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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*

**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 REIMBURSEMENT
MOTION**

[Concurrently Filed with Declaration of S.
Burton; Declaration of J. Gutierrez]

Date: April 8, 2022

Time: 1:30 p.m.

Department: S35

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY	5
II. BACKGROUND	7
III. OBJECTIONS TO THE TERMS OF AGREEMENT (TOA)	8
IV. OBJECTIONS TO THE JOINT STATEMENT.....	10
V. LEGAL ARGUMENTS.....	12
A. There Is No Settlement of the Reimbursement Motion.	12
B. The TOA Does Not Bind the Moving Parties.....	12
1. The TOA Unlawfully Modifies the May 28 and December 3 Orders.	12
2. The TOA Unlawfully Amends the Peace Agreement Without the Consent of All Parties.	13
3. These Proceedings Were Initiated to Protect the Interests of AP Members – Not the AP.	14
4. The TOA Violates Public Policy, Including the Prohibition Against Gifts of Public Funds.	15
C. The AP Lacks Authority to Bind Its Members to the TOA Without Their Consent.	16
VI. CONCLUSION.....	18

1
2
3
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Rules

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Constitutions

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1 **I. INTRODUCTION AND SUMMARY**

2 The City of Ontario (“Ontario”), the City of Chino (“Chino”), and Monte Vista Water
3 District and Monte Vista Irrigation Company (collectively, “Monte Vista”), are parties to the
4 pending Motion for Reimbursement of Attorney’s Fees and Expenses Paid to the Agricultural
5 Pool (“Reimbursement Motion”) filed by Chino on or about January 4, 2022.¹ The hearing on
6 this motion originally was set for February 4, 2022. The hearing was continued to April 8 after
7 counsel for the Agricultural Pool (“Ag Pool”) represented to the Court that a settlement had been
8 reached – thereby implying that the alleged settlement encompassed the Reimbursement Motion.
9 As of the date of this Rebuttal Brief and Objections, there continues to be no settlement of the
10 Reimbursement Motion.

11 The Ag Pool and AP recently signed a document entitled “Terms of Agreement” (“TOA”)
12 and filed it with the Court as Exhibit A to the Pools’ Joint Statement dated March 24, 2022 (“Joint
13 Statement”). (Declaration of S. Burton, filed herewith [“Burton Decl.”], ¶ 3 & Ex. 1.) Ontario,
14 Chino, and Monte Vista (collectively, the “Moving Parties”) voted against the TOA and
15 registered their objections to it on the record. (*Id.* at ¶ 4.) The Moving Parties object to the TOA
16 and Joint Statement for many reasons summarized herein, not least of which is that the TOA
17 provides for payment of many hundreds of thousands of dollars of Ag Pool legal expenses for
18 which supporting documentation (i.e., attorney invoices) has never been provided as required by
19 the May 28 Order. (*Id.* at ¶¶ 7-8.)

20 The AP is not a party to the Reimbursement Motion and cannot settle it on behalf of the
21 Moving Parties. Nor can the AP relinquish rights or benefits obtained by the Moving Parties
22 through the Motion of AP Member Agencies re: Ag Pool Legal and Other Expenses, filed on or
23 about September 18, 2020 (“Original Motion”). The Original Motion was brought by AP
24 member agencies (not the AP) to protect members’ individual rights and financial interests. The
25 Original Motion resulted in the Court’s Order of May 28, 2021 (“May 28 Order”),² which

26 ¹ Monte Vista filed its joinder in the Motion on or about January 6, 2022. Ontario filed its
27 joinder on January 11.

28 ² The May 28 Order was not appealed from, and it is now final. Time to appeal expired sixty
days after entry of the Order. (California Rules of Court, Rule 8.406(a).)

1 interprets Section 5.4(a) of the Peace Agreement to include appropriate legal limitations on fee-
2 shifting. The May 28 Order led to the Court’s December 3 Order (“December 3 Order”) denying
3 the Ag Pool’s motion for legal expenses incurred in fiscal years (“FY”) 2019-20 and 2020-21,³
4 which led to the pending Reimbursement Motion.

