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EXEMPT FROM FILING FEES UNDER GOVERNMENT CODE § 6103

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.: RCVRS 51010

Assigned to the Honorable Stanford E. Reichert

FONTANA WATER COMPANY'S AND CUCAMONGA VALLEY WATER DISTRICT'S OPPOSITION TO CITY OF ONTARIO'S APPLICATION FOR AN ORDER TO EXTEND TIME UNDER JUDGMENT, PARAGRAPH 31(c) TO CHALLENGE WATERMASTER ACTION/ DECISION ON NOVEMBER 18, 2021 TO APPROVE THE FY 2021/2022 ASSESSMENT PACKAGE

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

Filed currently herewith:

- Memorandum of Points & Authorities in Opposition
- Declaration of Josh Swift;
- Declaration of Eduardo Espinoza
- [Proposed] Order.

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Fontana Water Company (FWC) and Cucamonga Valley Water District (CVWD), each of which is a defendant under the Chino Basin Judgment and a member of the Appropriative Pool, oppose both: (1) the City of Ontario's ("Ontario") application for an order to extend time to challenge the Watermaster's Fiscal Year 2021/2022 Assessment Package; and (2) the merits of Ontario's challenge to the Assessment Package.

SUMMARY OF ARGUMENT

FWC and CVWD are among the primary targets of the Ontario filing. Court approval of Ontario's application on the merits would cost FWC and CVWD millions of dollars in back-charged assessments based upon their legitimate past decisions to pump water under the Dry Year Yield Program (DYYP), cause significant financial and other impacts to virtually all appropriators in past, current and future years, and create a chilling effect on participation in the DYYP by FWC and CVWD, if not all appropriators, going forward. FWC and CVWD ask this Court resolve the merits expeditiously.

An extension of time is both unwarranted and harmful to FWC and CVWD and their ongoing operations. Ontario first raised its concerns about the Assessment Package in writing no later than November 1, 2021. Accordingly, Ontario had at least three and one-half months to prepare a full motion to challenge the package. However, Ontario chose not to prepare a motion, but instead filed its last-minute application for an extension of the deadline.

FWC and CVWD dispute Ontario's characterization that settlement negotiations among the parties directly involved in this matter are ongoing and warrant an extension of time. While Agency and Ontario representatives did meet twice in January 2022 regarding DYYP issues, no further settlement meetings have occurred since that time. Based upon a unilateral term sheet shared by Ontario during a January 24, 2022 meeting, FWC and CVWD do not believe settlement is possible. Moreover, there will be continued prejudice to FWC and CVWD if the matter is not decided promptly by this Court because the outcome of the application *will* impact past and future assessment amounts in the millions of dollars payable by FWC and CVWD and *will* affect ongoing operational decisions each Agency is taking in FY 21/22. Indeed, FWC and CVWD would each immediately cease all involvement in the DYYP if the merits of Ontario's application are upheld.

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The substance of the application also lacks merit. Ontario's admitted primary concern with the DYYP is with the process followed by the Chino Basin Watermaster in approving a 2019 Letter Agreement among the Watermaster, Inland Empire Utilities Agency (IEUA), Metropolitan Water District of Southern California (MWD), and Three Valleys Municipal Water District ("Three Valleys") addressing changes to aspects of the program. However, Ontario failed to timely challenge that 2019 approval within 90 days, as required by Paragraph 31(c) of the Judgment. As a result, Watermaster's approval of the 2019 Agreement was and remains legally valid. Ontario is now precluded by the terms of the Judgment and laches from trying to bring a late-arriving challenge to that agreement via the instant application.

Furthermore, FWC and CVWD have justifiably relied upon the Watermaster's approval of the 2019 Letter Agreement in conducting their respective operations since the beginning of Production Year ("PY") 19/20. Each agency would have purchased available imported surface water in lieu of producing water stored in MWD's Chino Basin storage account under the DYYP had the 2019 Agreement not been approved. Any Ontario assertion to the contrary would be both false and inadmissible for lack of knowledge of the intent of FWC and CVWD.

