

FEE EXEMPT

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

11 CHINO BASIN MUNICIPAL WATER  
DISTRICT,

12 Plaintiff,

13 v.

14 CITY OF CHINO et al,

15 Defendants,  
16  
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Case No. RCVRS 51010

Assigned for All Purposes to the  
Honorable Gilbert G. Ochoa

**DECLARATION OF CHRIS DIGGS IN  
SUPPORT OF REPLY TO OPPOSITION  
TO APPROPRIATIVE POOL MOTION  
FOR AWARD OF EXPENSES PER  
CONTRACT AND CIVIL CODE SECTION  
1717**

Date: August 29, 2024  
Time: 9:00 a.m.  
Dept. R17

Motion Filed: June 26, 2024

*[Declaration of Chris Diggs; Declaration of  
Todd M. Corbin; Declaration of John J. Schatz;  
Declaration of Mitchell C. Tilner; filed  
concurrently herewith]*

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1 I, Chris Diggs, declare as follows:

2 1. I submit this declaration as evidence in support of the “Reply To Opposition To  
3 Appropriative Pool Motion For Award of Expenses Per Contract And Civil Code Section 1717”.

4 2. I have been the Water Resources Director for the City of Pomona since May 2020,  
5 and have served in other capacities at the City since December 2017. I have been Pomona’s  
6 Appropriative Pool (AP) representative since January 2019, and served as the AP Vice-Chair and  
7 also as Pomona’s Advisory Committee representative in 2022. Since January 2023 I have served  
8 as the AP Chair. I was extensively involved in negotiating the Terms of Agreement in 2022 that  
9 was approved by AP majority vote and resolved the Agricultural Pool expenses dispute between  
10 the AP and Ag Pool in connection with Peace Agreement Section 5.4(a).

11 3. I am very familiar with matters involving Watermaster, the business of the AP and  
12 its administration, and regularly interact with AP members and other Watermaster parties. I have  
13 personal knowledge of the matters set forth herein, and if called as a witness, I could and would  
14 competently testify to the facts stated herein.

15 4. The AP administrates funding for its expenses, including AP attorney and  
16 consultant fees, by approving AP Special Assessments based on expense estimates, before  
17 receiving any invoices from the attorneys or consultants. Watermaster is then informed of the total  
18 amount of the AP Special Assessment needed to fund the estimated expense. Watermaster then  
19 invoices each AP member for that member’s proportionate share of the total AP Special  
20 Assessment on the basis of a formula or formulas prescribed by the AP.

21 5. In other words, the AP fund operates like a bank deposit account where expenses  
22 come in and are paid from any money on hand from prior deposits, with the amount of new  
23 deposits based on estimated future expenses.

24 6. The AP’s approval of expense estimates and AP Special Assessments over at least  
25 the 14 years it has engaged legal counsel has been by consensus (without a formal vote), or in  
26 accordance with the AP Pooling Plan by one vote per member or weighted vote (Opp. RJN, ¶ 1).  
27 Over the last few years when Respondents consistently refused to pay any AP Special

1 Assessments or paid only limited AP legal, consultant or Ag Pool expenses, or certain other  
2 discreet matters, majority approval has been by weighted vote. The majority vote percentage is  
3 then recorded and reported to Watermaster. When Watermaster issues the Special Assessment  
4 invoices, it includes the majority vote tally, the amount of the Special Assessment and  
5 proportionate share of that assessment for each AP member (Motion, Schatz Decl., ¶ 8). I am not  
6 aware that, other than Respondents' recent request for AP legal invoices, any AP member has  
7 requested backup or supporting invoices or information in order for their city or water agency to  
8 process and pay the Watermaster invoice.

9 7. There has never been any requirement, policy or practice for AP members to  
10 subsequently review expense invoices to: "*help us complete our evaluation and determine our*  
11 *payment*". (Opp. Jones Decl., ¶ 9). The AP has historically and currently operates on the basis that  
12 each member incurs its obligation to pay at the time the majority approves the Special Assessment  
13 to pay the estimated expense, after which a member does not have the right to determine or  
14 question its obligation or to withhold its payment.

15 8. As AP Chair, I review AP legal and consultant invoices and then authorize  
16 Watermaster to pay the invoices. This has been the AP practice for many years, including  
17 preceding my time as AP Chair. Only after the Court of Appeal Opinion confirmed the AP can act  
18 and bind its members by majority vote did Respondents start requesting copies of the expense  
19 invoices I review and approve. No other AP member has requested the invoices or questioned the  
20 Chair's authority to approve them consistent with the AP's longstanding practice.

21 9. Previously over many years and at the time Respondents stopped paying AP  
22 Special Assessments starting in November 2021 and continuing until the most recent assessment  
23 in October 2023, Respondents did not ask to review AP legal invoices.

24 10. I am not aware that any AP member would oppose considering a new, discretionary  
25 policy regarding member review of AP legal or other invoices, or a new protocol for approval, so  
26 long as the new policy or protocol (1) would not introduce a two-step process to approve expenses  
27 (majority vote *plus* approval by each AP member), (2) would not be asserted to defeat the majority

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1 vote of the AP to approve expenses and bind its members, and (3) would not be the basis for an  
2 AP member to withhold payment of its assessment because it determines an expense is adverse to  
3 it.

4 11. Following the Court's April 22, 2022 Order, Respondents did not approach the AP  
5 regarding any settlement discussions. Instead, Respondents promptly filed the appeal, which  
6 required the AP to incur attorney fees to defend against the appeal.

7 12. Like the other AP majority members, the City of Pomona has incurred substantial  
8 expenses in addition to its own share of AP expenses because of surcharges on paying members of  
9 the AP over the last several years to carry Respondents' unpaid shares of AP expenses and  
10 continuing even after the March Court of Appeal Opinion. Additionally, Pomona has paid its own  
11 counsel and Watermaster counsel expenses in connection with Respondents' appeal, none of  
12 which is captured in the AP's motion for attorney fees on appeal. Recovery of attorney fees on  
13 appeal, therefore, only represents part of the total cost of the appeal to Pomona.

14 I declare under penalty of perjury that the foregoing is true and correct. Executed this 15<sup>th</sup>  
15 day of August, 2024 at Pomona, California.

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August 15, 2024

By: Chris Diggs  
Chris Diggs, Chair  
Chino Basin Watermaster Appropriative  
Pool

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 15, 2024 I served the following:

1. DECLARATION OF CHRIS DIGGS IN SUPPORT OF REPLY TO OPPOSITION TO APPROPRIATIVE POOL MOTION FOR AWARD OF EXPENSES PER CONTRACT AND CIVIL CODE SECTION 1717

/ 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 15, 2024 in Rancho Cucamonga, California.



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By: Ruby Favela Quintero  
Chino Basin Watermaster

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