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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.,

Defendants.

Case No. RCVRS51010

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

CHINO BASIN WATERMASTER'S OPPOSITION TO CITY OF ONTARIO'S MOTION FOR ORDER DIRECTING WATERMASTER TO CORRECT AND AMEND THE FY 2021/2022 AND 2022/2023 ASSESSMENT PACKAGES

Hearing:
Date: February 20, 2026
Time: 10:00 a.m.
Dept: R-17

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I. INTRODUCTION

Chino Basin Watermaster ("Watermaster") respectfully submits this opposition to the City of Ontario's Motion for Order Directing Watermaster to Correct and Amend the FY 2021/2022 and 2022/2023 Assessment Packages ("Motion"). The Motion's requested relief is inconsistent with the Court of Appeal's specific direction as to the manner in which Watermaster must "correct and amend" the FY 2021/2022 and 2022/2023 Assessment Packages ("Assessment Packages"). Additionally, the Motion's requested relief is inconsistent with the Opinion's determination of Watermaster's errors in approving the Assessment Packages arising from its interpretation of the 2019 Letter Agreement.

The Court of Appeal Opinion ("Opinion") found that: (1) Ontario's challenge to the Assessment Package was timely; (2) the 2019 Letter Agreement was invalid to the extent that a change authorized parties to take stored foreign/supplemental water under a Court approved DYY *without* undertaking a corresponding reduction in the delivery of surface water from the MWD; (3) Watermaster failed to evaluate potential economic injury associated with this change; (4) Ontario suffered economic injury in fact from the change and (5) Watermaster should have sought a formal amendment of the underlying court approved agreements. The Court of Appeal granted Ontario's challenge and directed Watermaster to "correct and amend" the two Assessment Packages.

Of particular relevance to the Court's consideration of an appropriate proposed order, is that the Court of Appeal found that Ontario had suffered economic harm by Watermaster exempting certain extractions of stored water from Watermaster assessments because they violated the rules of the DYY Program. As provided in Watermaster's Proposed Order attached as Exhibit A, Watermaster would "correct and amend" the Assessment Packages as directed through the ordinary and customary Watermaster process, and to file the amended Assessment Packages with the Court no later than March 31, 2026.

Following this process will enable all parties to the Judgment to receive full participatory rights in reviewing the revised Assessment Packages and avoid the cumbersome alternatives that do not consider the rights of parties to the Judgment that were not party to the Ontario challenge

herein. It will also not broaden the dispute beyond the correction and amendment of the Assessment Packages.

As this Court recently concluded, the dispute is about the invalidity of Watermaster assessments arising from its interpretation of the 2019 Letter Agreement. Other issues were left in the hands of the parties. In support of this Court's view, it is instructive that following an extensive oral argument, the Court of Appeal amended its original tentative opinion with the following language in the disposition: "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 groundwater; (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."[1]

By comparison, Ontario has presented a proposed order that is not grounded in the Court of Appeal's Opinion. Rather, its proposed order would preempt Watermaster from following its ordinary processes for the review and adoption of assessment packages and would have this Court order specific line-item changes to the Assessment Packages at issue as it directs. Ontario's proposed order would make changes based on a theory of misapplication of the 2019 Letter Agreement that would effectively obviate that agreement and entire portions of the Court of Appeal's Opinion.

Watermaster requests that the Court deny Ontario's Motion and presents an alternative form of order for the Court's consideration: consistent with the Court of Appeal's Opinion, direct Watermaster to correct and amend the Assessment Packages, pursuant to Watermaster's ordinary process of publishing a draft package, presenting the draft package to the Pool Committees, Advisory Committee for review prior to the Watermaster Board's consideration of the package for approval. This will necessarily involve all other Parties to the Judgment who may have an interest in the amendments to the previously approved Assessment Packages. Watermaster

[1] At the end of the oral argument on this appeal, the Presiding Justice on the Court of Appeal echoed this sentiment that the Parties should resolve as many issues as possible and try their best not to return to the Court of Appeal.