Ontario's application also entirely disregards the legal character of the imported water stored in MWD's account. Under long-standing California law, when an entity stores imported water in available storage space in a groundwater basin, the importer or its designee has the right to recapture the imported water without diminishment from the basin. (*Los Angeles v. Glendale* (1943) 23 Cal.2d 68, 76-77; *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, 260, 261, 264.) In keeping with this black letter law, the Judgment provides for Watermaster administration of Storage Accounts for imported water and explicitly recognizes in its definition of Safe Yield and other provisions that imported and native water are to be accounted for and treated separately.

Consistent with this separate treatment of native and stored imported water, over the more than ten years that DYYP water has been made available, withdrawals of Stored Water from the MWD Storage Account by local "Operating Parties" have *never* been subject to regular Watermaster assessments. Instead, the administrative and other costs to Watermaster associated with the administration of DYYP water are offset by way of the express payment obligations described in the

DYYP agreements, not through production assessments. And, Ontario has previously approved of this methodology for DYYP pumped water by approving prior year assessment packages. FWC and CVWD have paid, and continue to pay, in full their financial obligations to MWD and the Watermaster under the DYYP agreements for withdrawal of water from the MWD storage account. And, FWC and CVWD cannot be compelled to pay both DYYP obligations and Watermaster assessment charges for pumping the same water.

For all these reasons, as well as those discussed below and in the Watermaster's opposition brief, Ontario's application should be denied.

STATEMENT OF FACTS

The following is a summary of the significant facts leading up to Ontario's application. A more detailed statement of these facts is set forth in the Watermaster opposition and supported by the accompanying declarations.

Under the Dry Year Yield Program, MWD stores imported water in the Chino Basin, which is later withdrawn by Operating Parties, which are participating member agencies of the two wholesale agencies, IEUA and Three Valleys. The original purpose of the DYYP was to allow MWD, in times of emergency or drought, to require the Operating Parties to purchase and use imported water withdrawn from storage instead of purchasing imported surface water from MWD directly. (Declaration of Eduardo Espinoza, filed concurrently ("Espinoza Decl."), ¶¶ 4-5.)

In 2017, in response to heavy rainfall in the region, MWD requested to store more imported water in the Basin than permitted under the existing DYYP agreements. The Watermaster and parties agreed, but the Operating Parties expressed concern over their ability to withdraw this extra water when called to do so. At the same time, MWD expressed concern over the fate of any stored imported water that was still in the Basin when the DYYP expired in 2028. (*Id.* at ¶ 5.)

In 2018, discussions began over an early withdrawal provision to partly resolve these concerns. In Pool meetings and in the Watermaster Board meeting in September 2018, the Watermaster General Manager informed the Judgment parties that the Watermaster intended to sign a letter agreement allowing the Operating Parties to purchase and withdraw imported water from storage at any time, rather than just in response to a call by MWD. Neither Ontario nor any other Judgment party expressed any

opposition to the substance of the agreement, nor to the procedure of using a letter agreement to document it. No party expressed any concerns over the authority of the Watermaster General Manager to sign the letter agreement. No party called for formal approval of the agreement by the Watermaster Board of Directors. (*Id.* at ¶ 6.)

In 2019, the letter agreement was signed. (*Id.* at ¶ 6, Exh. B, (letter agreement, dated February 5, 2019).) The letter documents the effort of the parties to maximize storage during the wet period, and the new procedure for voluntary withdrawals of imported water from storage by the Operating Parties. It left unchanged the provisions for required withdrawals in response to a call from MWD. No party objected to or challenged the implementation of the letter agreement terms in FY 20/21.

After the letter agreement was signed, IEUA offered its member agencies, including Ontario, the opportunity to purchase and withdraw imported water from storage on a voluntary basis. Ontario did not avail itself of this opportunity, but FWC and CVWD did. Each of these agencies has purchased and withdrawn imported water from storage in the 19/20 and 20/21 production years, and are still doing so. (Declaration of Josh Swift ("Swift Decl."), ¶ 2; Espinoza Decl., ¶ 7.) By long Watermaster practice, as explained further below, Watermaster has never imposed assessments on withdrawal of imported water from storage. (Espinoza Decl., ¶ 10.) Accordingly, the FY 21/22 assessment package approved by the Watermaster parties in November 2021 does not contain any such assessments. It is this assessment package that Ontario challenges in the instant application.

