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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

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14 CHINO BASIN MUNICIPAL WATER
15 DISTRICT,

15 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' OBJECTION AND
MOTION TO STRIKE
WATERMASTER'S MOTION TO FILE
SURREPLY AND SURREPLY RE:
MOTION CHALLENGING
WATERMASTER'S BUDGET ACTION
TO FUND UNAUTHORIZED CEQA
REVIEW**

Date: November 18, 2022

[Changed from October 14, 2022]

Time: 9:00 a.m.

Department: S24

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MOVING PARTIES' OBJECTION AND MOTION TO STRIKE TO WATERMASTER'S MOTION TO FILE
SURREPLY AND SURREPLY

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1 In an effort to refocus on the key arguments and limit the amount of information that
2 needs to be considered by the Court, the Moving Parties respectfully present this Objection and
3 Motion to Strike Watermaster’s filing of an improper Surreply brief and related papers. The
4 Court may disregard such papers in their entirety.

5 The Surreply continues Watermaster’s obfuscation with respect to straightforward issues
6 presented by the Motion, i.e., Watermaster is a judicial branch entity and not an agency subject to
7 the California Environmental Quality Act (“CEQA”). Under the Judgment and applicable law,
8 Watermaster lacks any power or authority to conduct CEQA review. Watermaster is not a
9 regional governmental agency with power to assess parties based on majority vote for activities
10 outside the scope of Watermaster’s authority under the Judgment. Any such authority must arise
11 from an agreement among the public agencies responsible for projects, such as the Peace
12 Agreement and Peace II.¹ It does not arise from amorphous concepts such as Watermaster’s
13 desire for coordinated implementation in support of the public interest. (See Surreply, at 7:2-5.)

14 The Moving Parties object to Watermaster’s filing of a Surreply brief and supporting
15 papers on the grounds that they are not responsive to the Reply. The surreply papers violate Code
16 of Civil Procedure section 1005, subdivision (b): “All papers opposing a motion so noticed shall
17 be filed with the court . . . at least nine court days . . . before the hearing.” There is no statutory
18 authority for filing and serving papers after the Moving Parties’ reply papers have been filed.
19 Furthermore, Watermaster should not be granted leave of Court for this late filing, because the
20 matters raised therein have little relevance to issues presented by the Motion and could have been
21 made earlier in Watermaster’s Opposition, to the limited extent relevant. (See, e.g., *California*
22 *Native Plaintiff Soc. v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 613 fn. 8 [denying
23 motion for leave to file a surreply because the alleged “new evidence and argument” was not
24 material to the court’s decision]; *Farmers Insurance Exchange v. Superior Court* (2013) 218
25 Cal.App.4th 96, 100 fn.4 [leave to file a surreply was sought and denied].)

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27 _____
28 ¹ In the absence of such an agreement, CEQA expenditures are premature and waste money including public funds.

1 If the Court nonetheless decides to consider the Surreply, then the Moving Parties
2 respectfully request that the Court also consider the following concise responses to points asserted
3 therein:

- 4 • In order to implement the 2020 OBMP Update (“OBMPU”), the parties must also
5 update the 2000 OBMP Implementation Plan and amend the Peace Agreement.
6 Necessary CEQA review should not be conducted until all these inter-related items are
7 prepared, especially the Implementation Plan, as Watermaster repeatedly has
8 acknowledged.² Until then, CEQA review is premature and wastes money including
9 public funds.
- 10 • The Peace Agreement and Peace II processes show how CEQA review may be
11 conducted in connection with the OBMP. Agreements were developed among the
12 parties to establish scope, such as the project description attached to Peace II, prior to
13 undertaking CEQA review.
- 14 • The OBMPU process differs in many important respects from the Local Storage
15 Limitation Solution (“LSLS”), which does not establish precedent for how CEQA
16 review may be conducted in connection with the OBMPU. Storage issues are
17 specifically subject to Watermaster “control and regulation” pursuant to Section 11 of
18 the Judgment and Paragraph 5.2(a)(i) of the Peace Agreement.

19 Finally, Watermaster’s Surreply (like the Opposition) fails to offer any meaningful
20 response regarding the critically important principle that Watermaster must remain impartial,
21 unbiased, and neutral in its dealings with parties to the Judgment:

22 In its appointed capacity, the watermaster serves “as an arm of the court” in an
23 impartial and unbiased role. The watermaster's role is merely to administer and
24 implement the decree; its role is not to champion the rights of some water users

25 ² Watermaster’s publicly available records are replete with supporting references including items
26 cited in the Motion, Opposition, and Reply such as Watermaster’s Summary of Engineering
27 Services and Costs for the Budget (Exh. A to the Suppl. Declaration of C. Jones); statements
28 made by Mr. Peter Kavounas, General Manager of Watermaster during the December 12, 2019
Appropriative Pool Committee (mentioned in Mr. Kavounas’ declaration in support of the
Surreply, at ¶ 9); and many other public records including the “OBMP Update Timeline”
appearing near the bottom of Watermaster’s website, http://www.cbwm.org/pages/obmp_update/
(last visited Oct. 13, 2022) (see timing from where “CEQA Begins” to “CEQA Completed”).

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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 v. Lassen Irrigation Co.* (2022) 75 Cal.App.5th 482, 489, emphasis added; see also *Water Replenishment Dist. of Southern California v. City of Cerritos* (2012) 202 Cal.App.4th 1063, 1072.) As similarly stated by Judge Gunn in 2007: **“Watermaster's position with respect to the parties should be neutral.”** (Court Order entered Dec. 21, 2007, Exhibit 10 to RJN filed on Aug. 26, 2022, at 4:16-19, emphasis added.)

Designating IEUA to serve as “lead agency” for CEQA review before an agreed-upon CEQA “project” description is premature, and Watermaster providing funding and technical support to IEUA for such review, does not comport with the neutrality principle, especially in the presence of conflicts and objections by other public agency parties responsible for the CEQA projects.

Dated: October 13, 2022

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By:  _____

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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 13, 2022 I served the following:

1. MOVING PARTIES' OBJECTION AND MOTION TO STRIKE WATERMASTER'S MOTION TO FILE SURREPLY AND SURREPLY RE: 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 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.

/ 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.

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

Executed on October 13, 2022 in Rancho Cucamonga, California.



By: Ruby Favela Quintero
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