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10 Attorneys for CITY OF ONTARIO

11 *[Additional Parties on Following Pages]*

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, ET AL.,

Defendants.

Case No: RCVRS 51010

*Assigned for All Purposes to:
Honorable Stanford E. Reichert*

**DECLARATION OF SCOTT BURTON
IN SUPPORT OF MOTION OF
APPROPRIATIVE POOL MEMBER
AGENCIES RE: AGRICULTURAL
POOL LEGAL AND OTHER EXPENSES**

[Concurrently Filed with Notice of Motion;
Memorandum of Points & Authorities; Decl.
of J. Scott-Coe; Request for Judicial Notice;
Proposed Order]

Date: October 23, 2020
Time: 1:30 p.m.
Department: S35

DECLARATION OF SCOTT BURTON ISO MOTION OF APPROPRIATIVE POOL MEMBER AGENCIES RE:
AGRICULTURAL POOL LEGAL AND OTHER EXPENSES

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14 Attorneys for CITY OF CHINO HILLS

1 **DECLARATION OF SCOTT BURTON**

2 I, Scott Burton, declare:

3 1. I am the Utilities General Manager for the City of Ontario ("Ontario"), a member
4 agency of the Appropriative Pool ("AP") and a party in the above-captioned case. I have held this
5 position with Ontario for eight years. As the Utilities General Manager I hold overall
6 responsibility for Ontario's water system and water resources, wastewater system and Integrated
7 Waste services. In connection with my management role for Ontario, I closely follow and
8 regularly participate in matters involving the Chino Basin Watermaster. I attend Watermaster
9 meetings, including meetings of the Watermaster Board of Directors ("Board") and meetings of
10 the Appropriative Pool Committee. I am well-familiar with matters involving the Watermaster
11 and the AP. I have personal knowledge of the matters set forth herein, unless stated upon
12 information and belief, and if called as a witness, I could and would competently testify to the
13 facts stated herein. As to any matters stated upon information and belief I am informed and
14 believe they are true.

15 2. In my role as Ontario's Utilities General Manager, I have become increasingly
16 concerned about the scope of Agricultural Pool ("Ag Pool") expenses that the Ag Pool believes
17 are recoverable from the AP under the Peace Agreement. In particular, I am concerned about
18 expenses incurred by the Ag Pool in connection with adversarial proceedings such as the Storage
19 Contests filed by the Ag Pool in May 2017.

20 3. Based on information and belief in connection with my ongoing participation in
21 Watermaster matters, the Ag Pool Storage Contests are the first of their kind, representing the first
22 time the Contest procedure under the Watermaster Regulations has been utilized.

23 4. The Storage Contests were initiated by the Ag Pool to challenge applications for
24 Local Storage Agreements by certain members of the AP, including Ontario. Through the
25 Contests the Ag Pool opposed these applications for local storage by asserting, among other
26 things, that water in storage accounts exceeds the safe storage capacity of the Basin (which the Ag
27 Pool argued would cause a material physical injury to the Basin). The Storage Contests were
28

1 filed and have proceeded while the recent Safe Yield reset was pending. The Storage Contests,
2 including the Contest against Ontario, were consolidated for hearing and assigned to Mr. Kurt
3 Berchtold as the Hearing Officer.

4 5. It came to my attention through my involvement in the Appropriative Pool
5 Committee that the Ag Pool has incurred legal and expert expenses to prosecute the Storage
6 Contests. On information and belief, these expenses contributed to an overrun of the Ag Pool's
7 Watermaster-approved budget for Fiscal Year ("FY") 2019-2020. The overrun resulted in the Ag
8 Pool's recent request to Watermaster for a budget increase and transfer to cover unpaid legal
9 expenses of the Ag Pool for FY 2019-2020.

10 6. After learning of the overrun of the Ag Pool's Watermaster-approved budget for
11 FY 2019-2020, I met with representatives of other AP member agencies including Mr. Dave
12 Crosley of the City of Chino and Mr. Justin Scott-Coe of Monte Vista Water District.
13 Collectively we objected on behalf of our agencies to the Ag Pool's unbudgeted legal and expert
14 expenses and the overrun. Attached hereto as **Exhibit "A"** is a true and correct copy of the letter
15 outlining our concerns, dated May 12, 2020, and addressed to Mr. Peter Kavounas, PE, General
16 Manager of the Chino Basin Watermaster.

17 7. In response to the May 12 letter, I received a letter from Mr. Kavounas dated June
18 2, 2020, which explained that Watermaster treats Ag Pool legal invoices as attorney-client
19 privileged communications, and Watermaster does not release the detail of invoices or any
20 supporting documentation. Attached hereto as **Exhibit "B"** is a true and correct copy of Mr.
21 Kavounas' letter.

