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EXEMPT FROM FILING FEE PER GOV. CODE, § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, ET AL.,

Defendants.

Case No: RCVRS 51010

Assigned for All Purposes to: Honorable Stanford E. Reichert

MOVING PARTIES' REPLY TO SURREBUTTALS FILED BY THE APPROPRIATIVE POOL AND THE AGRICULTURAL POOL

[Concurrently Filed with Declarations of D. Crosley, A. Robles, and S. Burton]

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I. INTRODUCTION AND SUMMARY

The matter pending before the Court is the Motion for Reimbursement of Attorney's Fees and Expenses Paid to the Agricultural Pool ("Reimbursement Motion") brought by four Moving Parties: Chino, Ontario, and Monte Vista (i.e., Monte Vista Water District and Monte Vista Irrigation Company). The Reimbursement Motion seeks reimbursement – whether by direct refund, credit, or otherwise – of certain amounts paid for legal expenses incurred by the Agricultural Pool ("Ag Pool") in two fiscal years for which the Ag Pool failed to establish any entitlement to such expenses. Since early 2020, the Ag Pool has consistently refused all demands to provide its legal invoices for review by moving members of the Appropriative Pool ("AP"), the AP itself, and/or the Court. This refusal continues to the present day, despite the Court's May 28 Order which provides that:

> "No reasonable person would make a contract that would obligate the person to pay another party's expenses without limit and without knowledge of the nature of the expenses . . . .
>
> "It is fundamentally unfair to compel a party to pay expenses over which the party has no control and no specific, detailed knowledge.
>
> ". . . [T]he Ag Pool and the Appropriative Pool[1] can agree to a determination to about payment of 'litigation expense.' The court concludes that they have been doing this up until the instant motion. The court will only add that **now the dispute has arisen, the procedure should include the Ag Pool providing the Appropriative Pool with the Ag Pool's attorney fee bills.** Otherwise, there will be no way for the Appropriative Pool to determine whether the bills fit within the court's interpretation. . . .
>
> ". . . It is a denial of due process, as well as fundamentally unfair, for a party to be forced to pay a bill that the party has not seen. . . ." (May 28 Order, at ¶¶ 2.B, 2.C, 7, 8.B.III, emphasis added.)

According to the Pools' Joint Statement and Terms of Agreement ("TOA") filed with the Court, in the absence of supporting documentation nevertheless it is acceptable for individual members of the AP, including objecting parties, to pay more than $800,000 for Ag Pool legal expenses incurred in two fiscal years 2019-20 and 2020-21. The Moving Parties emphatically disagree.

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[1] "Appropriative Pool" is a defined term "hav[ing] the meaning as used in the Judgment and **shall include all its members**" according to § 1.1(b) of the Peace Agreement. Thus, § 5.4(a) obligates individual members of the AP. Nothing in the May 28 Order converts the AP into the "sole obligor" under § 5.4(a), nor could it, given that AP members are the payors of Watermaster assessments (not the AP), as acknowledged by the AP in its Surrebuttal at page 5.

That both Pools jointly seek to require individual AP members to pay large sums to the Ag Pool in the absence of supporting documentation is just one deeply troubling aspect of the TOA and a fatal flaw. The TOA is invalid for numerous additional reasons explained in our prior briefing and summarized herein. Importantly, by attempting to impose the TOA on Moving Parties over their objections, the two Pools have converted a dispute about the Ag Pool's insistence on a "blank check" interpretation of Section 5.4(a) of the Peace Agreement into an eerily similar dispute in which the two Pools and Watermaster seek new "carte blanche" authority for the AP to govern the contractual rights and interests of parties by majority rule. The efforts of the Pools to impose the TOA on the Moving Parties and foreclose their Reimbursement Motion represents an unprecedented overreach of the Pools' limited power under the Judgment and its Pooling Plan.

