

1 Allen W. Hubsch (Bar No. 136834)
HOGAN LOVELLS US LLP
2 1999 Avenue of the Stars, 15th Floor
Los Angeles, California 90067
3 Telephone: (310) 785-4600
Facsimile: (310) 785-4601
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6 Attorneys for Non-Agricultural (Overlying) Pool
Committee
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN BERNARDINO

11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, ET AL.,

16 Defendants.
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Case No. RCVRS 51010

Judgment Entered On January 27, 1978, as
Amended

**RESPONSE OF NON-
AGRICULTURAL (OVERLYING)
POOL COMMITTEE TO CITY OF
ONTARIO STATEMENT**

Filed Concurrently With Reply
Memorandum of Non-Agricultural
(Overlying) Pool Committee

Date: May 14, 2010
Time: 10:30 a.m.
Dept.: Dept. C-1
Chino, California

Assigned for All Purposes to the
Honorable STANFORD E. REICHERT

1 **Introduction**

2 As stated in the Moving Brief, the original Judgment in this Action arose from disputes
3 among three competing parties or “pools”, of water users. The Judgment recognized the
4 existence of these three competing groups, and formalized them as the Appropriative Pool, the
5 Agricultural Pool and the Non-Ag Pool. These three pools continue to have distinct and, in some
6 cases, conflicting interests. Bowcock Moving Decl. ¶5. Until about November 2008, a Special
7 Referee appointed by the Court actively supervised the Watermaster Board and staff, and made
8 reports and recommendations to the Court regarding Watermaster activities. Bowcock Moving
9 Decl. ¶5.

10 The Non-Ag is by far the smallest of the three pools established by the Judgment. The
11 Non-Ag Pool has only 1 member on the 9-member Watermaster Board. Bowcock Moving Decl.
12 ¶6, Exhibit A. The Non-Ag Pool has only 3 members on the 39-member Advisory Committee.
13 Bowcock Moving Decl. ¶6, Exhibit B. For the 2008-2009 Watermaster fiscal year, the Non-Ag
14 Pool produced only about 4% of the overall volume of water. Bowcock Moving Decl. ¶6, Exhibit
15 C. For the 2009-2010 fiscal year, the Non-Ag Pool was budgeted about 2% of financial
16 assessments. Bowcock Moving Decl. ¶6, Exhibit D.

17 The Appropriative Pool is by far the largest of the three pools established by the
18 Judgment, and it effectively controls the Watermaster system. Entities that are members of the
19 Appropriative Pool hold 4 positions on the Watermaster Board. Bowcock Moving Decl. ¶8,
20 Exhibit A. The Appropriative Pool has 26 members on the 39-member Advisory Committee.
21 Bowcock Moving Decl. ¶8, Exhibit B. For the most recent year, the Appropriative Pool produced
22 about 70% of the overall volume of water. Bowcock Moving Decl. ¶8, Exhibit C. As a result of
23 an agreement entered into between the Appropriative Pool and the Agricultural Pool to settle
24 various disputes between them, the Appropriative Pool currently pays all of the Agricultural
25 Pool’s financial assessments. Id. For the 2009-2010 fiscal year, the Appropriative Pool was
26 budgeted about 98% of the financial assessments in the most recent year. Bowcock Moving Decl.
27 ¶8, Exhibit D. In this system, the Appropriative Pool dominates the financial affairs of
28 Watermaster, and Watermaster staff and counsel act accordingly. During the period that the

1 Special Referee was active in this case, the Special Referee acted as a check on the dominance of
2 the Appropriative Pool.

3 **A. The City of Ontario Has A Conflict of Interest**

4 In its Statement, the City of Ontario acknowledges that it is a member of both the
5 Appropriative Pool and the Non-Ag Pool. As a result, the City of Ontario has a conflict of
6 interest with respect to any dispute between the Appropriative Pool and the Non-Ag Pool. The
7 City of Ontario owns a significantly greater water right in the Appropriative Pool than in the Non-
8 Ag Pool. According to the Annual Report of the Watermaster for the most recent year, the City
9 of Ontario has the following rights:

10 Appropriative Right 16,337.40 acre feet

11 Non-Agricultural Right 2,393.00 acre feet

12 Sage Reply Decl. ¶5. Because the Appropriative Pool controls and dominates the Watermaster
13 system, failure by the City of Ontario to join ranks with its fellow Appropriators could have a
14 detrimental effect upon its relations with its fellow appropriators, with ramifications not just
15 within the Watermaster system, but with respect to other relationships that the municipal water
16 providers have with each other outside of the Watermaster context. The statement filed by the
17 City of Ontario does not and should not reflect upon the merits of the pending Motion, but on the
18 arcane and unproductive politics of the Watermaster system, and water politics generally in
19 Southern California.

