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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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FOR THE COUNTY OF SAN BERNARDINO

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CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

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Plaintiff,

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vs.

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CITY OF CHINO, ET AL.,

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Defendants.

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Case No: RCVRS 51010

*Assigned for All Purposes to:
Honorable Gilbert G. Ochoa*

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION CHALLENGING
WATERMASTER'S BUDGET ACTION
TO FUND UNAUTHORIZED CEQA
REVIEW**

[Concurrently Filed with Notice of Motion;
Decl. of Courtney Jones; Request for Judicial
Notice; Proposed Order]

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Department: S24

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

3 The City of Ontario (“Ontario”), Monte Vista Water District (“MVWD”), Monte Vista
4 Irrigation Company (“MVIC”), and the City of Chino (“Chino”) (collectively, the “Moving
5 Parties”) bring this Motion to uphold the governance structure established for the Chino Basin
6 (“Basin”) by the stipulated judgment (“Judgment”)¹ that was agreed upon by parties holding
7 water rights in the Basin, and entered by the Court in 1978. The Judgment established an
8 equitable remedy called a physical solution for the Basin (the “Physical Solution”). The
9 Judgment also created a judicial branch entity called the Chino Basin Watermaster
10 (“Watermaster”) to administer and enforce the Physical Solution. The Judgment empowers
11 Watermaster to perform certain functions and to assess parties to finance such functions – but
12 only within the bounds established by the Judgment and subsequent agreements approved by the
13 Court.²

14 Watermaster’s power is strictly limited by the terms of the Judgment and applicable law.
15 Watermaster lacks independent power or authority to conduct environmental review pursuant to
16 the California Environmental Quality Act (“CEQA”). As a judicial branch entity or arm of the
17 court, Watermaster is not subject to CEQA – unlike public agencies such as Moving Parties.
18 CEQA review must be conducted by public agencies when they have a defined project, not by
19 Watermaster.

20 The Moving Parties take seriously their legal obligations to comply with CEQA. An
21 important first step of any such environmental review is to carefully describe the project to be
22 analyzed. In the absence of a clear and understandable project description, achieving full
23 compliance with CEQA is difficult if not impossible.

24 The present dispute arises from adoption of a budget for fiscal year (“FY”) 2022-2023 by
25 Watermaster’s Board that allocates approximately four hundred thousand dollars for unauthorized

26 _____
27 ¹ Throughout the Motion, “Judgment” refers to the amended and restated version of the original stipulated judgment.

28 ² *Orange Cove Irrigation District v. Los Molinos Mutual Water Co.* (2018) 30 Cal.App.5th 1, 21-22, holds that authority of a watermaster is strictly limited by the governing agreement.

1 and premature CEQA review of undefined projects in connection with the Optimum Basin
2 Management Program 2020 Update Report (“OBMPU”). Watermaster will assess parties to the
3 Judgment, including the Moving Parties,³ for these budgeted expenses via the forthcoming
4 Watermaster assessment package. The Moving Parties object to these expenses.

5 Watermaster adopted the OBMPU in 2020 pursuant to its authority under the Judgment to
6 administer the Physical Solution pursuant to the Court’s continuing jurisdiction. A watermaster’s
7 implementation of a physical solution under the court’s supervision is not subject to CEQA.⁴
8 Accordingly, there is no need or legal basis to conduct CEQA review of the OBMPU.

9 An Implementation Plan has not yet been developed in conjunction with the OBMPU.
10 When an Implementation Plan is developed, CEQA review will be necessary to the extent the
11 Plan contemplates public agencies undertaking projects subject to CEQA. Watermaster
12 acknowledged that an amendment to the Peace Agreement is a predicate to adoption of an
13 Implementation Plan. Thus, until an Implementation Plan is developed and adopted pursuant to a
14 Peace Agreement amendment, with the consent of the parties to the Peace Agreement, there are
15 no projects or plans that require CEQA analysis.

