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16 Fee exempt – Gov. Code §§6103 and 27383

17
18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION**

20
21 CHINO BASIN MUNICIPAL WATER
DISTRICT,

22 Plaintiff,

23 vs.

24 THE CITY OF CHINO, et al.,

25 Defendants.

CASE NO. RCV 51010

Assigned for All Purposes to:
Honorable KEITH D. DAVIS
Department R6

**JOINT EX PARTE APPLICATION TO
STAY DETERMINATION OF
CONTESTED MATTERS AND
WATERMASTER FILINGS UNTIL JUDGE
MICHAEL GUNN RETURNS, OR IN THE
ALTERNATIVE, UNTIL A COURT IS
APPOINTED PERMANENTLY FOR ALL-
PURPOSES**

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

2 PLEASE TAKE NOTICE that on August 14, 2008, at 8:30 a.m. in Department R6, before the
3 Honorable Keith D. Davis, Monte Vista Water District ("MVWD"), the City of Chino ("Chino") and
4 the City of Chino Hills ("Chino Hills") (collectively "Moving Parties") will apply ex parte for an
5 Order to stay determination of contested motions and Watermaster filings until Judge Michael Gunn is
6 re-assigned to the case for all purposes, or in the alternative, until Judge Keith D. Davis or another
7 Judge is appointed permanently for all-purposes.

8 This Motion is based on the Court's well-established authority to manage Its own calendar and
9 caseload in the interests of justice and judicial efficiency, as well as the Court's ongoing jurisdiction
10 over the 1978 Judgment in this matter.

11 Good cause exists for the requested ex parte Order because:

12 1. The above-referenced matter commenced in 1975, when a complaint was filed seeking
13 an adjudication of water rights, injunctive relief, and the imposition of a physical solution for the
14 Chino Groundwater Basin (hereinafter, "Chino Basin").

15 2. A Judgment was entered in San Bernardino County Superior Court Case No. 164327
16 (now designated as RCV 51010) in this matter on January 30, 1978 (the "Judgment") that adjudicated
17 rights to the groundwater storage capacity within the Chino Basin and established a physical solution.

18 3. The Judgment reserved "full jurisdiction, power and authority" to the Court as to all
19 matters contained in the Judgment, with limited exceptions, enabling the Court "to make such further
20 or supplemental orders or directions as may be necessary or appropriate for interpretation,
21 enforcement or carrying out of this Judgment, and to modify, amend or amplify any of the provisions
22 of this Judgment." (Judgment, pp.9:21 to 12:5.)

23 4. Judge Michael Gunn ("Judge Gunn") has presided over this matter for over ten years
24 and has developed intimate knowledge of the Chino Basin and the Judgment, including appointing the
25 present Watermaster, appointing the present Special Referee, and overseeing a number of Judgment
26 amendments within the Peace I and Peace II Agreement process.

27 5. Judge Gunn has been on a leave of absence for some time, and it has been unclear to
28 the Moving Parties if and when Judge Gunn will return to the bench. According to the Court's online

1 docket, on August 7, 2008, the Court sent out Notice of Reassignment to all Counsel of Record,
2 indicating that the case has been reassigned to Department R6 for All Purposes.

3 6. It is the Moving Parties' understanding that the reassignment to Department R6 for All
4 Purposes is a temporary reassignment and that Judge Gunn is anticipated to return in two months.
5 (Declaration of Tram T. Tran ("Tran Dec.") p. 1:26 to 2:18, ¶ 3-6.)

6 7. Due to the uncertainty of the assignment of this case, and for the sake of judicial
7 economy and continuity, Moving Parties herein request that determination on all contested matters and
8 Watermaster filings (including those made in response to the Court's December 21, 2007, Order) be
9 stayed until Judge Gunn returns, or in the alternative, until Judge Davis or another Judge is appointed
10 permanently for all-purposes.


11 This application is made and based upon this Ex Parte Application, the attached Memorandum
12 of Points and Authorities, the Declaration of Arthur G. Kidman, the Declaration of Tram T. Tran, all
13 pleadings and papers on file in this matter herein, and upon such other evidence as may be presented
14 to the Court at the hearing of this application, if any.

