FEE EXEMPT

RUTAN & TUCKER, LLP
Jeremy N. Jungreis (State Bar No. 256417)
jjungreis@rutan.com
Travis Van Ligten (State Bar No. 301715)
tvanligten@rutan.com
Scott C. Cooper (State Bar No. 339900)
scooper@rutan.com
18575 Jamboree Road, 9th Floor
Irvine, CA 92612
Telephone: 714-641-5100
Facsimile: 714-546-9035

Attorneys for
Cucamonga Valley Water District

DOWNEY BRAND LLP
MEREDITH E. NIKKEL (Bar No. 254818)
mnikkel@downeybrand.com
BRIAN E. HAMILTON (Bar No. 295994)
bhamilton@downeybrand.com
621 Capitol Mall, 18th Floor
Sacramento, California 95814
Telephone: 916.444.1000
Facsimile: 916.444.2100

Attorneys for Fontana Water Company

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants.

Case No. RCVRS 51010

[ASSIGNED FOR ALL PURPOSES TO: HONORABLE GILBERT G. OCHOA]

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CUCAMONGA VALLEY WATER DISTRICT AND FONTANA WATER COMPANY'S OPPOSITION TO CITY OF ONTARIO'S MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS

Date: October 31, 2025
Time: 10:00 a.m.
Dept: R17

CUCAMONGA VALLEY WATER DISTRICT ("CVWD") and FONTANA WATER COMPANY ("FWC"), through their attorneys of record, submit the following Request for Judicial Notice pursuant to California Rules of Court, Rule 3.1306(c) and Evidence Code sections 452 and 453, in support of their Opposition to CITY OF ONTARIO's ("Ontario") Motion for Award of Attorney's Fees and Costs.

The documents attached hereto are subject to judicial notice pursuant to Evidence Code section 452, subdivision (d), which provides that a court may take judicial notice of the records of any court in this State. (See *Taus v. Loftus* (2007) 40 Cal.4th 683, 726 ["Under Evidence Code section 452, a court may take judicial notice of the records of any court of this state. . . ."); *Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1181, fn.4 [taking judicial notice under Evidence Code section 452, subd. (d) of complaint in related state court action]; *Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 130, fn.7 ["We may take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact."].)

The Court may also take judicial notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code, § 452, subd. (h).)

On those grounds, CVWD and FWC hereby request that the Court take judicial notice of the following documents constituting records of state courts, including this Court (Exhibits A-C, F) and the Fourth District Court of Appeal (Exhibits D & E):

1. Ontario's Application for an Order to Extend Time Under Judgment, Paragraph 31(c) Challenge to Watermaster Action/Decision on November 18, 2021 to Approve the FY 2021/2022 Assessment Package, filed on February 17, 2022 in *Chino Basin Municipal Water District v. City of Chino, et al*, San Bernardino County Superior Court Case No. RCVRS 51010. A true and correct copy of Ontario's Application is attached hereto as **Exhibit A**.

2. Memorandum of Points and Authorities in Support of Ontario's Motion

Challenging Watermaster's November 17, 2022 Actions/Decision to Approve the FY 2022/2023 Assessment Package, filed on February 14, 2023 in *Chino Basin Municipal Water District v. City of Chino, et al*, San Bernardino County Superior Court Case No. RCVRS 51010. A true and correct copy of Ontario's Memorandum of Points and Authorities is attached hereto as **Exhibit B**.

3. Ontario's Opposition to Inland Empire Utility Agency's Motion for Costs and Attorney's Fees Pursuant to Civil Code § 1717 and Code of Civil Procedure § 10133.5, filed on March 21, 2025 in *Chino Basin Municipal Water District v. City of Chino, et al*, San Bernardino County Superior Court Case No. RCVRS 51010. A true and correct copy of Ontario's Opposition is attached hereto as **Exhibit C**.

4. Opening Brief of Appellant City of Ontario filed on July 3, 2023 in *Chino Basin Municipal Water District v. City of Chino, et al*, Fourth District Court of Appeal Case No. E080457. A true and correct copy of Ontario's Opening Brief is attached hereto as **Exhibit D**.

5. Ontario's Appellate Reply Brief filed on May 13, 2024 in *Chino Basin Municipal Water District v. City of Chino, et al*, Fourth District Court of Appeal Case Nos. E080457 & E082127. A true and correct copy of Ontario's Reply Brief is attached hereto as **Exhibit E**.

6. Ruling Denying IEUA's Motion for Attorney Fees, entered as the Court's final order on September 18, 2025 in *Chino Basin Municipal Water District v. City of Chino, et al*, San Bernardino County Superior Court Case No. RCVRS 51010. A true and correct copy of the Ruling is attached hereto as **Exhibit F**.

CVWD and FWC have given each adverse party sufficient notice of this request through these pleadings and have attached the records hereto so that the Court has sufficient information to enable it to take judicial notice of these records. (See Evid. Code, § 453.) As such, CVWD and FWC respectfully request that the Court take judicial notice of these exhibits.

[Signatures on next page]

Dated: October 20, 2025

RUTAN & TUCKER, LLP
JEREMY N. JUNGREIS
SCOTT C. COOPER

By: _____
Jeremy N. Jungreis
Attorneys for Defendant
CUCAMONGA VALLEY WATER DISTRICT

DATED: October 20, 2025

DOWNEY BRAND LLP

By: _____
MEREDITH E. NIKKEL
BRIAN E. HAMILTON
Attorneys for Fontana Water Company

EXHIBIT A

EXHIBIT A

LAW OFFICES OF CHARISSE L SMITH
CHARISSE L SMITH (SBN 213646)
csmith@clsmithlaw.com
8301 Utica Ave Ste 102
Rancho Cucamonga, CA 91730
Telephone: 909.257.0650
Facsimile: 909.257.0649

Attorney for the CITY OF ONTARIO

EXEMPT FROM FILING FEE PER GOV. CODE, § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, ET AL.,

Defendants.

Case No: RCVRS 51010

Assigned for All Purposes to:
Honorable Stanford E. Reichert

CITY OF ONTARIO'S APPLICATION FOR AN ORDER TO EXTEND TIME UNDER JUDGEMENT, PARAGRAPH 31(c) TO CHALLENGE WATERMASTER ACTION/DECISION ON NOVEMBER 18, 2021 TO APPROVE THE FY 2021/2022 ASSESSMENT PACKAGE. IF SUCH REQUEST IS DENIED, THIS FILING IS THE CHALLENGE

[Concurrently Filed with Declaration of Christopher Quach; Proposed Order]

Date: April 8, 2022
Time: 1:30 p.m.
Department: S35

TO: WATERMASTER AND ITS COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on April 8, 2022 at 1:30 PM in Dept S35 of the above entitled Court, the City of Ontario ("Ontario") will make an Application for an order to extend the time under Paragraph 31(c) of the Judgement, from 90 days to 180 days, for Ontario to challenge the Watermaster Board action/decision on November 18, 2021 to approve the Fiscal Year 2021/2022 Assessment Package. If the request to extend the time is denied by the Court, this filing shall act as the challenge to the Watermaster Board action/decision on November 18, 2021 to approve the Fiscal Year 2021/2022 Assessment Package.

This Application is made for the following purposes: (a) to preserve the time in which the City of Ontario may file a motion to challenge the Watermaster Board action/decision to approve the Fiscal Year 2021/2022 Assessment Package, (b) to allow additional time for Appropriative Pool parties to negotiate a settlement, and (c) to act as the filing of Ontario's motion to challenge the Watermaster Board action/decision to approve the Fiscal Year 2021/2022 Assessment Package if the request to extend the time is denied by the Court.

This Application is further based upon the Declaration of Christopher Quach, including attachments, filed concurrently herewith and the attached Memorandum of Points and Authorities below.

I. MEMORANDUM OF POINTS AND AUTHORITIES INTRODUCTION

The immediate purpose of this Application is to preserve the time in which Ontario may file a fully-developed motion to challenge the Watermaster Board action/decision for the approval of the Fiscal Year 2021/2022 Assessment Package. But, if the Application to preserve time is denied, then this Application shall serve as the filing of Ontario's motion to challenge the Watermaster Board action/decision to approve the Fiscal Year 2021/2022 Assessment Package.

On November 1, 2021, Ontario sent a letter to Mr. Kavounas, Watermaster General Manager, that outlined questions and comments to the draft Fiscal Year 2021/2022 Assessment Package. Ontario requested that Watermaster explain the basis for exempting 23,000 acre-feet

(AF) of water produced from the Metropolitan Water District's (MWD) Chino Basin Conjunctive Use Program (CUP), also known as the Dry Year Yield Storage and Recovery Program (DYYP), as identified in the draft Fiscal Year 2021/2022 Assessment Package, from the Watermaster assessment and the Desalter Replenishment Obligation (DRO) assessment. Under the 1978 Chino Basin Judgement ("Judgement"), this production should have been assessed.. Watermaster waived assessments for two Parties of the Chino Groundwater Basin, Cucamonga Valley Water District (CVWD) and Fontana Water Company (FWC), inconsistent with the Judgement. (See Declaration of Christopher Quach filed concurrently herewith ["Quach Decl."], ¶ 2, and Ex. A.)

On November 18, 2021, Watermaster presented a staff report to the Watermaster Board in response to Ontario's November 1, 2021 letter. The Watermaster Board directed Watermaster Staff and legal counsel to evaluate the concerns raised by Ontario surrounding the DYYP and related applicability to Watermaster assessments. (Quach Decl., ¶ 3.)

On November 18, 2021, the Watermaster Board approved the Fiscal Year 2021/2022 Assessment Package. Ontario understood that resolution to the questions and comments raised regarding the DYYP would not affect the ability to retroactively address the Fiscal Year 2021-2022 Assessment Package. As stated in the Watermaster staff report on the assessment of Ontario's issue, if warranted the assessment package could always be changed retroactively. (Quach Decl., ¶ 4.)

In an effort to exhaust all administrative remedies, on January 5, 2022, Watermaster, Ontario, CVWD, and FWC met to discuss the DYYP issues and begin good faith negotiations. (Quach Decl., ¶ 5.)

On January 24, 2022, Ontario, CVWD, and FWC met to discuss a draft settlement term sheet and good faith negotiations are currently ongoing. Ontario is actively working with Parties and Watermaster to reach a resolution. (Quach Decl., ¶ 6.)

On January 24, 2022, Ontario sent a letter to Mr. Kavounas, Watermaster General Manager, detailing Ontario's concerns with Watermaster's administration of the DYYP. (Quach Decl., ¶ 7, and Ex. B.)

On January 27, 2022, Watermaster presented a staff report to the Watermaster Board in response to Ontario's concerns as reiterated in the January 24, 2022 letter and in response to the Watermaster Board's direction on November 18, 2021. However, when asked, Watermaster general counsel stated that he was "not prepared to provide a legal opinion in this moment." It was understood by Ontario that in order to comply with Watermaster Board direction on November 18, 2021, a report with legal counsel's opinion would be forthcoming. (Quach Decl., ¶ 8.)

On February 11, 2022, Ontario requested Watermaster general counsel approve an extension to the 90-day period if determined necessary by Watermaster. (Quach Decl., ¶ 9.)

Under Paragraph 31(c) of the Judgement, a party to the Judgement seeking to challenge an action/decision of the Watermaster Board has 90 days in which to file a motion to challenge said action/decision. Since the Watermaster Board approved the Fiscal Year 2021-2022 Assessment Package on November 18, 2021, the 90-day period by which Ontario must file its motion to challenge said Watermaster Board action/decision falls on February 17, 2022. Since that time, the parties have been attempting to negotiate a settlement and thus Ontario has not had sufficient time to fully develop its challenge to the Watermaster Board decision. The parties have known of Ontario's challenge, thus there is no harm to the parties if the Watermaster were to grant an extension of time so that Ontario can fully develop its arguments in support of its challenge.

Ontario has grounds to challenge the propriety of the action/decision of the Watermaster Board's approval of the Fiscal Year 2021-2022 Assessment Package. Specifically, Ontario's challenge is based on the grounds of the failure of Watermaster staff to administer assessments consistent with the Judgement and Court Orders. Ontario desires additional time to further develop that challenge. However, in the event Ontario's Application for an extension of time is denied, this Application and Declaration in support of the Application as well as Exhibits A and B attached to the Declaration shall serve as Ontario's challenge to the propriety of the action/decision of the Watermaster Board to approve the Fiscal Year 2021-2022 Assessment Package.

II. CONCLUSION

If the extension of the time to file a challenge to the above Watermaster Board action/decision is not extended from 90 to 180 days, the City of Ontario will be burdened with the expense and effort of filing a complete and thorough motion by February 17, 2022. Furthermore, granting the extension of time imposes no harm on Watermaster or the parties hereto. However, in the event an extension of time is denied, Ontario's arguments in favor of its challenge are stated in the correspondence attached as exhibits to the Declaration of Christopher Quach filed concurrently herewith, and thus this Application shall act as Ontario's challenge to the Watermaster Board's action/decision.

Dated: February 17, 2022

LAW OFFICES OF CHARISSE L SMITH
CHARISSE L SMITH

By: Charisse Smith
Charisse L Smith
Attorney for CITY OF ONTARIO

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 February 17, 2022 served the following:

1. CITY OF ONTARIO'S APPLICATION FOR AN ORDER TO EXTEND TIME UNDER JUDGEMENT, PARAGRAPH 31(C) TO CHALLENGE WATERMASTER ACTION/DECISION ON NOVEMBER 18, 2021 TO APPROVE THE FY 2021/2022 ASSESSMENT PACKAGE. IF SUCH REQUEST IS DENIED, THIS FILING IS THE CHALLENGE

/ 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 February 17, 2022 in Rancho Cucamonga, California.

Janine Wilson

By: Janine Wilson
Chino Basin Watermaster

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

JEFF PIERSON
2 HEXAM
IRVINE, CA 92603

ALLEN HUBSCH
LOEB & LOEB LLP
10100 SANTA MONICA BLVD.
SUITE 2200
LOS ANGELES, CA 90067

Members:

Agnes Cheng	agnes.cheng@cc.sbcounty.gov
Al Lopez	alopez@wmwd.com
Alan Frost	Alan.Frost@dpw.sbcounty.gov
Alberto Mendoza	Alberto.Mendoza@cmc.com
Alfonso Ruiz	alfonso.ruiz@cmc.com
Allen W. Hubsch	ahubsch@loeb.com
Alma Heustis	alma.heustis@californiasteel.com
Alonso Jurado	ajurado@cbwm.org
Amanda Coker	amandac@cvwdwater.com
Amanda Meere	Amanda.Meere@cao.sbcounty.gov
Amer Jakher	AJakher@cityofchino.org
Amy Bonczewski	ABonczewski@ontarioca.gov
Andrew Gagen	agagen@kidmanlaw.com
Andy Campbell	acampbell@ieua.org
Andy Malone	amalone@westyost.com
Angelica Todd	angelica.todd@ge.com
Angelo Simoes	Angelo.Simoes@linde.com
Anna Nelson	atruongnelson@cbwm.org
April Robitaille	arobitaille@bhfs.com
Armando Martinez	armartinez@fontana.org
Art Bennett	citycouncil@chinohills.org
Arthur Kidman	akidman@kidmanlaw.com
Ashok Dhingra	ash@akdconsulting.com
Ben Lewis	benjamin.lewis@gswater.com
Ben Peralta	bperalta@tvmwd.com
Benjamin M. Weink	ben.weink@tetratech.com
Beth.McHenry	Beth.McHenry@hoferranch.com
Betty Anderson	banderson@jcsd.us
Betty Folsom	bfolsom@jcsd.us
Bill Schwartz	bschwartz@mvwd.org
Bob Bowcock	bbowcock@irmwater.com
Bob DiPrimio	rjdiprimio@sgvwater.com
Bob Feenstra	bobfeenstra@gmail.com
Bob Kuhn	bkuhn@tvmwd.com
Bob Kuhn	bgkuhn@aol.com
Bob Page	Bob.Page@rov.sbcounty.gov
Brad Herrema	bherrema@bhfs.com
Braden Yu	Byu@ci.upland.ca.us
Bradley Jensen	bradley.jensen@cao.sbcounty.gov
Brandon Howard	brahoward@niagarawater.com
Brenda Fowler	balee@fontanawater.com
Brent Yamasaki	byamasaki@mwdh2o.com
Brian Dickinson	bdickinson65@gmail.com
Brian Geye	bgeye@autoclubspeedway.com
Brian Lee	blee@sawaterco.com
Carmen Sierra	carmens@cvwdwater.com
Carol Boyd	Carol.Boyd@doj.ca.gov
Carolina Sanchez	csanchez@westyost.com
Casey Costa	ccosta@chinodesalter.org
Cassandra Hooks	chooks@niagarawater.com
Catharine Irvine	cirvine@DowneyBrand.com

Chad Blais	cblais@ci.norco.ca.us
Chander Letulle	cletulle@jcsd.us
Charles Field	cdfield@att.net
Charles Linder	Charles.Linder@nrgenergy.com
Charles Moorrees	cmoorrees@sawaterco.com
Chino Hills City Council	citycouncil@chinohills.org
Chris Berch	cberch@jcsd.us
Chris Diggs	Chris_Diggs@ci.pomona.ca.us
Christiana Daisy	cdaisy@ieua.org
Christofer Coppinger	ccoppinger@geoscience-water.com
Christopher M. Sanders	cms@eslawfirm.com
Christopher Quach	cquach@ontarioca.gov
Christopher R. Guillen	cguillen@bhfs.com
Cindy Cisneros	cindyc@cvwdwater.com
Cindy Li	Cindy.li@waterboards.ca.gov
Courtney Jones	cjjones@ontarioca.gov
Craig Miller	CMiller@wmwd.com
Craig Stewart	craig.stewart@woodplc.com
Cris Fealy	cifealy@fontanawater.com
Dan Arrighi	darrighi@sgvwater.com
Dan McKinney	dmckinney@douglascountylaw.com
Daniel Bobadilla	dbobadilla@chinohills.org
Danny Kim	dkim@linklogistics.com
Dave Argo	daveargo46@icloud.com
Dave Crosley	DCrosley@cityofchino.org
David Aladjem	daladjem@downeybrand.com
David De Jesus	ddejesus@tvmwd.com
David Huynh	dhuynh@cbwm.org
Dawn Martin	Dawn.Martin@cc.sbcounty.gov
Denise Garzaro	dgarzaro@ieua.org
Dennis Mejia	dmejia@ontarioca.gov
Dennis Williams	dwilliams@geoscience-water.com
Diana Frederick	diana.frederick@cdcr.ca.gov
Ed Means	edmeans@roadrunner.com
Edgar Tellez Foster	etellezfoster@cbwm.org
Eduardo Espinoza	EduardoE@cvwdwater.com
Edward Kolodziej	edward.kolodziej@ge.com
Elizabeth M. Calciano	ecalciano@hensleylawgroup.com
Elizabeth Skrzat	ESkrzat@cbwcd.org
Eric Fordham	eric_fordham@geopentech.com
Eric Garner	eric.garner@bbklaw.com
Eric Grubb	ericg@cvwdwater.com
Eric Papathakis	Eric.Papathakis@cdcr.ca.gov
Eric Tarango	edtarango@fontanawater.com
Erika Clement	Erika.clement@sce.com
Eunice Ulloa	eulloa@cityofchino.org
Evette Ounanian	EvetteO@cvwdwater.com
Frank Brommenschenkel	frank.brommen@verizon.net
Frank Yoo	FrankY@cbwm.org
Fred Fudacz	ffudacz@nossaman.com
Fred Galante	fgalante@awattorneys.com
Gabriela Garcia	ggarcia@cbwm.org
Garrett Rapp	grapp@westyost.com

Gene Tanaka	Gene.Tanaka@bbklaw.com
Geoffrey Kamansky	gkamansky@niagarawater.com
Geoffrey Vanden Heuvel	geoffreyvh60@gmail.com
Gerald Yahr	yahrj@koll.com
Gidti Ludesirishoti	GidtiL@cvwdwater.com
Gina Nicholls	gnicholls@nossaman.com
Gino L. Filippi	Ginoffvine@aol.com
Gracie Torres	gtorres@wmwd.com
Grant Mann	GMann@dpw.sbcounty.gov
Greg Woodside	gwoodside@ocwd.com
Gregor Larabee	Gregor.Larabee@cdcr.ca.gov
Henry DeHaan	Hdehaan1950@gmail.com
Irene Islas	irene.islas@bbklaw.com
James Curatalo	jamesc@cvwdwater.com
James Jenkins	cnomgr@airports.sbcounty.gov
James McKenzie	jmckenzie@dpw.sbcounty.gov
Jane Anderson	janderson@jcsd.us
Janine Wilson	JWilson@cbwm.org
Jasmin A. Hall	jhall@ieua.org
Jason Marseilles	jmarseilles@ieua.org
Jason Pivovaroff	JPivovaroff@wmwd.com
Jayne Joy	Jayne.Joy@waterboards.ca.gov
Jean Cihigoyenetche	Jean@thejclawfirm.com
Jeff Evers	jevers@niagarawater.com
Jeff Mosher	jmosher@sawpa.org
Jeffrey L. Pierson	jpierson@intexcorp.com
Jennifer Hy-Luk	jhyluk@ieua.org
Jeremy N. Jungries	jjungreis@rutan.com
Jessie Ruedas	Jessie@thejclawfirm.com
Jim Markman	jmarkman@rwglaw.com
Jim W. Bowman	jbowman@ontarioca.gov
Jimmy Gutierrez - Law Offices of Jimmy Gutierrez	jimmylaredo@gmail.com
Jimmy L. Gutierrez	Jimmy@City-Attorney.com
Jimmy Medrano	Jaime.medrano2@cdcr.ca.gov
Jiwon Seung	JiwonS@cvwdwater.com
Joanne Chan	jchan@wvwd.org
Joao Feitoza	joao.feitoza@cmc.com
Jody Roberto	jroberto@tvmwd.com
Joe Graziano	jgraz4077@aol.com
Joe Joswiak	JJoswiak@cbwm.org
Joel Ignacio	jignacio@ieua.org
John Abusham	john.abusham@nrg.com
John Bosler	johnb@cvwdwater.com
John Harper	jrharper@harperburns.com
John Huitsing	johnhuitsing@gmail.com
John Lopez	jlopez@sarwc.com
John Lopez and Nathan Cole	customerservice@sarwc.com
John Mendoza	jmendoza@tvmwd.com
John Partridge	jpartridge@angelica.com
John Schatz	jschatz13@cox.net
John Thornton	JThorntonPE@H2OExpert.net
Jose A Galindo	Jose.A.Galindo@linde.com

Josh Swift	jmswift@fontanawater.com
Joshua Aguilar	jaguilar@ieua.org
Justin Brokaw	jbrokaw@marygoldmutualwater.com
Justin Nakano	JNakano@cbwm.org
Justin Scott-Coe Ph. D.	jscottcoe@mvwd.org
Karen Williams	kwilliams@sawpa.org
Kathleen Brundage	kathleen.brundage@californiasteel.com
Keith Kramer	kkramer@fontana.org
Keith Person	keith.person@waterboards.ca.gov
Ken Waring	kwaring@jcsd.us
Kevin O'Toole	kotoole@ocwd.com
Kevin Sage	Ksage@IRMwater.com
Kristina Robb	KRobb@cc.sbcounty.gov
Kurt Berchtold	kberchtold@gmail.com
Kyle Brochard	KBrochard@rwglaw.com
Kyle Snay	kylesnay@gswater.com
Larry Cain	larry.cain@cdcr.ca.gov
Laura Mantilla	lmantilla@ieua.org
Laura Yraceburu	lyraceburu@bhfs.com
Lauren Harold	lharold@linklogistics.com
Linda Jadeski	ljadeski@wvwd.org
Lisa Lemoine	LLemoine@wmwd.com
Liz Hurst	ehurst@ieua.org
Marcella Correa	MCorrea@rwglaw.com
Marco Tule	mtule@ieua.org
Maria Ayala	mayala@jcsd.us
Maria Mendoza	mmendoza@westyost.com
Maribel Sosa	msosa@ci.pomona.ca.us
Marilyn Levin	marilyn.levin@doj.ca.gov
Mark D. Hensley	mhensley@hensleylawgroup.com
Mark Wildermuth	mwildermuth@westyost.com
Mark Wiley	mwiley@chinohills.org
Martin Cihigoyenetche	marty@thejclawfirm.com
Martin Rauch	martin@rauchcc.com
Martin Zvirbulis	mezvirbulis@sgvwater.com
Mathew C. Ballantyne	mballantyne@cityofchino.org
Matthew H. Litchfield	mlitchfield@tvmwd.com
May Atencio	matencio@fontana.org
Melanie Trevino	Mtrevino@jcsd.us
Michael A. Blazevic	mblazevic@westyost.com
Michael Adler	michael.adler@mcmcnet.net
Michael P. Thornton	mthornton@tkeengineering.com
Michelle Licea	mlicea@mvwd.org
Michelle Staples	mstaples@jacksontidus.law
Mike Gardner	mgardner@wmwd.com
Mike Maestas	mikem@cvwdwater.com
Miriam Garcia	mgarcia@ieua.org
Moore, Toby	TobyMoore@gswater.com
MWDProgram	MWDProgram@sdcwa.org
Nadia Aguirre	naguirre@tvmwd.com
Natalie Costaglio	natalie.costaglio@mcmcnet.net
Nathan deBoom	n8deboom@gmail.com
Neetu Gupta	ngupta@ieua.org

Nichole Horton	Nichole.Horton@pomonaca.gov
Nick Jacobs	njacobs@somachlaw.com
Nicole deMoet	ndemoet@ci.upland.ca.us
Nicole Escalante	NEscalante@ontarioca.gov
Noah Golden-Krasner	Noah.goldenkrasner@doj.ca.gov
Parker Simon	psimon@bhfs.com
Paul Deutsch	paul.deutsch@woodplc.com
Paul Hofer	farmerhofer@aol.com
Paul Hofer	farmwatchtoo@aol.com
Paul S. Leon	pleon@ontarioca.gov
Pete Hall	rpetehall@gmail.com
Pete Hall	pete.hall@cdcr.ca.gov
Pete Vicario	PVicario@cityofchino.org
Peter Hettinga	peterhettinga@yahoo.com
Peter Kavounas	PKavounas@cbwm.org
Peter Rogers	progers@chinohills.org
Rachel Avila	R.Avila@MPGLAW.com
Randy Visser	RVisser@sheppardmullin.com
Richard Anderson	horsfly1@yahoo.com
Rick Darnell	Richard.Darnell@nrgenergy.com
Rick Rees	richard.rees@woodplc.com
Rickey S. Manbahal	smanbahal@wvwd.org
Rita Pro	rpro@cityofchino.org
Robert C. Hawkins	RHawkins@earthlink.net
Robert DeLoach	robertadeloach1@gmail.com
Robert E. Donlan	red@eslawfirm.com
Robert Neufeld	robneu1@yahoo.com
Robert Wagner	rwagner@wbecorp.com
Ron Craig	Rcraig21@icloud.com
Ron LaBrucherie, Jr.	ronLaBrucherie@gmail.com
Ronald C. Pietersma	rcpietersma@aol.com
Ruben Llamas	rllamas71@yahoo.com
Ruby Favela	rfavela@cbwm.org
Ryan Shaw	RShaw@wmwd.com
Sally H. Lee	shlee@ieua.org
Sam Nelson	snelson@ci.norco.ca.us
Sam Rubenstein	srubenstein@wpcarey.com
Sandra S. Rose	directorrose@mvwd.org
Sarah Foley	Sarah.Foley@bbklaw.com
Scott Burton	sburton@ontarioca.gov
Scott Slater	sslater@bhfs.com
Seth J. Zielke	sjzielke@fontanawater.com
Shawnda M. Grady	sgrady@eslawfirm.com
Shivaji Deshmukh	sdeshmukh@ieua.org
Skylar Stephens	SStephens@sdcwa.org
slee@tvmwd.com	slee@tvmwd.com
Sonya Barber	sbarber@ci.upland.ca.us
Sonya Zite	szite@wmwd.com
Stephanie Gutierrez	Stephanie.Gutierrez@cc.sbcounty.gov
Stephanie Reimer	SReimer@mvwd.org
Stephen Deitsch	stephen.deitsch@bbklaw.com
Steve Kennedy	skennedy@bmklawplc.com
Steve M. Anderson	steve.anderson@bbklaw.com

Steve Nix	snix@ci.upland.ca.us
Steve Riboli	steve.riboli@sanantoniowinery.com
Steve Smith	ssmith@ieua.org
Steve W. Ledbetter, PE	sledbetter@tkeengineering.com
Steven Andrews Engineering	sandrews@sandrewsengineering.com
Steven Flower	sflower@rwglaw.com
Steven J. Elie	selie@ieua.org
Steven J. Elie	s.elie@mpglaw.com
Steven Popelar	spopelar@jcsd.us
Steven Raughley	Steven.Raughley@cao.sbcounty.gov
Susan Palmer	spalmer@kidmanlaw.com
Tammi Ford	tford@wmwd.com
Tariq Awan	Tariq.Awan@cdcr.ca.gov
Taya Victorino	tayav@cvwdwater.com
Teri Layton	tlayton@sawaterco.com
Terry Catlin	tlcatlin@wfajpa.org
Tim Barr	tbarr@wmwd.com
Tim Kellett	tkellett@tvmwd.com
Timothy Ryan	tjryan@sgvwater.com
Toby Moore	TobyMoore@gswater.com
Todd Minten	tminten@sbcglobal.net
Tom Barnes	tbarnes@esassoc.com
Tom Bunn	TomBunn@Lagerlof.com
Tom Cruikshank	tcruikshank@linklogistics.com
Tom Harder	tharder@thomashardercompany.com
Tom McPeters	THMcP@aol.com
Tom O'Neill	toneill@chinodesalter.org
Toni Medell	mmedel@mbakerintl.com
Tony Long	tlong@angelica.com
Toyasha Sebbag	tsebbag@cbwcd.org
Tracy J. Egoscue	tracy@egoscuelaw.com
Van Jew	vjew@wvwd.org
Vanny Khu	VKhu@ontarioca.gov
Veronica Tristan	vtristan@jcsd.us
Veva Weamer	vweamer@westyost.com
Victor Preciado	Victor_Preciado@ci.pomona.ca.us
Vivian Castro	vcastro@cityofchino.org
Wade Fultz	Wade.Fultz@cmc.com
WestWater Research, LLC	research@waterexchange.com
William J Brunick	bbrunick@bmblawoffice.com
William Urena	wurena@emeraldus.com

EXHIBIT B

EXHIBIT B

FEE EXEMPT

ELIZABETH P. EWENS (SB #213046)
elizabeth.ewens@stoel.com
MICHAEL B. BROWN (SB #179222)
michael.brown@stoel.com
WHITNEY A. BROWN (SB #324320)
whitney.brown@stoel.com
STOEL RIVES LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
Telephone: 916.447.0700
Facsimile: 916.447.4781

Attorneys for
CITY OF ONTARIO

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendants.

CASE NO. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO
HONORABLE GILBERT G. OCHOA

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CITY OF ONTARIO'S MOTION CHALLENGING WATERMASTER'S NOVEMBER 17, 2022 ACTIONS/DECISION TO APPROVE THE FY 2022/2023 ASSESSMENT PACKAGE

Date: March 21, 2023
Time: 9:00 a.m.
Dept: S24

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

City of Ontario ("Ontario") files this challenge to Chino Basin Watermaster's ("Watermaster") November 17, 2022 decision to approve the Fiscal Year 2022/2023 Assessment Package ("FY 22/23 Assessment Package").[1] The FY 22/23 Assessment Package purports to exclude from assessment water produced from Chino Basin (the "Basin") by certain parties as part of the Dry Year Yield Program (the "DYY Program").

The FY 22/23 Assessment Package is legally invalid for three independent reasons. The first two assume that the 2019 Letter Agreement is valid and in effect, consistent with this Court's November 3, 2022 Order on Ontario's Challenge to the FY 2021/2022 Assessment Package. The third argument is similar to Ontario's prior Challenge but is raised to preserve Ontario's issues as they relate to Ontario's new challenge to the FY 2022/2023 Assessment Package while the Court's November 3, 2022 Order is pending on appeal.

First, Watermaster's decision to exclude groundwater produced from the DYY Program storage account ("DYY water") flouts the requirements set forth in this Court's 1978 Judgment as well as in subsequent court orders and agreements that govern Basin operation. Those governing agreements and orders specify that *all* water produced in the Basin must be assessed; they do not distinguish between different types of water (*e.g.*, native water, stored water, and supplemental water) for the purpose of assessment, nor do they suggest that Watermaster may permissibly circumvent its obligation to assess all water produced, regardless of type. Indeed, Watermaster's own actions only underscore that produced water has always been assessed. Importantly, the 2019 Letter Agreement contains ***no*** terms relating to assessments. Accordingly, there is no basis for Watermaster to interpret the 2019 Letter Agreement as throwing out or overriding those portions of the Judgment addressing what production is assessed. Watermaster's decision not to assess DYY water has, and continues to, result in a windfall for interested parties Fontana Water Company

/ / /

[1] Under Paragraph 31(c) of the Judgment, a party to the Judgment seeking to challenge an action or decision of the Watermaster Board has 90 days in which to file a motion to challenge such action.

("FWC") and Cucamonga Valley Water District ("CVWD") and has required Ontario and others to pay substantially more than their fair share in assessments.[2]

Second, operation of the DYY Program requires compliance with certain performance criteria, detailed in Exhibit G to the 2003 Groundwater Storage Program Funding Agreement ("Funding Agreement"). The Funding Agreement, including Exhibit G, was approved by the Court in 2003. The 2019 Letter Agreement specifically references and includes Exhibit G within its terms, and while the 2019 Letter Agreement purported to amend Exhibit G's groundwater performance criteria (e.g., making groundwater production out of the DYY Program voluntary, thus permitting parties to voluntarily increase groundwater pumping), the 2019 Letter Agreement did ***not*** mention, amend, or change Exhibit G *as it pertains to imported water performance criteria that require a shift off of imported water deliveries*. For the 2021/22 fiscal year, upon which the FY 22/23 Assessment Package is based, both CVWD and FWC failed to comply with the Exhibit G imported water performance criteria. In doing so, they overclaimed their DYY production amounts and financially benefited from a corresponding reduction in the amount of their total assessed groundwater production to the detriment of other parties, including Ontario, who were required to absorb the financial difference in assessments.

Third, Watermaster's approval of the FY 22/23 Assessment Package is unenforceable because it was adopted in reliance on a 2019 Letter Agreement that purported to make material changes to the DYY Program without notice to the parties and without following the mandated approval process for such changes, which ordinarily includes vetting through pool committees (which develop policy recommendations for the administration of particular groups of parties with similar water rights within the Basin), an advisory committee (which is charged with making recommendations, reviewing, and acting upon decisions made by Watermaster), and the Watermaster Board. Having failed to provide the requisite notice and having bypassed court-mandated procedure, Watermaster lacked the authority to enforce the 2019 Letter Agreement and, correspondingly, to approve the cost-shifting within the FY 22/23 Assessment Package.

[2] FWC and CVWD are interested parties because Watermaster allowed these agencies to draw unassessed DYY water in violation of the Judgment and subsequent court orders and agreements.

This Court performs an essential role through its continuing jurisdiction by ensuring that all parties to the Judgment, including Watermaster, play by the rules. Watermaster has not done so here. Accordingly, Ontario respectfully requests that this Court grant its challenge and issue an order: (1) directing Watermaster to implement the DYY Program in a manner consistent with the Judgment and court orders, including both as it relates to the assessment of groundwater production and compliance with the Exhibit G performance criteria; (2) directing Watermaster to comply with the Watermaster Approval Process as it pertains to the DYY Program and any proposed amendments thereto;[3] (3) correcting and amending the FY 22/23 Assessment Package to assess water produced from the DYY Program; and (4) invalidating the 2019 Letter Agreement.

