

**FEE EXEMPT**

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7 Attorneys for

**CHINO BASIN WATERMASTER**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN BERNARDINO

11 CHINO BASIN MUNICIPAL WATER  
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, ET AL.,

16 Defendants.

**Case No. RCV RS 51010**

[Assigned for All Purposes to the  
Honorable Stanford E. Reichert, Dept. S35]

**NOTICE OF LODGING PROPOSED  
ORDER AND RULINGS RE CITY OF  
CHINO MOTION AND CORRECTED  
MOTION FOR REIMBURSEMENT OF  
ATTORNEY FEES AND EXPENSES PAID  
TO THE AGRICULTURAL POOL**

Date: April 22, 2021

Time: 1:30 p.m.

Dept: S35

(FEE EXEMPT PER GOVERNMENT CODE § 6103)

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**  
1021 Anacapa Street, 2nd Floor  
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**TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that a true and correct copy of a proposed Order and Rulings re City of Chino Motion and Corrected Motion for Reimbursement of Attorney Fees and Expenses Paid to the Agricultural Pool, attached hereto as Exhibit "A" is hereby lodged with the Court.

Dated: April 25, 2022

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

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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. RCV 51010  
ORDER and RULINGS re City of Chino  
Motion and Corrected Motion for  
Reimbursement of Attorney Fees and  
Expenses Paid to the Agricultural Pool  
Date: April 22, 2022  
Time: 1:30 pm  
Department: S35

I. RULING: For the reasons set forth herein, the court denies the City of Chino (Chino) motion and corrected motion for reimbursement of attorney fees and expenses paid to the Agricultural Pool. In short, the court finds that the Terms of Agreement settlement is valid, binding on all App Pool members, and resolves all issues of Chino’s motion and corrected motion.

II. Documents reviewed: Miscellaneous rulings

A. Motion and responses

1. Dated December 31, 2021, City of Chino (Chino) motion for reimbursement of attorney fees and expenses paid to the Agricultural Pool (AgPool) and the corrected motion also dated December 31, 2021.

1 2. Dated January 24, 2022, Watermaster's response to Chino corrected  
2 motion, including declaration of Joseph Joswiak.

3 3. Dated January 24, 2022, Appropriative Pool (App Pool) response to  
4 Chino corrected motion.

5 4. Dated January 24, 2022, AgPool opposition to Chino's corrected  
6 motion; declaration of Tracy Egoscue in support.

7 5. Dated January 28, 2022, Chino reply to AgPool opposition

8 B. Joinders in Chino motion

9 1. Dated January 6, 2022, Monte Vista Water District and Monte Vista  
10 Irrigation Company.

11 a. Dated January 24, 2022, AgPool opposition.

12 i. AgPool argues the Monte Vista Water District and Monte Vista  
13 Irrigation Company joinder was untimely and provided no additional  
14 evidence or argument.

15 (a) Dated January 24, 2022, State of California (AgPool member)  
16 joinder in AgPool opposition to the joinder by Monte Vista  
17 Water District and Monte Vista Irrigation Company.

18 (1) RULING: State of California joinder granted

19 ii. RULING: The court grants the joinder of Monte Vista Water  
20 District and Monte Vista Irrigation Company.

21 2. Dated January 10, 2022, City of Ontario (Ontario) joinder in Chino  
22 motion.

23 a. Ontario's joinder seeks:

24 i. Ontario's share of \$61,132 of the \$300,000 assessed and paid for  
25 AgPool attorney fees and expenses for fiscal year 2019-20;

26 ii. Ontario's share of \$63,314 assessed and paid for AgPool special  
27 projects for fiscal year 2019-20 that was transferred by Watermaster  
28 to the AgPool's legal budget to pay for AgPool attorney fees and

1 expenses for fiscal year 2019-20 as calculated by Watermaster;  
2 iii. Reimbursement from AgPool for \$102,557 to Watermaster's  
3 administrative reserve funds that were used to pay AgPool's legal  
4 expenses for fiscal year 2020-21.

5 b. Dated January 24, 2022, AgPool objection and opposition to Ontario's  
6 joinder

7 i. Aside from the appellate stay argument, the AgPool argues that the  
8 joinder was untimely and seeks different relief than that of Chino.  
9 The AgPool incorporates as arguments from its opposition to  
10 Chino's corrected motion.

11 c. Dated January 28, 2022, Ontario's reply:

12 i. Ontario argues there has been no waiver and the AgPool cannot  
13 establish the elements of estoppel.

14 d. RULING: The court grants the joinder. The court will address the  
15 substantive issues below.

16 3. Dated January 24, 2022, State of California (California) joinder in  
17 AgPool's opposition to the Monte Vista Water District and Monte Vista  
18 Irrigation Company joinder in Chino's corrected motion

19 a. RULING: The court grants the joinder.

20 4. Dated January 24, 2022, California joinder in AgPool's opposition to  
21 Chino's corrected motion.

22 a. RULING: The court grants the joinder.

23 C. Contested settlement documents

24 1. Dated March 24, 2022, AgPool and App Pool joint statement regarding  
25 their settlement

26 2. Dated April 1, 2011, Ontario, Chino, Monte Vista Water District and  
27 Monte Vista Irrigation Company (the parties/dissenters) rebuttal brief and  
28 objections re joint statement including declaration of Scott Burton and

1 declaration of Jimmy Gutierrez

2 3. Dated April 6, 2022, Watermaster limited response to rebuttal brief and  
3 objection re joint statement, etc., including declaration of Peter Kavounas

4 4. Dated April 14, 2022, the parties/dissenters' surrebuttal to  
5 Watermaster's limited response

6 5. Dated April 18, 2022, Watermaster response to the parties/dissenters'  
7 surrebuttal to Watermaster's limited response.

