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13 **CHINO BASIN WATERMASTER**

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

16 CHINO BASIN MUNICIPAL WATER  
17 DISTRICT,  
18  
19 Plaintiff,  
20  
21 v.  
22 CITY OF CHINO, ET AL.,  
23  
24 Defendants.

25 **Case No. RCV RS 51010**  
26 [Assigned for All Purposes to the  
27 Honorable Stanford E. Reichert]

28 **NOTICE OF ORDERS**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that, on May 28, 2021, at 1:30 p.m., in Department S35 of the above-entitled Court, the Motion of Appropriative Pool Member Agencies Re: Agricultural Pool Legal and Other Expenses came on for hearing in the above-captioned matter. The Court entered its Order on Motion of Appropriative Pool Member Agencies Re: Agricultural Pool Legal and Other Expenses, a copy of which is attached to this Notice as **Exhibit A**.

At that time, the Court additionally received a report from Chino Basin Watermaster (“Watermaster”) legal counsel regarding the status of the Local Storage Limitation Solution and Watermaster’s Motion Regarding Implementation of the Local Storage Limitation Solution,


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which is on calendar to be heard by this Court on June 25, 2021, at 1:30 p.m., in Department S35 of the above-entitled Court.

Dated: June 1, 2021

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By:   
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22731639.1

# Exhibit A

MAY 28 2021

BY Amber Bouchard  
AMBER BOUCHARD, DEPUTY

SUPERIOR COURT FOR 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

ORDER on MOTION of  
APPROPRIATIVE POOL MEMBER  
AGENCIES RE: AGRICULTURAL  
POOL LEGAL AND OTHER  
EXPENSES

Date: May 28, 2021

Time: 1:30 PM

Department: S35/S3 [Hearing Location]

Regarding the motion of the Appropriative Pool Member Agencies re: Agricultural Pool legal and other expenses, filed September 18, 2020, the court finds and orders as follow:

1. The court concludes that the word "all" in paragraph 5.4(a) of the Peace Agreement cannot mean "all" in the dictionary sense of the whole amount without qualification or limitation. The court must look at the context and use of the word "all" to interpret the word from the Peace Agreement (aka Peace I) made 20 years ago in relation to the Judgment entered more than 40 years ago.

A. The court concludes that to interpret the word "all" in the way that the

1 AgPool proposes would defeat the reasonable expectations of the parties to the  
2 Peace Agreement.

3 B. No reasonable person would make a contract that would obligate that person  
4 to pay another party's expenses without limit and without knowledge of the nature of  
5 the expenses, including the expenses of a lawsuit against the paying person, *i.e.*, no  
6 reasonable person would pay to finance a lawsuit against himself or herself. (As  
7 pointed out in the Appropriative Pool member agencies response to the Agricultural  
8 Pool's briefing filed May 24, 2021.)

9 C. It is fundamentally unfair to compel a party to pay expenses over which the  
10 party has no control and no specific, detailed knowledge.

11 I. The court notes that the AgPool has consistently refused to provide the  
12 Appropriative Pool with the actual attorney fee bills for the AgPool's attorney. In  
13 its last briefing, the AgPool again offered for the court to review the bills in  
14 camera. The court refuses this offer because there is no legal basis for the court  
15 to do so. If the parties cannot come to an agreement themselves (as the court  
16 states they may do in paragraph 7 below), then the court defines the procedure  
17 for the court to rule on the legal expenses, and any other expenses, as set forth in  
18 paragraph 8 below.

19 D. The court's ruling has nothing to do with the separation of powers among the  
20 three pools, the Advisory Committee, and the Watermaster. It applies strictly to the  
21 issue of the attorney fee and expense dispute between the AgPool and the  
22 Appropriative Pool pursuant of Section 5.4(a) of the 2000 Peace Agreement.

23 2. The court concludes that its previous tentative ruling also does not provide a  
24 solution to the dispute because the court now concludes that the previous  
25 tentative did not contain the proper legal basis for the ruling, that being, an  
26 analysis of the Judgment and the 2000 Peace agreement, as set forth herein.

27 A. The court appreciates the Appropriative Pool's argument that the resolution of  
28 the dispute in 2009 could be a precedent for the court's resolution of the current

1 attorney fee dispute, but the court has concluded that a specific tailored decision for  
2 the attorney fee dispute based on the Judgment and the 2000 Peace Agreement is the  
3 proper remedy.

4 I. The 2009 dispute over Section 5.4(a) involved the Appropriative Pool's  
5 dispute regarding the payment of costs assessed to the AgPool for a State of  
6 California Regional Water Quality Control Board, Santa Ana Region requirement.  
7 Specifically, the dispute was over an invoice for the Pathogen Total Maximum  
8 Daily Loads Task Force Study (TMDL Study) for the Middle Santa Ana River  
9 watershed. The issue was whether the TMDL study constituted a Special Project  
10 Expense subject to payment by the Appropriative Pool under section 5.4(a) of the  
11 Peace Agreement. That issue is completely different than the instant issue.

