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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 THE HONORABLE GILBERT G. OCHOA]

CITY OF ONTARIO'S OPPOSITION TO WATERMASTER'S MOTION FOR COURT APPROVAL OF CORRECTED AND AMENDED FISCAL YEARS 2021/22 AND 2022/23 ASSESSMENT PACKAGES

Hearing:
Date: June 12, 2026
Time: 11:00 a.m.
Department: R17

TABLE OF CONTENT

Page(s)

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

I. INTRODUCTION

The City of Ontario ("Ontario") opposes Chino Basin Watermaster's ("Watermaster") Motion for Court Approval of Corrected and Amended Fiscal Years ("FY") 2021/22 and 2022/23 Assessment Packages ("Motion for Approval" or "Motion"), because the Corrected and Amended FY 2021/22 and 2022/23 Assessment Packages ("CAA Packages") are still in conflict with the *original* Dry Year Yield ("DYY") Program agreements, the Judgment, this Court's prior orders, and the Court of Appeal's April 18, 2025 Opinion[1] ("Opinion" or "Op."), and hereby challenges Watermaster's adoption of the CAA Packages pursuant to the Judgment and other orders entered in this case, including paragraph 31 of the Judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Opinion Found That Watermaster's Interpretation and Application of the 2019 Letter Agreement Defied the Original DYY Program Agreements, Court Orders, and Judgment

"Watermaster's interpretation and application of the 2019 Letter Agreement violated the Judgment and agreements that created the DYY program," and the effect was to defy the rules in the original DYY Program agreements[2] "by allowing FWC (a nonparty) to voluntarily produce water from the storage account without a Local Agency Agreement [and] by letting CVWD to voluntarily produce double its allocated shares of stored water regardless of its performance criteria."[3] (Op. at 27-28.) The Opinion also found that Watermaster's exemption of this voluntary production caused unlawful cost-shifting and a resulting increase in assessments shouldered by Ontario and other parties to the Judgment. (*Id*. at 34-36.)

The Court of Appeal held that the 2019 Letter Agreement "fundamentally changed the

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[1] The Opinion is attached as Exhibit A to the Declaration of Bradley J. Herrema in Support of Watermaster's Motion.

[2] "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." (Op. at 25.)

[3] As to CVWD, while the Opinion focused on Watermaster improperly allowing CVWD to voluntarily produce double its allocated shares of stored from the DYY Program storage account regardless of its performance criteria, the Court of Appeal also recognized that the original DYY agreements and court orders did not allow for DYY production absent a "call" from Metropolitan Water District. (Op. at 9, 12, 14, 27; Declaration of Elizabeth P. Ewens ("Ewens Decl."), Ex. 1 at 24:1-8 (transcript of appellate oral arguments).)

recovery aspect of the DYY Program by allowing voluntary production of water from the storage account regardless of party status or performance criteria" and that "[t]he impact of these voluntary takes materially affected the rights of the Operating Parties and other local agencies when 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." (Op. at 38-39.) What the above findings make clear is the Court of Appeal specifically found that the challenged "voluntary production" of water by Fontana and CVWD from the DYY Program violated the original DYY Program agreements, the Judgment, and prior court orders. (See, e.g., Op. at 34 ["water can no more be recovered (produced/withdrawn) without a Local Agency Agreement than it can be stored without such agreements"].) The Court of Appeal's Opinion targets two primary issues: improperly claimed "voluntary production" and the resulting unlawful cost-shifting.

B. The Opinion Directs Watermaster to Correct and Amend the Assessment Packages Consistent with the Original DYY Agreements and Orders Which Do Not Include the 2019 Letter Agreement and Do Not Authorize "Voluntary Production"

The Opinion leaves no ambiguity as to what Watermaster was required to do following issuance of the remittitur:

> 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.

