

CASE NO. E051613

IN THE COURT OF APPEAL, STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT, DIVISION TWO

---

OVERLYING (NON-AGRICULTURAL) POOL,

*Appellants*

vs.

CHINO BASIN WATERMASTER,

*Respondents.*

---

Appeal from the Superior Court for San Bernardino County

Superior Court Case No. RCVRS 51010

STANFORD E. REICHERT-DEPARTMENT C1

---

CHINO BASIN WATERMASTER'S SETTLEMENT  
CONFERENCE STATEMENT

---

BROWNSTEIN HYATT FARBER SCHRECK, LLP

SCOTT S. SLATER (SBN 117317)

MICHAEL T. FIFE (SBN 203025)

21 E. Carrillo Street

Santa Barbara, CA 93101

Tel. No.: (805) 963-7000; Fax: (805) 965-4333

*Attorneys for Respondent, Chino Basin Watermaster*

## **SETTLEMENT CONFERENCE STATEMENT**

### **I. TRIAL COURT NAME AND CASE TITLE AND NUMBER**

San Bernardino Superior Court, Chino Division, Dept. C-1.

Underlying Case Name: *Chino Basin Municipal Water District v. City of Chino*, San Bernardino Superior Court Case No. RCV 51010.

Appeal Name: *Overlying (Non-Agricultural) Pool v. Chino Basin Watermaster* (E051653).

### **II. NAME OF JUDGE AND DATE OF ENTRY OF ORDER**

Judge: The Honorable Stanford E. Reichert

Date of entry of order: June 18, 2010

### **III. DATE NOTICE OF APPEAL WAS FILED**

Notice of Appeal filed August 11, 2010.

### **IV. NAMES AND ADDRESSES OF COUNSEL**

Michael T. Fife, Brownstein Hyatt Farber Schreck, LLP, 21 East Carrillo Street, Santa Barbara, CA 93101

Allen Waverly Hubsch, Hogan Lovells US LLP, 1999 Avenue of the Stars, 15th Floor, Los Angeles, CA 90067

Karin Dougan Vogel, Sheppard, Mullin, Richter & Hampton, 501 West Broadway, Suite 1900, San Diego, CA 92101

John Joseph Schatz, P.O. Box 7775, Laguna Niguel, CA 92607-7775

Steven G. Lee, Reid & Hellyer, P.O. Box 1300, Riverside, CA 92502-  
1300

**V. BRIEF DESCRIPTION OF ORDER APPEALED**

As described below, this appeal arises out of a post-Judgment proceeding in which Appellant filed a motion challenging the sufficiency of a notice of intent to purchase provided under a purchase and sale agreement by Chino Basin Watermaster (“Watermaster”). The Court denied the motion in total.

**Key Court Findings:**

1. This case involves unique and complex relationships that have developed over more than 30 years under the Judgment. (Order, 18:13-14; 24:17.)
2. The Court’s determination that written notice was provided is based upon contract principles and the unique facts of this case. (Order, 28:19-20.)
3. The specific words of the Purchase and Sale Agreement were carefully considered, negotiated and agreed upon. (Order, 18:4-6.)
4. On August 27, 2009, the Watermaster Board approved the written Notice of Intent to Purchase. (Order, 14:17-19.)
5. The approved Notice was an affirmative, clear written Notice of Intent to Purchase which the Court found to be sufficient compliance with the Purchase and Sale Agreement. (Order, 18:15-17; 20:1-2; 21:22-25; 27:13-14.)
6. The Non-Agricultural Pool was present at the August 27, 2009 meeting through its representative Mr. Sage who thereby received direct notice of the intent to purchase the water. (Order, 24:4; 14:9-11.)

7. Direct notice to one individual on behalf of the Non-Agricultural Pool was sufficient. (Order, 24:8-9.)
8. Posting of the agenda package on the Watermaster website was an additional means of providing written notice. (Order, 22:6-8.)
9. Subsequent Watermaster meetings in November 2009 provide further evidence of the Non-Agricultural Pool being provided with written notice of an intent to purchase the water. (Order, 27:25-28.)
10. The Court found that the Agreement is not an option contract. (Order, 17:12-14.) The Court did not analyze the impact of this finding on Watermaster's arguments concerning reasonable notice and substantial compliance, because the Court found satisfactory compliance with the Purchase and Sale Agreement even under a strict compliance standard. (Order, 29:11-14.)

## **VI. STATEMENT OF CASE (PROCEDURAL HISTORY AND MATERIAL FACTS)**

The underlying case is a comprehensive groundwater adjudication of the Chino Groundwater Basin which is the groundwater basin underlying the 220-square mile area that includes the cities of Pomona, Upland, Claremont, Montclair, Chino, Chino Hills, Ontario, Rancho Cucamonga, Fontana, and Norco. The groundwater basin is used as the primary water supply source by numerous public and private entities. The Basin serves as the principal water supply for the populations of the cities described above, as well as significant agricultural operations and numerous industries.

Final Judgment was entered in the case in 1978. As is customary in a groundwater adjudication, the Court retained continuing jurisdiction to amend, amplify or modify any defined terms under the Judgment. (Judgment, ¶ 15.) In order to assist the Court in the exercise of this continuing jurisdiction, the Court created a Watermaster whose purpose is to, “. . . administer and enforce the provisions of [the] Judgment and any subsequent instructions or orders of the Court. . . .” (Judgment, ¶ 16.)

In order to organize the upwards of 400 parties to the adjudication, the Judgment created three “pools” of parties according to the nature of their water use. (Judgment, ¶ 43.) These three Pools are the Overlying (Agricultural) Pool (“Agricultural Pool”) consisting of agricultural water users, the Overlying (Non-Agricultural) Pool (“Non-Agricultural Pool”) consisting of primarily industrial users of water, and the Appropriative Pool, consisting primarily of public water suppliers.

Under Paragraph 31 of the Judgment, any party or any Pool may challenge the propriety of any Watermaster decision or action.

On December 21, 2007, the Court approved a collection of Agreements between the parties known as the “Peace II Measures.” One of these measures was a Purchase and Sale Agreement (“Agreement”) between Watermaster and the Non-Agricultural Pool. The purchase of the water under the Agreement was to be made by Watermaster on behalf of the Appropriative Pool, and it is the Appropriative Pool that has provided the funds to make the purchase.

In order to give the public entities in the Appropriative Pool sufficient time to raise the funds to make the purchase, the Agreement allowed for a two-year

period between the approval of the Agreement and the first payment date. (Order, 5:13-17.) The Agreement contained an explicit condition subsequent requiring Watermaster to provide a Notice of Intent to Purchase by December 21, 2009.

Between 2007 and 2009, drought conditions in the State resulted in a rapid increase in the cost of water in Southern California. By the end of 2009, the price of water had risen such that if the water at issue had been sold at 2009 prices, the Non-Agricultural Pool members collectively would have received an additional \$4.2 million for their water.

On August 27, 2009, the Watermaster Board approved a Notice of Intent to Purchase (“Notice”) in compliance with the terms of the Agreement. The Non-Agricultural Pool is a member of the Watermaster Board and voted to approve the Notice. In January 2010, immediately after the expiration of the December 21, 2009 deadline, the Non-Agricultural Pool took the position that the Notice was defective.

The Non-Agricultural Pool filed a Paragraph 31 Motion (“Motion”) challenging Watermaster’s implementation of the Agreement based on satisfaction of the condition subsequent. The Court denied the Motion in total finding that the August 27, 2009 approval of the Notice satisfied the condition subsequent under the Agreement.

## **VII. ISSUES EXPECTED TO BE RAISED IN BRIEFS**

The Non-Agricultural Pool’s motion was predicated on proving that an actual written document entitled “NOTICE OF INTENT TO PURCHASE” approved at a regular, noticed and open public meeting, published continuously and

actually delivered to the Non-Agricultural Pool representative was not “the” legal notice required under the Purchase and Sale Agreement. However, after a lengthy and detailed review of the record and its recitation of the material facts, the Superior Court found that the Notice of Intent was properly issued and that the Non-Agricultural Pool received notice on multiple grounds. There appear to be relatively few disagreements on the applicable law relevant to the holding of the Superior Court. Because of this, Watermaster believes the appeal is without merit. Consequently, Watermaster cannot predict whether the Non-Agricultural Pool and California Steel will argue that the Court interpreted and applied the applicable case law incorrectly or failed to properly weigh and consider material facts.

DATED: December 6, 2010

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

By 

---

Scott S. Slater  
Michael T. Fife  
*Attorneys for Respondent,  
Chino Basin Watermaster*

**PROOF OF SERVICE**

I am over the age of eighteen years and not a party to the within-entitled action. My business address is Brownstein Hyatt Farber Schreck, LLP, 21 East Carrillo Street, Santa Barbara, CA 93101. On December 6, 2010, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**CHINO BASIN WATERMASTER'S  
SETTLEMENT CONFERENCE STATEMENT**

in a sealed envelope, postage fully paid, addressed as follows:

*See attached Service List*

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

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

Executed on December 6, 2010, at Santa Barbara, California.



---

Maria Klachko-Blair



**IN THE  
COURT OF APPEAL OF THE STATE OF CALIFORNIA  
IN AND FOR THE  
FOURTH APPELLATE DISTRICT**

**SERVICE LIST**

|   |   |
|---|---|
| Allen Waverly Hubsch<br>Hogan Lovells US LLP<br>1999 Avenue of the Stars, 15th Floor<br>Los Angeles, CA 90067 | Karin Dougan Vogel<br>Sheppard, Mullin, Richter & Hampton<br>501 West Broadway, Suite 1900<br>San Diego, CA 92101 |
| John Joseph Schatz<br>P.O. Box 7775<br>Laguna Niguel, CA 92607-7775   | Steven G. Lee<br>Reid & Hellyer<br>P.O. Box 1300<br>Riverside, CA 92502-1300                                      |

4TH CIVIL No.

**E051653**

# **In the Court of Appeal**

OF THE

**State of California**

---

FOURTH APPELLATE DISTRICT  
DIVISION TWO

---

NON-AGRICULTURAL (OVERLYING) POOL COMMITTEE  
and CALIFORNIA STEEL INDUSTRIES, INC.  
*Defendants and Appellants,*

v.

CHINO BASIN MUNICIPAL WATER DISTRICT, et al.  
*Plaintiffs and Respondents.*

---

APPEAL FROM THE SAN BERNARDINO SUPERIOR COURT  
HONORABLE STANFORD E. REICHERT, JUDGE  
Case No. RCVRS 51010

---

## **SETTLEMENT CONFERENCE STATEMENT**

---

HOGAN LOVELLS US LLP  
ALLEN W. HUBSCH, CAL. BAR No. 136834  
1999 AVENUE OF THE STARS, 15<sup>TH</sup> FLOOR  
LOS ANGELES, CALIFORNIA 90069  
TEL: 310-785-4600

*Attorneys for Appellant NON-AGRICULTURAL (OVERLYING) POOL COMMITTEE*

Appellant Non-Agricultural (Overlying) Pool Committee (NAP) submits the following Settlement Conference Statement, consistent with the requirements of the Local Rules of the California Courts of Appeal, Fourth Appellate District, Division Two, local rule 4(d)(2).

