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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN BERNARDINO

10
11 CHINO BASIN MUNICIPAL WATER
DISTRICT,

12 Plaintiff,

13 vs.

14 CITY OF CHINO, et al.,

15 Defendants.
16
17

Case No. RCVRS 51010

[ASSIGNED FOR ALL PURPOSES TO:
HONORABLE GILBERT G. OCHOA]

**DEFENDANT CUCAMONGA VALLEY
WATER DISTRICT'S RESPONSE TO CITY
OF ONTARIO'S SUPPLEMENTAL BRIEF
IN SUPPORT OF OPPOSITION TO
WATERMASTER'S MOTION FOR COURT
APPROVAL OF CORRECTED AND
AMENDED FISCAL YEARS 2021/22 AND
2022/23 ASSESSMENT PACKAGES**

Date: August 14, 2026
Time: 10:00 am
Dept: R17

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1 Cucamonga Valley Water District (“Cucamonga” or “CVWD”) hereby submits this
2 response to the City of Ontario’s (“Ontario”) Supplemental Brief in Opposition to the Chino Basin
3 Watermaster’s (“Watermaster”) Motion for Court Approval of the Corrected and Amended Fiscal
4 Years 2021/22 and 2022/23 Assessment Packages (“Motion”).

5 Ontario’s supplemental briefing confirms that Ontario’s opposition to Watermaster’s
6 Motion rests on a misunderstanding or mischaracterization of the DYY Program, DRO
7 assessments, and the legal character of imported and native water. The very foundation of
8 Ontario’s argument is that no DYY water may ever be withdrawn absent a formal “call” from
9 Metropolitan. However, as this Court has previously held, “the Court of Appeal did not order, as
10 Ontario claims, that there should not have been any water withdrawn from Metropolitan’s DYY
11 account because it did not exercise its ‘call’ right to require CVWD to do so.” (February 20, 2026
12 Order on Remittitur, p. 11.) Nonetheless, Ontario continues to ask this Court to treat CVWD’s
13 withdrawal of imported DYY water as ordinary production of native groundwater from the Basin
14 based on the mistaken belief that no DYY water may ever be withdrawn absent a formal “call”
15 from Metropolitan.

16 To reach this conclusion, Ontario must ignore decades of California law holding that
17 imported or foreign water does not lose its character merely because it is stored underground and
18 later recovered. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 264-264
19 [“The fact that spread water is commingled with other ground water is no obstacle to the right to
20 recapture the amount by which the available conglomerated ground supply has been augmented by
21 the spreading.”]. Instead, Ontario advances an unsupported argument that there is no physical
22 difference between the individual molecules of water, despite the fact that this argument has been
23 routinely rejected by the courts. (*See e.g., City of Santa Maria v. Adam* (2012) 211 Cal.App.4th
24 266, 301-302.) Consistent with California law’s treatment of imported water, the Judgment
25 distinguishes between native groundwater and stored supplemental water, explicitly excluding the
26 latter from the Basin’s native Safe Yield. (Declaration of Scott C. Cooper ISO CVWD
27 Supplemental Brief (“Cooper Decl.”), Ex. B [Judgment, ¶ 4(x)].) Thus there is no legal basis to
28 treat DYY water as production of native groundwater as Ontario suggests.

1 The Peace II Agreement (“Peace II”) similarly recognizes an important distinction between
2 native and imported water by expressly excluding pumping associated with approved storage and
3 recovery programs, including the DYY Program, from DRO assessments. (Declaration of Amanda
4 Coker ISO CVWD Supplemental Brief (“Coker Decl.”), Ex. B [Order Approving amendment to
5 Appropriative Pooling Plan, Ex. A § 6(b)(iv)(3)].) Because DRO assessments are intended to
6 allocate costs associated with Desalter production among parties producing native Safe Yield,
7 there is no legal or rational basis to impose DRO assessments on withdrawals of stored imported
8 water.