22 8. On June 24, 2020, I wrote to Mr. Kavounas on behalf of Ontario and other AP
23 member agencies to request appropriately redacted supporting documentation for the Ag Pool's
24 invoices. My letter also objected to Watermaster's payment of the Ag Pool's invoices until the
25 AP had an opportunity to review the information. Attached hereto as **Exhibit "C"** is a true and
26 correct copy my letter to Mr. Kavounas.

27 ///

1 9. On June 30, 2020, as shown by the minutes of the Ag Pool's special meeting
2 conducted on June 30, 2020, the Ag Pool took formal action demanding that the AP pay the Ag
3 Pool's unbudgeted legal expenses for FY 2019-2020.

4 10. Next, Ontario and other AP member agencies directed their collective request for
5 appropriately redacted invoices to the Ag Pool. Attached hereto as **Exhibit "D"** is a true and
6 correct copy of a letter from Mr. Scott-Coe on behalf of Monte Vista Water District and other AP
7 member agencies including Ontario, dated July 17, 2020, and addressed to the Ag Pool
8 Committee.

9 11. Mr. Robert Feenstra, Chairman of the Ag Pool Committee, responded on the Ag
10 Pool's behalf on July 20, 2020. His letter stated that the Ag Pool will not provide the redacted
11 invoices, and that if the AP does not pay its expenses, the Ag Pool will sue the AP Members.
12 Attached hereto as **Exhibit "E"** is a true and correct copy of Mr. Feenstra's letter.

13 12. In response to multiple communications expressing concerns on behalf of Ontario
14 and other AP member agencies, in oral communications with me and other AP representatives,
15 Watermaster representatives including Mr. Kavounas and Mr. Scott Slater, Watermaster's
16 General Counsel, further explained that Watermaster treats Ag Pool legal invoices as attorney-
17 client privileged communications and, as such, Watermaster neither reviews Ag Pool legal
18 invoices nor would it release the invoices.

19 13. On August 25, 2020, the Watermaster Board voted to invoice the AP for
20 approximately \$167,000 that the Ag Pool incurred in legal and expert fees in excess of its budget
21 for FY 2019-2020. The Board also voted to approve the Ag Pool's request to transfer
22 approximately \$63,000 from its Special Projects budget to its Pool Legal Services budget, for a
23 total revised budget in the approximate amount of \$530,000. The Appropriative Pool Committee
24 voted to oppose these actions at its meeting conducted on August 13, 2020, in which I personally
25 participated.

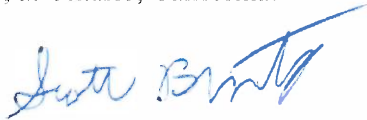
26 14. At a meeting of the Appropriative Pool Committee conducted on September 10,
27 2020, in which I participated, Watermaster notified the AP that the Ag Pool has revised its FY
28

1 2020-2021 budget for legal expenses upward from the previously approved amount of \$300,000,
2 by an additional \$200,000 to a new annual budget of \$500,000. In response to my questions
3 asked during the meeting, Watermaster representatives acknowledged that the Ag Pool provided
4 no backup for the requested increase to its legal budget, and Watermaster did not request any.

5 15. Based on information and belief, I understand that during the years following the
6 resolution of the 2009 dispute between the Ag Pool and the AP regarding interpretation of Section
7 5.4(a) of the Peace Agreement, the AP has generally paid Ag Pool assessments and expenses
8 submitted for payment under Section 5.4(a) which were pre-approved through the annual
9 Watermaster budget process. Until recently, AP member agencies such as Ontario understood
10 that such assessments and expenses were related to Watermaster-initiated projects, programs, or
11 actions, and consistent with legitimate Ag Pool functions promulgated in the Judgment. The
12 Storage Contests and recent large budget overruns led me to question the scope and
13 appropriateness of the expenses for which the Ag Pool is demanding payment by the AP.

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

16 Executed this 17th day of September, 2020, at Ontario, California.

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18 _____

19 Scott Burton
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EXHIBIT A



May 12, 2020

Mr. Peter Kavounas
General Manager
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Dear Mr. Kavounas,

The three undersigned Appropriative Pool members have objected to the Agricultural Pool's request for a Judgment Amendment which would include portions of Peace Agreement Section 5.4 (a) as part of the Agricultural Pooling Plan. In preparation for the Court hearing on this Motion, we would like to better understand how Watermaster has handled payment of assessments and expenses of the Agricultural Pool under this provision of the Peace Agreement. Accordingly, we respectfully request the following information from Watermaster:

- 1) All documentation supporting Agricultural Pool invoices under Peace Agreement Section 5.4 (a) paid by Watermaster, through assessments on the Appropriative Pool members, for the fiscal year 2018-2019 and for the current fiscal year to date.
- 2) A Statement of all payments made to the Agricultural Pool, or at its request, pursuant to Peace Agreement Section 5.4 (a) for attorney and consultant fees, together with all supporting documentation provided by the Agricultural Pool.
- 3) A Statement of all payments made to the Agricultural Pool, or at its request, pursuant to Peace Agreement Section 5.4 (a) for expenses related to the Storage contest it has filed, if any, together with supporting documentation provided by the Agricultural Pool.
- 4) If payments have been made to the Agricultural Pool, or at its request, relating to the Storage contest, a Statement of the justification for such payments in light of Watermaster Rule 10.26 (a) which provides that each party to the proceeding "shall bear its own costs and expenses...."

