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CHINO BASIN WATERMASTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

Case No. RCVRS51010

[Assigned for All Purposes to the Honorable Gilbert G. Ochoa]

DECLARATION OF BRADLEY J. HERREMA IN SUPPORT OF WATERMASTER'S SUPPLEMENTAL BRIEF IN RESPONSE TO THE COURT'S ORDER REQUESTING FURTHER BRIEFING

Date: August 14, 2026
Time: 10:00 a.m.
Dept.: R17

BROWNSTEIN HYATT FARBER SCHRECK, LLP
1020 State Street
Santa Barbara, CA 93101-2102

I, Bradley J. Herrema, declare as follows:

1. I am an attorney duly admitted to practice before all of the courts of this State, and am a shareholder in the law firm of Brownstein Hyatt Farber Schreck, LLP, counsel of record for Chino Basin Watermaster ("Watermaster"). I have personal knowledge of the facts stated in this declaration, except where stated on information and belief, and, if called as a witness, I could and would competently testify to them under oath. I make this declaration in support of the above-referenced request.

2. As legal counsel for Watermaster, I am familiar with Watermaster's practices and procedures, as well as actions taken by the Pool Committees, Advisory Committee, and Watermaster Board. I am also familiar with Watermaster's filings with the Superior Court for the County of San Bernardino and the Court's orders in response to those filings.

3. Attached hereto as **Exhibit A** is a true and correct copy of the Superior Court's June 12, 2026 Final Ruling on Watermaster's Motion for Court Approval of Corrected and Amended FY 2021/2022 and 2022/2023 Assessment Package.

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

Dated this 10th day of July, 2026, at Los Angeles, California.

Bradley J. Herrema

BROWNSTEIN HYATT FARBER SCHRECK, LLP
1020 State Street
Santa Barbara, CA 93101-2102

Exhibit A

Final

[redacted]E RULINGS 6-12-26
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 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.

RCVRS 51010

Watermaster Case

CHINO BASIN MUNICIPAL WATER DISTRICT

v.

CITY OF CHINO, et al.

Motion(s): Motion for Court Approval of Corrected and Amended FY 2021/2022 and 2022/2023 Assessment Packages; Request for the Court to Approve Intervention

Movant(s): Chino Basin Watermaster

Respondent(s): City of Ontario

Procedural/Factual Background

On April 18, 2025, the Court of Appeal issued its Opinion, with its Remittitur following on June 20, 2025, regarding a consolidated appeal in which the City of Ontario challenged Watermaster's fiscal year (FY) 2021/2022 and 2022/2023 assessments on the grounds

Watermaster failed to levy assessments on the groundwater voluntarily produced as part of the Dry Year Yield Program (DYY Program).

Ontario challenged Watermaster's proposed FY 2021/2022 Assessment Package on November 1, 2021, and requested an explanation for the exemption of 23,000 AF of groundwater produced from the DYY Program. Ontario claimed such exemption was inconsistent with the Judgment. On November 3, 2022, the Court concluded Ontario's challenge to the FY 2021/2022 Assessment Package was really a challenge to the validity of the 2019 Letter Agreement and denied it as untimely. Then, when the Watermaster approved the FY 2022/2023 Assessment Package on November 17, 2022, Ontario again filed a motion in the superior court challenging the failure to levy assessments on water voluntarily produced from the DYY Program. On August 21, 2023, the Court denied the motion on the grounds Ontario's position regarding the validity of the 2019 Letter Agreement was previously rejected, the Judgment does not require assessment of stored or supplemental water, and Ontario misconstrued the language in the 2019 Letter Agreement because Exhibit G's performance criteria did not apply to voluntary withdrawals. Ontario appealed again, and these appeals were consolidated.

First, the appellate court found that the challenges were, in fact, timely because Ontario's challenges to both FY 2021/2022 and 2022/2023 Assessment Packages were filed within 90 days of Watermaster's action approving them.

Second, the appellate court noted that its Opinion focused on the interpretation and application of the 2019 Letter Agreement. In doing so, it noted that although the parties raised

other issues, the appellate court left them "in the hands of the parties, who are much better suited than the superior and appellate courts to decide."

Next, in analyzing the circumstances that gave rise to the appeal, the appellate court noted that as a result of the 2019 Letter Agreement, two agencies Cucamonga Valley Water District (CVWD) and Fontana Water Company (FWC)—a party not subject to the Performance Criteria in Exhibit G—voluntarily withdrew water from the DYY Program storage account during FY 2020/2021 and 2021/2022. Subsequently, when calculating annual assessments, Watermaster ignored the absence of a Local Agency Agreement (FWC) and the performance criteria set forth in Exhibit G (CVWD) and exempted these takes. These exemptions decreased CVWD's and FWC's assessments, while increasing the assessments of other parties, such as Ontario. The appellate court found this interpretation and application of the 2019 Letter Agreement with respect to the approval of the FY 2021/2022 and 2022/2023 Assessment Packages violated the Judgment and the agreements that created the DYY program.

