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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

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF JOINT OPPOSITION TO
CITY OF ONTARIO'S MOTION FOR
ORDER DIRECTING WATERMASTER
TO CORRECT AND AMEND THE
FY2021/2022 AND 2022/2023
ASSESSMENT PACKAGES**

Hearing:

Date: February 6, 2026

Time: 10:00 a.m.

Dept.: R-17

FONTANA WATER COMPANY ("Fontana") and CUCAMONGA VALLEY WATER
DISTRICT ("Cucamonga"), through their attorneys of record, submit the following Request for
Judicial Notice pursuant to California Rules of Court, Rule 3.1306(c) and Evidence Code sections

1 452 and 453, in support of their Opposition to CITY OF ONTARIO's ("Ontario") Motion for
 2 Award of Attorney's Fees and Costs.

3 The documents attached hereto are subject to judicial notice pursuant to Evidence Code
 4 section 452, subdivision (d), which provides that a court may take judicial notice of the records of
 5 any court in this State. (See *Taus v. Loftus* (2007) 40 Cal.4th 683, 726 ["Under Evidence Code
 6 section 452, a court may take judicial notice of the records of any court of this state. . . ."]; *Hines*
 7 *v. Lukes* (2008) 167 Cal.App.4th 1174, 1181, fn.4 [taking judicial notice under Evidence Code
 8 section 452, subd. (d) of complaint in related state court action]; *Williams v. Wraxall* (1995) 33
 9 Cal.App.4th 120, 130, fn.7 ["We may take judicial notice of the existence of judicial opinions and
 10 court documents, along with the truth of the results reached—in the documents such as orders,
 11 statements of decision, and judgments—but cannot take judicial notice of the truth of hearsay
 12 statements in decisions or court files, including pleadings, affidavits, testimony, or statements of
 13 fact."].)

14 The Court may take judicial notice of the official acts of state legislative, executive, and
 15 judicial departments. (Evid. Code, § 452, subd. (c); see also *People v. Castillo* (2010) 49 Cal.4th
 16 145, 157 [providing that official letters from a municipal entity are subject to judicial notice
 17 pursuant to section 452, subd. (c)].) And the Court may take judicial notice of facts and
 18 propositions that are not reasonably subject to dispute and are capable of immediate and accurate
 19 determination by resort to sources of reasonably indisputable accuracy. (Evid. Code, § 452, subd.
 20 (h).)

21 On those grounds, Fontana and Cucamonga hereby request that the Court take judicial
 22 notice of the following documents constituting (1) official records of state legislative, executive,
 23 and judicial departments (Exhibits A-I); and (2) records of state courts, including this Court
 24 (Exhibits B-C), Watermaster (Exhibits F-H), and the Fourth District Court of Appeal (Exhibits A,
 25 D, & E). Each of the documents listed herein are self-authenticating pursuant to Evidence Code
 26 section 1530.

- 27 1. **Exhibit A:** Opinion, filed on April 18, 2025 in *Chino Basin Municipal Water*
 28 *District v. City of Chino, et al*, Fourth District Court of Appeal Case Nos. E080457

& E082127.

2. **Exhibit B:** Ontario's Application for an Order to Extend Time Under Judgment, Paragraph 31(c) Challenge to Watermaster Action/Decision on November 18, 2021 to Approve the FY 2021/2022 Assessment Package, filed on February 17, 2022 in *Chino Basin Municipal Water District v. City of Chino, et al*, San Bernardino County Superior Court Case No. RCVRS 51010.
3. **Exhibit C:** Memorandum of Points and Authorities in Support of Ontario's Motion Challenging Watermaster's November 17, 2022 Actions/Decision to Approve the FY 2022/2023 Assessment Package, filed on February 14, 2023 in *Chino Basin Municipal Water District v. City of Chino, et al*, San Bernardino County Superior Court Case No. RCVRS 51010.
4. **Exhibit D:** Opening Brief of Appellant City of Ontario filed on July 3, 2023 in *Chino Basin Municipal Water District v. City of Chino, et al*, Fourth District Court of Appeal Case No. E080457.
5. **Exhibit E:** Ontario's Appellate Reply Brief filed on May 13, 2024 in *Chino Basin Municipal Water District v. City of Chino, et al*, Fourth District Court of Appeal Case Nos. E080457 & E082127.
6. **Exhibit F:** Restated Judgment, entered on September 27, 2012 in *Chino Basin Municipal Water District v. City of Chino, et al*, San Bernardino County Superior Court Case No. RCVRS 51010, available at www.cbwm.org/docs/WatermasterCourtFilings/2012/2012%20Watermaster%20Restated%20Judgment.pdf.
7. **Exhibit G:** Chino Basin Watermaster Rules and Regulations, available at [www.cbwm.org/docs/rulesregs/CBWM%20Rules%20and%20Regulations%20\[2025\].pdf](http://www.cbwm.org/docs/rulesregs/CBWM%20Rules%20and%20Regulations%20[2025].pdf).
8. **Exhibit H:** October 10, 2025 Watermaster Assessment Summaries.
9. **Exhibit I:** December 17, 2025 Letter from City of Ontario to Watermaster Board.

Fontana and Cucamonga have given each adverse party sufficient notice of this request through these pleadings and have attached the records hereto so that the Court has sufficient

1 information to enable it to take judicial notice of these records. (See Evid. Code, § 453.) As such,
2 Fontana and Cucamonga respectfully request that the Court take judicial notice of these exhibits.

3 DATED: February 5, 2026

DOWNEY BRAND LLP

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By: _____

MEREDITH E. NIKKEL
Attorneys for Fontana Water Company

EXHIBIT A

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff and Respondent,

v.

CITY OF ONTARIO,

Defendant and Appellant;

CUCAMONGA VALLEY WATER
DISTRICT, et al.,

Defendants and Respondents.

E080457, E082127

(Super.Ct.No. RCVRS51010)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gilbert G. Ochoa,
Judge. Reversed and remanded with directions.

Stoel Rives LLP, Elizabeth P. Ewens, Michael B. Brown and Whitney Brown, for
Defendant and Appellant, City of Ontario.

Brownstein Hyatt Farber Schreck, LLP, Scott S. Slater, Bradley J Herrema and
Laura K. Yraceburu, for Plaintiff and Respondent, Chino Basin Watermaster.

Lagerlof, LLP and Thomas S. Bunn III, for Defendants and Respondents, Fontana Water Company and Cucamonga Valley Water District.

JC Law Firm, Jean Cihigoyenette and J. Martin Cihigoyenette, for Defendant and Respondent Inland Empire Utilities Agency.

A 1978 stipulated judgment (Judgment) governs the water rights in the Chino Groundwater Basin (Basin) by establishing the Basin's governance structure, providing judicial oversight via continuing jurisdiction provisions, and creating the Chino Basin Watermaster (Watermaster). To achieve full utilization of the Basin's resources, Watermaster adopted, and the superior court approved, a long-term management program, one element of which instituted an objective and strategy to develop storage and recovery programs for the broad regional benefit of the parties to the Judgment. One such program—Dry Year Yield Program (DYY Program)—stores extra groundwater during wet years and then recovers the water during dry years. To finance its actions, Watermaster establishes an annual budget and assesses parties to the Judgment based on their groundwater production.

In this consolidated appeal, one party to the Judgment, the City of Ontario (Ontario), challenges Watermaster's fiscal year (FY) 2021/2022 and 2022/2023 assessments on the grounds Watermaster failed to levy assessments on the groundwater voluntarily produced as part of the DYY Program based upon its erroneous interpretation and application of the 2019 Letter Agreement that amended the agreement that governs the DYY Program. The superior court, *inter alia*, found Ontario's challenge to be an untimely and improper objection to the 2019 Letter Agreement—entered into between

Three Valleys Municipal Water District (TVMWD),¹ Watermaster, Metropolitan Water District of Southern California (Metropolitan), and Inland Empire Utilities Agency (IEUA)—and further held that stored and supplemental water (from the DYY Program or other storage programs) are exempt from Watermaster assessment.

On appeal, Ontario requests 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 for in the Judgment and subsequent court orders when approving material changes to the DYY Program.

We conclude 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.

I. PROCEDURAL BACKGROUND AND FACTS

A. The Judgment, Pools, and Watermaster.

In 1975, Chino Basin Municipal Water District (later known as IEUA) initiated this action against several parties to adjudicate their rights and obligations with respect to groundwater in the Basin, one of the largest groundwater basins in Southern California, providing water to millions of residents in San Bernardino, Riverside, and Los Angeles

¹ Referred to in the Judgment as Pomona Valley Municipal Water District.

Counties. Three years later, the parties stipulated to the Judgment, which created a water management plan for the Basin—the Optimum Basin Management Program—by, among other things, setting a safe yield (maximum extraction amount) for the Basin; establishing three stakeholder groups or “pools”—the Overlying Agricultural Pool (Ag Pool), Overlying Non-Agricultural Pool (Non-Ag Pool), and Appropriative Pool (Ap Pool)—each with its own safe yield, rights, and restrictions; and allowing the superior court to retain and exercise jurisdiction via the appointment of Watermaster, an arm of the court. (*Dow v. Honey Lake Valley Resource Conservation Dist.* (2021) 63 Cal.App.5th 901, 911 [observing that Watermaster is ““considered an arm of the Court””].) As an arm of the court, Watermaster administers and enforces the Judgment and any subsequent instructions or orders of the superior court.

The Pools are responsible for costs of replenishment water and other aspects of the physical solution. Each Pool has a committee that administers its internal affairs, employs its own separate counsel, may seek judicial review of any Watermaster action or failure to act, and—along with an Advisory Committee—provides advice and assistance to Watermaster on the administration of the Judgment. Ontario is a member of the Ap Pool. Watermaster, a nine-member board, is comprised of representatives of parties to the Judgment, including representatives from each Pool. It “administer[s] and enforce[s] the provisions of this Judgment and any subsequent instructions or orders of the [c]ourt,” keeps records of water use and ownership, oversees and approves water transfers, monitors groundwater levels, determines the operating safe yield for each year,

and assesses the Pools for its expenses. However, the court retains “[f]ull jurisdiction, power and authority . . . as to all matters contained” in the Judgment.

B. The Basin’s Safe Yield

The Judgment identifies the Basin’s safe yield, namely, the amount of water that can be withdrawn annually without harming or depleting the Basin.² The safe yield defines the parties’ various rights to Basin groundwater. Parties are prohibited from producing groundwater except as provided in the Judgment, specifically “pursuant to the provisions of the Physical Solution or a storage water agreement.” Also, a party’s individual groundwater production establishes the party’s portion/assessment of Basin costs. The Judgment set the initial safe yield at 140,000 acre-feet (AF) per year; however, in 2017, the superior court reset it to 135,000 AF per year.

C. The Basin’s Groundwater Storage.

The Judgment acknowledges the Basin’s “substantial amount of available groundwater storage capacity” for “storage and conjunctive use of supplemental water

² “‘Safe yield’ means the long-term average annual quantity of groundwater (excluding Replenishment Water or Stored Water but including return flow to the Basin from use of Replenishment or Stored Water) which can be Produced [(pumped or extracted groundwater)] from the Basin under cultural conditions of a particular year without causing an undesirable result.” “The phrase ‘undesirable result’ is understood to refer to a gradual lowering of the groundwater levels resulting eventually in depletion of the supply.” (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278 [safe yield is “‘the maximum quantity of water which can be withdrawn annually from a groundwater supply under a given set of conditions without causing an undesirable result’”], disapproved on other grounds in *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1247-1248.)

with Basin Waters.”³ Conjunctive use is the planned use of surface water and groundwater resources (either immediately using or storing) to provide a buffer against drought. Stored water is defined as “supplemental water held in storage, as a result of direct spreading, in lieu delivery, or otherwise, for subsequent withdrawal” and is not included in the Basin’s safe yield. Supplemental water includes “both water imported to Chino Basin from outside Chino Basin Watershed, and reclaimed water,” which in turn is defined as water “which, as a result of processing of waste water, is suitable for a controlled use.” The Judgment expressly enjoins the unauthorized storage and withdrawal of supplemental water other than pursuant to an agreement with Watermaster; it compels the adoption of uniformly applicable rules and a standard form of agreement for storage of supplemental water; however, storage agreements “shall by their terms preclude operations which will have a substantial adverse impact on other producers.”

D. The Optimum Basin Management Program.

At the superior court’s direction, Watermaster prepared the Basin’s management program—the Optimum Basin Management Program (OBMP)—to address groundwater quantity and quality issues and regulate withdrawals. The OBMP was divided into two phases: Phase I (the report) was adopted in 1999, and Phase II (implementation plan) was approved by the court in 2000. The OBMP was subject to intensive settlement negotiations that led to various parties to the Judgment executing the Peace Agreement in June 2000 to resolve their disputes regarding “a number of matters pertaining to the

³ It is estimated that the Basin has an unused storage capacity of about one million AF.

power and authority of the Court and Watermaster under the Judgment, . . .” It addresses implementation of the OBMP and allows Watermaster to administer transfers, recharge, and storage/recovery of water. The Peace Agreement, amended in 2004 and 2007, prohibits the approval of a water storage and recovery project “if it . . . will cause any Material Physical Injury to any party to the Judgment or the Basin.”

The OBMP’s implementation plan defines the Operational Storage Capacity of the Basin at approximately 5,300,000 AF of water and introduces the concept of Safe Storage (“an estimate of the maximum storage in the Basin that will *not* cause significant water quality and high groundwater related problems”) and Safe Storage Capacity (quantified at about 500,000 AF). Subsurface storage space in a groundwater basin is a public resource, which must be put to beneficial use under Article X, section 2 of the California Constitution. (*Central and West Basin Water Replenishment Dist. v. Southern Cal. Water Co.* (2003) 109 Cal.App.4th 891, 905.)

E. Annual Assessments.

Watermaster levies and collects assessments based on each party’s water production during the prior year, namely the annual quantity of groundwater⁴ pumped or extracted from the Basin. Thus, each year Watermaster staff prepare an assessment

⁴ The Judgment’s definition of groundwater does not distinguish between the “type” of groundwater or how that water made its way into the Basin. Groundwater is defined as water “beneath the surface of the ground and within the zone of saturation, i.e., below the existing water table.”

package detailing the accounting of each party's production and use of Basin water.⁵

Each party's assessment is determined by dividing the total of the fixed costs of operating the Basin by the total annual production of all parties; this calculation yields a dollar amount per acre feet of water. Under the Watermaster Rules and Regulations, uniform assessment of production is mandatory. Given fixed costs, a decrease in the total annual production results in an increase in the unit cost.

F. Groundwater Storage Program Funding Agreement and Dry Year Yield Program.

In 2000, Metropolitan received \$45 million in general obligation bonds for groundwater storage projects within its service area. IEUA and TVMWD are member agencies of Metropolitan. Metropolitan has had storage agreements with IEUA and Watermaster since 1979. In 2003, Metropolitan, IEUA, TVMWD, and Watermaster entered into a Groundwater Storage Program Funding Agreement (Funding Agreement), which was approved by the superior court. The Funding Agreement was subsequently amended to make adjustments to improve and clarify measurement of storage and extraction, to clarify how performance of calls will be evaluated, and to revise administrative milestones and make miscellaneous updates.

In 2004, Watermaster, IEUA, and TVMWD entered into the Storage and Recovery Program Storage Agreement (Storage and Recovery Agreement), which specified the

⁵ The term Basin water is defined as groundwater within the Basin that is part of the Safe Yield, Operating Safe Yield, or replenishment water in the Basin as a result of operations under the Physical Solution decreed in the Judgment. The "term does not include Stored Water."

permissible quantity of water that could be stored under the DYY Program.⁶ The 2004 court order approving this agreement emphasized that the DYY Program will “provide[] broad mutual benefits to the parties to the Judgment” but prohibited Watermaster from approving any annual operating plan that “will have a substantial adverse impact on other producers.” The order acknowledged the Judgment’s provision that “no use shall be made of the storage capacity of Chino Basin except pursuant to written agreement with Watermaster,” approved by “written order of the Court,” and found the Storage and Recovery Agreement was “unlikely to have any adverse impacts on a party to the Judgment.”

The DYY Program authorized Metropolitan (1) to store up to 100,000 AF of imported water in the Basin,⁷ subject to higher amounts if approved in advance by Watermaster, and (2) to require (or “call”) participating agencies (including IEUA and TVMWD) to produce (pump) 33,000 AF of stored water rather than using the same amount of surface water. The details of how participating agencies would pump stored

⁶ The DYY Program “allows participating members (‘Operating Agencies’) of two wholesale agencies [IEUA] and [TVMWD] to withdraw [the] water” stored by Metropolitan. The Operating Agencies include Chino, Chino Hills, Ontario, Pomona, Upland, Cucamonga Valley Water District (CVWD), Jurupa Community Services District, and Monte Vista Water District, all of which are parties to the Judgment and retail water purveyors within the IEUA and the TVMWD service areas. These agencies, including IEUA and TVMWD, executed local agency agreements whereby they would use facilities owned or controlled by them to implement the DYY Program. The Fontana Water Company (FWC) negotiated with IEUA but did not opt-in as a participating agency.

⁷ This amount is within the presumptive safe harbor of the Safe Storage Capacity given the fact that Watermaster held approximately 226,797 of the 500,000 AF maximum.

water, including specific performance criteria regarding reductions in imported water deliveries, were provided for in Exhibit G attached to the Funding Agreement. Exhibit G was initially entitled “Chino Basin Conjunctive Use ‘Dry Year’ Storage Project Performance Criteria.” Because IEUA and TVMWD are not local water producers, Exhibit G’s performance criteria, which include both groundwater and imported water criteria, are placed on their member agencies to perform. The imported water criteria require a roll-off from imported water supplies and onto groundwater production from the DYY Program. Thus, a program agency claims DYY credit that is equal to its shift off of imported water and onto DYY Program groundwater.

The DYY Program is administered by a five-member Operating Committee, comprised of two representatives from Metropolitan and three representatives chosen by IEUA, TVMWD, and Watermaster. The Operating Committee is delegated with the authority to prepare the Annual Operating Plan which provides an estimated schedule and location for all storage and extraction under the DYY Program and in conformance with Exhibit G on a monthly basis for the upcoming fiscal year. According to the Storage and Recovery Agreement, the Annual Operating Plan must “provide sufficient information to allow the Operating Committee and Watermaster to assess [the program’s] potential impacts.”

The DYY Program “allow[s] for rational regional water supply planning by allowing for increased imports to the Chino Basin during wet years, and reduced imports during dry years.” In exchange for the right to store up to 25,000 AF per year in the Basin (provided the total amount does not exceed 100,000 AF maximum unless approved

by Watermaster), Metropolitan invested \$27.5 million in local infrastructure and makes annual payments (\$177,430 for FY 2021/22) to Watermaster for administration of the DYY Program. Otherwise, the costs associated with the DYY Program, including financing the maintenance and operation of its facilities and Watermaster staff administration time, are passed on to the participating entities. DYY Program costs are distinct from assessment fees charged for production of groundwater from the Basin.

The Funding Agreement and the Storage and Recovery Agreement were adopted through the required process as defined in the Judgment/Peace Agreement, after notice and consideration by the pool committees, the advisory committee, and Watermaster, and approval by superior court order. By its order, the court recognized that any local agency agreements necessary for the DYY Program must be implemented by Watermaster and approved by the court. Thus, IEUA, TVMWD, and their member agencies executed written local agency agreements (Local Agency Agreement) to govern performance obligations under the DYY Program. (See fn. 6.)

Subsequently, the Funding Agreement was amended several times to address administrative issues, such as completion timing of facilities and changes in sources of funds. The eighth amendment, dated January 28, 2015, materially changed the DYY Program by altering the participating entities' performance criteria via the adoption of a revised Exhibit G, now named "Chino Basin Conjunctive Use Program (CUP) 'Dry Year' Storage Project Performance Criteria," and increasing the baseline purchase from Metropolitan to the region to 40,000 AF of water. According to Exhibit G, performance is determined by using an operating party's groundwater baseline. The eighth

amendment was adopted after formal notice was provided, the proposal was vetted and approved by the pool committees, the advisory committee, and Watermaster, and a technical analysis confirmed the amendment would not cause material physical injury to the Basin.

G. 2019 Letter Agreement.

In 2017, Metropolitan had excess water from the State Water Project that it needed to store. After obtaining authorization, Metropolitan recharged around 41,380 AF of water into the DYY Program storage account from June 2017 to June 2018. This increase in stored water prompted the Operating Committee to explore the potential of allowing voluntary withdrawal of water, as opposed to mandatory withdrawal via a Metropolitan call. The proposed system of voluntary withdrawals “was deemed not to materially affect the rights of the [DYY Program] parties and local agencies.” Thus, in 2018, IEUA proposed revising the DYY Program, “to increase flexibility for the parties in the Chino Basin by allowing the region to choose when to buy-out the DYY account [(voluntary take)] without waiting for [a Metropolitan] ‘call year’ [(mandatory take)].”

Ontario raised questions regarding whether these voluntary withdrawals from the DYY Program storage account under the proposed system would be subject to Watermaster assessments as typical production from the Basin, or whether the proposed voluntary withdrawals would be exempt from Watermaster assessment as part of the storage and recovery program. Ontario opined that if the voluntary withdrawal system would materially affect the DYY Program, the proper implementation mechanism would be a formal amendment to the program documents. IEUA replied, “Based on

conversations with [Watermaster], the DYY water is a storage and recovery program, and is not subject to assessments.” Following subsequent discussions, Ontario stated, “Based on the information provided by IEUA, [Ontario is] currently neutral regarding the proposed letter agreement between IEUA and [Metropolitan]. As long as there are parameters that are undecided or unclear, Ontario cannot take a position of support because we cannot know the full effects of the proposed changes. Without these details, which would best be explained and memorialized in an amendment, we will take a wait-and-see approach regarding impacts, and we reserve the right to address any harm or detriment that may arise.”

At the Ap Pool’s meeting on September 13, 2018, Watermaster’s General Manager (Peter Kavounas) noted that “some proposed changes” to the DYY Program had been circulated, and he planned to sign it “on behalf of Watermaster” but “the changes don’t commit Watermaster to - - to anything. We actually don’t think a letter is even required. It’s just [Metropolitan] offering its water at better terms to the parties, which they’re entitled to do. So if there is a letter, we do plan to sign it.” He added, “It’s a good thing. Again, it doesn’t affect Watermaster, but we are signatories to the original DYY. So if they want us to sign a letter of acknowledgement, I will go ahead and do that.” At the Watermaster Board meeting on September 27, 2018, Mr. Kavounas informed the Board about Metropolitan’s proposed changes to the DYY Program, and he characterized them as “favorable to the parties.” He added, “We don’t believe they constitute a change to the agreement, so we don’t intend to bring an agreement

amendment to the board. There may be an acknowledgement letter. If there is, I wanted to let you know that I would be signing that acknowledgement letter.”

In February 2019, Mr. Kavounas executed the 2019 Letter Agreement between Watermaster, Metropolitan, IEUA, and TVMWD. According to this agreement, any water stored after June 1, 2017 “would be purchased from the account by IEUA and [TVMWD] 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 Metropolitan 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 O&M, power and treatment credits and be billed for the water when the parties pump over the groundwater baseline as defined in Exhibit G.”

Initially, the DYY Program allowed Metropolitan to “call on Parties to take stored water in lieu of [Metropolitan] deliveries and receive an operational credit, or the Parties may do so voluntarily without receiving the operational credit.” Either way, the parties “pay [Metropolitan] for the water as if they were receiving ordinary [Metropolitan] deliveries.” However, the 2019 Letter Agreement allowed the parties “to voluntarily take water and receive an operational credit without a [Metropolitan] call” when they “pump over the groundwater baseline as defined in Exhibit G.”

H. Impacts of the 2019 Letter Agreement.

As previously noted, all water produced in the Basin was assessed consistent with the terms of the Judgement and Watermaster Rules and Regulations; each party's assessment was based on the amount of its individual production.⁸ However, following the 2019 Letter Agreement, Watermaster interpreted it to allow parties to produce (take) extra stored groundwater from the DYY Program storage account without realizing a corresponding change or reduction in the production of imported surface water. Thus, in calculating the FY 2021/22 assessment package, Watermaster exempted CVWD's voluntary production of 20,500 AF of water from the DYY account even though the agreed-to performance criteria authorized it to produce only 11,353 AF in any given year. Also, for the first time, FWC—a member of the Ap Pool, a customer of IEUA, and an

⁸ Watermaster filed a request for judicial notice with its respondent's brief. We reserved ruling for consideration with the merits of the appeal. Having now considered the request, we deny it. The request seeks judicial notice of Metropolitan Resolution 9265—which adopted updates to Metropolitan's wholesale water rates and charges, including its full service volumetric rates—on the grounds the Metropolitan's wholesale water rates relate to the cost of water voluntarily withdrawn from the DYY Program storage account. In response, Ontario contends the request should be denied because Watermaster never presented this document to the superior court, and it is irrelevant to the issues currently before this court. We agree with Ontario and deny the request for judicial notice. "Reviewing courts generally do not take judicial notice of evidence not presented to the trial court." (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.) In exceptional circumstances, we may, but are not required to, take judicial notice of material that was not presented to the lower court in the first instance. (*Ibid.*; see *Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 325.) Watermaster has not presented any exceptional circumstances. We therefore follow the general rule and decline to exercise our discretion to take judicial notice of this evidence. Also, the evidence is unnecessary to our resolution of this appeal. (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 613, fn. 29 ["materials in question are unnecessary to resolution of the appeal"].)

entity not governed by a Local Agency Agreement—voluntarily produced and claimed 2,500 AF of stored groundwater from the DYY account. Watermaster exempted this voluntary production from FWC’s FY 2021/22 assessment.

Similarly, Watermaster’s interpretation of the 2019 Letter Agreement affected calculation of the FY 2022/23 assessment package. For example, CVWD shifted off of imported water by 13,915 AF but claimed DYY production of 17,912 AF (4,000 AF more). FWC shifted off of imported water by 1,718 AF but claimed DYY production of 5,000 AF (3,282 AF more). The shift off of imported water is fundamental to the DYY conjunctive use program, and it is mandatory under the terms of the court orders approving the DYY Program, which adopt Exhibit G performance criteria.

I. Ontario’s Challenge.

In response to Watermaster’s proposed FY 2021/2022 Assessment Package, on November 1, 2021, Ontario requested an explanation for the exemption of 23,000 AF of groundwater produced from the DYY Program. Ontario claimed such exemption was inconsistent with the Judgment which required its assessment. On November 18, 2021, Watermaster Board directed its staff and legal counsel to evaluate Ontario’s concerns. Nonetheless, that same day, Watermaster Board approved the FY 2021/2022 Assessment Package; its staff noted that, if warranted, the assessment package could always be changed retroactively. Subsequently, discussions continued regarding Ontario’s concerns. Monte Vista Water District also expressed its concerns related to unrestricted voluntary takes and their impacts on assessments to Watermaster. Watermaster Board

directed staff to consult with the parties, prepare a summary of the issue, and make any pertinent recommendations.

In preparing its January 27, 2022, report, Watermaster staff noted Ontario asked that Watermaster cease any further implementation of the 2019 Letter Agreement and amend the assessment packages as applicable, and Monte Vista Water District recommended the provisions of the 2019 Letter Agreement be set aside and “clear and consistent criteria [be established] for how DYY [Program] production should be assessed by Watermaster.” The staff opined that Ontario’s concerns “appear to be predominantly: (i) the precedent of how aspects of the [DYY] Program’s administration are adjusted and (ii) the specific financial consequences resulting from [Metropolitan’s], IEUA’s, TVMWD’s and Watermaster’s willingness to extend the recovery of imported water stored in the Basin from dry years to all years for the remainder of the Program.”

When the Watermaster Board discussed Ontario’s concerns on January 27, 2022, it concluded the following: (1) Watermaster cannot set aside the 2019 Letter Agreement because the Operating Committee implements operation of the DYY Program according to the contract provisions, including the 2019 Letter Agreement; (2) Ontario’s complaint concerns the effects of the 2019 Letter Agreement; (3) Monte Vista Water District now concludes the 2019 Letter Agreement was not the appropriate vehicle even though Monte Vista Water District was an integral part in its development; (4) the parties may agree to a different forward implementation of the DYY Program under existing terms and conditions including the 2019 Letter Agreement, and instruct Watermaster accordingly; and (5) the four signatories to the DYY Program (Metropolitan, IEUA, TVMWD, and

Watermaster) may formally modify it, and Watermaster may propose such modification to the Operating Committee. Watermaster staff recommended the parties “could reach agreement on forward implementation of the DYY Program under existing terms and conditions; or, [¶] [they] could recommend, upon reaching consensus, one or more DYY modifications to IEUA, its Member Agencies, and Watermaster to consider and propose to the Operating Committee, leading to a DYY contract modification.”

When no resolution was reached by February 17, 2022, Ontario filed an application in the superior court for an order to extend the time under paragraph 31(c) of the Judgment, from 90 days to 180 days, to challenge Watermaster’s November 18, 2021, decision approving the FY 2021/2022 Assessment Package, or if such request is denied, to consider this application to be the challenge. Watermaster, IEUA, FWC, and CVWD opposed Ontario’s application. On November 3, 2022, the court concluded Ontario’s challenge to the FY 2021/2022 Assessment Package was really a challenge to the validity of the 2019 Letter Agreement and denied it as untimely. Ontario appealed.

When Watermaster approved the FY 2022/2023 Assessment Package on November 17, 2022, Ontario again filed a motion in the superior court challenging the failure to levy assessments on water voluntarily produced from the DYY Program. Watermaster, IEUA, FWC and CVWD opposed the motion. On August 21, 2023, the court denied the motion on the grounds Ontario’s position regarding the validity of the 2019 Letter Agreement was previously rejected, the Judgment does not require assessment of stored or supplemental water, and Ontario misconstrues the language in the 2019 Letter Agreement because Exhibit G’s performance criteria do not apply to

voluntary withdrawals. Ontario appealed. We consolidated the two appeals for purposes of briefing, oral argument, and decision.

II. DISCUSSION

Ontario challenges the superior court's rulings that Watermaster was not required to levy assessments on groundwater produced as part of the DYY Program. It contends (1) Watermaster's failure to assess water produced from the DYY Program storage account is inconsistent with the Judgment and subsequent court orders; (2) Watermaster violated the Judgment by allowing a nonparty (FWC), without a written storage agreement, to withdraw stored groundwater through the DYY Program; (3) the 2019 Letter Agreement made unauthorized changes to the DYY Program without providing notice or following the required approval process; (4) Ontario's challenge is timely; (5) the superior court erred in holding that all stored and supplemental water in the Basin is categorically exempt from assessment; and (6) Watermaster erred in failing to apply the Exhibit G performance criteria when interpreting the 2019 Letter Agreement.

As we explain, we conclude Ontario's challenge is timely and the 2019 Letter Agreement was incorrectly interpreted at best, or imprudently executed at worst.

A. Timeliness of Ontario's Challenge.

We begin by considering the issue of timeliness. According to the superior court's ruling, Ontario's challenge to Watermaster's approval of the FY 2021/2022 and 2022/2023 Assessment Packages are thinly veiled challenges to Watermaster's execution of the 2019 Letter Agreement and, as such, they are untimely because the 2019 Letter Agreement was provided to all parties on or around March 20, 2019. The court explained

that “under Paragraph 31(c) of the Judgment, *Ontario had 90 days to serve and file notice of any motion or application seeking review of Watermaster’s action in executing the 2019 Letter Agreement.*” Thus, according to the court, Ontario had until June 18, 2019, to challenge Watermaster’s execution of the 2019 Letter Agreement.

On appeal, Ontario contends it is not challenging the 2019 Letter Agreement. Rather, it is challenging Watermaster’s interpretation of the letter which (1) “made fundamental changes to the DYY Program, including by allowing parties to flout the DYY Storage Agreement by ‘voluntarily’ producing far more stored groundwater from the DYY account than the Exhibit G performance criteria allowed,” and by exempting such production from assessment; and (2) harmed Ontario when applied to both the FY 2021/2022 and 2022/2023 Assessment Packages. Thus, Ontario argues that its challenges are timely. (*Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 769 (*Travis*).) Moreover, Ontario asserts the 90-day period in which a party must file a notice or application seeking review of an action like the 2019 Letter Agreement never accrued because Watermaster failed to provide formal notice of its approval of the letter pursuant to paragraph 31 of the Judgment. Alternatively, Ontario argues that its challenges are “akin to a challenge to an unlawful tax” because the 2019 Letter Agreement imposes a continuing or recurring obligation. (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 812.) Respondents Watermaster, IEUA, and CVWD refute each of these contentions and argue the challenges are barred by laches. We conclude Ontario’s challenges to both FY 2021/2022 and 2022/2023 Assessment Packages, filed within 90 days of Watermaster’s action approving them, are timely.

Citing *Travis*, Ontario argues it was Watermaster’s application of the 2019 Letter Agreement in the FY 2021/2022 and 2022/2023 Assessment Packages, including the new benefit given to FWC, that harmed Ontario and is the basis for its challenge. We agree. At issue in *Travis* was a statute whose 90-day limitations period was triggered differently depending on whether the challenge was to enactment of an ordinance or to imposition of conditions under the ordinance. (*Travis, supra*, 33 Cal.4th at p. 768; see *County of Sonoma v. Superior Court* (2010) 190 Cal.App.4th 1312, 1324.) *Travis* involved two property owners’ challenge to a county ordinance they alleged violated state law, was preempted by state and federal law, and unconstitutionally took their property without compensation by imposing occupancy and rent restrictions as permit conditions. (*Travis*, at pp. 762, 764.) Both the trial and appellate court found plaintiffs’ claims were time-barred; however, the California Supreme Court disagreed. (*Id.* at pp. 765-766.) The high court explained that since one of the property owners had complained of injury both from imposition of the permit conditions and the ordinance’s enactment, the action was in part timely under Government Code section 65009, subdivision (c)(1)(E), which governs actions to “‘determine the . . . validity’” of permit conditions and to “‘void, or annul’” those decisions. (*Travis*, at pp. 766-767.) According to the court, “[t]his is not a case in which the plaintiff complains of injury *solely* from a law’s enactment. . . . [Rather,] *Travis* complains of injury arising from, and seeks relief from . . . the County’s imposition on his second unit permit of conditions required by the [o]rdinance. Having brought his action in a timely way after application of the [o]rdinance to him, *Travis* may

raise in that action a facial attack on the [o]rdinance's validity. [Citation.]" (*Id.* at pp. 768-769.)

Here, the 2019 Letter Agreement was approved in 2019; however, its effects were unclear until Watermaster interpreted it as (1) authorizing a credit for voluntary DYY Program water takes (regardless of Exhibit G's performance criteria) in calculating assessments, and (2) allowing nonparties to the Funding Agreement to participate. Following the adoption of the FY 2021/2022 and FY 2022/2023 Assessment Packages, Ontario became aware of how Watermaster would interpret and apply the 2019 Letter Agreement and challenged this interpretation and application via challenging the Assessment Packages. Ontario is not claiming injury solely from the approval of the 2019 Letter Agreement. Rather, it complains of injury arising from, and seeks relief from, Watermaster's exemption of certain groundwater produced from the DYY storage account in administering assessments inconsistent with the governing Judgment, prior agreements, and court orders. The exemption of such production is not based on the Judgment or other agreements governing Basin operations and the DYY Program, but upon Watermaster's interpretation of the 2019 Letter Agreement. Having timely challenged Watermaster's approval of the FY 2021/2022 and 2022/2023 Assessment Packages (which reflect Watermaster's imposition of the 2019 Letter Agreement), Ontario may raise an attack on the 2019 Letter Agreement as interpreted and applied.

Nonetheless, Watermaster faults Ontario for not raising this challenge to the FY 2020/2021 Assessment Package which shows a "purported 'waiver' of assessments for voluntary takes when voluntary takes occurring during production year 2019/2020

were not assessed in the 2020/2021 Assessment Package, approved by the Watermaster Board on November 19, 2020.” In response, Ontario asserts that, under *Howard Jarvis Taxpayers Assn. v. City of La Habra, supra*, 25 Cal.4th at pages 818-825, “a new limitation period begins anew with each unlawful assessment package collected by Watermaster, as does a challenge to the 2019 Letter Agreement. . . . Thus, Ontario had no need to act sooner and any delay in challenging the 2019 Letter Agreement was not ‘unreasonable and inexcus[ible].’” Again, we agree.

“[I]n *Howard Jarvis Taxpayers Assn. v. City of La Habra, supra*, 25 Cal.4th 809, the plaintiffs belatedly challenged the validity of a municipal tax. Though the limitations period had run on any direct challenge to the validity of the ordinance imposing the tax, [the California Supreme Court] concluded suit was still permissible because the continuing monthly collection of the tax represented an alleged ongoing breach of state law. [Citations.]” (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1199.) Here, Ontario has raised the issue of whether the continuing exemption of voluntary production of DYY Program water from Watermaster’s annual assessment (according to Watermaster’s interpretation and application of the 2019 Letter Agreement) represents an ongoing breach of the Judgment and other agreements governing Basin operations. As Ontario observes, whether it “should have known . . . about Watermaster’s failure to assess stored water as part of the [FY] 2020/2021 Assessment Package is irrelevant.”

B. The Exemption of Voluntary Production of DYY Program Water from Watermaster's Annual Assessment.

According to Ontario, this case boils down to whether Watermaster should be bound by the terms of the Judgment and several court orders or by its staff's unilateral decisions that have million-dollar consequences for certain parties to the Judgment. Ontario argues "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[because t]he effect of [this] decision has been to allow some players in the Basin—notably CVWD and FWC—to circumvent their financial responsibilities while requiring Ontario and others to make up the difference." Respondents disagree, claiming Ontario incorrectly conflates the production of supplemental water in storage with the production of native groundwater, and DYY Program withdrawals have historically been exempt from assessments. IEUA further asserts that FWC was not obligated to have a local agency agreement to voluntarily take water, and the 2019 Letter Agreement suspended the Exhibit G performance criteria on voluntary withdrawals apart from utilizing the same baseline measure for production.

1. Standard of Review.

Since the primary issue before this court involves the 2019 Letter Agreement, and other agreements governing Basin operations, we exercise our independent judgment and

apply de novo review. (*Dow v. Honey Lake Valley Resource Conservation Dist.* (2021) 63 Cal.App.5th 901, 911.)

2. *Analysis.*

Although the parties have raised issues regarding (1) whether water from the DYY Program is withdrawn (not produced), (2) whether stored and supplemental water are simply two types of ground water, and (3) whether all stored and supplemental water in the Basin is categorically exempt from assessment, we need not resolve these issues today because we conclude that Watermaster erred in its interpretation and application of the 2019 Letter Agreement. As to the other issues raised, we leave them in the hands of the parties, who are much better suited than the superior and appellate courts to decide. 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. Thus, our focus is on the interpretation and application of the 2019 Letter Agreement.

As previously noted, the DYY Program is a conjunctive use program specifically designed to maximize the flexibility and reliability of water supplies, including the replacement of imported water with stored groundwater during dry years. The program is governed by three sets of agreements (two of which were approved by the superior court): (1) the Funding Agreement, (2) the Storage and Recovery Agreement, and (3) the Local Agency Agreements. Watermaster oversees the program by virtue of the Storage and Recovery Agreement and its seat on the Operating Committee. As the superior court's 2004 order emphasized, the DYY Program was designed to "provide broad

mutual benefits to the parties to the Judgment,” and the Judgment prohibits Watermaster from approving any Annual Operating Plan that “will have a substantial adverse impact on producers.”

At its inception, the DYY Program authorized Metropolitan (1) to place up to 25,000 AF of water per year⁹ into storage in wet years, and (2) in dry years, to require parties with local agency agreements (Chino, Chino Hills, Ontario, Pomona, Upland, CVWD, Jurupa Community Services District, and Monte Vista Water District) to produce 33,000 AF of groundwater from the storage account (pursuant to Performance Criteria) while simultaneously requiring these parties to forgo using an equivalent amount of imported water. The Performance Criteria (Exhibit G attached to the Funding Agreement and revised in 2015) effectuates the goal of the DYY Program, which is to provide a balance between the reduction of imported surface water deliveries and the corresponding increase in the production of stored groundwater.

Moreover, the foundation of the DYY Program is the Local Agency Agreements which define each agency’s facilities and annual recovery capacity, including performance targets (reducing their use of imported water deliveries and extracting an equivalent amount of DYY Program water) “to which that local agency has committed itself in exchange for its share of the benefits available under the [2003] Funding Agreement.” As the superior court stated in 2003, “[I]t is clear that until Watermaster and this Court approve the Local Agency Agreements and Storage and Recovery

⁹ Unless Watermaster approves a greater rate (100,000 AF max).

Application, or some equivalent approval process is completed, the storage and recovery program cannot be undertaken.” The court’s order approving the Funding Agreement indicates that “the specific location and operation of the facilities necessary to accomplish this commitment must . . . be analyzed by Watermaster,” and approval “will take the form of Watermaster approval of the Local Agency Agreements.”

For nearly two decades, the DYY Program accomplished its goals without any issues. However, in June 2017, Metropolitan began storing excess water (41,380 AF in one year) in the DYY Program storage account. This excess stored water prompted the Operating Committee (five members consisting of two representatives from Metropolitan and three representatives chosen by IEUA, TVMWD, and Watermaster¹⁰) to propose voluntary withdrawals, as opposed to Metropolitan calls. This proposed system of voluntary withdrawals “was deemed not to materially affect the rights of the [DYY Program] parties and local agencies.” Thus IEUA suggested revising the DYY Program, “to increase flexibility for the parties in the Chino Basin by allowing the region to choose when to buy-out the DYY account [(voluntary take)] without waiting for [a Metropolitan] ‘call year’ [(mandatory take)].” The revision came in the form of the 2019 Letter Agreement.

Watermaster does not dispute that the 2019 Letter Agreement operationally changed the DYY Program to broaden participation and increase the potential for the

¹⁰ Metropolitan has two appointees and two of its member agencies on the five-member Operating Committee, giving it considerable influence; yet it is not a party to this litigation.

storage and recovery of imported water. Mr. Kavounas, Watermaster's General Manager, characterized this change as "favorable to the parties," and claimed that it will not "affect Watermaster." However, that was not the case. As a result of the 2019 Letter Agreement, two agencies (CVWD and FWC—a party not subject to the Performance Criteria in Exhibit G) voluntarily withdrew water from the DYY Program storage account during FY 2020/2021 and 2021/2022. Subsequently, when calculating annual assessments, Watermaster ignored the absence of a Local Agency Agreement (FWC) and the performance criteria set forth in Exhibit G (CVWD) and exempted these takes. These exemptions decreased CVWD's and FWC's assessments, while increasing the assessments of other parties, such as Ontario. Nonetheless, Watermaster maintains that this change in the allocation of assessments among the parties is not relevant because it has no effect on the health of the Basin.

In 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.

It bears repeating that the DYY Program's goal is to provide greater water supply reliability by storing water in advance of dry periods and pumping the stored water in lieu of receiving imported water during droughts. To that end, the program's agreements involved eight entities with water storage facilities: Chino, Chino Hills, Ontario, Pomona, Upland, CVWD, Jurupa Community Services District, and Monte Vista Water

District (collectively referred to as Operating Parties).¹¹ Specific performance criteria set forth in Exhibit G dictated the amount of water Metropolitan could require these Operating Parties to produce in lieu of imported water. In 2015, an Amendment No. 8 to the Funding Agreement materially changed the program by altering the Operating Parties' performance criteria. This amendment was adopted after formal notice was afforded to the parties, and the proposed change was vetted (via a technical analysis) and approved by the pool committees, the advisory committee, and Watermaster.

When the idea of revising the DYY Program to include voluntary takes was introduced, IEUA initiated discussion with the Operating Parties. Recognizing the proposed change was a material departure from the program's initial goal, Ontario took a neutral position and refused to support the change "[a]s long as there are parameters that are undecided or unclear . . . because we cannot know the full effects of the proposed changes." Recommending the change be "explained and memorialized in an amendment," Ontario reserved "the right to address any harm or detriment that may arise" based on possible "impacts."

¹¹ The Funding Agreement states that "[t]he proposed groundwater storage Program consists of the facilities described in Exhibit H (the '**Facilities**'). The agencies within the service areas of IEUA and TVMWD responsible for operating the respective Facilities ('**Operating Parties**') are . . . listed in Exhibit H. IEUA and TVMWD will enter into agreements with **Operating Parties** within their respective service areas that will require such **Operating Parties** to operate and maintain the Facilities." The Operating Parties listed in Exhibit H include Pomona, Monte Vista Water District Chino, Upland, Chino Hills, CVWD, Ontario, FWC, and Jurupa Community Services District; however, FWC never opted in as an Operating Party.

Despite Ontario's concerns and recommendations, Metropolitan prepared the 2019 Letter Agreement wherein it acknowledged the storage of 39,000 AF of water, and expressed appreciation for the "effort that *the parties* have shown to maximize storage during [FY 2017/2018]." According to the letter, "*the parties*" agreed that water stored after June 1, 2017, "would be purchased from the account by IEUA and [TVMWD] *when the parties pump over the groundwater baseline as defined in Exhibit G.*" Exhibit G was included with the letter. Metropolitan further stated that this pumping "could be the result of a response to a call" by Metropolitan or "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 O&M, power, and treatment credits and be billed for the water when the parties pump over the groundwater baseline as defined in Exhibit G."

As Ontario points out, the effect of the 2019 Letter Agreement (as interpreted and applied by Watermaster) was to "defy the rules set forth in the documents that establish and govern the operation of the DYY Program, including the 2003 Funding Agreement, the 2003 court order adopting it, and the DYY Storage Agreement and its associated court order" by allowing FWC (a nonparty) to voluntarily produce water from the program storage account without a Local Agency Agreement, by letting CVWD to voluntarily produce double its allocated shares of stored water regardless of its performance criteria, and by permitting these voluntary extractions without any corresponding reductions in imported water. We agree.

To begin with, in the order approving the Storage and Recovery Agreement for the DYY Program, the superior court recognized that “[t]he Judgment enjoins storage or withdrawal of stored water ‘except pursuant to the terms of a written agreement with Watermaster . . . [that] is [in] accordance with Watermaster regulations.’ . . . The Court must first approve, by written order, the Watermaster’s execution of ‘Ground Water Storage Agreements.’” FWC does not have such agreement. Nonetheless, respondents contend that FWC was not obligated to have a Local Agency Agreement for voluntary withdrawal because additional facilities and performance standards were not involved, and there is nothing in the Funding Agreement or Local Agency Agreements that restrict the withdrawal of DYY Program water to parties with Local Agency Agreements. Watermaster further asserts there is no violation of the Judgment because the Storage and Recovery Agreement for the DYY Program satisfies paragraph 28 of the Judgement, and FWC is not the storing party; rather, Metropolitan owns the water in the DYY Program storage account, and IEUA acts as the manager of the account. According to Watermaster, (1) the Local Agency Agreements were required to enforce the “performance targets to which [each Operating Party] has committed itself in exchange for its share of the [capital] benefits available under the [2003] Funding Agreement;” and (2) since FWC received no capital benefits from Metropolitan, it had no performance obligations (as set forth in Exhibit G), and nothing in the DYY Program agreements suggests that a Local Agency Agreement is required for a voluntary withdrawal because the language is limited to Exhibit G’s application to Metropolitan calls only. We are not persuaded by respondents’ argument.

None of the three sets of DYY Program agreements considered a situation where the Operating Parties, or nonparties to the program, would be allowed to produce water from the program's storage account absent a court-approved written agreement with Watermaster. To hold otherwise ignores the Judgment, the DYY Program agreements, the conduct of all entities involved in the DYY Program, and the superior court's order approving the program. By using the absence of voluntary withdrawal language to justify their position, respondents seek to have their cake and eat it too. This is not permitted. "In the interpretation of contracts, the paramount consideration is the intention of the contracting parties ' . . . as it existed at the time of contracting, so far as the same is ascertainable and lawful.' [Citations.] . . . [¶] The words used in a contract must be given their ordinary meaning, unless there is evidence that the parties intended to use them in a unique sense or to give the words some different meaning. [Citations.] If a contract is reasonably susceptible to more than one interpretation or if it contains latent or patent ambiguities, the court may use extrinsic evidence to clarify the uncertainties; extrinsic evidence is relevant and material to prove a meaning to which the language of an instrument is reasonably susceptible. [Citations.] [¶] In construing a contract, it is not a court's prerogative to alter it, to rewrite its clear terms, or to make a new contract for the parties. [Citations.] Courts will not add a term to a contract about which the agreement is silent. [Citations.]" (*Moss Dev. Co. v. Geary* (1974) 41 Cal.App.3d 1, 9.)

As IEUA acknowledges, DYY Program water is stored pursuant to the Storage and Recovery Agreement between Watermaster, IEUA, and TVMWD. Withdrawals are governed by the Funding Agreement, which sets the terms and conditions under which

water can be stored within the Basin and later called for production by Metropolitan. The Funding Agreement identifies the agencies within IEUA's and TVMWD's service areas as Operating Parties, lists the Operating Parties in Exhibit H (Pomona, Monte Vista Water District, Chino, Upland, Chino Hills, CVWD, Ontario, and Jurupa Community Services District¹²), establishes the performance criteria for each Operating Party, and states that IEUA and TVMWD will enter into separate agreements with every one of them. Additionally, the Local Agency Agreements specify the amount of grant funds which would be passed through from IEUA to the Operating Parties for the purpose of constructing infrastructure to produce DYY Program water. If FWC was not obligated to have a Local Agency Agreement because it was not a storing party, i.e., it received no capital benefits from Metropolitan and had no performance obligations (as set forth in Exhibit G), then why does the Funding Agreement reference and identify Operating Parties? Why does the Storage and Recovery Agreement state that "no person shall store water in, and recover water from the Chino Groundwater Basin through the Storage and Recovery Program, without a Storage and Recovery agreement with Watermaster?" Why are the Operating Parties required to enter into Local Agency Agreements? Why does the 2019 Letter Agreement include Metropolitan's appreciation for the "effort that *the parties* have shown to maximize storage during [FY 2017/2018]?" Who are the parties Metropolitan was referring to if not the Operating Parties identified in Exhibit H to the Funding Agreement? Contrary to respondents' claims, the agreements (including the

¹² Again, FWC never opted in as an Operating Party.

2019 Letter Agreement) that govern the DYY Program do not apply to entities that do not have a Local Agency Agreement.

Moreover, as Ontario points out, Local Agency Agreements “are storage *and recovery* agreements that detail the means by which DYY [Program] water is recovered, including the [Operating Party’s] specific responsibilities relating to the pumping of stored water.” Thus, water can no more be recovered (produced/withdrawn) without a Local Agency Agreement than it can be stored without such agreements. Nor can the Exhibit G performance criteria be suspended (for any production, voluntary or not) without compromising the integrity of the DYY Program. In other words, to allow 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. Yet, that is what was done by allowing CVWD to voluntarily produce double its allocated shares of stored water regardless of its performance criteria and without a corresponding reduction in imported water.

IEUA dismisses the voluntary productions as merely “operational changes” to the DYY Program, contending the 2019 Letter Agreement was “within the operational flexibility afforded the Operating Committee in the [2003] Funding Agreement to adapt to changed circumstances.” Not so. Operational changes are allowed, but only if they do

not materially affect the rights of the DYY Program parties and local agencies.¹³ Such was not the case here since an Operating Party (CVWD) has voluntarily produced double its allocated shares of stored water from the DYY Program storage account, a nonparty has voluntarily produced stored water from the DYY Program storage account, Watermaster has exempted these voluntary productions from assessment, and Ontario's rights were materially affected when its assessments for both FY 2021/2022 and 2022/2023 increased due to the exemption of voluntary production of water from the DYY Program storage account. In other words, Ontario suffered a financial injury as a result of the 2019 Letter Agreement.

Watermaster takes issue with our conclusion that Ontario's financial injury constitutes a significant adverse impact. It argues that this term is found in the Judgment only and originated in 1970 with the enactment of the California Environmental Quality Act. Subsequently, during the negotiation of the Peace Agreement, the term material physical injury was added and defined as any "material injury that is attributable to the Recharge, Transfer, storage and recovery, management, movement or Production of water, or implementation of the OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence, increases in pump lift (lower water levels) and adverse impacts associated with rising groundwater." It specifically exempted any

¹³ Section 5.2(c)(iv)(b) of the Peace Agreement states that Watermaster is to give first priority to storage and recovery programs that provide broad mutual benefits to the parties to the Judgment.

“economic injury.” Thus, Watermaster argues Ontario’s financial injuries, which are solely economic injuries, are not redressable. We disagree.

Use of the term substantial adverse impact is not limited to the Judgment. It was used in the superior court’s 2003 order approving the Funding Agreement, Watermaster’s motion for approval of the Storage and Recovery Agreement, the Storage and Recovery Agreement, the 2004 order approving the Storage and Recovery Agreement, and the court’s May 12, 2023, tentative ruling. In 2003, when the Funding Agreement was approved, the court acknowledged the Judgment’s requirement that “groundwater storage agreements are to contain terms that will preclude operations having a *substantial adverse impact* on other producers.”

When Watermaster moved for approval of the Storage and Recovery Agreement, it also acknowledged the Judgment’s requirement that “all storage agreements shall by their terms preclude operations which will have a *substantial adverse impact* on other Producers.” Watermaster noted that “[t]his requirement is similar to the requirement contained in the Peace Agreement and Watermaster’s Rules and Regulations that Watermaster ensure that no Material Physical Injury is caused to any party or the Basin. Thus, through Part III of the Agreement,^[14] Watermaster references the broad requirement that the *storage of water under the Agreement must not cause either*

¹⁴ Section III. of the Storage and Recovery Agreement, entitled “No Material Physical Injury” states: “The Storage and Recovery of Supplemental Water stored under this Agreement will not cause *Material Physical Injury* **or** a *substantial adverse impact* to any party to the 1978 Judgment or to the Basin itself.”

“Or” is “used as a function word to indicate an alternative.”
(<https://www.merriam-webster.com/dictionary/or>, as of April 17, 2025.)

Material Physical Injury or a substantial adverse impact to any party or to the Basin.” If substantial adverse impact is similar to material physical injury, then why use both terms? Why was the term material physical injury defined, but substantial adverse impact was not?

The 2004 order approving the Storage and Recovery Agreement acknowledges the Judgment’s provision in paragraph 28 that “agreements for storage . . . must include terms that will ‘preclude operations which will have a *substantial adverse impact* on other producers.’” It further provides, “The DYY Storage Agreement calls for the development of Annual Operating Plans, which will provide estimated schedules and locations for the delivery of all water into and out of storage, on a monthly basis, for the upcoming fiscal year. The Annual Operating Plan is to be submitted to Watermaster for approval and is to have sufficient detail to allow Watermaster to assess the potential for any adverse impacts on producers. *Pursuant to Judgment paragraph 28, Watermaster may not approve an Annual Operating Plan that will have a substantial adverse impact on producers.*” And the superior court’s tentative ruling for May 12, 2023, reiterated its prior orders’ (2003 and 2004) acknowledgment that “*groundwater storage agreements are to contain terms that will preclude operations having a substantial adverse impact on other producers.*”

Given the use of the conjunctive “or” when referencing both substantial adverse impact and material physical injury, we conclude the two terms do not share the same meaning.

Also, the “changed circumstance” that necessitated a modification to the DYY Program was Metropolitan’s receipt of excess water (above the amount determined to meet the needs of the program) that needed to be stored. To the extent this excess stored water surpassed the limitations initially imposed by the DYY Program agreements, the Operating Committee¹⁵ should have proposed an amendment to the Funding Agreement, similar to Amendment No. 8 in 2015. This is especially true given the Operating Committee’s decision to expand the DYY Program beyond its originally intended purpose by allowing voluntary takes never contemplated by the program’s initial agreements.

3. *Summary.*

To summarize, the DYY Program was created to provide a buffer against drought, allowing Metropolitan to offset water it would otherwise import into the Basin with water stored in the DYY Program storage account. However, in 2018, Metropolitan requested, and was allowed, to put excess water into the DYY Program storage account. It then persuaded the Operating Committee (of which it possessed two votes) to propose the 2019 Letter Agreement. This agreement fundamentally changed the recovery aspect of the DYY Program by allowing voluntary production of water from the storage account regardless of party status or performance criteria. The impact of these voluntary takes materially affected the rights of the Operating Parties and other local agencies when

¹⁵ If not the Operating Committee, then Watermaster should have proposed an amendment. The Storage and Recovery Agreement provides that any storage and recovery of supplemental water “shall occur only under Watermaster’s control and regulation *in accordance with the Judgment and the Peace Agreement.*”

Watermaster interpreted and applied the 2019 Letter Agreement inconsistently with the original DYY Program agreements, the Judgment, and prior court orders when it calculated/approved the FY 2021/2022 and 2022/2023 Assessment Packages.

Accordingly, we reverse the orders of the superior court and direct Watermaster to correct and amend the FY 2021/2022 and 2022/2023 Assessment Packages consistent with the original DYY Program agreements, the Judgment, and prior court orders.

III. DISPOSITION

The November 3, 2022, and August 23, 2023, orders are reversed. The superior court is directed to enter new orders granting Ontario's challenges, and directing Watermaster to correct and amend its FY 2021/2022 and 2022/2023 Assessment Packages. The issues of (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 should be resolved by the parties prior to judicial intervention. Ontario shall recover its costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.

EXHIBIT B

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EXEMPT FROM FILING FEE
PER GOV. CODE, § 6103

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

11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

14 vs.

15 CITY OF CHINO, ET AL.,

16 Defendants.

Case No: RCVRS 51010

*Assigned for All Purposes to:
Honorable Stanford E. Reichert*

**CITY OF ONTARIO'S APPLICATION
FOR AN ORDER TO EXTEND TIME
UNDER JUDGEMENT, PARAGRAPH
31(c) TO CHALLENGE
WATERMASTER ACTION/DECISION
ON NOVEMBER 18, 2021 TO APPROVE
THE FY 2021/2022 ASSESSMENT
PACKAGE. IF SUCH REQUEST IS
DENIED, THIS FILING IS THE
CHALLENGE**

[Concurrently Filed with Declaration of
Christopher Quach; Proposed Order]

Date: April 8, 2022

Time: 1:30 p.m.

Department: S35

1 **TO: WATERMASTER AND ITS COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on April 8, 2022 at 1:30 PM in Dept S35 of the above
3 entitled Court, the City of Ontario ("Ontario") will make an Application for an order to extend the
4 time under Paragraph 31(c) of the Judgement, from 90 days to 180 days, for Ontario to challenge
5 the Watermaster Board action/decision on November 18, 2021 to approve the Fiscal Year
6 2021/2022 Assessment Package. If the request to extend the time is denied by the Court, this filing
7 shall act as the challenge to the Watermaster Board action/decision on November 18, 2021 to
8 approve the Fiscal Year 2021/2022 Assessment Package.

9 This Application is made for the following purposes: (a) to preserve the time in which the
10 City of Ontario may file a motion to challenge the Watermaster Board action/decision to approve
11 the Fiscal Year 2021/2022 Assessment Package, (b) to allow additional time for Appropriative
12 Pool parties to negotiate a settlement, and (c) to act as the filing of Ontario's motion to challenge
13 the Watermaster Board action/decision to approve the Fiscal Year 2021/2022 Assessment Package
14 if the request to extend the time is denied by the Court.

15 This Application is further based upon the Declaration of Christopher Quach, including
16 attachments, filed concurrently herewith and the attached Memorandum of Points and Authorities
17 below.

18
19 **I. MEMORANDUM OF POINTS AND AUTHORITIES INTRODUCTION**

20 The immediate purpose of this Application is to preserve the time in which Ontario may
21 file a fully-developed motion to challenge the Watermaster Board action/decision for the approval
22 of the Fiscal Year 2021/2022 Assessment Package. But, if the Application to preserve time is
23 denied, then this Application shall serve as the filing of Ontario's motion to challenge the
24 Watermaster Board action/decision to approve the Fiscal Year 2021/2022 Assessment Package.

