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CHINO BASIN WATERMASTER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN BERNARDINO

10 CHINO BASIN MUNICIPAL WATER
11 DISTRICT,

12
13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendant.

Case No. RCV RS51010

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

**CHINO BASIN WATERMASTER'S
OPPOSITION TO 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**

Date: February 1, 2019

Time: 8:30 a.m.

Dept.: S35

[Filed concurrently herewith: Declaration of;
Bradley J. Herrema in Support of Chino Basin
Watermaster Opposition to Ex Parte Application
for an Order to Take Watermaster Motion Off
Calendar]

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1 **I. INTRODUCTION**

2 The Chino Basin Watermaster (“Watermaster”) hereby opposes the Monte Vista Water
3 District’s (MVWD) Ex Parte Application for an Order to (A) Take Watermaster’s Motion Off
4 Calendar; or, in the Alternative, (B) Stay the Briefing Schedule and Hearing on the Appeal
5 Parties’ Motion (“MVWD Application”). The purpose of Watermaster’s motion is to create the
6 legal and factual basis for this Court to amend the Restated Judgment, the Peace and Peace II
7 Agreements, and revise the schedule for allocation of Re-Operation Water among the Desalters,
8 all of which are contemplated by the 2018 Proposed Changes.

9 MVWD – and MVWD alone – has erroneously and overbroadly interpreted the Court of
10 Appeal’s November 6, 2018 order. The Court of Appeal’s order refers to the parties to the appeal
11 because those are the only parties before that Court. The Court of Appeal can consider a
12 settlement between and among the parties to the appeal. But the vehicle the appellants chose to
13 dispose of their appeal was not an agreement inter-se. Instead, they chose a global resolution of
14 matters requiring amendment of the Restated Judgment, existing agreements, and prior Court
15 approvals – all of which affect the rights of all parties to the Restated Judgment.

16 The powers of this Court cannot be so limited as to enable amendment of the Restated
17 Judgment and agreements without the participation of all of the parties to the Restated Judgment
18 and the agreements - providing these parties due process and without regard to their rights
19 thereunder – without Watermaster – who has been continuing to administer the Restated
20 Judgment and the Agreements pending the appeal. MVWD should not be permitted to
21 manipulate the Court of Appeal’s order to prevent parties who did not appeal from seeking
22 redress from this Court.

23 Watermaster’s January 15, 2019 Motion Regarding Amendments to Restated Judgment,
24 Peace Agreement, Peace II Agreement, and Re-Operation Schedule (“Motion”) should remain on
25 calendar for hearing as scheduled for March 15, 2019. Watermaster’s Motion supports the
26 Appeal Parties’ proposed amendments and, absent Watermaster’s findings made by resolution
27 and the supporting declarations, there is an insufficient record for the Court to approve the
28 changes in the first instance.

1 **II. BACKGROUND**

2 **A. The Matters Relating to the April 28, 2017 Order Have Been Temporarily**
3 **Remanded to the Court for Consideration of the 2018 Proposed Changes**

4 The April 28, 2017 Order, among other things, reset the Safe Yield of the Basin to
5 135,000 AFY and denied Watermaster’s motion for approval of the 2015 Safe Yield Reset
6 Agreement. The Cucamonga Valley Water District, Monte Vista Water District, and the City of
7 Pomona (collectively “Appellants”) each timely filed a notice of appeal of the April 28, 2017
8 Order. (Cucamonga Valley Water District’s Notice of Appeal filed June 23, 2017; City of
9 Pomona’s Notice of Appeal filed June 26, 2017; Monte Vista Water District’s Notice of Appeal
10 filed June 27, 2017.) The appeal is presently pending as 4th Appellate District Division 2 Case
11 E068640. The Jurupa Community Services District, the City of Chino, and the City of Ontario
12 have appeared as respondents to the appeal (collectively “Respondents,” and together Appellants
13 and Respondents are hereinafter referred to as “Appeal Parties”). (See Ex Parte Application to
14 Specially Set a Hearing and Briefing Schedule; Memorandum of Points and Authorities filed
15 November 28, 2018.) Of note, the Appellants have never filed opening briefs in the appeal
16 detailing which portions of the April 28, 2017 Order they appealed.

17 On July 16, 2018, pursuant to their Joint Stipulation and Application for Limited Remand
18 to Superior Court (“Joint Stipulation”), the Appeal Parties requested that the Court of Appeal
19 temporarily remand the matter to this Court for the purpose of considering a motion as to certain
20 proposed amendments to the Restated Judgment and Court Approved Management Agreements
21 (CAMA), necessary to effectuate a proposed settlement among the Appeal Parties that would
22 result in their voluntary dismissal of the Appeal. (Declaration of Bradley J. Herrema in Support
23 of Chino Basin Watermaster Opposition to Ex Parte Application for an Order To Take
24 Watermaster Motion Off Calendar (“Herrema Decl.”), Exh. A.) On November 6, 2018, the Court
25 of Appeal issued an order temporarily remanding the matter to this Court so that this Court could
26 consider the Appeal Parties’ anticipated motion regarding proposed Restated Judgment and
27 CAMA amendments (“Court of Appeal Order”). (See Declaration of Andrew B. Gagen In
28 Support of Monte Vista Water District’s Ex Parte Application (“Gagen Decl.”), at ¶ 10, Exh.