5 To be clear, the Moving Parties do not dispute that other AP members are free to settle
6 their own claims or disputes with the Ag Pool, to the extent their agreement comports with public
7 law and policy. Other AP members cannot, however, by virtue of their collective membership in
8 the AP, force the Moving Parties to relinquish rights and impose financial obligations on them
9 contrary to the May 28 and December 3 Orders. The lack of AP authority to impose the TOA on
10 the Moving Parties without their consent and over their objections is evidenced by reference to
11 the Judgment including the AP Pooling Plan, the Peace Agreement, and the May 28 Order:

- 12 • It is the AP members (not the Pool) that hold water rights and incur obligations to pay
13 assessments under the Judgment. (Judgment, §§ 9, 43(c), 55; Exhibit E; Exhibit H ¶¶
14 6, 7, 10(b)(5).)
- 15 • It is the AP members (not the Pool) that pay Ag Pool expenses under Section 5.4(a) of
16 the Peace Agreement.⁴ (Peace Agreement, §§ 1.1(b); 5.4(a); Burton Decl., ¶ 10.)
- 17 • AP members (not the Pool) filed the Original Motion, which resulted in the May 28
18 Order and its interpretation of Section 5.4(a) of the Peace Agreement to include
19 appropriate legal limits on legal fee-shifting.
- 20 • The Moving Parties (not the Pool) filed the pending Reimbursement Motion to recover
21 funds they paid to cover Ag Pool legal expenses in FY 2019-20 and 2020-21, which
22 the Ag Pool failed to substantiate as required by the May 28 Order.

23 ³ On March 28, 2022, the Ag Pool filed a notice of abandonment of its pending appeal from the
24 December 3 Order (Case No. E078377). The Ag Pool did so despite having been informed of
25 the Moving Parties’ objection to the Pools’ TOA and declination of any benefits. (Declaration of
J. Gutierrez, filed herewith [“Gutierrez Decl.”], ¶¶ 15-18 & Ex. 2.)

26 ⁴ Section 1.1(b) of the Peace Agreement defines “Appropriative Pool” to “have the **meaning as**
27 **used in the Judgment and shall include all its members.**” (Emphasis added.) Section 5.4(a)
of the Peace Agreement provides that “all assessments and expenses of the Agricultural Pool . . .
shall be paid by the Appropriative Pool.” Watermaster assesses and invoices the individual
appropriators, not the Pool, for expenses under Section 5.4(a). (Burton Decl., ¶ 10.) The AP has
28 no funds apart from what is paid to Watermaster by AP members. (*Ibid.*)

- 1 • Each of the Moving Parties is a signatory and party to the Peace Agreement. The
2 TOA constitutes an amendment that cannot be implemented without unanimous
3 approval of all the parties to the Peace Agreement. (Peace Agreement, § 10.14.)
- 4 • The AP lacks authority to bind the Moving Parties to the TOA without their consent.
5 Under Section 38(a) of the Judgment, the role of the AP is limited to developing
6 policy recommendations for its particular Pool, not obligating the Moving Parties to an
7 agreement and payments to which they objected and voted against.
- 8 • The Joint Statement was inappropriately filed by counsel for the AP without
9 authorization as explained below in Part IV at ¶ 5.

10 In short, the Pools lawfully cannot renounce or compromise the rights and interests of the
11 Moving Parties under Paragraph 5.4(a) of the Peace Agreement as interpreted and applied by the
12 May 28 and December 3 Orders. The Moving Parties respectfully request that the Court
13 disregard the TOA and proceed with ruling on the Reimbursement Motion.

14 **II. BACKGROUND**

15 There is a straightforward reason why the Moving Parties have not agreed to settle the
16 Motion for Reimbursement with the Ag Pool: there have not been any settlement negotiations.
17 While the Moving Parties have not been silent about their interest in discussing settlement, the Ag
18 Pool has shown none. Soon after filing the Reimbursement Motion, counsel for Chino invited
19 counsel for the Ag Pool to discuss settlement of the matters presented in the Motion but received
20 no response. (Gutierrez Decl., ¶¶ 4-8 & Ex. 1.) At the February 4 hearing, counsel for Ontario
21 and Chino disputed the representation of Ag Pool's counsel as to the existence of a settlement by
22 stating unequivocally that, in fact, there was no settlement. (Burton Decl., ¶ 17.) Counsel for the
23 AP confirmed this fact for the Court. (*Ibid.*) Then, in open court, counsel for Chino reiterated his
24 invitation to the Ag Pool to communicate with him about settlement, but the Ag Pool never
25 accepted that invitation. (Gutierrez Decl., ¶¶ 10-11.)