1. Trial Court: San Bernardino County Superior Court  
Case Title: Chino Basin Municipal Water District v. City of Chino, et al.  
Case Number: RCVRS51010
2. Honorable Stanford E. Reichert, Judge Presiding  
Order entered June 18, 2010
3. Notice of Appeal filed August 11, 2010
4. Names, addresses and telephone numbers of counsel for all parties to the appeal

John J. Schatz, Esq.  
P.O. Box 7775  
Laguna Niguel, CA 92607-7775  
Telephone: (949) 683-0398  
Facsimile: (949) 305-6865  
*Attorneys for Appropriative Pool*

Allen W. Hubsch, Esq.  
Hogan Lovells US LLP  
1999 Avenue of the Stars, Suite 1400  
Los Angeles, CA 90067  
Telephone: (310) 785-4600  
*Attorneys for Non-Agriculture Pool*

Scott Slater, Esq.  
Michael T. Fife, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
21 East Carrillo Street  
Santa Barbara, CA 93101-2706  
Telephone: (805) 963-7000  
*Attorneys for Chino Basin Watermaster*

Karin Dougan Vogel, Esq.  
Sheppard, Mullin Richter & Hampton LLP  
501 West Broadway, 19<sup>th</sup> Floor  
San Diego, California 92101-3598  
Telephone (619) 338-6500  
*Attorneys for California Steel Industries, Inc.*

5. Description of Order Appealed From: A post-judgment motion for declaratory relief.
6. Statement of the Case:

By a judgment entered in 1978, the Superior Court adjudicated the rights of numerous parties to produce groundwater from the Chino groundwater basin. The judgment created three pools of similarly situated producers of groundwater – the Appropriative Pool, the Non-Agricultural Pool and the Agricultural Pool. The Appropriative Pool has historically consisted mainly of municipal utilities. The Non-Agricultural Pool has historically consisted mainly of industrial users.

The judgment also created a so-called “Watermaster” to administer the judgment. The Watermaster is not a disinterested special master or referee. The Watermaster is currently a 9-member board composed of representatives of the 3 pools, plus 2 other

municipal utilities. Four of the 9 members of the Board are members of the Appropriative Pool. The 2 municipal utilities who are not members of the Appropriative Pool have political and other affinities with the Appropriative Pool. The Non-Ag Pool has only 1 seat on the 9-member Board. Prior to 2008, an independent Special Referee existed to advise the Superior Court. In 2008, upon motion by members of the Appropriative Pool, the Special Referee was discharged. Under the current governing structure of Watermaster, the Appropriative Pool dominates the affairs of Watermaster.

In 2007, the parties to the judgment entered into a post-judgment settlement agreement, known as the "Peace II Agreement", to resolve numerous disputes and uncertainties that then existed. The Peace II Agreement included, among other things, provisions allowing Watermaster, at the direction of the Appropriative Pool, and prior to December 21, 2009, to exercise an option to purchase pre-2007 storage water then owned by 10 members of the Non-Ag Pool (the "Peace II Option Agreement"). The Peace II Option Agreement is attached hereto.

As stated previously, the Non-Ag Pool consists mainly of industrial companies. The representatives of these members are located in offices throughout the United States. Although the Non-Ag Pool has, according to Watermaster's roster, more than 20 members, for many years prior to the dispute in this action, not more than two members have attended any one meeting of the Non-Agricultural Pool Committee or of the Watermaster Board.

Against this known backdrop of non-attendance at meetings by members of the Non-Ag Pool, the Peace II Option Agreement specifically required that Watermaster provide "written notice" of exercise of the option to the members of the Non-Ag Pool prior to December 21, 2009. Under the Judgment, written notice was and is required to be delivered by U.S. mail.

In early January 2010, a member of the Non-Ag Pool Committee who was entitled to receive written notice of exercise of the option, having not received written notice, asked the Watermaster CEO and Watermaster counsel if the written notice had been sent. The CEO and counsel immediately undertook a revisionist history. They advised the members of the Non-Ag Pool shortly after the question was raised that Watermaster had provided notice via an August 2009 e-mail.

In this revisionist history, Watermaster relies upon an e-mail sent in early August 2009 stating that an agenda package for the August 27, 2009 meeting of the Watermaster Board was available on the Watermaster website. The August e-mail was in the same generic form as e-mails sent to announce the availability of Watermaster Board agenda packages every month for many prior months. The e-mail did not mention the Peace II Agreement or the option. The e-mail was apparently sent to hundreds of parties to the judgment, including some -- but less than half -- of the 10 members of the Non-Ag Pool

who were entitled to receive written notice of exercise of the option. The e-mail related to a meeting of the Watermaster Board, not of the Non-Ag Pool. The e-mail had no attachment.

None of the 10 members of the Non-Ag Pool had any reason to believe that the agenda package in question contained a notice of exercise of the option. If any representative of the 10 members of the Non-Ag Pool had tried to find the agenda package on the Watermaster's website in response to this generic notice, he or she would have had to search through many dozens of documents in various folders to find the agenda. If he or she had found the agenda, he or she would have found a 39.50 MB pdf file that would be, as a practical matter, very difficult or daunting to open or download. Among more than a hundred pages in the pdf was a single proposed "form" of notice for the Board's consideration. In other words, even the agenda package itself would have revealed that the notice had not yet been given, but only its "form" was being considered.

The Watermaster also contends that a copy of the agenda package was mailed to Bob Bowcock, Chairman of the Non-Ag Pool Committee and representative of Vulcan Materials. Vulcan Materials was not one of the 10 members of the Non-Ag Pool who was entitled to receive written notice. The Watermaster also contends that a copy of the agenda package was "available" to Kevin Sage, Vice Chairman of the Pool Committee and alternate representative of Vulcan Materials, because Mr. Sage attended the August 27 Watermaster Board meeting. At the August 27 meeting, the "form" of notice was approved by the Board, but the Board did not approve its contents, and expressly referred the notice back to the Appropriative Pool Committee for further consideration and a "separate motion". In other words, even a person who attended the meeting would have concluded that the notice had not been given.

The terms of the option required a payment by Watermaster to the 10 members of the Non-Ag Pool within 30 days after written notice of exercise of the option was provided. Watermaster first tendered payment in mid-January, after the December 21, 2009 deadline for exercise of the option had passed, and more than 5 months after the notice was allegedly given.

In March 2010, the Non-Ag Pool made a post-judgment motion for a declaration that Watermaster, as agent for the Appropriative Pool, had not exercised the option because Watermaster failed to give written notice of exercise to the 10 members of the Non-Ag Pool prior to December 21, 2009. In June 2010, the Superior Court denied the Non-Ag Pool's motion.

7. Issues on Appeal:

A. Option Required Strict Compliance

The Non-Agricultural Pool seeks de novo review whether Watermaster's right to

purchase the pre-2007 storage water was an option, or an ordinary purchase right. Under California law, an option must be exercised in "strict compliance" with its terms.

An option is "the right (but not the obligation) to buy or sell a given quantity of securities, commodities or other assets at a fixed price within a specified time." Black's Law Dictionary (9<sup>th</sup> Ed. 2009). Under California law, the definition is the same. An option "is a contract by which an owner gives another the exclusive right to purchase his property for a stipulated price within a specified time". County of San Diego v. Miller, 13 Cal.3d 684, 688 (1975).

By Order entered on December 21, 2007, Judge Gunn (a prior judge in the Superior Court) ordered Watermaster to explain the Peace II Option Agreement for the purpose of resolving, definitively, interpretation issues relating to the Peace II Option Agreement. In Watermaster's January 31, 2008 brief to Judge Gunn, Watermaster stated:

In its Order approving the Peace II Measures and directing Watermaster to proceed in accordance with Watermaster Resolution 07-05, the Court set forth several conditions subsequent, the first two of which are relevant to this pleading. The first condition was that Watermaster, "prepare and submit a brief to explain the amendments to Judgment Paragraph 8 and Exhibit 'G'." This request arises out of concerns expressed by the Special Referee regarding interpretation of the amendments in the event of future conflicts regarding their intended meaning.

In Watermaster's January 31, 2008 brief, Watermaster definitively advised the Superior Court that the purchase right contained in the Peace II Option Agreement was an option:

As for the quantities held in storage as of June 30, 2007 (less the special transfer quantity), the members of the Non-Agricultural Pool have exercised their discretion to option the water to Watermaster under the defined terms of the Purchase and Sale Agreement for the Purchase and Sale of Water by Watermaster from the Overlying (Non-Agricultural) Pool (the "Purchase and Sale Agreement"). Accordingly, the members of the Non-Agricultural Pool have exercised their discretion to make the water available to Watermaster, and Watermaster now has discretion under the defined terms of the option to obtain the water for use either in connection with a storage and recovery project or for desalter replenishment.

The option gives Watermaster two years from the date of Court approval of the Peace II Measures (December 21, 2009) to evaluate whether it requires the water for the potential purposes. Both Watermaster and the members of the Non-Agricultural Pool are provided certainty of financial terms with a negotiated incremental increase in the price for water and further adjusted by CPI as a hedge against inflation.

In the event the Watermaster does not exercise its option to purchase the water held in storage and Watermaster and members of the Non-Agricultural Pool do not mutually agree to otherwise extend the date of the option, then the stored water will be made available for purchase by the members of the Appropriative Pool under the procedures set forth in the Judgment Amendment Paragraph 9(iv). . . .

[I]n the event Watermaster does not exercise the option to the members of the Appropriative Pool. . . . The earmark helped to address concerns expressed over the delays between the time the original financial terms were negotiated for the Purchase and Sale Agreement and the time at which the option may be finally exercised by Watermaster. . . .

However, it should be noted that there is no requirement that Watermaster purchase the water made available and any unsubscribed quantities will be apportioned back among the members of the Non-Agricultural Pool in proportion to the amount each member made available. . . .

According to the official minutes of the January 22, 2009 Board meeting, Mr. Slater again conceded that the Peace II Option Agreement was an option:

1) Watermaster can exercise the option and buy the water and use it for a Storage & Recovery Agreement or, 2) Watermaster can use it in connection with Desalter replenishment. The agreement has a two year shelf life; and that agreement would expire at the end of 2009. If Watermaster fails to exercise its option rights to purchase the water in this calendar year, that water would then default back and be made available to the Appropriators under another provision of the Peace II Agreement.

In a letter dated January 14, 2010 from Watermaster CEO Ken Manning to Mr. Bowcock, Mr. Manning also conceded that the Peace II Option is an option:

In accordance with this provision, the Appropriators have exercised their option to purchase the stored water.

On January 17, Mr. Manning sent 10 additional letters to the 10 members of the Non-Ag Pool that owned the Non-Ag Storage Water, purporting to tender payment to each of them. These 10 additional letters were sent to the 10 respective addresses of the 10 members, and contained language identical to the January 14 letter:

In accordance with this provision, the Appropriators have exercised their option to purchase the stored water. The attached payment represents one quarter of the full payment.