8 6. Dated April 14, 2022, App Pool's surrebuttal to rebuttal and objections  
9 re settlement including declarations of John Bosler, Chris Diggs, and John  
10 Schatz

11 7. Dated April 14, 2022, AgPool's surrebuttal to rebuttal brief and  
12 objections re: joint statement including declaration of Tracey Egoscue

13 8. Dated April 18, 2022, the parties reply to App Pool and AgPool  
14 surrebuttals including declarations of D. Crosley, A. Robles, and S. Burton

15 III. Chino Motion--Summary/Analysis

16 A. On behalf of the Appropriative Pool (App Pool), Chino seeks reimbursement  
17 of the assessments to the App Pool for the AgPool's attorney fees and expenses  
18 totaling \$483,202.55 for fiscal years 2019-20 and 2020-21.

19 B. Also on behalf App Pool, Chino seeks reimbursement of assessments owed to  
20 Watermaster in the amount of \$102,557, or, in the alternative, to order Watermaster  
21 to refrain from seeking the collection of \$102,557.12 from the App Pool members  
22 including Chino.

23 1. The \$102,557.12 is what Watermaster paid to the AgPool from  
24 Watermaster reserve funds for which Watermaster seeks reimbursement  
25 from either the App Pool or the AgPool.

26 2. The court notes that Watermaster has released the escrow funds,  
27 according to the AgPool's opposition to Chino's original motion, dated  
28 January 24, page 8.

1 C. Chino argues that the AgPool 1) never showed any invoices that 2)  
2 demonstrate that the AgPool's legal services were of benefit to the App Pool or at  
3 least not adverse to the App Pool.

4 1. For fiscal year 2019-20, the App Pool submitted a \$300,000 budget for  
5 legal services. There was no specification for the amount payable by each  
6 App Pool member.

7 a. Page 5 of Chino's motion and page 5 of Chino's corrected motion has a  
8 breakdown of the contribution of each App Pool member for the  
9 \$300,000.

10 b. On December 13, 2019, Chino paid \$447,841.58 for its **total**  
11 Watermaster assessment for fiscal year 2019-20, which included Chino's  
12 portion of the App Pool \$300,000 legal budget. According to page 6, line  
13 1, Chino paid \$16,379 as its portion of the 2019-20 AgPool \$300,000 legal  
14 budget.

15 c. Later in fiscal year 2019-20, the AgPool increased its 2019-20 legal  
16 services expenditures or budget by \$229,008.75. Watermaster then  
17 transferred \$63,314 from the AgPool special projects fund (8471) into the  
18 AgPool legal fund (8467) and invoicing the difference of \$165,694.75 to  
19 the App Pool.

20 i. In response, some App Pool members deposited their allocated  
21 amounts totaling \$161,070.09 into an escrow account held by  
22 Watermaster.

23 ii. Marygold, Norco, SAWC and WVWD paid a total of \$4624.66  
24 directly to Watermaster.

25 iii. At the hearing on November 5, 2021, Watermaster agreed to return  
26 the \$161,070.09 to the App Pool members whose deposits made up  
27 that amount. The court did not address the \$4624.66 owed to the  
28 four (4) appropriators.



d. So the total fiscal year 2019-20 amount looks to the court like the amount set forth on page 6 on the corrected motion:

\$300,000	Paid for the 2019-20 AgPool legal services budget
\$63,314	Transferred from the AgPool special projects fund (8471) to the AgPool legal fund (8467)
\$4624.66	Made by the 4 members of the App Pool to Watermaster
Total: \$367,938.66	

e. Ontario's joinder contained this chart of AgPool legal expenses for fiscal year 2019-20 (amounts rounded to the nearest dollar):

AgPool legal expense budget	Assessments issued by Watermaster for Ag legal expenses	Payments made for Ag legal expenses	Ontario's share of payments made	Explanation of Ontario's share of payments made
\$300,000 Initial budget	\$300,000	\$300,000	\$61,132	Ontario paid these assessments to Watermaster  Watermaster did not separately itemize the \$300,000 on assessment invoices; the motion calculates share using information from

				Watermaster
\$229,008 Retroactive legal budget increases, formally objected to by App Pool	N/A	\$63,314 Transferred by Watermaster from AgPool special projects fund to AG pool legal budget	Watermaster should provide Ontario's share	AgPool special projects fund is funded by Watermaster assessments on App Pool members, including Ontario
	\$165,000	\$4625  \$161,070 Paid into escrow by App Pool members	\$0.00	Ontario paid its share of these additional assessments into escrow: funds in escrow were addressed by the December 3, 2021 court order

2. For fiscal year 2020-21 the AgPool submitted a \$500,000 budget for legal services. Watermaster allocated the \$500,000 budget to App Pool members and invoiced each member.
- a. Additionally, for fiscal year 2020-21, Watermaster paid \$102,557.12 for AgPool legal expenses from Watermaster administrator reserve funds, for which Chino now seeks reimbursement on behalf of Watermaster.
- i. Chino argues that the App Pool is not obligated to refund the \$102,557.12 because the AgPool 1) never showed any invoices that 2) demonstrate that the AgPool's legal services were of benefit to

1 the App Pool or at least not adverse to the App Pool. [This is the  
2 same argument Chino uses generally.]

3 ii. Some App Pool members refused to pay the Watermaster  
4 assessment for the \$500,000 budget, others paid.

5 iii. Pages 7-8 -of the original and corrected motions have a breakdown  
6 of the contribution of each App Pool member to the \$500,000  
7 AgPool budget, showing a total of \$115,263.89. Chino again makes  
8 its general argument that it is not obligated to pay the AgPool legal  
9 expenses.

10 iv. The reimbursement claim for fiscal year 2020-21 is \$115,263.89  
11 representing the total amount the 11 App Pool members paid for  
12 legal services to the AgPool.

13 b. Chino also cites the court's May 28, 2021 order and as the basis for its  
14 motion, and argues that the AgPool has waived its right to the fees due to  
15 its failure to comply with the court's May 28, 2021 order.

