "Location Map of Chino Basin" showing boundaries of Chino Basin Municipal Water
23 District, and other geographic and political features of Chino Basin.

24 "B" -- "Hydrologic Map of Chino Basin" showing hydrologic features of Chino Basin.

25 "C" -- Table Showing Parties in Overlying (Agricultural) Pool.

26 "D" -- Table Showing Parties in Overlying (Non-agricultural Pool and Their Rights).

27 "E" -- Table Showing Appropriators and Their Rights.
28

1 "F" -- Overlying (Agricultural) Pool Pooling Plan.

2 "G" -- Overlying (Non-agricultural) Pool Pooling Plan.

3 "H" -- Appropriative Pool Pooling Plan.

4 "I" -- Engineering Appendix.

5 "J" -- Map of In Lieu Area No. 1.

6 "K" -- Legal Description of Chino Basin.

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8 II. DECLARATION OF RIGHTS

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10 A. HYDROLOGY

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12 6. Safe Yield. The Safe Yield of Chino Basin is 140,000 acre feet per year.

13 7. Overdraft and Prescriptive Circumstances. In each year for a period in excess of five
14 years prior to filing of the First Amended Complaint herein, the Safe Yield of the Basin has been
15 exceeded by the annual production therefrom, and Chino Basin is and has been for more than five years
16 in a continuous state of over draft. The production constituting said overdraft has been open, notorious,
17 continuous, adverse, hostile and under claim of right. The circumstances of said overdraft have given
18 notice to all parties of the adverse nature of such aggregate over-production.

19 B. WATER RIGHTS IN SAFE YIELD

20
21 8. Overlying Rights. The parties listed in Exhibits "C" and "D", are the owners or in
22 possession of lands which overlie Chino Basin. As such, said parties have exercised overlying water
23 rights in Chino Basin. All overlying rights owned or exercised by parties listed in Exhibits "C" and "D",
24 have, in the aggregate, been limited by prescription except to the extent such rights have been preserved
25 by self-help by said parties. Aggregate preserved overlying rights in the Safe Yield for agricultural pool
26 use, including the rights of the State of California, total 82,800 acre feet per year. Overlying rights for
27 non-agricultural pool use total 7,366 acre feet per year and are individually decreed for each affected
28

1 20. Employment of Experts and Agents. Watermaster may employ or retain such
2 administrative, engineering, geologic, accounting, legal or other specialized personnel and consultants as
3 may be deemed appropriate in the carrying out of its powers and shall require appropriate bonds from all
4 officers and employees handling Watermaster funds. Watermaster shall maintain records for purposes of
5 allocation of costs of such services as well as of all other expenses of Watermaster administration as
6 between the several pools established by the Physical Solution.

7
8 21. Measuring Devices. Watermaster shall cause parties, pursuant to uniform rules, to install
9 and maintain in good operating condition, at the cost of each party, such necessary measuring devices or
10 meters as Watermaster may deem appropriate. Such measuring devices shall be inspected and tested
11 as deemed necessary by Watermaster, and the cost thereof shall constitute an expense of Watermaster.

12 22. Assessments. Watermaster is empowered to levy and collect all assessments provided
13 for in the pooling plans and Physical Solution.

14
15 23. Investment of Funds. Watermaster may hold and invest any and all Watermaster funds
16 in investments authorized from time to time for public agencies of the State of California.

17 24. Borrowing. Watermaster may borrow from time to time amounts not exceeding the
18 annual anticipated receipts of Watermaster during such year.

19
20 25. Contracts. Watermaster may enter into contracts for the performance of any powers
21 herein granted; provided, however, that Watermaster may not contract with or purchase materials,
22 supplies or services from IEUA, except upon the prior recommendation and approval of the Advisory
23 Committee and pursuant to written order of the Court.

24
25 26. Cooperation With Other Agencies. Subject to prior recommendation or approval of the
26 Advisory Committee, Watermaster may act jointly or cooperate with agencies of the United States and the
27 State of California or any political subdivisions, municipalities or districts or any person to the end that the
28 purpose of the Physical Solution may be fully and economically carried out.

1 27. Studies. Watermaster may, with concurrence of the Advisory Committee or affected Pool
2 Committee and in accordance with Paragraph 54 (b), undertake relevant studies of hydrologic conditions,
3 both quantitative and qualitative, and operating aspects of implementation of the management program
4 for Chino Basin.

5 28. Ground Water Storage Agreements. Watermaster shall adopt, with the approval of the
6 Advisory Committee, uniformly applicable rules and a standard form of agreement for storage of
7 supplemental water, pursuant to criteria therefore set forth in Exhibit "I". Upon appropriate application by
8 any person, Watermaster shall enter into such a storage agreement; provided that all such storage
9 agreements shall first be approved by written order of the Court, and shall by their terms preclude
10 operations which will have a substantial adverse impact on other producers.

11 29. Accounting for Stored Water. Watermaster shall calculate additions, extractions and
12 losses and maintain an annual account of all Stored Water in Chino Basin, and any losses of water
13 supplies or Safe Yield of Chino Basin resulting from such Stored Water.

14 30. Annual Administrative Budget. Watermaster shall submit to Advisory Committee an
15 administrative budget and recommendation for each fiscal year on or before March 1. The Advisory
16 Committee shall review and submit said budget and their recommendations to Watermaster on or before
17 April 1, following. Watermaster shall hold a public hearing on said budget at its April quarterly meeting
18 and adopt the annual administrative budget which shall include the administrative items for each pool
19 committee. The administrative budget shall set forth budgeted items in sufficient detail as necessary to
20 make a proper allocation of the expense among the several pools, together with Watermaster's proposed
21 allocation. The budget shall contain such additional comparative information or explanation as the
22 Advisory Committee may recommend from time to time. Expenditures within budgeted items may
23 thereafter be made by Watermaster in the exercise of powers herein granted, as a matter of course. Any
24 budget transfer in excess of 20% of a budget category during any budget year or modification of such
25 administrative budget during any year shall be first submitted to the Advisory Committee for review and
26 recommendation.

1 31. Review Procedures. All actions, decisions or rules of Watermaster shall be subject to
2 review by the Court on its own motion or on timely motion by any party, the Watermaster (in the case of a
3 mandated action), the Advisory Committee, or any Pool Committee, as follows:

4 (a) Effective Date of Watermaster Action. Any action, decision or rule of
5 Watermaster shall be deemed to have occurred or been enacted on the date on which written
6 notice thereof is mailed. Mailing of copies of approved Watermaster minutes to the active parties
7 shall constitute such notice to all parties.

8 (b) Noticed Motion. Any party, the Watermaster (as to any mandated action), the
9 Advisory Committee, or any Pool Committee may, by a regularly noticed motion, apply to the
10 Court for review of any Watermaster's action, decision or rule. Notice of such motion shall be
11 served personally or mailed to Watermaster and to all active parties. Unless otherwise ordered
12 by the Court, such motion shall not operate to stay the effect of such Watermaster action,
13 decision or rule.

14 (c) Time for Motion. Notice of motion to review any Watermaster action, decision or
15 rule shall be served and filed within ninety (90) days after such Watermaster action, decision or
16 rule, except for budget actions, in which event said notice period shall be sixty (60) days.

17 (d) De Novo Nature of Proceedings. Upon the filing of any such motion, the Court
18 shall require the moving party to notify the active parties, the Watermaster, the Advisory
19 Committee, and each Pool Committee, of a date for taking evidence and argument, and on the
20 date so designated shall review de novo the question at issue. Watermaster's findings or
21 decision, if any, may be received in evidence at said hearing, but shall not constitute presumptive
22 or prima facie proof of any fact in issue.

23 (e) Decision. The decision of the Court in such proceeding shall be an appealable
24 supplemental order in this case. When the same is final, it shall be binding upon the
25 Watermaster and all parties.
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3 C. ADVISORY AND POOL COMMITTEES

4 32. Authorization. Watermaster is authorized and directed to cause committees of producer
5 representatives to be organized to act as Pool Committees for each of the several pools created under
6 the Physical solution. Said Pool Committees shall, in turn, jointly form an Advisory Committee to assist
7 Watermaster in performance of its functions under this judgment. Pool Committees shall be composed as
8 specified in the respective pooling plans, and the Advisory Committee shall be composed of ten (10)
9 voting representatives from each pool, as designated by the respective Pool Committee⁶ **in accordance**
10 **with each pool's pooling plan. WMWD, Three Valleys Municipal Water District (Successor to**
11 **PVMWD)** and SBVMWD shall each be entitled to one non-voting representative on said Advisory
12 Committee.

13
14 33. Term and Vacancies. Members of any Pool Committee, shall serve for the term, and
15 vacancies shall be filled, as specified in the respective pooling plan. Members of the Advisory Committee
16 shall serve at the will of their respective Pool Committee.

17 34. Voting Power. The voting power on each Pool Committee shall be allocated as provided
18 in the respective pooling plan. The voting power on the Advisory Committee shall be one hundred (100)
19 votes allocated among the three pools in proportion to the total assessments paid to Watermaster during
20 the preceding year; provided, that the minimum voting power of each pool shall be

- 21
22 (a) Overlying Agricultural Pool 20,
23 (b) Overlying Non-Agricultural Pool 5, and
24 (c) Appropriative Pool 20.
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27 ⁶ Order dated September 18, 1996.
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1 In the event any pool is reduced to its said minimum vote, the remaining votes shall be allocated between
2 the remaining pools on said basis of assessments paid to Watermaster by each such remaining pool
3 during the preceding year. The method of exercise of each pool's voting power on the Advisory
4 Committee shall be as determined by the respective pool committees.

5 35. Quorum. A majority of the voting power of the Advisory Committee or any Pool
6 Committee shall constitute a quorum for the transaction of affairs of such Advisory or Pool Committee;
7 provided, that at least one representative of each Pool Committee shall be required to constitute a
8 quorum of the Advisory Committee. No Pool Committee representative may purposely absent himself or
9 herself, without good cause, from an Advisory Committee meeting to deprive it of a quorum. Action by
10 affirmative vote of a majority of the entire voting power of any Pool Committee or the Advisory Committee
11 shall constitute action by such committee. Any action or recommendation of a Pool Committee or the
12 Advisory Committee shall be transmitted to Watermaster in writing, together with a report of any
13 dissenting vote or opinion.

14 36. Compensation. Pool or Advisory Committee members may receive compensation, to be
15 established by the respective pooling plan, but not to exceed twenty-five dollars (\$25.00) for each
16 meeting of such Pool or Advisory Committee attended, and provided that no member of a Pool or
17 Advisory Committee shall receive compensation of more than three hundred (\$300.00) dollars for service
18 on any such committee during any one year. All such compensation shall be a part of Watermaster
19 administrative expense. No member of any Pool or Advisory Committee shall be employed by
20 Watermaster or compensated by Watermaster for professional or other services rendered to such Pool or
21 Advisory Committee or to Watermaster, other than the fee for attendance at meetings herein provided,
22 plus reimbursement of reasonable expenses related to activities within the Basin.

23 37. Organization.

24 (a) Organizational Meeting. At its first meeting in each year, each Pool Committee
25 and the Advisory Committee shall elect a chairperson and a vice chairperson from its
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1 membership. It shall also select a secretary, a treasurer and such assistant secretaries and
2 treasurers as may be appropriate, any of whom may, but need not, be members of such Pool or
3 Advisory Committee.

4 (b) Regular Meetings. All Pool Committees and the Advisory Committee shall hold
5 regular meetings at a place and time to be specified in the rules to be adopted by each Pool and
6 Advisory Committee. Notice of regular meetings of any Pool or Advisory Committee, and of any
7 change in time or place thereof, shall be mailed to all active parties in said pool or pools.
8

9 (c) Special Meetings. Special meetings of any Pool or Advisory Committee may be
10 called at any time by the Chairperson or by any three (3) members of such Pool or Advisory
11 Committee by delivering notice personally or by mail to each member of such Pool or Advisory
12 Committee and to each active party at least 24 hours before the time of each such meeting in the
13 case of personal delivery, and 96 hours in the case of mail. The calling notice shall specify the
14 time and place of the special meeting and the business to be transacted. No other business shall
15 be considered at such meeting.
16

17 (d) Minutes. Minutes of all Pool Committee, Advisory Committee and Watermaster
18 meetings shall be kept at Watermaster's offices. Copies thereof shall be mailed or otherwise
19 furnished to all active parties in the pool or pools concerned. Said copies of minutes shall
20 constitute notice of any Pool or Advisory Committee action therein reported, and shall be
21 available for inspection by any party.

22 (e) Adjournments. Any meeting of any Pool or Advisory Committee may be
23 adjourned to a time and place specified in the order of adjournment. Less than a quorum may so
24 adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously
25 posted forthwith on or near the door of the place where the meeting was held.

26 38. Powers and Functions. The powers and functions of the respective Pool Committees
27 and the Advisory Committee shall be as follows:
28

1 (a) Pool Committees. Each Pool Committee shall have the power and responsibility
2 for developing policy recommendations for administration of its particular pool, as created under
3 the Physical Solution. All actions and recommendations of any Pool Committee which require
4 Watermaster implementation shall first be noticed to the other two pools. If no objection is
5 received in writing within thirty (30) days, such action or recommendation shall be transmitted
6 directly to Watermaster for action. If any such objection is received, such action or
7 recommendation shall be reported to the Advisory Committee before being transmitted to
8 Watermaster.

9 (b) Advisory Committee. The Advisory Committee shall have the duty to study, and
10 the power to recommend, review and act upon all discretionary determinations made or to be
11 made hereunder by Watermaster.

12
13 [1] Committee Initiative. When any recommendation or advice of the
14 Advisory Committee is received by Watermaster, action consistent therewith may be
15 taken by Watermaster; provided, that any recommendation approved by 80 votes or more
16 in the Advisory Committee shall constitute a mandate for action by Watermaster
17 consistent therewith. If Watermaster is unwilling or unable to act pursuant to
18 recommendation or advice from the Advisory Committee (other than such mandatory
19 recommendations), Watermaster shall hold a public hearing, which shall be followed by
20 written findings and decision. Thereafter, Watermaster may act in accordance with said
21 decision, whether consistent with or contrary to said Advisory Committee
22 recommendation. Such action shall be subject to review by the Court, as in the case of
23 all other Watermaster determinations.

24
25 [2] Committee Review. In the event Watermaster proposes to take
26 discretionary action, other than approval or disapproval of a Pool Committee action or
27 recommendation properly transmitted, or execute any agreement not theretofore within
28 the scope of an Advisory Committee recommendation, notice of such intended action

1 shall be served on the Advisory Committee and its members at least thirty (30) days
2 before the Watermaster meeting at which such action is finally authorized.

