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PROPERTIES, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

Coordination Proceeding
Special Title (Rule 3.550 (fka Rule 1550(b)))

**ANTELOPE VALLEY GROUNDWATER
CASES**

Including Consolidated Actions:

REBECCA LEE WILLIS, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40, et al.

Defendants

RICHARD A. WOOD, an individual, on behalf
of himself and all others similarly situated,

Plaintiff,

v.

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40, et al.

Defendants.

AND RELATED ACTIONS

Judicial Council Coordination Proceeding No.
4408

Santa Clara Case No. 2005-1-CV-049053
Los Angeles Superior Court
Case Nos. BC364553 and BC391869

Assigned to the Hon. Jack Komar
Santa Clara Superior Court

**MOTION TO STRIKE DECLARATIONS OF
RUSS BRYDEN AND ROBERT PARRIS**

*Filed concurrently with Request for
Evidentiary Hearing, Offer of Proof, and
Objections to Evidence Submitted by
Watermaster in Support of Watermaster's
Opposition to the Motion for Action and
Implementation by The People Concern, Inc.,
as Agent for Barrel Springs Properties, LLC*

Date: September 19, 2023
Time: 9:30 a.m.

1 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 On August 24, 2023, this Court ordered the Watermaster to submit a declaration from
3 Director Kathy MacLaren explaining her "no" vote on the New Production Application (the
4 "Application") made by The People Concern, Inc. as agent for Barrel Springs Properties, LLC
5 ("The People Concern"). In response, the Antelope Valley Watermaster filed three declarations,
6 one each by Ms. MacLaren, Director Robert Parris, and Director Russ Bryden. The People
7 Concern moves to strike the Parris and Bryden declarations because they are not responsive to the
8 Court's order and present testimony not relevant to the Court's consideration of the basis for Ms.
9 MacLaren's "no" vote, which resulted in the Watermaster denying the Application.

10 The Court, however, should consider Mr. Parris's Declaration for the limited purpose of
11 evaluating Ms. MacLaren's credibility because Ms. MacLaren's Declaration is nearly identical to
12 Mr. Parris's. Witness credibility is always in issue; Ms. MacLaren's credibility is particularly at
13 issue here because the Court's focus is on whether MacLaren abused her discretion in voting "no."

14 **I. INTRODUCTION**

15 At the hearing on August 24, 2023, the Court ordered the Watermaster to submit testimony
16 by declaration from Kathy MacLaren because, without her testimony, the Court had no ability to
17 evaluate whether she had abused her discretion in voting "no" on the Application. The Court
18 further ordered that The People Concern respond by September 8, 2023 and that its request for an
19 evidentiary hearing was reserved.

20 The Watermaster submitted three declarations, including one from Robert Parris, who was
21 not present at the April 26, 2023 meeting and did not vote on the Application. The third
22 Declaration from Russ Bryden is speculation based on hearsay assertions from unnamed others for
23 which there is no foundation. Both declarations should be stricken for the simple reasons that (1)
24 they are not the MacLaren Declaration ordered by the Court and (2) they have no bearing on the
25 MacLaren Declaration. Accordingly, The People Concern moves to strike the Bryden and Parris
26 declarations pursuant to Evidence Code section 353 and relevant decisional law.

27 Ms. MacLaren's Declaration is not credible, is contradicted by contemporaneous writings,
28 and does not provide evidence showing a substantial or rational basis for her "no" vote.

1 Accordingly, The People Concern by concurrent filing makes an offer of proof and requests the
2 Court set an evidentiary hearing to test Ms. MacLaren's rationale for voting "no."

3 **II. IRRELEVANT AND INCOMPETENT EVIDENCE IS NOT ADMISSIBLE.**

4 "No evidence is admissible except relevant evidence." (Evid. Code §350.) Incompetent
5 evidence is likewise inadmissible. (Evid. Code §§140, 210, 403, 702.) The Bryden Declaration
6 proffers incompetent and irrelevant testimony. The Parris Declaration proffers irrelevant, and
7 therefore inadmissible evidence, and incompetent testimony. Both should be stricken.