ARGUMENT

I. Ontario's Request for an Extension of Time Should be Denied

Ontario's application for an extension of time to file a motion should be denied. Ontario raised written concerns about the draft FY 21/22 Assessment Package in a comment letter to the Watermaster dated November 1, 2021, which was more than three and half months before the due date for its motion. (See Declaration of Christopher Quach accompanying Ontario Application ("Quach Decl."), Exh. A.) Ontario also submitted a second comment letter to Watermaster dated January 24, 2022 providing more detail about its concerns. (Quach Decl., Exh. B.) Ontario could have used these letters as a basis to prepare a proper motion during the 90 days following the Watermaster's approval of the FY 21/22

Assessment Package on November 18, 2021. Accordingly, Ontario had ample time to prepare a "fully developed motion" to challenge the Assessment Package by mid-February 2022, but failed to do so.

Ontario asks that its filing deadline be extended in order to allow for settlement negotiations to continue. FWC and CVWD dispute Ontario's characterization (Application, 4:15) that settlement negotiations among FWC, CVWD and Ontario are ongoing. (Swift Decl., ¶ 8; Espinoza Decl., ¶ 14.) While FWC and CVWD did meet with Ontario representatives twice in January 2022 regarding DYYP issues, no further three-party settlement meetings have occurred since that time. (Swift Decl., ¶ 8; Espinoza Decl., ¶ 14.) Based upon a unilateral term sheet shared by Ontario during the January 24, 2022 meeting, FWC and CVWD do not believe settlement is possible, particularly insofar as Ontario's proposal seeks assurances and representations regarding DYYP administration from parties other than FWC and CVWD. (Swift Decl., ¶ 8; Espinoza Decl., ¶ 14.)

Moreover, there will be continued prejudice to FWC and CVWD if the DYYP matter is not resolved promptly by this Court because the outcome of the application will impact past and future assessment amounts payable by each of the agencies, and ongoing operational decisions they each make in PY 21/22. (Swift Decl., ¶¶ 4-5; Espinoza Decl., ¶ 13.) If, for example, the Court determines that pumping under the DYYP is assessable as regular production, FWC and CVWD would each eliminate DYYP pumping going forward and likely stop all participation in the DYYP until program uncertainty is resolved. (Swift Decl., ¶ 6; Espinoza Decl., ¶ 12.) Delays in a Court ruling will thus have significant impacts on Agency operational and financial decisions for the remainder of PY 21/22 and going forward. These impacts are in addition to impacts that would occur were the Court to grant Ontario's application on the merits, as discussed below. A decision on the merits of the issues should be promptly issued.

II. Ontario's Challenge to the 2019 Letter Agreement Should be Rejected as Untimely

Ontario's application, while stated as a challenge to the FY 21/22 Watermaster Assessment Package, is in reality a challenge to the 2019 Letter Agreement that amended the DYYP, on which the Assessment Package is based. Because Ontario did not timely contest the Watermaster's approval of that amendment in 2019 within the 90-day period set forth in Judgment, Paragraph 31(c), it cannot do so now retrospectively by way of a challenge to the Assessment Package.

Ontario has repeatedly acknowledged that its concerns about the FY 21/22 Watermaster Assessment Package arise primarily, if not exclusively, from the Watermaster approval of the 2019 Letter Agreement. (Ontario stated: "Ontario's concerns remain foundationally in the execution of the 2019 Letter Agreement, how it fundamentally changed the recovery aspect of the DYYP, how it is not consistent with the 2004 Court-approved agreements, and that it did not go through the formal Watermaster approval process similar to other material DYYP amendments.") Quach Decl., Exh. B, (January 24, 2022 letter from Courtney Jones, Ontario, to Peter Kavounas, Chino Basin Watermaster, p. 2).)

