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FEE EXEMPT PER GOV. CODE § 6103

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10
11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendants.

CASE NUMBER: RCV 51010
*[Assigned for All Purposes to Honorable
Stanford E. Reichert, Dept. S35]*

**CITY OF CHINO REPLY TO
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**

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

(FEE- EXEMPT PER GOVERNMENT CODE § 6103)

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23 The City of Chino (hereafter "Chino") submits this Reply to the Agricultural Pool's
24 Opposition to City of Chino's Corrected Motion for Reimbursement of Attorneys' Fees and
25 Expenses Paid to the Agricultural Pool and Request for Stay Pending Appeal (hereafter "Ag
26 Pool Opposition").

27 ///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Why shouldn't the Appropriative Pool members be reimbursed for their payments of the
4 Agricultural Pool's 2019-20 and 2020-21 attorneys' fees and expenses?

5 The Ag Pool Opposition fails to explain why it should not reimburse the attorney fees
6 and expenses, previously paid by the Appropriative Pool members, that had not been shown to
7 satisfy the requirements of the May 28, 2021 Court Order ("May Order") in the two prior
8 motions on this subject. Chino's "Motion for Reimbursement"¹ targets reimbursement of the
9 payments made by the Appropriative Pool members for which the Agricultural Pool had not
10 produced its invoices for FY 2019-20 and 2020-21 attorney fees and expenses. Thus, the
11 Agricultural Pool was on notice to produce those invoices and to show that they satisfy the
12 requirements of the May Order.

13 But, the Agricultural Pool chose not to do so. The Agricultural Pool also previously
14 chose not to provide its invoices for attorney fees and expenses covering the time frame of FY
15 2019-20 and 2020-21.² Thus, the Agricultural Pool has failed to establish any right to retain
16 the payments of the Appropriative Pool members. Further, these failures deny fundamental
17 fairness and due process to the Appropriative Pool members as to their obligation to pay
18 Agricultural Pool expenses under Paragraph 5.4(a) of the Peace Agreement. Thus, the
19 Appropriative Pool members that paid Agricultural Pool attorney fees and expenses still do not
20 know what they paid and whether they were obligated to make the payments. Without the
21 invoices, the Court has no factual basis from which to determine that the attorney fees and
22 expenses paid by the Appropriative Pool members may be retained by the Agricultural Pool.

23 Instead of establishing its right to retain the payments with affirmative evidence, the
24 Agricultural Pool makes a series of arguments that attempt to limit the Court's jurisdiction and
25 discretion to order reimbursement.

26 _____
27 ¹"Motion for Reimbursement" will be used to refer to the "City of Chino Corrected Motion for Reimbursement of
Attorney Fees and Expenses Paid to the Agricultural Pool" dated December 31, 2021 for the purpose of brevity.

28 ² John Schatz letter to Tracy Egosque dated August 27, 2021, Exhibit D to the Declaration of John Schatz in Support of
the Motion for Reimbursement.

1 **II. CHINO'S MOTION DOES NOT IMPACT THE EFFECTIVNESS OF THE**
2 **AGRICULTURAL POOL'S APPEAL OF THE COURT'S DECEMBER ORDER**

3 The Ag Pool Opposition argues that the determination of the Motion for Reimbursement
4 should be stayed due to its appeal of the Court's December 3, 2021 Order that denied the
5 Agricultural Pool's Motion for Attorney Fees filed July 26, 2021 ("December Order").

6 The Agricultural Pool appealed only from the December Order denying in its entirety
7 the Agricultural Pool's motion for legal expenses incurred in fiscal years 2019-20 and 2020-
8 21. (See Notice of Appeal, filed Jan. 4, 2022.) Time to appeal from the May 28 Court Order
9 expired sixty days thereafter, and that Order is no longer appealable. (CRC, Rule 8.406(a).)
10 The May 28 Order interprets Section 5.4(a) of the Peace Agreement and establishes a process
11 by which the Agricultural Pool may seek to establish entitlement to payment of its legal
12 expenses. By choosing not to appeal from the May Order, the Agricultural Pool has accepted
13 its finality. Having accepted the finality of the May Order, the Agricultural Pool may not
14 interfere with its implementation by appealing from subsequent trial court decisions, and
15 thereby invoke a broad automatic stay to preclude resolution of which legal expenses are
16 payable by the AP under Section 5.4(a) of the Peace Agreement.³

17 **A. Automatic Stay Does Not Apply to the Motion for Reimbursement.**

18 The Agricultural Pool's Opposition cites the general automatic stay rule set forth in
19 CCP, section 916(a). The purpose of the automatic stay is to prevent the trial court from
20 rendering an appeal futile by altering the appealed judgment. (*Betz v. Pankow* (1993) 16
21 Cal.App.4th 931, 938.) The automatic stay rule has important exceptions and limitations,
22 which are controlling here.