The fact that the option in this case was contained in a larger agreement, some covenants of which had already been performed, does not affect its characterization as an option. For example, in Bekins, the option at issue was contained in an office lease with a 10-year term. Bekins Moving & Storage Co. v. Prudential Insurance Company of America, 176 Cal.App.3d 245, 248 (2<sup>nd</sup> Dist. 1986). The option was not exercisable, and the dispute did not arise, until the end of the term, after ten years of mutual or bilateral performance of the other covenants in the lease. Id. at 248-249. In Simons, the option at issue was contained in a residential lease with a two-year term, and again the option at issue was not exercisable, and the dispute did not arise, until the end of the term. Simons v. Young, 93 Cal.App.3d 170, 174-175 (4<sup>th</sup> Dist. 1979). In Hayward, the option at issue was contained in an industrial lease with a 1-year term, and again the option was not exercisable, and the dispute did not arise until the end of the term. Hayward Lumber & Inv. Co. v. Construction Products Corp., 117 Cal. App. 2d 221, 223-225 (2<sup>nd</sup> Dist. 1953). In none of these cases did the fact that the option was contained in an agreement that had many other covenants that were mutual or bilateral, and had been performed, even over a lengthy period, render the option contained in the agreement something other than an option. In each of these cases, the Courts held that the optionor was subject to strict or exact compliance (not substantial performance) in connection with exercise of the option. Hayward, 117 Cal.App.2d at 229; Bekins, 176 Cal.App.3d at 224; Simons, 93 Cal.App.3d at 182.

Well-established California authority requires strict compliance with the notice requirements in an option contract. "An option is an offer by which a promisor binds himself in advance to make a contract if the optionee accepts the terms and within the time designated in the option. Since the optionor is bound while the optionee is free to accept or not as he chooses, courts are strict in holding an optionee to exact compliance with the terms of the option." Hayward, 117 Cal.App.2d at 229; Simons, 93 Cal.App.3d at 182; Bekins, 176 Cal.App.3d at 229. "[W]here, as here, the acceptance or the 'election' or the 'exercise' of the option is by the terms of the contract to be made in a particular manner, it must be strictly so made in order to constitute a valid acceptance." Callisch v. Franham, 83 Cal.App.2d 427, 430 (3<sup>rd</sup> Dist. 1948) (option to purchase real estate).

In sum, the Peace II Option Agreement provided Watermaster with an option to purchase the Non-Ag Pool's pre-2007 storage water, and strict compliance with the notice requirements was required.



B. Written Notice Was Required By U.S. Mail

The Non-Agricultural Pool seeks de novo review whether written notice by U.S. mail was required and given.

The Peace II Option Agreement specifically required that Watermaster provide “written Notice of Intent to Purchase the Non-Agricultural (Overlying) Pool water”. Civil Code § 1582 states:

If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

Section 59 of the Judgment states:

Delivery to or service upon any party or active party by the Watermaster, by any other party, or by the Court, of any item required to be served upon or delivered to such party or active party under or pursuant to the Judgment shall be made personally or by deposit in the United States mail, first class, postage prepaid, addressed to the designee and at the address in the latest designation filed by such party or active party.

Section 31(a) of the Judgment states:

(a) Effective Date of Watermaster Action. Any action, decision or rule of Watermaster shall be deemed to have occurred or been enacted on the date on which written notice thereof is mailed.

Pursuant to Section 59, Watermaster was required to give the written Notice of Intent to Purchase in writing by U.S. mail. Under Section 31(a), the delivery of notice in any manner other than U.S. mail is ineffective. Making the notice “available” on a website or on a table at a Board meeting (that is, if the unapproved “form” contained in the agenda package constituted notice) is not written notice by U.S. mail.

In Bourdieu v. Baker, 6 Cal.App.2d 150 (4<sup>th</sup> Dist. 1935), a case involving an option to purchase real property, the Court held that failure to deliver notice of exercise directly to the optionor was fatal where the whereabouts of the optionor were known. In Bourdieu, the Court found persuasive that “There is no evidence in the record that plaintiff could not be found.” Id. at 158. In this case, in fact, it is not disputed that Watermaster knew the U.S. mail addresses of all 10 members of the Non-Ag Pool entitled to written notice. In Bourdieu, the optionee had deposited money and closing instructions into escrow with a bank. The Court held that making the money “available” was irrelevant where no notice thereof had been give to the optionor. Among other things, “no duty rested upon [the optionor] to go to that bank or to make demand for the

money.” Id. at 160-161. Likewise, in the instant case, the 10 members of the Non-Ag Pool had no duty to separately sift through the hundreds of documents stored from time to time electronically on Watermaster’s website over the two-year period of the option. The burden was upon Watermaster to give a written notice, which Watermaster clearly had the ability to do. Making the notice “available” is not legally sufficient and not reasonable under the circumstances.

C. Clear And Unambiguous Standard Not Met

The Non-Agricultural Pool seeks de novo review whether clear and unambiguous notice was given.

Notice of exercise of an option must be clear and unambiguous in order to be effective. “A clear and unambiguous notice, timely given, and in the form prescribed by the contract, is essential to the exercise of an option”. Contracts, Corpus Juris Secundum (June 2009) (option to terminate). The party exercising an option must inform the optionor “in unequivocal terms of his unqualified intention to exercise his option”. Hayward, 117 Cal.App.2d at 227-228; Bekins, 176 Cal.App.3d at 251.

If Watermaster had given a written notice that was clear and unambiguous, the exhibits in the Superior Court would not constitute over 1,000 pages. The volume and extent of the paperwork filed by Watermaster in connection with this motion, by themselves, are sufficient evidence that if notice was given by Watermaster, such notice was not “clear and unambiguous”.

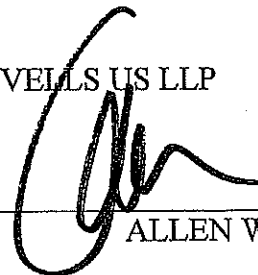
D. CSI’s Settlement Conference Statement

In addition to the foregoing, the Non-Agricultural (Overlying) Pool Committee joins in the Settlement Conference Statement filed on or about the date hereof by California Steel Industries, Inc.

Dated: December 8, 2010

HOGAN LOVELLS US LLP

By



ALLEN W. HUBSCH

Attorneys for Appellant  
Non-Agricultural (Overlying) Pool Committee

September 21, 2007

**Attachment "G"**

**PURCHASE AND SALE AGREEMENT FOR  
THE PURCHASE OF  
WATER BY WATERMASTER  
FROM OVERLYING (NON-AGRICULTURAL) POOL**

THIS AGREEMENT (Agreement) is dated 27th day of September, 2007, regarding the Chino Groundwater Basin.

**RECITALS**

WHEREAS, the Peace Agreement expressly authorized a transfer of water from the Overlying (Non-Agricultural) Pool to Watermaster for use as replenishment for the Desalters and for use in connection with a Storage and Recovery Program;

WHEREAS, Watermaster is evaluating its replenishment needs under the Judgment and several Storage and Recovery opportunities;

WHEREAS, Watermaster desires to purchase and the Overlying (Non-Agricultural) Pool desires to sell, all of the Non-Agricultural Pool water held in storage as of June 30, 2007;

WHEREAS, Watermaster is proposing an amendment to the Overlying (Non-Agricultural) Pool Pooling Plan set forth in Exhibit "G" to the Judgment whereby members of the Pool may offer water for purchase by Watermaster and thence the members of the Appropriative Pool under the process set forth therein;

NOW THEREFORE, in consideration of the mutual promises specified herein and by conditioning their performance under this Agreement upon the conditions precedent set forth herein, and for other good and valuable consideration, the Parties agree as follows:

A. **Peace Agreement Transfer.** This purchase and sale agreement is in accordance with Section 5.3(e) of the Peace Agreement that provides that "parties to the Judgment with rights within the Non-Agricultural (Overlying) Pool shall have the additional rights to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter or for a Storage and Recovery Program."

B. **Quantity.** The quantity of water being made available to Watermaster by the Non-Agricultural (Overlying) Pool on a one-time basis ("Storage Transfer Quantity") is equivalent to the total quantity of water held in storage by the members of the Overlying (Non-Agricultural) Pool held in storage on June 30, 2007 ("Storage Quantity"), less a ten percent dedication for the purpose of Desalter Replenishment, less the quantity of water transferred pursuant to paragraph I below ("Special Transfer Quantity").

September 21, 2007

C. **Notice.** Within twenty-four months of the final Court approval of this Agreement ("Effective Date"), and only with the prior approval of the Appropriative Pool, Watermaster will provide written **Notice of Intent to Purchase** the Non-Agricultural (Overlying) Pool water pursuant to Section 5.3(a) of the Peace Agreement, which therein identifies whether such payment will be in connection with Desalter Replenishment or a Storage and Recovery Program.

D. **Payment.** Commencing thirty (30) calendar days from the Notice of Intent to Purchase ("Payment Date") Watermaster will pay to the Non-Agricultural Overlying Pool for each acre-foot of the Storage Transfer Quantity in accordance with the following schedule as the schedule is adjusted for inflation by the consumers price index ("cpi") for San Bernardino County from May 31, 2006 until the Payment Date.:

1. \$215 times 1/4 of the Storage Transfer Quantity on the Payment Date.
2. \$220 times 1/4 of the Storage Transfer Quantity on the first anniversary of the Payment Date.
3. \$225 times 1/4 of the Storage Transfer Quantity on the second anniversary of the Payment Date
4. \$230 time 1/4 of the Storage Transfer Quantity on the third anniversary of the Payment Date.

However, all payments provided for herein, including inflation adjustments, are subject to an express price cap and will not exceed ninety-two (92) percent of the then prevailing MWD replenishment rate in any year.

E. **Dedication to Desalter Replenishment.** Upon Watermaster's issuance of its written **Notice of Intent to Purchase**, and Watermaster's tender of its initial payment on the Payment Date, ten (10) percent of the Storage Quantity will be dedicated for replenishment of Desalter production without compensation. Watermaster will receive but will not pay for this dedication.

F. **Use and Distribution.** Watermaster will take possession of the water made available pursuant to this Agreement and make use of and distribute the water made available in a manner consistent with Section 5.3(e) of the Peace Agreement.

G. **Condition Precedent.** This Agreement and the Parties performance hereunder are expressly conditioned upon Court approval of this Agreement.

H. **Early Termination.** This Agreement will expire and be of no further force and effect if: Watermaster does not issue its **Notice of Intent to Purchase** in accordance with Paragraph D above within twenty-four (24) months of Court approval. Upon Watermaster's failure to satisfy the condition subsequent, the rights of the Non-Agricultural (Overlying) Pool will remain unaffected and without prejudice as result of their having executed this Agreement except that in the event of Early Termination, the Storage Transfer Quantity, will then be made available for purchase by Watermaster and thence the members of the Appropriative Pool in accordance with Paragraph 9.(iv) of Amended Exhibit G, the Overlying (Non-Agricultural) Pool,

September 21, 2007

Pooling Plan, including the requirement of a ten percent dedication towards Desalter replenishment.

