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*Exempt from filing fee pursuant to
Gov't. Code Section 6103*

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11 Attorneys for Plaintiff,
12 THE MOJAVE WATER AGENCY,
13 AS THE MOJAVE BASIN AREA WATERMASTER

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SAN BERNARDINO, JUSTICE CENTER**

16 Coordination Proceeding Special Title
17 (Cal. Rules of Court, rule 3.550)

JCCP NO.: 5265
CIV208568 (LEAD CASE NUMBER)

18 MOJAVE BASIN WATER CASES

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

19 THE MOJAVE WATER AGENCY, AS
20 THE MOJAVE BASIN AREA
21 WATERMASTER,

CASE NO.: CIVSB 2218461

22 Plaintiff,

NOTICE OF RULING

23 vs.

24 All persons who are not presently parties to
25 the comprehensive groundwater
26 adjudication in the *City of Barstow, et al.*,
27 *v. City of Adelanto, et al.*, Riverside
28 Superior Court Case No. CIV 208568, 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,

Date: February 7, 2024

Time: 8:30 a.m.

Dept.: 1

RESERVATION NO.: 631960084740

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

Defendants.

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TO ALL PARTIES TO THIS ACTION AND THEIR COUNSEL OF RECORD:


PLEASE TAKE NOTICE THAT, on June 4, 2024, the Court ruled on Mojave Water Agency's Motion to Add Shadow Mountain, LLC as a defendant in this matter.

Mojave Water Agency's motion to add Shadow Mountain Ranch, LLC as a defendant is granted.

A copy of the Court's ruling is attached hereto.

Dated: June 6, 2024

BRUNICK, McELHANEY & KENNEDY PLC

By: 

William J. Brunick
Leland P. McElhaney
Attorneys for Defendant/Cross-complainant,
MOJAVE WATER AGENCY

JUN 04 2024

E. Escobedo

CM
 JUN 05 2024
 4:07 PM

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

TITLE: City of Barstow et al	v. City of Adelanto et al And Coordinated Action	DATE & DEPT. June 4, 2024	NUMBER JCCP 5265 CIVSB2218 461
COUNSEL None	None	REPORTER None	

PROCEEDING

Ruling on Submitted Matter-Motion of Mojave Water Agency to Amend Complaint to Add Shadow Mountain Ranch, LLC as a Defendant

Plaintiff Mojave Water Agency is a public agency with the authority to initiate actions to adjudicate rights to produce water in the Mojave Basin. It acts as the Watermaster in administering the judgment in this action. In August, 2022, MWA filed a complaint entitled Mojave Water Agency v. All Persons Not Presently Parties to the Comprehensive Groundwater Adjudication, CVSB2218461, to adjudicate the rights of producers in the Mojave Basin who were not parties to the earlier judgment in this JCCP coordinated proceeding.

Shadow Mountain Ranch, LLC is not a party to the original action. It is alleged to be a producer of water in the Mojave Basin. MWA filed a Doe amendment naming SMR, but when it realized that it was aware of SMR's identity when it filed the complaint, it dismissed the Doe amendment without prejudice. It now moves to amend the complaint to add SMR as a defendant. SMR appears specially to oppose the motion.

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading." *Cal. Civ. Proc. Code* § 473(a). "The policy favoring amendment is so strong that it is a rare case in which denial of leave to amend can be justified." *Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428. Where the proposed amendment would result in little or no prejudice to the opposing party, the "liberal rule of allowance prevails." *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564. Denial is only appropriate when "inexcusable delay and probable prejudice to the opposing party" is shown." *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 487; *Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486. Prejudice, in this context, would be a lack of opportunity to defend against the new allegations. *Trafton v. Youngblood* (1968) 69 Cal.2d 17, 31-32 (purported amendment would have substantially prejudiced plaintiff "who had no opportunity to offer evidence on such issue during the trial").

HAROLD W. HOPP, Judge

E. Escobedo (vis), Clerk

Here there is no trial date and little discovery has been taken. The proposed amendment would not significantly affect the scope of the issues in this litigation and so it is difficult to see what prejudice would come to SMR from the amendment, other than having to defend the action, which is not the type of prejudice that would justify denial of leave to amend.

Shadow Mountain points to the long delay between the Agency's purported discovery of the production of the water and the filing of the amended complaint. But circumstances under which water rights can be acquired prescriptively are narrow¹ and there is no reason to believe that they apply here; the issue here is the correlative and competing rights to water in an area of overproduction. See *Tehachapi-Cummings County Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 1001 ("As between overlying owners, the rights, like those of riparians, are correlative, i.e., they are mutual and reciprocal. This means that each has a common right to take all that he can beneficially use on his land if the quantity is sufficient; if the quantity is insufficient, each is limited to his proportionate fair share of the total amount available based upon his reasonable need"). This is always going to be adjudicable, whether it is brought in this case or filed separately and then later coordinated with the existing cases here. This, of course, does not deny SMR the opportunity to allege as an affirmative defense MVA's delay in bringing the action against it.

