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Attorneys for
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]

**DECLARATION OF PETER KAVOUNAS
IN SUPPORT OF 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: Chino Basin
Watermaster Response to City of Chino Ex-Parte
Application; Declaration of Bradley J. Herrema]

DECLARATION OF PETER KAVOUNAS

I, Peter Kavounas, declare as follows:

1. I currently serve as the General Manager of the Chino Basin Watermaster (“Watermaster”). I have served in this capacity since September 4, 2012. I have personal knowledge of the facts stated in this declaration, except where stated on information and belief, and if called as a witness, I could and would competently testify to them under oath. I make this declaration in support of Watermaster’s 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.

2. As the General Manager of Watermaster, I am intimately familiar with the actions taken by the Pool Committees, Advisory Committee, and the Watermaster Board. My role as General Manager includes attending all Pool Committee, Advisory Committee, and Watermaster Board meetings.

3. At its August 25, 2020 meeting, the Watermaster Board voted 8-1 to direct staff to issue invoices to the Appropriative Pool parties in order to reimburse the Agricultural (Ag) Pool account from which money had been transferred to cover the Ag Pool’s increased legal expenses, allocated on the basis of the “Ag Pool Reallocation”. Invoice No. 2020-02-SPE was issued with payment due no later than September 25, 2020. A true and correct copy of the Board’s August 25, 2020 staff report and invoices can be found attached at **Exhibit A**.

4. As of September 30, 2020, Invoice No. 2020-02-SPE had not been paid. Watermaster sent David Crosley, the City of Chino’s (the “City”) designated contact, a letter noting the delinquency and requesting prompt payment. A true and correct copy of the September 30, 2020 Delinquency Notice can be found attached at **Exhibit B**.

5. On October 9, 2020, Watermaster received a letter from David Crosley, dated October 8, 2020, indicating that the City would withhold acting on the invoices while the Motion of the Appropriative Pool Member Agencies Re: Agricultural Pool Legal And Other Expenses is pending before this Court. The City proposed that Watermaster also await this Court’s ruling and

1 requested a mutual stay of the City and Watermaster's respective remedies. A true and correct
2 copy of the October 8, 2020 letter can be found attached at **Exhibit C**.

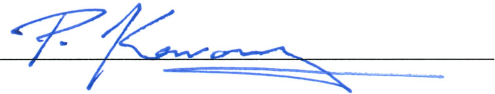
3 6. On October 9, 2020, I responded to the City's letter stating that only the
4 Watermaster Board, not staff, had the discretion to make a decision on the City's request,
5 indicating that the issue would be before the Board at its regular meeting scheduled for October
6 22, 2020. A true and correct copy of my October 9, 2020 email response can be found attached at
7 **Exhibit D**.

8 7. On October 15, 2020 Watermaster staff indicated to the Advisory Committee that
9 it would request direction from the Board at its October 22, 2020 meeting to institute a show-
10 cause proceeding to collect payments, interest, and attorney's fees thereunder. A true and correct
11 copy of the staff report for the October 15, 2020 Advisory Committee meeting can be found
12 attached at **Exhibit E**.

13 8. On October 8, 2020 and October 9, 2020² Watermaster staff indicated to the
14 Appropriative Pool, Agricultural Pool and Non-Agricultural Pool committees that it would
15 request direction from the Board at its October 22, 2020 meeting to institute a show-cause
16 proceeding to collect payments, interest, and attorney's fees thereunder. A true and correct copy
17 of the staff report for the October 8-9, 2020 Pool Committee meetings can be found attached at
18 **Exhibit F**.

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

21
22 Dated this 15th day of October, 2020, at Rancho Cucamonga, California.

23
24 
25 Peter Kavounas

26
27 21741189

EXHIBIT

“A”

CHINO BASIN WATERMASTER

- II. BUSINESS ITEMS
 - A. OAP LEGAL EXPENSE INCREASE



CHINO BASIN WATERMASTER

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PETER KAVOUNAS, P.E.
General Manager

STAFF REPORT

DATE: August 25, 2020

TO: Watermaster Board

SUBJECT: Overlying (Agricultural) Pool Committee Legal Expense Increase (Business Item II.A.)

SUMMARY:

Issue: The OAP Legal expense for FY 2019/20 has increased beyond the budgeted amount. The OAP formally amended its budget to account for the increase. The OAP has requested Watermaster to pay the invoices from the OAP Special Fund and it has further requested the Appropriative Pool to direct Watermaster to make payment to reimburse the OAP Special Fund pursuant to §5.4(a) of the Peace Agreement, and to provide direction on the method by which to allocate and invoice the reimbursement expense among AP members.

Recommendation: Direct staff to issue invoices to the Appropriative Pool Parties for the \$167,000 unreimbursed increase, allocated on the basis of the "Ag Pool Reallocation".

Financial Impact: The financial impact of the recommendation is to provide funding to Watermaster to pay the associated invoices.

Future Consideration

Watermaster Board – August 25, 2020: Approval [Normal Course of Business]

ACTIONS:

Watermaster Board (Special) – August 4, 2020: Approved by majority vote the motion to "direct Watermaster to offer the proposed assessment of Agricultural expenses set forth in its revised budget to be levied on the members of the Appropriative Pool pursuant to Paragraph 5.4 of the Peace Agreement, to the three Pools and Advisory Committee for their advice and assistance, honoring the intent of the 2009 Joint Pool Committee recommendation. The Board will consider the matter at its special August meeting scheduled for August 25, 2020."

Appropriative Pool – August 13, 2020: The Pool offered no advice or assistance on the subject of issuing invoices allocated based on the "Ag Pool Reallocation" formula; and, pending further actions toward resolution of its concerns regarding the OAP Budget increase, took action to oppose the OAP Budget increase

Agricultural Pool – August 13, 2020: No advice or assistance was offered

Non-Agricultural Pool – August 14, 2020: No advice or assistance was offered

Advisory Committee – August 20, 2020: No advice or assistance was offered

Watermaster Board – August 25, 2020:

Watermaster's function is to administer and enforce provisions of the Judgment and subsequent orders of the Court, and to develop and implement an Optimum Basin Management Program

BACKGROUND

Watermaster's Duty and Party Consent

Pursuant to Court Order, Watermaster is directed to administer the Judgment in accordance with the Peace Agreement. The Peace Agreement, by its terms, binds the Parties to the Agreement to act in conformity with the stated obligations. The Parties contractually agreed and "expressly consent to Watermaster's performance" of enumerated actions. Peace 5.4(a) states that:

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.

Section 5.4(a) further describes the assessments to be covered by this obligation to include but not be limited to OBMP Assessments, Paragraphs 20, 21, 22, 30, 42, 51, 53, and 54, General Administrative Expenses and Special Project Expenses. Based on prior agreements the Appropriative Pool (AP) began paying the Administrative Assessments for the members of the Overlying (Agricultural) Pool (OAP) in FY 1984/85. The prior practice was replaced by §5.4(a) of the Peace Agreement, whereby the AP began to also pay the OAP OBMP Assessment, which it has done since FY 1999/00, immediately following the Court ordering Watermaster to act in accordance with the Peace Agreement.

In each year since, Watermaster calculates the assessments for all three Pools based on their respective prior year production. The Assessments for the OAP have been added to the assessment for the AP and paid for by the AP. The OAP Assessments historically have been allocated among AP Parties on the basis of the allocation of the unused OAP water right, referred to as the "Ag Pool Reallocation" method.

Legal Counsel Expenses

Each Pool has retained legal counsel and the associated expenses are included in the Administration Budget allocated to each Pool respectively. The amount to be included in the annual budget is provided by each Pool directly to Watermaster annually in the preparation of the annual budget.

