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CHINO BASIN WATERMASTER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN BERNARDINO

10
11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendant.

Case No. RCVRS51010

[Assigned for All Purposes to the Honorable
Gilbert Ochoa]

CHINO BASIN WATERMASTER'S
OPPOSITION TO MOTION CHALLENGING
WATERMASTER'S BUDGET ACTION TO
FUND UNAUTHORIZED CEQA REVIEW

Hearing:

Date: October 14, 2022

Time: 9:00 a.m.

Dept.: S24

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1 **I. INTRODUCTION**

2 Moving Parties seek to invalidate Watermaster’s budget previously recommended by the
3 majority of three Pools and approved by a majority of the Advisory Committee, over their
4 objection. They would have the Court invalidate assessments that have not been levied and
5 request an order that Watermaster not expend the parties’ funds under the approved budget for
6 activities included in the Fiscal Year 2022/2023 budget (“FY 2022/23 Budget”) that are
7 consistent with over 22 years of historical practice of Watermaster in administering the decree
8 and in the public interest.

9 Moving Parties cite to authorities composed of applicable law, the Judgment, and the
10 Peace Agreement but fail to provide a nexus to their argument that technical support and “study”
11 by Watermaster under a budget approved in regular order consistent with historical practice and
12 essential to a prime Watermaster function; the development of an optimum basin management
13 program (“OBMP”). (Judgment ¶41). The Motion should be denied for the following reasons: (i)
14 Watermaster followed the advice and counsel of the three pools and the majority recommendation
15 of the Advisory Committee in approving the budget; (ii) adopting a budget to study actions – is
16 not equivalent and amendment of the Peace Agreement or a “Project”; (iii) doing technical work
17 in support of a programmatic level environmental review is not performance of a CEQA duty or
18 responsibility; and (iv) Watermaster technical support of the Inland Empire Utilities Agency
19 (“IEUA”) was previously ordered on November 18, 1999 and subsequently contractually agreed
20 under the Peace Agreement and again, ordered by the Court. (Peace Agreement §§2.1, 2.4.)

21 **II. BACKGROUND**

22 **A. The Parties**

23 Watermaster is an arm of the Court. It is not a public agency, and it is not subject to
24 CEQA; although the actions of the Parties to the Judgment may be. (*Hillside Memorial Park &*
25 *Mortuary v. Golden State Water Company* (2011) 205 Cal.App.4th 534, 550.) It is this Court’s
26 special master for the purposes of the administration and enforcement of the 1978 groundwater
27 adjudication in this matter. Watermaster’s role and functions are described in greater detail below.

28 Moving Parties the City of Chino (Chino), the Monte Vista Irrigation Company (MVIC),

1 Monte Vista Water District (MVWD), and the City of Ontario (Ontario) are all parties to the
2 Judgment and members of the Appropriative Pool.¹

3 **B. The Judgment**

4 On January 2, 1975, Chino Basin Municipal Water District (“CBMWD”) (now “IEUA”)
5 filed a plenary action to adjudicate all rights to groundwater and storage capacity within the
6 Chino Basin, which had been in overdraft since at least 1953. (Declaration of Peter Kavounas in
7 Support of Chino Basin Watermaster’s Opposition to Motion Challenging Watermaster’s Budget
8 Action to Fund Unauthorized CEQA Review [hereafter “Kavounas Decl.”] Exh. A [Restated
9 Judgment (hereafter “Judgment”)], ¶ 1; Exh. B [Post Trial Memorandum], 2:3-6.) A majority of
10 parties representing a majority of the quantitative rights adjudicated by the Judgment filed a
11 stipulation for entry of judgment. (Judgment, ¶ 2.) Following a trial as to the non-stipulating
12 parties, the Judgment², entered January 27, 1978, adjudicated the rights at issue in the action; this
13 Court retains continuing jurisdiction over the Judgment and the parties. (Judgment, ¶¶ 2, 15.)

14 **1. Physical Solution**

15 The Judgment contains a Physical Solution, establishing “a legal and practical means for
16 making the maximum reasonable beneficial use of the waters of Chino Basin.” (Judgment, ¶ 39.)

17 [T]he function of the Judgment, and of its Physical Solution, is to
18 provide an equitable and feasible method of assuring that a parties
19 share in the burden of the costs of importing the necessary
20 supplemental water to achieve a hydrologic balance within Chino
21 Basin.

21 The Physical Solution provides the mechanics by which the
22 management plan is implemented. The basic concept of the of the
23 Physical Solution is . . . the parties are entitled to produce their
24 requirements for ground water from the basin, provided that they
25 contribute, by Watermaster assessments, sufficient money to
26 assure purchase of supplemental water to replace any aggregate

25 ¹ Ontario and Chino are general law cities located within San Bernardino County and MVWD is a
26 special district. Moving Parties’ Memorandum of Points and Authorities in Support of the Motion
(Motion) refers to all Moving Parties as public agencies (Motion, at 5:17; 14:19); however,
27 MVIC is not a public agency, but a nonprofit corporation.