(Op. at 38-39, emphasis added.) This mandate unambiguously requires Watermaster to correct and amend the entirety of the Assessment Packages consistent with the original DYY Program agreements, and not the 2019 Letter Agreement. (See *id*. at 39 ["Watermaster interpreted and applied *the 2019 Letter Agreement* inconsistently with *the original DYY Program agreements*" (emphasis added)].) The Opinion does not narrow Watermaster's obligation to only redressing economic harm, nor does it allow Watermaster to cherry-pick what portions of the Assessment Packages to correct. It also does not authorize Watermaster to find new ways—including through the creation of brand-new terms and accounting mechanisms—to circumvent the Opinion's

mandates. Rather, Watermaster is required by the plain language of the Opinion to correct the Assessment Packages to reflect only the amount of DYY water that could be produced or claimed by parties pursuant to the original DYY Program agreements, the Judgment, and prior court orders.[4] Watermaster failed at this task.

C. Watermaster's Failure to Comply with the Directive Following Remittitur

Since the Remittitur was issued, Watermaster spent months developing and advocating for alternative proposals that are fundamentally inconsistent with the Opinion. Among other issues, Watermaster has continued to allow Fontana to claim (and financially benefit from) voluntary production from the DYY Program despite the explicit findings by the Court of Appeal that Fontana could not participate in the DYY Program. (See Op. at 34.) Ontario repeatedly objected to Watermaster's failure to take action to amend the Assessment Packages to correct the unlawful voluntary production of DYY Program water and corresponding cost-shifting. Instead of addressing known issues, Watermaster continued to actively work with Fontana and CVWD to avoid the adverse financial impacts of complying with the plain language of the Opinion, culminating in the flawed CAA Packages currently pending before this Court for review.

On October 31, 2025, the Court held a status conference following remittitur and directed Ontario to prepare a proposed order for presentation to all parties and set the matter for hearing on February 6, 2026. (Ewens Decl., ¶ 4, Ex. 2 [Tr., at 9:22-10:6].) The Court also instructed the parties to meet and confer to see whether they could stipulate to language in a proposed order, and to have a third-party neutral mediator assist. The parties jointly agreed to mediator Justice Stephen J. Kane

[4] The Opinion held that Fontana was not authorized to claim or produce any water from the DYY Program because it did not have a Local Agency Agreement. (Op. at 30 [none of the DYY Program agreements permit the production of water from the program's storage account absent a court-approved Local Agency Agreement].) As to CVWD, while the Court of Appeal focused on CVWD's improper voluntary production of double its allocated shares of stored water regardless of performance criteria, the Court of Appeal also recognized the distinction between "call" and "non-call" years. (Op. at 9, 12, 14, 27; Ewens Decl., Ex. 1 at 24:1-8.) Indeed, the underlying purpose of the 2019 Letter Agreement was to create a construct whereby parties could voluntarily take DYY water in non-call years. Per the Opinion: "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)].'" (Op. at 12.) In so doing, the parties turned what was a "dry year" program into a "wet year" program. (Ewens Decl., Ex. 1 at 24:1-8.)

(Ret.), and a mediation was held on December 12, 2025. (Ewens Decl., ¶ 5.) The parties were unable to reach a resolution on a proposed order, and a follow-up mediation was scheduled for January 16, 2025. (*Ibid*.)

In compliance with the Court's instruction to Ontario to prepare and submit a proposed order to the Court for the scheduled hearing on February 6, Ontario filed, by the deadline on January 12, 2026, a Motion for Order Directing Watermaster to Correct and Amend the FY 2021/2022 and 2022/2023 Assessment Packages. (Code Civ. Proc., § 1005(b).) The motion submitted a proposed order to the Court that mirrored the language in the Opinion.[5] The proposed order also attached a draft of the proposed corrected and amended Assessment Packages that showed in redline the accounting exercise that would be necessary to correct the Assessment Packages to reflect the proper DYY Program production by Fontana and CVWD in a manner that complied with the original DYY Program agreements and orders. (Request for Judicial Notice ("RJN"), Exs. 19-23.)

Watermaster, Fontana, CVWD and IEUA subsequently opposed Ontario's motion on numerous grounds, including that Ontario's motion was premature and Watermaster should be allowed to finish its ongoing process of developing the corrected Assessment Packages consistent with the Opinion. On February 20, 2026, the Court denied Ontario's motion and found, in part, that Ontario's motion was premature and that Watermaster should be allowed to prepare corrected Assessment Packages that could be reviewed by all parties before being submitted the Cout for approval. (See Herrema Decl., Ex. B.) The Court recognized Ontario's reservation of its objections. (Ewens Decl., ¶ 6, Ex. 3 at 14:20-23.)

