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EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103

8 Attorneys for CUCAMONGA VALLEY WATER
9 DISTRICT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiff,

v.

CITY OF CHINO, et al.,

Defendants.

Case No. RCV 51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

**JOINDER TO WATERMASTER'S
RESPONSE TO THE COURT'S ORDER
CONTINUING 12/18/15 HEARING**

Date: January 22, 2016
Time: 1:30 p.m.
Dept: R-6

[Filed Concurrently with Declaration of
Paeter E. Garcia in Support of District's Joinder
to Watermaster's Response to Court's Order
Continuing 12/18/15 Hearing]

1 The Cucamonga Valley Water District ("District"), a party to the Restated Judgment in
2 the above-entitled matter, hereby joins in the Chino Basin Watermaster's Response to the Court's
3 Order Continuing 12/18/15 Hearing and Confirmation of Filings Through Chino Basin
4 Watermaster ("Watermaster's Response"). The District agrees with the requested briefing
5 schedule set forth in Watermaster's Response because it ensures fairness among the parties
6 involved, does not prejudice any party, and allows a more reasonable schedule for numerous
7 parties (most of which are public agencies) to address the many important issues in this matter.

8 Watermaster's Motion regarding the 2015 Safe Yield Reset Agreement was filed on
9 October 23, 2015 with a hearing date of December 18, 2015. Initially, and in an abundance of
10 fairness, that provided the City of Chino and other parties more than six weeks to prepare
11 responsive pleadings. According to the Court's December 2, 2015 Order, the City of Chino
12 previously was attempting to file an ex parte application to continue the December 18th hearing
13 date, and thus the Court continued the hearing on its own motion to January 22, 2016. The
14 District is not aware of any grounds the City could have asserted for needing more than six weeks
15 to prepare a responsive pleading. However, to the extent the City may have asserted that it
16 needed more time, a schedule that requires responsive pleadings by December 21st gives the City
17 approximately eight weeks from when Watermaster's Motion was filed.

18 The District also supports the briefing schedule set forth in Watermaster's Response
19 because – in fairness – the District and other parties should have appreciably more than five Court
20 days to file reply briefs to the City of Chino's opposition. The City has raised numerous complex
21 issues in opposing the 2015 Safe Yield Reset Agreement, and in several instances the City has
22 leveled accusations directly at the parties to the Judgment. That has been illustrated by the City's
23 "Supplement to Status Report on Watermaster's Safe Yield Redetermination and Reset" and in
24 letters sent directly to the District by two different law firms representing the City. (See
25 Paragraphs 2 through 4 of the Declaration of Paeter E. Garcia filed in Support of this Joinder.)
26 As a public agency, the District needs a reasonable amount of time to meaningfully consider the
27 many serious issues and allegations that likely will be included in the City of Chino's opposition
28 brief. The briefing schedule proposed by the Watermaster's Response would allow the District

1 approximately three weeks (including the Holidays) to reply to an opposition the City had eight
2 weeks to prepare. That schedule brings fairness to the process without prejudice to the City of
3 Chino or any other parties.

4
5 Dated: December 11, 2015

BEST BEST & KRIEGER LLP

6
7 By: 

8 PAETER E. GARCIA
9 Attorneys for
10 CUCAMONGA VALLEY WATER
11 DISTRICT
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN BERNARDINO

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 v.

17 CITY OF CHINO, et al.,

18 Defendants.

Case No. RCV 51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

**DECLARATION OF PAETER E. GARCIA
IN SUPPORT OF CUCAMONGA VALLEY
WATER DISTRICT'S JOINDER TO
WATERMASTER'S RESPONSE TO THE
COURT'S ORDER CONTINUING 12/18/15
HEARING**

Date: January 22, 2016
Time: 1:30 p.m.
Dept: R-6

[Filed Concurrently With District's Joinder to
Watermaster's Response to Court's Order
Continuing 12/18/15 Hearing]

1 I, PAETER E. GARCIA, declare as follows:

2 1. I am an attorney at law licensed and admitted to practice before all courts in the
3 State of California. I am a partner in the law firm of Best Best & Krieger LLP, attorneys of
4 record in the above-entitled matter for the Cucamonga Valley Water District ("District"). As
5 such, I have personal knowledge of the facts stated in this Declaration, except as to those matters
6 stated upon knowledge or belief. If called to testify, I could and would competently testify as to
7 the facts stated herein.

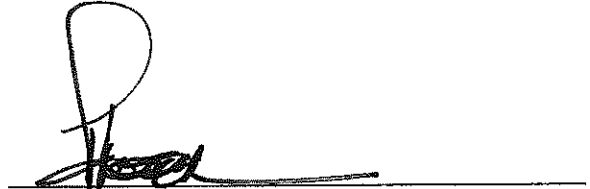
8 2. In connection with the above-entitled matter, on or about August 11, 2015 I
9 received an electronic Notice of Filing from the Chino Basin Watermaster regarding the City of
10 Chino's Supplement to Status Report on Watermaster's Safe Yield Redetermination and Reset;
11 Declaration of David G. Crosley to Supplement the Watermaster Staff Report. A true and correct
12 copy of the City of Chino's Supplement to Status Report on Watermaster's Safe Yield
13 Redetermination and Reset, without the accompanying Declaration and Exhibits, is attached
14 hereto as Exhibit "A."

15 3. As legal counsel for the District, I am aware that on or about September 29, 2015,
16 the District received a letter from the law firm of Desmond, Nolan, Livaich & Cunningham on
17 behalf of the City of Chino. The letter is addressed directly to the members of the District's
18 Board of Directors. Among other statements, the letter asserts: "We object to the Agreement and
19 urge you not to adopt it. If you do, we have advised our client to take whatever legal actions are
20 necessary to protect its rights and remedies, including but not limited to pursuing its right to just
21 compensation, due process of law, and recovery of attorney's fees." A true and correct copy of
22 the letter from Desmond, Nolan, Livaich & Cunningham to the District dated September 22, 2015
23 is attached hereto as Exhibit "B."

