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**EXEMPT FROM FILING FEE
PER GOV. CODE, § 6103**

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7 *[Additional Parties on Following Pages]*

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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SAN BERNARDINO

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13 CHINO BASIN MUNICIPAL WATER
DISTRICT,

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Plaintiff,

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vs.

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CITY OF CHINO, ET AL.,

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Defendants.

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Case No: RCVRS 51010

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

**DECLARATION OF SCOTT BURTON
IN SUPPORT OF REBUTTAL BRIEF
AND OBJECTIONS RE: JOINT
STATEMENT REGARDING
SETTLEMENT**

[Concurrently Filed with Rebuttal Brief and
Objections; Declaration of J. Gutierrez]

Date: April 8, 2022

Time: 1:30 p.m.

Department: S35

DECLARATION OF SCOTT BURTON ISO REBUTTAL BRIEF AND OBJECTIONS RE: JOINT STATEMENT
REGARDING SETTLEMENT

60410639.v1

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

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DECLARATION OF SCOTT BURTON

I, Scott Burton, declare:

1. I am the Utilities General Manager for the City of Ontario (“Ontario”), a member agency of the Appropriative Pool (“AP”) and a party in the above-captioned case. I have held this position with Ontario for ten years. As the Utilities General Manager I hold overall responsibility for Ontario’s water system, water resources, and wastewater system. In connection with my management role for Ontario, I closely follow and regularly participate in matters involving the Chino Basin Watermaster. I served as the Vice Chair for the AP in 2021. I currently serve on the Watermaster Board of Directors, and I have regularly attended Watermaster meetings, including meetings of the Watermaster Board of Directors, the Advisory Committee, and the AP. I am well-familiar with matters involving the Watermaster and the AP. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently testify to the facts stated herein.

2. I submit this declaration as evidence in support of the “Motion for Reimbursement of Attorney’s Fees and Expenses Paid to the Agricultural Pool” filed by Chino on or about January 4, 2022 (“Reimbursement Motion”) and the “Rebuttal Brief and Objections Re: Joint Statement Regarding Settlement Between Appropriative Pool and Agricultural Pool Re: Peace Agreement 5.4(a) [“Joint Statement”], Which Does Not Settle the Reimbursement Motion” (“Rebuttal Brief and Objections”). I reviewed these documents and the Joint Statement with its attached “Terms of Agreement” or “TOA,” to which Ontario objects.

3. Attached hereto as **Exhibit “1”** is a true and correct copy of the Joint Statement, along with its Exhibit A, the TOA, and Exhibit B, the AP Meeting Closed Session Action Report from March 22, 2022 (“Action Report”).

4. The Action Report discloses that Ontario, the City of Chino (“Chino”), and Monte Vista Water District and Monte Vista Water Company (“Monte Vista”) voted against a motion “[t]o approve settlement, authorize AP Chair to sign the [TOA] and disclose the votes in the report out.”

1 5. An alternative motion was made by Mr. Crosley of Chino “to disclose that the
2 **City of Chino, City of Ontario, and [Monte Vista] do not consent to the terms of settlement,**
3 **want to be excluded from the Terms, and are not obligated to and will not comply with the**
4 **Terms.”** This alternative motion to disclose objections to the TOA was voted down by a
5 majority of the AP.

6 6. I reviewed and I am familiar with the legal briefing of AP member agencies that
7 led to the May 28, 2021 Court Order (“May 28 Order”) and the December 3, 2021 Court Order
8 (“December 3 Order”) and with the Orders themselves. **Exhibit “2”** hereto is a true and correct
9 copy of the May 28 Order. **Exhibit “3”** hereto is a true and correct copy of the December 3
10 Order.

11 7. The May 28 Order directs the Agricultural Pool (“Ag Pool”) to “provid[e] the
12 Appropriative Pool with the Ag Pool’s attorney fee bills. Otherwise, there will be no way for the
13 Appropriative Pool to determine whether the bills fit within the court’s interpretation.” Despite
14 the May 28 Order, the Ag Pool has never disclosed its unredacted attorney invoices to the AP.