26 Rather than engage in settlement negotiations with the Moving Parties, members of the Ag
27 Pool negotiated with other members of the AP. (See Gutierrez Decl., ¶ 12.) Those negotiations
28 led to the TOA between the Pools containing provisions contrary to the May 28 and December 3

1 Orders, in an apparent attempt to deprive the Moving Parties of their rights and/or benefits under
2 those Orders without their consent and despite their objections.

3 The Moving Parties are willing to negotiate. They have been ready and willing to
4 participate in good faith negotiations with the Ag Pool. (Burton Decl., ¶¶ 11-16.) Ontario helped
5 initiate such negotiations through an in-person meeting with representatives of the Ag Pool in
6 early 2020. (*Id.* at ¶ 12; see also Suppl. Decl. of S. Burton, filed Oct. 16, 2020, ¶ 2.) Thereafter,
7 Ontario, Monte Vista, and others wrote letters expressing their concerns. (Burton Decl., ¶ 13; see
8 also Decl. of S. Burton, filed Sep. 21, 2020, ¶¶ 6-10 & Exhibits.) Even after AP members
9 including the Moving Parties jointly filed their Original Motion, they continued to participate in
10 negotiations with the Ag Pool. (Burton Decl., ¶ 14.) For example, they participated in mediation
11 with the Ag Pool in early 2021. (*Ibid.*) After mediation failed, Ontario continued to participate in
12 direct negotiations with the Ag Pool until about July 2021. (Burton Decl., ¶ 15; see also Decl. of
13 J. Bosler, filed Sep. 27, 2021, ¶ 4.) Since that time, however, Ontario’s representative has been
14 excluded from further negotiations. (Burton Decl., ¶¶ 15-16.) Monte Vista proposed settlement
15 terms reflecting concerns of the Moving Parties to the AP in September 2021 and again in
16 February and March 2022, but Monte Vista’s settlement proposals were not seriously considered
17 by the Pools. (*Id.* at ¶ 18.)

18 Given this history of exclusion, there can be no surprise that the Moving Parties did not
19 consent to be bound by the TOA and objected to its approval by the AP. (See Burton Decl., ¶ 19.)
20 Tellingly, neither the TOA nor the Joint Statement assert that the Moving Parties are obligated
21 under its terms. More importantly, the TOA does not identify the pending Motion for
22 Reimbursement nor does it assert that the Motion for Reimbursement will be dismissed by the
23 Moving Parties.

24 **III. OBJECTIONS TO THE TERMS OF AGREEMENT (TOA)**

25 The Moving Parties (Chino, Ontario, and Monte Vista) were parties to the Original
26 Motion and active participants in the litigation that resulted in the May 28 and December 3 Court
27 Orders. Yet, the Moving Parties are not parties to the TOA advanced by the two Pools, and they
28 object to the TOA on both procedural and substantive grounds.

1 The Moving Parties voted against the TOA and objected to its approval by the AP, as
2 shown by the AP vote report attached as Exhibit B to the Joint Statement. (Ex. 1 to Burton Decl.)
3 Furthermore, the Moving Parties immediately informed the Ag Pool of their objection to the TOA
4 and their declination of its benefits. (Gutierrez Decl., ¶¶ 15-18 & Ex. 2.) The Pools cannot
5 lawfully bind the Moving Parties to an agreement without their consent and over their objections,
6 as explained in Part 5.B below. No legal authority empowers the AP to enter into an agreement
7 on behalf of the Moving Parties, as explained in Part 5.C below.

