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Fee Exempt Per Gov. Code § 6103

5 **ARTHUR G. KIDMAN, CAL. BAR NO. 61719**
6 **ANDREW B. GAGEN, CAL. BAR NO. 212257**

7 Attorneys for Defendant, MONTE VISTA WATER DISTRICT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN BERNARDINO

10 CHINO BASIN MUNICIPAL WATER
11 DISTRICT

12 Plaintiff,

13 vs.

14 CITY OF CHINO, et al.,

15 Defendants.
16
17
18

Case No. RCV 51010

Assigned For All Purposes to:
Hon. Stanford E. Reichert

- (1) MONTE VISTA WATER DISTRICT'S EX PARTE APPLICATION FOR AN ORDER TO:
(A) TAKE WATERMASTER'S MOTION OFF CAELNDAR;
OR, IN THE ALTERNATIVE,
(B) STAY THE BREFING SCHEDULE AND HEARING ON THE APPEAL PARTIES' MOTION;
(2) MEMORANDUM OF POINTS AND AUTHORITIES; AND
(3) DECLARATION OF ANDREW B. GAGEN IN SUPPORT THEREOF

[Concurrently filed with a Proposed Order]

Hearing on Application:

Date: February 1, 2019

Time: 8:30 a.m.

Department: S35

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on February 1, 2019 at 8:30 a.m., in Department S35 of
3 the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino,
4 California, Defendant and Appellant Monte Vista Water District (“Monte Vista”) will make an
5 Ex Parte Application For an Order (“Application”) either to:

- 6 (1) take off calendar Watermaster’s Motion Regarding Amendments to Restated
7 Judgment, Peace Agreement, Peace II Agreement, and Re-Operation Schedule
8 (“Watermaster’s Motion”) and set a briefing schedule and hearing on
9 Watermaster’s Motion during the hearing on March 15, 2019 for the Appeal
10 Parties Motion, if the appeal (*Chino Basin Municipal Water District v. City of*
11 *Chino et al.* (Case No. E068640)) has been (or will be) dismissed; or, in the
12 alternative,
13 (2) stay both the briefing schedule and March 15th hearing on the appeal parties’
14 Motion to Approve Amendments to Appropriative Pool Plan and Court-
15 Approved Management Agreements (“Appeal Parties’ Motion”) until the Court
16 of Appeal responds to Watermaster’s violation of its November 6th ‘order for
17 limited remand’.

18 Good cause exists to grant either relief requested in this Application because:

- 19 (a) Watermaster and its Motion are in violation of both the Court of Appeal’s
20 November 6, 2018 ‘order for a limited remand’ *and* this Court’s December 28th
21 ‘ex parte order’ in which both courts authorized the six parties on appeal (and
22 no other) to file their “motion to approve the ‘2018 Amendments’” (i.e. the
23 Appeal Parties’ Motion). This Court lacks jurisdiction to decide or even
24 consider any other motion. If this Court decides to hear and grant
25 Watermaster’s Motion, then the settlement among the six parties on appeal may
26 be nullified, which will cause irreparable harm to Monte Vista.
27 (b) Monte Vista (and presumably the other five parties on appeal) is/are under a
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1 current obligation to advise the Court of Appeal of this violation and to request
2 that the Court of Appeal direct this Court to take Watermaster's Motion off
3 calendar, if this Court denies that request in this Application. The irreparable
4 harm to Monte vista (and presumably the other parties on appeal) is that the
5 Court of Appeal may perceive this violation as a reason for closing the limited
6 remand, re-imposing the automatic stay, and ordering the parties on appeal back
7 to the Court of Appeal. Any such orders by the Court of Appeal may nullify
8 the settlement among the six parties on appeal.

- 9 (c) Monte Vista will be prejudiced by having to oppose Watermaster's extra-
10 judicial Motion while concurrently moving this Court, along with the other
11 parties on appeal, for an order to approve the Amendments to the Appropriate
12 Pool Pooling Plan and CAMA.

13 The Application is made pursuant to the Court's inherent power and responsibility to
14 (i) compel obedience to its orders and to the orders of a judge out of court, in an action or
15 proceeding pending therein (i.e. the Court of Appeal case No. E068640) and (ii) exercise
16 control over all proceedings before it in order to insure the orderly administration of justice.
17 [See Code Civ. Proc. §§ 128(a)(2)-(5) and 187; *Hays v. Superior Court* (1940) 16 Cal.2d 260,
18 264.]

19 This Application is based on the supporting Memorandum of Points and Authorities,
20 the supporting Declaration of Andrew B. Gagen, the pleadings and papers on file in this case,
21 particularly the Appeal Parties' Motion and Watermaster's Motion, and any oral argument the
22 Court entertains on this matter.