16 3. Chino's total amount claimed breaks down as follows:

17		
18	\$300,000	Fiscal year 2019-20 AgPool legal budget
19	\$63,314	Fiscal year 2019-20: Transferred from special
20		projects fund (8471) to AG pool legal budget/fund
21		(8467)
22	\$4624.66	Fiscal year 2019-20: paid by 4 App Pool members
23		directly to Watermaster
24	\$115,263.89	Fiscal year 2020-2021: paid by 11 App Pool
25		members for the AgPool legal budget.
26	Total: \$483,202.55	
27	Additionally, for fiscal year 2020-21, on behalf of Watermaster, Chino seeks	
28	the \$102,557.12 which Watermaster paid for AgPool legal expenses from	
	Watermaster administrator reserve funds.	

1  
2 4. Ontario's joinder, has the following chart for AgPool Legal expenses  
3 for fiscal year 2020-21 rounded to the nearest dollar:

4 AgPool 5 legal 6 expense 7 budget	8 Assessments 9 issued by 10 Watermaster	11 Payments 12 made for Ag 13 legal expenses	14 Ontario's 15 share of 16 payments 17 made	18 Explanation of 19 Ontario's share of 20 payments made
21 \$500,000 22 Initial 23 budget	\$500,000	\$115,264	\$0.00	Watermaster separately itemized the \$500,000 on assessment invoices; Ontario - withheld payment pending resolution of the dispute
		\$102,557 Watermaster used funds from Watermaster's administrative reserves (Ontario seeks this amount in repayment)	Uncertain	Watermaster has indicated that it will look to the AgPool or App Pool to repay the transferred funds; Watermaster administrative reserves are funded by assessments on the App Pool and Nonagricultural Pool, but not the AgPool

24 D. Ontario's initial motion filing on September 13, 2020, page 10, has the  
25 following chronology based on the declaration of Scott Burton and the request for  
26 judicial notice.

- 27 1. The Storage Contests challenge applications for Local Storage  
28 Agreements submitted by certain members of the App Pool. Initially the  
AgPool opposed approval of the applications asserting that the Safe Yield

1 reset was pending and water in storage accounts exceeds the safe storage  
2 capacity of the Basin which the AgPool argued would cause a material  
3 physical injury to the Basin. The Storage Contests were consolidated for  
4 hearing and assigned to Mr. Kurt Berchtold as the Hearing Officer.

5 2. The AgPool incurred significant legal and expert expenses to prosecute  
6 the Storage Contests against certain App Pool members contributing to an  
7 overrun of the AgPool's Watermaster approved budget for the present Fiscal  
8 Year 2019-20. The overrun resulted in the AgPool's then recent request to  
9 Watermaster for a budget increase and transfer to cover unpaid legal and  
10 other expenses of the AgPool.

11 a. The AgPool requested this increase for its Fiscal Year 2020-21 for legal  
12 expenses upward from the previously approved amount of \$300,000 to  
13 \$500,000. Burton concludes that this increase request reflected the  
14 AgPool's "intent to continue with the same conduct resulting in excessive  
15 charges to the App Pool."

16 3. Despite resolution of the Pools' 2009 dispute the AgPool has continued  
17 to assert an unreasonably broad interpretation of Section 5.4(a) in connection  
18 with the present dispute. Specifically the AgPool asserts that the App Pool  
19 must pay all legal and expert expenses incurred by the AgPool for any  
20 purpose whatsoever. The AgPool also takes the position that redacted details  
21 of the expenses need not be revealed to the payor (i.e., the App Pool)  
22 because of attorney-client privilege.

23 a. The court again notes that the resolution of the 2009 dispute is  
24 irrelevant to the instant motion and ruling.

25 4. On June 30, 2020 the AgPool took action demanding that the App Pool  
26 pay the AgPool's unbudgeted legal and expert expenses in the amount of  
27 approximately \$167,000. According to the AgPool pursuant to the terms of  
28 the Peace Agreement, Section 5.4(a), all assessments and expenses of the

1 AgPool shall be paid by the App Pool. The AgPool further demands that  
2 Watermaster amend the AgPool budget as appropriate and necessary to  
3 cover all pending invoices.

4 5. Objecting to the unbudgeted legal and expert expenses and the overrun  
5 and without any detail regarding the basis of such fees and expenses App  
6 Pool members asked Watermaster to provide the appropriately redacted  
7 supporting documentation and objected to Watermaster's payment of the  
8 AgPool's invoices until the App Pool had an opportunity to review the  
9 information. Watermaster responded that it treats AgPool legal invoices as  
10 attorney-client privileged communications and as such Watermaster neither  
11 reviews AgPool legal invoices nor would it release the invoices (redacted or  
12 otherwise) to the payor of said invoices (i.e. the App Pool).

13 6. The App Pool members then directed their request for appropriately  
14 redacted invoices to the AgPool. The chairman of the AgPool Committee  
15 responded on the AgPool's behalf. His letter stated that the AgPool will not  
16 provide the redacted invoices and that if the App Pool does not pay its  
17 expenses then the AgPool will sue the App Pool members. On September  
18 10, 2020, the Watermaster acknowledged during an App Pool meeting that  
19 the AgPool provided no backup for its claimed expenses and Watermaster  
20 did not ask for any. Thus the App Pool has been denied any opportunity to  
21 review the basis of the expenses being passed on to determine whether the  
22 expenses are appropriate as contemplated under Section 5.4(a).

23 7. On August 25, 2020 the Watermaster Board voted to issue invoices to  
24 the App Pool for the \$165 694.75 that the Ag Pool incurred in legal and  
25 expert fees in excess of its budget. The AgPool's response to the App Pool  
26 and the resulting Watermaster-issued invoice necessitated the App Pool  
27 members' instant motion.

28 IV. Watermaster response to Chino corrected motion--Summary/Analysis

1 A. The purpose of Watermaster's filing is to provide the court with an accurate  
2 statement of facts regarding Watermaster's accounting for the funds at issue.

