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12 Attorneys for Defendant and Appellant
CUCAMONGA VALLEY WATER DISTRICT
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14 [Other Attorneys on Next Page]

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN BERNARDINO
17

18 CHINO BASIN MUNICIPAL WATER
19 DISTRICT,

20 Petitioner,

21 v.

22 CITY OF CHINO, et al.,

23 Defendants.
24
25
26
27
28

Exempt from Filing Fees
Per Gov't Code § 6103

Case No. RCVRS 51010

Judge: Stanford E. Reichert

EX PARTE APPLICATION TO SPECIALLY
SET A HEARING AND BRIEFING
SCHEDULE; MEMORANDUM OF POINTS
AND AUTHORITIES

*[filed concurrently with Decl. of Sarah
Foley and [Proposed] Order]*

Date: December 5, 2018

Time: 8:30 a.m.

Dept.: S35

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26 Attorneys for Defendant and Appellee City of Ontario
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EX PARTE APPLICATION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on December 5, 2018 at 8:30 a.m., in Department S35 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California, Defendants and Appellants Cucamonga Valley Water District, City of Pomona, and Monte Vista Water District, and Defendants and Appellees City of Chino, Jurupa Community Services District, and City of Ontario (collectively, "Settling Parties") will make an Ex Parte Application ("Application") to specially set a hearing and briefing schedule on a Motion to Approve Amendments to Appropriative Pool Pooling Plan and Court-Approved Management Agreements ("Motion").

The Settling Parties request a hearing for the Motion, on a date that is convenient for the Court and the parties shortly after February 1, 2019, as determined at the hearing on the Application. The Settling Parties further request the Court set a briefing schedule, according to Section 1005(b) of the Code of Civil Procedure, as follows:

- Settling Parties to file Motion on or before sixteen (16) court days before the hearing on the Motion;
- Joinders or opposition to Motion, if any, filed on or before nine (9) court days before the hearing on the Motion;
- Reply brief to filed on or before five (5) court days before the hearing on the Motion.

This Application is made pursuant to the Court's inherent power and responsibility to fairly and efficiently administer all of the judicial proceedings that are pending before it, which includes the power to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. Cal. Civ. Proc. Code § 128(a)(3), (5); Hays v. Superior Court, 16 Cal.2d 260, 264 (1940). Good cause exists to grant this Application because

1 the Court of Appeal has *temporarily* remanded this case for this Court to hear the Motion and has
2 directed this Court to decide the Motion "as soon as possible." To comply with the time
3 constraints imposed by the Court of Appeal, ex parte relief is required to specially set both the
4 hearing date and the briefing schedule. In addition, this relief is requested because the Settling
5 Parties are unable to file the Motion within five days of reserving a hearing date as required under
6 San Bernardino Superior Court Local Rule 520 or comply with the notice period required in the
7 Judgment.

8 This Application is based on the supporting Memorandum of Points and Authorities, the
9 supporting Declaration of Sarah Christopher Foley, the pleadings and papers on file in this case,
10 and any oral argument the Court entertains on this matter.

11 This notice and Application complies with the ex parte notice requirements of San
12 Bernardino Superior Court Local Rule 731 and California Rule of Court 3.1203. Declaration of
13 Sarah Christopher Foley ("Foley Decl."), ¶ 3.

14
15 Dated: November 28, 2018

BEST BEST & KRIEGER LLP

16
17 By: 

18 GENE TANAKA
19 STEVE ANDERSON
20 SARAH CHRISTOPHER FOLEY
21 Attorneys for Defendant and Appellant
22 Cucamonga Valley Water District

23
24 Dated: November 28, 2018

LAGERLOF SENEAL GOSNEY & KRUSE LLP

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26 By: with permission /S/ Thomas S. Bunn

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

1 Dated: November 28, 2018

KIDMAN GAGEN LAW LLP

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3 By: with Permission /s/ *Arthur G. Kidman*

4 ARTHUR G. KIDMAN
5 ANDREW B. GAGEN
6 Attorneys for Defendant and Appellant
7 Monte Vista Water District

8
9 Dated: November 28, 2018

JIMMY L. GUTIERREZ, A LAW CORPORATION

10 By: with Permission /s/ *Jimmy L. Gutierrez*

11 JIMMY L. GUTIERREZ
12 Attorneys for Defendant and Appellee
13 City of Chino

14 Dated: November 28, 2018

ELLISON SCHNEIDER & HARRIS LLP

15 By: with Permission /s/ *Robert E. Donlan*

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17 SHAWNDA M. GRADY
18 Attorneys for Defendant and Appellee
19 Jurupa Community Services District

20 Dated: November 28, 2018

NOSSAMAN LLP

21 By: with Permission /s/ *Fredric A. Fudacz*

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23 Attorneys for Defendant and Appellee
24 City of Ontario
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1. INTRODUCTION

Defendants and Appellants Cucamonga Valley Water District, City of Pomona, and Monte Vista Water District, and Defendants and Respondents City of Chino, Jurupa Community Services District, and City of Ontario (collectively, “Settling Parties”) request that this Court specially set a hearing and briefing schedule on a Motion to Approve Amendments to Appropriative Pool Pooling Plan and Court-Approved Management Agreements (“Motion”).

