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FEE EXEMPT

Attorneys for
CHINO BASIN WATERMASTER

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. RCV RS 51010

[Assigned for All Purposes to the
Honorable Gilbert G. Ochoa]

NOTICE OF ORDER

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TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on August 4, 2023, in Department S24 of the above-entitled Court, City of Ontario’s Motion Challenging Watermaster’s November 17, 2022 Actions/Decision to Approve FY 2022/2023 Assessment Package (“Motion”) came on for hearing in the above-captioned matter. On August 18, 2023, the Honorable Gilbert G. Ochoa, having considered the briefing submitted and all supporting documents filed concurrently therewith, and having heard any oral argument from counsel, denied the Motion, adopting the Court’s tentative ruling as a final ruling, a copy of which is attached to this Notice as **Exhibit A**. The Court’s minute order as to its ruling on the motion is attached as **Exhibit B**.

Dated: August 21, 2023

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

By: 
SCOTT S. SLATER
BRADLEY J. HERREMA
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Attorneys for
CHINO BASIN WATERMASTER

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EXHIBIT A

TENTATIVE RULINGS FOR May 12, 2023
Department S24 - Judge Gilbert G. Ochoa

This court follows California Rules of Court, rule 3.1308(a) (1) for tentative rulings. (See San Bernardino Superior Court Local Emergency Rule 8.) Tentative rulings for each law & motion will be posted on the internet (<https://www.sb-court.org>) by 3:00 p.m. on the court day immediately before the hearing.

If you do not have internet access or if you experience difficulty with the posted tentative ruling, you may obtain the tentative ruling by calling the Administrative Assistant. You may appear in person at the hearing but personal appearance is not required and remote appearance by Court Call is preferred during the Pandemic. (See www.sbcourt.org/general-information/remote-access)

If you wish to submit on the ruling, call the Court and your appearance is not necessary. If both sides do not appear, the tentative will simply become the ruling. If any party submits on the tentative, the Court will not alter the tentative and it will become the ruling. If one party wants to argue, Court will hear argument but will not change the tentative. If the Court does decide to modify tentative after argument, then a further hearing for oral argument will be reset for both parties to be heard at the same time by the Court.

UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.

Watermaster Case
RCVRS51010
CHINO BASIN MUNICIPAL WATER DISTRICT

v.

CITY OF CHINO, et al.

Motion: **Motion Challenging Watermaster's November 17, 2022 Actions/Decision to Approve the FY 2022/2023 Assessment Package**

Movant: City of Ontario

Respondent: 1. Chino Basin Watermaster
2. Inland Empire Utilities Agency
3. Fontana Water Company and Cucamonga Valley Water District

Discussion

Ontario's challenge arises from Watermaster's November 17, 2022 to approve the FY 22/23 Assessment Package. As discussed further below, Ontario contends that Watermaster improperly excluded certain assessments from the FY 22/23 Assessment Package—namely, assessments against Fontana Water and CVWD related to their production of water under the DYY Program. As argued by Ontario, Fontana Water and CVWD failed to comply with the provisions of the 2003 Groundwater Storage Program Funding

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
AUG 18 2023
BY Jennifer Medina
JENNIFER MEDINA, DEPUTY

Agreement, and “overclaimed” their DYY Program production levels. In addition, Ontario contends Watermaster’s action is based on an incorrect interpretation of the 2019 Letter Agreement, and thus resulted in a violation of the governing Judgment which requires the assessment of all water produced in the Chino Basin. Alternatively, Ontario argues that Watermaster’s approval of the FY 22/23 Assessment Package is unenforceable because it is based on the 2019 Letter Agreement—an agreement which Ontario contends was improperly adopted by Watermaster and which made unauthorized changes to the DYY Program.

Accordingly, Ontario now seeks an order: (1) directing Watermaster to implement the DYY Program in a manner consistent with the Judgment and applicable court orders, (2) directing Watermaster to comply with the Watermaster approval process as it pertains to the DYY Program and any proposed amendments, (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.

As discussed below, although it seems Ontario misunderstands which categories of water are subject to the DYY Program and its position regarding the validity of the 2019 Letter Agreement was previously rejected.

