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Attorneys for Defendant, Cross-Complainant, & Cross-Defendant
INDIAN WELLS VALLEY WATER DISTRICT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER

MOJAVE PISTACHIOS, LLC; et al.,

Plaintiffs,

v.

INDIAN WELLS VALLEY WATER
DISTRICT; et al.,

Defendants.

Case No. 30-2021-01187275-CU-OR-CJC

*[Related to: Case No. 30-2021-01187589-CU-
WM-CXC; Case No. 30-2021-01188089-CU-
WM-CXC; Case No. 30-2022-01239479-CU-
MC-CJC; Case No. 30-2022-01239487-CU-
MC-CJC; Case No. 30-2022-01249146-CU-
MC-CJC]*

Assigned For All Purposes To:
The Honorable William Claster, Dept. CX104

**JOINT STATUS CONFERENCE
STATEMENT**

Date: June 2, 2023
Time: 1:30 p.m.
Dept.: CX104

{00257782.5 }

INDIAN WELLS VALLEY WATER
DISTRICT,

Cross-Complainant,

v.

ALL PERSONS WHO CLAIM A RIGHT
TO EXTRACT GROUNDWATER IN THE
INDIAN WELLS VALLEY
GROUNDWATER BASIN NO. 6-54
WHETHER BASED ON
APPROPRIATION, OVERLYING RIGHT,
OR OTHER BASIS OF RIGHT, AND/OR
WHO CLAIM A RIGHT TO USE OF
STORAGE SPACE IN THE BASIN; et al.,

Cross-Defendants.

SEARLES VALLEY MINERALS INC.,

Cross-Complainant,

v.

ALL PERSONS WHO CLAIM A RIGHT
TO EXTRACT GROUNDWATER IN THE
INDIAN WELLS VALLEY
GROUNDWATER BASIN NO. 6-54
WHETHER BASED ON
APPROPRIATION, OVERLYING RIGHT,
OR OTHER BASIS OF RIGHT, AND/OR
WHO CLAIM A RIGHT TO USE OF
STORAGE SPACE IN THE BASIN; et al.,

Cross-Defendants.

AND RELATED CASES.

Complaint Filed:
Trial Date:

November 19, 2019
None Set

1 **JOINT STATUS CONFERENCE STATEMENT**

2 Defendant, Cross-Complainant, and Cross-Defendant Indian Wells Valley Water District
3 (“District”) has made a good faith effort to solicit input from parties prior to submission of this
4 Joint Status Conference Statement.¹

5 **1. WHAT HAS BEEN DONE IN THE CASE**

6 **A. STATUS OF THE PLEADINGS**

7 On November 19, 2019, Plaintiffs filed a Complaint for Quiet Title, Declaratory Relief
8 and Injunction Imposing a Physical Solution: Not General Adjudication against District, Searles,
9 and Meadowbrook. In response to Plaintiffs’ complaint, on June 16, 2021, District filed a
10 Cross-Complaint for Comprehensive Adjudication of the Basin pursuant to the California
11 Streamlined Groundwater Adjudication Statutes (Code Civ. Proc., §§ 830-852) (“Comprehensive
12 Adjudication”). Searles has also filed a cross-complaint seeking a comprehensive groundwater
13 rights adjudication.

14 **B. STATUS OF ASSIGNMENT BY CHAIRPERSON OF THE JUDICIAL**
15 **COUNCIL OF A JUDGE TO PRESIDE IN ALL PROCEEDINGS**

16 On May 20, 2022, at the initial Case Management Conference in the Comprehensive
17 Adjudication, the Court directed District to take the lead in requesting that the Chairperson of the
18 Judicial Council assign a judge to preside over the groundwater rights adjudication proceedings
19

