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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN BERNARDINO**

11
12 CHINO BASIN MUNICIPAL WATER
DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendants.

Case No. RCV RS 51010

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

**WATERMASTER LIMITED
RESPONSE TO 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**

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

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1 Watermaster respectfully submits this limited response to the Rebuttal Brief And
2 Objections Re Joint Statement Regarding Settlement Between Appropriative Pool And
3 Agricultural Pool Re: Peace Agreement 5.4(a), Which Does Not Settle The Reimbursement
4 Motion (“Rebuttal Brief”) filed by the City of Ontario, City of Chino, Monte Vista Water District
5 and Monte Vista Irrigation Company (“Objecting Parties”) on April 1, 2022. Watermaster
6 continues to take no position on any of the underlying claims, the opposition, the settlement
7 thereof or the challenges to the propriety of the settlement. However, an argument raised in the
8 Rebuttal Brief (pages 16-18) offers an interpretation of the Restated Judgment that merits a
9 Watermaster response as it has both specific and general application to the administration of the
10 decree by Watermaster and the citations are incomplete.

11 In short summary, a settlement of a dispute arising from a specific contractual provision
12 between the Appropriative Pool, the obligor, and the Overlying (Agricultural) Pool, the obligee,
13 arising out of Section 5.4(a) of the Peace Agreement, was lodged with the Court on March 24,
14 2022. Subsequently, the Objecting Parties, four members of the Appropriative Pool, have
15 contested the settlement on several grounds. *Watermaster narrowly responds to a construction of*
16 *the Judgment set forth in the Response*; that is, whether the three Pools, including the
17 Appropriative Pool, have authority act in a representative capacity within the context of the
18 Restated Judgment and the court approved management agreements?

19 Watermaster is not a party to the Peace Agreement, a contractual agreement among the
20 parties thereto. Instead, by design and this Court’s order, Watermaster acts in a manner consistent
21 with the Peace Agreement and its terms, performing a mere ministerial duty related to Section
22 5.4(a). Watermaster receives invoices from the obligee and collects funds to process payment in
23 the manner directed by the obligor, the Appropriative Pool. (Declaration of Peter Kavounas in
24 Support of Watermaster’s Response to Rebuttal Brief and Objections Re Joint Statement
25 Regarding Settlement Between Appropriative Pool and Agricultural Pool Re: Peace Agreement
26 5.4(A), Which Does Not Settle the Reimbursement Motion (“Kavounas Decl.”), ¶ 3.)

27 Objecting Parties include among their challenges to the proffered Settlement that the
28 Appropriative Pool lacks the legal authority to bind its members in a representative capacity
because: (i) the Appropriative Pool’s authority is narrowly circumscribed by Restated Judgment
Paragraph 38(a), and (ii) that the Appropriative Pool cannot bind its members. (Rebuttal Brief, 16

1 -18.) In effect, this means the scope of the settlement is beyond the Appropriative Pool’s
2 authority and, even if it were within its scope, approval by the Appropriative Pool members
3 would have to be unanimous.

4 The argument is grounded in an interpretation of the Restated Judgment that is
5 inconsistent with its efficient administration, historical practice, and the language of the Restated
6 Judgment itself. Here is why.

7 Restated Judgment Paragraph 38(a) does not state that the Pools’ sole responsibility is
8 making “policy recommendations for its particular pool...”. (Rebuttal Brief, 7:6.) Rather,
9 Paragraph 38(a) enumerates the Pool Committees’ purpose to advise Watermaster. Clearly this is
10 a key role, but not the only one. In support of their argument, Objecting Parties cite only to a
11 2009 Special Committee memo for this proposition. The problem with the argument is that it
12 defies logic and an appreciation of the requirement for efficient and coordinated management of
13 the Basin.