In sum, the appellate court found that the DYY Program was created to provide a buffer against drought, allowing the Metropolitan Water District (MWD) to offset water it would otherwise import into the Basin with water stored in the DYY Program storage account. But in 2018, MWD requested, and was allowed, to put excess water into the DYY Program storage account. It then

persuaded the Operating Committee to propose the 2019 Letter Agreement. This agreement fundamentally changed the recovery aspect of the DYY Program by allowing voluntary production of water from the storage account regardless of party status or performance criteria. The impact of these voluntary takes materially affected the rights of the Operating

Parties and other local agencies when Watermaster interpreted and applied the 2019 Letter Agreement inconsistently with the original DYY Program agreements, the Judgment, and prior court orders when it calculated/approved the FY 2021/2022 and 2022/2023 Assessment Packages.

As such, the appellate court reversed the November 3, 2022 and August 23, 2023 Orders of the Superior Court and directed Watermaster to correct and amend the FY 2021/2022 and 2022/2023 Assessment Packages consistent with the original DYY Program agreements, the Judgment, and prior court orders.

Finally, as mentioned earlier, the appellate court stated issues raised by Ontario are left for the parties to resolve. These include: (1) whether water from the DYY Program is withdrawn (not produced), (2) whether stored and supplemental water are simply two types of ground water, (3) whether all stored and supplemental water in the Basin is categorically exempt from assessment, and (4) the future viability and application of the 2019 Letter Agreement should be resolved by the parties prior to judicial intervention.

Thereafter, beginning on September 29, 2025, Ontario and Watermaster began filing status conference statements. Ontario maintained that Watermaster failed to follow the appellate court's directive by failing to correct the assessment packages and instead began collaborating with other agencies to develop alternative corrected assessment packages, which Ontario argues seek to avoid compliance.

Subsequently, the parties engaged in mediation but were unable to reach a resolution.

Now, before the Court are two motions filed by Watermaster on April 2, 2026.

First, Watermaster filed a Request for the Court to Approve Intervention. The Motion is supported by the declaration of Bradley J. Herrema. This motion is unopposed.

Second, Watermaster filed its Motion for Court Approval of Corrected and Amended FY 2021/2022 and 2022/2023 Assessment Packages. This Motion is supported by the declarations of Bradley J. Herrema and Todd M. Corbin.

On June 1, 2026, FWC and CVWD filed Notices of Nonopposition to the Motion for Court Approval. On the same day, however, the City of Ontario filed an Opposition, the declarations of Courtney Jones and Elizabeth P. Ewens, as well as a Request for Judicial Notice.

On June 5, 2026, Watermaster filed a Reply, for which FWC, CVWD, and Inland Empire Utilities Agency (IEUA) have filed joinders. Watermaster also filed the declaration of Bradley J. Herrema in support of the Reply, evidentiary objections, and an opposition to the request for judicial notice. Scott C. Cooper, for CVWD, also filed a declaration in support of its joinder.

Request for the Court to Approve Intervention. Watermaster requests the Court approve the intervention of the San Gabriel Band of Mission Indians led by the Gabrieleno Tongva Tribal Council (Intervenor) into the Appropriative Pool.

Paragraph 60 of the Restated Judgment provides: "Any non-party assignee of the adjudicated appropriative rights of any appropriator, or any other person newly proposing to produce water from Chino Basin, may become a party to this Judgment upon filing a petition in intervention. Said intervention must be confirmed by order of this Court. Such intervenor shall thereafter be a party bound by this judgment and entitled to the rights and privileges accorded under the Physical Solution herein, through the pool to which the Court shall assign such intervenor."

The motion is supported by the declaration of Bradley J. Herrema. He attests that on January 11, 2026, Intervenor submitted a petition for intervention to Watermaster for the purpose of accepting the transfer of 4 AF of stored water from NCL, Co LLC, which holds this water under a valid Local Excess Carry Over storage agreement after receiving it from CalMat Co. (a member of the Appropriative Pool), who received it from San Antonio Water Company as one of its shareholders. (Herrema Decl. ¶¶ 7-8; Exh. A.) Intervenor intends to be a member of the Appropriative Pool to receive and exercise Appropriative rights consistent with the Restated Judgment. (Herrema Decl. ¶ 9.) To the extent that they do not produce the water they receive from NCL, Co LLC (Appropriative), Intervenor understands that they would be required to enter into a Storage Agreement with Watermaster. (*Ibid.*)

On March 12, 2026, the intervention request was presented to the Pool Committees for consideration. The Appropriative and Overlying (Agricultural) Pool Committees unanimously recommended moving the item forward to the Advisory Committee; and the Overlying (Non-Agricultural) Pool Committee unanimously recommended its representatives to support at the Advisory Committee and Watermaster Board meetings, subject to changes they deem appropriate. (Herrema Decl. ¶ 12.)