23 First, Section 916(a) expressly allows "the trial court [to] . . . proceed upon any other
24 matter embraced in the action and not affected by the judgment or order."

25 ³ The right of appeal has strict limitations. For example, post-judgment orders arising from a stipulated judgment
26 typically are non-appealable. (CCP, § 904.1(a)(2); *Howath v. Coffelt* (2017) 18 Cal.App.5th 126.) Case law creates an
27 exception that allows for appeals of post-judgment orders issued to effectuate stipulated judgments in water cases.
28 (*Rancho Pauma Mutual Water Co. v. Yuima Municipal Water Dist.* (2015) 239 Cal.App.4th 109, 115.) This exception
need not be extended to allow appeals from all types of post-judgment orders in water cases, without limitation. Where
an appeal is properly taken, it should not result in broad stays hindering ongoing administration of the Chino Basin under
the Peace Agreement, including implementation of the May 28 Court Order.

1 [W]hether a matter is ‘embraced’ in or ‘affected’ by a . . . [order] within the meaning of
2 [section 916] depends on whether postjudgment [or postorder] proceedings on the matter
3 would have any effect on the ‘effectiveness’ of the appeal.” (*In re Marriage of Horowitz*
4 (1984) Cal.App.3d 377, 381.) If so, the proceedings are stayed; if not, the proceedings
5 are permitted.” (*Betz v. Pankow, supra*, 16 Cal.App.4th 931, 938.)

6 (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189, emphasis added.) The
7 Motion for Reimbursement has no “effect on the effectiveness” of the appeal from the
8 December Order. The December Order denies in the Agricultural Pool’s motion for legal
9 expenses. Any monetary reimbursements issued to Appropriators – whether issued as credits
10 or otherwise – would not interfere with the Court of Appeal’s resolution of the appeal.⁴ Thus,
11 the automatic stay does not apply to the Motion for Reimbursement and it may proceed.

12 Second, by the express language of CCP, section 916(a), there is no automatic stay
13 where, as here, CCP, section 917.1 applies. CCP, section 917.1 requires the appellant from an
14 order for “money or the payment of money” to post a bond in order to obtain a stay, as follows:

15 Unless an undertaking is given, the perfecting of an appeal shall not stay enforcement
16 of the judgment or order in the trial court if the judgment or order is for any of the
17 following:

18 (1) Money or the payment of money, whether consisting of a special fund or not, and
19 whether payable by the appellant or another party to the action. . . . (Emphasis added.)

20 The December Order is for “money or the payment of money . . . whether payable by the
21 appellant or another party to the action,” in that it denied a motion demanding payment of legal
22 expenses and directed Watermaster to release funds held in escrow. In addition, the December
23 3 Order implicitly requires Watermaster to look to the Agricultural Pool and not the AP to
24 refund the \$102,557.12 paid from the Watermaster administrative reserve funds to cover
25 Agricultural Pool legal expenses incurred in fiscal year 2020-21. Because the order from
26 which the appeal was taken is for money, the Agricultural Pool must post a bond in order to
27 obtain a stay.⁵ Because the Agricultural Pool has not posted a bond, it is not entitled to a stay.

28 ⁴ Even if the Court of Appeal reversed the December 3 Order, and as a result the trial court had to reconsider aspects of
the Agricultural Pool’s motion for legal expenses, any amounts awarded to the Agricultural Pool could be assessed and
paid at that time.

⁵ CCP, § 995.220 does not exempt the Agricultural Pool from the bond-posting requirement. Exemptions from the bond-
posting requirement are narrowly construed. (*Mitchell v. Board of Ed. of City & County of San Francisco* (1902) 137
Cal. 372, 374-375 [school district did not qualify for bon-posting exemption under the statutory predecessor to CCP, §
995.220, because the language did not expressly identify “school districts” as being entitled to the exceptions].)

