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EXEMPT FROM FILING FEES
 PURSUANT TO GOV. CODE, § 6103

8
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF SAN BERNARDINO

11
 12 CHINO BASIN MUNICIPAL WATER
 13 DISTRICT,

14 Plaintiff,

15 v.

16 CITY OF CHINO, et al.,

17 Defendants.

CASE NO. RCVRS 51010

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

**REQUEST FOR JUDICIAL NOTICE IN
 SUPPORT OF RESPONSE TO
 WATERMASTER'S AND OPPOSING
 PARTIES' SUPPLEMENTAL BRIEFS
 RE MOTION FOR COURT
 APPROVAL OF CORRECTED AND
 AMENDED FISCAL YEARS 2021/22
 AND 2022/23 ASSESSMENT
 PACKAGES**

Date: August 14, 2026
 Time: 10:00 a.m.
 Department: R17

1 Pursuant to California Evidence Code sections 452 and 453, City of Ontario (“Ontario”)
2 respectfully submits this Request for Judicial Notice in support of its Response to Watermaster’s and
3 Opposing Parties’ Supplemental Briefs Re Motion For Court Approval of Corrected and Amended Fiscal
4 Years 2021/22 and 2022/23 Assessment Packages (“Response Brief”), filed concurrently herewith.

5 This Court may take judicial notice of the pleadings, court minutes, and court transcripts,
6 as they are records of a court. Cal. Evid. Code § 452(d) (allowing courts to judicially notice
7 “[r]ecords of any court of this state”); *see also In re Clark*, 5 Cal. 4th 750, 798 fn. 35 (1993) (taking
8 judicial notice of court’s own records); *see also Shine v. Williams-Sonoma, Inc.*, 23 Cal. App. 5th
9 1070, 1076-77 (2018) (the trial court properly exercising discretion to take judicial notice of prior
10 case’s pleading, settlement agreement, and stipulated judgment of dismissal for purposes of
11 collateral estoppel).

12 Evidence Code section 453 requires a court to take judicial notice of any matter specified
13 in Evidence Code section 452 if a party requests it, and if it gives the adverse party sufficient notice
14 of the request and furnishes the court with sufficient information to enable it to take judicial notice
15 of the matter. Accordingly, Ontario respectfully requests that this Court take judicial notice of the
16 documents listed below, pursuant to Evidence Code section 452(h) as follows:

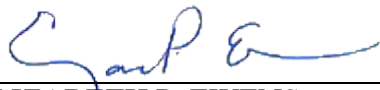
- 17 1. Attached as Exhibit 1 is a true and correct excerpt of Fontana Water Company’s and
18 Cucamonga Valley Water District’s Respondents’ Brief, filed March 25, 2024 in
19 Case No. E080457, Fourth Appellate District Court of Appeal (“Appeal”);
- 20 2. Attached as Exhibit 2 is a true and correct excerpt of Inland Empire Utilities
21 Agency’s Respondent’s Brief, filed February 26, 2024 in the Appeal.

22 The Court may take judicial notice of Exhibits 1-2 as they are records of a court of the State
23 of California. Evid. Code, § 452, subd. (d) (allowing courts to judicially notice “[r]ecords of any
24 court of this state”); *see also In re Clark*, 5 Cal. 4th 750, 798 fn. 35 (1993) (taking judicial notice
25 of court’s own records); *see also Shine v. Williams-Sonoma, Inc.*, 23 Cal. App. 5th 1070, 1076-77
26 (2018) (the trial court properly exercising discretion to take judicial notice of prior case’s pleading,
27 settlement agreement, and stipulated judgment of dismissal for purposes of collateral estoppel).
28

1 In addition to all of the provisions cited above, this Court may also take judicial notice of
2 the foregoing documents under Evidence Code section 452, subdivision (h), which allows courts
3 to take judicial notice of facts and propositions that are not subject to dispute and are capable of
4 immediate determination by resort to sources of reasonable indisputable accuracy.

