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9 Attorneys for OVERLYING
10 (AGRICULTURAL) POOL

FILE EXEMPT

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

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 v.

17 CITY OF CHINO et al.,

18 Defendants.

Case No. RCVRS 51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

**AG POOL'S REPLY TO MONTE VISTA
WATER DISTRICT AND CITY OF
ONTARIO'S OPPOSITION TO
AGRICULTURAL POOL MOTION TO
AMEND ITS POOLING PLAN IN THE
JUDGMENT; DECLARATION OF TRACY
J. EGOSCUE IN SUPPORT THEREOF**

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

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22 The Overlying (Agricultural) Pool will and hereby does Reply to Monte Vista Water
23 District and City of Ontario's Opposition to Agricultural Pool Motion to Amend Its Pooling Plan
24 in the Judgment.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On October 31, 2019, the Overlying (Agricultural) Pool (Ag Pool) filed its Notice of
4 Motion and Motion Regarding Amendment of Pooling Plan for the Overlying (Agricultural) Pool,
5 Exhibit “F” of the Judgment (Pooling Plan Amendment Motion). On December 2, 2019, the
6 Monte Vista Water District (Monte Vista) and City of Ontario (Ontario) filed an Opposition to
7 Agricultural Pool Motion to Amend Its Pooling Plan in the Judgment (Opposition). The
8 Opposition asserts that the Ag Pool “(1) gave little to no notice to [Monte Vista and Ontario]
9 regarding the proposed Judgment amendment, [¶] (2) ignored ‘Watermaster Pool process’, and [¶]
10 (3) the Ag Pool proposed Judgment amendment” violates sections of the Peace Agreement,
11 including amending the Peace Agreement without written consent of all parties to the Peace
12 Agreement. (Opposition, at 2:1-12.) The Opposition also contends that the amendment to the
13 Pooling Plan (Pooling Plan Amendment) “eliminates a significant portion of the mutuality of
14 obligation supporting the Peace Agreement” and “does not accurately reflect the language of
15 Section 5.4(a) agreed to by the parties to the Peace Agreement.” (Opposition, at 2:13-16.)

16 Contrary to the claims now asserted by Monte Vista and Ontario, the Pooling Plan
17 Amendment accurately and adequately references the terms of the Peace Agreement in addition to
18 accurately reflecting the policies and practices of the Ag Pool for a decade. The Pooling Plan
19 Amendment was provided in advance, in the meeting packages and agendas, of the October 10,
20 2019 meetings for all three Pool Committees. (Pooling Plan Amendment Motion, at 3:15-4:21.)
21 The Ag Pool followed the appropriate process for amending its Pooling Plan, including providing
22 more notice than required pursuant to the Judgment (or the Code of Civil Procedure), and the
23 Pooling Plan Amendment does not alter the terms and effect of the Peace Agreement. This filing
24 constitutes the Ag Pool’s reply to Monte Vista and Ontario’s Opposition.

25 **II. THE AGRICUTURAL POOL PROVIDED MORE THAN SUFFICIENT NOTICE**

26 The Opposition contends that the Ag Pool provided inadequate notice for the
27 Appropriative Pool to review, fully understand, and respond to the Pooling Plan Amendment.

1 Thus, the Opposition asks this Court to deny the Pooling Plan Amendment Motion, “or, in the
2 alternative, ‘call a timeout’ for a period of time sufficient to allow [Monte Vista and Ontario] (and
3 other Appropriative Pool members) time to fully understand, discuss, and potentially respond to
4 the proposed Ag Pool Judgment amendment and for the Watermaster process to be completed,
5 including Advisory Committee and Watermaster Board consideration.” (Opposition, at 2:17-22.)

