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8  
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10 Committee  
11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN BERNARDINO  
14

15 CHINO BASIN MUNICIPAL WATER  
16 DISTRICT,

17 Plaintiff,

18 v.

19 CITY OF CHINO, ET AL.,

20 Defendants.  
21

Case No. RCVRS 51010

Judgment Entered On January 27, 1978, as  
Amended

**NOTICE OF MOTION AND MOTION  
REGARDING AMENDMENT OF  
POOLING PLAN FOR THE NON-  
AGRICULTURAL (OVERLYING)  
POOL, ATTACHED TO THE  
JUDGMENT AS EXHIBIT G**

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

Assigned for All Purposes to the  
Honorable STANFORD E. REICHERT

1 TO EACH PARTY TO THIS ACTION AND TO THE COUNSEL OF RECORD FOR  
2 EACH PARTY:

3 YOU ARE HEREBY NOTIFIED THAT on September 10, 2010 at 10:30 a.m., in  
4 Department C-1 of this Court, located at 13260 Central Avenue, Chino, California 91710, the  
5 Non-Agricultural (Overlying) Pool Committee will and hereby does move, pursuant to § 15 of the  
6 Judgment previously entered in this action, for approval of an amendment to the Pooling Plan of  
7 the Non-Agricultural (Overlying) Pool. The Pooling Plan is attached as Exhibit G to the  
8 Judgment.

9 The Motion will be based upon this notice, the attached memorandum in support, the  
10 pleadings, records and files herein, and on such oral argument as may be presented at the hearing  
11 on the Motion.

12 Date: August 19, 2010

HOGAN LOVELLS US LLP

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14  
15 By: 

16 Allen W. Hubsch  
17 Attorneys for the Non-Agricultural  
18 (Overlying) Pool Committee  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. **THE NON-AG POOLING PLAN AND THE NON-AG RULES**

3 The Non-Agricultural (Overlying) Pool (the "Non-Ag Pool") is one of three pools  
4 established by the Judgment.

5 The Non-Ag Pool has its own "Pooling Plan", which is attached to the Judgment as  
6 Exhibit G (the "Non-Ag Pooling Plan"). See attached Exhibit A.<sup>1</sup> The Non-Ag Pooling Plan  
7 describes the manner in which the Non-Agricultural Pool Committee (the "Non-Ag Committee")  
8 is organized and administers its internal affairs. The Non-Ag Pooling Plan applies only to the  
9 Non-Ag Pool. The Non-Ag Pooling Plan states that "The Pool Committee shall adopt rules for  
10 conducting meetings and affairs of the committee and for administering its program and in  
11 amplification of the provisions, but not inconsistent with, this pooling plan." Exhibit A, Section  
12 9.

13 At some time in the past, the Non-Ag Committee adopted Rules and Regulations pursuant  
14 to the Pooling Plan (the "Non-Ag Rules"). See attached Exhibit B.<sup>2</sup> The Non-Ag Rules apply  
15 only to the Non-Ag Pool. The Non-Ag Rules state that "The Pool Committee may amend these  
16 rules and regulations from time to time, but not inconsistent with its pooling plan, by majority  
17 vote of the voting power." Rules and Regulations, Section 2.20.

18 II. **AMENDMENT**

19 At its meeting on May 19, 2010, the Non-Ag Committee voted to amend Section 2.09 of  
20 the Non-Ag Rules and Section 2 of the Non-Ag Pooling Plan, by inserting the following at the  
21 conclusion of the second paragraph of said Section 2.09 and also at the conclusion of the indented  
22 paragraph of said Section 2:

23 Affirmative action of the Committee shall require a majority of the voting power  
24 of members in attendance, provided that it includes concurrence by at least one-

25  
26 <sup>1</sup> The Non-Ag Pooling Plan is attached as Exhibit G to the Judgment, and is part of the record in  
27 this action. However, due to the large size of the record in this action, and for the convenience of  
the Court, and for other parties, the Pooling Plan is submitted as an Exhibit to this Motion.