II. FACTUAL BACKGROUND

What follows is a brief summary of the history and context of this nearly 50-year-old basin adjudication. For a more detailed factual background, Ontario respectfully refers this Court to its Combined Reply, filed on May 27, 2022 (the "Combined Reply"), at pages 9-24.[4]

A. Basin Adjudication, the Court's Continuing Jurisdiction, and the Watermaster Approval Process

In 1978, this Court entered a judgment (the "Judgment") that imposed an efficient and equitable plan for the management of groundwater resources in the Basin.[5] (RJN, Ex. 1.) The Judgment adjudicated rights to groundwater and storage capacity in the Basin and authorized Watermaster to "administer and enforce the provisions of [the] Judgment and any subsequent

---

[3] While Ontario recognizes that the Court addressed arguments concerning the Watermaster Approval Process and the 2019 Letter Agreement in Ontario's challenge to the FY 2021/2022 Assessment Package, that Order currently is pending on appeal. (Declaration of Elizabeth P. Ewens ("Ewens Decl."), ¶¶ 4-5.) Those arguments, therefore, are raised herein for the purposes of preserving Ontario's claims as they relate to its challenge to the FY22/23 Assessment Package.

[4] The full title of this May 27, 2022 filing is "City of Ontario's Combined Reply to the Oppositions of Watermaster, Fontana Water Company and Cucamonga Valley Water District, and Inland Empire Utilities Agency to Applications for an Order to Extend Time Under Paragraph 31(c) of the Judgment, to Challenge Watermaster Action/Decision on November 18, 2021 to Approve the FY 2021/2022 Assessment Package or Alternatively, City of Ontario's Challenge." (See Request for Judicial Notice ("RJN"), Ex. 57.) As noted herein, the ruling on the FY 2021/2022 Assessment Package challenge is currently pending on appeal. (Ewens Decl., ¶¶ 4-5.)

[5] The Court's entry of the Judgment followed trial and a stipulation among the majority of parties. (RJN, Ex. 1 at ¶ 2.)

instructions or orders of the Court hereunder." (*Id.* at ¶ 16.) The Court was careful, however, to reserve to itself "[f]ull jurisdiction, power and authority" as to "all matters contained" in the Judgment. (*Id.* at ¶ 15.) Thus, Watermaster's authorities and duties were expressly restricted and made "[s]ubject to the continuing supervision and control of the Court." (*Id.* at ¶ 17.)

Over time, the Judgment has been amended and refined by subsequent agreements as well as court orders. Together, these agreements and orders govern Watermaster's actions, both procedurally and substantively. For example, the Judgment provides that Watermaster may take "discretionary action" only upon the recommendation or advice of an advisory committee. (RJN, Ex. 1 at ¶ 38(b)[2].) And groundwater storage agreements must proceed through a prescribed approval process that first requires Watermaster to obtain the Court's approval of the agreements. (*Id.*, Ex. 3 at p. 12 fn. 8.)

B. Development of the DYY Program

The DYY Program was borne out of a groundwater storage program funding agreement in 2003 (the "2003 Funding Agreement"). The 2003 Funding Agreement provided that Metropolitan Water District ("Metropolitan") could store up to 100,000 acre feet ("AF") of water that it imported from the Colorado River, among other sources. (RJN, Ex. 8 at p. 6.) The 2003 Funding Agreement further allowed that, during dry years, Metropolitan could direct participating agencies (including the Inland Empire Utilities Agency ("IEUA") and Three Valleys Municipal Water District ("TVMWD")) to pump up to 33,000 AF of that stored water rather than using the same amount of surface water.[6] (*Id.* at ¶ I(J).) The details of how participating agencies would pump stored water, including specific performance criteria regarding reductions in imported water deliveries, were provided for in an attachment to the 2003 Funding Agreement ("Exhibit G"). (*Id.* at 6; see *id.*, Ex. G.) Ultimately, Exhibit G, which remains in full force and effect, ensures a balanced formula: it calls for the reduction of imported water deliveries and the corresponding replacement of water that has been imported with stored Basin groundwater. The 2003 Funding Agreement, including Exhibit G, was approved through the prescribed Watermaster approval process (the "Watermaster

[6] The unused surface water flow to Metropolitan to supply its surface-water needs during a drought.

Approval Process"), which involved consideration by pool committees, advisory committees, and the Watermaster Board. (RJN, Ex. 11; Declaration of Courtney Jones ("Jones Decl."), ¶¶ 9-14, Ex. 3.) Subsequent amendments that sought to make material changes to the 2003 Funding Agreement similarly were adopted only after full consideration through the Watermaster Approval Process.

The 2003 Funding Agreement was ultimately approved by court order on June 5, 2003, which recognized that the DYY Program "cannot be undertaken" until and unless "Watermaster and this Court approve the Local Agency Agreements and Storage and Recovery Application, or some equivalent approval process is completed." (RJN, Ex. 9 at 3:18-25.) The court's order also provided that storage and recovery programs should "provide broad mutual benefits to the parties to the Judgment." (*Id.* at 2:1.)

Consistent with the 2003 Court Order, Local Agency Agreements were executed between IEUA, TVMWD, and their member agencies.[7] (RJN, Exs. 10-12; Jones Decl., ¶ 15.) A subsequent court order in 2004 reviewed and approved a DYY storage agreement submitted by the Watermaster. (See RJN, Ex. 15.) The 2004 Court Order again emphasized that the DYY Program should "provide broad mutual benefits to the parties to the Judgment" and prohibited Watermaster from approving any plan "that will have a substantial adverse impact on other producers." (*Id.* at 2-3.) It further stated that "no use shall be made of the storage capacity of Chino Basin except pursuant to written agreement with Watermaster" and reiterated that the approval of storage agreements must occur through the formal Watermaster Approval Process. (*Id.* at 3-4.) Importantly, neither the 2003 Court Order nor the 2004 Court Order amended the Judgment nor its key principle that all water produced from the Basin must be assessed.

C. Watermaster's Assessment of Produced Water: Then and Now

Until very recently, all water produced in the Basin was assessed consistent with the terms of the Judgment. The amount that each party is assessed is principally based on the amount of its individual groundwater production. (RJN, Ex. 1 at ¶ 53.) Indeed, the Judgment defines "produced"

[7] The member agencies are CVWD, City of Pomona, City of Chino Hills, City of Chino, Monte Vista Water District, Ontario, City of Upland, and Jurupa Community Services District via Ontario. (Jones Decl., ¶ 15.) Opposing Party FWC does *not* have a Local Agency Agreement. (*Id.,* ¶ 17.)

groundwater in the broadest possible terms: "to pump or extract ground water from Chino Basin." (*Id*. at ¶ 4(q), (s).) Under the Watermaster Rules and Regulations, uniform assessment of production is mandatory, and there is no exception for water produced from the DYY Program. (*Id.*, Ex. 2 at art. IV, § 4.1, see also *id*., Ex. 1 at ¶ 53.)

Watermaster failed to comply with these basic tenets of the Judgment in the 2022/23 Assessment Packages. Relying on its interpretation of the 2019 Letter Agreement[8] that was adopted outside of the required Watermaster Approval Process and without notice to all parties (see Combined Reply at pp. 16-20 (RJN, Ex. 57)), Watermaster excluded DYY water when calculating the parties' individual assessments. In other words, Watermaster failed to count DYY water as "produced" water for purposes of calculating assessments, in contravention of the Judgment and subsequent court orders.

This injury was compounded in the 2022/23 assessment year as a result of Watermaster's failure to enforce the Exhibit G performance criteria as it pertains to the use of imported water. As detailed further herein, in failing to comply with the Exhibit G performance criteria, both CVWD and FWC overclaimed their DYY production thus exempting additional water from production assessments. CVWD shifted off of imported water by only 13,915 AF but claimed DYY production in the amount of 17,912 AF, thus overclaiming 4,000 AF of DYY production. For its part, FWC, which does not even have a Local Agency Agreement authorizing its participation in the DYY Program, shifted off of imported water by only 1,718 AF but claimed DYY production in the amount of 5,000 AF, thus overclaiming the difference of 3,282 AF. This shift off of imported water is fundamental to the DYY conjunctive use program; it is mandatory under the terms of 2003 Court Order adopting the Exhibit G performance criteria, and was left unchanged by the 2019 Letter Agreement that explicitly incorporates and references Exhibit G. (RJN, Exs. 12, 41.)

Watermaster's decision not to enforce the Exhibit G performance criteria resulted in a windfall to interested parties CVWD and FWC, and a dramatically higher assessment for Ontario. (Jones Decl., ¶ 17.)

[8] See RJN, Ex. 34.

III. STANDARD OF REVIEW

"Under paragraph 31 of the Judgment[,] the Court's review of any Watermaster action or decision is 'de novo.'" (RJN, Ex. 9 at 4:2-3.) "Watermaster's findings, if any, may be received in evidence at the hearing but shall not constitute presumptive or prima facie proof of any fact in issue." (*Id.* at 4:3-5.) Thus, "the Court looks at the evidence anew." (*Id.* at 4:7.) Where the issue presented is whether the Watermaster properly interpreted a judgment or decree, courts exercise their independent judgment and apply de novo review. (*Dow v. Honey Lake Valley Res. Conservation Dist.* (2021) 63 Cal.App.5th 901, 911.)

IV. ARGUMENT

A. Watermaster Failed to Comply With the Performance Criteria for the DYY Program Detailed in Exhibit G

The DYY Program is a conjunctive use program specifically designed maximize the flexibility and reliability of water supplies through the coordinated management and use of surface water and groundwater resources, and to replace imported water supplies with groundwater during dry years. To that end, the DYY Program and its implementing orders and agreements provide explicit performance targets for the reduction of imported water deliveries and corresponding increases in local groundwater pumping or, put another way, shifts off of imported water and onto groundwater production from DYY Program storage accounts in certain years. The Exhibit G performance criteria detail the manner in which roll-off from imported water supplies and corresponding use of DYY Program water work together, and fundamentally ensure that an agency can only claim DYY credit equal to their shift off of imported water. (Jones Decl., ¶ 14.)

In the year at issue, Watermaster did not require CVWD and FWC to comply with the Exhibit G performance criteria as they pertain to required shifts off of imported water supplies and onto groundwater production from the DYY Program. In the 2022/23 assessment year (production year 2021/22), CVWD reduced its used of imported water by 13,915 AF but claimed DYY production amounts of 17,912 AF—an imbalance and overclaiming of 4,000 AF of DYY production. (Jones Decl., ¶ 65.) For its part, in the same year, FWC rolled off of imported water by only 1,718 AF but claimed DYY production amounts of 5,000 AF—an imbalance and

overclaiming of 3,282 AF of DYY production. (*Id*., ¶ 66.) As addressed more fully, below, because Watermaster has taken the position that DYY Program production is exempt from assessments, the additional 4,000 AF of DYY production claimed by CVWD and extra 3,282 AF of DYY production claimed by FWC, in violation of the Exhibit G performance criteria, exempts that additional water from otherwise authorized production assessments. It is a windfall. And it is a windfall at the expense of other parties, like Ontario, who are required to make up the difference. (*Id*., ¶ 67.)

While Watermaster has taken the position DYY Program water is not assessed, and that the 2019 Letter Agreement somehow was legally sufficient to materially alter the Judgment and other Court orders, this much is clear: the 2019 Letter Agreement explicitly incorporated the Exhibit G performance criteria that CVWD and FWC now have violated. (Jones Decl., ¶ 35.) While the 2019 Letter Agreement allowed parties to pump over the groundwater baseline as defined in Exhibit G, the 2019 Letter Agreement is silent as to all other aspects of the Exhibit G performance criteria and does nothing to amend or modify the imported water criteria contained in Exhibit G. While, as detailed below, the validity and legal effect of the 2019 Letter Agreement is very much in dispute, even if, *arguendo*, the 2019 Letter Agreement is valid, CVWD and FWC violated both the terms of the 2019 Letter Agreement and the 2003 Order adopting the Exhibit G performance criteria when they claimed amounts of DYY production that exceeded the corresponding amount of their shift off of imported water.

B. Watermaster's Failure to Assess Stored Water is Inconsistent With the 1978 Judgment and Subsequent Court Orders

The Judgment requires that Watermaster assess all water produced from the Basin. Accordingly, waiving assessments for the DYY Program would require a Judgment amendment or explicit instructions from the Court for an exception for DYY production. Neither of these has happened and thus Watermaster must comply with the Judgment in assessing DYY production. Further, neither the 2003 nor 2004 DYY Court Orders can be interpreted by Watermaster in a manner that is inconsistent with the Judgment. Ultimately, the terms of the Judgment prevail.

Managing the Basin is costly. To defray some of the costs, the Judgment and subsequent agreements make clear that all water produced must be assessed. According to the Judgment, the

amount that each party is assessed is "based upon *production*." (RJN, Ex. 1 at ¶ 53 (emphasis added).) The Judgment and other governing documents define groundwater production subject to assessment in very broad terms. The Judgment, for example, does not distinguish between different types of water produced. Instead, it defines "Produce or Produced" broadly as "[t]o pump or extract ground water from Chino Basin" and "Production" as "[a]nnual quantity, stated in acre feet, of water produced." (*Id.* at ¶ 4(q), (s).) Similarly, the Judgment does not limit Watermaster's ability to assess production. (Jones Decl., ¶ 41; RJN, Ex. 1 at ¶ 51 ["Production assessments, on whatever bases, may be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool."].) The Watermaster Rules and Regulations, in turn, provide that "Watermaster *shall* levy assessments against the parties . . . based upon Production during the preceding Production period. The assessments shall be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool."[9] (RJN, Ex. 2 at art. IV, § 4.1 (emphasis added).) And the Appropriative Pooling Plan provides that "[c]osts of administration of [the Appropriative] pool and its share of general Watermaster expense shall be recovered by a uniform assessment applicable to *all* production during the preceding year." (Jones Decl., ¶ 42 (emphasis added).) The governing documents, in other words, require that all water produced must be assessed. (See generally *Hi-Desert Cnty. Water Dist. v. Blue Skies Country Club, Inc.* (1994) 23 Cal.App.4th 1723, 1737 [rejecting watermaster's attempt to "palpably ignore[] the rights of defendant as defined in" an earlier judgment and instead trying to "extract money from defendant to pay for . . . supplemental water in direct violation of the terms of such judgment"].)

To be sure, the Judgment distinguishes between native groundwater, stored groundwater, and supplemental water for some purposes.[10] Paragraph 11, for example, provides that ground

[9] The Watermaster Rules and Regulations allow for limited assessment adjustments, but the exceptions do not apply to water produced through the DYY Program. (RJN, Ex. 2 at art. IV, § 4.4; Jones Decl., ¶ 44.)

[10] The Judgment defines "Basin Water" as ground water within Chino Basin that is subject to the Judgment, excluding stored water. (RJN, Ex. 1, at ¶ 4(d).) "Stored Water," in turn, is defined as "[s]upplemental water held in storage . . . for subsequent withdrawal and use pursuant to agreement with Watermaster." (*Id.* at ¶ 4(aa).) And "Ground Water" is "[w]ater beneath the surface of the ground and within the zone of saturation, i.e., below the existing water table." (*Id.* at ¶ 4(h).)

water storage capacity that is not used for storage or regulation of Basin Water can be used for storage of "supplemental water," pursuant to Watermaster's control and regulation. But Paragraph 11 does not suggest that different kinds of water can be assessed differently. Similarly, Paragraph 14 prohibits the parties from "storing supplemental water in Chino Basin for withdrawal," except pursuant to a written agreement with Watermaster and in accordance with Watermaster regulations. (RJN, Ex. 1 at ¶ 14.) This paragraph does not provide that such "supplemental water" (or any other type of water) should not be assessed. Finally, Paragraph 13 prohibits parties from "producing ground water" in certain amounts but has nothing to say about whether the water produced should be assessed. Put simply, the 1978 Judgment's injunctions on producing ground water or storing supplemental water do not require or even suggest that supplemental water should be exempt from assessment. And nothing in subsequent agreements or court orders alters Watermaster's obligation to assess all water that is produced.

1. Watermaster's actions confirm that all water produced must be assessed

Consistent with the governing documents' mandate that all water produced must be assessed, Watermaster consistently assessed all water until suddenly reversing course. For example, Watermaster assessed FWC's production of supplemental water in assessment year 2021/22. (Jones Decl., ¶ 46; RJN, Ex. 53.) Watermaster also assessed imported water. (See Jones Decl., ¶ 47; RJN, Ex. 53.) Finally—and crucially—Watermaster assessed DYY Program water in production years 2002/03 through 2010/11 during the first cycle of the DYY Program. (Jones Decl., ¶ 49; RJN, Exs. 44-52.) Watermaster's own actions establish that until very recently, all water produced was assessed, and there has been no legal rationale given for the change in course.

2. Assessing all water does not amount to "double counting"

In its opposition to Ontario's challenge to Watermaster's previous (2021/22) Assessment Package, FWC and CVWD have insisted that assessing all water produced would amount to a "double administration charge" for the pumping of DYY Program water. This argument is hard to take seriously. A San Francisco resident who pays a toll each time she crosses the Bay Bridge is not thereby exempt from paying other city taxes, because the taxes or assessments have entirely

different purposes. The same concept applies here: Entities participating in the DYY Program are assessed administrative surcharges for the specific purpose of defraying the administrative costs of running the DYY Program. Assessments of produced water, by contrast, underwrite Basin operations as a whole. (RJN, Ex. 1 at ¶¶ 53-54.)

Further, crediting FWC and CVWD's position would invite gamesmanship. Water suppliers could manipulate their records concerning the "type" of water they take to avoid paying administrative surcharges like those the DYY Program assesses. By "coloring the water something else"—*i.e.*, by stating that they took 2,500 AF of recycled water rather than DYY water, or the reverse—parties like FWC and CVWD can circumvent fees and improperly shift costs to others.

3. Excluding DYY water when calculating parties' individual assessments improperly shifted responsibility for those payments to Ontario

By declining to assess water produced through the DYY Program in the FY 22/23 Assessment Package, Watermaster has repeated the same error it made the 2021/22 Assessment Package. As a result, Watermaster allowed CVWD and FWC to circumvent their financial responsibilities. While CVWD is only entitled to take 11,353 AF of DYY Program production per year per its Local Agency Agreement, it claimed 17,912 AF, and was not assessed on the full amount. And while FWC does not have a Local Agency Agreement at all, it was allowed to claim 5,000 AF of DYY Program Production. Watermaster's failure to assess any DYY production resulted in cost-shifting to other parties, including an additional $693,964 added financial burden on Ontario. (Jones Decl., ¶ 67.) Watermaster's decision not to assess all water produced contravenes the Judgment and this Court's 2003 and 2004 orders, which emphasize that the DYY Program must "provide broad mutual benefits to the parties to the Judgment." (RJN, Ex. 9 at pp. 4-6; *Id.*, Ex. 14 at p. 2.) An agreement that benefits only a few (CVWD and FWC) at the expense of many contravenes that directive. And it contravenes case law holding that parties to a stipulated judgment cannot unilaterally revise that judgment.

C. Watermaster Failed to Provide Notice Regarding the 2019 Letter Agreement and Failed to Comply With the Mandatory Watermaster Approval Process

Aside from the Watermaster's legally erroneous understanding of the Judgment and other

governing documents, its approval of the FY 22/23 Assessment Package is unenforceable for a second, independent reason. The Judgment and subsequent court orders prescribe both procedural and substantive requirements relating to proposed Watermaster actions. In 2015, a proposed amendment to the 2003 Funding Agreement ("Amendment 8") sought to make material changes to the DYY Program, including changes to the parties' performance criteria in Exhibit G. (RJN, Ex. 16 at Ex. G.) Under the Judgment and court orders, Amendment 8 had to make its way through the formal Watermaster Approval Process before it could be adopted, a process that involved recommendations for approval by the pool and advisor committees tasked with assisting the Watermaster in the performance of its duties under the Judgment. By contrast, the 2019 Letter Agreement—which modified the DYY Program to allow for water to be recovered outside of local agency agreements without a corresponding change or reduction in imported water supplies—was not approved through the mandated Watermaster Approval Process, nor was notice of the proposed changes provided to all parties as required under the Judgment. (See Jones Decl., ¶¶ 20, 33.) Ontario incorporates by reference its arguments challenging the validity of the 2019 Letter Agreement, which were made in its challenge to the Watermaster's 2021/22 Assessment Package, and which are now pending on appeal. (See Combined Reply at pp. 28-33 (RJN, Ex. 57).) For the same reasons, the Watermaster lacked the authority to enact the FY 22/23 Assessment Package. At the very least, if Watermaster wanted to make a change of this magnitude, it was obligated to provide Ontario notice and an opportunity to be heard. (See RJN, Ex. 57.)

V. CONCLUSION

For the foregoing reasons, Ontario respectfully requests that the Court grant its challenge and issue an order: (1) directing Watermaster to implement the DYY Program in a manner consistent with the Judgment and subsequent agreements and court orders, including Exhibit G; (2) directing Watermaster to comply with the Watermaster Approval Process; (3) correcting and

/ / /

/ / /

/ / /

/ / /

amending the FY 22/23 Assessment Package to assess water produced from the DYY Program; and (4) invalidating the 2019 Letter Agreement.

DATED: February 14, 2023

STOEL RIVES LLP

By: _____

ELIZABETH A. EWENS
MICHAEL B. BROWN
WHITNEY A. BROWN
Attorneys for City of Ontario

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 February 15, 2023, I served the following:

1. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CITY OF ONTARIO'S MOTION CHALLENGING WATERMASTER'S NOVEMBER 17, 2022 ACTIONS/DECISION TO APPROVE THE 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.

/ 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 February 15, 2023 in Rancho Cucamonga, California.

By: Ruby Favela Quintero
Chino Basin Watermaster

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

JEFF PIERSON
2 HEXAM
IRVINE, CA 92603

Ruby Favela Quintero

Contact Group Name: Master Email Distribution List

Categories: Main Email Lists

Members:

Adrian Gomez	agomez@emeraldus.com
Alan Frost	Alan.Frost@dpw.sbcounty.gov
Alberto Mendoza	Alberto.Mendoza@cmc.com
Alejandro R. Reyes	arreyes@sgvwater.com
Alexandria Moore	amoore@cbwm.org
Alexis Mascarinas	AMascarinas@ontarioca.gov
Alfonso Ruiz	alfonso.ruiz@cmc.com
Allen Hubsch	ahubsch@hubschlaw.com
Alma Heustis	alma.heustis@californiasteel.com
Alonso Jurado	ajurado@cbwm.org
Alyssa Coronado	acoronado@sarwc.com
Amanda Coker	amandac@cvwdwater.com
Amer Jakher	AJakher@cityofchino.org
Amy Bonczewski	ABonczewski@ontarioca.gov
Andrew Gagen	agagen@kidmanlaw.com
Andy Campbell	acampbell@ieua.org
Andy Malone	amalone@westyost.com
Angelica Todd	angelica.todd@ge.com
Anna Nelson	atruongnelson@cbwm.org
Anthony Alberti	aalberti@sgvwater.com
April Robitaille	arobitaille@bhfs.com
Art Bennett	citycouncil@chinohills.org
Arthur Kidman	akidman@kidmanlaw.com
Ashok Dhingra	ash@akdconsulting.com
Ben Lewis	benjamin.lewis@gswater.com
Ben Peralta	bperalta@tvmwd.com
Benjamin M. Weink	ben.weink@tetratech.com
Beth.McHenry	Beth.McHenry@hoferranch.com
Betty Anderson	banderson@jcsd.us
Betty Folsom	bfolsom@jcsd.us
Bill Schwartz	bschwartz@mvwd.org
Bob Bowcock	bbowcock@irmwater.com
Bob DiPrimio	rjdiprimio@sgvwater.com
Bob Feenstra	bobfeenstra@gmail.com
Bob Kuhn	bkuhn@tvmwd.com
Bob Kuhn	bgkuhn@aol.com
Bob Page	Bob.Page@rov.sbcounty.gov
Brad Herrema	bherrema@bhfs.com
Braden Yu	Byu@ci.upland.ca.us
Bradley Jensen	bradley.jensen@cao.sbcounty.gov
Brandi Belmontes	BBelmontes@ontarioca.gov
Brandi Goodman-Decoud	bgdecoud@mvwd.org
Brandon Howard	brahoward@niagarawater.com
Brenda Fowler	balee@fontanawater.com
Brent Yamasaki	byamasaki@mwdh2o.com
Brian Dickinson	bdickinson65@gmail.com
Brian Geye	bgeye@autoclubspeedway.com
Brian Lee	blee@sawaterco.com
Bryan Smith	bsmith@jcsd.us
Carmen Sierra	carmens@cvwdwater.com
Carol Boyd	Carol.Boyd@doj.ca.gov

Carolina Sanchez	csanchez@westyost.com
Casey Costa	ccosta@chinodesalter.org
Cassandra Hooks	chooks@niagarawater.com
Chad Blais	cblais@ci.norco.ca.us
Chander Letulle	cletulle@jcsd.us
Charles Field	cdfield@att.net
Charles Moorrees	cmoorrees@sawaterco.com
Chino Hills City Council	citycouncil@chinohills.org
Chris Berch	cberch@jcsd.us
Chris Diggs	Chris_Diggs@ci.pomona.ca.us
Christiana Daisy	cdaisy@ieua.org
Christofer Coppinger	ccoppinger@geoscience-water.com
Christopher M. Sanders	cms@eslawfirm.com
Christopher Quach	cquach@ontarioca.gov
Christopher R. Guillen	cguillen@bhfs.com
Cindy Cisneros	cindyc@cvwdwater.com
Cindy Li	Cindy.li@waterboards.ca.gov
City of Chino, Administration Department	administration@cityofchino.org
Courtney Jones	cjjones@ontarioca.gov
Craig Miller	CMiller@wmwd.com
Craig Stewart	craig.stewart@wsp.com
Cris Fealy	cifealy@fontanawater.com
Curtis Burton	CBurton@cityofchino.org
Dan Arrighi	darrighi@sgvwater.com
Dan McKinney	dmckinney@douglascountylaw.com
Daniel Bobadilla	dbobadilla@chinohills.org
Danny Kim	dkim@linklogistics.com
Dave Argo	daveargo46@icloud.com
Dave Crosley	DCrosley@cityofchino.org
David Aladjem	daladjem@downeybrand.com
David De Jesus	ddejesus@tvmwd.com
David Huynh	dhuynh@cbwm.org
Dawn Forgeur	dawn.forgeur@stoel.com
Denise Garzaro	dgarzaro@ieua.org
Dennis Mejia	dmejia@ontarioca.gov
Dennis Williams	dwilliams@geoscience-water.com
Derek Hoffman	dhoffman@fennemorelaw.com
Diana Frederick	diana.frederick@cdcr.ca.gov
Ed Means	edmeans@roadrunner.com
Edgar Tellez Foster	etellezfoster@cbwm.org
Eduardo Espinoza	EduardoE@cvwdwater.com
Edward Kolodziej	edward.kolodziej@ge.com
Elizabeth M. Calciano	ecalciano@hensleylawgroup.com
Elizabeth P. Ewens	elizabeth.ewens@stoel.com
Elizabeth Skrzat	ESkrzat@cbwcd.org
Eric Fordham	eric_fordham@geopentech.com
Eric Garner	eric.garner@bbklaw.com
Eric Grubb	ericg@cvwdwater.com
Eric N. Robinson	erobinson@kmtg.com
Eric Papathakis	Eric.Papathakis@cdcr.ca.gov
Eric Tarango	edtarango@fontanawater.com
Erika Clement	Erika.clement@sce.com

Eunice Ulloa	eulloa@cityofchino.org
Eunice Ulloa - City of Chino (eulloa@cityofchino.org)	eulloa@cityofchino.org
Evette Ounanian	EvetteO@cvwdwater.com
Frank Yoo	FrankY@cbwm.org
Fred Fudacz	ffudacz@nossaman.com
Fred Galante	fgalante@awattorneys.com
G. Michael Milhiser	Milhiser@hotmail.com
G. Michael Milhiser	directormilhiser@mvwd.org
Garrett Rapp	grapp@westyost.com
Gene Tanaka	Gene.Tanaka@bbklaw.com
Geoffrey Kamansky	gkamansky@niagarawater.com
Geoffrey Vanden Heuvel	geoffreyvh60@gmail.com
Gerald Yahr	yahrj@koll.com
Gina Gomez	ggomez@ontarioca.gov
Gina Nicholls	gnicholls@nossaman.com
Gino L. Filippi	Ginoffvine@aol.com
Gracie Torres	gtorres@wmwd.com
Grant Mann	GMann@dpw.sbcounty.gov
Greg Woodside	gwoodside@ocwd.com
Gregor Larabee	Gregor.Larabee@cdcr.ca.gov
Ha T. Nguyen	ha.nguyen@stoel.com
Henry DeHaan	Hdehaan1950@gmail.com
Irene Islas	irene.islas@bbklaw.com
James Curatalo	jamesc@cvwdwater.com
James Jenkins	cnomgr@airports.sbcounty.gov
Janelle S.H. Krattiger, Esq	janelle.krattiger@stoel.com
Janine Wilson	JWilson@cbwm.org
Jasmin A. Hall	jhall@ieua.org
Jason Marseilles	jmarseilles@ieua.org
Jason Pivovaroff	JPivovaroff@wmwd.com
Jayne Joy	Jayne.Joy@waterboards.ca.gov
Jean Cihigoyenetche	Jean@thejclawfirm.com
Jeff Evers	jevers@niagarawater.com
Jeff Mosher	jmosher@sawpa.org
Jeffrey L. Pierson	jpierson@intexcorp.com
Jenifer Ryan	jryan@kmtg.com
Jennifer Hy-Luk	jhyluk@ieua.org
Jeremy N. Jungries	jjungreis@rutan.com
Jesse Pompa	jpompa@jcsd.us
Jessie Ruedas	Jessie@thejclawfirm.com
Jim Markman	jmarkman@rwglaw.com
Jim W. Bowman	jbowman@ontarioca.gov
Jimmy Gutierrez - Law Offices of Jimmy Gutierrez	jimmylaredo@gmail.com
Jimmy L. Gutierrez	Jimmy@City-Attorney.com
Jimmy Medrano	Jaime.medrano2@cdcr.ca.gov
Jiwon Seung	JiwonS@cvwdwater.com
Joanne Chan	jchan@wvwd.org
Joao Feitoza	joao.feitoza@cmc.com
Jody Roberto	jroberto@tvmwd.com
Joe Graziano	jgraz4077@aol.com
Joe Joswiak	JJoswiak@cbwm.org

Joel Ignacio	jignacio@ieua.org
John Bosler	johnb@cvwdwater.com
John Harper	jrharper@harperburns.com
John Huitsing	johnhuitsing@gmail.com
John Lopez	jlopez@sarwc.com
John Lopez and Nathan Cole	customerservice@sarwc.com
John Mendoza	jmendoza@tvmwd.com
John Partridge	jpartridge@angelica.com
John Schatz	jschatz13@cox.net
John Thornton	JThorntonPE@H2OExpert.net
Jose A Galindo	Jose.A.Galindo@linde.com
Josh Swift	jmswift@fontanawater.com
Joshua Aguilar	jaguilar1@wmwd.com
Justin Brokaw	jbrokaw@marygoldmutualwater.com
Justin Nakano	JNakano@cbwm.org
Justin Scott-Coe Ph. D.	jscottcoe@mvwd.org
Kaitlyn Dodson-Hamilton	kaitlyn@tdaenv.com
Karen Williams	kwilliams@sawpa.org
Kathleen Brundage	kathleen.brundage@californiasteel.com
Keith Person	keith.person@waterboards.ca.gov
Ken Waring	kwaring@jcsd.us
Kevin O'Toole	kotoole@ocwd.com
Kevin Sage	Ksage@IRMwater.com
kparker@katithewaterlady.com	kparker@katithewaterlady.com
Krista Paterson	Kpaterson@kmtg.com
Kristina Robb	KRobb@cc.sbcounty.gov
Kurt Berchtold	kberchtold@gmail.com
Kyle Brochard	KBrochard@rwglaw.com
Kyle Snay	kylesnay@gswater.com
Laura Mantilla	lmantilla@ieua.org
Laura Roughton	lroughton@wmwd.com
Laura Yraceburu	lyraceburu@bhfs.com
Lauren V. Neuhaus, Esq.	lauren.neuhaus@stoel.com
Lee McElhaney	lmcelhaney@bmklawplc.com
Leon "Ken" Kazandjian	Leon.Kazandjian@cdcr.ca.gov
Linda Jadeski	ljadeski@wvwd.org
Liz Hurst	ehurst@ieua.org
Lorena Heredia	lheredia@ieua.org
Mallory Gandara	MGandara@wmwd.com
Manny Martinez	directormartinez@mvwd.org
Marcella Correa	MCorrea@rwglaw.com
Marco Tule	mtule@ieua.org
Maria Ayala	mayala@jcsd.us
Maria Insixiengmay	Maria.Insixiengmay@cc.sbcounty.gov
Maria Mendoza	mmendoza@westyost.com
Maribel Sosa	msosa@ci.pomona.ca.us
Marilyn Levin	marilyn.levin@doj.ca.gov
Mark D. Hensley	mhensley@hensleylawgroup.com
Mark Wiley	mwiley@chinohills.org
Marlene B. Wiman	mwiman@nossaman.com
Martin Cihigoyenetche	marty@thejclawfirm.com
Martin Rauch	martin@rauchcc.com
Martin Zvirbulis	mezvirbulis@sgvwater.com

Matthew H. Litchfield	mlitchfield@tvmwd.com
May Atencio	matencio@fontana.org
Melanie Trevino	Mtrevino@jcsd.us
Michael Adler	michael.adler@mcmcnet.net
Michael B. Brown, Esq.	michael.brown@stoel.com
Michael Fam	mfam@dpw.sbcounty.gov
Michael Mayer	Michael.Mayer@dpw.sbcounty.gov
Michael P. Thornton	mthornton@tkeengineering.com
Michelle Licea	mlicea@mvwd.org
Mike Gardner	mgardner@wmwd.com
Mike Maestas	mikem@cvwdwater.com
Miriam Garcia	mgarcia@ieua.org
mmarti47@yahoo.com	mmarti47@yahoo.com
Moore, Toby	TobyMoore@gswater.com
MWDProgram	MWDProgram@sdcwa.org
Nadia Aguirre	naguirre@tvmwd.com
Natalie Avila	navila@cityofchino.org
Natalie Costaglio	natalie.costaglio@mcmcnet.net
Nathan deBoom	n8deboom@gmail.com
Neetu Gupta	ngupta@ieua.org
Nichole Horton	Nichole.Horton@pomonaca.gov
Nick Jacobs	njacobs@somachlaw.com
Nicole deMoet	ndemoet@ci.upland.ca.us
Nicole Escalante	NEscalante@ontarioca.gov
Noah Golden-Krasner	Noah.goldenkrasner@doj.ca.gov
Paul Deutsch	paul.deutsch@woodplc.com
Paul Hofer	farmerhofer@aol.com
Paul Hofer	farmwatchtoo@aol.com
Paul S. Leon	pleon@ontarioca.gov
Pete Hall	pete.hall@cdcr.ca.gov
Pete Hall	rpetehall@gmail.com
Pete Vicario	PVicario@cityofchino.org
Peter Hettinga	peterhettinga@yahoo.com
Peter Kavounas	PKavounas@cbwm.org
Peter Rogers	progers@chinohills.org
Randy Visser	RVisser@sheppardmullin.com
Rebekah Walker	rwalker@jcsd.us
Richard Anderson	horsfly1@yahoo.com
Richard Rees	richard.rees@wsp.com
Rickey S. Manbahal	smanbahal@wvwd.org
Rita Pro	rpro@cityofchino.org
Robert C. Hawkins	RHawkins@earthlink.net
Robert DeLoach	robertadeloach1@gmail.com
Robert E. Donlan	red@eslawfirm.com
Robert Neufeld	robneu1@yahoo.com
Robert Wagner	rwagner@wbecorp.com
Ron Craig	Rcraig21@icloud.com
Ron LaBrucherie, Jr.	ronLaBrucherie@gmail.com
Ronald C. Pietersma	rcpietersma@aol.com
Ruben Llamas	rllamas71@yahoo.com
Ruby Favela	rfavela@cbwm.org
Ryan Shaw	RShaw@wmwd.com
Sam Nelson	snelson@ci.norco.ca.us

Sam Rubenstein	srubenstein@wpcarey.com
Sandra S. Rose	directorrose@mvwd.org
Sarah Foley	Sarah.Foley@bbklaw.com
Scott Burton	sburton@ontarioca.gov
Scott Slater	sslater@bhfs.com
Seth J. Zielke	sjzielke@fontanawater.com
Shawnda M. Grady	sgrady@eslawfirm.com
Sheila D. Brown	sheila.brown@stoel.com
Shivaji Deshmukh	sdeshmukh@ieua.org
Sonya Barber	sbarber@ci.upland.ca.us
Sonya Zite	szite@wmwd.com
SRamirez@kmtg.com	SRamirez@kmtg.com
Stephanie Reimer	SReimer@mvwd.org
Stephen Deitsch	stephen.deitsch@bbklaw.com
Steve Kennedy	skennedy@bmklawplc.com
Steve M. Anderson	steve.anderson@bbklaw.com
Steve Nix	snix@ci.upland.ca.us
Steve Riboli	steve.riboli@sanantoniowinery.com
Steve Smith	ssmith@ieua.org
Steven Andrews Engineering	sandrews@sandrewsengineering.com
Steven Flower	sflower@rwglaw.com
Steven J. Elie	selie@ieua.org
Steven J. Elie	s.elie@mpglaw.com
Steven Popelar	spopelar@jcsd.us
Steven Raughley	Steven.Raughley@isd.sbcounty.gov
Susan Palmer	spalmer@kidmanlaw.com
Sylvie Lee	slee@tvmwd.com
Tammi Ford	tford@wmwd.com
Tariq Awan	Tariq.Awan@cdcr.ca.gov
Tarren Torres	tarren@egoscuelaw.com
Taya Victorino	tayav@cvwdwater.com
Teri Layton	tlayton@sawaterco.com
Terri Whitman	TWhitman@kmtg.com
Terry Catlin	tlcatlin@wfajpa.org
Tim Barr	tbarr@wmwd.com
Tim Kellett	tkellett@tvmwd.com
Tim Moore	tmoore@westyost.com
Timothy Ryan	tjryan@sgvwater.com
Toby Moore	TobyMoore@gswater.com
Tom Barnes	tbarnes@esassoc.com
Tom Bunn	TomBunn@Lagerlof.com
Tom Cruikshank	tcruikshank@linklogistics.com
Tom Dodson (tda@tdaenv.com)	tda@tdaenv.com
Tom Harder	tharder@thomashardercompany.com
Tom McPeters	THMcP@aol.com
Tom O'Neill	toneill@chinodesalter.org
Toni Medell	mmedel@mbakerintl.com
Tony Long	tlong@angelica.com
Toyasha Sebbag	tsebbag@cbwcd.org
Tracy J. Egoscue	tracy@egoscuelaw.com
Van Jew	vjew@wvwd.org
Veva Weamer	vweamer@westyost.com
Victor Preciado	Victor_Preciado@ci.pomona.ca.us

Vivian Castro	vcastro@cityofchino.org
Wade Fultz	Wade.Fultz@cmc.com
WestWater Research, LLC	research@waterexchange.com
William J Brunick	bbrunick@bmblawoffice.com
William McDonnell	wmcdonnell@ieua.org
William Urena	wurena@emeraldus.com

EXHIBIT C

EXHIBIT C

FEE EXEMPT

NOSSAMAN LLP
FREDERIC A. FUDACZ (SBN 50546)
ffudacz@nossaman.com
GINA R. NICHOLLS (SBN 270174)
gnicholls@nossaman.com
777 S. Figueroa Street, 34th Floor
Los Angeles, CA 90017
Telephone: 213.612.7800
Facsimile: 213.612.7801

Attorneys for CITY OF ONTARIO

EXEMPT FROM FILING FEE PER GOV. CODE, § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, ET AL.,

Defendants.