5 Dated: August 3, 2026

STOEL RIVES LLP

6
7 By: 

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9 MICHAEL B. BROWN

10 Attorneys for
11 City of Ontario
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EXHIBIT 1

No. E080457

(consolidated with E082127)

**IN THE COURT OF APPEAL
FOR THE FOURTH APPELLATE DISTRICT
OF CALIFORNIA
(Division 2)**

CHINO BASIN WATERMASTER

Plaintiff and Respondent

vs.

CITY OF ONTARIO, ET AL.

Defendant and Appellant

**FONTANA WATER COMPANY'S AND
CUCAMONGA VALLEY WATER DISTRICT'S
RESPONDENTS' BRIEF**

Appeal From an Order of the Superior Court of California,
County of San Bernardino, Case No. RCVRS51010
The Honorable Gilbert Ochoa, Judge Presiding

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(*Travelers Prop. Cas. Co. of Am. v. Workers' Comp. Appeals Bd.* (2019) 40 Cal.App.5th 728, 739–740; see *Southern Cal. Edison Co. v. Superior Court* (1995) 37 Cal.App.4th 839, 847–851.)

Ontario incorrectly states that “Watermaster consistently assessed virtually all stored groundwater in the DYY account until suddenly reversing course in ostensible reliance on the 2019 Letter Agreement.” (AOB 32.) This conclusion is based on a misunderstanding of the concept of “in-lieu recharge.”

Peter Kavounas, Watermaster general manager, testified that Watermaster has never assessed withdrawals from the DYY Storage Account. “In-lieu” deposits, on the other hand, have consistently been assessed. (SA2293, ¶13.) Kavounas explained that “[i]n-lieu” recharge involves a participating retailer taking imported water from MWD directly into its delivery system and foregoing pumping groundwater it would otherwise produce.” From an accounting perspective, this has the same effect as producing the water and delivering it to MWD’s storage account. Because water is leaving the Operating Party’s account, a production assessment is charged. (SA 2292, ¶5.) Thus, what Ontario perceived as assessments on stored groundwater were in reality assessments on in-lieu deposits.

Too, the email correspondence with IEUA in 2018 demonstrated Ontario’s understanding and acquiescence in the historical practice that withdrawal of stored water is not assessed. (6 SA 2342, 2345.)

D. Fontana Water and CVWD relied on the 2019 Letter Agreement and would be substantially harmed if they were retroactively assessed for the voluntary withdrawal.

Another canon of contract interpretation is that “[a] contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.” (Civ. Code § 1643; see *Southern Cal.*

Edison Co. v. Superior Court, supra, 37 Cal.App.4th at p. 852.) Here, Ontario’s interpretation of the Judgment would not be “reasonable and capable of being carried out.” The 2003 DYY Funding Agreement requires Operating Parties to pay the “then applicable [MWD] full-service rate” for each acre-foot of water called for and withdrawn from the MWD Storage Account. In addition, DYY water is factored into fixed MWD readiness-to-serve (RTS) fees paid by Fontana Water and CVWD. Together, this means that in Production Year 21/22, entities like Fontana Water and CVWD paid more than \$799 per acre-foot, plus a portion of RTS fees less an operational credit, to withdraw MWD stored water. (2 AA 510-511, ¶9.) Fontana Water and CVWD have always paid these MWD service rates in full when withdrawing MWD stored water. Any requirement for Fontana Water and CVWD to pay *both* the MWD full-service rate, plus an RTS charge, *and* a Watermaster assessment for withdrawal of stored water would constitute an improper double charge, which is not “reasonable and capable of being carried into effect.” (Civ. Code §1643.)