28 <sup>2</sup> In January or February 2010, Watermaster counsel supplied the Rules and Regulations of the  
Non-Ag Pool to counsel for the Non-Ag Pool, and informed counsel for the Non-Ag Pool that  
such Rules and Regulations had been adopted previously.

1           third of its total members.

2   The motion to amend was made by the City of Ontario, seconded by California Steel Industries,  
3   Inc., and passed unanimously by the members of the Non-Ag Committee in attendance.

4           The foregoing sentence is identical to a sentence that appears in the Pooling Plan for the  
5   Appropriative Pool. See attached Exhibit C.<sup>3</sup> The Non-Ag Committee seeks to conform its  
6   Pooling Plan, insofar as it relates to so-called "volume voting", to the Pooling Plan for the  
7   Appropriative Pool. The amendment to the Non-Ag Pooling Plan does not affect, and is not  
8   intended to affect, any Pool other than the Non-Ag Pool.

9           The second paragraph of Section 2.09 and the indented paragraph of Section 2 both  
10   concern volume voting only, and the amendment only affects volume voting. A volume voting  
11   system is a so-called "weighted voting system" based upon the idea that not all voters are equal.  
12   Those who own more water have more votes. A traditional or common voting system is one in  
13   which each member's vote carries equal weight. The voting system which the Appropriative Pool  
14   Committee has previously adopted, and which the Non-Ag Committee has now adopted, blends  
15   the weighted voting system with the traditional system. Volume voting continues to exist, but  
16   33% of the members by number must concur in any volume vote. The blended system is a  
17   reasonable and feasible method of voting. The blended system has been in place in the  
18   Appropriative Pool for many years, without any known objection or controversy.

19           The Pooling Plan itself allows the Non-Ag Committee to make amendments "in  
20   amplification" of the existing provisions of the Pooling Plan. The amendment is the addition of a  
21   single sentence, without deletion of any existing words or sentences. At the time the Non-Ag  
22   Committee adopted the amendment, the Non-Ag Committee believed that the amendment was  
23   and is "in amplification" of the existing provisions of the Pooling Plan. However, in an  
24   abundance of caution, and to allow other Watermaster parties an opportunity and forum to  
25   comment on the amendment, the Non-Ag Committee has elected to file this motion for approval

26  
27           <sup>3</sup> The Pooling Plan for the Appropriative Pool is attached as Exhibit H to the Judgment, and is  
28   part of the record in this action. However, due to the large size of the record in this action, and  
  for the convenience of the Court, and for other parties, the Pooling Plan is submitted as an Exhibit  
  to this Motion.

1 of the amendment.<sup>4</sup>

2 The amendment by the Non-Ag Rules was adopted unanimously by the members of the  
3 Non-Ag Committee. The Non-Ag Committee is not presently aware of any objection or  
4 opposition to the amendment.

5 III. CONCLUSION

6 In Section 15 of the Judgment, this Court retained jurisdiction to “modify, amend or  
7 amplify any of the provisions of this Judgment”. The Non-Ag Committee respectfully requests  
8 that the Court approve the amendment to the Pooling Plan of the Non-Ag Pool, adopted  
9 unanimously by the members of the Non-Ag Committee.

10 Date: August 19, 2010

HOGAN & HARTSON LLP

11  
12 By: 

13 ALLEN W. HUBSCH

14 Attorneys for Non-Agricultural (Overlying) Pool  
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27 <sup>4</sup> The Non-Ag Rules allow for any amendment not inconsistent with the Non-Ag Pooling Plan.  
28 Accordingly, if the amendment to the Non-Ag Pooling Plan is approved pursuant to this motion,  
then the identical amendment to the Non-Ag Rules which was also adopted unanimously by the  
Non-Ag Pool will be word-for-word consistent with the Non-Ag Pooling Plan.

# EXHIBIT A

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EXHIBIT "G"  
OVERLYING (NON-AGRICULTURAL) POOL  
POOLING PLAN

1. Membership in Pool. The initial members of the pool, together with the decreed share of the Safe Yield of each, are listed in Exhibit "D". Said pool includes producers of water for overlying industrial or commercial (non-agricultural) purposes, or such producers within the Pool who may hereafter take water pursuant to Paragraph 8 hereof.

