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17 Attorneys for Defendant and Appellant  
18 Cucamonga Valley Water District

19 [Other Attorneys on Next Page]

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 COUNTY OF SAN BERNARDINO

22 CHINO BASIN MUNICIPAL WATER  
23 DISTRICT,

24 Petitioner,

25 v.

26 CITY OF CHINO, et al.,

27 Defendants.

Case No. RCV 51010

Judge: Hon. Donald Alvarez

NOTICE OF MOTION AND MOTION TO  
CONFIRM STAY PENDING APPEAL OF  
DEFENDANTS AND APPELLANTS  
CUCAMONGA VALLEY WATER DISTRICT,  
MONTE VISTA WATER DISTRICT AND CITY  
OF POMONA

[Filed Concurrently With:

1. Mem. of P. & A;

2. [Proposed] Ord.]

Date: September 12, 2017

Time: 8:30 a.m.

Dept.: S23

04342.00108\30006775.1

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NOTICE OF MOTION AND MOTION TO CONFIRM STAY

TO ALL PARTIES AND THEIR ATTORNEYS:

PLEASE TAKE NOTICE that on September 12, 2017, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department S23 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California, Defendants and Appellants Cucamonga Valley Water District, Monte Vista Water District and City of Pomona (collectively "Defendants") shall move to stay the Court Order Denying the Chino Basin Watermaster's Motion Regarding 2015 Safe Yield Reset Agreement, etc., filed April 28, 2017 ("Order"), pending appeal. The Motion shall be made on the grounds that the Order is automatically stayed pursuant to California Civil Procedure Code Section 916(a), and the Order is not binding until the appeal is final pursuant to the 1978 Judgment, Paragraph 31(e).

This Motion is based on this Notice, the accompanying Memorandum of Points and Authorities, the pleadings and papers on file in this action, and any other matters properly before the Court at the hearing on the Motion.

Dated: August 10, 2017

BEST BEST & KRIEGER LLP

By: Gene Tanaka

GENE TANAKA  
STEVE ANDERSON  
MILES KRIEGER  
Attorneys for Defendant and Appellant  
Cucamonga Valley Water District

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Dated: August 9, 2017

LAGERLOF, SENECAL, GOSNEY & KRUSE LLP

By: Thomas S. Bunn III

THOMAS S. BUNN III  
Attorneys for Defendant and Appellant  
City of Pomona

Dated: August \_\_, 2017

KIDMAN LAW LLP

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

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Dated: August \_\_, 2017

LAGERLOF, SENEAL, GOSNEY & KRUSE LLP

By: \_\_\_\_\_  
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City of Pomona

Dated: August 10, 2017

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21 COUNTY OF SAN BERNARDINO

22 CHINO BASIN MUNICIPAL WATER  
23 DISTRICT,  
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25 Petitioner,  
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27 v.  
28 CITY OF CHINO, et al.,  
29  
30 Defendants.

Case No. RCV 51010  
Judge: Hon. Donald Alvarez  
[PROPOSED] ORDER  
Date: September 12, 2017  
Time: 8:30 a.m.  
Dept.: S23

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[PROPOSED] ORDER

The Motion to Confirm Stay Pending Appeal of the Court’s Order Regarding 2015 Safe Yield Reset Agreement, etc., filed April 28, 2017 (“Order”), of Defendants and Appellants Cucamonga Valley Water District, Monte Vista Water District and City of Pomona (collectively “Defendants”), came on regularly for hearing on September 12, 2017, at 8:30 a.m., in Department S23 of the Superior Court of California, County of San Bernardino, the Honorable Donald Alvarez, Judge presiding. Appearances were as noted on the record. After full consideration of the respective moving papers, opposition papers and reply papers, and having heard oral argument of counsel at the hearing,

IT IS ORDERED that Defendants’ Motion to Confirm Stay of the Order is SUSTAINED on the following grounds:

1. The Court’s Order is automatically stayed pending appeal. Cal. Civ. Proc. Code § 916.
2. The 1978 Judgment provides that the Court’s Order is not binding on all parties until an appeal is final. Judgment, ¶ 31(e), signed Jan. 27, 1978.

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Judge of the Superior Court



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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF SAN BERNARDINO

17  
18 CHINO BASIN MUNICIPAL WATER  
DISTRICT,

19 Petitioner,

20 v.

