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Attorneys for  
**CHINO BASIN WATERMASTER**

**FEE EXEMPT**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER  
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

**Case No. RCV 51010**

[Assigned for All Purposes to the Honorable  
STANFORD E. REICHERT]

**NOTICE OF MOTION AND MOTION  
FOR COURT APPROVAL OF  
TEMPORARY SUBSTITUTE RATE FOR  
PHYSICAL SOLUTION TRANSFERS  
UNDER EXHIBIT "G" TO THE  
JUDGMENT; DECLARATION OF  
BRADLEY J. HERREMA IN SUPPORT  
THEREOF**

Date: December 12, 2014  
Time: 1:30 P.M.  
Dept.: R-6

TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT the Chino Basin Watermaster ("Watermaster") hereby moves this Court, pursuant to Paragraph 15 of the Restated Judgment in this action, for an Order approving a temporary substitute rate applicable to "physical solution transfers" pursuant to Exhibit "G" to the Restated Judgment in this matter. This request is made pursuant to the Court's continuing jurisdiction and authority to enforce and carry out the Restated Judgment in this action with respect to the rights established thereunder.

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MOTION FOR APPROVAL OF TEMPORARY SUBSTITUTE RATE

1 The Motion will be based upon this Notice of Motion and Motion, the attached  
2 Memorandum of Points and Authorities, the pleadings, records and files in this action, and upon  
3 such oral argument and other evidence as may be presented at the hearing on the Motion.

4 As described in the Declaration of Bradley J. Herrema in support of Motion for Court  
5 Approval of Temporary Substitute Rate for Physical Solution Transfers Under Exhibit "G" to the  
6 Restated Judgment, the proposed substitution that is the subject of this Motion was unanimously  
7 approved by the Overlying (Non-Agricultural) and Appropriative Pool Committees, Advisory  
8 Committee and Watermaster Board, and Watermaster does not believe that any party will oppose  
9 this Motion. For this reason, Watermaster requests that the Court grant this motion without  
10 hearing.

11 Dated: November 3, 2014

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP



15 By: \_\_\_\_\_  
16 SCOTT S. SLATER  
17 BRADLEY J. HERREMA  
18 Attorneys for  
19 CHINO BASIN WATERMASTER  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Pursuant to Paragraph 15 of the Restated Judgment in this action, the Chino Basin Watermaster (“Watermaster”) respectfully requests that the Court grant this Motion and the relief herein requested, which are necessary to enforce and carry out the Chino Basin Judgment<sup>1</sup> (“Restated Judgment”). Watermaster petitions the Court to allow Watermaster to temporarily deviate from the requirements of certain provisions of Exhibit “G” to the Restated Judgment, due to unique circumstances for Fiscal Year 2014-2015. Specifically, Watermaster seeks the Court’s approval to utilize a substitute “Physical Solution Transfer” rate applicable to transfers from the Overlying (Non-Agricultural) Pool to Watermaster, and thence to members of the Appropriative Pool, pursuant to Paragraph 9 of Exhibit “G” to the Restated Judgment, as explained below.

**II. BACKGROUND**

Under this Court’s continuing jurisdiction, reserved to it pursuant to Paragraph 15 of the Restated Judgment, upon application of any party by properly noticed motion and after hearing thereon, the Court may “...make such further or supplemental orders to direction as may be necessary or appropriate for interpretation, enforcement or carrying out of this Judgment, and to modify, amend or amplify any of the provisions of the Judgment.” (Restated Judgment, ¶ 15.)

