

FEE EXEMPT

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Filing Fee Exempt Per
Government Code § 6103

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

11 CHINO BASIN MUNICIPAL WATER
DISTRICT,

12 Plaintiff,

13 vs.

14 CITY OF CHINO, et al.

15 Defendants.

CASE NO. RCV 51010

[Assigned for All Purposes to the
Honorable MICHAEL GUNN]

**CITY OF CHINO HILLS' EX
PARTE NOTICE FOR AN ORDER
CONTINUING THE MOTION
FOR APPROVAL OF
WATERMASTER'S LONG TERM
PLAN FOR THE MANAGEMENT
OF SUBSIDENCE**

Filed: October 16, 1998

22 TO WATERMASTER, TO ALL PARTIES AND TO THEIR ATTORNEYS OF
23 RECORD:

24 PLEASE TAKE NOTICE THAT on August 27, 2007, at 8:30 a.m. in
25 Department R8 of the above-entitled Court, located at 8303 North Haven Avenue,
26 Rancho Cucamonga, California, the City of Chino Hills will appear and apply for an Order
27 continuing the Motion for Approval of Watermaster's Long Term Plan for the
28

1 Management of Subsidence ("Motion"). In its application, the City will seek to continue
2 the hearing date, currently scheduled for hearing on September 13, 2007, for a period of
3 not less than 120 days on the grounds that the Long Term Plan proposed by Watermaster
4 involves substantial contractual interests that greatly affect the City of Chino Hills and its
5 ability to provide potable water to its residents.

6
7 DATED: August 23, 2007

MARK D. HENSLEY, CITY ATTORNEY
CITY OF CHINO HILLS; and
JENKINS & HOGIN, LLP

8
9
10 By 

11 MARK D. HENSLEY
Attorneys for CITY OF CHINO HILLS

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO
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11 CHINO BASIN MUNICIPAL WATER
DISTRICT,

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CASE NO. RCV 51010

[Assigned for All Purposes to the
Honorable MICHAEL GUNN]

EX PARTE APPLICATION TO
CONTINUE HEARING ON
WATERMASTER MOTION FOR
APPROVAL OF LONG TERM PLAN

Date: August 27, 2007

Time: 8:30 a.m.

Dept.: R8

Filed: August 24, 2007

21 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

22 PLEASE TAKE NOTICE that on August 27, 2007, at 8:30 a.m. in Department
23 R8 of the above-entitled Court, located at 8303 North Haven Avenue, Rancho
24 Cucamonga, California, the City of Chino Hills ("City" or "Chino Hills") will and hereby
25 does apply *ex parte* for an Order continuing the Motion for Approval of Watermaster's
26 Long Term Plan for the Management of Subsidence ("Motion"), currently scheduled for
27 September 13, 2007, for a period of not less than 120 days.
28

1 Good cause exists for this application because the Long Term Plan under
2 consideration in the Motion involves substantial contractual interests that greatly affect the
3 City of Chino Hills and its ability to provide potable water to its residents. Additionally,
4 the Motion is the culmination of a process that took nearly eight years to complete. A
5 continuance will also allow the City time to review the voluminous documents and
6 information that exist relative to the issues raised by the Motion, conduct discovery and
7 prepare an opposition to the Motion as well as prepare for an evidentiary hearing on the
8 Motion. Discovery will allow the parties to refine the issues so that court resources are
9 not spent unnecessarily on issues that could have been vetted in the normal discovery
10 process. Further, Watermaster has, in essence, mislabeled a Complaint for Declaratory
11 Relief as a "Motion" in that it asks for the Court to make a determination of contractual
12 rights under the Peace Agreement and Optimum Basin Management Plan, and the City
13 needs adequate time to respond to this Complaint as it would any other Complaint.
14 Finally, the Watermaster breached two separate confidentiality provisions by including
15 certain information in the Motion. Chino Hills needs adequate time to file a separate
16 action with the Court to seek a declaration with respect to the City's rights and obligations
17 regarding this breach by the Watermaster.