We respectfully request this documentation no later than 15 days from the date of this letter. We very much appreciate your anticipated cooperation.

Sincerely,

(signatures on following pages)

A handwritten signature in black ink, appearing to read 'Dave Crosley', with a stylized, flowing script.

Dave Crosley
Water and Environmental Manager
City of Chino

Scott Burton
Utilities General Manager
City of Ontario

Justin Scott-Coe
General Manager
Monte Vista Water District

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**EXEMPT FROM FILING FEE
PER GOV. CODE, § 6103**

10 Attorneys for CITY OF ONTARIO

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6 Attorneys for JURUPA COMMUNITY SERVICES DISTRICT

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11 HENSLEY LAW GROUP

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13 Burbank, CA 91505

Tel: (818) 333-5120; Fax: (818) 333-5121

14 Attorneys for CITY OF CHINO HILLS

1 **DECLARATION OF SCOTT BURTON**

2 I, Scott Burton, declare:

3 1. I am the Utilities General Manager for the City of Ontario ("Ontario"), a member
4 agency of the Appropriative Pool ("AP") and a party in the above-captioned case. I have held this
5 position with Ontario for eight years. As the Utilities General Manager I hold overall
6 responsibility for Ontario's water system and water resources, wastewater system and Integrated
7 Waste services. In connection with my management role for Ontario, I closely follow and
8 regularly participate in matters involving the Chino Basin Watermaster. I attend Watermaster
9 meetings, including meetings of the Watermaster Board of Directors ("Board") and meetings of
10 the Appropriative Pool Committee. I am well-familiar with matters involving the Watermaster
11 and the AP. I have personal knowledge of the matters set forth herein, unless stated upon
12 information and belief, and if called as a witness, I could and would competently testify to the
13 facts stated herein. As to any matters stated upon information and belief I am informed and
14 believe they are true.

15 2. In my role as Ontario's Utilities General Manager, I have become increasingly
16 concerned about the scope of Agricultural Pool ("Ag Pool") expenses that the Ag Pool believes
17 are recoverable from the AP under the Peace Agreement. In particular, I am concerned about
18 expenses incurred by the Ag Pool in connection with adversarial proceedings such as the Storage
19 Contests filed by the Ag Pool in May 2017.

20 3. Based on information and belief in connection with my ongoing participation in
21 Watermaster matters, the Ag Pool Storage Contests are the first of their kind, representing the first
22 time the Contest procedure under the Watermaster Regulations has been utilized.

23 4. The Storage Contests were initiated by the Ag Pool to challenge applications for
24 Local Storage Agreements by certain members of the AP, including Ontario. Through the
25 Contests the Ag Pool opposed these applications for local storage by asserting, among other
26 things, that water in storage accounts exceeds the safe storage capacity of the Basin (which the Ag
27 Pool argued would cause a material physical injury to the Basin). The Storage Contests were
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1 filed and have proceeded while the recent Safe Yield reset was pending. The Storage Contests,
2 including the Contest against Ontario, were consolidated for hearing and assigned to Mr. Kurt
3 Berchtold as the Hearing Officer.

4 5. It came to my attention through my involvement in the Appropriative Pool
5 Committee that the Ag Pool has incurred legal and expert expenses to prosecute the Storage
6 Contests. On information and belief, these expenses contributed to an overrun of the Ag Pool's
7 Watermaster-approved budget for Fiscal Year ("FY") 2019-2020. The overrun resulted in the Ag
8 Pool's recent request to Watermaster for a budget increase and transfer to cover unpaid legal
9 expenses of the Ag Pool for FY 2019-2020.

10 6. After learning of the overrun of the Ag Pool's Watermaster-approved budget for
11 FY 2019-2020, I met with representatives of other AP member agencies including Mr. Dave
12 Crosley of the City of Chino and Mr. Justin Scott-Coe of Monte Vista Water District.
13 Collectively we objected on behalf of our agencies to the Ag Pool's unbudgeted legal and expert
14 expenses and the overrun. Attached hereto as **Exhibit "A"** is a true and correct copy of the letter
15 outlining our concerns, dated May 12, 2020, and addressed to Mr. Peter Kavounas, PE, General
16 Manager of the Chino Basin Watermaster.

