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10	SUPERIOR COURT OF T	HE STATE OF CALIFORNIA
11	COUNTY C	OF RIVERSIDE
12		
13	CITY OF BARSTOW, et al.,	Lead Case No. CIV208568 JCCP5265 MOJAVE BASIN WATER
14	Plaintiff,	CASES
15	V.	SHADOW MOUNTAIN RANCH, LLC'S OPPOSITION TO MOJAVE WATER
16	CITY OF ADELANTO, et al.	AGENCY'S MOTION TO FILE FIRST AMENDED COMPLAINT TO ADD
17	Defendants.	SHADOW MOUNTAIN RANCH, LLC, AS A DEFENDANT
18		Date: April 15, 2024
19 20		Time: 8:30 a.m. Dept.: 1 RESERVATION NO.: 635695970181
20		Assigned for All Purposes to Dept. 1, Hon.
22		Harold W. Hopp, Judge Presiding by Assignment
23		Action Filed: May 30, 1990
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	31057.00001\42180220.1 SMR'S OPPOSITION TO MWA'S MOTIO	ON TO FILE FIRST AMENDED COMPLAINT

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I. **INTRODUCTION**

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2 Specially-Appearing Party Shadow Mountain Ranch, LLC ("SMR") files this opposition to 3 Mojave Water Agency's ("MWA") motion for leave to file a First Amended Complaint ("FAC"), 4 which would add SMR as a named defendant in this action. The Court should deny MWA's motion 5 for at least four separate and independent reasons.

6 *First*, MWA substantially delayed bringing this motion, and without justification. MWA 7 has known of SMR's (and its predecessor's) pumping of groundwater for decades, but MWA did 8 nothing. MWA recently named SMR as a Doe defendant, which was a complete sham because 9 MWA knows full well of SMR's identity and that it is pumping groundwater in the so-called 10 adjudicated area. Worse, MWA did not provide the courtesy of serving SMR with the Doe 11 amendment, and MWA tried to deprive SMR of its due process rights in several prior attempts to 12 bring SMR into this case. It was only when SMR found out on its own what MWA was doing that 13 MWA finally brought this motion for leave, in which it actually gave notice to SMR. MWA's 14 unjustified delay, and its conduct of trying to sandbag SMR, warrant a denial of this motion. SMR 15 is not a party to the underlying action Case No. CIV208568, published decision City of Barstow v. 16 City of Adelanto (2000) 23 Cal.4th 1224 ("City of Barstow"). That was MWA's choice, as it 17 voluntarily dismissed SMR's predecessor from the case about 30 years ago, before that case went 18 to trial and before a Judgment and physical solution were approved by the Court. MWA has no 19 basis to now ask for a "do over" against SMR, and MWA's procedural gamesmanship should 20 warrant a denial of this motion.

21 Second, the Court should deny this motion because the proposed FAC, and indeed this 22 entire lawsuit, are futile. By this new action, MWA is trying to force SMR into becoming a party 23 to the Judgment and physical solution in the *City of Barstow* action. As a matter of law, MWA 24 cannot do this. The California Supreme Court has analyzed this Judgment and physical solution 25 that MWA now seeks to force upon SMR and others, and the Supreme Court determined that 26 because the physical solution is based on equitable principals, and not an actual determination of 27 water rights, *it cannot be imposed on non-stipulating parties*. (City of Barstow, supra, 23 Cal.4th 28 at pp. 1252-1254.) The Supreme Court has spoken, and the opinion is clear: MWA cannot do the - 5 -

exact thing it is trying to do by this new lawsuit, and its FAC, which would add SMR as a party, is
futile. MWA cannot under any circumstance impose the existing Judgment and physical solution
upon SMR, or any other non-stipulating party that now finds itself in the unfortunate position of
being a named defendant (or even a Doe defendant) in this misguided new lawsuit. By this
opposition, SMR hereby places MWA on notice that if it proceeds in trying to enforce the Judgment
and physical solution from the *City of Barstow* action upon it or any other non-stipulating party,
SMR will pursue sanctions against MWA under Code of Civil Procedure section 128.7.

8 Third, MWA's proposed FAC, and its entire new lawsuit, fails to satisfy statutory law 9 applicable to comprehensive groundwater adjudications, such as this one, including the Sustainable 10 Groundwater Management Act ("SGMA"), and a companion statute, the Streamlined Adjudication 11 Act. MWA may argue in response to the second point above that it is not precluded by the Supreme 12 Court's ruling in *City of Barstow* because this action is a new comprehensive groundwater 13 adjudication, and a new physical solution will be imposed. Leaving aside for a moment that that is 14 not what MWA pleads or prays for in the FAC, this new lawsuit still fails because under the 15 Streamlined Adjudication Act, a plaintiff that brings a comprehensive groundwater adjudication 16 must name all water users within the proposed adjudication area, and must comply with specific 17 statutory notice requirements before bringing such an action. (See Code Civ. Proc., §§ 835, 836.) 18 MWA makes no reference in the FAC that it actually complied with the strict notice requirements 19 for initiating a comprehensive adjudication. MWA has seemingly ignored its obligations under 20 California law to give notice of this new adjudication, which seems to be par for the course for 21 MWA. This is fatally defective, and for this reason as well, the Court should deny this motion.

Fourth, and finally, the FAC is also futile because the water underlying the SMR Property
is hydrologically disconnected from the rest of the Mojave Basin area, and therefore is not subject
to the Judgment. For this reason, too, the FAC is fatally defective and the motion should be denied.