A. The Dry Year Yield Program (“DYY Program”)

The Dry Year Yield Program (“DYY Program”) is a groundwater Storage and Recovery Program whereby the Metropolitan Water District (“MWD”) agreed to provide certain local infrastructure investments and physical benefits to the Appropriative Pool, as well as annual payments to Watermaster, in exchange for the right to deliver and store imported water supplies in the Chino Basin. (RJN Exh. 8, Sec. IV.A.1.; *see also*, Declaration of Elizabeth Hurst (“Hurst Decl.”), ¶ 3.) The purpose of the DYY Program was to allow the MWD, in emergency or drought situations, to require the “Operating Parties” to purchase and use imported water withdrawn directly from storage rather than purchasing surface water directly from the MWD. (RJN Exh. 8, Sec. I.D; Declaration of Peter Kavounas (“Kavounas Decl.”), ¶ 5.)

The DYY Program is based primarily on the 2003 Groundwater Storage Program Funding Agreement (“DYY Funding Agreement”), to which Watermaster, the MWD, Inland Empire Utilities Agency (“IEUA”), and Three Valleys Municipal Water District (“Three Valleys”) are parties. (RJN Exh.

8; *see also*, Hurst Decl., ¶ 2.) The DYY Program allows for MWD to deliver and store up to 100,000 acre-feet of imported water in the Chino Basin, and to cause stored water to be extracted, at MWD's request, at a rate of 33,000 acre-feet per year.¹ This storage "account" (hereinafter, "DYY Storage Account") is effectively owned by MWD. (RJN Exh. 8, Sec. IV.A.1.a. and Sec. IV.A.2.b.; Hurst Decl., ¶ 4; *see also*, Kavounas Decl., ¶ 3.)

Pursuant to the DYY Funding Agreement, IEUA and Three Valleys entered into separate local agency agreements with the Operating Parties. (RJN Exh. 8, Sec. IV.A.1.b.) At MWD's request, IEUA, Three Valleys, and Watermaster could make "deposits" into the DYY Storage Account through either: (1) direct wet water recharge (i.e., delivery) of imported water in the Basin (e.g., by injection or spreading);² or (2) storing the amount of imported water by "in lieu" recharge—i.e., reducing the pumping of stored water from the Basin by the amount delivered—under separate agreements with members of the Appropriative Pool.³ (RJN Exh. 8, Sec. VII.A.3; Kavounas Decl., ¶¶ 3, 4.) The imported water could be withdrawn later by the Appropriative Pool parties under terms agreed to by MWD. (Kavounas Decl., ¶¶ 4, 5.) When the parties pump the water, the MWD then invoices IEUA or Three Valleys for the amount of water extracted, and IEUA or Three Valleys receive an operational credit for operation and maintenance costs for the stored water.⁴ (RJN Exh. 8, Sec. VII.D.)

Exhibit G to the DYY Funding Agreement allowed MWD to compel IEUA and Three Valleys to meet certain performance criteria: (a) the reduction of imported water deliveries by 33,000 acre-feet during

¹ Imported water provided for storage by MWD is referred to as "Program Water" in the DYY Funding Agreement. (RJN Exh. 8, Sec. IV.A.1.c.)

² The Watermaster General Manager explained wet water recharge as the delivery by MWD of imported water to recharge basins or injection wells. Such delivery occurs through Three Valleys or IEUA. (Kavounas Decl., ¶ 4.)

³ The Watermaster General Manager attests that "in-lieu" recharge is accomplished through IEUA, Three Valleys, and the "participating retailers" in the DYY Program. He goes on to explain that, " 'In-lieu' recharge involves a participating retailer taking imported water from MWD directly into its delivery system and foregoing pumping groundwater it would otherwise produce. The groundwater as to which its production is foregone is then considered to be recharged 'in-lieu'" (Kavounas Decl., ¶ 5.)