6 The Ag Pool’s Pooling Plan is a provision of the Judgment. Paragraph 15 of the Judgment
7 provides that any Pool Committee may move this Court to modify, amend or amplify any of the
8 provisions of the Judgment, or to make such further or supplemental orders or directions as may
9 be necessary or appropriate for interpretation, enforcement or carrying out of the Judgment, upon
10 application and at least 30 days’ notice thereof and after hearing thereon. (Judgment, ¶ 15.) The
11 Ag Pool could have provided a 30-day notice to all parties of a court motion to amend the Pooling
12 Plan. Instead, the Pooling Plan Amendment was presented to the Pools at the regularly scheduled
13 October 10, 2019 meetings; was reported by the Watermaster General Manager to the Advisory
14 Committee on October 17, 2019 and the Watermaster Board on October 24, 2019; and the
15 Pooling Plan Amendment Motion was filed on October 31, 2019. (Pooling Plan Amendment
16 Motion, at 3:12-4:14.) The Ag Pool has provided more than sufficient notice as required by the
17 Judgment. Indeed, the Ag Pool has exceeded the 30-day notice requirement of Paragraph 15,
18 given the 21 days between presentation of the Pooling Plan Amendment to the Pools and the
19 filing of the Pooling Plan Amendment Motion, with an additional 45 days from notice of the
20 Pooling Plan Amendment Motion to the December 13, 2019 hearing date.

21 Monte Vista and Ontario note that at the October 10, 2019 meeting, the “Appropriative
22 Pool made it clear that it had no position at that time and reserved its comments,” (Opposition, at
23 4:9-11). Despite this reservation, neither Monte Vista nor Ontario subsequently attempted to
24 discuss or respond to the Pooling Plan Amendment. At no time between the presentation of the
25 Pooling Plan Amendment at the October 10, 2019 meeting and the Ag Pool filing of the Pooling
26 Plan Amendment Motion on October 31, 2019 did Monte Vista or Ontario contact Counsel for
27 the Ag Pool to attempt to “fully understand, discuss and potentially respond to the proposed Ag
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1 Pool Judgment amendment...” (Declaration of Tracy J. Egoscue (Egoscue Decl.), ¶ 3.) Notably,
2 the issue of the sufficiency of notice of the Pooling Plan Amendment was not raised at all in the
3 Response to Ag Pool’s Pooling Plan Amendment Motion filed by the Appropriative Pool.¹

4 Monte Vista and Ontario also state that the Pooling Plan Amendment Motion “is silent as
5 to what position, if any, was taken by either the Advisory Committee or the Watermaster Board.”
6 (Opposition, at 4:14-15, footnote omitted.) No position was taken by either the Advisory
7 Committee or the Watermaster Board because no position was required by either the Advisory
8 Committee or Watermaster Board. Providing the Pooling Plan Amendments to the Pools via the
9 Pool meetings was done as a courtesy by the Ag Pool and is not required by the Judgment.

10 **III. THE POOLING PLAN DOES NOT AMEND THE PEACE AGREEMENT AND IS**
11 **APPROPRIATELY FILED WITH THIS COURT TO BE AMENDED PURSUANT TO**
12 **THE JUDGMENT**

13 The Opposition correctly notes that the Ag Pool ignored the section of the Peace
14 Agreement (Section 10.14) relating to amendments of the Peace Agreement. (Opposition, at 4:16-
15 23.) The Ag Pool ignored Section 10.14 of the Peace Agreement because the Pooling Plan
16 Amendment does not amend the Peace Agreement, and therefore it is not necessary for the Ag
17 Pool to “obtain written consent of the parties to the Peace Agreement.” Section 10.14 of the Peace
18 Agreement is not applicable.

19 Monte Vista and Ontario argue that the Ag Pool has ignored the “Watermaster Pool
20 process” by *choosing* “not to obtain written consent of the parties to the Peace Agreement...”
21 (Opposition, at 4:24-26); and has instead “chosen to amend the Judgment (Pooling Plan) to
22 allegedly reconcile language within its Rules and Regulations and Section 5.4(a) of the Peace
23 Agreement – *versus simply amending its Rules and Regulations.*”² (Opposition, at fn.1, original

24
25 ¹ On December 2, 2019, the Appropriative Pool filed a Response to Notice of Motion and Motion
Regarding Amendment of Pooling Plan for the Overlying (Agricultural) Pool, Exhibit “F” of the
Judgment.

26 ² The Opposition also contends that the Ag Pool should have followed Pool notification criteria
27 established in Paragraph 38(a) of the Judgment while also acknowledging that that paragraph is
not controlling in this instance; and this despite the fact that the Ag Pool notified each Pool at
28 least 21 days prior to its filing of the Pooling Plan Amendment Motion and an additional 45 days
prior to this hearing date. (Opposition, fn.3.)