15 8. The TOA provides for payment of \$370,000 of Ag Pool legal expenses for which
16 the supporting documentation has never been provided. This payment is in addition to hundreds
17 of thousands of dollars already paid for Ag legal expenses incurred in fiscal years 2019-20 and
18 2020-21, to which the December 3 Order found no entitlement on the part of the Ag Pool.

19 9. As an official entrusted with managing a public water system, I consider such
20 payments of public funds without supporting documentation and contrary to the Court Orders, to
21 be unwarranted and improper expenditures.

22 10. The Watermaster invoices each individual appropriator, not the AP, for expenses
23 under Section 5.4(a) of the Peace Agreement. The AP does not pay such expenses, and has no
24 funds with which it could pay such expenses, apart from the assessments that its members pay to
25 Watermaster. These expenses under Section 5.4(a) are not part of the approved Watermaster
26 budget and are not approved by the AP.

1 11. I personally participated, at length, in negotiations with members of the Ag Pool
2 until I was excluded from further negotiations.

3 12. In early March 2020, I attended an in-person meeting conducted at Watermaster's
4 offices with attendees representing the Ag Pool and the AP. During this meeting, AP
5 representatives, including myself on behalf of Ontario, proposed that the Ag Pool and AP
6 participate in informal dispute resolution regarding Ag Pool expenses.

7 13. In mid-2020, I conferred with representatives of other AP member agencies
8 including Mr. Dave Crosley of Chino and Mr. Justin Scott-Coe of Monte Vista, and we
9 cooperated to prepare and send letters outlining our concerns about Ag Pool expenses. After
10 several letters back and forth, the Ag Pool Chairman continued to insist that the matter of Ag
11 Pool expenses would need to go to court. Thereafter, Ontario led the effort to prepare and file
12 the Motion of AP Member Agencies re: Ag Pool Legal and Other Expenses, filed on or about
13 September 18, 2020 ("Original Motion"), in cooperation with other AP member agencies
14 including Monte Vista and Chino.

15 14. After filing the Original Motion, AP members including Ontario, Chino, and
16 Monte Vista continued participating in negotiations with the Ag Pool. I personally participated
17 in mediation with the Ag Pool in March 2021, along with representatives of other AP member
18 agencies. Unfortunately, the mediation concluded in an impasse.

19 15. After the mediation failed, I continued to participate in direct negotiations with
20 Ag Pool representatives until the final meeting I attended on September 15, 2021. I and other
21 AP representatives met with Ag Pool representatives on May 10, June 8, June 16, and September
22 15, 2021 to engage in good faith discussions regarding potential settlement of the fee dispute
23 with the Ag Pool. I was not invited to any further meetings with Ag Pool representatives after
24 September 15.

25 16. Since September 15, I have been excluded as Ontario's representative from
26 further negotiations between representatives of the two Pools.

1 17. I was present by telephone at the Court hearing on February 4, 2022, when
2 counsel for the Ag Pool announced that a settlement had been reached, and when counsel for
3 Ontario and Chino disputed this representation. Counsel for the AP confirmed there was no
4 settlement. Based on my discussions with representative of the three moving parties (Ontario,
5 Chino, and Monte Vista), counsel for the Ag Pool has never communicated with representatives
6 of the three moving parties about settlement of the Reimbursement Motion.

7 18. Monte Vista proposed settlement terms reflecting concerns of the Moving Parties
8 to the AP in September 2021 and again in February and March 2022. To the best of my own
9 knowledge and as related to me by other Ontario staff who actively participate in the AP, Monte
10 Vista's settlement proposals were not seriously considered by the Pools.

11 19. Given this history of exclusion of moving party representatives, and me
12 personally, from settlement negotiations, I and other moving party representatives such as Mr.
13 Crosley and Mr. Scott-Coe have made our objections and concerns well-known within the AP.
14 Therefore, the Pools' representatives must have known that the moving parties would not
15 consent to be bound by the TOA and would object to its approval by the AP.

