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*Exempt from Filing fee Pursuant to
Gov. Code § 6103*

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DISTRICT

10 CHINO BASIN MUNICIPAL WATER
11 DISTRICT,

CASE NO.: RCVRS 51010

Assigned for All Purposes to Hon. Gilbert G. Ochoa

12 Plaintiffs,

13 v.

**INLAND EMPIRE UTILITIES AGENCY'S
MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF ITS MOTION FOR COSTS
AND ATTORNEY'S FEES PURSUANT TO
CIVIL CODE §1717 AND CODE OF CIVIL
PROCEDURE §1033.5**

14 CITY OF CHINO, et al.,

15 Defendants.

*[Filed concurrently with Notice of Motion, Declaration
of Jean Cihigoyenette; Memorandum of Costs;
Request for Judicial Notice; Proposed Order]*

DATE: April 4, 2025

TIME: 10:00 a.m.

DEPT: R17

21 COMES NOW, the INLAND EMPIRE UTILITIES AGENCY ("IEUA"), which submits the
22 following Memorandum of Points and Authorities in support of its motion for costs and attorney's fees
23 authorized by contract pursuant to Civil Code 1717, Code of Civil Procedure 1033.5.

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I.

INTRODUCTION

1
2
3 IEUA brings this motion for an award of costs, including attorney’s fees pursuant to contract. This
4 matter was initiated by several agencies including the city of Ontario, the city of Chino, Monte Vista
5 Water District and Monte Vista Irrigation Company, challenging Watermaster’s budget action to fund
6 unauthorized CEQA review. The moving parties also sought a finding that selecting IEUA to serve as lead
7 agency for CEQA review in connection with the Optimum Basin Management Plan Programmatic
8 Environmental Impact Report update (OBMP PEIR Update) was inappropriate due to a perceived conflict
9 of interest. (See Memorandum of Points and Authorities in Support of Motion Challenging Watermaster’s
10 Budget Action to Fund Unauthorized CEQA Review RJN, Exhibit 1, § I, pg. 8)

11 The moving parties went on to argue that it was inappropriate for IEUA to serve as CEQA lead
12 agency due to its proposed Chino Basin Program. (*Id.* §III, pg. 15-16) They asserted that selecting IEUA
13 as lead agency violated Watermaster’s obligation of neutrality.

14 IEUA opposed the motion to avoid the potential waste of significant expenditures it had incurred
15 in preparation of the OBMP PEIR update. This would include extensive work leading up to the 2020
16 version which was not certified, as well as the subsequent version which was ultimately certified.

17 A hearing was held before this court on October 14, 2022, and the court denied the motion in its
18 entirety. An appeal ensued with oral argument taking place on November 5, 2024. The Court of Appeal
19 affirmed the trial court and awarded costs on appeal to the respondents including IEUA. The Court of
20 Appeal issued a remittitur on January 15, 2025.

21 IEUA asserts that as the prevailing party it is entitled to attorneys’ fees not only for the appeal, but
22 for all costs and fees in opposing this matter, including at the trial court level.

23
24 II.

ARGUMENT

25
26 **A. IEUA is the prevailing party in this action.**

27 IEUA argued at both the trial court and on appeal that there was no conflict of interest in serving as
28 lead agency for the preparation of the OBMP PEIR update. This court agreed, and the Court of Appeal

1 affirmed this court’s decision. Accordingly, IEUA accomplished all its litigation objectives in this matter.
2 The Court of Appeal awarded costs which establishes IEUA as a prevailing party. (Cal. Rules of Court,
3 Rule 8.278(a)(2)) The moving parties recovered no relief against IEUA or Watermaster and accomplished
4 none of their litigation objectives. In determining the prevailing party, the trial court must consider which
5 party accomplished its litigation objectives. (*Friends of Spring Street v. Nevada City* (2019) 33 Cal. App.
6 5th 1092) “Thus, when a defendant defeats recovery by the plaintiff on the only contract claim in the
7 action, the defendant is the party prevailing on the contract under section 1717 as a matter of law.” (*Hsu v.*
8 *Abbara* (1995) 9 Cal. 4th 863)