3 (c) Review of Watermaster Actions. Watermaster (as to mandated action), the
4 Advisory Committee or any Pool Committee shall be entitled to employ counsel and expert
5 assistance in the event Watermaster or such Pool or Advisory Committee seeks Court review of
6 any Watermaster action or failure to act. The cost of such counsel and expert assistance shall be
7 Watermaster expense to be allocated to the affected pool or pools.
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9 VI. PHYSICAL SOLUTION

10 A. GENERAL

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12 39. Purpose and Objective. Pursuant to the mandate of Section 2 of Article X of the
13 California Constitution, the Court hereby adopts and orders the parties to comply with a Physical Solution.
14 The purpose of these provisions is to establish a legal and practical means for making the maximum
15 reasonable beneficial use of the waters of Chino Basin by providing the optimum economic, long-term,
16 conjunctive utilization of surface waters, ground waters and supplemental water, to meet the
17 requirements of water users having rights in or dependent upon Chino Basin.
18

19 40. Need for Flexibility. It is essential that this Physical solution provide maximum flexibility
20 and adaptability in order that Watermaster and the Court may be free to use existing and future
21 technological, social, institutional and economic options, in order to maximize beneficial use of the waters
22 of Chino Basin. To that end, the Court's retained jurisdiction will be utilized, where appropriate, to
23 supplement the discretion herein granted to the Watermaster.
24

25 41. Watermaster Control. Watermaster, with the advice of the Advisory and Pool
26 Committees, is granted discretionary powers in order to develop an optimum basin management program
27 for Chino Basin, including both water quantity and quality considerations. Withdrawals and supplemental
28 water replenishment of Basin Water, and the full utilization of the water resources of Chino Basin, must

1 be subject to procedures established by and administered through Watermaster with the advice and
2 assistance of the Advisory and Pool Committees composed of the affected producers. Both the quantity
3 and quality of said water resources may thereby be preserved and the beneficial utilization of the Basin
4 maximized.

5
6 42. General Pattern of Operations. It is contemplated that the rights herein decreed will be
7 divided into three (3) operating pools for purposes of Watermaster administration. A fundamental
8 premise of the Physical Solution is that all water users dependent upon Chino Basin will be allowed to
9 pump sufficient waters from the Basin to meet their requirements. To the extent that pumping exceeds
10 the share of the Safe Yield assigned to the Overlying Pools, or the Operating Safe Yield in the case of the
11 Appropriative Pool, each pool will provide funds to enable Watermaster to replace such overproduction.
12 The method of assessment in each pool shall be as set forth in the applicable pooling plan.

13 B. POOLING

14
15 43. Multiple Pools Established. There are hereby established three (3) pools for
16 Watermaster administration of, and for the allocation of responsibility for, and payment of, costs of
17 replenishment water and other aspects of this Physical Solution.

18 (a) Overlying (Agricultural) Pool. The first pool shall consist of the State of California
19 and all overlying producers who produce water for other than industrial or commercial purposes.
20 The initial members of the pool are listed in Exhibit "C".

21
22 (b) Overlying (Non-agricultural) Pool The second pool shall consist of overlying
23 producers who produce water for industrial or commercial purposes. The initial members of this
24 pool are listed in Exhibit "D".

25 (c) Appropriative Pool. A third and separate pool shall consist of owners of
26 appropriative rights. The initial members of the pool are listed in Exhibit "E".
27
28

1 Any party who changes the character of his use may, by subsequent order of the Court, be
2 reassigned to the proper pool; but the allocation of Safe Yield under Paragraph 44 hereof shall not be
3 changed. Any non-party producer or any person who may hereafter commence production of water from
4 Chino Basin, and who may become a party to this physical solution by intervention, shall be assigned to
5 the proper pool by the order of the Court authorizing such intervention.

6 44. Determination and Allocation of Rights to Safe Yield of Chino Basin. The declared Safe
7 Yield of Chino Basin is hereby allocated as follows:
8

9 <u>Pool</u>	<u>Allocation</u>
10 Overlying (Agricultural) Pool	414,000 acre-feet in any five (5) consecutive years.
11 Overlying (Non-agricultural) Pool	7,366 acre-feet per year.
12 Appropriative Pool	49,834 acre-feet per year.

13
14 The foregoing acre foot allocations to the overlying pools are fixed. Any subsequent change in
15 the Safe Yield shall be debited or credited to the Appropriative Pool. Basin Water available to the
16 Appropriative Pool without replenishment obligation may vary from year to year as the Operating Safe
17 Yield is determined by Watermaster pursuant to the criteria set forth in Exhibit "I".

18 45. Annual Replenishment. Watermaster shall levy and collect assessments in each year,
19 pursuant to the respective pooling plans, in amounts sufficient to purchase replenishment water to
20 replace production by any pool during the preceding year which exceeds that pool's allocated share of
21 Safe Yield in the case of the overlying pools, or Operating Safe Yield in the case of the Appropriative
22 Pool. It is anticipated that supplemental water for replenishment of Chino Basin may be available at
23 different rates to the various pools to meet their replenishment obligations. If such is the case, each pool
24 will be assessed only that amount necessary for the cost of replenishment water to that pool, at the rate
25 available to the pool, to meet its replenishment obligation.
26
27
28

1 46. Initial Pooling Plans. The initial pooling plans, which are hereby adopted, are set forth in
2 Exhibits “F”, “G” and “H”, respectively. Unless and until modified by amendment of the judgment pursuant
3 to the Court’s continuing jurisdiction, each such plan shall control operation of the subject pool.

4
5 C. REPORTS AND ACCOUNTING

6 47. Production Reports. Each party or responsible party shall file periodically with
7 Watermaster, pursuant to Watermaster rules, a report on a form to be prescribed by Watermaster
8 showing the total production of such party during the preceding reportage period, and such additional
9 information as Watermaster may require, including any information specified by the affected Pool
10 Committee.

11
12 48. Watermaster Report and Accounting. **Watermaster’s Annual Report shall be filed by**
13 **January 31 of each year. The Report shall apply to the preceding fiscal years’ operation. The**
14 **Report shall contain details as to operation of the Pools. A certified audit of assessments and**
15 **expenditures pursuant to this Physical Solution, and a review of Watermaster activity.⁷**

16 D. REPLENISHMENT

17
18 49. Sources of Supplemental Water. Supplemental water may be obtained by Watermaster
19 from any available source. Watermaster shall seek to obtain the best available quality of supplemental
20 water at the most reasonable cost for recharge in the Basin. To the extent that costs of replenishment
21 water may vary between pools, each pool shall be liable only for the costs attributable to its required
22 replenishment. Available sources may include, but are not limited to:

23 (a) Reclaimed Water. There exist a series of agreements generally denominated the
24 Regional Waste Water Agreements between IEUA and owners of the major municipal sewer
25

26
27 _____
⁷ Order dated March 31, 1999.

1 systems within the basin. Under those agreements, which are recognized hereby but shall be
2 unaffected and unimpaired by this judgment, substantial quantities of reclaimed water may be
3 made available for replenishment purposes. There are additional sources of reclaimed water
4 which are, or may become, available to Watermaster for said purposes. Maximum beneficial use
5 of reclaimed water shall be given high priority by Watermaster.

6 (b) State Water. State water constitutes a major available supply of supplemental
7 water. In the case of State Water, Watermaster purchases shall comply with the water service
8 provisions of the State's water service contracts. More specifically, Watermaster shall purchase
9 State Water from MWD for replenishment of excess production within IEUA, WMWD and
10 TVMWD, and from SBVMWD to replenish excess production within SBVMWD's boundaries in
11 Chino Basin, except to the extent that MWD and SBVMWD give their consent as required by
12 such State water service contracts.

13
14 (c) Local Import. There exist facilities and methods for importation of surface and
15 ground water supplies from adjacent basins and watersheds.

16
17 (d) Colorado River Supplies. MWD has water supplies available from its Colorado
18 River Aqueduct.

19 50. Methods of Replenishment. Watermaster may accomplish replenishment of
20 overproduction from the Basin by any reasonable method, including:

21
22 (a) Spreading and percolation or Injection of water in existing or new facilities,
23 subject to the provisions of Paragraphs 19, 25 and 26 hereof.

24
25 (b) In Lieu Procedures. Watermaster may make, or cause to be made, deliveries of
26 water for direct surface use, in lieu of ground water production.

27 E. REVENUES
28

1 51. Production Assessment. Production assessments, on whatever basis, may be levied by
2 Watermaster pursuant to the pooling plan adopted for the applicable pool.

3 52. Minimal Producers. Minimal Producers shall be exempted from payment of production
4 assessments, upon filing of production reports as provided in Paragraph 47 of this Judgment, and
5 payment of an annual five dollar (\$5.00) administrative fee as specified by Watermaster rules.
6

7 53. Assessment Proceeds — Purposes. Watermaster shall have the power to levy
8 assessments against the parties (other than minimal pumpers) based upon production during the
9 preceding period of assessable production, whether quarterly, semi-annually or annually, as may be
10 determined most practical by Watermaster or the affected Pool Committee.

11 54. Administrative Expenses. The expenses of administration of this Physical Solution shall
12 be categorized as either (a) general Watermaster administrative expense, or (b) special project expense.
13

14 (a) General Watermaster Administrative Expense shall include office rental, general
15 personnel expense, supplies and office equipment, and related incidental expense and general
16 overhead.
17

18 (b) Special Project Expense shall consist of special engineering, economic or other
19 studies, litigation expense, meter testing or other major operating expenses. Each such project
20 shall be assigned a Task Order number and shall be separately budgeted and accounted for.

21 General Watermaster administrative expense shall be allocated and assessed against the
22 respective pools based upon allocations made by the Watermaster, who shall make such
23 allocations based upon generally accepted cost accounting methods. Special Project Expense
24 shall be allocated to a specific pool, or any portion thereof, only upon the basis of prior express
25 assent and finding of benefit by the Pool Committee, or pursuant to written order of the Court.

26 55. Assessments -- Procedure. Assessments herein provided for shall be levied and
27 collected as follows:
28

1 (a) Notice of Assessment. Watermaster shall give written notice of all applicable
2 assessments to each party on or before ninety (90) days after the end of the production period to
3 which such assessment is applicable.

4 (b) Payment. Each assessment shall be payable on or before thirty (30) days after
5 notice, and shall be the obligation of the party or successor owning the water production facility at
6 the time written notice of assessment is given, unless prior arrangement for payment by others
7 has been made in writing and filed with Watermaster.

8
9 (c) Delinquency. Any delinquent assessment shall bear interest at 10% per annum
10 (or such greater rate as shall equal the average current cost of borrowed funds to the
11 Watermaster) from the due date thereof. Such delinquent assessment and interest may be
12 collected in a show-cause proceeding herein instituted by the Watermaster, in which case the
13 Court may allow Watermaster its reasonable costs of collection, including attorney's fees.

14
15 56. Accumulation of Replenishment Water Assessment Proceeds. In order to minimize
16 fluctuation in assessment and to give Watermaster flexibility in purchase and spreading of replenishment
17 water, Watermaster may make reasonable accumulations of replenishment water assessment proceeds.
18 Interest earned on such retained funds shall be added to the account of the pool from which the funds
19 were collected and shall be applied only to the purchase of replenishment water.

20 57. Effective Date. The effective date for accounting and operation under this Physical
21 Solution shall be July 1, 1977, and the first production assessments hereunder shall be due after July 1,
22 1978. Watermaster shall, however, require installation of meters or measuring devices and establish
23 operating procedures immediately, and the cost of such Watermaster activity (not including the cost of
24 such meters and measuring devices) may be recovered in the first administrative assessment in 1978.

EXHIBIT "H"
APPROPRIATIVE POOL
POOLING PLAN

1. Qualification for Pool. Any city, district or other public entity and public utility -- either regulated under Public Utilities Commission jurisdiction, or exempt therefrom as a non-profit mutual water company (other than those assigned to the Overlying (Agricultural) Pool) -- shall be a member of this pool. All initial members of the pool are listed in Exhibit "E", together with their respective appropriative rights and acre foot allocation and percentage shares of the initial and subsequent Operating Safe Yield.

2. Pool Committee. The Pool Committee shall consist of one (1) representative appointed by each member of the Pool.

3. Voting. The total voting power on the Pool Committee shall be 1,000 votes. Of these, 500 votes shall be allocated in proportion to decreed percentage shares in Operating Safe Yield. The remaining 500 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year. Routine business of the Pool Committee may be conducted on the basis of one vote per member, but upon demand of any member a weighted vote shall be taken. Affirmative action of the Committee shall require a majority of the voting power of members in attendance, provided that it includes concurrence by at least one-third of its total members.

4. Advisory Committee Representatives. **Members of the Pool Committee shall be designated to represent this pool on the Advisory Committee *on the following basis*: Each major appropriator, i.e., the owner of an adjudicated appropriative right in excess of 3,000 acre feet, *or each appropriator that produces in excess of 3,000 acre feet based upon the prior year's production*, shall be entitled to one representative. *Two additional representatives of the Appropriative Pool on the Advisory Committee shall be elected at large by the remaining members of the pool. The voting power of the Appropriative Pool on the Advisory Committee shall be apportioned between the major appropriator representatives in proportion to their respective voting power in the Pool Committee. The two representatives of the remaining appropriators shall exercise equally the voting power proportional to the Pool Committee voting power of said***

remaining appropriators; provided, however, that if any representative fails to attend an Advisory Committee meeting, the voting power of that representative shall be allocated among the representatives of the Appropriative Pool in attendance in the same proportion as their respective voting powers.¹²

5. Replenishment Obligation. The pool shall provide funds for purchase of replenishment water to replace any production by the pool in excess of Operating Safe Yield during the preceding year.

6. Administrative Assessment. Costs of administration of this pool and its share of general Watermaster expense shall be recovered by a uniform assessment applicable to all production during the preceding year.

7. Replenishment Assessment. The cost of replenishment water required to replace production from Chino Basin in excess of Operating Safe Yield in the preceding year shall be allocated and recovered as follows:

(a) For production, other than for increased export,

within CBMWD or WMWD:

(1) Gross Assessment. 15% of such replenishment water costs shall be recovered by a uniform assessment against all production of each appropriator producing in said area during the preceding year.

(2) Net Assessment. The remaining 85% of said costs shall be recovered by a uniform assessment on each acre foot of production from said area by each such appropriator in excess of his allocated share of Operating Safe Yield during said preceding year.

(b) For production which is exported for use outside Chino Basin in excess of maximum export in any year through 1976, such increased export production shall be assessed against the exporting appropriator in an amount sufficient to purchase replenishment water from CBMWD or WMWD in the amount of such excess.

¹² Order dated September 18, 1996.

(c) For production within SBVMWD or PVMWD:

By an assessment on all production in excess of an appropriator's share of Operating Safe Yield in an amount sufficient to purchase replenishment water through SBVMWD or MWD in the amount of such excess.