8 Furthermore, the Moving Parties object to the substance of the TOA because it represents
9 both a modification of the May 28 and December 3 Orders and an amendment to the Peace
10 Agreement, in the following respects:

- 11 1. The TOA would modify the May 28 Order by paying hundreds of thousands of dollars
12 of past Ag legal expenses without ever obtaining documentation showing any amount
13 is payable under Section 5.4(a) of the Peace Agreement.
- 14 2. The TOA's fourth un-numbered paragraph would require a payment of \$370,000 for
15 Ag Pool legal expenses incurred for prior fiscal years, even though payment of such
16 legal expenses was denied by the December 3 Order.⁵ The \$370,000 payment would
17 be in addition to \$483,202.54 already paid,⁶ for total payments of \$853,202.54, all
18 without adequate supporting documentation.⁷
- 19 3. The TOA is silent as to how the \$370,000 payment would be allocated among the AP
20 members. The Pools appear to expect Moving Parties to make substantial payments
21 even though they have not agreed to do so.
- 22 4. Paragraph No. 1 of the TOA would require the \$102,557.12 expended on Ag legal
23 expenses from Watermaster's administrative reserves to be repaid from the \$370,000

24 _____
25 ⁵ The payment was calculated, in part, based on giving back to the Ag Pool amounts that had
26 been held in escrow, and which the December 3 Order directed Watermaster to refund to AP
27 payors. (Ex. 3 to Burton Decl.)

26 ⁶ The TOA is silent as to how any of the \$483,202.54 already paid to the Ag Pool would be
27 reimbursed to Ontario, Chino and Monte Vista as parties that have not agreed to the TOA.

27 ⁷ The amounts already paid for Ag legal expenses, broken down by fiscal year, are as follows:
28 \$483,202.54 = \$367,938.66 (FY 2019-20) + \$115,263.88 (FY 2020-21).

1 payment by the AP – even though the December 3 Order relieves the AP from any
2 such obligation.

3 5. Although Paragraph No. 6 purports to prohibit abrogation or waiver of the rights of
4 the AP under the May 28 Order, that representation is contradicted by other
5 provisions of the TOA described herein. For example, Paragraph No. 6(b) would
6 limit the rights granted by the May 28 Order, because it appears to exclude individual
7 appropriators such as the Moving Parties from the review of Ag Pool invoices and
8 injects an arbitrary 30-day limit on the review process.

9 6. Paragraph No. 6(c) would impose an attorney fee-shifting provision, representing an
10 amendment of the Peace Agreement, without the consent of all the parties to the
11 Peace Agreement in violation of its terms. (Peace Agreement, § 10.14.) Relevant
12 sections of the Peace Agreement contradict this provision: Section 5.4 is devoid of
13 any attorney fee-shifting provision, and Section 9.2(d) limits the grant of attorneys’
14 fees to adversarial proceedings and specifically excludes them for dispute resolution.

15 In short, the TOA would modify the May 28 and December 3 Orders and the Peace
16 Agreement without the consent of all parties, including the Moving Parties. Among other
17 troubling terms, it purports to require AP members to pay hundreds of thousand dollars for legal
18 expenses incurred while this dispute has been pending – to which the Ag Pool has never
19 established any entitlement whatsoever. These payments so egregiously exceed any reasonably
20 determined valuation of the Ag Pool’s claims as to constitute an illegal gift of public funds. (Cal.
21 Const., art. XVI, § 6.)

22 **IV. OBJECTIONS TO THE JOINT STATEMENT**

23 The Moving Parties object not only to the TOA as summarized above, but also to the
24 contents of the Joint Statement and its filing, as follows:

25 1. The entirety of the Joint Statement is based on a false characterization of the AP as
26 the “sole obligor” under Section 5.4(a) of the Peace Agreement. Section 5.4(a)
27 obligates the “Appropriative Pool,” as defined by Section 1.1(b) of the Peace
28 Agreement to “have the meaning **as used in the Judgment . . . includ[ing] all its**

1 **members**” to pay certain assessments and expenses of the Ag Pool. (Emphasis
2 added.) Each of the Moving Parties is a member of the AP and therefore an obligor
3 under Section 5.4(a) – as well as an independent party with rights and interests under
4 the Judgment, the Peace Agreement, and the May 28 and December 3 Orders.
5 Nothing in the Judgment (see especially, Section 38) nor the Peace Agreement
6 empowers the AP to act collectively to bind individual members to the TOA.

7 2. The TOA incorrectly represents that the TOA “is a comprehensive resolution of the
8 current fees dispute arising under Section 5.4(a) of the Peace Agreement between the
9 named obligee and obligor.” The TOA does not comprehensively resolve anything
10 because it does not include the Moving Parties for all the reasons explained herein.