1 “C”).) On December 5, 2018, the Appeal Parties appeared *ex parte* before this Court to set a
2 hearing and briefing schedule on their planned motion regarding proposed Restated Judgment and
3 CAMA amendments. Thereafter, on December 28, 2018, the Court entered its Order re Ex Parte
4 Application to Specially Set a Hearing and Briefing Schedule, setting the briefing schedule for
5 consideration of the proposed Restated Judgment and CAMA amendments (“Briefing Schedule”).
6 (See Gagen Decl., Exh. “D”).)

7 **B. The 2018 Proposed Changes**

8 The Appeal Parties’ proposed Restated Judgment and CAMA amendments do not request
9 modifications to the Court’s April 28, 2017 Order. Instead, the Appeal Parties have reached
10 agreement on amendments to the Restated Judgment, the Peace Agreement, the Peace II
11 Agreement, and the Re-Operation schedule (collectively, “2018 Proposed Changes”) that would
12 comprehensively resolve their dispute and provide for the dismissal of the Appeal. The 2018
13 Proposed Changes are described in greater detail in Watermaster’s Motion. Collectively, the
14 2018 Proposed Changes (a) modify the rights of parties to the Restated Judgment under existing
15 Court-approved management agreements, which provide that the agreements cannot be amended
16 without their consent, (b) amend the Restated Judgment, and (c) alter Watermaster’s
17 responsibilities in administering the agreements Watermaster previously agreed to implement.

18 **III. THE LIMITED REMAND NECESSARILY ALLOWS FOR THE**
19 **PARTICIPATION OF ALL PARTIES INTERESTED IN THE RESTATED**
20 **JUDGMENT AND PEACE AND PEACE II AGREEMENTS**

21 **A. The Court of Appeal Order Refers to the Appeal Parties Because They Are**
22 **the Only Parties Before That Court**

23 The Court of Appeal Order must be read in the context in which it was made. At that
24 time, based on repeated representations that a settlement was pending that would lead to the
25 dismissal of the appeal, no opening briefs had been filed, and the parties to the appeal were
26 limited to the three Appellants and three parties that had appeared as respondents.¹ The Court of

27 _____
28 ¹ Note that Watermaster is not included in the MAILING LIST FOR CASE: E068640 attached to
the Court of Appeal Order. (Gagen Decl., at ¶ 10₃ Exh. C.)

1 Appeal Order providing that the matter be temporarily remanded for “the limited purpose of, and
2 for the limited time necessary for, the consideration and decision of the parties’ motion to
3 approve” the 2018 Proposed Changes speaks only of the Parties to the Appeal because *those are*
4 *the only parties over whom the Court of Appeal had jurisdiction.* (*Di Nola v. Allison* (1904) 143
5 Cal. 106, 113 [appellate court has jurisdiction “over only the parties before it.”].)

6 The Court of Appeal issued the November 6, 2018 Order based on Joint Stipulation that
7 was before it. The Joint Stipulation expressly provides that “review of the [2018 Proposed
8 Changes] by the Trial Court would allow for the parties to the Judgment that are not parties to this
9 appeal to participate in the process of amending the Judgment and CAMA.” (Herrema Decl, Exh.
10 A p. 5; see Herrema Decl, Exh. A, p. 8.) The Appeal Parties’ acknowledged in their Stipulation
11 that their proposed motions required the participation of parties other than the Appeal Parties
12 (Herrema Decl, Exh. A, p. 5, p. 5). Having acknowledged that fact, MVWD is judicially
13 estopped from changing its position. “Judicial estoppel prevents a party from asserting a position
14 in a legal proceeding that is contrary to a position previously taken in the same or some earlier
15 proceeding. The doctrine serves a clear purpose: to protect the integrity of the judicial process.”
16 (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181.)

17 **B. The Restated Judgment and Peace and Peace II Agreements Cannot be**
18 **Amended without Participation of All Interested Parties**

19 The Appeal Parties have represented that they have resolved their dispute premised on the
20 implementation of the 2018 Proposed Changes. This Court’s consideration of whether the 2018
21 Proposed Changes are appropriate, whether the Restated Judgment and Re-Operation schedule
22 should be amended and whether Watermaster be ordered to comply with the Peace and Peace II
23 Agreements as amended *necessarily require the participation of parties other than the Appeal*
24 *Parties.* In fact, the Appeal Parties’ settlement is contingent upon amendment of agreements
25 involving third parties and Court orders not subject to the appeal.

