

FEE EXEMPT

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10 (AGRICULTURAL) POOL

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN BERNARDINO

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 v.

17 CITY OF CHINO et al.,

18 Defendants.

Case No. RCVRS 51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

AGRICULTURAL POOL'S
OPPOSITION TO CITY OF CHINO'S
CORRECTED MOTION FOR
REIMBURSEMENT OF ATTORNEYS
FEES AND EXPENSES PAID TO THE
AGRICULTURAL POOL; REQUEST
FOR STAY PENDING APPEAL

[Filed concurrently with Declaration of
Tracy Egoscue]

Date: February 4, 2022
Time: 1:30pm
Dept.: S35

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On January 3, 2022, the City of Chino (Chino) filed a Motion for Reimbursement of
4 Attorney’s Fees and Expenses Paid to the Agricultural Pool in response to this Court’s November
5 5, 2021 order signed on December 3, 2021.¹ A “Corrected Motion for Reimbursement of
6 Attorney’s Fees and Expenses Paid to the Agricultural Pool” was served on January 4, 2022
7 (Corrected Motion). The Overlying (Agricultural) Pool Committee (Agricultural Pool) hereby
8 opposes the City of Chino’s Corrected Motion.²

9 The Corrected Motion should be dismissed because the Court’s December 2021 Order is
10 automatically stayed pending the Agricultural Pool’s appeal.

11 Furthermore, the Court should deny the Corrected Motion because (1) Chino requests
12 reimbursements in amounts that exceed the Court’s May 28, 2021 and December 2021 Orders;
13 (2) Chino has not appropriately plead a reimbursement process for payments made by four
14 Appropriate Pool members totaling \$4,624.66³; and (3) Chino has waived any right to payments
15 it approved and authorized prior to the dispute and is estopped from claiming reimbursement.

16 **II. THE CORRECTED MOTION SHOULD BE DENIED DUE TO AN AUTOMATIC**
17 **STAY PENDING THE AGRICULTURAL POOL’S APPEAL OF THE**
18 **DECEMBER 2021 ORDER**

19 On January 4, 2022, the Agricultural Pool filed a Notice of Appeal of the Court’s
20 December 2021 Order.⁴ (Declaration of Tracy Egoscue (“Egoscue Decl.”), ¶7.) California Code of
21 Civil Procedure section 916, subdivision (a) suspends the trial court’s power to enforce, vacate or
22 modify an appealed order while the appeal is pending. (See Code of Civ. Proc. § 916, subd. (c);

23 ¹ For clarity and consistency this order will be referred to as “December 2021 Order” throughout
24 this opposition.

25 ² The Agricultural Pool is filing this opposition in response to the Corrected Motion on the
26 understanding that the Corrected Motion was intended to operate as an amended pleading under
27 Code of Civil Procedure, § 472, which supersedes the original January 3, 2022 filing. (*Sylmar Air*
28 *Conditioning v. Pueblo Contracting Servs., Inc.* (2004) 122 Cal. App. 4th 1049, 1054 [An
amendatory pleading supersedes the original one, which ceases to perform any function as a
pleading.]

³ While the Corrected Motion includes a declaration by Appropriate Pool counsel, Mr. John
Schatz, Mr. Schatz is not a signatory of the motion, therefore, the motion was not filed jointly
with Appropriate Pool.

⁴ The Agricultural Pool’s Notice of Appeal identifies the December 2021 Order as the
“November 5, 2021 order.”

1 see also *Elsea v. Saberi* (1992) 4 Cal.App.4th 625, 629.) Section 916 states, “the perfecting of an
2 appeal stays [the] proceedings in the trial court upon the judgment or order appealed from or upon
3 the matters embraced therein or affected thereby, including enforcement of the judgment or
4 order...” (Code Civ. Proc. § 916, subd. (a).)

