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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN BERNARDINO

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11 CHINO BASIN MUNICIPAL WATER
DISTRICT,

12 Plaintiff,

13 v.

14 CITY OF CHINO, et al.,

15 Defendant.
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Case No. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO
HONORABLE GILBERT G. OCHOA

**CHINO BASIN WATERMASTER'S
RESPONSE TO 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.: S24

The Chino Basin Watermaster (“Watermaster”) hereby submits this Response to Defendant City of Ontario’s (“Ontario”) evidentiary objection to the Declaration of Peter Kavounas, and certain exhibits, filed in support of Watermaster’s Opposition to City of Ontario’s 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. The laundry list of objections offered are a waste of this Court’s and Watermaster’s – its special master - resources. Nonetheless, Watermaster presents its responses below.

SPECIFIC OBJECTIONS TO DECLARATION OF PETER KAVOUNAS

No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
1.	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). 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.)	Although the objection claims that it misstates the evidence, which the Court can clearly determine for itself, the objections under Evid. Code § 210 are a contention that the evidence is not relevant. Evidence is relevant if it pertains to a witness' credibility or has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the matter." Cal. Evid. Code § 210. "Relevance is a low bar." <i>People v. Villa</i> , (2020) 55 Cal. App. 5th 1042, 1052, (2020), review denied (Jan. 13, 2021). This evidence is relevant because it pertains to the operation of the DYYP and assessments related thereto, which are the subject of Ontario’s challenge to	Sustained: Overruled:

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>Watermaster's adoption of the FY 2021/22 Assessment Package.</p> <p>Similarly, Ontario's objection that proffered evidence is more prejudicial than probative, Evid. Code § 352, is not applicable in this instance. Among the factors a trial court must consider when it is requested to exercise its discretion to deprive a party of probative evidence are a determination that the evidence is relevant to an issue that is in dispute, a consideration of other proof on that issue available to the party which offers the evidence, and that party's relatively greater need for the evidence if it must carry the burden of proof on the issue to which the evidence relates. <i>Thor v. Boska</i> (1974), 38 Cal. App. 3d 558. Here, by making the objection, Ontario is asking the Court to weigh whether the prejudicial value outweighs the probative value, which cannot be the case here.</p> <p>Ontario also objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702 and</p>	

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>that his statement lacks foundation. Both objections should be overruled. The declarant has been the General Manager of Watermaster for approximately a decade. In this role, he is involved with both Watermaster's administration of the DYYP and its calculation, collection, and spending of assessments.</p>	
2.	<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 Exhibit C. 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>Ontario objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702, that his statement lacks foundation and that it is vague and ambiguous. Each of objections should be overruled. The declarant has been the General Manager of Watermaster for approximately a decade. In this role, he is involved with the administration of the DYYP and he was Watermaster's signatory to the 2019 Letter Agreement.</p> <p>The statement at issue provides a foundation for authenticating and explaining the cited document and its purpose.</p>	<p>Sustained:</p> <hr/> <p>Overruled:</p> <hr/>

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>Additionally, Ontario objects that the declarant is setting forth opinion testimony. This is not the case. The statement does not contain an opinion, but, to the degree it did, the opinion would be admissible. To the extent an assistant principal's declaration describing the high number of programs competing for limited space in facilities might have contained opinions in addition to observations based on the personal knowledge of the witness, such opinions were admissible as rationally based, helpful lay opinions in a dispute concerning a charter school's request for facilities. <i>Westchester Secondary Charter School v. Los Angeles Unified School Dist.</i> (2015), 237 Cal. App. 4th 1226.</p>	
3.	<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</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>Although the objection claims that it misstates the evidence, which the Court can clearly determine for itself, the objections under Evid. Code § 210 are a contention that the evidence is not relevant. Evidence is relevant if it pertains to a witness'</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
	formally approved by the Watermaster Board.	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 Courtney Jones ("Jones Decl."), ¶ 34, Ex. 7; Burton Decl., ¶ 2, Ex. 1.)	<p>credibility or has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the matter." Cal. Evid. Code § 210.</p> <p>"Relevance is a low bar." <i>People v. Villa</i>, (2020) 55 Cal. App. 5th 1042, 1052, (2020), review denied (Jan. 13, 2021). This evidence is relevant because it pertains to the development and review of the 2019 Letter Agreement, which is the subject of Ontario's challenge to Watermaster's adoption of the FY 2021/22 Assessment Package.</p> <p>Ontario objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702, that his statement lacks foundation and that it is vague and ambiguous. Each of objections should be overruled. The declarant has been the General Manager of Watermaster for approximately a decade. In this role, he is involved with the administration of the DYYP and he was Watermaster's signatory to the 2019 Letter Agreement.</p> <p>Similarly, Ontario's objection that proffered evidence is</p>	

