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FREE EXEMPT

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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  
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO et al,

16 Defendants,  
17

Case No. RCVRS 51010

Assigned for All Purposes to the  
Honorable Stanford E. Reichert

**APPROPRIATIVE POOL RESPONSE TO  
NOTICE OF MOTION REGARDING  
AMENDMENT OF POOLING PLAN FOR  
THE OVERLYING (AGRICULTURAL)  
POOL, EXHIBIT "F" OF THE  
JUDGMENT; [PROPOSED] ORDER**

Date: December 13, 2019

Time: 1:30 p.m.

Dept. S-35

[Filed concurrently herewith: Declaration of  
John J. Schatz in support of Appropriative Pool  
Response To Motion Regarding Amendment Of  
Pooling Plan For The Overlying (Agricultural)  
Pool, Exhibit "F" Of The Judgment; [Proposed]  
Order]

25 The Chino Basin Appropriative Pool, whose members include parties to the Judgment  
26 previously entered in this matter, files this Response to the Agricultural Pool's Motion to Amend  
27 Exhibit "F" of the Judgment (Overlying (Agricultural) Pool Pooling Plan) for the purpose of  
28

1 clarity. This Response does not seek interpretation or definition of Section 5.4(a) of the Peace  
2 Agreement.

3 **I. INTRODUCTION**

4 The Ag Pool Motion states: “the amendment updates the Pooling Plan to reflect the terms of  
5 the Peace Agreement approved by this Court and to conform to the policies and practices of the  
6 Pool.” (Motion at 4:20-21.)

7 The Ag Pool Motion also states: “[t]he revisions to Section 5 of the Ag Pool Pooling Plan  
8 acknowledge and reflect the terms of the 2000 Peace Agreement. The Peace Agreement was an  
9 agreement between the Parties to the Judgment and the Court ordered Watermaster to proceed in  
10 accordance with same. Section 5.4(a) of the Peace Agreement establishes that, for the term of the  
11 Peace Agreement, all assessments and expenses of the Ag Pool shall be paid by the Appropriative  
12 Pool.” (Motion at 4:25-5:1-2.)

13 The Ag Pool Motion to “conform the policies and practices of the Pool” is related to  
14 Watermaster’s Notice Of Motion And Motion For Court Approval Of Amendments to Restated  
15 Judgment Regarding Compensation Of Watermaster Pool and Advisory Committee Members that  
16 amends Judgment Paragraph 36 and will be heard by the Court on December 13, 2019. (Schatz  
17 Decl. ¶ 3.) The Ag Pool’s approach as evidenced by its Motion “to conform the policies and  
18 practices of the Pool” that includes Paragraph 36 compensation is to amend its Pooling Plan to  
19 recite only part of but not the entirety of Section 5.4(a) of the Peace Agreement that identifies the  
20 Appropriative Pool as the *source of revenue* to fund compensation and other Ag Pool expenses  
21 referenced in Section 5.4(a).

22 **II. THE APPROPRIATIVE POOL IS OPPOSED TO THE AG POOL POOLING**  
23 **PLAN AMENDMENT TO THE EXTENT IT CHANGES THE EFFECT, IMPORT OR**  
24 **MEANING OF SECTION 5.4(A) IN THE PEACE AGREEMENT**

25 During the Safe Yield reset legal dispute, the Ag Pool’s Opposition To Motion To  
26 Approve Amendments To Appropriative Pool Pooling Plan And Court-Approved Management  
27 Agreements; And Declaration Of Tracy J. Egoscue In Support Thereof, dated February 28, 2019  
28 (Ag Pool Opposition), stated: “[a]mong the changes proposed in the Motion are amendments to

1 the Peace Agreements. This Court’s February 20, 2019 Order correctly noted that the purpose of  
2 the Court of Appeal’s limited remand is for all the parties to the Judgment to participate in the  
3 process of amending the Restated Judgment and CAMA because the proposed amendments affect  
4 all the parties to the Judgment and “amendment of the provisions of [the Peace Agreement] is  
5 subject to the unanimous agreement of the parties thereto (Peace I agreement §10.14..)” (February  
6 20, 2019 Order at 2:25-3:2 and 4:12-14; emphasis added.) As contracts between the  
7 parties, amendments and/or changes to the Peace Agreements cannot be made without the express  
8 written approval of each party to the Peace Agreements (See Peace Agreement, §10.14  
9 [amendments require express written approval of each party]... (emphasis added). The Ag Pool  
10 signed the Peace Agreements on behalf of its members and is therefore a party to the  
11 Agreements”. (Ag Pool Opposition at 8:2-13.)