Even though the Watermaster and its staff undertook an extensive process before the General Manager executed the 2019 Letter Agreement, Ontario did not timely challenge that approval. (Espinoza Decl., ¶ 6; Judgment, ¶ 31(c).) Therefore, the limitations period has run and Ontario's claims are also barred by laches. (*Pacific Hills Homeowners Ass'n v. Prun* (2008) 160 Cal.App.4th 1557, 1564-1565 [defense of laches requires unreasonable delay by plaintiff, plus either acquiescence by plaintiff in the act complained of or prejudice to defendant caused by the lapse of time].)

Accordingly, the 2019 Letter Agreement and the DYYP remain valid. Under basic agency concepts, FWC and CVWD were entitled to rely, and did rely in good faith, upon the Watermaster General Manager's action in entering into the Letter Agreement. Under the Civil Code, agents have the authority to do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of their agency. (Civ. Code, § 2319.) The agent has this authority unless specially deprived of it by the principal, and even then has the authority ostensibly, except as to persons who have actual or constructive notice of the restriction on the agent's authority. (Civ. Code, § 2318.) Here, the Watermaster Board took no action to limit the authority of the General Manager to enter into the Letter Agreement in the ordinary course of business. Also, an instrument within the scope of an agent's authority by which an agent intends to bind the principal, does so if, as here, the intent is plainly inferable from the instrument itself. (Civ. Code, § 2337.)

Finally, if a person has incurred liability or parted with value on good faith belief of actual or ostensible authority, the principal is bound by the agency's acts. (Civ. Code, § 2334.) Here, FWC and CVWD parted with money in purchasing and withdrawing imported water from storage under the

DYYP, in the good faith belief that the letter agreement is valid. Therefore, the Watermaster is bound by the letter agreement as if the Board formally authorized it. And, because the 2019 Letter Agreement is binding on DYYP participants, any assessments based on the terms of that agreement are also valid.

III. The Watermaster Correctly Excluded DYY Pumping from the FY 21/22 Assessment Package Calculations

The Application's assertion that the Watermaster improperly excluded removal of Stored Water from regular production assessments is without merit. California law, the language of the Judgment and the DYYP agreements, and the unchallenged course of conduct of the Watermaster since the beginning of the DYYP all support treating the take of stored, imported water as non-assessable.

A. Watermaster's Refusal to Assess Stored Water Withdrawal is Consistent with California Law

Under California law, groundwater storage space is a public resource. (*Los Angeles v. Glendale* (1943) 23 Cal.2d 68, 76-77; accord *Central and West Basin Water Replenishment District* (2003) 109 Cal.App.4th 891, 896.) An entity that imports water into a basin has the right to subsurface storage of that imported water, as well as the right to recapture the imported water without diminishment. (*Glendale*, 23 Cal.2d at 76-77; *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, 260, 261, 264 ["[O]nly deliveries derived from imported water add to the ground supply"; the importer is to be credited with "the fruits of his expenditures and endeavors in bringing into the basin water that would not otherwise be there."].)

Consistent with the above-described black letter law, the Chino Basin Judgment expressly allows parties and non-parties to utilize available groundwater storage capacity and to withdraw Stored Water, subject to written agreement with the Watermaster. (Judgment, ¶ 12.) And, as described below, costs to the Watermaster associated with administration of the DYYP and take of Stored Water are paid by MWD and the local Operating Party under the terms of the DYYP agreements. As a result, there is no need, nor would it be proper in this instance, for the Watermaster to impose regular production assessments on the removal of Stored Water.

B. The Judgment Treats Native and Stored Water Differently

The Judgment carefully distinguishes between the native groundwater supply of the Chino Basin, on one hand, and stored imported water, on the other. Stored Water is defined as "Supplemental Water held in storage, as a result of direct spreading, in lieu delivery, or otherwise, for subsequent withdrawal and use pursuant to agreement with Watermaster." (Judgment, ¶ 4(aa).) In turn, Supplemental Water "[i]ncludes both water imported to Chino Basin from outside Chino Basin Watershed, and reclaimed water". (Judgment, ¶ 4(bb).) In contrast, the Judgment terms "Basin Water"[1] and "Safe Yield"[2] focus on native water and expressly exclude Stored Water.

