

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA,
FOURTH APPELLATE DISTRICT, DIVISION TWO**

CHINO BASIN MUNICIPAL
WATER DISTRICT,

Plaintiff and Respondent,

vs.

CITY OF CHINO

Defendant and Respondent,

CUCAMONGA VALLEY
WATER DISTRICT, ET AL.,

Defendants and Appellants.

CASE NO. E068640

Superior Court No. RCV 51010

**On Appeal From the San Bernardino County Superior Court of the
State of California
The Honorable Stanford E. Reichert, Dept. S35 (Case No. RCV 51010)**

**MOTION TO DESIGNATE CHINO BASIN
WATERMASTER OVERLYING
(AGRICULTURAL) POOL COMMITTEE AS A
PARTY AND RESPONDENT**

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Tarren A. Torres, Bar No. 275991
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Attorneys for Chino Basin Watermaster
Overlying (Agricultural) Pool
Committee

Received by Fourth District Court of Appeal, Division Two

To the Honorable Court of Appeal of the State of California, Fourth
Appellate District, Division Two:

The Chino Basin Watermaster Overlying (Agricultural) Pool
Committee (Agricultural Pool) hereby submits this motion to designate the
Agricultural Pool as a party and respondent in the above-captioned appeal.
The motion is made on the grounds that, pursuant to California Code of Civil
Procedure, section 902 and California Rules of Court, rule 8.10, the
Agricultural Pool is a party and respondent and is adverse to and will be
affected by the reversal or modification of the Judgment or order from which
the appeal has been taken.

Dated: April 2, 2018

Egoscue Law Group, Inc.

By: Tracy Egoscue
Tracy J. Egoscue
Tarren A. Torres
Attorneys for Chino
Basin Watermaster
Overlying
(Agricultural) Pool
Committee

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

In 1978 the trial court entered a stipulated Judgment (Judgment) in the complex water rights case titled *Chino Basin Municipal Water District v. City of Chino, Cucamonga Valley Water District, et al.*, Superior Court No. RCV 51010. Since that Judgment, the trial court has exercised its continuing jurisdiction to modify and interpret the Judgment.

On October 23, 2015, the Chino Basin Watermaster (Watermaster) filed “Watermaster’s Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6” (Watermaster Motion) in the trial court. (Declaration of Tracy J. Egoscue, ¶ 1 [hereafter Egoscue Decl.].) On November 19, 2015, the Agricultural Pool, whose members include parties to the Judgment previously entered, including the State of California, filed a joinder to the Watermaster Motion. (*Id.* at ¶ 2.) The Watermaster Motion was also joined by the Inland Empire Utilities Agency and opposed by Jurupa Community Services District and the City of Chino. (*Id.* at ¶ 3.) The trial court granted in part and denied in part the Watermaster Motion in “Final Rulings and Orders” dated April 28, 2017. (*Id.* at ¶ 5.) The Appellants, Cucamonga Valley Water District, Monte Vista Water District and City of Pomona, have filed this appeal of the Final Rulings and Orders which granted in part the Watermaster Motion to which the Agricultural Pool filed a joinder.

On July 17, 2017, the Agricultural Pool was notified of the filing of the Cucamonga Valley Water District’s Civil Case Information Statement (Case Statement) and the Appellants’ Proposed Briefing Sequence, which were filed on July 11, 2017 and July 14, 2017, respectively. (Egoscue Decl., ¶ 7.) Although the Agricultural Pool was an active litigant in the trial court proceedings now on appeal and its members include parties to the Judgment previously entered, the Agricultural Pool was not identified as a party or respondent in the Case Statement and was, accordingly, not served with the above-mentioned filings. On August 2, 2017, the Agricultural Pool filed a motion to be identified as a party and respondent in the above-captioned appeal. (*Id.* at ¶ 8.) This Court denied the Agricultural Pool’s motion in an order dated August 14, 2017, finding that the Agricultural Pool has not “asserted a position that is contrary to that taken by appellants.” (*Id.* at ¶ 9.) Consequently, the Agricultural Pool submits this “Motion to Designate Overlying (Agricultural) Pool Committee As a Party and Respondent,” declaring that its joinder of the Watermaster Motion and participation in the proceedings in the trial court below are adverse to the Appellants’ position.¹

II. ARGUMENT

¹ Additionally, a Response to the Joint Status Update Re Stay is concurrently filed and provides further support for the adverse position of the Agricultural Pool vis-à-vis the Appellants.

A respondent is an adverse party.² (Code Civ. Proc., § 902.) An adverse party is “[e]very party whose interest in the subject-matter of the appeal is adverse to or will be affected by the reversal or modification of the judgment or order from which the appeal has been taken...” (*Senter v. De Bernal* (1869) 38 Cal. 637, 640.)