5 The December 2021 Order requires affirmative action and changes the status quo by
6 ordering that Watermaster return funds paid into escrow for the Agricultural Pool’s legal
7 expenses and allowing the City of Chino to “file and serve a motion as to the procedure for
8 reimbursement of any assessments that are not held in the escrow account that may be due to the
9 paying party.” (December 2021 Order, p. 2:2-15.) The assessment for the majority of the
10 Agricultural Pool’s legal expenses budget amendment for Fiscal Year (FY) 2019/20 totaling
11 \$165,694.75 has been held in escrow until recently when in response to the Court Order, the
12 Watermaster returned the funds to the member agencies of the Appropriative Pool. (Egoscue
13 Decl., ¶8.) The only funds that remain at issue total \$4,624.66, and the determination of the
14 reimbursement of these funds should be stayed pending the appeal of the December 2021 Order.

15 “The purpose of the rule depriving the trial court of jurisdiction during the pending appeal
16 is to protect the appellate court’s jurisdiction by preserving the status quo until the appeal is
17 decided.” (*Elsea v. Saberi, supra*, 4 Cal.App.4th at p. 629.) Accordingly, whether a matter is
18 “embraced” in or “affected” by a judgment within the meaning of section 916 depends upon
19 whether postjudgment trial court proceedings on the particular matter would have any impact on
20 the “effectiveness” of the appeal. (*Ibid.*) A mandatory injunction is automatically stayed by an
21 appeal. An injunction is considered to be mandatory where it requires affirmative action and
22 changes the status quo. (*Musicians Club of Los Angeles v. Superior Court* (1958) 165 Cal.App.2d
23 67, 71 and *Hayworth v. City of Oakland* (1982) 129 Cal.App.3d 723, 728.)

24 Therefore, the December 2021 Order is stayed during the Agricultural Pool’s appeal and
25 the Corrected Motion should be denied. Accordingly, the Agricultural Pool requests that the
26 Court confirm the stay pending the Agricultural Pool’s appeal of the December 3, 2021 order.
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1 **III. THE CORRECTED MOTION SHOULD BE DENIED BECAUSE IT REQUESTS**
2 **REIMBURSEMENTS IN AMOUNTS THAT EXCEED THE COURT’S MAY 28,**
3 **2021 AND DECEMBER 2021 ORDERS**

4 In a blatant misrepresentation of the Court’s orders, Chino asserts that “[t]he Court has
5 determined that the Agricultural Pool is not entitled to the payment of its attorney fees and
6 expenses for fiscal years 2019-20 and 2020-21.” (Corrected Motion, pp. 9:15-16; 10:27-28.)
7 What the Court actually determined was that “all *fees sought by the Overlying (Agricultural)*
8 *Pool*” were either adversarial to the Appropriative Pool or in the alternative could not be
9 determined whether the fees were fair, reasonable, appropriate, and consistent with the Court’s
10 May 28, 2021 Order. (December 2021 Order p. 2:4-8.) (Italics added.) The only support for
11 Chino’s contention that the “*Ag Pool legal expenses are squarely at issue for the entirety of fiscal*
12 *years 2019-2020 and 2020-2021*” is a citation to their own opposition to the Agricultural Pool’s
13 Motion for Attorney’s Fees and the Appropriative Pool Member Agencies’ September 17, 2020
14 motion. (Corrected Motion, pp. 6:19-21; 11:11-14; 13.) (Italics in original.) It is the Court’s
15 March 28, 2021 and December 2021 Orders that establishes the parameters of both the relief
16 granted to the Appropriative Pool as well as the Agricultural Pool’s motion for attorney’s fees --
17 not the pleadings filed by Chino.

17 **A. The Corrected Motion Inappropriately Seeks More Money and Is a**
18 **Perversion of The Court’s Direction.**

19 Chino now seeks a further Court order for “the Agricultural Pool to reimburse assessments
20 paid by the Appropriative Pool for Agricultural Pool attorney's fees and expenses in the sum of
21 \$483,202.55 for fiscal years 2019-20 and 2020-21 including Chino’s portion thereof and to
22 reimburse Watermaster in the sum of \$102,557 for Agricultural Pool attorney fees and expenses it
23 paid for fiscal year 2020-21...” (Corrected Motion, 1:22-26.) The Corrected Motion is a
24 perversion of the Court’s direction that purposefully attempts to exploit the complex nature of the
25 financial accounting and court proceedings regarding this dispute. Chino is inappropriately
26 attempting to relitigate this matter and reach back in time beyond the current dispute to recoup
27 assessments not at issue.

