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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendants.

CASE NO. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO
HONORABLE GILBERT G. OCHOA

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CITY OF ONTARIO'S MOTION CHALLENGING WATERMASTER'S NOVEMBER 17, 2022 ACTIONS/DECISION TO APPROVE THE FY 2022/2023 ASSESSMENT PACKAGE

Date: March 21, 2023
Time: 9:00 a.m.
Dept: S24

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

City of Ontario ("Ontario") files this challenge to Chino Basin Watermaster's ("Watermaster") November 17, 2022 decision to approve the Fiscal Year 2022/2023 Assessment Package ("FY 22/23 Assessment Package").[1] The FY 22/23 Assessment Package purports to exclude from assessment water produced from Chino Basin (the "Basin") by certain parties as part of the Dry Year Yield Program (the "DYY Program").

The FY 22/23 Assessment Package is legally invalid for three independent reasons. The first two assume that the 2019 Letter Agreement is valid and in effect, consistent with this Court's November 3, 2022 Order on Ontario's Challenge to the FY 2021/2022 Assessment Package. The third argument is similar to Ontario's prior Challenge but is raised to preserve Ontario's issues as they relate to Ontario's new challenge to the FY 2022/2023 Assessment Package while the Court's November 3, 2022 Order is pending on appeal.

First, Watermaster's decision to exclude groundwater produced from the DYY Program storage account ("DYY water") flouts the requirements set forth in this Court's 1978 Judgment as well as in subsequent court orders and agreements that govern Basin operation. Those governing agreements and orders specify that *all* water produced in the Basin must be assessed; they do not distinguish between different types of water (*e.g.*, native water, stored water, and supplemental water) for the purpose of assessment, nor do they suggest that Watermaster may permissibly circumvent its obligation to assess all water produced, regardless of type. Indeed, Watermaster's own actions only underscore that produced water has always been assessed. Importantly, the 2019 Letter Agreement contains ***no*** terms relating to assessments. Accordingly, there is no basis for Watermaster to interpret the 2019 Letter Agreement as throwing out or overriding those portions of the Judgment addressing what production is assessed. Watermaster's decision not to assess DYY water has, and continues to, result in a windfall for interested parties Fontana Water Company

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[1] Under Paragraph 31(c) of the Judgment, a party to the Judgment seeking to challenge an action or decision of the Watermaster Board has 90 days in which to file a motion to challenge such action.

("FWC") and Cucamonga Valley Water District ("CVWD") and has required Ontario and others to pay substantially more than their fair share in assessments.[2]

Second, operation of the DYY Program requires compliance with certain performance criteria, detailed in Exhibit G to the 2003 Groundwater Storage Program Funding Agreement ("Funding Agreement"). The Funding Agreement, including Exhibit G, was approved by the Court in 2003. The 2019 Letter Agreement specifically references and includes Exhibit G within its terms, and while the 2019 Letter Agreement purported to amend Exhibit G's groundwater performance criteria (e.g., making groundwater production out of the DYY Program voluntary, thus permitting parties to voluntarily increase groundwater pumping), the 2019 Letter Agreement did ***not*** mention, amend, or change Exhibit G *as it pertains to imported water performance criteria that require a shift off of imported water deliveries*. For the 2021/22 fiscal year, upon which the FY 22/23 Assessment Package is based, both CVWD and FWC failed to comply with the Exhibit G imported water performance criteria. In doing so, they overclaimed their DYY production amounts and financially benefited from a corresponding reduction in the amount of their total assessed groundwater production to the detriment of other parties, including Ontario, who were required to absorb the financial difference in assessments.

