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SHADOW MOUNTAIN RANCH, LLC

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF RIVERSIDE

12 CITY OF BARSTOW, et al.,

13 Plaintiffs,

14 v.

15 CITY OF ADELANTO, et al.,

16 Defendants.
17
18
19

Lead Case No. CIV208568
JCCP5265 MOJAVE BASIN WATER
CASES

Judge: Harold W. Hopp, Department 1

**SUPPLEMENTAL DECLARATION OF
TONY MORGAN IN SUPPORT OF
REPLY TO MOJAVE WATER
AGENCY'S OPPOSITION TO SHADOW
MOUNTAIN RANCH LLC'S MOTION
TO INTERPRET AND CLARIFY THE
JUDGMENT**

*[Filed concurrently with:
1. Reply ISO SMR Motion;
2. Objection to Wagner Declaration;
and
3. Objection to RJN.]*

Date: February 7, 2024
Time: 8:30 a.m.
Dept: 1

[Reservation ID: 001680774956]

Action Filed: May 30, 1990

1 **SUPPLEMENTAL DECLARATION OF TONY MORGAN**

2 I, Tony Morgan, declare as follows:

3 1. I am a Vice President and Principal Hydrogeologist at Daniel B. Stephens &
4 Associates, Inc. (“DBS&A”). I have personal knowledge of the facts set forth in this declaration
5 and, if called as a witness, could competently testify to all matters set forth herein.

6 2. I make this declaration in support of Shadow Mountain Ranch, LLC’s (“SMR”)
7 reply in support of its motion to interpret and clarify the scope of the January 10, 1996 Judgment
8 and Physical Solution (“Motion”).

9 3. I previously made a declaration in support of SMR’s Motion in November 2023.
10 That prior declaration outlines my professional background, experience, credentials, and
11 qualifications. A true and correct copy of my curriculum vitae is attached to that declaration as
12 Exhibit “1.”

13 4. I have reviewed the Declaration of David Peterson (“Peterson Declaration”) and
14 the Declaration of Robert Wagner (“Wagner Declaration”) filed by Mojave Water Agency
15 (“MWA”) in opposition to the SMR Motion.

16 5. As stated in my prior declaration, DBS&A reviewed more than 20 years of
17 available studies, reports, models, and other engineering materials and information to assess the
18 potential for fault lines, groundwater flow gradients, water quality, and other indicators of or
19 barriers to hydrologic connectivity between the SMR Property and the rest of the Mojave Basin.
20 That comprehensive review included review and analysis of all of the reports cited in the Peterson
21 and Wagner Declarations, including, for example only and without limitation, the 2005 Todd
22 Engineers report (“Todd Report”) and the 2010 CSU Fullerton report (“CSUF Report”).¹

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27 _____
28 ¹ The Peterson and Wagner declarations both specifically cite to the CSUF report. Note that the
CSUF report was “Prepared in cooperation with and submitted to Mojave Water Agency.”
(CSUF Report at p. 2.)

No Change in Basin Boundaries

6. The purpose of DBS&A’s references to the Harper Valley basin, and data related to that basin, is not to amend the jurisdictional boundaries of the Judgment or establish the Harper Valley basin as a separate jurisdictional basin.

7. Rather, the purpose is to demonstrate that the data specific to the Harper Valley basin is more closely aligned with the SMR Property’s unique hydrogeological characteristics—based on size, geologic barriers, and watershed—than data more broadly applicable to the Mojave Basin or its Subareas. That is, data from the Harper Valley basin better describes the SMR Property’s characteristics than data from the Mojave Basin, although they are not synonymous.

Mojave River Water Flows Into the Harper Valley Basin Via the Hinkley Gap

8. The SMR Property is located in the Harper Valley basin, which is a closed watershed separated from the Mojave River watershed by faulting and low ridges. (*See* CSUF report at p. 5 (“Harper Lake Basin is a closed basin northwest of the Mojave River.”).)

9. DBS&A’s conclusions, as set forth in my prior declaration, are also that “The Harper Valley Groundwater Basin is not ‘disconnected’ from the Mojave River watershed.” (Peterson Decl. ¶ 5.) To be clear, DBS&A agrees that the Mojave River contributes groundwater to the Harper Valley basin via water flowing through the Hinkley gap.

