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Attorneys for Jurupa Community Services District

IN THE SUPERIOR COURT OF CALIFORNIA

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]

**JURUPA COMMUNITY SERVICES  
DISTRICT'S NON-OPPOSITION TO ORDER  
CONTINUING HEARING AND BRIEFING  
SCHEDULE, AND MOTION TO CONFIRM  
BRIEFING SCHEDULE**

**I. INTRODUCTION**

Pursuant to the Court's December 2, 2015 Minute Order continuing the December 18, 2015 hearing date on the Watermaster's Motion,<sup>1</sup> Defendant Jurupa Community Services District ("JCSD"), by and through its attorneys of record, hereby submits this non-opposition to the Court's continuance of the hearing to January 22, 2016, and requests that the Court confirm the briefing schedule for the Watermaster's Motion in conformance with the statutory timelines provided in the Code of Civil Procedure. This Non-Opposition to the Court's Order Continuing Hearing and Briefing Schedule, and Motion to Confirm Briefing Schedule is based on the above

<sup>1</sup> As used herein, "Watermaster's Motion" or "Reset Motion" refers to the Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement and Amended Judgment of Restated Judgment.

1 and the accompanying Memorandum of Points and Authorities, the Declaration of Robert E.  
2 Donlan ("Donlan Decl.") filed concurrently herewith, and the pleadings and other papers on file  
3 in this action.

## 4 II. LEGAL ARGUMENT

### 5 A. THE COURT'S DECEMBER 2, 2016 ORDER RESETTNG THE HEARING 6 DATE FOR THE WATERMASTER RESET MOTION ALSO RESET THE 7 BRIEFING SCHEDULE FOR THE RESET MOTION.

8 Pursuant to the Code of Civil Procedure, and in the absence of setting an alternative briefing  
9 schedule, the Court's December 2, 2015 Order for continuance of the Watermaster's Motion to  
10 January 22, 2016 also continued the briefing schedule on the Watermaster Motion. The Code of  
11 Civil Procedure sets the deadlines for parties to file opposition and reply papers based on the date  
12 of the hearing on the motion. (Code Civ. Proc. §1005(b), (c).) While the Court has the authority  
13 to prescribe a shorter time for the parties to file their papers, the Court did not do so in its  
14 December 2, 2015 Order. In the absence of the alternative schedule, JCSD counsel relied on the  
15 statutory schedule provided in the Code of Civil Procedure, as set forth below. Based on the  
16 January 22, 2016 hearing date, the schedule for filing remaining papers in this case is as follows:

17 January 8, 2016: deadline for parties to file and serve opposition papers to  
18 the Watermaster's Motion

19 January 14, 2016: deadline to file and serve reply papers to opposition to  
20 Watermaster's Motion

21 (Code Civ. Proc. §1005(b), (c).)

22 JCSD had planned to appear before Judge Reichert, ex parte, on Friday, December 4<sup>th</sup> to  
23 request a modest continuance of the hearing schedule. As a result, JCSD counsel was in  
24 communication with the Court clerk prior to and immediately after the Court's issuance of its  
25 Order continuing the hearing on the Watermaster Motion to January 22, 2016. In those  
26 communications the clerk confirmed that the schedule for the filing of opposition papers would  
27 be based on the new January 22, 2016 hearing date and Code of Civil Procedure timelines, and  
28

1 specifically that opposition briefs would be due nine court days before the hearing (i.e., on  
2 January 8, 2016. (Donlan Decl. ¶ 9). As discussed below, there is no good cause to depart from  
3 the Court's revised schedule for the Watermaster Motion or to deviate from the briefing schedule  
4 prescribed by the Code of Civil Procedure.

5  
6 To be clear, JCSD has no intent to file any additional motions at this this time, and does  
7 not have an opinion or recommendation regarding the briefing schedule for any new motions that  
8 a party may bring in this matter.