For purposes of ruling on the Reimbursement Motion, however, the Court need not determine the outer bounds of the Pools' authority under the Judgment and Peace Agreement. The only issue before the Court related to the TOA is whether it resolves the Reimbursement Motion. The Moving Parties respectfully submit that the TOA has no such effect for the many reasons explained in prior briefing and herein.

The invalidity of the TOA and its inapplicability to the Reimbursement Motion presents no significant challenges for Basin governance going forward. Any entitlement of the Ag Pool to payment of its legal expenses pursuant to Section 5.4(a) of the Peace Agreement can be addressed via the process established by the Court in its May 28 Order. In contrast, imposing the TOA on Moving Parties would usher in a new era of Basin governance by reimagining the Pools as governing bodies with unforeseen super powers to enter into contracts on behalf of their members – including on behalf of independent governmental entities – in violation of law.

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II. REPLY TO APPROPRIATIVE POOL (AP) SURREBUTTAL

If there were any remaining doubt regarding the AP's intention and belief that it can impose the TOA on objecting parties, the AP Surrebuttal removes it.[2] The AP's assertion of this extraordinary new power is summed up in the AP Surrebuttal as follows:

> ". . . **AP members are bound by settlements and other actions by the AP** that conform to the Judgment and Pool procedures." (5:18-19, emphasis added.)

To be clear, the Moving Parties do not dispute that all AP members are bound by the Judgment including its voting provisions in the Pooling Plan. (See AP Surrebuttal, at 5:18-19.) Rather, the Moving Parties oppose extreme and invalid new interpretations of the Judgment, Pooling Plan, and Peace Agreement advanced by the AP that would make individual parties subject to governance by the AP on matters far beyond the role of the three pools under the Judgment.[3]

A. The AP Identifies Nothing in the Judgment that Empowers the AP to Impose the TOA on Its Members.

The limited role of the Pools is established by Paragraph 38 of the Judgment using mandatory language, "shall be," and its role well-described by three words that follow thereafter, "developing policy recommendations":

> "38. Powers and Functions. The powers and functions of the respective Pool Committees . . . **shall be** as follows:
>
> "(a) Pool Committees. Each Pool Committee shall have the power and responsibility for **developing policy recommendations** for administration of its

---

[2] Counsel for the AP prepared and filed the Surrebuttal without authority to do so. Section 38(c) of the Judgment establishes the limited role of Pool counsel by empowering each Pool to "employ counsel . . . in the event . . . such Pool . . . seeks review of any Watermaster action or failure to act."

[3] The fact that the AP is advancing a new and unprecedented interpretation is demonstrated by reference to the 2009 Memo of the three pools. The 2009 Memo explains the pools' shared understanding of their respective roles as follows:

> ". . . *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."

(2009 Memo, Ex. 4 to Burton Decl. filed on April 1, 2022, in support of the Rebuttal Brief & Objections, emphasis added.)

particular pool, as created under the Physical Solution. All actions and recommendations of any Pool Committee which require Watermaster implementation shall first be noticed to the other two pools. If no objection is received in writing within thirty (30) days, such action or recommendation shall be transmitted directly to Watermaster for action. If any such objection is received, such action or recommendation shall be reported to the Advisory Committee before being transmitted to Watermaster. . . ." (Emphasis added.)

Other provisions of the Judgment cited by the AP are consistent with Paragraph 38 and underscore the limited power of the AP, for example:

- Judgment ¶ 15, which provides for the Court's continuing jurisdiction, confirms the Pools' ability to seek judicial review pursuant to ¶ 38(c), and ¶ 31 sets forth procedures for judicial review. (See AP Surrebuttal, at 6:6-7.)
- Judgment ¶ 41 provides for pools to give "advice and assistance" to Watermaster when Watermaster establishes procedures for administration. (See *id.*, at 6:4-5, 10:11-12.)
- Judgment ¶ 43 indicates that the pools assist with "Watermaster administration" and "allocation of responsibility for, and payment of, costs of replenishment water and other aspects of this Physical Solution."[4] (See *id.*, at 6:5-6, 10:8-9.)
- Judgment ¶¶ 45 and 46 provide for Watermaster to levy and collect replenishment assessments pursuant to the various Pooling Plans. (See *id.*, at 6:4-6.)
- The AP Pooling Plan, Exhibit H to the Judgment, includes provisions for various assessments for replenishment and AP administration (e.g., ¶¶ 5,6) *but nothing whatsoever providing for payment of another pool's legal expenses.*