Mojave River Water Does Not Flow Into the SMR Property

10. The Harper Valley basin and the SMR Property are not synonymous.

11. The SMR Property is located in the northeastern corner of the Harper Valley basin and at an elevation above the Harper Dry Lake playa area.

12. The Harper Dry Lake playa area is westerly and southerly from the SMR Property, and is the low point of the Harper Valley basin.

13. The Harper Dry Lake playa area and the SMR Property are both within the Harper Valley basin, but have different hydrogeological characteristics due to, among other things, their different geologic settings.

///

///

1 14. Groundwater flowing from the Mojave River through the Hinkley gap and into the
2 Harper Valley basin does not reach the SMR Property due to differing groundwater flow
3 directions.

4 15. The CSUF report corroborates DBS&A’s findings that water flowing through the
5 Hinkley gap would reach the Harper Valley basin, but not the SMR Property.

6 16. Attached as Exhibit “1” to this declaration are relevant excerpts of that CSUF
7 report. In particular, Figures 19, 20, and 21 demonstrate that predominant groundwater flow
8 directions from higher elevations to lower elevations, ending up in the low point at the Harper
9 Valley Lake playa area.

10 17. The arrows depicting groundwater flow directions in the CSUF report Figures 19,
11 20, and 21 are consistent with the groundwater flow diagram arrows contained in Figure 3
12 attached to my prior declaration.

13 18. Importantly, the SMR Property is at a higher elevation than the Harper Dry Lake
14 playa area. Therefore, groundwater flow through the Hinkley gap will travel into the playa area.
15 As depicted in Exhibit “1,” groundwater from the Mojave River does not reach the SMR
16 Property.

17 19. There are several other possible sources of water for the water underlying the SMR
18 Property. These include: water flowing in from the northeast, an area commonly known as
19 “Water Valley” (see Ex. “1”); water flowing in from the northwest; and limited amounts of
20 precipitation, as MWA concedes. (See generally Figure 3 attached to my prior declaration.)

21 20. Typically groundwater flow directions are consistent with elevation, with water
22 moving from higher elevations to lower elevations. This concept is consistent with groundwater
23 flow directions beneath the SMR Property (see Ex. “1”), which are from the Property’s higher
24 elevations down to the Harper Dry Lake playa area. Groundwater elevation data does not support
25 that the Mojave River water will flow to the SMR Property.

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1 **The Age of the Water Neither Confirms Nor Defines That Water’s Original Source**

2 21. As a theoretical concept, Mr. Peterson is correct that water gets older as it moves
3 underground. That is, as water travels, it ages, and older water will be found farther away from
4 the original water source. However, Mr. Peterson raises no new data to prove that the water
5 underlying the SMR Property is, in fact, Mojave River water. Rather, consistent with the CSUF
6 report and DBS&A’s conclusions, the water underlying the SMR Property is, therefore,
7 regardless of its age, not Mojave River.

8 22. In any event, DBS&A largely relied upon carbon-dating² to confirm the age
9 differences between the shallow aquifer (7,000 YBP) and the deep aquifer (20,000 YBP). The
10 Peterson Declaration does not deny this age difference. It is clear based on these two vastly
11 different ages that the source water for the shallow aquifer and deep aquifer are separate and
12 distinct. These analytical results support the conclusion that the shallow and deep aquifers are of
13 different ages and are therefore separate aquifers with little to no hydrologic connectivity with
14 each other.

15 **Groundwater Level Declines in Harper Valley are Not Disputed, But There is No Evidence**
16 **of Groundwater Level Declines Under the SMR Property**

17 23. The Peterson Declaration argues that there are groundwater level declines in the
18 Harper Valley basin. The data presented in the Peterson Declaration is generally applicable to the
19 Harper Valley basin, including in its southern and southeastern portions, and is not specific to the
20 SMR Property, which is located in the northeastern corner of the Harper Valley basin. As
21 explained in my prior declaration, the groundwater levels on the SMR Property itself do not
22 indicate a long-term decline attributable to groundwater pumping on SMR’s Property. (See
23 paragraphs 22, 28, 63 in my prior declaration.)

24 24. Historical groundwater pumping from the shallow aquifer underneath the SMR
25 Property has had no documented impact on the groundwater quantity or quality in the rest of the
26 Mojave Basin.

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² We also analyzed the presence of tritium, as explained in my prior declaration.