23 Counsel for Monte Vista provided notice of this Application to counsel for
24 Watermaster and all parties to the Restated Judgment, by electronic mail through the regular
25 Watermaster service mechanism at 10:37 a.m. on January 29, 2019. [Declaration of Andrew
26 B. Gagen ¶ 4, Exh. A.] The notice included the nature of the relief requested; the date, time,
27 and place of the hearing on this Application; and a request for notification of any intent to
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1 oppose this Application. [*Id.*] Watermaster responded on January 29th and the Agricultural
2 Pool responded on January 30th that they intend to oppose this Application. [*Id.* at ¶¶ 5-6.]
3

4 Dated: January 30, 2019

KIDMAN GAGEN LAW LLP

6 By: 

7 ARTHUR G. KIDMAN
8 ANDREW B. GAGEN
9 Attorneys for Defendant and Appellant
10 Monte Vista Water District
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Defendant and Appellant Monte Vista Water District¹ (“Monte Vista”) requests that
3 this Court issue an order either to (1) take off calendar Watermaster’s Motion Regarding
4 Amendments to Restated Judgment, Peace Agreement, Peace II Agreement, and Re-Operation
5 Schedule (“Watermaster’s Motion”), which is scheduled to be heard on March 15, 2019, and
6 opposition briefs are to be filed on February 13, 2019, and set a briefing schedule and hearing
7 on Watermaster’s Motion during the hearing on March 15, 2019 for the Appeal Parties
8 Motion, if the appeal has been (or will be) dismissed; or, in the alternative, (2) stay both the
9 briefing schedule and March 15th hearing on the appeal parties’ Motion to Approve
10 Amendments to Appropriative Pool Plan and Court-Approved Management Agreements
11 (“Appeal Parties’ Motion”) until the Court of Appeal responds to Watermaster’s Motion,
12 which is in violation of the Court of Appeal’s ‘order for limited remand’ dated November 6,
13 2018 (and this Court’s ‘ex parte order’ dated December 28, 2018) as explained in Section 3
14 below.

15 1. THIS COURT HAS AUTHORITY TO TAKE WATERMASTER’S MOTION
16 OFF CALENDAR; OR, IN THE ALTERNATIVE, STAY THE BRIEFING
17 AND HEARING ON THE APPEAL PARTIES’ MOTION

18 Under Section 128 of the *Code of Civil Procedure*, this Court has the statutory
19 authority to take Watermaster’s Motion off calendar; or, in the alternative, stay both the
20 briefing schedule and hearing on the Appeal Parties Motion. In relevant part, Section 128
21 states:

- 22 (a) Every court shall have the power to do all of the
23 following:
24 (2) To enforce order in the proceedings before it . . .
25 (3) To provide for the orderly conduct of proceedings
26 before it, or its officers.

27 _____
28 ¹ Monte Vista is an owner of appropriative rights and an initial member of the Appropriative Pool.
[Restated Judgment at ¶ 43(c) and Exh. “E.”]

1 (4) *To compel obedience to its judgments, orders, and*
2 *process, and to the orders of a judge out of court,*
3 *in an action or proceeding pending therein.*

4 (5) To control in furtherance of justice, the conduct of
5 its ministerial officers, and all other persons in any
6 manner connected with a judicial proceeding
7 before it, in every matter pertaining thereto. [Code
8 Civ. Proc. § 128(a); emphasis added.]

9 This Application is made pursuant to the Court's statutory authority to compel obedience to its
10 orders (i.e. this Court's December 28th 'ex parte order') and to the orders of a judge out of
11 court, in an action or proceeding pending therein (i.e. the Court of Appeal's November 6th
12 'order for limited remand'). [See Code Civ. Proc. § 128(a)(2), (4).]

13 In addition, it is well-established in California that a court has the inherent power to
14 exercise control over all proceedings before it in order to insure the orderly administration of
15 justice. This includes the power to control the disposition of cases on its docket with economy
16 of time and effort for itself, for counsel, and for litigants. [See Code Civ. Proc. § 128(a)(3),
17 (5); see also *Hays v. Superior Court* (1940) 16 Cal.2d 260, 264 ("There is nothing novel in the
18 concept that a trial court has the power to exercise a reasonable control over all proceedings
19 connected with the litigation before it. Such power necessarily exists as one of the inherent
20 powers of the court and such power should be exercised by the courts in order to insure the
21 orderly administration of justice").

22 In the alternative to Section 128, Section 187 of the *Code of Civil Procedure* may be
23 applied in cases where no course of procedure is pointed out by the Code of Civil Procedure or
24 a statute. [See *People v. Budd* (1914) 24 Cal. App. 176.] Section 187 states in its entirety:

25 When jurisdiction is, by the Constitution or this Code, or by any
26 other statute, conferred on a Court or judicial officer, all the
27 means necessary to carry it into effect are also given; and in the
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1 exercise of this jurisdiction, if the course of proceeding be not
2 specifically pointed out by this Code or the statute, any suitable
3 process or mode of proceeding may be adopted which may
4 appear most conformable to the spirit of this Code.

5 As established by Constitution, this Court has the power of self-preservation and the power to
6 remove all obstructions to its successful and convenient operation. [See *Millholen v. Riley*
7 (1930) 211 Cal. 29.] Section 187 provides an alternate source of authority, which is broad, to
8 grant the relief requested in this Application.