9 While Peace II recognizes that the withdrawal of supplemental water has no impact on the
10 Safe Yield as a matter of law, Ontario similarly fails to provide any evidentiary support for the
11 proposition that CVWD’s pumping of DYY water placed any physical burden on the Basin’s Safe
12 Yield. Instead CVWD’s pumping of DYY water was simply an alternative method for CVWD to
13 obtain imported water from Metropolitan. Instead having Metropolitan water delivered to its water
14 treatment facility through a pipe, Metropolitan requested that CVWD pump Metropolitan’s
15 imported water that had been stored in the Basin pursuant to the DYY Program. However, in no
16 way did CVWD’s participation in the DYY Program increase its reliance on native Safe Yield. If
17 CVWD did not participate in the DYY Program it would have just continued to purchase imported
18 Metropolitan water for delivery at its treatment plant. (Coker Decl., ¶ 9.)

19 Instead, Ontario admits that it seeks to have this Court subsidize its relative share of DRO
20 assessments by improperly including DYY pumping in DRO. (Declaration of Courtney Jones in
21 Support of Ontario’s Supplemental Brief (“Jones. Decl.”), ¶ 26.] This is precisely the kind of
22 windfall this Court foresaw, and should be rejected. (Cooper Decl., Ex. A [June 12, 2026 Final
23 Ruling on Watermaster’s Motion for Court Approval of Corrected and Amended FY 2021/2022
24 and 2022/2023 Assessment Packages, p. 23] [“if ultimately the parties’ water did not impose a
25 physical burden on the Safe Yield of the Basin, to recover those fees would be a windfall.”].)

26 Finally, Ontario concedes that the Court need not resolve the four reserved questions
27 identified by the Court of Appeal to decide the issue now before it. The question presented is
28 narrower—whether DYY water withdrawn by CVWD should be subject to DRO assessments. The

1 answer is no. The Judgment excludes stored supplemental water from Safe Yield, and Peace II
2 excludes DYY recovery from DRO assessments. The plain language of these documents is
3 sufficient to resolve Ontario’s argument without deciding broader issues concerning the future
4 viability of the 2019 Letter Agreement or the treatment of all stored and supplemental water in
5 other contexts.

6 For these reasons, Watermaster’s Motion should be granted and Ontario’s challenge must
7 be denied.

8 **I. ARGUMENT**

9 **A. The Court of Appeal Never Held Voluntary Withdrawals Were Improper.**

10 Despite the Court’s request for the parties to address two discrete questions, Ontario again
11 dedicates a substantial portion of its supplemental brief to the contention that no DYY water could
12 be withdrawn unless Metropolitan first issued a formal “call.” This argument rests on a premise
13 the Court of Appeal did not adopt and this Court has already rejected. (February 20, 2026 Order
14 on Remittitur, p. 11.) As CVWD has previously explained, nothing in the Court of Appeal’s
15 opinion holds that DYY water could never be voluntarily withdrawn absent a formal Metropolitan
16 call. To the contrary, this Court correctly recognized that “the Court of Appeal did not order, as
17 Ontario claims, that there should not have been any water withdrawn from Metropolitan’s DYY
18 account because it did not exercise its ‘call’ right to require CVWD to do so.” (*Id.*)

19 If, as Ontario contends, the Court of Appeal had intended to hold that all voluntary
20 withdrawals were unlawful in non-call years, it would have done so. However, it did not. The
21 Court of Appeal instead identified a narrower problem—Watermaster’s implementation of the
22 2019 Letter Agreement allowed DYY withdrawals without a corresponding reduction in imported
23 water deliveries, thereby creating the “roll-off” issue identified in the opinion. (Opinion, p. 28.)
24 The Court of Appeal did not invalidate the 2019 Letter Agreement, did not order the parties to
25 “put the water back,” and did not direct Watermaster to treat all DYY withdrawals as native
26 groundwater production. Instead, the Court of Appeal remanded for Watermaster to correct and
27 amend the challenged assessment packages in light of the economic harm associated with the
28 failure to account for corresponding roll-off of imported water.

