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**FILED**  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
RANCHO CUCAMONGA DISTRICT

**MAY 02 2014**

BY M. Dicarra  
DEPUTY

7 Attorneys for Non-Agricultural (Overlying) Pool  
8 Committee

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

**BY FAX**

11 CHINO BASIN MUNICIPAL WATER  
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, ET AL.,

16 Defendants.

Case No. RCVRS 51010

Judgment Entered On January 27, 1978, as  
Amended

**NOTICE OF MOTION AND MOTION  
REGARDING AMENDMENT TO THE  
JUDGMENT RELATING TO  
QUORUM AND VOTING OF THE  
NON-AGRICULTURAL  
(OVERLYING) POOL COMMITTEE**

Date: July 11, 2014  
Time: 1:30 p.m.  
Dept.: R6

Assigned for All Purposes to the  
Honorable STANFORD E. REICHERT

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

3 YOU ARE HEREBY NOTIFIED THAT on July 11, 2014 at 1:30 p.m., in Department R6  
4 of this Court, located at 8303 North Haven Avenue, Rancho Cucamonga, California, the Non-  
5 Agricultural (Overlying) Pool Committee will and hereby does move, pursuant to § 15 of the  
6 Judgment previously entered in this action, for approval of an amendment to the Judgment  
7 relating to quorum and voting of the Non-Agricultural (Overlying) Pool Committee.

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

11 Date: April 29, 2014

HOGAN LOVELES US LLP

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14 By: 

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

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

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

5 The Non-Ag Pool has its own "Pooling Plan", which is attached to the Judgment as  
6 Exhibit G (the "Non-Ag Pooling Plan"). Hubsch Decl. ¶2 and Ex. A.<sup>1</sup> The Non-Ag Pooling Plan  
7 describes the manner in which the Non-Agricultural Pool Committee (the "Non-Ag Committee")  
8 is organized and administers its internal affairs. The Non-Ag Pooling Plan states that "The Pool  
9 Committee shall adopt rules for conducting meetings and affairs of the committee and for  
10 administering its program and in amplification of the provisions, but not inconsistent with, this  
11 pooling plan." Exhibit A, Section 9.

12 The Non-Ag Committee adopted Rules and Regulations pursuant to the Pooling Plan (the  
13 "Non-Ag Rules"). Hubsch Decl. ¶3 and Ex. B. The Non-Ag Rules apply only to the Non-Ag  
14 Committee. The Non-Ag Rules state that "The Pool Committee may amend these rules and  
15 regulations from time to time, but not inconsistent with its pooling plan, by majority vote of the  
16 voting power." Rules and Regulations, Section 2.20.

17 A. QUORUM

18 Section 35 of the Judgment states that:

19 *A majority of the voting power of the Advisory Committee or any Pool Committee shall*  
20 *constitute a quorum for the transaction of the affairs of such Advisory or Pool*  
21 *Committee; provided that at least one representative of each Pool Committee shall be*  
22 *required to constitute a quorum of the Advisory Committee. No Pool Committee*  
23 *representative may purposely absent himself or herself, without good cause, from an*  
24 *Advisory Committee meeting to deprive it of a quorum. Action by affirmative vote of the*  
25 *entire voting power of any Pool Committee or the Advisory Committee shall constitute*  
26 *action by such committee. Any action or recommendation of a Pool Committee or the*

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

1 Advisory Committee shall be transmitted to Watermaster in writing, together with a  
2 report of any dissenting vote or opinion.

3 Watermaster Board Counsel has provided documents to Non-Ag Pool Counsel indicating  
4 that in 2001, with the knowledge of all or substantially all persons actively involved in  
5 Watermaster's affairs, the members of the Non-Ag Committee voted to reduce the quorum for the  
6 transaction of Non-Ag Committee business to one representative. Hubsch Decl. ¶4 and Ex. C. At  
7 the time this action was taken in 2001, the Non-Ag Committee was not represented by separate  
8 counsel. Hubsch Decl. ¶4. The members of the Non-Ag Committee at that time may not have  
9 been aware that this action was inconsistent with Section 35 of the Judgment. Non-Ag Pool  
10 Counsel is not aware that Watermaster or any pool or party sought or obtained approval by this  
11 Court of this vote, creating some doubt about its validity or effectiveness. Hubsch Decl. ¶4.