26 The Court’s consideration of amendments to the Restated Judgment may be undertaken
27 pursuant only to noticed motion. (Restated Judgment, ¶ 15.) The amendment of the provisions of
28 the Peace and Peace II Agreements is subject to the unanimous agreement of the parties thereto

1 (Peace Agreement, § 10.14), and the Re-Operation Schedule may only be amended through the
2 approval of Watermaster (Peace II Agreement, § 7.2(c)(ii).) The Court’s continuing jurisdiction to
3 make further orders necessary or appropriate for interpretation, enforcement or carrying out of the
4 Restated Judgment, and to modify, amend or amplify any of the provisions of the Restated
5 Judgment is, again, only pursuant to the noticed motion requirements of Restated Judgment
6 Paragraph 15.

7 The Briefing Schedule’s provisions regarding a motion to this Court for approval of the
8 2018 Proposed Changes must be read in light of the proceedings at the Court of Appeal that
9 resulted in the limited remand. The Court of Appeal Order does not prohibit this Court’s
10 consideration of motions regarding the approval of the 2018 Proposed Change by parties other the
11 Appeal Parties. While the Briefing Schedule contemplates a motion by the Appeal Parties, and
12 provides for the filing of responsive pleadings to such a motion, it does not prohibit any other
13 party’s filing of a motion for the approval of the 2018 Proposed Changes.

14 The Court’s consideration of the 2018 Proposed Changes is a matter on which
15 Watermaster may appropriately advise the Court, given its duty to administer and enforce the
16 Restated Judgment and the subsequent instructions and orders of this Court. (Restated Judgment,
17 ¶ 16.) Watermaster consistently advises the Court as to requested amendments to the Restated
18 Judgment and the requested Court orders that Watermaster implement the Peace and Peace II
19 Agreements came to this Court through Watermaster motions following Watermaster’s adoption
20 of resolutions as to the same. (See Motion to Amend the Judgment, filed August 14, 2000;
21 Motion for Approval of Peace II Documents, filed October 25, 2007.)

22 The Appeal Parties’ January 15, 2019 Motion to Approve Amendments to Appropriative
23 Pool Pooling Plan and Court-Approved Management Agreements (“Appeal Parties’ Motion”) on
24 its face requires the demonstration of facts that the Appeal Parties have not established.
25 Therefore, in support of the Appeal Parties’ Motion, Watermaster’s Motion offers evidence and
26 findings in support of the 2018 Proposed Changes, and provides the basis for the Court to make
27 the required and customary findings. For example, the Appeal Parties’ Motion does not comply
28 with the requirements of the Peace and Peace II Agreements for amendment and it does not

1 comply with the Peace II Agreement provisions requiring predicate findings for Watermaster to
2 seek an amendment of the Re-Operation Schedule. (Peace Agreement, § 10.14, Peace II
3 Agreement, § 7.2(c)(ii).) Additionally, the Appeal Parties' Motion is entirely without evidentiary
4 support for its requested Court actions. Watermaster's Motion addresses each of these
5 deficiencies.

6 First, it offers the Declaration of Peter Kavounas in Support of Motion Regarding
7 Amendments to Restated Judgment, Peace Agreement, Peace II Agreement, and Re-Operation
8 Schedule and the Declaration of Mark Wildermuth in Support of Motion Regarding Amendments
9 to Restated Judgment, Peace Agreement, Peace II Agreement, and Re-Operation Schedule.

10 Second, it includes the predicate findings related to the status and compliance with the
11 Recharge Master Plan.

12 Third, upon Watermaster's adoption of its Resolution 2019-03 and the filing of the
13 Watermaster Motion, the Overlying (Agricultural) Pool has taken formal action to support the
14 2018 Proposed Changes on the grounds articulated by Watermaster (Declaration of Bradley J.
15 Herrema in Support of Chino Basin Watermaster Opposition to Ex Parte Application for an Order
16 To Take Watermaster Motion Off Calendar, Exh. B), providing the basis for its consent to the
17 requested amendments.

18 C. **MVWD Does Not Explain Why Consideration of Watermaster's Motion**
19 **Would Nullify the Appeal Parties' Settlement**

20 MVWD's January 29, 2019 Notice of Ex Parte Application for An Order to Take
21 Watermaster's Motion Off Calendar states that:

22 If *either* this Court decides to hear and grant Watermaster's Motion
23 *or* if the Court of Appeal perceives Watermaster's Motion as a
24 violation of its November 6th 'order for limited remand' and order
25 the appeal parties back to the Court of Appeal, then the settlement
26 may be nullified, which will cause irreparable harm to [MVWD].
(emphasis in original)

26 (Gagen Decl., Exh. "A"; *see also* MVWD Application, 5:17-19.) Concerns regarding the scope of
27 the Court of Appeal's limited remand – and its jurisdiction – are addressed in Section III.A.,
28 above.

