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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF RIVERSIDE

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

JCCP5265
CIV208568 (Lead Case Number)

12 MOJAVE BASIN WATER CASES

Dept. 1, Riverside Superior Court
Hon. Harold W. Hopp, Judge Presiding

13 THE MOJAVE WATER AGENCY, AS THE
MOJAVE BASIN AREA WATERMASTER,

Case No. CIVSB 2218461

14 Plaintiff,

**DEFENDANT AND CROSS-
COMPLAINANT SHADOW
MOUNTAIN RANCH LLC'S REPLY IN
SUPPORT OF MOTION TO
BIFURCATE TRIAL AND SET THE
EARLIEST POSSIBLE TRIAL DATE**

15 v.

16 All persons who are not presently parties to the
17 comprehensive groundwater adjudication in
City of Barstow, et al., v. City of Adelanto, et
18 *al.*, Riverside Superior Court Case No.
CIV208568, and are either producing more
19 than 10 acre-feet of Basin groundwater
annually, or using Basin groundwater for
20 unlawful purposes, and Does 1 through 2,000,

Reservation ID: 313539654405
Date: April 10, 2026
Time: 1:30 p.m.
Dept.: 1

21 Defendants.

Action Filed: May 30, 1990
Trial Date: Not Set

22 SHADOW MOUNTAIN RANCH, LLC,

23 Cross-Complainant,

24 v.

25 MOJAVE WATER AGENCY, and Does 1
through 2,000,

26 Cross-Defendants.
27
28

1 **SHADOW MOUNTAIN RANCH, LLC’S REPLY IN SUPPORT OF MOTION TO**
2 **BIFURCATE TRIAL AND SET THE EARLIEST POSSIBLE TRIAL DATE**

3 Defendant and Cross-Complainant SHADOW MOUNTAIN RANCH, LLC (“SMR”)
4 respectfully submits the following reply in support of its Motion to Bifurcate Trial and Set a Trial
5 Date (“Motion”) and in response to Plaintiff and Cross-Defendant THE MOJAVE WATER
6 AGENCY, AS THE MOJAVE BASIN AREA WATERMASTER’S (“MWA”)¹ response opposing
7 the Motion (“Response”) and to S.E. Combined Services of California, Inc.’s (“S.E. Combined
8 Services”) separate response to the Motion.²

9 SMR requests a trial to determine the amount and scope of SMR’s groundwater rights in
10 the Basin and whether such groundwater is hydrologically connected to the Mojave Basin Area.
11 No party challenges that request, and a bifurcated trial on those issues should be granted. As is
12 explained in SMR’s Motion, it makes sense to bifurcate and initially try the issue of whether the
13 aquifers under SMR’s property are hydrologically disconnected because if they are, that will impact
14 a safe yield analysis, and that will impact any analysis of the parties’ correlative or other rights that
15 may occur in subsequent phases.

16 MWA does not dispute that this Court has the authority to bifurcate and set trial, and SMR’s
17 declaratory relief claim should be tried first because SMR is entitled to priority on that claim.³ (See
18 Code Civ. Proc., § 1062.3, subd. (a) [requiring that claims “shall be set for trial at the earliest
19 possible date and shall take precedence over all other cases ...”].) MWA argues only that “speedy
20 trial” was not adequately demonstrated by SMR. (Resp. at 1, 7-10.) As clearly set forth in the
21 Motion, SMR was brought into this litigation by MWA nearly four years ago, and while the Court
22 has now indicated that it intends to start the trial in the next six months, there is still no definition

23 _____
24 ¹ It bears repeating: MWA was appointed by this Court to be Watermaster and enforce the
25 Judgment, but as set forth in the pleadings, MWA is not enforcing the Judgment against SMR and
26 admits it cannot enforce the Judgment against SMR. Yet MWA is using its purported power as
27 Watermaster to force all defendants in this case, including SMR, to “prove up” their water rights;
28 a cause of action which does not exist anywhere in the law. This case should be dismissed.

² All other capitalized terms in this reply have the same meaning as defined in the Motion.

