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| 7 8 | Attorneys for Defendant\Cross-Complainant, MOJAVE WATER AGENCY | |
| 9 | SUPERIOR COURT OF T | THE STATE OF CALIFORNIA |
| 10 | IN AND FOR THE C | COUNTY OF RIVERSIDE |
| 11 | | IGGDNG 5245 |
| 12 | Coordination Proceeding Special Title (Cal. Rules of Court, rule 3.550) | JCCP NO.: 5265 Lead Case No: CIV 208568 |
| 13 | MOJAVE BASIN WATER CASES | Dept. 1, Riverside Superior Court Hon. Harold W. Hopp, Judge Presiding |
| 14 | CITY OF BARSTOW, | WATERMACTERS OF IECTION |
| 1516 | Plaintiff, vs. | WATERMASTER'S OBJECTION/ REPLY TO AMENDED DECLARATION OF DR. RICHARD LATON |
| 17 | CITY OF ADELANTO, et al., | Date: October 22, 2024 |
| 18 | Defendant. | Time: 1:30 p.m. Dept.: M302, Menifee Justice Center Reservation ID: 562595011427 |
| 1920 | AND RELATED CROSS ACTIONS | Hon. Craig G. Riemer, Retired Judge of the Riverside Superior Court, sitting by Assignment of the Chief Justice |
| 21 | | Assignment of the Chief Justice |
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WATERMASTER'S OBJECTION/REPLY TO AMENDED DECLARATION OF DR. RICHARD LATON

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The Mojave Water Agency, as Watermaster for the Mojave Basin Area, submits this Objection/Reply to the amended declaration of Dr. Richard Laton filed and served on October 9,2024 (in support of Newberry Springs Recreational Lakes Association ["Newberry Springs"]) Response to the motion of Golden State Water Company ("Golden State") purportedly to enforce the Judgment.

I.

Introduction

Newberry Springs' "Amended Response," which includes the amended declaration of Dr. Robert Laton, seeks relief beyond that sought in Golden State's motion, including amending the Judgment and Physical Solution entered in this action. The Court's October 2, 2024 Minute Order, in pertinent part, provides:

- e. If desired, any party that has filed documents supporting, opposing, or otherwise responding to the motion has leave to file and serve addition[al] argument or evidence no later than October 9, 2024. If any such new document is in the form of additional declarations from witnesses who have already filed a declaration, the new declaration shall be in the form of an amended declaration rather than a separate supplemental declaration, so that all testimony of that witness shall be located in a single document.
- f. Any opposition, reply, or objection to any such new declarations shall be filed and served no later than October 16, 2024. Any reply shall be limited to argument; no additional declaration will be permitted at that late date.

Accordingly, Watermaster submits this Objection and Reply to Dr. Laton's amended declaration.

П.

Errors in Dr. Laton's Amended Declaration

Dr. Laton's declaration includes numerous errors and allegations without evidentiary support, to wit:

A. The Alto Subarea's Obligation is to the Transition Zone, not to the Centro Subarea, and not to the Baja Subarea.

As explained in Watermaster's Amended Opposition to Golden State's motion to enforce the Judgment, Exhibit G of the Judgment very clearly states the Alto Producers' "Subarea Obligation" is to the Transition Zone (TZ), not to the Centro Subarea, and not to the Baja

Subarea. Exhibit G to the Judgment specifically provides:

1. <u>Subarea Obligations</u>. Producers in the respective Subareas shall have the obligation to provide the following average annual and minimum Annual Subsurface Flows and/or Base Flows per Year:

. . .

e. Alto subarea Producers – an average Annual **combined Subsurface Flow and Base Flow** of 23,000 acre-feet per Year **to the Transition Zone**. . . .

Nonetheless, Dr. Laton's declaration and his Power Point presentation repeatedly state, incorrectly, that the Alto Subarea Obligation is to Centro and Baja, and "the compliance boundary" is the border between the Transition Zone and Centro (rather than at the Transition Zone near the Lower Narrows) (see, e.g., Laton Dec., 4:17-19, 4:22-23, 12:1-2).¹

B. LATON amended declaration page 4, lines 21-22:

...the surface flow at the Barstow gage was less than ten percent of what was observed in 2004-2005.

