

1 Jimmy L. Gutierrez (SBN 59448)
JIMMY L. GUTIERREZ LAW CORPORATION
2 12616 Central Avenue
Chino, California 91710
3 Telephone: (909) 591-6336

FEE EXEMPT PER GOV. CODE § 6103

4 Attorney for Defendant City of Chino
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO
10

11 CHINO BASIN MUNICIPAL WATER)
DISTRICT,)

12)
13 Plaintiff,)

14 v.)

15 CITY OF CHINO, et al.,)

16 Defendants.)
17)
18)
19)

CASE NUMBER: RCVRS 51010
*[Assigned for All Purposes to Honorable
Stanford E. Reichert, Dept. S35]*

**CITY OF CHINO CORRECTED
MOTION FOR REIMBURSEMENT OF
ATTORNEYS FEES AND EXPENSES
PAID TO THE AGRICULTURAL POOL**

Date: February 4, 2022
Time: 1:30 p.m.
Dept.: S35

(FEE- EXEMPT PER GOVERNMENT CODE § 6103)

20
21 Pursuant to this Court's Order dated December 3, 2021, the City of Chino ("Chino")
22 hereby moves the Court to order the Agricultural Pool to reimburse assessments paid by the
23 Appropriative Pool for Agricultural Pool attorney's fees and expenses in the sum of
24 **\$483,202.55** for fiscal years 2019-20 and 2020-21 including Chino's portion thereof and to
25 reimburse Watermaster in the sum of **\$102,557** for Agricultural Pool attorney fees and expenses
26 it paid for fiscal year 2020-21 or, alternatively, order Watermaster to refrain from seeking
27 collection of the sum of **\$102,557** from Appropriative Pool members including Chino.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 The Appropriative Pool has paid \$483,202.55 for Agricultural Pool attorney fees and
5 expenses in fiscal years 2019-20 and 2020-21 without being shown invoices for such legal
6 services and without a showing that those legal services were of benefit to the Agricultural Pool
7 and/or not adverse to the Appropriative Pool. Similarly, Watermaster paid \$102,557.12 for
8 Agricultural Pool attorney fees and expenses for fiscal year 2020-21 from Watermaster
9 Administrative reserve funds for which Watermaster has stated that it seeks reimbursement of
10 that sum from the Appropriative Pool or the Agricultural Pool.

11 Chino brings this motion to initiate the process for reimbursement of the above sums as
12 ordered by the Court. Chino intends this motion to be the court ordered process for completing
13 resolution of the pending requests of the Appropriative Pool members that elect to join this
14 motion for reimbursement of Agricultural Pool attorney fees and expenses paid by the
15 Appropriative Pool in the form of Watermaster assessments and those paid by Watermaster
16 because it too seeks reimbursement provided it too elects to join this motion.

17 The Appropriative Pool's first request for reimbursement was in its "Notice of Motion
18 and Motion of the Appropriative Pool Member Agencies Re: Agricultural Pool Legal Fees and
19 Other Expenses" dated September 17, 2020. The court did not rule on the reimbursement
20 request until the supporting invoices were provided, and, alternatively, the court indicated it
21 would vacate the disputed assessments and reimburse the payment of such assessments to the
22 paying parties.

23 The Appropriative Pool's second request for reimbursement was in its "Opposition to
24 Agricultural Pool's Motion for Attorney's Fees" dated September 27, 2021. While the Court's
25 order dated December 3, 2021 again does not rule on the reimbursement request of the
26 Appropriative Pool, it does order Chino to file and serve a "motion as to the procedure for
27 reimbursement of any assessments that are not held in the escrow account that may be due the
28 paying party."

1 Because the Agricultural Pool failed to demonstrate entitlement to the payment of any
2 of its attorney fees and expenses for Fiscal Years 2019-20 and 2020-21 as requested by the
3 Court, the Agricultural Pool has waived its claims to the payment of any of its attorney fees or
4 expenses under Paragraph 5.4(a) of the Peace Agreement. Thus, the Court should order:

- 5 1. Vacation of all Watermaster assessments imposed upon the Appropriative Pool for
6 Agricultural Pool attorney fees and expenses under Peace Agreement Paragraph
7 5.4(a) for Fiscal Years 2019-20 and 2020-21.
- 8 2. Reimbursement by the Agricultural Pool of the sum of **\$483,202.55** to the members
9 of the Appropriative Pool members in the amounts of their assessments including
10 the amounts paid by Chino.
- 11 3. Reimbursement by the Agricultural Pool of the sum of **\$102,557.12** to Watermaster
12 that it paid for Agricultural Pool attorney fees and expenses for Fiscal Year 2020-21
13 or, alternatively, order Watermaster to refrain from seeking collection of the sum of
14 **\$102,557** from the members of the Appropriative Pool including Chino.

15 **II.**

16 **APPROPRIATIVE POOL PAYMENTS FOR AGRICULTURAL POOL**

17 **ATTORNEY FEES AND EXPENSES**

18 The Appropriative Pool members have paid the sum of **\$483,202.55** in Watermaster
19 assessments for legal services rendered to the Agricultural Pool in fiscal years 2019-20 and
20 2020-21 without (1) being shown invoices for such legal services and (2) a showing that those
21 legal services were (a) of benefit to the Agricultural Pool and/or (b) not adverse to the
22 Appropriative Pool.

23 In addition, Watermaster paid the sum of **\$102,557.12** for legal services rendered to the
24 Agricultural Pool in fiscal year 2020-21 from Watermaster administrative reserve funds
25 without (1) being shown invoices for such legal services and (2) a showing that those legal
26 services were (a) of benefit to the Agricultural Pool and/or (b) not adverse to the Appropriative
27 Pool.

1 Furthermore, Watermaster has indicated it will seek reimbursement of that sum from the
2 Agricultural Pool or Appropriative Pool. However, the Appropriative Pool has not been shown
3 the invoices for such legal services rendered to the Agricultural Pool and there has been no
4 showing that those legal services were of benefit to the Agricultural Pool and/or not adverse to
5 the Appropriative Pool. In order to avoid a futile dispute between the Agricultural Pool and
6 the Appropriative Pool on reimbursement of the \$102,557.12 sum, the court should order the
7 Agricultural Pool to reimburse the \$102,557.12 sum to Watermaster. In the alternative, the
8 court should order Watermaster to refrain from collecting the sum of \$102,557.12 from
9 members of the Appropriative Pool including Chino.