SMR argues that it has been denied some kind of due process right by "attempt[ing] to bring SMR into this case without notice" and by failing to provide Shadow Mountain with notice. Although in certain circumstances, such as a claim against a public entity or a medical malpractice claim, pre-filing notice is required,² in general there is no right to be told in advance that you will be sued and the Court is unaware of any case holding that due process requires an opportunity to argue in court whether a complaint naming a party as a defendant may be filed or not. Significantly, section A.2 of the opposition brief does not cite even one case to support SMR's contention that it has somehow been denied due process. Moreover, if SMR had the right to be heard before the amendment of the complaint to add it as a defendant, it has been heard.

Next, SMR contends that the proposed FAC is futile because the physical solution of the judgment in the City of Barstow case that is part of the coordinated proceeding cannot be imposed on it. But this misunderstands what the proposed FAC seeks, which is that: "this court should require the defendants named or identified herein to establish and prove-up their rights to produce or use groundwater in the Mojave Basin Area, if any they have, or alternatively to stipulate to the Judgment's Physical Solution in *City of Barstow*; to cease and desist from any use of groundwater in the Mojave Basin that is not lawful, reasonable and beneficial, and is not consistent with the provisions of the Judgment and the need to manage the limited groundwater in the Mojave Basin Area in a way that is sustainable; and, to those ends and for those purposes, to be subject to Administrative, Replacement Water, Makeup Water and Biological Resources Assessments, as defined below." (Proposed FAC, ¶39.) SMR will, in other words, have a full opportunity to litigate whether it will be subject to a judgment in this case.

¹ See, e.g., *Brewer v. Murphy* (2008) 161 Cal.App.4th 928, 936 (prescriptive easement can be created by lower riparian owner diverting water to their property in an open and notorious way).

² There are other instances in which a complaint cannot be filed without some sort of notice, such as unlawful detainer actions or actions to foreclose on a mechanics' lien.

HAROLD W. HOPP, Judge

E. Escobedo (vis), Clerk

Pages 2 of 3

It is true that SMR cannot be compelled to stipulate to the *City of Barstow* judgment and that it may assert its rights that are superior to others in the region. But this does not mean that SMR can just take as much water as it desires. It may be that SMR's use is unreasonable and it has no right to produce water, or it may be that SMR's rights are inferior to that of others in the basin, or it may be that SMR's rights are equal and must be reduced proportionally. This litigation could be the vehicle for resolving these issues.

SMR makes various arguments regarding compliance with the Sustainable Groundwater Management Act (*California Water Code* section 10720 *et seq.*) and *California Code of Civil Procedure* section 830, setting forth the procedures for comprehensive adjudication of water rights. But as argued in the reply, the Mojave Basin is expressly excluded by the SGMA. *Cal. Water Code* §10720.8(a)(10). This exclusion applies to the *area* for which the adjudication action has determined rights, not just the parties. *Cal. Water Code* §10720.8(e).

Finally, SMR contends that the motion "disregards the hydrologic disconnect between the SMR property and the rest of the Mojave Basin." (Opposition, 19:7-8 [boldface, underlining omitted].) Of course, this may well be a disputed fact that the Court cannot decide on a demurrer, let alone a motion for leave to amend the complaint. Further, at least at this point in the litigation, it is hard to see how it is relevant, even if the Court were to assume that what SMR asserts is true. It appears that MWA's jurisdiction extends to production throughout the entire geographic region, regardless of the multiple sources of water in the Mojave Basin. In any event, if this fact is of significance, SMR will have the opportunity to litigate it.

For all these reasons, the motion to file the First Amended Complaint is granted. MVA to file the FAC within 30 days.

Clerk to give notice.

HAROLD W. HOPP, Judge

E. Escobedo (vis), Clerk

Pages 3 of 3

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PROOF OF SERVICE

The Mojave Water Agency, as the Mojave Basin Area Watermaster vs. All Persons Who are not presently 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
San Bernardino Superior Court Case No.: CIVSB 2218461

Mojave Basin Water Cases JCCP5265

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 1839 Commercenter West, P.O. Box 13130, San Bernardino, California 92423-3130.

On June 6, 2024, I served the following entitled document: **NOTICE OF RULING** on the interested parties in this action in the manner described below, addressed as follows:

SEE ATTACHED FOR SERVICE LIST

XX **BY MAIL AS FOLLOWS:** 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 at San Bernardino, California 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.

 (BY OVERNIGHT COURIER SERVICE): I caused such envelopes to be delivered via overnight courier service to the addressee(s) described above.

X **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct

Executed June 6, 2024, in the City of San Bernardino, State of California.