16 20. Attached hereto as **Exhibit "4"** is a true and correct copy of the Special Joint Pool
17 Committee, Pool Dispute Resolution, addressed from the Chairmen of the three Pool Committees
18 to the Chairman of the Chino Basin Watermaster, dated August 11, 2009. This document has
19 been referred to in the proceedings before the Court as the "2009 Memo."

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

22 Executed this 31st day of March, 2022, at Ontario, California.

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25 _____
26 Scott Burton
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EXHIBIT 1

FEE EXEMPT

1 TRACY J. EGOSCUE (SBN 190842)
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9 *Attorneys for AGRICULTURAL POOL*

10 JOHN J. SCHATZ (141029)
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16 *Attorney for APPROPRIATIVE POOL*

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 FOR THE COUNTY OF SAN BERNARDINO

19 CHINO BASIN MUNICIPAL WATER
20 DISTRICT,

21 Plaintiff,

22 v.

23 CITY OF CHINO et al.,

24 Defendants.

Case No. RCVRS 51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

**JOINT STATEMENT
REGARDING SETTLEMENT
AGREEMENT BETWEEN
APPROPRIATIVE POOL AND
AGRICULTURAL POOL
REGARDING PEACE
AGREEMENT 5.4(A)**

25 **TO THE COURT, EACH PARTY TO THIS ACTION AND TO THE COUNSEL OF
26 RECORD FOR EACH PARTY:**

27 The Overlying (Agricultural) Pool Committee (Ag Pool) and the Appropriative Pool
28 Committee (AP) (collectively, the Parties or the Pools), each acting pursuant to and in

JOINT STATEMENT REGARDING SETTLEMENT AGREEMENT BETWEEN
APPROPRIATIVE POOL AND AGRICULTURAL POOL REGARDING PEACE AGREEMENT
5.4(A)

1 conformance with their respective Pooling Plans set forth in the Chino Basin Judgment and
2 respective promulgating Rules and Regulations, have agreed to Terms of Agreement (Settlement
3 Agreement) regarding current and future disputes with respect to Peace Agreement Section
4 5.4(a). A fully executed copy of the Settlement Agreement effective March 22, 2022, is attached
5 as **Exhibit "A"**.

6 The Settlement Agreement is a comprehensive resolution of the current fees dispute
7 arising under Section 5.4(a) of the Peace Agreement between the named obligee and obligor and
8 is made within the interpretational parameters and consistent with this Court's May 28, 2021
9 Order, which Order interprets Section 5.4(a), sets forth procedures for the consideration of
10 payment of Ag Pool fees claims by the AP, and finds that the Judgment and Peace Agreement
11 enable the Parties to agree about payment of the fees. This Settlement Agreement is also a
12 comprehensive resolution of the current appeal taken on this Court's December 3, 2021 Order
13 denying the Ag Pool's attorneys' fees motion that was made pursuant to the May 28, 2021 Order.

14 Following meetings between representatives of the Parties, each of the two Pools met and
15 voted as authorized by the Judgment per their respective Pooling Plans to fully compromise the
16 Ag Pool's fees claims against the AP resulting in full satisfaction of those claims and for the
17 purpose of avoiding future disputes between the Parties regarding Peace Agreement Section
18 5.4(a).

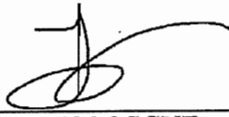
19 The Ag Pool, which is a signatory and party to the Peace Agreement, met on March 18,
20 2022, at a duly noticed special meeting and pursuant to the Ag Pool's Pooling Plan approved the
21 Settlement Agreement. Pursuant to terms of the Settlement Agreement, on March 23, 2022, the
22 Ag Pool filed in the Court of Appeal a Notice of Settlement and intent to file an Abandonment of
23 Appeal within 45 days after the date of the notice and also on March 23, 2022, notified the Chino
24 Basin Watermaster of the withdrawal of its May 3, 2017 Storage Contests, as amended, in their
25 entirety with prejudice.