28 Chino requests reimbursement of \$300,000 of payments the Appropriative Pool has

1 already authorized and \$63,314 transferred from one Agricultural Pool fund account to another.
2 In doing so the Corrected Motion distorts the Court’s order by asserting findings not made by the
3 Court and requests reimbursement of payments that are not at issue and were not incorporated
4 into, or anticipated by, the Court’s December 2021 Order.

5 Nothing in the Court’s orders puts “the entirety of fiscal years 2019-2020 and 2020-
6 2021,” including \$300,000 paid by members of the Appropriative Pool, squarely at issue. In fact,
7 the Court’s May 28, 2021 Order specifically concluded that prior to the instant dispute, the parties
8 have agreed to a determination about payment of such expenses—“Judgement ¶54 and Peace I
9 §5.4(a) mean that, of course, the Ag Pool and the Appropriative Pool can agree to a determination
10 to [sic] about payment of ‘litigation expense.’ The court concludes that they have been doing this
11 up until the instant motion.” (May 28, 2021 Order, ¶7.) (Italics added.) As noted above, the Court
12 specifically confined the reach of its order to “apply only to the specific attorney fee dispute
13 between the Ag Pool and the Appropriative Pool” that is at issue – namely the \$165,694.75. (*Id.*
14 at ¶5.)

15 Chino first objected to payment of Agricultural Pool expenses assessed to it in August 2020
16 after it—and the other members of the Appropriate Pool—authorized payment of the \$300,000
17 now requested to be reimbursed. (Declaration of Dave Crosley (“Crosley Decl.”), ¶¶4 and 5.)
18 There was no objection before that time. In fact, Chino plainly states that it reviewed the
19 assessment for FY 2019/20 and authorized its payment. (*Id.* at ¶4.) Authorized payments made
20 before that time were agreements by the parties for payment under the Peace Agreement as
21 ordered by the Court. (See May 28, 2021 Order, ¶7.)

22 **B. The Court’s Orders Only Pertain to the Appropriative Pool Special**
23 **Assessment of \$165,694.75 for the Agricultural Pool Legal Expense Increase –**
24 **Approved by the Watermaster Board by Majority Vote on August 25, 2020.**

25 It is clear from the Court’s December 2021 Order and the November 5, 2021 hearing
26 transcript that the Corrected Motion was not what the Court had intended when it accepted Mr.
27 Gutierrez’ offer to file a motion to address “parties’ payment that did not go into escrow.”
28 (November 5, 2021 Transcript, p. 34:1-5.) The Court put the February 4th hearing on calendar as
“an additional hearing regarding procedures for reimbursement.” (*Id.* at 30:9-10.) Chino’s

1 Corrected Motion does not provide the Court with procedures for reimbursement of the \$4,624.66
2 in payments not in escrow.

3 **C. The Watermaster Has Released the Escrowed Funds.**

4 The Court's direction was clear. The Court specifically ordered that money in escrow be
5 returned and asked the City of Chino to file and serve a motion to address "any money that's
6 somehow got paid that isn't in escrow." (December 2021 Order; November 5, 2021 Transcript, p.
7 33:3-4.) The Court has been consistent and clear that its rulings are limited to this specific
8 attorney fee dispute stating:

9 The ruling of the court on the instant motion for attorney fees is
10 intended to apply only to the specific attorney fee dispute between
11 the Ag Pool and the Appropriative Pool. It is not intended to have
12 any general effect on any other party or pool, or to give the
13 Appropriative Pool any legal basis to object to any other aspect or
14 any other budget item.