³ Oddly, the Response actually dedicates several pages to discussing how bifurcation “could”
generally proceed. (Resp. at 7-9.) But these musings are purely theoretical concepts upon which
MWA has not filed any motions or made any requests of this Court, and therefore are irrelevant to
resolution of SMR’s Motion and its discrete ask for a trial on SMR’s cross-complaint.

1 as to how the trial will be staged, and when it will end. MWA’s ongoing delays have prevented
2 and prejudiced SMR’s ability to use its water, and any further delays in resolving SMR’s cross-
3 complaint would violate the laws and public policy of this state. (Cal. Rules of Court, Standard
4 2.2, subd. (d) [“The goal of each trial court should be to process general civil cases so that all cases
5 are disposed of within two years of filing.”]; *id.* at Standard 2.1, subd. (a) [“[t]rial courts should be
6 guided by the general principle that from the commencement of litigation to its resolution, whether
7 by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery,
8 preparation, and court events is unacceptable and should be eliminated.”].) SMR has scientific
9 evidence in support of its claims that the aquifers under its property are hydrologically disconnected
10 from the Basin aquifers defined in the existing Judgment. For all of the reasons set forth in the
11 Motion, and because SMR seeks only declaratory relief here on its cross-complaint as against
12 MWA and no other party, it is entitled to a priority trial setting on its claims. (Code Civ. Proc. §
13 1062.3, subd. (a).)

14 MWA’s Response is otherwise wholly unresponsive to SMR’s Motion. This reply
15 nevertheless responds to two of the fundamentally fatal flaws in MWA’s Response. **First**, MWA
16 raises numerous arguments substantively attacking SMR’s cross-complaint as failing to state a
17 claim for declaratory relief, but these pleading challenges are not properly made now, and they are
18 irrelevant to bifurcation. These challenges may also have been waived insofar as MWA failed to
19 raise them earlier. Even if MWA could raise those arguments now (and it cannot), all fail because
20 an actual and present controversy clearly exists—especially because MWA itself initiated this
21 lawsuit as against SMR. **Second**, MWA fails to appreciate the immediate and actual controversy
22 of determining the scope of SMR’s correlative overlying groundwater rights, including the priority
23 of those rights and to whom SMR’s rights are correlative. (See *City of Barstow v. City of Adelanto*
24 (2000) 23 Cal.4th 1224 (“*City of Barstow*”).)

25 MWA continues to demonstrate a fundamental misunderstanding of the importance of
26 determining both the priority of use and the common water source of an overlying right, both of
27 which are foundational to determining SMR’s rights here. (See generally *id.*) How will MWA and
28 the parties to this case determine rights and priorities if, as MWA argues, they share a common

1 water source with the parties to the existing Judgment (who are not parties to this case)? If MWA
2 is correct and the parties overlying these Basins are all drawing from the same water source, which
3 is the same water source that the parties to the Judgment are drawing from, then who gets the first
4 priority(ies)? MWA has never explained this, nor has it explained what exactly it intends to do with
5 this case once the defendants who have appeared “prove up” their own overlying rights. Will these
6 defendants have priority over the parties to the existing Judgment, who never proved up their water
7 rights? They should, just as the Cardozo appellants did in the Supreme Court decision, but it is
8 doubtful that the parties to the existing Judgment will agree to that.

9 In addition, this reply further responds—briefly—to MWA’s inaccurate definition of
10 Supplemental Water and to the S.E. Combined Services Response.

