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8 **MOJAVE WATER AGENCY**

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF RIVERSIDE**

11
12 Coordination Proceeding Special Title
13 (Cal. Rules of Court, rule 3.550)

JCCP NO.: 5265

14 **MOJAVE BASIN WATER CASES**

15 **CITY OF BARSTOW,**

16 **Plaintiff,**
17 **vs.**

18 **CITY OF ADELANTO, et al.,**

19 **Defendant.**

LEAD CASE NO.: CIV208568
Coordinated with San Bernardino Superior
CASE NO.: CIVSB 2218461

**MOJAVE WATER AGENCY'S
OPPOSITION TO SHADOW
MOUNTAIN RANCH'S MOTION FOR
AN ORDER INTERPRETING AND
CLARIFYING THE SCOPE OF THE
JUDGMENT**

20 **AND RELATED CROSS ACTIONS**

Date: February 7, 2024

Time: 8:30 a.m.

Dept.: 1

RESERVATION NO.: 001680774956

Assigned for All Purposes to Dept. 1,
Hon. Harold Hopp, Judge Presiding by
Assignment

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1 The MOJAVE WATER AGENCY (hereafter, "MWA") submits this Opposition to the
2 motion of SHADOW MOUNTAIN RANCH (hereafter, "SMR") which seeks to: **(a) alter the**
3 **Judgment's adjudicated boundaries to exclude the entire Harper Lake Basin (including**
4 **the property owned by SMR located within the Harper Lake Basin); and (b) allow SMR**
5 **to produce groundwater on its property without any limitation or restriction whatsoever**
6 – which motion SMR euphemistically characterizes as seeking "an order interpreting and
7 clarifying the scope of the Judgment".

8 **I.**
9 **Introduction**

10 The January 1, 1996, Judgment entered in this action (CIV 208568) provides that any
11 person who produces more than ten (10) acre-feet of groundwater annually within the
12 Judgment's adjudicated boundaries (referenced therein as "the Mojave Basin Area") should be
13 made a party to the adjudication (Judgment, 5:1-5.) To that end, and pursuant to the Court's
14 suggestion, MWA filed a separate action in the San Bernardino Superior Court, Case No.
15 2218461, titled *The Mojave Water Agency, as Mojave Basin Watermaster v. All persons [etc.]*
16 (hereafter, "the San Bernardino action") to name as defendants therein persons who produce
17 more than 10 acre-feet of groundwater annually within the Mojave Basin Area.¹

18 SMR admits it produces more than ten acre-feet of groundwater annually within the
19 Mojave Basin Area. Accordingly, on October 3, 2023, MWA filed a motion in the San
20 Bernardino action to add SMR as an additional defendant in that separate, but coordinated
21 action. That motion is scheduled to be heard concurrently with SMR's motion in this action, on
22 February 7, 2024.

23 Rather than merely litigating its purported defenses in the San Bernardino action, SMR
24 elected to file a motion in this action (*City of Barstow v. City of Adelanto*), seeking to change
25 the Judgment so that SMR's groundwater production will not be limited or restricted in any way.

26 In its motion, SMR claims the two aquifers beneath its property should not be regulated
27

28 ¹ The San Bernardino action has been coordinated for all purposes with this action.
MOJAVE WATER AGENCY'S OPPOSITION TO SHADOW MOUNTAIN RANCH'S MOTION TO CHANGE THE JUDGMENT'S
ADJUDICATED BOUNDARIES AND TO BE EXCLUDED FROM ANY POSSIBLE APPLICATION OF THE JUDGMENT

1 by the Judgment, because the aquifers: (a) meet the Judgment's definition of "supplemental
2 water"; (b) are not "recharged" from, and are not hydrologically "connected" to, the Mojave
3 River or its tributaries; (c) were not included in the 1996 production safe yield (PSY) calculation
4 in this action; and (d) have not been put to their full beneficial use.

5 To the contrary, the aquifers beneath SMR's property do not meet the Judgment's
6 definition of "supplemental water," and none of the reasons advanced by SMR justify redrawing
7 the Judgment's adjudicated boundaries to carve out the Harper Lake Basin or SMR's Property.