9
10 2. PERTINENT FACTS AND PROCEDURAL BACKGROUND

11 On April 28, 2017, this Court issued an order regarding the Watermaster's 2015 motion
12 to approve the Safe Yield Resent Agreement ("2017 Order"). Cucamonga Valley Water
13 District, Monte Vista Water District, and the City of Pomona ("Appellants") appealed the 2017
14 Order. The respondents to the appeal are the City of Chino, Jurupa Community Services
15 District, and the City of Ontario ("Respondents"). Appellants and Respondents are
16 collectively referred to herein as "Appeal Parties".

17 On January 3, 2018, the Court of Appeal stayed the appeal to allow the Appeal Parties
18 to conduct settlement negotiations. [Declaration of Andrew B. Gagen ("Gagen Dec."), ¶ 7,
19 Exh. B.] Appeal Parties engaged in extensive settlement negotiations and reached a settlement
20 in principle. [Gagen Dec., ¶ 8.] This settlement requires certain amendments to the
21 Appropriative Pool Pooling Plan and Court-Approved Management Agreements for the Chino
22 Basin Adjudication, for which the Appeal Parties sought this Court's approval via the Appeal
23 Parties Motion that was filed on January 15, 2019. [*Id.*]

24 On November 6, 2018, the Court of Appeal issued an order for a temporary remand
25 "for the limited purpose of, and for the limited time necessary for, the consideration and
26 decision of *the [appeal] parties' motion to approve the '2018 Amendments' . . .*" [Gagen
27 Dec., ¶¶ 9-10, Exh. C; emphasis added.] The Court of Appeal also ordered Appellants to serve
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1 and file a status letter to the Court of Appeal by December 6, 2018. [*Id.*]

2 On December 5, 2018, this Court granted the Appeal Parties' ex parte application and
3 ordered the "Motion to Approve Amendments to Appropriative Pool Pooling Plan and Court-
4 Approved Management Agreements . . . *by Appeal Parties*" (i.e. Appeal Parties' Motion) to be
5 filed on January 15, 2019, opposition papers filed on February 13, 2019, reply papers filed on
6 February 28, 2019, and Appeal Parties Motion to be heard on March 15, 2019. [Gagen Dec.,
7 ¶ 11, Exh. D; emphasis added.] This Court also took off calendar the Ag Pool's Petition for
8 Writ of Mandate dated November 19, 2018 ("Ag Pool's Petition"). [*Id.*]

9 On December 6th, the Appeal Parties filed a status letter with the Court of Appeal in
10 which they memorialized this Court's 'ex parte order', including a representation to the Court
11 of Appeal that the Appeal Parties "sought ex parte relief . . . for the superior court to specially
12 set a hearing and briefing schedule on" the Appeal Parties Motion, and the "superior court
13 granted the Parties' requested relief and specially set a hearing for the [Appeal Parties]
14 Motion" and no other motion. [Gagen Dec., ¶ 12, Exh. E.] Rightfully so, and since this Court
15 did not order it, no other representation was made regarding any motion other than the Appeal
16 Parties Motion. [*Id.*]

17 On January 15, 2019, the Appeal Parties' filed their Motion. So did Watermaster - in
18 violation of both the Court of Appeal's November 6th 'order for limited remand' and this
19 Court's December 28th 'ex parte order'. . [Gagen Dec., ¶ 8.]

20
21 3. GOOD CAUSE EXISTS TO EITHER TAKE WATERMASTER'S MOTION
22 OFF CALENDAR; OR, IN THE ALTERNATIVE, STAY THE BRIEFING
23 SCHEDULE AND HEARING ON THE APPEAL PARTIES' MOTION

24 Good cause exists for this Court to grant either relief requested in this Application
25 because this Court lacks jurisdiction to decide or even consider Watermaster's Motion. This
26 Court lacks jurisdiction under Section 916 of the *Code of Civil Procedure* and Paragraph 31 of
27

1 the Restated Judgment.²

2 Specifically, once the Appellants filed their Notices of Appeal as to this Court's 2017
3 Order, this Court was divested of its jurisdiction as to the 2017 Order and "*the matters*
4 *embraced therein or affected thereby, including enforcement of the judgment or order . . .*"

5 [Code Civ. Proc. § 916(a); emphasis added.] Section 916 mandates: "the perfecting of an
6 appeal stays proceedings in the trial court upon the judgment or order appealed from . . ."

7 [Id.]

8 In recognition of Section 916, the Parties on Appeal requested, and the Court of Appeal
9 issued, an order for a temporary remand "for the limited purpose of, and for the limited time
10 necessary for, the consideration and decision of the *[appeal] parties' motion to approve the*
11 *'2018 Amendments'*" and for no other purpose (or motion). [Gagen Dec., ¶¶ 9-10, Ex. C;
12 emphasis added.] In accordance thereof, this Court ordered the Appeal Parties Motion (and no
13 other motion) to be filed on January 15, 2019. [Gagen Dec., ¶ 11, Exh. D.]

