

# FEE EXEMPT

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**CHINO BASIN WATERMASTER**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER  
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, ET AL.,

Defendants.

**Case No. RCV RS 51010**

[Assigned for All Purposes to the  
Honorable Stanford E. Reichert]

**CHINO BASIN WATERMASTER  
RESPONSE TO CITY OF CHINO EX  
PARTE APPLICATION FOR AN ORDER  
TO EXTEND TIME UNDER JUDGMENT,  
PARAGRAPH 31(C) TO CHALLENGE  
WATERMASTER ACTION/DECISION ON  
AUGUST 25, 2020 TO ISSUE INVOICES  
TO PAY AG POOL LEGAL EXPENSES TO  
APPROPRIATORS INCLUDING THE  
CITY OF CHINO**

Date: October 16, 2020

Time: 1:30 p.m.

Dept: S35

[Filed concurrently herewith: Declaration of Peter  
Kavounas; Declaration of Bradley J. Herrema]

1           **TO THE HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF**  
2 **RECORD**, Chino Basin Watermaster (“Watermaster”) hereby files its Response to the City of  
3 Chino’s (“City”) Ex Parte Application for an Order to Extend Time Under Judgment, Paragraph  
4 31(C) To Challenge Watermaster Action/Decision on August 25, 2020 to Issue Invoices to Pay  
5 Ag Pool Legal Expenses to Appropriators Including the City of Chino (the “Application”).  
6 Watermaster takes no position as to the merits of the City’s Application, but believes the City’s  
7 Application is premature and that the Court should delay consideration of Application until after  
8 the Watermaster Board has considered the City’s October 9, 2020 request in regard to the  
9 Watermaster invoice at issue.

10 **I.     THE CITY’S APPLICATION IS PREMATURE**

11       **A.     Factual Background**

12           By the end of Fiscal Year 2019-2020, the Overlying (Agricultural) Pool (“Ag Pool”) legal  
13 expenses had exceeded the budgeted amount. To address the exceedance, the Ag Pool directed  
14 Watermaster transfer a portion of its budget for other expenses to cover the increased expenses  
15 for the legal services. (Declaration of Peter Kavounas (“Kavounas Declaration”), at ¶ 3)  
16 Following advice and assistance from the Pool Committees, at its August 25, 2020 meeting, the  
17 Watermaster Board voted to direct staff to issue invoices to the Appropriative Pool parties in  
18 order to reimburse the Ag Pool account from which money had been transferred to cover the Ag  
19 Pool’s increased legal expenses. (*Id.*) Later that day, Watermaster issued invoices to the  
20 Appropriative Pool parties, including issuing Invoice No. 2020-02-SPE to the City of Chino. (*Id.*  
21 at Exhibit A.) Invoice No. 2020-02-SPE indicated that payment was due no later than September  
22 25, 2020. (*Id.*)

23           The City did not pay Invoice No. 2020-02-SPE by September 25, 2020, and, on  
24 September 30, 2020, Watermaster sent the City’s designated contact, Mr. David Crosley, a letter  
25 noting the City’s payment delinquency and requesting that the City let the Watermaster General  
26 Manager know what arrangements were being made for prompt payment of the outstanding  
27 invoice. (Kavounas Declaration, at ¶ 4.)

28           On October 9, 2020, Watermaster received a letter from Mr. Crosley, acknowledging

Watermaster's September 30, 2020 letter. Mr. Crosley's letter indicated that the City had "neither chosen to pay nor not to pay [Invoice No. 2020-02-SPE]. Instead, the City of Chino has chosen to await Judge Reichert's ruling on the 'Motion of the Appropriative Pool Member Agencies Re: Agricultural Pool Legal And Other Expenses' as the basis for the payment or nonpayment of the above described invoice." (Kavounas Declaration, at ¶ 5.) The City proposed that Watermaster also await this Court's ruling on the Motion of the Appropriative Pool Member Agencies Re: Agricultural Pool Legal And Other Expenses and agree to a mutual stay of the City and Watermaster's respective remedies under the Judgment. (*Id.*) Mr. Crosley requested a response to his letter no later than October 13, 2020. (*Id.* at Exhibit C.) On the afternoon of October 9, 2020, Mr. Kavounas responded to Mr. Crosley's letter, stating, "A determination regarding your request is beyond staff's discretion and will be made by the Watermaster Board. You are welcome to address the Board at its October 22, 2020 meeting." (*Id.* at ¶ 6.)

