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

CHINO BASIN MUNICIPAL WATER  
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, ET AL.,

Defendants.

Case No: RCVRS 51010

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

**RESPONSE TO AGRICULTURAL  
POOL'S OBJECTIONS TO EVIDENCE**

[Concurrently Filed with Reply; Supplemental  
Declaration of S. Burton; Declaration of J.  
Schatz]

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

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**RESPONSE TO OBJECTIONS TO EVIDENCE**

This response is submitted to the Ag Pool’s objections to evidence and its Proposed Order. The Ag Pool’s evidentiary objections are meritless and may be overruled by the Court.

**I. MEMORANDUM BY THE SPECIAL JOINT POOL COMMITTEE REGARDING POOL DISPUTE RESOLUTION, DATED AUGUST 11, 2009**

The Ag Pool advances two evidentiary objections to the 2009 Memo: (1) it constitutes inadmissible extrinsic evidence under the parol evidence rule, and (2) it is not proper for judicial notice. Both objections are meritless for reasons set forth in the concurrently filed Reply, and as summarized below.

**A. The Parol Evidence Rule Does Not Render the 2009 Memo Inadmissible.**

The 2009 Memo is highly relevant and admissible for two purposes. First, it underscores that the language at issue in the Peace Agreement is ambiguous and susceptible to interpretation. Second, in addition to the language of Peace Agreement it provides an independent basis that supports the reasonable interpretation advanced by the Motion. (See *PG&E v. G. W. Thomas Drayage Co.* (1968) 69 Cal.2d 33, 37, 39-41.)

The parol evidence rule operates to bar extrinsic evidence which contradicts the terms of a written contract. (Code Ci.v. Proc., § 1856(a); *Riley v. Bear Creek Planning Committee* (1976) 17 Cal. 3d 500, 508.) The 2009 Memo is not a “prior” or “contemporaneous” agreement subject to this rule. The 2009 Memo was written *after* the Peace Agreement. It memorializes the Pools’ join resolution of a similar prior dispute and their mutual interpretation of the Peace Agreement Section 5.4(c). The 2009 Memo supplements or explains the Peace Agreement; it does not contradict it. Thus, the parol evidence rule does not apply.

Even if the parol evidence rule applied, the 2009 Memo still would be admissible. According to the California Supreme Court in *PG&E*:

The test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether [the instrument] appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible.  
[. . .]

1 Rational interpretation requires at least a preliminary consideration of all credible  
2 evidence offered to prove the intention of the parties. . . . If the court decides, after  
3 considering this evidence, that the language of a contract, in the light of all the  
circumstances, is fairly susceptible of either one of the two interpretations  
contended for, extrinsic evidence relevant to prove either of such meanings is  
admissible.

4 (*PG&E, supra*, 69 Cal.2d at pp.37, 39.) Just like the extrinsic evidence at issue in *PG&E*, the  
5 2009 Memo is relevant and admissible for both of the purposes described in the first paragraph  
6 above. There are no grounds to exclude the 2009 Memo nor limit its admissibility.

7 **B. Judicial Notice Is Proper; But Is Not the Only Basis for Admissibility.**

8 Judicial notice is proper under Sections 453 and 452 of the Evidence Code. Even if judicial  
9 notice is not taken, the Court may consider the 2009 Memo because it is properly before the Court  
10 as an exhibit to the Declaration of Mr. Scott-Coe that was filed concurrently with the Motion.

11 Under Evidence Code, section 453, the Court may take judicial notice of any matter  
12 specified under section 452. Subdivision (c) of Section 452 provides that judicial notice may be  
13 taken of official acts of the legislative, executive, and judicial departments of a state. Courts may  
14 take judicial notice of public records that reflect a wide variety of official acts. (See, e.g., *Hogen*  
15 *v. Valley Hospital* (1983) 147 Cal.App.3d 119, 125 [taking judicial notice of the files of the Board  
16 of Medical Quality Assurance]; *San Mateo County Coastal Landowners' Assn. v. County of San*  
17 *Mateo* (1995) 38 Cal.App.4th 523, 552–553 [taking judicial notice of a letter sent by a  
18 government official].) The 2009 Memo is a public record of the Watermaster and was obtained  
19 from Watermaster’s files. It was generated as a joint effort of the Watermaster Pool Committees  
20 to memorialize their resolution of a dispute. Watermaster relies on the 2009 Memo as part of the  
21 basis for its annual process to review and approve Pool budget requests. (See Supplemental  
22 Declaration of S. Burton filed concurrently herewith, at ¶¶5-6.) Because the 2009 Memo is a  
23 public record that reflects acts of the Special Joint Pool Committee and forms the basis for a  
24 Watermaster budget process, it qualifies for judicial notice under Subdivision (c).

25 Subdivision (h) provides another independent basis for taking judicial notice. It provides  
26 that that judicial notice may be taken of facts and propositions that are not reasonably subject to  
27 dispute and are capable of immediate and accurate determination by resort to sources of  
28

1 reasonably indisputable accuracy. The 2009 Memo has been authenticated by the Declaration of  
2 Mr. Scott-Coe. Its validity and authenticity is undisputed. It is a public record of the  
3 Watermaster that establishes a budget process of the Watermaster. Thus, the 2009 Memo is  
4 authentic and reliable, and judicial notice is proper.

5 For each of these reasons, the Court may take judicial notice of the 2009 Memo.

6 **II. MOTION'S SUPPORTING DECLARATIONS**

7 The Ag Pool objects to both of the declarations submitted with the Motion (the  
8 Declaration of S. Burton and the Declaration of J. Scott-Coe) in their entirety "to the extent" they  
9 are argumentative rather than factual. This objection is meritless and fails to identify any  
10 inadmissible testimony. Both declarations supply facts and authenticate relevant documents  
11 based on the personal knowledge of the declarants. The declarations are admissible and may be  
12 considered by the Court.

13 For the above-stated reasons, the AP Members respectfully request that the Court overrule  
14 the Ag Pool's evidentiary objections.

15  
16 Dated: October 16, 2020

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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 16, 2020 I served the following:

1. RESPONSE TO AGRICULTURAL POOL'S OBJECTIONS TO EVIDENCE

/X/ BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:

**See attached service list:** Mailing List 1

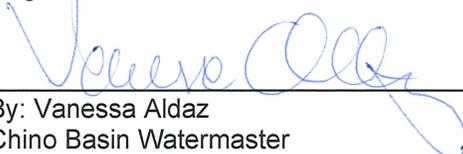
/\_\_\_/ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/\_\_\_/ BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

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

Executed on October 16, 2020 in Rancho Cucamonga, California.

  
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