Objection/Reply: This statement has no context and ignores differences in storms, as well as the extent of drought between storm periods. Illustrating this point, Dr. Laton compares recent conditions to those existing "in 2004-2005," during which the largest storm flows in the last twenty years occurred in the Mojave Basin Area (see Exhibit 2 to Dr. Laton's amended declaration). All this demonstrates is that surface flow to Centro and Barstow are climate driven.

Further, the "water bridge" concept as presented by Dr. Laton is incorrect; the concept does not mean there are no losses in the TZ, rather, it means that the amount of water exiting the TZ will equal the amount entering the TZ, less consumptive uses within the TZ -- as is demonstrated in Watermaster's Amended Opposition to Golden State's motion.

Additionally, the river losses occur in Centro. The USGS gage at Hodge, 9 miles downstream of the Helendale Fault ("HF"), recorded 84,351 acre-feet in 2023, meaning that

¹ It is true that several of Watermaster's earlier Annual Reports mistakenly state the Alto Subarea Obligation is owed to Centro. That mistake, however, was corrected in subsequent Annual Reports (see Exhibit 2 to Dr. Laton's declaration). Moreover, mistaken statements in the Watermaster's Annual Reports do not change the fact that the Judgment itself, in Exhibit G, clearly states that Alto Producers' Subarea Obligation is owed to the TZ, not to Centro.

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based upon Dr. Laton's statement, 90% of the loss occurred between Hodge and Barstow, which is an area wholly within the Centro subarea. Thus, the 'lost' flow in Centro directly impacts the supply to Baja.

C. LATON amended declaration page 5, lines 11-12:

As the climate is changing, these calculations need to be revisited with flow data that is more relevant than the flow rates tied to periods that were much wetter than today.

Objection/Reply: The subsurface flow of 2,000 AFY at the TZ was agreed upon by all Parties who stipulated to the Judgment. Additionally, as explained in Watermaster's Opposition to Golden State's motion and in Mr. Wagner's supporting declaration:

In compliance with the Judgment, to re-evaluate the subsurface flow after 10 years, on February 22, 2006, during Watermaster's public meeting at which three representatives from Golden State Water Company were in attendance, the Watermaster Engineer's detailed report 'Summary Report Subsurface Flows Between Subareas' was submitted for review and was explained (see Exhibits 8 and 9 to Wagner declaration, Exhibit A hereto). At Watermaster's March 22, 2006 meeting (during which two Golden State Water Company representatives were in attendance), the Watermaster adopted the 'Summary Report Subsurface Flows Between Subareas,' which confirms 'there is not a reason to recommend a change in the estimated subsurface flow from Alto to Centro' (see Exhibit 10, pp. 2-3, attached to Wagner Dec., Exhibit A hereto).

(Watermaster Amended Opposition, 6:20-7:8; Exhibit A thereto, Wagner Dec., 4:27-5:5.)

D. LATON amended declaration page 6, lines 5-10:

A review of the groundwater levels obtained from USGS NWIS website (https://nwis.waterdata.usgs.gov/usa/nwis/gwlevels) for USGS well 08N04W31 R01 with groundwater level records dating back to the 1930s indicates that groundwater levels have declined since the 1950s and have never fully recovered to those historic 1930-1950 levels.

Objection/Reply: After the 1996 adjudication, water levels have remained relatively constant in the TZ with ups and downs behavior. Despite the fluctuations, the water levels have not changed. Watermaster prepares hydrographs for all monitoring wells as part of its Annual Reports. Dr. Laton's vertical scale of the graphs in his Exhibit 5 distorts the magnitude of the fluctuations.

The variability over time of these wells is unchanged. For example, the hydrograph posted on Watermaster's website for monitoring well 06N04W29M01 shows the water level has

increased about 8 feet between 1958 and 2023, and generally has varied within a 10 foot elevation change; the water level is not "trending" up or down.