8 Additionally, SMR lacks "standing" to bring this motion, and its motion is highly
9 irregular procedurally.

10 For these and the other reasons set forth below, SMR's motion should be denied in its
11 entirety.

12 II. 13 SMR lacks "standing" to bring this motion

14 SMR's motion is highly irregular procedurally. Among other things, SMR employs this
15 motion to criticize MWA's motion filed in the separate San Bernardino action, which separate
16 motion merely seeks to join SMR as an additional defendant in that other action.

17 SMR's motion also states it "brings this motion pursuant to Paragraph 19 of the
18 Judgment" entered in this action (SMR's Mot., 2:7-8). However, motions filed pursuant to
19 paragraph 19 of the Judgment are limited to "the application of **any Party**" to the Judgment
20 (emphasis added), and SMR admits "it is not a 'Party' to the Judgment" (Mot., 2:9-10).

21 Attempting to avoid this limitation, SMR argues it "has standing . . . given the broad
22 definition of 'Party' as set forth in Paragraph 4.v. of the Judgment" (Mot., 2:13-14). However,
23 paragraph 4.v. defines a Party to be "Any Person(s) **named in this action** who has intervened
24 in this case or **has become subject to this Judgment** either through stipulation, default, trial
25 or otherwise." SMR does not fit any of these categories, because it is not named in this action
26 and it has not yet "become subject to the Judgment." Indeed, SMR claims it is not, and should
27 not, be subject to the Judgment.

28 In fact, SMR will not become "subject to [any] Judgment" until a judgment is entered

1 against it (if ever) in the San Bernardino action. That has not yet occurred. Indeed, SMR is
2 merely being joined as an additional defendant in the San Bernardino action. After being joined
3 as a defendant in the San Bernardino action, SMR will be free to assert and litigate whatever
4 defenses it believes are applicable – all before judgment is entered against SMR *in the San*
5 *Bernardino action*.

6 As SMR notes, in some situations, persons who are not parties to a proceeding may have
7 standing when they are “directly affected” by the judgment or order entered in the proceeding
8 (e.g., *Eyak Native Village v. Exxon Corp.* (9th Cir. 1994) 25 F.3d 773, 777). However, SMR
9 makes no attempt to demonstrate, and it cannot demonstrate, that it has been “directly affected”
10 by the Judgment entered in this action.

11 Finally, SMR makes the curious argument that its interpretation:

12 “is consistent with paragraph 19 of the Judgment, which makes clear that **any ‘Person,’**
13 **and not just a ‘Producer’ who pays assessments and has a ‘Base Annual Production**
14 **Right,’ may bring a motion to clarify or otherwise interpret the Judgment.**”

14 (SMR Mot., 15:18-21; emphasis added.)

15 This argument is curious because paragraph 19 contains none of the language or
16 provisions SMR attributes to it. Instead, paragraph 19 is limited to motions made by “any Party”
17 and, as noted, SMR is not a Party to this action.

18 In summary, SMR is not a “Party” and has not yet, in any way *or otherwise*, “become
19 subject to the Judgment” entered in this action. Therefore, SMR lacks standing to bring this
20 motion. For this reason alone, SMR’s motion should be denied.

21 III.

22 SMR complains about MWA’s motion filed in the San Bernardino Action

23 In its motion herein, SMR argues MWA’s motion in the San Bernardino action to name
24 SMR as an additional defendant therein: “seeks to bind [SMR] to a Judgment without affording
25 due process rights” (SMR Mot., 2:26), “without a trial” (Mot., 16:203); and, “SMR should be
26 afforded the opportunity to demonstrate to the Court that the waters underneath its property are
27 hydrologically disconnected” (Mot., 7:4-5), and “the ability to appear before the Court and
28 challenge the scope of the Judgment” (Mot., 16:4-5).

1 To the contrary, SMR will have its full due process rights and be able to present all of
2 its defenses in the separate and coordinated San Bernardino action. MWA's motion in the San
3 Bernardino action merely seeks to add SMR as an additional defendant, after which SMR will
4 have every opportunity to assert whatever defenses it believes apply. Significantly, the judgment
5 that will bind SMR (if that should ever occur), is the judgment that has yet to be entered in the
6 San Bernardino action.