Third, Watermaster's approval of the FY 22/23 Assessment Package is unenforceable because it was adopted in reliance on a 2019 Letter Agreement that purported to make material changes to the DYY Program without notice to the parties and without following the mandated approval process for such changes, which ordinarily includes vetting through pool committees (which develop policy recommendations for the administration of particular groups of parties with similar water rights within the Basin), an advisory committee (which is charged with making recommendations, reviewing, and acting upon decisions made by Watermaster), and the Watermaster Board. Having failed to provide the requisite notice and having bypassed court-mandated procedure, Watermaster lacked the authority to enforce the 2019 Letter Agreement and, correspondingly, to approve the cost-shifting within the FY 22/23 Assessment Package.

[2] FWC and CVWD are interested parties because Watermaster allowed these agencies to draw unassessed DYY water in violation of the Judgment and subsequent court orders and agreements.

This Court performs an essential role through its continuing jurisdiction by ensuring that all parties to the Judgment, including Watermaster, play by the rules. Watermaster has not done so here. Accordingly, Ontario respectfully requests that this Court grant its challenge and issue an order: (1) directing Watermaster to implement the DYY Program in a manner consistent with the Judgment and court orders, including both as it relates to the assessment of groundwater production and compliance with the Exhibit G performance criteria; (2) directing Watermaster to comply with the Watermaster Approval Process as it pertains to the DYY Program and any proposed amendments thereto;[3] (3) correcting and amending the FY 22/23 Assessment Package to assess water produced from the DYY Program; and (4) invalidating the 2019 Letter Agreement.

II. FACTUAL BACKGROUND

What follows is a brief summary of the history and context of this nearly 50-year-old basin adjudication. For a more detailed factual background, Ontario respectfully refers this Court to its Combined Reply, filed on May 27, 2022 (the "Combined Reply"), at pages 9-24.[4]

A. Basin Adjudication, the Court's Continuing Jurisdiction, and the Watermaster Approval Process

In 1978, this Court entered a judgment (the "Judgment") that imposed an efficient and equitable plan for the management of groundwater resources in the Basin.[5] (RJN, Ex. 1.) The Judgment adjudicated rights to groundwater and storage capacity in the Basin and authorized Watermaster to "administer and enforce the provisions of [the] Judgment and any subsequent

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[3] While Ontario recognizes that the Court addressed arguments concerning the Watermaster Approval Process and the 2019 Letter Agreement in Ontario's challenge to the FY 2021/2022 Assessment Package, that Order currently is pending on appeal. (Declaration of Elizabeth P. Ewens ("Ewens Decl."), ¶¶ 4-5.) Those arguments, therefore, are raised herein for the purposes of preserving Ontario's claims as they relate to its challenge to the FY22/23 Assessment Package.

[4] The full title of this May 27, 2022 filing is "City of Ontario's Combined Reply to the Oppositions of Watermaster, Fontana Water Company and Cucamonga Valley Water District, and Inland Empire Utilities Agency to Applications for an Order to Extend Time Under Paragraph 31(c) of the Judgment, to Challenge Watermaster Action/Decision on November 18, 2021 to Approve the FY 2021/2022 Assessment Package or Alternatively, City of Ontario's Challenge." (See Request for Judicial Notice ("RJN"), Ex. 57.) As noted herein, the ruling on the FY 2021/2022 Assessment Package challenge is currently pending on appeal. (Ewens Decl., ¶¶ 4-5.)

[5] The Court's entry of the Judgment followed trial and a stipulation among the majority of parties. (RJN, Ex. 1 at ¶ 2.)

instructions or orders of the Court hereunder." (*Id.* at ¶ 16.) The Court was careful, however, to reserve to itself "[f]ull jurisdiction, power and authority" as to "all matters contained" in the Judgment. (*Id.* at ¶ 15.) Thus, Watermaster's authorities and duties were expressly restricted and made "[s]ubject to the continuing supervision and control of the Court." (*Id.* at ¶ 17.)

Over time, the Judgment has been amended and refined by subsequent agreements as well as court orders. Together, these agreements and orders govern Watermaster's actions, both procedurally and substantively. For example, the Judgment provides that Watermaster may take "discretionary action" only upon the recommendation or advice of an advisory committee. (RJN, Ex. 1 at ¶ 38(b)[2].) And groundwater storage agreements must proceed through a prescribed approval process that first requires Watermaster to obtain the Court's approval of the agreements. (*Id.*, Ex. 3 at p. 12 fn. 8.)