9  
10 **B. THE MODIFIED BRIEFING SCHEDULE PROPOSED BY WATERMASTER**  
11 **WOULD UNJUSTIFIABLY DEPART FROM THE CODE OF CIVIL**  
12 **PROCEDURE SCHEDULE AND UNDULY PREJUDICE JCSD.**

13 Watermaster proposes a briefing schedule that would substantially depart from the schedule  
14 prescribed in the Code of Civil Procedure. Inexplicably, Watermaster now proposes to shorten  
15 JCSD's time to prepare and file an opposition brief by approximately two and a half weeks (from  
16 January 8, 2016 to December 21, 2015), and to extend by more than two weeks Watermaster's  
17 time to prepare a reply to any such opposition briefs. (Code Civ. Proc. §1005(b), (c).) (Donlan  
18 Decl. ¶ 10). Watermaster apparently does not object to the January 22, 2016 hearing date or to  
19 the modest extension of time for the Court to resolve the substantive matters at issue in the  
20 Watermaster Reset Motion. Rather, Watermaster's proposed schedule is intended to limit the  
21 time allowed for Parties concerned about the adverse impacts of the proposed Reset Agreement  
22 to prepare briefs explaining the grounds for opposing the Watermaster's Motion. Inasmuch as the  
23 Watermaster's moving papers describe and present the Reset Agreement as fair and equitable<sup>2</sup> to  
24 the Parties to the Chino Basin Judgment, JCSD is at a loss to understand why the Watermaster is  
25 interested in shortening JCSD's time to prepare an opposition to the Watermaster Motion.  
26

27  
28 <sup>2</sup> The Watermaster's Reset Motion repeatedly states that the "agreement" fairly and equitably addresses the Parties'  
interests. *See e.g.* Watermaster's Motion at 2:15.

1           Moreover, Watermaster counsel has been informed that JCSD is in discussions with other  
2 Parties to determine whether a compromise might be reached that would obviate the need for  
3 JCSD to even oppose Watermaster's Motion. (Donlan Decl. ¶ 11). Only if such negotiations do  
4 not address JCSD's opposition to the Reset Agreement will JCSD prepare opposition papers to  
5 the Watermaster's Motion.  
6

7           Watermaster has an obligation and duty to administer the Chino Basin Judgment in a fair and  
8 equitable manner. There is no equitable reason to deprive the parties to the Judgment –  
9 including those that may be opposed to or adversely impacted by the Reset Agreement and Reset  
10 Motion – adequate time and opportunity to fully brief the issues and file opposition briefs  
11 within a timeframe that is specifically prescribed by the Code of Civil Procedure. At this point,  
12 any other schedule would unduly prejudice JCSD, which has legitimate concerns about the  
13 impact of the proposed Reset Agreement and has relied on the revised briefing schedule that  
14 resulted with the Court's December 2, 2015 Order. Had JCSD known that Watermaster intended  
15 to use the Court's Order continuing the hearing as an opportunity to shorten JCSD's time to  
16 prepare and file opposition briefs, JCSD would have moved forward with its ex parte application  
17 on December 2, 2016 as planned and specifically requested a continuance of the briefing  
18 schedule.  
19

20           **C. BECAUSE THE WATERMASTER'S RESET MOTION PRESENTS COMPLEX**  
21 **AND SUBSTANTIAL QUESTIONS OF LAW AND FACT, AND OTHER**  
22 **PARTIES DESIRE TO FILE ADDITIONAL MOTIONS, THE COURT**  
23 **ORDERED CONTINUANCE AND A BRIEFING SCHEDULE THAT**  
**CONFORMS TO THE CODE OF CIVIL PROCEDURE IS LEGALLY**  
**SUPPORTED AND APPROPRIATE.**

24           A continuance should be granted if failure to allow the extension would possibly prejudice  
25 the party seeking the continuance by depriving that party of the opportunity to fully and fairly  
26 present its case. *Cadle Co. v. WorldWide Hospitality Furniture* (2006) 144 Cal. App. 4<sup>th</sup> 504,  
27 513- 515; *Cohen v. Herbert* 91960) 186 Cal. App.2d 488, 494. The Watermaster's Motion seeks  
28 an order from the Court reallocating priorities to water under the Restated Judgment.

