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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO, SAN BERNARDINO JUSTICE CENTER

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendant.

Case No. RCVRS 51010

JOINT OPPOSITION TO CITY OF ONTARIO'S MOTION FOR ORDER DIRECTING WATERMASTER TO CORRECT AND AMEND THE FY2021/2022 AND 2022/2023 ASSESSMENT PACKAGES; REQUEST IN THE ALTERNATIVE TO PRESENT ORAL TESTIMONY PURSUANT TO CRC 3.1306(b)

Hearing:
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I. INTRODUCTION

The present dispute boils down to how to implement the Court of Appeal's directive that this Court enter an order directing the Chino Basin Watermaster ("Watermaster") to "correct and amend" the Fiscal Year ("FY") 2021/2022 and 2022/2023 Assessment Packages (the "Assessment Packages") after the Court of Appeal determined Watermaster improperly interpreted the 2019 Letter Agreement in its implementation of the Dry Year Yield ("DYY") Program.[1] While the Court of Appeal determined that violation of the DYY Program occurred as a result of Watermaster's actions in 2022 and 2023, and that Ontario suffered a financial injury as a result of such violations, the Court of Appeal intentionally did not specify the remedy for the violations it identified. The City of Ontario ("Ontario"), in its motion to this Court (the "Motion"), appears to seek millions of dollars in "damages" and other punitive court orders, e.g., a confusing demand to "put the water back," against third parties Cucamonga Valley Water District ("Cucamonga") and Fontana Water Company ("Fontana"). Fontana and Cucamonga are public water suppliers who relied on the understanding that the voluntary takes of DYY water authorized by Watermaster, IEUA, TVWD, and Metropolitan in 2022 and 2023 would be beneficial to the Chino Basin and the other participants of the DYY Program. (Corker Decl. at ¶ 14; Declaration of Eddie Lin in Support of IEUA's Opposition to Ontario's Motion ("Lin Decl.") at ¶¶ 6–8.) Ontario's demands are inconsistent with the Court of Appeal's Opinion, which focused on identifying Ontario's discrete financial injury, not on penalizing Fontana and Cucamonga for doing what they believed, in good faith, was in the best interests of all DYY Program participants and Chino Basin generally. (Request for Judicial Notice in Support of Opposition to Motion ("RJN") at Ex. A ("Opinion").)

While Ontario devotes significant energy to arguing that a "call" is a prerequisite to any withdrawal of DYY water, this is not what the Court of Appeal held. If Ontario's position is to be

[1] In 2019, Watermaster staff, Metropolitan Water District of Southern California ("Metropolitan"), Three Valleys Municipal Water District ("TVWD"), and Inland Empire Utility Agency ("IEUA") entered into an agreement (the "2019 Letter Agreement") for parties to voluntarily produce groundwater from DYY Program storage accounts without a call from Metropolitan. (Declaration of Amanda Coker in Support of Joint Opposition to Ontario's Motion ("Coker Decl."), Ex. A.)

accepted, the Court of Appeal would have been compelled to invalidate the 2019 Letter Agreement; however, that is not what the Court of Appeal did. Instead, the Court of Appeal took no action with regard to the validity of the 2019 Letter Agreement, leaving the future use of the 2019 Letter Agreement up to Watermaster and the Parties.

Despite months of efforts by Watermaster, the Parties, and other stakeholders to achieve good-faith implementation of the Court of Appeal's remittitur instructions, Ontario seeks to pre-empt Watermaster's ongoing efforts to respond to the Opinion by seeking a one-sided order that would punish Fontana and Cucamonga while providing a massive financial windfall to Ontario. A windfall that, if ordered, would be grossly disproportionate to the actual financial harm identified by the Court of Appeal as a result of the failure of Watermaster to assess certain groundwater pumping. As explained below, Ontario's proposed order rests on a fundamental misreading of the Opinion, disregards Watermaster's exclusive statutory and judgment-based role in assessment formulation, and would impose substantial financial consequences on Fontana and Cucamonga that were never litigated, never noticed, and never authorized on appeal.

Instead of adopting Ontario's flawed and premature proposal, Fontana and Cucamonga urge the Court to allow Watermaster to finish its ongoing process of developing a reassessment package consistent with the Opinion, the Judgment, and the Watermaster Rules and Regulations, a reassessment package that would actually focus on making Ontario (and other DYY Program participants) whole rather than imposing draconian penalties on Fontana and Cucamonga—a result the law disfavors, and which will only lead to further litigation and uncertainty. Allowing Watermaster to take action prior to judicial review will also ensure other parties who will be affected by reassessment are able to fully participate in the process.