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25. Neither the Peterson nor Wagner Declarations dispute the many additional findings noted in my prior declaration, including that tritium dating, water quality data, isotope sampling, and other topics, all as noted in my prior declaration, support a conclusion that the shallow and deep aquifers underlying the SMR Property are disconnected both from each other, and from the rest of the Mojave Basin, because the aquifers' waters are not from the Mojave River.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Executed this 31st day of January, 2024, at Santa Barbara, California.



Tony Morgan

Exhibit 1

HARPER LAKE BASIN, SAN BERNARDINO COUNTY, CALIFORNIA HYDROGEOLOGIC REPORT



July 2010

California State University, Fullerton
Department of Geological Sciences



HARPER LAKE BASIN,
SAN BERNARDINO COUNTY, CALIFORNIA
HYDROGEOLOGIC REPORT

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Reviewed by

Lance Eckhart, PG, CHG
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Dedicated to the Memory of Brock Boeke

Prepared in cooperation with and submitted to
Mojave Water Agency

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Plates

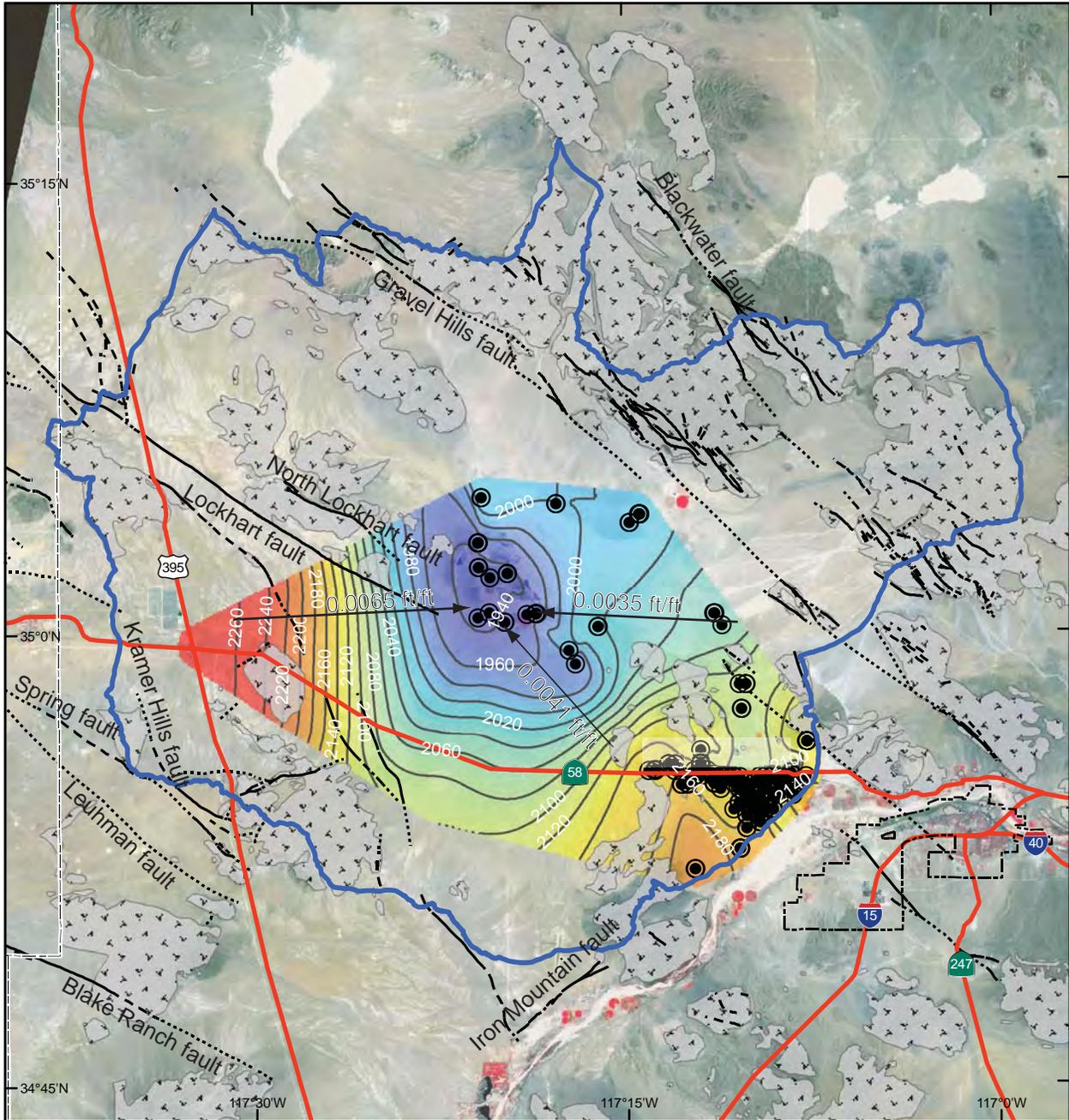
Plate 1: Harper Lake Basin composite geologic map

Appendices

- Appendix A. Climatic data and plots.
- Appendix B. Water level data
- Appendix C. General water chemistry.
- Appendix D. Glossary of terms.