P. Jo Anne Quihuis

SERVICE LIST

The Mojave Water Agency, as the Mojave Basin Area Watermaster vs. All Persons Who are not presently 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

San Bernardino Superior Court Case No.: CIVSB 2218461

Mojave Basin Water Cases JCCP5265

Shunxing Weng 135 W. Newmark Ave., Apt. A Monterey Park, California 91754	Defendant, In Pro Per
Jasper Young Kim 2665 Amber Wood Pl. Thousand Oaks, California 91362	Defendant, In Pro Per
Jae Hwan Lee 1520 James M. Wood Blvd. Los Angeles, California 90015	Defendant In Pro Per
Byung Koo Chin 15648 Meridian Rd. Lucerne Valley, California 92356	Defendant In Pro Per
Law Offices of Matthew C. Mullhofer, PC Matthew C. Mullhofer, Esq. 18012 Sky Park Circle, Ste. 100A Irvine, California 92614 Telephone: (714) 827-9955 Facsimile: (714) 827-9966 E-Mail: mcm@matthewcmullhofer.com	Attorneys for Defendant, Jing Chen
Cameron H. Totten Paul P. Cheng Gene S. Lizaso PPRC Law, APC 790 E. Colorado Blvd., Suite 260 Pasadena, California 91101 Tele: (626) 356-8880 Fax: (888) 231-8196 E-Mail: litigation@pprclaw.com	Attorneys for Defendant, Weilong Huang

1 **PROOF OF SERVICE**

2 *The Mojave Water Agency, as the Mojave Basin Area Watermaster vs. All Persons Who are*
3 *not presently parties to the comprehensive groundwater adjudication in the City of*
4 *Barstow, et al., v. City of Adelanto, et al., Riverside Superior Court Case No. CIV208568,*
5 *and are either producing more than 10 acre-feet of Basin groundwater annually, or using*
6 *Basin groundwater for unlawful purposes, and Does 1 through 2,000*
7 *San Bernardino Superior Court Case No.: CIVSB 2218461*

8 *Mojave Basin Water Cases JCCP5265*

9 I am employed in the County of the San Bernardino, State of California. I am over the
10 age of 18 and not a party to the within action; my business address is 1839 Commercenter
11 West, P.O. Box 13130, San Bernardino, California 92423-3130.

12 On June 6, 2024, I served the following entitled document(s): **NOTICE OF RULING**
13 on the interested parties in this action in the manner described below, addressed as follows:

14 **SEE ATTACHED SERVICE LIST**

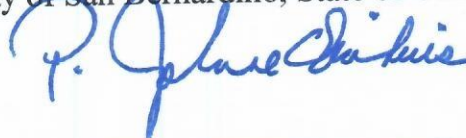
15 **BY MAIL AS FOLLOWS:** I am “readily familiar” with the firm’s practice of
16 collection and processing correspondence for mailing. Under that practice it would be
17 deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid
18 at San Bernardino, California in the ordinary course of business. I am aware that on motion
19 of the party served, service is presumed invalid if postal cancellation date or postage meter
20 date is more than one day after date of deposit for mailing in affidavit.

21 XX **BY ELECTRONIC MAIL AS FOLLOWS:** On this date, the aforesaid document
22 was transmitted by electronic mail to the person(s) whose name(s) and e-mail address are
23 listed. The transmission(s) were reported without error.

24 **(BY OVERNIGHT COURIER SERVICE):** I caused such envelopes to be delivered
25 via overnight courier service to the addressee(s) described above.

26 X **(STATE)** I declare under penalty of perjury under the laws of the State of California
27 that the above is true and correct

28 Executed June 6, 2024, in the City of San Bernardino, State of California.



P. Jo Anne Quihuis

SERVICE LIST

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Attorneys for CITY OF VICTORVILLE

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.

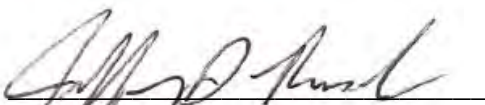
On June 6, 2024, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing 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:

NOTICE OF RULING

 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 June 6, 2024 at Apple Valley, California.



Jeffrey D. Ruesch

Mojave Basin Area Watermaster Service List as of June 06, 2024

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Attn: John McCallum
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Attn: Dwayne Oros
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Apple Valley Heights County Water District
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Apple Valley, CA 92308-0938

Attn: Matthew Schulenberg
Apple Valley Unified School District
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Attn: Emely and Joe Saltmeris
Apple Valley View Mutual Water Company
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Attn: Valeria Brown
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Attn: Catalina Fernandez-Moores
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Attn: Catalina Fernandez-Moores
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Attn: Tony Camanga
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Attn: Myron Campbell II
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Mojave Basin Area Watermaster Service List as of June 06, 2024

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San Bernardino, CA 92415-0023

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askregion6@wildlife.ca.gov;
aaron.johnson@wildlife.ca.gov)
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(alejandrav.silva@cemex.com)
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Mojave Basin Area Watermaster Service List as of June 06, 2024

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