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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN BERNARDINO

12 CHINO BASIN MUNICIPAL WATER
13 DISTRICT,

14 Plaintiff,

15 v.

16 CITY OF CHINO, et al.,

17 Defendants.

Case No.: RCVRS 51010

Assigned to the Honorable Gilbert G. Ochoa

**FONTANA WATER COMPANY AND
CUCAMONGA VALLEY WATER
DISTRICT'S OPPOSITION TO THE CITY
OF ONTARIO'S MOTION CHALLENGING
WATERMASTER'S NOVEMBER 17, 2022
ACTIONS/DECISION TO APPROVE
FY 2022/2023 ASSESSMENT PACKAGE**

Date: April 5, 2023

Time: 9:00 a.m.

Place: San Bernardino District, Dept S24
247 West 3rd Street
San Bernardino, CA 92415

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21 Fontana Water Company (FWC) and Cucamonga Valley Water District (CVWD), each of which
22 is a defendant under the Chino Basin Judgment and a member of the Appropriative Pool, oppose the
23 City of Ontario's Motion Challenging Chino Basin Watermaster's (Watermaster) November 17, 2022
24 Actions/Decision To Approve FY 2022/2023 Assessment Package.

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INTRODUCTION

Ontario’s motion challenges Watermaster’s approval of the 2022/2023 Assessment Package. Ontario seeks the same relief as it sought in its motion filed on February 17, 2022, which challenged Watermaster’s approval of the 2021/2022 Assessment Package. In the earlier motion, the court ruled that the purported challenge to the assessment package was actually a challenge to a 2019 letter agreement. The court denied the motion on the ground that it was too late to challenge that agreement. Although in the current motion Ontario purports to challenge Watermaster’s approval of the following year’s assessment package, the motion still seeks at bottom to invalidate the same 2019 letter agreement. It is still too late to do so and nothing has changed since the prior motion. The court should deny the motion.

BACKGROUND

The court is already familiar with the facts of this challenge. The following summary is intended to give context to the argument. It is taken from FWC’s and CVWD’s opposition to the original motion filed on February 17, 2022, as well as the court’s order denying the motion, filed November 3, 2022.

Under the Dry Year Yield Program (DYYP) and related documents, the Metropolitan Water District of Southern California (MWD) stores imported water in the Chino Groundwater Basin (Chino Basin). The stored water is later withdrawn by Operating Parties, which are participating member agencies of the two wholesale agencies, Inland Empire Utilities Agency (IEUA) and Three Valleys Municipal Water District (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 March 25, 2022 (“Espinoza Decl.”), ¶¶ 4-5.)

In 2017, in response to heavy rainfall in the region, MWD requested to store more imported water in the Chino Basin than permitted under the existing DYYP agreements. Watermaster and the Operating 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 Chino Basin when the DYYP expired in 2028. (Espinoza Decl. at ¶ 5.)

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1 In response to these concerns, Watermaster approved a 2019 Letter Agreement among
2 Watermaster, IEUA, MWD, and Three Valleys. (Espinoza Decl. at ¶ 6, Exh. B (letter agreement, dated
3 February 5, 2019)). The letter documented the effort of the parties to maximize storage during the wet
4 period, and the new procedure for voluntary withdrawals of imported water from storage by the
5 Operating Parties. It left unchanged the provisions for required withdrawals in response to a call from
6 MWD.

7 After the letter agreement was signed, IEUA offered its member agencies, including Ontario, the
8 opportunity to purchase and withdraw imported water from storage on a voluntary basis. Ontario did not
9 avail itself of this opportunity, but FWC and CVWD did. Each of these agencies purchased and withdrew
10 imported water from storage in the 20/21 and 21/22 production year. By long Watermaster practice,
11 Watermaster has never imposed assessments on withdrawal of stored water from the DYY storage
12 account. (Espinoza Decl., ¶ 10.) Accordingly, the FY 21/22 assessment package approved by
13 Watermaster parties in November 2021 did not contain any such assessments.

14 Ontario challenged the FY 21/22 assessment package in a motion filed February 17, 2022. The
15 motion was opposed by FWC, CVWD, IEUA, Three Valleys and Watermaster. This court denied the
16 motion by order dated November 3, 2022 (Order). The court found that the challenge to the 21/22
17 assessment package was in reality a challenge to the 2019 letter agreement, and that the mailing of the
18 2019 letter agreement on March 20, 2019, constituted notice of Watermaster's action. The order went
19 on: "As a result, under Paragraph 31(c) of the Judgment, *Ontario had 90 days to serve and file notice of*
20 *any motion or application seeking review of Watermaster's action in executing the 2019 Letter*
21 *Agreement.*" (Order at p. 6 (emphasis in original)). Therefore, the court denied Ontario's motion. The
22 court's order is currently on appeal.

23 ARGUMENT

24 **I. The reasons for denying the prior motion are still applicable.**

25 The instant motion is a challenge to the FY 22/23 assessment package.¹ While the original motion
26 was pending, FWC and CVWD continued to withdraw water voluntarily under the DYY Program in
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28 ¹ Ontario supports its motion by a Declaration of Courtney Jones, which consists largely of legal
opinion and argument rather than facts. The court should disregard the opinion and argument.

1 production year 21/22. Water produced in a production year is assessed in the following fiscal year, and
2 Ontario contends that the water withdrawn from storage in 21/22 should have been assessed in 22/23.
3 Except for the fiscal year involved, the rationale for the motion is the same: Ontario is challenging
4 Watermaster’s execution of the 2019 letter agreement.

