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		FEE EXEMPT	
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7			
8	SUPERIOR COURT OF CALIFORNIA		
9	COUNTY OF SAN BERNARDINO		
10			
11	CHINO BASIN MUNICIPAL WATER DISTRICT, Plaintiff	CASE NO. RCV 51010	
12	v.	Assigned for all purposes to the Honorable Stanford E. Reichert	
13	CITY OF CHINO, et al.,	JURUPA COMMUNITY SERVICES	
14	Defendants	DISTRICT'S RESPONSES TO QUESTIONS FOR	
15		CLARIFICATION RE TENTATIVE RULING	
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17			
18	Pursuant to the Court's Order at the September 23, 2016 hearing on Chino Basin		
19	Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement ("SYRA"), Amendment of		
20	Restated Judgment, Paragraph 6 (the "SYRA Motion"), the Jurupa Community Services District		
21	("JCSD") hereby submits the following responses to particular questions for clarification that		
22	were submitted to the Court on or about October 7,	2016. Jurupa's responses to comments	
23	correlate with the particular questions raised in Wate	ermaster's Questions for Clarification in	
24	Final Orders for Watermaster Motion Regarding 2015	Safe Yield Reset Agreement, Amendment	
25	of Restated Judgment, Paragraph 6, and Monte Vista Water District, et al.'s Court-Authorized		
26	Questions Re Court's Tentative Ruling Re Watermasters's Motion Re 2015 Safe Yield Reset		
27	Agreement.		
28	Despite the Court's clear direction during th	e September 23 hearing to not propose	

1 questions about the priority of Land Use Conversion Claims, much of Watermaster's questions 2 are directed to that topic. JCSD therefore resubmits its request that the Court issue a final Order 3 on the priority issue elements of the Tentative Ruling concurrently with its list of final questions 4 for additional briefing. In so doing, the parties and Watermaster will have a clear understanding 5 that the priority issue is not to be further litigated and will not be a basis for further briefing 6 and/or negotiations. A final Order regarding the priority issue will permit the parties and 7 Watermaster to focus on other aspects of the Tentative Ruling that the Court may conclude 8 warrant additional briefing (e.g., Desalter Production/New Yield).

10 Chino Basin Watermaster:

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1) **Desalter Production v. New Yield**

a) No comment – JCSD agrees that clarification of this issue in the Tentative Ruling is appropriate.

14 2 SYRA Condition Precedent

Watermaster asks whether the Court can approve some but not all of the actions or 15 elements of the SYRA.¹ Watermaster, and Watermaster counsel acting as facilitator of the 16 17 FANDA process, elected to bundle the technical or scientific determination of Safe Yield with a 18 suite of other terms and measures designed to induce support from certain parties for Basin 19 management responsibilities. Watermaster's obligation under Section 6.5 of the Rules and 20 Regulations and Paragraph 6 of the Restated Judgment was only to reevaluate the Safe Yield of 21 the Chino Groundwater Basin, and to seek a Judgment amendment if the Safe Yield volume is to 22 be revised. The SYRA Motion and exhibits thereto include ample technical support for the 23 determination that Safe Yield should be reset from 140,000 acre-feet per annum (afa) to 135,000 24 afa, and on that basis the Tentative Ruling approved the reset of the safe yield. The Court clearly 25 has jurisdiction to approve this new Safe Yield volume. The Court also has jurisdiction to

^{27 &}lt;sup>1</sup> Watermaster's questions refer to the SYRA as a "compromise agreement." The SYRA <u>is not</u> a compromise agreement because it was not approved by at least two parties adversely affected by its terms. It is revealing that Watermaster's questions do not acknowledge that consent and approval of all affected parties is also a condition precedent to a compromise agreement.

1 approve other elements of the SYRA, or to not approve elements of the SYRA if they are not 2 supported by sufficient evidence, or are not consistent with the Judgment or otherwise consistent 3 with the law. The Tentative Ruling does this.