20
21 ¹ The following parties have met and conferred and submit this Joint Statement for the June 2, 2023 Status
22 Conference: (1) Plaintiffs and Cross-Defendants Mojave Pistachios, LLC; John Thomas Conaway; John Thomas
23 Conaway Trust; John Thomas Conaway Living Trust u/d/t August 7, 2008; Nugent Family Trust; and Sierra
24 Shadows Ranch LP (collectively, “Plaintiffs”); (2) District; (3) Defendant, Cross-Defendant, and Cross-Complainant
25 Searles Valley Minerals Inc. (“Searles”); (4) Defendants and Cross-Defendants Meadowbrook Dairy Real Estate,
26 LLC; Big Horn Fields, LLC; Brown Road Fields, LLC; Highway 395 Fields, LLC; and the Meadowbrook Mutual
27 Water Company (collectively, “Meadowbrook”); (5) Cross-Defendant United States of America (“United States”);
28 (6) Cross-Defendants California Department of Fish and Wildlife, California Department of Parks and Recreation,
and California 53rd District Agricultural Association (collectively, “State”); (7) Cross-Defendant City of Ridgecrest
 (“City”); (8) Cross-Defendant County of Kern (“Kern County”); (9) Cross-Defendant Little Lake Ranch, Inc.
 (“Little Lake”); (10) Cross-Defendant BT-OH, LLC (“BT-OH”); (11) Cross-Defendant Inyokern Community
 Services District (“ICSD”); (12) Cross-Defendant Indian Wells Valley Groundwater Authority (“Authority”);
 (13) Cross-Defendant the City of Los Angeles, acting by and through its Department of Water and Power
 (“LADWP”); and (14) Cross-Defendant Granite Construction Company, erroneously named as Granite Construction
 Water System (“Granite”). (Plaintiffs, District, Searles, Meadowbrook, United States, State, City, Kern County,
 Little Lake, BT-OH, ICSD, Authority, LADWP, and Granite are collectively referred to as “Parties.”)

1 pursuant to Code of Civil Procedure section 838(a)(1). The Court also expressed a willingness to
2 continue to preside over all of the related cases.

3 On August 10, 2022, Plaintiffs, District, Searles, Meadowbrook, United States, and
4 Indian Wells Valley Groundwater Authority (“Authority”) filed in this Court and mailed to the
5 Judicial Council a Joint Request for Assignment by Chairperson of the Judicial Council (Code
6 Civ. Proc., § 838(a)). The Joint Request requested that the Chairperson of the Judicial Council
7 assign a judge to preside in all proceedings in the Comprehensive Adjudication and specifically
8 requested that the Chairperson assign the Honorable William Claster as said judge.

9 At the December 2, 2022 Case Management Conference, the Court indicated that it
10 would follow up with the Judicial Council as it did not appear the Judicial Council had yet acted
11 on the Joint Request. On December 21, 2022, District sent another copy of the Joint Request to
12 the Judicial Council at the Court’s request.

13 At the Status Conference on March 17, 2023, the Court indicated that the Courtroom
14 Clerk had followed up with the Judicial Council on the Joint Request but had been unsuccessful
15 in having the Judicial Council assign a judge to the adjudication proceedings.

16 On March 30, 2023, the Court granted the joint ex parte application of District, Plaintiffs,
17 Searles, Meadowbrook, Little Lake, BT-OH, ICSD, Granite, Cross-Defendant Michael P.
18 Henson, and Cross-Defendant Tamera Walters and entered an Order Referring Action to Judicial
19 Council for Judicial Assignment (Code Civ. Proc., § 838(a)) (“Referral Order”).

20 On April 4, 2023, the Court sent a copy of the Referral Order to the Judicial Council.

21 On April 5, 2023, District emailed and mailed a copy of the Referral Order to the Judicial
22 Council.

23 On April 18, 2023, District contacted the Judicial Council and confirmed the Judicial
24 Council’s receipt of the Referral Order. District followed up with the Judicial Council on
25 May 8, 2023.

26 As of the filing of this Joint Statement, there has yet to be a response from the Judicial
27 Council.

1 C. STATUS OF NOTICE AND SERVICE

2 District has completed and complied with all notice and service requirements required by
3 Code of Civil Procedure section 830 *et seq.* and Court orders regarding notice and service.

4 D. STATUS OF PARTICIPATION BY DE MINIMIS PUMPERS

5 Pursuant to Code of Civil Procedure section 833(d), if a court finds that claims of right to
6 pump only “minor” quantities of water, not exceeding five acre-feet of water per year, would not
7 have a material effect on the groundwater rights of other parties, the court may exempt those
8 claimants with respect to those claims from a comprehensive adjudication. (Code Civ. Proc.,
9 § 833(d).)