2. Pool Committee. The Pool Committee for this pool shall consist of one representative designated by each member of the pool. Voting on the committee shall be on the basis of one vote for each member, unless a volume vote is demanded, in which case votes shall be allocated as follows:

The volume voting power on the Pool Committee shall be 1,484 votes. Of these, 742 votes shall be allocated on the basis of one vote for each ten (10) acre feet or fraction thereof of decreed shares in Safe Yield. (See Exhibit "D".) The remaining 742 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year.\*

3. Advisory Committee Representatives. At least three (3) members of the Pool Committee shall be designated by said committee to serve on the Advisory Committee. The exact number of such representatives at any time shall be as determined by the Pool Committee. The voting power of the pool shall be exercised in the

\*Or production assessments paid under Water Code Section 72140 et seq., as to years prior to the second year of operation under the Physical Solution hereunder.

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1 Advisory Committee as a unit, based upon the vote of a majority of  
2 said representatives.

3 4. Replenishment Obligation. The pool shall provide funds  
4 for replenishment of any production in excess of the pool's share  
5 of Safe Yield in the preceding year.

6 5. Assessment. Each member of this pool shall pay an assess-  
7 ment equal to the cost of replenishment water times the number of  
8 acre feet of production by such producer during the preceding year  
9 in excess of (a) his decreed share of the Safe Yield, plus (b) any  
10 carry-over credit under Paragraph 7 hereof. In addition, the cost  
11 of the allocated share of Watermaster administration expense shall  
12 be recovered on an equal assessment against each acre foot of  
13 production in the pool during such preceding fiscal year or calen-  
14 dar quarter; and in the case of Pool members who take substitute  
15 ground water as set forth in Paragraph 8 hereof, such producer  
16 shall be liable for its share of administration assessment, as if  
17 the water so taken were produced, up to the limit of its decreed  
18 share of Safe Yield.

19 6. Assignment. Rights herein decreed are appurtenant to the  
20 land and are only assignable with the land for overlying use  
21 thereon; provided, however, that any appropriator who may, directly  
22 or indirectly, undertake to provide water service to such overlying  
23 lands may, by an appropriate agency agreement on a form approved by  
24 Watermaster, exercise said overlying right to the extent, but only  
25 to the extent necessary to provide water service to said overlying  
26 lands.

27 7. Carry-over. Any member of the pool who produces less than  
28 its assigned water share of Safe Yield may carry such unexercised

EXHIBIT "G"



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1 right forward for exercise in subsequent years. The first water  
2 produced during any such subsequent year shall be deemed to be an  
3 exercise of such carry-over right. In the event the aggregate  
4 carry-over by any pool member exceeds its share of Safe Yield, such  
5 member shall, as a condition of preserving such surplus carry-over,  
6 execute a storage agreement with Watermaster.

7 8. Substitute Supplies. To the extent that any Pool member,  
8 at the request of Watermaster and with the consent of the Advisory  
9 Committee, takes substitute surface water in lieu of producing  
10 ground water otherwise subject to production as an allocated share  
11 of Safe Yield, said party shall nonetheless remain a member of this  
12 Pool.

13 9. Rules. The Pool Committee shall adopt rules for adminis-  
14 tering its program and in amplification of the provisions, but not  
15 inconsistent with, this pooling plan.  
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EXHIBIT "G"

# **EXHIBIT B**

## OVERLYING (NON-AGRICULTURAL) POOL COMMITTEE

### RULES AND REGULATIONS

#### ARTICLE 1

##### GENERAL PROVISIONS

1.01 Title/Code. This document shall be known and may be referred to as the “Overlying (Non-Agricultural) Pool Committee Rules and Regulations” adopted pursuant to Judgment entered in Chino Basin Municipal Water District v. City of Chino, et al., S.B. Sup. Ct. No. 164327, on January 27, 1978. To provide convenience in operation under the Judgment certain procedural matters contained therein have been set forth in these rules and regulations, however, should a conflict arise between the Judgment and these rules and regulations the language of the Judgment shall in all cases prevail. Designations hereinafter to “See Judgment” shall refer to verbatim quotations from the Judgment; whereas “Based on Judgment” shall refer to a paraphrase of the Judgment language.