Case No: RCVRS 51010

Assigned for All Purposes to: Honorable Gilbert G. Ochoa

ONTARIO'S OPPOSITION TO INLAND EMPIRE UTILITIES AGENCY'S MOTION FOR COSTS AND ATTORNEY'S FEES PURSUANT TO CIVIL CODE §1717 AND CODE OF CIVIL PROCEDURE §1033.5

[Concurrently Filed with Declaration of G. Nicholls]

Date: April 4, 2025
Time: 10:00 a.m.
Place: Dept. R17

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY

The Inland Empire Utilities Agency ("IEUA") has no grounds to recover attorney fees for its intervention in proceedings challenging the Chino Basin Watermaster ("Watermaster"). The "Motion Challenging Watermaster's Budget Action to Fund Unauthorized CEQA Review" (the "CEQA Budget Motion") brought by four moving parties, the City of Ontario ("Ontario"), the City of Chino ("Chino"), and Monte Vista Water District and Monte Vista Irrigation Company (collectively, "Monte Vista"), attacked a Watermaster budget action and sought no relief from IEUA. Watermaster defended itself from the challenge and did not rely on IEUA.

IEUA's fee motion invokes Section 9.2(d) of the Peace Agreement, but the CEQA Budget Motion could not have triggered any attorney-fee shifting under the Peace Agreement because Watermaster, the sole target of the CEQA Budget Motion, is not even a party to the Peace Agreement. (Peace Agreement, at signature pages pp. 62-66; copy of Peace Agreement is Exhibit A to Declaration of J. Cihigoyenetche, filed Feb. 20, 2025 ["Cihigoyenetche Decl."].) Even if the Peace Agreement were implicated, its fee-shifting provision Section 9.2(d) excludes adversarial proceedings utilizing "the dispute resolution procedure ***under the Judgment***." (*Id.*, at §9.2(d) [emphasis added].)

The CEQA Budget Motion utilized Paragraph 31 of the Judgment (especially ¶ 31(c) for Watermaster "budget actions") and tested the limits of Watermaster's authority under Judgment. Specifically, the Motion challenged Watermaster's authority (1) to budget and assess parties for environmental review of the Optimum Basin Management Program Update ("OBMPU") and (2) de facto to appoint IEUA as the lead agency for this purpose. (CEQA Budget Motion, filed Aug. 26, 2022, at p.3; copy of the CEQA Budget Motion is Exhibit 1 to Request for Judicial Notice, filed Feb. 2, 2025 ["RJN"].) The CEQA Budget Motion comes within the exclusionary clause of Peace Agreement section 9.2(d) because it sought relief ***under the Judgment*** Paragraph 31(c) for "budget actions." (See Judgment, relevant excerpts attached as Exhibit 1 to Declaration of Gina Nicholls, filed concurrently herewith ["Nicholls Decl."].)

None of the predicates to fee-shifting under Peace Agreement section 9.2(d) were met in the context of this CEQA budget dispute. Section 9.2(d) applies where a notice of default is properly

served on the opposing party, giving the party an opportunity to cure the default. (See Section III.C below.) This procedure was not followed by any participant in the CEQA budget dispute, and certainly not by IEUA when it piled onto the dispute to defend Watermaster.

II. PROCEDURAL HISTORY

In August 2022 a coalition of parties to the Judgment consisting of Ontario, Chino, and Monte Vista filed the CEQA Budget Motion challenging Watermaster's adoption of a budget that appropriated funds to conduct CEQA review of Watermaster's OBMPU. The Motion's primary arguments were that (1) Watermaster lacks authority under the Judgment or other law to conduct CEQA review, and (2) CEQA does not even apply to Watermaster's OBMPU. (See CEQA Budget Motion, Exh. 1 to RJN.) The Motion also argued that Watermaster's de facto endorsement of IEUA as lead agency for CEQA review violates Watermaster's neutrality as an arm of the Court. (*Id.*, at pp. 15-17.)

Watermaster opposed the Motion with substantial briefing that included an opposition brief, three supporting declarations, two sets of evidentiary objections, and a separate motion for sur-reply and a sur-reply brief. (Nicholls Decl., at ¶3.) IEUA intervened in support of Watermaster by filing a 3-4 page opposition with a declaration. (*Ibid.*; see also IEUA Opposition & Declaration of S. Deshmukh, filed Oct. 3, 2022.) Legal counsel for Watermaster presented oral arguments at the hearing conducted by this Court. (Nicholls Decl., at ¶4 & Exh. 2.) Counsel for IEUA appeared but otherwise did not participate in the oral argument. (*Ibid.*)

At the hearing, the Court questioned why "CEQA is required here" before adopting all three arguments advanced by Watermaster in their entirety as the basis for the Court's decision. (Hearing transcript, Exhibit A to Notice of Order, filed Nov. 29, 2022, at 13:15-16; 13:23-26; copy is attached as Exhibit 2 to Nicholls Decl.) All three arguments pertained to Watermaster's authority (not IEUA), as follows: (1) Watermaster is bound by Advisory Committee's budget approval; (2) OBMP CEQA review is within Watermaster's funding power; and (3) any challenge to Watermaster's assessments is premature. (*Id.*, at 13:25-26, citing Watermaster's Opposition Brief.) No party including IEUA filed any motion for attorney fees following notice of the Court's final ruling and before the resulting appellate proceedings. (Nicholls Decl., at ¶6.)

Ontario and Chino appealed from the Court Order.[1] On appeal, Watermaster filed a Respondents brief approximately 36 pages long (10,288 words), and IEUA filed an additional Respondents brief of approximately 6-7 page Respondent's Brief (1,927 words), both defending the trial Court's ruling in favor of Watermaster. (Nicholls Decl., at ¶7.) The questions addressed by the Court of Appeals opinion were nearly the same as at the trial court: "(1) **[w]hether Watermaster may** appropriate and expend funds for the environmental review of the OBMPU; and (2) **[w]hether Watermaster may** designate [IEUA] as the lead agency to conduct such review." (Court of Appeals Opinion, filed Nov. 12, 2024, at pp. 2-3 [emphasis added]; copy of the Opinion is attached as Exhibit 3 to Nicholls Decl.) Legal counsel for IEUA requested oral argument and appeared at the appellate oral argument, but otherwise remained silent during the proceedings. (Nicholls Decl., at ¶7.)

The Court of Appeal awarded "costs" – not attorney fees – to Respondents.[2] (Court of Appeals Opinion, at p. 20, Exh. 3 to Nicholls Decl.) IEUA filed a Memorandum of Costs on Appeal with its motion seeking $63,029 for attorney fees from Ontario, Chino, and Monte Vista. Of that amount, $12,897.50 is for legal services pre-appeal and $50,131.50 for legal services related to the appeal. (Cihigoyenetche Decl., at ¶ 5.) After filing its motion, IEUA settled with Chino for $21,000. (Notice of Settlement, filed Mar. 12, 2025.) The remaining balance sought by IEUA's fee motion is $42,029.

III. LEGAL ARGUMENT

IEUA's motion fails for similar reasons as the Appropriative Pool's attorney fee motion that is scheduled for concurrent hearing by this Court.[3] Normally attorney fees are not recoverable as

[1] Monte Vista did not file an appeal. (Nicholls Decl., at ¶5.)

[2] This opposition does not dispute costs claimed by IEUA in the amount of $40.00 paid toward preparation of the reporter's transcript for the appeal. (IEUA's Memorandum of Costs on Appeal, filed February 20, 2025.)

[3] Ontario has proposed that all affected parties discuss global settlement of claims for attorney-fee shifting, including motions by the Appropriative Pool and IEUA and motions pertaining to the forthcoming Dry Year Yield appellate decision, all of which present certain common issues arising for the first time in Watermaster Court. (Declaration of C. Jones, filed Mar. 19, 2025, at ¶ 6 & Exh. B; copy of Jones Decl. is Exhibit 4 to Nicholls Decl. filed concurrently herewith.)

costs. Rather, under the American rule, each party to a lawsuit must ordinarily pay their own attorney fees regardless of outcome. (*Wash v. Banda-Wash* (2025) 108 Cal.App.5th 561, 567.) Attorney fees are recoverable only where expressly authorized by contract or statute. (*Ibid.*, citing Code of Civil Procedure, §1021.) Like the Appropriative Pool's motion, IEUA's motion also fails because it does not cite any valid ground for attorney fee-shifting, which is unprecedented in Watermaster Court.[4] The American Rule applies and requires IEUA to bear its own attorney fees incurred from its intervention in the CEQA budget dispute.

A. Fee-Shifting Under the Peace Agreement Is Not Triggered Because the CEQA Budget Motion Challenged Watermaster, Not a Party to the Peace Agreement.

IEUA's motion assumes that the CEQA Budget Motion and the derivative appeal triggered fee-shifting under Peace Agreement Section 9.2(d) because moving parties and IEUA are signatories to the Peace Agreement, and the Motion discussed the Peace Agreement. (IEUA Motion, at 3:27-28.) IEUA's assumption is wrong. IEUA's motion cannot satisfy IEUA's burden to establish entitlement to attorney fees in this dispute (*Civic Western Corp. v. Zila Industries, Inc.* (1977) 66 Cal.App.3d 1, 16) for the simple reason that its motion ignores a dispositive fact, i.e., that Watermaster is not a signatory to the Peace Agreement. The CEQA budget challenge that was brought under Section 31 of the Judgment against Watermaster – a non-party to the Peace Agreement – cannot be converted into a Peace Agreement proceeding just because a Peace Agreement party leaps to Watermaster's defense.

B. Peace Agreement Section 9.2(d) Excludes Proceedings Under the Judgment Such as the Motion Challenging Watermaster's Budget Action Under Judgment Paragraph 31(c).

Section 9.2(d) expressly excludes adversarial proceedings utilizing "the dispute resolution procedure ***under the Judgment***." (Emphasis added.) The CEQA Budget Motion followed the procedure specified under Paragraph 31(c) of the Judgment for any challenge to a Watermaster

[4] The Appropriative Pool's motion for attorney fees, which is scheduled for hearing concurrently with IEUA's motion, represents the first time ever that attorney fee-shifting has been requested for proceedings in Watermaster Court under the Judgment. (Declaration of C. Jones, filed Mar. 19, 2025, at ¶7; copy of Jones Decl. is Exhibit 4 to Nicholls Decl. filed concurrently herewith.)

"budget action," including the requirement to file within a sixty-day time frame. (See CEQA Budget Motion, at p.5-6, 8; copy of the CEQA Budget Motion is Exhibit 1 to RJN.) Also, the issues presented on appeal, for which the IEUA is seeking fee-shifting, turned on interpretations of the Judgment. The questions presented on appeal were: "(1) [w]hether Watermaster may appropriate and expend funds for the environmental review of the OBMPU; and (2) [w]hether Watermaster may designate [IEUA] as the lead agency to conduct such review." (Court of Appeals Opinion, at pp. 2-3; copy attached as Exhibit 3 to Nicholls Decl.) Both questions addressed the nature and scope of Watermaster authority arising from the Judgment. Thus, the exclusionary clause of Section 9.2(d) applies.

C. Section 9.2(d)'s Predicates to Fee-Shifting Are Not Met by the CEQA Budget Motion.

Even if the dispute with Watermaster could be considered a proceeding under the Peace Agreement (and it cannot because Watermaster is not a party to it), Section 9.2(d) still would not apply. IEUA's motion tries to shoehorn the CEQA Budget Motion into Section 9.2(d) and Article 9 of the Peace Agreement, which pertain to "defaults." (Peace Agreement, at Article 9, entitled "Conflicts," and §9.2, pp. 53-56; copy of Peace Agreement is Exhibit A to Cihigoyenetche Decl.) In the CEQA budget dispute, no participant alleged any Peace Agreement default at any time.

As explained more fully in Ontario's Supplemental Opposition, filed March 19, 2025, to the Appropriative Pool's motion for attorney fees, "default" is a defined term referring to the "fail[ure] to perform or observe any term, covenant, or undertaking in the [Peace] Agreement . . . and such failure continues for ninety (90) days from a Notice of Default being sent in the manner prescribed in Section 10.13." (Peace Agreement, §9.1.) Thus, the requirements for a notice of default under the Peace Agreement are specific – ninety-days written notice and opportunity to cure (*ibid.*), and the written notice must be served by "personal delivery, mail, or fax." (*Id.*, at §10.13.) None of these conditions are met here. IEUA's motion does not mention any notice of default and there was none.

Mere mentions of the Peace Agreement in the CEQA Budget Motion and related proceedings are not the same as a notice of default that triggers the fee-shifting provisions under sections 9.1 and

9.2(d). At best, references to the Peace Agreement in the CEQA Budget Motion implicate its generally applicable attorney fee provision, Section 10.5. However, contrary to IEUA's motion, Section 10.5 requires each party to "***bear its own costs, expenses, and attorneys' fee arising out of or in connection with the subject matter of this [Peace] Agreement*** and the negotiation, drafting, and execution of this [Peace] Agreement. . . ." (Peace Agreement, §10.5 [emphasis added]; copy of Peace Agreement is Exhibit A to Cihigoyenetche Decl.)

D. IEUA Unreasonably Incurred Attorney Fees to Defend Watermaster's Budget Action.

IEUA is not entitled to recover its attorney fees for defending Watermaster's budget action. "It is elementary that . . . the party claiming [attorney fees] must establish (1) not only entitlement to such fees but (2) the reasonableness of the fees claimed." (*Civic Western Corp. v. Zila Industries, Inc.* (1977) 66 Cal.App.3d 1, 16; see also *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1020 [party claiming fees must establish their reasonableness].) IEUA cannot satisfy its burden on either of these points. The first point is discussed in the prior sections, above.

As for the second point, IEUA's attorney fee request fails the reasonableness test. Nothing in the CEQA Budget Motion compelled IEUA's intervention. The Motion sought no relief against IEUA, and Watermaster mounted its own successful defense. (See CEQA Budget Motion, Exhibit 1 to RJN.) Nothing in the Motion could have invalidated IEUA's CEQA determinations despite IEUA's attempt to recast the CEQA Budget Motion as "a manipulation of the Watermaster process to challenge" IEUA's own separate project (Chino Basin Project)" (Court of Appeals Opinion, at p. 9; copy attached as Exhibit 3 to Nicholls Decl.) The neutrality issue raised by the Motion is ***Watermaster's obligation to remain neutral as between the parties***; there was no argument that lack of neutrality disqualifies IEUA from performing CEQA functions. (See CEQA Budget Motion, Exhibit 1 to RJN.) The irrelevance of IEUA's intervention is underscored by the fact its legal counsel refrained from contributing to oral arguments at both the trial and appellate levels. (Nicholls Decl., at ¶¶ 4,7 & Exh. 2.)

In short, there was no need for IEUA to intervene and defend Watermaster. So IEUA's attorney fees are unreasonable and cannot be shifted to Ontario for this additional reason.

E. IEUA Is Not Entitled to Fees for Trial Court Proceedings Claimed Belatedly Via a Memorandum of Costs on Appeal.

IEUA's motion is time-barred to the extent it seeks $12,897.50 is for pre-appeal legal services. IEUA improperly counted these fees as costs on its Memorandum of Costs on Appeal and included them in its concurrently filed motion for attorney fees.

California Rules of Court, Rule 3.1702(b)(1) sets the deadline to file any motion for attorney fees incurred "for services up to and including the rendition of judgment" as follows: the motion must be "served and filed within the time for filing a notice of appeal under rule[] 8.104 . . . ." In post-judgment proceedings, the term "judgment" may refer to a post-judgment appealable order on such as the Court's November 2022 order disposing of the CEQA Budget Motion. (See *Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 901 ["[C]ourts typically embody their final rulings . . . in orders or judgments . . . constitute[ing] the court's final [and therefore appealable] decision on the merits.].) Because the Court rendered a final, appealable order on the merits analogous to a judgment in November 2022, the time to file any motion for attorney fees ran concurrently with the time to appeal from the order and expired in early 2023.

Because IEUA's time to request any allowable fees for pre-appeal activities long since expired, IEUA's motion should be limited to seeking only appellate fees – which are not available for all the reasons explained above.

IV. CONCLUSION

For all the reasons set forth herein, Ontario respectfully requests that the Court deny IEUA's motion. IEUA must bear its own attorney fees under (1) the Judgment, (2) the American rule, and (3) the Peace Agreement, all of which require IEUA to bear its own attorney fees in this matter. Also, IEUA's attorney fees were not reasonably incurred for purposes of Civil Code section 1717

because the CEQA Budget Motion sought no relief as to IEUA. Finally, the time to seek pre-appeal attorney fees expired more than two years ago.

Dated: March 21, 2025

NOSSAMAN LLP
FREDERIC A. FUDACZ
GINA R. NICHOLLS

By: _____

Frederic A. Fudacz
Attorneys for CITY OF ONTARIO

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 March 21, 2025 I served the following:

1. ONTARIO'S OPPOSITION TO INLAND EMPIRE UTILITIES AGENCY'S MOTION FOR COSTS AND ATTORNEY'S FEES PURSUANT TO CIVIL CODE §1717 AND CODE OF CIVIL PROCEDURE §1033.5

/ 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 March 21, 2025 in Rancho Cucamonga, California.

By: Anna T. Nelson
Chino Basin Watermaster

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

JEFF PIERSON
2 HEXHAM
IRVINE, CA 92603

Ruby Favela Quintero

Contact Group Name: Master Email Distribution

Categories: Main Email Lists

Members:

Aimee Zhao	azhao@ieua.org
Alan Frost	Alan.Frost@dpw.sbcounty.gov
Alberto Mendoza	Alberto.Mendoza@cmc.com
Alejandro R. Reyes	arreyes@sgvwater.com
Alex Padilla	Alex.Padilla@wsp.com
Alexis Mascarinas	AMascarinas@ontarioca.gov
Alfonso Ruiz	alfonso.ruiz@cmc.com
Alonso Jurado	ajurado@cbwm.org
Alyssa Coronado	acoronado@sarwc.com
Amanda Coker	amandac@cvwdwater.com
Amy Bonczewski	ABonczewski@ontarioca.gov
Andrew Gagen	agagen@kidmanlaw.com
Andy Campbell	acampbell@ieua.org
Andy Malone	amalone@westyost.com
Angelica Todd	angelica.todd@ge.com
Anna Nelson	atruongnelson@cbwm.org
Anthony Alberti	aalberti@sgvwater.com
April Robitaille	arobitaille@bhfs.com
Art Bennett	citycouncil@chinohills.org
Arthur Kidman	akidman@kidmanlaw.com
Ashley Zapp	ashley.zapp@cmc.com
Ashok Dhingra	ash@akdconsulting.com
Ben Lewis	benjamin.lewis@gswater.com
Ben Markham	bmarkham@bhfs.com
Ben Orosco	Borosco@cityofchino.org
Ben Roden	BenR@cvwdwater.com
Benjamin M. Weink	ben.weink@tetratech.com
Beth.McHenry	Beth.McHenry@hoferranch.com
Bill Schwartz	bschwartz@mvwd.org
Bill Velto	bvelto@uplandca.gov
Board Support Team IEUA	BoardSupportTeam@ieua.org
Bob Bowcock	bbowcock@irmwater.com
Bob DiPrimio	rjdiprimio@sgvwater.com
Bob Feenstra	bobfeenstra@gmail.com
Bob Kuhn	bkuhn@tvmwd.com
Bob Kuhn	bgkuhn@aol.com
Bob Page	Bob.Page@rov.sbcounty.gov
Brad Herrema	bherrema@bhfs.com
Bradley Jensen	bradley.jensen@cao.sbcounty.gov
Brandi Belmontes	BBelmontes@ontarioca.gov
Brandi Goodman-Decoud	bgdecoud@mvwd.org
Brandon Howard	brahoward@niagarawater.com
Brenda Fowler	balee@fontanawater.com
Brent Yamasaki	byamasaki@mwdh2o.com
Brian Dickinson	bdickinson65@gmail.com
Brian Geye	bgeye@autoclubspeedway.com
Brian Lee	blee@sawaterco.com
Bryan Smith	bsmith@jcsd.us
Carmen Sierra	carmens@cvwdwater.com
Carol Boyd	Carol.Boyd@doj.ca.gov
Carolina Sanchez	csanchez@westyost.com

Casey Costa	ccosta@chinodesalter.org
Cassandra Hooks	chooks@niagarawater.com
Chad Blais	cblais@ci.norco.ca.us
Chad Nishida	CNishida@ontarioca.gov
Chander Letulle	cletulle@jcsd.us
Charles Field	cdfield@att.net
Charles Moorrees	cmoorrees@sawaterco.com
Chino Hills City Council	citycouncil@chinohills.org
Chris Berch	cberch@jcsd.us
Chris Diggs	Chris_Diggs@ci.pomona.ca.us
Christen Miller	Christen.Miller@cao.sbcounty.gov
Christensen, Rebecca A	rebecca_christensen@fws.gov
Christopher M. Sanders	cms@eslawfirm.com
Christopher R. Guillen	cguillen@bhfs.com
Cindy Cisneros	cindyc@cvwdwater.com
Cindy Li	Cindy.li@waterboards.ca.gov
City of Chino, Administration Department	administration@cityofchino.org
Courtney Jones	cjjones@ontarioca.gov
Craig Miller	CMiller@wmwd.com
Craig Stewart	craig.stewart@wsp.com
Cris Fealy	cifealy@fontanawater.com
Curtis Burton	CBurton@cityofchino.org
Dan McKinney	dmckinney@douglascountylaw.com
Daniel Bobadilla	dbobadilla@chinohills.org
Daniela Uriarte	dUriarte@cbwm.org
Danny Kim	dkim@linklogistics.com
Dave Argo	daveargo46@icloud.com
Dave Crosley	DCrosley@cityofchino.org
Dave Schroeder	DSchroeder@cbwcd.org
David Barnes	DBarnes@geoscience-water.com
David De Jesus	ddejesus@tvmwd.com
Dawn Varacchi-Ives	dawn.varacchi@ge.com
Denise Garzaro	dgarzaro@ieua.org
Dennis Mejia	dmejia@ontarioca.gov
Dennis Williams	dwilliams@geoscience-water.com
Derek Hoffman	dhoffman@fennemorelaw.com
Diana Frederick	diana.frederick@cdcr.ca.gov
Ed Diggs	ediggs@uplandca.gov
Ed Means	edmeans@icloud.com
Eddie Lin	elin@ieua.org
Edgar Tellez Foster	etellezfoster@cbwm.org
Eduardo Espinoza	EduardoE@cvwdwater.com
Elizabeth M. Calciano	ecalciano@hensleylawgroup.com
Elizabeth P. Ewens	elizabeth.ewens@stoel.com
Elizabeth Willis	ewillis@cbwcd.org
Eric Fordham	eric_fordham@geopentech.com
Eric Garner	eric.garner@bbklaw.com
Eric Grubb	ericg@cvwdwater.com
Eric Lindberg PG,CHG	eric.lindberg@waterboards.ca.gov
Eric N. Robinson	erobinson@kmtg.com
Eric Papathakis	Eric.Papathakis@cdcr.ca.gov
Eric Tarango	edtarango@fontanawater.com

Erick Jimenez	Erick.Jimenez@nucor.com
Erik Vides	evides@cbwm.org
Erika Clement	Erika.clement@sce.com
Eunice Ulloa	eulloa@cityofchino.org
Evette Ounanian	EvetteO@cvwdwater.com
Frank Yoo	FrankY@cbwm.org
Fred Fudacz	ffudacz@nossaman.com
Fred Galante	fgalante@awattorneys.com
G. Michael Milhiser	directormilhiser@mvwd.org
G. Michael Milhiser	Milhiser@hotmail.com
Garrett Rapp	grapp@westyost.com
Geoffrey Kamansky	gkamansky@niagarawater.com
Geoffrey Vanden Heuvel	geoffreyvh60@gmail.com
Gerald Yahr	yahrj@koll.com
Gina Gomez	ggomez@ontarioca.gov
Gina Nicholls	gnicholls@nossaman.com
Gino L. Filippi	Ginoffvine@aol.com
Gracie Torres	gtorres@wmwd.com
Grant Mann	GMann@dpw.sbcounty.gov
Greg Zarco	Greg.Zarco@airports.sbcounty.gov
Gregor Larabee	Gregor.Larabee@cdcr.ca.gov
Ha T. Nguyen	ha.nguyen@stoel.com
Heather Placencia	heather.placencia@parks.sbcounty.gov
Henry DeHaan	Hdehaan1950@gmail.com
Hvianca Hakim	HHakim@linklogistics.com
Hye Jin Lee	HJLee@cityofchino.org
Imelda Cadigal	Imelda.Cadigal@cdcr.ca.gov
Irene Islas	irene.islas@bbklaw.com
Ivy Capili	ICapili@bhfs.com
James Curatalo	jamesc@cvwdwater.com
Jasmin A. Hall	jhall@ieua.org
Jason Marseilles	jmarseilles@ieua.org
Jayne Joy	Jayne.Joy@waterboards.ca.gov
Jean Cihigoyenetche	Jean@thejclawfirm.com
Jeff Evers	jevers@niagarawater.com
Jeff Mosher	jmosher@sawpa.org
Jeffrey L. Pierson	jpierson@intexcorp.com
Jenifer Ryan	jryan@kmtg.com
Jennifer Hy-Luk	jhyluk@ieua.org
Jeremy N. Jungries	jjungreis@rutan.com
Jesse Pompa	jpompa@jcsd.us
Jessie Ruedas	Jessie@thejclawfirm.com
Jill Keehnen	jill.keehnen@stoel.com
Jim Markman	jmarkman@rwglaw.com
Jim Van de Water	jimvdw@thomashardercompany.com
Jim W. Bowman	jbowman@ontarioca.gov
Jimmie Moffatt	jimmiem@cvwdwater.com
Jimmy Gutierrez - Law Offices of Jimmy Gutierrez	jimmylaredo@gmail.com
Jimmy L. Gutierrez	Jimmy@City-Attorney.com
Jimmy Medrano	Jaime.medrano2@cdcr.ca.gov
Jiwon Seung	JiwonS@cvwdwater.com
Joanne Chan	jchan@wvwd.org

Joao Feitoza	joao.feitoza@cmc.com
Jody Roberto	jroberto@tvmwd.com
Joe Graziano	jgraz4077@aol.com
Joel Ignacio	jignacio@ieua.org
John Bosler	johnb@cvwdwater.com
John Harper	jrharper@harperburns.com
John Hughes	jhughes@mvwd.org
John Huitsing	johnhuitsing@gmail.com
John Lopez	jlopez@sarwc.com
John Lopez and Nathan Cole	customerservice@sarwc.com
John Mendoza	jmendoza@tvmwd.com
John Partridge	jpartridge@angelica.com
John Russ	jruss@ieua.org
John Schatz	jschatz13@cox.net
Jordan Garcia	jgarcia@cbwm.org
Jose A Galindo	Jose.A.Galindo@linde.com
Jose Ventura	jose.ventura@linde.com
Josh Swift	jmswift@fontanawater.com
Joshua Aguilar	jaguilar1@wmwd.com
Justin Brokaw	jbrokaw@marygoldmutualwater.com
Justin Castruita	jacastruita@fontanawater.com
Justin Nakano	JNakano@cbwm.org
Justin Scott-Coe Ph. D.	jscottcoe@mvwd.org
Kaitlyn Dodson-Hamilton	kaitlyn@tdaenv.com
Karen Williams	kwilliams@sawpa.org
Kathleen Brundage	kathleen.brundage@californiasteel.com
Kati Parker	kparker@katithewaterlady.com
Keith Lemieux	klemieux@awattorneys.com
Keith Person	keith.person@waterboards.ca.gov
Kelly Alhadeff-Black	kelly.black@lewisbrisbois.com
Kelly Ridenour	KRIDENOUR@fennemorelaw.com
Ken Waring	kwaring@jcsd.us
Kevin Alexander	kalexander@ieua.org
Kevin O'Toole	kotoole@ocwd.com
Kevin Sage	Ksage@IRMwater.com
Kirk Richard Dolar	kdolar@cbwm.org
Krista Paterson	Kpaterson@kmtg.com
Kurt Berchtold	kberchtold@gmail.com
Kyle Brochard	KBrochard@rwglaw.com
Kyle Snay	kylesnay@gswater.com
Laura Roughton	lroughton@wmwd.com
Laura Yraceburu	lyraceburu@bhfs.com
Lauren V. Neuhaus, Esq.	lauren.neuhaus@stoel.com
Lee McElhaney	lmcelhaney@bmklawplc.com
Lewis Callahan	Lewis.Callahan@cdcr.ca.gov
Linda Jadeski	ljadeski@wvwd.org
Liz Hurst	ehurst@ieua.org
Mallory Gandara	MGandara@wmwd.com
Manny Martinez	DirectorMartinez@mvwd.org
Marcella Correa	MCorrea@rwglaw.com
Marco Tule	mtule@ieua.org
Maria Ayala	mayala@jcsd.us
Maria Insixiengmay	Maria.Insixiengmay@cc.sbcounty.gov

Maria Mendoza	mmendoza@westyost.com
Maribel Sosa	msosa@ci.pomona.ca.us
Marilyn Levin	Marilynhlevin@gmail.com
Marissa Turner	mturner@tvmwd.com
Mark D. Hensley	mhensley@hensleylawgroup.com
Mark Wiley	mwiley@chinohills.org
Marlene B. Wiman	mwiman@nossaman.com
Martin Cihigoyenetche	marty@thejclawfirm.com
Martin Rauch	martin@rauchcc.com
Martin Zvirbulis	mezvirbulis@sgvwater.com
Matthew H. Litchfield	mlitchfield@tvmwd.com
Maureen Snelgrove	Maureen.snelgrove@airports.sbcounty.gov
Maureen Tucker	mtucker@awattorneys.com
Megan N. Sims	mnsims@sgvwater.com
Melanie Trevino	Mtrevino@jcsd.us
Michael Adler	michael.adler@mcmcnet.net
Michael B. Brown, Esq.	michael.brown@stoel.com
MIchael Blay	mblay@uplandca.gov
Michael Fam	mfam@dpw.sbcounty.gov
Michael Hurley	mhurley@ieua.org
Michael Maeda	michael.maeda@cdcr.ca.gov
Michael Mayer	Michael.Mayer@dpw.sbcounty.gov
Michael P. Thornton	mthornton@tkeengineering.com
Michele Hinton	mhinton@fennemorelaw.com
Michelle Licea	mlicea@mvwd.org
Mikayla Coleman	mikayla@cvstrat.com
Mike Gardner	mgardner@wmwd.com
Mike Maestas	mikem@cvwdwater.com
Miriam Garcia	mgarcia@ieua.org
Monica Nelson	mnelson@ieua.org
Moore, Toby	TobyMoore@gswater.com
MWDProgram	MWDProgram@sdcwa.org
Nadia Aguirre	naguirre@tvmwd.com
Natalie Avila	navila@cityofchino.org
Natalie Costaglio	natalie.costaglio@mcmcnet.net
Natalie Gonzaga	ngonzaga@cityofchino.org
Nathan deBoom	n8deboom@gmail.com
Neetu Gupta	ngupta@ieua.org
Nicholas Miller	Nicholas.Miller@parks.sbcounty.gov
Nichole Horton	Nichole.Horton@pomonaca.gov
Nick Jacobs	njacobs@somachlaw.com
Nicole deMoet	ndemoet@uplandca.gov
Nicole Escalante	NEscalante@ontarioca.gov
Noah Golden-Krasner	Noah.goldenkrasner@doj.ca.gov
Norberto Ferreira	nferreira@uplandca.gov
Paul Hofer	farmerhofer@aol.com
Paul Hofer	farmwatchtoo@aol.com
Paul S. Leon	pleon@ontarioca.gov
Pete Vicario	PVicario@cityofchino.org
Peter Dopulos	peterdopulos@gmail.com
Peter Dopulos	peter@egoscuelaw.com
Peter Hettinga	peterhettinga@yahoo.com
Peter Rogers	progers@chinohills.org

Rebekah Walker	rwalker@jcsd.us
Richard Anderson	horsfly1@yahoo.com
Richard Rees	richard.rees@wsp.com
Robert DeLoach	robertadeloach1@gmail.com
Robert E. Donlan	rdonlan@wjhattorneys.com
Robert Neufeld	robneu1@yahoo.com
Robert S. (RobertS@cbwcd.org)	RobertS@cbwcd.org
Robert Wagner	rwagner@wbecorp.com
Ron Craig	Rcraig21@icloud.com
Ron LaBrucherie, Jr.	ronLaBrucherie@gmail.com
Ronald C. Pietersma	rcpietersma@aol.com
Ruben Llamas	rllamas71@yahoo.com
Ruby Favela	rfavela@cbwm.org
Ryan Shaw	RShaw@wmwd.com
Sam Nelson	snelson@ci.norco.ca.us
Sam Rubenstein	srubenstein@wpcarey.com
Sandra S. Rose	directorrose@mvwd.org
Scott Burton	sburton@ontarioca.gov
Scott Slater	sslater@bhfs.com
Seth J. Zielke	sjzielke@fontanawater.com
Shawnda M. Grady	sgrady@wjhattorneys.com
Sherry Ramirez	SRamirez@kmtg.com
Shivaji Deshmukh	sdeshmukh@ieua.org
Sonya Barber	sbarber@ci.upland.ca.us
Sonya Zite	szite@wmwd.com
Stephanie Reimer	SReimer@mvwd.org
Stephen Deitsch	stephen.deitsch@bbklaw.com
Stephen Parker	sparker@uplandca.gov
Steve Kennedy	skennedy@bmklawplc.com
Steve M. Anderson	steve.anderson@bbklaw.com
Steve Nix	snix@ci.upland.ca.us
Steve Smith	ssmith@ieua.org
Steven Andrews	sandrews@sandrewsengineering.com
Steven J. Elie	s.elie@mpglaw.com
Steven J. Elie	selie@ieua.org
Steven Popelar	spopelar@jcsd.us
Steven Raughley	Steven.Raughley@isd.sbcounty.gov
Susan Palmer	spalmer@kidmanlaw.com
Sylvie Lee	slee@tvmwd.com
Tammi Ford	tford@wmwd.com
Tariq Awan	Tariq.Awan@cdcr.ca.gov
Taya Victorino	tayav@cvwdwater.com
Teri Layton	tlayton@sawaterco.com
Terri Whitman	TWhitman@kmtg.com
Terry Catlin	tlcatlin@wfajpa.org
Terry Watkins	Twatkins@geoscience-water.com
Thomas S. Bunn	tombunn@lagerlof.com
Tim Barr	tbarr@wmwd.com
Timothy Ryan	tjryan@sgvwater.com
Toby Moore	toby.moore@gswater.com
Todd M. Corbin	tcorbin@cbwm.org
Tom Barnes	tbarnes@esassoc.com
Tom Bunn	TomBunn@Lagerlof.com

Tom Cruikshank	tcruikshank@linklogistics.com
Tom Dodson	tda@tdaenv.com
Tom Harder	tharder@thomashardercompany.com
Tom O'Neill	toneill@chinodesalter.org
Toni Medell	mmedel@mbakerintl.com
Tony Long	tlong@angelica.com
Toyasha Sebbag	tsebbag@cbwcd.org
Tracy J. Egoscue	tracy@egoscuelaw.com
Trevor Leja	Trevor.Leja@cao.sbcounty.gov
Veva Weamer	vweamer@westyost.com
Victor Preciado	Victor_Preciado@ci.pomona.ca.us
Vivian Castro	vcastro@cityofchino.org
Wade Fultz	Wade.Fultz@cmc.com
WestWater Research, LLC	research@waterexchange.com
William Brunick	bbrunick@bmklawplc.com
William McDonnell	wmcdonnell@ieua.org
William Urena	wurena@emeraldus.com

EXHIBIT D

EXHIBIT D

Case No. E080457

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

CHINO BASIN WATERMASTER,

Plaintiff and Respondent,

v.