⁴ Generally, under the DYY Program, the years are divided between "put" years and "call" years. (Hurst Decl., ¶ 5.) During "put" years, up to 25,000 acre-feet of water may be placed in the DYY Program account at the MWD's request. During "call" years, at the MWD's request, up to 33,000 acre-feet of water may be extracted, as long as the amount extracted does not exceed the amount stored in the DYY Program account. The water extracted during "call" years is used by the parties with credits to offset pumping, operations, and maintenance costs, thus making the costs of this stored water equivalent to a direct MWD purchase. (*Ibid.*)

a 12-month period, (b) cause 33,000 acre-feet to be pumped from the DYY Storage Account during the same period, and (c) increase Basin pumping by the Operating Parties within the Appropriative Pool by 33,000 acre-feet over the previous year. (RJN Exh. 8, Exh. G.) The objective was to provide 33,000 acre-feet of additional pumping capacity in the Basin in dry years, and allow MWD, IEUA, and Three Valleys the flexibility to use the facilities in the most efficient manner possible. (*Ibid.*)

In the June 2003 Order approving the DYY Funding Agreement, the court noted that under Paragraph 28 of the Judgment, “groundwater storage agreements are to contain terms that will preclude operations having a substantial adverse impact on other producers.” (*See*, RJN Exh. 9, 2:22-24.) The Order also states that “until Watermaster and this Court approve the Local Agency Agreements and Storage and Recovery Application, or some equivalent approval process is completed, the storage and recover program cannot be undertaken. The Judgment mandates that the Funding Agreement be reviewed in this context.” (*Id.* at 3:22-26.) The various individual Local Agency Agreements contemplated in the DYY Funding Agreement were executed between IEUA and Three Valleys and the Operating Parties in 2003. (RJN, Exhs. 9-11; Declaration of Courtney Jones (“Jones Decl.”), ¶ 15.)

In 2004, the parties proposed the DYY Storage and Recovery Program Storage Agreement (“DYY Storage Agreement”) to establish the permissible quantity of imported water that may be stored in the Basin, and Watermaster submitted a motion for approval to the court. (RJN Exh. 15; Jones Decl., ¶ 6.)⁵ In its 2004 Order approving the DYY Storage Agreement, the court first noted that under the governing Judgment, “no use shall be made of the storage capacity of Chino Basin except pursuant to written agreement with Watermaster,” and “agreements for storage ‘shall first be approved by written order of the Court’ and must include terms that will ‘preclude operations which will have a substantial adverse impact on other producers.’” (RJN Exh. 15, 3:2-9, quoting Judgment, at RJN Exh. 1, ¶¶ 12, 28.) The court then granted Watermaster’s motion for approval of the DYY Storage Agreement, finding the Agreement was “consistent

⁵ The 2004 Storage and Recovery Program Storage Agreement established the permissible quantity of imported water that could be stored in Chino Basin.

with the Judgment and Implementation Plan” and “unlikely to have any adverse impacts on a party to the Judgment.” (RJN Exh. 15, 3:14-17.)

Several amendments were subsequently made to the DYY Funding Agreement, including the January 2015 amendment—Amendment No. 8—which, as discussed below, contemplated material changes to the DYY Program. (RJN Exh. 16.)

B. 2019 Letter Agreement

Generally, under the DYY Program, years are divided between “put” years and “call” years. During “put” years, up to 25,000 acre-feet of water may be placed in the DYY Program account at the MWD’s request. During “call” years, at the MWD’s request, up to 33,000 acre-feet of water may be extracted, as long as the amount extracted does not exceed the amount stored in the DYY Program account. The water extracted during “call” years is used by the Basin parties with credits to offset pumping, operations, and maintenance costs, thus making the costs of this stored water equivalent to a direct MWD purchase. (Hurst Decl., ¶ 5.)

In 2017, due to heavy regional rainfall, the MWD had excess water supply and asked for a “put” to store more imported water than permitted under the then-existing DYY Program agreements. (Hurst Decl., ¶ 7.) Although Watermaster and other parties agreed to the request, the Operating Parties were concerned about their ability to voluntarily withdraw the extra water. Voluntary withdrawal would allow the parties to use the stored water in the DYY Storage Account without MWD issuing a call, and it would prevent stored water from being left in the Basin when the DYY Program expired in 2028. (Hurst Decl., ¶ 8.)