11 3. Likewise, the TOA is not a “comprehensive resolution of the current appeal taken on
12 this Court’s December 3, 2021 Order.” The Ag Pool abandoned this appeal on March
13 28, 2022, despite having been informed in advance of the Moving Parties’ objection
14 to the TOA and declination of any benefits. (Gutierrez Decl., ¶¶ 15-18 & Ex. 2.)

15 4. Any withdrawal of the Storage Contests by the Ag Pool is made with full knowledge
16 of the Moving Parties’ objection to the TOA and declination of any benefits.
17 (Gutierrez Decl., ¶¶ 15-18 & Ex. 2.)

18 5. Counsel for the AP filed the Joint Statement without authority to do so either under
19 the Judgment or by the AP.⁸

20 While neither the TOA nor the Joint Statement expressly assert that the Moving Parties
21 are obligated under the terms of the TOA, nonetheless, the Joint Statement strongly implies that
22 the Moving Parties are bound by the TOA apparently because it was approved by a majority vote
23 of the Ag Pool and AP. Likewise, the Joint Statement and TOA do not mention the
24 Reimbursement Motion, and yet, the Joint Statement seems to imply that the TOA somehow
25 requires the Moving Parties to dismiss it. However, the Joint Statement acknowledges that the

26 _____
27 ⁸ Section 38(c) of the Judgment establishes the limited role of Pool counsel by empowering each
28 Pool to “employ counsel . . . in the event . . . such Pool . . . seeks review of any Watermaster
action or failure to act.” Action by Pool counsel outside this limited scope of authority
established by the Judgment requires the consent of all Pool members.

1 Moving Parties refused to consent to and to be bound by the TOA by attaching the AP's action
2 report detailing the AP's motions and voting on the TOA as Exhibit B to the Joint Statement.

3 **V. LEGAL ARGUMENTS**

4 The TOA is invalid and unenforceable to the extent it purports to resolve the Moving
5 Parties' pending claims for reimbursement and renounce their rights and interests under the
6 Peace Agreement as interpreted by the May 28 and December 3 Orders, including without
7 limitation, the right to conduct a meaningful review of invoices before paying legal expenses.
8 Entering into such an expansive agreement is beyond the scope of the AP's role and the authority
9 of the Pools under the Judgment.

10 **A. There Is No Settlement of the Reimbursement Motion.**

11 The TOA does not address the Reimbursement Motion, and it does not resolve the issues
12 presented by the Reimbursement Motion. Conspicuously absent from the Joint Statement is any
13 recitation of the Pools' intention to compromise the claims of the Moving Parties against the Ag
14 Pool in the pending Reimbursement Motion. The Joint Statement acknowledges the Moving
15 Parties refused to consent to and to be bound by the TOA. (See Exhibit B to the Joint Statement,
16 Burton Decl., at Ex. 1.) Accordingly, the TOA lacks the requisite element of a valid agreement,
17 i.e., mutual consent.

18 **B. The TOA Does Not Bind the Moving Parties.**

19 As explained above, the Joint Statement indicates an extremely broad intention of the
20 Pools to resolve issues regarding payment of Ag Pool legal expenses and Section 5.4(a) of the
21 Peace Agreement, including the claims and interests of the Moving Parties. Entering into such an
22 agreement is beyond the scope of the AP's role and authority under the Judgment.

23 **1. The TOA Unlawfully Modifies the May 28 and December 3 Orders.**

24 The Pool's TOA is invalid, first, because its terms would modify the May 28 and
25 December 3 Orders. The Moving Parties were parties to the Original Motion and active
26 participants in the litigation that resulted in the Court Orders. As a result of such litigation, the
27 Moving Parties received (a) a judicial interpretation of the meaning of Paragraph 5.4(a) of the
28 Peace Agreement, and (b) a denial the Ag Pool's request for payment of its attorney expenses by

1 members of the AP. The two Court Orders are important because they define the extent of the
2 appropriators' obligation under Section 5.4(a) of the Peace Agreement and the methodology for
3 ascertaining the amount of that obligation. The TOA would revise the meaning and methodology
4 of Section 5.4(a) of the Peace Agreement as set forth in the May 28 and December 3 Orders to the
5 detriment of the Moving Parties, over their objections and without their consent. Thus, the TOA
6 is invalid and unenforceable.