15 (May 28, 2021 Order, ¶5.)

16 At the November 5, 2021 hearing Watermaster counsel presented to the Court that it could
17 release the money held in escrow "forthwith" but that there may be additional money, "something
18 trailing," that will need to be figured out. (November 5, 2021 Transcript, p. 33:15-21.) Counsel
19 for the Agricultural Pool followed up the statement by specifically asking the Court if that
20 something trailing was the subject of the subsequent reimbursement motion, to which the Court
21 replied, "Yes, that would be Mr. Gutierrez' motion." (*Id.* at 33:15-21.) The Court did not request
22 direction or any motion practice for any payments previously authorized and not at issue in the
23 current dispute, and in fact by order precluded any such motion.

24 **D. Only \$4,624.66 In Paid Assessments Remain at Issue.**

25 As the Corrected Motion acknowledges, in response to Watermaster's August 25, 2020
26 invoice for increased Agricultural Pool legal expenses, four Appropriative Pool members paid
27 their allocated amounts totaling \$4,624.66 directly to Watermaster. (Corrected Motion, p. 6:12-
28 13.) It is this \$4,624.66 that is the "something trailing" the Court has requested be addressed by
motion. The Corrected Motion is an inappropriate attempt to claw back money Chino approved
and paid and is without support or authority.

Curiously, although volunteering to brief the Court on this issue, Chino has not made a

1 single payment towards the Agricultural Pool legal expenses since the dispute began.
2 Additionally, along with the rest of the Member Agencies' escrowed funds, Chino's payment of
3 its portion of the "Appropriative Pool Special Assessment of \$165,694.75 for Ag Pool Legal
4 Expense Increase – Approved by Watermaster Board by majority vote on August 25, 2020" into
5 escrow has been returned. (Crosley Decl., ¶ 5; Egoscue Decl., ¶8.) Chino has not paid any amount
6 it believed was attributable to the Agricultural Pool special project and legal expenses for FYs
7 2020/21 or 2021/22. (Crosley Decl., ¶¶ 6 and 7.) Nevertheless, at the November 5, 2021 hearing,
8 Mr. Jimmy Gutierrez on behalf of Chino volunteered to file a motion addressing the procedure for
9 reimbursement of monies that were not held in escrow and totaling \$4,624.66. (November 5,
10 2021, p. 32:1-28.) Apparently Chino is not the appropriate party to assert the reimbursement
11 rights of four members of the Appropriative Pool.

12 **E. The City Of Chino Has Not Appropriately Plead A Reimbursement Process
13 For The \$4,624.66 Paid By Four Members Of The Appropriative Pool.**

14 In response to Chino's attorney volunteering to draft a motion, the Court's December
15 2021 Order directs Chino to "file and serve a motion as to the procedure for reimbursement of
16 any assessments that are not held in the escrow account that may be due to the paying party."
17 (December 2021 Order, p. 2:13-15.) Chino's Corrected Motion is a departure from this clear
18 directive as it does not provide the Court with a proposed procedure for reimbursement of the
19 \$4,624.66 in assessments not held in escrow. To the contrary, "Chino suggests that no order of
20 reimbursement be made in favor of any Appropriative Pool member or Watermaster other than
21 Chino in the absence of any specific request by such party or by Watermaster." (Corrected
22 Motion, p. 15:1-3.) Consequently, Chino's Corrected Motion necessitates each member of the
23 Appropriative Pool to bring their own motion for reimbursement. There is no evidence that Chino
24 consulted or communicated with the other members of the Appropriative Pool to discuss
25 reimbursement amounts or to simply inform them of the need to file a joinder or their own
26 motion, and indeed no other party filed a timely joinder or motion (including the Appropriative
27 Pool). Assuming arguendo that a motion regarding the funds not held in escrow is appropriately
28 heard by the Court and not stayed by the Agricultural Pool's appeal, the Appropriative Pool is the