The Court issued an Order on Remittitur and provided that "Watermaster is directed to correct and amend the FY 2021/2022 and FY 2022/2023 Assessment Packages consistent with the

[5] After filing the Motion, Ontario attended the January 16 mediation and negotiated in good faith, but the parties were unable to resolve the dispute. Ontario did not unilaterally terminate the mediation as falsely claimed by the opposing parties but filed a notice to the Court to advise the Court that mediation had not resolved the dispute between the Watermaster and the parties and to request that the previously scheduled February 6 hearing proceed. (See RJN, Ex. 24.) Notably, notwithstanding the conclusion of formal mediation, Ontario has continued its efforts to resolve all issues. (Declaration of Courtney Jones ("Jones Decl."), ¶ 4, Ex. 2 at 6:8-13.)

original DYY Program agreements, the Judgment, and prior Court orders." (Herrema Decl., Ex. B [citing Op. at 39].) The Order directed Watermaster to draft the revised Assessment Packages in accordance with historical practice and allow stakeholder review through the presentation of the draft CAA Packages to the Pool and Advisory Committees and Watermaster Board. Watermaster was directed to file the CAA Packages with the Court for its review no later than March 31, 2026.

D. The Watermaster Process Leading to the Adoption of the CAA Packages

1. There Were Significant Objections to the CAA Packages

Watermaster emphasizes that the CAA Packages were developed through an extensive stakeholder process, but that process really reflects Watermaster's attempts to "workshop" its way around the Opinion's mandates. However, no amount of "process" can compensate for the fact that the CAA Packages now presented to this Court fundamentally conflict with the Opinion, a fact made even more clear by Watermaster's inability to provide authority from the original DYY Program agreements and court orders to justify the changes it is advancing.

For example, during the March 10, 2026 workshop, Watermaster staff presented revised calculations, emphasizing that the revisions were limited to addressing the "economic harm" stemming from the exemption of Fontana's and CVWD's DYY production. (See RJN, Ex. 1 at p. 3.) The proposals put forward by Watermaster, however, did not address or correct the fact that CVWD and Fontana still were improperly permitted to get credit for "voluntary" withdrawals of DYY water. Indeed, the revised Assessment Packages discussed at the workshops and presented now to the Court for approval include provisions that *still allow the exact same volume of water to be recovered from the DYY Program as Watermaster previously allowed when it originally approved the now-overturned FY 2021/2022 and FY 2022/2023 Assessment Packages.* (*Id*. at pp. 1-3; see e.g. Declaration of Todd M. Corbin ("Corbin Decl."), Ex. A at 99.)

The meeting process focused almost entirely on Watermaster's attempt to defend its chosen accounting approach, including its use of brand-new terminology to justify the changes. And while the changes are supposed to give effect to the *original* DYY agreements, the Judgment and orders—all of which remain in effect—Watermaster takes the position that the proposed amendments (which are supposed to comply with the original orders and agreements, and therefore should be

durable) are only for the FY 2021/2022 and FY 2022/2023 and should not be construed as precedent. (Motion for Approval at 3:17-20.) If, indeed, Watermaster is implementing the original DYY orders and agreements then there should be no question about whether the CAA Packages are "precedent setting". In other words, if Watermaster is truly correcting the Assessment Packages to comply with the original DYY orders, agreements, and Judgment, then there should be uniform continuity across all years, including future years. Instead, because Watermaster is now applying new accounting methodologies in the CAA Packages that are untethered to the original DYY agreements and orders, all parties are left with complete uncertainty about whether the new terms and accounting tactics employed in the CAA Packages will be applied in future Assessment Packages to all parties, or whether Fontana and CVWD are the only beneficiaries of the new special rules for the two years at issue in this case.

Finally, it is notable that there was not unanimous support for the CAA Packages. In fact, the Non-Agricultural Pool voted down the CAA Packages and the Advisory Committee received "no" votes from Ontario and other parties. (RJN, Ex. 2 (p. 3), Ex. 3 (pp. 2, 4).)