Ontario argues that the failure to assess withdrawals from storage benefits only a few at the expense of the many, in contravention of the requirement that the DYY Program must provide broad mutual benefits to the parties to the Judgment. (AOB 34.) In fact, the opposite is true. All Operating Parties, including Ontario, were offered the opportunity to voluntarily withdraw from the DYY account. Ontario declined to participate. (1 AA 177-178, ¶14.) In addition, allowing voluntary withdrawals functioned to prevent stored water being stranded in the Chino Basin, to the broad mutual benefit of all parties. (1 AA 176, ¶8)

V. CONCLUSION

Had Ontario filed its motion in a timely manner, the issues raised here could have been resolved before Fontana Water and CVWD elected to make voluntary withdrawals of DYY water. If Ontario had prevailed, there would

have been no financial reason for Fontana or CVWD to participate in voluntary withdrawals—and indeed, no reason for them or any other appropriator to participate in the DYY Program at all. The Court should affirm the trial court’s decision on the basis that Ontario’s motion was untimely.

If, however, the Court reaches the issue of whether withdrawals from storage are assessable under the Judgment, it should apply the canons of contract interpretation and decide that they are not. Such a decision would carry into effect the parties’ intentions, as has been the practice since 2003.

The Court should affirm the trial court’s decision.

Dated: March 25, 2024

LAGERLOF, LLP

By: /s/ Thomas S. Bunn III
Counsel for Respondents
Fontana Water Company and
Cucamonga Valley Water District

CERTIFICATE OF WORD COUNT

I declare under penalty of perjury under the laws of the State of California that the text of Respondent's Brief consists of 4,568 words, as counted by the Microsoft Word for Microsoft 365 word-processing program used to generate it.

Dated: March 25, 2024

LAGERLOF, LLP

By: /s/ Thomas S. Bunn III
Counsel for Respondent
Fontana Water Company and
Cucamonga Valley Water District

EXHIBIT 2

Case No. E080457 (consolidated with E082127)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

CHINO BASIN WATERMASTER,

Plaintiff and Respondent,

v.

CITY OF ONTARIO, et al.,

Defendant and Appellant.

RESPONDENT'S BRIEF

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

Attorney for Respondent,
Inland Empire Utilities Agency
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(State Bar No. 105227)
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Despite Appellant's suggestion to the contrary, there is no language in either the Funding Agreement or the Local Agency Agreement which restricts the withdrawal of DYYP water to those with Local Agency Agreements. Likewise, the court order approving the Funding Agreement extended the authority to approve Local Agency Agreements to Watermaster (4 AA 1338, pg.3, Ins.7-9.) but did not restrict withdrawals of water to entities holding such agreements. As noted herein, the Letter Agreement reflected an operational change to the DYYP deemed not to be material in its impact and was approved by Watermaster. The volume of water taken through Voluntary withdrawals from the DYYP remained within the parameters of the court-approved Funding Agreement and storage and recovery program and no one has alleged otherwise.

ii. MWD, through the Letter Agreement, suspended Exhibit Gq performance criteria for voluntary withdrawals.

As noted above, the Letter Agreement arose from unique circumstances not contemplated by the parties at the time of the Funding Agreement. The Letter Agreement was based on extra water in the MWD account which belonged to MWD. Although MWD had the exclusive right to make a Call under the Funding and Local Agency Agreements, they decided to allow extra water to be withdrawn on a voluntary basis to make full and efficient use of the extra water stored in the account. (1 AA 176 ¶ 8.) A close reading of the Letter Agreement shows that it did not impose Exhibit G performance criteria on voluntary withdrawals apart from utilizing the same baseline measure for production. The Letter Agreement expressly excepts Call situations from the rules governing voluntary withdrawals and treats the two scenarios differently.

MWD as the owner of the account and the water within it had the authority to authorize voluntary withdrawals from the account with the approval of Watermaster. The Operating Committee deemed the operational changes depicted in the Letter Agreement to be immaterial to the program

and its participants and issued its approval after advising all stakeholders of its intention to do so. This action was well within the operational flexibility afforded the Operating Committee in the Funding Agreement to adapt to changed circumstances. (4 AA 1220.) Appellant lodged no formal objection at that time and should not be allowed to do so now.

iii. DYYP withdrawals have historically been exempted from assessments.

Withdrawals from the DYYP account are part of a storage and recovery program which has always been exempted from assessments. As the testimony of Peter Kavounas bears out, DYYP withdrawals have been free from assessments for the duration of the program. (1 AA 236 ¶ 37.) Appellant was clearly advised of the fact that voluntary withdrawals would be done without Watermaster assessments. (1 AA 183 ¶ 2.)