14 In violation of both orders, Watermaster filed its Motion on January 15, 2019. This
15 Court cannot decide or even consider Watermaster's Motion because it lacks jurisdiction to do
16 so, which is the similar, if not the same, reason why this Court, at the ex parte hearing on
17 December 5th, took the Ag Pool's Petition off calendar. [Gagen Dec. ¶ 11, Exh. D.] If this
18 Court decides to hear and grant Watermaster's Motion, then the settlement among the six
19 parties on appeal may be nullified, which will cause irreparable harm to Monte Vista.

20 Good cause also exists because Monte Vista (and presumably the other five parties on
21 appeal) is/are under a current obligation both to advise the Court of Appeal of Watermaster's
22 violation and to request that the Court of Appeal direct this Court to take Watermaster's
23 Motion off calendar, if this Court denies that request in this Application. The irreparable harm
24 to Monte Vista (and presumably the other parties on appeal) is that the Court of Appeal may
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26 ² In addition to Section 916, this Court was divested of its jurisdiction as to the 2017 Order because the
27 2017 Order is "an *appealable supplemental Order* in this case. *When the same is final, it shall be*
28 *binding upon the Watermaster and all Parties.*" [Restated Judgment ¶ 31(e); emphasis added.] Accordingly, this Court's 2017 Order does not become binding until the appeal is resolved.

1 perceive this violation as a reason for closing the limited remand, re-imposing the automatic
2 stay, and ordering the Appeal Parties back to the Court of Appeal. Any such orders by the
3 Court of Appeal may nullify the settlement among the Appeal Parties.

4 Good cause also exists because Monte Vista will be prejudiced by having to oppose an
5 extra-judicial motion (Watermaster's Motion) while concurrently moving this Court, along
6 with the other parties on appeal, for an order to approve the Amendments to the Appropriative
7 Pool Pooling Plan and CAMA, which, if issued, will cause the appeal to be dismissed. This
8 prejudicial distraction will divide public and judicial resources and lessen the likelihood that
9 the Appeal Parties Motion, which should be the sole focus of this Court and the Appeal
10 Parties, will be properly briefed and argued at the March 15th hearing..

11 Such dueling motions will also complicate a simple matter before this Court, which is
12 whether to approve the Amendments to the AP Pooling Plan and CAMA. Lastly, for the sake
13 of judicial economy, Monte Vista and any other parties to the Restated Judgment should not be
14 compelled to oppose and argue against a motion (Watermaster's Motion) that this Court lacks
15 jurisdiction to decide or even consider.

16 4. CONCLUSION

17 For the reasons stated herein, Monte Vista respectfully requests that this Court issue an
18 order either to:

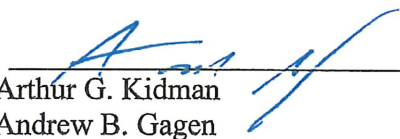
- 19 (1) take off calendar Watermaster's Motion Regarding Amendments to Restated
20 Judgment, Peace Agreement, Peace II Agreement, and Re-Operation Schedule
21 ("Watermaster's Motion") and set a briefing schedule and hearing on
22 Watermaster's Motion during the hearing on March 15, 2019 for the Appeal
23 Parties Motion, if the appeal (*Chino Basin Municipal Water District v. City of*
24 *Chino et al.* (Case No. E068640)) has been (or will be) dismissed; or, in the
25 alternative,
26 (2) stay both the briefing schedule and March 15th hearing on the Appeal Parties'
27 Motion to Approve Amendments to Appropriative Pool Plan and Court-
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Approved Management Agreements (“Appeal Parties’ Motion”) until the Court of Appeal responds to Watermaster’s violation of its November 6th ‘order for limited remand’.

Dated: January 30, 2019

KIDMAN GAGEN LAW LLP

By: 
Arthur G. Kidman
Andrew B. Gagen
Attorneys for Defendant,
MONTE VISTA WATER DISTRICT

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DECLARATION OF ANDREW B. GAGEN

I, Andrew B. Gagen, declare as follows:

1. I am an attorney licensed to practice law before the courts of the State of California, including this Court. I am a partner with the law firm of Kidman Gagen Law LLP, General Counsel and attorneys of record for Defendant and Appellant Monte Vista Water District ("Monte Vista") in both this action and the appeal titled *Chino Basin Municipal Water District v. City of Chino et al.* (Case No. E068640).

2. I have personal knowledge of the facts set forth below and if called as a witness, could and would testify to those facts under oath in support of this Ex Parte Application ("Application") for an order either to take off calendar Watermaster's Motion; or, in the alternative, stay the briefing schedule and hearing on the Appeal Parties Motion to Approve Amendments to Appropriative Pool Pooling Plan and Court-Approved Management Agreements ("Appeal Parties Motion"), filed by 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 "Appeal Parties").