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II. FACTUAL AND PROCEDURAL HISTORY

The January 10, 1996 Judgment and Physical Solution in the *City of Barstow* action, as
 amended on December 5, 2002 ("Judgment") apportioned water in the Mojave Basin, without first
 determining the legal rights or priorities of water users, and provided a physical solution for the
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1 Mojave Basin.¹ Before the Judgment was entered and the physical solution imposed, MWA 2 dismissed the previous owner of the SMR Property,² Curt Jahnke and Ace Exploration & Water 3 Drilling Company (collectively, "Ace"). Accordingly, Ace had no opportunity to participate in the 4 drafting of the Judgment and physical solution, and was never made a party to the Judgment and 5 physical solution. As MWA concedes, Ace, and then SMR after it acquired the SMR Property in 6 2017, continued to pump groundwater on the SMR Property for decades after the Judgment was 7 entered, without being subject to the Judgment and physical solution, and until recently without 8 any action from MWA, which supposedly serves as the Watermaster for the basin.

9 Nearly three decades later, in October of 2022, MWA filed this new lawsuit. Although 10 MWA knew of Ace and the pumping at the SMR Property at the time it filed this new lawsuit, 11 MWA did not name SMR as a defendant in its complaint. Instead, in August of 2023, MWA filed 12 an amendment to the complaint, naming SMR as a previously unknown "Doe" defendant, Doe No. 13 55. This Doe amendment was a sham, because MWA knew full well at the time it filed this lawsuit 14 that there was pumping at the SMR Property based on its experience with Ace. MWA did not serve 15 SMR with this Doe amendment, and MWA now readily admits that it knew of SMR's identity at 16 that time, and that the "Doe" amendment was improper. MWA has now remedied that error by 17 dismissing the Doe amendment, which it did in March of 2024.

In October of 2023, without notice or service of process on SMR, MWA filed a motion
requesting that this Court make SMR a party to this new lawsuit. SMR discovered MWA's October
2023 motion based on its own independent research, and was never served or provided notice by
MWA. Still without serving or notifying SMR, MWA unilaterally set a hearing date of
December 7, 2023 to address this October 2023 motion.

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² The SMR Property refers to that 631-acre piece of property located on the Northeast side of the Harper Dry Lake basin, just to the south of Black Mountain.

SMR'S OPPOSITION TO MWA'S MOTION TO FILE FIRST AMENDED COMPLAINT

 ¹ MWA requests judicial notice of certain portions of the Judgment. This request cannot and does not extend to the truth of the Judgment's statements nor the legal interpretation of the Judgment's terms as those are subject to dispute and different interpretations. (See, e.g., *Scott v. JP Morgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 760-761 [holding that if information is reasonably disputed by the parties, it is not subject to judicial notice]; *L.B. Research & Education Foundation v. UCLA Foundation* (2005) 130 Cal.App.4th 171, 180 fn.2 [holding information is not subject to judicial notice where it is subject to interpretation].)
 ² The SMR Property refers to that 631-acre piece of property located on the Northeast side of the

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On November 2, 2023, SMR filed a motion in the *City of Barstow* action, wherein it asked this Court to interpret the Judgment to exclude the groundwater underlying the SMR Property from 3 the Judgment because said water is "Supplemental Water" as defined in the Judgment ("SMR 4 Motion"). This Court recently denied the SMR Motion, but seemingly invited SMR to address this 5 issue of whether the water under its property is "supplemental" via a declaratory relief action. As 6 for initiating a new declaratory relief action, SMR is considering its options at this point.

7 Following a meet and confer amongst the parties, both the October 2023 MWA motion and 8 the SMR Motion were consolidated and set to be heard by this Court on February 7, 2024. On 9 January 31st, a mere five business days before the hearing, MWA attempted, in its reply briefing 10 and without a noticed motion, to request leave to file its FAC. The Court properly declined to grant such procedurally improper relief which denied SMR the opportunity to brief this issue. At the 11 February 7th hearing, the Court denied MWA's October 2023 motion. 12

13 On February 13, 2024, MWA served SMR with its request for dismissal as to SMR "as Doe 14 Defenant [sic] 55 only." On March 6, 2024, MWA filed its instant motion, and a hearing is set to proceed on April 15th for the relief requested. 15

16 III. LEGAL STANDARD

SMR agrees that Code of Civil Procedure sections 473³ and 576 govern MWA's motion 17 18 and request to file the FAC. MWA no longer has the right to amend its complaint as a matter of 19 course, and MWA's operative pleading can only be amended by order of this Court.

20 As stated explicitly in Section 473, the Court "may," in its "discretion," permit an 21 amendment such as that considered here. The "liberal policy" of permitting amendments as 22 referenced by MWA (see Mot. at pp. 11-12) is not without limitation or qualification; for example, 23 a proposed amendment should be timely made. (Morgan v. Superior Court of Cal. In and For Los 24 Angeles County (1959) 172 Cal. App.2d 527, 530.) Indeed, "the trial court has wide discretion in

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³ Subsection (a)(1) states in full: "The court may, in furtherance of justice, and on any terms as may 26 be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; 27 and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its

discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be 28 made after the time limited by this code."

