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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, ET AL.,

Defendants.

Case No: RCVRS 51010

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

**DECLARATION OF JIMMY
GUTIERREZ IN SUPPORT OF
REBUTTAL BRIEF AND OBJECTIONS
RE: JOINT STATEMENT REGARDING
SETTLEMENT BETWEEN
APPROPRIATIVE POOL AND
AGRICULTURAL POOL RE: PEACE
AGREEMENT 5.4(A), WHICH DOES
NOT SETTLE THE MOTION FOR
REIMBURSEMENT**

Date: April 8, 2022
Time: 1:30 p.m.
Department: S35

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16 Attorneys for MONTE VISTA WATER DISTRICT and
17 MONTE VISTA IRRIGATION COMPANY

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1 I, Jimmy L. Gutierrez, state and declare as follows:

2 1. I am an attorney duly licensed to practice law in the courts of the State of
3 California. I represent the City of Chino on its ground water rights in the Chino Ground Water
4 Basin. I have so represented the City of Chino since approximately 1995, first as City Attorney
5 and as special counsel since 2017.

6 2. I make this declaration based upon my personal knowledge of the matters herein.
7 If called to testify, I would and could competently testify to the matters contained herein.

8 3. On January 5, 2022, I filed a motion for reimbursement entitled "City of Chino
9 Corrected Motion for Reimbursement of Attorney's Fees and Expenses Paid to the Agricultural
10 Pool" ("Motion for Reimbursement").

11 4. After filing the Motion for Reimbursement as ordered by the Court, I sent an
12 email to Tracy Egoscue inviting a discussion to explore settlement. A true and correct copy of
13 my email is attached hereto as Exhibit 1.

14 5. One purpose of the invitation was to inquire about invoices for Agricultural Pool
15 ("Ag Pool") legal services that might show compliance with the Court's May 28 Order, so as to
16 deduct those amounts from the total amount being requested in the Motion for Reimbursement.

17 6. Another purpose of the invitation was to ascertain whether the Ag Pool preferred
18 granting a credit to the appropriators for past payments against future Watermaster assessments
19 allocated to the Ag Pool rather than direct payments of the reimbursable amounts to the
20 appropriators.

21 7. I did not receive any response from Ms. Egoscue - not by email, not by telephone,
22 not by letter, not by text message to my email invitation to discuss settlement.

23 8. Prior to the Feb 4, 2022 hearing, neither I nor Dave Crosley nor anyone else in the
24 City of Chino received any proposal to settle Chino's request for reimbursement of payments
25 previously made for Ag Pool attorney expenses, as set forth in the Motion for Reimbursement.

26 9. At the hearing on the Motion for Reimbursement on Feb 4, 2022, Ms. Egoscue
27 represented to the Court that there had been a settlement. That statement surprised me because I
28

1 had no knowledge of any settlement pertaining to the matters in the Motion for Reimbursement.

2 Thus, I informed the Court that there was no settlement.

3 10. At the hearing on Feb 4, 2022, I requested the Court to continue the hearing on
4 the Motion for Reimbursement for two weeks, rather than 2 months, because it was my desire to
5 motivate the Ag Pool to submit a proposal to settle the Motion for Reimbursement, enter into
6 negotiation discussions with the Ag Pool designee(s) regarding the Motion for Reimbursement,
7 to ascertain whether the Ag Pool's settlement proposal would be or could be acceptable to the
8 City of Chino prior to the next hearing date.

9 11. As of this date, neither I nor Dave Crosley or anyone else at the City of Chino has
10 received any proposal to settle Chino's request for reimbursement of payments previously made
11 toward the Ag Pool attorney expenses, as set forth in the Motion for Reimbursement.

12 12. Subsequent to the hearing on February 4, 2022 on the Motion for Reimbursement,
13 I became aware that discussions commenced between certain members of the Appropriative Pool
14 ("AP"), other than Chino, and members of the Ag Pool regarding the obligations of AP members
15 arising from Paragraph 5.4(a) of the Peace Agreement.

16 13. My knowledge of the settlement discussions is limited to what was revealed in the
17 confidential sessions of the Appropriative Pool by the representatives of the appropriators
18 involved in the settlement discussions. I will not disclose them. I will disclose that the Motion
19 for Reimbursement was not identified to me as being part of those settlement discussions.

20 14. On March 22, 2022, the Appropriative Pool met in a confidential session. At that
21 meeting, the Terms of Agreement ("TOA") was presented and a motion was made to approve it.
22 As revealed by Exhibit B of the Joint Statement, five AP members voted against the approval of
23 the TOA. The AP members voting against the TOA are City of Chino, Monte Vista Water
24 District, Monte Vista Irrigation Company, City of Ontario and San Antonio Water Company.

25 15. I read the TOA and learned that the TOA calls for the Ag Pool to dismiss its
26 appeal from the Court Order dated December 3, 2021 that denied the Ag Pool's Motion for
27 Attorneys' Expenses dated July 26, 2021, and the TOA also calls for the Ag Pool to dismiss its
28 several "contests" to various storage agreements and transfer agreements of many appropriators

1 including those for the City of Chino. Thus, I realized that the Ag Pool might seek to argue that
2 the dismissal of its appeal and contests would benefit all members of the AP including those that
3 opposed the TOA and voted against its approval as part of an attempt to bind the City of Chino,
4 Monte Vista Water District, Monte Vista Irrigation Company, City of Ontario and San Antonio
5 Water Company to the TOA.