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>more prejudicial than probative, Evid. Code § 352, is not applicable in this instance. Among the factors a trial court must consider when it is requested to exercise its discretion to deprive a party of probative evidence are a determination that the evidence is relevant to an issue that is in dispute, a consideration of other proof on that issue available to the party which offers the evidence, and that party's relatively greater need for the evidence if it must carry the burden of proof on the issue to which the evidence relates. <i>Thor v. Boska</i> (1974), 38 Cal. App. 3d 558. Here, by making the objection, Ontario is asking the Court to weigh whether the prejudicial value outweighs the probative value, which cannot be the case here.</p>	
4.	<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</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</p>	<p>Although the objection claims that it misstates the evidence, which the Court can clearly determine for itself, the objections under Evid. Code § 210 are a contention that the evidence is not relevant. Evidence is relevant if it pertains</p>	<p>Sustained:</p> <hr/> <p>Overruled:</p> <hr/>

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
	withdrew 2,500 AF from MWD's DYYP account during production year 2020/21.	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.)	to a witness' credibility or has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the matter." Cal. Evid. Code § 210. "Relevance is a low bar." <i>People v. Villa</i> , (2020) 55 Cal. App. 5th 1042, 1052, (2020), review denied (Jan. 13, 2021). This evidence is relevant because it pertains to the groundwater extraction that is the subject of Ontario's challenge to Watermaster's adoption of the FY 2021/22 Assessment Package. Additionally, Ontario objects that the declarant is setting forth opinion testimony. This is not the case. The statement does not contain an opinion, but, to the degree it did, the opinion would be admissible. To the extent an assistant principal's declaration describing the high number of programs competing for limited space in facilities might have contained opinions in addition to observations based on the personal knowledge of the witness, such opinions were admissible as	

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>rationally based, helpful lay opinions in a dispute concerning a charter school's request for facilities. <i>Westchester Secondary Charter School v. Los Angeles Unified School Dist.</i> (2015), 237 Cal. App. 4th 1226.</p> <p>Ontario objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702, that his statement lacks foundation and that it is vague and ambiguous. Each of objections should be overruled. The declarant has been the General Manager of Watermaster for approximately a decade. In this role, he is involved with the administration of the DYYP.</p> <p>Similarly, Ontario's objection that proffered evidence is more prejudicial than probative, Evid. Code § 352, is not applicable in this instance. Among the factors a trial court must consider when it is requested to exercise its discretion to deprive a party of probative evidence are a determination that the evidence is relevant to an issue that is in dispute, a consideration of other proof on that issue</p>	

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			available to the party which offers the evidence, and that party's relatively greater need for the evidence if it must carry the burden of proof on the issue to which the evidence relates. <i>Thor v. Boska</i> (1974), 38 Cal. App. 3d 558. Here, by making the objection, Ontario is asking the Court to weigh whether the prejudicial value outweighs the probative value, which cannot be the case here.	
	<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.</p>	<p>Although the objection claims that it misstates the evidence, which the Court can clearly determine for itself, the objections under Evid. Code § 210 are a contention that the evidence is not relevant. Evidence is relevant if it pertains to a witness' credibility or has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the matter." Cal. Evid. Code § 210.</p> <p>"Relevance is a low bar." <i>People v. Villa</i>, (2020) 55 Cal. App. 5th 1042, 1052, (2020), review denied (Jan. 13, 2021). This evidence is relevant because it pertains to</p>	<p>Sustained:</p> <hr/> <p>Overruled:</p> <hr/>