CITY OF ONTARIO, et al.,

Defendant and Appellant.

OPENING BRIEF OF APPELLANT CITY OF ONTARIO

San Bernardino Superior Court of California, County of San Bernardino
Case No. RCVRS 51010
Honorable Gilbert Ochoa

Attorneys for Appellant, City of Ontario

*Elizabeth P. Ewens (SB #2213046)
Michael B. Brown (SB #179222)
Whitney Brown (SB #324320)
Stoel Rives LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
Telephone: 916.447.0700
Facsimile: 916.447.4781

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to Rule 8.208 of the California Rules of Court, Appellant City of Ontario certifies that there are no entities or persons that must be listed in this certificate.

DATED: July 3, 2023

STOEL RIVES LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814

By: */s/Elizabeth P. Ewens*
Elizabeth P. Ewens
Attorneys for Appellant
City of Ontario

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

I. INTRODUCTION

Forty-five years ago, several hundred individuals and entities entered into a stipulated agreement governing rights to groundwater and storage capacity in Chino Groundwater Basin (the "Basin"). The superior court memorialized the parties' agreement in a 1978 judgment (the "Judgment"). The Judgment appointed the Chino Basin Watermaster ("Watermaster") and tasked Watermaster with even-handed management of the Basin consistent with the Judgment, including by adopting rules and regulations for the conduct of its duties, establishing committees of parties with similar interests in the Basin, developing uniformly applicable rules for the storage of water, and assessing parties for all water produced from the Basin. At its core, this dispute is about whether Watermaster and other parties to the Judgment may run roughshod over the Judgment's requirements to the detriment of the City of Ontario ("Ontario") and others. Ontario takes the position that they may not, and respectfully requests that this Court reverse the superior court's decision to the contrary.

Each year, Watermaster prepares an assessment package detailing the accounting for production and use of Basin water, and announcing the assessments that producers of Basin water must pay. Traditionally, consistent with the Judgment, Watermaster has assessed all water produced from the Basin. This included stored water produced as part of the Dry Year Yield Program ("DYY Program"), a conjunctive use program established for the storage of extra water during wet years and the corresponding recovery of that groundwater during dry years.

The DYY Program was meticulously crafted by agreements and court orders that provided, among other things, that only parties that executed written agreements (known as local agency agreements) could participate.

All of this changed without notice. In the 2021/2022 Assessment Package at issue here, Watermaster announced that it would not be levying assessments on water produced through the DYY Program. And in the same production year, for the first time, Watermaster allowed Fontana Water Company ("FWC") to participate in the DYY Program, even though FWC did not have a local agency agreement allowing it to withdraw water from that program. These changes clearly violated the Judgment and subsequent court orders unambiguously requiring that all water produced from the Basin must be assessed and that water may not be produced from the DYY Program absent a written local agency agreement.

Rather than recognizing as much, the superior court concluded that Ontario's challenge to the 2021/2022 Assessment Package amounted to an untimely and improper objection to an earlier letter agreement that Watermaster staff entered into with Metropolitan Water District, Three Valleys Municipal Water District, and Inland Empire Utilities Agency ("IEUA") (the "2019 Letter Agreement"). But the court failed to appreciate that Watermaster relied on the 2019 Letter Agreement to make fundamental changes to the DYY Program without providing notice to Ontario and other affected parties, and without following the required procedures for making material

amendments to the Judgment and the DYY Program. In fact (and contrary to the superior court's conclusion otherwise) Watermaster *never* provided notice to Ontario of the 2019 Letter Agreement. The 2019 Letter Agreement, put simply, was enacted in the shadows, and its full effects became clear only when Watermaster issued its 2021/2022 Assessment Package. Ontario timely challenged the 2021/2022 Assessment Package. Ontario therefore respectfully requests that this Court reverse the superior court's denial of Ontario's challenge and remand with instructions to (1) invalidate the 2019 Letter Agreement; (2) direct Watermaster to comply with the process provided for in the Judgment and subsequent court orders when approving material changes; (3) direct Watermaster to implement the DYY Program in a manner consistent with the Judgment and court orders; and (4) correct and amend the 2021/2022 Assessment Package to assess water produced from the DYY Program.

II. ISSUES PRESENTED FOR REVIEW

1. Where a 1978 stipulated judgment and subsequent agreements between the parties make clear that all water produced from the Basin must be assessed, did Watermaster violate the Judgment by exempting from assessment stored groundwater produced from the Basin?

2. Where a 1978 stipulated judgment and subsequent court order require that parties may only withdraw stored water from the Basin pursuant to a written agreement, did Watermaster violate that Judgment and court order by permitting a party without a local agency agreement to withdraw stored water from the Basin?

3. Where Watermaster enacted major changes to the DYY Program without notifying Ontario or proceeding through the sequential approval process mandated by the Judgment

and other court orders, and where the changes and the harm wrought on Ontario only became evident when Watermaster issued its 2021/2022 Assessment Package, was Ontario's challenge to the 2021/2022 Assessment Package valid and timely?

III. BACKGROUND

A. The 1978 Judgment.

The Chino Groundwater Basin (the "Basin") is one of the largest groundwater basins in Southern California, providing water to millions of residents of San Bernadino, Riverside, and Los Angeles Counties. After years of severe water shortages and continuous overdrafts in the 1960s and 1970s, a complaint was filed seeking an adjudication of rights to groundwater and storage capacity in the Basin. (AA44,[1] AA48 [Judgment ¶¶ 1, 7].) Trial and a stipulated judgment led to the superior court's imposition of a "physical solution," an equitable plan for the management of groundwater resources, which is set forth in a 1978 judgment (the "Judgment"). "The phrase 'physical solution' is used in water-rights cases to describe an agreed upon or judicially imposed resolution of conflicting claims in a manner that advances the constitutional rule of reasonable and beneficial use of the state's water supply." (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287, *as modified on denial of reh'g* (Dec. 21, 2012).)

The Judgment addresses a variety of issues related to the allocation of Basin resources and Basin management. For

[1] Citations to Appellant's Appendix are referenced as AA and page number without any leading zero, *e.g.*, AA1, AA2050.

example, the Judgment appoints and details the duties of the Chino Basin Watermaster ("Watermaster"), a nine-member Board charged with administering and enforcing the Judgment and defines the processes Watermaster must follow when exercising its powers and responsibilities. (AA10 [Judgment ¶¶ 16-17].)

The Judgment also identifies the Basin's safe yield, that is, the amount of water that can be withdrawn annually from the Basin without harming or depleting the Basin, and defines the parties' various rights to groundwater in the Basin. (AA48-AA50 [Judgment ¶¶ 6, 8-10].) The Judgment generally prohibits parties from "producing ground water from Chino Basin" except as provided in the Judgment or a written water storage agreement. It also provides for the equitable, but mandatory, apportionment and assessment of costs of Basin management based on the amount of a party's individual groundwater production. (AA47, AA51, AA67 [Judgment ¶¶ 4(x), 13, 53].)

The Judgment further explains that there is "a substantial amount of available ground water storage capacity" in the Basin that can be used for conjunctive use. (AA50 [Judgment ¶ 11].) Conjunctive use is the planned use of surface water and groundwater resources to provide a buffer against drought. Conjunctive use generally involves immediately using surface water or storing it as groundwater in wet years when water is plentiful and withdrawing it from storage during dry years as a means of improving the availability and reliability of water. The Judgment explicitly recognizes that utilization of groundwater

storage capacity is essential to safe and sustainable management, but it also requires that the Basin's groundwater storage capacity "be undertaken only under Watermaster control and regulation" in order to "protect the integrity of both such Stored Water and Basin Water in storage and the safe yield of the Chino Basin." (*Id.*)

The Judgment defines "stored water" as "supplemental water held in storage, as a result of direct spreading, in lieu delivery, or otherwise, for subsequent withdrawal and use pursuant to agreement with Watermaster." (AA47 [Judgment ¶ 4(aa)].) "Supplemental water," for its part, is defined as "both water imported to Chino Basin from outside Chino Basin Watershed, and reclaimed water," which in turn is defined as water "which, as a result of processing of waste water, is suitable for a controlled use." (AA46-AA47 [Judgment ¶ 4(u), (bb)].) The Judgment treats stored and supplemental water differently for certain purposes. For example, the Judgment provides that stored water is not included in the Basin's safe yield. (AA45, AA47 [Judgment ¶ 4(d), (x)].) It also provides that while parties are entitled to a predetermined amount of groundwater in the Basin consistent with the safe yield, they may not store additional groundwater, or withdraw stored groundwater, without a written agreement with Watermaster. (AA51 [Judgment ¶ 14].)

Other provisions, however, are categorical commands and do not distinguish between the "type" of groundwater—*i.e.*, native (naturally occurring) or stored—at issue. The Judgment

provides, for example, that annual assessments levied against the parties to the Judgment should be "based upon production" (AA67 [Judgment ¶ 53]), *i.e.*, on the annual quantity of groundwater pumped or extracted from the Basin (AA46 [Judgment ¶ 4(q), (s)]). The Judgment's definition of groundwater is similarly broad and does not distinguish between the "type" of groundwater or how that water made its way into the Basin. Groundwater is simply water "beneath the surface of the ground and within the zone of saturation, i.e., below the existing water table." (AA45 [Judgment ¶ 4(h)].)

B. Watermaster's role.

As noted, the Judgment appoints and defines Watermaster's role in administering and enforcing the Judgment. The Judgment is clear that Watermaster is authorized to act "[s]ubject to the continuing supervision and control of the Court." (AA53 [Judgment ¶ 17].) Watermaster, in other words, is an arm of the court. (*See generally Water Replenishment Dist. of S. Cal. v. City of Cerritos* (2012) 202 Cal.App.4th 1063, 1072 [noting that Watermaster "serves as an arm of the court to assist the Court in the administration and enforcement of the provisions of this judgment" (internal quotation marks omitted)]; *Dow v. Honey Lake Valley Res. Conservation Dist.* (2021) 63 Cal.App.5th 901, 911 [observing that Watermaster is "considered an arm of the Court" (internal quotation marks omitted)].) Unlike parties to the Judgment like Cucamonga Valley Water District ("CVWD") and the City of Ontario ("Ontario"), "[t]he [W]atermaster's role is merely to administer and implement the decree; its role is not to

champion the rights of some water users subject to the decree to the detriment of other water users subject to the decree. In other words, the [W]atermaster's role is not to take sides or play favorites." (*Dow v. Lassen Irrigation Co.* (2022) 75 Cal.App.5th 482, 489.) Rather, Watermaster is charged with conducting its duties "in an impartial and unbiased" manner. (*Id.*)

C. Basin management and the Watermaster approval process.

To facilitate management of the Basin, the Judgment provides a detailed roadmap to ensure the parties bound by and subject to the Judgment have adequate opportunities to develop and present recommendations to Watermaster. The Judgment creates three "pools" of parties with similar rights in the Basin: (1) an overlying (agricultural) pool, (2) an overlying (non-agricultural) pool, and (3) an appropriative pool.[2] (AA63 [Judgment ¶ 43].) Each pool is represented by a "pool committee," which is responsible for "developing policy recommendations for administration of its particular pool" and for transmitting uncontroversial actions and recommendations "directly to Watermaster for action." (AA60-AA61 [Judgment ¶ 38(a)].) In addition, representatives of each pool committee

[2] The overlying (agricultural) pool consists of producers of water for non-industrial or non-commercial purposes, as well as the State of California; the overlying (non-agricultural) pool consists of producers of water for industrial or commercial purposes; and the appropriative pool consists of owners (both public and private) of appropriative rights. (AA63 [Judgment ¶ 43].) A list of the entities in each pool can be found in Exhibits C, D, and E to the Judgment. (AA73-AA97.)

serve on an "advisory committee," which has "the duty to study, and the power to recommend, review and act upon all discretionary determinations made or to be made . . . by Watermaster." (*Id.* ¶ 38(b).)

To safeguard water resources within the Basin, and to ensure that the interests of parties to the Judgment are protected, the Judgment also requires that the pool and advisory committees follow certain procedures. Notice must be provided before any meeting of the pool or advisory committee. (AA59-AA60 [Judgment ¶ 37(b), (c)].) Minutes must be kept of all such meetings and furnished to parties in the pool(s) concerned. (*Id.* ¶ 37(d).) Whenever an action or recommendation of a pool committee requires Watermaster to implement the action or recommendation, notice must be provided to the other two pools. (*Id.* ¶ 38(a).) If one of the other pools objects to the action or recommendation, it must be reported to the advisory committee for consideration before it is transmitted to Watermaster. (*Id.*)

The Judgment similarly charges Watermaster with following certain established procedures. If Watermaster rejects the advisory committee's recommendation, Watermaster is required to hold a public hearing and to issue written findings and decision justifying its departure. (AA61 [Judgment ¶ 38(b)[1]].) Similarly, if Watermaster proposes to take discretionary action (*i.e.*, an action other than a simple approval or disapproval of an action or recommendation by a pool committee), it must serve notice on the advisory committee and its members at least 30 days before the Watermaster meeting at

which the action is authorized. (AA61-AA62 [Judgment ¶ 38(b)[2]].) Watermaster has no authority to bypass these procedures. In fact, as an arm of the court, it is Watermaster's duty to implement them neutrally and fairly and without prejudice towards a particular outcome.

Over time, the Judgment has been modified by subsequent agreements and court orders, including the Chino Basin Watermaster Rules and Regulations, pursuant to the Judgment's mandate that Watermaster "adopt, after public hearing, appropriate rules and regulations for conduct of Watermaster affairs." (AA54 [Judgment ¶ 18]; *see* AA843.) A peace agreement to settle disputes among the parties was adopted and approved by the superior court in 2000 (the "Peace Agreement"). (*See* AA1757.) The Peace Agreement provides, among other things, that Watermaster may not approve a water storage and recovery project "if it . . . will cause any Material Physical Injury to any party to the Judgment or the Basin." (AA1783-AA1784 [¶ 5.2(a)(iii)].)[3]

Since the original enactment of the Judgment, the court has consistently retained "[f]ull jurisdiction, power and authority" as to "all matters contained" in the Judgment. (AA53 [Judgment ¶ 17]; *see also* AA57 [Judgment ¶ 31] ["All actions, decisions or rules of Watermaster shall be subject to review by the Court."].) In other words, the Judgment entrusts the court with the responsibility to ensure that all players in the Basin,

[3] The Peace Agreement was subsequently amended in 2004 and 2007. (*See* AA1841, AA1856.)

including Watermaster, play by the rules.

D. Watermaster's authority to levy assessments.

As noted, the Judgment imposes both the authority and the duty on Watermaster to levy and collect assessments based on production during the prior year. (*See* AA55, AA67 [Judgment ¶¶ 22, 24, 53]; *see also* AA868-AA869 [section 4.1] (Watermaster rules and regulations require that Watermaster "shall levy assessments against the parties . . . based upon Production during the preceding Production period).) In furtherance of these requirements, each year, Watermaster staff prepares an annual assessment package detailing the accounting for production and use of Basin water. (*See* AA2889.)

The cost of operating the Basin is determined based on an annual budget. The amount that each party is assessed is determined by dividing the total of the fixed costs of operating the Basin by the total annual production of all parties. (AA661 [¶ 61].) That calculation yields a dollar amount per acre foot of water. (*Id.* ¶ 62.) Since the costs are fixed, when the total annual production increases, the unit cost decreases; conversely, when the total annual production decreases, the unit cost increases. (*Id.*) More concretely, if Watermaster treats certain types of water produced by certain parties as not "produced" (*i.e.*, exempts from assessment certain types of water) the unit cost per acre foot of water—and the total amount that the other parties must pay—rises. (*See id.* ¶ 63.)

E. The DYY Program.

In 2000, California voters approved a proposition

authorizing the state to sell $1.97 billion in general obligation bonds for water-related projects. (AA1208.) The Metropolitan Water District ("Metropolitan") received $45 million in grant funds to be used for groundwater storage projects within its service area. (*Id.*) As a result, in June 2003, Metropolitan and two of its member public agencies—Inland Empire Utilities Agency ("IEUA") and Three Valleys Municipal Water District ("TVMWD")—entered into a Groundwater Storage Program Funding Agreement with Watermaster (the "2003 Funding Agreement").

The 2003 Funding Agreement provided that Metropolitan could store up to 100,000 acre feet of water in the Basin.[4] (AA1213.) It further provided that during dry years, Metropolitan could require (or "call") on parties with local agency agreements to produce 33,000 acre feet of stored groundwater from that storage account while simultaneously requiring the agencies to forgo using an equivalent amount of surface water. (*Id.*) In wet years, this arrangement allowed Metropolitan to store water to provide a buffer for future dry years, and in dry years, it left Metropolitan with more surface water to distribute within its service area. (AA1208-AA1209, AA1226-AA1227.) This arrangement, now known as the DYY Program, was understood to provide "a mutually beneficial arrangement" for

[4] An acre foot of water is the amount of water needed to cover an acre of land (about the size of a football field) to the depth of one foot deep and is generally considered to be the amount of water used by a household of four people over the course of two years. (Littleworth and Garner, California Water (3rd ed. 2019) p. 2.)

the use and storage of groundwater. (AA1210.) The DYY Program, in other words, "allow[s] for rational regional water supply planning by allowing for increased imports to the Chino Basin during wet years, and reduced imports during dry years." (AA1480.)

The 2003 Funding Agreement was adopted through the required process discussed above, *i.e.*, after notice and consideration by the pool committees, the advisory committee, and Watermaster itself. (AA651 [¶ 19].) It was ultimately approved by superior court order. (*See* AA1336.) In its order, the superior court recognized that because of the Judgment's injunction on storing or withdrawing water except pursuant to a written storage agreement (*see* AA51 [Judgment ¶¶ 13, 14]), Watermaster would need to execute, and the court would have to approve, local agency agreements for the 2003 Funding Agreement to take effect. (*See* AA1338.) Consistent with the superior court's order, IEUA, TVMWD, and their member agencies executed written local agency agreements to govern performance obligations under the DYY Program. (*See* AA652-AA653 [¶ 25], AA1358-AA1456.)

In 2004, Watermaster filed—and the superior court approved—a motion seeking final approval of the DYY Program and an associated storage and recovery agreement between Watermaster, Metropolitan, IEUA, and TVMWD (the "DYY Storage Agreement"). (AA1470.) The DYY Storage Agreement included specific performance criteria that would be used to ensure that the stored groundwater that parties to the agreement

produced as part of the DYY Program would be produced *instead of* imported surface water. (*See* AA1330.) These performance criteria, sometimes referred to as "Exhibit G performance criteria," help effectuate the promise of the DYY Program—ensuring a balanced formula by calling for the reduction of imported surface water deliveries and the corresponding replacement of that water with stored groundwater from the DYY account.

Watermaster's 2004 motion confirmed that the DYY Storage Agreement, including the Exhibit G performance criteria, had been "fully vetted through the traditional Watermaster process, thoroughly examined by the parties to the Judgment and unanimously supported and approved by all the various Pools, the Advisory Committee and the Watermaster Board. Ample notice and opportunity to be heard has been afforded all parties to the Judgment and the public generally." (AA1470; *see also* AA1578 [court order approving the DYY Storage Agreement notes that it was unanimously approved by all three pools, the advisory committee, and Watermaster].) The superior court's order approving the DYY Storage Agreement reiterated that the DYY Program would "provide broad mutual benefits to the parties to the Judgment" (AA1576), and that "no use shall be made of the storage capacity of Chino Basin except pursuant to written agreement with Watermaster" (AA1577 [citing Judgment ¶ 12]). The court further found that the DYY Storage Agreement was "unlikely to have any adverse impacts on a party to the Judgment." (AA1578.) Taken together, the 2003 Funding

Agreement (and the court order approving it), the DYY Storage Agreement (and the court order approving it), and the local agency agreements that were subsequently executed, govern the operation of the DYY Program.

Two additional points bear mentioning. First, the 2003 Funding Agreement was amended several times during the development of the DYY Program. The first seven amendments, which were passed in the initial phases of the DYY Program, were ministerial—pertaining to the completion timing of facilities and changes in sources of funds—and were therefore handled administratively, in accordance with the Judgment and other governing documents. (*See* AA648 [¶ 7], AA1609.) The eighth amendment in 2015, which made material changes to the DYY Program by altering the parties' performance criteria, was adopted only after formal notice was provided to the parties and the proposal was vetted and approved by the pool committees, the advisory committee, and Watermaster, and a technical analysis confirmed that the amendment would not cause material physical injury to the Basin. (AA1458, AA1678; *see* AA648-649 [¶¶ 7-8].) The amendment was executed by parties with local agency agreements.

Second, substantial costs are associated with the DYY Program, including to finance the maintenance and operation of DYY facilities and Watermaster staff time necessary to administer the DYY Program. (AA1340-AA1341, AA1608-AA1609.) Accordingly, entities participating in the DYY Program pay Watermaster administrative surcharges for the specific

purpose of defraying these costs. These administrative fees, however, are distinct from assessment fees charged for production of groundwater from the Basin, whose purpose is to underwrite Basin operations as a whole. (AA67 [Judgment ¶¶ 53-54].)

F. The 2019 Letter Agreement.

In 2018, IEUA (not Watermaster) floated the idea of allowing parties with local agency agreements to implement *voluntary* (rather than mandatory) production of stored groundwater out of the DYY account without a corresponding reduction of imported surface water. (AA654-AA655 [¶ 32].) This was a change to the DYY Program. Recall that the fundamental purpose of the DYY Program was to create a symmetrical formula by ensuring that parties produce stored groundwater from the DYY account during dry years in lieu of (not in addition to) producing surface water.

IEUA, however, did not attempt to explain how or whether the 2003 Funding Agreement or the 2003 and 2004 court orders approving various parts of the DYY Program contemplated such an arrangement. As will be described later, allowing local agencies that participated in the DYY Program, not to mention an entirely new agency, to produce stored groundwater from the DYY account without demanding a corresponding change or reduction in imported water supplies would throw off the careful balance struck by the DYY Program. Absent from the discussion was any suggestion that the contemplated changes would exempt parties who produced stored groundwater from the DYY account

from paying their share of Basin assessments, or that the proposed changes would allow a party without a local agency agreement to participate in the DYY Program.

The topic of IEUA's proposal never appeared as a business or informational item for discussion and potential adoption. Rather, it was included under Watermaster's "General Manager's Report" on the agenda for the September 2018 meetings of the appropriative pool (but not the agricultural and non-agricultural pools), the advisory committee, and the Watermaster Board. (*See* AA2040-AA2050.) And at all three meetings, Watermaster's General Manager insisted that the proposal would not "commit Watermaster to . . . anything" and even went so far as to contend that the proposal did not "constitute a change" requiring vetting through the Watermaster approval process. (AA673, AA687.)

Ontario contemporaneously registered its view that the proposal should go through the traditional approval process, and noted significant uncertainty about the practical effect the proposal would have. (AA655 [¶ 34], AA692-AA695.) Ontario explained that "[a]s long as there are parameters that are undecided or unclear, Ontario cannot take a position of support because we cannot know the full effects of the proposed changes. Without these details, which would best be explained and memorialized in an amendment, we will take a wait-and-see approach regarding impacts, and we reserve the right to address any harm or detriment that may arise." (*Id.*)

Nevertheless, Watermaster's General Manager executed IEUA's proposal by letter agreement between Watermaster,

Metropolitan, IEUA, and TVMWD on February 19, 2019. The adoption of the letter agreement (the "2019 Letter Agreement") thus was neither preceded nor followed by formal notice of Watermaster's action as the Judgment and the Watermaster Rules and Regulations require for "discretionary" actions. (*See* AA61-AA62 [Judgment ¶ 38(b)[2]].) Indeed, because it was never included as a business item or informational item on the agendas of any of the pool committee meetings, none of the pools had the opportunity to consider the proposed amendment to the DYY Program. Nor was the subject of the 2019 Letter Agreement ever subjected to full and formal consideration by the advisory committee or Watermaster. And crucially, Watermaster did not mail the 2019 Letter Agreement to Ontario. (*See* AA2069-AA2070 [Ontario not listed as recipient on letter from Metropolitan documenting agreement].)

G. Impacts of the 2019 Letter Agreement.

As later became apparent, changes to the DYY Program introduced through the 2019 Letter Agreement resulted in harm to Ontario and other parties to the Judgment. First, the 2019 Letter Agreement allowed parties to produce extra stored groundwater from the DYY account without a corresponding change or reduction in production of imported surface water. It did so by inserting a provision allowing for "voluntary" or discretionary withdrawals at a party's whim. Under the 2019 Letter Agreement, CVWD, for example, produced over 20,000 acre feet of water in 2021-22 even though the agreed-to performance criteria in Exhibit G of the DYY Storage Agreement

authorized it to produce only 11,000 acre feet in any given year.

Second, Watermaster interpreted the 2019 Letter Agreement to allow parties *without* a local agency agreement to make withdrawals from the DYY Program storage account. Under the Judgment, a written agreement with Watermaster is required before an entity may withdraw stored water from the Basin. (AA51 [Judgment ¶ 14].) Similarly, the court order approving the 2003 Funding Agreement made clear that local agency agreements are required before a party may withdraw stored groundwater from the DYY account. (AA1338.) Previously, the DYY Program benefited only Metropolitan, IEUA, TVMWD, Watermaster, and local agencies that had executed local agency agreements. Nevertheless, for the first time, Fontana Water Company ("FWC"), which is not governed by a local agency agreement, was allowed to produce approximately 2,500 acre feet of stored groundwater from the DYY account and claim that DYY production for 2021/2022.

Third, Watermaster interpreted the 2019 Letter Agreement to allow it to exempt from assessment stored groundwater produced from the DYY account. That is what Watermaster did in its fiscal year 2021/2022 Assessment Package. (*See* AA2889-AA2932.)

In concrete terms, these changes left Ontario and other parties not participating in the DYY Program holding the bag. Recall that the unit cost that parties to the Judgment must pay per acre foot of water is based on fixed costs divided by the total annual production of all parties in the Basin. (AA661 [¶ 62].) By

exempting stored groundwater produced from the DYY account, Watermaster effectively reduced the denominator in that calculation, thereby increasing the unit cost for all parties. At the same time, Watermaster's decision meant that parties like CVWD (which drastically increased its production of stored groundwater from the DYY account) were exempt from paying large sums for water they produced. Similarly, non-parties like FWC (which was inappropriately allowed to produce stored groundwater from the DYY account despite not being a formal participant in the program) were not assessed for their production of this groundwater.

A simplified example may be illustrative. Suppose the unit cost for all water produced from the Basin was determined to be $100 per acre foot. Suppose also that CVWD produced a total of 1,000 acre feet of water from the Basin, 600 acre feet of which was stored groundwater from the DYY account. CVWD should be assessed $100,000 (1,000 acre feet x $100 per acre foot) on the water it produced, regardless of which "account" the water came from.

By Watermaster's calculation, however, only 400 acre feet of the water CVWD produced is assessable. The 600 acre feet of stored groundwater CVWD produced from the DYY account is exempt from assessment and is therefore essentially free to CVWD when it comes to paying its required share of fixed Basin costs based on CVWD's total annual production. The exemption of this 600 acre feet would result in a higher unit cost (of, say, $130 per acre foot of water produced). As a result, under

Watermaster's approach, CVWD would pay only $52,000 (400 acre feet x $130 per acre foot) despite having actually produced 1,000 acre feet. Simultaneously, a party like Ontario that withdrew no or very little groundwater from the DYY storage account would get hit with a unit cost ($130 per acre foot of produced water from the Basin rather than $100) that is significantly higher than it otherwise would have been.

Here, the harm is even more striking. CVWD paid approximately $1 million less than it would have had its 20,500 acre feet of production of DYY water been assessed, and other parties (including Ontario) paid $1 million more than they otherwise would have.[5] And, for its part, FWC avoided assessments on 2,500 acre feet of DYY production even though FWC does not have a local agency agreement authorizing its participation in the program.

H. Ontario's challenge.

Ontario timely challenged the 2021/2022 Assessment Package in the superior court, arguing that Watermaster's failure to assess stored groundwater produced from the DYY account

[5] The same sort of cost-shifting occurred with respect to other payment obligations that are calculated based on each party's production. For example, desalter replenishment obligations are an annual fixed obligation that members of the appropriative pool (including Ontario, CVWD, and FWC) must pay. When the amount of water a party produces is artificially low (*i.e.*, because its production of groundwater from the DYY storage account is not considered "produced"), that party's share of the desalter replenishment obligations is also proportionately reduced and shifted to the other parties, resulting in a direct and substantial financial injury. (AA662-AA663 [¶¶ 64-65, 67].)

contravened the Judgment and other court orders and agreements governing the Basin's operation, and that in enacting the 2019 Letter Agreement, Watermaster made significant changes to the DYY Program without following the required approval process or providing the requisite notice of its action prior to Watermaster's execution of the 2019 Letter Agreement.

The superior court rejected Ontario's challenge. As for Watermaster's decision to exempt stored groundwater from the DYY account from assessment, the court summarily stated that the Judgment "seems to distinguish between the production of Basin Water and the withdrawal of Stored Water." (AA3085.) In the court's view, that distinction was "relevant to the issue of Watermaster assessments." (*Id.*)

With respect to notice, the court explained that "the mailing of the actual 2019 Letter Agreement constituted notice of Watermaster's action" because it allowed for voluntary withdrawals above the baseline set forth in the Exhibit G performance criteria. (AA3079-AA3080 [emphasis omitted].) The court concluded that because Ontario did not challenge the 2019 Letter Agreement within 90 days, its challenge was untimely. (AA3080-AA3081, AA3085.) It therefore denied Ontario's challenge. (AA3085.)

IV. STANDARD OF REVIEW

Where the issue presented is whether Watermaster properly interpreted a judgment or decree, courts exercise their independent judgment and apply de novo review. (*Dow*, *supra*, 63 Cal.App.5th at p. 911.)

V. ARGUMENT

A. Watermaster's failure to assess water produced from the DYY storage account is inconsistent with the 1978 Judgment and subsequent court orders.

Watermaster's decision to exempt from assessment stored groundwater produced from the DYY account cannot be squared with the express language of the Judgment and other agreements governing Basin operations, nor with Watermaster's own practice of assessing all water produced before 2019. The effect of Watermaster's decision has been to allow some players in the Basin—notably CVWD and FWC—to circumvent their financial responsibilities while requiring Ontario and others to make up the difference.

i. The governing documents make clear that all water produced is assessed.