15 RESPECTFULLY SUBMITTED.

16 Dated: August 12, 2008

MCCORMICK, KIDMAN & BEIRENS, LLP

17
18 By:


Arthur G. Kidman
John Paul Glowacki
Tram T. Tran
Attorneys for Monte Vista Water District

21 Dated: August _____, 2008

JENKINS & HOGIN

22
23 By:

JOHN COTTI
Attorneys for the City of Chino Hills

25 Dated: August _____, 2008

LAW OFFICES OF JIMMY L. GUTIERREZ

26
27 By:

JAMES E. ERICKSON
Attorneys for the City of Chino

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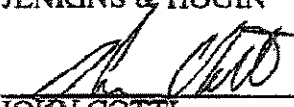
17 By:

18 Arthur G. Kidman
19 John Paul Glowacki
20 Tram T. Tran
Attorneys for Monte Vista Water District

21 Dated: August 12, 2008

JENKINS & HOGIN

22 By:

23 
JOHN COTTI
24 Attorneys for the City of Chino Hills

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LAW OFFICES OF JIMMY L. GUTIERREZ

26 By:

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28 Attorneys for the City of Chino

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4 Purposes is a temporary reassignment and that Judge Gunn is anticipated to return in two months.
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Attorneys for Monte Vista Water District

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21 Dated: August _____, 2008

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23 By:

JOHN COTTI
Attorneys for the City of Chino Hills

24
25 Dated: August 12, 2008

LAW OFFICES OF JIMMY L. GUTIERREZ

26
27 By:


JAMES E. ERICKSON
Attorneys for the City of Chino

28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 The Moving Parties respectfully submit this Memorandum of Points and Authorities in support
3 of this application for an Order staying determination of all contested matters and Watermaster filings
4 until Judge Gunn returns, or in the alternative, until Judge Davis or another Judge is appointed
5 permanently for all-purposes.

6 **I. INTRODUCTION.**

7 The above referenced matter commenced in 1975 with a complaint seeking an adjudication of
8 water rights, injunctive relief, and a physical solution for the Chino Basin. (Complaint in San
9 Bernardino Superior Court Case No. 164327 [now designated as RCV 51010], January 2, 1975.) A
10 Judgment was entered in San Bernardino County Superior Court Case No. 164327 on January 30,
11 1978 ("Judgment") that adjudicated rights for over twelve hundred (1200) overlying users and public
12 agencies to the groundwater and groundwater storage capacity within the Chino Basin and established
13 a physical solution. (Judgment.) The Moving Parties are all parties to the Judgment. (*Id.* at p. 61,
14 Exh. E.)

15 The Judgment reserved "full jurisdiction, power and authority" to the Court as to all matters
16 contained in the Judgment, with limited exceptions, enabling the Court "to make such further or
17 supplemental orders or directions as may be necessary or appropriate for interpretation, enforcement
18 or carrying out of this Judgment, and to modify, amend or amplify any of the provisions of this
19 Judgment." (*Id.* at pp.9:21 to 12:5.)

20 The Honorable Michael Gunn ("Judge Gunn") has presided over this matter for over ten years,
21 developing unique experience and knowledge as Judge Gunn guided Watermaster and the parties in
22 implementing the Judgment. Judge Gunn oversaw a number of Judgment amendments within the
23 Peace I and Peace II Agreement processes. (Declaration of Arthur G. Kidman (hereinafter "Kidman
24 Dec.") p.2:5-10, ¶4.) Through a number of Court Orders, Judge Gunn developed the existing
25 governance structure, which includes the nine-member Watermaster board, the separate Pool
26 Committees, and the Special Referee. (*Id.* at p. 2:15-17.) Judge Gunn appointed Ann Schneider as
27 the Special Referee and Joe Scalmanini as the Technical Advisor to assist the Court.

28 The Judgment and Judgment amendments involve complex technical and legal issues,

1 including the development of desalters within the basin, the proposed hydraulic control,
2 implementation of an Optimum Basin Management Plan and issues of subsidence. The complexity of
3 this matter is further highlighted in ongoing disputes and the ongoing need to adapt to changing
4 circumstances, such as procedures to determine water rights when agricultural land is converted to
5 urban development. Furthermore, the Court shares jurisdiction over water quality matters with the
6 California Regional Water Quality Control Board. (Kidman Dec. p. 1:26 to 2:4, ¶ 3.)