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
		(Jones Decl., ¶ 34, Ex. 7.)	<p>the treatment of groundwater extraction that is the subject of Ontario's challenge to Watermaster's adoption of the FY 2021/22 Assessment Package.</p> <p>Additionally, Ontario objects that the declarant is setting forth opinion testimony. This is not the case. The statement does not contain an opinion, but, to the degree it did, the opinion would be admissible. To the extent an assistant principal's declaration describing the high number of programs competing for limited space in facilities might have contained opinions in addition to observations based on the personal knowledge of the witness, such opinions were admissible as rationally based, helpful lay opinions in a dispute concerning a charter school's request for facilities. <i>Westchester Secondary Charter School v. Los Angeles Unified School Dist.</i> (2015), 237 Cal. App. 4th 1226.</p> <p>Ontario objects that the declarant does not have personal knowledge under Cal.</p>	

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>Evid. Code § 702, that his statement lacks foundation and that it is vague and ambiguous. Each of objections should be overruled. The declarant has been the General Manager of Watermaster for approximately a decade. In this role, he is involved with the administration of the DYYP and the assembly and consideration of each year's Assessment Package.</p> <p>Similarly, Ontario's objection that proffered evidence is more prejudicial than probative, Evid. Code § 352, is not applicable in this instance. Among the factors a trial court must consider when it is requested to exercise its discretion to deprive a party of probative evidence are a determination that the evidence is relevant to an issue that is in dispute, a consideration of other proof on that issue available to the party which offers the evidence, and that party's relatively greater need for the evidence if it must carry the burden of proof on the issue to which the evidence relates. <i>Thor v. Boska</i> (1974), 38 Cal. App. 3d 558. Here, by</p>	

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			making the objection, Ontario is asking the Court to weigh whether the prejudicial value outweighs the probative value, which cannot be the case here.	
5.	<p>Paragraph 28, p. 5, lines 5-8.</p> <p>Throughout the remainder of 2021, Watermaster and IEUA communicated extensively with Ontario and requested 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.</p>	<p>Misstates the testimony/evidence (Evid. Code §§ 210, 403); Lacks Foundation (Evid. Code §§ 702, 800);</p> <p>Lacks Personal Knowledge/Speculative (Evid. Code §§ 702, 403)</p> <p>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.)</p>	<p>Although the objection claims that it misstates the evidence, which the Court can clearly determine for itself, the objections under Evid. Code § 210 are a contention that the evidence is not relevant. Evidence is relevant if it pertains to a witness' credibility or has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the matter." Cal. Evid. Code § 210.</p> <p>"Relevance is a low bar." <i>People v. Villa</i>, (2020) 55 Cal. App. 5th 1042, 1052, (2020), review denied (Jan. 13, 2021). This evidence is relevant because it pertains to the discussions among Watermaster and Ontario that Ontario suggest justify its request for an extension of time.</p> <p>Ontario also objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702 and</p>	<p>Sustained:</p> <hr/> <p>Overruled:</p> <hr/>

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>that his statement lacks foundation. Both objections should be overruled. The declarant has been the General Manager of Watermaster for approximately a decade. In this role, he interacts with the representatives of parties to the Judgment in regard to their concerns and questions regarding Watermaster's actions.</p> <p>Additionally, Ontario objects that the declarant is setting forth opinion testimony. This is not the case. The statement does not contain an opinion, but, to the degree it did, the opinion would be admissible. To the extent an assistant principal's declaration describing the high number of programs competing for limited space in facilities might have contained opinions in addition to observations based on the personal knowledge of the witness, such opinions were admissible as rationally based, helpful lay opinions in a dispute concerning a charter school's request for facilities. <i>Westchester Secondary Charter</i></p>	