10 **A. Assessments Imposed and Paid by Appropriative Pool Members for**
11 **Agricultural Pool Attorney Fees and Expenses in Fiscal Year 2019-20**

12 For fiscal year 2019-20, the Agricultural Pool submitted a budget for legal services in
13 the sum of \$300,000. Watermaster included that sum in the general assessment it invoiced to
14 the Appropriative Pool members but it did not specify the amount payable by each
15 Appropriative Pool member in the Watermaster Assessment Fee Summary. [Declaration of
16 Dave Crosley ¶4; Declaration of Jimmy L. Gutierrez ¶9(iii), ¶10(iii), ¶11) and Exhibits 5 & 6;
17 Declaration of John Schatz ¶4]

18 John Schatz, counsel for the Appropriative Pool, undertook the task of ascertaining the
19 amount each Appropriative Pool member was assessed by Watermaster for the Agricultural
20 Pool legal budget of \$300,000 in Fiscal Year 2019-20. Mr. Schatz did so by referring to the
21 Watermaster Assessment Fee Summary for Fiscal Year 2019-20, performing a weighted
22 calculation using the dollar amounts in columns 8B and 8E in the Assessment Fee Summary
23 and showing the results of his calculations and methodology on Exhibit B of his declaration,
24 and confirming his calculations and methodology with Watermaster General Manager Peter
25 Kavounas. [Declaration of John Schatz, ¶4, ¶5 and Exhibits A, B and C].

26 Thus, the foregoing methodology reveals the amount of the 2019-20 Watermaster
27 Assessment attributable to the Agricultural Pool Legal Budget of \$300,000 that was assessed
28

1 to each Appropriative Pool member. The amount assessed to each Appropriative Pool member
2 is as follows:

| | | |
|----|---------------------------------------|-----------|
| 3 | 1. Arrowhead Mtn Spring Water Co | \$883 |
| 4 | 2. Chino Hills, City of | \$7,503 |
| 5 | 3. Chino, City of | \$16,379 |
| 6 | 4. Cucamonga Valley Water Company | \$32,717 |
| 7 | 5. Fontana Union Water Company | \$4,003 |
| 8 | 6. Fontana Water Company | \$31,754 |
| 9 | 7. Golden State Water Company | \$258 |
| 10 | 8. Jurupa Community Services District | \$59,667 |
| 11 | 9. Marygold Mutual Water Company | \$3,350 |
| 12 | 10. Monte Vista Irrigation District | \$424 |
| 13 | 11. Monte Vista Water District | \$23,163 |
| 14 | 12. Niagra Bottling | \$5,210 |
| 15 | 13. Nicholson Trust | \$3 |
| 16 | 14. Norco, City of | \$126 |
| 17 | 15. Ontario, City of | \$61,132 |
| 18 | 16. Pomona, City of | \$40,576 |
| 19 | 17. San Antonio Water Co | \$2,108 |
| 20 | 18. San Bernardino County | \$33 |
| 21 | 19. Santa Ana River Water Company | \$815 |
| 22 | 20. Upland, City of | \$8,899 |
| 23 | 21. Westend Consolidated Water Co. | \$594 |
| 24 | 22. West Valley Water District | \$403 |
| 25 | TOTAL: | \$300,000 |

26 On December 13, 2019, Chino paid the sum of \$447,841.58 as its total Watermaster
27 Assessment for Fiscal Year 2019-20, which included payment of Chino's portion of the
28 Agricultural Pool legal budget of \$300,000. [Declaration of Dave Crosley ¶4] According to

1 Mr. Schatz's calculations, Chino paid the sum of \$16,379 as its portion of the 2019-20
2 Agricultural Pool legal budget of \$300,000. Thus, Chino seeks reimbursement of that sum
3 from the Agricultural Pool.

4 Later in Fiscal Year 2019-20, the Agricultural Pool increased its 2019-20 legal services
5 expenditures or budget by the sum of \$229,008.75. Watermaster responded to the increase in
6 legal services by transferring the sum of **\$63,314** from the Agricultural Pool Special Projects
7 Fund (8471) into the Agricultural Pool Legal Fund (8467) and by invoicing the difference of
8 **\$165,694.75** to the Appropriative Pool. [Declaration of Jimmy L. Gutierrez ¶¶ 7, 9(ii), 10(ii)
9 and Exhibit 5; Declaration of Dave Crosley ¶ 5 and Exhibit 3]

10 The Appropriative Pool members responded to the increased invoice as follows: (a)
11 fifteen Appropriative Pool members deposited their allocated amounts totaling **\$161,070.09**
12 into an escrow account held by Watermaster; and (b) four Appropriative Pool members paid
13 their allocated amounts totaling **\$4,624.66** directly to Watermaster.¹ At the hearing on
14 November 5, 2021 wherein the Court denied the Agricultural Pool's Motion for Attorneys'
15 fees, Watermaster agreed to return the sum of \$161,070.09 to the appropriators that deposited
16 their allocated amounts in the escrow fund; nothing was said about returning the \$4,624.66 paid
17 by the four appropriators. It remains an issue. [Declaration of Dave Crosley ¶5 and Exhibit 3;
18 Declaration of Jimmy L. Gutierrez ¶¶7, 8, 9(i)(ii), 10(i)(ii) and Exhibit 3-Table 1]

19 Thus, the sums subject to reimbursement for the payment of Agricultural Pool legal
20 services in Fiscal Year 2019-20 by the Appropriative Pool members are:

- 21 (a) **\$300,000** paid for the 2019-20 Agricultural Pool legal services budget,
- 22 (b) **\$63,314** transferred from the Special Projects Fund (8471) to the Legal Fund,
- 23 (c) **\$4,624.66** paid by four appropriators to Watermaster,
- 24 (d) Total: **\$367,938.66**

25 The sum of \$300,000 is payable to the Appropriative Pool members in the amount each
26 paid as shown above. The sum of \$63,314 (b) is payable to the Special Projects Fund (8471)

27 _____
28 ¹ Marygold paid \$1,007.38, Norco paid \$310.22, SAWC paid \$2,316.54 and WVWD paid \$990.52.

1 or to the Appropriative Pool members according to the methodology in the Schatz declaration.
2 The sum of \$4,624.66 is payable to the four appropriators in the amounts shown in footnote 1:

3 **B. Assessments Imposed and Paid by Appropriative Pool Members for**
4 **Agricultural Pool Attorney Fees and Expenses in Fiscal Year 2020-21**

5 For fiscal year 2020-21, the Agricultural Pool submitted a budget for legal services in
6 the sum of \$500,000. Watermaster allocated the \$500,000 amount to the Appropriative Pool
7 members and invoiced each member. [Declaration of Jimmy L. Gutierrez, Exhibit 3-Table 2,
8 ¶¶7, 8; Declaration of Dave Crosley ¶6, Exhibit 6;]

9 Watermaster paid the sum of **\$102,557.12** for Agricultural Pool legal expenses in fiscal
10 year 2020-21 from Watermaster administrative reserve funds. Watermaster will require the sum
11 refunded to the Administrative Reserve fund. [Declaration of Jimmy L. Gutierrez, Exhibit 1,
12 Table 2, ¶¶9(v), 10(v)]

13 However, the Appropriative Pool is not obligated to refund the **\$102,557.12**, because
14 (1) the Appropriative Pool has not been shown the invoices for such legal services rendered to
15 the Agricultural Pool and (2) there has been no showing that those legal services were (a) of
16 benefit to the Agricultural Pool and/or (b) not adverse to the Appropriative Pool.

