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**CHINO BASIN WATERMASTER**

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

11  
12 CHINO BASIN MUNICIPAL WATER  
DISTRICT,  
13  
14 Plaintiff,  
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16 v.  
17 CITY OF CHINO, et al.,  
18  
19 Defendants.  
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**Case No. RCV RS 51010**

[Assigned for All Purposes to the  
Hon. Stanford E. Reichert]

**WATERMASTER 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. IF SUCH  
REQUEST IS DENIED, THIS FILING  
IS THE CHALLENGE.**

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

*[Declaration of Peter Kavounas in Support  
of 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. If Such  
Request is Denied, This Filing is the  
Challenge filed concurrently herewith]*

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CBWM OPPOSITION TO ONTARIO APPLICATION FOR AN ORDER TO EXTEND TIME UNDER JUDGMENT TO CHALLENGE WATERMASTER ACTION ON NOVEMBER 18, 2021 TO APPROVE THE FY 2021/2022 ASSESSMENT PACKAGE. IF SUCH REQUEST IS DENIED, THIS FILING IS THE CHALLENGE.

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1 Chino Basin Watermaster ("Watermaster") hereby files this Opposition to the City of  
2 Ontario's Application for an Order to Extend Time Under Judgment, Paragraph 31(c) to  
3 Challenge Watermaster Action/Decision on November 18, 2021 to Approve the FY 2021/2022  
4 Assessment Package. If Such Request is Denied, This Filing is the Challenge ("Application").  
5 While Watermaster is aware the Court strongly supports consensual resolution of disputes among  
6 the parties, in this instance Watermaster does not believe the matter will be timely resolved by  
7 negotiation among stakeholders because no other stakeholder expressed an interest in continued  
8 negotiations and the uncertainty created by extending the time to challenge – let alone resolve –  
9 may chill further storage and recovery of high-quality imported water. Consequently,  
10 Watermaster opposes the request for an extension and the substance of Ontario's challenge to the  
11 Fiscal Year 2021/2022 Assessment Package ("2021/22 Assessment Package").

12 **I. INTRODUCTION**

13 The Application arises out of the City of Ontario's ("Ontario") challenge to the 2021/22  
14 Assessment Package's treatment of the Dry Year Yield Program ("DYYP"), composed of a Dry  
15 Year Yield Agreement ("DY YA") executed and Court-approved in 2003, made contingent upon  
16 this Court's approval of a Storage and Recovery Agreement in 2004. The DYYP was designed to  
17 promote the storage and recovery of imported water that established broad benefits across the  
18 Basin furthered through the Court's recent approval of the Local Storage Limitation Solution  
19 ("Skinny Storage") in September of 2021.

20 Ontario contends that, in 2019, Watermaster impermissibly agreed to an operational  
21 change in the DYYP that broadened participation and increased the potential for the storage and  
22 recovery of imported water. Ontario does so though it participated in the development of these  
23 changes and did not object to or challenge them when Watermaster agreed to them. Nearly three  
24 years later, after imported water had been stored and recovered pursuant to this 2019 change,  
25 Ontario indirectly challenges the DYYP by contesting the 2021/22 Assessment Package. After  
26 promoting discussions among stakeholders to address Ontario's request, Watermaster finds there  
27 is no stakeholder interest in modifying the program as requested by Ontario and no irregularity in

1 its administration of the DYYP. Accordingly, Ontario’s Application should be denied.

2 **II. BACKGROUND**

3 **A. Watermaster Assessment Packages**

4 The Restated Judgment grants Watermaster the “power to levy assessments against the  
5 parties (other than minimal pumpers) based upon production during the preceding period of  
6 assessable production...” (Restated Judgment, ¶ 53.) Watermaster annually prepares an  
7 assessment package, detailing the accounting for production and use of Basin water and water  
8 from storage accounts in the prior production year, and spreading that year’s administrative and  
9 OBMP assessments among the parties based on the prior year’s activities, as directed by the  
10 Pooling Plans and the agreements among the parties. (Declaration of Peter Kavounas [“Kavounas  
11 Decl.”], ¶¶ 3–5.)