1.02 Definitions. Unless otherwise expressly indicated or compelled by their context, words, phrases, and references appearing herein shall have the same meanings as set forth in the Judgment, including the additional definitions as follows:

(a) Committee(s) – Any of the Pool Committees or the Watermaster

Advisory Committee as the context may compel.

(b) Judgment – The judgment entered in Chino Basin Municipal Water District v. City of Chino et al., San Bernardino Superior Court No. 164327.

(c) Overlying (Agricultural) Pool – The pool consisting of the State of California and all overlying producers who produce water for other than industrial or commercial purposes.

(d) Overlying (Non-agricultural) Pool – The pool consisting of overlying producers who produce water for industrial or commercial purposes or who, at the request of Watermaster and with the consent of the Watermaster Advisory Committee, take substitute water in lieu of producing such ground water.

(e) Appropriative Pool – The pool consisting of owners of appropriative rights, as defined under the Judgment, and any person who produces water for other than overlying use.

1.03 Membership in Pool. The pool shall include all producers of water for overlying industrial or commercial purposes, or such producers within the Pool who may hereafter take substitute water, at the request of Watermaster and with the consent of the Watermaster Advisory Committee, in lieu of producing ground water. The initial members of the Pool are listed in Exhibit “D” to the Judgment. [Based on Judgment, page 65, Section 1.]

1.04 Representation. The Pool Committee shall consist of one representative designated by each member of the pool.

[Based on Judgment, page 65, Section 2.]

1.05 Powers and Duties. The Pool Committee shall have the power and responsibility for developing policy recommendations for administration of its Pool and to adopt an annual budget. All actions and recommendations which require Watermaster implementation shall first be noticed to the other two Pools. If no objection is received in writing within thirty (30) days, such action or recommendation shall be transmitted directly to Watermaster for action. If any such objection is received, such action or recommendation shall be reported to the Watermaster Advisory Committee before being transmitted to Watermaster. [Based on Judgment, page 21, Section 38(a).]

## ARTICLE 2

### PROCEDURES

2.01 Principal Office. The principal office of Pool shall be the Chino Basin Municipal Water District business office, located at 8555 Archibald Avenue, Cucamonga, California 91730; telephone number (714) 987-1712, or at such other location or locations as may be designated from time to time by amendment to these rules and regulations.

2.02 Records. The records of the Pool shall be open to inspection and maintained at the Watermaster's office. [Based on Judgment, page 20, Section 37(d).] Copies of such records may be obtained upon payment of the duplication costs thereof.

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2.03 Regular Meetings. The Pool Committee shall meet annually, at the beginning of each year, at such time and place as the Pool Committee may determine from time to time by resolution, for purpose of conducting the business of the pool and to make such recommendations as may be necessary to properly advise Watermaster. If the time designated for regular meetings shall fall on a legal holiday, the regular meeting shall be held instead on the next succeeding regular business day at the same time and place, or such other day, time and place as may be designated.

2.04 Special Meetings. Special meetings may be called at any time by the Chairperson or by any three (3) members of the Pool Committee. [Based on Judgment, page 20, Section 37(c).]

2.05 Adjournment. Any meeting may be adjourned to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously posted forthwith on or near the door of the place where the meeting was held. [See Judgment, pages 20-21, Section 37(e).]

2.06 Public Meetings. All meetings, whether regular or special, shall be open to the public.

2.07 Notice. Notices shall be given in writing to all Active Parties within the Pool and each such person who has requested notice in writing, and shall specify the time and place of the meeting and the business to be transacted thereat.

Delivery of notice shall be deemed made on the date personally given or within 96 hours of deposit thereof in the United States mail, first class, postage prepaid, addressed to the designee and at the address in the latest designation filed by such person.