26 The AP, which is a signatory and party to the Peace Agreement and per the express
27 mandatory provision of Section 5.4(a) is the named sole obligor for the purpose of Ag Pool

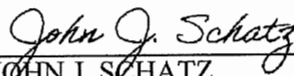
1 expenses reimbursement, met on March 22, 2022 at a duly noticed special meeting that included
2 all AP members who were in opposition to the Settlement Agreement. In accordance with the
3 provisions of the AP Pooling Plan, the Settlement Agreement was approved, and the AP
4 Chairman was authorized to sign the Settlement Agreement as shown in the March 22, 2022
5 Special Appropriative Pool Meeting Confidential Session Action Report attached as **Exhibit "B."**

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Dated: March 24, 2022

By: 

TRACY J. EGOSCUE
Attorneys for
AGRICULTURAL POOL

By: 

JOHN J. SCHATZ
Attorney for
APPROPRIATIVE POOL

EXHIBIT A

TERMS OF AGREEMENT

These Terms of Agreement by and between the Chino Basin Appropriative Pool Committee (AP) and Overlying (Agricultural) Pool Committee (Ag Pool) (sometimes herein collectively referred to as the Parties) are for the purpose of comprehensively resolving the current dispute and avoiding future disputes between the Ag Pool and AP (the Parties) with respect to Peace Agreement Section 5.4(a).

These Terms of Agreement are in furtherance of and without abrogation of the provisions of the May 28, 2021, San Bernardino Superior Court Order (the Order).

These Terms of Agreement are made for purposes of settlement within the interpretational parameters of the Order. These Terms of Agreement and the Order shall be construed together.

Payment of the amount of \$370,000 within 60 days of both parties execution of these Terms of Agreement, which amount is being made as a compromise and settlement of disputed issues while recognizing the Order and the December 3, 2021, Court Order. The Parties further acknowledge and stipulate that these Terms of Agreement shall be deemed to constitute conclusive evidence of the good-faith nature of the negotiated settlement and neither party will consider, deem, or suggest that anything in these Terms of Agreement constitutes the other party's admission of liability.

1. The amount of \$102,557.12 which was advanced from Watermaster administrative reserves to cover Ag Pool legal expenses, will be returned to Watermaster by the Ag Pool within 30 days after said payment to the Ag Pool is made.
2. For Fiscal Year 2021/2022 through the initial term of the Peace Agreement, the AP agrees to pay Ag Pool expenses pursuant to the Order, which may include the payment of a specific amount as agreed-upon for the conduct of the Ag Pool's regular business, such as meetings and review of Watermaster documents and reports.
3. The Ag Pool and AP, represented by at least two members from each Pool, shall meet and confer at least quarterly. These meetings are intended to:
 - a. Review the Ag Pool's known and forecasted expenses;
 - b. Develop solutions to improve Watermaster efficiencies for the mutual benefit of the Parties; and,
 - c. Address any other issues or concerns, which if not raised beforehand shall be considered per se adverse to the AP, including prior to the Ag Pool's expenditure of efforts or funds for any matter that is or is likely to be disputed as adverse to the AP.
4. The AP and Ag Pool agree to explore opportunities to undertake technical basin studies and other basin related working together as it relates to Watermaster business that may impact the Ag Pool.
5. Ag Pool agrees to the following, upon execution of this Terms of Agreement:
 - a. To dismiss its appeal of the December 3, 2021, Court Order.

