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COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

Case No. RCVRS 51010

[Assigned for All Purposes to the Honorable
STANFORD E. REICHERT]

**CITY OF FONTANA'S
SUPPLEMENTAL MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO REVISE
SECTION 5 OF THE 2013 RECHARGE
MASTER PLAN UPDATE AND
RESTATED JUDGMENT**

Date: December 13, 2013
Time: 1:30 p.m.
Dept.: R6

SOMACH SIMMONS & DUNN
A Professional Corporation

I. INTRODUCTION

Pursuant to this Court's order of October 3, 2013, the City of Fontana ("Fontana" or "City") submits this supplemental memorandum of points and authorities. This supplemental brief will correct minor factual errors in the City of Fontana's Memorandum of Points and Authorities in Support of Motion to Revise Section 5 of the 2013 Recharge Master Plan Update and Restated Judgment, filed with this Court on September 25, 2013 (hereafter, "Original P&A"), and then invite Watermaster and other interested parties to accept the offer from Judge Reichert at the October 2, 2013 hearing to engage in mediation of the issues raised in this motion.

II. SUPPLEMENTAL ISSUES

A. Factual Corrections

1. Water Rates

The "2013 Customer Water Costs Comparison" that was presented as Exhibit D to the Declaration of Charles Hays in Support of the City of Fontana's Motion to Revise Section 5 of the 2013 Recharge Master Plan Update and Restated Judgment ("Hays Decl.") contains minor errors on three of the regional water rates. (Declaration of Charles Hays in Support of City of Fontana's Supplemental Memorandum of Points and Authorities ("Supplemental Hays Decl."), ¶ 2.) The Fontana Water Company (FWC) rates were erroneously reported as currently being \$64.56 per month for a standard quantity of 19.61 hundred cubic-feet of water, and going up to \$73.71 on June 30, 2014. (Supplemental Hays Decl., ¶ 3.) In fact, those rates are currently \$62.81, and going up to \$71.97 on June 30, 2014. (*Id.* at ¶ 4.) East Valley Water District's rates, for the standard quantity of 19.61 hundred cubic-feet of water, were erroneously reported as costing \$48.42, but are actually \$52.62. (*Id.* at ¶ 5.) A corrected comparison of the regional water rates is attached at Exhibit A to the Supplemental Hays Decl. These minor adjustments in no way change the fact that the FWC rates are among the highest in the region. (*Id.* at ¶ 6; Exhibit A to Supplemental Hays Decl.)

2. Fontana's Funding for Stormwater Recharge Projects

On page 5, lines 3-4 of Fontana's Original P&A, it erroneously states that "Fontana has secured approximately \$25 million in various funding sources for the purposes of implementing

1 stormwater recharge projects.” In fact, the figure is \$14.5 million, not \$25 million.
2 (Supplemental Hays Decl., ¶ 7.) This adjustment does not change the fact that Fontana has
3 secured significant funding to pursue beneficial stormwater recharge projects.

4 **B. Watermaster and Other Interested Parties Should Join Fontana in Accepting the**
5 **Court’s Offer to Mediate the Issues Raised in Fontana’s Motion**

6 On October 2, 2013, the Court held a hearing on Watermaster’s ex parte motion to
7 continue the hearing for the instant motion until December 13, 2013, so that oral argument for
8 this motion could occur at the same time as argument on Watermaster’s motion to adopt the 2013
9 Recharge Master Plan Update in its entirety. During the October 2, 2013 hearing, this Court
10 offered to mediate the issues raised in Fontana’s motion. Counsel for Fontana accepted the
11 Court’s offer. Counsel for the Watermaster and Monte Vista Water District declined the offer.

12 Fontana urges Watermaster and other interested parties to accept the Court’s offer for
13 mediation, and express this position in writing to the Court. Mediation will allow the parties to
14 honestly discuss the issues associated with the instant motion, and receive feedback from the
15 Court on the likely outcome of a litigated resolution. The process may result in a mutually
16 beneficial resolution. At the very least, this process will allow the parties exhaust all avenues
17 before litigation proceeds.

18 **III. CONCLUSION**

19 For the reasons set forth herein and in Fontana’s Original P&A, Fontana respectfully
20 requests that the Court issue an order granting the relief set forth in Fontana’s Original P&A. In
21 the alternative, Fontana requests that Watermaster and other interested parties express their
22 interest in mediation by the Court, and that the Court order such mediation.

