

# FEE EXEMPT

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(AGRICULTURAL) POOL

## SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER  
DISTRICT,

Plaintiff,

v.

CITY OF CHINO et al.,

Defendants.

Case No. RCVRS 51010

Assigned for All Purposes to the  
Honorable Stanford E. Reichert

**NOTICE OF MOTION AND MOTION TO  
STRIKE JURUPA COMMUNITY  
SERVICES DISTRICT'S JOINDER TO  
MONTE VISTA WATER DISTRICT AND  
CITY OF ONTARIO'S OPPOSITION AND  
REQUEST TO SUBMIT A SUR-REPLY TO  
AGRICULTURAL POOL MOTION TO  
AMEND ITS POOLING PLAN**

Date: June 26, 2020  
Time: 1:30 p.m.  
Dept. S-35

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**NOTICE**

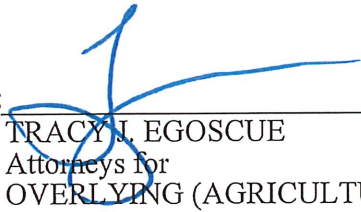
**TO EACH PARTY TO THIS ACTION AND TO THE COUNSEL OF RECORD  
FOR EACH PARTY:**

YOU ARE HEREBY NOTIFIED THAT on June 26, 2020 at 1:30 p.m., in Department S35 of this Court, located at 247 West 3<sup>rd</sup> Street, San Bernardino, California 92415, the Chino Basin Watermaster Overlying (Agricultural) Pool (Agricultural Pool) will and hereby does move by ex parte application, pursuant California Code of Civil Procedure § 435, subdivision (b), this Court to strike out the whole of the Jurupa Community Services District's (JCSD) Joinder To Monte Vista Water District and City of Ontario's Opposition and Request to Submit a Sur-Reply to Agricultural Pool Motion to Amend Its Pooling Plan (JCSD Joinder & Sur-Reply).

This Motion to Strike by ex parte application will be based upon this notice, the attached memorandum in support, the pleadings, records and files herein, and on such oral argument as may be presented at the hearing on the motion.

Dated: June 23, 2020

EGOSCUE LAW GROUP, INC.

By:   
\_\_\_\_\_  
TRACY L. EGOSCUE  
Attorneys for  
OVERLYING (AGRICULTURAL) POOL

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3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **INTRODUCTION**

5 On October 31, 2019, the Chino Basin Watermaster Overlying (Agricultural) Pool  
6 Committee (Agricultural Pool) filed a Motion Regarding Amendment of Pooling Plan for the  
7 Overlying (Agricultural) Pool, Exhibit "F" of the Judgment (Agricultural Pool Motion) with  
8 notice of a December 13, 2019 hearing on the motion. Monte Vista Water District (MVWD) and  
9 the City of Ontario (Ontario) timely filed an Opposition to Agricultural Pool Motion (Joint  
10 Opposition) on December 2, 2019. On December 10, 2019, the Court entered an order resetting  
11 all matters previously calendared for hearing on December 13, 2019 to be heard on March 20,  
12 2020. On March 20, 2020 the Court entered minute orders continuing the March 20, 2020  
13 hearings to June 26, 2020 pursuant to General Order: Implementation of Emergency Relief  
14 Authorized Pursuant to GC 68115 By Chair of the Judicial Council on March 17, 2020. The  
15 JCSD filed its Joinder to MVWD and Ontario's Joint Opposition and Request to Submit a Sur-  
16 reply (JCSD Joinder & Sur-Reply) on June 19, 2020.

17 **STANDARD FOR MOTIONS TO STRIKE**

18 Pursuant to Code of Civil Procedure section 435, the Agricultural Pool moves to strike the  
19 whole of the JCSD Joinder & Sur-Reply. Any party may serve and file a notice of motion to  
20 strike the whole pleading. (Code Civ. Proc., § 435, subd. (b)(1).) The Court may, upon a motion  
21 made pursuant to Section 435 or at any time in its discretion, strike out all or any part of any  
22 pleading not filed in conformity with the laws of the state, a court rule, or an order of the Court.<sup>1</sup>  
(Code Civ. Proc., § 436, subd. (b).)

23 **ARGUMENT**

24 **I. THE JCSD JOINDER SHOULD BE STRUCK IN ITS ENTIRETY BECAUSE IT  
25 WAS NOT FILED IN CONFORMITY WITH THE LAWS OF THE STATE**

26 A party may join another party's motion by filing a timely notice of joinder. The joinder

27 <sup>1</sup> The meet and confer requirement of Code Civil Procedure section 435.5, subdivision (a) does  
28 not apply to this motion strike because it is brought less than 30 days before trial. (Code Civ.  
Proc., § 435.5, subd. (d)(4).)

1 must (1) be timely made, (2) establish the necessary factual foundation to support the motion, and  
2 (3) request affirmative relief on behalf of the joining party. (See, e.g., *Barak v. Quisenberry Law*  
3 *Firm* (2006) 135 Cal.App.4th 654, 661; *Commonwealth Energy Corp. v. Investor Data Exch.*,  
4 *Inc.* (2003) 110 Cal.App.4th 26, 31 n.3; *Frazee v. Seely* (2002) 95 Cal.App.4th 627, 636–37.) The  
5 joinder should present a showing that the joining party’s interests are identical to those of the  
6 moving party so that, in granting the joinder, the Court may make a finding that the shared  
7 interests provide for conservation of the resources of the parties.