17 In order to avoid a futile dispute between the Agricultural Pool and the Appropriative
18 Pool over reimbursement of the \$102,557.12 sum, the court should order the Agricultural Pool
19 to reimburse the \$102,557.12 sum to Watermaster. In the alternative, the court should order
20 Watermaster to refrain from collecting the sum of \$102,557.12 from members of the
21 Appropriative Pool including Chino.

22 Some Appropriative Pool members declined to pay the Watermaster assessment for the
23 2020-21 Fiscal Year Agricultural Pool Legal Budget in the sum of \$500,000. However, some
24 of the Appropriative Pool members did pay the assessment. The Appropriative Pool members
25 that paid the assessment and the amounts each paid is shown as follows:

- | | | |
|----|-----------------------------------|-------------|
| 26 | 1. Chino Hills, City of | \$19,946.64 |
| 27 | 2. Chino, City of | \$0 |
| 28 | 3. Cucamonga Valley Water Company | \$0 |

| | | |
|----|---------------------------------------|-------------|
| 1 | 4. Fontana Union Water Company | \$0 |
| 2 | 5. Fontana Water Company | \$6,845.62 |
| 3 | 6. Golden State Water Company | \$1,834.16 |
| 4 | 7. Jurupa Community Services District | \$0 |
| 5 | 8. Marygold Mutual Water Company | \$2,936.76 |
| 6 | 9. Monte Vista Irrigation Water Co | \$0 |
| 7 | 10. Monte Vista Water District | \$0 |
| 8 | 11. Nicholson Trust | \$17.20 |
| 9 | 12. Norco, City of | \$904.38 |
| 10 | 13. Ontario, City of | \$0 |
| 11 | 14. Pomona, City of | \$50,266.64 |
| 12 | 15. San Antonio Water Company | \$6,753.34 |
| 13 | 16. Santa Ana River Water Company | \$5,831.75 |
| 14 | 17. Upland, City of | \$12,784.15 |
| 15 | 18. West End Consolidated Water Co | \$4,246.63 |
| 16 | 19. West Valley Water District | \$2,887.61 |
| 17 | Total: \$115,263.89. | |

18 The entire sum of **\$115,263.89** paid by the above Appropriative Pool members was used
19 to pay for legal services rendered to the Agricultural Pool. [Declaration of Jimmy L. Gutierrez
20 ¶¶7, 8, 9(iv), 10(iv) and Exhibit 3–Table 2]

21 However, (1) no invoices for such legal services have been shown and (2) there is no
22 showing that those legal services were (a) of benefit to the Agricultural Pool and/or (b) not
23 adverse to the Appropriative Pool. Thus, the foregoing assessment payments in the sum of
24 \$115,263.89 are reimbursable to the Appropriative Pool members that paid them.

25 The Agricultural Pool’s motion dated July 25, 2021 seeking payment of its attorney fees
26 and expenses for the fiscal years of 2019-20 and 2020-21 sought to justify only its attorney fees
27 and expenses that had not been paid. The Agricultural Pool made no attempt to justify its
28 attorney fees and expenses that already had been paid by the Appropriative Pool - an amount

1 of **\$483,202.55**. John Schatz, counsel of the Appropriative Pool and attorneys of nine other
2 Appropriative Pool members sent a letter on August 27, 2021 to Tracy Egoscue, counsel for
3 the Agricultural Pool, seeking to obtain invoices for legal services that would reveal some legal
4 services rendered to the Agricultural Pool that qualified for payment under Peace Agreement
5 Paragraph 5.4(a) and the Court Order dated May 28, 2021. However, Ms. Egoscue did not
6 provide any invoices in addition to or different from the redacted ones she filed with the
7 Agricultural Pool Motion for Attorney's Fees.

8 Thus, the Agricultural Pool waived its claim to attorney fees and expenses paid by the
9 Appropriative Pool in the above amounts and the Agricultural Pool should be ordered to
10 reimburse the Appropriative Pool members in the sum of **\$483,202.55** and Watermaster in the
11 sum of **\$102,557.12**.

12 III.

13 **THE AGRICULTURAL POOL WAIVED ITS CLAIMS TO ATTORNEY FEES** 14 **AND EXPENSES FOR FISCAL YEARS 2019-20 AND 2020-21**

15 The Court has determined that the Agricultural Pool is not entitled to the payment of its
16 attorney fees and expenses for fiscal years 2019-20 and 2020-21. The reason for its
17 determination is that the Agricultural Pool failed to establish the elements of the Appropriative
18 Pool's obligation for the payment of such expenses under Peace Agreement Paragraph 5.4(a)
19 as set forth by the Court in its May 28, 2021 Order.

20 The Court's determination applies to all of the Agricultural Pool's attorney fees and
21 expenses in Fiscal Years 2019-20 and 2020-21 – not only those requested in the Ag Pool Fee
22 Motion. The basis of the Court's ruling is clear. The Agricultural Pool failed to provide
23 unredacted bills that show the purpose of its attorney fees and expenses in Fiscal Years 2019-
24 20 and 2020-21; i.e., that those attorney fees and expenses were of benefit to the Agricultural
25 Pool and/or not adverse to the Appropriative Pool. Furthermore, the Agricultural Pool refused
26 an offer to cure its failure by providing minimally redacted bills for FY 2019-20 and 2020-21
27 and filing them with the court made by John Schatz, as counsel of the Appropriative Pool, and
28 attorneys of nine Appropriative Pool members. [Declaration of John Schatz, ¶6, Exhibit D]

1 Thus, the Agricultural Pool has waived its claim to payment of all of its attorney fees and
2 expenses in Fiscal Years 2019-20 and 2020-21.

3 Therefore, the Agricultural Pool should not retain the payment of its attorney fees and
4 expenses in Fiscal Years 2019-20 and 2020-21 that have been paid by the Appropriative Pool.
5 It must dislodge those payments. The Agricultural Pool should reimburse the following
6 payments for its attorney fees and expenses to the Appropriative Pool:

- 7 1. \$300,000 paid by all appropriators for the Fiscal Year 2019-20 Agricultural Pool
8 Legal Budget,
- 9 2. \$63,314 transferred from the Special Projects Fund (8471) to the Legal Budget
10 to pay for increased legal services in Fiscal Year 2019-20,
- 11 3. \$4,624.66 paid by four appropriators directly to Watermaster for increased legal
12 services in Fiscal year 2019-20, and
- 13 4. \$115,263.89 paid by eleven (11) appropriators for the Fiscal Year 2020-21
14 Agricultural Pool Legal Budget.

15 **Total: \$483,202.55**

16 In addition, the Agricultural Pool should repay Watermaster the sum of **\$102,557.12** for
17 the attorney fees and expenses it paid for the Agricultural Pool in Fiscal Year 2020-21. In
18 alternative, the Court should find that said sum is not an obligation of the Appropriative Pool.