28 ² In September 2012, the Court ordered that the Restated Judgment, incorporating all amendments
since 1978, shall serve as the official and legally operative copy of the 1978 Judgment. All
references to Judgment refer to the Restated Judgment.

1 production in excess of the Safe Yield.”

2 (Kavounas Decl., Exh. B, at 4:28-5:12.)

3 **2. Chino Basin Watermaster**

4 The Judgment appointed CBMWD as the initial Watermaster to administer and enforce
5 the Judgment and any subsequent orders. (Judgment, ¶ 16.) On February 19, 1998, the Court
6 appointed a nine-member Board (Board), with individual Board members appointed by the
7 various interests in the Basin, as “Interim Watermaster” between March 1, 1998 and June 30,
8 2000 and directed the Interim Watermaster to develop and submit the Optimum Basin
9 Management Plan (OBMP), as discussed in greater detail below. (Kavounas Decl., Exh. C
10 [February 19, 1998 Order].) The Court has extended the appointment of nine-member Board on
11 multiple occasions. The present appointment of the nine-member Board runs through February
12 10, 2024. (Kavounas Decl., Exh. D [December 28, 2018 Order].)

13 Watermaster’s powers include, but are not limited to, employing experts and agents
14 (Judgment, ¶ 20), levying assessments (Judgment, ¶ 22), studying hydrologic conditions
15 (Judgment, ¶ 27), among others. The Judgment grants Watermaster “discretionary powers in
16 order to develop an optimum basin management program for Chino Basin, including both water
17 quantity and quality considerations” with the advice of the Advisory and Pool Committees.
18 (Judgment, ¶ 41.) All Watermaster actions, decisions or rules are subject to review by the Court
19 on motion by any party, Watermaster, the Advisory Committee, or any Pool Committee.
20 (Judgment, ¶ 31.)

21 **3. Pool and Advisory Committees**

22 The Judgment established three pools for Watermaster administration of, and for the
23 allocation of responsibility for, and payment of, costs of replenishment water and other aspects of
24 the Physical Solution. (Judgment, ¶ 43.) Owners of appropriative rights, such as Moving Parties,
25 are members of the Appropriative Pool.³ (Judgment, Exh. “E” [Appropriative Rights].) The
26 Judgment directed the organization of groundwater producer representatives as to act as Pool

27 _____
28 ³ The other two pools are the Overlying (Agricultural) Pool and the Overlying (Non-Agricultural)
Pool. (Judgment, ¶ 43.)

1 Committees to develop policy recommendations for administration of the pool and provide advice
2 and direction to Watermaster implementation of the Judgment. (Judgment, ¶¶ 32, 38.) The Pool
3 Committees function in accordance with their respective pooling plans. (See Judgment, Exh. “H”
4 [Appropriative Pool Pooling Plan]; Judgment, ¶ 32.)

5 The three Pool Committees jointly form the Advisory Committee, which has “the duty to
6 study, and the power to recommend, review and act upon all discretionary determinations made
7 or to be made hereunder by Watermaster.” (Judgment, ¶¶ 32, 38(b).) The Advisory Committee is
8 composed of 10 voting representatives from each pool designated by each Pool Committee in
9 accordance with its pooling plan. (Judgment, ¶ 32.) The total voting power of the Advisory
10 Committee is one hundred (100) votes allocated among the three pools pro rata based on
11 assessments paid in the preceding year. (Judgment, ¶ 34.) Presently, the Appropriative Pool is
12 allocated 75 votes, the Overlying (Agricultural) Pool 20 votes, and the Overlying (Non-
13 Agricultural) Pool 5 votes. (Kavounas Decl., ¶ 7.)

14 The full scope of the Advisory Committee’s relationship to the Watermaster Board is
15 discussed in the Report and Recommendation of Special Referee to Court Regarding: (1) Motion
16 for Order that Audit Commissioned by Watermaster is not a Watermaster Expense, and (2)
17 Motion to Appoint a Nine-Member Watermaster Board (Report and Recommendation), which
18 was incorporated into the Court’s February 19, 1998 Order Appointing a Nine Member Board.
19 (Kavounas Decl., ¶ 3; Kavounas Decl., Exh. C, at 2:15-16.) Watermaster cannot take certain
20 actions (including adoption of a budget) absent recommendation or advice of the Advisory
21 Committee – adopting a budget is not identified as “discretionary”. (Kavounas Decl., Exh. C,
22 Report and Recommendation, 15:18-20; see also Judgment, ¶ 30.) Watermaster’s Court-
23 Approved Rules and Regulations require Watermaster to take action to adopt “the budget which
24 was approved by Advisory Committee . . .” (Kavounas Decl., Exh. E [Watermaster Rules and
25 Regulations], § 2.20.)

