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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN BERNARDINO – RANCHO CUCAMONGA DISTRICT**

11 CHINO BASIN MUNICIPAL WATER  
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendants.

CASE NUMBER: RCV 51010

[Assigned for All Purposes to the Honorable  
Stanford E. Reichert]

**CITY OF CHINO'S OPPOSITION TO  
WATERMASTER'S REQUEST TO  
SHORTEN CHINO'S TIME TO  
OPPOSE THE WATERMASTER  
RESET MOTION AND TO FILE NEW  
MOTIONS**

17  
18  
19 **TO WATERMASTER AND ALL PARTIES AND THEIR ATTORNEYS OF**  
20 **RECORD:**

21 The CITY OF CHINO (hereafter "CHINO") hereby opposes Watermaster's request to  
22 shorten the time in which CHINO is permitted to file its opposition to the "Watermaster's  
23 Motion Regarding 2015 Safe Yield Reset Agreement, Amendment of Restated Judgment,  
24 Paragraph 6" set for hearing on January 22, 2016 ("Watermaster Motion") and to file any new  
25 motion authorized by the Court's Order dated December 2, 2015.

26 This request by Watermaster is another example of the huge inequity perpetuated by  
27 Watermaster against CHINO – especially in light of Judge Gunn's December 21, 2007 order  
28 warning Watermaster to remain neutral as to the Parties to the Judgment.

1 The essential reality about the Watermaster Motion is that the agreement for which  
2 Watermaster seeks court approval is an agreement of less than all of the Parties to the  
3 Judgment. It is not an agreement to which Watermaster is a Party. It is an agreement by  
4 which the Parties seek to confiscate water from CHINO and reallocate water from CHINO in  
5 a manner that is contrary to the Judgment. Yet, Watermaster, through its legal counsel, has  
6 taken the lead by preparing it, filing it and making this request. No Party to the Judgment is  
7 the moving party of the Watermaster Motion or to the request to shorten CHINO'S time to  
8 file its opposition to the Watermaster Motion and to file any new motion.

9 Another reality is that Watermaster took months to prepare the Watermaster Motion  
10 before filing it and chose when to file it – without any attempt to seek CHINO'S input on the  
11 initial hearing date of the motion or a briefing schedule. The idea for a briefing schedule was  
12 not initiated until after the court issued its December 2, 2015 order continuing the hearing of  
13 the Watermaster Motion to January 22, 2016. Even then, the thrust of the request for a  
14 briefing schedule is to compress the time in which CHINO may file its opposition to the  
15 Watermaster Motion and expand the time in which Watermaster may file its reply to said  
16 opposition. This is contrary to the Court's order and the time specified by Code of Civil  
17 Procedure Section 1005.

18 It is also a reality that the Watermaster Motion is not a true motion, because it provides  
19 no legal support for the orders it requests. As such, CHINO'S opposition to the Watermaster  
20 Motion will be in the nature of a demurrer to a complaint but without the opportunity to reply  
21 to Watermaster's opposition to the demurrer. In other words, Watermaster will get the last  
22 word when CHINO should have the last word. This inequity should be corrected by giving  
23 CHINO the right to file a sur-reply brief.

24 A further reality is that no party to the Judgment has asked for a briefing schedule –  
25 either before the Watermaster Motion was filed or now. The most likely reason for the  
26 absence of any such request by the parties is that they are not the moving parties of the  
27 Watermaster Motion. The best evidence is that no party to the Judgment has communicated  
28 any request for a briefing schedule to CHINO – let alone one at odds with the Court order to

1 submit briefs in accordance with the requirements of the Code of Civil Procedure.

2 The inequity of Watermaster's request is also exemplified by its counsel's refusal to  
3 consent to CHINO'S request to continue the hearing on the Watermaster Motion and to  
4 stipulate to allow discovery that CHINO made on November 5, 2015. As a result CHINO has  
5 expended a great deal of time in preparing an Ex Parte Application to continue the hearing on  
6 the Watermaster Motion and to hear a Motion to Permit Chino to Conduct Discovery.  
7 CHINO'S intention to file these motions was communicated to the Court's clerk in order to  
8 schedule dates convenient to the Court to hear the motions. However, the Court issued its  
9 Order without hearing the Ex Parte Applications.