18 This Application is brought pursuant to California Rules of Court, Rules 3.1200 *et*
19 *seq.* and is based upon this written application, the attached Memorandum of Points and
20 Authorities, the Declaration of Mark D. Hensley, the pleadings and other documents on
21 file herein, including the Interim Plan for the Management of Subsidence ("Interim Plan"),
22 the Peace Agreement, the Optimum Basin Management Plan and any other such evidence
23 as the Court deems appropriate at the hearing on the application.
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1 **I. GOOD CAUSE EXISTS TO CONTINUE THE HEARING DATE FOR**
2 **WATERMASTER'S MOTION**

3 On August 2, 2007, the Chino Basin Watermaster filed its Motion for Approval of
4 Watermaster's Long Term Plan for the Management of Subsidence (the "Motion"). In its
5 Motion, Watermaster asks this Court to make a number of specific factual findings and,
6 based thereon, "direct the Watermaster to proceed in accordance with the Long Term Plan
7 as presented." Motion at 17:4-5. Chino Hills finds the proposed Long Term Plan ("LTP")
8 and the requested findings deficient in several respects and inconsistent with the
9 contractual rights of Chino Hills under the Peace Agreement and the Optimum Basin
10 Management Plan ("OBMP").

11 Finally, after eight years and expenditures in excess of 3.3 million dollars (Motion,
12 Exhibit K, Rojo Declaration) Watermaster has developed its LTP to manage subsidence in
13 the MZ1 area of the Chino Basin.¹ The proposal encompassed in the Long-Term Plan
14 asks Chino Hills to acquiesce in the continued "voluntary" curtailment of water
15 production from managed wells in the MZ1.² As Watermaster concedes, however, this is
16 water Chino Hills is entitled to withdraw and never agreed to forbear permanently.

17
18 ¹ The creation of the LTP was a result of an obligation placed on the Watermaster through the Peace
19 Agreement and OBMP. Chino Hills and Chino were both signatories to the Peace Agreement and
20 supported the development of a LTP. While the Motion does accurately state that the Cities of
21 Chino Hills and Chino did ultimately engage in litigation regarding the subsidence issue (Motion
22 at 4-5), this litigation was largely caused by the failure of the Watermaster to timely undertake its
23 obligations. Watermaster seems to imply that the LTP is a result of the litigation between Chino
24 and Chino Hills. Motion at 4:7- 7:11. The obligation of the Watermaster to create the LTP
25 predated the litigation between the Cities and is an attempt to distract the Court by trying to place
26 a "black hat" on Chino Hills rather than focus on the merits of the proposed LTP and the failure
27 by Watermaster to prepare it in a timely and adequate fashion. This failure has now resulted in
28 this expedited hearing process that prejudices the rights of Chino Hills.

24 ² Watermaster maintains that subsidence is still occurring within the Chino Basin generally and
25 the MZ1 specifically. See Proposed LTP at 1-2. Despite this admission, and despite the mandate
26 to abate subsidence within Management Zone 1 (MZ1), Watermaster's LTP proposal is
27 completely voluntary and "will not require any specific action by any party under the theory that
28 each producer is best suited to weigh the risks and benefits of producing groundwater under the
identified conditions." Motion, Exhibit H (The June 28, 2007 Staff Report, attached to the
Motion as Exhibit H, contains no page numbers. Hence, we refer this Court to the Section 1 in
the heading entitled "Long Term Plan").

1 Motion at 6:5-9. It is the City's position that the LTP does not meet the goals and
2 requirements of the Peace Agreement and OBMP – to prevent further subsidence.
3 Moreover, it does not accurately reflect the causes of subsidence and does nothing to
4 address how production should be shifted, if at all, in the future to avoid additional
5 subsidence. In short, the LTP is inadequate to accomplish the very purposes for which it
6 was supposed to be developed. Additionally, the City disputes the Watermaster's
7 assertion that the City, pursuant to section 5.4(e) of the Peace Agreement, is not entitled to
8 credit against future Watermaster assessments or reimbursements for reducing production
9 from its existing wells.

10
11 **A. Thirty Days Is Inadequate Time for The City To Respond To**
12 **Watermaster's Motion Because The Motion Is Actually A**
13 **Complaint For Declaratory Relief**

14 Watermaster now asks this Court to approve the LTP and, moreover, make a
15 finding, among others, that the LTP “does not trigger the reimbursement provision of
16 section 5.4(e) of the Peace Agreement.” Motion at 17:2-3.³ If the court makes this
17 finding, it could cost the City upwards of one million dollars. Declaration of Mark D.
18 Hensley (“Declaration”) at ¶ 6. Watermaster, however, makes its request after providing
19 less than 45 days' notice. The request for these determinations is the equivalent of filing a
20 complaint for declaratory relief by which Watermaster asks this Court to make
21 determinations regarding declare Chino Hills' significant contractual rights, as well as
22 those of other parties to the Peace Agreement. *See* Code of Civil Procedure §1060 (“Any
23 person interested . . . under a contract may. . . bring an action or cross-complaint in the
24