1 The factual, technical, and legal background culminating in the Watermaster's Motion is lengthy  
2 and undeniably complex, and an extension of the hearing and briefing schedule, consistent with  
3 the Court's December 2, 2015 Minute Order and Code of Civil Procedure section 1005, is  
4 appropriate given the level of complexity of the technical and legal arguments presented.  
5 (Donlan Decl. ¶ 2). A continuance should be granted if the party and counsel have been diligent,  
6 but there is insufficient time to prepare, or if there otherwise is good cause to support a  
7 continuance. *Cohen*, 186 Cal.App.2d at 495- 496. This is especially so where, as here, there have  
8 been no previous continuances, the length of the Court ordered continuance is minimal, and there  
9 is an absence of any prejudice to other parties from the continuance and corresponding  
10 adjustment of the briefing schedule. (Cal. Rules of Court, rule 3.1332(d)(2), (3), and (5); Code  
11 Civ. Proc. §1005(b), (c).)

12 The approximately one month continuance of the hearing date, and corresponding  
13 adjustment of the briefing schedule pursuant to the applicable rule of civil procedure, will not  
14 impede progress in this case. Indeed, Watermaster's proposed safe yield reset determination is  
15 more than four years later than required, and is advanced now only as part of an inaptly labeled  
16 "agreement" among certain parties to reallocate water adjudicated to JCSD, in violation of the  
17 Judgment. Although Watermaster has presented its Reset Motion as a request for approval of the  
18 "Reset Agreement," the fact is that only a few Parties have even approved and executed the  
19 agreement presented by the Watermaster to the Court for approval. (Donlan Decl. ¶ 3). In light  
20 of the fact that the "Reset Agreement" has not been approved by a majority of the Parties, the  
21 Court's modest continuance of the hearing date and briefing schedule should not prejudice any of  
22 the Parties nor cause any undue delay resolving this dispute or implementing the reset  
23 determination. (Donlan Decl. ¶ 3).

24 Even if the Court had not continued the hearing and briefing schedule on its own motion,  
25 the continuance is appropriate given the fact that the original hearing date was set without  
26 conferring with counsel for JCSD. (Donlan Decl. ¶ 4). Had JCSD's counsel been consulted,  
27 JCSD would have requested a later hearing date in the first instance to allow appropriate time to  
28 review the record and to prepare a briefing of the issues presented. This Court's proposed

schedule also allows necessary time to explore compromise opportunities with the parties and other agencies, which might possibly eliminate or narrow JCSD's opposition to Watermaster's Motion. The need for additional time was made known to Watermaster's counsel weeks ago, but JCSD's request that the Watermaster stipulate to a modest continuance was rejected. (Donlan Decl. ¶¶ 5, 6). Had the Court not continued the December 18, 2015 hearing date on its own motion, JCSD would have filed an ex parte application for a continuance and, indeed, JCSD was in the process of setting a hearing on its ex parte application when the Court, rendered JCSD's application unnecessary. (Donlan Decl. ¶ 8).

Among the factors to be considered in determining whether there is good cause for a continuance is the availability of alternative means to address the problems giving rise to the motion and any opposition. (Cal. Rules of Court, rule 3.1332(d)(4).) As referenced, above, JCSD has been engaged in ongoing discussions with parties and other agencies to determine whether there are alternative means to resolve JCSD's opposition to the Reset Agreement and Watermaster's Motion, and to mitigate the harm to JCSD's water rights that otherwise will arise from implementation of the proposed Reset Agreement. (Donlan Decl. ¶ 11). Since the filing of the Watermaster's Motion, JCSD has been engaged in discussions with other parties and with Western Municipal Water District of Riverside County ("Western") in particular. (Donlan Decl. ¶ 11). These discussions are ongoing and productive, but additional time is needed to determine whether supplemental projects are viable. If these discussions are successful, the results may either narrow or eliminate JCSD's opposition to the Reset Agreement, and may obviate the need for JCSD to file an opposition to the Watermaster's Motion. (Donlan Decl. ¶ 11).

### III. CONCLUSION

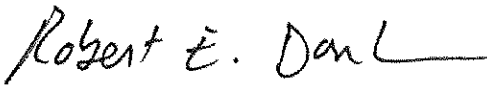
For the reasons stated herein, good cause supports the Court's Order continuing the hearing on the Watermaster's Motion to January 22, 2016, and there is no reason for the Court to depart from the briefing schedule prescribed by the Code of Civil Procedure. (Code Civ. Proc. §1005(b), (c).) The Court's continuance of the hearing and briefing schedule will not prejudice the parties, and even Watermaster does not object to the Court's continuance of the hearing. The

1 modest continuance of the hearing and briefing schedule will avoid prejudice to JCSD and  
2 permit JCSD the appropriate time, given the complexity of issues, to provide a full briefing and  
3 presentation of the facts and legal issues to the Court. The Code of Civil Procedure schedule  
4 also furthers the interests of judicial economy to the extent that JCSD's continued negotiations  
5 with other parties result in removal of JCSD's opposition to the Reset Agreement and  
6 Watermaster Motion.