2. The CAA Packages Do Not Comply with the Original DYY Program Agreements or Court Orders.

Ontario fully engaged in the process ordered by this Court, submitted both oral and written questions and comments to Watermaster, and worked in good faith with all parties to try to resolve the issues to avoid further contested proceedings. (Jones Decl., ¶¶ 4-11, Exs. 1 (7:24 – 8:25), 2 (6:8 – 7:14), 3, 5, 6 (2:10 – 7:19.)[6] Among other things, Ontario pointed out the fundamental inconsistencies between the draft CAA Packages, on the one hand, and the Opinion and the original DYY Program agreements, on the other, including that the CAA Packages continue to allow Fontana to produce water from the DYY Program account without a Local Agency Agreement and continue to allow CVWD to get credit for "voluntary" production of DYY above what was allowed under its performance criteria and the original DYY Program agreements and orders. (*Ibid*.) Ontario also pointed out that Watermaster did not address all of the financial harm to Ontario and other parties, choosing instead to cherry-pick select categories of assessments to revise.

[6] Ontario's comments and objections to the CAA Packages are incorporated herein by reference.

To comply with the Opinion, Watermaster should have gone page-by-page through the Assessment Packages to determine whether any of the numbers or calculations were affected by Watermaster's wrongful application of the 2019 Letter Agreement and then correct those issues. The Opinion and this Court's Order on Remittitur did not authorize Watermaster to reweigh policy considerations by creating new columns and categories of water to create new exceptions to reduce the adverse financial impacts to Fontana and CVWD. Indeed, uniform treatment of all parties, instead of applying special rules to only two parties, is at the heart of the Opinion that stresses that "uniform assessment of production is mandatory" under the Judgment and Watermaster Rules and Regulations. (Op. at 8.)

III. STANDARD OF REVIEW

Under paragraph 31 of the Judgment, the Court's review of any Watermaster action or decision is "de novo." (Judgment, ¶ 31(d).) While Watermaster's findings, if any, may be received as evidence at the hearing or trial, such evidence "shall not constitute presumptive or prima facie proof of any fact in issue." (*Ibid*.) Under this standard of review, and consistent with the Judgment, the Court is required to look at evidence anew. (*Ibid.*; *see*, *e.g*., *Littoral Dev. Co. v. S.F. Bay Conservation & Dev. Comm'n* (1994) 24 Cal.App.4th 1050, 1058, as modified on denial of reh'g (May 26, 1994).) Similarly, the Court should conduct independent oversight of Watermaster's implementation of the terms in the Judgment and subsequent court orders through the exercise of the Court's continuing jurisdiction. (Judgment, ¶¶ 16-17.)

IV. ARGUMENT

A. Law of the Case Requires the Assessment Packages to be Corrected Consistent with the Original DYY Program Agreements and Court Orders

Code of Civil Procedure section 43 authorizes the Supreme Court and Courts of Appeal to "affirm, reverse, or modify any judgment or order appealed from, and may direct the proper judgment or order to be entered." This directive is binding on the lower court and upon any subsequent appeal, which is embodied in the law of the case doctrine. ""[This] doctrine holds that when an appellate opinion states a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to through its subsequent progress in the

lower court and upon subsequent appeal. [Citations.]"'" (*Broad. Music, Inc. v. Structured Asset Sales, LLC* (2022) 75 Cal.App.5th 596, 604, quoting *People v. Cooper* (2007) 149 Cal.App.4th 500, 524.) The doctrine is applicable to "'"questions not expressly decided but implicitly decided because they were essential to the decision on the prior appeal."'" (*Ibid*., citation omitted.)

B. The CAA Packages Do Not Comply with the Opinion

Watermaster continues to actively work to circumvent and avoid the Opinion's mandate to correct and amend the Assessment Packages consistent with the original DYY Program agreements, the Judgment, and prior court orders. Instead, Watermaster has consistently described the proposed revisions to the Assessment Packages as targeted responses to address certain (but not all) "economic impacts" identified by the Court of Appeal.