In short, among numerous provisions of the Judgment cited by the AP Surrebuttal, nothing even suggests that a pool's power extends to entering into contracts on behalf of members in a representative capacity – not contracts pertaining to payment of another pool's legal expenses under the Peace Agreement, and not contracts without legislative approval by the governmental entity members of the AP.

[4] Authority to impose assessments under the Judgment is limited by law. For example, *Hi-Desert County Water District v. Blue Skies Country Club* (1994) 23 Cal.App.4th 1723, confirms that a watermaster implementing a physical solution cannot impose assessments that exceed a party's proportionate share of water. Accordingly, it would be unlawful to impose Ag Pool assessments on appropriators in the absence of an agreement such as the Peace Agreement.

The extreme new interpretation of the Judgment advanced by the AP in support of its adoption of the TOA with the intent to bind non-consenting AP members finds no basis in the rules of contract interpretation that apply to stipulated judgments. (*Jamieson v. City Council of the City of Carpinteria* (2012) 204 Cal.App.4th 755, 761.) The plain language of the Judgment confirms Watermaster (not any pool) as the entity responsible for implementing the Physical Solution, and it empowers the three pools to develop policy recommendations – not to contract on behalf of members.

B. The AP Is Not the "Sole Obligor" with Responsibility to Pay or Settle Ag Pool Legal Expenses.

As discussed in Moving Parties' prior briefing and in footnote 1 above, the Pools' Joint Statement invents the term "sole obligor" to advance a notion that the AP holds the necessary power and authority to settle the Reimbursement Motion and other disputes over the Ag Pool's legal expenses under Section 5.4(a) of the Peace Agreement. In making its "sole obligor" argument, the AP fails to acknowledge that "Appropriative Pool" in Section 5.4(a) is defined to "have the meaning as used in the Judgment and **shall include all its members**." (Peace Agreement, §1.1(b), emphasis added.) Thus, Section 5.4(a) obligates individual members of the AP to pay certain Ag Pool expenses.

The AP Surrebuttal acknowledges, as it must, that "**[o]f course, the AP members pay the assessments**, but that is based on upon their required membership in the AP under the Judgment." (5:15-16.) It should be obvious that the concept of the AP as "sole obligor" is a false contrivance where the AP members (never the AP) pay the assessments.[5]

In a similar sleight of hand, the AP re-casts the Motion of AP Member Agencies re: Ag Pool Legal and Other Expenses that was filed on or about September 18, 2020 ("Original Motion") as a motion *of the AP*. (AP Surrebuttal, at 7:14-15 & fn. 5.) The Original Motion was

[5] Watermaster assesses and invoices the individual appropriators for expenses under Section 5.4(a). (Declaration of D. Crosley, filed concurrently herewith, at ¶¶4-5 & Exh. 1, 2; Declaration of S. Burton, filed Apr. 1, 2022 in support of the Rebuttal Brief & Objections ["Burton Decl."], at ¶10.) Watermaster has never invoiced the AP for the Ag Pool's legal expenses (Crosley Decl. at ¶4), nor could it, given that the AP has no funds apart from what is paid to Watermaster by AP members. (Burton Decl. at ¶10.)

brought *by AP member agencies* to protect their individual rights and financial interests. Because the AP was not a party to the Original Motion that resulted in the May 28 Order, any rights and benefits that may innure to the AP under the May 28 Order are purely incidental. The term "Appropriative Pool" in the May 28 Order, which interprets the Peace Agreement (May 28 Order, ¶ 6), necessarily has the same meaning as it does in the Peace Agreement, which expressly includes the *AP members*.