25 ³ The City understands that the Court after numerous failures by Watermaster to timely fulfill a
26 number of its obligations, including filing deadlines, ordered the Watermaster to file the LTP by
27 the end of July and to set a hearing before the end of September. However, Watermaster's failure
28 to timely develop the Interim Plan, investigate subsidence issues, and develop the LTP should not
prejudice Chino Hills' right to protect its interests and result in Chino Hills' receiving inadequate
time to respond to the motion and conduct a meaningful evidentiary hearing. Additionally,
neither the Chino Hills nor the Court could foresee whether these time periods originally called
for by the Court would be adequate and fair until the actual Motion was filed.

1 superior court for a declaration of his or her rights and duties . . . **including a**
2 **determination of any question of construction or validity arising under the . . .**
3 **contract.”** [emphasis added]. Case law addresses the issue of mislabeling declaratory
4 relief actions. A party cannot circumvent the declaratory relief procedures by labeling
5 their request a motion instead of a complaint. See *Bank of America National Trust and*
6 *Savings Association v. Gillett* (1940) 36 Cal.App.2d 453, 455 (“forms of pleading are of
7 no importance if the pleading in substance states the facts showing the relief to which the
8 pleader is entitled”).

9 The City requests that this Court ignore the Watermaster’s title of “Motion” and
10 instead treat this action as a complaint for declaratory relief and accord the City
11 appropriate time to gather evidence, depose and cross-examine the Watermaster’s
12 witnesses and experts, prepare opposition papers and prepare for an evidentiary hearing
13 and otherwise take the other necessary steps to meaningfully oppose Watermaster’s
14 sweeping requests contained in the Motion. By filing the Motion on August 2, and setting
15 the hearing for September 13, the Watermaster has provided Chino Hills less than thirty
16 calendar days to prepare an Opposition and just slightly more time to prepare for and
17 conduct a full evidentiary hearing. The City vehemently opposes the LTP and the
18 requested findings. Certainly, due process requires a reasonable time period to engage in
19 the aforementioned normal litigation activities.

20 **B. Thirty Days Is Inadequate Time for The City To Respond To A Long-**
21 **Term Plan That Took Eight Years To Create**

22 The City has significant contractual interests at stake that Watermaster and the
23 proposed LTP seemingly ignore, for example: (i) whether the LTP is adequate and
24 complies with the requirements of the Peace Agreement and OBMP, including but not
25 limited to the determination regarding the causes of subsidence and the recommended
26 actions to mitigate the subsidence that Watermaster believes is a continuing problem; and
27 (ii) whether Section 5.4 (e) of the Peace Agreement obligates Watermaster to credit or
28 reimburse the Chino Hills for lost production. The City is in the process of reviewing

1 approximately a decade of documents, sending out discovery requests and deposition
2 subpoenas and notices (it appears the City will take between approximately three to six
3 depositions depending on how the Court ultimately addresses the breach of confidentiality
4 issue discussed in Section C below). Declaration, ¶ 8. The City will then need time to
5 receive and review responses to discovery and deposition transcripts in order to prepare its
6 opposition to the Motion and ultimately prepare for the evidentiary hearing before the
7 Court. Further, the City needs time for its expert to complete his analysis and study of the
8 LTP and address the deficiencies present in the LTP and show there are reasonable ways
9 to prepare a better LTP. Declaration, ¶12. The City estimates that at a minimum,
10 assuming the parties are cooperative in the discovery process, it will need at least a 120
11 day continuance to complete these activities. Declaration, ¶ 8.

12 The Judgment entitles parties to an evidentiary hearing *de novo* before this Court
13 to challenge the adequacy of the LTP and the findings the Watermaster is requesting, a
14 point Watermaster concedes in its Motion. Motion at 2:11-15. Therefore, at a minimum,
15 Watermaster agrees that Chino Hills is entitled to present evidence to the Court as called
16 for in Paragraph 31 (d). The best way for the City to gather that evidence and refine it for
17 presentation to the Court is through the normal discovery process.