As a result, in 2018, all the parties, including Ontario, engaged in discussions regarding proposed revisions to the DYY Program agreements related to voluntary withdrawals from the Basin wherein the Operating Parties could voluntarily extract water from the DYY account outside of a “call” year. (Jones Decl., ¶ 32; Hurst Decl., ¶¶ 9-13.) In June 2018, Ontario sent an email to the parties requesting clarification from IEUA regarding certain aspects of the proposed voluntary withdrawal system. (Hurst Decl., ¶ 10, Exh. A.) Notably, Ontario specifically asked whether the voluntary withdrawals would be subject to Watermaster assessments as part of the typical production, or whether the proposed voluntary withdrawal system would

be categorized as part of the storage and recovery program. (*Ibid.*) IEUA responded, and stated that as part of the DYY Program, the proposed voluntary withdrawals from the MWD account would not be subject to the typical Watermaster assessments since the DYY Program water was categorized as a storage and recovery program. (Hurst Decl., ¶ 11, Exh. B.) In addition, IEUA noted the voluntary withdrawal system would be completely voluntary and would not materially affect the DYY Program. (*Ibid.*)

Although Ontario reserved its right to challenge the proposed agreement, it did not formally submit any objections to IEUA. As a result, on February 5, 2019, Watermaster, MWD, IEUA, and Three Valleys signed the 2019 Letter Agreement. (RJN Exh. 34; Hurst Decl., ¶ 14 and Exh. D; Jones Decl., ¶¶ 34, 35.)

C. Ontario's Challenge to the FY 2022/2023 Assessment Package

Ontario challenge's Watermaster's approval of the FY 22/23 Assessment Package on the ground that Watermaster failed to assess water produced by Fontana Water and CVWD as part of the DYY Program. As argued by Ontario, the FY 22/23 Assessment Package is legally invalid for three reasons: (1) Watermaster's approval violates the Judgment, other governing agreements, and various court orders; (2) Fontana Water and CVWD failed to comply with the imported water performance criteria in Exhibit G of the DYY Funding Agreement; and (3) Watermaster's approval is unenforceable because it was adopted in reliance on the 2019 Letter Agreement.

1. Categories of Water in the Chino Basin, Watermaster Assessments, and the DYY Program

Regarding its first argument, Ontario contends that the Judgment requires Watermaster to assess all water produced from the Basin, including water produced in the DYY Program. As argued by Ontario, the Judgment and other governing documents broadly define ground water production that is subject to assessment, and do not distinguish between different types of water that are produced. In addition, Ontario contends neither the Judgment nor the Rules and Regulations limit Watermaster's ability to assess production, and state that Watermaster must levy assessments based on all production and pursuant to the applicable pooling plan adopted by the parties. (Jones Decl., ¶ 41; RJN Exh. 1, ¶ 51; RJN Exh. 2, Sec. IV.4.1.) Although Ontario acknowledges that the Judgment distinguishes between various categories of

water, Ontario contends the distinctions do not suggest that certain water should be exempt from assessment.

However, Ontario seems to misconstrue the relevant provisions of the Judgment, Chino Basin Watermaster Rules and Regulations (hereinafter, "Rules and Regulations"), and the DYY Funding Agreement. An examination of the definitions provided in these governing documents and how they relate to the DYY Program is instructive.

As a preliminary matter, regarding assessments, the Judgment provides: "Watermaster shall have the power to levy assessments against the parties (other than minimal pumpers) based upon production during the preceding period of assessable production, whether quarterly, semi-annually or annually, as may be determined most practical by Watermaster or the affected Pool Committees." (Judgment, ¶ 53, emphasis added.) Similarly, the Rules and Regulations state in relevant part: "Watermaster shall levy assessments against the parties (other than Minimal Producers complying herewith) based upon Production during the preceding Production period.

The Judgment and the Rules and Regulations define "Produce" or "Produced" as "to pump or extract ground water from Chino Basin." (Judgment, ¶ 4(q); Rules and Regs., Sec. 1.1(ooo) [emphasis added].) "Production" is defined as "annual quantity, stated in acre feet, of water Produced from the Chino Basin." (Rules and Regs., Sec. 1.1(qqq); Judgment, ¶ 4(s) [emphasis added].) Accordingly, in applying these definitions to Paragraph 53 of the Judgment, it is clear that this provision intends for Watermaster to levy assessments based on the annual quantity of ground water pumped or extracted from the Basin.