C. The AP Surrebuttal Ignores Controlling Provisions of the Peace Agreement that Render the TOA Invalid.

The AP Surrebuttal focusses narrowly on attorney fee-shifting in an effort to reconcile the TOA with the Peace Agreement. (See AP Surrebuttal, at 9:13-21, 10:14-20.) In doing so, the AP selectively omits the portion of the definition of "Appropriative Pool" that states it "shall include all its members." (*Id.*, at 10:14-15) Furthermore, the AP ignores the following provisions of the Peace Agreement that establish the TOA's invalidity:

- Peace Agreement §§ 1.1(b) and 5.4(a) make AP members responsible for payment of certain Ag Pool legal expenses. While the AP is a party and signatory to the Peace Agreement, the AP lacks any financial interest that it could settle via the TOA.[6]
- Peace Agreement § 10.14 prohibits amendments without the express written consent of each party to the Peace Agreement, which has not been given, and accordingly the TOA is invalid.[7]
- Peace Agreement § 4.4 reflects consent by all parties to the Peace Agreement to certain Judgment amendments – none of which expands the power of the AP, nor appoints the AP to represent the interests of parties to the Peace Agreement.

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[6] *Dow v. Lassen Irrigation Co.* (2022) 75 Cal.App.5th 482, holds that parties with water rights under a judgment, whose pecuniary interests would be affected by a court order, had standing to appeal from the order, whereas watermaster could not appeal because its interests were merely administrative. Because the AP's role under the judgment and Peace Agreement is purely administrative, the AP, similarly, lacks standing in connection with the parties' fee dispute.

[7] Additional reasons why the TOA would unlawfully amend the Peace Agreement are explained in the Moving Parties' Rebuttal Brief & Objections. For example, Section 6(b) of the TOA would curtail the parties' rights under the Peace Agreement and May 28 Order by designating the AP to review Ag Pool invoices without consent of all the parties. Additionally, Section 6(b) injects an arbitrary 30-day limit on the review process that finds no basis in the May 28 Order.

Additionally, the AP's protest that the TOA's legal fee-shifting provision somehow does not unlawfully amend the Peace Agreement without consent by all parties, lacks merit. Legal fee-shifting under Section 6(c) of the TOA in favor of the prevailing party purportedly applies in any future dispute before the Court regarding payment of Ag Pool legal invoices. In the absence of the TOA, such disputes are governed by the terms of the Peace Agreement as interpreted by the May 28 Order. Thus, it is readily apparent that the TOA would alter the parties' rights and remedies available under the Peace Agreement as interpreted by the May 28 Order, thereby effectuating an unlawful amendment of the Peace Agreement.

D. The TOA Creates No Enforceable Obligations of the Moving Parties, Nor Any Public Entity Member of the AP.

As mentioned in prior briefing, public entities including the Moving Parties cannot lawfully enter into contracts without observing statutory requirement and certain formalities not present here. Efforts by the AP to impose contract obligations on the Moving Parties via the TOA not only bypasses fundamental concepts of mutual consent and consideration, but also the Moving Parties' independent governing and contracting powers. The AP Surrebuttal fails to address this argument, presumably because there is no satisfactory response.

General law cities such as Chino and Ontario cannot be held liable on a contract unless the contract is in writing, approved by its legislative body as required by law, and signed by a duly authorized designee.[8] (*Torres v. City of Montebello* (2015) 234 Cal.App.4th 382; *Authority for California Cities Excess Liability v. City of Los Altos* (2006) 136 Cal.App.4th 1207.) The same requirements apply to other types of California public entities such as Monte Vista Water District – i.e., unwritten or unsigned agreements are unenforceable against such public entities. (See