16 Contrary to Watermaster’s role as a non-CEQA agency, Watermaster intends to fund
17 CEQA review with the Inland Empire Utility Agency (“IEUA”) acting as “lead agency” for
18 purposes of preparing a Programmatic Environmental Impact Report (“PEIR”) for the OBMPU.
19 Not only is the PEIR unauthorized, as discussed above, but also IEUA’s role as CEQA lead
20 agency presents conflicts of interest and pre-supposes which public agency should serve as lead
21 agency where projects have not yet been identified and agreed upon. IEUA is the leading
22 proponent of a controversial and expensive (on the order of hundreds of millions of dollars) Chino
23 Basin Program. The Chino Basin Program is a candidate for inclusion in the OBMPU
24 Implementation Plan. By funding and supporting IEUA’s PEIR, Watermaster will be helping

26 ³ The Moving Parties, collectively, will be assessed about forty percent of the \$402,999.
27 (Watermaster Staff Report dated Jul. 28, 2022, Exhibit 8 to RJN; see also Declaration of C. Jones,
28 filed concurrently herewith, at ¶ 4.)

⁴ *Hillside Memorial Park & Mortuary v. Golden State Water Co.* (2011) 205 Cal.App.4th 534,
550; see also Stater, 1 California Water Law and Policy § 11.10.

1 IEUA advance IEUA's interest in ensuring that the Chino Basin Program is included in an
2 OBMPU Implementation Plan. Watermaster's authority to finance or otherwise participate in
3 CEQA review of the OBMPU is dependent on an agreement of the parties to the Peace
4 Agreement that has not been achieved. Accordingly, there is no legal basis for Watermaster to
5 fund CEQA review, and doing so violates the principle that watermaster should remain neutral.

6 Despite objections made on all the above-referenced grounds by the Moving Parties, and
7 the Moving Parties' repeated requests for a legal opinion supporting Watermaster's budgeted
8 funds for IEUA's CEQA review, on July 28, 2022, Watermaster refused to provide the requested
9 legal opinion and decided to proceed with expending its budgeted funds for CEQA review.

10 The Moving Parties are seeking determinations by the Court that (1) Watermaster's
11 budget action is invalid to the extent it allocates funding for IEUA's PEIR in connection with the
12 OBMPU; and (2) any corresponding assessments by Watermaster are invalid and unenforceable.
13 The Moving Parties respectfully request that this Court direct Watermaster not to expend funds
14 for CEQA review until after parties to the Peace Agreement reach agreement regarding the
15 OBMPU Implementation Plan and a corresponding amendment to the Peace Agreement.

16 Following is a summary of the reasons why the Court may grant the requests of the Moving
17 Parties:

- 18 • As an arm of the Court, Watermaster is not subject to CEQA and does not conduct CEQA
19 review.
- 20 • Watermaster lacks authority to proceed with any OBMPU Implementation Plan or projects
21 subject to CEQA without prior agreement of the parties to the Peace Agreement, which
22 has not been obtained.
- 23 • Parties to the Peace Agreement have not defined or agreed to any OBMPU
24 Implementation Plan, nor are any projects that may be included in the to-be-updated
25 Implementation Plan ready for CEQA review.
- 26 • Because the existing PEIR for the 2000 OBMP Implementation Plan, another PEIR for a
27 currently non-existent update to the Implementation Plan is not necessary or appropriate at
28 this time.

- 1 • Watermaster’s budgeted funding for CEQA review conducted by IEUA as lead agency is
2 inappropriate because of conflicts of interest and absence of consensus on projects among
3 parties to the Peace Agreement.

4 Section 31 of the Judgment makes Watermaster actions and decisions such as the May 26,
5 2022 Watermaster budget action subject to review by this Court. Additionally, this Court’s
6 approval of the Peace Agreement enables this Court to interpret the Peace Agreement and make
7 the requested determinations as an exercise of its continuing jurisdiction under Section 15 the
8 Judgment.

9 **II. FACTUAL AND PROCEDURAL BACKGROUND**

10 **A. The Judgment and the Optimum Basin Management Program**

11 The Judgment provides for development of an optimum basin management program for
12 the Basin. (Exhibit 1 to Request for Judicial Notice, filed concurrently herewith [“RJN”], at §
13 41.) Specifically, Section 41 of the Judgment empowers Watermaster to do the following in
14 connection with its administration of the Physical Solution:

15 41. Watermaster Control. Watermaster, with the advice of the Advisory
16 and Pool Committees, is granted discretionary powers in order to develop an
17 optimum basin management program for Chino Basin, including both water
18 quantity and quality considerations.