- b. To dismiss the storage contests, as amended, in their entirety with prejudice.
 - c. To support or not oppose storage applications and transfers, the OBMP Update, the Safe Yield Reset, and grant funding opportunities unless the Ag Pool determines following notice to and after consultation with the AP, that support or non-opposition is adverse to the Ag Pool.
6. The Parties agree to abide by the Order. The Agreement is not and shall not be asserted to abrogate or be deemed to be a waiver of the rights of the Ag Pool or AP. Specifically, and consistent with the Order, the Parties agree to the following:
- a. The AP shall not be responsible for the payment of any Ag Pool expenses associated with any lawsuit or contested proceeding filed by the Ag Pool against the AP, any individual members of the AP, or Watermaster where the Ag Pool's position is adverse to the AP.
 - b. The Ag Pool shall submit all invoices to be paid by the AP to Watermaster in a form that enables a determination by the AP that all invoiced expenses are not adverse to the AP and benefits the Ag Pool, and are in accordance with the Order. Watermaster shall allow the AP the opportunity to review said invoices for 30 days prior to processing payment. At the expiration of the 30 days period, and without objection, invoices shall be paid.
 - c. In the event of a disputed invoice either because of form or content, the Parties shall appoint two representatives to negotiate a good faith resolution. In the event a Court order is sought by either or both Parties, the losing Party shall be responsible for the cost of the prevailing Party's attorney's fees and expenses.

Appropriative Pool


Eduardo Espinoza P.E., Chair

Date:

3/22/2022

Agricultural Pool


Robert F. Feenstra, Chair

Date:

3-18-2022

EXHIBIT B

John Schatz

From: John Schatz <jschatz13@cox.net>
Sent: Wednesday, March 23, 2022 8:08 PM
To: Anna Truong (atruongnelson@cbwm.org); 'Janine Wilson'
Cc: Jimmy@city-attorney.com; jimmylaredo@gmail.com; Fred Fudacz (ffudacz@nossaman.com); Nicholls, Gina R.; Andrew Gagen; Eduardo Espinoza; Chris Diggs (chris_diggs@ci.pomona.ca.us)
Subject: Chino Basin: 3/22 AP Confidential Attendance, Motions, Votes, and Adjournment
Attachments: Terms of Agreement.pdf

March 22, 2022 Special Appropriative Pool Meeting Confidential Session Action Report:

Motion by Chris Diggs (Pomona), second by Josh Swift (Fontana Union Water Company). Passed 59.363% voting in affirmative

To approve settlement, authorize AP Chair to sign the Terms of Agreement (dated 3/16, signed by Bob Feenstra) and disclose the votes in the report-out.

2022 APPROPRIATIVE POOL VOLUME VOTE							QUORUM
Assessment Year 2021-2022 (Production Year 2020-2021)							MET?
							YES
Enter Y or N in Each Cell							
Party	Present (Y/N)	Vote (Y/N)	Assigned	Reallocated	Reallocated	Quorum	Total Vote
Bloomington Brands, Inc			1,841	1,841	0,000	0,000	0,000
Central Co. (Appropriative)			0,000	0,000	0,000	0,000	0,000
Chino Hills, City Of	Y	Y	36,004	0,946	36,950	36,004	36,950
Chino, City Of	Y	N	55,598	1,460	57,058	55,598	0,000
Claremont Valley Water District	Y	Y	71,994	1,891	73,885	71,994	73,885
Fontana Union Water Company	Y	Y	58,285	1,931	60,216	58,285	59,814
Fontana Water Company	Y	Y	75,362	1,979	77,341	75,362	77,341
Fontana, City Of			0,000	0,000	0,000	0,000	0,000
Golden State Water Company	Y	Y	21,096	-0,291	20,805	21,096	21,351
Julien's Community Services District	Y	Y	92,046	2,391	94,437	92,046	94,437
Monte Vista Water District			11,701	11,701	0,000	0,000	0,000
Monte Vista Irrigation Company	Y	N	6,170	0,142	6,312	6,170	0,000
Monte Vista Water District	Y	N	95,217	2,501	97,718	95,217	0,000
NCI, Inc LLC			0,000	0,000	0,000	0,000	0,000
Regatta Building LLC			11,928	11,928	0,000	0,000	0,000
San Joaquin Farm Trust	Y	Y	0,035	0,001	0,036	0,035	0,034
Arctic, City Of	Y	Y	1,842	0,048	1,890	1,842	1,888
Ontario, City Of	Y	N	220,641	5,785	226,426	220,641	0,000
Pomona, City Of	Y	Y	164,866	4,380	169,246	164,866	169,247
San Antonio Water Company			18,447	0,482	18,929	18,447	0,000
San Bernardino County of (Shasta Farm)			0,117	0,117	0,000	0,000	0,000
San Ana River Water Company	Y	Y	13,050	0,343	13,403	13,050	13,403
Upland, City Of	Y	Y	40,358	1,060	41,418	40,358	41,418
Westland Community Water Co	Y	Y	8,640	0,217	8,857	8,640	8,867
West Valley Water District	Y	Y	5,875	0,154	6,029	5,875	6,029
			1,000,000	0,000	1,000,000	974,400	59,600