1 How this Court’s consideration and granting of Watermaster’s Motion might result in the
2 nullification of the Appeal Parties’ settlement is unclear. The only material differences between
3 the actions of the Court requested by Watermaster’s Motion and those requested in the Appeal
4 Parties’ Motion, are the Court’s approval of the amendments to the Overlying (Non-Agricultural)
5 Pool Pooling Plan and the reaffirmation of those portions of the Court’s April 28, 2017 Order
6 pertaining to the reset of the Basin’s Safe Yield, as found on pages 18-21 of that order to achieve
7 the unanimous consent required under section 10.14 of the Peace Agreement. The Appeal Parties’
8 Agreement Settling Appeal, attached as Exhibit B to the January 25, 2019 Declaration of Sarah
9 Christopher Foley in Support of Motion to Approve Amendments to Appropriative Pool Pooling
10 Plan and Court-Approved Management Agreements (“Foley Decl.”), which expressly provides
11 that the Appeal Parties will seek “Watermaster consent and support of the Appropriative Pool
12 Pooling Plan and CAMA Amendments by means of Resolution of Watermaster Board” (Foley
13 Decl., Exh B., p. 2) does not demonstrate that this is the case.

14 Curiously, the MVWD Application does not articulate the substantive basis for its concern
15 with the Watermaster’s Motion or why it would “[have] to oppose” Watermaster’s Motion.
16 (MVWD Application, p. 6.) However, one can deduce, based upon the principal difference
17 between Watermaster’s Motion and the Appeal Parties’ Motion, that MVWD’s Application is an
18 attempt to foreclose the Court’s reaffirmation of the provisions of the Court’s April 27, 2018
19 Order establishing the method and procedure for the re-setting of the Basin’s Safe Yield. This
20 was the sole basis for the Ag Pool’s opposition to the 2018 Proposed Changes and it is cured by
21 Watermaster’s Resolution No. 2019-03 and the proposed order accompanying Watermaster’s
22 Motion. If this is MVWD’s objective, then its Ex Parte Application is failed from the outset
23 because MVWD’s dismissal of its appeal will bar any subsequent challenge to the Court’s April
24 28, 2017 Order. (*In re Marriage of Weiss* (1996) 42 Cal.App.4th 106, 119 [appealable order or
25 final judgment becomes final and binding on the parties thereto when a notice of appeal is not
26 timely filed].)

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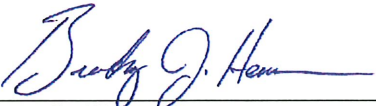
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IV. CONCLUSION

For all the reasons described above, the Court need not and should not take Watermaster's Motion off calendar.

Dated: January 31, 2019

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: 
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CHINO BASIN WATERMASTER

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN BERNARDINO**

11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, ET AL.,

16 Defendants.

Case No. RCV RS 51010

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

**DECLARATION OF BRADLEY J.
HERREMA IN SUPPORT OF CHINO
BASIN WATERMASTER OPPOSITION
TO 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**

Date: February 1, 2019

Time: 8:30 a.m.

Dept.: S35

*[Chino Basin Watermaster Opposition to 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 concurrently filed herewith]*

25 ///

1 I, Bradley J. Herrema, declare as follows:

2 1. I am an attorney duly admitted to practice before all of the courts of this State, and
3 am a shareholder in the law firm of Brownstein Hyatt Farber Schreck, LLP, counsel of record for
4 Chino Basin Watermaster (“Watermaster”). I have personal knowledge of the facts stated in this
5 declaration, except where stated on information and belief, and, if called as a witness, I could and
6 would competently testify to them under oath. I make this declaration in support of the above-
7 referenced request.

8 2. As legal counsel for Watermaster, I am familiar with Watermaster’s practices and
9 procedures, as well as actions taken by the Pool Committees, Advisory Committee, and Board.

10 3. Attached hereto as **Exhibit A** is a true and correct copy of the Appeal Parties’ July
11 16, 2018 Joint Stipulation and Application for Limited Remand to the Superior Court.

12 4. At a January 29, 2019 special meeting, the Overlying (Agricultural) Pool
13 Committee (“Ag Pool”) took action to join in Watermaster’s January 15, 2019 Motion Regarding
14 Amendments to Restated Judgment, Peace Agreement, Peace II Agreement, and Re-Operation
15 Schedule. Attached hereto as **Exhibit B** is a true and correct copy of an email I received from the
16 Ag Pool’s counsel describing this action.

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

19 Dated this 31st day of January, 2019, at Los Angeles, California.

20
21 

22
23 _____
Bradley J. Herrema

Exhibit A

**Declaration of Bradley J. Herrema In Support of
Watermaster's Opposition to Monte Vista Water
District's Ex Parte Application**

***Chino Basin Municipal Water District v. City of Chino, et al.*
San Bernardino Superior Court Case No. RCV 51010**

Case No. E068640

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO

CHINO BASIN MUNICIPAL WATER DISTRICT,

Plaintiff and Respondent,

v.

CITY OF CHINO et al.,

Defendant and Respondent,

CUCAMONGA VALLEY WATER DISTRICT, et al.,

Defendants and Appellants.