[8] Contracts with a general law city must be signed by the mayor, unless the city has provided by ordinance for another method that does not require mayor's signature. (Gov. Code, § 40602; *South Bay Senior Housing Corp. v. City of Hawthorne* (1997) 56 Cal.App.4th 1231; G.L. *Mezzetta, Inc. v. City of American Canyon* (2000) 78 Cal.App.4th 1087.) Ontario has not delegated any such authority to approve or sign the TOA. (Declaration of S. Burton, filed concurrently herewith, at ¶ 2.) As to Chino, the TOA lacks the requisite signature of Chino Mayor Eunice M. Ulloa. The TOA was never submitted to Chino City Clerk for placement on a meeting agenda of the City Council, and, in fact, the TOA was not approved by the Chino City Council. (Declaration of A. Robles, filed concurrently herewith, at ¶¶ 5, 6.) Furthermore, it readily apparent on the face of the TOA that the TOA has not been signed on behalf of any of the Moving Parties including Chino, Ontario, and Monte Vista.

Torres, supra, 234 Cal.App.4th at p. 399, citing *Royal Mobilehome Owners Assn. v. City of Poway* (2007) 149 Cal.App.4th 1460, 1476 [estoppel may not be raised to enforce an unwritten agreement against a public entity when it would defeat the public policy of requiring adherence to contract procedures]; *Santa Monica Unified Sch. Dist. v. Persh* (1970) 5 Cal.App.3d 945, 953 [school district].) Because the TOA has not been approved and signed on behalf of any Moving Party, which are public entities, the TOA is invalid and unenforceable against them by anyone including the Pools.[9]

The purpose of these strict rules is to prevent hasty decisions concerning public finances. (See *Torres, supra*, 234 Cal.App.4th 382; *City of Orange v. San Diego County Employees Retirement Assn.* (2002) 103 Cal.App.4th 45, 54.) Persons dealing with a public entity are presumed to know the law with respect to any agency's authority to contract – specifically, the requirement that a contract that does not comply with the required formalities is void and unenforceable against the entity – and disregard it at their own peril. (*Torres, supra*, 234 Cal.App.4th at p. 399; *Santa Monica Unified Sch. Dist. v. Persh, supra*, 5 Cal.App.3d at p. 948.) Applying this principle to the TOA, the Pools have entered into the TOA at their own risk and cannot complain about its invalidity.

E. Public Entities Cannot Lawfully Delegate Their Authority to the AP to Make a Contract Such as the TOA.

In approving the stipulated Judgment and the Peace Agreement, no public agency party lawfully could have delegated its legislative authority to enter into future agreements on its behalf – not to the AP, or otherwise. Any "carte blanche" delegation of such authority would have been unlawful and in violation of public policy. (See, e.g., *Bagley v. City of Manhattan Beach* (1976)

[9] There is no indication that the TOA was approved by the legislative bodies of other AP member agencies such as City of Chino Hills, Cucamonga Valley Water District, Jurupa Community Services District, City of Pomona and City of Upland, as shown by the absence of the signatures of their mayors, board presidents, or similar public official. This apparent lack of valid approval of the TOA by the public entities nullifies the majority vote of the AP in its attempt to approve the TOA during the AP closed session meeting on March 22, 2022. Excluding all votes in favor of the TOA that were made by public agency representatives without evidence of requisite approval by the applicable public agency, total votes in favor represented only 18.34% of votes cast within the AP and does not constitute a majority. (Crosley Decl., at ¶ 9.)

18 Cal.3d 22 [invalidating a measure that constituted an unlawful delegation of City Council authority].) Contracts beyond the power of a public agency are void and cannot be ratified or enforced under any theory including estoppel or quasi-contract. (*Kugler v. Yocum* (1968) 69 C.2d 371, 375.) Even if public agencies had intended such a broad delegation of authority, which they did not,[10] the delegation would be *ultra vires* act and *void ab initio*. (See *Bagley, supra*, 18 Cal.3d 22.)