Watermaster's questions do not seek clarification about what the Tentative Ruling says, but rather ask the Court to speculate about potential consequences should the Tentative Ruling become a final Order. Watermaster's practice of including condition precedent language in 7 "agreements" (e.g., Peace II and the SYRA) should not be an impediment to the Court's enforcement of the Judgment and issuance of a final Order affirming the Tentative Ruling. Watermaster's questions suggest that the Court's role is to rubber-stamp Watermaster's 10 proposals. It is not. The Court's role is to enforce and implement the Judgment, particularly where Watermaster is unwilling to do so.

Watermaster's questions are not currently before the Court and do not aid to clarify the Court's Tentative Ruling. Watermaster's questions expand and confuse the issues addressed and resolved in the Tentative Ruling. There is no need for additional briefing on these questions in this proceeding.

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Priority of Land Use Conversion Claims

17 Watermaster's questions about the priority of the land use conversion claims ignore the 18 clear and express direction of the Court at the September 23, 2016 Hearing on the SYRA 19 Motion. The Court was clear that it did not want questions on the land use priority issue: "I'm 20 going to identify a couple of items that are not – that the Court, at the current time, *is not going* 21 to reconsider or have parties doing additional questions, and that is with respect to the order of 22 priority and with respect to the Court's failure to grant the Safe Storage Management 23 measures..." (Hearing Transcript, p. 99, ll. 6-11, emphasis added). Additionally, the Court's 24 Minute Order from the September 23, 2016 Hearing requested questions to clarify the Court's 25 Tentative Ruling: "Court directs counsel to submit *questions for clarification in the Tentative –* these are to be submitted by October 7, 2016."² Rather than seeking clarification about what the 26 27 Tentative Ruling says or means, Watermaster's questions ask the Court to speculate about the

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² See also, Hearing Transcript p. 99, ll. 11-15.

1 consequences of the Tentative Order becoming a final Order. Like the "condition precedent" 2 questions, addressed above, these questions are not currently before the Court and do not aid to 3 clarify the Court's Tentative Ruling with respect to the priority issue; rather, the questions are an 4 indirect attempt to question and re-open the Court's ruling on priority. For these reasons, and for 5 the additional reasons set forth below, JCSD respectfully requests that the Court clarify - again -6 in a final Order on the priority issue or in its final list of questions for additional briefing, that 7 there will be no additional briefing regarding the relative priority of conversion claims under the 8 Restated Judgment with respect to Watermaster accounting under its Rules and Regulations and 9 prior court orders.

(a) Watermaster question 3(a) suggests that the Court's clarification of the Land Use
Conversion Claim priority may somehow affect the Peace II measures package.³ While JCSD
strongly disagrees that the Tentative Ruling will have any such effect on other Peace II measures,
this question is irrelevant to interpretation or understanding of the Tentative Ruling, and raises
issues not currently before the Court in the SYRA Motion. There is no need for additional
briefing on this issue.

16 (b) Watermaster's question 3(b) addresses accounting. The Court's Tentative Ruling is 17 very clear about the priority of Land Use Conversion claims under the Restated Judgment, and 18 that Watermaster's Rules and Regulations must conform to the priorities set forth in the Restated 19 Judgment. Watermaster's question about how to account for reallocation water under the 20 Tentative Ruling is disingenuous, as Watermaster has previously provided an answer to the very 21 question it now poses. In its Post-Order Memorandum, dated October 26, 2000, submitted 22 immediately after approval of the Peace Agreement, Watermaster responded to several questions 23 that the Special Referee believed would elucidate further clarification and an appropriate record 24 to aid in future construction of the Early Transfer provisions of Peace I under the reallocation 25 methodology in the Restated Judgment, Exhibit H, ¶ 10(a). (See Watermaster's Response to 26 Order for Additional Briefing, April 1, 2016, Ex. 2, at pp. 8-10). Watermaster's Post-Order

 ²⁷ 3 Similar to the SYRA, Watermaster's characterization of the Peace II package as an "Agreement" or compromise is misleading, as there were parties like JCSD that affirmatively opposed certain aspects of the Peace II measures. This issue has already been briefed by the parties.

