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Order # 23761500
Submitted 9/18/2024 4:37 PM PT by Jeremiah Jones
Case CITY OF BARSTOW vs CITY OF ADELANTO
#CIV208568
Court Superior Court of California, Riverside County
(Riverside)
Client billing 11183870
Court transaction # 24RSCR00880754

Documents

- Response to RESPONSE BY NEWBERRY SPRINGS RECREATI...

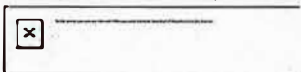
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9 Attorneys for NEWBERRY SPRINGS RECREATIONAL LAKES ASSOCIATION

10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **COUNTY OF RIVERSIDE – CENTRAL DISTRICT**

12 CITY OF BARSTOW, et al.

13 Plaintiffs,

14 vs.

15 CITY OF ADELANTO, et al.

16 Defendants,

17 AND RELATED CROSS-ACTIONS.

CASE NO: CIV 208568

18 RESPONSE BY NEWBERRY SPRINGS
19 RECREATIONAL LAKES ASSOCIATION
20 TO GOLDEN STATE WATER COMPANY'S
21 MOTION TO ENFORCE JUDGMENT;
22 DECLARATION OF DR. W. RICHARD
23 LATON, PG, CHG, SUPPORTING THE
24 RESPONSE

Hearing Information:

25 Date: October 2, 2024

26 Time: 8:30 AM

27 Dept: 1

28 Before the Hon. Craig G. Riemer, Judge

29 NEWBERRY SPRINGS RECREATIONAL LAKE ASSOCIATION, hereinafter referred
30 to solely as "NEWBERRY", responds and supports the motion of Golden State Water Company,

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1 in its effort to enforce the judgment and NEWBERRY argues in support of the position,
2 providing additional expert opinion as to its necessity, as follows:

3 **PRELIMINARY STATEMENT**

4 It should be noted that NEWBERRY does not oppose this motion, in fact, it had desired
5 (since 2021) to make such a motion itself, but only would have done so in collaboration with
6 larger stakeholders such as Golden State Water Company, which serves over 40,000
7 customers. Now that the motion has been filed by Golden State Water Company, NEWBERRY
8 submits its support and the 2021 declaration of its expert, Dr. W. Richard Laton, updated by Dr.
9 Laton, for purposes of this hearing and consideration by the Court, while also recognizing that
10 some of the elements and work recommended therein may have already been accomplished by
11 the Watermaster.
12

13
14 The intent in producing the supporting information of Dr. Laton, is to further demonstrate
15 that the motion made by Golden State Water Company is essential to ongoing Basin
16 management, and well taken as to the relief requested. The declaration of Dr. Laton was
17 originally prepared after his analysis in June of 2021. In preparing for this hearing, a supplement
18 was procured and is attached to his June 2021 declaration.¹
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23 ¹ While Watermaster Counsel may argue that Dr. Laton had previously provided work for the
24 Mojave Water Agency, with contrary findings, it should be noted that Dr. Laton has knowledge of this Basin, is not
25 adverse to challenging the science and his recommendations are not in advocacy against the Agency, they
26 underscore a need for Agency Action.
27

1 NEWBERRY and its various members are vigilant as to their specific rights and
2 obligations under the Judgment. It has participated in all aspects with the Watermaster, has kept
3 itself informed and offered input and suggestion, even if only from its lay perspective. But as a
4 water user, among other users, it is sometimes more valuable to juxtapose common sense and
5 actual experience against the science in order to challenge and find any shortcomings in the
6 scientific analysis and improve the outcomes for all users in the Basin.
7

8 **NEWBERRY'S POSITION IN SUPPORT OF GOLDEN STATE WATER COMPANY**

9 Generally speaking, NEWBERRY understands that the Judgment After Trial was a
10 compromise that was supposed to remedy a problem. At the time of the original Judgment,
11 NEWBERRY further understood that the "Transition Zone" was established as the place for Alto
12 to meet its downstream obligation to Centro according to the Judgment. The assumption was that
13 the water flowing into the Transition Zone would continue downstream to the basins of Centro
14 and Baja, by keeping the groundwater table high. The conceptual metaphor of "keeping the cup
15 full" is a simple idea. If the cup is full, then when one adds an ounce of water to the cup, then
16 an ounce of water would also spill over to the next cup. (See Illustration from - attachment B to
17 Declaration of Dr. Laton."
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20 The Cup Full concept is also referred to as the "Water Bridge". The Transition Zone has a
21 descending elevation difference from south (higher elevations) to north (lower elevations). When
22 water is added on the south side it should spill over the Helendale fault at the north end. This is
23 the issue we believe that the Golden State motion addresses; it is necessary to confirm the
24 spillover. The Watermaster appears not to have the best scientific data available when it makes
25 its annual recommendation. Based upon the ongoing decline in water levels in the wells of the
26
27

1 Golden State Water Company (despite all reduction in pumping), the projected “spill” into
2 Centro appears not to have happened.

3 NEWBERRY has always maintained the position that amount of reported water from the
4 Alto Subarea to the Transition Zone and then to Centro has not been accurately measured. It has
5 also participated in numerous meetings to bring this position to the Watermaster and its
6 Engineer. However, as a lesser stakeholder, at the bottom of the Water Bridge, or the “last cup”,
7 so to speak, its presentations and arguments have been politely regarded with no action
8 taken. NEWBERRY believes that the “economy of scale”, that of spending dollars to benefit the
9 greatest number of water users, has been the constraining factor as to its solo efforts, both from a
10 cost and benefit analysis.
11

12
13 NEWBERRY contends that the obligation to supply water to the Transition Zone was
14 clearly a vehicle or means to resolve Barstow's complaint/needs set forth in the underlying
15 action. If it were otherwise, the actual settlement would have been worthless for the downstream
16 areas and a windfall for the upper basins.
17

18 As we now have three decades of information, it appears to be the time to accurately
19 report and explain just what is happening. Numerous factors contribute to the need to ascertain
20 if the water bridge is working as intended. Issues to be addressed, from NEWBERRY'S
21 perspective include:
22

23 1. The science used was flawed, therefore the settlement is flawed and should be
24 amended.

25 2. The water level in the Transition Zone has increased but it is unknown if the
26 projected amount of water is flowing to the Centro Subbasin.
27

1 3. The settlement is being interpreted wrongly by MWA/Watermaster.

2 4. River forces have changed since the settlement.

3
4 Possible changes/forces to the Mojave River since the Judgment are:

5 1. Mojave Water Agency R3 project now pumps from the River to send water to
6 customers for a profit.

7 2. Flood control on the River and tributaries that slow storm flow and allow for more
8 water attenuation in the upper basin as was set forth and learned in the “Briefing on the Cedar
9 Springs and Forks Dam”, by Matthew Howard of the Mojave Water Agency Cedar Springs Dam
10 was built in 1971: Forks Dam was built in 1974.

11 3. Slow release of water from the Cedar Springs Dam


12 4. Overgrown channel through the Transition Zone

13 5. Climate Change

14
15 **CONCLUSION**

16
17 NEWBERRY contends that these multiple factors support the need to challenge the
18 existing scientific methodology to ascertain if it is still the best science available. As set forth in
19 the motion by Golden State Water Company and the declaration of Dr. Laton attached hereto, the
20 issue is ripe and the requested relief, if ordered, would benefit all parties.

21 Dated: September 18, 2024

22 
23 _____
24 DIANA J. CARLONI, ATTORNEY
25 FOR NEWBERRY SPRINGS
26 RECREATIONAL LAKES
27 ASSOCIATION

1 **DECLARATION OF DR. W. RICHARD LATON, PG, CHG**
2 **IN SUPPORT OF RESPONSE**

3 Supplemental Statement to my original 2021 Declaration.

4 I, Dr. W. Richard Laton, declare:

5 Since my declaration, two stream gages have been re-established and are being operated
6 at both Hodge and Daggett. Installing these stream gages was one of my original conclusions in
7 my 2021 declaration. The assessment is current as of June 2, 2021; however, a preliminary
8 review of groundwater levels indicates that the levels are still decreasing in the Centro Sub-
9 basin. Additionally, since my 2021 declaration, there have been no significant surface flows past
10 the Barstow stream gage, with the previous significant flow occurring in the 2010-2011 rainfall
11 season.
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14 I declare under penalty of perjury of the laws of the State of California that the foregoing
15 is true and correct and that I have executed this declaration on the 18th day of September 2024, at
16 Santa Ana, California.
17

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19
20 W. Richard Laton, Ph.D.

21 PG (CA, AK, AZ, IL, IN, FL, MN, NC, NY, OR, PA, TX, WA), CHG (CA, WA), CPG, EG

22 Principal Consultant, Hydrogeology
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1 I, W. Richard Laton, declare as follows:

2 1. I am the Principal Hydrogeologist and President/Owner of Earth Forensics, Inc. I am an
3 expert in the field of geology, hydrology, hydrogeology, environmental contamination, and contaminated
4 site investigations. I possess extensive knowledge and experience in the areas of hydrogeology, soil and
5 water contamination, water quality, corrective action, hydrology and surface water, site assessment, site
6 investigation, site remediation, wetlands, coastal monitoring/geomorphology, environmental field sampling
7 techniques and well hydraulics, waste management, as well as environmental remote sensing, aerial
8 photographic interpretation/analysis and geographical information system (GIS). See Appendix A:
9

10 2. My educational background that relates to this case is as follows: 1997 – Ph.D. in
11 Hydrogeology, Western Michigan University; 1992 – M.S. in Environmental Earth Science, Western
12 Michigan University; 1989 – B.A. in Earth Science, St. Cloud State University, Minnesota.