8 **A. The Parris Declaration Is Not Relevant Because He Was Not Present When**
9 **the Watermaster Denied The People Concern's Application.**

10 Mr. Parris is the Chairman of the Watermaster Board of Directors. He fills the board seat
11 set aside for the Antelope Valley-East Kern Water Agency ("AVEK") by the Judgment and
12 Proposed Solution. These facts are not in dispute and are admitted by Mr. Parris's Declaration.
13 (Parris Decl. ¶¶1, 2 at 6:3-14.) Mr. Parris's alternate, Matthew Knudson, the General Manager of
14 AVEK, attended the April 26, 2023 Watermaster Board meeting. (Mtn at 5:25-28; Comp. Exh. 3.)
15 Mr. Knudson voted "yes" on Barrel Springs' Application.

16 **B. The Parris Declaration Is Not Competent.**

17 Before the Court is The People Concern's Motion for Action and Implementation of the
18 Watermaster Engineer's Recommendation of Approval of its Application (the "Motion"). By this
19 Motion, The People Concern moved this Court to set aside the vote taken by the Watermaster
20 Board on April 26, 2023, rejecting the Watermaster Engineer's recommendation for approval. The
21 People Concern further moved this Court to approve Barrel Springs' Application because no
22 material injury to the Basin has been confirmed by the Watermaster Engineer's Findings. Mr.
23 Parris was not present and did not vote on April 26, 2023. His views about Barrel Springs'
24 Application are not relevant. (Evid. Code §210.) His views about Barrel Springs' Application are
25 outside the record of decision before this Court. (See *County of Mono v. City of Los Angeles*
26 (2022) 82 Cal.App.5th 657, 666.) He has no personal knowledge of what transpired at the April 26,
27 2023 meeting. (Evid. Code §702.) Accordingly, his declaration is not admissible.

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1 **C. The Parris Declaration Is Admissible for the Limited Purpose of Testing Ms.**
2 **MacLaren's Credibility.**

3 Ms. MacLaren's Declaration repeats—nearly verbatim—the Parris Declaration. For
4 example, the paragraphs below are drawn from the two declarations; the differences are shown in
5 italics.¹ At paragraph 4, Mr. Parris declared,

6 *Upon reviewing the Application and the Findings, I had concerns*
7 *about the potential consequences and fallout if the single well*
8 *proposed to be constructed to serve the Project should fail, leaving*
9 *144 people using 145 proposed bathrooms without a certified*
10 *domestic water supply to cover their proposed 47, 000 square feet of*
11 *buildings, and knowing that Palmdale Water District had already*
12 *issued a serviceability letter declining to provide water to the Project*
13 *unless Barrel Springs constructed the necessary infrastructure, which*
14 *I understood Barrel Springs was not willing or able to construct.*

15 (Parris Decl. ¶4 at 6:25 – 7:3.) Ms. MacLaren— at paragraph 5, declared,

16 *My concerns included the potential consequences and fallout if the*
17 *single well proposed to be constructed to serve the Project should*
18 *fail, leaving 144 people using 145 proposed bathrooms without a*
19 *certified domestic water supply to cover their proposed 47, 000*
20 *square feet of buildings, and knowing that PWD had already issued*
21 *a serviceability letter declining to provide water to the Project unless*
22 *Barrel Springs constructed the necessary infrastructure.*

23 (MacLaren Decl. ¶5 at 2:27 – 3:3.) Indeed, Ms. MacLaren's entire declaration parrots Mr. Parris,
24 and states issues raised solely by Mr. Parris (not Ms. MacLaren) at the May 25 meeting, one
25 month after the meeting. (Declaration of Toby Waxman at ¶¶18, 19; Declaration of Claire Collins
26 at ¶¶4, 5.) It is not credible that Ms. MacLaren on the date of the April hearing had any (or all) of
27 the concerns stated by Mr. Parris at the May meeting. Ms. MacLaren has herself never stated any
28 of those concerns at any time prior to her August 29 Declaration.

