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7 Attorneys for
8 City of Ontario

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

11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendants.

CASE NO. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO
HONORABLE STANFORD E. REICHERT

EX PARTE APPLICATION BY NEW
COUNSEL FOR AN ORDER TO EXCEED
PAGE LIMIT FOR CITY OF ONTARIO'S
REPLY MEMORANDA IN SUPPORT OF
APPLICATION FOR AN ORDER TO
EXTEND TIME UNDER JUDGMENT,
PARAGRAPH 31(C) TO CHALLENGE
WATERMASTER ACTION/DECISION
ON NOVEMBER 18, 2021 TO APPROVE
THE FY 2021/2022 ASSESSMENT
PACKAGE; OR, ALTERNATIVELY,
CITY OF ONTARIO'S CHALLENGE

TELEPHONIC APPEARANCE

Ex Parte Hearing:

Date: April 8, 2022
Time: 1:30 p.m.
Dept.: S35

1 **NOTICE OF EX PARTE APPLICATION AND APPLICATION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE
3 that City of Ontario (“Ontario”) requests that this Court consider and grant its ex parte application
4 (“*Ex Parte* Application”) for an order to allow Ontario to exceed the 10-page limit for the reply
5 briefs to the three oppositions to Ontario’s Application for Extension.¹ While the Application for
6 Extension requests an extension for full briefing on the challenge to the Watermaster Action,
7 Ontario makes this ex parte request because Watermaster and Defendants Fontana Water Company
8 (“FWC”) and Cucamonga Valley Water District (“CVWD”), and Inland Empire Utilities Agency
9 (“IEUA”) have filed oppositions to the Application for Extension that oppose not only the extension
10 request but also the merits of the underlying challenged Watermaster Action. These oppositions
11 and supporting papers total 356 pages and Ontario requests leave to file reply memoranda to each
12 opposition, either separately or jointly, with a total page count for the reply memoranda of no more
13 than 40 pages.

14 This *Ex Parte* Application is made pursuant to California Rules of Court, rules 3.1113(e),
15 3.1200 et seq., and Local Rule 731. Good cause exists to grant the *Ex Parte* Application because
16 Ontario’s counsel recently substituted into this proceeding. In addition, the Application for
17 Extension was filed by Ontario on short notice due to the parties’ ongoing settlement negotiations
18 and without the aid of its then water law counsel due to defendant FWC’s refusal to waive conflicts
19 shortly before the February 17 deadline and Ontario’s reliance on ongoing settlement negotiations
20 between the parties. As a result, the Application for Extension was filed to preserve Ontario’s
21 challenge of the Watermaster Action and did not fully brief the substantive issues in this matter.

22 As set forth in the accompanying Declaration of Elizabeth P. Ewens (“Ewens Decl.”),
23 written notice of this *Ex Parte* Application will be provided to all parties’ counsel prior to
24
25

26 ¹ The “Application for Extension” is Ontario’s Application for an Order to Extend Time under
27 Judgment, Paragraph 31(c) to Challenge Watermaster Action/Decision on November 18, 2020 to
28 Approve the FY 2021/2022 Assessment Package (“Watermaster Action”) filed with this Court on
February 17, 2022.


1 10:00 a.m., the court day before the hearing for this Application. Ewens Decl., ¶ 4, Ex. 1. Ontario
2 understands that Watermaster does not intend to oppose this application. *Id.* at ¶ 5, Ex. 2.

3 This *Ex Parte* Application is based upon this Application, the Memorandum of Points and
4 Authorities, the Declaration of Elizabeth P. Ewens, Declaration of Scott Burton, the [Proposed]
5 Order filed concurrently herewith, the records and pleadings on file herein, and any other
6 documents or information, or argument and statements at or prior to the hearings on these matters.

7 Dated: April 7, 2022

STOEL RIVES LLP

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By: 
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CITY OF ONTARIO

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Court should grant City of Ontario’s (“Ontario”) reasonable request to exceed the page
4 limit for its reply briefs as requested herein. Ontario’s counsel was only recently retained last
5 month, and the Application for Extension does not fully brief Ontario’s substantive challenge to
6 the Watermaster Action. Moreover, the Oppositions contain complicated legal arguments that
7 oppose not only the extension request, but also address the substance of the underlying challenge
8 to the Watermaster Action under paragraph 31(c) of the Judgment. The substantive matters at issue
9 before the Court, including but not limited to complex legal and factual issues relating to the 2021-
10 2022 assessment package, improper material changes to the recovery aspect of the Dry Year Yield
11 Storage and Recovery Program (DYYP),² and violations of the Judgment and prior Court Orders,
12 cannot reasonably be briefed within the current page limitations. While Ontario believes that the
13 Application for Extension pending before that Court should be granted so that the Court has the
14 benefit of full briefing concerning the dispute over the Watermaster Action, Ontario files this
15 request as a precautionary measure so that Ontario has an opportunity to address the numerous legal
16 and factual arguments in the three oppositions that were filed by Watermaster and certain
17 Defendants.