PASSED

NO VOTES
NO VOTES

Alternate Motion by Dave Crosley (Chino), second by Christopher Quach (Ontario). Did not pass, 38.754% voting in affirmative

Vote on settlement and disclose that the City of Chino, City of Ontario, Monte Vista Water District, and Monte Vista Irrigation Company do not consent to the terms of settlement, want to be excluded from the Terms, and are not obligated to and will not comply with the Terms.



2022 APPROPRIATE POOL VOLUME VOTE
Assessment Year 2021-2022 (Production Year 2020-2021)

QUORUM
 MET?
YES

(Enter Y or N in Each Cell)

Party	Approved (Y/N)	Withdrew (Y/N)	Assigned	Unassigned	Pool Volume	Quorum	Pool Vote
BullTron Brands, Inc			1,647	-1,647	0.000	0.000	0.000
Ca Mt Co (Appropriated)			0.000	0.000	0.000	0.000	0.000
Chino Hills City Of	Y	N	36,004	0.000	36,004	36,004	0.000
Chino City Of	Y	Y	37,596	1,660	37,456	37,456	37,056
Culverton Valley Water District	Y	N	71,996	1,891	73,887	73,887	0.000
Fountain-on-Water Company	Y	N	58,285	1,531	59,816	59,816	0.000
Fountain Water Company	Y	N	75,362	1,978	77,342	75,362	0.000
Fountain City Of			0.000	0.000	0.000	0.000	0.000
Golden State Water Company	Y	N	11,068	0.281	11,357	11,068	0.000
Lyons Community Services District	Y	N	91,046	2,393	93,437	91,046	0.000
Marysville Mutual Water Company			11,701	11,701	0.000	0.000	0.000
North Vista Irrigation Company	Y	Y	6,170	0.162	6,332	6,170	6,332
North Vista Water District	Y	Y	95,217	2,501	97,718	95,217	97,718
PCI Co LLC			0.000	0.000	0.000	0.000	0.000
North Vista Water, LLC			11,928	11,928	0.000	0.000	0.000
North Vista Farm Trust	Y	N	0.035	0.001	0.036	0.035	0.000
North Vista City Of	Y	N	1,840	0.048	1,888	1,840	0.000
Ontario City Of	Y	Y	220,641	5,795	226,437	220,641	226,437
Orange City Of	Y	N	164,866	4,330	169,197	164,866	0.000
San Antonio Water Company	Y	N	18,347	0.482	18,829	18,347	0.000
San Bernardino County of Groundwater			0.117	-0.117	0.000	0.000	0.000
San Jacinto Water Company	Y	N	13,090	0.343	13,433	13,090	0.000
Upland City Of	Y	N	40,358	1,090	41,418	40,358	0.000
West End Community Water Co	Y	N	8,640	0.227	8,867	8,640	0.000
West Valley Water District	Y	N	3,875	0.134	4,009	3,875	0.000
TOTAL			1,000,000	8,800	1,000,000	976,000	187,343

NOT PASSED

MAJORITY OF VOTES REQUIRED

The meeting commenced at 8:30 AM and adjourned at 9:59 AM.

