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NO FEE PER GOV. CODE § 6103

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAY 30 2018

J. Marcial

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

CITY OF BARSTOW, et al.

Plaintiffs,

CITY OF ADELANTO, et al.,

Defendants.

And All Related Cross Actions

Case No. CIV 208568

**CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
RESPONSE TO WATERMASTER'S
MOTION TO ADJUST FREE
PRODUCTION ALLOWANCE FOR
WATER YEAR 2018-2019**

**[DECLARATIONS OF ALISA
ELLSWORTH, KIT CUSTIS and
MARILYN H. LEVIN IN SUPPORT
THEREOF FILED CONCURRENTLY
HEREWITH]**

Date: June 15, 2017

Time: 1:30 p.m.

Dept: 5

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1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 The California Department of Fish and Wildlife (Department) respectfully submits this
3 Response in support of the Mojave Water Agency's (Watermaster) Motion to Adjust the Free
4 Production Allowance to 35% for Water Year 2018-2019 (2018-2019 Rampdown Motion) in the
5 Baja Subarea (Baja), to continue reduction in 5% increments as required by the *City of Barstow v*
6 *City of Adelanto* Judgment entered on January 10, 1996 (Judgment) and to explore additional
7 actions to ensure the sustainability of the Mojave Basin Area (Basin), including the purchase of
8 imported water for Baja.

9 The continued loss of groundwater in Baja has had a significant negative effect on the
10 residents and the natural resources of Baja. The Department's Camp Cady Wildlife Area (Camp
11 Cady), once home to a unique, vegetated area of Baja in the 1960's, has now slowly become a
12 dry, migrating dune field that inundates both vegetation and buildings. The continued decline in
13 water levels is predicted for the foreseeable future, despite many years spent by the parties and
14 Watermaster addressing the problem.

15 The evidence presented in the Watermaster's Motion, including the Declaration of
16 Watermaster Engineer, Robert C. Wagner for WY 2018-2019 (2018 Wagner Decl.) and the
17 independent review by the Department, compels an annual adjustment of the Free Production
18 Allowance (Rampdown) of 5% in Baja. The current evidence submitted to the Court shows that
19 the following negative impacts in Baja have already occurred:

20 • The long term rate of groundwater levels in the Baja Subarea continue to decline at a rate
21 of 1 to 2 feet per year and water levels in Baja have declined as much as 100 feet in some areas,
since 1996;

22 • The declining water levels in Baja have had a continuing significant negative effect on
23 the biological resources in and around Camp Cady located along the Mojave River in the eastern
portion of Baja;

24 • Groundwater storage has decreased more than 400,000 acre-feet since 1996;

25 • Baja remains in overdraft, which means that the rate of water leaving the basin through
26 excess pumping and other factors is more then the amount of recharge to the basin through
27 precipitation and return flows.

1 Respectfully, the Department agrees with the Watermaster Engineer’s recommendation that
2 a 5% Rampdown in Baja to 35% of Base Annual Production should be imposed pursuant to the
3 terms of the Judgment. The Department additionally agrees with the Watermaster Engineer that
4 in order to prevent an eventual exhaustion of the water supply in Baja, and to return to
5 sustainability in Baja, imported water is also necessary.

6 **II. BACKGROUND AND HISTORY OF RAMPDOWN MOTIONS AND ORDERS**

7 The original complaint in this water adjudication was filed by the City of Barstow on May
8 30, 1990. On January 10, 1996, the Court entered a Judgment that addressed the overdraft
9 situation in all of the five subareas and determined that the Basin had been in a state of overdraft
10 since at least the 1950’s.¹ The Judgment was upheld on appeal in *City of Barstow v Mojave*
11 *Water Agency* (2000) 23 Cal. 4th 1224. The background of the litigation is set forth in detail in the
12 2018-2019 Rampdown Motion.² The Department is a party to the Judgment and has statutory
13 and common law responsibilities with regard to fish and wildlife resources, including their
14 habitats. (Fish & Game Code, § 711.7; § 1802.) The Department owns and manages lands in the
15 Basin, including Camp Cady in Baja. (Declaration of Alisa Ellsworth in Support of the
16 Department of Fish and Wildlife’s Response to Watermaster’s Motion to Adjust Free Production
17 Allowance for the 2018-2019 Water Year [2018 Ellsworth Decl. at p. 2, ¶¶ 1, 2]). The
18 Department also owns and manages the Mojave Narrows Regional Park and the Mojave River
19 Fish Hatchery in the Alto Subarea. The Department is an ex-officio member of the Alto and Baja
20 Subarea Advisory Committees. (2018 Ellsworth Decl. at p. 2, ¶¶ 1, 2.)