Watermaster treats the invoices for Legal services provided to each Pool in the same manner. The invoices submitted by Legal Counsel are paid only after they have been reviewed and approved by the respective Pool Chair, who verifies that the work billed is responsive to the Pool's direction. Invoices are not audited or reviewed by Watermaster in any way.

Watermaster has historically collected monies to administer payments by levying assessments for both Administration and, since 2000, OBMP expenses; and in the case of the OAP expenses, the assessments are levied on the AP.

2009 Joint Pool Committee Recommendation

In 2009 a concern arose because of a proposed Budget Transfer that would allocate Special Project expenses to the OAP, which in turn would have to be paid by the AP. In addition, a Budget Amendment was necessary to cover increased Legal expenses by the OAP. The concerns were addressed by discussion among the Pools which resulted in a Joint Pool Committee recommendation.

The recommendation of the Joint Pool Committee was captured in a Memorandum referred to as the "2009 memo" (Attachment 1). The Memorandum states that going forward all OAP expenses need to be budgeted for and presented for Committee review and approval in the same form and fashion as other two Pools. The Memorandum further states that Special Projects related to the physical solution are to be undertaken by Watermaster and not supplanted by the individual Pools. Budget amendment approvals were recommended to address the expenses at issue.

Since that time, the OAP has acted in conformity with the 2009 memo and submitted a budget that has been presented for Committee review and approval in the same form as the other two Pools. In the last four years when the OAP Legal expense budget has been exceeded a budget amendment was prepared to cover the shortfall, averaging approximately \$27k. In practice the shortfall was covered by Advisory

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and to develop and implement an Optimum Basin Management Program*

Committee approval of Budget Amendment/Transfer from other accounts or from the Admin Reserve. This practice is in line with 2009 memo that provides for Pool and Advisory Committee review prior to Watermaster levying the assessment.

DISCUSSION

The OAP Legal expense account was on track through March 2020; the April invoice however was larger than the anticipated 1/12th of the annual budget and depleted the balance of the full year's budget; the OAP Chair and Vice Chair were immediately notified that Watermaster did not have the ability to pay any further invoices until the budget was amended and additional funds were made available. On June 30, 2020 the OAP approved a budget increase for FY 2019/20 to cover the outstanding May and June invoices; the OAP also reduced budget for the account that tracks the TMDL study. The \$167,000 difference between the outstanding invoices and the reduction in the TMDL account needs to be added to the FY 2019/20 budget for Watermaster to be allowed to reimburse the OAP for their use of reserves to pay the outstanding invoices.

The OAP prepared a FY 2019/20 budget and approved a Budget Amendment.

Watermaster considered a Budget Amendment/Transfer as a method that had been used in the past to authorize the payment. A Budget Amendment/Transfer is problematic this year: first, there are not enough unspent funds in other Admin accounts to transfer; second, the amount is the same order of magnitude as the remaining Admin Reserve balance and a transfer from Admin Reserve would wipe out the reserve (and would have to be refilled at assessment time); and third, Admin accounts are funded based on one formula (Production), whereas OAP expenses are covered from money collected based on "Ag Pool Reallocation" formula, resulting in an inconsistency among Appropriative Pool parties which would be substantial in light of the necessary transfer amount.

As an alternative, Watermaster has identified direct assessment of AP parties as a preferred method to collect the funds for the OAP Legal expense increase. During the July meetings the AP was asked its preference for how the invoicing should be allocated among its members, and on July 31, the AP responded without providing any direction. The matter was presented to the Watermaster Board for consideration during a Special Meeting on August 4, 2020. The Board provided direction to offer the proposed assessment to the Pool and Advisory Committees for their advice and assistance as they had not yet had the opportunity to do so as contemplated by the 2009 recommendation. In the interim, the OAP has requested Watermaster to pay the amount from its reserves and the levy on the AP parties will be to reimburse the OAP.

The topic was discussed by the three Pool Committees at their August 2020 regular meetings. Following its August 13, 2020 meeting the AP sent an email (Attachment 2) to Watermaster with the related action. Additional material was distributed in advance of the Pool Committee meetings electronically and is attached here (Attachments 3-6). The OAP and ONAP offered no advice or assistance. The topic was also discussed at the Advisory Committee meeting, and no advice or assistance was offered to Watermaster.

ATTACHMENTS

1. April 11, 2009 Memorandum Subject "Special Joint Pool Committee – Pool Dispute Resolution"
2. August 13, 2020 Email from AP to Watermaster
3. Minutes of the Appropriative Pool Committee June 7, 1988
4. Notice of Default by the Appropriative Pool and Demand to Cure Default within 90 days (January 23, 2009)
5. Watermaster Staff Report titled "Ag Pool's Fund Balance" (July 26, 2011)
6. Notice of Default by the Appropriative Pool and Demand to Cure Default within 90 days (August 6, 2020)

m e m o r a n d u m

April 11, 2009

TO: Ken Willis, Chairman
Chino Basin Watermaster

FROM: Bob Feenstra, Agricultural Pool Chairman
Ken Jeske, Appropriative Pool Chairman
Bob Bowcock, Overlying-Non Agricultural Pool Chairman

RE: Special Joint Pool Committee
Pool Dispute Resolution.

A budget transfer request of \$21,000.00 has been made by staff to pay for the Regional Water Quality Control Board Basin Plan Amendment for Pathogen Total Maximum Daily Loads (TMDL) for the Middle Santa Ana River Watershed Pathogen TMDL for the Agricultural Pool. The Chino Basin Watermaster Agricultural Pool participates collectively in a task force administered by the Santa Ana Watershed Project Authority (SAWPA).

The Special Joint Pool Committee has resolved the budget transfer should be approved by the Watermaster and requests that Watermaster pay the invoice presented by the SAWPA Task Force.

As part of the resolution process, the Special Joint Pool Committee would like Watermaster to include in its motion to approve the above referenced budget transfer that the Agricultural Pool agrees to participate in the regular Watermaster Budget Process and present an annual budget in the same form and fashion as the other Pools. This will include: legal fees, consultant fees, meeting fees and projects. All of the budgets will be reviewed through the Pool process, approved and submitted by the Advisory Committee to the Watermaster.

Only Watermaster is authorized to undertake Special Project expense under Judgment Section 54 and Section 27. Such expense can only be allocated to a specific Pool if the Pool agrees or the court so orders, but this is not an authorization for the Pool to undertake such expense on its own initiative. (See e.g. Judgment section 54 and Peace Agreement section 5.4(a).) Under Section 38 (a) Pool Committees are limited to "developing policy recommendations for administration of its particular Pool." Special Project expense necessarily must be part of the Physical Solution which is under the control of the Court and its Court appointed Watermaster. While the Pool Committees are there to provide advice and assistance to Watermaster they may not supplant Watermaster's Physical Solution authority under Section 41.

Further, the Special Joint Pool Committee would like to notify Watermaster that additional legal fees have been expended which will require a budget transfer before the end of this fiscal year. Staff will be preparing a legal fee Budget Transfer in May for both the Watermaster and the Agricultural Pool, as recommended by the Special Joint Pool Committee. Presently, the estimate for the Agricultural Pool Budget Transfer for legal fees is approximately \$30,000.00.

From: John Schatz <jschatz13@cox.net>
Sent: Thursday, August 13, 2020 11:49 PM
To: Anna Nelson; Peter Kavounas
Cc: John Bosler; Cris Fealy
Subject: Chino Basin; Confidential Session Reportable Action

Consistent with the purpose of the Pools offering advice and assistance to Watermaster pursuant to the Special Joint Pool Committee April 11, 2009 memorandum, because the Agricultural Pool's budget increase remains in dispute and the Appropriative Pool continues to extend invitations to the Ag Pool to meet regarding Ag's expenses, pending a meeting, response to requests for information relating to Ag's expenses or other resolution of the dispute, the Appropriative Pool is opposed to the budget increase and related funds transfer.