12 Watermaster Board Counsel has also provided documents to Non-Ag Pool Counsel  
13 indicating that from 2001 to 2009, the Non-Ag Committee met with as few as one member  
14 present, with considerable frequency, and conducted business that Watermaster staff requested  
15 that the Non-Ag Committee conduct. Hubsch Decl. ¶5. These meetings were conducted at the  
16 offices of Watermaster staff, with many persons actively involved in Watermaster's affairs  
17 present from time to time. Hubsch Decl. ¶5. Again, during this period, the Non-Ag Committee  
18 was not represented by separate counsel. Even though the Judgment requires action by a majority  
19 of the voting power, to the knowledge of Non-Ag Pool Counsel, no Pool or party has objected to  
20 any action taken by the Non-Ag Committee during such period on the grounds that it was taken  
21 by less than a majority of the voting power. Hubsch Decl. ¶5.

22 On February 13, 2014, at a regular meeting of the Non-Ag Committee, the representative  
23 of one member, and only one member, of the Non-Ag Committee was present at the time roll was  
24 called by Watermaster staff. Hubsch Decl. ¶6. There was some discussion among the sole  
25 representative present (who was also the Chair), Non-Ag Pool Counsel, Watermaster Board  
26 Counsel and Watermaster Staff about whether the meeting could or should proceed for the limited  
27 purposes on the agenda for that particular meeting. Hubsch Decl. ¶6. The meeting proceeded,  
28 with consensus among those present to ask the members of the Non-Ag Pool to consider the

1 quorum issue at the following meeting.

2 At its meetings on March 13 and April 10, 2014, a quorum of the Non-Ag Committee was  
3 present, and voted unanimously to direct Non-Ag Pool Counsel to file a motion to amend Section  
4 35 of the Judgment to allow the Non-Ag Committee to establish its own quorum and voting  
5 requirements. Hubsch Decl. ¶7.

6 Accordingly, the Non-Ag Committee hereby requests that Section 35 of the Judgment be  
7 amended to including the following additional sentence at the end of Section 35:

8 Notwithstanding the foregoing, the Non-Agricultural Pool Committee may  
9 hereafter, by affirmative action of a majority of the voting power of the Non-  
10 Agricultural Pool Committee, (1) amend its rules and regulations from time to  
11 time to allow for a quorum at its meetings that is less than a majority of the voting  
12 power of the Non-Agricultural Pool Committee; and (2) amend its rules and  
13 regulations and its pooling plan from time to time to allow for affirmative action  
14 of the Non-Agricultural Pool Committee by less than a majority of voting power  
15 of the Non-Agricultural Pool Committee; provided that if a volume vote is called,  
16 affirmative action of the Non-Agricultural Pool Committee shall nonetheless  
17 require concurrence of at least one-third of its total members.

18 II. CONCLUSION

19 In Section 15 of the Judgment, this Court retained jurisdiction to “modify, amend or  
20 amplify any of the provisions of this Judgment.” The Non-Ag Committee respectfully requests  
21 that the Court approve the amendment to Section 35 of the Judgment relating to quorum and  
22 voting of the Non-Ag Committee, as requested unanimously by the members of the Non-Ag  
23 Committee.

24 Date: April 29, 2014

HOGAN LOVELLS US LLP

25  
26 By: 

27 ALLEN W. HUBSCH

28 Attorneys for Non-Agricultural (Overlying) Pool

**DECLARATION OF ALLEN  
W. HUBSCH**

**DECLARATION OF ALLEN W. HUBSCH**

I, Allen W. Hubsch, declare as follows:

1. I know the following of my own personal knowledge, except as otherwise stated, and would so testify if called upon to do so.

2. The "Pooling Plan" of the Non-Agricultural Pool is attached to the Judgment as Exhibit G (the "Non-Ag Pooling Plan"). Exhibit A.

3. I am informed and believe that, prior to my representation of the Non-Ag Committee, the Non-Ag Committee adopted Rules and Regulations pursuant to the Pooling Plan. The current Rules and Regulations of the Non-Agricultural Pool (the "Non-Ag Rules") are attached hereto as Exhibit B.