13 3. I am a licensed Professional Geologist in California, Alaska, Arizona, Illinois, Indiana,
14 Florida, Minnesota, New York, North Carolina, Oregon, Pennsylvania, Texas and Washington. I am also
15 a licensed Professional Hydrogeologist in both California and Washington. I am a Certified Professional
16 Geologist with the American Institute of Professional Geologist as well as Certified Professional geologist
17 for the European Union.
18

19 4. I am currently an Associate Professor of Hydrogeology in the Department of Geological
20 Sciences, California State University, Fullerton, California. This is a continuation of a career that includes
21 years of teaching, consulting, litigation support and management experience. My course topics encompass
22 hydrogeology, water quality, environmental sampling, groundwater modeling, well hydraulics, remediation
23 technologies, RCRA/CERCLA compliance, meteorology, oceanography, geology, drilling and well
24 construction, field hydrogeology, borehole and surface geophysics.
25

26 5. I have worked both as a consultant and researcher within the Mojave River area. This
27 includes research conducted for and on the behalf of the Mojave Water Agency, in developing conceptual
28 basin models and both geological and hydrogeological mapping. My work was pursuant to specific

1 assignments and projects, resulting in reports, most of which were grant-funded and related solely to the
2 specific purpose of the study. Additional work was performed for the Agency in determining the
3 groundwater flow between basins and what if any changes had taken place at the time of the studies. This
4 overall research resulted in no less than 16 public reports, 18+ presentations and 12+ theses. Consulting
5 efforts have included the evaluation of blowing sand, mountain front recharge and surface flow as well as
6 specific site evaluations for water resource supply.

7 6. I have been asked and retained by Newberry Springs Recreational Lake Association
8 (NSRLA) for the purpose of providing opinions (recommendation) on the following issues affecting the
9 Alto Transition Zone, Centro and Baja subarea.
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15 The Mojave Judgement after Trial (Judgement) (Judgement, 1996) states the Mojave Water Agency
16 (MWA) and Watermaster (Watermaster) shall manage the Mojave Basin Area (MWA/Watermaster). The
17 stated missions of the MWA/Watermaster are represented below (taken from Agency website):
18

19 **Mojave Watermaster Mission**

20 *"MWA was appointed as Watermaster in 1993 pursuant to the Court Judgment which
21 adjudicated the rights to pump groundwater in the Mojave Basin Area. Watermaster's main
22 responsibilities are to monitor and verify water production for approximately 450 parties
23 (1,700 wells), collect required assessments, conduct studies and prepare an annual report
24 of its findings and activities to the Court."*

25 **Mojave Water Agency Mission**

26 *"To manage the region's water resources for the common benefit to assure stability in the
27 sustained use by the citizens we serve"*

28 MWA/Watermaster is responsible for managing the areas as shown in **Exhibit 1: Map showing Lower
Alto, Transition Zone (TZ), Centro, and Baja Subareas. Exhibit 1** also has the location of Mojave River
stream gages and the major faults within the MWA/Watermaster service area.

1
2 The following are definitions of various terms as used in the Judgement and MWA/Watermaster reports:

3 Hydrologic subarea / sub-basin: *"The five subareas of the Mojave Basin Area – Este, Oeste, Alto,*
4 *Centro and Baja."*

5 Transition Zone (TZ, Alto to Centro Transition Zone; Alto Transition Zone (Alto TZ); Transition
6 to Centro Subarea): *"The portion of the Alto Subarea, shown on Exhibit "A", that lies generally*
7 *between the Lower Narrows and the Helendale Fault"*

8 Obligation: *"The average annual amount of water that a subarea is obligated to provide to an*
9 *adjoining downstream subarea or the Transition zone or, in the case of the Baja subarea, the*
10 *average annual subsurface flow towards Afton at the WMA eastern boundary as set fourth in*
11 *Exhibit "G"."*

12 Subarea Obligation: *"The average Annual amount of water that a Subarea is obligated to provide*
13 *to an adjoining downstream Subarea or the Transition Zone or, in the case of the Baja Subarea,*
14 *the average Annual Subsurface Flow toward Afton at the MWA eastern boundary as set forth in*
15 *Exhibit "G"."*

16 Subsurface Flow: *"Groundwater which flows beneath the earth's surface."*

17 Baseflow: *"That portion of the total surface flow measured Annually at Lower Narrows which*
18 *remains after subtracting Storm Flow."*

19 Storm Flow: *"That portion of the total surface flow originating from precipitation and runoff*
20 *without having first percolated to Groundwater storage in the zone of saturation and passing a*
21 *particular point of reckoning, as determined annually by the Watermaster."*

22 Makeup Obligation: *"The obligation of a Subarea to pay for Makeup Water to satisfy its Subarea*
23 *Obligation."*

24 VVWRA Discharge: *Victorville Valley Wastewater Reclamation Authority discharges treated*
25 *wastewater back to the Mojave River at the Victorville Valley Wastewater Reclamation Plant,*
26 *located (20111 Shay Road, Victorville, CA 92394) within the Alto Transition Zone.*

27 Watermaster: *The Person(s) appointed by the Court to administer the provisions of the judgement.*
28 *Which as the date of this declaration is the still the Mojave Water Agency.*

OBLIGATION OF WATER FLOW BETWEEN SUBAREAS (ALTO TZ TO CENTRO SUBAREA)

The 1996 Judgement calls out an annual obligation of the Alto subarea to downstream subarea(s). This obligation has been calculated as 23,000 acre-feet per year (AFY). The amount of obligation water entering

1 the subareas is estimated annually by the MWA/Watermaster as: baseflow + VVWRP discharge +
2 subsurface (groundwater) flow, and the addition of any makeup obligation purchases.

3
4 Specifically, the Judgement States:

5 *"The elements for calculating outflow from the Transition Zone to the Centro Subarea include:*

- 6 • *Long-term subsurface outflow (Table 5-1)*
- 7 • *Surface water outflow leaving the Transition Zone (which becomes inflow to the Centro Subarea)*

8 *Surface water outflow from the Transition Zone to the Centro Subarea is calculated based on*
9 *the assumption that change in storage in the Transition Zone is zero. Historical water levels in*
10 *the Transition Zone are stable over long periods of time (Figure 3-13). Therefore, for*
11 *simplicity, surface water outflow is determined as the sum of water supply, less the sum of*
12 *consumptive use and subsurface flow. Figure 3-10 shows that since the end of the hydrologic*
13 *Base Period (1931-1990), average flow to Centro (1991-2020) has exceeded the Base Period*
14 *average."*

15 This assumes that maintaining a constant water level within the Alto TZ equates to flow into and out of the
16 Alto TZ that must equal flow into the Centro subarea. MWA/Watermaster have described within their
17 annual reports and graphics that the obligated 23,000 AFY to the Centro subarea, not the Alto TZ.

18 As shown in **Attachment A**, the MWA/Watermaster describes the "*Average Annual Subarea Obligation*
19 *to Centro*" as 23,000 AFY. Further the shown in **Attachment B** MWA/Watermaster lists the Proposed
20 Judgement Subsurface obligation from Alto to Centro as: minimum subsurface flow, baseflow guarantee,
21 Alto TZ "*water bridge*" and no interference with storm flows.

22 MWA/Watermaster referred to a concept called "*water bridge*" to explain movement of water from Alto
23 TZ subarea to the Centro subarea. This concept assumes that if water levels are relatively stable (no
24 change in storage) flow coming into a subarea will equal flow coming out of the subarea.
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SOURCE OF OBLIGATION FLOW VALUES IN THE JUDGEMENT

The current estimate of subsurface flow between the Alto subarea and Centro subarea is 2,000 AFY in the Judgement and is used in the Watermaster Annual Reports. These estimates are based on published volumes reported more than 70 years ago. Additionally, the location for where these calculations were measured is actually around 3 miles from the actual legal basin boundary as defined in the Judgement. As the climate is changing these calculations need to be revisited with flow data that is more relevant than the flow rates tied to time-periods that were much wetter than today.

STREAM GAGE

Over the years the United States Geological Survey (USGS) and others have maintained and operated multiple stream gaging stations along the Mojave River. Some of these gages were only operational for a short period of time, while others have had prolonged periods of operations. **Exhibit 1** shows all known gages and the period of time that they were in operation. Several locations have been measured as only a single one-time survey of surface water flow. The stream gaging stations used by the Watermaster to evaluate the surface flow of the Mojave River are the Mojave River Forks, Dam Deep Creek, Lower Narrows, Barstow and Afton Canyon gages. These gages cover approximately 117 miles of the river, including the flow between subareas; Alto, Centro and Baja.