On March 19, 2026, the request was presented to the Advisory Committee, which unanimously recommended the Watermaster Board to recommend Court approval of the intervention request. (¶ 13.) On March 26, 2026, the intervention request was presented to the Watermaster Board, which unanimously voted to recommend to the Court the approval of Intervenor's intervention request. (¶ 14.)

The Proposed Order, however, also includes a limited waiver of immunity. Although the San Gabriel Band of Mission Indians is not presently a federally recognized tribe, a group known as the Gabrielino/Tongva Nation has filed a pending federal petition for acknowledgment with the Bureau of Indian Affairs, which was officially noticed on February 6, 2026. (Herrema Decl. ¶¶ 4-5.) As of the date of this request, Watermaster is not aware that this petition has been approved. (Herrema Decl. ¶ 6.)

""Among the core aspects of sovereignty that tribes possess is the common law immunity from suit traditionally enjoyed by sovereign powers." *Bodi v. Shingle Springs Band of Miwok Indians*, 832 F.3d 1011, 1016 (9th Cir. 2016) Although a tribe may waive this immunity, such waiver "cannot be implied but must be unequivocally expressed."" (*Maverick Gaming LLC v. United States* (9th Cir. 2024) 123 F.4th 960, 978.) In the event the petition is approved, because the intervenor could then be immune from suit, the limited waiver of immunity is integrated into the Order so that the Court will retain the ability to enforce the Restated Judgment as it applies to Intervenor.

No Oppositions have been filed as to this motion. Therefore, the Court **GRANTS** the Request for Intervention and sign the Proposed Order submitted by Watermaster.

***Motion for Court Approval of Corrected and Amended Fiscal Years 2021/2022 and 2022/2023 Assessment Packages*.**

Request for Judicial Notice. Ontario requests the Court take judicial notice of 45 documents. As stated in Watermaster's Opposition, Exhibits 1 through 8 are subject to dispute, and Ontario requested notice under Evidence Code section 452, subdivision (h). The Court

DENIES these requests as these reference Watermaster documents, minutes, presentations, amendments, and Watermaster staff reports.

Ontario requests the Court take judicial notice of the 2012 Restated Judgment as Exhibit 9. The Court **GRANTS** that request.

Exhibits 10 through 45 are all Court records within this case and include various filings and their supporting declarations. I recommend the Court **DENIES** these requests as unnecessary. While these documents are all entitled to judicial notice pursuant to Evidence Code section 452, subdivision (d), the request is unnecessary since the Court has the authority to look through its own file. (*See Davis v. Southern California Edison Company* (2011) 236 Cal.App.4th 619, 632, fn. 11 [judicial notice of document included in appellate record is unnecessary]; *Roth v. Plikaytis* (2017) 15 Cal.App.5th 283 [court was required to consider previously filed materials incorporated by reference into attorney fee motion].)

Evidentiary Objections. First, Watermaster objects to the entirety of the Courtney Jones declaration. The Court **OVERRULES** this objection. Evidentiary objections are to be specific and particularized. To the extent the material cited as being objectionable contains any statement that is non-objectionable, even if meritorious objections could have been posed to unspecified portions of the material, the objection is overruled. (*OCFCD v. Sunny Crest Dairy, Inc.* (1978) 77 Cal.App.3d 742, 753; *see also Rose v. State* (1942) 19 Cal.2d 713, 742 [discussion in context of motion to strike out inadmissible evidence, but should apply equally to evidentiary objections].)

Objections 2, 3, and 4 pertain to the transcripts attached by Jones and paragraphs 6, 7, and 11. the Court **SUSTAINS** the objections as the accuracy of the transcripts is called into question, lack foundation, and they are hearsay.

Although the objections are numbered by paragraph, the remaining objections, consequentially 5 through 11, are all overbroad. Therefore, the Court **OVERRULES** the remaining objections as such and on the grounds stated as well.

Analysis. Watermaster moves for the Court to approve the corrected and amended packages for fiscal years 2021/2022 and 2022/2023.

These Assessment Packages had to be corrected and amended in light of the Court of Appeal's April 18, 2025 Opinion.[1]

In that Opinion, the Court of Appeal found Watermaster misinterpreted the 2019 Letter Agreement when it allowed parties to produce (take) extra stored groundwater from the DYY Program storage account ***without realizing a corresponding*** change or reduction in the production of imported surface water. Thus, Watermaster exempted CVWD's voluntary production of 20,500 AF when it was only allowed to produce 11,353 AF in any given year. And, for the first time, FWC (not governed by a Local Agency Agreement) voluntarily produced and claimed 2,500 AF of stored groundwater from the DYY account. (*Chino Basin Municipal Water Dist. v. City of Ontario* (Apr. 18, 2025, Nos. E080457, E082127) ___Cal.App.5th___ [2025 Cal. App. Unpub. LEXIS 2362, at *17-19] (*Opinion*), emphasis added.)