Exhibit “G” to the Restated Judgment is the Overlying Non-Agricultural Pooling Plan. Paragraph 9 of Exhibit “G,” entitled “Physical Solution Transfers,” provides mechanisms pursuant to which, during the term of the Peace Agreement, the members of the Overlying (Non-Agricultural) Pool have the right to transfer or lease their quantified Production rights and carry-over water held in storage accounts. (Restated Judgment, Exh. “G”, ¶ 9.) Specifically as pertains to this Motion, the members of the Overlying (Non-Agricultural) Pool may transfer water to Watermaster, and thence to members of the Appropriative Pool, in accordance with the guidelines

<sup>1</sup> On September 27, 2012, this Court entered an Order Adopting Restated Judgment, Approving Intervention of Tad Nakase (TDN Land Company) into the Chino Basin Judgment. Pursuant to that Order, the Court ordered that the Restated Judgment shall serve as the official and legally operative copy of the Judgment in this case. All references to the “Judgment” herein are to that Restated Judgment.

1 contained in Paragraph 9. (Restated Judgment, Exh. "G", ¶ 9.)

2 By way of summary, the procedure for these transfers, as described in Paragraph 9 of  
3 Exhibit "G", is as follows: by December 31 of each year, the members of the Overlying (Non-  
4 Agricultural) Pool shall notify Watermaster of the amount of water each member shall make  
5 available in their individual discretion for purchase by the Appropriators. By January 31 of the  
6 following year, Watermaster shall provide a Notice of Availability of each Appropriator's pro-  
7 rata share of such water. (Restated Judgment, Exh. "G", ¶ 9(a).) The members of the  
8 Appropriative Pool have until March 1 of that year to determine whether to purchase such pro-  
9 rata share, and if a member's pro-rata share is not purchased, it is made available to the remaining  
10 members of the Pool in accordance with their resulting pro-rata shares. (Restated Judgment, Exh.  
11 "G", ¶ 9(c).) Commensurate with the cumulative commitments by members of the Appropriative  
12 Pool to purchase the water made available by the members of the Overlying (Non-Agricultural  
13 Pool), Watermaster will purchase the surplus water made available by the Overlying (Non-  
14 Agricultural) Pool on behalf of the members of the Appropriative Pool, and, by June 30 of each  
15 year, each member of the Appropriative Pool must complete its payment for its share of the water  
16 made available. (Restated Judgment, Exh. "G", ¶ 9(d).) Paragraph 9(d) of Exhibit "G" specifies  
17 that payment for such purchased water will be 92% of the then-prevailing "[Metropolitan Water  
18 District of Southern California] Replenishment Rate." (*Id.*)

19 **III. ARGUMENT**

20 **A. Temporary Adjustment of the Physical Solution Transfer Rate is Necessary in**  
21 **the Event MWD does not Publish a Replenishment Rate**

22 As described above, Paragraph 9(d) of Exhibit G provides that Watermaster will purchase  
23 the surplus water made available by the Overlying (Non-Agricultural) Pool water, on behalf of  
24 the members of the Appropriative Pool, at a rate of 92% of the then-applicable Metropolitan  
25 Water District of Southern California ("MWD") Replenishment Rate. (Restated Judgment, Exh.  
26 G, ¶ 9(d).) According to Watermaster's past practices, the MWD Replenishment Rate utilized is  
27 that applicable for the calendar year in which Watermaster's purchase takes place. (Declaration of  
28 Bradley J. Herrema in Support of Motion for Court Approval of Temporary Substitute Rate for  
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Physical Solution Transfers under Exhibit “G” to the Judgment, dated November 3, 2014 and attached hereto (“Herrema Dec.,” at ¶ 4.) As applied to transfers in Fiscal Year 2014-2015, as payment would be made by June 30, 2015, MWD’s Replenishment Rate for 2015 would be utilized. (Herrema Dec., ¶ 4.) Watermaster, the members of the Appropriative Pool, and the members of the Overlying (Non-Agricultural) Pool are aware, however, that MWD discontinued its Replenishment Rate prior to 2013. (Herrema Dec., ¶ 5.) Accordingly, as this is the case, Watermaster and the parties to the Restated Judgment are left without a rate from which to calculate the rate for Physical Solution Transfers in Fiscal Year 2014-2015. (See Herrema Dec., ¶ 5.)

