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EXEMPT FROM FILING FEES
PURSUANT TO GOV. CODE, § 6103

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

12 CHINO BASIN MUNICIPAL WATER
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

OBJECTIONS TO DECLARATION OF
EDUARDO ESPINOZA

RE: 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. IF SUCH REQUEST IS
DENIED, THIS FILING IS THE
CHALLENGE

Hearing:

Date: June 17, 2022

Time: 1:30 p.m.

Dept.: S35

1 City of Ontario (“Ontario”) hereby objects to the Court’s consideration of the entire
 2 Declaration of Eduardo Espinoza, and certain exhibits, filed in support of Fontana Water Company
 3 and Cucamonga Valley Water District’s Opposition to City of Ontario’s Application for an Order
 4 to Extend Time Under Judgment, Paragraph 31(c) to Challenge Watermaster Action/Decision on
 5 November 18, 2021 to Approve the FY 2021/2022 Assessment Package, or alternatively, City of
 6 Ontario’s challenge.

7 **LEGAL BASES FOR OBJECTIONS**

8 Evidence proposed by means of an affidavit or declaration is subject to the same standards
 9 of admissibility as at trial, and a judge hearing the motion may decline to consider statements in a
 10 declaration on the same grounds that a trial judge would sustain an objection to proffered testimony.
 11 (See *McLellan v. McLellan* (1972) 23 Cal.App.3d 343, 359.)

12 In order to be admissible, evidence must be relevant. (Evid. Code, § 350.) This means that
 13 the proffered fact must have a “tendency in reason to prove or disprove any disputed fact that is of
 14 consequence to the determination of the action.” (*Id.*, at § 210.) Declarations should state
 15 evidentiary facts, not ultimate facts or legal conclusions. (See *Ware v. Stafford* (1962) 206
 16 Cal.App.2d 232, 237.) Unless a witness has personal knowledge of facts, the witness is
 17 incompetent to testify. (Evid. Code, § 702, subd. (a).) Hearsay statements contained in a
 18 declaration may be excluded from evidence unless shown to be admissible under an exception to
 19 the hearsay rule. (See *Pacific Air Lines, Inc. v. Superior Court* (1965) 231 Cal.App.2d 587.)

20 Under the secondary evidence rule, oral testimony is not admissible to prove the contents
 21 of a writing unless otherwise permitted by statute. (Evid. Code, § 1523, subd. (a).)

22 **SPECIFIC OBJECTIONS TO DECLARATION OF EDUARDO ESPINOZA**

Pg/Ln and/or ¶ Ref.	Testimony	Ontario’s Specific Objections
Paragraph 4, p. 2, lines 16-18	The DYYP allows participating members (“Operating Agencies”) of two wholesale agencies Inland Empire Utilities Agency and Three Valleys	Misstates the testimony (Evid. Code §§ 210, 403.)

Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific Objections
	Municipal Water District ("Three Valleys"), to withdraw that stored water.	<p>Mr. Espinoza misstates what the Dry Year Yield Program ("DYY Program") permits. The Watermaster S&R Program Storage Agreement allows the recovery of stored water, rather than the DYPP as implied in Mr. Espinoza's statement. (See Request for Judicial Notice ("RJN"), Ex. 17 at Ex. A.)</p> <p>Sustained: _____ Overruled: _____</p>
Paragraph 5, p. 2, lines 20-27.	Originally, the DYYP was to enable MWD to require the Operating Parties to purchase and use imported water withdrawn from storage instead of purchasing imported surface water from MWD directly in times of emergency or drought. In 2017, in response to heavy rainfall in the region, MWD asked to store more imported water in the Basin than permitted under the existing DYYP Agreement. The Watermaster and parties agreed, but the Operating Parties expressed concern over their ability to withdraw this extra water when called to do so. At the same time, MWD expressed concern over the fate of any stored imported water that was still in the Basin when the DYYP expired in 2028.	<p>Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403); Hearsay (Evid. Code § 1200).</p> <p>Mr. Espinoza attests that he is the Assistant General Manager for Cucamonga Valley Water District ("CVWD"). There is no foundation for Mr. Espinoza's personal knowledge of Metropolitan Water District's ("MWD") concerns, the Operating Parties concerns as a whole, or what the Dry Year Yield Program ("DYYP") originally intended to do. These statements are speculative and hearsay.</p> <p>Sustained: _____ Overruled: _____</p>
Paragraph 6, p. 3, lines 1-10.	To address these concerns, discussions began in 2018 over a voluntary withdrawal provision. In Pool meetings and in the Watermaster Board meeting in September 2018, the Watermaster General Manager informed the Judgment parties that the Watermaster intended to sign a letter agreement allowing the Operating Parties to purchase and withdraw imported water from storage at any time, rather than just in response to a call by MWD. Neither	<p>Misstates the testimony (Evid. Code §§ 210, 403); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403)</p> <p>Mr. Espinoza's statements misstate the facts surrounding the voluntary withdrawal proposal. The DYYP was not listed as an action item or an informational item. It was only raised verbally by the General Manager. Moreover, the City of Ontario was not</p>

Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific Objections
1 2 3 4 5 6 7 8 9 10 11 12 13 14	the City of Ontario ("Ontario") nor any other party to the Judgment party expressed opposition to the substance of the agreement, or the procedure of using a letter agreement. Specifically, no party expressed any concerns about the authority of the Watermaster General Manager to sign the letter agreement or the absence of formal approval by the Watermaster Board of Directors. The letter agreement was signed in 2019.	in attendance at the Watermaster Board meeting. Mr. Espinoza's statement implies the City of Ontario did not oppose the substance of the agreement when, in reality, there was no prior notice of the voluntary withdrawal provision and Ontario was only in attendance at one of the two meetings referenced by Mr. Espinoza. No notice of the proposed letter agreement was provided, as required, and therefore there was no opportunity to object. (RJN, Exs. 34-39; Declaration of Courtney Jones ("Jones Decl."), Exs. 4-6.) Sustained: _____ Overruled: _____
15 16 17 18 19 20 21	Paragraph 7 p. 3, lines 14-16. Ontario did not use this opportunity, but Fontana Water Company ("FWC") and CVWD did. Both Agencies have purchased and withdrawn imported water from storage in Production Years ("PY") 2019/20 and PY 2020/21, and are still doing so.	Misstates the testimony (Evid. Code §§ 210, 403); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403) FWC did purchase and withdraw water in the 2020/2021 Production Year, however it did not purchase or withdraw water in the 2019/2020 Production Year. (See RJN, Ex. 59 at p. 10.1 (Storage and Recovery Programs column).) Sustained: _____ Overruled: _____
22 23 24 25 26 27 28	Paragraph 8, p. 3, lines 17-25 Under the DYYP Agreement, since 2004 MWD has paid an "administrative fee" of \$132,000 (plus an annual inflation adjustment) per year to the Watermaster, which has increased to over \$170,000 annually by 2021, "to cover the incremental costs and expenses of administering the Program during such year." Therefore, MWD pays the Watermaster for its administrative costs of operating the DYYP like the administrative assessments on	Misstates the testimony (Evid. Code §§ 210, 403; Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403)) This statement lacks foundation and is speculative. Mr. Espinoza also conflates the administrative fee with the production assessments. . These fees are not the same. The Watermaster assessment is a Basin

