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**CHINO BASIN WATERMASTER**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN BERNARDINO

10 CHINO BASIN MUNICIPAL WATER  
11 DISTRICT,

12 Plaintiff,

13 v.

14 CITY OF CHINO, ET AL.,

15 Defendants.

**Case No. RCV RS 51010**

[Assigned for All Purposes to the  
Honorable Gilbert Ochoa]

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

Date: October 14, 2022

Time: 9:00 a.m.

Dept: S24

[Filed concurrently herewith: Declaration of Peter  
Kavounas; Objections to Supplemental  
Declaration of Courtney Jones; Motion to Strike  
Supplemental Declaration of Courtney Jones and  
Reply in Support of Motion Challenging  
Watermaster's Budget Action to Fund  
Unauthorized CEQA Review; [Proposed] Order  
Granting Motion to Strike]

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1 In contravention of the traditional rules of law and motion practice, Moving Parties have  
2 raised new arguments and submitted new evidence in their Reply. (See *Jay v. Mahaffey* (2013) 218  
3 Cal.App.4th 1522, 1538.) “[T]he inclusion of additional evidentiary matter with the reply should  
4 only be allowed in the exceptional case.” (*Plenger v. Alza Corp.* (1992) 11 Cal.App.4th 349, 362  
5 fn.8.) In response, the Chino Basin Watermaster (“Watermaster”), by and through its undersigned  
6 counsel of record, the law firm of Brownstein Hyatt Farber Schreck, LLP, hereby requests leave to  
7 file this Surreply in Response to Moving Parties’ Reply in Support of Motion Challenging  
8 Watermaster’s Budget Action to Fund Unauthorized CEQA Review (“Surreply”).

9 The Moving Parties argue for the first time in their Reply that: (i) California Environmental  
10 Quality Act (“CEQA”) consultant costs for the 2020 Optimum Basin Management Program (“2020  
11 OBMPU”) were not approved through the Watermaster budget process and (ii) Watermaster has  
12 changed position regarding CEQA review of the 2020 OBMPU. (Reply, at 8:11-9:8.) In support,  
13 Moving Parties offer new evidence, via a supplemental declaration and attached exhibits. The  
14 Moving Parties’ contentions and supporting evidence are misleading and incomplete necessitating  
15 Watermaster’s Surreply.

16 Moving Parties conflate a challenge to Watermaster’s FY 2022/23 Budget Approval with  
17 a challenge to a CEQA review process, but they are not the same. Watermaster appropriately  
18 approved the FY 2022/23 Budget, as discussed in Watermaster’s Opposition to Motion  
19 Challenging Watermaster’s Budget Action to Fund Unauthorized CEQA Review (“Opposition”).

20 **I. The 2021 Addendum to the 2000 PEIR for the LSLs was Undertaken Only After**  
21 **Parties Could Not Agree to Amendments to the Peace Agreement and OBMP**  
22 **Implementation Plan**

23 Responsibility for developing an OBMP is Watermaster’s alone, as a component of the  
24 Physical Solution. (Judgment, ¶ 41.) Implementing “projects” within the meaning of CEQA is  
25 reserved to parties to the Judgment.

26 Moving Parties state that the 2017 and 2019<sup>1</sup> “[storage-related addenda to the 2000 PEIR]

27 \_\_\_\_\_  
28 <sup>1</sup> Watermaster understands that Moving Parties’ reference to a “2019” addendum is in reference to  
addendum adopted by the IEUA Board of Directors on March 17, 2021, which facilitated the

1 enjoyed unanimous support by the public agency parties and did not require an update to the  
2 OBMP Implementation Plan or a Peace Agreement amendment.” (Reply, at 8:12-14.) The  
3 statement is misleading.

4 The process for Watermaster’s development of the 2020 OBMPU and CEQA was fully  
5 described to this Court in a contemporaneous series of Status Reports that were intended to ensure  
6 the Court was familiar with the subject matter prior to any request for approval of the updated  
7 OBMP or amendments to the Peace Agreement and OBMP Implementation Plan.<sup>2</sup> (Kavounas  
8 Decl., ¶ 4.) These Status Reports are currently on file with the Court and were presented to the  
9 parties to the Judgment for their review and comment prior to filing and accepted by the Court  
10 without comment or opposition of any party. (Kavounas Decl., ¶ 4.)

11 The Status Reports kept the Court apprised of the intended and accomplished processes  
12 for development of the 2020 OBMPU and CEQA review, the need for the LSLs, and the  
13 predicates for the Court’s approval of the LSLs. In the end, Watermaster advised the Court and  
14 the parties to the Judgment that conflicts over the parameters of Watermaster management of  
15 aquifer storage capacity above 500,000 AF could be resolved in one of three ways.