2.08 Quorum. A majority of the voting power of the Pool Committee shall constitute a quorum for the transaction of its affairs. [Based on Judgment, page 18, Section 35.]

2.09 Voting Procedures. All voting shall be on the basis of one vote for each member, unless a volume vote is demanded by any member, in which case votes shall be allocated as follows:

The volume voting power on the Pool Committee shall be 1,484 votes. Of these, 742 votes shall be allocated on the basis of one vote for each ten (10) acre feet or fraction thereof of decreed shares in Safe Yield. The remaining 742 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year; provided, however, that if a member of the Pool takes water pursuant to paragraph 8. of Exhibit G to the Judgment, for purposes of voting only, such producer shall be credited as if it had produced such water so taken and paid the assessment which would have been applicable thereto. [Based on Judgment, Exhibit G, page 65, Section 2.]

Any action or recommendation taken by the Pool Committee shall be transmitted to Watermaster in writing

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within five (5) days of such action, together with a report of any dissenting vote or opinion. [Based on Judgment, page 19, Section 35.]

All actions may be adopted by voice vote, but upon demand of any member thereof, the roll shall be called and the ayes and noes recorded in the minutes of the proceedings. Every member of the Pool Committee in attendance, unless disqualified by reason of a conflict of interest, shall be required to vote.

2.10 Agenda. Any person requesting that a matter be considered for action by the Pool Committee, shall request such action in writing delivered to the secretary thereof at least fourteen (14) days prior to said meeting. The priorities of business shall be as stated in the agenda for a particular meeting, subject, however, to matters of business which may arise on an urgency basis, and require the immediate attention and action of the Pool Committee.

2.11 Minutes. The secretary (or in the absence thereof) any person so designated at said meeting) shall prepare and subscribe the minutes of each meeting and make available a copy thereof to the appropriate Active Parties and each person who has filed a request for copies of all minutes or notices in writing. The minutes shall constitute notice of all actions therein reported. [Based on Judgment, page 20, Section 37(d).] Unless a reading of the minutes of a meeting is ordered by a majority vote of its members, each such minutes may be approved without reading.



2.12 Rules of Order. Except as may be provided herein, the procedures for the conduct of any meeting shall be governed by the latest revised edition of Roberts' Rules of Order. However, such rules, adopted to expedite the transaction of the business in an orderly fashion, are deemed to be procedural only and the failure to strictly observe such rules shall not affect the jurisdiction or invalidate any action taken at a meeting that is otherwise held in conformity with law.

2.13 Compensation. Members of the Pool Committee may by resolution, allow themselves compensation for attendance at meetings, regular or special, in an amount not to exceed twenty-five (\$25.00) dollars per meeting, to a maximum of three hundred (\$300.00) dollars per year, together with reasonable expenses related to the respective activities thereof, subject to applicable provisions of law. [Based on Judgment, page 19, Section 36.]

2.14 Officers. Annually, members of the Pool Committee shall elect one of their number to serve as Chairperson and another of their number to serve as Vice Chairperson. They shall also select a secretary, a treasurer and such assistant secretaries and treasurers may be appropriate, any of whom may, but need not be members of the Pool Committee. All officers are to hold their respective offices subject to the vote of the majority voting power of the Pool Committee. [Based on Judgment, page 19, Section 37(a).]

The Chairperson shall preside over all meetings of

the Pool Committee. In the event of the Chairperson's absence, inability, or disability, those duties shall be performed by the Vice Chairperson or, in the Vice Chairperson's absence, inability, or disability as well, by one of their number so appointed by majority vote as temporary Chairperson for that meeting. The secretary shall prepare and maintain minutes of the meetings of the Pool Committee, and forward the originals for filing with the Watermaster, within ten (10) days of each meeting.

