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Exempt per Government Code § 6103

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7
8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF RIVERSIDE

10
11 Coordination Proceeding Special Title
(Cal. Rules of Court, Rule 3.550)

JCCP NO.: 5265
Case No. CIV 208568

12 MOJAVE BASIN WATER CASES

Assigned for All Purposes to:
Hon. Judge Harold W. Hopp, Dept. 1

13 CITY OF BARSTOW, et al.,

14 Plaintiff,

15 v.

16 CITY OF ADELANTO, et al.,

17 Defendant.

SAN BERNARDINO COUNTY'S OPPOSITION
TO MOJAVE BASIN AREA WATERMASTER'S
MOTION FOR ORDER REQUIRING THE
COUNTY TO CONSIDER ALL APPLICATIONS
FOR PERMITS TO CONSTRUCT WATER
WELLS WITHIN THE MOJAVE BASIN
ADJUDICATED BOUNDARIES AREA AS
REQUIRING DISCRETIONARY
DETERMINATIONS

18
19
20 AND RELATED CROSS ACTIONS

Date: December 4, 2023
Time: 8:30 a.m.
Dept: 1

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23
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25 **I. INTRODUCTION**

26 San Bernardino County ("County") hereby opposes the motion filed by Mojave Basin Area
27 Watermaster ("Watermaster") as it is an improper attempt to change the nature of the Judgment, blur the

1 lines between the judiciary and legislative branches, and impermissibly insert itself into the regulatory
2 process.

3 At the June 9, 2023 hearing, the Court ordered the Watermaster to explore:

- 4 (1) the Court’s authority to require the County to exercise its permitting discretion in a
5 particular way, and
6 (2) why it is appropriate to exercise that authority by issuing the particular order proposed
7 by the Watermaster?

8 (Notice of Court’s June 9, 2023 Order and Proof of Service thereon, Exhibit 1, p. 4.) The answer to both
9 questions is no.

10 The Watermaster’s Motion for Order Requiring the County of San Bernardino to Consider All
11 Applications for Permits to Construct Water Wells Within the Mojave Basin Adjudicated Boundaries
12 Area as Requiring Discretionary Determinations (“Motion”) inaccurately framed the Court’s first
13 question and stated differently asks: “Does the Court have authority to order the County to consider all
14 permits as discretionary” (Motion, p. 2:20-23). The answer to this question is still no.

15 The complaint, cross-complaint, and resulting January 10, 1996 Judgment After Trial
16 (“Judgment”) for the adjudicated Mojave Basin Area (“Basin”) frame the scope and limitations of the
17 Court’s jurisdiction under the Judgment. By joining the Judgment as a stipulating party, the County did
18 not subjugate its legislative or regulatory power to the Court, nor could it. (*Monarch Cablevision, Inc. v.*
19 *City Council, City of Pacific Grove* (1966) 2389 Cal.App.2d 206, 211.) The County only agreed to be
20 bound by the Court’s jurisdiction as a property owner regarding a declaration of its water rights for
21 property owned and located within the Este and Alto subareas of the Basin. Even the Court acknowledged
22 at the June 9, 2023 hearing that the Court likely does not have the authority to force the County to change
23 how it exercises its permitting authority.

24 Because the first question is answered in the negative, the Court need not address the second
25 question, stated in the Motion as: “If so, should the Court order the County to do so?” relating to requiring
26 the County to consider all well permit applications with a discretionary determination. (Motion, p. 2:20-
27 23.) Even assuming *arguendo* that the Court somehow has the jurisdiction to make such an order, which
28 it does not, the answer to this question is again, no. The California Supreme Court reversed an appellate

1 court decision ordering all permits be categorized as discretionary in the case relied upon by the
2 Watermaster, *prohibiting the exact type of relief the Watermaster requests. (Protecting Our Water and*
3 *Environmental Resources v. County Stanislaus* (2020) 10 Cal. 479, 487.)

4 To overstep the terms of the Judgment and the County's regulatory authority, the Watermaster
5 requests extraordinary relief that is not provided for under the Judgment, statute, or case law. Despite
6 years of the Watermaster trying to assert itself into the regulatory process, the County has and is
7 cooperatively working with the Watermaster to provide notice of well permit applications and
8 informative information to well-permit applicants.