18 Accordingly, Ontario respectfully requests that the Court grant this ex parte request to
19 exceed the page limit for its reply briefs for a total page count for the memoranda of no more than
20 40 pages.

21 **II. STATEMENT OF FACTS**

22 **A. The November 18, 2021 Watermaster Action and Subsequent Negotiations**

23 As set forth in the Application for Extension, on November 1, 2021, Ontario sent a letter to
24 the Watermaster General Manager that outlined questions and comments to the draft Fiscal Year
25

26 ² “DYYP” means the Metropolitan Water District’s Chino Basin Conjunctive Use Program as
27 identified in the draft Fiscal Year 2021/2022 Assessment Package, from the Watermaster
28 assessment and the Desalter Replenishment Obligation assessment. See Application for Extension
at 2-3.

1 2021/2022 Assessment Package, including those relating to the DYYP. Application for Extension
2 at 2-3; Declaration of Scott Burton (“Burton Decl.”), ¶ 4.

3 On November 18, 2021, the Watermaster Board approved the Fiscal Year 2021/2022
4 Assessment Package. Application for Extension at 3; Burton Decl., ¶ 5.

5 Shortly thereafter, on January 5, 2022, the Watermaster, Ontario, Cucamonga Valley Water
6 District (“CVWD”), and Fontana Water Company (“FWC”) began good faith negotiations with the
7 Watermaster to address issues with the Watermaster Action. Burton Decl., ¶ 6. On January 24,
8 Ontario, CVWD, and FWC met to discuss a draft settlement term sheet and continue good faith
9 negotiations. *Id.* at ¶ 7. During this meeting, Ontario mentioned that if this issue would end up in
10 Court, conflict waivers might be needed to resolve it quickly. *Id.* On this day, Ontario sent a letter
11 to the Watermaster General Manager, detailing Ontario’s concerns with the Watermaster Action.
12 *Id.* at ¶ 8, Ex. 1.

13 On January 27, 2022, the Watermaster presented a staff report to the Watermaster Board in
14 response to Ontario’s concerns that were reiterated in the January 24, 2022 letter. Burton Decl.,
15 ¶ 9. But the Watermaster responded that it was “not prepared to provide a legal opinion in this
16 moment.” *Id.* It was understood by Ontario that in order to comply with the Watermaster Action,
17 a report with legal counsel’s opinion would be forthcoming. *Id.* On this day, Ontario also sent a
18 request to FWC for a conflict-of-interest waiver, and Ontario began searching for other options for
19 legal counsel. *Id.* at ¶ 10.

20 Ontario continued its settlement efforts, and on February 11, 2022, just six (6) days before
21 the deadline to file a challenge, the parties were still negotiating settlement terms. Burton Decl.,
22 ¶¶ 11-12.

23 **B. Ontario’s Request for Extension and Request for a Conflict Waiver Refused,**
24 **and Its Application for Extension**

25 As negotiations were ongoing, on February 11, 2022, Ontario requested Watermaster
26 general counsel to approve an extension to the 90-day period if determined necessary by the
27 Watermaster. Burton Decl. ¶¶ 11-12. Although the Watermaster initially indicated that it likely
28 would stipulate to an extension, it ultimately refused. *Id.* at ¶ 12.

1 Similarly, on February 11, 2022, FWC informed Ontario that it would not grant Ontario's
2 request for a conflict waiver. Burton Decl. ¶ 12. As a result, on February 14, 2022, Ontario began
3 actively searching for new qualified counsel. *Id.* at ¶ 13.

4 In order to preserve Ontario's time to file a motion to challenge the Watermaster Action
5 and on an emergency basis, Ontario utilized non-water counsel to file the Application for Extension,
6 in which it requested an additional 90 days to challenge the Watermaster Action. Burton Decl.,
7 ¶ 14; *see generally*, Application for Extension. Although the Application for Extension
8 alternatively constituted the challenge itself, it did not fully brief the complex and important issues
9 on the merits of Ontario's challenge. *See generally*, Application for Extension.