24 4. As legal counsel for the District, I am aware that on or about October 26, 2015, the
25 District received a letter from the law firm of Gutierrez, Fierro & Erickson on behalf of the City
26 of Chino. The letter is addressed directly to the District's Board of Directors. Among other
27 statements, the letter asserts: "On behalf of the City of Chino, I am writing to urge you not to
28 approve the Chino Basin 2015 Safe Yield Reset Agreement ('SYRA') that is Item 11 on your

1 agenda for October 27, 2015. Approval of the item would violate the California Environmental
2 Quality Act because the project is not exempt from environmental review under CEQA." A true
3 and correct copy of the letter from Gutierrez, Fierro & Erickson to the District dated October 26,
4 2015 is attached hereto as Exhibit "C."

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct and that this Declaration was executed this 11th day of December,
7 2015, in Los Angeles, California.



Paeter E. Garcia

EXHIBIT “A”

Paeter Garcia

From: Janine Wilson <JWilson@cbwm.org>
Sent: Tuesday, August 11, 2015 4:10 PM
Subject: Chino Basin Watermaster Notice of Filing

Please click on the link below to view and/or download the following Notice of Filing:

1. 20150811 CITY OF CHINO'S SUPPLEMENT TO STATUS REPORT ON WATERMASTER'S SAFE YIELD REDETERMINATION AND RESET; DECLARATION OF DAVID G. CROSLY TO SUPPLEMENT THE WATERMASTER STATUS REPORT

<http://www.cbwm.org/FTP/Legal/20150811%20City%20of%20Chino%20Supplement%20to%20Status%20Report%20on%20SY%20Redetermination%20and%20Reset.pdf>

Thank you,

*Janine Wilson
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1 Jimmy L. Gutierrez (SBN 59448)
2 GUTIERREZ, FIERRO & ERICKSON, A.P.C.
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4 Chino, California 91710
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FEE EXEMPT

7 Attorneys for Defendant, City of Chino

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10
11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendants.

CASE NUMBER: RCV 51010

Honorable Stanford E. Reichert

**CITY OF CHINO'S SUPPLEMENT
TO STATUS REPORT ON
WATERMASTER'S SAFE YIELD
REDETERMINATION AND RESET**

Date: August 21, 2015

Time: 1:30 p.m.

Dept.: R6

(FEE- EXEMPT PURSUANT TO GOVERNMENT
CODE § 6103)

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22 **THE CITY OF CHINO HEREBY SUBMITS THIS SUPPLEMENT TO THE**
23 **"STATUS REPORT ON WATERMASTER'S SAFE YIELD REDETERMINATION**
24 **AND RESET" (HEREAFTER "STATUS REPORT") AS FOLLOWS:**

25 **I.**

26 **INTRODUCTION**

27 The Status Report incompletely and inaccurately describes the work of Watermaster
28 and it fails to disclose the justification and impact of the majority of that work.

1 The Status Report merely states that it seeks to inform the Court of "Watermaster's
2 ongoing efforts" to comply with what Watermaster describes as "prior orders" and asks the
3 Court to "accept the Status Report and approve the proposed timeline for completion."
4 However, Watermaster's work, as outlined in the key principles document, goes far beyond a
5 redetermination of the Safe Yield of the Basin.

6 Furthermore, the Status Report seeks to justify Watermaster's work on the basis of
7 court orders dated July 13, 2000 and July 19, 2001 and two provisions of the Judgment. Yet,
8 nothing in those orders or the Judgment authorize Watermaster to support a taking of the City
9 of Chino's water in storage, reduce the amount of water to which the City of Chino is entitled
10 as conversion claims under the Judgment, or to rearrange the allocation of water under the
11 Judgment in order to reduce the Parties obligation for Replenishment Water under the Peace
12 Agreements in a way that most severely and inequitably impacts the Jurupa Community
13 Services District and the City of Chino.

14 One clear implication of the Status Report is that the Watermaster and Parties can
15 convert water that the City of Chino hold in storage and impose material changes to the
16 allocation of basin water and over the objection of the City of Chino. Another implication is
17 that the negative financial impact of this work can be accomplished without justification and
18 without compensation to the City of Chino.

19 The City of Chino has objected to such proposed actions including a reasoned
20 explanation to the Watermaster Board on May 28, 2015. However, the Watermaster Board
21 did not respond to the City of Chino's objection except to direct its staff to proceed with their
22 plans.

23 For these reasons, the City of Chino elects to supplement the Status Report in order to
24 fully apprise the Court of the direction of its special master, the nine member Watermaster
25 Board, and members of the Appropriative Pool and the Overlying Agricultural Pool.

26 At this stage, the City of Chino believes that the Court should not accept or approve
27 anything in the Watermaster's Status Report unless and until Watermaster submits all of its
28 requests with supporting evidence and legal justification and only after the City of Chino

1 has had a meaningful opportunity to respond legally and conduct discovery pertaining to the
2 Watermaster's justification and evidence.

3 II.

4 THE CITY OF CHINO'S EXCESS CARRY-OVER WATER CANNOT BE TAKEN

5 Every year, the Watermaster Board approves the number of acre feet of Carry-Over
6 Water each appropriator holds in storage and the amount of that water each appropriator sold
7 to others. [Judgment, Exhibit H, Sections 12 and 13; Watermaster Rules 1.1(o) and 8.3(c) and
8 (e)]. The Watermaster Board notifies the Court, in the annual report, of its approval of all
9 water held in storage and all water sales.

10 On November 25, 2014, the Watermaster Board confirmed the amount of acre feet of
11 Carry-Over Water and Supplemental Water held in storage by each appropriator. The matter
12 was presented to the Watermaster Board as Agenda Item II.A entitled "Chino Basin
13 Watermaster 2014/15 Assessment Package" that was approved by the Watermaster Board.
14 The Assessment Package included the following documents relative to this Supplement:

- 15 • Pool 3 Water Production Summary on Page 2A.
- 16 • Pool 3 Local Excess Carry-Over Storage Account Summary on Page 3A.
- 17 • Pool 3 Local Supplemental Storage Account Summary on Page 4A.
- 18 • Pool 3 Water Transaction Summary on Page 6A.
- 19 • Pool 3 Water Transaction Detail on Page 7A and 7B.