1 only proper party to file such a motion for reimbursement.⁵

2 **F. The Court’s Orders Did Not Require the Agricultural Pool to “Justify”**
3 **Payments Already Authorized and Paid.**

4 The Corrected Motion misrepresents the facts. Contrary to the Court’s Orders, Chino
5 asserts that “[b]ecause the Agricultural Pool failed to demonstrate entitlement to the payment of
6 any of its attorney fees and expenses for Fiscal Years 2019-20 and 2020-21 as requested by the
7 Court, the Agricultural Pool has waived its claims to the payment of any of its attorney fees or
8 expenses under Paragraph 5.4(a) of the Peace Agreement.” (Corrected Motion, p. 3:1-4.) That is
9 not what the Court ordered. The Court stated that if the Agricultural Pool does not timely file its
10 motion for attorney’s fees as ordered, the Court “will consider the Ag Pool to have waived *its*
11 *current claims for attorney fees and expenses...*” (May 28, 2021, ¶8.C.II.) (Italics added.) The
12 Agricultural Pool’s “current claims for attorney fees and expenses” do not include those already
13 approved, invoiced, and paid; instead, the Agricultural Pool’s “current claims for attorney fees
14 and expenses” encompass the \$165,694.75 – the amount of the initial dispute. (Egoscue Decl.,
15 ¶5.)

16 Indeed, while the Corrected Motion attempts to argue that the Court’s May 28, 2021
17 Order would consider the Agricultural Pool’s claims waived, it conveniently fails to include the
18 order’s very next paragraph that specifically states, “The court notes the Exhibit A to the
19 Declaration of John Schatz filed May 24, 2021, ‘Appropriative Pool Special Assessment of
20 \$165,694.75’ which appears to the court to itemize the assessments to Appropriative Pool
21 members, and the court would use that list as the basis of the reimbursements.” (May 28, 2021
22 Order, ¶8.C.II.a) The Agricultural Pool was under no obligation to justify payment of expenses
23 already approved, invoiced, and paid.

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26 ⁵ The relevant benefit and obligations of the Peace Agreement Section 5.4 are made and received
27 by the Agricultural and Appropriative Pools. Any relief requested under the Peace Agreement
28 should be made by the Appropriative Pool, not a Member Agency of the Appropriative Pool that
is not entitled to the relief requested.

1 **IV. CHINO HAS WAIVED ANY RIGHT TO PAYMENTS IT AUTHORIZED AND**
2 **PAID PRIOR TO THE DISPUTE AND IS ESTOPPED FROM CLAIMING**
3 **REIMBURSEMENT OF FUNDS AUTHORIZED AND PAID PRIOR TO THE**
4 **SEPTEMBER 18, 2020 MOTION**

5 The Corrected Motion is seeking reimbursement in the sum of \$483,202.55 for fiscal
6 years 2019-20 and 2020-21, which includes authorized payments not incorporated into or
7 anticipated by either the Court’s December 2021 or May 28, 2021 Orders. Legal expenses and
8 costs that were approved by the Agricultural Pool and assessed to the Appropriative Pool by
9 Watermaster and were then authorized and paid by the Appropriative Pool are not reimbursable
10 under the Court’s May 28, 2021, or December 3, 2021 orders.

11 **A. Estoppel Precludes Chino from Claiming Reimbursement of \$300,000 Worth**
12 **of Funds Authorized and Paid Prior to the September 18, 2020 Motion.**

13 Chino is estopped from claiming reimbursement of payments already authorized,
14 including its claim to the \$16,379 paid as a portion of the 2019-20 Agricultural Pool legal budget
15 of \$300,000. (Corrected Motion, p. 6:1-3.). A party cannot intentionally and deliberately lead
16 another party to believe a particular thing true and act upon such belief and then, in any litigation
17 resulting from the intentional statement or conduct, contradict that “truth.” (Evid. Code § 623
18 [“Whenever a party has, by his own statement or conduct, intentionally and deliberately led
19 another to believe a particular thing true and to act upon such belief, he is not, in any litigation
20 arising out of such statement or conduct, permitted to contradict it.”].) Estoppel is founded on
21 fundamental fairness that one who engages in conduct designed to cause another to believe a
22 certain state of things and later alters their previous position, cannot then assert to that person a
23 different state of things. (*Est. of Bonanno* (2008)165 Cal. App. 4th 7, 22 [“[T]he rule of law is
24 clear, that, where one by his words or conduct willfully causes another to believe the existence of
25 a certain state of things, and induces him to act on that belief, so as to alter his own previous
26 position, the former is [precluded] from averring against the latter a different state of things as
27 existing at the same time....”]. Citations removed.)