16 “...the Peace Agreement establishes processes, procedures, burdens  
17 of proof, priorities and protections for managing storage quantities  
18 up to 500,000 AF. These provisions do not apply to quantities in  
19 excess of 500,000 AF. While the LSLs Addendum was under  
20 consideration, the parties to the Restated Judgment turned their  
21 attention to preparing proposed instructions as to how water in  
22 storage in excess of 500,000 AF would be managed. Consequently,

23 Court’s approval of the Local Storage Limitation Solution. (See Kavounas Decl., Exh. B, pp. 2:22-  
24 3:5.) However, the environmental review process initiated in 2019 resulted in the draft SEIR as to  
25 the OBMP Update that was considered by the IEUA Board in June 2020. The addendum that  
26 supported the LSLs was initiated in September 2022, at the request of the Pool Committees.

27 <sup>2</sup> These status report, all of which are in this Court’s files for this matter, include: Chino Basin  
28 Watermaster Status Report Regarding Update to the Optimum Basin Management Program, filed  
August 6, 2019; Supplement to Chino Basin Watermaster Status Report Regarding Update to the  
Optimum Basin Management Program, filed December 5, 2019; Second Supplement to Chino  
Basin Watermaster Status Report Regarding Update to the Optimum Basin Management Program,  
filed March 13, 2020; Third Supplement to Chino Basin Watermaster Status Report Regarding  
Update to the Optimum Basin Management Program, filed August 26, 2020; Fourth Supplement to  
Chino Basin Watermaster Status Report Regarding Update to the Optimum Basin Management  
Program, filed December 9, 2020; Fifth Supplement to Chino Basin Watermaster Status Report  
Regarding Update to the Optimum Basin Management Program, filed February 24, 2021; and,  
Update to Fifth Supplement to Chino Basin Watermaster Status Report Regarding Update to the  
Optimum Basin Management Program, filed March 22, 2021.

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new management directives will be required. These will either come by: (i) a unanimously supported proposal of the parties to the Restated Judgment coupled with a recommendation by Watermaster; (ii) a request to amend the Peace Agreement over the objection of one or more parties, with Watermaster potentially supporting, or opposing the proposal; or (iii) *an independent Watermaster proposal, supported and/or opposed by respective parties*. In pursuit of unanimity, parties to the Peace Agreement have proposed offers and counter-proposals for consideration and they are engaged in active discussions regarding potential amendments to the Peace Agreement inclusive of instructions that would guide the future management of storage in amounts in excess of 500,000 AF.” (Kavounas Decl., Exh. B [Update to Fifth Supplement to Chino Basin Watermaster Status Report Regarding Update to the Optimum Basin Management Program, filed March 22, 2021], 3:12-25 [emphasis added].)

Thus, it was clear that a potential resolution might come over the objection of some parties – and that unanimity was not required for a potential solution and associated environmental review, distinct from the unanimity requirement to amend the Peace Agreement and OBMP Implementation Plan. (Peace Agreement, § 10.14(b).)

Moving forward with the LSLS was only possible after a consensus emerged as to a Watermaster strategy to dispense with amending the Peace Agreement and OBMP Implementation Plan. Thus, in May 2021, Watermaster actually moved this Court for its approval of the implementation of the LSLS, based on IEUA’s completion of a CEQA addendum to previous environmental review, and *without agreement* among the Peace Agreement parties as to any amendment to the Peace Agreement. (Kavounas Decl., Exh. C.) As stated in Watermaster’s Notice of Motion and Motion Regarding Implementation of the Local Storage Limitation Solution, filed May 27, 2021:

“In pursuit of unanimity, parties to the Peace Agreement proposed offers and counter-proposals for consideration and they are engaged in active discussions regarding potential amendments to the Peace Agreement inclusive of instructions that would guide the future management of storage in amounts in excess of 500,000 AF. *As of this filing, they were unable to reach a unanimously supported proposal.*” (Kavounas Decl., Exh. C [citations omitted; emphasis added].)

1       **II. Moving Parties’ New Evidence is Cherry-Picked and is not a Fair Representation of**  
2       **the Watermaster Agenda Item**