10 Under the Sustainable Groundwater Management Act of 2014 (“SGMA”), a “de
11 minimis” pumper is defined as a person who extracts, for domestic purposes, two acre-feet of
12 groundwater or less per year. (Wat. Code, § 10721(e).) Authority currently exempts de minimis
13 pumpers from the payment of Authority’s Replenishment Fee and certain other GSP-related
14 programs.

15 United States’ position is that the McCarran Amendment’s waiver of sovereign immunity
16 for a comprehensive state court adjudication requires joinder of all groundwater right users and
17 potential claimants. (See, *infra*, § 1.F for further discussion.)

18 No determination has been made whether to exempt minor water pumpers. The Court
19 has paused or stayed participation by such parties since the initial Case Management Conference
20 on May 20, 2022.

21 E. STATUS OF RELATED PROCEEDINGS

22 The Parties request the Court to conduct the status conference on the Comprehensive
23 Adjudication before taking up the status conferences on the related cases.

24 (1) *Mojave Pistachios, LLC; et al. v. Indian Wells Valley Groundwater*
25 *Authority; et al.*, OCSC Case No. 30-2021-01187589-CU-WM-CXC (the “Mojave Pistachios
26 Action”) (consolidated with the Searles Action; related to all cases listed on the caption; and
27 pending before The Honorable William Claster): On September 30, 2020, Mojave Pistachios,
28 LLC and Paul G. Nugent and Mary E. Nugent, Trustees of the Nugent Family Trust dated

1 June 20, 2011 (collectively, “Mojave Pistachios”) filed a Petition for Writ of Mandamus and
2 Complaint against Authority. On January 6, 2023, Mojave Pistachios filed a Fourth Amended
3 Petition for Writ of Mandamus and Complaint. Through its petition, Mojave Pistachios alleges,
4 inter alia, that Authority adopted a Groundwater Sustainability Plan on January 16, 2020
5 (“GSP”) that is illegal and technically deficient.

6 A status conference in the Mojave Pistachios Action is set to occur on June 2, 2023 in
7 this Department. However, the Mojave Pistachios Action is currently stayed pursuant to an order
8 of the Court of Appeal, Fourth Appellate District, Division Three. On April 26, 2023, the Court
9 of Appeal issued an Order to Show Cause as to why mandate or other appropriate relief should
10 not issue on Mojave Pistachios’ February 21, 2023 petition for writ of mandate. The Order to
11 Show Cause stayed the Mojave Pistachios Action pending further order of the Court of Appeal
12 and set a briefing schedule. Authority’s formal return to the petition is due on May 26, 2023 and
13 Mojave Pistachios’ formal reply is due on June 26, 2023.

14 Mojave Pistachios has elected to prepare the administrative record. Authority filed an
15 answer to Mojave Pistachios’ Fourth Amended Petition and Complaint on April 24, 2023, just
16 two days before the Court of Appeal stayed this action. The administrative record has not been
17 prepared in the consolidated cases.

18 (2) *Searles Valley Minerals Inc. v. Indian Wells Valley Groundwater*
19 *Authority; et al.*, OCSC Case No. 30-2021-01188089-CU-WM-CXC (the “Searles Action”)
20 (consolidated with the Mojave Pistachios Action, which is the lead case; related to all cases listed
21 on the caption; and pending before The Honorable William Claster): On September 29, 2020,
22 Searles filed a Petition for Writ of Mandate; Complaint for Declaratory and Injunctive Relief;
23 and Takings Claims under the California Constitution against Authority and Authority’s Board
24 of Directors. On or about August 25, 2021, Searles filed a First Amended Petition for Writ of
25 Mandate and Complaint for Declaratory and Injunctive Relief; and Takings Claim under the
26 California Constitution. Through its petition, Searles challenges the validity of Authority’s GSP.

27 A status conference in the Searles Action is set to occur on June 2, 2023 in this
28 Department.

1 Authority filed an Answer to Searles' First Amended Petition and Complaint on
2 April 24, 2023, just two days before the Mojave Pistachios Action was stayed. Given that the
3 administrative records for both the Mojave Pistachios and Searles Actions are likely to be mostly
4 similar, the administrative record has not been prepared in the consolidated cases. Moreover,
5 Searles intends to file a motion for leave to amend its operative complaint to add a Public
6 Records Act cause of action for Authority's failure to comply with Searles' request for public
7 records for the administrative record.