20 The "Pool 3 Water Production Summary" shows the percentage of the Operation Safe
21 Yield (OSY) owned by each appropriator in the first column. The percentage Operating Safe
22 Yield is a method by which some basin water is allocated among the Appropriators. For
23 example, the Summary shows that the City of Chino owns 7.357% and that the City of
24 Pomona owns 20.454% of OSY shares.

25 The Pool 3 Local Excess Carry-Over Storage Account Summary shows the number of
26 acre feet of Carry-Over Water in storage owned by each appropriator totaling 231,679 acre
27 feet. The Summary shows that the City of Chino owns 65,508 acre feet of excess Carry-Over
28 Water in storage, which is the most among Appropriators and represents 28.3 percent of

1 all Excess Carry-Over Water in storage.

2 The Pool 3 Local Supplemental Storage Account Summary shows the number of acre
3 feet of Supplemental Water in storage owned by each appropriator, which totals 125,052 acre
4 feet. It shows that the City of Ontario owns 33,390 acre feet of Supplemental Water in
5 storage, which is the most among Appropriators and represents 26.7 percent of all
6 Supplemental Water in storage.

7 The Pool 3 Water Transaction Summary shows the transfers of water among
8 Appropriators and others including Excess Carry-Over Water. It shows that the City of
9 Ontario sold 5,500 acre feet of Excess Carry-Over Water.

10 The Pool 3 Water Transaction Detail shows which Appropriators transferred water
11 among Appropriators and the sales price of that water. The City of Ontario transferred 5,500
12 acre feet of Excess Carry-Over Water to the Fontana Water Company at a price of \$504.05
13 per acre foot or \$2,772,275. It also shows that a total of 18,934 acre feet of water were
14 transferred at a value of \$8,169,512.

15 The rights of an appropriator to waters from the Chino Basin are declared in Paragraph
16 9 of the Judgment. In addition, the right of an appropriator to store and to transfer its water is
17 established by the Appropriative Pool Pooling Plan, contained in Exhibit H of the Judgment.
18 Section 12 thereof provides:

19 *"Any appropriator who produces less than his assigned share of Operating Safe Yield*
20 *may carry such unexercised right forward for exercise in subsequent years."*

21 Section 13 thereof also provides:

22 *"Appropriative rights, and corresponding shares of Operating Safe Yield may be*
23 *assigned or may be leased or licensed to another appropriator for exercise in a given*
24 *year."*

25 Because of the declaration of such appropriative rights, no provision of the Judgment
26 permits the confiscation or taking of an appropriator's water in storage - by Watermaster or by
27 any Party to the Judgment. Indeed, Watermaster's appointment is limited to *"administer and*
28 *enforce the provisions of this judgment and any subsequent instructions or orders of the*

1 *Court hereunder.*" Neither its appointment under Judgment nor any court order directs
2 Watermaster to participate in the confiscation of an appropriator's waters held in storage.

3 However, the Key Principles document reveals Watermaster's participation with the
4 Parties to the Judgment in formulating a "Plan" that will confiscate 36,758 acre feet of water
5 valued at \$18,526,032 from the City of Chino – over its objection!

6 The Key Principles document leads to the creation of a "Safe Storage Management"
7 Plan that will prohibit the production of 130,000 acre feet of water currently owned and held
8 in storage by the Appropriators, although it may allow an appropriator to produce an
9 undetermined portion of that water in the event of an unspecified emergency and on the
10 condition that the appropriator replenishes that water within three years of its production. The
11 City of Chino has objected and continues to object to the taking of its water.

12 Furthermore, the allocation of the 130,000 acre feet of water to be taken from the City
13 of Chino is doubly inequitable to the City of Chino. First, the water to be taken is limited to
14 Excess Carry-Over Water of which the City of Chino owns more than any other appropriator.
15 Under the Plan, no water will be taken from the Appropriators' Supplemental Water storage
16 accounts. Second, the water to be taken will be in proportion to the amount of Carry-Over
17 water held in storage by each appropriator on July 1, 2015 rather than each appropriator's
18 percent of Operating Safe Yield. Because the City of Chino owns 28.3% (65,507/231,679) of
19 all Excess Carry-Over Water in storage, it will lose 36,756 acre feet of its water (28.3% x
20 130,000) – more than any other appropriator.

21 Under the Judgment, some of the Basin's water is allocated to the Appropriators based
22 upon their share of Operating Safe Yield. [Judgment, Paragraphs 9 and 44; Judgment Exhibit
23 E; Judgment Exhibit H, Section 10; Judgment Exhibit I, Section 3.] As a comparison with the
24 City of Pomona, the City of Chino owns 7.357% and the City of Pomona owns 20.454% of
25 Operating Safe Yield shares. [Pool 3 Water Production Summary, page 2A]. If the Plan were
26 to use the percentages of Operating Safe Yield as an allocation formula, the City of Chino
27 would lose 9,564 (7.357% x 130,000) and the City of Pomona would lose 26,590 (20.454% x
28 130,000) of the 130,000 acre feet total. However, the Plan's allocation formula would

1 cause the City of Chino to lose 36,790 (28.3% x 130,000) and the City of Pomona to lose
2 15,922 (12.25% x 130,000) of the 130,000 acre feet Plan total. Under the Plan, the City of
3 Pomona will lose proportionally less than its share of Operating Safe Yield and the City of
4 Chino will lose proportionally more than its share of Operation Safe Yield.

5 Watermaster's participation in the preparation of the Plan is completely inappropriate,
6 because Watermaster has left its role of administering the Judgment and leaped into an
7 advocacy role on behalf of certain Parties to the Judgment and against the City of Chino.