Superior Court of California, County of San Bernardino
Honorable Stanford E. Reichert, Dept. S35 (Case No. RCVRS51010)

**JOINT STIPULATION AND APPLICATION FOR LIMITED
REMAND TO THE SUPERIOR COURT**

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Attorneys for Appellant
Cucamonga Valley Water District

WHEREAS, the underlying action is an adjudication of water rights in the Chino Groundwater Basin (“Basin”), one of the largest groundwater basins in Southern California and a water source for more than one million residents of the Inland Empire.

WHEREAS, the Superior Court of the State of California for the County of San Bernardino (“Trial Court”) entered judgment in 1978 and has since amended and issued a Restated Judgment (“Judgment”), adjudicating groundwater rights and rights to storage space and imposing a physical solution.

WHEREAS, the purpose of the physical solution is “to establish the legal and practical means for making the maximum reasonable beneficial use of the waters of Chino Basin by providing the optimum economic, long-term, conjunctive utilization of surface waters, ground waters and supplemental water, to meet the requirements of water users having rights in or dependent upon Chino Basin.”

WHEREAS, the Judgment set an initial safe yield of authorized pumping from the Basin.

WHEREAS, the Judgment quantified the rights of the parties and established three pools of holders of water rights in the Basin: (1) the Overlying Non-Agricultural Pool; (2) the Overlying Agricultural Pool; and (3) the Appropriative Pool.

WHEREAS, the Trial Court retained continuing jurisdiction “for interpretation, enforcement or carrying out of [the] Judgment, and to

modify, amend or amplify any of the provisions of [the] Judgment,” subject to certain exceptions not at issue here.

WHEREAS, the Judgment established a Watermaster to administer and implement the Judgment.

WHEREAS, the Judgment recognized a need for flexibility and adaptability for the physical solution so that the Watermaster and the Trial Court “may be free to use existing and future technological, social, institutional and economic options, in order to maximize beneficial use of the waters of Chino Basin.”

WHEREAS, pursuant to the flexibility and adaptability of the physical solution, since the entry of the Judgment, the Trial Court has approved and the Watermaster and the parties to the Judgment have operated pursuant to several “Court Approved Management Agreements” or “CAMA.”

WHEREAS, in 2015, the Watermaster filed a motion to approve a Safe Yield Reset Agreement (“SYRA”), including a request to change the safe yield from 140,000 acre-feet per year to 135,000. Some, but not all, parties approved the SYRA after significant negotiations, and some parties opposed the SYRA and the Watermaster’s motion.

WHEREAS, throughout 2016 and 2017, the Trial Court requested, authorized, and considered voluminous additional briefs, objections, declarations, questions, and answers regarding the Watermaster’s 2015 motion to approve the SYRA.

WHEREAS, on April 28, 2017, the Trial Court issued an order regarding the Watermaster's 2015 motion to approve the SYRA ("Trial Court Order"), changing the safe yield but denying all other provisions of the SYRA and making additional rulings regarding the interpretation of the Judgment and the CAMA.

WHEREAS, Cucamonga Valley Water District, Monte Vista Water District, and the City of Pomona (collectively "Appellants"), which are all members of the Appropriative Pool, appealed the Trial Court Order.

WHEREAS, the Respondents to the appeal, the City of Chino, Jurupa Community Services District, and the City of Ontario ("Respondents" and collectively with Appellants, the "Parties") are also members of the Appropriative Pool.

WHEREAS, the Parties have engaged in extensive settlement negotiations since the filing of the notices of appeal.

WHEREAS, the Parties reached a settlement in principle in late 2017.

WHEREAS, efforts to finalize the settlement are challenging due, among other reasons, to: (1) the complex nature of the underlying case; (2) the Trial Court's continuing jurisdiction over the case, including Trial Court-approved CAMA; (3) the relationship between the proposed settlement of this appeal and the Judgment and CAMA; and (4) the Appellants' concerns regarding potential jurisdictional issues stemming from the obligation to obtain Trial Court approval of certain matters

embraced in the anticipated settlement without abandoning the pending appeal.

WHEREAS, on January 3, 2018, this Court stayed this appeal to allow the Parties to continue their settlement negotiations and on April 17, 2018, ordered that the stay continue in full force and effect.

WHEREAS, the Parties have since reached a proposed settlement agreement premised upon court approval, with the participation and support of the Overlying Non-Agricultural Pool, the Overlying Agricultural Pool, and members of the Appropriative Pool that are parties to the Judgment and CAMA but not Parties to this appeal, of certain substantive amendments to the Judgment and existing CAMA (“2018 Amendments”).

WHEREAS, court approval of the 2018 Amendments is necessary to effectuate the proposed settlement and voluntary dismissal of this appeal.

WHEREAS, review of the 2018 Amendments by the Trial Court would allow for the parties to the Judgment that are not parties to this appeal to participate in the process of amending the Judgment and CAMA.

