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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 Petitioner and Plaintiff,

19 v.

20 METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA; ALL
21 PERSONS INTERESTED IN THE
VALIDITY OF THE RATES ADOPTED
22 BY THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA
23 ON APRIL 8, 2014 TO BE EFFECTIVE
24 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 REPLY IN SUPPORT OF
MOTION TO TRANSFER VENUE**

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 There is no reason for this Court to hold onto this case when it has no power to address its
3 merits and there is a perfectly competent, experienced judge waiting in San Francisco to
4 adjudicate it. Right up front, MWD admits that “if this case proceeds, it should be transferred to a
5 neutral venue.” Opp. at 1:15-16.¹ MWD offers no objection to transferring this lawsuit to the
6 San Francisco Superior Court, where the two nearly identical 2010 and 2012 cases are being
7 actively litigated and nearing final judgment. Instead, MWD suggests that the Court should keep
8 this case on ice, cluttering its docket, for several years while the appeals in the 2010 and 2012
9 cases play out, then transfer once coordination with those cases is no longer possible.

10 As an initial matter, MWD’s position is contrary to Code of Civil Procedure § 394, which
11 requires the Court to transfer the action to a neutral venue upon timely application. Because the
12 Water Authority has timely invoked its transfer rights under this statute, the Court must transfer
13 the case now. MWD ignores the statute’s clear language and purpose, and instead urges the
14 Court to stay the case and forget about transferring it. But even if the Court could stay this action,
15 which case law does not support, doing so would serve no interest but delay. Even if a decision
16 in the 2010 and 2012 cases would fully resolve this case—a concession MWD has never made—
17 that argues *in favor* of transfer, so that coordination with the other pending cases can happen
18 now, not years from now. As MWD concedes, Code of Civil Procedure § 394(a) bars this Court
19 from making any substantive rulings in this case, so this Court could not even enter judgment, if it
20 came to that. A neutral court would have to do so.

21 Transferring this case to San Francisco now is consistent with the governing statute, case
22 law, efficiency, and common sense. Keeping it in Los Angeles would frustrate all of the above.

23 **II. ARGUMENT**

24 **A. MWD ignores the mandatory nature of transfer under Code of Civil
25 Procedure section 394.**

26 MWD concedes Code of Civil Procedure section 394 requires transfer if this case moves
27 forward. See Opp. at 1:15-16 (“[I]f this case proceeds, it should be transferred to a neutral

28 ¹ As used herein, “Mot.” refers to the Water Authority’s Memorandum of Points and Authorities
in Support of its Motion to Transfer and “Opp.” refers to MWD’s Opposition to that motion.

1 venue.”); *see also id.* at 4:2-5 (“MWD agrees that if this case is eventually litigated on the merits .
2 . . . it should eventually be transferred to a neutral venue.”). But for some bizarre reason MWD
3 asks this Court to hold onto the case pending appellate resolution of the 2010 and 2012 cases. *Id.*
4 at 3-4. First, MWD’s argument ignores the mandatory nature of the transfer statute.

5 It is well-established that a court must transfer a case to a neutral venue when one party
6 invokes its transfer rights under Code of Civil Procedure § 394(a), as the Water Authority has
7 done here. *See* Mot. at 3-4. “The statute is couched in mandatory language, **requiring** the trial
8 court to transfer an action to a neutral county upon timely application.” *Arntz Builders v. Super.*
9 *Ct.*, 122 Cal. App. 4th 1195, 1203 (2004) (emphasis added); *see also Cnty. of San Bernardino v.*
10 *Super. Ct.*, 30 Cal. App. 4th 378, 389 (1994) (“transfer on application . . . is mandatory”).

11 Because the Water Authority has timely moved to transfer this action to a neutral venue
12 under Section 394(a), the Court is required to transfer the action.

