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

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN BERNARDINO

16 CHINO BASIN MUNICIPAL WATER
17 DISTRICT,

18 Plaintiff,

19 v.

20 CITY OF CHINO, et al.,

21 Defendants.

CASE NO. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO
HONORABLE STANFORD E. REICHERT

OBJECTIONS TO DECLARATION OF
ELIZABETH HURST

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 Elizabeth Hurst, and certain exhibits, filed in support of Inland Empire Utilities
 3 Agency’s Opposition to City of Ontario’s Application for an Order to Extend Time Under
 4 Judgment, Paragraph 31(c) to Challenge Watermaster Action/Decision on November 18, 2021 to
 5 Approve the FY 2021/2022 Assessment Package. If such request is denied, this filing is the
 6 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 ELIZABETH HURST**

Pg/Ln and/or ¶ Ref.	Testimony	Ontario’s Specific
Paragraph 3, p. 2, lines 15-17	Under the DYYP, MWD agreed to provide an investment of over \$27,000,000 to Chino Basin parties for groundwater treatment and well facilities	Misstates the testimony/evidence (Evid. Code §§ 210, 403.)

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Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific
	in exchange for the right of MWD to store water within the Basin.	<p>Ms. Hurst misstates what the Dry Year Yield Program ("DYYP") provides. The right to store water arises from the Watermaster Storage and Recovery Program Storage Agreement, rather than the DYPP as implied in Ms. Hurst's statement. (Request for Judicial Notice ("RJN"), Exs. 12 (3:1-9), 17.)</p> <p>Sustained: _____ Overruled: _____</p>
Paragraph 8, p. 3, lines 9-13	Voluntary withdrawal, if approved, would enable local parties, including the City of Ontario, to make full and efficient use of the water stored in the DYYP account on a voluntary basis, without MWD issuing a call. Voluntary withdrawal from the DYYP account at this time would also function to prevent water being stranded in the Chino Basin, which would result in a substantial cost increase to the local parties.	<p>Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403); Vague and ambiguous; Inappropriate Lay Opinion Testimony (or Legal Conclusion) (Evid. Code § 800).</p> <p>This statement lacks foundation, is speculative, and vague as to "if approved," as it does not state who would approve voluntary withdrawal. Ms. Hurst's speculations as to what voluntary withdrawal would or would not function to do is without context and improper lay opinion testimony.</p> <p>Sustained: _____ Overruled: _____</p>
Paragraph 9, p. 3, lines 16-19	As the proposed system was deemed not to materially affect the rights of the DYYP parties and local agencies, a letter agreement executed by the DYYP signatories (IEUA, MWD, TVMWD, and Watermaster) incorporating the voluntary withdrawal system was the preferred method of implementing the system.	<p>Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403); Vague and ambiguous; Inappropriate Lay Opinion Testimony (or Legal Conclusion) (Evid. Code § 800).</p> <p>This statement lacks foundation, is speculative, and vague as to the phrase "deemed not to materially affect the rights of DYYP parties and local agencies." Ms. Hurst does not specify</p>

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Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific
		<p>who “deemed” the proposed system to not materially affect DYYP parties and local agencies.</p> <p>Sustained: _____ Overruled: _____</p>
<p>Paragraph 11, p. 4, lines 6-10</p>	<p>In this email, IEUA provided that as part of the DYYP, the proposed voluntary withdrawals from the MWD account would not be subject to typical Watermaster assessments as DYYP water is categorized as a storage and recovery program. IEUA’s responsive email also provided that the proposed voluntary withdrawal system is completely voluntary, and as such, would not materially affect any party’s rights under the DYYP.</p>	<p>Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/ Speculative (Evid. Code §§ 702, 403); Vague and ambiguous; Inappropriate Lay Opinion Testimony (or Legal Conclusion) (Evid. Code § 800).</p> <p>Ms. Hurst does not have any personal knowledge of and therefore speculates as to whether and how the voluntary withdrawal system would or would not affect any of the other parties under the DYYP.</p> <p>Sustained: _____ Overruled: _____</p>
<p>Paragraph 12, p. 4, lines 14-17</p>	<p>As a result of these discussions, the City of Ontario’s representative sent me an email on July 30, 2018, which stated that the proposed letter agreement language was now much more clear to the City. I interpreted the City of Ontario’s email as a statement in support of the proposed letter agreement language and responded with an email confirming the City’s support of this proposed letter agreement.</p>	<p>Misstates the testimony/evidence (Evid. Code §§ 210, 403); Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/ Speculative (Evid. Code §§ 702, 403); Irrelevant (Evid. Code §§ 210, 350-351); Prejudicial (Evid. Code § 352); Hearsay (Evid. Code, § 1200); Inappropriate Lay Opinion Testimony (or Legal Conclusion) (Evid. Code § 800).</p> <p>Ms. Hurst statement on her “interpretation” of the City of Ontario’s email lacks foundation, misstates the evidence, and is directly contradicted by the City of Ontario’s July 31, 2018 email to Ms. Hurst that stated the City of Ontario could not take a position of support because it did not know the full effects of the proposed changes and reserving its rights to address any harm or</p>