19 **A. The May 28, 2021 Court Order Defines the Elements of the Appropriative**
20 **Pool's Obligation for Paying Agricultural Pool Attorney Fees and Expenses**

21 This motion is made in accordance with the Court Order of May 28, 2021 pertaining to
22 the requirements on the Agricultural Pool to obtain payment of its attorney fees and expenses
23 from the Appropriative Pool (hereafter "May 28 Order"). The May 28 Order required the
24 Agricultural Pool to file its motion including all of its bills for attorney fees and expenses, or
25 its claims to payment would be considered waived and the court would vacate the assessments
26 subject to the dispute. [May 28 Order, Paragraph 8.C.II., p. 7, Exhibit 1, Gutierrez Declaration].
27 The order applies to all payments by the Appropriative Pool for attorney fees and expenses of
28 the Agricultural Pool in fiscal years 2019-20 and 2020-21.

1 The genesis of the May 28 Order is the “Notice of Motion and Motion of the
2 Appropriative Pool Member Agencies Re: Agricultural Pool Legal Fees and Other Expenses”
3 dated September 17, 2020 wherein the Appropriative Pool Members sought a determination if
4 its obligation to pay for Agricultural Pool legal expenses and a refund of legal expenses they
5 had paid by requesting the following order:

6 *“an order interpreting the obligation of the AP to pay for legal and other expenses of*
7 *the Agricultural (Overlying) Pool (“Ag Pool”).*

8 *“Specifically, the AP Members seek a judicial determination appropriately limiting the*
9 *expenses that the AP can be required to pay on behalf of the Ag Pool under the Peace*
10 *Agreement.*

11 *“The AP Members seek a further determination, consistent with the above, that the AP*
12 *and its members are not obligated to pay any Ag Pool legal and expert expenses related*
13 *to Storage Contests initiated by the Ag Pool. The AP is entitled to a refund of any such*
14 *expenses already paid”* (Emphasis added). [Notice of Motion, page 4, lines 8-12, 19-
15 22; Memorandum of Points and Authorities, page 20, lines 8-15].

16 The May 28 Order delineated two paths by which the Agricultural Pool may seek
17 payment of its attorneys’ fees from the Appropriative Pool. Under the first path, the
18 Agricultural Pool and the Appropriative Pool *“can agree to a determination to about payment*
19 *of ‘litigation expense’”* adding that the Agricultural Pool must provide its attorney fee bills to
20 the Appropriative Pool and noting that *“Otherwise, there will be no way for the Appropriative*
21 *Pool to determine whether the bills fit within the court’s interpretation.”* [May 28 Order,
22 Paragraph 7 p. 6, Exhibit 1, Gutierrez Declaration]. No such agreement was reached – even
23 after the offer of the Appropriative Pool’s counsel. [John Schatz Declaration, Exhibit D]

24 Under the second path, the Agricultural Pool could seek payment of its attorneys’ fees
25 upon a motion for which the court imposed the following requirements: (i) Serve and file a
26 noticed motion; (ii) Notice the motion pursuant to CCP §§1010 and 1020; (iii) Include all
27 supporting documents including the attorney fee bills. As to the third requirement, the court
28 explained that:

1 *“It is a denial of due process, as well as fundamentally unfair, for a party to be forced*
2 *to pay a bill that the party has not seen. In order for a party to contest a bill, the party*
3 *must be able to see and examine it first. (a) The Court would consider this requirement*
4 *not only a matter of fundamental fairness, but also for the court and the Appropriative*
5 *Pool to determine whether the fees for actions benefitting the AgPool (as required by*
6 *¶54 of the Judgment) and at least not adverse to the Appropriative Pool. (i) The court*
7 *requires this to be not only a matter of fundamental fairness, but also not to defeat the*
8 *reasonable expectations of the parties to Peace I. (b) The bills may be redacted, but the*
9 *court must admonish the parties that the redactions cannot be so extensive as to make*
10 *the bills meaningless for review by opposing counsel and determination by the court”*
11 *(Emphasis added). [May 28 Order, Paragraph 8.B.III. page 6, line 18 to page 7, line 3,*
12 *Exhibit 1, Gutierrez Declaration].*

13 The Court also expressed its intent to bring closure to the issue of the obligation for
14 payment of Agricultural Pool attorney fees and expenses by ordering the Agricultural Pool to
15 serve and file its motion for attorney fees and expenses by July 25, 2021. [May 28 Order,
16 Paragraph 8.C.I., p.7, lines 9-12, Exhibit 1, Gutierrez Declaration]. In this context, the Court
17 ruled that the Agricultural Pool will have “*waived its current claims for attorney fees and*
18 *expenses, and any party’s payment of assessments subject to the current dispute reimbursed to*
19 *the paying party.*” [May 28 Order, Paragraph 8.C.II, page 7, lines 13-18 Exhibit 1, Gutierrez
20 Declaration].

21 The Agricultural Pool filed such a motion; and it has been denied. Thus, the issue of
22 reimbursement is properly before the court.

23 **B. The Motion for Attorney’s Fees by the Agricultural Pool Waives its Right to**
24 **Relief under the May 28 Order Due to its Failure to Comply**

25 Pursuant to the May 28 Order, the Agricultural Pool filed the “Notice of Motion and
26 Motion For Attorney’s Fees” dated July 26, 2021 (“Ag Pool Fee Motion”) for “*an order*
27 *requiring the Appropriative Pool to pay legal expenses in the amount of \$460,723.63 to the*
28 *Agricultural Pool and \$102,557.12 to the Watermaster Administrative Reserve Account for a*

1 total of \$563,280.75.” [Ag Pool Fee Motion, page 4, lines 15-18]. The Ag Pool Fee Motion
2 puts at issue all of its budgeted legal expenses for Fiscal Years 2019-20, 2020-21 and 2021-22
3 - asserting that the Appropriative Pool is refusing to pay them.²

4 In response, the Appropriative Pool filed the “Opposition to Agricultural Pool’s Motion
5 for Attorney’s Fees” dated September 27, 2021 (“AP Opposition”). The thrust of the AP
6 Opposition is the that the Ag Pool Fee Motion fails to comply with the May 28 Order noting
7 that “*The Motion completely disregards the Court Order and demands the AP pay all of the*
8 *legal expenses the Ag Pool has incurred over the last two fiscal years, without limitation.”
9 [Emphasis Added] [AP Opposition, page 7, lines 4-6].*

10 The AP Opposition notes the following material failures of the Ag Pool Fee Motion: (i)
11 it does not contain invoices capable of being reviewed meaningfully due to extensive
12 redactions, (ii) it does not show that the legal expenses benefitted the Agricultural Pool or are
13 otherwise unnecessary and unreasonable and (iii) it does not show that the expenses were for
14 legal actions not adverse to the Appropriative Pool.