13 **B. MWD’s argument that this Court should delay transfer until after appellate**
14 **resolution of the 2010 and 2012 cases is nonsensical.**

15 MWD tries to end-run the mandatory nature of section 394(a), arguing the Court should
16 stay the case in Los Angeles pending appellate resolution of the 2010 and 2012 cases. MWD
17 insists this would be legally permissible because this Court would not be doing anything
18 “substantive,” only imposing a procedural deep-freeze. *See, e.g.,* Opp. at 2:8-18, 4:2-5. But that
19 leaves unanswered the critical question: why is that the best way to handle this case? And that
20 question answers itself: it isn’t. MWD doesn’t want an efficient resolution of all pending cases; it
21 hopes to divide and conquer by putting this new case on ice. To begin with, MWD’s position is
22 premised on the assumption that the appeals in the 2010 and 2012 cases will fully resolve this
23 action. But those cases have not yet gone to final judgment, and resolution of the appeals are
24 years away. Surely there is much the parties can do in the meantime to confirm that the 2014
25 case presents the same issues as the 2010 and 2012 cases, resolve the 2014 case on that basis, and
26 possibly even coordinate all three cases at some point during the appellate process.

27 Even if MWD were willing to stipulate to judgment in this case based on the rulings in the
28 2010 and 2012 cases—which MWD has never suggested it would do—this Court could not even
enter judgment, because that would be a substantive ruling on the merits of this case. *See* Code

1 Civ. Proc. § 577 (“A judgment is the final determination of the rights of the parties in an action or
2 proceeding.”); Code Civ. Proc. § 1064 (similar definition of judgment in special proceeding);
3 *Sylvester v. Soulsburg*, 252 Cal. App. 2d 185, 188 (1967) (stipulated judgment of dismissal is a
4 final judgment on the merits). That would have to happen in a different, neutral forum.
5 Moreover, assuming MWD disputes that San Diego’s victory in the 2010 and 2012 cases entitles
6 it to judgment in this case, this Court would lack the power to resolve that dispute. And waiting
7 for a decision from the Court of Appeal would be no help—even with such a decision, this Court
8 still would have to determine how that decision affects the issues in this case and then enter
9 judgment, all of which it is barred from doing under section 394(a). *See Arntz Builders*, 122 Cal.
10 App. 4th at 1203 (“the statute is designed to obviate the appearance of prejudice as well as actual
11 prejudice or bias.”). The San Francisco Superior Court is better positioned to make such a
12 determination, having conducted the trial in the two prior cases and resolved disputed issues.

13 Given that this case must eventually be transferred to a neutral venue, there is no reason
14 *not* to transfer the action to the San Francisco Superior Court now, while the 2010 and 2012 cases
15 are still pending, so that venue can manage all three related cases. Even if the San Francisco
16 Superior Court stays this case following transfer, it makes more sense for it to be stayed in a
17 venue where the court has the power to quickly and finally resolve any and all issues when they
18 arise.²

19 **C. The Court should deny or defer MWD’s pending motion to stay.**

20 Rather than trying to make the case for why a stay makes the slightest bit of sense, MWD
21 spends most of its Opposition arguing that the Court has jurisdiction to hear its stay motion. *See*
22 *Opp.* at 1-3. But so what? Even if the Court technically could hear MWD’s motion to stay, it

23
24 ² MWD once again distorts the Water Authority’s position regarding management of this case,
25 stating that the Water Authority “does not dispute that a stay of this action is appropriate. . . .”
26 *Opp.* at 1:4-5; *see also id.* at 4:15-16 (“both parties agree [a stay] is appropriate. . . .” As the
27 Water Authority has repeatedly explained, it should be up to the San Francisco Superior Court to
28 decide how this case should be handled after it is transferred. *See Mot.* at 6:11-22; *Opp. to Mot.*
to Stay at 5:2-17. Rather than a stay, the Water Authority has suggested that the parties stipulate
to judgment in this action, so that it can be appealed alongside the 2010 and 2012 cases. *Id.* By
mischaracterizing the Water Authority’s position, MWD only highlights the need for this action
to be transferred expeditiously so that these case management issues can be presented to the San
Francisco Superior Court for resolution.