9

10 **B. IEUA is entitled to attorney’s fees based upon contract.**

11 Civil Code §1717 provides, in pertinent part, as follows:

12

13 “(a) in any action on a contract, where the contract specifically provides that attorney’s
14 fees and costs, which are incurred to enforce that contract, shall be awarded either to one
15 of the parties or to the prevailing party, then the party who is determined to be the party
16 prevailing on the contract, whether he or she is the party specified in the contract or not,
17 shall be entitled to reasonable attorney’s fees in addition to other costs....”

16

17 In the present case, the contract involved is the Peace Agreement which states, at § 9.2 (d):

18

19 “Attorney’s Fees. In any adversarial proceedings between the Parties other than the
20 dispute resolution procedure set forth below and under the Judgment, the prevailing
21 Party shall be entitled to recover their costs, including reasonable attorneys’ fees. If
22 there is no clear prevailing Party, the Court shall determine the prevailing party and
23 provides for the award of costs and reasonable attorneys’ fees. In considering the
24 reasonableness of either Party’s request for attorneys’ fees as prevailing Party, the court
25 shall consider the quality, efficiency, and value of the legal services and
26 similar/prevaling rate for comparable legal services in the local community.”
(Declaration of Jean Cihigoyenette, Exhibit A, Peace Agreement pg. 54)

25 As here, where a contract includes a provision for attorney’s fees, the court must grant fees to the
26 prevailing party. (*City of Los Angeles Department of airports v. US Specialty Insurance Company* (2022)
27 79 Cal. App. 5th 1039, 1043) IEUA is a party to the Peace Agreement. (Declaration of Jean
28 Cihigoyenette, ¶ 7)

1 The moving parties invoked the Peace Agreement in their underlying motion. For example, the
2 city of Ontario stated in their Notice of Motion, “This motion is based upon Section 31 of the Judgment;
3 the continuing jurisdiction of the Court under Section 15 of the Judgment; and documents approved by the
4 Court under the Judgment including the Watermaster Rules and Regulations, the Peace Agreement, and
5 the Peace II Agreement.” (Notice of Motion and Motion Challenges Watermaster’s Budget Action to Fund
6 Unauthorized CEQA Review, RJN, Exhibit 1, pg.3, Ins. 17-20) Additionally, Ontario asserted several
7 bases why the court should grant the relief requested including:

- 8
- 9 • “Watermaster lacks authority to proceed with any OBMPU Implementation Plan on projects
10 subject to CEQA without prior agreement of the parties to the Peace Agreement which has not
11 been obtained.
- 12 • Parties to the Peace Agreement have not defined or agreed to any OBMPU Implementation Plan,
13 nor are any projects that may be included in the two-be-updated Implementation Plan ready for
14 CEQA review....
- 15 • Watermaster’s budgeted funding for CEQA review conducted by IEUA as lead agency is
16 inappropriate because of conflicts of interest and absence of consensus on projects among
17 parties to the Peace Agreement.” (*Id.* § I, pgs. 7-8)

18 Certainly, the moving parties in the underlying motion relied upon the Peace Agreement as the
19 basis for recovery. In fact, Ontario devotes an entire section of their brief to a discussion of the Peace
20 Agreement and its relevance to their motion, citing section 2.2 of the Peace Agreement as foundational to
21 their argument. (*Id.* § I B., pgs. 9-10) Accordingly, the Peace Agreement provides a contractual basis to
22 support an award of attorney’s fees to IEUA as a prevailing party under Civil Code §1717.

23 **C. IEUA is entitled to an award of all its attorney’s fees incurred in this matter and is not**
24 **limited to costs on appeal.**

25 Attorney’s fees which are established by contract are considered an element of costs of suit. (Code
26 of Civil Procedure §1033.5 (a)(10)(A)) An award of costs on appeal is separate from the contractual
27 provision for fees. (*Butler-Rupp v. Lourdeaux* (2007) 154 Cal. App. 4th 918, 924) Moreover, attorney’s
28 fees based on contract can be requested after issuance of the remittitur.