MINUTES
OF
APPROPRIATIVE POOL COMMITTEE MEETING
JUNE 7, 1988

A meeting of the Appropriative Pool Committee was held June 6, 1988 at 12:00 noon in the Chino Basin Municipal Water District Board Room.

Pool Members Present:

Ray Wellington, Chairman
Jim Lundie
Lloyd Michael
Mike Teal
Hooite Rugge
John Schatz
Jim Ashcraft
Ira Pace
Bill Stafford
M. D. Funk
Lee Travers
Larry Dilley
Harold Andersen
J. Arnold Rodriguez
Thomas M. Rose

City of Chino
City of Pomona
Cucamonga Co. Water District
City of Ontario
Fontana Union W.C.
Jurupa Comm. Svcs. Dist.
City of Norco
West S.Bdno. Co. Water Dist.
Marygold M.W.C.
Marygold M.W.C.
City of Upland
City of Upland
Monte Vista Irrigation Co.
Santa Ana River Water Co.
S.B.Co. WW Dist. #8

Watermaster and CBMWD Staff Present:

Don Peters
Alice Lichti
Jerry Busch
Thomas J. Homan
Mary Blasingame

Chief, Watermaster Services
Controller, CBMWD
Asst. Controller, CBMWD
Gen. Mgr., CBMWD
Recording Secretary

Others Present:

Ed Dubiel
Pam Cvitan
Guido Smith
Tom Carnesi
Herbert C. Hall

Attorney General's Office
Attorney General's Office
Watermaster Legal Counsel
Agricultural Pool
Agricultural Pool

Chairman Wellington called the meeting to order and a quorum was declared present.

1. Minutes

By motion and unanimous vote, the Minutes of March 10, 1988 were approved as submitted.

2. Treasurer's Report of Financial Affairs

Mrs. Lichti presented and reviewed the Treasurer's Report of Financial Affairs for the period ending April 30, 1988. There being no discussion, by motion and unanimous vote:

(the Treasurer's Report of Financial Affairs for the period ending April 30, 1988 was approved as presented).

3. Agricultural Pool Transfers

Chief Peters gave a brief review of the actions taken to date regarding the allocation of unallocated safe yield transfers from the Agricultural Pool to the Appropriative Pool. Mr. Peters referenced the March 27, 1988 opinion letter rendered by Attorney Guido Smith and the method of allocation proposed by the City of Norco. Mr. Peters further stated it was the Committee's decision to have an Ad Hoc Committee study the matter and return with a recommendation as to how the allocations should be accomplished. It was the consensus of the Ad Hoc Committee that allocations be made pursuant to the spread previously used, i.e., percentage of share of operating safe yield within the Pool.

Mr. Ashcraft distributed and reviewed his June 6, 1988 letter to the members of the Appropriative Pool Committee, and a letter prepared by Attorney Susan M. Trager setting forth the City of Norco's concerns with the allocation procedure. He also distributed Mr. Guido Smith's March 27, 1988 opinion letter. Mr. Ashcraft stated it was the opinion of the City of Norco and their legal counsel that several items within the Judgment can be used to rectify the water quality problem that could be created by spreading the unallocated safe yield transfers, that the Socio Economic Study would address the problem; the Optimum Basin Management Plan would put water quantity with water quality and address them equally; and the Facilities Equity Assessment whereby better quality water could be introduced into the basin and reduce some water quality problems. Mr. Ashcraft suggested studies on all three items should be completed before action is taken to spread the 78,489 acre feet of agricultural transfer water. Mr. Ashcraft further suggested a portion of the 78,489 acre feet be used to offset the replenishment requirement and the balance be held until the studies are completed and there is agreement that the water quality impacts to the basin are met. Mr. Wellington encouraged the Committee members to review the documents distributed by Mr. Ashcraft. Discussion ensued on the matter and it was stated that factual background is needed to substantiate an opinion and the Committee should keep in mind possible solutions to the quantity/quality problems that will benefit all parties. After discussion, the following motion was made by Mr. Teal, seconded by Mr. Funk:

MOVED, the Appropriative Pool Committee accept the recommendation of the Ad Hoc Committee and spread the unallocated safe yield water transfer from the Agricultural Pool to the Appropriative Pool pursuant to the percentage of operating safe yield within the Appropriative Pool.

VOLUME VOTE:

AYES: City of Ontario, City of Pomona, City of Upland, Cucamonga County Water District, West San Bernardino County Water District, Fontana Union Water Company, Marygold Mutual Water Company, Monte Vista Irrigation District, Santa Antonio Water Company, Santa Ana River Water Company, West End Consolidated Water Company.

NOES: City of Chino, City of Norco, Jurupa Community Services District, San Bernardino County Waterworks District No. 8

ABSENT: Monte Vista Water District, Mutual Water District of Glen Avon Heights, Southern California Water Company

Motion carried by majority vote.

4. Request for Support

Chief Peters presented the March 10, 1988 letter from the Overlying (Agricultural) Pool requesting support from the Appropriative Pool in the amount equal to the Overlying (Agricultural) Pool's 1988-89 Administrative assessment for unpumped Agricultural water transferred to the Appropriative Pool following this 1987-88 production year. Mr. Peters confirmed the intent of the action as follows:

1. Appropriative Pool picks up all Agricultural Pool Administrative Expenses, including Special Project allocations.
2. Agricultural Pool will transfer all pool administrative reserve to the Appropriative Pool effective July 1, 1988.
3. Agricultural Pool will meet formally once a year to elect officers.
4. Agricultural Pool members will receive copies of Appropriative Pool Agendas and may attend Appropriative Pool meetings (with no voting rights) if item on agenda(s) are of interest.

5. Agricultural Pool Members (except for State of California representative) will be reimbursed at \$25/meeting for each Appropriative or Agricultural Pool meeting attended.
6. Annual Administrative Assessments will no longer be issued to Agricultural Pool producers.
7. Agricultural Pool intends to sell its 2,000 acre feet of water in storage and funds received will be held and invested by Watermaster Treasurer for future use to be determined by the Agricultural Pool members.

After brief discussion on the matter, by motion and unanimous vote:

(the Request for Support as requested by the Overlying (Agricultural) Pool be accepted by the Appropriative Pool Committee.)

5. Water Spreading Agreement

Chief Peters presented the water spreading agreement between the San Bernardino County Flood Control District and Chino Basin Watermaster and stated the existing three year agreement terminates June 30, 1988. Mr. Peters stated the agreement had been reviewed and approved by Watermaster legal counsel. By motion and unanimous vote:

(the water spreading agreement between San Bernardino County Flood Control District and Chino Basin Watermaster was approved as presented.)

6. Personal Computer Purchase

Chief Peters presented and reviewed his June 6, 1988 letter requesting authorization to purchase a personal computer and associated equipment for exclusive use in the Chino Basin Watermaster program for a total cost of \$4,450.00 including sales tax. Mr. Peters noted since 1983 Watermaster has utilized the District's personal computer for computing and spread sheet preparation. Mr. Peters continued by stating the increased workload being experienced by the Watermaster program and the increasingly limited time available on the District's personal computer justifies a personal computer for the Watermaster program. Mr. Peters stated Section 5(B), Paragraph 19 of the Judgment permits the acquisition of the equipment and noted sufficient funds for the purchase were available in the SB-222 fund. Mr. Peters further requested he be authorized to attend a 2-1/2 day personal computer school and the \$250 registration fee be taken from the Watermaster Educational Fund Account. Discussion ensued on the matter and it was suggested in lieu of the Watermaster owning the equipment, the equipment be purchased by Chino Basin Municipal Water

District and leased to the Chino Basin Watermaster. The Committee concurred with the suggestion. Following discussion, there was no objection by the Committee to pursue the acquisition of the personal computer as discussed and authorize attendance at the personal computer school as requested.