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<i>School v. Los Angeles Unified School Dist.</i> (2015), 237 Cal. App. 4th 1226.	
6.	<p>Paragraph 30, p. 5, lines 18-20</p> <p>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.</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 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.)</p>	<p>Although the objection claims that it misstates the evidence, which the Court can clearly determine for itself, the objections under Evid. Code § 210 are a contention that the evidence is not relevant. Evidence is relevant if it pertains to a witness' credibility or has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the matter." Cal. Evid. Code § 210.</p> <p>"Relevance is a low bar." <i>People v. Villa</i>, (2020) 55 Cal. App. 5th 1042, 1052, (2020), review denied (Jan. 13, 2021). This evidence is relevant because pertains to the discussions among Watermaster and Ontario that Ontario suggest justify its request for an extension of time.</p> <p>Ontario also objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702 and that his statement lacks foundation. Both objections should be overruled. The declarant has</p>	<p>Sustained:</p> <hr/> <p>Overruled:</p> <hr/>

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>been the General Manager of Watermaster for approximately a decade. In this role, he prepares the agendas for, and participates in the Watermaster Board meetings.</p> <p>Additionally, Ontario objects that the declarant is setting forth opinion testimony. This is not the case. The statement does not contain an opinion, but, to the degree it did, the opinion would be admissible. To the extent an assistant principal's declaration describing the high number of programs competing for limited space in facilities might have contained opinions in addition to observations based on the personal knowledge of the witness, such opinions were admissible as rationally based, helpful lay opinions in a dispute concerning a charter school's request for facilities. <i>Westchester Secondary Charter School v. Los Angeles Unified School Dist.</i> (2015), 237 Cal. App. 4th 1226.</p>	

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
7.	<p>Paragraph 31, p. 6, lines 1-3</p> <p>This meeting was the first negotiation effort among Ontario and other stakeholders. Ontario initially refused to negotiate a resolution with other stakeholders</p>	<p>Misstates the testimony/evidence (Evid. Code §§ 210, 403); Lacks Foundation (Evid. Code §§ 702, 800);</p> <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>Although the objection claims that it misstates the evidence, which the Court can clearly determine for itself, the objections under Evid. Code § 210 are a contention that the evidence is not relevant. Evidence is relevant if it pertains to a witness' credibility or has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the matter." Cal. Evid. Code § 210.</p> <p>"Relevance is a low bar." <i>People v. Villa</i>, (2020) 55 Cal. App. 5th 1042, 1052, (2020), review denied (Jan. 13, 2021). This evidence is relevant because it pertains to the discussions regarding Ontario's concerns with DYYP and associated assessments that Ontario suggests justify its request for an extension of time.</p> <p>Ontario also objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702 and that his statement lacks foundation. Both objections should be overruled. The declarant has been the General Manager of Watermaster for</p>	<p>Sustained:</p> <hr/> <p>Overruled:</p> <hr/>

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>approximately a decade. In this role, he interacts with the representatives of parties to the Judgment in regard to their concerns and questions regarding Watermaster's actions.</p> <p>Additionally, Ontario objects that the declarant is setting forth opinion testimony. This is not the case. The statement does not contain an opinion, but, to the degree it did, the opinion would be admissible. To the extent an assistant principal's declaration describing the high number of programs competing for limited space in facilities might have contained opinions in addition to observations based on the personal knowledge of the witness, such opinions were admissible as rationally based, helpful lay opinions in a dispute concerning a charter school's request for facilities. <i>Westchester Secondary Charter School v. Los Angeles Unified School Dist.</i> (2015), 237 Cal. App. 4th 1226.</p>	

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
8.	<p>Paragraph 32, p. 6, lines 6-7</p> <p>Stakeholders reported that there were no ongoing discussions and no interest in continuing their efforts.</p>	<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>Similarly, Ontario's object that proffered evidence is more prejudicial than probative, Evid. Code § 352, is not applicable in this instance. Among the factors a trial court must consider when it is requested to exercise its discretion to deprive a party of probative evidence are a determination that the evidence is relevant to an issue that is in dispute, a consideration of other proof on that issue available to the party which offers the evidence, and that party's relatively greater need for the evidence if it must carry the burden of proof on the issue to which the evidence relates. <i>Thor v. Boska</i> (1974), 38 Cal. App. 3d 558. Here, by making the objection, Ontario is asking the Court to weigh whether the prejudicial value outweighs the probative value, which cannot be the case here.</p> <p>Ontario also objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702 and that his statement lacks foundation. Both objections should be overruled.</p>	<p>Sustained:</p> <hr/> <p>Overruled:</p> <hr/>

