l								
1 2	Jimmy L. Gutierrez (SBN 59448) JIMMY L. GUTIERREZ LAW CORPORAT	FEE EXEMPT PER GOV. CODE § 6103						
3	12616 Central Avenue							
	Chino, California 91710 Telephone: (909) 591-6336							
4	arrang and my Milyring com							
. 5								
6	Attorney for the City of Chino							
7								
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA							
9	FOR THE COUNTY OF SAN BERNARDINO							
10								
11	CHINO BASIN MUNICIPAL WATER	) CASE NUMBER: RCV 51010						
12	DISTRICT,	<ul><li>() [Assigned for All Purposes to Honorable</li><li>) Stanford E. Reichert, Dept. S35]</li></ul>						
13	Plaintiff,							
14	v.	<ul><li>DECLARATION OF JIMMY L.</li><li>GUTIERREZ IN SUPPORT OF CITY</li></ul>						
15	CITY OF CHINO, et al.,	<ul> <li>OF CHINO EX PARTE APPLICATION</li> <li>FOR AN ORDER TO EXTEND TIME</li> <li>UNDER JUDGMENT PARAGRAPH</li> </ul>						
16	Defendants.	) 31(c) TO CHALLENGE						
17		) WATERMASTER ACTION/DECISION ) ON AUGUST 25, 2020 TO ISSUE						
18		) INVOICES TO PAY AG POOL LEGAL EXPENSES TO APPROPRIATORS						
19	·	) INCLUDING THE CITY OF CHINO						
20		) Date: October 16, 2020 ) Time: 1:30 p.m.						
21		_) Dept.: S35 1						
22								
23	I, Jimmy L. Gutierrez, state and decla	are as follows:						
24	1. I am the attorney of record for	1. I am the attorney of record for the City of Chino, a party to the Judgment and to						
	the Peace Agreement. I am over eighteen ye	ears of age. The facts herein are personally known						
25	to me. If sworn, I could and would competently testify to the matters set forth herein. I submit							
26	this declaration in support of the "City of Chino Ex Parte Application for an Order to Extend							
27	Time Under Judgment Paragraph 31(c) to Challenge Watermaster Action/Decision on August							
28	DECLARATION OF HMMV L CHTIEPPEZ L	<u>l</u> IN SUPPORT OF CHINO EX PARTE APPLICATION						
	DECLARATION OF JIMINIT E. GOTTERREZ I	an John Or Charles Extracted in Electronic						

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. On August 25, 2020, the Watermaster Board ordered the issuance of invoices to the members of the Appropriative Pool to pay for the legal expenses initiated by the Agricultural Pool in the sum of \$165,694.75.
- 3. On August 25, 2020, Watermaster staff issued Special Invoice No. 2020-02-SPE to the City of Chino requiring the payment of \$29,835.46, as its portion of said Ag Pool initiated legal expenses pursuant to the order of the Watermaster Board on the same date. A true copy of that invoice is attached hereto as Exhibit 2 and made a part hereof.
- 4. Paragraph 31(c) of the Judgment authorizes any party to the Judgment to seek review by the Court of "all actions, decisions or rules of Watermaster" by serving and filing a motion within ninety (90) days after such Watermaster action, decision or rule, except for budget actions, in which event said notice period shall be sixty (60) days.
- 5. Currently, the underlying obligation of the Appropriators, if any, to pay Ag Pool initiated legal expenses is the subject of a motion of several members of the Appropriative Pool filed on September 17, 2020, joined by the City of Chino, scheduled for a hearing before the Court on October 23, 2020 (hereafter "AP Motion").
- 6. Nevertheless, on September 30, 2020, Watermaster General Manager, Peter Kavounas, sent a letter to the City of Chino stating that Watermaster had not received payment from the City of Chino in the sum of \$29,835.46 and intimating that Watermaster would impose penalties and pursue "show-cause proceedings" under Paragraph 55(c) of the Judgment against the City of Chino. A true copy of that letter is attached hereto as Exhibit 2 and made a part hereof.
- 7. On October 9, 2020, the City of Chino sent a letter to Mr. Kavounas, Watermaster General Manager, advising that it had neither decided to pay nor not to pay Watermaster's invoice; but, instead, that the City of Chino had chosen to await Judge Reichert's ruling on the

AP Motion. Given the pendency of the AP Motion, the City of Chino proposed to Watermaster that it too await the outcome of the Court's ruling on the motion and "agree to a mutual stay of our respective remedies under the Judgment" about the issues related to Watermaster invoices to members of the Appropriative Pool including the one to the City of Chino. A true copy of that letter is attached hereto as Exhibit 3 and made a part hereof.