12 **B. The Dry Year Yield Program**

13 The DYYP is a Storage and Recovery program, which includes the DYVA, a funding  
14 agreement whereby MWD agreed to provide specific financial and physical benefits to the  
15 Appropriative Pool parties and to the Chino Basin (“Basin”) in exchange for the right to store  
16 high quality imported water in the Basin. (Kavounas Decl., ¶ 15, Ex. A.) MWD and two of its  
17 member agencies, the Three Valleys Municipal Water District (“TVMWD”) and the Inland  
18 Empire Utilities Agency (“IEUA”), and Watermaster are the parties to the DYVA. (Kavounas  
19 Decl., ¶ 15, Ex. A.) A Storage and Recovery Agreement, establishing the permissible quantity of  
20 imported water that might be stored in the Basin, was approved by the Court in 2004. (Kavounas  
21 Decl., ¶ 16, Ex. B.) In furtherance of the program, MWD has invested \$27.5 million in local  
22 infrastructure (which is owned by the Chino Basin entities at the conclusion of the Program), and  
23 makes an annual payment to Watermaster (\$177,430 for Fiscal Year 2021/22) for administration  
24 of the Program, which in turn lowers the Parties’ administrative assessments. (Kavounas Decl., ¶  
25 15.)

26 IEUA and TVMWD store water on MWD’s behalf both through direct recharge of surface  
27 deliveries and under separate agreements with members of the Appropriative Pool for in-lieu

1 storage. (Kavounas Decl., Ex. A, DYVA § VII.A.3.) Watermaster is not party to the IEUA and  
2 TVMWD local agency agreements and Ontario does not challenge any action under them.  
3 (Kavounas Decl., ¶ 17.) In the most recent put cycle (2016–2020), MWD has stored water only  
4 through direct recharge. (Kavounas Decl., ¶ 18.) When MWD delivers water to IEUA or  
5 TVMWD (or their local agencies), the recipient must certify the quantity of delivery. (Kavounas  
6 Decl., Ex. A, DYVA § VII.B.)

7 The imported water stored in MWD’s account may be withdrawn later by the  
8 Appropriative Pool parties under terms agreed to by MWD. (Kavounas Decl., ¶ 19, Ex. A.) When  
9 parties produce the water, they pay MWD for the in-lieu delivery of this stored water – paying  
10 MWD’s cost as if the water were physically delivered to the party – and receive an operational  
11 credit for the costs of pumping the stored water. (Kavounas Decl., Ex. A, DYVA § VII.D.)

12 Watermaster exerts oversight through the Court-approved Storage and Recovery  
13 Agreement and its seat on the DYYP Operating Committee (“Operating Committee”). (Kavounas  
14 Decl., ¶ 20.) The Operating Committee is delegated certain authorities to administer the DYYP,  
15 including preparation of the Annual Operating Plan. (Kavounas Decl., Ex. A, DYVA § VI.A.)

16 Although the fundamentals of the Court-approved Storage and Recovery Agreement have  
17 remained unchanged, the parties to the DYVA have made adaptive adjustments to the DYYP  
18 since its inception. (Kavounas Decl., ¶ 21.) Between 2004 and 2015, there were eight  
19 amendments to the DYVA, which extended construction deadlines and permitted reimbursements  
20 for water withdrawn pursuant to the DYYP. (Kavounas Decl., ¶ 21.) In 2015, the DYYP was  
21 amended to revise the Performance Criteria applicable during an MWD call to recover water from  
22 MWD’s DYY account. (Kavounas Decl., ¶ 21.) In 2019, the DYYP signatories agreed to a further  
23 change by letter agreement (“2019 Letter Agreement”), which allowed for the *voluntary*  
24 *extraction* water from the account and the receipt of operational credit, in addition to producing  
25 water during an MWD call. (Kavounas Decl., ¶¶ 19, 20, Ex. C.)

26 Other than the 2015 amendment, all prior operational changes to the DYYP were  
27 administratively approved, without formal action by the Watermaster Board (“Board”).

1 (Kavounas Decl., ¶ 21.) Consistent with most of the changes made to the DYYP, the 2019 Letter  
2 Agreement was signed by the Watermaster General Manager without formal action by the Board.  
3 (Kavounas Decl., ¶ 25.) The process, however, was open and transparent. The Watermaster  
4 General Manager reported on the proposed contents of the 2019 Letter Agreement to all Pool  
5 Committees at their respective September 13, 2018 regular meetings. (Kavounas Decl., ¶ 22.) No  
6 discussion ensued and no action was requested or taken by any of the Pool Committees.