Historically, there has been multiple stream gages within the Alto TZ and the Centro subarea upstream of the City of Barstow. These include: Upper Narrows, Point of Rocks, Wild Crossing, and Hodge gages. The Annual Average Baseflow is calculated by now based only the Lower Narrows gage and the Barstow gage.

KEY WELL PROGRAM

The MWA/Watermaster maintains a key groundwater well program within its agency's management area. These wells are located throughout the various subareas. The below **Table 1** and in **Attachment C: Centro**

Groundwater Monitoring Wells lists below shows the wells used for determining the overall groundwater levels within the Alto TZ. A review of the groundwater levels for well 08N04W31R01 with records back to the 1930's indicates that groundwater levels have been in decline since the 1950s and have never fully recovered to those historic 1930-1950 levels, **Attachment D: Groundwater levels.**

Table 1: MWA/Watermaster Key Groundwater Wells

Well ID	Depth (ft, bgs)	Screen Interval (ft, bgs)	Length of Record (years)
08N04W19G04	103.3	80-100	1994-2021
08N04W29E06	41.6	30-40	1994-2021
07N05W23R03	315	295-315	1991-2021
07N05W24R08	50	45-50	1991-2021
06N04W30K16	31.6	26-31	2008-2021
06N04W30J05	23.9	Unknown	1996-2021
06N04W29M01	22.5	Unknown	1991-2021

Water levels in all but two of the seven wells (07N05W24R08 and 07N05W23R03) listed above have been in decline since 2012. (see **Attachment D: Groundwater levels.**)

HISTORICAL CALCULATION OF FLOW

The annual obligation of flow between subareas includes both baseflow (surface water flow) and subsurface (groundwater) flow. The 23,000 AFY obligation to Alto TZ does not flow directly into the Centro subarea. It is questionable if this flow does in fact make its way to the Alto-Centro subarea boundary, just downstream the City of Helendale. The MWA/Watermaster has admitted that there is no accounting of how much obligated water actually flows into the Centro subarea from the Alto TZ because there are no active stream gages in the vicinity of this boundary. Historically, there have been at least 3 gages between the current existing Lower Narrows (Alto TZ) and Barstow (Centro subarea) stream gages. These are the Point of Rocks, Wild Crossing, and Hodge historical gages. These gages however only have records of between 3 to 24 years.

1 The baseflow obligation of 21,000 AFY to the Alto TZ is calculated using the Lower Narrows gage records.
2 Baseflow calculations for the purpose of basin obligation excludes storm flow (Judgement, see define terms
3 above). The baseflow accounting does however include supplemental waster provided by VVWRA,
4 starting in 1986. This treated wastewater is discharged to the Mojave River in the Alto TZ about 4 miles
5 downstream of the Lower Narrows Gage. Over the years, discharge from VVWRA has increased,
6 discharged has varied from 4,346 to 14,868 AFY.

7
8 A review of historical aerial photographs and stream gages between the Lower Narrows and Barstow
9 indicates that subsurface baseflow into the Centro subarea is limited in duration and volume. With little if
10 any surface water reaching the boundary. Dry-flow year baseflow into the Centro subarea is only a fraction
11 of the 21,000 AFY that flows into the Alto TZ.
12

13
14 The 21,000 AFY of surface water inflow is calculated from stream gage records at the Lower Narrows
15 stream gage. Stream gage data at the Lower Narrows prior to VVWRA (**Exhibit 2**) shows annual flows
16 between 11,500 and 28,235 AFY with an average of 21,158 AFY during average low flow years (dry-year).
17 At the Wild Crossing stream gage, during non-storm years the maximum flow rate observed was 3,779
18 AFY during the 4 years the gage was operational. At the Hodge stream gage, during dry-flow years a
19 maximum flow rate observed was 2,317 AFY during the 24 years the gage was operational. **Exhibit 2:**
20 **Annual Mojave River Flow**, shows the Annual amount the flows through the gages on the Mojave River,
21 note not all of the gages have been operation during same period.
22

23
24 The subsurface flow (groundwater) is assumed to be 2,000 AFY at the Alto TZ and Centro subarea
25 boundary. This value for subsurface flow used in Judgement for subarea obligation was taken from DWR
26 Bulletin 84 published in 1967 and was determined at the City of Helendale (not the actual legal defined
27 boundary). In reviewing Bulletin 84, there is no actual calculation or explanation as to how the 2,000 AFY
28

1 was actually calculated. However, this number has been passed along from report to report without ever
2 being re-evaluated and adjusted (see **Table 2: Subsurface Flow**).

3 **Table 2: Subsurface Flow**

Boundary	Source	Year	Subsurface flow (AFY)	Location
TZ-Centro	DWR	1967	2,000	At 1967 Subunit boundary
TZ-Centro	Judgement	1996	2,000	At 1967 Subunit boundary*
TZ-Centro	USGS 2001	2001	5,000-6,000	At Helendale Fault
TZ-Centro	USGS 2001	2000	1,566	At Helendale Fault
TZ-Centro	URS	2002	4,600	At Helendale Fault
TZ-Centro	Laton	2004	1,100-2,220	At Helendale Fault
Alto-TZ	Webb	2000	4,590	At Lower Narrows
Alto-TZ	URS	2002	4,900	At Lower Narrows

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10 *from DWR, 1967

11
12 Without actual data (either stream gage or groundwater) it is impossible to validate the Judgement
13 obligations. This becomes even more important as climate changes and the stresses placed on the water
14 resources of the MWA/Watermaster area increase, therefore this should be reevaluated yearly.

15
16 A simple review of monthly aerial photography and stream records for the previous 6 water years, indicates
17 that baseflow to the City of Barstow has only occurred 1 time during those 6 years. The observed baseflow
18 was only 169 AF during the 2019 water year. Water years 2016, 2017, 2018, 2020, 2021 were considered
19 dry-flow years. Of those years, no flow was observed past the historic Hodge stream gage location (**Exhibit**
20 **2**). During 2 of the years (2017, 2020) baseflow was observed past the historic Wild Crossing gage. Three
21 of the 6 years, baseflow made it past the historic Point of Rocks gage location but ceased before the historic
22 Wild Crossing gage location (**Exhibit 2**). If gages had been operating at these historic locations a better
23 understanding of baseflow this area could be assessed. The aerial photographs indicate that 2 of the 6 years
24 no flow reached the Centro subarea. On the remaining dry-flow years, low baseflow entering the Centro
25 subarea seemed minimal because most flows ceased prior to the historic Wild Crossing gage but there is no
26 way to quantify the baseflow because there are no gages at the Alto – Centro subarea boundary.
27
28

DEFICIENCIES OF THE MONITORING PROGRAM

1 An updated monitoring program, with actual data at the point of compliance is needed in order to evaluate
2 the actual flows between subareas. The following are several easily implemented changes that would
3 provide data to close the gap on actual obligated flows at the subarea boundaries.
4

5
6 The first problem is the location of active stream gages. The Lower Narrows gage is 19 miles upstream the
7 compliance boundary between Alto and Centro subareas. The same is true of the Barstow gage as it is 26
8 miles downstream of the same boundary (**Exhibit 1**). In the past there have been several gages that would
9 be more useful to Watermaster in determining actual baseflow at the Alto – Centro subarea boundary, these
10 are the Point of Rocks and Wild Crossing. Additionally, a gage near Hodge was previously operating for
11 24 years (**Exhibit 1**). Though further from the Alto – Centro subarea boundary, this gage would be better
12 suited for determining surface flows within the Centro subarea. This gage previously recorded significant
13 storm seasons of 1978, 1980, 1983, and 1993. The Point of Rocks gage was previously only operational
14 for 4 years; however, it did survive the 1969 storm season which had the highest annual flow rate measured
15 at the Lower Narrows Gage (**Exhibit 2**).
16

17
18 Stream gaging in an arid environment with flow ranging from zero to significant is difficult. There are
19 several solutions to the problem, however. One is to re-establish the previous gages. Second, would be at
20 least a minimum to install live video feeds of select locations along the Mojave River. Though, not
21 qualitative, this would at least provide real-time quantitative information MWA/Watermaster and the
22 subarea constituents.
23

24
25 MWA/Watermaster should provide real-time groundwater levels within all the agencies subareas via their
26 Key Well program. This should be tied to real-time groundwater production and the above baseflow, in
27 order to truly manage the water under the control of the agency. Based upon the Judgement, this seems to
28 be well within the rights of WMA/Watermaster.