Recognizing this problem, Watermaster, the Overlying (Non-Agricultural) Pool and the Appropriative Pool have stipulated that the substitution of a rate of 86% of MWD’s 2015 Tier 1 Untreated Rate for the rate of 92% of its Replenishment Rate for Physical Solution Transfers during Fiscal Year 2014-2015 would be appropriate. (See attached Stipulation and Proposed Order.) Watermaster and the members of the Appropriative and Overlying (Non-Agricultural) Pools have all agreed that 86% of MWD’s Tier 1 Untreated Rate is a proper rate to be used temporarily. (Herrema Dec., ¶¶ 6, 7.) It is important that the substitute rate be identified prior to the December 31, 2014 date by which members of the Overlying (Non-Agricultural) Pool must determine whether to make water available for transfer so that they may properly evaluate whether to do so. (Herrema Dec., ¶ 8.) The Court’s approval of a substitute rate under Paragraph 9(d) of Exhibit “G” would allow transfers to proceed without further issue, allowing the parties to discuss a long-term solution once MWD’s plan for offering replenishment water in the future becomes clear.

**B. Court Approval is Necessary for Watermaster Compliance with the Peace II Measures**

In its December 21, 2007 Order, this Court approved the amendment to the Restated Judgment to include the current Exhibit “G.” (Order Concerning Motion for Approvals of Peace II Documents (Dec. 21, 2007), at p 7:11-12.) The Court required Watermaster to “proceed in accordance with the second amendment to the Peace Agreement,” and “comply with all

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1 commitments it has made in the Peace II documents....” (Order Concerning Motion for  
2 Approvals of Peace II Documents (Dec. 21, 2007), at p 7:13-14, p. 8:24-25.) In order to remain  
3 compliant with Watermaster’s Peace II obligations and with the terms of Exhibit “G” to the  
4 Restated Judgment, Watermaster seeks court approval to temporarily deviate from the terms of  
5 the Restated Judgment and utilize the MWD 2015 Tier 1 Untreated rate in place of the MWD  
6 Replenishment Rate for transfers under Paragraph 9 of Exhibit G. Watermaster requests that the  
7 temporary substitute 86% of the 2015 Tier 1 Untreated Rate apply only for Physical Solution  
8 Transfers in Fiscal Year 2014-2015.

9 **IV. CONCLUSION**

10 For the reasons stated above, there is good cause to grant Watermaster’s Motion for Court  
11 Approval of Temporary Substitute Rate under Exhibit “G”, allowing temporary deviation from  
12 the terms of the Restated Judgment to substitute a rate of 86% of MWD’s Tier 1 Untreated Rate  
13 for Fiscal Year 2014-2015.

14  
15 Dated: November 3, 2014

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP



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18 By: \_\_\_\_\_  
19 SCOTT S. SLATER  
20 BRADLEY J. HERREMA  
21 Attorneys for  
22 CHINO BASIN WATERMASTER  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNARDINO

10  
11 CHINO BASIN MUNICIPAL WATER  
DISTRICT,

12 Plaintiff,

13 v.

14 CITY OF CHINO, et al.,

15 Defendant.  
16  
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**Case No. RCV 51010**

[Assigned for All Purposes to the Honorable  
STANFORD E. REICHERT]

**DECLARATION OF BRADLEY J.  
HERREMA IN SUPPORT OF MOTION  
FOR COURT APPROVAL OF  
TEMPORARY SUBSTITUTE RATE FOR  
PHYSICAL SOLUTION TRANSFERS  
UNDER EXHIBIT "G" TO THE  
JUDGMENT**

18  
19 I, Bradley J. Herrema, declare as follows:

20 1. I am an attorney duly admitted to practice before all of the courts of this State, and  
21 am a shareholder in the law firm of Brownstein Hyatt Farber Schreck, LLP, counsel of record for  
22 Chino Basin Watermaster ("Watermaster"). I have personal knowledge of the facts stated in this  
23 declaration, except where stated on information and belief, and if called as a witness, I could and  
24 would competently testify to them under oath. I make this declaration in support of the above-  
25 referenced motion.

