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13 SAN DIEGO COUNTY WATER AUTHORITY

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF LOS ANGELES

16 SAN DIEGO COUNTY WATER
17 AUTHORITY,
18
19 Petitioner and Plaintiff,

20 v.

21 METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA; ALL
22 PERSONS INTERESTED IN THE
VALIDITY OF THE RATES ADOPTED
23 BY THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA
24 ON APRIL 8, 2014 TO BE EFFECTIVE
JANUARY 1, 2015 AND JANUARY 1,
2016; and DOES 1-10,

25 Respondents and Defendants.
26
27
28

Case No. BC547139

**SAN DIEGO COUNTY WATER
AUTHORITY'S OPPOSITION TO
METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA'S MOTION
TO STAY**

Date: October 31, 2014
Time: 8:30 a.m.
Dept.: 17
Judge: Hon. Richard Rico

Date Filed: May 30, 2014

Trial Date: Not Yet Set

1 **I. INTRODUCTION**

2 This Court should deny or defer consideration of Metropolitan Water District of Southern
3 California’s (“MWD”) motion to stay for all of the reasons stated in San Diego County Water
4 Authority’s (the “Water Authority”) pending motion to transfer venue and more. There is no
5 reason for this case to remain in this Court, and MWD’s motion is a transparent and misguided
6 attempt to stall the mandatory transfer of this action to San Francisco Superior Court.

7 *First*, as the Water Authority explained in its motion to transfer venue, the Court is
8 required to transfer this case to a neutral venue under Code of Civil Procedure § 394(a) because
9 this dispute involves two “local agencies.” Because the Water Authority has moved for a
10 mandatory change of venue to San Francisco Superior Court—where the two prior cases filed by
11 the Water Authority were transferred by stipulation of the parties and are nearing a final
12 decision—MWD’s motion to stay must be denied, or deferred pending transfer.

13 *Second*, the Water Authority is entitled to have MWD’s motion heard in a neutral venue to
14 avoid the appearance of bias or prejudice by maintaining this case in Los Angeles County. In
15 fact, MWD has effectively conceded that any determination regarding whether to stay this action
16 only can be made by a court in a neutral venue following transfer. In the 2012 case,¹ MWD first
17 stipulated to transfer to San Francisco Superior Court and then moved (unsuccessfully) for a stay
18 *after* the action was transferred. The same series of procedural steps is required here: The action
19 should first be transferred to San Francisco Superior Court and then that neutral venue, which has
20 been managing the related 2010 and 2012 cases for years, can determine how the three near-
21 identical cases should proceed.

22 *Third*, although MWD claims that an indefinite stay in this Court “would be in the
23 interests of judicial economy,” MWD’s proposed stay would have the exact opposite effect.
24 Staying the action in this Court now would only multiply the resources the parties and the Court

25
26 ¹ As discussed in the Water Authority’s motion to transfer, two nearly identical cases, styled as
27 *San Diego County Water Authority v. Metropolitan Water District of Southern California et al.*,
28 Case No. CPF-10-510830 (the “2010 case”) and *San Diego County Water Authority v.*
Metropolitan Water District of Southern California et al., Case No. CPF-12-512466 (the “2012
case”) (collectively, the “2010 and 2012 cases”), are currently pending before the Honorable
Curtis E.A. Karnow in the San Francisco Superior Court’s Complex Department.

1 have to spend litigating transfer proceedings. Because this case is subject to mandatory transfer,
2 even if the Court were to stay the action now, the Water Authority would ultimately have to
3 bring, and the Court decide, first a motion to lift the stay and then a second motion to transfer
4 after the stay is lifted. The Court should cut to the chase and transfer this action now, as it is
5 obligated to do.

6 **II. ARGUMENT**

7 **A. The Court should deny or defer MWD's motion to stay because that motion**
8 **must be decided by a Court in a neutral venue.**

9 As the Water Authority has explained—and as MWD well knows—this action is subject
10 to mandatory transfer to a neutral venue under Code of Civil Procedure § 394. *See* Mot. to
11 Transfer at 1-5. In both the 2010 and 2012 cases, MWD consented to transfer to the San
12 Francisco Superior Court, agreeing that those cases were subject to “mandatory change of venue”
13 and that it would be “in the interests of judicial economy” to transfer them to the San Francisco
14 Superior Court. *See id.* at 1-3; *see also* Declaration of Nicholas S. Goldberg i/s/o Mot. to
15 Transfer (Goldberg Decl. i/s/o Mot. to Transfer), Exs. B-D. But after receiving an unfavorable
16 decision in the 2010 and 2012 cases, MWD refused to stipulate to transfer in this case, and
17 instead filed a motion asking this Court to indefinitely stay this case “pending appellate
18 resolution” of the 2010 and 2012 cases. Mot. to Stay at 7:12-13. Accordingly, the Water
19 Authority was forced to file a motion to transfer the present action to a neutral venue. *See*
20 *generally* Mot. to Transfer.