1 determining whether to allow the amendment, but the appropriate exercise of that discretion 2 requires the trial court to consider a number of factors: 'including the conduct of the moving party 3 and the belated presentation of the amendment. [Citation.] ... The law is well settled that a long 4 deferred presentation of the proposed amendment without a showing of excuse for the delay is itself 5 a significant factor to uphold the trial court's denial of the amendment. [Citation.]." (Leader v. Health Industries of America, Inc. (2001) 89 Cal.App.4th 603, 613 [citations omitted] [alterations and italics in original].) "[U]nwarranted delay in presenting it may—of itself—be a valid reason for denial." (Ibid. [citing Roemer v. Retail Credit Co. (1975) 44 Cal.App.3d 926, 939-940; see also Rainer v. Buena Community Memorial Hosp. (1971) 18 Cal.App.3d 240, 258 ["A long, unexcused delay may be the basis for denying permission to amend pleadings."].) Courts are understandably suspicious of a party's belated claim of new allegations where that party has had unrestricted access to the facts, presumptive knowledge of what occurred, and several opportunities to present the correct facts. (Roemer v. Retail Credit Corp. (1975) 44 Cal.App.3d 926, 939; Am. Advert. & Sales 14 Co. v. Mid-W. Transp. (1984) 152 Cal. App. 3d 875, 879.)

15 Also under "Code of Civil Procedure section 473, subdivision (a)(1), a court has ample 16 discretion to deny a motion for leave to amend where a proposed amendment is legally futile." (Jo 17 Redland Trust, U.A.S. 4-6-05 v. CITI Bank, N.A. (2023) 92 Cal.App.5th 142, 161; Vaillatte v. 18 Fireman's Fund Ins. Co. (1993) 18 Cal.App.4th 680, 685 ["leave to amend should not be granted where, in all probability, amendment would be futile"].) Similarly, an incurable defect in the 19 20 pleading will also merit against permitting amendment. (Ion Equipment Corp. v. Nelson (1980) 21 110 Cal.App.3d 868, 878 ["The right to amend is not unqualified. If a party has had several chances 22 to amend a defective pleading and fails to do so [citation], or if the defect is not curable by 23 amendment [citation], the court may grant the motion for judgment on the pleadings." [citations 24 omitted]].)

25 IV. LEGAL ARGUMENT

MWA's motion should be denied for multiple independent reasons. First, MWA has known about its potential claims concerning the SMR Property *since 1996*, and has repeatedly failed to seek leave to amend its complaint in the new lawsuit since it was first filed in August 2022, over 1 twenty months ago. It is only now, after MWA's improper attempts to bring SMR in as a defendant 2 without actually giving SMR notice, that MWA seeks to add SMR via a proper noticed motion 3 procedure. MWA should not be rewarded for finally doing what is right after getting caught 4 multiple times doing what was wrong. Second, the FAC, and this entire new lawsuit, is futile 5 because it seeks to impose the Judgment and physical solution in the *City of Barstow* action upon 6 SMR, a non-stipulating party, which as a matter of law MWA cannot do. Third, the FAC fails to 7 comply with SGMA and the Streamlined Adjudication Act, and for this reason is also fatally 8 defective. Fourth, the FAC is futile because the water underlying the SMR Property is 9 "Supplemental Water" under the Judgment. For all of these reasons, the motion should be denied.

A. <u>MWA's Substantial Delays and Improper Tactics Justify a Denial of this</u> <u>Motion for Leave</u>

The *Leader* case exemplifies the fact-specific inquiry used to determine whether a dilatory amendment is appropriate, including the analysis of both (1) the belated presentment of the amendment, and (2) the conduct of the moving party. (*Leader*, 89 Cal.App.4th at p. 613.) MWA has delayed for decades in bringing in the owner of the SMR Property.

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1. <u>MWA Has Known of the SMR Property for Nearly Thirty Years, and</u> <u>MWA Knew SMR Was a Property Owner and Groundwater Pumper at the</u> <u>Time MWA Initially Filed its Complaint</u>

18 MWA argues that it filed "this action, and specifically named as defendants therein various 19 persons known to be either producing in the Mojave Basin Area more than 10 acre-feet of 20 groundwater annually, or utilizing groundwater for the unlawful cultivation of cannabis." (Mot. 21 at p. 6.) But MWA seemingly cherry-picked which "known" persons to include and which to 22 selectively exclude when it filed the complaint in this action. MWA knew that there has been 23 pumping of groundwater on the SMR Property since at least 1996, under the prior ownership of 24 Ace. (Mot. at p. 8.) MWA voluntarily dismissed Ace from the *City of Barstow* action. That was 25 MWA's right, because as Cross-Complainant, MWA is the master of its pleading. But in doing so, 26 MWA allowed a Judgment and physical solution to be entered by the Court in which it knew full 27 well that there was a pumper who was extracting more than 10 acre-feet per year within the 28 adjudicated area—Ace. MWA knew this was happening, and it purposefully excluded Ace from - 10 -31057.00001\42016352.3

the negotiations of the physical solution. Despite MWA's knowledge of the groundwater under the SMR Property being pumped without being subject to the Judgment, MWA did not take any action, and allowed that water to be pumped (again, without being subject to the Judgment) for decades. Now, in the face of MWA's admitted knowledge of Ace and the pumping on the SMR

Property, MWA failed to include SMR in its initial complaint in this new action, which MWA filed twenty months ago, on October 5, 2022. MWA concedes this fact readily, as it must. (Mot. at p. 6 ["[P]laintiff was aware of SMR's identity and groundwater production prior to October 5, 2022 (when the original complaint in this action was filed)."].) This, of course, makes the Doe Amendment No. 55 a sham, which MWA tries to justify by claiming that it made a "mistake" in naming SMR as a Doe. That is truly unbelievable. MWA did not make a "mistake"; rather, they tried to sneak SMR in to this new lawsuit as a Doe defendant, seemingly in the hopes that its now regretful decision to dismiss Ace would not come back to haunt them. Unfortunately for MWA, SMR and its legal counsel were paying attention.