11 **I. MWA’S DEMURRER ARGUMENTS ARE LATE, SUBSTANTIVELY WRONG,**
12 **AND MAY HAVE BEEN WAIVED**

13 SMR filed its cross-complaint on May 19, 2025. MWA filed an answer on June 3, 2025.
14 MWA did not move to strike the cross-complaint and did not demur to the cross-complaint.
15 Further, the affirmative answers raised in MWA’s answer did not challenge the cross-complaint for
16 not stating an actual and present controversy. SMR’s cross-complaint is at issue, discovery is
17 complete, and the case is ready for trial—and now MWA appears to argue, for the first time, that
18 there is no “actual and present controversy.” MWA’s arguments should have been raised at the
19 pleading stage, and it is not appropriate to raise it now. Demurrers are only intended to be filed at
20 the very beginning of a case. (*See, e.g.*, Code Civ. Proc., §§ 472, subd. (a) [“A demurrer is not
21 waived by an answer filed at the same time.”]; 430.40, subd. (a) [providing 30 days after service of
22 a cross-complaint to file a demurrer]; 387, subd. (f) [permitting demurrer of a complaint or answer
23 in intervention within 30 days of service]; 430.10 [permitting a party to “object, by demurrer or
24 answer”].) Even where demurrers are untimely, they are often considered mere days after the 30-
25 day deadline has passed—not many months after. (*See, e.g., Jackson v. Doe* (2011) 192
26 Cal.App.4th 742, 749 [considering a demurrer filed eight (8) days late].) Here, MWA filed its
27 answer nearly one year ago on June 3, 2025. Any grounds for MWA to demur to the cross-
28 complaint should have been raised then, were not raised then, and therefore have been waived.

1 The case *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, cited by MWA in its Response,
2 centered around a motion to strike a cause of action. (*Id.* at 73.) That is a wholly separate
3 procedural posture from the instant briefing—*City of Cotati* was at the beginning of the case, and
4 this case is on the eve of trial.

5 Even were the Court to consider MWA’s arguments (and it need not), it is abundantly clear
6 that an actual and present controversy exists. It is absurd for MWA to file a cause of action against
7 SMR in the first instance, and then to claim there exists no “present and actual controversy.”

8 MWA filed its FAC and sought litigation against SMR. (See Resp. at 4 [“MWA has merely
9 filed an action *to determine* SMR’s right to produce and use the groundwater beneath its Property.”]
10 [emphasis in original].) The FAC seeks a determination of SMR’s water rights in and to the Mojave
11 Basin. (FAC, ¶¶ 34(as), 39 [requesting SMR “to establish and prove-up their rights to produce or
12 use groundwater in the Mojave Basin Area, if any they have, or alternatively to stipulate to the
13 Judgment’s Physical Solution in *City of Barstow*”].) In turn, SMR’s cross-complaint generally
14 seeks declaratory relief as to the priority and scope of SMR’s groundwater rights in the Basin, and
15 a determination that the aquifers beneath its property are hydrologically disconnected from the
16 Basin. (Cross-Complaint, ¶¶ 29-64). Therefore, both MWA and SMR seek relief from this Court
17 to determine SMR’s rights in the Basin and hydrologic connectivity—and a present and actual
18 controversy exists about the priority, nature, and scope of SMR’s groundwater rights based on both
19 MWA’s FAC and SMR’s cross-complaint. MWA’s drawn-out litigation has prevented, and
20 continues to prevent, SMR from being able to reasonably and beneficially use its groundwater.
21 Therefore, a bifurcated and speedy trial would resolve this immediate dispute and should be set for
22 the earliest possible date.

23 **II. MWA MISUNDERSTANDS CORRELATIVE OVERLYING WATER RIGHTS**

24 MWA appears to imply that the Court’s inquiry ends when the parties agree SMR has an
25 overlying groundwater right. Not so.

26 SMR claims a correlative, priority overlying groundwater right. An overlying groundwater
27 right “is the owner’s right to take water from the ground underneath for use on his land within the
28 basin or watershed; it is based on the ownership of the land and is appurtenant thereto.” (*City of*

1 *Barstow, supra*, 23 Cal.4th at 1240 [citations omitted].) Importantly, “[o]ne with overlying rights
2 has rights **superior** to that of other persons who lack legal priority, but is nonetheless restricted to
3 a reasonable beneficial use.” (*Id.* [emphasis added].) “Proper overlying use ... is paramount and
4 the rights of an appropriator, being limited to the amount of the surplus [citation], must yield to that
5 of the overlying owner in the event of a shortage ...” (*Id.* at 1241 [parentheticals in original], *see*
6 *also id.* at 1243 [“overlying use is paramount ... the appropriator must yield to the rights of the ...
7 overlying owner”] [citing *Burr v. Maclay Rancho Water Co.* (1908) 154 Cal. 428, 435 and *Katz v.*
8 *Walkinshaw* (1903) 141 Cal. 116, 135], *id.* at 1245 [“Proper overlying use, however, is paramount
9 ...”] [quoting *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 925-26], *id.* at 1247
10 [“Overlying rights take priority ...”] [citing *City of Los Angeles v. City of San Fernando* (1975) 14
11 Cal.3d 199, 293.) “As between overlying owners, the rights, like those of riparians, are correlative;
12 [i.e.,] each may use only his reasonable share when water is insufficient to meet the needs of all
13 [citation].” (*Id.* at 1241 [parentheticals in original].)