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believes this is consistent with this Court's interpretation of the scope of the Court of Appeal's Opinion:

> …importantly, although multiple issues were raised on appeal, the Court of Appeal explicitly stated some of those issues were [] be left in the "hands of the parties." *What the Court of Appeal focused on, and what the reversal applied to*, was the "interpretation and application of the 2019 Letter Agreement." ([Opinion] at *31.)

(January 28, 2026 Tentative Ruling re Ontario's Motion for Award of Attorney's Fees and Costs, at p. 7 (emphasis added).)

II. BACKGROUND

A. The Disputes Regarding the Assessment Packages

The Court is familiar with the background of the Assessment Packages and Ontario's challenges in regard to the Dry Year Yield (DYY) Program voluntary withdrawals based on the extensive briefing thereon. Accordingly, Watermaster will not repeat history here.

Ontario's challenges to the Assessment Packages in the consolidated cases were based upon its assertion that in levying its assessments Watermaster erred in exempting certain *voluntary* extractions of stored water from a Production Assessment arising from its failure to consider *economic* injury as well as in the administration of the DYY Program when it interpreted the 2019 Letter Agreement. Watermaster's interpretation allowed FWC to extract stored water while it was not part of the DYY Program and CVWD to extract stored water that was not accompanied by a reduction in surface water deliveries. In summary, Ontario's allegations were that CVWD and FWC's voluntary withdrawals of water from the DYY account, and the treatment of those withdrawals in the 2021/2022 Assessment Package and 2022/2023 Assessment Package, resulted in economic injury to Ontario as a result of the shift in assessments from CVWD and FWC to Ontario and the other parties responsible for assessments. Succinctly, Ontario alleged it was assessed more than it would have been if Watermaster had followed the appropriate methodology in compiling the Assessment Packages.

B. The Opinion

The Court of Appeal ruled in Ontario's favor, finding that Ontario suffered economic harm through a relative increase in its assessments when CVWD withdrew water from MWD's

DYY account in excess of the quantity by which it "rolled off" of MWD imported water deliveries, and due to the fact that FWC had taken water from MWD's DYY account when it did not have a local agency agreement. Specifically, the Opinion determined that: (1) Ontario's challenge to the Assessment Package was timely; (2) the 2019 Letter Agreement was invalid to the extent that a change authorized parties to take stored foreign/supplemental water under a Court approved DYY *without* undertaking a corresponding reduction in the delivery of surface water from the Metropolitan Water District of Southern California; (3) Watermaster failed to evaluate potential economic injury associated with this change; (4) Ontario suffered economic injury from the change and (5) Watermaster should have sought a formal amendment of the underlying court approved agreements. The Court of Appeal granted Ontario's challenges and ordered Watermaster to "correct and amend" the two Assessment Packages.

In coming to its ruling, the Court of Appeal addressed the framework of the DYY Program in the context that the program was intended to make water available in dry years when MWD did not have imported water available and that the extraction of stored water from MWD's account under the DYY agreement must be accompanied by a forbearance of taking imported water by the agencies that were party to the implementation agreements ("rolling off" of MWD's imported water supplies and onto the water taken from its DYY account). In this regard, the Court of Appeal found that Ontario was injured because its assessments were higher than they would have been if CVWD's take of water from the DYY account had been commensurate with its "roll off" of MWD imported water.[2] The Opinion additionally identified that FWC did not have a local agency agreement that required it to perform subject to a MWD call and that its voluntary extraction of water from the MWD DYY account similarly caused economic injury to Ontario by increasing the assessments levied on Ontario. To rule in Ontario's favor, the Court of Appeal concluded it did not need to reach all of the issues raised by the parties.[3] (Opinion, p. 25.) Further,

[2] The Assessment Packages did not include water taken from the Metropolitan DYY account in the pumping over which assessments were spread – meaning, that the denominator (budget divided by assessable production) was lower than it would have been if Cucamonga's take from the DYY account had been lower.

[3] The issues that the Court of Appeal found it did not need to reach are those that the Court of Appeal found should be resolved by the parties prior to judicial intervention. (Opinion, p. 39.)

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the Court of Appeal ruling did not prescribe any specific manner in which Watermaster might revise the Assessment Packages to address the economic injury it found Ontario had suffered.

C. Proceedings Following the Opinion

The Court of Appeal issued the Opinion in April 2025, and no party petitioned for its review by the Supreme Court.