18 If the Court grants Chino Hills continuance request and the City is permitted to
19 engage in the normal discovery process, then this process may result in the parties not
20 needing to call witnesses during the evidentiary hearing on the Motion. At a minimum, it
21 will certainly make for a more orderly and efficient hearing process before the Court.
22 Otherwise, the City will be forced to subpoena a number of witness and voluminous
23 documents and then review these documents while examining witnesses. Declaration, ¶ 8.
24 This process will likely take days, be enormously inefficient and place the City at an
25 unfair disadvantage in the process since the Watermaster controls the key witnesses and
26 documents. Declaration, ¶ 8.

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1 In sum, defending against a “declaratory relief action” in less than 45 days is
2 undeniably a very expedited and unfair judicial process. Accordingly, the City’s request
3 for a mere 120 days is more than reasonable and should be granted.

4 **C. The Attorneys Directly Handling This Matter For Chino Hills On This**
5 **Case Have Not Remained The Same Over the Course of Eight Years, So**
6 **Additional Time Is Needed For Them To Come Up To Speed And Assist**
7 **the City in Responding to the Motion**

8 In addition to the large volume of documents and information involved, the City
9 has not had the benefit, as has Watermaster, of staffing this case with the same attorneys
10 for the last eight years. While the City Attorney has remained the same, the other
11 attorneys directly handling this matter have changed in the normal course of events.
12 (Declaration, ¶ 11.) This also is a factor in granting the City it’s continuance request.

13 **D. Chino Hills Needs Additional Time to Assess What it Perceives As**
14 **Breaches of the Interim Plan**

15 Watermaster did not simply present its LTP with an explanation of how it complies
16 with the Judgment, Peace Agreement, and the OBMP. Instead, much of Watermaster’s
17 Motion is devoted to attacking Chino Hills and its role in the process and, in doing so, it
18 utilized information that the parties agreed in writing to keep confidential. Watermaster’s
19 Motion is littered with these colorful yet inaccurate characterizations that involve
20 protected communications of Chino Hills and its participation in the LTP’s preparation.
21 In short, Watermaster directed its Motion at the City of Chino Hills in what appears to be
22 an effort to color the Court’s view of the City’s objections to the LTP.⁴

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27 ⁴ It is noteworthy that most of these allegations are not supported by any documents and that
28 Watermaster did not attach any declarations to its Motion for purposes of introducing these
allegations/statements as evidence. Accordingly, it is not clear who Watermaster will call as
witnesses at the hearing to testify as to these statements. The City is at a disadvantage with regard
to responding to these allegations when there is no evidence cited that the City can respond to.

1 **1. Watermaster Violated the Interim Plan by Impermissibly Using**
2 **Privileged Communications to Disparage Chino Hills**

3 Watermaster improperly relied on privileged statements in express violation of the
4 Interim Plan, which provides that all written or oral communications made between
5 members of the Technical Group and to Watermaster during meetings of the Technical
6 Group are privileged communications protected from disclosure under Evidence Code
7 §1152. *See* Interim Plan, §1.c. and Exhibit A. In the Motion, Watermaster not only
8 revealed a one-sided and slanted view of the City's concerns and ongoing objections made
9 in Technical Group meetings, but did so with an obvious intent to color this Court's view
10 of Chino Hills' LTP concerns. This conduct places the City in the untenable position of
11 either violating the same confidentiality provision when defending itself against the
12 Watermaster's allegations or not responding to the allegations and leaving the Court no
13 choice but to believe the Watermaster's allegations.

14 These violations are pervasive and numerous. Most glaring is Watermaster's
15 discussion of Chino Hills' alternative LTP proposal and the Technical Committee
16 suspension of its meetings to allow the City of Chino Hills to submit its proposal. Motion
17 at 7:16-18. Watermaster accuses the City of being non-responsive to imply that it was
18 Chino Hills' fault for delaying the Technical Committee meetings. Motion at 7:22-28.
19 What purpose is served by bringing these discussions to the Court? How do they relate to
20 the adequacy of the LTP?

21 These questions are particularly interesting in light of Watermaster's prayer that the
22 Court find that Watermaster has no obligation to provide credits to the City for its lost
23 production. If the Watermaster did not believe the City deserves any credits, why was it
24 allegedly wasting its or the City's time waiting for a proposal from the City? These
25 statements serve only to provide a one-sided interpretation of confidential
26 communications that Watermaster used in an attempt to discredit Chino Hills valid
27 objections to the LTP. More importantly, these statements violate the express
28 confidentiality provisions of the Interim Plan. For the City to properly defend against

1 these accusations, the City itself must also violate these confidentiality provisions (and
2 consequently the rights of the non-offending signatories to the Interim Plan) by revealing
3 email exchanges, conversations, letters and other communications that paint a much
4 different picture than Watermaster's. Declaration, ¶ 7.

