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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN BERNARDINO, SAN BERNARDINO JUSTICE CENTER

11 CHINO BASIN MUNICIPAL WATER
DISTRICT,

12 Plaintiff,

13 v.

14 CITY OF CHINO, et al.,

15 Defendant.

Case No. RCVRS 51010

**FONTANA WATER COMPANY'S REPLY
SUPPLEMENTAL BRIEF IN SUPPORT
OF WATERMASTER'S MOTION FOR
COURT APPROVAL OF THE
CORRECTED AND AMENDED
ASSESSMENT PACKAGES**

Hearing:

Date: August 14, 2026

Time: 10:00 a.m.

Dept.: R-17

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I. INTRODUCTION

Fontana Water Company (“FWC”) joins Chino Basin Watermaster’s Supplemental Reply Brief in Response to the Court’s Order Requesting Further Briefing. FWC files this Reply Brief to address two arguments raised in the City of Ontario’s (“Ontario”) Supplemental Brief Opposing Watermaster’s Motion for Court Approval of Corrected and Amended Assessment Packages. First, Ontario’s argument that the Corrected and Amended Fiscal Years 2021/22 and 2022/23 Assessment Packages (“Corrected Assessment Packages”) allow FWC to avoid its share of Desalter Replenishment Obligation (“DRO”) assessments for water it withdrew from the Dry Year Yield (“DYY”) Program is directly contradicted by Peace Agreement II, as modified by this Court. Peace Agreement II explicitly states that an appropriative party’s withdrawal of DYY water is not counted for purposes of calculating its DRO assessment. Thus, Watermaster properly excluded FWC’s production of DYY water from its DRO assessment in the Corrected Assessment Packages.

Second, Ontario claims that unlike other DYY participants, FWC did not designate wells to withdraw DYY water pursuant to a local agency agreement and as such FWC was not “authorized” to use its facilities to extract DYY water. This argument has no basis in fact or law. In fact, the facilities designated in the local agency agreements are those that were being constructed with funding to support the DYY Program, not those that were “authorized” to extract DYY water. Regardless, the fact that a local agency agreement designates facilities to pump DYY water does not mean that a local agency agreement is necessary to allow a well-owner to operate its facilities to extract DYY water. Rather, once Metropolitan Water District (“Metropolitan”) imports supplemental water for storage in the Chino Basin (“Basin”) and stores it in the Basin, Metropolitan retains ownership of that water and can allow others, such as FWC, to withdraw it. Upon Inland Empire Utilities Agency’s (“IEUA”) request and subsequent certification, FWC paid Metropolitan for DYY water and was then able to extract that water using its existing facilities. It does not follow that FWC did not produce DYY water because it did not designate wells in a local agency agreement.

For these reasons, the Court should grant Watermaster’s Motion to approve the Corrected Assessment Packages and deny Ontario’s challenge.

II. LEGAL ARGUMENT

A. Watermaster’s Corrected Assessment Packages Comply with the Court of Appeal’s Opinion.

In its Order on Remittitur, this Court ordered Watermaster to “correct and amend the FY 2021/22 and FY 2022/23 Assessment Packages consistent with the original DYY Program agreements, the Judgment, and prior court orders.” (See Declaration of Bradley J. Herrema, filed Apr. 1, 2026, Ex. C. [Order on Remittitur at p. 2].) In its Supplemental Brief Opposing the Corrected Assessment Packages, Ontario claims that Watermaster failed to count FWC’s production of DYY water as part of its DRO assessments in the Corrected Assessment Packages. (See Supplemental Opposition at 15:17-17:10.) The crux of Ontario’s argument is that the Corrected Assessment Packages must treat the DYY water FWC produced as native groundwater throughout the entire assessment package. (*Ibid.*) This argument ignores Watermaster’s obligations under Peace Agreement II, which requires Watermaster to exclude a party’s production of DYY water from its DRO assessment.

In 2019, this Court revised provisions of Peace Agreement II that govern how Watermaster must calculate an appropriative party’s DRO assessment. (See Declaration of Amanda Coker filed July 9, 2026 (“Coker Decl.”), ¶ 16, Ex. B [Order Approving amendment to Appropriative Pooling Plan, Ex A § 6.2(b)].) Under the revised provisions of Peace Agreement II, Watermaster calculates each party’s DRO assessment using a formula that incorporates an appropriative party’s percentage of the operating safe yield and a percentage of the appropriator’s proportional share of that year’s total conversion claims.¹ (*Id.* at § 6.2(b)(ii).) If there is any remaining DRO after applying this formula, then a Replenishment Assessment is levied against the Appropriative Pool

¹ The formula Watermaster uses is: Desalter replenishment obligation contribution = (8,500 * % Appropriator’s share of total initial 49,834 acre-feet Operating Safe Yield) + (1,500 * % Appropriator’s proportional share of that year’s total conversion claims). (Coker Decl. ¶ 16, Ex. B [Order Approving amendment to Appropriative Pooling Plan, Ex A § 6.2(b)(ii)].)