8. Socio-Economic Impact Review. The parties have conducted certain preliminary socio-economic impact studies. Further and more detailed socio-economic impact studies of the assessment formula and its possible modification shall be undertaken for the Appropriator Pool by Watermaster no later than ten (10) years from the effective date of this Physical Solution, or whenever total production by this pool has increased by 30% or more over the decreed appropriative rights, whichever is first.

9. Facilities Equity Assessment. Watermaster may, upon recommendation of the Pool Committee, institute proceedings for levy and collection of a Facilities Equity Assessment for the purposes and in accordance with the procedures which follow:

(a) Implementing Circumstances. - There exist several sources of supplemental water available to Chino Basin, each of which has a differential cost and quantity available. The optimum management of the entire Chino Basin water resource favors the maximum use of the lowest cost supplemental water to balance the supplies of the Basin, in accordance with the Physical Solution. The varying sources of supplemental water include importations from MWD and SBVMWD, importation of surface and ground water supplies from other basins in the immediate vicinity of Chino Basin, and utilization of reclaimed water. In order to fully utilize any of such alternate sources of supply, it will be essential for particular appropriators having access to one or more of such supplies to have invested, or in the future to invest, directly or indirectly, substantial funds in facilities to obtain and deliver such water to an appropriate point of use. To the extent that the use of less expensive alternative sources of supplemental water can be maximized by the inducement of a Facilities Equity Assessment, as herein provided, it is to the long-term benefit of the entire basin that such assessment be authorized and levied by Watermaster.

(b) Study and Report. - At the request of the Pool Committee, Watermaster shall undertake a survey study of the utilization of alternate supplemental supplies by

members of the Appropriative Pool which would not otherwise be utilized and shall prepare a report setting forth the amount of such alternative supplies being currently utilized, the amount of such supplies which could be generated by activity within the pool, and the level of cost required to increase such uses and to optimize the total supplies available to the basin. Said report shall contain an analysis and recommendation for the levy of a necessary Facilities Equity Assessment to accomplish said purpose.

(c) Hearing. - If the said report by Watermaster contains a recommendation for imposition of a Facilities Equity Assessment, and the Pool Committee so requests, Watermaster shall notice and hold a hearing not less than 60 days after distribution of a copy of said report to each member of the pool, together with a notice of the hearing date. At such hearing, evidence shall be taken with regard to the necessity and propriety of the levy of a Facilities Equity Assessment and full findings and decision shall be issued by Watermaster.

(d) Operation of Assessment. - If Watermaster determines that it is appropriate that a Facilities Equity Assessment be levied in a particular year, the amount of additional supplemental supplies which should be generated by such assessment shall be estimated. The cost of obtaining such supplies, taking into consideration the investment in necessary facilities shall then be determined and spread equitably among the producers within the pool in a manner so that those producers not providing such additional lower cost supplemental water, and to whom a financial benefit will result, may bear a proportionate share of said costs, not exceeding said benefit; provided that any producer furnishing such supplemental water shall not thereby have its average cost of water in such year reduced below such producer's average cost of pumping from the Basin. In so doing, Watermaster shall establish a percentage of the total production by each party which may be produced without imposition of a Facilities Equity Assessment. Any member of the pool producing more water than said percentage shall pay such Facilities Equity Assessment on any such excess production. Watermaster is authorized to transmit and pay the proceeds of such Facilities Equity Assessment to those producers who take less than their share of Basin water by reason of furnishing a higher percentage of their requirements through use of supplemental water.

10. Unallocated Safe Yield Water. To the extent that, in any five years, any portion of the share of Safe Yield allocated to the Overlying (Agricultural) Pool is not produced, such water shall be available for reallocation to members of the Appropriative Pool, as follows:

(a) Priorities. - Such allocation shall be made in the following sequence:

(1) to supplement, in the particular year, water available from Operating Safe Yield to compensate for any reduction in the Safe Yield by reason of recalculation thereof after the tenth year of operation hereunder.

(2) pursuant to conversion claims as defined in Subparagraph (b) hereof.

(3) as a supplement to Operating Safe Yield, without regard to reductions in Safe Yield.

(b) Conversion Claims.¹³ The following procedures may be utilized by any appropriator:

1) **Record of Unconverted Agricultural Acreage. Watermaster shall maintain on an ongoing basis a record with appropriate related maps of all agricultural acreage within the Chino Basin subject to being converted to appropriative water use pursuant to the provisions of this subparagraph. An initial identification of such acreage as of June 30, 1995 is attached hereto as Appendix 1.**

(2) **Record of Water Service Conversion. Any appropriator who undertakes to permanently provide water service to lands *subject to conversion* may report such intent to change water service to Watermaster. Watermaster *should* thereupon verify such change in water service and shall maintain a record and account for each appropriator of the total acreage involved. *Should, at any time, converted acreage return to water service from the Overlying (Agricultural) Pool, Watermaster shall return such acreage to unconverted status***

¹³ Order dated November 17, 1995.

and correspondingly reduce or eliminate any allocation accorded to the appropriator involved.

(3) Allocation of Safe Yield Rights

(i) *For the term of the Peace Agreement in any year in which sufficient unallocated Safe Yield from the Overlying (Agricultural) Pool is available for such conversion claims, Watermaster shall allocate to each appropriator with a conversion claim 2.0 acre feet of unallocated Safe Yield water for each converted acre for which conversion has been approved and recorded by the Watermaster.*¹⁴

(ii) *In any year in which the unallocated Safe Yield water from the Overlying (Agricultural) Pool is not sufficient to satisfy all outstanding conversion claims pursuant to subparagraph (i) herein above, Watermaster shall establish allocation percentages for each appropriator with conversion claims. The percentages shall be based upon the ratio of the total of such converted acreage approved and recorded for each appropriators's account in comparison to the total of converted acreage approved and recorded for all appropriators. Watermaster shall apply such allocation percentage for each appropriator to the total unallocated Safe Yield water available for conversion claims to derive the amount allocable to each appropriator.*

(4) Notice and Allocation. Notice of the special allocation of Safe Yield water pursuant to conversion claims shall be given to each appropriator and shall be treated for purposes of this Physical Solution as an addition to such appropriator's share of the Operating Safe Yield for the particular year only.

¹⁴ Order dated September 28, 2000 and Order dated April 19, 2001.

(5) Administrative Costs. Any costs of Watermaster attributable to the administration of such special allocations and conversion claims shall be assessed against the appropriators participating in such reporting, apportioned in accordance with the total amount of converted acreage held by each appropriator participating in the conversion program.

11. In Lieu Procedures. There are, or may develop, certain areas within Chino Basin where good management practices dictate that recharge of the basin be accomplished, to the extent practical, by taking surface supplies of supplemental water in lieu of ground water otherwise subject to production as an allocated share of Operating Safe Yield.

(a) Method of Operation. - An appropriator producing water within such designated in lieu area who is willing to abstain for any reason from producing any portion of such producer's share of Operating Safe Yield in any year may offer such unpumped water to Watermaster. In such event, Watermaster shall purchase said water in place, in lieu of spreading replenishment water, which is otherwise required to make up for over production. The purchase price for in lieu water shall be the lesser of:

- (1) Watermaster's current cost of replenishment water, whether or not replenishment water is currently then obtainable, plus the cost of spreading; or
- (2) The cost of supplemental surface supplies to the appropriator, less
 - a. said appropriator's average cost of ground water production, and
 - b. the applicable production assessment were the water produced.

Where supplemental surface supplies consist of MWD or SBVMWD supplies, the cost of treated, filtered State water from such source shall be deemed the cost of supplemental surface supplies to the appropriator for purposes of such calculation.

In any given year in which payments may be made pursuant to a Facilities Equity Assessment, as to any given quantity of water the party will be entitled to payment under this section or pursuant to the Facilities Equity Assessment, as the party elects, but not under both.

(b) Designation of In Lieu Areas. - The first in lieu area is designated as the "In Lieu Area No. 1" and consists of an area wherein nitrate levels in the ground water generally exceed 45 mg/l, and is shown on Exhibit "J" hereto. Other in lieu areas may be designated by subsequent order of Watermaster upon recommendation or approval by Advisory Committee. Said in lieu areas may be enlarged, reduced or eliminated by subsequent orders; provided, however, that designation of In Lieu Areas shall be for a minimum fixed term sufficient to justify necessary capital investment. In Lieu Area No. 1 may be enlarged, reduced or eliminated in the same manner, except that any reduction of its original size or elimination thereof shall require the prior order of Court.

12. Carry-over. Any appropriator who produces less than his assigned share of Operating Safe Yield may carry such unexercised right forward for exercise in subsequent years. The first water produced during any such subsequent year shall be deemed to be an exercise of such carry-over right. In the event the aggregate carry-over by any appropriator exceeds its share of Operating Safe Yield, such appropriator shall, as a condition of preserving such surplus carry-over, execute a storage agreement with Watermaster. Such appropriator shall have the option to pay the gross assessment applicable to such carry-over in the year in which it accrued.

13. Assignment, Transfer and Lease. Appropriative rights, and corresponding shares of Operating Safe Yield, may be assigned or may be leased or licensed to another appropriator for exercise in a given year. Any transfer, lease or license shall be ineffective until written notice thereof is furnished to and approved as to form by Watermaster, in compliance with applicable Watermaster rules. Watermaster shall not approve transfer, lease or license of a right for exercise in an area or under conditions where such production would be contrary to sound basin management or detrimental to the rights or operations of other producers.

14. Rules. The Pool Committee shall adopt rules for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

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EXHIBIT B

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**EXEMPT FROM FILING FEE
PER GOV. CODE, § 6103**

6 Attorneys for CITY OF ONTARIO

7 *[Additional Parties on Following Pages]*

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, ET AL.,

Defendants.

Case No: RCVRS 51010
*Assigned for All Purposes to:
Honorable Stanford E. Reichert*

**NOTICE OF MOTION AND MOTION
OF APPROPRIATIVE POOL MEMBER
AGENCIES RE: AGRICULTURAL
POOL LEGAL AND OTHER EXPENSES**

[Concurrently Filed with Memorandum of
Points & Authorities; Decl. of Scott Burton;
Decl. of Justin Scott-Coe; Request for Judicial
Notice; Proposed Order]

Date: October 23, 2020
Time: 1:30 p.m.
Department: S35

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Attorneys for CITY OF CHINO HILLS

1 NOTICE OF MOTION

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on October 23, 2020 at 1:30 p.m. in Department S35 of
4 the above-entitled court, the following members of the Appropriative Pool (“AP”): City of
5 Ontario; City of Pomona; San Antonio Water Company; Fontana Union Water Company; Monte
6 Vista Water District; Monte Vista Irrigation District; Cucamonga Valley Water District; Jurupa
7 Community Services District; and City of Chino Hills (collectively, “AP Members”),¹ will and
8 hereby do move this Court for an order interpreting the obligation of the AP to pay for the legal
9 and other expenses of the Agricultural (Overlying) Pool (“Ag Pool”).

10 Specifically, the AP Members seek a judicial determination appropriately limiting the
11 expenses that the AP can be required to pay on behalf of the Ag Pool under the Peace
12 Agreement. The AP Members respectfully request that this Court enter an order declaring that,
13 to be payable under Section 5.4(a) of the Peace Agreement, Ag Pool expenses must be (1) for
14 actions, programs, or projects initiated by Watermaster; (2) within a budget pre-approved by
15 Watermaster following review through the Pool process including approval and submission by
16 the Advisory Committee to the Watermaster; (3) consistent with the Peace Agreement and
17 legitimate Ag Pool functions pursuant to Section 38 of the Restated Judgment; and (4)
18 reasonable.

19 The AP Members seek a further determination, consistent with the above, that the AP and
20 its members are not obligated to pay any Ag Pool legal and expert expenses related to Storage
21 Contests initiated by the Ag Pool. The AP is entitled to a refund of any such expenses already
22 paid.

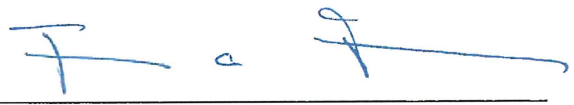
23 This Motion is based upon Section 31 of the Judgment; the continuing jurisdiction of the
24 Court under Section 15 of the Judgment; and documents approved by the Court under the
25 Judgment including the Chino Basin Watermaster Rules and Regulations and the Peace
26

27 ¹ Each of the AP Members is a party to the Restated Judgment (“Judgment”) in the above-
28 captioned case.

1 Agreement. Also this Motion is based upon attached Memorandum of Points and Authorities;
2 the Declarations of Mr. Burton and Mr. Scott-Coe and the Request for Judicial Notice submitted
3 herewith; the records and files in this adjudication; and upon other such evidence as may be
4 presented to the Court.

5
6 Dated: September 17, 2020

NOSSAMAN LLP
FREDERIC A. FUDACZ
GINA R. NICHOLLS

7
8
9 By: 

10 Frederic A. Fudacz
11 Attorneys for CITY OF ONTARIO

12
13 Dated: September 17, 2020

Lagerlof, LLP

14
15 By: 

16 Thomas S. Bunn III
17 Attorneys for CITY OF POMONA

18
19 Dated: September 17, 2020

Thomas H. McPeters, Esq.

20
21 By: 

22 Thomas H. McPeters
23 Attorney for SAN ANTONIO WATER COMPANY
24 and FONTANA UNION WATER COMPANY

25
26 [SIGNATURES CONTINUE ON FOLLOWING PAGE]

EXHIBIT C

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**EXEMPT FROM FILING FEE
PER GOV. CODE, § 6103**

Attorneys for CITY OF ONTARIO

[Additional Parties on Following Pages]

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, ET AL.,

Defendants.

Case No: RCVRS 51010

*Assigned for All Purposes to:
Honorable Stanford E. Reichert*

**DECLARATION OF JOHN J. SCHATZ
IN SUPPORT OF MOTION OF
APPROPRIATIVE POOL MEMBER
AGENCIES RE: AGRICULTURAL
POOL LEGAL AND OTHER EXPENSES**

[Concurrently Filed with Reply; Supplemental
Declaration of S. Burton; Response to Ag
Pool's Objections to Evidence]

Date: October 23, 2020
Time: 1:30 p.m.
Department: S35

DECLARATION OF JOHN J. SCHATZ IN SUPPORT OF MOTION OF APPROPRIATIVE POOL MEMBER
AGENCIES RE: AGRICULTURAL POOL LEGAL AND OTHER EXPENSES

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DECLARATION OF JOHN J. SCHATZ

I, JOHN J. SCHATZ, declare as follows:

1. I have personal knowledge of the facts set forth below, and could and would testify to those facts under oath.

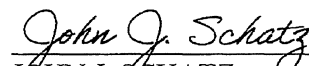
2. I am an attorney licensed to practice law in the State of California. I am Counsel to the Chino Basin Watermaster Appropriative Pool in the above-captioned case.

