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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN BERNARDINO

11
12 CHINO BASIN MUNICIPAL WATER
13 DISTRICT,
14
15 Plaintiff,
16 v.
17 CITY OF CHINO, et al.,
18 Defendants.
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CASE NO. RCVRS 51010

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

**CITY OF ONTARIO'S
SUPPLEMENTAL BRIEF IN SUPPORT
OF OPPOSITION TO
WATERMASTER'S MOTION FOR
COURT APPROVAL OF CORRECTED
AND AMENDED FISCAL YEARS
2021/22 AND 2022/23 ASSESSMENT
PACKAGES**

Hearing:

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

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1 **I. INTRODUCTION**

2 The City of Ontario (“Ontario”) respectfully submits its supplemental briefing in support of
3 its Opposition to Chino Basin Watermaster’s Motion for Court Approval of Corrected and
4 Amended Fiscal Years 2021/22 and 2022/23 Assessment Packages (“Motion”). In its June 12, 2026
5 Ruling on the Motion, this Court requested further briefing on certain issues including whether the
6 “four issues identified by the Court of Appeal . . . must be addressed now” and, pertaining to the
7 Desalter Replenishment Obligations (“DRO” or “RDRO”), issues concerning the physical nature
8 of the water extracted from the DYY Program and whether the production of this water places an
9 additional physical burden on the Basin or any party to the Judgment. (Notice of Rulings and
10 Continued Hearing (“Ruling”), filed June 16, 2026, Ex. A at 23-24.)

11 As to the first question, the answer to whether any or all of the four reserved issues need to
12 be resolved now is a resounding “no” due to the clear directive in the Court of Appeal’s April 18,
13 2025 Opinion¹ (“Opinion” or “Op.”). The Court of Appeal ordered the correction and amendment
14 of the assessment packages consistent “with the original DYY Program agreements, the Judgment,
15 and prior court orders,” and specifically held that the Court does not need to resolve the reserved
16 issues now. (Op. at 39.) Nor was the Court of Appeal’s direction to Watermaster to correct and
17 amend the assessment package contingent upon the resolution of the four issues. (*Ibid.*)
18 Notwithstanding this, through the corrected and amended assessment packages (“CAA Packages”)
19 put forward by Watermaster, Watermaster improperly predetermined the four reserved issues –
20 including the “validity” of the 2019 Letter Agreement – and did so in a manner expressly designed
21 to minimize the financial impacts to Fontana Water Company (“Fontana” or “FWC”) and
22 Cucamonga Valley Water District (“CVWD”) (collectively “Opposing Parties”). The four reserved
23 issues do not need to be resolved prior to correcting the assessment packages consistent with the
24 original DYY Program agreements and historical practice. Any other result would violate the
25 holding in the Opinion and the Court of Appeal’s directive.

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28 ¹ The Opinion is the law of the case and is attached as Exhibit A to the Declaration of Bradley J. Herrema in Support of Watermaster’s Motion. (Ruling, Ex. A at 9, fn. 1.)

1 As to the physical nature of the claimed DYY Program water extracted by CVWD and the
2 water extracted by Fontana,² Watermaster and the Opposing Parties now argue – for the first time
3 and “without any evidence in support, that the extractions did not place any ‘additional physical
4 burden on the Safe Yield of the Basin or any party as it related to the Desalters’” and that “the
5 withdrawals [are] from ‘a distant watershed from the DYY storage account.’” (Ruling, Ex. A at
6 23.) Watermaster and Opposing Parties’ arguments that production of DYY Program water has no
7 relation to the Safe Yield of the Basin or does not place a physical burden on the Basin lack
8 credibility. The Judgment expressly recognizes the physical connection and impact of storage and
9 recovery programs like the DYY Program on the Basin. The Judgment states: “It is essential that
10 said reservoir capacity utilization for storage and conjunctive use of supplemental water be
11 undertaken only under Watermaster control and regulation *in order to protect the integrity of both*
12 *such Stored Water and Basin Water in storage and the Safe Yield of Chino Basin.*” (Judgment, ¶
13 11, emphasis added.) Even more on point, the 2003 DYY Program Funding Agreement requires an
14 Annual Operating Plan and states that that plan “shall provide sufficient information to allow the
15 Operating Committee and Watermaster to assess potential impacts from the [DYY] Program on the
16 Chino Basin and the Judgment Parties, such as: (1) current and projected water level in the basin;
17 and (2) short-term and long-term projections of Chino Basin water supply and water quality.”
18 (Request for Judicial Notice (“RJN”), filed concurrently, Ex. 6 at § VI.A.3(b).)³ The operation of
19 the DYY Program is inextricably tied to the integrity of the Safe Yield of the Basin. (Judgment,
20 ¶ 11.) Further to the point, there is no physical distinction between the water extracted from the
21