3. My office called this Court's clerk on January 25, 2019 and on January 28, 2019 to inquire about hearing dates for the Application. The Court's clerk informed my office that a February 1, 2019 date for this Application is available.

4. My office provided notice of this Application to counsel for Watermaster and all parties to the Restated Judgment, by electronic mail through the regular Watermaster service mechanism at 10:37 a.m. on January 29, 2019. Attached as **Exhibit "A"** is a true and correct copy of the notice dated January 29, 2019.

5. On January 29, 2019, I received an email from Mr. Brad Herrema, Counsel for Watermaster, that Watermaster intended to oppose Monte Vista's Application.

6. On January 30, 2019, I received a phone call from Ms. Tracy Egoscue, Counsel for the Agricultural Pool, that the Ag Pool intended to oppose Monte Vista's Application.

1 7. On January 3, 2018, the Court of Appeal stayed the appeal to allow the Appeal
2 Parties to conduct settlement negotiations. Attached as **Exhibit "B"** is a true and correct copy
3 of the Court of Appeal's order dated January 3, 2018.

4 8. On behalf of Monte Vista, I attended nearly all settlement negotiation meetings
5 and conference calls and I was an active participant in all communications related to the
6 settlement process. I also participated in the drafting of the settlement documents, including
7 the Appeal Parties Motion. I've also received and reviewed Watermaster's Motion.

8 9. On behalf of Monte Vista, I participated in nearly all communications among
9 the Appeal Parties related to the appeal. I also participated in the drafting of the documents
10 filed with the Court of Appeal, including the documents identified in this Application. My
11 office is served with any documents served by the Court of Appeal and I've reviewed all such
12 documents.

13 10. On November 6, 2018, the Court of Appeal issued an order for a temporary
14 remand "for the limited purpose of, and for the limited time necessary for, the consideration
15 and decision of the [appeal] parties' motion to approve the '2018 Amendments'" and for
16 no other purpose (or motion). The Court of Appeal also ordered Appellants to serve and file a
17 status letter to the Court of Appeal by December 6, 2018. Attached as **Exhibit C"** is a true
18 and correct copy of the Court of Appeal's order dated November 6, 2018.

19 11. On December 5, 2018, I attended the hearing on the Appeal Parties' Ex Parte
20 Application to Specially Set a Hearing and Briefing Schedule. During that hearing, this Court
21 granted the Appeal Parties' ex parte application and ordered the "Motion to Approve
22 Amendments to Appropriative Pool Pooling Plan and Court-Approved Management
23 Agreements . . . by Appeal Parties" (i.e. Appeal Parties' Motion) to be filed on January 15,
24 2019, opposition papers filed on February 13, 2019, reply papers filed on February 28, 2019,
25 and Appeal Parties Motion to be heard on March 15, 2019. In response to oral argument,
26 including a jurisdictional argument presented by counsel for the City of Chino, Mr. Jimmy
27 Gutierrez, this Court also took off calendar the Ag Pool's Petition for Writ of Mandate dated
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1 November 19, 2018 (“Ag Pool’s Petition”). Attached as **Exhibit “D”** is a true and correct
2 copy of this Court’s ex parte order, without the lengthy Proof of Service attached, dated
3 December 28, 2018.

4 12. I participated in the drafting of the Appeal Parties status letter that was filed
5 with the Court of Appeal on December 6, 2018, in which the Appeal Parties memorialized this
6 Court’s ‘ex parte order’, including a representation to the Court of Appeal that the Appeal
7 Parties “sought ex parte relief . . . for the superior court to specially set a hearing and briefing
8 schedule on” the Appeal Parties Motion, and the “superior court granted the Parties’ requested
9 relief and specially set a hearing for the [Appeal Parties] Motion” and no other motion. No
10 other representation was made regarding any motion other than the Appeal Parties Motion.
11 Attached as **Exhibit “E”** is a true and correct copy of the Appeal Parties’ status letter, without
12 the attachment, dated December 6, 2018.

13 I declare under penalty of perjury under the laws of the State of California that the
14 above facts are true. Executed on January 30, 2019.


15
16 
17 Andrew B. Gagen, Esq.

EXHIBIT A

KIDMAN GAGEN LAW_{LLP}
Water | Environment | Government

2030 Main Street, Suite 1300
Irvine, California 92614
714-755-3100
714-755-3110 *fax*
www.kidmanlaw.com

January 29, 2019

VIA WATERMASTER ELECTRONIC SERVICE

Re: *Chino Basin Municipal Water District v. City of Chino, et al.*
Superior Court, Case No. RCVRS 51010
Notice of Ex Parte Application for An Order to Take Watermaster's
Motion Off Calendar

To Watermaster, Parties to the Restated Judgment and Counsel of Record:

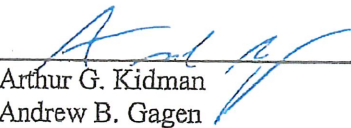
Please take notice that at 8:30 a.m., on Friday, February 1, 2019, in Department S35 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California, Defendant and Appellant Monte Vista Water District ("Monte Vista") will make an Ex Parte Application ("Application") to take off calendar Watermaster's Motion Regarding Amendments to Restated Judgment, Peace Agreement, Peace II Agreement, and Re-Operation Schedule ("Watermaster's Motion"); or, in the alternative, stay both the briefing schedule and March 15th hearing on the appeal parties' Motion to Approve Amendments to Appropriative Pool Plan and Court-Approved Management Agreements ("Appeal Parties' Motion") until the Court of Appeal responds to Watermaster's violation of its November 6th Order.