26 **C. The Optimum Basin Management Plan**

27 In its 1998 order appointing the nine-member Board, the Court ordered Watermaster to
28 develop the OBMP to maximize the beneficial utilization of the Basin and preserve the quantity

1 and quality of water resources. (Judgment, ¶ 41.) To fund development of the OBMP, including
2 the CEQA review, Watermaster began assessing the parties to the Judgment to undertake
3 technical work and studies before the OBMP, the OBMP Implementation Plan, or the Peace
4 Agreement were finalized. (Declaration of Joseph S. Joswiak in Support of Chino Basin
5 Watermaster’s Opposition to Motion Challenging Watermaster’s Budget Action to Fund
6 Unauthorized CEQA Review [hereafter, “Joswiak Decl.”], at ¶ 17.)

7 In 1999, over opposition from MVWD, the Court approved IEUA as “Lead Agency” to
8 conduct CEQA a “programmatic” level environmental review of the OBMP. (MP RJN, Exh. 3
9 [November 18, 1999 Order].) The “parties to the Judgment” executed the Peace Agreement in
10 July of 2000, declaring IEUA the Lead Agency for a Programmatic Environmental Impact Report
11 (“PEIR”). The Court ordered Watermaster to proceed in accordance with the Peace Agreement,
12 conditioned upon the certification of the PEIR. The parties developed an Implementation Plan
13 outlining the tasks and projects necessary for implementation and memorialized their agreement
14 to implement the OBMP with the Peace Agreement. (See Kavounas Decl., Exh. G [Peace
15 Agreement], Exh. B [OBMP Implementation Plan].) In 2007, the parties entered into the Peace II
16 Agreement to further enhance Basin management; again IEUA certified an environmental report,
17 this time a Subsequent Environmental Impact Report (SEIR) in 2010.⁴ (Kavounas Decl., at ¶ 13.)

18 **D. The Peace Agreements**

19 The Peace Agreement⁵ outlined the parties’ intent to implement the Optimum Basin
20 Management Program as well as other related responsibilities of Watermaster and the parties. The
21 initial term of the Peace Agreement is 30 years. (Peace Agreement, § 8.2.) Section 4.4 of the
22 Peace Agreement describes the changes to the Judgment to which the parties agreed. These
23 changes do not include a change to Watermaster’s budget process. Nor does the Peace Agreement
24 mention the Watermaster budget process in any other regard.

25 ⁴ IEUA has also certified two addenda related to the parties’ storage of water within the Basin. In
26 2017, IEUA certified an Addendum to the 2000 PEIR certifying that a temporary increase in
27 storage would have no undesirable results. In 2021, IEUA certified a second Addendum to the
28 2000 PEIR regarding environmental coverage of the Local Storage Limitation Solution (LSLS).
(Kavounas Decl., at ¶ 13.)

⁵ The Peace agreement is an agreement among the parties to the Judgment and by order of this
Court, Watermaster acts consistent with its terms.

1 In 2007, the Peace II Agreement was entered into by the parties to the Peace Agreement.
2 (Kavounas Decl., Exh. H [Peace II Agreement].) The Peace II Agreement enabled expansion of
3 desalters to produce 40,000 acre-feet per year and enabled reduction of groundwater discharge
4 from the Chino North Management Zone to the Santa Ana River to *de minimis* quantities
5 (hydraulic control) by controlled overdraft of the Basin (Basin Re-Operation). (Peace II
6 Agreement, §§ 1.1(b), 1.1(d), 5.1, 5.2, 5.4.)

7 **E. The 2020 OBMP Update**

8 Watermaster updated the OBMP in 2020 and began a facilitated process for the
9 negotiation of an update to the OBMP Implementation Plan.⁶ (Kavounas Decl., ¶ 14.) To that end,
10 Watermaster hosted an OBMP Implementation Plan Drafting Orientation Session on March 2,
11 2020 and an OBMP Implementation Plan Drafting Session #1 on March 16th, 2020. (Kavounas
12 Decl., ¶ 14.) On March 26, 2020, MVWD requested the process be delayed so Parties could
13 address the COVID-19 pandemic. (Kavounas Decl., ¶ 14.) In 2020, IEUA prepared a draft
14 Subsequent EIR (SEIR) for the 2020 OBMP that analyzed the anticipated OBMP implementation
15 projects pursuant to the 2020 OBMP, and that would facilitate the parties' eligibility for grant
16 funding for the activities reviewed in that SEIR. (Kavounas Decl., ¶ 15.) None of the Moving
17 Parties challenged Watermaster's budgeting process⁷ or the manner in which Watermaster's
18 technical consultant and legal counsel participated in the development and review of the 2020
19 draft SEIR. (Kavounas Decl., ¶ 15.)