8 (3) *Indian Wells Valley Groundwater Authority v. Mojave Pistachios, LLC; et*
9 *al.*, OCSC Case No. 30-2022-01239479-CU-MC-CJC (related to all cases listed on the caption;
10 and pending before The Honorable William Claster): On January 5, 2022, Authority filed a
11 Complaint for Preliminary and Permanent Injunction; Recovery of Delinquent Groundwater
12 Fees; and Civil Penalties against Mojave Pistachios. Through its complaint, Authority seeks to
13 enjoin Mojave Pistachios from operating groundwater wells without payment of Basin
14 Replenishment Fees, delinquent groundwater extraction charges, and civil penalties. Mojave
15 Pistachios filed an Answer on April 11, 2022. A status conference in this matter is set to occur
16 on June 2, 2023 in this Department.

17 The Authority contends the case is at issue and the Authority requests that a trial date be
18 set. The Authority also intends to file a motion for preliminary injunction in this action.

19 (4) *Indian Wells Valley Groundwater Authority v. Searles Valley Minerals*
20 *Inc.*, OCSC Case No. 30-2022-01239487-CU-MC-CJC (related to all cases listed on the caption;
21 pending before The Honorable William Claster): On January 5, 2022, Authority filed a
22 Complaint for Preliminary and Permanent Injunction; Recovery of Delinquent Groundwater
23 Fees; and Civil Penalties against Searles. Through its complaint, Authority seeks to enjoin
24 Searles from operating groundwater wells without payment of Basin Replenishment Fees,
25 delinquent groundwater extraction charges, and civil penalties. Searles filed an Answer on
26 April 19, 2022. A status conference in this matter is set to occur on June 2, 2023 in this
27 Department.

1 The Authority contends the case is at issue and the Authority requests that a trial date be
2 set. The Authority also intends to file a motion for preliminary injunction in this action.

3 (5) *Mojave Pistachios, LLC; et al. v. Indian Wells Valley Groundwater*
4 *Authority; et al.*, OCSC Case No. 30-2022-01249146-CU-MC-CJC (related to all cases listed on
5 the caption; and pending before The Honorable William Claster): On March 9, 2022, Mojave
6 Pistachios filed a Complaint for Refund of Extraction Fees Paid against Authority, seeking to
7 recover fee payments levied by Authority pursuant to Ordinance No. 02-20, as later amended by
8 Ordinance Nos. 02-20 and 05-20, which impose a \$105 per acre-foot groundwater extraction fee,
9 which Authority states is necessary to finance the estimated costs to develop and adopt the GSP.
10 On August 24, 2022, the Court stayed the matter pending a resolution of the Mojave Pistachios
11 Action. A status conference in this matter is set to occur on June 2, 2023 in this Department.

12 (6) *Indian Wells Valley Groundwater Authority v. Inyo Kern Community*
13 *Services District*, Kern County Superior Court Case No. BCV-22-100281 (Notice of Related
14 Case filed by Mojave Pistachios on April 26, 2022, but not yet acted upon): On
15 February 1, 2022, Authority filed a Complaint for Preliminary and Permanent Injunction;
16 Recovery of Delinquent Groundwater Extraction Fees; Imposition of Civil Penalties against
17 ICSD. Through its complaint, Authority seeks to enjoin ICSD from operating groundwater wells
18 without payment of Basin Replenishment Fees, delinquent groundwater extraction charges, and
19 civil penalties. ICSD filed an Answer on November 18, 2022. This action is not pending in this
20 Court. A status conference in this matter is set to occur on August 11, 2023.

21 F. THIS COURT'S JURISDICTION OVER THE COMPREHENSIVE
22 ADJUDICATION PURSUANT TO THE STREAMLINED GROUNDWATER
23 ADJUDICATION STATUTES

24 United States is party in the Comprehensive Adjudication under the McCarran
25 Amendment (43 U.S.C. § 666; *United States v. District Court in and for Eagle County*, 401 U.S.
26 520 (1971).)