1 **B. Agricultural Pool Has Not Appealed from a Mandatory Injunction.**

2 The Agricultural Pool appealed only from the December Order denying its motion for
3 legal expenses incurred in fiscal years 2019-20 and 2020-21. The December Order is not an
4 injunction of any kind, much less a mandatory injunction that would be automatically stayed
5 during the appeal. Neither of the cases cited by the Agricultural Pool involve monetary awards
6 of attorney fees, and they do not apply. (Opposition at 5:22-23.) *Musicians Club of Los*
7 *Angeles v. Superior Court of Los Angeles County* (1958) 165 Cal.App.2d 67, 71 stayed
8 contempt proceedings during the appeal from a judgment unseating incumbent members of a
9 board of directors. *Hayworth v. City of Oakland* (1982) 129 Cal.App.3d 723, 728 reasoned that
10 an order to reform existing civil service promotion procedures was automatically stayed.

11 In contrast, the December Order denies a motion that seeks money (i.e., entitlement to
12 payment by the AP of legal expenses incurred in fiscal years 2019-20 and 2020-21.) The
13 Agricultural Pool’s motion did not seek an injunction of any kind (Agricultural Pool’s Proposed
14 Order, lodged Jul. 26, 2021), and none was granted.

15
16 **III. THE COURT ORDERS DO NOT LIMIT THE REIMBURSABLE AMOUNTS**

17 Why shouldn’t the Appropriative Pool members be reimbursed for their payments of the
18 Agricultural Pool’s 2019-20 and 2020-21 attorneys’ fees and expenses?

19 Instead of providing evidence to show its right to retain the payments, the Ag Pool
20 Opposition argues the Court’s prior orders do not require the Agricultural Pool to reimburse
21 the payments made by the Appropriative Pool members beyond the funds in escrow. Not true.

22
23 The Agricultural Pool is not a “public agency, or other political subdivision in the state” under CCP, § 995.220(b). Nor is
24 the Agricultural Pool an “other entity of the state” under CCP, § 995.220(a). Public agencies are created pursuant to an
25 enabling law statute or Constitution. (*McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task*
Force (2005) 134 Cal.App.4th 354, 359.) The Agricultural Pool has no enabling act, is not the Watermaster, and is not
tasked with administering the judgment on behalf of the Court. It is comprised predominantly of private individuals and
entities.

26 Membership of the State of California in the Agricultural Pool does not change its character to that of a bond-exempt
27 public entity. (See, e.g., *Barrios v. California Interscholastic Federation* (9th Cir. 2002) 277 F.3d 1128, 1136 FN 6
28 [voluntary, non-profit association, made up of both public and private members, is not a “local public entity” within the
meaning of the California Tort Claims Act]; *California State University v. Superior Court* (2001) 90 Cal.App.4th 810,
829 [The words “state body” and “state agency” do not include a separate organization that is affiliated with and auxillary
to the state university.]; 59 Ops.Cal.Atty.Gen. 162 (1976) [The Democratic Party Central Committee is not a “local
agency” because it does not carry out government functions and is therefore private rather than public.])

1 The May Order sets forth the criteria necessary to obligate the Appropriative Pool to
2 pay for the Agricultural Pool's attorney fees and expenses. One is that the Agricultural Pool
3 must produce invoices of its attorney fees and expenses as the basis for obligating the
4 Appropriative Pool to pay them. The May Order also provides for reimbursement of the
5 Appropriative Pools' payments of the Agricultural Pool's attorney fees and expenses but sets
6 no limit on what sums are reimbursable. While the May Order refers to the Schatz declaration
7 about the \$165,000 Special Assessments for FY 2019-20 that the Court would use for
8 reimbursement, it does not set that sum as a limit on what payments are reimbursable.

9 The December 3, 2021 Court Order ("December Order") denies the Agricultural Pool's
10 Motion that requested payment of its outstanding legal invoices by the Appropriative Pool. The
11 December Order also orders Chino to file a motion for reimbursement of Appropriative Pool
12 member assessments not held in escrow "that may be due to the paying party." It too does not
13 set a limit on what sums are reimbursable.

14 **A. The Court Orders Open the Door to Reimbursement**

15 The Ag Pool Opposition argues the Court Orders do not permit the Appropriative Pool
16 members to request reimbursement of their payments for Agricultural Pool attorney fees and
17 expenses in FY 2019-20 and 2020-21.