22 ² As held by the Court of Appeal, because it did not have a Local Agency Agreement, Fontana’s
23 claimed production of DYY Program water violated the original DYY Program orders and
24 agreements. The Court of Appeal explained: “As Ontario points out, the effect of the 2019 Letter
25 Agreement (as interpreted and applied by Watermaster) was to ‘defy the rules set forth in the
26 documents that establish and govern the operation of the DYY Program, including the 2003
27 Funding Agreement, the 2003 court order adopting it, and the DYY Storage Agreement and its
28 associated court order’ by allowing FWC (a nonparty) to voluntarily produce water from the program
storage account without a Local Agency Agreement . . . We agree.” (Op. at 30.)

³ Ontario previously requested, and the Court granted, judicial notice of almost all the exhibits
attached to the Appendix of Evidence filed herewith. (See RJN at p. 4.) The Court may also
consider the Exhibits as evidence previously filed with the Court in this action. (Cal. Rule of Court,
rule 3.1110(d).)

1 ground as native groundwater or the recovery of water stored in the Basin – it is all water “beneath
2 the surface of the ground.” (Op. at 7, fn. 4.) The classification of the water that has been extracted
3 from the Basin is simply an accounting designation that also is used for purposes of calculating
4 each party’s annual assessments.

5 In sum, consistent with the Court of Appeal’s Opinion, resolution of the four reserved issues
6 is not necessary to correct and amend the assessment packages in a manner that is consistent with
7 the Judgment and the original DYY Program agreements and orders. Second, there is nothing about
8 the physical nature of the water extracted that justifies the exclusion of CVWD’s and Fontana’s
9 claimed DYY Program production from DRO assessments.⁴ The Court of Appeal held that
10 Watermaster’s interpretation and application of the 2019 Letter Agreement to the Fiscal Year
11 (“FY”) 2021/2022 and 2022/2023 assessment packages violated the Judgment and the agreements
12 that created the DYY Program and directed “Watermaster to correct and amend the FY 2021/2022
13 and 2022/2023 Assessment Packages consistent with the original DYY Program agreements, the
14 Judgment, and prior court orders.” (Op. at 35, 39.) All portions of the assessment package –
15 including DRO assessments – should be recalculated without delay to correct the exclusion of this
16 groundwater production from assessments and the corresponding improper cost-shifting that
17 occurred as a result.

18 **II. THE OPINION REQUIRES CORRECTION OF THE ASSESSMENT PACKAGES**
19 **CONSISTENT WITH THE ORIGINAL DYY PROGRAM AGREEMENTS AND**
20 **ORDERS AND DOES NOT REQUIRE RESOLUTION OF THE FOUR RESERVED**
21 **ISSUES TO CARRY OUT THAT DIRECTIVE.**

22 As recognized by this Court, the Court of Appeal gave unambiguous instructions for the
23 Court to enter an order directing “Watermaster to correct and amend the FY 2021/2022 and
24 2022/2023 Assessment Packages consistent with the *original* DYY Program agreements, the
25 Judgment, and prior court orders.” (Op. at 39, emphasis added.) The Court of Appeal did not hold

26 ⁴ To be clear, although Watermaster and Opposing Parties continue to allege that the water CVWD
27 and Fontana produced was stored and imported water from the DYY Program, under the Judgment
28 and original DYY orders and agreements, the claimed DYY production reflected in the CAA
Packages was not authorized.

1 that the resolution of the four reserved issues was a necessary prerequisite for Watermaster to carry
2 out that directive. (*Id.* at 25, 39.) ““When an appellate court's reversal is accompanied by directions
3 requiring specific proceedings on remand, those directions are binding on the trial court and must
4 be followed. Any material variance from the directions is unauthorized and void.”” (*Martinez v.*
5 *Rite Aid Corp.* (2021) 63 Cal.App.5th 958, 969, quoting *Butler v. Superior Court* (2002) 104
6 Cal.App.4th 979, 982.) Allowing Watermaster and Opposing Parties to unilaterally answer the four
7 reserved questions for the purpose of minimizing the financial impact of the CAA Packages on
8 Opposing Parties is directly contrary to the Court of Appeal’s determination that the four issues
9 should be resolved by the parties prior to judicial intervention, and has the effect of ignoring and
10 bypassing the appellate court’s explicit directions to Watermaster to correct and amend the
11 Assessment Packages consistent with the original DYY Program agreements, the Judgment, and
12 prior court orders.