10 C. **Ontario's Reasonable Request for an Extension and Notice of this *Ex Parte***
11 **Application**

12 Ontario officially retained its current counsel on March 15, 2022. Ewens Decl., ¶ 6; Burton
13 Decl., ¶ 15. Ontario filed a substitution of counsel on March 23, 2022, and its current counsel is
14 still gathering information. Ewens Decl., ¶ 6. Ontario, through newly retained counsel, contacted
15 Watermaster counsel by phone and by email to renew settlement efforts and to request that the
16 Watermaster Board stipulate to an extension of time. *Id.* at ¶ 7, Ex. 3. In order to compromise and
17 help alleviate any concerns with an extension, Ontario offered to stipulate to a 75-day extension,
18 but the Watermaster declined to stipulate. *Id.*

19 Ontario then requested from Watermaster's counsel on March 25, 2022, a stipulation to
20 minimally continue the hearing on April 8, 2022 to April 22, 2022 and for additional time for
21 Ontario's new counsel to file its reply briefs by April 15, instead of the prior deadline of April 1 in
22 the event that the Court did not grant the pending Application for Extension. Ewens Decl., ¶ 8.
23 The Watermaster ultimately accepted this request, and the parties filed a stipulation to continue the
24 hearing. *Id.* Pursuant to this stipulation, Ontario did not waive, and specifically reserved, its request
25 in the Application for Extension to file a challenge to Watermaster Action which then would allow
26 for a full briefing schedule on the challenge thereto. *Id.* at ¶ 8, Ex. 4 ("The Parties agree that the
27 above is without prejudice to Ontario's ability to argue both alternatives in its Application
28 (application for extension of time and challenge to Watermaster action), plead in the alternative.").

1 On March 24 and 25, 2022, the Watermaster, CVWD and FWC, and IEUA filed the
2 Oppositions. *See* Oppositions. Each opposition set forth substantive grounds that requires
3 Ontario's response. *Id.* Ontario's reply date is April 15, 2022.

4 To protect its rights, Ontario filed this *Ex Parte* Application. Ontario provided sufficient
5 notice to the Watermaster and all parties to this action of this *Ex Parte* Application, as detailed in
6 the Declaration of Elizabeth P. Ewens. Ewens Decl., ¶¶ 4, Ex. 1.

7 **III. GOOD CAUSE EXISTS TO ALLOW ONTARIO TO CONSOLIDATE REPLIES**
8 **AND EXCEED REPLY PAGE LIMIT**

9 While California Rule of Court, rule 3.1113(d) sets a 10-page limit for a reply, a party may
10 apply *ex parte* for permission to file a longer reply pursuant to rule 3.1113(e).

11 Good cause for *ex parte* relief, such as additional pages on a reply brief, exists where there
12 is irreparable harm, immediate danger, or any other statutory basis for granting relief *ex parte*. Cal.
13 Rules of Court, rule 3.1202(c); *Newsome v. Sup. Ct. (Gallagher)*, 50 Cal. App. 5th 1093, 1097
14 (2020).

15 The Oppositions contain complicated legal arguments and facts and raise several
16 substantive arguments in response to Ontario's request for additional time and the merits to the
17 challenge to the Watermaster Action. *See* Oppositions. The Oppositions brief significant
18 substantive issues, totaling 356 pages, including the supporting documents. *See* Oppositions. In
19 addition, Ontario's counsel was recently retained, and the Application for Extension before the
20 Court does not fully brief the substantive issues. Ewens Decl., ¶ 6; Burton Decl., ¶ 15; Application
21 for Extension. As a result, Ontario requires additional space to fully brief these important and
22 complex issues in response to the Oppositions filed. Because the three replies together would
23 constitute 30 pages, Ontario requests only an additional ten pages total in order to fully address the
24 points in all three Oppositions.

25 //

1 **IV. CONCLUSION**


2 For the foregoing reasons, Ontario respectfully requests that the Court grant this *Ex Parte*
3 Application and enter the order submitted herewith.

4 Dated: April 7, 2022

STOEL RIVES LLP

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By: 

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

On April 7, 2022 I served the following:

1. EX PARTE APPLICATION BY NEW COUNSEL FOR AN ORDER TO EXCEED PAGE LIMIT FOR CITY OF ONTARIO'S REPLY MEMORANDA IN SUPPORT OF APPLICATION FOR AN ORDER TO EXTEND TIME UNDER JUDGMENT, PARAGRAPH 31(C) TO CHALLENGE WATERMASTER ACTION/DECISION ON NOVEMBER 18, 2021 TO APPROVE THE FY 2021/2022 ASSESSMENT PACKAGE; OR, ALTERNATIVELY, CITY OF ONTARIO'S CHALLENGE

BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:

See attached service list: Master Email Distribution List

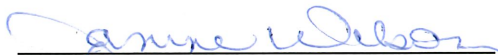
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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.

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

Executed on April 7, 2022 in Rancho Cucamonga, California.



By: Janine Wilson
Chino Basin Watermaster

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