3 B. On December 7, 2021, Watermaster issued a refund for \$161,070.90 to 15  
4 members of the App Pool.

5 C. From July 2022 December 2020, Watermaster paid \$217,821 to the AgPool  
6 legal counsel only after receipt of the necessary information as to the invoices to be  
7 paid and direction from the AgPool chair. \$102,557.12 is the difference between the  
8 \$217,821 paid to AgPool legal counsel and \$115,263.88 collected from the  
9 November 19, 2020, assessment invoices paid by the App Pool.

10 D. Watermaster expects that Watermaster's administrative reserve funds will be  
11 refunded \$102,557.12, paid from Watermaster administrative reserve funds for  
12 AgPool attorney fees and expenses for fiscal year 2020-21. The funding may come  
13 from either the App Pool or the AgPool, depending upon the court's ruling. (As  
14 noted, the refund has been made.)

15 E. Regarding the \$63,314:

- 16 1. In fiscal year 2019-20, when the AgPool increased its 2019-20 legal  
17 services expenditures budget by \$229,008.75, Watermaster did *not* transfer  
18 \$63,314 from the AgPool special projects fund (8471) into the AgPool legal  
19 fund (8467). The AgPool controls both these accounts and directed this  
20 transfer, but with the \$63,314 being spent on legal expenses during fiscal year  
21 2019-20.

22 F. Regarding the \$161,070.09 deposited into the escrow account, and the  
23 \$4624.66 paid in fiscal year 2019-20:

- 24 1. The App Pool paid \$161,070.09 and \$4624.66 to Watermaster and from  
25 there into AgPool funds.
- 26 2. 15 parties gave instructions to place the funds in escrow, but 4 did not  
27 (totaling \$4624.66). App Pool gave clear instructions that the parties needed  
28 to indicate whether they wanted funds deposited to escrow or whether they

1 wanted the funds deposited directly into AgPool funds.

2 V. App Pool response to Chino motion--Summary/Analysis

3 A. The App Pool supports Chino's motion.

4 VI. AgPool opposition<sup>1</sup>--Summary/Analysis

5 A. The AgPool argues that

6 1. Chino seeks reimbursements that exceed the court's May 28, 2021, and  
7 December 21, 2021, orders.

8 a. The AgPool points out that the only support for this proposition is  
9 Chino's opposition to the AgPool's original motion filed September 17,  
10 2020 and the App Pool's opposition thereto.

11 i. Chino is inappropriately attempting to reach back in time to recoup  
12 assessments not in issue.

13 2. Chino has not appropriately pled the reimbursement process for the  
14 \$4624.66 paid by the 4 App Pool members.

15 3. Chino has waived any right to payments it approved and authorized  
16 prior to the dispute and is estopped from claiming reimbursement.

17 a. The AgPool points to paragraph seven of the court's order filed May  
18 28, 2021. In that order, the court noted that the court concluded the  
19 AgPool and the App Pool had been agreeing to a determination about  
20 payments of "litigation expense." Furthermore, the court stated "now that  
21 the dispute has arisen, the procedure should include the AgPool providing  
22 the Appropriative Pool with the AgPool's attorney fee bills."

23 4. Chino first objected to the AgPool's expenses in August 2020, which  
24 was after the Appropriative Pool authorized the \$300,000 for the budget of  
25 fiscal year 2019-20.

26 a. In Ontario's motion filed September 13, 2020, memorandum of points  
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<sup>1</sup> With the AgPool's abandonment of its appeal, the court will not address that issue.



1 and authorities, page 10, line 20, Ontario notes that “on June 30, 2020, the  
2 AgPool took action demanding that the App Pool pay the AgPool’s legal  
3 and expert expenses in the amount of approximately \$167,000.”

4 i. The court concludes that was about then that the legal basis started  
5 to take shape for the AgPool’s attorney fee motion filed August 2,  
6 2021 under the Peace I Agreement, paragraph §5.4(a). It is that  
7 motion that started the legal basis and procedure upon which the  
8 court is ruling in the instant order.

9 5. The AgPool also points out paragraph 5 of the court’s May 28, 2021  
10 order in which the court states “the ruling of the court on the instant motion  
11 for attorney fees is intended to apply only to the specific attorney fee dispute  
12 between the AgPool and the App Pool. It is not intended to have any  
13 general effect on any other party or pool, or to give the App Pool any legal  
14 basis to object to any other aspect or any other budget item.”

15 6. The AgPool also points out the order paragraph 8.C.II. which states:  
16 If the AgPool does not file its motion on or before July 25, 2021, as  
17 ordered, then the court will consider the AgPool to have waived its  
18 current claims for attorney fees and expenses, and the court will order  
19 vacated the assessments subject to the current dispute reimbursed to  
20 the paying party.

21 (a) The court notes exhibit A to the declaration of John Schatz filed  
22 May 24, 2021, “Appropriative Pool Special Assessment of  
23 \$165,694.75” which appears to the court to itemize the  
24 assessments to App Pool members, and the court would use that  
25 list as the basis of the reimbursements.

26 7. The AgPool also argues that Chino waived its right to repayments for  
27 the 2019-20 fiscal year budget because the payment issue for that fiscal year  
28 has been concluded and therefore cannot be litigated in the instant motion.

1 VII. Chino reply--Summary/Analysis<sup>2</sup>

2 A. Chino argues that its motion targets reimbursement for the payments made by  
3 the App Pool for fiscal years 2019-20 and 2020-21 because the AgPool did not  
4 produce invoices for those years.

5 B. Chino also argues that the AgPool has failed to establish any right to retain the  
6 payments of the App Pool members.

7 C. Chino also argues that the AgPool failure to produce the invoices denies  
8 fundamental fairness and due process to pay the AgPool expenses under Peace  
9 Agreement paragraph 5.4(a).

10 D. Chino also argues to refute the AgPool position that the prior orders of the  
11 court do not require the AgPool to reimburse App Pool members beyond the funds  
12 in escrow.