21 CITY OF CHINO, et al.,

22 Defendants.  
23

Case No. RCV 51010

Judge: Hon. Donald Alvarez

MEMORANDUM OF POINTS AND  
AUTHORITIES OF DEFENDANTS AND  
APPELLANTS CUCAMONGA VALLEY  
WATER DISTRICT, MONTE VISTA WATER  
DISTRICT AND CITY OF POMONA IN  
SUPPORT OF MOTION TO CONFIRM STAY  
PENDING APPEAL

[Filed Concurrently With:  
1. Notice of Mot. and Mot.;  
2. [Proposed] Order.]

Date: September 12, 2017  
Time: 8:30 a.m.  
Dept.: S23

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1 MEMORANDUM OF POINTS & AUTHORITIES

2  
3 1. INTRODUCTION

4  
5 This Motion to Confirm Stay Pending Appeal is premised on two separate and  
6 independent grounds. First, California Code of Civil Procedure Section 916(a) provides that “the  
7 perfecting of an appeal stays proceedings in the trial court upon the judgement or order appealed  
8 from....” Here, this Court’s Order for Watermaster’s Motion Regarding 2015 Safe Yield Reset  
9 Agreement, etc., filed April 28, 2017 (“Order”), changed the Safe Yield from 140,000 acre feet  
10 per year (“AFY”) to 135,000 AFY, and instructed Watermaster to change its “erroneous  
11 interpretation” and “wrong practice” of allocating Unproduced Agricultural Pool water equally  
12 for Land Use Conversion and Early Transfer claims, and instead to give priority to Land Use  
13 Conversion claims. Because these provisions of the Order require Watermaster to take  
14 affirmative action and change the status quo among the parties, they are mandatory injunctions  
15 which are automatically stayed.

16  
17 Second, Paragraph 31(e) of the 1978 Judgment provides that the decision of this Court  
18 “shall be binding upon the Watermaster and all Parties,” only “[w]hen the same is final.”  
19 Accordingly, this Court’s Order does not become binding until the appeal of Defendants and  
20 Appellants Cucamonga Valley Water District (“Cucamonga”), Monte Vista Water District  
21 (“Monte Vista”) and City of Pomona (“Pomona”) (collectively “Appellants”) is resolved.

22  
23 For these reasons, Appellants respectfully request that the Court protect the appellate  
24 court’s jurisdiction and preserve the status quo by confirming that its Order is stayed on appeal.

25  
26 2. PROCEDURAL HISTORY

27  
28 This case is an adjudication of the groundwater rights in the Chino Basin. Under the 1978

1 Judgment, “all actions, decisions or rules of Watermaster shall be subject to review by the Court  
2 on its own motion or on timely motion by any party, the Watermaster (in the case of a mandated  
3 action), the Advisory Committee, or any Pool Committee . . . .” Judgment, ¶ 31, signed Jan. 27,  
4 1978 (“Judgment”). Paragraph 31(e) further provides that: “The decision of the Court in such  
5 proceedings shall be an *appealable supplemental Order* in this case. *When the same is final, it*  
6 *shall be binding upon the Watermaster and all Parties.*” Emphasis added.

7  
8 The Judgment defines Safe Yield as “the long-term average annual quantity of ground  
9 water . . . which can be produced from the Basin under cultural conditions of a particular year  
10 without causing an undesirable result.” Judgment, ¶ 4(x). The Safe Yield represents the total of  
11 the water rights allocated by the Judgment. *Id.* ¶ 44. The Judgment reserved continuing  
12 jurisdiction to redetermine Safe Yield. *Id.* ¶ 15(a).

13  
14 In 2015, the parties to the 2015 Safe Yield Reset Agreement (“2015 SYRA”) agreed to  
15 reset the Safe Yield of the Basin from 140,000 AFY to 135,000 AFY. Watermaster’s Motion  
16 Regarding 2015 Safe Yield Reset Agreement, etc., dated Oct. 23, 2015 (“Watermaster Motion”),  
17 10:9-12:12. The parties to the 2015 SYRA also confirmed that Land Use Conversion and Early  
18 Transfer claims will continue to receive equal priority to Unproduced Agricultural Pool water.  
19 Watermaster Motion 18:2-4. This agreement reflects the parties’ historical understanding and  
20 practice. Watermaster Motion 17:26-18:16.