Similarly, the Court found Watermaster's interpretation of the 2019 Letter Agreement affected its calculation of the FY 2022/2023 assessment where it shifted off imported water by 13,915 AF but claimed DYY production of 17,912 AF (4,000 AF more) and FWC shifted off 1,718 AF but claimed DYY production of 5,000 AF (3,282 AF more). (*Id.* at pp. 18-19.)

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[1] While generally unpublished decisions may not be cited or relied upon, the decision represents the law of the case. (Cal. Rules of Court, rule 8.1115(b)(1).) The Opinion is also attached as Exhibit A to the Herrema declaration.

As to the interpretation of the 2019 Letter Agreement, the Court of Appeal found that "Subsequently, when calculating annual assessments, Watermaster ignored the absence of a Local Agency Agreement (FWC) and the performance criteria set forth in Exhibit G (CVWD) and exempted these takes. These exemptions decreased CVWD's and FWC's assessments, while increasing the assessments of other parties, such as Ontario." (*Id.* at p. 35.) And: "In challenging Watermaster's approval of the FY 2021/2022 and 2022/2023 Assessment Packages, Ontario contends Watermaster's interpretation and application of the 2019 Letter Agreement violated the Judgment and the agreements that created the DYY Program. We agree." (*Ibid.*)

The Court of Appeal stated its Disposition as follows: "The November 3, 2022, and August 23, 2023, orders are reversed. The superior court is directed to enter new orders granting Ontario's challenges, and directing Watermaster to correct and amend its FY 2021/2022 and 2022/2023 Assessment Packages. The issues of (1) whether water from the DYY Program is withdrawn (not produced), (2) whether stored and supplemental water are simply two types of ground water, (3) whether all stored and supplemental water in the Basin is categorically exempt from assessment, and (4) the future viability and application of the 2019 Letter Agreement should be resolved by the parties prior to judicial intervention. Ontario shall recover its costs on appeal." (*Id.* at pp. 50-51.)

To comply with the Court of Appeal Opinion, Watermaster now presents the corrected and amended Assessment Packages noting that they were heavily scrutinized by the Parties to the Judgment. Watermaster also notes that the Packages were based on the conclusion that the economic harm identified by the Court of Appeal was attributable to noncompliance with specific DYY parameters, namely the absence of a required Local Agency Agreement and the

failure to achieve corresponding "roll-off" causing a "cost shift." Watermaster's calculation of the cumulative increase in assessments required to ameliorate this economic injury requires increased payments by CVWD and FWC totaling $878,712.59, which will be distributed among the parties.

In support of the motion, Watermaster submits the declarations of Todd M. Corbin, the General Manger for Watermaster, and Bradley J. Herrema. The Corbin declaration provides detailed information regarding the process Watermaster used in order to correct and amend the packages. It also provides a detailed account of the various parties' participation and objections throughout the process. Given the level of detail, the main points only are highlighted here.

Corbin attests that since the Court of Appeal's Opinion was issued, Watermaster held workshops, sought stakeholder input, and participated in mediation with the parties. (Corbin Decl. ¶¶ 3-5.)

Following this Court's Order on Remittitur, Watermaster initiated the historical and customary practices in order to correct and amend the packages. (Corbin Decl. ¶ 8.)

At the March 10, 2026 workshop, Watermaster presented the draft Corrected Packages and explained in detail the interpretation and application of the Exhibit G provisions including the reasons for the increases in assessments levied on CVWD and FWC. Based on the draft Corrected Packages, Watermaster received comments and feedback. Revisions based on these comments and feedback were incorporated into the attachments to the Advisory Committee staff report, resulting in the Corrected and Amended Packages (CAA Packages). (Corbin Decl. ¶ 9.) On March 12, 2026, the Watermaster Pool Committees met and discussed the draft

Corrected Packages. The draft Corrected Packages proposed to impose additional assessments upon: (a) CVWD in the amount of 8,196 AF in 2021/2022 and no change in 2022/2023 [CVWD reduced its imported water deliveries in a manner consistent with Exhibit G] and (b) upon FWC in the amount of 2,500 AF in 2021/2022 and 5,000 AF in 2022/2023. The cumulative additional assessments upon CVWD and FWC were distributed to Ontario and other members of the Appropriative Pool. (Corbin Decl. ¶¶ 10, 25.) The Appropriative Pool Committee and Overlying (Agricultural) Pool Committee provided no additional advice and assistance. The Overlying (Non-Agricultural) Pool Committee directed their Advisory Committee and Watermaster Board representative to evaluate the item based on the agreements, Judgment and all court orders. No further changes were made to the draft Corrected Packages based on the discussions at the Pool Committee meetings. (Corbin Decl. ¶ 11.)

Ultimately, Ontario and FWC provided comments against the revised packages. FWC raised issues that the application of the 85/15 Rule could apply and the inequality of assessing all DYY withdrawals attributed to it, which Watermaster rejected as a legal fiction—noting that while it is true CVWD and FWC might have chosen to qualify the purchase of the water as an 85/15 transaction, this is not what was done in reality. (See Corbin Decl. ¶¶ 15, 33.) Ontario raised several issues, which are discussed in more detail below.