20 On the morning of the meeting at which the IEUA Board was to consider the item,
21 Ontario transmitted a letter to IEUA alleging deficiencies in the draft SEIR and the IEUA Board
22 of Directors did not certify the draft SEIR.. (Kavounas Decl., ¶ 16.) Following dialogue with the
23 Board and parties, Watermaster included in its draft budget for FY 2022/23 funding for activities
24 necessary to complete the environmental review of the 2020 OBMPU and assist the parties in
25 coming to an agreement regarding the amendment of the OBMP Implementation Plan. (Kavounas

26 _____
27 ⁶ The OBMP Implementation Plan is Exhibit "B" to the Peace Agreement.

28 ⁷ In fact, the budget amendment for the CEQA work for the 2020 draft SEIR was unanimously recommended for approval by the Appropriative Pool Committee and unanimously approved by the Advisory Committee. (Kavounas Decl., ¶ 14.)

1 Decl., ¶ 17.)

2 Following the approval of the FY 2022/23 Budget, the process of which is described
3 below, the Watermaster Board received a presentation at its July 28, 2022 meeting regarding the
4 2000 and 2020 OBMP and took action⁸ to: (1) Direct staff to meet with all interested
5 stakeholders, including the Moving Parties, to evaluate the current status of the 2020 OBMP,
6 consider changes in circumstances, and gather stakeholder input; and (2) Using input from the
7 meetings with stakeholders, develop a project description for the 2020 OBMP PEIR and proceed
8 with the effort within the approved budget. (Kavounas Decl., ¶ 18; Kavounas Decl., Exh. J [July
9 28, 2022 Board Minutes].)

10 At its August 25, 2022 meeting, in response to the request of the Moving Parties, the
11 Board directed the Watermaster General Manager to explore the interest of the parties in
12 Watermaster facilitation of OBMP project level implementation. (Kavounas Decl., ¶ 19.)
13 Meanwhile, Watermaster held its previously scheduled workshop on September 1, 2022 to
14 discuss the 2020 OBMP programmatic level environmental review process, including potential
15 updates to the 2020 OBMP Project Description. (Kavounas Decl., ¶ 20.) A CEQA consultant is
16 preparing an updated Project Description for a programmatic level evaluation with feedback
17 received from many parties. (Kavounas Decl., ¶ 20.) Watermaster staff has contacted many of the
18 parties to the Peace Agreement and all parties contacted have agreed to participate in facilitated
19 negotiations regarding potential OBMP Implementation Plan and Peace Agreement amendments
20 that would trigger a more refined level of environmental review at a “project” level. (Kavounas
21 Decl., ¶ 22.)

22 **F. 2022-2023 Budget Process**

23 Moving Parties’ complaint with the May 26, 2022 approval of the 2022-2023 Budget is
24 based on two line items within the approved budget totaling \$402,999, which Moving Parties
25 misconstrue. The first line item is within the legal services budget and allocates \$126,200 for
26 “OBMP Update”.⁹ (Kavounas Decl., Exh. L [May 26, 2022 Staff Report], at 5.) The second line

27 ⁸ The Board member appointed by MVWD voted no. (Kavounas Dec., Exh. J.)

28 ⁹ Expenses related to the implementation of the OBMP are considered Watermaster
Administrative Expenses pursuant to paragraph 54 of the Judgment. (R&R, § 4.2.) The Judgment

1 item is within engineering services and budgets \$276,799 for “2020 OBMP Update”. (Kavounas
2 Decl., Exh. L, at 7.) Both items not only “support a new PEIR being prepared by IEUA in
3 connection with the OBMPU” (Motion, at 10:17-20), but also support Watermaster facilitation of
4 an amendment to the Peace Agreement, as requested by the Moving Parties, and 2020 OBMP
5 Implementation Plan development. (Kavounas Decl., Exh. N [July 28, 2022 Staff Report], at 4.)
6 The challenged budget items do not include funding for the CEQA consultant that would prepare
7 the environmental review document (Kavounas Decl., Exh. N, at 5) – although that would not be
8 improper if it had.