18 The Ag Pool Opposition states that the Motion for Reimbursement attempts to "reach
19 back in time beyond the current dispute to recoup assessments not at issue." It seeks to rescue
20 the \$300,000 amount paid by the Appropriative Pool in 2019-20 and the \$63,314 transferred
21 from the Agricultural Pool Special Projects fund to Agricultural Pool Legal fund from the reach
22 of the Motion for Reimbursement. It implies that these amounts are precluded by the December
23 Order, but that order does not contain any such limiting language.

24 The Ag Pool Opposition also argues that the payments of the Appropriative Pool in
25 FY2019-20 and 2020-21 were not at issue in the May Order, and, therefore not reimbursable.
26 It relies on Paragraph 7 of the May Order that concludes the Pools have agreed to payment
27 prior to the Motion of Appropriative Pool Agencies of September 17, 2020 ("AP Motion"), but
28 Paragraph 7 does not make a statement about reimbursement nor precludes reimbursement for

1 a particular period. In addition, no other part of the May Order imposes a limitation on the
2 period for which reimbursement may be sought. Furthermore, the AP Motion specifically
3 refers to an overrun in the Ag Pool's budget for FY2019-20 [AP Motion, page 10, lines 9-14]
4 and seeks reimbursement by stating "the AP is entitled to a refund of any such expenses already
5 paid." [AP Motion, page 20, lines 14-15].

6 The Ag Pool Opposition argues that Paragraph 5 of the May Order limits the scope of
7 the AP Motion to the sum of \$165,694.75; but it describes no sum in dispute between the
8 Agricultural Pool and the Appropriative Pool. It responds to the Non-Agricultural Pool stating
9 that it addresses only the attorney fee dispute between the Ag Pool and the Appropriative Pool.

10 Finally, the Ag Pool Opposition notes that Chino did not object to payment of the
11 Watermaster assessment for FY2019-20. While it fails to explain the significance of Chino's
12 payment, it likely asserts a waiver; but the assertion lacks merit as addressed below.

13 **B. The December Order Authorizes the Motion for Reimbursement**

14 Again, the Ag Pool Opposition interprets the December Order narrowly. It would
15 reduce the December Order for a motion for "an additional hearing regarding procedures for
16 reimbursement." In actuality, the December Order authorizes a motion "as to the procedure
17 for reimbursement of any assessments that are not held in the escrow account that may be due
18 to the paying party." (Emphasis added).

19 The clear purpose of the December Order is to enable the court to identify and reimburse
20 payments made by Appropriative Pool members for which the Agricultural Pool has not shown
21 invoices that benefit the Agricultural Pool and/or are not adverse to the Appropriative Pool.

22 **C. The Motion is Futile if it is Limited to the Escrow Funds**

23 The Ag Pool Opposition again interprets the December Order so narrowly as to
24 frustrates the Court's purpose for authorizing Chino to bring the Motion for Reimbursement.

25 In support of its narrow interpretation, the Ag Pool Opposition returns to Paragraph 5 of
26 the May Order and refers to selected excerpts from the transcripts of the hearing held on
27 November 5, 2021 (hereafter "Transcripts"). The excerpts do not capture the balance of the
28 dialogue and the purpose and intent of the motion as expressed at the hearing. For example:

- 1 • Attorney Fred Fudacz, for Ontario, reminded the Court that its May 28, 2020 order states
2 that the court would order the vacation of the assessments subject to the current dispute
3 and the assessments would be reimbursed to the paying parties. He inquired whether
4 the court would give effect to the order on its own or whether the parties would need to
5 file something to affect the order. Transcripts, p. 27:3-15
- 6 • The court agreed but was unprepared to do so, and suggested that the reimbursement
7 plan could be placed on the February 4, 2022 hearing date. Transcripts, p. 27:16-18
- 8 • Attorney Gina Nicholls, for Ontario, stated that the Court’s suggestion about a procedure
9 for reimbursement was more appropriate than focusing on the escrow, because there are
10 more funds at issue than just the escrow. She requested that the hearing be more broadly
11 stated than the procedure for reimbursement. Transcripts p. 31:10-18
- 12 • Attorney Jimmy Gutierrez, for Chino, volunteered to file a motion on that issue.
13 Transcripts p. 32:5-6
- 14 • Attorney Fred Fudacz, for Ontario, reiterated that funds were paid by parties that were
15 not in escrow. Transcripts p. 32:21-25
- 16 • The court thanked Mr. Gutierrez and asked him to “address any money that’s somehow
17 got paid that isn’t in escrow.” Transcripts p. 33:1-6

18 Thus, the dialogue at the hearing on the prospective motion demonstrates that the court
19 did not intend to limit Chino’s motion to the funds in escrow but to all other funds paid by the
20 Appropriative Pool members.