25 On November 1, 2021, Ontario sent a letter to Mr. Kavounas, Watermaster General
26 Manager, that outlined questions and comments to the draft Fiscal Year 2021/2022 Assessment
27 Package. Ontario requested that Watermaster explain the basis for exempting 23,000 acre-feet

1 (AF) of water produced from the Metropolitan Water District's (MWD) Chino Basin Conjunctive
2 Use Program (CUP), also known as the Dry Year Yield Storage and Recovery Program (DYYP),
3 as identified in the draft Fiscal Year 2021/2022 Assessment Package, from the Watermaster
4 assessment and the Desalter Replenishment Obligation (DRO) assessment. Under the 1978 Chino
5 Basin Judgement ("Judgement"), this production should have been assessed.. Watermaster waived
6 assessments for two Parties of the Chino Groundwater Basin, Cucamonga Valley Water District
7 (CVWD) and Fontana Water Company (FWC), inconsistent with the Judgement. (See Declaration
8 of Christopher Quach filed concurrently herewith ["Quach Decl."], ¶ 2, and Ex. A.)

9 On November 18, 2021, Watermaster presented a staff report to the Watermaster Board
10 in response to Ontario's November 1, 2021 letter. The Watermaster Board directed Watermaster
11 Staff and legal counsel to evaluate the concerns raised by Ontario surrounding the DYYP and
12 related applicability to Watermaster assessments. (Quach Decl., ¶ 3.)

13 On November 18, 2021, the Watermaster Board approved the Fiscal Year 2021/2022
14 Assessment Package. Ontario understood that resolution to the questions and comments raised
15 regarding the DYYP would not affect the ability to retroactively address the Fiscal Year 2021-
16 2022 Assessment Package. As stated in the Watermaster staff report on the assessment of
17 Ontario's issue, if warranted the assessment package could always be changed retroactively.
18 (Quach Decl., ¶ 4.)

19 In an effort to exhaust all administrative remedies, on January 5, 2022, Watermaster,
20 Ontario, CVWD, and FWC met to discuss the DYYP issues and begin good faith negotiations.
21 (Quach Decl., ¶ 5.)

22 On January 24, 2022, Ontario, CVWD, and FWC met to discuss a draft settlement term
23 sheet and good faith negotiations are currently ongoing. Ontario is actively working with Parties
24 and Watermaster to reach a resolution. (Quach Decl., ¶ 6.)

25 On January 24, 2022, Ontario sent a letter to Mr. Kavounas, Watermaster General
26 Manager, detailing Ontario's concerns with Watermaster's administration of the DYYP. (Quach
27 Decl., ¶ 7, and Ex. B.)

1 On January 27, 2022, Watermaster presented a staff report to the Watermaster Board in
2 response to Ontario's concerns as reiterated in the January 24, 2022 letter and in response to the
3 Watermaster Board's direction on November 18, 2021. However, when asked, Watermaster
4 general counsel stated that he was "not prepared to provide a legal opinion in this moment." It
5 was understood by Ontario that in order to comply with Watermaster Board direction on November
6 18, 2021, a report with legal counsel's opinion would be forthcoming. (Quach Decl., ¶ 8.)

7 On February 11, 2022, Ontario requested Watermaster general counsel approve an
8 extension to the 90-day period if determined necessary by Watermaster. (Quach Decl., ¶ 9.)

9
10 Under Paragraph 31(c) of the Judgement, a party to the Judgement seeking to challenge
11 an action/decision of the Watermaster Board has 90 days in which to file a motion to challenge
12 said action/decision. Since the Watermaster Board approved the Fiscal Year 2021-2022
13 Assessment Package on November 18, 2021, the 90-day period by which Ontario must file its
14 motion to challenge said Watermaster Board action/decision falls on February 17, 2022. Since that
15 time, the parties have been attempting to negotiate a settlement and thus Ontario has not had
16 sufficient time to fully develop its challenge to the Watermaster Board decision. The parties have
17 known of Ontario's challenge, thus there is no harm to the parties if the Watermaster were to grant
18 an extension of time so that Ontario can fully develop its arguments in support of its challenge.

19 Ontario has grounds to challenge the propriety of the action/decision of the Watermaster
20 Board's approval of the Fiscal Year 2021-2022 Assessment Package. Specifically, Ontario's
21 challenge is based on the grounds of the failure of Watermaster staff to administer assessments
22 consistent with the Judgement and Court Orders. Ontario desires additional time to further develop
23 that challenge. However, in the event Ontario's Application for an extension of time is denied, this
24 Application and Declaration in support of the Application as well as Exhibits A and B attached to
25 the Declaration shall serve as Ontario's challenge to the propriety of the action/decision of the
26 Watermaster Board to approve the Fiscal Year 2021-2022 Assessment Package.

1 **II. CONCLUSION**

2 If the extension of the time to file a challenge to the above Watermaster Board
3 action/decision is not extended from 90 to 180 days, the City of Ontario will be burdened with the
4 expense and effort of filing a complete and thorough motion by February 17, 2022. Furthermore,
5 granting the extension of time imposes no harm on Watermaster or the parties hereto. However, in
6 the event an extension of time is denied, Ontario's arguments in favor of its challenge are stated
7 in the correspondence attached as exhibits to the Declaration of Christopher Quach filed
8 concurrently herewith, and thus this Application shall act as Ontario's challenge to the
9 Watermaster Board's action/decision.

10 Dated: February 17, 2022

LAW OFFICES OF CHARISSE L SMITH
CHARISSE L SMITH

12 By: Charisse Smith
13 Charisse L Smith
14 Attorney for CITY OF ONTARIO
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CHINO BASIN WATERMASTER

Case No. RCVRS 51010

Chino Basin Municipal Water District v. City of Chino, et al.

PROOF OF SERVICE

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On February 17, 2022 served the following:

1. CITY OF ONTARIO'S APPLICATION FOR AN ORDER TO EXTEND TIME UNDER JUDGEMENT, PARAGRAPH 31(C) TO CHALLENGE WATERMASTER ACTION/DECISION ON NOVEMBER 18, 2021 TO APPROVE THE FY 2021/2022 ASSESSMENT PACKAGE. IF SUCH REQUEST IS DENIED, THIS FILING IS THE CHALLENGE

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

See attached service list: Master Email Distribution List

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

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

/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.

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

Executed on February 17, 2022 in Rancho Cucamonga, California.



By: Janine Wilson
Chino Basin Watermaster

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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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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 City of Ontario (“Ontario”) files this challenge to Chino Basin Watermaster’s
4 (“Watermaster”) November 17, 2022 decision to approve the Fiscal Year 2022/2023 Assessment
5 Package (“FY 22/23 Assessment Package”).¹ The FY 22/23 Assessment Package purports to
6 exclude from assessment water produced from Chino Basin (the “Basin”) by certain parties as part
7 of the Dry Year Yield Program (the “DYY Program”).

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

14 First, Watermaster’s decision to exclude groundwater produced from the DYY Program
15 storage account (“DYY water”) flouts the requirements set forth in this Court’s 1978 Judgment as
16 well as in subsequent court orders and agreements that govern Basin operation. Those governing
17 agreements and orders specify that *all* water produced in the Basin must be assessed; they do not
18 distinguish between different types of water (*e.g.*, native water, stored water, and supplemental
19 water) for the purpose of assessment, nor do they suggest that Watermaster may permissibly
20 circumvent its obligation to assess all water produced, regardless of type. Indeed, Watermaster’s
21 own actions only underscore that produced water has always been assessed. Importantly, the 2019
22 Letter Agreement contains ***no*** terms relating to assessments. Accordingly, there is no basis for
23 Watermaster to interpret the 2019 Letter Agreement as throwing out or overriding those portions
24 of the Judgment addressing what production is assessed. Watermaster’s decision not to assess DYY
25 water has, and continues to, result in a windfall for interested parties Fontana Water Company
26 ///

27 _____
28 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.

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

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

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

27 _____
28 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.

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

10 **II. FACTUAL BACKGROUND**

11 What follows is a brief summary of the history and context of this nearly 50-year-old basin
12 adjudication. For a more detailed factual background, Ontario respectfully refers this Court to its
13 Combined Reply, filed on May 27, 2022 (the “Combined Reply”), at pages 9-24.⁴

14 **A. Basin Adjudication, the Court’s Continuing Jurisdiction, and the** 15 **Watermaster Approval Process**

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

20
21 ³ While Ontario recognizes that the Court addressed arguments concerning the Watermaster
22 Approval Process and the 2019 Letter Agreement in Ontario’s challenge to the FY 2021/2022
23 Assessment Package, that Order currently is pending on appeal. (Declaration of Elizabeth P. Ewens
24 (“Ewens Decl.”), ¶¶ 4-5.) Those arguments, therefore, are raised herein for the purposes of
25 preserving Ontario’s claims as they relate to its challenge to the FY22/23 Assessment Package.

26 ⁴ The full title of this May 27, 2022 filing is “City of Ontario’s Combined Reply to the Oppositions
27 of Watermaster, Fontana Water Company and Cucamonga Valley Water District, and Inland
28 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.)

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

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

12 **B. Development of the DYY Program**

13 The DYY Program was borne out of a groundwater storage program funding agreement in
14 2003 (the “2003 Funding Agreement”). The 2003 Funding Agreement provided that Metropolitan
15 Water District (“Metropolitan”) could store up to 100,000 acre feet (“AF”) of water that it imported
16 from the Colorado River, among other sources. (RJN, Ex. 8 at p. 6.) The 2003 Funding Agreement
17 further allowed that, during dry years, Metropolitan could direct participating agencies (including
18 the Inland Empire Utilities Agency (“IEUA”) and Three Valleys Municipal Water District
19 (“TVMWD”)) to pump up to 33,000 AF of that stored water rather than using the same amount of
20 surface water.⁶ (*Id.* at ¶ I(J).) The details of how participating agencies would pump stored water,
21 including specific performance criteria regarding reductions in imported water deliveries, were
22 provided for in an attachment to the 2003 Funding Agreement (“Exhibit G”). (*Id.* at 6; see *id.*, Ex.
23 G.) Ultimately, Exhibit G, which remains in full force and effect, ensures a balanced formula: it
24 calls for the reduction of imported water deliveries and the corresponding replacement of water that
25 has been imported with stored Basin groundwater. The 2003 Funding Agreement, including
26 Exhibit G, was approved through the prescribed Watermaster approval process (the “Watermaster
27

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

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

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

11 Consistent with the 2003 Court Order, Local Agency Agreements were executed between
12 IEUA, TVMWD, and their member agencies.⁷ (RJN, Exs. 10-12; Jones Decl., ¶ 15.) A subsequent
13 court order in 2004 reviewed and approved a DYY storage agreement submitted by the
14 Watermaster. (See RJN, Ex. 15.) The 2004 Court Order again emphasized that the DYY Program
15 should “provide broad mutual benefits to the parties to the Judgment” and prohibited Watermaster
16 from approving any plan “that will have a substantial adverse impact on other producers.” (*Id.* at
17 2-3.) It further stated that “no use shall be made of the storage capacity of Chino Basin except
18 pursuant to written agreement with Watermaster” and reiterated that the approval of storage
19 agreements must occur through the formal Watermaster Approval Process. (*Id.* at 3-4.)
20 Importantly, neither the 2003 Court Order nor the 2004 Court Order amended the Judgment nor its
21 key principle that all water produced from the Basin must be assessed.

22 **C. Watermaster’s Assessment of Produced Water: Then and Now**

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

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

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

5 Watermaster failed to comply with these basic tenets of the Judgment in the 2022/23
6 Assessment Packages. Relying on its interpretation of the 2019 Letter Agreement⁸ that was
7 adopted outside of the required Watermaster Approval Process and without notice to all parties (see
8 Combined Reply at pp. 16-20 (RJN, Ex. 57)), Watermaster excluded DYY water when calculating
9 the parties’ individual assessments. In other words, Watermaster failed to count DYY water as
10 “produced” water for purposes of calculating assessments, in contravention of the Judgment and
11 subsequent court orders.

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

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

27
28 ⁸ See RJN, Ex. 34.

1 **III. STANDARD OF REVIEW**

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

9 **IV. ARGUMENT**

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

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

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

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

7 While Watermaster has taken the position DYY Program water is not assessed, and that the
8 2019 Letter Agreement somehow was legally sufficient to materially alter the Judgment and other
9 Court orders, this much is clear: the 2019 Letter Agreement explicitly incorporated the Exhibit G
10 performance criteria that CVWD and FWC now have violated. (Jones Decl., ¶ 35.) While the 2019
11 Letter Agreement allowed parties to pump over the groundwater baseline as defined in Exhibit G,
12 the 2019 Letter Agreement is silent as to all other aspects of the Exhibit G performance criteria and
13 does nothing to amend or modify the imported water criteria contained in Exhibit G. While, as
14 detailed below, the validity and legal effect of the 2019 Letter Agreement is very much in dispute,
15 even if, *arguendo*, the 2019 Letter Agreement is valid, CVWD and FWC violated both the terms
16 of the 2019 Letter Agreement and the 2003 Order adopting the Exhibit G performance criteria when
17 they claimed amounts of DYY production that exceeded the corresponding amount of their shift
18 off of imported water.

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

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

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

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

21 To be sure, the Judgment distinguishes between native groundwater, stored groundwater,
22 and supplemental water for some purposes.¹⁰ Paragraph 11, for example, provides that ground
23

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

26 ¹⁰ The Judgment defines “Basin Water” as ground water within Chino Basin that is subject to the
27 Judgment, excluding stored water. (RJN, Ex. 1, at ¶ 4(d).) “Stored Water,” in turn, is defined as
28 “[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).)

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

13 **1. Watermaster’s actions confirm that all water produced must be**
14 **assessed**

15 Consistent with the governing documents’ mandate that all water produced must be
16 assessed, Watermaster consistently assessed all water until suddenly reversing course. For
17 example, Watermaster assessed FWC’s production of supplemental water in assessment year
18 2021/22. (Jones Decl., ¶ 46; RJN, Ex. 53.) Watermaster also assessed imported water. (See Jones
19 Decl., ¶ 47; RJN, Ex. 53.) Finally—and crucially—Watermaster assessed DYY Program water in
20 production years 2002/03 through 2010/11 during the first cycle of the DYY Program. (Jones
21 Decl., ¶ 49; RJN, Exs. 44-52.) Watermaster’s own actions establish that until very recently, all
22 water produced was assessed, and there has been no legal rationale given for the change in course.

23 **2. Assessing all water does not amount to “double counting”**

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

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

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

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

13 By declining to assess water produced through the DYY Program in the FY 22/23
14 Assessment Package, Watermaster has repeated the same error it made the 2021/22 Assessment
15 Package. As a result, Watermaster allowed CVWD and FWC to circumvent their financial
16 responsibilities. While CVWD is only entitled to take 11,353 AF of DYY Program production per
17 year per its Local Agency Agreement, it claimed 17,912 AF, and was not assessed on the full
18 amount. And while FWC does not have a Local Agency Agreement at all, it was allowed to claim
19 5,000 AF of DYY Program Production. Watermaster's failure to assess any DYY production
20 resulted in cost-shifting to other parties, including an additional \$693,964 added financial burden
21 on Ontario. (Jones Decl., ¶ 67.) Watermaster's decision not to assess all water produced
22 contravenes the Judgment and this Court's 2003 and 2004 orders, which emphasize that the DYY
23 Program must "provide broad mutual benefits to the parties to the Judgment." (RJN, Ex. 9 at pp. 4-
24 6; *Id.*, Ex. 14 at p. 2.) An agreement that benefits only a few (CVWD and FWC) at the expense of
25 many contravenes that directive. And it contravenes case law holding that parties to a stipulated
judgment cannot unilaterally revise that judgment.

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

28 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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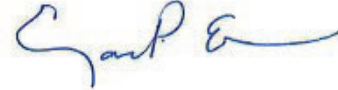
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1 amending the FY 22/23 Assessment Package to assess water produced from the DYY Program;
2 and (4) invalidating the 2019 Letter Agreement.

3
4 DATED: February 14, 2023

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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

/ ___ / 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 15, 2023 in Rancho Cucamonga, California.



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EXHIBIT D

2023 WL 4679674 (Cal.App. 4 Dist.) (Appellate Brief)
Court of Appeal, Fourth District, California.

Chino Basin WATERMASTER, Plaintiff and Respondent,
v.
CITY OF ONTARIO, et al., Defendant and Appellant.

No.

E080457

July 3, 2023.

San Bernardino Superior Court of California, County of San Bernardino Case No. RCVRS 51010 Honorable Gilbert Ochoa

Opening Brief of Appellant City of Ontario

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***6 I. INTRODUCTION**

Forty-five years ago, several hundred individuals and entities entered into a stipulated agreement governing rights to groundwater and storage capacity in Chino Groundwater Basin (the “Basin”). The superior court memorialized the parties’ agreement in a 1978 judgment (the “Judgment”). The Judgment appointed the Chino Basin Watermaster (“Watermaster”) and tasked Watermaster with even-handed management of the Basin consistent with the Judgment, including by adopting rules and regulations for the conduct of its duties, establishing committees of parties with similar interests in the Basin, developing uniformly applicable rules for the storage of water, and assessing parties for all water produced from the Basin. At its core, this dispute is about whether Watermaster and other parties to the Judgment may run roughshod over the Judgment’s requirements to the detriment of the City of Ontario (“Ontario”) and others. Ontario takes the position that they may not, and respectfully requests that this Court reverse the superior court’s decision to the contrary.

Each year, Watermaster prepares an assessment package detailing the accounting for production and use of Basin water, and announcing the assessments that producers of Basin water must pay. Traditionally, consistent with the Judgment, Watermaster has assessed all water produced from the Basin. This included stored water produced as part of the Dry Year Yield Program (“DYY Program”), a conjunctive use program established for the storage of extra water during wet years and the corresponding recovery of that groundwater during dry years. *7 The DYY Program was meticulously crafted by agreements and court orders that provided, among other things, that only parties that executed written agreements (known as local agency agreements) could participate.

All of this changed without notice. In the 2021/2022 Assessment Package at issue here, Watermaster announced that it would not be levying assessments on water produced through the DYY Program. And in the same production year, for the first time, Watermaster allowed Fontana Water Company (“FWC”) to participate in the DYY Program, even though FWC did not have a local agency agreement allowing it to withdraw water from that program. These changes clearly violated the Judgment and subsequent court orders unambiguously requiring that all water produced from the Basin must be assessed and that water may not be produced from the DYY Program absent a written local agency agreement.

Rather than recognizing as much, the superior court concluded that Ontario’s challenge to the 2021/2022 Assessment Package amounted to an untimely and improper objection to an earlier letter agreement that Watermaster staff entered into with Metropolitan Water District, Three Valleys Municipal Water District, and Inland Empire Utilities Agency (“IEUA”) (the “2019 Letter Agreement”). But the court failed to appreciate that Watermaster relied on the 2019 Letter Agreement to make fundamental changes to the DYY Program without providing notice to Ontario and other affected parties, and without following the required procedures for making material *8 amendments to the Judgment and the DYY Program. In fact (and contrary to the superior court’s conclusion otherwise) Watermaster *never* provided notice to Ontario of the 2019 Letter Agreement. The 2019 Letter Agreement, put simply, was enacted in the shadows, and its full effects became clear only when Watermaster issued its 2021/2022 Assessment Package. Ontario timely challenged the 2021/2022 Assessment Package. Ontario therefore

respectfully requests that this Court reverse the superior court's denial of Ontario's challenge and remand with instructions to (1) invalidate the 2019 Letter Agreement; (2) direct Watermaster to comply with the process provided for in the Judgment and subsequent court orders when approving material changes; (3) direct Watermaster to implement the DYY Program in a manner consistent with the Judgment and court orders; and (4) correct and amend the 2021/2022 Assessment Package to assess water produced from the DYY Program.

II. ISSUES PRESENTED FOR REVIEW

1. Where a 1978 stipulated judgment and subsequent agreements between the parties make clear that all water produced from the Basin must be assessed, did Watermaster violate the Judgment by exempting from assessment stored groundwater produced from the Basin?
2. Where a 1978 stipulated judgment and subsequent court order require that parties may only withdraw stored water from the Basin pursuant to a written agreement, did Watermaster violate that Judgment and court order by permitting a party without a local agency agreement to withdraw stored water from the Basin?
3. Where Watermaster enacted major changes to the DYY Program without notifying Ontario or proceeding through the sequential approval process mandated by the Judgment *9 and other court orders, and where the changes and the harm wrought on Ontario only became evident when Watermaster issued its 2021/2022 Assessment Package, was Ontario's challenge to the 2021/2022 Assessment Package valid and timely?

III. BACKGROUND

A. The 1978 Judgment.

The Chino Groundwater Basin (the “Basin”) is one of the largest groundwater basins in Southern California, providing water to millions of residents of San Bernadino, Riverside, and Los Angeles Counties. After years of severe water shortages and continuous overdrafts in the 1960s and 1970s, a complaint was filed seeking an adjudication of rights to groundwater and storage capacity in the Basin. (AA44, ¹ AA48 [Judgment ¶¶ 1, 7].) Trial and a stipulated judgment led to the superior court's imposition of a “physical solution,” an equitable plan for the management of groundwater resources, which is set forth in a 1978 judgment (the “Judgment”). “The phrase ‘physical solution’ is used in water-rights cases to describe an agreed upon or judicially imposed resolution of conflicting claims in a manner that advances the constitutional rule of reasonable and beneficial use of the state's water supply.” (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287, as modified on denial of reh'g (Dec. 21, 2012).)

The Judgment addresses a variety of issues related to the allocation of Basin resources and Basin management. For *10 example, the Judgment appoints and details the duties of the Chino Basin Watermaster (“Watermaster”), a nine-member Board charged with administering and enforcing the Judgment and defines the processes Watermaster must follow when exercising its powers and responsibilities. (AA10 [Judgment ¶¶ 16-17].)

The Judgment also identifies the Basin's safe yield, that is, the amount of water that can be withdrawn annually from the Basin without harming or depleting the Basin, and defines the parties' various rights to groundwater in the Basin. (AA48-AA50 [Judgment ¶¶ 6, 8-10].) The Judgment generally prohibits parties from “producing ground water from Chino Basin” except as provided in the Judgment or a written water storage agreement. It also provides for the equitable, but mandatory, apportionment and assessment of costs of Basin management based on the amount of a party's individual groundwater production. (AA47, AA51, AA67 [Judgment ¶¶ 4(x), 13, 53].)

The Judgment further explains that there is “a substantial amount of available ground water storage capacity” in the Basin that can be used for conjunctive use. (AA50 [Judgment ¶ 11].) Conjunctive use is the planned use of surface water and groundwater resources to provide a buffer against drought. Conjunctive use generally involves immediately using surface water or storing it

as groundwater in wet years when water is plentiful and withdrawing it from storage during dry years as a means of improving the availability and reliability of water. The Judgment explicitly recognizes that utilization of groundwater ***11** storage capacity is essential to safe and sustainable management, but it also requires that the Basin's groundwater storage capacity “be undertaken only under Watermaster control and regulation” in order to “protect the integrity of both such Stored Water and Basin Water in storage and the safe yield of the Chino Basin.” (*Id.*)

The Judgment defines “stored water” 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.” (AA47 [Judgment ¶ 4(aa)].) “Supplemental water,” for its part, is defined as “both water imported to Chino Basin from outside Chino Basin Watershed, and reclaimed water,” which in turn is defined as water “which, as a result of processing of waste water, is suitable for a controlled use.” (AA46-AA47 [Judgment ¶ 4(u), (bb)].) The Judgment treats stored and supplemental water differently for certain purposes. For example, the Judgment provides that stored water is not included in the Basin's safe yield. (AA45, AA47 [Judgment ¶ 4(d), (x)].) It also provides that while parties are entitled to a predetermined amount of groundwater in the Basin consistent with the safe yield, they may not store additional groundwater, or withdraw stored groundwater, without a written agreement with Watermaster. (AA51 [Judgment ¶ 14].)

Other provisions, however, are categorical commands and do not distinguish between the “type” of groundwater--*i.e.*, native (naturally occurring) or stored--at issue. The Judgment ***12** provides, for example, that annual assessments levied against the parties to the Judgment should be “based upon production” (AA67 [Judgment ¶ 53]), *i.e.*, on the annual quantity of groundwater pumped or extracted from the Basin (AA46 [Judgment ¶ 4(q), (s)]). The Judgment's definition of groundwater is similarly broad and does not distinguish between the “type” of groundwater or how that water made its way into the Basin. Groundwater is simply water “beneath the surface of the ground and within the zone of saturation, *i.e.*, below the existing water table.” (AA45 [Judgment ¶ 4(h)].)

B. Watermaster's role.

As noted, the Judgment appoints and defines Watermaster's role in administering and enforcing the Judgment. The Judgment is clear that Watermaster is authorized to act “[s]ubject to the continuing supervision and control of the Court.” (AA53 [Judgment ¶ 17].) Watermaster, in other words, is an arm of the court. (*See generally Water Replenishment Dist. of S. Cal. v. City of Cerritos* (2012) 202 Cal.App.4th 1063, 1072 [noting that Watermaster “serves as an arm of the court to assist the Court in the administration and enforcement of the provisions of this judgment” (internal quotation marks omitted)]; *Dow v. Honey Lake Valley Res. Conservation Dist.* (2021) 63 Cal.App.5th 901, 911 [observing that Watermaster is “considered an arm of the Court” (internal quotation marks omitted)].) Unlike parties to the Judgment like Cucamonga Valley Water District (“CVWD”) and the City of Ontario (“Ontario”), “[t]he [W]atermaster's role is merely to administer and implement the decree; its role is not to ***13** champion the rights of some water users subject to the decree to the detriment of other water users subject to the decree. In other words, the [W]atermaster's role is not to take sides or play favorites.” (*Dow v. Lassen Irrigation Co.* (2022) 75 Cal.App.5th 482, 489.) Rather, Watermaster is charged with conducting its duties “in an impartial and unbiased” manner. (*Id.*)

C. Basin management and the Watermaster approval process.

To facilitate management of the Basin, the Judgment provides a detailed roadmap to ensure the parties bound by and subject to the Judgment have adequate opportunities to develop and present recommendations to Watermaster. The Judgment creates three “pools” of parties with similar rights in the Basin: (1) an overlying (agricultural) pool, (2) an overlying (non-agricultural) pool, and (3) an appropriative pool.² (AA63 [Judgment ¶ 43].) Each pool is represented by a “pool committee,” which is responsible for “developing policy recommendations for administration of its particular pool” and for transmitting uncontroversial actions and recommendations “directly to Watermaster for action.” (AA60-AA61 [Judgment ¶ 38(a)].) In addition, representatives of each pool committee ***14** serve on an “advisory committee,” which has “the duty to study, and the power to recommend, review and act upon all discretionary determinations made or to be made ... by Watermaster.” (*Id.* ¶ 38(b).)

To safeguard water resources within the Basin, and to ensure that the interests of parties to the Judgment are protected, the Judgment also requires that the pool and advisory committees follow certain procedures. Notice must be provided before any meeting of the pool or advisory committee. (AA59-AA60 [Judgment ¶ 37(b), (c)].) Minutes must be kept of all such meetings and furnished to parties in the pool(s) concerned. (*Id.* ¶ 37(d).) Whenever an action or recommendation of a pool committee requires Watermaster to implement the action or recommendation, notice must be provided to the other two pools. (*Id.* ¶ 38(a).) If one of the other pools objects to the action or recommendation, it must be reported to the advisory committee for consideration before it is transmitted to Watermaster. (*Id.*)

The Judgment similarly charges Watermaster with following certain established procedures. If Watermaster rejects the advisory committee's recommendation, Watermaster is required to hold a public hearing and to issue written findings and decision justifying its departure. (AA61 [Judgment ¶ 38(b)[1]].) Similarly, if Watermaster proposes to take discretionary action (*i.e.*, an action other than a simple approval or disapproval of an action or recommendation by a pool committee), it must serve notice on the advisory committee and its members at least 30 days before the Watermaster meeting at *15 which the action is authorized. (AA61-AA62 [Judgment ¶ 38(b)[2]].) Watermaster has no authority to bypass these procedures. In fact, as an arm of the court, it is Watermaster's duty to implement them neutrally and fairly and without prejudice towards a particular outcome.

Over time, the Judgment has been modified by subsequent agreements and court orders, including the Chino Basin Watermaster Rules and Regulations, pursuant to the Judgment's mandate that Watermaster “adopt, after public hearing, appropriate rules and regulations for conduct of Watermaster affairs.” (AA54 [Judgment ¶ 18]; *see* AA843.) A peace agreement to settle disputes among the parties was adopted and approved by the superior court in 2000 (the “Peace Agreement”). (*See* AA1757.) The Peace Agreement provides, among other things, that Watermaster may not approve a water storage and recovery project “if it... will cause any Material Physical Injury to any party to the Judgment or the Basin.” (AA1783-AA1784 [¶ 5.2(a)(iii)].)³

Since the original enactment of the Judgment, the court has consistently retained “[f]ull jurisdiction, power and authority” as to “all matters contained” in the Judgment. (AA53 [Judgment ¶ 17]; *see also* AA57 [Judgment ¶ 31] [“All actions, decisions or rules of Watermaster shall be subject to review by the Court.”].) In other words, the Judgment entrusts the court with the responsibility to ensure that all players in the Basin, *16 including Watermaster, play by the rules.

D. Watermaster's authority to levy assessments.

As noted, the Judgment imposes both the authority and the duty on Watermaster to levy and collect assessments based on production during the prior year. (*See* AA55, AA67 [Judgment ¶¶ 22, 24, 53]; *see also* AA868-AA869 [section 4.1] (Watermaster rules and regulations require that Watermaster “shall levy assessments against the parties ... based upon Production during the preceding Production period).) In furtherance of these requirements, each year, Watermaster staff prepares an annual assessment package detailing the accounting for production and use of Basin water. (*See* AA2889.)

The cost of operating the Basin is determined based on an annual budget. The amount that each party is assessed is determined by dividing the total of the fixed costs of operating the Basin by the total annual production of all parties. (AA661 [¶ 61].) That calculation yields a dollar amount per acre foot of water. (*Id.* ¶ 62.) Since the costs are fixed, when the total annual production increases, the unit cost decreases; conversely, when the total annual production decreases, the unit cost increases. (*Id.*) More concretely, if Watermaster treats certain types of water produced by certain parties as not “produced” (*i.e.*, exempts from assessment certain types of water) the unit cost per acre foot of water--and the total amount that the other parties must pay-- rises. (*See id.* ¶ 63.)

E. The DYY Program.

In 2000, California voters approved a proposition ***17** authorizing the state to sell \$1.97 billion in general obligation bonds for water-related projects. (AA1208.) The Metropolitan Water District (“Metropolitan”) received \$45 million in grant funds to be used for groundwater storage projects within its service area. (*Id.*) As a result, in June 2003, Metropolitan and two of its member public agencies--Inland Empire Utilities Agency (“IEUA”) and Three Valleys Municipal Water District (“TVMWD”)--entered into a Groundwater Storage Program Funding Agreement with Watermaster (the “2003 Funding Agreement”).

The 2003 Funding Agreement provided that Metropolitan could store up to 100,000 acre feet of water in the Basin.⁴ (AA1213.) It further provided that during dry years, Metropolitan could require (or “call”) on parties with local agency agreements to produce 33,000 acre feet of stored groundwater from that storage account while simultaneously requiring the agencies to forgo using an equivalent amount of surface water. (*Id.*) In wet years, this arrangement allowed Metropolitan to store water to provide a buffer for future dry years, and in dry years, it left Metropolitan with more surface water to distribute within its service area. (AA1208-AA1209, AA1226-AA1227.) This arrangement, now known as the DYY Program, was understood to provide “a mutually beneficial arrangement” for ***18** the use and storage of groundwater. (AA1210.) The DYY Program, in other words, “allow[s] for rational regional water supply planning by allowing for increased imports to the Chino Basin during wet years, and reduced imports during dry years.” (AA1480.)

The 2003 Funding Agreement was adopted through the required process discussed above, *i.e.*, after notice and consideration by the pool committees, the advisory committee, and Watermaster itself. (AA651 [¶ 19].) It was ultimately approved by superior court order. (*See* AA1336.) In its order, the superior court recognized that because of the Judgment’s injunction on storing or withdrawing water except pursuant to a written storage agreement (*see* AA51 [Judgment ¶¶ 13, 14]), Watermaster would need to execute, and the court would have to approve, local agency agreements for the 2003 Funding Agreement to take effect. (*See* AA1338.) Consistent with the superior court’s order, IEUA, TVMWD, and their member agencies executed written local agency agreements to govern performance obligations under the DYY Program. (*See* AA652-AA653 [¶ 25], AA1358-AA1456.)

In 2004, Watermaster filed--and the superior court approved--a motion seeking final approval of the DYY Program and an associated storage and recovery agreement between Watermaster, Metropolitan, IEUA, and TVMWD (the “DYY Storage Agreement”). (AA1470.) The DYY Storage Agreement included specific performance criteria that would be used to ensure that the stored groundwater that parties to the agreement ***19** produced as part of the DYY Program would be produced *instead of* imported surface water. (*See* AA1330.) These performance criteria, sometimes referred to as “Exhibit G performance criteria,” help effectuate the promise of the DYY Program--ensuring a balanced formula by calling for the reduction of imported surface water deliveries and the corresponding replacement of that water with stored groundwater from the DYY account.

Watermaster’s 2004 motion confirmed that the DYY Storage Agreement, including the Exhibit G performance criteria, had been “fully vetted through the traditional Watermaster process, thoroughly examined by the parties to the Judgment and unanimously supported and approved by all the various Pools, the Advisory Committee and the Watermaster Board. Ample notice and opportunity to be heard has been afforded all parties to the Judgment and the public generally.” (AA1470; *see also* AA1578 [court order approving the DYY Storage Agreement notes that it was unanimously approved by all three pools, the advisory committee, and Watermaster].) The superior court’s order approving the DYY Storage Agreement reiterated that the DYY Program would “provide broad mutual benefits to the parties to the Judgment” (AA1576), and that “no use shall be made of the storage capacity of Chino Basin except pursuant to written agreement with Watermaster” (AA1577 [citing Judgment ¶ 12]). The court further found that the DYY Storage Agreement was “unlikely to have any adverse impacts on a party to the Judgment.” (AA1578.) Taken together, the 2003 Funding ***20** Agreement (and the court order approving it), the DYY Storage Agreement (and the court order approving it), and the local agency agreements that were subsequently executed, govern the operation of the DYY Program.

Two additional points bear mentioning. First, the 2003 Funding Agreement was amended several times during the development of the DYY Program. The first seven amendments, which were passed in the initial phases of the DYY Program, were ministerial--pertaining to the completion timing of facilities and changes in sources of funds--and were therefore handled administratively, in accordance with the Judgment and other governing documents. (*See* AA648 [¶ 7], AA1609.) The eighth

amendment in 2015, which made material changes to the DYY Program by altering the parties' performance criteria, was adopted only after formal notice was provided to the parties and the proposal was vetted and approved by the pool committees, the advisory committee, and Watermaster, and a technical analysis confirmed that the amendment would not cause material physical injury to the Basin. (AA1458, AA1678; *see* AA648-649 [¶¶ 7-8].) The amendment was executed by parties with local agency agreements.

Second, substantial costs are associated with the DYY Program, including to finance the maintenance and operation of DYY facilities and Watermaster staff time necessary to administer the DYY Program. (AA1340-AA1341, AA1608-AA1609.) Accordingly, entities participating in the DYY Program pay Watermaster administrative surcharges for the specific ***21** purpose of defraying these costs. These administrative fees, however, are distinct from assessment fees charged for production of groundwater from the Basin, whose purpose is to underwrite Basin operations as a whole. (AA67 [Judgment ¶¶ 53-54].)

F. The 2019 Letter Agreement.

In 2018, IEUA (not Watermaster) floated the idea of allowing parties with local agency agreements to implement *voluntary* (rather than mandatory) production of stored groundwater out of the DYY account without a corresponding reduction of imported surface water. (AA654-AA655 [¶ 32].) This was a change to the DYY Program. Recall that the fundamental purpose of the DYY Program was to create a symmetrical formula by ensuring that parties produce stored groundwater from the DYY account during dry years in lieu of (not in addition to) producing surface water.

IEUA, however, did not attempt to explain how or whether the 2003 Funding Agreement or the 2003 and 2004 court orders approving various parts of the DYY Program contemplated such an arrangement. As will be described later, allowing local agencies that participated in the DYY Program, not to mention an entirely new agency, to produce stored groundwater from the DYY account without demanding a corresponding change or reduction in imported water supplies would throw off the careful balance struck by the DYY Program. Absent from the discussion was any suggestion that the contemplated changes would exempt parties who produced stored groundwater from the DYY account ***22** from paying their share of Basin assessments, or that the proposed changes would allow a party without a local agency agreement to participate in the DYY Program.

The topic of IEUA's proposal never appeared as a business or informational item for discussion and potential adoption. Rather, it was included under Watermaster's "General Manager's Report" on the agenda for the September 2018 meetings of the appropriate pool (but not the agricultural and non-agricultural pools), the advisory committee, and the Watermaster Board. (*See* AA2040-AA2050.) And at all three meetings, Watermaster's General Manager insisted that the proposal would not "commit Watermaster to ... anything" and even went so far as to contend that the proposal did not "constitute a change" requiring vetting through the Watermaster approval process. (AA673, AA687.)

Ontario contemporaneously registered its view that the proposal should go through the traditional approval process, and noted significant uncertainty about the practical effect the proposal would have. (AA655 [¶ 34], AA692-AA695.) Ontario explained that "[a]s long as there are parameters that are undecided or unclear, Ontario cannot take a position of support because we cannot know the full effects of the proposed changes. Without these details, which would best be explained and memorialized in an amendment, we will take a wait-and-see approach regarding impacts, and we reserve the right to address any harm or detriment that may arise." (*Id.*)

Nevertheless, Watermaster's General Manager executed IEUA's proposal by letter agreement between Watermaster, ***23** Metropolitan, IEUA, and TVMWD on February 19, 2019. The adoption of the letter agreement (the "2019 Letter Agreement") thus was neither preceded nor followed by formal notice of Watermaster's action as the Judgment and the Watermaster Rules and Regulations require for "discretionary" actions. (*See* AA61-AA62 [Judgment ¶ 38(b)[2]].) Indeed, because it was never included as a business item or informational item on the agendas of any of the pool committee meetings, none of the pools had the opportunity to consider the proposed amendment to the DYY Program. Nor was the subject of the 2019 Letter Agreement ever subjected to full and formal consideration by the advisory committee or Watermaster. And crucially, Watermaster did not

mail the 2019 Letter Agreement to Ontario. (See AA2069-AA2070 [Ontario not listed as recipient on letter from Metropolitan documenting agreement].)

G. Impacts of the 2019 Letter Agreement.

As later became apparent, changes to the DYY Program introduced through the 2019 Letter Agreement resulted in harm to Ontario and other parties to the Judgment. First, the 2019 Letter Agreement allowed parties to produce extra stored groundwater from the DYY account without a corresponding change or reduction in production of imported surface water. It did so by inserting a provision allowing for “voluntary” or discretionary withdrawals at a party's whim. Under the 2019 Letter Agreement, CVWD, for example, produced over 20,000 acre feet of water in 2021-22 even though the agreed-to performance criteria in Exhibit G of the DYY Storage Agreement ***24** authorized it to produce only 11,000 acre feet in any given year.

Second, Watermaster interpreted the 2019 Letter Agreement to allow parties *without* a local agency agreement to make withdrawals from the DYY Program storage account. Under the Judgment, a written agreement with Watermaster is required before an entity may withdraw stored water from the Basin. (AA51 [Judgment ¶ 14].) Similarly, the court order approving the 2003 Funding Agreement made clear that local agency agreements are required before a party may withdraw stored groundwater from the DYY account. (AA1338.) Previously, the DYY Program benefited only Metropolitan, IEUA, TVMWD, Watermaster, and local agencies that had executed local agency agreements. Nevertheless, for the first time, Fontana Water Company (“FWC”), which is not governed by a local agency agreement, was allowed to produce approximately 2,500 acre feet of stored groundwater from the DYY account and claim that DYY production for 2021/2022.

Third, Watermaster interpreted the 2019 Letter Agreement to allow it to exempt from assessment stored groundwater produced from the DYY account. That is what Watermaster did in its fiscal year 2021/2022 Assessment Package. (See AA2889-AA2932.)

In concrete terms, these changes left Ontario and other parties not participating in the DYY Program holding the bag. Recall that the unit cost that parties to the Judgment must pay per acre foot of water is based on fixed costs divided by the total annual production of all parties in the Basin. (AA661 [¶ 62].) By ***25** exempting stored groundwater produced from the DYY account, Watermaster effectively reduced the denominator in that calculation, thereby increasing the unit cost for all parties. At the same time, Watermaster's decision meant that parties like CVWD (which drastically increased its production of stored groundwater from the DYY account) were exempt from paying large sums for water they produced. Similarly, non-parties like FWC (which was inappropriately allowed to produce stored groundwater from the DYY account despite not being a formal participant in the program) were not assessed for their production of this groundwater.

A simplified example may be illustrative. Suppose the unit cost for all water produced from the Basin was determined to be \$100 per acre foot. Suppose also that CVWD produced a total of 1,000 acre feet of water from the Basin, 600 acre feet of which was stored groundwater from the DYY account. CVWD should be assessed \$100,000 (1,000 acre feet x \$100 per acre foot) on the water it produced, regardless of which “account” the water came from.

By Watermaster's calculation, however, only 400 acre feet of the water CVWD produced is assessable. The 600 acre feet of stored groundwater CVWD produced from the DYY account is exempt from assessment and is therefore essentially free to CVWD when it comes to paying its required share of fixed Basin costs based on CVWD's total annual production. The exemption of this 600 acre feet would result in a higher unit cost (of, say, \$130 per acre foot of water produced). As a result, under ***26** Watermaster's approach, CVWD would pay only \$52,000 (400 acre feet x \$130 per acre foot) despite having actually produced 1,000 acre feet. Simultaneously, a party like Ontario that withdrew no or very little groundwater from the DYY storage account would get hit with a unit cost (\$130 per acre foot of produced water from the Basin rather than \$100) that is significantly higher than it otherwise would have been.

Here, the harm is even more striking. CVWD paid approximately \$1 million less than it would have had its 20,500 acre feet of production of DYY water been assessed, and other parties (including Ontario) paid \$1 million more than they otherwise would

have.⁵ And, for its part, FWC avoided assessments on 2,500 acre feet of DYY production even though FWC does not have a local agency agreement authorizing its participation in the program.

H. Ontario's challenge.

Ontario timely challenged the 2021/2022 Assessment Package in the superior court, arguing that Watermaster's failure to assess stored groundwater produced from the DYY account *27 contravened the Judgment and other court orders and agreements governing the Basin's operation, and that in enacting the 2019 Letter Agreement, Watermaster made significant changes to the DYY Program without following the required approval process or providing the requisite notice of its action prior to Watermaster's execution of the 2019 Letter Agreement.

The superior court rejected Ontario's challenge. As for Watermaster's decision to exempt stored groundwater from the DYY account from assessment, the court summarily stated that the Judgment “seems to distinguish between the production of Basin Water and the withdrawal of Stored Water.” (AA3085.) In the court's view, that distinction was “relevant to the issue of Watermaster assessments.” (*Id.*)

With respect to notice, the court explained that “the mailing of the actual 2019 Letter Agreement constituted notice of Watermaster's action” because it allowed for voluntary withdrawals above the baseline set forth in the Exhibit G performance criteria. (AA3079-AA3080 [emphasis omitted].) The court concluded that because Ontario did not challenge the 2019 Letter Agreement within 90 days, its challenge was untimely. (AA3080-AA3081, AA3085.) It therefore denied Ontario's challenge. (AA3085.)

IV. STANDARD OF REVIEW

Where the issue presented is whether Watermaster properly interpreted a judgment or decree, courts exercise their independent judgment and apply de novo review. (*Dow, supra*, 63 Cal.App.5th at p. 911.)

*28 V. ARGUMENT

A. Watermaster's failure to assess water produced from the DYY storage account is inconsistent with the 1978 Judgment and subsequent court orders.

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. The effect of Watermaster's decision has been to allow some players in the Basin—notably CVWD and FWC—to circumvent their financial responsibilities while requiring Ontario and others to make up the difference.

i. The governing documents make clear that all water produced is assessed.

The Judgment provides that Watermaster's assessments must be “based upon production during the preceding period of assessable production.” (AA67 [Judgment ¶ 53].) The Judgment defines “production” in broad terms: the “[a]nnual quantity, stated in acre feet, of water produced,” with “produced” meaning “[t]o pump or extract ground water from Chino Basin.” (AA46 [Judgment ¶ 4(q), (s)].) Similarly, the Watermaster Rules and Regulations provide that “Watermaster shall levy assessments against the parties ... based on Production during the preceding Production period. The assessment shall be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool.” (AA868 [section 4.1]; *see also* AA855 *29 [section 1.1(ooo), (qqq)] (defining “Production” and “Produced” identically to the definitions in the Judgment).) Nothing in the Judgment, the

Watermaster Rules and Regulations, nor any of the agreements or court orders establishing the DYY Program gives Watermaster the discretion to exempt any water produced from the Basin from production. Watermaster's decision to do so as to stored groundwater from the DYY account was improper.

The superior court came to a different conclusion. In its view, the Judgment distinguishes between “ground water,” which is subject to assessment, and “stored water,” which is not. (AA3084-AA3085.) Specifically, the court appeared to rely on the fact that the Judgment's definition of “production” (which is defined by reference to the term “produced”) includes the term “ground water,” but not “stored” or “supplemental” water. (*Id.*) The court did not explain why it found this distinction meaningful. Presumably the court believed that because the production in this case involved production of *stored* groundwater from the DYY account, and the definition of “production” does not mention “stored groundwater,” Watermaster was within its right to exempt from assessment the production of stored groundwater from the DYY account.

The problem with the superior court's reasoning is that one of its premises is wrong. The court was correct that the Judgment defines “production” (and therefore the water that is to be assessed) by reference to “*ground water*” extracted from the Basin. (AA46 [Judgment ¶ 4(q), (s)].) But the court was wrong to assume that “stored water” and “supplemental water” are ***30** somehow different from “ground water.” Both DYY Program stored water and supplemental water exist “beneath the surface of the ground and within the zone of saturation.” (AA45 [Judgment ¶ 4(h)].) They are, in other words, types of groundwater. (*Id.*) Thus, stored and supplemental water produced from the Basin must (like other types of “ground water”) be assessed. (AA67 [Judgment ¶ 51].)

As noted, the Judgment employs different terms to refer to different categories of water when those distinctions are relevant to its rules. For example, paragraph 11 of the Judgment provides that groundwater storage capacity that is not used for storage or regulation of Basin waters can be used for storage of “supplemental water.” (AA50 [Judgment ¶ 11].) In other words, if native (*i.e.*, naturally existing) water is not occupying all of the storage capacity in the Basin, water may be imported from elsewhere and stored. As a corollary to paragraph 11's permissive approach to storage, paragraph 14 prohibits parties from “storing supplemental water in Chino Basin for withdrawal” unless provided for in a written agreement with Watermaster and in accordance with Watermaster's regulations. (AA51 [Judgment ¶ 14].) These provisions ensure that water imported to the Basin can be stored in the Basin and produced later under certain circumstances. They do not say that such water, when produced, should not be assessed. (*See also id.* ¶ 13 [enjoining parties from “producing ground water” in excess of their respective correlative share except pursuant to a storage water agreement, without implying that “ground water” is different ***31** from stored or supplemental water for purposes of assessments].) Put simply, the Judgment's rules about producing groundwater or storing supplemental water do not require or even suggest that supplemental water should be treated differently from other types of groundwater for the purposes of levying assessments. Moreover, to the extent the superior court believed that only produced *native* groundwater may be assessed, the record squarely refutes that position. (*See* AA657-AA658 [¶ 46] (noting that recycled water—which is a mixture of multiple water sources (imported, groundwater, stormwater) and cannot be categorized as native water—is assessed).) Indeed, the court-approved 2003 DYY Program Funding Agreement expressly requires Watermaster to account for and “specify [the] quantities [of (DYY Program water)] *produced* by each Operating Party.” (AA1222-AA1223, emphasis added)

Moreover, the Judgment is a stipulated agreement between the parties. When interpreting a stipulated judgment, as when interpreting a contract, “[t]he fundamental goal... is to give effect to the mutual intention of the parties.” (*Orange Cove Irrigation Dist. v. Los Molinos Mut. Water Co.* (2018) 30 Cal.App.5th 1, 12 [internal quotation marks and citation omitted].) Here, there is no reason to believe that the parties entering the 1978 stipulated judgment intended Watermaster to exempt from assessment groundwater produced from a storage account, to the benefit of some parties and the detriment of others. Such an approach would contravene the express terms of the Judgment. (*Cf.* AA50 [Judgment ¶ 12] [providing that ***32** entities may “make reasonable *beneficial* use of the available ground water storage capacity of Chino Basin for storage of supplemental water” pursuant to written agreements with Watermaster].) It would also contravene Watermaster's role as an “impartial and unbiased” actor, instead putting Watermaster in the position it is now in, *i.e.*, of “champion [ing] the rights of some water users ... to the detriment of other water users.” (*Dow, supra*, 75 Cal.App.5th at p. 489.) Surely, the parties to the Judgment would not have

approved of such an arrangement. The superior court's conclusion that Watermaster acted permissibly was erroneous and should be reversed.⁶

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

Watermaster consistently assessed virtually all stored groundwater in the DYY account until suddenly reversing course in ostensible reliance on the 2019 Letter Agreement. In the first cycle of the DYY Program (from production years 2002/2003 to 2010/2011), Watermaster assessed deposits made to the DYY storage account. The timing of that approach was inconsistent with the Judgment because it levied assessments at the time of *deposit* rather than *production*. (Cf. AA67 [Judgment ¶ 53] *33 [providing that assessments must be “based upon production”].) But the effect was that stored groundwater produced from the DYY storage account was assessed at some point, ensuring that assessments to cover Watermaster's fixed costs of Basin management were still spread among Basin users. (See AA658 [¶ 49].) Moreover, Watermaster's assessment history further reveals that it regularly assesses other stored supplemental water and imported water when it is produced. (AA657-AA658 [¶¶ 46, 47]; see AA2889-AA2932.) Thus, Watermaster has historically assessed precisely the categories of water that it now seeks to exempt from assessment. Watermaster's contention, and the superior court's finding, that stored groundwater may be exempt from assessment is therefore inconsistent with the way Watermaster has treated stored water in the past.

iii. Watermaster's decision not to assess stored groundwater from the DYY account improperly shifted responsibility for those payments to Ontario.

After the issuance of the 2019 Letter Agreement, Watermaster for the first time did not assess stored groundwater water from the DYY account, whether at the time of deposit or at the time of production. (AA658-AA659 [¶ 50].) The effect of the decision to exclude stored groundwater from the DYY account when calculating the parties' individual assessments improperly exempted parties like CVWD, which is a party to the Judgment and to a DYY local agency agreement, from being assessed on substantial quantities of water it produced, and improperly shifted responsibility for those payments onto Ontario and other *34 parties. Specifically, because the Basin's operating expenses are fixed and the unit cost that parties must pay depends on total production, Watermaster's decision to exempt stored groundwater produced from the DYY account from CVWD's total groundwater production had the effect of increasing the unit cost that others—including Ontario—had to pay. The reduction in CVWD's annual production by 20,500 acre feet—the amount of stored groundwater it claimed from the DYY account—allowed CVWD to avoid over \$1 million in assessments for annual Watermaster fixed cost and avoid payment of an additional \$1.5 million representing CVWD's share of the remaining desalter replenishment obligation, and shifted responsibility to pay those amounts to other parties, including Ontario. (AA662-AA663 [¶¶ 64-67].) FWC enjoyed a similar, though smaller, financial windfall by claiming to have produced 2,500 acre feet of stored groundwater from the DYY account (even though FWC does not have a local agency agreement), which Watermaster exempted from assessment. (*Id.*)

Not only did Watermaster's decision not to assess all water produced contravene the Judgment and the 2003 and 2004 court orders that were meant to ensure a balanced formula, it flies in the face of the superior court's earlier requirement that the DYY Program must “provide broad mutual benefits to the parties to the Judgment.” (AA1337; see also *id.* AA1576 [same].) An agreement that benefits only a few (CVWD and FWC) at the expense of many contradicts that directive.

Moreover, Watermaster's position—that it may pick and *35 choose when to assess water produced from the Basin—invites gamesmanship. Water suppliers can easily categorize water in ways that would allow them to avoid paying normal assessments for production. By “coloring the water something else”—*i.e.*, by stating that they produced 2,500 acre feet of imported or stored groundwater rather than native groundwater—parties like FWC and CVWD can circumvent fees and improperly shift costs to others, as they have done here. This Court should not countenance such machinations. Ontario respectfully requests that the Court reverse the superior court's determination that Watermaster's actions were consistent with the Judgment and other governing agreements and orders.

B. Watermaster also violated the Judgment by allowing non-party FWC to withdraw stored groundwater through the DYY Program.

For the first time, the 2021/2022 Assessment Package purported to allow non-party FWC to withdraw stored groundwater from the DYY account, despite not having a court-approved local agency agreement. This constitutes a clear violation of the Judgment, which prohibits withdrawing stored water except pursuant to a written storage agreement. (*See* AA51 [Judgment ¶¶ 13, 14]; *see also* AA947 [fn.8] [“The Judgment enjoins storage or withdrawal of stored water ‘except pursuant to the terms of a written agreement with Watermaster and [that] is [in] accordance with Watermaster regulations.’ *The Court must first approve, by written order, the Watermaster’s execution of Ground Water Storage Agreements.*” (Emphasis added; citation omitted)].) And it represents a departure from ***36** the way the DYY Program has been run to date. (*See* AA1358-AA1456; AA652-AA653 [¶ 25] [providing that, consistent with the Judgment and other court orders, IEUA, TVMWD, and their member agencies entered into written local agency agreements governing their performance obligations under the DYY Program].) At minimum, this Court should invalidate Watermaster’s allowance of FWC’s participation in the DYY Program in the 2021/2022 Assessment Package.

C. The 2019 Letter Agreement made unauthorized changes to the DYY Program without providing notice or following the required approval process.

If the Court concludes that exempting stored groundwater that was produced from the DYY account and/or allowing an entity without a local agency agreement to withdraw stored water from the Basin was impermissible, it should reverse the superior court’s decision. Even if it does not, however, the superior court’s decision should be reversed for a second, independent reason. The 2019 Letter Agreement made foundational changes to the DYY Program without proceeding through the notice and approval process established in the Judgment. As a result, the changes to the DYY Program were unauthorized and Watermaster’s reliance on the 2019 Letter Agreement in approving the 2021/2022 Assessment Package was unlawful.

****37 i. The 2019 Letter Agreement made three major changes to the DYY Program that required formal notice and approval.***

Watermaster relied on the 2019 Letter Agreement to make three unprecedented changes to the DYY Program. First, as previously discussed, Watermaster relied on the 2019 Letter Agreement to exempt from assessment stored groundwater produced through the DYY Program, even though the 2019 Letter Agreement itself did not purport to change the way water should be assessed. Second, as described above, Watermaster apparently believed that the 2019 Letter Agreement gave FWC the authority to participate in the DYY Program by withdrawing stored groundwater from the DYY account, despite not having a court-approved local agency agreement. Third, the 2019 Letter Agreement purported to allow parties to withdraw stored groundwater on a voluntary basis--*i.e.*, not just upon a mandatory “call” from Metropolitan--without a corresponding reduction in the amount of surface water those parties imported.

These changes defy the rules set forth in the documents that establish and govern the operation of the DYY Program, including the 2003 Funding Agreement, the 2003 court order adopting it, and the DYY Storage Agreement and its associated court order. With respect to assessment, as previously discussed, the Judgment is clear that assessment is based on “production,” *i.e.*, based upon the annual quantity, in acre feet, of water produced, irrespective of whether that water is native groundwater or stored groundwater. (AA46, AA67 [Judgment ¶¶ 4(s), 53].) And as previously discussed, Watermaster’s ***38** interpretation of the 2019 Letter Agreement to allow an entity without a local agency agreement to withdraw stored groundwater from the DYY account directly contradicts the Judgment’s unequivocal command that stored water may not be withdrawn “except pursuant to the terms of a written agreement with Watermaster.” (AA51 [Judgment ¶ 14].)

Finally, the 2019 Letter Agreement departed from the DYY Program’s requirement that parties only be allowed to withdraw stored water upon a “call” from Metropolitan. (*Cf.* AA6, AA1222, AA1239.) By permitting parties to *voluntarily* withdraw

stored water--and to do so in amounts greater than that permitted under the Exhibit G performance criteria--the 2019 Letter Agreement threw off the balance between the use of imported surface water and stored water that the DYY Program sought to achieve.

ii. When it enacted the 2019 Letter Agreement, Watermaster failed to comply with the mandatory Watermaster approval process and to provide sufficient notice of its action.

The changes wrought by the 2019 Letter Agreement saddled Ontario and other parties with over \$2.5 million in extra assessments to date.⁷ Such substantial changes unquestionably *39 should have been routed through the mandatory approval process provided for in the Judgment. The Judgment establishes a sequential process by which decisions concerning Basin management would be made, beginning with consideration by the pool committees, followed by the advisory committees, and culminating in consideration by the Watermaster Board. (See AA60-AA62 [Judgment ¶ 38].) The Judgment also sets forth other procedural and notice requirements. Watermaster is required to provide notice to the advisory committee and its members at least 30 days before taking any discretionary action. (*Id.* [¶ 38(b)[2]].) For any action requiring Watermaster implementation, the Judgment requires all three pools--not just the pool affected by the action--to be apprised of the proposal. (*Id.* [¶ 38(a)].) Local agencies that are parties to local agency agreements are required to approve the amendment, as they did when enacting the eighth amendment to the 2003 Funding Agreement. (AA1609.) Finally, the Peace Agreement that was approved by the superior court requires that before Watermaster approve any storage and recovery project like the DYY Program, it must first determine that the change would not cause material physical injury to any party or to the Basin. (AA1782-1783[¶ 5.2(a)(iii)].)

None of this was done here. The 2019 Letter Agreement was not routed through the pool committees, Watermaster did *40 not provide the requisite 30-day notice to the advisory committee and its members, local agencies did not approve it, and no material physical injury analysis was ever conducted. Remarkably, the sea change effected by the 2019 Letter Agreement was made without full consideration by the Watermaster Board; rather, it occurred by unilateral action of a single staff member (the General Manager). (See AA2074.)

As for notice, this Court has previously recognized that where Watermaster's communications indicate that it had not "definitively decided" to take action, Watermaster's purported notice was not timely or effective. (See *Chino Basin Mun. Water Dist. v. City of Chino* (Cal. App. Apr. 10, 2012) E051653, at 4 (AA1014).) Here, the Watermaster General Manager, a member of Watermaster's staff, provided a broad-strokes overview of the proposal during meetings of the appropriative pool, advisory committee, and Watermaster Board. But his statements about whether any action would be taken, and if so, in what form, were equivocal at best. (See AA687 ["The Metropolitan Water District has proposed some changes that are favorable to the parties. We don't believe they constitute a change to the agreement, so we don't intend to bring an agreement amendment to the Board. There *may* be an acknowledgment letter. *If* there is, I wanted to let you know I will be signing that acknowledgment letter." (Emphases added)].) Muddled statements indicating that Watermaster was not certain whether any action concerning the DYY Program would be taken did not put Ontario on notice of any such action. (See *Stevens v. Dep't of Corr.* (2003) 107 Cal.App.4th 285, 292 *41 [noting that an entity entitled to notice "is not required to be clairvoyant" (internal quotation marks and citation omitted)].)

Moreover, it is clear that the General Manager's verbal report--which was unaccompanied by any written explanation or analysis--did not address the consequences of the proposed changes to the DYY Program. In fact, he insisted that the proposal would not "commit Watermaster to ... anything" nor "constitute a change" at all.⁸ (AA673; see also AA687.) The General Manager did not convey that the proposal would allow CVWD to voluntarily withdraw nearly double its allocated share of stored groundwater from the DYY account, nor that non-parties would for the first time be permitted to produce stored groundwater from that account. And he certainly did not explain that Watermaster would later rely on the 2019 Letter Agreement to exempt stored groundwater from assessment.