EXHIBIT 2

FEE EXEMPT

1 SCOTT S. SLATER (State Bar No. 117317)
2 sslater@bhfs.com
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7 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**
8 1021 Anacapa Street, 2nd Floor
9 Santa Barbara, CA 93101-2102
10 Telephone: 805.963.7000
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12 Attorneys for
13 **CHINO BASIN WATERMASTER**

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF SAN BERNARDINO

16 CHINO BASIN MUNICIPAL WATER
17 DISTRICT,

18 Plaintiff,

19 v.

20 CITY OF CHINO, ET AL.,

21 Defendants.

Case No. RCV RS 51010

[Assigned for All Purposes to the
Honorable Stanford E. Reichert]

NOTICE OF ORDERS

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

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


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

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

Dated: June 1, 2021

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

By: 
SCOTT S. SLATER
BRADLEY J. HERREMA
KIMBERLY E. LEEFATT
Attorneys for
CHINO BASIN WATERMASTER

22731639.1

Exhibit A

MAY 28 2021

BY Amber Bouchard
AMBER BOUCHARD, DEPUTY

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

CHINO BASIN MUNICIPAL WATER)
DISTRICT,)
Plaintiff,)
vs.)
CITY OF CHINO, et al.,)
Defendants)

CASE NO. RCVRS 51010
ORDER on MOTION of
APPROPRIATIVE POOL MEMBER
AGENCIES RE: AGRICULTURAL
POOL LEGAL AND OTHER
EXPENSES

Date: May 28, 2021
Time: 1:30 PM
Department: S35/S3 [Hearing Location]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 instant issue is completely different.

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

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

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

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

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

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

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

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

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

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

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

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

- 13 a) (a) General Watermaster Administrative Expense shall include office
14 rental, general personnel expense, supplies and office equipment, and
15 related incidental expense and general overhead.
- 16 b) (b) Special Project Expense shall consist of special engineering,
17 economic or other studies, litigation expense, meter testing or other
18 major operating expenses. Each such project shall be assigned a Task
19 Order number and shall be separately budgeted and accounted for.
- 20 c) General Watermaster administrative expense shall be allocated and
21 assessed against the respective pool based upon allocation made by the
22 Watermaster, who shall make such allocations based upon generally
23 accepted cost accounting methods. Special Project Expense shall be
24 allocated to a specific pool, or any portion thereof, only upon the basis
25 of prior express assent and find of benefit by the Pool Committee, or
26 pursuant to written order of the court.

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

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

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

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

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

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

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

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

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

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

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

1 motion the court requires:

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

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

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

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

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

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

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

25 I. In order for the court to bring the current issue of the AgPool's
26

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

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

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

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

Dated: May 28, 2021


Stanford E. Reichert, Judge

EXHIBIT 3

FEE EXEMPT

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF SAN BERNARDINO

15 CHINO BASIN MUNICIPAL WATER
16 DISTRICT,

17 Plaintiff,

18 v.

19 CITY OF CHINO, ET AL.,

20 Defendants.

Case No. RCV RS 51010

[Assigned for All Purposes to the
Honorable Stanford E. Reichert]

NOTICE OF ORDER

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

22 **PLEASE TAKE NOTICE** that, on November 5, 2021, at 1:30 p.m., in Department S35
23 of the above-entitled Court, the Overlying (Agricultural) Pool's Motion for Attorney's Fees came
24 on for hearing in the above-captioned matter. The Court entered its Order Re Overlying
25 (Agricultural) Pool's Motion for Attorney's Fees, a copy of which is attached to this Notice as
26 **Exhibit A.**

27 Dated: December 6, 2021

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 

SCOTT S. SLATER

BRADLEY J. HERREMA

LAURA K. YRACEBURU

Attorneys for CHINO BASIN WATERMASTER

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Exhibit A



FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 03 2021

BY Kimberly Behan
KIMBERLY BEHAN, DEPUTY

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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, ET AL.,

Defendants.