21 **D. The Court did not Limit the Motion to \$4,624.66**

22 The Ag Pool Opposition interprets the December Order as requesting a motion to return
23 of the sum of \$4,624.66 paid by four Appropriative Pool members directly to Watermaster.
24 There is only one response to such an interpretation. A motion for the return of such a small
25 amount would not justify Chino’s effort to bring it, the parties’ effort to consider it, or the
26 court’s time and resources to hear it.

27 The statements that Chino has not paid Agricultural Pool legal expenses and that its
28 escrow funds were returned are irrelevant to the scope of the December Order. Finally, the

1 statement that Jimmy Gutierrez offered to bring a motion to recover the trivial sum of \$4,624.66
2 is disingenuous.

3 **E. Chino's Motion Provides the Basis for an Order of Reimbursement**

4 The Ag Pool Opposition casts doubt on the Court's ability to grant the Motion for
5 Reimbursement, because the motion seeks more than \$4,624.66 in reimbursement and it does
6 not request reimbursement for other appropriators. First, the Motion for Reimbursement is not
7 limited to the sum of \$4,624.66. Second, the Motion for Reimbursement provides the court
8 with the basis to determine the payments that are reimbursable.

9 Chino's attorney, Jimmy Gutierrez, only represents Chino. Thus, he cannot request
10 reimbursement for any other appropriator.

11 Finally, the argument that the Appropriative Pool is the proper party to bring the motion
12 lacks merit, because the Court did not order the Appropriative Pool to bring the motion.
13 Further, the Appropriative Pool requests the court to determine the Motion for Reimbursement.

14 **F. The Agricultural Pool Has Waived its Defenses to Reimbursement by Failing to**
15 **Produce its Legal Invoices for the Payments made by the Appropriator**

16 The Agricultural Pool tries to defend itself against the Motion for Reimbursement on
17 the basis that its Motion for Attorney Fees dated July 26, 2021 sought payment of its current
18 unpaid legal expenses – not its legal expenses previously paid by the Appropriative Pool
19 members.

20 Perhaps. However, the Agricultural Pool neither produced its invoices for its current
21 unpaid legal expenses nor its past paid legal expenses. As a result, the Appropriative Pool
22 members do not know what they paid for past Agricultural Pool legal services nor whether
23 those expenses satisfied the criteria in the May Order.

24 Furthermore, the Agricultural Pool failed to produce its invoices for all of its legal
25 expenses in Fiscal Years 2019-20 and 2020-21 as requested by John Schatz. More important
26 is the fact that the Ag Pool Opposition has not provided its legal invoices in defense of the
27 Motion for Reimbursement.

28

1 Thus, the Motion for Reimbursement correctly shows that the Agricultural Pool has
2 waived its claims to what has been paid by the Appropriative Pool as well as what was not paid.
3

4 **IV. NEITHER WAIVER NOR ESTOPPEL IS SHOWN**

5 Why shouldn't the Appropriative Pool members be reimbursed for their payments of the
6 Agricultural Pool's 2019-20 and 2020-21 attorneys' fees and expenses?

7 The Ag Pool Opposition asserts that Chino and other appropriators (1) are estopped from
8 seeking reimbursement of watermaster assessments they paid for Ag Pool legal fees and (2)
9 have waived their right to seek reimbursement of those payments. However, the Ag Pool
10 Opposition offers no evidence that supports its asserted defenses; and there is none. The sole
11 factual declaration in support of the Ag Pool Opposition is that of Tracy Egoscue, but it contains
12 no facts that establish those asserted defenses. Instead, the Ag Pool Opposition relies on
13 Paragraph 4 of the Declaration of Dave Crosley wherein he states that (a) he authorized
14 payment of Watermaster's 2019-20 total invoice amount of \$447,841 to Chino (Exhibit 1),
15 which did not show the portion attributable to the Ag Pool's special project and legal expenses⁶,
16 and (b) Chino paid the invoice on December 13, 2019. Mr. Crosley's declaration contains no
17 facts that support an estoppel or waiver by Chino or any other Appropriative Pool member.