Ultimately, on March 26, 2026, the Watermaster Board approved the CAA Packages by a 7-2 vote and directed staff to submit them to the Court for review and approval. (Corbin Decl. ¶ 20.) Consistent with the directives of the Court of Appeal and this Court regarding the specific economic injury to Ontario and the manner in which the previously approved Assessment Packages must be corrected and amended, the CAA Packages' revisions increase assessments

upon CVWD and FWC by approximately $78,712.59 and, as a result, proportionally reduce production assessments for other pumpers. (Corbin Decl. ¶ 21.)

Watermaster maintains that the revisions to CVWD's assessable pumping directly implement the Court of Appeal's finding that Watermaster erred by exempting CVWD's voluntary withdrawals from the DYY Program storage account in excess of the Exhibit G performance criteria, thereby shifting assessment costs to other parties. (Corbin Decl. ¶ 22.) Applying the Exhibit G baseline criteria, Watermaster recalculated CVWD's assessable pumping for FY 2021/2022 to include voluntary withdrawals of stored water that exceeded the permissible performance thresholds and were therefore required to be assessed. This correction resulted in an additional 8,196 AF being included in CVWD's assessable pumping total for FY 2021. (Corbin Decl. ¶ 23.) This correction resulted in an additional 8,196 AF being included in CVWD's assessable pumping total for FY 2021/2022, increasing CVWD's total pumping assessment by $475,880.28. (Corbin Decl. ¶ 24.)

As to FWC, Watermaster added 2,500 AF of previously unassessed pumping to FWC's total for FY 2021/2022 and 5,000 AF for FY 2022/2023. These corrections increased FWC's total pumping assessments by $80,820.60 for FY 2021/2022 and $364,360.92 for FY 2022/2023, aligning FWC's assessments with the Court's interpretation of the governing DYY Program requirements. (Corbin Decl. ¶ 27.)

Corbin further explains that the changes made in the compilation of the CAA Packages were to assess pumping by CVWD and FWC to account for extractions which violated DYY Program parameters, increasing the total acre-feet assessed, upon which the total assessable

budget amount is spread, thereby reducing the assessments upon all parties but CVWD and FWC. (Corbin Decl. ¶ 28.)

As noted in the Motion, the Parties advanced competing interpretations of how DYY withdrawals should be generically treated for assessment purposes, including arguments that all DYY withdrawals must be assessed as production of native groundwater, or conversely, that all such withdrawals are exempt as imported water. Watermaster did not reach this question because it maintains that the Opinion neither mandates assessment of all DYY withdrawals as native groundwater nor exempts them categorically. Instead, the Opinion, it claims, focuses entirely on economic harm resulting from the failure to comply with DYY Program requirements, specifically, the absence of a Local Agency Agreement and the failure to offset withdrawals with corresponding reductions in IEUA/MWD imported water under Exhibit G.

The Corbin declaration also addresses issues Ontario raised in the process. Ontario argued that the pumping by CVWD and FWC during the two subject years should not be considered withdrawals from the DYY storage account by FWC and by CVWD. (See Corbin Decl. ¶ 29.) Watermaster contends that the result of this "legal fiction" would be to consider the pumping to be production of basin groundwater and not DYY water—meaning that water would have to be "put back" in the DYY account. Watermaster states this does not reflect reality. Thus, the CAA Packages reject this legal fiction and instead impose additional assessment on FWC and CVWD to provide an economic response to the specific economic injuries identified by the Court of Appeal. (*Ibid.*) Ontario also made claims that it suffered an additional economic harm because the withdrawal from the DYY account impacts its share of the Desalter Replenishment Obligation as calculated under the separate 2019 amendment to

the Appropriative Pool Pooling Plan. (Corbin Decl. ¶ 30.) Watermaster notes this is an extension of the "legal fiction" Ontario puts forth in arguing the water must be put back into the DYY account and further notes that this argument was not presented to the Court of Appeal, accounted for by the Court of Appeal Opinion, and is beyond the scope of the current proceeding.

Based on Watermaster's motion, it seems that Ontario wants the water taken also redesignated as native groundwater in order to require it to factor into the Desalter Replenishment Obligation (DRO). DRO is not charged for imported water from MWD. (See Corbin Decl. ¶ 31.) Watermaster contends that the Court of Appeal Opinion addressed Ontario's economic harm only by allowing CVWD and FWC to make the withdrawals from the DYY. And, as such, Watermaster argues it has fully corrected the Packages to account for the increased financial obligation of these two agencies.

Corbin, however, also details that the actual harm to the parties of the Judgment, including penalties for failure to perform under the DYY program and the requirement to purchase imported water are considerable. (Corbin Decl. ¶ 32.)