23 SOMACH SIMMONS & DUNN

24
25 Dated: October 22, 2013

26 By: 

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Attorneys for CITY OF FONTANA

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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA

11
12 CHINO BASIN MUNICIPAL WATER
DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendant.
17

Case No. RCVRS 51010

[Assigned for All Purposes to the Honorable
STANFORD E. REICHERT]

**DECLARATION OF CHARLES HAYS
IN SUPPORT OF CITY OF
FONTANA'S SUPPLEMENTAL
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: December 13, 2013
Time: 1:30 p.m.
Dept.: R6

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21 I, Charles Hays, declare:

22 1. I am the Public Works Director for the City of Fontana ("Fontana" or "City"). I
23 have held that position since 2007. Between 2002 and 2007 I held various other positions with
24 Fontana, including Deputy Director of Public Works. Between 1985 and 2002 I worked for the
25 City of Rialto in various positions, including as a Public Works Supervisor and in technician
26 positions.

27 In my position as Public Works Director for Fontana, I currently oversee all public works
28 operations for the City, with a full time staff of 93 personnel. The Public Works Department is

1 comprised of three different divisions: Operations, Support Services, and Parks and Landscape.
2 Each division is made up of a Division Manager, two Supervisors, and approximately 28 field
3 staff personnel. The Operations Division is responsible for all City-owned utilities, routine street
4 maintenance, and roadside debris removal. The Support Services Division is responsible for all
5 City-owned facilities, the City's fleet inventory, and the Environmental Control workgroup. The
6 Parks and Landscape Division is responsible for the maintenance of 40 City-owned parks and all
7 of the Community Facilities Districts and Landscape Maintenance Districts within the City limits.

8 In my role as Public Works Director for Fontana, I have become very familiar with Chino
9 Basin matters.

10 The following matters are within my personal knowledge, and if called as a witness, I
11 could competently testify to these facts.

12 2. The "2013 Customer Water Costs Comparison" that was presented as Exhibit D to
13 the Declaration of Charles Hays in Support of the City of Fontana's Motion to Revise Section 5
14 of the 2013 Recharge Master Plan Update and Restated Judgment contains minor errors on three
15 of the regional water rates.

16 3. The Fontana Water Company (FWC) rates were erroneously reported as currently
17 being \$64.56 per month for a standard quantity of 19.61 hundred cubic-feet of water, and going
18 up to \$73.71 on June 30, 2014.

19 4. In fact, those rates are currently \$62.81, and going up to \$71.97 on June 30, 2014.

20 5. East Valley Water District's rates, for the standard quantity of 19.61 hundred
21 cubic-feet of water, were erroneously reported as costing \$48.42, but are actually \$52.62.

22 6. A corrected comparison of the regional rates is attached as Exhibit A to this
23 declaration, and was prepared by TKE Engineering, in consultation with Fontana staff, including
24 myself. These minor adjustments in no way change the fact that the FWC rates are among the
25 highest in the region.

26 7. On page 5, lines 3-4 of the City of Fontana's Memorandum of Points and
27 Authorities in Support of Motion to Revise Section 5 of the 2013 Recharge Master Plan Update
28 and Restated Judgment, it erroneously states that "Fontana has secured approximately \$25 million

1 in various funding sources for the purposes of implementing stormwater recharge projects." In
2 fact, the figure is \$14.5 million, not \$25 million.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed this 22nd day of October 2013, at Fontana, California.

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7 Charles Hays
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EXHIBIT A