12 II. That resolution was for a one-time problem, not a recurring issue which  
13 the court concludes the instant issue is.

14 3. The court also appreciates the briefing by the AgPool concerning Judge Gunn's  
15 1998 order and Special Referee Schneider's report of 1997, but the court finds  
16 that neither res judicata nor collateral estoppel applies here for the reasons set  
17 forth in the Appropriative Pool's response.

18 A. In short, neither res judicata nor collateral estopped applies because:

19 I. Judge Gunn's 1998 order and Special Referee Schneider's report of  
20 1997 predate the 2000 Peace Agreement.

21 II. Judge Gunn's order also addressed a specific problem not related to the  
22 current dispute, even though Judge Gunn's order addresses issues beyond the  
23 dispute.

24 a) The impetus for Judge Gunn's 1998 order was fraudulent checks drawn  
25 on the account of the Chino Basin Municipal Water District (then the  
26 Watermaster). The District's Board of Directors had ordered a special  
27 audit of the District's account. The issue at the time was whether the  
28 cost of the audit could be considered a "Watermaster expense." The

1 instant issue is completely different.

2 III. The “Tragedy of Commons” argument in the AgPool’s briefing the  
3 court found intriguing, but not relevant to the issue in dispute.

4 IV. Again even though Judge Gunn’s ruling addressed a number of areas,  
5 the issue for Judge Gunn’s resolution was for a one-time problem, not a recurring  
6 issue which the court concludes the instant issue is.

7 4. Furthermore, the court notes that the AgPool Storage Contests, which form the  
8 basis of the attorney fees at issue, were the first of their kind, representing the  
9 first time the contest procedure has been used. (Burton declaration filed  
10 September 13, 2020, ¶3.)

11 5. The ruling of the court on the instant motion for attorney fees is intended to  
12 apply only to the specific attorney fee dispute between the AgPool and the  
13 Appropriative Pool. It is not intended to have any general effect on any other  
14 party or pool, or to give the Appropriative Pool any legal basis to object to any  
15 other aspect or any other budget item.

16 A. The court notes this in response to the brief of the Non-Agricultural Pool  
17 (NAP).

18 6. So, in interpreting Peace Agreement §5.4(a), the court turns to the Judgment and  
19 to the 2000 Peace Agreement (Peace I).

20 A. Peace I, Paragraph 5.4(a) states in pertinent part:

21 I. 5.4 Assessments, Credits, and Reimbursements. After the Effective  
22 Date and until the termination of this Agreement, the Parties expressly consent to  
23 Watermaster’s performance of the following actions, programs or procedures  
24 regarding Assessments.

25 a) (a) During the term of this Agreement, all assessments and expenses of  
26 the Agricultural Pool including those of the Agricultural Pool  
27 Committee shall be paid by the Appropriative Pool. This includes but  
28 is not limited to OBMP Assessments, assessments pursuant to

1 Paragraphs 20, 21, 22, 30, 42, 51, 53, 54 both General Administrative  
2 Expenses and Special Project Expenses, 55, and Exhibit F (Overlying  
3 Agricultural Pool Pooling Plan) of the Judgment except however in the  
4 event the total Agricultural Pool Production exceeds 414,000 acre-feet  
5 in any five consecutive year period as defined in the Judgment, the  
6 Agricultural Pool shall be responsible for its Replenishment obligation  
7 pursuant to Paragraph 45 of the Judgment.”

8 B. In the Judgment, the only section that deals with attorney fees is Paragraph  
9 54(b) which states:

10 I. 54. Administrative Expenses. The expenses of administration of this  
11 Physical Solution shall be categorized as either (a) general Watermaster  
12 administrative expense, or (b) special project expense.

13 a) (a) General Watermaster Administrative Expense shall include office  
14 rental, general personnel expense, supplies and office equipment, and  
15 related incidental expense and general overhead.

16 b) (b) Special Project Expense shall consist of special engineering,  
17 economic or other studies, litigation expense, meter testing or other  
18 major operating expenses. Each such project shall be assigned a Task  
19 Order number and shall be separately budgeted and accounted for.

20 c) General Watermaster administrative expense shall be allocated and  
21 assessed against the respective pool based upon allocation made by the  
22 Watermaster, who shall make such allocations based upon generally  
23 accepted cost accounting methods. Special Project Expense shall be  
24 allocated to a specific pool, or any portion thereof, only upon the basis  
25 of prior express assent and find of benefit by the Pool Committee, or  
26 pursuant to written order of the court.

27 C. So, when the court reads Peace I Section 5.4(a) with Judgment Paragraph 54,  
28 the court initially concludes that attorney fees for storage contests would be included



1 in the definition of “Special Project Expense” as a “litigation expense.”

2 I. So, the first step would be for the AgPool to approve the attorney fee  
3 upon an express finding that it benefits the AgPool.

4 II. Then, pursuant to Peace I, the attorney fee as a Special Project Expense  
5 would go to the Appropriative Pool for payment.