Notably, notwithstanding its positions taken during the review process, FWC filed a notice of Nonopposition stating it does not oppose this motion. CVWD filed a similar Notice of Nonopposition. Both agencies are reserving their objections in the event the Court denies the motion.

Ontario opposes the motion because it claims the corrected and amended packages are still in conflict with the original DYY Program agreements, the Judgment, this Court's prior Orders, and the Court of Appeal's Opinion. To be clear, the Court of Appeal's Opinion held that

Watermaster was "to correct and amend the FY 2021/2022 and 2022/2023 Assessment Packages *consistent with the original DYY Program agreements, the Judgment, and prior court orders*. (*Opinion* at p. 49.) Ontario argues that Watermaster has failed to comply for several reasons. First, Ontario notes that although the Opinion explained CVWD voluntarily produced in excess its allocated shares stored from the DYY Program, it was noted that the fiscal years in questions were not "call" years and therefore DYY production was unallowed. Next, Ontario argues that the Opinion does not narrow Watermaster's obligation to only addressing economic harm or allow Watermaster to find new ways to avoid adverse financial impacts to affected agencies like CVWD and FWC. This last point is compelling, and one Watermaster essentially concedes. In its motion, Watermaster claims Ontario is not seeking its economic injury, but is instead seeking accounting actions that would be punitive.

Watermaster claims Ontario's position would require FWC and CVWD to actually physically dedicate water to the Basin under the legal fiction that it has not physically depleted. And DRO is never charged to a party for imported water delivered from MWD. (See Mot. at p. 11:20-22.) Watermaster then admits it also considered the actual economic consequences of following Ontario's suggestion and concluded that the stored water was not extracted under Paragraph 28 because the actual harm to the parties to the Judgment collectively, including penalties for failure to perform under the DYY Program and the requirement to purchase imported water, are considerable. (*Id.* at p. 11: 23-27.) Regardless, Watermaster was to correct the packages "consistent with the original DYY Program agreements, the Judgment, and prior court orders." (*Opinion* at p. 49.) Watermaster appears to have done an accounting in order to minimize the economic harm to FWC and CVWD, or as Ontario puts it: attempted to correct

some portions of the packages while ignoring others. Watermaster admits it still treats the withdrawals as imported water from MWD such that DRO assessments are unnecessary. Although Watermaster claims the DRO is not raised in the Opinion, it is potentially a direct financial harm resulting from how Watermaster characterizes the actions of FWC and CVWD. In addition, the Opinion did discuss assessments and noted "DYY Program costs are distinct from assessment fees charged for production of groundwater from the Basin." (Opinion at p. 12.) The Court of Appeal was also well-aware that the economic harm could be considerable and remarked: "According to Ontario, this case boils down to whether Watermaster should be bound by the terms of the Judgment and several court orders or by its staff's unilateral decisions that have million-dollar consequences for certain parties to the Judgment." (Id. at p. 29.) Watermaster has been clear in its motion that it has tried to limit the financial impact on other agencies and to do otherwise would have considerable economic consequences. *But this was not a directive of the Opinion.*

Ontario also notes that Watermaster claims these amendments will not establish any precedent. (See e.g., Mot. at p. 3:17-18.) Ontario, however, is correct that if the Opinion orders Watermaster to correct and amend consistent with the original DYY Program agreements, the Judgment, and prior court orders, then there should be uniform continuity across all years, including future years.

Ontario also explains that it is not seeking to create a legal fiction or have agencies put water back into the Basin. Instead, Ontario argues that Watermaster, in order to comply, should have gone page-by-page through the packages to determine whether any of the

members or calculations were affected by the wrongful application of the 2019 Letter Agreement and then correct those issues. Ontario is asking for uniformity as to all parties.

Ontario argues that Watermaster selectively (though imperfectly) attempted to correct some portions of the Assessment Packages while ignoring others. It purported to "correct" calculations relating to general production assessments, while still giving FWC and CVWD credit for claimed DYY production ("Storage and Recovery Adjustments") for purposes of the DRO assessments contained within the Assessment Packages. Using the FY 2021/2022 CAA Package as an example, Watermaster exempts the full 2,500 AF of Fontana's claimed DYY water from DRO assessments notwithstanding the fact that the Court of Appeal unequivocally ruled that Fontana was not entitled to participate in the DYY Program. (See Corbin Decl., Exh. A at 99, columns 20G, 20H.)