13 **A. The Four Reserved Issues Are Not Necessary to Correct and Amend the**
14 **Assessment Packages.**

15 **1. There is no need to address the four issues to correct and amend the FY**
16 **2021/2022 and 2022/2023 Assessment Packages because DYY**
17 **production was not authorized during those years.**

18 As previously recognized by Watermaster, a central purpose of the 2019 Letter Agreement
19 was to allow parties to produce DYY water in non-call years. In a 2021 Watermaster Staff Report
20 on the DYY Program, Watermaster stated:

21 Although the Storage and Recovery Agreement has remained
22 unchanged, there have been adjustments to the DYY Program since
23 its inception, including . . . *a further change by letter agreement by*
the signatories to the DYY Program contract in 2019 which allowed
parties to voluntarily extract water from the account as an
alternative to producing water only during an MWD call.

24 (RJN, Ex. 12 at 2, emphasis added [Nov. 18, 2021 Watermaster Staff Report re Dry Year Yield
25 Program].) Prior to the 2019 Letter Agreement (e.g., pursuant to the original DYY Program
26 agreements and orders), parties only were allowed to produce DYY Program water in a “call” year.
27 It is undisputed that the years in question were not “call years.” (Declaration of Courtney Jones in
28 Support of Ontario’s Supplemental Brief (“Jones Suppl. Decl.”), ¶¶ 23-24; Ruling, Ex. A at 16.)

1 Because the production of DYY Program water was not authorized, the water extracted from the
2 Basin could only be ordinary production of groundwater and must be assessed as such. (Jones
3 Suppl. Decl., ¶¶ 13-18.)

4 The Court of Appeal held that the Watermaster’s interpretation and application of the 2019
5 Letter Agreement violated the Judgment and the agreements that created the DYY Program, and
6 ordered Watermaster to “correct and amend the FY 2021/2022 and 2022/2023 Assessment
7 Packages consistent with the original DYY Program agreements, the Judgment, and prior court
8 orders.” (Op. at 28, 39.) As acknowledged by Watermaster in the above Staff Report, the original
9 Storage and Recovery Agreement did not allow a party to produce water except during an MWD
10 call. (RJN, Ex. 12 at p. 2.) The years at issue were non-call years and, accordingly, under the
11 “original DYY Program agreements, the Judgment, and prior court orders,” production of DYY
12 Program water was not allowed and production assessments should have been levied based on the
13 CVWD’s and Fontana’s production of groundwater from the Basin. Put another way, there is no
14 need to determine the answers to the four questions for the simple reason that under the original
15 DYY Program agreements and orders and in the absence of a “call” year, the water produced by
16 CVWD and Fontana was ordinary, assessable groundwater production. At that point, it is a mere
17 accounting exercise whereby Watermaster corrects its end-of-year accounting for the water
18 produced for purposes of calculating production assessments and assessments relating to the DRO.⁵
19 There is no need to answer any of the reserved questions to perform these calculations. Indeed,
20 before the outset of any litigation, Watermaster unequivocally stated that “[i]f changes to the
21 Program result in retroactive adjustments to the DYY Program they can be accounted for through
22 adjustments to the Assessments.” (*Id.* at p. 6.)

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27 ⁵ As previously briefed by Ontario in its Opposition to Watermaster’s Motion for Court Approval
28 of Corrected and Amended Fiscal Years 2021/22 and 2022/23 Assessment Packages, groundwater
production amounts serve as a basis to calculate both general production assessments and DRO
assessments.