19 In 1998, the Court directed Watermaster to commence the optimum basin management program
20 (Peace Agreement, Exhibit 2 to RJN, at p.2 Recitals), and in 1999, the Court approved a proposal
21 by Watermaster to prepare a PEIR with IEUA acting as lead agency for purposes of CEQA.
22 (Court Ruling, Exhibit 3 to RJN, at 2:19-20.) The Court noted a party’s contention that CEQA
23 did not apply to Watermaster’s development of an optimum basin management program. (*Id.* at
24 1:24-25.) Subsequently, *Hillside Memorial Park & Mortuary v. Golden State Water Co.* (2011)
25 205 Cal.App.4th 534 clarified that CEQA does not apply to a watermaster’s implementation of a
26 physical solution pursuant to the court’s continuing jurisdiction.

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B. Peace Agreement

Certain parties to the Judgment including the Moving Parties entered into the Peace Agreement, dated June 29, 2000 (as subsequently amended, the “Peace Agreement”),⁵ to resolve disputes pertaining to the power and authority of the Watermaster – in particular, disputes about procedures for adoption and implementation of the initial optimum basin management program for the Basin (“2000 OBMP”). (Peace Agreement, Exhibit 2 to RJN, at p.3 Recitals.) The Peace Agreement enabled adoption of the 2000 OBMP and a suite of projects under an OBMP implementation plan. (*Ibid.*) For example, the Peace Agreement allows Watermaster to administer transfers, recharge, and storage/recovery of water in the Chino Basin. (See generally, Peace Agreement, Exhibit 2 to RJN.) The Peace Agreement, the 2000 OBMP and the corresponding implementation plan all were approved by the Court, and Watermaster was ordered to proceed in accordance with their terms.⁶ (See Watermaster Resolution No. 2000-05, Exhibit 4 to RJN.)

The Peace Agreement established a framework for achieving compliance with CEQA in connection with the OBMP that remains in effect. The parties agreed that “no commitment will be made to carry out any ‘project’ under OBMP and within the meaning of CEQA unless and until the environmental review and assessments required by CEQA for that defined ‘project’ have been completed.” (Peace Agreement, Exhibit 2 to RJN, at § 2.1.) **Section 2.2 of the Peace Agreement confirms that any CEQA review of then-agreed-to project elements does not extend to future projects to which agreement has not yet been reached.** Accordingly, any new projects require CEQA review once agreement is achieved among the parties to the Peace Agreement.

Consistent with the framework established by the Peace Agreement, any new projects implementing the OBMP must be agreed-upon via an amendment to the Peace Agreement (see

⁵ Watermaster is neither a signatory nor party to the Peace Agreement, and, accordingly, Watermaster holds no rights or authority under the Peace Agreement. Watermaster’s function in relation to the Peace Agreement is to implement the Agreement’s terms and conditions, subject to oversight by this Court.

⁶ Certification of the PEIR for the 2000 OBMP was a pre-condition for Court approval of the Peace Agreement. (See CEQA Ruling dated Nov. 18, 1999, Exhibit 3 to RJN.)

1 Peace Agreement, § 10.14) and, then, reviewed in compliance with CEQA and the Peace
2 Agreement.

3 **C. Peace II Agreement**

4 The 2000 OBMP was supplemented in connection with the Peace II Agreement, dated
5 October 25, 2007 (“Peace II”). Peace II provided for implementation of a suite of additional
6 projects including the achievement of hydraulic control of the Basin through re-operation. The
7 actual physical project consisting of the construction and operation of a well field along the Santa
8 Ana River and a desalter facility was undertaken by the Chino Basin Desalter Authority, a joint
9 powers agency comprised of several parties to the Judgment and the Peace Agreements including
10 Chino and Ontario (Moving Parties hereto). (Declaration of C. Jones, filed concurrently herewith
11 [“Jones Decl.”], at ¶ 13.) Consistent with the process established by Section 2.2 of the Peace
12 Agreement, CEQA review of Peace II project elements was accomplished upon agreement of the
13 parties to Peace II. (See Peace II, Exhibit 5 to RJN, at § 2.3 [confirming that environmental
14 review will need to be completed before carrying out any “project” pursuant to Peace II], and
15 Exh. 2 Planning Schedule.)