1
2 “Accordingly,’ because contractually authorized attorney fees are now listed as costs
3 under Code of Civil Procedure section 1033.5, ... they may either be requested of the
4 appellate court while the appeal is pending, or of the trial court upon issuance of the
remittitur. The trial court has jurisdiction to award them, regardless of the lack of specific
instructions in the opinion or the remittitur’[citations]” *Id.*

5 The court retains broad procedural discretion regarding the award of attorney’s fees. (*Gunlock*
6 *Corporation v. Walk on Water, Inc.* (1993) 15 Cal. App. 4th 1301) Based upon the foregoing authorities,
7 IEUA is not relegated to attorney’s fees incurred solely in the appellate process but rather is entitled to all
8 attorney’s fees incurred in this case.

9
10 **D. The attorney’s fees requested are reasonable.**

11 The Declaration of Jean Cihigoyenette demonstrates the fees sought are reasonable both based
12 on the hourly rate and hours expended. Several factors should be considered by the court in determining
13 whether the requested fees are reasonable.

14 “Reasonableness of the fee is determined by looking to a variety of factors:” ‘the nature
15 of the litigation, its difficulty, the amount involved, the skill required and the skill
16 employed in handling the litigation, the attention given, the success of the attorney’s
17 efforts, his learning, his age, and his experience in the particular type of work demanded
18 [citation]; the intricacies and importance of the litigation, the labor and the necessity for
skilled legal training and the ability and trying the cause, and the time
consumed.[Citations]’ ” (*Martino v. Denevi* (1986) 182 Cal. App. 3d 553, 558)

19
20 The declaration evidence submitted herein establishes the hourly rates and total hours expended
21 going to the extent of breaking down the categories of tasks and hours expended in each category. The
22 hourly rates are well within the range of reasonableness given the attorney’s experience of over 42 years
23 in practice with more than 30 years of that dedicated to representing water and wastewater districts.
24 Counsel has represented IEUA in matters concerning Watermaster over those years even participating in
25 the lengthy negotiations which culminated in the Peace Agreement under consideration here. Legal issues
26 raised by Watermaster parties are typically complex, often calling into play agreements and events
27 surrounding their formation which occurred years before. An attorney’s experience in having participated
28

1 in those events brings value to the representation of the client. All factors considered; the fees requested
2 herein are more than reasonable.

3 Likewise, the evidence submitted is substantively sufficient to support an award of attorney's fees.
4 "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to
5 support an award of attorney's fees, even in the absence of detailed time records." [Citations]. (*Id.* at 559)

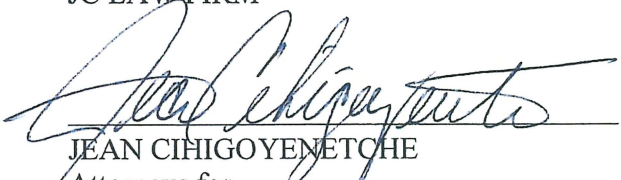
6
7 **III.**

8 **CONCLUSION**

9 Based upon the foregoing arguments and authorities, IEUA requests an award of costs and
10 attorney's fees in the amount of \$63,069.

11
12 Dated: February 17, 2025

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13
14 
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17 INLAND EMPIRE UTILITIES AGENCY

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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 action within. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On February 20, 2025 I served the following:

1. INLAND EMPIRE UTILITIES AGENCY'S MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF ITS MOTION FOR COSTS AND ATTORNEY'S FEES PURSUANT TO CIVIL CODE §1717 AND CODE OF CIVIL PROCEDURE §1033.5

BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by the 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.

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.
See attached service list: Master Email Distribution List

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 20, 2025 in Rancho Cucamonga, California.



By: Ruby Favela Quintero
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