In the Judgment, "Ground Water" is defined as "water beneath the surface of the ground and within the zone of saturation, i.e., below the existing water table."⁶ (Judgment, ¶ 4(h).) However, as discussed further below, the DYY Program involves the storage, purchase, and use of stored water that is imported into the Basin. (See, RJN Exh. 8.) "Stored Water" is defined in the Rules and Regulations as "Supplemental Water held in storage, as a result of direct spreading, injection or in lieu delivery, for subsequent withdrawal

⁶ The term is similarly defined in the Rules and Regulations as "all water beneath the surface of the ground." (Rules and Regs., Sec. 1.1 (kk).)

and use pursuant to a Groundwater Storage Agreement with Watermaster.”⁷ (Rules and Regs., Sec. 1.1(ag), emphasis added.) In the Rules and Regulations, “Supplemental Water” is defined as “water imported to Chino Basin from outside the Chino Basin Watershed and Recycled Water.”⁸ (Rules and Regs., Sec. 1.1(ah), emphasis added.) The Judgment similarly defines “Supplemental Water” as “includ[ing] both water imported to Chino Basin from outside Chino Basin Watershed, and reclaimed water.” (Judgment, ¶ 4(bb), emphasis added.) Therefore, by definition, “ground water”—the category of water subject to assessment—does not include “stored water” and “supplemental water”—the categories of water that are part of the DYY Program.

Moreover, it must be noted that the Judgment also contemplates that the Basin will be used for certain storage purposes, and distinguishes between the production of Basin Water and the withdrawal of Stored Water. First, Paragraph 11 of the Judgment provides in part that the Basin has “a substantial amount of available ground water storage capacity which is not utilized for storage or regulation of Basin Waters. Said reservoir capacity can appropriately be utilized for storage and conjunctive use of supplemental water with Basin Waters.” (Judgment, ¶ 11, emphasis added.) After setting forth provisions regarding an injunction against the unauthorized production of Basin Water, the Judgment goes on to set forth a companion injunction against the unauthorized storage or withdrawal of Stored Water. (Judgment, ¶¶ 13, 14, emphasis added.) This provision states in part that the parties are enjoined “from storing supplemental water in Chino Basin for withdrawal ... except pursuant to the terms of a written agreement with Watermaster and in accordance with Watermaster regulations.” (Judgment, ¶ 13, emphasis added.) These definitions and provisions also seem to indicate that there is a distinction between “production” of Basin Water and “withdrawal” of Supplemental or Stored Water—a distinction that is relevant to the issue of Watermaster assessments.

⁷ The term is similarly defined in the Judgment 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).)

⁸ The “Chino Basin Watershed” is the “surface drainage area tributary to and overlying the Chino Basin.” (Judgment, ¶ 4(g); Rules and Regs., Sec. 1.1(r).)

As explained in the DYY Funding Agreement, water is “deposited” into the DYY Storage Account either through direct recharge of “wet” water or through “in-lieu” recharge. (See, RJN Exh. 9.) In the Rules and Regulations, “In-lieu Recharge” is defined as “taking supplies of Supplemental Water in lieu of pumping groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, as provide in Exhibit ‘H’ Paragraph 11 of the Judgment.” (Rules and Regs., Sec. 1.1(oo).)

Watermaster’s General Manager explains the operation of the DYY Program this way: In-lieu recharge involves the Operating Parties taking imported water from MWD directly into their respective delivery systems and foregoing the pumping of ground water they would otherwise produce. The ground water that is not produced is then considered to be recharged “in-lieu” into the Basin, and Watermaster credits the DYY Storage Account for the amount of water that has been deemed “delivered in lieu of pumping” by the Operating Parties. Then, for each of the Operating Parties, Watermaster appropriately debits that party’s account holding native and Supplemental Water as directed by the party. From an accounting perspective, since the debit is akin to a party pumping ground water for its own use, a production assessment is levied against that party. (Kavounas Decl., ¶¶ 5, 7.) Under this system, a party’s “withdrawal” of water from the DYY Storage Account is not subject to assessment because the withdrawn water came from one of two sources: (1) it was recharged imported water, or (2) it was ground water deposited in-lieu to the Storage Account, and thus was assessed when deposited. Thus, according to Watermaster, although the Operating Parties physically withdraw water from the DYY Storage Account via extraction, the water is not considered “produced” from the Basin’s native water supply. (Kavounas Decl., ¶ 8.)