The superior court concluded that the 2019 Letter Agreement itself provided the requisite notice. (AA3079.) For two reasons, it did no such thing. First, there is nothing in the record to suggest that Watermaster ever mailed the letter to Ontario--which is exactly the opposite of what the superior court erroneously believed to be true. (*Compare* AA3079 [“[T]he court finds that the mailing of the actual 2019 Letter Agreement *42 constituted notice of Watermaster's action. The 2019 Letter Agreement, which was mailed on March 20, 2019, clearly states that it documented the agreement between [Metropolitan], IEUA, TVMWD, and Watermaster” (emphasis omitted)] *with* AA2069 [letter from Metropolitan dated March 20, 2019 addressed only to IEUA, TVMWD, and Watermaster, *not* Ontario].) A letter that Ontario never received from Watermaster plainly could not have provided the required notice.

Second, even if a phantom letter, or a letter provided after the fact by another party (not Watermaster), could provide notice, the 2019 Letter Agreement was absolutely silent as to non-parties' withdrawal of stored groundwater from the DYY account and the manner in which assessments would be handled. (*See* AA655 [¶ 34], AA692 [describing Ontario's contemporaneous expression of uncertainty about the consequences of the proposal, given the proposal's “undecided or unclear” parameters].) Nothing in the 2019 Letter Agreement would have alerted Ontario or other parties of Watermaster's intent to make these fundamental changes to the DYY Program. It was not until Watermaster issued the 2021/2022 Assessment Package, which exempted from assessment 23,000 acre feet of stored groundwater from the DYY account including water produced by FWC, that the significance of the consequences of Watermaster's decision became clear. Watermaster's failure not only to make clear *what* it proposed to do but also *whether* it proposed to do so at all does not constitute sufficient notice under the Judgment.

The procedural protections and notice requirements *43 provided for in the Judgment and subsequent court orders are not mere window-dressing. They ensure that all parties to the Judgment are apprised of important changes that may affect their interests and have an opportunity to respond. And they safeguard the DYY Program's purpose of providing “broad mutual benefits”--not effecting unilateral harm. (AA1337; *see also* AA1576.) Watermaster's abbreviated process in enacting the 2019 Letter Agreement does not come close to the kind of formal and sequential consideration by the pool committees, the advisory committee, and the Watermaster Board that the Judgment contemplates and that Watermaster has adhered to when it approved the DYY Program in the first place and subsequently when it has enacted material changes to the DYY Program. (*See* AA1678, AA1688 [describing the pools' unanimous recommendation to the Advisory Committee and the Watermaster Board that the eighth amendment to the DYY Program, which made material changes, be approved]; AA648 [¶ 6] [comparing approval process of eighth amendment to DYY Program to enactment of 2019 Letter Agreement].) Indeed, Watermaster's actions here offer a concrete demonstration of why the Judgment insists on such formal approval processes, lest a subgroup of powerful players make consequential changes to Basin operations while leaving other parties (here, Ontario) in the dark.

This Court need not and should not approve of such procedural shortcuts. Ontario respectfully requests that this Court reverse the superior court's determination that *44 Watermaster's approach was procedurally appropriate and remand with instructions that Watermaster must follow the requisite procedures if and when it chooses to consider such changes in the future. (*See generally* AA1 119 [observing that the court “has the authority and duty to independently review the evidence” to determine whether Watermaster “compl[ied] with the Judgment”]; AA1509 [DYY Storage Agreement provides that “any modification of facilities that is materially different from those contemplated by the Local Agency Agreements will require the filing of a new application”].)

D. Ontario's challenge is timely.

The superior court decided that Ontario's challenge to Watermaster's approval of the 2021/2022 Assessment Package was a thinly veiled challenge to Watermaster's execution of the 2019 Letter Agreement. (AA3081, AA3085.) In the court's view, because the Judgment provides that a notice of motion to review any Watermaster action must be served within 90 days (*see* AA57 [Judgment ¶ 31(c)]), the present action--which was filed in February 2022, long after the 90-day period to challenge the 2019 Letter Agreement had expired--was untimely. That is incorrect for two reasons.

First, as a factual matter, Ontario's challenge is not a challenge to the 2019 Letter Agreement masquerading as a challenge to the 2021/2022 Assessment Package. The 2019 Letter Agreement, as later interpreted by Watermaster, made fundamental changes to the DYY Program, including by allowing parties to flout the DYY Storage Agreement by “voluntarily” *45 producing far more stored groundwater from the DYY account than the Exhibit G performance criteria allowed. But the 2019 Letter Agreement did not provide that this water would be exempt from assessment. It was Watermaster's decision in its 2021/2022 Assessment Package to exempt stored groundwater produced from the DYY account that catalyzed this lawsuit. Because the 2021/2022 Assessment Package caused the harm Ontario alleges, and because Ontario's challenge to the 2021/2022 Assessment Package was timely, the superior court's decision to reject Ontario's challenge on the basis of timeliness should be reversed.

Second, as a legal matter, Ontario's challenge is timely. In *Travis v. County of Santa Cruz*, the California Supreme Court held that a challenge to a county ordinance was not barred by a statute of limitations because the challenge was brought “in a timely way after application of the Ordinance” to the plaintiff. (See *Travis v. Cnty. of Santa Cruz* (2004) 33 Cal.4th 757, 769.) The same is true here. It is Watermaster's application of the 2019 Letter Agreement to Ontario in the 2021/2022 Assessment Package that is the subject of this dispute. Thus, even accepting Watermaster's erroneous view that the 2019 Letter Agreement had anything to say about exempting certain types of water from production, it was Watermaster's *application* of that authority in the 2021/2022 Assessment Package, including the new benefit given to FWC, that harmed Ontario, and that Ontario timely challenged.

Moreover, the 90-day period in which a party must file a *46 notice or application seeking review of an action like the 2019 Letter Agreement never accrued. The Judgment provides that the “Effective Date” for any Watermaster action or decision “shall be deemed to have occurred or been enacted on the date on which written notice thereof is mailed.” (AA57 [Judgment ¶ 31(a)].) Because Watermaster provided no formal notice of its approval of the 2019 Letter Agreement, the time to challenge the action never accrued. (See *Util. Audit Co. v. City of Los Angeles* (2003) 112 Cal.App.4th 950, 962 [“A period of limitations ordinarily commences at the time when the obligation or liability arises”].) Thus, even if Ontario's suit is construed as a challenge to the 2019 Letter Agreement, it is not barred by the Judgment's limitations period.

Finally, this Court can consider Ontario's challenge timely brought because it is akin to a challenge to an unlawful tax. In *Howard Jarvis Taxpayers Association v. City of La Habra*, the California Supreme Court considered when the statute of limitations began to run on a challenge to a tax enacted without the voter approval required by law. (*Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 812.) The court concluded that the continued imposition of an illegal tax “is an ongoing violation, upon which the limitations period begins anew with each collection.” (*Id.*) Here, the 2019 Letter Agreement imposes a continuing or recurring obligation because it contemplates that parties may make a voluntary production each year. (See *id.* at pp. 818-819 [noting that even if the enactment of the unlawful tax “was *an* event giving rise to a cause of action, it *47 was not the only such event”].) Because the 2021/2022 Assessment Package exempted groundwater produced from the DYY storage account, the violation initiated by the 2019 Letter Agreement “accru[ed] continually” as Watermaster levied assessments each year. (*Id.* at p. 814.) Accordingly, Ontario's challenge to the 2021/2022 Assessment Package, filed within 90 days of Watermaster's action approving the 2021/2022 Assessment Package, was timely. (AA57 [Judgment ¶ 31(c)].)

VI. CONCLUSION

For the foregoing reasons, the Court should reverse the superior court's denial of Ontario's challenge and remand with instructions to (1) invalidate the 2019 Letter Agreement; (2) direct Watermaster to comply with the process provided for in the Judgment and subsequent court orders when approving material changes; (3) direct Watermaster to implement the DYY Program in a manner consistent with the Judgment and court orders; and (4) correct and amend the 2021/2022 Assessment Package to assess water produced from the DYY Program.

DATED: July 3, 2023

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By: /s/ Elizabeth P. Ewens

Elizabeth P. Ewens

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Footnotes

- 1 Citations to Appellant's Appendix are referenced as AA and page number without any leading zero, *e.g.*, AA1, AA2050.
- 2 The overlying (agricultural) pool consists of producers of water for non-industrial or non-commercial purposes, as well as the State of California; the overlying (non-agricultural) pool consists of producers of water for industrial or commercial purposes; and the appropriative pool consists of owners (both public and private) of appropriative rights. (AA63 [Judgment ¶ 43].) A list of the entities in each pool can be found in Exhibits C, D, and E to the Judgment. (AA73-AA97.)
- 3 The Peace Agreement was subsequently amended in 2004 and 2007. (*See* AA1841, AA1856.)
- 4 An acre foot of water is the amount of water needed to cover an acre of land (about the size of a football field) to the depth of one foot deep and is generally considered to be the amount of water used by a household of four people over the course of two years. (Littleworth and Garner, *California Water* (3rd ed. 2019) p. 2.)
- 5 The same sort of cost-shifting occurred with respect to other payment obligations that are calculated based on each party's production. For example, desalter replenishment obligations are an annual fixed obligation that members of the appropriative pool (including Ontario, CVWD, and FWC) must pay. When the amount of water a party produces is artificially low (*i.e.*, because its production of groundwater from the DYY storage account is not considered "produced"), that party's share of the desalter replenishment obligations is also proportionately reduced and shifted to the other parties, resulting in a direct and substantial financial injury. (AA662-AA663 [¶¶ 64-65, 67].)
- 6 The fact that the court did not include any discussion of the purported distinction between "production" of Basin Water and "withdrawal" of supplemental/stored water in the "Ruling" section of its order suggests that the court did not rely on any such distinction when coming to its decision. (AA3085.) Instead, the superior court's order seems to have turned solely on its belief that Ontario's challenge ultimately amounted to an untimely challenge to the 2019 Letter Agreement. (*Id.*; *see infra* section C.)
- 7 It bears emphasis that the changes ostensibly made in the 2019 Letter Agreement threaten to continue wreaking havoc on the way the DYY Program operates by, for example, allowing other parties without local agency agreements to withdraw stored groundwater from the DYY account or even by allowing parties in other pools (*e.g.*, the non-agricultural pools) to do so. Moreover, if the subgroup of four parties that enacted the 2019 Letter Agreement is allowed to make material changes to the way the DYY Program operates, there is essentially no limit to the sorts of significant changes that can be made by others in the future.

- 8 Previous material changes have at least been accompanied by a “Staff Report” explaining how the proposed amendment would change the DYY Program and providing a recommendation and analysis of any financial impact implementation would have. (*See, e.g.*, RJN Ex. 25 at 47, 57.)

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EXHIBIT E

2024 WL 2745386 (Cal.App. 4 Dist.) (Appellate Brief)

Court of Appeal, Fourth District, California.

Chino Basin WATERMASTER, Plaintiff and Respondent,

v.

CITY OF ONTARIO, Defendant and Appellant.

Nos. E080457, E082127.

May 13, 2024.

San Bernardino Superior Court of California, County of San Bernardino Case No. RCVRS 51010

Honorable Gilbert Ochoa

Reply Brief of Appellant City of Ontario

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*6 I. INTRODUCTION

This case boils down to whether the Chino Basin Watermaster (“Watermaster”) should be bound by the terms of a 1978 stipulated Judgment and several subsequent court orders, or instead whether Watermaster staff is free to make unilateral decisions that have million-dollar consequences for entities like the City of Ontario (“Ontario”) in violation of the Judgment, court orders, and Watermaster's obligations as an impartial and unbiased arm of the court. Watermaster's failure to assess stored groundwater produced from the Dry Year Yield (“DYY”) Program account violates the terms of the Judgment and other court-approved documents that govern Chino Basin (the “Basin”) operations, which make clear that *all* water produced must be assessed. Watermaster staff's decision to permit an unauthorized non-party to the DYY Program, Fontana Water Company (“FWC”), to recover water from the Basin without the required DYY local agency agreement in place was an equally egregious violation of the Judgment. And Watermaster staff's decision to allow both FWC and Cucamonga Valley Water District (“CVWD”) to produce water in excess of the amounts provided for under court-approved performance criteria violated a 2004 court order.

Respondents attempt to obfuscate Watermaster's serial violations by insisting that Ontario's challenge to the 2019 Letter Agreement came too late and is dispositive of this appeal. But approval of each assessment package is a new Watermaster action subject to challenge. Ontario's challenges to the 2021/2022 and 2022/2023 Assessment Packages were separate and independent

and were properly filed within 90 days of receiving *7 written notice of Watermaster's actions. Thus, the challenges to the assessment packages were timely under the Judgment and required adjudication on the merits based on Watermaster's continuing obligation to assess production consistent with the Judgment. Even so, Ontario's challenge to the 2019 Letter Agreement was also timely and not barred by laches. Although Watermaster later justified the fundamental changes to the DYY Program based on the 2019 Letter Agreement, the 2019 Letter Agreement did not address assessments, did not speak to the expansion of the DYY Program to parties without a local agency agreement, and did not proceed through the mandatory approval and notice process established in the Judgment. The record does not include reasonable and credible evidence that shows Ontario was mailed the letter agreement or was otherwise informed of the letter's implications as required under the Judgment.

For these reasons, the superior court's decision should be reversed.

II. STANDARD OF REVIEW

This case asks the Court to decide whether Watermaster's actions were consistent with a court judgment. “The meaning and effect of a judgment is determined according to the rules governing the interpretation of writings generally.” (*In re Marriage of Rose & Richardson* (2002) 102 Cal.App.4th 941, 948-949 (quoting *Verner v. Verner* (1978) 77 Cal.App.3d 718, 724).) “The entire document is to be taken by its four corners and construed as a whole to effectuate the obvious intention.” (*Id.* (alteration omitted) (quoting *In re* *8 *Gideon* (1958) 157 Cal.App.2d 133, 136).) “In the absence of ambiguity,” this Court reviews a court's judgment de novo. (*Id.*; see also *Needelman v. De Wolf Realty Co.* (2015) 239 Cal.App.4th 750, 758 (“When interpreting [a] stipulated judgment, we use ordinary contract principles and, in the absence of extrinsic evidence, we may interpret it as a matter of law.”).)

Watermaster acknowledges that the Court must interpret the Judgment as a matter of law and that questions of law are reviewed de novo. (Watermaster Br. 32, 33.) Findings of fact are reviewed for substantial evidence. (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.) Generally, laches is a question of fact for the trial court and is reviewed for substantial evidence. (*Blaser v. State Teachers' Ret. Sys.* (2022) 86 Cal.App.5th 507, 524 (*Blaser*).) But if the issue is whether laches is available as a defense, it is a legal issue subject to de novo review. (*Ibid.*)

III. ARGUMENT

A. Watermaster staff's refusal to assess stored groundwater produced as part of the DYY Program is inconsistent with the Judgment and subsequent court orders.

Watermaster staff's decision to exempt from assessment stored groundwater produced from the DYY account cannot be squared with the language of the Judgment and other agreements and court orders governing Basin operations, nor with Watermaster's historical practice of assessing all water produced. The Judgment's language could not be clearer: Watermaster assessments are to be “based upon *production* during the preceding period of assessable production.” (1AA67 (emphasis added) [Judgment ¶ 53].) “Production” is broadly *9 defined as the “[a]nnual quantity, stated in acre feet, of water *produced*,” and “produced” refers to “pump[ing] or extract[ing] *ground water* from Chino Basin.” (1AA46 (emphases added) [Judgment ¶¶ 4(q), 4(s)].) Nothing in the Judgment or any other order gives Watermaster the authority to exempt from assessment groundwater - whether stored, supplemental, or otherwise - produced from the Basin.

i. The Judgment and other governing documents do not distinguish between “production” and “withdrawal” for purposes of levying assessments.

In support of its argument that “production” of “ground water” does not include “withdrawal” of “stored” or “supplemental” water, Watermaster asserts that “the Judgment consistently uses ‘produce’ to mean extraction of native groundwater and ‘withdrawal’ to refer to extraction of Supplemental Water or Stored Water. It does not use those terms interchangeably, instead

assigning a unique meaning to each.” (Watermaster Br. 36; see also *id.* at 34 (arguing that Ontario “cannot point to a single requirement for Watermaster to assess a withdrawal of Stored Water arising under the Judgment, Rules and Regulations or Peace Agreement”).) That is demonstrably incorrect. The Judgment and the other agreements and orders governing operation of the DYY Program do not distinguish between “production” of groundwater and “withdrawal” of stored/supplemental water in the manner that Respondents and the superior court suggest they do. Nor do the governing documents in any way suggest that stored or *10 supplemental water should not be assessed. These documents provide, for example:

· “Re-Operation. ‘Re-Operation’ means the controlled overdraft of the Basin by the managed *withdrawal* of *groundwater* ...” (1AA114 (emphasis added) [Judgment, Exh. I, § 2(b)].)

· “For a period of five years from the Effective Date, Watermaster shall ensure that: (a) the quantity of water actually held in Local Storage under a storage agreement with Watermaster is confirmed and protected and (b) each party to the Judgment shall have the right to store its un-Produced carry-over water. Thereafter, a party to the Judgment may continue to *Produce* the actual quantity of carry-over water *and Supplemental Water held in its storage account*, subject only to the loss provision set forth in this Section 5.2.” (5AA1784 (emphases added) [Peace Agreement § 5.2(b)(i)].)

· “Except as provided in Section 5.2, Producers shall not be required to file a storage and recovery or recapture plan except when *Producing* water transferred *from a storage account*.” (5AA1793 (emphases added) [Peace Agreement § 5.3(d)].)

· “‘Re-Operation’ means the controlled overdraft of the Basin by the managed *withdrawal of groundwater Production* for the Desalters” (3AA855 (emphasis added) [Watermaster Rules & Regulations § 1.1(xxx)].)

*11 · “Specifically, the Recharge Master Plan will reflect an appropriate schedule for planning, design, and physical improvements as may be required to provide reasonable assurance that following the full beneficial use of the *groundwater withdrawn* in accordance with the Basin Re-Operation and authorized controlled overdraft” (3AA800-AA881 (emphasis added) [Watermaster Rules & Regulations § 7.1(c)].)

· “Contents of *Groundwater Storage Agreements*” should address “establishment and administration of *withdrawal* schedules, locations and methods.” (3AA893 (emphases added) [Watermaster Rules & Regulations § 8.1(h)].)

· “Thereafter, a party to the Judgment may continue to *Produce* the actual quantity of Excess Carry-Over Water *and Supplemental Water held in its storage account*, subject only to the loss provisions set forth herein.” (3AA894 (emphases added) [Watermaster Rules & Regulations § 8.2(a)].)

· “[A] party to the Judgment may continue to *Produce* the actual quantity of carry-over water and *Supplemental Water* held in its storage account ...” (5AA17884 (emphases added) [Peace Agreement § 5.2(b)(i)].)

· “*Producers* shall not be required to file a storage and recovery or recapture plan except when *Producing* water transferred *from a storage account*.” (5AA1793 (emphases added) [Peace Agreement § 5.3(d)].)

*12 These examples demonstrate that the governing documents do not consistently or exclusively use the term “withdraw” to refer to “Supplemental Water or Stored Water” or “produce” to refer to “ground water” or “native groundwater.” (*Cf.* Watermaster Br. 36; FWC Br. 16-18.) In fact, the governing documents make clear that the words can be used synonymously - which makes sense, given that “withdraw” is not a defined term with any fixed meaning in the Judgment. Thus, the superior court's conclusion that “there is a distinction between ‘production’ of Basin Water and ‘withdrawal’ of Supplemental or Stored Water” is, respectfully, incorrect. (9AA3085.) Because that was the apparent basis for the superior court's rejection of Ontario's challenge, the superior court's ruling should be reversed.

Watermaster argues that the injunctions in paragraphs 13 and 14 of the Judgment would be duplicative “if there were no difference between ‘production’ and ‘withdrawal.’” (Watermaster Br. 37.) That is wrong. Paragraph 13 prohibits *producing* water from the Basin, while paragraph 14 prohibits *storing* water without a written agreement. (1AA51 [Judgment ¶¶ 13, 14].) The paragraphs do different and important work. Ontario's interpretation does not cause one to obviate the other.

In addition to being inconsistent with the Judgment and other governing documents, Respondents' position, and the superior court's conclusion, that stored water cannot be “produced” is inconsistent with the 2003 Funding Agreement that Metropolitan Water District (“Metropolitan”), Inland Empire *13 Utilities Agency (“IEUA”), and Three Valleys Municipal Water District (“TVMWD”) entered. Just like the Judgment, Peace Agreement, and Watermaster Rules & Regulations, the 2003 Funding Agreement (which serves as the backbone of the DYY Program) provides that Watermaster must account for “water *produced*” from the DYY storage account - not water “withdrawn” from the DYY account. (1AA252; see also 1AA262, 1AA263.)

ii. The Judgment does not distinguish between various categories of water for purposes of its requirement that all water produced must be assessed.

The governing documents also squarely refute the superior court's conclusion - and Respondents' position on appeal (see Watermaster Br. 38-39; FWC Br. 18) - that “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.” (7SA2618.) For example, the Watermaster Rules & Regulations provide:

· “Upon the request of any Producer, Watermaster shall quantify the amount of *Groundwater* held in *Local Storage* by that Producer.” (3AA891 (emphases added) [Watermaster Rules & Regulations § 8.1(f)(iv)(a)].)

· “A Producer shall not have the right to replace the *Groundwater classified as Supplemental Water* pursuant to section 8.1 with other Supplemental Water following its initial Production from Local Storage without regard to the 100,000 acre-foot limitation.” (3AA894 (emphasis added))

*14 [Watermaster Rules & Regulations § 8.2(a)].)

In other words, “stored” and “supplemental water” are simply subcategories of “ground water.” As Ontario argued in its Opening Brief, this is true because both stored and supplemental water exist “beneath the surface of the ground and within the zone of saturation.” (1AA45 [Judgment ¶ 4(h)].) Thus, like any other type of groundwater, “stored” water and “supplemental” water must be assessed when they are produced.¹

Relatedly, Respondents repeatedly cite the Judgment's periodic distinction between native (*i.e.*, naturally occurring) water and stored water. (See Watermaster Br. 36-37; FWC Br. 18.) But they do not explain why the distinction matters *for the purpose of production and assessment*. As Ontario previously explained, the Judgment uses different terms for different categories of water when those distinctions are relevant to particular rules. (See Opening Br. 30-31.) For example, the Judgment provides that Watermaster must adopt rules and a standard agreement form for storage of “supplemental water.” *15 (1AA56 [Judgment ¶ 28].) But neither this nor any of the Judgment's rules indicate that supplemental water should be exempt from its requirement (see 1AA67 [Judgment ¶ 53]) that all water produced must be assessed.

Respondents do not even attempt to address Ontario's argument that if the Judgment had intended to exempt stored or supplemental water from assessment, it easily could have done so. Recall that the Judgment provides that assessments are levied “based upon production.” (1AA67 [Judgment ¶ 53].) “Production,” in turn, refers to “water *produced*,” and the definition of “Produce” refers to “pump[ing] or extract[ing] *ground water* from Chino Basin.” (1AA46 [Judgment ¶¶ 4(s), 4(q)].) If the Judgment had intended to exempt stored water from assessment, it easily could have substituted the defined term “Basin Water” (defined as “[g]round water” that “does not include Stored Water”) for the term “ground water” in the definition of “Produce.” That way, all groundwater produced - but *not* stored water - would have been subject to assessment. Instead, however,

the Judgment's definition of "production" refers to "ground water" - that is, all water beneath the surface of the ground, which includes stored and supplemental water. Respondents do not address this argument because it is fatal to their position. Instead, Respondents ask the court to re-write the Judgment to include definitional terms that are not there.

In digging in its heels and insisting that only *native* groundwater (rather than groundwater inclusive of stored or supplemental water) may be assessed, Watermaster also *16 sidesteps Ontario's argument that Watermaster assesses recycled water, which is not native groundwater. (2AA657-AA658.) In Watermaster's view, "[r]esolution of this issue is not necessary to resolve these cases." (Watermaster Br. 42.) To be clear, Ontario is not asking the Court to resolve anything with respect to recycled water. Watermaster's treatment of recycled water simply reveals that its argument is self-defeating, and that the superior court's conclusion is irremediably wrong. It cannot be true, as Watermaster argues (and as the superior court must have believed to reach its conclusion), that *some* non-native groundwater is assessed and also that *only* native groundwater is assessable. Watermaster has no response, except to decline to engage with the argument.

Watermaster also attempts to avoid the issue of its historic assessment of supplemental water (recycled water) through citation to the Peace Agreement and provisions pertaining to Watermaster's performance obligations relating to storage and recovery projects. (Watermaster Br. 42-43.) However, the provisions in the Peace Agreement that Watermaster relies on do not address assessments. Indeed, Watermaster's argument is nothing more than a red herring meant to obfuscate the fact that Watermaster historically has assessed some stored and supplemental water (recycled water) but not all stored and supplemental water (the second cycle of DYY production).² *17 Watermaster has provided no authority to justify such disparate treatment.

Finally, Watermaster insists that "[c]hanging the 'container' for storage from a surface reservoir to a groundwater basin alone does not change the character of Supplemental Water to 'groundwater,'" citing two cases that do not involve Chino Basin or this Judgment. (Watermaster Br. 39.) Watermaster overlooks that this Court is being asked to interpret rights and responsibilities under a written Judgment, not rights under the common law. The Judgment's negotiated definition of "ground water" thus supersedes Watermaster's idiosyncratic view about the purported "character" of Supplemental Water.

iii. Watermaster's remaining arguments are unpersuasive.

Watermaster attempts to rebut Ontario's argument that Watermaster's refusal to assess stored groundwater produced from the DYY account flies in the face of its longstanding practice by asserting that "takes" from the DYY Program have never been assessed. (Watermaster Br. 40.) But Watermaster offers little by way of response to Ontario's argument that in the first cycle of the DYY Program (from production years 2002/2003 through 2010/2011), Watermaster assessed *deposits* made to the DYY storage account, meaning that stored groundwater produced from the DYY account was assessed, just earlier in time than at the point of production. Watermaster's present contention that this *18 water is *exempt* from assessment is therefore inconsistent with Watermaster's historical practice.

Watermaster insists that Ontario "alleges no injury" as a result of the material changes Watermaster staff made to the DYY Program, and specifically asserts that Ontario's "purely financial" injuries do not count. (Watermaster Br. 52.) This argument is hard to take seriously. Watermaster is bound by the Judgment, which says that all water produced must be assessed. If Watermaster violates that command - which it has here by flouting the negotiated-and-agreed-to "assessment methodology based on production" (Watermaster Br. 52) - that decision harms Ontario, which is within its rights to recover its financial loss in court. This should come as no surprise to Watermaster, which has advocated for strict adherence to the stipulated Judgment and application of the Judgment according to its plain terms in a separate appeal in this very case. (See *Chino Basin Mun. Water Dist. v. City of Chino* (Mar. 26, 2024, No. E079052) Cal.App.4th __ [2024 WL 2824373 at *10].)

Finally, Respondents insist that Watermaster's action does not reduce the "broad mutual benefits" of the DYY Program. (Watermaster Br. 53; see also FWC Br. 20.) Again, Respondents attempt to substitute Watermaster's say-so for the requirements in the Judgment, court orders, and other documents that govern Basin operations. The Peace Agreement makes clear that it is *Watermaster's* responsibility to make a finding of no material physical injury, not Ontario's burden to show that there was

such an injury. (See 5AA1784 [Peace Agreement ¶ 5.2(a)(iii)] *19 (“Watermaster shall not approve an application to store and recover water if it is inconsistent with the terms of this Agreement or will cause any Material Physical Injury to any party to the Judgment or the Basin.”).) Despite this mandate, no material physical injury analysis was conducted here even though Watermaster permitted substantial increases in annual production of DYY from the Basin. (2AA631-AA633.)³ Thus, to the extent there is uncertainty about what injury Watermaster's refusal to assess production of stored groundwater from the DYY account has wrought on Ontario or the Basin more generally, that uncertainty is a result of Watermaster's failure, not Ontario's.

B. Watermaster violated the Judgment by allowing FWC to withdraw stored groundwater through the DYY Program, even though FWC did not have a court-approved local agency agreement in place.

In its 2021/2022 Assessment Package and 2022/2023 Assessment Package, Watermaster allowed FWC to withdraw stored groundwater from the DYY account, even though FWC never executed a court-approved local agency agreement. (2AA652-AA653 [¶ 25].) This violates the Judgment's requirement that stored water only be withdrawn pursuant to a written storage agreement. (See Opening Br. 35-36; Supp. *20 Opening Br. 24-25.) Consistent with this, the 2003 court order specifically provides 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 recovery program cannot be undertaken.” (4AA1338.) Similarly, the Peace Agreement provides that “[n]o person shall store water in and recover water from the Chino Basin without an agreement with Watermaster.” (5AA1783 [Peace Agreement § 5.2(a)(ii)].)

Remarkably, Respondents argue that FWC did not violate the 2003 and 2004 court orders because FWC was not required to have a written local agency agreement in place in order to participate in the DYY Program. (Watermaster Br. 52; IEUA Br. 15; FWC Br. 15 (“The local agency agreement does not have to be approved by the court and is not required to be in writing.”).) Respondents did not raise this argument in either case below, likely because it is contradicted by the plain terms of the Judgment and the repeated admonitions in court orders that water may only be stored and recovered pursuant to a court-approved written agreement with Watermaster (*i.e.*, a local agency agreement). (See 5AA1577 (“The Judgment provides that no use shall be made of the storage capacity of Chino Basin *except pursuant to written agreement with Watermaster.*” (emphasis added)).) Specifically, the Judgment provides that “[a]ny person or public entity, whether a party to this action or not, may make reasonable beneficial use of the available ground water storage capacity of Chino Basin for storage of supplemental water; *21 *provided that no such use shall be made except pursuant to written agreement with Watermaster*, as authorized by Paragraph 28.” (1AA50 (emphasis added) [Judgment ¶ 12].) It further provides that “[u]pon appropriate application by any person, Watermaster shall enter into such a storage agreement; *provided that all such storage agreements shall first be approved by written order of the Court*, and shall by their terms preclude operations which will have a substantial adverse impact on other producers.” (1AA56 [Judgment ¶ 28] (emphasis added).) Watermaster might wish that its limited authority to “direct[] and control[]” groundwater storage in the Basin imparts on its staff the ability to unilaterally nullify the Judgment and subsequent court orders. (5AA1577; *cf.* Watermaster Br. 14-15 (referring to Watermaster's purported “plenary” authority, a term/description that appears nowhere in the Judgment or other governing documents).) But that is not the law. (See [Dow v. Lassen Irrigation Co. \(2022\) 75 Cal.App.5th 482, 489](#) (noting that a watermaster's role “is merely to administer and implement” a judgment in an “impartial and unbiased” manner).)

Furthermore, Respondents' new position that water may be stored and recovered *without* a court-approved written agreement is inconsistent with the way the DYY Program has always been run. The record reflects that, consistent with the Judgment, IEUA, TVMWD, and their member agencies entered into written local agency agreements governing their performance obligations under the DYY Program. (See 5AA1358-AA1456, 2AA652-AA653 [¶ 25] (explaining that written agreements were executed *22 between IEUA, TVMWD, and their member agencies).) To the extent the Court finds it necessary to look beyond the plain terms of the Judgment, the parties' subsequent conduct therefore supports Ontario's position. (See generally [SLPR, L.L.C. v. San Diego Unified Port Dist. \(2020\) 49 Cal.App.5th 284](#) (noting that when interpreting a judgment, courts may consider the parties' subsequent conduct).)

Watermaster next insists that because Metropolitan, not FWC, was “the storing party,” FWC need not have had a written storage agreement in place. (Watermaster Br. 54.) Watermaster has never before made this assertion. And for good reason: the local agency agreements are not just “storage agreements.” Rather, the local agency agreements are storage *and recovery* agreements that detail the means by which DYY water is recovered, including the local agency’s specific responsibilities relating to the pumping of stored water. (5AA1362 [CVWD Local Area Agreement § 5(e)].) Further, none of the governing documents, including the Judgment and the 2003 and 2004 court orders approving various aspects of the DYY Program, provides for a carve-out for non-“storing parties” from the storage-agreement requirement. These governing orders instead provide that a “storage *and recovery program* cannot be undertaken” in the absence of written local agency agreements. (4AA1338 (emphasis added); see also 5AA1783 [Peace Agreement § 5.2(a)(ii).]) In other words, water can no more be recovered (*i.e.*, produced/withdrawn) in the absence of local agency agreements than it can be stored in the absence of such agreements. This is ***23** why the existing parties to the DYY Program (including Ontario, CVWD, the City of Chino, and others) - none of whom are “storing parties” as Watermaster appears to use the term - all have local agency agreements in place. Accepting Watermaster’s argument would drain these existing local agency agreements of any meaning or purpose.

Watermaster attempts to deflect, asserting that the DYY Storage and Recovery Agreement (see 5AA1505-AA1512) “satisfies paragraph 28 of the Judgment.”⁴ (Watermaster Br. 54.) But it clearly does not. The superior court’s 2003 order explains that a “storage and recovery program cannot be undertaken” until Watermaster and the superior court “approve the Local Agency Agreements *and* Storage and Recovery Application.” (4AA1338 (emphasis added).) The Storage and Recovery Agreement does not on its own suffice.

Finally, Watermaster observes that neither the 2003 Funding Agreement nor the local agency agreements “suggest[] that a Local Agency Agreement is required for a voluntary withdrawal.” (Watermaster Br. 55.) But before the 2019 Letter Agreement, there was no such thing as a “voluntary” withdrawal of stored groundwater from the DYY account. The 2003 Funding Agreement and the existing local agency agreements did not contemplate voluntary withdrawals because, like any kind of storage or recovery, they were prohibited in the absence of a ***24** written local agency agreement. (See, e.g., 1AA51, 1AA56 [Judgment ¶¶ 14, 28] (prohibiting storage without written storage agreement); 4AA1338 (2003 court order providing DYY Program “cannot be undertaken” without court approval of local agency agreements).)

Because Respondents’ argument that FWC was not required to have a local agency agreement in place before withdrawing stored groundwater from the DYY account fails based on the plain terms of the court orders that expressly require such agreements, this Court should invalidate Watermaster’s allowance of FWC’s participation in the DYY Program.

C. The 2021/2022 and 2022/2023 Assessment Packages flouted the performance criteria required by Exhibit G and Watermaster’s own court ordered Storage and Recovery Program Agreement.

Participants in the DYY Program entered an agreement (the “DYY Storage Agreement”) that contained an exhibit (“Exhibit G”) providing that participants must reduce their use of imported water deliveries and pump an equivalent amount of groundwater from DYY Program storage accounts to ensure a balanced formula. The Exhibit G performance criteria were approved by court order in 2004. (See 4AA1330 [Exhibit G], 5AA1575-AA1578 (court order approving DYY Storage Agreement).) A deviation from Exhibit G’s performance criteria thus amounts to a violation of the 2004 court order. Nevertheless, Watermaster allowed CVWD and non-party FWC to voluntarily withdraw stored water in excess of the amounts ***25** provided for under the court-approved performance criteria in Exhibit G. By doing so, Watermaster violated the 2004 court order. (Opening Br. 18-19; Supp. Opening Br. 25-28.)

Respondents argue that “textually,” Exhibit G “applies only to MWD calls that compel Parties to withdraw from the DYY storage account instead of receiving surface deliveries.” (Watermaster Br. 50; see also IEUA Br. 17 (observing that the 2019 Letter Agreement “expressly excepts Call situations from the rules governing voluntary withdrawals and treats the two scenarios differently”).) This argument fails for the same reason discussed above: voluntary withdrawals were simply not permitted or even contemplated before the 2019 Letter Agreement suddenly allowed them, nor were voluntary withdrawals analyzed

under the required material physical injury analysis conducted in advance of the court's 2004 order approving the DYY Storage Agreement. It is therefore unsurprising that Exhibit G's language appears specific to "call" (*i.e.*, mandatory withdrawal) situations, the only type of withdrawal that existed at the time the parties agreed to and the court approved the DYY Storage Agreement, which included Exhibit G.

Respondents have pointed to nothing to suggest that the parties intended Exhibit G's performance criteria to govern *only* the mandatory withdrawal of stored groundwater from the DYY account. Watermaster goes so far as to accuse Ontario of failing to offer any "legal or policy explanation in support of its argument that *voluntary* takes from the DYY Account must or *26 should comply with all Exhibit G Performance Criteria." (Watermaster Br. 51.) But in its opening briefs, Ontario explained that Watermaster's position is incorrect as a matter of law because Exhibit G was approved by court order, its provisions govern the operation of the DYY Program, and neither Watermaster nor its staff were free to unilaterally depart from them. (Opening Br. 19-20, 23-24; Supp. Opening Br. 26-28.)⁵ As to its policy argument, Ontario again respectfully refers Watermaster to its opening briefs, where it describes the concrete harm that Watermaster's failure to enforce Exhibit G's performance criteria unlawfully wrought on Ontario and other parties. (Opening Br. 23-26; Supp. Opening Br. 23-24.)

**D. Ontario's challenge to the 2019 Letter Agreement is separate and independent
of its challenges to the 2021/2022 and 2022/2023 Assessment Packages.**

Respondents are wrong that Ontario's challenges to the 2021/2022 and 2022/2023 Assessment Packages - filed in February 2022 and February 2023, respectively - are untimely because Ontario failed to challenge the 2019 Letter Agreement within the 90-day period. (See IEUA Br. 5, 13-14; FWC Br. 10-14.) The superior court was also wrong, to the extent it accepted that argument. (See 9AA3081, 9AA3085.)

*27 The Watermaster's approval of the 2021/2022 Assessment Package and the 2022/2023 Assessment Package are each independent Watermaster Actions subject to challenge under the Judgment, and Ontario's challenges to the assessment packages are separate and distinct from its challenge to the 2019 Letter Agreement and must be decided regardless. That is because Ontario's challenges to the assessment packets do not arise only from the 2019 Letter Agreement. (See, e.g., 1AA144-AA145.) After the fact, Watermaster used the 2019 Letter Agreement to change the DYY Program in a fundamental way: to allow voluntary withdrawals of stored groundwater, not just mandatory withdrawals. (See 6AA2070-AA2074.) But the 2019 Letter Agreement did not change the way stored groundwater should be assessed. (See *ibid.*) Nor did it allow non-parties to a local agency agreement to withdraw water from the DYY account or withdrawals to bypass the Exhibit G performance criteria. (*Ibid.*) Those were decisions Watermaster made as part of the 2021/2022 and 2022/2023 Assessment Packages, not the 2019 Letter Agreement, and Ontario timely challenged those actions and decisions.

To be clear, as authorized by the Judgment, Watermaster approved assessment packages for the 2021/2022 and 2022/2023 production years (1AA67 [Judgment ¶ 53]), and Ontario filed motions to challenge those actions within 90 days (1AA57 [Judgment ¶ 31(c)]). Ontario's right to challenge the assessments arose and accrued on the date Watermaster mailed written notice of these actions. (See *id.* [Judgment ¶ 31(a)]; *28 *Util. Audit Co. v. City of Los Angeles* (2003) 112 Cal.App.4th 950, 962 ("A period of limitations ordinarily commences at the time when the obligation or liability arises.")) Because Watermaster has a continuing obligation to assess the production of groundwater in compliance with the Judgment, Ontario's challenge to the 2021/2022 and 2022/2023 Assessment Packages, filed within 90 days of written notice of Watermaster's approval, was timely. (See 1AA67 [Judgment ¶ 53], 1AA57 [Judgment ¶ 31(c)].)

Ontario's challenges to the two annual assessment packages are no different than the challenge to the monthly municipal tax in *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809 (*Howard Jarvis Taxpayers*). (See Opening Br. 45-47.) There, the California Supreme Court applied the theory of continuous accrual and found that even though the limitations period had run on any direct challenge to the ordinance imposing the tax, the suit was still permissible because the continuing monthly collection of the tax represented an alleged ongoing violation of state law. (*Howard Jarvis Taxpayers, supra*, 25 Cal.4th at pp. 818-822 [holding the facial attack on the tax accrued every time the city collected the tax].) Under the continuous accrual theory,

“a series of wrongs or injuries may be viewed as each triggering its own limitations period, such that a suit for relief may be partially time-barred as to older events but timely as to those within the applicable limitations period.” (*Aryeh v. Canon Bus. Sols., Inc.* (2013) 55 Cal.4th 1185, 1192 (*Aryeh*) (citing *Howard Jarvis Taxpayers, supra*, 25 Cal.4th at pp. 818-822).)

***29** That is exactly the case here, yet Watermaster and FWC contend the continuous accrual theory does not apply because it is limited to situations where there is an ongoing obligation not to collect an unlawful tax and because the Judgment imposes no continuing obligation on Watermaster to collect a fee or tax. (Watermaster Br. 49; FWC Br. 13-14.) Neither excuse is true. As the Supreme Court observed in *Aryeh*, there are a variety of instances in which the continuous accrual theory has been applied to a plaintiff challenging the assessment of periodic payments under contract or California law.⁶ (See *Aryeh, supra*, 55 Cal.4th at pp. 1198-1200 [citing cases].) And Watermaster cannot seriously disclaim its continuing obligation “to levy assessments against the parties ... based upon production during the preceding period of assessable production” consistent with the Judgment. (1AA67 [Judgment ¶ 53].)

Because Ontario's challenges to the 2021/2022 and 2022/2023 Assessment Packages were timely filed under the Judgment, the merits of Watermaster's approval of the assessment packages was squarely before the superior court. It follows that Ontario's challenge to the 2019 Letter Agreement, even if found to be untimely, cannot be used to bar Ontario's ***30** challenges to Watermaster's unlawful actions as manifested in its subsequent approvals of assessment packages. In a 2017 order regarding the allocation of surplus Agricultural Pool water, the superior court rejected Watermaster's interpretation of a prior court order and held that Watermaster's “erroneous interpretation of the order of priorities is not a basis to continue that erroneous interpretation. If Watermaster has to make a reallocation, then it must do so to follow the court's order.” (4AA1167-AA1168 [Order dated Apr. 28, 2017]; see also 4AA1166 (“The final decision is the court's, not Watermaster's.”).) The same is true here. The 2019 Letter Agreement does not excuse and cannot justify yearly assessment packages that do not comply with the Judgment and subsequent court orders and are timely challenged.

E. The 2019 Letter Agreement made unauthorized changes to the DYY Program without providing notice or following the required approval process.

There are other, independent reasons why the 2021/2022 and 2022/2023 Assessment Packages must be corrected and the superior court's decision reversed. Even if, *arguendo*, the 2019 Letter Agreement contained provisions regarding material modifications to assessments and the DYY Program, such amendments to the DYY Program were unauthorized and unlawful because the 2019 Letter Agreement was adopted without following the mandatory approval and notice process established in the Judgment. (Opening Br. 21-27, 36-44.) Notwithstanding the above, the superior court, found Ontario's challenge to the 2019 Letter Agreement was untimely because it ***31** was not filed within 90 days of receiving notice of the letter agreement and was barred by laches. (See 9AA3077-AA3081, 9AA3085.) For the very reason the letter agreement is unlawful, the superior court's decision must be reversed.

i. The superior court erred legally and factually in finding Ontario's challenge to the 2019 Letter Agreement is untimely.

The superior court erred in holding Ontario's challenge to the 2019 Letter Agreement was untimely. Respondents argue that Ontario failed to “establish any reversible error as to the trial court's determination that adjudication of the merits is time barred.” (Watermaster Br. 43; see also IEUA Br. 13-15; FWC Br. 11-12.) Ontario did exactly that by showing the challenge was timely as a matter of law. (See Opening Br. 45.) Also, Ontario showed that there is no record support for the superior court's determination that the March 20, 2019 mailing of the actual 2019 Letter Agreement “constituted notice of Watermaster's action” (9AA3079; see Opening Br. 36-47.)

a. Having timely challenged the 2021/2022 and 2022/2023 Assessment Packages, Ontario timely challenged the 2019 Letter Agreement.

Ontario's challenge to the 2019 Letter Agreement is timely as a matter of law for the same reason its challenges to the 2021/2022 and 2022/2023 Assessment Packages are timely. A similar situation arose in *Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757 (*Travis*), where the plaintiff challenged both the initial enactment of a county ordinance and the application of the ordinance. Rejecting the county's argument that the entire suit *32 was untimely, the California Supreme Court held: "Having brought his action in a timely way after application of the Ordinance to him, Travis may raise in that action a facial attack on the Ordinance's validity." (*Id.* at p. 769.) Notably, for that holding, the Supreme Court cited *Howard Jarvis Taxpayers'* conclusion that "plaintiff's attacks on the validity of the tax ordinance itself 'are not barred merely because similar claims could have been made at earlier times to earlier violations.'" (*Ibid.*, quoting *Howard Jarvis Taxpayers, supra*, 25 Cal.4th at p. 822.)

FWC seeks to distinguish *Travis* on the basis that the Judgment has no "as-applied" limitations period.⁷ (FWC Br. 13-14.) But FWC ignores that the Judgment allows "[n]otice of motion to review any Watermaster action, decision or rule," so long as it is "served and filed within 90 days of such Watermaster action." (1AA57 [Judgment ¶ 31(c)].) Moreover, the actions that gave rise to Ontario's challenges - Watermaster's ongoing failure to conform to the Judgment and subsequent court orders - are no different than those in *Travis*. *Travis* shows, as does *Howard Jarvis Taxpayers*, that Watermaster's alleged illegal actions not only include the initial enactment of the 2019 Letter Agreement but also Watermaster's continued yearly assessment packages that fail to comply with the Judgment and other court orders.

***33 b. Substantial evidence does not support the superior court's holding that Ontario received notice of the 2019 Letter Agreement.**

In addition, the superior court's finding that Ontario received notice of the 2019 Letter Agreement is not supported by substantial evidence. Substantial evidence is evidence that is "reasonable in nature, credible and of solid value" and that "a reasonable mind might accept as adequate to support a conclusion." (*County of San Diego v. Assessment Appeals Bd. No. 2* (1983) 148 Cal.App.3d 548, 555, citations omitted.) Respondents rely on the declaration of Elizabeth Hurst, an IEUA employee, for evidence that Ontario was mailed the 2019 Letter Agreement.⁸ (See Watermaster Br. 43-45; FWC Br. 11-12.) So *34 did the superior court. (9AA3080.) Ms. Hurst testified that the agreement "was provided to all Chino Basin parties, including the City of Ontario, upon its execution." (1AA177 [¶ 13].) The record, however, directly refutes that testimony, making it incredible and unacceptable. "While findings must be given a liberal construction to the end of supporting rather than defeating a judgment, that rule cannot be used to uphold findings that are unsupported or inconsistent with each other." (*Jensen v. Union Paving Co.* (1951) 103 Cal.App.2d 164, 171, citation omitted.)

Thus, this is not about, as Watermaster contends, "weigh[ing] the facts differently." (Watermaster Br. 44.) Before taking any discretionary action, it was Watermaster's responsibility under the Judgment to serve notice to the advisory committee and its members at least 30 days before the action is authorized. (1AA61-AA62 [Judgment ¶ 38(b)(2)], 1AA69 [Judgment ¶ 59 (requiring service of documents personally or by deposit in the mail)].) But the record does not support that the Watermaster actually served Ontario with notice of the final 2019 Letter Agreement, either before or after its adoption. By letter dated March 20, 2019, Metropolitan, not Watermaster, mailed the 2019 Letter Agreement to only IEUA, TVMWD, and Watermaster. (6AA2069-AA2074.) There were no other *35 recipients. (*Ibid.*) Metropolitan's March 20, 2019 letter directly contradicts Ms. Hurst's testimony and the superior court's conclusion that the mailing of the 2019 Letter Agreement was notice to Ontario of Watermaster's action.

Further, there is nothing in the record to support that Ontario was apprised of the fundamental changes to the DYY Program inspired by the 2019 Letter Agreement. One reason is that, while Respondents emphasize Ontario's engagement in the debate over the proposed letter agreement (see Watermaster Br. 22-23; IEUA Br. 13-14; FWC Br. 12), evidence of Ontario's awareness of the *possibility* that Watermaster *might* adopt a proposal is not evidence that Watermaster actually provided the requisite notice or followed the court-approved procedures to adopt them. (See *Chino Basin Mun. Water Dist. v. City of Chino* (Mar. 12, 2024, No. E079052) Cal.App.4th [2024 WL 1060355, at *7-8] (*Chino Basin*) [holding that where Watermaster's communications indicate that it had not "definitively decided" to take action, Watermaster's purported notice under a contract was not timely or effective].)

Similarly, here, no formal notice was given and an informal email exchange between Ontario and IEUA (not Watermaster) in no way satisfies the defined notice and approval requirements contained in the Judgment. If anything, Ontario's questions regarding the proposed letter agreement demand that the proposal go through the Judgment's approval process, and reservation of "the right to address any harm or detriment that may arise" evinced Ontario's lack of awareness or understanding of the consequences of what *36 Watermaster was doing. (See, e.g., 1AA180 posing questions regarding the proposal], 2AA655 [¶ 34], 2AA692 [describing Ontario's uncertainty regarding the consequences of the proposal's "undecided or unclear" parameters].)

The 2019 Letter Agreement itself is another way to show the record is devoid of evidence of the requisite notice. Again, the letter agreement was completely silent on the assessment of stored groundwater withdrawal from the DYY account, the ability of non-parties, such as FWC, to voluntarily produce groundwater, and deviations from Exhibit G's performance criteria. (See 6AA2069-AA2074.) And Watermaster's failure to comply with the approval requirements mandated by the Judgment robbed Ontario of the opportunity to fully understand the implications of the 2019 Letter Agreement at the time and to formally object and have its concerns addressed. At the very least, the changes required adoption after formal notice to the parties and vetting and approval by all three pool committees and the advisory committee (see 1AA60-AA62 [Judgment ¶ 38]) and a technical analysis confirming the changes would not cause material physical injury to the Basin (5AA1782-AA1783 [Peace Agreement ¶ 5.2(a)(iii)]).

Based on the record, it is undisputed that none of those requirements were followed. At the September 2018 committee and board meetings, the proposed letter agreement was only identified to the appropriate pool, the advisory committee, and the Watermaster Board as part of the Watermaster General Manager's Report (6AA2040-AA2049), who represented the *37 proposal would make no changes to the DYY Program and was merely "an acknowledgement letter" (2AA673, 2AA687). Moreover, the changes were fundamental to a groundwater storage and recovery agreement and required court approval, just as the DYY Storage Agreement itself required court approval. (See 1AA56 [Judgment ¶ 28]; see also 5AA1577 [Order approving DYY Storage Agreement].)

In the end, the superior court's determination that Ontario was given notice of the 2019 Letter Agreement constitutes reversible error. (See *Chino Basin*, *supra*, 2024 WL 1060355, at pp. *7-9 [finding there was no substantial evidence to support the superior court's holdings that Watermaster's purported notice was timely or effective].) No reasonable factfinder would accept Ms. Hurst's testimony when it was refuted by Metropolitan's March 20, 2019 mailing of the 2019 Letter Agreement to only IEUA, TVMWD, and Watermaster and by the Letter Agreement itself.

ii. Substantial evidence does not support the superior court's holding that Ontario's challenge is barred by laches.

Respondents also argue that substantial evidence supports the superior court's holding that Ontario's challenge to the 2019 Letter Agreement is barred by laches. (Watermaster Br. 45; FWC Br. 14.) Laches is an equitable defense that requires an unreasonable delay in filing suit, plus either the plaintiff's acquiescence in the conduct about which it complains or prejudice resulting to the defendant because of the delay. (*38 *Blaser*, *supra*, 86 Cal.App.5th at p. 539.) There are four problems with the superior court's finding of laches.

First, laches cannot be used to negate a continuous accrual theory. (*Blaser*, *supra*, 86 Cal.App.5th at pp. 545-546.) As discussed, under *Howard Jarvis Taxpayers*, a new limitation period begins anew with each unlawful assessment package collected by Watermaster, as does a challenge to the 2019 Letter Agreement. (See *Howard Jarvis Taxpayers*, *supra*, 25 Cal.4th at pp. 818-825.) Thus, Ontario had no need to act sooner and any delay in challenging the 2019 Letter Agreement was not "unreasonable and inexcusable." (Watermaster Br. 47-49; FWC Br. 14.) Further, because each assessment package triggers its own limitations period, whether Ontario should have known of about Watermaster's failure to assess stored water as part of the 2020/2021 Assessment Package is irrelevant. Laches cannot bar Ontario's challenge to the 2019 Letter Agreement, as it would otherwise override lawful and timely challenges to Watermaster actions under the Judgment. (*Blaser*, *supra*, 86 Cal.App.5th at p. 547.)

Second, the superior court referred to laches only in passing, without any analysis, in its order on the 2021/2022 Assessment Package. (9AA3085 [“The approval of the 2019 Agreement remains legally valid and Ontario[] is precluded by the terms of the judgment and laches from trying to bring a late challenge via this application.”].) In effect, the court solely equated laches with its holding that Ontario received notice of the 2019 Letter Agreement through Metropolitan's March 20, *39 2019 letter and that its challenge was untimely. That was error. Laches requires more than just a finding of delay; it also requires either Ontario's acquiescence in Watermaster's actions or prejudice. (*Blaser, supra*, 86 Cal.App.5th at pp. 545-546.) “Prejudice is never presumed.” (*Miller v. Eisenhower Med. Ctr.* (1980) 27 Cal.3d 614, 624.) The superior court found neither acquiescence nor prejudice, and its finding of laches should be reversed on that basis alone. (See 9AA3085.)

Third, while Respondents claim prejudice now, on appeal, they cannot show prejudice.⁹ (See Watermaster Br. 47-48; FWC Br. 14, 19-20.) As noted earlier, in a 2017 order, the superior court found Watermaster must follow a prior court order and that Watermaster's erroneous interpretation of the order is not a basis to continue that erroneous interpretation. (4AA1167-1168.) The superior court also held: “A wrong practice can be long-standing, and still be wrong. A wrong practice cannot be the basis of prejudice.” (4AA1168.) The same is true here.

If the Court were to invalidate the 2019 Letter Agreement, CVWD and FWC cannot avoid the consequences of Watermaster's failure to comply with the requirements of the Judgment and court orders governing the DYY Program. Nor can Watermaster avoid the inconvenience of having to comply with the same, as it is obligated to do. Respondents cannot hide behind so-called prejudice to justify Watermaster's decisions not to assess stored *40 groundwater produced from the DYY Program, to allow FWC to withdraw stored groundwater from the DYY account without a local agency agreement, and to allow the voluntary withdrawal of stored groundwater in excess of the amounts provided for under Exhibit G performance criteria.

Compliance will simply ensure that participants in the DYY Program will not receive a windfall at the expense of Ontario and others in the 2021/2022 and 2022/2023 Assessment Packages. (See Opening Br. 23-26, 33-35.) It will also restore balance to the DYY Program as required by the DYY Storage Agreement and Exhibit G and ensure the DYY Program “provide[s] broad mutual benefits to the parties to the Judgment,” as required by the Peace Agreement. (4AA1337; 5AA1788-AA17898 [Peace Agreement ¶ 5.2(c)(iv)(b)].) Because the 2019 Letter Agreement benefits only a few (CVWD and FWC) at the expense of many, claims of prejudice ring hollow and must be rejected.

Fourth, in any event, laches is inappropriate as there is no substantial evidence to support it. (See, e.g., *Bono v. Clark* (2002) 103 Cal.App.4th 1409 [finding no substantial evidence of laches where defendant failed to prove prejudice].) Contrary to Watermaster (see Watermaster Br. 46-47), as already explained, Ontario did not have actual notice that the 2019 Letter Agreement was adopted or its potential consequences. Nor did the Watermaster General Manager's announcements of his intent to sign the proposed letter agreement at the September 2018 committee and board meetings constitute any sort of notice. (See *41 Watermaster Br. 46.) Watermaster ignores the General Manager's representations that the changes from the proposal “don't commit Watermaster to ... anything” and “don't constitute a change to the agreement” and that the proposal was merely “an acknowledgement letter” (2AA673, 2AA687). The Watermaster General Manager's other comments belie any finding that Ontario or any other party should have known about the significant consequences that would ultimately manifest in the 2021/2022 and 2022/2023 Assessment Packages.

In sum, the superior court's holding that Ontario's challenge to the 2019 Letter Agreement is contrary to law, unfounded, and unsupportable based on the record. The Court should find the superior court erred and reverse.

IV. CONCLUSION

For the foregoing reasons, the Court should reverse the superior court's denial of Ontario's challenge and remand with instructions to (1) direct Watermaster to implement the DYY Program in a manner consistent with the Judgment and court orders; (2) correct and amend the 2021/2022 and 2022/2023 Assessment Packages to assess water produced from the DYY

Program, and make necessary reallocations; (3) invalidate the 2019 Letter Agreement; and (4) direct Watermaster to comply with the process provided for in the Judgment and subsequent court orders when approving material changes.

DATED: May 13, 2024.

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Footnotes

- 1 Watermaster insists that “[a]lthough Stored Supplemental Water may be held within the Basin, it is not water *originating* from ‘beneath the surface of the ground and within the zone of saturation.’” (Watermaster Br. 39 (emphasis added).) But the Judgment’s definition of “ground water” does not include any requirement that the water *originate* from beneath the surface of the ground. The Judgment simply defines groundwater (*i.e.*, the water that must be assessed when produced) as “[w]ater beneath the surface of the ground and within the zone of saturation.” (1AA45 [Judgment ¶ 4(h)].) The fact that Watermaster must add terms to the Judgment’s definitions to make those definitions say what Watermaster wants them to say evinces the shortcomings of Watermaster’s argument.
- 2 As addressed in section III.A.iii., above, Watermaster assessed the first cycle of DYY production but not the second. Watermaster’s past assessment of DYY production further refutes Respondents’ position now that only “native” groundwater is assessed.
- 3 For example, in the 2021/2022 assessment year Respondent CVWD almost doubled its DYY production from the 11,353 af authorized by CVWD’s Local Agency Agreement to 20,500 af. (2AA649 [¶ 10].) For its part, Respondent FWC, that does not even have a Local Agency Agreement authorizing FWC’s recovery of DYY water, claimed 2,500 af of DYY production. (*Ibid.*)
- 4 Paragraph 28 of the Judgment provides that Watermaster must adopt, and the superior court must approve, all storage agreements. (1AA56 [Judgment ¶ 28].)
- 5 Respondent IEUA goes even further than Watermaster, arguing that *Metropolitan Water District* “through the letter agreement suspended Exhibit Gg (sic) performance criteria for voluntary withdrawals.” (IEUA Br. 17.) Exhibit G was approved by court order in 2004. Metropolitan Water District does not have the authority to override or usurp a court order entered in this adjudication, by letter agreement or otherwise.

- 6 Watermaster also cites two inapplicable decisions that are concerned with governmental actions that, by state law, are made subject to validation procedures of [Code of Civil Procedure section 860 et seq.](#) (See Watermaster Br. 49, citing [Coachella Valley Water Dist. v. Superior Ct. of Riverside Cnty.](#) (2021) 61 Cal.App.5th 755; [Campana v. E. Bay Mun. Util. Dist.](#) (2023) 92 Cal.App.5th 494.) Obviously, Ontario's challenges are not subject to the validation statutes.
- 7 Watermaster and IEUA do not contest Travis' application here.
- 8 Watermaster also contends that Ontario “admitted that the letter had been mailed to parties” and is estopped from arguing otherwise, citing its argument at the November 3, 2022 hearing before the superior court. (Watermaster Br. 44-45.) Reviewing Ontario's full comments shows the court reporter made a transcription error. Ontario stated that its complaint about the 2019 Letter Agreement “is timely, because that letter was not properly noticed. There's no evidence that the Watermaster actually gave notice of that 2019 letter. It was mailed out to the parties.” (Reporter's Transcript (“RT”) 14:9-13.) The last sentence makes no sense considering the sentence before. Further, the comments that followed confirm that the sentence should read: “It was [*not*] mailed out to the parties.” Ontario referenced the “robust service of process mechanism and machine in effect in this case and adjudication whereby if they wanted to[,] that letter agreement could have been appended to agendas, it could have been sent out via a service list to every [a]ffected party, it could have gotten out there so that the parties knew what that letter agreement said and what it didn't say. *That was not done.*” (RT 14:14-21 (emphasis added); see also RT 15:5-16 [commenting on problems with “an independent party e-mailing out to a subset, not to all Watermaster parties, but to a subset of parties, a draft agreement that that's going to be somehow binding on all parties [a]ffected within this adjudication”].)
- 9 Before the superior court, only FWC argued Ontario's challenge to the 2019 Letter Agreement should be barred by laches and claimed prejudice from purported delay. (See 1AA480, 1AA485.) On appeal, IEUA does not claim prejudice. (See IEUA Br.)