7 JCSD respectfully supports and concurs with the Court's December 2, 2015 Order  
8 continuing the hearing date on the Watermaster's Motion to January 22, 2016, and respectfully  
9 requests confirmation of a briefing schedule that is in conformance with the Code of Civil  
10 Procedure.

11  
12 Dated: December 11, 2015

ELLISON, SCHNEIDER & HARRIS L.L.P.

13 By   
14 Robert E. Donlan  
15 Elizabeth P Ewens  
16 Craig A. Carnes, Jr.  
17 Attorneys for Defendants  
Jurupa Community Services District

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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]

**DECLARATION OF ROBERT E. DONLAN IN  
SUPPORT OF DEFENDANT JURUPA  
COMMUNITY SERVICES DISTRICT'S NON-  
OPPOSITION TO ORDER CONTINUING  
HEARING AND BRIEFING SCHEDULE, AND  
MOTION TO CONFIRM BRIEFING  
SCHEDULE**

I, Robert E. Donlan, declare:

1. I am an attorney duly licensed to practice before all of the courts of the State of California and am a partner in the law firm Ellison, Schneider & Harris L.L.P., counsel of record for Defendant Jurupa Community Services District ("JCSD"). I have personal knowledge of the facts stated in this declaration, and if called as a witness I could and would competently testify to them under oath. I make this declaration in support of the above-captioned matter.



- 1           2. On September 23, 2015, before the Watermaster took action on a resolution directing  
2           the Watermaster to file a motion regarding 2015 safe yield "Reset Agreement", I  
3           submitted a letter regarding clarification of certain legal questions regarding the  
4           Chino Basin Judgment and the effect of the "Reset Agreement" on JCSD. A copy of  
5           the letter is attached hereto as Exhibit A, and describes in detail the complex legal,  
6           technical, and factual matters that are at issue. Watermaster took action on the  
7           resolution notwithstanding the issues raised in JCSD's requested clarification.
- 8           3. To my knowledge, no more than three Parties have formally approved and executed  
9           the "Reset Agreement." This represents only a small fraction of the Parties to the  
10          Chino Basin Judgment.
- 11          4. On October 23, 2015 the Watermaster filed and served Watermaster's Motion  
12          Regarding 2015 Safe Yield Reset Agreement ("Watermaster's Motion").  
13          Notwithstanding JCSD's known concerns with the Reset Agreement, as stated in my  
14          September 23, 2015 letter, Watermaster set a hearing on the Watermaster's Motion  
15          for December 18, 2015 at 1:30 p.m. without consulting with me or my client. Had I  
16          been consulted, I would have requested a later hearing date to allow for full briefing  
17          of the issues presented as well as additional time for my client to explore alternative  
18          water supply measures that might resolve JCSD's concerns, including those raised in  
19          my September 23, 2015 letter.
- 20          5. On November 19, 2015, I communicated with Scott Slater, counsel for the  
21          Watermaster, to request the Watermaster's stipulation to continue for one month the  
22          hearing on the Watermaster's Motion.
- 23          6. On November 19, 2015, I was advised by Mr. Slater that Watermaster would not  
24          agree to the requested continuance.
- 25          7. On November 20, 2015, at my direction, my paralegal contacted the Court clerk to  
26          determine the Court's availability to hear an ex parte motion for a continuance. My  
27          office was advised that the Court would not be in session from November 23 through

December 1, and that the court clerk and judge would be unavailable during this time for purposes of scheduling a hearing date.