7 (Kavounas Decl., ¶ 22.)

8 At the Advisory Committee’s September 20, 2018 meeting, Watermaster staff presented  
9 an update. (Kavounas Decl., ¶ 22.) The Advisory Committee did not engage in discussion and no  
10 action was sought or taken on the agenda item. (Kavounas Decl., ¶ 22.) The Watermaster General  
11 Manager provided a report at the Board’s September 27, 2018 meeting. (Kavounas Decl., ¶ 23.)  
12 The Board did not discuss the item and no action was requested or taken by the Board. (Kavounas  
13 Decl., ¶ 23.) Watermaster staff informed each committee and the Board that the General Manager  
14 intended to sign the 2019 Letter Agreement. (Kavounas Decl., ¶¶ 21, 22.) No party – including  
15 Ontario – objected to the General Manager proceeding in this manner, nor did any party request  
16 that the 2019 Letter Agreement be presented for formal action by the Committees or Board.

17 (Kavounas Decl., ¶ 24.)

18 MWD’s Assistant General Manager/Chief Operations Officer signed the 2019 Letter  
19 Agreement on February 5, 2019. (Kavounas Decl., Ex. C.) The Watermaster General Manager  
20 signed the 2019 Letter Agreement on February 19, 2019. (Kavounas Decl., ¶ 25, Ex. C.) The  
21 General managers of TVMWD and IEUA signed the 2019 Letter Agreement on February 25 and  
22 26, 2019, respectively. (Kavounas Decl., Ex. C.)

23 Each spring since 2019, IEUA has sent an email to its member agencies inquiring whether  
24 they are interested in making voluntary takes from the MWD DYY account. (Kavounas Decl., ¶  
25 40.) Interested Parties respond with the quantity of water they would like to extract. (Kavounas  
26 Decl., ¶ 40.)

27 Specifically, in production year 2020/21, the Cucamonga Valley Water District

1 (“CVWD”) and Fontana Water Company (“FWC”), an entity regulated by the California Public  
2 Utilities Commission, elected to participate and made investments in acquiring, storing and  
3 recovering imported water supplied by MWD through IEUA. (Kavounas Decl., ¶ 26.) In  
4 production year 2020/21, CVWD took 20,500 AF. (Kavounas Decl., ¶ 26.) In production year  
5 2020/21, FWC voluntarily took 2,500 AF. (Kavounas Decl., ¶ 26.) IEUA issued monthly  
6 certifications for withdrawals from MWD’s DYY account reflecting these quantities and  
7 submitted the certifications with a water activity verification to MWD. (Kavounas Decl., ¶ 26.)  
8 The water has been delivered to customers for beneficial use in their respective service territories.  
9 (Kavounas Decl., ¶ 26.)

10 C. **Watermaster Approval of the 2021/22 Assessment Package and Addressing**  
11 **Related DYY Concerns**

12 Following the close of the 2020/21 production year, Watermaster staff distributed water  
13 activity reports to all Parties for their review of their water activity – groundwater production,  
14 withdrawals of water from storage, placement of water into storage – during 2020/21. (Kavounas  
15 Decl., ¶ 5.) Watermaster staff compiled all of this information into its accounting for all such  
16 activity during the year. (Kavounas Decl., ¶ 5.) Watermaster staff then prepared the draft  
17 Assessment Package, spreading the FY 2021/22 budgeted expenses among the Parties based on  
18 the directions in the Pooling Plans, Court orders, and agreements among the Parties. (Kavounas  
19 Decl., ¶ 3.)

20 Ontario formally raised *legal* concerns with regard to the assessment of voluntary “takes”  
21 under the DYY in correspondence with IEUA in late Summer 2021 and at the Pool Committee  
22 meetings in September 2021. (Kavounas Decl., ¶ 27.) Throughout the remainder of 2021,  
23 Watermaster and IEUA communicated extensively with Ontario and requested the involvement  
24 by the Appropriative Pool. (Kavounas Decl., ¶ 28.) Additionally, Watermaster staff separately  
25 met in person with Ontario at least once and communicated with Ontario via phone or email at  
26 least weekly. (Kavounas Decl., ¶ 28.) Additionally, Watermaster hosted meetings with FWC,  
27 CVWD, the Appropriative Pool Chair and Legal Counsel, MWD, IEUA, and TVMWD.