The Settling Parties request a hearing for the Motion, on a date that is convenient for the Court and the parties shortly after February 1, 2019, as determined at the hearing on the Application. The Settling Parties further request the Court set a briefing schedule, according to Section 1005(b) of the Code of Civil Procedure, as follows:

- Settling Parties to file Motion on or before sixteen (16) court days before the hearing on the Motion;
- Joinders or opposition to Motion, if any, filed on or before nine (9) court days before the hearing on the Motion;
- Reply brief to filed on or before five (5) court days before the hearing on the Motion.

This Court has the authority to grant this Application, and good cause exists for it to do so because the Court of Appeal has *temporarily* remanded this case for this Court to hear the Motion, directed this Court to decide the Motion “as soon as possible,” and ordered Appellants to inform the Court of Appeal by December 6, 2018 “of the superior court’s progress in deciding the motion.”

2. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On April 28, 2017, this Court issued an order regarding the Watermaster's 2015 motion to approve the Safe Yield Resent Agreement ("Order"). Cucamonga Valley Water District, Monte Vista Water District, and the City of Pomona ("Appellants") appealed the Order. The respondents to the appeal are the City of Chino, Jurupa Community Services District, and the City of Ontario ("Respondents"). The Court of Appeal stayed the appeal on January 3, 2018 to allow the Appellants and Respondents to conduct settlement negotiations. And Appellants and Respondents have engaged in extensive settlement negotiations and have reached a settlement in principle. Settlement requires certain amendments to the Appropriative Pool Pooling Plan and Court-Approved Management Agreements for the Chino Basin Adjudication, for which the Settling Parties will seek this Court's approval by way of its Motion.

The Court of Appeal issued an Order on November 6, 2018 and temporarily remanded the case to this Court to allow it consider the Motion. Declaration of Sarah Christopher Foley ("Foley Decl."), ¶ 4, Ex. A. The Court of Appeal directed this Court to decide the Settling Parties' Motion "as soon as possible" and directed the Appellants to serve and file a status letter to the Court of Appeal's settlement conference administrator by December 6, 2018. *Id.* The Settling Parties agreed that February 1, 2019, or later as determined by the Court, is an acceptable hearing date for the Motion and agreed to a briefing schedule under California Civil Procedure Code Section 1005(b). Foley Decl., ¶ 5.

3. THIS COURT HAS AUTHORITY TO SPECIALLY SET A HEARING AND BRIEFING SCHEDULE

Code of Civil Procedure section 128 provides, in pertinent part, as follows:

(a) Every court shall have the power to do all of the following:

(3) To provide for the orderly conduct of proceedings
before it, or its officers.

1 ...

2 (5) To control in furtherance of justice, the conduct of its
3 ministerial officers, and all other persons in any
4 manner connected with a judicial proceeding before
5 it, in every matter pertaining thereto.
6

7 As part of that inherent power, this Court has the authority to specially set a hearing date
8 and briefing schedule in all matters before it. It is well-established in California that a court has
9 both the inherent power and the responsibility to fairly and efficiently administer all of the
10 judicial proceedings that are pending before it. This includes the power to control the disposition
11 of the causes on its docket with economy of time and effort for itself, for counsel, and for
12 litigants. See Cal. Civ. Proc. Code § 128(a)(3), (5); see also Hays v. Superior Court, 16 Cal.2d
13 260, 264 (1940) (“There is nothing novel in the concept that a trial court has the power to exercise
14 a reasonable control over all proceedings connected with the litigation before it. Such power
15 necessarily exists as one of the inherent powers of the court and such power should be exercised
16 by the courts in order to insure the orderly administration of justice”).
17

18 4. GOOD CAUSE EXISTS TO SPECIALLY SET A HEARING AND BRIEFING
19 SCHEDULE
20

21 Good cause exists to grant this Application because the Court of Appeal has *temporarily*
22 remanded this case for this Court to hear the Motion and has directed this Court to decide the
23 Motion “as soon as possible.” To comply with the time constraints imposed by the Court of
24 Appeal, ex parte relief is required to specially set both the hearing date and briefing schedule.