20 **B. Mr. Jeske Has A Conflict of Interest**

21 Attached to the City of Ontario's Statement is a declaration made by Mr. Ken Jeske. In
22 2009, Mr. Jeske was the Chair of Appropriative Pool. Sage Reply Decl. ¶¶6 & 7. In such
23 capacity, he was in a unique position with respect to this dispute. Mr. Jeske chaired each of the
24 meetings of the Appropriative Pool during 2009 at which the Peace II Option Agreement was
25 discussed. As Chair, Mr. Jeske had a leadership role in working with Watermaster staff to ensure
26 that the intentions of the Appropriative Pool were complied with. If the Appropriative Pool
27 intended that the written Notice of Intent to Purchase be delivered, and if Mr. Jeske was
28 responsible in whole or in part for a failure to deliver it, then Mr. Jeske has a very substantial

1 personal interest in the outcome of this Motion.

2 **C. The City of Ontario and Mr. Jeske Had Access to Unique Information**

3 As Chair of the Appropriative Pool, Mr. Jeske was privy to information to which no
4 member of the Non-Ag Pool had access. In 2009, confidential sessions of the Appropriative Pool
5 were routinely held at or after completion of joint meetings of the Appropriative Pool and the
6 Non-Ag Pool. Sage Reply Decl. ¶8. In many of those cases, the disclosed purpose of the
7 confidential session was discussion of the auction and the Peace II Agreement. Sage Reply Decl.
8 ¶8. In fact, Mr. Jeske routinely moved or called for such confidential sessions himself. Sage
9 Reply Decl. ¶8. Prior to the start of all of these confidential sessions, Mr. Jeske, as Chair of the
10 Appropriative Pool, asked that any member of the Non-Ag Pool then present leave the meeting
11 room. Sage Reply Decl. ¶8. Prior to the start of these confidential sessions, Mr. Jeske routinely
12 asked Watermaster staff and counsel to remain in the meeting room, and they did leave. Sage
13 Reply Decl. ¶9. Watermaster staff and counsel were under instructions from the Appropriative
14 Pool and Watermaster counsel not to disclose to any member of the Non-Ag Pool, any
15 information discussed in any such confidential session. Sage Reply Decl. ¶9.

16 Mr. Jeske was and is in a unique position shared with no member of the Non-Ag Pool.

17 **D. The City of Ontario and Mr. Jeske Have Taken Inconsistent Positions**

18 In late January and early February 2010, after this dispute arose, Mr. Jeske informed
19 members of the Non-Ag Pool that he had advised the City of Ontario not to accept Watermaster's
20 January 17, 2009 tender of payment under the Peace II Option Agreement. Bowcock Reply Decl.
21 ¶25. These statements by Mr. Jeske were made after the existence of a dispute in this matter but
22 before the filing of the Motion in this matter, at a time when the Non-Ag Pool was in a position to
23 rely upon them in deciding whether to file the Motion. These statements and actions are
24 inconsistent with any understanding that written Notice of Intent to Purchase was properly given.

25 **E. Mr. Jeske Is Not The City of Ontario's Representative On the Non-Ag Pool**
26 **Committee**

27 Mr. Jeske is not now and never has been the City of Ontario's representative on the Non-
28 Ag Pool Committee. Bowcock Reply Decl. ¶27. During 2009, Mr. Jeske was the City of

1 Ontario's representative on the Appropriative Pool Committee. Sage Reply Decl. ¶7. During
2 2009, Mr. Mohammed El Amany was the City of Ontario's representative on the Non-Ag Pool
3 Committee. Bowcock Reply Decl. ¶27. Mr. Jeske's declaration is clearly made as a
4 representative of the Appropriative Pool, and the City of Ontario's filing is clearly made in its
5 capacity as a member of the Appropriative Pool.

6 E. **The City of Ontario's Statement Is Untimely.**

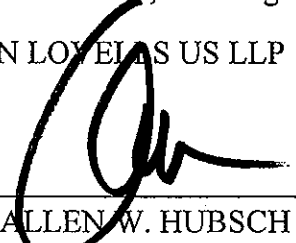
7 This Court entered a Case Management Order in connection with the pending Motion
8 requiring that all "responding memoranda and papers of the Appropriative Pool or its members
9 shall be filed and served on or before April 19, 2010". Further, this Court ordered that "No other
10 memoranda or papers may be filed or served in connection with the Motion". The City of
11 Ontario's statement was filed on or after April 27, 2010 and was served on April 29, 2010.
12 Because the City of Ontario filed its statement in its capacity as a member of the Appropriative
13 Pool, the City of Ontario's Statement violates this Court's Case Management Order.

14 **Conclusion**

15 For the foregoing reasons, the Non-Agricultural (Overlying) Pool Committee respectfully
16 requests that the statement filed by the City of Ontario be struck, or disregarded in its entirety.

17 Date: May 10 2010

HOGAN LOVELL S US LLP

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19 By: 

20 ALLEN W. HUBSCH
21 Attorneys for Non-Agricultural (Overlying) Pool
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