28 **B. Chino and Member Agencies of the Appropriative Pool Have Previously Only**
Objected to Payment of a Portion of the Appropriative Pool Special
Assessment of \$165,694.75 and Cannot Now Object to Previously Approved
and Paid Funds.

Chino authorized and paid a portion of the Agricultural Pool assessments and expenses for

1 FY 2019/20. (Crosley Decl., ¶4.) Mr. Crosley has attested that he, as the Water & Environmental
2 Manager for the City of Chino, reviews invoices sent from Watermaster to Chino “to determine
3 whether they constitute appropriate payments...[and that] the detail examination about the
4 appropriateness of paying the invoices of the [Chino] Water Enterprise Fund is mine alone to
5 make.” (*Id.* at ¶3.) Mr. Crosley further attested that “Chino received Chino Basin Watermaster
6 Invoice No. AP20-03 dated November 21, 2019 that describes a total invoice amount of
7 \$447,841” for FY 2019/20, which Mr. Crosley believed was inclusive of “Chino’s share of
8 Overlying Agricultural Pool special project and legal expenses...” (*Id.* at ¶4.) In response to the
9 invoice, Mr. Crosley “reviewed it and authorized payment of the entire amount.” (*Ibid.*) Chino
10 paid Invoice No. AP20-03 in the amount of \$447,841.58 by electronic fund on December 13,
11 2019. (*Ibid.*) The City of Chino did not make an objection to payment of the Agricultural Pool’s
12 assessment and expenses until it received a second invoice together with a table attached titled
13 “Appropriative Pool Special Assessment of \$165,694.75.” (*Id.* at ¶5.)

14 Chino and the other members of the Appropriative Pool are estopped from claiming
15 reimbursement of the payment of \$300,000 for Agricultural Pool legal expenses because they
16 have authorized the payment of such expenses pursuant to a contractual obligation and in the
17 custom and practice of two decades. The Agricultural Pool did, in good faith, rely on the
18 Appropriative Pool’s intentional and deliberate conduct of authorization and payment of the
19 Agricultural Pool’s duly approved budget. It would be fundamentally unfair to compel
20 reimbursement of payments authorized in the regular custom and practice of the past two decades,
21 especially given no such suggestion was made or allowed in the Court’s orders.

22 **C. Chino has Waived its Right to Reimbursement of Funds Authorized and Paid
23 Prior to the September 17, 2020 Motion.**

24 Furthermore, Chino has waived its right to claim reimbursement of payments already
25 authorized. Waiver is the intentional relinquishment of a known right after full knowledge of the
26 facts. (*DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal. App.
27 4th 54, 59.) As stated above, the Court’s May 28, 2021 Order specifically states that the parties
28 have agreed to a determination of payments prior to the current dispute and identifies that the
“Appropriative Pool Special Assessment of \$165,694.75” is what the Court intended to use as the

1 basis of the reimbursements. (May 28, 2021 Order, ¶8.C.II.a.) Chino did not previously object to
2 their share of the previously paid monies and made no objection to or appeal of the Court’s
3 conclusions and orders. Accordingly, Chino has waived its right to claim reimbursement of
4 payments other than the Appropriative Pool Special Assessment of \$165,694.75.

