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EXEMPT FROM FILING FEE PER GOV. CODE, § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, ET AL.,

Defendants.

Case No: RCVRS 51010

Assigned for All Purposes to: Honorable Gilbert G. Ochoa

OPPOSITION TO APPROPRIATIVE POOL'S MOTION FOR AWARD OF EXPENSES, INCLUDING ATTORNEY FEES PER CONTRACT AND CIVIL CODE SECTION 1717

[Concurrently Filed with Request for Judicial Notice; Declaration of J. Scott-Coe; Declaration of C. Jones; Declaration of G. Nicholls]

Date: August 22, 2024
Time: 9:00 a.m.
Place: Dept. R17

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I. INTRODUCTION AND SUMMARY

The Appropriative Pool's ("AP") Motion for Award of Expenses, Including Attorney Fees per Contract and Civil Code Section 1717 ("Motion") seeks two distinct but overlapping categories of payments from the following members of the AP: the City of Ontario ("Ontario"); Monte Vista Water District ("MVWD") and Monte Vista Irrigation Company ("MVIC") (MVWD and MVIC collectively are referred to herein as "Monte Vista"), and the City of Chino ("Chino"). Collectively, these AP members are referred to herein as the "Responding Parties." The Motion fails to well-explain the categories and amounts of payments sought. It asks the Court to issue a fee award with actual amounts to be computed later, which is fatal to the Motion. Also, amounts shown on the Proposed Order are duplicative and include amounts already paid by the Responding Parties.

Both before and after the Motion was filed, the Responding Parties discussed potential resolutions with the AP, including trying to understand the amounts at issue and how the amounts were determined. (Declaration of J. Scott-Coe, filed concurrently herewith, at ¶ 3 ["Scott-Coe Decl."]; Declaration of C. Jones, filed concurrently herewith, at ¶¶ 3-4, 7 ["Jones Decl."].) Based on conversations with AP representatives, the Responding Parties understand that the Motion is seeking two categories of expenses, as follows:

Category No. 1: Attorney Fee-Shifting.

This category consists of attorney fees incurred by the AP regarding the April 22, 2022 Court Order upholding an agreement (the "Terms of Agreement" or "TOA") between the AP and Overlying Agricultural Pool ("Ag Pool").

The Motion does not state the actual amount of attorney fees at issue. (Scott-Coe Decl. at ¶ 4.) Separate from the Motion, the Responding Parties have been informed that the amount is $196,687.01. (*Ibid.*; Jones Decl. at ¶ 4.) The Responding Parties understand that the $196,687.01 consists of attorney fees that were paid by AP members ***other than the Responding Parties according to each member's share***. (Scott-Coe Decl. at ¶ 4; Jones Decl. at ¶ 4.) This category ***does not*** include the Responding Parties' share of the attorney fees, which is discussed under Category No. 2 below. (*Ibid.*) The Motion seeks to shift the total amount paid by the other AP members to the Responding Parties (*ibid.*), which is not allowed as a matter of law.

Under the Judgment, each member of the AP must pay its own respective share of the Pool's expenses. There is no lawful basis to shift or otherwise re-allocate attorney fees within the AP. The Motion suggests that the Peace Agreement supports such fee-shifting, but that is wrong. The Judgment – not the Peace Agreement – governs the allocation of expenses within the AP. Even if the Peace Agreement applied, by its own terms it does not provide a basis for attorney fee shifting.

The Memorandum of Costs on Appeal and Proposed Order filed with the Motion reflect $393,107 in this category, but that number is overstated. The Responding Parties already paid a portion of the $393,107 when they paid their respective shares of the Ag Pool's attorney fees and costs in connection with the TOA dispute. (Scott-Coe Decl. at ¶ 5 and Jones Decl. at ¶ 6, citing the Declaration of Edgar Tellez, filed June 26, 2024 with the Motion ["Tellez Decl."], at ¶ 4.) Also, a portion of the $393,107 is included in Category No. 2 below.[1]

Category No. 2: AP Assessments for AP Legal Expenses.