18 **A. Estoppel to Seek Reimbursement Is Not Shown**

19 The Ag Pool Opposition argues that Chino is estopped from seeking reimbursement of
20 \$16,379 it paid as its portion of the 2019-20 Agricultural Pool legal budget of \$300,000. It
21 recites the elements of an estoppel, but it fails to satisfy the elements and show how Chino, or
22 any other Appropriative Pool member, is estopped from seeking reimbursement. It recites:
23 "[T]he rule of law is clear, that, where one by his words or conduct willfully causes another to
24 believe the existence of a certain state of things, and induces him to act on that belief, so as to
25

26
27 ⁶ Mr. Peter Kavounas acknowledges that Watermaster assessments for FY2019-20 did not separately itemize the Ag Pool
28 Legal Budget of \$300,000 due from each appropriator. Declaration of Jimmy L. Gutierrez in Support of City of Chino
Corrected Motion for Reimbursement of Attorney Fees and Expenses Paid to the Agricultural Pool, page 4, lines 21-23 and
page 5, lines 26-28.

1 alter his own previous position, the former is [precluded] from averring against the latter a
2 different state of things existing at the same time” [Bonanno (2008) 165 Cal.App.4th 7, 22].

3 Notwithstanding, the Ag Pool Opposition does not identify the facts Chino willfully
4 caused the Ag Pool to believe. It does not identify the action the Ag Pool was induced to take.
5 It does not identify the previous Ag Pool position that it altered. Instead, it merely argues that
6 an estoppel exists as to Chino (and other Appropriative Pool members) because of the payment
7 of the 2019-20 Watermaster assessment. However, payment of the assessment does not fulfill
8 the elements of an estoppel.

9 **B. Failure to Object to Assessments Is Not an Estoppel to Seek Reimbursement**

10 The Ag Pool Opposition argues that failure to object to the 2019-20 Watermaster
11 assessment constitutes an estoppel; but the failure to object to the assessment does not fulfill
12 the elements of an estoppel. It relies on Mr. Crosley’s declaration wherein he states he reviewed
13 Watermaster’s 2019-20 total invoice to Chino in the amount of \$447,841, but he noted it did
14 not show Chino’s share of the Agricultural Pool special project and legal expenses, and he
15 believed those expenses were included in the total invoice amount, and he authorized payment
16 of the invoice.

17 The Ag Pool Opposition states that Chino did not make an objection to payment of the
18 Agricultural Pool’s expenses until it received an invoice for Chino’s portion (\$29,835.46) of
19 the “Appropriative Pool Special Assessment of \$165,694.75 for Ag Poll Legal Expense
20 Increase.”⁷ The implication is that Chino did not object to payment of Watermaster’s 2019-20
21 total invoice amount of \$447,841, which included Chino’s portion of the 2019-20 Agricultural
22 Pool legal budget of \$300,000.

23 The Ag Pool Opposition argues that Chino and the other Appropriative Pool members
24 are estopped from claiming reimbursement of the payment of \$300,000 for Agricultural Pool
25 legal expenses because of two reasons unrelated to an estoppel: (i) the Appropriators authorized
26 payment of such expenses under the Peace Agreement for two decades and (ii) the Agricultural

27 ⁷ Declaration of Dave Crosley in Support of City of Chino Corrected Motion for Reimbursement of Attorney Fees and
28 Expenses Paid to the Agricultural Pool, Paragraph 5.

1 Pool relied on the Appropriative Pool's authorization and payment of the Agricultural Pool's
2 duly approved budgets. These reasons do not fulfill the elements of an estoppel, but they do
3 highlight the illusion of an estoppel in the Ag Pool Opposition.

4 The illusion is the failure to show facts advanced by the Appropriative Pool that were
5 accepted by the Agricultural Pool that lead the Agricultural Pool to change its position in
6 reliance on the (unknown) facts. The illusion includes the omission of the fact that the
7 Agricultural Pool prepared its 2019-20 budget for legal expenses and submitted its budget to
8 Watermaster, but that Watermaster did not reveal it to the Appropriative Pool members. The
9 illusion also includes the nondisclosure of the nature and purpose of Agricultural Pool's legal
10 services and whether they would benefit the Agricultural Pool and not be adverse to the
11 Appropriative Pool.