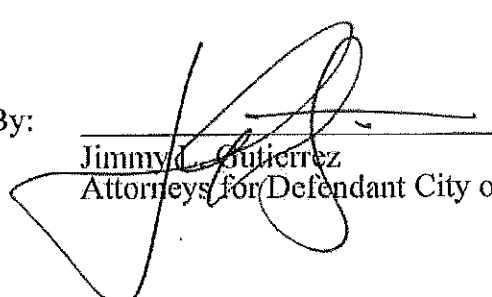
10 In the end, Watermaster makes no showing in support of its request to shorten  
11 CHINO'S time to file its opposition to the Watermaster Motion and to expand Watermaster's  
12 time to file its response to CHINO'S opposition. The first basis for this request is that the  
13 December 2, 2015 order does not contain a briefing schedule; but the briefing schedule is the  
14 one imposed by the Code of Civil Procedure. The second basis for this request is that  
15 Watermaster has received inquiries from the parties about the briefing schedule; but the  
16 answer is the same. The third basis is that the attorneys of other parties may seek clarification  
17 from the Court; but the answer is the same. In effect, the request by Watermaster advances no  
18 true basis for its request.

19 If, however, the true purpose of the request by Watermaster is to secure more time to  
20 file its response to CHINO'S opposition to the Watermaster Motion, CHINO would not object  
21 provided it is given an opportunity to file a sur-reply brief in order to balance the inequities.

22  
23 Dated: December 11, 2015

GUTIERREZ, FIERRO & ERICKSON, A.P.C.

24  
25  
26 By:

  
Jimmy D. Gutierrez  
Attorneys for Defendant City of Chino

27  
28  
Document No. 25831

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11 CHINO BASIN MUNICIPAL WATER )  
12 DISTRICT, )

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15 CITY OF CHINO, et al.,

16 Defendants.  
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19

CASE NUMBER: RCV 51010

[Assigned for All Purposes to the Honorable  
Stanford E. Reichert]

**DECLARATION OF JIMMY L.  
GUTIERREZ IN OPPOSITION TO  
WATERMASTER'S REQUEST TO  
SHORTEN THE CITY OF CHINO'S  
TIME TO FILE ITS OPPOSITION TO  
THE WATERMASTER MOTION SET  
FOR JANUARY 22, 2016**

20 **DECLARATION OF JIMMY L. GUTIERREZ**

21 I, Jimmy L. Gutierrez, declare as follows:

22 1. I am an attorney duly admitted to practice before all of the courts of the State of  
23 California. I am affiliated with the Law Offices of Gutierrez, Fierro & Erickson, attorneys for  
24 the City of Chino (hereafter CHINO"). The facts stated herein are within my personal  
25 knowledge, and if called upon to testify thereto, I could and would do so competently. I make  
26 this declaration in opposition to Watermaster's Request to shorten CHINO'S time to file its  
27 opposition to the Watermaster Motion set for January 22, 2016.  
28

1           2.     Before the Watermaster Motion was set for hearing on December 18, 2015, I  
2 received no communication from Watermaster's attorneys about setting a hearing date on the  
3 Watermaster Motion or about a briefing schedule. In fact, I receive no such communications  
4 from any Party to the Judgment herein.

5           3.     At the time the Watermaster Motion was filed, Watermaster's attorneys and all  
6 of the Parties knew that CHINO opposes the "2015 Safe Yield Reset Agreement" ("SYRA")  
7 and CHINO'S basis for opposing it. The reason they all knew is that on August 11, 2015,  
8 CHINO filed its position with the Court in a pleading entitled "CITY OF CHINO'S  
9 SUPPLEMENT TO STATUS REPORT ON WATERMASTER'S SAFE YIELD  
10 REDETERMINATION AND RESET." Nevertheless, no one invited CHINO to participate in  
11 any procedural matters pertaining to the Watermaster Motion.