1 **2. Even if one adopts the fiction advanced by Watermaster and Opposing**
2 **Parties that voluntary DYY production was somehow authorized, the**
3 **four reserved issues still do not need to be resolved in order to correct**
4 **and amend the assessment packages.**

4 The Court of Appeal was explicit: “Although the parties have raised issues regarding
5 (1) whether water from the DYY Program is withdrawn (not produced), (2) whether stored and
6 supplemental water are simply two types of ground water, and (3) whether all stored and
7 supplemental water in the Basin is categorically exempt from assessment, we need not resolve these
8 issues today because we conclude that Watermaster erred in its interpretation and application of the
9 2019 Letter Agreement. As to the other issues raised, we leave them in the hands of the parties who
10 are much better suited than the superior and appellate courts to decide.” (Op. at 25.) The Court of
11 Appeal found that it “need not resolve” the reserved issues prior to ordering Watermaster to correct
12 and amend the assessment packages consistent with the original DYY Program agreements, the
13 Judgment, and prior court orders, and the plain reading of this order from the Court of Appeal
14 should not be ignored. (*Id.* at 25, 39; see *The Law Firm of Fox & Fox v. Chase Bank, N.A.* (2023)
15 95 Cal.App.5th 182 [the same rules apply in interpreting a court order as in ascertaining the
16 meaning of any other writing].) Indeed, the language used for the fourth reserved issue addressed
17 in the Court of Appeal’s disposition specifically reserved for resolution “the *future* viability and
18 application of the 2019 Letter Agreement.” (Op. at 39, emphasis added.) Notably, the reserved
19 issues were briefed by the parties and were part of the record before the Court of Appeal.⁶ Having
20 considered these arguments, the Court of Appeal still determined that it did not need to resolve the
21 four issues. Indeed, the Court’s order directing Watermaster to “correct and amend the FY
22 2021/2022 and 2022/2023 Assessment Packages consistent with the original DYY Program
23 agreements, the Judgment, and prior court orders” was *not* contingent on the resolution of any of
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25 ⁶ (See, e.g., Fontana/CVWD Opposition to Ontario’s Application, filed Mar. 25, 2022, at pp. 10-
26 14; Watermaster’s Opposition to Ontario’s Application, filed Mar. 25, 2022, at pp. 15-16; Ontario’s
27 Combined Reply to Oppositions, filed May 27, 2022, at pp. 21-24,33-35; Ontario’s Motion
28 Challenging FY 2022/2023 Assessment Package (“2023 Motion”), filed Feb. 14, 2023, at pp. 11-
14; Watermaster Opposition to 2023 Motion, filed Mar. 22, 2023, at pp. 7-11; Ontario’s Reply in
Support of 2023 Motion, filed Mar. 28, 2023, at pp. 2-6.)

1 the four reserved issues. Effectively, resolution of the four issues was deemed irrelevant for
2 purposes of the correction of the two Assessment Packages at issue.

3 It is additionally concerning, and violative of the Court of Appeal’s directive, that in
4 unilaterally deciding the four reserved issues, Watermaster entirely bypassed the requirement that
5 the parties – *all* parties – work together to resolve the four reserved issues before seeking judicial
6 relief. As stated by the Court: “[a]s to the issues raised, we leave them in the hands of the parties,
7 who are much better suited than the superior and appellate courts to decide.” (Op. at 25.)
8 Continuing, the Court directed the following: “[t]he (four) issues . . . should be resolved by the
9 parties prior to judicial intervention.” (*Id.* at 39.) Not only have these issues not been resolved by
10 the parties, Watermaster has not initiated proceedings for the issues to be formally addressed.

11 As discussed in more detail, below, Watermaster decided and applied its own answers to
12 the four reserved questions, created special rules to be applied to the two CAA Packages to
13 financially benefit two parties, and declared that its decisions – including regarding the four
14 reserved issues – would have no precedent and would only apply to the two fiscal years at issue
15 and only to the two Opposing Parties (CVWD and Fontana). Such actions by Watermaster ignore
16 the Court’s determination that resolution of the four reserved issues was not necessary, violate the
17 Court’s order to amend the assessment packages consistent with the Judgment and the original court
18 orders and agreements, and sidestep the requirement that the parties work to resolve the four issues
19 prior to judicial intervention.

20 **B. Notwithstanding the Court of Appeal’s Holding that the Four Reserved Issues**
21 **Are for the Parties to Resolve in the Future, Watermaster Has Unilaterally**
22 **“Answered” Each of the Four Questions and Perpetuated the FY 2021/2022**
and FY 2022/2023 Cost-Shifting that Was Determined to Be Unlawful.

23 Watermaster answered the four reserved questions and then used those answers to “correct
24 and amend” the assessment packages in a manner that perpetuates the cost-shifting that gave rise
25 to this lawsuit in the first instance. Such actions violate the requirement, rooted in the original DYY
26 Program orders and agreements, that the DYY Program and its administration provide broad mutual
27 benefits to all parties and not adversely impact other parties. (Op. at 25 [“As the superior court’s
28

1 2004 order emphasized, the DYY Program was designed to ‘provide broad mutual benefits to the
2 parties to the Judgment’”].)