1 italics.) Monte Vista and Ontario erroneously assert that the Ag Pool’s Pooling Plan allows the
2 Pool to ignore the requirements of the Judgment, and that “adding Section 5.4(a) of the Peace
3 Agreement to its Pooling Plan can be done administratively by the Ag Pool without any actions
4 by the Advisory Committee, Watermaster Board, or the Court. [Ag Pool Pooling Plan at ¶ 8.]”
5 (Opposition, at fn.1.) Paragraph 8 of the Ag Pool Pooling Plan does not provide the Ag Pool with
6 authority to amend the Pooling Plan administratively. Paragraph 8 states in full, “Rules. The Pool
7 Committee shall adopt rules for conducting meetings and affairs of the committee and for
8 administering its program and in amplification of the provisions, but not inconsistent with, this
9 pooling plan.” Additionally, Paragraph 46 of the Judgment requires that the Pooling Plan may
10 only be modified by amendment of the Judgment pursuant to the Court’s continuing jurisdiction.
11 Accordingly, the opposition argument fails because the Ag Pool cannot amend the Pooling Plan
12 “administratively” or without action by this Court. (Judgment, ¶ 46 [“The initial pooling plans,
13 which are hereby adopted, are set forth in Exhibits “F”, “G” and “H”, respectively. Unless and
14 until modified by amendment of the judgment pursuant to the Court’s continuing jurisdiction,
15 each such plan shall control operation of the subject pool.”].)

16 **IV. THE POOLING PLAN AMENDMENT DOES NOT VIOLATE THE PEACE**
17 **AGREEMENT**

18 The Ag Pool’s Pooling Plan Amendment proposes appropriate and necessary edits to the
19 Pooling Plan in conformance with the long-standing practices of the Ag Pool. This Court has
20 ordered that the Watermaster proceed in accordance with the terms of the Peace Agreement,
21 which includes Section 5.4(a). The recital of Section 5.4(a) of the Peace Agreement in the
22 Pooling Plan Amendment does not violate any provision of the Peace Agreement or eliminate any
23 right or obligation under the Peace Agreement.

24 The revisions to Section 5 of the Ag Pool Pooling Plan acknowledges and reflects the
25 terms of Section 5.4(a) of the Peace Agreement and establishes that, for the term of Peace
26 Agreement, all assessments and expenses of the Ag Pool shall be paid by the Appropiative Pool.
27 This practice has occurred over the last ten years and no party to the Judgment has objected.
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1 (Egoscue Decl., ¶ 4.) In fact, the introductory paragraph of Section 5.4 of the Peace Agreement
2 identifies that the *Parties expressly consent* to the Watermaster’s performance of the subsequent
3 subsections, including subsection (a). The introductory paragraph of Section 5.4 reads in full:

4 Assessments, Credits, and Reimbursements. After the
5 Effective Date and until the termination of this Agreement,
6 the Parties expressly consent to Watermaster’s performance
7 of the following actions, programs or procedures regarding
8 Assessments.

9 The mere inclusion of a citation to the Peace Agreement in the Ag Pool’s Pooling Plan
10 Amendment does not change the rights or obligations of any Party to the Peace Agreement or
11 Judgment. Indeed, the Ag Pool filing does not assert or compel any related impact or change to
12 Section 5.4(a) of the Peace Agreement.

13 **V. MONTE VISTA AND ONTARIO MISCHARACTERIZE THE POOLING PLAN**
14 **AMENDMENT**

15 Monte Vista and Ontario argue that the Pooling Plan Amendment is a “hard-wiring” of
16 Section 5.4.(a) into the Judgment that elevates it “in the hierarchy of Watermaster enforcement
17 documents.” (Opposition, at 6:14-18.) This is a complete mischaracterization of the Pooling Plan
18 Amendment. The language of the Pooling Plan Amendment does not “hard-wire” or elevate
19 Section 5.4(a) because the Pooling Plan Amendment expressly acknowledges that the provision is
20 made *pursuant to* and *for the term of* the Peace Agreement. Specifically, the Pooling Plan
21 Amendment changes the Ag Pool’s Pooling Plan Paragraph 5 to read, in relevant part:

22 Assessments. Pursuant to page 36, Section 5.4(a) of the
23 Peace Agreement, and for the term of same, all assessments
24 and expenses of the Pool including those of the
25 Agricultural Pool Committee shall be paid by the
26 Appropriate Pool. This includes but is not limited to
27 replenishment obligations. However, in the event the total
28

1 Agricultural Pool Production exceeds 414,000 acre-feet in
2 any five consecutive year period as defined in the
3 Judgment, the Pool shall be responsible for its
4 replenishment obligation pursuant to Paragraph 45 of the
5 Judgment.

