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EXEMPT FROM FILING FEES
[GOVERNMENT CODE § 6103]

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Metropolitan Water District Of Southern California

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

SAN DIEGO COUNTY WATER AUTHORITY,

Petitioner and Plaintiff,

vs.

METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA; ALL
PERSONS INTERESTED IN THE VALIDITY OF
THE RATES ADOPTED
BY THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
ON APRIL 12, 2016 TO BE EFFECTIVE
JANUARY 1, 2017 AND JANUARY 1,
2018; and DOES 1-10,

Respondents and Defendants.

Case No. BS161729

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA'S MOTION TO
TRANSFER VENUE**

Date: August 23, 2016
Time: 9:30am
Dept: 82
Judge: Hon. Mary H. Strobel

[Filed concurrently with Notice of
Motion and Motion to Transfer Venue
and Proposed Order]

1 **I. Introduction**

2 Defendant/Respondent Metropolitan Water District of Southern California (“MWD”)
3 submits this memorandum of points and authorities in support of its motion to transfer this case to
4 a neutral county pursuant to Code of Civil Procedure section 394(a). Because Plaintiff/Petitioner
5 San Diego County Water Authority (“SDCWA”) and MWD are both local agencies, and Los
6 Angeles is one of the counties in which MWD is situated, Section 394 requires transfer.

7 **II. Background**

8 In its April 13, 2016 complaint (“Complaint”) SDCWA challenges, among other things,
9 the April 12, 2016 action by MWD regarding water rates that will take effect on January 1, 2017
10 and January 1, 2018. As the Complaint alleges, both SDCWA and MWD are local agencies.
11 Complaint ¶ 13-14.

12 SDCWA brought similar claims against MWD in three previous cases, challenging
13 MWD’s water rates in 2010 (*San Diego County Water Authority v. MWD*, Case No: BS126888
14 (Los Angeles County Superior Court)), 2012 (*San Diego County Water Authority v. MWD*, Case
15 No: BS137830 (Los Angeles County Superior Court)), and 2014 (*San Diego County Water*
16 *Authority v. MWD*, Case No: BC547139 (Los Angeles County Superior Court)). All were filed in
17 Los Angeles, and all were transferred to San Francisco under Code of Civil Procedure section
18 394(a).

19 **III. Argument**

20 This case is subject to mandatory transfer to a neutral venue under Code of Civil
21 Procedure § 394(a), which provides, in relevant part, that if an action or proceeding is brought by
22 a local agency against another local agency, “it may be tried in any county, or city and county, not
23 a party thereto and in which the city or local agency is not situated.” Cal. Civ. Proc. Code §
24 394(a). It further states that when an action is brought against a local agency, on motion of the
25 defendant an “action or proceeding must be transferred for trial to a county, or city and county,
26 other than that in which the plaintiff, or any of the plaintiffs, resides, or is doing business, or is
27 situated, and other than the plaintiff county, or city and county, or county in which that plaintiff

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1 city or local agency is situated, and other than the defendant county, or city and county, or county
2 in which the defendant city or local agency is situated.” *Id.*

3 Under Section 394(a) “an action between two public entities or agencies cannot be tried in
4 the county in which either resides.” *Cty. of San Bernardino v. Superior Court*, 30 Cal. App. 4th
5 378, 387-88 (1994). The statute is “couched in mandatory language, requiring the trial court to
6 transfer an action to a neutral county upon timely application.” *Arntz Builders v. Super. Ct.*, 122
7 Cal. App. 4th 1195, 1203 (2004); *see also San Bernardino*, 30 Cal. App. 4th at 388; *Ventura*
8 *Unified Sch. Dist. v. Super Ct.*, 92 Cal. App. 4th 811, 815 (2001).

9 SDCWA, located in San Diego, is San Diego County’s water authority. Compl. ¶ 13.
10 *Id.* MWD’s principal offices are located in Los Angeles, California, and its service area includes
11 all or portions of the counties of Ventura, Los Angeles, Riverside, San Bernardino, Orange, and
12 San Diego. Compl. ¶ 21. Under Section 394(b), a “local agency” is “any governmental district,
13 board, or agency, or any other local governmental body or corporation, but not “the State of
14 California or any of its agencies, departments, commissions, or boards.” Thus, both SDCWA and
15 MWD are “local agencies” under Section 394(a). *See also* Compl. ¶ 13-14.

16 Since both MWD and SDCWA are local agencies, this case is subject to mandatory
17 change of venue to a state court outside of both San Diego County and the counties in which
18 MWD resides. *See San Bernardino*, 30 Cal. App. 4th at 387-88. SDCWA’s Complaint concedes
19 this. Compl. ¶20 (the case is “subject to mandatory transfer of venue to a neutral county pursuant
20 to Code of Civil Procedure Section 394(a).”).¹

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25 ¹ MWD notes that making this motion excuses MWD from filing a responsive pleading to SDCWA’s Complaint.
26 Code of Civil Procedure section 396b(a) states that a defendant in an action may “at his or her option, without
27 answering, demurring, or moving to strike and within the time otherwise allowed to respond to the complaint, file[]
28 with the clerk, a notice of motion for an order transferring the action or proceeding to the proper court.” Cal. Civ.
Proc. Code § 396b(a); *see also* Cal. Civ. Proc. Code § 585 (no default while a transfer motion is pending); Cal. Civ.
Proc. Code § 396b(e) & Cal. Rules of Court, Rule 3.1326 (setting deadlines to respond to complaint following ruling
on a motion to transfer).

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IV. Conclusion

MWD respectfully requests that this court order this action transferred to a neutral county.

Dated: May 9, 2016

Respectfully submitted,
MORGAN, LEWIS & BOCKIUS LLP

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California