3. On or about September 3, 2020, I initiated communications with Watermaster legal counsel for the purpose of establishing an escrow account through Watermaster that would enable members of the Appropriative Pool invoiced by Watermaster for Ag Pool legal and expert expenses incurred in excess of its Fiscal Year 2019-20 budget to deposit the invoice amount to the escrow account.

4. On or about September 17, 2020, I distributed a copy of the document attached hereto as **Exhibit "A"** entitled "Watermaster Escrow Account for Payment of Agricultural Pool Budget Increase Assessments" to all members of the Appropriative Pool stating that Watermaster has established an escrow account enabling members of the Appropriative Pool to wire deposit an amount equal to their respective share of cumulative reimbursement amount attributable to the Ag Pool's claim arising under §5.4 of the Peace Agreement by the September 25, 2020 date the invoices were payable.

5. I reviewed the October 15, 2020 Watermaster Advisory Committee Meeting package that included a Staff Report regarding the status of the Appropriative Pool August 25, 2020 invoices stating fourteen (14) Appropriative Pool members have made payment into the escrow account in the amount of their invoices.

Executed on October 15, 2020, at Laguna Niguel, California.



JOHN J. SCHATZ

Watermaster Escrow Account for Payment of Agricultural Pool Budget Increase Assessments

Watermaster has established an escrow account for the purpose of enabling members of the Appropriative Pool to deposit an amount equal to their respective allocated share of cumulative reimbursement amount attributable to the Agricultural Pool's claim arising under §5.4 of the Peace Agreement. The Agricultural Pool's claim for these funds is the subject of a dispute, which the Appropriative Pool is taking to the Court for resolution.

The escrow instruction is for Watermaster to hold any payments specifically made for holding in the escrow account pending the outcome of the above-referenced court proceeding in an interest-bearing account, as may be prudent, customary and convenient to Watermaster, to be released only as follows:

(1) Watermaster shall transfer the funds to reimburse the Agricultural Pool's account only upon the occurrence of the following:

(a) The member of the Appropriative Pool expressly, consents in writing, to the transfer of funds for the purpose of reimbursing the Agricultural Pool, or

(b) After the service of the notice of a final Order of the Court that directs the Appropriative Pool to pay the amounts sought by the Agricultural Pool and after the time to file a Notice of Appeal of such Order has expired (if a Notice of Appeal is filed, the funds shall remain in escrow pending resolution of the Appeal and final resolution of the dispute);

(2) The Funds shall be returned to the respective Appropriative Pool members upon:

(a) After the service of the notice of a final Order of the Court that determines that the Appropriative Pool is not responsible to pay the amounts sought by the Agricultural Pool and after the time to file a Notice of Appeal of such Order has expired (if a Notice of Appeal is filed, the funds shall remain in escrow pending resolution of the Appeal and final resolution of the dispute); or

(3) If not otherwise directed in writing by the depositing members of the Appropriative Pool, the escrow account will be closed and any remaining balances will be returned to the respective Appropriative Pool member if not released within 24 (twenty-four) months of its creation.

Watermaster staff and counsel make no representation of any kind regarding the legal implications, if any, regarding the placement of funds into escrow.

EXHIBIT D



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO
San Bernardino District
247 West 3rd St
San Bernardino, CA 92415
www.sb-court.org

MINUTE ORDER

Case Number: RCVRS51010

Date: 4/5/2021

Case Title: CHINO BASIN MUNI WATER DIST -V- CITY OF CHINO

Department S35 - SBJC

Date: 4/5/2021

Time: 9:00 AM

Other Predisposition
Hearing

Judicial Officer: Stanford E Reichert
Judicial Assistant: Amber Bouchard
Court Reporter: Not Reported
Court Attendant: Daniel Moreno

Proceedings

Revised tentative ruling re motion of Appropriative Pool Member Agencies regarding Agricultural Pool legal and other expenses:

The court rules that to be payable by the Appropriative Pool under Section 5.4(a) of the Peace Agreement, expenses incurred by the Agricultural Pool must be:

- (1) for actions, programs, or projects initiated by Watermaster; and
- (2) within a budget pre-approved following review through the Pool process including submission to and approval by the Advisory Committee to the Watermaster; and
- (3) consistent with the Peace Agreement and legitimate Ag Pool functions pursuant to Section 38 of the Restated Judgement; and
- (4) reasonable

The court also recognizes a certain fundamental unfairness in charging Appropriative Pool Member Agencies for bills they have not seen because the Agricultural Pool members claim they are privileged.

The court would order reimbursements to parties who paid assessments above the budget previously approved by the Advisory Committee to the Watermaster. The court notes further questions exist regarding reimbursement amounts and procedures for reimbursements.

The Request to Approve the Intervention of Richard Anderson filed by Chino Basin Watermaster on 03/22/21 is placed on calendar for the hearing already set on 04/30/21 at 1:30 pm.

Hearings

Court orders 06/25/2021 Other Predisposition Hearing hearing Vacated.

Court orders 04/30/2021 Other Predisposition Hearing hearing Vacated.
Motion for Intervention added to hearing.

Other Predisposition Hearing set for 4/30/2021 at 1:30 PM in Department S35 - SBJC
Further Status on UMP/Appropriative Pool's Motion & Motion for Intervention

EXHIBIT E

MAY 28 2021

BY Amber Bouchard
AMBER BOUCHARD, DEPUTY

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

CHINO BASIN MUNICIPAL WATER)
DISTRICT,)
Plaintiff,)
vs.)
CITY OF CHINO, et al.,)
Defendants)

CASE NO. RCVRS 51010
ORDER on MOTION of
APPROPRIATIVE POOL MEMBER
AGENCIES RE: AGRICULTURAL
POOL LEGAL AND OTHER
EXPENSES
Date: May 28, 2021
Time: 1:30 PM
Department: S35/S3 [Hearing Location]

Regarding the motion of the Appropriative Pool Member Agencies re: Agricultural Pool legal and other expenses, filed September 18, 2020, the court finds and orders as follow:

1. The court concludes that the word "all" in paragraph 5.4(a) of the Peace Agreement cannot mean "all" in the dictionary sense of the whole amount without qualification or limitation. The court must look at the context and use of the word "all" to interpret the word from the Peace Agreement (aka Peace I) made 20 years ago in relation to the Judgment entered more than 40 years ago.
 - A. The court concludes that to interpret the word "all" in the way that the

1 AgPool proposes would defeat the reasonable expectations of the parties to the
2 Peace Agreement.

3 B. No reasonable person would make a contract that would obligate that person
4 to pay another party's expenses without limit and without knowledge of the nature of
5 the expenses, including the expenses of a lawsuit against the paying person, *i.e.*, no
6 reasonable person would pay to finance a lawsuit against himself or herself. (As
7 pointed out in the Appropriative Pool member agencies response to the Agricultural
8 Pool's briefing filed May 24, 2021.)

9 C. It is fundamentally unfair to compel a party to pay expenses over which the
10 party has no control and no specific, detailed knowledge.

11 I. The court notes that the AgPool has consistently refused to provide the
12 Appropriative Pool with the actual attorney fee bills for the AgPool's attorney. In
13 its last briefing, the AgPool again offered for the court to review the bills in
14 camera. The court refuses this offer because there is no legal basis for the court
15 to do so. If the parties cannot come to an agreement themselves (as the court
16 states they may do in paragraph 7 below), then the court defines the procedure
17 for the court to rule on the legal expenses, and any other expenses, as set forth in
18 paragraph 8 below.

19 D. The court's ruling has nothing to do with the separation of powers among the
20 three pools, the Advisory Committee, and the Watermaster. It applies strictly to the
21 issue of the attorney fee and expense dispute between the AgPool and the
22 Appropriative Pool pursuant of Section 5.4(a) of the 2000 Peace Agreement.

23 2. The court concludes that its previous tentative ruling also does not provide a
24 solution to the dispute because the court now concludes that the previous
25 tentative did not contain the proper legal basis for the ruling, that being, an
26 analysis of the Judgment and the 2000 Peace agreement, as set forth herein.

27 A. The court appreciates the Appropriative Pool's argument that the resolution of
28 the dispute in 2009 could be a precedent for the court's resolution of the current

1 attorney fee dispute, but the court has concluded that a specific tailored decision for
2 the attorney fee dispute based on the Judgment and the 2000 Peace Agreement is the
3 proper remedy.

4 I. The 2009 dispute over Section 5.4(a) involved the Appropriative Pool's
5 dispute regarding the payment of costs assessed to the AgPool for a State of
6 California Regional Water Quality Control Board, Santa Ana Region requirement.
7 Specifically, the dispute was over an invoice for the Pathogen Total Maximum
8 Daily Loads Task Force Study (TMDL Study) for the Middle Santa Ana River
9 watershed. The issue was whether the TMDL study constituted a Special Project
10 Expense subject to payment by the Appropriative Pool under section 5.4(a) of the
11 Peace Agreement. That issue is completely different than the instant issue.

12 II. That resolution was for a one-time problem, not a recurring issue which
13 the court concludes the instant issue is.

14 3. The court also appreciates the briefing by the AgPool concerning Judge Gunn's
15 1998 order and Special Referee Schneider's report of 1997, but the court finds
16 that neither res judicata nor collateral estoppel applies here for the reasons set
17 forth in the Appropriative Pool's response.

18 A. In short, neither res judicata nor collateral estopped applies because:

19 I. Judge Gunn's 1998 order and Special Referee Schneider's report of
20 1997 predate the 2000 Peace Agreement.

21 II. Judge Gunn's order also addressed a specific problem not related to the
22 current dispute, even though Judge Gunn's order addresses issues beyond the
23 dispute.

24 a) The impetus for Judge Gunn's 1998 order was fraudulent checks drawn
25 on the account of the Chino Basin Municipal Water District (then the
26 Watermaster). The District's Board of Directors had ordered a special
27 audit of the District's account. The issue at the time was whether the
28 cost of the audit could be considered a "Watermaster expense." The

1 instant issue is completely different.

2 III. The “Tragedy of Commons” argument in the AgPool’s briefing the
3 court found intriguing, but not relevant to the issue in dispute.

4 IV. Again even though Judge Gunn’s ruling addressed a number of areas,
5 the issue for Judge Gunn’s resolution was for a one-time problem, not a recurring
6 issue which the court concludes the instant issue is.

7 4. Furthermore, the court notes that the AgPool Storage Contests, which form the
8 basis of the attorney fees at issue, were the first of their kind, representing the
9 first time the contest procedure has been used. (Burton declaration filed
10 September 13, 2020, ¶3.)

11 5. The ruling of the court on the instant motion for attorney fees is intended to
12 apply only to the specific attorney fee dispute between the AgPool and the
13 Appropriative Pool. It is not intended to have any general effect on any other
14 party or pool, or to give the Appropriative Pool any legal basis to object to any
15 other aspect or any other budget item.

16 A. The court notes this in response to the brief of the Non-Agricultural Pool
17 (NAP).

18 6. So, in interpreting Peace Agreement §5.4(a), the court turns to the Judgment and
19 to the 2000 Peace Agreement (Peace I).

20 A. Peace I, Paragraph 5.4(a) states in pertinent part:

21 I. 5.4 Assessments, Credits, and Reimbursements. After the Effective
22 Date and until the termination of this Agreement, the Parties expressly consent to
23 Watermaster’s performance of the following actions, programs or procedures
24 regarding Assessments.

25 a) (a) During the term of this Agreement, all assessments and expenses of
26 the Agricultural Pool including those of the Agricultural Pool
27 Committee shall be paid by the Appropriative Pool. This includes but
28 is not limited to OBMP Assessments, assessments pursuant to

1 Paragraphs 20, 21, 22, 30, 42, 51, 53, 54 both General Administrative
2 Expenses and Special Project Expenses, 55, and Exhibit F (Overlying
3 Agricultural Pool Pooling Plan) of the Judgment except however in the
4 event the total Agricultural Pool Production exceeds 414,000 acre-feet
5 in any five consecutive year period as defined in the Judgment, the
6 Agricultural Pool shall be responsible for its Replenishment obligation
7 pursuant to Paragraph 45 of the Judgment.”

8 B. In the Judgment, the only section that deals with attorney fees is Paragraph
9 54(b) which states:

10 I. 54. Administrative Expenses. The expenses of administration of this
11 Physical Solution shall be categorized as either (a) general Watermaster
12 administrative expense, or (b) special project expense.

13 a) (a) General Watermaster Administrative Expense shall include office
14 rental, general personnel expense, supplies and office equipment, and
15 related incidental expense and general overhead.

16 b) (b) Special Project Expense shall consist of special engineering,
17 economic or other studies, litigation expense, meter testing or other
18 major operating expenses. Each such project shall be assigned a Task
19 Order number and shall be separately budgeted and accounted for.

20 c) General Watermaster administrative expense shall be allocated and
21 assessed against the respective pool based upon allocation made by the
22 Watermaster, who shall make such allocations based upon generally
23 accepted cost accounting methods. Special Project Expense shall be
24 allocated to a specific pool, or any portion thereof, only upon the basis
25 of prior express assent and find of benefit by the Pool Committee, or
26 pursuant to written order of the court.

27 C. So, when the court reads Peace I Section 5.4(a) with Judgment Paragraph 54,
28 the court initially concludes that attorney fees for storage contests would be included

1 in the definition of “Special Project Expense” as a “litigation expense.”

2 I. So, the first step would be for the AgPool to approve the attorney fee
3 upon an express finding that it benefits the AgPool.

4 II. Then, pursuant to Peace I, the attorney fee as a Special Project Expense
5 would go to the Appropriative Pool for payment.

6 a) The court interprets the Judgment ¶54 and Peace I §5.4(a) to mean that
7 the litigation expense at least must not be adverse to the Appropriative
8 Pool as a matter of fundamental fairness and not to defeat the
9 reasonable expectations of the parties to Peace I.

10 7. Judgement ¶54 and Peace I §5.4(a) mean that, of course, the Ag Pool and the
11 Appropriative Pool can agree to a determination to about payment of “litigation
12 expense.” The court concludes that they have been doing this up until the instant
13 motion. The court will only add that now the dispute has arisen, the procedure
14 should include the AgPool providing the Appropriative Pool with the AgPool’s
15 attorney fee bills. Otherwise, there will be no way for the Appropriative Pool to
16 determine whether the bills fit within the court’s interpretation.

17 8. The alternative in the Judgment is for the court to order the Special Project
18 Expense attorney fee or expense for the AgPool upon motion.