7 **2. The TOA Unlawfully Amends the Peace Agreement Without the**
8 **Consent of All Parties.**

9 The Pool's TOA is invalid, second, because it contains provisions that would amend the
10 Peace Agreement. For example, the May 28 Order interprets Section 5.4(a) of the Peace
11 Agreement to require production of invoices and that the expenses not be for adversarial purposes
12 and benefit the Ag Pool. (May 28 Order, ¶¶ 6(c), 8, Ex. 2 to Burton Decl.) The TOA would
13 abrogate this requirement by providing hundreds of thousands of dollars to the Ag Pool without
14 any invoices, and for adversarial purposes. Another example is that Paragraph 6(b) of the TOA
15 would limit the rights granted by the May 28 Order by excluding individual appropriators such as
16 the Moving Parties from the review of Ag Pool invoices and injects an arbitrary 30-day limit on
17 the review process. The May 28 Order contains no such limitations. Because the TOA
18 contradicts the Court's interpretation of Section 5.4(a), it constitutes an amendment to the Peace
19 Agreement. (Peace Agreement, § 10.14 ["The Parties hereby agree that no amendments may be
20 made to this Agreement without the express written approval of each Party to this Agreement."].)
21 Under Section 10.14, there can be no such amendment without the unanimous consent of all
22 parties.⁹

23 Each of the Moving Parties (Ontario, Chino, and Monte Vista) is a party and signatory to
24 the Peace Agreement, and none of these parties has signed the TOA. Thus, the TOA is an invalid
25 amendment to the Peace Agreement.

26 _____
27 ⁹ The Court Order entered April 28, 2017, which declines to approve the Safe Yield Reset
28 Agreement in light of objections by certain parties, underscores that a party cannot be forced to
agree to a Peace Agreement amendment.

1 **3. These Proceedings Were Initiated to Protect the Interests of AP**
2 **Members – Not the AP.**

3 The TOA is invalid, third, because interested parties have not consented to it. Individual
4 AP members hold water rights and incur obligations to pay assessments under the Judgment.
5 (Judgment, §§ 9, 43(c), 55; Exh. E; Exh. H ¶¶ 6, 7, 10(b)(5).) For this reason, AP members (not
6 the Pool) filed the Original Motion challenging the Ag Pool’s “‘all’ means ‘all’” interpretation of
7 Section 5.4(a) of the Peace Agreement, and in particular, the Ag Pool’s insistence that only it may
8 determine what constitutes payable legal expenses. The AP was not a party to the Original
9 Motion.

10 Ontario initially led the effort (Burton Decl., ¶ 13), and many AP members joined in and
11 benefitted from the May 28 Order resolving the Original Motion. The Ag Pool responded to the
12 May 28 Order by bringing a motion for its legal expenses for FY 2019-20 and 20-21, which was
13 denied in its entirety by the Court by its December 3 Order. Then, Moving Parties brought the
14 pending Reimbursement Motion to recover amounts they already paid for Ag Pool legal expenses,
15 for which the Ag Pool failed to establish any entitlement. Once again, the AP is not a party to the
16 Reimbursement Motion.

17 The Moving Parties, collectively, have a financial stake that represents roughly a third of
18 the total amounts at issue for FY 2019-20, 20-21, and 21-22, as shown by information presented
19 in the Reimbursement Motion and Ontario’s joinder. Other AP members hold the remaining
20 financial stake (roughly two-thirds). The Pools’ agreement is not effective to resolve matters
21 embraced in these proceedings without the consent, and over the objection, of the Moving Parties
22 whose financial interests are directly at issue.

23 The AP itself is not the payor for any Ag Pool legal expenses. Unlike AP members, the
24 AP holds no water rights under the Judgment, and it pays no assessments. The AP has no funds
25 apart from what is paid to Watermaster by AP members. (Burton Decl., ¶ 10.) The AP serves
26 administrative functions on behalf of the AP members pursuant to the Judgment and the Peace
27 Agreement. (See Part V.C below for further discussion.) The AP lacks any financial interest in
28

1 the outcome of these proceedings that it could settle.¹⁰ The administrative role of the AP does not
2 confer authority to cram down an agreement on public agencies over their objections.