26 2. As legal counsel for Watermaster, I am familiar with Watermaster's practices and  
27 procedures, as well as actions taken by the Pool Committees, Advisory Committee and Board.

28 ///

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1           3.       Exhibit "G" to the Judgment in the above-captioned matter is the Overlying Non-  
2       Agricultural Pooling Plan. Paragraph 9 of Exhibit "G," entitled "Physical Solution Transfers,"  
3       provides mechanisms pursuant to which, during the term of the Peace Agreement, the members of  
4       the Overlying (Non-Agricultural) Pool have the right to transfer or lease their quantified  
5       Production rights and carry-over water held in storage accounts.

6           4.       According to Watermaster's past practice applicable to Physical Solution Transfers  
7       pursuant to Exhibit "G" Paragraph 9 to the Judgment, the Metropolitan Water District of Southern  
8       California ("MWD") Replenishment Rate utilized to calculate the rate to be paid for transferred  
9       water under Exhibit "G" Paragraph 9(d) is the Replenishment Rate applicable for the calendar  
10      year in which Watermaster's purchase of water, on behalf of the members of the Appropriative  
11      Pool, takes place. As applied to transfers in Fiscal Year 2014-2015, as payment would be made  
12      by June 30, 2015, MWD's Replenishment Rate for 2015 would typically be utilized.

13          5.       MWD terminated its Replenishment Rate prior to 2013 and there are no  
14      indications that it will publish a Replenishment Rate for 2015. Accordingly, Watermaster and the  
15      parties to the Judgment will be left without a base rate from which to calculate the required 92%  
16      rate for Physical Solution Transfers in Fiscal Year 2014-2015.

17          6.       Recognizing this problem, Watermaster, the Overlying (Non-Agricultural) Pool  
18      and the Appropriative Pool have agreed to a substitute rate, which is 86% of MWD's 2015 Tier 1  
19      Untreated Rate, applicable to Physical solution Transfers in Fiscal Year 2014-2015. MWD's  
20      2015 Tier 1 Untreated Rate is \$582.00 per acre-foot; 86% of that rate is \$500.52 per acre-foot.

21          7.       At their October 9, 2014 regular meetings, the Overlying (Non-Agricultural) and  
22      Appropriative Pool Committees each approved this rate substitution for Fiscal Year 2014-2015  
23      transfers. At its regular meeting on October 16, 2014, the Advisory Committee approved the rate  
24      substitution, and at its regular meeting on October 23, 2014, the Watermaster Board approved the  
25      rate substitution.

26      ///

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1           8.       It is important that the rate for Physical Solution Transfers be identified prior to  
2 the December 31, 2014 date by which members of the Overlying (Non-Agricultural) Pool must  
3 determine whether to make water available for transfer so that they may properly evaluate  
4 whether to do so.

5           I declare under penalty of perjury under the laws of the State of California that the  
6 foregoing is true and correct. Dated this 3<sup>rd</sup> day of November, 2014, at Santa Barbara, CA.

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Bradley J. Herrema

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7 IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned counsel,  
8 solely on behalf of the parties that they represent of record, as follows:

9 1. If any member of the Overlying (Non-Agricultural) Pool Committee (each, a  
10 "NAP Electing Member") elects, pursuant to Section 9(a) of Exhibit "G" to the Judgment, to  
11 make any or all of its current annual Production right or water held in storage available for  
12 purchase by the members of the Appropriative Pool, then such offer shall be subject to the terms  
13 and conditions of Section 9 of Exhibit "G", except that the phrase "92% of the then-prevailing  
14 'MWD Replenishment Rate'" shall be replaced with the phrase "86% of the water rate for Full  
15 Service Untreated Volumetric Cost: Tier 1, as adopted by the Metropolitan Water District of  
16 Southern California as of the date hereof to be effective during the period of January 1, 2015  
17 through June 30, 2015, for each acre foot so transferred. MWD's 2015 rate for Full Service  
18 Untreated Volumetric Cost: Tier 1 is \$582.00 per acre-foot; 86% of that rate is \$500.52 per acre-  
19 foot." The terms and conditions of this Stipulation shall apply only to water made available by a  
20 NAP Electing Member between the date hereof and December 31, 2014, and only in the event  
21 that MWD does not, prior to December 31, 2014, publish a MWD Replenishment Rate that is  
22 effective during the period of January 1, 2015 through June 30, 2015.