21 The Water Authority's motion to transfer venue effectively moots MWD's pending
22 motion to stay because any motion to stay must be decided by the neutral venue in the first
23 instance. *See Thompson v. Thames*, 57 Cal. App. 4th 1296, 1303-04 (1997); *S. Sutter, LLC v. LJ*
24 *Sutter Partners, L.P.*, 193 Cal. App. 4th 634, 655 (2011); *McCarthy v. Super. Ct.*, 191 Cal. App.
25 3d 1023, 1034 (1987). As Witkin explains: “While the motion [to transfer] is pending, the court's
26 power is limited to hearing and determining the [transfer] motion, and it cannot take other judicial
27 action in the case.” 3 Witkin Cal. Proc. 5th Actions at § 914 (2008) (collecting cases). The
28 reason for this rule is that a party who is entitled to a change of venue has a right to have the court
in the appropriate venue “determine every judicial question involved in the action.” *See Walsh v.*

1 *Super. Ct.*, 44 Cal. App. 31, 32 (1919); *see also Riverside Cnty. v. Super. Ct.*, 69 Cal. 2d 828, 831
2 (1968).²

3 Because the Water Authority's motion for a transfer of venue under section 394 suspends
4 the Court's power to decide MWD's motion, and because transfer under section 394 is
5 mandatory, MWD's motion must be denied or deferred pending transfer. Any other order issued
6 by this Court would be "null and void." *See McCarthy*, 191 Cal. App. 3d at 1034; *Riverside*
7 *Cnty.*, 69 Cal. 2d at 831.

8 **B. Denying or deferring consideration of MWD's motion to stay is necessary to**
9 **effectuate the purpose of the mandatory change of venue statute.**

10 The express purpose of Code of Civil Procedure § 394(a)'s mandatory transfer provision
11 is to "guard against local bias that may exist in favor of litigants within a county as against those
12 from without the county, and to ensure that both parties have a trial on neutral territory."

13 *Kennedy/Jenks Consultants, Inc. v. Super. Ct.*, 80 Cal. App. 4th 948, 953-54 (2000) (citation
14 omitted). "There is no need for a party seeking transfer to demonstrate actual prejudice because
15 the statute is designed to obviate the appearance of prejudice as well as actual prejudice or bias."
16 *Arntz Builders v. Super. Ct.*, 122 Cal. App. 4th 1195, 1203 (2004) (internal quotations omitted).
17 Because the statute is remedial in its purpose, "it should receive a liberal construction which will
18 promote rather than frustrate the policy behind the law." *Westinghouse Elec. Corp. v. Super. Ct.*,
19 17 Cal. 3d 259, 266 (1976).

20 The Court should deny or defer consideration of MWD's motion to stay to a neutral court
21 to avoid any appearance of bias or prejudice from maintaining this case in Los Angeles County
22 for an extended period of time. Here, MWD, a Los Angeles-based public agency, has filed a
23 motion to stay this action indefinitely in Los Angeles County for the sole purpose of thwarting the
24 mandatory transfer of this case to a neutral venue. Further highlighting the need for immediate

25 ² Courts have carved out a narrow exception to these rules allowing judicial action "upon matters
26 which are incidental or ancillary to" the motion to transfer. *See, e.g., Oakland v. Darbee*, 102
27 Cal. App. 2d 493, 503 (1951) (motion to transfer under section 394 did not prevent court from
28 concurrently ordering the transfer *and* severance of the action under Code Civ. Proc. § 1048); *see*
also 3 Witkin Cal. Proc. 5th Actions at § 915 (2008). The exception is not applicable here
because MWD's motion to stay is not incidental to the Court's consideration of the Water
Authority's motion to transfer venue.

1 transfer to a neutral venue, the City of Los Angeles Department of Water and Power has added its
2 support to MWD's obstruction, filing a joinder to MWD's motion. *See* City of L.A. Dep't of
3 Water & Power's Notice of Joinder and Joinder in MWD's Mot. to Stay. Because the Water
4 Authority is a "local agency" operating in San Diego County, MWD's motion should either be
5 denied outright or the Court should defer its consideration to the neutral venue to "obviate the
6 appearance of prejudice . . . or bias." *Arntz Builders*, 122 Cal. App. 4th at 1203.