7 There is an important, contested Motion and review of Watermaster filings presently set for
8 hearing on August 21, 2008, the outcome of which could affect the governance and stability of the
9 Chino Basin for the foreseeable future. (Declaration of Tram T. Tran (“Tran Dec.”) p. 2:24 to 3:2, ¶
10 8.) Meanwhile, according to the Court’s online docket, on August 7, 2008, the Court sent out Notice
11 of Reassignment to all Counsel of Record, indicating that the case has been reassigned to Department
12 R6 for All Purposes. (*Id.* at p. 2:19-23, ¶ 7.) It is the Moving Parties’ understanding, based on
13 conversations with the civil court clerk’s office for Rancho Cucamonga District of the San Bernardino
14 County Superior Court, that the reassignment to Department R6 for All Purposes is a temporary
15 reassignment and that Judge Gunn is anticipated to return in two months. (*Id.* at p. 1:26 to 2:18, ¶ 3-
16 6.)

17 While the pending contested motion and Watermaster filings scheduled for hearing on August
18 21, 2008, are important, the timing of the determination of these matters is not urgent, and the parties
19 will not be prejudiced by a short stay. Given the importance of the issues pending before the Court,
20 and in light of the uncertainty surrounding the permanence of the assignment for all purposes at this
21 time, the Moving Parties felt it necessary to move the Court for the requested Order to ensure the most
22 effective management of the Judgment in the interest of the Chino Basin.

23 **II. TRIAL COURTS HAVE AN INHERENT POWER TO STAY PROCEEDINGS IN THE**
24 **INTERESTS OF JUSTICE AND TO PROMOTE JUDICIAL EFFICIENCY.**

25 “Trial courts generally have the inherent power to stay proceedings in the interests of justice
26 and to promote judicial efficiency.” (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484,
27 1489.) The United States Supreme Court stated: “the power to stay proceedings is incidental to the
28 power inherent in every court to control the disposition of the causes on its docket with economy of

1 time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise
2 of judgment, which must weigh competing interests and maintain an even balance.” (*Landis v. N. Am.*
3 *Co.* (1936) 299 U.S. 248, 254-55.)

4 The California Supreme Court recognizes the inherent power of the trial courts as well. “We
5 have often recognized the ‘inherent powers of the court . . . to insure the orderly administration of
6 justice.’” (*Walker v. Sup. Ct.* (1991) 53 Cal. 3d 257, 266-67, citing *Hays v. Sup. Ct.* (1940) 16 Cal.2d
7 260, 264; see also *Bauguess v. Paine* (1978) 22 Cal.3d 626, 635-36 [discussing “supervisory or
8 administrative powers which all courts possess to enable them to carry out their duties”].) “Although
9 some of these powers are set out by statute . . . , it is established that the inherent powers of the courts
10 are derived from the Constitution . . . , and are not confined by or dependent on statute . . .” (*Walker v.*
11 *Sup. Ct.* (1991) 53 Cal. 3d 257, 266-67 [internal citations omitted].)

12 A decision to stay contested matters and review of Watermaster filings in this case would
13 promote judicial efficiency and allow for continuity in a complicated water basin adjudication. A
14 short stay of determination of the contested matters and Watermaster filings will not prejudice the
15 parties. (Kidman Dec. 2: 19-20.) Additionally, the interests of justice would be served because
16 certain pending matters before this Court have a deep rooted historical background, with which Judge
17 Gunn is keenly familiar, and which require either Judge Gunn, or a subsequent permanent judge for all
18 purposes, to determine.

19 **A. The Interests of Judicial Economy and Justice Would be Best Served if the Motion**
20 **to Discontinue the Appointment of the Special Referee is Ruled on By a Judge**
21 **Permanently Assigned to this Case for All Purposes.**

22 In April 1997, Judge Gunn appointed Ann Schneider, an objective and impartial expert in
23 water law, as a Special Referee to serve the Court and the Parties to the 1978 Judgment of the Chino
24 Basin. The Court also appointed Joe Scalmanini as a Technical Advisor to assist the Special Referee.
25 For more than a decade since, the Special Referee and the Technical Advisor have consistently
26 provided invaluable assistance to the Court, Watermaster, and the Parties in the management of the
27 Basin and the progress of the Optimum Basin Management Plan (“OBMP”). The Special Referee
28 continues to play a vital role in the Chino Basin management.