This category consists of AP assessments for the Responding Parties' share of certain AP legal expenses in the amount of $262,761.21. (Tellez Decl., at ¶ 3; Proposed Order filed with the Motion.) It does not include other AP members' share of AP legal expenses, which are covered by Category No. 1 above.

Supporting invoices were not provided to the Court with the Motion (Scott-Coe Decl. at ¶ 8),[2] nor to the Responding Parties upon their later request. The Responding Parties have repeatedly requested to see the detailed invoices submitted to the AP Chairperson that explain the basis for these charges. (Scott-Coe Decl. at ¶ 9 & Exh. 2; Jones Decl. at ¶¶ 6 to 11 and Exhs. 2-5.) So far, the AP has refused all such requests. (*Ibid.*) In doing so, the AP is taking a position that (a) the Ag Pool previously asserted, and that was challenged by certain AP members (including the Responding

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[1] The Proposed Order seeks the $393,107 and plus $262,761.21 discussed under Category No. 2, but these amounts overlap and are duplicative. (*See* Tellez Decl., at ¶¶ 3, 4.) If the Court awarded both of these amounts as shown on the Proposed Order, the award would exceed the maximum amount at issue by hundreds of thousand dollars.

[2] The Motion only includes aggregate total amounts and summaries of activities performed in connection with the appeal. (Declaration of G. Nicholls, filed concurrently herewith, at ¶ 12 ["Nicholls Decl."].) No supporting documentation is provided for payments made to Mr. Schatz as the AP's legal counsel. (*Id.*, at ¶13.)

Parties), and (b) the Court rejected in 2021. In rejecting the Ag Pool's position at the urging of the AP and its members, the Court reasoned that:

> "It is a denial of due process, as well as fundamentally unfair, for a party to be forced to pay a bill that the party has not seen. In order for a party to contest a bill, the party must be able to see and examine it first."

(Court Order dated May 28, 2021 [the "May 28 Order"], at ¶ 8.B.III, Exh. H to the Request for Judicial Notice ["RJN"], filed concurrently herewith.)

Here, the imperative to provide supporting invoices is stronger than in the prior dispute with the Ag Pool, which resulted in the May 28 Order quoted above, because the Responding Parties asking to see the AP's invoices are the AP's own member agencies. The reasoning of the May 28 Order that requires the Ag Pool to provide its supporting legal invoices when seeking payment by the AP even more strongly compels the AP to allow its own members to review the invoices that they are asked to pay as members of the AP.

The right to see and examine bills should not require litigation, and the Responding Parties remain hopeful that the AP will provide its invoices. In the meantime, as a show of good faith, the Responding Parties are prepared to pay their respective shares of the $262,761.21 into an escrow account to be administered by Watermaster. (Jones Decl., at ¶¶ 12-13 & Exh. 5.)

II. BACKGROUND

As explained by the Motion, in 2020 a coalition of AP members including the Responding Parties initiated litigation in which they prevailed against the Ag Pool. (*See also* Nicholls Decl., at ¶¶ 2 to 4.) Each participating AP member bore its own legal expenses. (*Id.*, at ¶ 9.) Ontario bore the lion's share of legal expenses, which were not reimbursed by any other party. (*Id.*, at ¶ 8.)

The AP members' effort was successful against the Ag Pool until, in early 2022, a majority of the AP changed course and approved the TOA, which settled the dispute on terms objected-to by the Responding Parties. (Nicholls Decl., at ¶¶ 4-7, 10.) After the TOA was executed, the nature of the dispute shifted. Thereafter, the Responding Parties challenged the authority of the AP under the Judgment to bind the Responding Parties to the TOA, which settled the Responding Parties' unresolved claims against the Ag Pool despite their objections. (*Id.* at ¶ 10; *see also* Exh. J to RJN.)