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EXHIBIT F

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

11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

No. RCV 51010¹

14
15 v.

CITY OF CHINO, et al.

16 Defendants
17

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20 RESTATED JUDGMENT
21
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23
24
25
26

27 ¹ Original Judgment signed January 27, 1978, Case # 164327 by Judge Howard B. Weiner. File transferred August 1989, by order
28 of the Court and assigned new case number RCV 51010.

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FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.

Defendants

No. RCV 51010²

JUDGMENT

I. INTRODUCTION

1. Pleadings, Parties and Jurisdiction. The complaint herein was filed on January 2, 1975, seeking an adjudication of water rights, injunctive relief and the imposition of a physical solution. A first amended complaint was filed on July 16, 1976. The defaults of certain defendants have been entered, and certain other defendants dismissed. Other than defendants who have been dismissed or whose defaults have been entered, all defendants have appeared herein. By answers and order of this Court,

² Original Judgment signed January 27, 1978, Case # 164327 by Judge Howard B. Weiner. File transferred August 1989, by order of the Court and assigned new case number RCV 51010.

1 the issues have been made those of a full inter se adjudication between the parties. This Court has
2 jurisdiction of the subject matter of this action and of the parties herein.

3 2. Stipulation For Judgment. Stipulation for entry of judgment has been filed by and on
4 behalf of a majority of the parties, representing a majority of the quantitative rights herein adjudicated.

5 3. Trial; Findings and Conclusions. Trial was commenced on December 16, 1977, as to the
6 non-stipulating parties, and findings of fact and conclusions of law have been entered disposing of the
7 issues in the case.

8 4. Definitions. As used in this Judgment, the following terms shall have the meanings
9 herein set forth:

10 (a) Active Parties. All parties other than those who have filed with Watermaster a
11 written waiver of service of notices, pursuant to Paragraph 58.

12 (b) Annual or Year — A fiscal year, July 1 through June 30, following, unless the
13 context shall clearly indicate a contrary meaning.

14 (c) Appropriative Right — The annual production right of a producer from the Chino
15 Basin other than pursuant to an overlying right.

16 (d) Basin Water — Ground water within Chino Basin which is part of the Safe Yield,
17 Operating Safe Yield, or replenishment water in the Basin as a result of operations under the
18 Physical Solution decreed herein. Said term does not include Stored Water.

19 (e) CBMWD — Plaintiff Chino Basin Municipal Water District.

20 (f) Chino Basin or Basin — The ground water basin underlying the area shown as
21 such on Exhibit "B" and within the boundaries described in Exhibit "K".

22 (g) Chino Basin Watershed — The surface drainage area tributary to and overlying
23 Chino Basin.

24 (h) Ground Water — Water beneath the surface of the ground and within the zone of
25 saturation, i.e., below the existing water table.
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27
28

1 (i) Ground Water Basin -- An area underlain by one or more permeable formations
2 capable of furnishing substantial water storage.

3 (j) Minimal Producer -- Any producer whose production does not exceed **ten** acre-
4 feet per year.³

5 (k) MWD -- The Metropolitan Water District of Southern California.

6 (l) Operating Safe Yield -- The annual amount of ground water which Watermaster
7 shall determine, pursuant to criteria specified in Exhibit "I", can be produced from Chino Basin by
8 the Appropriative Pool parties free of replenishment obligation under the Physical Solution herein.

9 (m) Overdraft -- A condition wherein the total annual production from the Basin
10 exceeds the Safe Yield thereof.

11 (n) Overlying Right -- The appurtenant right of an owner of lands overlying Chino
12 Basin to produce water from the Basin for overlying beneficial use on such lands.

13 (o) Person. -- Any individual, partnership, association, corporation, governmental
14 entity or agency, or other organization.

15 (p) PVMWD -- Defendant Pomona Valley Municipal Water District.

16 (q) Produce or Produced -- To pump or extract ground water from Chino Basin.

17 (r) Producer -- Any person who produces water from Chino Basin.

18 (s) Production -- Annual quantity, stated in acre feet, of water produced.

19 (t) Public Hearing -- A hearing after notice to all parties and to any other person
20 legally entitled to notice.

21 (u) Reclaimed Water -- Water which, as a result of processing of waste water, is
22 suitable for a controlled use.

23 (v) Replenishment Water -- Supplemental water used to recharge the Basin
24 pursuant to the Physical Solution, either directly by percolating the water into the Basin or
25

26
27 ³ Order dated September 27, 2001.
28

1 indirectly by delivering the water for use in lieu of production and use of safe yield or Operating
2 Safe Yield.

3 (w) Responsible Party — The owner, co-owner, lessee or other person designated by
4 multiple parties interested in a well as the person responsible for purposes of filing reports
5 hereunder.

6 (x) Safe Yield — The long-term average annual quantity of ground water (excluding
7 replenishment or stored water but including return flow to the Basin from use of replenishment or
8 stored water) which can be produced from the Basin under cultural conditions of a particular year
9 without causing an undesirable result.

10 (y) SBVMWD — San Bernardino Valley Municipal Water District.

11 (z) State Water — Supplemental Water imported through the State Water Resources
12 Development System, pursuant to Chapter 8, Division 6, Part 6 of the Water Code.

13 (aa) Stored Water — Supplemental water held in storage, as a result of direct
14 spreading, in lieu delivery, or otherwise, for subsequent withdrawal and use pursuant to
15 agreement with Watermaster.

16 (bb) Supplemental Water — Includes both water imported to Chino Basin from outside
17 Chino Basin Watershed, and reclaimed water.

18 (cc) WMWD — Defendant Western Municipal Water District of Riverside County.

19 5. List of Exhibits. The following exhibits are attached to this Judgment and made a part
20 hereof:
21

22 “A” -- “Location Map of Chino Basin” showing boundaries of Chino Basin Municipal Water
23 District, and other geographic and political features of Chino Basin.

24 “B” -- “Hydrologic Map of Chino Basin” showing hydrologic features of Chino Basin.

25 “C” – Table Showing Parties in Overlying (Agricultural) Pool.

26 “D” – Table Showing Parties in Overlying (Non-agricultural Pool and Their Rights.

27 “E” – Table Showing Appropriators and Their Rights.
28

1 "F" -- Overlying (Agricultural) Pool Pooling Plan.

2 "G" -- Overlying (Non-agricultural) Pool Pooling Plan.

3 "H" -- Appropriative Pool Pooling Plan.

4 "I" -- Engineering Appendix.

5 "J" -- Map of In Lieu Area No. 1.

6 "K" -- Legal Description of Chino Basin.

7
8 II. DECLARATION OF RIGHTS

9
10 A. HYDROLOGY

11
12 6. Safe Yield. The Safe Yield of Chino Basin is 140,000 acre feet per year.

13 7. Overdraft and Prescriptive Circumstances. In each year for a period in excess of five
14 years prior to filing of the First Amended Complaint herein, the Safe Yield of the Basin has been
15 exceeded by the annual production therefrom, and Chino Basin is and has been for more than five years
16 in a continuous state of over draft. The production constituting said overdraft has been open, notorious,
17 continuous, adverse, hostile and under claim of right. The circumstances of said overdraft have given
18 notice to all parties of the adverse nature of such aggregate over-production.

19 B. WATER RIGHTS IN SAFE YIELD

20
21 8. Overlying Rights. The parties listed in Exhibits "C" and "D", are the owners or in
22 possession of lands which overlie Chino Basin. As such, said parties have exercised overlying water
23 rights in Chino Basin. All overlying rights owned or exercised by parties listed in Exhibits "C" and "D",
24 have, in the aggregate, been limited by prescription except to the extent such rights have been preserved
25 by self-help by said parties. Aggregate preserved overlying rights in the Safe Yield for agricultural pool
26 use, including the rights of the State of California, total 82,800 acre feet per year. Overlying rights for
27 non-agricultural pool use total 7,366 acre feet per year and are individually decreed for each affected
28

1 party in Exhibit "D". No portion of the Safe Yield of Chino Basin exists to satisfy unexercised overlying
2 rights, and such rights have all been lost by prescription. However, uses may be made of Basin Water on
3 overlying lands which have no preserved overlying rights pursuant to the Physical Solution herein. All
4 overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart
5 therefrom ***for the term of the Peace Agreement except that the members of the Overlying (Non-***
6 ***Agricultural) Pool shall have the right to Transfer or lease their quantified Production rights (i)***
7 ***within the Overlying (Non-Agricultural) Pool; (ii) to Watermaster in conformance with the***
8 ***procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000;***
9 ***or (iii) in accordance with the Overlying (Non-Agricultural) Pool Pooling Plan set forth in Exhibit***
10 ***"G."***⁴

11 9. Appropriative Rights. The parties listed in Exhibit "E" are the owners of appropriative
12 rights, including rights by prescription, in the unadjusted amounts therein set forth, and by reason thereof
13 are entitled under the Physical Solution to share in the remaining Safe Yield, after satisfaction of overlying
14 rights and rights of the State of California, and in the Operating Safe Yield in Chino Basin, in the annual
15 shares set forth in Exhibit "E".

16 (a) Loss of Priorities. By reason of the long continued overdraft in Chino Basin, and
17 in light of the complexity of determining appropriative priorities and the need for conserving and
18 making maximum beneficial use of the water resources of the State, each and all of the parties
19 listed in Exhibit "E" are estopped and barred from asserting special priorities or preferences, inter
20 se. All of said appropriative rights are accordingly deemed and considered of equal priority.

21 (b) Nature and Quantity. All rights listed in Exhibit "E" are appropriative and
22 prescriptive in nature. By reason of the status of the parties, and the provisions of Section 1007
23 of the Civil Code, said rights are immune from reduction or limitation by prescription.

27 ⁴ Order dated September 28, 2000 and Order dated April 19, 2001 further modified by Order dated December 21, 2007.

1 10. Rights of the State of California. The State of California, by and through its Department
2 of Corrections, Youth Authority and Department of Fish and Game, is a significant producer of ground
3 water from and the State is the largest owner of land overlying Chino Basin. The precise nature and
4 scope of the claims and rights of the State need not be, and are not, defined herein. The State, through
5 said departments, has accepted the Physical Solution herein decreed, in the interests of implementing the
6 mandate of Section 2 of Article X of the California Constitution. For all purposes of this Judgment, all
7 future production by the State or its departments or agencies for overlying use on State-owned lands shall
8 be considered as agricultural pool use.

9
10 C. RIGHTS TO AVAILABLE GROUND WATER STORAGE CAPACITY

11 11. Available Ground Water Storage Capacity. There exists in Chino Basin a substantial
12 amount of available ground water storage capacity which is not utilized for storage or regulation of Basin
13 Waters. Said reservoir capacity can appropriately be utilized for storage and conjunctive use of
14 supplemental water with Basin Waters. It is essential that said reservoir capacity utilization for storage
15 and conjunctive use of supplemental water be undertaken only under Watermaster control and regulation,
16 in order to protect the integrity of both such Stored Water and Basin Water in storage and the Safe Yield
17 of Chino Basin.

18
19 12. Utilization of Available Ground Water Capacity. Any person or public entity, whether a
20 party to this action or not, may make reasonable beneficial use of the available ground water storage
21 capacity of Chino Basin for storage of supplemental water; provided that no such use shall be made
22 except pursuant to written agreement with Watermaster, as authorized by Paragraph 28. In the allocation
23 of such storage capacity, the needs and requirements of lands overlying Chino Basin and the owners of
24 rights in the Safe Yield or Operating Safe Yield of the Basin shall have priority and preference over
25 storage for export.
26
27
28

1 III. INJUNCTION

2 13. Injunction Against Unauthorized Production of Basin Water. Each party in each of the
3 respective pools is enjoined, as follows:
4

5 (a) Overlying Agricultural Pool. Each party in the Overlying (Agricultural) Pool, its
6 officers, agents, employees, successors and assigns, is and they each are ENJOINED AND
7 RESTRAINED from producing ground water from Chino Basin in any year hereafter in excess of
8 such party's correlative share of the aggregate of 82,800 acre feet allocated to said Pool, except
9 pursuant to the Physical Solution or a storage water agreement.

10 (b) Overlying Non-Agricultural Pool. Each party in the Overlying Non-Agricultural
11 Pool, its officers, agents, employees, successors and assigns, is and they each are ENJOINED
12 AND RESTRAINED from producing ground water of Chino Basin in any year hereafter in excess
13 of such party's decreed rights in the Safe Yield, except pursuant to the provisions of the Physical
14 Solution or a storage water agreement.

15 (c) Appropriative Pool. Each party in the Appropriative Pool, its officers, agents,
16 employees, successors and assigns, is and they are each ENJOINED AND RESTRAINED from
17 producing ground water of Chino Basin in any year hereafter in excess of such party's decreed
18 share of Operating Safe Yield, except pursuant to the provisions of the Physical Solution or a
19 storage water agreement.

20
21 14. Injunction Against Unauthorized Storage or Withdrawal of Stored Water. Each party, its
22 officers, agents, employees, successors and assigns is and they each are ENJOINED AND
23 RESTRAINED from storing supplemental water in Chino Basin for withdrawal, or causing withdrawal of,
24 water stored by that party, except pursuant to the terms of a written agreement with Watermaster and in
25 accordance with Watermaster regulations. Any supplemental water stored or recharged in the Basin,
26 except pursuant to such a Watermaster agreement, shall be deemed abandoned and not classified as
27 Stored Water. This paragraph has no application, as such, to supplemental water spread or provided in
28 lieu by Watermaster pursuant to the Physical Solution.

1 IV. CONTINUING JURISDICTION

2 15. Continuing Jurisdiction. Full jurisdiction, power and authority are retained and reserved
3 to the Court as to all matters contained in this judgment, except:
4

5 (a) The redetermination of Safe Yield, as set forth in Paragraph 6, during the first ten
6 (10) years of operation of the Physical Solution;

7 (b) The allocation of Safe Yield as between the several pools as set forth in
8 Paragraph 44 of the Physical Solution;

9 (c) The determination of specific quantitative rights and shares in the declared Safe
10 Yield or Operating Safe Yield herein declared in Exhibits "D" and "E"; and
11

12 (d) The amendment or modification of Paragraphs 7 (a) and (b) of Exhibit "H", during
13 the first ten (10) years of operation of the Physical Solution, and thereafter only upon affirmative
14 recommendation of at least 67% of the voting power (determined pursuant to the formula
15 described in Paragraph 3 of Exhibit "H"), but not less than one-third of the members of the
16 Appropriative Pool Committee representatives of parties who produce water within IEUA or
17 WMWD; after said tenth year the formula set forth in said Paragraph 7 (a) and 7 (b) of Exhibit "H"
18 for payment of the costs of replenishment water may be changed to 100% gross or net, or any
19 percentage split thereof, but only in response to recommendation to the Court by affirmative vote
20 of at least 67% of said voting power of the Appropriative Pool representatives of parties who
21 produce ground water within IEUA or WMWD, but not less than one-third of their number. In
22 such event, the Court shall act in conformance with such recommendation unless there are
23 compelling reasons to the contrary; and provided, further, that the fact that the allocation of Safe
24 Yield or Operating Safe Yield shares may be rendered moot by a recommended change in the
25 formula for replenishment assessments shall not be deemed to be such a "compelling reason."
26
27
28

1 Said continuing jurisdiction is provided for the purpose of enabling the Court, upon application of any
2 party, the Watermaster, the Advisory Committee or any Pool Committee, by motion and, upon at least 30
3 days' notice thereof, and after hearing thereon, to make such further or supplemental orders or directions
4 as may be necessary or appropriate for interpretation, enforcement or carrying out of this Judgment, and
5 to modify, amend or amplify any of the provisions of this Judgment.

6 V. WATERMASTER

7 A. APPOINTMENT

8
9
10 16. Watermaster Appointment. CBMWD, acting by and through a majority of its board of
11 directors, is hereby appointed Watermaster, to administer and enforce the provisions of this Judgment
12 and any subsequent instructions or orders of the Court hereunder. The term of appointment of
13 Watermaster shall be for five (5) years. The Court will by subsequent orders provide for successive terms
14 or for a successor Watermaster. Watermaster may be changed at any time by subsequent order of the
15 Court, on its own motion, or on the motion of any party after notice and hearing. Unless there are
16 compelling reasons to the contrary, the Court shall act in conformance with a motion requesting the
17 Watermaster be changed if such motion is supported by a majority of the voting power of the Advisory
18 Committee.

19 B. POWERS AND DUTIES

20
21 17. Powers and Duties. Subject to the continuing supervision and control of the Court,
22 Watermaster shall have and may exercise the express powers, and shall perform the duties, as provided
23 in this Judgment or hereafter ordered or authorized by the Court in the exercise of the Court's continuing
24 jurisdiction.

1 18. Rules and Regulations.⁵

2 (a) Upon recommendation by the Advisory Committee, Watermaster shall make
3 and adopt, after public hearing, appropriate rules and regulations for conduct of Watermaster
4 affairs, including, meeting schedules and procedures, and compensation of members of
5 Watermaster. Thereafter, Watermaster may amend the rules from time to time upon
6 recommendation, or with approval of the Advisory Committee after hearing noticed to active
7 parties, except that compensation of Watermaster members shall be subject to Court Approval. A
8 copy of the rules and regulations, and of amendments, shall be mailed to each active party.
9

10 (b) Under the rules, Watermaster members shall be paid up to \$125 for each day's
11 attendance at meetings at the direction of the board, not to exceed eight meetings in each month.
12 Compensation shall not be paid for junkets or attendance at conferences, seminars, or retreats at
13 locations other than Watermaster headquarters. Members shall not be compensated for more than
14 one meeting each day.
15

16 (c) Under the rules, Watermaster members may be reimbursed for reasonable and
17 necessary travel, meals, lodging and registration expenses incurred on Watermaster business.
18 Mileage shall not be paid for travel to or from Watermaster meetings unless the individual must
19 travel more than 50 miles per month. The Watermaster's budget shall include an appropriation for
20 expense reimbursement. The Watermaster shall file a report on the expense reimbursement with
21 the court as part of the Annual Report. The Report shall disclose total expense reimbursements
22 and single expenditures for items of \$125.00 or more.

23 19. Acquisition of Facilities. Watermaster may purchase, lease, acquire and hold all
24 necessary facilities and equipment; provided, that it is not the intent of the Court that Watermaster acquire
25 any interest in real property or substantial capital assets.
26

27 ⁵ Order dated March 31, 1999.
28

1 20. Employment of Experts and Agents. Watermaster may employ or retain such
2 administrative, engineering, geologic, accounting, legal or other specialized personnel and consultants as
3 may be deemed appropriate in the carrying out of its powers and shall require appropriate bonds from all
4 officers and employees handling Watermaster funds. Watermaster shall maintain records for purposes of
5 allocation of costs of such services as well as of all other expenses of Watermaster administration as
6 between the several pools established by the Physical Solution.

7
8 21. Measuring Devices. Watermaster shall cause parties, pursuant to uniform rules, to install
9 and maintain in good operating condition, at the cost of each party, such necessary measuring devices or
10 meters as Watermaster may deem appropriate. Such measuring devices shall be inspected and tested
11 as deemed necessary by Watermaster, and the cost thereof shall constitute an expense of Watermaster.

12 22. Assessments. Watermaster is empowered to levy and collect all assessments provided
13 for in the pooling plans and Physical Solution.

14
15 23. Investment of Funds. Watermaster may hold and invest any and all Watermaster funds
16 in investments authorized from time to time for public agencies of the State of California.

17 24. Borrowing. Watermaster may borrow from time to time amounts not exceeding the
18 annual anticipated receipts of Watermaster during such year.

19
20 25. Contracts. Watermaster may enter into contracts for the performance of any powers
21 herein granted; provided, however, that Watermaster may not contract with or purchase materials,
22 supplies or services from IEUA, except upon the prior recommendation and approval of the Advisory
23 Committee and pursuant to written order of the Court.

24 26. Cooperation With Other Agencies. Subject to prior recommendation or approval of the
25 Advisory Committee, Watermaster may act jointly or cooperate with agencies of the United States and the
26 State of California or any political subdivisions, municipalities or districts or any person to the end that the
27 purpose of the Physical Solution may be fully and economically carried out.
28

1 27. Studies. Watermaster may, with concurrence of the Advisory Committee or affected Pool
2 Committee and in accordance with Paragraph 54 (b), undertake relevant studies of hydrologic conditions,
3 both quantitative and qualitative, and operating aspects of implementation of the management program
4 for Chino Basin.

5 28. Ground Water Storage Agreements. Watermaster shall adopt, with the approval of the
6 Advisory Committee, uniformly applicable rules and a standard form of agreement for storage of
7 supplemental water, pursuant to criteria therefore set forth in Exhibit "I". Upon appropriate application by
8 any person, Watermaster shall enter into such a storage agreement; provided that all such storage
9 agreements shall first be approved by written order of the Court, and shall by their terms preclude
10 operations which will have a substantial adverse impact on other producers.

11
12 29. Accounting for Stored Water. Watermaster shall calculate additions, extractions and
13 losses and maintain an annual account of all Stored Water in Chino Basin, and any losses of water
14 supplies or Safe Yield of Chino Basin resulting from such Stored Water.

15
16 30. Annual Administrative Budget. Watermaster shall submit to Advisory Committee an
17 administrative budget and recommendation for each fiscal year on or before March 1. The Advisory
18 Committee shall review and submit said budget and their recommendations to Watermaster on or before
19 April 1, following. Watermaster shall hold a public hearing on said budget at its April quarterly meeting
20 and adopt the annual administrative budget which shall include the administrative items for each pool
21 committee. The administrative budget shall set forth budgeted items in sufficient detail as necessary to
22 make a proper allocation of the expense among the several pools, together with Watermaster's proposed
23 allocation. The budget shall contain such additional comparative information or explanation as the
24 Advisory Committee may recommend from time to time. Expenditures within budgeted items may
25 thereafter be made by Watermaster in the exercise of powers herein granted, as a matter of course. Any
26 budget transfer in excess of 20% of a budget category during any budget year or modification of such
27 administrative budget during any year shall be first submitted to the Advisory Committee for review and
28 recommendation.

1 31. Review Procedures. All actions, decisions or rules of Watermaster shall be subject to
2 review by the Court on its own motion or on timely motion by any party, the Watermaster (in the case of a
3 mandated action), the Advisory Committee, or any Pool Committee, as follows:

4 (a) Effective Date of Watermaster Action. Any action, decision or rule of
5 Watermaster shall be deemed to have occurred or been enacted on the date on which written
6 notice thereof is mailed. Mailing of copies of approved Watermaster minutes to the active parties
7 shall constitute such notice to all parties.

8 (b) Noticed Motion. Any party, the Watermaster (as to any mandated action), the
9 Advisory Committee, or any Pool Committee may, by a regularly noticed motion, apply to the
10 Court for review of any Watermaster's action, decision or rule. Notice of such motion shall be
11 served personally or mailed to Watermaster and to all active parties. Unless otherwise ordered
12 by the Court, such motion shall not operate to stay the effect of such Watermaster action,
13 decision or rule.

14 (c) Time for Motion. Notice of motion to review any Watermaster action, decision or
15 rule shall be served and filed within ninety (90) days after such Watermaster action, decision or
16 rule, except for budget actions, in which event said notice period shall be sixty (60) days.

17 (d) De Novo Nature of Proceedings. Upon the filing of any such motion, the Court
18 shall require the moving party to notify the active parties, the Watermaster, the Advisory
19 Committee, and each Pool Committee, of a date for taking evidence and argument, and on the
20 date so designated shall review de novo the question at issue. Watermaster's findings or
21 decision, if any, may be received in evidence at said hearing, but shall not constitute presumptive
22 or prima facie proof of any fact in issue.

23 (e) Decision. The decision of the Court in such proceeding shall be an appealable
24 supplemental order in this case. When the same is final, it shall be binding upon the
25 Watermaster and all parties.
26
27
28

1
2
3 C. ADVISORY AND POOL COMMITTEES

4 32. Authorization. Watermaster is authorized and directed to cause committees of producer
5 representatives to be organized to act as Pool Committees for each of the several pools created under
6 the Physical solution. Said Pool Committees shall, in turn, jointly form an Advisory Committee to assist
7 Watermaster in performance of its functions under this judgment. Pool Committees shall be composed as
8 specified in the respective pooling plans, and the Advisory Committee shall be composed of ten (10)
9 voting representatives from each pool, as designated by the respective Pool Committee⁶ **in accordance**
10 **with each pool's pooling plan. WMWD, Three Valleys Municipal Water District (Successor to**
11 **PVMWD)** and SBVMWD shall each be entitled to one non-voting representative on said Advisory
12 Committee.

13
14 33. Term and Vacancies. Members of any Pool Committee, shall serve for the term, and
15 vacancies shall be filled, as specified in the respective pooling plan. Members of the Advisory Committee
16 shall serve at the will of their respective Pool Committee.

17 34. Voting Power. The voting power on each Pool Committee shall be allocated as provided
18 in the respective pooling plan. The voting power on the Advisory Committee shall be one hundred (100)
19 votes allocated among the three pools in proportion to the total assessments paid to Watermaster during
20 the preceding year; provided, that the minimum voting power of each pool shall be

21
22 (a) Overlying Agricultural Pool 20,

23 (b) Overlying Non-Agricultural Pool 5, and

24 (c) Appropriative Pool 20.
25
26

27 ⁶ Order dated September 18, 1996.
28

1 In the event any pool is reduced to its said minimum vote, the remaining votes shall be allocated between
2 the remaining pools on said basis of assessments paid to Watermaster by each such remaining pool
3 during the preceding year. The method of exercise of each pool's voting power on the Advisory
4 Committee shall be as determined by the respective pool committees.

5 35. Quorum. A majority of the voting power of the Advisory Committee or any Pool
6 Committee shall constitute a quorum for the transaction of affairs of such Advisory or Pool Committee;
7 provided, that at least one representative of each Pool Committee shall be required to constitute a
8 quorum of the Advisory Committee. No Pool Committee representative may purposely absent himself or
9 herself, without good cause, from an Advisory Committee meeting to deprive it of a quorum. Action by
10 affirmative vote of a majority of the entire voting power of any Pool Committee or the Advisory Committee
11 shall constitute action by such committee. Any action or recommendation of a Pool Committee or the
12 Advisory Committee shall be transmitted to Watermaster in writing, together with a report of any
13 dissenting vote or opinion.
14

15 36. Compensation. Pool or Advisory Committee members may receive compensation, to be
16 established by the respective pooling plan, but not to exceed twenty-five dollars (\$25.00) for each
17 meeting of such Pool or Advisory Committee attended, and provided that no member of a Pool or
18 Advisory Committee shall receive compensation of more than three hundred (\$300.00) dollars for service
19 on any such committee during any one year. All such compensation shall be a part of Watermaster
20 administrative expense. No member of any Pool or Advisory Committee shall be employed by
21 Watermaster or compensated by Watermaster for professional or other services rendered to such Pool or
22 Advisory Committee or to Watermaster, other than the fee for attendance at meetings herein provided,
23 plus reimbursement of reasonable expenses related to activities within the Basin.
24

25 37. Organization.

26 (a) Organizational Meeting. At its first meeting in each year, each Pool Committee
27 and the Advisory Committee shall elect a chairperson and a vice chairperson from its
28

1 membership. It shall also select a secretary, a treasurer and such assistant secretaries and
2 treasurers as may be appropriate, any of whom may, but need not, be members of such Pool or
3 Advisory Committee.

4 (b) Regular Meetings. All Pool Committees and the Advisory Committee shall hold
5 regular meetings at a place and time to be specified in the rules to be adopted by each Pool and
6 Advisory Committee. Notice of regular meetings of any Pool or Advisory Committee, and of any
7 change in time or place thereof, shall be mailed to all active parties in said pool or pools.
8

9 (c) Special Meetings. Special meetings of any Pool or Advisory Committee may be
10 called at any time by the Chairperson or by any three (3) members of such Pool or Advisory
11 Committee by delivering notice personally or by mail to each member of such Pool or Advisory
12 Committee and to each active party at least 24 hours before the time of each such meeting in the
13 case of personal delivery, and 96 hours in the case of mail. The calling notice shall specify the
14 time and place of the special meeting and the business to be transacted. No other business shall
15 be considered at such meeting.
16

17 (d) Minutes. Minutes of all Pool Committee, Advisory Committee and Watermaster
18 meetings shall be kept at Watermaster's offices. Copies thereof shall be mailed or otherwise
19 furnished to all active parties in the pool or pools concerned. Said copies of minutes shall
20 constitute notice of any Pool or Advisory Committee action therein reported, and shall be
21 available for inspection by any party.

22 (e) Adjournments. Any meeting of any Pool or Advisory Committee may be
23 adjourned to a time and place specified in the order of adjournment. Less than a quorum may so
24 adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously
25 posted forthwith on or near the door of the place where the meeting was held.

26 38. Powers and Functions. The powers and functions of the respective Pool Committees
27 and the Advisory Committee shall be as follows:
28

1 (a) Pool Committees. Each Pool Committee shall have the power and responsibility
2 for developing policy recommendations for administration of its particular pool, as created under
3 the Physical Solution. All actions and recommendations of any Pool Committee which require
4 Watermaster implementation shall first be noticed to the other two pools. If no objection is
5 received in writing within thirty (30) days, such action or recommendation shall be transmitted
6 directly to Watermaster for action. If any such objection is received, such action or
7 recommendation shall be reported to the Advisory Committee before being transmitted to
8 Watermaster.

9 (b) Advisory Committee. The Advisory Committee shall have the duty to study, and
10 the power to recommend, review and act upon all discretionary determinations made or to be
11 made hereunder by Watermaster.
12

13 [1] Committee Initiative. When any recommendation or advice of the
14 Advisory Committee is received by Watermaster, action consistent therewith may be
15 taken by Watermaster; provided, that any recommendation approved by 80 votes or more
16 in the Advisory Committee shall constitute a mandate for action by Watermaster
17 consistent therewith. If Watermaster is unwilling or unable to act pursuant to
18 recommendation or advice from the Advisory Committee (other than such mandatory
19 recommendations), Watermaster shall hold a public hearing, which shall be followed by
20 written findings and decision. Thereafter, Watermaster may act in accordance with said
21 decision, whether consistent with or contrary to said Advisory Committee
22 recommendation. Such action shall be subject to review by the Court, as in the case of
23 all other Watermaster determinations.

24 [2] Committee Review. In the event Watermaster proposes to take
25 discretionary action, other than approval or disapproval of a Pool Committee action or
26 recommendation properly transmitted, or execute any agreement not theretofore within
27 the scope of an Advisory Committee recommendation, notice of such intended action
28

1 shall be served on the Advisory Committee and its members at least thirty (30) days
2 before the Watermaster meeting at which such action is finally authorized.

3 (c) Review of Watermaster Actions. Watermaster (as to mandated action), the
4 Advisory Committee or any Pool Committee shall be entitled to employ counsel and expert
5 assistance in the event Watermaster or such Pool or Advisory Committee seeks Court review of
6 any Watermaster action or failure to act. The cost of such counsel and expert assistance shall be
7 Watermaster expense to be allocated to the affected pool or pools.
8

9 VI. PHYSICAL SOLUTION

10 A. GENERAL

11
12 39. Purpose and Objective. Pursuant to the mandate of Section 2 of Article X of the
13 California Constitution, the Court hereby adopts and orders the parties to comply with a Physical Solution.
14 The purpose of these provisions is to establish a legal and practical means for making the maximum
15 reasonable beneficial use of the waters of Chino Basin by providing the optimum economic, long-term,
16 conjunctive utilization of surface waters, ground waters and supplemental water, to meet the
17 requirements of water users having rights in or dependent upon Chino Basin.
18

19 40. Need for Flexibility. It is essential that this Physical solution provide maximum flexibility
20 and adaptability in order that Watermaster and the Court may be free to use existing and future
21 technological, social, institutional and economic options, in order to maximize beneficial use of the waters
22 of Chino Basin. To that end, the Court's retained jurisdiction will be utilized, where appropriate, to
23 supplement the discretion herein granted to the Watermaster.

24 41. Watermaster Control. Watermaster, with the advice of the Advisory and Pool
25 Committees, is granted discretionary powers in order to develop an optimum basin management program
26 for Chino Basin, including both water quantity and quality considerations. Withdrawals and supplemental
27 water replenishment of Basin Water, and the full utilization of the water resources of Chino Basin, must
28

1 be subject to procedures established by and administered through Watermaster with the advice and
2 assistance of the Advisory and Pool Committees composed of the affected producers. Both the quantity
3 and quality of said water resources may thereby be preserved and the beneficial utilization of the Basin
4 maximized.

5 42. General Pattern of Operations. It is contemplated that the rights herein decreed will be
6 divided into three (3) operating pools for purposes of Watermaster administration. A fundamental
7 premise of the Physical Solution is that all water users dependent upon Chino Basin will be allowed to
8 pump sufficient waters from the Basin to meet their requirements. To the extent that pumping exceeds
9 the share of the Safe Yield assigned to the Overlying Pools, or the Operating Safe Yield in the case of the
10 Appropriative Pool, each pool will provide funds to enable Watermaster to replace such overproduction.
11 The method of assessment in each pool shall be as set forth in the applicable pooling plan.

13 B. POOLING

14 43. Multiple Pools Established. There are hereby established three (3) pools for
15 Watermaster administration of, and for the allocation of responsibility for, and payment of, costs of
16 replenishment water and other aspects of this Physical Solution.

17
18 (a) Overlying (Agricultural) Pool. The first pool shall consist of the State of California
19 and all overlying producers who produce water for other than industrial or commercial purposes.
20 The initial members of the pool are listed in Exhibit "C".

21
22 (b) Overlying (Non-agricultural) Pool The second pool shall consist of overlying
23 producers who produce water for industrial or commercial purposes. The initial members of this
24 pool are listed in Exhibit "D".

25 (c) Appropriative Pool. A third and separate pool shall consist of owners of
26 appropriative rights. The initial members of the pool are listed in Exhibit "E".
27
28

Any party who changes the character of his use may, by subsequent order of the Court, be reassigned to the proper pool; but the allocation of Safe Yield under Paragraph 44 hereof shall not be changed. Any non-party producer or any person who may hereafter commence production of water from Chino Basin, and who may become a party to this physical solution by intervention, shall be assigned to the proper pool by the order of the Court authorizing such intervention.

44. Determination and Allocation of Rights to Safe Yield of Chino Basin. The declared Safe Yield of Chino Basin is hereby allocated as follows:

<u>Pool</u>	<u>Allocation</u>
Overlying (Agricultural) Pool	414,000 acre-feet in any five (5) consecutive years.
Overlying (Non-agricultural) Pool	7,366 acre-feet per year.
Appropriative Pool	49,834 acre-feet per year.

The foregoing acre foot allocations to the overlying pools are fixed. Any subsequent change in the Safe Yield shall be debited or credited to the Appropriative Pool. Basin Water available to the Appropriative Pool without replenishment obligation may vary from year to year as the Operating Safe Yield is determined by Watermaster pursuant to the criteria set forth in Exhibit "I".

45. Annual Replenishment. Watermaster shall levy and collect assessments in each year, pursuant to the respective pooling plans, in amounts sufficient to purchase replenishment water to replace production by any pool during the preceding year which exceeds that pool's allocated share of Safe Yield in the case of the overlying pools, or Operating Safe Yield in the case of the Appropriative Pool. It is anticipated that supplemental water for replenishment of Chino Basin may be available at different rates to the various pools to meet their replenishment obligations. If such is the case, each pool will be assessed only that amount necessary for the cost of replenishment water to that pool, at the rate available to the pool, to meet its replenishment obligation.

1 46. Initial Pooling Plans. The initial pooling plans, which are hereby adopted, are set forth in
2 Exhibits “F”, “G” and “H”, respectively. Unless and until modified by amendment of the judgment pursuant
3 to the Court’s continuing jurisdiction, each such plan shall control operation of the subject pool.

4
5 C. REPORTS AND ACCOUNTING

6 47. Production Reports. Each party or responsible party shall file periodically with
7 Watermaster, pursuant to Watermaster rules, a report on a form to be prescribed by Watermaster
8 showing the total production of such party during the preceding reportage period, and such additional
9 information as Watermaster may require, including any information specified by the affected Pool
10 Committee.

11
12 48. Watermaster Report and Accounting. **Watermaster’s Annual Report shall be filed by**
13 **January 31 of each year. The Report shall apply to the preceding fiscal years’ operation. The**
14 **Report shall contain details as to operation of the Pools. A certified audit of assessments and**
15 **expenditures pursuant to this Physical Solution, and a review of Watermaster activity.⁷**

16 D. REPLENISHMENT

17
18 49. Sources of Supplemental Water. Supplemental water may be obtained by Watermaster
19 from any available source. Watermaster shall seek to obtain the best available quality of supplemental
20 water at the most reasonable cost for recharge in the Basin. To the extent that costs of replenishment
21 water may vary between pools, each pool shall be liable only for the costs attributable to its required
22 replenishment. Available sources may include, but are not limited to:

23 (a) Reclaimed Water. There exist a series of agreements generally denominated the
24 Regional Waste Water Agreements between IEUA and owners of the major municipal sewer
25

26
27 ⁷ Order dated March 31, 1999.
28

1 systems within the basin. Under those agreements, which are recognized hereby but shall be
2 unaffected and unimpaired by this judgment, substantial quantities of reclaimed water may be
3 made available for replenishment purposes. There are additional sources of reclaimed water
4 which are, or may become, available to Watermaster for said purposes. Maximum beneficial use
5 of reclaimed water shall be given high priority by Watermaster.

6 (b) State Water. State water constitutes a major available supply of supplemental
7 water. In the case of State Water, Watermaster purchases shall comply with the water service
8 provisions of the State's water service contracts. More specifically, Watermaster shall purchase
9 State Water from MWD for replenishment of excess production within IEUA, WMWD and
10 TVMWD, and from SBVMWD to replenish excess production within SBVMWD's boundaries in
11 Chino Basin, except to the extent that MWD and SBVMWD give their consent as required by
12 such State water service contracts.

13
14 (c) Local Import. There exist facilities and methods for importation of surface and
15 ground water supplies from adjacent basins and watersheds.

16
17 (d) Colorado River Supplies. MWD has water supplies available from its Colorado
18 River Aqueduct.

19 50. Methods of Replenishment. Watermaster may accomplish replenishment of
20 overproduction from the Basin by any reasonable method, including:

21
22 (a) Spreading and percolation or Injection of water in existing or new facilities,
23 subject to the provisions of Paragraphs 19, 25 and 26 hereof.

24
25 (b) In Lieu Procedures. Watermaster may make, or cause to be made, deliveries of
26 water for direct surface use, in lieu of ground water production.

27 E. REVENUES
28

1 51. Production Assessment. Production assessments, on whatever basis, may be levied by
2 Watermaster pursuant to the pooling plan adopted for the applicable pool.

3 52. Minimal Producers. Minimal Producers shall be exempted from payment of production
4 assessments, upon filing of production reports as provided in Paragraph 47 of this Judgment, and
5 payment of an annual five dollar (\$5.00) administrative fee as specified by Watermaster rules.
6

7 53. Assessment Proceeds — Purposes. Watermaster shall have the power to levy
8 assessments against the parties (other than minimal pumpers) based upon production during the
9 preceding period of assessable production, whether quarterly, semi-annually or annually, as may be
10 determined most practical by Watermaster or the affected Pool Committee.

11 54. Administrative Expenses. The expenses of administration of this Physical Solution shall
12 be categorized as either (a) general Watermaster administrative expense, or (b) special project expense.
13

14 (a) General Watermaster Administrative Expense shall include office rental, general
15 personnel expense, supplies and office equipment, and related incidental expense and general
16 overhead.
17

18 (b) Special Project Expense shall consist of special engineering, economic or other
19 studies, litigation expense, meter testing or other major operating expenses. Each such project
20 shall be assigned a Task Order number and shall be separately budgeted and accounted for.
21 General Watermaster administrative expense shall be allocated and assessed against the
22 respective pools based upon allocations made by the Watermaster, who shall make such
23 allocations based upon generally accepted cost accounting methods. Special Project Expense
24 shall be allocated to a specific pool, or any portion thereof, only upon the basis of prior express
25 assent and finding of benefit by the Pool Committee, or pursuant to written order of the Court.

26 55. Assessments -- Procedure. Assessments herein provided for shall be levied and
27 collected as follows:
28

1 (a) Notice of Assessment. Watermaster shall give written notice of all applicable
2 assessments to each party on or before ninety (90) days after the end of the production period to
3 which such assessment is applicable.

4 (b) Payment. Each assessment shall be payable on or before thirty (30) days after
5 notice, and shall be the obligation of the party or successor owning the water production facility at
6 the time written notice of assessment is given, unless prior arrangement for payment by others
7 has been made in writing and filed with Watermaster.

8 (c) Delinquency. Any delinquent assessment shall bear interest at 10% per annum
9 (or such greater rate as shall equal the average current cost of borrowed funds to the
10 Watermaster) from the due date thereof. Such delinquent assessment and interest may be
11 collected in a show-cause proceeding herein instituted by the Watermaster, in which case the
12 Court may allow Watermaster its reasonable costs of collection, including attorney's fees.
13

14
15 56. Accumulation of Replenishment Water Assessment Proceeds. In order to minimize
16 fluctuation in assessment and to give Watermaster flexibility in purchase and spreading of replenishment
17 water, Watermaster may make reasonable accumulations of replenishment water assessment proceeds.
18 Interest earned on such retained funds shall be added to the account of the pool from which the funds
19 were collected and shall be applied only to the purchase of replenishment water.

20 57. Effective Date. The effective date for accounting and operation under this Physical
21 Solution shall be July 1, 1977, and the first production assessments hereunder shall be due after July 1,
22 1978. Watermaster shall, however, require installation of meters or measuring devices and establish
23 operating procedures immediately, and the cost of such Watermaster activity (not including the cost of
24 such meters and measuring devices) may be recovered in the first administrative assessment in 1978.
25
26
27
28

VII. MISCELLANEOUS PROVISIONS

58. Designation of Address for Notice and Service. Each party shall designate the name and address to be used for purposes of all subsequent notices and service herein, either by its endorsement on the Stipulation for Judgment or by a separate designation to be filed within thirty (30) days after Judgment has been served. Said designation may be changed from time to time by filing a written notice of such change with the Watermaster. Any party desiring to be relieved of receiving notices of Watermaster or committee activity may file a waiver of notice on a form to be provided by Watermaster. Thereafter such party shall be removed from the Active Party list. Watermaster shall maintain at all times a current list of all active parties and their addresses for purposes of service. Watermaster shall also maintain a full current list of names and addresses of all parties or their successors, as filed herein. Copies of such lists shall be available, without cost, to any party, the Advisory Committee or any Pool Committee upon written request therefor.

59. Service of Documents. Delivery to or service upon any party or active party by the Watermaster, by any other party, or by the Court, of any item required to be served upon or delivered to such party or active party under or pursuant to the Judgment shall be made personally or by deposit in the United States mail, first class, postage prepaid, addressed to the designee and at the address in the latest designation filed by such party or active party.

60. Intervention After Judgment. Any non-party assignee of the adjudicated appropriative rights of any appropriator, or any other person newly proposing to produce water from Chino Basin, may become a party to this Judgment upon filing a petition in intervention. Said intervention must be confirmed by order of this Court. Such intervenor shall thereafter be a party bound by this judgment and entitled to the rights and privileges accorded under the Physical Solution herein, through the pool to which the Court shall assign such intervenor.

61. Loss of Rights. Loss, whether by abandonment, forfeiture or otherwise, of any right herein adjudicated shall be accomplished only (1) by a written election by the owner of the right filed with Watermaster, or (2) by order of the Court upon noticed motion and after hearing.

62. Scope of Judgment. Nothing in this Judgment shall be deemed to preclude or limit any party in the assertion against a neighboring party of any cause of action now existing or hereafter arising based upon injury, damage or depletion of water supply available to such party, proximately caused by nearby pumping which constitutes an unreasonable interference with such complaining party's ability to extract ground water.

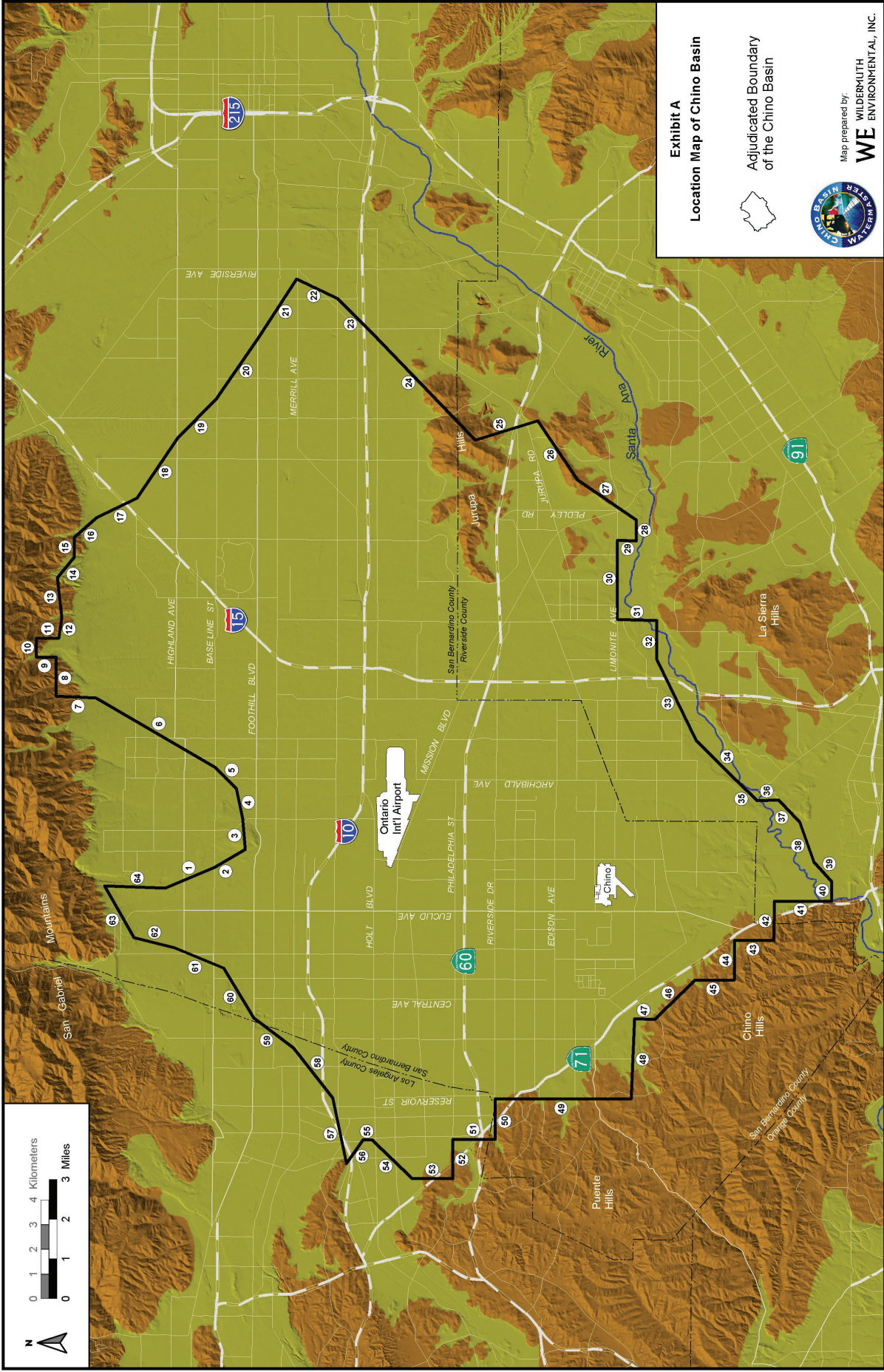
63. Judgment Binding on Successors. This Judgment and all provisions thereof are applicable to and binding upon not only the parties to this action, but also upon their respective heirs, executors, administrators, successors, assigns, lessees and licensees and upon the agents, employees and attorneys in fact of all such persons.

64. Costs. No party shall recover any costs in this proceeding from any other party.

Dated: January 1, 1978

Howard B. Weiner

Howard B. Weiner



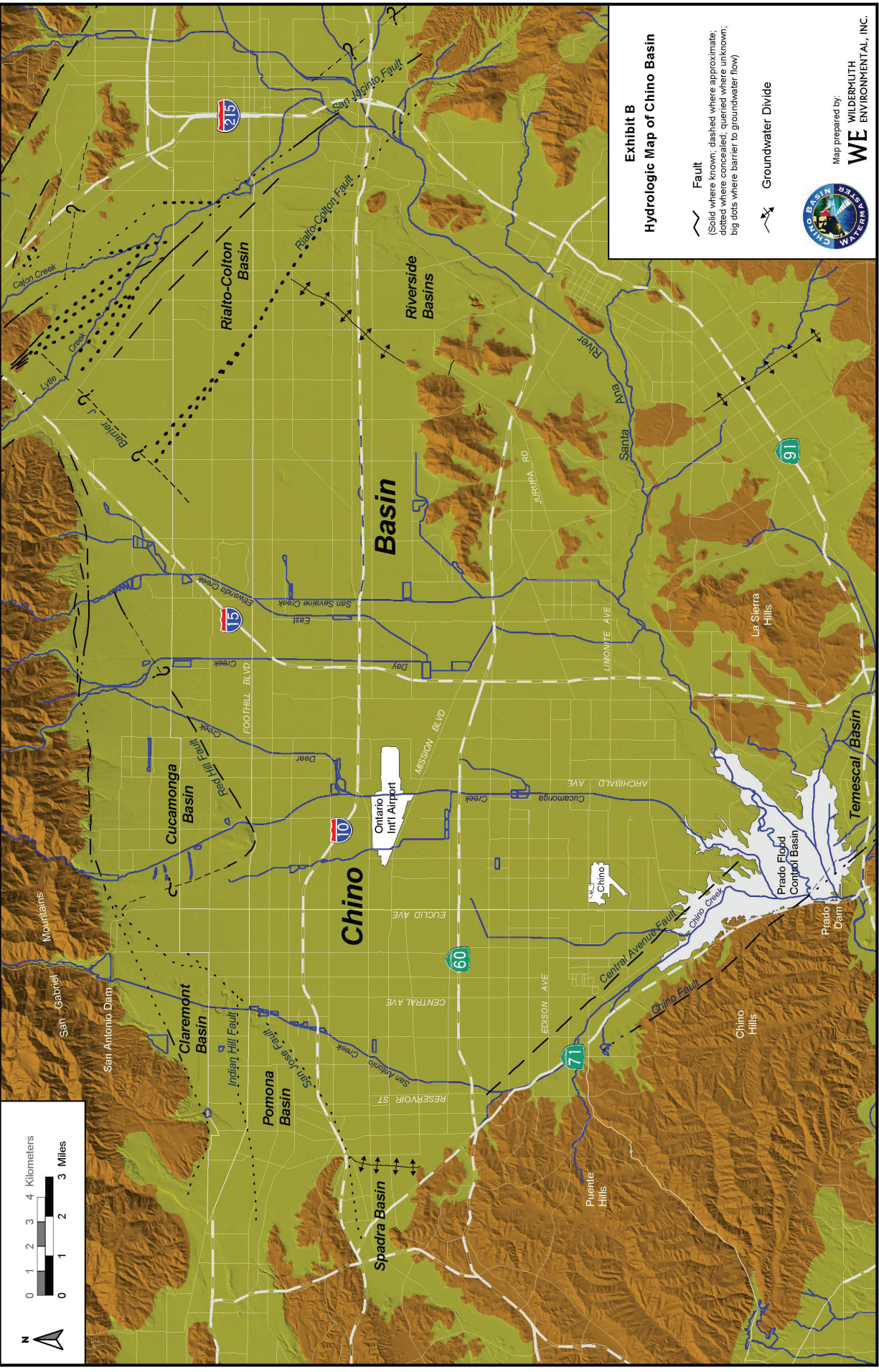


EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	STATE OF CALIFORNIA	Aphesssetche, Xavier
2	COUNTY OF SAN BERNARDINO	Arena Mutual Water Assn.
3	Abacherli, Dairy, Inc.	Armstrong Nurseries, Inc.
4	Abacherli, Frank	Arretche, Frank
5	Abacherli, Shirley	Arretche, Jean Pierre
6	Abbona, Anna	Arvidson, Clarence F.
7	Abbona, James	Arvidson, Florence
8	Abbona, Jim	Ashley, George W.
9	Abbona, Mary	Ashley, Pearl E.
10	Agliani, Amelia H.	Atlas Farms
11	Agman, Inc.	Atlas Ornamental Iron Works, Inc.
12	Aguerre, Louis B.	Aukeman, Carol
13	Ahmanson Trust Co.	Aukeman, Lewis
14	Akiyama, Shizuye	Ayers, Kenneth C., aka
15	Akiyama, Tomoo	Kelley Ayers
16	Akkerman, Dave	Bachoc, Raymond
17	Albers, J.N.	Baldwin, Edgar A.
18	Albers, Nellie	Baldwin, Lester
19	Alewyn, Jake J.	Banbury, Carolyn
20	Alewyn, Normalee	Bangma Dairy
21	Alger, Mary D.	Bangma, Arthur
22	Alger, Raymond	Bangma, Ida
23	Allen, Ben F.	Bangma, Martin
24	Allen, Jane F.	Bangma, Sam
25	Alta-Dena Dairy	Barba, Anthony B.
26	Anderson Farms	Barba, Frank
27	Anguiano, Sarah L.S.	Barcellos, Joseph
28	Anker, Gus	Barnhill, Maurine W.
	Barnhill, Paul	Boersma, Angie

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Bartel, Dale	Boersma, Berdina
2	Bartel, Ursula	Boersma, Frank
3	Bartel, Willard	Boersma, Harry
4	Barthelemy, Henry	Boersma, Paul
5	Barthelemy, Roland	Boersma, Sam
6	Bassler, Donald V., M.D.	Boersma, William L.
7	Bates, Lowell R.	Bohlander & Holmes, Inc.
8	Bates, Mildred L.	Bokma, Peter
9	Beahm, James W.	Bollema, Jacob
10	Beahm, Joan M.	Boonstoo, Edward
11	Bekendam, Hank	Bootsma, Jim
12	Bekendam, Pete	Borba, Dolene
13	Bello, Eugene	Borba, Dolores
14	Bello, Olga	Borba, Emily
15	Beltman, Evelyn	Borba, George
16	Beltman, Tony	Borba, John
17	Bergquist Properties, Inc.	Borba, John & Sons
18	Bevacqua, Joel A.	Borba, John Jr.
19	Bevacqua, Marie B.	Borba, Joseph A.
20	Bidart, Bernard	Borba, Karen E.
21	Bidart, Michael J.	Borba, Karen M.
22	Binnell, Wesley	Borba, Pete, Estate of
23	Black, Patricia E.	Borba, Ricci
24	Black, Victor	Borba, Steve
25	Bodger, John & Sons Co.	Borba, Tom
26	Boer, Adrian	Bordisso, Alleck
27	Boersma and Wind Dairy	Borges, Angelica M.
28	Borges, Bernadette	Bothof, Roger W.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Borges, John O.	Bouma, Cornie
2	Borges, Linda L.	Bouma, Emma
3	Borges, Manual Jr.	Bouma, Henry P.
4	Borges, Tony	Bouma, Martin
5	Bos, Aleid	Bouma, Peter G. & Sons Dairy
6	Bos, Gerrit	Bouma, Ted
7	Bos, John	Bouman, Helen
8	Bos, John	Bouman, Sam
9	Bos, Margaret	Bower, Mabel E.
10	Bos, Mary	Boys Republic
11	Bos, Mary Beth	Breedyk, Arie
12	Bos, Tony	Breedyk, Jessie
13	Bosch, Henrietta	Briano Brothers
14	Bosch, Peter T.	Briano, Albert
15	Boschma, Betty	Briano, Albert Trustee for
16	Boschma, Frank	Briano, Albert Frank
17	Boschma, Greta	Briano, Lena
18	Boschma, Henry	Brink, Russell N.
19	Bosma, Dick	Brinkerhoff, Margaret
20	Bosma, Florence G.	Brinkerhoff, Robert L.
21	Bosma, Gerrit	Britschgi, Florence
22	Bosma, Jacob J.	Britschgi, Magdalena Garetto
23	Bosma, Jeanette Thea	Britschgi, Walter P.
24	Bosman, Frank	Brommer, Marvin
25	Bosman, Nellie	Brookside Enterprizes, dba
26	Bosnyak, Goldie M.	Brookside Vineyard Co.
27	Bosnyak, Martin	Brothers Three Dairy
28	Brown, Eugene	Chino Corona Investment

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Brun, Martha M.	Chino Water Co.
2	Brun, Peter Robert	Christensen, Leslie
3	Buma, Duke	Christensen, Richard G.
4	Buma, Martha	Christian, Ada R.
5	Bunse, Nancy	Christian, Harold F.
6	Bunse, Ronnie L.	Christy, Ella J.
7	Caballero, Bonnie L.	Christy, Ronald S.
8	Caballero, Richard F.	Cihigoyenetché, Jean
9	Cable Airport Inc.	Cihigoyenetché, Leona
10	Cadlini, Donald	Cihigoyenetché, Martin
11	Cadlini, Jesse R.	Clarke, Arthur B.
12	Cadlini, Marie Edna	Clarke, Nancy L.
13	Cambio, Anna	Clarke, Phyllis J.
14	Cambio, Charles, Estate of	Coelho, Isabel
15	Cambio, William V.	Coelho, Joe A. Jr.
16	Cardoza, Florence	Collins, Howard E.
17	Cardoza, Olivi	Collins, Judith F.
18	Cardoza, Tony	Collinsworth, Ester L.
19	Carnesi, Tom	Collinsworth, John E.
20	Carver, Robt M., Trustee	Collinsworth, Shelby
21	Cauffman, John R.	Cone Estate (05-2-00648/649)
22	Chacon Bros.	Consolidated Freightways Corp.
23	Chancon, Elvera P.	of Delaware
24	Chacon, Joe M.	Corona Farms Co.
25	Chacon, Robert M.	Corra, Rose
26	Chacon, Virginia L.	Costa, Dimas S.
27	Chez, Joseph C.	Costa, Laura
28	Costa, Myrtle	De Boer, L.H.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Costamagna, Antonio	De Boer, Sidney
2	Costamagna, Joseph	De Bos, Andrew
3	Cousyn, Claus B.	De Graaf, Anna Mae
4	Cramer, Carole F.	De Graaf, Gerrit
5	Cramer, William R.	De Groot, Dick
6	Crossroads Auto Dismantlers, Inc.	De Groot, Dorothy
7	Crouse, Beatrice I.	De Groot, Ernest
8	Crouse, Roger	De Groot, Henrietta
9	Crowley, Juanita C.	De Groot, Jake
10	Crowley, Ralph	De Groot, Pete Jr.
11	Cucamonga Vintners	De Haan, Bernadene
12	D'Astici, Teresa	De Haan, Henry
13	Da Costa, Cecilia B.	De Hoog, Adriana
14	Da Costa, Joaquim F.	De Hoog, Joe
15	Daloisio, Norman	De Hoog, Martin
16	De Berard Bros.	De Hoog, Martin L.
17	De Berard, Arthur, Trustee	De Hoog, Mitch
18	De Berard, Charles	De Hoog, Tryntje
19	De Berard, Chas., Trustee	De Jager, Cobi
20	De Berard, Helan J.	De Jager, Edward D.
21	De Berard, Robert	De Jong Brothers Dairy
22	De Berard, Robert Trustee	De Jong, Cornelis
23	De Bie, Adrian	De Jong, Cornelius
24	De Bie, Henry	De Jong, Grace
25	De Bie, Margaret M.	De Jong, Jake
26	De Bie, Marvin	De Jong, Lena
27	De Boer, Fred	De Leeuw, Alice
28	De Leeuw, Sam	Dirkse, Catherine