3 **4. The TOA Violates Public Policy, Including the Prohibition Against**
4 **Gifts of Public Funds.**

5 The TOA is invalid and unenforceable, fourth, because it violates public policy. Courts
6 interpret contracts such as the TOA to avoid violations of public policy. (Civ. Code, § 1667.2 [a
7 contract that violates public policy is illegal].) Relevant here:

8 Unlawful delegation of governmental entities’ settlement authority. Each Moving Party is
9 an independently constituted public entity under the law of the State of California. Each has its
10 own governance structure including a City Council or Board of Directors, which holds the
11 authority to settle matters to which it is a party. (*Reams v. Cooley* (1915) 171 Cal. 150 [a contract
12 not executed in the manner authorized by law is not enforceable against the public agency].) This
13 governmental authority to settle claims has never been delegated to the AP.

14 Public accountability for expenditures. Public water suppliers such as the Moving Parties
15 have a responsibility to ensure that expenses passed through to the public through water rates are
16 documented and justified as being payable. Additionally, the Moving Parties are governmental
17 entities with public duties that prevent them from funding a “blank check” to benefit private
18 parties like many members of the Ag Pool. (See, e.g., *Ecco-Phoenix Electric Corp. v. Howard J.*
19 *White, Inc.* (1969) 1 Cal.3d 266, 272 [unilateral fee-shifting provisions are unenforceable].) Yet,
20 the TOA would permit the Ag Pool to retain hundreds of thousands of dollars without ever
21 providing supporting documentation. Further, the TOA proposes to pay an additional \$370,000
22 without any showing whatsoever that such funds are payable to the Ag Pool under Section 5.4(a)
23 of the Peace Agreement as interpreted by the Court.

24 _____
25 ¹⁰ The Court of Appeal appears to have recognized AP’s limited role and non-party status when
26 it rejected a Notice of Association of Counsel submitted on behalf of the AP on February 9, 2022
27 in the Ag Pool’s now-abandoned appeal from the December 3 Order (Case No. E078377). Had
28 the Ag Pool not abandoned its appeal, the Moving Parties would have opposed the AP’s motion
for party status on grounds the AP is not an aggrieved party and would lack standing in
connection with such an appeal. (See *Dow v. Lassen Irrigation Co.* (2022) 75 Cal.App.5th 482
[watermaster did not have the right to appeal from a court order where it was the water rights
holders’ pecuniary interests that would be affected by the order, not the watermaster’s].)

1 Unlawful gift of public funds. The TOA would result in payments of Ag Pool legal
2 expenses totaling more than eight hundred thousand dollars for FY 2019-20 and 2020-21, in
3 contravention of the May 28 and December 3 Orders. As determined by the December 3 Order,
4 the Ag Pool failed to establish any entitlement to payment of its legal expenses incurred in these
5 fiscal years, because the limited information presented by the Ag Pool demonstrated that many
6 activities “were adversarial to the Appropriative Pool,” and otherwise, the Court could not
7 determine what the legal expenses were for. (December 3 Order, Ex. 3 to Burton. Decl.) In light
8 of the Court’s determinations, the payments to the Ag Pool would be so egregiously in excess of
9 any reasonably determined valuation of the Ag Pool’s claims as to constitute an illegal gift of
10 public funds. (Cal. Const., art. XVI, § 6 [Public agencies are prohibited from making “any gift . .
11 . of any public money or thing of value to any individual, municipal or other corporation
12 whatever.”]; *Jordan v. Department of Motor Vehicles* (2002) 100 Cal.App.4th 431, 453 [“An
13 award of a gift of public funds is not authorized by law; the state could not agree to it, the
14 Legislature could not authorize it, and neither this nor any court could confirm it.”].)