Watermaster's Assessment Packages have a substantial number of inputs such that any change to one party's water use accounting and assessment obligations has the potential to cause economic consequences on all others. Consequently, following the issuance of the Opinion, on June 20, 2025, the Watermaster Board initiated a process to solicit stakeholder input on potential changes to the Assessment Packages, giving due consideration to the applicable provisions of the Judgment, the Court Approved Management Agreements, and the Superior Court's prior implementing orders. Watermaster's intention was to avoid future conflict and renewed challenges to the two Assessment Packages that were invalidated, and which require reevaluation.

As part of that process, Watermaster initially held two workshops. The first was held on July 23, 2025, where stakeholders discussed the Opinion and the determinations that would be required to revise the Assessment Packages. Following this workshop, Watermaster solicited written comments from the parties to the Judgment, and held a second workshop on August 20, 2025, where Watermaster presented previously compiled stakeholder comments and sought further input as to how those comments inform Watermaster's steps to implement the Opinion. Watermaster also sought stakeholder input as to the method to "correct and amend its FY 2021/2022 and 2022-23 Assessment Packages." (Opinion, at 39.) This effort was undertaken as part of a planned process pursuant to which Watermaster would: (i) prepare draft revised Assessment Packages in accordance with historical practice; (ii) enable stakeholder review; and (iii) present the Assessment Packages to the Pool Committees, Advisory Committee, and Watermaster Board.

Without addressing the merits of the arguments made in support of the positions asserted, having gathered input through the initial workshops, on October 14, 2025, Watermaster distributed displays of various potential assessment package revisions for consideration by the

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parties to the Judgment. Watermaster staff prepared the various assessment package revision scenarios after considering the arguments and assertions made by the parties to the Judgment during Watermaster's workshop process without weighing the merits of the contentions made.

On October 23, 2025, Ontario submitted a letter to Watermaster's General Manager outlining questions and comments regarding the displayed revision scenarios. Ontario requested responses from Watermaster as it "continues its efforts to work with parties on a mutually agreeable solution that is also compliant with the [Court of Appeal decision]." On October 23, CVWD submitted a letter to Watermaster's General Manager also outlining questions and comments regarding the displayed revision schedules.

D. October 31, 2025 Status Conference and Mediation

All of the Parties to the appellate proceedings on the Assessment Packages submitted status conference statements in advance of the October 31, 2025 status conference. A joint status report filed by Watermaster, CVWD, FWC, and IEUA included a proposed order – attached thereto as Attachment 1. At the status conference, this Court did not adopt that order or the order supplied by Ontario, but ordered the parties to mediation to attempt to come to agreement as to the form of an order that this Court might issue on remand. An initial mediation session was held on December 12, 2025, and while it did not produce an agreement among the parties, the parties agreed to a subsequent session to be held on January 16, 2026. Prior to that mediation session being held, and without meeting and conferring with any of the other parties to the mediation, on January 12, 2026, Ontario filed its Motion. On January 23, 2026, Ontario unilaterally filed a "Notice of Completion of Mediation."

III. FORM OF ORDER ON REMITTITUR

A. Scope of Relief

As described above, the Court of Appeal found it was able to rule in Ontario's favor without deciding the reserved Four Questions for the reasons set forth above. The DYY Program remains valid, court approved, and undisturbed by the Opinion. Watermaster can correct and amend the Assessment Packages to account for the failure to assess extractions that were inconsistent with the DYY Program. The increased assessments can be levied on FWC and

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CVWD. Ontario will receive the benefit of that calculation.

It is true that but for an amendment of some kind to the DYY Program, that the parties are facing a looming expiration of the DYY in 2028, and it is highly likely MWD will be compelled to take some action disruptive to Basin management (impose penalties or other measures) to avoid stranding up to 64,000 AF of its water in the Basin (valued at approximately $60M). Absent such an amendment, accounting and assessing for imported foreign water held in the DYY storage will cause immediate conflict among the Parties to this proceeding as well as among the parties to the Judgment, spurring instantaneous and serial challenges. However, while these challenges must be met with a good faith intention to resolve them, we see no legal or practical method to require previously recovered stored imported water to be returned to the Basin, as Ontario suggests. The Court of Appeal upheld a challenge to Watermaster's exemption on assessments for extraction not countenanced by the DYY Program, nothing more. Thus, Ontario is made whole with a correction. An argument that stored water already put to beneficial use be commandeered and returned to storage finds no support under any known law or agreement.