1 There is an important and contested motion pending in this matter, which was filed on June 30,
2 2008, and scheduled for hearing before the Honorable Keith D. Davis on August 21, 2008, by
3 Cucamonga Valley Water District ("CVWD") to discontinue the appointment of the Special Referee
4 (the "CVWD Motion"). (Tran Dec. p. 2:24 to 3:2, ¶8.) The issues raised in CVWD's Motion were
5 addressed by Judge Gunn less than a year ago when Watermaster also challenged the role of the
6 Special Referee. In the Order Concerning Motion for Approval of Peace II Documents, filed
7 December 21, 2007, ("Peace II Order") Judge Gunn expressed his opinion as to the Special Referees
8 invaluable role and acknowledged her contributions with her assistance to provide full and complete
9 explanations of issues brought before the court and to make recommendations where appropriate.

10 Now, with Judge Gunn apparently temporarily off the bench, CVWD has filed a Motion,
11 which raises issues previously addressed by Judge Gunn. There is no immediate need by either side of
12 the issue, which requires the motion to be determined at this point. (Kidman Dec. 2: 19-20.) The need
13 for judicial economy and continuity on this important issue outweighs any prejudice to the parties
14 from a short stay to determine if Judge Gunn will return or another judge is appointed permanently to
15 this case.

16 **B. Judicial Determinations on Watermaster's Filings Pursuant to Conditions**
17 **Subsequent 1 through 6, Under the Peace II Order, Would Benefit From a**
18 **Thorough Understanding of the Chino Basin.**

19 The issues presented in Watermaster's recent filings regarding its compliance with Conditions
20 Subsequent 1 through 6 of the Peace II Order relate to complicated issues involving the Judgment,
21 Peace I Agreement, Optimum Basin Management Plan, and Peace II Agreement. The Court is
22 scheduled to review Watermaster's filings on August 21, 2008, as well. For the sake of continuity and
23 judicial economy, Judge Gunn, or another Judge appointed to this matter permanently for all purposes,
24 would be in the best position to engage in a thorough review of the filings, including the technical
25 studies, to ensure compliance with the Court's prior Order and to understand the complex issues
26 related to the Chino Basin.

27 ///

28 ///

1 **III. THE REQUESTED STAY WOULD ALLOW FOR A PERMANENT**
2 **DETERMINATION OF THE FATE OF THIS CASE, AND WOULD NOT PREJUDICE**
3 **ANY PARTY OR THE CHINO BASIN AS A WHOLE.**

4 Judge Gunn has apparently been on a leave of absence for some time, and Moving Parties
5 could only obtain speculative information from the court clerks regarding any plans for his return.
6 (Tran Dec., p. 1:26 to 2:18, ¶ 3-6.) After the CVWD Motion was filed, the Court re-assigned this case
7 to Judge Davis for all purposes. (*Id.* at p. 2:19-23, ¶7.) On August 11, 2008, the civil court clerk's
8 office in Rancho Cucamonga informed counsel for MVWD that Judge Gunn may return to the bench
9 in two months, and that the reassignment to Judge Davis is temporary. (*Id.* at p. 2:13-18, ¶6.)

10 Regardless of the judicial assignment of this case, Watermaster and the Parties have an
11 ongoing obligation to manage the Chino Basin in accordance with the Judgment. The Court's ongoing
12 jurisdiction over the 1978 Judgment is critical to the management of the Chino Basin. Judge Gunn,
13 and Judge Turner, the previous judge in this matter, frequently expressed concern with the pace of
14 Watermaster and the Parties in dealing with important matters such as the OBMP implementation and
15 water quality. (Kidman Dec. p. 2:18-21, ¶ 8.) Moving Parties are sensitive to the need for ongoing
16 administration.

17 There would be no prejudice to any party, however, from a brief stay of judicial determinations
18 on contested matters and Watermaster filings. (Kidman Dec. p. 2:22-23, ¶ 9.) The CVWD Motion is
19 important because it seeks an order that would dramatically change the management of the Chino
20 Basin; however, it is not urgent because the Chino Basin governance has proceeded over the last ten
21 years with the Special Referee's oversight and nothing prevents such a structure from continuing at
22 least for a few months. Any potential prejudice to any Party, including CVWD, is outweighed by the
23 inefficiency and discontinuity that would arise if a temporary Judge were to make a determination on
24 the motion.

