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PURSUANT TO GOV. CODE, § 6103

8 Attorneys for
9 City of Ontario

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

13 CHINO BASIN MUNICIPAL WATER
DISTRICT,

14 Plaintiff,

15 v.

16 CITY OF CHINO, et al.,

17 Defendants.

CASE NO. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO
HONORABLE GILBERT G. OCHOA

RESPONSE TO INLAND EMPIRE
UTILITIES AGENCY'S OBJECTIONS TO
CITY OF ONTARIO'S SUPPORTING
EVIDENCE RE APPLICATION FOR AN
ORDER TO EXTEND TIME

Hearing:

Date: August 31, 2022
Time: 1:30 p.m.
Dept. S24

RESPONSE

The City of Ontario hereby responds to Inland Empire Utilities Agency’s Objections to Supporting Evidence re Application for an Order to Extend Time as follows:

I. OBJECTIONS TO ONTARIO’S REQUEST FOR JUDICIAL NOTICE

Items Subject to Objection	General Objections	Ontario’s Response to Objection
Paragraphs 1 – 61 (entire Request)	This entire evidentiary record relied upon by Ontario should have been submitted with Ontario's initial application. These items greatly increase the scope of Ontario's application in violation of the Court's instructions. These items are thus irrelevant to the matter before the Court (Evid. Code section 210). Admission of these items in support of Ontario's reply would deprive opposing parties of an opportunity to respond as required by due process. (See <i>San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> 102 Cal.App.4th 308, 316 (2002) (due process requires a party be fully advised of the issues to be addressed and be given adequate notice of what facts it must rebut in order to prevail); <i>American Drug Stores, Inc. v. Stroh</i> 10 Cal.App.4th 1446, 1453 (1992) ("[p]oints raised for the first time in a reply brief will ordinarily not be considered, because such consideration would	A court has discretion on whether to accept new evidence filed with a reply. (<i>Alliant Ins. Services, Inc. v. Gaddy</i> (2008) 159 Cal.App.4th 1292, 1307-1308.) There are also several exceptions to the general rule that permits a court to consider new evidence filed with a reply brief including, as pertinent here, evidence that responds to arguments made for the first time in an opposition brief and when good cause exists for why the moving party was unable to raise the arguments prior to the reply brief. (<i>Jacobs v. Coldwell Banker Residential Brokerage Co.</i> (2017) 14 Cal.App.5th 438, 449; <i>Neighbours v. Buzz Oats Enterprises</i> (1990) 217 Cal.App.3d 325, 335.) Moreover, Ontario’s RJN consists entirely of previous court orders or pleadings filed with the Court or appellate court or Watermaster’s own documents. Of the 61 documents contained in Ontario’s RJN, 16 are pleadings and orders previously filed with the

Items Subject to Objection	General Objections	Ontario's Response to Objection
	<p>deprive the respondent of an opportunity to counter the argument"); <i>Neighbours v. Buzz Oates Enterprises</i> 217 Cal.App.3d 325, 335, fn. 8 (1990) ("the rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before.")</p> <p>Sustained: __ Overruled: __</p>	<p>Court or appellate court and the 45 remaining documents are Watermaster documents, including assessment packages, agendas, staff reports and presentations, agreements, or rules and regulations. These documents do not constitute new evidence or new subject matter but rather are documents already in the Court's record in the adjudication or in Watermaster's records that were provided via RJN for the Court's convenience.</p>

II. OBJECTIONS TO THE DECLARATION OF COURTNEY JONES

Declaration Testimony	General Objections	Ontario's Response to Objection
<p>Paragraphs 1 - 67 (entire declaration)</p>	<p>The issue presented is whether Ontario should be granted relief from Watermaster's decision not to extend Ontario's time to challenge the 2021/2022 assessment package. Nothing in the declaration addresses the issue before the court therefore the declaration, in its entirety, is comprised of irrelevant testimony (Evid. Code section 210).</p> <p>Sustained: __ Overruled: __</p>	<p>Evidence is relevant if it has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the matter." (Evid. Code, § 210.) "Relevance is a low bar." (<i>People v. Villa</i> (2020) 55 Cal.App.5th 1042, 1052, review denied.) Ms. Jones' declaration addresses the history and operation of the DYY Program and assessments related thereto, which is the subject of Ontario's challenge to Watermaster's adoption of the FY 2021-22</p>