2.15 Advisory Committee Representatives. The number of representatives of the Pool Committee on the Watermaster Advisory Committee shall be as provided by resolution of the Pool Committee from time to time, but the number of said representatives shall at no time exceed ten (10) nor be less than three (3). The voting power of the pool on the Watermaster Advisory Committee shall be exercised as a unit, based upon the vote of a majority of its representatives in attendance. [Based on Judgment, page 17, Section 32, page 65, Section 3.]

2.16 Replenishment. It shall be the responsibility of the members of Pool to provide the funds necessary for purchase of replenishment water to replace any production by the pool in excess of the pool's share of Safe Yield. [Based on Judgment, page 66, Section 4.]

2.17 Assessment. Each member of the pool shall pay an assessment equal to the cost of replenishment water times the number of acre feet of production by such producer

during the preceding year in excess of (a) its decreed share of the Safe Yield, plus (b) any carry-over credit under paragraph 7. of Exhibit G to the Judgment. In addition, the cost of the allocated share of Watermaster administration expense shall be recovered on an equal assessment against each acre foot of production in the pool during such preceding fiscal year or calendar quarter; and in the case of Pool members who take substitute ground water as set forth in paragraph 8. of Exhibit G to the Judgment, such producer shall be liable for its share of administration assessment, as if the water so taken were produced, up to the limit of its decreed share of Safe Yield. [Based on Judgment, page 66, Section 5.]

2.18 Assignment. The rights pertaining to this pool are appurtenant to the land and are only assignable with the land for overlying use thereon; provided, however, that any Appropriator who may, directly or indirectly, undertake to provide water service to such overlying lands may, by an appropriate agency agreement on a form approved by Watermaster, exercise said overlying right to the extent, but only to the extent necessary to provide water service to said overlying lands. [Based on Judgment, page 66, Section 5.]

2.19 Carry-over. Any member of the pool who produces less than its assigned share of 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 its carry-over right.

In the event the aggregate carry-over by any pool member exceeds its share of Safe Yield, such member shall, as a condition of preserving such surplus carry-over, execute a storage agreement with Watermaster. [See Judgment, pages 66-67, Section 7.]

2.20 Amendment. The Pool Committee may amend these rules and regulations from time to time, but not inconsistent with its pooling plan, by majority vote of the voting power. [Based on Judgment, page 67, Section 8; page 19, Section 35.]

# **EXHIBIT C**

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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. Ten (10) members of

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\*Or production assessments paid under Water Code Section 72140 et seq., as to years prior to the second year of operation under the Physical Solution hereunder.

1 the Pool Committee shall be designated to represent this pool on  
2 the Advisory Committee. Each major appropriator, i.e., the owner  
3 of an adjudicated appropriative right in excess of 3,000 acre feet,  
4 shall be entitled to one representative. The remaining members  
5 representing the Appropriative Pool on the Advisory Committee shall  
6 be elected at large by the remaining members of the pool. The  
7 voting power of the Appropriative Pool on the Advisory Committee  
8 shall be apportioned between the major appropriator representatives  
9 in proportion to their respective voting power in the Pool Com-  
10 mittee. The remaining two representatives shall exercise equally  
11 the voting power proportional to the Pool Committee voting power  
12 of all remaining appropriators; provided, however, that if any  
13 representative fails to attend an Advisory Committee meeting, the  
14 voting power of that representative shall be allocated among the  
15 representatives of the Appropriator Pool in attendance in the same  
16 proportion as their own respective voting powers.

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

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

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

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1 (a) For production, other than for increased export,  
2 within CBMWD or WMWD:

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

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

12 (b) For production which is exported for use outside  
13 Chino Basin in excess of maximum export in any year through  
14 1976, such increased export production shall be assessed  
15 against the exporting appropriator in an amount sufficient to  
16 purchase replenishment water from CBMWD or WMWD in the amount  
17 of such excess.

18 (c) For production within SBVMWD or PVMWD:

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

23 8. Socio-Economic Impact Review. The parties have conducted  
24 certain preliminary socio-economic impact studies. Further and  
25 more detailed socio-economic impact studies of the assessment  
26 formula and its possible modification shall be undertaken for the  
27 Appropriator Pool by Watermaster no later than ten (10) years from  
28 the effective date of this Physical Solution, or whenever total

EXHIBIT "H"



1 production by this pool has increased by 30% or more over the  
2 decreed appropriative rights, whichever is first.