2013 Customer Water Costs Comparison

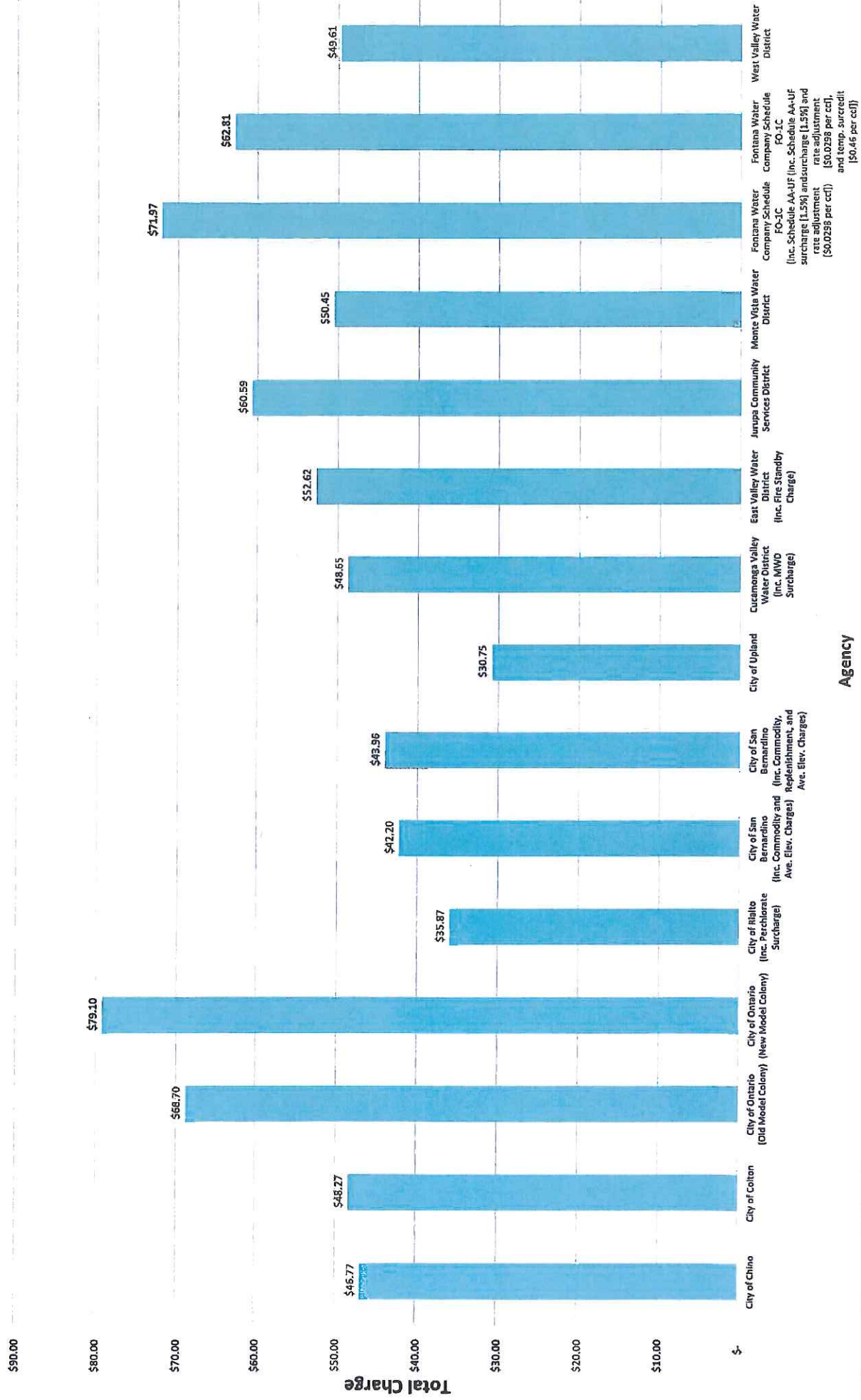
Average Estimated Water Sales to
Residential-Single Family Customer Class: 19.61 Hundred Cubic-Feet