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			The declarant has been the General Manager of Watermaster for approximately a decade. In this role, he interacts with the representatives of parties to the Judgment in regard to their concerns and questions regarding Watermaster's actions.	
9.	<p>Paragraph 37, p. 7, lines 13-14</p> <p>In the 19 years of the DYYP, Watermaster has not charged production assessments to takes from MWD's DYYP account.</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 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 Watermaster not charging for production assessments, not 19 years as implied by Mr.</p>	<p>Although the objection claims that it misstates the evidence, which the Court can clearly determine for itself, the objections under Evid. Code § 210 are a contention that the evidence is not relevant. Evidence is relevant if it pertains to a witness' credibility or has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the matter." Cal. Evid. Code § 210. "Relevance is a low bar." <i>People v. Villa</i>, (2020) 55 Cal. App. 5th 1042, 1052, (2020), review denied (Jan. 13, 2021). This evidence is relevant because it pertains to the operation of the DYYP and associated assessments that are the subject of Ontario's challenge to Watermaster's adoption of the FY</p>	<p>Sustained:</p> <hr/> <p>Overruled:</p> <hr/>

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
		Kavounas' statement (<i>Ibid.</i>)	<p>2021/22 Assessment Package.</p> <p>Ontario also objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702 and that his statement lacks foundation. Both objections should be overruled. The declarant has been the General Manager of Watermaster for approximately a decade. In this role, he is part of the preparation of each year's Assessment Package, its review, and its presentation to the Watermaster Board for approval.</p> <p>Additionally, Ontario objects that the declarant is setting forth opinion testimony. This is not the case. The statement does not contain an opinion, but, to the degree it did, the opinion would be admissible. To the extent an assistant principal's declaration describing the high number of programs competing for limited space in facilities might have contained opinions in addition to observations based on the personal knowledge of the witness, such opinions were admissible as</p>	

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			rationally based, helpful lay opinions in a dispute concerning a charter school's request for facilities. <i>Westchester Secondary Charter School v. Los Angeles Unified School Dist.</i> (2015), 237 Cal. App. 4th 1226.	
10.	<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>Although the objection claims that it misstates the evidence, which the Court can clearly determine for itself, the objections under Evid. Code § 210 are a contention that the evidence is not relevant. Evidence is relevant if it pertains to a witness' credibility or has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the matter." Cal. Evid. Code § 210.</p> <p>"Relevance is a low bar." <i>People v. Villa</i>, (2020) 55 Cal. App. 5th 1042, 1052, (2020), review denied (Jan. 13, 2021). This evidence is relevant because it pertains to the operation of the DYYP and the associated assessments that are the subject of Ontario's challenge to Watermaster's adoption of the FY</p>	<p>Sustained:</p> <hr/> <p>Overruled:</p> <hr/>

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>2021/22 Assessment Package.</p> <p>Ontario also objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702 and that his statement lacks foundation. Both objections should be overruled. The declarant has been the General Manager of Watermaster for approximately a decade. In this role, he is part of the preparation of each year's Assessment Package, its review, and its presentation to the Watermaster Board for approval.</p> <p>Similarly, Ontario's objection that proffered evidence is more prejudicial than probative, Evid. Code § 352, is not applicable in this instance. Among the factors a trial court must consider when it is requested to exercise its discretion to deprive a party of probative evidence are a determination that the evidence is relevant to an issue that is in dispute, a consideration of other proof on that issue available to the party which offers the evidence, and that party's relatively greater need for the evidence if it must</p>	