7. Sale of Water

Chief Peters presented a Notice of Sale of 2,000 acre feet of water in storage from the Overlying (Agricultural) Pool to the Cucamonga County Water District. Mr. Peters stated the Notice was dated March 17, 1988 and was presented as an information item with no action required.

8. Ad Hoc Committee

Chief Peters, at the request of Mike Teal, presented for discussion the possibility of forming an Ad Hoc Committee to deal with the water exchange program between Watermaster, Metropolitan Water District and the Appropriative Pool members who are also members of the Water Facilities Authority. Discussion ensued on the matter and it was the consensus of the Committee to reactivate the advisory level Ad Hoc Committee formed at the onset of the Conjunctive Use Study and include all parties that want to participate on the Committee. The State Attorney General's Office and the City of Norco requested to be included. After discussion, by motion and unanimous vote:

(it was recommended the Advisory Committee reactivate the advisory committee level ad hoc committee to deal with the water exchange program between Watermaster, Metropolitan Water District and the Appropriative Pool members who are also members of the Water Facilities Authority and set a meeting date of the same.)

9. Staff Report

Chief Peters presented and reviewed the final replenishment schedule for 1987-88 and noted the 15,635.9 acre foot replenishment requirement had been satisfied by taking delivery of 2,493.7 acre feet of State Project Water and purchasing 13,142.2 acre feet from Cyclic Storage.

Peters gave a status report on the matter pending with the County of Riverside concerning the two regional park wells and stated Attorney Smith had transmitted a letter to Riverside County Counsel requesting an answer to the matter by June 30, 1988 to avoid pursuance of the pending litigation.

10. Other Business

Chief Peters presented a Notice of Lease of 1,000 acre feet of corresponding share of initial operating safe yield from Monte Vista Irrigation District to Cucamonga County Water District covering the period July 1, 1987 through June 30, 1988. By motion and unanimous vote:

(the lease agreement between Monte Vista Irrigation District and Cucamonga County Water District was approved as presented.)

Lloyd Michael initiated discussion on the need to develop an agricultural reclamation program where water in excess of the mandated amount to be delivered to Orange County would be delivered to the agriculturalists and the benefits received by the Appropriative Pool through decreased pumping. Mr. Michael emphasized the need to study methods to get into a full reclamation program and curtail the delivery of excessive amounts of water to Orange County. Mr. Michael stated he was going to address the matter with the Regional Technical Committee. During discussion it was noted that facts and figures are required to make decisions on water management and water quality and it might be the appropriate time for the Pool committees to encourage the Advisory Committee to develop a plan of action. Recognizing the Regional Sewer Program's part in the reclamation, Tom Homan outlined the current studies underway through SAWPA, SARDA and CBMWD dealing with nitrates and ammonias in the groundwater and river, respectively, and other items.

Chairman Wellington noted the various pieces of information needed to be brought together and the scope of work defined. Mr. Dubiel suggested the committee members bring points they would like addressed to the Advisory Committee meeting. Mr. Ashcraft suggested an advisory level ad hoc task force committee be formed to consider a scope of work to address water quality issues, reclamation, and items in the Judgment, i.e., socio economic study, optimum basin management plan, and facility equities assessment which could have an impact on the reclamation plan. Mr. Ashcraft also suggested assistance from SAWPA, Western, CBMWD, and others who could contribute information relative to reclamation. After discussion, the following motion was made by Mr. Ashcraft, seconded by Mr. Teal:

(MOVED, an advisory level ad hoc task force committee for formed to consider a scope of work to address water quality issues, reclamation and items in the Judgment as suggested.)

Motion carried by unanimous vote.

There being no further business to discuss, the meeting was adjourned at 2:00 p.m.

Secretary

**NOTICE OF DEFAULT BY THE APPROPRIATIVE POOL
AND DEMAND TO CURE DEFAULT WITHIN 90 DAYS**

**TO: MEMBERS OF THE APPROPRIATIVE POOL
OF THE CHINO BASIN**

PLEASE TAKE NOTICE that your failure to agree to fund the farming portion of the Middle Santa Ana Watershed TMDL Study - Budget Transfer Request by the Agricultural Pool of the Chino Basin, in the amount of \$21,000 on January 22, 2009, constitutes a breach of paragraph 5.4(a) of the Peace Agreement dated June 29, 2000. Paragraph 5.4(a) of the Peace Agreement reads in relevant part as follows:

“During the term of this Agreement, all assessments and expenses of the Agricultural Pool Committee shall be paid by the Appropriative Pool. This includes but is not limited to OBMP Assessments, assessments pursuant to Paragraphs 20, 21, 22, 30, 42, 51, 53, 54 both General Administrative Expenses and Special Project Expenses, 55, and Exhibit F (Overlying Agricultural Pool Plan) of the Judgment”

Furthermore, section 4.1(b) of Article IV of the Rules and Regulations, entitled Assessments, Reimbursements and Credits reads in relevant part as follows:

“Special Project Expenses shall consist of special engineering, economic or other studies, litigation expense, meter testing or major operating expenses. . . .”

As a result of the above breach, the Agricultural Pool of the Chino Basin has been required to fund the TMDL Study out of its own funds. If the Appropriate Pool does not reimburse the Agricultural Pool for this expense, within 90 days from the date of service of this Notice of Default (as provided for in Paragraph 9.1(a) of the Peace Agreement), the Agricultural Pool intends to seek the appropriate remedy upon default as contained in Paragraph 9.2(a) of the Peace Agreement.

DATED: January 23, 2009



Steven G. Lee
Legal Counsel for the
Agricultural Committee
Of The Chino Basin



CHINO BASIN WATERMASTER

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Tel: 909.484.3888 Fax: 909.484.3890 www.cbwm.org

DESI ALVAREZ, PE
Chief Executive Officer

STAFF REPORT

DATE: July 26, 2011
TO: Agricultural Pool Members
SUBJECT: Agricultural Pool's Fund Balance

SUMMARY

Issue – Payment for the Middle Santa Ana River Pathogen TMDL Task Force study of \$13,474.00 and the Agricultural Pool Member Meeting Compensation amount of \$8,000.00 was charged against the Agricultural Pool's Fund Balance during FY 2008/2009.

Recommendations – After a detailed review of the Agricultural Fund Balance from the period November 2008 through March 2009, staff does not recommend the Fund Balance as of March 2009 be changed or adjusted.

Fiscal Impact – The Agricultural Pool's Fund Balance is correct and no changes are required.

DISCUSSION

BACKGROUND:

In early July 2011, Joseph Joswiak, CFO for Chino Basin Watermaster, was contacted by Mr. Bob Feenstra, Chairman of the Agricultural Pool, and asked to provide a balance of the Agricultural Pool's Fund Balance for the past several years. During the telephone conversation Joseph stated that there was an excel worksheet that had been developed several years ago by the previous CFO, Sheri Rojo. Joseph stated that he would email the updated worksheet to Mr. Feenstra. On Wednesday, July 6, 2011 the worksheet, along with several other May 31, 2011 financial reports were emailed to Mr. Feenstra.

Upon receiving the documents, Mr. Feenstra contact Joseph and asked for specific clarification on the changes in the Agricultural Pool's Fund Balance between the months of September 2008 through March 2009. Joseph responded to Mr. Feenstra's questions via email on July 13, 2011.

RECONCILIATION OF QUESTIONABLE AMOUNT(S)

During the Agricultural Pool meeting of July 14, 2011, Mr. Gene Koopman requested additional clarification on two specific invoices/amounts that Joseph was previously unable to clearly substantiate with invoice documentation. The invoice amounts were \$16,506.00 and \$13,474.00. During the meeting, Joseph stated that he was still investigating the issues and would continue to search the records from 2008 and 2009 for documentation.

