

FEE EXEMPT

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10 (AGRICULTURAL) POOL

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

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 v.

17 CITY OF CHINO et al.,

18 Defendants.

Case No. RCVRS 51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

**AGRICULTURAL POOL'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ATTORNEY'S FEES**

Date: October 8, 2021
Time: 1:30 p.m.
Dept. S-35

[Concurrently filed with Notice and Motion;
Declaration of Robert Feenstra; Declaration of
Tracy J. Egoscue; and [Proposed] Order
Granting Agricultural Pool's Motion for
Attorney's Fees]

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1 **I. INTRODUCTION**

2 Pursuant to Peace Agreement section 5.4(a), the Chino Basin Appropriative Pool
3 (Appropriative Pool) has agreed to pay all assessments and expenses of the Chino Basin
4 Overlying (Agricultural) Pool (Agricultural Pool). For more than sufficient consideration, the
5 Agricultural Pool entered into a contractual agreement with the Appropriative Pool more than two
6 decades ago to secure their financial ability to participate in the Watermaster process in exchange
7 for an early transfer of their water to the Appropriative Pool.¹

8 Despite this twenty-year old contractual relationship, a motion was filed in 2020 by
9 certain Member Agencies of the Appropriative Pool seeking to unilaterally limit their obligation
10 to pay the expenses of the Agricultural Pool. In response to this motion, the Court issued the May
11 28, 2021 “Rulings and Orders regarding Appropriative Pool Agencies Motion Re: Agricultural
12 Pool Legal and Other Expenses” further clarifying Peace Agreement section 5.4(a).

13 This Court ruled that pursuant to the Peace Agreement and the Chino Basin Judgment
14 (Judgment), the Court can order payment of attorney fees or expenses for the Agricultural Pool
15 upon a duly noticed motion. Accordingly, this motion is for an order requiring the Appropriative
16 Pool to pay the duly approved and invoiced legal expenses in the amount of \$460,723.63 to the
17 Agricultural Pool and \$102,557.12 to the Watermaster Administrative Reserve Account for a total
18 of \$563,280.75. Additionally, the Agricultural Pool requests that the Court order the
19 Appropriative Pool to resume paying the budgeted and appropriate expenses of the Agricultural
20 Pool immediately.

21 **A. Background**

22 On June 30, 2020, the Agricultural Pool, following standard Chino Basin Watermaster
23 (Watermaster) budget procedures, approved an amended budget for legal services. (Declaration of
24 Robert Feenstra (“Feenstra Decl.”), ¶ 11.) Pursuant to Section 5.4(a) of the Peace Agreement (and
25 twenty years of pattern and practice), the Watermaster issued a staff report on July 9, 2020 to the
26

27 ¹ Evidence shows that this early transfer of water has resulted in an economic benefit of \$172.8
28 million dollars to the Appropriators. (Declaration of Tracy J. Egoscue (“Egoscue Decl.”), ¶ 14,
Exhibit C at p. 1.)

1 Appropriate Pool members requesting direction regarding the method by which to allocate and
2 invoice the Agricultural Pool legal expenses. (Egoscue Decl., ¶ 21.) In response to the budget
3 amendment, a number of Appropriate Pool member agencies (Appropriate Pool Member
4 Agencies²) objected to the payment of the Agricultural Pool legal expenses and filed a lawsuit
5 against the Agricultural Pool -- the Motion of Appropriate Pool Member Agencies' Re:
6 Agricultural Pool Legal and Other Expenses. (Egoscue Decl., ¶ 22.)

7 **B. The 2021 Expenses Order**

8 After a review of the pleadings filed both in support and opposition to the motion, in
9 addition to multiple hearings thereon, the Court issued its May 28, 2021 Rulings and Orders
10 regarding Appropriate Pool Member Agencies Motion Re: Agricultural Pool Legal and Other
11 Expenses (2021 Expenses Order). The 2021 Expenses Order generally confirms Section 5.4(a) of
12 the Peace Agreement and does not reverse or reject the Section 5.4(a) obligation of the
13 Appropriate Pool to pay all assessments and expenses of the Agricultural Pool. The Court
14 concluded that “the word ‘all’ in paragraph 5.4(a) of the Peace Agreement cannot mean ‘all’ in
15 the dictionary sense of the whole amount without qualification or limitation.” (2021 Expenses
16 Order, ¶ 1.) Importantly, the 2021 Expenses Order also specifies that the ruling “is intended to
17 apply only to the specific attorney fee dispute between the [Agricultural Pool] and the
18 Appropriate Pool... [and is not intended] to give the Appropriate Pool any legal basis to
19 object to any other aspect or any other budget item.”³ (2021 Expenses Order, ¶ 1.) Despite the
20 2021 Expenses Order, the Appropriate Pool continues to refuse to pay the appropriately
21 budgeted Agricultural Pool legal expenses for FY 2019/20, FY 2020/21, and FY 2021/22.