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In the original dispute with the Ag Pool, the central issue was the Ag Pool's insistence that the AP was obligated to pay all of the legal expenses incurred by the Ag Pool, without limitation, under Section 5.4(a) of the Peace Agreement. (Nicholls Decl., at ¶ 4; Exh. B to RJN.) The AP members (including the Responding Parties) prevailed in this original dispute. (*See* May 28 Order; Nicholls Decl., at ¶¶ 4 to 6.) On May 28, 2021, the Court entered an order rejecting the Ag Pool's interpretation of the Peace Agreement. The May 28 Order directed the Ag Pool to present its legal invoices to the AP for review against limits articulated by the Order. (Exh. H to RJN, at ¶ 7.)

In a continuation of the original dispute, the Ag Pool filed a motion seeking to force the AP to pay the Ag Pool's legal expenses based upon heavily redacted invoices. (Exh. F to RJN; Nicholls Decl., at ¶ 7.) The AP members (including the Responding Parties) and the AP opposed the Ag Pool's motion, asserting, among other things, that the AP Members have public duties that prevent them from funding a 'blank check'" to pay legal fees." (Exh. G to RJN, at p.7, fn.1.)

The AP members prevailed once again. (*See generally* December 3 Order, Exh. H to RJN; Nicholls Decl., at ¶ 7.) On December 3, 2021, the Court entered an order rejecting the Ag Pool's request for payment. (Exh. H to RJN, at 2:4-9.) The Order also directed Watermaster to return all funds that had been placed in escrow at the AP's request in the same amounts that each AP member had paid them into escrow. (*Id.* at 2:10-12.) The Order also directed Chino to file a motion as to the procedure for reimbursement that may be due to the paying party. (*Id.* at 2:13-15.)

In early 2022, Chino filed a motion for reimbursement in accordance with the December 3 Order. (Exh. I to RJN.) Ontario and Monte Vista joined in the reimbursement motion. (*See* Exh. J to RJN at p.5, lines 2-5 & fn.1.) But before the Court heard the reimbursement motion, a majority of the AP decided to settle the matter with the Ag Pool. The two Pools entered into the TOA, which they styled as a settlement of the entire dispute with the Ag Pool, including the reimbursement motion.

The Responding Parties believed that the AP lacked the ability to waive their individual claims for reimbursement and continued to litigate their motion. (*See* Exh. J to RJN.) At this point, the original dispute transformed into a new dispute between the Responding Parties and the AP regarding the legal effect of the TOA. (Nicholls Decl., at ¶ 10.) In this new TOA dispute, the

Responding Parties challenged the authority of the AP under the Judgment to bind the Responding Parties to the TOA. (*Ibid.*; *see also* Exh. J to RJN.)

On April 22, 2022, the Court entered an order denying the reimbursement motion as moot in reliance on the TOA (the "April 22 Order"). (Exh. F to Declaration of John J. Schatz, filed June 26, 2024 with the Motion ["Schatz Decl."].) The Responding Parties appealed from the April 22 Order and lost. (Exhs. K & L to RJN.) The Court of Appeal's opinion found that the Court correctly had denied the reimbursement motion on the grounds that the Judgment permits a Pool majority to bind its members to a contract like the TOA. (Exh. K to RJN, at p. 4.) The opinion allowed the Pools and Watermaster "to recover their costs on appeal" – "costs," not attorney fees. (*Id.*, at p. 24.)

III. LEGAL ARGUMENT

The two categories of expenses sought by the Motion are legally distinct and must be addressed separately, even though the amounts sought by the Motion in each category are overlapping.

Category No. 1: Attorney Fee-Shifting. No Grounds Exist for Re-Allocating or Shifting Attorney Fees Within the AP.

The Motion asks the Court to order the Responding Parties to pay other AP members' share of legal fees charged to the AP in connection with the TOA dispute. In other words, the AP seeks to shift attorney fees entirely to the Responding Parties as opposed to having the fees borne proportionally as required by the Judgment.