In a similar vein, the Judgment is also careful to distinguish between the *production* of native Chino Basin groundwater and the *withdrawal* (aka "take") of Stored Water. (Compare Judgment, ¶ 13 entitled "Injunction Against Unauthorized Production of Basin Water" with ¶ 14 entitled "Injunction Against Unauthorized Storage or Withdrawal of Stored Water").

C. Production of Native Groundwater is Subject to Production Assessments, but Withdrawal of Stored Water is Subject to the Payments Required by the DYYP Agreements

1. Production Assessments Apply to Native Groundwater

The Judgment directs the Watermaster to assess *production* based upon the pooling plans. (See Judgment, ¶ ¶ 51, 53].) The Appropriative Pool Pooling Plan establishes two different kinds of native water production assessments: administrative assessments and replenishment assessments. (Judgment, Exh. H, ¶¶ 6 and 7; see also Watermaster Rule 4.1.) Administrative assessments cover general Watermaster administrative expenses such as office, rental, personnel, supplies, office equipment and general overhead, as well as special project expenses. (Watermaster Rule 4.1(a).) The replenishment

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[1] "Basin Water –- Ground water within Chino Basin which is part of the Safe Yield, Operating Safe Yield, or replenishment water in the Basin as a result of operations under the Physical Solution decreed herein. Said term does not include Stored Water." (Judgment, ¶ 4(d) - emphasis added.)

[2] "Safe Yield –- The long-term average annual quantity of ground water (excluding replenishment or stored water but including return flow to the Basin from use of replenishment or stored water) which can be produced from the Basin under cultural conditions of a particular year without causing an undesirable result." (Judgment, ¶ 4(x) - emphasis added.)

obligation portion of the regular production assessment covers both overproduction by Appropriative Pool parties and their desalter replenishment obligation (DRO). (Watermaster Rule 4.7; Judgment, ¶ 45.)

2. Watermaster Cost Recovery for the DYYP Program is Established in the DYYP Agreements

In contrast to the above procedures applicable to pumping of Chino Basin native groundwater, administrative and other costs to the Watermaster associated with the DYYP are recovered by way of the payment terms in the 2003 DYYP Agreement among MWD, Watermaster, Three Valleys and IEUA.[3]

Under the DYYP Agreement, since 2004 MWD has paid an "administrative fee" of $132,000 (plus an annual inflation adjustment) per year to the Watermaster, which has increased to over $170,000 annually by 2021, "to cover the incremental costs and expenses of administering the Program during such year." (Espinoza Decl, Exh. A, 2003 DYYP Agreement, ¶ VI(D)(3).) In other words, MWD already pays for the administrative costs to the Watermaster of operating the DYYP, akin to the administrative assessments on groundwater production that AP members pay to produce native water. To impose further administrative charges via a production assessment on Chino Basin Operating Parties that withdraw MWD water from its Storage Account—an argument Ontario advances—would constitute a double administration charge on pumping of such water. And, the Judgment does not contemplate the imposition of replenishment assessments on withdrawals of Stored Water, which are not part of the Basin's Safe Yield. (See Judgment, ¶¶ 4(xx) and 45.)

The Ontario application mistakenly implies that withdrawal of Stored Water is conducted free of charge. (Quach Decl., Exh. B, p. 3.) To the contrary, the 2003 DYYP Agreement requires that the "then applicable [MWD] full-service rate" be paid for each acre foot of water called for and withdrawn from the MWD Storage Account by Operating Parties. In addition, DYYP water is factored into fixed MWD

[3] Without citation, Ontario asserts that "the Judgment requires virtually all production to be assessed in order to pay for Watermaster activities." (Quach Decl., Exh. B, p. 3.) As explained above, under the Judgment regular Watermaster assessments are imposed on the *production* of native water. The *withdrawal* or recovery of Stored Water is treated separately. Indeed, even the Ontario filing admits (albeit using incorrect Judgment terms) that "Watermaster has historically waived assessments . . . on water produced under the DYYP without objection." (*Id.*, p. 3.)