8 **III.**

9 **DIVERTING WATER FROM CHINO FOR DESALTER REPLENISHMENT** 10 **WATER VIOLATES JUDGMENT, PEACE AGREEMENTS AND COURT ORDERS**

11 **A. The Judgment Requires Basin Water to be Allocated to the Appropriators**

12 The Court adopted a Physical Solution and ordered the parties to comply with it.
13 [Judgment, Paragraph 39]. The Physical Solution is described in Paragraphs 39 through 46
14 and Exhibits F, G, H and I of the Judgment.

15 The Physical Solution sets 140,000 acre feet as the maximum amount of water that can
16 be produced from the Chino Basin without the replenishment of any of that water. The
17 Overlying Agricultural Pool is allocated 414,000 acre feet in any five years or 82,800 per
18 year. The Overlying Non-agricultural Pool is allocated 7,366 acre feet per year. The
19 Appropriative Pool is allocated 49,834 acre feet per year, which amount may vary based on
20 the criteria contained in Exhibit I to the Judgment; and the amount actually allocated to the
21 Appropriative Pool is called the Operating Safe Yield. Furthermore, any subsequent change
22 in the Safe Yield is debited or credited to the Appropriative Pool. [Judgment, Paragraphs 44].

23 The Appropriators listed in Exhibit E own appropriative rights set forth therein and are
24 entitled under the Physical Solution to share in the remaining Safe Yield, after satisfaction of
25 overlying rights, and in the Operating Safe Yield in the annual shares described in Exhibit E.
26 [Judgment, Paragraph 9]. The Judgment does not provide for the allocation of the Safe
27 Yield and Operating Safe Yield other than as described in Paragraphs 9 and 44. In short, the
28 Judgment does not permit basin water to be allocated to the Desalters.

1 In addition, the Pooling Plan described in Exhibit H controls the operation of the
2 Appropriative Pool. [Judgment, Paragraph 46]. In particular, Section 10 of Exhibit H, which
3 requires any portion of the Safe Yield allocated to the Overlying Agricultural Pool that is not
4 produced by members of the Agricultural Pool to be reallocated to members of the
5 Appropriative Pool according to the following priority:

- 6 • First, to restore the water removed from the Operating Safe Yield to compensate for a
7 reduction in the Safe Yield due a recalculation of the Safe Yield;
- 8 • Second, to satisfy conversion claims; and
- 9 • Third, to supplement the Operating Safe Yield, apart from reductions in the Safe Yield.

10 Conversion claims, under Exhibit H, are requests by members of the Appropriative
11 Pool for reallocation of the unproduced agricultural pool water to Appropriators that have
12 undertaken to provide water permanently to lands that converted from agricultural water use
13 to appropriative water use. During the term of the Peace Agreement, an appropriator is
14 allocated two acre feet of water for each acre of land that has converted. [Judgment, Exhibit
15 H, Section 10]. Not all members of the Appropriative Pool have conversion claims. However,
16 every appropriator receives a portion of the unproduced agricultural water as Early Transfers
17 based upon their respective percentage shares in the Operating Safe Yield.

18 The Pooling Plan of the Appropriative Pool does not permit the reallocation of any
19 portion of the unproduced agricultural water for a purpose other than described in Section 10.
20 In short, the Pooling Plan of the Appropriative Pool does not permit basin water to be
21 allocated to the Desalters.

22 The City of Chino relies on these provisions of the Judgment for allocation of basin
23 water and particularly upon conversion claims due to the ongoing conversion of lands in the
24 City of Chino from agricultural to appropriative uses. In the 2013-14 Production Year, the
25 City of Chino was entitled to receive 7,623 acre feet of unproduced agricultural water due to
26 its conversion claims. The City of Chino also was entitled to receive 2,413 acre feet in early
27 transfers for a total of 10,036 acre feet of unproduced agricultural water. However, the City
28 of Chino received 8,368 acre feet, because there was an insufficient amount of

1 unproduced agricultural water to satisfy its conversion claims and early transfers. In that year,
2 the total of all the Appropriators' conversion claims and early transfers was 58,962 acre feet;
3 whereas, the amount of unproduced agricultural water available for reallocation was 49,161
4 acre feet. The shortage of 9,800 acre feet caused the City of Chino to receive less than its full
5 allocation of water to satisfy its conversion claims and early transfers. [2014-2015 Land Use
6 Conversion Summary, Pages 11A and 11B].

7 What is significant is the existing shortage of unproduced agricultural water to satisfy
8 the City of Chino's conversion claims and early transfers will be increased under the SARU
9 Plan and will result in a lesser allocation of water to the City of Chino to satisfy its conversion
10 claims and early transfers.

11 **B. The Santa Ana River Underflow (SARU) Plan Seeks Basin Water for the Desalters**

12 The Santa Ana River Underflow (SARU) Plan will reduce further the amount of
13 unproduced agricultural water available to satisfy the City of Chino's conversion claims and
14 early transfers. [Page 5, Key Principles Document.] Under the SARU Plan, one half of the
15 annual desalter water will be taken from the Safe Yield allocated to the Appropriative Pool
16 and that reduction to the amount of Safe Yield allocated to the Appropriative Pool will be
17 "backfilled" or "restored" from the unproduced agricultural water. This taking of water from
18 the Safe Yield allocated to the Appropriative Pool violates the Judgment's water allocation
19 provisions. [Judgment, Paragraphs 9, 44 and 46; and Exhibit H, Section 10].

20 Regardless of the amount of water to be taken under the SARU Plan in any year during
21 the next fifteen (15) year period, it is clear that the water so taken will decrease the available
22 unproduced agricultural water upon which the City of Chino relies under the Judgment's
23 water allocation provisions. It is well understood that the OBMP and the Peace Agreements
24 anticipate that the desalters will produce 40,000 acre feet annually, which is the minimum
25 amount of water that must be produced in order to achieve hydraulic control of the Chino
26 Basin. [OBMP Implementation, Program Element 3; Peace II Agreement, Section 5.1].
27 Therefore, it is reasonably clear that the SARU Plan intends to take 20,000 acre feet, annually,
28 from the Safe Yield allocated to the Appropriative Pool for the Desalters.