7 Therefore, SMR's criticism of MWA's motion filed in the San Bernardino action is
8 entirely without merit. Moreover, if SMR's extant motion filed in this action is to be brought
9 anywhere, it should be brought in the San Bernardino action – not in this action. Accordingly,
10 at a minimum, SMR's motion is **premature and should be brought in the San Bernardino**
11 **action** -- after SMR has been duly joined as a defendant in that action. Therefore, SMR's
12 motion also should be denied for this additional reason.

13 IV.

14 The aquifers beneath SMR's Property are not "supplemental water"

15 Paragraph 4.11 of the Judgment defines "supplemental water" as:

16 "Water imported to the Basin Area from outside the Basin Area, [and] water that would
17 otherwise be lost from the Basin Area but which is captured and made available for use
18 in the Basin Area, . . ."

19 SMR contends the two aquifers beneath its Property have existed within the Judgment's
20 adjudicated boundaries for 7,000 years and 20,000 years, respectively. Therefore, the aquifers
21 beneath SMR's property do not qualify as "supplemental" water "imported" into the Mojave
22 Basin Area.

23 Instead, SMR claims the aquifers underlying its property meet the Judgment's definition
24 of supplemental water because they contain "water that would otherwise be lost from the Basin
25 Area but which is captured and made available for use in the Basin Area." However, this part
26 of the Judgment's definition of "supplemental water" was intended to refer to surface or
27 subterranean water flow that "would otherwise be lost if not captured and made available for
28 use in the Basin Area." It does not include or refer to groundwater that has existed in the Mojave
Basin Area for thousands of years, and is in no danger of being "lost if not captured."

1 Nonetheless, in a subtly deceptive argument, SMR claims the deep aquifer beneath its
2 Property is “supplemental water” because that water is “presently not being put to a beneficial
3 use. It is otherwise available for **capture** and . . . its **potential benefits** to the region are being
4 **lost**” (SMR Mot., 17:25-28, emphasis added). This twists the Judgment’s definition of
5 “supplemental water” beyond recognition. By this argument, SMR merely claims the “**potential**
6 **benefits**” of the water are being “lost” through non-use, not that the water itself would somehow
7 be lost if not captured and preserved in the Basin Area – which is the Judgment’s actual
8 definition of “supplemental water.”

9 The reality is the aquifers below SMR’s property are not going anywhere. As a result, the
10 water in the aquifers are in no danger of being “lost from the Basin Area,” and they need not be
11 “captured” before escaping from the Basin Area. Accordingly, the aquifers beneath SMR’s
12 property do not meet the Judgment’s definition of “supplemental water.”

13 **A. The aquifers beneath SMR’s property are not “supplemental water” for the**
14 **additional reason that they are part of the Mojave Basin Area’s natural water**
supply.

15 That the aquifers below SMR’s Property are not sources of “supplemental water” is
16 further confirmed by Judge Kaiser’s January 3, 1996 “Attached Amended Statement of
17 Decision,” wherein Judge Kaiser (as the trial judge) explained: “Supplemental water is defined
18 as ‘**an additional source of water that is above the natural water supply for that area**’” (p.
19 20, emphasis added). Based on this common sense definition, the aquifers beneath SMR’s
20 Property cannot be characterized as “supplemental water” because they are manifestly a part of,
21 and included within, “**the natural water supply for that area.**” SMR does not dispute this fact
22 (see also Wagner declaration, ¶(5)).²

23 **B. The aquifers beneath SMR’s property are not “supplemental water” because they**
24 **are part of the Mojave Basin Area’s “groundwater.”**

25 The Judgment defines “Groundwater” as “Water beneath the surface of the ground and
26

27 ² MWA requests that the Court take judicial notice of Judge Kaiser’s January 3, 1996,
28 “Attached Amended Statement of Decision” (Exhibit 1 hereto), wherein he explains that “the natural
water supply for [an] area” is not “supplemental water.”

1 within the zone of saturation; i.e., below the existing water table, whether or not flowing through
2 known and definite channels.” (Judgment, p. 9, para. “1”; see, also, Code of Civil Procedure
3 section 832; *Los Angeles v. Pomeroy* (1899) 124 Cal. 597, 628; *North Gualala Water Co. v.*
4 *State Water Resources Control Board* (2006) 139 Cal.App.4th 1577, 1596.)

