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*Exempt from filing fee pursuant to  
Gov't. Code Section 6103*

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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

**NOTICE OF RULING ON MOJAVE  
WATER AGENCY'S MOTION FOR  
LEAVE TO FILE A SECOND  
AMENDED CROSS-COMPLAINT**

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

**AND RELATED CROSS ACTIONS**

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

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE THAT** on July 20, 2022, the court issued its Tentative Ruling, stating its intention to deny the motion of Defendant/Cross-Complainant, Mojave Water Agency, for leave to file its proposed Second Amended Cross-Complaint. On July 21, 2022, after hearing oral argument on the motion, the court denied the motion, stating its Tentative Ruling would become its final ruling on the motion. A copy of the Court's Tentative Ruling, which is now its final ruling on the motion, is attached hereto as Exhibit 1 hereto.

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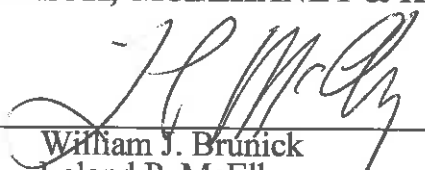
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**NOTICE OF RULING ON MOJAVE WATER AGENCY'S MOTION FOR LEAVE TO FILE A SECOND  
AMENDED CROSS-COMPLAINT**

1 Dated: July 21, 2022

**BRUNICK, McELHANEY & KENNEDY PLC**

2  
3 By:

  
\_\_\_\_\_  
William J. Brunick  
Leland P. McElhaney  
Attorneys for Defendant/Cross-complainant,  
MOJAVE WATER AGENCY

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**NOTICE OF RULING ON MOJAVE WATER AGENCY'S MOTION FOR LEAVE TO FILE A SECOND  
AMENDED CROSS-COMPLAINT**

# EXHIBIT 1

# Tentative Rulings for July 21, 2022

## Department 1

**To request oral argument, you must notify Judicial Secretary  
Amy Norton at (760) 904-5722  
and inform all other counsel no later than 4:30 p.m.**

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings. (See Riverside Superior Court Local Rule 3316.) Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

If the Court has issued a tentative ruling, no hearing will be conducted on the motion unless one of the parties requests oral argument. To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 1 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

**If oral argument is requested, the hearing will be conducted at 8:30 A.M., even if the hearing had been scheduled to begin at 9:00 A.M.**

IN LIGHT OF THE CORONAVIRUS PANDEMIC, IF ORAL ARGUMENT HAS BEEN REQUESTED, THE COURT ENCOURAGES COUNSEL AND SELF-REPRESENTED PARTIES TO APPEAR AT THE HEARING OF THE MOTION TELEPHONICALLY RATHER THAN IN PERSON.

**TO APPEAR TELEPHONICALLY:** On the day of the hearing, call into one of the phone numbers listed below, and input the meeting number (followed by #):

- Call-in Numbers: 1-833-568-8864 (Toll Free), 1-669-254-5252,  
1-669-216-1590, 1-551-285-1373 or 1-646-828-7666
- Meeting Number: **160 638 4172**

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at <https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php>

Effective May 3, 2021, official court reporters will not be available in unlimited civil for any pretrial proceedings, law and motion matters, case management hearings, civil restraining orders, and civil petitions. (See General Administrative Order No. 2021-19-1)

1.

CIV208568	CITY OF BARSTOW VS CITY OF ADELANTO	MOTION FOR LEAVE TO FILE SECOND AMENDED CROSS-COMPLAINT BY THE MOJAVE WATER AGENCY
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**Tentative Ruling:**

The Mojave Water Agency's motion for leave to file a second amended cross-complaint is denied.

**Analysis:**

The Court has no doubt that the Agency is authorized by the judgment to bring a motion within the current action to enforce the judgment against any party to that judgment who is violating the terms of that judgment. However, it appears that the proposed cross-complaint would be alleged against cross-defendants who are not parties to the underlying judgment.

Similarly, the Court has no doubt that the Agency is authorized by the judgment to bring an action to abate the unauthorized or excessive use of water within the basin against water producers who are not now parties to the judgment. That is what the Agency proposes to do by way of its second amended cross-complaint. The question is whether such an action must be brought as a separate action, or whether it may be filed as a cross-complaint in this action.