17 7. In response to the May 12 letter, I received a letter from Mr. Kavounas dated June
18 2, 2020, which explained that Watermaster treats Ag Pool legal invoices as attorney-client
19 privileged communications, and Watermaster does not release the detail of invoices or any
20 supporting documentation. Attached hereto as **Exhibit "B"** is a true and correct copy of Mr.
21 Kavounas' letter.

22 8. On June 24, 2020, I wrote to Mr. Kavounas on behalf of Ontario and other AP
23 member agencies to request appropriately redacted supporting documentation for the Ag Pool's
24 invoices. My letter also objected to Watermaster's payment of the Ag Pool's invoices until the
25 AP had an opportunity to review the information. Attached hereto as **Exhibit "C"** is a true and
26 correct copy my letter to Mr. Kavounas.

27 ///

1 9. On June 30, 2020, as shown by the minutes of the Ag Pool's special meeting
2 conducted on June 30, 2020, the Ag Pool took formal action demanding that the AP pay the Ag
3 Pool's unbudgeted legal expenses for FY 2019-2020.

4 10. Next, Ontario and other AP member agencies directed their collective request for
5 appropriately redacted invoices to the Ag Pool. Attached hereto as **Exhibit "D"** is a true and
6 correct copy of a letter from Mr. Scott-Coe on behalf of Monte Vista Water District and other AP
7 member agencies including Ontario, dated July 17, 2020, and addressed to the Ag Pool
8 Committee.

9 11. Mr. Robert Feenstra, Chairman of the Ag Pool Committee, responded on the Ag
10 Pool's behalf on July 20, 2020. His letter stated that the Ag Pool will not provide the redacted
11 invoices, and that if the AP does not pay its expenses, the Ag Pool will sue the AP Members.
12 Attached hereto as **Exhibit "E"** is a true and correct copy of Mr. Feenstra's letter.

13 12. In response to multiple communications expressing concerns on behalf of Ontario
14 and other AP member agencies, in oral communications with me and other AP representatives,
15 Watermaster representatives including Mr. Kavounas and Mr. Scott Slater, Watermaster's
16 General Counsel, further explained that Watermaster treats Ag Pool legal invoices as attorney-
17 client privileged communications and, as such, Watermaster neither reviews Ag Pool legal
18 invoices nor would it release the invoices.

19 13. On August 25, 2020, the Watermaster Board voted to invoice the AP for
20 approximately \$167,000 that the Ag Pool incurred in legal and expert fees in excess of its budget
21 for FY 2019-2020. The Board also voted to approve the Ag Pool's request to transfer
22 approximately \$63,000 from its Special Projects budget to its Pool Legal Services budget, for a
23 total revised budget in the approximate amount of \$530,000. The Appropriative Pool Committee
24 voted to oppose these actions at its meeting conducted on August 13, 2020, in which I personally
25 participated.

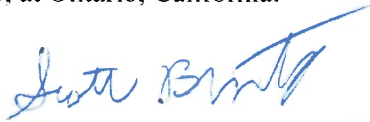
26 14. At a meeting of the Appropriative Pool Committee conducted on September 10,
27 2020, in which I participated, Watermaster notified the AP that the Ag Pool has revised its FY
28

1 2020-2021 budget for legal expenses upward from the previously approved amount of \$300,000,
2 by an additional \$200,000 to a new annual budget of \$500,000. In response to my questions
3 asked during the meeting, Watermaster representatives acknowledged that the Ag Pool provided
4 no backup for the requested increase to its legal budget, and Watermaster did not request any.

5 15. Based on information and belief, I understand that during the years following the
6 resolution of the 2009 dispute between the Ag Pool and the AP regarding interpretation of Section
7 5.4(a) of the Peace Agreement, the AP has generally paid Ag Pool assessments and expenses
8 submitted for payment under Section 5.4(a) which were pre-approved through the annual
9 Watermaster budget process. Until recently, AP member agencies such as Ontario understood
10 that such assessments and expenses were related to Watermaster-initiated projects, programs, or
11 actions, and consistent with legitimate Ag Pool functions promulgated in the Judgment. The
12 Storage Contests and recent large budget overruns led me to question the scope and
13 appropriateness of the expenses for which the Ag Pool is demanding payment by the AP.