5 SMR does not dispute that the aquifers beneath its Property meet the foregoing
6 definitions of “Groundwater.” Therefore, the aquifers beneath SMR’s Property do not constitute
7 “supplemental water” for the additional reason that they are part of the Mojave Basin Area’s
8 “Groundwater” and natural water supply.

9 The Judgment further provides that “**The water supply . . .** of the entire Mojave Basin
10 Area and its hydrologic Subareas extending over 4000 square miles have been brought into
11 issue” (Judgment, 5:19-22, emphasis added). That includes the Harper Lake Basin and the
12 Groundwater beneath SMR’s property, all of which are included in the Mojave Basin Area’
13 adjudicated boundaries (Wagner declaration, ¶¶ 5-8).

14 Therefore, the aquifers beneath SMR’s property do not constitute “supplemental water”
15 because: (a) they do not meet either of the Judgment’s definitions of “supplemental water;” and
16 (b) the aquifers beneath SMR’s property are a part of the groundwater and “natural water supply
17 for that area.”

18 V.

19 **Whether the aquifers beneath SMR’s property are hydrologically “connected” to,**
20 **or “recharged” by the Mojave River or its tributaries.**

21 SMR’s motion goes to great lengths in an attempt to demonstrate an absence of
22 “connectivity” between Harper Lake Basin and other areas of the Mojave Basin Area. It does
23 so because SMR realizes that, as long as SMR’s property remains within the Judgment’s
24 adjudicated boundaries, the aquifers beneath its property cannot be characterized as
25 “supplemental water” (for the reasons stated above)

26 Thus, through its lack of “connectivity” arguments, SMR seeks to persuade the Court that
27 it should carve the Harper Lake Basin out of the Judgment’s adjudicated boundaries. If that
28 change were to be made, then when SMR’s water was delivered to what remained of the Mojave

1 Basin Area, that water would be considered to be “imported” and “supplemental water,” and
2 would not be subject to any limitations or restrictions.

3 However, as demonstrated below, SMR’s lack of “connectivity” arguments also fail
4 because: (a) hydrologic connectivity” does, in fact, exist between the Mojave River System, the
5 Harper Lake Basin, and the shallow aquifer beneath SMR’s property; (b) whether connectivity
6 exists between SMR’s deep aquifer and the Mojave River system remains unknown; and (c)
7 even if there were a lack of connectivity, that does not justify carving the Harper Lake Basin out
8 of the Judgment’s adjudicated boundaries.

9 **A. The Judgment recognizes and accepts the fact that certain areas have less
10 hydrologic “connectivity” than others.**

11 First, there is nothing in the Judgment that excludes groundwater supplies simply because
12 they are not recharged by, or hydrologically connected to, the Mojave River or its tributaries.
13 To the contrary, the trial court’s Statement of Decision indicates otherwise. Therein, Judge
14 Kaiser explains:

15 “The Mojave Basin is composed of several alluvial filled valleys. The valleys *and basins*
16 are filled with alluvial sediment washed down from the surrounding mountains. *There*
17 *are several faults that obstruct groundwater flow.*”

18 (Exhibit 1, Attached Statement of Decision, p. 3, emphasis added.)

19 “The Mojave River Basin [referred to in the Judgment as the Mojave Basin Area] is
20 divided into five subareas. The Helendale fault separates the Alto and Centro Subareas.
21 The Waterman Fault separates the Centro and Baja Subareas. The Oeste Subarea is west
22 of the Alto Subarea. The Este Subarea is east of the Alto Subarea and south of the Centro
23 Subarea. (RT 122-124, Exhibit 4003)

24 (Exhibit 1, Attached Statement of Decision, p. 6.)

25 “*There are areas of the basin where there is very little groundwater movement and very*
26 *little recharge.*”

27 (Exhibit 1, Attached Statement of Decision, p. 6, emphasis added.)

