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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DISTRICT

14 CHINO BASIN MUNICIPAL WATER
15 DISTRICT,

16 Plaintiffs,

17 v.

18 CITY OF CHINO, et al.,

19 Defendants.

CASE NO.: RCVRS 51010

Assigned for All Purposes to Hon. Gilbert G. Ochoa

**INLAND EMPIRE UTILITIES AGENCY'S
OPPOSITION TO MOTION CHALLENGING
WATERMASTER'S BUDGET ACTION TO
FUND UNAUTHORIZED CEQA REVIEW;
DECLARATION OF SHIVAJI DESHMUKH**

DATE: October 14, 2022

TIME: 9:00 a.m.

DEPT: S24

20
21 COMES NOW, the INLAND EMPIRE UTILITIES AGENCY ("IEUA"), which submits the
22 following Memorandum of Points and Authorities in opposition to Motion Challenging Watermaster's
23 Budget Action to Fund Unauthorized CEQA Review.

24 **I.**

25 **INTRODUCTION**

26 IEUA is a municipal water district organized and existing pursuant to the Municipal Water
27 District Act of 1911. IEUA provides wastewater treatment services to the cities of Chino, Chino Hills,
28 Fontana, Ontario, Montclair, Upland as well as Cucamonga Valley Water District. IEUA is also a

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1 member agency of the Metropolitan Water District and facilitates the delivery of imported water to local
2 agencies.

3 IEUA was first appointed as lead agency for the Optimum Basin Management Plan (OBMP)
4 Programmatic Environmental Impact Report (PEIR) by court order in 1999 and at the suggestion of
5 Watermaster. These facts are noted in the moving papers at page 8. The selection was based, in part, on
6 the fact that IEUA is a regional water and wastewater agency with jurisdictional boundaries similar to the
7 boundaries of the Chino Basin. Until now no objection has been lodged regarding IEUA serving as lead
8 agency from any of the moving parties even though IEUA had several of its own projects planned under
9 the umbrella of the OBMP. Since 2000, many of the OBMP projects have been completed.

10 The moving papers omit critical history related to the OBMP PEIR and IEUA's role as lead agency.
11 Since 2017, efforts have been made to reevaluate and refresh the original PEIR to comport to current
12 conditions of the Chino groundwater basin. Naturally, IEUA continued in its court-appointed position as
13 lead agency without objection from other parties. Those efforts were funded by Watermaster, again
14 without objection from the moving parties that Watermaster was unauthorized to proceed. IEUA
15 challenges the notion raised in the moving papers that it is somehow not qualified to serve as lead agency
16 for the OBMP PEIR due to some perceived conflict of interest. Moreover, the moving parties'
17 speculative arguments of favoritism by IEUA are refuted by the long history of successful projects
18 conceived and implemented by IEUA which benefit the region, including the moving parties.

19 II.

20 ARGUMENT

21 **A. IEUA is the appropriate agency to serve as lead agency for the OBMP PEIR**

22 Cloaked in challenges to Watermaster's authority, the pending motion is nothing more than a
23 veiled attack on the Chino Basin Program (CBP) currently under consideration by IEUA. The CBP has
24 been the subject of its own separate CEQA review and a PEIR was recently certified for that project. As
25 noted in the moving papers, Ontario has filed a legal challenge to that PEIR.

26 The moving parties argue that it would be inappropriate to allow IEUA to serve as lead agency as
27 it would enable IEUA to promote the CBP, presumably at the expense of other local projects. They offer
28 neither fact nor law to support their specious allegations. The fact is that since being appointed by the

1 court to serve as lead agency under the OBMP PEIR, IEUA has implemented almost 30 of its own
2 projects to benefit the entire Chino Basin region. (Declaration of Deshmukh, pg. 2) Never, over the
3 course of more than 20 years, has IEUA promoted its own projects at the expense of projects promoted
4 by others, and the moving parties have not cited a single instance where that has occurred. Rather IEUA
5 has worked cooperatively with other agencies to implement projects which benefit the region overall.