6 (Italics added.)

7 Monte Vista and Ontario also incorrectly assert that the Pooling Plan Amendment violates
8 the “meet and confer” requirement of Section 8.3 of the Peace Agreement, which requires the
9 parties to discuss any new or modified terms requested or required by each Party as a prerequisite
10 to extending the term of the Agreement. (Opposition, at 6:19-25.) The Pooling Plan Amendment
11 does not modify the Peace Agreement and is made *pursuant to and for the term of* the Peace
12 Agreement. There is no mention of extending or otherwise modifying the term of the Peace
13 Agreement and the Pooling Plan Amendment is not an attempt to discuss or require “any new or
14 modified terms.”

15 Without citing to or submitting any evidence that the Ag Pool has incurred inappropriate
16 expenses, Monte Vista and Ontario argue that the Pooling Plan Amendment’s inclusion of the
17 provision of Section 5.4(a) “would validate a blank check for Ag Pool expenses,” making the
18 Appropriative Pool responsible for Ag Pool expenses “not contemplated in the Peace
19 Agreement.” (Opposition, at 6:26-7:5.) Monte Vista and Ontario go further to argue that if a
20 dispute over Ag Pool expenses occurs, the Ag Pool’s modification of its Pooling Plan forces
21 Monte Vista and Ontario “to litigate the dispute in court versus attempting to resolve the dispute
22 among the Peace Agreement parties through dispute resolution as contemplated by Section 9 of
23 the Peace Agreement.” (Opposition, at 7:6-9, footnote omitted.) The expenses of the Ag Pool
24 have been paid by the Appropriative Pool for a decade without any party objecting or initiating
25 any dispute resolution. (Egoscue Decl., ¶ 4.) This vacuous contention that conforming the Pooling
26 Plan to established practice will somehow create a problem is not a sufficient basis for opposing
27 the Ag Pool’s Pooling Plan Amendment. The Pooling Plan Amendment references the relevant
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1 authority for the long-standing practice of the Ag Pool's expenses paid *pursuant to* and *for the*
2 *term of* the Peace Agreement, and accordingly, does not provide an opportunity for application
3 beyond what is "contemplated in the Peace Agreement."

4 **VI. CONCLUSION**

5 The Ag Pool's Pooling Plan Amendment renders into writing what has occurred without
6 opposition for a decade and is a necessary administrative act filed with this Court to further the
7 efficient and appropriate operation of the Pool. Pursuant to the terms of the Judgment as well as
8 the requirements of the Code of Civil Procedure, more than adequate notice was given to Monte
9 Vista and Ontario to consider the Pooling Plan Amendment. The Pooling Plan Amendment does
10 not amend the Peace Agreement, does not change any right or obligation of any Party to the
11 Peace Agreement, nor does the Pooling Plan Amendment violate any provision of the Peace
12 Agreement. Therefore, good cause exists for the Court to grant the Ag Pool's Pooling Plan
13 Amendment Motion and Proposed Order. Accordingly, the Ag Pool respectfully requests that the
14 Court grant the Pooling Plan Amendment Motion and Proposed Order.

15 Dated: December 6, 2019

EGOSCUE LAW GROUP, INC.

16
17
18 By: _____

TRACY J. EGOSCUE
Attorneys for
OVERLYING (AGRICULTURAL) POOL

1 TRACY J. EGOSCUE (SBN 190842)
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FEE EXEMPT

9 Attorneys for OVERLYING
10 (AGRICULTURAL) POOL

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

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 v.