22 In an attempt to facilitate settlement, the Court’s 2021 Expenses Order noted that
23 Paragraph 54 of the Judgment taken together with Section 5.4(a) of the Peace Agreement mean

24 ² Objecting Appropriate Pool Member Agencies include the City of Ontario, City of Pomona,
25 San Antonio Water Company, Fontana Union Water Company, Monte Vista Water District,
26 Monte Vista Irrigation Company, Cucamonga Valley Water District, Jurupa Community Services
27 District, City of Chino Hills, and City of Chino.

28 ³ The amount of this specific attorney fee dispute is \$165,694.75, which the Court noted was
itemized in the Exhibit A to the Declaration of John Schatz filed May 24, 2021, “Appropriate
Pool Special Assessment of \$165,694.75” filed on behalf of the Appropriate Pool member
agencies. (2021 Expenses Order, ¶ 8.C.II.a.)

1 that “the [Agricultural] Pool and the Appropriative Pool can agree to a determination...about
2 payment of ‘litigation expense.’” (2021 Expenses Order, ¶ 7.) The Court further found that in the
3 alternative, the Court can order attorney fees or expenses for the Agricultural Pool upon motion.⁴
4 (*Id.*, ¶ 8.) Because there is no procedure in either the Judgment or the Peace Agreement for the
5 Court to hear this unique kind of motion concerning attorney fees, the 2021 Expenses Order
6 requires that the motion be served, filed, noticed, and include all supporting documents,
7 specifically the fee bills themselves for the court and the Appropriative Pool to determine whether
8 the fees are incurred for an action benefitting the Agricultural Pool and at “least not adverse to the
9 Appropriative Pool.”⁵ (*Id.* at ¶ 8.)

10 Despite the Court’s order, it is clear from the actions—or inaction—of the Appropriative
11 Pool, that certain Members of the Appropriative Pool will continue to refuse to meet their
12 contractual obligations of Section 5.4(a) without the Court’s intervention. Without reason or
13 justification, the members of the Agricultural Pool are now blindsided and hobbled by the
14 continued breach of the Peace Agreement contract and forced to expend the majority of the
15 Agricultural Pool’s reserve account to sustain the Pool up until the date of this motion and until
16 relief is granted from this Court. As the Agricultural Pool reserve account now approaches zero,
17 the Pool is at an immense disadvantage with the loss of its ability to pay for legal counsel in an
18 adjudicated groundwater basin. In fact, the majority of the legal fees for the past few months were
19 incurred as a result of defending the Agricultural Pool in response to the Appropriative Pool
20 Member Agencies’ motion filed on September 18, 2020. (Egoscue Decl., ¶ 24.) Additionally, as
21 the Court is well aware, the monumental task of the recalculation of the Safe Yield is again about
22 to begin. The Appropriative Pool has already effectively removed the Agricultural Pool from
23 meaningful participation in the recalculation process by continuing to refuse to pay appropriately
24 budgeted Agricultural Pool expenses.⁶

25 _____
26 ⁴ The 2021 Expenses Order requires that the Agricultural Pool must file a motion by July 26,
2021 for recovery of the Agricultural Pool’s attorney’s fees and expenses. (*Id.*, ¶ 8(C)(I).)

27 ⁵ The Court does allow that the bills may be redacted so long as the redactions are not “so
28 extensive as to make the bills meaningless for review by opposing counsel and determination by
the court.” (*Id.* at ¶ 8.)

⁶ It bears repeating that while the Court explicitly stated that the 2021 Expenses Order applies

1 Additionally, the Agricultural Pool has approved a budget for the current Fiscal Year
2 2021/22 (which began on July 1, 2021) and has approved payment of monthly invoices for legal
3 services performed. (Feenstra Decl., ¶¶ 14-15, 17.) Nevertheless, the Agricultural Pool has been
4 forced to continue to utilize its dwindling reserve fund to cover the cost of all of legal expenses
5 incurred since November 2020 in addition to the \$165,694.75 that was the subject of the
6 Appropriative Pool Member Agencies’ motion. (*Id.* at ¶ 18.)