Later in the week after discussing the issue with the Watermaster accounting and administrative staff and researching past meeting minutes, it was determined that the invoices had to do with activity from FY 2007/2008 and FY 2008/2009 with regards to the Middle Santa Ana River Pathogen TMDL Task Force. The following information is submitted:

1. Invoice number 8500, dated February 20, 2008 from the Santa Ana Watershed Project Authority for \$3,031.50 (see attached invoice)
 - a. Posted to the accounting records as of October 30, 2008 (FY 2008/2009).
 - b. Invoice was Watermaster's 50% portion (the other 50% was covered by the Milk Producers Council) of the "billing for participation in the Middle Santa Ana River Pathogen TMDL Task Force.
 - c. Invoice was coded to account general ledger 6906.6 (OBMP Engineering Services).
 - d. Paid on November 7, 2008 by check number 12808.
 - e. During this time period, the only approval signature required on the invoice was Sheri Rojo, who did approve payment for this invoice.
2. Invoice number 8505, dated April 4, 2008 from the Santa Ana Watershed Project Authority for \$13,474.00 (see attached invoice)
 - a. Posted to the accounting records as of June 30, 2008 (FY 2007/2008).
 - b. Invoice was Watermaster's 50% portion (the other 50% was covered by the Milk Producers Council) of the "share of costs to development project deliverables on behalf of Agricultural Operators for the Middle Santa Ana River Pathogen TMDL – Best Management Plan Implementation Study and to address compliance with the Middle Santa Ana River Pathogen TMDL's.
 - c. Invoice was coded to account general ledger 6906.6 (OBMP Engineering Services).
 - d. Paid on August 7, 2008 by check number 12562.
 - e. During this time period, the only approval signature required on the invoice was Sheri Rojo, who did approve payment for this invoice.
 - f. Attached to the invoice documentation is the Ag Pool meeting minutes from August 21, 2007 that state "the Agricultural Pool to pay for the farming portion"

The original amount (which first appeared on the Fund Balance Reports in November 2008) of \$16,506.00 was a combination of the invoices $\$13,474.00 + \$3,031.50 = \$16,505.50$ rounded to \$16,506.00. The amount of \$16,506.00 was a reduction to the Agricultural Pool's Fund Balance.

In March 2009, the dollar amount of \$16,506.00 was adjusted by the amount of \$3,031.50 to a new amount of \$13,474.00 ($\$16,506.00 - \$3,031.50 = \$13,474.00$). The net effect was an increase of \$3,031.50 to the Agricultural Pool's Fund Balance.

AGRICULTURAL POOL MEMBER COMPENSATION

Prior to July 2009, the Agricultural Pool did fund a portion of their meeting expenses from their own Agricultural Fund. According to the Agricultural Pool expense reports, The Agricultural Pool members... "shall be compensated for regular and special committee meetings of the Agricultural Pool, Appropriative Pool, Advisory Committee and Watermaster Board; and for subcommittees and workshops in the amount of \$125.00 per meeting not to exceed \$250 per day. \$25.00 per meeting will be compensated from the established compensation account until the maximum annual amount of \$300 is reached. The remaining \$100 per meeting will come from the Overlying (Agricultural) Pool interest account. At such time as the \$300 annual amount is reached compensation from the accrued interest account will be \$125." When Janine codes the expense of \$125 in the accounting system, \$100 is coded to account 8470 and the remaining \$25 is coded to account 8411. Prior to July 2009, the expenses in account 8470 were deducted from the Agricultural Pool balance and in fact, paid for by the Agricultural Pool. The remaining \$25 was paid for by the Appropriative Pool. During FY 2008/2009 the amount of \$8,000 was charged against the Agricultural Pool's Fund balance with regards to account 8470.

In April 2009, the Special Joint Pool Committee (Pool Dispute Resolution) of Bob Feenstra, Ken Jeske and Bob Bowcock send a memo to Ken Willis regarding a budget amendment of \$21,000 for the special TMDL project. During these discussions, according to Sheri Rojo, the discussions about "All means All" took place. It was right after this

timeframe that Sheri Rojo stopped charging the majority of the meeting compensation against the Agricultural Pool Fund and started charging "ALL" Agricultural Pool expenses against the Appropriative Pool Fund.

According to the financial records, starting July 2009, the practice of charging the amounts in account 8470 against the Agricultural Pool Fund balance stopped. There were no longer any adjustments against the Agricultural Pool Fund balance, and in fact, the Appropriative Pool started to pay "ALL" of the Agricultural Pool expenses, including the category 8470.

AGRICULTURAL POOL MINUTES:

From the documentation provided, it appears the intent was for the Agricultural Pool's Fund Balance to pay for invoice number 8505 in the amount of \$13,474.00 as described in the Staff Report's dated August 21, 2007 and October 21, 2008 (see attached).

I have provided documentation (listed below) from the meeting minutes to assist in detailing the intent of the parties with regards to the Middle Santa Ana River Pathogen TMDL Task Force.

Agricultural Pool Minutes of October 21, 2008:

TMDL STUDY

Mr. Feenstra stated he has been in consultation with Rob Vanden Heuvel regarding the TMDL Study and has also received some documentation from Geoffrey Vanden Heuvel regarding shared expense. Mr. Manning stated this item comes before this committee today based upon the continuation of Participation in a study that the Agricultural Pool began last year. Mr. Manning noted the memorandum written by Rob Vanden Heuvel to the Agricultural Pool chair and vice-chair regarding this study. Staff is seeking a motion regarding the expense that the Agricultural Pool volunteered to participate in last year and whether this committee wants to still participate in the study. Mr. Manning stated the Agricultural Pool does have the funds in the accounts to cover the amount that is being requested. Mr. Rob Vanden Heuvel stated last year's authorization up to \$20,000 dollars which was applied to three different causes. What is before this committee today is the actual implementation and a portion for continuance, for another year, in the larger stakeholder group. In discussions with Ms. Rojo all monies set aside for this last year project was not fully spent; however, Watermaster's policy is to not carry balances forward and would require a new authorization for the full amount in the amount of \$21,000.00. Mr. Geoff Vanden Heuvel offered comment on the Executive Summary received on this project as to what has been done thus far and preliminary findings on their sampling. A discussion regarding this matter ensued. It was noted by the committee members this needs to be a special projects item and come from the Watermaster general budget. Mr. Manning stated Watermaster does not have this money budgeted and this would have to be presented as a budget amendment through the Watermaster process for approval. Mr. Manning suggested a representative from the Agricultural Pool attend the other meetings to present their position on this item in November.

Motion by Koopman, second by Mackamul, and by majority vote – Jennifer Novak abstained
Moved to approve the continuation of the TMDL Study in the amount of \$21,000.00 and to include the costs be paid as a "Special Agricultural Pool Project" from the current Watermaster budget, as presented

Agricultural Pool Minutes of November 18, 2008:

Funding of the Farming Portion of the Middle Santa Ana Watershed TMDL Study – Budget Transfer Request for \$21,000

Mr. Manning stated this is an Agricultural Pool request for the farming portion of the TMDL Study and administrative fees associated with this study. This was brought forward last month to this committee and it was decided at that meeting to seek payment for this item through the Watermaster process as a special project. This will require Watermaster staff to move monies around to cover the \$21,000 since this was not a budgeted cost. A discussion regarding special projects ensued and Mr. Lee offered comment on what special projects is described as in the Judgment. Mr. Vanden Heuvel offered comment on the TMDL study. A discussion regarding this matter ensued.