WHEREAS, in order to allow the Trial Court opportunity to review and rule upon the proposed 2018 Amendments, the Parties have agreed to bring this joint request to remand this case to the Trial Court for the limited purpose of considering a motion to approve the 2018 Amendments.

WHEREAS, the Parties agree that such an action would be consistent with Code of Civil Procedure section 43 and would serve judicial

economy as described in the attached memorandum of points and authorities.

THEREFORE, the Parties agree as follows:

1. The Parties will and hereby do respectfully request that this Court remand this case to Trial Court for the limited purpose of considering a motion to approve the 2018 Amendments.
2. The Parties will and hereby do respectfully request that this Court continue the stay of this appeal pending resolution of the motion to approve the 2018 Amendments.
3. Granting the Parties' present application and remanding this action to the Trial Court for the limited purpose of considering a motion to approve the 2018 Amendments would serve the interests of justice and judicial economy as discussed in the attached memorandum of points and authorities.

Dated: July 16, 2018

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION AND BACKGROUND

The Parties to this appeal seek a limited remand to allow the Trial Court to review the 2018 Amendments, approval of which is necessary to effect settlement and dismiss the pending appeal. Although the Parties reached a conceptual settlement in late 2017, the complexity of this matter made completing that settlement challenging. The Parties have spent almost a year negotiating not only the substantive terms of the proposed settlement, but also the procedural mechanism to effect settlement to allow for the dismissal of this appeal. The Parties have agreed to amend the Judgment and the CAMA, as outlined in their proposed 2018 Amendments but, as a result of the Trial Court's continuing jurisdiction, must obtain court approval of the 2018 Amendments in order to complete the settlement and dismiss this appeal.

As court approval of the 2018 Amendments is a condition precedent to Appellants' dismissal of their appeal, the Parties are concerned with how to obtain the necessary court approval. As the Trial Court's Order that is the subject of the appeal amends and interprets certain provisions of the Judgment and CAMA, the Appellants are concerned that the Trial Court lacks jurisdiction to review the 2018 Amendments. The Parties are also concerned that this Court may lack jurisdiction over issues contained in the 2018 Amendments that are ancillary to the appeal and unaffected by the Trial Court Order. To resolve this conundrum, the Parties have agreed to bring this request for a limited remand of this matter to allow the Trial Court to review and rule upon a motion to approve the proposed 2018

Amendments. Should the Trial Court grant that motion, the Parties would consider their settlement effective, and Appellants would dismiss their appeal, having protected their interests. A motion before the Trial Court would also allow the Overlying Non-Agricultural Pool, the Overlying Agricultural Pool, and the Appropriative Pool members that are parties to the Judgment but not Parties to this appeal to participate in and support the motion to amend the Judgment and CAMA.

Accordingly, the Parties jointly request that this Court, pursuant to its broad authority in the disposition of appeals, remand this case to the Trial Court for the limited purpose of hearing a motion to approve the 2018 Amendments. If the Trial Court approves the motion to approve the 2018 Amendments, Appellants will dismiss their appeal. If the Trial Court denies the motion, the Parties will ask this Court to lift the stay of the appeal and will proceed therewith. In either instance, justice and judicial economy will be served.

II.

ARGUMENT

A. Jurisdiction to Review and Approve the 2018 Amendments is Unclear.

The Parties have agreed to settle the appeal of the Trial Court Order through the 2018 Amendments to the Judgment and the CAMA. However, Amendments to the Judgment and CAMA require Trial Court approval, under its continuing jurisdiction, to become effective. If the Trial Court were to grant a motion to approve the 2018 Amendments, all of the issues raised on appeal, which are numerous and complex, will be moot because

the approval of the 2018 Amendments would effect settlement, and the Appellants would dismiss their appeal. However, final settlement cannot be reached, and Appellants will not dismiss their appeal, unless and until the court approval of the 2018 Amendments is obtained. As the 2018 Amendments concern several Basin management issues, only some of which are embraced or affected by the Trial Court Order on appeal, it is not clear whether this Court or the Trial Court has jurisdiction to hear a motion to approve the 2018 Amendments.

Because the Trial Court Order modifies certain provisions of the Judgment and CAMA, the Appellants are concerned that the Trial Court may consider a motion to approve the 2018 Amendments a proceeding upon matters embraced and affected by the Trial Court Order on appeal and find that it lacks jurisdiction to hear such a motion.¹ Code of Civil Procedure, section 916(a) provides that the “perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.” The purpose of this provision is “to protect the appellate court’s jurisdiction by preserving the status quo until the appeal is decided.” (Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal.4th 180, 189 (citation omitted).)

¹ Appellants’ concern is, in part, the subject of Appellants’ motion to confirm stay, which is pending before the Trial Court, but has been continued to provide the Parties time to attempt to reach settlement. In bringing this Joint Application, Respondent Jurupa Community Services District (“JCSD”) does not waive, and hereby expressly preserves, any defense it may have to the motion to confirm stay pending before the Trial Court should settlement not be effectuated.