28 The court’s last finding is not materially different from the opinion of SMR’s expert
witness, Mr. Morgan, that the aquifers beneath its property have “**little to no hydrologic**
connectivity with the rest of the Mojave Basin” (Morgan Dec., ¶¶ 20 and 21). Nonetheless, the
trial court and the stipulating parties determined to include the Harper Lake Basin and SMR’s
property within the Mojave Basin Area’s adjudicated boundaries.

1 Thus, it is clear that, when the Judgment was entered on January 10, 1996, areas of “very
2 little groundwater movement and very little recharge” were not precluded then (as they are not
3 precluded now) from being included within the Judgment’s adjudicated boundaries. Instead, the
4 Judgment merely recognizes different degrees of hydrological “connectivity” and “recharge”
5 from one subarea to other subareas and, in some instances, even within a single subarea.³

6 Therefore, even if the shallow and deep aquifers beneath SMR’s Property were not
7 hydrologically “connected” to other portions of the Mojave Basin Area, they nonetheless remain
8 an important part of the groundwater and “natural water supplies” within the Judgment’s
9 adjudicated boundaries. As such, they should not be carved out or excluded from the Mojave
10 Basin Area’s adjudicated boundaries (see the Judgment, vol. II, Appendix A). Moreover, in his
11 declaration, Mr. Wagner notes:

12 The Mojave Basin Area Judgment adjudicated all of the water resources within the Basin
13 Area, as the surface water, groundwater, return flow from production, recharge from
14 precipitation and other sources were included in the common water supply of the Mojave
15 Basin Area. **No distinction was made as to whether or not water was directly
“connected” to recharge from the Mojave River.** Rather, the determination was made
that pumping, or diversions within the Adjudicated Area affected the common water
supply within the individual subarea from where water was produced.

16 (Wagner declaration, ¶ 8, emphasis added.)

17 Pursuing its argument further, SMR points to the Judgment’s Exhibit F, paragraph 8
18 which states:

19 “No Producer in the Harper Lake Basin may transfer a Base Annual Production right or
20 any portion thereof to Producers outside of Harper Lake Basin except by physically
conveying the water . . .”

21 While this provision may have been a recognition of the remoteness or relatively little
22 connectivity of Harper Lake Basin to other parts of the Mojave Basin Area, it remains clear that
23 in 1996, the stipulating parties agreed and the trial court determined that Harper Lake Basin
24 should be included within the Judgment’s adjudicated boundaries. Indeed, it is clear from
25

26 ³ SMR’s motion devotes much space to discussing disparities in the chemical composition of
27 water samples taken from the aquifers beneath its property, compared to samples taken from the
28 Mojave River and its tributaries. This is merely data purportedly supporting SMR’s claims of lack of
hydrologic connectivity and recharge.

1 paragraph 8 of Exhibit F of the Judgment that the parties who stipulated to the Judgment and
2 its Physical Solution intended that the Judgment would govern the groundwater and natural
3 water supplies within the Harper Lake Basin (which include the aquifers beneath SMR's
4 property). Nothing has changed since January 10, 1996 (when the Judgment was entered) that
5 would justify re-drawing the Judgment's adjudicated boundaries to exclude the Harper Lake
6 Basin and SMR's property.

7 Therefore, the alleged absence of hydrological "connectivity" and "recharge" between
8 the Harper Lake Basin and other parts of the Mojave Basin Area does not now warrant
9 excluding Harper Lake Basin from the Judgment's adjudicated boundaries, or characterizing the
10 natural water supplies beneath SMR's Property as "supplemental water."⁴

11 **B. Moreover, the Harper Lake Basin is hydrologically "connected" to the Mojave**
12 **River watershed.**

13 David Peterson is a Professional Geologist, Certified Engineering Geologist, and
14 Certified Hydrologist in the State of California. He has reviewed SMR's motion, the supporting
15 declaration of Tony Morgan, and other relevant documents and records. Based thereon, Mr.
16 Peterson has concluded that the groundwater in the Harper Lake Basin is, in fact, hydrologically
17 "connected" to the Mojave River watershed. Mr. Peterson notes that prior studies from the
18 California Department of Water Resources (DWR), the U.S. Geological Survey (USGS), Jacobs
19 Engineers, Todd Engineers, and others, have ALL concluded that groundwater, in fact, flows
20 from the floodplain aquifer along the Mojave River, northward through a relatively narrow
21 alluvial divide near Red Hill, termed the Hinkley Gap, into the Harper Lake Basin; and, there
22 is little disagreement between these studies that groundwater flows from the Mojave River to
23 Harper Lake Basin, although the actual amount remains unclear. (Peterson Dec., ¶ 5.)