5 **2. Watermaster Also Violated a Separate and Distinct**
6 **Confidentiality Provision from the Interim Plan by**
7 **Impermissibly Using Chino Hills Voluntary Forbearance as**
8 **Evidence**

9 In addition to the above-described violations, the Watermaster breached the Interim
10 Plan provision that prevents parties from asserting another party's voluntary curtailment
11 of production against them in subsequent proceedings. *See* Interim Plan at §7(a). As the
12 Court knows, the Interim Plan called for voluntary modifications to the City's
13 groundwater production patterns in the MZ1. *See* Interim Plan, at p. 1. Now, the LTP
14 simply proposes that the producers in the MZ1 continue to voluntarily curtail production
15 from "managed wells" in the MZ1.³ *See* LTP at p. 2-1. In this connection the Watermaster
16 makes numerous statements that violate the confidentiality provision, for example:

17 Staff does note that it has been nearly eight years since deep zone
18 pumping was identified in the Phase I Report as the potential source of
19 subsidence in MZ-1 and it is reasonable to conclude that if the parties had
20 concerns regarding the provision of supplemental water to off-set
21 groundwater production, that they would take whatever actions required to
22 redress the problem.

23
24 ³It should not go unnoticed that of the nine active, managed wells identified by Watermaster for
25 voluntary curtailment, eight belong to Chino Hills. *See* LTP at Table 2-1. The only other
26 managed well belongs to the California Institute for Men. Hence, Watermaster's proposed LTP,
in essence, asks the City of Chino Hills to voluntarily reduce production by 6500 gpm. The only
other party to the judgment being asked to curtail any production is the CIM, which Watermaster
asks to reduce production by 600 gpm.

27 Also notably missing from the LTP, however, is any provision of substitute water. It was
28 the availability of substitute water that allowed the City of Chino Hills to forbear 1500 acre-feet
of water per year during the Interim Plan period.

1 Motion at 14: 23-28. The Motion also states:

2 No Producer is compelled by Watermaster to move a groundwater
3 production facility. In fact, Watermaster has seen no evidence to date
4 suggesting any necessity to move any ground water facilities.

5 Motion at 16:15-18.

6 The confidentiality provision clearly states that the parties' actions in curtailing
7 production could not be used against the parties in subsequent court proceedings. Both of
8 the above statements are blatant violations of this provision.

9 Additionally, the crux of Watermaster's LTP is actually based upon confidential
10 information. The reasoning used by the Watermaster is as follows:

11 Chino Hills voluntarily curtailed production and inelastic
12 subsidence in the MZ1 began to remediate. Chino Hills must
13 therefore be the cause of subsidence. Hence, Chino Hills must
14 voluntarily curtail production from managed wells in the MZ1.

15 Watermaster is using Chino Hills' temporary and voluntary modification of
16 groundwater production as the basis for supporting its recommendations in the LTP that
17 the City continue to curtail its production from its wells. All of the above confidential
18 information is ultimately used by Watermaster to convince the Court to find that the LTP
19 does not "trigger the reimbursement provision of section 5.4(e) of the Peace Agreement."

20 Motion at 17:2-3.⁵

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27 ⁵ Section 5.4 states clearly that "[a]ny Producer that Watermaster compels to move a groundwater
28 Production facility that is in existence on the Date of Execution shall have the right to receive a
credit against future Watermaster assessments or reimbursements up to the reasonable cost of the
replacement groundwater Production facility." Peace Agreement at §5.4(e).

1 **3. Before the City Can Respond to the Motion, the Court Will Need**
2 **to Rule on a Motion Filed By the City Seeking Court Direction**
3 **and Action Regarding the Watermaster's Breach of the**
4 **Confidentiality Provisions.**

5 In light of the Watermaster's purposeful violation of the Evidence Code and
6 express provisions of the Interim Plan, the City does not believe that it can file a response
7 to the Motion that fully and adequately defends itself without filing a declaratory relief
8 action regarding the Watermaster's use of confidential information. The alternative would
9 require Chino Hills to agree to waive its own rights under the confidentiality agreements
10 (a position that it should not have been placed in pursuant to the confidentiality
11 provisions) *and* obtain waivers of all the other parties to the Interim Plan. Accordingly,
12 the City is also requesting that the Court continue the hearing date on the Motion to allow
13 the City to file an action with the Court on the this issue and receive a ruling from the
14 Court as to how the parties should proceed in light of the Watermaster's failure to adhere
15 to the confidentiality agreement. The City intends to do so by August 29, 2007.