Appellants are concerned that because the 2018 Amendments include amendments to certain provisions of the Judgment and CAMA embraced and affected by the Trial Court Order on appeal, the Trial Court may lack jurisdiction to hear a motion to approve the 2018 Amendments. However, because the 2018 Amendments also modify certain provisions of the Judgment and CAMA that are not embraced or affected by the Trial Court order on appeal, and which affect parties to the Judgment and CAMA that are not parties to this appeal, the Parties are concerned that this Court lacks jurisdiction to hear a motion to approve the 2018 Amendments.

B. This Court is Empowered to Remand this Case to the Trial Court on a Limited Basis.

To resolve the jurisdictional conundrum, this Court may exercise its discretion to remand the matter to the Trial Court for the limited purpose of addressing the motion to approve the 2018 Amendments.

The courts of appeal have broad powers in the disposition of appeals, including the authority to “direct ... further proceedings to be had” in the trial court. (Code Civ. Proc., § 43; Ducoing Management Inc. v. Superior Court of Orange County (2015) 234 Cal.App.4th 306, 313.) “[J]urisdiction is not necessarily unidirectional.” (People v. Awad (2015) 238 Cal.App.4th 215, 222 (“Awad”).) In remanding a case, the court of appeal defines the scope of the jurisdiction of the court to which the matter is returned. (Griset v. Fair Political Practices Com’n (2001) 25 Cal.4th 688, 701.)

A limited remand to the trial court is appropriate “for the exercise of any discretion that is vested by law in the trial court.” (Awad, 238

Cal.App.4th at 222; see also People v. Braxton (2004) 34 Cal.4th 798, 819 (“Braxton”).) Although Awad and Braxton are both criminal cases that cite Penal Code section 1260 in setting forth the appellate court’s power to order a limited remand, the Penal Code language mirrors Code of Civil Procedure section 43. (Compare Pen. Code, § 1260 [court may “remand the cause to the trial court for such further proceedings as may be just under the circumstances”] with Code Civ. Proc., § 43 [appellate court has the authority to “direct ... further proceedings to be had” in the trial court].)

The concept of a limited remand arises not only from statutory language, but from the inherent power of the court that “arises from necessity where, in the absence of any previously established procedural rule, rights would be lost.” (Awad, 238 Cal.App.4th at p. 222 citing In re Amber S. (1993) 15 Cal.App.4th 1260, 1264.) There are several examples in the criminal and civil contexts where appellate courts may order limited remands to the trial court during the pendency of an appeal. (See, e.g., Cal. Rules of Court, rule 8.155(c)(2) [reviewing court may order trial court to settle disputes about omissions or errors in the record]; Cal. Rules of Court, rule 8.244(d) [reviewing court may order trial court to hold a hearing regarding approval of minor’s compromise of pending appeal]; Cal. Rules of Court, rule 8.252(c) [reviewing court may take evidence on appeal by specifying special master or referee].)

Here, the Trial Court has reserved continuing jurisdiction “to make such further or supplemental orders or directions as may be necessary or appropriate for interpretation, enforcement or carrying out of [the] Judgment, and to modify, amend or amplify any of the provisions of [the] Judgment.” (Judgment, ¶ 15 at p. 10.) It has exercised that continuing jurisdiction in amending the Judgment and approving various CAMA. A

limited remand to the Trial Court to consider the 2018 Amendments is thus appropriate.

A limited remand will not alter the Trial Court Order on appeal or endanger this Court's jurisdiction, but it will promote justice and judicial economy by allowing the Parties to settle their appeal without giving up their rights on appeal. Absent a limited remand and continued stay of the appeal, Appellants are concerned that if the Trial Court does not have jurisdiction to hear the motion to approve the 2018 Amendments, Appellants would be forced to choose between dismissing their appeal before the Trial Court could hear a motion to approve the 2018 Amendments – and risk losing their right to appeal if the Trial Court ultimately denied the motion – and abandoning the proposed settlement to proceed with their appeal. A limited remand, on the other hand, would not require the Trial Court to decide any issues that this Court must determine in conjunction with the final disposition of the appeal. The Trial Court would only have to determine whether or not to approve the proposed amendments to the Judgment and CAMA. If the Trial Court grants the motion to approve the 2018 Amendments, Appellants will dismiss their appeal; if the Trial Court denies the motion, the Parties will ask this Court to lift the stay and proceed with the appeal. (See Awad, 238 Cal.App.4th at p. 223.)

The Parties bring this Application in the interest of justice and judicial economy, as the requested limited remand will either facilitate settlement among the Parties or encourage them to proceed with the appeal expeditiously. (See Union Bank of California v. Braille Institute of America (2001) 92 Cal.App.4th 1324 [“public trust in the courts is ... enhanced by settlements of pending appeals and related litigation,” and

efforts should be made, where possible, to settle disputes in a fashion that protects the respective parties' interests].) The Parties to this action have found common ground and are prepared to settle their appeal, but need the Trial Court's review and approval of the proposed amendments to the Judgment and CAMA to effect their proposed settlement.

