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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  
PETER KAVOUNAS

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 Peter Kavounas, and certain exhibits, filed in support of Watermaster’s Opposition  
 3 to City of Ontario’s Application for an Order to Extend Time Under Judgment, Paragraph 31(C) to  
 4 Challenge Watermaster Action/Decision on November 18, 2021 to Approve the FY 2021/2022  
 5 Assessment Package. If such request is denied, this filing is the challenge.

6 **LEGAL BASES FOR OBJECTIONS**

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

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

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

21 **SPECIFIC OBJECTIONS TO DECLARATION OF PETER KAVOUNAS**

Pg/Ln and/or ¶ Ref.	Testimony	Ontario’s Specific Objections
Paragraph 15, p. 3, lines 9-11	MWD’s contribution to administration of the DYYP lowers the Parties’ administrative assessments.	Misstates the testimony/evidence (Evid. Code §§ 210, 403); Lacks Personal Knowledge/ Speculative (Evid. Code §§ 702, 403); Prejudicial (Evid. Code § 352).

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Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific Objections
		<p>Mr. Kavounas' statement that MWD's contribution lowers the Parties' administrative assessments is misleading and misstates the effects of MWD's contribution. MWD's contribution covers the added costs or Watermaster to administer the DYYP and only lowers assessments if the added cost is less than the payment. (Declaration of Scott Burton ("Burton Decl."), ¶ 2; see also Request for Judicial Notice ("RJN"), Ex. 11 at ¶ VI.D.3.)</p> <p><b>Sustained:</b> _____ <b>Overruled:</b> _____</p>
<p>Paragraph 21, p. 4, lines 8-12</p>	<p>In 2019, signatories to the DYVA agreed to permit Parties to voluntarily take water and receive an operational credit without a MWD call in a letter agreement ("2019 Letter Agreement"), attached hereto as <b>Exhibit C</b>. The 2019 Letter Agreement comprises changes to the DYY contract that had being extensively discussed with IEUA subagencies in a year-and-a-half long process.</p>	<p>Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403); Vague and ambiguous.</p> <p>Mr. Kavounas' statement is vague and ambiguous as to the signatories to the DYVA, the phrase "DYY contract" which is not defined, and the word "extensively" which is not substantiated with any facts.</p> <p><b>Sustained:</b> _____ <b>Overruled:</b> _____</p>
<p>Paragraph 24, p. 4, lines 20-22</p>	<p>No Party objected to the 2019 Letter Agreement or to my signing the 2019 Letter Agreement. Nor did any Party request that the 2019 Letter Agreement be formally approved by the Watermaster Board.</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>Mr. Kavounas' statement that no party objected to 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. (Declaration of</p>

Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific Objections
		<p>Courtney Jones ("Jones Decl."), ¶ 34, Ex. 7; Burton Decl., ¶ 2, Ex. 1.)</p> <p><b>Sustained:</b> _____ <b>Overruled:</b> _____</p>
<p>Paragraph 26, p. 4, lines 24-25</p>	<p>In accordance with the DYYP, CVWD voluntarily withdrew 20,500 AF and Fontana Water Company ("FWC") voluntarily withdrew 2,500 AF from MWD's DYYP account during production year 2020/21.</p>	<p>Misstates the testimony/evidence (Evid. Code §§ 210, 403); Lacks Personal Knowledge/ Speculative (Evid. Code §§ 702, 403); Prejudicial (Evid. Code § 352).</p> <p>The statement that CVWD and FWC's voluntarily withdrawals were done "in accordance with the DYYP" is misleading and misstates the evidence. The 2019 Letter Agreement does not contemplate an individual agency producing more water than its Take Capacity. (Burton Decl., ¶ 2, Ex. 1.)</p> <p><b>Sustained:</b> _____ <b>Overruled:</b> _____</p>
<p>Paragraph 27, p. 5, lines 1-4</p>	<p>Ontario first raised legal concerns with Watermaster's assessment of voluntary takes under the DYYP in late Summer 2021 and later raised its concerns publicly at Pool Committee meetings in September 2021. Ontario's concerns have not changed since September 2021.</p>	<p>Misstates the testimony/evidence (Evid. Code §§ 210, 403); Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/ Speculative (Evid. Code §§ 702, 403)</p> <p>Mr. Kavounas' statement that Ontario did not raise legal concerns with the Watermaster's assessment of voluntary takes under the DYYP until late Summer 2021 is misleading and misstates the evidence. Ontario first raised concerns with IEUA in early 2021 before the start of the fiscal/production year. (Jones Decl., ¶ 34, Ex. 7.)</p> <p><b>Sustained:</b> _____ <b>Overruled:</b> _____</p>
<p>Paragraph 28, p. 5, lines 5-8.</p>	<p>Throughout the remainder of 2021, Watermaster and IEUA communicated extensively with Ontario and requested</p>	<p>Misstates the testimony/evidence (Evid. Code §§ 210, 403); Lacks Foundation (Evid. Code §§ 702, 800);</p>

Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific Objections
	involvement from the Appropriative Pool. Additionally, Watermaster staff separately met in person with Ontario at least once and communicated with Ontario via phone or email at least weekly.	Lacks Personal Knowledge/ Speculative (Evid. Code §§ 702, 403)  The phrases “extensively” and “at least weekly” are vague and ambiguous, as no context or support is provided. Mr. Kavounas’ statement is further misleading, as it suggests the communications were between Watermaster, IEUA, and Ontario. Ontario met with and had several communications with Watermaster but did not have many, let alone “extensive” communications with IEUA. (Burton Decl., ¶ 7.)  <b>Sustained:</b> _____ <b>Overruled:</b> _____
Paragraph 30, p. 5, lines 18-20	Watermaster staff presented a detailed report outlining and responding to Ontario’s legal concerns to the Watermaster Board at the Board’s November 18, 2021 regular meeting. Legal counsel was available to answer questions at the meeting.	Misstates the testimony/evidence (Evid. Code §§ 210, 403); Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/ Speculative (Evid. Code §§ 702, 403)  Mr. Kavounas’ statement is misleading, as it suggests legal counsel was available to answer Ontario’s questions at the Board’s November 18, 2021 meeting but Ontario was not part of the Board in 2021. Mr. Burton attended the meeting in his capacity as a representative of Ontario. At the meeting, a Board member directed legal counsel to evaluate the concerns raised by Ontario. Based on the forthcoming legal opinion, Mr. Burton did not pose any further questions at the time. (Burton Decl., ¶ 5; RJN, Ex. 61.)  <b>Sustained:</b> _____ <b>Overruled:</b> _____
Paragraph 31, p. 6, lines 1-3	This meeting was the first negotiation effort among Ontario and other stakeholders. Ontario initially refused to	Misstates the testimony/evidence (Evid. Code §§ 210, 403); Lacks Foundation (Evid. Code §§ 702, 800);

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Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific Objections
	negotiate a resolution with other stakeholders	<p>Lacks Personal Knowledge/ Speculative (Evid. Code §§ 702, 403)</p> <p>Mr. Kavounas lacks personal knowledge as to when Ontario began negotiation efforts among other stakeholders and his statement to this effect misstates the evidence. Prior to July 2021, Ontario initiated and held meetings with IEUA and conducted a meeting before then for AP Parties prior to its meeting with IEUA. (Jones Decl., ¶ 34, Ex. 7.)</p> <p><b>Sustained:</b> _____ <b>Overruled:</b> _____</p>
Paragraph 32, p. 6, lines 6-7	Stakeholders reported that there were no ongoing discussions and no interest in continuing their efforts.	<p>Prejudicial (Evid. Code § 352); Vague and ambiguous; Lacks Personal Knowledge/ Speculative (Evid. Code §§ 702, 403)</p> <p>Mr. Kavounas' reference to "stakeholders" is vague and ambiguous as it does not define which stakeholders or who the stakeholders reported to.</p> <p><b>Sustained:</b> _____ <b>Overruled:</b> _____</p>
Paragraph 37, p. 7, lines 13-14	In the 19 years of the DYYP, Watermaster has not charged production assessments to takes from MWD's DYYP account.	<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>Mr. Kavounas' statement is misleading and misstates the history of assessments under the DYYP. Prior to the 2019 Letter Agreement, assessments were charged for in-lieu put, which was treated as imported water and assessed once on the front end. (Jones Decl., ¶¶ 49-50.) Voluntary takes only began occurring after the 2019 Letter Agreement which means there have been 2 years of</p>