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	De Soete, Agnes	Dirkse, Charles C.
2	De Soete, Andre	Dixon, Charles E.
3	De Vries, Abraham	Dixon, Geraldine A.
4	De Vries, Case	Doesberg, Hendrica
5	De Vries, Dick	Doesburg, Theodorus, P.
6	De Vries, Evelyn	Dolan, Marion
7	De Vries, Henry, Estate of	Dolan, Michael H.
8	De Vries, Hermina	Dominguez, Helen
9	De Vries, Jack H.	Dominguez, Manual
10	De Vries, Jane	Donkers, Henry A.
11	De Vries, Janice	Donkers, Nellie G.
12	De Vries, John	Dotta Bros.
13	De Vries, John J.	Douma Brothers Dairy
14	De Vries, Neil	Douma, Betty A.
15	De Vries, Ruth	Douma, Fred A.
16	De Vries, Theresa	Douma, Hendrika
17	De Wit, Gladys	Douma, Herman G.
18	De Wit, Peter S.	Douma, Narleen J.
19	De Wyn, Evert	Douma, Phillip M.
20	De Zoete, Hattie V.	Dow Chemical Co.
21	Do Zoete, Leo A.	Dragt, Rheta
22	Decker, Hallie	Dragt, William
23	Decker, Henry A.	Driftwood Dairy Farm
24	Demmer, Ernest	Droogh, Case
25	Di Carlo, Marie	Duhalde, Marian
26	Di Carlo, Victor	Duhalde, Lauren
27	Di Tommaso, Frank	Duits, Henrietta
28	Duits, John	Excelsior Farms F.D.I.C.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Dunlap, Edna Kraemer,	Fagundes, Frank M.
2	Estate of	Fagundes, Mary
3	Durrington, Glen	Fernandes, Joseph Jr.
4	Durrington, William F.	Fernandes, Velma C.
5	Dusi, John Sr.	Ferraro, Ann
6	Dykstra, Dick	Ferreira, Frank J.
7	Dykstra, John	Ferreira, Joe C. Jr.
8	Dykstra, John & Sons	Ferreira, Narcie
9	Dykstra, Wilma	Fillippi, J. Vintage Co.
10	Dyt, Cor	Filippi, Joseph
11	Dyt, Johanna	Filippi, Joseph A.
12	E and S Grape Growers	Filippi, Mary E.
13	Eaton, Thomas, Estate of	Fitzgerald, John R.
14	Echeverria, Juan	Flameling Dairy Inc.
15	Echeverria, Carlos	Flamingo Dairy
16	Echeverria, Pablo	Foss, Douglas E.
17	Eilers, E. Myrle	Foss, Gerald R.
18	Eilers, Henry W.	Foss, Russel
19	El Prado Golf Course	Fred & John Troost No. 1 Inc.
20	Ellsworth, Rex C.	Fred & Maynard Troost No. 2 Inc.
21	Engelsma, Jake	Freitas, Beatriz
22	Engelsma, Susan	Freitas, Tony T.
23	Escojeda, Henry	Gakle, Louis L.
24	Etiwanda Grape Products Co.	Galleano Winery, Inc.
25	Euclid Ave. Investment One	Galleano, Bernard D.
26	Euclid Ave. Investment Four	Galleano, D.
27	Euclid Ave. Three Investment	Galleano, Mary M.
28	Garcia, Pete	Hansen, Raymond F.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Gardner, Leland V.	Hanson, Ardeth W.
2	Gardner, Lola M.	Harada, James T.
3	Garrett, Leonard E.	Harada, Violet A.
4	Garrett, Patricia T.	Haringa, Earl and Sons
5	Gastelluberry, Catherine	Haringa, Herman
6	Gastelluberry, Jean	Haringa, Rudy
7	Gilstrap, Glen E.	Haringa, William
8	Gilstrap, Marjorie J.	Harper, Cecilia de Mille
9	Godinho, John	Harrington, Winona
10	Godinho, June	Harrison, Jacqueline A.
11	Gonsalves, Evelyn	Hatanaka, Kenichi
12	Gonsalves, John	Heida, Annie
13	Gorzeman, Geraldine	Heida, Don
14	Gorzeman, Henry A.	Heida, Jim
15	Gorzeman, Joe	Heida, Sam
16	Govea, Julia	Helms, Addison D.
17	Goyenetché, Albert	Helms, Irma A.
18	Grace, Caroline E.	Hermans, Alma I.
19	Grace, David J.	Hermans, Harry
20	Gravatt, Glenn W.	Hettinga, Arthur
21	Gravatt, Sally Mae	Hettinga, Ida
22	Greydanus Dairy, Inc.	Hettinga, Judy
23	Greydanus, Rena	Hettinga, Mary
24	Griffin Development Co.	Hettinga, Wilbur
25	Haagsma, Dave	Heublein, Inc., Grocery Products
26	Haagsma, John	Group
27	Hansen, Mary D.	Hibma, Catherine M.
28	Hibma, Sidney	Hohberg, Harold C.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Hicks, Kenneth I.	Hohberg, Harold W.
2	Hicks, Minnie M.	Holder, Arthur B.
3	Higgins Brick Co.	Holder, Dorothy F.
4	Highstreet, Alfred V.	Holmes, A. Lee
5	Highstreet, Evada V.	Holmes, Frances P.
6	Hilarides, Bertha as Trustee	Hoogeboom, Gertrude
7	Hilarides, Frank	Hoogeboom, Pete
8	Hilarides, John as Trustee	Hoogendam, John
9	Hindelang, Tillie	Hoogendam, Tena
10	Hindelang, William	Houssels, J. K. Thoroughbred
11	Hobbs, Bonnie C.	Farm
12	Hobbs, Charles W.	Hunt Industries
13	Hobbs, Hazel I.	Idsinga, Ann
14	Hobbs, Orlo M.	Idsinga, William W.
15	Hoekstra, Edward	Imbach Ranch, Inc.
16	Hoekstra, George	Imbach, Kenneth E.
17	Hoekstra, Grace	Imbach, Leonard K.
18	Hoekstra, Louie	Imbach, Oscar K.
19	Hofer, Paul B.	Imbach, Ruth M.
20	Hofer, Phillip F.	Indaburu, Jean
21	Hofstra, Marie	Indaburu, Marceline
22	Hogeboom, Jo Ann M.	Iseli, Kurt H.
23	Hogeboom, Maurice D.	Ito, Kow
24	Hogg, David V.	J & B Dairy Inc.
25	Hogg, Gene P.	Jaques, Johnny C. Jr.
26	Hogg, Warren G.	Jaques, Mary
27	Hohberg, Edith J.	Jaques, Mary Lou
28	Jay Em Bee Farms	Knevelbaard, John

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Johnson Bro's Egg Ranches, Inc.	Knudsen, Ejnar
2	Johnston, Ellwood W.	Knudsen, Karen M.
3	Johnston, George F. Co.	Knudsen, Kenneth
4	Johnston, Judith H.	Knudson, Robert
5	Jones, Leonard P.	Knudson, Darlene
6	Jongsma & Sons Dairy	Koel, Helen S.
7	Jongsma, Diana A.	Koetsier, Gerard
8	Jongsma, Dorothy	Koetsier, Gerrit J.
9	Jongsma, George	Koetsier, Jake
10	Jongsma, Harold	Koning, Fred W.
11	Jongsma, Henry	Koning, Gloria
12	Jongsma, John	Koning, J. W. Estate
13	Jongsma, Nadine	Koning, James A.
14	Jongsma, Tillie	Koning, Jane
15	Jordan, Marjorie G.	Koning, Jane C.
16	Jordan, Troy O.	Koning, Jennie
17	Jorritsma, Dorothy	Koning, John
18	Juliano, Albert	Koning, Victor A.
19	Kamper, Cornelis	Kooi Holstein Corporation
20	Kamstra, Wilbert	Koolhaas, Kenneth E.
21	Kaplan, Lawrence J.	Koolhaas, Simon
22	Kasbergen, Martha	Koolhaas, Sophie Grace
23	Kasbergen, Neil	Koopal, Grace
24	Kazian, Angelen Estate of	Koopal, Silas
25	Kingsway, Const. Corp.	Koopman, Eka
26	Klapps Market	Koopman, Gene T.
27	Kline, James K.	Koopman, Henry G.
28	Koopman, Ted	Leck, Arthur A.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Koopman, Tena	Leck, Evelyn M.
2	Koot, Nick	Lee, Harold E.
3	Koster, Aart	Lee, Helen J.
4	Koster, Frances	Lee, Henrietta C.
5	Koster, Henry B.	Lee, R. T. Construction Co.
6	Koster, Nellie	Lekkerkerk, Adriana
7	Kroes, Jake R.	Lekkerkerk, L. M.
8	Kroeze, Bros	Lekkerkerker, Nellie
9	Kroeze, Calvin E.	Lekkerkerker, Walt
10	Kroeze, John	Lewis Homes of California
11	Kroeze, Wesley	Livingston, Dorothy M.
12	Kruckenber, Naomi	Livingston, Rex E.
13	Kruckenber, Perry	Lokey, Rosemary Kraemer
14	L. D. S. Welfare Ranch	Lopes, Candida A.
15	Labrucherie, Mary Jane	Lopes, Antonio S.
16	Labrucherie, Raymond F.	Lopez, Joe D.
17	Lako, Samuel	Lourenco, Carlos, Jr.
18	Landman Corp.	Lourenco, Carmelina P.
19	Lanting, Broer	Lourenco, Jack C.
20	Lanting, Myer	Lourenco, Manual H.
21	Lass, Jack	Lourenco, Mary
22	Lass, Sandra L.	Lourenco, Mary
23	Lawrence, Cecelia, Estate of	Luiten, Jack
24	Lawrence, Joe H., Estate of	Luiz, John M.
25	Leal, Bradley W.	Luna, Christine I.
26	Leal, John C.	Luna, Ruben T.
27	Leal, John Craig	Lusk, John D. and Sons A California Corporation
28		
	Lyon, Gregory E.	Mickel, Louise

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Lyon, Paula E.	Miersma, Dorothy
2	M & W Co. #2	Meirsma, Harry C.
3	Madole, Betty M.	Minaberry, Arnaud
4	Madole, Larry B.	Minaberry, Marie
5	Marquez, Arthur	Mistretta, Frank J.
6	Marquine, Jean	Mocho and Plaa Inc.
7	Martin, Lelon O.	Mocho, Jean
8	Martin, Leon O.	Mocho, Noeline
9	Martin, Maria D.	Modica, Josephine
10	Martin, Tony J.	Montes, Elizabeth
11	Martins, Frank	Montes, Joe
12	Mathias, Antonio	Moons, Beatrice
13	Mc Cune, Robert M.	Moons, Jack
14	Mc Masters, Gertrude	Moramarco, John A. Enterprise
15	Mc Neill, J. A.	Moreno, Louis W.
16	Mc Neill, May F.	Moss, John R.
17	Mees, Leon	Motion Pictures Associates, Inc.
18	Mello and Silva Dairy	Moynier, Joe
19	Mello and Sousa Dairy	Murphy, Frances V.
20	Mello, Emilia	Murphy, Myrl L.
21	Mello, Enos C.	Murphy, Naomi
22	Mello, Mercedes	Nanne, Martin Estate of
23	Mendiondo, Catherine	Nederend, Betty
24	Mendiondo, Dominique	Nederend, Hans
25	Meth. Hosp. – Sacramento	Norfolk, James
26	Metzger, R. S.	Norfolk, Martha
27	Metzger, Winifred	Notrica, Louis
28	Nyberg, Lillian N.	Ormonde, Viva

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Nyenhuis, Annie	Ortega, Adeline B.
2	Nyenhuis, Jim	Ortega, Bernard Dino
3	Occidental Land Research	Osterkamp, Joseph S.
4	Okumura, Marion	Osterkamp, Margaret A.
5	Okumura, Yuiche	P I E Water Co.
6	Oldengarm, Effie	Palmer, Eva E.
7	Oldengarm, Egbert	Palmer, Walter E.
8	Oldengarm, Henry	Parente, Luis S.
9	Oliviera, Manuel L.	Parente, Mary Borba
10	Oliviera, Mary M.	Parks, Jack B.
11	Olson, Albert	Parks, Laura M.
12	Oltmans Construction Co.	Patterson, Lawrence E. Estate of
13	Omlin, Anton	Payne, Clyde H.
14	Omlin, Elsie L.	Payne, Margo
15	Ontario Christian School Assn.	Pearson, Athelia K.
16	Oord, John	Pearson, William C.
17	Oostdam, Jacoba	Pearson, William G.
18	Oostdam, Pete	Pene, Robert
19	Oosten, Agnes	Perian, Miller
20	Oosten, Anthonia	Perian, Ona E.
21	Oosten, Caroline	Petrissans, Deanna
22	Oosten, John	Petrissans, George
23	Oosten, Marinus	Petrissans, Jean P.
24	Oosten, Ralph	Petrissans, Marie T.
25	Orange County Water District	Pickering, Dora M.
26	Ormonde, Manuel	(Mrs. A. L. Pickering)
27	Ormonde, Pete, Jr.	Pierce, John
28	Pierce, Sadie	Righetti, A. T.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Pietszak, Sally	Riley, George A.
2	Pine, Joe	Riley, Helen C.
3	Pine, Virginia	Robbins, Jack K.
4	Pires, Frank	Rocha, John M.
5	Pires, Marie	Rocha, Jose C.
6	Plaa, Jeanne	Rodrigues, John
7	Plaa, Michel	Rodrigues, Manuel
8	Plantenga, Agnes	Rodrigues, Manuel, Jr.
9	Plantenga, George	Rodrigues, Mary L.
10	Poe, Arlo D.	Rodriguez, Daniel
11	Pomona Cemetery Assn.	Rogers, Jack D.
12	Porte, Cecelia, Estate of	Rohrer, John A.
13	Porte, Garritt, Estate of	Rohrer, Theresa D.
14	Portsmouth, Vera McCarty	Rohrs, Elizabeth H.
15	Ramella, Mary M.	Rossetti, M. S.
16	Ramirez, Concha	Roukema, Angeline
17	Rearick, Hildegard H.	Roukema, Ed.
18	Rearick, Richard R.	Roukema, Nancy
19	Reinalda, Clarence	Roukema, Siebren
20	Reitsma, Greta	Ruderian, Max J.
21	Reitsma, Louis	Russell, Fred J.
22	Rice, Bernice	Rusticus, Ann
23	Rice, Charlie E.	Rusticus, Charles
24	Richards, Karin	Rynsburger, Arie
25		
26	(Mrs. Ronnie Richards)	Rynsburger, Berdena, Trust
27	Richards, Ronald L.	Rynsburger, Joan Adele
28	Ridder, Jennie Wassenaar	Rynsburger, Thomas
	S. P. Annex, Inc.	Scott, Frances M.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Salisbury, Elinor J.	Scott, Linda F.
2	Sanchez, Edmundo	Scott, Stanley A.
3	Sanchez, Margarita O.	Scritsmier, Lester J.
4	Santana, Joe Sr.	Serl, Charles A.
5	Santana, Palmira	Serl, Rosalie P.
6	Satragni, John B. Jr.	Shady Grove Dairy, Inc.
7	Scaramella, George P.	Shamel, Burt A.
8	Schaafsma Bros.	Shelby, Harold E.
9	Schaafsma, Jennie	Shelby, John A.
10	Schaafsma, Peter	Shelby, Velma M.
11	Schaafsma, Tom	Shelton, Alice A.
12	Schaap, Andy	Sherwood, Robert W.
13	Schaap, Ids	Sherwood, Sheila J.
14	Schaap, Maria	Shue, Eva
15	Schacht, Sharon C.	Shue, Gilbert
16	Schakel, Audrey	Sieperda, Anne
17	Schakel, Fred	Sieperda, James
18	Schmid, Olga	Sigrist, Hans
19	Schmidt, Madeleine	Sigrist, Rita
20	Schoneveld, Evert	Silveira, Arline L.
21	Schoneveld, Henrietta	Silveira, Frank
22	Schoneveld, John	Silveira, Jack
23	Schoneveld, John Allen	Silveira, Jack P. Jr.
24	Schug, Donald E.	Simas, Dolores
25	Schug, Shirley A.	Simas, Joe
26	Schuh, Bernatta M.	Singleton, Dean
27	Schuh, Harold H.	Singleton, Elsie R.
28	Sinnott, Jim	Staal, John

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Sinnott, Mildred B.	Stahl, Zippora P.
2	Slegers, Dorothy	Stampfl, Berta
3	Slegers, Hubert J.	Stampfl, William
4	Slegers, Jake	Stanley, Robert E.
5	Slegers, Jim	Stark, Everett
6	Slegers, Lenwood M.	Stellingwerf, Andrew
7	Slegers, Martha	Stellingwerf, Henry
8	Slegers, Tesse J.	Stellingwerf, Jenette
9	Smith, Edward S.	Stellingwerf, Shana
10	Smith, Helen D.	Stellingwerf, Stan
11	Smith, James E.	Stelzer, Mike C.
12	Smith, Keith J.	Sterk, Henry
13	Smith, Lester W.	Stiefel, Winifred
14	Smith, Lois Maxine	Stiefel, Jack D.
15	Smith, Marjorie W.	Stigall, Richard L.
16	Soares, Eva	Stigall, Vita
17	Sogioka, Mitsuyoshi	Stockman's Inn
18	Sogioka, Yoshimato	Stouder, Charlotte A.
19	Sousa, Sam	Stouder, William C.
20	Southern Pacific Land Co.	Struikmans, Barbara
21	Southfield, Eddie	Struikmans, Gertie
22	Souza, Frank M.	Struikmans, Henry Jr.
23	Souza, Mary T.	Struikmans, Henry Sr.
24	Spickerman, Alberta	Struikmans, Nellie
25	Spickerman, Florence	Swager, Edward
26	Spickerman, Rudolph	Swager, Gerben
27	Spyksma, John	Swager, Johanna
28	Swager, Marion	Terpstra, Theodore G.

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Swierstra, Donald	Teune, Tony
2	Swierstra, Fanny	Teunissen, Bernard
3	Sybrandy, Ida	Teunissen, Jane
4	Sybrandy, Simon	Thomas, Ethel M.
5	Sytsma, Albert	Thommen, Alice
6	Sytsma, Edith	Thommen, Fritz
7	Sytsma, Jennie	Tillema, Allie
8	Sytsma, Louie	Tillema, Harold
9	Te Velde, Agnes	Tillema, Klaas D.
10	Te Velde, Bay	Timmons, William R.
11	Te Velde, Bernard A.	Tollerup, Barbara
12	Te Velde, Bonnie	Tollerup, Harold
13	Te Velde, Bonnie G.	Trapani, Louis A.
14	Te Velde, George	Trimlett, Arlene R.
15	Te Velde, George, Jr.	Trimlett, George E.
16	Te Velde, Harm	Tristant, Pierre
17	Te Velde, Harriet	Tuinhout, Ale
18	Te Velde, Henry J.	Tuinhout, Harry
19	Te Velde, Jay	Tuinhout, Hilda
20	Te Velde, Johanna	Tuls, Elizabeth
21	Te Velde, John H.	Tuls, Jack S.
22	Te Velde, Ralph A.	Tuls, Jake
23	Te Velde, Zwaantina, Trustee	Union Oil Company of California
24	Ter Maaten, Case	United Dairyman's Co-op.
25	Ter Maaten, Cleone	Urquhart, James G.
26	Ter Maaten, Steve	Usle, Cathryn
27	Terpstra, Carol	Usle, Faustino
28		
	V & Y Properties	Van Hofwegen, Clara

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Vaile, Beryl M.	Van Hofwegen, Jessie
2	Valley Hay Co.	Van Klaveren, A.
3	Van Beek Dairy Inc.	Van Klaveren, Arie
4	Van Canneyt Dairy	Van Klaveren, Wilhelmina
5	Van Canneyt, Maurice	Van Klaveren, William
6	Van Canneyt, Wilmer	Van Leeuwen, Arie C.
7	Van Dam, Bas	Van Leeuwen, Arie C.
8	Van Dam, Isabelle	Van Leeuwen, Arlan
9	Van Dam, Nellie	Van Leeuwen, Clara G.
10	Van Den Berg, Gertrude	Van Leeuwen, Cornelia L.
11	Van Den Berg, Joyce	Van Leeuwen, Harriet
12	Van Den Berg, Marinus	Van Leeuwen, Jack
13	Van Den Berg, Marvin	Van Leeuwen, John
14	Van Der Linden, Ardith	Van Leeuwen, Letie
15	Van Der Linden, John	Van Leeuwen, Margie
16	Van Der Linden, Stanley	Van Leeuwen, Paul
17	Van Der Veen, Kenneth	Van Leeuwen, William A.
18	Van Diest, Anna T.	Van Ravenswaay, Donald
19	Van Diest, Cornelius	Van Ryn Dairy
20	Van Diest, Ernest	Van Ryn, Dick
21	Van Diest, Rena	Van Surksum, Anthonetta
22	Van Dyk, Bart	Van Surksum, John
23	Van Dyk, Jeanette	Van Veen, John
24	Van Foeken, Martha	Van Vliet, Effie
25	Van Foeken, William	Van Vliet, Hendrika
26	Van Hofwegen, Steve	Van Vliet, Hugo
27	Van Hofwegen, Adrian A.	Van Vliet, Klaas
28		
	Vande Witte, George	Vander Laan, Katie

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Vanden Berge, Gertie	Vander Laan, Martin Jr.
2	Vanden Berge, Gertie	Vander Laan, Tillie
3	Vanden Berge, Jack	Vander Leest, Anna
4	Vanden Berge, Jake	Vander Leest, Ann
5	Vanden Brink, Stanley	Vander Meer, Alice
6	Vander Dussen, Agnes	Vander Meer, Dick
7	Vander Dussen, Cor	Vander Poel, Hank
8	Vander Dussen, Cornelius	Vander Poel, Pete
9	Vander Dussen, Edward	Vander Pol, Irene
10	Vander Dussen, Geraldine Marie	Vander Pol, Margie
11	Vander Dussen, James	Vander Pol, Marines
12	Vander Dussen, John	Vander Pol, William P.
13	Vander Dussen, Nelvina	Vander Schaaf, Earl
14	Vander Dussen, Rene	Vander Schaaf, Elizabeth
15	Vander Dussen, Sybrand Jr.	Vander Schaaf, Henrietta
16	Vander Dussen, Sybrand Sr.	Vander Schaaf, John
17	Vander Dussen Trustees	Vander Schaaf, Ted
18	Vander Eyk, Case Jr.	Vander Stelt, Catherine
19	Vander Eyk, Case Sr.	Vander Stelt, Clarence
20	Vander Feer, Peter	Vander Tuig, Arlene
21	Vander Feer, Rieka	Vander Tuig, Sylvester
22	Vander Laan, Ann	Vander Veen, Joe A.
23	Vander Laan, Ben	Vandervlag, Robert
24	Vander Laan, Bill	Vander Zwan, Peter
25	Vander Laan, Corrie	Vanderford, Betty W.
26	Vander Laan, Henry	Vanderford, Claud R.
27	Vander Laan, James	Vanderham, Adrian
28	Vanderham, Cornelius	Vestal, J. Howard

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Vanderham, Cornelius P.	Visser, Gerrit
2	Vanderham, Cory	Visser, Grace
3	Vanderham, E. Jane	Visser, Henry
4	Vanderham, Marian	Visser, Jess
5	Vanderham, Martin	Visser, Louie
6	Vanderham, Pete C.	Visser, Neil
7	Vanderham, Wilma	Visser, Sam
8	Vasquez, Eleanor	Visser, Stanley
9	Veenendaal, Evert	Visser, Tony D.
10	Veenendaal, John H.	Visser, Walter G.
11	Veiga, Dominick, Sr.	Von Der Ahe, Fredric T.
12	Verbree, Jack	Von Euw, George
13	Verbree, Tillie	Von Euw, Majorie
14	Verger, Bert	Von Lusk, a limited partnership
15	Verger, Betty	Voortman, Anna Marie
16	Verhoeven, Leona	Voortman, Edward
17	Verhoeven, Martin	Voortman, Edwin J.
18	Verhoeven, Wesley	Voortman, Gertrude Dena
19	Vermeer, Dick	Wagner, Richard H.
20	Vermeer, Jantina	Walker, Carole R.
21	Vernola Ranch	Walker, Donald E.
22	Vernola, Anthonietta	Walker, Wallace W.
23	Vernola, Anthony	Wardle, Donald M.
24	Vernola, Frank	Warner, Dillon B.
25	Vernola, Mary Ann	Warner, Minnie
26	Vernola, Pat F.	Wassenaar, Peter W.
27	Vestal, Frances Lorraine	Waters, Michael
28	Weeda, Adriana	Wiersma, Jake

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Weeda, Daniel	Wiersma, Otto
2	Weeks, O. L.	Wiersma, Pete
3	Weeks, Verona E.	Winchell, Verne H., Trustee
4	Weidman, Maurice	Wind, Frank
5	Weidman, Virginia	Wind, Fred
6	Weiland, Adaline I.	Wind, Hilda
7	Weiland, Peter J.	Wind, Johanna
8	Wesselink, Jules	Woo, Frank
9	West, Katharine R.	Woo, Sem Gee
10	West, Russel	Wybenga, Clarence
11	West, Sharon Ann	Wybenga, Gus
12	Western Horse Property	Wybenga, Gus K.
13	Westra, Alice	Wybenga, Sylvia
14	Westra, Henry	Wynja, Andy
15	Westra, Hilda	Wynja, Iona F.
16	Westra, Jake J.	Yellis, Mildred
17	Weststeyn, Freida	Yellis, Thomas E.
18	Weststeyn, Pete	Ykema-Harmsen Dairy
19	Whitehurst, Louis G.	Ykema, Floris
20	Whitehurst, Pearl L.	Ykema, Harriet
21	Whitmore, David L.	Yokley, Betty Jo
22	Whitmore, Mary A.	Yokley, Darrell A.
23	Whitney, Adolph M.	Zak, Zan
24	Wiersema, Harm	Zivelonghi, George
25	Wiersema, Harry	Zivelonghi, Margaret
26	Wiersma, Ellen H.	Zwaagstra, Jake
27	Wiersma, Gladys J.	Zwaagstra, Jessie M.
28		Zwart, Case

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

NON-PRODUCER WATER DISTRICTS

Chino Basin Municipal Water District
Chino Basin Water Conservation District
Pomona Valley Municipal Water District
Western Municipal Water District of Riverside County

DEFAULTING OVERLYING AGRICULTURAL PRODUCERS

Cheryl L. Bain	Roy W. Lantis
Warren Bain	Sharon I. Lantis
John M. Barcelona	Frank Lorenz
Letty Bassler	Dagney H. MacDonald
John Brazil	Frank E. Martin
John S. Briano	Ruth C. Martin
Lupe Briano	Connie S. Mello
Paul A. Briano	Naldiro J. Mello
Tillie Briano	Felice Miller
Arnie B. Carlson	Ted Miller
John Henry Fikse	Masao Nerio
Phyllis S. Fikse	Tom K. Nerio
Lewellyn Flory	Toyo Nerio
Mary I. Flory	Yuriko Nerio
L. H. Glazer	Harold L. Rees
Dorothy Goodman	Alden G. Rose
Sidney D. Goodman	Claude Rouleau, Jr.
Frank Grossi	Patricia M. Rouleau
Harada Brothers	Schultz Enterprises
Ellen Hettinga	Albert Shaw

EXHIBIT "C"

STIPULATING OVERLYING AGRICULTURAL PRODUCERS

1	Hein Hettinga	Lila Shaw
2	Dick Hofstra, Jr.	Cathy M. Stewart
3	Benjamin M. Hughey	Marvin C. Stewart
4	Frieda L. Hughey	Betty Ann Stone
5	Guillaume Indart	John B. Stone
6	Ellwood B. Johnston, Trustee	Vantoll Cattle Co., Inc.
7	Perry Kruckenberg, Jr.	Catherine Verburg
8	Martin Verburg	
9	Donna Vincent	
10	Larry Vincent	
11	Cliff Wolfe & Associates	
12	Ada M. Woll	
13	Zarubica Co.	

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EXHIBIT "D"

OVERLYING NON-AGRICULTURAL RIGHTS

<u>Party</u>	<u>Total Overlying Non-Agricultural Rights (Acre-Feet)</u>	<u>Share of Safe Yield (Acre-Feet)</u>
Ameron Steel Producers, Inc.	125	97.858
County of San Bernardino (Airport)	171	133.870
Conrock Company	406	317.844
Kaiser Steel Corporation	3,743	2,930.274
Red Star Fertilizer	20	15.657
Southern California Edison Co.	1,255	982.499
Space Center, Mira Loma	133	104.121
Southern Service Co. dba Blue Seal Linen	24	18.789
Sunkist Growers, Inc.	2,393	1,873.402
Carlsberg Mobile Home Properties, Ltd '73	593	464.240
Union Carbide Corporation	546	427.446
Quaker Chemical Co.	<u>0</u>	<u>0.000</u>
Totals	9,409	7,366.000

EXHIBIT “E”

<u>APPROPRIATIVE RIGHTS</u>			
<u>Party</u>	<u>Appropriative Right (Acre Feet)</u>	<u>Share of Initial Operating Safe Yield (Acre-Feet)</u>	<u>Share of Operating Safe Yield (Percent)</u>
City of Chino	5,271.7	3,670.067	6.693
City of Norco	289.5	201.545	0.368
City of Ontario	16,337.4	11,373.816	20.742
City of Pomona	16,110.5	11,215.852	20.454
City of Upland	4,097.2	2,852.401	5.202
Cucamonga County Water District	4,431.0	3,084.786	5.626
Jurupa Community Services District	1,104.1	768.655	1.402
Monte Vista County Water District	5,958.7	4,148.344	7.565
West San Bernardino County Water District	925.5	644.317	1.175
Etiwanda Water Company	768.0	534.668	0.975
Feldspar Gardens Mutual Water Company	68.3	47.549	0.087
Fontana Union Water Company	9,188.3	6,396.736	11.666
Marygold Mutual Water Company	941.3	655.317	1.195
Mira Loma Water Company	1,116.0	776.940	1.417
Monte Vista Irrigation Company	972.1	676.759	1.234
Mutual Water Company of Glen Avon Heights	672.2	467.974	0.853
Park Water Company	236.1	164.369	0.300
Pomona Valley Water Company	3,106.3	2,162.553	3.944
San Antonio Water Company	2,164.5	1,506.888	2.748
Santa Ana River Water Company	1,869.3	1,301.374	2.373
Southern California Water Company	1,774.5	1,235.376	2.253
West End Consolidated Water Company	<u>1,361.3</u>	<u>947.714</u>	<u>1.728</u>
TOTAL	78,763.8	55,834.000	100.000

EXHIBIT “F”

OVERLYING (AGRICULTURAL) POOL

POOLING PLAN

1. Membership in Pool. The State of California and all producers listed in Exhibit “C” shall be the initial members of this pool, which shall include all producers of water for overlying uses other than industrial or commercial purposes.

2. Pool Meetings. The members of the pool shall meet annually, in person or by proxy, at a place and time to be designated by Watermaster for purposes of electing members of the Pool Committee and conducting any other business of the pool. Special meetings of the membership of the pool may be called and held as provided in the rules of the pool.

3. Voting. All voting at meetings of pool members shall be on the basis of one vote for each 100 acre feet or any portion thereof of production from Chino Basin during the preceding year, as shown by the records of Watermaster.

4. Pool Committee. The Pool Committee for this pool shall consist of not less than nine (9) representatives selected at large by members of the pool. The exact number of members of the Pool Committee in any year shall be as determined by majority vote of the voting power of members of the pool in attendance at the annual pool meeting. Each member of the Pool Committee shall have one vote and shall serve for a two-year term. The members first elected shall classify themselves by lot so that approximately one-half serve an initial one-year term. Vacancies during any term shall be filled by a majority of the remaining members of the Pool Committee.

5. Advisory Committee Representatives. The number of representatives of the Pool Committee on the Advisory Committee shall be as provided in the rules of the pool from time to time but not exceeding ten (10). The voting power of the pool on the Advisory Committee shall be apportioned and exercised as determined from time to time by the Pool Committee.

6. Replenishment Obligation. The pool shall provide funds for replenishment of any production by persons other than members of the Overlying Non-Agricultural Pool or Appropriator Pool,

in excess of the pool's share of Safe Yield. During the first five (5) years of operations of the Physical Solution, reasonable efforts shall be made by the Pool Committee to equalize annual assessments.

7. Assessments. All assessments in this pool (whether for replenishment water cost or for pool administration or the allocated share of Watermaster administration) shall be in an amount uniformly applicable to all production in the pool during the preceding year or calendar quarter. Provided, however, that the Agricultural Pool Committee, may recommend to the Court modification of the method of assessing pool members, inter se, if the same is necessary to attain legitimate basin management objectives, including water conservation and avoidance of undesirable socio-economic consequences. Any such modification shall be initiated and ratified by one of the following methods:

(a) Excess Production. - In the event total pool production exceeds 100,000 acre feet in any year, the Pool Committee shall call and hold a meeting, after notice to all pool members, to consider remedial modification of the assessment formula.

(b) Producer Petition. - At any time after the fifth full year of operation under the Physical Solution, a petition by ten percent (10%) of the voting power or membership of the Pool shall compel the holding of a noticed meeting to consider revision of said formula of assessment for replenishment water.

In either event, a majority action of the voting power in attendance at such pool members' meeting shall be binding on the Pool Committee.

8. Rules. - The Pool Committee shall adopt rules for conducting meetings and affairs of the committee and for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

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EXHIBIT "G"

OVERLYING (NON-AGRICULTURAL) POOL

POOLING PLAN

1. Membership in Pool. The initial members of the pool, together with the decreed share of the Safe Yield of each, are listed in Exhibit "D". Said pool includes producers of water for overlying industrial or commercial non-agricultural purposes, or such producers within the Pool who may hereafter take water pursuant to Paragraph 8 hereof.

2. Pool Committee. The Pool Committee for this pool shall consist of one representative designated by each member of the pool. Voting on the committee shall be on the basis of one vote for each member, unless a volume vote is demanded, in which case votes shall be allocated as follows:

The volume voting power on the Pool Committee shall be 1,484 votes. Of these, 742 votes shall be allocated on the basis of one vote for each ten (10) acre feet or fraction thereof of decreed shares in Safe Yield. (See Exhibit "D"). The remaining 742 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year.⁸

Affirmative action of the Committee shall require a majority of the voting power of the members in attendance, provided that it includes concurrence by at least one-third of its total members.⁹

3. Advisory Committee Representatives. At least three (3) members of the Pool Committee shall be designated by said committee to serve on the Advisory Committee. The exact number of such representatives at any time shall be as determined by the Pool Committee. The voting power of the pool shall be exercised in the Advisory Committee as a unit, based upon the vote of a majority of said representatives.

⁸ Or production assessments paid under Water Code Section 72140 et seq., as to years prior to the second year of operation under the Physical Solution hereunder.

⁹ Order dated October 8, 2010.

4. Replenishment Obligation. The pool shall provide funds for replenishment of any production in excess of the pool's share of Safe Yield in the preceding year.

5. Assessments.¹⁰

(a) Replenishment Assessments. Each member of this pool shall pay an assessment equal to the cost of replenishment water times the number of acre feet of production by such producer during the preceding year in excess of (a) his decreed share of the Safe Yield, plus (b) any carry-over credit under Paragraph 7 hereof.

(b) Administrative Assessments. In addition, the cost of the allocated share of Watermaster administration expense shall be recovered on an equal assessment against each acre foot of production in the pool during such preceding fiscal year or calendar quarter; and in the case of Pool members who take substitute ground water as set forth in Paragraph 8 hereof, such producer shall be liable for its share of administration assessment, as if the water so taken were produced, up to the limit of its decreed share of Safe Yield.

(c) Special Project OBMP Assessment. Each year, every member of this Pool will dedicate ten (10) percent of their annual share of Operating Safe Yield to Watermaster or in lieu thereof Watermaster will levy a Special Project OBMP Assessment in an amount equal to ten percent of the Pool member's respective share of Safe Yield times the then-prevailing MWD Replenishment Rate.

6. Assignment. Rights herein decreed are appurtenant to *that* land and are only assignable with the land for overlying use thereon; provided, however, (a) that any appropriator who may, directly or indirectly, undertake to provide water service to such overlying lands may, by an appropriate agency agreement on a form approved by Watermaster, exercise said overlying right to the extent, but only to the extent necessary to provide water service to said overlying lands, and (b) *the members of the pool shall have the right to Transfer or lease their quantified production rights within the pool or to*

¹⁰ Order dated December 21, 2007.

Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000 for the term of the Peace Agreement.¹¹

7. Carry-over. Any member of the pool who produces less than its assigned water share of Safe Yield may carry such unexercised right forward for exercise in subsequent years. The first water produced during any such subsequent year shall be deemed to be an exercise of such carry-over right. In the event the aggregate carry-over by any pool member exceeds its share of Safe Yield, such member shall, as a condition of preserving such surplus carryover, execute a storage agreement with Watermaster.

8. Substitute Supplies. To the extent that any Pool member, at the request of Watermaster and with the consent of the Advisory Committee, takes substitute surface water in lieu of producing ground water otherwise subject to production as an allocated share of Safe Yield, said party shall nonetheless remain a member of this Pool.

9. Physical Solution Transfers. All overlying rights are appurtenant to the land and cannot be assigned or conveyed separate or apart therefrom except that for the term of the Peace Agreement the members of the Overlying (Non-Agricultural) Pool shall have the discretionary right to Transfer or lease their quantified Production rights and carry-over water held in storage accounts in quantities that each member may from time to time individually determine as Transfers in furtherance of the Physical Solution: (i) within the Overlying (Non-Agricultural) Pool; (ii) to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000; (iii) in conformance with the procedures described in Paragraph I of the Purchase and Sale Agreement for the Purchase of Water by Watermaster from Overlying (Non-Agricultural Pool dated June 30, 2007; or (iv) to Watermaster and thence to members of the Appropriative Pool in accordance with the following guidelines and those procedures Watermaster may further provide in Watermaster's Rules and Regulations:

¹¹ Order dated September 28, 2000 and Order dated April 19, 2001.

(a) By December 31 of each year, the members of the Overlying (Non-Agricultural) Pool shall notify Watermaster of the amount of water each member shall make available in their individual discretion for purchase by the Appropriators. By January 31 of each year, Watermaster shall provide a Notice of Availability of each Appropriator's pro-rata share of such water;

(b) Except as they may be limited by paragraph 9(e) below, each member of the Appropriative Pool will have, in their discretion, a right to purchase its pro-rata share of the supply made available from the Overlying (Non-Agricultural) Pool at the price established in 9(d) below. Each Appropriative Pool member's pro-rata share of the available supply will be based on each Producer's combined total share of Operating Safe Yield and the previous year's actual Production by each party;

(c) If any member of the Appropriative Pool fails to irrevocably commit to their allocated share by March 1 of each year, its share of the Overlying (Non-Agricultural) Pool water will be made available to all other members of the Appropriative Pool according to the same proportions as described in 9(b) above and at the price established in Paragraph 9(d) below. Each member of the Appropriative Pool shall complete its payment for its share of water made available by June 30 of each year.

(d) Commensurate with the cumulative commitments by members of the Appropriative Pool pursuant to (b) and (c) above, Watermaster will purchase the surplus water made available by the Overlying (Non-Agricultural) Pool water on behalf of the members of the Appropriative Pool on an annual basis at 92% of the then-prevailing "MWD Replenishment Rate" and each member of the Appropriative Pool shall complete its payment for its determined share of water made available by June 30 of each year.

(e) Any surplus water cumulatively made available by all members of the Overlying (Non-Agricultural) Pool that is not purchased by Watermaster after completion of the process set forth herein will be pro-rated among the members of the Pool in proportion to the total quantity offered for transfer in accordance with this provision and may be retained by the

Overlying (Non-Agricultural) Pool member without prejudice to the rights of the members of the Pool to make further beneficial use or transfer of the available surplus.

(f) Each Appropriator shall only be eligible to purchase their pro-rata share under this procedure if the party is: (i) current on all their assessments; and (ii) in compliance with the OBMP.

(g) The right of any member of the Overlying (Non-Agricultural) Pool to transfer water in accordance with this Paragraph 9(a)-(c) in any year is dependent upon Watermaster making a finding that the member of the Overlying (Non-Agricultural) Pool is using recycled water where it is both physically available and appropriate for the designated end use in lieu of pumping groundwater.

(h) Nothing herein shall be construed to affect or limit the rights of any Party to offer or accept an assignment as authorized by the Judgment Exhibit "G" paragraph 6 above, or to affect the rights of any Party under a valid assignment.

910. Rules. The Pool Committee shall adopt rules for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

EXHIBIT "H"
APPROPRIATIVE POOL
POOLING PLAN

1. Qualification for Pool. Any city, district or other public entity and public utility -- either regulated under Public Utilities Commission jurisdiction, or exempt therefrom as a non-profit mutual water company (other than those assigned to the Overlying (Agricultural) Pool) -- shall be a member of this pool. All initial members of the pool are listed in Exhibit "E", together with their respective appropriative rights and acre foot allocation and percentage shares of the initial and subsequent Operating Safe Yield.

2. Pool Committee. The Pool Committee shall consist of one (1) representative appointed by each member of the Pool.

3. Voting. The total voting power on the Pool Committee shall be 1,000 votes. Of these, 500 votes shall be allocated in proportion to decreed percentage shares in Operating Safe Yield. The remaining 500 votes shall be allocated proportionally on the basis of assessments paid to Watermaster during the preceding year. Routine business of the Pool Committee may be conducted on the basis of one vote per member, but upon demand of any member a weighted vote shall be taken. Affirmative action of the Committee shall require a majority of the voting power of members in attendance, provided that it includes concurrence by at least one-third of its total members.

4. Advisory Committee Representatives. **Members of the Pool Committee shall be designated to represent this pool on the Advisory Committee *on the following basis:* Each major appropriator, i.e., the owner of an adjudicated appropriative right in excess of 3,000 acre feet, or each appropriator that produces in excess of 3,000 acre feet based upon the prior year's production, shall be entitled to one representative. Two additional representatives of the Appropriative Pool on the Advisory Committee shall be elected at large by the remaining members of the pool. The voting power of the Appropriative Pool on the Advisory Committee shall be apportioned between the major appropriator representatives in proportion to their respective voting power in the Pool Committee. The two representatives of the remaining appropriators shall exercise equally the voting power proportional to the Pool Committee voting power of said**

remaining appropriators; provided, however, that if any representative fails to attend an Advisory Committee meeting, the voting power of that representative shall be allocated among the representatives of the Appropriative Pool in attendance in the same proportion as their respective voting powers.¹²

5. Replenishment Obligation. The pool shall provide funds for purchase of replenishment water to replace any production by the pool in excess of Operating Safe Yield during the preceding year.

6. Administrative Assessment. Costs of administration of this pool and its share of general Watermaster expense shall be recovered by a uniform assessment applicable to all production during the preceding year.

7. Replenishment Assessment. The cost of replenishment water required to replace production from Chino Basin in excess of Operating Safe Yield in the preceding year shall be allocated and recovered as follows:

(a) For production, other than for increased export,
within CBMWD or WMWD:

(1) Gross Assessment. 15% of such replenishment water costs shall be recovered by a uniform assessment against all production of each appropriator producing in said area during the preceding year.

(2) Net Assessment. The remaining 85% of said costs shall be recovered by a uniform assessment on each acre foot of production from said area by each such appropriator in excess of his allocated share of Operating Safe Yield during said preceding year.

(b) For production which is exported for use outside Chino Basin in excess of maximum export in any year through 1976, such increased export production shall be assessed against the exporting appropriator in an amount sufficient to purchase replenishment water from CBMWD or WMWD in the amount of such excess.

¹² Order dated September 18, 1996.

(c) For production within SBVMWD or PVMWD:

By an assessment on all production in excess of an appropriator's share of Operating Safe Yield in an amount sufficient to purchase replenishment water through SBVMWD or MWD in the amount of such excess.

8. Socio-Economic Impact Review. The parties have conducted certain preliminary socio-economic impact studies. Further and more detailed socio-economic impact studies of the assessment formula and its possible modification shall be undertaken for the Appropriator Pool by Watermaster no later than ten (10) years from the effective date of this Physical Solution, or whenever total production by this pool has increased by 30% or more over the decreed appropriative rights, whichever is first.

9. Facilities Equity Assessment. Watermaster may, upon recommendation of the Pool Committee, institute proceedings for levy and collection of a Facilities Equity Assessment for the purposes and in accordance with the procedures which follow:

(a) Implementing Circumstances. - There exist several sources of supplemental water available to Chino Basin, each of which has a differential cost and quantity available. The optimum management of the entire Chino Basin water resource favors the maximum use of the lowest cost supplemental water to balance the supplies of the Basin, in accordance with the Physical Solution. The varying sources of supplemental water include importations from MWD and SBVMWD, importation of surface and ground water supplies from other basins in the immediate vicinity of Chino Basin, and utilization of reclaimed water. In order to fully utilize any of such alternate sources of supply, it will be essential for particular appropriators having access to one or more of such supplies to have invested, or in the future to invest, directly or indirectly, substantial funds in facilities to obtain and deliver such water to an appropriate point of use. To the extent that the use of less expensive alternative sources of supplemental water can be maximized by the inducement of a Facilities Equity Assessment, as herein provided, it is to the long-term benefit of the entire basin that such assessment be authorized and levied by Watermaster.

(b) Study and Report. - At the request of the Pool Committee, Watermaster shall undertake a survey study of the utilization of alternate supplemental supplies by

members of the Appropriative Pool which would not otherwise be utilized and shall prepare a report setting forth the amount of such alternative supplies being currently utilized, the amount of such supplies which could be generated by activity within the pool, and the level of cost required to increase such uses and to optimize the total supplies available to the basin. Said report shall contain an analysis and recommendation for the levy of a necessary Facilities Equity Assessment to accomplish said purpose.

(c) Hearing. - If the said report by Watermaster contains a recommendation for imposition of a Facilities Equity Assessment, and the Pool Committee so requests, Watermaster shall notice and hold a hearing not less than 60 days after distribution of a copy of said report to each member of the pool, together with a notice of the hearing date. At such hearing, evidence shall be taken with regard to the necessity and propriety of the levy of a Facilities Equity Assessment and full findings and decision shall be issued by Watermaster.

(d) Operation of Assessment. - If Watermaster determines that it is appropriate that a Facilities Equity Assessment be levied in a particular year, the amount of additional supplemental supplies which should be generated by such assessment shall be estimated. The cost of obtaining such supplies, taking into consideration the investment in necessary facilities shall then be determined and spread equitably among the producers within the pool in a manner so that those producers not providing such additional lower cost supplemental water, and to whom a financial benefit will result, may bear a proportionate share of said costs, not exceeding said benefit; provided that any producer furnishing such supplemental water shall not thereby have its average cost of water in such year reduced below such producer's average cost of pumping from the Basin. In so doing, Watermaster shall establish a percentage of the total production by each party which may be produced without imposition of a Facilities Equity Assessment. Any member of the pool producing more water than said percentage shall pay such Facilities Equity Assessment on any such excess production. Watermaster is authorized to transmit and pay the proceeds of such Facilities Equity Assessment to those producers who take less than their share of Basin water by reason of furnishing a higher percentage of their requirements through use of supplemental water.

10. Unallocated Safe Yield Water. To the extent that, in any five years, any portion of the share of Safe Yield allocated to the Overlying (Agricultural) Pool is not produced, such water shall be available for reallocation to members of the Appropriative Pool, as follows:

(a) Priorities. - Such allocation shall be made in the following sequence:

(1) to supplement, in the particular year, water available from Operating Safe Yield to compensate for any reduction in the Safe Yield by reason of recalculation thereof after the tenth year of operation hereunder.

(2) pursuant to conversion claims as defined in Subparagraph (b) hereof.

(3) as a supplement to Operating Safe Yield, without regard to reductions in Safe Yield.

(b) Conversion Claims.¹³ The following procedures may be utilized by any appropriator:

1) Record of Unconverted Agricultural Acreage. Watermaster shall maintain on an ongoing basis a record with appropriate related maps of all agricultural acreage within the Chino Basin subject to being converted to appropriative water use pursuant to the provisions of this subparagraph. An initial identification of such acreage as of June 30, 1995 is attached hereto as Appendix 1.

(2) Record of Water Service Conversion. Any appropriator who undertakes to permanently provide water service to lands *subject to conversion* may report such intent to change water service to Watermaster. Watermaster *should* thereupon verify such change in water service and shall maintain a record and account for each appropriator of the total acreage involved. *Should, at any time, converted acreage return to water service from the Overlying (Agricultural) Pool, Watermaster shall return such acreage to unconverted status*

¹³ Order dated November 17, 1995.

and correspondingly reduce or eliminate any allocation accorded to the appropriator involved.

(3) Allocation of Safe Yield Rights

(i) *For the term of the Peace Agreement in any year in which sufficient unallocated Safe Yield from the Overlying (Agricultural) Pool is available for such conversion claims, Watermaster shall allocate to each appropriator with a conversion claim 2.0 acre feet of unallocated Safe Yield water for each converted acre for which conversion has been approved and recorded by the Watermaster.*¹⁴

(ii) *In any year in which the unallocated Safe Yield water from the Overlying (Agricultural) Pool is not sufficient to satisfy all outstanding conversion claims pursuant to subparagraph (i) herein above, Watermaster shall establish allocation percentages for each appropriator with conversion claims. The percentages shall be based upon the ratio of the total of such converted acreage approved and recorded for each appropriators's account in comparison to the total of converted acreage approved and recorded for all appropriators. Watermaster shall apply such allocation percentage for each appropriator to the total unallocated Safe Yield water available for conversion claims to derive the amount allocable to each appropriator.*

(4) Notice and Allocation. Notice of the special allocation of Safe Yield water pursuant to conversion claims shall be given to each appropriator and shall be treated for purposes of this Physical Solution as an addition to such appropriator's share of the Operating Safe Yield for the particular year only.

¹⁴ Order dated September 28, 2000 and Order dated April 19, 2001.

(5) Administrative Costs. Any costs of Watermaster attributable to the administration of such special allocations and conversion claims shall be assessed against the appropriators participating in such reporting, apportioned in accordance with the total amount of converted acreage held by each appropriator participating in the conversion program.

11. In Lieu Procedures. There are, or may develop, certain areas within Chino Basin where good management practices dictate that recharge of the basin be accomplished, to the extent practical, by taking surface supplies of supplemental water in lieu of ground water otherwise subject to production as an allocated share of Operating Safe Yield.

(a) Method of Operation. - An appropriator producing water within such designated in lieu area who is willing to abstain for any reason from producing any portion of such producer's share of Operating Safe Yield in any year may offer such unpumped water to Watermaster. In such event, Watermaster shall purchase said water in place, in lieu of spreading replenishment water, which is otherwise required to make up for over production. The purchase price for in lieu water shall be the lesser of:

- (1) Watermaster's current cost of replenishment water, whether or not replenishment water is currently then obtainable, plus the cost of spreading; or
- (2) The cost of supplemental surface supplies to the appropriator, less
 - a. said appropriator's average cost of ground water production, and
 - b. the applicable production assessment were the water produced.

Where supplemental surface supplies consist of MWD or SBVMWD supplies, the cost of treated, filtered State water from such source shall be deemed the cost of supplemental surface supplies to the appropriator for purposes of such calculation.

In any given year in which payments may be made pursuant to a Facilities Equity Assessment, as to any given quantity of water the party will be entitled to payment under this section or pursuant to the Facilities Equity Assessment, as the party elects, but not under both.

(b) Designation of In Lieu Areas. - The first in lieu area is designated as the "In Lieu Area No. 1" and consists of an area wherein nitrate levels in the ground water generally exceed 45 mg/l, and is shown on Exhibit "J" hereto. Other in lieu areas may be designated by subsequent order of Watermaster upon recommendation or approval by Advisory Committee. Said in lieu areas may be enlarged, reduced or eliminated by subsequent orders; provided, however, that designation of In Lieu Areas shall be for a minimum fixed term sufficient to justify necessary capital investment. In Lieu Area No. 1 may be enlarged, reduced or eliminated in the same manner, except that any reduction of its original size or elimination thereof shall require the prior order of Court.

12. Carry-over. Any appropriator who produces less than his assigned share of Operating Safe Yield may carry such unexercised right forward for exercise in subsequent years. The first water produced during any such subsequent year shall be deemed to be an exercise of such carry-over right. In the event the aggregate carry-over by any appropriator exceeds its share of Operating Safe Yield, such appropriator shall, as a condition of preserving such surplus carry-over, execute a storage agreement with Watermaster. Such appropriator shall have the option to pay the gross assessment applicable to such carry-over in the year in which it accrued.

13. Assignment, Transfer and Lease. Appropriative rights, and corresponding shares of Operating Safe Yield, may be assigned or may be leased or licensed to another appropriator for exercise in a given year. Any transfer, lease or license shall be ineffective until written notice thereof is furnished to and approved as to form by Watermaster, in compliance with applicable Watermaster rules. Watermaster shall not approve transfer, lease or license of a right for exercise in an area or under conditions where such production would be contrary to sound basin management or detrimental to the rights or operations of other producers.

14. Rules. The Pool Committee shall adopt rules for administering its program and in amplification of the provisions, but not inconsistent with, this pooling plan.

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EXHIBIT "I"

ENGINEERING APPENDIX

1. Basin Management Parameters. In the process of implementing the physical solution for Chino Basin, Watermaster shall consider the following parameters:

(a) Pumping Patterns. - Chino Basin is a common supply for all persons and agencies utilizing its waters. It is an objective in management of the Basin's waters that no producer be deprived of access to said waters by reason of unreasonable pumping patterns, nor by regional or localized recharge of replenishment water, insofar as such result may be practically avoided.

(b) Water Quality. - Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster.

(c) Economic Considerations. - Financial feasibility, economic impact and the cost and optimum utilization of the Basin's resources and the physical facilities of the parties are objectives and concerns equal in importance to water quantity and quality parameters.

2. Hydraulic Control and Re-Operation. In accordance with the purpose and objective of the Physical Solution to "establish a legal and practical means for making the maximum reasonable beneficial use of the waters of the Chino Basin" (paragraph 39) including but not limited to the use and recapture of reclaimed water (paragraph 49(a)) and the identified Basin Management Parameters set forth above, Watermaster will manage the Basin to secure and maintain Hydraulic Control through controlled overdraft.

(a) **Hydraulic Control.** "Hydraulic Control" means the reduction of groundwater discharge from the Chino North Management Zone to the Santa Ana River to de minimus quantities. The Chino North Management Zone is more fully described and set forth in Attachment I-1 to this Engineering Appendix. By obtaining Hydraulic Control, Watermaster will ensure that the water management activities in the Chino North Management Zone do not cause

materially adverse impacts to the beneficial uses of the Santa Ana River downstream of Prado Dam.

(b) **Re-Operation.** “Re-Operation” means the controlled overdraft of the Basin by the managed withdrawal of groundwater for the Desalters and the potential increase in the cumulative un-replenished Production from 200,000 acre-feet authorized by paragraph 3 below, to 600,000 acre feet for the express purpose of securing and maintaining Hydraulic Control as a component of the Physical Solution.

[1] The increase in the controlled overdraft herein is separate from and in addition to the 200,000 acre-feet of accumulated overdraft authorized in paragraph 3(a) and 3(b) below over the period of 1978 through 2017.

[2] “Desalters” means the Chino I Desalter, the Chino I Expansion, the Chino II Desalter and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin water, including extraction wells and transmission facilities for delivery of groundwater to the Desalter. Desalter treatment and delivery facilities for the desalted water include pumping and storage facilities and treatment and disposal capacity in the Santa Ana Regional Interceptor.

[3] The groundwater Produced through controlled overdraft pursuant to Re-Operation does not constitute New Yield or Operating Safe Yield and it is made available under the Physical Solution for the express purpose of satisfying some or all of the groundwater Production by the Desalters until December 31, 2030. (“Period of Re-Operation”).

[4] The operation of the Desalters, the Production of groundwater for the Desalters and the use of water produced by the Desalters pursuant to Re-Operation are

subject to the limitations that may be set forth in Watermaster Rules and Regulations for the Desalters.

(5) Watermaster will update its Recharge Master Plan and obtain Court approval of its update, to address how the Basin will be contemporaneously managed to secure and maintain Hydraulic Control and operated at a new equilibrium at the conclusion of the period of Re-Operation. The Recharge Master Plan shall contain recharge projections and summaries of the projected water supply availability as well as the physical means to accomplish recharge projections. The Recharge Master Plan may be amended from time to time with Court approval.

(6) Re-Operation and Watermaster's apportionment of controlled overdraft in accordance with the Physical Solution will not be suspended in the event that Hydraulic Control is secured in any year before the full 400,000 acre-feet has been Produced without Replenishment, so long as: (i) Watermaster has prepared, adopted and the Court has approved a contingency plan that establishes conditions and protective measures that will avoid unreasonable and unmitigated material physical harm to a party or to the Basin and that equitably distributes the cost of any mitigation attributable to the identified contingencies; and (ii) Watermaster is in substantial compliance with a Court approved Recharge Master Plan.¹⁵

3. Operating Safe Yield. Operating Safe Yield in any year shall consist of the Appropriative Pool's share of Safe Yield of the Basin, plus any controlled overdraft of the Basin which Watermaster may authorize. In adopting the Operating Safe Yield for any year, Watermaster shall be limited as follows:

(a) Accumulated Overdraft. - During the operation of this Judgment and Physical Solution, the overdraft accumulated from and after the effective date of the Physical Solution and

¹⁵ Order dated December 21, 2007.

resulting from an excess of Operating Safe Yield over Safe Yield shall not exceed 200,000 acre feet.

(b) Quantitative Limits. - In no event shall Operating Safe Yield in any year be less than the Appropriative Pool's share of Safe Yield, nor shall it exceed such share of Safe Yield by more than 10,000 acre feet. The initial Operating Safe Yield is hereby set at 54,834 acre feet per year. Operating Safe Yield shall not be changed upon less than five (5) years' notice by Watermaster. Nothing contained in this paragraph shall be deemed to authorize, directly or indirectly, any modification of the allocation of shares in Safe Yield to the overlying pools, as set forth in Paragraph 44 of the Judgment.

4. Ground Water Storage Agreements. Any agreements authorized by Watermaster for storage of supplemental water in the available ground water storage capacity of Chino Basin shall include, but not be limited to:

- (a) The quantities and term of the storage right.
- (b) A statement of the priority or relation of said right, as against overlying or Safe Yield uses, and other storage rights.
- (c) The procedure for establishing delivery rates, schedules and procedures which may include:
 - [1] spreading or injection, or
 - [2] in lieu deliveries of supplemental water for direct use.
- (d) The procedures for calculation of losses and annual accounting for water in storage by Watermaster.
- (e) The procedures for establishment and administration of withdrawal schedules, locations and methods.