 The principal difference between the Parris and MacLaren Declarations is that Mr. Parris
adds paragraphs 12, 13, and 14, purporting to explain how New Production Applications approved
for wells with larger capacities than Barrel Springs' proposed well are not comparable. None of
this testimony is relevant. For these reasons, the Parris Declaration should only be considered by

¹ By separate, concurrent filing, The People Concern makes evidentiary objections to the
MacLaren, Parris, and Bryden declarations. These evidentiary objections illustrate further that
Watermaster lacks any rational basis for having denied Barrel Springs' Application.

1 the Court to test the credibility of Ms. MacLaren. (Evid. Code §§210, 403.)

2 **D. Mr. Bryden's Testimony About What He Might Do Is Irrelevant.**

3 Mr. Bryden voted to approve the Application. Accordingly, his testimony is not required to
4 answer the Court's question, namely, what reason(s) did Ms. MacLaren have for voting "no." It is
5 not relevant to whether Ms. MacLaren abused her discretion.

6 Mr. Bryden's Declaration is inadmissible for another, separate reason. Mr. Bryden
7 testifies—on no foundation and inadmissible hearsay—that had he known then what he thinks he
8 knows now, he might vote differently in future. (Bryden Decl. ¶3 at 11:17-21.) He declared,

9 however in hindsight, now that I have been made aware of Directors
10 MacLaren's and Parris' [sic] questions and concerns regarding the
11 Engineer's Findings, and now knowing Barrel Springs' intransigence
12 and unwillingness to respond in any meaningful way to the
Watermaster's follow-up questions and offer to re-consider the
Application, *I am no longer certain I would vote to approve the*
Application.

13 (emph. added.) None of this testimony is admissible. None of it is relevant. Mr. Bryden voted
14 "yes." Even if he could change his vote now, he *does not* testify that he (a) has changed his mind
15 or (b) that he is revoking his "yes" vote.²

16 **III. CALIFORNIA LAW SUPPORTS STRIKING THE BRYDEN AND PARRIS**
17 **DECLARATIONS.**

18 Evidence Code sections 353 and 354 address the effect of an erroneous admission of
19 evidence on appeal. Evidence Code section 353 provides:

20 A verdict or finding shall not be set aside, nor shall the judgment or
21 decision based thereon be reversed, by reason of the erroneous
admission of evidence unless:

22 (a) There appears of record an objection to or a motion to exclude or
23 to strike the evidence that was timely made and so stated as to make
clear the specific ground of the objection or motion; and

24 (b) The court which passes upon the effect of the error or errors is of
25 the opinion that the admitted evidence should have been excluded

26
27 ² AVEK's representative voted to approve the Application at the April 26, 2023 hearing. The
28 curious Mr. Bryden's Declaration begs the question why Watermaster did not present testimony
from Mr. Knudson about his "yes" vote.

1 on the ground stated and that the error or errors complained of
2 resulted in a miscarriage of justice.

3 Evidence Code section 354 provides:

4 A verdict or finding shall not be set aside, nor shall the judgment or
5 decision based thereon be reversed, by reason of the erroneous
6 exclusion of evidence unless the court which passes upon the effect
7 of the error or errors is of the opinion that the error or errors
8 complained of resulted in a miscarriage of justice and it appears of
9 record that:

10 (a) The substance, purpose, and relevance of the excluded evidence
11 was made known to the court by the questions asked, an offer of
12 proof, or by any other means;

(b) The rulings of the court made compliance with subdivision (a)
13 futile; or

14 (c) The evidence was sought by questions asked during cross-
15 examination or recross-examination.

16 The People Concern must make its objections and offer of proof in order to preserve its rights on
17 appeal. (*United Savings & Loan Ass'n v. Reeder Dev. Corp.* (1976) 57 Cal.App.3d 282, 293-94.)

18 This Court risks reversible error if it admits the Bryden Declaration and reversible error if
19 it admits the Parris Declaration for any purpose other than testing Ms. MacLaren's credibility. To
20 preserve and protect The People Concern's rights regarding improperly admitted evidence it must,
21 in accordance with Evidence Code section 353 (1) object and (2) move to strike the evidence, with
22 specification of the grounds for objection to and striking of the evidence. (*People v. Demetrulias*
23 (2006) 39 Cal.4th 1, 20-22 [objection and motion to strike at close of testimony both required;
24 collecting authorities].)