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Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific Objections
	groundwater production that AP members pay to produce native water. MWD pays the "administrative fee" annually regardless if it puts imported water in the ground or an agency takes imported water out of the ground in any given year, and there have been many years throughout the program where there has been no put or take activity.	user fee applied to all production. The administrative fee is for the additional cost for Watermaster to administer the DYY Program. The DYY Program is using the basin and creating additional administrative costs, which means both charges are applicable.
Paragraph 10 p. 4, lines 8-17	Since inception of the DYYP in 2003, withdrawals of MWD stored imported water through pumping by local Operating Parties in the Chino Basin in lieu of purchasing imported surface water have never been subject to Watermaster assessments under the court-approved DYYP Agreement and 2019 Letter Agreement. A true and correct copy of the Watermaster Staff Report, 1/27 /22, p. 5, confirming this practice is attached as Exh. C. Until recently, neither Ontario nor any other Chino Basin pumper ever challenged that course of conduct by the Watermaster. To the contrary, in the first cycle of the DYYP, Ontario regularly conducted puts and takes of Stored Water under the DYYP without paying assessments on the water it pumped from the Basin. Ontario also voted in favor of assessment packages as recently as Fiscal Year ("FY") 2020/21 under which DYYP withdrawals were not assessed.	<p>Misstates the testimony (Evid. Code §§ 210, 403); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403)</p> <p>Mr. Espinoza states that withdrawals of MWD stored imported water through pumping by local Operating Parties in the Chino Basin in lieu of purchasing imported surface water have "never been subject to Watermaster assessments..." During the first cycle, however, all in-lieu put was assessed. The assessment was paid up front rather than at the time of production.</p> <p>Mr. Espinoza further states that Ontario did not pay assessments on the water it pumped from the Basin. Mr. Espinoza lacks personal knowledge on this fact and misstates the testimony – Ontario has paid assessments on the puts and majority of the water taken out when the water was put in.</p> <p>Sustained: _____ Overruled: _____</p>
Paragraph 11, p. 4, lines 18-25	CVWD will incur significant financial and operational harm if their past or ongoing withdrawals of Stored Water under the DYYP are subject to production assessments. From PY 2019/20 forward, most of CVWD's groundwater pumping constituted	Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403); Irrelevant (Evid. Code §§ 210, 350-351); Inappropriate Lay Opinion Testimony (or Legal Conclusion) (Evid. Code § 800).

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Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific Objections
	<p>withdrawal of Stored Water from the MWD Storage Account. Since PY 2020/21, CVWD has already paid and continues to pay more than \$799 per acre foot to MWD to withdraw this water. If it is also compelled to pay Watermaster assessments on the pumping of that water, CVWD would incur significant undue harm. The total financial impact to CVWD from such a change would range from approximately \$2.3 to \$8.65 million, depending on the prescribed remedy, for PY 2020/21.</p>	<p>There is no foundation for Mr. Espinoza's conclusion on the total financial impact to CVWD from a change to production assessments. Mr. Espinoza's "estimate" is speculative, without context, and improper lay opinion testimony.</p> <p>Sustained: _____ Overruled: _____</p>
<p>Paragraph 12, p. 5, line 26 through p. 6, line 2</p>	<p>And, these extra charges would make the cost of producing each acre foot of water under the DYYP far more expensive than simply purchasing imported surface water from MWD or other available sources. As a result, there would be no financial reason for CVWD, or any other appropriator, to participate in the DYYP, which would have a chilling effect on the entire program.</p>	<p>Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403); Irrelevant (Evid. Code §§ 210, 350-351); Prejudicial (Evid. Code § 352); Inappropriate Lay Opinion Testimony (or Legal Conclusion) (Evid. Code § 800).</p> <p>Mr. Espinoza does not have knowledge of what other appropriators may or may not do in light of a change to production assessments and his statement is purely speculative. His statement is also prejudicial and misleading as it does not provide context as to CVWD's contractual obligations to perform or the capital funding it received at the start of the program. Finally, "far more expensive" is vague and ambiguous.</p> <p>Sustained: _____ Overruled: _____</p>

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Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific Objections
Paragraph 13, p. 5, lines 3-7.	If, for example, the Court determines that pumping under the DYYP is assessable as regular production, CVWD will eliminate DYYP pumping going forward and likely stop all participation in the DYYP until program uncertainty is resolved. Therefore, delays in a Court ruling will thus have significant impacts on CVWD's operational and financial decisions for the remainder of PY 2021 /2122 and beyond.	Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403); Vague and ambiguous. Mr. Espinoza statements are purely speculative as to what CVWD may do in the future and how a Court delay may affect that decision. "Regular production" is further undefined and vague and ambiguous. Sustained: _____ Overruled: _____

Dated: May 26, 2022

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By: 

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