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**CHINO BASIN WATERMASTER**

8  
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.  
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**Case No. RCV RS 51010**

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

**WATERMASTER RESPONSE TO  
MOVING PARTIES' SURREBUTTAL  
TO WATERMASTER'S LIMITED  
RESPONSE TO REBUTTAL BRIEF  
AND OBJECTIONS**

Date: April 22, 2022  
Time: 1:30 p.m.  
Dept.: S35

1 Watermaster respectfully submits this further response to the Moving Parties' Surrebuttal  
2 to Watermaster's Limited Response to Rebuttal Brief and Objections ("Surrebuttal") filed by the  
3 City of Ontario, City of Chino, Monte Vista Water District and Monte Vista Irrigation Company  
4 ("Objecting Parties") on April 14, 2022 in accordance with the Court's ruling of April 8, 2022.  
5 To encourage the Court to set aside the settlement among the Appropriative and Ag Pools, the  
6 Objecting Parties boldly assert the Appropriative Pool is a meaningless artifice of the Judgment.  
7 They assert the individual Appropriators hold the authority as individual entities and an objection  
8 by one can vitiate the collective authority of the Pool to act. However, Objecting Parties have  
9 confused their individual remedies under the Judgment with the representative authority of the  
10 Appropriative Pool to take an action in the first instance. Individual appropriators are represented  
11 in the governance fabric of Watermaster, through the Appropriative Pool, through the Advisory  
12 Committee and through the Board. In no particular order, Objecting Parties offer several  
13 arguments why the Appropriative Pool may not act in a representative capacity, each of which are  
14 succinctly addressed below.

15 ***The Appropriative Pool is a Party to the Peace Agreement***

16 First, Objecting Parties argue that the Appropriative Pool is not a Party to the Judgment  
17 and therefore could not be expected to assume the direct authority to negotiate a resolution of  
18 Section 5.4(a) of the Peace Agreement. They further argue that an amendment to the Peace  
19 Agreement is therefore necessary to give the Appropriative Pool the authority to act in that  
20 capacity. However, the Appropriative Pool is a Party to the Peace Agreement and Section 5.4(a)  
21 plainly provides that Agricultural Pool invoices will be "paid by the Appropriative Pool."

22 Objecting Parties, each of which voted in favor of Resolution No. 2000-03 authorizing the  
23 Appropriative Pool's execution of the Peace Agreement and participation as a "Party," appear to  
24 argue otherwise now. In this regard, it bears remembering that the Peace Agreement does not say  
25 how Section 5.4(a) was to be implemented, and the Appropriative Pool, not the Objecting Parties,  
26 acting in a representative capacity, has historically instructed Watermaster how to implement it.  
27 The Court itself will recall its earlier ruling that Watermaster's role in regard to Section 5.4(a)  
28 was ministerial. Thus, Objecting Parties' position that the Appropriative Pool had the authority to  
instruct how the provision would be implemented but not how to resolve a dispute arising under  
the same clause is difficult to reconcile.

1 In short summary, two Parties to the Peace Agreement, each specifically named in Section  
2 5.4(a), the obligee and the obligor, contend they have reached a settlement of their dispute on  
3 terms agreeable to them. If there is an argument that the apportionment of the obligation among  
4 the members of the Appropriative Pool is improper, that is not before the Court. The sole question  
5 is whether a settlement has been reached between the two parties to the dispute. If the Pool's  
6 authority to act on behalf of the Appropriators was established by contract, the Court need not  
7 resolve the question of the Pool's representative authority under the Judgment generally.

8 ***The Appropriative Pool May Act in a Representative Capacity Under the Judgment***

9 Second, Objecting Parties argue that the Peace Agreement didn't or couldn't mean what  
10 Watermaster contends it does because it would result in the Appropriative Pool exceeding its  
11 authority under the Judgment or otherwise constitute an unlawful delegation of authority in  
12 violation of public policy.