3 While Watermaster improperly and implicitly applied its own answers to each of the four
4 reserved issues to the CAA Packages, Ontario focuses here on two that are especially material to
5 the CAA Packages before this Court: whether stored or supplemental water are simply two types
6 of groundwater and the future viability of the 2019 Letter Agreement.

7 **1. Whether stored water and supplemental water are simply two types of**
8 **groundwater?**

9 Watermaster answers this question in the negative. It is Watermaster and Opposing Parties’
10 position, as reflected in the CAA Packages, that the DYY Program water is stored or supplemental
11 water that is physically distinct from basin groundwater and, thus, is not subject to production
12 assessments and DRO assessments. (Ruling, Ex. A at 23-24, citing Watermaster’s Reply.) Based
13 on this unilateral decision that attempts to draw a distinction between native groundwater and stored
14 or supplemental water, Watermaster made the decision to give CVWD and Fontana credit for their
15 claimed voluntary production of DYY Program water and exempt this water from assessments in
16 the CAA Packages.

17 As addressed more fully in section II.C., below, in response to the Court’s questions about
18 the physical nature of the water being produced, Watermaster also answered this question
19 incorrectly. There is no physical distinction between the well production of water molecules
20 constituting the Safe Yield of the Basin, local water in storage, and supplemental water in storage.
21 (Jones Suppl. Decl., filed concurrently, ¶¶ 18-21.) Similarly, as recognized by the Court of Appeal,
22 all types of groundwater fall within the Judgment’s definition of “Groundwater.” “Watermaster
23 levies and collects assessments based on each party’s water production during the prior year,
24 namely the annual quantity of groundwater pumped or extracted from the basin” and “[t]he
25 Judgment’s definition of groundwater does not distinguish between the ‘type’ of groundwater or
26 how that water made its way into the Basin. Groundwater is defined as water ‘beneath the surface
27 of the ground and within the zone of saturation, i.e., below the water table.’” (Op. at 7, fn. 4.)
28

1 **2. The future viability and application of the 2019 Letter Agreement.**

2 The Court of Appeal expressly stated that the issue of the viability and application of the
3 2019 Letter Agreement is reserved for the “future” and, specific to the two Assessment Packages
4 at issue now, ruled that “Watermaster’s interpretation and application of the 2019 Letter
5 Agreement” to the FY 2021/2022 and FY 2022/2023 Assessment Packages “violated the Judgment
6 and the agreements that created the DYY Program.” (Op. at 28.) There is no need to answer the
7 question about the future viability and application of the 2019 Letter Agreement. And yet, through
8 the CAA Packages presented to the Court, Watermaster has unilaterally determined that the 2019
9 Letter Agreement authorizing voluntary DYY production remains viable not just in the future *but*
10 *now*, and continues to allow Fontana and CVWD to financially benefit from their claimed voluntary
11 production of DYY Program water under the auspices of the 2019 Letter Agreement
12 notwithstanding the Court of Appeal’s Opinion.

13 The Court of Appeal did not give Watermaster license to unilaterally adjudicate the viability
14 of the 2019 Letter Agreement, which is not one of the original DYY Program agreements,⁷ and
15 then apply it to the CAA Packages for the purpose of evading (for example) the Opinion’s express
16 holding that nonparties to the DYY Program, like Fontana, could not produce water from the
17 program’s storage account without a local agency agreement. (Op. at 32.) As the Court of Appeal
18 specifically held: “This is not permitted.” (*Ibid.*)

19 It is evident from the CAA Packages and its briefing on this issue that Watermaster
20 *disagrees* with Ontario’s position that the CAA Packages should give “no effect” to the 2019 Letter
21 Agreement. Watermaster also admits that it has amended the CAA Assessment Packages to reduce
22 the financial impacts to Fontana and CVWD. (Reply, filed June 5, 2026, at 4:9-16; Motion, filed
23 Apr. 1, 2026, at 11:23-27 [“Watermaster also considered the actual economic consequences of
24 following Ontario’s suggestion”].) These positions taken by Watermaster to justify the CAA
25 Packages are contrary to the holding in the Opinion finding that Ontario and the other agencies
26 suffered financial injury “as a result of the 2019 Letter Agreement.” (Op. at 34-35.) Because the
27 2019 Letter Agreement is not one of the “original” DYY Program agreements and prior court