Agency	Tier 1 (1')			Tier 2 (2')			Consumption Change	3/4" Meter		Percent Increase ^{2.)}
	Unit	Rate	Tier 1 Sub Total	Unit	Rate	Tier 2 Sub Total		Service Charge ^{1.)}	Total Charge	
City of Chino	19.61	\$ 1.2900	\$ 25.30	0.00	\$ -	\$ -	\$ 25.30	\$ 21.47	\$ 46.77	54%
City of Colton	19.61	\$ 1.6100	\$ 31.57	0.00	\$ -	\$ -	\$ 31.57	\$ 16.70	\$ 48.27	49%
City of Ontario (Old Model Colony)	15.00	\$ 2.2500	\$ 33.75	4.61	\$ 2.8300	\$ 13.05	\$ 46.80	\$ 21.90	\$ 68.70	5%
City of Ontario (New Model Colony)	15.00	\$ 2.8300	\$ 42.45	4.61	\$ 3.2000	\$ 14.75	\$ 57.20	\$ 21.90	\$ 79.10	-9%
City of Rialto (Inc. Perchlorate Surcharge)	5.00	\$ 0.5540	\$ 2.77	14.61	\$ 0.8730	\$ 12.75	\$ 15.52	\$ 20.35	\$ 35.87	101%
City of San Bernardino (Inc. Commodity and Ave. Elev. Charges)	19.61	\$ 1.3283	\$ 26.05	0.00	\$ -	\$ -	\$ 26.05	\$ 16.15	\$ 42.20	71%
City of San Bernardino (Inc. Commodity, Replenishment, and Ave. Elev. Charges)	19.61	\$ 1.4183	\$ 27.81	0.00	\$ -	\$ -	\$ 27.81	\$ 16.15	\$ 43.96	64%
City of Upland	19.61	\$ 1.1600	\$ 22.75	0.00	\$ -	\$ -	\$ 22.75	\$ 8.00	\$ 30.75	134%
Cucamonga Valley Water District (Inc. MWD Surcharge)	10.00	\$ 1.6500	\$ 16.50	9.61	\$ 1.9400	\$ 18.64	\$ 35.14	\$ 13.51	\$ 48.65	48%
East Valley Water District (Inc. Fire Standby Charge)	19.61	\$ 1.7700	\$ 34.71	0.00	\$ -	\$ -	\$ 34.71	\$ 17.91	\$ 52.62	37%
Jurupa Community Services District	19.61	\$ 1.3000	\$ 25.49	0.00	\$ -	\$ -	\$ 25.49	\$ 35.10	\$ 60.59	19%
Monte Vista Water District	10.57	\$ 1.7040	\$ 18.01	9.04	\$ 2.0430	\$ 18.47	\$ 36.48	\$ 13.97	\$ 50.45	43%
Fontana Water Company Schedule FO-1C (Inc. Schedule AA-UF surcharge [1.5%] and rate adjustment [\$0.0298 per ccf])	16.00	\$ 2.3657	\$ 37.85	3.61	\$ 2.7160	\$ 9.80	\$ 47.66	\$ 23.25	\$ 71.97	0%
Fontana Water Company Schedule FO-1C (Inc. Schedule AA-UF surcharge [1.5%] and rate adjustment [\$0.0298 per ccf] and temp. surcredit [\$0.46 per ccf])	16.00	\$ 1.9057	\$ 30.49	3.61	\$ 2.2560	\$ 8.14	\$ 38.64	\$ 23.25	\$ 62.81	15%
West Valley Water District	10.00	\$ 1.6000	\$ 16.00	9.61	\$ 1.7500	\$ 16.82	\$ 32.82	\$ 16.79	\$ 49.61	45%

NOTES:

- 1.) Agency data taken from rate schedules posted on respective Agency website.
- 2.) Percent Increase = (FWC Total Charge)/(Other Agency Total Charge)-1

Customer Water Costs Comparison



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Case No. RCVRS 51010

[Assigned for All Purposes to the Honorable
STANFORD E. REICHERT]

**PROOF OF DELIVERY TO
WATERMASTER**

Date: December 13, 2013
Time: 1:30 p.m.
Dept.: R6

PROOF OF DELIVERY TO WATERMASTER

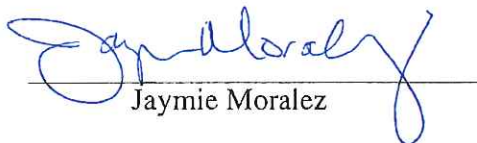
I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California 95814. I am over the age of 18 years and not a party to the foregoing action.

On October 23, 2013, pursuant to the Court's instructions, I submitted the following documents to Janine Wilson, Watermaster in this matter, in an email addressed to JWilson@cbwm.org:

1. **CITY OF FONTANA'S SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO REVISE SECTION 5 OF THE 2013 RECHARGE MASTER PLAN UPDATE AND RESTATED JUDGMENT**
2. **DECLARATION OF CHARLES HAYS IN SUPPORT OF CITY OF FONTANA'S SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES**

The Watermaster has agreed to file the above-referenced pleadings with the Court, and serve said pleadings on all pertinent parties.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on October 23, 2013, at Sacramento, California.


Jaymie Moralez

CHINO BASIN WATERMASTER
Case No. RCV 51010
Chino Basin Municipal Water District v. The City of Chino

PROOF OF SERVICE

I declare that:

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

On October 23, 2013 I served the following:

1. **CITY OF FONTANA'S SUPPLEMENTAL MEMORANDUM OF POINT AND AUTHORITIES IN SUPPORT OF MOTION TO REVISE SECTION 5 OF THE 2013 RECHARGE MASTER PLAN UPDATE AND RESTATED JUDGMENT**
2. **DECLARATION OF CHARLES HAYS IN SUPPORT OF CITY OF FONTANA'S SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES**
3. **PROOF OF DELIVERY TO WATERMASTER**

/ X / BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:

See attached service list: 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.

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

Executed on October 23, 2013 in Rancho Cucamonga, California.



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Chino Basin Watermaster

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