19 A. This is consistent with California Civil Code §1717 regarding a contract
20 provision for attorney fees and costs.

21 I. The 2000 Peace Agreement (Peace I) is a contract, and therefore, CC
22 §1717 should apply by analogy, even though the Peace I does not have a
23 requirement of “prevailing party.”

24 II. California Rules of Court, Rule 1702, which requires a motion for
25 attorney fees, should also should apply by analogy.

26 B. There is no procedure in either the Judgement or Peace I (or Peace II for that
27 matter) for the court to hear this unique kind of motion concerning for attorney fees
28 and expenses set forth in the Judgment ¶54. So, the court indicates that for such a

1 motion the court requires:

2 I. Service and filing of a noticed motion with a hearing set for Friday at
3 1:30 PM, with the date cleared by the court's judicial assistant.

4 II. Notice of the motion pursuant to CCP §§1010 to 1020.

5 III. All supporting documents for the motion to be included, including the
6 fee bills themselves. It is a denial of due process, as well as fundamentally unfair,
7 for a party to be forced to pay a bill that the party has not seen. In order for a
8 party to contest a bill, the party must be able to see and examine it first.

9 a) The court would consider this requirement to be not only a matter of
10 fundamental fairness, but also for the court and the Appropriative Pool
11 to determine whether the fees for actions benefitting the AgPool (as
12 required by ¶54 of the Judgment) and at least not adverse to the
13 Appropriative Pool.

14 i) The court requires this to be not only a matter of fundamental
15 fairness but also not to defeat the reasonable expectations of the
16 parties to Peace I.

17 b) The bills may be redacted, but the court must admonish the parties that
18 the redactions cannot be so extensive as to make the bills meaningless
19 for review by opposing counsel and determination by the court.

20 C. If the AgPool so chooses, it may file a motion for attorney's fees using the
21 procedure the court has set forth above. This will protect the due process rights of
22 the AgPool as well as serve what the court determines to be the issues of
23 fundamental fairness surrounding the issue of the AgPool's attorney fees. It will also
24 give the court a factual basis to rule upon the amount of the fees.¹

25 I. In order for the court to bring the current issue of the AgPool's
26

27 ¹ The court notes that the Appropriative Pool points out that Watermaster Regulations ¶10.26(a) requires that "each
28 party to the [Contest] proceeding shall bear its own costs and expenses associated with the proceeding." (Memorandum
of points and authorities in support of motion of Appropriative Pool member agencies re: Agricultural Pool legal and
other expenses, filed September 18, 2020, page 16, lines 1-7.) However, the court finds that this issue should be
governed by the Judgment and the 2000 Peace Agreement only.

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attorney fees and expenses to a close the court orders that the AgPool serve and file its motion for attorney fees and expenses by 2:00 PM (when the clerk's office now closes) on July 25, 2021, with a hearing date to be set by the court.

II. If the AgPool does not file its motion on or before July 25, 2021, as ordered, then the court will consider the AgPool to have waived its current claims for attorney fees and expenses, and the court will order vacated the assessments subject to the current dispute, and any party's payment of the assessments subject to the current dispute reimbursed to the paying party.

- a) The court notes the Exhibit A to the Declaration of John Schatz filed May 24, 2021, "Appropriative Pool Special Assessment of \$165,694.75" which appears to the court to itemize the assessments to Appropriative Pool members, and the court would use that list as the basis of the reimbursements.

Dated: May 28, 2021


Stanford E. Reichert, Judge

EXHIBIT F

1 TRACY J. EGOSCUE (SBN 190842)
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9 Attorneys for OVERLYING
10 (AGRICULTURAL) POOL

FEE EXEMPT

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

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 v.

17 CITY OF CHINO et al.,

18 Defendants.

Case No. RCVRS 51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

**NOTICE OF MOTION AND MOTION
FOR ATTORNEY'S FEES**

Date: October 8, 2021
Time: 1:30 p.m.
Dept. S-35

[Concurrently filed with Memorandum of Points
and Authorities; Declaration of Robert Feenstra;
Declaration of Tracy J. Egoscue; and [Proposed]
Order Granting Agricultural Pool's Motion for
Attorney's Fees]

19 **TO THE COURT, EACH PARTY TO THIS ACTION AND TO THE COUNSEL**
20 **OF RECORD FOR EACH PARTY:**

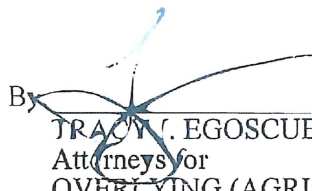
21 YOU ARE HEREBY NOTIFIED THAT on October 8, 2021 at 1:30 p.m., in Department
22 S35 of this Court, located at 247 West 3rd Street, San Bernardino, California 92415, the Chino
23 Basin Watermaster Overlying (Agricultural) Pool (Agricultural Pool) will and hereby does move
24 this Court for attorney's fees in concordance with the Court's May 28, 2021 Rulings and Orders
25 regarding Appropriative Pool Agencies Motion Re: Agricultural Pool Legal and Other Expenses.
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1 As set forth in the concurrently filed supporting Memorandum of Point and Authorities,
2 the Agricultural Pool seeks payment of \$460,723.63 in reasonable attorney's fees to the
3 Agricultural Pool and \$102,557.12 paid to the Watermaster Administrative Reserve Account.¹
4 This notice is made in compliance with Code of Civil Procedure sections 1010 to 1020, and
5 regular notice procedures in the above captioned matter.

6 This Motion for Attorney's Fees will be based upon this notice, the attached
7 Memorandum of Points and Authorities, Declaration of Robert Feenstra, Declaration of Tracy J.
8 Egoscue, the pleadings, records and files herein, matters which the Court may judicially notice,
9 and on such oral argument as may be presented at the hearing on the motion.

10
11 Dated: July 26, 2021

EGOSCUE LAW GROUP, INC.

12
13 By  _____
14 TRACY J. EGOSCUE
15 Attorneys for
16 OVERLYING (AGRICULTURAL) POOL

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26 _____
27 ¹ These numbers are provided with the caveat that a full accounting of the unpaid Ag Pool legal
28 expenses is subject to the concurrence of the Chief Financial Officer of the Watermaster that the
amounts identified herein are correct.

EXHIBIT G

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**EXEMPT FROM FILING FEE
PER GOV. CODE, § 6103**

6 Attorneys for CITY OF ONTARIO

7 *[Additional Parties on Following Pages]*

8

9

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

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12 CHINO BASIN MUNICIPAL WATER
13 DISTRICT,

14 Plaintiff,

15 vs.

16 CITY OF CHINO, ET AL.,

17 Defendants.

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Case No: RCVRS 51010

*Assigned for All Purposes to:
Honorable Stanford E. Reichert*

**OPPOSITION TO AGRICULTURAL
POOL'S MOTION FOR ATTORNEY'S
FEES**

[Concurrently Filed with Declaration of J.
Bosler; Declaration of S. Burton; Declaration
of G. Nicholls; Proposed Order]

Date: October 8, 2021

Time: 1:30 p.m.

Department: S35

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Attorney for APPROPRIATIVE POOL

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I. INTRODUCTION AND SUMMARY OF ARGUMENT 7

II. BACKGROUND 8

III. LEGAL ARGUMENT 10

 A. The Ag Pool Has Not Complied with the Order to Provide Minimally Redacted Attorney Bills Sufficient to Allow the AP and Court to Understand Whether the Ag Pool is Entitled to Reimbursement. 11

 B. The Ag Pool’s Motion Fails for Lack of Supporting Evidence. 12

 C. The Motion Seeks Non-Recoverable Attorney Fees and Costs for Adversarial Matters..... 13

 1. Ag Pool Expenses for the Storage Contests Are Not Recoverable..... 13

 2. Ag Pool’s Adversarial Expert Consulting Fees Are Non-Recoverable..... 14

 3. Ag Pool Expenses for Opposing the AP’s Motion Are Non-Recoverable..... 15

 D. The Motion Seeks Non-Recoverable Costs that Are Not for the Benefit of the Ag Pool, and Are Unnecessary and Unreasonable. 16

IV. CONCLUSION..... 17

1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 The Agricultural Pool’s Motion for Attorney Fees (“Motion”), which includes a request
3 for expert consultant and other costs, does not comply with the order entered by this Court on
4 May 28, 2021 (“Court Order”). The Motion lacks supporting evidence and reflects ongoing
5 reluctance of the Agricultural Pool (“Ag Pool”) to subject its claims for legal expenses to
6 meaningful review as directed by this Court.¹

7 After a year of litigation over the Appropriative Pool’s (“AP’s”) obligation to pay certain
8 Ag Pool expenses under Section 5.4(a) of the Peace Agreement, the Ag Pool still has not
9 relinquished its position that “‘all’ means ‘all,’” a position this Court expressly rejected in its
10 order. The Motion completely disregards the Court Order and demands the AP pay all of the
11 legal expenses the Ag Pool has incurred over the last two fiscal years, without limitation.

12 Contrary to the Court Order, the Motion’s supporting information is heavily redacted,
13 selective, incomplete, and confusing. Redactions cover approximately 90 percent of all the legal
14 fees invoiced to the Ag Pool. The Court and the AP are left to wonder about the nature of the
15 legal expenses that the Ag Pool has kept hidden by the heavy redactions. Additionally, the
16 Motion fails to identify which legal expenses have not yet been reimbursed and therefore are at
17 issue.

18 Because the Ag Pool disregarded the Court’s direction to provide invoices with detail
19 sufficient to understand that for which the Ag Pool seeks reimbursement, and refuses to provide
20 complete information,² the Motion should be denied in its entirety.

21
22 ¹ As discussed in previous briefing, the AP Members have public duties that prevent them from
23 funding a “blank check,” especially for the benefit of private parties like members of the Ag
24 Pool. (See, e.g., *Ecco-Phoenix Electric Corp. v. Howard J. White, Inc.* (1969) 1 Cal.3d 266, 272
[a blank check to pay legal fees “is patently inequitable and would be contrary to public policy as
encouraging--and in fact indemnifying--vexation or frivolous litigation”]; Civ. Code, § 1667.2 [a
contract that violates public policy is illegal].)

25 ² After the Ag Pool filed its Motion, the AP and AP Members met and conferred with the Ag
26 Pool to request minimally redacted invoices, as required by the Court Order, showing the nature
27 of each line item of expense for which reimbursement is sought. (Declaration of G. Nicholls
28 filed in support of the Opposition [“Nicholls Decl.”], at ¶ 2.) The AP offered, if necessary, to
stipulate to a request for continuance of the hearing to allow more time. (*Ibid.*) The Ag Pool
refused. (*Id.* at ¶ 3.) Given that the Ag Pool has chosen to stand by its presentation of
insufficient evidence, the Motion should be denied for this additional reason.

1 The limited information provided with the Motion makes it clear that the Ag Pool is
2 seeking reimbursement for expenses incurred for matters that are directly adverse to the AP.
3 Additionally, some of the expenses do not benefit the Ag Pool or are otherwise unnecessary and
4 unreasonable. As the Court Order makes clear, the Ag Pool is not entitled to reimbursement for
5 such expenses.

6 In short, the Motion fails to show that the Ag Pool is entitled to reimbursement for any
7 particular legal expense for fiscal years 2019-2020 and 2020-2021. Because the Ag Pool has not
8 established any entitlement to legal expenses for these fiscal years, despite being given the
9 opportunity to do so under the Court Order, the Ag Pool should be responsible to reimburse all its
10 legal expenses that were paid for these fiscal years, in the total amount of \$746,281.³

11 **II. BACKGROUND**

12 Under the Judgment, each Pool pays its own expenses (including legal expenses) to
13 support the Watermaster and Pool functions. (See, e.g., Judgment §§ 45, 54.) The Ag Pool could
14 pay its own way, like the other two Pools, but in 2000 parties entered into the Peace Agreement.
15 Section 5.4(a) of the Peace Agreement reflects an agreement by the AP to pay non-legal
16 Watermaster assessments on the Ag Pool as well as certain legal expenses incurred by the Ag
17 Pool. The Ag Pool has relied on Section 5.4(a) to shift every penny it incurs to the AP. (See
18 Declaration of J. Bosler filed in support of the Opposition [“Bosler Decl.”], at ¶ 2.)

19 In recent years, Ag Pool assessments for legal expenses have skyrocketed. In 2013, the
20 Ag Pool expended \$81,518 for legal expenses; this annual amount has increased sixfold to
21 \$529,009 in fiscal year (“FY”) 2019-2020. (Bosler Decl., ¶ 3.) For FY 2020-2021, the Ag Pool
22 budgeted another \$500,000 for its legal expenses. (*Ibid.*) This steep increase in the legal budget

23
24
25 ³ For fiscal year (“FY”) 2019-2020, the AP has made payments based on the Ag Pool’s legal
26 expense budget as follows: (1) the initial budgeted amount of \$300,000; (2) mid-year transfer of
27 \$63,314; and (3) additional assessments of \$165,695 (of this amount \$161,070 was paid into
28 escrow and remains there pending resolution of the present dispute), for a total of \$529,009.
(Burton Decl., ¶ 2.a.) For FY 2020-2021, \$217,821 has been paid to cover a portion of the Ag
Pool’s budgeted legal expenses of \$500,000. (*Id.*, at ¶ 2.b and Ex. A.) For both fiscal years, the
total payments are \$746,830.

1 indicates that the Ag Pool increasingly has been funding activities not contemplated under the
2 Judgment or the Peace Agreement.

3 The \$500,000 budgeted for Ag Pool legal expenses in FY 2020-2021 was in addition to
4 non-legal expenses of \$1.8 million for that year, the majority of which was paid by the AP
5 without objection. (Bosler Decl., ¶ 3.) The Ag Pool’s non-legal expenses are subject to external
6 review, unlike its legal expenses,⁴ and have not shown the same steep growth. (See *id.* at Ex. A.)

7 As the AP contends that the Ag Pool was abusing the process for reimbursement of legal
8 expenses, and the AP had no opportunity to review such legal expenses, members of the AP filed
9 a motion on September 18, 2020 for the Court to interpret the meaning of Section 5.4(a) (“AP
10 Members’ Motion”). On May 28, 2021, the Court issued the Court Order, which held, in relevant
11 part as follows:

- 12 • The Ag Pool’s assertion that “all means all” with respect to the AP’s agreement to
13 pay certain Ag Pool legal expenses is incorrect – the AP did not provide the Ag
14 Pool an unlimited fund for any purpose;
- 15 • The Court directed the Ag Pool to provide the AP with the Ag Pool’s attorney fee
16 bills, *before* filing a motion (¶ 7), and to submit all supporting documents
17 including the attorney fee bills with any motion; (¶ 8.B.3)
- 18 • Fees for which the Ag Pool seeks reimbursement must “benefit[] the Ag Pool” and
19 “at least not [be] adverse to the Appropriative Pool”; (¶ 8.B.III.a)
- 20 • Any “redactions [of legal invoices] cannot be so extensive as to make the bills
21 meaningless for review by opposing counsel and determination by the court.” (¶
22 8.B.III.b.)