By an October 14, 2020, 4:33 p.m. e-mail, the City's legal counsel, Mr. Jimmy Gutierrez, informed Watermaster's legal counsel that he had set an Ex Parte Hearing on Friday, October 16, 2020 at 1:30 p.m. in Judge Reichert's Courtroom, Dept. 35S. (Declaration of Bradley J. Herrema, at ¶ 4.) His e-mail explained the basis for the Application as follows:

The Ex Parte Application seeks an order to extend the period of time under Paragraph 31(c) of the Judgment, from 60 days to 120 days, for Chino to file a motion to challenge Watermaster's August 25, 2020 order to issue invoices to the Members of the Appropriative Pool to pay the Ag Pool initiated legal fees in the sum of \$165,694.75 including Invoice No. 2020-02-SPE to the City of Chino in the sum of \$29,835.46.

(*Id.*) Watermaster legal counsel responded to Mr. Gutierrez that it took no position on the merits of the Application, but that not allowing the Board to consider the City's October 9, 2020 request before seeking ex parte relief seemed unnecessary. (*Id.* at ¶ 5.)

**B. The Application is Premature**

As described in Mr. Kavounas' October 9, 2020 e-mail, Watermaster staff intended to take the City's request to the Watermaster Board at its October 22, 2020 meeting. (Kavounas Declaration at ¶¶ 7-8.)

Watermaster takes no position on the request until the Board has an opportunity to

1 evaluate it. The deadline established by the City for a response would have required the  
2 scheduling for the sole purpose of evaluating the request. It is Watermaster's position that the  
3 Court's consideration of the City's Application prior to the Board's consideration of the City's  
4 October 9, 2020 letter is premature for the reasons set forth below.

5 First, it deprives the Watermaster Board of the opportunity to consider the request  
6 undermining the administrative authority of Watermaster. In short, the failure to exhaust its  
7 remedy to seek relief from Watermaster encourages further law and motion before the Court that  
8 may easily be resolved by the Watermaster Board.

9 Second, the City will not be prejudiced by the Court declining to hear the City's  
10 Application until after the Board's October 22, 2020 meeting. This meeting is within 60 days of  
11 the August 25, 2020 Watermaster Board action to direct staff to invoice the City and within 60  
12 days of Watermaster's issuance of Invoice No. 2020-02-SPE. Additionally, this Court already has  
13 on its calendar for October 23, 2020 a hearing in the Watermaster case – the Motion of the  
14 Appropriative Pool Member Agencies Re: Agricultural Pool Legal And Other Expenses. This  
15 hearing date is also within 60 days of the August 25, 2020 Watermaster Board action to direct  
16 staff to invoice the City and within 60 days of Watermaster's issuance of Invoice No. 2020-02-  
17 SPE. If the City is dissatisfied with the Board's response to its request, it can have the Application  
18 heard on October 23, 2020, in conjunction with the hearing already on calendar.

19 **II. CONCLUSION**

20 Watermaster respectfully offers that the City's Application is premature and that the Court  
21 should delay consideration of Application until after the Watermaster Board has considered the  
22 City's request. For the convenience of the Court and the parties, the Court may set the  
23 Application for hearing in coordination with the October 23, 2020 hearing that is already on  
24 calendar.

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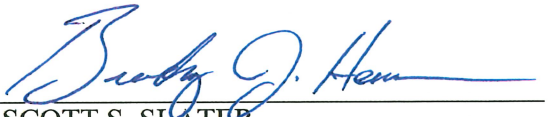
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1 Dated: October 15, 2020

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2  
3 By: 

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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 October 15, 2020 I served the following:

1. CHINO BASIN WATERMASTER RESPONSE TO CITY OF CHINO EX PARTE APPLICATION FOR AN ORDER TO EXTEND TIME UNDER JUDGMENT, PARAGRAPH 31(C) TO CHALLENGE WATERMASTER ACTION/DECISION ON AUGUST 25, 2020 TO ISSUE INVOICES TO PAY AG POOL LEGAL EXPENSES TO APPROPRIATORS INCLUDING THE CITY OF CHINO

/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 October 15, 2020 in Rancho Cucamonga, California.

  
By: Vanessa Aldaz  
Chino Basin Watermaster

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