District's position is that the California Streamlined Groundwater Adjudication Statutes (Code Civ. Proc., §§ 830-852) establish a procedure that, if followed, provides for the conduct of a comprehensive adjudication consistent with, and in satisfaction of, the McCarran Amendment. (Code Civ. Proc., § 830(b)(6).) In other words, satisfying all notice and service requirements under Code of Civil Procedure section 830 *et seq.* and related court orders, as District has, establishes a court's jurisdiction over all those claiming an interest or potential interest in extraction of water from, or use of storage space within, the Basin, including de minimis pumpers and non-users. District will seek to bind all joined parties, including all minor water pumpers, through a final judgment and physical solution, subject to the Court's continuing jurisdiction.

Accordingly, District is amenable to a stipulated order recognizing this Court's jurisdiction over all water users, including all minor water pumpers, in satisfaction of the McCarran Amendment.

2. RECOMMENDED DATES AND TIMES

A. NEXT STATUS CONFERENCE

The Parties recommend the next status conference be set in approximately sixty (60) days.

B. UPCOMING LAW AND MOTION HEARING RE TRIAL SETTING

As stated in the Joint Statement for the March 17, 2023 Status Conference, as soon as the Judicial Council makes its judicial assignment, District, Plaintiffs, Searles, and Meadowbrook will file a motion and propose, among other things, the phasing of trial, potential trial dates, discovery scheduling, and a deadline for initial disclosures. The motion will also brief the issue of the Court's authority to determine safe yield and to impose a physical solution.

The Authority, County of Kern, and City of Ridgecrest agree that the issues of phasing and scope of proceedings should be addressed, and suggest that when the Court is formally assigned by the Judicial Council, that a briefing schedule be set to allow parties to submit their proposals and to respond.

1 C. JURISDICTION OVER ALL WATER USERS IN SATISFACTION OF THE
2 MCCARRAN AMENDMENT

3 The United States proposes that in order to meet the requirements for maintaining
4 jurisdiction over the United States, the parties stipulate to an order recognizing the Court's
5 jurisdiction over all water users, including minor water users, and the material effect of minor
6 water users on the groundwater rights of other parties. (*See* Code Civ. Proc., § 833(d).) Should
7 the parties not be willing to stipulate to the Court's jurisdiction over minor water users, the
8 United States' position is that the question of whether minor water users are going to be
9 exempted pursuant to Code of Civil Procedure section 833(d) is a threshold jurisdictional issue
10 which must be resolved prior to phasing of the trial.

11 **3. SUMMARY OF REQUESTS**

12 Based on the foregoing report, the Parties respectfully request that the Court consider
13 taking the following actions:

- 14 A. EXPERT DISCLOSURES: Continue to refrain from setting a deadline for expert
15 disclosures pursuant to Code of Civil Procedure section 843 until setting the first
16 phase of trial and then set disclosure deadlines in phases as to the issues to be
17 tried during each phase.
- 18 B. DISCOVERY STAY: Continue the stay on discovery until setting the first phase
19 of trial and then lift the discovery stay in phases as to the issues to be tried during
20 each phase.
- 21 C. INITIAL DISCLOSURES: Continue the stay on initial disclosures through a
22 further status conference in approximately sixty (60) days.
- 23 D. NEXT STATUS CONFERENCE: Set a further status conference in
24 approximately sixty (60) days.
- 25
26
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1 DATED: May 26, 2023