15 Additionally, as determined by the May 28 Order, requiring payment of someone else’s
16 legal expenses in the absence of adequate documentation is fundamentally unfair and a violation
17 of due process. (May 28 Order, Ex. 2 to Burton Decl.) Unredacted invoices for Ag Pool legal
18 expenses have never been provided to members of the AP, contrary to the May 28 Order. (Burton
19 Decl., ¶¶ 7-8.) Based on the information available to the Moving Parties (and the AP), the Ag
20 Pool is not entitled to any payments of its legal expenses going back at least to the beginning of
21 the fee dispute. Under these circumstances, payments totaling more than eight hundred thousand
22 dollars for legal expenses incurred by the Ag Pool in FY 2019-20 and 2020-21 would constitute
23 an unlawful gift of public funds.

24 **C. The AP Lacks Authority to Bind Its Members to the TOA Without Their**
25 **Consent.**

26 The AP is not created by any statute or law of the State. It is not a city, water district,
27 corporation, nor any other type of entity with an enabling statute. Rather, it is empowered and
28 limited by the specific documents that created it, i.e., the Judgment. (See, e.g., *Holt v. Santa*

1 *Clara County Sheriff's Ben. Ass'n* (1967) 250 Cal.App.2d 925, 929 [It is a “well-established
2 principle that the constitution or by-laws of an unincorporated association have the force and
3 effect of a contract between the association and its members as to which the members are
4 bound”.] Nothing in the Judgment and its AP Pooling Plan allows a majority of the AP or the
5 Ag Pool to bind other AP members to an agreement such as the TOA.

6 Section 38 of the Judgment (especially 38(a)) empowers and limits the role of AP and the
7 Ag Pool as follows:

8 38. Powers and Functions. The powers and functions of the respective
9 Pool Committees . . . **shall** be as follows:

10 (a) Pool Committees. Each Pool Committee **shall have the
11 power and responsibility for developing policy recommendations for
12 administration of its particular pool**, as created under the Physical Solution. . . .

13 (Emphasis added.) The Judgment uses mandatory language “shall,” which indicates that
14 “developing policy recommendations for administration of its particular pool” is the full scope of
15 the Pool’s role. A resolution of the Special Joint Pool Committee (i.e., the 2009 Memo) confirms
16 this limited role of the Pools, as follows:

17 . . . **Under Section 38(a) Pool Committees are limited to ‘developing policy
18 recommendations for administration of its particular Pool.’** Special Project
19 expense necessarily must be part of the Physical Solution which is under the
20 control of the Court and its Court appointed Watermaster. While **the Pool
21 Committees are there to provide advice and assistance to Watermaster** they
22 may not supplant Watermaster’s Physical Solution authority under Section 41.

23 (Ex. 4 to Burton Decl., emphasis added.) Nothing in the Judgment or the Pooling Plan expands
24 the role of the AP, nor gives it the ability to collectively decide matters on behalf of its members
25 that goes beyond the scope of Section 38 or the Judgment.¹¹ Likewise, nothing in the Judgment
26 or the Pooling Plans authorizes the Ag Pool to impose legally binding obligations on the AP or
27 AP members.

28 ¹¹ Paragraph 6 of the AP Pooling Plan (Exhibit H to the Judgment) provides for imposition of
administrative assessments to recover costs of administration of the AP and its share of general
Watermaster expense from appropriators.

1 In short, the AP provides administrative services on behalf of the AP members pursuant to
2 the Judgment. The administrative role of the AP does not confer authority to cram down a
3 settlement on public agencies over their objections.

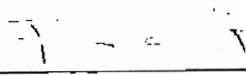
4 **VI. CONCLUSION**

5 For all the above-stated reasons, the Pools lawfully cannot, and have not, renounced the
6 rights and interests of the Moving Parties under Paragraph 5.4(a) of the Peace Agreement as
7 interpreted and applied by the May 28 and December 3 Orders. The Moving Parties respectfully
8 request that the Court disregard the TOA and proceed with ruling on the Moving Parties'
9 Reimbursement Motion.

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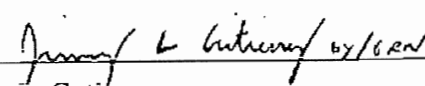
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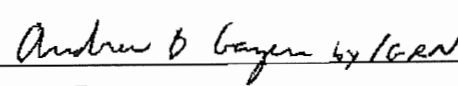
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CHINO BASIN WATERMASTER

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. 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 REIMBURSEMENT MOTION

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.



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