7 Indeed, MWD's conduct in the 2012 case confirms that any motion to stay should only be
8 decided by the neutral venue following transfer. Like the present action, the 2012 case was
9 originally filed in Los Angeles County Superior Court, as required by the venue statute. *See*
10 Code Civ. Proc. § 395. Recognizing that the 2012 case was subject to mandatory transfer to a
11 neutral venue and that it would be improper to move for a stay prior to such transfer, MWD first
12 stipulated to transfer the 2012 case to San Francisco Superior Court and then waited to move for a
13 stay of that case until *after* the action was transferred to San Francisco. *See* Goldberg Decl. i/s/o
14 Mot. to Transfer, Ex. C (7/19/12 Stip/Order); Ex. D (8/16/12 Stip/Order); Declaration of Nicholas
15 S. Goldberg in Opp. to Mot. to Stay (Goldberg Opp. Decl.), Ex. A (MWD Mem. i/s/o Mot. to
16 Stay 2012 case) at 1. That motion to stay ultimately was denied, based on the transferee court's
17 evaluation of the two cases, and accounting for case management considerations. Goldberg Opp.
18 Decl., Ex. B (11/9/12 CMC Tr.) at 4:27-5:27.

19 The Court should follow the same procedural steps here: The action should first be
20 transferred to San Francisco Superior Court and then that neutral venue, which has been
21 managing the related 2010 and 2012 cases for years, can determine how to proceed with this case.

22 **C. An indefinite stay in this Court would neither be efficient nor further the ends**
23 **of justice.**

24 It would neither be efficient nor further the ends of justice for this Court to grant a stay.
25 While trial courts, in certain circumstances, have the "inherent power to stay proceedings in the
26 interests of justice and to promote judicial efficiency," *Freiberg v. City of Mission Viejo*, 33 Cal
27 App. 4th 1484, 1489 (1995), here, any motion to stay should be addressed in the first instance by
28 the San Francisco Superior Court. Granting a stay in this Court will only inflate the resources the
parties and the Court have to spend on transfer proceedings.

1 MWD advances only two arguments in support of staying this case in this Court—both
2 are meritless. First, MWD misrepresents the Water Authority’s position by categorically stating
3 that the Water Authority “agrees this case should be stayed.” *See* Mot. to Stay at 6:12; *see also*
4 *id.* at 2:9-11. The Water Authority’s actual position, articulated in a Joint Case Management
5 Conference Statement filed in the 2010 and 2012 cases, is that once this action is transferred to
6 San Francisco Superior Court, “the parties can meet and confer, and propose to the [San
7 Francisco] Court how the 2014 case should be handled, in light of the advanced status of the
8 current [2010 and 2012] cases and the expected appeal.” Goldberg Decl. i/s/o Mot. to Transfer,
9 Ex. F (6/26/14 Joint CMC Statement in 2010 and 2012 cases) at 11:14-16. While the parties may
10 come to an agreement, it is equally possible that they will present different proposals for moving
11 forward with this case—for example, the Water Authority has suggested that the parties stipulate
12 to judgment in this action, so that it can be appealed alongside the 2010 and 2012 cases. *See id.* at
13 11:16-19. Given that trial in the 2010 and 2012 cases is still ongoing, and final judgment may
14 still be months away, the Court in San Francisco might want to push the parties to try this case
15 quickly, in order to limit post-appeal proceedings. Either way, it is the San Francisco Superior
16 Court, which has managed these cases for more than four years, that should determine the best
17 path forward.

18 Second, MWD asserts that this Court should grant a stay now before transferring the case
19 to the San Francisco Superior Court because “transfer would be an unnecessary expenditure of
20 resources, since the matter will be stayed in any event.” Mot. to Stay at 6:19-20. Aside from the
21 fact that this Court has no power to decide the motion to stay, MWD’s argument is based on the
22 logical fallacy that this Court can somehow conserve resources by postponing transfer. In fact,
23 the opposite is true. Because this case is subject to mandatory transfer under Code of Civil
24 Procedure § 394, even if the Court were to stay the action now, it would still have to transfer the
25 action to a neutral venue after lifting the stay in the future. In other words, whether it’s now or
26 later, the parties and the Court will have to expend the resources to have this case transferred to a
27 neutral venue. MWD’s proposal would multiply the resources spent adjudicating transfer
28 proceedings by requiring the Water Authority to bring, and the Court to first decide, a motion to

1 lift the stay, and then a second transfer motion sometime after that stay is lifted. Given that this
2 Court is obligated to transfer the case, nothing is to be gained by letting this case sit on this
3 Court's docket for months or years, just so that it can be transferred at some later point in time.
4 The Court should transfer the case now.

5 **III. CONCLUSION**

6 For these reasons, MWD's motion to stay should be denied or deferred and the Water
7 Authority's motion to transfer this action to the Superior Court in and for the County of San
8 Francisco should be granted.

9
10 Dated: October 20, 2014

KEKER & VAN NEST LLP

11 By: 
12 Warren A. Braunig

13 Attorneys Petitioner and Plaintiff
14 SAN DIEGO COUNTY WATER
15 AUTHORITY

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