25 Further, San Bernardino Superior Court Local Rule 520 prohibits the filing of a motion
26 without first reserving a hearing date and requires moving papers to be filed within five days of
27 reserving a hearing date. Although the Settling Parties have not yet been able to obtain a hearing
28 date on the Motion from this Court’s clerk, even if they could reserve a hearing date at this time,

1 ex parte relief would be necessary to excuse the Settling Parties from complying with Local Rule
2 520. Foley Decl., ¶ 2. Specifically, the Settling Parties are not yet ready to file the Motion
3 because they are still negotiating its terms with parties to the Judgment that are not parties to the
4 appeal. Foley Decl., ¶ 6. Accordingly, the Settling Parties would not be able to file the Motion
5 within five days of reserving a hearing date as required by Local Rule 520. Foley Decl., ¶¶ 2, 6.

6 Furthermore, Paragraph 15 of the Judgment requires thirty (30) days' notice for all post-
7 Judgment motions, but good cause exists for a shorter notice period, one that follows California
8 Civil Procedure Code Section 1005(b), because the Court of Appeal has ordered the Motion be
9 heard "as soon as possible." Foley Decl. ¶ 4. Accordingly, ex parte relief is also required to
10 specially set the briefing schedule on a shorter notice period than the thirty day notice period
11 required by the Judgment. A briefing schedule set pursuant to Code of Civil Procedure Section
12 1005(b) will provide sufficient notice to all parties and will comply with the Court of Appeal's
13 mandate to hear the Motion expeditiously.

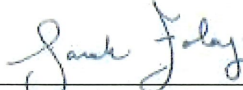
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15 5. CONCLUSION
16

17 For the reasons stated herein, the Settling Parties respectfully request that this Court
18 specially set a hearing on the Motion, on a date that is convenient for the Court and the parties
19 shortly after February 1, 2019, as determined at the hearing on the Application. The Settling
20 Parties further request the Court set a briefing schedule, according to Section 1005(b) of the Code
21 of Civil Procedure, as follows:

- 22
- 23 • Settling Parties to file Motion on or before sixteen (16) court days before the
 - 24 hearing on the Motion;
 - 25 • Joinders or opposition to Motion, if any, filed on or before nine (9) court days
 - 26 before the hearing on the Motion;
 - 27 • Reply brief to be filed on or before five (5) court days before the hearing on the
 - 28 Motion.

1 Dated: November 28, 2018

BEST BEST & KRIEGER LLP

2
3 By: 

4 GENE TANAKA
5 STEVE ANDERSON
6 SARAH CHRISTOPHER FOLEY
Attorneys for Defendant and Appellant
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8 Dated: November 28, 2018

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Attorneys for Defendant and Appellant
City of Pomona

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13 Dated: November 28, 2018

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19 Dated: November 28, 2018

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21 By: with Permission /s/ Jimmy L. Gutierrez

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City of Chino

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Dated: November 28, 2018

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Dated: November 28, 2018

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN BERNARDINO
17

18 CHINO BASIN MUNICIPAL WATER
19 DISTRICT,

20 Petitioner,

21 v.

22 CITY OF CHINO, et al.,

23 Defendants.
24

Case No. RCVRS 51010

Judge: Stanford E. Reichert

DECLARATION OF SARAH
CHRISTOPHER FOLEY IN SUPPORT OF
EX PARTE APPLICATION TO SPECIALLY
SET A HEARING AND BRIEFING
SCHEDULE

*[filed concurrently with Ex Parte
Application and [Proposed] Order]*

Date: December 5, 2018
Time: 8:30 a.m.
Dept.: S35

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5. The Settling Parties agreed that February 1, 2019, or later as determined by the Court, is an acceptable hearing date for the Motion and agreed to a briefing schedule under California Civil Procedure Code Section 1005(b).

6. The Settling Parties are not yet ready to file the Motion because they are still negotiating its terms with parties to the Judgment that are not parties to the appeal. The Settling Parties would not be able to file the Motion within five days of reserving a hearing date as required by Local Rule 520.

I declare under penalty of perjury under the laws of the State of California that the above facts are true. Executed on November 28, 2018.

Sarah Foley

Sarah Christopher Foley

EXHIBIT A

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

CHINO BASIN MUNICIPAL WATER
DISTRICT,
Plaintiff,

E068640

v.

CITY OF CHINO et al.,
Defendants, Objectors and Respondents;
CUCAMONGA VALLEY WATER
DISTRICT et al.,
Defendants, Movants and Appellants.

(Super. Ct. No. RCVRS51010)

The County of San Bernardino

THE COURT

On the court's own motion, the appeal is ACCEPTED for this court's settlement conference program, and all other proceedings in the appeal are STAYED pending further order of the court, extending the stay ordered January 3, 2018. (Ct. App., Fourth Dist., Local Rules of Ct., rule 4(c)(3).)