In the alternative, given that there are significant factual disputes as to the extent of Ontario's injury, and what is required to remedy that injury, Fontana and Cucamonga request that the Court hold an evidentiary hearing before fashioning a remedy consistent with the facts, the Opinion, and the Judgment.

II. BACKGROUND

A. Ontario Challenged Watermaster's Assessment on Voluntary Withdrawals from the

Dry Year Yield Program—Water Owned by Metropolitan that Fontana and Cucamonga Already Paid Full Price to Obtain.

The DYY Program allows Metropolitan to store its imported water underground in the Chino Basin during wet years so that it can be recovered during dry years. The water stored in the DYY account is surface water owned by Metropolitan—who, as owner of the water, has the right to sell the water. When local agencies withdraw DYY water, they are pumping stored imported water from the ground, not native groundwater, and these agencies must pay Metropolitan the cost of the water, just as if the local agencies had purchased the water directly from a Metropolitan pipeline. (Coker Decl. ¶¶ 9–10 [noting Cucamonga incurred charges from Metropolitan of approximately $34 million and Fontana paid Metropolitan approximately $2.9 million for the water withdrawn from Metropolitan's DYY Account per the 2019 Letter Agreement]).

From 2020 to 2022, at the urging of Metropolitan and its member agency IEUA, Fontana and Cucamonga agreed to purchase significant quantities of stored water from Metropolitan through IEUA. (Opinion at pp. 15–16.) IEUA and Metropolitan needed to get stored water from Northern California and into storage in Southern California. Subsequently, it was necessary to reduce the amount of total DYY storage, which was nearly at capacity. (Request for Judicial Notice in Support of Ontario's Motion at Ex. E [2003 Funding Agreement] at § IV.A.1.a; Coker Decl.¶ 4, Ex A [Cucamonga Ltr. to Watermaster dated August 8, 2025].) Fontana and Cucamonga did so without any understanding that doing so would cause financial harm to Ontario. Indeed, they believed the opposite to be true. (Coker Decl. ¶¶ 14–15.)

Ontario's initial challenge to the FY 2021/2022 assessments specified Ontario was challenging the "propriety of the action/decision of the Watermaster Board to approve the Fiscal Year 2021/2022 Assessment Package." (RJN, Ex. B at p. 4.) Likewise, following adoption of the FY 2022/2023 assessments, Ontario filed another motion challenging Watermaster's adoption of those assessments. This Court rejected Ontario's challenges as untimely; Ontario appealed.

Fontana and Cucamonga were not parties to the underlying challenge such that they were on notice of the remedy that Ontario would be seeking—and indeed, until Ontario filed this Motion, Fontana and Cucamonga did not understand what exactly Ontario was claiming as a

financial injury.[2] None was apparent. Fontana and Cucamonga simply took imported water from the ground rather than through a pipe. Fontana and Cucamonga understood that they were assisting Ontario and the other DYY Program participants by reducing the amount of Metropolitan water in storage that Ontario and other DYY Program participants would likely be unable to withdraw prior to the end of the DYY Program in 2028, which would trigger significant penalties for parties unable to fully perform per the requirements of the DYY Program. (Coker Decl. ¶¶14–15.; Lin Decl. ¶¶ 6–8.) In neither of these motions challenging the Assessment Packages did Ontario seek any remedy or plead any claims against Cucamonga or Fontana, nor did they seek recission of the 2019 Letter Agreement—as they appear to do now via their demand to "put the water back." (RJN Ex. B at p. 4; *id.* at Ex. C at p. 6.)