8. Before JCSD had an opportunity to file its ex parte application for a continuance, which I planned to do on December 2, 2015 after the judge and clerk returned from the holiday, the Court on its own motion issued an Order continuing the hearing date on the Watermaster's Motion to January 22, 2016.
9. After reviewing the Court's Order continuing the hearing date, my office contacted the court clerk to confirm that the deadline for the filing of opposition papers would be based on the Code of Civil Procedure schedule. We were advised that January 8 would be the deadline for the filing of opposition briefs based on the new January 22, 2016 hearing date.
10. I have been in communication with the Watermaster's counsel. It is my understanding from those communications that while the Watermaster does not intend to oppose the January 22, 2016 hearing date, the Watermaster intends to ask the Court to shorten the time allowed under the Code of Civil Procedure for JCSD and other parties to file opposition papers to the Watermaster's Motion. Specifically, it is my understanding that the Watermaster proposes that all opposition papers regarding the Watermaster's Motion be filed by December 21, 2015 (rather than January 8, 2016 as per the Code of Civil Procedure), and that reply papers be filed by January 14, 2016. The Watermaster's proposed schedule would shorten JCSD's time to prepare and file an opposition by nineteen (19) days, and would extend by sixteen (16) days the Watermaster's time to prepare its reply to any such oppositions.
11. Since the filing of the Watermaster's Motion, JCSD has been engaged in discussions with some of the Parties and with the Western Municipal Water District to explore measures that might mitigate the water supply and financial impact to JCSD that will result from the implementation of the 2015 Safe Yield Reset Agreement. These discussions are ongoing and productive, but additional time is required to determine

1 whether such measures are viable. If these discussions are successful, the results may  
2 narrow or possibly eliminate JCSD's opposition to the Watermaster's Motion.  
3

4 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
5 true and correct and that this declaration was executed on December 11, 2015 in Sacramento,  
6 California.

7 Dated: December 11, 2015

ELLISON, SCHNEIDER & HARRIS L.L.P.

8  
9  
10 By Robert E. Donlan

11 Robert E. Donlan  
12 Attorney for Defendants  
13 Jurupa Community Services District  
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# **EXHIBIT A**

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ROBERT E. DONLAN

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September 23, 2015

Chino Basin Watermaster Board  
9641 San Bernardino Road  
Rancho Cucamonga, CA 91730

**Re: Proposed 2015 Safe Yield Reset Agreement – Request for Clarification  
Regarding Basin Production Accounting**

Dear Members of the Chino Watermaster Board:

On behalf for the Jurupa Community Services District (JCSD), we would like to thank the Chino Basin Watermaster staff and Board for their efforts to facilitate consensus among the parties to the Chino Basin Judgment on an appropriate recalculation of the Safe Yield of the Chino Groundwater Basin. JCSD also appreciates the work of the other Parties, and in particular the other members of the Appropriative Pool, to work through these complicated issues in a collaborative and principled manner. JCSD staff participated in the facilitation process to the maximum extent possible in light of the other pressing water management issues during this historical drought. JCSD supports the recommendations of the Advisory Committee to reset the Safe Yield of the Chino Basin at 135,000 acre feet per annum (afa). Unfortunately, JCSD cannot support the proposed 2015 Safe Yield Reset Agreement without additional clarification from Watermaster as requested herein.

Specifically, JCSD requests that Watermaster direct counsel and staff to provide a written clarification that, in accordance with Paragraph 10 of Exhibit H to the Judgment and consistent with Paragraphs 5.3(g) and 5.3(h) of the Peace I Agreement and Paragraphs 6.3 and 9.5 of the Watermaster Rules and Regulations, land use Conversion Claims are the highest priority of use of unproduced Overlying (Agricultural) Pool entitlement and, after accounting for any reduction in Safe Yield, must be fully satisfied before any unproduced Overlying (Agricultural) Pool entitlement may be allocated for other purposes of use. Stated differently, we request confirmation that land use Conversion Claims will be satisfied in full each year, to the extent unproduced Overlying (Agricultural) entitlement is available, before any unproduced Overlying (Agricultural) water will be allocated to any other uses, including but not limited to use for the Early Transfer program or Desalter replenishment under the proposed 2015 Safe Yield Agreement. With this written clarification, and of course implementation of the clarification in future Watermaster accounting and assessment packages, JCSD can support the proposed 2015 Safe Yield Reset Agreement.

