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EXEMPT FROM FILING FEES
PURSUANT TO GOV. CODE, § 6103

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN BERNARDINO

15 CHINO BASIN MUNICIPAL WATER
16 DISTRICT,

17 Plaintiff,

18 v.

19 CITY OF CHINO, et al.,

20 Defendants.

Case No. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO
HONORABLE GILBERT G. OCHOA

**CITY OF ONTARIO’S RESPONSE RE
CONTINUED HEARING ON MOTION
CHALLENGING WATERMASTER’S
NOVEMBER 17, 2022
ACTIONS/DECISION TO APPROVE
FY 2022/2023 ASSESSMENT PACKAGE**

Hearing:

Date: August 4, 2023
Time: 9:00 a.m.
Dept: S24
Judge: Gilbert Ochoa

1 City of Ontario respectfully submits this short response in advance of the continued hearing
2 on Ontario’s Motion (“Motion”) Challenging Watermaster’s November 17, 2022 Actions/Decision
3 to Approve the Fiscal Year 2022/2023 Assessment Package (“FY 22/23 Assessment Package”).

4 **I. INTRODUCTION**

5 At the hearing on May 12, 2023, the Court raised certain concerns that the Motion
6 challenging the approval of the FY 22/23 Assessment Package was an improper motion for
7 reconsideration of the separate challenge to the approval of the assessment package from the prior
8 year (“FY 21/22 Assessment Package”) that had been denied by this Court on November 3, 2022
9 (“2022 Order”). Ontario respectfully submits that it was not.

10 A motion for reconsideration requests that the court modify, amend, or revoke its ruling on
11 the same matter. (Code Civ. Proc., § 1008(a).) The Motion raises a separate challenge to a different
12 action/approval by the Watermaster than the action/approval that is the subject of the 2022 Order.
13 Moreover, the 2022 Order is the subject of a pending appeal, and Ontario was required to file the
14 Motion to preserve its challenge to the FY 22/23 Assessment Package. Indeed, in public comments
15 Watermaster also recognized that the Motion is a separate challenge to the FY 22/23 Assessment
16 Package that is distinct from the challenge that led to the pending appeal. At the March 23, 2023
17 Chino Basin Watermaster Board Meeting, Watermaster’s counsel addressed the board regarding
18 the pending challenge and stated that it was different from the case on appeal because “it’s a new
19 assessment. And so a legal practitioner would say to protect and perfect your right against the
20 earlier, you have to challenge each and every [assessment package].” (Declaration of Elizabeth P.
21 Ewens, ¶¶ 4-5, Ex. B at 2:9-12 [Certified Transcript].) As described more fully herein, had Ontario
22 failed to file a challenge to Watermaster’s approval of the FY 22/23 Assessment Package within
23 ninety days of its adoption, then Ontario would have been time barred under section 31(c) of the
24 Judgment. In short, particularly given the pending appeal of the FY 21/22 Assessment Package,
25 Ontario had no option other than to file the new and separate challenge.

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1 **II. ONTARIO DISPUTES THE VALIDITY OF THE FY 22/23 ASSESSMENT**
2 **PACKAGE AND WAS REQUIRED TO FILE A CHALLENGE OR THE CLAIM**
3 **WOULD BE TIME BARRED**

4 On November 17, 2022, Watermaster approved the FY 22/23 Assessment Package, which
5 Ontario contends was in excess of Watermaster’s authority, was contrary to the Judgment and Court
6 Orders in this adjudication, and resulted in improper cost-shifting to parties including an additional
7 \$693,964 financial burden imposed on Ontario. (See Request for Judicial Notice in Support of
8 Challenge (“RJN”), filed Feb. 15, 2023, Ex. 55; Declaration of Courtney Jones in Support of
9 Challenge, filed Feb. 15, 2023, ¶ 67.) To preserve its challenge to the approval of the FY 22/23
10 Assessment Package, Ontario timely filed the Motion within ninety (90) days of the decision as
11 required by the Judgment. (Judgment, ¶ 31(c) [see RJN, Ex. 1].)

12 Also following Watermaster’s approval of the FY 22/23 Assessment Package and prior to
13 filing the Motion, Ontario filed a timely Notice of Appeal on December 30, 2022 of the 2022 Order
14 arising from the challenge to the FY 21/22 Assessment Package approval. (See Ontario Notice of
15 Appeal, filed Dec. 30, 2022).

16 Because Ontario disputes the validity of the FY 22/23 Assessment Package and the 2022
17 Order is currently pending an appeal, Ontario was required to file the Motion to challenge the
18 FY 22/23 Assessment Package within ninety days of notice of Watermaster’s approval of that
19 assessment package or the challenge would be time-barred. As a result, Ontario’s Motion was
20 proper and is not a challenge to the 2022 Order that is the subject of the pending appeal.

21 **III. THE MOTION DOES NOT REQUEST RECONSIDERATION OF THE 2022**
22 **ORDER**

23 Ontario respectfully submits that the pending Motion is not a motion for reconsideration of
24 the 2022 Order under Code of Civil Procedure section 1008. That section provides that “any party
25 affected by the order may, within 10 days after service upon the party of written notice of entry of
26 the order and based upon new or different facts, circumstances, or law, make application to the
27 same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the
28 prior order.” (Code Civ. Proc., § 1008(a).) Ontario’s Motion is not requesting that the Court

1 modify, amend, or revoke the 2022 Order but is an entirely new challenge to a different
2 Watermaster Board approval of an assessment package for a different fiscal year, which was
3 approved after the 2022 Order. Because the pending Motion is not asking the court to decide the
4 same matter, i.e., a challenge to the FY 21/22 Assessment Package, it is not a motion for
5 reconsideration. (*J.W. v. Watchtower Bible and Tract Society of New York, Inc.* (2018) 29
6 Cal.App.5th 1142, 1171 [“a motion asking the trial court to decide the same matter previously ruled
7 on is a motion for reconsideration under Code of Civil Procedure section 1008”].)¹

8 **IV. CONCLUSION**

9 Ontario respectfully submits that the Motion is not a request for reconsideration of the 2022
10 Order that is pending on appeal but a separate and independent challenge to a new and different
11 Watermaster Board action approving an assessment package for a different fiscal year. Ontario
12 was required to bring the challenge or the claim would have been time-barred had Ontario not
13 asserted it.

14 Ontario thanks for the Court for its time and consideration with respect to the Motion.

15
16 Dated: July 24, 2023

STOEL RIVES LLP

17
18 By: 

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25 _____
26 ¹ The challenge to FY 22/23 Assessment Package approval is also proper and not a request for
27 reconsideration of the 2022 Order because each unlawful assessment gives rise to a new
28 limitations period and new cause of action. (*See Howard Jarvis Taxpayers Assn. v. City of La
Habra* (2001) 25 Cal.4th 809, 823-825 [city’s allegedly illegal actions included not only the
ordinance’s initial enactment but also the continued collection of an unapproved tax each time it
was assessed].)

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 action within. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On July 24, 2023, I served the following:

1. CITY OF ONTARIO'S RESPONSE RE CONTINUED HEARING ON MOTION CHALLENGING WATERMASTER'S NOVEMBER 17, 2022 ACTIONS/DECISION TO APPROVE FY 2022/2023 ASSESSMENT PACKAGE

/ 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.

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

Executed on July 24, 2023 in Rancho Cucamonga, California.



By: Alexandria Moore
Chino Basin Watermaster

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