There is no lawful basis for such fee-shifting. Instead, the Judgment establishes the method of allocating attorney fees and other expenses proportionally among members of the Pool. (*See especially* Judgment, at §42 & Exh. H [AP Pooling Plan], Exhibit 1 to the RJN.) Also, the "American rule" requires each litigant to bear its own attorney fees regardless of prevailing party status. (*Tract 19051 Homeowners Assn. v. Kemp* (2015) 60 Cal.4th 1135.) Thus, all AP members including the Responding Parties must bear their own respective share of the attorney fees per the Judgment.

Nothing in the Peace Agreement changes this result. In fact, the Peace Agreement is consistent with the Judgment. Section 9.2(d) of the Peace Agreement expressly excludes

proceedings under the Judgment from any fee-shifting under the Peace Agreement. Also, Section 10.5 of the Peace Agreement requires all parties to bear their own attorney fees.

The Motion characterizes the TOA as a turning point after which the AP became a "prevailing party" entitled to recover attorney fees from the Responding Parties. The gravamen of the AP's argument is that because the Responding Parties refused to release their claims against the Ag Pool after a majority of the AP changed course and approved the TOA, the Responding Parties should pay all the other Pool members' proportional share of the Pools' legal expenses incurred for the TOA dispute. That view ignores the efforts of the Responding Parties as prevailing parties in connection with the May 28 and December 3 Court Orders,[3] and it is contrary to law for each of the following reasons:

- The American Rule requires each party to bear its own attorney fees.
- The Court of Appeal's opinion establishes the AP's right to recover ***costs*** on appeal – not attorney fees.
- The Judgment governs the allocation of Pool expenses among the members of the AP – not the Peace Agreement.
- The Motion fails to identify any contract or statute that supports attorney fee-shifting, and there is none:
  - The Peace Agreement does not modify the Judgment's allocation of expenses within the Pool.
  - Section 10.5 of the Peace Agreement confirms that all parties must bear their own attorney fees.
  - Fee-shifting under Section 9.2(d) of the Peace Agreement is not triggered because it does not apply to disputes arising under the Judgment. Also, the Responding Parties are not in default under the Peace Agreement, and the AP has not given the requisite Notice of Default and opportunity to cure.

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[3] If this view were upheld by the Court, it would open the door to even more claims for attorney fee-shifting, including by Responding Parties that championed successful efforts against the Ag Pool leading up to the TOA. (*See* Nicholls Decl., at ¶¶ 4-9.)

- Civil Code section 1717 does not provide a statutory basis for attorney fee-shifting.

Also, Civil Code section 1717 requires the AP to prove any entitlement to the fees claimed. The lack of invoices submitted with the Motion makes it impossible to determine with certainty what amounts are owed and by whom. The Motion ask the Court to award fees in amounts to be calculated later, which is fatal to the Motion.

A. The Judgment Controls the Allocation of Pool Expenses Among AP Members.

The Judgment creates the voting and assessment mechanisms by which each Pool pays its expenses (including legal expenses) to support the Watermaster and Pool functions. (*See, e.g.*, Judgment §§ 45, 54 and its Pooling Plans, Exhs. F, G & H.) Watermaster's declaration filed with the Motion admits that the Judgment controls the allocation of expenses among members of the AP:

> "Watermaster collects and makes payments from the AP's special assessments funds ***in accordance with the Judgment*** to fund AP legal counsel . . . as deemed necessary by the AP."

(Tellez Decl., at 2:7-9, emphasis added.)