2. <u>MWA Has Denied SMR its Due Process Rights and Has Repeatedly</u> <u>Attempted to Block SMR From Fairly Representing Itself in This Action</u>

16 MWA's conduct is a further reason to deny the motion. In its motion, MWA 17 mischaracterizes what it has done in this case. As briefed previously,⁴ MWA attempted to bring 18 SMR into this case without notice and without service of process on at least two separate occasions, 19 and in a third instance, MWA failed to follow proper procedure that would have provided SMR 20 with notice and a chance to brief the issues presented. MWA's poor conduct is relevant to this 21 Court's consideration, and further merits denial of the Motion. 22 First, MWA filed a Doe amendment in August 2023 to include SMR in its complaint, but 23 did not serve or provide notice of the amendment to SMR. As stated in SMR's opposition to

- 24 MWA's prior October 2023 motion to add SMR as a defendant:
- 25 26
- According to the Court's docket in this case, on August 1, 2023, MWA filed a Doe amendment to the complaint and named SMR as a Doe defendant, or more specifically Doe 55. But while counsel for

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 ⁴ See SMR Opposition to MWA Motion in this San Bernardino Action, filed on January 25, 2024 ("Opposition" or "Opp."); see also SMR's Reply to MWA Opposition in the Riverside Action, filed on January 31, 2024, at pp. 8-9.

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SMR recently agreed in November 2023 to accept service of process on behalf of SMR, at no time has MWA's counsel served on SMR's a summons indicating SMR's status as a Doe defendant. Rather, MWA provided SMR with an October 5, 2022 summons that does not identify SMR. SMR's counsel only discovered MWA's Doe amendment through independent research of the Court docket.

(Opp. at p. 4 [citations omitted].) Finally, in February 2024, MWA was forced to admit that its "Doe" amendment was improper, and again, MWA chalked it up to a simple "mistake." But if it was a mere mistake, and not gamesmanship, then why did MWA not serve this "Doe" amendment on SMR, so that this "mistake" could have been quickly discovered and remedied? MWA filed a sham Doe amendment, and hid that from SMR.

Second, MWA again never served or provided notice to SMR when, "on October 22, 2023, plaintiff filed a motion for leave to add SMR as an additional, specifically named defendant in the San Bernardino action." (Mot. at p. 6.) Worse, MWA then (still without notice or service upon SMR) unilaterally set a hearing of December 7, 2023 for that motion.⁵ Solely because of its own independent research, SMR discovered that this new lawsuit even existed, and that MWA was attempting to make SMR a party to this new case without even giving notice to SMR. SMR conferred with MWA in good faith, and ultimately was able to reach agreement with MWA to receive service of the October 2023 motion and set a consolidated February 7, 2024 hearing. But once again, MWA was exposed for "blind-siding" a party, and trying to bring SMR into this lawsuit without affording even a shred of due process rights.

Finally, shortly before the February 7, 2024 hearing, MWA attempted to file the FAC with its reply papers. On January 31, 2024, in its purported "reply" to SMR's opposition to MWA's October 2023 motion, MWA attempted to request leave to file the FAC, and for the first time it filed a proposed amended pleading. For the reasons set forth in SMR's objection to MWA's purported "reply," dated February 2nd, and the reasons stated by the Court in the February 7th hearing, that approach was improper and prejudicial to SMR, and the Court appropriately denied MWA's improper request.

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 ⁵ In this October 2023 motion, MWA sought far more than just adding SMR as a defendant—it also addressed many of the same arguments raised by SMR in the *City of Barstow* action, including MWA's argument that SMR's water is not "Supplemental Water" as defined by the Judgment.

Each of these three instances demonstrate that MWA's actions have all been made with the intent to sweep SMR into this lawsuit and subject it to the existing Judgment and physical solution, and in doing so to deprive SMR of its due process rights. MWA obviously regrets having dismissed Ace back in 1996. But MWA cannot "fix" this by trying to bring Ace's successor into the new lawsuit without affording due process. The Court has discretion to deny this motion, and it should do so in the face of MWA's repeated, and egregious, misconduct.

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3. <u>There is No Excuse for MWA's Delayed Amendment</u>

8 MWA's "Reason request to amend was not made earlier" is a mere 14 lines—one 9 paragraph—and it fails to adequately provide justification for its egregious delay. (Mot. at p. 10.) 10 MWA appears to blame SMR for MWA's own failures, arguing that "The request [to file the FAC] 11 was not made earlier because SMR's owners claimed the groundwater beneath SMR's property is 12 'supplemental' water." (Mot. at p. 10.) This argument is nonsense. MWA is the master of its 13 pleading. It always has been and always will be. MWA has known of the pumping on this property 14 for decades, and there is nobody to blame for MWA not trying to make the owner of this property 15 a party sooner but MWA itself. MWA and its legal counsel are entirely to blame here, and they 16 cannot be saved by a claim of inexcusable neglect. (See Leader, 89 Cal.App.4th at p. 616 ["Attorney 17 conduct constituting inexcusable neglect (here including a deliberate decision not to attempt to 18 timely file amended *allegations* due solely to the temporary absence of supporting *evidence*) would 19 generally doom to failure any motion for leave to amend under 473, subdivision (a) ..."].).