15 It also is important to emphasize that the Ag Pool Fee Motion provides invoices only
16 for Attorneys’ Fees and Expenses not paid by the Appropriative Pool. The Ag Pool Fee Motion
17 does not provide any evidence that the legal expenses paid by the Appropriative Pool for the
18 enumerated fiscal years were justified under the requirements of the May 28 Order. The “*Ag*
19 *Pool legal expenses are squarely at issue for the entirety of fiscal years 2019-2020 and 2020-*
20 *2021.*” [AP Opposition, page 11 lines 20-21].

21 In addition, the AP Opposition observes that the Agricultural Pool’s right to relief under
22 the May 28 Order has been waived due to its failure to comply with that order, and, accordingly,
23 requests reimbursement of all sums paid for Agricultural Pool attorneys’ fees and expenses.
24 “*Because the Ag Pool has not established any entitlement to attorney’s fees and other legal*
25 *expenses for fiscal years 2019-20 and 2020-21, . . . the Ag Pool should be responsible to*
26

27
28 ² Ag Pool Fee Motion page 5 lines 19-21, page 6 lines 10-12 & 22-24, page 7 lines 1-3 & 7-9, page 9 lines 20-21, page
10 lines 5-8, page 12 lines 12-14 & 21-24, page 13 lines 14-18, page 14 lines 2-5, 7-13 & 19-25.

1 reimburse, refund, or otherwise repay all amounts for its expenses for these fiscal years, in the
2 total amount of \$746,830. [AP Opposition, page 17 lines 2-8].

3 **C. The Court Denies the Ag Pool Fee Motion for Attorney's Fees and**
4 **Authorizes this Motion for Reimbursement to the Appropriative Pool**

5 On November 5, 2021 at the hearing on the Ag Pool Fee Motion, the Court denied the
6 Ag Pool Fee Motion in its entirety. The Court's written order dated December 3, 2021 states:

7 *"the Motion is DENIED in its entirety, on the basis that all fees sought by the Overlying*
8 *(Agricultural) Pool are either for activities that were adversarial to the Appropriative*
9 *Pool or, in the alternative, the Court could not determine whether the claimed fees were*
10 *fair, reasonable, appropriate, and consistent with the Court's May 28, 2021 Order, due*
11 *to the level of redaction of the invoices supporting such claimed fees."* [Exhibit 2,
12 Gutierrez Declaration]

13 At the suggestion of Watermaster, the Court also ordered that Watermaster to return all
14 sums currently held in escrow in the same amounts that each Appropriative Pool member paid
15 them into the escrow account. Watermaster did not offer to pay the sum of \$4,624.66 that had
16 been paid by four appropriators directly to Watermaster.

17 The Court further authorized the City of Chino to bring this motion for reimbursement
18 in order to establish the procedure for reimbursement of any assessments that are not held in
19 the escrow account and that may be due a paying party.

20 **CONCLUSION**

21 It is appropriate for the court to order the Agricultural Pool to reimburse the sum of
22 **\$483,202.55** to the Appropriative Pool. It also is appropriate for the court to order the
23 Agricultural Pool to reimburse the sum of **\$102,557.12** to Watermaster and/or determine that
24 the Appropriative Pool has no obligation to pay this sum to Watermaster.

25 However, Chino can only seek and does seek an order that it be reimbursed for all of its
26 assessment payments for Agricultural Pool attorney fees and expenses in fiscal years 2019-20
27 and 2020-21 including the sum of \$16,379 Chino paid for fiscal year 2019-20.
28

1 Thus, Chino suggests that no order of reimbursement be made in favor of any
2 Appropriative Pool member or Watermaster other than Chino in the absence of any specific
3 request by such a party or by Watermaster. However, Chino does request an order that the
4 Appropriative Pool shall not be obligated to reimburse Watermaster for any portion of the sum
5 of **\$102,557.12** that Watermaster paid for Agricultural Pool legal fees in fiscal year 2020-21.

6 There are three reasons why such orders are just and reasonable. First, the Agricultural
7 Pool failed to demonstrate its entitlement to the payment of its attorney fees and expenses in
8 Fiscal Years 2019-20 and 2020-21 by the Appropriative Pool under Paragraph 5.4(a) of the
9 Peace Agreement and the May 28, 2021 Court Order. Second, most of the assessment payments
10 were paid with public moneys by cities and water districts, which are obligated to account to
11 the public for the expenditure of public funds. Third, public policy is violated by a one-sided
12 attorney fees contract provision that would compel limitless expenditures by one party at the
13 expense of another party.³

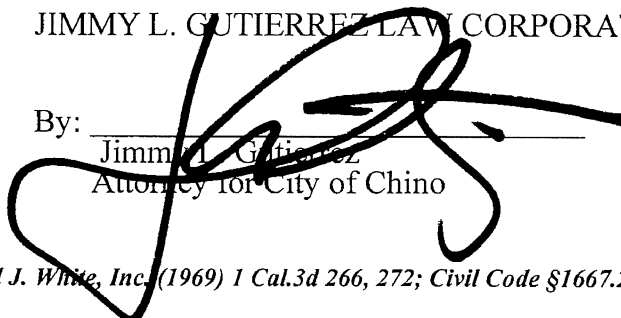
14 The only open issue is the method of reimbursement, but the court may adopt any
15 method suggested by any Appropriative Pool member, the Agricultural Pool or Watermaster
16 including whether any such party seeks reimbursement based on this motion. One method is
17 to require the Agricultural Pool to make direct payments to Appropriative Pool members and
18 Watermaster. Another is to permit credits in favor of each Appropriative Pool member against
19 its future obligations to the Agricultural Pool under Paragraph 5.4(a) of the Peace Agreement.

20 The City of Chino is hopeful that this motion is the vehicle envisioned by the Court to
21 bring resolution on the amounts of reimbursement for previously paid Agricultural Pool
22 attorney fees and expenses by the parties to the Judgment and by Watermaster.