B. Development of the DYY Program

The DYY Program was borne out of a groundwater storage program funding agreement in 2003 (the "2003 Funding Agreement"). The 2003 Funding Agreement provided that Metropolitan Water District ("Metropolitan") could store up to 100,000 acre feet ("AF") of water that it imported from the Colorado River, among other sources. (RJN, Ex. 8 at p. 6.) The 2003 Funding Agreement further allowed that, during dry years, Metropolitan could direct participating agencies (including the Inland Empire Utilities Agency ("IEUA") and Three Valleys Municipal Water District ("TVMWD")) to pump up to 33,000 AF of that stored water rather than using the same amount of surface water.[6] (*Id.* at ¶ I(J).) The details of how participating agencies would pump stored water, including specific performance criteria regarding reductions in imported water deliveries, were provided for in an attachment to the 2003 Funding Agreement ("Exhibit G"). (*Id.* at 6; see *id.*, Ex. G.) Ultimately, Exhibit G, which remains in full force and effect, ensures a balanced formula: it calls for the reduction of imported water deliveries and the corresponding replacement of water that has been imported with stored Basin groundwater. The 2003 Funding Agreement, including Exhibit G, was approved through the prescribed Watermaster approval process (the "Watermaster

[6] The unused surface water flow to Metropolitan to supply its surface-water needs during a drought.

Approval Process"), which involved consideration by pool committees, advisory committees, and the Watermaster Board. (RJN, Ex. 11; Declaration of Courtney Jones ("Jones Decl."), ¶¶ 9-14, Ex. 3.) Subsequent amendments that sought to make material changes to the 2003 Funding Agreement similarly were adopted only after full consideration through the Watermaster Approval Process.

The 2003 Funding Agreement was ultimately approved by court order on June 5, 2003, which recognized that the DYY Program "cannot be undertaken" until and unless "Watermaster and this Court approve the Local Agency Agreements and Storage and Recovery Application, or some equivalent approval process is completed." (RJN, Ex. 9 at 3:18-25.) The court's order also provided that storage and recovery programs should "provide broad mutual benefits to the parties to the Judgment." (*Id.* at 2:1.)

Consistent with the 2003 Court Order, Local Agency Agreements were executed between IEUA, TVMWD, and their member agencies.[7] (RJN, Exs. 10-12; Jones Decl., ¶ 15.) A subsequent court order in 2004 reviewed and approved a DYY storage agreement submitted by the Watermaster. (See RJN, Ex. 15.) The 2004 Court Order again emphasized that the DYY Program should "provide broad mutual benefits to the parties to the Judgment" and prohibited Watermaster from approving any plan "that will have a substantial adverse impact on other producers." (*Id.* at 2-3.) It further stated that "no use shall be made of the storage capacity of Chino Basin except pursuant to written agreement with Watermaster" and reiterated that the approval of storage agreements must occur through the formal Watermaster Approval Process. (*Id.* at 3-4.) Importantly, neither the 2003 Court Order nor the 2004 Court Order amended the Judgment nor its key principle that all water produced from the Basin must be assessed.

C. Watermaster's Assessment of Produced Water: Then and Now

Until very recently, all water produced in the Basin was assessed consistent with the terms of the Judgment. The amount that each party is assessed is principally based on the amount of its individual groundwater production. (RJN, Ex. 1 at ¶ 53.) Indeed, the Judgment defines "produced"

[7] The member agencies are CVWD, City of Pomona, City of Chino Hills, City of Chino, Monte Vista Water District, Ontario, City of Upland, and Jurupa Community Services District via Ontario. (Jones Decl., ¶ 15.) Opposing Party FWC does *not* have a Local Agency Agreement. (*Id.,* ¶ 17.)

groundwater in the broadest possible terms: "to pump or extract ground water from Chino Basin." (*Id*. at ¶ 4(q), (s).) Under the Watermaster Rules and Regulations, uniform assessment of production is mandatory, and there is no exception for water produced from the DYY Program. (*Id.*, Ex. 2 at art. IV, § 4.1, see also *id*., Ex. 1 at ¶ 53.)