readiness to serve (RTS) fees paid by FWC and CVWD. (Espinoza Decl., ¶ 9, Exh. A (2003 DYYP Agreement, ¶ VIII(D).)) Together, this means that, in PY 21/22, entities like FWC and CVWD pay more than $799 per acre foot, plus a portion of RTS fees less an operational credit, to withdraw MWD Stored Water. (Espinoza Decl. ¶ 11) FWC and CVWD have always paid in full these MWD service rates amounts when withdrawing MWD Stored Water. (Swift Decl., ¶ 3; Espinoza Decl. ¶ 9). Any requirement for FWC and CVWD to pay the MWD full service rate, an RTS charge, and a Watermaster assessment for withdrawal of stored water would constitute an improper double charge.

D. The Watermaster's Proper, Unchallenged Course of Conduct Has Been to Exclude DYY Pumping from Production Assessments

Based upon the above, the Watermaster has *always* and correctly treated take of Stored Water from the MWD accounts by Operating Parties under the DYYP as non-assessable. Since inception of the DYYP in 2003, withdrawals of MWD stored imported water through pumping by local Operating Parties in the Chino Basin in lieu of purchasing imported surface water has never been subject to Watermaster assessments under the court-approved DYYP Agreements. ("The water that was taken from MWD's account by [FWC and CVWD] is considered a take from a Storage and Recovery account and as such, consistent with *ten* prior Assessment Packages, it is not subject to Watermaster assessments or DRO obligation.") Espinoza Decl. ¶ 10, Exh. C, Watermaster Staff Report, 1/27/22, p. 5).) Until recently, neither Ontario nor any other Chino Basin pumper has *ever* challenged that course of conduct by the Watermaster. (*Id.* ¶ 10.) To the contrary, in the first cycle of the DYYP, Ontario regularly conducted puts and takes of Stored Water under the DYYP without paying assessments on those volumes it pumped from the Basin.) Ontario has also voted in favor of assessment packages as recently as FY 20/21 under which DYYP withdrawals were not assessed. (*Id.* ¶ 10.) Ontario has unclean hands with respect to this issue and has waived its right to challenge the assessment fee structure with respect to recovering Stored Water under the DYYP. See *Mendoza v. Ruesga* (2008) 169 Cal. App. 4th 270, 278-279.

IV. FWC and CVWD Will Be Substantially Harmed If Assessed On Their Withdrawal Of Imported Water From Storage

FWC and CVWD will be significantly financially and operationally harmed if their past or ongoing withdrawals of Stored Water under the DYYP are made subject to production assessments. If the FY 21/22 Assessment Package were redone to unwind CVWD's participation in the DYYP, the total financial impact to CVWD would range from approximately $2.3 million to $8.5 million, depending on the prescribed remedy. (Espinoza Decl. ¶ 11.) FWC's cost would increase over $885,000. (Swift Decl. ¶ 4.) In addition, FWC and CVWD have already paid and continue to pay more than $762 per acre foot, less an operational credit, to MWD to withdraw this DYYP water. (Espinoza Decl. ¶ 9.) This amounts to millions of dollars paid by FWC and CVWD to MWD each fiscal year. If FWC and CVWD were compelled to also pay Watermaster assessments on DYYP water, they would incur significant undue harm. (Swift Decl., ¶ 4; Espinoza Decl. ¶ 11.) And, these extra charges would render the cost of producing each acre foot of water under the DYYP far more expensive that simply purchasing imported surface water from MWD or other available sources. (Espinoza Decl., ¶ 12.) As a result, there would be no financial reason for FWC and CVWD, or any other appropriator, to participate in the DYYP. Such an outcome would have a chilling effect on the entire program. (Swift Decl., ¶ 5; Espinoza Decl. ¶ 12.)