9 To prepare a budget of anticipated expense each year, Watermaster staff conducts
10 meetings internally and with consultants to discuss upcoming projects and anticipated work.
11 (Joswiak Decl., ¶¶ 4, 5.) As the budget is developed, the related budgeted expenses are
12 continually refined. (Joswiak Decl., ¶ 4.) From all these various committees and groups, and other
13 inputs from operations staff, Watermaster developed the Proposed FY 2022/23 Budget in the
14 amount of \$9,490,976 and presented an overview on March 22, 2022. (Joswiak Decl., ¶ 6.)
15 Watermaster requested attendees email questions or comments to Watermaster Chief Financial
16 Officer, Joseph Joswiak, as has occurred the last several years. (Joswiak Decl., ¶ 6.) No questions
17 were received after the Budget Release meeting. (Joswiak Decl., ¶ 6.)

18 Watermaster presented the budget in detail at Budget Workshop #1 on April 19, 2022.
19 (Joswiak Decl., ¶ 7.) On April 19, 2022, Watermaster received written questions from MVWD.
20 (Joswiak Decl., ¶ 8.) Watermaster provided responses and posted them to the Watermaster
21 website. (Joswiak Decl., ¶ 8.) On April 27, 2022, following Workshop #2, updated responses
22 were provided and posted to the Watermaster website. (Joswiak Decl., ¶ 8.)

23 The Watermaster Budget Workshop #2 was held on Tuesday, April 26, 2022. (Joswiak
24 Decl., ¶ 9.) Watermaster staff reviewed responses to the MVWD questions submitted earlier and

25 _____
26 divides Administrative Expenses into “General Watermaster Administrative Expense” (office
27 rental, personnel, supplies, equipment, and related incidental expense and overhead) and “Special
28 Project Expense” (special engineering, economic or other studies, litigation expense, meter
testing or other major operating expenses). (Judgment, ¶ 54.) OBMP expenses are special project
expenses as defined in paragraph 54(b) of the Judgment and therefore are properly included in
Watermaster’s Administrative Budget.

1 invited any further questions.(Joswiak Decl., ¶ 9.) Watermaster posted Moving Parties’ May 2,
2 2022 letter along with Watermaster comments to the Watermaster Website on May 4, 2022.
3 (Joswiak Decl., ¶ 10.) The Watermaster Budget Workshop #3 was held on May 3, 2022 to discuss
4 the responses to the April 19, 2022 email from MVWD, and the Moving Parties’ May 2, 2022
5 letter. (Joswiak Decl., ¶ 10.)

6 Each of the three Pool Committees considered whether to provide advice and assistance
7 on the FY 2022/23 Budget during their regular meetings on May 12, 2022. The Appropriative
8 Pool Committee took no action.¹⁰ (Joswiak Decl., ¶ 11.) The Overlying (Non-Agricultural) Pool
9 Committee, by majority vote, recommended to recommend to the Advisory Committee to
10 approve the FY 2022/23 Budget as presented. (Joswiak Decl., ¶ 11.) The Overlying (Agricultural)
11 Pool Committee, by unanimous vote, recommended to recommend to the Advisory Committee to
12 approve the FY 2022/23 Budget as presented. (Joswiak Decl., ¶ 11.) On May 19, 2022, the
13 Advisory Committee approved the 2022-23 Budget by majority (72.141 votes out of 100).
14 (Joswiak Decl., ¶ 12; Kavounas Decl., Exh. K [May 19, 2022 Advisory Committee Minutes].) On
15 May 26, 2022, the Board approved the 2022-23 Budget by vote of 8-1; the representative from
16 MVWD voted against budget approval. (Joswiak Decl., ¶ 13; Kavounas Decl., Exh. M [May 26,
17 2022 Board Minutes].)

18 Watermaster has not assessed the parties for the expenses approved in the FY 2022/23
19 Budget. (Joswiak Decl., ¶ 14.) Watermaster levies assessments based upon production during the
20 prior year, meaning that the parties will be assessed for FY 2022/23 Budget expenses based on
21 their production in production year 2021/22. (Joswiak Decl., ¶ 14.) Following the close of a
22 production year on June 30 of each year, Watermaster staff work with the producers to certify
23 their water use and transactions during the production year. (Joswiak Decl., ¶ 14.) After that
24 process is completed, generally in September of each year, Watermaster staff calculates the
25 assessments to be levied on each party based on the current budget and production in the prior
26 year and the Pooling Plans’ direction and agreements of the parties as to the manner in which

27 ¹⁰ The Appropriative Pool further considered the item in confidential session on May 19, 2022.
28 There was no reportable action taken at the May 19, 2022 confidential session. (Joswiak Decl., ¶ 11.)

1 assessments be spread among them. (Joswiak Decl., ¶ 14.) The assessments that collect funds for
2 the FY 2022/23 Budget have not yet been calculated or levied. (Joswiak Decl., ¶ 15.)
3 Watermaster staff plans to bring these assessments to the Pool Committees, Advisory Committee,
4 and Watermaster Board in November 2022. (Joswiak Decl., ¶ 15.)