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

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

28 (b) Study and Report. At the request of the Pool

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1 Committee, Watermaster shall undertake a survey study of the  
2 utilization of alternate supplemental supplies by members of  
3 the Appropriative Pool which would not otherwise be utilized  
4 and shall prepare a report setting forth the amount of such  
5 alternative supplies being currently utilized, the amount of  
6 such supplies which could be generated by activity within the  
7 pool, and the level of cost required to increase such uses and  
8 to optimize the total supplies available to the basin. Said  
9 report shall contain an analysis and recommendation for the  
10 levy of a necessary Facilities Equity Assessment to accomplish  
11 said purpose.

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

21 (d) Operation of Assessment. If Watermaster determines  
22 that it is appropriate that a Facilities Equity Assessment be  
23 levied in a particular year, the amount of additional supple-  
24 mental supplies which should be generated by such assessment  
25 shall be estimated. The cost of obtaining such supplies,  
26 taking into consideration the investment in necessary  
27 facilities shall then be determined and spread equitably among  
28 the producers within the pool in a manner so that those

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1 producers not providing such additional lower cost supple-  
2 mental water, and to whom a financial benefit will result, may  
3 bear a proportionate share of said costs, not exceeding said  
4 benefit; provided that any producer furnishing such supple-  
5 mental water shall not thereby have its average cost of water  
6 in such year reduced below such producer's average cost of  
7 pumping from the Basin. In so doing, Watermaster shall  
8 establish a percentage of the total production by each party  
9 which may be produced without imposition of a Facilities  
10 Equity Assessment. Any member of the pool producing more  
11 water than said percentage shall pay such Facilities Equity  
12 Assessment on any such excess production. Watermaster is  
13 authorized to transmit and pay the proceeds of such Facilities  
14 Equity Assessment to those producers who take less than their  
15 share of Basin water by reason of furnishing a higher per-  
16 centage of their requirements through use of supplemental  
17 water.

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

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

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

EXHIBIT "H"

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

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

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

7 (1) Record of Land Use Conversion. Any appro-  
8 priator who undertakes, directly or indirectly, dur-  
9 ing any year, to permanently provide water service to  
10 lands which during the immediate preceding five (5)  
11 consecutive years was devoted to irrigated agriculture  
12 may report such change in land use or water service to  
13 Watermaster. Watermaster shall thereupon verify such  
14 change in water service and shall maintain a record and  
15 account for each appropriator of the total acreage  
16 involved and the average annual water use during said  
17 five-year period.

18 (2) Establishment of Allocation Percentage. In  
19 any year in which unallocated Safe Yield water from  
20 the Overlying (Agricultural) Pool is available for such  
21 conversion claims, Watermaster shall establish allocable  
22 percentages for each appropriator based upon the total  
23 of such converted acreage recorded to each such appro-  
24 priator's account.

25 (3) Allocation and Notice. Watermaster shall  
26 thereafter apply the allocated percentage to the total  
27 unallocated Safe Yield water available for special  
28 allocation to derive the amount thereof allocable to

1 each appropriator; provided that in no event shall the  
2 allocation to any appropriator as a result of such  
3 conversion claim exceed 50% of the average annual amount  
4 of water actually applied to the areas converted by such  
5 appropriator prior to such conversion. Any excess water  
6 by reason of such limitation on any appropriator's right  
7 shall be added to Operating Safe Yield. Notice of such  
8 special allocation shall be given to each appropriator  
9 and shall be treated for purposes of this Physical  
10 Solution as an addition to such appropriator's share of  
11 the Operating Safe Yield for the particular year only.

12 (4) Administrative Costs. Any costs of Water-  
13 master attributable to administration of such special  
14 allocations and conversion claims shall be assessed  
15 against appropriators participating in such reporting.