F. The TOA Is Invalid and Unenforceable for Additional Public Policy Reasons.

Prior briefing explains many reasons why the TOA is unlawful and void in violation of public policy, including without limitation its purported unlawful delegation of authority to the AP in violation of the Moving Parties' independent governing and contracting powers, as explained in the sections directly above. In an effort to minimize repetition, this Reply Brief adds only two more points in response to the AP Surrebuttal:

Unlawful gift of public funds. Although settlements can qualify for an exception from the constitutional prohibition against gift of public funds where appropriate consideration is paid in furtherance of a valid public purpose, the TOA does not satisfy this exception. For reasons previously discussed, payments under the TOA would exceed the maximum legal exposure of public agencies. Therefore, the TOA violates the gift clause of Article XVI, Section 6 of the Constitution. (*Page v. MiraCosta Community College Dist.* (2009) 180 Cal.App.4th 471, 497.)

Public accountability for expenditures. This important principle has been explained in a many different ways throughout the fee dispute, by reference to Propositions 218 and 26 of the

[10] For example, in approving the "Stipulation for Judgment" on August 2, 1977, Chino's City Council did not delegate its legislative authority to enter into any future agreement with third parties on its behalf. The minutes of the Chino City Council meeting of the August 2, 1977 show that the City Manager advised the Chino City Council only to "stipulate to the judgment" and that the Chino City Council moved to "execute the Stipulation for Judgment" which carried unanimously. It took no other action. (Exhibit 1, Declaration of A. Robles, filed concurrently herewith.) The actual "Stipulation for Judgment" so approved was signed by Chino Mayor Bob B. McCloud on August 2, 1977. (*Id.*, Exhibit 2). In approving the "Stipulation for Judgment", the Chino City Council reserved its legislative authority over all future agreements regarding the Judgment. (*Richeson v. Helal* (2007) 158 Cal.Appl4th 267, 280. ["Reservation of the police power is implicit in all government contracts . . . . Thus, Courts will not read into the contract an abrogation of the potential future exercise of the sovereign police power."].)

Constitution, among other things. It is well-addressed by the May 28 Order, as shown by the quotes from that Order that appear on the first page of this Reply Brief.

III. REPLY TO AGRICULTURAL POOL (AG POOL) SURREBUTTAL

The Ag Pool's Surrebuttal is susceptible to all the same arguments set forth above, which are incorporated here without restating them. It bears repeating, however, that as discussed in Section II.D above, the Ag Pool is presumed to know that any contract such as the TOA that does not comply with the required formalities is void and unenforceable against public agencies such as Moving Parties. The Ag Pool did not just overlook the formalities required for approval of contracts. Rather, no AP member signed the TOA *by design*, and the TOA neither mentions the Reimbursement Motion nor purports to require its abandonment. For all of these reasons and more, the TOA has no effect on the Reimbursement Motion.

A. The Ag Pool Cannot Enforce the Invalid TOA.

It speaks volumes that the Ag Pool never sought consent or signatures on behalf of all the parties it seeks to bind to the TOA. Instead, after counsel for the Ag Pool misrepresented to the Court at the February 4 hearing that a settlement had been reached, the Ag Pool continued to negotiate with certain members of the AP to the exclusion of the Moving Parties. (Declaration of S. Burton, filed Apr. 1, 2022 in support of the Rebuttal Brief & Objections ["Burton Decl."].) In doing so, the Ag pool ignored multiple invitations to discuss the Reimbursement Motion with counsel for Chino. (Declaration of J. Gutierrez, filed Apr. 1, 2022 in support of the Rebuttal Brief & Objections ["Gutierrez Decl.], at ¶¶10-11.)

The Ag Pool sought to reach an agreement on terms that representatives of both Pools knew would be objected-to by the Moving Parties, and then force it on the Moving Parties. Sure enough, on March 22, 2022, a majority of the AP voted to approve the TOA over the objections of Moving Parties, and a majority also voted not to report the objections out of closed session. (Ex. B to the Pools' Joint Statement, filed Mar. 23, 2022.)