20 In all, MWA has known since 1996 that there has been pumping on the SMR Property that 21 has been in excess of 10 acre-feet per year. Despite this knowledge, MWA made the decision to 22 dismiss Ace from the *City of Barstow* action, and then when MWA filed a new action to try to bring 23 in other pumpers who are not parties to the Judgment, MWA made the decision to exclude SMR as 24 a named defendant, then filed a sham "Doe" amendment purporting to name SMR as Doe No. 55, 25 then filed but did not serve a motion to add SMR, and then filed an attempted amended complaint 26 via reply briefing. So the list goes on. Only now, when its improper conduct has been exposed, 27 does MWA file this motion for leave to amend. In light of these circumstances, and for the 28 substantive reasons discussed herein, the Court should deny this motion.

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B.

<u>The Court Should Further Deny this Motion for Leave Because the Proposed</u> <u>FAC is Futile; MWA Cannot Impose The Existing Judgment and Physical</u> <u>Solution on SMR or any Other Non-Stipulating Party</u>

MWA's motion is just the first step in MWA's attempt to force SMR to become subject to the Judgment's physical solution. The Court should deny leave to amend, and cut this off now, because MWA's attempt is futile.

The California Supreme Court has analyzed the same Judgment and physical solution that 6 MWA would seek to force upon SMR and others, and has determined that because this physical 7 solution is based only on equitable principals, and not an actual determination of the parties' water 8 rights, *it cannot be imposed on non-stipulating parties.* (*City of Barstow, supra*, 23 Cal.4th at pp. 9 1236-1238.) As noted above, the Judgment was entered into via stipulation, and it did not determine 10 the stipulating parties' water rights. While over 200 parties stipulated to the Judgment, several 11 others declined and went to trial to determine those parties' water rights. (Id. at p. 1236 ["The trial 12 court entered an interlocutory judgment imposing the physical solution on the stipulating parties. 13 It then held a trial to adjudicate the individual rights of the nonstipulating parties ..."].) The 14 California Supreme Court subsequently held that courts cannot "allocate water based entirely on 15 equitable principles," rather, the Judgment could not stand against parties with overlying water 16 rights (such as the Cardozos) who contested the Judgment. (Id. at p. 1252; see also ibid. ["Thus, 17 we protect the rights of the Cardozo Appellants while also respecting the rights of the stipulating 18 parties to agree to a judgment which waives or alters their water rights in a manner which they 19 believe to be in their best interest."].)⁶ This is a key holding of the *City of Barstow* case—that water 20 rights must be determined before any involuntary imposition of a physical solution—and is 21 repeated throughout the opinion. (See, e.g., id. at pp. 1224-1225, 1235, 1236-1238, 1241 [no party 22 to the Judgment attempted to prove up a prescriptive right], 1251.) 23

Further, the Supreme Court quoted the Court of Appeal decision, which questioned the legality of the physical solution. While the Court of Appeal agreed with the Cardozo Appellants

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⁶ The Judgment itself reflects this same understanding, clarifying that non-stipulating parties had the opportunity to fully and fairly litigate their water rights. (Judgment at p. 3, § (II)(A)(1)(b) ["All named Parties who have not been dismissed have appeared herein or have been given adequate opportunity to appear herein."].)

in doubting the legal propriety of some aspects of the physical solution, it stopped short of reversing 2 the entire Judgment without regard to the rights of the stipulating parties. The Court of Appeal 3 explained: "While we share the Cardozo Appellants' doubts as to the legal propriety of various 4 aspects of the trial court's physical solution, such as allowing transfer of water produced in 5 accordance with riparian or overlying rights to nonriparian or nonoverlying lands, we do not need 6 to consider those aspects of the physical solution. We see no reason why the parties cannot stipulate 7 to a judgment incorporating the physical solution, nor do we see any reason why a stipulated 8 judgment entered into by a large number of water producers in the Mojave Basin should be totally 9 reversed when the rights of the Cardozo Appellants can be fully protected by appropriate trial court 10 orders on remand. [Citations.] ... [¶] Thus, we protect the rights of the Cardozo Appellants while 11 also respecting the rights of the stipulating parties to agree to a judgment which waives or alters 12 their water rights in a manner which they believe to be in their best interest." (City of Barstow, 13 *supra*, 23 Cal.4th at p. 1252.)

14 In all, the Supreme Court essentially found that while parties can stipulate and agree to an 15 equitable apportionment of water, those who do not stipulate cannot be forced to abide by a physical 16 solution to which they do not agree. Therefore, it was error, said the Supreme Court, to "disregard 17 legal water rights in order to apportion on an equitable basis. ..." (City of Barstow, supra, 23 Cal.4th 18 at pp. 1239-1240.) This holding—that a physical solution must take into account the priorities of 19 water rights, and may not be applied in a way that vested rights are eliminated—has been reiterated 20 in numerous other cases. (See, e.g., Peabody v. City of Vallejo (1935) 2 Cal.2d 351; Rancho Santa 21 Margarita v. Vail (1938) 11 Cal.2d 501; California Water Service Company, et al. v. Edward 22 Sidebotham & Son, et al. (1994) 224 Cal.App.2d 715, 724 ["As the stipulation of the other parties 23 concerning the reduction in pumping is not binding on Hawthorne, its rights in relation to the other 24 producers must be determined as if there had been no agreement."].)