9 **II. THE JUDGMENT IS LIMITED IN SCOPE AND DOES NOT ALLOW THE**
10 **REQUESTED RELIEF.**

11 **A. Requiring the County to Exercise its Well Permitting Discretion in a Particular Way**
12 **Oversteps the Bounds of the Judgment and Violates Separation of Powers Doctrine.**

13 When answering the Court's first question regarding "*The Court's authority to require the County*
14 *to exercise its permitting discretion in a particular way?*" the answer is it does not have the authority.
15 The Judgment does not allow for such authority and would violate the separation of powers clause.

16 1. The Judgment Limits the Court's Jurisdiction.

17 The Watermaster's motion confuses the concept of jurisdiction and the limits therein. Simply
18 because the County is a party to the Judgment does not give the Court jurisdiction over the County's
19 regulatory authority. In fact, the Judgment, in which the Watermaster bases its entire argument on
20 jurisdiction, limits the Court's jurisdiction to a declaration of water rights.

21 The County does not dispute that it is a party to the Judgment by virtue of property ownership in
22 the Este and Alto subareas of the Basin and was a party to the original Judgment. (See Judgment After
23 Trial, Exhibit B.) In February 2022, the County entered the "Stipulation for Intervention and Submission
24 to Judgment" for a declaration of water rights for a base annual production right of 168 acre-feet in the
25 Baja Subarea. (Motion, Exhibit 1.) The County agrees that, "All Parties to the MWA cross-complaint are
26 included in this Judgment" and that includes the County, both by the original Judgment and 2022
27 Stipulation. (Motion, p. 3:27 citing the Judgment, p. 3:13; Motion, Exhibit 1). A water rights declaration
28 was made for the County, just like all other parties to the Basin. Simply because the County is a party to

1 the Judgment, it did not subjugate its regulatory power to the Court, nor could it.

2 The Judgment, and the pleadings that resulted in the Judgment, limit the Court's jurisdiction to
3 an adjudication to declare water rights:

4 The MWA cross-complaint, as currently amended, requests a declaration that the available
5 native water supply to the Mojave Basin Area ... is inadequate to meet the demands of the
6 combined Parties and requests a determination of the water rights of whatever nature
7 within the MWA boundaries and the Mojave Basin Area.

8 (Judgment, p. 1:23-26 [emphasis added].)

9 The Judgment further limits the Court's jurisdiction to the adjudication of water rights:

10 a. Jurisdiction. This Court has jurisdiction to enter Judgment declaring and adjudicating
11 the rights to reasonable and beneficial use of water by the Parties in the Mojave Basin
12 Area pursuant to Article X, Section 2 of the California Constitution. This Judgment
13 constitutes an adjudication of water rights of the Mojave Basin Area pursuant to Section
14 37 of Chapter 2146 of Statutes of 1959 ("the MWA Act").

15 (Judgment, p. 3: 5-11 [emphasis added].)

16 A declaration of water rights is the intended and limited purpose of ground water basin
17 adjudication. (See also, California Water Code section 2000, "In any suit brought in any court ... for a
18 determination of rights to water" and section 10737, "an adjudication action to determine rights to
19 groundwater in a basin" [emphasis added].) When "the County agreed 'to submit to and be bound by the
20 Judgment entered in this matter on January 10, 1996,'" it did so regarding its water rights amongst all
21 other parties to the Basin, and nothing more. (Watermaster Opposition, p. 3:5-6 and Exhibit 1.)

22 Further, the Judgment was predicate on the "Need for a Declaration of Rights and Obligations
23 and for Physical Solution." (Judgment, p. 5:27-28.) The rights being the individual water rights of each
24 producer to produce water and the obligations to equitably share the costs of the water supplies and costs
25 for supplemental water:

26 A Physical Solution for the Mojave Basin Area is based upon a declaration of water rights
27 and a formula for Intra- and Inter-Subarea allocation of rights and obligations.

28 (Judgment, p. 6:1-2 [emphasis added].)

Such Physical Solution requires the definition of the individual rights of all Producers
within the Basin Area in manner in which will equitably allocate the natural water supplies
and which will provide for equitable sharing of costs for Supplemental Water.

1 (Judgment, p. 6:4-8 [emphasis added].)