Immediately following the AP vote regarding the TOA, as discussed in prior briefing, all the Moving Parties promptly emailed counsel for the Ag Pool regarding their objections to the TOA and to decline its benefits. (Gutierrez Decl., at ¶¶ 15-18 and Ex.2.) The Ag Pool chose to

ignore the emails. In the days and weeks that followed, the AP proceeded to dismiss its appeal of the December 3 Order and its Storage Contests without seeking any further clarification as to the legality of the TOA and the effect of Moving Parties' objections. (*Ibid.*)

The Ag Pool has taken all these steps at its own risk. As a matter of law, the Ag Pool cannot enforce the invalid TOA. Nor can the TOA be enforced against objecting parties or individual AP members that did not sign it. As to public agencies such as the Moving Parties, the TOA cannot be enforced under any theory including estoppel, quasi-contract or otherwise. (See, e.g., *Torres, supra*, 234 Cal.App.4th at p. 399; *Santa Monica Unified Sch. Dist. v. Persh, supra*, 5 Cal.App.3d at p. 948.)

B. Moving Parties' Objections to the TOA Do Not Violate or Modify the May 28 Order.

According to the Ag Pool's Surrebuttal, the Moving Parties are seeking to unilaterally modify the May 28 Order by preventing the two Pools from settling the fee dispute. (Ag Pool Surrebuttal, at 6:9-20.) In support of this faulty argument, the Ag Pool cites Paragraph 7 of the May 28 Order, which appears in its entirety on the first page of this Reply Brief and is repeated directly below for ease of reference:

> "7. . . . [T]he Ag Pool and the Appropriative Pool can agree to a determination to about payment of 'litigation expense.' The court concludes that they have been doing this up until the instant motion. The court will only add that now the dispute has arisen, the procedure should include the Ag Pool providing the Appropriative Pool with the Ag Pool's attorney fee bills. Otherwise, there will be no way for the Appropriative Pool to determine whether the bills fit within the court's interpretation. . . .

The Ag Pool's argument is misplaced, first, because it ignores the fact that the term "Appropriative Pool" in the May 28 Order, which interprets the Peace Agreement (May 28 Order, ¶ 6), necessarily has the same meaning as it does in the Peace Agreement and expressly includes the AP members. The AP is not the "sole obligor" with authority to settle the dispute in a representative capacity on behalf of its member agencies.

Second, nothing in the May 28 Order obligates the parties to settle the fee dispute, nor could it. Accordingly, there is no violation of the May 28 Order based on Moving Parties' present unwillingness to settle and the objections they have presented to the TOA.

Lastly, the May 28 Order provides a roadmap for any resolution of the fee dispute, as follows: "now the dispute has arisen, the procedure should include the Ag Pool providing the Appropriative Pool with the Ag Pool's attorney fee bills." As discussed above, the invoices have never been disclosed to AP members except in an excessively redacted form that renders them meaningless. Accordingly, the factual predicate for an amicable resolution of the dispute by all parties, in a manner consistent with the May 28 Order, continues to be absent.

IV. CONCLUSION

For all the reasons explained above and in prior briefing, the Pools lawfully cannot, and have not, renounced the rights and interests of the Moving Parties under Paragraph 5.4(a) of the Peace Agreement as interpreted and applied by the May 28 and December 3 Orders. The Moving Parties respectfully request that the Court: (1) disregard the invalid TOA; and (2) proceed with ruling on the Reimbursement Motion. Going forward, any entitlement of the Ag Pool to payment of its legal expenses pursuant to Section 5.4(a) of the Peace Agreement can be addressed via the process established by the Court in its May 28 Order.

Dated: April 18, 2022

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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 18, 2022 I served the following:

1. MOVING PARTIES' REPLY TO SURREBUTTALS FILED BY THE APPROPRIATIVE POOL AND THE AGRICULTURAL POOL

/ X / BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:
See attached service list: 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.

/ X / BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

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

Executed on April 18, 2022 in Rancho Cucamonga, California.

By: Janine Wilson
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