Watermaster failed to comply with these basic tenets of the Judgment in the 2022/23 Assessment Packages. Relying on its interpretation of the 2019 Letter Agreement[8] that was adopted outside of the required Watermaster Approval Process and without notice to all parties (see Combined Reply at pp. 16-20 (RJN, Ex. 57)), Watermaster excluded DYY water when calculating the parties' individual assessments. In other words, Watermaster failed to count DYY water as "produced" water for purposes of calculating assessments, in contravention of the Judgment and subsequent court orders.

This injury was compounded in the 2022/23 assessment year as a result of Watermaster's failure to enforce the Exhibit G performance criteria as it pertains to the use of imported water. As detailed further herein, in failing to comply with the Exhibit G performance criteria, both CVWD and FWC overclaimed their DYY production thus exempting additional water from production assessments. CVWD shifted off of imported water by only 13,915 AF but claimed DYY production in the amount of 17,912 AF, thus overclaiming 4,000 AF of DYY production. For its part, FWC, which does not even have a Local Agency Agreement authorizing its participation in the DYY Program, shifted off of imported water by only 1,718 AF but claimed DYY production in the amount of 5,000 AF, thus overclaiming the difference of 3,282 AF. This shift off of imported water is fundamental to the DYY conjunctive use program; it is mandatory under the terms of 2003 Court Order adopting the Exhibit G performance criteria, and was left unchanged by the 2019 Letter Agreement that explicitly incorporates and references Exhibit G. (RJN, Exs. 12, 41.)

Watermaster's decision not to enforce the Exhibit G performance criteria resulted in a windfall to interested parties CVWD and FWC, and a dramatically higher assessment for Ontario. (Jones Decl., ¶ 17.)

[8] See RJN, Ex. 34.

III. STANDARD OF REVIEW

"Under paragraph 31 of the Judgment[,] the Court's review of any Watermaster action or decision is 'de novo.'" (RJN, Ex. 9 at 4:2-3.) "Watermaster's findings, if any, may be received in evidence at the hearing but shall not constitute presumptive or prima facie proof of any fact in issue." (*Id.* at 4:3-5.) Thus, "the Court looks at the evidence anew." (*Id.* at 4:7.) Where the issue presented is whether the Watermaster properly interpreted a judgment or decree, courts exercise their independent judgment and apply de novo review. (*Dow v. Honey Lake Valley Res. Conservation Dist.* (2021) 63 Cal.App.5th 901, 911.)

IV. ARGUMENT

A. Watermaster Failed to Comply With the Performance Criteria for the DYY Program Detailed in Exhibit G

The DYY Program is a conjunctive use program specifically designed maximize the flexibility and reliability of water supplies through the coordinated management and use of surface water and groundwater resources, and to replace imported water supplies with groundwater during dry years. To that end, the DYY Program and its implementing orders and agreements provide explicit performance targets for the reduction of imported water deliveries and corresponding increases in local groundwater pumping or, put another way, shifts off of imported water and onto groundwater production from DYY Program storage accounts in certain years. The Exhibit G performance criteria detail the manner in which roll-off from imported water supplies and corresponding use of DYY Program water work together, and fundamentally ensure that an agency can only claim DYY credit equal to their shift off of imported water. (Jones Decl., ¶ 14.)