4. Watermaster Board Counsel has provided documents to me indicating that in 2001, with the knowledge of all or substantially all persons actively involved in Watermaster's affairs, the members of the Non-Ag Committee voted to reduce the quorum for the transaction of Non-Ag Committee business to one representative. Exhibit C. I am informed and believe that at the time this action was taken in 2001, the Non-Ag Committee was not represented by separate counsel. I am not aware that Watermaster or any pool or party sought or obtained approval by this Court of this vote.

5. Watermaster Board Counsel has also provided documents to me indicating that from 2001 to 2009, the Non-Ag Committee met with as few as one member present, with considerable frequency, and conducted business that Watermaster staff requested that the Non-Ag Committee conduct. I am informed and believe that these meetings were conducted at the offices of Watermaster staff, with many persons actively involved in Watermaster's affairs present from time to time. Even though the Judgment requires action by a majority of the voting power, I am informed and believe that no Pool or party has objected to any action taken by the Non-Ag Committee during such period on the grounds that it was taken by less than a majority of the voting power.

6. On February 13, 2014, at a regular meeting of the Non-Ag Committee, the representative of one member, and only one member, of the Non-Ag Committee was present at

1 the time roll was called by Watermaster staff. There was some discussion among the sole  
2 representative present (who was also the Chair), Non-Ag Pool Counsel, Watermaster Board  
3 Counsel and Watermaster Staff about whether the meeting could or should proceed for the limited  
4 purposes on the agenda for that particular meeting. The meeting proceeded, with consensus  
5 among those present to ask the members of the Non-Ag Pool to consider the quorum issue at the  
6 following meeting.

7 7. At its meetings on March 13 and April 10, 2014, a quorum of the Non-Ag  
8 Committee was present, and voted unanimously to direct Non-Ag Pool Counsel to file a motion  
9 to amend Section 35 of the Judgment to allow the Non-Ag Committee to establish its own  
10 quorum and voting requirements.

11 I declare under penalty of perjury under the laws of the State of California that the  
12 foregoing is true and correct. Executed at Los Angeles, California on April 29, 2014.

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16 Allen W. Hubsch  
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# EXHIBIT A

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

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

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

The volume voting power on the Pool Committee shall be 1,484 votes. Of these, 742 votes shall be allocated on the basis of one vote for each ten (10) acre feet or fraction thereof of decreed shares in Safe Yield. (See Exhibit "D"). The remaining 742 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year.<sup>8</sup>

**Affirmative action of the Committee shall require a majority of the voting power of the members in attendance, provided that it includes concurrence by at least one-third of its total members.<sup>9</sup>**

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

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<sup>8</sup> Or production assessments paid under Water Code Section 72140 et seq., as to years prior to the second year of operation under the Physical Solution hereunder.

<sup>9</sup> Order dated October 8, 2010.

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

5. Assessments.<sup>10</sup>

(a) Replenishment Assessments. Each member of this pool shall pay an assessment equal to the cost of replenishment water times the number of acre feet of production by such producer during the preceding year in excess of (a) his decreed share of the Safe Yield, plus (b) any carry-over credit under Paragraph 7 hereof.

(b) Administrative Assessments. In addition, the cost of the allocated share of Watermaster administration expense shall be recovered on an equal assessment against each acre foot of production in the pool during such preceding fiscal year or calendar quarter; and in the case of Pool members who take substitute ground water as set forth in Paragraph 8 hereof, such producer shall be liable for its share of administration assessment, as if the water so taken were produced, up to the limit of its decreed share of Safe Yield.

(c) Special Project OBMP Assessment. Each year, every member of this Pool will dedicate ten (10) percent of their annual share of Operating Safe Yield to Watermaster or in lieu thereof Watermaster will levy a Special Project OBMP Assessment in an amount equal to ten percent of the Pool member's respective share of Safe Yield times the then-prevailing MWD Replenishment Rate.

6. Assignment. Rights herein decreed are appurtenant to *that* land and are only assignable with the land for overlying use thereon; provided, however, (a) that any appropriator who may, directly or indirectly, undertake to provide water service to such overlying lands may, by an appropriate agency agreement on a form approved by Watermaster, exercise said overlying right to the extent, but only to the extent necessary to provide water service to said overlying lands, and (b) *the members of the pool shall have the right to Transfer or lease their quantified production rights within the pool or to*

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<sup>10</sup> Order dated December 21, 2007.

*Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000 for the term of the Peace Agreement.*<sup>11</sup>

7. Carry-over. Any member of the pool who produces less than its assigned water share of Safe Yield may carry such unexercised right forward for exercise in subsequent years. The first water produced during any such subsequent year shall be deemed to be an exercise of such carry-over right. In the event the aggregate carry-over by any pool member exceeds its share of Safe Yield, such member shall, as a condition of preserving such surplus carryover, execute a storage agreement with Watermaster.

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

9. Physical Solution Transfers. All overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart therefrom except that for the term of the Peace Agreement the members of the Overlying (Non-Agricultural) Pool shall have the discretionary right to Transfer or lease their quantified Production rights and carry-over water held in storage accounts in quantities that each member may from time to time individually determine as Transfers in furtherance of the Physical Solution: (i) within the Overlying (Non-Agricultural) Pool; (ii) to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000; (iii) in conformance with the procedures described in Paragraph I of the Purchase and Sale Agreement for the Purchase of Water by Watermaster from Overlying (Non-Agricultural Pool dated June 30, 2007; or (iv) to Watermaster and thence to members of the Appropriative Pool in accordance with the following guidelines and those procedures Watermaster may further provide in Watermaster's Rules and Regulations:

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<sup>11</sup> Order dated September 28, 2000 and Order dated April 19, 2001.

(a) By December 31 of each year, the members of the Overlying (Non-Agricultural) Pool shall notify Watermaster of the amount of water each member shall make available in their individual discretion for purchase by the Appropriators. By January 31 of each year, Watermaster shall provide a Notice of Availability of each Appropriator's pro-rata share of such water;

(b) Except as they may be limited by paragraph 9(e) below, each member of the Appropriative Pool will have, in their discretion, a right to purchase its pro-rata share of the supply made available from the Overlying (Non-Agricultural) Pool at the price established in 9(d) below. Each Appropriative Pool member's pro-rata share of the available supply will be based on each Producer's combined total share of Operating Safe Yield and the previous year's actual Production by each party;

(c) If any member of the Appropriative Pool fails to irrevocably commit to their allocated share by March 1 of each year, its share of the Overlying (Non-Agricultural) Pool water will be made available to all other members of the Appropriative Pool according to the same proportions as described in 9(b) above and at the price established in Paragraph 9(d) below. Each member of the Appropriative Pool shall complete its payment for its share of water made available by June 30 of each year.

(d) Commensurate with the cumulative commitments by members of the Appropriative Pool pursuant to (b) and (c) above, Watermaster will purchase the surplus water made available by the Overlying (Non-Agricultural) Pool water on behalf of the members of the Appropriative Pool on an annual basis at 92% of the then-prevailing "MWD Replenishment Rate" and each member of the Appropriative Pool shall complete its payment for its determined share of water made available by June 30 of each year.

(e) Any surplus water cumulatively made available by all members of the Overlying (Non-Agricultural) Pool that is not purchased by Watermaster after completion of the process set forth herein will be pro-rated among the members of the Pool in proportion to the total quantity offered for transfer in accordance with this provision and may be retained by the

Overlying (Non-Agricultural) Pool member without prejudice to the rights of the members of the Pool to make further beneficial use or transfer of the available surplus.

(f) Each Appropriator shall only be eligible to purchase their pro-rata share under this procedure if the party is: (i) current on all their assessments; and (ii) in compliance with the OBMP.

(g) The right of any member of the Overlying (Non-Agricultural) Pool to transfer water in accordance with this Paragraph 9(a)-(c) in any year is dependent upon Watermaster making a finding that the member of the Overlying (Non-Agricultural) Pool is using recycled water where it is both physically available and appropriate for the designated end use in lieu of pumping groundwater.

(h) Nothing herein shall be construed to affect or limit the rights of any Party to offer or accept an assignment as authorized by the Judgment Exhibit "G" paragraph 6 above, or to affect the rights of any Party under a valid assignment.

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

# **EXHIBIT B**

# OVERLYING (NON-AGRICULTURAL) POOL COMMITTEE

## RULES AND REGULATIONS

### ARTICLE I

#### GENERAL PROVISIONS

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

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

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

Advisory Committee as the context may compel.