E. LATON amended declaration page 7, lines 19-20:

Dry-flow year baseflow into the Centro subarea is only a fraction of the 21,000 AFY that flows into the Alto TZ.

Objection/Reply: No evidence is presented by Dr. Laton supporting this ambiguous statement. Additionally, Watermaster has demonstrated Alto's obligation to the TZ of Surface Flow of 21,000 AFY has been met, and all inflows into the TZ, less consumptive uses in the TZ, flow into Centro. Alto's obligation to the TZ of 21,000 acre-feet consisting of Surface Flow and 2,000 acre-feet of Subsurface Flow is met every year pursuant to the Judgment. Surface Flow is determined by adding Base Flow at Lower Narrows, plus VVWRA discharge, plus make-up obligation purchases. As demonstrated in Watermaster's Amended Opposition to Golden State's motion, the severe drought conditions from 2012 to 2022, resulted in less flow to Centro.

F. LATON amended declaration page 8, lines 1-2:

At the Wild Crossing stream gage, the maximum flow rate observed during non-storm years was 3,779 AFY during the 4 years the gage was operational.

Objection/Reply: Watermaster and Mr. Wagner previously explained why the Wild Crossing gage was not reliable; it was discontinued by USGS decades ago due to measurement inaccuracy resulting in unreliable readings.

G. LATON amended declaration page 8, lines 10-12:

In reviewing Bulletin 84, there is no actual calculation or explanation as to how the 2,000 AFY was calculated. However, this number has been passed along from report to report without ever being re-evaluated and adjusted.

Objection/Reply: Dr. Laton incorrectly characterizes Bulletin 84, among other reasons because Bulletin 84 does include a calculation and explanation. Also, all Parties who stipulated WATERMASTER'S OBJECTION/REPLY TO AMENDED DECLARATION OF DR. RICHARD LATON

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to the Judgment agreed that the Subsurface Flow at the TZ should be deemed to be 2,000 acrefeet annually. At Watermaster's March 22, 2006 meeting (during which two Golden State Water Company representatives were in attendance), Watermaster adopted the "Summary Report Subsurface Flows Between Subareas," which confirms "there is not a reason to recommend a change in the estimated subsurface flow from Alto to Centro." This report calculates the subsurface flows in the same manner that was used in Bulletin 84. The calculation from Bulletin 84 is reprinted below:

"The amounts of underflow across the basin boundaries were determined from estimates of the factors in the equation, Q=TIW, which is based on Darcy's Law. In this equation, the subsurface flow (Q) is equal to the transmissibility (permeability times the saturated aquifer depth) (T) of the subsurface materials, multiplied by the width of the cross-sectional area (W) through which the flow passes, and the slope, or the hydraulic gradient, (I) of the ground water at the cross-sectional area."

(Copied from "Subsurface Flow" on Page 54 of Bulletin 84, California Department of Water Resources 1967.)

H. LATON amended declaration page 9, lines 5-6:

If gages had been operating at these historic locations a better understanding of baseflow in this area could be assessed.

Objection/Reply: The Judgment at paragraph 4 (h) page 8, defines Base Flow as, "That portion of the total surface flow measured Annually **at Lower Narrows** which remains after subtracting Storm Flow."

Mr. Wagner's declaration indicates new gages at Helendale or Wild Crossing locations will encounter the same operational/accuracy issues that were encountered in the past with the Wild Crossing gage, resulting in unreliable readings. However, the Hodge gage has been recently re-installed and Watermaster will consider the data recorded from that gage in its evaluation of stream flow and water supply. There is no reference to Base Flow in the Judgment except as defined above.

I. LATON amended declaration page 10, lines 3-4:

Second, it would be a least a minimum to install live video feeds at select locations along the Mojave River.

Objection/Reply: Live video feeds do not quantify flow.

J. LATON amended declaration page 10, lines 8-9:

MWA/Watermaster should provide real-time groundwater levels within all the agency's sub-areas via their Key Well program.