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⁷ (Op. at 8-12, 39; see also Jones Suppl. Decl., ¶ 4.)
12

1 orders, it also is contrary to the Court of Appeal’s order to Watermaster to correct and amend the
2 assessment packages consistent with the *original* DYY Program orders and agreements. (*Id.* at 39;
3 see also Jones Suppl. Decl., ¶ 4.) Watermaster’s continued use and application of the 2019 Letter
4 Agreement – in effect Watermaster’s answer to the fourth reserved issue – gives Fontana and
5 CVWD a financial windfall by allowing “voluntary” production of DYY water to the detriment of
6 Ontario and the other parties.

7 This Court asked whether the four reserved issues need to be answered now. (Ruling, Ex. A
8 at 24.) The answer is no. The Court of Appeal neither ordered the reserved issues to be resolved
9 prior to correcting and amending the assessment packages nor authorized Watermaster to
10 unilaterally answer the four questions and apply its own developed answers to the CAA Packages.

11 **C. The Nature of the Physical Water Produced Does Not Impact the Necessary**
12 **Corrections to the Assessment Packages Required to Comply with the Opinion.**

13 Watermaster contends that in correcting the Assessment Packages it cannot “return” water
14 that was removed from the DYY storage account by Fontana and CVWD and claims that the relief
15 sought by Ontario would require a modification of the “physical world.” As a result of these
16 contentions, the Court requested further briefing and clarification of the “physical aspects of the
17 withdrawal” of water that was accounted for in the CAA Assessment Packages as DYY Program
18 water. (See Watermaster Reply, filed June 5, 2026, at p. 9.)

19 **1. There is no physical difference between the water produced by Fontana**
20 **and CVWD whether it is DYY water or native groundwater.**

21 Watermaster’s contention that the physical molecules of the water cannot be “put back” in
22 the Basin is simply a false narrative and attempt by Watermaster to support its efforts to reduce the
23 financial impacts to Fontana and CVWD and still allow the water to be accounted for as DYY
24 production in violation of the express holding in the Opinion (i.e., allowing Fontana to claim DYY
25 production in the absence of a Local Storage Agreement). (See Watermaster Reply, filed June 5,
26 2026, at p. 9.) There is no physical difference between the “molecules” of water produced as DYY
27 water or native groundwater. (Jones Suppl. Decl., ¶ 19.) Further, any claims that the extractions
28 did not place any “additional physical burden on the Safe Yield of the Basin or on any party” or

1 that the withdrawals (are) from “a distant watershed from the DYY storage account” are
2 contradicted by Watermaster’s own prior court filings, the Judgment, the 2003 DYY Program
3 Funding Agreement, and the 2004 DYY Program Storage and Recovery Agreement. The operation
4 of storage and recovery programs, including the DYY Program, is integrally and inseparably
5 connected to the Safe Yield of the Basin.

6 All production, including production relating to storage and recovery projects, places a
7 physical burden on the Basin. (Jones Suppl. Decl., ¶ 21.) This is recognized in the Judgment, it is
8 recognized in the 2003 DYY Program Funding Agreement, and it is recognized in Watermaster’s
9 Motion for this court’s approval of the 2004 DYY Program Storage and Recovery Agreement.
10 Without limitation:

- 11 • “It is essential that said reservoir capacity utilization for storage and conjunctive use of
12 supplemental water be undertaken only under Watermaster control and regulation, *in*
13 *order to protect the integrity of both such Stored Water and Basin Water in storage*
14 *and the Safe Yield of Chino Basin.*” (Judgment, ¶ 11, emphasis added.)
- 15 • “The (DYY Program) Annual Operating Plan shall provide sufficient information to
16 allow the Operating Committee and Watermaster to assess *potential impacts from the*
17 *(DYY) Program on the Chino Basin and the Judgment Parties, such as: (1) current*
18 *and projected water levels in the basin; and (2) short-term and long-term projections*
19 *of Chino Basin water supply and water quality.*” (RJN, Ex. 6 at § VI.A.3, emphasis
20 added.)
- 21 • “The [DYY Program Storage] Agreement carries forward the concept of the Annual
22 Operating Plan from the Funding Agreement. Part IV.C. of the Agreement requires that
23 the Annual Operating Plan shall provide an estimated schedule and location for all
24 delivery of water into and out of storage on a monthly basis for the upcoming fiscal
25 year. *The estimated schedule and location for the delivery and extraction of water in*
26 *the Annual Operating Plan must be of sufficient detail in order to allow Watermaster*
27 *to assess the potential for Material Physical Injury to be caused to a party or to the*
28 *Basin.* (Agreement, Part IV.C.) The Agreement not only prohibits Watermaster from