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Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific
		<p>detriment that may arise. (Declaration of Courtney Jones (“Jones Decl.”). ¶ 34, Ex. 7.) This email is omitted from the exhibits to Ms. Hurst’s declaration (<i>Ibid.</i>)</p> <p>Sustained: _____ Overruled: _____</p>
<p>Paragraph 13, p. 4, lines 20-21</p>	<p>No objections to the proposed voluntary withdrawal system language from the City of Ontario, nor any other party, were received by IEUA after July 30, 2018.</p>	<p>Misstates the testimony/evidence (Evid. Code §§ 210, 403); Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/ Speculative (Evid. Code §§ 702, 403); Irrelevant (Evid. Code §§ 210, 350-351); Prejudicial (Evid. Code § 352); Hearsay (Evid. Code, § 1200); Inappropriate Lay Opinion Testimony (or Legal Conclusion) (Evid. Code § 800).</p> <p>Ms. Hurst statement that there were no objections to the proposed voluntary withdrawal system language from the City of Ontario lacks foundation, misstates the evidence, and is directly contradicted by the City of Ontario’s July 31, 2018 email to Ms. Hurst that stated the City of Ontario could not take a position of support because it did not know the full effects of the proposed changes and reserving its rights to address any harm or detriment that may arise. (Jones Decl., ¶ 34, Ex. 7.) This email is omitted from the exhibits to Ms. Hurst’s declaration (<i>Ibid.</i>)</p> <p>Sustained: _____ Overruled: _____</p>

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Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific
Paragraph 13, p. 4, lines 24-26.	Until now, no party has ever objected to the terms of the 2019 Letter Agreement. A true and correct copy of the 2019 Letter Agreement is attached hereto as Exhibit "D" and incorporated herein by reference.	<p>Misstates the testimony/evidence (Evid. Code §§ 210, 403); Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/ Speculative (Evid. Code §§ 702, 403); Prejudicial (Evid. Code § 352).</p> <p>Ms. Hurst's statement that no party has ever objected to the terms of the 2019 Letter Agreement lacks foundation, is prejudicial, and misstates the evidence. Ontario has raised several objections to the 2019 Letter Agreement, including to IEUA and Watermaster. Additionally, because the Letter Agreement did not go through the Watermaster Approval Process, as a practical matter there was no notice and no opportunity to lodge objections. (Jones Decl., ¶ 34, Ex. 7; Burton Decl., ¶ 2, Ex. 1.)</p> <p>Sustained: _____ Overruled: _____</p>
Paragraph 14, pp. 4-5, lines 27-28 and 1-3.	Pursuant to the terms of 2019 Letter Agreement, all DYYP parties, including the City of Ontario, were offered the opportunity to voluntarily withdraw from the DYYP account in production years 2019/20 and 2020/21. The City of Ontario declined to participate in the offered voluntary withdrawal program in each of these years. Based on information and belief, the City of Ontario declined the option to participate in this program in its sole discretion.	<p>Misstates the testimony/evidence (Evid. Code §§ 210, 403); Lacks Personal Knowledge/ Speculative (Evid. Code §§ 702, 403); Prejudicial (Evid. Code § 352).</p> <p>Ms. Hurst's statement regarding the opportunity to voluntarily withdraw from the DYYP account is misleading and misstates the evidence. The 2019 Letter Agreement references the 2015 performance criteria on the take side; under the new voluntary take provision, agencies have different baselines and only production above the baseline can be accounted for as a voluntary take. (RJN, Ex. 41). Therefore, the opportunity is not the same for all parties, as implied in Ms. Hurst's statement. (<i>Ibid.</i>) Ms. Hurst further lacks personal knowledge on why the City of Ontario declined the</p>

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Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific
		<p>option to participate in the program and her statement is speculative.</p> <p>Sustained: _____ Overruled: _____</p>
<p>Paragraph 15, p. 5 lines 6 -9.</p>	<p>This production was exempt from assessment by Watermaster in its most recent assessment package as a storage and recovery program, in accord with the established understanding of the 2019 Letter Agreement, and as explained to the City of Ontario in 2018.</p>	<p>Misstates the testimony/evidence (Evid. Code §§ 210, 403); Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/ Speculative (Evid. Code §§ 702, 403); Prejudicial (Evid. Code § 352).</p> <p>Ms. Hurst's statement on assessment exemption lacks foundation and misstates the evidence. The assessment package does not state why production is not assessed and there is nothing in the Judgment or DYY agreements that state production from the Storage and Recovery Programs will not be assessed. (RJN, Exs. 1 (¶ 53), 2 (§ 4.1, 4.4), 60; Jones Decl., ¶¶ 48-50.)</p> <p>Sustained: _____ Overruled: _____</p>

Dated: May 26, 2022

STOEL RIVES LLP

By: 
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 Attorneys for Defendant
 City of Ontario