Ontario’s contention is inaccurate regarding the withdrawal of stored water from the DYY Storage Account being considered “production” within the meaning of the Judgment. As discussed above, neither the Judgment nor the Rules and Regulations defines “production” as the withdrawal or recovery of stored or supplemental water in the DYY Program. “Production” only refers to the pumping or extraction of ground water from the Basin.

However, subsequent documents appear to inject some ambiguity into whether stored water should be subject to Watermaster assessment. According to Ontario, Watermaster’s methodology in determining

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assessments has changed over the years, and Watermaster's past actions confirm that all water produced must be assessed. In support, Ontario points to Watermaster's purported assessment of Fontana Water's production of "supplemental" water in FY 2021/2022. (Jones Decl., ¶ 46; RJN Exh. 53.) Ontario contends that during the first cycle of the DYY Program—i.e., production years 2003/2004 to 2011/2012—approximately 90 percent of all water within the DYY Storage Account was subject to assessment. (Jones Decl., ¶¶ 47, 49; RJN Exhs. 37-45.) But Ontario contends that during the second cycle of the DYY Program—production years 2016/2017 to 2021/2022—none of the water in the DYY Storage Account was subject to Watermaster assessment. (Jones Decl., ¶ 50; RJN Exhs. 46-53.)

Conversely, Watermaster contends that its assessment methodology has remained unchanged since the beginning of the DYY Program. (Kavounas Decl., ¶ 13.) According to Watermaster's General Manager, Watermaster has never assessed withdrawals from the DYY Storage Account or recharged imported water—only "in-lieu" deposits have been assessed. (*Ibid.*; *see also*, RJN Exhs. 37-53.)

However, on this point, as discussed further below, there is a question as to whether Ontario is correct that the Watermaster assessment methodology changed, or should have changed.

2. Exhibit G Performance Criteria vs. Voluntary Withdrawals

Ontario contends the FY 22/23 Assessment Package is incorrect because Watermaster did not require Fontana Water and CVWD to comply with the performance criteria set forth in Exhibit G to the DYY Funding Agreement regarding the required reduction of imported water deliveries and corresponding increase in ground water pumping from the DYY Storage Account in certain years. (Jones Decl., ¶ 14.) According to Ontario, the performance criteria in Exhibit G that controls the use of water in the DYY Program under this court's 2003 Order was left unchanged by the 2019 Letter Agreement, and ensures that a party can only claim DYY Program credit equal to their reduction of imported water deliveries. (*Ibid.*)

Regarding FY 22/23 assessment year (2021/2022 production year), Ontario specifically contends that although Fontana Water reduced its use of imported water by on 1,718 acre-feet, Fontana Water claimed a DYY Program production amount of 5,000 acre-feet—thus allowing Fontana Water to "overclaim" 3,282 acre-feet of DYY Program production. (Jones Decl., ¶ 66.) Similarly, Ontario contends

that CVWD reduced its use of imported water by 13,915 acre-feet, but claimed a DYY Program production amount of 17,912 acre-feet—thus “overclaiming” 4,000 acre-feet of DYY Program production. (Jones Decl., ¶ 65.) According to Ontario, Watermaster’s failure to assess any DYY Program production resulted in cost-shifting to other parties, including an additional \$693,964 in costs to Ontario. (Jones Decl., ¶ 67.) Ontario contends that in failing to assess water produced through the DYY Program, Watermaster allowed Fontana Water and CVWD to avoid their financial responsibilities, thus resulting in a windfall to Fontana Water and CVWD and shifting responsibility for those payments to Ontario and other parties. (Jones Decl., ¶ 17.)