23 2. The approval of a temporary substitute rate for Physical Solution Transfers herein  
24 shall have no precedential effect in regard to the rate that may be implemented for Physical  
25 Solution Transfers in years other than Fiscal Year 2014-2015.

26 3. Legal counsel for the Watermaster Board shall file a motion seeking entry of an  
27 order of the Court approving the rate substitution described in paragraph 1 above, and shall  
28

1 provide notice to other parties thereof. No assertion of fact or law contained in any paper filed  
2 with the Court by the Watermaster Board shall be construed as the belief or position of any other  
3 party.

4 Dated: November 3, 2014

HOGAN LOVELLS US, LLP

6 By: 

7 ALLEN W. HUBSCH  
8 Attorneys for CHINO BASIN  
9 WATERMASTER OVERLYING (NON-  
10 AGRICULTURAL) POOL

9 Dated: November \_\_\_\_, 2014

10 BY: \_\_\_\_\_

11 JOHN J. SCHATZ  
12 Attorneys for CHINO BASIN  
13 WATERMASTER APPROPRIATIVE  
14 POOL

13 Dated: November \_\_\_\_, 2014

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

15 BY: \_\_\_\_\_

16 SCOTT S. SLATER  
17 BRADLEY J. HERREMA  
18 Attorneys for CHINO BASIN  
19 WATERMASTER

19 ORDER

20 Pursuant to the stipulation of the parties and good cause appearing thereof, IT IS SO  
21 ORDERED.

22 DATED: \_\_\_\_, 2014

23 \_\_\_\_\_  
24 Judge of the Superior Court

1 provide notice to other parties thereof. No assertion of fact or law contained in any paper filed  
2 with the Court by the Watermaster Board shall be construed as the belief or position of any other  
3 party.

4 Dated: November \_\_\_\_, 2014

HOGAN LOVELLS US, LLP

6 By: \_\_\_\_\_

7 ALLEN W. HUBSCH  
8 Attorneys for CHINO BASIN  
9 WATERMASTER OVERLYING (NON-  
10 AGRICULTURAL) POOL

11 Dated: November 3, 2014

12 BY: \_\_\_\_\_

13 JOHN J. SCHATZ  
14 Attorneys for CHINO BASIN  
15 WATERMASTER APPROPRIATIVE  
16 POOL

17 Dated: November 3, 2014

18 BROWNSTEIN HYATT FARBER  
19 SCHRECK, LLP

20 BY: \_\_\_\_\_

21 SCOTT S. SLATER  
22 BRADLEY J. HERREMA  
23 Attorneys for CHINO BASIN  
24 WATERMASTER

25 ORDER

26 Pursuant to the stipulation of the parties and good cause appearing thereof, IT IS SO

27 ORDERED.

28 DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
Judge of the Superior Court

**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 November 4, 2014 I served the following:

1. **NOTICE OF MOTION AND MOTION FOR COURT APPROVAL OF TEMPORARY SUBSTITUTE RATE FOR PHYSICAL SOLUTION TRANSFERS UNDER EXHIBIT "G" TO THE JUDGMENT; DECLARATION OF BRADLEY J. HERREMA IN SUPPORT THEREOF**

☒ 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

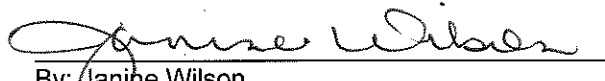
☐ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

☐ 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.

☒ 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 November 4, 2014 in Rancho Cucamonga, California.

  
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Chino Basin Watermaster

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