1 “pro-rata to each Appropriative Pool member according to the combined total of the member’s
 2 share of Operating Safe Yield and the member’s Adjusted Physical Production....” (*Id.* at §
 3 6.2(b)(iii).)

4 Peace Agreement II defines “Adjusted Physical Production” as “the Appropriative Pool
 5 member’s total combined physical production (i.e., all groundwater pumped or produced by the
 6 Appropriative Pool member’s groundwater wells in the Chino Basin, including water transferred
 7 from the Non- Agricultural Pool under Exhibit G, ¶ 9 of the Judgment).” (Coker Decl. ¶ 16, Ex. B
 8 [Order Approving amendment to Appropriative Pooling Plan, Ex A § 6.2(b)(iv)].) However,
 9 when calculating a party’s Adjusted Physical Production, Peace Agreement II explicitly states:
 10 “Production associated with approved storage and recovery programs (e.g., Dry Year Yield
 11 recovery program with [Metropolitan]) is not counted in Adjusted Physical Production....” (*Id.* at
 12 § 6.2(b)(iv)(3) [emphasis added].) Watermaster complied with these provisions in the Corrected
 13 Assessment Packages by excluding FWC’s production of DYY water from its Adjusted Physical
 14 Production. (See Declaration of Todd M. Corbin, filed Apr. 1, 2026, Ex. A at 99, 187.)

15 Without any support, Ontario claims that these provisions of Peace Agreement II are
 16 irrelevant and beyond the scope of these proceedings. (Supplemental Opposition at 17:1-10.)
 17 Ironically, Ontario’s initial Opposition to Watermaster’s Motion to Approve the Corrected
 18 Assessment Packages claimed that Watermaster could not “cherry-pick what portions of the
 19 Assessment packages to correct,” and that the Court of Appeal’s Opinion directed Watermaster to
 20 correct the assessment packages “pursuant to the original DYY Program agreements, the
 21 Judgment, and prior court orders.” (Opposition, filed June 1, 2026, at 5:25-6:3 [emphasis added].)
 22 Now, Ontario is asking this Court to ignore prior Court orders that directly apply to Watermaster’s
 23 assessment of water produced from the DYY Program. Ontario cannot have it both ways.
 24 Watermaster must comply with this Court’s order that revised Peace Agreement II to exclude
 25 DYY production from a party’s Adjusted Physical Production. Watermaster complied with this
 26 order when it excluded FWC’s production of DYY water in the Corrected Assessment Packages.
 27 (See Declaration of Todd M. Corbin, filed Apr. 1, 2026, Ex. A at 99, 187.) Therefore, there is no
 28

1 support for Ontario's contention that FWC's production of DYY water should be counted towards
2 FWC's DRO assessment.

3 **B. FWC was not Required to Designate Facilities Before Withdrawing DYY Water.**

4 Ontario asserts that parties with local agency agreements specified what facilities each
5 agency would use in the operation of the DYY Program. (Supplemental Opposition at pp. 15-16 n.
6 8.) Ontario then claims that, since FWC did not designate which facilities would use in a local
7 agency agreement, it has no wells that are "authorized or designated" to produce DYY water.
8 (*Ibid.*) As a result, Ontario argues that the Corrected Assessment Packages should count FWC's
9 production of DYY water toward its DRO assessment because none of its wells produced DYY
10 water. (*Ibid.*) Ontario's argument is without merit because designating facilities is not necessary
11 for Metropolitan to authorize extraction of its previously stored

12 As an initial matter, the facilities and wells identified in the local agency agreements were
13 not the only facilities local agencies could use to withdraw DYY water. In fact, local agency
14 agreements explicitly allowed parties to use their already existing facilities to withdraw DYY
15 water. (See City of Ontario's Request for Judicial Notice, filed July 10, 2026, Ex. 1 at p. 3
16 [Cucamonga Valley Water District's Local Agency Agreement, § 5(c)(iv)].) Rather, the local
17 agency agreements identified the facilities that Metropolitan would pay to construct so the parties
18 could maintain the Operational Capacity Thresholds necessary to meet the DYY Program's
19 performance targets. (*Ibid.*; see also Coker Decl. ¶ 19, Ex. C, at p. 6 [2003 Funding Agreement, §
20 IV(A)(1)].) Under the terms of the local agency agreements, parties could use existing facilities
21 that were not identified in the exhibit attached to local agency agreement to extract DYY water.
22 Thus, the designation of a facility in a local agency agreement is not necessary to allow a party to
23 pump DYY water.