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

22 (a) Method of Operation. Any appropriator producing  
23 water within such designated in lieu area who is willing to  
24 abstain for any reason from producing any portion of such  
25 producer's share of Operating Safe Yield in any year may  
26 offer such unpumped water to Watermaster. In such event,  
27 Watermaster shall purchase said water in place, in lieu of  
28 spreading replenishment water, which is otherwise required to

1 make up for over production. The purchase price for in lieu  
2 water shall be the lesser of:

3 (1) Watermaster's current cost of replenishment  
4 water, whether or not replenishment water is currently  
5 then obtainable, plus the cost of spreading; or

6 (2) The cost of supplemental surface supplies to  
7 the appropriator, less

8 a. said appropriator's average cost of  
9 ground water production, and

10 b. the applicable production assessment  
11 were the water produced.

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

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

22 (b) Designation of In Lieu Areas. The first in lieu  
23 area is designated as the "In Lieu Area No. 1" and consists  
24 of an area wherein nitrate levels in the ground water gen-  
25 erally exceed 45 mg/l, and is shown on Exhibit "J" hereto.  
26 Other in lieu areas may be designated by subsequent order of  
27 Watermaster upon recommendation or approval by Advisory  
28 Committee. Said in lieu areas may be enlarged, reduced or

1 eliminated by subsequent orders; provided, however, that  
2 designation of In Lieu Areas shall be for a minimum fixed  
3 term sufficient to justify necessary capital investment. In  
4 Lieu Area No. 1 may be enlarged, reduced or eliminated in  
5 the same manner, except that any reduction of its original  
6 size or elimination thereof shall require the prior order of  
7 Court.

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

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

28 14. Rules. The Pool Committee shall adopt rules for

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1 administering its program and in amplification of the provisions,  
2 but not inconsistent with, this pooling plan.

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PROOF OF SERVICE

STATE OF CALIFORNIA        )  
COUNTY OF LOS ANGELES    ) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to this action. My business address is Hogan Lovells US LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles, CA 90067.

On August 19, 2010, I caused the foregoing document described as:

**NOTICE OF MOTION AND MOTION REGARDING AMENDMENT OF POOLING PLAN FOR THE NON-AGRICULTURAL (OVERLYING) POOL, ATTACHED TO THE JUDGMENT AS EXHIBIT G**

to be served on the interested parties in this action as follows:

**PLEASE SEE ATTACHMENT**

☒ **BY MAIL.** I sealed said envelope and placed it for collection and mailing following ordinary business practices.

☐ **BY HAND DELIVERY.** I caused such envelope to be delivered by hand to the offices of the addressee(s) following ordinary business practices.

☐ **BY FACSIMILE.** I served such document via facsimile to the facsimile number as indicated above.

☐ **BY E-MAIL.** I caused such document(s) to be served via e-mail.

☐ **BY OVERNIGHT SERVICE.** I caused such document to be delivered by overnight mail to the offices of the addressee(s) by placing it for collection by UPS/Federal Express following ordinary business practices by my firm, to wit, that packages will either be picked up from my firm by UPS/Federal Express and/or delivered by my firm to the UPS/Federal Express office.

☒ **(State)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 19, 2010, at Los Angeles, California.

Kristen Echols  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Signature

# ATTACHMENT

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<p>Chino Basin Watermaster  Kenneth R. Manning, Chief Executive Officer  9641 San Bernardino Road  Rancho Cucamonga, CA 91730  Facsimile: (909) 484-3890  E-Mail: KManning@CBWM.org</p>	

**CHINO BASIN WATERMASTER**  
**Case No. RCV 51010**  
**Chino Basin Municipal Water District v. The City of Chino**

**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 within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On August 20, 2010 I served the following:

**1) NOTICE OF MOTION AND MOTION REGARDING AMENDMENT OF POOLING PLAN  
FOR THE NON – AGRICULTURAL (OVERLYING) POOL, ATTACHED TO THE  
JUDGMENT AS EXHIBIT G**

/\_x\_/ BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by 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.

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

Executed on August 20, 2010 in Rancho Cucamonga, California.

  
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