12 Lastly, the illusion is the assumption that the Appropriative Pool members sufficiently
13 knew the nature and purposes of the Agricultural Pool 2019-20 legal services budget to be put
14 on notice that they should object to paying for such legal services. In short, the two reasons
15 are merely another way of arguing that the Appropriative Pool members must pay all expenses
16 of the Agricultural Pool and that, therefore, they are not entitled to be reimbursed for past
17 payments of Agricultural Pool legal expenses beyond the scope of its obligation under
18 Paragraph 5.4(a) of the Peace Agreement.

19 **C. Waiver of the Right to Seek Reimbursement is Not Shown**

20 The Ag Pool Opposition argues that Chino waived its claim to reimbursement of
21 \$16,379 it paid as its portion of the 2019-20 Agricultural Pool legal budget of \$300,000. It
22 recites the elements of a waiver, but it fails to satisfy the elements and show how Chino, or any
23 other Appropriative Pool member, waived its claim to reimbursement. It relies on
24 *DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Café & Takeout III, Ltd (1994) 30 Cal.App.4th*
25 *54,59* which is instructive on the elements of a waiver.

26 *DRG/Beverly* instructs: "Waiver refers to the act, or the consequences of the act of one
27 side. Waiver is the intentional relinquishment of a known right after full knowledge of the facts
28 and depends upon the intention of one party only." In addition: "All caselaw on the subject of

1 waiver is unequivocal. ‘Wavier always rests on intent. The burden, moreover, is on the party
2 claiming a wavier of a right to prove it by clear and convincing evidence that does not leave
3 the matter to speculation, and ‘doubtful cases will be decided against a waiver. (Citations
4 omitted).’ 30 Cal.App.4th 54,60.

5 Notwithstanding, the Ag Pool Opposition does not identify Chino’s knowledge about
6 the nature and purpose of the Agricultural Pool’s 2019-20 budgeted legal services, or that such
7 legal services would be beneficial to the Agricultural Pool or that such legal services would not
8 be adverse to the Appropriative Pool. Neither does it identify Chino’s intent - how or when
9 Chino intentionally relinquished its right to seek reimbursement of such legal expenses. In
10 actuality, the Agricultural Pool offers no evidence on the elements of Chino’s waiver; and, of
11 course, it does not prove any waiver by Chino.

12 Instead, the Agricultural Pool seeks to interpret the May 28, 2021 Court Order as stating
13 “that the parties have agreed to a determination of payments prior to the current dispute”
14 (Opposition, p12:26-27); but the interpretation misstates the Order. Instead, the May 28, 2021
15 Court Order states: “Judgment ¶54 and Peace I §5.4(a) means that, of course, the Ag Pool and
16 the Appropriative Pool can agree to a determination to about payment of ‘litigation expenses.’
17 The court concludes that they have been doing this up until the instant motion.” [Page 6, lines
18 10-13]. Thus, the Court’s statement is not a finding of waiver by Chino or by any other
19 appropriator.

20 The Ag Pool Opposition also states that the May 28, 2021 Court Order identifies the
21 Appropriative Pool Special Assessment of \$165,694.75 as the basis of reimbursement. Again,
22 the Court’s statement is not a finding of waiver by Chino or by any other appropriator.

23 Next, the Ag Pool Opposition states that Chino did not object to its share of the
24 Agricultural Pool legal expenses and did not appeal the May 28, 2021 Court Order. It argues
25 that Chino’s failure to object constitutes a waiver; but again the argument does not fulfill the
26 elements of a waiver. The Ag Pool Opposition simply fails to meet its burden of establishing
27 the elements of a waiver by clear and convincing evidence.

28

1 Finally, the Ag Pool Opposition argues that any reimbursement to the appropriators is
2 limited to the amount of \$165,694.75 referenced in the May 28, 2021 Court Order, because (1)
3 Chino (and other appropriators) approved all prior payments, (2) the Appropriative Pool
4 Member Agencies Motion objected to unbudgeted legal and expert expenses and (3) the May
5 28, 2021 Court Order limited the reimbursement amount. All three arguments fail.