1
2 In order to provide total transparency in the management of water, MWA/Watermaster should have real-
3 time monitoring on its web site. This could be tied to actual subarea water balance calculations and provide
4 information that would be invaluable to the MWA/Watermaster constituents. This would also allow for the
5 constituents to plan for any potential ramp-down or changes in allowable free production allowances.
6

7 **SUMMARIZED FROM PREVIOUS DECLARATION: Declaration of Dr. W. Richard Laton,**

8 **October 1, 2018**

9 Groundwater modeling by the USGS has shown that groundwater pumping in upstream subareas has a
10 substantial impact on storage downstream in both the Centro and Baja subareas. The USGS and Todd
11 Engineering state the following:
12

13 *“Based on simulations with the USGS model, upper basin pumping (not including Centro) was*
14 *estimated to account for about 21 percent of groundwater lost from storage in the Baja Subarea*
15 *over the base period (1931 to 1990). The USGS did not simulate the effect of upstream pumping in*
16 *Centro on stream discharge and recharge in Baja.”*

17 Based on this loss in storage, we calculate a loss of 92,750 AF for the 25 years since 1993-94 water year on
18 3,710 AFY to the Baja subarea. This unaccounted overdraft is based on the loss of storage during the base
19 period (1931-1990) and projected forward into the adjudication period. **These losses were unaccounted**
20 **for in the MWA/Watermaster initial calculations.**

21 To summarize, due to the historical distribution of storm events that lead to storm flows that ultimately
22 flow into the Baja subarea and the overestimated calculation by the MWA/Watermaster of about 225,000
23 AF of flow have not been realized and thus have contributed to subarea overdrafts. Additionally, the
24 MWA/Watermaster has not fully considered the effects of pumping in up-gradient subareas which as the
25 USGS modeled. To date, this has not been evaluated nor included in the MWA/Watermaster’s calculations
26 for water budgets.
27
28

1 The Centro subarea groundwater is some 25 feet lower than pre-Judgement, but generally has remained
2 constant since the adjudication. This creates the illusion of Centro subarea being in balance and sending
3 the required outflow to downstream subareas, when in fact, the water never spills over to flow downstream,
4 resulting in the loss of subsurface flow that should have flowed annually to the Baja subarea.
5

6 CONCLUSION AND OPINIONS

7 In 2001, the USGS stated that "*Overall, pumping in the lower region does not negatively affect the upper*
8 *region: however, pumping in the upper region negatively affects the lower region by decreasing recharge*
9 *from the Mojave River.*" (Stamos et al., 2001).
10

11
12 Based upon the information set forth in the declaration and the above statement the following opinions can
13 be drawn.

- 14 • Baseflow is that portion of the total surface flow measured annually which remains after subtracting
15 storm flow. Storm flow does not count towards any baseflow obligation to any subarea.
- 16 • The calculated water obligation to the Centro subarea is not based on sound science. There is
17 limited to no data at the compliance boundary (baseflow or subsurface flow).
- 18 • MWA/Watermaster cannot adequately provided an estimate of water moving from Alto to Centro
19 subareas given the lack of data; specifically, the amount of water flowing out of Alto TZ and into
20 the Centro subarea and to a lesser degree from Centro to Baja subarea.
- 21 • MWA/Watermaster has failed to meet their duty, by not adequately installing stream gages and
22 monitoring wells to collect boundary specific data.
- 23 • Baseline conditions used in the original Judgement do not apply to current conditions. The climate
24 has and is evolving. The change in stresses to exiting water resource conditions along with the
25 original deficiencies from previous studies (from last century) all need to be re-visited with actual
26 data.
27
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- The 21,000 AFY of baseflow obligation to the Alto TZ (which is part of the Alto subarea) and the subsequent obligation of baseflow to next downstream subarea (Centro) is little to non-existent.
 - Simple aerial imagery analysis shows that the obligated baseflow is not making its way to the Centro subarea and therefore not making it to Centro-Baja subarea boundary.
 - There is no reason for not re-establishing historical stream gages closer to the compliance boundary between Alto and Centro subareas.
 - MWA/Watermaster has failed to meet their duty, by not adequately measuring or monitoring water flow between subareas. As such, there has been calculated harm to downstream subareas.
 - Based on a loss in storage in the Centro subarea, the Baja subarea has seen a realized loss of 92,750 AF for the 25 years since 1993-94 water year or 3,710 AFY.

13 This declaration sets forth my opinions and the information upon which I relied.

14

15 I declare under penalty of perjury of the laws of the State of California that the foregoing is true and

16 correct and that I have executed this declaration on the 2nd day of June 2021, at Santa Ana, California

17

18

19 

20

21 **Dr. W. Richard Laton, PG, CHg**
22 President of Earth Forensics, Inc.
23 Principal Consultant, Hydrogeology

24

25

26

27

28

EXHIBIT "1"

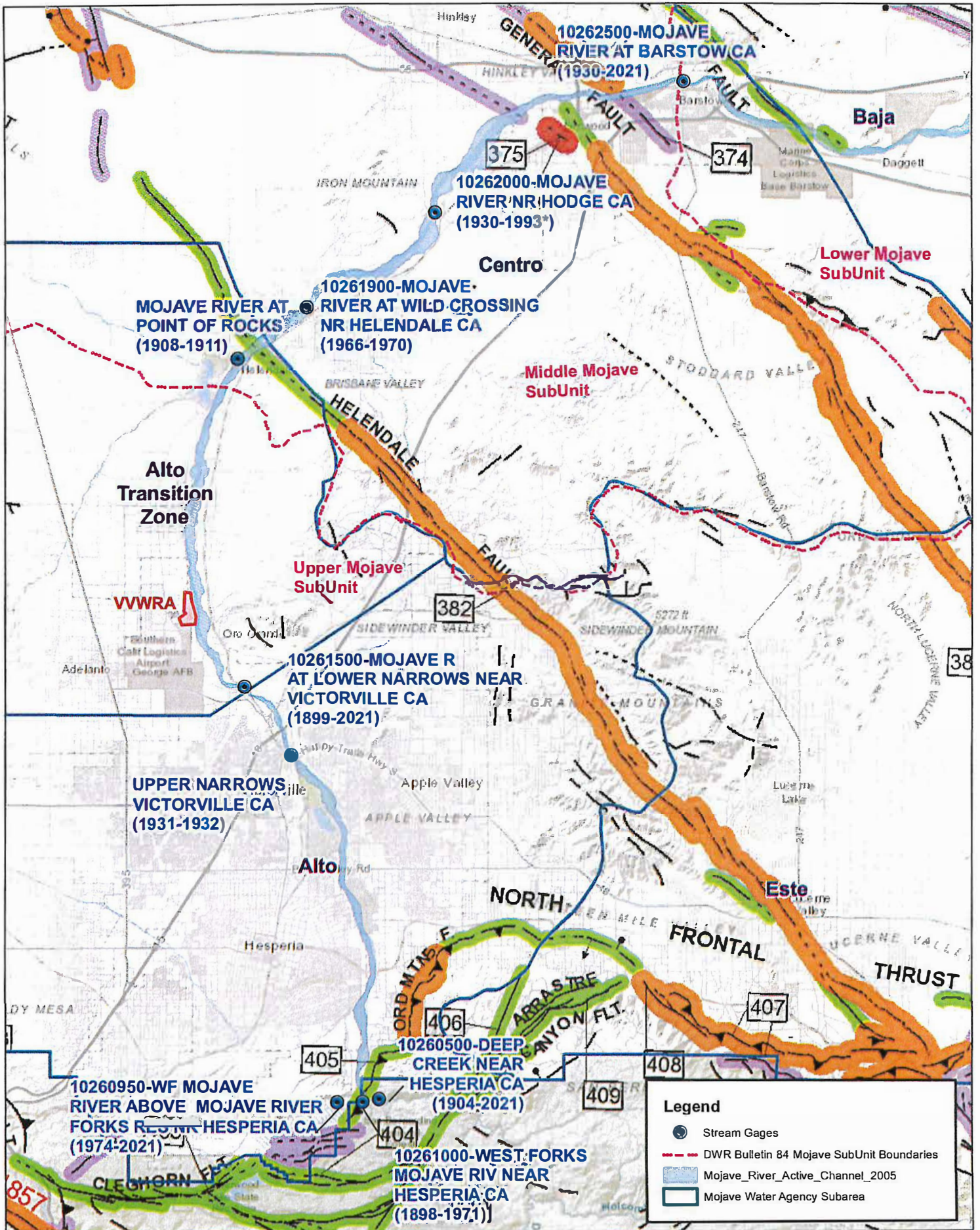


Exhibit 1: Stream Gage Locations

EXHIBIT "2"

