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E-FILED
06/16/2017

FRESNO COUNTY SUPERIOR COURT
By: M.Sanchez, Deputy

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF FRESNO
10

11 CITY OF FRESNO,

12 Petitioner,

13 v.

14 PINEDALE COUNTY WATER DISTRICT;
and DOES 1 through 15, inclusive,

15 Respondent.
16
17 _____

Case No. 17CECG02055

PETITION FOR WRIT OF
MANDATE TO COMPEL
RESPONDENT TO PAY
JUDGMENT
[Government Code §970.2]

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19 Petitioner, City of Fresno, alleges as follows:

20 1. Respondent Pinedale County Water District is a local public entity, as set
21 forth in Government Code §970(c), with its principal place of business located in Fresno
22 County, California.

23 2. On or about June 3, 2008, Petitioner initiated the underlying action against
24 Respondent in a matter styled City of Fresno v Pinedale County Water District, et al.,
25 Fresno County Superior Court Case No. 08CECG01899. That action was subsequently
26 transferred to the Madera County Superior Court pursuant to Code of Civil Procedure
27 §394, and assigned Madera County Superior Court Case No. MCV043413.

28 3. The underlying action arose out of Respondent's breach of a written

1 agreement commonly referred to as the "2007 Agreement", a copy of which is attached
2 hereto as Exhibit 1.

3 4. The underlying action proceeded to trial on April 25, 2011, in Department
4 5 of the Madera County Superior Court, the Hon. James E. Oakley, presiding.

5 5. On or about October 4, 2011, the Madera County Superior Court issued
6 Judgment in the underlying action in favor of Petitioner and against Respondent, a copy
7 of which (including the Court's Statement of Decision) is attached hereto as Exhibit 2.

8 6. Following the rendition of Judgment in Petitioner's favor, Respondent
9 appealed the Court's Judgment to the Fifth District Court of Appeal, and subsequently
10 appealed the Court's post-trial award of Petitioner's attorney's fees and costs.
11 Respondent's appeals were unsuccessful, and the Trial Court's Judgment and award of
12 attorney's fees and costs were affirmed on appeal. (See Appellate Opinions attached
13 as Exhibits 3 and 4, respectively.)

14 7. Pursuant to Petitioner's Judgment, and the Court's ensuing orders, the
15 following sums are due and owing to Petitioner by Respondent:

- 16 • \$86,658.53 in fees and costs (See Amended Judgment attached
17 hereto as Exhibit 5);
- 18 • \$938.91 for costs on appeal, which were not taxed by Respondent
19 (See Memorandum of Costs attached hereto as Exhibit 6); and
- 20 • \$39,918.00 in appellate attorney's fees as ordered by this Court on
21 January 31, 2014. (See Notice of Entry of Order on Motion to Fix
22 Attorney's Fees, attached hereto as Exhibit 7.)

23 8. The amount owed by Respondent to Petitioner totals \$127,515.84, plus
24 interest thereon.

25 9. There are no conditions precedent to Respondent's duty to satisfy
26 Petitioner's Judgment, which remains owing and unpaid.

27 10. On or about February 11, 2014, Petitioner demanded that Respondent
28 pay said Judgment, but Respondent has failed and refused, and continues to fail and

1 refuse, to do so.

2 11. Under the provisions of §970.4 of the Government Code, Respondent is
3 expressly required to pay Petitioner's Judgment with interest thereon. It is apparent
4 that Respondent does not intend to satisfy its lawful obligations to pay Petitioner's
5 Judgment, and Petitioner has no plain, speedy and/or adequate remedy in the ordinary
6 course of law, or any remedy other than this proceeding, which is expressly authorized
7 by the provisions of §970.2 of the Government Code.

8 WHEREFORE, Petitioner prays as follows:

- 9 1. That this Court issue its peremptory writ of mandate compelling
10 Respondent to pay Petitioner's Judgment with interest;
- 11 2. For an award of attorney's fees incurred in the prosecution of this
12 action, as provided in the 2007 Agreement.
- 13 3. For costs of suit; and
- 14 4. For such other and further relief as this Court may deem just and
15 appropriate.

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17 Dated: June 16, 2017

BETTS & RUBIN

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19 By James B. Betts
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21 Attorneys for Petitioner CITY OF FRESNO
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