1 (Kavounas Decl., ¶ 28.)

2 Watermaster held Assessment Package Workshops on October 19, 2021 and on  
3 November 2, 2021 to present the draft 2021/22 Assessment Package to the Parties and provide the  
4 opportunity to raise questions, concerns, and provide feedback. (Kavounas Decl., ¶ 6.)

5 Ontario sent a letter to Watermaster on November 1, 2021 outlining its legal concerns  
6 regarding the DYYP-based assessments and requesting “Watermaster explain the basis for  
7 exempting water produced from MWD’s CUP, as identified in the draft Fiscal Year 2021-2022  
8 Assessment Package, from the Watermaster assessment and the Desalter Replenishment  
9 Obligation (DRO) assessment.” (Declaration of Christopher Quach [“Quach Decl.”], Ex. A.).  
10 Ontario’s letter also requested responses to six questions regarding the 2019 Letter Agreement  
11 and the associated change. (Quach Decl., Ex. A.) In response, a discussion of the DYYP was  
12 included as a separate discussion only agenda item for the November 10, 2021 Pool Committee  
13 meetings. (Kavounas Decl., ¶ 29.)

14 Following a discussion of the DYYP, Watermaster presented the 2021/22 Assessment  
15 Package to the Pool Committees for their advice and assistance during their respective November  
16 10, 2021 regular meetings. (Kavounas Decl., ¶ 7.) During its November 10, 2021 meeting, the  
17 Appropriate Pool Committee recommended approval of the 2020/21 Assessment Package and  
18 recommended Watermaster staff address Ontario’s concerns about the DYYP at a later date.  
19 (Kavounas Decl., ¶ 8.) The motion passed by majority vote, with Ontario casting a “no” vote.  
20 (Kavounas Decl., ¶ 8.) During its November 10, 2021 meeting, the Non-Agricultural (“Non-Ag”)  
21 Pool Committee unanimously recommended approval of the 2021/22 Assessment Package and  
22 directed Pool representatives to support approval at the Advisory Committee and Board meetings  
23 conditioned on Ontario (Non-Ag) being in agreement to move the item forward based on  
24 discussions to take place prior to the Advisory meeting. (Kavounas Decl., ¶ 11.) If Ontario were  
25 not in favor of supporting the item, the Pool requested the item be returned to the Pool for further  
26 consideration. (Kavounas Decl., ¶ 11.) During its November 10, 2021 meeting, the Overlying  
27 (Agricultural) Pool (“Ag Pool”) Committee took no action with respect to the 2012/22

1 Assessment Package. (Kavounas Decl., ¶ 12.) Watermaster presented the 2021/22 Assessment  
2 Package at the Advisory Committee's November 18, 2021 meeting for the Committee's advice  
3 and assistance, following a separate discussion-only agenda item regarding the DYYP. (Kavounas  
4 Decl., ¶¶ 13, 29.) The Advisory Committee recommended approval of the 2021/22 Assessment  
5 Package as presented by a vote of 72.934 votes (out of 100) in favor. (Kavounas Decl., ¶ 13.)  
6 Ontario was among the Parties casting dissenting votes. (Kavounas Decl., ¶ 13.)

7 On November 18, 2021, Watermaster staff publicly presented a report at the regularly  
8 scheduled Board meeting responding to Ontario's legal concerns regarding the DYYP, with legal  
9 counsel available for questions. (Kavounas Decl., ¶ 30.) The Board directed staff to obtain input  
10 from interested Parties and prepare a comprehensive report for presentation at the January 2022  
11 Board meeting. (Kavounas Decl. ¶ 30.) Subsequently, the Board approved the 2021/22  
12 Assessment Package unanimously. (Kavounas Decl. ¶ 14.) Invoices were then emailed to the  
13 Parties. (Kavounas Decl. ¶ 14.)