6 a) The court interprets the Judgment ¶54 and Peace I §5.4(a) to mean that  
7 the litigation expense at least must not be adverse to the Appropriative  
8 Pool as a matter of fundamental fairness and not to defeat the  
9 reasonable expectations of the parties to Peace I.

10 7. Judgement ¶54 and Peace I §5.4(a) mean that, of course, the Ag Pool and the  
11 Appropriative Pool can agree to a determination to about payment of “litigation  
12 expense.” The court concludes that they have been doing this up until the instant  
13 motion. The court will only add that now the dispute has arisen, the procedure  
14 should include the AgPool providing the Appropriative Pool with the AgPool’s  
15 attorney fee bills. Otherwise, there will be no way for the Appropriative Pool to  
16 determine whether the bills fit within the court’s interpretation.

17 8. The alternative in the Judgment is for the court to order the Special Project  
18 Expense attorney fee or expense for the AgPool upon motion.

19 A. This is consistent with California Civil Code §1717 regarding a contract  
20 provision for attorney fees and costs.

21 I. The 2000 Peace Agreement (Peace I) is a contract, and therefore, CC  
22 §1717 should apply by analogy, even though the Peace I does not have a  
23 requirement of “prevailing party.”

24 II. California Rules of Court, Rule 1702, which requires a motion for  
25 attorney fees, should also should apply by analogy.

26 B. There is no procedure in either the Judgement or Peace I (or Peace II for that  
27 matter) for the court to hear this unique kind of motion concerning for attorney fees  
28 and expenses set forth in the Judgment ¶54. So, the court indicates that for such a

1 motion the court requires:

2 I. Service and filing of a noticed motion with a hearing set for Friday at  
3 1:30 PM, with the date cleared by the court's judicial assistant.

4 II. Notice of the motion pursuant to CCP §§1010 to 1020.

5 III. All supporting documents for the motion to be included, including the  
6 fee bills themselves. It is a denial of due process, as well as fundamentally unfair,  
7 for a party to be forced to pay a bill that the party has not seen. In order for a  
8 party to contest a bill, the party must be able to see and examine it first.

9 a) The court would consider this requirement to be not only a matter of  
10 fundamental fairness, but also for the court and the Appropriative Pool  
11 to determine whether the fees for actions benefitting the AgPool (as  
12 required by ¶54 of the Judgment) and at least not adverse to the  
13 Appropriative Pool.

14 i) The court requires this to be not only a matter of fundamental  
15 fairness but also not to defeat the reasonable expectations of the  
16 parties to Peace I.

17 b) The bills may be redacted, but the court must admonish the parties that  
18 the redactions cannot be so extensive as to make the bills meaningless  
19 for review by opposing counsel and determination by the court.

20 C. If the AgPool so chooses, it may file a motion for attorney's fees using the  
21 procedure the court has set forth above. This will protect the due process rights of  
22 the AgPool as well as serve what the court determines to be the issues of  
23 fundamental fairness surrounding the issue of the AgPool's attorney fees. It will also  
24 give the court a factual basis to rule upon the amount of the fees.<sup>1</sup>

25 I. In order for the court to bring the current issue of the AgPool's  
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27 <sup>1</sup> The court notes that the Appropriative Pool points out that Watermaster Regulations ¶10.26(a) requires that "each  
28 party to the [Contest] proceeding shall bear its own costs and expenses associated with the proceeding." (Memorandum  
of points and authorities in support of motion of Appropriative Pool member agencies re: Agricultural Pool legal and  
other expenses, filed September 18, 2020, page 16, lines 1-7.) However, the court finds that this issue should be  
governed by the Judgment and the 2000 Peace Agreement only.

1 attorney fees and expenses to a close the court orders that the AgPool serve and  
2 file its motion for attorney fees and expenses by 2:00 PM (when the clerk's office  
3 now closes) on July 25, 2021, with a hearing date to be set by the court.

4 II. If the AgPool does not file its motion on or before July 25, 2021, as  
5 ordered, then the court will consider the AgPool to have waived its current claims  
6 for attorney fees and expenses, and the court will order vacated the assessments  
7 subject to the current dispute, and any party's payment of the assessments subject  
8 to the current dispute reimbursed to the paying party.

- 9 a) The court notes the Exhibit A to the Declaration of John Schatz filed  
10 May 24, 2021, "Appropriative Pool Special Assessment of \$165,694.75"  
11 which appears to the court to itemize the assessments to Appropriative  
12 Pool members, and the court would use that list as the basis of the  
13 reimbursements.

14  
15 Dated: May 28, 2021

16  
17   
18 \_\_\_\_\_  
Stanford E. Reichert, Judge

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 June 1, 2021 I served the following:

1. NOTICE OF ORDERS

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

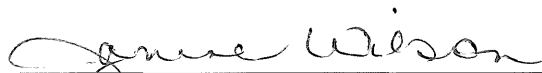
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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.

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 June 1, 2021 in Rancho Cucamonga, California.



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Chino Basin Watermaster

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