13 1. Chino points out that the court's May 28 order refers to the Schatz  
14 declaration about the special assessments of \$165,000 that the court would  
15 consider for reimbursement, but the order does not set a limit on what  
16 payments are reversible.

17 2. Chino argues that paragraph 7 of the May 28 order does not make a  
18 statement about reimbursement or preclude reimbursement for a particular  
19 period.

20 3. Chino argues that paragraph 5 of the May 28 order does not limit the  
21 scope of the App Pool reimbursement motion to \$165,694.75.

22 a. Chino argues that this limitation would frustrate the courts purpose in  
23 authorizing Chino to bring its motion for reimbursement.

24 b. Chino points out that the court asked Mr. Gutierrez, Chino's attorney,  
25 to address any money that somehow got paid that is not in escrow.

26 [Transcript page 33:1-6.]

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<sup>2</sup> Again, because the AgPool abandoned its appeal, the court will not address Chino's arguments regarding the state.

1 4. Chino argues that the court did not limit its motion to \$4624.66.

2 5. Chino argues that there is no evidence to support waiver or estoppel  
3 because Chino's December 13, 2019 payment of Watermaster's 2019-20 total  
4 invoice for \$447,841. The invoice did not show the portion attributable to  
5 the AgPool's special project in legal expenses.

6 a. Chino further argues that the payment of the 2019-20 Watermaster is  
7 not a basis for estoppel.

8 VIII. Joint statement regarding settlement between App Pool and AgPool regarding  
9 Peace Agreement paragraph 5.4(a)--Summary/Analysis

10 A. Chino's motion was originally scheduled for hearing on February 4, 2022. It  
11 was continued to April 8, due to the parties telling the court that settlement  
12 negotiations were underway. Then on April 8, upon being told that there were  
13 objections to the settlement, the court continued the hearing to April 22.

14 B. Dated March 24, 2022, Tracy Egoscue, attorney for the AgPool, and John  
15 Schatz, attorney for the App Pool, submitted the joint statement regarding  
16 settlement. The joint statement contains "terms of agreement (TOA)." App Pool  
17 Chair Eduardo Espinoza signed the agreement on 3/22/22, and AgPool Chair  
18 Robert Feenstra signed the agreement on 3/18/22. There were no other signatories  
19 to the agreement.

20 IX. Rebuttal brief and objections re: joint statement regarding settlement between  
21 App Pool and AgPool including declarations of Scott Burton and Jimmy Gutierrez--  
22 Summary/Analysis

23 A. Ontario, Chino, and Monte Vista Water District and Monte Vista Irrigation  
24 Company (the parties or the dissenters) filed this brief.

25 1. The parties voted against the terms of agreement (TOA) and "registered  
26 their objections to it on the record."

27 B. The parties argue that the TOA provides for payment of many hundreds of  
28 thousands of dollars for legal expenses for which the AgPool has never complied

1 with the court's May 28 order.

2 C. The parties argue that the App Pool members themselves are not parties to  
3 the reimbursement motion and the App Pool has no authority to settle on behalf of  
4 the parties.

5 1. The parties point out that App Pool member agencies, not the App  
6 Pool, brought the original motion filed September 18, 2020. The result of  
7 this motion was the court's order of May 28, 2021.

8 2. The May 28, 2021 order set the rules which the court would apply to  
9 determine whether the AgPool (really the AgPool members) would be  
10 entitled to reimbursement of their attorney fees and expenses pursuant to the  
11 Judgment Paragraph 5.4(a).

12 3. The parties point out that there is no basis in law or in the Judgment by  
13 which membership in the App Pool can compel App Pool members to abide  
14 by the TOA.

15 a. The parties also point out that the parties individually signed the Peace  
16 Agreements, the TOA would constitute an amendment to the Peace  
17 Agreement, and unanimous approval is required to amend the Peace  
18 Agreement.

19 i. The parties note even though a majority of the App Pool and the  
20 AgPool members voted for the TOA, it is not binding on all the  
21 member parties for the reasons the parties list, such as no legal basis  
22 to compel all the App Pool members to abide by the TOA, that is,  
23 to bind the parties.

24 4. The parties also point out that they were not involved in any settlement  
25 negotiations with the AgPool. The TOA was negotiated with other members  
26 of the App Pool.

27 5. The parties also objected to the TOA because;

28 a. They did not consent to it;

1 b. There is no legal authority authorizing the App Pool to enter into an  
2 agreement on their behalves;

3 c. It is a modification of the court's May 28 order.

4 d. Its terms are vague.

5 6. The parties also objected to the joint statement because:

6 a. It falsely characterizes the App Pool as the "sole obligor" under Peace  
7 Agreement, paragraph 5.4(a);

8 b. It purports to be a complete resolution of the fee issues, when it does  
9 not.

10 c. It purports to be a comprehensive resolution of the AgPool's appeal,  
11 when it is not.

12 X. Watermaster limited response to rebuttal brief and objections re joint  
13 statement, etc., including declaration of Peter Kavounas--Summary/Analysis

14 A. Watermaster argues that each of the pools has acted in a representative  
15 capacity since their entry into and the court's approval of the Peace Agreement. If  
16 individual members of the App Pool believe their rights are harmed, then the  
17 member or members can pursue remedies under the Peace Agreement or seek review  
18 of Watermaster's actions.

19 1. The court agrees with the statement that App Pool members can seek  
20 remedies through the court under the Peace Agreement. The parties are  
21 doing so here.

22 B. The parties argue that unanimity is a requirement for the App Pool, or any  
23 pool to act, allowing a party to "opt out" of a proposed action.

24 1. Watermaster argues that if an appropriator can "opt out" of a pool  
25 proposed action, then the Restated Judgement cannot be managed efficiently  
26 and cost-effectively.

27 XI. The parties' surrebuttal to Watermaster's limited response--Summary/Analysis

28 A. The parties argue that Watermaster's argument gives the App Pool "carte

1 blanche” to act in a representative capacity for its members and bind members to the  
2 TOA without their consent.