Executive Summary

Harper Lake Basin is a closed basin northwest of the Mojave River. It lies in the Centro Sub-area of the Mojave Water Agency management area of the Mojave Desert. Drainage into the central dry lake portion of the basin [Harper (dry) Lake] occurs through late summer thunderstorms and winter storms. Average precipitation is approximately 5 inches (13 cm) a year (NOAA, 2007) while evapotranspiration is approximately 68 inches (173 cm) a year (CIMIS, 2007). Groundwater levels have gradually declined since the keeping of water-level records began. Although the sequence of records is incomplete in many instances, they are still a good general indicator. There are 377 known wells in Harper Lake Basin, most of which are located directly adjacent to the northwest edge of the Mojave River. The bulk of the remaining wells are located at the southeast edge of Harper Lake Basin. Water use has dropped by about half from the highs reported prior to the initiation of the “1996 Adjudication.” The principal aquifer of Harper Lake Basin is composed of older alluvium, which underlies the Late Pleistocene lake sediments and surrounds the lake as alluvial fan deposits. Older alluvium ranges from being very thin to a thickness of several hundred meters mostly on the northeast side of Harper (dry) Lake. Groundwater recharge comes primarily from underflow from the middle Mojave River Valley basin through a small alluvial divide near Red Hill. Flow through the Red Hill gap is approximately 1,000 acre feet per year. Additional recharge occurs from precipitation but is poorly quantified and in general only occurs when seasonal rainfall exceeds 8 inches (20 cm). Measured water quality is limited to TDS values. TDS values are lower further away from the Harper (dry) Lake boundary. Reported water quality ranges have shown a decrease in the low values from 1,000 mg/l in 1979 to 179 mg/l in 2003, while the higher values have remained high at 2,300 mg/l on average over the same time period. Degraded groundwater quality near the dry lake is attributed to the infiltration of irrigation return flow.



