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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*

**MOVING PARTIES' REPLY IN
SUPPORT OF MOTION
CHALLENGING WATERMASTER'S
BUDGET ACTION TO FUND
UNAUTHORIZED CEQA REVIEW**

[Concurrently Filed with Supplemental
Declaration of Courtney Jones]

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Time: 9:00 a.m.

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1 **I. INTRODUCTION**

2 The present dispute turns on a narrow question about Basin governance. Specifically, the
3 question before the Court is whether Watermaster has unilateral authority to choose a “lead
4 agency” to conduct CEQA review in connection with Watermaster’s Optimum Basin
5 Management Program 2020 Update Report (“OBMPU”), and relatedly, whether Watermaster can
6 expend funds and assess the parties to the Judgment for costs associated with such CEQA review
7 without their consent or agreement. The Moving Parties respectfully submit that Watermaster is
8 not endowed with any such authority under the Judgment and applicable law.

9 Despite contrary arguments by Watermaster and the Inland Empire Utilities Agency
10 (“IEUA”), Watermaster’s current action and approach of funding CEQA review in connection
11 with the OBMPU does not reflect consistency with past practice. Rather, the Oppositions
12 misstate the process historically used for achieving CEQA compliance in connection with the
13 OBMP. Historically, the parties have negotiated an agreement that identifies the scope of CEQA
14 review before the environmental review is conducted. In this way, consensus has been achieved
15 among public agencies that will undertake projects--before funding CEQA review.

16 The consensus-based approach not only is consistent with past practice, but also is a legal
17 necessity where Watermaster is concerned. As discussed in more detail in the Motion,
18 Watermaster is not a public agency that undertakes projects subject to the California
19 Environmental Quality Act (“CEQA”). CEQA does not apply to a watermaster’s implementation
20 of a physical solution. (*Hillside Memorial Park & Mortuary v. Golden State Water Co.* (2011)
21 205 Cal.App.4th 534.) Watermaster exists to administer and enforce the Judgment and its
22 Physical Solution on behalf of the Court and under the Court’s continuing jurisdiction.
23 (Judgment, §§ 15,16.) Watermaster’s power is strictly defined and limited by the terms of the
24 Judgment and applicable law. Nothing in the Judgment empowers Watermaster to conduct
25 CEQA review, nor expend funds or assess the parties to the Judgment for such purposes.

26 Watermaster is not a regional governmental agency with plenary power to tax or assess
27 the parties to the Judgment (and thereby impose costs on local residents of Ontario, Chino and
28 MVWD) outside of Watermaster’s authority established under the Judgment or an agreement

1 among the parties. This Court holds the authority to ensure that local residents do not bear costs
2 improperly imposed on them for matters beyond Watermaster’s role.

3 As discussed in detail in the Memorandum of Points and Authorities at pages 16-17,
4 Watermaster must remain neutral with respect to the parties. This concept may be referred to as
5 the “neutrality principle,” and it has been recognized repeatedly by case law and by prior orders
6 of this Watermaster Court. The neutrality principle guards against expansion of Watermaster’s
7 role established by the Judgment or action that favors one party over others, including
8 Watermaster’s present and ongoing expenditures for CEQA activities conducted by IEUA, for
9 which Watermaster will soon assess the parties to the Judgment including the Moving Parties.

10 **II. ARGUMENT**

11 **A. Watermaster’s Opposition Misconstrues Watermaster’s Role, and Tellingly,** 12 **Fails to Explain How Watermaster Could Maintain Neutrality While** 13 **Selectively Funding CEQA Efforts by One Party to the Judgment, IEUA.**

14 Watermaster’s function is to serve as an “‘arm of the Court’ in an impartial and unbiased
15 role.” (*Dow v. Lassen Irrigation Co.* (2022) 75 Cal.App.5th 482.) Watermaster is not a regional
16 governmental agency with plenary power to tax or assess the parties to the Judgment outside of its
17 authority established under the Judgment or an agreement among the parties. Watermaster’s
18 limited function is to administer and enforce the terms of the Judgment. (*Id.* at p. 489.)

19 Neither Watermaster’s nor IEUA’s Oppositions dispute the important point that
20 Watermaster has no responsibility to conduct CEQA as a matter of law. (See Memorandum of
21 Points and Authorities, at p. 13 [“As an arm of the Court, Watermaster is not authorized to
22 conduct environmental review pursuant to CEQA”].) Yet, Watermaster has usurped the role of
23 complying with CEQA on behalf of, and over the objections of, parties to the Judgment. For
24 example, Watermaster *de facto* designated or appointed IEUA to act as “lead agency” to conduct
25 CEQA review in connection with the OBMPU. Additionally, Watermaster is developing a
26 project description for CEQA review purposes that have not been established by the parties
27 having the responsibility for their implementation.