13 The best response to these arguments is likely the most obvious. The Appropriative Pool's  
14 authority emanates from the collective decision-making of the Pool; not from any individual  
15 appropriator. None of the three Pools hold water rights, their individual members do. This  
16 governance structure embodied within the Judgment enables administration of the Physical  
17 Solution through collective decision-making by the Pool, avoiding the inherent conflict among  
18 interests that might otherwise arise if it were an actual party to the Judgment with a different,  
19 opposing discernable interest. Having the Appropriative Pool act in a representative capacity does  
20 not strip any individual appropriator of its rights, subject to the implementation of the Physical  
21 Solution.

22 Objecting Parties argue that the Pool's authority is narrowly circumscribed by Paragraph  
23 38(a)(c). However, the Judgment acknowledges the representative character of the Pool by  
24 requiring specific voting percentages of Pool "representatives" (not parties) in accessing the  
25 Court's continuing jurisdiction (Paragraph 15(d).) and then extending the Pool Committees the  
26 right to seek relief thereunder.

27 In fact, the Appropriative Pool *has the power seek judicial review* of "any Watermaster  
28 action or failure to act." (Paragraph 38(c); see also Paragraph 31.) Paragraph 43 provides that the  
29 three pools are created for: "Watermaster administration of, and for the allocation of  
30 responsibility for, payment of costs or replenishment water and other aspects of this Physical  
31 Solution." (Emphasis Added) The Peace Agreement is a vital component of the Physical Solution

1 and enables the implementation of the OBMP. (See Paragraph 41.) The Court knows that the  
2 OBMP, the OBMP Implementation Plan, and the Peace Agreement are inextricably intertwined,  
3 having been mandated by the Court in the same Order in June of 2000 and as amended in  
4 December of 2007. The Judgment requires any action under the Judgment of the Pool to be  
5 undertaken by “an affirmative vote of the entire voting power of the Pool Committee...”  
6 (Paragraph 35.) By definition this is “representative.” There is no ambiguity.

7 ***The Pool Committees’ Authority is not Unbounded***


8 Objecting Parties’ final point is that Parties to the Judgment, municipal entities, cannot be  
9 deemed to have provided an “unbounded delegation of authority” to the Appropriative Pool.  
10 (Page 4). The answer to this is that they didn’t. There is not unbounded authority under the  
11 Judgment, as the Appropriative Pool acts in accordance with its Pooling Plan and the rules and  
12 procedures for decision-making under the Judgment. Its actions are subject to judicial review if a  
13 member of the Pool has a grievance with the Pool on a specific matter for failure to act in a  
14 manner required by the Judgment or in contravention of the Judgment. (See Paragraph 15.)

15 In the end, each of the parties, inclusive of all the appropriators, public and private, submit  
16 to the Court’s inherent constitutional authority in implementing a physical solution. (*Hillside  
17 Memorial Park and Mortuary v Golden State Water Company* (2012) 205 Cal.App.4th 534, 539 .)  
18 Governance within this physical solution requires effective governance that is facilitated by the  
19 Pool structure.

20 As Watermaster has previously made clear, its interest in this matter is in its continuing  
21 ability to implement the Judgment, the OBMP, and the Court’s orders, and not a particular  
22 position as to the effectiveness of the settlement terms under Section 5.4(a) or even the fairness to  
23 the member of the Pool, including the Objecting Parties. Whatever the Court may conclude about  
24 the finality and propriety of the settlement on other grounds, Watermaster respectfully requests  
25 that the representative authority of the Appropriative Pool be undiminished by its ruling.

26 Dated: April 18, 2022

27 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**

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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. WATERMASTER RESPONSE TO MOVING PARTIES' SURREBUTTAL TO WATERMASTER'S LIMITED RESPONSE TO REBUTTAL BRIEF AND OBJECTIONS

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 18, 2022 in Rancho Cucamonga, California.



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Chino Basin Watermaster

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