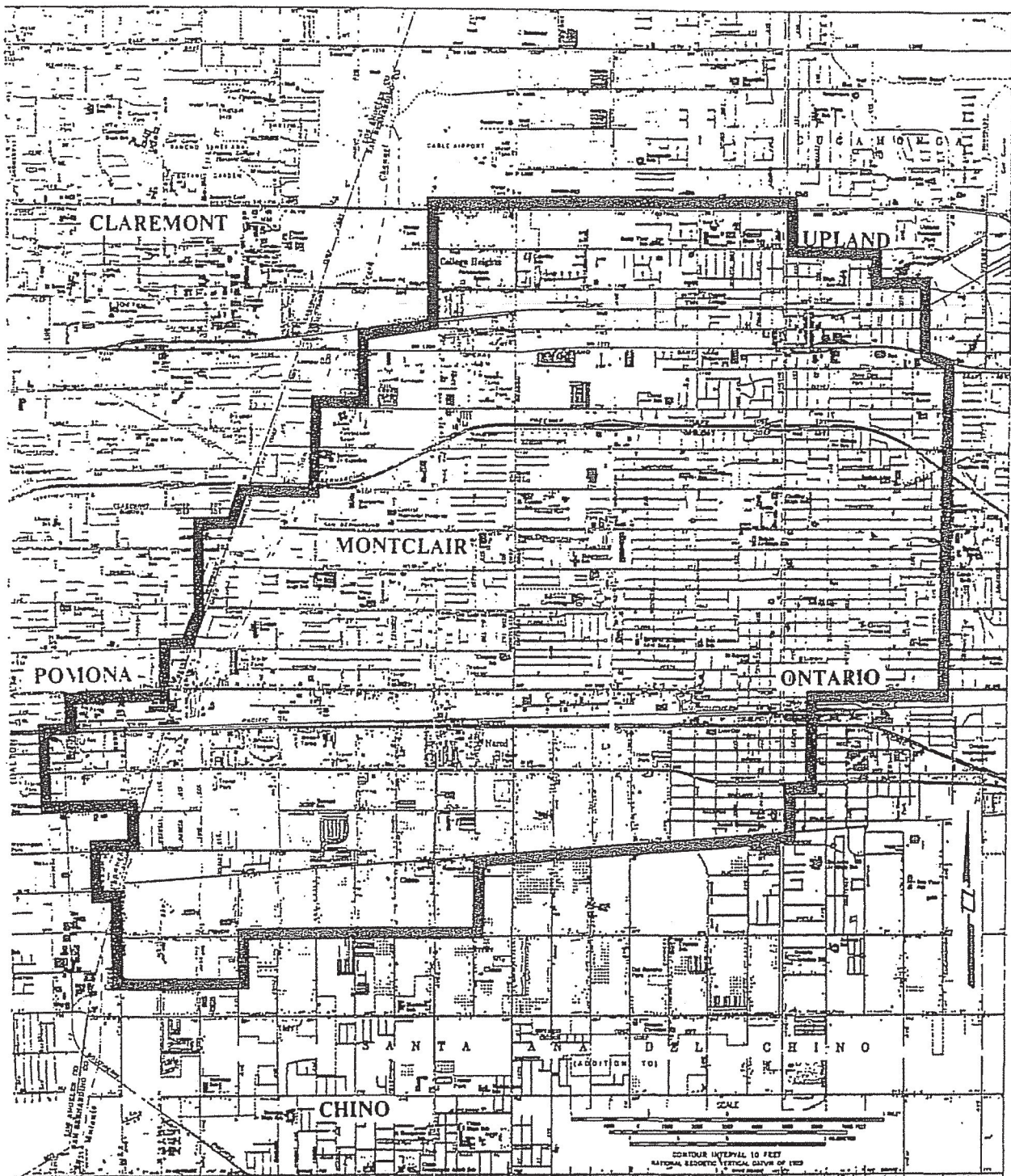
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CHINO BASIN
IN LIEU AREA NO. 1

EXHIBIT "J"

EXHIBIT "K"
LEGAL DESCRIPTION
OF CHINO BASIN

Preamble

All of the townships and ranges referred to in the following legal description are the San Bernardino Base and Meridian. Certain designated sections are implied as the System of Government Surveys may be extended where not established. Said sections are identified as follows:

Section 20, T1N, R8W is extended across Rancho Cucamonga;

Section 36, T1N, R8W is extended across the City of Upland;

Sections 2,3, and 4, T1S, R7W are extended across Rancho Cucamonga;

Section 10, T1S, R8W is extended across the City of Claremont;

Sections 19, 20, 21, 30, 31 and 32, T1S, R8W are extended across the City of Pomona;

Sections 4, 5, and 28, T2S, R8W are extended across Rancho Santa Ana Del Chino;

Sections 15 and 16, T3S, R7W are extended across Rancho La Sierra; and

Sections 17 and 20, T3S, R7W are extended across Rancho El Rincon.

Description

Chino Basin is included within portions of the Counties of San Bernardino, Riverside and Los Angeles, State of California, bounded by a continuous line described as follows:

EXHIBIT "K"

BEGINNING at the Southwest corner of Lot 241 as shown on Map of Ontario Colony Lands, recorded in Map Book 11, page 6, Office of the County Recorder of San Bernardino County, said corner being the Point of Beginning;

1. Thence Southeasterly to the Southeast corner of Lot 419 of said Ontario Colony Lands;
2. Thence Southeasterly to a point 1300 feet North of the South line and 1300 feet East of the West line of Section 4, T1S, R7W;
3. Thence Easterly to a point on the East line of Section 4, 1800 feet North of the Southeast corner of said Section 4;
4. Thence Easterly to the Southeast corner of the Southwest quarter of the Northeast quarter of Section 3, T1S, R7W;
5. Thence Northeasterly to a point on the North line of Section 2, T1S, R7W, 1400 feet East of the West line of said Section 2;
6. Thence Northeasterly to the Southwest corner of Section 18, T1N, R6W;
7. Thence Northerly to the Northwest corner of said Section 18;
8. Thence Easterly to the Northeast corner of said Section 18;

9. Thence Northerly to the Northwest corner of the Southwest Quarter of Section 8, T1N, R6W;
10. Thence Easterly to the Northeast corner of said Southwest quarter of said Section 8;
11. Thence Southerly to the Southeast corner of said Southwest Quarter of said Section 8;
12. Thence Easterly to the Northeast corner of Section 17, T1N, R6W;
13. Thence Easterly to the Northeast corner of Section 16, T1N, R6W;
14. Thence Southeasterly to the Northwest corner of the Southeast quarter of Section 15, T1N, R6W;
15. Thence Easterly to the Northeast corner of said Southeast quarter of said Section 15;
16. Thence Southeasterly to the Northwest corner of the Northeast quarter of Section 23, T1N, R6W;
17. Thence Southeasterly to the Northwest corner of Section 25, T1N, R6W;
18. Thence Southeasterly to the Northwest corner of the Northeast quarter of Section 31, T1N, R5W;
19. Thence Southeasterly to the Northeast corner of the Northwest quarter of Section 5, T1S, R5W;
20. Thence Southeasterly to the Southeast corner of Section 4, T1S, R5W;
21. Thence Southeasterly to the Southeast corner of the Southwest quarter of Section 11, T1S, R5W;
22. Thence Southwesterly to the Southwest corner of Section 14, T1S, R5W;

23. Thence Southwest to the Southwest corner of Section 22, T1S, R5W;
24. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 6, T2S, R5W;
25. Thence Southeasterly to the Northeast corner of Section 18, T2S, R5W;
26. Thence Southwesterly to the Southwest corner of the Southeast quarter of Section 13, T2S,
R6W;
27. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 26, T2S, R6W;
28. Thence Westerly to the Southwest corner of the Northwest quarter of said Section 26;
29. Thence Northerly to the Northwest corner of said Section 26;
30. Thence Westerly to the Southwest corner of Section 21, T2S, R6W;
31. Thence Southerly to the Southeast corner of Section 29, T2S, R6W;
32. Thence Westerly to the Southeast corner of Section 30, T2S, R6W;
33. Thence Southwesterly to the Southwest corner of Section 36, T2S, R7W;
34. Thence Southwesterly to the Southeast corner of Section 3, T3S, R7W;
35. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 10, T3S, R7W;

36. Thence Southerly to the Northeast corner of the Northwest quarter of Section 15, T3S, R7W;
37. Thence Southwesterly to the Southeast corner of the Northeast quarter of Section 16, T3S, R7W;
38. Thence Southwesterly to the Southwest corner of said Section 16;
39. Thence Southwesterly to the Southwest corner of the Northeast quarter of Section 20, T3S, R7W;
40. Thence Westerly to the Southwest corner of the Northwest quarter of said Section 20;
41. Thence Northerly to the Northwest corner of Section 17, T3S, R7W;
42. Thence Westerly to the Southwest corner of Section 7, T3S, R7W;
43. Thence Northerly to the Southwest corner of Section 6, T3S, R7W;
44. Thence Westerly to the Southwest corner of Section 1, T3S, R8W;
45. Thence Northerly to the Southeast corner of Section 35, T2S, R8W;
46. Thence Northwesterly to the Northwest corner of said Section 35;
47. Thence Northerly to the Southeast corner of Lot 33, as shown on Map of Tract 3193, recorded in Map Book 43, pages 46 and 47, Office of the County Recorder of San Bernardino County;
48. Thence Westerly to the Northwest corner of the Southwest quarter of Section 28, T2S, R8W;

49. Thence Northerly to the Southwest corner of Section 4, T2S, R8W;
50. Thence Westerly to the Southwest corner of Section 5, T2S, R8W;
51. Thence Northerly to the Southwest corner of Section 32, T1S, R8W;
52. Thence Westerly to the Southwest corner of Section 31, T1S, R8W;
53. Thence Northerly to the Southwest corner of Section 30, T1S, R8W;
54. Thence Northeasterly to the Southwest corner of Section 20, T1S, R8W;
55. Thence Northerly to the Northwest corner of the Southwest quarter of the Southwest quarter of said Section 20;
56. Thence Northwesterly to the Northeast corner of the Southeast quarter of the Southeast quarter of the Northwest quarter of Section 19, T1S, R8W;
57. Thence Easterly to the Northwest corner of Section 21, T1S, R8W;
58. Thence Northeasterly to the Southeast corner of the Southwest quarter of the Southwest quarter of Section 10, T1S, R8W;
59. Thence Northeasterly to the Southwest corner of Section 2, T1S, R8W;

60. Thence Northeasterly to the Southeast corner of the Northwest quarter of the Northwest quarter of Section 1, T1S, R8W;
61. Thence Northerly to the Northeast corner of the Northwest quarter of the Northeast quarter of Section 36, T1N, R8W;
62. Thence Northerly to the Southeast corner of Section 24, T1N, R8W;
63. Thence Northeasterly to the Southeast corner of the Northwest quarter of the Northwest quarter of Section 20, T1N, R7W; and
64. Thence Southerly to the Point of Beginning.

Sections Included

Said perimeter description includes all or portions of the following Townships, Ranges and Sections of San Bernardino Base and Meridian:

T1N, R5W - Sections: 30, 31 and 32

T1N, R6W - Sections: 8, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35
and 36

T1N, R7W - Sections: 19, 20, 24, 25, 26, 29, 30, 31, 32, 35 and 36

T1N, R8W - Sections: 25 and 36

T1S, R5W - Sections: 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31 and 32

T1S, R6W - Sections: 1 through 36, inclusive

T1S, R7W - Sections: 1 through 36, inclusive

T1S, R8W - Sections: 1, 2, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,
32, 33, 34, 35 and 36

T2S, R5W - Sections: 6, 7 and 18

T2S, R6W - Sections: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,
26, 29, 30 and 31

T2S, R7W - Sections: 1 through 36, inclusive

T2S, R8W - Sections: 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 35 and
36

T3S, R7W - Sections: 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17 and 20

T3S, R8W - Sections: 1.

SB 565248 v1:038350.0001

EXHIBIT G

CHINO BASIN WATERMASTER RULES AND REGULATIONS

2025 Update to 2022 version

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ARTICLE I GENERAL PROVISIONS

1.0 Title.

This document shall be known and may be referred to as the "2025 Update to the 2022 Chino Basin Watermaster Rules and Regulations" adopted pursuant to the Judgment.

1.1 Definitions.

As used in these Rules and Regulations, these terms, including any grammatical variations thereof shall have the following meanings.

- (a) "Active Parties" means all parties to the Judgment other than those who have filed a written waiver of service of notices with Watermaster, pursuant to Paragraph 58 of the Judgment. [Judgment ¶ 4(a).]
- (b) "Adjusted Physical Production" shall have the definition given in section 7.5(b)(iv).
- (c) "Agricultural Pool" shall have the meaning of Overlying (Agricultural) Pool as used in the Judgment and shall include all its members. [Peace Agreement § 1.1(a).]
- (d) "Agricultural Pool Committee" shall mean the designated representatives and alternates who serve on behalf of the Agricultural Pool.
- (e) "Annual or Year" means a fiscal year, July 1 through June 30 following, unless the context shall clearly indicate a contrary meaning. [Judgment ¶ 4(b).]
- (f) "Annual Production Right" means the total amount of water available to the Appropriative Pool in any year from all available sources (e.g., Carry-Over Water, assigned share of Operating Safe Yield, Transfers, New Yield, water Recaptured from Storage, land-use conversions, Early Transfer) which Watermaster shall determine can be Produced by the members of the Appropriative Pool free of a Replenishment Obligation.
- (g) "Answer" means the written response that may be filed to a Complaint or the reply to a Contest pursuant to the provisions of Article X.
- (h) "Applicant" means a person that files an Application for Watermaster approval of an action pursuant to Article X.
- (i) "Application" means a request filed by any person pursuant to the provisions of Article X, seeking (i) Watermaster approval of Recharge, Transfer, Recapture or Qualifying Storage operations or activities or (ii) for Watermaster approval of a credit or reimbursement.
- (j) "Appropriative Pool" shall have the meaning as used in the Judgment and shall include all its members. [Peace Agreement § 1.1(b).]

- (k) "Basin Water" means Groundwater within the Chino Basin which is part of the Safe Yield, Operating Safe Yield, New Yield), or Replenishment Water in the Basin as a result of operations under the Physical Solution decreed in the Judgment. Basin Water does not include "Stored Water" under the Judgment and the Peace Agreement. [Judgment ¶ 4(d).]
- (l) "Best Efforts" means reasonable diligence and reasonable efforts under the totality of the circumstances. [Peace Agreement § 1.1(d).] Note: a rule of construction applies to this definition. See section 1.2(e) below.
- (m) "CBWCD" means the Chino Basin Water Conservation District. [Peace Agreement § 1.1(e).]
- (n) "Carry-Over Right" means the annual unpumped share of Safe Yield and Operating Safe Yield that is reserved to be pumped first the following year by the members of the Non-Agricultural Pool and the Appropriative Pool respectively. [Based on the Judgment Exhibit "G" ¶ 7 and Exhibit "H" ¶ 12.]
- (o) "Carry-Over Water" means the un-Produced water in any year that may accrue to a member of the Non-Agricultural Pool or the Appropriative Pool and that is Produced first each subsequent Fiscal Year or stored as Excess Carry-Over. (Judgment Exhibit H ¶ 12.)
- (p) "CEQA" means the California Environmental Quality Act, Public Resources Code Sections 21000 et seq; 14 California Code of Regulations 15000 et seq. [Peace Agreement § 1.1(f).]
- (q) "Chino Basin" or "Basin" means the Groundwater basin underlying the area shown on Exhibit "B" to the Judgment and within the boundaries described on Exhibit "K" to the Judgment. [Judgment ¶ 4(f) and Peace Agreement § 1.1(g).]
- (r) "Chino Basin Watershed" means the surface drainage area tributary to and overlying Chino Basin. [Judgment ¶ 4(g) and Peace Agreement § 1.1(h).]
- (s) "Chino I Desalter," also known as the SAWPA Desalter, means the Desalter owned and operated by PC 14 with a present capacity of approximately eight (8) million gallons per day (mgd) and in existence on the Effective Date. [Peace Agreement § 1.1(i).]
- (t) "Chino I Desalter Expansion" means the planned expansion of the Chino I Desalter from its present capacity of approximately eight (8) mgd to a capacity of up to fourteen (14) mgd. [Peace Agreement § 1.1(j).]
- (u) "Chino II Desalter" means a new Desalter not in existence on the Effective Date with a design capacity of approximately ten (10) mgd, to be constructed and operated consistent with the OBMP and to be located on the eastside of the Chino Basin. [Peace Agreement § 1.1(k).]

- (v) "Chino North Management Zone" means the Chino North Management Zone, as it is illustrated in the 2004 Basin Plan amendment (Regional Water Quality Control Board Resolution R8-2004-0001, "Resolution Amending the Water Quality Control Plan for the Santa Ana River Basin to Incorporate an Updated Total Dissolved Solids (TDS) and Nitrogen Management Plan for the Santa Ana Region Including Revised Groundwater Subbasin Boundaries, Revised TDS and Nitrate-Nitrogen Quality Objectives for Groundwater, Revised TDS and Nitrogen Wasteload Allocations, and Revised Reach Designations, TDS and Nitrogen Objectives and Beneficial Uses for Specific Surface Waters").
- (w) "Committee(s)" means any of the Pool Committees or the Watermaster Advisory Committee as the context may compel.
- (x) "Complainant" means a party to the Judgment that files a Complaint pursuant to Article X.
- (y) "Complaint" means a claim filed by a party to the Judgment with Watermaster pursuant to the provisions of Article X.
- (z) "Contest" means an objection filed by a party to the Judgment pursuant to the provisions of Article X.
- (aa) "Contestant" means a party to the Judgment that files a Contest pursuant to the provisions of Article X.
- (bb) "Court" means the court exercising continuing jurisdiction under the Judgment. [Peace Agreement § 1.1(1).]
- (cc) "Court's Findings and Order, dated July 21, 2021" shall mean the Court's Findings and Order Re Motion Regarding Implementation of the Local Storage Limitation Solution, dated July 21, 2021.
- (dd) "Court's Findings and Order, dated March 15, 2019" shall mean the Court's Findings and Order Regarding Amendments to Restated Judgment, Peace Agreement, Peace II Agreement, and Re-Operation Schedule, dated March 15, 2019.
- (ee) "Court's Orders, dated April 28, 2017" shall mean the Court's Orders for Watermaster's Motion Regarding the 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment, Paragraph 6, dated April 28, 2017.
- (ff) "Court's Orders, dated July 31, 2020" shall mean the Court's Orders Regarding Chino Basin Watermaster Motion Regarding 2020 Safe Yield Reset, Amendment of Restated Judgment, Paragraph 6, dated July 31, 2020.
- (gg) "Court's Order, dated January 10, 2025" shall mean the Court's Findings and Order Granting Motion to Increase the Safe Storage Capacity of the Chino Basin, dated January 10, 2025.

- (hh) "Date of Execution" means the first day following the approval and execution of the Peace Agreement by the last Party to do so which date is August 1, 2000. [Peace Agreement § 1.1(m).]
- (ii) "Desalter" and "Desalters" means the Chino I Desalter, Chino I Desalter Expansion, the Chino II Desalter, related facilities and Future Desalters, consisting of all the capital facilities and processes that remove salt from Basin Water, including extraction wells, transmission facilities for delivery of groundwater to the Desalter, Desalter treatment and delivery facilities for the desalted water including pumping and storage facilities, and treatment and disposal capacity in the SARI System. [Peace Agreement § 1.1(n).]
- (jj) "Early Transfer" means the reallocation of Safe Yield in accordance with the Peace Agreement where water from the Agricultural Pool is made available to the Appropriative Pool on an annual basis. [Peace Agreement § 1.1(o).]
- (kk) "Effective Date" refers to the Effective Date of the Peace Agreement and means October 1, 2000. [Peace Agreement § 1.1(p).]
- (ll) "Excess Carry-Over Water" means Carry-Over Water which in aggregate quantities exceeds a party's share of Safe Yield in the case of the Non-Agricultural Pool, or the assigned share of Operating Safe Yield in the case of the Appropriative Pool, in any year.
- (mm) "Future Desalters" means enlargement of the Chino I Desalter to a capacity greater than the Chino I Expansion or enlargement of the Chino II Desalter and any other new Desalter facilities that may be needed to carry out the purposes of the OBMP over the term of the Peace Agreement. [Peace Agreement § 1.1(q).]
- (nn) "General law" means all applicable state and federal laws. [Peace Agreement § 1.1(r).]
- (oo) "Groundwater" means all water beneath the surface of the ground. [Judgment ¶ 4(h) and Peace Agreement § 1.1(s).]
- (pp) "Groundwater Storage Agreement" means either a Local Storage Agreement or an agreement in connection with a Storage and Recovery Program.
- (qq) "Hydraulic Control" means the reduction of groundwater discharge from the Chino North Management Zone to the Santa Ana River to de minimus quantities. [Peace II Agreement § 1.1(b).]
- (rr) "Hydrologic Balance" means the maintenance of total inflow at a level generally equivalent to total outflow as measured over an appreciable period of time that is sufficient to account for periodic changes in climate and watershed, basin and land management conditions.

- (ss) "IEUA" means the Inland Empire Utilities Agency, referred to in the Judgment as Chino Basin Municipal Water District. [Peace Agreement § 1.1(t).]
- (tt) "In-lieu Recharge" means taking supplies of Supplemental Water in lieu of pumping groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, as provided in Exhibit "H" Paragraph 11 of the Judgment. [Peace Agreement § 1.1(u).]
- (uu) "Judgment" means the Judgment dated January 27, 1978, in San Bernardino County Case No. 164327 (redesignated as San Bernardino County Case No. RCV RS51010) as restated pursuant to Order Adopting Restated Judgment, dated September 27, 2012, amended pursuant to Order Approving Amendments to Restated Judgment and Rules and Regulations Regarding Compensation of Watermaster Board Members, dated August 22, 2014, Court's Orders, dated April 28, 2017, Court's Findings and Order, dated March 15, 2019, Court's Order Granting Motion for Court Approval of Amendments to Restated Judgment Regarding Compensation of Watermaster Pool and Advisory Committee Members, dated June 26, 2020, Court's Orders, dated July 31, 2020, and other such amendments. [See Peace Agreement § 1.1(v).]
- (vv) "Leave Behind" means a contribution to the Basin from water held in storage within the Basin under a Storage and Recovery Agreement that may be established by Watermaster from time to time that may reflect any or all of the following: (i) actual losses; (ii) equitable considerations associated with Watermaster's management of storage agreements; and (iii) protection of the long-term health of the Basin against the cumulative impacts of simultaneous recovery of groundwater under all storage agreements. [Peace II Agreement § 1.1(c).]
- (ww) "Local Imported Water" is water from any origin, native or foreign which was not available for use or included in the calculation of Safe Yield of the Chino Basin at the time the Judgment was entered. [Based on Judgment 49(c).] Local Imported Water is reported by Watermaster in its annual report.
- (xx) "Local Storage" means water held in a storage account pursuant to a Local Storage Agreement between a party to the Judgment and Watermaster. Local Storage accounts may consist of: (i) a Producer's unproduced Excess Carry-Over Water or (ii) a party to the Judgment's Supplemental Water, up to a cumulative maximum of one hundred thousand (100,000) acre-feet for all parties to the Judgment stored in the Basin on or after July 1, 2000 or (iii) that amount of Supplemental Water previously stored in the Basin on or before July 1, 2000 and quantified in accordance with the provisions and procedures set forth in Section 7.2 of these Rules and Regulations, or (iv) that amount of water which is or may be stored in the Basin pursuant to a Storage Agreement with Watermaster which exists and has not expired before July 1, 2010. [Peace Agreement § 1.1(x).] As to that portion of the Maximum Local Storage Quantity in excess of the initial 500,000 AF Safe Storage Capacity, Local Storage accounts may consist of

Producers' Excess Carry-Over Water or parties' to the Judgment's Supplemental Water.

- (yy) "Local Storage Agreement" means a Groundwater Storage Agreement for Local Storage.
- (zz) "Material Physical Injury" means material injury that is attributable to the Recharge, Transfer, Storage and Recovery, management, movement or Production of water, or implementation of the OBMP, including, but not limited to, degradation of water quality, liquefaction, land subsidence, increases in pump lift (lower water levels) and adverse impacts associated with rising Groundwater. Material Physical Injury does not include "economic injury" that results from other than physical causes. Once fully mitigated, physical injury shall no longer be considered to be material. [Peace Agreement § 1.1(y).]
- (aaa) "Maximum Local Storage Quantity" means the maximum quantity of water that may be held in Local Storage, when combined with Carry-Over Water, is 900,000 acre-feet until June 30, 2040. [Court's Order, dated January 10, 2025.]
- (bbb) "Metropolitan Water District" or "MWD" means the Metropolitan Water District of Southern California. [Peace Agreement § 1.1(z).]
- (ccc) "Minimal Producer" means any producer whose Production does not exceed ten (10) acre-feet per year. [Judgment ¶ 4(j).]
- (ddd) "New Yield" means proven increases in yield in quantities greater than historical amounts from sources of supply including, but not limited to, capture of rising water, capture of available storm flow, operation of the Desalters and related facilities, induced Recharge and other management activities implemented and operational after June 1, 2000. [Peace Agreement § 1.1(aa).]
- (eee) "Non-Agricultural Pool" shall have the meaning as used in the Judgment for the Overlying (Non-Agricultural) Pool and shall include all its members. [Peace Agreement § 1.1(bb).]
- (fff) "OBMP" means the Optimum Basin Management Program, which consists of the OBMP Phase I Report and the OBMP Implementation Plan, which shall be implemented consistent with the provisions of Article V of the Peace Agreement. [July 13, 2000 Court Order.]
- (ggg) "OBMP Assessments" means assessments levied by Watermaster for the purpose of implementing the OBMP. [Peace Agreement § 1.1(cc).] Note: a rule of construction applies to this definition. See section 1.2(f) below.
- (hhh) "OBMP Implementation Plan" means Exhibit "B" to the Peace Agreement, as supplemented by the 2007 Supplement thereto.

- (iii) "OCWD" means the Orange County Water District. [Peace Agreement § 1.1(dd).]
- (jjj) "Operating Safe Yield" means the annual amount of Groundwater which Watermaster shall determine, pursuant to criteria specified in Exhibit "I" to the Judgment, can be Produced from Chino Basin by the Appropriative Pool parties free of Replenishment obligation under the Physical Solution. [Judgment ¶ 4(1) and Peace Agreement § 1.1(ee).]
- (kkk) "Overdraft" means a condition wherein the total annual Production from the Basin exceeds the Safe Yield thereof, as provided in the Judgment. [Judgment ¶ 4(m) and Peace Agreement § 1.1(ff).]
- (lll) "Overlying Right" means the appurtenant right of an owner of lands overlying Chino Basin to Produce water from the Basin for overlying beneficial use on such lands. [Judgment ¶ 4(n).]
- (mmm) "PC 14" means Project Committee No. 14, members of SAWPA, composed of IEUA, WMWD, and OCWD, pursuant to Section 18 of the SAWPA Joint Exercise of Powers Agreement which now constitutes the executive Authority through which SAWPA acts with respect to the Chino I Desalter and other facilities, programs and projects. [Peace Agreement § 1.1(ll).]
- (nnn) "Party" or "Parties" means a Party to the Peace Agreement or Peace II Agreement. [Peace Agreement § 1.1(gg); Peace II Agreement § 1.1(e).]
- (ooo) "Party" or "parties to the Judgment" means a party to the Judgment. [Peace Agreement § 1.1(hh).]
- (ppp) "Peace Agreement" means the agreement dated June 29, 2000 among various parties to the Judgment identified therein and approved by Watermaster, as amended by the First Amendment to Peace Agreement dated September 2, 2004, the Second Amendment to Peace Agreement, dated September 21, 2007, and as shown in Attachment A to the Court's Findings and Order, dated March 15, 2019.
- (qqq) "Peace II Agreement" means the agreement dated September 21, 2007 among various parties to the Judgment identified therein and approved by Watermaster, as amended as shown in Attachment A to the Court's Findings and Order, dated March 15, 2019.
- (rrr) "Person" means any individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, water district and other entity of whatever nature including but not limited to the State of California and the Department of Water Resources. [Judgment ¶ 4(o).]

- (sss) "Physical Solution" shall have the meaning of the Physical Solution as described in the Judgment.
- (ttt) "Produce" or "Produced" means to pump or extract groundwater from the Chino Basin. [Judgment 4(q) and Peace Agreement § 1.1(ii).]
- (uuu) "Producer" means any person who Produces water from the Chino Basin. [Judgment ¶ 4(r) and Peace Agreement § 1.1(jj).]
- (vvv) "Production" means the annual quantity, stated in acre-feet, of water Produced from the Chino Basin. [Judgment ¶ 4(s) and Peace Agreement § 1.1(kk).]
- (www) "Public Hearing" means a hearing of Watermaster held pursuant to the Judgment other than as provided in Article X herein.
- (xxx) "Qualifying Storage" means the storage of Supplemental Water, Excess Carry-Over Water after July 1, 2010 or to participate in a Storage and Recovery Program.
- (yyy) "Qualifying Storage Agreement" means an agreement with Watermaster to store Supplemental Water, Excess Carry-Over Water after July 1, 2010 or to store water by participation in a Storage and Recovery Program.
- (zzz) "Recapture" and "Recover" means the withdrawal of water stored in the Basin under a Groundwater Storage Agreement.
- (aaaa) "Recharge" and "Recharge Water" means the introduction of water into the Basin, directly or indirectly, through injection, percolation, delivering water for use in-lieu of Production or other method. Recharge references the physical act of introducing water into the Basin. Recharge includes Replenishment Water but not all Recharge is Replenishment Water. [Peace Agreement § 1.1(nn).] Note: a rule of construction applies to this definition. See section 1.2(g) below.
- (bbbb) "Recycled Water" means water which, as a result of treatment of wastewater, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource, referred to as "reclaimed water" in the Judgment. [Judgment ¶ 4(u) and Peace Agreement § 1.1(pp).]
- (cccc) "Re-Operation" means the controlled overdraft of the Basin by the managed withdrawal of groundwater Production for the Desalters and the potential increase in the cumulative un-replenished Production from 200,000 acre-feet authorized by paragraph 3 of the Engineering Appendix Exhibit I to the Judgment, to 600,000 acre-feet for the express purpose of securing and maintaining Hydraulic Control as a component of the Physical Solution. [Peace II Agreement § 1.1(d).] The Court-approved schedule for access to Re-Operation water during the period of 2013-14 through 2029-30 is attached hereto as Exhibit "B."

- (dddd) "Reset Technical Memorandum" means the memorandum, dated October 6, 2022, attached hereto and incorporated herein as Exhibit "A," which sets forth the methodology pursuant to which the Safe Yield is evaluated or reset.
- (eeee) "Replenishment Obligation" means the quantity of water that Watermaster must purchase to replace Production by any Pool during the preceding Fiscal Year which exceeds that Pool's allocated share of Safe Yield or Operating Safe Yield in the case of the Appropriative Pool. The quantity of a Producer's Over-Production and the Replenishment Obligation is determined after Watermaster takes into account any Transfers of water or any Recovery from storage in the same year, and takes into account the Appropriative Pool obligation as a result of the implementation of the Peace Agreement, if any. [Judgment ¶ 45.]
- (ffff) "Replenishment Water" means Supplemental Water used to Recharge the Basin pursuant to the Physical Solution, either directly by percolating the water into the Basin or indirectly by delivering the water for use in-lieu of Production and use of Safe Yield or Operating Safe Yield. [Judgment ¶ 4(v) and Peace Agreement § 1.1(oo).]
- (gggg) "Responsible Party" means the owner, co-owner, lessee or other person(s) designated by multiple parties interested in a well as the person responsible for purposes of filing reports with Watermaster pursuant to the Judgment ¶ 4(w). [Judgment, ¶ 4(w).]
- (hhhh) "Rules and Regulations" means this 2025 Update to the 2022 Chino Basin Watermaster Rules and Regulations as authorized pursuant to the Judgment, adopted by the Watermaster on April 24, 2025 and as they may be amended from time to time. They are to be distinguished from the previous Watermaster Rules and Regulations that were repealed and replaced by the same action adopting and approving these Rules and Regulations.
- (iiii) "Safe Yield" means the long-term average annual quantity of groundwater (excluding Replenishment Water or Stored Water but including return flow to the Basin from use of Replenishment or Stored Water) which can be Produced from the Basin under cultural conditions of a particular year without causing an undesirable result. [Judgment ¶ 4(x) and Peace Agreement § 1.1(qq).]
- (jjjj) "SAWPA" means the Santa Ana Watershed Project Authority. [Peace Agreement § 1.1(ss).]
- (kkkk) "Sphere of Influence" has the same meaning as set forth in Government Code Section 56076.
- (llll) "Storage and Recovery Program" means the use of the available storage capacity of the Basin by any person under the direction and control of Watermaster pursuant to a Court approved Groundwater Storage Agreement but excluding "Local Storage," including the right to export water for use outside the Chino

Basin and typically of broad and mutual benefit to the parties to the Judgment. [Peace Agreement §1.1(uu).]

- (mmmm) "Stored Water" means Supplemental Water held in storage, as a result of direct spreading, injection or in-lieu delivery, for subsequent withdrawal and use pursuant to a Groundwater Storage Agreement with Watermaster. [Judgment ¶ 4(aa) and Peace Agreement § 1.1(vv).]
- (nnnn) "Supplemental Water" means water imported to Chino Basin from outside the Chino Basin Watershed and Recycled Water. [Judgment ¶ 4(bb) and Peace Agreement § 1.1(ww).]
- (oooo) "Transfer" means the assignment (excepting an assignment by a member of the Non-Agricultural Pool or the Agricultural Overlying Pool), lease, or sale of a right to Produce water to another Producer within the Chino Basin or to another person or entity for use outside the Basin upon the person's intervention in conformance with the Judgment. [Peace Agreement § 1.1(xx).]
- (pppp) "TVMWD" means Three Valleys Municipal Water District (referred to in the Judgment as Pomona Valley Municipal Water District). [Peace Agreement § 1.1(yy).]
- (qqqq) "Uniform Groundwater Rules and Regulations" (UGRR) means the Uniform Groundwater Rules and Regulations that were in effect on December 31, 2000.
- (rrrr) "Watermaster" means Watermaster as the term is used in the Judgment. [Peace Agreement § 1.1 (zz).]
- (ssss) "WMWD" means Western Municipal Water District. [Judgment ¶ 4(cc) and Peace Agreement § 1.1(bbb).]

1.2 Rules of Construction

- (a) Unless the context clearly requires otherwise:
 - (i) The plural and singular forms include the other;
 - (ii) "Shall," "will," "must," and "agrees" are each mandatory;
 - (iii) "may" is permissive;
 - (iv) "or" is not exclusive;
 - (v) "includes" and "including" are not limiting; and
 - (vi) "between" includes the ends of the identified range.
- (b) The masculine gender shall include the feminine and neuter genders and vice versa.

- (c) Reference to any agreement, document, instrument, or report means such agreement, document, instrument or report as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof
 - (d) Except as specifically provided herein, reference to any law, statute, ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part and in effect from time to time, including any rules and regulations promulgated thereunder. [Peace Agreement § 1.2.]
 - (e) "Best Efforts" as defined in section 1.1 (l) above, shall be construed to mean that indifference and inaction do not constitute Best Efforts. However, futile action(s) are not required. [Peace Agreement § 1.1(d).]
 - (f) OBMP Assessments as defined in section 1.1(ggg) above, shall be deemed Administrative Expenses under Paragraph 54 of the Judgment. OBMP Assessments do not include assessments levied as provided in Section 5.1(g) of the Peace Agreement. Upon the expiration of the Peace Agreement, no conclusion of "general benefit" may be drawn based upon the manner in which the assessments have been made during the term of the Peace Agreement. [Peace Agreement § 1.1(cc).]
 - (g) The definition of the terms Recharge and Recharge Water in section 1.1(aaaa) above, shall not be construed to limit or abrogate the authority of CBWCD under general law. [Peace Agreement § 1.1(nn).]
 - (h) The right of a party to receive a credit if Watermaster compels a Groundwater Production facility to be shut down and/or moved under section 4.5 below, shall not be construed in determining the extent of Watermaster's authority under the Judgment, if any, to compel the shut-down of a well.
 - (i) These Rules and Regulations should not be construed as placing any limitation on the export of Supplemental Water other than as may be provided in the Judgment, except as may be necessary as a condition to prevent Material Physical Injury (see specifically section 8.3 below).
- 1.3 Consistency with Judgment, Peace Agreement, and Peace II Agreement. These Rules and Regulations shall be construed consistent with the Judgment, the Peace Agreement, and the Peace II Agreement. In the event of a conflict between these Rules and Regulations and the Judgment, the Peace Agreement, or the Peace II Agreement, the Judgment, the Peace Agreement, and Peace II Agreement shall prevail. In the event of a conflict between the Peace Agreement, or the Peace II Agreement and the Judgment, the Judgment shall control.
- 1.4 No Prejudice. No provision of these Rules and Regulations shall be used to construe the power and authority of the Advisory Committee or the Watermaster Board inter-se under the Judgment.

- 1.5 Amendment of Rules. These Rules and Regulations may be amended by Watermaster only upon the prior approval of the Watermaster Advisory Committee.
- 1.6 Repeal of Existing Rules and Regulations. Watermaster's existing Rules and Regulations are repealed upon the adoption of this 2025 Update to the 2022 Chino Basin Watermaster Rules and Regulations and along with the previously repealed Uniform Groundwater Rules and Regulations, they will have no further force and effect. However, all other rules and regulations, which includes the Rules for the Advisory Committee and for each of the three Pools, shall remain in effect.

ARTICLE II ADMINISTRATION

- 2.0 Principal Office. The principal office of Watermaster shall be the Chino Basin Watermaster business office, currently located at 9641 San Bernardino Road, Rancho Cucamonga, California 91730, telephone number 909-484-3888, fax number 909-484-3890, and e-mail info@cbwm.org, or at such other location or locations as may be designated from time to time by Watermaster Resolution and filed with the Court.
- 2.1 Records. The minutes of Watermaster meetings shall be open to inspection and maintained at the principal office. [Based on Judgment ¶ 37(d).] Copies of minutes may be obtained upon payment of the duplication costs thereof. Copies of other records may be obtained on the payment of the duplication costs thereof and pursuant to Watermaster policy. Watermaster shall maintain a website (presently www.cbwm.org). Watermaster Staff shall publish those records and other matters that it deems to be of interest to the parties to the Judgment, the general public or the Court on its website.
- 2.2 Regular Meetings. Regular meetings shall be held at the principal office of Watermaster pursuant to Watermaster policy at such time(s) as may be contained in the necessary notice(s) thereof [Based on Judgment ¶ 37 (b).] As a matter of policy, Watermaster shall generally operate in accordance with the provisions of the California Open Meetings Law (Brown Act). However, in the event of conflict, the procedures set forth in these Rules and Regulations shall control.
- 2.3 Special Meetings. Special meetings may be called at any time by a majority of the Watermaster Board by delivering notice thereof at least twenty-four (24) hours before the time of each such meeting in the case of personal delivery (including faxes and e-mail), and ninety-six (96) hours in the case of mail. [Based on Judgment ¶ 37 (c).]
- 2.4 Adjournment. Any meeting may be adjourned to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously posted forthwith on or near the door of the place where the meeting was held. [Based on Judgment ¶ 37 (e).]
- 2.5 Public Meetings/Hearings. All meetings, whether regular or special, shall be open to the public unless they are properly designated as a confidential session. Whenever a Public Hearing shall be required therein, written notice of such public hearing containing the time, date and place of Public Hearing, together with the matter to be heard thereat, shall be given to all Active Parties and each such person who has requested, in writing, notice of such meeting, at least ten (10) days prior to said Public Hearing. At such Public Hearing, evidence shall be taken with regard to only the matters noticed, unless a sufficient urgency shall exist to the contrary, and full findings and decisions shall be issued and made available for public inspection. Notwithstanding the provisions of this section 2.5, the provisions of Article X shall control when applicable.
- 2.6 Confidential Sessions.

- (1) The Watermaster Board may hold confidential sessions authorized by this Rule .A confidential session may be held by the Watermaster Board and, at a minimum, the chairs of the three Pools (Appropriative, Agricultural and Non-Agricultural) to, in a manner consistent with the Judgment:
 - (i) meet with counsel to discuss or act on pending or threatened litigation involving Watermaster; or
 - (ii) discuss personnel matters of Watermaster employees involving individual employees; or
 - (iii) discuss contract negotiations involving Watermaster.
 - (2) Minutes shall not be taken for confidential sessions of the Watermaster Board, but a confidential memorandum shall be prepared to describe attendance and votes on decisions.
 - (3) Notice of confidential sessions of the Watermaster Board shall be as provided in section 2.7.
 - (4) A report on any action taken at the confidential session of the Watermaster Board shall be given both immediately following the conclusion of the confidential session and at the next regular meeting of the Watermaster Board.
 - (5) The Advisory Committee may hold a confidential session on any matter authorized by its own resolution.
- 2.7 Notice. Notices shall be given in writing to all Active Parties and each such person who has requested notice in writing, and shall specify the time and place of the meeting and the business to be transacted at the meeting. Notice may be provided by either facsimile or e-mail delivery if the party so consents to such delivery. [Based on Judgment ¶ 37(c).] Delivery of notice shall be deemed made on the date personally given or within ninety-six (96) hours of deposit thereof in the United States mail, first class, postage prepaid, addressed to the designee and at the address in the latest designation filed by such person. Copies of all notices shall be published on the Watermaster website. Watermaster will maintain a current list of the names of active parties and their addresses for the purpose of providing service, and will maintain a current list of the names and addresses of all parties to the Judgment. [Judgment ¶ 58.]
- 2.8 Quorum. A majority of the Board acting as Watermaster shall constitute a quorum for the transaction of the affairs or business. [Based on Judgment ¶ 35.]
- 2.9 Voting Procedures. Only action by affirmative vote of a majority of the members of the Watermaster Board present and acting as Watermaster shall be effective. All actions may be adopted by voice vote, but upon demand of any member of a Board acting as Watermaster, the roll shall be called and the ayes and noes recorded in the minutes of the proceedings. Every member of a Board acting as Watermaster, in attendance, unless

disqualified by reason of an opinion of the Watermaster counsel that the member of the board has a conflict of interest, shall be required to vote.

2.10 Conflict of Interest. Watermaster is an interest based governing structure in which various interests must be represented in decision-making. It is expected and preferred that each interest be allowed to participate in Watermaster decisions except as provided in these Rules and Regulations. Each member of the Watermaster Board or the Advisory Committee shall vote on matters before the Board or Advisory Committee unless that member has a conflict of interest as described in this Rule or other provision of general law. No member of the Watermaster Board or Advisory Committee may vote, participate in meetings or hearings pertaining to, or otherwise use his or her position to influence a Watermaster decision in which he knows or has reason to know he has both a direct personal and financial interest.

(a) Subject to the qualification provided for in section 2.10(b) herein, a member of the Watermaster Board or Advisory Committee is deemed to have a direct personal and financial interest in a decision where it is reasonably foreseeable that the decision will have a material effect on the Watermaster member, members of his or her immediate family, or the Watermaster member's other business, property, and commercial interests.

(b) To be classified as a direct personal and financial interest, the particular matter must be distinguishable from matters of general interest to the respective pool (Appropriative, Non-Agricultural, or Agricultural) or party to the Judgment, which the Watermaster member has been appointed to represent on the Watermaster Board or Advisory Committee. The member must stand to personally gain discrete and particular advantage from the outcome of the decision beyond that generally realized by any other person or the interests he or she represents. Moreover, Watermaster representatives are expressly intended to act in a representative capacity for their constituents. A member of the Board or Advisory Committee shall not be considered to have a discrete and particular financial advantage unless a decision may result in their obtaining a financial benefit that is not enjoyed by any other person. In those instances where the Board member or Advisory Committee member does have a conflict of interest, that respective interest may be represented by that interest's designated alternate and the Board or Advisory Committee member with the identified conflict of interest may address the Board or Committee or participate in the hearing or meeting as a party to the Judgment.

2.11 Minutes. The secretary (or in the absence thereof any person so designated at said meeting) shall cause the preparation and subscription of the minutes of each meeting and make available a copy thereof to all Active Parties and each person who has filed a request for copies of all minutes or notices in writing. The minutes shall constitute notice of all actions therein reported. Unless a reading of the minutes is ordered by a majority of the members of the Board acting as Watermaster, minutes may be approved without reading. [Based on Judgment ¶ 37(d).] Watermaster shall publish a copy of its minutes on the Watermaster website.

- 2.12 Rules of Order. Except as may be provided herein, the procedures of the conduct of any meeting shall be governed by the latest revised edition of Roberts' Rules of Order. However, such rules, adopted to expedite the transaction of the business in an orderly fashion, are deemed to be procedural only and failure to strictly observe such rules shall not affect the jurisdiction or invalidate any action taken at a meeting that is otherwise held in conformity with law.
- 2.13 Compensation. Members of Watermaster shall receive compensation from Watermaster for attendance at meetings, regular or special, in an amount as approved by the Court, together with reasonable expenses related to the respective activities thereof, subject to applicable provisions of law. A Watermaster Board member has three Options with regard to payment of compensation. Option 1 is have the payment payable directly to the Board member under the Board member's name; Option 2 is to have the payment payable directly to the Board member's employer/agency; and Option 3 is for the Board member to waive the compensation payment. Option 1 or 2 requires completion and submission of a signed W •9 form. [Based on Judgment ¶ 18 (as amended).]
- 2.14 Employment of Experts and Agents. Watermaster may employ or retain such administrative, engineering, geologic, accounting, legal or other specialized personnel and consultants as it may deem appropriate and shall require appropriate bonds from all officers and employees handling Watermaster funds. Watermaster shall maintain records for purposes of allocating costs of such services as well as of all other expenses of Watermaster administration as between the several pools established by the Physical Solution of the Judgment. No member of the Watermaster Advisory Committee or any Pool Committee may be employed or compensated by Watermaster for professional or other services rendered to such committee or to Watermaster other than as provided in section 2.13 above. [Based on Judgment ¶ 20.]
- 2.15 Acquisition of Facilities. Watermaster may purchase, lease, acquire and hold all necessary facilities and equipment; provided, that it is not the intent of the Judgment that Watermaster acquire any interest in real property or substantial capital assets. [Judgment ¶ 19 and Peace Agreement § 5.1(h).]
- 2.16 Investment of Funds. Watermaster may hold and invest all Watermaster funds in investments authorized from time to time for public agencies of the State of California, taking into consideration the need to increase the earning power of such funds and to safeguard the integrity thereof. [Based on Judgment ¶ 23.]
- 2.17 Borrowing. Watermaster may borrow from time to time, amounts not to exceed the annual anticipated receipts of Watermaster during such year. [Judgment ¶ 24.]
- 2.18 Contracts. Watermaster may enter into contracts and agreements for the performance of any of its powers pursuant to the Judgment.
- 2.19 Cooperation with Other Agencies. Watermaster may, subject to the prior recommendation of the Advisory Committee, act jointly or cooperate with agencies of the United States of America, and the State of California or any political subdivisions, municipalities, districts

or any person to the end that the purpose of the Physical Solution of the Judgment may be fully and economically carried out. [Based on Judgment ¶ 26.]

- 2.20 Annual Administrative Budget. Watermaster shall submit to the Advisory Committee, after Pool Committee review and approval, an administrative budget and recommendation for action for each subsequent Fiscal Year on or before March 1. The Advisory Committee shall review and submit the budget and their recommendations to Watermaster on or before April 1, next following. Watermaster shall hold a public hearing on the budget which was approved by Advisory Committee at an April meeting of each year and adopt the annual administrative budget which shall include the administrative items for each committee. The administrative budget shall set forth budgeted items in sufficient detail as necessary to make a proper allocation of expenses among the several pools, together with Watermaster's proposed allocation. The budget shall contain such additional comparative information or explanation as the Advisory Committee may recommend from time to time. Expenditures within the budgeted items may thereafter be made by Watermaster in the exercise of its powers, as matter of course. Any budget transfer in excess of 20% of a budget category, or modification of the administrative budget during any year shall be first submitted to the Advisory Committee for review and recommendation. [Based on Judgment ¶ 30.]
- 2.21 Annual Report. Watermaster shall prepare and make available an annual report, which shall be filed on or before January 31 of each year and shall contain details as to the operation of each of the pools, a certified audit of all assessments and expenditures pursuant to the Physical Solution of the Judgment and a review of Watermaster activities. [Based on Judgment ¶ 48.] The annual report shall generally include an update on the status of the parties' efforts to implement the OBMP. On a biannual basis, the annual report shall include an engineering appendix which contains a more specific "state of the Basin" report including an update on the status of individual OBMP related activities such as monitoring results and Watermaster's analysis of Hydrologic Balance. The annual report shall also include a compilation of any amendments to these Rules and Regulations made by Watermaster during the prior twelve (12) months and serve as notice to the Court of the amendments.
- 2.22 Studies. Watermaster may, with concurrence of the Advisory Committee or affected Pool Committee and in accordance with paragraph 54(b) of the Judgment, undertake relevant studies of hydrologic conditions, both quantitative and qualitative, and operating aspects of implementation of the Chino Basin OBMP. [Judgment ¶ 27.]
- 2.23 Demonstrated CEQA Compliance. Watermaster shall not approve any request made under the Judgment or these Rules and Regulations where the proposed action also constitutes a "project" within the meaning of CEQA unless the Watermaster finds that the person requesting Watermaster approval has demonstrated CEQA compliance.
- 2.24 Notice of Litigation. Watermaster shall provide reasonable notice to the parties to the Judgment of any threatened or existing litigation affecting Watermaster or that challenges the legality, validity, or enforceability of the Judgment, the Peace Agreement, the OBMP Implementation Plan or the Rules and Regulations.

- 2.25 Defense of Judgment. Watermaster shall reasonably defend the Judgment, the Peace Agreement, the Peace II Agreement, the OBMP Implementation Plan, and these Rules and Regulations against challenges brought by persons who are not parties to the Judgment. These costs incurred by Watermaster in defending the Judgment, the Peace Agreement, the Peace II Agreement, the OBMP Implementation Plan, and these Rules and Regulations shall be considered a Watermaster general administrative expense. However, the State of California shall not be obligated to reimburse Watermaster for any legal or administrative costs incurred in such defense. [Based on Peace Agreement § 4.1.]
- 2.26 Written Reports. All reports required to be provided by Watermaster under these Rules and Regulations shall be provided in written form unless the context requires otherwise.
- 2.27 Interventions. Watermaster will receive and make recommendations regarding petitions for intervention and accumulate them for filing with the Court from time to time. [Judgment ¶ 60 and Order re Intervention Procedures, July 14, 1978.]
- 2.28 Advisory Committee and Pool Administration. Administration of each of the three Pools is not governed by these Rules and Regulations. Each of these entities has its own rules and shall thereby be governed by those rules. The Advisory Committee shall also be governed by its own rules and procedures. However, when these Rules and Regulations make express reference to the Advisory Committee and the context requires such a construction, these Rules and Regulations shall control.

ARTICLE III MONITORING

- 3.0 Scope. Watermaster will carry out the monitoring activities described under Program Element 1 of the OBMP and, as described in the OBMP Implementation Plan. Monitoring procedures not described by this Article III, shall be implemented through the development of appropriate Watermaster policies and procedures as necessary. Any such policies and procedures adopted by resolution or minute action shall be reported to the Court in Watermaster's annual report.
- 3.1 Meters. This section sets forth Watermaster's rules and procedures for monitoring Groundwater Production by metering.
- (a) Reporting. Any person Producing in excess of ten (10) acre-feet per year shall install and maintain in good operating condition, at the cost of each such person except as provided in (b) below, such meters as Watermaster may deem necessary. Any such measuring device shall be subject to regular inspection and testing as the Watermaster may, from time to time, require, but at a minimum every two years. [Judgment ¶ 21.]
 - (b) Watermaster shall provide a meter testing service with a complete line of carefully calibrated test equipment. Any Producer may request an evaluation of any or all of its water meters at any time. Watermaster shall only pay for tests initiated by Watermaster and for all tests on meters owned by Watermaster
 - (c) Agricultural Pool Meters.
 - (i) Any assessment levied by Watermaster on the members of the Agricultural Pool to fund the installation of meters which is set forth in the Judgment, paragraph 21 regarding metering, shall be paid by the Appropriative Pool. Members of the Agricultural Pool, shall have no obligation to pay for or assume any duty with regard to the installation of meters. The obligation to install and maintain and replace meters on wells owned or operated by members of the Agricultural Pool shall be that of the Watermaster. [Peace Agreement § 5.6(a).]
 - (ii) Agricultural Pool meters shall be installed within thirty-six (36) months of the Date of Execution. Watermaster shall be responsible for providing the meter, as well as paying the cost of any installation, maintenance, inspection, testing, calibrating and repairing. The members of the Agricultural Pool shall provide reasonable access during business hours to a location reasonably appropriate for installation, inspection, testing, calibrating and repairing of a meter. [Peace Agreement § 5.6(b).] However, the State of California reserves its right to continue to install, operate, maintain, inspect, test and repair its own meters on wells owned or operated by the State, unless it consents to installation by Watermaster in which case Watermaster assumes the cost. [Peace Agreement § 5.6(c).]

- (iii) Watermaster shall test every Agricultural Pool meter other than those owned by the State of California on an active well under Watermaster's jurisdiction at least once every two years.
- 3.2 Reporting by Producers. Each party, or Responsible Party Producing water from the Basin, shall file with Watermaster on forms provided therefore, a quarterly report of the total water Production of that Producer during the preceding calendar quarter, together with such additional information as Watermaster and/or the affected Pool Committee may require. The report shall be due on the 15th day of the month next succeeding the end of each respective calendar quarter, i.e., April 15, July 15, October 15 and January 15, except for minimal Producers, whose reports are due annually by July 15. [Judgment ¶ 47.] Watermaster shall annually estimate the quantity of water Produced by "minimal producers" by any reasonable means, including but not limited to the use of a water duty factor dependent upon the type of use and/or acreage.
- 3.3 Error Corrections. All reports or other information submitted to Watermaster by the parties shall be subject to a four-year limitations period regarding the correction of errors contained in such submittals. In addition, all information generated by Watermaster shall be subject to the same four-year limitations period. All corrections to errors shall apply retroactively for no more than four years.

ARTICLE IV
ASSESSMENTS, REIMBURSEMENTS AND CREDITS

- 4.0 Scope. This Article sets forth Watermaster's rules and procedures regarding, assessments, reimbursements and credits.
- 4.1 Assessments. Watermaster shall levy assessments against the parties (other than Minimal Producers complying herewith) based upon Production during the preceding Production period. The assessment shall be levied by Watermaster pursuant to the pooling plan adopted for the applicable pool. [Based on Judgment ¶ 53.] Assessments shall cover the cost of Replenishment Water and the expenses of Watermaster administration which shall be categorized as either (a) general, or (b) special project expense.
- (a) General Administrative Watermaster Expense shall include office rental, general personnel expense, supplies and office equipment and related incidental expense and general overhead. [Judgment ¶ 54(a).]
 - (b) Special Project Expense shall consist of special engineering, economic or other studies, litigation expense, meter testing or other major operating expenses. Each such project shall be assigned a task order number and shall be separately budgeted and accounted for. [Judgment ¶ 54(b).]
 - (c) General Watermaster administrative expense shall be allocated and assessed against the respective pools based upon allocations made by the Watermaster, who shall make such allocations based upon generally-accepted cost accounting methods. [Judgment ¶ 54.]
 - (d) Special project expense shall be allocated to a specific pool, or any portion thereof, only upon the basis of prior express assent and finding of benefit by the appropriate Pool Committee, or pursuant to written order of the Court. [Judgment ¶ 54.]
 - (e) Minimal Producers shall be exempted from payment of assessments upon filing of the Production reports referred to in section 3.2 hereof and payment of an annual five dollar (\$5.00) administrative fee with the annual Production report. [Based on Judgment ¶ 52.] In addition, any Minimal Producer who is a member of the Appropriative Pool or the Non-Agricultural Pool and who has no quantified right to Produce water, shall pay a replenishment assessment upon the water that it Produces.
 - (f) Notwithstanding the foregoing, Watermaster shall levy assessments for the 6,500 acre-feet per year as provided in section 5.1(g) of the Peace Agreement and the cost and allocation of this Supplemental Water shall be apportioned pro rata among the members of the Appropriative Pool under the Judgment according to the Producer's assigned share of Operating Safe Yield. [Peace Agreement § 5.1(g)(ii) (inclusion of word "Operating" to correct mis-phrasing of Peace Agreement as required by the context in the Peace Agreement).]

- 4.2 OBMP Assessments. Watermaster Assessments for implementation of the OBMP shall be considered a Watermaster Administrative Expense pursuant to paragraph 54 of the Judgment.
- 4.3 Assessment - Procedure. Assessments shall be levied and collected as follows:
- (a) Notice of Assessment. Watermaster shall give written notice of all applicable assessments to each party as provided in the Judgment not later than October 31 of each year [Judgment ¶ 55(a).];
 - (b) Payment. Each assessment shall be payable on or before thirty (30) days after the date of invoice, and shall be the primary obligation of the party or successor owning the water Production facility at the time written notice of assessment is given, even though prior arrangement for payment by others has been made in writing and filed with Watermaster [Judgment ¶ 55(b).]; and
 - (c) Delinquency. Any delinquent assessment shall incur a late charge of ten (10%) percent per annum (or such greater rate as shall equal the average current cost of borrowed funds to the Watermaster) from the due date thereof. Delinquent assessments and late charge may be collected in a show-cause proceeding instituted by the Watermaster, in which case the Court may allow Watermaster's reasonable cost of collection, including attorney's fees. [Judgment ¶ 55(c).]
- 4.4 Assessment Adjustments. The Watermaster shall make assessment adjustments in whole or in part for assessments to any Producer as a result of erroneous Production reports or otherwise as necessary for the reporting period as either a credit or debit in the next occurring assessment package unless otherwise decided by Watermaster.
- (a) All assessments will be based on the assumption that appropriate, timely filed and pending Applications will be approved by Watermaster. If any such Applications are not approved, a supplemental assessment may be levied.
 - (b) Assessment adjustments may be necessary due to overstated Production, understated Production, or errors in the assessment package discovered after the assessments have been approved.
 - (c) Watermaster may cause an investigation and report to be made concerning questionable reports of Production from the Basin.
 - (d) Watermaster may seek to collect delinquent assessments and interest in a show-cause proceeding in which case the Court may allow Watermaster its reasonable costs of collection, including attorney's fees. [Judgment ¶ 55(c).] Alternately, Watermaster may bring suit in a court having jurisdiction against any Producer for the collection of any delinquent assessments and interest thereon. The court, in addition to any delinquent assessments, may award interest and reasonable costs including attorney's fees.

- 4.5 Credits Against OBMP Assessments and Reimbursements. Watermaster shall exercise reasonable discretion in making its determination regarding credits against OBMP Assessments and reimbursements, considering the importance of the project or program to the successful completion of the OBMP, the available alternative funding sources, and the professional engineering and design standards as may be applicable under the circumstances. However, Watermaster shall not approve such a request for reimbursement or credit against future OBMP Assessments under this section where the Producer or party to the Judgment was otherwise legally compelled to make the improvement. [Peace Agreement § 5.4(d).]
- (a) Any party to the Judgment may make Application for credits against OBMP assessments or for reimbursement by filing a timely Application pursuant to the provisions of this section and Article X of these Rules and Regulations.
 - (b) A party to the Judgment is eligible to be considered for credits or reimbursement for those documented capital, operations and maintenance expenses, including the cost of shutting down and/or relocating Groundwater Production facilities, that are reasonably incurred in the implementation of any project or program that carries out the purposes of the OBMP and specifically relates to the prevention of subsidence in the Basin, upon approval of the request by Watermaster. [Peace Agreement § 5.4(d), as amended.] The purposes of the OBMP shall be those goals set forth in the Phase I Report as implemented through the OBMP Implementation Plan in a manner consistent with the Peace Agreement. [July 13, 2000 Court Order.]
 - (c) Any Producer that Watermaster compels to shut down and/or move a Groundwater Production facility that is in existence on August 1, 2000 shall have the right to receive a credit against future Watermaster assessments or reimbursement up to the reasonable cost of the replacement Groundwater Production facility, including the legal rate of interest on California Judgments. [Peace Agreement § 5.4(e).] In its sole discretion, Watermaster may determine to issue full reimbursement upon approval of the Application or to issue a credit against future Watermaster assessments. However, in the event Watermaster elects to provide a credit in lieu of reimbursement, it must have fully compensated the Producer for the reasonable cost of the replacement Groundwater Production facility through any combination of credits and reimbursements within five years from the date of the Application, unless the Producer consents in writing to a longer period. Note: this section is subject to a rule of construction. See section 1.2(h) above.
 - (d) An Application to Watermaster for reimbursement or a credit against OBMP Assessments shall be considered timely, if and only if the Application has been approved by Watermaster in advance of construction or the offer by a party to dedicate the facility to carry out the purposes of the OBMP as described in (b) above. [Based on Peace Agreement § 5.4(d).]
- 4.6 Agricultural Pool Assessments and Expenses. During the term of the Peace Agreement, all Assessments and expenses of the Agricultural Pool including those of the Agricultural Pool Committee shall be paid by the Appropriative Pool. This includes but is not limited to

OBMP Assessments, assessments pursuant to paragraphs 20, 21, 22, 30, 42, 51, 53, 54 (both general administrative expenses and special project expenses), 55, and Exhibit F (Agricultural Pool Pooling Plan) of the Judgment except however in the event the total Agricultural Pool Production exceeds 414,000 acre-feet in any five consecutive year period as defined in the Judgment, the Agricultural Pool shall be responsible for its Replenishment Obligation pursuant to paragraph 45 of the Judgment. [Peace Agreement § 5.4(a).]