Whatever correction that is required to address over or under production does not trigger a payment to Ontario of any specific amount but instead requires the preparation of new – corrected and amended – Assessment Packages and a distribution of expenses among the parties under Watermaster Rules and Regulations. The same result would follow from any of the arguments made by CVWD and FWC. Any funds collected through new assessments on CVWD and FWC, whatever they might be, will be distributed among all parties to the Judgment that have contributed to the assessment obligation, not just Ontario. There is no lawful basis to grant Ontario a specific, line-item refund for the alleged overpayment.[4]

B. <u>Proposed Forms of Order</u>

1. Ontario's Proposed Order Misinterprets the Court of Appeal's Opinion

The form of order proposed by Ontario is improper. Ontario's arguments to Watermaster,

[4] It is not clear from whom Ontario believes a refund would be due. While the two parties whose takes from the Metropolitan DYY account were the subject of the Court of Appeal's review are Cucamonga and Fontana Water, as described herein, the effect of one party's assessable groundwater production impacts the assessments due from all other groundwater producers.

this Court, and the Court of Appeal were premised on two arguments – first, that FWC did not have a local agency agreement, and second, that CVWD had taken more water from MWD's DYY account beyond the amount by which it had reduced its receipt of deliveries of MWD imported water (the Exhibit "G" performance criteria). Ontario now claims – based on an expansive reading of the Opinion's requirement that the corrections and amendments comply with all of the contracts and orders that pertain to the DYY Program – that there should not have been ANY water withdrawn from MWD's DYY account because MWD did not exercise its "call" right to require CVWD to do so. However, this reading – freshly conjured by Ontario at this late date in the proceedings – would have the effect of obviating the 2019 Letter Agreement altogether, which the Court of Appeal expressly did not do,[5] and is inconsistent with the manner in which the Opinion analyzed the injury to Ontario occasioned by Watermaster's incorrect *interpretation and application* of the 2019 letter agreement.

If the Court of Appeal believed that no voluntary withdrawals (e.g., withdrawals in the absence of a "call") could be undertaken, it would not have spent so much of its Opinion analyzing the effects of the withdrawals consisting of more than one's "share" of the water in the DYY account. Ontario's proposed order would read all of the Court of Appeal's analysis in this regard out of its Order and cannot be considered the proper interpretation of the Order.

2. Grant Ontario's Challenges and Order Watermaster to Correct and Amend the Assessment Packages Consistent with the Court of Appeal's Opinion

As described herein, the Court of Appeal's Opinion does not explicitly detail the changes to the Assessment Packages that are necessary to effectuate its ruling but rather provides that Watermaster will "correct and amend" the Assessment Packages. Particularly in light of the Court of Appeal's reservation of the four issues for the parties' resolution, the most appropriate route would be for the Court to order Watermaster to swiftly follow its ordinary process (draft assessment package, workshop(s), presentation to Committees, presentation to Watermaster Board) and return corrected and amended packages to this Court no later than March 31.

[5] One of the Court of Appeal's four questions for the Parties to resolve is the "the future viability and application of the 2019 Letter Agreement."

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This would allow all Parties the opportunity to review and comment upon the amended Assessment Packages and provide Watermaster with advice and assistance from the Pool Committees and Advisory Committee prior to Watermaster Board action. As contrasted with the process proposed by Ontario – that this Court direct specific corrections and amendments to the Assessment Packages based solely upon Ontario's interpretation of the Opinion – the process described in this order would allow for the vetting of and potential resolution of other Parties' concerns with any proposed corrections and amendments.

Watermaster believes this to be consistent with this Court's reading of what the Court of Appeal did in its Opinion. As this Court stated in its tentative ruling on Ontario's attorney fees motion,

> although multiple issues were raised on appeal, the Court of Appeal explicitly stated some of those issues were be left in the "hands of the parties." What the Court of Appeal focused on, and what the reversal applied to, was the "interpretation and application of the 2019 Letter Agreement." (Id. at *31.)