25 Accordingly, and as relevant here, the Judgment can only enjoin and otherwise control 26 pumping by those parties who agreed to the Judgment by stipulation, or parties who were defaulted. 27 SMR's position is analogous to that of the Cardozo Appellants identified above: because SMR does

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1 not stipulate to the Judgment (just as the Cardozos did not stipulate), the Judgment cannot restrict 2 SMR's pumping (just as the Supreme Court found it to not restrict the Cardozo's pumping).

3 SMR has a priority overlying right and has not and will not stipulate to the Judgment. Nor 4 did SMR's predecessor and prior owner of the SMR Property, Ace, stipulate to the Judgment. 5 Indeed, Ace was dismissed from the case, so it never had a chance to stipulate, or to try to advocate 6 for terms that would be beneficial to it. And because SMR does not stipulate to the Judgment, it cannot be forced to comply with the Judgment absent a full trial of the water rights of *everyone* 8 who is using water within the so-called Mojave Basin. So unless MWA wants to completely scrap 9 the Judgment, and start everything over from scratch, it cannot do what it now purports to do, which 10 is to bind SMR and control its pumping. The FAC, as proposed, is fatally defective, and it would be futile to allow MWA to proceed. The motion should be denied.

C. The Court Should Further Deny this Motion for Leave Because the Proposed FAC is Futile insofar as it Fails to Comply with Applicable Statutory Law

1. The FAC Does Not Comply with SGMA and the Streamlined Adjudication Act

16 In 2014, the California Legislature enacted SGMA to protect the state's groundwater basins. 17 One year later, the Legislature enacted the Streamlined Adjudication Act at Code of Civil Procedure 18 Section 830 et seq. to complement SGMA by establishing new civil procedures for the initiation 19 and judicial management of groundwater basin adjudications. The complaint in this case was filed 20 in October 2022, after both SGMA and the Streamlined Adjudication Act were enacted into law. 21 As such, these statutes are applicable, and the procedures set forth therein must be followed. The 22 proposed FAC contains a single cause of action seeking a "Comprehensive Adjudication and Physical Solution" of the Mojave Basin, a groundwater basin. (Code Civ. Proc. § 832) 23 24 ["Comprehensive adjudication" means an action filed in superior court to comprehensively 25 determine rights to extract groundwater in a basin.].) In comparison, the Judgment was entered 26 prior to SGMA and the Streamlined Adjudication Act. Therefore, while the *City of Barstow* action, 27 28

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and the existing Judgment and physical solution, are not subject to SGMA⁷ and the Streamlined Adjudication Act, this new lawsuit that MWA filed in 2022 is. Accordingly, MWA's complaint in this new lawsuit must comply with SGMA and the Streamlined Adjudication Act. It does not.

For example, under the Streamlined Adjudication Act, after initiating a comprehensive adjudication, it would be the plaintiff's—MWA's—duty to serve the complaint on numerous parties, including numerous state entities (the Attorney General, the Department of Water Resources, etc.) and local entities (public water systems, etc.). (Code Civ. Proc., § 835.) This, MWA has not done. Further, in filing the complaint, the plaintiff—MWA—must file additional notice language with the Court for review and approval, and then subsequently deliver that notice 10 to interested persons. (Code Civ. Proc., § 836.) This, too, MWA has not done. The examples of MWA's failed compliance with the Streamlined Adjudication Act are plentiful. MWA's FAC is therefore defective for this additional reason that it does not comply with all applicable law.

> 2. MWA Misinterprets the Mojave Water Agency Law and the Judgment, Neither of Which Save Its Request at This Late Hour

15 The Mojave Water Agency Law cited by MWA does not include any affirmative ability of 16 MWA to add SMR as a party to *this* Action, and at *this* stage. (Mot. at p. 4.) The Mojave Water 17 Agency Law quoted by MWA includes several references to "the adjudication." (See Mot. at p. 4.) 18 That referenced "adjudication," singular, is in the *City of Barstow* action, not the instant case, as it 19 is the *City of Barstow* action that is "an adjudication of substantially all of the rights of whatever nature to extract water from any of the groundwater basins or ... affecting the water supply within 20 21 the Mojave Water Agency." (Ibid. [quoting Mojave Water Agency Law]; see also Judgment at 22 p. 3, § (II)(A)(1)(a) ["This Judgment constitutes an adjudication of water rights of the Mojave Basin 23 Area pursuant to Section 37 of Chapter 2146 of Statutes of 1959 ("the MWA Act")."].) Indeed, 24 none of the parties to the Judgment in the City of Barstow action are parties to this new lawsuit, 25 which MWA admits. This new action only covers certain pumpers—primarily, the unlawful

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SMR'S OPPOSITION TO MWA'S MOTION TO FILE FIRST AMENDED COMPLAINT

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²⁷ ⁷ Water Code section 10720.8, subdivision (e), makes clear that the Mojave Basin Area is only excluded from SGMA's requirements to the extent it "has determined the rights to extract 28 groundwater." (Wat. Code, § 10720.8, subd. (e).) Because SMR's rights to extract groundwater have not been determined, SGMA applies to SMR and many other parties in the Mojave Basin area.

cultivation of cannabis which had expanded in recent years—who were not previously included in the City of Barstow action and not subject to the Judgment and physical solution. (Mot. at p. 6.) Accordingly, the Mojave Water Agency Law addresses MWA's powers to initiate and adjudicate the *City of Barstow* action, and does not provide a basis to bring this new action.