1 Because the SARU Plan intends to take the Safe Yield allocated to the Appropriative
2 Pool by 20,000 acre feet annually, the available unproduced agricultural water also will be
3 reduced by 20,000 acre feet annually. As a result, the Plan will reduce the unproduced
4 agricultural water available for reallocation to the Appropriators from the current 49,161 acre
5 feet amount to 29,161 acre feet. Assuming the conversion claims remain constant, the City of
6 Chino's current allocation to satisfy its conversion claims will be reduced from 8,368 acre
7 feet to 4,963 acre feet in future years ($17\% \times 29,161$). Thus, the SARU Plan will cause an
8 annual loss of 3,405 acre feet of basin water to the City of Chino to satisfy its conversion
9 claims. The current market value of this loss exceeds \$1,700,000.

10 It also is significant that the conversion claims of the Jurupa Community Services
11 District and the City of Chino are larger than those of the other five agencies that also make
12 conversion claims. Jurupa's claim was 13,876 acre feet, Chino's claim was 7,623 acre feet
13 and the other five agency claims were 4,663 acre feet. The combined total of Jurupa's and
14 Chino's conversion claims amount to 21,499 acre feet and represent 82% of all of the
15 conversion claims. Because of these circumstances, the SARU Plan negatively impacts Chino
16 and Jurupa very much more than the other five Appropriators with conversion claims, while
17 the SARU Plan imposes no negative impact to the Appropriators that do not make conversion
18 claims. This is not accidental.

19 **C. The Judgment Does Not Permit Basin Water to be Allocated for the Desalters**

20 At this point, it is very important to stress the obvious - there is no provision in the
21 Judgment that allocates Safe Yield for the Desalters. It also is apparent that the allocation of
22 Safe Yield for the Desalters is the essential component of the SARU Plan - the likely purpose
23 of which is to reduce the Desalter Replenishment obligation of the Parties to the Judgment.

24 However, Paragraph 44 of the Judgment allocates the Safe Yield of 140,000 acre feet
25 of basin water to the three pools. The allocations of the Safe Yield to the overlying pools are
26 fixed. The allocation to the Appropriative Pool is reducible only by a decline in the Safe
27 Yield.

28 ///

1 In addition, the provision in Paragraph 44 that the Operating Safe Yield may be varied
2 by Watermaster pursuant to Exhibit I applies to the use of the original 200,000 acre feet of
3 controlled overdraft water. Exhibit I does not permit the Operating Safe Yield to be allocated
4 for any other purpose. Even if Exhibit I permitted the allocation of Operating Safe Yield for
5 the Desalters, there has been no compliance with the condition precedent of five (5) years
6 prior written notice of a change in the amount or use of the Operating Safe Yield.

7 The entire amount of Safe Yield allocable to the Appropriative Pool under Paragraph
8 44 must be allocated to each Appropriator according to its percent share of the Safe Yield
9 under Paragraph 9. There is no provision that permits the diversion of an Appropriator's
10 percent share of Safe Yield for any purpose. Likewise, the unproduced agricultural water
11 must be allocated to each Appropriator to satisfy its conversion claims and early transfers
12 under Paragraph 46 and Exhibit 10. There is no provision for the diversion of an
13 Appropriator's portion of the unproduced agricultural water.

14 Clearly, the SARU Plan is contrary to the Judgment and cannot be approved.

15 To be clear, the City of Chino objects to this diversion or reduction of its water rights
16 under the Judgment.

17 **D. The Peace Agreements Do Not Permit Basin Water for the Desalters**

18 Water for the Desalters has been an element of the Peace Agreement since it was
19 adopted fifteen (15) years ago. Section 7.1 states "*The OBMP requires construction and*
20 *operation of Desalters.*" Section 7.5 requires replenishment water for the Desalters and lists
21 four exclusive sources of water in order of priority for this purpose. The fourth source is the
22 purchase of replenishment water by Watermaster and the levying of assessments on the
23 Parties to the Judgment to pay for the replenishment water. The Peace Agreement does not
24 include the Safe Yield allocated to the Appropriative Pool or the unproduced agricultural
25 water as sources available to satisfy the obligation for Replenishment Water for the Desalters
26 of the Parties to the Judgment.

27 Peace Agreement II follows and amplifies the method of providing replenishment
28 water for the Desalters established in the Peace Agreement. Peace Agreement II added

1 sources of water for the Desalters and further specified how the assessments would be
2 imposed on the members of the Appropriative Pool and the Overlying Non-Agricultural Pool.
3 However, Peace Agreement II did not add the Safe Yield allocated to the Appropriative Pool
4 or the unproduced agricultural water as sources available to satisfy the Parties' obligation for
5 Replenishment Water for the Desalters.

6 In fact, Section 6.1 of Peace Agreement II reiterates the Desalter water replenishment
7 provisions of the Peace Agreement. It reads as follows:

8 *The Parties acknowledge that the hierarchy for providing Replenishment Water*
9 *for the Desalters is set forth in Article 7, paragraph 7.5 of the Peace Agreement,*
10 *and that this section controls the sources of water that will be offered to offset*
11 *Desalter Production.*

12 Likewise, Section 6.2 of Peace Agreement II states:

13 *To facilitate Hydraulic Control through Basin Re-Operation, in accordance with*
14 *the 2007 Supplement to the OBMP Implementation Plan and the amended*
15 *Exhibits G and I to the Judgment, additional sources of water will be made*
16 *available for purposes of Desalter production and thereby some or all of the*
17 *replenishment obligation. With these available sources, the Replenishment*
18 *Obligation attributable to Desalter production in any year will be determined by*
19 *Watermaster as follows:*

20 Then, Section 6.2(a) directs Watermaster to calculate the amount Desalter production
21 in the preceding year and apply credits against that production from the listed sources.