At the outset of the remand process, and contrary to the findings of the Court of Appeal, Watermaster impermissibly and narrowly construed its mandate, limiting it to correcting what it characterized as cost-shifting resulting from the failure to assess certain DYY withdrawals, without revisiting the permissibility of the withdrawals themselves. In Watermaster's words, the CAA Packages "do not include any determination as to the removal of water from the DYY Program Account." (Jones Decl., ¶ 9, Ex. 4 at 1-2, emphasis in original.) As a result, the CAA Packages indiscriminately track and count some DYY water use by CVWD and Fontana when calculating certain portions of the assessment package but then discount their use of DYY water in other portions. As a result, the CAA Packages put forward by Watermaster are an absolute end-run around the Court of Appeal's Opinion designed to still give Fontana and CVWD the benefit of their "voluntary" production of DYY water under the 2019 Letter Agreement.

While not exhaustive, the following examples are illustrative of Watermaster's failure to follow the Opinion, and this Court's, directive 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." (Op. at 39; Herrema Decl., Ex. C.)[7]

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[7] Additional examples are provided in the accompanying Declaration of Courtney Jones, and in written and oral comments provided by Ontario. (Jones Decl., ¶¶ 13-18, Exs. 3, 5.)

1. The CAA Packages Still Improperly Give CVWD and Fontana Credit for Their Unlawful DYY Production

a. The CAA Packages Continue to Reward Fontana for Its Improper Production of DYY Program Water

The Court of Appeal could not have been clearer than in its statement that Fontana was not, and is not, entitled to the benefit of DYY Program water because it does not have a local agency agreement. The Court specifically found that the 2019 Letter Agreement "'def[ies] 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." (Op. at 30.) Accordingly, in order to comply with the Opinion's directive, Watermaster was required to assess the water in question, thereby reducing Fontana's production and use of water from the DYY Storage and Recovery Program to zero.

The Assessment Packages contain multiple types of assessments. These include production assessments (see Corbin Decl., Ex. A at 89, 87 [Water Production Summary])], and assessments relating to the Desalter Replenishment Obligation ("DRO"). (See *id.*, Ex. A at 99, 187 [Remaining Desalter Replenishment Obligation (RDRO)].) Using the FY 2021/2022 CAA Package as an example, as to the production assessments, the CAA Package does what is required and zeroes out the 2,500 AF in Fontana's previously claimed DYY production and assesses Fontana for the full 13,565.3 AF of its production. (*Id*., Ex. A at 89, columns 10G and 10K.) However, in calculating Fontana's share of the DRO assessments, that CAA Package still gives Fontana full credit for its 2,500 AF of claimed DYY production (see *id*., Ex. A at 99, column 20G), subtracts that amount from Fontana's adjusted physical production (*id.*, at column 20H), and thus reduces the amount of Fontana's DRO assessment by the amount of Fontana's claimed DYY production. There is no authority in the original DYY Program agreements, the Judgment, prior DYY court orders, or the Opinion that allows Fontana—a party without a Local Agency Agreement—to participate in and

claim a benefit from the DYY Program. Indeed, Watermaster has cited to none.[8] The resulting impact is the same cost-shifting burden to Ontario and other parties that the Court of Appeal found to be contrary to the Judgment and original DYY orders and agreements.

b. The CAA Packages Give CVWD Credit for DYY Production in Non-Call Years and in Excess of Its Performance Criteria

There is no authority in the original DYY agreements and court orders that allows production from the DYY storage account during a "non-call" year, nor is there any authority to allow CVWD to produce DYY Program water above its performance criteria set forth in its Local Agency Agreement. As the Opinion noted, the production of DYY Program water is not authorized unless there is a "call" by Metropolitan Water District for Stored Water Delivery. (Jones Decl., ¶ 12, Ex. 7 [¶ VI.B.5].) In contrast, during call years, all parties with Local Agency Agreements are authorized and required to produce DYY Program water. (*Id*., ¶ 12.) So-called "voluntary" production of DYY water in a non-call year was not allowed under the original DYY Program agreements, the Judgment, or prior court orders but was later improperly authorized under the 2019 Letter Agreement. (See Op. at 9, 12, 14, 27.) The years covered by the FY 2021/22 and 2022/23 Assessment Packages were not "call" years, and therefore no operating parties were authorized to produce or claim DYY Program water during those years. (Jones Decl., ¶ 12, Ex. 5.)