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

16 Executed this 17th day of September, 2020, at Ontario, California.

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18 _____
19 Scott Burton
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EXHIBIT A



May 12, 2020

Mr. Peter Kavounas
General Manager
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Dear Mr. Kavounas,

The three undersigned Appropriative Pool members have objected to the Agricultural Pool's request for a Judgment Amendment which would include portions of Peace Agreement Section 5.4 (a) as part of the Agricultural Pooling Plan. In preparation for the Court hearing on this Motion, we would like to better understand how Watermaster has handled payment of assessments and expenses of the Agricultural Pool under this provision of the Peace Agreement. Accordingly, we respectfully request the following information from Watermaster:

- 1) All documentation supporting Agricultural Pool invoices under Peace Agreement Section 5.4 (a) paid by Watermaster, through assessments on the Appropriative Pool members, for the fiscal year 2018-2019 and for the current fiscal year to date.
- 2) A Statement of all payments made to the Agricultural Pool, or at its request, pursuant to Peace Agreement Section 5.4 (a) for attorney and consultant fees, together with all supporting documentation provided by the Agricultural Pool.
- 3) A Statement of all payments made to the Agricultural Pool, or at its request, pursuant to Peace Agreement Section 5.4 (a) for expenses related to the Storage contest it has filed, if any, together with supporting documentation provided by the Agricultural Pool.
- 4) If payments have been made to the Agricultural Pool, or at its request, relating to the Storage contest, a Statement of the justification for such payments in light of Watermaster Rule 10.26 (a) which provides that each party to the proceeding "shall bear its own costs and expenses...."

We respectfully request this documentation no later than 15 days from the date of this letter. We very much appreciate your anticipated cooperation.

Sincerely,

(signatures on following pages)

A handwritten signature in black ink, appearing to read 'Dave Crosley', with a stylized, flowing script.

Dave Crosley
Water and Environmental Manager
City of Chino

Scott Burton
Utilities General Manager
City of Ontario

Justin Scott-Coe
General Manager
Monte Vista Water District

Dave Crosley
Water and Environmental Manager
City of Chino



Scott Burton
Utilities General Manager
City of Ontario

Justin Scott-Coe
General Manager
Monte Vista Water District

Dave Crosley
Water and Environmental Manager
City of Chino

A handwritten signature in black ink, appearing to read 'JSC', with a long, sweeping horizontal stroke extending to the right.

Justin Scott-Coe
General Manager
Monte Vista Water District

Scott Burton
Utilities General Manager
City of Ontario

EXHIBIT B



CHINO BASIN WATERMASTER

9641 San Bernardino Road, Rancho Cucamonga, CA 91730
Tel: 909.484.3888 Fax: 909.484.3890 www.cbwm.org

PETER KAVOUNAS, P.E.
General Manager

June 2, 2020

RE: Response to RFI Submitted on May 19, 2020

Dear Messrs. Crosley, Burton, and Scott-Coe,

The following information is provided in response to your Request for Information dated May 19, 2020.

Attached are copies of all invoices paid at the request of the Overlying (Agricultural) Pool (OAP) for attorney fees during the described time period; during that period, there have been no payments made to a consultant at the request of the OAP. The information can also be found in the B5 reports provided monthly to the Committees and the Board.

Watermaster handles Legal Counsel expenses as Attorney-Client privileged communications and does not release the detail of the invoices or any supporting documentation. Accordingly, while we have provided the Ag Pool legal counsel's invoices submitted during the described time period, all time entry descriptions have been redacted.

Inquiry as to whether fees paid to an attorney at the request of the OAP included expenses related to the "Storage Contest" would invade the Attorney-Client privilege to determine the nature of the work performed. Therefore, a breakdown of the detail beyond the total amounts paid is not available for release based on its privileged nature.

In regard to section 10.26(a) of the Watermaster Rules and Regulations¹, Watermaster interprets the Rules and Regulations consistent with section 1.3 thereof, which provides:

These Rules and Regulations shall be construed consistent with the Judgment, the Peace Agreement, and the Peace II Agreement. In the event of a conflict between these Rules and Regulations and the Judgment, the Peace Agreement, or the Peace II Agreement, the Judgment, the Peace Agreement, and Peace II Agreement shall prevail. In the event of a conflict between the Peace Agreement, or the Peace II Agreement and the Judgment, the Judgment shall control.

¹ "Each party to the proceeding shall bear its own costs and expenses associated with the proceeding."
(Watermaster Rules and Regulations, § 10.26(a).)

June 2, 2020

Peace Agreement ¶5.4(a) sets forth the requirement that the Appropriative Pool obligation to pay OAP and OAP Committee expenses. In relevant part, ¶5.4(a) provides:

During the term of this Agreement, all assessments and expenses of the Agricultural Pool, including those of the Agricultural Pool Committee shall be paid by the Appropriative Pool.

The initial term of the Peace Agreement expires, unless extended in June of 2030. As such, the costs and expenses of the OAP to the present contest proceedings described in Rules and Regulations section 10.26(a) are treated as expenses as described in paragraph 5.4(a) of the Peace Agreement.

Please do not hesitate to contact me if you have any questions or need further information.

Sincerely,



Peter Kavounas, P.E.

