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16 THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 FOR THE COUNTY OF SAN FRANCISCO

19 SAN DIEGO COUNTY WATER
20 AUTHORITY,

Case No.: CPF-10-510830
Related Case No.: CPF-12-512466

21 Petitioner and Plaintiff,

**METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA'S EX
PARTE APPLICATION FOR ORDER
REVOKING ORDER STRIKING C.C.P.
§ 170.6 MOTION, AND GRANTING
DISQUALIFICATION; OR IN THE
ALTERNATIVE, FOR ORDER
GRANTING RECONSIDERATION,
REVOKING PRIOR ORDER, AND
GRANTING DISQUALIFICATION**

22 vs.

23 THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA, ALL
PERSONS INTERESTED IN THE VALIDITY
24 OF THE RATES ADOPTED BY THE
METROPOLITAN WATER DISTRICT OF
25 SOUTHERN CALIFORNIA ON APRIL 13,
2010 TO BE EFFECTIVE JANUARY 1, 2011;
26 AND DOES 1-10,

Hearing

Department 304, Hon. Curtis E.A. Karnow
Date: March 23, 2018
Time: 11:30 a.m.

27 Respondents and Defendants.
28

1 **TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 23, 2018 at 11:30 a.m. in Department 304 of
3 the above-captioned Court, located at 400 McAllister Street, San Francisco, California 94102-
4 4514, Respondent and Defendant Metropolitan Water District of Southern California (“MWD”)
5 will and hereby does apply *ex parte* for an order from this Court in Case No. CFP-10-510830 and
6 in related Case No. CFP-12-512466 revoking its March 16, 2018, “Order Striking C.C.P. § 170.6
7 Motion” (“Order”) entered in each such case; and entering a new order in each such case
8 Granting MWD’s Motion for Peremptory Disqualification Pursuant to Code of Civil Procedure
9 Section 170.6, filed March 15, 2018 (“Motion”), pursuant to Code of Civil Procedure Section
10 128(a)(8) under which the Court has the power to change an order to conform to law and justice.
11 In the alternative, MWD seeks reconsideration of the Order, and an order revoking the Order after
12 reconsideration, and entering a new order Granting MWD’s Motion, pursuant to Code of Civil
13 Procedure Section 1008. MWD seeks such relief under either statute on the grounds that the basis
14 of the Court’s Order—that the Motion was untimely—is, as a matter of law, incorrect. *See* Cal.
15 Code Civ. Proc. § 170.6(a)(2); *Ghaffarpour v. Super. Court (Commerce Plaza Hotel)*, 202 Cal.
16 App. 4th 1463 (2012).

17 This Application is based on the Memorandum of Points and Authorities and Declaration
18 of Barry W. Lee in support of this Application filed and served herewith, together with all
19 pleadings, papers, declarations, and exhibits on file herein, matters as to which the Court may
20 properly take judicial notice, as well as any oral argument that may be presented at the hearing.

21 Pursuant to California Rules of Court, Rule 3.1200 *et seq.*, MWD seeks *ex parte* relief
22 prior to the deadline for MWD to file a petition for writ of mandate with the California Courts of
23 Appeal, First Appellate District: “within 10 days after service of written notice of entry of the
24 court’s order determining the question of disqualification.” Cal. Code Civ. Proc. § 170.3(d).
25 Given the 10-day deadline to file a petition for writ of mandate to vacate the Order, MWD seeks
26 relief on an *ex parte* basis.

27 MWD seeks alternative relief pursuant to Code of Civil Procedure Section 1008 within 10
28 days after receiving written notice of the Order. *See id.* § 1008(a). As stated, MWD filed its

1 Motion for Peremptory Disqualification on March 15, 2018, which the court struck by its Order
2 of March 16, 2018. As the Court noted in its Order, “the parties have not had the opportunity to
3 make a legal argument on these issues, and I am happy to entertain a motion for reconsideration.”
4 Based upon the Court’s reliance on an incorrect issue and legal standard, MWD meets the special
5 or different circumstances prong of Section 1008. *See Monarch Healthcare v. Super. Court*
6 *(Cassidenti)*, 78 Cal. App. 4th 1282, 1286-87 (2000).

7 When an application for an order has been made to a judge, or to a court, and refused in
8 whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order
9 may, within 10 days after service upon the party of written notice of entry of the order and based
10 upon new or different facts, circumstances, or law, make application to the same judge or court
11 that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The
12 party making the application shall state by affidavit what application was made before, when and
13 to what judge, what order or decisions were made, and what new or different facts, circumstances,
14 or law are claimed to be shown.

15 On March 20, 2018, MWD gave notice to Petitioner and Plaintiff San Diego County
16 Water Authority (“SDCWA”) and MWD’s other Member Agencies of this Ex Parte Application.
17 Declaration of Barry W. Lee, ¶ 33.

18 The contact information for counsel of the parties to this litigation is as follows:

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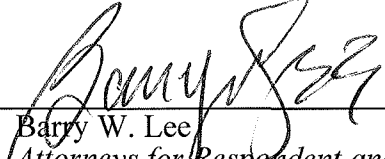
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Dated: March 22, 2018

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