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

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

(d) Overlying (Non-agricultural) Pool – The pool consisting of (i) overlying producers who produce water for industrial or commercial purposes or who, at the request of Watermaster and with the consent of the Watermaster Advisory Committee, take substitute water in lieu of producing such ground water, and (ii) persons who own Safe Yield or storage water within the Pool, and have been admitted into the Pool following notice and hearing on a motion for intervention.

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

1.03 Membership in Pool. The pool shall include (i) all producers of water for overlying industrial or commercial purposes, or such producers within the Pool who may hereafter take substitute water, at the request of Watermaster and with the consent of the Watermaster Advisory Committee, in lieu of producing ground water, and (ii) all owners of Safe Yield or storage water within the Pool who have been admitted into the Pool following notice and hearing on a motion for intervention. The initial members of the Pool are listed in Exhibit “D” to the Judgment. [Based on Judgment, page 65, Section 1.]

The Pool Committee may, by affirmative vote at any time, direct that Watermaster staff or Pool Counsel deliver a written notice (the "Non-Producing Member Notice") to the last known address and to the attention of the last known representative of any person who is then a Non-Producing Member (as hereafter defined) requesting that the Non-Producing Member state in writing whether it thereafter intends to produce water or take substitute water for overlying industrial or commercial purposes. If the Non-Producing Member delivers a written notice (a "Member Continuation Notice") to Watermaster staff or Pool Counsel within 30 calendar days after delivery or attempted delivery of the Non-Producing Member Notice stating an unambiguous present intent thereafter to produce water or take substitute water for overlying industrial or commercial purposes, or to acquire Safe Yield or storage water within the Pool, then such person shall remain a member of the Pool. Otherwise, such person shall automatically and irrevocably be deemed to have withdrawn as a member of the Pool. If such Non-Producing Member delivers a Member Continuation Notice but does not actually produce water or take substitute water for overlying industrial or commercial purposes, or does not actually acquire Safe Yield or storage water within the Pool, within three fiscal years after the fiscal year in which the Non-Producing Member Notice was delivered, then the Non-Producing Member shall automatically and irrevocably be deemed to have withdrawn as a member of the Pool, notwithstanding the Member Continuation Notice. For purposes hereof, the term "Non-Producing Member" shall mean, as of any date of determination, a member of the Pool (1) who owns no Safe Yield or storage water within the Pool; and (2) who has not produced water or taken substitute water for overlying industrial or commercial purposes at any time on or after the first day of the fiscal year

immediately preceding the fiscal year in which the date of determination falls. Nothing herein shall affect the right of any Non-Producing Member who is deemed to have withdrawn from the Pool to again become a member of the Pool, or any other person to become a member of the Pool, in any other manner permitted by the Judgment, the Pooling Plan and these Rules.

1.04 Representation. The Pool Committee shall consist of one representative designated by each member of the Pool. [Based on Judgment, page 65, Section 2.]

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

## ARTICLE 2

### PROCEDURES

2.01 Principal Office. The principal office of the Pool Committee shall be the office used by Watermaster staff, or such other location within the Chino Basin as may be designated from time to time by vote of the Pool Committee.

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

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

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

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

2.06 Public Meetings. All meetings, whether regular or special, shall be open to the public. A Pool Committee meeting may be held telephonically. Any meeting of the Pool Committee may contain a confidential session for the purpose of (1) considering any matter permitted to be considered in closed session under the Brown Act (it being acknowledged that the Pool Committee is not subject to the Brown Act), or (2) considering any other matter where the closed session is approved by vote of the Pool Committee. [Approved by Pool at its meeting on 11/30/2010.]

2.07 Notice. Notices shall be given in writing to all Active Parties within the Pool and each such person who has requested notice in writing, and shall specify the time and place of the meeting and the business to be transacted thereat. Delivery of notice shall be deemed made on the date personally given or within 96 hours of deposit thereof in the United States mail, first class, postage prepaid, addressed to the designee and at the address in the latest designation filed by such person.