Pursuant to the parties' Joint Stipulation and Application for Limited Remand to the Superior Court" (capitalization changed) filed July 16, 2018, (Joint Stipulation) and while the appeal is still pending in this court, Superior Court Case No. RCVRS51010 is TEMPORARILY REMANDED to the superior court for the limited purpose of, and for the limited time necessary for, the consideration and decision of the parties' motion to approve the "2018 Amendments" to the "Restated Judgment" and "Court Approved Management Agreements," to which amendments the parties have agreed as a result of the settlement negotiations ongoing since the filing of the notice of appeal. (Joint Stip., pp. 2-5.)

The superior court is DIRECTED to decide the parties' motion as soon as possible by a written order signed by the judge. Appellants are DIRECTED to serve and file with this court's settlement conference administrator a letter on or before 30 days after the date of this order informing this court of the superior court's progress in deciding the motion.

Upon the filing of the signed order, the superior court clerk is DIRECTED to transmit to this court's settlement conference administrator a file-stamped copy of the order. To effectuate the Joint Stipulation within a reasonable time: if the superior court grants the motion, appellants are DIRECTED to serve and file with the settlement conference administrator, on or before 20 days after the date the signed order is filed in

the superior court, a request for dismissal of the appeal; however, if the superior court denies the motion, this court through its settlement conference administrator will confer with the parties and determine how the appeal should proceed. (See Joint Stip., pp. 8-9 [“Appellants will dismiss their appeal”; “Parties will ask this court to lift the stay . . . and will proceed”]. See: *In re Amber S.* (1993) 15 Cal.App.4th 1260, 1264-1265 [constitutionally-based, inherent judicial powers entitle courts to adopt any procedure suitable to achieve justice in a particular case even though unauthorized by statute or rule]. See, e.g., *People v. Awad* (2015) 238 Cal.App.4th 215, 218 [“stay[ed] pending appeal for a short period of time to allow the trial court to conduct a Proposition 47 postconviction hearing”].)

RAMIREZ

Presiding Justice

cc: See attached list

MAILING LIST FOR CASE: E068640

Chino Basin Municipal Water District v. City of Chino et al.; Cucamonga Valley Water District et al.

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12 CUCAMONGA VALLEY WATER DISTRICT

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18 CHINO BASIN MUNICIPAL WATER
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Exempt from Filing Fees
Per Gov't Code § 6103

Case No. RCVRS 51010

Judge: Stanford E. Reichert

[PROPOSED] ORDER SPECIALLY
SETTING A HEARING AND BRIEFING
SCHEDULE

*[filed concurrently with Ex Parte
Application and Decl. of Sarah
Christopher Foley]*

Date: December 5, 2018
Time: 8:30 a.m.
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26 Attorneys for Defendant and Appellee City of Ontario
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28

[PROPOSED] ORDER

The Ex Parte Application of Defendants and Appellants Cucamonga Valley Water District, City of Pomona, and Monte Vista Water District and Defendants and Appellees City of Chino, Jurupa Community Services District, City of Ontario (collectively "Settling Parties") for an order specially setting a hearing and briefing schedule on their Motion to Approve Amendments to Appropriative Pool Pooling Plan and Court-Approved Management Agreements ("Motion") came on for hearing in Department S35 of this Court on December 5, 2018, at 8:30 a.m., the Honorable Stanford E. Reichert presiding. Appearances were noted on the record.

Having read and considered the Settling Parties' Ex Parte Application and the papers filed in support thereof, having heard argument, and good cause appearing therefor,

IT IS HEREBY ORDERED that the application is granted. The hearing on the Settling Parties' Motion is hereby specially set for _____, 2019 at _____ a.m./p.m., before this Court. The briefing for the Motion is scheduled as follows:

- Settling Parties to file Motion on or before sixteen (16) court days before the hearing on the Motion;
- Joinders or opposition to Motion, if any, filed on or before nine (9) court days before the hearing on the Motion;
- Reply brief to be filed on or before five (5) court days before the hearing on the Motion.

Dated: _____

JUDGE OF THE SUPERIOR COURT

CHINO BASIN WATERMASTER

Case No. RCVRS 51010

Chino Basin Municipal Water District v. City of Chino, et al.

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 November 28, 2018 served the following:

1. EX PARTE APPLICATION TO SPECIALLY SET A HEARING AND BRIEFING SCHEDULE;
MEMORANDUM OF POINTS AND AUTHORITIES
2. DECLARATION OF SARAH CHRISTOPHER FOLEY IN SUPPORT OF EX PARTE
APPLICATION TO SPECIALLY SET A HEARING AND BRIEFING SCHEDULE
3. [PROPOSED] ORDER SPECIALLY SETTING A HEARING AND BRIEFING SCHEDULE

/ 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

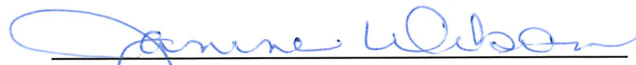
/ ___ / BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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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 November 28, 2018 in Rancho Cucamonga, California.



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