

John Bosler
Secretary/General Manager/CEO

August 6, 2025

Mr. Todd Corbin
General Manager
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730
Email: tcorbin@cbwm.org

Re: July 23rd Workshop on the Implementation of Dry Year Yield Appellate Court Ruling Comments

Dear Mr. Corbin,

Cucamonga Valley Water District (“CVWD”) appreciates the opportunity to provide written comments on the workshop facilitated by the Chino Basin Watermaster (“Watermaster”) on July 23, 2025, and for the opportunity to discuss the implementation of the appellate court ruling which pertains to the Watermaster’s Dry Year Yield Program (“DYYP”). CVWD is a long-term participant in the DYYP, through our Local Agency Agreement with the Inland Empire Utilities Agency (“IEUA”) and has consistently met CVWD’s performance obligations throughout the history of the program and in accordance with eight contract amendments to the 2004 DYYP Agreement, and the 2019 Letter Agreement that provided additional clarity on obligations of the Parties participating in the DYYP. Although CVWD has been able to meet performance obligations throughout the duration of the DYYP because of investments it has made in accordance with its obligations under the DYYP, other participating DYYP agencies, such as the City of Ontario (“Ontario”) have been challenged with water quality/blending requirements and infrastructure concerns that have limited their ability to comply with DYYP calls by the Metropolitan Water District (“MWD”), and have ultimately led to several of the contract amendments and the 2019 Letter Agreement so as to allow the DYYP program to function as designed.

During fiscal year 16/17 and 17/18, MWD, the entity which “owns” the imported water stored in the DYYP storage account, made a request to Watermaster to deliver 45,000 acre-feet (AF) of imported water to the DYYP storage account due to a series of wet years and excess water availability in Northern California. Due to the past performance concerns associated with infrastructure limitations for certain agencies, including the City of Ontario, MWD agreed, via the 2019 Letter Agreement, to expand the terms for performance from the DYYP storage account to allow for voluntary extractions to avoid stranding MWD stored water at the end of the agreement term in 2028 and to give MWD an additional location to store excess water from Northern California. If water remained in the account after the 2028 expiration of the agreement, it would be billed to all of the DYYP participating parties at the MWD tier 1 rate. The 2019 Letter Agreement between MWD, Watermaster, Three Valleys Municipal Water District (TVMWD) and IEUA memorialized the shift in how MWD would administer the program so as to allow sufficient quantities of the DYYP stored water to be timely withdrawn from the account, notwithstanding the inability of some agencies, who had taken significant funds from MWD to construct DYYP facilities, to perform their obligations under the amended DYYP. The changes implemented via the 2019 Letter Agreement were seen as a benefit to all of the performing parties as it would allow participating agencies with sufficient pumping capacity to draw down the DYYP storage account, which would alleviate the need for agencies with pumping challenges to perform according to their otherwise applicable contractual obligation during a call by MWD.

Additionally, the Chino Basin was approaching expiration of a maximum groundwater storage limit on June 30, 2021, which included Chino Basin parties’ local storage in addition to MWD’s DYYP stored water. The 2019 Letter Agreement and associated voluntary take provision was a way to maintain storage below the limit and provide additional time while the Watermaster, and their consultants and attorneys, studied and obtained CEQA clearance and Court approval to raise the storage limit to accommodate increasing volumes of local storage, primarily consisting of excess carry over.

With the 2019 Letter Agreement executed by the four parties to the amended DYYP contract (MWD, Watermaster, TVMWD, and IEUA), CVWD in good faith proceeded with voluntary takes that were specifically authorized by the 2019 Letter Agreement,¹ by shifting importing water purchases to groundwater production. It is important to note that CVWD paid MWD for the voluntary takes, since DYYP stored water is owned by MWD and is in essence imported water, which means CVWD paid MWD Tier 1 volumetric rates plus the share of MWD Readiness to Serve (RTS) charges which are factored into the ten-year rolling average calculation. CVWD has paid MWD a total of \$15 million for water purchased through MWD under the DYYP plus CVWD's RTS share which has thus far resulted in an additional \$1.3 million with an estimated total of \$5.2 million over the ten-year period. That means the total cost to CVWD for participating during the two years in question is about \$20 million, inclusive of the credit provided by MWD but not factoring in pumping and transmission costs, which was offset by the O&M credit.

In FY2018 and FY2019, CVWD had a strategy to produce imported water in quantities of around 30,000 AF/Y to preserve its groundwater storage for drought years and increase its imported water baseline during MWD/IEUA allocation years. This strategy came at a cost and was an investment, whether purchasing imported water delivered as surface water or pumped from the DYYP storage account. CVWD's strategy can be seen going into effect FY2018 (CBWM Assessment Year 2019) and FY 2019. If the 2019 Letter Agreement did not exist, CVWD would have produced imported water in similar quantities as the two prior years before the Agreement allowed voluntary participation assessment years in question, resulting in the same production assessment.

Following CVWD and Fontana Water company's participation in voluntary takes from the DYYP, Ontario challenged the FY21/22 and FY22/23 Watermaster Assessment packages. The result of the ensuing litigation was a California Court of Appeals ("Court") disposition reversing the Superior Court's November 3, 2022, and August 23, 2023, orders. The superior court was directed to enter new orders and directed Watermaster to correct and amend its FY 2021/2022 and 2022/2023 Assessment Packages.

We are providing the following comments on CVWD's interpretation of the disposition and how that corresponds to implementation of the appellate court ruling.