B. <u>The Court of Appeal Reverses the Trial Court's Denial of Ontario's Challenge And Directs Watermaster to "Correct and Amend" the Challenged Assessments.</u>

The Court of Appeal issued the Opinion on April 18, 2025. The Court of Appeal accepted Ontario's argument that Watermaster misinterpreted the 2019 Letter Agreement holding "[i]n challenging Watermaster's approval of the FY 2021/2022 and 2022/2023 Assessment Packages, Ontario contends Watermaster's interpretation and application of the 2019 Letter Agreement violated the Judgment and the agreements that created the DYY Program. We agree." (Opinion at p. 28.) Importantly, the Court of Appeal treated Ontario's motions as applied challenges to the 2019 Letter Agreement and did not invalidate the 2019 Letter Agreement. (See Opinion at p. 39 ["[T]he future viability and application of the 2019 Letter Agreement should be resolved by the parties prior to judicial intervention."].) Instead, the Court of Appeal reversed this Court on the limited grounds that: (1) Ontario's challenge was timely, and (2) that Watermaster's interpretation of the 2019 Letter Agreement was inconsistent with the Judgment and the DYY Program's

[2] In its Appellants' Opening Brief, Ontario framed its challenge as one directed at Watermaster. (RJN, Ex. D at p. 8–9.) According to Ontario, "Watermaster's decision to exempt from assessment stored groundwater produced from the DYY account cannot be squared with the express language of the Judgment and other agreements governing Basin operations, nor with Watermaster's own practice of assessing all water produced before 2019." (*Id.* at p. 26.) In its Reply, Ontario represented the purpose of the action was "whether Watermaster's actions were consistent with a court judgment." (RJN, Ex. E at pp. 6–7.)

implementing documents causing non-specified economic harm to Ontario. (Opinion at p. 19.)

As noted, Ontario only sought remedies against Watermaster directly, and it did not quantify the damages it had sustained as a result of Watermaster's alleged non-compliance. (RJN Ex. D & E.) Accordingly, the Court of Appeal did not explain the manner, extent, or degree of such economic injury, nor did it consider impacts to Appropriative Pool members (including Fontana and Cucamonga) and the variety of interrelated formulas and calculations that would potentially be impacted by reopening two prior assessment packages. Nor did the Court of Appeal specify the required remedy to address the economic harm to Ontario. Instead, the Court of Appeal directed *Watermaster*, in the first instance, to correct and amend the challenged assessment packages after considering four additional questions that the Parties were to address prior to seeking judicial intervention. (Opinion at p. 39.) Contrary to Ontario's contentions, reassessment of payments made over three years ago is a highly complex endeavor that must be undertaken with care to reach an equitable result consistent with the Opinion while avoiding the potential unintended consequences detailed below.

C. <u>On Remand, Court-Ordered Mediation and the Watermaster Assessment Amendment Process Continue.</u>

Contrary to Ontario's assertions, correcting and amending prior assessments per the Opinion is not simple. Since receipt of the remittitur on June 15, 2025, Watermaster has undertaken efforts to correct and amend the Assessment Packages pursuant to the Opinion with involvement from stakeholders including Ontario, Fontana, and Cucamonga. (Declaration of Elizabeth Ewens in Support of Ontario's Motion ("Ewens Decl.") at ¶¶ 4–6.)

Meanwhile, the Court held a status conference on October 31, 2025, wherein the Court directed the parties to engage a third party neutral and work toward a stipulation on a proposed order on remand. (Nikkel Decl. at ¶ 2 & Ex. A [Oct. 31, 2025 Hearing Tr.] at 9:22–10:6; 28:18–29:18.) The Court set a hearing to decide whether to issue a proposed order on remand for February 6, 2026. (*Id.* at 33:17–25.) The parties held mediation sessions with Justice Stephen J. Kane (Ret.) on December 12, 2025, and January 16, 2026. (Nikkel Decl. at ¶ 3.)

On December 17, 2025, just three business days after the first mediation session, Ontario

sent a letter to the Watermaster Board explaining its position on implementation of the Court of Appeal's decision—precisely the issue that this Court directed the parties to attempt to resolve in mediation. (RJN Ex. I.) On January 12, 2026, prior to the January 16, 2026 mediation session and without any prior meet and confer efforts, nor any effort to select another mutually agreeable date as suggested by the Court, Ontario filed its Motion. (Nikkel Decl. at ¶ 4.) On January 23, 2026, Ontario unilaterally filed a Notice of Completion of Mediation.

Ontario's conduct is particularly troubling given this Court's express directive that the parties pursue mediation. Filing this Motion just days after the first mediation session–and before the second session occurred–reflects a calculated decision to abandon the Court-ordered process in favor of unilateral litigation pressure. That choice did not advance resolution; it merely shifted costs to the Parties and the Court, requiring adjudication of issues the Court of Appeal directed be addressed administratively and collaboratively before judicial involvement.