The Judgment was entered by stipulation of the parties and therefore is interpreted by the rules applicable to contracts. (*Jamieson v. City Council of the City of Carpinteria* (2012) 204 Cal.App.4th 755, 761; *Rancho Pauma Mutual Water Co v. Yuima Municipal Water District* (2015) 239 Cal.App.4th 109.) The Judgment is explicit as to the allocation of Pool expenses within the AP. It states: "Watermaster is empowered to levy and collect all assessments provided for in the pooling plans and Physical Solution." (Judgment, § 22, Exh. 1 to RJN.) "The cost of [legal] counsel and expert assistance shall be Watermaster expense to be allocated to the affected pool or pools." (*Id.* at § 38(c).) "The method of assessment in each pool shall be as set forth in the applicable pooling plan." (*Id.* at § 42.)

The AP pooling plan is Exhibit H to the Judgment. The pooling plan establishes that administrative assessments of the AP members shall be "uniform" based on "production during the preceding year":

> "***Costs of administration of this pool*** and its share of general Watermaster expense ***shall be recovered by a uniform assessment applicable to all production during the preceding year***."

(Exh. H to the Judgment, at § 6, Exh. 1 to RJN, emphasis added.) The Judgment does not contain any attorney fee-shifting provision, and it does not allow the AP to change the allocation within the Pool by shifting some AP members' share of Pool expenses to other members. It would require an amendment to the Judgment to create a fee-shifting mechanism within the AP.

B. The Court of Appeal Opinion Shifts Costs, Not Attorney Fees.

The Court of Appeal's opinion allowed the Pools "to recover their ***costs*** on appeal." (Exh. K to RJN, at p. 24, emphasis added.) Like the opinion, the Remittitur states: "Respondents shall recover ***costs*** on appeal." (Exh. L to RJN, emphasis added.) The California Rules of Court ("CRC") distinguish "costs" versus "attorney's fees" and clarify that attorney fees are not costs. (CRC, rule 8.278(d)(2); *see also* CCP, §1021 [confirming the distinction between attorney fees and costs]; *Building Maintenance Service Co. v. AIL Systems, Inc.* (1997) 55 Cal.App.4th 1014, [attorney fees are not recoverable as costs].) The Responding Parties have already paid the AP's costs. (Scott-Coe Decl. at ¶ 6 & Exh. 1.) Attorney fee-shifting is a different issue, discussed below.

C. The American Rule Requires Each Litigant to Bear its Own Attorney Fees.

CCP section 1021 codifies the American rule that ordinarily requires each litigant to bear its own attorney fees. Section 1021 permits parties to "'contract out' of the American rule" by executing an attorney fee-shifting agreement. (*Trope v. Katz* (1995) 11 Cal.4th 274, 279; see *Santisas v. Goodin* (1998) 17 Cal.4th 599, 607, fn. 4.) Here, no statue or contract provides for fee-shifting. (CCP, § 1021; *accord* CRC, rules 3.1702(c)(1) and 8.278(d)(2).)

The Judgment must be interpreted like a contract (*Jamieson, supra*, 204 Cal.App.4th at p.761), and it does not allow fee-shifting, as discussed in Section III.A above. Instead, the Judgment requires assessments for AP expenses among the members to be "uniform" based on "production during the preceding year." (Exh. H to the Judgment, at § 6, Exh. 1 to RJN.) Thus, all parties must bear their own proportional share of the Pools' attorney fees.

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1. The Judgment's Allocation of Expenses Within the AP Is Supreme.

As discussed at Section III.A above, the Judgment – not the Peace Agreement – governs the allocation of costs within the AP.[4] The Judgment does not allow for the AP to shift certain members' share of expenses to other members. Nothing in the Peace Agreement purports to modify how expenses are allocated within the AP under the Judgment. The Peace Agreement has certain provisions regarding attorney fees, namely Sections 10.5 and 9.2. But neither of these sections apply to the disagreement between the Responding Parties and the Pools about the TOA.