25 Furthermore, a stay on judicial review of Watermaster filings will not prejudice or harm the
26 Court, the Parties, or the Chino Basin, as they are Court Ordered deadlines. The Court has approved
27 Peace II and OBMP implementation subject to Court review. Watermaster continues to function and
28 move forward with Peace II and OBMP implementation regardless of when the Court reviews its

1 filings. The matters are not so urgent that a short stay will impede overall progress, and the judicial
2 resources required to review and understand the case and rule on the pending matters need not be
3 spent if Judge Gunn will return shortly.

4 Other pending matters are either uncontested or set far enough out in time that no prejudice
5 would obtain as long as the stay is reviewed by the Court after a reasonable period of time. As a result
6 of the ambiguity and uncertainty as to whether or not Judge Gunn will return to the bench, Moving
7 Parties request that the Court issue the stay and then set an Order to Show Cause regarding the Stay at
8 least ninety (90) days out. Of course, the Court could lift the stay in whole or in part sooner than that
9 on any Party's motion or the Court's own motion if an urgent matter did arise. The requested stay
10 would not therefore prejudice the Court, Watermaster, any Party, or the Chino Basin at large.

11 **IV. CONCLUSION.**

12 For the foregoing reasons, Moving Parties respectfully request that this Court issue an Order
13 staying determinations on all contested matters and Watermaster filings until either: (1) Judge Gunn
14 returns from his temporary leave; or, in the alternative, (2) until Judge Davis or another Judge is
15 appointed permanently for all purposes.

16 RESPECTFULLY SUBMITTED.

17 Dated: August 17, 2008

MCCORMICK, KIDMAN & BEHRENS, LLP

18 By: 

19 Arthur G. Kidman
20 John Paul Glowacki
21 Tram T. Tran
22 Attorneys for Monte Vista Water District

23 Dated: August _____, 2008

JENKINS & HOGIN

24 By: _____

25 JOHN COTTI
26 Attorneys for the City of Chino Hills

27 Dated: August _____, 2008

LAW OFFICES OF JIMMY L. GUTIERREZ

28 By: _____

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21 Dated: August 12, 2008

JENKINS & HOGIN

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25 Attorneys for the City of Chino Hills

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DECLARATION

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6 Fee exempt – Gov. Code §§6103 and 27383

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION**

10
11 CHINO BASIN MUNICIPAL WATER
DISTRICT,

12 Plaintiff,

13 vs.

14 THE CITY OF CHINO, et al.,

15 Defendants.

CASE NO. RCV 51010

Assigned for All Purposes to:
Honorable KEITH D. DAVIS
Department R6

**DECLARATION OF ARTHUR G.
KIDMAN IN SUPPORT OF EX PARTE
APPLICATION TO STAY ALL
CONTESTED MATTERS AND
WATERMASTER FILINGS**

16
17
18 I, Arthur G. Kidman, declare as follows:

19 1. I am a partner at McCormick, Kidman & Behrens, LLP. I am the partner responsible
20 for handling this matter on behalf of Monte Vista Water District. If called to testify as a witness, I
21 could and would competently attest to the facts contained herein.

22 2. I give this Declaration in support of the Joint Ex Parte Application by Monte Vista
23 Water District, the City of Chino Hills, and the City of Chino for an Order Staying All Contested
24 Matters and Watermaster Filings until Judge Michael Gunn returns or, in the alternative, until a new
25 judge is appointed permanently for all purposes.

26 3. I have been involved in this case on behalf of Monte Vista Water District and other
27 parties since 1978. The Judgment and Judgment amendments involve complex technical and legal
28 issues, including the development of desalters within the basin, the proposed program for hydraulic

1 control, implementation of an Optimum Basin Management Plan and issues of subsidence. The
2 complexity of this matter is further highlighted in ongoing disputes affecting hundreds of parties, and
3 the ongoing need to adapt to changing circumstances, such as procedures to determine water rights
4 when agricultural land is converted to urban development.