Case No. RCV RS 51010

[Assigned for All Purposes to the
Honorable Stanford E. Reichert]

**~~PROPOSED~~ ORDER RE OVERLYING
(AGRICULTURAL) POOL'S MOTION
FOR ATTORNEY'S FEES**

Date: November 5, 2021
Time: 1:30 p.m.
Dept: S35

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[PROPOSED] ORDER

On November 5, 2021, the Overlying (Agricultural) Pool's July 26, 2021 Motion for Attorney's Fees ("Motion") came on regularly for hearing in the above-captioned matter. Having read and considered the papers and heard the arguments of counsel, the Motion is DENIED in its entirety, on the basis that all fees sought by the Overlying (Agricultural) Pool are either for activities that were adversarial to the Appropriative Pool or, in the alternative, the Court could not determine whether the claimed fees were fair, reasonable, appropriate, and consistent with the Court's May 28, 2021 Order, due to the level of redaction of the invoices supporting such claimed fees.

It is further ordered that, within 30 days of this order, Watermaster shall return all funds currently held in escrow under the prior request of the members of the Appropriative Pool in the same amounts as each member paid them into the escrow account.

It is further ordered that, within 30 days of this order, the City of Chino shall file and serve a motion as to the procedure for reimbursement of any assessments that are not held in the escrow account that may be due to the paying party. Such motion shall be heard on February 4, 2022 at 1:30 p.m., in Department S35 of this Court, located at 247 West 3rd Street, San Bernardino, California 92415.

IT IS SO ORDERED.

Dated: 12-31-21

Reichert
Hon. Stanford E. Reichert
Judge of the Superior Court

EXHIBIT 4

memorandum

April 11, 2009

TO: Ken Willis, Chairman
Chino Basin Watermaster

FROM: Bob Feenstra, Agricultural Pool Chairman
Ken Jeske, Appropriative Pool Chairman
Bob Bowcock, Overlying-Non Agricultural Pool Chairman

RE: Special Joint Pool Committee
Pool Dispute Resolution

A budget transfer request of \$21,000.00 has been made by staff to pay for the Regional Water Quality Control Board Basin Plan Amendment for Pathogen Total Maximum Daily Loads (TMDL) for the Middle Santa Ana River Watershed Pathogen TMDL for the Agricultural Pool. The Chino Basin Watermaster Agricultural Pool participates collectively in a task force administered by the Santa Ana Watershed Project Authority (SAWPA).

The Special Joint Pool Committee has resolved the budget transfer should be approved by the Watermaster and requests that Watermaster pay the invoice presented by the SAWPA Task Force.

As part of the resolution process, the Special Joint Pool Committee would like Watermaster to include in its motion to approve the above referenced budget transfer that the Agricultural Pool agrees to participate in the regular Watermaster Budget Process and present an annual budget in the same form and fashion as the other Pools. This will include: legal fees, consultant fees, meeting fees and projects. All of the budgets will be reviewed through the Pool process, approved and submitted by the Advisory Committee to the Watermaster.

Only Watermaster is authorized to undertake Special Project expense under Judgment Section 54 and Section 27. Such expense can only be allocated to a specific Pool if the Pool agrees or the court so orders, but this is not an authorization for the Pool to undertake such expense on its own initiative. (See e.g. Judgment section 54 and Peace Agreement section 5.4(a).) Under Section 38 (a) Pool Committees are limited to "developing policy recommendations for administration of its particular Pool." Special Project expense necessarily must be part of the Physical Solution which is under the control of the Court and its Court appointed Watermaster. While the Pool Committees are there to provide advice and assistance to Watermaster they may not supplant Watermaster's Physical Solution authority under Section 41.

Further, the Special Joint Pool Committee would like to notify Watermaster that additional legal fees have been expended which will require a budget transfer before the end of this fiscal year. Staff will be preparing a legal fee Budget Transfer in May for both the Watermaster and the Agricultural Pool, as recommended by the Special Joint Pool Committee. Presently, the estimate for the Agricultural Pool Budget Transfer for legal fees is approximately \$30,000.00.

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 SCOTT BURTON IN SUPPORT OF REBUTTAL BRIEF AND OBJECTIONS RE: JOINT STATEMENT REGARDING SETTLEMENT

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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