Attachment A

Transition Zone Water Balance

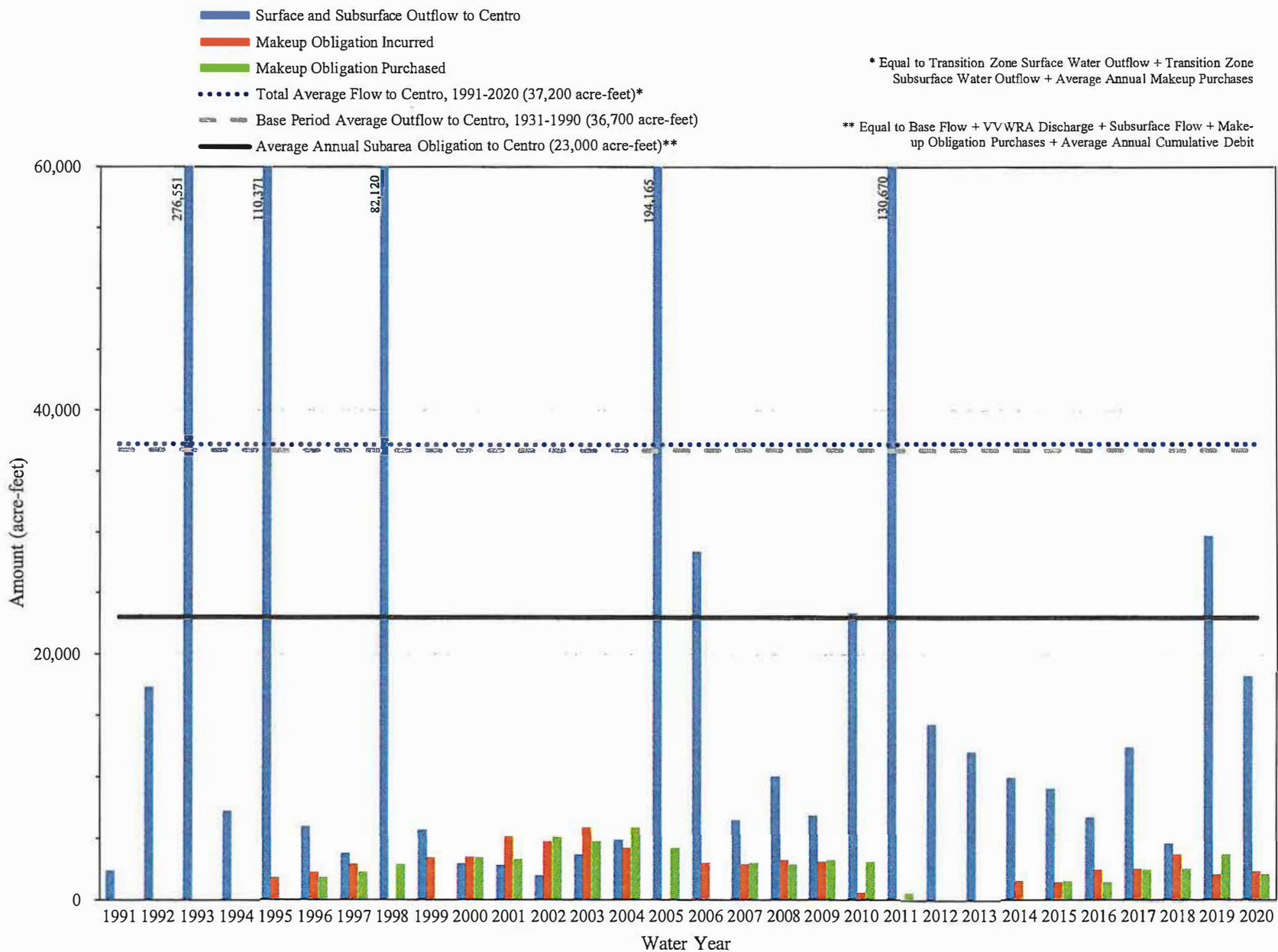
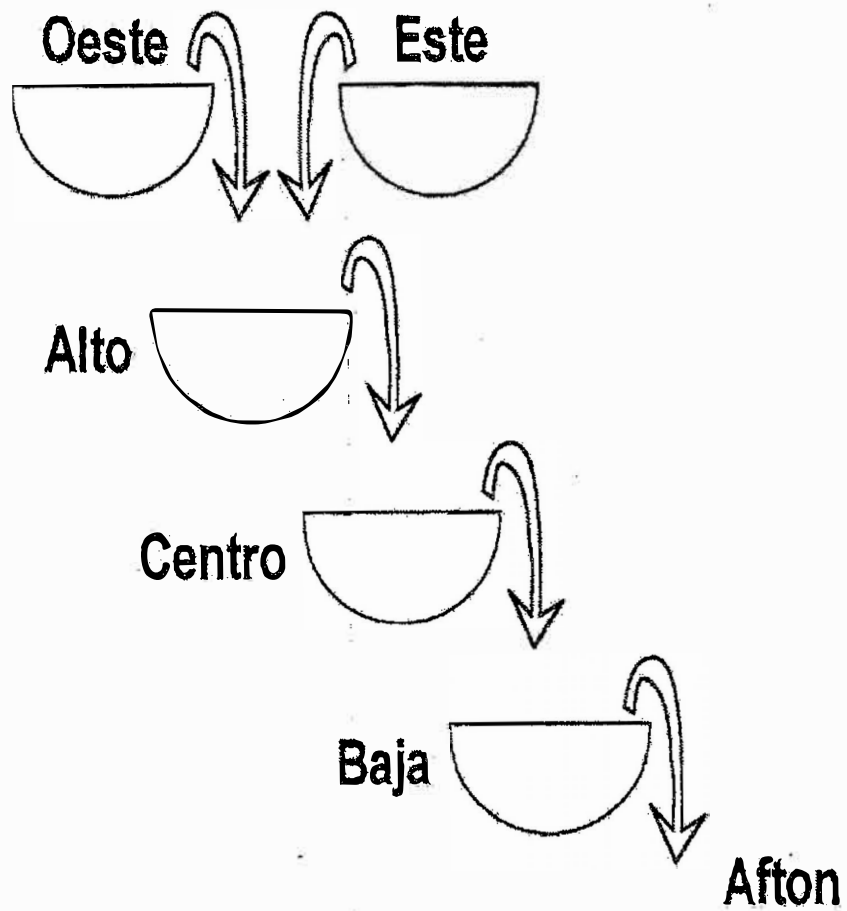