7 Despite the Court’s 2021 Expenses Order and the affirmation of the Appropriative Pool’s
8 contractual obligation to pay the expenses of the Agricultural Pool, Members of the Appropriative
9 Pool have continued to refuse to pay any legal expenses of the Agricultural Pool and the Pool
10 seeks relief from this Court. (Egoscue Decl., ¶ 25.)

11 **II. GOOD FAITH ATTEMPTS AT SETTLEMENT AND INFORMAL RESOLUTION**
12 **BETWEEN THE AGRICULTURAL POOL AND APPROPRIATIVE POOL HAVE NOT**
13 **BEEN SUCCESSFUL**

14 The Court has ordered that the Agricultural Pool and the Appropriative Pool are free to
15 settle the dispute and agree to a determination about payment of “litigation expense[s].” (2021
16 Expenses Order, ¶ 7.) In conformity with the Court’s 2021 Expenses Order, the Agricultural Pool
17 and Appropriative Pool leadership have conducted multiple meetings and communications
18 seeking a settlement or informal resolution regarding the outstanding legal expenses invoices.
19 (Feenstra Decl., ¶ 21.) Unfortunately, despite diligent efforts, the parties have not been able to
20 resolve their dispute. (*Id.* at ¶ 22.)

21 only to the specific attorney fee dispute and is not intended to give the Appropriative Pool any
22 legal basis to object to any other aspect or any other budget item, the Appropriative Pool
23 continues to exert undue control over the Agricultural Pool’s budget. Most recently, the Advisory
24 Committee approved a motion by Mr. Scott Burton, Utilities General Manager at City of Ontario,
25 to approve the Fiscal Year 2021/22 Budget Amendment for the Safe Yield Reset methodology
26 evaluation with changes proposed by a consultant for the Appropriative Pool, including that a
27 technical representative from the Pools “participate in the development of the Safe Yield Rest
28 methodology from the beginning to ensure that the [Appropriative Pool’s] concerns are addressed
...” (Feenstra Decl., ¶ 23.) When questioned about whether the Appropriative Pool would support
a budget to allow for the Agricultural Pool to have a technical representative participate as well,
Mr. Burton responded that he would not because it is a choice of the Pools whether or not to send
a representative to participate. (*Id.* at ¶ 24.) Therefore, Mr. Burton and the Appropriative Pool
have secured meaningful participation in the development of the Safe Yield Reset methodology to
benefit their members while also preventing a fair opportunity for the Agricultural Pool to do the
same.

1 Consequently, and in accordance with the Court’s 2021 Expenses Order, the Agricultural
2 Pool hereby respectfully submits this Motion for Attorney’s Fees.

3 **III. THE COURT SHOULD GRANT THIS MOTION AND ORDER THE**
4 **APPROPRIATIVE POOL TO PAY THE REASONABLE ATTORNEY’S FEES OF THE**
5 **AGRICULTURAL POOL**

6 In the absence of an agreement regarding the payment of the Agricultural Pool’s legal
7 expenses, the Court found that it can order attorney fees or expenses for the Agricultural Pool
8 upon motion in conformity with the Court’s identified requirements. (2021 Expenses Order, ¶ 8.)

9 **A. This Motion Meets the Requirements of the Peace Agreement and 2021**
10 **Expenses Order.**

11 This motion meets the requirements of the 2021 Expenses Order as it was (1) served and
12 filed by July 26, 2021; (2) for a hearing set on Friday October 8, 2021 at 1:30 PM as assigned by
13 the court’s judicial assistant; (3) notice was made consistent with Code of Civil Procedure
14 sections 1010 to 1020; (4) and the motion is made with all supporting documents including
15 minimally redacted fee bills.

16 **B. The Attorney’s Fees Are Reasonable.**

17 In this matter attorney’s fees are to be awarded pursuant to the 2021 Expenses Order, the
18 Peace Agreement, and California Civil Code § 1717 as analogous. Section 5.4(a) of the Peace
19 Agreement requires that the Appropriative Pool pay all assessments and expenses of the
20 Agricultural Pool. The Court’s 2021 Expenses Order clarifies that the Agricultural Pool’s legal
21 expenses should be approved by the Agricultural Pool and presented to the Appropriative Pool for
22 payment. (2021 Expenses Order, ¶ 8(C).) The 2021 Expenses Order expressly authorized the
23 Agricultural Pool to file and serve this motion for attorney’s fees. (*Id.* at ¶ 8.)