## **DISCUSSION**

JCSD recognizes and appreciates that this is not a new issue to Watermaster and other Parties to the Judgment. Indeed, there was a significant amount of discussion of this topic prior to and during the facilitation process leading to the Proposed 2015 Safe Yield Reset Agreement.<sup>1</sup> Without the requested clarification, however, JCSD fears that the Proposed 2015 Safe Yield Reset Agreement, like other instruments implementing the Chino Basin Judgment, may be misinterpreted in a manner that reduces the volume of water available to satisfy land use Conversion Claims at a substantial cost to JCSD rate payers. Conversion Claims are valuable water right interests in the Safe Yield of the Chino Basin, conferred by the Judgment consistent with long-standing principles of water law and policy, and JCSD simply cannot support the Proposed 2015 Safe Yield Reset Agreement to the extent it may be construed to reallocate water rights conferred in the Judgment. JCSD respectfully requests that Watermaster staff and counsel set the record straight on this issue at this important juncture, before the Watermaster Board asks the Superior Court to approve the Proposed 2015 Safe Yield Reset Agreement. JCSD further requests that future Watermaster water accounting and assessment packages properly reflect the primacy of Conversion Claims under the Judgment.

### **1. Land Use Conversion Claims are Afforded the Highest Priority Under the Chino Basin Judgment, Ahead of All Uses Other than Agricultural Use.**

The Chino Basin Judgment, Exhibit H, contains a logical and elegant process for allocation of unproduced Overlying (Agricultural) water rights, by assigning those unused water rights to the water suppliers that provide municipal water service to the converted agricultural land. The methodology fully protects agricultural water rights against all other uses, up to 82,800 afa, and redistributes the right to the unproduced agricultural water to the land use conversion agencies with the provision of water service to the converted agricultural land. The Judgment is clear in this regard:

To the extent that ... any portion of the share of Safe Yield allocated to the Overlying (Agricultural) Pool [i.e., 82,800 afa] is not produced, such water shall be available for reallocation to members of the Appropriative Pool... in the following sequence: (1) to supplement water available from Operating Safe Yield to compensate for any reduction in the Safe Yield by reason of recalculation thereof after the tenth year of operation... [and then] (2) ..., to conversion claims as defined...; [and then] (3) to supplement Operating Safe Yield, without regard to reductions in Safe Yield."

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<sup>1</sup> See Sept. 26, 2014 letter from Cities of Ontario and Chino, and JCSD, to Chino Basin Watermaster General Manager; (b) October 16, 2014 letter from City of Ontario to Chino Basin Watermaster General Manager; and (c) City of Chino's August 11, 2015 "Supplement to Status Report on Watermaster's Safe Yield Redetermination and Reset."

(Chino Basin Judgment, Exhibit H, ¶10(a), emphasis added). The Judgment clearly defines the process by which Conversion Claims arise, and the procedures for reallocating the unproduced Overlying (Agricultural) water to and among Appropriative Pool members.

## **2. The Peace I Agreement and the Authorization of Early Transfers did Not Modify Rights to Conversion Claims Set Forth in the Judgment.**

Paragraph 5.3 of the Peace Agreement conceived a process for “early transfer” of unproduced Overlying (Agricultural) water, among other things. Like the Judgment, the Peace Agreement provides a means to allocate unproduced agricultural water to maximize the reasonable and beneficial use of the full Safe Yield of the Basin. In recognition of the then existing circumstance that unproduced Overlying (Agricultural) water exceeded the quantity of Conversion Claims, the Parties stipulated in the Peace Agreement to permit “early transfer” of some of the unproduced Overlying (Agricultural) water to the members of the Appropriative Pool. This early transfer of water could be used or stored, but in either case it was put to beneficial use under the Judgment. The Parties approximated at the time that the volume of unproduced Overlying (Agricultural) water would be 32,800 afa, and also agreed that Early Transfers could be a greater volume if “... the actual quantity of water not produced by the Agricultural Pool for that Fiscal Year remaining after all the land use conversions are satisfied...” is greater than 32,800 afa. (Peace Agreement, ¶5.3(g), emphasis added).<sup>2</sup>

Nothing in this arrangement modified the precept that land use Conversion Claims have priority to unproduced Overlying (Agricultural) water after accounting for any reductions to Safe Yield. In fact, the priority of land use Conversion Claims vis-à-vis Early Transfers is expressly acknowledged in Paragraph 5.3(g), cited above, and further reinforced in Paragraph 5.3(h), which modified the formula for determining and allocating Conversion Claims. Moreover, Paragraph 5.3(h) obligates the Appropriative Pool purveyor to pledge the Conversion Claim to the converted lands, up to two acre-feet per acre, and authorizes the landowner to pursue judicial remedies to enforce the pledge. (Peace Agreement, ¶5.3(h)). The Judgment was subsequently amended to conform the Peace Agreement and Judgement relative to land use Conversion Claim rights and processes.