In support of the Opposition, Courtney Jones submits a declaration. Jones is the Assistant General Manager for Utilities Engineering and Operations for the City of Ontario. (Jones Decl. ¶ 2.) She attests to several facts in order to demonstrate the economic harms at issue and the extent of those harms. She also attests that Ontario is not arguing that Watermaster, or FWC and CVWD should physically "put back" the water. Rather, Ontario is claiming that Watermaster must only complete an accounting exercise to reclassify the water FWC and CVWD claim to have withdrawn from the DYY storage account but legally could not have pursuant to original DYY Program agreements and Judgment. (Jones Decl. ¶ 14.) Further, she details that Watermaster created new terminology and accounting practices in the CAA Packages, including new columns and calculations in the amended assessment package spreadsheets. For example, a brand new "Storage and Recovery Adjustments" column was

added to the calculation of DRO assessments, and Watermaster explains in a footnote that the column "was added to account for (CVWD's) withdrawal of water in excess of the Exhibit 'G' Performance Criteria amount, and the withdrawal of water (by Fontana) absent of [sic] a Local Agency Agreement." (See Declaration of Todd M. Corbin, Exh. A at 99.) The effect of adding these "Storage and Recover Adjustments", Jones claims, is to exempt all DYY Program water claimed by FWC and CVWD from DRO assessments. The use of a "Storage and Recovery Adjustment" has no precedent in Watermaster's "historical practices" and no basis in the original DYY Program agreements, orders, or the Judgment, according to Jones. (Jones Decl. ¶ 15.) Jones details additional specifics she claims are issues with the corrections and amendments that ultimately result in imposing only partial assessments. (See Jones Decl. ¶¶ 16-18.)

Ontario asks the Court for two things. Ontario asks the motion be denied and also asks for specific direction to Watermaster to correct and amend the Assessment Packages consistent with Ontario's motion and proposed Order. This second request goes too far. Ontario is again, essentially, asking the Court to make an Order where the Court does the accounting for the parties. As noted in the Non-opposition from FWC and CVWD they had objections to the proposed amendments and reserved them.

In any event, no party has presented this Court with sufficient information to determine whether the CAA Packages comply with the Opinion. This is demonstrated by the issues raised in the Replies.

In its joinder to Watermaster's Reply, CVWD highlights several issues with Ontario's position that may not be entirely consistent with the Opinion and could potentially

overestimate their liability (e.g., whether none of CVWD's withdrawals could come from the DYY Program because it was not a "call" year). CVWD also raised new issues in the joinder, for example, wider effects of reclassifying the water as groundwater instead of imported water by claiming it would affect Readiness to Serve, or RTS, charges that would affect a number of parties unable to currently protect their interests if the Court were to adopt Ontario's position outright.

In addition, IEUA submits a joinder to the Reply and claims: "As a key requirement of Ontario's proposed assessment package reaccounting requires Watermaster to exercise unilateral authority it does not possess, adoption of Ontario's proposal would lead to an absurd result inviting serial litigation and potentially impacting entities absent from this litigation. Any act to alter the amount of water stored in the MWD account, whether an increase or decrease thereto, is delegated by contract to the Operating Committee." (IEUA Reply at p. 2: 24-28.) It is alarming that for the first time on reply a party is raising the notion that Watermaster lacks the authority to adopt Ontario's proposal (especially where Watermaster has elsewhere stated it calculated the proposal and found them punitive). Watermaster itself has not claimed this. Further, what no party explains is why Ontario's proposal would lead to altering the water stored in the MWD account. The parties could on paper, for example, calculate what the assessments for FWC and CVWD would be had their withdrawals not been part of the DYY Program. It is clear Ontario is contending there were subsequent additional assessments that would need to be made that have not been made. The Opposition to such a task seems hyperbolic in that suddenly there will be catastrophic chain reaction involving a party that is never explicitly named—though it seems likely the parties are referring to MWD. No party,

however, has presented to the Court what this catastrophic event would look like and exactly who would be affected. Therefore, there is also no reason for the Court to dismiss Ontario's claims based upon these postulations alone.

However, Watermaster's Reply is useful, and highlights an issue that requires further briefing and consideration in order to determine what appears to be the heart of the issue. Ontario has argued that in adopting its methodology, Watermaster was essentially settling some of the four issues the Court of Appeal left to the parties to resolve. At the last hearing, this Court did not find that they needed to be resolved prior to the amending the Packages; however, in light of the parties' issues raised herein, it appears that perhaps these issues may need to be resolved after all. These include: (1) whether water from the DYY Program is withdrawn (not produced), (2) whether stored and supplemental water are simply two types of ground water, (3) whether all stored and supplemental water in the Basin is categorically exempt from assessment, and (4) the future viability and application of the 2019 Letter Agreement.

For example, Watermaster contends that it, as to CVWD, recalculated FY 2021/22 assessable pumping to include 8,196 AF that exceeded allowable Exhibit G thresholds, resulting in an additional $475,880.28 in Production assessments. As to FWC, Watermaster added 2,500 AF of previously unassessed pumping for FY 2021/22 and 5,000 AF for FY 2022/23, increasing its assessments by $80,820.60 and $364,360.92, respectively. These adjustments were tailored to align the Assessment Packages with the Court of Appeal's interpretation of the governing DYY requirements and to eliminate the cost-shifting injury identified on appeal. Even Ontario acknowledges there was at least a partial compliance with the Opinion.