**I. One Time Transfer in Furtherance of the Physical Solution and in Aid of Desalter Replenishment ("Special Transfer Quantity")**. In consideration of the Overlying (Non-Agricultural) Pool members' irrevocable commitment made herein and it the Peace II Measures Watermaster will purchase and immediately make available the quantity of 8,530 acre-feet (less a ten percent dedication to Watermaster for Desalter Production) to the San Antonio Water Company (SAWCO) and Vulcan Materials, a member of the Overlying (Non-Agricultural) Pool under terms established as between those parties. This One Time Transfer is in addition to and without prejudice to the discretionary rights of the members of the Overlying (Non-Agricultural) Pool to make available and Watermaster and members of the Appropriative Pool to purchase water as Physical Solution transfers. No member of the Appropriative Pool, other than SAWCO assumes any responsibility for the purchase of this Special Transfer Quantity from Vulcan.

IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated:

NON-AGRICULTURAL OVERLYING POOL

By \_\_\_\_\_

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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 December 8, 2010, I caused the foregoing document described as:

## SETTLEMENT CONFERENCE STATEMENT

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

**[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.

**[X]** (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. **Executed on December 8, 2010**, at Los Angeles, California.

Kristen Echols  
Print Name

Signature

PARTY AND ATTORNEY INFORMATION

Scott S. Slater, Esq.  
Michael T. Fife, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
21 East Carrillo Street  
Santa Barbara, CA 93101  
Telephone: (805) 963-7000  
Facsimile: (805) 965-4333

*Attorneys for Chino Basin Watermaster,  
Respondant*

John Schatz, Esq.  
Attorney at Law  
P.O. Box 7775  
Laguna Niguel, CA 92607-7775  
Telephone: (949) 683-0398  
Facsimile: (949) 305-6865

*Attorneys for Appropriative Pool, Respondant*

Karin Dougan Vogel, Esq.  
Geoffrey K. Willis, Esq.  
Sheppard, Mullin, Richter & Hampton  
501 West Broadway, Suite 1900  
San Diego, CA 92101

*Attorneys for California Steel Industries, Inc.,  
Movant and Appellant*

4TH CIVIL No.

**E051653**

# **In the Court of Appeal**

OF THE

**State of California**

---

FOURTH APPELLATE DISTRICT  
DIVISION TWO

---

NON-AGRICULTURAL (OVERLYING) POOL COMMITTEE  
and CALIFORNIA STEEL INDUSTRIES, INC.  
*Defendants and Appellants,*

v.

CHINO BASIN MUNICIPAL WATER DISTRICT, et al.  
*Plaintiffs and Respondents.*

---

APPEAL FROM THE SAN BERNARDINO SUPERIOR COURT  
HONORABLE STANFORD E. REICHERT, JUDGE  
Case No. RCVRS 51010

---

## **SETTLEMENT CONFERENCE STATEMENT**

---

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
KARIN DOUGAN VOGEL, CAL. BAR No. 131768  
501 WEST BROADWAY, 19TH FLOOR  
SAN DIEGO, CALIFORNIA 92101-3598  
TEL: 619-338-6500

*Attorneys for Appellant CALIFORNIA STEEL INDUSTRIES, INC.*



Appellant California Steel Industries, Inc. (CSI) submits the following Settlement Conference Statement, consistent with the requirements of the Local Rules of the California Courts of Appeal, Fourth Appellate District, Division Two, local rule 4(d)(2).

1. **Trial Court:** San Bernardino County Superior Court  
**Case Title:** Chino Basin Municipal Water District v. City of Chino, et al.  
**Case Number:** RCVRS51010
2. **Presiding Judge:** Honorable Stanford E. Reichert
3. **Notice of Appeal filed:** August 11, 2010
4. **Names, addresses and telephone numbers of counsel for all parties to the appeal:**

John J. Schatz, Esq.  
P.O. Box 7775  
Laguna Niguel, CA 92607-7775  
Telephone: (949) 683-0398  
Facsimile: (949) 305-6865  
*Attorneys for Appropriative Pool*

Allen Hubsch, Esq.  
Hogan Lovells US LLP  
1999 Avenue of the Stars, Suite 1400  
Los Angeles, CA 90067  
Telephone: (310) 785-4600  
Facsimile: (310) 785-4601  
*Attorneys for Non-Agriculture Pool*

Scott Slater, Esq.  
Michael T. Fife, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
21 East Carrillo Street  
Santa Barbara, CA 93101-2706  
Telephone: (805) 963-7000  
Facsimile: (805) 965-4333  
*Attorneys for Chino Basin Watermaster*

Karin Dougan Vogel, Esq.  
Sheppard, Mullin, Richter & Hampton LLP  
501 West Broadway, 19th Floor  
San Diego, CA 92101  
Telephone: (619) 338-6500  
Facsimile: (619) 234-3815  
*Attorneys for California Steel Industries, Inc.*

5. **Description of Order Appealed From:**

In 1978, the court entered a judgment in this action that resolved disputes and provided an on-going structure for the interactions and rights of three competing "pools" of water users in the Chino Basin – the Appropriative Pool, the Agricultural Pool, and the Non-Agricultural (Overlying) Pool ("Non-Ag Pool"). Later, a nine-member board was set up to act as Watermaster. The judgment specifically provides for continuing jurisdiction by the superior court over "[a]ll actions, decisions or rules of Watermaster . . . on timely motion by any party, . . . or any Pool Committee." (1978 Judgment, ¶ 31.) Further, the judgment provides that the resulting decision of the superior court is "an appealable supplemental order in this case." (*Id.* at ¶ 31(e).) In March of 2010, the Non-Ag Pool brought a post-judgment motion for a declaration that Watermaster, acting on

behalf of the Appropriative Pool, had not properly exercised an option to purchase storage water owned by the Non-Ag Pool and thus had improperly seized water from some of the Non-Ag Pool members. California Steel Industries, Inc., a member of the Non-Ag Pool, filed a joinder in that motion. In its order dated June 18, 2010, the superior court interpreted the operative written agreement between the parties, and declared that the Appropriative Pool, through Watermaster, complied with its notice requirement found in paragraph C of the agreement. Because the court found Watermaster complied with the notice requirement in paragraph C, the court found the default alternative provided in paragraph H of the agreement did not come into play. Thus, the court denied the Non-Ag Pool and CSI's motion. CSI and the Non-Ag Pool appealed from the June 18 order.

#### 6. Statement of the Case:

The 1978 judgment recognized the existence of the three competing groups of water users in the Chino Basin. The three pools continue to have distinct, and sometimes conflicting, interests. The Non-Ag Pool, the smallest by far of the three pools, was allowed only one member on the nine member Watermaster Board and three members on the 39-member Advisory Committee to Watermaster. The Agricultural Pool, next in size, has two members on the Watermaster Board and seven members on the Advisory Committee. By far the largest of the three pools, the Appropriative Pool holds four positions on the Watermaster Board and has 26 members on the 39-member Advisory Committee. In this system, the Appropriative Pool dominates the financial affairs of Watermaster.

In a December 21, 2007 Order, the superior court authorized Watermaster to proceed in accordance with the so-called "Peace II Agreement," which addresses and resolves issues related to Watermaster's adoption and implementation of an Optimum Basin Management Program for the Chino Basin. One aspect of the Peace II Agreement included an agreement ("Agreement") for the purchase by Watermaster of certain storage water from the Non-Ag Pool ("Non-Ag Storage Water"). (See Exhibit 1, attached hereto.) This Agreement, attached to the Peace II Agreement as exhibit G, allows Watermaster the option to purchase the water from the Non-Ag Pool members. To trigger the purchase and sale under the option, paragraph C of the Agreement required Watermaster to comply with certain notice requirements, as follows:

"C. **Notice.** Within twenty-four months of the final Court approval of this Agreement ("effective Date"), and only with the prior approval of the Appropriative Pool, Watermaster will provide written **Notice of Intent to Purchase** the Non-Agricultural (Overlying) Pool water pursuant to Section 5.3(a) of the Peace Agreement, which therein identifies whether such payment will be in connection with Desalter Replenishment or a Storage and Recovery Program."

(Emphasis in original.) Thus, paragraph C clearly requires that the written Notice of Intent to Purchase (1) must be provided no later than December 21, 2009 (the second anniversary of court approval of the Peace II Agreement); and (2) must specifically identify the intended use of the Non-Ag Storage Water, either desalter replenishment or a storage and recovery program.

If Watermaster exercised its option to purchase the Non-Ag Storage Water by timely providing the required notice, then pursuant to paragraph D of the agreement, the price for the water purchased would be approximately \$215 per acre-foot, payable in four annual installments. If Watermaster failed to timely exercise the option by providing the required written notice, then paragraph H of the Agreement controlled. Paragraph H provides that if Watermaster did not issue its Notice of Intent to Purchase "within twenty-four (24) months of Court approval" then the Agreement would "expire and be of no further force and effect." Notwithstanding the expiration of the Agreement, the rights of the Non-Ag Pool "will remain unaffected and without prejudice as a result of their having executed this Agreement except that in the event of Early Termination, the Storage Transfer Quantity, will then be made available for purchase by Watermaster and thence the members of the Appropriative Pool" in accordance with a provision of another document (the Non-Ag Pool Pooling Plan). That provision allows for Watermaster, on behalf of the Appropriative Pool, to purchase water made available by the Non-Ag Pool water "on an annual basis at 92% of the then-prevailing 'MWD Replenishment Rate'." The MWD Replenishment Rate had increased to \$366 per acre-foot by September 1, 2009. Because of the increased spread between the 2007 price and the 2009 MWD Replenishment Rate, Watermaster and the Appropriative Pool stood to benefit approximately \$5 million by timely exercising their option to purchase the Non-Ag Pool Storage Water pursuant to paragraph C, rather than by allowing that notice period to lapse, thus triggering paragraph H.

The Appropriative Pool's problems began in 2008, when it began formulating a complicated strategy to exploit the margin it might enjoy by purchasing the Non-Ag Pool's Storage Water. Rather than use the water for desalter replenishment or a storage and recovery program within the Basin, as required by the Peace II Agreement, the Appropriative Pool proposed to make the water available at an auction to speculative investors from as far away as New York City, Texas and Colorado, who would pay even more for the water than the MWD Replenishment Rate. The auction was initially scheduled to occur on November 4, 2009, and Watermaster set a minimum bid of \$600 per acre-foot for the water. Watermaster CEO Ken Manning, however, publicly stated that he expected to receive bids up to \$1,000 per acre-foot. After using a portion of the windfall from the auction to pay the Non-Ag Pool members for the water, the potential profit to the Appropriative Pool could still be as high as \$30 million. The Appropriative Pool claimed the auction sale would be part of a "storage and recovery program" even though the water might be physically transported outside the Chino Basin for consumptive use elsewhere.

At an Appropriative Pool meeting on August 13, 2009, the official meeting minutes indicate the Watermaster CEO recognized that "as part of the Peace II Agreement in the purchase of the Overlying Non-Agricultural water one of the requirements was to issue an official notice of intent to Purchase." (Emphasis added.) Thus, Watermaster staff took steps preliminary to issuing an official notice by presenting a form of the notice at the August 13 meeting. According to the meeting minutes:

Staff has proposed to put the purchase date out as far as possible and still be in compliance with the Purchase and Sale Agreement due to not knowing the exact date of the auction; the proposed date is December 18, 2009. [Watermaster counsel Michael] Fife stated that the primary issue is that the notice has to identify how the water will be used.