The Judgment provides that Watermaster's assessments must be "based upon production during the preceding period of assessable production." (AA67 [Judgment ¶ 53].) The Judgment defines "production" in broad terms: the "[a]nnual quantity, stated in acre feet, of water produced," with "produced" meaning "[t]o pump or extract ground water from Chino Basin." (AA46 [Judgment ¶ 4(q), (s)].) Similarly, the Watermaster Rules and Regulations provide that "Watermaster shall levy assessments against the parties . . . based on Production during the preceding Production period. The assessment shall be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool." (AA868 [section 4.1]; *see also* AA855

[section 1.1(ooo), (qqq) (defining "Production" and "Produced" identically to the definitions in the Judgment)].) Nothing in the Judgment, the Watermaster Rules and Regulations, nor any of the agreements or court orders establishing the DYY Program gives Watermaster the discretion to exempt any water produced from the Basin from production. Watermaster's decision to do so as to stored groundwater from the DYY account was improper.

The superior court came to a different conclusion. In its view, the Judgment distinguishes between "ground water," which is subject to assessment, and "stored water," which is not. (AA3084-AA3085.) Specifically, the court appeared to rely on the fact that the Judgment's definition of "production" (which is defined by reference to the term "produced") includes the term "ground water," but not "stored" or "supplemental" water. (*Id.*) The court did not explain why it found this distinction meaningful. Presumably the court believed that because the production in this case involved production of *stored* groundwater from the DYY account, and the definition of "production" does not mention "stored groundwater," Watermaster was within its right to exempt from assessment the production of stored groundwater from the DYY account.

The problem with the superior court's reasoning is that one of its premises is wrong. The court was correct that the Judgment defines "production" (and therefore the water that is to be assessed) by reference to "*ground water*" extracted from the Basin. (AA46 [Judgment ¶ 4(q), (s)].) But the court was wrong to assume that "stored water" and "supplemental water" are

somehow different from "ground water." Both DYY Program stored water and supplemental water exist "beneath the surface of the ground and within the zone of saturation." (AA45 [Judgment ¶ 4(h)].) They are, in other words, types of groundwater. (*Id.*) Thus, stored and supplemental water produced from the Basin must (like other types of "ground water") be assessed. (AA67 [Judgment ¶ 51].)

As noted, the Judgment employs different terms to refer to different categories of water when those distinctions are relevant to its rules. For example, paragraph 11 of the Judgment provides that groundwater storage capacity that is not used for storage or regulation of Basin waters can be used for storage of "supplemental water." (AA50 [Judgment ¶ 11].) In other words, if native (*i.e.*, naturally existing) water is not occupying all of the storage capacity in the Basin, water may be imported from elsewhere and stored. As a corollary to paragraph 11's permissive approach to storage, paragraph 14 prohibits parties from "storing supplemental water in Chino Basin for withdrawal" unless provided for in a written agreement with Watermaster and in accordance with Watermaster's regulations. (AA51 [Judgment ¶ 14].) These provisions ensure that water imported to the Basin can be stored in the Basin and produced later under certain circumstances. They do not say that such water, when produced, should not be assessed. (*See also id.* ¶ 13 [enjoining parties from "producing ground water" in excess of their respective correlative share except pursuant to a storage water agreement, without implying that "ground water" is different

from stored or supplemental water for purposes of assessments].) Put simply, the Judgment's rules about producing groundwater or storing supplemental water do not require or even suggest that supplemental water should be treated differently from other types of groundwater for the purposes of levying assessments. Moreover, to the extent the superior court believed that only produced *native* groundwater may be assessed, the record squarely refutes that position. (*See* AA657-AA658 [¶ 46] (noting that recycled water—which is a mixture of multiple water sources (imported, groundwater, stormwater) and cannot be categorized as native water—is assessed).) Indeed, the court-approved 2003 DYY Program Funding Agreement expressly requires Watermaster to account for and "specify [the] quantities [of (DYY Program water)] *produced* by each Operating Party." (AA1222-AA1223, emphasis added)

Moreover, the Judgment is a stipulated agreement between the parties. When interpreting a stipulated judgment, as when interpreting a contract, "[t]he fundamental goal . . . is to give effect to the mutual intention of the parties." (*Orange Cove Irrigation Dist. v. Los Molinos Mut. Water Co.* (2018) 30 Cal.App.5th 1, 12 [internal quotation marks and citation omitted].) Here, there is no reason to believe that the parties entering the 1978 stipulated judgment intended Watermaster to exempt from assessment groundwater produced from a storage account, to the benefit of some parties and the detriment of others. Such an approach would contravene the express terms of the Judgment. (*Cf.* AA50 [Judgment ¶ 12] [providing that

entities may "make reasonable *beneficial* use of the available ground water storage capacity of Chino Basin for storage of supplemental water" pursuant to written agreements with Watermaster].) It would also contravene Watermaster's role as an "impartial and unbiased" actor, instead putting Watermaster in the position it is now in, *i.e.*, of "champion[ing] the rights of some water users . . . to the detriment of other water users." (*Dow*, *supra*, 75 Cal.App.5th at p. 489.) Surely, the parties to the Judgment would not have approved of such an arrangement. The superior court's conclusion that Watermaster acted permissibly was erroneous and should be reversed.[6]

ii. Watermaster's actions confirm that all water must be assessed.

Watermaster consistently assessed virtually all stored groundwater in the DYY account until suddenly reversing course in ostensible reliance on the 2019 Letter Agreement. In the first cycle of the DYY Program (from production years 2002/2003 to 2010/2011), Watermaster assessed deposits made to the DYY storage account. The timing of that approach was inconsistent with the Judgment because it levied assessments at the time of *deposit* rather than *production*. (*Cf.* AA67 [Judgment ¶ 53]

[6] The fact that the court did not include any discussion of the purported distinction between "production" of Basin Water and "withdrawal" of supplemental/stored water in the "Ruling" section of its order suggests that the court did not rely on any such distinction when coming to its decision. (AA3085.) Instead, the superior court's order seems to have turned solely on its belief that Ontario's challenge ultimately amounted to an untimely challenge to the 2019 Letter Agreement. (*Id.*; *see infra* section C.)

[providing that assessments must be "based upon production"].) But the effect was that stored groundwater produced from the DYY storage account was assessed at some point, ensuring that assessments to cover Watermaster's fixed costs of Basin management were still spread among Basin users. (*See* AA658 [¶ 49].) Moreover, Watermaster's assessment history further reveals that it regularly assesses other stored supplemental water and imported water when it is produced. (AA657-AA658 [¶¶ 46, 47]; *see* AA2889-AA2932.) Thus, Watermaster has historically assessed precisely the categories of water that it now seeks to exempt from assessment. Watermaster's contention, and the superior court's finding, that stored groundwater may be exempt from assessment is therefore inconsistent with the way Watermaster has treated stored water in the past.

iii. Watermaster's decision not to assess stored groundwater from the DYY account improperly shifted responsibility for those payments to Ontario.

After the issuance of the 2019 Letter Agreement, Watermaster for the first time did not assess stored groundwater water from the DYY account, whether at the time of deposit or at the time of production. (AA658-AA659 [¶ 50].) The effect of the decision to exclude stored groundwater from the DYY account when calculating the parties' individual assessments improperly exempted parties like CVWD, which is a party to the Judgment and to a DYY local agency agreement, from being assessed on substantial quantities of water it produced, and improperly shifted responsibility for those payments onto Ontario and other

parties. Specifically, because the Basin's operating expenses are fixed and the unit cost that parties must pay depends on total production, Watermaster's decision to exempt stored groundwater produced from the DYY account from CVWD's total groundwater production had the effect of increasing the unit cost that others—including Ontario—had to pay. The reduction in CVWD's annual production by 20,500 acre feet—the amount of stored groundwater it claimed from the DYY account—allowed CVWD to avoid over $1 million in assessments for annual Watermaster fixed cost and avoid payment of an additional $1.5 million representing CVWD's share of the remaining desalter replenishment obligation, and shifted responsibility to pay those amounts to other parties, including Ontario. (AA662-AA663 [¶¶ 64-67].) FWC enjoyed a similar, though smaller, financial windfall by claiming to have produced 2,500 acre feet of stored groundwater from the DYY account (even though FWC does not have a local agency agreement), which Watermaster exempted from assessment. (*Id.*)

Not only did Watermaster's decision not to assess all water produced contravene the Judgment and the 2003 and 2004 court orders that were meant to ensure a balanced formula, it flies in the face of the superior court's earlier requirement that the DYY Program must "provide broad mutual benefits to the parties to the Judgment." (AA1337; *see also id.* AA1576 [same].) An agreement that benefits only a few (CVWD and FWC) at the expense of many contradicts that directive.

Moreover, Watermaster's position—that it may pick and

choose when to assess water produced from the Basin—invites gamesmanship. Water suppliers can easily categorize water in ways that would allow them to avoid paying normal assessments for production. By "coloring the water something else"—*i.e.*, by stating that they produced 2,500 acre feet of imported or stored groundwater rather than native groundwater—parties like FWC and CVWD can circumvent fees and improperly shift costs to others, as they have done here. This Court should not countenance such machinations. Ontario respectfully requests that the Court reverse the superior court's determination that Watermaster's actions were consistent with the Judgment and other governing agreements and orders.

B. Watermaster also violated the Judgment by allowing non-party FWC to withdraw stored groundwater through the DYY Program.

For the first time, the 2021/2022 Assessment Package purported to allow non-party FWC to withdraw stored groundwater from the DYY account, despite not having a court-approved local agency agreement. This constitutes a clear violation of the Judgment, which prohibits withdrawing stored water except pursuant to a written storage agreement. (*See* AA51 [Judgment ¶¶ 13, 14]; *see also* AA947 [fn.8] ["The Judgment enjoins storage or withdrawal of stored water 'except pursuant to the terms of a written agreement with Watermaster and [that] is [in] accordance with Watermaster regulations.' *The Court must first approve, by written order, the Watermaster's execution of Ground Water Storage Agreements*." (Emphasis added; citation omitted)].) And it represents a departure from

the way the DYY Program has been run to date. (*See* AA1358-AA1456; AA652-AA653 [¶ 25] [providing that, consistent with the Judgment and other court orders, IEUA, TVMWD, and their member agencies entered into written local agency agreements governing their performance obligations under the DYY Program].) At minimum, this Court should invalidate Watermaster's allowance of FWC's participation in the DYY Program in the 2021/2022 Assessment Package.

C. The 2019 Letter Agreement made unauthorized changes to the DYY Program without providing notice or following the required approval process.

If the Court concludes that exempting stored groundwater that was produced from the DYY account and/or allowing an entity without a local agency agreement to withdraw stored water from the Basin was impermissible, it should reverse the superior court's decision. Even if it does not, however, the superior court's decision should be reversed for a second, independent reason. The 2019 Letter Agreement made foundational changes to the DYY Program without proceeding through the notice and approval process established in the Judgment. As a result, the changes to the DYY Program were unauthorized and Watermaster's reliance on the 2019 Letter Agreement in approving the 2021/2022 Assessment Package was unlawful.

i. The 2019 Letter Agreement made three major changes to the DYY Program that required formal notice and approval.

Watermaster relied on the 2019 Letter Agreement to make three unprecedented changes to the DYY Program. First, as previously discussed, Watermaster relied on the 2019 Letter Agreement to exempt from assessment stored groundwater produced through the DYY Program, even though the 2019 Letter Agreement itself did not purport to change the way water should be assessed. Second, as described above, Watermaster apparently believed that the 2019 Letter Agreement gave FWC the authority to participate in the DYY Program by withdrawing stored groundwater from the DYY account, despite not having a court-approved local agency agreement. Third, the 2019 Letter Agreement purported to allow parties to withdraw stored groundwater on a voluntary basis—*i.e.*, not just upon a mandatory "call" from Metropolitan—without a corresponding reduction in the amount of surface water those parties imported.

These changes defy the rules set forth in the documents that establish and govern the operation of the DYY Program, including the 2003 Funding Agreement, the 2003 court order adopting it, and the DYY Storage Agreement and its associated court order. With respect to assessment, as previously discussed, the Judgment is clear that assessment is based on "production," *i.e.*, based upon the annual quantity, in acre feet, of water produced, irrespective of whether that water is native groundwater or stored groundwater. (AA46, AA67 [Judgment ¶¶ 4(s), 53].) And as previously discussed, Watermaster's

interpretation of the 2019 Letter Agreement to allow an entity without a local agency agreement to withdraw stored groundwater from the DYY account directly contradicts the Judgment's unequivocal command that stored water may not be withdrawn "except pursuant to the terms of a written agreement with Watermaster." (AA51 [Judgment ¶ 14].)

Finally, the 2019 Letter Agreement departed from the DYY Program's requirement that parties only be allowed to withdraw stored water upon a "call" from Metropolitan. (*Cf.* AA6, AA1222, AA1239.) By permitting parties to *voluntarily* withdraw stored water—and to do so in amounts greater than that permitted under the Exhibit G performance criteria—the 2019 Letter Agreement threw off the balance between the use of imported surface water and stored water that the DYY Program sought to achieve.

ii. When it enacted the 2019 Letter Agreement, Watermaster failed to comply with the mandatory Watermaster approval process and to provide sufficient notice of its action.

The changes wrought by the 2019 Letter Agreement saddled Ontario and other parties with over $2.5 million in extra assessments to date.[7] Such substantial changes unquestionably

[7] It bears emphasis that the changes ostensibly made in the 2019 Letter Agreement threaten to continue wreaking havoc on the way the DYY Program operates by, for example, allowing other parties without local agency agreements to withdraw stored groundwater from the DYY account or even by allowing parties in other pools (*e.g.*, the non-agricultural pools) to do so. Moreover, if the subgroup of four parties that enacted the 2019 Letter

should have been routed through the mandatory approval process provided for in the Judgment. The Judgment establishes a sequential process by which decisions concerning Basin management would be made, beginning with consideration by the pool committees, followed by the advisory committees, and culminating in consideration by the Watermaster Board. (*See* AA60-AA62 [Judgment ¶ 38].) The Judgment also sets forth other procedural and notice requirements. Watermaster is required to provide notice to the advisory committee and its members at least 30 days before taking any discretionary action. (*Id*. [¶ 38(b)[2]].) For any action requiring Watermaster implementation, the Judgment requires all three pools—not just the pool affected by the action—to be apprised of the proposal. (*Id*. [¶ 38(a)].) Local agencies that are parties to local agency agreements are required to approve the amendment, as they did when enacting the eighth amendment to the 2003 Funding Agreement. (AA1609.) Finally, the Peace Agreement that was approved by the superior court requires that before Watermaster approve any storage and recovery project like the DYY Program, it must first determine that the change would not cause material physical injury to any party or to the Basin. (AA1782-1783[¶ 5.2(a)(iii)].)

None of this was done here. The 2019 Letter Agreement was not routed through the pool committees, Watermaster did

---

Agreement is allowed to make material changes to the way the DYY Program operates, there is essentially no limit to the sorts of significant changes that can be made by others in the future.

not provide the requisite 30-day notice to the advisory committee and its members, local agencies did not approve it, and no material physical injury analysis was ever conducted. Remarkably, the sea change effected by the 2019 Letter Agreement was made without full consideration by the Watermaster Board; rather, it occurred by unilateral action of a single staff member (the General Manager). (*See* AA2074.)

As for notice, this Court has previously recognized that where Watermaster's communications indicate that it had not "definitively decided" to take action, Watermaster's purported notice was not timely or effective. (*See Chino Basin Mun. Water Dist. v. City of Chino* (Cal. App. Apr. 10, 2012) E051653, at 4 (AA1014).) Here, the Watermaster General Manager, a member of Watermaster's staff, provided a broad-strokes overview of the proposal during meetings of the appropriative pool, advisory committee, and Watermaster Board. But his statements about whether any action would be taken, and if so, in what form, were equivocal at best. (*See* AA687 ["The Metropolitan Water District has proposed some changes that are favorable to the parties. We don't believe they constitute a change to the agreement, so we don't intend to bring an agreement amendment to the Board. There *may* be an acknowledgment letter. *If* there is, I wanted to let you know I will be signing that acknowledgment letter." (Emphases added)].) Muddled statements indicating that Watermaster was not certain whether any action concerning the DYY Program would be taken did not put Ontario on notice of any such action. (*See Stevens v. Dep't of Corr.* (2003) 107

Cal.App.4th 285, 292 [noting that an entity entitled to notice "is not required to be clairvoyant" (internal quotation marks and citation omitted)].)

Moreover, it is clear that the General Manager's verbal report—which was unaccompanied by any written explanation or analysis—did not address the consequences of the proposed changes to the DYY Program. In fact, he insisted that the proposal would not "commit Watermaster to . . . anything" nor "constitute a change" at all.[8] (AA673; *see also* AA687.) The General Manager did not convey that the proposal would allow CVWD to voluntarily withdraw nearly double its allocated share of stored groundwater from the DYY account, nor that non-parties would for the first time be permitted to produce stored groundwater from that account. And he certainly did not explain that Watermaster would later rely on the 2019 Letter Agreement to exempt stored groundwater from assessment.

The superior court concluded that the 2019 Letter Agreement itself provided the requisite notice. (AA3079.) For two reasons, it did no such thing. First, there is nothing in the record to suggest that Watermaster ever mailed the letter to Ontario—which is exactly the opposite of what the superior court erroneously believed to be true. (*Compare* AA3079 ["[T]he court finds that the mailing of the actual 2019 Letter Agreement

[8] Previous material changes have at least been accompanied by a "Staff Report" explaining how the proposed amendment would change the DYY Program and providing a recommendation and analysis of any financial impact implementation would have. (*See, e.g.*, RJN Ex. 25 at 47, 57.)

constituted notice of Watermaster's action. The 2019 Letter Agreement, which was mailed on March 20, 2019, clearly states that it documented the agreement between [Metropolitan], IEUA, TVMWD, and Watermaster . . . ." (emphasis omitted)] *with* AA2069 [letter from Metropolitan dated March 20, 2019 addressed only to IEUA, TVMWD, and Watermaster, *not* Ontario].) A letter that Ontario never received from Watermaster plainly could not have provided the required notice.

Second, even if a phantom letter, or a letter provided after the fact by another party (not Watermaster), could provide notice, the 2019 Letter Agreement was absolutely silent as to non-parties' withdrawal of stored groundwater from the DYY account and the manner in which assessments would be handled. (*See* AA655 [¶ 34], AA692 [describing Ontario's contemporaneous expression of uncertainty about the consequences of the proposal, given the proposal's "undecided or unclear" parameters].) Nothing in the 2019 Letter Agreement would have alerted Ontario or other parties of Watermaster's intent to make these fundamental changes to the DYY Program. It was not until Watermaster issued the 2021/2022 Assessment Package, which exempted from assessment 23,000 acre feet of stored groundwater from the DYY account including water produced by FWC, that the significance of the consequences of Watermaster's decision became clear. Watermaster's failure not only to make clear *what* it proposed to do but also *whether* it proposed to do so at all does not constitute sufficient notice under the Judgment.

The procedural protections and notice requirements

provided for in the Judgment and subsequent court orders are not mere window-dressing. They ensure that all parties to the Judgment are apprised of important changes that may affect their interests and have an opportunity to respond. And they safeguard the DYY Program's purpose of providing "broad mutual benefits"—not effecting unilateral harm. (AA1337; *see also* AA1576.) Watermaster's abbreviated process in enacting the 2019 Letter Agreement does not come close to the kind of formal and sequential consideration by the pool committees, the advisory committee, and the Watermaster Board that the Judgment contemplates and that Watermaster has adhered to when it approved the DYY Program in the first place and subsequently when it has enacted material changes to the DYY Program. (*See* AA1678, AA1688 [describing the pools' unanimous recommendation to the Advisory Committee and the Watermaster Board that the eighth amendment to the DYY Program, which made material changes, be approved]; AA648 [¶ 6] [comparing approval process of eighth amendment to DYY Program to enactment of 2019 Letter Agreement].) Indeed, Watermaster's actions here offer a concrete demonstration of why the Judgment insists on such formal approval processes, lest a subgroup of powerful players make consequential changes to Basin operations while leaving other parties (here, Ontario) in the dark.

This Court need not and should not approve of such procedural shortcuts. Ontario respectfully requests that this Court reverse the superior court's determination that

Watermaster's approach was procedurally appropriate and remand with instructions that Watermaster must follow the requisite procedures if and when it chooses to consider such changes in the future. (*See generally* AA1119 [observing that the court "has the authority and duty to independently review the evidence" to determine whether Watermaster "compl[ied] with the Judgment"]; AA1509 [DYY Storage Agreement provides that "any modification of facilities that is materially different from those contemplated by the Local Agency Agreements will require the filing of a new application"].)

D. Ontario's challenge is timely.

The superior court decided that Ontario's challenge to Watermaster's approval of the 2021/2022 Assessment Package was a thinly veiled challenge to Watermaster's execution of the 2019 Letter Agreement. (AA3081, AA3085.) In the court's view, because the Judgment provides that a notice of motion to review any Watermaster action must be served within 90 days (*see* AA57 [Judgment ¶ 31(c)]), the present action—which was filed in February 2022, long after the 90-day period to challenge the 2019 Letter Agreement had expired—was untimely. That is incorrect for two reasons.

First, as a factual matter, Ontario's challenge is not a challenge to the 2019 Letter Agreement masquerading as a challenge to the 2021/2022 Assessment Package. The 2019 Letter Agreement, as later interpreted by Watermaster, made fundamental changes to the DYY Program, including by allowing parties to flout the DYY Storage Agreement by "voluntarily"

producing far more stored groundwater from the DYY account than the Exhibit G performance criteria allowed. But the 2019 Letter Agreement did not provide that this water would be exempt from assessment. It was Watermaster's decision in its 2021/2022 Assessment Package to exempt stored groundwater produced from the DYY account that catalyzed this lawsuit. Because the 2021/2022 Assessment Package caused the harm Ontario alleges, and because Ontario's challenge to the 2021/2022 Assessment Package was timely, the superior court's decision to reject Ontario's challenge on the basis of timeliness should be reversed.

Second, as a legal matter, Ontario's challenge is timely. In *Travis v. County of Santa Cruz*, the California Supreme Court held that a challenge to a county ordinance was not barred by a statute of limitations because the challenge was brought "in a timely way after application of the Ordinance" to the plaintiff. (*See Travis v. Cnty. of Santa Cruz* (2004) 33 Cal.4th 757, 769.) The same is true here. It is Watermaster's application of the 2019 Letter Agreement to Ontario in the 2021/2022 Assessment Package that is the subject of this dispute. Thus, even accepting Watermaster's erroneous view that the 2019 Letter Agreement had anything to say about exempting certain types of water from production, it was Watermaster's *application* of that authority in the 2021/2022 Assessment Package, including the new benefit given to FWC, that harmed Ontario, and that Ontario timely challenged.

Moreover, the 90-day period in which a party must file a

notice or application seeking review of an action like the 2019 Letter Agreement never accrued. The Judgment provides that the "Effective Date" for any Watermaster action or decision "shall be deemed to have occurred or been enacted on the date on which written notice thereof is mailed." (AA57 [Judgment ¶ 31(a)].) Because Watermaster provided no formal notice of its approval of the 2019 Letter Agreement, the time to challenge the action never accrued. (*See Util. Audit Co. v. City of Los Angeles* (2003) 112 Cal.App.4th 950, 962 ["A period of limitations ordinarily commences at the time when the obligation or liability arises . . . ."].) Thus, even if Ontario's suit is construed as a challenge to the 2019 Letter Agreement, it is not barred by the Judgment's limitations period.

Finally, this Court can consider Ontario's challenge timely brought because it is akin to a challenge to an unlawful tax. In *Howard Jarvis Taxpayers Association v. City of La Habra*, the California Supreme Court considered when the statute of limitations began to run on a challenge to a tax enacted without the voter approval required by law. (*Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 812.) The court concluded that the continued imposition of an illegal tax "is an ongoing violation, upon which the limitations period begins anew with each collection." (*Id.*) Here, the 2019 Letter Agreement imposes a continuing or recurring obligation because it contemplates that parties may make a voluntary production each year. (*See id.* at pp. 818-819 [noting that even if the enactment of the unlawful tax "was *an* event giving rise to a cause of action, it

was not the only such event"].) Because the 2021/2022 Assessment Package exempted groundwater produced from the DYY storage account, the violation initiated by the 2019 Letter Agreement "accru[ed] continually" as Watermaster levied assessments each year. (*Id.* at p. 814.) Accordingly, Ontario's challenge to the 2021/2022 Assessment Package, filed within 90 days of Watermaster's action approving the 2021/2022 Assessment Package, was timely. (AA57 [Judgment ¶ 31(c)].)

VI. CONCLUSION

For the foregoing reasons, the Court should reverse the superior court's denial of Ontario's challenge and remand with instructions to (1) invalidate the 2019 Letter Agreement; (2) direct Watermaster to comply with the process provided for in the Judgment and subsequent court orders when approving material changes; (3) direct Watermaster to implement the DYY Program in a manner consistent with the Judgment and court orders; and (4) correct and amend the 2021/2022 Assessment Package to assess water produced from the DYY Program.

DATED: July 3, 2023

STOEL RIVES LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814

By: */s/Elizabeth P. Ewens*
Elizabeth P. Ewens
Attorneys for Appellant
City of Ontario

CERTIFICATE OF COMPLIANCE

I, Elizabeth P. Ewens, am one of the attorneys for Appellant City of Ontario, in this proceeding.

The attached Appellant's Opening Brief consists of 10,350 words, including footnotes and endnotes. I am relying on the computer program, Microsoft Word, for this word count.

DATED: July 3, 2023

STOEL RIVES LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814

By: */s/Elizabeth P. Ewens*
Elizabeth P. Ewens
Attorneys for Appellant
City of Ontario

EXHIBIT E

EXHIBIT E

Case No. E080457 (consolidated with E082127)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

CHINO BASIN WATERMASTER,

Plaintiff and Respondent,

v.

CITY OF ONTARIO,

Defendant and Appellant.

REPLY BRIEF OF APPELLANT CITY OF ONTARIO

San Bernardino Superior Court of California,
County of San Bernardino
Case No. RCVRS 51010
Honorable Gilbert Ochoa

Attorneys for Appellant City of Ontario

*Elizabeth P. Ewens (SB #2213046)
Michael B. Brown (SB #179222)
Whitney A. Brown (SB #324320)
Stoel Rives LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
Telephone: 916.447.0700
Facsimile: 916.447.4781

TABLE OF CONTENTS

Page

Contents

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES
(continued)

Page

Statutes

I. INTRODUCTION

This case boils down to whether the Chino Basin Watermaster ("Watermaster") should be bound by the terms of a 1978 stipulated Judgment and several subsequent court orders, or instead whether Watermaster staff is free to make unilateral decisions that have million-dollar consequences for entities like the City of Ontario ("Ontario") in violation of the Judgment, court orders, and Watermaster's obligations as an impartial and unbiased arm of the court. Watermaster's failure to assess stored groundwater produced from the Dry Year Yield ("DYY") Program account violates the terms of the Judgment and other court-approved documents that govern Chino Basin (the "Basin") operations, which make clear that *all* water produced must be assessed. Watermaster staff's decision to permit an unauthorized non-party to the DYY Program, Fontana Water Company ("FWC"), to recover water from the Basin without the required DYY local agency agreement in place was an equally egregious violation of the Judgment. And Watermaster staff's decision to allow both FWC and Cucamonga Valley Water District ("CVWD") to produce water in excess of the amounts provided for under court-approved performance criteria violated a 2004 court order.

Respondents attempt to obfuscate Watermaster's serial violations by insisting that Ontario's challenge to the 2019 Letter Agreement came too late and is dispositive of this appeal. But approval of each assessment package is a new Watermaster action subject to challenge. Ontario's challenges to the 2021/2022 and 2022/2023 Assessment Packages were separate and independent and were properly filed within 90 days of receiving

written notice of Watermaster's actions. Thus, the challenges to the assessment packages were timely under the Judgment and required adjudication on the merits based on Watermaster's continuing obligation to assess production consistent with the Judgment. Even so, Ontario's challenge to the 2019 Letter Agreement was also timely and not barred by laches. Although Watermaster later justified the fundamental changes to the DYY Program based on the 2019 Letter Agreement, the 2019 Letter Agreement did not address assessments, did not speak to the expansion of the DYY Program to parties without a local agency agreement, and did not proceed through the mandatory approval and notice process established in the Judgment. The record does not include reasonable and credible evidence that shows Ontario was mailed the letter agreement or was otherwise informed of the letter's implications as required under the Judgment.

For these reasons, the superior court's decision should be reversed.

II. STANDARD OF REVIEW

This case asks the Court to decide whether Watermaster's actions were consistent with a court judgment. "'The meaning and effect of a judgment is determined according to the rules governing the interpretation of writings generally.'" (*In re Marriage of Rose & Richardson* (2002) 102 Cal.App.4th 941, 948-949 (quoting *Verner v. Verner* (1978) 77 Cal.App.3d 718, 724).) "'The entire document is to be taken by its four corners and construed as a whole to effectuate the obvious intention.'" (*Id.* (alteration omitted) (quoting *In re Gideon* (1958) 157 Cal.App.2d

133, 136).) "In the absence of ambiguity," this Court reviews a court's judgment de novo. (*Id.*; see also *Needelman v. De Wolf Realty Co.* (2015) 239 Cal.App.4th 750, 758 ("When interpreting [a] stipulated judgment, we use ordinary contract principles and, in the absence of extrinsic evidence, we may interpret it as a matter of law.").)

Watermaster acknowledges that the Court must interpret the Judgment as a matter of law and that questions of law are reviewed de novo. (Watermaster Br. 32, 33.) Findings of fact are reviewed for substantial evidence. (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.) Generally, laches is a question of fact for the trial court and is reviewed for substantial evidence. (*Blaser v. State Teachers' Ret. Sys.* (2022) 86 Cal.App.5th 507, 524 (*Blaser*).) But if the issue is whether laches is available as a defense, it is a legal issue subject to de novo review. (*Ibid.*)

III. ARGUMENT

A. Watermaster staff's refusal to assess stored groundwater produced as part of the DYY Program is inconsistent with the Judgment and subsequent court orders.

Watermaster staff's decision to exempt from assessment stored groundwater produced from the DYY account cannot be squared with the language of the Judgment and other agreements and court orders governing Basin operations, nor with Watermaster's historical practice of assessing all water produced. The Judgment's language could not be clearer: Watermaster assessments are to be "based upon *production* during the preceding period of assessable production." (1AA67 (emphasis added) [Judgment ¶ 53].) "Production" is broadly

defined as the "[a]nnual quantity, stated in acre feet, of water *produced*," and "produced" refers to "pump[ing] or extract[ing] *ground water* from Chino Basin." (1AA46 (emphases added) [Judgment ¶¶ 4(q), 4(s)].) Nothing in the Judgment or any other order gives Watermaster the authority to exempt from assessment groundwater—whether stored, supplemental, or otherwise—produced from the Basin.

i. The Judgment and other governing documents do not distinguish between "production" and "withdrawal" for purposes of levying assessments.

In support of its argument that "production" of "ground water" does not include "withdrawal" of "stored" or "supplemental" water, Watermaster asserts that "the Judgment consistently uses 'produce' to mean extraction of native groundwater and 'withdrawal' to refer to extraction of Supplemental Water or Stored Water. It does not use those terms interchangeably, instead assigning a unique meaning to each." (Watermaster Br. 36; see also *id.* at 34 (arguing that Ontario "cannot point to a single requirement for Watermaster to assess a withdrawal of Stored Water arising under the Judgment, Rules and Regulations or Peace Agreement").) That is demonstrably incorrect. The Judgment and the other agreements and orders governing operation of the DYY Program do not distinguish between "production" of groundwater and "withdrawal" of stored/supplemental water in the manner that Respondents and the superior court suggest they do. Nor do the governing documents in any way suggest that stored or

supplemental water should not be assessed. These documents provide, for example:

- "Re-Operation. 'Re-Operation' means the controlled overdraft of the Basin by the managed *withdrawal* of *groundwater* . . . ." (1AA114 (emphasis added) [Judgment, Exh. I, § 2(b)].)
- "For a period of five years from the Effective Date, Watermaster shall ensure that: (a) the quantity of water actually held in Local Storage under a storage agreement with Watermaster is confirmed and protected and (b) each party to the Judgment shall have the right to store its un-Produced carry-over water. Thereafter, a party to the Judgment may continue to *Produce* the actual quantity of carry-over water *and Supplemental Water held in its storage account*, subject only to the loss provision set forth in this Section 5.2." (5AA1784 (emphases added) [Peace Agreement § 5.2(b)(i)].)
- "Except as provided in Section 5.2, Producers shall not be required to file a storage and recovery or recapture plan except when *Producing* water transferred *from a storage account*." (5AA1793 (emphases added) [Peace Agreement § 5.3(d)].)
- "'Re-Operation' means the controlled overdraft of the Basin by the managed *withdrawal of groundwater Production* for the Desalters . . . ." (3AA855 (emphasis added) [Watermaster Rules & Regulations § 1.1(xxx)].)

- "Specifically, the Recharge Master Plan will reflect an appropriate schedule for planning, design, and physical improvements as may be required to provide reasonable assurance that following the full beneficial use of the *groundwater withdrawn* in accordance with the Basin Re-Operation and authorized controlled overdraft . . . ." (3AA800-AA881 (emphasis added) [Watermaster Rules & Regulations § 7.1(c)].)
- "Contents of *Groundwater* Storage Agreements" should address "establishment and administration of *withdrawal* schedules, locations and methods." (3AA893 (emphases added) [Watermaster Rules & Regulations § 8.1(h)].)
- "Thereafter, a party to the Judgment may continue to *Produce* the actual quantity of Excess Carry-Over Water *and Supplemental Water held in its storage account*, subject only to the loss provisions set forth herein." (3AA894 (emphases added) [Watermaster Rules & Regulations § 8.2(a)].)
- "[A] party to the Judgment may continue to *Produce* the actual quantity of carry-over water and *Supplemental Water* held in its storage account …" (5AA17884 (emphases added) [Peace Agreement § 5.2(b)(i)].)
- "*Producers* shall not be required to file a storage and recovery or recapture plan except when *Producing water transferred from a storage account*." (5AA1793 (emphases added) [Peace Agreement § 5.3(d)].)

These examples demonstrate that the governing documents do not consistently or exclusively use the term "withdraw" to refer to "Supplemental Water or Stored Water" or "produce" to refer to "ground water" or "native groundwater." (*Cf.* Watermaster Br. 36; FWC Br. 16-18.) In fact, the governing documents make clear that the words can be used synonymously—which makes sense, given that "withdraw" is not a defined term with any fixed meaning in the Judgment. Thus, the superior court's conclusion that "there is a distinction between 'production' of Basin Water and 'withdrawal' of Supplemental or Stored Water" is, respectfully, incorrect. (9AA3085.) Because that was the apparent basis for the superior court's rejection of Ontario's challenge, the superior court's ruling should be reversed.

Watermaster argues that the injunctions in paragraphs 13 and 14 of the Judgment would be duplicative "if there were no difference between 'production' and 'withdrawal.'" (Watermaster Br. 37.) That is wrong. Paragraph 13 prohibits *producing* water from the Basin, while paragraph 14 prohibits *storing* water without a written agreement. (1AA51 [Judgment ¶¶ 13, 14].) The paragraphs do different and important work. Ontario's interpretation does not cause one to obviate the other.