6 First, as shown herein, estoppel and waiver have not been established. Second, the
7 Appropriative Pool Member Agencies Motion dated September 17, 2020 ("AP Motion") did
8 not limit any prospective claim to reimbursement as implied by the Ag Pool Opposition. The
9 AP Motion at p11:1-8 (not p10:1-2) explains that it requested Watermaster to provide
10 appropriately redacted documentation supporting the Agricultural Pool's legal and expert
11 expenses and objected to Watermaster payment of Ag Pool invoices, because the Appropriators
12 had objected to unbudgeted legal and expert expenses and had not been provided the detail
13 regarding the basis of such fees and expenses. Lastly, the May 28, 2021 Court Order does not
14 limit reimbursement of sum paid by the Appropriators.

15 **D. The Transfer of \$63,314 was Used to Pay Agricultural Pool Legal Expenses**

16 The Ag Pool Opposition seeks to avoid the request to reimburse the sum of \$63,314 that
17 was transferred from the Agricultural Pool's special project fund to the legal fund. It argues
18 that Chino lacks the authority to direct the Agricultural Pool on the management of its fund
19 accounts, but Chino does not purport to have such authority as demonstrated by the filing of its
20 motion. It again argues that the Appropriative Pool has waived its right and is estopped from
21 seeking reimbursement of money previously paid, but the Ag Pool Opposition has not shown
22 an estoppel or waiver. Furthermore, the Ag Pool Opposition avoids the fact that the transfer of
23 \$63,314 was used to pay Agricultural Pool legal fees and expenses according to the Declaration
24 of Joseph Joswiak.⁸ Because the sum of \$64,314 was not designated for payment of legal
25 expenses, the transfer and use of that sum to pay for Agricultural Pool legal expenses was not
26 authorized and not supported by invoices showing they are permissible under the criteria of the

27 _____
28 ⁸ Declaration of Joseph Joswiak In Support of Chino Basin Watermaster's Response to City of Chino Corrected Motion
for Reimbursement at Attorneys Fees and Expenses Paid to the Agricultural Pool, ¶7, page 3.

1 May 28, 2021 Court Order. Thus, the sum of \$63,314 should be reimbursed to the
2 Appropriative Pool members in proportion to their respective payment of assessments.

3 **V. CONCLUSION**

4 Why shouldn't the Appropriative Pool members be reimbursed for their payments of the
5 Agricultural Pool's 2019-20 and 2020-21 attorneys' fees and expenses?

6 The answer is that the Appropriative Pool members and Watermaster should be
7 reimbursed for their past payments of Agricultural Pool legal fees.

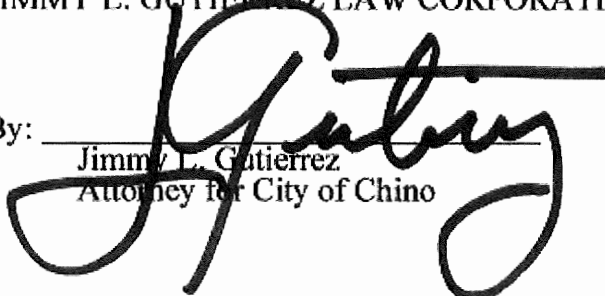
8 The first reason is that the May Order rejected the Agricultural Pool declaration that the
9 word "all" in Paragraph 5.4(a) of the Peace Agreement obligates the Appropriative Pool to pay
10 all expenses that the Agricultural Pool chooses to incur.

11 The second reason is that the Appropriative Pool faithfully paid such expenses.

12 The third reason is that the Agricultural Pool has failed or refused to comply with the
13 May Order by providing its invoices. Thus, the Agricultural Pool have not shown, and cannot
14 show, that its legal expenses were of benefit the Agricultural Pool and not adverse to the
15 Appropriative Pool. The Agricultural Pool's behavior shows convincingly that it may not
16 retain the payments requested in the Motion for Reimbursement.

17 Respectfully submitted,

18 JIMMY L. GUTIERREZ LAW CORPORATION

19
20 By:  _____
21 Jimmy L. Gutierrez
22 Attorney for City of Chino

Dated: January 28, 2022

28

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 28, 2022 served the following:

1. CIT OF CHINO REPLY TO 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

/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 January 28, 2022 in Rancho Cucamonga, California.



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