16 Declaration, ¶7. Further, depending on how the Court rules on this issue, there may be
17 more discovery needed including depositions and document requests, to obtain all of the
18 information necessary to respond and refute the statements in the Motion that in the City's
19 view are misleading to this Court.

20 **II. THE CITY ATTEMPTED TO RESOLVE THIS ISSUE INFORMALLY**

21 It should also be noted that the City of Chino Hills attempted without success to
22 secure a stipulation continuing the pending Motion. Recognizing the need for additional
23 time to respond to Watermaster's Motion, the City, through City Attorney Mark Hensley,
24 called counsel for the Watermaster on the date the City received the Motion. Declaration,
25 ¶ 9. Mr. Hensley stated that the City believed the confidentiality provisions had been
26 violated by Watermaster's filing of the Motion and that a continuance of the hearing was
27 necessary to allow Chino Hills adequate time to respond to the Motion. Declaration, ¶ 9.
28 Since that time, the parties have actively engaged in discussions regarding the hearing date

1 and other related matters. Declaration, ¶ 9. To date, the parties have been unable to each
2 agreement on these issues. Declaration, ¶ 9.

3 Certainly, good cause for a continuance exists where it is shown that the
4 continuance is sought for the purpose of allowing adequate time to prepare. See *Oliveros*
5 *v. County of Los Angeles* (2004) 120 Cal.App.4th 1389, 1395 (the trial judge must
6 exercise his discretion with due regard to all interests involved, and the refusal of a
7 continuance which has the practical effect of denying the applicant a fair hearing is
8 reversible error).

9 **III. CONCLUSION**

10 The decision to grant a continuance falls within the sound discretion of this Court.
11 This discretion must be exercised, however, with due regard to all of the interests
12 involved. The proposed LTP based upon flawed analysis and conclusions singles out
13 Chino Hills to bear the burden of solving the subsidence problem in the MZ1 without
14 providing an alternative source of water, without providing credits and without
15 reimbursement. The City does not feel that it can prepare an adequate response to the
16 Motion in the short time frame provided by Watermaster.

17 Given the substantial interests of the City of Chino Hills, and given that this
18 Motion is in fact a Complaint for Declaratory Relief that encompasses a process that took
19 nearly eight years to complete, a continuance of the hearing for 120 days is reasonable.
20

21
22 DATED: August 24, 2007

MARK D. HENSLEY, CITY ATTORNEY
CITY OF CHINO HILLS; and
JENKINS & HOGIN, LLP

23
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25 By: 

MARK D. HENSLEY
Attorneys for CITY OF CHINO HILLS
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9 Attorneys for Defendant, CITY OF CHINO HILLS

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN BERNARDINO**

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 vs.

17 CITY OF CHINO, et al.

18 Defendants.

CASE NO. RCV 51010

[Assigned for All Purposes to the
Honorable MICHAEL GUNN]

**DECLARATION OF MARK D.
HENSLEY**

Filed: October 16, 1998

19 **DECLARATION OF MARK D. HENSLEY**

20
21 I, MARK D. HENSLEY, declare as follows:

22 1. I am over the age of 18 and not a party to this action. I am an attorney
23 licensed to practice law before all courts of the State of California. I am the City Attorney
24 for the City of Chino Hills ("Chino Hills") and a partner with the law firm of Jenkins and
25 Hogin, LLP. The facts stated herein are true and correct of my own personal knowledge.
26 If called to testify regarding the facts herein, I could and would so testify.

27 2. This declaration is submitted in support of Chino Hills' *Ex Parte*
28 Application to Continue Hearing on Watermaster Motion for Approval of Long Term Plan

1 ("LTP") for an Order Continuing Trial and Related Dates ("Watermaster's Motion"), filed
2 concurrently herewith. In its Motion, Watermaster is asking for the Court's approval of
3 and to proceed in accordance with the Long Term Plan.

4 3. The hearing on Watermaster's Motion is currently scheduled on September
5 13, 2007. Under Code of Civil Procedure §1005, Chino Hills' Opposition is due on
6 Thursday, August 30, 2007.