- **Define Ontario's Financial Harm**

The court of appeals stated there was financial harm to the City of Ontario, but it is unclear what that harm is. Indeed, we can discern no possible harm to Ontario since any increased costs to Watermaster associated with implementing the DYYP would have been offset by MWD's annual administrative fees per Section VI.D.3 of the DYYP Agreement. All of the parties to the DYYP would greatly benefit from Ontario's clarification on the financial injury it has sustained as that is the very issue that Watermaster is tasked with addressing on remand through revision of the assessment packages. Further, it is difficult to conceive how Ontario could be financially harmed under the DYYP where Ontario cannot demonstrate it has the ability to meet its performance requirements under the DYYP.

- **If all water must be assessed, CDA production must be included**

The City of Ontario argued in its briefs and in its argument to the Court of Appeal that all water produced from the Basin should be included in the Watermaster production assessment, and that a cost shift resulted from the omission of DYYP production to those parties who did not voluntarily produce per the 2019 Letter Agreement. While CVWD does not agree that a cost shift occurred due to its participation in the DYYP, following the logic of the Ontario argument production from the Chino Basin Desalter Authority (CDA) should also be subject to production assessment—and CDA extractions should likely be retroactively assessed going back four years.² Omission of CDA production from the assessment calculation has resulted in a substantial shift in production assessments negatively impacting CVWD (and creating a windfall for Ontario and other CDA participants based on

¹ Page 2 of the 2019 Letter Agreement states, in pertinent part "[b]y agreement of the parties, any water stored after June 1, 2017, would be purchased from the account by IEUA and Three Valleys when the parties pump over the groundwater baseline as defined in Exhibit G. A copy of Exhibit G is enclosed in this letter. This pumping could be the result of a response to a call for pumping made by Metropolitan or it could be through normal operational decisions made by the individual parties in a given year." CVWD was specifically authorized by the 2019 Letter Agreement to pump above and beyond the amounts listed in Exhibit G to DYYP Amendment 8, and CVWD promptly complied with its obligation to "submit a certification for extraction from the account" to IEUA.

² In its Opening Brief before the Court of Appeal, Ontario argued that "Watermaster's position--that it may pick and choose when to assess water produced from the Basin--invites gamesmanship. Water suppliers can easily categorize water in ways that would allow them to avoid paying normal assessments for production. By 'coloring the water something else'--i.e., by stating that they produced 2,500 acre-feet of imported or stored groundwater rather than native groundwater--parties like FWC and CVWD can circumvent fees and improperly shift costs to others, as they have done here."

Ontario's previous arguments), and CVWD therefore requests that CDA production be assessed both within the revised FY 21/22 and 22/23 assessment packages and into the future with the upcoming assessment packages.

- **MWD and operating committee should weigh in on determining performance under the 2015 amendment**

Absent of the 2019 Letter Agreement, performance obligations under the DYYP revert to Amendment No. 8 to the Agreement for the Chino Basin Groundwater Storage Program approved in 2015 (2015 Amendment), with performance requirements specified in Exhibit G. CVWD asks that MWD and the DYYP Operating Committee provide guidance on performance under the 2015 Amendment. It is CVWD's understanding that MWD is the agency which determines if performance requirements are met, not Ontario, and MWD's determination is entitled to deference. Our analysis of Exhibit G of the 2015 Amendment results in performance being met under both the groundwater and imported water baselines with CVWD imported water purchases reduced below the 3-year baseline and groundwater pumping increased above the 3-year baseline, as evidenced by MWD certification. If performance is confirmed by MWD, production under the DYYP for the years in question was proper and should not be considered for retroactive assessment. Additionally, water stored in the DYYP belongs to MWD. MWD has sold that water to CVWD and the water has been produced. Consequently, there should be no recalculation of storage account balances considered.

- **2019 Letter Agreement is not invalid, should go through the WM process for approval**

While Ontario asserts that the Court of Appeals invalidated the 2019 Letter Agreement between IEUA, MWD, TVWD and Watermaster, this is not what the Court of Appeals decision actually says. Indeed, on remand, Watermaster is directed to evaluate the future viability and application of the 2019 Letter Agreement (see COA Opinion at p. 39), which would not be possible had the Court of Appeals actually invalidated the 2019 Letter Agreement as Ontario now contends. While the Court expressed concerns about the 2019 Letter Agreement and the manner of its approval, it was not invalidated by the Court.³ CVWD believes that the intent and objectives of the 2019 Letter Agreement retain vitality through the remaining term of the DYYP through 2028, and it can be harmonized with the DYY Program Agreement as amended. CVWD therefore requests that the Watermaster route the 2019 Letter Agreement through the Watermaster process and ultimately seek Watermaster Board approval at the earliest opportunity.

- **MWD annual admin fee should be considered as payment for any assessments**

Additionally, as part of the DYYP agreement MWD paid substantial incentives to the DYYP parties for infrastructure in exchange and preparation to perform on call years. On top of that, the DYYP agreement includes provisions for MWD to pay an annual fee to CBWM towards administrative expenses, regardless of if water is recharged or produced from the program in any given year. CVWD contends that this administrative fee should cover any production assessments levied on DYYP withdrawals resulting from performance calls or voluntary takes. MWD has paid over \$3 million in administrative assessments thus far, with an additional \$800,000 estimated through the end of the term.

Thank you again for the opportunity to provide comments, we look forward to a resolution which acknowledges CVWD's good faith participation in the DYYP under the guidance of MWD, Watermaster, IEUA and TVMWD.

Sincerely,



John Bosler, PE
General Manager/CEO
Cucamonga Valley Water District

³ The Court of Appeals concluded "that Watermaster erred in its interpretation and application of the 2019 Letter Agreement ... [thus] our focus is on the interpretation and application of the 2019 Letter Agreement." (COA Opinion at p. 25.)