1 would be a colossal waste of this Court's time, and inhibit potential efficient coordination of this
2 case with other pending cases, to grant a stay.

3 In any event, because there are serious questions about whether this Court has the power
4 to decide MWD's motion to stay, and no practical benefit to doing so, the more prudent course
5 would simply be to transfer the case. As the Water Authority has explained, the filing of a
6 motion to transfer suspends a court's power to act because a party who is entitled to a change of
7 venue has the right to have the court in the proper venue "determine every judicial question
8 involved in the action." See Mot. at 5-6 (quoting *Walsh v. Super Ct.*, 44 Cal. App. 31, 32 (1919)
9 and collecting authority). MWD's arguments for deviating from this general rule are unavailing.

10 First, MWD relies on the exception spelled out in *Oakland v. Darbee*, 102 Cal. App. 2d
11 493, 502 (1951), to argue that the Court may act on its motion to stay because that motion is
12 "incidental or ancillary" to the Water Authority's transfer motion. See Opp. at 2-3. But MWD
13 misconstrues the logic of the "incidental and ancillary" exception, as explained by the court in
14 *Darbee*. There, the city of Oakland filed an eminent domain action against a group of defendants
15 who owned six contiguous parcels of land in Alameda County. *Id.* at 496. Two defendants
16 residing in San Francisco County simultaneously filed: (1) a motion for an order severing them
17 from the proceedings against the other defendants who resided in Alameda County; and (2) a
18 motion to transfer the action, as to them, to a neutral county pursuant to Code of Civil Procedure
19 § 394. *Id.* The trial court granted both motions and transferred the case to a neutral court. *Id.*
20 On appeal, the city of Oakland argued that the severance order was void because, upon the filing
21 of the defendants' transfer motion, the court had no power to sever the cases. *Id.* at 502. The
22 Court of Appeal rejected that argument, holding that, despite the general rule depriving a trial
23 court of power to act on the merits while a section 394(a) transfer motion is pending, that court
24 still could act on matters "incidental or ancillary" to the motion to transfer. *Id.* at 503. Critically,
25 the court emphasized that the severance motion was "incidental or ancillary" because it *enabled*
26 transfer, thus vindicating defendants' rights under section 394(a):

27 Thus, it is clear that the two motions and orders were intimately
28 related, one to the other, and were so regarded by the superior
court. Its consideration of the proposal for separation was based

1 principally, if not wholly, upon that relation, incidental to and in
2 aid of the demand for transfer, a desire to satisfy that rightful
3 demand of respondents with the least of inconvenience to other
4 parties.

5 *Id.* at 504.

6 MWD's position here turns the *Darbee* exception on its head. Unlike *Darbee*, where the
7 severance order was "in aid of the demand for transfer," MWD's motion to stay would **obstruct**
8 transfer and defer for years the Water Authority's entitlement to have this case heard in a neutral
9 forum. 102 Cal. App. 2d at 504. In other words, MWD's motion to stay is certainly not
10 "incidental or ancillary" to the Water Authority's motion to transfer, *id.* at 503, because it seeks to
11 defeat that motion and the requested relief.

12 Second, MWD's argument that this Court has the power to hear its motion to stay is based
13 on the premise that a stay motion is not "substantive." *See* Opp. at 2:8-18. Again, MWD's
14 defensive argument provides no affirmative reason why a stay would be the best course of action
15 for this case. But moreover, MWD is wrong; of course a stay of the magnitude advocated by
16 MWD would have substantive consequences. MWD wants to defer any consideration of the
17 merits of this case for years, until the inevitable appeals of the 2010 and 2012 cases finally
18 conclude. That would deprive the parties of the opportunity to coordinate this new case with the
19 other pending cases, resolve any common issues quickly and efficiently, and move toward a final
20 resolution of all cases. It would also deny the Water Authority and its ratepayers any relief from
21 MWD's illegal 2015 and 2016 rates for years, forcing millions of San Diego County residents to
22 tithe to MWD while their timely filed rate challenge sat in limbo. The substantive consequences
23 of coordination and scheduling should be evaluated by the San Francisco Superior Court, which is
24 most familiar with the status of the various cases and the scope of its rulings.