III. ARGUMENT

A. Ontario's Motion Is Premature.

Per the Opinion, any correction or amendment to the challenged assessments must be done in the first instance by Watermaster, not by a litigant such as Ontario, and not by the Court until Watermaster has acted. (Opinion at p. 25 ["While our reversal of the superior court's orders includes a reversal of the lower court's determination of these issues, we express no opinion on them, preferring to allow the parties to resolve them prior to judicial intervention, as they have done in the past."].) There can be no reasonable dispute that Watermaster has engaged in a meaningful and good faith process to correct and amend the Assessment Packages. While Ontario clearly wishes this process moved faster, implementation of the Opinion will necessarily impact all parties to the Judgment, not just those engaged in the present dispute. Thus, Watermaster properly sought stakeholder input in crafting the revised Assessment Packages.

Watermaster has specific rules and processes for calculating, amending, and challenging assessments. The Opinion does not require deviation from those rules—and doing so has significant potential to prejudice parties with an interest in the reassessment process that are not currently before the Court. Once Watermaster has acted, any party that objects to the corrected and

amended the assessments can challenge the reassessment pursuant to the process under the Judgment and the Watermaster Rules and Regulations for amending assessments. (RJN, Ex. F at p. 11, § 18(a); *id.* at p. 12, § 22; *id.* at p. 14, § 31; *id.* at Ex. G at p. 22, § 4.4.)

Instead of waiting for that process to play out–or even meeting and conferring with the affected parties—Ontario's Motion is an end-run around an orderly process. Ontario is seeking to jump the line with a convoluted, one-sided proposal that would confer a windfall on Ontario that far exceeds its harm, while wiping out future storage programs in the Chino Basin and imposing draconian and unforeseeable penalties on Fontana and Cucamonga.

B. Ontario Is Not Entitled to the Remedy It Seeks.

1. The Law of the Case Does Not Require the Remedy Ontario Seeks.

As an initial matter, Ontario overreaches in its attempt to make the Opinion say more than it actually does. While the Court of Appeal acknowledged economic impact to Ontario, and violation of the Judgment as a result of this economic harm, Ontario goes too far by insisting that the Court of Appeal mandated it be paid millions of dollars—when in reality it's "harm," according to Watermaster's calculation of the failure of Fontana and Cucamonga to roll off of imported water (i.e., pump more assessable water rather than taking imported water) is less than $200,000. (RJN Ex. H [Watermaster Assessment Summaries].) In this effort, Ontario argues that the law of the case doctrine requires the Court to order the relief Ontario seeks. According to Ontario, the Court is required to order Watermaster to convert Fontana and Cucamonga's water withdrawn from Metropolitan's DYY Account (imported water owned and stored by Metropolitan for which Fontana and Cucamonga paid Metropolitan) to native groundwater and then to re-assess that water as if it were produced like native groundwater—thereby requiring payment for the same water twice—irrespective that doing so would generate a huge windfall for Ontario. Ontario omits the manner that its proposal would frustrate any future groundwater storage and recovery of imported water in the Basin. Ontario asks the Court to infer this remedy from the Court of Appeal's decision, claiming this inference is required under the law of the case. A cursory review of the Opinion quickly refutes Ontario's argument.

The law of the case doctrine is simple: "The decision of an appellate court, stating a rule of

law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case." (*Morales v. 22nd Dist. Agricultural Association* (2018) 25 Cal.App.5th 85, 99, internal citations omitted.) Ontario asserts that law of the case requires lower courts also adopt implied findings that were necessary to the decision of the upper court. (Motion at 16:4–5.) But as shown below, the relief Ontario seeks cannot be inferred from the Opinion.

2. Ontario Misstates the Court of Appeal's Opinion and What It Requires-Leading to an Unfair Result.

Ontario reads in an entire component of the Opinion that does not exist—a determination of the appropriate remedy for the violations identified by the Court. On appeal, Ontario sought "reversal of the superior court's orders and remand with instructions to (1) direct Watermaster to implement the DYY Program in a manner consistent with the Judgment and prior court orders, (2) correct and amend the FY 2021/2022 and 2022/2023 Assessment Packages to assess water produced from the DYY Program, and (3) invalidate the 2019 Letter Agreement and direct Watermaster to comply with the process provided in the Judgment and subsequent court orders when approving material changes to the DYY Program." (Opinion at p. 3.) Despite Ontario's request for these specific holdings, the Court of Appeal limited its holding to a finding that "the superior court erred in finding Ontario's challenges to be untimely and in affirming Watermaster's interpretation of the 2019 Letter Agreement. We therefore reverse." (*Ibid.*) If the Court of Appeal had intended to adopt Ontario's argument on an appropriate remedy, it would have done so. More importantly, it would not have deferred resolution of the four issues that it remanded to Watermaster to resolve—issues that go to the heart of how reassessment should be accomplished.