Even if, *arguendo*, one buys into the fiction created by Watermaster that the water years at issue were "call" years even though it is undisputed that they were not (Jones Decl. Ex. 5), the CAA Packages still violate the Court of Appeal's Opinion because they give CVWD credit for DYY water in amounts that are in excess of the 11,353 AF allowed by CVWD's Local Agency Agreement. (Op. at 15.) For example, in CAA Package for FY 2021/22, Watermaster gives CVWD credit for—and thus exempts from production assessments—12,304 AF of claimed DYY Program water for FY 2021/22 (Corbin Decl., Ex. A at 89, column 10J) and exempts the entirety of this water from production assessments (*id.*, column 10K). Likewise, in the CAA Package for

[8] Watermaster attempts to justify this approach by stating that it considered the "actual harm" to CVWD and Fontana. (Motion to Approve at 11:23-27.) It is improper to consider the economic harm to only these parties, and it defies the Opinion's mandate.

FY 2022/23, Watermaster exempts from production assessments 17,912.8 AF of DYY Program water. (*Id*., Ex. A at 177 (column 10J); Jones Decl., ¶ 16.) These amounts are in excess of the 11,353 AF of water allowed under CVWD's Local Agency Agreement *in a call year*. (RJN, Ex. 5 at Ex. B.) In other words, in addition to giving CVWD credit for the production of DYY water in a non-call year, Watermaster is allowing CVWD to get credit and reap financial benefits from DYY production above the established limits for CVWD under the DYY Program agreements and orders and CVWD's own Local Agency Agreement. As the Court of Appeal found, "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." (Op. at 15.) Thus, in calculating the revised assessments, Watermaster is still relying on the voluntary withdrawals that the Court of Appeal already found to be improper. (*Id*. at 34-35.) What is reflected in the CAA Packages now before this Court is an extension of the same "voluntary" production of DYY water that the Court of Appeal previously ruled is unauthorized by the original DYY Program agreements and court orders. (*Id*. at 15-16, 20, 30.)[9]

2. Watermaster Fails to Correct the Whole of the Assessment Packages

As noted above, the CAA Packages fail to correct DRO assessments. A central feature of the CAA Packages is Watermaster's decision not to assess Fontana and CVWD's claimed DYY water for purposes of DRO assessments. Watermaster has tried to justify this exclusion by recharacterizing this water as "withdrawn" from the DYY storage account and suggesting that as "foreign" or imported water, DRO does not apply. (See Jones Decl., Ex. 1 at 9:10-24.) Whatever new term Watermaster creates to recategorize this water, the result is the same: Fontana and CVWD still are benefiting from their claimed use of DYY water through the exemption of the DYY water

[9] Watermaster suggests that so long as CVWD can demonstrate that it "rolled off" of its imported water supplies, it can claim and exempt amounts greater than the limits contained as part of the Exhibit G performance criteria and CVWD's Local Agency Agreement. (Motion at 2-3.) Such an interpretation nullifies the DYY Program Orders and Agreements and the performance criteria contained therein. Such a result is both contrary to law and nonsensical, particularly with the crux of the Court of Appeal's order directed Watermaster to correct and amend the Assessment Packages "consistent with the original DYY Program agreements, the Judgment, and prior court orders." (Op. at 38-39.)

from DRO assessment calculations to the detriment of the other parties. (See Motion for Approval at 10:20-11:27.) This dual treatment—assessing DYY withdrawals as production for some purposes in the CAA Packages but not others—was identified during committee discussions as violative of the Judgment, the original DYY Program agreements, and the Opinion. (See Jones Decl., Ex. 1 at 9:10 – 12:3.)[10]