14 Part VI of the Restated Judgment speaks to the principal reason for entry of the Judgment:
15 the “Physical Solution,” which establishes a broad responsibility for adaptive management over
16 time. The pattern of responsibilities is addressed in Restated Judgment Paragraph 39, which
17 declares that the Court is adopting and ordering the parties to comply with a Physical Solution:

18 [T]o establish a legal and practical means for making the maximum
19 reasonable and beneficial use of waters by the Chino Basin by
20 providing the optimum economic, long-term, conjunctive utilization
21 of surface waters, ground waters and supplemental water, to meet
22 the requirements of water users having rights in or dependent upon
23 the Chino Basin. (Restated Judgment, ¶ 39.)

24 Paragraph 40 establishes the need for flexibility to “maximize beneficial use of waters
25 of Chino Basin” and reserves jurisdiction to supplement the discretion of Watermaster where
26 appropriate. (Restated Judgment, ¶ 40.)

27 Paragraph 41 grants Watermaster discretionary powers to develop an optimum basin
28 management program for the Basin, with the assistance of Advisory and Pool Committees.
(Restated Judgment, ¶ 41.)

Section VI. Paragraph 43 of the Judgment continues with a more complete description of
the Pools’ interests and responsibilities:

1 There are hereby established three (3) pools for Watermaster
2 administration of, and for allocation of responsibility for, payment
3 of costs, or replenishment water, *and other aspects of the Physical*
4 *Solution.*” (Restated Judgment, ¶ 43 (emphasis added).)

5 The Court is keenly aware that these provisions of the Restated Judgment were the
6 impetus for the development of the Optimum Basin Management Program, first approved by the
7 Court in 2000 and which was predicated on execution of the Peace Agreement. The actions
8 implementing the OBMP are not subject to the easily labeled responsibility of any one party. And
9 the benefits are achieved by coordinated action, foreseen by the parties, Watermaster and the
10 Courts.

11 By unanimous resolution in 2000, the Appropriative Pool approved the Peace Agreement
12 and expressly authorized the execution of the agreement, including the Watermaster actions to be
13 undertaken. (Kavounas Decl., ¶ 4, Exhibit “A.”) The Resolution provides express consent to the
14 Chairman to execute the agreement “on behalf of the Appropriative Pool” and to exert the Pool’s
15 rights and responsibilities pursuant to that agreement.

16 Since their entrance into and the Court’s approval of the Peace Agreement, each of the
17 Pools has acted in a representative capacity in accordance with its respective Pooling plan, where
18 it has been necessary or convenient. (Kavounas Decl., ¶ 5.) Individual appropriators (members of
19 the Appropriative Pool) are not without remedy if their individual rights are harmed. They can
20 file a Contest, pursue specific remedies under the Peace Agreement, or seek review of
21 Watermaster’s actions. (Restated Judgment, ¶ 31.) But the Objecting Parties’ argument that
22 unanimity is a requirement for the Pool to act, allows an appropriator the ability to “opt out” of
23 the proposed action, not only for itself, but as to the entire Pool.


24 At which point, Watermaster will be challenged as to how the Restated Judgment can be
25 efficiently administered, and at what cost. The Declaration of Peter Kavounas provides a survey
26 of the pragmatic benefits of the Pool’s ability to act in a representative capacity. (Kavounas Decl.,
27 ¶ 5.) And the Pool’s ability to act in this manner also benefits Watermaster as it allows
28 Watermaster the certainty of a single voice from which it takes instructions. (Kavounas Decl., ¶

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6.) If this Court does not agree that these authorities and considerations warrant the Pool acting in a representative capacity on matters of uniform application, Watermaster requests that the Court allow further briefing or, in the alternative, provide its guidance as to the manner in which Watermaster may receive such instruction from the members of the Pool.

Dated: April 6, 2022

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24015282.2

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 7, 2022 I served the following:

1. WATERMASTER LIMITED RESPONSE TO 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 7, 2022 in Rancho Cucamonga, California.


By: Janine Wilson
Chino Basin Watermaster

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