In the year at issue, Watermaster did not require CVWD and FWC to comply with the Exhibit G performance criteria as they pertain to required shifts off of imported water supplies and onto groundwater production from the DYY Program. In the 2022/23 assessment year (production year 2021/22), CVWD reduced its used of imported water by 13,915 AF but claimed DYY production amounts of 17,912 AF—an imbalance and overclaiming of 4,000 AF of DYY production. (Jones Decl., ¶ 65.) For its part, in the same year, FWC rolled off of imported water by only 1,718 AF but claimed DYY production amounts of 5,000 AF—an imbalance and

overclaiming of 3,282 AF of DYY production. (*Id*., ¶ 66.) As addressed more fully, below, because Watermaster has taken the position that DYY Program production is exempt from assessments, the additional 4,000 AF of DYY production claimed by CVWD and extra 3,282 AF of DYY production claimed by FWC, in violation of the Exhibit G performance criteria, exempts that additional water from otherwise authorized production assessments. It is a windfall. And it is a windfall at the expense of other parties, like Ontario, who are required to make up the difference. (*Id*., ¶ 67.)

While Watermaster has taken the position DYY Program water is not assessed, and that the 2019 Letter Agreement somehow was legally sufficient to materially alter the Judgment and other Court orders, this much is clear: the 2019 Letter Agreement explicitly incorporated the Exhibit G performance criteria that CVWD and FWC now have violated. (Jones Decl., ¶ 35.) While the 2019 Letter Agreement allowed parties to pump over the groundwater baseline as defined in Exhibit G, the 2019 Letter Agreement is silent as to all other aspects of the Exhibit G performance criteria and does nothing to amend or modify the imported water criteria contained in Exhibit G. While, as detailed below, the validity and legal effect of the 2019 Letter Agreement is very much in dispute, even if, *arguendo*, the 2019 Letter Agreement is valid, CVWD and FWC violated both the terms of the 2019 Letter Agreement and the 2003 Order adopting the Exhibit G performance criteria when they claimed amounts of DYY production that exceeded the corresponding amount of their shift off of imported water.

B. Watermaster's Failure to Assess Stored Water is Inconsistent With the 1978 Judgment and Subsequent Court Orders

The Judgment requires that Watermaster assess all water produced from the Basin. Accordingly, waiving assessments for the DYY Program would require a Judgment amendment or explicit instructions from the Court for an exception for DYY production. Neither of these has happened and thus Watermaster must comply with the Judgment in assessing DYY production. Further, neither the 2003 nor 2004 DYY Court Orders can be interpreted by Watermaster in a manner that is inconsistent with the Judgment. Ultimately, the terms of the Judgment prevail.

Managing the Basin is costly. To defray some of the costs, the Judgment and subsequent agreements make clear that all water produced must be assessed. According to the Judgment, the

amount that each party is assessed is "based upon *production*." (RJN, Ex. 1 at ¶ 53 (emphasis added).) The Judgment and other governing documents define groundwater production subject to assessment in very broad terms. The Judgment, for example, does not distinguish between different types of water produced. Instead, it defines "Produce or Produced" broadly as "[t]o pump or extract ground water from Chino Basin" and "Production" as "[a]nnual quantity, stated in acre feet, of water produced." (*Id.* at ¶ 4(q), (s).) Similarly, the Judgment does not limit Watermaster's ability to assess production. (Jones Decl., ¶ 41; RJN, Ex. 1 at ¶ 51 ["Production assessments, on whatever bases, may be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool."].) The Watermaster Rules and Regulations, in turn, provide that "Watermaster *shall* levy assessments against the parties . . . based upon Production during the preceding Production period. The assessments shall be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool."[9] (RJN, Ex. 2 at art. IV, § 4.1 (emphasis added).) And the Appropriative Pooling Plan provides that "[c]osts of administration of [the Appropriative] pool and its share of general Watermaster expense shall be recovered by a uniform assessment applicable to *all* production during the preceding year." (Jones Decl., ¶ 42 (emphasis added).) The governing documents, in other words, require that all water produced must be assessed. (See generally *Hi-Desert Cnty. Water Dist. v. Blue Skies Country Club, Inc.* (1994) 23 Cal.App.4th 1723, 1737 [rejecting watermaster's attempt to "palpably ignore[] the rights of defendant as defined in" an earlier judgment and instead trying to "extract money from defendant to pay for . . . supplemental water in direct violation of the terms of such judgment"].)