The TOA dispute arose from competing interpretations of the Judgment – not the Peace Agreement. Its genesis was the motion for reimbursement filed by Chino pursuant to the December 3 Order and the effectiveness of the TOA to curtail or moot the reimbursement motion. (Exhs. I & J to RJN.) The Responding Parties asserted in the trial court and before the Court of Appeal that the AP lacked authority under the Judgment, specifically Paragraph 38, to bind the Responding Parties to the TOA over their objections. (See *id.*, at p. 17.) The Court of Appeal's opinion states that the Court's April 22 Order from which the appeal was taken "found that the Pools had authority ***under the Judgment*** to settle their inter-Pool disputes (here through the TOA)." (Exh. K to RJN, at p.3, emphasis added.) The opinion confirms that the "central question" presented by the Responding Parties in their appeal was "whether a committee of parties with appropriative water rights formed under the Judgment, specifically, the [AP], holds the power to bind individual members of the [AP] to a contract without the consent or approval of parties purportedly bound." (*Ibid.*) Thus, the TOA dispute was based on the Judgment not the Peace Agreement.[5]

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[4] Section 5.4(a) of the Peace Agreement reflects the AP's agreement to pay expenses of the Ag Pool, including certain legal expenses. But nothing in the Peace Agreement changes the allocation of such expenses among the AP members within the AP.

[5] The original dispute with the Ag Pool – but not the later TOA dispute – turned on the meaning of Section 5.4(a) of the Peace Agreement. (Nicholls Decl., at ¶¶2-10.)

2. Even if the Peace Agreement Applied, it Provides that All Parties Must Bear Their Own Attorney Fees.

The Motion ignores Section 10.5 of the Peace Agreement. Section 10.5 confirms that all parties must bear their own attorney fees "arising out of or in connection with the subject matter of [the Peace] Agreement":

> "***Each Party is to bear its own costs, expenses, and attorneys' fees arising out of or in connection with the subject matter of this Agreement*** and the negotiation, drafting, and execution of this Agreement." (Emphasis added.)

Even if the Peace Agreement governed attorney fees here, and it does not, Section 10.5 would require all parties to bear their own attorney fees.

3. Even if the Peace Agreement Applied, Part IX of the Peace Agreement, Including Section 9.2(d), Is Limited to Defaults Under the Peace Agreement and Excludes Proceedings Under the Judgment.

The Motion relies on Section 9.2(d) of the Peace Agreement, which is limited to certain "adversarial proceedings between the Parties." But the Motion fails to demonstrate that the predicates for Section 9.2(d) have been met. Section 9.2(d) applies only in certain circumstances not present here, namely where there is a Notice of Default and opportunity to cure under the Peace Agreement. Also, Section 9.2(d) expressly excludes "any adversarial proceedings . . . under the Judgment" such as the TOA dispute.

Part IX of the Peace Agreement, including Section 9.2(d), creates a regime for addressing defaults under the Peace Agreement. Section 9.1 defines what "constitutes a 'default' by a Party under [the Peace] Agreement":

> "A Party fails to perform or observe any term, covenant, or undertaking in this Agreement that it is to perform or observe and such failure continues for ninety (90) days from a Notice of Default being sent in the manner prescribed by Section 10.13."

(Peace Agreement, § 9.1(a).) Section 9.2 is titled "Remedies Upon Default," and it provides that

> "In the event of ***default***, each Party shall have the following rights and remedies: . . . (d) Attorney' Fees. In any adversarial proceedings between the Parties other than the dispute resolution procedure . . . the prevailing party shall be entitled to recover their costs, including reasonable attorney fees." (Emphasis added.)

The Motion ignores the limitation of Section 9.2(d) and the definition of "default." The Responding Parties are not in default because they have not failed to perform any term of the Peace Agreement. In addition, the AP has not given any Notice of Default and opportunity to cure,[6] as required to trigger remedies under Part IX of the Peace Agreement.