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>carry the burden of proof on the issue to which the evidence relates. <i>Thor v. Boska</i> (1974), 38 Cal. App. 3d 558. Here, by making the objection, Ontario is asking the Court to weigh whether the prejudicial value outweighs the probative value, which cannot be the case here.</p>	
11.	<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>Ontario objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702 and that his statement lacks foundation. Both objections should be overruled. The declarant has been the General Manager of Watermaster for approximately a decade. In this role, he is part of the preparation of each year's Assessment Package, its review, and its presentation to the Watermaster Board for approval.</p> <p>Additionally, Ontario objects that the declarant is setting forth opinion testimony. This is not the case. The statement does not contain an opinion, but, to the degree it did, the opinion would be admissible. To the extent an</p>	<p>Sustained:</p> <hr/> <p>Overruled:</p> <hr/>

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>assistant principal's declaration describing the high number of programs competing for limited space in facilities might have contained opinions in addition to observations based on the personal knowledge of the witness, such opinions were admissible as rationally based, helpful lay opinions in a dispute concerning a charter school's request for facilities. <i>Westchester Secondary Charter School v. Los Angeles Unified School Dist.</i> (2015), 237 Cal. App. 4th 1226.</p> <p>Ontario objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702, that his statement lacks foundation and that it is vague and ambiguous. Each of objections should be overruled. The declarant has been the General Manager of Watermaster for approximately a decade. In this role, he is involved with the assembly and consideration of each year's Assessment Package.</p> <p>Similarly, Ontario's objection that proffered evidence is more prejudicial than</p>	

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>probative, Evid. Code § 352, is not applicable in this instance. Among the factors a trial court must consider when it is requested to exercise its discretion to deprive a party of probative evidence are a determination that the evidence is relevant to an issue that is in dispute, a consideration of other proof on that issue available to the party which offers the evidence, and that party's relatively greater need for the evidence if it must carry the burden of proof on the issue to which the evidence relates. <i>Thor v. Boska</i> (1974), 38 Cal. App. 3d 558. Here, by making the objection, Ontario is asking the Court to weigh whether the prejudicial value outweighs the probative value, which cannot be the case here.</p>	
12.	<p>Paragraph 41, p. 8, lines 4-10</p> <p>Watermaster performed Material Physical Impact analysis for the DYYP at its inception. Watermaster has since further evaluated storage</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)</p> <p>Mr. Kavounas' statements on other storage evaluation is</p>	<p>Ontario objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702 and that his statement lacks foundation. Both objections should be overruled. The declarant has been the General Manager of Watermaster for</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
	<p>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.</p>	<p>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.</p>	<p>approximately a decade. In this role, he is intimately involved in Watermaster's role as the manager of water stored within the Chino Basin.</p> <p>Similarly, Ontario's object that proffered evidence is more prejudicial than probative, Evid. Code § 352, is not applicable in this instance. Among the factors a trial court must consider when it is requested to exercise its discretion to deprive a party of probative evidence are a determination that the evidence is relevant to an issue that is in dispute, a consideration of other proof on that issue available to the party which offers the evidence, and that party's relatively greater need for the evidence if it must carry the burden of proof on the issue to which the evidence relates. <i>Thor v. Boska</i> (1974), 38 Cal. App. 3d 558. Here, by making the objection, Ontario is asking the Court to weigh whether the prejudicial value outweighs the probative value, which cannot be the case here.</p>	

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>Additionally, Ontario objects that the declarant is setting forth opinion testimony. This is not the case. The statement does not contain an opinion, but, to the degree it did, the opinion would be admissible. To the extent an assistant principal's declaration describing the high number of programs competing for limited space in facilities might have contained opinions in addition to observations based on the personal knowledge of the witness, such opinions were admissible as rationally based, helpful lay opinions in a dispute concerning a charter school's request for facilities. <i>Westchester Secondary Charter School v. Los Angeles Unified School Dist.</i> (2015), 237 Cal. App. 4th 1226.</p>	
13.	<p>Paragraph 42, p. 8, lines 11-15</p> <p>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</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</p>	<p>Ontario objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702 and that his statement lacks foundation. Both objections should be overruled. The declarant has been the General Manager of Watermaster for</p>	<p>Sustained:</p> <hr/> <p>Overruled:</p> <hr/>