FIGURE 3-10

Attachment B

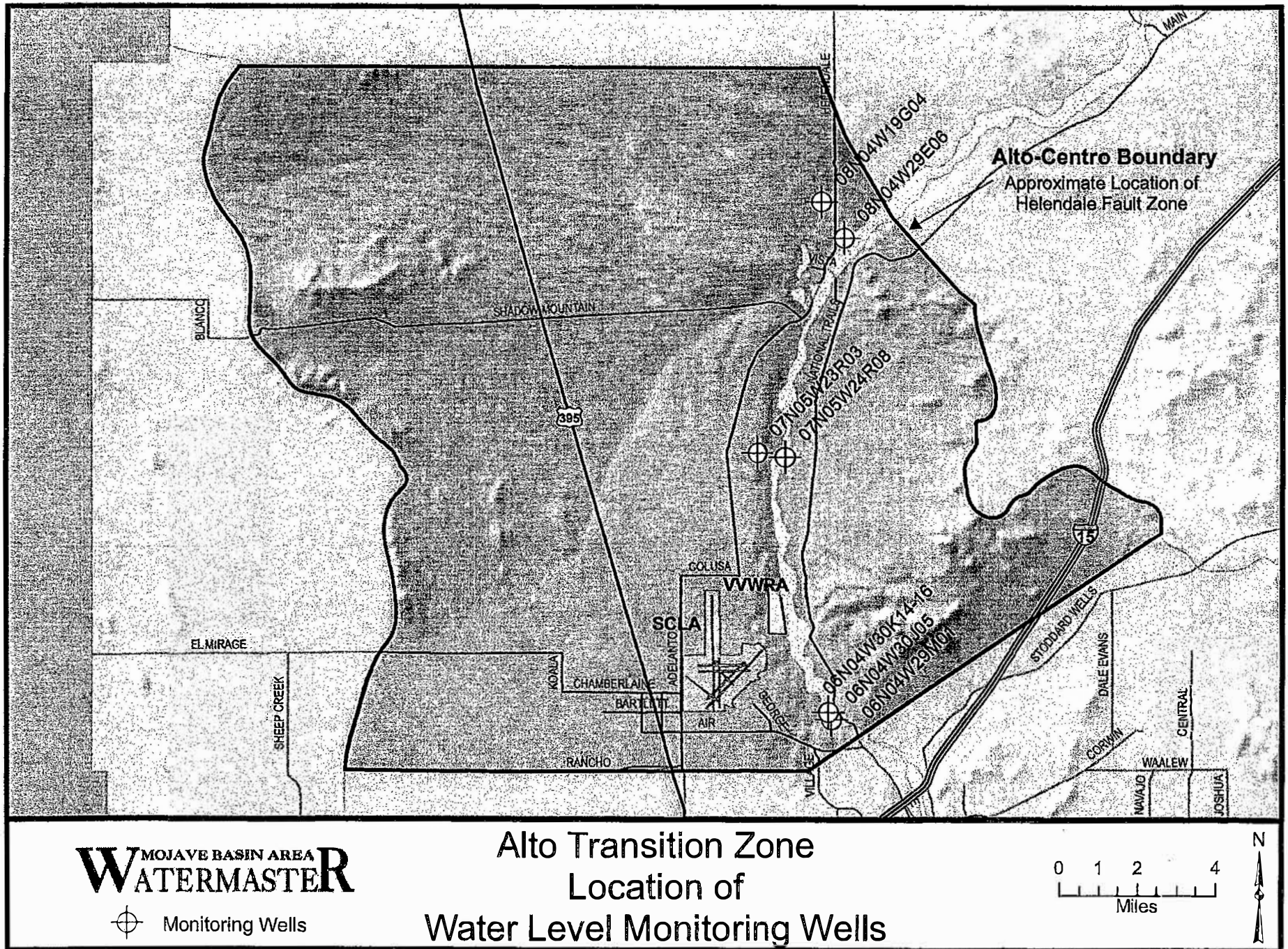
Proposed Judgement

Subarea Obligation



Attachment C

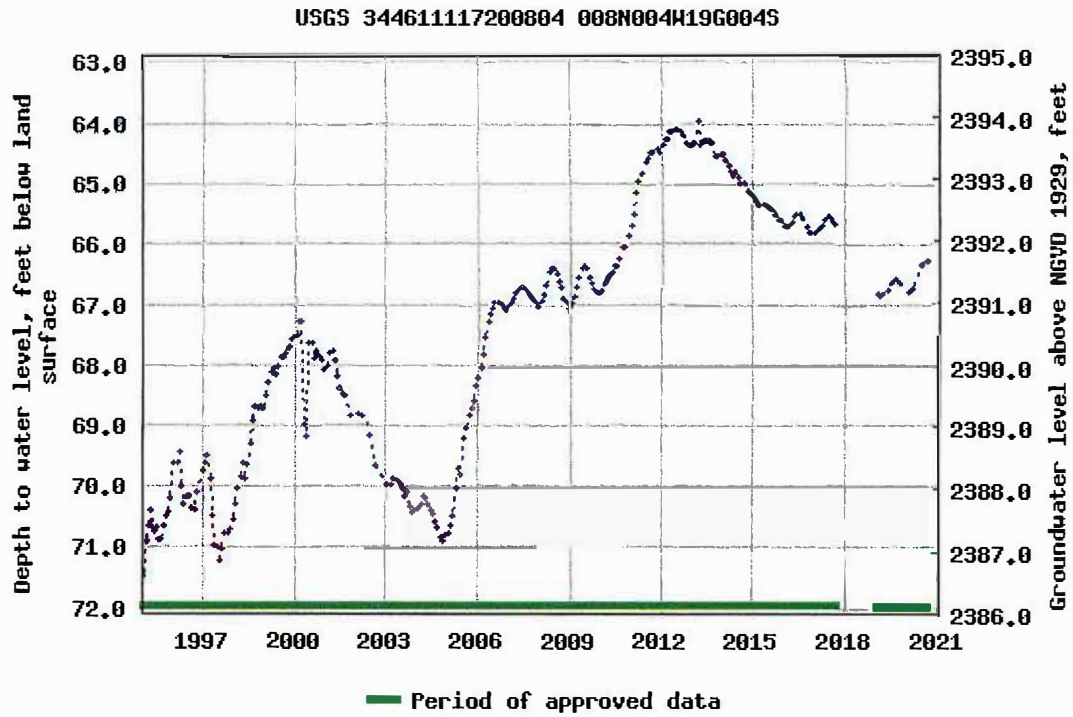
FIGURE 3-6



Attachment D

Attachment D: Groundwater Levels

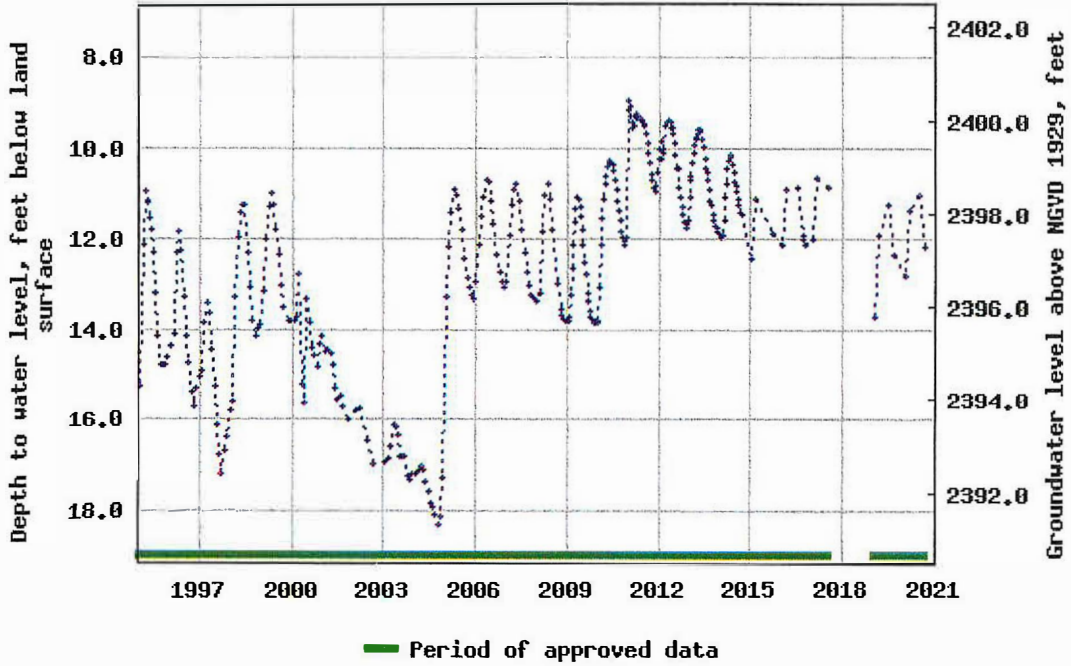
- 08N04W19G04
- Land-surface elevation 2,458.00 feet above NGVD29
- The depth of the well is 103.3 feet below land surface.
- The depth of the hole is 320 feet below land surface.



o 08N04W29E06

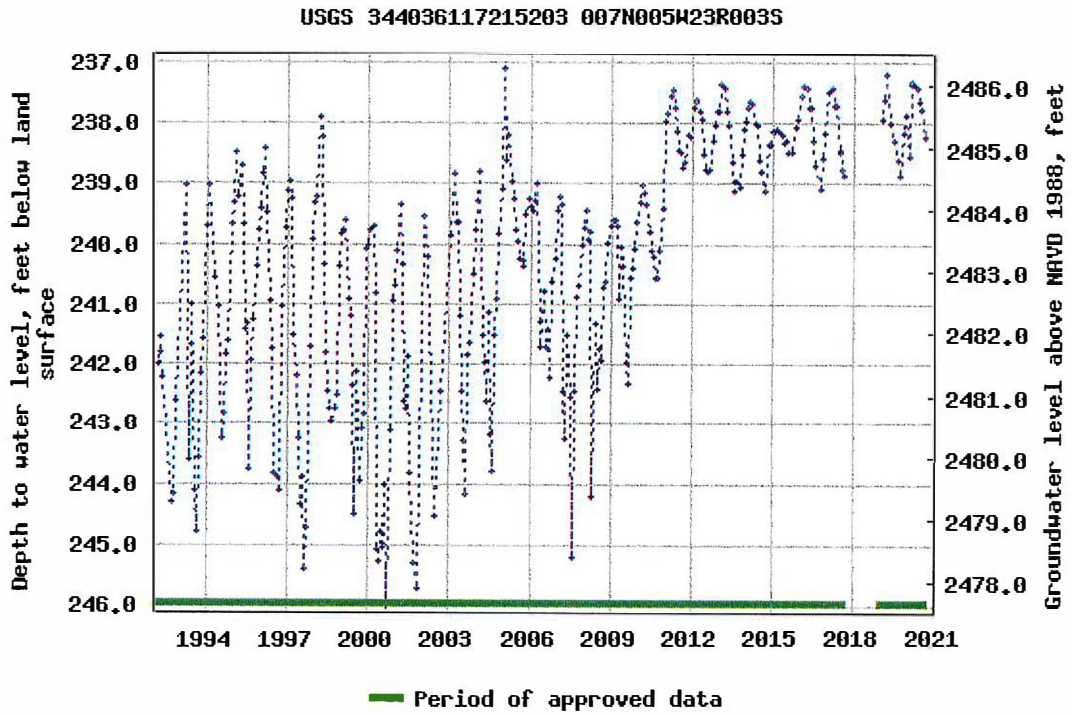
Land-surface elevation 2,409.49 feet above NGVD29
The depth of the well is 41.6 feet below land surface.
The depth of the hole is 309 feet below land surface.

USGS 344524117193404 008N004W29E006S



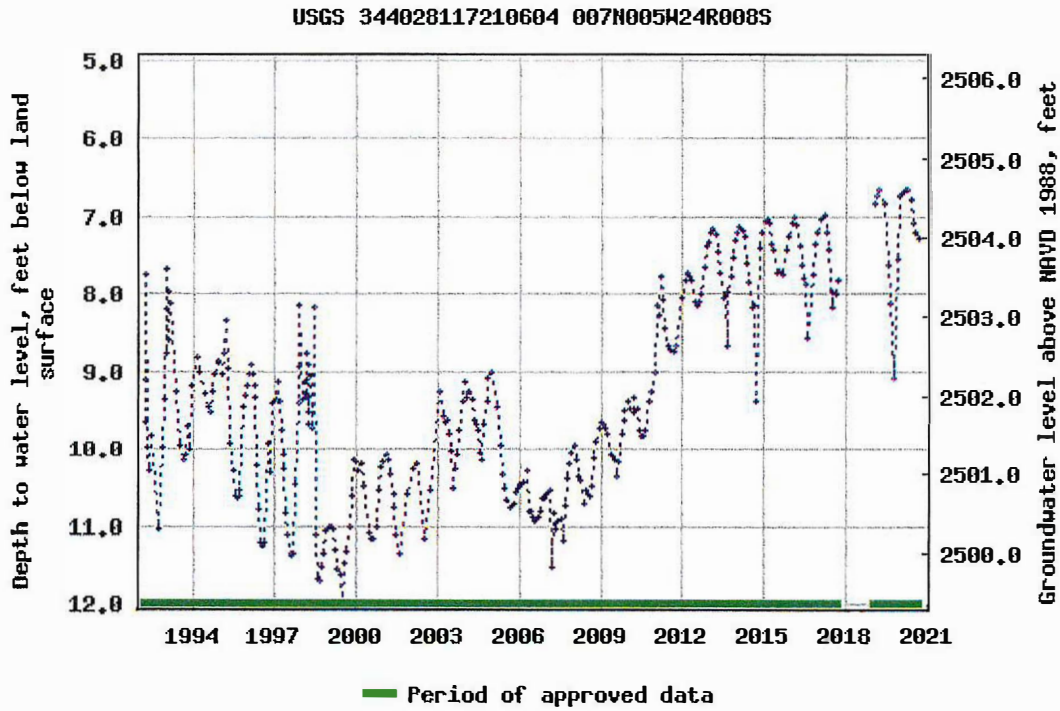
o 07N05W23R03

Land-surface elevation 2,723.5 feet above NAVD88
The depth of the well is 311.7 feet below land surface.
The depth of the hole is 760 feet below land surface.