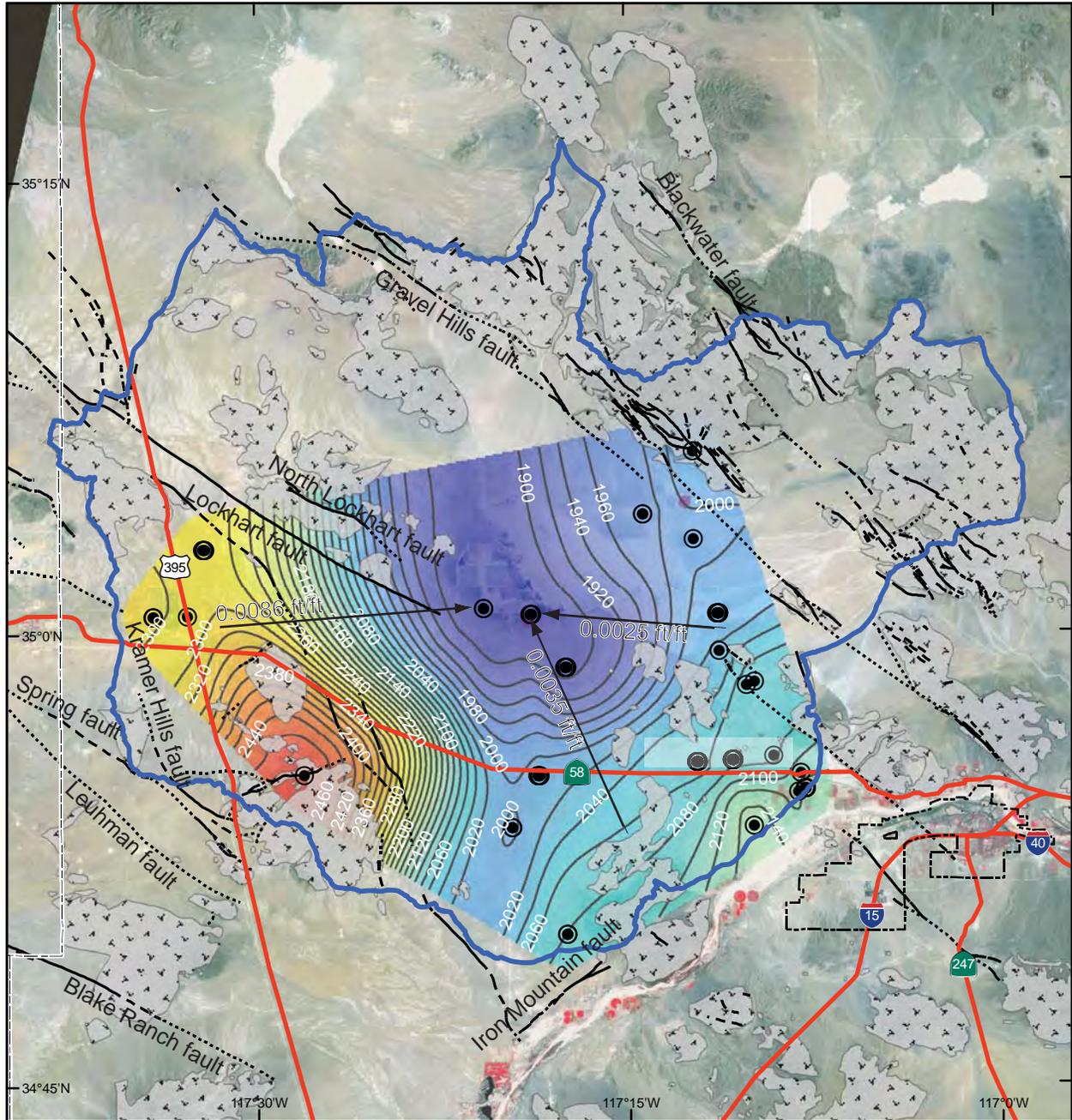
Legend

-  Harper Lake Basin
-  County Boundary
-  City Boundary
-  Well
-  Major Highway
-  Bedrock
-  Faults
-  Groundwater Flow Direction

1958 Groundwater Elevation amsl



Figure 19: Harper Lake Basin groundwater elevation contour map 1958.



Legend

-  Harper Lake Basin
-  County Boundary
-  City Boundary
-  Well
-  Major Highway
-  Bedrock
-  Faults
-  Groundwater Flow Direction