MWA also misinterprets relevant provisions of the Judgment. MWA's primary interpretation of the Judgment asserts "that persons determined to be producing more than 10 acrefeet of groundwater annually shall be made parties to the Mojave Basin Area groundwater *adjudication*..." (Mot. at p. 7 [emphasis added].) Once again, that adjudication (referenced with a singular "the") is the *City of Barstow* action, not this action. There is no language in the Judgment 10 demanding that SMR, or any defendant or person alleged to produce more than 10 acre-feet of groundwater annually, should be made party to this action.

12 Moreover, the Judgment does not, as MWA asserts, "provide[] that any person producing 13 more than 10 acre feet of groundwater annually 'shall' be made subject to the groundwater 14 adjudication. . ." (Mot. at p. 5.) Rather, the Judgment provides that "[a]ny Minimal Producer 15 whose Annual Production exceeds ten (10) acre-feet in an Year following the date of entry of 16 Judgment shall be made a Party pursuant to Paragraph 12 and shall be subject to" certain 17 assessments. Paragraph 12 states that "Watermaster shall bring an action or a motion to enjoin any 18 Production that is not pursuant to the terms of this judgment." (Judgment at p. 21, ¶ 12.) MWA 19 has not sought such a motion against SMR.

20 Further, the Judgment defines "Minimal Producer" as "Any Person whose Base Annual 21 Production, as verified by MWA is not greater than ten (10) acre-feet. A Person designated as a 22 Minimal Producer whose Annual Production exceeds ten (10) acre-feet in any Year following the 23 date of entry of Judgment is no longer a Minimal Producer." (Judgment at pp. 9-10, § II(A)(4)(q).) 24 In turn, "Base Annual Production" is a term associated with each "Producer," and "Producer" is "A 25 Person, *other than a Minimal Producer*, who Produces water." (Judgment at p. 11, § II(A)(4)(y) 26 [emphasis added].) In all, for the Judgment to provide authority for MWA to bring in SMR to the 27 City of Barstow action (and not this Action), at a minimum MWA would have to verify SMR's 28 Base Annual Production. That, once more, MWA has not done. Indeed, its FAC alleges only that - 18 -

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SMR "produces more than 10 acre-feet of groundwater annually."⁸ (FAC at ¶ 34(as).) That number
 is not sufficiently definitive to be a "Base Annual Production."

Accordingly, MWA's argument that "ALL persons" "shall be made a party" to this action is simply incorrect. (Mot. at p. 5.) None of the quoted provisions from either the Mojave Agency Water Law or the Judgment provide MWA with the authority to bring SMR into this separate action.

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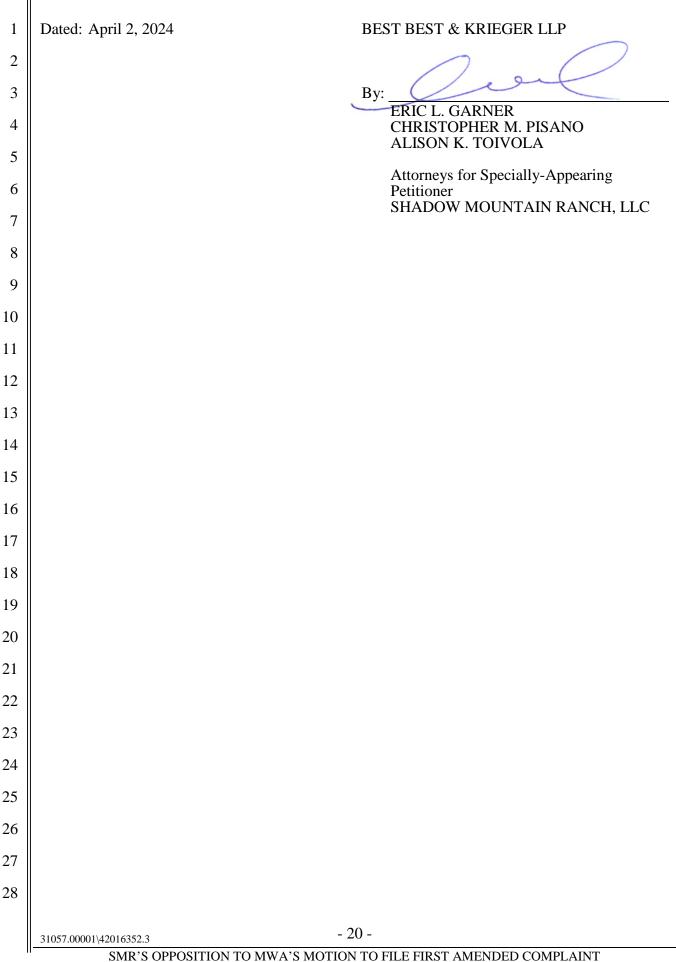
D. <u>The Motion Disregards the Hydrologic Disconnect Between the SMR</u> <u>Property and the Rest of the Mojave Basin, Which Disconnect Renders the</u> <u>FAC Futile, Further Meriting Denial of the Motion</u>