The Application is made pursuant to the Court's inherent power and responsibility to (a) compel obedience to its orders and to the orders of a judge out of court, in an action or proceeding pending therein (i.e. the Court of Appeal case No. E068640) and (b) exercise control over all proceedings before it in order to insure the orderly administration of justice. [CCP § 128(a)(2)-(5); *Hays v. Superior Court*, 16 Cal.2d 260, 264 (1940).]

Good cause exists to grant this Application because this Court lacks jurisdiction to hear or even consider any motion other than the Appeal Parties' Motion. If *either* this Court decides to hear and grant Watermaster's Motion *or* if the Court of Appeal perceives Watermaster's Motion as a violation of its November 6th 'order for limited remand' and order the appeal parties back to the Court of Appeal, then the settlement among the six parties on appeal may be nullified, which will cause irreparable harm to Monte Vista.

Pursuant to this notice, we request that any party that will appear to oppose the Application provide notice of such intent to counsel for Monte Vista, Andrew Gagen, at 714-755-3100 or agagen@kidmanlaw.com.

Sincerely,



Arthur G. Kidman
Andrew B. Gagen
KIDMAN GAGEN LAW LLP
Attorneys for Defendant and Appellant
Monte Vista Water District

cc: See attached Watermaster service list

EXHIBIT B

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

ORDER

CHINO BASIN MUNICIPAL WATER
DISTRICT,
Plaintiff,
v.

E068640

(Super.Ct.No. RCVRS51010)

CITY OF CHINO et al.,
Defendants, Objectors and
Respondents;

The County of San Bernardino

CUCAMONGA VALLEY WATER DISTRICT
et al.,
Defendants, Movants and Appellants.

THE COURT

The court has considered the request of the parties received December 29, 2017, for an extension of time to file the appellant's opening brief on or before July 6, 2018. The request is DENIED. Instead, the appeal is STAYED pending further order of this court. Appellants are DIRECTED to serve and file either a request for dismissal or a letter advising this court of the status of the settlement negotiations on or before 90 days from the date of this order.

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.

Superior Court Clerk
San Bernardino County
8303 N. Haven Ave
Rancho Cucamonga, CA 91730

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Riverside, CA 92502-1028

EXHIBIT C

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;	(Super. Ct. No. RCVRS51010)
CUCAMONGA VALLEY WATER DISTRICT et al., <u>Defendants, Movants and Appellants.</u>	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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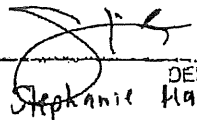
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

DEC 28 2018

BY  DEPUTY
Stephanie Hara

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Petitioner,

v.

CITY OF CHINO, et al.,

Defendants.

Case No. RCVRS 51010

Judge: Stanford E. Reichert

~~PROPOSED~~ ORDER RE EX PARTE
APPLICATION TO SPECIALLY SET A
HEARING AND BRIEFING SCHEDULE

Date: December 5, 2018

Time: 8:30 a.m.

Dept.: S35

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1 [PROPOSED] ORDER

2
3 On December 5, 2018, in Department S35 of the above-entitled Court, the Ex Parte
4 Application to Specially Set a Hearing and Briefing Schedule, dated November 28, 2018 ("Ex
5 Parte Application"), by Defendants and Appellants Cucamonga Valley Water District
6 ("Cucamonga Valley"), Monte Vista Water District ("Monte Vista"), and City of Pomona
7 ("Pomona"), and Defendants and Appellees City of Chino ("Chino"), Jurupa Community
8 Services District ("Jurupa Community"), and City of Ontario ("Ontario") (collectively "Appeal
9 Parties") came on for hearing, the Honorable Stanford E. Reichert, Judge presiding. The
10 following parties appeared: Gene Tanaka for Cucamonga Valley; Andrew Gagen for Monte
11 Vista; Thomas S. Bunn III for Pomona; Jimmy Gutierrez for Chino; Robert Donlan, via
12 CourtCall, for Jurupa Community; Fred Fudacz for Ontario; Bradley Herrema for Chino Basin
13 Watermaster; John Schatz for Appropriative Pool; Allan Hubsch for Non-Agricultural Pool
14 Committee; and Tracy Egoscue for Overlying (Agricultural) Pool Committee.