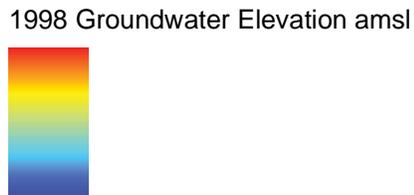
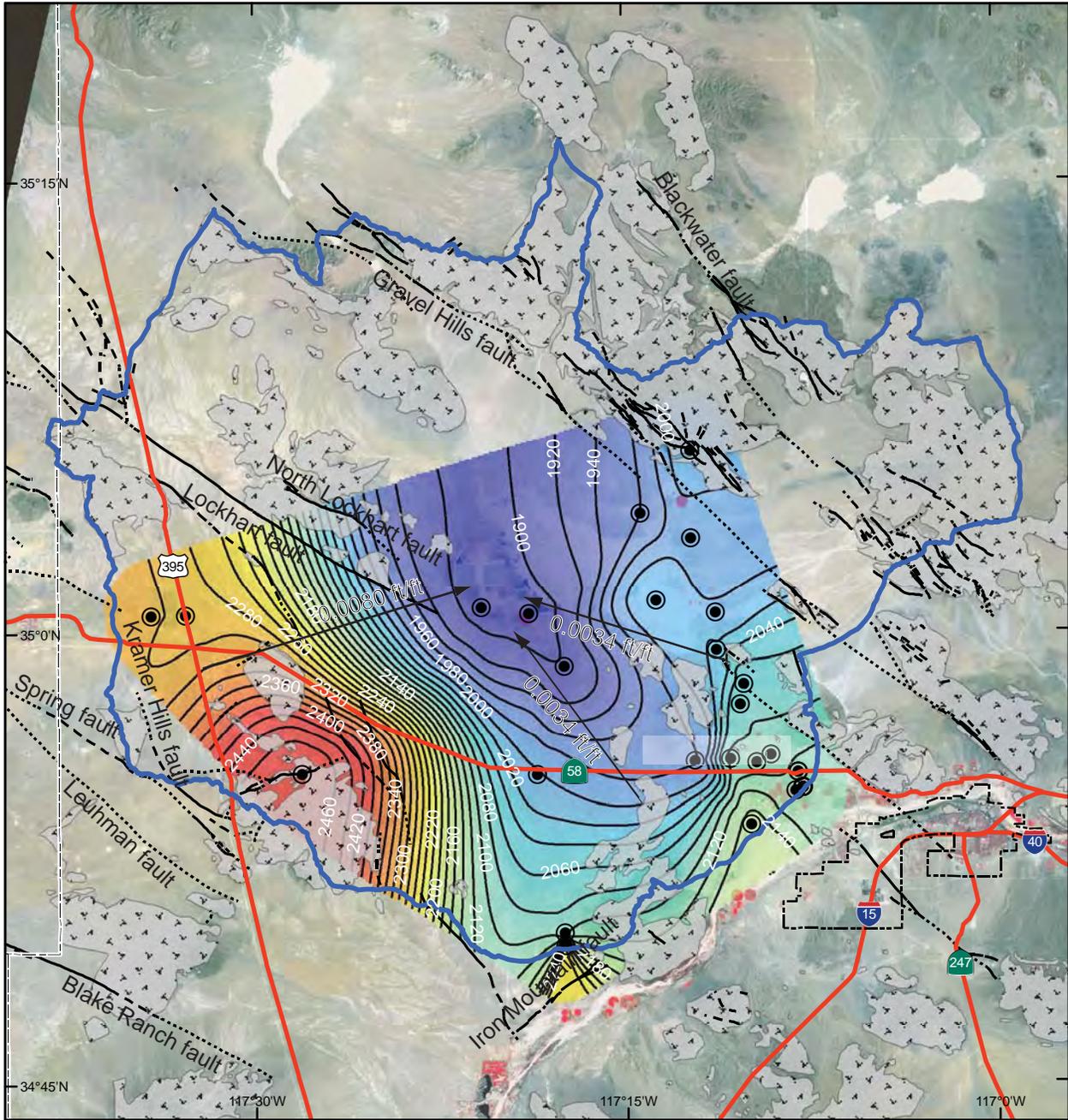


Figure 20: Harper Lake Basin groundwater elevation contour map 1998.



Legend

-  Harper Lake Basin
-  County Boundary
-  City Boundary
-  Well
-  Major Highway
-  Bedrock
-  Faults
-  Groundwater Flow Direction

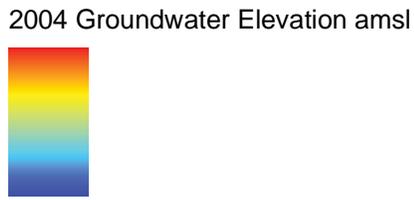


Figure 21: Harper Lake Basin groundwater elevation contour map 2004.

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PROOF OF SERVICE

I, Vanessa Guillen-Becerra, declare:

I am a citizen of the United States and employed in San Bernardino County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2855 E. Guasti Road, Suite 400, Ontario, California 91761. On January 31, 2024, I served a copy of the within document(s):

SUPPLEMENTAL DECLARATION OF TONY MORGAN IN SUPPORT OF REPLY TO MOJAVE WATER AGENCY’S OPPOSITION TO SHADOW MOUNTAIN RANCH LLC’S MOTION TO INTERPRET AND CLARIFY THE JUDGMENT

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Ontario, California addressed as set forth below.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Please see attached Service List.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on January 31, 2024, at Ontario, California.



Vanessa Guillen-Becerra

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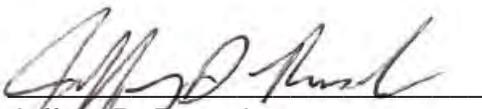
On February 1, 2024, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing 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:

SUPPLEMENTAL DECLARATION OF TONY MORGAN IN SUPPORT OF REPLY TO MOJAVE WATER AGENCY'S OPPOSITION TO SHADOW MOUNTAIN RANCH LLC'S MOTION TO INTERPRET AND CLARIFY 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 February 1, 2024 at Apple Valley, California.



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Mojave Basin Area Watermaster Service List as of February 01, 2024

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