12 The Appropriative Pool agrees with the Ag Pool that amendments and/or changes to the  
13 Peace Agreement cannot be made without express written approval of each party to the Peace  
14 Agreement. Any amendments and/or changes to the effect, import or meaning of the Peace  
15 Agreements as a consequence of elevating CAMA provisions including Section 5.4(a) of the  
16 Peace Agreement in the Ag Pool Pooling Plan amendment that is part of the Judgment would  
17 constitute a unilateral amendment to the Peace Agreement.

18 The Appropriative Pool is opposed to the Pooling Plan Amendment to the extent it amends  
19 and/or changes or may be asserted to amend and/or change the effect, import or meaning of  
20 Section 5.4(a) of the Peace Agreement or other CAMA provisions either because of incomplete  
21 recitation or because recitation of Section 5.4(a) or other CAMA provisions in the Judgment  
22 impose or is alleged to have greater force or effect because they are recited in the Judgment.

### 23 III. CONCLUSION

24 The Appropriative Pool agrees with the Ag Pool that there should be clarity for all  
25 stakeholders and the Court. (Motion at 5:10-11.) Clarity includes recognition and acknowledgment  
26 that any amendments and/or changes to the Peace Agreement require written approval of each  
27 party to the Peace Agreement. The Ag Pool has not obtained such written approval. The  
28 Appropriative Pool requests clarity so that the Pool and all stakeholders understand the Ag Pool’s

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1 proposed Judgment amendment does not require negotiated agreement by all parties to the Peace  
2 Agreement.

3 Any change to the effect, import or meaning of the Peace Agreements as a consequence of  
4 elevating Section 5.4(a) of the Peace Agreement to the Ag Pool Pooling Plan, via its proposed  
5 amendment, would constitute a unilateral amendment to the Peace Agreement. To the extent the  
6 proposed amendment changes the effect, import or meaning of Section 5.4(a) either because of  
7 incomplete recitation or because recitation of Section 5.4(a) in the Judgment may give it greater  
8 force or effect, the Appropriative Pool is opposed to the Ag Pool Pooling Plan Amendment.

9  
10 Dated: December 2, 2019

11  
12  
13 Respectfully,

14 JOHN J. SCHATZ  
15 ATTORNEY AT LAW

16 By:

17 

18 \_\_\_\_\_  
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20 Attorney for  
21 Chino Basin Appropriative Pool  
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11 CHINO BASIN MUNICIPAL WATER  
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO et al,

16 Defendants,  
17  
18

Case No. RCVRS 51010

Assigned for All Purposes to the  
Honorable Stanford E. Reichert

**DECLARATION OF JOHN J. SCHATZ IN  
SUPPORT OF APPROPRIATIVE POOL  
RESPONSE TO NOTICE OF MOTION  
REGARDING AMENDMENT OF  
POOLING PLAN FOR THE OVERLYING  
(AGRICULTURAL) POOL, EXHIBIT "F"  
OF THE JUDGMENT; [PROPOSED]  
ORDER**

Date: December 13, 2019  
Time: 1:30 p.m.  
Dept. S-35

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- 22 1. I, John J. Schatz, am an attorney licensed to practice in the State of California. Based upon  
23 my knowledge and experience, I can competently attest to the following facts.
  - 24 2. I am counsel for the Appropriative Pool and this Declaration is made in support of the  
25 Appropriative Pool's Response To Notice Of Motion Regarding Amendment of Pooling  
26 Plan For The Overlying (Agricultural) Pool, Exhibit "F" Of the Judgment; [Proposed  
27 Order].  
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3. I attended the October 10, 2019 Appropriative Pool meeting. The meeting agenda included three related items; Business Item II.A. Restated Judgment Amendment – Watermaster Motion To Amend ¶ 36; Business Item II.B. Restated Judgment Amendment – Overlying (Agricultural) Pool Pooling Plan; and, Business Item II.C Overlying (Agricultural) Pool Rules and Regulations Amendment (Information Only).

4. The agenda for the October 10, 2019 Appropriative Pool meeting is attached as **Exhibit A**.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2<sup>nd</sup> day of December 2019, in the City of Laguna Niguel and County of Orange, State of California.

By:



---

JOHN J. SCHATZ

**EXHIBIT A**

**OCTOBER 10, 2019 APPROPRIATIVE POOL MEETING AGENDA**

**CHINO BASIN WATERMASTER  
APPROPRIATIVE POOL MEETING**

9:00 a.m. – October 10, 2019

*Mr. Van Jew, Chair*

*Mr. John Bosler, Vice-Chair*

**At The Offices Of**

**Chino Basin Watermaster**

9641 San Bernardino Road

Rancho Cucamonga, CA 91730

**AGENDA**

**CALL TO ORDER**

**AGENDA - ADDITIONS/REORDER**

**I. CONSENT CALENDAR**

**Note: All matters listed under the Consent Calendar are considered to be routine and non-controversial and will be acted upon by one motion in the form listed below. There will be no separate discussion on these items prior to voting unless any members, staff, or the public requests specific items be discussed and/or removed from the Consent Calendar for separate action.**