To be sure, the Judgment distinguishes between native groundwater, stored groundwater, and supplemental water for some purposes.[10] Paragraph 11, for example, provides that ground

[9] The Watermaster Rules and Regulations allow for limited assessment adjustments, but the exceptions do not apply to water produced through the DYY Program. (RJN, Ex. 2 at art. IV, § 4.4; Jones Decl., ¶ 44.)

[10] The Judgment defines "Basin Water" as ground water within Chino Basin that is subject to the Judgment, excluding stored water. (RJN, Ex. 1, at ¶ 4(d).) "Stored Water," in turn, is defined as "[s]upplemental water held in storage . . . for subsequent withdrawal and use pursuant to agreement with Watermaster." (*Id.* at ¶ 4(aa).) And "Ground Water" is "[w]ater beneath the surface of the ground and within the zone of saturation, i.e., below the existing water table." (*Id.* at ¶ 4(h).)

water storage capacity that is not used for storage or regulation of Basin Water can be used for storage of "supplemental water," pursuant to Watermaster's control and regulation. But Paragraph 11 does not suggest that different kinds of water can be assessed differently. Similarly, Paragraph 14 prohibits the parties from "storing supplemental water in Chino Basin for withdrawal," except pursuant to a written agreement with Watermaster and in accordance with Watermaster regulations. (RJN, Ex. 1 at ¶ 14.) This paragraph does not provide that such "supplemental water" (or any other type of water) should not be assessed. Finally, Paragraph 13 prohibits parties from "producing ground water" in certain amounts but has nothing to say about whether the water produced should be assessed. Put simply, the 1978 Judgment's injunctions on producing ground water or storing supplemental water do not require or even suggest that supplemental water should be exempt from assessment. And nothing in subsequent agreements or court orders alters Watermaster's obligation to assess all water that is produced.

1. Watermaster's actions confirm that all water produced must be assessed

Consistent with the governing documents' mandate that all water produced must be assessed, Watermaster consistently assessed all water until suddenly reversing course. For example, Watermaster assessed FWC's production of supplemental water in assessment year 2021/22. (Jones Decl., ¶ 46; RJN, Ex. 53.) Watermaster also assessed imported water. (See Jones Decl., ¶ 47; RJN, Ex. 53.) Finally—and crucially—Watermaster assessed DYY Program water in production years 2002/03 through 2010/11 during the first cycle of the DYY Program. (Jones Decl., ¶ 49; RJN, Exs. 44-52.) Watermaster's own actions establish that until very recently, all water produced was assessed, and there has been no legal rationale given for the change in course.

2. Assessing all water does not amount to "double counting"

In its opposition to Ontario's challenge to Watermaster's previous (2021/22) Assessment Package, FWC and CVWD have insisted that assessing all water produced would amount to a "double administration charge" for the pumping of DYY Program water. This argument is hard to take seriously. A San Francisco resident who pays a toll each time she crosses the Bay Bridge is not thereby exempt from paying other city taxes, because the taxes or assessments have entirely

different purposes. The same concept applies here: Entities participating in the DYY Program are assessed administrative surcharges for the specific purpose of defraying the administrative costs of running the DYY Program. Assessments of produced water, by contrast, underwrite Basin operations as a whole. (RJN, Ex. 1 at ¶¶ 53-54.)

Further, crediting FWC and CVWD's position would invite gamesmanship. Water suppliers could manipulate their records concerning the "type" of water they take to avoid paying administrative surcharges like those the DYY Program assesses. By "coloring the water something else"—*i.e.*, by stating that they took 2,500 AF of recycled water rather than DYY water, or the reverse—parties like FWC and CVWD can circumvent fees and improperly shift costs to others.