17 CITY OF CHINO et al.,

18 Defendants.

Case No. RCVRS 51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

**DECLARATION OF TRACY J. EGOSCUE
IN SUPPORT OF AG POOL'S REPLY TO
MONTE VISTA WATER DISTRICT AND
CITY OF ONTARIO'S OPPOSITION TO
AGRICULTURAL POOL MOTION TO
AMEND ITS POOLING PLAN IN THE
JUDGMENT**

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20 1. I, Tracy J. Egoscue, am an attorney licensed to practice in the State of California. Based
21 upon my own knowledge and experience, I can competently attest to the following facts.

22 2. I am counsel for the Overlying (Agricultural) Pool (hereafter Ag Pool) and this
23 Declaration is made in support of the Ag Pool's Reply to Monte Vista Water District and City of
24 Ontario's Opposition to Agricultural Pool Motion to Amend Its Pooling Plan in the Judgment.

25 3. At no time between the presentation of the Pooling Plan Amendment at the October 10,
26 2019 meeting and the Ag Pool filing of the Amendment Motion on October 31, 2019 did a
27 representative of Monte Vista or Ontario contact me to attempt to understand, discuss or respond
28 to the Pooling Plan Amendment.

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4. Pursuant to Section 5.4(a) of the Peace Agreement, the expenses of the Ag Pool have been paid by the Appropriative Pool for a decade without any party objecting or initiating any dispute resolution.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of December 2019 in the City of Long Beach and County of Los Angeles, State of California.

By: 
TRACY J. EGOSCUE

1 TRACY J. EGOSCUE (SBN 190842)
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10 (AGRICULTURAL) POOL

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

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 v.

17 CITY OF CHINO et al.,

18 Defendants.

Case No. RCVRS 51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

**AG POOL'S REPLY TO APPROPRIATIVE
POOL'S RESPONSE TO NOTICE OF
MOTION AND MOTION REGARDING
AMENDMENT OF POOLING PLAN FOR
THE OVERLYING (AGRICULTURAL)
POOL, EXHIBIT "F" OF THE JUDGMENT**

Date: December 13, 2019

Time: 1:30 p.m.

Dept. S-35

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22 The Overlying (Agricultural) Pool will and hereby does Reply to the Appropriative Pool's
23 Response to Ag Pool's Notice of Motion and Motion Regarding Amendment of Pooling Plan for
24 the Overlying (Agricultural) Pool, Exhibit "F" of the Judgment.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On October 31, 2019, the Overlying (Agricultural) Pool (Ag Pool) filed its Notice of
4 Motion and Motion Regarding Amendment of Pooling Plan for the Overlying (Agricultural) Pool,
5 Exhibit “F” of the Judgment (Pooling Plan Amendment Motion). On December 2, 2019, the
6 Appropriative Pool filed a Response to Motion Regarding Amendment of Pooling Plan for the
7 Overlying (Agricultural) Pool, Exhibit “F” of the Judgment (Appropriative Pool Response). This
8 filing constitutes the Ag Pool’s reply to the Appropriative Pool Response.

9 **II. THE POOLING PLAN AMENDMENT DOES NOT AMEND THE PEACE**
10 **AGREEMENT**

11 By filing a responsive pleading, the Appropriative Pool opposes the Ag Pool Pooling Plan
12 Amendment (Pooling Plan Amendment) “to the extent it amends and/or changes or may be
13 asserted to amend and/or change the effect, import or meaning of Section 5.4(a) of the Peace
14 Agreement or other [Court-Approved Management Agreements (CAMA)] provisions either
15 because of incomplete recitation or because recitation of Section 5.4(a) or other CAMA
16 provisions in the Judgment impose or is alleged to have greater force or effect because they are
17 recited in the Judgment.” (Appropriative Pool Response, at 3:18-22.)

18 The Ag Pool’s Pooling Plan Amendment does not change the effect, import or meaning of
19 the Peace Agreements. The Ag Pool does not contest that there can be no modification, change, or
20 amendment to the Peace Agreement without unanimous agreement of all parties to the Peace
21 Agreement, and the Pooling Plan Amendment does not purport to modify, change, or amend the
22 Peace Agreement. Instead, the Pooling Plan Amendment merely proposes appropriate and
23 necessary edits to the Pooling Plan itself to conform the Pooling Plan with the long-standing
24 practices of the Ag Pool. The amendment updates the Pooling Plan to reflect the terms of the
25 Peace Agreement agreed to by the parties—to which this Court has ordered the Watermaster
26 proceed in accordance with—and to reflect the policy and practice of the Ag Pool for the last ten
27 years.