22 Next, Section 6.2(b) restates the authorization to Watermaster to impose assessments
23 on members of the Overlying Non-Agricultural Pool and the Appropriative Pool to meet any
24 remaining Replenishment obligation. Subsection 6.2(b)(i) directs the use of an assessment for
25 Desalter water replenishment on the Overlying Non-Agricultural Pool. Subsection 6.2(b)(ii)
26 provides that the Replenishment Assessment on the Appropriative Pool shall be "*pro-rata*
27 *based on each Producer's combined total share of Operating Safe Yield and the previous*
28 *year's actual production*" but excludes Desalter production from this calculation.

1 However, the SARU Plan proposes a new agreement that, in effect, would take water
2 from the Safe Yield allocated to the Appropriative Pool or the unproduced agricultural water,
3 make that water available for Desalter Replenishment Water, and thereby reduce the current
4 obligation of the Parties to provide Replenishment Water for the Desalters or to pay for that
5 Replenishment Water under the Peace Agreements. Such diversion of water under the SARU
6 Plan would be made largely at the expense of the City of Chino and the Jurupa Community
7 Services District.

8 Clearly, the SARU Plan and any implementing agreement would be inconsistent with
9 the Peace Agreement and the Judgment; and any such implementing agreement requires the
10 consent of all Parties to the Peace Agreement. [Peace Agreement, Paragraph 10.2.]

11 The City of Chino does not consent to any such agreement. The objection of the City
12 of Chino has been communicated to Watermaster; but its objection has been ignored.

13 **E. The Court's Orders Prohibit Actions Inconsistent with the Peace Agreements**

14 Judge Gunn approved the Peace Agreements and ordered Watermaster to implement
15 them and to take no action inconsistent with them. The SARU Plan and Watermaster efforts
16 to implement it violate these orders. On July 13, 2000, Judge Gunn ordered Watermaster as
17 follows:

18 *1. Watermaster shall adopt the goals and plans of the Phase I Report and*
19 *implement them through the Implementation Plan, which is attached as Exhibit B*
20 *to the Peace Agreement. Watermaster shall proceed in a manner consistent*
21 *with the Peace Agreement and the OBMP Implementation Plan.*

22 On December 21, 2007, Judge Gunn also ordered Watermaster as follows:

23 *"3. Watermaster's adoption of Resolution 07-05 is approved and Watermaster*
24 *shall proceed in accordance with the terms of the resolution and the documents*
25 *attached thereto."*

26 These orders were made at Watermaster's request, because its appointment under
27 Paragraphs 16 of the Judgment limits Watermaster to "administer and enforce the provisions"
28 of the Judgment and as directed by order of the Court. For example, on October 25,

1 2007, the Watermaster Board adopted Watermaster Resolution 07-05, which conveyed the
2 Peace Agreement II and related documents to the Court and requested court orders directing
3 Watermaster to proceed in accordance with the terms of the Peace Agreement II and related
4 documents.

5 Cleary, the SARU Plan and any implementing agreement would be inconsistent with
6 the Peace Agreement and the Judgment.

7 Therefore, the Court's Order prohibits Watermaster from advancing or approving the
8 SARU Plan and from requesting the Court to approve it.

9 Watermaster well knows the City of Chino's opposition to the SARU Plan for the
10 reason that the Plan takes water rights from the City of Chino secured to it under the
11 Judgment and the Peace Agreements. Nevertheless, Watermaster has authorized its staff to
12 pursue the preparation of an agreement to implement the SARU plan. Thus, Watermaster has
13 taken a position in favor of many Parties to the Judgment and against, at least, one Party to the
14 Judgment - the City of Chino.

15 At this juncture, it is particularly necessary to remind the Court, Watermaster and the
16 Parties of Judge's Gunn's admonition to Watermaster in its December 21, 2007 Order:

17 *The Court accepts Watermaster's analysis of its role: "Watermaster's legal*
18 *existence emanates from the Judgment. All of Watermaster's enumerated powers*
19 *originate within and arise from the Judgment. It is not a public entity or private*
20 *entity that has been formed under some general or special law. Its duty is 'to*
21 *administer and to enforce the provisions of this Judgment and any subsequent*
22 *instructions or orders of the Court hereunder.'* As all special masters,
23 *Watermaster operates as an extension of the Court and to meet the needs of the*
24 *Court in carrying out its obligations under the Judgment and Article X, Section 2*
25 *of the California Constitution."* Although it is not stated in Watermaster's
26 *pleadings, it is important to note that it is not Watermaster's duty to be an*
27 *advocate for any, or for all, of the parties. Watermaster's position with respect*
28 *to the parties should be neutral.*

1 IV.

2 **SAFE YIELD RESET IS INCONGRUITY WITH THE JUDGMENT AND**
3 **RELIES ON PAST HYDROLOGY**

4 The Key Principles document entitled "Safe Yield Rest" utilizes a method to determine
5 the Safe Yield of the Basin that is incongruous with the provisions of the Judgment pertaining
6 to the Basin's Safe Yield and it seeks to utilize that method as a substitute for the Judgment's
7 purposes and requirements. [Status Report, Exhibit A, Pages 1 and 2]. The Court should not
8 allow that method to substitute for the provisions of the Judgment and the Court's discretion.

9 The concept of Safe Yield is very broad and dynamic. The concept encompasses
10 several provisions of the Judgment that are excluded from the Safe Yield Rest method. The
11 consideration of the Basin's Safe Yield must begin with Paragraph 39 that provides for the
12 maximization, not the minimization, of the waters of the Chino Basin to meet the needs of the
13 public – the ultimate users of the waters of the Chino Basin.

14 To this end, Paragraph 40 invests the Court and Watermaster with "maximum
15 flexibility and adaptability" and freedom to "use existing and future technologies, social,
16 institutional and economic options, in order to maximize beneficial use of the waters of the
17 Chino Basin." Likewise, the definition of Safe Yield in Paragraph 4(x) of the Judgment
18 constitutes a broad and fluid set of criteria with which to make a reasoned determination of
19 the Safe Yield of the basin.

20 However, the Safe Yield Reset's process is mechanistic and limiting. Its exclusive use
21 independent from the provisions of the Judgment should be rejected.