(Emphasis added.) The minutes show the Appropriative Pool voted to use 2,652 acre-feet of the Non-Ag Storage Water for desalter replenishment and 36,000 acre feet for the "auction process," a term which the minutes do not define.

The form of notice addressed at the Appropriative Pool meeting was considered by the Watermaster Board two weeks later, on August 27, 2009. At that time, the Watermaster CEO Ken Manning reminded the Board of the December 21, 2009 deadline to give written notice of the intent to purchase the storage water. In addition, the Board rejected the allocation of the water approved by the Appropriative Pool and referred the allocation "back to the Appropriative Pool for further consideration and a separate motion." (Emphasis added.) Thus, the Board effectively rejected the form of notice prepared by Watermaster staff. At the October 1, 2009, Appropriative Pool meeting, its members could not agree on the intended use of the Non-Ag Storage Water, and instead voted to table the issue for 30 days for further discussion and Watermaster staff recommendations.

At the November 5, 2009, Appropriative Pool meeting, Watermaster again reminded the Appropriative Pool of the need to give notice by December 21, 2009. In addition, the staff told the Appropriative Pool that the auction had been postponed indefinitely due to concerns by potential bidders about "recovery issues." Thus, the Appropriative Pool considered and approved a so-called "Plan B", whereby Watermaster "under the direction of the Appropriative Pool, will send the Notice of Intent to Purchase pursuant to the Purchase and Sale Agreement," Watermaster would hold the purchased water "in trust for the members of the Appropriative Pool," and if the water was not used in a storage and recovery program or for desalter replenishment within 3 years, then the Appropriative Pool could elect to distribute the water among its members. Despite its approval of "Plan B," neither the Appropriative Pool nor Watermaster sent any Notice of Intent to Purchase to the Non-Ag Pool or any of its members thereafter. Plan B would have been invalid in any event, as it required the Watermaster to hold the water in trust, which the court-approved rules and regulations preclude it from doing.

The Watermaster Board met on November 19, and Watermaster staff again reminded the Board that the written Notice of Intent to Purchase was still outstanding. The plan continued to be to give notice at the last possible date, before December 21, 2009.

December 21, 2009 came and went, and no notice was given. Two weeks later, during a public meeting of the Appropriative Pool on January 7, 2010, David Penrice, a member of the Non-Ag Pool asked Watermaster staff about whether and when the required written Notice of Intent to Purchase had been provided. Watermaster CEO Ken Manning and Watermaster counsel Michael Fife, looked at each other, conferred privately for a long time, and then Manning stated, "We will have to get back to you." The Non-Ag Pool did not get its question answered at the meeting. It was only later, after Manning and Fife had a chance to regroup, that Fife claimed that the *form* Notice of Intent to Purchase circulated via email with the agenda package for the August 27 Watermaster Board meeting constituted the *official* notice required by the Agreement. Fife also stated that Watermaster's books had been changed to move the Non-Ag Storage Water out of the Non-Ag Pool's storage accounts. Although paragraph D of the Agreement requires the Appropriative Pool to pay the first installment of the cost of the water within 30 days after giving Notice of Intent to Purchase, the Appropriative Pool did not tender payment of the first installment until mid-January 2010.

Watermaster and its counsel continue to take the position that Watermaster and the Appropriative Pool fully performed by giving timely notice under paragraph C of the Agreement, and that the default agreement found in paragraph H does not apply. Consistent with that position, Watermaster seized the Non-Ag Storage Water from the Non-Ag Pool members. Accordingly, the Non-Ag Pool brought a motion under section 31 of the judgment, seeking superior court review of the Watermaster's actions, and CSI filed a joinder in the motion. The superior court denied the motions in its order dated July 18, 2010. Thereafter, the Non-Ag Pool and CSI each timely appealed from the order.

**7. Issues on Appeal:**

This appeal raises three main issues:

1. Whether Watermaster's right to purchase under the Agreement was an option;
2. What constitutes written Notice of Intent to Purchase under paragraph C of the Agreement; and
3. Whether Watermaster provided written Notice of Intent to Purchase as required by paragraph C of the Agreement.

The first and second issues involve interpretation of a written contract and therefore are subject to de novo review. (See *Parsons v. Bristol Develop. Co.* (1965) 62 Cal.2d 861, 865-866 (court of appeal independently interprets written instruments).) The third issue involves mixed questions of law and fact. (See, e.g., *Crocker Nat'l Bank v. City & County of San Francisco* (1989) 49 Cal.3d 881, 888.) Because the facts are largely undisputed and the inquiries are not "essentially factual," the rule of independent review applies to the third issue, as well. (See *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 800-801.) These issues are similar or the same for both CSI and the Non-Ag Pool, and therefore CSI and the Non-Ag Pool have allocated the issues between them. The Non-Ag Pool will address issues 1, 2 and portions of 3 in its Settlement Conference Statement, and CSI incorporates that section of the Non-Ag Pool's Statement by reference. CSI, on the other hand, will address portions of issue 3 herein, which issue also applies to the Non-Ag Pool.

For ease of reading and continuity of argument, CSI requests that the mediator refer at this point to the Non-Ag Pool's Settlement Conference Statement, section 7, pages 3 to 8, before reading the remainder of CSI's Settlement Conference Statement.

**\*\*Incorporation by reference of Non-Ag Pool's Settlement Conference Statement\*\***

**NONE OF THE ACTIONS RELIED ON BY WATERMASTER  
PROVIDED THE "NOTICE" REQUIRED BY PARAGRAPH C**

At no point prior to December 21, 2009, did Watermaster send to any of the Non-Ag Pool members, either in their individual capacity or as a representative of the Non-Ag Pool, any written document that plainly informed the recipient: "Watermaster hereby provides notice that it is exercising its rights to purchase the Non-Agricultural (Overlying) Pool water" and identifying whether the purchase was for Desalter Replenishment or a Storage and Recovery Program. There is no dispute on this factual point. In the past, Watermaster has argued that a variety of events, other than the plain notice described in Paragraph C, nonetheless should constitute sufficient performance of the Agreement. Those arguments are nothing more than a belated attempt to cover for Watermaster's obvious failure to provide the required notice. None of the events proffered by Watermaster are allowable substitutes for Paragraph C's notice requirements.

**1. Electronic posting or mailing of agendas for meetings at which a Non-Ag Pool representative was present did not constitute notice.**

Easily disposed of is Watermaster's argument that electronic posting of agendas constituted notice under the Agreement. Obviously, an agenda of discussion items is notice of nothing, except that the item was going to be discussed. If the agendas are sufficient notice under Paragraph C, then there was no need for a notice provision in the Agreement at all. The agendas, including the attachment, provided no more "notice" than

the notice the Agreement itself provided – that the purchase of the water was a decision to be made by the Appropriative Pool and Watermaster, which presumably would be discussed at meetings before the decision was made and the "notice" required by the Agreement was provided.

**2. The presence of a Non-Ag Pool representative at meetings of the Appropriative Pool or the Watermaster Board where notice was discussed and votes were taken did not constitute notice.**

The presence of the Non-Ag Pool representative on the Watermaster Board at meetings of the Appropriative Pool or the Watermaster Board where notice was discussed does not constitute notice under the Agreement. At best, all that the representative would have gained from being present at those meetings is that the potential circumstances of any purchase of the Non-Ag Storage Water by Watermaster remained undecided, precluding the provision of notice under the Agreement. What the representative could come away with from the August meetings of the Appropriative Pool and the Watermaster Board is that the Appropriative Pool voted to use 2,652 acre-feet of the Non-Ag Storage Water for desalter replenishment and 36,000 acre feet for the "auction process," and the Watermaster Board thereafter rejected that allocation, referring the matter back to the Appropriative Pool. At the October meeting of the Appropriative Pool, its members could not agree on the intended use of the Non-Ag Storage Water and so tabled the issue for 30 days for further discussion and Watermaster staff recommendations. In the November meeting of the Appropriative Pool, Watermaster again reminded the Appropriative Pool of the December 21 deadline for providing notice, the staff indicated the auction had been postponed indefinitely, and the Appropriative Pool considered and approved a new Plan B to be used to set the terms for Watermaster's Notice of Intent to Purchase. At the November Watermaster Board meeting, the Board took no action related to the notice, except that the Watermaster staff continued to advise that notice had to be given by December 21. This summary of events illustrates that Watermaster did not provide the notice required by Paragraph C based on a Non-Ag Pool representative's attendance at the fall 2009 meetings of the Appropriative Pool or the Watermaster Board.

**3. Electronic posting of minutes for meetings at which a Non-Ag Pool representative was present did not constitute notice.**

The notion that notice was accomplished by posting the minutes for the meetings on a general purpose website is even more attenuated. As discussed above, the substance of the meetings did not provide notice, so the minutes of those meetings similarly could not constitute notice. Even if the minutes had provided the concrete information necessary for the notice required by paragraph C, however, simply posting those minutes on a general purpose website could not constitute "providing" notice. Certainly, if nothing else, the term "provide" requires that Watermaster alert the Non-Ag Pool in some way that *notice* was being given under the Agreement, and not just that meeting minutes

were being posted. "Publishing" notice on a general purpose website in the midst of hundreds of other pages of documents is not sufficient to "provide" notice.

**4. The form of notice approved by the Appropriative Pool in August, 2009, did not constitute notice, no matter how that form was "provided."**

The form of notice that was approved by the Appropriative Pool in August, the substance of which was rejected by the Watermaster Board and then open to debate for the months that followed, could not constitute notice, no matter how provided. It was preliminary, and by Watermaster's own admission, notice still needed to be "officially" provided. On numerous occasions after the form notice was approved by the Appropriative Pool, the Watermaster CEO spoke in future tense, about how the notice *needed* to be provided. It was not until after the deadline had passed for notice to be given that the Watermaster spoke in past tense, claiming notice had been given in August 2009. Clearly, the form of notice considered and approved by the Appropriative Pool in August, 2009, was that Pool's approval of what the notice would look like when notice was provided, but it did not constitute notice.

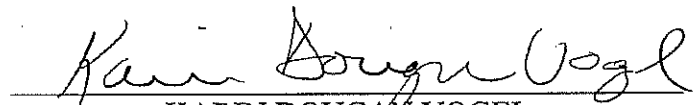
In short, Watermaster failed to provide the notice as required under Paragraph C of the Agreement, and as a result, paragraph H of the Agreement applies. Under paragraph H, CSI, and the other Non-Ag Pool members, can make the Non-Ag Storage Water available for purchase annually by the Appropriative Pool at 92% of the then current MWD Replenishment Rate. The trial court erred in ruling otherwise.

Dated: December 8, 2010

Respectfully submitted,

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By



KARIN DOUGAN VOGEL

Attorneys for Appellant

CALIFORNIA STEEL INDUSTRIES, INC.



# EXHIBIT 1

September 21, 2007

Attachment "G"

**PURCHASE AND SALE AGREEMENT FOR  
THE PURCHASE OF  
WATER BY WATERMASTER  
FROM OVERLYING (NON-AGRICULTURAL) POOL**

THIS AGREEMENT (Agreement) is dated 27th day of September, 2007, regarding the Chino Groundwater Basin.