1 The revisions to Section 3 of the Ag Pool Pooling Plan reflect the practice of the Pool to
2 allow for each member of the Ag Pool Committee to have one vote and serve for a one-year term.
3 This practice has occurred over the last ten years and no party to the Judgment has objected to
4 this practice.

5 The revisions to Section 5 of the Ag Pool Pooling Plan acknowledge and reflect the terms
6 of the 2000 Peace Agreement. Section 5.4(a) of the Peace Agreement establishes that, for the
7 term of the Peace Agreement, all assessments and expenses of the Ag Pool shall be paid by the
8 Appropriative Pool. This practice has occurred over the last ten years and no party to the
9 Judgment has objected.

10 The Appropriative Pool Response does not object to the practices of the Ag Pool, but
11 instead indicates that the Appropriative Pool is concerned that the Pooling Plan Amendment
12 “recite[s] only part of but not the entirety of Section 5.4(a) of the Peace Agreement that identifies
13 the Appropriative Pool as the *source of revenue* to fund compensation and other Ag Pool
14 expenses referenced in Section 5.4(a).” (Appropriative Pool Response, at 2:17-21, original
15 italics.)

16 The Pooling Plan Amendment language cites to Section 5.4(a) but did not include the
17 entirety of Section 5.4(a) language for brevity and clarity—and because it is not necessary.
18 Indeed, the mere inclusion of a citation to the Peace Agreement in the Pooling Plan Amendment
19 should be sufficient and in no way changes the effect, meaning or force of Section 5.4(a), nor
20 does the Ag Pool filing assert or compel any related impact or change to Section 5.4(a) of the
21 Peace Agreement. The Pooling Plan Amendment contains the appropriate citation to the Peace
22 Agreement and nearly word-for-word language of Section 5.4(a). (See Pooling Plan Amendment
23 Motion, Exhibit B, at ¶5 [“Pursuant to page 36, Section 5.4(a) of the Peace Agreement, and for
24 the term of same, *all assessments and expenses of the Pool including those of the Agricultural*
25 *Pool Committee shall be paid by the Appropriative Pool. This includes but is not limited to*
26 *replenishment obligations. However, in the event the total Agricultural Pool Production exceeds*
27 *414,000 acre-feet in any five consecutive year period as defined in the Judgment, the Pool shall*
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1 *be responsible for its replenishment obligation pursuant to Paragraph 45 of the Judgment...”],*
2 italics added.) The full text of Section 5.4(a) of the Peace Agreement is as follows:

3 During the term of this Agreement, *all assessments and expenses of the*
4 *Agricultural Pool including those of the Agricultural Pool Committee*
5 *shall be paid by the Appropriative Pool. This includes but is not limited to*
6 *the OBMP Assessments, assessments pursuant to Paragraphs 20, 21, 22,*
7 *30, 42, 51, 53, 54 both General Administrative Expenses and Special*
8 *Project Expenses, 55, and Exhibit F (Overlying Agricultural Pool Pooling*
9 *Plan) of the Judgment except however in the event that total Agricultural*
10 *Pool Production exceeds 414,000 acre-feet in any five consecutive year*
11 *period as defined in the Judgment, the Agricultural Pool shall be*
12 *responsible for its Replenishment obligation pursuant to Paragraph 45 of*
13 *the Judgment.*

14 (Italics added.)

15 Thus, the Pooling Plan Amendment *prima facie* does not change the effect, import or
16 meaning of the Peace Agreements. Because the Pooling Plan Amendment contains the
17 appropriate citation to the Peace Agreement Section 5.4(a), the Ag Pool asserts that the Pooling
18 Plan Amendment is appropriate as submitted.

19 The Ag Pool provided the draft Pooling Plan Amendment to the Appropriative Pool in
20 advance and during a regularly noticed Appropriative Pool meeting in an attempt to elicit
21 feedback. Despite the Ag Pool’s good faith participation in the Watermaster review process, there
22 was no timely feedback from the Appropriative Pool.

