

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)**

**PROPOSED RESPONSE OF AGRICULTURAL
POOL TO THE JOINT STATUS UPDATE RE
STAY SUBMITTED WITH MOTION TO BE
DESIGNATED AS A PARTY**

*Tracy J. Egoscue, Bar No. 190842
Tarren A. Torres, Bar No. 275991
EGOSCUE LAW GROUP, INC.
3777 Long Beach Blvd., Ste. 280
Long Beach, CA 90807
(562) 988-5978
tracy@egoscuelaw.com
tarren@egoscuelaw.com

Attorneys for Chino Basin
Watermaster Overlying (Agricultural)
Pool Committee

Received by Fourth District Court of Appeal, Division Two

Proposed Response of Agricultural Pool to the Joint Status Update re
Stay, Submitted with Motion to be Designated as a Party

Although not currently designated as a party to this appeal, a motion was filed on April 2, 2018 to designate the Chino Basin Watermaster Overlying (Agricultural) Pool Committee (Agricultural Pool) as a party and respondent. (Declaration of Tracy J. Egoscue, ¶ 1.) Accordingly, the Agricultural Pool submits the following as a Proposed Response of Agricultural Pool to the Joint Status Update re Stay, Submitted with Motion to be Designated as a Party to be considered by the Court in the event that the motion for party status is granted.

On March 29, 2018, six parties to this appeal filed a Joint Status Update re Stay (Joint Status Update) regarding pending settlement negotiations. The filing of the Joint Status Update is in response to this Court's January 3, 2018 order directing the appellants to serve and file either a request for dismissal or a letter advising the court of the status of settlement negotiations within 90 days.

The Joint Status Update indicates that six parties "have made significant progress and are confident they can settle this appeal." (Joint Status Update, p.1.) The Agricultural Pool contends that the Joint Status Update and its suggestion of a pending settlement does not relate to the issues on appeal before this Court and that the six parties are using the

appellate process and the stay to renegotiate an entirely new agreement that was previously set aside, except for two provisions (safe yield and land conversions) by the Superior Court. The Court of Appeal is being asked to stay an improper and limited appeal pending negotiations between a few parties in an entire basin with numerous interested and impacted parties. The Court of Appeal is not the proper forum for this effort by only six parties to a Judgment pertaining to an adjudicated groundwater basin. Respondent, the Agricultural Pool, hereby submits the following:

The Joint Status Update indicates that the parties to the appeal “have reached agreement on a draft settlement” without providing any substantive information regarding the content of the draft settlement. While the contents of the draft settlement are not fully known, the Agricultural Pool has become aware that the parties have developed a Chino Basin Safe Yield Reset and Accounting Compromise Term Sheet (Term Sheet) as part of the settlement negotiations. (Declaration of Tracy J. Egoscue, ¶¶ 2 and 3.) This Term Sheet demonstrates that the settlement negotiation is not related to this appeal as it accepts the Safe Yield recalculation and the unallocated water priorities of the Superior Court Order, and specifically states that the “goal of the negotiations is to develop a comprehensive plan for implementing the Superior Court Order.” (Declaration of Tracy J. Egoscue, ¶ 4.) Additionally, although the Joint Status Update states, “[i]f

uncontested, the Parties could obtain court approval of the settlement agreement as early as September 2018,” it also acknowledges that “[e]fforts to finalize the settlement in this matter are challenging due, among other reasons, to (1) the complex nature of the underlying case... (2) the continuing jurisdiction of the Judgment (Paragraph 15), including trial court approval of the agreements among the numerous parties to the Judgment, and (3) the relationship between the potential settlement and existing court-approved agreements.” (Joint Status Update, p. 1.) There is no indication that this proposed settlement will be uncontested and it is misleading to the appellate court to suggest otherwise.

This Response briefly expands on each of the three identified reasons so that the Court may better understand the complex process governing the interpretation and enforcement of the Chino Basin Groundwater Judgment (Judgment) and court-approved management agreements, including Watermaster implementation of agreements effectuating the Chino Basin’s Safe Yield recalculation and the Superior Court’s continuing jurisdiction. The Agricultural Pool contends that the Court of Appeal has been placed in an untenable position and may not be the proper forum for any “settlement negotiations” in an adjudicated basin that pertain to the complex underlying Judgment, as under these

circumstances parties must use the Watermaster process and proceed as the Judgment and the Superior Court require.

1. Complex Nature of the Underlying Case.

Not only are the issues at the heart of the case complex, but so are the processes for interpreting and implementing those issues under the structure of the Judgment and court-approved management agreements. A primary requirement of the Judgment for actions submitted to the Watermaster is review of the proposed action by all of the Pool Committees (i.e., the Overlying Agricultural, Overlying Non-Agricultural and Appropriative Pool Committees).

The Joint Status Update acknowledges that discussions of the “settlement [will] progress[] and expand[] to involve parties to the Judgment who are not parties to the appeal,” and that the parties must “[o]btain the support or non-opposition of the Watermaster, the Agricultural Pool, and the Non-Agricultural Pool” in order to finalize and effectuate any settlement among the parties. (Joint Status Update, p. 2.)