1 Memorandum specifically states: "If the Early Transfer of the 32,800 acre-feet results in total 2 Production in excess of the Safe Yield, then the Appropriative Pool will correct the 3 overproduction through means which may include incurring a replenishment obligation. (See, for 4 example, Judgment Paragraph 42 and Judgment Exhibit "I")." (Post-Order Memorandum, p. 9). 5 Watermaster also stated that "'Early Transfer' is essentially the same as the reallocation of 6 unused Agricultural Pool Water" (the terminology that is used in the Restated Judgment, Exhibit 7 H, Paragraph 10(a)). (Post-Order Memorandum at p. 10). Finally, Watermaster addressed this 8 question in practice every year from 2000 to 2007, in its assessment accounting spreadsheets.

9 Watermaster knows how to reconcile the Early Transfer provisions approved in the Peace 10 I Agreement with the priority schedule set forth in the Restated Judgment, Exhibit H, Paragraph 10(a). This question has been exhaustively briefed and fully considered and analyzed by the 12 Court in the Tentative Ruling, and there is no need for additional briefing on this issue.

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Retroactive Application

The Court's Tentative Ruling is very clear about the priority of Land Use Conversion 15 claims under the Restated Judgment, and that Watermaster's Rules and Regulations must 16 conform to the priorities set forth in the Restated Judgment. Watermaster's question about the 17 effect of the Tentative Ruling on Watermaster Resolution 2010-04 is irrelevant and designed to 18 expand and confuse the issues, and requires the Court to speculate about the consequences of the 19 Tentative Order becoming a final Order. The question does not aid in understanding the Tentative Ruling, and there is no need for additional briefing on this issue. 20

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22 Monte Vista Water District

23 1) No comment

24 2) No comment

25 3) This question is irrelevant and should be disregarded by the Court. The Tentative Ruling 26 addresses the priority of Conversion Claims as defined and quantified in the Restated Judgment, 27 as amended by Court order in 2000 as part of the Peace I process.

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1	There is no need for clarification of the Tentative Ruling on this point, and no need for additional	
2	briefing.	
3		
4	Dated: October 28, 2016	Respectfully submitted,
5		ELLISON, SCHNEIDER & HARRIS L.L.P.
6		By Robert E. Don L
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8		Attorneys for Defendant
9		Jurupa Community Services District
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	JCSD'S RESPONSES TO QUESTIONS	6 FOR CLARIFICATION RE TENTATIVE RULING

1	PROOF OF SERVICE	
2	I declare that:	
3	I am employed in the County of Sacramento, State of California. I am over the age of eighteen	
4	years and am not a party to the within action. My business address is ELLISON, SCHNEIDER	
5	& HARRIS, L.L.P.: 2600 Capitol Avenue, Suite 400; Sacramento, California, 95816. On	
6	October 28, 2016, I sent the foregoing document described as:	
7	JURUPA COMMUNITY SERVICES DISTRICT'S RESPONSES TO QUESTIONS FOR CLARIFICATION RE TENTATIVE RULING	
8		
9	via electronic mail in portable document format ("PDF") to Chino Basin Watermaster: E-Mail: <u>courtfilings@cbwm.org</u> for filing with the Court and service by Watermaster staff on parties to	
10	the Judgment.	
11 12	I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 28, 2016, at Sacramento, California.	
12	ALLCAL	
13	Patty Clause	
15	Patty Slomski	
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	PROOF OF SERVICE	

<u>CHINO BASIN WATERMASTER</u> 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 October 28, 2016 I served the following:

- 1. JURUPA COMMUNITY SERVICES DISTRICTS' RESPONSES TO QUESTION FOR CLARIFICATION RE TENTATIVE RULING
- /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.
- <u>/X</u>/ 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 October 28, 2016 in Rancho Cucamonga, California.

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