**RECITALS**

WHEREAS, the Peace Agreement expressly authorized a transfer of water from the Overlying (Non-Agricultural) Pool to Watermaster for use as replenishment for the Desalters and for use in connection with a Storage and Recovery Program;

WHEREAS, Watermaster is evaluating its replenishment needs under the Judgment and several Storage and Recovery opportunities;

WHEREAS, Watermaster desires to purchase and the Overlying (Non-Agricultural) Pool desires to sell, all of the Non-Agricultural Pool water held in storage as of June 30, 2007;

WHEREAS, Watermaster is proposing an amendment to the Overlying (Non-Agricultural) Pool Pooling Plan set forth in Exhibit "G" to the Judgment whereby members of the Pool may offer water for purchase by Watermaster and thence the members of the Appropriative Pool under the process set forth therein;

NOW THEREFORE, in consideration of the mutual promises specified herein and by conditioning their performance under this Agreement upon the conditions precedent set forth herein, and for other good and valuable consideration, the Parties agree as follows:

A. **Peace Agreement Transfer.** This purchase and sale agreement is in accordance with Section 5.3(e) of the Peace Agreement that provides that "parties to the Judgment with rights within the Non-Agricultural (Overlying) Pool shall have the additional rights to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter or for a Storage and Recovery Program."

B. **Quantity.** The quantity of water being made available to Watermaster by the Non-Agricultural (Overlying) Pool on a one-time basis ("Storage Transfer Quantity") is equivalent to the total quantity of water held in storage by the members of the Overlying (Non-Agricultural) Pool held in storage on June 30, 2007 ("Storage Quantity"), less a ten percent dedication for the purpose of Desalter Replenishment, less the quantity of water transferred pursuant to paragraph I below ("Special Transfer Quantity").

September 21, 2007

C. **Notice.** Within twenty-four months of the final Court approval of this Agreement ("Effective Date"), and only with the prior approval of the Appropriative Pool, Watermaster will provide written Notice of Intent to Purchase the Non-Agricultural (Overlying) Pool water pursuant to Section 5.3(a) of the Peace Agreement, which therein identifies whether such payment will be in connection with Desalter Replenishment or a Storage and Recovery Program.

D. **Payment.** Commencing thirty (30) calendar days from the Notice of Intent to Purchase ("Payment Date") Watermaster will pay to the Non-Agricultural Overlying Pool for each acre-foot of the Storage Transfer Quantity in accordance with the following schedule as the schedule is adjusted for inflation by the consumers price index ("cpi") for San Bernardino County from May 31, 2006 until the Payment Date.:

1. \$215 times 1/4 of the Storage Transfer Quantity on the Payment Date.
2. \$220 times 1/4 of the Storage Transfer Quantity on the first anniversary of the Payment Date.
3. \$225 times 1/4 of the Storage Transfer Quantity on the second anniversary of the Payment Date
4. \$230 time 1/4 of the Storage Transfer Quantity on the third anniversary of the Payment Date.

However, all payments provided for herein, including inflation adjustments, are subject to an express price cap and will not exceed ninety-two (92) percent of the then prevailing MWD replenishment rate in any year.

E. **Dedication to Desalter Replenishment.** Upon Watermaster's issuance of its written Notice of Intent to Purchase, and Watermaster's tender of its initial payment on the Payment Date, ten (10) percent of the Storage Quantity will be dedicated for replenishment of Desalter production without compensation. Watermaster will receive but will not pay for this dedication.

F. **Use and Distribution.** Watermaster will take possession of the water made available pursuant to this Agreement and make use of and distribute the water made available in a manner consistent with Section 5.3(e) of the Peace Agreement.

G. **Condition Precedent.** This Agreement and the Parties performance hereunder are expressly conditioned upon Court approval of this Agreement.

H. **Early Termination.** This Agreement will expire and be of no further force and effect if: Watermaster does not issue its Notice of Intent to Purchase in accordance with Paragraph D above within twenty-four (24) months of Court approval. Upon Watermaster's failure to satisfy the condition subsequent, the rights of the Non-Agricultural (Overlying) Pool will remain unaffected and without prejudice as result of their having executed this Agreement except that in the event of Early Termination, the Storage Transfer Quantity, will then be made available for purchase by Watermaster and thence the members of the Appropriative Pool in accordance with Paragraph 9.(iv) of Amended Exhibit G, the Overlying (Non-Agricultural) Pool,

September 21, 2007

Pooling Plan, including the requirement of a ten percent dedication towards Desalter replenishment.

I. One Time Transfer in Furtherance of the Physical Solution and in Aid of Desalter Replenishment ("Special Transfer Quantity"). In consideration of the Overlying (Non-Agricultural) Pool members' irrevocable commitment made herein and it the Peace II Measures Watermaster will purchase and immediately make available the quantity of 8,530 acre-feet (less a ten percent dedication to Watermaster for Desalter Production) to the San Antonio Water Company (SAWCO) and Vulcan Materials, a member of the Overlying (Non-Agricultural) Pool under terms established as between those parties. This One Time Transfer is in addition to and without prejudice to the discretionary rights of the members of the Overlying (Non-Agricultural) Pool to make available and Watermaster and members of the Appropriative Pool to purchase water as Physical Solution transfers. No member of the Appropriative Pool, other than SAWCO assumes any responsibility for the purchase of this Special Transfer Quantity from Vulcan.

IN WITNESS THEREOF, the Parties hereto have set forth their signatures as of the date written below:

Dated:

NON-AGRICULTURAL OVERLYING POOL

By \_\_\_\_\_

1 California Court of Appeal, Fourth Appellate District, Division Two  
2 *Non-Agricultural (Overlying Pool) Committee and California Steel Industries, Inc. v.*  
3 *Chino Basin Municipal Water District, et al.*, Case No. E051653

4 **PROOF OF SERVICE**  
5 **STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

6 I am employed in the County of San Diego; I am over the age of eighteen years and not a  
7 party to the within entitled action; my business address is 501 West Broadway, Suite 1900,  
8 San Diego, California 92101.

9 On December 8, 2010, I served the following document(s) described as **SETTLEMENT**  
10 **CONFERENCE STATEMENT** on the interested party(ies) in this action by placing true copies  
11 thereof enclosed in sealed envelopes and/or packages addressed as follows:

12 John J. Schatz, Esq.  
13 P.O. Box 7775  
14 Laguna Niguel, CA 92607-7775  
15 Telephone: (949) 683-0398  
16 Facsimile: (949) 305-6865  
17 *Attorneys for Appropriative Pool*

Allen Hubsch, Esq.  
Hogan Lovells US LLP  
1999 Avenue of the Stars, Suite 1400  
Los Angeles, CA 90067  
Telephone: (310) 785-4600  
Facsimile: (310) 785-4601  
*Attorneys for Non-Agriculture Pool*

18 Scott Slater, Esq.  
19 Michael T. Fife, Esq.  
20 Brownstein Hyatt Farber Schreck, LLP  
21 21 East Carrillo Street  
22 Santa Barbara, CA 93101-2706  
23 Telephone: (805) 963-7000  
24 Facsimile: (805) 965-4333  
25 *Attorneys for Chino Basin Watermaster*

Chino Basin Watermaster  
Kenneth R. Manning, Chief Executive Officer  
9641 San Bernardino Road  
Rancho Cucamonga, CA 91730  
Facsimile: (909) 484-3890

26 ☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing  
27 correspondence for mailing. Under that practice it would be deposited with the U.S. postal  
28 service on that same day with postage thereon fully prepaid at San Diego, California in the  
ordinary course of business. I am aware that on motion of the party served, service is  
presumed invalid if postal cancellation date or postage meter date is more than one day  
after date of deposit for mailing in affidavit.

☒ **STATE:** I declare under penalty of perjury under the laws of the State of  
California that the foregoing is true and correct. Executed on **December 8, 2010**, at  
San Diego, California.

  
PAMELA PARKER

CASE NO. E051613

IN THE COURT OF APPEAL, STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT, DIVISION TWO

---

NONAGRICULTURAL (OVERLYING) COMMITTEE et  
al.,

*Plaintiffs and Appellants*

vs.

CHINO BASIN WATERMASTER et al.,

*Defendants and Respondents.*

---

Appeal from the Superior Court for San Bernardino County  
Superior Court Case No. RCVRS 51010

STANFORD E. REICHERT-DEPARTMENT C1

---

APPROPRIATIVE POOL'S SETTLEMENT  
CONFERENCE STATEMENT

---

JOHN J. SCHATZ (SBN 141029)  
P.O. BOX 7775  
LAGUNA NIGUEL, CA. 92607-7775  
Tel. No.: (949) 683-0398; Fax: (949) 305-6865

*Attorney for Respondent, Appropriative Pool*

## **SETTLEMENT CONFERENCE STATEMENT**

### **I. TRIAL COURT NAME AND CASE TITLE AND NUMBER**

San Bernardino Superior Court, Chino Division, Dept. C-1.

Underlying Case Name: *Chino Basin Municipal Water District v. City of Chino*, San Bernardino Superior Court Case No. RCV 51010.

Appeal Name: *Overlying (Non-Agricultural) Pool v. Chino Basin Watermaster* (E051653).

### **II. NAME OF JUDGE AND DATE OF ENTRY OF ORDER**

Judge: The Honorable Stanford E. Reichert

Date of entry of order: June 18, 2010.

### **III. DATE NOTICE OF APPEAL WAS FILED**

Notice of Appeal filed August 11, 2010.

### **IV. NAMES AND ADDRESSES OF COUNSEL**

Michael T. Fife, Scott S. Slater, Brownstein Hyatt Farber Schreck, LLP,  
21 East Carrillo Street, Santa Barbara, CA 93101

Allen Waverly Hubsch, Hogan Lovells US LLP, 1999 Avenue of the  
Stars, 15th Floor, Los Angeles, CA 90067

Karin Dougan Vogel, Sheppard, Mullin, Richter & Hampton, 501 West  
Broadway, Suite 1900, San Diego, CA 92101

John Joseph Schatz, P.O. Box 7775, Laguna Niguel, CA 92607-7775

Steven G. Lee, Reid & Hellyer, P.O. Box 1300, Riverside, CA 92502-1300.

#### **V. BRIEF DESCRIPTION OF ORDER APPEALED**

As detailed below, Appellants have filed an appeal arising from a motion Appellants filed in Superior Court contending Chino Basin Watermaster ("Watermaster") on behalf of the Appropriative Pool (a Watermaster member) did not process a notice of intent to purchase water in the time and in the manner required by a water purchase and sale agreement. On June 18, 2010, the Superior Court denied the motion.

#### **VI. CONCISE STATEMENT OF CASE, INCLUDING PROCEDURAL HISTORY AND FACTS MATERIAL TO ISSUES**

The 1978 Chino Basin Judgment, which prescriptively and comprehensively operates to govern the 220-square mile groundwater basin underlying the area that includes the cities of Ontario, Pomona, Chino, Chino Hills, Fontana, Rancho Cucamonga, Jurupa and adjacent municipalities substantially or partially overlying the Chino Basin, is the foundation upon which subsequent implementing agreements and programs have been built, including the 2007 water purchase and sale agreement between Appellants and Watermaster that is at issue in this appeal. The Court retained continuing jurisdiction for purposes including ensuring subsequent agreements and programs are consistent with the Judgment and amendments to the Judgment. (Judgment, ¶ 15.). Watermaster (which includes the Overlying (Non-



Agricultural), Agricultural and Appropriative Pools) serves to administer the Judgment in accordance with Court orders. (Judgment, ¶ 16.)