8 The JCSD’s so-called “joinder” does not attempt to meet any of these thresholds for a  
9 party to successfully join another party’s motion. It consists of only four lines of a one-page  
10 filing. The JCSD’s joinder does not include a motion and supporting memorandum of points and  
11 authorities or any declaration at all. The JCSD’s joinder does not provide any showing of shared  
12 interest and conservation of resources—let alone any statement at all to support JCSD’s request to  
13 join the Joint Opposition.

14 The Agricultural Pool filed its Motion on October 31, 2019 with notice of a December 13,  
15 2019 hearing on the motion. Code of Civil Procedure section 1005, subdivision (b) requires all  
16 papers opposing the motion be filed with the court at least nine court days before the hearing.  
17 Accordingly, all papers opposing the Agricultural Pool’s Motion were to have been filed with the  
18 Court and served on the parties by December 2, 2019. MVWD and Ontario filed their Joint  
19 Opposition on December 2, 2019.

20 JCSD has now—232 days since the Agricultural Pool filed its motion and 200 days since  
21 the deadline to file an opposition—filed a joinder to the Joint Opposition. JCSD failed to join the  
22 Joint Opposition after MVWD and Ontario filed it on December 2<sup>nd</sup>. JCSD failed to join the Joint  
23 Opposition after the Court continued the hearing by order on December 10, 2019. After the Court  
24 continued the hearing a second time on March 20, 2020, JCSD waited another 91 days before it  
25 filed a joinder to the Joint Opposition. Even now, the JCSD has failed to file its joinder to the  
26 Joint Opposition within the time prescribed by the Code for Civil Procedure. The JCSD Joinder  
27 was made five court days before the twice-continued hearing date—not nine court days as is  
28

1 required by Section 1005(b). Therefore, the JCSD's joinder was not filed in conformity with the  
2 applicable statute setting the time in which an opposition may be properly filed.

3 **II. THE JCSD REQUEST TO SUBMIT A SUR-REPLY SHOULD BE STRUCK IN**  
4 **ITS ENTIRETY BECAUSE IT WAS NOT FILED IN CONFORMITY WITH THE**  
5 **LAWS OF THE STATE**

6 Code of Civil Procedure section 1005, subdivision (b) prescribes the time for filing a  
7 motion, the responding party's opposition and the moving party's reply to the opposition.  
8 Specifically, Section 1005, subdivision (b) states that "[a]ll papers opposing a motion so noticed  
9 shall be filed with the court and a copy served on each party at least nine court days...before the  
10 hearing." The Code of Civil Procedure prescribes this time to provide parties with adequate notice  
11 of the arguments of the moving party in support of its motion and for the moving party to respond  
12 to arguments made in opposition. The statute contemplates moving, opposition and reply papers.  
13 (*Ibid.*) Sur-replies are not contemplated by the statute.

14 JCSD's request to submit a sur-reply is not prescribed by statute; nonetheless JCSD's  
15 request does not even attempt to present any good cause or explanation for the Court to grant its  
16 request. It is not supported by a declaration, memorandum of points and authorities, or any  
17 statement at all within the two-line request to support its position. Because Section 1005 does not  
18 intend to provide leave for sur-reply and JCSD has given no good cause or any explanation for  
19 granting such a request, the Court should deny JCSD's request.

20 Furthermore, JCSD is requesting leave to submit a sur-reply *232 days* after the  
21 Agricultural Pool filed its motion and *200 days* after the deadline to file an opposition without  
22 explanation. This is unquestionably unreasonable delay.

23 Therefore, the JCSD's request to submit a sur-reply was not filed in conformity with the  
24 applicable. JCSD's inappropriate and late filing deprives the Agricultural Pool of a fair  
25 opportunity to review and respond to written opposition to its motion. This is a blatant thwarting  
26 of the intent of the Code of Civil Procedure's prescription of time for filing motions, oppositions  
27 and replies.

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**V. CONCLUSION**

Code of Civil Procedure section 1005, subdivision (b) requires all papers opposing a motion be filed with the court at least nine court days before the hearing; and the Court may strike out any pleading pursuant to Code of Civil Procedure section 436. JCSD failed to appropriately or timely oppose the Agricultural Pool's Motion in conformity with the statute of the State, and JCSD's late filing deprives the Agricultural Pool of a fair opportunity to review and respond to written opposition to its motion. Therefore, it may be stricken by the Court.

Good cause exists for the Court to grant this motion in order to ensure equity is preserved in the Court's proceedings by providing the Agricultural Pool with a fair opportunity to review and respond to opposition to its motion. Accordingly, the Agricultural Pool respectfully requests that the Court grant the Agricultural Pool's Motion to Strike the whole of the JCSD Joinder & Sur-reply.

Dated: June 23, 2020

EGOSCUE LAW GROUP, INC.

By: 

\_\_\_\_\_  
TRACY J. EGOSCUE  
Attorneys for  
OVERLYING (AGRICULTURAL) POOL



**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 June 23, 2020 I served the following:

1. NOTICE OF MOTION AND MOTION TO STRIKE JURUPA COMMUNITY SERVICES DISTRICT'S JOINDER TO MONTE VISTA WATER DISTRICT AND CITY OF ONTARIO'S OPPOSITION AND REQUEST TO SUBMIT A SUR-REPLY TO AGRICULTURAL POOL MOTION TO AMEND ITS POOLING PLAN

/ 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:** Mailing List 1

/ 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 June 23, 2020 in Rancho Cucamonga, California.

  
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Chino Basin Watermaster

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