25 **D. MWD concedes that the San Francisco Superior Court is the appropriate**
26 **neutral venue.**

27 Finally, MWD does not object to San Francisco Superior Court as the proper transferee
28 venue. As the Water Authority has explained, all of the factors weigh strongly in favor of transfer
to that court, which has been managing the 2010 and 2012 cases for years and has addressed
many of the same legal and factual questions presented by this case. *See* Mot. at 7-8.

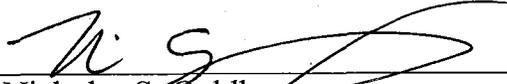
1 Accordingly, the Court should transfer this action to the San Francisco Superior Court.³

2 **III. CONCLUSION**

3 For these reasons, the Court should grant the Water Authority's motion to transfer this
4 action to the Superior Court in and for the County of San Francisco and deny or defer MWD's
5 motion to stay.

6
7 Dated: October 24, 2014

KEKER & VAN NEST LLP

8
9 By: 

Nicholas S. Goldberg

10
11 Attorneys Petitioner and Plaintiff
12 SAN DIEGO COUNTY WATER
13 AUTHORITY

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24 ³ Highlighting the lack of substance in its merits arguments, MWD spends a substantial portion
25 of its Opposition arguing why it should not be sanctioned for its conduct. *See* Opp. at 4-5. The
26 Court would be well within its discretion to award the Water Authority's expenses and attorney's
27 fees for having to bear the burden and expense of this transfer motion. Contrary to MWD's
28 position, the plain language of Code Civ. Proc. § 396b(b) grants the Court discretion to "order the
payment to the prevailing party of reasonable expenses and attorney's fees incurred in making or
resisting the motion to transfer whether or not that party is otherwise entitled to recover his or her
costs of action." Furthermore, as MWD apparently recognizes, Code Civ. Proc. § 128.7(c) also
provides another basis for sanctions.

1 **PROOF OF SERVICE**

2 I am employed in the City and County of San Francisco, State of California in the office of a
3 member of the bar of this court at whose direction the following service was made. I am over the
4 age of eighteen years and not a party to the within action. My business address is Keker & Van
Nest LLP, 633 Battery Street, San Francisco, CA 94111-1809.

5 On October 24, 2014, I served the following document(s):

6 **SAN DIEGO COUNTY WATER AUTHORITY'S REPLY IN SUPPORT OF**
7 **MOTION TO TRANSFER VENUE**

8 by regular **UNITED STATES MAIL** by placing Original in a sealed envelope addressed as
9 shown below. I am readily familiar with the practice of Keker & Van Nest LLP for
10 collection and processing of correspondence for mailing. According to that practice, items
11 are deposited with the United States Postal Service at San Francisco, California on that same
12 day with postage thereon fully prepaid. I am aware that, on motion of the party served,
service is presumed invalid if the postal cancellation date or the postage meter date is more
than one day after the date of deposit for mailing stated in this affidavit.

13 by **E-MAIL VIA PDF FILE**, by transmitting on this date via e-mail a true and correct copy
14 scanned into an electronic file in Adobe "pdf" format. The transmission was reported as
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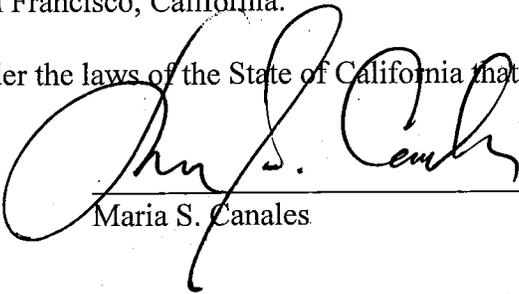
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21 Executed on October 24, 2014, at San Francisco, California.

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

24 
25 _____
26 Maria S. Canales
27
28