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

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.  
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CASE NO. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO  
HONORABLE STANFORD E. REICHERT

OBJECTIONS TO DECLARATION OF  
JOSH SWIFT

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  
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1 City of Ontario (“Ontario”) hereby objects to the Court’s consideration of the entire  
 2 Declaration of Josh Swift, and certain exhibits, filed in support of Fontana Water Company’s and  
 3 Cucamonga Valley Water District’s Opposition to City of Ontario’s Application for an Order to  
 4 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. If such request is denied,  
 6 this filing is the challenge.

7 **LEGAL BASES FOR OBJECTIONS**

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

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

18 **SPECIFIC OBJECTIONS TO DECLARATION OF JOSH SWIFT**

Pg/Ln and/or ¶ Ref.	Testimony	Ontario’s Specific Objections
Paragraph 4, p. 2, lines 7- 14	FWC will incur significant financial and operational harm if their past or ongoing withdrawals of Stored Water under the DYYP are subject to production assessments. First, FWC will have to attribute its production to another, more expensive water source for which it has already paid. Second, the production will become assessable itself. Third, FWC will be subject to a higher Desalter Replenishment Obligation, which will have to be purchased from a	Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403); Inappropriate Lay Opinion Testimony (or Legal Conclusion) (Evid. Code § 800).  Mr. Swift’s comments are unsubstantiated, unquantified, and speculative, as there is no basis as to why FWC would pay higher costs in the hypothetical scenario provided, or

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Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific Objections
	<p>more expensive source. These costs are not precisely known, because the Chino Basin Watermaster would have to calculate a new assessment package, which is an intricate process and dependent on many factors, including actions of other parties.</p>	<p>whether the current amount FWC pays is a fair representation of its required proportional share of costs.</p> <p><b>Sustained:</b> _____ <b>Overruled:</b> _____</p>
<p>Paragraph 5, p. 2, lines 19-23</p>	<p>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 IEUA or other available sources. As a result, there would be no financial reason for FWC, or any other appropriator, to participate in the DYYP, which would have a chilling effect on the entire program and the participating agencies.</p>	<p>Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403); Prejudicial (Evid. Code § 352); Hearsay (Evid. Code, § 1200); Inappropriate Lay Opinion Testimony (or Legal Conclusion) (Evid. Code § 800); Vague and ambiguous.</p> <p>Mr. Swift's comments are not substantiated or supported by facts. "Far more expensive" is vague and ambiguous. Mr. Swift has no knowledge of other appropriators and his statements as to what they would do under a hypothetical scenario is speculative.</p> <p><b>Sustained:</b> _____ <b>Overruled:</b> _____</p>
<p>Paragraph 6, p. 2, lines 24-28</p>	<p>If, for example, the Court determines that pumping under the DYYP is assessable as regular production, FWC 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 FWC's operational and financial decisions for the remainder of production year 21/22 and beyond.</p>	<p>Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/Prejudicial (Evid. Code § 352); Inappropriate Lay Opinion Testimony (or Legal Conclusion) (Evid. Code § 800); Vague and ambiguous.</p> <p>Mr. Swift's statements are purely speculative as to what FWC may do in the future and how a Court delay may affect that decision. "Regular production" is further undefined and vague and ambiguous.</p>

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Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific Objections
		Sustained: _____ Overruled: _____
Paragraph 7, p. 3, lines 1-3	In addition, withdrawal of MWD Stored Water under the voluntary program benefited all the parties by protecting them from threats of losing stored water rights in Production Year 2020-21 due to the cap on storage amounts.	Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403); Prejudicial (Evid. Code § 352); Vague and ambiguous.  There is no foundation for Mr. Swift to testify as to "all parties" and what may have "benefited" or "threatened" any parties outside of FWC. His comments are vague and speculative.  Sustained: _____ Overruled: _____

Dated: May 26, 2022

STOEL RIVES LLP

By: 

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