24 A declaration summarizing the work counsel performed is sufficient to support a fee
25 award. (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698 [“California courts
26 do not require detailed time records, and trial courts have discretion to award fees based on
27 declarations of counsel describing the work they have done and the court’s own view of the
28 number of hours reasonably spent.”].) And, in the “absence of clear indication the records are

1 erroneous,” an attorney’s claimed hours are presumed reasonable. (*Horsford v. Board of Trustees*
2 *of California State University* (2005) 132 Cal.App.4th 359, 396.)

3 Here, counsel’s declaration attaches the redacted fee bills as directed as exhibits for the
4 Court’s review. The Agricultural Pool’s counsel is a 24-year attorney, having been licensed by
5 the California State Bar in 1997. (Egoscue Decl., ¶ 2.) Additionally, counsel’s associate is a 10-
6 year attorney and is also engaged when appropriate. (*Id.* at ¶ 6.) The hours of attorney time billed
7 by Agricultural Pool counsel are reasonable in light of the large amount of activity in the Basin
8 during this time, including the herculean tasks of the Court’s reset of the Safe Yield in 2020, the
9 Agricultural Pool’s storage contest filed against the Watermaster, and defending the Agricultural
10 Pool from litigation regarding the Pool’s legal expenses filed by eleven law firms representing
11 member agencies of the Appropriative Pool. As the Court is well aware, the recalculation of the
12 Safe Yield was a lengthy and arduous process requiring numerous filings and court appearances
13 as well as the engagement of expert consultants. Furthermore, as the Court is aware and as is
14 described in counsel’s declaration, the Agricultural Pool has initiated a storage contest in an effort
15 to protect the Agricultural Pool’s production rights in the Basin. (*Id.* at ¶ 9.) The Agricultural
16 Pool is comprised of the overlying landowners, represents the largest holder of water rights in the
17 Chino Basin, and has a vested interest in the careful management the groundwater resources.

18 **C. The Appropriative Pool Should Be Required to Pay the \$165,694.75**
19 **Attorney’s Fees in Dispute.**

20 The Appropriative Pool has refused to pay the Agricultural Pool’s duly approved budget
21 amendment for legal expenses invoiced to it. (Egoscue Decl., ¶ 25.) For the FY 2019/20
22 expenses, the Watermaster invoiced the Appropriative Pool for the \$165,694.75 in Agricultural
23 Pool legal expenses.⁷ The Agricultural Pool’s budget process is and has been conducted
24 consistent with the regular Watermaster budget process. (Feenstra Decl., ¶ 3.) Following regular
25 and longstanding practice, the Agricultural Pool notifies the Watermaster of each duly approved

26
27 ⁷ See Exhibit A: “Appropriative Pool Special Assessment of \$165,694.75” to the Declaration of
28 John J. Schatz in Support of Appropriative Pool Member Agencies’ Response to Agricultural
Pool’s Briefing re 1998 Ruling and Separation of Powers, Etc., filed May 24, 2021.

1 legal expense to be invoiced to the Appropriative Pool. (*Id.* at ¶ 4.) The Agricultural Pool’s legal
2 expenses were made at issue by certain Member Agencies of the Appropriative Pool include
3 attorney’s fees for legal counsel that include, inter alia, costs related to a storage contest and 2020
4 Safe Yield reset. (Egoscue Decl., ¶ 19.)

5 In contravention of the Peace Agreement and the 2021 Expenses Order, the Appropriative
6 Pool has objected to the payment of *any* of the Agricultural Pool’s legal invoices and has
7 *continued to refuse to make any payment.* (Egoscue Decl., ¶ 25.) Accordingly, the Court should
8 order the Appropriative Pool to pay the total \$165,694.75.