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Declaration Testimony	General Objections	Ontario's Response to Objection
		Assessment Package. Ms. Jones' declaration further provides information and evidence related to issues raised by the IEUA, Watermaster, Cucamonga Valley Water District ("CVWD") and Fontana Water Company ("FWC") (collectively, the "Opposing Parties") in their Opposition briefs, including prior amendments to the DYY Program and cost shifting and financial impact of 2019 Letter Agreement.
Paragraph 4, p.2, lines 15-17.	Calls for a legal conclusion (Evid. Code 310); no foundation, declarant cannot opine on the legal effect of a document (Evid. Code section 702, 803). Sustained: __ Overruled: __	Declarant's statement is based on her personal knowledge of events, and her position as Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) Declarant's statement is not a legal opinion but, rather, an observation based on the personal knowledge of the witness and admissible as a rationally based, helpful lay opinion. (Evid. Code, § 800.)
Paragraph 5, P. 2, lines 18 - 22	Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702); irrelevant (Evid. Code section 210). Sustained: __ Overruled: __	Declarant's statement is based on her personal knowledge of events, and her position as Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) Declarant's statement is not a legal opinion but, rather, an observation based on the personal knowledge of the

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Declaration Testimony	General Objections	Ontario's Response to Objection
		<p>witness and admissible as a rationally based, helpful lay opinion. (Evid. Code, § 800.)</p> <p>Declarant established the bases for her testimony as the Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) In that capacity, she has personal knowledge of DYY Program agreements and Watermaster Approval Process.</p> <p>Declarant's statement regarding the operation of the DYY Program and Watermaster Approval Process relate to the Ontario's challenge to Watermaster's adoption of the FY 2021-22 Assessment Package and are relevant. It is further relevant to address issues raised by the Objecting Parties in their Opposition briefs.</p>
Paragraph 6, P. 3, lines 1-13	<p>No foundation (Evid. Code section 702); irrelevant (Evid. Code section 210).</p> <p>Sustained: __ Overruled: __</p>	<p>Declarant established the bases for her testimony as the Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) In that capacity, she has personal knowledge of DYY Program agreements and Watermaster Approval Process.</p> <p>Declarant's statement regarding prior amendments</p>

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Declaration Testimony	General Objections	Ontario's Response to Objection
		to the DYY Program vs. the 2019 Letter Agreement relate to the Ontario's challenge to Watermaster's adoption of the FY 2021-22 Assessment Package and are relevant. It is further relevant to address issues raised by the Objecting Parties in their Opposition briefs.
Paragraph 7, P. 3, lines 14-26	No foundation (Evid. Code section 702); the declarant has not established a foundation of firsthand knowledge regarding documents dated before 2021; calls for hearsay (Evid. Code section 1200). The declarant testifies from watermaster staff report and is therefore based upon hearsay. Sustained: __ Overruled: __	Declarant established the bases for her testimony for matters prior to 2021 through her previous positions of Senior Associate Civil Engineer and Water Resources Manager. (Evid. Code, § 702; Jones Decl., ¶ 2.) In that capacity, she has personal knowledge of prior amendments to the DYY Program and Watermaster Approval Process. Declarant's reference to a statement in the Watermaster's staff report is a party admission and not hearsay. (Evid. Code, § 1220.)
Paragraph 11, P. 5, lines 2 - 7	Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702). Sustained: __ Overruled: __	Declarant's statement is based on her personal knowledge of events, and her position as Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) Declarant's statement is not a legal opinion but, rather, an observation based on the personal knowledge of the witness and admissible as a

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Declaration Testimony	General Objections	Ontario's Response to Objection
		<p>rationaly based, helpful lay opinion. (Evid. Code, § 800.)</p> <p>Declarant established the bases for her testimony as the Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) In that capacity, she has personal knowledge of Watermaster authority pursuant to the Judgment.</p>
<p>Paragraph 12, P. 5, lines 8 - 14</p>	<p>Calls for hearsay (Evid. Code section 1200). The declarant testifies from a hearsay document and therefore the testimony is based upon hearsay; no foundation for the documents referred to (Evid. Code section 702).</p> <p>Sustained: __ Overruled: __</p>	<p>The Judgment is properly admitted as an Official Record pursuant to Evidence Code section 1280.</p>
<p>Paragraph 13, P. 5, lines 26 - 27</p>	<p>Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702).</p> <p>Sustained: __ Overruled: __</p>	<p>Declarant's statement is based on her personal knowledge of events, and her position as Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) Declarant's statement is not a legal opinion but, rather, an observation based on the personal knowledge of the witness and admissible as a rationaly based, helpful lay opinion. (Evid. Code, § 800.)</p> <p>Declarant established the bases for her testimony as</p>