5 **III. DISCUSSION**

6 **A. The Watermaster Board Appropriately Approved the FY 2022/23 Budget**
7 **and Moving Parties do not suggest otherwise**

8 Watermaster appropriately approved the FY 2022/23 Budget, including the challenged
9 expenses, pursuant to the terms of the Judgment and this Court’s orders. In addition to omitting
10 any reference to the actions of the Pool and Advisory Committees prior to the Board’s vote, the
11 motion alleges no violation of the Budget approval process.

12 **1. Watermaster is Bound to Follow the Advisory Committee’s Approval of**
13 **the 2022-23 Budget**

14 Fundamentally, Moving Parties’ objection arises from their failure to persuade a majority
15 of the voting power of the Advisory Committee, of which 72.141 votes out of 100 voted to
16 approve the FY 2022/23 Budget. Watermaster is bound to follow the Advisory Committee’s
17 budget decision and lacks discretion as to budget approval absent Court direction to the contrary.
18 (Kavounas Decl., Exh. C, Report and Recommendation, 15:18-20; Judgment, ¶ 30; Kavounas
19 Decl., Exh. E, § 2.20.) On May 26, 2022, the Watermaster Board approved the FY 2022/23
20 Budget as approved by the Advisory Committee at its May 19, 2022 meeting. (Joswiak Decl., ¶¶
21 12-13; Kavounas Decl., Exh. M; Kavounas Decl., Exh. K.) Only one member, appointed by
22 MVWD, voted against budget approval. (Kavounas Decl., Exh. M.) There was no error in the
23 budget process that supports invalidating the decision of the Advisory Committee and the
24 Watermaster Board.

25 It should also be noted that Watermaster took due care to address Moving Parties’
26 concerns, hosting an initial budget release meeting and three budget workshops and responding to
27 Moving Parties’ letters in writing and at budget workshop. (Joswiak Decl., ¶¶ 6-10.) Watermaster
28 continued to communicate with Moving Parties and prepared detailed staff reports again

1 addressing Moving Parties’ concerns before the July 28, 2022 Watermaster Board meeting.¹¹ (See
2 Kavounas Decl., Exh. N.)

3 2. OBMP CEQA Review is Properly Within the Watermaster Parties’
4 Funding Power

5 The Board was ordered to develop its first OBMP in 1998. The OBMP’s update is
6 consistent with the Judgment’s direction that it is essential that its Physical Solution provide
7 maximum flexibility and adaptability in order that Watermaster and the Court may be free to use
8 existing and future technological, social, institutional and economic options, in order to maximize
9 beneficial use of the waters of Chino Basin. (Judgment, ¶ 40.) Programmatic level environmental
10 review of the OBMP, as updated, in order to facilitate OBMP implementation and potential
11 funding thereof is consistent with Watermaster’s past practice and in furtherance of “the full
12 utilization of the water resources of Chino Basin”. (Judgment, ¶ 41.) The work of Watermaster
13 and the management of the Basin cannot continue if there is insufficient funding to support
14 prudent evaluation.

15 Further, the Judgment permits expenditures for “special engineering, economic or *other*
16 *studies*, litigation expense, meter testing or *other major operating expenses*.” (Judgment, ¶ 54(b)
17 [emphasis added].) Environmental review pursuant to CEQA fits within these categories and
18 Moving Parties argue that because the Judgment does not specific expenditure for CEQA among
19 the general categories in Paragraph 54(b) that Watermaster is prohibited from spending funds to
20 ensure CEQA compliance. This is inconsistent with historical practice and Court order. (See, e.g.,
21 Motion, at 14:2-6 [quoting Kavounas Decl., Exh. I (December 21, 2007 Order)]; Kavounas Decl.,
22 Exh. F.) Moving Parties are aware of the inclusion of similar expenses in Watermaster’s budgets
23 in the past and have paid assessments for the same. (Joswiak Decl., ¶ 17.)

24
25 ¹¹ Moving Parties state many times that Watermaster did not provide the “legal opinion” that they
26 requested regarding CEQA review of the 2020 OBMP. Watermaster staff and counsel, both at
27 public workshops and separately, responded to Moving Parties questions regarding the draft FY
28 2022/23 Budget. (Joswiak Decl., ¶¶ 6-10.) Moving Parties cite to no provision of the Judgment or
any Court order that would require Watermaster to provide detailed legal opinions to the parties.
Moving Parties’ rationale for such a request is unclear, particularly where Watermaster legal
counsel’s client is the Watermaster Board and each Moving Party has its own counsel.