1 Notably, Ontario repeatedly asserts that the assessment packages must be revised in
2 accordance with the “original DYY agreements,” but it does not identify any provision of the
3 Judgment, the 2003 Funding Agreement, or any other DYY Program document that mandates a
4 formal Metropolitan call before DYY water may be withdrawn. The absence of such a citation is
5 telling. Ontario’s argument therefore depends not on the text of the governing agreements, but on
6 an unsupported inference that the Court of Appeal declined to adopt. Rather, Section VII(C) of the
7 Funding Agreement, which governs the extraction of Metropolitan’s stored water, explicitly
8 provides that “[d]uring an emergency or *unforeseen operational condition*, IEUA and TVMWD
9 will use their best efforts in responding to Metropolitan’s request for a Stored Water Delivery.
10 (Cooper Decl., Ex. B [2003 Funding Agreement § VII(C)].) Thus, the “original agreement” that
11 Ontario repeatedly refers to not only doesn’t require a call as a precondition of extraction of DYY
12 Water, it explicitly contemplates voluntary production of DYY water upon request by
13 Metropolitan, exactly the scenario that occurred vis-à-vis the 2019 Letter Agreement.¹

14 Here, the CAA Packages directly address the economic harm identified by the Court of
15 Appeal by assessing DYY water to the extent it exceeded any corresponding reduction in imported
16 water deliveries. This resulted in CVWD paying an additional \$475,880.28 in administrative
17 assessments to eliminate any potential cost shifting associated with CVWD’s DYY participation.
18 The “original DYY agreements” that Ontario continues to allude to establish performance
19 obligations for parties who take supplemental DYY water, including the required reduction of
20 imported water deliveries. (Coker Decl., Ex. C [2003 Funding Agreement, § VII(C)(2)].) Thus, the
21 CAA Packages implement the Court of Appeal’s actual holding and directly address the identified
22 economic injury without adopting Ontario’s overbroad and unsupported remedy, which would
23 impose retroactive penalties on CVWD far beyond the injury identified on appeal. The Court
24 should therefore reject Ontario’s attempt to convert the Court of Appeal’s limited roll-off ruling
25 into a categorical prohibition on all voluntary DYY withdrawals.

26
27 ¹ As explained in CVWD’s Supplemental Brief, a series of very wet years between 2017 and
28 2019 resulted in unforeseen operation conditions resulting in Metropolitan needing to store
additional surface water in the Basin.

1 **B. Withdrawing DYY Water Does Not Have a Physical Impact on Safe Yield.**

2 Ontario’s response to the Court’s question concerning the physical character of the water is
3 both factually and legally flawed. Ontario contends that imported DYY water pumped by CVWD
4 and native Basin Water are physically indistinguishable and therefore should be treated the same
5 for DRO purposes. But that assertion ignores the most important fact—DYY water did not
6 originate in the Chino Basin. It is imported surface water brought into the Basin by Metropolitan
7 for storage and later recovery. (Coker Decl., Ex. C [2003 Funding Agreement § I(C)] [under the
8 DYY Program Metropolitan imports from the State Water Project and the Colorado River for
9 storage in the Basin].) But for Metropolitan’s importation and storage of the DYY water, it would
10 never have entered the Basin at all.

11 California law has long recognized the distinction between native groundwater and foreign
12 or imported water stored in a groundwater basin. (*See e.g., City of Los Angeles v. City of San*
13 *Fernando* (1975) 14 Cal.3d 199, 263-264; *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th
14 266, 302.) Imported water does not lose its legal identity merely because it is placed underground
15 and commingled with native groundwater supplies. (*San Fernando, supra*, 14 Cal.3d at 263-264.)
16 This is because the importer’s right is not to the particular water molecules placed in the ground,
17 but a right to recover an equivalent quantity of water by which the basin was augmented. (*Santa*
18 *Maria, supra*, 211 Cal.App.4th at 301-302.) Thus, even if stored DYY water and native
19 groundwater are physically indistinguishable at the point of extraction, the legal character of the
20 water remains distinct. (*Id.* at 302.) As a result, Ontario’s focus on the individual molecules of
21 water at issue here is at odds with decades of binding precedent.