Attachment: Ag Pool Legal Services – July 1, 2018 to April 30, 2020 – Egoscue Invoices

EXHIBIT C

CITY OF



ONTARIO

ONTARIO MUNICIPAL UTILITIES COMPANY

PAUL S. LEON
MAYOR

DEBRA DORST-PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

June 24, 2020

SCOTT OCHOA
CITY MANAGER

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT BURTON
UTILITIES GENERAL MANAGER

Mr. Peter Kavounas
General Manager
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Dear Mr. Kavounas,

The City of Ontario requests that Watermaster immediately provide the back-up information supporting the legal and consultant invoices submitted by the Agricultural Pool relating to the Storage Contest. Moreover, we request that Watermaster not pay any Agricultural Pool invoices until we have had an opportunity to review this information. Ontario is joined in these requests by the Cities of Chino and Pomona, Jurupa Community Services District, and Monte Vista Water District. We find the reasons advanced by Watermaster for not providing this supporting information and arguing for payment of these invoices by the Appropriative Pool under Section 5.4(a) of the Peace Agreement, to be unsupportable. We require that this information be made available immediately so that it can be utilized during the June 26, 2020 Court Hearing on the proposed amendments to the Agricultural Pooling Plan.

By letter dated May 26, 2020, Messrs. Burton, Crosley and Scott-Coe, representing the Cities of Ontario and Chino and the Monte Vista Water District, requested all documents supporting the Agricultural Pool invoices relating to the Storage Contests. The need for this information is apparent as Legal Expenses for a Storage Contest are clearly not reimbursable under Section 5.4 of the Peace Agreement.

Your June 2nd response letter impermissibly interprets the obligation of the Appropriative Pool to reimburse under Section 5.4 so broadly as to allow virtually any expense no matter how divorced that expense is from the appropriate role and authority of the Pool under the Judgment. Such an interpretation is not sustainable, and certainly not in the context of Agricultural Pool Expenditures for the Storage Contest.

Specifically, your response letter ignored (1) an applicable California Supreme Court decision, (2) controlling provisions of our Judgment, and (3) Watermaster's own Rules relating to Contests of Storage Applications. Your letter states that "Watermaster handles Legal Counsel expenses as Attorney-Client privileged communications and does not release the detail of the invoices or any supporting

documentation." Not only does this position make it impossible for Appropriative Pool members to determine whether such expenses are appropriate and reimbursable under Section 5.4 of the Peace Agreement but is contrary to law.

1. California Supreme Court Authority

The California Supreme Court, in interpreting the Public Records Act in *Los Angeles County Board of Supervisors v. Superior Court* (2016) 2 Cal. 5th 282 held that not everything in an invoice for legal services is categorically privileged. Instead, the contents of an invoice are privileged only to the extent they communicate information for the purpose of legal consultation. The fact that parts of an attorney invoice may contain privileged information does not justify withholding the entire document where the invoice can be disclosed with appropriate redactions. *Los Angeles County Board of Supervisors v. Superior Court* 2 Cal 5th at 299-300. Contrary to these principles, Watermaster has made no attempt to disclose the invoices with appropriate redactions so that the Appropriative Pool members can determine what portions of the invoices relate to the Storage Contest versus other issues.

2. Controlling Provisions of the Judgment

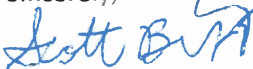
Importantly, the Agricultural Pool is further constrained by our Judgment, which certainly dictates how Section 5.4 of the Peace Agreement should be interpreted. Section 38 (a) of the Judgment limits the role of the Pool Committee to "developing policy recommendations for administration of its particular pool...". In that context, a Pool Committee under Section 38 (c) of the Judgment is "entitled to employ counsel and expert assistance in the event that...such Pool...seeks Court Review of any Watermaster action or inaction." Nowhere else in the Judgment or the Pooling Plans is the Agricultural Pool entitled to employ counsel or expert assistance. Certainly, the Storage Contest improperly initiated by the Agricultural Pool before Kurt Berchtold cannot be construed as "Court review of any Watermaster action or inaction."

3. Watermaster Rules and Regulations

Lastly, the Agricultural Pool is not a party to the Judgment and is not authorized to contest an application under Watermaster Rules and Regulations, Section 10.13. That section states that "a Contest to the Application may be filed by any party to the Judgment" and does not authorize participation by a Pool. Further, Section 10.26 of the Rules states that each such party "shall bear its own costs and expenses associated with the proceeding." Finally, the Peace Agreement itself at Section 10.5 provides that each Party shall bear its own attorney's fees and costs "in connection with the subject matter of this Agreement."