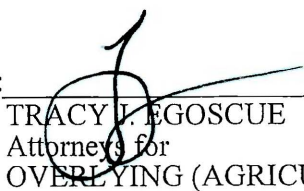
23 **III. CONCLUSION**

24 The Ag Pool’s Pooling Plan Amendment is necessary for the efficient and appropriate
25 operation of the Pool and provides necessary clarity for all stakeholders. The Pooling Plan
26 Amendment does not change the effect, import or meaning of the Peace Agreements; contains
27 appropriate citation to the Peace Agreement; and contains nearly word-for-word language of

1 Section 5.4(a). The Pooling Plan Amendment contains edits that accurately reflect the well-
2 established business practices of the Ag Pool, the Appropriative Pool, and Watermaster for a
3 decade. Therefore, good cause exists for the Court to grant the Ag Pool's Pooling Plan
4 Amendment Motion. Accordingly, the Ag Pool respectfully requests that the Court grant the
5 Pooling Plan Amendment Motion.

6
7 Dated: December 6, 2019

EGOSCUE LAW GROUP, INC.

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9 By: 
10 TRACY J. EGOSCUE
11 Attorney for
12 OVERLYING (AGRICULTURAL) POOL
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN BERNARDINO

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 v.

17 CITY OF CHINO et al.,

18 Defendants.

Case No. RCVRS 51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

**NOTICE OF MOTION AND MOTION TO
STRIKE CITY OF CHINO'S JOINDER TO
MONTE VISTA WATER DISTRICT AND
CITY OF ONTARIO'S OPPOSITION TO
AG POOL MOTION TO AMEND
POOLING PLAN IN THE JUDGMENT**

Date: December 13, 2019

Time: 1:30 p.m.

Dept. S-35

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22 **TO EACH PARTY TO THIS ACTION AND TO THE COUNSEL OF RECORD**
23 **FOR EACH PARTY:**

24 YOU ARE HEREBY NOTIFIED THAT on December 13, 2019 at 1:30 p.m., in
25 Department S35 of this Court, located at 247 West 3rd Street, San Bernardino, California 92415,
26 the Overlying (Agricultural) Pool will and hereby does move, pursuant California Code of Civil
27 Procedure § 435, subdivision (b), this Court to strike out the whole of City of Chino Joinder to
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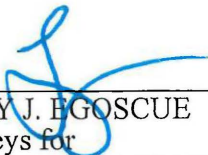
1 Monte Vista Water District and City of Ontario's Opposition to Ag Pool Motion to Amend
2 Pooling Plan.

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

6
7 Dated: December 6, 2019

EGOSCUE LAW GROUP, INC.

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By: 

TRACY J. EGOSCUE
Attorneys for
OVERLYING (AGRICULTURAL) POOL

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On October 31, 2019, the Overlying (Agricultural) Pool (Ag Pool) filed its Motion
4 Regarding Amendment of Pooling Plan for the Overlying (Agricultural) Pool, Exhibit “F” of the
5 Judgment (Pooling Plan Amendment Motion) with notice of a December 13, 2019 hearing on the
6 motion. On December 2, 2019, the Appropriative Pool filed a response to the Ag Pool Pooling
7 Plan Amendment Motion opposing the amendment to the extent it amends and/or changes the
8 effect, import or meaning of Section 5.4(a) of the Peace Agreement or other Court-Approved
9 Management Agreements provisions. On December 2, 2019, Monte Vista Water District and the
10 City of Ontario filed an opposition to the Pooling Plan Amendment Motion asserting that the Ag
11 Pool gave little to no notice to the Appropriative Pool members regarding the amendment,
12 ignored Watermaster Pool process and was in conflict with Peace Agreement provisions.

13 The City of Chino (Chino) filed its Joinder to Monte Vista Water District and City of
14 Ontario’s Opposition to Ag Pool Motion to Amend Pooling Plan (Chino Joinder) on December 3,
15 2019.