Motion by Novak, second by Vanden Heuvel, and by unanimous vote

Moved to approve budget transfer from OPMP & Water Quality Committee Expense to Recharge Master Plan and Watermaster Legal Counsel for \$413,750.00 and the funding of the farming portion of the Middle Santa Ana Watershed TMDL Study for \$21,000.00, as presented

Agricultural Pool Meeting of December 16, 2008:

Added Discussion Item:

Mr. Vanden Heuvel stated at the November Appropriative and Non-Agricultural Pool meeting those committee members requested some additional information from legal counsel and Watermaster staff to further investigate the request for the TMDL study as a special project forwarded from the Agricultural Pool. Mr. Vanden Heuvel also stated those pools were looking for a report on the Agricultural Pool's history of funds. Mr. Manning stated he would cover a portion of Mr. Vanden Heuvel's question under the Financial Update on the agenda and that would be the history of funds. A discussion regarding this issue ensued. Mr. Manning stated if this was an urgent item for the Agricultural Pool then this committee could make a motion to take the funds from the Agricultural Pool monies and seek reimbursement from the Appropriative Pool in the future. A discussion regarding special projects ensued.

WATERMASTER FINANCIAL REPORT

1. Accounting of Agricultural Pool Fund Balance

Mr. Manning gave the Agricultural Pool Fund Analysis presentation. Mr. Manning stated at the Ag Pool meeting of June 16, 1988, "the pool members ratified an agreement with the Appropriative Pool to assume all future Ag Pool administrative expenses, including special project allocations, in return for which the Ag Pool transferred all pool administrative reserves at June 30, 1988 (\$59,852) to the Appropriative Pool effective July 1, 1988". In June, 1988, the Ag Pool sold 2,000 acre-feet of water in storage to Cucamonga County Water District. "Funds from this sale are to be held and invested by the Watermaster for future use as determined by the Ag Pool members". The 2,000 acre-feet of water was purchased in 1978 by the Ag Pool, in anticipation of having a future replenishment obligation. \$246,000 earned interest for the past 19 years and the Ag pool "extra compensation" was taken from these funds beginning in 2001. Various "Mutual Agency Project Costs" have been paid out of the Ag pool funds on six different occasions since 1998 in amounts ranging from \$3,000 -\$20,000/year. The Ag Pool fund balance is \$475,604 as of 6/30/2008. A discussion regarding the presentation ensued and it was noted the Agricultural Pool requested a copy of the given presentation.

Agricultural Pool Meeting on January 20, 2009:

Chair Feenstra closed the open Annual Agricultural Pool meeting to go into closed session at 10:22 a.m.

A lengthy discussion regarding Special Projects and the TMDL Study was noted to the recording secretary by Counsel Fife and Mr. Manning.

*Motion #1 by Koopman, second by Vanden Heuvel, and by majority vote – one abstention by Novak
Moved to approve authorization to pay \$21,000 towards the TMDL Study from the Agricultural Pool funds if approval is not given at the next Watermaster Board meeting, as presented*

Advisory Committee Meeting on January 22, 2009:

BUSINESS ITEM

A. BUDGET TRANSFER

Ms. Rojo stated this item pertains to a TMDL Study along the Santa Ana River and there was a request made by the Agricultural Pool to fund the farming portion of this study. This item has been through the Watermaster process and at the last Advisory Committee meeting in December, 2008, that committee requested this item be pulled from the agenda for further consideration. This item is now once again before this committee for reconsideration. Chair Koopman made a motion to approve the Budget Transfer to fund the farming portion of the TMDL Study for \$21,000. Mr. Jeske made reference to the last Advisory Committee meeting when this item was discussed at length and noted options were brought forward through the Pool process; however, they were not approved. Having these options brought forth to the parties showed there was good faith efforts put forth to negotiate this item. Mr. Jeske stated he would like to see this put off for another month to allow the Appropriative Pool try to rework and restructure some language that might assist in moving this forward. Mr.

DeLoach stated the Appropriative Pool members were just notified a few days ago that the Agricultural Pool took action to decline the offer to work out this process; Mr. DeLoach noted his displeasure in the action the Agricultural Pool took. Mr. DeLoach agreed with Mr. Jeske in wanting to work on defining improved language for this broad term of Special Projects and to provide clarification on how to proceed with this type of request in the future. A lengthy discussion regarding this matter, what the TMDL study is, and what a Special Project is ensued. Mr. Bowcock stated he doesn't think the attorneys should define what special projects are. A discussion ensued with regard to this item including how this vote will be taken to the Watermaster Board meeting later today.

Motion by Koopman, to approve the budget transfer to fund the farming portion of the TMDL study for \$21,000 second by Pierson

Motion failed to pass by a majority no vote, the Non-Agricultural Pool concurred with a no vote, as presented

Board Meeting on January 22, 2009:

BUSINESS ITEM

A. BUDGET TRANSFER

Mr. Manning offered background on this item which has been on a previous agenda. Mr. Manning stated this item comes to you with an 80% no vote from the Advisory Committee meeting this morning; the Agricultural Pool representatives voted yes. This recommendation of a no vote from the Advisory Committee means the Board has no position to vote on this item. Chair Willis stated that as noticed in the Watermaster by-laws even if this committee voted unanimously the item would not stand. Chair Willis stated with this being brought forward as it is, this item will be removed. Mr. Bowcock stated he did talk about the item at length at the Advisory Committee meeting this morning and in listening to the Appropriators, there were some very good points brought up. Mr. Bowcock noted he personally witnessed no less than three attempts to reach attempts to reach out to the Agricultural Pool to make this issue go away. Mr. Bowcock commented on how unfortunate this situation is to have caused such a rift between the Pools, because there are solutions out there. Mr. Bowcock urged the participants in all Pools to work through this sad affair quickly. Chair Willis asked Mr. Bowcock and Mr. Vanden Heuvel to be on a committee to try and resolve this situation and to have a meeting take place here at the Watermaster office with the parties involved to come up with a solution. Both Mr. Bowcock and Mr. Vanden Heuvel stated they would work on getting this resolved.

Board Meeting on April 23, 2009:

BUSINESS ITEM

A. BUDGET TRANSFER T-09-04-01

Mr. Manning stated this item comes before this committee with a unanimous vote from all the Pools and the Advisory Committee. Mr. Manning stated this is a budget transfer request for moving funds into the budget for the farming portion of the TMDL Study. Several discussions have taken place over matter for the last few months and staff is recommending approval for this budget transfer. Mr. Bowcock stated the terms of this Pool dispute resolution are written out in a submitted memorandum developed by the Special Joint Pool Committee, dated April 11, 2009, and submitted to the Board of Directors. Mr. Feenstra thanked Mr. Bowcock for his efforts to schedule and attend meetings regarding this matter.

Motion by Camacho, second by Bowcock, and by unanimous vote

Moved to approve budget transfer T-09-04-01 for the funding of the farming portion of the middle Santa Ana Watershed TMDL Study and to included the terms of agreement memorandum dated April 11, 2009

AFTER MARCH 2009

After March 2009, the only change to the Agricultural Pool Fund Balance is the addition of quarterly interest income from the Pool's "prorated" portion of the quarterly interest income earned on the LAIF balance.



Egoscue Law Group, Inc.

**NOTICE OF DEFAULT BY THE APPROPRIATIVE POOL
AND DEMAND TO CURE DEFAULT WITHIN 90 DAYS**

TO: MEMBERS OF THE CHINO BASIN APPROPRIATIVE POOL

Please take notice that your failure to agree to pay the Overlying (Agricultural) Pool Committee (Agricultural Pool) expenses of \$165,694.75 to cover the May and June 2020 legal invoices constitutes a breach of paragraph 5.4(a) of the Peace Agreement dated June 29, 2000. Paragraph 5.4(a) of the Peace Agreement reads in relevant part as follows:

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. This includes but is not limited to OBMP Assessments, assessments pursuant to Paragraphs 20, 21, 22, 30, 42, 51, 53, 54 both General Administrative Expenses and Special Project Expenses, 55, and Exhibit F (Overlying Agricultural Pool Pooling Plan) of the Judgment...