2 It is within this framework of water rights and cost obligations that the Court is limited and cannot
3 reach into the County's regulatory authority over how it exercises its permitting discretion. Accordingly,
4 the Court's ability to "modify, amend or amplify any of the provisions of this Judgment or to add to the
5 provisions thereof" are limited to the need to be "consistent with the rights herein decreed..." (Motion,
6 p. 4:4-5 citing Judgment, p. 24:8-11 [emphasis added].) It is within these constraints that the Court's
7 "jurisdiction may be utilized where appropriate, to supplement the Physical Solution." (Motion, p. 4:11-
8 12, citing Judgment, p. 25:11-12.) This is because the Physical Solution is the "fair and equitable basis
9 for satisfaction of all water rights." (Judgment, p. 24:20-22.) And it is with these limitations that the
10 Physical Solution's "Need for Flexibility" and the "Court's retained jurisdiction" must operate under.
11 (Motion, p. 4:10-15, citing to Judgment, p. 24:28-25:12.)

12 The Court cannot go outside the scope of the built-in limitations of the Judgment to single out one
13 party in how it should conduct itself over matters not related to water rights. All orders directed to the
14 County must be as to any other party in the Basin related to water rights.

15 2. Violates Separation of Powers

16 The Watermaster is requesting that the Court step into the role of a regulatory authority and force
17 the County to change its regulatory process on the Watermaster's behalf, and more incredibly to allow
18 the Watermaster to be a part of the regulatory process. (Motion, p. 7:19-21.) This request violates the
19 separation of powers doctrine because it would authorize the Court to direct the County, acting in its
20 capacity as a regulatory agency, on how to exercise its discretion in a particular manner. The separation
21 of powers doctrine prohibits this action and provides the following:

22 Generally, a court is without power to interfere with purely legislative action, in the sense
23 that it may not command or prohibit legislative acts, whether the act contemplated or done
24 be at the state level (*French v. Senate of California*, 146 Cal. 604, 80 P. 1031, 69 L.R.A.
25 556) or the local level (*City Council, etc. v. Superior Court*, 179 Cal.App.2d 389, 3
26 Cal.Rptr. 796.) The reason for this is a fundamental one—it would violate the basic
27 constitutional concept of the separation of powers among the three coequal branches of
28 the government.

(*Monarch Cablevision, Inc. v. City Council, City of Pacific Grove* (1966) 2389 Cal.App.2d 206, 211.)

27 The motion lacks any credible authority for such an improper request and is a clear violation of
28 the separation of powers doctrine.

1 **B. Because the First Question is No, the Second Question Should Not Be Considered, but if**
2 **the Court is Inclined to Proceed, Case Law Prohibits the Watermaster’s Request.**

3 Because the answer to the first question is no, there is no need to address the second question:
4 “why it is appropriate to exercise that authority by issuing the particular order proposed by the
5 Watermaster.” (June 9, 2023 Order, p. 4.) If the Court is inclined to proceed to the second question, the
6 answer is still in the negative. It would not be appropriate for the Court to exercise that authority because
7 there is no legal support for the request to make blanket categorizations.

8 The Motion misunderstands the holding of *Protecting Our Water and Environmental Resources*
9 *v. County Stanislaus* (2020) 10 Cal. 479 (*Stanislaus*). The plaintiff in *Stanislaus* brought an action to
10 challenge Stanislaus County’s blanket classification of a subset of well construction permits as
11 ministerial, arguing that all permit issuances are discretionary and trigger CEQA determinations. (*Id.* at
12 487.) The trial court found the permit issuances were ministerial and the court of appeal reversed. (*Id.*)
13 The California Supreme Court reserved the court of appeal ruling “that *all* permit issuances under Chapter
14 9.36 of the Stanislaus County Code are discretionary,” coincidentally the exact thing the Watermaster
15 requests. (*Id.* at 487 and 501.) The California Supreme Court held that a “blanket ministerial
16 categorization is unlawful.” *Id.* at 502. This ruling was acknowledged in a County email cited in the
17 Motion. (Motion, p. 2:10-11.)

18 Clearly, the Watermaster wants to be part of the regulatory process. In the Watermaster’s
19 Supplemental Report as Required by the Court’s December 7, 2022 Order, filed on January 23, 2023, the
20 Watermaster stated that it is “considering whether to request statutory amendments to its enabling Act
21 (Water Code Appendix section 97-1 et seq.) that would grant MWA specific authority in the well
22 permitting process and/or the ability to perform inspections....” It does not appear that Watermaster has
23 determined that right and instead misapplies the terms of the Judgment and case law in a desperate attempt
24 to force the County to act as its enforcement arm. This cannot be, nor is it what the legislature intended.
25 Additionally, since County permits are issued countywide, a ruling as requested by the Watermaster could
26 have larger unanticipated consequences countywide and not just to the Basin.