III.

CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Court grant this joint Application and remand this matter to the Trial Court for the limited purpose of considering a motion to approve the 2018 Amendments. The Parties further request that the stay of the appeal remain in full force and effect pending resolution of the proposed motion to approve the 2018 Amendments.

Dated: July 16, 2018

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[PROPOSED] ORDER FOR LIMITED REMAND TO THE SUPERIOR COURT

The parties hereto having filed a Joint Stipulation and Application for Limited Remand to the Superior Court, Memorandum of Points and Authorities in support thereof and the Court having been afforded the opportunity to review the merits of the Application, it is determined that the Stipulation is accepted and approved and Application is granted.

It is ORDERED that:

1. The matter is remanded to the Trial Court for the limited purpose of considering a motion to approve the 2018 Amendments.
2. The stay of the appeal ordered by this Court otherwise shall remain in full force and effect pending resolution of the motion to approve the 2018 Amendments.

Dated: _____

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed: **JOINT STIPULATION AND APPLICATION FOR LIMITED REMAND TO THE SUPERIOR COURT** with the Clerk of the Court for the United States Court of Appeal, Fourth Appellate District, Division Two, by using TrueFiling, the court's EFS on July 16, 2018 and served as follows:

- I certify that the participants, as indicated below, are registered TrueFiling EFS users and that service will be accomplished by the appellate EFS system.

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Walnut Creek, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

- I caused such envelope to be delivered via overnight delivery. Such envelope was deposited for delivery by United Parcel Service following the firm's ordinary business practices.

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

04342.00108\31302579.1

Executed on July 16, 2018 at Walnut Creek, California.

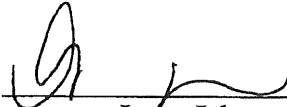

Irene Islas

Exhibit B

**Declaration of Bradley J. Herrema In Support of
Watermaster's Opposition to Monte Vista Water
District's Ex Parte Application**

Chino Basin Municipal Water District v. City of Chino, et al.
San Bernardino Superior Court Case No. RCV 51010

Herrema, Brad

From: Tracy J. Egoscue <tracy@egoscuelaw.com>
Sent: Tuesday, January 29, 2019 12:44 PM
To: Anna Nelson; Camille Gregory
Cc: Tracy J. Egoscue; Jeff Pierson; Bob Feenstra; Herrema, Brad; Peter Kavounas
Subject: Special Ag Pool Meeting Reportable Action

FilingDate: 1/29/2019 2:21:00 PM
FilingFolder: \Chino Basin Watermaster - (Administration 6078) Miscellaneous
(038350-0001)_Communications (038350-0001)
FilingDocumentID: !nrtdms:0:!session:DMS:!database:Active:!document:18700535,1:

The Ag Pool adjourned the January 29, 2019 special meeting at 12:40pm with the following reportable action:

Motion by Ron Pietersma
Second by Geoff Vanden Heuvel

The Ag Pool directs counsel to prepare and file an opposition to:

1. 20180115 Notice of Motion and Motion to Approve Amendments to Appropriative Pool Pooling Plan and Court -Approved Management Agreements; Memorandum of Points and Authorities; Declaration of Sarah Christopher Foley in Support of Motion to Approve Amendments to Appropriative Pool Pooling Plan and Court-Approved Management Agreements; [Proposed]
Order: <https://cbwm.syncedtool.com/shares/file/bb79091c33bbed/?modal=1>

Further the Ag Pool directs counsel to prepare and file a joinder to:

1. 20190115 Chino Basin Watermaster Notice of Motion and Motion Regarding Amendments to Restated Judgment, Peace Agreement, Peace II Agreement, and Re-Operation Schedule;
2. Declaration of Bradley J. Herrema in Support of Motion Regarding Amendments to Restated Judgment, Peace Agreement, Peace II Agreement, and Re-Operation Schedule;
3. Declaration of Peter Kavounas in Support of Motion Regarding Amendments to Restated Judgment, Peace Agreement, Peace II Agreement, and Re-Operation Schedule;
4. Declaration of Mark Wildermuth in Support of Motion Regarding Amendments to Restated Judgment, Peace Agreement, Peace II Agreement, and Re-Operation Schedule;
5. [Proposed] Findings and Order Regarding Amendments to Restated Judgment, Peace Agreement, Peace II Agreement, and Re-Operation Schedule.

Motion Passed.

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"CONFIDENTIALITY NOTICE: Do not read this e-mail if you are not the intended recipient. This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is prohibited. If you have received this transmission in error, please immediately advise us by reply e-mail, by forwarding this to tracy@egoscuelaw.com or by calling (562) 988-5978, and destroy the original transmission and its attachments without reading or saving them in any manner. Thank you."

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. CHINO BASIN WATERMASTER'S OPPOSITION TO 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. DECLARATION OF BRADLEY J. HERREMA IN SUPPORT OF CHINO BASIN WATERMASTER'S OPPOSITION TO 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

/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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