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Declaration Testimony	General Objections	Ontario's Response to Objection
		the Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) In that capacity, she has personal knowledge of the 2019 Letter Agreement, how it was noticed, and how it differs from prior agreements.
Paragraphs 14, 15, 16, 17, and 18	Calls for hearsay (Evid. Code section 1200). The declarant testifies from a hearsay document and therefore the testimony is based upon hearsay; no foundation for the documents referred to (Evid. Code section 702). Sustained: __ Overruled: __	These documents are properly admitted as Business Records, pursuant to Evidence Code section 1271, and Official Records, pursuant to Evidence Code section 1280.
Paragraphs 20, 21, 22 and 23, p. 6-7, lines 25-18	Calls for hearsay (Evid. Code section 1200). The declarant testifies from a hearsay document, therefore the testimony is based upon hearsay; no foundation for the documents referred to (Evid. Code section 702). Sustained: __ Overruled: __	These documents are properly admitted as Business Records, pursuant to Evidence Code section 1271, and Official Records, pursuant to Evidence Code section 1280.
Paragraph 24, P. 7, lines 19- 21	Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702). Sustained: __ Overruled: __	Declarant's statement is based on her personal knowledge of events, and her position as Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) Declarant's statement is not a legal opinion but, rather, an observation based on the

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Declaration Testimony	General Objections	Ontario's Response to Objection
		<p>personal knowledge of the witness and admissible as a rationally based, helpful lay opinion. (Evid. Code, § 800.)</p> <p>Declarant established the bases for her testimony as the Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) In that capacity, she has personal knowledge of the DYY Program.</p>
<p>Paragraph 31, P. 9, lines 14-17</p>	<p>Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702).</p> <p>Sustained: __ Overruled: __</p>	<p>Declarant's statement is based on her personal knowledge of events, and her position as Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) Declarant's statement is not a legal opinion but, rather, an observation based on the personal knowledge of the witness and admissible as a rationally based, helpful lay opinion. (Evid. Code, § 800.)</p> <p>Declarant established the bases for her testimony as the Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) In that capacity, she has personal knowledge of the DYY Program.</p>

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Declaration Testimony	General Objections	Ontario's Response to Objection
<p>Paragraphs 32, 33, 34 and 35, P.9-10, lines 21-20</p>	<p>No foundation (Evid. Code section 702) the declarant has not established a foundation of firsthand knowledge regarding documents dated before 2021; calls for hearsay (Evid. Code section 1200). The declarant testifies from a hearsay document and therefore the testimony is based upon hearsay.</p> <p>Sustained: __ Overruled: __</p>	<p>Declarant established the bases for her testimony for matters prior to 2021 through her previous positions of Senior Associate Civil Engineer and Water Resources Manager. (Evid. Code, § 702; Jones Decl., ¶ 2.) In that capacity, she has personal knowledge of prior amendments to the DYY Program and Watermaster Approval Process.</p> <p>Declarant's reference to transcripts is admissible as Business Records and/or a party admission and not hearsay. (Evid. Code, §§ 1220 1271.)</p>
<p>Paragraph 39, P. 11, lines 21 -23</p>	<p>Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702).</p> <p>Sustained: __ Overruled: __</p>	<p>Declarant's statement is based on her personal knowledge of events, and her position as Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) Declarant's statement is not a legal opinion but, rather, an observation based on the personal knowledge of the witness and admissible as a rationally based, helpful lay opinion. (Evid. Code, § 800.)</p> <p>Declarant established the bases for her testimony as the Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) In</p>

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Declaration Testimony	General Objections	Ontario's Response to Objection
		that capacity, she has personal knowledge of the DYY Program and requirements for changing the DYY Program.
Paragraph 45, P. 12, lines 18- 22	Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702). Sustained: __ Overruled: __	Declarant's statement is based on her personal knowledge of events, and her position as Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) Declarant's statement is not a legal opinion but, rather, an observation based on the personal knowledge of the witness and admissible as a rationally based, helpful lay opinion. (Evid. Code, § 800.) Declarant established the bases for her testimony as the Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) In that capacity, she has personal knowledge of the DYY Program and assessments under the DYY Program.
Paragraph 48, P. 13, lines 17 - 19	Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702). Sustained: __ Overruled: __	Declarant's statement is based on her personal knowledge of events, and her position as Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) Declarant's statement is not a legal