22 The Judgment similarly reflects the same distinction between imported and native water.
23 Under the Judgment, Supplemental Water is defined as water imported into the Chino Basin from
24 outside the watershed and stored Supplemental Water is expressly excluded from the Basin’s Safe
25 Yield. (Cooper Decl., Ex. B [Judgment ¶¶ 4(aa-bb)].) The 2003 Funding Agreement likewise
26 describes the DYY Program as a program for storing new wet water imported by Metropolitan
27 from sources outside of the Basin, including the State Water Project and Colorado River. (Coker
28 Decl., Ex. C [2003 Funding Agreement Ex. F.]

1 Here, it cannot be reasonably disputed that all DYY water in the Basin is foreign surface
2 water that Metropolitan imported into the Basin for storage, not native groundwater. But for
3 Metropolitan's actions, this water would never have entered the Basin by natural means.
4 Obviously, Ontario would prefer to gloss over this inconvenient fact, but it does not change
5 reality. When imported water is stored in the ground, California law is clear that although the
6 individual molecules of water may be indistinguishable, the legal character of the water does not
7 change. Ontario dismisses the concerns over Ontario's efforts to recharacterize the DYY water as
8 "simply a false narrative"; however, as demonstrated by Watermaster's, IEUA's, and CVWD's
9 supplemental briefing, Ontario's assessment is incorrect. The fact is that DYY water is, and has
10 always been treated as, imported supplemental water. (Coker Decl., ¶¶ 10-17.)

11 Ontario's contention that pumping DYY water creates a physical impact on the Basin's
12 Safe Yield is similarly unsupported. Ontario cites provisions requiring Watermaster to consider
13 potential impacts of storage and recovery programs, but a precautionary requirement for
14 Watermaster to consider potential impacts is not evidence that any actual physical impact occurred
15 here. As a result, Ontario's analysis is missing a critical step—causation. Indeed, the undisputed
16 facts show the opposite. The water withdrawn by CVWD was surface water imported by
17 Metropolitan, stored in the Basin, purchased by CVWD, pumped out of the Basin by CVWD, and
18 accounted for as a withdrawal of stored supplemental water. (Coker Decl., ¶¶ 7-11.) That water
19 was never part of the native Safe Yield as a matter of law or fact. Watermaster and the parties
20 have consistently treated and accounted for the DYY water as stored supplemental water. (Coker
21 Decl., ¶¶ 10-17.) At no point has the DYY withdrawals Ontario complains of been treated as
22 anything else.

23 As a result, CVWD's participation in the DYY Program did not change its reliance on
24 native Safe Yield at all. (Coker Decl., ¶ 9.) Because groundwater rights in the Basin are finite,
25 CVWD cannot sustainably increase groundwater pumping beyond certain levels. (Coker Decl.,
26 ¶ 6.) Where native groundwater supplies are insufficient to meet demand, CVWD turns to
27 imported water to bolster its water supplies. (Coker Decl., ¶¶ 6, 9.) CVWD's participation in the
28 DYY Program merely changed the way it received imported water deliveries. Instead of receiving

1 imported water deliveries at its water treatment plant through a pipe, CVWD pumped the same
2 amount of imported water from storage in the Basin. (Coker Decl., ¶ 9.) Had CVWD not
3 participated in the DYY Program, CVWD still would not have produced any additional native
4 groundwater. (*Id.*) Instead, CVWD would have simply purchased additional imported water
5 Metropolitan that would have been delivered to its surface water facilities through a pipeline. (*Id.*)
6 Ontario therefore conflates Watermaster’s obligation to evaluate possible impacts with proof of an
7 actual burden on Safe Yield. Nothing in Ontario’s briefing identifies a hydrologic or legal
8 mechanism by which CVWD’s withdrawal of DYY water physically impacted the Basin’s native
9 Safe Yield. Without that connection, Ontario’s argument cannot support imposing DRO on DYY
10 pumping.