24 Regardless, nothing in the local agency agreements was necessary for FWC to purchase
25 DYY water and for Metropolitan to authorize extraction of it from FWC's existing wells. FWC is
26 a member of the appropriative pool and has an allocation to produce water from the Basin under
27 the Judgment. (See Declaration of Cris Fealy ("Fealy Decl."), filed July 10, 2026, at ¶ 8.) To
28 utilize its ability to produce water from the Basin, FWC owned and operated twelve wells in the

1 Basin prior to withdrawing DYY water. (*Id.* at ¶ 5.) In July, 2020, IEUA asked FWC to withdraw
 2 water from Metropolitan’s DYY storage account. (*Id.* at ¶ 12.) FWC agreed to produce DYY
 3 water and used its existing wells in the Basin to pump DYY water in 2020 through 2022. (*Id.* at
 4 ¶¶ 14-15.) FWC accounted for the withdrawal of DYY water separately and asked IEUA to
 5 certify that it withdrew 2,500 acre-feet of DYY water between July 1, 2020, and June 30, 2021,
 6 and 5,000 acre-feet of DYY water between July 1, 2021, and June 30, 2022. (*Id.* at ¶¶ 14-15, Ex.
 7 C, D.) IEUA certified that FWC withdrew DYY water in both assessment years, and FWC paid
 8 Metropolitan for the right to pump DYY water. (*Id.* at ¶¶ 14-16, Ex. C, D.) Based on these facts, it
 9 cannot be genuinely disputed that FWC intended to withdraw 7,500 acre-feet of DYY water from
 10 2020 to 2022 and had the facilities capable of pumping DYY water from the Basin.

11 Ontario’s argument rests on the faulty premise that, because FWC does not have a local
 12 agency agreement designating facilities to withdraw DYY water, FWC is not “authorized” to use
 13 any facilities to produce and recover DYY water. (Supplemental Opposition at pp. 15-16 n. 8.²)

14 However, Ontario’s argument ignores the fact that FWC paid the Metropolitan Tier 1
 15 Untreated rate for DYY water, which would not have been necessary if FWC could not pump this
 16 water. (Fealy Decl. at ¶ 16.) Further undercutting this argument is the fact that IEUA certified
 17 FWC’s production of DYY water. (*Id.* at ¶¶ 14-15, Ex. C, D.) There would be no reason for either
 18 of these actions to occur if FWC was not “authorized” to use its existing facilities to pump DYY
 19 water. Therefore, none of the facts or terms of the local agency agreements support Ontario’s
 20 claim that FWC was unable to withdraw DYY water using its existing facilities.

23 ² Ontario’s argument relies on Paragraph 11 of the Supplemental Declaration of Courtney Jones.
 24 FWC objects to the following statement in Ms. Jones’ Declaration: “Because FWC does not have
 25 a Local Agency Agreement, and does not have approved production facilities authorized for the
 26 recovery of DYY Program water, and has not filed the required application, FWC has no basis or
 27 ability to use any facilities for the production and recovery of DYY Program water.” (Jones Suppl.
 28 Decl., ¶ 11, 4:16-19.) Ms. Jones’ statement that FWC cannot use facilities it owns and is
 authorized to operate to extract water from the Chino Basin to withdraw DYY water is a legal
 conclusion, not an evidentiary fact. (See *Kramer v. Barnes* (1963) 212 Cal.App.2d 440, 446
 [“Affidavits which set forth only conclusions, opinions or ultimate facts are insufficient.”].)

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III. CONCLUSION

For all of the reasons above, FWC asks this Court to approve Watermaster’s Motion to Approve the Corrected and Amended Assessment Packages and deny Ontario’s challenge.

DATED: August 3, 2026

DOWNEY BRAND LLP

By: 
 MEREDITH E. NIKKEL
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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 August 3, 2026, I served the following:

1. FONTANA WATER COMPANY'S REPLY SUPPLEMENTAL BRIEF IN SUPPORT OF WATERMASTER'S MOTION FOR COURT APPROVAL OF THE CORRECTED AND AMENDED 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.

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

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

Noemi Medrano

By: Noemi Medrano
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