In addition to being inconsistent with the Judgment and other governing documents, Respondents' position, and the superior court's conclusion, that stored water cannot be "produced" is inconsistent with the 2003 Funding Agreement that Metropolitan Water District ("Metropolitan"), Inland Empire

Utilities Agency ("IEUA"), and Three Valleys Municipal Water District ("TVMWD") entered. Just like the Judgment, Peace Agreement, and Watermaster Rules & Regulations, the 2003 Funding Agreement (which serves as the backbone of the DYY Program) provides that Watermaster must account for "water *produced*" from the DYY storage account—not water "withdrawn" from the DYY account. (1AA252; see also 1AA262, 1AA263.)

ii. The Judgment does not distinguish between various categories of water for purposes of its requirement that all water produced must be assessed.

The governing documents also squarely refute the superior court's conclusion—and Respondents' position on appeal (see Watermaster Br. 38-39; FWC Br. 18)—that "by definition, 'ground water'—the category of water subject to assessment—does not include 'stored water' and 'supplemental water'—the categories of water that are part of the DYY Program." (7SA2618.) For example, the Watermaster Rules & Regulations provide:

- "Upon the request of any Producer, Watermaster shall quantify the amount of *Groundwater* held in *Local Storage* by that Producer." (3AA891 (emphases added) [Watermaster Rules & Regulations § 8.1(f)(iv)(a)].)
- "A Producer shall not have the right to replace the *Groundwater classified as Supplemental Water* pursuant to section 8.1 with other Supplemental Water following its initial Production from Local Storage without regard to the 100,000 acre-foot limitation." (3AA894 (emphasis added)

[Watermaster Rules & Regulations § 8.2(a)].)

In other words, "stored" and "supplemental water" are simply subcategories of "ground water." As Ontario argued in its Opening Brief, this is true because both stored and supplemental water exist "beneath the surface of the ground and within the zone of saturation." (1AA45 [Judgment ¶ 4(h)].) Thus, like any other type of groundwater, "stored" water and "supplemental" water must be assessed when they are produced.[1]

Relatedly, Respondents repeatedly cite the Judgment's periodic distinction between native (*i.e.*, naturally occurring) water and stored water. (See Watermaster Br. 36-37; FWC Br. 18.) But they do not explain why the distinction matters *for the purpose of production and assessment*. As Ontario previously explained, the Judgment uses different terms for different categories of water when those distinctions are relevant to particular rules. (See Opening Br. 30-31.) For example, the Judgment provides that Watermaster must adopt rules and a standard agreement form for storage of "supplemental water."

---

[1] Watermaster insists that "[a]lthough Stored Supplemental Water may be held within the Basin, it is not water *originating* from 'beneath the surface of the ground and within the zone of saturation.'" (Watermaster Br. 39 (emphasis added).) But the Judgment's definition of "ground water" does not include any requirement that the water *originate* from beneath the surface of the ground. The Judgment simply defines groundwater (*i.e.*, the water that must be assessed when produced) as "[w]ater beneath the surface of the ground and within the zone of saturation." (1AA45 [Judgment ¶ 4(h)].) The fact that Watermaster must add terms to the Judgment's definitions to make those definitions say what Watermaster wants them to say evinces the shortcomings of Watermaster's argument.

(1AA56 [Judgment ¶ 28].) But neither this nor any of the Judgment's rules indicate that supplemental water should be exempt from its requirement (see 1AA67 [Judgment ¶ 53]) that all water produced must be assessed.

Respondents do not even attempt to address Ontario's argument that if the Judgment had intended to exempt stored or supplemental water from assessment, it easily could have done so. Recall that the Judgment provides that assessments are levied "based upon production." (1AA67 [Judgment ¶ 53].) "Production," in turn, refers to "water *produced*," and the definition of "Produce" refers to "pump[ing] or extract[ing] *ground water* from Chino Basin." (1AA46 [Judgment ¶¶ 4(s), 4(q)].) If the Judgment had intended to exempt stored water from assessment, it easily could have substituted the defined term "Basin Water" (defined as "[g]round water" that "does not include Stored Water") for the term "ground water" in the definition of "Produce." That way, all groundwater produced—but *not* stored water—would have been subject to assessment. Instead, however, the Judgment's definition of "production" refers to "ground water"—that is, all water beneath the surface of the ground, which includes stored and supplemental water. Respondents do not address this argument because it is fatal to their position. Instead, Respondents ask the court to re-write the Judgment to include definitional terms that are not there.

In digging in its heels and insisting that only *native* groundwater (rather than groundwater inclusive of stored or supplemental water) may be assessed, Watermaster also

sidesteps Ontario's argument that Watermaster assesses recycled water, which is not native groundwater. (2AA657-AA658.) In Watermaster's view, "[r]esolution of this issue is not necessary to resolve these cases." (Watermaster Br. 42.) To be clear, Ontario is not asking the Court to resolve anything with respect to recycled water. Watermaster's treatment of recycled water simply reveals that its argument is self-defeating, and that the superior court's conclusion is irremediably wrong. It cannot be true, as Watermaster argues (and as the superior court must have believed to reach its conclusion), that *some* non-native groundwater is assessed and also that *only* native groundwater is assessable. Watermaster has no response, except to decline to engage with the argument.

Watermaster also attempts to avoid the issue of its historic assessment of supplemental water (recycled water) through citation to the Peace Agreement and provisions pertaining to Watermaster's performance obligations relating to storage and recovery projects. (Watermaster Br. 42-43.) However, the provisions in the Peace Agreement that Watermaster relies on do not address assessments. Indeed, Watermaster's argument is nothing more than a red herring meant to obfuscate the fact that Watermaster historically has assessed some stored and supplemental water (recycled water) but not all stored and supplemental water (the second cycle of DYY production).[2]

[2] As addressed in section III.A.iii., above, Watermaster assessed the first cycle of DYY production but not the second. Watermaster's past assessment of DYY production further

Watermaster has provided no authority to justify such disparate treatment.

Finally, Watermaster insists that "[c]hanging the 'container' for storage from a surface reservoir to a groundwater basin alone does not change the character of Supplemental Water to 'groundwater,'" citing two cases that do not involve Chino Basin or this Judgment. (Watermaster Br. 39.) Watermaster overlooks that this Court is being asked to interpret rights and responsibilities under a written Judgment, not rights under the common law. The Judgment's negotiated definition of "ground water" thus supersedes Watermaster's idiosyncratic view about the purported "character" of Supplemental Water.

iii. Watermaster's remaining arguments are unpersuasive.

Watermaster attempts to rebut Ontario's argument that Watermaster's refusal to assess stored groundwater produced from the DYY account flies in the face of its longstanding practice by asserting that "takes" from the DYY Program have never been assessed. (Watermaster Br. 40.) But Watermaster offers little by way of response to Ontario's argument that in the first cycle of the DYY Program (from production years 2002/2003 through 2010/2011), Watermaster assessed *deposits* made to the DYY storage account, meaning that stored groundwater produced from the DYY account was assessed, just earlier in time than at the point of production. Watermaster's present contention that this

---

refutes Respondents' position now that only "native" groundwater is assessed.

water is *exempt* from assessment is therefore inconsistent with Watermaster's historical practice.

Watermaster insists that Ontario "alleges no injury" as a result of the material changes Watermaster staff made to the DYY Program, and specifically asserts that Ontario's "purely financial" injuries do not count. (Watermaster Br. 52.) This argument is hard to take seriously. Watermaster is bound by the Judgment, which says that all water produced must be assessed. If Watermaster violates that command—which it has here by flouting the negotiated-and-agreed-to "assessment methodology based on production" (Watermaster Br. 52)—that decision harms Ontario, which is within its rights to recover its financial loss in court. This should come as no surprise to Watermaster, which has advocated for strict adherence to the stipulated Judgment and application of the Judgment according to its plain terms in a separate appeal in this very case. (See *Chino Basin Mun. Water Dist. v. City of Chino* (Mar. 26, 2024, No. E079052) __ Cal.App.4th __ [2024 WL 2824373 at *10].)

Finally, Respondents insist that Watermaster's action does not reduce the "broad mutual benefits" of the DYY Program. (Watermaster Br. 53; see also FWC Br. 20.) Again, Respondents attempt to substitute Watermaster's say-so for the requirements in the Judgment, court orders, and other documents that govern Basin operations. The Peace Agreement makes clear that it is *Watermaster's* responsibility to make a finding of no material physical injury, not Ontario's burden to show that there was such an injury. (See 5AA1784 [Peace Agreement ¶ 5.2(a)(iii)]

("Watermaster shall not approve an application to store and recover water if it is inconsistent with the terms of this Agreement or will cause any Material Physical Injury to any party to the Judgment or the Basin.").) Despite this mandate, no material physical injury analysis was conducted here even though Watermaster permitted substantial increases in annual production of DYY from the Basin. (2AA631-AA633.)[3] Thus, to the extent there is uncertainty about what injury Watermaster's refusal to assess production of stored groundwater from the DYY account has wrought on Ontario or the Basin more generally, that uncertainty is a result of Watermaster's failure, not Ontario's.

B. Watermaster violated the Judgment by allowing FWC to withdraw stored groundwater through the DYY Program, even though FWC did not have a court-approved local agency agreement in place.

In its 2021/2022 Assessment Package and 2022/2023 Assessment Package, Watermaster allowed FWC to withdraw stored groundwater from the DYY account, even though FWC never executed a court-approved local agency agreement. (2AA652-AA653 [¶ 25].) This violates the Judgment's requirement that stored water only be withdrawn pursuant to a written storage agreement. (See Opening Br. 35-36; Supp.

[3] For example, in the 2021/2022 assessment year Respondent CVWD almost doubled its DYY production from the 11,353 af authorized by CVWD's Local Agency Agreement to 20,500 af. (2AA649 [¶ 10].) For its part, Respondent FWC, that does not even have a Local Agency Agreement authorizing FWC's recovery of DYY water, claimed 2,500 af of DYY production. (*Ibid.*)

Opening Br. 24-25.) Consistent with this, the 2003 court order specifically provides that "until Watermaster and this Court approve the Local Agency Agreements and Storage and Recovery Application, or some equivalent approval process is completed, the storage and recovery program cannot be undertaken." (4AA1338.) Similarly, the Peace Agreement provides that "[n]o person shall store water in and recover water from the Chino Basin without an agreement with Watermaster." (5AA1783 [Peace Agreement § 5.2(a)(ii)].)

Remarkably, Respondents argue that FWC did not violate the 2003 and 2004 court orders because FWC was not required to have a written local agency agreement in place in order to participate in the DYY Program. (Watermaster Br. 52; IEUA Br. 15; FWC Br. 15 ("The local agency agreement does not have to be approved by the court and is not required to be in writing.").) Respondents did not raise this argument in either case below, likely because it is contradicted by the plain terms of the Judgment and the repeated admonitions in court orders that water may only be stored and recovered pursuant to a court-approved written agreement with Watermaster (*i.e.*, a local agency agreement). (See 5AA1577 ("The Judgment provides that no use shall be made of the storage capacity of Chino Basin *except pursuant to written agreement with Watermaster*." (emphasis added)).) Specifically, the Judgment provides that "[a]ny person or public entity, whether a party to this action or not, may make reasonable beneficial use of the available ground water storage capacity of Chino Basin for storage of supplemental water;

provided that no such use shall be made except pursuant to written agreement with Watermaster, as authorized by Paragraph 28." (1AA50 (emphasis added) [Judgment ¶ 12].) It further provides that "[u]pon appropriate application by any person, Watermaster shall enter into such a storage agreement; *provided that all such storage agreements shall first be approved by written order of the Court*, and shall by their terms preclude operations which will have a substantial adverse impact on other producers." (1AA56 [Judgment ¶ 28] (emphasis added).) Watermaster might wish that its limited authority to "direct[] and control[]" groundwater storage in the Basin imparts on its staff the ability to unilaterally nullify the Judgment and subsequent court orders. (5AA1577; *cf.* Watermaster Br. 14-15 (referring to Watermaster's purported "plenary" authority, a term/description that appears nowhere in the Judgment or other governing documents).) But that is not the law. (See *Dow v. Lassen Irrigation Co.* (2022) 75 Cal.App.5th 482, 489 (noting that a watermaster's role "is merely to administer and implement" a judgment in an "impartial and unbiased" manner).)

Furthermore, Respondents' new position that water may be stored and recovered *without* a court-approved written agreement is inconsistent with the way the DYY Program has always been run. The record reflects that, consistent with the Judgment, IEUA, TVMWD, and their member agencies entered into written local agency agreements governing their performance obligations under the DYY Program. (See 5AA1358-AA1456, 2AA652-AA653 [¶ 25] (explaining that written agreements were executed

between IEUA, TVMWD, and their member agencies).) To the extent the Court finds it necessary to look beyond the plain terms of the Judgment, the parties' subsequent conduct therefore supports Ontario's position. (See generally *SLPR, L.L.C. v. San Diego Unified Port Dist.* (2020) 49 Cal.App.5th 284 (noting that when interpreting a judgment, courts may consider the parties' subsequent conduct).)

Watermaster next insists that because Metropolitan, not FWC, was "the storing party," FWC need not have had a written storage agreement in place. (Watermaster Br. 54.) Watermaster has never before made this assertion. And for good reason: the local agency agreements are not just "storage agreements." Rather, the local agency agreements are storage *and recovery* agreements that detail the means by which DYY water is recovered, including the local agency's specific responsibilities relating to the pumping of stored water. (5AA1362 [CVWD Local Area Agreement § 5(e)].) Further, none of the governing documents, including the Judgment and the 2003 and 2004 court orders approving various aspects of the DYY Program, provides for a carve-out for non-"storing parties" from the storage-agreement requirement. These governing orders instead provide that a "storage *and recovery program* cannot be undertaken" in the absence of written local agency agreements. (4AA1338 (emphasis added); see also 5AA1783 [Peace Agreement § 5.2(a)(ii).) In other words, water can no more be recovered (*i.e.*, produced/withdrawn) in the absence of local agency agreements than it can be stored in the absence of such agreements. This is

why the existing parties to the DYY Program (including Ontario, CVWD, the City of Chino, and others)—none of whom are "storing parties" as Watermaster appears to use the term—all have local agency agreements in place. Accepting Watermaster's argument would drain these existing local agency agreements of any meaning or purpose.

Watermaster attempts to deflect, asserting that the DYY Storage and Recovery Agreement (see 5AA1505-AA1512) "satisfies paragraph 28 of the Judgment."[4] (Watermaster Br. 54.) But it clearly does not. The superior court's 2003 order explains that a "storage and recovery program cannot be undertaken" until Watermaster and the superior court "approve the Local Agency Agreements *and* Storage and Recovery Application." (4AA1338 (emphasis added).) The Storage and Recovery Agreement does not on its own suffice.

Finally, Watermaster observes that neither the 2003 Funding Agreement nor the local agency agreements "suggest[] that a Local Agency Agreement is required for a voluntary withdrawal." (Watermaster Br. 55.) But before the 2019 Letter Agreement, there was no such thing as a "voluntary" withdrawal of stored groundwater from the DYY account. The 2003 Funding Agreement and the existing local agency agreements did not contemplate voluntary withdrawals because, like any kind of storage or recovery, they were prohibited in the absence of a

[4] Paragraph 28 of the Judgment provides that Watermaster must adopt, and the superior court must approve, all storage agreements. (1AA56 [Judgment ¶ 28].)

written local agency agreement. (See, e.g., 1AA51, 1AA56 [Judgment ¶¶ 14, 28] (prohibiting storage without written storage agreement); 4AA1338 (2003 court order providing DYY Program "cannot be undertaken" without court approval of local agency agreements).)

Because Respondents' argument that FWC was not required to have a local agency agreement in place before withdrawing stored groundwater from the DYY account fails based on the plain terms of the court orders that expressly require such agreements, this Court should invalidate Watermaster's allowance of FWC's participation in the DYY Program.

C. The 2021/2022 and 2022/2023 Assessment Packages flouted the performance criteria required by Exhibit G and Watermaster's own court ordered Storage and Recovery Program Agreement.

Participants in the DYY Program entered an agreement (the "DYY Storage Agreement") that contained an exhibit ("Exhibit G") providing that participants must reduce their use of imported water deliveries and pump an equivalent amount of groundwater from DYY Program storage accounts to ensure a balanced formula. The Exhibit G performance criteria were approved by court order in 2004. (See 4AA1330 [Exhibit G], 5AA1575-AA1578 (court order approving DYY Storage Agreement).) A deviation from Exhibit G's performance criteria thus amounts to a violation of the 2004 court order. Nevertheless, Watermaster allowed CVWD and non-party FWC to voluntarily withdraw stored water in excess of the amounts

provided for under the court-approved performance criteria in Exhibit G. By doing so, Watermaster violated the 2004 court order. (Opening Br. 18-19; Supp. Opening Br. 25-28.)

Respondents argue that "textually," Exhibit G "applies only to MWD calls that compel Parties to withdraw from the DYYP storage account instead of receiving surface deliveries." (Watermaster Br. 50; see also IEUA Br. 17 (observing that the 2019 Letter Agreement "expressly excepts Call situations from the rules governing voluntary withdrawals and treats the two scenarios differently").) This argument fails for the same reason discussed above: voluntary withdrawals were simply not permitted or even contemplated before the 2019 Letter Agreement suddenly allowed them, nor were voluntary withdrawals analyzed under the required material physical injury analysis conducted in advance of the court's 2004 order approving the DYY Storage Agreement. It is therefore unsurprising that Exhibit G's language appears specific to "call" (*i.e.*, mandatory withdrawal) situations, the only type of withdrawal that existed at the time the parties agreed to and the court approved the DYY Storage Agreement, which included Exhibit G.

Respondents have pointed to nothing to suggest that the parties intended Exhibit G's performance criteria to govern *only* the mandatory withdrawal of stored groundwater from the DYY account. Watermaster goes so far as to accuse Ontario of failing to offer any "legal or policy explanation in support of its argument that *voluntary* takes from the DYYP Account must or

should comply with all Exhibit G Performance Criteria." (Watermaster Br. 51.) But in its opening briefs, Ontario explained that Watermaster's position is incorrect as a matter of law because Exhibit G was approved by court order, its provisions govern the operation of the DYY Program, and neither Watermaster nor its staff were free to unilaterally depart from them. (Opening Br. 19-20, 23-24; Supp. Opening Br. 26-28.)[5] As to its policy argument, Ontario again respectfully refers Watermaster to its opening briefs, where it describes the concrete harm that Watermaster's failure to enforce Exhibit G's performance criteria unlawfully wrought on Ontario and other parties. (Opening Br. 23-26; Supp. Opening Br. 23-24.)

D. Ontario's challenge to the 2019 Letter Agreement is separate and independent of its challenges to the 2021/2022 and 2022/2023 Assessment Packages.

Respondents are wrong that Ontario's challenges to the 2021/2022 and 2022/2023 Assessment Packages—filed in February 2022 and February 2023, respectively—are untimely because Ontario failed to challenge the 2019 Letter Agreement within the 90-day period. (See IEUA Br. 5, 13-14; FWC Br. 10-14.) The superior court was also wrong, to the extent it accepted that argument. (See 9AA3081, 9AA3085.)

---

[5] Respondent IEUA goes even further than Watermaster, arguing that *Metropolitan Water District* "through the letter agreement suspended Exhibit Gg (sic) performance criteria for voluntary withdrawals." (IEUA Br. 17.) Exhibit G was approved by court order in 2004. Metropolitan Water District does not have the authority to override or usurp a court order entered in this adjudication, by letter agreement or otherwise.

The Watermaster's approval of the 2021/2022 Assessment Package and the 2022/2023 Assessment Package are each independent Watermaster Actions subject to challenge under the Judgment, and Ontario's challenges to the assessment packages are separate and distinct from its challenge to the 2019 Letter Agreement and must be decided regardless. That is because Ontario's challenges to the assessment packets do not arise only from the 2019 Letter Agreement. (See, e.g., 1AA144-AA145.) After the fact, Watermaster used the 2019 Letter Agreement to change the DYY Program in a fundamental way: to allow voluntary withdrawals of stored groundwater, not just mandatory withdrawals. (See 6AA2070-AA2074.) But the 2019 Letter Agreement did not change the way stored groundwater should be assessed. (See *ibid*.) Nor did it allow non-parties to a local agency agreement to withdraw water from the DYY account or withdrawals to bypass the Exhibit G performance criteria. (*Ibid*.) Those were decisions Watermaster made as part of the 2021/2022 and 2022/2023 Assessment Packages, not the 2019 Letter Agreement, and Ontario timely challenged those actions and decisions.

To be clear, as authorized by the Judgment, Watermaster approved assessment packages for the 2021/2022 and 2022/2023 production years (1AA67 [Judgment ¶ 53]), and Ontario filed motions to challenge those actions within 90 days (1AA57 [Judgment ¶ 31(c)]). Ontario's right to challenge the assessments arose and accrued on the date Watermaster mailed written notice of these actions. (See *id*. [Judgment ¶ 31(a)]; *Util. Audit Co. v.*

City of Los Angeles (2003) 112 Cal.App.4th 950, 962 ("A period of limitations ordinarily commences at the time when the obligation or liability arises.").) Because Watermaster has a continuing obligation to assess the production of groundwater in compliance with the Judgment, Ontario's challenge to the 2021/2022 and 2022/2023 Assessment Packages, filed within 90 days of written notice of Watermaster's approval, was timely. (See 1AA67 [Judgment ¶ 53], 1AA57 [Judgment ¶ 31(c)].)

Ontario's challenges to the two annual assessment packages are no different than the challenge to the monthly municipal tax in *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809 (*Howard Jarvis Taxpayers*). (See Opening Br. 45-47.) There, the California Supreme Court applied the theory of continuous accrual and found that even though the limitations period had run on any direct challenge to the ordinance imposing the tax, the suit was still permissible because the continuing monthly collection of the tax represented an alleged ongoing violation of state law. (*Howard Jarvis Taxpayers, supra,* 25 Cal.4th at pp. 818-822 [holding the facial attack on the tax accrued every time the city collected the tax].) Under the continuous accrual theory, "a series of wrongs or injuries may be viewed as each triggering its own limitations period, such that a suit for relief may be partially time-barred as to older events but timely as to those within the applicable limitations period." (*Aryeh v. Canon Bus. Sols., Inc.* (2013) 55 Cal.4th 1185, 1192 (*Aryeh*) (citing *Howard Jarvis Taxpayers*, *supra*, 25 Cal.4th at pp. 818-822).)

That is exactly the case here, yet Watermaster and FWC contend the continuous accrual theory does not apply because it is limited to situations where there is an ongoing obligation not to collect an unlawful tax and because the Judgment imposes no continuing obligation on Watermaster to collect a fee or tax. (Watermaster Br. 49; FWC Br. 13-14.) Neither excuse is true. As the Supreme Court observed in *Aryeh*, there are a variety of instances in which the continuous accrual theory has been applied to a plaintiff challenging the assessment of periodic payments under contract or California law.[6] (*See Aryeh*, *supra*, 55 Cal.4th at pp. 1198-1200 [citing cases].) And Watermaster cannot seriously disclaim its continuing obligation "to levy assessments against the parties . . . based upon production during the preceding period of assessable production" consistent with the Judgment. (1AA67 [Judgment ¶ 53].)

Because Ontario's challenges to the 2021/2022 and 2022/2023 Assessment Packages were timely filed under the Judgment, the merits of Watermaster's approval of the assessment packages was squarely before the superior court. It follows that Ontario's challenge to the 2019 Letter Agreement, even if found to be untimely, cannot be used to bar Ontario's

---

[6] Watermaster also cites two inapplicable decisions that are concerned with governmental actions that, by state law, are made subject to validation procedures of Code of Civil Procedure section 860 et seq. (See Watermaster Br. 49, citing *Coachella Valley Water Dist. v. Superior Ct. of Riverside Cnty.* (2021) 61 Cal.App.5th 755; *Campana v. E. Bay Mun. Util. Dist.* (2023) 92 Cal.App.5th 494.) Obviously, Ontario's challenges are not subject to the validation statutes.

challenges to Watermaster's unlawful actions as manifested in its subsequent approvals of assessment packages. In a 2017 order regarding the allocation of surplus Agricultural Pool water, the superior court rejected Watermaster's interpretation of a prior court order and held that Watermaster's "erroneous interpretation of the order of priorities is not a basis to continue that erroneous interpretation. If Watermaster has to make a reallocation, then it must do so to follow the court's order." (4AA1167-AA1168 [Order dated Apr. 28, 2017]; see also 4AA1166 ("The final decision is the court's, not Watermaster's.").) The same is true here. The 2019 Letter Agreement does not excuse and cannot justify yearly assessment packages that do not comply with the Judgment and subsequent court orders and are timely challenged.

E. The 2019 Letter Agreement made unauthorized changes to the DYY Program without providing notice or following the required approval process.

There are other, independent reasons why the 2021/2022 and 2022/2023 Assessment Packages must be corrected and the superior court's decision reversed. Even if, *arguendo*, the 2019 Letter Agreement contained provisions regarding material modifications to assessments and the DYY Program, such amendments to the DYY Program were unauthorized and unlawful because the 2019 Letter Agreement was adopted without following the mandatory approval and notice process established in the Judgment. (Opening Br. 21-27, 36-44.) Notwithstanding the above, the superior court, found Ontario's challenge to the 2019 Letter Agreement was untimely because it

was not filed within 90 days of receiving notice of the letter agreement and was barred by laches. (See 9AA3077-AA3081, 9AA3085.) For the very reason the letter agreement is unlawful, the superior court's decision must be reversed.

i. The superior court erred legally and factually in finding Ontario's challenge to the 2019 Letter Agreement is untimely.

The superior court erred in holding Ontario's challenge to the 2019 Letter Agreement was untimely. Respondents argue that Ontario failed to "establish any reversible error as to the trial court's determination that adjudication of the merits is time barred." (Watermaster Br. 43; see also IEUA Br. 13-15; FWC Br. 11-12.) Ontario did exactly that by showing the challenge was timely as a matter of law. (See Opening Br. 45.) Also, Ontario showed that there is no record support for the superior court's determination that the March 20, 2019 mailing of the actual 2019 Letter Agreement "constituted notice of Watermaster's action" (9AA3079; see Opening Br. 36-47.)

a. Having timely challenged the 2021/2022 and 2022/2023 Assessment Packages, Ontario timely challenged the 2019 Letter Agreement.

Ontario's challenge to the 2019 Letter Agreement is timely as a matter of law for the same reason its challenges to the 2021/2022 and 2022/2023 Assessment Packages are timely. A similar situation arose in *Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757 (*Travis*), where the plaintiff challenged both the initial enactment of a county ordinance and the application of the ordinance. Rejecting the county's argument that the entire suit

was untimely, the California Supreme Court held: "Having brought his action in a timely way after application of the Ordinance to him, Travis may raise in that action a facial attack on the Ordinance's validity." (*Id.* at p. 769.) Notably, for that holding, the Supreme Court cited *Howard Jarvis Taxpayers'* conclusion that "plaintiff's attacks on the validity of the tax ordinance itself 'are not barred merely because similar claims could have been made at earlier times to earlier violations.'" (*Ibid.*, quoting *Howard Jarvis Taxpayers*, *supra*, 25 Cal.4th at p. 822.)

FWC seeks to distinguish *Travis* on the basis that the Judgment has no "as-applied" limitations period.[7] (FWC Br. 13-14.) But FWC ignores that the Judgment allows "[n]otice of motion to review *any* Watermaster action, decision or rule," so long as it is "served and filed within 90 days of such Watermaster action." (1AA57 [Judgment ¶ 31(c)].) Moreover, the actions that gave rise to Ontario's challenges—Watermaster's ongoing failure to conform to the Judgment and subsequent court orders—are no different than those in *Travis*. *Travis* shows, as does *Howard Jarvis Taxpayers*, that Watermaster's alleged illegal actions not only include the initial enactment of the 2019 Letter Agreement but also Watermaster's continued yearly assessment packages that fail to comply with the Judgment and other court orders.

[7] Watermaster and IEUA do not contest *Travis*' application here.

b. Substantial evidence does not support the superior court's holding that Ontario received notice of the 2019 Letter Agreement.

In addition, the superior court's finding that Ontario received notice of the 2019 Letter Agreement is not supported by substantial evidence. Substantial evidence is evidence that is "reasonable in nature, credible and of solid value" and that "a reasonable mind might accept as adequate to support a conclusion." (*County of San Diego v. Assessment Appeals Bd. No. 2* (1983) 148 Cal.App.3d 548, 555, citations omitted.) Respondents rely on the declaration of Elizabeth Hurst, an IEUA employee, for evidence that Ontario was mailed the 2019 Letter Agreement.[8] (See Watermaster Br. 43-45; FWC Br. 11-12.) So

[8] Watermaster also contends that Ontario "admitted that the letter had been mailed to parties" and is estopped from arguing otherwise, citing its argument at the November 3, 2022 hearing before the superior court. (Watermaster Br. 44-45.) Reviewing Ontario's full comments shows the court reporter made a transcription error. Ontario stated that its complaint about the 2019 Letter Agreement "is timely, because that letter was not properly noticed. There's no evidence that the Watermaster actually gave notice of that 2019 letter. It was mailed out to the parties." (Reporter's Transcript ("RT") 14:9-13.) The last sentence makes no sense considering the sentence before. Further, the comments that followed confirm that the sentence should read: "It was [*not*] mailed out to the parties." Ontario referenced the "robust service of process mechanism and machine in effect in this case and adjudication whereby if they wanted to[,] that letter agreement could have been appended to agendas, it could have been sent out via a service list to every [a]ffected party, it could have gotten out there so that the parties knew what that letter agreement said and what it didn't say. *That was not done*." (RT 14:14-21 (emphasis added); see also RT 15:5-

did the superior court. (9AA3080.) Ms. Hurst testified that the agreement "was provided to all Chino Basin parties, including the City of Ontario, upon its execution." (1AA177 [¶ 13].) The record, however, directly refutes that testimony, making it incredible and unacceptable. "While findings must be given a liberal construction to the end of supporting rather than defeating a judgment, that rule cannot be used to uphold findings that are unsupported or inconsistent with each other." (*Jensen v. Union Paving Co.* (1951) 103 Cal.App.2d 164, 171, citation omitted.)

Thus, this is not about, as Watermaster contends, "weigh[ing] the facts differently." (Watermaster Br. 44.) Before taking any discretionary action, it was Watermaster's responsibility under the Judgment to serve notice to the advisory committee and its members at least 30 days before the action is authorized. (1AA61-AA62 [Judgment ¶ 38(b)[2]], 1AA69 [Judgment ¶ 59 (requiring service of documents personally or by deposit in the mail)].) But the record does not support that the Watermaster actually served Ontario with notice of the final 2019 Letter Agreement, either before or after its adoption. By letter dated March 20, 2019, Metropolitan, not Watermaster, mailed the 2019 Letter Agreement to only IEUA, TVMWD, and Watermaster. (6AA2069-AA2074.) There were no other

---

16 [commenting on problems with "an independent party e-mailing out to a subset, not to all Watermaster parties, but to a subset of parties, a draft agreement that that's going to be somehow binding on all parties [a]ffected within this adjudication"].)

recipients. (*Ibid*.) Metropolitan's March 20, 2019 letter directly contradicts Ms. Hurst's testimony and the superior court's conclusion that the mailing of the 2019 Letter Agreement was notice to Ontario of Watermaster's action.

Further, there is nothing in the record to support that Ontario was apprised of the fundamental changes to the DYY Program inspired by the 2019 Letter Agreement. One reason is that, while Respondents emphasize Ontario's engagement in the debate over the proposed letter agreement (see Watermaster Br. 22-23; IEUA Br. 13-14; FWC Br. 12), evidence of Ontario's awareness of the *possibility* that Watermaster *might* adopt a proposal is not evidence that Watermaster actually provided the requisite notice or followed the court-approved procedures to adopt them. (See *Chino Basin Mun. Water Dist. v. City of Chino* (Mar. 12, 2024, No. E079052) __ Cal.App.4th __ [2024 WL 1060355, at *7-8] (*Chino Basin*) [holding that where Watermaster's communications indicate that it had not "definitively decided" to take action, Watermaster's purported notice under a contract was not timely or effective].) Similarly, here, no formal notice was given and an informal email exchange between Ontario and IEUA (not Watermaster) in no way satisfies the defined notice and approval requirements contained in the Judgment. If anything, Ontario's questions regarding the proposed letter agreement demand that the proposal go through the Judgment's approval process, and reservation of "the right to address any harm or detriment that may arise" evinced Ontario's lack of awareness or understanding of the consequences of what

Watermaster was doing. (See, e.g., 1AA180 posing questions regarding the proposal], 2AA655 [¶ 34], 2AA692 [describing Ontario's uncertainty regarding the consequences of the proposal's "undecided or unclear" parameters].)

The 2019 Letter Agreement itself is another way to show the record is devoid of evidence of the requisite notice. Again, the letter agreement was completely silent on the assessment of stored groundwater withdrawal from the DYY account, the ability of non-parties, such as FWC, to voluntarily produce groundwater, and deviations from Exhibit G's performance criteria. (See 6AA2069-AA2074.) And Watermaster's failure to comply with the approval requirements mandated by the Judgment robbed Ontario of the opportunity to fully understand the implications of the 2019 Letter Agreement at the time and to formally object and have its concerns addressed. At the very least, the changes required adoption after formal notice to the parties and vetting and approval by all three pool committees and the advisory committee (see 1AA60-AA62 [Judgment ¶ 38]) and a technical analysis confirming the changes would not cause material physical injury to the Basin (5AA1782-AA1783 [Peace Agreement ¶ 5.2(a)(iii)]).

Based on the record, it is undisputed that none of those requirements were followed. At the September 2018 committee and board meetings, the proposed letter agreement was only identified to the appropriate pool, the advisory committee, and the Watermaster Board as part of the Watermaster General Manager's Report (6AA2040-AA2049), who represented the

proposal would make no changes to the DYY Program and was merely "an acknowledgement letter" (2AA673, 2AA687). Moreover, the changes were fundamental to a groundwater storage and recovery agreement and required court approval, just as the DYY Storage Agreement itself required court approval. (See 1AA56 [Judgment ¶ 28]; see also 5AA1577 [Order approving DYY Storage Agreement].)

In the end, the superior court's determination that Ontario was given notice of the 2019 Letter Agreement constitutes reversible error. (See *Chino Basin, supra,* 2024 WL 1060355, at pp. *7-9 [finding there was no substantial evidence to support the superior court's holdings that Watermaster's purported notice was timely or effective].) No reasonable factfinder would accept Ms. Hurst's testimony when it was refuted by Metropolitan's March 20, 2019 mailing of the 2019 Letter Agreement to only IEUA, TVMWD, and Watermaster and by the Letter Agreement itself.

ii. Substantial evidence does not support the superior court's holding that Ontario's challenge is barred by laches.

Respondents also argue that substantial evidence supports the superior court's holding that Ontario's challenge to the 2019 Letter Agreement is barred by laches. (Watermaster Br. 45; FWC Br. 14.) Laches is an equitable defense that requires an unreasonable delay in filing suit, plus either the plaintiff's acquiescence in the conduct about which it complains or prejudice resulting to the defendant because of the delay. (*Blaser*, *supra*,

86 Cal.App.5th at p. 539.) There are four problems with the superior court's finding of laches.

First, laches cannot be used to negate a continuous accrual theory. (*Blaser*, *supra*, 86 Cal.App.5th at pp. 545-546.) As discussed, under *Howard Jarvis Taxpayers*, a new limitation period begins anew with each unlawful assessment package collected by Watermaster, as does a challenge to the 2019 Letter Agreement. (See *Howard Jarvis Taxpayers, supra,* 25 Cal.4th at pp. 818-825.) Thus, Ontario had no need to act sooner and any delay in challenging the 2019 Letter Agreement was not "unreasonable and inexcus[]able." (Watermaster Br. 47-49; FWC Br. 14.) Further, because each assessment package triggers its own limitations period, whether Ontario should have known of about Watermaster's failure to assess stored water as part of the 2020/2021 Assessment Package is irrelevant. Laches cannot bar Ontario's challenge to the 2019 Letter Agreement, as it would otherwise override lawful and timely challenges to Watermaster actions under the Judgment. (*Blaser*, *supra*, 86 Cal.App.5th at p. 547.)