24 Mr. Peterson also notes that these studies and maps clearly show groundwater flowing

25
26 ⁴ SMR speculates MWA dismissed SMR's predecessor-in-interest "because [the property]
27 was not hydrologically connected to the Centro Subarea" (Mot., 5:17-18). This is unsupported
28 speculation and not true. SMR's predecessor-in-interest was dismissed because it filed for
bankruptcy, and the bankruptcy court encouraged MWA to do so. Moreover, the record shows that
the dismissal was "without prejudice." (See Exhibit 2 hereto.)

1 under gradient from the Mojave River, northward through the Hinkley Gap; and carbon dating
2 of groundwater samples also indicates quite clearly that groundwater is flowing from the Mojave
3 River system to the Harper Lake Basin (see Peterson Dec., ¶ 5, Exhibits 2 and 3 thereto).
4 Therefore, there is compelling evidence that the Harper Lake Basin is hydrologically “connected”
5 to the Mojave River watershed. Even Bulletin 118 – upon which SMR relies -- shows “Harper
6 Valley also receives some groundwater underflow from the Middle Mojave River Valley” (see
7 second page of DWR Bulletin 118 excerpt attached to SMR’s Request for Judicial Notice; see,
8 also, Tony Morgan dec., ¶53 [“The dominate source of groundwater recharge to upper aquifers
9 in the Harper Valley basin is underflow of percolated Mojave River water that flows through
10 gaps in the low bedrock hills”]).

11 **C. The age of groundwater in the shallow aquifer is a function of the very slow rates**
12 **of groundwater flow in the Basin, and is not evidence of disconnection between**
the Mojave River and the Harper Lake Basin.

13 Mr. Peterson notes further that, with the exception of possible minor (and generally
14 unmeasurable) amounts of native recharge occurring along small washes within the Harper Lake
15 Basin, the only known source of recharge is from the Mojave River; therefore, it is likely that
16 the suggested 7,000-year-old age of water in the shallow aquifer may only reflect the very long
17 time period required for groundwater to travel from the Mojave River to the Harper Lake Basin.
18 This is supported by USGS age dating of water collected from wells in other subareas of the
19 Mojave Basin Area, which found groundwater located 6 to 7 miles from the recharge source
20 were up to 18,800 years old (Peterson Dec., ¶ 6).

21 **D. The extent and “connectivity” of the deep aquifer to other aquifers is unknown.**

22 Based upon his review of the available records, Mr. Peterson also notes that the
23 identification of the deep aquifer beneath SMR’s appears to be based only on a single well log,
24 and the aquifer may be a block that was displaced and down-dropped along a fault. Nonetheless,
25 the limited groundwater sample data from SMR’s single test well indicates the deeper aquifer
26 is much older than the shallow aquifer and may be largely isolated from the shallow aquifer.
27 However, without the well driller’s log or pump testing data from the deep well to review
28 (which MWA and Mr. Peterson have not had an opportunity to review), it is difficult to evaluate

1 the potential connectivity of the two aquifers, and the connectivity with other aquifers remains
2 unknown. (Peterson Dec., ¶ 7, Exhibit 4 thereto.) Thus, the need for further discovery exists on
3 the issue of the deep aquifer's "connectivity" to other water sources.

4 **E. Bulletin 118 is not dispositive.**

5 Relying upon DWR Bulletin 118, SMR argues "that in hydrologic terms these are two
6 separate and disconnected groundwater basins" (Mot., 12:6-19).⁵ However, it is clear that in
7 1996, when the Judgment was entered, the Court and the stipulating parties determined to
8 include Harper Lake Basin within the Judgment's adjudicated boundaries (see Appendix "A"
9 to the Judgment, a copy of which is attached as Exhibit 3 to the Wagner declaration). Nothing
10 has changed since 1996, either factually or legally, that would justify now changing the
11 Judgment's adjudicated boundaries which include multiple groundwater basins.