16 **D. The Present Dispute**

17 The present dispute arises from the action taken by the Watermaster Board on May 26,
18 2022 to adopt a budget that allocates \$402,999 to support a new PEIR being prepared by IEUA in
19 connection with the OBMPU. (Watermaster Staff Report dated Jul. 28, 2022, Exhibit 8 to RJN;
20 *see also* Jones Decl., at ¶¶ 3-5.) The Moving Parties contest the need for a PEIR and challenge
21 the legality of Watermaster expending funds in support of the PEIR, for the reasons explained in
22 this Motion. Critically, the OBMPU by itself does not provide for any projects subject to CEQA
23 review. An Implementation Plan is needed to identify specific projects. Watermaster
24 acknowledges that another predicate that has not yet been developed is an amendment to the
25 Peace Agreement:

26 **“Furthermore, to implement the 2020 OBMP Update, the parties must update the**
27 **2000 OBMP Implementation Plan and amend the Peace Agreement.”**

1 (Watermaster's Summary of Engineering Services and Costs for the Budget, emphasis added; *see*
2 *also* Jones Decl., at 5.) Under Section 10.14 of the Peace Agreement, all such amendments
3 require unanimous consent of the parties to the Peace Agreement including consent of the Moving
4 Parties. Such consent is a predicate to the Implementation Plan and any projects that may require
5 CEQA review.

6 In March 2020, Watermaster initiated a process to facilitate the development of the
7 Implementation Plan through an amendment to the Peace Agreement. (Watermaster Staff Report
8 dated Jul. 28, 2022, Exhibit 8 to RJN; *see also* Jones Decl., at ¶ 2.) An orientation meeting and
9 the first Implementation Plan drafting session were held in March 2020. However, the process
10 was put on hold and has yet to resume. (*Ibid.*)

11 In light of the stalled process to develop an Implementation Plan for the OBMPU, the
12 Moving Parties were surprised to find line items in Watermaster's proposed FY 2022-2023
13 budget for CEQA review. (see Jones Decl., at ¶¶ 2-3.) The budget includes \$276,799 for
14 environmental review and other technical work (account 6906.26) along with \$126,200 for legal
15 support (account 6907.45), for a total of \$402,999. (*Ibid.*)

16 On May 2, 2022, the Moving Parties wrote to Watermaster and registered their objections
17 to these items in the proposed budget. (Jones Decl., at ¶ 6, Exh. A.) Their letter sought
18 justification for whether Watermaster intends to proceed with OBMPU-related work prior to the
19 necessary Peace Agreement amendment. In the letter, Moving Parties proposed that Watermaster
20 reconvene meetings pertaining to the Implementation Plan, in order to allow the parties
21 responsible for implementation to first develop the scope of an updated Implementation Plan and
22 negotiate a corresponding amendment to the Peace Agreement. CEQA review of the
23 environmental impacts would be conducted thereafter, as needed. (*Ibid.*)

24 Moving Parties wrote to Watermaster again on May 25, 2022, further questioning
25 Watermaster's inclusion of expenditures for OBMPU CEQA review in Watermaster's FY 2022-
26 2023 proposed budget and requesting a written legal opinion from Watermaster legal counsel that
27 "identifies both the CEQA 'project' description and the provision(s) in the Chino Basin Judgment

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1 and/or Peace Agreements, and/or any other agreement among the parties to the Judgment, which
2 authorizes such expenditures.” (Jones Decl., at ¶ 7, Exh. B.)

3 The May 25 letter also identified a potential conflict of interest arising from
4 Watermaster’s apparent intention to finance and support IEUA’s PEIR, where IEUA is itself a
5 proponent of a proposed OBMPU project (i.e., the Chino Basin Program) that requires
6 Watermaster approval under the Judgment. (Jones Decl., at ¶ 7, Exh. B.) The letter requested
7 that Watermaster’s legal opinion address this apparent conflict of interest. (*Ibid.*)

8 Watermaster never provided the requested opinion despite a further written request on
9 June 21, 2022. (Jones Decl., at ¶ 8, Exh. C.) Watermaster’s Board adopted the FY 2022-2023
10 budget at its May 26, 2022 meeting. (Minutes dated May 26, 2022, Exhibit 7 to RJN.)

11 On July 28, 2022, Watermaster convened a special meeting of its Board Members
12 specifically to address the Moving Parties’ request for a legal opinion. (Watermaster Staff Report
13 dated Jul. 28, 2022, Exhibit 8 to RJN; Meeting Transcript, Exhibit 9 to RJN; *see also* Jones Decl.,
14 at ¶ 9.) At the end of this meeting, the Board directed Watermaster staff to gather stakeholder
15 input and develop a project description for the PEIR and proceed with the effort within
16 Watermaster’s approved budget. Such direction pre-supposed the need for a PEIR for CEQA
17 review and endorsed IEUA as the CEQA lead agency, neither of which decisions is appropriately
18 made by a non-CEQA judicial branch entity such as Watermaster. Watermaster also refused to
19 provide the requested written legal opinion. (*Ibid.*)

20 In connection with ongoing discussions between Watermaster and the Moving Parties,
21 Watermaster extended the deadline for Moving Parties to challenge its budget action under
22 Section 31 of the Judgment by an additional thirty (30) days from Watermaster’s July 28 special
23 meeting. This Motion is timely submitted within the thirty days.