- 4.7 Replenishment Assessments. Watermaster shall levy and collect assessments in each year, pursuant to the respective pooling plans, in the amount of the Replenishment Obligation (including any Desalter Replenishment) for any pool during the preceding year. [Based on Judgment ¶ 51.]
- 4.8 Desalter Replenishment Assessments and Credits. The price of Desalted water to a purchaser of Desalted water does not include the cost of Replenishment. The source of Replenishment shall be those provided in Article VII herein, Article VII of the Peace Agreement, and Article VI of the Peace II Agreement. However, a purchaser of Desalted water may elect to obtain a reduced Assessment levied by Watermaster by dedicating by Transfer, or assignment, some or all of its Production rights to Watermaster for the purpose of satisfying Desalter Replenishment. The amount of the credit granted by Watermaster shall be equal to the value of the cost of Replenishment Water then available from the MWD as interruptible, untreated water or the then prevailing value of the avoided Replenishment Obligation, whichever is less. For purposes of determining Replenishment assessments, water Produced by the Desalters shall be considered Production by the Appropriative Pool.
- 4.9 Consistency with Peace Agreement. The procurement of Replenishment Water and the levy of Assessments shall be consistent with the provisions of section 5.4(a) of the Peace Agreement.
- 4.10 OBMP Committee. Watermaster shall establish a subcommittee (OBMP Committee) for the purpose of coordinating fund raising efforts in furtherance of the OBMP.
 - (a) The subcommittee shall hold a regularly scheduled meeting a minimum of once every quarter.
 - (b) Prior to each subcommittee meeting, Watermaster shall prepare a summary of the funds, loans or grants secured for the purpose of implementing the OBMP over the past three months and distribute any information it may possess regarding the availability of other potential funds, loans or grants.

ARTICLE V PHYSICAL SOLUTION

- 5.0 Scope. This Article generally sets forth the standards for Watermaster implementation of the Physical Solution established by the Judgment, including the application of these standards to Watermaster conduct and decisions under the Judgment, these Rules and Regulations and the OBMP.
- 5.1 Physical Solution. It is essential that this Physical Solution provide maximum flexibility and adaptability to use existing future, technological, social, institutional and economic options to maximize beneficial use of the waters of the Chino Basin. [Judgment ¶ 40.]
- 5.2 Watermaster Control. Watermaster, with the advice of the Advisory and Pool Committees, is granted discretionary powers in order to develop its OBMP. [Based on Judgment ¶ 41.]
- 5.3 Basin Management Parameters. Watermaster shall consider the following parameters in implementing the Physical Solution under Articles VI - X of these Rules and Regulations:
- (a) Pumping Patterns. Chino Basin is a common supply for all persons and agencies utilizing its waters. It is an objective in management of the Basin's waters that no Producer be deprived of access to said waters by reason of unreasonable pumping patterns, nor by regional or localized Recharge of Replenishment Water, insofar as such result may be practically avoided. [Judgment Exhibit "I".]
 - (b) Water Quality. Maintenance and improvement of water quality is a prime consideration and function of management decisions by Watermaster. [Judgment Exhibit "I".]
 - (c) Economic Considerations. Financial feasibility, economic impact and the cost of optimum use of the Basin's resources and the physical facilities of the parties are objectives and concerns equal in importance to water quantity and quality parameters. [Judgment Exhibit "I".]

ARTICLE VI SAFE YIELD AND OPERATING SAFE YIELD

- 6.0 Scope. This Article sets forth the rules and procedures that are applicable to Watermaster's regulation, control, and management of Safe Yield and Operating Safe Yield.
- 6.1 Annual Production Right. The Annual Production Right shall be calculated by Watermaster pursuant to the Judgment and the Peace Agreement.
- 6.2 New Yield. The Judgment provides that Safe Yield may need to be periodically adjusted based on more accurate and updated data and based on evidence of increased capture of native water and increased return flow from use of Replenishment or Stored Water. Safe Yield can only be re-determined periodically when long-term data or evidence is developed in support thereof. In order to encourage maximization of Basin Water under the Physical Solution, New Yield shall be accounted for by Watermaster in interim periods between re-determinations of Safe Yield.
- (a) Proven increases in yield in quantities greater than the historical level of contribution from certain Recharge sources may result from changed conditions including, but not limited to, the increased capture of rising water, increased capture of available storm flow, and other management activities. These increases are considered New Yield.
 - (b) To the extent the New Yield arises from conditions, programs or projects implemented and operational after July 1, 2000, it is available for allocation by Watermaster as a component of the Annual Production Right for each member of the Appropriative Pool.
 - (c) As part of the documentation for the assessments and annual report for each year, Watermaster will provide a summary and analysis of the historical recharge and whether there are changed conditions that have resulted in a quantity of New Yield.
 - (d) Except as described in section 6.2(f) below, pursuant to the Peace Agreement and the Peace II Agreement, any New Yield shall first be assigned to offsetting Desalter Replenishment Obligations in the immediately following year and as reasonably required to satisfy expected future Replenishment Obligations arising from the Desalter. If there is water in the Watermaster Desalter Replenishment Account to satisfy the Desalter Replenishment Obligation for the year, the New Yield shall be made available to the Appropriative Pool to satisfy a Replenishment Obligation consistent with section 7.5(a)(3) herein.
 - (e) New Yield is expected to result from a variety of conditions, including but not limited to enhanced Basin management, increased stormwater Recharge, induced Recharge from operation of the Desalters, injection, and changes in land use patterns. Watermaster has established an initial baseline quantity of stormflow Recharged in the Basin under historical conditions in the amount of 5,600 acre-feet per year. Any party to the Judgment may request Watermaster to re-examine this

initial estimate of the baseline quantity and to adjust the quantity in accordance with best available technology and substantial evidence.

- (f) The storm flow component of Recharge determined by Watermaster to be part of New Yield shall be allocated to the Appropriators according to their percentages of Safe Yield under the Judgment. Notwithstanding section 7.5(c) of the Peace Agreement, those amounts will continue to be dedicated in those percentages to the Appropriators if that storm flow Recharge is subsequently determined to be Safe Yield. [First Amendment to Peace Agreement, ¶ 2.]

6.3 Accounting of Unallocated Agricultural Portion of Safe Yield.

- (a) In each year, the 82,800 acre-feet being that portion of the Safe Yield made available to the Agricultural Pool under the Judgment, shall be made available in the following sequence:
 - (i) To the Agricultural Pool to satisfy all demands for overlying Agricultural Pool lands;
 - (ii) To supplement, in the particular year, water available from Operating Safe Yield to compensate for any reduction in the Safe Yield by reason of recalculation thereof;
 - (iii) To land use conversions that were completed prior to October 1, 2000;
 - (iv) To land use conversions that have been completed after October 1, 2000; and
 - (v) To the Early Transfer of the quantity of water not Produced by the Agricultural Pool that is remaining after all the land use conversions are satisfied pursuant to section 5.3(h) of the Peace Agreement from the Agricultural Pool to the Appropriative Pool in accordance with their pro-rata assigned share of Operating Safe Yield.
- (b) In the event actual Production by the Agricultural Pool exceeds 414,000 acre-feet in any five years, the Agricultural Pool shall procure sufficient quantities of Replenishment Water to satisfy over-Production obligations, whatever they may be.

6.4 Conversion Claims. The following procedures may be utilized by any Appropriator:

- (a) Record of Unconverted Agricultural Acreage. Watermaster shall maintain on an ongoing basis a record, with appropriate related maps, of all agricultural acreage within the Chino Basin subject to being converted to appropriative water use pursuant to the provisions of this subparagraph.
- (b) Record of Water Service Conversion. Any Appropriator who undertakes to permanently provide water service to any portion of a legal parcel subject to

conversion shall report such change to Watermaster. Watermaster shall ensure that when a partial conversion occurs, that the water use on the acreage is properly metered. For all or any portion of the legal parcel that is proposed for conversion, Watermaster shall thereupon verify such change in water service and shall maintain a record and account for each Appropriator of the total acreage involved. Should, at any time, all or any portion of the converted acreage return to agricultural overlying use, Watermaster shall return such acreage that returns to agricultural use to unconverted status and correspondingly reduce or eliminate any allocation accorded to the Appropriator involved.

6.5 Recalculation of Safe Yield.

- (a) Prior Safe Yield Resets. Pursuant to the Court's Orders, dated April 28, 2017, effective July 1, 2010 and continuing until June 30, 2020, the Safe Yield for the Basin was reset at 135,000 AFY. Pursuant to the Court's Orders, dated July 31, 2020, effective July 1, 2020 and continuing until June 30, 2030, the Safe Yield for the Basin was reset at 131,000 AFY. For all purposes arising under the Judgment, the Peace Agreements and the OBMP Implementation Plan, the Safe Yield shall be 131,000 AFY, without exception, unless and until Safe Yield is reset in accordance with the procedures set forth in this Section 6.5, and determined by the Court pursuant to its retained continuing jurisdiction.
- (b) Scheduled Resets. Watermaster will initiate a process to evaluate and reset the Safe Yield by July 1, 2030 as further provided in this Section 6.5. Subject to the provisions of Section 6.5(c) below, the Safe Yield, as it is reset effective July 1, 2030 will continue until June 30, 2040. Watermaster will initiate the reset process, taking into account then prevailing best management practices and advances in hydrological science, no later than July 1, 2028, in order to ensure that the Safe Yield, as reset, may be approved by the court no later than June 30, 2030. [Court's Orders , dated July 31, 2020 at 15.] Watermaster must present its evaluation and recommendation regarding Safe Yield for the period July 1, 2030, and ending June 30, 2040, to the Parties to the Judgment no later than January 1, 2030. [Court's Orders, dated July 31, 2020 at 15.] Consistent with the provisions of the OBMP Implementation Plan, thereafter Watermaster will conduct a Safe Yield evaluation and reset process no less frequently than every ten years. This Section 6.5(b) is deemed to satisfy Watermaster's obligation, under Paragraph 3.(b) of Exhibit "I" to the Judgment, to provide notice of a potential change in Operating Safe Yield.
- (c) Interim Correction. In addition to the scheduled reset set forth in Section 6.5(b) above, the Safe Yield may be reset in the event that:
 - (i) with the recommendation and advice of the Pools and Advisory Committee and in the exercise of prudent management discretion described in Section 6.5(e)(iii), below, Watermaster recommends to the court that the Safe Yield must be changed by an amount greater (more or less) than 2.5% of the then-effective Safe Yield. [Court's Order, dated April 28, 2017; Court's Findings and Order, dated March 15, 2019 at 2.]

- (ii) The California State Water Resources Control Board develops water conservation measures prior to June 30, 2030, that result in a reduction in urban irrigation in the Chino Basin (i.e., reduced Evapotranspiration Adjustment Factors), as required by Water Code § 10609, et seq., that is reasonably likely to materially reduce recharge in the Chino Basin and such measures are determined to change the Safe Yield by more than 2.5% of the then-effective Safe Yield, and Watermaster moves the Court to reset the Safe Yield accordingly. [Court's Orders, dated July 31, 2020 at 15.]
- (d) Safe Yield Reset Methodology. The Safe Yield shall be subsequently evaluated pursuant to the methodology set forth in the Reset Technical Memorandum. The reset will rely upon long-term hydrology and will include data from 1921 to the date of the reset evaluation. The long-term hydrology will be continuously expanded to account for new data from each year, through July 2030, as it becomes available. This methodology will thereby account for short-term climatic variations, wet and dry. Based on the best information practicably available to Watermaster, the Reset Technical Memorandum sets forth a prudent and reasonable professional methodology to evaluate the then prevailing Safe Yield in a manner consistent with the Judgment, the Peace Agreements, and the OBMP Implementation Plan. In furtherance of the goal of maximizing the beneficial use of the waters of the Chino Basin, Watermaster, with the recommendation and advice of the Pools and Advisory Committee, may supplement the Reset Technical Memorandum's methodology to incorporate future advances in best management practices and hydrologic science as they evolve over the term of the Court's Order, dated April 28, 2017.
- (e) Annual Data Collection and Evaluation. In support of its obligations to undertake the reset in accordance with the Reset Technical Memorandum and this Section 6.5, Watermaster shall annually undertake the following actions:
 - (i) Ensure that, unless a Party to the Judgment is excluded from reporting, all production by all Parties to the Judgment is metered, reported, and reflected in Watermaster's approved Assessment Packages;
 - (ii) Collect data concerning cultural conditions annually with cultural conditions including, but not limited to, land use, water use practices, production, and facilities for the production, generation, storage, recharge, treatment, or transmission of water;
 - (iii) Evaluate the potential need for prudent management discretion to avoid or mitigate undesirable results including, but not limited to, subsidence, water quality degradation, and unreasonable pump lifts. Where the evaluation of available data suggests that there has been or will be a material change from existing and projected conditions or threatened undesirable results, then a more significant evaluation, including modeling, as described in the Reset Technical Memorandum, will be undertaken; and,

- (iv) As part of its regular budgeting process, develop a budget for the annual data collection, data evaluation, and any scheduled modeling efforts, including the methodology for the allocation of expenses among the Parties to the Judgment. Such budget development shall be consistent with section 5.4(a) of the Peace Agreement.
- (f) Modeling. Watermaster shall cause the Basin model to be updated and a model evaluation of Safe Yield, in a manner consistent with the Reset Technical Memorandum, to be initiated no later than January 1, 2024, in order to ensure that the same may be completed by June 30, 2025.
- (g) Peer Review. The Pools shall be provided with reasonable opportunity, no less frequently than annually, for peer review of the collection of data and the application of the data collected in regard to the activities described in Section 6.5(d), (e), and (f) above.
- (h) No Retroactive Accounting. Notwithstanding that the initial Safe Yield reset, described in Section 6.5(a) above, was effective as of July 1, 2010, Watermaster will not, in any manner, including through the approval of its Assessment Packages, seek to change prior accounting of the prior allocation of Safe Yield and Operating Safe Yield among the Parties to the Judgment for Production Years prior to July 1, 2014.

ARTICLE VII RECHARGE

7.0 Scope. This Article sets forth the standards that are applicable to Watermaster's review of Recharge actions by all persons that may be subject to the Judgment as well as Watermaster's efforts to administer, direct, and arrange for Recharge in accordance with the Judgment.

7.1 In General

- (a) Watermaster shall administer, direct and arrange for the Recharge of all water in a manner pursuant to the Judgment, the Peace and Peace II Agreements and the OBMP in a manner that causes no Material Physical Injury to any party to the Judgment or the Chino Basin. Nothing herein shall be construed as committing a Party to provide Supplemental Water upon terms and conditions that are not deemed acceptable to that party. This means that no party to the Judgment shall be individually and independently obligated to purchase or acquire Supplemental Water on behalf of another party to the Judgment. [Peace Agreement § 5.1(e).] Applications to engage in Recharge activities shall be processed in accordance with the provisions of Article X using the forms provided by Watermaster attached hereto as Appendix 1.
- (b) Watermaster shall exercise its Best Efforts to:
 - (i) Protect and enhance the Safe Yield of the Chino Basin through Replenishment and Recharge [Peace Agreement § 5.1(e).];
 - (ii) Ensure there is sufficient Recharge capacity for Recharge water to meet the goals of the OBMP and the future water supply needs within the Chino Basin [Peace Agreement § 5.1(e).];
 - (iii) Evaluate the long term Hydrologic Balance within all areas and subareas of the Chino Basin;
 - (iv) Make its initial report on the then existing state of Hydrologic Balance by July 1, 2003, including any recommendations on Recharge actions which may be necessary under the OBMP. Thereafter Watermaster shall make written reports on the long term Hydrologic Balance in the Chino Basin every two years;
 - (v) Use and consider the information provided in the reports under (iv) above, when modifying or updating the Recharge Master Plan and in implementing the OBMP;
 - (vi) Evaluate the potential or threat for any Material Physical Injury to any party to the Judgment or the Chino Basin, including, but not limited to, any Material Physical Injury that may result from any Transfer of water in

storage or water rights which is proposed in place of physical Recharge of water to Chino Basin in accordance with the provisions of section 5.3 of the Peace Agreement [Peace Agreement § 5.1(e).];

- (vii) Cooperate with owners of existing Recharge facilities to expand/improve/preserve Recharge facilities identified in the Recharge Master Plan; arrange for the construction of the works and facilities necessary to implement the quantities of Recharge identified in the OBMP Implementation Plan [Peace Agreement § 5.1(e)(ix)] and cooperate with appropriate entities to construct and operate the new Recharge facilities that are identified in the Recharge Master Plan;
 - (viii) Ensure that its Recharge efforts under the Recharge Master Plan are consistent with the Judgment, and the Peace Agreement;
 - (ix) Establish and periodically update criteria for the use of water from different sources for Replenishment purposes [Peace Agreement § 5.1(e)(v).];
 - (x) Ensure a proper accounting of all sources of Recharge to the Chino Basin [Peace Agreement § 5.1(e)(vi).];
 - (xi) Recharge the Chino Basin with water in any area where Groundwater levels have declined to such an extent that there is an imminent threat of Material Physical Injury to any party to the Judgment or the Basin [Peace Agreement § 5.1(e)(vii).];
 - (xii) Maintain long-term Hydrologic Balance between total Recharge and discharge within all areas and sub-areas [Peace Agreement § 5.1(e)(viii).]; and
 - (xiii) Use water of the lowest cost and the highest quality, giving preference as far as possible to the augmentation and the Recharge of native storm water. [Peace Agreement § 5.1(f).]
- (c) Recharge Master Plan. The Recharge Master Plan will address how the Basin will be contemporaneously managed to secure and maintain Hydraulic Control and subsequently operated at a new equilibrium at the conclusion of the period of Re-Operation. The Recharge Master Plan will be jointly approved by IEUA and Watermaster and shall contain recharge estimations and summaries of the projected water supply availability as well as the physical means to accomplish the recharge projections. Specifically, the Recharge Master Plan will reflect an appropriate schedule for planning, design, and physical improvements as may be required to provide reasonable assurance that following the full beneficial use of the groundwater withdrawn in accordance with the Basin Re-Operation and authorized controlled overdraft, that sufficient Replenishment capability exists to meet the reasonable projections of Desalter Replenishment obligations. With the concurrence of IEUA and Watermaster, the Recharge Master Plan will be updated

and amended as frequently as necessary with Court approval and not less than every five (5) years. [Peace II Agreement § 8.1.]

- (i) Coordination. The members of the Appropriative Pool will coordinate the development of their respective Urban Water Management Plans and Water Supply Master Plans with Watermaster as follows. [Peace II Agreement § 8.2.]
 - a) Each Appropriator that prepares an Urban Water Management Plan and Water Supply Plans will provide Watermaster with copies of its existing and proposed plans.
 - b) Watermaster will use the Urban Water Management Plans in evaluating the adequacy of the Recharge Master Plan and other OBMP Implementation Plan program elements.
 - c) Each Appropriator will provide Watermaster with a draft in advance of adopting any proposed changes to its Urban Water Management Plans and in advance of adopting any material changes to their Water Supply Master Plans respectively in accordance with the customary notification routinely provided to other third parties to offer Watermaster a reasonable opportunity to provide informal input and informal comment on the proposed changes.
 - d) Any Party that experiences the loss or the imminent threatened loss of a material water supply source will provide reasonable notice to Watermaster of the condition and the expected impact, if any, on the projected groundwater use.
- (ii) In preparation of the Recharge Master Plan, Watermaster will consider whether existing groundwater production facilities owned or controlled by producers within Management Zone 1 may be used in connection with an aquifer storage and recovery ("ASR") project so as to further enhance recharge in specific locations and to otherwise meet the objectives of the Recharge Master Plan. [Peace II Agreement § 8.4(d)(2).]
- (d) Watermaster shall not own Recharge projects, including but not limited to spreading grounds, injection wells, or diversion works. [Peace Agreement § 5.1(h).]
- (e) Watermaster may own and hold water rights in trust for the benefit of the parties to the Judgment. Subject to this exception, Watermaster shall not own land or interests in real property. [Peace Agreement § 5.1(h).] Watermaster shall obtain Court approval prior to acquiring any water rights in trust for the benefit of the parties to the Judgment. In addition, Watermaster shall conform all existing permits to ensure that title is held in trust for the benefit of the parties to the Judgment.

- (f) Watermaster shall arrange, facilitate and provide for Recharge by entering into contracts with appropriate persons, which may provide facilities and operations for physical Recharge of water as required by the Judgment and the Peace Agreement, or pursuant to the OBMP. Any such contracts shall include appropriate terms and conditions, including terms for the location and payment of costs necessary for the operation and maintenance of facilities, if any. [Peace Agreement § 5.1(h).]
- (g) Watermaster shall provide an annual accounting of the amount of Recharge and the location of the specific types of Recharge. [Peace Agreement § 5.1(j).]

7.2 Recharge of Supplemental Water. All Recharge of the Chino Basin with Supplemental Water shall be subject to Watermaster approval obtained by Application made to Watermaster in accordance with provisions of Article X. [Peace Agreement § 5.1(a).] In reviewing any such Application, Watermaster shall comply with the following.

- (a) Watermaster will ensure that any person may make Application to Watermaster to Recharge the Chino Basin with Supplemental Water pursuant to Article X, including the exercise of the right to offer to sell In-Lieu Recharge Water to Watermaster as provided in the Judgment and the Peace Agreement in a manner that is consistent with the OBMP and the law. [Peace Agreement § 5.1(b).]
- (b) Watermaster shall not approve an Application by any party to the Judgment under Article X if it is inconsistent with the terms of the Peace Agreement, or will cause any Material Physical Injury to any party to the Judgment or the Basin. [Peace Agreement § 5.1(b).]
- (c) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Recharge of Supplemental Water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Recharge of Supplemental Water must be denied. [Peace Agreement § 5.1(b).]
- (d) Absent a clear showing as to peculiar circumstances or changes, Recharge of the Chino Basin with Supplemental Water conducted through spreading grounds shall be assessed: (i) a 1.5% evaporation loss if the Recharge occurs in November through March; or (ii) a 4.2% evaporation loss if the Recharge occurs in April through October. Such loss shall be a one-time adjustment applicable to the Party engaging in Recharge. Losses for Recharge through injection wells shall be determined on a case by case basis. [Judgment at ¶41.]

7.3 Recharge of 6,500 Acre-Feet of Supplemental Water in Management Zone 1. Consistent with its overall obligations to manage the Chino Basin to ensure hydrologic balance within each management zone, for the duration of the Peace Agreement (until June of 2030), Watermaster will ensure that a minimum of 6,500 acre-feet of wet water recharge occurs within Management Zone 1 on an annual basis. However, to the extent that water is unavailable for recharge or there is no replenishment obligation in any year, the obligation

to recharge 6,500 acre-feet will accrue and be satisfied in subsequent years. [Peace II Agreement § 8.4(d).]

- (a) Watermaster will implement this measure in a coordinated manner so as to facilitate compliance with other agreements among the parties, including but not limited to the Dry-Year Yield Agreements.
- (b) Five years from the effective date of the Peace II Measures, Watermaster will cause an evaluation of the minimum recharge quantity for Management Zone 1. After consideration of the information developed, the observed experiences in complying with the Dry Year Yield Agreements as well as any other pertinent information, Watermaster may increase the minimum requirement for Management Zone 1 to quantities greater than 6,500 acre-feet per year. In no circumstance will the commitment to recharge 6,500 acre-feet be reduced for the duration of the Peace Agreement. [Peace II Agreement § 8.4(e).]

7.4 Sources of Replenishment Water. Supplemental Water may be obtained by Watermaster from any available source. Watermaster shall, however, seek to obtain the best available quality of Supplemental Water at the most reasonable cost for recharge in the Basin. It is anticipated that Supplemental Water for Replenishment of Chino Basin may be available at different rates to the various pools to meet their Replenishment Obligations. If such is the case, each pool will be assessed only that amount necessary for the cost of Replenishment Water to that pool, at the rate available to the pool, to meet its Replenishment Obligation. In this connection, available resources may include, but are not limited to:

- (a) Maximum beneficial use of Recycled Water, which shall be given a high priority by Watermaster [Judgment ¶ 49(a).];
- (b) State Project Water subject to applicable service provisions of the State's water service contracts [Judgment ¶ 49(b).];
- (c) Local Imported Water through facilities and methods for importation of surface and Groundwater supplies from adjacent basins and watersheds [Judgment ¶ 49(c).]; and
- (d) Available supplies of Metropolitan Water District water from its Colorado River Aqueduct. [Judgment ¶ 49(d).]

7.5 Desalter Replenishment. Notwithstanding the provisions of section 7.4, above, for the initial term of the Peace Agreement, the Replenishment obligation attributable to Desalter production in any year will be determined by Watermaster as follows [Peace Agreement § 7.5; Peace II Agreement § 6.2.]:

- (a) Watermaster will calculate the total Desalter Production for the preceding year and then apply a credit against the total quantity from:

- (i) the Watermaster Desalter replenishment account composed of 25,000 acre-feet of water abandoned by Kaiser Ventures pursuant to the "Salt Offset Agreement" dated October 21, 1993, between Kaiser Ventures and the RWQCB, and other water previously dedicated by the Appropriative Pool [Peace Agreement § 7.5(a).];
 - (ii) dedication of water from the Overlying (Non-Agricultural) Pool Storage Account or from any contribution arising from an annual authorized Physical Solution Transfer in accordance with amended Exhibit G to the Judgment;
 - (iii) New Yield that may be made available to Watermaster through a combination of management programs, actions or facilities, other than the Stormwater component of New Yield, as determined on an annual basis [Peace Agreement § 7.5(b)];
 - (iv) any declared losses from storage in excess of actual losses enforced as a "Leave Behind";
 - (v) Safe Yield that may be contributed by the parties [Peace Agreement § 7.5(c)];
 - (vi) any Production of groundwater attributable to the controlled overdraft authorized pursuant to Exhibit I to the Judgment, as amended.
- (b) To the extent available credits are insufficient to fully offset the quantity of groundwater production attributable to the Desalters, Watermaster will use water or revenue obtained by levying the following assessments among the members of the Overlying (Non-Agricultural) Pool and the Appropriative Pool to meet any remaining replenishment obligation as follows.
- (i) A Special OBMP Assessment against the Overlying (Non-Agricultural) Pool as more specifically authorized and described in amendment to Exhibit "G" paragraph 5 (c) to the Judgment will be dedicated by Watermaster to further off-set replenishment of the Desalters. However, to the extent there is no remaining replenishment obligation attributable to the Desalters in any year after applying the off-sets set forth in 7.5(a), the OBMP Special Assessment levied by Watermaster will be distributed as provided in Section 9.2 of the Peace II Agreement. The Special OBMP Assessment will be assessed pro-rata on each member's share of Safe Yield.
 - (ii) The members of the Appropriative Pool will contribute a total of 10,000 afy toward Desalter replenishment, allocated among Appropriative Pool members as follows:

- 85% of the total (8,500 afy) will be allocated according to the Operating Safe Yield percentage of each Appropriative Pool member; and
- 15% of the total (1,500 afy) will be allocated according to each land use conversion agency's percentage of the total land use conversion claims, based on the actual land use conversion allocations of the year.

The annual desalter replenishment obligation contribution of each Appropriative Pool member will be calculated using the following formula:

$$\begin{aligned} \text{Desalter replenishment obligation contribution} = & (8,500 * \% \text{ Appropriator's share of total initial 49,834 afy Operating Safe Yield}) \\ & + (1,500 * \% \text{ Appropriator's proportional share of that year's total conversion claims}) \end{aligned}$$

A sample calculation of the desalter replenishment obligation contribution for each Appropriative Pool member is shown on Exhibit 4 to the Peace II Agreement, as amended.

- (iii) A Replenishment Assessment against the Appropriative Pool for any remaining Desalter replenishment obligation after applying both 6(b)(i) and 6(b)(ii) of the Peace II Agreement, allocated pro-rata to each Appropriative Pool member according to the combined total of the member's share of Operating Safe Yield and the member's Adjusted Physical Production, as defined below. Desalter Production is excluded from this calculation. A sample calculation of the allocation of the remaining desalter obligation is shown in Exhibit 4 to the Peace II Agreement.¹
- (iv) Adjusted Physical Production is the Appropriative Pool member's total combined physical production (i.e., all groundwater pumped or produced by the Appropriative Pool member's groundwater wells in the Chino Basin, including water transferred from the Non- Agricultural Pool under Exhibit G, ¶9 of the Judgment), with the following adjustments:
 - (1) In the case of assignments among Appropriative Pool members, or between Appropriative Pool members and Non-Agricultural Pool members under Exhibit G, ¶6 of the Judgment, resulting in pumping or production by one party to the Judgment for use by another party to the Judgment, the production for purposes of Adjusted Physical Production shall be assigned to the party making beneficial use of the water, not the actual producer.

¹ This sample calculation is attached hereto as Exhibit "C."

- (2) Production offset credits pursuant to voluntary agreements under section 5.3(i) of the Peace Agreement are calculated at 50% of the total voluntary agreement credit in the determination of Adjusted Physical Production for an Appropriative Pool member participating in a voluntary agreement for that year. In the determination of Adjusted Physical Production, the voluntary agreement credit is subtracted from physical production. Reduction of the voluntary agreement credit from 100% to 50% is applicable only to the calculation of the Adjusted Physical Production hereunder; but in all other applications, the voluntary agreement credit shall remain unchanged (i.e. remain at 100%).
- (3) Production associated with approved storage and recovery programs (e.g., Dry Year Yield recovery program with MWD) is not counted in Adjusted Physical Production, except for in-lieu participation in such programs: in-lieu put quantities shall be added to physical production, and in-lieu take quantities shall be subtracted from physical production.
- (4) Metered pump-to-waste Production that is determined by Watermaster to be subsequently recharged to the groundwater basin is deducted from physical production; unmetered pump-to-waste production that is determined by Watermaster not to be subsequently recharged to the groundwater basin is added to physical production.
- (5) The Appropriative Pool may approve, by unanimous vote, the inclusion of other items in the determination of Adjusted Physical Production, with the exception of Non- Agricultural Pool water assigned or transferred under Exhibit G, ¶6 or ¶10 of the Judgment.
- (v) Any member of the Non-Agricultural Pool that is also a member of the Appropriative Pool may elect to transfer (a) some or all of the annual share of Operating Safe Yield of the transferor in and for the year in which the transfer occurs (except that such transfer shall exclude any dedication to the Watermaster required by section 6.2(b)(1) of the Peace II Agreement), and (b) any quantity of water held in storage by the transferor (including without limitation carryover and excess carryover) to any member of the Appropriative Pool, in either case at any price that the transferor and transferee may deem appropriate and for the purpose of satisfying the transferee's desalter replenishment obligation. The transferee's desalter replenishment obligation shall be credited by the number of acre-feet so transferred.
- (vi) For the purposes of this section 7.5(b), the quantification of any Party's share of Operating Safe Yield does not include either land use conversions or Early Transfers.

- 7.6 Method of Replenishment. Watermaster may accomplish Replenishment by any reasonable method, including spreading and percolation, injection of water into existing or new facilities, in-lieu procedures and acquisition of unproduced water from members of the Non-Agricultural and Appropriative Pools. [Judgment ¶ 50.]
- 7.7 Accumulations. In order to minimize fluctuations in assessments and to give Watermaster flexibility in the purchase and spreading of Replenishment Water, Watermaster may make reasonable accumulations of Replenishment Water assessment proceeds. Interest earned on such retained funds shall be added to the account of the pool from which the funds were collected and shall be applied only to the purchase of Replenishment Water. [Judgment ¶ 56.]
- 7.8 In-Lieu and Other Negotiated Procedures. To the extent good management practices dictate that recharge of the Basin be accomplished by taking surface supplies of Supplemental Water in lieu of Groundwater otherwise subject to Production as an allocated share of Operating Safe Yield, the following in-lieu procedures or other additional procedures as may be negotiated by Watermaster and approved by the Watermaster Advisory Committee shall prevail [Judgment Exhibit "H" ¶ 11.]:
- (a) Designation of In-Lieu Areas. In-lieu areas may be designated by order of Watermaster upon recommendation or approval of the Watermaster Advisory Committee. Watermaster has previously designated the entire Chino Basin as an in-lieu area. In-lieu areas may be enlarged, reduced or eliminated by subsequent order; provided, however, that designation of an in-lieu area shall be for a minimum fixed term sufficient to justify necessary capital investment. However, should in-lieu Area No.1, which has been established by the Court, be reduced or eliminated, it shall require prior order of the Court.
 - (b) Method of Operation. Any member of the Appropriative Pool Producing water within a designated in-lieu area who is willing to abstain for any reason from Producing any portion of its share of Operating Safe Yield in any year, may offer such unpumped water to Watermaster on a form to be provided therefor. In such event, Watermaster shall purchase said water in place, in lieu of spreading Replenishment Water, which may be otherwise required to make up for over Production. The purchase price for in-lieu water shall be the lesser of:
 - (i) Watermaster's current cost of Replenishment Water, plus the cost of spreading; or
 - (ii) The cost of supplemental surface supplies to the Appropriator, less
 - a) said Appropriator's average cost of Groundwater Production, and
 - b) the applicable Production assessment where the water is Produced.

ARTICLE VIII STORAGE

8.0 Scope. This Article sets forth Watermaster's obligations and responsibilities regarding the management, regulation and control of storage within the Basin.

8.1 In General.

- (a) Watermaster Control. A substantial amount of available Groundwater storage capacity exists in the Basin that is not used for storage or regulation of Basin Waters. It is essential that the use of storage capacity of the Basin be undertaken only under Watermaster control and regulation so as to protect the integrity of the Basin. Watermaster will exercise regulation and control of storage primarily through the execution of Groundwater Storage Agreements. [Judgment ¶ 11.]
- (b) Categories of Groundwater Storage Agreements. There are different categories of storage and different types of Groundwater Storage agreements. Only those Groundwater Storage agreements defined as "Qualifying Storage agreements" require new Watermaster approval. Qualifying Storage agreements will be processed by Watermaster in accordance with the forms provided by Watermaster and attached hereto as Appendix 1.
- (c) Court Notification and Approval. Before it is effective, any Storage and Recovery Agreement entered into pursuant to a Storage and Recovery Program shall first receive Court Approval. With respect to all other Groundwater Storage Agreements, Watermaster shall notify the Court after approval.
- (d) Relationship Between Recapture and Storage. Recapture of water held in a storage account will generally be approved by Watermaster as a component of and coincident with a Groundwater Storage Agreement for Qualifying Storage. However, an Applicant for Qualifying Storage may request, and Watermaster may approve, a Groundwater Storage Agreement where the plan for recovery is not yet known. In such cases, the Applicant may request Watermaster approval of the Qualifying Storage only and subsequently submit and process an independent Application for Recapture under the provisions of Article X.
- (e) Storage of Safe Yield as Carry-Over Water. Any member of the Appropriative Pool or member of the Non-Agricultural Pool who Produces less than its assigned share of Operating Safe Yield or Safe Yield, respectively, may carry such unexercised right forward for exercise in subsequent years. Watermaster shall be required to keep an accounting of Carry-Over Water in connection with said Carry-Over Rights. The first water Produced in any subsequent year, shall be deemed to be in exercise of that Carry-Over Right. If the aggregate remaining Carry-Over Water available to any member of the Appropriative Pool, or member of the Non-Agricultural Pool with Safe Yield, in a given year exceeds its assigned share of Operating Safe Yield after its demands are met, such Producer shall, as a condition of preserving such Excess Carry-Over Water execute a Local Storage Agreement

with Watermaster. A member of the Appropriative Pool shall have the option to pay the gross assessment applicable to said Carry-Over Right in the year in which it occurred. [Judgment Exhibit "G," and Exhibit "H" ¶ 12.]

(f) Storage of Supplemental Water. The rules and procedures for the storage of Supplemental Water are set forth as follows.

(i) Supplemental Water. Each party, its officers, agents, employees, successors, and assigns, has been enjoined and restrained from storing Supplemental Water in Chino Basin for withdrawal, or causing withdrawal of water stored, except pursuant to the terms of a Groundwater Storage Agreement with Watermaster. Any Supplemental Water recharged by any person within Chino Basin, except pursuant to these Rules and Regulations and a Groundwater Storage Agreement, is deemed abandoned and shall not be considered Stored Water. [Judgment ¶ 14.]

(ii) Application for Storage of Supplemental Water. Watermaster will ensure that any person, including but not limited to the State of California and the Department of Water Resources may make Application to Watermaster to store and Recover water from the Chino Basin as provided herein in a manner that is consistent with the OBMP and the law. Watermaster shall not approve an Application to store and Recover water if it is inconsistent with the terms of the Peace Agreement or will cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the storage and Recovery of water shall be reasonably and fully mitigated as a condition of approval. In the event the Material Physical Injury cannot be mitigated, the request for storage and Recovery must be denied. [Peace Agreement § 5.2(a)(iii).] Applications for the storage of Supplemental Water shall be processed in accordance with the provisions of Article X.

(g) Rules and Procedures in General.

(i) Any person desiring to store Supplemental Water in the Basin shall make appropriate Application therefor with the Watermaster pursuant to the provisions of this Article and Article X. Supplemental Water stored or Recharged in the Basin, except pursuant to a Groundwater Storage Agreement with Watermaster, shall be deemed abandoned and not classified as Stored Water. [Judgment ¶ 14.]

(ii) Guidelines and Criteria. Any person, whether a party to the Judgment or not, may make reasonable beneficial use of the available groundwater storage capacity of Chino Basin for storage of Water pursuant to written agreement with the Watermaster as provided herein. [Judgment ¶ 12.]

(iii) In the allocation of storage capacity, the needs and requirements of lands overlying Chino Basin and the owners of rights in the Safe Yield or

Operating Safe Yield of the Basin shall have priority and preference over storage for export. [Judgment ¶ 12.]

- (iv) It is an objective in management of the Basin's waters that no Producer shall be deprived of access to the Basin's waters by reason of unreasonable pumping patterns, nor by regional or localized Recharge of Replenishment Water, insofar as such result may be practically avoided. [Judgment Exhibit "I" ¶ 1(a).]
- (v) Maintenance and improvement of water quality shall be given prime consideration. [Judgment Exhibit "I" ¶ 1(b).]
- (vi) Financial feasibility, economic impact and the cost and optimum utilization of the Basin's resources and the physical facilities of the parties to the Judgment shall be considered equal in importance to water quantity and quality parameters. [Judgment Exhibit "I" ¶ 1(c).]
- (h) Contents of Groundwater Storage Agreements. Each Groundwater Storage Agreement shall include but not be limited to the following components [Judgment Exhibit "I" ¶ 3]:
 - (i) The quantities and the term of the storage right, which shall specifically exclude credit for any return flows;
 - (ii) A statement of the priorities of the storage right as against overlying, Safe Yield uses, and other storage rights;
 - (iii) The delivery rates, together with schedules and procedures for spreading, injection or in-lieu deliveries of Supplemental Water for direct use;
 - (iv) The calculation of storage water losses and annual accounting for water in storage; and
 - (v) The establishment and administration of withdrawal schedules, locations and methods.
- (i) Accounting. Watermaster shall calculate additions, extractions and losses of all Stored Water in Chino Basin, and any losses of water supplies or Safe Yield of Chino Basin resulting from such Stored Water, and keep and maintain for public record, an annual accounting thereof. [Judgment ¶ 29.]
- (j) No Material Physical Injury. Watermaster will ensure that any party to the Judgment may Recapture water in a manner consistent with the Peace Agreement, the OBMP, the Judgment and these Rules and Regulations. Watermaster shall not approve a Recapture plan if it is inconsistent with the terms of Peace Agreement or will cause Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Recapture of water by any person shall be fully and reasonably

mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Recapture must be denied.

8.2 Local Storage: Special Considerations. Under a Local Storage Agreement with Watermaster, every party to the Judgment shall be permitted to store its Excess Carry-Over Water and Supplemental Water in the Chino Basin according to the following provisions:

- (a) For the term of the Peace Agreement, Watermaster shall ensure that: (a) the quantity of water actually held in local storage under a Local Storage Agreement with Watermaster is confirmed and protected and (b) each party to the Judgment shall have the right to store its Excess Carry-Over Water. Thereafter, a party to the Judgment may continue to Produce the actual quantity of water held pursuant to a Local Storage Agreement, subject only to the loss provisions set forth herein.
- (b) For the term of the Peace Agreement, any party to the Judgment may make Application to Watermaster for a Local Storage Agreement pursuant to the provisions of this Article and Article X, whereby it may store Supplemental Water in the Chino Basin. [Peace Agreement § 5.2(b)(ii).]
- (c) In accordance with Article X, Watermaster shall provide written notice to all interested parties of the proposed Local Storage Agreement prior to approving the agreement.
- (d) Watermaster shall approve the storage of Supplemental Water under a Local Storage Agreement so long as: (1) the total quantity of Supplemental Water authorized to be held in Local Storage under all then-existing Local Storage Agreements, other than amounts classified as Supplemental Water under the procedure set forth in section 8.1 above, for all parties to the Judgment does not exceed the Maximum Local Storage Quantity; (2) the party to the Judgment making the request provides their own Recharge facilities for the purpose of placing the Supplemental Water into Local Storage; (3) the agreement will not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed agreement with conditions that mitigate any threatened or potential Material Physical Injury. [Peace Agreement § 5.2(b)(iv); Second Amendment to Peace Agreement.]
- (e) There shall be a rebuttable presumption that the Local Storage Agreement for Supplemental Water does not result in Material Physical Injury to a Party to the Judgment or the Basin. [Peace Agreement § 5.2(b)(v).]
- (f) In the event more than one party to the Judgment submits a request for an agreement to store Supplemental Water pursuant to a Local Storage Agreement, Watermaster shall give priority to the first party to file a bona fide written request which shall include the name of the party to the Judgment, the source, quantity and quality of the Supplemental Water, an identification of the party to the Judgment's access to or ownership of the Recharge facilities, the duration of the Local Storage and any other information Watermaster shall reasonably request. Watermaster shall not

grant any person the right to store more than the then-existing amount of available Local Storage. The amount of Local Storage available for the storage of Supplemental Water shall be determined by subtracting the previously approved and allocated quantity of storage capacity for Supplemental Water and Excess Carryover Water from the Maximum Local Storage Quantity. [Court's Findings and Order, dated July 21, 2021.] This means Watermaster shall not approve requests for the storage of Supplemental Water and Excess Carryover Water in excess of the Maximum Local Storage Quantity. Priorities among the parties to the Judgment shall be on the basis that the completed Applications filed first in time under the provisions of Article X shall have a priority in right up to the amount of the quantity approved by Watermaster.

- (g) After July 1, 2035, Watermaster shall have discretion to place reasonable limits on the further accrual of Excess Carry-Over Water and Supplemental Water in Local Storage. However, during the term of the Peace Agreement, Watermaster shall not limit the accrual of Excess Carry-Over Water for Fontana Union Mutual Water Company and Cucamonga County Water District when accruing Excess Carry-Over Water in Local Storage pursuant to the Settlement Agreement Among Fontana Union Water Company, Kaiser Steel Resources Inc., San Gabriel Valley Water Company and Cucamonga County Water District dated February 7, 1992, to a quantity less than 25,000 acre-feet for the term of the Peace Agreement. [Peace Agreement § 5.2(b)(x).]
- (h) Watermaster shall evaluate the need for limits on water held in Local Storage to determine whether the accrual of additional Local Storage by the parties to the Judgment should be conditioned, curtailed or prohibited if it is necessary to provide priority for the use of storage capacity for those Storage and Recovery Programs that provide broad mutual benefits to the parties to the Judgment as provided in this paragraph and section 5.2(c) of the Peace Agreement. [Peace Agreement § 5.2(b)(xi).]
- (i) Watermaster will impose a uniform loss against all water in storage in an amount of 2 (two) percent where the Party holding the storage account: (i) has previously contributed to the implementation of the OBMP as a Party to the Judgment, is in compliance with their continuing covenants under the Peace and Peace II Agreements or in lieu thereof they have paid or delivered to Watermaster "financial equivalent" consideration to offset the cost of past performance prior to the implementation of the OBMP and (ii) promised continued future compliance with Watermaster's Rules and Regulations. Where a Party has not satisfied the requirements of subsection (i)(i) and (i)(ii) herein, Watermaster will assess a 6 (six) percent loss. Following a Watermaster determination that Hydraulic Control has been achieved, Watermaster will assess losses of less than 1 (one) percent where the Party satisfies subsection (i)(i) and (i)(ii). [Peace II Agreement § 7.4.]

- (j) Watermaster shall allow water held in storage to be Transferred pursuant to the provisions of section 5.3 of the Peace Agreement as provided in Article X. Storage capacity is not Transferable. [Peace Agreement § 5.2(b)(xiii).]
- (k) Monetary payment shall not be accepted as a form of mitigation for Material Physical Injury where the injury is not confined to a specific party or parties. Where the Material Physical Injury is confined to a specific party or parties, monetary payment may be accepted as a form of mitigation, if acceptable to the affected party or parties.
- (l) Applicants for Local Storage of Supplemental Water agreements shall submit such Application prior to initiation of the placement of the Supplemental Water into storage except as provided in sections 8.1 and 8.2 above.
- (m) Any Supplemental Water stored or recharged in the Basin, except pursuant to a Local Storage Agreement for Supplemental Water with Watermaster, shall be deemed abandoned and not classified as Stored Water. [Judgment ¶ 14.]

8.3 Groundwater Storage and Recovery Program; Special Considerations. The parties, through Watermaster, may initiate a regional Storage and Recovery (sometimes called "conjunctive use") Program, for the mutual benefit of the Appropriators and the Non-Agricultural Pool in the Chino Basin according to the following provisions:

- (a) Watermaster will ensure that no person shall store water in, and recover water from the Basin, other than pursuant to a Local Storage Agreement, without a Storage and Recovery agreement with Watermaster [Peace Agreement § 5.2(c)(i).];
- (b) A proposed Applicant for a Storage and Recovery Program must submit the information set forth in Article X to Watermaster prior to Watermaster's consideration of an Application for a Storage and Recovery agreement;
- (c) As a precondition of any project, program or contract regarding the use of Basin storage capacity pursuant to a Storage and Recovery Program, Watermaster shall first request proposals from qualified persons [Peace Agreement § 5.2(c)(iii).];
- (d) Watermaster shall be guided by the following criteria in evaluating any request to store and recover water from the Basin by a party to the Judgment or any person under a Storage and Recovery Program.
 - (i) The initial target for the cumulative quantity of water held in storage is 500,000 acre-feet in addition to the existing storage accounts. The 500,000 acre-feet target may be comprised of any combination of participants and is in excess of up to an additional 100,000 acre-feet of Supplemental Water and Excess Carry-Over Rights that may be stored under Local Storage Agreements.

- (ii) Watermaster shall prioritize its efforts to regulate and condition the storage and recovery of water developed in a Storage and Recovery Program for the mutual benefit of the parties to the Judgment and give first priority to Storage and Recovery Programs that provide broad mutual benefits. [Peace Agreement § 5.2(c)(iv).];
- (e) The members of the Appropriative Pool and the Non-Agricultural Pool shall be exclusively entitled to the compensation paid for a Storage and Recovery Program irrespective of whether it be in the form of money, revenues, credits, proceeds, programs, facilities, or other contributions (collectively "compensation") with the benefits of such compensation to be spread as broadly as possible as directed by the Non-Agricultural and the Appropriative Pools [Peace Agreement § 5.2(c)(v).];
- (f) The compensation received from the use of available storage capacity under a Storage and Recovery Program, may be used to offset the Watermaster's cost of operation, to reduce any assessments on the parties to the Judgment within the Appropriative and Non-Agricultural Pools, and to defray the costs of capital projects as may be requested by the members of the Non-Agricultural Pools and the Appropriative Pool [Peace Agreement § 5.2(c)(vi).];
- (g) Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by storage and recovery of water, whether Local Storage and recovery or pursuant to a Storage and Recovery Program, shall be reasonably and fully mitigated as a condition of approval [Peace Agreement §§ 5.2(a)(iii) and 5.2(c)(viii) (labeled "(xiii)");
- (h) Watermaster reserves discretion to negotiate appropriate terms and conditions or to deny any request to enter into a Storage and Recovery Program Agreement. With respect to persons who are not parties to the Judgment, Watermaster reserves complete discretion to ensure that maximum compensation, as defined in section (e) above, is received. Watermaster shall base any decision to approve or disapprove any proposed Storage and Recovery Program Agreement upon the record as provided in Article X. However, it may not approve a proposed Storage and Recovery Program Agreement unless it has first imposed conditions to reasonably and fully mitigate any threatened or potential Material Physical Injury [Peace Agreement § 5.2(c)(ix).];
- (i) Any party to the Judgment may seek review of the Watermaster's decision regarding a Storage and Recovery Program Agreement as provided in Article X;
- (j) Nothing herein shall be construed as prohibiting the export of Supplemental Water stored under a Storage and Recovery Program and pursuant to a Storage and Recovery Agreement; and
- (k) The Parties shall indemnify and defend the State of California and the members of the Agricultural Pool against any lawsuit or administrative proceedings, without

limitation, arising from Watermaster's adoption, approval, management, or implementation of a Storage and Recovery Program.

- (l) Any losses from storage assessed as a Leave Behind in excess of actual losses (“dedication quantity”) will be dedicated by Watermaster towards groundwater Production by the Desalters to thereby avoid a Desalter replenishment obligation that may then exist in the year of recovery. Any dedication quantity which is not required to offset Desalter Production in the year in which the loss is assessed, will be made available to the members of the Appropriative Pool. The dedication quantity will be pro-rated among the members of the Appropriative Pool in accordance with each Producer’s combined total share of Operating Safe Yield and the previous year’s actual production. However, before any member of the Appropriative Pool may receive a distribution of any dedication quantity, they must be in full compliance with the 2007 Supplement to the OBMP Implementation Plan and current in all applicable Watermaster assessments. [Peace II Agreement § 7.5.]

8.4 Recapture.

- (a) All Recapture of water held in a storage account under a Groundwater Storage Agreement shall be subject to the requirement that the Recovery of the water not result in Material Physical Injury to a party to the Judgment or the Basin.
- (b) Recapture of water held in a Local Storage Account that pre-exists the adoption of these Rules and Regulations and that was extended by Watermaster in accordance with Article V of the Peace Agreement and these Rules and Regulations until July 1, 2005, shall be in accordance with the provisions of the plan for Recapture previously approved by Watermaster. Any amendments to an approved Recapture plan shall require additional Watermaster's approval under the provisions of Article X.
- (c) A person with an approved plan for Recapture shall have the right to process amendments to the previously approved plan in accordance with the provisions of Article X.

ARTICLE IX TRANSFERS

- 9.0 Scope. Any Transfer shall be made only in accordance with the Judgment, the Peace Agreement section 5.3, the Peace II Agreement, the OBMP and this Article IX.
- 9.1 In General. Watermaster will ensure that any party to the Judgment may Transfer water in a manner that is consistent with the Judgment, the Peace and Peace II Agreements, the OBMP and the law. Watermaster shall approve a Transfer if it is consistent with the terms of the Peace Agreement and Peace II Agreement, and will not cause any Material Physical Injury to any party to the Judgment or the Basin. Any potential or threatened Material Physical Injury to any party to the Judgment or the Basin caused by the Transfer of water shall be fully and reasonably mitigated as a condition of approval. In the event the Material Physical Injury cannot be fully and reasonably mitigated, the request for Transfer must be denied. Upon receipt of written request by Watermaster, a party to the Judgment shall exercise Best Efforts to provide Watermaster with a preliminary projection of any anticipated Transfer of Production within the Year.
- 9.2 Application to Transfer. A party to the Judgment may make Application to Watermaster to Transfer water as provided in the Judgment under the procedures set forth in Article X.
- (a) Watermaster shall provide reasonable advance written notice to all the Active Parties of a proposed Transfer, prior to approving the Transfer as provided in Article X.
 - (b) Watermaster shall approve the Transfer of water as provided in the Judgment so long as the individual Transfer does not result in any Material Physical Injury to any party to the Judgment or the Basin. Watermaster may approve a proposed Transfer with conditions that fully and reasonably mitigate any threatened or potential Material Physical Injury.
 - (c) There shall be a rebuttable presumption that the Transfer and the Production by the transferee does not result in Material Physical Injury to a party to the Judgment or the Basin.
 - (d) Watermaster shall base any decision to approve or disapprove any proposed Transfer upon the record after considering potential impacts associated with the individual Transfer alone and without regard to impacts attributable to any other Transfers. [Peace Agreement § 5.3(b)(v).] However, nothing herein shall be construed as impairing or restraining Watermaster's duty and discretion with regard to cumulative impacts in the context of section 9.3.
 - (e) Transfers which occur between the same parties in the same year shall be considered as a single Transfer for the purpose of determining Material Physical Injury.

- 9.3 Integrated Watermaster Review. In reviewing Transfers under these Rules and Regulations, Watermaster shall exercise reasonable discretion. Watermaster shall review each proposed Transfer based upon the record before it and considering the potential impacts of the proposed Transfer alone. However, Watermaster shall also consider the cumulative impacts of Transfers generally when carrying out its responsibilities to implement the OBMP and Recharge and monitoring programs authorized by these Rules and Regulations or the Judgment.
- (a) Watermaster will evaluate the cumulative physical impact of Transfers on the Basin, if any, by July 1, 2003, and a minimum of once every two years thereafter.
 - (b) Watermaster will take the results of its evaluation into account when carrying out its obligations under section 7.1 of these Rules and Regulations.
- 9.4 Transfer of Non-Agricultural Pool Production Rights. Watermaster shall approve the Transfer or lease of the quantified Production rights of Non-Agricultural Producers within the Non-Agricultural Pool subject to the provisions of section 9.2(b) above. The members of the Overlying (Non-Agricultural) Pool shall have the discretionary right to Transfer or lease their quantified Production rights and carry-over water held in storage accounts in quantities that each member may from time to time individually determine as Transfers in furtherance of the Physical Solution:
- (a) within the Overlying (Non-Agricultural) Pool;
 - (b) to Watermaster in conformance with the procedures described in the Peace Agreement between the Parties therein, dated June 29, 2000; or
 - (c) to Watermaster and thence to members of the Appropriative Pool in accordance with the following guidelines set forth in the Overlying (Non-Agricultural) Pool Pooling Plan:
 - (i) By December 31 of each year, the members of the Overlying (Non-Agricultural) Pool shall notify Watermaster of the amount of water each member shall make available in their individual discretion for purchase by the Appropriators. The Pool Committee of the Overlying (Non-Agricultural) Pool may, by affirmative action of its members from time to time, establish a price for such water or a method pursuant to which such price will be established. By January 31 of each year, Watermaster shall provide a Notice of Availability of each Appropriator's pro-rata share of such water;
 - (ii) Except as they may be limited by paragraph 9.4(v) below, each member of the Appropriative Pool will have, in their discretion, a right to purchase its pro-rata share of the supply made available from the Overlying (Non-Agricultural) Pool at the price at which the water is being offered. Each Appropriative Pool member's pro-rata share of the available supply will be

based on each Producer's combined total share of Operating Safe Yield and the previous year's actual Production by each party;

- (iii) If any member of the Appropriative Pool fails to irrevocably commit to their allocated share by March 1 of each year, its share of the Overlying (Non-Agricultural) Pool water will be made available to all other members of the Appropriative Pool according to the same proportions as described in 9.4(c)(ii) above and at the price at which the water is being offered. Each member of the Appropriative Pool shall complete its payment for its share of water made available by June 30 of each year.
 - (iv) Commensurate with the cumulative commitments by members of the Appropriative Pool pursuant to (ii) and (iii) above, Watermaster will purchase the surplus water made available by the Overlying (Non-Agricultural) Pool water on behalf of the members of the Appropriative Pool on an annual basis at which the water is being offered and each member of the Appropriative Pool shall complete its payment for its determined share of water made available by June 30 of each year.
 - (v) Any surplus water cumulatively made available by all members of the Overlying (Non-Agricultural) Pool that is not purchased by Watermaster after completion of the process set forth herein will be pro-rated among the members of the Pool in proportion to the total quantity offered for transfer in accordance with this provision and may be retained by the Overlying (Non-Agricultural) Pool member without prejudice to the rights of the members of the Pool to make further beneficial use or transfer of the available surplus.
 - (vi) Each Appropriator shall only be eligible to purchase their pro-rata share under this procedure if the party is: (i) current on all their assessments; and (ii) in compliance with the OBMP.
 - (vii) The right of any member of the Overlying (Non-Agricultural) Pool to transfer water in accordance with subsections 9.4(c)(i)–(iii) in any year is dependent upon Watermaster making a finding that the member of the Overlying (Non-Agricultural) Pool is using recycled water where it is both physically available and appropriate for the designated end use in lieu of pumping groundwater.
 - (viii) Nothing herein shall be construed to affect or limit the rights of any Party to offer or accept an assignment as authorized by the Judgment Exhibit “G” paragraph 6 above, or to affect the rights of any Party under a valid assignment.
- (d) In addition, the parties to the Judgment with rights within the Non-Agricultural Pool shall have the additional right to Transfer their rights to Watermaster for the purposes of Replenishment for a Desalter or for a Storage and Recovery Program.

- (e) Any member of the Non-Agricultural Pool (including without limitation any member of the Non-Agricultural Pool that is also a member of the Appropriative Pool) may elect to transfer (a) some or all of the annual share of Operating Safe Yield of the transferor in and for the year in which the transfer occurs (except that such transfer shall exclude any dedication to Watermaster required by Section 5(c) of Exhibit "G" to the Judgment), and (b) any quantity of water held in storage by the transferor (including without limitation carryover and excess carryover) to any member of the Appropriative Pool, in either case at any price that the transferor and transferee may deem appropriate and for the purpose of satisfying the transferee's desalter replenishment obligation. Any such transfer shall be effective upon delivery by the transferor or transferee to Watermaster staff of written notice of such transfer in the form attached hereto as Form 12. The transferee's desalter replenishment obligation shall be credited by the number of acre feet so transferred.

9.5 Early Transfer.

- (a) Pursuant to the Peace Agreement, Watermaster approved an Early Transfer of the quantity of water not Produced by the Agricultural Pool that is remaining after all the land use conversions are satisfied pursuant to section 5.3(h) of the Peace Agreement to the Appropriative Pool. The quantity of water subject to Early Transfer under this section shall be the quantity of water not Produced by the Agricultural Pool that is remaining after all the land use conversions are satisfied pursuant to section 5.3(h) of the Peace Agreement.
 - (i) The Transfer shall not limit the Production right of the Agricultural Pool under the Judgment to Produce up to 82,800 acre-feet of water in any year or 414,000 acre-feet in any five years as provided in the Judgment. [Peace Agreement § 5.3(g)(ii).]
 - (ii) The combined Production of all parties to the Judgment shall not cause a Replenishment assessment on the members of the Agricultural Pool. The Agricultural Pool shall be responsible for any Replenishment obligation created by the Agricultural Pool Producing more than 414,000 acre-feet in any five-year period. [Peace Agreement § 5.3(g)(iii).]
 - (iii) Nothing herein shall be construed as modifying the procedures or voting rights within or by the members of the Agricultural Pool. [Peace Agreement § 5.3(g)(v).]
- (b) The amount of water converted from agricultural use to urban use prior to execution of the Peace Agreement was 2.6 acre-feet per acre, with 1.3 acre-feet per acre being allocated collectively to all members of the Appropriative Pool with an assigned share of Operating Safe Yield and 1.3 acre-feet per acre being allocated to that Appropriator providing service for that urban use. The rate of 2.6 acre-feet per acre shall be changed to a total of 2.0 acre-feet per acre, all of which shall be allocated upon the conversion of the land use to that party to the Judgment which is a member of the Appropriative Pool, on the Effective Date of the Peace Agreement, and

whose Sphere of Influence or authorized service area contains the land ("purveyor"). Upon such conversion of water use the purveyor will pledge that the amount of water needed for such urban land use, when such urban land use is established, up to 2.0 acre-feet of water per acre of land per year will be made available for service for such converted land by purveyor under its then existing standard laws, regulations, rules and policies, or for service arranged by such purveyor, subject only to prohibition of such service by a federal, state agency or court with jurisdiction to enforce such prohibition. The owner of such converted land shall have the right to enforce such pledge by specific performance or writ of mandate under the terms of the Peace Agreement. No monetary damages shall be awarded.