23 Respectfully submitted.

24 Dated: December 31, 2021

JIMMY L. GUTIERREZ LAW CORPORATION

25
26 By: 
27 Jimmy L. Gutierrez
Attorney for City of Chino

28 ³ *Ecco-Phoenix Electric Corp v. Howard J. White, Inc.* (1969) 1 Cal.3d 266, 272; Civil Code §1667.2

FEE EXEMPT

APP-002

| | | |
|--|--|----------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: Tracy J. Egoscue FIRM NAME: Egoscue Law Group, Inc. STREET ADDRESS: 3834 Pine Ave. CITY: Long Beach TELEPHONE NO.: 562-988-5978 E-MAIL ADDRESS: tracy@egoscuelaw.com ATTORNEY FOR (name): Overlying (Agricultural) Pool | STATE BAR NO.: 190842 STATE: CA ZIP CODE: 90807 FAX NO.: | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, CA 92415 BRANCH NAME: San Bernardino Justice Center | | |
| PLAINTIFF/PETITIONER: Chino Basin Municipal Water District DEFENDANT/RESPONDENT: City of Chino, et al. | | |
| <input checked="" type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE) | | CASE NUMBER: RCVRS51010 |

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

1. NOTICE IS HEREBY GIVEN that (name): Overlying (Agricultural) Pool
appeals from the following judgment or order in this case, which was entered on (date): November 5, 2021
- Judgment after jury trial
 Judgment after court trial
 Default judgment
 Judgment after an order granting a summary judgment motion
 Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
 Judgment of dismissal after an order sustaining a demurrer
 An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
 An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
 Other (describe and specify code section that authorizes this appeal):
2. For cross-appeals only:
- Date notice of appeal was filed in original appeal:
 - Date superior court clerk mailed notice of original appeal:
 - Court of Appeal case number (if known):

Date: January 4, 2022

Tracy J. Egoscue

(TYPE OR PRINT NAME)



Tracy J. Egoscue

(SIGNATURE OF PARTY OR ATTORNEY)

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 January 4, 2022, I served the following:

1. CITY OF CHINO CORRECTED MOTION FOR REIMBURSEMENT OF ATTORNEYS FEES AND EXPENSES PAID TO THE AGRICULTURAL POOL
2. OVERLYING (AGRICULTURAL) POOL NOTICE OF APPEAL FROM 11/5/21 ORDER

/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.

See attached service list: Master Email Distribution List

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

Executed on January 4, 2022 in Rancho Cucamonga, California.



By: Gabriela Garcia
Chino Basin Watermaster

Mailing List 1

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

Gabriela Garcia

Contact Group Name: Master Email Distribution List

Members:

| | |
|-------------------|----------------------------------|
| Agnes Cheng | agnes.cheng@cc.sbcounty.gov |
| Al Lopez | alopez@wmwd.com |
| Alan Frost | Alan.Frost@dpw.sbcounty.gov |
| Alberto Mendoza | Alberto.Mendoza@cmc.com |
| Alfonso Ruiz | alfonso.ruiz@cmc.com |
| Allen W. Hubsch | ahubsch@loeb.com |
| Alma Heustis | alma.heustis@californiasteel.com |
| Alonso Jurado | ajurado@cbwm.org |
| Amanda Coker | acoker@cityofchino.org |
| Amanda Meere | Amanda.Meere@cao.sbcounty.gov |
| Amer Jakher | AJakher@cityofchino.org |
| Amy Bonczewski | ABonczewski@ontarioca.gov |
| Andrew Gagen | agagen@kidmanlaw.com |
| Andy Campbell | acampbell@ieua.org |
| Andy Malone | amalone@westyost.com |
| Angelica Todd | angelica.todd@ge.com |
| Angelo Simoes | Angelo.Simoes@linde.com |
| Anna Nelson | atruongnelson@cbwm.org |
| April Robitaille | arobitaille@bhfs.com |
| Armando Martinez | armartinez@fontana.org |
| Art Bennett | citycouncil@chinohills.org |
| Arthur Kidman | akidman@kidmanlaw.com |
| Ashok Dhingra | ash@akdconsulting.com |
| Ben Lewis | benjamin.lewis@gswater.com |
| Ben Peralta | bperalta@tvmwd.com |
| Benjamin M. Weink | ben.weink@tetrattech.com |
| Beth.McHenry | Beth.McHenry@hoferranch.com |
| Betty Anderson | banderson@jcsd.us |
| Betty Folsom | bfolsom@jcsd.us |
| Bill Schwartz | bschwartz@mwd.org |
| Bob Bowcock | bbowcock@irmwater.com |
| Bob DiPrimio | rjdiprimio@sgvwater.com |
| Bob Feenstra | bobfeenstra@gmail.com |
| Bob Kuhn | bkuhn@tvmwd.com |
| Bob Kuhn | bgkuhn@aol.com |
| Bob Page | Bob.Page@rov.sbcounty.gov |
| Brad Herrema | bherrema@bhfs.com |
| Braden Yu | bradeny@cvwdwater.com |
| Braden Yu | Byu@ci.upland.ca.us |
| Brandon Howard | brahoward@niagarawater.com |
| Brenda Fowler | balee@fontanawater.com |
| Brent Yamasaki | byamasaki@mwdh2o.com |
| Brian Dickinson | bdickinson65@gmail.com |
| Brian Geye | bgeye@autoclubspeedway.com |
| Brian Lee | blee@sawaterco.com |
| Carmen Sierra | carmens@cvwdwater.com |
| Carol Boyd | Carol.Boyd@doj.ca.gov |
| Carolina Sanchez | csanchez@westyost.com |
| Casey Costa | ccosta@chinodesalter.org |
| Cassandra Hooks | chooks@niagarawater.com |
| Catharine Irvine | cirvine@DowneyBrand.com |

| | |
|--------------------------|---------------------------------|
| Chad Blais | cblais@ci.norco.ca.us |
| Chander Letulle | cletulle@jcsd.us |
| Charles Field | cdfield@att.net |
| Charles Linder | Charles.Linder@nrgenergy.com |
| Charles Moorrees | cmoorrees@sawaterco.com |
| Chino Hills City Council | citycouncil@chinohills.org |
| Chris Berch | cberch@jcsd.us |
| Chris Diggs | Chris_Diggs@ci.pomona.ca.us |
| Christiana Daisy | cdaisy@ieua.org |
| Christofer Coppinger | ccoppinger@geoscience-water.com |
| Christopher M. Sanders | cms@eslawfirm.com |
| Christopher Quach | cquach@ontarioca.gov |
| Christopher R. Guillen | cguillen@bhfs.com |
| Cindy Cisneros | cindyc@cvwdwater.com |
| Cindy Li | Cindy.li@waterboards.ca.gov |
| Courtney Jones | cjjones@ontarioca.gov |
| Craig Miller | CMiller@wmwd.com |
| Craig Stewart | craig.stewart@woodplc.com |
| Cris Fealy | cifealy@fontanawater.com |
| Dan Arrighi | darrighi@sgvwater.com |
| Dan McKinney | dmckinney@douglascountylaw.com |
| Daniel Bobadilla | dbobadilla@chinohills.org |
| Danny Kim | dkim@linklogistics.com |
| Dave Argo | daveargo46@icloud.com |
| Dave Crosley | DCrosley@cityofchino.org |
| David Aladjem | daladjem@downeybrand.com |
| David De Jesus | ddejesus@tvmwd.com |
| David Doublet | ddoublet@dpw.sbcounty.gov |
| David Huynh | dhuynh@cbwm.org |
| Dawn Martin | Dawn.Martin@cc.sbcounty.gov |
| Denise Garzaro | dgarzaro@ieua.org |
| Dennis Mejia | dmejia@ontarioca.gov |
| Dennis Williams | dwilliams@geoscience-water.com |
| Diana Frederick | diana.frederick@cdcr.ca.gov |
| Ed Means | edmeans@roadrunner.com |
| Edgar Tellez Foster | etellezfoster@cbwm.org |
| Eduardo Espinoza | EduardoE@cvwdwater.com |
| Edward Kolodziej | edward.kolodziej@ge.com |
| Elizabeth M. Calciano | ecalciano@hensleylawgroup.com |
| Elizabeth Skrzat | ESkrzat@cbwcd.org |
| Eric Fordham | eric_fordham@geopentech.com |
| Eric Garner | eric.garner@bbklaw.com |
| Eric Grubb | ericg@cvwdwater.com |
| Eric Papathakis | Eric.Papathakis@cdcr.ca.gov |
| Eric Tarango | edtarango@fontanawater.com |
| Erika Clement | Erika.clement@sce.com |
| Eunice Ulloa | eulloa@cityofchino.org |
| Evette Ounanian | EvetteO@cvwdwater.com |
| Frank Brommenschenkel | frank.brommen@verizon.net |
| Frank Yoo | FrankY@cbwm.org |
| Fred Fudacz | ffudacz@nossaman.com |
| Fred Galante | fgalante@awattorneys.com |
| Gabriela Garcia | ggarcia@cbwm.org |

