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6 **CHINO BASIN WATERMASTER**

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN BERNARDINO**

10 CHINO BASIN MUNICIPAL DISTRICT

11 Plaintiff,

12 vs.

13 CITY OF CHINO, ET AL.

14 Defendant.

Case No. RCV 51010

[Assigned for All Purposes to the  
Honorable MICHAEL GUNN]

**RESPONSE TO CHINO HILLS  
EX PARTE MOTION**

HATCH AND PARENT  
21 East Carrillo Street  
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21 Watermaster opposes the requested continuance sought by the City of Chino Hills because it  
22 is not warranted under the facts of the case and it will cause undue hardship unless the resolution of  
23 Chino Hills' concerns is made coterminous with the balance of the Watermaster efforts to implement  
24 the Optimum Basin Management Program. On August 23, 2007 Watermaster General Counsel  
25 presented a request by Chino Hills for a continuance on the presently scheduled September 13, 2007  
26 hearing. The Watermaster Board declined the request because of deep concern over the tight  
27 schedule facing the parties arising from previous orders of this Court regarding scheduling and the  
28 completion of the suite of measures commonly referred to as the Peace II measures.

1           Although Watermaster respects the right of the City of Chino Hills' desire to oppose the  
2 Long Term Plan for Management Zone Number 1 ("Long Term Plan"), Watermaster is mindful that  
3 the parties to the Judgment are likely to be unwilling to proceed with the balance of the Peace II  
4 measures with the issues arising from the Long Term Plan remaining unresolved. The Stakeholder  
5 Non-Binding Term Sheet dated May 23, 2006 previously transmitted to the Court for its  
6 consideration and constituting the cornerstone of Watermaster's present efforts contemplates final  
7 approval on all elements. One such element is the Long Term Plan.

8           Continuing the resolution of the adequacy of the Long Term Plan beyond the time period  
9 established for the approval of the Peace II process may create substantial and unnecessary financial  
10 hardships for the parties requiring an assessment for replenishment water that may be required to  
11 off-set desalter production. Present estimates are that this liability may be in excess of \$5,000,000  
12 for 2007. (See Attached Declaration of Michael T. Fife)

13           Moreover, the legal argument in support of the request mischaracterizes the Long Term Plan  
14 and inappropriately links a finding that the Long Term Plan does not trigger *Watermaster* financial  
15 responsibility under a contract to which *Watermaster* is not a party. To the contrary, Watermaster  
16 acts pursuant to the mandates of the Judgment and the orders of this Court. It has been ordered to  
17 prepare a Long Term Plan and it has done so. The Court is free to determine whether Watermaster  
18 has complied with prior orders of the Court without construing the City of Chino Hills' contractual  
19 right against *other parties to the contract*, as opposed to evaluating Watermaster's duties.

20           Accordingly, Watermaster requests that if the Court is inclined to grant a continuance and  
21 authorize discovery as requested by Chino Hills that it make the final resolution of the adequacy of  
22 the Chino Hills opposition coterminous with the Court's orders on the balance of the Peace II  
23 measure. If this entails continuing the hearing into 2008, then the court should provide relief to the  
24 other potentially impacted parties in the Basin by authorizing Watermaster to delay replenishment  
25 assessments associated with the Desalters until the completion of the hearing.

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1 ARGUMENT

2 On April 2, 2007 and April 30, 2007, Watermaster made two filing with the Court that  
3 addressed the status of implementation of the Optimum Basin Management Program ("OBMP"), the  
4 status of future desalting plans for the Chino Basin, and the status of the Long Term Plan. The filings  
5 included an "Exhibit C" which was a detailed schedule for the completion of the tasks described  
6 above. Collectively, all of these tasks are referenced by the parties and by the Court in its Order, as  
7 the "Peace II Agreement process." These filings resulted in an Order of the Court dated May 24,  
8 2007 which contained numerous deadlines for Watermaster to meet and which required Watermaster  
9 to report to the Court any delay that goes beyond 30 days. (Order, 4:19.) The Court ordered  
10 Watermaster to submit a motion for Court approval of the Long Term Plan by July 24, 2007 and to  
11 set a hearing on that motion no later than September 30, 2007. (Order, 3:2-4.)

12 The motivation for Watermaster's filings and for the Court's May 24, 2007 Order is that the  
13 failure to complete the Peace II Agreement process by the end of 2007 will have tremendous  
14 consequences for all parties in the Chino Basin. If the management strategy known as Basin Re-  
15 Operation has not been authorized by the end of 2007, then Watermaster will be forced to begin the  
16 process under the Judgment to replenish the increased desalter production that occurred in 2007 from  
17 not just the Chino I Desalter, but also from the recently operational Chino II Desalter. This will have  
18 significant financial consequences for all the parties in the Chino Basin, and it will also require  
19 actions which inhibit the progress toward achieving Hydraulic Control, which in turn will have  
20 consequences with respect to the Regional Water Quality Control Board and the Basin Plan  
21 Amendments. The Court's Order sought to facilitate the avoidance of these problems by imposing a  
22 rigid schedule which would lead to an approval of the Peace II Agreement in early November.

23 Under the "Stakeholder Non-Binding Term Sheet", Watermaster is to develop guidance  
24 criteria and a long-term plan. The Stakeholder Non-Binding Term Sheet specifies that, "The  
25 guidance criteria and the long-term plan will be incorporated into the final binding agreement."  
26 (Term Sheet, p.25.)