In *City of Hanford v. Superior Court* (1989) 208 Cal.App.3d 580 ("*Hanford*"), the issue was "whether a party can file a cross-complaint after judgment has been entered on the underlying complaint but before the case is finally determined on appeal . . ." (*Id.*, p. 584.) The appellate court held that a "cross-complaint cannot be filed after judgment has been entered in the trial court on the underlying complaint." (*Ibid.*) The trial court had abused its discretion by allowing such a cross-complaint to be filed. (*Id.*, pp. 584 & 589.)

The *Hanford* court noted that Code of Civil Procedure section 428.50, subdivision (c), provides that a cross-complaint may be filed "at any time during the course of the action." It interpreted that language to mean that the cross-complaint may only be filed until judgment is entered. (*Hanford*, p. 587.) The court found that interpretation to be supported by policy reasons, explaining: "The reason for allowing cross-complaints is to have a complete determination of a controversy among the parties in one action, thus avoiding circuity of action and duplication of time and effort. [Citation.] While it makes sense to join multiple causes of action at the outset in order to permit efficient resolution of a controversy, it makes no sense to add new causes of action to a controversy which has been resolved and the result of which cannot be altered by any issue raised in the new pleading." (*Id.*, p. 587-588.)

It concluded: "No purpose is served by permitting [the cross-complaint] to file a cross-complaint after judgment has been entered on the underlying complaint. [The cross-complainant] is not prejudiced by the holding. Its claims are not precluded but merely are denominated what they are -- a new action." (*Hanford*, pp. 588-589.)

Here, both the underlying complaint and the Agency's first amended cross-complaint were resolved decades ago by the entry of judgments. Therefore, it would be an abuse of this Court's discretion to grant leave to add a new cross-complaint against individuals or entities that were not parties to the prior action and who those are not bound by the prior judgments.

In resisting this conclusion, the Agency argues that a cross-complaint is proper here, notwithstanding the entry of the prior judgments, because it involves substantially the same issues as in the underlying complaint, and it does not seek to raise a new claim that is independent of the issues resolved in the underlying complaint. Instead, it seeks to enforce the underlying judgment.

The Court is not persuaded.

Had the prior judgment adjudicated the water rights of all producers within the basin, the Court might agree that the cross-complaint is one to enforce the judgment. But the underlying judgment did not result from such an adjudication. Instead, the judgment was entered pursuant to the stipulation of some but not all the producers within the basin. The cross-complaint does not seek to enforce that stipulation – or the judgment that resulted from it – against parties to that stipulation. Instead, it seeks to enforce the stipulated judgment against parties who did not stipulate to it.

Although the proposed cross-complaint may involve issues similar to those resolved in the judgment, it does not seek to resolve them against the same parties as those involved in the underlying litigation. Because it is to be asserted against new parties, it is independent of the underlying judgment.

The Court is sympathetic to the desire to coordinate the on-going enforcement of the judgments in this action with the Agency's efforts to bring non-party producers within the scope of the stipulated judgment. The Court can also appreciate the Agency's desire to take advantage of the experience that this Court has gained over the last several years concerning the physical solution imposed by the judgment and the issues with the annual adjustment of production rights. However, those conveniences and whatever efficiencies result from the Court's experience are not foreclosed as a result of this ruling. Were the Agency to bring a new action in San Bernardino County, where venue would be proper, and then petition for coordination with this action, the same advantages could be achieved. However, the Court cannot grant the Agency leave to bypass those steps by filing the proposed cross-complaint directly in this action.



## 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 21, 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:

### **NOTICE OF RULING ON MOJAVE WATER AGENCY'S MOTION FOR LEAVE TO FILE A 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 21, 2022 at Apple Valley, California.

  
\_\_\_\_\_  
Jeffrey D. Ruesch

## Mojave Basin Area Watermaster Service List as of July 21, 2022

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## Mojave Basin Area Watermaster Service List as of July 21, 2022

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## Mojave Basin Area Watermaster Service List as of July 21, 2022

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## Mojave Basin Area Watermaster Service List as of July 21, 2022

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Attn: Lawrence Dean  
Jackson, Ray Revocable Trust No. 45801  
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## Mojave Basin Area Watermaster Service List as of July 21, 2022

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## Mojave Basin Area Watermaster Service List as of July 21, 2022

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