9 1. Storage Contest Expenses

10 The central focus of the Appropriative Pool’s objections has been the Agricultural Pool’s
11 legal expenses associated with the storage contest. (See Motion of Appropriative Pool Member
12 Agencies’ Re: Agricultural Pool Legal and Other Expenses, September 18, 2020.) To this end, the
13 Court has concluded that attorney fees for storage contests⁸ would be included in the definition of
14 “Special Project Expense” as a “litigation expense.” (2021 Expenses Order, ¶ 8(C).) As such, the
15 2021 Expenses Order requires (1) that the Agricultural Pool approve the attorney fee upon an
16 express finding that it benefits the Agricultural Pool and then (2) pursuant to the Peace
17 Agreement, the attorney fee would go to the Appropriative Pool for payment. (*Ibid.*) The
18 Agricultural Pool’s request for payment of its legal expenses have been made in conformity with
19 the Court’s 2021 Expenses Order and yet no payment has been made by the Appropriative Pool.

20 Of the \$165,694.75 in attorney’s fees from the original dispute, the actual cost of the
21 storage contest (including expert consultant fees) is \$100,542.50. (Egoscue Decl., ¶ 20.) While
22 the Court has noted that “no reasonable person would pay to finance a lawsuit against himself or
23 herself” (2021 Expenses Order, ¶ 1.B), the Agricultural Pool’s storage contest is not a lawsuit
24 against the Appropriative Pool. As explicitly stated in the Agricultural Pool’s initial storage
25 contest, the Agricultural Pool submitted the storage contest “in good faith and with the intention
26 of acting to preserve the best interests of Chino Basin and all those who rely upon its groundwater

27 ⁸ The Agricultural Pool first initiated its storage contest in 2017, however, the disputed amount of
28 \$165,694.75 is limited to invoices from Fiscal Year 2019/20. (Egoscue Decl., ¶ 19.)

1 resources (including but not limited to the Ag Pool).” (Egoscue Decl., ¶ 9, Exhibit A.) As the
2 contest is not per se adverse to the Appropriative Pool, the entirety of the legal fees and
3 consultant expenses should be paid.

4 A storage application contest is not a lawsuit against one pool or another but is instead a
5 challenge to individual or agency applications for local storage of water in the Chino Basin.
6 Watermaster Rules and Regulations allow a party to the Judgment to request Watermaster’s
7 approval of a Local Storage Agreement, which the Watermaster is required to prepare a written
8 summary and analysis of—including an analysis of the potential Physical Material Injury (MPI).⁹
9 (Egoscue Decl., ¶ 28, Exhibit H, §§ 10.6, 10.10.) Watermaster is also required to provide advance
10 notice of the date of Watermaster’s scheduled consideration and possible action on any pending
11 applications. (*Id.* at § 10.10.) All applications, and associated Watermaster summaries, must be
12 placed on the first available agenda for each Pool Committee for consideration, discussion,
13 recommendations, or proposed conditions. (*Id.* at § 10.11.) Following such consideration, a
14 contest to the storage application may be filed and an applicant may answer the contest. (*Id.* at §§
15 10.13 and 10.16.) As described in the Agricultural Pool’s storage contest documents and as
16 discussed in counsel’s declaration, the Agricultural Pool’s storage contest challenges the approval
17 of applications of storage without mitigating conditions which the Agricultural Pool believes
18 would avoid the potential to cause MPI to the Basin. (Egoscue Decl., ¶ 9.)

19 The Agricultural Pool’s storage contest is not directed at any one Pool and must be
20 answered by Watermaster staff. (Egoscue Decl., ¶ 10.) In fact, the Appropriative Pool has not
21 been granted party status to the storage contest. (*Id.* at ¶ 11.) Even if the Appropriative Pool were
22 to request intervention in the storage contest as an active party, the Appropriative Pool’s
23 involvement and disagreement with the Agricultural Pool’s storage contest does not transform the
24

25 ⁹ “Material Physical Injury” means material injury that is attributable to the Recharge, Transfer,
26 storage and recovery, management, movement or Production of water, or implementation of the
27 OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence,
28 increases in pump lift (lower water levels) and adverse impacts associated with rising
groundwater. Material Physical Injury does not include “economic injury” that results from other
than physical causes. (Peace Agreement, 1.1(y).)

1 storage contest into a lawsuit against the Appropriative Pool. Labeling the storage contest as a
2 lawsuit against the Appropriative Pool is completely inaccurate, and a distortion of the purpose of
3 the storage contest as well as the Watermaster storage contest process. If the Appropriative Pool
4 is permitted to label each and every item involving Watermaster a “disagreement with the
5 Agricultural Pool,” there will be no reason for the Agricultural Pool to continue to participate as
6 the Judgment intended.¹⁰ The Agricultural Pool’s storage contest is for the benefit of the
7 Agricultural Pool in addition to all Basin producers and is not directly adverse to the
8 Appropriative Pool. Therefore, the Court should order the Appropriative Pool to pay attorney’s
9 fees related to the storage contest in the amount of \$100,542.50, and to further pay the entirety of
10 the impermissibly withheld total from the previous fiscal year 2019/20 of \$165,694.75.