27 Watermaster's Motion describes in detail the process for development of the Long Term  
28 Plan. This has been an ongoing process that has spanned many years. The technical basis for the

1 Long Term Plan was complete in 2005 and was presented to the Special Referee and her technical  
2 assistant at a workshop dated May 25, 2005. (Motion, 6:10.) The Long Term Plan was eventually  
3 distributed to the parties in May 2007 through the Pool process and to the Advisory Committee and  
4 the Board. In June of 2007, the Long Term Plan was again distributed through the Pool process and  
5 to the Advisory Committee and the Board for approval. (Motion, 8:6.) At this time Watermaster's  
6 Motion was also distributed for approval along with the Long Term Plan in the agenda packages.

7 The City of Chino Hills has thus been aware of the technical basis for the Long Term Plan  
8 for at least over two years. It has had a copy of Watermaster's motion since at least June of this year.  
9 Now, two weeks before the hearing, it seeks a continuance in order to prepare for the hearing. The  
10 request does not explain why Chino Hills has waited until this late date to raise its issues, nor does it  
11 explain what type of information it seeks that has not been available to it already over the past two  
12 years.

13 On the merits, the City of Chino Hills' largest problem is its failure to establish any link  
14 between the Long Term Plan and any rights it has under Peace Agreement paragraph 5.4(e).  
15 Watermaster has not sought any determination of the City's rights. Rather it has sought only a Court  
16 determination that under prior orders of this Court, its adoption of a completely voluntary plan does  
17 not trigger an obligation under a contract to which it is not a party.


18 The City's papers offer no basis for its assertion that its rights under which Watermaster is  
19 not a party, whatever they may be, are miraculously foreclosed by Watermaster submitting a  
20 voluntary Long Term Plan to the Court

21 As for the City of Chino Hills' objections to the contents of the filing as someone being in  
22 breach of previous assurances of confidentiality, Watermaster sees no such violation. We have  
23 enclosed a copy of the agreement allegedly giving rise to the concern and on the face of the  
24 agreement, the scope of the confidentiality is limited and does pertain to the subject matter identified  
25 by the City. (Attached as Exhibit B)

26 Accordingly, Watermaster requests that if the Court is inclined to grant a continuance and  
27 authorize discovery as requested by Chino Hills that it make the final resolution of the adequacy of  
28

1 the Chino Hills opposition coterminous with the Court's orders on the balance of the Peace II  
2 measure. If this entails continuing the hearing into 2008, then the court should provide relief to the  
3 other potentially impacted parties in the Basin by authorizing Watermaster to delay replenishment  
4 assessments associated with the Desalters until the completion of the hearing.

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7 Dated: August 24, 2007

8   
9 By: \_\_\_\_\_  
10 HATCH & PARENT  
11 Scott S. Slater  
12 Michael T. Fife  
13 Attorneys for Chino Basin Watermaster  
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# **Exhibit A**

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9 **FOR THE COUNTY OF SAN BERNARDINO**

10 CHINO BASIN MUNICIPAL DISTRICT

11 Plaintiff,

12 vs.

13 CITY OF CHINO, ET AL.

14 Defendant.  
15  
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17

**Case No. RCV 51010**

[Assigned for All Purposes to the  
Honorable MICHAEL GUNN]

**DECLARATION OF MICHAEL FIFE**

HATCH AND PARENT  
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Santa Barbara, CA 93101

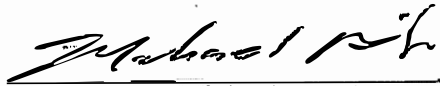
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**DECLARATION OF MICHAEL FIFE**

- 1. My name is Michael Fife and I am an attorney with the law firm of Hatch & Parent.
- 2. I am general counsel for the Chino Basin Watermaster.
- 3. During the normal course of my duties as general counsel I am made aware of the financial implications of various actions.
- 4. Through my understanding of the Watermaster assessment package and my understanding of the Watermaster process, I am aware that if the Peace II Agreement process is not complete by the end of 2007 that the financial consequence to the parties will be over \$5 million dollars.

I declare under penalty of perjury that the forgoing is true.

Dated: August 24, 2007

  
\_\_\_\_\_  
Michael T. Fife

HATCH AND PARENT  
21 East Carrillo Street  
Santa Barbara, CA 93101



# **Exhibit B**

B  
Exhibit "A"

**Acknowledgment That Technical Group Communications are  
Privileged Communications and Technical Group  
Participation Shall not be Used as Evidence**

1. Offer of Compromise. It is hereby agreed by the following parties that all written or oral communications made between or among members of the Technical Group and to Watermaster during meetings of the Technical Group shall be considered privileged communications as good faith settlement discussions. As such, each party agrees that these communications shall be privileged and protected from disclosure as an "offer of compromise" under Evidence Code § 1152. The existence or non-existence of other privileges or the potential application of any privilege to the specific form of communication, whatever the privilege or communication may be, is not affected by this acknowledgment.
2. Participation Not Evidence. The decision by any party to the Judgment to participate in meetings of the Technical Group or to voluntarily modify their production in exchange for receiving Substitute Water or Alternate Water will not be used by a party as evidence of any fact regarding subsidence in any legal or equitable proceeding of any kind.
3. Enforcement. Each party who is a signatory below acknowledges the applicability of this privilege and agrees to abide by the terms of the Interim Plan

\_\_\_\_\_  
City of Chino

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City of Chino Hills

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City of Ontario

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City of Upland

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City of Pomona

\_\_\_\_\_  
Monte Vista Water District

\_\_\_\_\_  
State of California

\_\_\_\_\_  
Southern California Water Company

\_\_\_\_\_  
Agricultural Pool

**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) RESPONSE TO CHINO HILLS EX PARTE MOTION**

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**

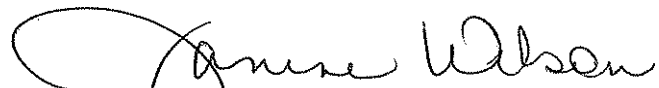
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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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Chino Basin Watermaster

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