15
16 After consideration of the papers filed in connection with the Ex Parte Application and
17 arguments of counsel, and good cause appearing, IT IS HEREBY ORDERED:

18
19 1. The Motion to Approve Amendments to Appropriative Pool Pooling Plan and
20 Court-Approved Management Agreements ("Motion to Approve") by Appeal Parties shall be
21 briefed and heard as follows:

22
23 A. The Motion to Approve and all supporting papers shall be served through
24 Watermaster and filed by noon, January 15, 2019.

25
26 B. All opposition papers shall be served through Watermaster and filed by
27 noon, February 13, 2019.

28 04342.0010831656646.1

1 C. All reply papers shall be served through Watermaster and filed by noon,
2 February 28, 2019.

3
4 D. The Motion to Approve shall be heard on March 15, 2019, at 1:30 p.m., in
5 Department S35 of the above-entitled Court.

6
7 2. The Petition for Writ of Mandate, dated November 19, 2018 ("Writ Petition"), by
8 the Overlying (Agricultural) Pool and the Motion to Confirm Stay Pending Appeal, dated August
9 10, 2017 ("Motion to Confirm Stay"), by Cucamonga Valley, Monte Vista, and Pomona,
10 currently set for hearing on December 28, 2019, shall be taken off-calendar. At the hearing on
11 the Motion to Approve on March 15, 2019, the Court will set a briefing schedule and hearing on
12 the Writ Petition and Motion to Confirm Stay, if necessary.

13
14 3. The Motion Regarding Amendment of Pooling Plan for the Non-Agricultural Pool,
15 dated October 4, 2018 ("Motion re NAP Pooling Plan"), by the Non-Agricultural Pooling
16 Committee, currently set for hearing on December 28, 2019, shall be continued as follows:

17
18 A. Any opposition papers shall be served through Watermaster and filed by
19 noon on January 15, 2015.

20
21 B. Any reply papers shall be served through Watermaster and filed by noon
22 on February 13, 2019.

23
24 C. The Motion re NAP Pooling Plan shall be heard on March 15, 2019, at
25 1:30 p.m.

26
27 4. Chino Basin Watermaster's Motion for Court Approval of 2018 Recharge Master
28 Plan Update, dated October 5 and 9, 2018, Request for Court to Receive and File Watermaster
04342.00108\31656646.1

1 Semi-Annual OBMP Status Reports 2017-2 and-2018-1, dated October 9, 2018, and Motion for
2 Court to: Re-Appoint Nine-Member Watermaster Board for a Further Five-Year Term, etc, dated
3 November 28, 2019 (collectively "Watermaster Motions"), shall remain on calendar for
4 December 28, 2018. All opposition papers and reply papers shall be served through Watermaster
5 and filed with the Court pursuant to the deadlines in California Code of Civil Procedure section
6 1005(b).

7
8 5. A courtesy copy of all papers filed with the Court in connection with the above
9 motions shall be delivered by Watermaster to the chambers of Judge Reichert.

10
11 Dated: 12.28.18

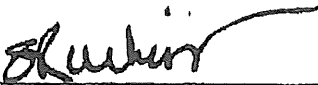

12 JUDGE OF THE SUPERIOR COURT
13 STANFORD E. REICHERT



EXHIBIT E



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December 5, 2018

VIA ELECTRONIC FILING

Court of Appeal
Fourth District, Division Two
Settlement Conference Administrator
3389 Twelfth Street
Riverside, CA 92501

Re: *Chino Basin Municipal Water District v. City of Chino, et al.*
Court of Appeal Case No. E068640 (Superior Court, Case No.
RCVRS 51010) – Joint Status re Temporary Remand and Superior Court
Progress re Motion

Dear Settlement Conference Administrator:

Pursuant to the Court's Order dated November 6, 2018 ("Order"), attached hereto, this letter shall serve as a joint status report by Appellants Cucamonga Valley Water District, Monte Vista Water District, and the City of Pomona regarding the superior court's progress in deciding a motion that if granted, will allow the Appellants to dismiss their appeal.

Appellants and Respondents City of Chino, Jurupa Community Services District, and City of Ontario (collectively "Parties") sought ex parte relief in the superior court on December 5, 2018 for the superior court 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 superior court granted the Parties' requested relief and specially set a hearing for the Motion on March 15, 2019, at 1:30 p.m., in Department S35 of the San Bernardino County Superior Court. The superior court further ordered a briefing schedule for the Motion as follows:

- Motion and all supporting papers shall be served through Watermaster and filed by noon, January 15, 2019;
- All opposition papers shall be served through Watermaster and filed by noon, February 13, 2019;
- All reply papers shall be served through Watermaster and filed by noon, February 28, 2019.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Settlement Conference Administrator
December 5, 2018
Page 2

As directed in the Order, the Appellants will provide a further update to the settlement conference administrator after the hearing on the Motion. If the Motion is granted, Appellants will file a request for dismissal. If the Motion is denied, the Parties will confer with the settlement conference administrator to “determine how the appeal should proceed.” See Order, ¶ 4.