As a preliminary matter, it is noted that in January 2015, Amendment No. 8 to the DYY Funding Agreement replaced the original Exhibit G in its entirety, and enabled MWD to compel the Operating Parties to pump water from the DYY Storage Account in lieu of receiving imported water deliveries, thus making additional imported water supply available for delivery to other MWD member agencies. (*See*, RJN Exh. 16.)

Regarding Exhibit G, Ontario contends that although the 2019 Letter Agreement incorporates the Exhibit G performance criteria, Fontana Water and CVWD violated the performance criteria. (RJN Exh. 34; Jones Decl., ¶ 35.) In addition, Ontario contends the 2019 Letter Agreement allows parties to pump water in excess of the ground water baseline as defined in Exhibit G, but it is silent as to all other aspects of the Exhibit G performance criteria and does not amend or modify the imported water criteria. Therefore, Ontario argues that Fontana Water and CVWD violated the terms of the 2019 Letter Agreement and this court’s 2003 Order when they claimed DYY production in amounts exceeding the corresponding amounts of their respective reductions in imported water deliveries.

However, as argued by Watermaster and IEUA, Ontario misconstrues the 2019 Letter Agreement’s effect on Exhibit G as amended by Amendment No. 8. As noted by Watermaster, Exhibit G, as amended, explicitly applies to only MWD “calls” that compel the Operating Parties to withdraw from the DYY Storage Account instead of receiving surface water deliveries. Watermaster and IEUA argue that, other than incorporating the definition of “groundwater baseline” from Exhibit G, the 2019 Letter Agreement

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does not impose Exhibit G performance criteria on voluntary withdrawals of water from the DYY Storage Account by the Operating Parties. Instead, according to Watermaster and IEUA, the 2019 Letter Agreement created new rules for voluntary withdrawals which were not covered under Exhibit G.⁹ (Hurst Decl., ¶ 17.)

Indeed, as review of the 2019 Letter Agreement reveals that Ontario has misconstrued its provisions. As noted above, the 2019 Letter Agreement, entitled “Chino Basin Groundwater Storage Actions and Voluntary Purchase Methodology,” addressed the excess water stored in the DYY Storage Account after MWD asked for a “put” in 2017, and the Operating Parties’ concerns about their ability to withdraw the excess water upon request. (RJN Exh. 34; Hurst Decl., ¶ 7.) Under the 2019 Letter Agreement,

...any water stored after June 1, 2017, would be purchased from the [DYY Storage] account by IEUA and Three Valleys when the parties pump over the groundwater baseline as defined in Exhibit G. ... This pumping could be the result of a response to a call for pumping made by [MWD] or it could be through normal operational decisions made by the individual parties in a given year. Except during a call, the increase in pumping would be voluntary and performance would be measured by the parties that elect to increase their pumping. Call provisions would remain unchanged. The parties will receive [Operation and Maintenance], power, and treatment credits and be billed for the water when the parties pump over the groundwater baseline as defined in Exhibit G.

(RJN Exh. 34, p. 2.)

Therefore, contrary to Ontario’s contention, the pumping of water by Fontana Water and CVWD in the 2021/2022 production year was for voluntary withdrawals under the 2019 Letter Agreement—not mandatory withdrawals pursuant to MWD “calls.”¹⁰ (Hurst Decl., ¶ 16.) As a result, those withdrawals were not subject to the Exhibit G performance criteria that required the Operating Parties to reduce deliveries of

⁹ Watermaster explains that the voluntary withdrawals provided the parties with additional flexibility under the Judgment, but did not provide free, unassessed water. According to Watermaster, when a party withdraws water from the DYY Storage Account, the party pays MWD for the water at MWD’s “then applicable full-service rate ... as if such Stored Water Deliveries were surface water deliveries through its service connection ...” (See, Watermaster Opp. Brief, p. 11, fn. 8, citing to RJN Exh. 8, Sec. VII.D.) According to Watermaster, under the DYY Funding Agreement, MWD compensates Watermaster for administration of the DYY Program, and payment of MWD’s rates by the parties covers MWD’s costs, including costs associated with the DYY Funding Agreement. As a result, Watermaster states that in paying MWD’s rates for the voluntary withdrawal of water from the DYY Storage Account, parties necessarily pay costs to cover Watermaster’s expenses for administration of the DYY Program. (*Ibid.*)

¹⁰ IEUA notes that Ontario also had the opportunity to voluntarily withdraw water from the DYY Storage Account in production years 2019/2020 and 2020/2021, but Ontario declined to do so. (Hurst Decl., ¶ 15.)

imported water, and they were exempt from assessment by Watermaster in accordance with the 2019 Letter Agreement. (Hurst Decl., ¶ 16.)