11 **C. Recharacterizing the DYY Water Would Have Significant Impacts.**

12 Recharacterizing DYY water as native groundwater would also have significant real-world
13 consequences that Ontario minimizes as a mere “accounting” issue. Ontario has never
14 acknowledged or addressed the fact that CVWD paid Metropolitan nearly \$35 million for the
15 DYY water at issue and incurred increased imported-water charges, including its proportional
16 share of the Readiness to Serve charge, because the DYY water was treated as imported water.
17 (Coker Decl., ¶ 12.) These are the exact charges CVWD would have paid if it took the same
18 imported water from a pipeline rather than pumping it from storage in the Basin. However, if the
19 same water is now reclassified as native groundwater, CVWD would be left having paid
20 Metropolitan for water that Ontario contends it should have never received. Additionally, it cannot
21 be disputed that CVWD’s DYY purchases affected its proportional share of the RTS Charge, and
22 any reclassification of this water would shift those charges to other imported-water users who are
23 not presently before the Court. (Coker Decl., ¶ 13.) Finally, returning the disputed withdrawals to
24 Metropolitan’s DYY account would increase the account balance, exceeding the 100,000 AF
25 storage cap in violation of the 2003 Funding Agreement and making it more difficult for DYY
26 Program participants to meet performance obligations before the program ends. (Coker Decl.,
27 ¶¶ 19-22.) Ontario’s deliberate decision to ignore these realities demonstrates that it seeks the very
28 same windfall it believes CVWD has received.

1 **D. DRO Cannot be Assessed on DYY Water.**

2 Ontario again asserts that DRO should be assessed on supplemental DYY water, but it
3 does not identify any provision of the Judgment, either Peace Agreement, or any other agreement
4 that authorizes such a result. Instead, Ontario attempts to avoid the governing DRO language by
5 suggesting that the manner in which DRO is administered is beyond the scope of this case.
6 (Ontario Supplemental Brief, p. 17 “[h]ow the DRO is administered...is well beyond the scope of
7 this case.”).) That position is untenable. This Court specifically asked whether the extraction of
8 DYY water imposed an additional burden on Safe Yield as it relates to the Desalters in response to
9 Ontario’s argument that DRO should be assessed on pumping DYY water. The governing DRO
10 provisions are therefore central to the analysis.

11 As explained above and in CVWD’s supplemental brief, Ontario cannot transmute the
12 DYY water into something it is not. As a matter of law, this water is, and always was, imported
13 supplemental water. This is why Peace II expressly excludes pumping associated with storage and
14 recovery programs, like the DYY Program with Metropolitan, from DRO assessments. (Coker
15 Decl., Ex. B [Order Approving amendment to Appropriative Pooling Plan, Ex. A § 6(b)(iv)(3)]
16 [exempting pumping “associated with approved storage and recovery programs (e.g., Dry Year
17 Yield recovery program with MWD)” from DRO assessments.”).) That exclusion is consistent
18 with DRO’s purpose to allocate costs associated with Desalter production among the parties who
19 produce the Basin’s native Safe Yield. In exchange, parties producing native Safe Yield must
20 share in that obligation because they benefit from Desalter operations. By contrast, a party
21 withdrawing imported supplemental water stored in the Basin is not producing Safe Yield and is
22 not imposing the physical burden DRO is intended to address.

23 Ontario takes issue with Watermaster’s assessment of the DYY water for administrative
24 assessment purposes and DRO assessment purposes; however, Ontario ignores the critical
25 distinction between administrative assessments and DRO assessments. Administrative assessments
26 fund Watermaster’s administration of the Judgment. (Cooper Decl., Ex. B [Judgment ¶ 45].) DRO
27 assessments serve a different purpose—they offset costs associated with preserving the Basin’s
28 Safe Yield through operation of the Desalters. (Coker Decl., ¶ 16, Ex. B [Order Approving

1 amendment to Appropriative Pooling Plan, Ex. A § 6.2(b)(iii)].) As a result, DRO assessments
2 are imposed pro-rata on each party's production of native groundwater in the Basin, not on the use
3 of foreign water sources. Because stored DYY water is imported supplemental water and is
4 excluded from Safe Yield, withdrawing that water does not create the type of burden DRO is
5 designed to remedy.