14 Accordingly, and consistent with the direction of the California Supreme Court and
15 California law, SMR claims a superior overlying right which is correlative as between all other
16 overlying owners to the same water source who have established their overlying rights and is
17 superior to any appropriative water rights claims. Therefore, it is “necessary for the trial court to
18 determine whether such owners, considering all the needs of those in the particular water field, are
19 putting the waters to any reasonable beneficial uses, giving consideration to all factors involved,
20 including reasonable methods of use and reasonable methods of diversion.” (*City of Barstow,*
21 *supra*, 23 Cal.4th at 1242.) In addition, this Court will need to determine whether SMR’s water
22 source is hydrologically connected to the rest of the Basin and therefore SMR’s water rights are
23 correlative to all other overlying rights holders who share that common source of supply. The
24 priority and common source of the overlying right must be determined in order for the parameters
25 of SMR’s right to be determined. This is an immediate controversy before the Court.

26 The *City of Barstow* decision is illustrative. In *City of Barstow*, the trial court originally
27 entered a judgment and physical solution “without regard to overlying and riparian water rights
28 holders” because it concluded it was “unnecessary to adjudicate individual legal water rights.”

1 (*City of Barstow, supra*, 23 Cal.4th at 1237.) The Court of Appeal, and then the Supreme Court,
2 both agreed that it was not necessary to adjudicate individual legal water rights for stipulating
3 parties, but that for non-stipulating parties—such as the Cardozo appellants, who pursued the case
4 on appeal and ultimately “proved up” their water rights—a determination of their water rights was
5 necessary. (*Id.* at 1238-29, 1252.) The Supreme Court found that, “while the rights of all overlying
6 owners in a groundwater basin are correlative and subject to cutbacks when the basin is overdrafted,
7 overlying rights are superior to appropriative rights” and the trial court erred when it “did not
8 attempt to determine the priority of water rights, and merely allocated pumping rights based on
9 prior production.” (*Id.* at 1252.)

10 Just like the Cardozo appellants did not stipulate to the Judgment, neither does SMR.
11 Therefore, this Court must determine the scope, nature, and priority of SMR’s groundwater right,
12 and then also confirm to whom that right is correlative depending on the water source and whether
13 it is shared with other correlative overlying groundwater rights holders in the Basin who have
14 proved their overlying right.

15 Also similar to the Cardozo appellants, SMR’s rights cannot be constrained as against
16 undetermined water rights. Where, as here, MWA seeks to somehow (and still under an as-yet-
17 unidentified cause of action) regulate or limit SMR’s groundwater use, then questions of priority
18 are inherent in determining the full scope of SMR’s groundwater right—and priority is determined
19 based on who else has what type of water rights to the shared water source.

20 Again like the Cardozo appellants, SMR’s rights are superior overlying rights and cannot
21 be reduced by inferior rights, such as appropriative rights or undetermined rights. Therefore,
22 SMR’s rights cannot be limited by undetermined rights as set forth in the Judgment. The parties
23 who stipulated to the Judgment never proved up their water rights, and therefore their rights were
24 never determined; and they cannot interfere with SMR’s priority overlying groundwater rights.

25 Water is a limited resource in the Mojave area, and here, of all places, water rights are
26 meaningless without priority. The scope, nature, and priority of SMR’s groundwater rights must
27 be determined in order for SMR’s rights to be protected. And there is clearly a dispute as between
28 SMR and MWA on both SMR’s priority status and how to determine the full scope and correlative

1 nature of SMR’s water right, including which other parties share SMR’s water source as a common
2 supply.