Thus, the specific steps required for implementation of the Court of Appeal's opinion in amending and correcting the Assessment Packages beyond the interpretation and application of the 2019 Letter Agreement were not explicitly proscribed by the Court of Appeal's Opinion and Watermaster's ordinary process will allow the Parties – who would all be affected by corrections and amendments to the Assessment Packages - to provide their input in that process.

C. Watermaster as Neutral

Watermaster understands that Ontario prevailed on appeal and it is prepared to implement the "correct and amend" requirement, if possible, in a manner that avoids repetitive conflict on the same issues. Ontario spent a considerable portion of its briefing at both the Superior Court and the Court of Appeal on claims of Watermaster's alleged lack of neutrality in regard to the promulgation of the Assessment Packages and defense of its appointing court's order. While neither this Court nor the Court of Appeal has found any merit in these arguments, Ontario continues to press this issue, often mischaracterizing Watermaster's actions to fit this narrative[6].

[6] For example, Ontario characterizes Watermaster has having argued on behalf of the other respondents simply because only counsel for Watermaster – the party whose Assessment

The role of the Watermaster Board in its present form arises from prior conflict among the parties about the then Watermaster Chino Basin Municipal Water District and a deliberative process ensued that settled on approach characterized by Nobel Prize winner Elinor Ostrom as polycentric governance. Dr. Bill Bloomquist authored two books about it; one entirely about Watermaster.[7] Fundamental in this process was a 1998 Order from this Court that details the rationale and established the pathway.

For 25 years, Watermaster has successfully acted in a dispute resolution capacity. Ontario has been there all along the way. It is true that not all disputes are resolved to the satisfaction of all parties and the trial court and appellate courts have issued rulings that are different than the positions asserted by Watermaster. In some cases, this has occurred as to matters as to which Ontario was aligned with Watermaster. And in all cases, win or lose, Watermaster has faithfully carried out these rulings. Watermaster does have an obligation to the Parties and to the Court to point out the consequences of proposed actions, to make decisions, within the authorities granted by the Judgment and Court orders, subject to judicial review.

Seeking to disqualify Watermaster from its function when it is overruled under the review rights for Watermaster under the Judgment, is contrary to the fabric of the decree and 25 years of custom and practice which Ontario has historically supported through its actions and execution of written agreements, is regrettably momentary and self-serving. If Ontario desires to change the Watermaster and governing documents, it has the right as a party to the Judgment to make a proposal and seek that change through the procedures set forth in the Judgment. (Judgment Paragraph 16.)

IV. CONCLUSION

As described above, Ontario's Motion and proposed form of order misinterprets the Court of Appeal's Opinion and the Court should decline to enter it. For the reasons stated above, we

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Packages are the subject of Ontario's challenges and the entity defending its appointing Court's order upholding them - argued the matter at the Court of Appeal during respondents' limited time for argument.

[7] Blomquist, William A. Dividing the Waters: Governing Groundwater in Southern California. ICS Press, 1992; Blomquist, William. The Realities of Adaptive Groundwater Management: Chino Basin, California. Springer Nature, 2021.

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respectfully request the Court to enter Watermaster's Proposed Order attached hereto as Attachment 1. Entry of this Proposed Order will result in corrected and amended Assessment Packages that meet the requirements of the Court of Appeal Opinion, leaving the four issues reserved by the Court of Appeal in the hands of the parties.

Dated: February 5, 2026

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: _____

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CHINO BASIN WATERMASTER
Case No. RCVRS 51010
Chino Basin Municipal Water District v. City of Chino, et al.

PROOF OF SERVICE

I declare that:

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

On February 5, 2026, I served the following:

1. CHINO BASIN WATERMASTER'S OPPOSITION TO CITY OF ONTARIO'S MOTION FOR ORDER DIRECTING WATERMASTER TO CORRECT AND AMEND THE FY 2021/2022 AND 2022/2023 ASSESSMENT PACKAGES

/ 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 5, 2026, in Rancho Cucamonga, California.

By: Ruby Favela Quintero
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