- 3 1. They argue that there is no support for Watermaster’s position in the  
4 Judgment or the Peace agreement.
- 5 2. They point out Peace Agreement Section 10.14 that “no amendments’  
6 may be made to this [Peace] Agreement without the express written approval  
7 of each Party to this Agreement.”
- 8 3. Their response contains an analysis of Paragraph 38, 41, and 43 of the  
9 Judgment.
- 10 4. They also argue that Watermaster’s interpretation would unlawfully  
11 expand the pools’ function and repeat that the TOA would result in an illegal  
12 gift of public funds. There is also an argument that the TOA is against  
13 public policy.

14 XII. Watermaster response to moving parties’ surrebuttal to Watermaster’s limited  
15 response--Summary/Analysis

16 A. Watermaster points out that the App Pool is a party to the Peace [I]  
17 Agreement, paragraph 5.4(a).which provides that the AgPool invoices will be “paid  
18 by the App Pool.”

- 19 1. The parties each voted in favor of Resolution No. 2000.09 which  
20 authorized the App Pool’s execution of the Peace Agreement and  
21 participation as a “Party.”
- 22 2. Watermaster’s role re Section 5.4(a) is ministerial, as the court has  
23 previously ruled. Watermaster notes that the parties’ position that the App  
24 Pool had the authority to instruct how the provision would be implemented  
25 but not how to resolve a dispute arising the same clause is difficult to  
26 reconcile.
  - 27 a. The court re-affirms that Watermaster’s role re Section 5.4(a) is  
28 ministerial.

1 XIII. App Pool's surrebuttal to rebuttal and objections re settlement including  
2 declarations of John Bosler, Chris Diggs, and John Schatz--Summary/Analysis

3 A. The App Pool argues that Peace Agreement, section 5.4(a) expressly makes the  
4 App Pool the sole obligor for payment of the AgPool's attorney fees and costs.

5 1. The Judgment App Pool pooling plan enables the App Pool to act  
6 collectively and thereby empowers its members by majority vote to exercise  
7 the App Pool's authority to enter the TOA.

8 a. The court orders did not address the permissible scope of settlement or  
9 an administrative process for considering and processing AgPool expenses  
10 set forth in the TOA.

11 2. The court orders addressed a motion for attorney fees under Peace I,  
12 not a settlement agreement.

13 3. The parties'/dissenters' position regarding the lack of App Pool's  
14 binding authority would nullify provisions of the Judgment, namely §§15, 31,  
15 38, 41, 43-46, and exhibit H.

16 4. The parties'/dissenters' public policy arguments lack legal basis.

17 5. The App Pool's surrebuttal reprises a history of the case.

18 XIV. AgPool surrebuttal to rebuttal brief and objections re: joint statement  
19 including declaration of Tracy Egoscue--Summary/Analysis

20 A. The AgPool argues that the TOA settles the fee dispute and makes further  
21 proceedings moot. The TOA does not limit any individual appropriator's rights and  
22 also is not an unlawful gift of public funds.

23 B. The AgPool surrebuttal outlines the procedure in which the pools reached the  
24 TOA.

25 C. The AgPool argues that the settlement TOA is consistent with the court's May  
26 28 order and is an appropriate remedy for the dispute between the App Pool and the  
27 AgPool. It also resolves the reimbursement of \$4624.66 not currently held in  
28 escrow.

1 D. The TOA is also consistent with the Peace Agreement and the court orders.

2 E. Finally, the settlement is valid and preserves the rights of the pools' and their  
3 members. It also provides for flexibility to maximize the beneficial use of the Chino  
4 Basin water.

5 XV. The parties/dissenters reply to App Pool and AgPool surrebuttals including  
6 declarations of D. Crosley, S. Robles, and S. Burton--Summary/ Analysis

7 A. The parties/dissenters still object because they have not received any of the  
8 bills from the AgPool. They still consider the TOA to be essentially a blank check.  
9 They still argue that the TOA is an unprecedented overreach of the pools' limited  
10 power under the judgment and pooling plan.

11 B. The parties/dissenters argue that imposing the TOA on them will bring a new  
12 era of basin governance by re-imagining that pools' governing bodies with  
13 unforeseen superpowers to enter into contracts on behalf of their members in  
14 violation of the law when their members include indicated governmental entities.

15  
16  
17 RULINGS AND ANALYSIS

18 I. Ruling: For the reasons set forth herein, the court denies the Chino motion and  
19 corrected motion for reimbursement of attorney fees and expenses paid to the  
20 AgPool. As set forth above, the court finds that the TOA settlement is valid,  
21 binding on all App Pool members, and resolves all issues of Chino's motion and  
22 corrected motion.

23 II. Ruling analysis

24 A. The original AgPool motion filed August 2, 2021, sought reimbursement of  
25 \$460,723.63 as reasonable attorney fees to the AgPool and \$102,557.12 paid to the  
26 Watermaster administrative reserve account for a total of \$563,280.75.

27 III. After the court's May 28, 2021 order which outlined the legal procedure and  
28 requirements that the AgPool had to follow to seek reimbursement of its attorney



1 expenses, on August 2, the AgPool filed its motion for attorney fees. On December  
2 3, 2021, the court signed the order which denied the AgPool's motion entirely.

3 A. At the hearing where the court denied the AgPool's attorney fee motion, it  
4 appeared to the court that there might be additional attorney fees which parties had  
5 paid for AgPool attorney expenses, but which should be reimbursed pursuant to the  
6 court's decision and order. The court suggested the City of Chino file that motion,  
7 and the result was Chino's filing of the motion and the corrected motion for  
8 reimbursement under consideration in this order.

9 1. The court notes some confusion in the amounts the various parties  
10 have been seeking.

11 a. In its motion, the AgPool sought legal expenses of \$460,723.63 plus  
12 \$102,557.12 from the Watermaster administrative reserve account for a  
13 total of \$563,280.75.