3 **III. SUPPLEMENTAL WATER INCLUDES GROUNDWATER**

4 MWA attempts to substantively address whether SMR’s groundwater aquifers are
5 “Supplemental Water.” That is an issue that should be addressed at trial. For now, SMR provides
6 a small but important correction to MWA’s description. The term “Supplemental Water” includes
7 “water that would otherwise be lost from the Basin Area but which is captured and made available
8 for use in the Basin Area.” (Judgment, § II(A)(4)(II).) MWA implies that all “Supplemental Water”
9 must be surface water (Resp. at 6), but that is wrong. The Judgment clearly states in Section
10 II(B)(6) that “[t]he waters derived from the Mojave River and its tributaries constitute a common
11 source of supply of the five Subareas and of the Persons producing therefrom.” This language does
12 not differentiate between surface and groundwater, and therefore includes both surface and
13 groundwater sources. Thus, the general reference to “water” as used in the term “Supplemental
14 Water” would include groundwater that can be captured and made available for use in the Basin
15 Area—which includes the groundwater aquifers underlying SMR’s property.

16 **IV. S.E. COMBINED SERVICES REPLY DOES NOT OPPOSE BIFURCATION**

17 S.E. Combined Services does not oppose bifurcation of the following issues for trial as
18 between SMR and MWA only: (1) the hydrological disconnection of SMR’s groundwater aquifers
19 from the rest of the Basin, and (2) SMR’s groundwater rights within the Basin. The remaining
20 issues raised by S.E. Combined Services indeed should be resolved as against all defendants, which
21 includes: (i) this Court’s determination that the Judgment does not apply to non-stipulating parties,
22 including SMR; (ii) what are the Basin boundaries, safe yield, and existence of overdraft in this
23 new case, none of which have been determined because the Judgment does not apply here; and (iii)
24 how does MWA plan to apply priority of rights when numerous water users under the Judgment
25 have never had their water rights determined and are not party to the case here? SMR requests that
26 the issues for which S.E. Combined Services does not object, i.e., the hydrologic disconnection and
27 SMR’s groundwater rights within the Basin, should be tried first, with the remaining issues noted
28 by S.E. Combined Services to follow.

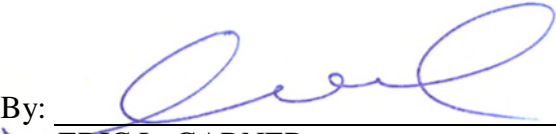
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V. CONCLUSION

Trial should be set to address whether SMR’s groundwater aquifers are hydrologically disconnected from the rest of the Basin, as well as to determine the full scope of SMR’s correlative overlying groundwater rights, including the priority of that right and to whom SMR’s right is correlated. Currently, SMR has the right—indeed, a constitutional directive—to reasonably and beneficially use these groundwater resources. (See Cal. Const. Art. X, § 2 [“requir[ing] that the water resources of the State be put to beneficial use to the fullest extent of which they are capable”].) Trial is needed to determine and permit the exercise of that right. For the reasons stated in the Motion and herein, SMR respectfully requests that the Court grant the Motion.

Dated: April 3, 2026

BEST BEST & KRIEGER LLP

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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 April 3, 2026, I served a copy of the within document(s):

DEFENDANT AND CROSS-COMPLAINANT SHADOW MOUNTAIN RANCH LLC'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO BIFURCATE TRIAL AND SET THE EARLIEST POSSIBLE TRIAL DATE


- 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 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 April 3, 2026, at Fontana, California.



Vanessa Guillen-Becerra

Service List

In re The Mojave Water Agency, as the Mojave Basin Area Watermaster v. All Persons Who are not parties to the comprehensive groundwater adjudication in the *City of Barstow, et al. v. City of Adelanto, et al., Riverside Superior Court Case No. CIV208568*, and are either producing more than 10 acre-feet of Basin groundwater annually, or using Basin groundwater for unlawful purposes, and Does 1 through 2,000

Riverside Superior Court Case No.: CIVSB 2218461 (transferred)
Mojave Basin Water Cases JCCP5265

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