6 16. In order to ensure the Ag Pool was informed of objections to the TOA before the Ag
7 Pool dismissed any claims or actions, I sent an email on March 22, 2022 at 12:14 p.m. to Ms.
8 Egosque, the Ag Pool's legal counsel, attached hereto as Exhibit 2 (hereafter "Chino's Notice of
9 Non-Consent"). The Monte Vista Water District, Monte Vista Irrigation Company (collectively,
10 "Monte Vista") and City of Ontario joined Chino's Notice of Non-Consent immediately
11 thereafter. Ontario joined at 12:27 p.m. and Monte Vista joined at 12:30 p.m. Ms. Egosque has
12 not replied to the Notices of Non-Consent.

13 17. Chino's Notice of Non-Consent clearly and directly informs Ms. Egosque and the
14 Ag Pool that the City of Chino, Monte Vista and City of Ontario (1) did not vote in favor of the
15 TOA during the AP closed session on March 22, 2022, (2) do not consent to the TOA in any
16 way, (3) are not bound by the TOA, and (4) do not accept any alleged benefit of the TOA.

17 18. Chino's Notice of Non-Consent clearly and directly informs Ms. Egosque and the
18 Ag Pool that the Ag Pool's dismissal of its appeal and contests, if they choose to dismiss them,
19 will not bind the City of Chino, Monte Vista and City of Ontario to the TOA by the doctrine of
20 estoppel or any other legal doctrine.

21
22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on March 31, 2022 in the City of Chino.

24
25 By: _____

26 Jimmy L. Gutierrez
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EXHIBIT 1

Jimmy Gutierrez

From: Jimmy Gutierrez
Sent: Thursday, January 13, 2022 6:02 PM
To: Tracy J. Egoscue; jschatz13@cox.net
Cc: Crosley, Dave
Subject: Chino Motion for Reimbursement

Good evening Tracy.

I am writing you to request a telephone conference for the purpose of discussing Chino's Motion for Reimbursement.

I want to discuss your preference on the implementation of an order for reimbursement as requested by the City of Chino – assuming, of course, that it is granted.

I recognize that the denial of your motion for legal fees and the granting of this order places a substantial burden on the Ag Pool.

It is my desire to ameliorate the burden.

There must be ways that we can work with Watermaster to ameliorate the burden and accommodate the Ag Pool.

If you are interested, please email me two dates and times when you can talk.

Thank you.

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Jimmy@City-Attorney.com

EXHIBIT 2

From: Andrew Gagen <agagen@kidmanlaw.com>
Sent: Tuesday, March 22, 2022 12:30 PM
To: Tracy J. Egoscue
Cc: Crosley, Dave; Nicholls, Gina R.; Fudacz, Fred A.; Jimmy Gutierrez
Subject: [External] RE: Notice of Non-Consent to the Terms of Agreement

Likewise for Monte Vista.

From: Fudacz, Fred A. <ffudacz@nossaman.com>
Sent: Tuesday, March 22, 2022 12:27 PM
To: Jimmy Gutierrez <jimmy@city-attorney.com>; Tracy J. Egoscue <tracy@egoscuelaw.com>
Cc: Crosley, Dave <dcrosley@cityofchino.org>; Andrew Gagen <agagen@kidmanlaw.com>; Nicholls, Gina R. <gnicholls@nossaman.com>
Subject: RE: Notice of Non-Consent to the Terms of Agreement

Ms. Egoscue---as stated in Mr. Gutierrez's e-mail below, the City of Ontario joins in this Notice.

From: Jimmy Gutierrez <jimmy@city-attorney.com>
Sent: Tuesday, March 22, 2022 12:14 PM
To: Tracy J. Egoscue <tracy@egoscuelaw.com>
Cc: Crosley, Dave <dcrosley@cityofchino.org>; Fudacz, Fred A. <ffudacz@nossaman.com>; agagen@kidmanlaw.com
Subject: [External] Notice of Non-Consent to the Terms of Agreement

Dear Ms. Egoscue.

The City of Chino, City of Ontario, Monte Vista Water District and Monte Vista Irrigation Company hereby inform you and your client, the Overlying Agricultural Pool (OAP), that we (1) did not vote in favor of the "Terms of Agreement" during the AP Closed Session on March 22, 2022, (2) we do not consent to the "Terms of the Agreement" in any way, (3) we do not consider ourselves to be bound by the "Terms of the Agreement", and (4) we do not accept any alleged benefit of the "Terms of the Agreement."

Based on this joint Notice, we believe, and it is our position that your dismissal of the OAP contests and appeal, if you choose to dismiss them on behalf of the OAP, will not bind the foregoing parties to the "Terms of Agreement" by the doctrine of estoppel or any other legal doctrine.

Finally, the foregoing parties will not make any payment to the OAP under the "Terms of Agreement" and we will pursue our Motion for Reimbursement.

Jimmy Gutierrez
Counsel for the City of Chino

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 April 1, 2022 I served the following:

1. DECLARATION OF JIMMY GUTIERREZ IN SUPPORT OF REBUTTAL BRIEF AND OBJECTIONS RE: JOINT STATEMENT REGARDING SETTLEMENT BETWEEN APPROPRIATIVE POOL AND AGRICULTURAL POOL RE: PEACE AGREEMENT 5.4(A), WHICH DOES NOT SETTLE THE MOTION FOR REIMBURSEMENT

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: Master Email Distribution List

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 April 1, 2022 in Rancho Cucamonga, California.



By: Janine Wilson
Chino Basin Watermaster

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