24 **III. LEGAL ARGUMENT**

25 Watermaster’s budget action to finance unauthorized and premature CEQA review wrests
26 control over the OBMPU Implementation Plan from the parties to the Peace Agreement,
27 including Moving Parties, that are public agencies with authority to identify “projects” and
28 subject them to CEQA review. The unauthorized PEIR inappropriately favors the interests of

1 certain parties to the Peace Agreement over others, given the lack of a Peace Agreement
2 amendment necessary to establish which projects should be advanced. Watermaster has endorsed
3 IEUA to act as lead agency for the PEIR, despite Watermaster’s lack of authority to take such a
4 CEQA action and the absence of an agreement among the parties to the Peace Agreement, which
5 include public agencies responsible for CEQA. The all-important CEQA lead agency role allows
6 IEUA to advance its own proposed projects such as the controversial Chino Basin Program,
7 despite the absence of an agreement among the parties to include the Chino Basin Program in the
8 Implementation Plan, and the preference IEUA is likely to give the Chino Basin Program over
9 other potential projects.

10 **A. Watermaster Lacks Independent Authority to Fund CEQA Review.**

11 As an arm of the Court, Watermaster is not authorized to conduct environmental review
12 pursuant to CEQA. The responsibility to conduct CEQA review arises when a “public agency”
13 undertakes or supports a “project,” as defined in CEQA. (Pub. Res. Code § 21065.) “‘Public
14 agency’ includes any state agency, board, or commission and any local or regional agency, It
15 does not include the courts of the state. (Cal. Code Regs., tit. 14, § 15379; see also *Picayune*
16 *Rancheria of Chukchansi Indians v. Brown* (2014) 229 Cal.App.4th 1416, 1422-1423 [CEQA is
17 interpreted literally, not broadly].) Watermaster is an arm of the court (i.e., a judicial entity) and
18 not a public agency within the meaning of CEQA. A watermaster’s implementation of a physical
19 solution under the court’s supervision is not subject to CEQA. (*Hillside Memorial Park &*
20 *Mortuary, supra*, 205 Cal.App.4th at p.550 [“[w]here a physical solution is in place, a public
21 agency may not order preparation of an EIR under CEQA that conflicts with the court order”
22 because the court’s continuing jurisdiction “deprives the [agency] of authority to order CEQA
23 compliance.”]; see also Slater, 1 California Water Law and Policy § 11.10.

24 Rather than any Watermaster action or decision regarding the OBMP, it is the
25 participation of public agency parties, such as the Moving Parties, in a project that gives rise to
26 obligations to comply with CEQA. (Pub. Res. Code § 21065 [CEQA definition of “project”
27 includes certain activities undertaken or supported by “public agencies”].). Prior court orders
28 have recognized that CEQA obligations arise when public agency parties agree to implement

1 projects in furtherance of the OBMP. For example, the Court Order approving Peace II states as
2 follows: “By April 1, 2008, Watermaster shall report to the Court on the status of CEQA
3 documentation, compliance, and requirements, and provide the Court with assurances that
4 Watermaster’s approval and participation in any project that is a ‘project’ for CEQA purposes has
5 been or will be subject to all appropriate CEQA review.” (Court Order entered Dec. 21, 2007,
6 Exhibit 10 to RJN.)

7 Parties to the Peace Agreement have not yet reached any agreement on any project of the
8 OBMPU Implementation Plan and corresponding Peace Agreement amendment that are
9 necessary to establish which projects should be implemented in connection with the OBMPU.
10 Therefore, any participation in CEQA review by Watermaster is both unauthorized and
11 premature.