14 On January 5, 2022 and at the direction of the Board, Watermaster staff facilitated a  
15 meeting between the representatives of the Ontario, CVWD, and FWC<sup>1</sup> to discuss the  
16 implementation of the DYYP that might address Ontario's concerns moving forward. (Kavounas  
17 Decl., ¶ 31.)

18 The matter was again agendized for the Pool Committees' consideration and input at the  
19 next regular Pool Committees meetings on January 13, 2022. (Kavounas Decl., ¶ 33.) The City of  
20 Chino Hills expressed that the voluntary withdrawals helps ease the pressure of exceeding the  
21 Safe Storage Capacity. (Kavounas Decl., ¶ 33.)

22 The Non-Ag Pool Committee requested that the matter of the DYYP's validity be brought  
23 back through the Pool process for further advice and recommendation to the Advisory Committee  
24 and Board absent a resolution of the matter. (Kavounas Decl., ¶ 33.)

25 Neither the Ag Pool Committee at its January 13, 2022 meeting, nor the Advisory  
26

27 <sup>1</sup> CVWD and FWC both voluntarily produced water from MWD's DYYP account during  
28 production year 2020/21 pursuant to the DYYP. (Kavounas Decl., ¶ 26.)

1 Committee at its January 20, 2022 meeting offered further advice or assistance. (Kavounas Decl.,  
2 ¶ 33.)

3 Ontario reiterated its concerns in an additional written letter dated January 24, 2022.  
4 (Quach Decl., Ex. B.) Monte Vista Water District also expressed its concerns related to  
5 unrestricted voluntary takes and their impacts on assessments to Watermaster in a letter dated  
6 January 25, 2022. (Kavounas Decl. ¶ 34.) No basis was cited other than Watermaster’s alleged  
7 failure to comply with legal requirements arising under the Judgments and prior Court orders.

8 In response to the Board’s November direction, Watermaster staff presented a report  
9 providing context to the DYYP operations at the Board’s January 27, 2022 meeting summarizing  
10 Ontario’s comments, and detailing efforts to communicate with stakeholders and to resolve  
11 Ontario’s concerns. (Kavounas Decl., ¶ 35, Ex. D.) After many attempts to resolve Ontario’s  
12 concerns regarding the DYYP, Watermaster staff identified two paths forward: (1) Parties might  
13 reach agreement on forward implementation of the DYYP under existing terms and conditions  
14 that addresses the financial consequence arising from Ontario’s legal concerns; or, (2) Parties  
15 might recommend one or more DYY modifications to IEUA, its Member Agencies, and  
16 Watermaster to consider and propose to the Operating Committee, leading to a modification to  
17 the DYYP. (Kavounas Decl. ¶ 36.) Because neither of the recommendations require Board action,  
18 Watermaster staff did not recommended the Board take action. (Kavounas Decl. ¶ 36.) The Board  
19 did not take action on this item. (Kavounas Decl. ¶ 36.)

20 **III. ONTARIO HAD SUFFICIENT TIME TO PREPARE A CHALLENGE**

21 Paragraph 31(c) of the Restated Judgment provides that, “[n]otice of motion to review any  
22 Watermaster action, decision or rule shall be served and filed within ninety (90) days after such  
23 Watermaster action, decision or rule . . .” (Restated Judgment, ¶ 31(c).) Short challenge periods  
24 serve “the important policy of speedy determination of the public agency’s action” (*Embarcadero*  
25 *Mun. Improvement Dist. v. Cty. of Santa Barbara* (2001) 88 Cal.App.4th 781, 790) and support  
26 “the need for a single dispositive final judgment” (*Committee for Responsible Planning v. City of*  
27 *Indian Wells* (1990) 225 Cal.App.3d 191, 197–198). Ontario has shown no reason to extend the

1 deadline to challenge Watermaster’s approval of the 2021/22 Assessment Package to allow it to  
2 “further develop” its challenge. Permitting Ontario to belatedly challenge Watermaster’s actions  
3 would cause delay and potentially jeopardize the success of the DYYP and similar storage and  
4 recovery programs.