4. Civil Code Section 1717 Does Not Create a Statutory Basis for Attorney Fee-Shifting.

The Motion cites Civil Code section 1717 as a potential basis for attorney fee-shifting but fails to explain the relevance. Section 1717 transforms any unilateral contractual fee-shifting provision into a bilateral provision so that all parties to the contract are deemed to have the same rights to attorney fee-shifting in favor of the prevailing party. (See, e.g., *Nasser v. Superior Court* (1984) 156 Cal.App.3d 52, 56 [Civil Code § 1717 "was enacted to transform a unilateral contract right to attorney fees into a reciprocal provision designed to accomplish mutuality of remedy."].) The Motion has not asserted any argument based upon a unilateral contractual fee-shifting provision, so Section 1717 does not apply. Furthermore, mutuality of remedies under Civil Code section 1717 only applies to contract actions (e.g., breach of contract) and cannot be extended to any other claims arising out of or related to a contract. (*Moallem v. Coldwell Banker Com. Group, Inc.* (1994) 25 Cal.App.4th 1827, 1830.)

D. Civil Code Section 1717 Precludes any Award of Attorney Fees Because the AP Has Not Made the Requisite Showing of Reasonability.

If there were a contractual right to fee-shifting (which there is not), Civil Code section 1717 would require the parties seeking fees to prove their entitlement to the amount claimed. Courts interpreting Section 1717 have held that, when making a fee determination, "[i]t is elementary that . . . the party claiming them must establish (1) not only entitlement to such fees but (2) the reasonableness of the fees claimed." (*Civic Western Corp. v. Zila Industries, Inc.* (1977) 66 Cal.App.3d 1, 16; see also *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1020 [any

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[6] In contrast to the TOA dispute, the Ag Pool in the original dispute issued a Notice of Default asserting that AP members had breached Section 5.4(a) of the Peace Agreement by which the AP and its members expressly agreed to pay certain Ag Pool expenses. (Nicholls Decl., at ¶ 2.) In the TOA dispute, no party has issued a Notice of Default, and there is no basis for a Notice. (Scott-Coe Decl. at ¶ 7.)

party seeking attorney's fees bears the burden of establishing entitlement to an award].) Here, the Motion and its supporting declarations state aggregate amounts of legal fees and costs billed and, only for the appeal, present high-level summaries of legal services rendered to the AP. (Nicholls Decl., at 12.) No supporting documentation is provided for payments made to Mr. Schatz as the AP's legal counsel. (*Id.*, at ¶13.)

In sum, the Motion fails to justify the reasonableness of the amounts sought. Also, the limited information presented with the Motion makes it impossible to tell with any degree of certainty what is the amount owed, by whom. The Motion fails for this additional reason. (*Civic Western Corp. v. Zila Industries, Inc., supra*, 66 Cal.App.3d at p. 16.)

Category No. 2: AP Assessments for AP Legal Expenses.

The Responding Parties Are Ready and Willing to Pay Their Share of AP Legal Expenses Into a Watermaster Escrow Account, with the Funds to Be Released from Escrow Upon Receipt of the Supporting Legal Invoices.

In the course of discussions regarding the amounts sought by the AP, the Responding Parties have expressed willingness to pay their share of AP legal expenses in the amount of $262,761.21 upon receipt of detailed invoices supporting the charges. (Jones Decl. at ¶¶ 7, 9 & Exhs. 1, 2.) So far, the AP has refused all requests for the invoices (Scott-Coe Decl. at ¶ 9 & Exh. 2; Jones Decl. at ¶¶ 6 to 11 and Exhs. 2-5), but the Responding Parties remain hopeful that this issue can be resolved amicably.

As a show of good faith, in an attempt to amicably respond to the issues raised by the Motion, the Responding Parties have reached out to Watermaster in an effort to establish an escrow account into which they would pay the entire $262,761.21. (Jones Decl. at ¶ 13 & Exh. 5.) The approach was previously used in 2020 in connection with the original dispute when, at the AP's request, Watermaster established as escrow account and AP members deposited funds sought by the Ag Pool. (*Id.*, at Exh.5; Exh. C to RJN.) Proposed escrow instructions would provide for the funds to be released when supporting invoices are provided to the Responding Parties, consistent with the Responding Agencies' standards of financial accountability as stewards of public funds, or as ordered by the Court.