Second, the superior court referred to laches only in passing, without any analysis, in its order on the 2021/2022 Assessment Package. (9AA3085 ["The approval of the 2019 Agreement remains legally valid and Ontario[] is precluded by the terms of the judgment and laches from trying to bring a late challenge via this application."].) In effect, the court solely equated laches with its holding that Ontario received notice of the 2019 Letter Agreement through Metropolitan's March 20,

2019 letter and that its challenge was untimely. That was error. Laches requires more than just a finding of delay; it also requires either Ontario's acquiescence in Watermaster's actions or prejudice. (*Blaser*, *supra*, 86 Cal.App.5th at pp. 545-546.) "Prejudice is never presumed." (*Miller v. Eisenhower Med. Ctr.* (1980) 27 Cal.3d 614, 624.) The superior court found neither acquiescence nor prejudice, and its finding of laches should be reversed on that basis alone. (See 9AA3085.)

Third, while Respondents claim prejudice now, on appeal, they cannot show prejudice.[9] (*See* Watermaster Br. 47-48; FWC Br. 14, 19-20.) As noted earlier, in a 2017 order, the superior court found Watermaster must follow a prior court order and that Watermaster's erroneous interpretation of the order is not a basis to continue that erroneous interpretation. (4AA1167-1168.) The superior court also held: "A wrong practice can be long-standing, and still be wrong. A wrong practice cannot be the basis of prejudice." (4AA1168.) The same is true here.

If the Court were to invalidate the 2019 Letter Agreement, CVWD and FWC cannot avoid the consequences of Watermaster's failure to comply with the requirements of the Judgment and court orders governing the DYY Program. Nor can Watermaster avoid the inconvenience of having to comply with the same, as it is obligated to do. Respondents cannot hide behind so-called prejudice to justify Watermaster's decisions not to assess stored

[9] Before the superior court, only FWC argued Ontario's challenge to the 2019 Letter Agreement should be barred by laches and claimed prejudice from purported delay. (See 1AA480, 1AA485.) On appeal, IEUA does not claim prejudice. (See IEUA Br.)

groundwater produced from the DYY Program, to allow FWC to withdraw stored groundwater from the DYY account without a local agency agreement, and to allow the voluntary withdrawal of stored groundwater in excess of the amounts provided for under Exhibit G performance criteria.

Compliance will simply ensure that participants in the DYY Program will not receive a windfall at the expense of Ontario and others in the 2021/2022 and 2022/2023 Assessment Packages. (See Opening Br. 23-26, 33-35.) It will also restore balance to the DYY Program as required by the DYY Storage Agreement and Exhibit G and ensure the DYY Program "provide[s] broad mutual benefits to the parties to the Judgment," as required by the Peace Agreement. (4AA1337; 5AA1788-AA17898 [Peace Agreement ¶ 5.2(c)(iv)(b)].) Because the 2019 Letter Agreement benefits only a few (CVWD and FWC) at the expense of many, claims of prejudice ring hollow and must be rejected.

Fourth, in any event, laches is inappropriate as there is no substantial evidence to support it. (See, e.g., *Bono v. Clark* (2002) 103 Cal.App.4th 1409 [finding no substantial evidence of laches where defendant failed to prove prejudice].) Contrary to Watermaster (see Watermaster Br. 46-47), as already explained, Ontario did not have actual notice that the 2019 Letter Agreement was adopted or its potential consequences. Nor did the Watermaster General Manager's announcements of his intent to sign the proposed letter agreement at the September 2018 committee and board meetings constitute any sort of notice. (See

Watermaster Br. 46.) Watermaster ignores the General Manager's representations that the changes from the proposal "don't commit Watermaster to . . . anything" and "don't constitute a change to the agreement" and that the proposal was merely "an acknowledgement letter" (2AA673, 2AA687). The Watermaster General Manager's other comments belie any finding that Ontario or any other party should have known about the significant consequences that would ultimately manifest in the 2021/2022 and 2022/2023 Assessment Packages.

In sum, the superior court's holding that Ontario's challenge to the 2019 Letter Agreement is contrary to law, unfounded, and unsupportable based on the record. The Court should find the superior court erred and reverse.

IV. CONCLUSION

For the foregoing reasons, the Court should reverse the superior court's denial of Ontario's challenge and remand with instructions to (1) direct Watermaster to implement the DYY Program in a manner consistent with the Judgment and court orders; (2) correct and amend the 2021/2022 and 2022/2023 Assessment Packages to assess water produced from the DYY Program, and make necessary reallocations; (3) invalidate the 2019 Letter Agreement; and (4) direct Watermaster to comply with the process provided for in the Judgment and subsequent court orders when approving material changes.

//

//

DATED: May 13, 2024.

STOEL RIVES LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814

By: */s/Elizabeth P. Ewens*
Elizabeth P. Ewens

Attorneys for Appellant
City of Ontario

CERTIFICATE OF COMPLIANCE

I, Elizabeth P. Ewens, am one of the attorneys for Appellant City of Ontario in this proceeding.

The attached Appellant's Supplemental Opening Brief consists of 8,587 words, including footnotes and endnotes. I am relying on the computer program, Microsoft Word, for this word count.

DATED: May 13, 2024

STOEL RIVES LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814

By: */s/Elizabeth P. Ewens*
Elizabeth P. Ewens

Attorneys for Appellant
City of Ontario

DECLARATION OF SERVICE

I declare that I am over the age of 18 years and not a party to this action. I am employed in the City and County of Sacramento and my business address is 500 Capitol Mall, Suite 1600, Sacramento, CA 95814.

On May 14, 2024, at Sacramento, California, I served a true and correct copy of the documents listed below:

REPLY BRIEF OF APPELLANT CITY OF ONTARIO

☒ **ELECTRONICALLY VIA TRUEFILING** on the following parties:

Party	**Attorney**
Chino Basin Water Master : Plaintiff and Respondent	Bradley J. Herrema Scott S. Slater Laura K. Yraceburu Brownstein Hyatt Farber Schreck, LLP 1021 Anacapa Street, 2nd Floor Santa Barbara, CA 93101
Cucamonga Valley Water District : Defendant and Respondent	Thomas Simms Bunn, III Lagerlof, LLP 155 N. Lake Avenue, 11th Floor Pasadena, CA 91101-2333
Fontana Water Company : Defendant and Respondent	Thomas Simms Bunn, III Lagerlof, LLP 155 N. Lake Avenue, 11th Floor Pasadena, CA 91101-2333
Inland Empire Utilities Agency : Defendant and Respondent	Jean Cihigoyenetche 13925 City Center Dr., Ste 200 P.O. Box 2259 Chino Hills, CA 91709

Three Valleys Municipal Water District : Defendant and Respondent	Steven M. Kennedy Brunick, Battersby, McElhaney & Beckett PO Box 13130 San Bernardino, CA 92408-3303

On May 13, 2024, I also served this **REPLY BRIEF OF APPELLANT CITY OF ONTARIO** by first class mail as follows:

Hon. Gilbert G. Ochoa
Superior Court of California
County of San Bernardino
San Bernardino District – Civil Division
Department R17 – Rancho Cucamonga
8303 Haven Avenue
Rancho Cucamonga, CA 91730

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this document was executed on May 14, 2024, at Sacramento, California.

/s/ Jill Keehnen
Jill Keehnen

EXHIBIT F

EXHIBIT F

FEE EXEMPT

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT

SEP 18 2025

BY Stephanie Hernandez
STEPHANIE HERNANDEZ, DEPUTY

JEAN CIHIGOYENETCHE (State Bar No. 105227)
JC LAW FIRM
P.O. Box 2259
Chino Hills, CA 91709
(909) 214-6012
Jean@thejclawfirm.com

Exempt from Filing fee Pursuant to Gov. Code § 6103

Attorneys for INLAND EMPIRE UTILITIES AGENCY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DISTRICT

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiffs,

v.

CITY OF CHINO, et al.,

Defendants.

CASE NO.: RCVRS 51010

Assigned for All Purposes to Hon. Gilbert G. Ochoa

[~~PROPOSED~~] ORDER ON INLAND EMPIRE UTILITIES AGENCY'S MOTION FOR COSTS AND ATTORNEY'S FEES PURSUANT TO CIVIL CODE §1717 AND CODE OF CIVIL PROCEDURE §1033.5

DATE: September 12,2025
TIME: 10:00 a.m.
DEPT: R17

JC LAW FIRM
P.O. Box 2259
Chino Hills, CA 91709
Tele: (909) 214-6012

[~~PROPOSED~~] ORDER

Inland Empire Utilities Agency's (IEUA) Motion for Costs and Attorney's Fees Pursuant to Civil Code 1717 and Code of Civil Procedure 1033.5 was originally scheduled for hearing on April 4, 2025 and subsequently scheduled for hearing September 12, 2025 at 10:00 AM in Department R 17 of the above-entitled court, the Hon. Judge Gilbert G. Ochoa presiding. Having read and considered the papers submitted by counsel, the court issued a tentative ruling dated June 13, 2025, a copy of which is attached hereto as **Exhibit A**. The parties have stipulated to the tentative ruling without further argument.

THE COURT HEREBY RULES AS FOLLOWS:

1. The tentative ruling dated June 13, 2025 and attached hereto as **Exhibit A** shall be the ruling of the court.

2. IEUA's motion for attorney's fees is denied.

3. IEUA's motion for costs in the amount of $40.00 is granted.

Dated: September 18, 2025

Hon. Gilbert G. Ochoa
Judge of the Superior Court

JC LAW FIRM
P.O. Box 2259
Chino Hills, CA 91709
Tele: (909) 214-6012

EXHIBIT A

TENTATIVE RULINGS FOR June 13, 2025
Department R17- Judge Gilbert G. Ochoa

This court follows California Rules of Court, rule 3.1308(a) (1) for tentative rulings. (See San Bernardino Superior Court Local Emergency Rule 8.) Tentative rulings for each law & motion will be posted on the internet (https://www.sb-court.org) by 3:00 p.m. on the court day immediately before the hearing.

If you do not have internet access or if you experience difficulty with the posted tentative ruling, you may obtain the tentative ruling by calling the Administrative Assistant. You may appear in person at the hearing but personal appearance is not required and remote appearance by CourtCall is preferred during the Pandemic. (See www.sbcourt.org/general-information/remote-access)

If you wish to submit on the ruling, call the Court, check-in and state that you will be submitting on the Tentative, and your appearance is not necessary. But you must check in.
If both sides do not appear, the tentative will simply become the ruling.
If any party submits on the tentative, the Court will not alter the tentative and it will become the ruling.
If one party wants to argue, Court will hear argument but will not change the tentative.
If the Court does decide to modify tentative after argument, then a further hearing for oral argument will be reset for both parties to be heard at the same time by the Court.
This procedure is meant to minimize your waiting time in Court.

Watermaster Case
CHINO BASIN MUNICIPAL WATER DISTRICT

v.

CITY OF CHINO, et al.

Motion(s):	Motion for Attorney Fees and Costs
Movant(s):	Inland Empire Utilities Agency
Respondent(s):	City of Ontario; City of Chino; and, Monte Vista Water District and Monte Vista Irrigation Company

Discussion

IEUA seeks $63,069 in attorney fees, arguing that as the prevailing party in this action, they are entitled to costs and fees under the contract—namely, under section 9.2(d) of the Peace Agreement.

In support of the motion, counsel, Jean Cihigoyenetche submits a declaration. He attests that IEUA is a party to the Peace Agreement. (Cihigoyenetche ¶ 7.) A true and correct copy of the Peace Agreement is also attached to the declaration as Exhibit A. (*Ibid.*)

Article IX of the Peace Agreement, entitled "Conflicts," provides in relevant part:

> 9.1 Events Constituting a Default by a Party. Each of the following constitutes a "default" by a Party under this Agreement.
>
> (a) A Party fails to perform or observe any term, covenant, or undertaking in this Agreement that it is to perform or observe and such failure continues for ninety (90) days from a Notice of Default being sent in the manner prescribed in Section 10.13.
>
> 9.2 Remedies Upon Default. In the event of a default, each Party shall have the following rights and remedies:
>
> ....
>
> (d) Attorneys' Fees. In any adversarial proceedings between the Parties other than the dispute resolution procedure set forth below and under the Judgment, the prevailing Party shall be entitled to recover their costs, including reasonable attorneys' fees. If there is no clear prevailing Party, the Court shall determine the prevailing Party and provide for the award of costs and reasonable attorneys' fees. In considering the reasonableness of either Party's request for attorneys' fees as a prevailing Party, the Court shall consider the quality, efficiency, and value of the legal services and similar/prevailing rate for comparable legal services in the local community.

(*See* Cihigoyenetche Decl.; Exh. A, Peace Agreement §9.2, p. 54.) IEUA also notes that a review of the underlying motion to the appeal shows the moving parties invoked the Peace Agreement. (*See* RJN, Exh. 1 at 3:17-20.) IEUA also notes other examples whereby the moving parties had invoked the Peace Agreement. (*Id.* pp. 7-8.)

IEUA argues now that the remittitur has been issued, it is appropriate for this Court to award the attorney fees and costs. They cite:

> Accordingly, "because contractually authorized attorney fees are now listed as costs under Code of Civil Procedure section 1033.5,... they may either be requested of the appellate court while the appeal is pending, or of the trial court upon issuance of the remittitur. The trial court has jurisdiction to award them, regardless of the lack of specific instructions in the opinion or the remittitur."

(*Butler-Rupp v. Lourdeaux* (2007) 154 Cal.App.4th 918, 924, *citing Harbour Landing-Dolfann, Ltd. v.* Anderson (1996) 48 Cal.App.4th 260.)

In addition, IEUA argues that the fees and costs they seek are reasonable. Counsel Cihigoyenetche attests he has been practicing law for more than 42 years and has served for approximately 31 years as general counsel to the IEUA. He currently serves as general counsel to East Valley Water District, and has had that position for 11 years. For the past 31 years, his primary area of practice has been as general counsel to municipal water and wastewater districts. Over the years, he has provided special counsel services to water and wastewater districts. Since 2016, he has practiced under the fictitious business name JC Law Firm and is the principal of that firm. (Cihigoyenetche ¶ 2.) He is the attorney primarily responsible for representing IEUA in this case. (Cihigoyenetche ¶ 3.)

Cihigoyenetche's hourly rate varied throughout the course of this matter. It began with the hourly rate of $350 per hour through April 2023, but as of May 1, 2023, the rate increased to $475 per hour, and as of July 1, 2024, his rate increased to $490 per hour. (*Ibid.*) As of the date of the declaration (February 17, 2025), he spent 144.6 hours of legal services representing IEUA, which are allocated as follows:

a. Correspondence (written and telephone) with clients and parties. 6.5 hours
b. Legal research/preparation of pleadings and appellate brief. 84.1
c. Review pleadings/court orders/record on appeal. 44
d. Court appearances. 10.0

Total: 144.6

(Cihigoyenetche ¶ 4.) Of the total amount requested, $12,897.50 is for legal services pre-appeal, and $50,131.50 is the cost of legal services related to the appeal. There is an additional cost of $40 for a reporter's transcript. (Cihigoyenetche ¶ 5.)

The associated Memorandum of Costs notes that the Attorney Fees are $63,029 and the reporter's transcript charge was $40, which brings the total to $63,069. Notably, IEUA has already accepted $21,000 from the City of Chino per the settlement. Therefore, only $42,069 in fees and costs remain at issue.

Ontario opposes the motion arguing IEUA has no grounds to recover attorney fees for its intervention in proceedings challenging the Watermaster. The underlying motion, they say, attacked a Watermaster budget action and sought no relief from IEUA. Further, they claim Watermaster defended itself from the challenge, and it did not rely on IEUA.

Of note, Ontario does not dispute the $40 cost for the reporter's transcript since the appellate court ordered costs. Thus, only $42,029 is at issue.

Ontario acknowledges IEUA's fee motion invokes section 9.2(d) of the Peace Agreement, but they argue the CEQA Budget did not trigger any attorney fee shifting under the Peace Agreement because Watermaster, the sole target of the CEQA Budget motion, is not a party to the Peace Agreement.

Ontario additionally argues section 9.2(d) of the Peace Agreement excludes proceedings under the Judgment, such as the motion challenging Watermaster's budget action under Judgment paragraph 31(c).

Ontario also claims the predicates that trigger section 9.2(d) have not been met because it was not in default under the Peace Agreement. Specifically, Ontario argues the motion utilized

paragraph 31 of the Judgment (as noted above) and that section 9.2(d) applies where a Notice of Default is properly served on the opposing party giving the party opportunity to cure the default.

Further, Ontario argues IEUA's fees are unreasonable because there was no need to intervene and defend Watermaster.

Lastly, Ontario argues that the request for $12,897.50 for pre-appeal legal fees is time-barred because the Court rendered a final, appealable order on the merits analogous to a judgment in November 2022. Ontario argues the time to file any motion for attorney fees ran concurrently with the time to appeal from the order and expired in early 2023.

In support of the Ontario Opposition, counsel Gina R. Nicholls submits a declaration. She attaches a copy of the 2012 Restated Judgment as Exhibit 1. (Nicholls Decl. ¶ 2.) She also attests the IEUA intervened in the underlying motion in support of Watermaster by filing a 3-4 page opposition with a declaration. She also appeared for Ontario at the Court hearing regarding the CEQA Budget Motion, and Watermaster presented oral argument, counsel for IEUA appeared but otherwise did not participate in oral argument. (Nicholls Decl. ¶¶ 3-4; Exh. 2.)

In early 2023, Ontario and Chino filed notices of appeal, while Monte Vista did not appeal. (Nicholls Decl. ¶ 5.) Nicholls also attests that no participant in the CEQA Budget Motion, including IEUA, filed any motion for attorney fees following notice of the Court's final ruling and before the resulting appellate proceedings. (Nicholls. Decl. ¶ 6.)

On appeal, Watermaster filed a Respondent's brief approximately 36 pages long, and IEUA filed an additional Respondent's brief of approximately 6-7 pages. Nicholls personally appeared on behalf of Ontario at oral arguments where counsel for IEUA also appeared but remained silent during the proceedings. (Nicholls Decl. ¶ 7; Exh. 3.)

Monte Vista joins in Ontario's Opposition and presents its own opposing arguments. Monte Vista argues that attorney fee shifting does not apply and has never been applied to motion proceedings in Watermaster Court pursuant to the Court's continuing jurisdiction under the Judgment. Like Ontario, Monte Vista argues section 9.2(d) expressly excludes adversarial proceedings utilizing the dispute resolution procedure under the Judgment. However, unlike Ontario, Monte Vista argues the appellate court's decision as to both issues raised on appeal, the expenditure of funds as well as the appointment of IEUA as lead agency, addressed the nature and scope of Watermaster authority arising from the Judgment.

Was Watermaster the sole target of the underlying "Budget Motion"? Ontario argues that Watermaster was not a signatory to the Peace Agreement and was the sole target and party from whom relief was sought, thereby precluding IEUA from invoking section 9.2(d) of the Peace Agreement; however, Watermaster was not the sole target of the motion. The motion had two parts; the first of which was to challenge the expenditure of funds for the OBMPU PEIRU, but the second part was a challenge to IEUA's appointment as lead agency. Ontario does not contest that both they and IEUA are signatories to the Peace Agreement. Ontario does not contest that IEUA opposed the underlying motion and participated in the appeal. Further, Ontario does not dispute that IEUA is a prevailing party on appeal. This argument alone does not appear to prevent IEUA from invoking section 9.2(d) of the Peace Agreement. Indeed, it is merely a mischaracterization of the motion.

Does section 9.2(d) apply? Ontario argues the "Budget Motion" was brought under the Judgment and thereby does not implicate the Peace Agreement and its provisions. Specifically, Ontario cites paragraph 30 of the Judgment, which provides:

Annual Administrative Budget. Watermaster shall submit to Advisory Committee an

> administrative budget and recommendation for each fiscal year on or before March 1. The Advisory Committee shall review and submit said budget and their recommendations to Watermaster on or before April 1, following. Watermaster shall hold a public hearing on said budget at its April quarterly meeting and adopt the annual administrative budget which shall include the administrative items for each pool committee. The administrative budget shall set forth budgeted items in sufficient detail as necessary to make a proper allocation of the expense among the several pools, together with Watermaster's proposed allocation. The budget shall contain such additional comparative information or explanation as the Advisory Committee may recommend from time to time. Expenditures within budgeted items may thereafter be made by Watermaster in the exercise of powers herein granted, as a matter of course. Any budget transfer in excess of 20% of a budget category during any budget year or modification of such administrative budget during any year shall be first submitted to the Advisory Committee for review and recommendation.

Paragraph 31 provides review procedures, such that:

> All actions, decisions or rules of Watermaster shall be subject to review by the Court on its own motion or on timely motion by any party, the Watermaster (in the case of a mandated action), the Advisory Committee, or any Pool Committee, as follows:
>
> > (c) Time for Motion. Notice of motion to review any Watermaster action, decision or rule shall be served and filed within ninety (90) days after such Watermaster action, decision or rule, except for budget actions, in which event said notice period shall be sixty (60) days.

(Nicholls Decl.; Exh. 1, Judgment at ¶¶ 30-31.) Here, the challenge to the budget falls under the Judgment as cited by Ontario, but that is only half of the issue.

The motion also challenged IEUA's appointment as the lead agency. This issue does not necessarily fall under paragraph 31 of the Judgment. Ontario, nor Monte Vista, point to any provision in the Judgment under which the challenge to IEUA's appointment as lead agency was brought. Further, a review of the appellate decision shows that the appellate court did rely on the Peace Agreement for determining whether the appointment of IEUA as lead agency violated any conflicts of interest. The court noted: "The identification of IEUA as lead agency for the OBMPU PEIRU was based on the Peace Agreements and IEUA's long history of serving as lead agency for environmental impact review of the OBMP. IEUA was approved by the parties, and

designated as lead agency by the superior court in 1999." (*Chino Basin Municipal Water District v. City of Ontario* (Cal. Ct. App., Nov. 12, 2024, No. E080533) 2024 WL 4750863, at *7.)

In addition, the appellate court also looked at the Peace Agreement in determining whether the budget action by the Watermaster with respect to the expenditure of funds for the CEQA review was authorized.

> Turning our analysis to the propriety of budgeting for the OBMPU PEIRU in the FY 2022/2023 budget, as previously noted, Watermaster is charged with discretionary authority and responsibility to adopt a management program to achieve full utilization of the Basin's resources. To that end, in 1999, Watermaster prepared the OBMP, budgeted for and assessed the parties for expenses associated with the PEIR for the OBMP in FY 1998/1999 and FY 1999/2000, designated (with the parties' and the superior court's approval) IEUA as the lead agency, and completed the draft OBMP PEIR prior to execution of Peace 1. The parties to the Judgment (except Monte Vista Water District) agreed that the OBMP PEIR was necessary because certain programs within the OBMP will necessitate further project-specific CEQA evaluation. Furthermore, certification of the OBMP PEIR was a condition for court approval of Peace I.

(*Id.* at *6.) And:

> Contrary to appellants' claims, nothing in the Judgment, Peace Agreements, Watermaster's rules and regulations, or prior practice of the parties prevents Watermaster from budgeting, or approving a budget that includes funding for the OBMPU PEIRU. Rather, the Judgment explicitly permits Watermaster to undertake and fund environmental studies, hydrologic conditions, and operating aspects of implementation of the management program for the Basin.

(*Ibid.*) Further, the court analyzed the history of the OBMP and the PEIR, which brought about the execution of the Peace Agreements.

> On June 29, 2000, the parties executed the Peace Agreement (Peace I) to facilitate implementation of the OBMP. According to Peace I, the parties agreed that no project subject to CEQA review would be carried out unless and until the environmental review and assessments have been completed. Peace I's recitals state that the draft PEIR for the OBMP was completed and circulated to the parties prior to execution of Peace I. Certification of the OBMP PEIR was a condition for court approval of Peace I. Peace I was amended in 2004 and 2007.

> In 2007, the parties entered into the Peace II Agreement (Peace II) wherein they agreed to support Watermaster's OBMP implementation plan, acknowledged IEUA as the properly designated lead agency for the purpose of completing environmental assessment and review of the proposed project [...]

(*Id.* at *2.)

While Ontario Defendants are correct that the Judgment also was at issue, case law provides that when some fees are recoverable under Civil Code section 1717 or the terms of the contract, and others are not, such fees need not be apportioned if they are so intertwined that it would be impracticable or impossible to separate them. The issue usually arises when non-contract claims are also asserted, with courts holding that fees need not be apportioned "'when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed. All expenses incurred with respect to the [issues common to all causes of action] qualify for award.'" (*Thompson Pacific Const., Inc. v. City of Sunnyvale* (2007) 155 Cal.App.4th 525, 555.) "Thus, allocation is not required when the issues are 'so interrelated that it would have been impossible to separate them into claims for which attorney fees are properly awarded and claims for which they are not.' [Citation.]" (*Ibid.*) When fees are authorized for some causes of action, but not others, allocation is a matter within the trial court's discretion. (*Ibid.*)

The same principles should likewise apply here where the appellate issues of the parties' obligations under the Judgment and the Peace Agreement are inextricably intertwined. Therefore, the Peace Agreement and its provisions, in general, apply.

On the other hand, even if the Peace Agreement is invoked, Section 9.2(d) categorically provides that it applies to "Remedies Upon Default." And section 9.1 delineates what events

constitute a default by a Party. As cited above, the following constitute defaults under the Peace Agreement:

> A Party fails to perform or observe any term, covenant, or undertaking in this Agreement that it is to perform or observe and such failure continues for ninety (90) days from a Notice of Default being sent in the manner prescribed in Section 10.13.

(*See* Peace Agreement § 9.1, p. 53.) Ontario's motion seeking judicial review of the Watermaster's actions does not fall under this definition of default.

Therefore, it must be determined if the attorney fee provision that is stated in subdivision (d) of section 9.2 of the Peace Agreement applies only in the event of a default. To do so, the Court must interpret the contract to determine the intent of the parties.

> *Does the Attorney Fee provision only apply to a "default"?*
>
> The rules governing the role of the court in interpreting a written instrument are well established. The interpretation of a contract is a judicial function. [Citation.] In engaging in this function, the trial court "give[s] effect to the mutual intention of the parties as it existed" at the time the contract was executed. (Civ. Code, § 1636.) Ordinarily, the objective intent of the contracting parties is a legal question determined solely by reference to the contract's terms.

(*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1125–1126.) "The court generally may not consider extrinsic evidence of any prior agreement or contemporaneous oral agreement to vary or contradict the clear and unambiguous terms of a written, integrated contract. [Citations.] Extrinsic evidence is admissible, however, to interpret an agreement when a material term is ambiguous." (*Id.* at p. 1126.)

> When the meaning of the words used in a contract is disputed, the trial court engages in a three-step process. First, it provisionally receives any proffered extrinsic evidence that is relevant to prove a meaning to which the language of the instrument is reasonably susceptible. [Citations.] If, in light of the extrinsic evidence, the language is reasonably susceptible to the interpretation urged, the extrinsic evidence is then admitted to aid the court in its role in interpreting the contract. [Citations.] When there is no material conflict in the extrinsic evidence, the trial court interprets the contract as a matter of law.

(*Ibid.*) "Interpretation of a written instrument becomes solely a judicial function only when it is based on the words of the instrument alone, when there is no conflict in the extrinsic evidence, or when a determination was made based on incompetent evidence." (*City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 395.)

Here, there is no extrinsic evidence presented by the parties, and the interpretation of the Peace Agreement is based on the words alone. In looking to the clear and unambiguous terms of the Peace Agreement as a whole, it appears the fee shifting provision of section 9.2, subdivision (d) is intended only to apply to defaults.

First, in the rules of construction, section 1.2 of the Peace Agreement, it is stated that "Headings at the beginning of Articles, paragraphs, and subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement and shall not be used in construing it." (Peace Agreement, § 1.2(b).)

Next, under section IV, Mutual Covenants, specifically 4.2, the parties agreed "Nothing herein shall be construed as limiting any Party's right of participation in all the functions of Watermaster as are provided in the Judgment or to preclude a party to the Judgment from seeking judicial review of Watermaster determinations pursuant to the Judgment or as otherwise provided in this Agreement. (Peace Agreement, § 4.2.)

Section 9 pertains to conflicts. As stated above, section 9.1 defines what constitutes a default by a party. A default occurs where a party fails to perform or observe any term, covenant, or undertaking in the Agreement that it is to perform or observe and such failure continues for ninety (90) days from a Notice of Default being sent in the manner prescribed in Section 10.13. (*See* Peace Agreement, § 9.1(a).)

Here, the Peace Agreement does not classify seeking judicial review of a Watermaster action under the Judgment as a default. Indeed, throughout, the Peace Agreement allows any party to seek judicial review, as it is expressly stated in section 4.2. Further evidence of this intent to exclude judicial review of Watermaster actions is found in Section 9.3.

Section 9.3 of the Peace Agreement, entitled "Dispute Resolution" states it is applicable to disputes between the parties, other than those constituting a "Default" or "Exclusion". The Dispute Resolution process in Section 9.3(c) calls for non-binding mediation. The Exclusion section provides that the rights and remedies of parties to the Judgment to seek review of Watermaster actions are not subject to dispute resolution. (Peace Agreement § 9.3(b)(iii).) Throughout Section 9, Conflicts, review of Watermaster actions under the Judgment are consistently excluded from the remedies under the Peace Agreement.

As noted above, Respondents did seek judicial review under paragraph 31 of the Judgment, although they also implicated the Peace Agreement in their underlying motion. Yet, a default under the Peace Agreement occurs when a party fails to perform or observe any term, covenant, or undertaking. Seeking judicial review, however, does not fall under the definition of default whereby a party fails to perform a covenant as provided in the Peace Agreement. Instead, seeking judicial review is permitted. (*See* Peace Agreement, § 4.2.)

In addition, the Peace Agreement attorney fees provision requires a Notice of Default procedure that is prescribed section 10.13. It provides that: (a) Any notice required under this Agreement shall be written and shall be served either by personal delivery, mail, or fax. Subsequent to this notice, section 9.1(a) applies whereby 90 days from the Notice, if the party continues to fail to perform or observe any term, covenant, or undertaking in the Agreement,

then they are in default. (Peace Agreement §10.13, p. 59.) The Notice of Default gives notice to a party to correct the default.

Section 9.2 by its plain and unambiguous language provides remedies upon default only. It does not provide remedies under circumstances beyond default.

Even discounting the heading "Remedies Upon Default," the language of 9.2 provides: "**In the event of a default**, each Party shall have the following rights and remedies." (Peace Agreement, § 9.2, emphasis added.) The provision for attorney fees follows as subparagraph, (d), of section 9.2. Therefore, Ontario appears correct that the section 9.2(d) is predicated on a default event. Only then does section 9.2(d) apply, which provides for the recovery of attorney fees by a prevailing party in an adversarial proceeding.

When reading the Peace Agreement as a whole, it appears the parties intended for fee shifting to apply under section 9.2(d) when a party defaults, had notice of the default, and did not correct the default—thus causing an adversarial proceeding.

This is also a logical interpretation of the provision, whereby a defaulting party causes attorney fees to incur, is found at fault, and the prevailing party thus enjoys the benefits of fee shifting. Of course: "'[T]he primary object of all interpretation is to ascertain and carry out the intention of the parties.'" (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 238.) It does not appear, however, the parties intended to create a fee shifting provision for all disputes, as argued by IEUA in their moving papers and upon reply, otherwise, each time the Court undertook any judicial review implicating the Peace Agreement, a prevailing party would need to be determined and awarded attorney fees. Rather, this provision appears to be intended to encourage a default to be cured prior to further legal intervention or to discourage unwarranted accusations of default.

Finally, in reply, IEUA admits they did not comply with default procedures because they never declared a default. (*See* Reply, p. 4:20.) Indeed, IEUA does not address the requirement of the Notice of Default at all as prescribed by section 9.1(a) and section 10.13. Instead, IEUA argues the opposing parties declared a default by challenging IEUA's suitability as lead agency. Nowhere in the Peace Agreement is it stated that seeking judicial review constitutes a Notice of Default. This would also deny a party the 90 days to correct the default.

IEUA's claim, in reply, that they themselves were the defaulting party against whom action was taken overlooks the plain language of the Peace Agreement. IEUA cannot be said to be in default simply because they were appointed as lead agency, or that their appointment was challenged, as that would not constitute a failure to perform or observe any term, covenant, or undertaking in the Agreement.

All parties acknowledge a Notice of Default was never issued as to any party, which is required in order to allow a defaulting party time to cure before the fee shifting procedure is implicated. In light of this, IEUA is not entitled to attorney fees. As such, the Court need not reach Ontario's remaining arguments.

Ruling

The Court DENIES IEUA's motion for attorney fees but grant the award for costs as to the uncontested $40 in appellate costs for the reporter's transcript.

Movant to give Notice and prepare Order.

Dated-

_____

Judge

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 September 16, 2025, I served the following:

1. [PROPOSED] ORDER ON INLAND EMPIRE UTILITIES AGENCY'S MOTION FOR COSTS AND ATTORNEY'S FEES PURSUANT TO CIVIL CODE §1717 AND CODE OF CIVIL PROCEDURE §1033.5

/ 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 September 16, 2025 in Rancho Cucamonga, California.