Put another way, Watermaster selectively (though imperfectly) attempted to correct some portions of the Assessment Packages while ignoring others. It purported to "correct" calculations relating to general production assessments, while still giving Fontana and CVWD credit for claimed DYY production ("Storage and Recovery Adjustments") for purposes of the DRO assessments contained within the Assessment Packages. Using the FY 2021/2022 CAA Package as an example, *Watermaster exempts the full 2,500 AF of Fontana's claimed DYY water from DRO assessments* notwithstanding the fact that the Court of Appeal unequivocally ruled that Fontana was not entitled to participate in the DYY Program. (See Corbin Decl., Ex. A at 99, columns 20G, 20H.) And, for its part, CVWD avoids DRO assessments for *the same 20,500 AF of DYY production it claimed as part of the original Assessment Packages that the Court of Appeal overturned*. (*Id.* at columns 20E, 20G, 20H.) There is no authority in the Opinion for such cherry-picking. Watermaster's insistence on giving Fontana and CVWD credit for DYY Program water in the calculation of DRO assessments economically harms Ontario and the other parties. (Jones Decl., ¶¶ 13-18.) It is both improper and inconsistent with the original DYY Program agreements, the Judgment and prior court orders.

If Watermaster followed the original DYY agreements, DYY orders, and the Judgment in the first instance, then Watermaster never would have allowed Fontana to produce DYY water without a local agency agreement, Watermaster never would have allowed CVWD to claim DYY production in a non-call year, and (in a call year) Watermaster never would have allowed CVWD to produce DYY water in excess of Exhibit G (imported water criteria) or in excess of CVWD's

[10] The 2019 Appropriative Pool Pooling Plan Amendment does not change this result and does not apply. The 2019 Letter Agreement was not "approved" and the voluntary production still claimed by Fontana and CVWD is outside of the original and approved DYY Program orders and agreements.

performance obligation. Further, Watermaster certainly never would have allowed CVWD and Fontana to reduce their respective DRO assessment obligations based on the above. For the same reason now, when directed to amend the Assessment Packages consistent with the original DYY agreements, court orders, and the Judgment, Watermaster cannot make up new rules, new terms, and new accounting methodologies in order to continue to credit CVWD and Fontana for their claimed DYY production and reduce the DRO assessments owed by these parties.

3. Watermaster Created Entirely New Categories of Water to Shield Fontana and CVWD from the Impacts of the COA's Opinion

The real "legal fiction" in this case stems from Watermaster's introduction of new terminology and accounting constructs for no purpose other than to circumvent the Opinion. Indeed, Watermaster has admitted as much. For example, in introducing a brand-new "Storage and Recovery Adjustments" column to the calculation of DRO assessments, Watermaster explains in a footnote that the column "was added to account for (CVWD's) withdrawal of water in excess of the Exhibit 'G' Performance Criteria amount, and (Fontana's) withdrawal of water absent of (sic) a Local Agency Agreement." (Corbin Decl., Ex. A at 99, fn. 2.) The use of this column and the credits in that column given to CVWD and Fontana have no precedent in Watermaster's "historical practices" and certainly have no basis in the DYY Program agreements, orders, or the Judgment. (Jones Decl., ¶ 15.)

Additionally, Watermaster fails to explain (or cite to supporting provisions from the original DYY governing documents or the Opinion) why so-called "transferred" water is exempt from DRO assessments. As a symptom of its attempt to find ways around the Court of Appeal's directives, Watermaster goes on to use the terms "withdrawn," "transferred," "extracted," and "produced" seemingly interchangeably, without a clear distinction between the terms, and on an inconsistent basis. In doing so, Watermaster appears to have predetermined a few of the four issues the Court of Appeal ordered the parties to work together to resolve and then applied those determinations to the CAA Packages to reduce the adverse financial impacts to Fontana and CVWD. (Op. at 39; see also Section IV.D., below.) Watermaster has provided no specific authority in the original DYY orders and agreements to make these determinations, nor a justification for circumventing the

Opinion's directive for the parties to work together to resolve the four forward-looking issues.[11]

C. Ontario Is Not Asking for a Physical Return of DYY Water to the Basin, Nor Is It Asking Watermaster to Perform an Impossible Task