7 4. As this Court knows, the Long Term Plan ("LTP") is the culmination of
8 almost eight years of study, meetings and negotiation. The process generated enormous
9 volumes of paperwork, including reports and studies, and extensive pleadings. The
10 documentation in my office alone fills at least 10 banker's boxes, and I do not have in my
11 possession every document relevant to these proceedings.

12 5. The City of Chino Hills intends to vehemently oppose the proposed LTP as it
13 forces Chino Hills alone to bear the burden of subsidence in the MZ1. The City does not
14 feel that it can prepare an adequate response to the Motion in the short time frame
15 provided by Watermaster. If the September 13, 2007 date were to stand, the City would
16 have less than a month to prepare its written opposition and prepare for an evidentiary
17 hearing on (i) a document that was eight years in the making; (ii) the Watermaster's
18 "Proposed Finding and Order" that go well beyond just submitting the LTP to the Court,
19 and really is a request for declaratory relief; and (iii) respond to numerous allegations
20 regarding the conduct of Chino Hills for which in many instances there are no references
21 to evidence and/or declarations to support the allegations.

22 6. Of tremendous import is the fact that Watermaster is asking the Court to
23 make a finding that Section 5.4(e) of the Peace Agreement is not implicated by the LTP
24 and, although Chino Hills is asked to curtail production by up to 6500 gpm, it is not
25 entitled to credits and reimbursements. This decision could impact the City by \$1,000,000
26 or more.

27 7. The City's opposition and preparation for the evidentiary hearing will
28 require that the City obtain guidance from this Court on how to proceed with regard to two

1 breaches of the Interim Plan. First, Watermaster improperly and inaccurately reported
2 privileged statements in its Motion in express violation of confidentiality provisions
3 contained in the Interim Plan, which provides that all written or oral communications
4 made between members of the Technical Group and to Watermaster during meetings of
5 the Technical Group are privileged communications protected from disclosure under
6 Evidence Code §1152. Second, Watermaster is attempting to assert the City's voluntary
7 curtailment of production under the Interim Plan against the City in its Motion. For the
8 City to properly defend against these accusations, the City itself must also violate these
9 confidentiality provisions (and consequently the rights of the non-offending signatories to
10 the Interim Plan) by revealing email exchanges, conversations, letters and other
11 communications that paint a much different picture than Watermaster's. The City intends
12 to file a declaratory relief action with this Court by July 31, 2007 to address these issues.

13 8. The City intends to take limited discovery with regard to the substance of
14 the LTP and as to each of these asserted breaches. The City is in the process of reviewing
15 approximately a decade of documents, sending out discovery requests and deposition
16 subpoenas and notices (it appears the City will take between approximately 3 to 6
17 depositions depending on how the Court ultimately addresses the breach of confidentiality
18 issue). The City fully anticipates that these issues can be resolved within 120 days if the
19 parties cooperate during the discovery process. This process may result in the parties not
20 needing to call witnesses during the evidentiary hearing on the Motion. If the City is not
21 permitted to engage in the normal discovery process, the City intends to subpoena a
22 number of witness and voluminous documents for the hearing and then review these
23 documents while examining witnesses. This would be inefficient and place the City at an
24 unfair disadvantage in the process since the Watermaster controls the key witnesses and
25 documents.

26 9. Upon receiving Watermaster's Motion, I immediately contacted Scott Slater,
27 the General Counsel for the Watermaster to address two issues. First, I recognized the
28 importance of issues embodied in Watermaster's Motion and I informed Mr. Slater that

1 City would need additional time to respond to the Motion (including time to conduct
2 discovery). I also expressed to Mr. Slater my concerns regarding the Watermaster's
3 pervasive use of privileged communications in its Motion to attack Chino Hills. Since
4 that time, the parties have actively engaged in discussions regarding the hearing date and
5 other related matters. To date, the parties have been unable to reach agreement on these
6 issues.

7 10. Chino Hills' position is that it is entitled to an evidentiary hearing before the
8 Court to challenge the adequacy of the LTP and the findings the Watermaster is requesting
9 that will cause great detriment to Chino Hills residents. Chino Hills intends to call
10 witnesses at the hearing on the Watermaster's Motion both presenting its own evidence
11 and cross-examining Watermaster's witnesses that created the LTP.

12 11. During the course of the creation of the Long Term Plan, the attorneys in my
13 office directly handling this matter have, in the normal course of events, changed. For
14 example, in 2004 I left my former firm of Burke, Williams & Sorensen and joined Jenkins
15 & Hogin, LLP. This change necessitated staffing changes that provide a further basis for
16 this request.