28

1 If the parties to the Judgment consented and agreed to a CEQA review process, as was
2 done in connection with the Peace Agreement and Peace II, there would be no dispute. However,
3 the parties have not consented. Rather, the Moving Parties objected to Watermaster’s budget
4 action and requested a written legal opinion to explain the basis for Watermaster’s decision to act
5 unilaterally without party agreement. Watermaster convened a special meeting of its Board
6 Members on July 28, 2022 specifically to address these issues, and ultimately decided to deny the
7 request for a legal opinion and to direct Watermaster staff to proceed with the CEQA effort within
8 Watermaster’s approved budget. (Meeting Transcript, Exhibit 9 to RJN, filed 8/26/22; see also
9 Jones Decl., at ¶ 9, filed 8/26/22.) The Watermaster Board rejected and voted down a competing
10 motion to add that such action had to be “approved by the Parties”. (*Ibid.*)

11 Watermaster’s identification of IEUA to act as lead agency to conduct CEQA review for
12 the OBMPU represents a clear and troubling violation of the neutrality principle for many reasons
13 explained in the Motion and its supporting declaration and summarized as follows:

- 14 • IEUA is sponsor and advocate for the Chino Basin Program and, as such, refused to
15 consider an alternative advanced water treatment proposal by Ontario, resulting in a
16 lawsuit by Ontario against IEUA alleging inadequate evaluation of alternatives under
17 CEQA. (See Memorandum of Points and Authorities, at p. 16, fn. 7; Jones Decl., filed
18 8/26/22, at ¶ 12.)
- 19 • Ontario submitted its alternative advanced water treatment proposal to Watermaster for
20 consideration for inclusion in the project description of the OBMPU. As “partners” in
21 connection with the Chino Basin Program, Watermaster and IEUA may be inclined to
22 exclude this proposal from the project description or to steer the CEQA analysis to favor
23 the Chino Basin Program over the alternative, or any other alternative. (See Memorandum
24 of Points and Authorities, at p. 16.)
- 25 • The lead agency role in connection with Watermaster’s OBMPU gives IEUA the ability to
26 advance its own proposed projects such as the Chino Basin Program over other parties’
27 proposed projects, despite the existence of conflicting interests. For example, IEUA needs
28 Watermaster’s approval of the Chino Basin Program including an analysis and

1 determination regarding “material physical injury” (MPI), which calls into question
2 Watermaster’s neutrality. (See Memorandum of Points and Authorities, at p. 16, fn. 7;
3 Jones Decl., filed 8/26/22, at ¶ 10.)

4 As lead agency reviewing a range of projects for implementation, IEUA has the ability to
5 shape the environmental analysis in favor of the Chino Basin Program as being the most
6 environmentally beneficial. The likelihood that IEUA will favor the Chino Basin Program over
7 other potential environmentally beneficial alternatives is underscored by extensive collaboration
8 between Watermaster and IEUA related to the Chino Basin Program such as:

- 9 • Watermaster’s consulting engineer is working for IEUA on the Chino Basin Program.
10 (See Memorandum of Points and Authorities, at p. 16; Jones Decl., filed 8/26/22, at ¶ 10.)
- 11 • Watermaster and IEUA Boards have held joint workshops on the Chino Basin Program.
12 (*Ibid.*)

13 For all of these reasons, Watermaster’s decision to fund CEQA-related activities by IEUA
14 without any agreement or approval of parties to the Judgment violates the neutrality principle.
15 Watermaster is acting like an advocate or a party to the Judgment, not as an arm of this Court.

16 **B. Watermaster’s Opposition Misconstrues the History of OBMP CEQA.**

17 Unlike the original OBMP in connection with the 2000 Peace Agreement and Peace II in
18 2007, Watermaster has orchestrated this process of environmental review for the OBMPU such
19 that the parties to the Judgment have no approval authority for the CEQA project description.

20 Although Watermaster claims to be following the same CEQA review process as for the
21 original OBMP, it is not. In 2000, following satisfaction of conditions precedent in the Peace
22 Agreement and its unanimous approval by the parties, Watermaster (1) adopted goals of its Phase
23 1 Report, (2) agreed to proceed in accordance with the Peace Agreement and Implementation
24 Plan, and (3) requested that the Court order Watermaster to proceed with CEQA review.
25 (Resolution No. 2000-05, Exhibit 4 to RJN.) Today, the “OBMP Update” is equivalent to
26 Watermaster’s Phase 1 Report, yet Watermaster seeks to advance the OBMPU by conducting
27 CEQA review without first completing an Implementation Plan and Peace Agreement
28

1 amendment, and without the Parties having any decision-making or approval authority over the
2 project description.

3 Watermaster also claims to be following the same CEQA review process as for the Peace
4 II Agreement, but it is not. The Peace II Agreement is an agreement of the parties to the
5 Judgment that amends the Peace Agreement and the OBMP Implementation Plan in furtherance
6 of implementing the OBMP. The Peace II Agreement defines and attaches the project description
7 for future CEQA environmental review by IEUA,¹ i.e., the project description was established by
8 agreement of the parties to Peace II. In contrast, Watermaster has orchestrated the current process
9 of environmental review for the OBMPU such that the parties to the Judgment have no approval
10 authority for the project description.