1 approving an Annual Operating Plan that will cause Material Physical Injury, it also
2 prohibits Watermaster from approving an Annual Operating Plan that does not provide
3 sufficient detail to allow for a proper assessment of the potential for Material Physical
4 Injury. (Agreement, Part IV.C. and F.)” (RJN, Ex. 4 at 24:19-25:2, emphasis added.)

- 5 • “The Judgment contains a very broad requirement that the use of the storage space in
6 the Chino Basin should be undertaken only under Watermaster control and regulation,
7 *in order to protect the integrity of both such Stored Water and Basin Water in storage*
8 *and the Safe Yield of the Chino Basin.* (Judgment, ¶ 11, p. 8.)” (RJN, Ex. 4 at 26:1-4,
9 emphasis added.)

10 Native groundwater and extractions of stored water are physically indistinguishable and are
11 produced from the same Basin, and the extraction of the water presents the same physical burden
12 or impact on the Basin. (Jones Suppl. Decl., ¶¶ 21-22.) This includes potential impacts to the Safe
13 Yield of the Chino Basin, water quality in the Basin, and the parties to the Chino Basin Judgment
14 who rely on these groundwater resources. Watermaster and Opposing Parties’ arguments that call
15 into question the physical nature of the water are a red herring, and do not justify their proposed
16 exemption of the produced water from all assessments including DRO.

17 **2. The water is subject to DRO assessments and the physical nature of the**
18 **water does not change that result.**

19 Watermaster and Opposing Parties argue that there is a difference in the physical molecules
20 in the extracted water to buttress its contention that some of the produced water by Fontana and
21 CVWD must continue to be treated as supplemental water under the DYY Program in order to
22 allow Fontana and CVWD to avoid their share of DRO assessments. This is contrary to the directive
23 in the Opinion and, as set forth above, there is no difference in the physical nature of the water that
24 would support this result.⁸

25 _____
26 ⁸ It also is notable that each Local Agency Agreement, including CVWD’s Local Agency
27 Agreement, contains an exhibit specifying each agency’s facilities to be used toward operation of
28 the DYY Program. (Jones Suppl. Decl., ¶ 6.) Ontario is unaware of any evidence in the record to
suggest that CVWD’s designated DYY Program production wells are separate and distinct from
CVWD’s groundwater production wells. The Local Agency Agreements also designate the
maximum amount of DYY production allowed. (Jones Suppl. Decl., ¶¶ 6-10.) For its part, Fontana

1 The absurdity of Watermaster and the Opposing Parties’ position is amplified by the fact
2 that Watermaster *accounts for the same water extractions differently within the same assessment*
3 *package*. As described in the briefing on the underlying motion, the CAA Assessment Packages
4 contain production assessments (see Declaration of Todd M. Corbin, filed Apr. 1, 2026, Ex. A
5 at 89, 177 [Water Production Summary]), and assessments relating to the DRO (see *id.*, Ex. A at 99,
6 187 [Remaining Desalter Replenishment Obligation (DRO)]). Using the FY 2021/2022 CAA
7 Assessment Package as an example, as to the production assessments, the CAA Package zeroes out
8 the 2,500 AF of Fontana’s previously claimed DYY production and includes that 2,500 AF as part
9 of Fontana’s full 13,565.3 AF of assessable groundwater production. (*Id.*, Ex. A at 89, cols. 10G &
10 10K.) However, in calculating Fontana’s share of the DRO assessments, the CAA Package *treats*
11 *and categorizes the same water differently* and gives Fontana full credit for the production of the
12 same 2,500 AF (categorizing it as a “Storage and Recovery Adjustment,” column 20G) to “account
13 for the withdrawal of water absent a (DYY) Local Agency Agreement” (see *id.*, Ex. A at 99,
14 Note 2). Watermaster then excludes this 2,500 AF of “Storage and Recovery” water from Fontana’s
15 adjusted physical production (*id.*, col. 20H). This reduces the amount of Fontana’s DRO assessment
16 by the amount of Fontana’s claimed DYY production⁹. Watermaster cannot argue with a straight
17 face that this 2,500 AF of extracted water is assessable groundwater production on one page of the
18 CAA Assessment Package and then call the same 2,500 AF of water “Storage and Recovery” water
19 on another. It is the same water. If Watermaster and Opposing Parties truly believe that “native
20 groundwater” is physically distinct from “stored” or “imported” water, then the same 2,500 AF of
21 water produced by Fontana cannot be both “native” groundwater and “stored” groundwater at the
22 same time – especially within the same assessment package.¹⁰ Watermaster uses a similar legal
23 fiction to exempt CVWD from DRO assessments.