5 **A. Ontario Has Had Adequate Time to Prepare a Challenge.**

6 Ontario first raised concerns regarding the 2021/22 Assessment Package in late Summer  
7 2021 and its position has not changed since that time. (Kavounas Decl., ¶ 27.) Therefore, Ontario  
8 has been able to develop legal arguments in preparation for a potential challenge since September  
9 2021. Moreover, identical treatment of DYY account takes<sup>2</sup> to those about which Ontario  
10 complains was approved without challenge in the 2020/21 Assessment Package. (Kavounas  
11 Decl., ¶ 38.)

12 Ontario argues that “attempting to negotiate a settlement” has precluded it from  
13 developing legal arguments in support of its challenge to the 2021/22 Assessment Package.  
14 (Application, 4:15–16.) While negotiation and consensual resolution is always the preferred path,  
15 Ontario’s position is that they were harmed by Watermaster’s alleged failure to act in accordance  
16 with certain legal requirements.

17 First, this is not a case that requires discovery. The arguments have not changed. Ontario  
18 contends that the Watermaster General Manager and Watermaster were legally required to  
19 discharge specific obligations before implementing the 2019 Letter Agreement. It made all of its  
20 arguments to the Pool and Advisory Committees and to the Board. They were exhaustively  
21 addressed by Watermaster.

22 Second, Ontario openly discussed its concerns with other stakeholders and, according to  
23 its own Application, only began negotiations on January 5, 2022, four months after Ontario first  
24 expressed its legal concerns and just six weeks prior to the deadline to file a challenge.  
25 (Application, 3:19–21.) Assuming Ontario was preoccupied with settlement, it in fact was relying

26 <sup>2</sup> CVWD participated in voluntary takes under the DYYP in production year 2019/20. (Kavounas  
27 Decl., ¶ 38.) CVWD and FWC participated in voluntary takes in production year 2020/21.  
28 (Kavounas Decl., ¶ 38.)

1 on legal arguments to support its settlement position. If there were other grounds, not disclosed to  
2 Watermaster, there was ample time to develop and present those arguments between September  
3 2021 and February 2022.

4 Prior to Watermaster taking a position on a potential tolling of the time to challenge the  
5 2021/22 Assessment Package, Watermaster staff and counsel consulted with those parties with  
6 whom Ontario might need to reach consensus as to changes to the DYYP. (Kavounas Decl., ¶  
7 32.) They reported there were no ongoing discussions and no interest in pursuing them further.  
8 (Kavounas Decl., ¶ 32.) One party does not make a negotiation.

9 **B. Any Challenge to an Action Taken in 2019 is Nearly Three Years Late.**

10 Ontario’s challenge of the 2021/22 Assessment Package is, in actuality, a collateral  
11 challenge the 2019 Letter Agreement, which implements an operational change to permit  
12 voluntary withdrawals from MWD’s account under the DYYP. In its November 1, 2021 letter,  
13 Ontario articulates the crux of its challenge: “The 2019 Letter fundamentally changed the  
14 recovery side of [the DYY] *without obtaining an approved written agreement through the*  
15 *Watermaster process.* Additionally, the implications of these changes were not represented and/or  
16 evaluated to determine the impacts on individual parties.” (Quach Decl., Ex. A, emphasis added.)  
17 In its January 24, 2022 letter, Ontario even more clearly shows its challenge is to the 2019 Letter  
18 Agreement: “. . . Ontario remains concerned that Watermaster is administering *an unauthorized*  
19 *change to the DYYP . . .*” (Quach Decl., Ex. B, emphasis added.)

20 Ninety (90) days from the date Watermaster General Manager signed the 2019 Letter  
21 Agreement was May 20, 2019. Any challenge to the 2019 Letter Agreement is untimely as the  
22 challenge period has long expired. No concerns were raised or protests made at or near the time  
23 of the 2019 Letter Agreement. (Kavounas Decl., ¶ 24.) Because “Ontario’s concerns *remain*  
24 *foundationally in the execution of the 2019 Letter*” (Quach Decl., Ex. B, emphasis added),  
25 Ontario’s time to bring such an action lapsed nearly three years ago. Although the time to  
26 challenge the 2019 Letter Agreement has passed, Watermaster briefly addresses Ontario’s  
27 arguments here.