1 3. Any Challenge to the Assessment of the Challenged Expenses is Premature
2 To the extent Moving Parties seek relief related to assessments, such a determination is
3 not ripe, as the Board has taken no action to assess for FY 2022/23 expenses.¹² (See Motion, at
4 6:2-4 [“Watermaster will assess parties to the Judgment, including the Moving Parties, for these
5 budgeted expenses via the forthcoming Watermaster assessment package.”].)

6 The argument that the Peace Agreement parties must unanimously agree to budget for
7 OBMP expenses is unsupported by the Judgment and Peace Agreement and contrary to past
8 practice. As described above, the parties were assessed for OBMP related expenses before the
9 Peace Agreement existed. (Joswiak Decl., ¶ 17.) The Peace Agreement contains no provisions
10 related to the Watermaster budget and did not include support for any proposed changes to the
11 Judgment as to Watermaster’s budget processes. The Peace Agreement’s unanimity provision,
12 section 10.14, pertains to amendments to the agreement itself; and, while the OBMP
13 Implementation Plan is an exhibit/attachment thereto, nowhere do Moving Parties contend that
14 the Implementation Plan is inclusive of Watermaster’s OBMP expenses budget.

15 Finally, Moving Parties’ assertion that “Section 2.2 of the Peace Agreement confirms that
16 any CEQA review of then-agreed-to project elements does not extend to future projects to which
17 agreement has not yet been reached” (Motion, at 9:18-20) is inaccurate. Section 2.2 of the Peace
18 Agreement merely states: “Execution of this Agreement is not intended to commit any Party to
19 undertake a project without compliance with CEQA or to commit the Parties to a course of action,
20 which would result in the present approval of a future project.” This section makes clear that each
21 parties’ individual execution of the Peace Agreement was not in and of itself a “project under
22 CEQA” – intended to protect them from CEQA lawsuits based on their *execution* of the Peace
23 Agreement. This is unambiguous when read in conjunction with the preceding section 2.1 (In
24 executing this Agreement, the Parties agree that no commitment will be made to carry out any
25 ‘project’ under the OBMP and within the meaning of CEQA unless and until the environmental

26 ¹² Moving Party Ontario is aware of the process for challenging Watermaster’s Assessment
27 Package, as can be seen from its February 17, 2022 Application for an Order to Extend Time
28 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.

1 review and assessments required by CEQA for that defined "project" have been completed.)

2 **B. Watermaster's Actions as to Environmental Review of the 2020 OBMPU**
3 **are Proper**

4 While Moving Parties' CEQA arguments are premature or not properly part of
5 Watermaster's budgeting considerations, Watermaster responds to them briefly here to aid the
6 Court's understanding.

7 **1. Moving Parties' CEQA Arguments are Premature**

8 Watermaster is not an agency that is subject to CEQA – as Moving Parties repeatedly
9 point out. In this case, Watermaster is budgeting for activities by its consultants in support for a
10 process that will be conducted by IEUA. The budgeted expenses to which Moving Parties object
11 are – in part¹³ – Watermaster's technical consultants and counsel's work to facilitate IEUA's
12 process. Watermaster has held a workshop as to CEQA review of the OBMPU and has solicited
13 from the parties to the Judgment their feedback as to activities properly included in the project
14 description for the OBMPU. (Kavounas Decl., ¶ 19.) IEUA has not made any determination as to
15 the form of the CEQA document for the CEQA review contemplated in the FY 2022/23 Budget,
16 or how it might relate to the draft SEIR prepared in 2020 (Kavounas Decl., ¶ 20.) As Moving
17 Parties are aware, they will have many opportunities to participate in, voice objections as to, and
18 even potentially bring suit as to, the CEQA process for environmental review of the OBMPU.

19 Ontario has separately challenged the EIR that IEUA certified as to the Chino Basin
20 Project, which seems to be Moving Parties' primary concern as to the environmental review of
21 the OBMPU. (Motion, at 16:27-28; Jones Decl., ¶ 12.) In order to comply with CEQA, a public
22 agency must compile the information required by CEQA. These activities must occur before
23 project approval in order to serve their informational purposes. (*Laurel Heights Improvement*
24 *Assn. v. Regents of Univ. of California* (1993) 6 Cal. 4th 1112, 1123 [“Its purpose is to inform the
25 public and its responsible officials of the environmental consequences of their decisions *before*
26 they are made.”]; *S. of Mkt. Cmty. Action Network v. City & Cnty. of San Francisco* (2019) 33

27 ¹³ The budgeted expenses also include technical consultants' and legal counsels' support for the
28 OBMP Implementation Plan and Peace Agreement amendment facilitated negotiations that
Moving Parties have requested. (Kavounas Decl., Exh. N, at 4.)