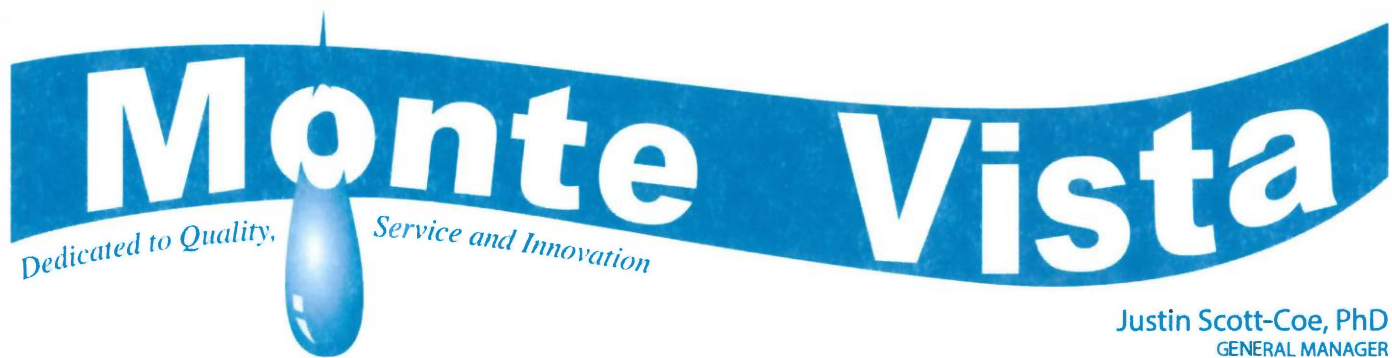
In sum, members of the Appropriative Pool have a pressing need for the documentation which will disclose if any of the expenses invoiced by the Agricultural Pool have been improperly incurred in connection with the Storage Contest, an unauthorized expenditure under our Judgment. We very much appreciate your anticipated cooperation.

Sincerely,



Scott Burton
Utilities General Manager

EXHIBIT D



July 17, 2020

Overlying Agricultural Pool Committee
c/o Peter Kavounas, General Manager
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

SENT VIA EMAIL ONLY: pkavounas@cbwm.org

Dear Chairperson Feenstra and Committee Members:

Monte Vista Water District requests the Overlying Agricultural Pool (“Ag Pool”) to provide documentation supporting Ag Pool legal and consultant invoices submitted to Watermaster regarding the Ag Pool Storage and Transfer Contest (“Contest”). Such documentation should include attorney bills, redacted as appropriate, and unredacted consultant bills. Monte Vista Water District is joined in this request by the following members of the Appropriate Pool: the Cities of Chino, Chino Hills, Ontario, Pomona, and Upland, Cucamonga Valley Water District, Fontana Water Company, Fontana Union Water Company, Jurupa Community Services District, Monte Vista Irrigation Company, San Antonio Water Company, and West End Consolidated Water Company (collectively, “AP Members”).

In addition, and since the Appropriate Pool has been denied any opportunity so far to review either unredacted or redacted versions of Ag Pool legal expenses, the AP Members request that the Ag Pool reimburse the AP for all Ag Pool legal and consultant invoices submitted to Watermaster regarding the Ag Pool Contest since such invoices are clearly outside the expenses contemplated by Section 5.4(a) of the Peace Agreement. In addition to Ag Pool expenses regarding its Contest, the AP Members object to, and request reimbursement of, all other Ag Pool expenses not contemplated by Section 5.4(a) which have been submitted to Watermaster and paid by the Appropriate Pool.

The expenses contemplated in Section 5.4(a) are limited to those generated by Watermaster (i.e. Watermaster’s performance) – not expenses generated by the Ag Pool such as legal and consultant fees to initiate litigation or a Contest. This limited scope of expenses is evidenced by:

- (1) The Peace Agreement in its entirety;
- (2) Introductory language to Section 5.4, which states that the “Parties expressly consent to ***Watermaster’s performance*** of the following actions, programs or procedures regarding assessments”;



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PRESIDENT

G. Michael Milhiser
VICE PRESIDENT

Manny Martinez
DIRECTOR / BOARD AUDITOR

Philip L. Erwin
DIRECTOR

Tony Lopez
DIRECTOR

- (3) The title of Section 5, which is “***Watermaster Performance***”; and
- (4) Examples of assessments and expenses in Section 5.4(a), which include OBMP Assessments, General Administrative Expenses, and Special Project Expenses – assessments and expenses generated by Watermaster’s performance in its role as an arm of the court. Aside from Watermaster Special Project Expenses, Section 5.4(a) does not provide for payment of Ag Pool legal or consultant fees.

As stated in a letter to Watermaster dated June 24th, which is attached, Ag Pool expenses are further constrained by Section 38 of the Judgment, which limits the role of the Pool Committee to “developing policy recommendations...” and entitles a Pool Committee “to employ counsel and expert assistance” to seek “Court Review of any Watermaster action or inaction” (i.e. Watermaster performance or failure to perform). Certainly, the Contest improperly initiated by the Ag Pool cannot be construed as “Court review of any Watermaster action or inaction.” And Ag Pool costs to review Watermaster action or inaction under Paragraph 38 are not payable by the Appropriate Pool under the Peace Agreement.