- 8. On October 9, 2020, Watermaster General Manager, Peter Kavounas, sent an email response to the City of Chino in which he advised that a determination about the City of Chino's proposal was beyond his discretion, that the determination will be made by the Watermaster Board and that the City of Chino was welcome to address the Watermaster Board at its October 22, 2020 meeting. A true copy of that email is attached hereto as Exhibit 4 and made a part hereof.
- 9. I am informed and believe, and thereon allege, that a few of the members of the Appropriative Pool have paid the invoices and that many of the members have paid the invoiced amounts into an escrow fund, which Watermaster regards as non-payment, while a few like the City of Chino have not paid the invoices pending the outcome of the AP Motion.
- 10. Under Paragraph 31(c) of the Judgement, a party to the Judgment seeking to challenge a budget action/decision of the Watermaster Board has 60 days in which to file a motion to challenge said action/decision. Since the Watermaster Board ordered the issue of invoices to the members of the Appropriative Pool in the sum of \$165,694.75 including the attached invoice to the City of Chino, the 60-day period by which the City of Chino must file its motion to challenge said Watermaster Board action/decision falls on October 24, 2020.
- 11. The City of Chino has several grounds to challenge the propriety of the action/decision of the Watermaster Board to order the issuance of the invoices to the members of the Appropriative Pool. Some of those grounds include the failure of Watermaster to ascertain the nature and purpose of the Ag Pool initiated expenses, the timeliness of said expenses and whether said expenses are payable by members of the Appropriative Pool under the Peace Agreement, and other grounds as well.

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12. If the extension of the time to file a challenge to the above Watermaster Board action/decision is not extended from 60 to 120 days, the City of Chino will be burdened with the expense and effort of filing a motion within the next ten (10) days while this underlying billing dispute between Watermaster and the members of the Appropriative Pool is embedded in the AP Motion. Given Mr. Kavounas' stated inability to agree to a mutual stay of remedies under the Judgement, it is dangerous for the City of Chino to wait until October 22, 2020 for a Watermaster determination on a mutual stay of remedies under the Judgment, because the 60-day period in which to file a motion to challenge the invoices falls on October 24, 2020. Furthermore, granting the extension of time Ex Parte imposes no harm on Watermaster and the Court's ruling on the AP Motion may be dispositive of the billing dispute.

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

Executed this 14th day of October, 2020 in Chino, California



### 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** 

29,835.46

29,835.46

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

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

# **Appropriative Pool Special Assessment of \$165,694.75**

Production information based upon 2019-2020 Assessment Package dated November 21, 2019 (Production Year 2018-2019)