A plain language reading of the Appeals Court's opinion reveals these limited holdings: (1) Ontario's challenge was timely; (2) the Parties interpretation of the 2019 Letter Agreement was inconsistent with the Judgment and the authorizing agreements—by failing to recognize the requirement for a corresponding roll off of imported water; and (3) Watermaster failed to consider the "economic impact" on Ontario occasioned by the resulting incremental increase in the amount of its annual assessment. As a result, the court ordered Watermaster to correct and amend the

Assessment Packages, but expressly declined to rule on Ontario's other arguments. (Opinion at p. 25 ["While our reversal of the superior court's orders includes a reversal of the lower court's determination of these issues, we express no opinion on them, preferring to allow the parties to resolve them prior to judicial intervention, as they have done in the past."].)

With respect to Watermaster's interpretation of the 2019 Letter Agreement, the Court of Appeal held that the DYY Program did not allow a party to take from the DYY account without a corresponding reduction in imported water, the "roll-off" problem. (*Id.* at p. 30.) As a result, the Court of Appeal directed Watermaster to correct and amend the Assessment Packages taking into account Ontario's potential economic injury. (*Id.* at p. 39.) Notably, the Court of Appeal did not invalidate the 2019 Letter Agreement, did not state that withdrawing Metropolitan's stored water, with its express permission and at its behest, was a violation of any agreement or law in the absence of a call, and did not direct or even imply that all of the water previously paid for and withdrawn by Fontana and Cucamonga per the 2019 Letter Agreement must again be purchased from Metropolitan and put back in the ground—if that is even possible. Moreover, if Ontario's proposed order is adopted by the Court, each of the other parties to the DYY Program, most of whom are not before the Court in this proceeding, would be assessed for all DYY water that they are required to withdraw prior to 2028, in addition to paying Metropolitan for Tier 1 water.

Indeed, the Court of Appeal did not prescribe any specific remedy or direction on how these prior assessments must be recalculated, nor did the court consider the potentially profound impacts and economic injury that would result to Fontana, Cucamonga, and the other parties from such retroactive changes to the Assessment Packages—changes that are different than Watermaster's historical practice of not assessing DYY water. Indeed, contrary to what Ontario argues, the Court of Appeal acknowledged the possibility that water withdrawn pursuant to the DYY Program may not be subject to assessment at all. (*Id.* at p. 39 [reserving judgment on "whether all stored and supplemental water in the Basin is categorically exempt from assessment"].) Nowhere in the Opinion did the Court of Appeal adopt or prescribe any remedies. Instead, the Court of Appeal directed the Parties to resolve four foundational questions before seeking judicial intervention: "(1) whether water from the DYY Program is withdrawn (not

produced), (2) whether stored and supplemental water are simply two types of ground water, (3) whether all stored and supplemental water in the Basin is categorically exempt from assessment, and (4) the future viability and application of the 2019 Letter Agreement[.]" (*Ibid.*) Ontario hand-waives away these four questions to go straight to the result that it gives it the most financial benefit and causes the most pain to the two parties who are caught in the middle of what is essentially a fight between Ontario on the one hand, and Watermaster and IEUA on the other.

3. Ontario's Proposed Order Is Fatally Flawed Because it Omits Significant Components of Watermaster's Assessment Packages.