3. *Validity of 2019 Letter Agreement*

Ontario's third argument regarding is identical to the argument underlying Ontario's previous challenge to Watermaster's approval of the Fiscal Year 2021/2022 Assessment Package—an argument that was unequivocally rejected by this court in its November 3, 2022 Ruling.¹¹ Therefore, this issue will not be addressed here.

Rulings

1. **The court GRANTS Ontario's Request for Judicial Notice as to Exhibits 4, 5, 6, 7, 9 and 14. Judicial notice should also be GRANTED as to all of the remaining exhibits, with the caveat that the court is not judicially noticing the truth of the matters asserted in the documents.**
2. **The court GRANTS Inland Empire Utilities Agency's Request for Judicial Notice.**
3. **The court GRANTS Ontario's Reply Request for Judicial Notice.**
4. **The court DENIES the Motion for all the above reasons.**

Movants to give Notice and prepare Order.

Dated-

AUG 18 2023



Judge **GILBERT G. OCHOA**

¹¹ This court's November 2, 2022 Order regarding Ontario's challenge to Watermaster's approval of the Fiscal Year 2021/2022 Assessment Package is current on appeal. (Declaration of Elizabeth P. Ewens ("Ewens Decl."), ¶¶ 4-5.) Ontario contends they raised these arguments here for the purpose of preserving its claim as it relates to its current challenge of Watermaster's approval of the FY 22/23 Assessment Package.

EXHIBIT B



**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO**
San Bernardino District
247 West 3rd St
San Bernardino, CA 92415
www.sb-court.org

MINUTE ORDER

Case Number: RCVRS51010

Date: 8/18/2023

Case Title: CHINO BASIN MUNI WATER DIST -V- CITY OF CHINO

Department S24 - SBJC	Date: 8/18/2023	Time: 8:30 AM	Ruling on Submitted Matter
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Judicial Officer: Gilbert Ochoa
Judicial Assistant: Jennifer Medina
Court Reporter: Not Reported or Recorded

Ruling

The Court having taken the matter of City of Ontario's Motion Challenging Watermaster's November 17, 2022 Actions/Decision to Approve the FY 2022/2023 Assessment Package under submission on 8/4/2023 now rules as follows:

City of Ontario's Motion Challenging Watermaster's November 17, 2022 Actions/Decision to Approve the FY 2022/2023 Assessment Package is denied.

The Court's tentative ruling given on 05/12/23 becomes the final ruling.

1. The court GRANTS Ontario's Request for Judicial Notice as to Exhibits 4, 5, 6, 7, 9 and 14. Judicial notice should also be GRANTED as to all of the remaining exhibits, with the caveat that the court is not judicially noticing the truth of the matters asserted in the documents.
2. The court GRANTS Inland Empire Utilities Agency's Request for Judicial Notice.
3. The court GRANTS Ontario's Reply Request for Judicial Notice.
4. The court DENIES the Motion for all the above reasons.

(See the Court's Ruling/Order signed this date for specific findings.)

Ruling on Submitted Matter

City of Ontario's Motion Challenging Watermaster's November 17, 2022 Actions/Decision to Approve the FY 2022/2023 Assessment Package

Counsel for Watermaster to give notice.

(Judicial Assistant to email Ruby Favela Quintero, for watermaster that the court has ruled on submitted matter.)

== Minute Order Complete ==

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 August 21, 2023, I served the following:

1. NOTICE OF ORDER

/ 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

/ ___ / 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.

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 August 21, 2023 in Rancho Cucamonga, California.



By: Ruby Favela Quintero
Chino Basin Watermaster

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