o 07N05W24R08

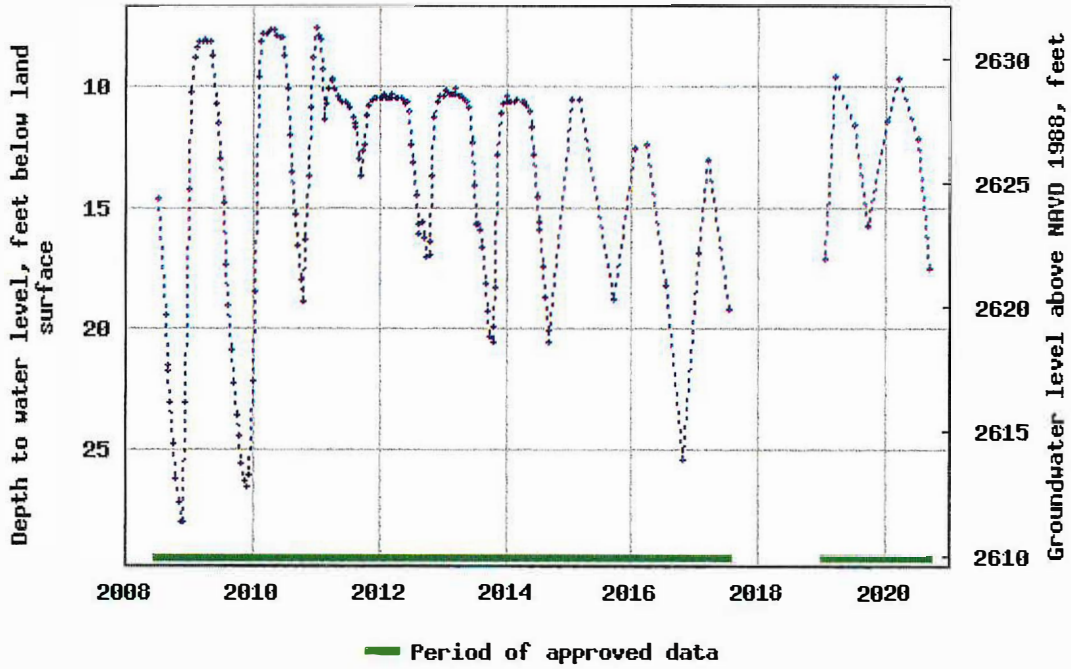
Land-surface elevation 2,511.3 feet above NAVD88
The depth of the well is 49.2 feet below land surface.
The depth of the hole is 600 feet below land surface.



o 06N04W30K14-16

Land-surface elevation 2,639.1 feet above NAVD88
The depth of the well is 31.6 feet below land surface.
The depth of the hole is 32.5 feet below land surface.

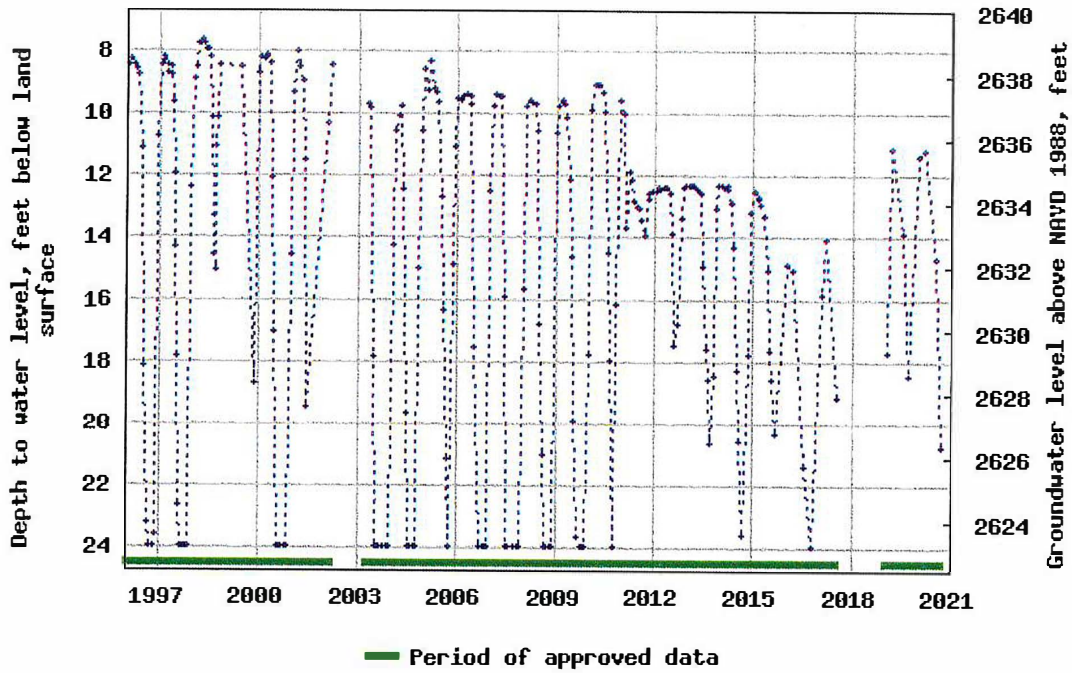
USGS 343443117200401 006N004M30K016S



o 06N04W30J05

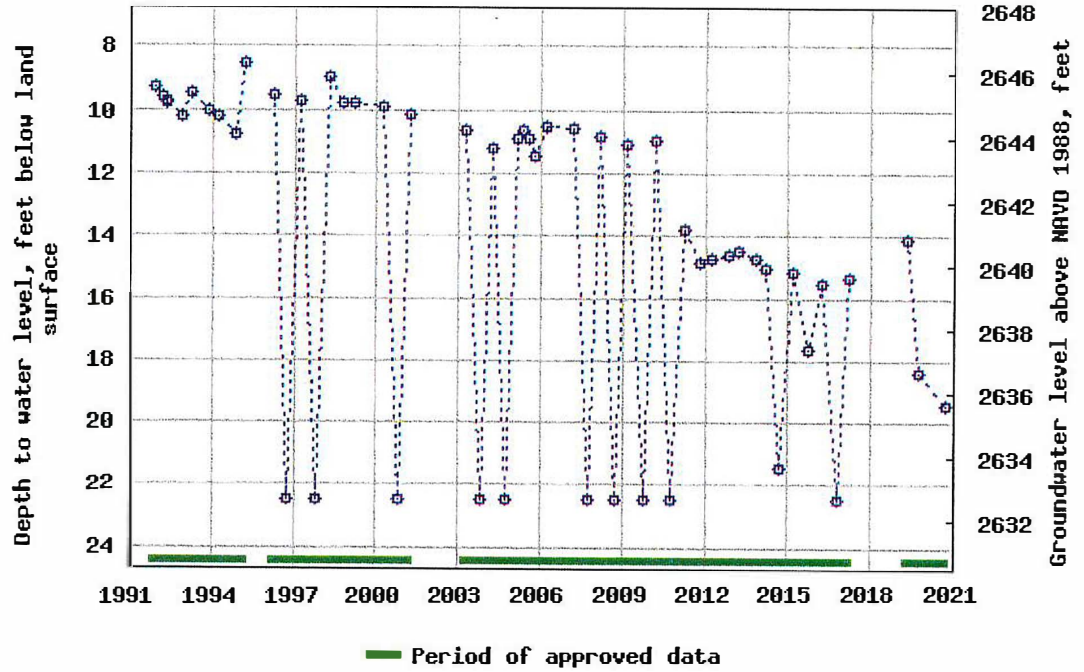
Land-surface elevation 2,647.0 feet above NAVD88
The depth of the well is 23.9 feet below land surface.
The depth of the hole is 24.5 feet below land surface.