Ontario's proposal has several glaring flaws. *First*, Ontario's proposal would convert the imported water withdrawn and paid to Metropolitan at the Metropolitan Tier 1 rate per the DYY Program into assessable groundwater. (Declaration of Cris Fealy in Support of Fontana's Opposition to Motion ("Fealy Decl.") at ¶ 6.) But this is not what the Court of Appeal said to do. Instead, the Court of Appeal, which never questioned whether DYY water was imported water, explained that allowing "the voluntary withdrawal of stored water, and in amounts greater than that permitted under the Exhibit G performance criteria, would create an imbalance between the use of imported surface water and stored water which the program had established." (Opinion at p. 34.) This water is not subject to assessment—or at least the Court of Appeal did not hold that it was; only the difference in Fontana's and Cucamonga's failure to roll off of imported water was found to be improper by the Court of Appeal. (Opinion at p. 30.) Had the Court of Appeal found that the voluntary withdrawal of DYY water itself was invalid, the court would have invalidated the 2019 Letter Agreement as Ontario requested. Instead, the court noted, and reserved judgment on, the issue of whether DYY water may still be exempt from assessment; it did not hold that Ontario was automatically entitled to any amount of damages. (*Id.* at p. 39.)

Second, Ontario's proposal to assess all water would, on its face, require Watermaster to retroactively recalculate the Desalter Replenishment Obligation ("DRO") for all parties in the Appropriative Pool, not just those involved in this case. DRO is calculated based upon a party's annual percentage of groundwater versus imported water usage and specifically excludes DYY withdrawals per a 2019 amendment to the Peace II Agreement. (Coker Decl. ¶ 9 & Ex. B [Mar.

15, 2019 Order re Amendments to Peace Agreement II] at p.4, Ex A, §6.b.iv.3.) Notwithstanding the 2019 amendment to the Peace II Agreement, Ontario's order requests recalculation of DRO and a demand that Fontana and Cucamonga "put all the water back," and as such, the impacts to Cucamonga, if Ontario's proposed order is accepted without modification, would be **catastrophic**—with a total estimated additional cost to Cucamonga of approximately 27 million, which is in addition to the nearly 35 million Cucamonga already incurred to Metropolitan for the DYY water. (Coker Decl. ¶ 9.) This is clearly *not* what the Court of Appeal had in mind—particularly for a public agency spending ratepayer funds.

Third, Ontario ignores Exhibit H to the Judgment, which states that an Appropriative Pool member who overproduces groundwater is only required to fund 85% of the costs associated with obtaining replenishment water, and the remaining 15% of those costs are recovered through a uniform assessment issued against all of the other 85/15 members of the Appropriative Pool, referred to as the "85/15 Rule." (Fealy Decl. at ¶ 8; RJN, Ex. F [Restated Judgment] at Ex. H.) So even if water voluntary withdrawn from the DYY storage account was an overproduction of groundwater rather than withdrawal of stored imported water, Ontario fails to apply the 85/15 Rule to the production of DYY Program water during FY 2021/2022 and FY 2022/2023. (Fealy Decl. at ¶ 8.) If Watermaster must assess all of the DYY Program water withdrawn by Fontana and Cucamonga as an overproduction, the 85/15 Rule must be applied to the FY 2021/2022 and FY 2022/2023 Assessment Packages. (*Ibid.*) By failing to apply the 85/15 Rule to its proposed changes, Ontario's analysis is incomplete and incorrect, which results in an inflated "total net impact." (*Ibid.*) Ontario's omission of the 85/15 rule is no accident. Not only does it reduce the penalty that it seeks this Court to impose on Fontana and Cucamonga, but the applicability of the 85/15 rule creates liability for other members of the Appropriative Pool, who are not before the Court in this proceeding, upon reassessment for the other fifteen percent. If the Court leaves this matter to Watermaster as requested herein, then these parties can represent their interests.

Fourth, as noted, Ontario improperly tries to characterize DYY water as groundwater production. (Declaration of Courtney Jones in Support of Ontario's Motion ("Jones Decl.") at ¶ 12.) It has never been treated as such by Watermaster, and it should not be now; adopting

Ontario's approach would significantly impact the distribution of Readiness to Serve ("RTS") charges across all the parties to the Judgment that take imported water. The RTS Charge is a pass-through charge for imported water purchases that is based on a rolling 10-year average that currently includes Fontana's and Cucamonga's DYY Program production. For a given year, the total RTS Charge, which is imposed on a pro rata basis, does not change. Instead, the total charge is passed along to the individual parties who purchase imported water. Ontario omits any analysis of how crediting Metropolitan's storage account if Cucamonga and Fontana were directed to "put the water back," would affect the RTS Charge. (Fealy Decl. at ¶ 7; Request for Judicial Notice in Support of Ontario's Motion ("Ontario RJN"), Ex. C at pp. 13.1, 27.3; *id.*, Ex. D at pp. 13.1, 27.3.) However, as a necessary result of Ontario's proposal, reclassifying Fontana's and Cucamonga's withdrawal of DYY Program water from imported water to produced groundwater would increase the RTS Charge for all parties who purchased imported water during FY 2021/2022 and FY 2022/2023—parties who will have no ability to protect their interests if the Court adopts Ontario's bizarre interpretation that all DYY water be converted to groundwater. (Fealy Decl. at ¶ 7.)