V. Even if the Court Considers the Substance of Ontario's Challenge to the 2019 Letter Agreement, those Arguments Should be Rejected

Ontario's fundamental substantive assertion appears to be that Watermaster's approval of the 2019 Letter Agreement constituted an unauthorized change to the DYYP that "is inconsistent with the storage agreement approved by Watermaster and ordered by this Court" and that "it did not go through the formal Watermaster approval process similar to DYYP Amendments." (Quach Decl., Exh. B, pp. 1-2.)

Although its arguments are difficult to discern because they are not made in the proper format in the legally required memorandum of points and authorities (see California Rule of Court 3.1113(a)), Ontario's convoluted reasoning seems to be that: (1) the Watermaster did not lawfully approve the 2019 Letter Agreement; (2) the Watermaster, IEUA, Three Valleys and MWD signed amendment to the DYYP is void; (3) therefore, no entity in the Basin could have lawfully pumped Stored Water under the

DYYP from PY 19/20 forward under the terms of the 2019 Agreement; (4) accordingly, all water pumped from the ground by FWC and CVWD during that period must have been native groundwater; and (5) as a result, all that pumping constituted native water production subject to regular Watermaster assessments.

Each of these assertions is wrong. Moreover, Ontario's chain of illogic falls if even one of these causal links is broken.

First, as explained above and in the Watermaster opposition, the Watermaster followed the proper process when approving the 2019 Letter Agreement.

Second, because that approval was not challenged within 90 days by Ontario or any other party, that agreement is valid.

Third, neither the Court, nor the four parties to the DYYP Agreements have suspended the program. Thus, the program remains in full effect, subject to the terms of the DYYP Agreement and amendments. And, even if the 2019 Letter Agreement had been adopted incorrectly—which it was not—the local Operating Parties have legally and justifiably relied upon its parameters and criteria from FP 19/20 to date.

Fourth, from PY 19/20 forward, much of FWC's and CVWD's groundwater pumping has taken the form of withdrawal of Stored Water from the MWD Storage Account. (Swift Decl., ¶ 2; Espinoza Decl. ¶ 11.) And, Ontario did not challenge the FY 19/20 or FY 20/21 Assessment packages within 90 days, as required by the Judgment. (Judgment, ¶ 31(c).) As a result, those earlier year packages are not subject to being redone at this late stage.

Finally, even if Ontario were correct in its first four assertions, each Operating Party has the right to decide the type of water it pumped from the Basin from PY 20/21 forward. In this case, FWC and CVWD each elected to pump MWD stored water from the DYYP. Contrary to the underpinnings of its filing, Ontario has no unilateral right to change the type or character of water FWC and CVWD pump from the Basin. That decision rests with FWC and CVWD.

And, FWC and CVWD would never have pumped DYYP Stored Water had such withdrawals been subject to regular Watermaster Assessments. (Swift Decl., ¶ 5; Espinoza Decl. ¶ 11.) Indeed, it would have been cost ineffective to do so. Rather, they would have each purchased imported surface

water directly from MWD or acquired other available supplies. Any Ontario assertion to the contrary would be false, speculative and inadmissible for lack of knowledge of the intent of FWC and CVWD. See Evid. Code, §§ 210, 350, 351, 702(a), 800, 801.

CONCLUSION

For the above reasons, FWC and CVWD ask that this Court deny Ontario's application in full.

Dated: March 25, 2022

LAGERLOF, LLP

By _____
Thomas S. Bunn III
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Dated: March 25, 2022

BEST BEST & KRIEGER

By /s/ Steve Anderson
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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 within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On March 25, 2022 I served the following:

1. FONTANA WATER COMPANY'S AND CUCAMONGA VALLEY WATER DISTRICT'S OPPOSITION TO CITY OF ONTARIO'S APPLICATION FOR AN ORDER TO EXTEND TIME UNDER JUDGMENT, PARAGRAPH 31(C) TO CHALLENGE WATERMASTER ACTION/DECISION ON NOVEMBER 18, 2021 TO APPROVE THE FY 2021/2022 ASSESSMENT PACKAGE

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

/___/ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/___/ BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

/ X / BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

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

Executed on March 25, 2022 in Rancho Cucamonga, California.

By: Ruby Favela
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