11 Watermaster also claims the 2017 and 2019 addenda to the Programmatic Environmental
12 Impact Report (“PEIR”) followed the same CEQA review process, but they did not. The addenda
13 enjoyed unanimous support by the public agency parties and did not require an update to the
14 OBMP Implementation Plan or a Peace Agreement amendment. (Supplemental Declaration of C.
15 Jones, filed concurrently herewith [“Suppl. Jones Decl.”], at ¶ 8.) In contrast, the OBMPU
16 process has faced objections by the Moving Parties for reasons presented to Watermaster and
17 explained herein, such as Watermaster’s assumption of CEQA authority and a potential the
18 conflict with IEUA regarding the Chino Basin Program. Further, approval and funding of the
19 CEQA environmental consultants for the addenda went through the Watermaster approval
20 process; whereas, it has not for the OBMPU. (Suppl. Jones Decl., at ¶¶ 7-8 and Exhibit “B”.)

21 Watermaster now claims that the PEIR for this 2020 OBMP Update Report (i.e., OBMPU)
22 is following the same CEQA review process, but it is not. Approval and funding for the CEQA
23 environmental consultant has not gone through the Watermaster approval process. (Suppl. Jones
24 Decl., at ¶¶ 7-8 and Exhibit “B”.) Watermaster initially took the position that the OBMPU’s
25 corresponding Implementation Plan and Peace Agreement amendment would move forward in
26 parallel with the OBMPU, much like the Peace Agreement, Implementation Plan, and
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28 ¹ The final environmental report or Subsequent Environmental Impact Report (“SEIR”) was certified in 2010. (Watermaster Opposition, at 8:16-17.)

1 Watermaster Phase I Report from 2000. Subsequently, however, Watermaster changed that
2 position and now advances the CEQA review process without any agreement among public
3 agency parties and no agreed-upon project or project description. (Suppl. Jones Decl., at ¶¶ 4-8
4 and Exhibits “A” and “B”.)

5 The Moving Parties object to Watermaster’s changed processes for CEQA review, and
6 more specifically, they object to Watermaster budgeting for, expending party funds, and
7 partnering with IEUA to complete CEQA review on an updated OBMP Implementation Plan and
8 Peace Agreement amendment that do not yet exist.

9 **C. Advisory Committee Budget Review Does Not Empower Watermaster to**
10 **Exceed its Authority.**

11 The fact that majority of the Advisory Committee voted for a budget that Watermaster
12 proposed does not expand Watermaster’s role into areas in which it has no authority such as
13 CEQA. As explained above and in the Motion, nothing in the Judgment empowers Watermaster
14 to conduct CEQA review, nor to expend funds or assess the parties for such purposes. Nothing
15 about the Watermaster Advisory Committee budget review and approval process confers such
16 power and authority on Watermaster, nor could it. Ultra vires expenditures of public funds on
17 unnecessary and inappropriate CEQA review are unlawful regardless of whether the Advisory
18 Committee recommends approval of a budget for such expenditures.² In short, nothing about the
19 Advisory Committee budget review process empowers Watermaster to assess Ontario, Chino and
20 MVWD (which assessments ultimately are paid by their customers) for CEQA review outside the
21 scope of Watermaster’s role under the Judgment, without concurrence of these same Moving
22 Parties.

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25 ² Section 30 of the Judgment explains the role of the Advisory Committee in Watermaster’s
26 budget process. Specifically, the Advisory Committee reviews a budget proposed by
27 Watermaster and makes recommendations. (Judgment, § 30.) Watermaster is not required to take
28 action consistent with any recommendation or advice of the Advisory Committee consisting of
more than fifty (50) but less than eighty (80) votes; Watermaster may ignore the action if
Watermaster holds a public hearing and makes written findings. (Judgment, § 38(b)(1).) If a
recommendation constitutes a “mandate” to Watermaster based on its approval by eighty (80) or
more votes in the Advisory Committee, Watermaster may challenge said recommendation with
the Court. All such actions and Watermaster determinations are subject to judicial review. (*Ibid.*)


1 **III. CONCLUSION**

2 For all of the foregoing reasons, the Moving Parties respectfully request that this Court
3 enter an order declaring that: (1) the May 26, 2022 Watermaster budget action is invalid to the
4 extent said action appropriates and/or allocates funding to conduct CEQA review in connection
5 with the OBMPU; (2) any assessments by Watermaster are invalid and unenforceable to the
6 extent based on budget allocation(s) to conduct CEQA review in connection with the OBMPU;
7 and (3) parties to the Judgment are not obligated to pay the corresponding portion of assessments
8 by Watermaster. Further, the Moving Parties respectfully request that this Court order
9 Watermaster not to expend any funds on CEQA review until after the parties to the Peace
10 Agreement reach agreement among themselves and provide direction to Watermaster regarding
11 implementing actions and projects that require CEQA review in connection with the OBMPU.

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Dated: October 7, 2022

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[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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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 7, 2022 I served the following:

1. MOVING PARTIES' REPLY 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 October 7, 2022 in Rancho Cucamonga, California.



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