In a separate and concurrent letter to Watermaster, which is attached, AP Members request Watermaster to deny the Ag Pool’s requested budget amendment and payment of unpaid invoices until the AP has an opportunity to review the documents in support of Ag Pool expenses before Watermaster takes action. Accordingly, AP Members request such documentation (and reimbursement) from the Ag Pool for all Ag Pool legal and consultant invoices regarding the Contest (and object to, and request reimbursement of, all other Ag Pool expenses not contemplated by Section 5.4(a)).

Thank you for your time and attention to this matter. We request a written response within ten (10) business days.

Sincerely,

Monte Vista Water District



Justin M. Scott-Coe
General Manager

Attachments: AP Members Letter to Watermaster dated June 24, 2020
AP Members Concurrent Letter to Watermaster

cc: Tracy Egoscue, Esq. (Tracy@Egoscuelaw.com)
Scott Slater, Esq. (SSlater@bhfs.com)

EXHIBIT E

Agricultural Pool

Chair: Bob Feenstra

Vice-Chair: Jeff Pierson

Chino Basin Watermaster

9641 San Bernardino Road, Rancho Cucamonga, Ca. 91730

Tel: 909.484.3888 Fax: 909.484.3890 www.cbwm.org



July 20, 2020

Via Email Only: pkavounas@cbwm.com

Monte Vista Water District and Joining Members of the Appropriative Pool
c/o Peter Kavounas, General Manager
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Dear Mr. Scott-Coe and "AP Members":

This letter serves as the Overlying (Agricultural) Pool's (Agricultural Pool) written response to your letter dated July 17, 2020 by "AP Members"—Monte Vista Water District, the Cities of Chino, Chino Hills, Ontario, Pomona, and Upland, Cucamonga Valley Water District, Fontana Water Company, Fontana Union Water Company, Jurupa Community Services District, Monte Visit Irrigation Company, San Antonio Water Company, and West End Consolidated Water Company.

Your correspondence requests that the Agricultural Pool reimburse the Appropriative Pool for all Agricultural Pool legal and consultant invoices submitted to the Chino Basin Watermaster regarding the Agricultural Pool Contest. The July 17, 2020 letter asserts that legal and consultant expenses of the Agricultural Pool related to the Contest are "clearly outside the expenses contemplated by Section 5.4(a) of the Peace Agreement" and that Agricultural Pool expenses are constrained by Section 38 of the Judgment, which limits the role of the Pool Committee to "developing policy recommendations..." and entitles a Pool Committee "to employ counsel and expert assistance" to seek "Court Review of any Watermaster action or inaction."

These assertions are wrong, disingenuous, and made in bad faith. The invoices requested by the AP Members are protected by attorney-client privilege and the Agricultural Pool declines to provide such invoices to avoid waiver of its attorney-client privilege.¹

Additionally, Section 5.4(a) of the Peace Agreement explicitly states that the Appropriative Pool consents to pay *all* assessments and expenses of the Agricultural Pool, specifically:

During the term of this Agreement, all assessments and expenses of the Agricultural Pool including those of the Agricultural Pool Committee shall be paid by the Appropriative Pool.

There is no ambiguity in determining the meaning of the phrase "*all assessments and expenses of the Agricultural Pool*." All assessments and expenses mean *all assessments and expenses*. Therefore, the

¹ *Los Angeles County Board of Supervisors v. Superior Court* (2016) 2 Cal.5th 282.

Agricultural Pool further declines to reimburse the Appropriative Pool for any legal or consultant expenses.

Also, interpreting Section 38 of the Judgment to constrain Pool Committees to employing counsel or experts only in seeking court review of Watermaster action/inaction is improper, unreasonable and would deprive the Pool Committees of fully and effectively participating in the Chino Basin Watermaster process.

If the AP Members continue to refuse to act in accordance with the plain language of the terms of the contractual Peace Agreement requiring payment of *all assessments and expenses of the Agricultural Pool*, the Agricultural Pool will be forced to bring suit for breach of contract, damages, and any other relief the Court deems suitable.

Sincerely,

Robert Feenstra,
Chair

CC: Justin Scott-Coe
Scott Slater
Brad Herrema
Andrew Gagen

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 September 18, 2020 I served the following:

1. DECLARATION OF SCOTT BURTON IN SUPPORT OF MOTION OF APPROPRIATIVE POOL MEMBER AGENCIES RE: AGRICULTURAL POOL LEGAL AND OTHER EXPENSES

/ 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

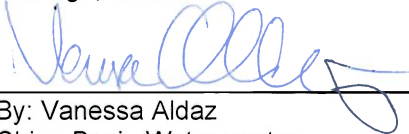
/ ___ / BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/ ___ / 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 September 18, 2020 in Rancho Cucamonga, California.



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Chino Basin Watermaster

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