Chino Basin Watermaster Rules and Regulations Section 4.6 incorporates the Peace Agreement provision providing that all assessments and expenses of the Agricultural Pool be paid for by the Appropriative Pool during the term of the Peace Agreement. Pursuant to Section 4.6, the Watermaster had and has the ability to pay the outstanding Agricultural Pool Legal Budget balance. The delay in payment is prejudicial to the Agricultural Pool, and Watermaster's failure to issue a timely payment has resulted in damages.

Accordingly, the Agricultural Pool formally demands that the Appropriative Pool immediately direct the Watermaster to make payment of the Agricultural Pool expenses of \$165,694.75 to cover May and June 2020 invoices with direction on the method by which to allocate and invoice the payment among the members of the Appropriative Pool.

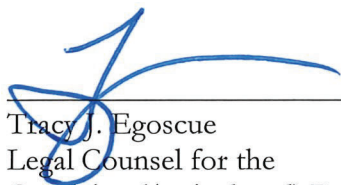
As a result of the above breach, the Agricultural Pool will be required to fund the Legal Budget remaining balance to cover May and June 2020 invoices. If the Appropriative Pool does not direct Watermaster to make the above payment or reimburse the Agricultural Pool for this expense within 90 days from the date of service of this Notice of Default (as provided for in Paragraph 9.1(a) of the Peace Agreement), the Agricultural Pool intends to



Egoscue Law Group, Inc.

seek appropriate remedy upon default including but not limited to interest and penalties as contained in Paragraph 9.2 of the Peace Agreement.

Dated: August 6, 2020


Tracy J. Egoscue
Legal Counsel for the
Overlying (Agricultural) Pool

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

Transmitted Via Email

September 30, 2020

City of Chino
Attn.: Mr. Dave Crosley
5050 Schaefer Ave
Chino, CA 91710-5549

Subject: Payment Delinquency

Dear Mr. Crosley:

The attached invoice in the amount of \$29,835.46 was due on September 25, 2020 and your payment has not been received.

Per the Judgment Section VI, 55 (c) Delinquency. Any delinquent assessment shall bear interest at 10% per annum (or such greater rate as shall equal the average current cost of borrowed funds to the Watermaster) from the due date thereof. Such delinquent assessment and interest may be collected in a show-cause proceeding herein instituted by the Watermaster, in which case the Court may allow Watermaster its reasonable costs of collection, including attorney's fees.

Please let me know what arrangements are being made for prompt payment of the outstanding invoice.

Sincerely,

Peter Kavounas, P.E.
General Manager



CHINO BASIN WATERMASTER
9641 San Bernardino Road
Rancho Cucamonga, CA 91730

Invoice

DATE	INVOICE NO.
8/25/2020	2020-02-SPE

BILL TO

CITY OF CHINO
ATTN: DAVE CROSLEY
PO BOX 667
CHINO CA 91708-0667

TERMS	DUE DATE
Net 30 days	9/25/2020

DESCRIPTION	QTY	RATE	AMOUNT
Appropriative Pool Special Assessment of \$165,694.75 for Ag Pool Legal Expense Increase - Approved by Watermaster Board by majority vote on August 25, 2020		29,835.46	29,835.46
If you prefer, a wire transfer can be sent to Bank of America using the following information: Routing/ABA Number: 026 009 593 Account Number: 14314-80008 Account Name: Chino Basin Watermaster			
Payments received after due date shall bear interest at 10% annum from the due date thereof.		Total	\$29,835.46

EXHIBIT

“C”

EUNICE M. ULLOA
Mayor

TOM HAUGHEY
Mayor Pro Tem



MARK HARGROVE
MARC LUCIO
PAUL A. RODRIGUEZ Ed.D.
Council Members

MATTHEW C. BALLANTYNE
City Manager

October 8, 2020

CITY of CHINO

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

Re: Watermaster Invoice 2020-02-SPE dated August 25, 2020

Dear Mr. Kavounas,

On behalf of the City of Chino, I acknowledge your September 30, 2020 letter advising non-receipt of the City of Chino's payment of the above described invoice and reference to Paragraph 55(c) of the Judgment about Watermaster's remedy for delinquencies including interest and the availability of "show-cause proceedings" to collect the amount of the above invoice.

The City of Chino has neither chosen to pay nor not to pay the above described invoice. 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.

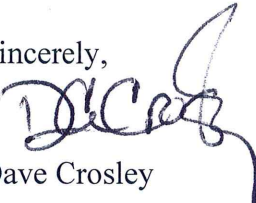
Based on the foregoing and other considerations, the City of Chino proposes that Watermaster also await Judge Reichert's ruling on the Motion and agree to a mutual stay of our respective remedies under the Judgment.

The Ag Pool's contest to the City of Chino's storage and transfer agreements commenced in 2017, the Ag Pool's recent request for payment of its legal and expert witness fees from the Appropriative Pool and how these matters have been handled by Watermaster have been frustrating and costly to the City of Chino.

The City of Chino believes it is prudent to avoid any further communications and legal proceedings between ourselves on the many issues inherent in the various matters leading to Watermaster's invoice to the City of Chino.

Please advise me if you agree to this request by Tuesday October 13, 2020.

Sincerely,



Dave Crosley



13220 Central Avenue, Chino, California 91710
Mailing Address: P.O. Box 667, Chino, California 91708-0667
(909) 334-3250 • (909) 334-3720 Fax
Web Site: www.cityofchino.org

EXHIBIT

“D”

Herrema, Brad

From: Peter Kavounas <PKavounas@cbwm.org>
Sent: Friday, October 09, 2020 1:25 PM
To: Crosley, Dave
Cc: Gutierrez, Jimmy; Postovoit, Austin
Subject: RE: City of Chino (Water Master Invoice 2020-02-SPE)

Good afternoon Dave,

Thank you for your October 8, 2020 letter regarding Watermaster s August 25, 2020 invoice. 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.

Best regards,
Peter

From: Postovoit, Austin
Sent: Friday, October 9, 2020 9:12 AM
To: Peter Kavounas
Cc: Crosley, Dave ; Gutierrez, Jimmy
Subject: City of Chino (Water Master Invoice 2020-02-SPE)
Importance: High

Good Morning Mr. Kavounas,

Please find the attached PDF copy of a return correspondence from David Crosley, which is being delivered to your attention on behalf of the City of Chino. Feel free to contact me at the phone number below if you have any difficulties opening the provided attachment. Thank you!

Sincerely,

Austin Postovoit
Management Aide
City of Chino | Public Works Department
13220 Central Avenue | Chino, CA 91710
apostovoit@cityofchino.org Direct (909) 334-3415



EXHIBIT

“E”

CHINO BASIN WATERMASTER

III. REPORTS/UPDATES

C. CHIEF FINANCIAL OFFICER

1. AP August 25, 2020 Invoices for \$165,694.75



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

STAFF REPORT

DATE: October 15 2020

TO: Advisory Committee

SUBJECT: AP August 25, 2020 Invoices for \$165,694.75 (Agenda Item III.C.1.)

SUMMARY:

Issue: Status of the AP August 25, 2020 Invoices for \$165,694.75

Recommendation: None

Financial Impact: No impact at this time

Future Consideration

Advisory Committee – October 15, 2020: Information only

Watermaster Board – October 22, 2020: Provide direction to staff [Normal Course of Business]

ACTIONS:

Appropriative Pool – October 8, 2020: Information only

Agricultural Pool – October 8, 2020: Information only

Non-Agricultural Pool – October 9, 2020: Information only

Advisory Committee – October 15, 2020:

Watermaster Board – October 22, 2020:

*Watermaster's function is to administer and enforce provisions of the Judgment and subsequent orders of the Court,
and to develop and implement an Optimum Basin Management Program*

BACKGROUND

On August 25, 2020, the Watermaster Board directed staff to issue invoices to the Appropriative Pool members for the \$165,694.75 unreimbursed increase in the Overlying (Agricultural) Pool's Fiscal Year 2019-2020 legal budget, allocated on the basis of the "Ag Pool Reallocation." That day, Watermaster staff sent out invoices for this charge to the members of the Appropriative Pool, with such payments being due on September 25, 2020.