14 b. In this motion, Chino sought reimbursement of 483,202.25 for fiscal  
15 years 2019-20 and 2020-21 and reimbursement to Watermaster  
16 \$402,557.12.

17 c. The charts set forth above in sections III.C.1, III.C.2, III.C.3, and  
18 III.C.4 above were not much help to the court in resolving its confusion.

19 2. Because the court is finding that the settlement agreement between the  
20 AgPool and the App Pool resolves all these issues, the court does not need to  
21 reconcile the figures.

22 IV. The TOA resolves the issues of the Chino's motion and corrected motion, and  
23 the court finds that the TOA is valid because:

24 1. The App Pool and the AgPool who signed the TOA are also signatories  
25 and thereby recognized as parties in the Peace I Agreement.

26 2. The court finds that the TOA does not contradict the court's  
27 interpretation of Section 5.4(a) for the following reasons:

28 a. The court's May 28 ruling applied to set rules and procedures for the

1 AgPool to follow if the AgPool sought the court's approval of its attorney  
2 fees and expenses. The court's ruling did not address any issue of  
3 settlement of the AgPool and the App Pool regarding the AgPool's  
4 attorney fees and expenses (attorney fees). The court has not prohibited  
5 any settlement between the AgPool and the App Pool.

6 3. The TOA addresses a dispute that has arisen only between the Ag Pool  
7 and the App Pool regarding the AgPool's attorney fees and expenses. The  
8 TOA does not affect any other parties or Pool on any other issue. Therefore,  
9 the TOA is not an amendment to the Peace Agreement.

10 4. The court finds that the TOA does not contradict the court's  
11 interpretation of Section 5.4(a) for the following reasons:

12 a. The court's May 28 ruling applied to set rules and procedures for the  
13 AgPool to follow if the AgPool sought the court's approval of its attorney  
14 fees and expenses. The court's ruling did not address any issue of  
15 settlement of the AgPool and the App Pool regarding the AgPool's attorney  
16 fees and expenses (attorney fees). The court has not prohibited any  
17 settlement between the AgPool and the App Pool.

18 b. Section 5.4(a) provides that the App **Pool** pay the AgPool's legal fees  
19 any expenses. There is no further specification of a payor, so the court  
20 concludes that the App Pool, qua pool, pays the AgPool's attorney fees.  
21 The court May 28 order was only one way to accomplish this, and the court  
22 did not rule out any other procedure or method, such as settlement.

23 5. The court concludes that the parties/dissenters must contribute as App  
24 Pool members to the settlement of the AgPool attorney fees for the following  
25 reasons:

26 a. The June 29, 2000 Peace Agreement was signed not only by the  
27 individual parties but also by representatives of the AgPool and the App  
28 Pool (not to mention the Non-Agricultural Pool). To the court, this

1 demonstrates that the Peace Agreement recognized the AgPool and the  
2 App Pool as parties to the agreement.

3 1) The Peace Agreement's recognition of the App Pool as a party is  
4 also demonstrated by the simple reference of the App Pool in  
5 Section 5.4(a).

6 b. So, for the last 20+ years, the court concludes that all the parties,  
7 including the pools themselves, and the members of the respective pools,  
8 recognized the 3 pools. Those pools have developed legal relationships  
9 over the years not only among the members of the pools but also between  
10 the pools themselves.

11 6. The court concludes that the App Pool has been paying the AgPool  
12 legal expenses for the 20+ years since the Peace Agreement went into effect, or  
13 at least the App Pool had the legal obligation to do so. Except for one  
14 objection to the 2019-20 budget, there has been silence about those legal  
15 relationships until now. Now the parties/dissenters have challenged the legal  
16 relationships between the pools and their members.

17 a. The court concludes that the parties/dissenters challenge is  
18 substantively a challenge to the amount of the AgPool's legal expenses.  
19 The parties/dissenters continually raise the issue that they have never seen  
20 the AgPools legal fee bills. The court challenge of the parties/dissenters  
21 started with the amount of the bills and the budget that increased greatly  
22 between fiscal years 2019-20 and 2020/21. That remains one of the  
23 parties/dissenters' arguments that the TOA is invalid.

24 b. There was no follow up to the objection to the 2019-20 budget. In  
25 order for the objection to have any legal effect, the objector would have to  
26 file a motion with the court. There was no such motion, and the instant  
27 motion is an untimely remedy for that one objection, even without the  
28 TOA.

1 7. The court concludes that the basis of the parties/dissenters objections  
2 to the TOA, and everything else about the AgPool's legal expenses, is a  
3 quantative one, not a legal qualitative one because they App Pool has never  
4 sought the court's intervention for more than 20 years.

5 8. Furthermore, the length of time that the parties/dissenters have failed  
6 to raise their qualitatively legal objections in court to the App Pool's payment  
7 of the AgPool's legal expenses has the following consequences:

- 8 a. They are barred by laches.
- 9 b. They are waived.

10 9. The App Pool might not have all the legal elements for a legal estoppel,  
11 but the court finds the parties/dissenters are estopped from raising their legal  
12 arguments now because all the parties and pool have not changed their  
13 positions over the last 20+ years in reliance on the App Pool paying the  
14 AgPool legal expense pursuant to the Peace Agreement. To the court, that is  
15 the essence of an equitable estoppel.

16 10. Furthermore, with the standard operating procedures of the parties in  
17 place from the Peace agreement for more than 20 years, without objection  
18 raised to the court, and such things as the innumerable assessment packages  
19 and the operational involvement of Watermaster, the court finds a basis for an  
20 implied-in-fact contract that the App Pool members abide by the majority vote  
21 on decisions of the App Pool. Furthermore, in the context this 40 year old  
22 case including such things as the Judgment, Peace Agreement I and Peace  
23 Agreement II, the court judgments and rulings, the OBMP, the court finds an  
24 implied-in-law contract that the App Pool members abide and are bound by  
25 the majority vote on decisions of the App Pool.