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

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

The volume voting power on the Pool Committee shall be 1,484 votes. Of these, 742 votes shall be allocated on the basis of one vote for each ten (10) acre feet or fraction thereof of decreed shares in Safe Yield. The remaining 742 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year; provided, however, that if a member of the Pool takes water pursuant to paragraph 8. of Exhibit G to the Judgment, for purposes of voting only, such producer shall be credited as if it had produced such water so taken and paid the assessment which would have been applicable thereto. [Based on Judgment, Exhibit G, page 65, Section 2.] Affirmative action of the Committee shall require a majority of the voting power of members in attendance, provided that it includes concurrence by at least one-third of its total members. [Approved by Pool at its meeting on 5/19/2010.]

Any action or recommendation taken by the Pool Committee shall be transmitted to Watermaster in writing within five (5) days of such action, together with a report of any dissenting vote or opinion. [Based on Judgment, page 19, Section 35.]

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

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

2.11 Minutes. The secretary (or in the absence thereof) any person so designated at said meeting) shall prepare and subscribe the minutes of each meeting and make available a copy thereof to the appropriate Active Parties and each person who has filed a request for copies of all minutes or notices in writing.<sup>1</sup> The minutes shall constitute notice of all actions therein reported. [Based on Judgment, page 20, Section 37(d).] Unless a reading of the minutes of a meeting is ordered by a majority vote of its members, each such minutes may be approved without reading.

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<sup>1</sup> Pool Counsel is authorized and instructed to maintain a copy of the approved minutes, reports and resolutions of the Non-Agricultural Pool Committee commencing with the minutes of the Committee meeting which occurred on July 1, 2010. In the event of any conflict between minutes, reports and resolutions maintained by Watermaster staff and those maintained by Pool Counsel, those maintained by Pool Counsel shall constitute the true minutes, reports and resolutions of the Committee. [Resolution adopted by pool at its meeting on 09/02/2010.]

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

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

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

The Chairperson shall preside over all meetings of the Pool Committee. In the event of the Chairperson's absence, inability, or disability, those duties shall be performed by the Vice Chairperson or, in the Vice Chairperson's absence, inability, or disability as well, by one of their number so appointed by majority vote as temporary

Chairperson for that meeting. The secretary shall prepare and maintain minutes of the meetings of the Pool Committee, and forward the originals for filing with the Watermaster, within ten (10) days of each meeting.<sup>2</sup>

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

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

2.17 Assessment. Each member of the pool shall pay an assessment equal to the cost of replenishment water times the number of acre feet of production by such producer during the preceding year in excess of (a) its decreed share of the Safe Yield, plus (b) any carry-over credit under paragraph 7. of Exhibit G to the Judgment. In addition, the cost of the allocated share of Watermaster administration expense shall be recovered on an equal assessment against each acre foot of production in the pool during such preceding

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<sup>2</sup> Pool Counsel shall serve as secretary to the Non-Agricultural Pool Committee during confidential meetings and sessions of the Committee, for the purposes, among other things, of preparing and maintaining a list of the members of the Committee and their representatives, for conducting roll calls during such meetings and sessions, for maintaining records of the actions taken during such meetings and sessions, for preparing and sending reports thereof to Watermaster staff and others, each as and when appropriate given the potentially confidential nature of such meetings and sessions. [Resolution by pool adopted at its meeting on 09/02/2010.]



fiscal year or calendar quarter; and in the case of Pool members who take substitute ground water as set forth in paragraph 8. of Exhibit G to the Judgment, such producer shall be liable for its share of administration assessment, as if the water so taken were produced, up to the limit of its decreed share of Safe Yield. [Based on Judgment, page 66, Section 5.]

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

2.19 Carry-over. Any member of the pool who produces less than its assigned share of Safe Yield may carry such unexercised right forward for exercise in subsequent years. The first water produced during any such subsequent year shall be deemed to be an exercise of its carry-over right. In the event the aggregate carry-over by any pool member exceeds its share of Safe Yield, such member shall, as a condition of preserving such surplus carry-over, execute a storage agreement with Watermaster. [See Judgment, pages 66-67, Section 7.]