Objection/Reply: Ambiguous as to "real-time groundwater levels." Moreover, water level data is available to the public from the USGS website, and on request from MWA which compiles that data quarterly.

K. LATON amended declaration page 10, lines 25-27 and page 11, lines 1-4:

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

Based on this loss in storage, we calculate a loss of 92,750 AF for the 25 years from 1993-94 to the 2017-2018 water years or 3,710 AFY to the Baja sub-area. This unaccounted overdraft is based on the loss of storage during the base period (1931-1990) and projected forward into the adjudication period. These losses were unaccounted for in the MWA/Watermaster initial calculations.

Objection/Reply: Dr. Laton mischaracterizes the USGS report. USGS used a model simulation wherein the model did not allow any pumping or groundwater extraction in the "upper region" and then modeled that effect on the "lower region." USGS did not evaluate whether the lower region had the right or any entitlement to a "no-pumping scenario" in the upper region; USGS also does not attribute any loss of storage due to correlative pumping between 1931 and 1990, or extrapolate a loss of storage to "Baja" between 1993-94 and 2017-

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27 28 2018. Dr. Laton's calculation of 92,750 acre feet of loss to the Baja subarea due to a "modeling" exercise" is fantasy.

L. LATON amended declaration page 11, lines 14-18:

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

Objection/Reply: This statement by Dr. Laton is unsupported by evidence; specifies no location or specific time-period; and is vague as to "required outflow to downstream sub-areas." However, his comments suggest subsurface flow into Baja is impeded by Centro, somehow. USGS, Hardt, 1971, shows water levels near the Waterman Fault (Centro/Baja boundary) in spring 1964 to be about the same elevation as in 2023, indicating that subsurface flow has not changed at that location. Dr. Laton's comments further suggest that groundwater declines from pumping in Centro deplete storm flow to Baja.

Μ. LATON amended declaration page 12, lines 7-8:

MWA/Watermaster has failed to meet their duty by not adequately installing stream gages and monitoring wells to collect boundary-specific data.

Objection/Reply: This is not true. MWA and Watermaster have an extensive network of monitoring wells at strategic locations that inform the behavior of the basin including responses to storm events and severe drought conditions. Watermaster has submitted admissible evidence showing 30 monitoring wells have been installed in the TZ, with monitoring wells on both sides of the boundary between the TZ and Centro (see Exhibits A through E to Technical Memorandum, Exhibit 1 to Wagner Declaration [Exhibit A to Watermaster Opposition to Golden State's motion]).

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N. LATON amended declaration page 12, lines 9-10:

Baseline conditions used in the original Judgment do not apply to current conditions. The climate has been and is evolving.

Objection/Reply: This statement is unsupported. No evidence was presented regarding how climate change has changed the baseline conditions from the original Judgment.

O. LATON amended declaration page 12, lines 13-15:

The 21,000 AFY of baseflow obligation to the Alto TZ (which is part of the Alto sub-area) and the subsequent obligation of baseflow to the next downstream sub-area (Centro) is essentially non-existent.

Objection/Reply: Again, the Alto surface and subsurface obligations are to the TZ, and have been met. Moreover, under the Judgment, there is no "subsequent obligation of baseflow to the next downstream sub-area (Centro)."

EXHIBIT 7 to LATON amended declaration:

Groundwater Wells. Provides a hydrograph at monitoring well 08N04W31R01 with water level data since 1920s, include a linear trend line suggesting groundwater decline since the year 1950.

Objection/Reply: No information is provided about this trend line (no information about the slope or R2 value) to indicate there actually is a trend based upon the recorded data. Adding a trend line to a scatter plot of data that fluctuates over time does not show a trend. The same hydrograph prepared by Watermaster shows that during the last 20 years, water levels have fluctuated (as expected), but overall, there is no observable trend in the data. Depth to water seems to fluctuate between 20 and 30 feet bgs, but from at least 1959 water levels are not declining.

