

E-FILED
9/20/2017 9:40 AM
FRESNO COUNTY SUPERIOR COURT
By: K. Daves, Deputy

NEAL E. COSTANZO SBN122352
MICHAEL G. SLATER SBN 247302
COSTANZO & ASSOCIATES
575 EAST LOCUST AVENUE, SUITE #115
FRESNO, CALIFORNIA 93720
TELEPHONE (559) 261-0163
FACSIMILE (559) 261-0703

Attorneys for Respondent, PINEDALE COUNTY WATER DISTRICT
(NO FILING FEE REQUIRED GOVERNMENT CODE §6103)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

CITY OF FRESNO,

Petitioner,

vs.

PINEDALE COUNTY WATER DISTRICT,

Respondents.

Case No.: 17 CECG 02055

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO TRANSFER ACTION**

Date: November 8, 2017

Time: 8:30 a.m.

Dept.: 404

Judge: Honorable Mark Cullers

I. INTRODUCTION

As shown by the Complaint by Petitioner, City of Fresno, against Respondent, Pinedale County Water District, herein, this is an action in which a city and a local government agency are adversaries. Respondent objects to the action being heard in Fresno County and requests transfer of this action to Kings County. As demonstrated below, in an action or proceeding brought against a local agency by a city, also a local agency, in the same county in which the local agency is situated, transfer to a neutral county or the assignment of a disinterested judge from a neutral county, when requested by either party, is mandatory.

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II. ARGUMENT

A. THIS ACTION SHOULD BE TRANSFERRED BECAUSE A CITY, THE CITY OF FRESNO, AND A LOCAL AGENCY, THE PINEDALE COUNTY WATER DISTRICT, ARE ADVERSARIES BOTH LOCATED IN THE FORUM COUNTY AND THE RESPONDENT OBJECTS TO THE MATTER BEING TRIED IN THE FORUM COUNTY.

This action alleging a single cause of action for writ of mandate was filed by the City of Fresno, a municipal corporation, located in the County of Fresno. Because CCP §394, in the context of this action, acts as a removal statute, it must first be established that this action is in the proper court as defined by statute (e.g., CCP §§392, 393 and 395), before mandatory transfer to a neutral venue or the assignment of a disinterested judge from a neutral county. (*County of San Bernardino v. Superior Court* (1994) 30 Cal.App.4th 378, 387; *City of Alameda v. Superior Court* (1974) 42 Cal.App.3d 312, 316.) The Respondent in this matter is the Pinedale County Water District, is a county water district organized and existing under the County Water District law, Water Code §30000, et seq., located in Fresno County. (Complaint at para. 1.) The subject matter of the Complaint is a Judgment entered in Madera County relating to a settlement agreement executed by the parties in the County of Fresno, to be performed in the County of Fresno. Because the Respondent is located in Fresno County, Fresno County is the proper venue in which to file this action pursuant to CCP §395.

Code of Civil Procedure §394 provides, in pertinent part, as follows:

"An action or proceeding against a . . . local agency, may be tried in such . . . county in which such . . . local agency is situated, unless such action or proceeding is brought by . . . a city . . . in which case it may be tried in any county . . . not a party thereto and in which the . . . local agency is not situated When the action or proceeding is one in which a jury is not of right, or in case a jury be waived, then in lieu of transferring the cause, the court in the original county may request the Chairman of the Judicial Council to assign a disinterested judge from a neutral county to hear said cause and all proceedings in connection therewith"

1 A "local agency" within the meaning of CCP §394(b) is defined to include "any
2 governmental district, board or agency, or other local government body or corporation,
3 but shall not include the State of California or any of its agencies, departments,
4 commissions or boards." Pinedale County Water District (hereinafter the "District"), as
5 stated above, is a county water district and, therefore, is a local agency within the
6 meaning of CCP §394. Likewise, the City of Fresno is a municipal corporation, a local
7 agency within the meaning of CCP §394(b).

8 CCP §394 requires a change of venue where two governmental entities located
9 in the same county are adversaries and either of them objects to venue in the forum
10 county, unless a jury is not of right or a jury is waived, in which case, the court may, in
11 lieu of transfer, request assignment to a disinterested judge from a neutral county to try
12 the case. (*City of Alameda, supra*, at p. 316). In *Alameda*, Respondent, City of
13 Alameda, filed a motion for change of venue pursuant to CCP §394 to transfer the
14 action filed by the City of Oakland to another county because both cities were located
15 within the forum county. (Id. at p. 315). In reversing the Trial Court, the Appellate
16 Court held that the language of CCP §394 makes it clear that "when two cities in the
17 same county are adversaries, the case cannot be tried over objection in that county."
18 (Id. at p. 316). Here, as in *Alameda*, this case must be transferred because the
19 Petitioner is a city located in Fresno County and the Respondent is an agency, located
20 within Fresno County and the Respondent objects to the case being tried in Fresno
21 County. In the alternative, the court in *Alameda* stated that CCP §394 allows the Trial
22 Court, at its discretion, to request that the Chairperson of the Judicial Council assign a
23 disinterested judge from a neutral county to hear the cause and all proceedings in
24 connection therewith as an alternative to removing the cause from the forum county
25 "where a jury trial is not a matter of right." (Ibid.) In this case, for writ of mandate, a jury
26 trial is not a matter of right.

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III. CONCLUSION

For the foregoing reasons, Respondent requests that the court transfer the action to a neutral County or, in the alternative that the matter be assigned by the Judicial Council to a disinterested judge from a neutral county.

DATE: 9-15, 2017


Neal E. Costanzo, Attorney for
Pinedale County Water District

1 **PROOF OF SERVICE BY MAIL AND FACSIMILE**

2 The undersigned declares:

3 Shirlene Capuchino, the undersigned, declare that:

4
5 I am employed in the County of Fresno, State of California. I am over the age of eighteen
6 years, and am not a party to the within action. My business address is 575 E. Locust Avenue,
Suite 115, Fresno California 93720.

7 I am familiar with the regular mail collection and processing practice of said business and
8 in the ordinary course of business the mail is deposited with the United States Postal Service that
9 same day.

10 On September 20, 2017, I served the foregoing documents described as:

11 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
12 **MOTION TO TRANSFER ACTION**

13 on all parties to this action by causing a true copy thereof to be:

14 **(X)** Placed in a sealed envelope with postage thereon fully prepaid in the designated
15 area for outgoing mail.

16 **(X)** Sent via Facsimile

17 Addressed as follows:

18
19 James B. Betts, Esq.
20 BETTS & RUBIN
21 907 Santa Fe Avenue, Suite #201
22 Fresno, California 93721
23 (559) 438-6959 Facsimile

CITY OF FRESNO

vs.

PINEDALE COUNTY WATER DISTRICT
Case No. 17CECG02055

24
25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct.

27 Date: September 20, 2017

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Shirlene R. Capuchino