5 4. Judge Michael Gunn has been involved in the oversight of this case for over ten years.
6 Judge Gunn has been instrumental in the oversight of the management of the Chino Basin
7 groundwater under the 1978 Judgment, and actively involved in overseeing the progress and adoption
8 of Judgment Amendments, Peace I and Peace II Agreements, and implementation of an Optimum
9 Basin Management Plan, as required by the 1978 Judgment and Order of the Court

10 5. Upon information and belief, it is also my understanding that the Court shares
11 jurisdiction over water quality matters with the California Regional Water Quality Control Board,
12 which adds to the complexity of the case.

13 6. Based upon my involvement with this case, a new judge will have an enormous task to
14 become conversant with this case. That expenditure of judicial resources should be avoided or
15 delayed until absolutely necessary and undertaken only if Judge Gunn is unable to return to the case.

16 7. Through the years, Judge Gunn adopted a number of Court Orders, which developed
17 the existing governance structure, and includes the nine-member Watermaster board, the separate Pool
18 Committees, and the Special Referee.

19 8. The Court's ongoing jurisdiction over the 1978 Judgment is critical to the management
20 of the Chino Basin. Judge Gunn, and Judge Turner, the previous judge in this matter, frequently
21 expressed concern with the pace of Watermaster and the Parties in dealing with important matters such
22 as the OBMP implementation and water quality.

23 9. Based upon my involvement with this case and upon information and belief, a short
24 stay of contested matters and Watermaster filings will not prejudice the parties.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
26 true and correct. Executed this 12th day of August, 2008, in Costa Mesa, California.

27
28 
Arthur G. Kidman

DECLARATION

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2 JOHN PAUL GLOWACKI SBN 234055
TRAM T. TRAN SBN 240697
3 650 Town Center Drive, Suite 100
Costa Mesa, California 92626
4 Telephone: 714.755.3100 Fax: 714.755.3110

5 Attorneys for Monte Vista Water District

6 Fee exempt – Gov. Code §§6103 and 27383

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION**

10
11 CHINO BASIN MUNICIPAL WATER
DISTRICT,

12 Plaintiff,

13 vs.

14 THE CITY OF CHINO, et al.,

15 Defendants.

CASE NO. RCV 51010

Assigned for All Purposes to:
Honorable KEITH D. DAVIS
Department R6

**DECLARATION OF TRAM T. TRAN IN
SUPPORT OF EX PARTE APPLICATION
TO STAY DETERMINATION ALL
CONTESTED MATTERS AND
WATERMASTER FILINGS**

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18 I, Tram T. Tran, declare as follows:

19 1. I am an associate attorney with McCormick, Kidman & Behrens, LLP. I am one of the
20 attorneys responsible for handling this matter on behalf of Monte Vista Water District. If called to
21 testify as a witness, I could and would competently attest to the facts contained herein.

22 2. I give this Declaration in support of the Joint Ex Parte Application by Monte Vista
23 Water District, the City of Chino Hills, and the City of Chino for an Order staying determination of all
24 contested matters and Watermaster filings until Judge Michael Gunn returns, or, in the alternative,
25 until Judge Davis or another judge is appointed permanently for all purposes.

26 3. On August 11, 2008, around 11:30 a.m., I contacted the Clerk in Department R8, the
27 courtroom where Judge Michael Gunn presides, and was informed that the above-referenced matter
28 had been transferred to Department R6 before Judge Keith D. Davis. I also asked the Clerk in

1 Department R8 whether and when Judge Gunn would be returning, and she indicated that she was
2 uncertain of when his return would be.

3 4. On August 11, 2008, around 11: 35 a.m., I contacted the Clerk in Department R6, the
4 courtroom where Judge Keith D. Davis presides, and requested further information regarding the
5 status of this matter. The clerk confirmed that this matter had been transferred to Department R6, and
6 it was his understanding that the matter was transferred for all-purposes. He also indicated that Judge
7 Davis will be hearing the pending matters scheduled for hearing on August 21, 2008, at 1:30 p.m.

8 5. On August 11, 2008, around 3:40 p.m., I contacted the Michelle Ricker, the Clerk in
9 Department R9, the courtroom where Judge Barry Plotkin, the Supervising Civil Judge, presides.
10 Upon questioning, she informed me that she was uncertain of who had authorized the re-assignment of
11 this matter, but if I wanted more information, to contact the civil court clerk's office, which was the
12 office that re-assigned this matter.