In 2000, and in 2007, the parties to the Judgment via Watermaster entered into a series of interlocking understandings and programs known as the Peace and Peace II Agreements fundamentally to further maximize beneficial use of the basin waters by adaptively managing the basin in view of changed local, regional and Statewide circumstances affecting the basin and Judgment. The 2007 Peace II Agreement included the water purchase agreement at issue here that enabled the Overlying (Non-Agricultural) Pool for the first time to sell its stored water to the Appropriative Pool and thus enable the otherwise stranded water to be put to beneficial use while respectively generating revenue and savings to the Overlying (Non-Agricultural) and Appropriative Pools compared to buying basin replenishment water from The Metropolitan Water District of Southern California (that may not have been available when needed).

On or about March 16, 2010, Appellants filed a motion under Paragraph 31 of the Judgment challenging whether Watermaster delivered the notice of intent before December 21, 2009, to purchase the Overlying (Non-Agricultural) Pool's stored water in the time and in the manner required by the 2007 purchase and sale agreement.

The Superior Court's June 18, 2010 Order denied Appellant's Paragraph 31 motion on multiple grounds strictly in accordance with principles of contract law based upon the unique circumstances of this case (Order 30: 3-4).

Facts material to consideration of the issues presented included in the Superior Court's Order are:

1. On August 27, 2009, the Watermaster Board approved the written Notice of Intent to Purchase (Order, 14:17-19.)

2. The approved Notice was an affirmative, clear written Notice of Intent to Purchase which the Court found to be sufficient compliance with the Purchase and Sale Agreement (Order, 18:15-17; 20:1-2; 21:22-25; 27:13-14.).

3. The Overlying (Non-Agricultural) Pool was present at the August 27, 2009 meeting through its representative, Mr. Sage, who thereby received direct notice of the intent to purchase the water (Order, 24:4; 14:9-11.).

4. Direct notice to one individual on behalf of the Overlying (Non-Agricultural) Pool was sufficient (Order, 24:8-9.).

5. Posting of the agenda package on the Watermaster website was an additional means of providing written notice (Order, 22:6-8.).

6. Subsequent Watermaster meetings in November 2009 provide further evidence of the Overlying (Non-Agricultural) Pool being provided with written notice of intent to purchase the water (Order, 27:25-28.).

7. The 2007 purchase and sale agreement concerning the Overlying (Non-Agricultural) Pool's stored water is not an option contract (Order, 17:12-14.).

## **VII. ISSUES EXPECTED TO BE RAISED IN BRIEFS**

The Superior Court's Order was based on principles of contract law and the unique circumstances of this case. Although Appropriative Pool counsel has

engaged in several discussions with Appellants' respective counsel, they have not communicated the basis for the appeal. It is, therefore, unknown and subject to conjecture if Appellants will argue the Superior Court failed to correctly interpret and apply contract law principles and interpreting case law or properly consider and appropriately weigh material facts.

DATED: December 6, 2010

By John J. Schatz  
John J. Schatz  
*Attorney for Respondent,  
Appropriative Pool*

**PROOF OF SERVICE**

I am over the age of eighteen years and not a party to the within-entitled action. My business address is 26111 Antonio Parkway, Rancho Santa Margarita Ca. 92688. On December 6, 2010, I placed at 28562 Oso Parkway, Suite D, Rancho Santa Margarita, Ca. 92688 for deposit with the United States Postal Service a true and correct copy of the within document(s):

**APPROPRIATIVE POOL'S SETTLEMENT CONFERENCE STATEMENT**

in a sealed envelope, postage fully paid, addressed as follows:

*See attached Service List*

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

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

Executed on December 6, 2010, at Rancho Santa Margarita, California.

  
Cindy Lane

**IN THE  
COURT OF APPEAL OF THE STATE OF CALIFORNIA  
IN AND FOR THE  
FOURTH APPELLATE DISTRICT**

**SERVICE LIST**

|   |   |
|---|---|
| Allen Waverly Hubsch<br>Hogan Lovells US LLP<br>1999 Avenue of the Stars, 15th Floor<br>Los Angeles, CA 90067                     | Karin Dougan Vogel<br>Sheppard, Mullin, Richter & Hampton<br>501 West Broadway, Suite 1900<br>San Diego, CA 92101 |
| Scott S. Slater<br>Michael T. Fife<br>Brownstein Hyatt Farber Schreck,<br>LLP<br>21 E. Carillo Street<br>Santa Barbara, Ca. 93101 | Steven G. Lee<br>Reid & Hellyer<br>3880 Lemon Street, Fifth Floor<br>P.O. Box 1300<br>Riverside, CA 92502-1300    |

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 December 10, 2010 I served the following:

1. **CHINO BASIN WATERMASTER SETTLEMENT CONFERENCE STATEMENT**
2. **NON-AGRICULTURAL POOL COMMITTEE SETTLEMENT CONFERENCE STATEMENT**
3. **CALIFORNIA STEEL INDUSTRIES, INC. SETTLEMENT CONFERENCE STATEMENT**
4. **APPROPRIATIVE POOL'S SETTLEMENT CONFERENCE STATEMENT**

/\_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

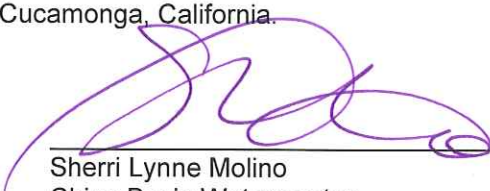
/\_\_\_/ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/\_\_\_/ 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 December 10, 2010 in Rancho Cucamonga, California.

  
\_\_\_\_\_  
Sherri Lynne Molino  
Chino Basin Watermaster

MICHAEL CAMACHO  
6055 ZIRCON AVE.  
RANCHO CUCAMONGA, CA 91701

KEN WILLIS  
1425 WEST FOOTHILL BLVD.  
SUITE 220  
UPLAND, CA 91786

ROBERT BOWCOCK  
INTEGRATED RESOURCES MGMNT  
405 N. INDIAN HILL BLVD  
CLAREMONT, CA 91711-4724

MICHAEL WHITEHEAD  
P.O. BOX 6010  
EL MONTE, CA 91734

GEOFFREY VANDEN HEUVEL  
CBWM BOARD MEMBER  
8315 MERRILL AVENUE  
CHINO, CA 91710

PAUL HOFER  
11248 S TURNER AVE  
ONTARIO, CA 91761

BOB KUHN  
669 HUNTERS TRAIL  
GLEN DORA, CA 91740

CHARLES FIELD  
4415 FIFTH STREET  
RIVERSIDE, CA 92501

TOM HAUGHEY  
CITY OF CHINO  
PO BOX 667  
CHINO, CA 91708-0667

MARK KINSEY  
10575 CENTRAL AVE.  
P.O. BOX 71  
MONTCLAIR, CA 91763

GLEN DURRINGTON  
5512 FRANCIS ST  
CHINO, CA 91710

BOB FEENSTRA  
P.O. BOX 17482  
ANAHEIM HILLS, CA 92817

**Members:**

|                         |                               |
|-------------------------|-------------------------------|
| Alfred E. Smith         | asmith@nossaman.com           |
| Allen W. Hubsch         | allen.hubsch@hoganlovells.com |
| Andrew Lazenby          | lazenbyag@bv.com              |
| Art Kidman              | akidman@mkblawyers.com        |
| Barbara Swanson         | Barbara_Swanson@yahoo.com     |
| Beth Barry              | bethb@cvwdwater.com           |
| Bob Feenstra            | bobfeenstra@gmail.com         |
| Carol                   | marie@tragerlaw.com           |
| Carol Davis             | cdavis@lagerlof.com           |
| Chris Swanberg          | chris.swanberg@corr.ca.gov    |
| Dan McKinney            | dmckinney@rhlaw.com           |
| Eric Garner             | elgarner@bbklaw.com           |
| Fred Fudacz             | ffudacz@nossaman.com          |
| Jean Cihigoyenetché     | Jean_CGC@hotmail.com          |
| jeeinc@aol.com          | jeeinc@aol.com                |
| Jennifer Novak          | jennifer.novak@doj.ca.gov     |
| Jill Willis             | jnwillis@bbklaw.com           |
| Jim Markman             | jmarkman@rwglaw.com           |
| Jim@city-attorney.com   | Jim@city-attorney.com         |
| jimmy@city-attorney.com | jimmy@city-attorney.com       |
| John Cotti              | jcotti@localgovlaw.com        |
| John Schatz             | jschatz13@cox.net             |
| Joseph S. Aklufi        | AandWLaw@aol.com              |
| Karin Vogel             | KVogel@sheppardmullin.com     |
| Kuperberg, Joel         | jkuperberg@rutan.com          |
| Marguerite P Battersby  | pbattersby@sheppardmullin.com |
| Mark Hensley            | mhensley@localgovlaw.com      |
| Michelle Staples        | mstaples@jdplaw.com           |
| Randy Visser            | RVisser@sheppardmullin.com    |
| Rodney Baker            | rodbaker03@yahoo.com          |
| smt@tragerlaw.com       | smt@tragerlaw.com             |
| Steve Kennedy           | skennedy@bbmblaw.com          |
| Steven K. Beckett       | skbeckett@bbmblaw.com         |
| Steven Lee              | slee@rhlaw.com                |
| Steven R. Orr           | sorr@rwglaw.com               |
| Tom Bunn                | TomBunn@Lagerlof.com          |
| Tom McPeters            | THMcP@aol.com                 |
| Tram Tran               | ttran@mkblawyers.com          |
| William J. Brunick      | bbrunick@bbmblaw.com          |
| William P. Curley       | wcurley@rwglaw.com            |