## **3. Watermaster Rules and Regulations Confirm the Priority of Land Use Conversion Claims**

Watermaster’s own Rules and Regulations confirm the priority of the Conversion Claims to other potential uses of unproduced Overlying (Agricultural) water. (Rules and Regulations, §6.3 and §9.5). Section 9.5 of the Rules and Regulations restates the provisions of the Peace

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<sup>2</sup> The Peace Agreement also approved the use of voluntary agreements between overlying land owners and appropriative purveyors for water service to the overlying land. (Peace Agreement, ¶ 5.3(i)). The Voluntary Agreement program did not in any way alter or diminish the relative priority of Conversion Claims to unproduced Overlying (Agricultural) water under the Judgment.

Agreement relative to Early Transfers and the priority of Conversion Claims, and creates in the owner of the converted land an enforceable entitlement to the Conversion Claim water. (Rules and Regulations, June 2001, § 9.5(b)). Section 6.3 of the Rules and Regulations is similar and, as originally promulgated in 2001, included a provision acknowledging that the Appropriative Pool would be responsible for securing Replenishment Water if Conversion Claims and Early Transfers exceeded 82,800 acre-feet in a year after accounting for Overlying (Agricultural) production. (Rules and Regulations, June 2001, § 6.3(c)).

It has been suggested that a September 21, 2007 amendment to Section 6.3 of the Rules and Regulations, also referenced as Exhibit F to the Peace II Agreement, somehow reprioritized the relative rights of Conversion Claims and Early Transfers. This of course cannot be accurate, as the Rules and Regulations expressly state that they are to be interpreted consistent with the Judgment and Peace Agreement, and that the Judgment and Peace Agreement control in the event of a conflict with the Rules and Regulations. (Rules and Regulations, ¶ 1.3). The Judgment and Rules and Regulations, read together or separately, are unambiguous about the priority of Conversion Claims. But in addition to this express rule of construction, Section 6.3(c) as modified can be read only to allocate any Early Transfer rights to unproduced Overlying (Agricultural) water amongst the Appropriative Pool after Conversion Claims have been fully satisfied. The reason for this construction is simple: the amendments to the Rules and Regulations do not, and do not purport to, modify the priority of Conversion Claims under the Judgment and Peace Agreement relative to all other uses of unproduced Overlying (Agricultural) water, nor do they purport to modify Conversion Claim priority as stated in Section 9.5 of the Rules and Regulations (which were not modified in 2007).<sup>3</sup> Only the Court can modify the quantification and priority of water rights allocated under the Judgment, and can only do so openly and with due process notice to and approval of the Parties (as was done with the amendments to Exhibit II to the Restated Judgment following the Peace Agreement).

### CONCLUSION

JCSD respectfully requests written clarification and confirmation of the paramount priority of land use Conversion Claims to unproduced Overlying (Agricultural) water. JCSD submits that this construction is not only dictated by the Chino Basin Judgment and the Peace Agreement, but is consistent with the equitable basis for allocating the Safe Yield of the Chino Basin as agricultural groundwater use declines and urban water use commensurately increases. JCSD believes that clarification of this construction will affect interpretation about how production of

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<sup>3</sup> It also has been suggested that an October 8, 2010 Order of the Court pertaining to *Procedures to Allocate Surplus Agricultural Pool Water in the Event of a Decline in Safe Yield* had the effect of reprioritizing unproduced Overlying (Agricultural) water as between Conversion Claims and Early Transfers. For the reasons stated herein, that cannot be a reading of this Order. On this issue, the Court Order only sought approval of the allocation of Early Transfer water among Appropriative Pool members pursuant to Exhibit F of the Peace II Agreement; the Order did not, nor could it, subordinate the priority of land use Conversion Claims relative to unproduced Overlying (Agricultural) entitlement.