1 The Watermaster General Manager validly signed the 2019 Letter Agreement without  
2 protest from any Party. All but a single change to the DYYP have been done administratively,  
3 without formal Board action. (Kavounas Decl., ¶ 21.) Watermaster reported on the 2019 Letter  
4 Agreement to all Pool Committees, the Advisory Committee, and the Board. (Kavounas Decl., ¶¶  
5 22, 23.) Watermaster staff informed each committee and the Board that the General Manager  
6 intended to sign the 2019 Letter Agreement. (Kavounas Decl., ¶¶ 22, 23.) No Party, committee, or  
7 the Board opposed Watermaster staff's proposed course of action, nor did anyone request that the  
8 2019 Letter Agreement be presented to the Committees or Board. (Kavounas Decl., ¶ 24.)

9 A formal amendment to the DYVA was unnecessary. The 2019 Letter Agreement was  
10 agreed to and signed by all four signatories to the DYVA (MWD, Watermaster, IEUA,  
11 TVMWD). (Kavounas Decl., Ex. C.) None of the Appropriative Pool parties, including Ontario,  
12 are parties to the DYVA. (Kavounas Decl., Ex. A.) Watermaster is not a party to – and therefore  
13 could not amend – any local agency agreements, including the local agency agreement between  
14 IEUA and Ontario. (Kavounas Decl., ¶ 17.)

15 Watermaster performed Material Physical Impact (“MPI”) analysis for the OBMP’s entire  
16 program at its inception. (Kavounas Decl. ¶ 41.) In addition, Watermaster has evaluated storage  
17 with the Storage Framework Investigation and the Storage Management program, both of which  
18 included consideration of the DYYP assuming it were being fully utilized. (Kavounas Decl. ¶ 41.)  
19 As a practical matter, it is well understood that cumulative storage and water levels are not  
20 materially impacted by seasonal recovery of stored water. (Kavounas Decl. ¶ 41.) This was  
21 recently evidenced by the Local Storage Limitation Solution, which was analyzed for MPI,  
22 adopted by Watermaster, had CEQA evaluation performed by IEUA, and approved by the Court  
23 in 2021. (Kavounas Decl., ¶ 41.) The 2019 changes did not and do not suggest the need for any  
24 further analyses. The changes that were agreed to in 2019 were suggested by IEUA member  
25 agencies and went through a year-and-a-half long open and transparent review. (Kavounas Decl.,  
26 ¶ 21.)



1 of evidence. (*See* Code of Civ. Proc. §§ 98, 2015.5, 1878.) Evidence supports, but does not  
2 constitute, legal arguments. (*See* California Rules of Court, Rules 3.1112(b) & 3.1115.) The  
3 Application itself must state the basis for the motion. (California Rules of Court, Rule  
4 3.1112(d)(3).)

5 Ontario should not be allowed to make limited arguments on the face of its Application  
6 only to later expand the scope through the attached exhibits. Any arguments Ontario raises in its  
7 reply or at a hearing should be limited to those on the face of the Application. The only basis  
8 Ontario’s Application states for “challeng[ing] the propriety of the action/decision of the  
9 Watermaster Board’s approval of the Fiscal Year 2021-2022 Assessment Package” is “the failure  
10 of Watermaster staff to administer assessments consistent with the Judgment and Court Orders.”  
11 (Application at 4:19–22.)

12 **B. The 2021/22 Assessment Properly Treated the Voluntary Takes**

13 Watermaster did not *wave* any assessments for production. Consistent with its standing  
14 practice, production assessments were not applied to water taken from MWD’s DYYP account.  
15 (Kavounas Decl., ¶¶ 10, 37.) Each time, and without objection from any party, the Board has  
16 approved an Assessment Package in which these takes are not assessed. (Kavounas Decl., ¶¶ 10,  
17 37.)

18 In production year 2019/20 (production accounted for in the 2020/21 Assessment  
19 Package), CVWD voluntarily purchased water from MWD’s DYYP account. (Kavounas Decl., ¶  
20 38.) Consistent with prior practice, this voluntary take was not assessed in the 2020/21  
21 Assessment Package.

22 Ontario’s complaint is based on the fact that if the pumping of the voluntary takes was  
23 instead considered assessable production of Basin water, it would decrease Ontario’s share of  
24 total assessable production and therefore decrease the total assessments paid by Ontario. Because  
25 in March 2019 the Court approved a Peace II Agreement amendment – supported by Ontario –  
26 that based the Appropriative Pool parties’ Desalter Replenishment Obligations in part on a party’s  
27 share of assessable production (Kavounas Decl., ¶ 39), decreasing Ontario’s share of total



1 assessable production would also decrease Ontario's share of the DRO.