12 Referencing Code of Civil Procedure section 841 of the Streamline Adjudication Act,
13 SMR also argues that DWR Bulletin 118 is conditionally "dispositive" under the Streamline
14 Adjudication Act passed in 2015 (Mot., 11:24-26). However, by its own provisions, the
15 Streamline Adjudication Act does not apply to "An adjudicated area described in subdivisions
16 (a) to (d), inclusive, of Section 10720.8 of the Water Code . . ." (Code Civ. Proc. § 833(b)(4)).
17 In turn, Section 10720.8(a)(10) of the Water Code expressly and specifically **excludes** the
18 "Mojave Basin Area." (See also Tony Morgan decl., ¶ 37 ["the majority of the Mojave Basin
19 is adjudicated and therefore exempt from regulations required by the 2014 Sustainable
20 Groundwater Management Act, commonly known as SGMA"].)

21 Therefore, Bulletin 118 is **not dispositive** on any issue involved in this motion. Indeed,
22 it is questionable whether Bulletin 118 has any application or significance to this motion. This
23 is so, because Bulletin 118 merely determines the boundaries of various groundwater basins, and
24 there is no legal impediment to a court adjudicating groundwater rights in more than one
25 groundwater basin – as the trial court did in this action in 1996. In fact, there are multiple other

26
27 ⁵ SMR's "connectivity" arguments are answered above. The Judgment refers to the area in
28 question as "Harper Lake Basin," while SMR's motion refers to it as "Harper Valley Basin"
(apparently adopting the current description in Bulletin 118).

1 instances where California courts have adjudicated groundwater rights in areas that included
2 more than one groundwater basin, e.g., the San Bernardino Basin Area, the Chino Basin, and
3 the Upper Los Angeles River Area (ULARA); the ULARA encompasses the San Fernando
4 Basin, the Sylmar Basin, the Verdugo Basin and the Eagle Rock Basin. Accordingly, the Mojave
5 Basin Area adjudication is not the only groundwater adjudication in California that includes
6 multiple groundwater basins (see Wagner Dec., ¶ 7).

7 Thus, SMR's reliance upon DWR Bulletin 118 is misplaced. In fact, as is elsewhere
8 shown herein, Bulletin 118 actually supports MWA's opposition to SMR's motion.

9 **VI.**

10 **The aquifers beneath SMR's property may be used beneficially**

11 SMR also claims that, "To not use this water as supplemental water would leave the
12 water underground – unused" (SMR Mot., 18:7-8). This is patently untrue. Subject to the
13 limitations and restrictions imposed by the Judgment (assuming such are ultimately made
14 applicable to SMR), SMR may harvest and market as much of the water as it chooses. However,
15 SMR wishes to characterize the water beneath its Property as "supplemental water" so it may
16 be allowed to produce and sell unlimited quantities without being constrained by allocations of
17 Base Annual Production or Free Production Allowance, or by replacement assessments.

18 Moreover, SMR has another means of utilizing the water in the aquifers beneath its
19 property. And it may do so without chopping up the Judgment's adjudicated boundaries or
20 mischaracterizing as "supplemental water" the natural water supply located beneath SMR's
21 property and within the Judgment's adjudicated boundaries, to wit: in the San Bernardino action,
22 SMR may attempt to establish an overlying groundwater right and then proceed to produce and
23 market water based upon that overlying right – constrained only by (a) the amount of its
24 established groundwater right, and (b) the correlative water rights of other Centro Subarea
25 overlying property owners who have not stipulated to the Judgment.

26 ///

27 ///

VII.

That the aquifers beneath SMR's Property were not included in the earlier production safe yield (PSY) calculation is irrelevant.

So far as is known, the calculations of production safe yield made before entry of the January 10, 1996, Judgment did not include the aquifers beneath SMR's Property -- simply because those water supplies were not well known at the time. In fact, SMR claims the deeper and larger of the two aquifers was not discovered until recently.