3           Moving Parties new arguments and evidence state that they only supported approval of the  
4 budget for the CEQA consultant believing “CEQA environmental review would be performed on  
5 the OBMP Implementation Plan and Peace Agreement update—not the 2020 OBMPU Report.”  
6 (Suppl. Jones Decl., ¶ 6.) Moving Parties cite to a single sentence from Watermaster’s Summary  
7 of Proposed Engineering Services and Cost Estimates Fiscal Year 2022/23 – prepared by  
8 Watermaster’s engineering services provider (“Exhibit A”) (Suppl. Jones Decl., Exh. A) - and a  
9 general reference to a *December 19, 2019 Watermaster Board staff report* (“Exhibit B”) (Suppl.  
10 Jones Decl., Exh. B) completed *three years earlier* in a different budget cycle, as an alleged  
11 admission of Watermaster’s prior position on environmental review. (Reply, at 7:17-9:8 [citing  
12 Suppl. Jones Decl., ¶¶ 4-8, Exhs. A, B]; see Suppl. Jones Decl., ¶¶ 5, 7.) Moving Parties,  
13 however, have omitted all the attachments to Exhibit B and the pertinent staff report from the  
14 same Watermaster Board meeting relating to the budget action to support the contract proposed in  
15 Exhibit B. Therein attachments to Exhibit B describe environmental review of the 2020 OBMPU  
16 and make no mention whatsoever of any amendments to the Peace Agreement or Implementation  
17 Plan. (Kavounas Decl., Exh. E.) The prior action item on the same agenda as Exhibit B – a budget  
18 amendment to fund the work proposed under that contract – discusses the scope of environmental  
19 review.

20                   “Budget Amendment Form A-19-12-01 in the amount of \$225,500  
21 is being presented for approval . . . to procure environmental  
22 review services for the 2020 OBMP Update.

23                   Watermaster, along with the other water management agencies in  
24 the Chino Basin, seek to have an updated environmental impact  
25 report (EIR) compiled for an updated Optimum Basin Management  
26 Program (OBMP). . . .

27                   . . . . Based on recent meetings held by Watermaster and Inland  
28 Empire Utilities Agency it was concluded that the benefit accrues  
to all parties to the Judgment and not only those that are IEUA  
Member Agencies; as such it is believed to be more appropriate  
that the expense for the environmental review should be paid

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through Watermaster.”(Kavounas Decl., Exh. D, p. 68; see also Kavounas Decl., Exh. E, p. 73.)

Additionally, the paragraph immediately preceding the quoted language from Exhibit A in paragraph 5 of the Supplemental Jones Declaration states, “Starting in 2020, IEUA began the process of preparing CEQA documentation for the 2020 OBMP Update.” (Suppl. Jones Decl., Exh. A.)

As described on page 10, line 23 to page 11, line 8 of Watermaster’s Opposition, the May 26, 2022 budget approval only included items for Watermaster legal and engineering services in support of the efforts; funds for the CEQA consultant had been previously approved. (Kavounas Decl., ¶ 11.)

Moving Parties state “approval and funding for the CEQA environmental consultant [for the OBMPU] has not gone through the Watermaster approval process.” (Reply, at 8:22-23.) This is false. Both a budget addendum and contract for the CEQA consultant were unanimously approved by the Appropriative Pool Committee and the Advisory Committee on December 12, 2019 and December 19, 2019, respectively. (Kavounas Decl., ¶ 10.) The Watermaster Board unanimously approved both items on December 19, 2019. (Kavounas Decl., ¶ 10.)

Environmental review work that this consultant is presently conducting, in conjunction with the work budgeted for by Watermaster’s technical consultant and legal counsel in the two challenged budget items, is being done pursuant to the contract that is the subject of Exhibit B to Ms. Jones’ October 7, 2022 “supplemental declaration,” and the budget amendment approved in conjunction therewith, as such funding was not all expended previously during the 2020 OBMPU draft SEIR process. (Kavounas Decl., ¶ 10.) Moreover, this December 2019 budget action and contract approval specifically related to OBMPU CEQA Review; the budget addendum and contract for the LSLs addendum were approved during the September 2020 Committee and Board meetings. (Kavounas Decl., ¶ 11.)

**III. Conclusion**


The gravamen of the Reply is grounded in governance, and that Watermaster, once neutral, has lost its way, now picking sides. However, “neutrality” does not mean “acquiescence”

1 and “consensus” does not mean “unanimity”. Watermaster respects the Moving Parties and their  
2 arguments. However, the adoption of the OBMP is Watermaster’s responsibility. Coordinated  
3 implementation by the parties is best where they are involved and informed by a programmatic  
4 evaluation of the whole of the actions and the parties proceed pursuant to a consensus. Sharing  
5 technical information and data with IEUA is in the public interest and neither exercising CEQA  
6 responsibilities nor surrendering neutrality.

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Dated: October 11, 2022

BROWNSTEIN HYATT FARBER  
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By:   
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CHINO BASIN WATERMASTER

Case No. RCVRS 51010

Chino Basin Municipal Water District v. City of Chino, et al.

PROOF OF SERVICE

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On October 11, 2022 I served the following:

1. MOTION TO FILE SURREPLY AND SURREPLY IN RESPONSE TO MOVING PARTIES' REPLY IN SUPPORT OF MOTION CHALLENGING WATERMASTER'S BUDGET ACTION TO FUND UNAUTHORIZED CEQA REVIEW

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.

/ 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.

/X / 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 11, 2022 in Rancho Cucamonga, California.



By: Ruby Favela Quintero  
Chino Basin Watermaster



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