23 The Ag Pool has not provided its legal invoices as directed by the Court Order. No
24 invoices were provided to the AP before the Ag Pool filed its Motion. (Bosler Decl., ¶ 3.)
25 Although the Ag Pool submitted certain legal invoices with the Motion, none were provided for
26

27 ⁴ The AP has no opportunity to review Ag Pool legal expenses, either before or after their
28 approval and payment. (See Declaration of S. Burton filed in support of the Opposition [“Burton
Decl.”], at ¶ 2.)

EXHIBIT H

SCANNED

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 03 2021

BY Kimberly Behan
KIMBERLY BEHAN, DEPUTY

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, ET AL.,

Defendants.

Case No. RCV RS 51010

[Assigned for All Purposes to the
Honorable Stanford E. Reichert]

~~PROPOSED~~ ORDER RE OVERLYING
(AGRICULTURAL) POOL'S MOTION
FOR ATTORNEY'S FEES

Date: November 5, 2021
Time: 1:30 p.m.
Dept: S35

1 **[PROPOSED] ORDER**

2 On November 5, 2021, the Overlying (Agricultural) Pool's July 26, 2021 Motion for
3 Attorney's Fees ("Motion") came on regularly for hearing in the above-captioned matter. Having
4 read and considered the papers and heard the arguments of counsel, the Motion is DENIED in its
5 entirety, on the basis that all fees sought by the Overlying (Agricultural) Pool are either for
6 activities that were adversarial to the Appropriative Pool or, in the alternative, the Court could not
7 determine whether the claimed fees were fair, reasonable, appropriate, and consistent with the
8 Court's May 28, 2021 Order, due to the level of redaction of the invoices supporting such claimed
9 fees.

10 It is further ordered that, within 30 days of this order, Watermaster shall return all funds
11 currently held in escrow under the prior request of the members of the Appropriative Pool in the
12 same amounts as each member paid them into the escrow account.

13 It is further ordered that, within 30 days of this order, the City of Chino shall file and
14 serve a motion as to the procedure for reimbursement of any assessments that are not held in the
15 escrow account that may be due to the paying party. Such motion shall be heard on February 4,
16 2022 at 1:30 p.m., in Department S35 of this Court, located at 247 West 3rd Street, San
17 Bernardino, California 92415.

18
19 **IT IS SO ORDERED.**

20 Dated: 1.2-3.21

21 

22 Hon. Stanford E. Reichert
23 Judge of the Superior Court
24
25
26
27
28

EXHIBIT I

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FEE EXEMPT PER GOV. CODE § 6103

6 Attorney for Defendant City of Chino

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10
11 CHINO BASIN MUNICIPAL WATER)
12 DISTRICT,)

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,)

16 Defendants.)

CASE NUMBER: RCVRS 51010
[Assigned for All Purposes to Honorable
Stanford E. Reichert, Dept. S35]

**CITY OF CHINO CORRECTED
MOTION FOR REIMBURSEMENT OF
ATTORNEYS FEES AND EXPENSES
PAID TO THE AGRICULTURAL POOL**

Date: February 4, 2022
Time: 1:30 p.m.
Dept.: S35

(FEE- EXEMPT PER GOVERNMENT CODE § 6103)

17
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20
21 Pursuant to this Court's Order dated December 3, 2021, the City of Chino ("Chino")
22 hereby moves the Court to order the Agricultural Pool to reimburse assessments paid by the
23 Appropriative Pool for Agricultural Pool attorney's fees and expenses in the sum of
24 **\$483,202.55** for fiscal years 2019-20 and 2020-21 including Chino's portion thereof and to
25 reimburse Watermaster in the sum of **\$102,557** for Agricultural Pool attorney fees and expenses
26 it paid for fiscal year 2020-21 or, alternatively, order Watermaster to refrain from seeking
27 collection of the sum of **\$102,557** from Appropriative Pool members including Chino.

28 ///

EXHIBIT J

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**EXEMPT FROM FILING FEE
PER GOV. CODE, § 6103**

6 Attorneys for CITY OF ONTARIO
7 *[Additional Parties on Following Page]*

8

9

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

12

13 CHINO BASIN MUNICIPAL WATER
DISTRICT,

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Plaintiff,

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vs.

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CITY OF CHINO, ET AL.,

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Defendants.

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Case No: RCVRS 51010

*Assigned for All Purposes to:
Honorable Stanford E. Reichert*

**REBUTTAL BRIEF AND OBJECTIONS
RE: JOINT STATEMENT REGARDING
SETTLEMENT BETWEEN
APPROPRIATIVE POOL AND
AGRICULTURAL POOL RE: PEACE
AGREEMENT 5.4(A), WHICH DOES
NOT SETTLE THE REIMBURSEMENT
MOTION**

[Concurrently Filed with Declaration of S.
Burton; Declaration of J. Gutierrez]

Date: April 8, 2022
Time: 1:30 p.m.
Department: S35

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16 Attorneys for MONTE VISTA WATER DISTRICT and
17 MONTE VISTA IRRIGATION COMPANY

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1 **I. INTRODUCTION AND SUMMARY**

2 The City of Ontario (“Ontario”), the City of Chino (“Chino”), and Monte Vista Water
3 District and Monte Vista Irrigation Company (collectively, “Monte Vista”), are parties to the
4 pending Motion for Reimbursement of Attorney’s Fees and Expenses Paid to the Agricultural
5 Pool (“Reimbursement Motion”) filed by Chino on or about January 4, 2022.¹ The hearing on
6 this motion originally was set for February 4, 2022. The hearing was continued to April 8 after
7 counsel for the Agricultural Pool (“Ag Pool”) represented to the Court that a settlement had been
8 reached – thereby implying that the alleged settlement encompassed the Reimbursement Motion.
9 As of the date of this Rebuttal Brief and Objections, there continues to be no settlement of the
10 Reimbursement Motion.

11 The Ag Pool and AP recently signed a document entitled “Terms of Agreement” (“TOA”)
12 and filed it with the Court as Exhibit A to the Pools’ Joint Statement dated March 24, 2022 (“Joint
13 Statement”). (Declaration of S. Burton, filed herewith [“Burton Decl.”], ¶ 3 & Ex. 1.) Ontario,
14 Chino, and Monte Vista (collectively, the “Moving Parties”) voted against the TOA and
15 registered their objections to it on the record. (*Id.* at ¶ 4.) The Moving Parties object to the TOA
16 and Joint Statement for many reasons summarized herein, not least of which is that the TOA
17 provides for payment of many hundreds of thousands of dollars of Ag Pool legal expenses for
18 which supporting documentation (i.e., attorney invoices) has never been provided as required by
19 the May 28 Order. (*Id.* at ¶¶ 7-8.)

20 The AP is not a party to the Reimbursement Motion and cannot settle it on behalf of the
21 Moving Parties. Nor can the AP relinquish rights or benefits obtained by the Moving Parties
22 through the Motion of AP Member Agencies re: Ag Pool Legal and Other Expenses, filed on or
23 about September 18, 2020 (“Original Motion”). The Original Motion was brought by AP
24 member agencies (not the AP) to protect members’ individual rights and financial interests. The
25 Original Motion resulted in the Court’s Order of May 28, 2021 (“May 28 Order”),² which

26 ¹ Monte Vista filed its joinder in the Motion on or about January 6, 2022. Ontario filed its
27 joinder on January 11.

28 ² The May 28 Order was not appealed from, and it is now final. Time to appeal expired sixty
days after entry of the Order. (California Rules of Court, Rule 8.406(a).)

1 interprets Section 5.4(a) of the Peace Agreement to include appropriate legal limitations on fee-
2 shifting. The May 28 Order led to the Court’s December 3 Order (“December 3 Order”) denying
3 the Ag Pool’s motion for legal expenses incurred in fiscal years (“FY”) 2019-20 and 2020-21,³
4 which led to the pending Reimbursement Motion.

5 To be clear, the Moving Parties do not dispute that other AP members are free to settle
6 their own claims or disputes with the Ag Pool, to the extent their agreement comports with public
7 law and policy. Other AP members cannot, however, by virtue of their collective membership in
8 the AP, force the Moving Parties to relinquish rights and impose financial obligations on them
9 contrary to the May 28 and December 3 Orders. The lack of AP authority to impose the TOA on
10 the Moving Parties without their consent and over their objections is evidenced by reference to
11 the Judgment including the AP Pooling Plan, the Peace Agreement, and the May 28 Order:

- 12 • It is the AP members (not the Pool) that hold water rights and incur obligations to pay
13 assessments under the Judgment. (Judgment, §§ 9, 43(c), 55; Exhibit E; Exhibit H ¶¶
14 6, 7, 10(b)(5).)
- 15 • It is the AP members (not the Pool) that pay Ag Pool expenses under Section 5.4(a) of
16 the Peace Agreement.⁴ (Peace Agreement, §§ 1.1(b); 5.4(a); Burton Decl., ¶ 10.)
- 17 • AP members (not the Pool) filed the Original Motion, which resulted in the May 28
18 Order and its interpretation of Section 5.4(a) of the Peace Agreement to include
19 appropriate legal limits on legal fee-shifting.
- 20 • The Moving Parties (not the Pool) filed the pending Reimbursement Motion to recover
21 funds they paid to cover Ag Pool legal expenses in FY 2019-20 and 2020-21, which
22 the Ag Pool failed to substantiate as required by the May 28 Order.

23 ³ On March 28, 2022, the Ag Pool filed a notice of abandonment of its pending appeal from the
24 December 3 Order (Case No. E078377). The Ag Pool did so despite having been informed of
25 the Moving Parties’ objection to the Pools’ TOA and declination of any benefits. (Declaration of
26 J. Gutierrez, filed herewith [“Gutierrez Decl.”], ¶¶ 15-18 & Ex. 2.)

26 ⁴ Section 1.1(b) of the Peace Agreement defines “Appropriative Pool” to “have the **meaning as**
27 **used in the Judgment and shall include all its members.**” (Emphasis added.) Section 5.4(a)
28 of the Peace Agreement provides that “all assessments and expenses of the Agricultural Pool . . .
shall be paid by the Appropriative Pool.” Watermaster assesses and invoices the individual
appropriators, not the Pool, for expenses under Section 5.4(a). (Burton Decl., ¶ 10.) The AP has
no funds apart from what is paid to Watermaster by AP members. (*Ibid.*)

- 1 • Each of the Moving Parties is a signatory and party to the Peace Agreement. The
2 TOA constitutes an amendment that cannot be implemented without unanimous
3 approval of all the parties to the Peace Agreement. (Peace Agreement, § 10.14.)
- 4 • The AP lacks authority to bind the Moving Parties to the TOA without their consent.
5 Under Section 38(a) of the Judgment, the role of the AP is limited to developing
6 policy recommendations for its particular Pool, not obligating the Moving Parties to an
7 agreement and payments to which they objected and voted against.
- 8 • The Joint Statement was inappropriately filed by counsel for the AP without
9 authorization as explained below in Part IV at ¶ 5.

10 In short, the Pools lawfully cannot renounce or compromise the rights and interests of the
11 Moving Parties under Paragraph 5.4(a) of the Peace Agreement as interpreted and applied by the
12 May 28 and December 3 Orders. The Moving Parties respectfully request that the Court
13 disregard the TOA and proceed with ruling on the Reimbursement Motion.

14 **II. BACKGROUND**

15 There is a straightforward reason why the Moving Parties have not agreed to settle the
16 Motion for Reimbursement with the Ag Pool: there have not been any settlement negotiations.
17 While the Moving Parties have not been silent about their interest in discussing settlement, the Ag
18 Pool has shown none. Soon after filing the Reimbursement Motion, counsel for Chino invited
19 counsel for the Ag Pool to discuss settlement of the matters presented in the Motion but received
20 no response. (Gutierrez Decl., ¶¶ 4-8 & Ex. 1.) At the February 4 hearing, counsel for Ontario
21 and Chino disputed the representation of Ag Pool's counsel as to the existence of a settlement by
22 stating unequivocally that, in fact, there was no settlement. (Burton Decl., ¶ 17.) Counsel for the
23 AP confirmed this fact for the Court. (*Ibid.*) Then, in open court, counsel for Chino reiterated his
24 invitation to the Ag Pool to communicate with him about settlement, but the Ag Pool never
25 accepted that invitation. (Gutierrez Decl., ¶¶ 10-11.)

26 Rather than engage in settlement negotiations with the Moving Parties, members of the Ag
27 Pool negotiated with other members of the AP. (See Gutierrez Decl., ¶ 12.) Those negotiations
28 led to the TOA between the Pools containing provisions contrary to the May 28 and December 3

1 Orders, in an apparent attempt to deprive the Moving Parties of their rights and/or benefits under
2 those Orders without their consent and despite their objections.

3 The Moving Parties are willing to negotiate. They have been ready and willing to
4 participate in good faith negotiations with the Ag Pool. (Burton Decl., ¶¶ 11-16.) Ontario helped
5 initiate such negotiations through an in-person meeting with representatives of the Ag Pool in
6 early 2020. (*Id.* at ¶ 12; see also Suppl. Decl. of S. Burton, filed Oct. 16, 2020, ¶ 2.) Thereafter,
7 Ontario, Monte Vista, and others wrote letters expressing their concerns. (Burton Decl., ¶ 13; see
8 also Decl. of S. Burton, filed Sep. 21, 2020, ¶¶ 6-10 & Exhibits.) Even after AP members
9 including the Moving Parties jointly filed their Original Motion, they continued to participate in
10 negotiations with the Ag Pool. (Burton Decl., ¶ 14.) For example, they participated in mediation
11 with the Ag Pool in early 2021. (*Ibid.*) After mediation failed, Ontario continued to participate in
12 direct negotiations with the Ag Pool until about July 2021. (Burton Decl., ¶ 15; see also Decl. of
13 J. Bosler, filed Sep. 27, 2021, ¶ 4.) Since that time, however, Ontario's representative has been
14 excluded from further negotiations. (Burton Decl., ¶¶ 15-16.) Monte Vista proposed settlement
15 terms reflecting concerns of the Moving Parties to the AP in September 2021 and again in
16 February and March 2022, but Monte Vista's settlement proposals were not seriously considered
17 by the Pools. (*Id.* at ¶ 18.)

18 Given this history of exclusion, there can be no surprise that the Moving Parties did not
19 consent to be bound by the TOA and objected to its approval by the AP. (See Burton Decl., ¶ 19.)
20 Tellingly, neither the TOA nor the Joint Statement assert that the Moving Parties are obligated
21 under its terms. More importantly, the TOA does not identify the pending Motion for
22 Reimbursement nor does it assert that the Motion for Reimbursement will be dismissed by the
23 Moving Parties.