25 The People Concern concurrently objects to Watermaster's evidence and moves here to
26 strike the Bryden and Parris Declarations.

27 **A. The Parris Declaration Must Be Stricken Because It Is Not Relevant to This**
28 **Court's Ruling on The People Concern's Motion.**

Mr. Parris did not participate in the April 26, 2023 hearing. Accordingly, his testimony
about whether the Watermaster Engineer's Findings addressed a laundry-list of *post hoc* concerns
is of no moment. (Parris Decl. ¶5 at 7:4-14.) The People Concern did not move this Court to direct

1 the Watermaster to *reconsider* its denial of the Application, it moved the Court to act on and
2 implement the Watermaster Engineer's finding that no material injury to the Basin will result from
3 the new well. (Ntc of Mtn at 2:3-14; Mtn at 5:6-7, 13:2-6.)

4 1. *The Watermaster Engineer Considered and Made Findings on Those of Mr.*
5 *Parris's Concerns Relevant to The People Concern's Application.*

6 Mr. Parris's *post-hoc* concerns were, to the extent relevant to the New Production
7 Application, *addressed by the Watermaster Engineer's Findings and Recommendation for*
8 *Approval*. In opposing the Motion, the Watermaster submitted the Declaration of the Watermaster
9 Engineer Phyllis Stanin, which does not list her credentials. The record shows she is more than the
10 Vice-President and Principal Geologist [Stanin Decl. ¶2 at 1:26-27], she is a registered
11 Professional Geologist *and* a Certified Hydrogeologist.³ (Compendium, Exh. 5 at p.18.) As noted
12 previously, Ms. Stanin's August 9, 2023 Declaration submitted in support of Watermaster's
13 Opposition, *does not revoke, or amend, or shade, or carve-back* her original finding that no
14 material injury to the Basin will result from The People Concern's proposed new production. Mr.
15 Parris's speculation about possible problems already considered and evaluated by Ms. Stanin is not
16 relevant to the Court's decision-making.

17 2. *The Parris Declaration Filed on September 1, 2023 Suffers From the Same*
18 *Defect as the Declarations Filed in Opposition to the Motion—It Is*
Careless as to What Is Part of the Record and What Is Not.

19 The Court has before it the record considered by the Watermaster Engineer and the
20 Watermaster Board in voting to deny the Application. What happened after April 26, 2023 is not
21 part of that record. Yet paragraphs 4 through 11 of 15 in Mr. Parris's Declaration testify about
22 post-April 26, 2023 matters. This extra-record evidence is not admissible. (*County of Mono v. City*
23 *of Los Angeles* (2022) 82 Cal.App.5th 657, 666.) If the proceeding here is akin to administrative
24 mandamus, Mr. Parris's testimony about extra-record facts is "largely inadmissible[.]" (*Id.* [citing
25 *Western States Petroleum Ass'n v. Superior Court* (1996) 9 Cal.4th 559, 576].) If The People

26 _____
27 ³ The Watermaster dragged its feet on action on The People Concern's Application for so long that
28 the original Watermaster Engineer assigned to the project—Kate White—retired. Ms. White is not
a hydrogeologist, she is a Professional Engineer. (See, e.g., Comp. Exh. 6 at p.2.)

1 Concern's Motion is construed as akin to ordinary mandamus, it is not admissible unless "the facts
2 are in dispute." (*Id.* [quoting *Western States*, 9 Cal.4th 559, 576].) The facts here are not in dispute.
3 The Watermaster Engineer's Findings were and remain that no material injury to the Basin will
4 result from approval of the Application. Watermaster proffers no authority showing consideration
5 of its "extra-record" evidence is proper.

6 **B. The Bryden Declaration Must Be Stricken Because It Lacks Foundation and Is**
7 **Speculative and Irrelevant.**

8 Mr. Bryden voted to approve the Application. Accordingly, his testimony is not required to
9 answer the Court's question, namely, what reason(s) did Ms. MacLaren have for voting "no." It is
10 not relevant to whether Ms. MacLaren abused her discretion.