11 **2. Other Legal Expenses**

12 Despite the Court ruling otherwise in the 2021 Expenses Order, the Appropriative Pool
13 has chosen to continue to deny payment of all of the Agricultural Pool’s legal expenses. (Egoscue
14 Decl., ¶ 25.) As set forth in counsel’s declaration and exhibits, fees are derived from performance
15 of legal counsel providing advice to the Pool Committee as to its rights and obligations under the
16 Judgment and state laws and regulations. Pool counsel also advises in a manner as to protect the
17 Pool member’s pumping rights and the health and stability of the groundwater Basin. (*Id.* at ¶ 5.)
18 The attorney’s fees and legal service are for counsel services to the Agricultural Pool that directly
19 benefit the Agricultural Pool. (Feenstra Decl., ¶ 9.) Indeed, counsel for the Agricultural Pool is
20 the only staff to the Pool Committee. (*Id.* at ¶ 10.)

21 The time billed by Agricultural Pool counsel for FY 2019/20, FY 2020/21, and FY
22 2021/22 include a wide range of issues in the Basin, such as Pool Committee meetings, the 2020
23 Safe Yield reset, storage, and water delivery issues to dairies and farms involving the Agricultural
24 Pool members. (Egoscue Decl., ¶ 17.) For instance, the City of Ontario sent a letter in May 2020
25 indicating that recycled water would stop being delivered to agricultural users. (*Id.* at ¶ 18.) The
26

27 ¹⁰ Although the 2021 Expenses Order found that Judge Gunn’s 1998 order addresses issues
28 beyond the dispute at issue, it is nonetheless relevant to note the importance of the separation of
functions of the Pools described in Special Referee Schneider’s Report of 1997.

1 City of Ontario's actions forced the Agricultural Pool's counsel to expend extra time discussing
2 the matter with dairymen and women during this time. (*Ibid.*) As a result of the Ontario letter, the
3 legal expenses increased. This among other issues led to the need to increase the budget.

4 Additionally, and as intended by the Judgment, the Agricultural Pool along with the other
5 two Pools and Watermaster staff spent years participating in the extensive process of determining
6 the appropriate recalculation of the Safe Yield. The Agricultural Pool's counsel and her
7 involvement with the Safe Yield reset process benefits the Agricultural Pool and more
8 importantly was not, and is not, adverse to the Appropriative Pool, and therefore, should be paid
9 by the Appropriative Pool pursuant to Section 5.4(a) of the Peace Agreement and the 2021
10 Expenses Order.

11 The Agricultural Pool's counsel serves at the direction of the Agricultural Pool Committee
12 and expressly for its benefit. (Feenstra Decl., ¶ 6.)

13 **D. The Appropriative Pool Should Be Required to Pay \$397,586 for Attorney's
14 Fees Incurred in Fiscal Year 2020/21.**

15 In accordance with standard budget practices, the Agricultural Pool adopted its Fiscal
16 Year 2020/21 budget to include a legal services budget in the amount of \$500,000. (Feenstra
17 Decl., ¶ 14.) As discussed above, the Appropriative Pool has unreasonably objected to the
18 payment of any of the Agricultural Pool's legal invoices (not just the \$165,694.75 at issue) and
19 has refused to make any payment. (*Id.* at ¶ 18.)

20 The attorney's fees charged to the Agricultural Pool are to compensate the Pool's legal
21 counsel for legal advice relating to the Agricultural Pool Committee's operations as well as its
22 members' rights and obligations under the Judgment and state laws and regulations. (Egoscue
23 Decl., ¶ 5.) This work entails staffing all Pool meetings, and advice and counsel on all
24 Watermaster related matters. (*Ibid.*) The Chino Basin is a large and complex adjudicated basin,
25 which requires the full and robust participation of each of the Pool Committees.