22 Second, the Safe Yield must be a forward-looking concept in order to have any
23 relevancy to the determination of the Basin's Safe Yield. All data, tools and assessments to
24 determine the Basin's Safe Yield should have this concept at their core. Instead, the Safe
25 Yield Rest intends to rely solely on past hydrology as the basis for determining future
26 precipitation and recharge of water into the basin. This is contrary to the Judgment's
27 requirement for "maximum flexibility and adaptability" and freedom to "use existing and
28 future technologies."

1 Third, the "Rest Technical Memorandum" is embedded with three biases that are not
2 supported by the Judgment. The first is that the Safe Yields is limited to the amount of water
3 that is recharged into the basin annually. The second is that the public cannot use the millions
4 and millions of acre feet of water in the vast Chino Basin. The third is that no attention need
5 be given to the other waters of the Chino Basin -- those surface waters that are allowed to
6 escape into Orange County rather than preserved and utilized for the public overlying the
7 Basin.

8 Finally, the Safe Yield Reset does not identify or measure the impact on the Basin of
9 any undesirable result - thereby ignoring one essential criterion of the definition of Safe
10 Yield. In particular, no such undesirable result is offered as a justification for reducing the
11 Safe Yield of the Basin.

12 CONCLUSION

13 The City of Chino respectfully requests the Court to consider rejecting the Watermaster
14 request to Reset the Safe Yield and appoint a special referee to oversee its determination
15 similar to how Judge Gunn appointed Anne Schneider and Joseph Scalmanini to oversee the
16 preparation of the Optimum Basin Management Plan.

17 The City of Chino also respectfully requests the Court to consider directing
18 Watermaster to cease and desist from advancing the Safe Storage Management Plan and the
19 SARU Plan on behalf of the Parties interested in those Plans.

20 Finally, the City of Chino respectfully requests the Court to request any Party
21 interested in the Safe Storage Management Plan or the SARU Plan to submit such a request
22 with supporting legal justification and/or evidentiary support for those Plans and to provide a
23 meaningful opportunity to the City of Chino to conduct discovery pertaining to those plans.

24 Dated: August 11, 2015

GUTIERREZ, FIERRO & ERICKSON, APC

25
26
27 By:


Jimmy L. Gutierrez, Esq.
Attorney for Defendant City of Chino

EXHIBIT “B”

RECEIVED SEP 29 2015

DESMOND, NOLAN, LIVAICH & CUNNINGHAM
ATTORNEYS AT LAW

September 22, 2015

President James V. Curatalo, Jr.
Vice President Luis Cetina
Director Oscar Gonzalez
Director Randall James Reed
Director Kathleen J. Tiegs

Cucamonga County Water District
10440 Ashford St.
Rancho Cucamonga, CA 91730

Re: City of Chino Objections to Adoption of the 2015 Safe Yield Reset Agreement

Dear President Curatalo, Vice President Cetina, and Directors:

This office is special counsel to the City of Chino (hereafter called "Chino") regarding two aspects of the proposed "2015 Safe Yield Reset Agreement" (hereafter called "Agreement") that would appropriate water owned by Chino. It is our understanding that your representatives are advocating this proposed plan in order to benefit your District, and that they intend to recommend adoption of the Agreement by the Cucamonga County Water District. A copy of the Agreement and its various exhibits are attached hereto for your reference.

Our review of the proposed Agreement reveals that if it were adopted and its terms implemented, substantial water and water rights held by Chino would be taken or damaged in violation of Article 1, Section 19 of the California Constitution. In particular, although the Safe Yield Redetermination will result in a reduction of the annual safe yield of 5,000 acre feet, the proposed Safe Storage Management Plan would severely impact Chino's right to use its stored water. This letter is to advise you of our objection to adoption of the proposed plan and to encourage you to reject it.

On November 25, 2014, the Watermaster Board confirmed that all parties hold 231,679 acre feet of water in storage accounts (known as "Excess Carry Over Water"), and that Chino holds

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Richard F. Desmond
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William C. Livaich
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September 22, 2015

Page 2

65,507 acre feet – 28% – of this water. Under the Safe Storage Management Plan, Chino's stored water would be taken in proportion to this high percentage rather than Chino's share of operating safe yield, which is only 7.36%. This would result, under Paragraph 6.2(a) of the Agreement, in the appropriation of 36,757 acre feet of water, which at the current rate of \$515 per acre foot, has a present value of \$18,930,044.

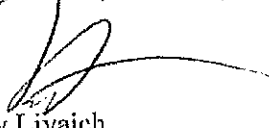
Additionally, Paragraph 5.2 of the Agreement, which pertains to the Desalter-Induced Recharge Plan, proposes that approximately 3,405 acre feet of water Chino is entitled to receive annually on its land use conversion claims will be taken for the next fifteen (15) years. At the current rate of \$515 per acre foot, this water has a present value of \$1,753,575 per year, and will amount to \$26,303,625 over the fifteen (15) years of the Agreement. Furthermore, the Agreement provides for the renegotiation and continuation of this Plan for another thirty (30) years after expiration of the Peace Agreement in 2030.

Despite the fact that the proposed Agreement would effect takings or damaging of Chino's property and rights therein without due process or payment of just compensation, there has been a complete failure by the Parties advancing the Agreement to address procedural requirements and safeguards of the Eminent Domain Law – let alone any efforts at compliance. There has not even been an attempt to explain or justify the appropriation of Chino's water.

We object to the Agreement and urge you not to adopt it. If you do, we have advised our client to take whatever legal actions are necessary to protect its rights and remedies, including but not limited to pursuing its right to just compensation, due process of law, and recovery of attorney's fees.