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Declaration Testimony	General Objections	Ontario's Response to Objection
		<p>opinion but, rather, an observation based on the personal knowledge of the witness and admissible as a rationally based, helpful lay opinion. (Evid. Code, § 800.)</p> <p>Declarant established the bases for her testimony as the Water Resources and Regulatory Affairs Director for Ontario. (Evid. Code, § 702; Jones Decl., ¶ 2.) In that capacity, she has personal knowledge of the DYY Program and assessments under the DYY Program.</p>

III. OBJECTIONS TO THE DECLARATION OF SCOTT BURTON

Declaration Testimony:	Objections:	Ontario's Response to Objection:
<p>Paragraph 4, P. 2, lines 18 - 22 "Under the 1978 Chino Basin Judgment ("Judgment"), this production should have been assessed. The Watermaster waived assessments for 2 Parties of the Chino Groundwater Basin, the Cucamonga Valley Water District ("CV WD") and the Fontana Water Company ("FWC") inconsistent with the judgment.</p>	<p>Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702).</p> <p>Sustained: __ Overruled: __</p>	<p>Declarant established the bases for his testimony as the Utilities General Manager for Ontario. (Evid. Code, § 702; Burton Decl., ¶ 2.) In that capacity, he has personal knowledge of the Judgment and assessments under the DYY Program.</p> <p>Declarant's statement is not a legal opinion but, rather, an observation based on the personal knowledge of the witness and admissible as a rationally based, helpful lay opinion. (Evid. Code, § 800.)</p>

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<p>Paragraph 8, P. 3, lines 9 to 13</p>	<p>No foundation (Evid. Code section 702; calls for hearsay (Evid. Code section 1200). The declarant is testifying on behalf of "Ontario" with no indication of the declarant's involvement or personal knowledge of the matter stated.</p> <p>Sustained: __ Overruled: __</p>	<p>Declarant established the bases for his testimony as the Utilities General Manager for Ontario. (Evid. Code, § 702; Burton Decl., ¶ 2.) In that capacity, he has personal knowledge of the meetings between Ontario, CVWD, and FWC.</p>
<p>Paragraph 15, P. 4, lines 19 -21</p>	<p>Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702); irrelevant (Evid. Code section 210).</p> <p>Sustained: __ Overruled: __</p>	<p>Declarant established the bases for his testimony as the Utilities General Manager for Ontario. (Evid. Code, § 702; Burton Decl., ¶ 2.) In that capacity, he has personal knowledge of the Judgment and assessments under the DYY Program.</p> <p>Declarant's statement is not a legal opinion but, rather, an observation based on the personal knowledge of the witness and admissible as a rationally based, helpful lay opinion. (Evid. Code, § 800.)</p> <p>Declarant's statement regarding notice or, more precisely, lack of notice, that Ontario received regarding Watermaster Board meetings immediately preceding Ontario's Application are relevant and relate to matters raised therein.</p>

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<p>Paragraphs 16, 17,18, 19, 20 and 21 P. 5, lines 3-16</p>	<p>Irrelevant (Evid. Code section 210). This testimony exceeds the scope of the original motion filed by Ontario herein. The declarant's efforts to secure counsel are not relevant to the subject challenge to Watermaster's discretionary action.</p> <p>Sustained: __ Overruled: __</p>	<p>Declarant's statements regarding Ontario's efforts to secure new counsel are relevant and relate to (1) Ontario's bases for applying for an order to extend time under the judgment to file its challenge to the 2021-2022 Assessment Package; (2) good cause for raising additional information in Ontario's Reply; and (3) to respond to issues raised by Objecting Parties in their Oppositions.</p>
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Dated: July 1, 2022

STOEL RIVES LLP

By: 

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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 July 1, 2022 I served the following:

1. RESPONSE TO INLAND EMPIRE UTILITIES AGENCY'S OBJECTIONS TO CITY OF ONTARIO'S SUPPORTING EVIDENCE RE APPLICATION FOR AN ORDER TO EXTEND TIME

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

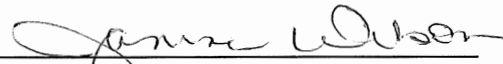
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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 July 1, 2022 in Rancho Cucamonga, California.


By: Janine Wilson
Chino Basin Watermaster

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