| | |
|--|------------------------------|
| Garrett Rapp | grapp@westyost.com |
| Gene Tanaka | Gene.Tanaka@bbklaw.com |
| Geoffrey Kamansky | gkamansky@niagarawater.com |
| Geoffrey Vanden Heuvel | geoffreyvh60@gmail.com |
| Gerald Yahr | yahrj@koll.com |
| Gidti Ludesirishoti | GidtiL@cvwdwater.com |
| Gina Nicholls | gnicholls@nossaman.com |
| Gino L. Filippi | Ginoffvine@aol.com |
| Gracie Torres | gtorres@wmwd.com |
| Greg Woodside | gwoodside@ocwd.com |
| Gregor Larabee | Gregor.Larabee@cdcr.ca.gov |
| Henry DeHaan | Hdehaan1950@gmail.com |
| Irene Islas | irene.islas@bbklaw.com |
| James Curatalo | jamesc@cvwdwater.com |
| James Jenkins | cnomgr@airports.sbcounty.gov |
| James McKenzie | jmckenzie@dpw.sbcounty.gov |
| Jane Anderson | janderson@jcsd.us |
| Janine Wilson | JWilson@cbwm.org |
| Jasmin A. Hall | jhall@ieua.org |
| Jason Marseilles | jmarseilles@ieua.org |
| Jason Pivovarovff | JPivovarovff@wmwd.com |
| Jayne Joy | Jayne.Joy@waterboards.ca.gov |
| Jean Cihigoyenetché | Jean@thejclawfirm.com |
| Jeff Evers | jevers@niagarawater.com |
| Jeff Mosher | jmosher@sawpa.org |
| Jeffrey L. Pierson | jpierson@intexcorp.com |
| Jennifer Hy-Luk | jhyluk@ieua.org |
| Jeremy N. Jungreis - General Counsel for OCWD | JJungreis@rutan.com |
| | Jessie@thejclawfirm.com |
| Jessie Ruedas | jmarkman@rwglaw.com |
| Jim Markman | jbowman@ontarioca.gov |
| Jim W. Bowman | |
| Jimmy Gutierrez - Law Offices of Jimmy Gutierrez | jimmylaredo@gmail.com |
| | Jaime.medrano2@cdcr.ca.gov |
| Jimmy Medrano | jimmy@city-attorney.com |
| jimmy@city-attorney.com | JiwonS@cvwdwater.com |
| Jiwon Seung | jchan@wwwd.org |
| Joanne Chan | joao.feitoza@cmc.com |
| Joao Feitoza | jgraz4077@aol.com |
| Joe Graziano | JJoswiak@cbwm.org |
| Joe Joswiak | jignacio@ieua.org |
| Joel Ignacio | john.abusham@nrg.com |
| John Abusham | johnb@cvwdwater.com |
| John Bosler | jrharper@harperburns.com |
| John Harper | johnhuitsing@gmail.com |
| John Huitsing | jlopez@sarwc.com |
| John Lopez | customerservice@sarwc.com |
| John Lopez and Nathan Cole | jmendoza@tvmwd.com |
| John Mendoza | jpartridge@angelica.com |
| John Partridge | jschatz13@cox.net |
| John Schatz | JThorntonPE@H2OExpert.net |
| John Thornton | Jose.A.Galindo@linde.com |
| Jose A Galindo | |

| | |
|-------------------------|---------------------------------------|
| Josh Swift | jmswift@fontanawater.com |
| Joshua Aguilar | jaguilar@ieua.org |
| Justin Brokaw | jbrokaw@marygoldmutualwater.com |
| Justin Nakano | JNakano@cbwm.org |
| Justin Scott-Coe Ph. D. | jscottcoe@mvwd.org |
| Karen Williams | kwilliams@sawpa.org |
| Kathleen Brundage | kathleen.brundage@californiasteel.com |
| Keith Kramer | kkramer@fontana.org |
| Keith Person | keith.person@waterboards.ca.gov |
| Ken Waring | kwaring@jcsd.us |
| Kevin O'Toole | kotoole@ocwd.com |
| Kevin Sage | Ksage@IRMwater.com |
| Kimberly E. Leefatt | kleefatt@bhfs.com |
| Kristina Robb | KRobb@cc.sbcounty.gov |
| Kurt Berchtold | kberchtold@gmail.com |
| Kyle Brochard | KBrochard@rwglaw.com |
| Kyle Snay | kylesnay@gswater.com |
| Larry Cain | larry.cain@cdcr.ca.gov |
| Laura Mantilla | lmantilla@ieua.org |
| Laura Yraceburu | lyraceburu@bhfs.com |
| Lauren Harold | lharold@linklogistics.com |
| Linda Jadeski | ljadeski@wwd.org |
| Lisa Lemoine | LLemoine@wmwd.com |
| Liz Hurst | ehurst@ieua.org |
| Marcella Correa | MCorrea@rwglaw.com |
| Marco Tule | mtule@ieua.org |
| Maria Ayala | mayala@jcsd.us |
| Maria Mendoza | mmendoza@westyost.com |
| Maribel Sosa | msosa@ci.pomona.ca.us |
| Marilyn Levin | marilyn.levin@doj.ca.gov |
| Mark D. Hensley | mhensley@hensleylawgroup.com |
| Mark Wildermuth | mwildermuth@westyost.com |
| Mark Wiley | mwiley@chinohills.org |
| Martin Cihigoyenetché | marty@thejclawfirm.com |
| Martin Rauch | martin@rauchcc.com |
| Martin Zvirbulis | mezvirbulis@sgvwater.com |
| Mathew C. Ballantyne | mballantyne@cityofchino.org |
| Matthew H. Litchfield | mlitchfield@tvmwd.com |
| May Atencio | matencio@fontana.org |
| Melissa L. Walker | mwalker@dpw.sbcounty.gov |
| mgarcia@ieua.org | mgarcia@ieua.org |
| Michael A. Blazevic | mblazevic@westyost.com |
| Michael Adler | michael.adler@mcmcnet.net |
| Michael P. Thornton | mthornton@tkeengineering.com |
| Michelle Licea | mlicea@mvwd.org |
| Michelle Staples | mstaples@jacksontidus.law |
| Mike Gardner | mgardner@wmwd.com |
| Mike Maestas | mikem@cvwdwater.com |
| Moore, Toby | TobyMoore@gswater.com |
| MWDProgram | MWDProgram@sdewa.org |
| Nadia Aguirre | naguirre@tvmwd.com |
| Natalie Costaglio | natalie.costaglio@mcmcnet.net |
| Nathan deBoom | n8deboom@gmail.com |