Sincerely,

DESMOND, NOLAN, LIVAICH & CUNNINGHAM



Gary Livaich
GL/ta

Cc: Client
District Counsel Prater Garcia

EXHIBIT “C”

LAW OFFICES OF
GUTIERREZ, FIERRO & ERICKSON
A PROFESSIONAL CORPORATION

FACSIMILE TRANSMITTAL COVER LETTER

DATE: October 26, 2015 NUMBER: (909) 476-8032
NUMBER OF PAGES: 3+cover

TO: Taya Victorino, Executive Assistant to Board of Directors

FROM: Arturo N. Pierro

RE: 10/27/2015 Board of Directors Meeting
Agenda Item No. 11- Chino Basin 2015 Safe Yield Reset Agreement

Remarks: Good afternoon Ms. Victorino,

Attached please find an Amended letter regarding Agenda Item No. 11 for the Cucamonga Valley Water District's October 27, 2015 Board of Directors Meeting. Please forward a copy to each Board Member as well as to your General Manager, Mr. Zvirbulis. Thank you for your attention to this matter.

Sincerely,

Violet Topete

CITY OF CHINO CITY ATTORNEY'S OFFICE

CONFIDENTIALITY NOTE

The information contained in this facsimile message is legally privileged and confidential information which is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this message in error, please notify us by telephone immediately so that we can arrange for the return of the original documents to us at no cost to you.

LAW OFFICES OF
GUTIERREZ, FIERRO & ERICKSON
A PROFESSIONAL CORPORATION

October 26, 2015

Sent Via Email and Facsimile
boardmember@cvwdwater.com
(909) 476-8032
Amended

Board of Directors
Cucamonga Valley Water District
10440 Ashford St.
Rancho Cucamonga, CA 91730

Re: Chino Basin 2015 Safe Yield Reset Agreement

Dear Members of the Board of Directors:

On behalf of the City of Chino, I am writing to urge you not to approve the Chino Basin 2015 Safe Yield Reset Agreement ("SYRA") that is Item 11 on your agenda for October 27, 2015. Approval of the item would violate the California Environmental Quality Act because the project is not exempt from environmental review under CEQA.

Because it appears that the Cucamonga Valley Water District has not taken even the first step in the environmental analysis (the initial study), approval of the project would be improper under CEQA because it requires a proper analysis of the project's potential impacts on the environment.

The SYRA authorizes several components. However, the potential environmental impacts of these components have not been ascertained or analyzed.

For example, Article 6 of the SYRA prevents the production or sale of 130,000 acre feet of "Excess Carry Over Water" held in storage that is now available for production under the Judgment. This project is equivalent to injecting 130,000 acre feet of water into the Chino Basin. Some potential adverse impacts of this component are:

1. Rising of water levels will compromise hydraulic control of the basin by losing a greater amount of basin water to the Santa Ana River and by inducing less water from the Santa Ana River into the Chino Basin.

2. Reduction of the basin's capacity to store supplemental water from 500,000 to 370,000 acre feet under the Optimum Basin Management Plan.

Cucamonga Valley Water District
October 26, 2015
Page 2 of 3

Next, Article 5 of the SYRA provides for a reallocation of unproduced agricultural water to satisfy one half of the Parties' desalter water replenish obligation contained in the Peace Agreement by depriving the City of Chino and the Jurupa Community Services District from satisfying their land use conversion claims of 21,499 acre feet per year. Some potential impacts of this component are:

1. Reduction of the ability to develop lands approved for development based upon existing allocation of unproduced agricultural water for land use conversions;
2. Reductions in the production of desalter water.

Finally, Article 4 of the SYRA provides for a reduction of Chino Basin water that can be produced from the historic amount of 140,000 acre feet per year to 135,000 acre feet per year. Some potential impacts of this component are:

1. Adverse effects to hydraulic control i.e., loss of groundwater from the Basin to the Santa Ana River due to higher near-stream hydraulic gradients;
2. Increased flooding risk in the lower portions of the Basin due to elevated groundwater levels, e.g., the areas in and around Prado Dam;
3. Reduced ability to store water in the Basin;
4. Increased water quality issues in the Santa Ana River as a result of lost hydraulic control as raised in the Basin Plan;
5. Reduced capacity for replacement water supplies necessary to make up Safe Yield reduction or overproduction could impart their own separate and distinct impacts;
6. Impacts of hydraulic control on the Santa Ana riparian ecosystem.

Under applicable case law, approving an agreement that commits a public agency to an act that may impact the environment is a project that requires environmental analysis. See, e.g., *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, in which the Supreme Court held that an agreement to build senior housing was subject to CEQA analysis, and that the analysis could not be put off until after the approval. Under the agreement, the City agreed to several actions, including granting the developer an option to purchase the property; giving the developer a loan of one million dollars; and giving the city manager the power to make decisions that were not appealable to the city council. The Supreme Court held that because the city committed to these actions, it could not postpone environmental review to a later time; instead, the analysis should have been done before the approval of the agreement. See also *County of Amador v. City of Plymouth* (2007) 149 Cal.App.4th 1089 for a similar ruling.

Because the Safe Yield Reset Agreement also commits the District to specific actions, the environmental analysis should be performed before the agreement is approved.


Cucamonga Valley Water District
October 28, 2015
Page 3 of 3

Please do not approve the agreement that is Item 11 on the agenda for October 27, 2015.

Sincerely,

GUTIERREZ, FIERRO & ERICKSON, A.P.C.
City Attorney

By:


Arturo N. Fierro
Assistant City Attorney

CHINO BASIN WATERMASTER
Case No. RCV 51010
Chino Basin Municipal Water District v. The City of Chino

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 within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On December 11, 2015 I served the following:

1. **JOINDER TO WATERMASTER'S RESPONSE TO THE COURT'S ORDER CONTINUING 12/18/15 HEARING**
2. **DECLARATION OF PAETER E. GARCIA IN SUPPORT OF CUCAMONGA VALLEY WATER DISTRICT'S JOINDER TO WATERMASTER'S RESPONSE TO THE COURT'S ORDER CONTINUING 12/18/15 HEARING**

/ X / BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:

See attached service list: Mailing List 1

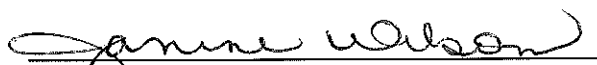
/ / BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/ / 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.

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

Executed on December 11, 2015 in Rancho Cucamonga, California.


By: Janine Wilson
Chino-Basin Watermaster

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