12 **B. Watermaster Lacks Authority to Fund or Conduct CEQA Review of OBMPU**
13 **Projects Without Consent of the Parties to the Peace Agreement.**

14 Watermaster is not authorized by the Judgment or otherwise to fund or conduct CEQA
15 review of projects under OBMPU unless there is agreement among the Parties to the Peace
16 Agreement. As explained above, “projects” under CEQA are undertaken by “public agencies” (as
17 defined in CEQA), not by judicial branch entities such as Watermaster. A non-CEQA agency
18 such as Watermaster cannot make CEQA decisions such as selecting a lead agency and deciding
19 the scope of CEQA review. Instead, “public agencies” (including Moving Parties) are obligated
20 under CEQA to make such decision.

21 While Section 41 of the Judgment grants discretionary powers to Watermaster to develop
22 an OBMP for the Chino Basin, nothing in the Judgment supersedes CEQA and empowers
23 Watermaster to implement projects subject to CEQA or conduct CEQA review. The Judgment is
24 interpreted like a contract to effectuate the mutual intention of the stipulating parties. (Slater, 1
25 California Water Law and Policy § 11.10, citing *Rancho Pauma Mutual Water Co. v. Yuima*
26 *Municipal Water Dist.* (2015) 239 Cal.App.4th 109 for the proposition that stipulated judgments
27 are interpreted like contracts.)

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1 The authority of a watermaster is strictly limited by the governing documents (*Orange*
2 *Cove Irrigation Dist. v. Los Molinos Mutual Water Co.*, *supra*, 30 Cal.App.5th at pp. 21-22), and
3 the Judgment assigns Watermaster the limited role of administering the Physical Solution
4 established for the Basin. (See Judge Gunn order from Dec. 2007; see also *Dow v. Lassen*
5 *Irrigation Co.* 75 Cal.App.5th 482 [Watermaster’s role is limited to judgment administration].).
6 Therefore, any ability of Watermaster to participate in projects subject to CEQA arises from
7 subsequent agreements among parties to the Judgment, such as the Peace Agreement and Peace
8 II. For example, the initial implementation plan and suite of projects under the 2000 OBMP was
9 approved by unanimous consent of the parties to the Peace Agreement. Similarly, in connection
10 with Peace II, CEQA review was conducted after the parties agreed to Peace II measures. (See
11 Peace II, Exhibit 5 to RJN, at § 2.3 and Exh. 2 Planning Schedule.) In the absence of such
12 agreements, Watermaster lacks authority to provide funding and other support for CEQA review.

13 **C. Parties Cannot Be Compelled to Pay for Watermaster Support of IEUA’s**
14 **PEIR for the OBMPU.**

15 The Judgment limits Watermaster expenditures to the administration of the Physical
16 Solution defined in the Judgment. Such expenses are categorized as either: (a) general
17 Watermaster administrative expenses, which include “office rental, general personnel expense,
18 supplies and office equipment, and related incidental expense and general overhead”; or (b)
19 special project expenses, which include “special engineering, economic or other studies, litigation
20 expense, meter testing or other major operating expenses.” (Judgment, Exhibit 1 to RJN, at § 54.)
21 The Judgment does not authorize Watermaster to make expenditures for CEQA activities or
22 compliance, and as a matter of law, Watermaster is an arm of the Court that may not conduct
23 CEQA review.

24 **D. Watermaster’s Funding of CEQA and Endorsement of IEUA as Lead Agency**
25 **for CEQA Review Is Inappropriate Because it Violates Watermaster’s**
26 **Neutrality as an Arm of the Court.**

27 As discussed above, Watermaster is not authorized to undertake any CEQA activity under
28 CEQA and the Judgment. Accordingly, Watermaster’s endorsement of IEUA as CEQA lead

1 agency status for the PEIR is inappropriate. When two or more public agencies have a
2 “substantial claim” to serve as CEQA lead agency for a project, as is the case here, the agencies
3 may designate one agency as lead agency by agreement. (Cal. Code Regs., tit. 14, §15051, subd.
4 (d); see also *Center for Biological Diversity v. County of San Bernardino* (2016) 247 Cal.App.4th
5 326, 343 [public agencies may determine lead agency by agreement]). Public agencies that may
6 have a claim to serve as lead agency depending on what OBMPU project(s) ultimately are
7 selected by the parties include the Chino Basin Desalter Authority and the Chino Basin Water
8 Conservation District. However, Watermaster’s budget action to finance CEQA review
9 effectively designates IEUA to serve as lead agency, despite the lack of any agreement of the
10 parties to this effect. Watermaster’s action in designating or endorsing IEUA, a party to the
11 Judgment, as the lead agency violates its neutrality as an arm of the Court.