21  
22 For the past nine years, without objection from any of the parties, Watermaster has  
23 allocated Land Use Conversion and Early Transfer claims on an equal priority basis.  
24 Watermaster’s Reply to Oppositions to Motion Regarding 2015 Safe Yield Reset Agreement, etc.,  
25 dated Feb. 1, 2016 (“Watermaster Reply”), 15:1-16:3; 17:22-18:19; 24:15-25:1. Watermaster  
26 relied upon the Peace II Agreement, its Rules and Regulations and this Court’s October 8, 2010  
27 Order to authorize its practices. Watermaster Reply 22:9-25:1. The proposed 2015 SYRA  
28 continued Watermaster’s nearly decade-long practice of distributing water to the Appropriate

1 Pool based on equal priority for Land Use Conversions and Early Transfers. Watermaster Reply  
2 17:22-18:5; 24:15-25:1.

3  
4 This Court granted the Motion with respect to amending the restated Judgment to reset the  
5 Safe Yield to 135,000 AFY. Order 1:23-24. The Court also rejected Watermaster’s interpretation  
6 of the Peace II Agreement, its Rules and Regulations and the October 8, 2010 Court Order. Order  
7 40:23-26; 54:10-57:20. The Court concluded that the Watermaster’s decade-long interpretation  
8 of priorities: “is not a basis to continue that erroneous interpretation. If Watermaster has to make  
9 a reallocation, then it must do so in order to follow the court’s order.” Order 57:27-58:2. Thus,  
10 the Court explicitly rejected Watermaster’s historical practice of allocating Unproduced  
11 Agricultural Pool water for Conversion claims on an equal-priority basis, and mandated  
12 Watermaster allocate Unproduced Agricultural Pool water for Early Transfer claims and  
13 Conversion claims on an equal priority basis. Order 60:13-28.

14  
15 Appellants filed timely notices of appeal of the Order and perfected their appeals.  
16 Appellants had 60 days to file its notice of appeal following issuance of the Order. Cal. Rule of  
17 Court 8.104(a)(1)(B). The Order was filed on April 28, 2017. Cucamonga filed its Notice of  
18 Appeal on June 23, 2017, Monte Vista filed its Notice of Appeal on June 27, 2017, and City of  
19 Pomona filed its Appeal on June 27, 2017, all within the 60 day period.

20  
21 3. ANALYSIS

22  
23 A. THE ORDERS REGARDING SAFE YIELD AND PRIORITY OF  
24 CONVERSION CLAIMS ARE MANDATORY INJUNCTIONS, WHICH  
25 ARE AUTOMATICALLY STAYED BY SECTION 916(A)  
26

27 California Civil Procedure Code Section 916(a) provides, subject to certain exceptions,  
28 “the perfecting of an appeal stays proceedings in the trial court upon the judgment or order

1 appealed from or upon the matters embraced therein or affected thereby. . . ." The purpose of this  
2 provision is "to protect the appellate court's jurisdiction by preserving the status quo until the  
3 appeal is decided . . . the [automatic stay] prevents the trial court from rendering an appeal futile  
4 by altering the appealed judgment or order by conducting other proceedings that may affect it."  
5 Varian Medical Systems, Inc. v. Delfino, 35 Cal.4th 180, 189 (2005) (citation omitted, brackets  
6 added).

7  
8 Whether a stay applies automatically or at the court's discretion depends on whether the  
9 court issued a "prohibitory" or "mandatory" injunction. An injunction is prohibitory "if its effect  
10 is to leave the parties in the same position as they were prior to the entry of the judgment."  
11 Musicians Club of Los Angeles v. Superior Court, 165 Cal.App.2d 67, 71 (1958). For example,  
12 in Musicians Club, the trial court order enjoining former board members from exercising  
13 authority as directors was not stayed on appeal because the order was made after each member  
14 lost reelection at the annual board election and thus, did not change their status from member to  
15 non-member. Id. at 71.