**A. MINUTES**

Approve as presented:

1. Minutes of the Appropriative Pool Meeting held September 12, 2019 *(Page 1)*

**B. FINANCIAL REPORTS**

Receive and file as presented:

1. Cash Disbursements for the month of August 2019 *(Page 15)*
2. Watermaster VISA Check Detail for the month of August 2019 *(Page 27)*
3. Combining Schedule for the Period August 1, 2019 through August 31, 2019 *(Page 31)*
4. Treasurer's Report of Financial Affairs for the Period August 1, 2019 through August 31, 2019 *(Page 35)*
5. Budget vs. Actual Report for the Period August 1, 2019 through August 31, 2019 *(Page 39)*

**C. APPLICATION FOR RECHARGE – JURUPA COMMUNITY SERVICES DISTRICT *(Page 57)***

Recommend Advisory Committee to recommend to the Watermaster Board to approve Jurupa Community Services District's Application for Recharge and direct Watermaster staff to account for this supplemental water recharged in Jurupa Community Services District's existing Local Supplemental Storage account.

**II. BUSINESS ITEMS**

**A. RESTATED JUDGMENT AMENDMENT – WATERMASTER MOTION TO AMEND ¶ 36**

Staff report will be distributed separately. *(Page 65)*

**B. RESTATED JUDGMENT AMENDMENT – OVERLYING (AGRICULTURAL) POOL POOLING PLAN**

Provide advice and assistance regarding the amendments to Ag Pool Pooling Plan. *(Page 67)*

**C. OVERLYING (AGRICULTURAL) POOL RULES AND REGULATIONS AMENDMENT (INFORMATION ONLY) *(Page 73)***



**D. RULES AND REGULATIONS 2019 UPDATE**

Staff report will be distributed separately. *(Page 85)*

**III. REPORTS/UPDATES**

**A. LEGAL COUNSEL REPORT**

1. 2019-1 OBMP Semi-Annual Status Report Court Filing

**B. ENGINEER REPORT**

1. GLMC Activities
2. Safe Yield Recalculation
3. Miscellaneous Requests for Watermaster Data/Information

**C. CFO REPORT**

None

**D. GM REPORT**

1. Status report: OBMP Update
2. Status report: Storage Management Plan
3. Other

**IV. INFORMATION**

1. Cash Disbursements for September 2019 *(Page 87)*
2. Recharge Investigations and Projects Committee (RIPCom) *(Page 97)*
3. Plumes Status Reports *(Page 123)*
4. Ground-Level Monitoring Status Reports *(Page 189)*

**V. POOL MEMBER COMMENTS**

**VI. CONFIDENTIAL SESSION - POSSIBLE ACTION**

A Confidential Session may be held during the Pool Committee meeting for the purpose of discussion and possible action.

1. Appropriative Pool Strategic Planning Discussion

**VII. FUTURE MEETINGS AT WATERMASTER**

10/10/19	Thu	9:00 a.m.	Appropriative Pool
10/10/19	Thu	11:00 a.m.	Non-Agricultural Pool
10/10/19	Thu	1:30 p.m.	Agricultural Pool
10/17/19	Thu	8:00 a.m.	Appropriative Pool Strategic Planning (Confidential Session Only)
10/17/19	Thu	9:00 a.m.	Advisory Committee
10/17/19	Thu	9:30 a.m.	OBMP Update – Listening Session 7
10/24/19	Thu	9:00 a.m.	Recharge Investigations and Projects Committee (RIPCom)
10/24/19	Thu	11:00 a.m.	Watermaster Board
10/29/19	Tue	1:00 p.m.	2019/20 Assessment Package Workshop

**ADJOURNMENT**

CHINO BASIN WATERMASTER

Case No. RCVRS 51010

Chino Basin Municipal Water District v. City of Chino, et al.

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 2, 2019 served the following:

1. APPROPRIATIVE POOL RESPONSE TO NOTICE OF MOTION REGARDING AMENDMENT OF POOLING PLAN FOR THE OVERLYING (AGRICULTURAL) POOL, EXHIBIT "F" OF THE JUDGMENT; [PROPOSED] ORDER
2. DECLARATION OF JOHN J. SCHATZ IN SUPPORT OF APPROPRIATIVE POOL RESPONSE TO NOTICE OF MOTION REGARDING AMENDMENT OF POOLING PLAN FOR THE OVERLYING (AGRICULTURAL) POOL, EXHIBIT "F" OF THE JUDGMENT; [PROPOSED] ORDER

/ 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 2, 2019 in Rancho Cucamonga, California.

  
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