Nonetheless, the fact that the aquifers beneath SMR's property were not included in the earlier PSY (production safe yield) calculations also does not now warrant carving the Harper Lake Basin out of the Judgment's adjudicated boundaries, or characterizing the aquifers below SMR's Property as "supplemental water."

VIII.

Whether pumping from the aquifers beneath SMR's property negatively impacts other producers also is irrelevant.

SMR repeatedly states that pumping from the shallow aquifer beneath its Property has not resulted in "documented" complaints from other producers (Mot., 8:7-9; 8:15; 11:14-15). For the reasons stated above, however, the absence of documented complaints about SMR's pumping also is not dispositive, or even relevant, as to whether the aquifers beneath SMR's property constitute "supplemental water," or whether the Judgment's adjudicated boundaries should now be drastically altered to accommodate SMR's stated desire to pump and sell large quantities of water without any constraint or limitation.

Moreover, the impacts of SMR's proposed production of very large quantities of groundwater are in dispute and remain uncertain. Indeed, hydrographs of wells located near SMR's wells demonstrate a marked decline in water levels (See Peterson declaration, ¶ 8, and Exhibit 5 thereto). In this connection, DWR Bulletin 118 notes, "The hydrograph for a well in the southern part of the [Harper Lake Basin] indicates that the groundwater surface elevation declined about 12 feet during 1992 through 1998. The hydrograph for a well in the southeastern part of the basin shows a drop of 17 feet from 1967 to 1999." (See page 2 of Bulletin 118 attached to SMR's Request for Jud. Notice.) This was the same period during which SMR's

1 predecessor-in-interest farmed extensively and used large quantities of groundwater produced
2 from water wells located on SMR's Property. Mr. Peterson also notes that hydrographs for water
3 wells in the Centro Subarea (in which SMR's property and the Harper Lake Basin are located)
4 show historical declines in groundwater levels in areas of the Harper Lake Basin since the
5 1930s, and the hydrograph for a water well located closest to SMR's property shows historical
6 declines dating back to about 1954, leveling off in the past approximately five years. Mr.
7 Peterson opines further that increased pumping may cause further depletion of stored
8 groundwater (Peterson Dec., ¶8).

9 Finally, even if SMR's groundwater production did not materially affect groundwater
10 levels of other areas of the Centro Subarea, that would not warrant carving the Harper Lake
11 Basin or SMR's property out of the Judgment's adjudicated boundaries (as requested by SMR).

12 **IX.**
13 **Conclusion**

14 SMR's motion should be denied because:

15 1. SMR is not "a Party" to this adjudication. Therefore, SMR lacks "standing" to bring the
16 extant motion in this proceeding. However, once SMR is joined as a defendant in the separate,
17 consolidated San Bernardino action, SMR will be free to raise whatever defenses it deems viable
18 **in that action.**

19 2. The aquifers beneath SMR's property are part of the groundwater and "natural water
20 supplies" within the Mojave Basin Area (as that area is defined in Appendix A of the Judgment).
21 Therefore, the aquifers beneath SMR's property cannot be characterized as "supplemental
22 water."

23 3. SMR has not demonstrated good cause to carve out of the Judgment's adjudicated
24 boundaries the Harper Lake Basin (which includes SMR's property).

25 ///

26 ///

27 ///

1 4. SMR's motion is akin to a motion for summary adjudication. SMR should file and serve
2 its motion in the San Bernardino action -- after SMR has been joined as a defendant in that
3 action.

4 Dated: January 25, 2024

BRUNICK, McELHANEY & KENNEDY PLC

5
6 By: _____

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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 January 25, 2024, 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:

**MOJAVE WATER AGENCY'S OPPOSITION TO SHADOW MOUNTAIN RANCH'S
MOTION FOR AN ORDER INTERPRETING AND CLARIFYING THE SCOPE OF THE
JUDGMENT**

 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 January 25, 2024 at Apple Valley, California.



Jeffrey D. Ruesch

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Attn: Katherine Hill (Khill9@comcast.net)
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Mojave Basin Area Watermaster Service List as of January 25, 2024

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Mojave Basin Area Watermaster Service List as of January 25, 2024

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Mojave Basin Area Watermaster Service List as of January 25, 2024

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Mojave Basin Area Watermaster Service List as of January 25, 2024

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