27 **C. County and the Watermaster**

28 As with all local government entities, the County is comprised of many departments operating in

1 various capacities as authorized by law to provide services to County residents. The County has tried to
2 work with the Watermaster and provides information regarding the Judgment and requirements therein
3 to well-permit applicants. The County also actively provides information to the Watermaster when a well-
4 permit application is received for the Basin.


5 **III. CONCLUSION**

6 For the foregoing reasons, there is no legal basis in the Judgment or law to order the Watermaster's
7 requested relief, and the County respectfully requests that the Motion be denied.

8 DATED: November 14, 2023

Respectfully submitted,

9
10 TOM BUNTON
County Counsel

11
12 
13 Maria Insixiengmay
Deputy County Counsel
Attorneys for San Bernardino County

1 **PROOF OF SERVICE**

2 I am employed in the County of San Bernardino, State of California. I am a citizen of the United
3 States, employed in the County of San Bernardino, State of California, over the age of 18 years and not a
4 party to nor interested in the within action. My business address is 385 North Arrowhead Avenue, Fourth
Floor, San Bernardino, CA 92415-0140.

5 On November 14, 2023, I served the following documents (*specify*):

6 **SAN BERNARDINO COUNTY’S OPPOSITION TO MOJAVE BASIN AREA**
7 **WATERMASTER’S MOTION FOR ORDER REQUIRING THE COUNTY TO CONSIDER**
8 **ALL APPLICATIONS FOR PERMITS TO CONSTRUCT WATER WELLS WITHIN THE**
9 **MOJAVE BASIN ADJUDICATED BOUNDARIES AREA AS REQUIRING DISCRETIONARY**
10 **DETERMINATIONS**

11 I served the documents on the persons below, as follows:

| <u>Via Email and United States Mail</u> | <u>Via Email Only</u> |
|--|---|
| Jeffrey D. Ruesch Watermaster Services Manager Mojave Water Agency 13846 Conference Center Drive Apple Valley, CA 92307-4377 jruesch@mojavewater.org | William J. Brunick and Leland P. McElhaney Brunick, McElhaney & Kennedy PLC P.O. Box 13130 San Bernardino, CA 92408-3303 Attorneys for Defendant/Cross-Complainant Mojave Water Agency bbrunick@bmklawplc.com |

12 The documents were served by the following means:

13 **By United States Mail.** I enclosed the documents in a sealed envelope or package addressed to the
14 persons at the addresses listed above and placed the envelope for collection and mailing following our
15 ordinary business practices. I am readily familiar with this business’s practice for collecting and processing
16 envelopes for mailing. On the same day that an envelope is placed for collection and mailing, it is deposited
17 in the ordinary course of business with the United States Postal Service, in San Bernardino, California, in a
18 sealed envelope with postage fully prepaid.

19 I am a resident or employed in the county where the mailing occurred. The envelope or package
20 was placed in the mail at San Bernardino, California.

21 **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to
22 accept electronic service, I caused the documents to be sent to the persons at the electronic service
23 addresses listed above.

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

26 DATED: November 14, 2023

27 
28 Josefa Soria, Declarant

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.

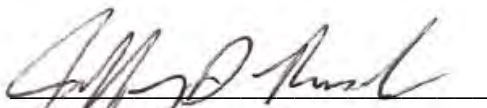
On November 16, 2023, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing 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:

SAN BERNARDINO COUNTY'S OPPOSITION TO MOJAVE BASIN AREA WATERMASTER'S MOTION FOR ORDER REQUIRING THE COUNTY TO CONSIDER ALL APPLICATIONS FOR PERMITS TO CONSTRUCT WATER WELLS WITHIN THE MOJAVE BASIN ADJUDICATED BOUNDARIES AREA AS REQUIRING DISCRETIONARY DETERMINATIONS

 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 November 16, 2023 at Apple Valley, California.



Jeffrey D. Ruesch

Mojave Basin Area Watermaster Service List as of November 16, 2023

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Mojave Basin Area Watermaster Service List as of November 16, 2023

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Mojave Basin Area Watermaster Service List as of November 16, 2023

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Mojave Basin Area Watermaster Service List as of November 16, 2023

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Mojave Basin Area Watermaster Service List as of November 16, 2023

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Mojave Basin Area Watermaster Service List as of November 16, 2023

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Mojave Basin Area Watermaster Service List as of November 16, 2023

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