Sincerely,

/s/Sarah Christopher Foley
Gene Tanaka
Steve Anderson
Sarah Christopher Foley
BEST BEST & KRIEGER, LLP
Attorney for Appellant
Cucamonga Valley Water District

/s/ with permission
Arthur G. Kidman
Andrew B. Gagen
KIDMAN GAGEN LAW LLP
Attorney for Appellant
Monte Vista Water District

/s/ with permission
Thomas Bunn III
LAGERLOF, SENEAL, GOSNEY &
KRUSE, LLP
Attorney for Appellant
City of Pomona

Attachment

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2 Irvine, CA 92614
Telephone: (714) 755-3100
3 Facsimile: (714) 755-3110
4 agagen@kidmanlaw.com

Fee Exempt Per Gov. Code § 6103

5 **ARTHUR G. KIDMAN, CAL. BAR NO. 61719**
6 **ANDREW B. GAGEN, CAL. BAR NO. 212257**

7 Attorneys for Defendant, MONTE VISTA WATER DISTRICT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN BERNARDINO

10 CHINO BASIN MUNICIPAL WATER)
11 DISTRICT)
12) Plaintiff,
13 vs.)
14 CITY OF CHINO, et al.,)
15) Defendants.
16)
17)
18)

Case No. RCV 51010

Assigned For All Purposes to:
Hon. Stanford E. Reichert

[PROPOSED] ORDER RE MONTE VISTA WATER DISTRICT'S EX PARTE APPLICATION TO TAKE WATERMASTER'S MOTION OFF CALENDAR; OR, IN THE ALTERNATIVE, STAY THE BRIEFING AND HEARING ON APPEAL PARTIES MOTION

[Concurrently filed with Ex Parte Application]

Hearing on Application:
Date: February 1, 2019
Time: 8:30 a.m.
Department: S35

[PROPOSED] ORDER

19 On February 1, 2019, in Department S35 of the above-entitled Court, Defendant and
20 Appellant Monte Vista Water District ("Monte Vista") moved this Court by Ex Parte
21 Application ("Application") for an Order to either to take off calendar Watermaster's Motion
22 Regarding Amendments to Restated Judgment, Peace Agreement, Peace II Agreement, and
23 Re-Operation Schedule ("Watermaster's Motion"); or, in the alternative, stay both the briefing
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1 schedule and March 15th hearing on the appeal parties' Motion to Approve Amendments to
2 Appropriative Pool Plan and Court-Approved Management Agreements ("Appeal Parties'
3 Motion") until the Court of Appeal responds to Watermaster's violation of its November 6th
4 'order for limited remand'. The parties stated their appearances on the record. After
5 consideration of the papers filed in connection with the Application and arguments of counsel,
6 and good cause appearing, this Court HEREBY FINDS:

7 Watermaster's Motion violates the Court of Appeal 'order for limited remand'
8 dated November 6, 2018, which is attached hereto as **Exhibit C**.

9 IT IS HEREBY ORDERED:

10 Watermaster's Motion filed on January 15, 2019 is off calendar. At the hearing
11 on March 15, 2019 for the Appeal Parties Motion, the Court will set a briefing
12 schedule and hearing on Watermaster's Motion, if the appeal (*Chino Basin*
13 *Municipal Water District v. City of Chino et al.* (Case No. E068640)) has been
14 (or will be) dismissed.

15 [OR]

16 The briefing schedule and March 15, 2019 hearing on the Appeal Parties
17 Motion filed on January 15, 2019 are stayed until the Court of Appeal responds
18 to Monte Vista's status letter regarding Watermaster's violation of the Court of
19 Appeal's 'order for limited remand' dated November 6, 2018. Monte Vista
20 must file its status letter to the Court of Appeal within 15 days of this signed
21 Order. This Court will schedule a Status Conference within 30 days (or a date
22 convenient to the Court's calendar) receipt of the Court of Appeal's response to
23 establish a new briefing schedule and hearing date for the Appeal Parties
24 Motion and possibly Watermaster's Motion, depending on the Court of

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Appeal's response.

[OR]

Dated: _____ 2019

Hon. Stanford E. Reichert
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 January 31, 2019 served the following:

1. MONTE VISTA WATER DISTRICT'S EX PARTE APPLICATION FOR AN ORDER TO:
 - A. TAKE WATERMASTER'S MOTION OFF CALENDAR; OR, IN THE ALTERNATIVE,
 - B. STAY THE BRIEFING SCHEDULE AND HEARING ON THE APPEAL PARTIES' MOTION;
2. MEMORNADUM OF POINTS AND AUTHORITIES; AND
3. DECLARATION OF ANDREW B. GAGEN IN SUPPORT THEREOF
4. [PROPOSED] ORDER RE MONTE IVSTA WATER DISTRICT'S EX PARTE APPLICATION TO TAKE WATERMASTER'S MOTION OFF CALENDAR; OR, IN THE ALTERNATIVE, STAY THE BRIEFING AND HEARING ON APPEAL PARTIES' MOTION

/ 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 January 31, 2019 in Rancho Cucamonga, California.



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Chino Basin Watermaster

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