Groundwater Wells. Provides several hydrographs of "Key Wells" located in the Transition Zone and concluded that groundwater levels have declined in 3 out of 7 wells since 2012.

Objection/Response: The hydrographs include groundwater level trend lines. Again, a trend line to a scatter plot does not mean there is a trend. Hydrographs for these wells prepared by Watermaster show groundwater fluctuates over time, but overall there is no decline in the groundwater elevations, and groundwater levels seem to be stable in the long term. Moreover, accordingly to Dr. Laton's purported trend lines, water levels actually increased in 4 out of the 7 key wells. Additionally, Dr. Laton's purported trend begins in 2012, which was a very high water year and just the start of the severe drought conditions that continued through 2022.

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Statements by Dr. Laton that are irrelevant to the pending motion.

The declaration of Dr. Laton also makes a number of statements or claims that are irrelevant to Golden State's pending motion.

(1) Impacts of pumping in upstream subareas.

Dr. Laton argues "that groundwater pumping in upstream subareas has a substantial impact on storage downstream in both the Centro and Baja sub-areas" (Laton Dec., 10:22-23; 11:8-12). Even if true, that is irrelevant to the pending motion. This is so, because the issues presented are whether (a) the Alto Producers are meeting their Subarea Obligation at the TZ, and (b) whether groundwater levels in the TZ remain stable so as to allow both surface and subsurface water to spill into Centro. Therefore, the general proposition as to whether "groundwater pumping in upstream subareas has a substantial impact on storage downstream" is irrelevant to the pending motion.

(2) Whether groundwater spills from Centro to Baja.

Dr. Laton also states that groundwater "never spills over [from Centro] to flow downstream resulting in the loss of subsurface flow that should have flowed annually to the Baja sub-area" (Laton Dec., 11:14-17). This statement also is irrelevant as to whether (a) the Alto Producers are meeting their Subarea Obligation at the TZ, and (b) whether groundwater levels in the TZ remain stable so as to allow both surface and subsurface water to spill into Centro.

Should Golden State or Newberry Springs argue Alto's PSY should be based upon

reduced groundwater storage in Centro or Baja, the Judgment provides otherwise – namely, the 2 PSY for a Subarea (including the Alto Subarea) is based upon "the highest average Annual 3 Amount of water that can be produced from a Subarea . . . without resulting in a long-term net 4 reduction of groundwater in storage in the Subarea," to wit: 5 The highest average Annual Amount of water that can be produced from a Subarea: (1) over a sequence of years that is representative of long-term average annual natural water supply to the Subarea net of long-term average annual natural outflow from the Subarea, 6 (2) under given patterns of Production, applied water, return flows and Consumptive Use, 7 and (3) without resulting in a long-term net reduction of groundwater in storage in the **Subarea**. (Emphasis added.) 8 (Judgment, p. 11, para. 4, subd. "aa.") 9 **(3)** Whether Judgment should be amended. 10 In his declaration, Dr. Laton also states that: 11 "Baseline conditions used in the original Judgment do not apply to current **conditions**. The climate has been and is evolving. The change in stresses to existing 12 water resource conditions and the original deficiencies from previous studies (from as far back as the last century) all need to be revisited with actual data." 13 14 (Laton Dec., 12:8-12, emphasis added). 15 This statement appears to be offered in support of Newberry Springs claim that the 16 Judgment's Physical Solution should be amended; that far exceeds the scope of Golden State's 17 motion, which does not seek to amend the Judgment. Accordingly, this statement is irrelevant 18 to Golden State's pending motion. 19 Dated: October 16, 20244 BRUNICK, McELHANEY & KENNEDY PLC 20 Leland P. McElhaney 21 William J. Brunick 22 Leland P. McElhaney Attorneys for Defendant/Cross-complainant, 23 MOJAVE WATER AGENCY 24 25 26

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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 October 16, 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:

WATERMASTER'S OBJECTION/REPLY TO AMENDED DECLARATION OF DR. RICHARD LATON

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 October 16, 2024 at Apple Valley, California.

2 Aust

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