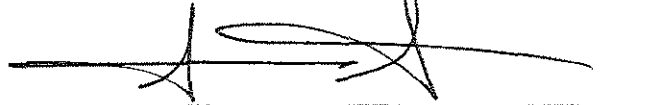
13 6. On August 11, 2008, around 3:50 p.m., I contacted the civil court clerk's office at (909)
14 945-4131, and spoke to a clerk by the name of Daniel Zwierlein, who informed me that the matter has
15 been, in fact, transferred to Department R6. Upon further questioning, Mr. Zwierlein indicated that he
16 would speak to his supervisor (by the name of Angel) to see if she had any other information. After
17 speaking to his supervisor, he indicated that this re-assignment was a temporary reassignment, and
18 Judge Gunn was anticipated to return in two months.

19 7. On August 11, 2008, I checked the Court's online case information, which can be
20 accessed through the San Bernardino Superior Court website, and found an entry dated August 7,
21 2008, which stated "CASE RE-ASSIGNED TO DEPARTMENT R6 FOR ALL PURPOSES.
22 NOTICE OF RE-ASSIGNMENT SENT TO ALL COUNSEL OF RECORD." As of the date of this
23 filing, I have not received the mailed copy of the Notice of Re-Assignment.

24 8. On August 11, 2008, I checked the Court's online case information, which can be
25 accessed through the San Bernardino Superior Court website, and confirmed that there are several
26 matters on calendar, at different times, on August 21, 2008, related to this case. Some of those matters
27 are contested, specifically Cucamonga Valley Water District's motion to discontinue the appointment
28

1 of the Special Referee, and other matters concern Watermaster filings, including Watermaster
2 compliance with the Court's December 21, 2007, Order.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct. Executed this 12th day of August, 2008, in Costa Mesa, California.

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Tram T. Tran

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DIVISION**

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff,

vs.

THE CITY OF CHINO, et al.,

Defendants.

CASE NO. RCV 51010

Assigned for All Purposes to:
Honorable KEITH DAVIS
Department R6

**[PROPOSED] ORDER STAYING
CONTESTED MATTERS AND JUDICIAL
DETERMINATIONS ON WATERMASTER
FILINGS**

Date: August 14, 2008
Time: 8:30 A.M.
Dept.: R6

ORDER

On August 14, 2008, at 8:30 a.m. in Department R6, before the Honorable Keith D. Davis, Monte Vista Water District ("MVWD"), the City of Chino ("Chino") and the City of Chino Hills ("Chino Hills") (collectively "Moving Parties") applied ex parte for an Order to stay determination of contested motions and Watermaster filings until Judge Michael Gunn is re-assigned to the case for all purposes, or in the alternative, until Judge Keith Davis or another Judge is appointed permanently for all-purposes.

1 After reviewing the moving papers, all other papers filed in response to the ex parte
2 application, and pertinent portions of the Court's file in this matter, and after extending an opportunity
3 for oral argument to all counsel present at the hearing, the Court, for good cause shown, hereby finds
4 and orders as follows.

- 5 1. This Court has the inherent authority to manage Its docket in the interests of justice and
6 judicial economy. The above-captioned matter is a complex proceeding with numerous
7 parties and technical substantive elements. Continuity of judicial administration is critical
8 to promoting the interests of justice and judicial economy. Moving Parties have
9 established good cause for the requested stay by showing that the status of the removal of
10 this case from Judge Gunn's docket, and of the assignment for all purposes to Judge Davis,
11 may not be permanent.
- 12 2. Contested matters and judicial determinations on Watermaster filings would be best
13 accomplished either by Judge Michael Gunn, to whom this case has been assigned for all
14 purposes for over ten years, or by another Judge assigned permanently to this case for all
15 purposes. This includes, but is not limited to, the pending Motion to Discontinue the
16 Appointment of the Special Referee filed by Cucamonga Valley Water District (the
17 "CVWD Motion") and Watermaster's filings in response to the conditions set forth in the
18 Court's December 21, 2007, Order.
- 19 3. The requested stay will cause no substantial prejudice to the Court, Watermaster, any Party
20 to the Judgment, or the Chino Basin at large. The CVWD Motion and Watermaster's
21 filings are important to the management of the Chino Basin, but do not urgently require
22 judicial determination. Watermaster, with the assistance of the Parties, the Special Referee,
23 and the Technical Advisor, are charged with and capable of managing the Chino Basin
24 during the stay.
- 25 4. In light of the foregoing, the Court hereby Orders all contested matters (including but not
26 limited to the CVWD Motion) and any Judicial determination on Watermaster filings
27 (including but not limited to any filings, completed or upcoming, in response to the Court's
28 Order of December 21, 2007) **STAYED** pending further order of this Court. Uncontested

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matters and filings may still come on regularly for hearing in Department R6 of this Court.

