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MOJAVE WATER AGENCY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE**

CITY OF BARSTOW, et al

Plaintiff,

v.

CITY OF ADELANTO, et al

Defendant.

CASE NO.: CIV 208568

**WATERMASTER'S ADDITIONAL
BRIEFING AS TO WHETHER IT
SHOULD BE ALLOWED TO FILE ITS
PROPOSED SECOND AMENDED
CROSS-COMPLAINT**

Time: 8:30 a.m.
Date: July 21, 2022
Dept: 1

AND RELATED CROSS ACTIONS

Assigned for All Purposes to:
Hon. Craig G. Riemer, Judge Presiding

TO THE PARTIES TO THIS PROCEEDING AND COUNSEL OF RECORD:

On June 30, 2022, the Court continued to July 21, 2022, at 8:30 a.m. in Department 1 of the above-entitled Court, the hearing on Watermaster's motion for leave to file its proposed Second Amended Cross-Complaint. In doing so, the court requested briefing as to whether a cross-complaint may now be filed where, as here, the Court has already entered a judgment on the underlying complaint and previously filed cross-complaint -- referencing the decision in *City of Hanford v. Superior Court* (1989) 208 Cal.App.3d 580 (hereafter, "*City of Hanford*"). Watermaster submits this brief on the issue identified in the Court's Order.

ADDITIONAL BRIEFING ON MOTION FOR LEAVE TO FILE AMENDED CROSS-COMPLAINT

I.

INTRODUCTION

A trial court abuses its discretion when it allows the filing of a post-judgment cross-complaint that does not seek to enforce the provisions of the judgment and, instead, raises an entirely new claim that is “independent of the underlying complaint.” That is particularly true where leave to file a cross complaint is granted while an appeal is pending. Those were the circumstances existing in *City of Hanford*.

In the case at bar, the Watermaster’s proposed Second Amended Cross-Complaint is proper because it: (a) involves “substantially the same issues” raised in the underlying complaint; (b) does not seek to raise a new claim that is “independent” of those raised and determined in the underlying action; and (c) merely seeks to enforce provisions of the underlying judgment -- as the judgment itself specifically requires.

In this connection, the judgment requires that any person producing more than 10 acre-feet of Basin groundwater annually “shall be made a party” to the action and, also, that Watermaster “shall bring an action or a motion to enjoin any Production that is not pursuant to the terms of this Judgment.” The proposed Second Amended Cross-Complaint merely seeks to implement and enforce those provisions of the judgment.¹

For these reasons, granting Watermaster leave to file its proposed Second Amended Cross-Complaint would not constitute an abuse of the trial court’s discretion. Indeed, Watermaster respectfully submits it would be an abuse of discretion **not** to grant Watermaster’s motion.

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¹ A cross complaint may be asserted against any person, whether or not a party to the action, if the cause of action asserted in the cross complaint arises out of the same transaction or occurrence or involves the same property or controversy [see Assembly Legislative Committee Comment to Code Civ. Proc. § 428.10].

1 II.

2 ARGUMENT

3 In *City of Hanford*, various environmental groups filed a complaint challenging the city's
4 approval of a coal-fueled cogeneration power plant, alleging the approval violated CEQA
5 requirements, other provisions of state law, and the city's own zoning ordinance. The trial court
6 entered judgment in the city's favor, and the environmental groups appealed. While the appeal
7 was pending, the city adopted a moratorium ordinance prohibiting issuance of permits for
8 construction of coal-fueled industrial plants; whereupon the developer then sought and obtained
9 leave from the trial court to file a cross-complaint challenging the legality of the moratorium
10 ordinance. The city then filed a petition for writ of prohibition and mandate, arguing that under
11 those circumstances the trial court was without discretion to allow the developer to file the post-
12 judgment cross-complaint.

13 The issue on appeal from the grant of leave to file the cross-complaint turned, in part, on
14 the meaning of the rule stated in subdivision (c) of Code Civil Procedure section 428.50 that,
15 "Leave may be granted in the interest of justice *at any time during the course of the action.*"
16 (Italics added.) In the case at bar, "the course of action" did not end with entry of judgment on
17 January 10, 1996. To the contrary, and pursuant to terms of the judgment, additional actions
18 have regularly been taken, and will continue to be taken by Watermaster and the Court to
19 implement and enforce various provisions of the judgment. As explained below, Watermaster's
20 pending motion is one of many such actions taken to implement and enforce provisions of the
21 judgment.

22 In *City of Hanford*, the developer's post-judgment cross-complaint was improper because
23 the claims asserted therein constituted "a new action" that was "independent" of the claims
24 alleged in the underlying action. The Court of Appeal explained:

25 . . . [The developer's] cross-complaint, which does not assert claims against the
26 environmental groups, may be considered sufficiently *independent of the underlying*
27 *complaint* to avoid the one final judgment rule. However, since the claims *are*
28 *independent* and did not ripen until judgment was entered, no purpose is served by
injecting them into the underlying proceeding. [The developer's] claims are best treated
as a separate action.

1 ... [The developer's] claims are not precluded but merely are denominated what
2 they are – *a new action*.

3 (*Id.*, at 588-589; italics added.)

4 **A. The Second Amended Cross-Complaint involves “substantially the same” issues
5 raised in the original proceeding.**

6 The Court of Appeal in *City of Hanford* explained further that:

7 A subsequent proceeding is a continuation of an earlier action rather than a
8 separate and independent action *if it involves “substantially the same issues” and*
9 *“matters necessarily relevant and material to the issues involved in the [original]*
10 *action.”* (*McClenny v. Superior Court* (1964) 60 Cal.2d 677, 684 ...)