16  
17 Conversely, "an injunction is considered to be mandatory where it requires affirmative  
18 action and changes the status quo." Hayworth v. City of Oakland, 129 Cal. App.3d 723, 727-728  
19 (1982). In Hayworth, the trial court order imposed a five-to-one promotion ratio due to past  
20 racial discrimination. This required "different, positive action" and resulted in a change to the  
21 City's status quo; namely, its existing civil service promotion procedures. Id. at 727-728. See,  
22 Paramount Pictures Corp. v. Davis, 228 Cal. App. 2d 827, 835 (1964) (trial court order was  
23 mandatory, and thus, stayed on appeal where it enjoined defendant from providing contractual  
24 services under an exclusive agreement by compelling her to make an additional photoplay scene).

25  
26 Here, the Court's Order resetting the Safe Yield changes the status quo by reducing the  
27 amount of water rights allocated to the parties, and it requires the Watermaster to take the  
28 affirmative action of levying and collecting assessments on water production exceeding the

1 reduced Safe Yield. Judgment ¶ 45. The Order also compels the Watermaster to give Land Use  
2 Conversion Claims priority over Early Transfers Claims. Equal priority has been the practice of  
3 Watermaster and relied upon by the Appropriators for the past nine years. Therefore, the Order  
4 requires Watermaster to take affirmative action and changes the status quo among the parties so it  
5 is a mandatory injunction. As such, it is automatically stayed under Section 916(a).

6  
7 B. PARAGRAPH 31(E) OF THE JUDGMENT STATES THAT THE  
8 ORDER IS NOT FINAL UNTIL THIS APPEAL IS FINAL SO IT IS  
9 STAYED PENDING APPEAL

10  
11 The Judgment is equally clear that the Order is not binding until the appeals are final.  
12 Paragraph 31 of the Judgment authorizes the Court to review “all actions, decisions and rules of  
13 Watermaster . . . .” Paragraph 31(e) explains that “[t]he decision of the Court in such proceedings  
14 shall be an *appealable supplemental order* in this case. *When the same is final, it shall be*  
15 *binding upon the Watermaster and all Parties.*” Emphasis added. The Watermaster’s Motion  
16 and its allocation of Safe Yield and allocation of Unproduced Agricultural Pool water for Land  
17 Use Conversion and Early Transfer claims are “actions” “rules” and/or “decisions” for purposes  
18 of Paragraph 31(e). Because the Court’s Order is only binding upon the Watermaster and all  
19 parties once any appeal becomes final, the Court Order is not binding and stayed pending the  
20 appeal.

21  
22 4. CONCLUSION

23  
24 The Order mandates Watermaster to take affirmative action and change long-standing  
25 practices, which are mandatory injunctions automatically stayed on appeal by Civil Procedure Code  
26 Section 916(a). Separately, Paragraph 31(e) of the Judgment expressly states that this Court’s orders,  
27 reviewing Watermaster’s actions, decisions or rules, are not binding until all appeals are final.

28 Therefore, Appellants respectfully request this Court protect the appellate court’s jurisdiction and

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Dated: August 10, 2017

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Cucamonga Valley Water District

Dated: August \_\_, 2017

LAGERLOF, SENEAL, GOSNEY & KRUSE LLP

By: \_\_\_\_\_  
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City of Pomona

Dated: August \_\_, 2017

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3 Dated: August \_\_, 2017

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9 Dated: August 9, 2017

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13 Dated: August \_\_, 2017

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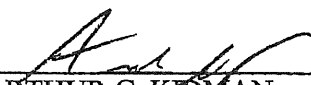
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Monte Vista Water District

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 11, 2017 I served the following:

1. NOTICE OF MOTION AND MOTION TO CONFIRM STAY PENDING APPEAL OF DEFENDANTS AND APPELLANTS CUCAMONGA VALLEY WATER DISTRICT, MONTE VISTA WATER DISTRICT AND CITY OF POMONA
2. [PROPOSED] ORDER
3. MEMORANDUM OF POINTS AND AUTHORITIES OF DEFENDANTS AND APPELLANTS CUCAMONGA VALLEY WATER DISTRICT, MONTE VISTA WATER DISTRICT AND CITY OF POMONA IN SUPPORT OF MOTION TO CONFIRM STAY PENDING APPEAL

/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.

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/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 August 11, 2017 in Rancho Cucamonga, California.

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