September 23, 2015

Page 5

the Safe Yield of the Chino Basin is to be accounted for under the Proposed 2015 Safe Yield Reset Agreement, and JCSD therefore seeks this written clarification as necessary to support and approve that Agreement. We also believe that it is critical to establishing clarity as to the future implementation of the Chino Basin Judgment.

These clarifications would logically suggest modifications to Paragraphs 5.2 and 5.3 of the Proposed 2015 Safe Yield Reset Agreement. We do not believe these modifications affect Parties outside of the Appropriative Pool, and thus should not result in significant delays to approval of appropriate amendments to the Agreement.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Robert E. Donlan", with a long, sweeping horizontal line extending to the right.

Robert E. Donlan  
Counsel, Jurupa Community Services District

cc: JCSD Board  
Todd Corbin, General Manager, JCSD  
Peter Kavounas, Chino Basin Watermaster General Manager  
Scott Slater, Chino Basin Watermaster Counsel

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**EXEMPT FROM FILING FEES  
GOV'T CODE § 6103**

5 Attorneys for Jurupa Community Services District  
6

7 IN THE SUPERIOR COURT OF CALIFORNIA

8 COUNTY OF SAN BERNARDINO

9 CHINO BASIN MUNICIPAL  
WATER DISTRICT

10 Plaintiff

11 v.

12 CITY OF CHINO, et al.,

13 Defendants.  
14  
15  
16

CASE NO. RCV 51010

[Assigned for all purposes to the Honorable Stanford  
E. Reichert]

**[PROPOSED] ORDER GRANTING  
DEFENDANT JURUPA COMMUNITY  
SERVICES DISTRICT'S NON-OPPOSITION  
TO ORDER CONTINUING HEARING AND  
BRIEFING SCHEDULE, AND MOTION TO  
CONFIRM BRIEFING SCHEDULE**

17 Jurupa Community Services District's Non-Opposition to the Court's Order Continuing  
18 Hearing and Motion to Adopt Briefing Schedule came before this Court. The Court having read,  
19 reviewed, and considered all pleadings filed in support and response, including all declarations  
20 and exhibits attached thereto:

21 IT IS HEREBY ORDERED that the Court's December 2, 2015 Order continuing the  
22 hearing on the Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement and  
23 Amendment of Restated Judgment ("Watermaster's Motion") is affirmed. The hearing on the  
24 Watermaster's Motion is set for January 22, 2016 at 1:30 p.m. in Department R6. The briefing  
25 schedule shall be as prescribed by the Code of Civil Procedure as follows:

26 January 8, 2016: Last court day to file and serve opposition to the Watermaster's  
27 Motion  
28

{00342797;1}

1 January 14, 2016: Last court day to file and serve reply papers to opposition to  
2 Watermaster's Motion  
3

4 IT IS SO ORDERED.  
5

6 Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Stanford E. Reichert  
Judge of the Superior Court  
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**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. **JURUPA COMMUNITY SERVICES DISTRICT'S NON-OPPOSITION TO ORDER CONTINUING HEARING AND BRIEFING SCHEDULE, AND MOTION TO CONFIRM BRIEFING SCHEDULE**
2. **DECLARATION OF ROBERT E. DONLAN IN SUPPORT OF DEFENDANT JURUPA COMMUNITY SERVICES DISTRICT'S NON-OPPOSITION TO ORDER CONTINUING HEARING AND BRIEFING SCHEDULE, AND MOTION TO CONFIRM BRIEFING SCHEDULE**
3. **[PROPOSED] ORDER GRANTING DEFENDANT JURUPA COMMUNITY SERVICES DISTRICT'S NON-OPPOSITION TO ORDER CONTINUING HEARING AND BRIEFING SCHEDULE, AND MOTION TO CONFIRM BRIEFING SCHEDULE**

/ 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**

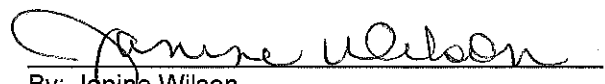
/ / BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/ / 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.

  
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Chino Basin Watermaster

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