PRODUCER	AF Total AG Pool Reallocation Page 16.1 Column 16E	% Share of AG Pool Reallocation	Based on % Share of AG Pool Reallocation	\$165,694.75 Special Assessment Amount Due
Arrowhead Mountain Spring Water Co. Chino Hills, City Of Chino, City Of Cucamonga Valley Water District Desalter Authority Fontana Union Water Company Fontana Water Company Fontana, City Of Golden State Water Company Jurupa Community Services District Marygold Mutual Water Company Monte Vista Irrigation Company Monte Vista Water District NCL Co., LLC Niagara Bottling, LLC Nicholson Trust Norco, City Of Ontario, City Of San Antonio Water Company San Bernardino County of (Shooting Park) Santa Ana River Water Company Upland, City Of West End Consolidated Water Co. West Valley Water District	0.0 2,473.4 10,986.4 2,647.4 0.0 3,618.5 834.6 0.0 232.8 16,079.8 370.9 383.1 2,798.4 0.0 0.0 2.2 114.2 10,017.5 6,349.3 853.0 0.0 736.6 1,614.8 536.4	0.00% 4.05% 18.01% 4.34% 0.00% 5.93% 1.37% 0.00% 0.38% 26.35% 0.61% 0.63% 4.59% 0.00% 0.00% 0.19% 16.42% 10.41% 1.40% 0.00% 1.21% 2.65% 0.88%	\$ 6,717.04 \$ 29,835.46 \$ 7,189.55 \$ - \$ 9,826.76 \$ 2,266.56 \$ - \$ 632.25 \$ 43,667.70 \$ 1,007.38 \$ 1,040.25 \$ 7,599.42 \$ - \$ - \$ 5.90 \$ 310.22 \$ 27,204.29 \$ 17,242.56 \$ 2,316.54 \$ - \$ 2,000.42 \$ 4,385.24 \$ 1,456.69	\$ 4,385.24 \$ 1,456.69
GRAND TOTALS	61,014.1	100.00%		

On Tuesday, August 25, 2020, a Watermaster Board meeting was called to order by Chair Pierson at 11:00 a.m. via GoToMeeting (conference call and web meeting). Business Item II.A. OAP LEGAL EXPENSE INCREASE was presented with the following action taken: Motion by Mr. Bob Bowcock, seconded by Mr. Don Galleano and by majority vote (8 yes and 1 no), Direct staff to issue invoices to the Appropriative Pool Parties for the amount of \$165,694.75 for the unreimbursed increase, allocated on the basis of the Assessment Year 2019-2020 "Ag Pool Reallocation".



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) <u>Delinquency.</u> 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** 

29,835.46

29,835.46

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

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

EUNICE M. ULLOA Mexico

TOM HAUGHLY



MARCHARGROVE
MARCHUCTO
PAULA RODRIGGEZ Edd.

MATTHEW C. BALLANTANE CONTROL

October 8, 2020

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

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### RE: City of Chino (Water Master Invoice 2020-02-SPE)

## Peter Kavounas < PKavounas@cbwm.org >

To: Crosley, Dave <dcrosley@cityofchino.org>

Cc: Jimmy Gutierrez <jimmy@city-attorney.com>; Postovoit, Austin <apostovoit@cityofchino.org>

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 <apostovoit@cityofchino.org>

Sent: Friday, October 9, 2020 9:12 AM

To: Peter Kavounas < PKavounas@cbwm.org>

Cc: Crosley, Dave <dcrosley@cityofchino.org>; Gutierrez, Jimmy <jimmy@city-attorney.com>

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 Direct (909) 334-3415



### **CHINO BASIN WATERMASTER**

## Case No. RCVRS 51010

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

#### **PROOF OF SERVICE**

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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 JIMMY L. GUTIERREZ IN SUPPORT OF 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
/ <u>X</u> /	pr ac	Y MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully repaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, ddresses as follows:  ee attached service list: Mailing List 1
//	B'	Y PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.
//	nι	Y FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax umber(s) indicated. The transmission was reported as complete on the transmission report, hich was properly issued by the transmitting fax machine.
<u>/ X _</u> /	tra	Y ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic ansmission to the email address indicated. The transmission was reported as complete on the ansmission report, which was properly issued by the transmitting electronic mail device.
l decla		under penalty of perjury under the laws of the State of California that the above is true and

Executed on October 15, 2020 in Rancho Cucamonga, California.

By: Vanessa Aldaz Chino Basin Watermaster PAUL HOFER CBWM BOARD MEMBER 11248 S TURNER AVE ONTARIO, CA 91761

JEFF PIERSON 2 HEXAM IRVINE, CA 92603

ALLEN HUBSCH LOEB & LOEB LLP 10100 SANTA MONICA BLVD. SUITE 2200 LOS ANGELES, CA 90067

BRIAN GEYE CA SPEEDWAY CORPORATION 9300 CHERRY AVE FONTANA, CA 92335

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