11 (*Id.*, at 589; italics added.)

12 In the case at bar, the issues raised in Watermaster's proposed Second Amended Cross-
13 Complaint involve “substantially the same issues,” and are not “independent of the underlying
14 complaint.” In this connection, the underlying proceedings in this action, and the resulting
15 judgment, in pertinent part seek to regulate persons who produce more than 10 acre-feet of
16 Basin groundwater annually, or who use Basin groundwater for unlawful (and therefore
17 wasteful) purposes. The proposed Second Amended Cross-Complaint seeks to do the same. In
18 fact, it merely seeks to implement and enforce provisions of the January 10, 1996 judgment
19 entered in this action.

20 **B. Watermaster's proposed Second Amended Cross-Complaint seeks to enforce
21 particular provisions of the judgment.**

22 The judgment entered in this action on January 10, 1996, in pertinent part, provides:

23 Any Minimal Producer whose annual Production exceeds ten (10) acre-feet in any Year
24 following the date of entry of Judgment **shall be made a party** [to this action] pursuant
25 to Paragraph 12 and shall be subject to Administrative, Replacement Water, Makeup
26 Water and Biological Resources Assessment.

27 (Judgment, page 5, emphasis added.)

28 Because of the existence of Overdraft, any Production outside the framework of this
Judgment and Physical Solution will contribute to an increased Overdraft, potentially
damage the Mojave Basin Area and public interests in the Basin Area, injure the rights
of all Parties, and interfere with the Physical Solution. **Watermaster shall bring an
action or a motion to enjoin any Production that is not pursuant to the terms of this
Judgment.** (Emphasis added.)

(Judgment, paragraph 12.)

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1 Accordingly, the proposed Second Amended Complaint is merely a continuation of “the
2 course of [this] action” (Code Civ. Proc. §428.50), and is specifically intended to enforce
3 provisions of the judgment against Minimal Producers producing more than 10 acre-feet of
4 groundwater annually, and persons using Basin groundwater to unlawfully cultivate cannabis.
5 Therefore, the issues raised in the proposed Second Amended Cross-Complaint are
6 “substantially the same issues” and are “matters necessarily relevant and material to the issues
7 involved in the underlying action.” By contrast, in *City of Hanford*:

8 . . . the legal issues raised by the two actions are *quite distinct*. . .

9 . . . The paramount questions presented by the two cases *are different*, and
10 the relationship of the issues in the two cases is not as direct as in the cases
11 *where the second proceeding involves . . . enforcement proceedings based on the
original order*. [The developer’s] suit is a new action attacking a separate
phenomenon and thus is not merely a continuation of the earlier proceeding.

12 (*Id.* at 593, italics added.)

13 The express purpose of the Watermaster’s Second Amended Cross-Complaint
14 is to implement certain *enforcement* provisions of the underlying judgment. In fact, the
15 judgment mandates that the Watermaster do so. Thus, the proposed Second Amended
16 Cross-Complaint is a continuation of the underlying action, and mandated by the
17 judgment. Consequently, the holding in *City of Hanford* is clearly distinguishable and
18 has no application to the case at bar.

19 III.

20 CONCLUSION

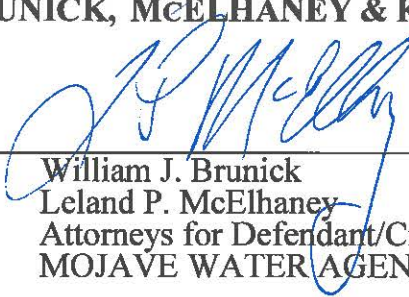
21 For the reasons stated above, Watermaster respectfully submits the *City of*
22 *Hanford* decision is clearly distinguishable from the case at bar.

23 Watermaster submits further that its motion should be granted because the
24 proposed Second Amended Cross-Complaint seeks to enforce specific provisions of the
25 judgment -- as mandated by the judgment itself -- and is merely a continuation of the
26
27
28

1 action.²

2 Dated: July 13, 2022

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4 By: 

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26 2 Arguably, it would be an abuse of discretion not to grant the pending motion --
27 which merely attempts to address and remedy the same overdraft conditions the judgment
28 seeks to address and remedy, and to do so by implementing the judgment's above-quoted
and mandated enforcement provisions.

ADDITIONAL BRIEFING ON MOTION FOR LEAVE TO FILE AMENDED CROSS-COMPLAINT

PROOF OF SERVICE

**STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO}**

I am employed in the County of the San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 13846 Conference Center Drive, Apple Valley, California 92307.

On July 13, 2022, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing each document being served, to each Party or its designee according to the official service list, a copy of which is attached hereto, and which shall be maintained by the Mojave Basin Area Watermaster pursuant to Paragraph 37 of the Judgment. Served documents will be posted to and maintained on the Mojave Water Agency's internet website for printing and/or download by Parties wishing to do so.

Document(s) filed with the court and served herein are described as follows:

WATERMASTER'S ADDITIONAL BRIEFING AS TO WHETHER IT SHOULD BE ALLOWED TO FILE ITS PROPOSED SECOND AMENDED CROSS-COMPLAINT

 X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 13, 2022 at Apple Valley, California.



Jeffrey D. Ruesch

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Mojave Basin Area Watermaster Service List as of July 13, 2022

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Mojave Basin Area Watermaster Service List as of July 13, 2022

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Mojave Basin Area Watermaster Service List as of July 13, 2022

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Mojave Basin Area Watermaster Service List as of July 13, 2022

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Mojave Basin Area Watermaster Service List as of July 13, 2022

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