Equally probative is the June 26, 2018, email from Katie Gienger of the City of Ontario to Elizabeth Hurst during the discussions leading up to the Letter Agreement. (1 AA 180.) There, she asks the following question:

“Would pumping be subject to Watermaster assessments as typical production, or would it be categorized as part of the Storage & Recovery program?”

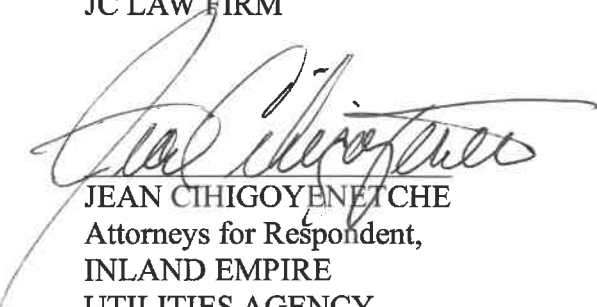
This question notes that Appellant was well aware of the difference between typical production and production from storage and recovery programs such as the DYYP and that storage and recovery programs are not assessed. It also demonstrates that Appellant was clearly on notice of the potential for waived assessments under the Letter Agreement long before the presentation of the 2021/22 assessment package where they allege the fact was sprung upon them. Based on historical practice, had MWD made a Call on the DYYP, the water would have been withdrawn without assessments and without objection from Appellant. However, Appellant finds it objectionable here because MWD allowed the water to be withdrawn on a voluntary basis. The argument is untenable.

contractual provision which was violated as a result.³ As Peter Kavounas testified, the DYYP water has never been assessed for production in the history of the program. Nevertheless, there have been no protests over the cost shift prior to the Letter Agreement. Apparently, despite an almost 20-year course of dealing within the DYYP, it is only the voluntary withdrawals that created the cost shift complained of. Moreover, although Appellant argues that Fontana Water Company should not have been allowed to take voluntary withdrawals absent a Local Agency Agreement, Cucamonga Valley Water District has always been a party to a Local Agency Agreement and therefore, withdrawals by that agency from the DYYP, whether voluntary or not, were not assessed which was foreseeable by all parties.

Based upon the foregoing arguments and authorities, the trial court rulings in each of these consolidated cases should be affirmed.

Dated: February 23, 2024

JC LAW FIRM



JEAN CHIGOYNETCHE
Attorneys for Respondent,
INLAND EMPIRE
UTILITIES AGENCY

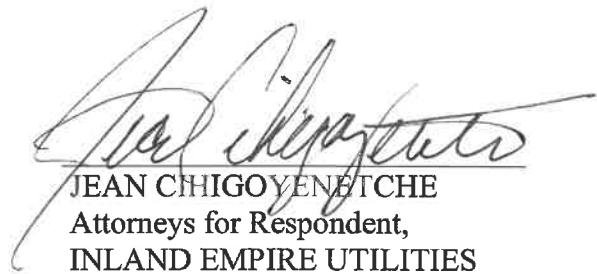
³ Despite appellant's assertions of significant adverse financial impacts suffered by it and others similarly situated, no others have made claims and Appellant is the lone objector here.

CERTIFICATE OF COMPLIANCE

I, Jean Cihigoyenette, am one of the attorneys for Respondents Inland Empire Utilities Agency, in this proceeding. The attached Respondent's Brief consists of 4657 words, including footnotes and endnotes. I am relying on the computer program, Microsoft Word, for this word count.

Dated: February 23, 2024

JC LAW FIRM



JEAN CHIGOYENETTE
Attorneys for Respondent,
INLAND EMPIRE UTILITIES
AGENCY

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. REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF RESPONSE TO WATERMASTER'S AND OPPOSING PARTIES' SUPPLEMENTAL BRIEFS RE 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 August 3, 2026, in Rancho Cucamonga, California.



By: Kirk Richard C. Dolar
Chino Basin Watermaster

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