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
	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.	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.	approximately a decade. In this role, he is intimately involved in Watermaster’s role as the manager of water stored within the Chino Basin. Additionally, Ontario objects that the declarant is setting forth opinion testimony. This is not the case. The statement does not contain an opinion, but, to the degree it did, the opinion would be admissible. To the extent an assistant principal’s declaration describing the high number of programs competing for limited space in facilities might have contained opinions in addition to observations based on the personal knowledge of the witness, such opinions were admissible as rationally based, helpful lay opinions in a dispute concerning a charter school’s request for facilities. <i>Westchester Secondary Charter School v. Los Angeles Unified School Dist.</i> (2015), 237 Cal. App. 4th 1226. Similarly, Ontario’s object that proffered evidence is more prejudicial than probative, Evid. Code	

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
			<p>§ 352, is not applicable in this instance. Among the factors a trial court must consider when it is requested to exercise its discretion to deprive a party of probative evidence are a determination that the evidence is relevant to an issue that is in dispute, a consideration of other proof on that issue available to the party which offers the evidence, and that party's relatively greater need for the evidence if it must carry the burden of proof on the issue to which the evidence relates. <i>Thor v. Boska</i> (1974), 38 Cal. App. 3d 558. Here, by making the objection, Ontario is asking the Court to weigh whether the prejudicial value outweighs the probative value, which cannot be the case here.</p>	
14.	<p>Paragraph 43, p. 8, lines 16-27</p> <p>MWD is presently contemplating the initiation of two additional local groundwater storage programs: the Reverse Cyclic (RC) and the Extraordinary Groundwater</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>Ontario objects that the declarant does not have personal knowledge under Cal. Evid. Code § 702 and that his statement lacks foundation. Both objections should be overruled. The declarant has been the General Manager of Watermaster for approximately a</p>	<p>Sustained:</p> <hr/> <p>Overruled:</p> <hr/>

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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
	<p>Utilization Program (EGUP.) The former has already been approved by the MWD Board of Directors and the latter is being seriously considered. Both 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 DYYP would make it easier for all to know and commit</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 DYYP" is vague as to "all" and improper lay opinion testimony.</p>	<p>decade. In this role, he is intimately involved in Watermaster's role as the manager of water stored within the Chino Basin.</p> <p>Additionally, Ontario objects that the declarant is setting forth opinion testimony. This is not the case. The statement does not contain an opinion, but, to the degree it did, the opinion would be admissible. To the extent an assistant principal's declaration describing the high number of programs competing for limited space in facilities might have contained opinions in addition to observations based on the personal knowledge of the witness, such opinions were admissible as rationally based, helpful lay opinions in a dispute concerning a charter school's request for facilities. <i>Westchester Secondary Charter School v. Los Angeles Unified School Dist.</i> (2015), 237 Cal. App. 4th 1226.</p> <p>Similarly, Ontario's object that proffered evidence is more prejudicial than probative, Evid. Code § 352, is not</p>	

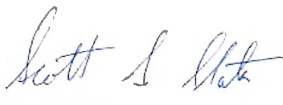
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No.	Material Objected to:	Grounds for Objection	Response to Objection:	Ruling on the Objection:
	to the two programs.		applicable in this instance. Among the factors a trial court must consider when it is requested to exercise its discretion to deprive a party of probative evidence are a determination that the evidence is relevant to an issue that is in dispute, a consideration of other proof on that issue available to the party which offers the evidence, and that party's relatively greater need for the evidence if it must carry the burden of proof on the issue to which the evidence relates. <i>Thor v. Boska</i> (1974), 38 Cal. App. 3d 558. Here, by making the objection, Ontario is asking the Court to weigh whether the prejudicial value outweighs the probative value, which cannot be the case here.	

Dated: June 3, 2022

BROWNSTEIN HYATT FARBER
 SCHRECK, LLP

By: 

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 Attorneys for
 CHINO BASIN WATERMASTER

24215510.5

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 June 3, 2022 I served the following:

1. CHINO BASIN WATERMASTER'S RESPONSE TO OBJECTIONS TO DECLARATION OF PETER KAVOUNAS

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 June 3, 2022 in Rancho Cucamonga, California.



By: Janine Wilson
Chino Basin Watermaster

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

JEFF PIERSON
2 HEXAM
IRVINE, CA 92603

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