11 Mr. Bryden's Declaration is inadmissible for another, separate reason. Mr. Bryden
12 testifies—on no foundation and inadmissible hearsay—that had he known then what he thinks he
13 knows now, he might vote differently in future. (Bryden Decl. ¶3 at 11:17-21.)

14 Mr. Bryden testified that if he,

15 had been made aware of Directors MacLaren's and Parris' [sic]
16 questions and concerns regarding the Engineer's Findings, and now
17 knowing Barrel Springs' intransigence and unwillingness to respond
18 in any meaningful way to the Watermaster's follow-up questions and
offer to re-consider the Application, *I am no longer certain I would
vote to approve the Application.*

19 (Bryden Decl. ¶3 at p.11:17-21 [emph. Added].) None of this testimony is admissible. None of it
20 is relevant. Mr. Bryden voted "yes." Even if he could changes his vote now, he *does not* testify
21 that he (a) has changed his mind or (b) that he is revoking is "yes" vote.⁴

22 **IV. EXTRA-RECORD CONCERNS, EVEN IF RELEVANT (THEY ARE NOT) TO**
23 **APPROVING THE APPLICATION, CANNOT BE CONSIDERED.**

24 Nearly all of MacLaren and Parris's detailed concerns presented in their declarations were
25 not *raised* by either of them before the Watermaster Board voted on April 26, 2023. (Declaration
26

27 ⁴ AVEK's representative voted to approve the Application at the April 26, 2023 hearing. The
28 curious Mr. Bryden's Declaration begs the question why Watermaster did not present testimony
from Mr. Knudson about his "yes" vote.

1 of Nathan A. Metcalf at ¶¶2, 5, and 6; Declaration of David W. Larson, P.E. at ¶25; Declaration of
2 Toby Waxman at ¶¶15-16.) Mr. Parris was not there. And Ms. MacLaren admits that she did not
3 raise these issues. (MacLaren Decl. ¶8 at 3:21-22.) After the issue of San Andreas Fault and the
4 aqueduct's unknown effects on the aquifer were broached, Watermaster Counsel Craig Parton
5 reminded the Watermaster Board that those issues were "not relevant and that there was no reason
6 to deny the application." (Larson Decl. ¶25 at 6:20-23.) The other issues—the square footage, the
7 number of farmworkers, the calculation of water needed for each farmworker, potential
8 contamination of the SWP, recharge of the aquifer by replacement water, and other New
9 Production Applications—were not raised at the April 16, 2023 Meeting.

10 The Watermaster did not record its April 26, 2023 meeting. Accordingly, the only
11 evidence before the Court regarding what transpired at that meeting is testimony of The People
12 Concern and Watermaster witnesses. Mr. Bryden mentions none of the "concerns" now articulated
13 by the MacLaren and Parris Declarations. Ms. MacLaren's Declaration does not say that any of
14 these issues came up. Indeed, she admits that she did not explain her "no" vote. (MacLaren Decl.
15 ¶8 at 3:21-22.) The People Concerns' witnesses:

- 16 1. confirm that Ms. MacLaren did not articulate any concerns [Metcalf Decl. ¶6 at
17 3:2; Larson Decl. ¶26 at 7:1-3];
- 18 2. identify that the topic of a test well did surface [Waxman Decl. ¶15 at 5:3-5]; and
- 19 3. explain that the San Andreas Fault effect on the aquifer—not the proposed Barrel
20 Springs' well—was discussed but ruled irrelevant to the Board's decision by counsel.
21 (Larson Decl. ¶25 at 6:20-23.)

22 Ms. MacLaren and Mr. Parris's concerns were raised *after* the April 26, 2023 hearing, as
23 admitted by Ms. MacLaren's (¶¶4 at p.2:23-26 and 8 at p.3:20-24.) and Mr. Parris's Declaration.
24 (¶3 at p.6:20-22.)

25 ///

26 ///

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28 ///

1 **V. CONCLUSION**

2 For all of the foregoing reasons, the Bryden Declaration must be stricken. The Parris
3 Declaration must be stricken but admitted solely for the limited purpose of cross-examining Ms.
4 MacLaren.

5
6 DATED: September 8, 2023

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7
8 By:



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12 Attorneys for BARREL SPRINGS PROPERTIES,
13 LLC
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