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

# EXHIBIT C

RESOLUTION NO. 01-05  
A RESOLUTION OF THE CHINO BASIN WATERMASTER  
AMENDING THE OVERLYING (NON-AGRICULTURAL) POOL RULES & REGULATIONS  
IN REGARD TO WHAT CONSTITUTES A QUORUM FOR THE TRANSACTION OF ITS AFFAIRS

WHEREAS, pursuant to Judgment entered on January 27, 1978, Chino Basin Municipal Water District v. City of Chino, et al, Case No RCV 51010 (formerly 164326), Exhibit "G", Overlying (Non-Agricultural) Pool Pooling Plan, "The Pool Committee shall adopt rules for administering its program..."; and

WHEREAS, pursuant to adopted Rules and Regulations, Article 2, Paragraph 2.03, "The Pool Committee shall meet...for purpose of conducting the business of the pool and to make such recommendations as may be necessary to properly advise Watermaster"; and

WHEREAS, pursuant to adopted Rules and Regulations, Article 2, Paragraph 2.08, "A majority of the voting power of the Pool Committee shall constitute a quorum for the transaction of its affairs"; and

WHEREAS, an annual meeting of the Overlying (Non-Agricultural) Pool was noticed to occur on January 25, 2001 for the purpose of electing a pool committee chairperson and a vice chairperson from its membership in accordance with Judgment Paragraph 37(a), and

WHEREAS, the annual meeting was cancelled due to less than a quorum (a majority of the voting power) being present, and

WHEREAS, it has become increasingly difficult for a majority of the voting power of the Overlying (Non-Agricultural) Pool to attend meetings and the current escalated meeting schedule is anticipated to continue in order to facilitate implementation of the Optimum Basin Management Program.

NOW, THEREFORE, BE IT RESOLVED that in order to assure the regular business of the Overlying (Non-Agricultural) Pool is conducted and its collective interests are represented at Advisory Committee and Board meetings, Paragraph 2.08 of the Overlying (Non-Agricultural) Pool Rules and Regulations is amended to "The members of the Overlying (Non-Agricultural) Pool in attendance at meetings shall constitute a quorum for the transaction of its affairs and will represent the collective interest of the entire Pool membership." On February 2, 2001, the members of the Overlying (Non-Agricultural) Pool were sent a copy of this Resolution via facsimile and provided an opportunity to approve or oppose its adoption in writing.

BE IT FURTHER RESOLVED that upon execution of Resolution 01-05 amended Paragraph 2.08 shall become effective and remain in effect until amended or rescinded by subsequent resolution.

THE FOREGOING RESOLUTION NO. 01-05 was approved by a majority of the Overlying (Non-Agricultural) Pool voting power on this 21<sup>st</sup> day of March 2001.

By:

Stephen Arbellide  
Chairman, Overlying (Non-Agricultural) Pool

Attest:

Luan Stewart  
Secretary, Overlying (Non-Agricultural) Pool

PROOF OF SERVICE

STATE OF CALIFORNIA )

COUNTY OF LOS ANGELES )

) ss. -  
)

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

On May 2, 2014, I caused the foregoing document described as:

**NOTICE OF MOTION AND MOTION REGARDING AMENDMENT TO THE  
JUDGMENT RELATING TO QUORUM AND VOTING OF THE NON-  
AGRICULTURAL (OVERLYING) POOL COMMITTEE**

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

[PLEASE SEE ATTACHED SERVICE LIST]


☐ **BY E-MAIL.** Based on an agreement of the parties to accept service by e-mail, I caused the document to be sent to the person at the e-mail address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **BY MAIL.** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, and following ordinary business practices, placing it for collection and mailing with the United States mail at Los Angeles, California addressed as set forth below.

☐ **BY HAND DELIVERY.** I caused such document to be hand-delivered by to those on the attached service list.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 2, 2014 at Los Angeles, California.

Kristen Echols  
Print

  
Signature

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**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 May 5, 2014 I served the following:

1. **NOTICE OF MOTION AND MOTION REGARDING AMENDMENT TO THE JUDGMENT RELATING TO QUORUM AND VOTING OF THE NON-AGRICULTURAL (OVERLYING) POOL COMMITTEE**

/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

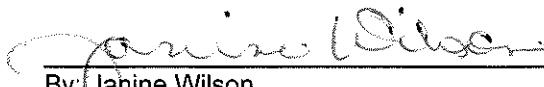
/ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/ 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 May 5, 2014 in Rancho Cucamonga, California.

  
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Chino Basin Watermaster

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