12 IEUA is an inappropriate lead agency because of its proposed Chino Basin Program.
13 Several other parties to the Judgment are Chino Basin Program “partners” with IEUA; however,
14 no Basin-wide agreements have been reached. The Chino Basin Program competes with other
15 potential projects that the parties ultimately may select.⁷ The lead agency role in connection with
16 Watermaster’s OBMPU gives IEUA the ability to advance its own proposed projects such as the
17 Chino Basin Program at the expense of other parties, despite the existence of differing priorities
18 among parties to the Judgment and conflicts of interest. For example, IEUA needs Watermaster’s
19 approval of the Chino Basin Program including an analysis and determination regarding “material
20 physical injury” (MPI) (See Jones Decl., at ¶ 10), which calls into question Watermaster’s
21 neutrality. Watermaster’s consulting engineer is already working for IEUA on the Chino Basin
22 Program. (*Ibid.*) Watermaster and IEUA Boards have held joint workshops on the Chino Basin
23 Program (*ibid.*), further calling Watermaster’s neutrality into question.

24 Watermaster must remain impartial, unbiased, and neutral in its dealings with parties to
25 the Judgment:

26 ///

27 _____
28 ⁷ Ontario has sued IEUA over IEUA’s inadequate evaluation the alternative advanced treatment proposal advocated by Ontario in connection with the Chino Basin Program, as alleged by Ontario in its complaint against IEUA. (See Jones Decl., at ¶ 12.)

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In its appointed capacity, the watermaster serves “as an arm of the court” in an impartial and unbiased role. The watermaster's role is merely to administer and implement the decree; its role is not to champion the rights of some water users subject to the decree to the detriment of other water users subject to the decree. In other words, **the watermaster’s role is not to take sides or play favorites.**

(*Dow, supra*, 75 Cal.App.5th 482, 489, emphasis added.) Because a “watermaster serves as an arm of the court to ‘assist the Court in the administration and enforcement of the provisions of this judgment,’” the role of watermaster is similar to that of a judge and may be held to similar ethical standards. (*Water Replenishment Dist. of Southern California v. City of Cerritos* (2012) 202 Cal.App.4th 1063, 1072.)

Judge Gunn gave a similar, specific admonition to Watermaster in 2007:

Although it is not stated in Watermaster's pleadings, it is important to note that it is not Watermaster's duty to be an advocate for any, or for all, of the parties. **Watermaster's position with respect to the parties should be neutral.**

(Court Order entered Dec. 21, 2007, Exhibit 10 to RJN, at 4:16-19, emphasis added.) Such admonitions for watermasters to remain neutral underscores the necessity to await direction from the parties, here, via a Peace Agreement amendment, before providing funding and support for CEQA review – especially where the self-appointed lead agency, IEUA, is the proponent of an expensive and controversial project like the Chino Basin Program.

Refusal by Watermaster to provide requested legal opinion highlights that Watermaster is expending funds on unauthorized CEQA analysis without the requisite legal authority and in violation of the neutrality principal.

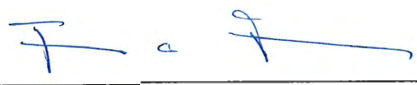
IV. CONCLUSION

For all of the foregoing reasons, the Moving Parties respectfully request that this Court enter an order declaring that: (1) the May 26, 2022 Watermaster budget action is invalid to the extent said action appropriates and/or allocates funding to conduct CEQA review in connection with the OBMPU; (2) any assessments by Watermaster are invalid and unenforceable to the extent based on budget allocation(s) to conduct CEQA review in connection with the OBMPU; and (3) parties to the Judgment are not obligated to pay the corresponding portion of assessments by Watermaster. Further, the Moving Parties respectfully request that this Court order

1 Watermaster not to expend any funds on CEQA review until after the parties to the Peace
2 Agreement reach agreement among themselves and provide direction to Watermaster regarding
3 implementing actions and projects that require CEQA review in connection with the OBMPU.
4

5 Dated: August 26, 2022

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7
8 By: 
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11
12 [SIGNATURES CONTINUE ON FOLLOWING PAGE]

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Dated: August 26, 2022

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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 August 26, 2022 I served the following:

1. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION CHALLENGING WATERMASTER'S BUDGET ACTION TO FUND UNAUTHORIZED CEQA REVIEW

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 August 26, 2022 in Rancho Cucamonga, California.



By: Denise Morales
Chino Basin Watermaster

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