The subject of this appeal is the trial court’s order dated April 28, 2017. That order granted the Watermaster Motion’s request to recalculate the Chino Basin Safe Yield from 140,000 acre-feet per year to 135,000 acre-feet per year. (Egoscue Decl., ¶¶ 3 and 4.) The Agricultural Pool filed a joinder to the Watermaster Motion for the recalculation of the Safe Yield to 135,000 acre-feet per year. (*Id.* at ¶ 1.) The Agricultural Pool’s joinder stated that it believed that the “Watermaster [had] fulfilled its obligations as to the initial reset of the Safe Yield ... [a]ccordingly, the Court should amend the Restated Judgment and order Watermaster to proceed in accordance with the 2015 Safe Yield Agreement.” (*Id.* at ¶ 2.) Neither the Watermaster, nor the Agricultural Pool appealed the trial court’s order. The Appellants have challenged the order of the trial court and have now filed a “Joint Status Report Re Stay” that does not represent the other parties in the Chino Basin.

² The Court has acknowledged that the Agricultural Pool is a party to the action in its Order dated August 14, 2017.

Therefore, the Agricultural Pool has taken a position that is contrary to that taken by Appellants and its interest in the subject-matter of the appeal is adverse to or will be adversely affected by a reversal or modification of the April 28, 2017 order. Accordingly, the Agricultural Pool is an adverse party to this appeal and respectfully requests that the Court designate the Agricultural Pool as a respondent with leave to fully participate in the appeal proceedings as such, including submittal of a respondent's brief and response to the Joint Status Update re Stay.

III. CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the Chino Basin Watermaster Overlying (Agricultural) Pool Committee be designated as a party and specifically as a respondent with leave to fully participate in the appeal proceedings as such, including submittal of a respondent's brief and response to the Joint Status Update re Stay.

Dated: April 2, 2018

Egoscue Law Group, Inc.

By: Tracy Egoscue
Tracy J. Egoscue
Tarren A. Torres
Attorneys for Chino
Basin Watermaster
Overlying
(Agricultural) Pool
Committee

SUPPORTING DECLARATION OF TRACY J. EGOSCUE

I, Tracy J. Egoscue, declare:

I am admitted to practice law in the State of California and am the attorney of record for the Chino Basin Watermaster Overlying (Agricultural) Pool Committee (Agricultural Pool). As such I have personal knowledge of the facts set forth below and, if called upon to testify on such matters, would and could do so competently.

1. On October 23, 2015, the Chino Basin Watermaster (Watermaster) filed “Watermaster’s Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6” (Watermaster Motion) in the trial court.

2. The Agricultural Pool, whose members include parties to the Judgment previously entered, filed a joinder to the Watermaster Motion. The Agricultural Pool’s joinder stated that it believed that the “Watermaster [had] fulfilled its obligations as to the initial reset of the Safe Yield ... [a]ccordingly, the Court should amend the Restated Judgment and order Watermaster to proceed in accordance with the 2015 Safe Yield Agreement.”

A true and correct copy of the Agricultural Pool’s joinder is attached hereto as Attachment A.

3. The Watermaster Motion was also joined by the Inland Empire Utilities Agency and opposed by Jurupa Community Services District and the City of Chino.
4. The Watermaster Motion requested, among other things, a recalculation of the Chino Basin Safe Yield from 140,000 acre-feet per year to 135,000 acre-feet per year.
5. The trial court granted in part and denied in part the Watermaster Motion in “Final Rulings and Orders” dated April 28, 2017. The Final Rulings and Orders reset the Chino Basin Safe Yield at 135,000 acre-feet per year.
6. The Agricultural Pool participated in the relevant proceedings in the trial court through appearances and filings by counsel, including submitting a joinder to the Watermaster Motion and appearing at the April 28, 2017 proceeding issuing the trial court’s Final Rulings and Orders.
7. On July 17, 2017, the Watermaster notified the Agricultural Pool of the filing of the Cucamonga Valley Water District’s Civil Case Information Statement and the Appellants’ Proposed Briefing Sequence, which were filed on July 11, 2017 and July 14, 2017, respectively.
8. On August 2, 2017, Agricultural Pool filed a “Motion to Identify Overlying (Agricultural) Pool Committee As a Party and Respondent.”

9. On August 14, 2017, the Court denied the Agricultural Pool's August 2, 2017 motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of April, 2018 in the City of Long Beach and County of Los Angeles, State of California.