- 9.6 Voluntary Agreement. The members of the Agricultural Pool, including the State of California, shall have the right to engage in a voluntary agreement with an Appropriator which has a service area contiguous to or inclusive of the agricultural land, to provide water allocated from the Agricultural Pool to the overlying land for agricultural use on behalf of the member of the Agricultural Pool unless otherwise prohibited by general law. The Appropriator providing service shall be entitled to a pumping credit to offset Production pursuant to the Peace Agreement section 5.3(i). This provision will be construed as permitting Watermaster to accept new voluntary agreements only to the extent that such voluntary agreements occur within areas eligible for conversion as described in Attachment 1 to the Judgment, previously added to the Judgment as an amendment of the Order of the Court dated November 17, 1995.
- 9.7 Assignment of Overlying Rights. In addition to the Voluntary Agreement under section 9.6 above, should an Appropriator take an assignment of rights from a Non-Agricultural Pool member, the agreement shall provide that the Appropriator may undertake to provide water service to such overlying land, but only to the extent necessary to provide water service to said overlying lands. Watermaster shall make available to members of the Non-Agricultural Pool and/or Appropriative Pool, a standard form which shall be completed and filed with Watermaster. Any assignment, lease and/or license shall be ineffective unless provided on the standard form approved by Watermaster and filed with Watermaster. [Based on Judgment Exhibit "H" ¶ 13; Exhibit "G" ¶ 6.]

ARTICLE X
APPLICATIONS, CONTESTS AND COMPLAINTS

- 10.0 Purpose. This Article sets forth the Watermaster rules and procedures for processing requests by a person for: (i) Watermaster approval of Recharge and Transfer; (ii) Qualifying Storage and Recapture; (iii) amendments to previously approved Applications; (iv) reimbursement or a credit for costs incurred by a party to the Judgment in furtherance of the OBMP; and (v) a Complaint for redress arising from an alleged Material Physical Injury to a party to the Judgment or the Basin. However, the procedures described in this Article X shall not be construed to apply to Watermaster actions, decisions, or rules other than as expressly set forth herein. All proceedings hereunder shall be conducted in an expeditious manner.
- 10.1 Notice and Opportunity to be Heard. Watermaster shall provide reasonable notice and opportunity to be heard to any person requesting Watermaster review or approval of any matter arising under this Article.
- 10.2 Judicial Review.
- (a) The Complaint procedures set forth in this Article X are not intended to constitute an exclusive remedy or constitute a requirement that a party to the Judgment exhaust this discretionary remedy. However, a party to the Judgment may elect to avail itself of the procedures set forth herein by filing a Complaint and requesting relief from any actual or threatened Material Physical Injury to any person or to the Basin where the alleged injury arises from the Recharge, Transfer or Qualifying Storage or Recapture of water by any person other than Watermaster.
 - (b) Once a party to the Judgment elects to pursue redress under the provisions of this Article, it shall exhaust this process until conclusion unless there is a sudden, unexpected event or emergency that causes a need for immediate judicial review or in the event that the Watermaster has failed to take action on a longstanding request. Thus, other than in the event of an emergency or where Watermaster has engaged in undue delay, a party to the Judgment may not seek judicial review of a Watermaster action on a pending Application or Complaint until the Watermaster Board has taken final action under the provisions of this Article. However, the procedures described in this Article X shall not preclude any party from seeking judicial review of any action, decision or rule of Watermaster in accordance with paragraph 31 of the Judgment.
- 10.3 Applications for Watermaster Approval: In General. Any party to the Judgment requesting approval by Watermaster for the Recharge, Transfer, Qualifying Storage or Recapture of water in the Basin, or reimbursements or credits against OBMP Assessments, or any person requesting approval of an agreement to participate in a Storage and Recovery Program, may make Application to Watermaster as provided in these Rules and Regulations.
- (a) Requests for Watermaster approval shall be processed by Application to the Watermaster.

- (b) All Applications shall be submitted to Watermaster in compliance with the requirements set forth in this Article. Approved forms for use by persons requesting Watermaster approval pursuant to this section are attached hereto as Appendix 1. Watermaster shall have no obligation to process incomplete Applications.
- (c) No person shall obtain a right to engage in the activities subject to an Application to Watermaster under these Rules and Regulations or the Judgment unless and until the proposed action is approved by Watermaster as provided herein.
- (d) Upon approval by Watermaster, the person shall have the right to proceed in accordance with the terms and conditions of the Watermaster approval. The rights of a party shall be construed consistent with the Judgment and subject to the terms and conditions set forth in Watermaster's approval.

10.4 Recharge Applications. Any party to the Judgment may make a request for Watermaster approval to engage in Recharge by submitting an Application to Watermaster that includes the following information.

- (a) The identity of the person proposing to engage in Recharge;
- (b) The quantity of water to be Recharged;
- (c) The quality of water to be Recharged;
- (d) The duration of the Recharge;
- (e) The method of the Recharge; and
- (f) The facilities to be used in the Recharge, and their location.

10.5 Transfer Applications. Any party to the Judgment may request Watermaster's approval for a Transfer by submitting an Application to Watermaster. A party to the Judgment that Produces water may in the same Fiscal Year request approval of a Transfer to offset all or a portion of its Replenishment Obligation, subject to the Watermaster's authority to approve or reject the Application under the provisions of this Article. An Application for Transfer shall include the following information:

- (a) The identity of the transferee and transferor;
- (b) The maximum quantity of water to be Transferred;
- (c) The duration of the Recovery of the quantity of water Transferred;
- (d) The location of the Production facilities from which the water will be Transferred, if known;
- (e) The location of the Production facilities from which the Transferred water will be Recaptured and Produced, if known; and

- (f) The rate of extraction at which the Transferred water will be Recaptured and Produced.

10.6 Qualifying Storage Agreements. A party to the Judgment may request Watermaster's approval of a Local Storage Agreement to store Supplemental Water, or, after July 1, 2005, a party to the Judgment may request Watermaster's approval of the accumulation of Excess Carry-Over Water in the event the party's aggregate Carry-Over Water exceeds its share of assigned Operating Safe Yield or Safe Yield. Prior to July 1, 2005, a party to the Judgment shall also be required to obtain a Local Storage Agreement to store Excess Carry-Over Water, and Watermaster shall approve such agreements under uniform terms and conditions. In addition, so long as there is then less than 100,000 acre-feet of Supplemental Water that was placed in Local Storage after July 1, 2000, a party to the Judgment's request to store Supplemental Water under a Local Storage Agreement shall be approved by Watermaster. The Applicant may include a plan for Recapture within the request for approval of the Qualifying Storage or subsequently identify the proposed plan for Recapture under an independent Application for Recapture or combine the request for subsequent approval in an Application for Transfer.

- (a) Any party to the Judgment may file an Application to store Supplemental Water pursuant to a Local Storage Agreement. The Application shall include the following information:
 - (i) The identity of the person(s) that will Recharge, Store and Recover the water;
 - (ii) The quantity of Supplemental Water to be Stored and Recovered;
 - (iii) The proposed schedule and method for the Recharge of water for Storage, if any;
 - (iv) The proposed schedule for Recovery, if any;
 - (v) The location of the Recharge facilities through which the Stored water will be Recharged, if any;
 - (vi) The location of the Production facilities through which the Stored water will be Recovered, if known; and
 - (vii) The water levels and water quality of groundwater in the areas likely to be affected by the storage and Recovery.
- (b) Each Producer shall have the right to store its un-Produced Carry-Over Water in the Basin. Excess Carry-Over Water placed into Local Storage after July 1, 2005 shall require a Local Storage Agreement with Watermaster. A Producer may file an Application prior to July 1, 2005 for a Local Storage Agreement for Excess Carry-Over Water that will be placed into Local Storage after July 1, 2005. Such an Application shall include the following information:

- (i) The identity of the person(s) that will store and Recover the Carry-Over Water;
- (ii) The quantity of Carry-Over Water to be stored and Recovered;
- (iii) The proposed schedule for the Recovery, to the extent known;
- (iv) The location of the Production facilities through which the stored Carry-Over Water will be Recovered, to the extent known; and
- (v) The water levels and water quality of Groundwater in the areas likely to be affected by the Production of the stored Carry-Over Water.

10.7 Storage and Recovery Program. Any person may request Watermaster's approval of an Agreement to participate in a Storage and Recovery Program by submitting an Application to Watermaster that, at a minimum, includes the following information:

- (a) The identity of the person(s) that will Recharge, store and Recover the water as well as its ultimate place of use;
- (b) The quantity of water to be Stored and Recovered;
- (c) The proposed schedule for the Recharge of water for storage, if any;
- (d) The proposed schedule and method for Recovery;
- (e) The location of the Recharge facilities through which the Stored Water will be Recharged;
- (f) The location of the Production facilities through which the Stored Water will be Recovered;
- (g) The water levels and water quality of the Groundwater in the areas likely to be affected by the Storage and Recovery, if known; and
- (h) Any other information that Watermaster requires to be included.

10.8 Recapture. Any person may file an Application for approval of its Recovery of water held in storage. Recapture of water may be approved by Watermaster as a component of and coincident with a request for approval of Qualifying Storage or a Transfer. However, an Applicant for Qualifying Storage may request, and Watermaster may approve, a Groundwater Storage Agreement where the plan for Recovery is not yet known. An Application for Recapture shall include the following information:

- (a) The identity of the person(s) that Recharged and stored the water;
- (b) The identity of the person(s) that will Recover the water as well as its ultimate place of use;

- (c) The quantity of water to be Recovered;
- (d) The proposed schedule for Recovery;
- (e) The location of the Production facilities through which the Stored Water will be Recovered;
- (f) The existing water levels and water quality of the Groundwater in the areas likely to be affected by the Recovery; and
- (g) Any other information that Watermaster requires to be included.

10.9 Credits Against OBMP Assessments and Reimbursements. Any Producer, including the State of California, may make Application to Watermaster to obtain a credit against OBMP Assessments or for reimbursements by filing an Application that includes the following information:

- (a) The identity of the party to the Judgment;
- (b) The specific purposes of the OBMP satisfied by the proposed project;
- (c) The time the project is proposed to be implemented and a schedule for completion;
- (d) The projected cumulative project costs; and
- (e) The specific capital or operations and maintenance expenses incurred in the implementation of any project or program, including the cost of relocating Groundwater Production facilities.

10.10 Watermaster Summary and Notification of a Pending Application. Upon Watermaster's receipt of an Application for Recharge, Transfer, Storage, Recapture or for a credit or reimbursement, Watermaster shall prepare a written summary and an analysis (which will include an analysis of the potential for Material Physical Injury) of the Application and provide Active Parties with a copy of the written summary and advance notice of the date of Watermaster's scheduled consideration and possible action on any pending Applications. The notice shall be accompanied by the Watermaster summary and analysis and it shall reasonably describe the contents of the Application and the action requested by the Applicant. Watermaster shall provide the following minimum notice to the Active Parties:

- (a) Applications for Recharge: 30 (thirty) days.
- (b) Applications for Transfer: 30 (thirty) days.
- (c) Applications for Storage and Recovery: 90 (ninety) days.
- (d) Local Storage Agreement or Recapture: 30 (thirty) days.

- 10.11 All Applications Considered by Pool Committees. All Applications shall be considered by the Pool Committees. Following its completion of the summary and analysis and the issuance of the required notice as provided in section 10.10, Watermaster Staff shall place the Application on the first available Pool Committee Agenda for each of the respective Pool Committees for consideration, discussion, recommendations or proposed conditions. The Application shall not be considered by the Advisory Committee until at least twenty-one (21) days after the last of the three Pool Committee meetings to consider the matter.
- 10.12 Watermaster Investigations of Applications. Watermaster may, in its discretion, cause an investigation of the Groundwater or the portion of the Basin affected by a pending Application. Any party to the proceeding may be requested to confer and cooperate with the Watermaster, its staff or consultants to carry out such investigations.
- 10.13 Contesting an Application. Following consideration of an Application by each Pool Committee, a Contest to the Application may be filed by any party to the Judgment. Contests to Applications filed by parties to the Judgment or other persons requesting Watermaster's approval pursuant to this Article shall be submitted in writing a minimum of fourteen (14) days prior to the date scheduled for Advisory Committee consideration and possible action. The Contest shall describe the basis for the Contest and the underlying facts and circumstances. Watermaster shall provide notice of the Contest to the Active Parties.
- 10.14 Contents of a Contest.
- (a) Each Contest shall include the name and address of the Contestant and show that the Contestant has read either the application or the related notice.
 - (b) If the Contest is based upon the allegation that the proposed action may result in Material Physical Injury to a party to the Judgment or the Basin, there shall be an allegation of the specific injury to the Contestant or to the Basin which may result from the proposed action and an identification of any then available evidence to support the allegation. If the Contest identifies documentary evidence other than Watermaster records or files, the Contestant shall serve copies of the documentary evidence on Watermaster and the Applicant seven (7) days prior to the hearing. If relevant to the Contest, the Contestant shall provide Watermaster with the location of the Contestant's extraction and place of use. The location shall be described with sufficient accuracy so that the position thereof relative to the proposed action may be determined. If relevant to the Contest, the Contestant shall describe the Contestant's purpose of use.
 - (c) If a Contest is based upon other grounds it shall summarize the grounds of the Contest.
 - (d) The Contest shall set forth any conditions or amendments to the proposed action which, if agreed upon, would result in withdrawal of the Contest.

- (e) If Watermaster finds the Contest fails to comply with this provision, it may reject the Contest and deny the request for hearing if the Contestant fails to correct the defect and file a proper Contest within five (5) business days of the Watermaster's rejection. In any instance where a rebuttable presumption is applicable, the Watermaster shall include a statement in the rejection of the Contest that the Contestant has failed to reference any potential substantial evidence to overcome the presumption of no Material Physical Injury.
- 10.15 Extensions of Time and Continuance for Good Cause. An Applicant or Contestant may request an extension of time to file a Contest and Answer or for a continuance of a scheduled hearing and the request may be granted by Watermaster staff where good cause exists.
- 10.16 Applicant May Answer the Contest. An Applicant or project proponent may elect to file a written Answer to any Contest.
- (a) Contents. An Answer shall be responsive to the allegations contained in the Contest.
 - (b) Time for Filing. Answers shall be filed at least seven (7) days prior to the scheduled hearing. If the Applicant intends to rely on documentary evidence other than Watermaster records or files, the Applicant shall serve copies of the documentary evidence upon Watermaster and the Contestant a minimum of three (3) days prior to the hearing.
- 10.17 Uncontested Applications by Parties to the Judgment.
- (a) The Advisory Committee and Board shall consider and may approve any uncontested Application. No hearing shall be required for an uncontested Application by a party to the Judgment unless there is good cause to hold a hearing. Where good cause appears, the Advisory Committee and the Board may deny, condition, or continue an uncontested Application. However, Watermaster shall not deny an Application until it has referred the matter to a hearing officer. In the case of a proposed denial or conditional approval, and upon the request of the Applicant, Watermaster shall schedule an appropriate and timely hearing in general conformity with this Article X.
 - (b) An uncontested Application shall be considered at the first regularly scheduled meeting of the Advisory Committee following the expiration of the Contest period.
 - (c) The Advisory Committee shall consider the Application, the staff Summary and Analysis and staff report and any rebuttable presumption that may be applicable and make any determinations under the Judgment in accordance with the provisions of section 10.25 herein.
 - (d) Following consideration by the Advisory Committee, the matter shall be transmitted to the Board for consideration. The Board shall also consider the

Application, the staff summary and Analysis and staff report and any rebuttable presumption that may be applicable, as well as the Advisory Committee action consistent with the Judgment. The Board's determination shall be made in accordance with the provisions of section 10.25 herein.

- (e) In each case where Watermaster the Advisory Committee or Board denies or conditions an uncontested Application made by a party to the Judgment, it must support its determination by substantial evidence and act in a manner that is consistent with the Judgment and the Peace Agreement.
- 10.18 Contested Applications. In each case where a Contest is filed, the matter shall be set for hearing by Watermaster staff in coordination with the hearing officer and the parties to the proceeding.
- 10.19 Applications by Persons not Parties to the Judgment. In its sole discretion, Watermaster may review, consider, process and decide upon Applications made by persons not parties to the Judgment. However, Watermaster may not approve or conditionally approve such an Application without first holding a hearing in accordance with this Article X.
- 10.20 Complaints in General. Any party to the Judgment may file a Complaint with Watermaster alleging that the conduct of another person is causing or will cause Material Physical Injury in violation of these Rules and Regulations, the Judgment and the Peace Agreement.
- (a) The Complaint shall identify the name of the Complainant, the specific action or conduct that is causing or will or may cause Material Physical Injury, and any recommended mitigation measures or conditions that might avoid or reduce the alleged Material Physical Injury.
 - (b) Upon receipt of the Complaint by Watermaster, it shall prepare a summary of the allegations and serve the summary along with a notice of the Complaint to the parties to the Judgment within 30 (thirty) days from filing.
 - (c) Any party to the Judgment may file an Answer to the Complaint within 14 (fourteen) days of the date of the notice of Complaint or other time as may be prescribed in the Watermaster notice of the Complaint.
 - (d) Watermaster shall schedule a hearing on the Complaint within 30 (thirty) days of the notice of the Complaint.
 - (e) A party to the Judgment's failure to appear or Contest a hearing on the approval of an Application of any matter before Watermaster shall not be a bar to the party's right to file a Complaint as provided herein. However, a party shall not be permitted to file a Complaint if it knew or should have known of a particular harm that that party would suffer and had a reasonable opportunity to object at the time of the original approval process but did not file such a Contest.

- (f) Any party to the Judgment may request an extension of time to file an Answer or to continue the hearing, which may be granted for good cause by Watermaster.
 - (g) Any party to a Complaint proceeding that intends to rely upon documentary evidence at the hearing, other than Watermaster documents or files, shall serve copies of the evidence upon Watermaster and the other parties to the proceeding a minimum of seven (7) days in advance of the hearing.
 - (h) Watermaster may, in its discretion, cause an investigation of the injury alleged to exist by the pending Complaint. Any party to the proceeding may be requested to confer and cooperate with the Watermaster, its staff or consultants to carry out such investigations.
- 10.21 All Complaints Considered by Pool Committees. All Complaints shall be considered by the Pool Committees. Following consideration by the respective Pool Committees, if the Complaint is not dismissed any person(s) directly impacted by the Complaint may file an Answer in accordance with the provisions of section 10.16 and the Complaint shall be set for hearing.
- 10.22 Designation of Hearing Officer for Applications, Contests and Complaints. The Watermaster Board shall develop and maintain a panel of five individuals that have technical expertise and some familiarity with the Basin. The hearing officer shall be selected by the mutual agreement of each side. If mutual agreement cannot be reached, each side to any hearing on an Application or Complaint shall rank their preferred hearing officer from one (1) to five (5). The panel member receiving the highest total score shall be selected by the Watermaster Board as the Hearing Officer, unless he or she is unable to serve in which case the panel member receiving the next highest rank shall be selected. Ties shall be broken by vote of the Watermaster Board. Watermaster may add or remove new members to the five member panel from time to time or as circumstances may warrant. There shall be only two sides in any hearing and intervenors shall be assigned to a side.
- 10.23 Duty of the Hearing Officer. The hearing officer shall conduct the hearings in accordance with the provisions of this Article. It shall be the responsibility of the hearing officer to compile the record, develop proposed findings and recommendations supported by substantial evidence in the record within thirty days of the hearing and transmit the record to the Advisory Committee and thereafter the Watermaster Board for further action. The hearing officer shall have and shall exercise the power to regulate all proceedings in any matter before it, and to take and do all acts and measures necessary or proper for the efficient performance of its duties.
- 10.24 Procedure at Hearings on Applications, Contests and Complaints
- (a) Parties Recognized at Hearing. Only the Applicant(s), Contestant(s), Watermaster staff and other party or parties to the Judgment which the hearing officer, in its discretion, allows to intervene as Applicant or Contestant, may be allowed to appear at the hearing.

- (b) Appearances. Persons appearing on their own behalf shall identify themselves at the beginning of the hearing. When a person is represented by an agent or attorney, such agent or attorney shall likewise enter an appearance before the hearing officer and thereafter will be recognized as fully controlling the case on behalf of that party to the proceeding.
- (c) Conduct of Hearings. Hearings shall be open to the public. The hearing officer has and shall exercise the power to regulate all proceedings in any manner before it, and to do all acts and take all measures necessary or proper for the efficient performance of its duties. The hearing officer may rule on the admissibility of evidence and may exercise such further and incidental authority as necessary for the conduct of the proceedings.
- (d) Evidence. The hearing need not be conducted according to technical rules of evidence and witnesses. Any relevant, non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions.
- (e) Rebuttable Presumption. A rebuttable presumption under these Rules and Regulations means that the presumption shall be sufficient to approve an Application, unless a party to the Judgment opposing the Application produces substantial evidence to rebut the presumption. Once the party to the Judgment opposing the Application produces substantial evidence in support of their contention that an action may cause Material Physical Injury to a party to the Judgment or the Basin, the presumption shall be deemed rebutted.
- (f) Official Notice. Before or after submission of a matter for decision, official notice may be taken by the Hearing Officer of such facts as may be judicially noticed by the courts of this State.
- (g) Evidence by Reference. Public records of Watermaster which are relevant to the subject of the hearing and books, reports or other papers and pleadings which have been prepared by Watermaster and submitted previously to the Court, may in the discretion of the hearing officer, be received into evidence as exhibits without the need of supplying copies to Watermaster or other parties to the proceeding.
- (h) Examination of Witnesses. Each party to the proceeding shall have the right to call and examine witnesses and introduce exhibits. Watermaster staff and consultants may participate in the hearing as appropriate, using their technical knowledge and experience for the primary purpose of developing a full, fair and accurate record, including the questioning of any witness or the agents for any party to the proceeding
- (i) Order of Procedure. There shall be an opening statement by Watermaster staff, summarizing the subject matter and purpose of the hearing and the procedures to

be followed. The designated hearing officer will then ask all persons wishing to participate in the hearing to identify themselves. Staff shall present any written reports, or summary of any findings resulting from an investigation of the Application or the Complaint. The Applicant or the Complainant shall then proceed in the case in chief, followed by the Contestant(s) or the Respondents. The Applicant and the Complainant will then be afforded an opportunity to present any responsive evidence. The hearing officer may allow further response as the interests of justice may require. Questions from the hearing officer or Watermaster staff shall be appropriate at any time.

- (j) Opening Statements and Closing Briefs. Prior to presenting their case, any party to the proceeding may file a written opening statement, or may make an oral opening statement, the length of which may be prescribed by the hearing officer. At the close of the hearing, if the hearing officer deems it advisable, time will be allowed for the filing of written briefs.
- (k) Record. The record of the hearing shall consist of all documents submitted for consideration as well as all testimony presented. Tape recordings of all testimony shall be made. Any party, at that party's sole expense, may have a court reporter present at the hearing.
- (l) Completion of Record. The Hearing Officer may request assistance from Watermaster staff and general counsel in completing the record, proposed findings and recommendations. The Hearing Officer shall transmit his or her proposed findings to the Advisory Committee within thirty days of the close of the hearing. The proposed findings of the hearing officer shall be based upon substantial evidence in the record.

10.25 Watermaster Determinations.

- (a) Watermaster shall consider and may approve, deny, or condition any contested Application. Prior to rendering a determination on a contested Application or a Complaint, both the Advisory Committee or the Board may also each remand the matter for further findings by the hearing officer a maximum of one time each. The hearing officer shall conduct any additional hearings and complete its review and rehearing and transmit its subsequent report to the Advisory Committee within thirty days from the date of notice from Watermaster of the need for additional findings.
- (b) A contested Application or a Complaint shall be considered at the first regularly scheduled meeting of the Advisory Committee following the transmittal of the record, proposed findings of fact and recommendations by the hearing officer and no later than 30 days from the date of the hearing. The Advisory Committee shall consider the Application, the staff summary and analysis and staff report, any rebuttable presumption, the Contest, Answer, the record, proposed findings of fact and any recommendations of the hearing officer. The Advisory Committee may amend, modify, accept or reject the report of the hearing officer, or it may direct

the hearing officer to conduct a re-hearing to receive additional evidence, direct the filing of additional briefs or request oral argument.

- (i) The findings and decision adopted by the Advisory Committee shall be supported by citations to substantial evidence in the record.
 - (ii) If the Advisory Committee fails to base its decision on substantial evidence in the record or fails to consider the proposed findings of fact developed by the Hearing Officer, subject to the right of the Advisory Committee to remand for further findings, any Advisory Committee mandate shall not be binding on the Watermaster Board. This provision shall not be considered in construing the power of the Watermaster Board or the Advisory Committee that may exist under the Judgment.
- (c) Following consideration by the Advisory Committee, the matter shall be transmitted to the Board for consideration within the next thirty (30) days. The Board shall also consider the Application, the staff summary, analysis and staff report, any rebuttable presumption that may be applicable, the Contest, the Answer, the record, the proposed findings of fact and recommendations of the hearing officer, as well as the Advisory Committee action consistent with the Judgment. The Watermaster Board may amend, modify, accept or reject the report of the hearing officer, or it may direct the hearing officer to conduct a re-hearing to receive additional evidence, direct the filing of additional briefs or request oral argument. If the Board directs the hearing officer to conduct a re-hearing, then the proposed findings of fact and any recommendations shall be transmitted to the Advisory Committee for re-consideration prior to transmittal to the Board.
- (d) Watermaster Action. In acting upon a Complaint, or by approving, denying or conditioning in whole or in part any Application under this Article, the determinations made by the Watermaster Advisory Committee and Board shall be based upon substantial evidence in the record developed by the hearing officer and then before the Advisory Committee and Board. In making such determinations, the Advisory Committee and Board shall act in a manner consistent with the Judgment, the Peace Agreement and these Rules and Regulations. Each shall support its determinations by written findings. Each shall consider all relevant evidence presented and give due consideration to the policies and purposes set forth in the Judgment as well as Article X, section 2 of the Peace Agreement and the OBMP Implementation Plan.
- (e) No Restriction on Rights to Judicial Review Following Determination by Watermaster. Nothing herein shall be construed as imposing any limitation on any party's rights to seek judicial review of a Watermaster decision under this Article pursuant to paragraph 31 of the Judgment once Watermaster has rendered a decision on the respective Application or, in the case of a Complaint, to seek judicial review of a Watermaster decision where a party to the Judgment has elected to pursue Watermaster review of an action under this Article.

- (f) Emergency Review. In the event of a sudden, unforeseen and unexpected emergency impacting the health, safety and welfare of a party to the Judgment or the Basin, the party to the Judgment may seek immediate judicial review in accordance with the provisions of the Judgment and the Local Rules.
- (g) Undue Delay. Absent a Watermaster determination that extraordinary circumstances exist, Watermaster shall render its final decision on any Application filed under this Article within 180 days from the date the Application is deemed complete by Watermaster Staff. In the event Watermaster fails to offer a satisfactory response to repeated requests by a party to the Judgment to approve, deny or condition an Application or to rule on a Complaint, a party to the Judgment may request judicial review of the matter prior to the final Watermaster action.
- (h) Effective Date of Watermaster Action.
 - (i) For purposes of judicial review, any action determination or rule of Watermaster shall be the date on which the decision is filed.
 - (ii) For the purposes of determining the date on which an approved Application pursuant to Article X shall be considered effective, the approval shall relate back to date the completed Application is filed.

10.26 Application, Contests, Complaints Fees and Expenses.

- (a) Each party to the proceeding shall bear its own costs and expenses associated with the proceeding.
- (b) Watermaster's summary and analysis and participation in any hearing under this Article X shall be considered a general Watermaster administrative expense.
- (c) Upon request by the Agricultural Pool, Non-Agricultural Pool, or Appropriative Pool, the parties shall renegotiate this section 10.26. This renegotiation shall consider, but shall not be limited to, the adoption of a Court-approved resolution to address potential costs, fees and procedures incurred by parties to the Judgment and Watermaster in resolving frivolous and repetitiously unsuccessful similar contests.
- (d) Nothing herein shall be construed as precluding the right or claim by any party to the Judgment to request a reviewing Court under paragraph 31 of the Judgment to award litigation fees and costs to the extent such fees and costs may be available under general law.

EXHIBIT A

RESET TECHNICAL MEMORANDUM

DATE: October 6, 2022

Project No.: 941-80-22-32

SENT VIA: EMAIL

TO: Peter Kavounas, Chino Basin Watermaster

FROM: Garrett Rapp, PE, RCE #86007
Andy Malone, PG

SUBJECT: 2022 Methodology to Reset the Safe Yield of the Chino Basin



2022 UPDATED SAFE YIELD RESET METHODOLOGY

This technical memorandum summarizes the methodology¹ to calculate the Safe Yield of the Chino Basin for the 2025 Safe Yield Reevaluation and subsequent Safe Yield evaluations. The methodology: (i) is consistent with professional custom, standard, and practice; (ii) incorporates current best management practices and hydrologic science; and (iii) is consistent with the definition of Safe Yield in the Judgment and the Physical Solution.

1. Use data collected since the implementation of the OBMP to re-calibrate the Watermaster's groundwater-flow model. The re-calibration period should be long enough to include wet and dry periods relative to the long-term historical precipitation record.
2. Conduct an uncertainty analysis of the re-calibrated groundwater-flow model to identify a plausible range of calibrated models.
3. Describe current and projected future cultural conditions, including but not limited to land use and water-management practices, such as: pumping, managed recharge, managed groundwater storage, impervious land cover, water recycling, and water conservation practices. Identify a possible range of projected future cultural conditions.
4. Using the most current research on future climate and hydrology, identify a possible range of projected future climatic conditions in the Santa Ana River watershed.
5. Using the results of [3.] and [4.] above, prepare an ensemble of multiple projection scenarios of combinations of future climate/hydrology and cultural conditions (herein called the "Projection Ensemble"). Assign likelihoods to each scenario in the Projection Ensemble.
6. Simulate the range for the potential future water budget and groundwater conditions in the Chino Basin over no less than a 50-year future period. This is accomplished by using:
 - i. The range of calibrated models developed in [2.], and
 - ii. The Projection Ensemble developed in [5.] as model input data.

¹ A detailed description of the methodology summarized here can be found in the technical memorandum titled "2022 Update of the Chino Basin Safe Yield Reset Methodology," dated October 6, 2022.

7. Using the results of [6.] above, characterize the range in the model results for:
 - i. Groundwater conditions, including: groundwater elevations, groundwater in storage, and groundwater flow directions, and
 - ii. The water budget, including: basin inflows, outflows, change in storage, and net recharge.
8. Using the set of net recharge results from [7.ii], determine a tentative Safe Yield as the likelihood-weighted average net recharge over the 10-year prospective period for which the Safe Yield is being redetermined (Tentative Safe Yield).
9. Evaluate whether the groundwater production at the Tentative Safe Yield estimated in [8] above will cause or threaten to cause "undesirable results" or "Material Physical Injury." If groundwater production at Tentative Safe Yield will cause or threaten to cause "undesirable results" or "Material Physical Injury," then Watermaster will identify and implement prudent measures necessary to mitigate "undesirable results" or "Material Physical Injury," set the value of Safe Yield to ensure there is no "undesirable results" or "Material Physical Injury," or implement a combination of mitigation measures and a changed Safe Yield.

EXHIBIT B

Attachment: Peace Agreement, Section 7.2 (e)(ii)

Schedule for Use of Re-Operation Water**, and
Calculation of Remaining Desalter Replenishment Obligation (DRO)
Production from 2017-18 through 2029-30 is estimated

Production Year	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Peace I Desalter Production	29,227.997	29,541.300	27,008.810	26,275.588	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000
Peace II Desalter Production	14.555	448.690	1,154.052	1,527.215	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000
Appropriative Pool DRO Contribution	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)
Re-Operation Water**	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)	(12,500.000)
Non-Agricultural Pool Assessment	0.000	0.000	0.000	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)
Remaining DRO	6,742.552	7,489.990	5,662.862	4,567.803	16,765.000	16,765.000	16,765.000	16,765.000	16,765.000

Production Year	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30
Peace I Desalter Production	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000	30,000.000
Peace II Desalter Production	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000	10,000.000
Appropriative Pool "DRO Contribution	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)	(10,000.000)
Re-Operation Water**	(12,500.000)	(12,500.000)	(12,500.000)	(5,000.000)	(5,000.000)	(5,000.000)	(5,000.000)	(5,000.000)
Non-Agricultural Pool Assessment	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)	(735.000)
Remaining DRO	16,765.000	16,765.000	16,765.000	24,265.000	24,265.000	24,265.000	24,265.000	24,265.000

EXHIBIT C

Attachment: Peace II Agreement, Section 6.2(b)(ii)

Allocation of Appropriate Pool Desalter Replenishment Obligation (DRO) Contributions (by agency)

Production Year 2013-14 Desalter Replenishment Obligation (DRO) Contribution:

10,000.000 AF

Appropriate Pool Party	Production Year 2013/14 Common Data (Headings from Approved 2014/2015 Assessment Package)			Methodology for 85/15 split between shares of Operating Safe Yield and % of Land Use Conversions		
	a	b	c = %b	d = (DRO Contrib*.85)*a	e = (DRO Contrib*.15)*c	f = d + e
	Percent of Operating Safe Yield (Column 2A)	Land Use Conversions (Page 12A)*	Percent of Land Use Conversions	85% DRO Contribution Based on Percent of Operating Safe Yield	15% DRO Contribution Based on Percent of Land Use Conversions	Desalter Replenishment Obligation Contribution
Arrowhead Mtn Spring Water Co	0.000%	0.000	0.000%	0.000	0.000	0.000
Chino Hills, City of	3.851%	1,133.906	4.334%	327.335	65.013	392.348
Chino, City of	7.357%	7,623.064	29.138%	625.345	437.074	1,062.419
Cucamonga Valley Water District	6.601%	598.364	2.287%	561.085	34.308	595.393
Fontana Union Water Company	11.657%	0.000	0.000%	990.845	0.000	990.845
Fontana Water Company	0.002%	834.000	3.188%	0.170	47.818	47.988
Fontana, City of	0.000%	0.000	0.000%	0.000	0.000	0.000
Golden State Water Company	0.750%	0.000	0.000%	63.750	0.000	63.750
Jurupa Community Services District	3.759%	13,876.196	53.040%	319.515	795.602	1,115.117
Marygold Mutual Water Company	1.195%	0.000	0.000%	101.575	0.000	101.575
Monte Vista Irrigation Company	1.234%	0.000	0.000%	104.890	0.000	104.890
Monte Vista Water District	8.797%	55.075	0.211%	747.745	3.158	750.903
Niagara Bottling, LLC	0.000%	0.000	0.000%	0.000	0.000	0.000
Nicholson Trust	0.007%	0.000	0.000%	0.595	0.000	0.595
Norco, City of	0.368%	0.000	0.000%	31.280	0.000	31.280
Ontario, City of	20.742%	2,041.095	7.802%	1,763.070	117.028	1,880.098
Pomona, City of	20.454%	0.000	0.000%	1,738.590	0.000	1,738.590
San Antonio Water Company	2.748%	0.000	0.000%	233.580	0.000	233.580
San Bernardino, County of (Shooting Park)	0.000%	0.000	0.000%	0.000	0.000	0.000
Santa Ana River Water Company	2.373%	0.000	0.000%	201.705	0.000	201.705
Upland, City of	5.202%	0.000	0.000%	442.170	0.000	442.170
West End Consolidated Water Co	1.728%	0.000	0.000%	146.880	0.000	146.880
West Valley Water District	1.175%	0.000	0.000%	99.875	0.000	99.875
	100.000%	26,161.700	100.000%	8,500.000	1,500.000	10,000.000

Attachment: Peace II Agreement, Section 6.2 (b)(iii)

Allocation of Appropriative Pool Remaining Desalter Replenishment Obligation (RDRO)

Production Year 2013-14:	acre-feet
CDA Production - Peace I Allocation	29,227.997
CDA Production - Peace II Allocation	14.555
Total Desalter Replenishment Obligation (Total DRO):	29,242.552
Desalter Replenishment Obligation Contribution (DROC)	(10,000.000)
Re-Operation Water RDRO	(12,500.000)
	6,742.552

Appropriative Pool Party	Operating Safe Yield	Production Year 2013/14 Common Data (From Approved 2014/2015 Assessment Package - Appendix A)						Methodology for Calculation of Adjusted Physical Production (APP)	Methodology for Calculation of "RDRO"
	a	b	c	d	e	f		APP = [b+(c*50%)+d+e+f]	Individual Party RDRO = ((a+APP)/(Total a + Total APP)) * RDRO
	Assessment Package Page 2A: Column 2D	Physical Production	Voluntary Agreements (w/Ag)	Assignments (w/Non-Ag)	Storage and Recovery Programs	Other Adjustments	*Note: APP for City of Chino does not include "Other Adjustments" for this period		
Arrowhead Mtn Spring Water Co	0.000	379.111	0.000	0.000	0.000	0.000		379.111	15.905
Chino Hills, City of	2,111.422	2,150.925	(286.221)	0.000	0.000	5,359.300		7,367.115	397.669
Chino, City of	4,033.857	6,725.430	(6,686.440)	(104.278)	0.000	65.288		3,277.932	306.764
Cucamonga Valley Water District	3,619.454	16,121.550	0.000	0.000	0.000	0.000		16,121.550	828.227
Fontana Union Water Company	6,391.736	0.000	0.000	0.000	0.000	0.000		0.000	268.163
Fontana Water Company	1.000	15,377.579	0.000	0.000	0.000	0.000		15,377.579	645.203
Fontana, City of	0.000	0.000	0.000	0.000	0.000	0.000		0.000	0.000
Golden State Water Company	411.476	736.362	0.000	0.000	0.000	0.000		736.362	48.157
Jurupa Community Services District	2,061.118	18,406.630	0.000	(379.499)	0.000	(8.784)		18,018.347	842.427
Marygold Mutual Water Company	655.317	1,314.734	0.000	0.000	0.000	0.000		1,314.734	82.653
Monte Vista Irrigation Company	676.759	0.000	0.000	0.000	0.000	0.000		0.000	28.393
Monte Vista Water District	4,823.954	12,521.892	(151.480)	0.000	0.000	(5,371.667)		7,074.485	499.195
Niagara Bottling, LLC	0.000	1,342.588	0.000	0.000	0.000	0.000		1,342.588	56.328
Nicholson Trust	4.000	0.000	0.000	0.000	0.000	0.000		0.000	0.168
Norco, City of	201.545	0.000	0.000	0.000	0.000	0.000		0.000	8.456
Ontario, City of	11,373.816	21,980.342	(4,428.101)	(1,855.196)	0.000	0.000		17,911.096	1,228.639
Pomona, City of	11,215.852	12,909.293	0.000	0.000	0.000	0.000		12,909.293	1,012.163
San Antonio Water Company	1,506.888	1,159.242	0.000	0.000	0.000	0.000		1,159.242	111.857
San Bernardino, County of (Shooting Park)	0.000	16.390	0.000	0.000	0.000	0.000		16.390	0.688
Santa Ana River Water Company	1,301.374	0.000	0.000	0.000	0.000	48.515		48.515	56.634
Upland, City of	2,852.401	2,822.046	0.000	0.000	0.000	0.000		2,822.046	238.070
West End Consolidated Water Co	947.714	0.000	0.000	0.000	0.000	0.000		0.000	39.761
West Valley Water District	644.317	0.000	0.000	0.000	0.000	0.000		0.000	27.032
	54,834.000	113,964.114	(11,552.242)	(2,338.973)	0.000	92.652		105,876.384	6,742.552

EXHIBIT H



Assessment Fee Summary (Revised)

**** DRAFT ****

[illegible]

¹ Based on feedback from City of Ontario during Workshop #1.
² Based on feedback from Cucamonga Valley Water District during Workshop #1.
³ Based on feedback from Fontana Water Company during Workshop #1.
⁴ Based on feedback from Cucamonga Valley Water District during Workshop #2.
⁵ Based on a hypothetical \$500/AF replacement, subject to change.



Assessment Year 2022-2023 (Production Year 2021-2022)
Assessment Fee Summary (Revised)

**** DRAFT ****

**** DRAFT ****

COA Interpretation															
Party	Approved FY 2022/23 Assessment Package	DIY Partial Performance FWC 3,427 AF DIY Takes of 19,486.1 AF DIY 3,426.7 AF Transacted 85/15 Rule Applied (\$500/AF) CDA NOT Assessed		DIY Partial Performance FWC 3,427 AF DIY Take of 19,486.1 AF DIY 3,426.7 AF Transacted 85/15 Rule Applied (\$500/AF) CDA Assessed		DIY Partial Performance FWC 3,427 AF DIY Take of 19,486.1 AF DIY 3,426.7 AF Transacted 85/15 Rule Applied (\$500/AF) CDA Assessed		DIY Assessed CWVD 17,913 AF / FWC 5,000 AF DIY 22,912.8 AF Transacted 85/15 Rule NOT Applied CDA NOT Assessed		DIY Assessed CWVD 17,913 AF / FWC 5,000 AF DIY 22,912.8 AF Transacted 85/15 Rule Applied (\$500/AF) CDA NOT Assessed		DIY Assessed CWVD 17,913 AF / FWC 5,000 AF DIY 22,912.8 AF Transacted 85/15 Rule Applied (\$500/AF) CDA Assessed			
		Footnotes 3, 4, 5		Footnotes 3, 2, 3, 4		Footnotes 3, 2, 3, 4, 5		Footnote 1		Footnotes 1, 2, 4, 5		Footnotes 1, 2, 4, 5			
		Assessment	Difference	Assessment	Difference	Assessment	Difference	Assessment	Difference	Assessment	Difference	Assessment	Difference	Assessment	Difference
BlueTriton Brands, Inc.	30,385.95	29,641.44	(724.51)	29,641.44	(724.51)	23,694.34	(6,671.61)	23,694.34	(6,671.61)	26,290.53	(4,075.42)	26,290.53	(4,075.42)	21,888.08	(8,477.87)
CalMat Co. (Appropriative)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chino Hills, City of	376,041.19	371,403.79	(4,637.40)	375,822.78	(218.41)	580,675.00	204,633.81	585,093.99	209,052.80	314,644.81	(61,396.38)	355,039.52	(21,001.67)	549,529.40	173,482.21
Chino, City of	721,798.95	707,928.56	(13,870.39)	712,971.96	(8,826.99)	888,764.25	166,965.30	893,907.65	172,108.70	602,123.60	(119,673.35)	649,140.30	(72,658.68)	830,199.96	108,401.21
Cucamonga Valley Water District	1,095,496.55	1,084,949.40	(10,547.15)	1,100,696.58	5,200.03	843,124.89	(252,371.69)	888,872.07	(236,624.48)	2,420,376.72	1,324,880.17	1,758,236.89	662,740.34	1,252,691.23	157,194.68
Desaster Authority	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Fontana Union Water Company	205,829.86	202,504.15	(3,325.71)	202,504.15	(3,325.71)	175,205.06	(30,624.80)	175,205.06	(30,624.80)	187,125.69	(18,704.17)	187,125.69	(18,704.17)	166,906.78	(38,923.08)
Fontana Water Company	253,365.74	404,034.65	150,668.91	318,396.54	65,030.80	47,003.72	(206,362.02)	(38,634.39)	(292,000.13)	274,834.64	21,468.90	298,090.30	44,724.56	39,191.61	(214,174.13)
Fontana, City of	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Golden State Water Company	73,949.81	72,817.83	(1,131.98)	74,609.79	659.98	45,859.55	(28,090.26)	47,651.51	(26,298.30)	53,262.74	(30,687.07)	1,688,948.36	(4,306.45)	49,176.35	(24,773.46)
Jurupa Community Services District	1,714,299.56	1,688,025.57	(26,273.99)	1,707,526.89	(6,772.67)	2,092,733.33	378,433.77	2,112,234.65	397,935.09	1,410,663.61	(303,615.95)	1,598,948.27	(125,351.29)	1,997,021.19	282,721.63
Marygold Mutual Water Company	103,809.97	100,749.87	(3,060.10)	100,749.87	(3,060.10)	75,631.54	(28,178.43)	75,631.54	(28,178.43)	86,597.25	(17,212.72)	86,597.25	(17,212.72)	98,001.83	(35,808.14)
Monte Vista Irrigation Company	21,798.98	21,436.92	(362.06)	21,436.92	(362.06)	18,547.06	(3,241.92)	18,547.06	(3,241.92)	19,808.97	(1,980.01)	19,808.97	(1,980.01)	17,668.61	(4,130.37)
Monte Vista Water District	876,017.79	867,379.38	(8,638.41)	879,137.17	3,119.38	680,553.33	(195,464.46)	692,311.12	(183,706.67)	733,470.02	(142,547.77)	840,949.85	(35,067.94)	699,294.23	(176,723.56)
NCL Co, LLC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Niagara Bottling, LLC	409,787.98	399,457.32	(10,330.66)	399,457.32	(10,330.66)	359,647.54	(50,140.44)	359,647.54	(50,140.44)	350,862.76	(58,925.22)	350,862.76	(58,925.22)	321,392.74	(88,395.24)
Nicholson Family Trust	123.61	121.61	(2.00)	121.61	(2.00)	106.22	(18.39)	106.22	(18.39)	112.38	(11.23)	112.38	(11.23)	100.23	(23.38)
Norco, City of	6,497.83	6,392.85	(104.98)	6,392.85	(104.98)	74,794.88	68,297.05	74,794.88	68,297.05	5,907.36	(590.47)	5,907.36	(590.47)	66,268.38	59,766.55
Ontario, City of	2,009,742.60	1,985,871.88	(23,870.72)	2,010,060.12	317.52	2,142,459.97	132,717.37	2,166,648.21	156,905.61	1,682,186.54	(377,556.06)	1,903,295.10	(106,447.50)	2,095,290.37	85,516.77
Pomona, City of	1,177,222.01	1,142,057.27	(35,164.74)	1,142,057.27	(35,164.74)	853,412.60	(323,809.41)	853,412.60	(323,809.41)	979,425.65	(197,796.36)	979,425.65	(197,796.36)	765,732.57	(411,489.44)
San Antonio Water Company	89,806.79	88,676.22	(1,130.57)	89,352.74	(454.05)	72,796.29	(17,080.50)	73,402.81	(16,403.98)	79,041.82	(11,764.97)	84,226.01	(5,580.78)	72,223.82	(17,582.97)
San Bernardino County (Shooting Park)	18,660.00	18,578.86	(81.14)	18,612.18	(47.82)	18,110.31	(549.69)	18,143.63	(516.37)	17,925.51	(734.49)	18,230.05	(429.95)	17,873.71	(786.29)
Santa Ana River Water Company	53,579.33	52,813.48	(765.85)	52,986.87	(592.46)	127,929.50	74,350.17	128,102.89	74,523.56	47,886.55	(5,692.78)	49,471.49	(4,107.84)	116,693.58	63,114.25
Upland, City of	226,473.99	223,859.78	(2,614.21)	226,065.79	(408.20)	180,652.52	(46,821.47)	182,858.53	(43,615.46)	194,141.73	(32,332.26)	214,307.16	(12,166.83)	181,689.82	(44,784.17)
West End Consolidated Water Co	30,511.63	30,018.64	(492.99)	30,018.64	(492.99)	25,971.91	(4,539.73)	25,971.91	(4,539.73)	27,738.98	(2,772.65)	27,738.98	(2,772.65)	24,741.79	(5,769.84)
West Valley Water District	21,289.48	20,954.25	(335.23)	20,954.25	(335.23)	18,202.57	(3,086.91)	18,202.57	(3,086.91)	19,404.14	(1,885.34)	19,404.14	(1,885.34)	17,366.12	(3,923.36)
Westminster Municipal Water District	0.00	0.00	0.00	0.00	0.00	244,776.12	244,776.12	244,776.12	244,776.12	0.00	0.00	0.00	0.00	215,562.48	215,562.48
Overlying (Non-Agricultural) Pool	284,649.59	275,970.92	(8,678.67)	275,970.92	(8,678.67)	204,733.31	(79,916.28)	204,733.31	(79,916.28)	235,831.96	(48,817.63)	235,831.96	(48,817.63)	183,096.86	(101,552.73)
Total	9,801,109.19	9,795,544.64	(5,564.55)	9,795,544.65	(5,564.54)	9,795,314.81	(5,794.38)	9,795,314.82	(5,794.37)	9,768,693.96	(32,425.23)	9,768,693.97	(32,425.22)	9,769,566.74	(31,540.45)
Total Desalter Replenishment Assessment	199,422.47	193,877.66	(5,544.81)	193,877.66	(5,544.81)	193,877.66	(5,544.81)	193,877.66	(5,544.81)	167,405.81	(32,016.66)	167,405.81	(32,016.66)	167,405.81	(32,016.66)
Total Change in Assessments Minus DFO			19.74		19.73		249.57		249.56		408.57		408.56		476.21

² Based on feedback from Cucamonga Valley Water District during Workshop #1.

⁴ Based on feedback from Cucamonga Valley Water District during Workshop #2.



Assessment Year 2023-2024 (Production Year 2022-2023)

Assessment Fee Summary (Revised)

**** DRAFT ****

Party	Approved FY 2023/24 Assessment Package	No DYY This Year CDA NOT Assessed		No DYY This Year CDA Assessed	
		Assessment	Difference	Assessment	Difference
		Footnotes 1, 2, 4			
BlueTriton Brands, Inc.	36,845.39	36,845.39	0.00	28,370.85	(8,474.54)
CalWat Co. (Appropriative)	0.00	0.00	0.00	0.00	0.00
Chino Hills, City of	345,403.61	345,403.61	0.00	576,207.95	230,804.34
Chino, City of	719,171.56	719,171.56	0.00	907,708.06	188,536.50
Cucamonga Valley Water District	1,532,818.27	1,532,818.27	0.00	1,097,148.03	(435,670.24)
Desalter Authority	0.00	0.00	0.00	0.00	0.00
Fontana Union Water Company	201,190.20	201,190.20	0.00	171,496.10	(29,694.10)
Fontana Water Company	300,180.58	300,180.58	0.00	26,322.48	(273,858.10)
Fontana, City of	0.00	0.00	0.00	0.00	0.00
Golden State Water Company	97,329.98	97,329.98	0.00	67,177.72	(30,152.26)
Jurupa Community Services District	1,269,852.48	1,269,852.48	0.00	1,803,954.41	534,101.93
Maygold Mutual Water Company	76,188.29	76,188.29	0.00	55,993.68	(20,194.61)
Monte Vista Irrigation Company	21,297.82	21,297.82	0.00	18,154.43	(3,143.39)
Monte Vista Water District	739,552.80	739,552.80	0.00	558,033.36	(181,519.44)
NCL Co, LLC	0.00	0.00	0.00	0.00	0.00
Niagara Bottling, LLC	439,828.43	439,828.43	0.00	396,888.86	(42,939.57)
Nicholson Family Trust	120.80	120.80	0.00	102.98	(17.82)
Norco, City of	6,351.37	6,351.37	0.00	81,008.38	74,657.01
Ontario, City of	1,930,359.16	1,930,359.16	0.00	2,090,645.45	160,286.29
Pomona, City of	1,280,291.36	1,280,291.36	0.00	915,740.61	(364,550.75)
San Antonio Water Company	99,410.02	99,410.02	0.00	78,347.69	(21,062.33)
San Bernardino, County of (Shooting Park)	19,225.71	19,225.71	0.00	18,685.31	(540.40)
Santa Ana River Water Company	42,224.30	42,224.30	0.00	126,887.51	84,663.21
Upland, City of	150,950.17	150,950.17	0.00	121,151.92	(29,798.25)
West End Consolidated Water Co	29,823.85	29,823.85	0.00	25,422.08	(4,401.77)
West Valley Water District	20,905.88	20,905.88	0.00	17,912.78	(2,993.10)
Western Municipal Water District	0.00	0.00	0.00	267,148.19	267,148.19
Overlying (Non-Agricultural) Pool	305,899.38	305,899.39	0.01	214,135.16	(91,764.22)
Total	9,665,221.41	9,665,221.42	0.01	9,664,643.99	(577.42)

Total Desalter Replenishment Assessment	185,682.80	185,682.80	0.00
Total Change in Assessments Minus DRO			(0.01)

Judgment Administration Assessment / AF	42.39	42.39	0.00	29.06	(13.33)
OBMP Assessment / AF	55.08	55.08	0.00	37.77	(17.31)
Total Assessment / AF	97.47	97.47	0.00	66.83	(30.64)

¹ Based on feedback from City of Ontario during Workshop #1.

² Based on feedback from Cucamonga Valley Water District during Workshop #1.

³ Based on feedback from Fontana Water Company during Workshop #1.

⁴ Based on feedback from Cucamonga Valley Water District during Workshop #2.

⁵ Based on a hypothetical \$500/AF replenishment, subject to change.

EXHIBIT I



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MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

December 17, 2025

VIA EMAIL

Chino Basin Watermaster Board
9641 San Bernardino Road
Rancho Cucamonga, CA 91730
Email: RFavelaQuintero@cbwm.org

Watermaster's Implementation of the Court of Appeal Ruling

Dear Members of the Watermaster Board:

The City of Ontario appreciates the opportunity to provide context and perspective as the Chino Basin Watermaster Board considers its actions and role in the Dry Year Yield ("DYY") matter pending before the Court. As the Board is aware, Ontario is the prevailing party in a dispute involving Watermaster's handling of the DYY Program. A court hearing is scheduled for February 6, 2026, during which Judge Ochoa intends to consider and issue an order implementing the Court of Appeal's ("COA") decision.

Throughout this dispute, the role of the Board remains unchanged: to act as an impartial arm of the Court in administering the Judgment and subsequent court orders on behalf of the Judge. The Board, including each member, shares this mandate and is expected to act consistently with the Board's role when recommending actions to the Judge. Consideration of staff and legal counsel's opinions is expected, but ultimately, the Board's decisions are its own.

The circumstances leading to the current litigation have long been understood by Watermaster (and by the other parties to the dispute, who are all currently represented on the Board), and they were and are still within your power to correct. Ontario raised concerns early and often regarding the implementation of the 2019 Letter Agreement, citing that Watermaster and the parties to the dispute were deviating from the Court-approved DYY Program. Well in advance of filing any litigation, Ontario attempted to resolve its stated concerns in good faith but encountered resistance that at times appeared less than neutral. While these attempts were ongoing, Ontario requested an extension (from Watermaster legal counsel) of the filing period to raise objections with the Court, but Watermaster, through its officers and legal counsel, denied the request – notably, only three days before the filing deadline. On the same day, Ontario's legal

counsel was disqualified after a party to the dispute revoked the conflict waiver for Ontario's legal counsel. Meanwhile, the unlawful implementation of the DYY Program continued for two additional years, while the Board dismissed Ontario's concerns and approved the two assessment packages. In doing so, the Board missed an opportunity for amicable resolution and, instead, placed this matter in the hands of the Court.

The Court of Appeal found that the Board erred in its approval of these assessment packages and concluded, among other things, that "the 2019 Letter Agreement was incorrectly interpreted at best, or imprudently executed at worst." The opportunity now before the Board is to prove that it was the former and not the latter, and you can do so by supporting the COA direction to correct and amend the subject assessment packages "consistent with the original DYY Program agreements, the Judgment, and prior court orders." There are significant implications in this case, but in light of the COA Opinion and directives, Watermaster must part ways with its prior litigation positions, including those arguments Watermaster advanced on behalf of the Cucamonga Valley Water District, the Fontana Water Company, and the Inland Empire Utilities Agency. The Board must ensure Watermaster adheres to the plain language of court orders as an arm of the Court. The COA analysis and findings provide sufficient direction to accomplish this.

Watermaster recently publicly distributed a set of options for implementing the COA's direction to correct and amend the assessment packages. The options were released shortly after a closed-session Board meeting and were presumably vetted by the Board; unfortunately, none of the options adhered to the COA's order and findings. The options included consideration of items not before the Court in this case, such as Desalter production assessments, at the request of Cucamonga Valley Water District and Fontana Water Company. Simultaneously, Ontario's request to consider specific provisions of the COA ruling, such as those noted herein, were ignored. By way of example, all options 1) allowed for an agency *without* a Local Agency Agreement to recover DYY water and 2) suspended the performance criteria defined in the original DYY agreements. Remarkably, and for clarity, some of the provisions of the COA and associated documents that contradict Watermaster's proposed options are outlined below.

- By order of the Funding Agreement and the Storage and Recovery Agreement, "the court recognized that any local agency agreements necessary for the DYY Program must be implemented by Watermaster and approved by the court."
- "...the foundation of the DYY Program is the Local Agency Agreements which define each agency's facilities and annual recovery capacity, including performance targets..."
- "...water can no more be recovered (produced or withdrawn) without a Local Agency Agreement than it can be stored without such agreements. Nor can the Exhibit G performance criteria be suspended." As a reminder, the performance criteria determine how much DYY water a participating agency can produce in a given year.
- "Ontario contends Watermaster's interpretation and application of the 2019 Letter Agreement violated the Judgment and agreements that created the DYY Program. We agree."
- "The impact of these voluntary takes materially affected the rights of the Operating Parties and other local agencies."
- From the original 2003 Court Order approving the Funding Agreement: "until Watermaster and the Court approve the Local Agency Agreements and Storage and Recovery application ... the storage and recovery program cannot be undertaken."
- From the original 2004 Court-approved Storage and Recovery Agreement: "the facilities used to store and recover Supplemental Water will be as described in the Local Agency Agreements..."

and goes on to describe that material modifications will require the filing of a new Storage and Recovery application.

In contrast and for the benefit of the Board, Ontario has prepared an assessment package summary consistent with the COA analysis, findings, and direction. In doing so, we can point to the plain language of the COA and original DYY agreements to explain and justify the various decision points that guide the effort. Attached is a summary of the revised assessment packages, illustrating the impact on each Appropriative Pool party and the Non-Agricultural Pool.

The DYY dispute has been ongoing for five years, and Ontario is the prevailing party. Ontario remains committed to concluding this effort as constructively as possible and has always been open to settlement discussions or, with the assistance of the recent Court-ordered neutral mediator, to achieving a stipulated proposed order implementing the COA. Short of these alternative paths, we expect the Board to credibly and neutrally fulfill its fundamental promise to the Court by supporting a court order to Judge Ochoa that accepts and implements the COA without further attempts to relitigate. I welcome a meeting or discussion with any Board member, individually or the Board collectively, regarding this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott Burton".

Scott Burton, P.E.
City of Ontario, Utilities General Manager

cc: Scott Ochoa, City of Ontario City Manager
Todd Corbin, Chino Basin Watermaster General Manager
Courtney Jones, City of Ontario Assistant General Manager

encl: 20251126 DYY Shifting

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. REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF JOINT OPPOSITION TO CITY OF ONTARIO'S MOTION FOR ORDER DIRECTING WATERMASTER TO CORRECT AND AMEND THE FY2021/2022 AND 2022/2023 ASSESSMENT PACKAGES

/ 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 February 5, 2026, in Rancho Cucamonga, California.



By: Ruby Favela Quintero
Chino Basin Watermaster

PAUL HOFER
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