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Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific Objections
		<p>Watermaster not charging for production assessments, not 19 years as implied by Mr. Kavounas' statement (<i>Ibid.</i>)</p> <p><b>Sustained:</b> _____ <b>Overruled:</b> _____</p>
<p>Paragraph 38, p. 8, lines 19-21</p>	<p>Package was recommended for approval by the Advisory Committee on Ontario's motion. The only differences between the voluntary takes during production year 2019/20 and production year 2020/21 are the Parties and quantities involved.</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>Mr. Kavounas' statement that the only differences between voluntary takes during the 2019/20 production year and 2020/21 production year were the Parties and quantities involved is misleading and misstates the evidence. There was a significant difference in costs owed by Ontario, and resulting prejudice, between the 2019/20 and 2020/21 production years. (Jones Decl., ¶¶ 62-63.)</p> <p><b>Sustained:</b> _____ <b>Overruled:</b> _____</p>
<p>Paragraph 39, p. 7, lines 22-23</p>	<p>All Parties' ordinary groundwater production were assessed consistent with longstanding Watermaster practice.</p>	<p>Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/ Speculative (Evid. Code §§ 702, 403); Prejudicial (Evid. Code § 352); Vague and ambiguous</p> <p>This statement lacks foundation, is vague, and misleading as Mr. Kavounas does not define "ordinary groundwater production" or "longstanding Watermaster practice."</p> <p><b>Sustained:</b> _____ <b>Overruled:</b> _____</p>

Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific Objections
Paragraph 41, p. 8, lines 4-10	Watermaster performed Material Physical Impact analysis for the DYYP at its inception. Watermaster has since further evaluated storage within the Basin through the Storage Framework Investigation and the Storage Management program. Both assumed the DYYP was fully utilized. Long-term storage and water levels are not materially impacted by seasonal recovery, like that which occurs under the DYYP. The Court recently approved the Local Storage Limitation Solution for storage within the Basin, which had MPI analysis performed by Watermaster and CEQA analysis performed by IEUA.	Lacks Foundation (Evid. Code §§ 702, 800); Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403); Irrelevant (Evid. Code §§ 210, 350-351); Prejudicial (Evid. Code § 352)  Mr. Kavounas' statements on other storage evaluation is vague and does not state how or whether it these other evaluations, including the Storage Framework Investigation, Storage Management Program, or Local Storage Limitation Solution are related to DYY or issues pertinent in this litigation.  <b>Sustained: _____ Overruled: _____</b>
Paragraph 42, p. 8, lines 11-15	The DYYP provides great benefit to the Basin and to the Parties both in terms of groundwater quality and water supply reliability. Imported water that is recharged in the Basin is high quality and improves the overall conditions in the Basin; and, imported water that is stored in the Basin during years of excess supplies is available to Parties in the Basin during years of drought.	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).  The phrase "great benefit" is vague and ambiguous and speculative, as it assumes all parties will be able to benefit from imported water during years of drought.  <b>Sustained: _____ Overruled: _____</b>
Paragraph 43, p. 8, lines 16-27	MWD is presently contemplating the initiation of two additional local groundwater storage programs: the Reverse Cyclic (RC) and the Extraordinary Groundwater Utilization Program (EGUP.) The former has already been approved by the MWD Board of Directors and the latter is being seriously considered. Both	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).




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Pg/Ln and/or ¶ Ref.	Testimony	Ontario's Specific Objections
	<p>programs are essentially pre-purchases of MWD water to be delivered later; the water can be looked at as in lieu puts in a storage account or, at the time of the future delivery, wet water may need to be recharged in a storage account. The programs might well be handled through the already approved DYYP. From my conversations with IEUA executive management it is my understanding that some IEUA member agencies have already expressed strong interest in the RC; also it appears that several IEUA member agencies are interested in the EGUP depending on its final form. The conversations about both programs are happening in real time. In my opinion certainty about the DYY would make it easier for all to know and commit to the two programs.</p>	<p>The two additional local groundwater storage programs that Mr. Kavounas raises are irrelevant to the present litigation and speculative, as neither program has been approved or implemented to date. Mr. Kavounas' statement as to the "several IEUA member agencies" that are interested in the Extraordinary Groundwater Utilization Program "depending on its final form" is vague and speculative. Finally, Mr. Kavounas' opinion as to "certainty about the DYY" is vague as to "all" and improper lay opinion testimony.</p> <p><b>Sustained:</b> _____ <b>Overruled:</b> _____</p>

Dated: May 26, 2022

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