26 In addition to numerous Basin issues, the Agricultural Pool has been forced to engage
27 legal counsel to address the Appropriative Pool's objections to compliance with Section 5.4(a).
28 (Egoscue Decl., ¶ 24.) In fact, the majority of the legal fees for the past few months were incurred

1 as a result of defending the Agricultural Pool in response to the Appropriative Pool Member
2 Agencies' motion filed on September 18, 2020. (*Ibid.*) As has been assiduously discussed, the
3 Agricultural Pool has instructed the Watermaster to invoice the Appropriative Pool for the duly
4 approved legal expenses, which the Appropriative Pool has refused to pay. (Feenstra Decl., ¶¶ 3-
5 4, 18.)

6 **1. Legal Invoices Paid from Agricultural Pool Reserve Fund**

7 The Agricultural Pool Chairperson has duly approved invoices for legal work performed
8 from July 2020 to November 2020 in the amount of \$217,821 (\$115,263.88 of which was paid
9 from the Agricultural Pool's reserve fund). (Feenstra Decl., ¶¶ 15-16.) The Agricultural Pool
10 Chairperson further approved legal invoices from December 2020 to June 2021 in the amount of
11 \$179,765 (also paid from the reserve fund).¹¹ (*Id.* at ¶ 17.) The Appropriative Pool's refusal to
12 pay any of the Agricultural Pool's legal expenses has left Agricultural Pool's reserve fund nearly
13 depleted. (*Id.* at ¶ 20.) To allow one Pool to obstruct and effectively silence another Pool's
14 participation in Basin affairs would effectively undermine the concept of the management of the
15 Basin pursuant to the Judgment and is clearly in conflict with the Peace Agreement and the 2021
16 Expenses Order.

17 **2. Legal Invoices Paid from Watermaster Administrative Reserve**
18 **Account**

19 As stated above, the Agricultural Pool Chairperson duly approved legal invoices for legal
20 work performed from July 2020 to November 2020 in the amount of \$217,821. (Feenstra Decl., ¶
21 15.) Due to the unexpected shortfall and outstanding balance, funds from the Watermaster's
22 Administrative Reserve were also used to cover the shortfall in the amount of \$102,557.12. (*Id.* at
23 ¶ 16.) Accordingly, the Appropriative Pool must repay the Watermaster Administrative Reserve
24 Account in the amount of \$102,557.12 that was expended to cover Agricultural Pool legal
25 expenses due to the Appropriative Pool's refusal to pay.

26 The attorney's fees requested are reasonable and are in furtherance of the Agricultural

27 ¹¹ Pursuant to this Court's ruling, this total excludes attorney's fees invoiced and paid for costs
28 related to mediation of this matter. (Feenstra Decl., ¶ 17.)

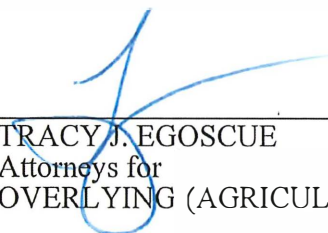
1 Pool's goals to protect the health and stability of its members as well as the Basin. Therefore, the
2 Court should order the Appropriative Pool to pay the outstanding attorney's fee incurred since
3 July 1, 2020 in the amount of **\$295,028.88** to the Agricultural Pool in addition to the \$102,557.12
4 owed and payable to the Watermaster's Administrative Reserve Account.

5 **IV. CONCLUSION**

6 For all the foregoing reasons, the Agricultural Pool respectfully requests the Court grant
7 this motion and order the Appropriative Pool to pay the outstanding attorney's fees for the
8 Agricultural Pool in the amounts of \$100,542.50 related to the storage contest, \$65,152.25 for
9 other legal expenses, and \$397,586 for attorney's fees incurred in FY 2020/21 for a **total of**
10 **\$460,723.63 to the Agricultural Pool and \$102,557.12 to the Watermaster Administrative**
11 **Reserve Account.**¹²

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14 Dated: July 26, 2021

EGOSCUE LAW GROUP, INC.

15
16 By: 
17 TRACY J. EGOSCUE
18 Attorneys for
19 OVERLYING (AGRICULTURAL) POOL
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27 ¹² These numbers are provided with the caveat that a full accounting of the unpaid Ag Pool legal
28 expenses is subject to the concurrence of the Chief Financial Officer of the Watermaster that the
amounts identified herein are correct.

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 July 26, 2021 I served the following:

1. AGRICULTURAL POOL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ATTORNEY'S FEES

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 July 26, 2021 in Rancho Cucamonga, California.



By: Janine Wilson
Chino Basin Watermaster

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