1 Cal. App. 5th 321, 330 [“. . . whether the discussion sufficiently performs the function of
2 facilitating ‘informed agency decisionmaking and informed public participation.’”].) As an
3 informational process, it is not clear from the Motion how Moving Parties postulate that
4 environmental review of the OBMPU – even led by IEUA – would somehow “prefer” an IEUA
5 project for which an EIR has already been certified.

6 **2. The Court has Previously Authorized and Required CEQA Review**
7 **as to OBMP Activities**

8 Moving Parties argue that Watermaster’s actions in implementing the physical solution
9 are not subject to CEQA. Courts have determined CEQA does not apply to implementation of
10 physical solutions where watermasters or parties lack discretion to modify the terms. (See e.g.,
11 *Cent. Basin Mun. Water Dist. v. Water Replenishment Dist. of S. California* (2012) 211 Cal. App.
12 4th 943, 951 [“CBMWD seeks to have WRD exercise its authority in contravention of the
13 Judgment by requesting WRD study consequences of the carryover and five-year replenishment,
14 which are terms of the Judgment establishing a physical solution (and not subject to WRD's
15 modification.)”]; *Hillside Memorial Park and Mortuary v. Golden State Water Co.*, 205
16 Cal.App.4th 534, 550 [“[W]here an existing judgment is in place establishing a physical solution
17 to water rights issues, the public agency has no judgmental controls to exercise. The power to act
18 in these circumstances is reserved to the court.”].)

19 The miss the point. The adoption of the OBMP by Watermaster is not a "project" for
20 purposes of CEQA. However, the physical projects carried out by the parties under the OBMP
21 may be. This is abundantly clear and blackletter law. It is precisely why CEQA’s application to
22 the OBMP was specifically considered in a court decision dated November 18, 1999. The Court
23 determined that the “OBMP is likely to involve numerous public agencies undertaking activities
24 that may cause direct as well as indirect physical environmental harm.” (Kavounas Decl., Exh. F
25 [citing Pub. Res. Code, § 21065; Cal. Code Regs., tit. 14 § 15378].)

26 Aside from its responsibility for evaluating Material Physical Injury,¹⁴ Watermaster
27 responsibility is to "provide the Court with assurances that Watermaster's approval and

28 ¹⁴ A core function of Watermaster in reviewing actions before it to avoid physical harm.

1 participation in any project that is a 'project' for CEQA purposes has been or will be subject to all
2 appropriate CEQA review." (Motion, at 14:2-6 [quoting Kavounas Decl., Exh. I].) Here,
3 Watermaster has recommended preparation of a PEIR, or a supplement to the prior PEIR, which
4 is "preprepared when an activity is composed of a series of actions that are related
5 geographically, a logical part in a chain of contemplated actions, connected as part of a
6 continuing program, carried out under the same authorizing statute or regulatory authority and
7 have similar environmental impacts that can be mitigated in similar ways." (Kavounas Decl., Exh.
8 F [citing Cal. Code Regs., tit. 14 § 15168].) Because the OBMP "sets forth a long-term program
9 for Basin management" and because "certain programs within the OBMP will necessitate further
10 project-specific CEQA evaluation", the Court held that preparation of a PEIR for the OBMP was
11 appropriate. (Kavounas Decl., Exh. F.) The Court also approved IEUA's agreement to serve as
12 lead agency for CEQA review. (Kavounas Decl., Exh. F.) The Peace Agreement recites and
13 provides for IEUA to perform environmental review functions for the 2020 OBMP. (Peace
14 Agreement, § 2.4.) It has undertaken this responsibility for the convenience of the parties on
15 multiple occasions because it results in more informed decision-making, e.g. Dry-Year Yield,
16 Basin-Re-Operation - Hydraulic Control; Storage Addendums. In regard to the Peace II
17 Agreement, the Court specifically conditioned its approval of the agreement on CEQA review
18 being conducted. (Kavounas Decl., Exh. I, at 8:6-9, 8:26-27.) Watermaster technical support is
19 offered for a programmatic level environmental review by IEUA, not because it is required, but
20 because it will result in better informed decision-making.

21 **IV. CONCLUSION**

22 At best, Moving Parties have identified a disagreement with Watermaster and all other
23 parties. They prefer environmental review of only those "projects" they approve for
24 implementation rather than a programmatic evaluation of all potential projects before making a
25 project specific decision. The law, public interest, and common sense support Watermaster's
26 action.

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Dated: October 3, 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 October 3, 2022, I served the following:

1. CHINO BASIN WATERMASTER'S OPPOSITION TO 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 the United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:

See attached service list: Mailing List 1

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.

See attached service list: Master Email Distribution List

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 3, 2022 in Rancho Cucamonga, California.



By: Denise Morales
Chino Basin Watermaster

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