USGS 343435117195501 006N004W30J005S



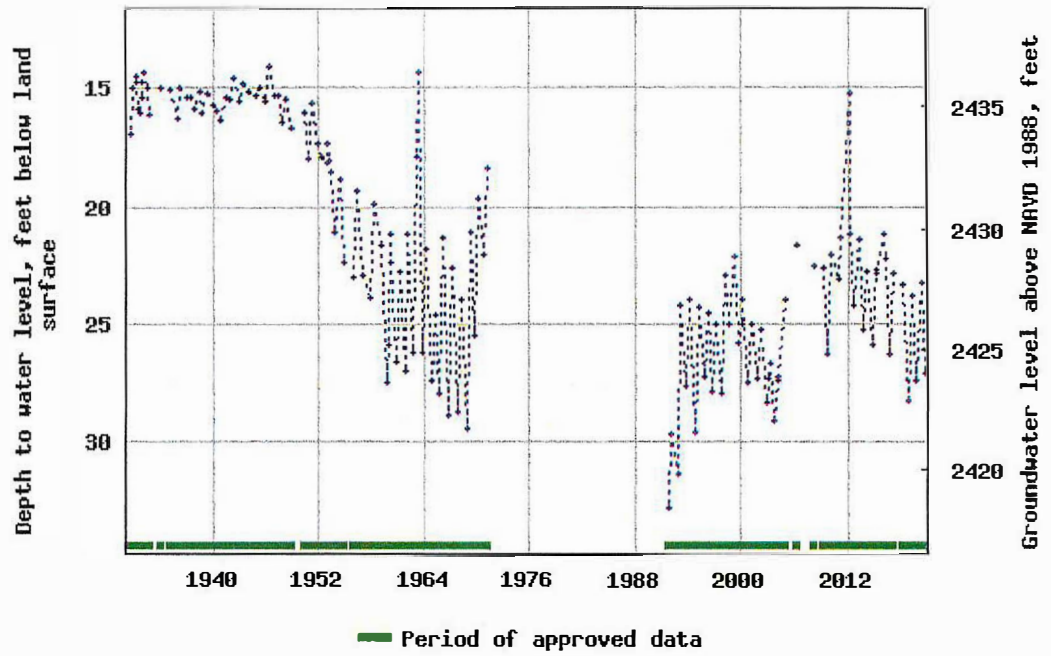
- 06N04W29M01
- Land-surface elevation 2,655.0 feet above NAVD88
- The depth of the well is 22.5 feet below land surface.

USGS 343433117194201 006N004W29M001S



- Land-surface elevation 2,451 feet above NAVD88
- The depth of the well is 59 feet below land surface.

USGS 344401117194701 008N004M31R001S



<https://ca.water.usgs.gov/mojave/mojave-water-data.html>

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO**

3 I am employed in the County of San Bernardino, State of California. I am over the age of 18 and not
4 a party to the within action. My business address is 21001 N. Tatum Blvd., Suite 1630-455, Phoenix, AZ
85050.

5 On September 19, 2024, I served the within documents described as
6 **RESPONSE BY NEWBERRY SPRINGS RECREATIONAL LAKES ASSOCIATION TO**
7 **GOLDEN STATE WATER COMPANY'S MOTION TO ENFORCE JUDGMENT;**
8 **DECLARATION OF DR. W. RICHARD LATON, PG, CHG, SUPPORTING THE**
9 **RESPONSE, on the interested parties in this action, as follows:**

10 **By email or electronic transmission to the Watermaster and its counsel** at the e-mail addresses listed
11 below, and I did not receive, within a reasonable time after the transmission, any electronic message or
12 other indication that the transmission was unsuccessful; and

13 By messenger service to the Watermaster, **on September 19, 2024**, the documents referred to
14 hereinabove were personally delivered to the Watermaster by Rapid Attorney Service, a professional
15 Service of Process/messenger service; A Declaration of Messenger will subsequently be filed; and
16 Via, Watermaster to all parties to the action, pursuant to the Judgment of this case and the Mojave Basin
17 Area Watermaster's Rules and Regulations paragraph 8.B which provides that service to be the
18 responsibility of the Watermaster and paragraph 10.D, which provides that a party's service obligation is
19 satisfied upon delivery of a copy of the conformed documents as filed with the Court. As of today, the
20 Watermaster has not set a service fee. Per the Watermaster's request, I will cause a check to be delivered
21 to Watermaster upon being notified of the Watermaster's service costs.

22 Mojave Basin Area Watermaster
23 c/o Valerie L. Wiegenstein,
24 Watermaster Services Manager
25 13846 Conference Center Drive Apple Valley, CA 92307-4377
26 watermaster@mojavewater.org

27 [x] **BY MAIL.** September 18, 2024, I caused such envelope, as indicated on the addresses noted
28 above and/or the attached service list, with postage thereon fully prepaid to be placed in the
United States mail at Hesperia, California. I am readily familiar with the firm's business practice
for collection and processing of correspondence for mailing with the United States Postal Service
and that the foregoing document was placed for collection and mailing in accordance with
ordinary business practices pursuant to *Code of Civil Procedure*, Section 1013a.

William J. Burnick Leland P. McElhaney
Brunick, McElhaney & Kennedy PLC
1839 Commercenter West
San Bernardino, CA 92408-3303
bbrunick@bmklawplc.com

[X] **(State)** I declare under penalty of perjury pursuant to the laws of the State of California that the
above is true and correct.

Executed on September 19, 2024, at Hesperia, California.

By:  _____
Jackie J. Gray

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 September 19, 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:

**RESPONSE BY NEWBERRY SPRINGS RECREATIONAL LAKES
ASSOCIATION TO GOLDEN STATE WATER COMPANY'S MOTION TO
ENFORCE JUDGMENT; DECLARATION OF DR. W. RICHARD
LATON, PG, CHG, SUPPORTING THE RESPONSE**

 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 September 19, 2024 at Apple Valley, California.



Jeffrey D. Ruesch

Mojave Basin Area Watermaster Service List as of September 19, 2024

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11273 Palms Blvd., Ste. D.
Los Angeles, CA 90066-2122

Attn: John McCallum
Abshire, David V.
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Lucerne Valley, CA 92356-2059

Attn: Dwayne Oros
Adelanto, City Of
11600 Air Expressway
Adelanto, CA 92301-1914

(adesdevon@gmail.com)
Ades, John and Devon (via email)

Attn: Pedro Dumaua
(pdumaua@ducommun.com)
Aerochem, Inc. (via email)
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Adelanto, CA 92301-9489

Attn: Lori Clifton (lclifton@robar.com)
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17671 Bear Valley Road
Hesperia, CA 92345-4902

Attn: Chun Soo and Wha Ja Ahn
(chunsooahn@naver.com)
Ahn Revocable Living Trust (via email)
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Apple Valley, CA 92307-0001

Attn: Simon Ahn (ssahn58@gmail.com)
Ahn Revocable Trust (via email)
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Murrieta, CA 92563-6710

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chunsooahn@naver.com;
davidahn0511@gmail.com)
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Apple Valley, CA 92307-0001

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Barstow, CA 92311-6757

Attn: Paul Tsai (paul@ezzlife.com)
America United Development, LLC (via
email)
19625 Shelyn Drive
Rowland Heights, CA 91748-3246

Attn: Ana Chavez
American States Water Company
160 Via Verde, Ste. 100
San Dimas, CA 91773-5121

Anderson, Ross C. and Betty J.
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Victorville, CA 92395-4832

Attn: Daniel B. Smith (avfwd@gmail.com)
Apple Valley Foothill County Water District
(via email)
22545 Del Oro Road
Apple Valley, CA 92308-8206

Attn: Matthew Patterson
Apple Valley Heights County Water District
P. O. Box 938
Apple Valley, CA 92308-0938

Attn: Matthew Schulenberg
Apple Valley Unified School District
12555 Navajo Road
Apple Valley, CA 92308-7256

Attn: Emely and Joe Saltmeris
Apple Valley View Mutual Water Company
P. O. Box 3680
Apple Valley, CA 92307-0072

Attn: Tina Kuhns
Apple Valley, Town Of
14955 Dale Evans Parkway
Apple Valley, CA 92307-3061

(ArchibekFarms@gmail.com;
Sandi.Archibek@gmail.com)
Archibek, Eric (via email)
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Newberry Springs, CA 92365-9517

Avila, Angel and Evalia
1523 S. Visalia
Compton, CA 90220-3946

Attn: Sheré R. Bailey
(LegalPeopleService@gmail.com)
Bailey 2007 Living Revocable Trust, Sheré R.
(via email)
10428 National Blvd
Los Angeles, CA 90034-4664

Attn: Daniel Shaw (barhwater@gmail.com)
Bar H Mutual Water Company (via email)
P. O. Box 844
Lucerne Valley, CA 92356-0844

Barber, James B.
43774 Cottonwood Road
Newberry Springs, CA 92365

Attn: John Munoz
(barlenwater@hotmail.com);
Bar-Len Mutual Water Company (via email)
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Barstow, CA 92312-0077

Attn: Curtis Palmer
Baron, Susan and Palmer, Curtis
141 Road 2390
Aztec, NM 87410-9322

Attn: Jennifer Riley (hriley@barstowca.org)
Barstow, City of (via email)
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Mojave Basin Area Watermaster Service List as of September 19, 2024

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Mojave Basin Area Watermaster Service List as of September 19, 2024

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Mojave Basin Area Watermaster Service List as of September 19, 2024

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Mojave Basin Area Watermaster Service List as of September 19, 2024

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