6 The fact that IEUA has one or more OBMP projects under consideration does not disqualify it
7 from serving as lead agency. To the contrary, it is common that the lead agency have an interest in the
8 project under review. The issue was addressed in the case of *Center for Biological Diversity v. County of*
9 *San Bernardino* (2016) 247 Cal App. 4th 326, where the court stated:

10 “We conclude that the relevant portions of the Public Resources Code and the Guidelines set forth the
11 applicable criteria for determining which agency involved in a project should be the lead agency. That
12 agency need not be free from receiving any benefit from the project, as long as that agency is able to
13 fully and fairly provide the necessary environmental information required by CEQA’s processes. Santa
14 Margarita’s interest in the Project did not automatically make it an improper lead agency. Indeed, the
15 language of Guidelines section 15051, subdivision (a) requires a public agency to take on the role of lead
16 agency when it is carrying out the project in question.” *Id.* at 345.

17 The moving parties have offered nothing to suggest that IEUA should be disqualified from
18 serving as lead agency under the OBMP PEIR. Neither the facts nor the law supports their position.

19 **B. The arguments challenging Watermaster neutrality are distorted and unsupported**

20 The moving papers challenge Watermaster’s neutrality, painting the picture of Watermaster as a
21 solitary entity conspiring with IEUA to impose unwanted projects upon the remaining Chino Basin
22 parties. In fact, Watermaster is governed by a nine-member board comprised of elected and appointed
23 officials from various agencies within the region not all of whom support the CBP. The decision-making
24 process includes three pool committees representing various basin groundwater producers and an
25 advisory committee which reports to the Board, all of which adds to the transparency of the process. The
26 moving parties argue that Watermaster is not authorized to appoint IEUA as lead agency for the OBMP
27 PEIR as inimical to its obligation of neutrality. Capital projects which come under the umbrella of the
28 OBMP are not restricted to IEUA, any local agency can pursue its own projects. All the proposed

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1 projects will undergo separate CEQA analysis to determine whether they comport to the OBMP PEIR.
2 Likewise, all the proposed OBMP projects are subject to the material physical injury analysis by
3 Watermaster. Under the scenario offered by the moving parties, Watermaster would effectively be
4 precluded from selecting a lead agency from amongst its members as any of them could propose a project
5 at any given time, thereby impugning Watermaster's neutrality.

6 As noted above, the pending motion is not so much a challenge of Watermaster's authority but
7 rather a manipulation of the Watermaster process to challenge the CBP. In 2017, Watermaster appointed
8 IEUA to serve as lead agency for the preparation of Addendum 1 of the OBMP PEIR. (Declaration of
9 Deshmukh, pg.2) No challenge to Watermaster's authority or neutrality was lodged at that time. Again,
10 as recently as 2019 IEUA was designated as the lead agency for the preparation of Addendum 2 of the
11 OBMP PEIR without objection. (Declaration of Deshmukh, pg. 2)

12 **III.**
13 **CONCLUSION**

14 If the moving parties were truly convinced in the legitimacy of their position, these objections
15 would have been made long ago. A separate and stand-alone CEQA analysis for the CBP has been
16 completed and the PEIR for that project has been certified. Ontario has filed a legal challenge to that
17 document as they are entitled to do and that is the proper forum within which to mount that challenge.
18 Manipulating the Watermaster dispute process in the manner pursued by the moving parties herein sets a
19 dangerous precedent whereby a local agency could extend its authority beyond its own territorial
20 jurisdiction to disrupt its neighbors' projects. There are ample safeguards in the Watermaster decision-
21 making process to protect the region from projects which might result in material physical injury to the
22 basin and the CBP will be reviewed accordingly.

23
24 Dated: September 30, 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. INLAND EMPIRE UTILITIES AGENCY'S OPPOSITION TO MOTION CHALLENGING WATERMASTER'S BUDGET ACTION TO FUND UNAUTHORIZED CEQA REVIEW; DECLARATION OF SHIVAJI DESHMUKH

/ X / 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.

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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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