- 26 a. The court finds that the only way, in reason and in law, that the App  
27 Pool can act qua pool pursuant to Peace I is through the weighted voting  
28 system currently in place.

- 1) The App Pool surrebuttal brief, dated April 14, 2022, starting on page 6, outlines the how votes are assessed in the App Pool.
- a) The App Pool is not governed on the proposition that it is merely the sum of its members each exercising equal rights. Rather the Pooling Plan: assigns voting power to each member according to its share in the Operating Safe Yield (OSY) and assessments paid to Watermaster; appoints an advisory committee representative for each major appropriator and two representatives for the remaining appropriators; apportions assessments according to different formulas for each member's water production; and reallocates unallocated OSY water to the members based on their different operations. The App Pool argues that all App Pool members are bound by the judgment, including is voting provisions.
- (1) In a footnote on page 6, the App Pool points out that regarding the voting power assigned to each member, the Exhibit H to the Judgment, Section 3, states in relevant part:
- (a) The total voting power of the pool committee shall be 1000 votes. Of these, 500 shall be allocated in proportion to decreed shares in Operating Safe Yield. The remaining 500 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year . . . . Affirmative action of the Committee shall require a majority vote of the voting power of the members in attendance, provided that it includes concurrence by at least one-third of its total members.
- 2) The App Pool surrebuttal brief, dated April 14, 2022, starting on page 7 outlines the procedure followed by the App Pool in approving the TOA.
- a) Beginning May 10, 2021, principals of the AgPool and principals

1 of certain App Pool members conducted five settlement  
2 meetings. Ontario [one of the parties/dissenters] was  
3 represented in each of the meetings, and Monte Vista's [also  
4 one of the parties/dissenters] representative helped draft  
5 substantive provisions of the Terms of Agreement. . . . In the  
6 late stages of the negotiations, each Pool appointed negotiators,  
7 but the App Pool gave instructions to its negotiators in  
8 confidential meetings in which all App Pool members and their  
9 counsel were given a chance to participate.

10 b) Ultimately, the AgPool and App Pool resolved their dispute  
11 regarding the AgPool's attorney's fees and other expenses  
12 which underpinned the attorney fee motions for App Pool,  
13 AgPool, and Chino. On March 18, 2022, the AgPool approved  
14 the Terms of Agreement. On March 22. The App Pool  
15 approved the Terms of Agreement by 59.363% of the weighted  
16 votes of thirteen App Pool members, which is substantially  
17 more than the required concurrence by 33% of the App Pool  
18 members.

19 3) The declaration of App Pool Chair John Bossler, dated April 13,  
20 2022, shows that Scott Burton representing Ontario and Monte  
21 Vista Water District General Manager Justin Scott-Coe were  
22 involved in the settlement discussions. The court must conclude  
23 that the Chino's voice was also heard during the settlement  
24 negotiations (either directly or indirectly).

25 4) Pomona City Water Resources Director Chris Diggs states in his  
26 declaration dated April 12, 2022 that all App Pool members,  
27 including the parties/dissenters, were provided an opportunity to  
28 participate in the confidential App Pool settlement meetings; and

1 the parties/dissenters input was fully considered in working out the  
2 TOA.

- 3 5) Additional details of the vote are contained in the declaration of  
4 Chino City Utilities Engineering and Operations Manager David  
5 Crosley, dated April 18, 2022. He states that on March 22, 2022,  
6 he attended the App Pool Committee meeting where the TOA was  
7 discussed and voted on. On behalf of Chino, he voted against the  
8 TOA. There were a total of 974,406 weighted votes cast, and  
9 593,628 weighted votes of App Pool member votes were in favor  
10 of the TOA, that is, 59.363%. Crosley notes that in addition to the  
11 public entity votes App Pool member votes in favor of the TOA,  
12 there were an additional 178,739 App Pool member votes in favor  
13 of the TOA.

14 Public Entities voting in favor of the TOA	
15 Chino Hills City	36.950
16 Cucamonga Valley Water District	73.887
17 Jurupa Community Services District	93.437
18 Pomona City	167.197
19 Upland City	41.418
20 Total Public Entity Votes in Favor of the TOA	414.889

21 b. With the votes of other public entities in favor of the TOA, the court  
22 must conclude that the legal arguments raised by the parties/dissenters are  
23 disputed by other public agencies such as Chino Hills, Pomona, and  
24 Upland, and other water districts such as Cucamonga Valley Water District  
25 and Jurupa Community Water District.

26 11. The TOA resolves all the issues raised by Chino's motion and corrected  
27 motion.

28 a. The TOA references the court's May 28, 2021 order and addresses the  
reimbursement of the \$102,557.12 to Watermaster.

- b. It states it is a compromise and settlement of disputed issues.
- c. It dismisses the storage contests, which the court concludes were the genesis of all the AgPool attorney fee issues.
- d. Paragraph 6 of the TOA tracks the court's May 28, 2021 order.
- e. It provides a procedure for the resolution of future disputes.

12. The court also finds that the TOA is consistent with the Judgment and the Peace Agreements.

V. The court finds unpersuasive any arguments not specifically addressed above.

Therefore, IT IS ORDERED. ADJUDGED, and DECREED,  
That the motion and corrected motion of the City of Chino for reimbursement of attorneys fees and expense paid to the Agricultural Pool IS DENIED.

Dated: April \_\_\_\_, 2022

\_\_\_\_\_  
Stanford E. Reichert, Judge



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 25, 2022 I served the following:

1. NOTICE OF LODGING PROPOSED ORDER AND RULINGS RE CITY OF CHINO MOTION AND CORRECTED MOTION FOR REIMBURSEMENT OF ATTORNEY FEES AND EXPENSES PAID TO 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

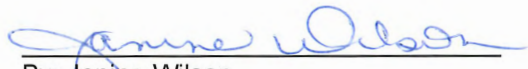
/ / BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/ / 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 25, 2022 in Rancho Cucamonga, California.

  
By: Janine Wilson  
Chino Basin Watermaster

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