24 _____
25 does not have a Local Agency Agreement and, therefore, has no wells that are authorized or
26 designated to produce DYY Program water. (Jones Suppl. Decl., ¶ 11; see also, RJN, Ex. 1.)

26 ⁹ The role of a party’s production of water in the calculation of DRO assessments is described in
27 the Declaration of Courtney Jones. (Jones Suppl. Decl., ¶¶ 25-27.)

27 ¹⁰ As previously briefed at length, there also is no authority in the original DYY Program
28 agreements, the Judgment, prior DYY court orders, or the Opinion that allows Fontana – a party
without a Local Agency Agreement – to participate in and claim a financial benefit from the DYY
Program.

1 More broadly, the DRO is part of the Peace I and Peace II Agreements, a broad set of
2 negotiated terms agreed to in the collective for purposes of implementing the Optimum Basin
3 Management Program. How the DRO is administered is well documented through historical
4 practice, and it is well beyond the scope of this case. All production by Appropriative Pool parties
5 has been subject to the DRO assessments.¹¹ Indeed, the use of each party’s production as part of
6 this calculation is explicit on page 20.1 of the assessment packages (RDRO) which includes column
7 20B listing each party’s “Physical Production” for the purpose of “Calculating the Adjusted
8 Physical Production” for purposes of DRO assessments. (RJN, Ex. 11 at p. 20.1.) This court should
9 reject Watermaster and Opposing Parties’ invitation to re-open the DRO terms and agreements. It
10 is far beyond the scope of these proceedings and is irrelevant to the task at hand.

11 **III. CONCLUSION**

12 In 2021, Ontario asked Watermaster to explain the basis for exempting water produced from
13 the DYY Program from “the Watermaster assessment and the Desalter Replenishment Obligation
14 (DRO) assessment.” (RJN, Ex. 12 at Attachment 1.) This was Watermaster’s response: “Should
15 any of the transactions in the Assessment Package warrant a change . . . Watermaster has the ability
16 to revise a prior approved Assessment Package and has in fact done that on several occasions.” (*Id.*
17 at p. 5.) There was absolutely no suggestion by Watermaster that to revise the Assessment Package
18 the physical attributes of the water would have to be re-examined first, or that a correction to the
19 Watermaster and DRO assessments would require the initiation of a debate about the administration
20 of the DRO and what water is subject to DRO assessments.

21 As it pertains to the correction and calculation of each party’s FY 2021/2022 and FY
22 2022/2023 assessments, this is now – and always has been – an accounting exercise. Watermaster
23 is under court orders, both from the Court of Appeal and this Court, to correct and amend the
24 assessment packages consistent “with the original DYY Program agreements, the Judgment, and
25 prior court orders.” (Op. at 39; Ruling, Ex. A.) The CAA Packages presented by Watermaster to


26
27 ¹¹ The 2019 Appropriative Pool Pooling Plan Amendment does not change this result and does not
28 apply. The 2019 Letter Agreement relied upon by Watermaster and Opposing Parties was not
“approved,” and the voluntary production still claimed by Fontana and CVWD is outside of the
original and approved DYY Program orders and agreements.

1 the Court should be rejected for failing to comply with the Court's order, and Watermaster should
2 be ordered to further revise the Assessment Packages as directed.

3 Dated: July 10, 2026

STOEL RIVES LLP

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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 July 10, 2026, I served the following:

1. CITY OF ONTARIO'S SUPPLEMENTAL BRIEF IN SUPPORT OF OPPOSITION TO WATERMASTER'S MOTION FOR COURT APPROVAL OF CORRECTED AND AMENDED FISCAL YEARS 2021/22 AND 2022/23 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 July 10, 2026, in Rancho Cucamonga, California.



By: Ruby Favela Quintero
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