Watermaster contends that in correcting the Assessment Packages it cannot "return" water that was removed from the DYY storage account by Fontana and CVWD. First, this contention is flatly contradicted by Watermaster's prior statements that the Assessment Packages "could always be changed retroactively." (Op. at 16.) Second, Ontario is not arguing that Watermaster, or Fontana and CVWD, should physically "put back" the water. (See Motion for Approval at 10:5-18.) Ontario's arguments are not a "legal fiction" but rather reflect that this process involves only a simple math and accounting exercise to retroactively correct the Assessment Packages and properly reclassify this water as Watermaster has previously stated it could do. Third, contrary to Watermaster's contentions, this has nothing to do with prior approvals through the Operating Committee process (see Motion at 14). It is Watermaster's responsibility to ensure that the Court's orders are followed, and it is Watermaster's responsibility to correct and amend the Assessment Packages consistent with the DYY Program agreements, the Judgment, and prior court orders. In sum, Watermaster controls storage and the Assessment Packages, not the Operating Committee. (Jones Decl., Ex. 5 at 5:9 – 6:2.)

Correcting the accounting is not an impossible task. Indeed, Ontario has already prepared and submitted a template demonstrating how to correct the Assessment Packages in a manner that complies with the Court of Appeal's Opinion. (See RJN, Exs.11-13, 16-17; see also, RJN, Exs. 19-23, 34-38.) Watermaster alleges that this Court rejected the substance accounting methodology put forward by Ontario. (Motion at 5.) Not so. The crux of this Court's Order was that Ontario's motion was premature. (Herrema, Ex. B at Ex. A at 14-15.) Moreover, consistent with the Court of Appeal's directive, this Court ordered Watermaster to amend the Assessment Packages consistent with the *original* DYY Program agreements, the Judgment, and the prior court orders. As described above, this is something that Watermaster utterly failed to do.

[11] Notably, the Court of Appeal held that resolution of these issues was not necessary because Watermaster fundamentally erred in its interpretation and application of the 2019 Letter Agreement. (Op. at 25.)

D. Watermaster Has Done Nothing to Engage with the Parties on the Four Reserved Issues as Directed by the Court of Appeal

In its Motion, Watermaster claims to recognize that the four reserved issues, including the "future viability and application of the 2019 Letter Agreement," do not need to be resolved as part of the "correction and amendment process" of the Assessment Packages. (Motion at 12-13.) Despite this, as discussed above, Watermaster effectively and unilaterally answered some of the four reserved issues for purposes of the CAA Packages, including whether water from the DYY Program is withdrawn (not produced), whether stored and supplemental water are simply two types of groundwater, and whether all stored and supplemental water in the Basin is categorically exempt from assessments, and then applied those determinations to the CAA Packages to reduce the adverse financial impacts to Fontana and CVWD. This is inconsistent with the statement in Watermaster's Motion that the four issues are reserved and fails to comply with the clear directive in the Opinion to correct and amend the Assessment Packages pursuant to the original DYY Program agreements—not the 2019 Letter Agreement.

Watermaster also has not put forward either a timeline or process for the resolution of the four issues. (Jones Decl., ¶ 18.) Perhaps worse, Watermaster has applied its own "answers" to some of the four reserved questions to the FY 2021/2022 and 2022/2023 Assessment Packages to benefit CVWD and Fontana and at the same time has not committed to following the same rules and precedent in the future. This leaves all other parties in absolute limbo.

V. CONCLUSION

Ontario respectfully requests that the Court deny Watermaster's Motion for Approval and direct Watermaster to further correct and amend the Fiscal Years 2021/22 and 2022/23 Assessment Packages to comply with the Court of Appeal Opinion, the original DYY Program agreements, the Judgment, and the prior court orders, and for Watermaster to initiate a separate process to resolve the four reserved issues identified by the Court of Appeal. Ontario also requests that this Court provide specific direction to Watermaster to correct and amend the Assessment Packages consistent with Ontario's motion and proposed order submitted in advance of this Court's February 6, 2026 hearing.

Dated: June 1, 2026

STOEL RIVES LLP

By: _____
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Attorneys for
City of Ontario

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 June 1, 2026, I served the following:

1. CITY OF ONTARIO'S OPPOSITION TO WATERMASTER'S MOTION FOR COURT APPROVAL OF CORRECTED AND AMENDED FISCAL YEARS 2021/22 AND 2022/23 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 June 1, 2026, in Rancho Cucamonga, California.

By: Ruby Favela Quintero
Chino Basin Watermaster

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