16 **II. THE AG POOL MOVES TO STRIKE THE CHINO JOINDER PURSUANT TO**
17 **CODE OF CIVIL PROCEDURE § 435**

18 Pursuant to Code of Civil Procedure section 435, the Ag Pool moves to strike the whole of
19 the Chino Joinder. Any party may serve and file a notice of motion to strike the whole pleading.
20 (Code Civ. Proc., § 435, subd. (b)(1).) The Court may, upon a motion made pursuant to Section
21 435 or at any time in its discretion, strike out all or any part of any pleading not filed in
22 conformity with the laws of the state, a court rule, or an order of the Court. (Code Civ. Proc., §
23 436, subd. (b).)

24 **III. THE CHINO JOINDER WAS NOT TIMELY FILED**

25 Code of Civil Procedure section 1005, subdivision (b) prescribes that “[a]ll papers
26 opposing a motion so noticed shall be filed with the court and a copy served on each party at least
27 nine court days... before the hearing.”

1 The Ag Pool filed its Pooling Plan Amendment Motion on October 31, 2019 with notice
2 of a December 13, 2019 hearing on the motion. Accordingly, all papers opposing the Ag Pool's
3 Pooling Plan Amendment Motion were to have been filed with the court and served on the parties
4 by December 2, 2019.

5 On December 2, 2019, Monte Vista Water District and the City of Ontario filed an
6 opposition to the Pooling Plan Amendment Motion. Chino failed to file its Joinder by the
7 December 2, 2019 deadline. Therefore, the Joinder was not filed in conformity with the
8 applicable statute setting the time in which an opposition to Ag Pool's Pooling Plan Amendment
9 Motion may be properly filed. Chino's late filing deprives the Ag Pool of a fair opportunity to
10 review and respond to written opposition to its motion.

11 **IV. CONCLUSION**

12 Code of Civil Procedure section 1005, subdivision (b) requires all papers opposing the
13 motion be filed with the court at least nine court days before the hearing; and the Court may strike
14 out any pleading pursuant to Code of Civil Procedure section 436. Chino failed to file its Joinder
15 within the time prescribed by statute, and therefore, may be stricken by the Court.

16 Good cause exists for the Court to grant this motion in order to ensure equity is preserved
17 in the Court's proceedings by providing the Ag Pool with a fair opportunity to review and
18 respond to any written opposition to its motion in conformity with applicable statutes.
19 Accordingly, the Ag Pool respectfully requests that the Court grant the Overlying (Agricultural)
20 Pool's Motion to Strike the Whole of the Chino Joinder.

21 Dated: December 6, 2019

EGOSCUE LAW GROUP, INC.

22
23
24 By: 

25 TRACY J. EGOSCUE
26 Attorneys for
27 OVERLYING (AGRICULTURAL) POOL
28

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 6, 2019 served the following:

1. AG POOL'S REPLY TO MONTE VISTA WATER DISTRICT AND CITY OF ONTARIO'S OPPOSITION TO AGRICULTURAL POOL MOTION TO AMEND ITS POOLING PLAN IN THE JUDGMENT; DECLARATION OF TRACY J. EGOSCUE IN SUPPORT THEREOF
2. DECLARATION OF TRACY J. EGOSCUE IN SUPPORT OF AG POOL'S REPLY TO MONTE VISTA WATER DISTRICT AND CITY OF ONTARIO'S OPPOSITION TO AGRICULTURAL POOL MOTION TO AMEND ITS POOLING PLAN IN THE JUDGMENT
3. AG POOL'S REPLY TO APPROPRIATIVE POOL'S RESPONSE TO NOTICE OF MOTION AND MOTION REGARDING AMENDMENT OF POOLING PLAN FOR THE OVERLYING (AGRICULTURAL) POOL, EXHIBIT "F" OF THE JUDGMENT
4. NOTICE OF MOTION AND MOTION TO STRIKE CITY OF CHINO'S JOINDER TO MONTE VISTA WATER DISTRICT AND CITY OF ONTARIO'S OPPOSITION TO AG POOL MOTION TO AMEND ITS POOLING PLAN IN THE JUDGMENT

/ 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

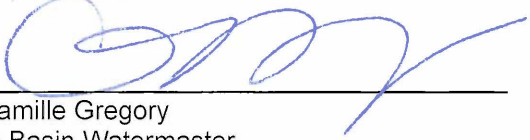
/ ___ / BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/ ___ / 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.

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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, 2019 in Rancho Cucamonga, California.


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