6 As this Court recognized, imposing DRO assessments where no physical burden has been
7 placed on Safe Yield would create an improper windfall for Ontario. (Cooper Decl., Ex. A
8 [June 12, 2026 Final Ruling on Watermaster's Motion for Court Approval of Corrected and
9 Amended FY 2021/2022 and 2022/2023 Assessment Packages, p. 23.) However, that is precisely
10 what Ontario seeks. Ontario would use DYY withdrawals—imported supplemental water
11 purchased from Metropolitan and expressly exempted from DRO under Peace II—to dilute its
12 own proportional DRO share. Indeed, Ms. Jones concedes in her declaration that Ontario seeks to
13 subsidize its proportional share of DRO by improperly including DYY water in the Adjusted
14 Physical Production calculation. (Jones Decl. ¶ 26.) Similarly, Ontario incorrectly asserts—
15 without any citation—that “[a]ll production by Appropriative Pool parties has been subject to
16 DRO assessments.” (Ontario Supplemental. Brief, p. 17.) Yet, this statement is expressly belied
17 by Peace II. (Coker Decl., Ex. B [Order Approving amendment to Appropriative Pooling Plan,
18 Ex. A § 6(b)(iv)(3)].) DRO assessments can only be imposed on a party's production of native
19 water and pumping of stored supplemental water—like DYY water—is explicitly exempted from
20 DRO. (*Id.*) Thus, there is no basis to impose DRO assessments on DYY water.

21 **E. Resolution of the Four Questions**

22 Ontario agrees that resolution of the four questions identified by the Court of Appeal is not
23 necessary to approve the CAA Packages. The Court can resolve Ontario's DRO objection by
24 applying the plain language of the Judgment and Peace II—stored supplemental water is excluded
25 from Safe Yield, and Peace II expressly exempts pumping associated with approved storage and
26 recovery programs, including DYY, from DRO assessments.

27 Ontario nevertheless contends that Watermaster effectively resolved some of the four
28 questions when it prepared the revised assessment packages. That is incorrect. Watermaster did

1 not purport to decide, as a general matter, the future viability of the 2019 Letter Agreement or
2 whether all stored and supplemental water is categorically exempt from every form of
3 assessment.² Watermaster instead applied the governing assessment provisions to the specific
4 CAA Packages before it and corrected the roll-off issue identified by the Court of Appeal. Nor did
5 Watermaster decide that supplemental water is merely a subset of groundwater for DRO purposes.
6 To the contrary, the DRO analysis is controlled by Peace II's express exemption for DYY
7 recovery. Applying that exemption does not require the Court to answer the broader reserved
8 questions.

9 If the Court determines that any of the four questions must be resolved before addressing
10 Ontario's objections, then CVWD respectfully requests that the Court set a further briefing
11 schedule so those issues can be addressed directly and with full participation by affected parties.
12 But the Court need not do so here. The CAA Packages can be approved because they implement
13 the Court of Appeal's actual holding, address the identified roll-off harm, and correctly decline to
14 impose DRO on imported supplemental DYY water.

15 **II. CONCLUSION**

16 For the forgoing reasons, the Court should grant Watermaster's Motion and deny Ontario's
17 challenge to Watermaster's approval of the CAA Packages.

18 Dated: August 3, 2026

RUTAN & TUCKER, LLP
JEREMY N. JUNGREIS
SCOTT C. COOPER

20 By: 

21 Scott C. Cooper
22 Attorneys for Defendant
23 CUCAMONGA VALLEY WATER
24 DISTRICT

26 _____
27 ² Notably, Ontario declined to address two of the four questions that could preclude any
28 recovery by Ontario at all—(1) whether water from the DYY Program is withdrawn (not produced)
and (2) whether all stored and supplemental water in the Basin is categorically exempt from
assessment.

CHINO BASIN WATERMASTER

Case No. RCVRS 51010

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

PROOF OF SERVICE

I declare that:

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

On August 3, 2026, I served the following:

1. DEFENDANT CUCAMONGA VALLEY WATER DISTRICT'S RESPONSE TO CITY OF ONTARIO'S SUPPLEMENTAL BRIEF IN SUPPORT OF OPPOSITION TO WATERMASTER'S MOTION FOR COURT APPROVAL OF CORRECTED AND AMENDED FISCAL YEARS 2021/22 AND 2022/23 ASSESSMENT PACKAGES

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Executed on August 3, 2026, in Rancho Cucamonga, California.



By: Kirk Richard C. Dolar
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