17 12. Dr. Dennis Williams of Geoscience Support Services, Inc, a renowned
18 expert in ground water hydrology, has been engaged by the City. The City intends to
19 present testimony from Dr. Williams that will show how the LTP is deficient regarding
20 optimum well field operation by Chino Hills and that better alternatives are available. He
21 will also be providing testimony that relates to the long term causes of subsidence in the
22 Basin which is contrary to the information that has been provided by the Watermaster.
23 His work will not be completed until approximately September 21, 2007. He will also
24 present evidence regarding the potential for additional subsidence in MZ-1 which is
25 relative to the LTP. Once Chino Hills has this information and has been able to test the
26 expert evidence proffered by the Watermaster in support of the LTP by subjecting it to the
27 discovery process, and has compiled and analyzed all of the information and documents
28 relevant to this proceeding, the City will be in a position to adequately protect its rights

1 and interests under the Peace Agreement and Optimum Basis Management Plan, file a
2 meaningful and informed opposition to the proposed LTP, and demonstrate that the LTP is
3 not a meaningful solution that is consistent with the intent of the Peace Agreement and
4 OBMP.

5 13. I caused email notification of this *ex Parte* hearing (in the form attached to
6 this Declaration) to be delivered to the Watermaster staff late in the evening on August 23,
7 2007 pursuant to procedures agreed upon by all parties so that Watermaster staff could
8 serve notice by email on all parties by 10:00 a.m. today. I also orally communicated my
9 intent to file this motion for a continuance to Mr. Slater, General Counsel for the
10 Watermaster on August 23, 2007, and he indicated that he would oppose said continuance.

11 I declare under penalty of perjury that the foregoing is true and correct.

12 Executed at Manhattan Beach, California on August 24, 2007.

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15 MARK D. HENSLEY
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August 24, 2007

**TO WATERMASTER, TO ALL PARTIES AND TO THEIR ATTORNEYS OF
RECORD:**

**Re: *Chino Basin Municipal Water District vs. City of Chino Hills, et al.*
San Bernardino Superior Court Case No: RCV51010**

On August 27, 2007, at 8:30 a.m. in Department R8 of the above-entitled Court, located at 8303 North Haven Avenue, Rancho Cucamonga, California, the City of Chino Hills will appear and apply for an Order continuing the Motion for Approval of Watermaster's Long Term Plan for the Management of Subsidence ("Motion"). In its application, the City will seek to continue the hearing date, currently scheduled for hearing on September 13, 2007, for a period of not less than 120 days on the grounds that the Long Term Plan proposed by Watermaster involves substantial contractual interests that greatly affect the City of Chino Hills and its ability to provide potable water to its residents.

If any party to the Judgment wishes to discuss the City's application or any other matter, please do not hesitate to contact me. Thank you.

Very truly yours,

Mark D. Hensley

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

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.

Defendants.

CASE NO. RCV 51010

[Assigned for All Purposes to the Honorable MICHAEL GUNN]

[PROPOSED] ORDER

Filed: October 16, 1998

Based on the *ex parte* application and supporting memorandum of points and authorities, the Declaration of Mark Hensley, and any documentary evidence having been received and the matter having been submitted, and good cause appearing therefor,

IT IS HEREBY ORDERED that:

1. The City's *ex parte* application for an order continuing the hearing on the Motion for Approval of Watermaster's Long Term Plan For the Management of Subsidence and related dates are granted;
2. The hearing on the Motion in this matter is continued to _____, 2008; and

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3. The dates for Opposition and Reply briefs shall be continued in accordance with the new Motion hearing date.

IT IS SO ORDERED.

DATED: August __, 2007

HONORABLE MICHAEL GUNN
JUDGE OF THE SUPERIOR COURT

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 August 24, 2007, I served the following:

- 1) **CITY OF CHINO HILLS' EX PARTE NOTICE FOR AN ORDER CONTINUING THE MOTION FOR APPROVAL OF WATERMASTER'S LONG TERM PLAN FOR THE MANAGEMENT OF SUBSIDENCE.**

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

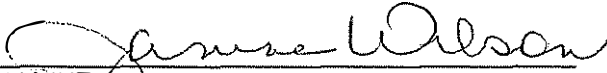
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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.

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 August 24, 2007 in Rancho Cucamonga, California.



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