By: Tracy Egoscue
Tracy J. Egoscue

Attachment A

1 TRACY J. EGOSCUE (SBN 190842)
2 TARREN A. TORRES (SBN 275991)
3 EGOSCUE LAW GROUP
4 3777 Long Beach Blvd, Suite 280
5 Long Beach, CA 90807
6 Tel: 562.988.5978
7 Attorneys for OVERLYING
8 (AGRICULTURAL) POOL

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN BERNARDINO

11 Chino Basin Municipal Water District,
12 Plaintiff,
13 v.
14 City of Chino et al.,
15 Defendants.

Case No. RCV 51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

JOINDER TO WATERMASTER'S REPLY
TO OPPOSITIONS TO MOTION
REGARDING 2015 SAFE YIELD RESET
AGREEMENT, AMENDMENT OF
RESTATED JUDGMENT, PARAGRAPH 6

Date: February 26, 2016
Time: 1:30 p.m.
Dept. R-6

19 The Chino Basin Overlying (Agricultural) Pool Committee (Ag Pool), which has joined
20 Chino Basin Watermaster's (Watermaster) Motion regarding 2015 Safe Yield Reset Agreement,
21 Amendment of Restated Judgment, Paragraph 6 (Reset Motion), through a joinder filed
22 November 19, 2015, and whose members include parties to the Judgment previously entered in
23 this matter, hereby joins Watermaster's Reply to Oppositions to Reset Motion Regarding 2015
24 Safe Yield Reset Agreement, Amendment of Restated Judgment Paragraph 6 (Reply to
25 Oppositions). Through its Opposition to the Reset Motion (Opposition), the City of Chino
26 (Chino) asserts unsupported claims that the Reset Motion re-litigates the rights to Chino Basin
27 water, that the Reset Motion constitutes a "taking," and that the Court lacks jurisdiction to
28 approve the Reset Motion. These claims are a misinterpretation of applicable law, the Judgment,

1 and related Court-approved agreements.

2 Additionally, Chino's Opposition implies that the Ag Pool has knowledge of and supports
3 an alleged "scheme" of certain Appropriative Pool members. (Opposition, 3: 9-11.) Chino's
4 Opposition not only does not provide any evidence of the alleged "scheme," but also does not
5 provide any further argument or evidence that the Ag Pool has knowledge or is in support of the
6 alleged "scheme." Accordingly, the Ag Pool joins Watermaster's Reply to Oppositions and
7 respectfully requests that the Court deny the Oppositions and grant Watermaster's Reset Motion.

8
9 Dated: February 1, 2016

EGOSCUE LAW GROUP

10
11 By: 

12 TRACY J. EGOSCUE

13 Attorneys for

14 OVERLYING (AGRICULTURAL) POOL
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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA,
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CHINO BASIN MUNICIPAL
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vs.

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Defendant and Respondent,

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Defendants and Appellants.

CASE NO. E068640

Superior Court No. RCV 51010

**On Appeal From the San Bernardino County Superior Court of the
State of California
The Honorable Stanford E. Reichert, Dept. S35 (Case No. RCV 51010)**

[PROPOSED] ORDER

Tracy J. Egoscue, Bar No. 190842
Tarren A. Torres, Bar No. 275991
EGOSCUE LAW GROUP, INC.
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Attorneys for Chino Basin Watermaster
Overlying (Agricultural) Pool
Committee

[PROPOSED] ORDER

Good cause appearing, the Court grants the motion by the Chino Basin Watermaster Overlying (Agricultural) Pool Committee for designation as a respondent.

The Court hereby designates the Chino Basin Watermaster Overlying (Agricultural) Pool Committee as a respondent in the appeal from *Chino Basin Municipal Water District v. City of Chino, Cucamonga Valley Water District, et al.*, Superior Court No. RCV 51010, Case No. E068640, with leave to fully participate in the appeal proceedings as such.

IT IS SO ORDERED.

Dated:

Presiding Judge

Certificate of Electronic Service

CHINO BASIN MUNICIPAL WATER DISTRICT v. CITY OF CHINO,
CUCAMONGA VALLEY WATER DISTRICT, ET AL.,
Case No.: E068640

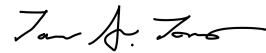
I am a member of the California State Bar; I am over the age of eighteen years and not a party to the within entitled action. My business address is 3777 Long Beach Blvd. Suite 280, Long Beach, CA 90807.

On April 2, 2018, I electronically filed and served the **MOTION TO DESIGNATE CHINO BASIN WATERMASTER OVERLYING (AGRICULTURAL) POOL COMMITTEE AS A PARTY AND RESPONDENT** by transmitting a true copy via the TrueFiling system. And I placed a true copy thereof enclosed in a sealed envelope in the U.S. Postal Service box with postage thereon fully prepaid at Long Beach, California, addressed as follows:

Honorable Stanford E. Reichert
Department S35
San Bernardino Justice Center
247 W. Third Street
San Bernardino, CA 92415

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

Executed on April 2, 2018, at Long Beach, California.



Tarren A. Torres