12           4.     After reviewing the Watermaster Motion, I realized its immensity and volume  
13 including a previously undisclosed 492-page report by Watermaster's engineer. I also  
14 realized that I would need more time to prepare an adequate opposition and the opportunity to  
15 conduct discovery in order to present the factual basis on issues about the impact of the  
16 SYRA on CHINO'S water rights that were not addressed by the Watermaster Motion.

17           5.     Therefore, I communicated my requests to Watermaster's attorneys. On  
18 November 5, 2016, I conducted a telephone conference with Watermaster's attorneys Scott  
19 Slater and Brad Herrema. The purpose of my conference call was to request a continuance of  
20 the Watermaster Motion then set for December 18, 2015 and to request a stipulation that  
21 CHINO be allowed to conduct discovery. The response from Mr. Slater was that he was  
22 unauthorized to grant such requests and a suggestion that I bring these issues to the Court's  
23 attention. Therefore, I proceeded to prepare two Ex Parte Applications to bring these issues  
24 before the Court.

25           6.     In the meantime, I am informed and believe that Watermaster's attorneys  
26 conferred with the Watermaster Board in closed session about the Watermaster although I  
27 have no information about the substance of those discussions. I only know that  
28

1 Watermaster's attorneys did not communicate with me about my requests of November 5,  
2 2016.

3 7. After the Court issued the December 2, 2015, I received a telephone call from  
4 Scott Slater on December 7, 2015 proposing to set a briefing schedule that would reduce  
5 CHINO'S time to file its opposition to the Watermaster Motion. I asked him to communicate  
6 a specific proposal by email. That same day, he sent his proposal and I responded with mine.  
7 We exchanged several more emails. There was no resolution. From my viewpoint, I was  
8 unwilling to reduce CHINO'S time while Watermaster's time was expanded. However, I did  
9 offer other concessions but they were not acceptable to Mr. Slater.

10 8. Although Mr. Slater's email communications to me referred to questions or  
11 concerns of other parties about a briefing schedule, no other party to the Judgment  
12 communicated any such concerns or questions to me.

13 9. I have read Mr. Slater's Request and it is not acceptable to CHINO for many  
14 reasons. One of those reasons is that his proposed briefing schedule would expand the time  
15 Watermaster will have to respond to CHINO'S opposition at the expense of the time CHINO  
16 will have to file its opposition. The fact of the matter is that I need the time to prepare an  
17 adequate opposition to the massive Watermaster Motion that would impose a huge loss of  
18 water on Chino amounting to the loss of 87,832 acre-feet of water that, at today's prices, are  
19 valued in excess of \$45 Million. This impact alone merits an adequate opportunity to CHINO  
20 to oppose the Watermaster Motion.

21 10. In addition, Watermaster's request reveals no problem to resolve as the Court's  
22 December 2, 2015 order clearly sets the briefing schedule – the one implicit in Code of Civil  
23 Procedure Section 1005.

24 I declare under penalty of perjury under the laws of the State of California that the  
25 foregoing is true and correct.

26 I executed this declaration on December 11, 2015 in Chino, California.

27 By: \_\_\_\_\_

28 Jimmy L. Gutierrez

**CHINO BASIN WATERMASTER**

**Case No. RCV 51010**

**Chino Basin Municipal Water District v. The City of Chino**

**PROOF OF SERVICE**

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On December 11, 2015 I served the following:

1. **CITY OF CHINO'S OPPOSITION TO WATERMASTER'S REQUEST TO SHORTEN CHINO'S TIME TO OPPOSE THE WATERMASTER RESET MOTION AND TO FILE NEW MOTIONS**
2. **DECLARATION OF JIMMY L. GUTIERREZ IN OPPOSITION TO WATERMASTER'S REQUEST TO SHORTEN THE CITY OF CHINO'S TIME TO FILE ITS OPPOSITION TO THE WATERMASTER MOTION SET FOR JANUARY 22, 2016**

/ X / BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:

***See attached service list: Mailing List 1***

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

/ / BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

/ X / BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

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

Executed on December 11, 2015 in Rancho Cucamonga, California.



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Chino Basin Watermaster

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