By: Ruby Favela Quintero
Chino Basin Watermaster

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

JEFF PIERSON
2 HEXHAM
IRVINE, CA 92603

Ruby Favela Quintero

Contact Group Nam Master Email Distribution

Categories: Main Email Lists

Members:

Aimee Zhao	azhao@ieua.org
Alan Frost	Alan.Frost@dpw.sbcounty.gov
Alberto Mendoza	Alberto.Mendoza@cmc.com
Alejandro R. Reyes	arreyes@sgvwater.com
Alex Padilla	Alex.Padilla@wsp.com
Alexis Mascarinas	AMascarinas@ontarioca.gov
Alfonso Ruiz	alfonso.ruiz@cmc.com
Alonso Jurado	ajurado@cbwm.org
Alyssa Coronado	acoronado@sarwc.com
Amanda Coker	amandac@cvwdwater.com
Andrew Gagen	agagen@kidmanlaw.com
Andy Campbell	acampbell@ieua.org
Andy Malone	amalone@westyost.com
Angelica Todd	angelica.todd@ge.com
Anna Nelson	atruongnelson@cbwm.org
Anthony Alberti	aalberti@sgvwater.com
April Robitaille	arobitaille@bhfs.com
Art Bennett	citycouncil@chinohills.org
Arthur Kidman	akidman@kidmanlaw.com
Ashley Zapp	ashley.zapp@cmc.com
Ashok Dhingra	ash@akdconsulting.com
Ben Lewis	benjamin.lewis@gswater.com
Ben Markham	bmarkham@bhfs.com
Ben Orosco	Borosco@cityofchino.org
Ben Roden	BenR@cvwdwater.com
Benjamin M. Weink	ben.weink@tetratech.com
Beth.McHenry	Beth.McHenry@hoferranch.com
Bill Schwartz	bschwartz@mvwd.org
Bill Velto	bvelto@uplandca.gov
Board Support Team IEUA	BoardSupportTeam@ieua.org
Bob Bowcock	bbowcock@irmwater.com
Bob DiPrimio	rjdiprimio@sgvwater.com
Bob Feenstra	bobfeenstra@gmail.com
Bob Kuhn	bkuhn@tvmwd.com
Bob Kuhn	bgkuhn@aol.com
Bob Page	Bob.Page@rov.sbcounty.gov
Brad Herrema	bherrema@bhfs.com
Bradley Jensen	bradley.jensen@cao.sbcounty.gov
Brandi Belmontes	BBelmontes@ontarioca.gov
Brandi Goodman-Decoud	bgdecoud@mvwd.org
Brandon Howard	brahoward@niagarawater.com
Brenda Fowler	balee@fontanawater.com
Brent Yamasaki	byamasaki@mwdh2o.com
Brian Dickinson	bdickinson65@gmail.com
Brian Geye	bgeye@autoclubspeedway.com
Brian Lee	blee@sawaterco.com
Bryan Smith	bsmith@jcsd.us
Carmen Sierra	carmens@cvwdwater.com
Carol Boyd	Carol.Boyd@doj.ca.gov
Carolina Sanchez	csanchez@westyost.com
Casey Costa	ccosta@chinodesalter.org

Cassandra Hooks	chooks@niagarawater.com
Chad Blais	cblais@ci.norco.ca.us
Chad Nishida	CNishida@ontarioca.gov
Chander Letulle	cletulle@jcsd.us
Charles Field	cdfield@att.net
Charles Moorrees	cmoorrees@sawaterco.com
Chino Hills City Council	citycouncil@chinohills.org
Chris Berch	cberch@jcsd.us
Chris Diggs	chris.diggs@pomonaca.gov
Christen Miller	Christen.Miller@cao.sbcounty.gov
Christensen, Rebecca A	rebecca_christensen@fws.gov
Christopher M. Sanders	cms@eslawfirm.com
Christopher R. Guillen	cguillen@bhfs.com
Cindy Cisneros	cindyc@cvwdwater.com
Cindy Li	Cindy.li@waterboards.ca.gov
City of Chino, Administration Department	administration@cityofchino.org
Courtney Jones	cjjones@ontarioca.gov
Craig Miller	CMiller@wmwd.com
Craig Stewart	craig.stewart@wsp.com
Cris Fealy	cifealy@fontanawater.com
Curtis Burton	CBurton@cityofchino.org
Dan McKinney	dmckinney@douglascountylaw.com
Daniel Bobadilla	dbobadilla@chinohills.org
Daniela Uriarte	dUriarte@cbwm.org
Danny Kim	dkim@linklogistics.com
Dave Argo	daveargo46@icloud.com
Dave Crosley	DCrosley@cityofchino.org
Dave Schroeder	DSchroeder@cbwcd.org
David Barnes	DBarnes@geoscience-water.com
David De Jesus	ddejesus@tvmwd.com
Dawn Varacchi-Ives	dawn.varacchi@ge.com
Denise Garzaro	dgarzaro@ieua.org
Dennis Mejia	dmejia@ontarioca.gov
Dennis Williams	dwilliams@geoscience-water.com
Derek Hoffman	dhoffman@fennemorelaw.com
Ed Diggs	ediggs@uplandca.gov
Ed Means	edmeans@icloud.com
Eddie Lin	elin@ieua.org
Edgar Tellez Foster	etellezfoster@cbwm.org
Eduardo Espinoza	EduardoE@cvwdwater.com
Elena Rodrigues	erodrigues@wmwd.com
Elizabeth M. Calciano	ecalciano@hensleylawgroup.com
Elizabeth P. Ewens	elizabeth.ewens@stoel.com
Elizabeth Willis	ewillis@cbwcd.org
Eric Fordham	eric_fordham@geopentech.com
Eric Garner	eric.garner@bbklaw.com
Eric Grubb	ericg@cvwdwater.com
Eric Lindberg PG,CHG	eric.lindberg@waterboards.ca.gov
Eric N. Robinson	erobinson@kmtg.com
Eric Papathakis	Eric.Papathakis@cdcr.ca.gov
Eric Tarango	edtarango@fontanawater.com
Erick Jimenez	Erick.Jimenez@nucor.com

Erik Vides	evides@cbwm.org
Erika Clement	Erika.clement@sce.com
Eunice Ulloa	eulloa@cityofchino.org
Evette Ounanian	EvetteO@cvwdwater.com
Frank Yoo	FrankY@cbwm.org
Fred Fudacz	ffudacz@nossaman.com
Fred Galante	fgalante@awattorneys.com
G. Michael Milhiser	directormilhiser@mvwd.org
G. Michael Milhiser	Milhiser@hotmail.com
Garrett Rapp	grapp@westyost.com
Geoffrey Kamansky	gkamansky@niagarawater.com
Geoffrey Vanden Heuvel	geoffreyvh60@gmail.com
Gerald Yahr	yahrj@koll.com
Gina Gomez	ggomez@ontarioca.gov
Gina Nicholls	gnicholls@nossaman.com
Gino L. Filippi	Ginoffvine@aol.com
Gracie Torres	gtorres@wmwd.com
Grant Mann	GMann@dpw.sbcounty.gov
Greg Zarco	Greg.Zarco@airports.sbcounty.gov
Ha T. Nguyen	ha.nguyen@stoel.com
Heather Placencia	heather.placencia@parks.sbcounty.gov
Henry DeHaan	Hdehaan1950@gmail.com
Hvianca Hakim	HHakim@linklogistics.com
Hye Jin Lee	HJLee@cityofchino.org
Imelda Cadigal	Imelda.Cadigal@cdcr.ca.gov
Irene Islas	irene.islas@bbklaw.com
Ivy Capili	ICapili@bhfs.com
James Curatalo	jamesc@cvwdwater.com
Jasmin A. Hall	jhall@ieua.org
Jason Marseilles	jmarseilles@ieua.org
Jayne Joy	Jayne.Joy@waterboards.ca.gov
Jean Cihigoyenetche	Jean@thejclawfirm.com
Jeff Evers	jevers@niagarawater.com
Jeff Mosher	jmosher@sawpa.org
Jeffrey L. Pierson	jpierson@intexcorp.com
Jenifer Ryan	jryan@kmtg.com
Jennifer Hy-Luk	jhyluk@ieua.org
Jeremy N. Jungries	jjungreis@rutan.com
Jesse Pompa	jpompa@jcsd.us
Jessie Ruedas	Jessie@thejclawfirm.com
Jill Keehnen	jill.keehnen@stoel.com
Jim Markman	jmarkman@rwglaw.com
Jim Van de Water	jimvdw@thomashardercompany.com
Jim W. Bowman	jbowman@ontarioca.gov
Jimmie Moffatt	jimmiem@cvwdwater.com
Jimmy Gutierrez - Law Offices of Jimmy Gutierrez	jimmylaredo@gmail.com
Jimmy L. Gutierrez	Jimmy@City-Attorney.com
Jimmy Medrano	Jaime.medrano2@cdcr.ca.gov
Jiwon Seung	JiwonS@cvwdwater.com
Joanne Chan	jchan@wvwd.org
Joao Feitoza	joao.feitoza@cmc.com
Jody Roberto	jroberto@tvmwd.com

Joe Graziano	jgraz4077@aol.com
Joel Ignacio	jignacio@ieua.org
John Bosler	johnb@cvwdwater.com
John Harper	jrharper@harperburns.com
John Hughes	jhughes@mvwd.org
John Huitsing	johnhuitsing@gmail.com
John Lopez	jlopez@sarwc.com
John Lopez and Nathan Cole	customerservice@sarwc.com
John Mendoza	jmendoza@tvmwd.com
John Partridge	jpartridge@angelica.com
John Russ	jruss@ieua.org
John Schatz	jschatz13@cox.net
Jordan Garcia	jgarcia@cbwm.org
Jose A Galindo	Jose.A.Galindo@linde.com
Jose Ventura	jose.ventura@linde.com
Josh Swift	jmswift@fontanawater.com
Joshua Aguilar	jaguilar1@wmwd.com
Justin Brokaw	jbrokaw@marygoldmutualwater.com
Justin Castruita	jacastruita@fontanawater.com
Justin Nakano	JNakano@cbwm.org
Justin Scott-Coe Ph. D.	jscottcoe@mvwd.org
Kaitlyn Dodson-Hamilton	kaitlyn@tdaenv.com
Karen Williams	kwilliams@sawpa.org
Kassandra Lopez	klopez@cbwcd.org
Kathleen Brundage	kathleen.brundage@californiasteel.com
Kati Parker	kparker@katithewaterlady.com
Keith Lemieux	klemieux@awattorneys.com
Keith Person	keith.person@waterboards.ca.gov
Kelly Alhadeff-Black	kelly.black@lewisbrisbois.com
Kelly Ridenour	KRIDENOUR@fennemorelaw.com
Ken Waring	kwaring@jcsd.us
Kevin Alexander	kalexander@ieua.org
Kevin O'Toole	kotoole@ocwd.com
Kevin Sage	Ksage@IRMwater.com
Kirk Richard Dolar	kdolar@cbwm.org
Krista Paterson	Kpaterson@kmtg.com
Kurt Berchtold	kberchtold@gmail.com
Kyle Brochard	KBrochard@rwglaw.com
Kyle Snay	kylesnay@gswater.com
Laura Roughton	lroughton@wmwd.com
Laura Yraceburu	lyraceburu@bhfs.com
Lauren V. Neuhaus, Esq.	lauren.neuhaus@stoel.com
Lee McElhaney	lmcelhaney@bmklawplc.com
Lewis Callahan	Lewis.Callahan@cdcr.ca.gov
Linda Jadeski	ljadeski@wvwd.org
Liz Hurst	ehurst@ieua.org
Mallory Gandara	MGandara@wmwd.com
Manny Martinez	DirectorMartinez@mvwd.org
Marcella Correa	MCorrea@rwglaw.com
Marco Tule	mtule@ieua.org
Maria Ayala	mayala@jcsd.us
Maria Insixiengmay	Maria.Insixiengmay@cc.sbcounty.gov
Maria Mendoza	mmendoza@westyost.com

Maribel Sosa	Maribel.Sosa@pomonaca.gov
Marilyn Levin	Marilynhlevin@gmail.com
Marissa Turner	mturner@tvmwd.com
Mark D. Hensley	mhensley@hensleylawgroup.com
Mark Wiley	mwiley@chinohills.org
Marlene B. Wiman	mwiman@nossaman.com
Martin Cihigoyenetche	marty@thejclawfirm.com
Martin Rauch	martin@rauchcc.com
Martin Zvirbulis	mezvirbulis@sgvwater.com
Matthew H. Litchfield	mlitchfield@tvmwd.com
Maureen Snelgrove	Maureen.snelgrove@airports.sbcounty.gov
Maureen Tucker	mtucker@awattorneys.com
Megan N. Sims	mnsims@sgvwater.com
Melanie Trevino	Mtrevino@jcsd.us
Meredith Nikkel	mnikkel@downeybrand.com
Michael Adler	michael.adler@mcmcnet.net
Michael B. Brown, Esq.	michael.brown@stoel.com
MIchael Blay	mblay@uplandca.gov
Michael Cruikshank	mcruikshank@wsc-inc.com
Michael Fam	mfam@dpw.sbcounty.gov
Michael Hurley	mhurley@ieua.org
Michael Maeda	michael.maeda@cdcr.ca.gov
Michael Mayer	Michael.Mayer@dpw.sbcounty.gov
Michael P. Thornton	mthornton@tkeengineering.com
Michele Hinton	mhinton@fennemorelaw.com
Michelle Licea	mlicea@mvwd.org
Mikayla Coleman	mikayla@cvstrat.com
Mike Gardner	mgardner@wmwd.com
Mike Maestas	mikem@cvwdwater.com
Miriam Garcia	mgarcia@ieua.org
Monica Nelson	mnelson@ieua.org
Moore, Toby	TobyMoore@gswater.com
MWDProgram	MWDProgram@sdcwa.org
Nabil B. Saba	Nabil.Saba@gswater.com
Nadia Aguirre	naguirre@tvmwd.com
Natalie Avila	navila@cityofchino.org
Natalie Costaglio	natalie.costaglio@mcmcnet.net
Natalie Gonzaga	ngonzaga@cityofchino.org
Nathan deBoom	n8deboom@gmail.com
Neetu Gupta	ngupta@ieua.org
Nicholas Miller	Nicholas.Miller@parks.sbcounty.gov
Nichole Horton	Nichole.Horton@pomonaca.gov
Nick Jacobs	njacobs@somachlaw.com
Nicole deMoet	ndemoet@uplandca.gov
Nicole Escalante	NEscalante@ontarioca.gov
Noah Golden-Krasner	Noah.goldenkrasner@doj.ca.gov
Norberto Ferreira	nferreira@uplandca.gov
Paul Hofer	farmerhofer@aol.com
Paul Hofer	farmwatchtoo@aol.com
Paul S. Leon	pleon@ontarioca.gov
Pete Vicario	PVicario@cityofchino.org
Peter Dopulos	peterdopulos@gmail.com
Peter Dopulos	peter@egoscuelaw.com

Peter Hettinga	peterhettinga@yahoo.com
Peter Rogers	progers@chinohills.org
Rebekah Walker	rwalker@jcsd.us
Richard Anderson	horsfly1@yahoo.com
Richard Rees	richard.rees@wsp.com
Robert DeLoach	robertadeloach1@gmail.com
Robert E. Donlan	rdonlan@wjhattorneys.com
Robert Neufeld	robneu1@yahoo.com
Robert S. (RobertS@cbwcd.org)	RobertS@cbwcd.org
Robert Wagner	rwagner@wbecorp.com
Ron Craig	Rcraig21@icloud.com
Ron LaBrucherie, Jr.	ronLaBrucherie@gmail.com
Ronald C. Pietersma	rcpietersma@aol.com
Ruben Llamas	rllamas71@yahoo.com
Ruby Favela	rfavela@cbwm.org
Ryan Shaw	RShaw@wmwd.com
Sam Nelson	snelson@ci.norco.ca.us
Sam Rubenstein	srubenstein@wpcarey.com
Sandra S. Rose	directorrose@mvwd.org
Scott Burton	sburton@ontarioca.gov
Scott Slater	sslater@bhfs.com
Seth J. Zielke	sjzielke@fontanawater.com
Shawnda M. Grady	sgrady@wjhattorneys.com
Sherry Ramirez	SRamirez@kmtg.com
Shivaji Deshmukh	sdeshmukh@ieua.org
Sonya Barber	sbarber@ci.upland.ca.us
Sonya Zite	szite@wmwd.com
Stephanie Reimer	SReimer@mvwd.org
Stephen Deitsch	stephen.deitsch@bbklaw.com
Stephen Parker	sparker@uplandca.gov
Steve Kennedy	skennedy@bmklawplc.com
Steve M. Anderson	steve.anderson@bbklaw.com
Steve Smith	ssmith@ieua.org
Steven Andrews	sandrews@sandrewsengineering.com
Steven J. Elie	s.elie@mpglaw.com
Steven J. Elie	selie@ieua.org
Steven Popelar	spopelar@jcsd.us
Steven Raughley	Steven.Raughley@isd.sbcounty.gov
Susan Palmer	spalmer@kidmanlaw.com
Sylvie Lee	slee@tvmwd.com
Tammi Ford	tford@wmwd.com
Tariq Awan	Tariq.Awan@cdcr.ca.gov
Taya Victorino	tayav@cvwdwater.com
Teri Layton	tlayton@sawaterco.com
Terri Whitman	TWhitman@kmtg.com
Terry Watkins	Twatkins@geoscience-water.com
Thomas S. Bunn	tombunn@lagerlof.com
Tim Barr	tbarr@wmwd.com
Timothy Ryan	tjryan@sgvwater.com
Toby Moore	tobymoore@gswater.com
Todd M. Corbin	tcorbin@cbwm.org
Tom Barnes	tbarnes@esassoc.com
Tom Bunn	TomBunn@Lagerlof.com

Tom Cruikshank	tcruikshank@linklogistics.com
Tom Dodson	tda@tdaenv.com
Tom Harder	tharder@thomashardercompany.com
Tom O'Neill	toneill@chinodesalter.org
Tony Long	tlong@angelica.com
Toyasha Sebbag	tsebbag@cbwcd.org
Tracy J. Egoscue	tracy@egoscuelaw.com
Trevor Leja	Trevor.Leja@cao.sbcounty.gov
Veva Weamer	vweamer@westyost.com
Victor Preciado	Victor.preciado@ci.pomona.ca.us
Vivian Castro	vcastro@cityofchino.org
Wade Fultz	Wade.Fultz@cmc.com
WestWater Research, LLC	research@waterexchange.com
William Brunick	bbrunick@bmklawplc.com
William McDonnell	wmcdonnell@ieua.org
William Urena	wurena@emeraldus.com

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 October 20, 2025 I served the following:

1. REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CUCAMONGA VALLEY WATER DISTRICT AND FONTANA WATER COMPANY'S OPPOSITION TO CITY OF ONTARIO'S MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS

/ 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 20, 2025 in Rancho Cucamonga, California.

By: Ruby Favela Quintero
Chino Basin Watermaster

PAUL HOFER
11248 S TURNER AVE
ONTARIO, CA 91761

JEFF PIERSON
2 HEXHAM
IRVINE, CA 92603

Ruby Favela Quintero

Contact Group Nam Master Email Distribution

Categories: Main Email Lists

Members:

Aimee Zhao	azhao@ieua.org
Alan Frost	Alan.Frost@dpw.sbcounty.gov
Alberto Mendoza	Alberto.Mendoza@cmc.com
Alejandro R. Reyes	arreyes@sgvwater.com
Alex Padilla	Alex.Padilla@wsp.com
Alexis Mascarinas	AMascarinas@ontarioca.gov
Alfonso Ruiz	alfonso.ruiz@cmc.com
Alonso Jurado	ajurado@cbwm.org
Alyssa Coronado	acoronado@sarwc.com
Amanda Coker	amandac@cvwdwater.com
Andrew Gagen	agagen@kidmanlaw.com
Andy Campbell	acampbell@ieua.org
Andy Malone	amalone@westyost.com
Angelica Todd	angelica.todd@ge.com
Anna Nelson	atruongnelson@cbwm.org
Anthony Alberti	aalberti@sgvwater.com
April Robitaille	arobitaille@bhfs.com
Art Bennett	citycouncil@chinohills.org
Arthur Kidman	akidman@kidmanlaw.com
Ashley Zapp	ashley.zapp@cmc.com
Ashok Dhingra	ash@akdconsulting.com
Ben Lewis	benjamin.lewis@gswater.com
Ben Markham	bmarkham@bhfs.com
Ben Orosco	Borosco@cityofchino.org
Ben Roden	BenR@cvwdwater.com
Benjamin M. Weink	ben.weink@tetratech.com
Beth.McHenry	Beth.McHenry@hoferranch.com
Bill Schwartz	bschwartz@mvwd.org
Bill Velto	bvelto@uplandca.gov
Board Support Team IEUA	BoardSupportTeam@ieua.org
Bob Bowcock	bbowcock@irmwater.com
Bob DiPrimio	rjdiprimio@sgvwater.com
Bob Feenstra	bobfeenstra@gmail.com
Bob Kuhn	bkuhn@tvmwd.com
Bob Kuhn	bgkuhn@aol.com
Bob Page	Bob.Page@rov.sbcounty.gov
Brad Herrema	bherrema@bhfs.com
Bradley Jensen	bradley.jensen@cao.sbcounty.gov
Brandi Belmontes	BBelmontes@ontarioca.gov
Brandi Goodman-Decoud	bgdecoud@mvwd.org
Brandon Howard	brahoward@niagarawater.com
Brenda Fowler	balee@fontanawater.com
Brent Yamasaki	byamasaki@mwdh2o.com
Brian Dickinson	bdickinson65@gmail.com
Brian Geye	bgeye@autoclubspeedway.com
Brian Hamilton	bhamilton@downeybrand.com
Brian Lee	blee@sawaterco.com
Bryan Smith	bsmith@jcsd.us
Carmen Sierra	carmens@cvwdwater.com
Carol Boyd	Carol.Boyd@doj.ca.gov
Carolina Sanchez	csanchez@westyost.com

Casey Costa	ccosta@chinodesalter.org
Cassandra Hooks	chooks@niagarawater.com
Chad Nishida	CNishida@ontarioca.gov
Chander Letulle	cletulle@jcsd.us
Charles Field	cdfield@att.net
Charles Moorrees	cmoorrees@sawaterco.com
Chino Hills City Council	citycouncil@chinohills.org
Chris Berch	cberch@jcsd.us
Chris Diggs	chris.diggs@pomonaca.gov
Christen Miller	Christen.Miller@cao.sbcounty.gov
Christensen, Rebecca A	rebecca_christensen@fws.gov
Christopher M. Sanders	cms@eslawfirm.com
Christopher R. Guillen	cguillen@bhfs.com
Cindy Cisneros	cindyc@cvwdwater.com
Cindy Li	Cindy.li@waterboards.ca.gov
City of Chino, Administration Department	administration@cityofchino.org
Courtney Jones	cjjones@ontarioca.gov
Craig Miller	CMiller@wmwd.com
Craig Stewart	craig.stewart@wsp.com
Cris Fealy	cifealy@fontanawater.com
Curtis Burton	CBurton@cityofchino.org
Dan McKinney	dmckinney@douglascountylaw.com
Dana Reeder	dreeder@downeybrand.com
Daniel Bobadilla	dbobadilla@chinohills.org
Daniela Uriarte	dUriarte@cbwm.org
Danny Kim	dkim@linklogistics.com
Dave Argo	daveargo46@icloud.com
Dave Crosley	DCrosley@cityofchino.org
Dave Schroeder	DSchroeder@cbwcd.org
David Barnes	DBarnes@geoscience-water.com
David De Jesus	ddejesus@tvmwd.com
Dawn Varacchi-Ives	dawn.varacchi@ge.com
Deanna Fillon	dfillon@DowneyBrand.com
Denise Garzaro	dgarzaro@ieua.org
Dennis Mejia	dmejia@ontarioca.gov
Dennis Williams	dwilliams@geoscience-water.com
Derek Hoffman	dhoffman@fennemorelaw.com
Derek LaCombe	dlacombe@ci.norco.ca.us
Ed Diggs	ediggs@uplandca.gov
Ed Means	edmeans@icloud.com
Eddie Lin	elin@ieua.org
Edgar Tellez Foster	etellezfoster@cbwm.org
Eduardo Espinoza	EduardoE@cvwdwater.com
Elena Rodrigues	erodrigues@wmwd.com
Elizabeth M. Calciano	ecalciano@hensleylawgroup.com
Elizabeth P. Ewens	elizabeth.ewens@stoel.com
Elizabeth Willis	ewillis@cbwcd.org
Eric Fordham	eric_fordham@geopentech.com
Eric Garner	eric.garner@bbklaw.com
Eric Grubb	ericg@cvwdwater.com
Eric Lindberg PG,CHG	eric.lindberg@waterboards.ca.gov
Eric N. Robinson	erobinson@kmtg.com

Eric Papathakis	Eric.Papathakis@cdcr.ca.gov
Eric Tarango	edtarango@fontanawater.com
Erick Jimenez	Erick.Jimenez@nucor.com
Erik Vides	evides@cbwm.org
Erika Clement	Erika.clement@sce.com
Eunice Ulloa	eulloa@cityofchino.org
Evette Ounanian	EvetteO@cvwdwater.com
Frank Yoo	FrankY@cbwm.org
Fred Fudacz	ffudacz@nossaman.com
Fred Galante	fgalante@awattorneys.com
G. Michael Milhiser	directormilhiser@mvwd.org
G. Michael Milhiser	Milhiser@hotmail.com
Garrett Rapp	grapp@westyost.com
Geoffrey Kamansky	gkamansky@niagarawater.com
Geoffrey Vanden Heuvel	geoffreyvh60@gmail.com
Gerald Yahr	yahrj@koll.com
Gina Gomez	ggomez@ontarioca.gov
Gina Nicholls	gnicholls@nossaman.com
Gino L. Filippi	Ginoffvine@aol.com
Gracie Torres	gtorres@wmwd.com
Grant Mann	GMann@dpw.sbcounty.gov
Greg Zarco	Greg.Zarco@airports.sbcounty.gov
Ha T. Nguyen	ha.nguyen@stoel.com
Heather Placencia	heather.placencia@parks.sbcounty.gov
Henry DeHaan	Hdehaan1950@gmail.com
Hvianca Hakim	HHakim@linklogistics.com
Hye Jin Lee	HJLee@cityofchino.org
Imelda Cadigal	Imelda.Cadigal@cdcr.ca.gov
Irene Islas	irene.islas@bbklaw.com
Ivy Capili	ICapili@bhfs.com
James Curatalo	jamesc@cvwdwater.com
Jasmin A. Hall	jhall@ieua.org
Jason Marseilles	jmarseilles@ieua.org
Jayne Joy	Jayne.Joy@waterboards.ca.gov
Jean Cihigoyenetche	Jean@thejclawfirm.com
Jeff Evers	jevers@niagarawater.com
Jeff Mosher	jmosher@sawpa.org
Jeffrey L. Pierson	jpierson@intexcorp.com
Jennifer Hy-Luk	jhyluk@ieua.org
Jeremy N. Jungries	jjungreis@rutan.com
Jesse Pompa	jpompa@jcsd.us
Jessie Ruedas	Jessie@thejclawfirm.com
Jill Keehnen	jill.keehnen@stoel.com
Jim Markman	jmarkman@rwglaw.com
Jim Van de Water	jimvdw@thomashardercompany.com
Jim W. Bowman	jbowman@ontarioca.gov
Jimmie Moffatt	jimmiem@cvwdwater.com
Jimmy Gutierrez - Law Offices of Jimmy Gutierrez	jimmylaredo@gmail.com
Jimmy L. Gutierrez	Jimmy@City-Attorney.com
Jimmy Medrano	Jaime.medrano2@cdcr.ca.gov
Jiwon Seung	JiwonS@cvwdwater.com
Joanne Chan	jchan@wvwd.org

Joao Feitoza	joao.feitoza@cmc.com
Jody Roberto	jroberto@tvmwd.com
Joe Graziano	jgraz4077@aol.com
Joel Ignacio	jignacio@ieua.org
John Bosler	johnb@cvwdwater.com
John Harper	jrharper@harperburns.com
John Hughes	jhughes@mvwd.org
John Huitsing	johnhuitsing@gmail.com
John Lopez	jlopez@sarwc.com
John Lopez and Nathan Cole	customerservice@sarwc.com
John Mendoza	jmendoza@tvmwd.com
John Partridge	jpartridge@angelica.com
John Russ	jruss@ieua.org
John Schatz	jschatz13@cox.net
Jordan Garcia	jgarcia@cbwm.org
Jose A Galindo	Jose.A.Galindo@linde.com
Jose Ventura	jose.ventura@linde.com
Josh Swift	jmswift@fontanawater.com
Joshua Aguilar	jaguilar1@wmwd.com
Justin Brokaw	jbrokaw@marygoldmutualwater.com
Justin Castruita	jacastruita@fontanawater.com
Justin Nakano	JNakano@cbwm.org
Justin Scott-Coe Ph. D.	jscottcoe@mvwd.org
Kaitlyn Dodson-Hamilton	kaitlyn@tdaenv.com
Karen Williams	kwilliams@sawpa.org
Kassandra Lopez	klopez@cbwcd.org
Kathleen Brundage	kathleen.brundage@californiasteel.com
Kati Parker	kparker@katithewaterlady.com
Keith Lemieux	klemieux@awattorneys.com
Keith Person	keith.person@waterboards.ca.gov
Kelly Alhadeff-Black	kelly.black@lewisbrisbois.com
Kelly Ridenour	KRIDENOUR@fennemorelaw.com
Ken Waring	kwaring@jcsd.us
Kevin Alexander	kalexander@ieua.org
Kevin O'Toole	kotoole@ocwd.com
Kevin Sage	Ksage@IRMwater.com
Kirk Richard Dolar	kdolar@cbwm.org
Kurt Berchtold	kberchtold@gmail.com
Kyle Brochard	KBrochard@rwglaw.com
Kyle Snay	kylesnay@gswater.com
Laura Roughton	lroughton@wmwd.com
Laura Yraceburu	lyraceburu@bhfs.com
Lauren V. Neuhaus, Esq.	lauren.neuhaus@stoel.com
Lee McElhaney	lmcelhaney@bmklawplc.com
Lewis Callahan	Lewis.Callahan@cdcr.ca.gov
Linda Jadeski	ljadeski@wvwd.org
Liz Hurst	ehurst@ieua.org
Mallory Gandara	MGandara@wmwd.com
Manny Martinez	DirectorMartinez@mvwd.org
Marcella Correa	MCorrea@rwglaw.com
Marco Tule	mtule@ieua.org
Maria Ayala	mayala@jcsd.us
Maria Insixiengmay	Maria.Insixiengmay@cc.sbcounty.gov

Maria Mendoza	mmendoza@westyost.com
Maribel Sosa	Maribel.Sosa@pomonaca.gov
Marilyn Levin	Marilynhlevin@gmail.com
Marissa Turner	mturner@tvmwd.com
Mark D. Hensley	mhensley@hensleylawgroup.com
Mark Wiley	mwiley@chinohills.org
Marlene B. Wiman	mwiman@nossaman.com
Martin Cihigoyenetche	marty@thejclawfirm.com
Martin Rauch	martin@rauchcc.com
Martin Zvirbulis	mezvirbulis@sgvwater.com
Matthew H. Litchfield	mlitchfield@tvmwd.com
Maureen Snelgrove	Maureen.snelgrove@airports.sbcounty.gov
Maureen Tucker	mtucker@awattorneys.com
Megan N. Sims	mnsims@sgvwater.com
Melanie Trevino	Mtrevino@jcsd.us
Meredith Nikkel	mnikkel@downeybrand.com
Michael Adler	michael.adler@mcmcnet.net
Michael B. Brown, Esq.	michael.brown@stoel.com
MIchael Blay	mblay@uplandca.gov
Michael Cruikshank	mcruikshank@wsc-inc.com
Michael Fam	mfam@dpw.sbcounty.gov
Michael Hurley	mhurley@ieua.org
Michael Maeda	michael.maeda@cdcr.ca.gov
Michael Mayer	Michael.Mayer@dpw.sbcounty.gov
Michael P. Thornton	mthornton@tkeengineering.com
Michele Hinton	mhinton@fennemorelaw.com
Michelle Licea	mlicea@mvwd.org
Mikayla Coleman	mikayla@cvstrat.com
Mike Gardner	mgardner@wmwd.com
Mike Maestas	mikem@cvwdwater.com
Miriam Garcia	mgarcia@ieua.org
Monica Nelson	mnelson@ieua.org
Moore, Toby	TobyMoore@gswater.com
MWDProgram	MWDProgram@sdcwa.org
Nabil B. Saba	Nabil.Saba@gswater.com
Nadia Aguirre	naguirre@tvmwd.com
Natalie Avila	navila@cityofchino.org
Natalie Costaglio	natalie.costaglio@mcmcnet.net
Natalie Gonzaga	ngonzaga@cityofchino.org
Nathan deBoom	n8deboom@gmail.com
Neetu Gupta	ngupta@ieua.org
Nicholas Miller	Nicholas.Miller@parks.sbcounty.gov
Nichole Horton	Nichole.Horton@pomonaca.gov
Nick Jacobs	njacobs@somachlaw.com
Nicole deMoet	ndemoet@uplandca.gov
Nicole Escalante	NEscalante@ontarioca.gov
Noah Golden-Krasner	Noah.goldenkrasner@doj.ca.gov
Norberto Ferreira	nferreira@uplandca.gov
Paul Hofer	farmerhofer@aol.com
Paul Hofer	farmwatchtoo@aol.com
Paul S. Leon	pleon@ontarioca.gov
Pete Vicario	PVicario@cityofchino.org
Peter Dopulos	peterdopulos@gmail.com

Peter Dopulos	peter@egoscuelaw.com
Peter Hettinga	peterhettinga@yahoo.com
Peter Rogers	progers@chinohills.org
Rebekah Walker	rwalker@jcsd.us
Richard Anderson	horsfly1@yahoo.com
Richard Rees	richard.rees@wsp.com
Robert DeLoach	robertadeloach1@gmail.com
Robert E. Donlan	rdonlan@wjhattorneys.com
Robert Neufeld	robneu1@yahoo.com
Robert S. (RobertS@cbwcd.org)	RobertS@cbwcd.org
Robert Wagner	rwagner@wbecorp.com
Ron Craig	Rcraig21@icloud.com
Ron LaBrucherie, Jr.	ronLaBrucherie@gmail.com
Ronald C. Pietersma	rcpietersma@aol.com
Ruben Llamas	rllamas71@yahoo.com
Ruby Favela	rfavela@cbwm.org
Ryan Shaw	RShaw@wmwd.com
Sam Nelson	snelson@ci.norco.ca.us
Sam Rubenstein	srubenstein@wpcarey.com
Sandra S. Rose	directorrose@mvwd.org
Scott Burton	sburton@ontarioca.gov
Scott Slater	sslater@bhfs.com
Seth J. Zielke	sjzielke@fontanawater.com
Shawnda M. Grady	sgrady@wjhattorneys.com
Sherry Ramirez	SRamirez@kmtg.com
Shivaji Deshmukh	sdeshmukh@ieua.org
Sonya Barber	sbarber@ci.upland.ca.us
Sonya Zite	szite@wmwd.com
Stephanie Reimer	SReimer@mvwd.org
Stephen Deitsch	stephen.deitsch@bbklaw.com
Stephen Parker	sparker@uplandca.gov
Steve Kennedy	skennedy@bmklawplc.com
Steve M. Anderson	steve.anderson@bbklaw.com
Steve Riboli	steve.riboli@riboliwines.com
Steve Smith	ssmith@ieua.org
Steven Andrews	sandrews@sandrewsengineering.com
Steven J. Elie	s.elie@mpglaw.com
Steven J. Elie	selie@ieua.org
Steven Popelar	spopelar@jcsd.us
Steven Raughley	Steven.Raughley@isd.sbcounty.gov
Susan Palmer	spalmer@kidmanlaw.com
Sylvie Lee	slee@tvmwd.com
Tammi Ford	tford@wmwd.com
Tariq Awan	Tariq.Awan@cdcr.ca.gov
Taya Victorino	tayav@cvwdwater.com
Teri Layton	tlayton@sawaterco.com
Terri Whitman	TWhitman@kmtg.com
Terry Watkins	Twatkins@geoscience-water.com
Thomas S. Bunn	tombunn@lagerlof.com
Tim Barr	tbarr@wmwd.com
Timothy Ryan	tjryan@sgvwater.com
Toby Moore	tobymoore@gswater.com
Todd M. Corbin	tcorbin@cbwm.org

Tom Barnes	tbarnes@esassoc.com
Tom Bunn	TomBunn@Lagerlof.com
Tom Cruikshank	tcruikshank@linklogistics.com
Tom Dodson	tda@tdaenv.com
Tom Harder	tharder@thomashardercompany.com
Tom O'Neill	toneill@chinodesalter.org
Tony Long	tlong@angelica.com
Toyasha Sebbag	tsebbag@cbwcd.org
Tracy J. Egoscue	tracy@egoscuelaw.com
Trevor Leja	Trevor.Leja@cao.sbcounty.gov
Veva Weamer	vweamer@westyost.com
Victor Preciado	victor.preciado@pomonaca.gov
Vivian Castro	vcastro@cityofchino.org
Wade Fultz	Wade.Fultz@cmc.com
WestWater Research, LLC	research@waterexchange.com
William Brunick	bbrunick@bmklawplc.com
William McDonnell	wmcdonnell@ieua.org
William Urena	wurena@emeraldus.com