Previously, the AP shared the Responding Parties' understanding of public accountability and supported the AP members' efforts to obtain similar documentation from the Ag Pool. (See *Rock Island A. & L.R. Co. v. U.S.* (1920) 254 U.S. 141, 143 [As Oliver Wendell Holmes wrote, "[m]en must turn square corners when they deal with the Government."].) In the original dispute, legal counsel for the AP even signed onto a legal brief challenging the Ag Pool's failure to produce its invoices, asserting, among other things, that ***"the AP Members have public duties that prevent them from funding a 'blank check'" to pay legal fees."*** (Nicholls Decl., at ¶ 13, quoting RJN, Exh. G at p.7, fn.1, emphasis added.)

The same reasoning compels the AP to provide its legal invoices to its members. If the AP insists on opposing its own members' requests for legal invoices, the AP would be acting contrary to the May 28 Order that states: "***It is a denial of due process, as well as fundamentally unfair, for a party to be forced to pay a bill that the party has not seen. In order for a party to contest a bill, the party must be able to see and examine it first."*** (Exh. H to RJN, at ¶ 8.B.III, emphasis added.)

The AP's refusal to provide its invoices in the TOA dispute would be more egregious than the Ag Pool's refusal in the original dispute because the AP is resisting requests from its own members – not information sought by another Pool. Each Responding Party is a party to the Judgment and a member of the AP with the same rights as any other member of the AP – including the same rights as the member whose representative currently serves as Pool chairperson. Adversity with one's own member agencies, especially as to now-concluded litigation, does not provide a basis to withhold invoices. (Exh. H to RJN, at ¶ 8.B.III.) The Court addressed a similar issue in its Minute Order dated April 5, 2021: ***"The court also recognizes a certain fundamental unfairness in charging [AP] Member Agencies for bills they have not seen because the [Ag Pool] members claim they are privileged."*** (Exh. D to RJN, emphasis added.) Thus, alleged privilege is not a basis for Ag Pool to withhold its detailed legal supporting charges billed to the AP, and it cannot be a basis for the AP to withhold supporting invoices from its own members. (See also *Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 299-300.)

The Responding Parties hope that the AP will provide the invoices and thereby moot this issue prior to the hearing.

IV. CONCLUSION

For all the reasons set forth herein, the Responding Parties respectfully request that the Court deny the Motion. The limited information presented with the Motion makes it impossible to tell exactly what amounts allegedly are owed, by which entities. Regardless of the amount at issue, attorney fees sought under Category No. 1 cannot be shifted to the Responding Parties as a matter of law, for numerous reasons discussed above. As for Category No. 2, the Responding Parties stand ready and willing to pay upon receipt of the AP's supporting invoices and, in the meantime, are seeking in good faith to place the funds into escrow with Watermaster.

Dated: August 1, 2024

NOSSAMAN LLP
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GINA R. NICHOLLS

By: _____

Frederic A. Fudacz
Attorneys for CITY OF ONTARIO

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Dated: August 1, 2024

KIDMAN GAGEN LAW LLP

By: Andrew B Gagen /by GRN

Andrew B. Gagen

Attorneys for MONTE VISTA WATER DISTRICT and MONTE VISTA IRRIGATION COMPANY

Dated: August 1, 2024

JIMMY L. GUTIERREZ LAW CORPORATION

By: Jimmy L. Gutierrez /by GRN

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Attorneys for CITY OF CHINO

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 August 1, 2024 I served the following:

1. OPPOSITION TO APPROPRIATIVE POOL'S MOTION FOR AWARD OF EXPENSES, INCLUDING ATTORNEY FEES PER CONTRACT AND CIVIL CODE SECTION 1717

/ X / 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.

/ 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.
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 August 1, 2024 in Rancho Cucamonga, California.

By: Ruby Favela Quintero
Chino Basin Watermaster

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