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August 11, 2025

Todd Corbin, General Manager
Chino Basin Watermaster
9641 San Bernardino Road
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Email: tcorbin@cbwm.org

RE: Implementation of Dry Year Yield Appellate Court Ruling - Workshop 1 on July 23, 2025

Dear Mr. Corbin,

These comments are submitted by the City of Ontario ("Ontario") ahead of Watermaster's second "DYY (Dry Year Yield) Appellate Court Ruling Workshop" scheduled for August 20, 2025. These comments include requested feedback on the draft "DYY Decision Tree" circulated by Watermaster. While Ontario appreciates the continued collaboration between Watermaster and stakeholders in the basin, the DYY Decision Tree simply is not necessary to comply with the Court of Appeal's (COA) order requiring Watermaster to correct the FY 2021/2022 and FY 2022/2023 Assessment Packages ("Assessment Packages"). Similarly, the DYY Decision Tree does not appear to advance the resolution of the four forward-looking issues identified by the COA.

The COA Opinion requires "Watermaster to correct and amend its FY 2021/2022 and 2022/2023 Assessment Packages." (COA Opinion, p. 39.) This can be accomplished within the four corners of the existing Assessment Packages. It is, in short, a numbers exercise. The COA held that when calculating annual assessments, Watermaster improperly ignored the absence of a Local Agency Agreement (FWC) and the performance criteria set forth in Exhibit G (CVWD). These calculations need to be corrected so that, for example, FWC and CVWD's production of basin water (that was incorrectly categorized as a withdrawal from the DYY storage and recovery program) is assessed. No new workflow or decision tree is required to do this math.

The COA also identified four issues reserved for future resolution, preferably by the parties: (1) whether water from the DYY Program is withdrawn (not produced), (2) whether stored and supplemental water are simply two types of groundwater, (3) whether all stored and supplemental water in the basin is categorically exempt from assessment, and (4) the future viability and application of the 2019 Letter Agreement (the "Four Issues"). Notably, the COA held that it need not resolve these issues as part of its ruling in favor of Ontario "because we conclude that Watermaster erred in its interpretation and

application of the 2019 Letter Agreement.” (COA Opinion, p. 25.) Consistent with its Opinion and the COA’s ultimate disposition, resolution of the Four Issues is not necessary to correct and amend the Assessment Packages.

Given the above, the purpose of the DYY Decision Tree is unclear and needs to be clarified. Is it meant to influence the manner in which the Assessment Packages are corrected and re-calculated? If so, why is this necessary? Or is the DYY Decision Tree meant to guide resolution of one or more of the Four Issues? If so, then which one(s)? Or is the DYY Decision Tree meant to serve some other purpose? If so, that needs to be clearly identified.

Separate and apart from compliance with the COA Opinion, the parties need clarity about how Watermaster will assess each category of production or withdrawals from the basin going forward and the legal basis for each.

To avoid future disputes similar to the litigation that arose from the DYY Program, Ontario also suggests that the parties address appropriate amendments to the Watermaster Rules and Regulations and/or clarification of the required processes under the Judgment to ensure transparency in Watermaster’s decision-making and compliance with procedures that are mandated by the Judgment and other court orders.¹

Ontario appreciates the opportunity to provide comments in advance of the next workshop. In submitting these comments, Ontario specifically reserves all of its rights, including with respect to issues not expressly addressed above.

Sincerely,



Chad Nishida, P.E.
Water Resources Manager

cc: Scott Burton, Utilities General Manager – Ontario Municipal Utilities Company
Courtney Jones, Deputy General Manager – Ontario Municipal Utilities Company
Elizabeth Ewens, Legal Counsel – Stoel Rives
Anna Truong Nelson, Director of Administration – Chino Basin Watermaster

¹ In this regard, it is notable that the COA specifically found that the “2019 Letter Agreement was incorrectly interpreted at best, or imprudently executed at worst.” (COA Opinion, p. 19.)