2 The Advisory Committee approved the 2020/21 Assessment Package on motion made by  
3 Ontario before it was approved by the Board. (Kavounas Decl., ¶ 38.) The treatment of the exact  
4 same type of voluntary withdrawal is at issue in the FY 2021/22 Assessment Package. (Kavounas  
5 Decl., ¶ 38.) In approving the 2021/22 Assessment Package, the Board acted in conformity with  
6 past practice.

7 **C. Ontario's Application Challenges the 2019 Letter Agreement**

8 Ontario's Application is not directed at Watermaster's arithmetic calculation of  
9 assessments arising from the operations of the DYYP; rather it challenges the inputs – ostensibly  
10 alleging the 2019 Letter Agreement was void on process grounds. Specifically, Parties that chose  
11 not to engage in voluntary takes pursuant to the DYYP had to pay assessments on their ordinary  
12 groundwater production. (Kavounas Decl., ¶ 39.) The assessments paid by the members of the  
13 Appropriative Pool also affect their DRO assessments. (Kavounas Decl., ¶ 39.) This practice is  
14 consistent with the Restated Judgment and the Court's orders, including the one tendered by  
15 Ontario as one of the appellate parties key to the development of the 2019 Safe Yield Re-Set  
16 Agreement.

17 In point of fact, all members of the Appropriative Pool were offered equal opportunity to  
18 participate in voluntary takes as permitted by the 2019 Letter Agreement. (Kavounas Decl., ¶ 40.)  
19 Ontario did not elect to participate while others did, and now complains about the financial  
20 consequences of that choice. (Kavounas Decl., ¶ 40.) But the opportunity is evergreen so long as  
21 there is water in the DYY account, and Ontario will again have this choice as water is stored in  
22 the DYY account. (Kavounas Decl., ¶ 40.)

23 **V. CONCLUSION**

24 Watermaster is dedicated to the balanced administration of the decree. It understands and  
25 acknowledges the Court's continuous observations and admonitions that consensual resolution of  
26 disputes should be diligently pursued wherever practicable. The history of the parties' actions  
27 under the Judgment prove the Court's point. Here, however, the allegations attack Watermaster's

1 fundamental procedures and an existing storage program upon which thousands of people rely.

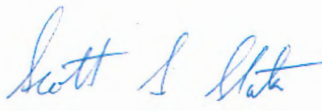
2 In the instant case, Watermaster is one of four parties to the DYVA, partially responsible  
3 for administering its terms. In 2019, each of these parties agreed that the specific operational  
4 change, beneficial to the Basin, should be accomplished by letter agreement. Each acted  
5 consistently without a formal amendment of the DYVA. This is the best evidence that the method  
6 undertaken was proper. There is no argument that the accounting was improper. Only that the  
7 2019 measures should be retroactively invalidated.

8 Watermaster understands that Ontario now has been impacted by the combination of its  
9 operational decisions and the arithmetic consequences in Watermaster's calculation of  
10 assessments. But it has offered no evidence of harm to the Basin or suggested any way the public  
11 interest has been undermined. To the contrary, the 2019 changes worked. Clean, high-quality  
12 imported water has been successfully stored and recovered from the Basin. And, as the Court well  
13 knows, storage of water in the Basin is one of the Watermaster's greatest successes. It should not  
14 be undermined by countenancing a challenge to Watermaster's 3-year old joinder in unanimously  
15 agreed method to change operations *within* the procedures set forth in the DYY Program.

16 Watermaster respectfully requests that Ontario's request to extend the challenge time and  
17 set aside the 2021/22 Assessment Package be denied.

18  
19 Dated: March 25, 2022

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20  
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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. WATERMASTER 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. IF SUCH REQUEST IS DENIED, THIS FILING IS THE CHALLENGE.

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

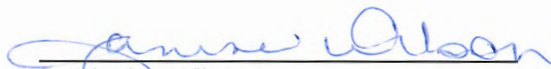
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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.

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.



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