24 **III. OBJECTIONS TO THE TERMS OF AGREEMENT (TOA)**

25 The Moving Parties (Chino, Ontario, and Monte Vista) were parties to the Original
26 Motion and active participants in the litigation that resulted in the May 28 and December 3 Court
27 Orders. Yet, the Moving Parties are not parties to the TOA advanced by the two Pools, and they
28 object to the TOA on both procedural and substantive grounds.

1 The Moving Parties voted against the TOA and objected to its approval by the AP, as
2 shown by the AP vote report attached as Exhibit B to the Joint Statement. (Ex. 1 to Burton Decl.)
3 Furthermore, the Moving Parties immediately informed the Ag Pool of their objection to the TOA
4 and their declination of its benefits. (Gutierrez Decl., ¶¶ 15-18 & Ex. 2.) The Pools cannot
5 lawfully bind the Moving Parties to an agreement without their consent and over their objections,
6 as explained in Part 5.B below. No legal authority empowers the AP to enter into an agreement
7 on behalf of the Moving Parties, as explained in Part 5.C below.

8 Furthermore, the Moving Parties object to the substance of the TOA because it represents
9 both a modification of the May 28 and December 3 Orders and an amendment to the Peace
10 Agreement, in the following respects:

- 11 1. The TOA would modify the May 28 Order by paying hundreds of thousands of dollars
12 of past Ag legal expenses without ever obtaining documentation showing any amount
13 is payable under Section 5.4(a) of the Peace Agreement.
- 14 2. The TOA's fourth un-numbered paragraph would require a payment of \$370,000 for
15 Ag Pool legal expenses incurred for prior fiscal years, even though payment of such
16 legal expenses was denied by the December 3 Order.⁵ The \$370,000 payment would
17 be in addition to \$483,202.54 already paid,⁶ for total payments of \$853,202.54, all
18 without adequate supporting documentation.⁷
- 19 3. The TOA is silent as to how the \$370,000 payment would be allocated among the AP
20 members. The Pools appear to expect Moving Parties to make substantial payments
21 even though they have not agreed to do so.
- 22 4. Paragraph No. 1 of the TOA would require the \$102,557.12 expended on Ag legal
23 expenses from Watermaster's administrative reserves to be repaid from the \$370,000

24 ⁵ The payment was calculated, in part, based on giving back to the Ag Pool amounts that had
25 been held in escrow, and which the December 3 Order directed Watermaster to refund to AP
26 payors. (Ex. 3 to Burton Decl.)

27 ⁶ The TOA is silent as to how any of the \$483,202.54 already paid to the Ag Pool would be
28 reimbursed to Ontario, Chino and Monte Vista as parties that have not agreed to the TOA.

⁷ The amounts already paid for Ag legal expenses, broken down by fiscal year, are as follows:
\$483,202.54 = \$367,938.66 (FY 2019-20) + \$115,263.88 (FY 2020-21).

1 payment by the AP – even though the December 3 Order relieves the AP from any
2 such obligation.

3 5. Although Paragraph No. 6 purports to prohibit abrogation or waiver of the rights of
4 the AP under the May 28 Order, that representation is contradicted by other
5 provisions of the TOA described herein. For example, Paragraph No. 6(b) would
6 limit the rights granted by the May 28 Order, because it appears to exclude individual
7 appropriators such as the Moving Parties from the review of Ag Pool invoices and
8 injects an arbitrary 30-day limit on the review process.

9 6. Paragraph No. 6(c) would impose an attorney fee-shifting provision, representing an
10 amendment of the Peace Agreement, without the consent of all the parties to the
11 Peace Agreement in violation of its terms. (Peace Agreement, § 10.14.) Relevant
12 sections of the Peace Agreement contradict this provision: Section 5.4 is devoid of
13 any attorney fee-shifting provision, and Section 9.2(d) limits the grant of attorneys’
14 fees to adversarial proceedings and specifically excludes them for dispute resolution.

15 In short, the TOA would modify the May 28 and December 3 Orders and the Peace
16 Agreement without the consent of all parties, including the Moving Parties. Among other
17 troubling terms, it purports to require AP members to pay hundreds of thousand dollars for legal
18 expenses incurred while this dispute has been pending – to which the Ag Pool has never
19 established any entitlement whatsoever. These payments so egregiously exceed any reasonably
20 determined valuation of the Ag Pool’s claims as to constitute an illegal gift of public funds. (Cal.
21 Const., art. XVI, § 6.)

22 **IV. OBJECTIONS TO THE JOINT STATEMENT**

23 The Moving Parties object not only to the TOA as summarized above, but also to the
24 contents of the Joint Statement and its filing, as follows:

25 1. The entirety of the Joint Statement is based on a false characterization of the AP as
26 the “sole obligor” under Section 5.4(a) of the Peace Agreement. Section 5.4(a)
27 obligates the “Appropriative Pool,” as defined by Section 1.1(b) of the Peace
28 Agreement to “have the meaning **as used in the Judgment . . . includ[ing] all its**

1 **members**” to pay certain assessments and expenses of the Ag Pool. (Emphasis
2 added.) Each of the Moving Parties is a member of the AP and therefore an obligor
3 under Section 5.4(a) – as well as an independent party with rights and interests under
4 the Judgment, the Peace Agreement, and the May 28 and December 3 Orders.
5 Nothing in the Judgment (see especially, Section 38) nor the Peace Agreement
6 empowers the AP to act collectively to bind individual members to the TOA.

7 2. The TOA incorrectly represents that the TOA “is a comprehensive resolution of the
8 current fees dispute arising under Section 5.4(a) of the Peace Agreement between the
9 named obligee and obligor.” The TOA does not comprehensively resolve anything
10 because it does not include the Moving Parties for all the reasons explained herein.

11 3. Likewise, the TOA is not a “comprehensive resolution of the current appeal taken on
12 this Court’s December 3, 2021 Order.” The Ag Pool abandoned this appeal on March
13 28, 2022, despite having been informed in advance of the Moving Parties’ objection
14 to the TOA and declination of any benefits. (Gutierrez Decl., ¶¶ 15-18 & Ex. 2.)

15 4. Any withdrawal of the Storage Contests by the Ag Pool is made with full knowledge
16 of the Moving Parties’ objection to the TOA and declination of any benefits.
17 (Gutierrez Decl., ¶¶ 15-18 & Ex. 2.)

18 5. Counsel for the AP filed the Joint Statement without authority to do so either under
19 the Judgment or by the AP.⁸

20 While neither the TOA nor the Joint Statement expressly assert that the Moving Parties
21 are obligated under the terms of the TOA, nonetheless, the Joint Statement strongly implies that
22 the Moving Parties are bound by the TOA apparently because it was approved by a majority vote
23 of the Ag Pool and AP. Likewise, the Joint Statement and TOA do not mention the
24 Reimbursement Motion, and yet, the Joint Statement seems to imply that the TOA somehow
25 requires the Moving Parties to dismiss it. However, the Joint Statement acknowledges that the

26 _____

27 ⁸ Section 38(c) of the Judgment establishes the limited role of Pool counsel by empowering each
28 Pool to “employ counsel . . . in the event . . . such Pool . . . seeks review of any Watermaster
 action or failure to act.” Action by Pool counsel outside this limited scope of authority
 established by the Judgment requires the consent of all Pool members.

1 Moving Parties refused to consent to and to be bound by the TOA by attaching the AP's action
2 report detailing the AP's motions and voting on the TOA as Exhibit B to the Joint Statement.

3 **V. LEGAL ARGUMENTS**

4 The TOA is invalid and unenforceable to the extent it purports to resolve the Moving
5 Parties' pending claims for reimbursement and renounce their rights and interests under the
6 Peace Agreement as interpreted by the May 28 and December 3 Orders, including without
7 limitation, the right to conduct a meaningful review of invoices before paying legal expenses.
8 Entering into such an expansive agreement is beyond the scope of the AP's role and the authority
9 of the Pools under the Judgment.

10 **A. There Is No Settlement of the Reimbursement Motion.**

11 The TOA does not address the Reimbursement Motion, and it does not resolve the issues
12 presented by the Reimbursement Motion. Conspicuously absent from the Joint Statement is any
13 recitation of the Pools' intention to compromise the claims of the Moving Parties against the Ag
14 Pool in the pending Reimbursement Motion. The Joint Statement acknowledges the Moving
15 Parties refused to consent to and to be bound by the TOA. (See Exhibit B to the Joint Statement,
16 Burton Decl., at Ex. 1.) Accordingly, the TOA lacks the requisite element of a valid agreement,
17 i.e., mutual consent.

18 **B. The TOA Does Not Bind the Moving Parties.**

19 As explained above, the Joint Statement indicates an extremely broad intention of the
20 Pools to resolve issues regarding payment of Ag Pool legal expenses and Section 5.4(a) of the
21 Peace Agreement, including the claims and interests of the Moving Parties. Entering into such an
22 agreement is beyond the scope of the AP's role and authority under the Judgment.

23 **1. The TOA Unlawfully Modifies the May 28 and December 3 Orders.**

24 The Pool's TOA is invalid, first, because its terms would modify the May 28 and
25 December 3 Orders. The Moving Parties were parties to the Original Motion and active
26 participants in the litigation that resulted in the Court Orders. As a result of such litigation, the
27 Moving Parties received (a) a judicial interpretation of the meaning of Paragraph 5.4(a) of the
28 Peace Agreement, and (b) a denial the Ag Pool's request for payment of its attorney expenses by

1 members of the AP. The two Court Orders are important because they define the extent of the
2 appropriators' obligation under Section 5.4(a) of the Peace Agreement and the methodology for
3 ascertaining the amount of that obligation. The TOA would revise the meaning and methodology
4 of Section 5.4(a) of the Peace Agreement as set forth in the May 28 and December 3 Orders to the
5 detriment of the Moving Parties, over their objections and without their consent. Thus, the TOA
6 is invalid and unenforceable.

7 **2. The TOA Unlawfully Amends the Peace Agreement Without the**
8 **Consent of All Parties.**

9 The Pool's TOA is invalid, second, because it contains provisions that would amend the
10 Peace Agreement. For example, the May 28 Order interprets Section 5.4(a) of the Peace
11 Agreement to require production of invoices and that the expenses not be for adversarial purposes
12 and benefit the Ag Pool. (May 28 Order, ¶¶ 6(c), 8, Ex. 2 to Burton Decl.) The TOA would
13 abrogate this requirement by providing hundreds of thousands of dollars to the Ag Pool without
14 any invoices, and for adversarial purposes. Another example is that Paragraph 6(b) of the TOA
15 would limit the rights granted by the May 28 Order by excluding individual appropriators such as
16 the Moving Parties from the review of Ag Pool invoices and injects an arbitrary 30-day limit on
17 the review process. The May 28 Order contains no such limitations. Because the TOA
18 contradicts the Court's interpretation of Section 5.4(a), it constitutes an amendment to the Peace
19 Agreement. (Peace Agreement, § 10.14 ["The Parties hereby agree that no amendments may be
20 made to this Agreement without the express written approval of each Party to this Agreement."].)
21 Under Section 10.14, there can be no such amendment without the unanimous consent of all
22 parties.⁹

23 Each of the Moving Parties (Ontario, Chino, and Monte Vista) is a party and signatory to
24 the Peace Agreement, and none of these parties has signed the TOA. Thus, the TOA is an invalid
25 amendment to the Peace Agreement.

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27 ⁹ The Court Order entered April 28, 2017, which declines to approve the Safe Yield Reset
28 Agreement in light of objections by certain parties, underscores that a party cannot be forced to
agree to a Peace Agreement amendment.

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3. These Proceedings Were Initiated to Protect the Interests of AP Members – Not the AP.

The TOA is invalid, third, because interested parties have not consented to it. Individual AP members hold water rights and incur obligations to pay assessments under the Judgment. (Judgment, §§ 9, 43(c), 55; Exh. E; Exh. H ¶¶ 6, 7, 10(b)(5).) For this reason, AP members (not the Pool) filed the Original Motion challenging the Ag Pool’s “‘all’ means ‘all’” interpretation of Section 5.4(a) of the Peace Agreement, and in particular, the Ag Pool’s insistence that only it may determine what constitutes payable legal expenses. The AP was not a party to the Original Motion.

Ontario initially led the effort (Burton Decl., ¶ 13), and many AP members joined in and benefitted from the May 28 Order resolving the Original Motion. The Ag Pool responded to the May 28 Order by bringing a motion for its legal expenses for FY 2019-20 and 20-21, which was denied in its entirety by the Court by its December 3 Order. Then, Moving Parties brought the pending Reimbursement Motion to recover amounts they already paid for Ag Pool legal expenses, for which the Ag Pool failed to establish any entitlement. Once again, the AP is not a party to the Reimbursement Motion.

The Moving Parties, collectively, have a financial stake that represents roughly a third of the total amounts at issue for FY 2019-20, 20-21, and 21-22, as shown by information presented in the Reimbursement Motion and Ontario’s joinder. Other AP members hold the remaining financial stake (roughly two-thirds). The Pools’ agreement is not effective to resolve matters embraced in these proceedings without the consent, and over the objection, of the Moving Parties whose financial interests are directly at issue.

The AP itself is not the payor for any Ag Pool legal expenses. Unlike AP members, the AP holds no water rights under the Judgment, and it pays no assessments. The AP has no funds apart from what is paid to Watermaster by AP members. (Burton Decl., ¶ 10.) The AP serves administrative functions on behalf of the AP members pursuant to the Judgment and the Peace Agreement. (See Part V.C below for further discussion.) The AP lacks any financial interest in

1 the outcome of these proceedings that it could settle.¹⁰ The administrative role of the AP does not
2 confer authority to cram down an agreement on public agencies over their objections.

3 **4. The TOA Violates Public Policy, Including the Prohibition Against**
4 **Gifts of Public Funds.**

5 The TOA is invalid and unenforceable, fourth, because it violates public policy. Courts
6 interpret contracts such as the TOA to avoid violations of public policy. (Civ. Code, § 1667.2 [a
7 contract that violates public policy is illegal].) Relevant here:

8 Unlawful delegation of governmental entities' settlement authority. Each Moving Party is
9 an independently constituted public entity under the law of the State of California. Each has its
10 own governance structure including a City Council or Board of Directors, which holds the
11 authority to settle matters to which it is a party. (*Reams v. Cooley* (1915) 171 Cal. 150 [a contract
12 not executed in the manner authorized by law is not enforceable against the public agency].) This
13 governmental authority to settle claims has never been delegated to the AP.