If the DYY water is recharacterized as something other than imported water, which the Opinion does not require or seemingly even contemplate, then Cucamonga's and Fontana's proportional share of the RTS charge will decrease, causing the RTS charges for other imported water users, including Ontario, to increase to account for the difference. (Fealy Decl. at ¶ 7; Ontario RJN at Ex. C at pp. 13.1, 27.3; *id.* at D at pp. 13.1, 27.3.) This is one of the many reasons Ontario's demand that imported water be treated as groundwater, in addition to conflicting with the plain language of the Judgment, is likely to lead to a result that was not contemplated by the Court of Appeal, and is further reason why remand to Watermaster to reassess in the first instance is absolutely imperative in order to ensure all parties to the Judgement, most of whom are not currently before the Court in this proceeding, can protect their interests.

Fifth, and as discussed at greater length in IEUA's brief, granting Ontario's demand that Fontana and Cucamonga purchase and then infiltrate approximately 45,913 AF of additional imported water into the ground, if even available from Metropolitan (which is constrained by available supplies from the State Water Project and available groundwater infiltration facilities)

would create significant hardship for other DYY Parties who are, in all likelihood, unable to meet their requirements to fully "perform" by pumping out all DYY water prior to the end of the DYY Program in 2028 at the current DYY account balance at 63,808 AF. (Lin Decl. at ¶¶ 6–8, Exs. C and D [letters from Ontario and Monte Vista Water District expressing concerns with their ability to perform under the DYY Program with 63,308 in storage]; Coker Decl. at ¶ 14.) Yet despite its acknowledgement of difficulty in performing prior to the end date of the DYY Program (March 1, 2028) with 63,808 AF in the DYY Account, Ontario nevertheless asks this Court, through its demand that all DYY water extracted in 2022 and 2023 be "put back", to increase the total amount in the Watermaster DYY account to 109,721 AF—which will result in a violation of the 2003 Funding Agreement with Metropolitan since the DYY Account is not allowed to exceed 100,000 AF. This sleight of hand by Ontario would be one thing if it only had the potential to impact Ontario, but it does not. All of the other DYY participants that are not before the Court in this proceeding, who Cucamonga and Fontana understand will be unable to fully perform if they are required to collectively pump out 109,721 AF prior to March 1, 2028, will potentially be looking at substantial penalties to Metropolitan if Ontario's order is granted. (Coker Decl. ¶14.) Moreover, although the Court of Appeal identified Fontana's and Cucamonga's failure to roll-off as the basis of Ontario's economic harm (Opinion at p. 30), Ontario ignores the manner that Fontana's and Cucamonga's voluntary withdrawals in 2022 and 2023 were beneficial to Ontario and the Basin as a whole by decreasing the future performance obligation of DYY Parties. (*Ibid.*)

Sixth, granting Ontario's Motion would impose a tremendous financial penalty on Fontana and Cucamonga that they could not have anticipated . Both already paid Metropolitan's service rates for the DYY water. (Fealy Decl. at ¶ 10; Coker Decl. at ¶ 10 [Cucamonga has paid approximately $34.9 million related to its purchase of Metropolitan water and participation in the DYY Program, and granting Ontario's order would cost Cucamonga an additional $26,718,630 in order to "put the water back" after recalculating DRO].) Ontario would have the water re-characterized as produced groundwater that is not exempt from assessment, requiring Fontana and Cucamonga to pay assessments on water each already purchased from Metropolitan. Ontario does not address this double-payment whatsoever. Ontario's punitive demand is simply beyond the

contemplation of the Court of Appeals, contrary to law, and violates established principles for imposing remedies. (See, e.g., Civil Code § 338 ["Except as expressly provided by statute, no person can recover a greater amount in damages for the breach of an obligation, than he could have gained by the full performance thereof on both sides."].)