## Members:

|                         |                                     |
|-------------------------|-------------------------------------|
| Al Lopez                | lopezsixto@netzero.net              |
| Alice Shiozawa          | afshioza@gswater.com                |
| Andy Campbell           | acampbell@ieua.org                  |
| Andy Malone             | amalone@wildermuthenvironmental.com |
| Anthony La              | ala@ci.upland.ca.us                 |
| April Woodruff          | awoodruff@ieua.org                  |
| Arnold Rodriguez        | jarodriguez@sarwc.com               |
| Ashok Dhingra           | ash@akdconsulting.com               |
| Ben Lewis               | benjamin.lewis@gswater.com          |
| Ben Pak                 | bpak@cbwm.org                       |
| Bill Kruger             | citycouncil@chinohills.org          |
| Bill Thompson           | bthompson@ci.norco.ca.us            |
| Bob Bowcock             | bbowcock@irmwater.com               |
| Bob Bowcock             | bbowcock@irmwater.com               |
| Bob Feenstra            | bobfeenstra@gmail.com               |
| Bob Feenstra            | feenstra@agconceptsinc.com          |
| Bob Kuhn                | bgkuhn@aol.com                      |
| Bob Lawhn               | rlawhn@rrienergy.com                |
| Bonnie Tazza            | bonniet@cvwdwater.com               |
| Brenda Fowler           | balee@fontanawater.com              |
| Brian Geye              | bgeye@autoclubspeedway.com          |
| Brian Hess              | bhess@niagarawater.com              |
| Carl Hauge              | chauge@water.ca.gov                 |
| Charles Field           | cdfield@att.net                     |
| Charles Moorrees        | cmoorrees@sawaterco.com             |
| Cheyenne Reseck-Francis | cheyanne.reseck.francis@ieua.org    |
| Chris Berch             | CBerch@ieua.org                     |
| Chuck Hays              | chays@fontana.org                   |
| Cindy Cisneros          | Cindy_Cisneros@ci.pomona.ca.us      |
| Cindy LaCamera          | clacamera@mwdh2o.com                |
| Craig Stewart           | Craig.Stewart@amec.com              |
| Curtis Stubbings        | Curtis_Stubbings@praxair.com        |
| Dan Arrighi             | darrighi@sgvwater.com               |
| Dan Hostetler           | dghostetler@csupomona.edu           |
| Daryl Grigsby           | daryl_grigsby@ci.pomona.ca.us       |
| Dave Argo               | argodg@bv.com                       |
| Dave Crosley            | DCrosley@cityofchino.org            |
| David D DeJesus         | tvmwddiv2rep@gmail.com              |
| David D DeJesus         | davidcicgm@aol.com                  |
| David Penrice           | dpenrice@acmwater.com               |
| David Ringel            | david.j.ringel@us.mwhglobal.com     |
| David Starnes           | david.starnes@mcmcn.net             |
| Dennis Poulsen          | dpoulsen@californiasteel.com        |
| Dennis Williams         | dwilliams@geoscience-water.com      |
| Diana Sturgeon          | dsturgeon@chinohills.org            |
| Don Cutler              | dcutler@jcsd.us                     |
| Don Galleano            | donald@galleanowinery.com           |
| Donna Stokes            | dstokes@cityofchino.org             |
| Earl Elrod              | earl.elrod@verizon.net              |
| Edward Gonsman          | Edward.Gonsman@cdcr.ca.gov          |
| Eldon Horst             | ehorst@jcsd.us                      |
| Eunice Ulloa            | eulloa@cbwcd.org                    |
| Frank Brommenschenkel   | frank.brommen@verizon.net           |
| Frank LoGuidice         | faloguidice@sgvwater.com            |
| Gene Koopman            | GTKoopman@aol.com                   |
| Geoffrey Kamansky       | gkamansky@niagarawater.com          |
| Geoffrey Vanden Heuvel  | GeoffreyVH@juno.com                 |
| Gerald Yahr             | yahrj@koll.com                      |
| Geye, Brian             | BGeye@autoclubspeedway.com          |
| Grace Cabrera           | grace_cabrera@ci.pomona.ca.us       |
| Greg Woodside           | gwoodside@ocwd.com                  |
| Ida Martinez            | idam@cvwdwater.com                  |

|                        |                                       |
|------------------------|---------------------------------------|
| Isabel Martinez        | imartinez_wfa@verizon.net             |
| Jack Safely            | jsafely@wmwd.com                      |
| James Jenkins          | cnomgr@airports.sbcounty.gov          |
| James McKenzie         | jmckenzie@dpw.sbcounty.gov            |
| Jean Perry             | JPerry@wmwd.com                       |
| Jeff Pierson           | jpierson@unitexcorp.com               |
| Jeffrey L. Pierson     | jpierson@intexcorp.com                |
| Jill Willis            | jnwillis@bbklaw.com                   |
| Jim Hill               | jhill@cityofchino.org                 |
| Jim Taylor             | jim_taylor@ci.pomona.ca.us            |
| Jo Lynne Russo-Pereyra | jolynner@cvwdwater.com                |
| Joe Graziano           | jgraz4077@aol.com                     |
| Joe P LeClaire         | jleclaire@wildermuthenvironmental.com |
| John Anderson          | janderson@ieua.org                    |
| John Bosler            | JohnBo@cvwdwater.com                  |
| John Huitsing          | johnhuitsing@gmail.com                |
| John Kennedy           | jkennedy@ocwd.com                     |
| John Mura              | jmura@chinohills.org                  |
| John Rossi             | jrossi@wmwd.com                       |
| John Salmon            | jsalmon@mkblawyers.com                |
| Jon Lambeck            | jlambeck@mwdh2o.com                   |
| Jorge Rosa Jr.         | Jorge.Rosa@sce.com                    |
| Julie Cavender         | julie.cavender@cdcr.ca.gov            |
| Julie Velez            | JVelez@sdca.org                       |
| Justin Brokaw          | jbrokaw@hughes.net                    |
| Karen Johnson          | kejwater@aol.com                      |
| Kathy Kunysz           | kkunysz@mwdh2o.com                    |
| Kathy Tiegs            | Kathyt@cvwdwater.com                  |
| Ken Eke                | keke@dpw.co.san-bernardino.ca.us      |
| Ken Jeske              | kjcwater@hotmail.com                  |
| Ken Kules              | kkules@mwdh2o.com                     |
| Ken Manning            | KManning@CBWM.ORG                     |
| Ken Waring             | kwaring@jcsd.us                       |
| Kenneth Willis         | kwillis@homeowners.org                |
| Kevin Blakeslee        | kblakeslee@dpw.sbcounty.gov           |
| Kevin Sage             | Ksage@IRMwater.com                    |
| Kim Morris             | kmorris@fontana.org                   |
| Kurt Berchtold         | kberchtold@waterboards.ca.gov         |
| Kyle Snay              | kylesnay@gswater.com                  |
| Lindsay Gomez          | lgomez@wildermuthenvironmental.com    |
| Lisa Hamilton          | Lisa.Hamilton@corporate.ge.com        |
| Marguerite P Battersby | pbattersby@sheppardmullin.com         |
| Maribel Sosa           | Maribel_Sosa@ci.pomona.ca.us          |
| Marsha Westropp        | MWestropp@ocwd.com                    |
| Martin Zvirbulis       | martinz@cvwdwater.com                 |
| Michael Whitehead      | mlwhitehead@sgvwater.com              |
| Michelle Lauffer       | mllauffer@jcsd.us                     |
| Mike Thies             | mthies@spacecenterinc.com             |
| Neil Miller            | neil_miller@ci.pomona.ca.us           |
| W. C. "Bill" Kruger    | wkrugers@earthlink.net                |
| W. C. "Bill" Kruger    | citycouncil@chinohills.org            |

## Members:

|                     |   |
|---------------------|---|
| Manuel Carrillo     | Manuel.Carrillo@SEN.CA.GOV              |
| Maria Klachko Blair | mklachko-blair@bhfs.com                 |
| Maria Linzay        | mlinzay@ci.upland.ca.us                 |
| Maria Mendoza       | mmendoza@wildermuthenvironmental.com    |
| Mark Kinsey         | mkinsey@mvwd.org                        |
| Mark Ward           | mark_ward@ameron-intl.com               |
| Mark Wildermuth     | mwildermuth@wildermuthenvironmental.com |
| Marla Doyle         | marla_doyle@ci.pomona.ca.us             |
| Martha Davis        | mdavis@ieua.org                         |
| Martin Rauch        | martin@rauchcc.com                      |
| Maynard Lenhert     | directorlenhert@mvwd.org                |
| Melanie Otero       | melanie_otero@ci.pomona.ca.us           |
| Michael Camacho     | MCamacho@pacificaservices.com           |
| Michael T Fife      | MFife@bhfs.com                          |
| Mike Maestas        | mmaestas@chinohills.org                 |
| Mindy Sanchez       | msanchez@ieua.org                       |
| Mohamed El-Amamy    | melamamy@ci.ontario.ca.us               |
| Moore, Toby         | TobyMoore@gswater.com                   |
| Nate Mackamul       | Nate.Mackamul@cdcr.ca.gov               |
| Nathan deBoom       | n8deboom@gmail.com                      |
| Pam Sharp           | PSharp@chinohills.org                   |
| Pam Wilson          | pwilson@bhfs.com                        |
| Pat Glover          | pglover@cityofchino.org                 |
| Patrick Sheilds     | psheilds@ieua.org                       |
| Paul Deutsch        | paul.deutsch@amec.com                   |
| Paul Hofer          | farmwatchtoo@aol.com                    |
| Peggy Asche         | peggy@wvwd.org                          |
| Pete Hall           | r.pete.hall@cdcr.ca.gov                 |
| Peter Hettinga      | peterhettinga@yahoo.com                 |
| Phil Krause         | pkrause@parks.sbcounty.gov              |
| Phil Rosentrater    | prosentrater@wmwd.com                   |
| Randy Lee           | rlee@ieua.org                           |
| Raul Garibay        | raul_garibay@ci.pomona.ca.us            |
| Rick Hansen         | rhansen@tvmwd.com                       |
| Rick Rees           | Richard.Rees@amec.com                   |
| Rob Vanden Heuvel   | Robert.t.van@gmail.com                  |
| Robert C. Hawkins   | RHawkins@earthlink.net                  |
| Robert Cayce        | rcayce@airports.sbcounty.gov            |
| Robert DeLoach      | robertd@cvwdwater.com                   |
| Robert Neufeld      | rrneufeld@sbvwcd.dst.ca.us              |
| Robert Nobles       | Robert.Nobles@cdcr.ca.gov               |
| Robert Tock         | rtock@jcsd.us                           |
| Robert Young        | rkyoung@fontanawater.com                |
| Roger Han           | roger_han@praxair.com                   |
| Ron Craig           | RonC@rbf.com                            |
| Sam Fuller          | samf@sbvmwd.com                         |
| Sandra S. Rose      | directorrose@mvwd.org                   |
| Sandy Lopez         | slopez@ci.ontario.ca.us                 |
| Sarah Kerr          | skerr@ci.ontario.ca.us                  |
| Sarah Schneider     | sarah.schneider@amec.com                |
| Scott Burton        | sburton@ci.ontario.ca.us                |
| Scott Slater        | sslater@bhfs.com                        |
| Shaun Stone         | sstone@ci.upland.ca.us                  |
| Sherri Rojo         | SRajo@pcgclient.com                     |
| Sherrie Schnelle    | Sschnelle@chinohills.org                |
| Sondra Elrod        | selrod@ieua.org                         |
| Sonya Bloodworth    | sbloodworth@wmwd.com                    |
| Steve Nix           | snix@chinohills.org                     |
| Steve Riboli        | steve.riboli@sanantoniowinery.com       |
| Ted Leaman          | tleaman@sunkistgrowers.com              |
| Terry Catlin        | tlcatlin@wfajpa.org                     |
| Tim Hampton         | tim_hampton@ci.pomona.ca.us             |

Tim Skrove  
Tom Cruikshank  
Tom Harder  
Tom Haughey  
Tom Love  
Toni Medel  
Tracy Tracy  
Van Jew  
Vicki Hahn  
William P. Curley  
WM Admin Staff

tskrove@mwdh2o.com  
tcruikshank@spacecenterinc.com  
thomas\_harder@att.net  
tom@haugheyinsurance.com  
TLove@ieua.org  
mmedel@rbf.com  
ttracy@mvwd.org  
vjew@mvwd.org  
vhahn@tvmwd.com  
wcurley@rwglaw.com