9 Both the shallow and deep groundwater aquifers underlying the SMR Property are 10 hydrologically disconnected from the rest of the Mojave Basin area, and therefore constitute 11 "Supplemental Water" according to the Judgment. (See Declaration of Tony Morgan, filed on 12 November 6, 2023 in the Riverside Action, at p. 4, ¶ 20-21.) Moreover, the deep aquifer was 13 discovered after entry of the Judgment and therefore was not included in the Judgment's definition 14 of native safe yield, and, the deep aquifer has never been pumped from the SMR Property. (Id. at 15 p. 5, ¶¶ 25-26.) None of the water sources underlying the SMR Property are subject to the 16 Judgment, and the deep aquifer, in particular, has never been put to beneficial use. MWA's FAC 17 in essence attempts to prevent SMR from using this ready source of water in a dry area that *needs* 18 water. To prevent SMR from using this water would defy the constitutional mandate of Article X, 19 section 2 of the California Constitution that water be put to reasonable and beneficial use. For this 20 reason, too, the FAC is futile and the motion should be denied. 21 V. CONCLUSION 22 For the reasons stated herein, this motion for leave should be denied. 23 ⁸ Despite the extensive factual and technical briefing which has now been ongoing since

⁸ Despite the extensive factual and technical briefing which has now been ongoing since November of 2023, MWA continues to misstate and misconstrue relevant facts. For example,
while the FAC is silent on SMR's pumping amounts, the motion itself purports that SMR produces "an estimated 1,700 acre-feet" of water from its property. (Mot. at p. 7.) On November
26 27 2023, the Declaration of Timothy Walsh that was filed concurrently with the SMR Motion stated that "SMR pumped approximately 631 AF of groundwater in the 2019-20 water year, and nearly 1,000 AF of groundwater in the 2020-21 water year." (Walsh Decl. at p. 3, ¶ 6.) There is no reason for MWA to continue to misconstrue key facts that have bene previously clarified, and

especially to leave that detail out of the FAC itself for no apparent reason. SMR reserves the right to further correct MWA as needed.

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1	PROOF OF SERVICE I, Vanessa Guillen-Becerra, declare:		
2 3	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		
4 5	address is 2855 E. Guasti Road, Suite 400, Ontario, California 91761. On April 2, 2024, I served a copy of the within document(s):		
6 7	SHADOW MOUNTAIN RANCH, LLC'S OPPOSITION TO MOJAVE WATER AGENCY'S MOTION TO FILE FIRST AMENDED COMPLAINT TO ADD SHADOW MOUNTAIN RANCH, LLC, AS A DEFENDANT		
8	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.		
9 10	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.		
11 12 13	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.		
14	by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.		
15 16 17	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.		
17 18	Please see attached Service List.		
19 20	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		
21	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.		
22 23	I declare under penalty of perjury under the laws of the State of California that the above is true and correct.		
24	Executed on April 2, 2024, at Ontario, California.		
25	<u>Vanessa Guillen-Becerra</u>		
26 27	Vanessa Guillen-Becerra		
27			
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BEST BEST & KRIEGER LLP Attornens at Law 2855 E. Guasti Road, Sutte 400 Ontario, California 91761

PROOF OF SERVICE

1	Service List		
2	In re Mojave Water Agency v. All Persons who are not Presently Parties to the Judgment San Bernardino County Superior Court, Case No. CIVSB 2218461		
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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 April 2, 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:

SHADOW MOUNTAIN RANCH, LLC'S OPPOSITION TO MOJAVE WATER AGENCY'S MOTION TO FILE FIRST AMENDED COMPLAINT TO ADD SHADOW MOUNTAIN RANCH, LLC, AS A DEFENDANT

 \underline{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 April 2, 2024 at Apple Valley, California.

Amil

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Attn: Jennifer Cutler Center Water Company P. O. Box 616 Lucerne Valley, CA 92356-0616

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Attn: Hwa-Yong Chung Chung, et al. 11446 Midway Ave. Lucerne Valley, CA 92356-8792

Conner, William H. 11535 Mint Canyon Rd. Agua Dulce, CA 91390-4577

Attn: Gwen Bartels Cross, Francis and Beverly 156 W 100 N Jerome, ID 83385-5256

Attn: Alessia Morris Crystal Lakes Property Owners Association P. O. Box 351 Yermo, CA 92398-0351

Attn: Steve and Dana Rivett Daggett Ranch, LLC P. O. Box 112 Daggett, CA 92327-0112

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Attn: Denise Courtney Desert Springs Mutual Water Company P. O. Box 396 Lucerne Valley, CA 92356-0396

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Mojave Basin Area Watermaster Service List as of April 02, 2024

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Mojave Basin Area Watermaster Service List as of April 02, 2024

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Johnson, Carlean 8626 Deep Creek Road Apple Valley, CA 92308

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Attn: Magdalena Jones (mygoldenbiz9@gmail.com) Jones Trust dated March 16, 2002 (via email) 35424 Old Woman Springs Road Lucerne Valley, CA 92356-7237

Attn: Ray Gagné Jubilee Mutual Water Company P. O. Box 1016 Lucerne Valley, CA 92356

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Attn: Nancy Lan Lake Waikiki 230 Hillcrest Drive La Puente, CA 91744-4816

Mojave Basin Area Watermaster Service List as of April 02, 2024

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Mojave Basin Area Watermaster Service List as of April 02, 2024

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Mojave Basin Area Watermaster Service List as of April 02, 2024

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