The Joint Status Update anticipates the preparation of an agreement to be approved by the parties to the appeal;¹ however, all actions and

¹ Any affirmative action by the Pool Committees, including such a settlement agreement, requires a majority of the voting power of its members in attendance. (2012 Restated Judgment, Exhibit “H” at ¶ 3.)

recommendations of any Pool Committee, which require Watermaster implementation, must be noticed to the other two Pools with the opportunity to object to the action or recommendation. (2012 Restated Judgment, ¶ 38, subd. (a); Appropriate Pool Rules and Regulations, Rule 1.05.) If any such objection is received, such action or recommendation shall be reported to the Advisory Committee before being transmitted to Watermaster. (2012 Restated Judgment, ¶ 38, subd. (a); Appropriate Pool Rules and Regulations, Rule 1.05.) Any action or recommendation of a Pool Committee or the Advisory Committee must be transmitted to Watermaster in writing, together with a report of any dissenting vote or opinion. (2012 Restated Judgment, ¶ 35; see also Appropriate Pool Rules and Regulations, Rule 2.09.) In other words, the Judgment and applicable Watermaster rules and regulations lay out a required process for the appellants to pursue their proposed expansive settlement that cannot be, and should not be, bypassed through this appeal.

2. Superior Court Approval of the Agreements Among the Parties to the Judgment.

Two of the future steps outlined in the Joint Status Update include “[d]raft[ing] papers for court approval of settlement agreement” and “obtain[ing] court approval of settlement agreement.” (Joint Status Update, pp. 2-3.)

The Judgment provides continuing jurisdiction to the Superior Court regarding all matters relating to the Judgment.² It is in the Superior Court’s jurisdiction to issue any supplemental orders necessary or appropriate to interpret, enforce or carry out the Judgment, or to modify, amend or amplify any provisions of the Judgment. (2012 Restated Judgment, ¶ 15.) The Judgment requires that actions to make supplemental orders or directions that are “necessary or appropriate for the interpretation, enforcement or carrying out of [the] Judgment, and to modify, amend or amplify any of the provisions of [the] Judgment” be made upon motion by any party, the Watermaster, the Advisory Committee or any Pool Committee, “upon at least 30 days’ notice thereof, and after hearing thereon.” (*Ibid.*) Accordingly, any settlement agreement must be first presented to the Superior Court for a noticed hearing and Court approval. Appellants cannot, and should not be allowed to, evade the Superior Court’s jurisdiction through this appeal.

3. The Relationship Between the Potential Settlement and Existing Court-Approved Management Agreements.

The Joint Status Update also anticipates an order from the Superior Court to amend existing court-approved management agreements (i.e., the

² There are exceptions to this rule which do not apply. (See 2012 Restated Judgment, ¶ 15.)

Peace I and Peace II Agreements, and Watermaster Rules and Regulations) to comport with the final settlement agreement. The Superior Court has previously approved existing management agreements to clarify, enforce and amend the provisions of the Judgment for the continued management of the Basin. Any settlement agreement finalized must comport with the court-approved management agreements or amend said management agreements.

The Judgment, and the Watermaster and Pool Committee rules and regulations, require that the settlement agreement be reviewed by the Watermaster and Pool Committees, and any amendments to the court-approved management agreements proposed by the settlement agreement be approved through a Superior Court order. Additionally, the Term Sheet acknowledges that the goal of the settlement negotiations is to “develop a comprehensive *plan for implementing* the Superior Court Order” and “to reach a compromise on the issues involved in the reset of the basin’s safe yield *and accompanying implementation of water allocations that arise from the Judgment and Court Approved Management Agreements.*”

(Declaration of Tracy J. Egoscue, ¶ 4.) (Emphasis added.)

Conclusion

Consequently, the Court of Appeal is not the proper forum for this effort by these six parties, specifically because the Watermaster process exists pursuant to a Judgment and has been in force and effect for several decades. Indeed, it is clear that the six parties are not discussing issues relevant to the appeal of the Superior Court's Order, but are instead negotiating how best to implement and expand upon the Superior Court Order which is in the sole discretion of the Watermaster and Superior Court. (2012 Restated Judgment, ¶ 15 [Watermaster is appointed "to administer and enforce the provisions of this Judgment and any subsequent instructions or orders of the Court hereunder."].) In fact, the Term Sheet specifically states, "[t]he goal of the negotiations is to develop a comprehensive plan for implementing the Superior Court Order case number RCV 51010 dated April 28, 2017." (Declaration of Tracy J. Egoscue, ¶ 4.)

Dated: April 3, 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 April 2, 2018, the Agricultural Pool filed a motion with the Court to be designated as a party and respondent.

2. The Agricultural Pool has not been made fully aware of the contents of the draft settlement agreement.

3. The Agricultural Pool has been made aware that members of the Appropriative Pool, who are parties to the appeal, have agreed to a Chino Basin Safe Yield Reset and Accounting Compromise Term Sheet (Term Sheet) as part of the settlement negotiations.

4. The Term Sheet for settlement negotiations has been made available to the public via the Watermaster's FTP website and states, "[t]he goal of the negotiations is to develop a comprehensive plan for implementing the Superior Court Order case number RCV 51010 dated April 28, 2017," and that "[t]he parties desire to reach a compromise on the

issues involved in the reset of the basin's safe yield and accompanying implementation of water allocations that arise from the Judgment and Court Approved Management Agreements.”³

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of April, 2018 in the City of Long Beach and County of Los Angeles, State of California.

By: Tracy Egoscue
Tracy J. Egoscue

³ A true and correct copy of which can be found on the Watermaster's FTP website at <http://www.cbwm.org/FTP/Safe%20Yield%20Reset/20180118%20Safe%20Yield%20Reset%20and%20Accounting%20Compromise%20Term%20Sheet/20180118%20Safe%20Yield%20Reset%20and%20Accounting%20Compromise%20Term%20Sheet.pdf>

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 3, 2018, I electronically filed and served the **PROPOSED RESPONSE OF AGRICULTURAL POOL TO THE JOINT STATUS UPDATE RE STAY SUBMITTED WITH MOTION TO BE DESIGNATED AS A PARTY** 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 3, 2018, at Long Beach, California.



Tarren A. Torres