BROWNSTEIN HYATT FARBER SCHRECK, LLP

2
3
4 By: /s/ Elisabeth L. Esposito

5 Scott S. Slater

6 Robert J. Saperstein

7 Amy M. Steinfeld

8 Elisabeth L. Esposito

9 Attorneys for Plaintiffs & Cross-Defendants

10 MOJAVE PISTACHIOS, LLC;

11 JOHN THOMAS CONAWAY;

12 JOHN THOMAS CONAWAY TRUST;

13 JOHN THOMAS CONAWAY LIVING TRUST u/d/t
August 7, 2008;

14 NUGENT FAMILY TRUST;

15 SIERRA SHADOWS RANCH LP

16 Attorneys for Cross-Defendant

17 INYOKERN COMMUNITY SERVICES DISTRICT

18 DATED: May 26, 2023

MURPHY & EVERTZ LLP

19 By: /s/ Douglas J. Evertz

20 Douglas J. Evertz

21 Emily L. Madueno

22 Attorneys for Defendant, Cross-Complainant, &
23 Cross-Defendant

24 INDIAN WELLS VALLEY WATER DISTRICT

1 DATED: May 26, 2023

BEST BEST & KRIEGER LLP

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4 By: /s/ Jeffrey V. Dunn

5 Eric L. Garner
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7 Wendy Wang
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SEARLES VALLEY MINERALS INC.

9 DATED: May 26, 2023

FENNEMORE LLP

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12 By: /s/ Derek R. Hoffman

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14 Darien Key
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16 MEADOWBROOK DAIRY REAL ESTATE, LLC;
17 BIG HORN FIELDS, LLC;
18 BROWN ROAD FIELDS, LLC;
HIGHWAY 395 FIELDS, LLC;
THE MEADOWBROOK MUTUAL WATER
COMPANY

19 DATED: May 26, 2023

U.S. DEPARTMENT OF JUSTICE

20
21
22 By: /s/ R. Lee Leininger

23 R. Lee Leininger
24 David W. Gehlert
25 Attorneys for Cross-Defendant
26 THE UNITED STATES OF AMERICA
27
28

1 DATED: May 26, 2023

OFFICE OF THE ATTORNEY GENERAL

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4 By: /s/ Noah Golden-Krasner

5 Noah Golden-Krasner
6 Attorneys for Cross-Defendants
7 CALIFORNIA DEPARTMENT OF FISH AND
8 WILDLIFE;
9 CALIFORNIA DEPARTMENT OF PARKS AND
RECREATION;
CALIFORNIA 53rd DISTRICT AGRICULTURAL
ASSOCIATION

10 DATED: May 26, 2023

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13 By: /s/ W. Keith Lemieux

14 W. Keith Lemieux
15 Alex Lemieux
16 Attorneys for Cross-Defendants
17 CITY OF RIDGECREST;
INDIAN WELLS VALLEY GROUNDWATER
AUTHORITY

18 DATED: May 26, 2023

KERN COUNTY OFFICE OF COUNTY COUNSEL

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21 By: /s/ Phillip W. Hall

22 Phillip W. Hall
23 Attorneys for Cross-Defendants
24 COUNTY OF KERN;
25 INDIAN WELLS VALLEY GROUNDWATER
26 AUTHORITY
27
28

1 DATED: May 26, 2023

RICHARDS, WATSON & GERSHON

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4 By: /s/ Kyle Brochard

5 James L. Markman

6 B. Tilden Kim

7 Kyle Brochard

8 Darrelle M. Field

9 Jacob Metz

Attorneys for Cross-Defendant

INDIAN WELLS VALLEY GROUNDWATER
AUTHORITY

10
11 DATED: May 26, 2023

ARNOLD LaROCHELLE MATHEWS VANCONAS &
ZIRBEL LLP

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14 By: /s/ Gary D. Arnold

15 Gary D. Arnold

16 Attorneys for Cross-Defendant

LITTLE LAKE RANCH, INC.

17 DATED: May 26, 2023

LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

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19
20 By: /s/ Brett A. Stroud

21 Brett A. Stroud

22 Attorneys for Cross-Defendant

23 BT-OH, LLC

1 DATED: May 26, 2023

OFFICE OF THE LOS ANGELES CITY ATTORNEY

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4 By: /s/ Melanie A. Tory

5 Julie C. Riley

6 Melanie A. Tory

7 Attorneys for Cross-Defendant

8 THE CITY OF LOS ANGELES, ACTING BY AND

THROUGH ITS DEPARTMENT OF WATER AND

POWER

9 DATED: May 26, 2023

LeBEAU THELEN, LLP

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11
12 By: /s/ Robert G. Kuhs

13 Robert G. Kuhs

14 Briar R. Keeler

15 Attorneys for Cross-Defendant

16 GRANITE CONSTRUCTION COMPANY,

erroneously named as Granite Construction Water

System