But Ontario focuses on the fact that it believes the water should be classified as groundwater, which would then increase other fees that have not been assessed. In the Reply, Watermaster provides further information about the Basin initiative, the Chino Basin Desalters and the cost-sharing associated with them: the Desalter Replenishment Obligation.

Watermaster explains that beyond the distribution of native groundwater pumped by the Desalters by contract, the Desalters carry their own independent financial structure. The framework addresses considerations unique to the distribution of benefits and burdens associated with the extraction of that water in a specific location in the Basin to maintain availability of native groundwater, which is distributed among appropriators as Operating Safe Yield. Desalter pumping groundwater has never been assessed by Watermaster as Production, unlike any other native groundwater and no rights are assigned to the Desalters. But, in recognizing the Desalters' purpose in preserving Safe Yield generally, those that produce native groundwater share in cost-allocation designed to offset that physical act of removing native groundwater from the Basin. The financial responsibility is distributed for funding the purchase of replenishment water required to offset the native groundwater desalted produced in the Basin. Watermaster explains that those parties that independently produce native groundwater and thereby benefit from the function the Desalters serve in preserving Safe Yield and pay their relative share of its costs. The more native groundwater a party produces the more they pay to offset the cost of acquiring replenishment water needed for the desalters. Parties that rely on supplemental water derive less benefit and therefore pay less. As to the water FWC and CVWD produced, Watermaster claims that in no sense did the extraction of this "Supplemental Water"

place an additional physical burden on the Safe Yield of the Basin or any party as it related to the Desalters.

This is the issue the parties do not make clear, and ***the Court requests further briefing on this issue***. When FWC and CVWD extracted their water, where did it physically come from? Watermaster for the first time in this Reply—though it is responsive to Ontario's argument—claims, without any evidence in support, that the extractions did not place any "additional physical burden on the Safe Yield of the Basin or any party as it related to the Desalters". If so, then there would be no justification for imposing such fees. Ontario can make a "but...for" argument, but if in fact there is a physical distinction in the water that was extracted—if ultimately the parties' water did not impose a physical burden on the Safe Yield of the Basin, to recover those fees would be a windfall. In fact, this would also put to rest the other contested issue of whether water can be returned to the DYY account. In the Reply, Watermaster describes the withdrawals as from "a distant watershed from the DYY storage account." Again, the physical aspect of the withdrawal needs to be clarified. Ontario has all along implied this can be a paper exercise, but Watermaster's Reply is clear that this requires a modification of the "physical world." Watermaster claims: "But for the paid importation of Supplemental Water from a foreign watershed, the physical molecules of water would not exist within the Basin. Ontario's suggested framing only highlights the defect in its position." The parties have possibly taken it for granted that how the water is extracted has been made clear, but no one has placed the Court in a position to be able to determine the physical nature of the water such that it should not be subject to the additional fees Ontario suggests. This information should also be supported by evidence, such as declarations detailing such

operations and what occurred when FWC and CVWD extracted the water at issue. However, in deciding this issue, it also seems that it is deciding or at least highly related to the four issues the Court of Appeal stated the parties needed to resolve. For example, whether all stored and supplemental water in the Basin is categorically exempt from assessment and whether stored and supplemental water are simply two types of groundwater. Ultimately, in deciding this issue, it may be that the Court is deciding issues that were to remain resolved by the parties. In fact, in its Opposition, Ontario noted Watermaster had not even begun to address these issues, a point Watermaster does not deny. Therefore, ***the Court also request further briefing*** regarding whether the resolution of the physical nature of the water extracted and whether it is subject to the DRO assessment overlaps with the four issues identified by the Court of Appeal such that those issues must be addressed now. While it previously did not appear that the issues needed to be resolved prior to the CAA Packages, given the potential fees identified by Ontario, it seems possible that these issues do in fact need to be resolved.

In sum, the Court **CONTINUES** the motion for further briefing and ask the parties to address these issues about the physical nature of the water and whether this issue overlaps with the four issues noted by the Court of Appeal such that the resolution of those issues do, in fact, impact the assessment packages.

Rulings

The Court rules as follows:

1. GRANT the Request for Intervention and sign Watermaster's corresponding Proposed Order;
2. DENY RJN Request Nos. 1-8;

3. GRANT RJN Request No. 9;
4. DENY RJN Request Nos. 10-45 as unnecessary;
5. OVERRULE Watermaster Objections 1 and 5 through 11;
6. SUSTAIN Watermaster's Objections 2, 3, and 4; and,
7. CONTINUE the Motion to Approve the Corrected and Amended Packages for further briefing as detailed above.

Movant to give notice.

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 July 10, 2026, I served the following:

1. DECLARATION OF BRADLEY J. HERREMA IN SUPPORT OF WATERMASTER'S SUPPLEMENTAL BRIEF IN RESPONSE TO THE COURT'S ORDER REQUESTING FURTHER BRIEFING

/ 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 July 10, 2026, in Rancho Cucamonga, California.

By: Ruby Favela Quintero
Chino Basin Watermaster

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