- 5. The Court hereby sets an Order to Show Cause re: Stay of Proceedings to be held on _____, _____, at _____ in Department R6 of the above-captioned Court. Watermaster and any interested Party to the Judgment may file and serve, pursuant to Watermaster's standard procedures, a Status Report re: Stay of Proceedings on or before _____, _____.
- 6. The Court hereby vacates the hearing on the CVWD Motion, previously set for August 21, 2008, at 8:30 a.m. and continues that hearing to coincide with the Order to Show Cause set in Paragraph 5, above.
- 7. Prior to the date of the Order to Show Cause set in Paragraph 5, above, any party or Watermaster may apply to this Court in a regularly-noticed motion or ex parte application supported by good cause for an Order partially or wholly removing the stay in order to have an urgent, contested matter heard in this Department.

IT IS SO ORDERED.

Dated: August _____, 2008

By: _____
Judge of the Superior Court

PROOF OF SERVICE

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STATE OF CALIFORNIA)
)ss:
COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and not a party to the within action; my business address is: 650 Town Center Drive, Suite 100, Costa Mesa, California 92626.

On August 12, 2008, I served the foregoing document described as:

(1) JOINT EX PARTE APPLICATION TO STAY DETERMINATION OF CONTESTED MATTERS AND WATERMASTER FILINGS UNTIL JUDGE MICHAEL GUNN RETURNS, OR IN THE ALTERNATIVE, UNTIL A COURT IS APPOINTED PERMANENTLY FOR ALL PURPOSES;

(2) DECLARATION OF ARTHUR G. KIDMAN IN SUPPORT OF EX PARTE APPLICATION TO STAY DETERMINATION ALL CONTESTED MATTERS AND WATERMASTER FILINGS;

(3) DECLARATION OF TRAM T. TRAN IN SUPPORT OF EX PARTE APPLICATION TO STAY DETERMINATION ALL CONTESTED MATTERS AND WATERMASTER FILINGS; AND

(4) [PROPOSED] ORDER STAYING CONTESTED MATTERS AND JUDICIAL DETERMINATIONS ON WATERMASTER FILINGS.

on the interested party in this action by electronically mailing a true and correct copy to:

Alexandra Perez
Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, CA 91730
Email address: APerez@CBWM.ORG

(BY ELECTRONIC SERVICE [Code Civ. Proc. 1010.6]) by electronically mailing a true and correct copy through McCormick Kidman & Behrens LLP's electronic mail system to the email address(es) set forth above in accordance with Code of Civil Procedure section 1010.6.

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

Executed on August 12, 2008, at Costa Mesa, California.



DANIELLE BRODERICK

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 12, 2008 I served the following:

- 1) **JOINT EX PARTE APPLICATION TO STAY DETERMINATION OF CONTESTED MATTERS AND WATERMASTER FILINGS UNTIL JUDGE MICHAEL GUNN RETURNS, OR IN THE ALTERNATIVE, UNTIL A COURT IS APPOINTED PERMANENTLY FOR ALL-PURPOSES**
- 2) **DECLARATION OF ARTHUR G. KIDMAN IN SUPPORT OF EX PARTE APPLICATION TO STAY ALL CONTESTED MATTERS AND WATERMASTER FILINGS**
- 3) **DECLARATION OF TRAM T. TRAN IN SUPPORT OF EX PARTE APPLICATION TO STAY DETERMINATION ALL CONTESTED MATTERS AND WATERMASTER FILINGS**
- 4) **[PROPOSED] ORDER STAYING CONTESTED MATTERS AND JUDICIAL DETERMINATIONS ON WATERMASTER FILINGS**

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 12, 2008 in Rancho Cucamonga, California.



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Chino Basin Watermaster

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