14 Public accountability for expenditures. Public water suppliers such as the Moving Parties
15 have a responsibility to ensure that expenses passed through to the public through water rates are
16 documented and justified as being payable. Additionally, the Moving Parties are governmental
17 entities with public duties that prevent them from funding a “blank check” to benefit private
18 parties like many members of the Ag Pool. (See, e.g., *Ecco-Phoenix Electric Corp. v. Howard J.*
19 *White, Inc.* (1969) 1 Cal.3d 266, 272 [unilateral fee-shifting provisions are unenforceable].) Yet,
20 the TOA would permit the Ag Pool to retain hundreds of thousands of dollars without ever
21 providing supporting documentation. Further, the TOA proposes to pay an additional \$370,000
22 without any showing whatsoever that such funds are payable to the Ag Pool under Section 5.4(a)
23 of the Peace Agreement as interpreted by the Court.

24 _____
25 ¹⁰ The Court of Appeal appears to have recognized AP's limited role and non-party status when
26 it rejected a Notice of Association of Counsel submitted on behalf of the AP on February 9, 2022
27 in the Ag Pool's now-abandoned appeal from the December 3 Order (Case No. E078377). Had
28 the Ag Pool not abandoned its appeal, the Moving Parties would have opposed the AP's motion
for party status on grounds the AP is not an aggrieved party and would lack standing in
connection with such an appeal. (See *Dow v. Lassen Irrigation Co.* (2022) 75 Cal.App.5th 482
[watermaster did not have the right to appeal from a court order where it was the water rights
holders' pecuniary interests that would be affected by the order, not the watermaster's].)

1 Unlawful gift of public funds. The TOA would result in payments of Ag Pool legal
2 expenses totaling more than eight hundred thousand dollars for FY 2019-20 and 2020-21, in
3 contravention of the May 28 and December 3 Orders. As determined by the December 3 Order,
4 the Ag Pool failed to establish any entitlement to payment of its legal expenses incurred in these
5 fiscal years, because the limited information presented by the Ag Pool demonstrated that many
6 activities “were adversarial to the Appropriative Pool,” and otherwise, the Court could not
7 determine what the legal expenses were for. (December 3 Order, Ex. 3 to Burton. Decl.) In light
8 of the Court’s determinations, the payments to the Ag Pool would be so egregiously in excess of
9 any reasonably determined valuation of the Ag Pool’s claims as to constitute an illegal gift of
10 public funds. (Cal. Const., art. XVI, § 6 [Public agencies are prohibited from making “any gift . .
11 . of any public money of thing of value to any individual, municipal or other corporation
12 whatever.”]; *Jordan v. Department of Motor Vehicles* (2002) 100 Cal.App.4th 431, 453 [“An
13 award of a gift of public funds is not authorized by law; the state could not agree to it, the
14 Legislature could not authorize it, and neither this nor any court could confirm it.”].)

15 Additionally, as determined by the May 28 Order, requiring payment of someone else’s
16 legal expenses in the absence of adequate documentation is fundamentally unfair and a violation
17 of due process. (May 28 Order, Ex. 2 to Burton Decl.) Unredacted invoices for Ag Pool legal
18 expenses have never been provided to members of the AP, contrary to the May 28 Order. (Burton
19 Decl., ¶¶ 7-8.) Based on the information available to the Moving Parties (and the AP), the Ag
20 Pool is not entitled to any payments of its legal expenses going back at least to the beginning of
21 the fee dispute. Under these circumstances, payments totaling more than eight hundred thousand
22 dollars for legal expenses incurred by the Ag Pool in FY 2019-20 and 2020-21 would constitute
23 an unlawful gift of public funds.

24 **C. The AP Lacks Authority to Bind Its Members to the TOA Without Their**
25 **Consent.**

26 The AP is not created by any statute or law of the State. It is not a city, water district,
27 corporation, nor any other type of entity with an enabling statute. Rather, it is empowered and
28 limited by the specific documents that created it, i.e., the Judgment. (See, e.g., *Holt v. Santa*

1 *Clara County Sheriff's Ben. Ass'n* (1967) 250 Cal.App.2d 925, 929 [It is a "well-established
2 principle that the constitution or by-laws of an unincorporated association have the force and
3 effect of a contract between the association and its members as to which the members are
4 bound".].) Nothing in the Judgment and its AP Pooling Plan allows a majority of the AP or the
5 Ag Pool to bind other AP members to an agreement such as the TOA.

6 Section 38 of the Judgment (especially 38(a)) empowers and limits the role of AP and the
7 Ag Pool as follows:

8 38. Powers and Functions. The powers and functions of the respective
Pool Committees . . . shall be as follows:

9 (a) Pool Committees. Each Pool Committee shall have the
10 **power and responsibility for developing policy recommendations for
administration of its particular pool**, as created under the Physical Solution. . . .

11 (Emphasis added.) The Judgment uses mandatory language "shall," which indicates that
12 "developing policy recommendations for administration of its particular pool" is the full scope of
13 the Pool's role. A resolution of the Special Joint Pool Committee (i.e., the 2009 Memo) confirms
14 this limited role of the Pools, as follows:

15 . . . **Under Section 38(a) Pool Committees are limited to 'developing policy
16 recommendations for administration of its particular Pool.'** Special Project
expense necessarily must be part of the Physical Solution which is under the
17 control of the Court and its Court appointed Watermaster. While **the Pool
18 Committees are there to provide advice and assistance to Watermaster** they
may not supplant Watermaster's Physical Solution authority under Section 41.

19 (Ex. 4 to Burton Decl., emphasis added.) Nothing in the Judgment or the Pooling Plan expands
20 the role of the AP, nor gives it the ability to collectively decide matters on behalf of its members
21 that goes beyond the scope of Section 38 or the Judgment.¹¹ Likewise, nothing in the Judgment
22 or the Pooling Plans authorizes the Ag Pool to impose legally binding obligations on the AP or
23 AP members.

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27 ¹¹ Paragraph 6 of the AP Pooling Plan (Exhibit H to the Judgment) provides for imposition of
28 administrative assessments to recover costs of administration of the AP and its share of general
Watermaster expense from appropriators.

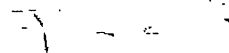
1 In short, the AP provides administrative services on behalf of the AP members pursuant to
2 the Judgment. The administrative role of the AP does not confer authority to cram down a
3 settlement on public agencies over their objections.

4 **VI. CONCLUSION**

5 For all the above-stated reasons, the Pools lawfully cannot, and have not, renounced the
6 rights and interests of the Moving Parties under Paragraph 5.4(a) of the Peace Agreement as
7 interpreted and applied by the May 28 and December 3 Orders. The Moving Parties respectfully
8 request that the Court disregard the TOA and proceed with ruling on the Moving Parties'
9 Reimbursement Motion.

10 Dated: April 1, 2022

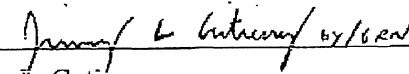
NOSSAMAN LLP
FREDERIC A. FUDACZ
GINA R. NICHOLLS

11
12
13 By: 

14 Frederic A. Fudacz
15 Attorneys for CITY OF ONTARIO

16 Dated: April 1, 2022

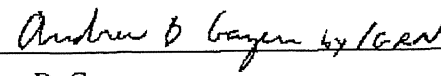
JIMMY L. GUTIERREZ LAW CORPORATION

17
18 By: 

19 Jimmy L. Gutierrez
20 Attorneys for CITY OF CHINO

21 Dated: April 1, 2022

KIDMAN GAGEN LAW LLP

22
23 By: 

24 Andrew B. Gagen
25 Attorneys for MONTE VISTA WATER DISTRICT
26 and MONTE VISTA IRRIGATION COMPANY
27
28

EXHIBIT K

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendants and Appellants;

CHINO BASIN APPROPRIATIVE
POOL, et al.,

Defendants and Respondents;

CHINO BASIN WATERMASTER,

Objector and Respondent.

E079052

(Super.Ct.No. RCVRS51010)

OPINION

APPEAL from the Superior Court of San Bernardino County. Stanford E.

Reichert, Judge. Affirmed.

Colantuono, Highsmith & Whatley, Michael G. Colantuono, Michael D. Champion
and Conor W. Harkins, for Defendant and Appellant City of Chino.

Nossaman, Frederic A. Fudacz, Jennifer L. Meeker and Gina R. Nicholls, for Defendants and Appellants, City of Ontario, Monte Vista Water District and Monte Vista Irrigation Company.

Horvitz & Levy, Lisa Perrochet, Mitchell C. Tilner; and John J. Schatz for Defendant and Respondent, Appropriative Pool.

Egoscue Law Group, Tracy J. Egoscue and Tarren A. Torres, for Defendant and Respondent, Chino Basin Overlying (Agricultural) Pool Committee.

Brownstein Hyatt Farber Schreck, Scott S. Slater, Bradley J. Herrema, Matthew L. Hofer and Laura K. Yraceburu, for Objector and Respondent, Chino Basin Watermaster.

In 1978, defendants and appellants City of Chino (Chino), City of Ontario (Ontario), Monte Vista Water District and Monte Vista Irrigation Company (collectively, Monte Vista), along with several other parties, stipulated to a judgment (Judgment), which manages competing water rights in the Chino Groundwater Basin (Basin). The Judgment established the Basin's governance structure, provided judicial oversight via continuing jurisdiction provisions, and created the Watermaster. The Judgment further organized the parties into three "Pools" (Overlying (Agricultural or Ag) Pool, Overlying (Non-agricultural or Non-Ag) Pool, and Appropriative (Ap or App) Pool) to administer and allocate responsibility for various aspects of the Judgment and the adopted physical solution to groundwater management. Appellants are members of the Ap Pool.

In 2000, the Ap Pool and the Ag Pool executed the Peace Agreement (sometimes referred to as the Agreement) which governs, *inter alia*, responsibility for certain Basin-related expenses. Subsequently, a dispute arose between these two Pools over the extent

of the Ap Pool's obligation to pay for the Ag Pool's legal expenses. Following the Ag Pool's unsuccessful attempt to obtain a court order requiring the Ap Pool to pay, appellants filed motions seeking reimbursement of the legal expenses paid for fiscal years 2019-2020 and 2020-2021. Simultaneously, the Pools sought resolution of their dispute, and over appellants' objection, they entered into a settlement agreement (Terms of Agreement or TOA) which committed the Ap Pool members to pay a portion of the legal expenses they were contesting. Appellants' motions were heard on April 22, 2022; the superior court denied them as moot based on the TOA. The court found that the Pools had authority under the Judgment to settle their inter-Pool disputes (here through the TOA) and appellants are bound by the Pools' action.

On appeal, appellants challenge the superior court's denial of their reimbursement motions via separate briefing. Ontario and Monte Vista contend the "central question in this appeal is whether a committee of parties with appropriative water rights formed under the Judgment, specifically, the [Ap Pool], holds the power to bind individual members of the [Ap Pool] to a contract without the consent or approval of the parties purportedly bound." In particular, they argue the court erred by (1) determining the TOA moots the monetary claims asserted by individual appellants, and (2) misreading the Judgment and Peace Agreement. Separately, Chino contends the court's order "holds Chino to an implied contract forbidden by controlling authority, established by unspecified evidence." It argues this appeal raises a question of law, namely, whether the court "properly conclude[d] a majority of the [Ap Pool] Committee could settle Chino's [reimbursement] motion over Chino's objections."

As we explain, we conclude the superior court correctly interpreted the Judgment and the Peace Agreement in denying appellants' motions for reimbursement on the grounds the TOA resolved the dispute between the two Pools.

I. PROCEDURAL BACKGROUND AND FACTS

In 1975, Chino Basin Municipal Water District (CBMWD) initiated this action against several parties to adjudicate their rights and obligations with respect to groundwater in the Basin. Three years later, the parties stipulated to the Judgment which established a "physical solution" and allowed the superior court to retain and exercise jurisdiction. The Judgment, including all amendments, was restated and reentered in 2012; this restated judgment is "the official and legally operative copy of the Judgment in [this] case."¹ Appellants are signatories to the Judgment.

The Judgment established the rights of three "Pools" of parties with water interests in the Basin: They include (1) the Ag Pool (the State of California and all overlying producers who produce water for other than industrial or commercial purposes); (2) the Non-Ag Pool (overlying producers who produce water for industrial or commercial purposes); and (3) the Ap Pool (owners of appropriative water rights not appurtenant to land ownership, principally public entities and water companies who pump water for municipal customer uses). Each Pool has a committee that administers its internal affairs, employs its own separate counsel, may seek judicial review of any Watermaster action or

¹ Unless otherwise indicated, all further references and citations to the judgment are to the 2012 restated judgment.

D. Conclusion.

For more than 40 years, disputes over Watermaster decisions, Pool actions, and party actions have fallen within the superior court’s continuing jurisdiction, and they continue to do so. Here, appellants have used their dispute over the propriety of the Ag Pool’s invoices—sanctioned by the Peace Agreement—to challenge the Ap Pool’s authority to act in a representative capacity under the Judgment. In denying their reimbursement motions based on a finding that the Pools executed a valid settlement, the TOA, the superior court correctly concluded that neither the Judgment nor the Peace Agreement requires the Ap Pool to obtain unanimous consent of its members to act. To hold otherwise would disrupt the efficient management of the Basin as provided for in the Judgment.

III. DISPOSITION

The order is affirmed. Respondents are to recover costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.

EXHIBIT L

COURT OF APPEAL
STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

REMITTITUR

CHINO BASIN MUNICIPAL WATER DISTRICT, Plaintiff,	E079052
v.	(Super.Ct.No. RCVRS51010)
CITY OF CHINO et al., Defendants and Appellants;	The County of San Bernardino
CHINO BASIN APPROPRIATIVE POOL et al., Defendants and Respondents;	
CHINO BASIN WATERMASTER, Objector and Respondent.	

I, BRANDON L. HENSON, Clerk of the Court of Appeal, State of California, Fourth Appellate District, certify the attached is a true and correct copy of the original opinion or decision entered in the above entitled cause on March 12, 2024, and this opinion or decision has now become final.

Respondents shall recover costs on appeal.



Witness my hand and seal of the Court
this May 17, 2024.

Brandon L. Henson, Clerk/Executive Officer

By: D. Bailon, Deputy Clerk

cc: All parties

CHINO BASIN WATERMASTER

Case No. RCVRS 51010

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

PROOF OF SERVICE

I declare that:

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

On August 1, 2024 I served the following:

1. REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO APPROPRIATIVE POOL'S MOTION FOR AWARD OF EXPENSES

/ X / BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by the United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:
See attached service list: Mailing List 1

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

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

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

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

Executed on August 1, 2024 in Rancho Cucamonga, California.



By: Ruby Favela Quintero
Chino Basin Watermaster

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

JEFF PIERSON
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