5 Chino’s conduct signifying approval consistent with past custom and practice, and the
6 Appropriative Pool Member Agencies’ Motion “[o]bjecting to the *unbudgeted legal and expert*
7 *expenses ...*” (Appropriative Pool Member Agencies’ September 17, 2020 Motion, p. 10:1-2;
8 italics added), coupled with the Court’s identification of the Appropriative Pool Special
9 Assessment of \$165,694.75 at issue limits the amount subject to the December 2021 Order. Chino
10 cannot now compel the Court to reverse Chino’s own previously authorized payment and the
11 payments of all Appropriative Pool members totaling \$300,000, as that claim for reimbursement
12 has been waived.

13 **D. Chino Cannot Be Reimbursed For Transfers Made Between Agricultural
Pool Fund Accounts.**

14 The Corrected Motion further asserts the Agricultural Pool should be required to
15 reimburse to the Appropriative Pool in the amount of “\$63,314 transferred from the Special
16 Projects Fund (8471) to the Legal Budget to pay for increased legal services in Fiscal Year 2019-
17 20.” (Corrected Motion, p. 10-9-10.) The Corrected Motion describes the accounting for the
18 \$63,314 as such:

19 Later in Fiscal Year 2019-20, the Agricultural Pool increased its
20 2019-20 legal services expenditures or budget by the sum of
21 \$229,008.75. Watermaster responded to the increase in legal
22 services by transferring the sum of **\$63,314** from the *Agricultural*
Pool Special Projects Fund (8471) into the Agricultural Pool
Legal Fund (8467) and by invoicing the difference of
\$165,694.75 to the Appropriative Pool.

23 (Corrected Motion, p. 6:4-9.) (Italics added.)

24 To put it plainly, Chino is seeking reimbursement for a sum of money transferred from
25 one Agricultural Pool fund account to another Agricultural Pool fund account. However, the
26 Corrected Motion provides no evidence that Chino has the authority to direct the Agricultural
27 Pool on the management of Agricultural Pool fund accounts. As discussed above, the
28 Appropriative Pool has waived its right and is estopped from reimbursement of the money

1 already held in the Agricultural Pool Special Projects Fund (8471) because those payments were
2 authorized by the Appropriative Pool members consistent with past custom and practice.

3 As counsel for the Agricultural Pool has testified to, both in court and by declaration, the
4 members of the Appropriative Pool have not made any payments for Agricultural Pool expenses
5 since this dispute began in August 2020, and therefore, because Watermaster already released the
6 escrow monies, other than the \$4,624.66, there are no other funds to be “reimbursed.” (See
7 November 5, 2021 Transcript, p. 20:6-27.)

8 **V. CONCLUSION**

9 The Court’s December 3, 2021 Order is stayed pending the Agricultural Pool’s appeal.
10 Additionally, Chino requests reimbursements in amounts that exceed the Court’s May 28, 2021
11 and December 2021 Orders; Chino has not appropriately plead a reimbursement process for four
12 Appropriative Pool members for an amount totaling \$4,624.66 (which is the only appropriate
13 amount of funds at issue); and Chino has waived any right to payments it approved and
14 authorized prior to the dispute and is estopped from claiming reimbursement.

15 For all of the foregoing reasons, the Court should deny the Corrected Motion for
16 Reimbursement of Attorney’s Fees and Expenses Paid to the Agricultural Pool and confirm the
17 stay of the December 2021 Order pending the Agricultural Pool’s appeal.

18
19 Dated: January 24, 2022

EGOSCUE LAW GROUP, INC.

20
21 By: Tracy J. Egoscue
22 TRACY J. EGOSCUE
23 Attorneys for
24 OVERLYING (AGRICULTURAL) POOL
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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 January 24, 2022 served the following:

1. AGRICULTURAL POOL'S OPPOSITION TO CITY OF CHINO'S CORRECTED MOTION FOR REIMBURSEMENT OF ATTORNEYS FEES AND EXPENSES PAID TO THE AGRICULTURAL POOL; REQUEST FOR STAY PENDING APPEAL

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 January 24, 2022 in Rancho Cucamonga, California.


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