On September 14, 2020, at the request of the Appropriative Pool, Watermaster established an escrow account for the purpose of enabling members of the Appropriative Pool to allow them to deposit funds in an amount equal to their respective allocated invoiced share of cumulative reimbursement amount attributable to the Overlying (Agricultural) Pool's claim arising under §5.4 of the Peace Agreement – and to hold their funds for their benefit. Functioning as an escrow, Watermaster has no access to the funds and has no discretion to access or distribute the funds other than as instructed by the depositing party.

As Watermaster has no access to the funds held in escrow, the deposit is not payment – or an excuse from delinquency. There is no agreement among Watermaster and the Appropriative Pool Parties as to the effect of the placement of funds into the escrow account on the provisions of Paragraph 55(c) of the Restated Judgment regarding delinquency of payments, the accrual of interest, and Watermaster's ability to institute a show-cause proceeding to collect payments and interest. As a condition of the establishment of the escrow account, Watermaster made it clear that its staff and counsel made no representation of any kind regarding the legal implications, if any, regarding the placement of funds into the escrow account.

As of the date of this staff letter, fourteen (14) Appropriative Pool members have made payments into the escrow account in the amount of their invoices issued on September 25, 2020, and two (2) members have neither paid Watermaster nor made payments into the escrow account.

On September 18, 2020, nine (9) members of the Appropriative Pool have filed their Motion of Appropriative Pool Member Agencies Re: Agricultural Pool Legal and Other Expenses with the Watermaster Court ("Motion") seeking a determination as to their obligations to pay the underlying invoices. The Motion is presently on calendar for an October 23, 2020 hearing – the day after the Board's October 22, 2020 regular meeting.

Watermaster has issued notices of delinquency to the two (2) Appropriative Pool parties who have neither paid Watermaster nor made payments into the escrow account.

DISCUSSION

As to those parties that have paid into the escrow account, the account is a mechanism through which the members of the Appropriative Pool may separately hold their own money in an interest-bearing account. While held in escrow, Watermaster cannot apply that money to reimburse the Overlying (Agricultural) Pool's account for which it was invoiced. For this reason, Watermaster staff views those parties that have paid into the escrow account as delinquent in their payments of the August 25, 2020 invoices. However, depending upon the outcome of the Court's review of the pending Motion, the terms of the escrow instructions established by the Appropriative Pool may result in full-payment along with associated interest on the funds deposited into escrow, a determination that the invoices should not be paid thereby invalidating the surcharge, or another order. It seems unnecessary and impractical to cause a second payment of a like amount. Consequently, Watermaster will not pursue a show-cause proceeding and a delinquency interest pending the outcome of the trial Court's review of the pending nine (9) party motion.

As to the two Appropriative Pool parties who have neither paid Watermaster nor made payments into the escrow account, Watermaster staff will request direction from the Board at its October 22, 2020 meeting to institute a show-cause proceeding to collect payments, interest, and attorney's fees thereunder.

EXHIBIT

“F”



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

STAFF REPORT

DATE: October 8, 2020 (AP and OAP)
October 9, 2020 (ONAP)

TO: AP/ONAP/OAP Members

SUBJECT: AP August 25, 2020 Invoices for \$165,694.75 (Agenda Item III.C.1.)

SUMMARY:

Issue: Status of the AP August 25, 2020 Invoices for \$165,694.75

Recommendation: None

Financial Impact: No impact at this time

Future Consideration

Appropriative Pool – October 8, 2020: Information only

Agricultural Pool – October 8, 2020: Information only

Non-Agricultural Pool – October 9, 2020: Information only

Advisory Committee – October 15, 2020: Information only

Watermaster Board – October 22, 2020: Provide direction to staff [Normal Course of Business]

ACTIONS:

Appropriative Pool – October 8, 2020:

Non-Agricultural Pool – October 9, 2020:

Agricultural Pool – October 8, 2020:

Advisory Committee – October 15, 2020:

Watermaster Board – October 22, 2020:

*Watermaster's function is to administer and enforce provisions of the Judgment and subsequent orders of the Court,
and to develop and implement an Optimum Basin Management Program*

BACKGROUND

On August 25, 2020, the Watermaster Board directed staff to issue invoices to the Appropriative Pool members for the \$165,694.75 unreimbursed increase in the Overlying (Agricultural) Pool's Fiscal Year 2019-2020 legal budget, allocated on the basis of the "Ag Pool Reallocation." That day, Watermaster staff sent out invoices for this charge to the members of the Appropriative Pool, with such payments being due on September 25, 2020.

On September 14, 2020, at the request of the Appropriative Pool, Watermaster established an escrow account for the purpose of enabling members of the Appropriative Pool to allow them to deposit funds in an amount equal to their respective allocated invoiced share of cumulative reimbursement amount attributable to the Overlying (Agricultural) Pool's claim arising under §5.4 of the Peace Agreement – and to hold their funds for their benefit. Functioning as an escrow, Watermaster has no access to the funds and has no discretion to access or distribute the funds other than as instructed by the depositing party.

As Watermaster has no access to the funds held in escrow, the deposit is not payment – or an excuse from delinquency. There is no agreement among Watermaster and the Appropriative Pool Parties as to the effect of the placement of funds into the escrow account on the provisions of Paragraph 55(c) of the Restated Judgment regarding delinquency of payments, the accrual of interest, and Watermaster's ability to institute a show-cause proceeding to collect payments and interest. As a condition of the establishment of the escrow account, Watermaster made it clear that its staff and counsel made no representation of any kind regarding the legal implications, if any, regarding the placement of funds into the escrow account.

As of the date of this staff letter, fourteen (14) Appropriative Pool members have made payments into the escrow account in the amount of their invoices issued on September 25, 2020, and two (2) members have neither paid Watermaster nor made payments into the escrow account.

On September 18, 2020, nine (9) members of the Appropriative Pool have filed their Motion of Appropriative Pool Member Agencies Re: Agricultural Pool Legal and Other Expenses with the Watermaster Court ("Motion") seeking a determination as to their obligations to pay the underlying invoices. The Motion is presently on calendar for an October 23, 2020 hearing – the day after the Board's October 22, 2020 regular meeting.

Watermaster has issued notices of delinquency to the two (2) Appropriative Pool parties who have neither paid Watermaster nor made payments into the escrow account.

DISCUSSION

As to those parties that have paid into the escrow account, the account is a mechanism through which the members of the Appropriative Pool may separately hold their own money in an interest-bearing account. While held in escrow, Watermaster cannot apply that money to reimburse the Overlying (Agricultural) Pool's account for which it was invoiced. For this reason, Watermaster staff views those parties that have paid into the escrow account as delinquent in their payments of the August 25, 2020 invoices. However, depending upon the outcome of the Court's review of the pending Motion, the terms of the escrow instructions established by the Appropriative Pool may result in full-payment along with associated interest on the funds deposited into escrow, a determination that the invoices should not be paid thereby invalidating the surcharge, or another order. It seems unnecessary and impractical to cause a second payment of a like amount. Consequently, Watermaster will not pursue a show-cause proceeding and a delinquency interest pending the outcome of the trial Court's review of the pending nine (9) party motion.

As to the two Appropriative Pool parties who have neither paid Watermaster nor made payments into the escrow account, Watermaster staff will request direction from the Board at its October 22, 2020 meeting to institute a show-cause proceeding to collect payments, interest, and attorney's fees thereunder.

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. DECLARATION OF PETER KAVOUNAS IN SUPPORT OF 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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