3. Excluding DYY water when calculating parties' individual assessments improperly shifted responsibility for those payments to Ontario

By declining to assess water produced through the DYY Program in the FY 22/23 Assessment Package, Watermaster has repeated the same error it made the 2021/22 Assessment Package. As a result, Watermaster allowed CVWD and FWC to circumvent their financial responsibilities. While CVWD is only entitled to take 11,353 AF of DYY Program production per year per its Local Agency Agreement, it claimed 17,912 AF, and was not assessed on the full amount. And while FWC does not have a Local Agency Agreement at all, it was allowed to claim 5,000 AF of DYY Program Production. Watermaster's failure to assess any DYY production resulted in cost-shifting to other parties, including an additional $693,964 added financial burden on Ontario. (Jones Decl., ¶ 67.) Watermaster's decision not to assess all water produced contravenes the Judgment and this Court's 2003 and 2004 orders, which emphasize that the DYY Program must "provide broad mutual benefits to the parties to the Judgment." (RJN, Ex. 9 at pp. 4-6; *Id.*, Ex. 14 at p. 2.) An agreement that benefits only a few (CVWD and FWC) at the expense of many contravenes that directive. And it contravenes case law holding that parties to a stipulated judgment cannot unilaterally revise that judgment.

C. Watermaster Failed to Provide Notice Regarding the 2019 Letter Agreement and Failed to Comply With the Mandatory Watermaster Approval Process

Aside from the Watermaster's legally erroneous understanding of the Judgment and other

governing documents, its approval of the FY 22/23 Assessment Package is unenforceable for a second, independent reason. The Judgment and subsequent court orders prescribe both procedural and substantive requirements relating to proposed Watermaster actions. In 2015, a proposed amendment to the 2003 Funding Agreement ("Amendment 8") sought to make material changes to the DYY Program, including changes to the parties' performance criteria in Exhibit G. (RJN, Ex. 16 at Ex. G.) Under the Judgment and court orders, Amendment 8 had to make its way through the formal Watermaster Approval Process before it could be adopted, a process that involved recommendations for approval by the pool and advisor committees tasked with assisting the Watermaster in the performance of its duties under the Judgment. By contrast, the 2019 Letter Agreement—which modified the DYY Program to allow for water to be recovered outside of local agency agreements without a corresponding change or reduction in imported water supplies—was not approved through the mandated Watermaster Approval Process, nor was notice of the proposed changes provided to all parties as required under the Judgment. (See Jones Decl., ¶¶ 20, 33.) Ontario incorporates by reference its arguments challenging the validity of the 2019 Letter Agreement, which were made in its challenge to the Watermaster's 2021/22 Assessment Package, and which are now pending on appeal. (See Combined Reply at pp. 28-33 (RJN, Ex. 57).) For the same reasons, the Watermaster lacked the authority to enact the FY 22/23 Assessment Package. At the very least, if Watermaster wanted to make a change of this magnitude, it was obligated to provide Ontario notice and an opportunity to be heard. (See RJN, Ex. 57.)

V. CONCLUSION

For the foregoing reasons, Ontario respectfully requests that the Court grant its challenge and issue an order: (1) directing Watermaster to implement the DYY Program in a manner consistent with the Judgment and subsequent agreements and court orders, including Exhibit G; (2) directing Watermaster to comply with the Watermaster Approval Process; (3) correcting and

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amending the FY 22/23 Assessment Package to assess water produced from the DYY Program; and (4) invalidating the 2019 Letter Agreement.

DATED: February 14, 2023

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 February 15, 2023, I served the following:

1. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CITY OF ONTARIO'S MOTION CHALLENGING WATERMASTER'S NOVEMBER 17, 2022 ACTIONS/DECISION TO APPROVE THE FY 2022/2023 ASSESSMENT PACKAGE

/ 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

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

Executed on February 15, 2023 in Rancho Cucamonga, California.

By: Ruby Favela Quintero
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