| | |
|------------------------|-------------------------------------|
| Neetu Gupta | ngupta@ieua.org |
| Nichole Horton | Nichole_Horton@ci.pomona.ca.us |
| Nick Jacobs | njacobs@somachlaw.com |
| Nicole deMoet | ndemoet@ci.upland.ca.us |
| Nicole Escalante | NEscalante@ontarioca.gov |
| Noah Golden-Krasner | Noah.goldenkrasner@doj.ca.gov |
| Parker Simon | psimon@bhfs.com |
| Paul Deutsch | paul.deutsch@woodplc.com |
| Paul Hofer | farmerhofer@aol.com |
| Paul Hofer | farmwatchtoo@aol.com |
| Paul S. Leon | pleon@ontarioca.gov |
| Penny Alexander-Kelley | Palexander-kelley@cc.sbcounty.gov |
| Pete Hall | rpetehall@gmail.com |
| Pete Hall | pete.hall@cdcr.ca.gov |
| Pete Vicario | PVicario@cityofchino.org |
| Peter Hettinga | peterhettinga@yahoo.com |
| Peter Kavounas | PKavounas@cbwm.org |
| Peter Rogers | progers@chinohills.org |
| Rachel Avila | R.Avila@MPGLAW.com |
| Rachel Ortiz | rortiz@nossaman.com |
| Randy Visser | RVisser@sheppardmullin.com |
| Richard Anderson | horsfly1@yahoo.com |
| Rick Darnell | Richard.Darnell@nrgenergy.com |
| Rick Rees | richard.rees@woodplc.com |
| Rickey S. Manbahal | smanbahal@wvwd.org |
| Rita Pro | rpro@cityofchino.org |
| Robert C. Hawkins | RHawkins@earthlink.net |
| Robert DeLoach | robertadeloach1@gmail.com |
| Robert E. Donlan | red@eslawfirm.com |
| Robert Neufeld | robneu1@yahoo.com |
| Robert Wagner | rwagner@wbecorp.com |
| Ron Craig | Rcraig21@icloud.com |
| Ron LaBrucherie, Jr. | ronLaBrucherie@gmail.com |
| Ronald C. Pietersma | rcpietersma@aol.com |
| Ruben Llamas | rllamas71@yahoo.com |
| Ruby Favela | rfavela@cbwm.org |
| Ryan Shaw | RShaw@wmwd.com |
| Sally H. Lee | shlee@ieua.org |
| Sam Nelson | snelson@ci.norco.ca.us |
| Sam Rubenstein | srubenstein@wpcarey.com |
| Sandra S. Rose | directorrose@mvwd.org |
| Sarah Foley | Sarah.Foley@bbklaw.com |
| Scott Burton | sburton@ontarioca.gov |
| Scott Slater | sslater@bhfs.com |
| Seth J. Zielke | sjzielke@fontanawater.com |
| Shawnda M. Grady | sgrady@eslawfirm.com |
| Shivaji Deshmukh | sdeshmukh@ieua.org |
| Skylar Stephens | SStephens@sdca.org |
| Sonya Barber | sbarber@ci.upland.ca.us |
| Sonya Zite | szite@wmwd.com |
| Stephanie Gutierrez | Stephanie.Gutierrez@cc.sbcounty.gov |
| Stephanie Reimer | SReimer@mvwd.org |
| Stephen Deitsch | stephen.deitsch@bbklaw.com |

| | |
|----------------------------|-----------------------------------|
| Steve Kennedy | skennedy@bmklawplc.com |
| Steve M. Anderson | steve.anderson@bbklaw.com |
| Steve Nix | snix@ci.upland.ca.us |
| Steve Riboli | steve.riboli@sanantoniowinery.com |
| Steve Smith | ssmith@ieua.org |
| Steve W. Ledbetter, PE | sledbetter@tkeengineering.com |
| Steven Andrews Engineering | sandrews@sandrewsengineering.com |
| Steven Flower | sflower@rwglaw.com |
| Steven J. Elie | selie@ieua.org |
| Steven J. Elie | s.elie@mpglaw.com |
| Steven Popelar | spopelar@jcsd.us |
| Steven Raughley | Steven.Raughley@cao.sbcounty.gov |
| Susan Palmer | spalmer@kidmanlaw.com |
| Sylvie Lee | slee@ieua.org |
| Tammi Ford | tford@wmwd.com |
| Taya Victorino | tayav@cvwdwater.com |
| Teri Layton | tlayton@sawaterco.com |
| Terry Bettencourt | miles.bettencourt@cdcr.ca.gov |
| Terry Catlin | tcatlin@wfajpa.org |
| Tim Barr | tbarr@wmwd.com |
| Tim Kellett | tkellett@tvmwd.com |
| Timothy Ryan | tjryan@sgwwater.com |
| Toby Moore | TobyMoore@gswater.com |
| Todd Minten | tminten@sbcglobal.net |
| Tom Barnes | tbarnes@esassoc.com |
| Tom Bunn | TomBunn@Lagerlof.com |
| Tom Cruikshank | tcruikshank@linklogistics.com |
| Tom Harder | tharder@thomashardercompany.com |
| Tom McPeters | THMcP@aol.com |
| Tom O'Neill | toneill@chinodesalter.org |
| Toni Medell | mmedel@mbakerintl.com |
| Tony Long | tlong@angelica.com |
| Toyasha Sebbag | tsebbag@cbwcd.org |
| Tracy J. Egoscue | tracy@egoscuelaw.com |
| Van Jew | vjew@wvwd.org |
| Vanny Khu | VKhu@ontarioca.gov |
| Veronica Tristan | vtristan@jcsd.us |
| Veva Weamer | vweamer@westyost.com |
| Victor Preciado | Victor_Preciado@ci.pomona.ca.us |
| Vivian Castro | vcastro@cityofchino.org |
| Wade Fultz | Wade.Fultz@cmc.com |
| WestWater Research, LLC | research@waterexchange.com |
| William J Brunick | bbrunick@bmblawoffice.com |
| wurena@emeraldus.com | wurena@emeraldus.com |