5 The court’s basis for denying Ontario’s challenge to the 21/22 assessment package applies
6 equally to the instant challenge to the 22/23 assessment package. Both are, in reality, challenges to
7 Watermaster’s execution of the 2019 letter agreement. Any challenge to that agreement was required to
8 be filed by 90 days after the agreement was mailed to the party. The instant motion is therefore untimely.

9 **II. Ontario’s grounds for its motion were all asserted in the prior motion.**

10 Ontario asserts that the 22/23 assessment package is legally invalid for three independent reasons,
11 two of which assume the validity of the 2019 letter agreement. Ontario implies that those two reasons
12 were not included in the prior motion. That is false. Ontario raised both of the issues in its prior motion,
13 and the court ruled against it. Ontario should not be permitted to raise them again, absent a change in
14 circumstances.

15 The first “new” reason asserted by Ontario is that Watermaster’s decision not to assess
16 withdrawals of DYY stored water conflicts with the Judgment. Ontario made this argument in the prior
17 motion. (See City of Ontario’s Combined Reply to the Oppositions of Watermaster, Fontana Water
18 Company and Cucamonga Valley Water District, and Inland Empire Utilities Agency to Application For
19 an Order To Extend Time Under Paragraph 31(c) of The Judgment, To Challenge Watermaster
20 Action/Decision on November 18, 2021 To Approve the FY 2021/2022 Assessment Package or
21 Alternatively, City of Ontario’s Challenge, filed May 22, 2022, pages 20–24 and 33–35 (“Ontario’s
22 Reply”). The court addressed this argument in its order, in which it discussed the distinctions made in
23 the judgment between “production” of Basin Water and the “withdrawal” of Supplemental or Stored
24 Water. As pointed out in the FWC’s and CVWD’s opposition to the earlier motion, Watermaster has
25 never levied assessments on withdrawal of stored water from the DYY storage account. (See Espinoza
26 Decl. ¶ 10.)

27 Ontario adds a red herring by asserting that Watermaster did assess withdrawal of stored water
28 in the first cycle of the DYY Program. (see Jones Decl., ¶ 49; Ontario’s RJN, Exhs. 44-52.) But a closer

1 look at the tables shows that assessments were levied on “in-lieu puts” and not on “takes.” A put is when
2 water is stored in the basin, and a take is when water is withdrawn. An in-lieu put is when an agency
3 takes water directly from MWD instead of pumping groundwater. The effect on the basin is the same as
4 if MWD had stored the water by directly recharging it into the basin. The operation is assessed as if that
5 had happened. In other words, the agency is assessed as if it had produced groundwater. The “in-lieu
6 put” is assessed, but the “take”—the withdrawal of stored water—is not. This also answers the question
7 asked in the Jones declaration, “why ‘In Lieu Recharge’ was subject to Watermaster assessments and
8 why ‘Wet Water Recharge’ was not.” (Jones Decl., ¶ 49.)

9 The second “new” reason asserted by Ontario for invalidation of the assessment is that CVWD
10 and FWC failed to comply with the performance criteria set out in Exhibit G to the 2003 Groundwater
11 Storage Program Funding Agreement. Again, Ontario made this argument in its earlier motion. (See
12 Ontario’s Reply, page 19.)

13 Exhibit G imposes no requirements on Watermaster. (Ontario’s RJN, Exh. 16, Exhibit G, page
14 135 of the pdf.)² It sets out criteria for IEUA and Three Valleys to be entitled to credits from MWD. It
15 has nothing to do with assessments.

16 Further, contrary to Ontario’s assertion, the 2019 letter agreement did modify the Exhibit G
17 performance criteria for voluntary withdrawals. It provided that “any water stored after June 1, 2017,
18 would be purchased from the account by IEUA and Three Valleys *when the parties pump over the*
19 *groundwater baseline as defined in Exhibit G. . . .* The parties will receive O&M, power, and treatment
20 credits and be billed for the water *when the parties pump over the groundwater baseline as defined in*
21 *Exhibit G,”* i.e., without having to meet any other performance criteria. (Espinoza Decl., Exhibit B.) The
22 agreement later confirms, “Credits will be applied if a Party chooses voluntarily to purchase stored water
23 by increasing groundwater pumping.” (*Ibid.*)

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28 ² Ontario’s motion incorrectly cites to the 2003 version of Exhibit G, not to the 2015 version which
was in effect at the time of the 2019 letter agreement, and is in effect now.

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CONCLUSION

Ontario wants the court to revisit its decision from last November. It has added nothing new—no new facts; no new arguments—from the prior motion. The court should deny the motion.

Dated: March 21, 2023

LAGERLOF, LLP

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CUCAMONGA VALLEY WATER DISTRICT

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 March 22, 2023, I served the following:

1. FONTANA WATER COMPANY AND CUCAMONGA VALLEY WATER DISTRICT'S OPPOSITION TO THE CITY OF ONTARIO'S MOTION CHALLENGING WATERMASTER'S NOVEMBER 17, 2022 ACTIONS/DECISION TO APPROVE FY 2022/2023 ASSESSMENT PACKAGE

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

See attached service list: Mailing List 1

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

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

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

See attached service list: Master Email Distribution List

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

Executed on March 22, 2023 in Rancho Cucamonga, California.



By: Ruby Favela Quintero
Chino Basin Watermaster

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