4. Watermaster Must Correct and Amend the Challenged Assessment Packages.

Since its inception, Ontario has exclusively framed its challenge as one directed at Watermaster. (See, *infra*, Section II.A.) Accordingly, the Court of Appeal's directive to the trial court redresses Ontario's challenge by calling on Watermaster to "correct and amend" the assessment packages. Nothing in the Court of Appeal's Opinion authorizes this Court to skip over Watermaster's own action in favor of a single party's interpretation of the assessment packages—particularly when such interpretation would have significant impacts potentially on parties that are not before the Court in this proceeding. Instead, the Court should order Watermaster to complete the process it has already started to carry out the Court of Appeal's directive to correct and amend the assessment packages by a date certain.

C. <u>Alternatively, an Evidentiary Hearing Should Be Held Prior to Ruling on the Motion.</u>

In the alternative, the Court should set an evidentiary hearing to determine the Motion's complex factual issues. A court may receive oral testimony for a law and motion hearing where good cause is shown. (Cal. Rules of Court, rule 3.1306(a).) Such a request must be made in writing three days in advance of the hearing and specify the nature and extent of the evidence that would be presented. (*Id.* at 3.1306(b).) If oral testimony is requested by a party, the court must exercise discretion as to whether oral testimony would be necessary or helpful to the decision of the matter. (See *Reifler v. Superior Court* (1974) 39 Cal.App.3d 479, 485 [trial court has discretion to receive oral testimony and permit cross-examination of a declarant].) There is good cause for oral testimony for three reasons.

First, ruling on Ontario's Motion requires resolution of factual disputes on complex financial and hydrologic matters that require determinations of credibility among various witnesses. For example, Ms. Jones' proposal relies on the assumption that Watermaster must assess all of the water Fontana and Cucamonga produced from the DYY Program. (Fealy Decl. at

¶ 6.) Fontana and Cucamonga should have an opportunity to learn and test the factual basis of Ms. Jones' assumptions through cross-examination. As noted above, it remains an open question on remand whether the water pumped under the DYY Program was a withdrawal of supplemental water or produced groundwater. (Opinion at p. 39.) Accordingly, the underlying issues should be fully vetted before one-sided assumptions in Ontario's favor are adopted.

Second, resolving the Motion on the substantive merits will require detailed testimony both on how Ontario's complicated seven-step plan will work in practice and the consequences of implementing the plan beyond Ontario's immediate and parochial interest in securing a windfall through an assessment credit. For example, the parties need to contend with how crediting Metropolitan's storage account would affect their ability to perform on their DYY obligations prior to 2028, the impact of the Readiness to Serve Charge, a pass-through charge for imported water purchases and the recalculation of DRO. (Fealy Decl. at ¶ 7.) The parties also need to contend with how the 85/15 Rule will apply. (*Id.* at ¶¶ 8–9.) It would be too cumbersome to vet these issues with dueling briefs and written testimony alone.

Third, the Court should hear directly from the court-appointed Watermaster before taking action on Ontario's Motion. Watermaster has already devoted extensive time/resources in studying assessment scenarios and analyzing implications of each scenario with stakeholders. (See, *supra*, Section II.C.1.) Rather than ignore or discount Watermaster's efforts, the Court should call Watermaster to testify on its understanding of the issues and its own approach to re-assessment.

In short, Ontario asks this Court to do exactly what the Court of Appeal declined to do: dictate a remedy before the necessary factual, technical, and administrative work has been completed by Watermaster. Granting Ontario's Motion would reward procedural impatience, penalize parties who relied in good faith on Watermaster's actions, and embroil the Court in matters that are neither ripe nor properly postured for judicial resolution.

CONCLUSION

For the above-stated reasons, Fontana and Cucamonga respectfully request that the Court deny Ontario's Motion for Order Directing Watermaster to Correct or Amend the FY 2021/2022 and 2022/2023 Assessment Packages.

DATED: February 5, 2026

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By: _____

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DATED: February 5, 2026

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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 5, 2026, I served the following:

1. JOINT OPPOSITION TO CITY OF ONTARIO'S MOTION FOR ORDER DIRECTING WATERMASTER TO CORRECT AND AMEND THE FY2021/2022 AND 2022/2023 ASSESSMENT PACKAGES; REQUEST IN THE ALTERNATIVE TO PRESENT ORAL TESTIMONY PURSUANT TO CRC 3.1306(b)

/ 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.

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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 February 5, 2026, in Rancho Cucamonga, California.

By: Ruby Favela Quintero
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