21 **A. The Terms of the Judgment**

22 The Judgment established a limit on the amount of water each Subarea could produce in
23 one year known as “Free Production Allowance” (FPA) which can be adjusted on an annual
24

25 ¹ A copy of the Judgment and a map of the Adjudicated Subareas are attached for the
26 Court’s convenience as Exhibits A and B respectively in the Declaration of Marilyn H. Levin
27 filed concurrently herewith. (Originals can be found on the Mojave Water Agency website at:
28 [@http://www.mojavewater.org/files/Judgment_3335z3tv.pdf](http://www.mojavewater.org/files/Judgment_3335z3tv.pdf);
[@https://www.mojavewater.org/files/adjudicatedsubareasmmap.pdf](https://www.mojavewater.org/files/adjudicatedsubareasmmap.pdf)

² (2018-2019 Rampdown Motion. at p. 3:3-22; 2018 Wagner Decl.)

1 basis. Pursuant to the gradual Rampdown in production required by the Judgment, Exhibit H to
2 the Judgment *requires* Watermaster to recommend a five percent (5%) decrease in the FPA for a
3 Subarea, when that Subarea's FPA exceeds its estimated Production Safe Yield (PSY) by five
4 percent (5%) or more on an annual water year basis. (2018-2019 Rampdown Motion, at p. 4:20-
5 25; 2018 Ellsworth Decl. at pp. 10-11, ¶ 16, Exh. C [Exhibit H at p.H-1:27-28 and-H-2:1-13].)³
6 The Judgment also established each producer's initial "Base Annual Production" (BAP). A
7 producer's BAP was based upon that producer's highest year of water production during the base
8 period of 1986-1990. The Base Annual Production Right or its share of the FPA is the right of
9 each producer to a *percentage* of the FPA within a given Subarea each year. (2018-2019
10 Rampdown Motion at p. 4:5-9.) For example, the Department owns 921 acre-feet of BAP in the
11 Judgment and its percentage share at 45% of BAP in WY 2016-2017 was 415 acre-feet. At 35%
12 its percentage share in WY 2018-2019 will be 322 acre-feet.

13 **B. Summary Of The Recent History Of Orders Pursuant to the Judgment**

14 A summary of the ten year history of Rampdown Motions and Orders is provided for the
15 convenience of the court below and in the Declaration of Alisa Ellsworth filed concurrently
16 herewith (2018 Ellsworth Decl.).⁴ As set forth below, various compromises to a strict reading of
17 the Judgment were implemented in the Baja Subarea over many years, but have not been
18 successful in achieving sustainability in the Baja Subarea.

19 In 2008, just three years after the Court imposed a ten year moratorium on Rampdown in
20 Baja, the Department and the Watermaster Engineer recommended to the Watermaster Board that
21 the ten-year moratorium on Rampdown to production be lifted and that Baja be immediately
22 ramped down from 75% to 60% of BAP. The Department stated at the time that the accelerated
23 Rampdown in production in Baja was needed because Baja had "materially exceeded" the limit

24 ³ "Production Safe Yield" is defined in the Judgment as follows: "The highest average
25 Annual Amount of water that can be produced from a Subarea: (1) over a sequence of years that
26 is representative of long-term average annual natural water supply to the Subarea net of long-term
27 average annual natural outflow from the Subarea, (2) under given patterns of Production, applied
28 water, return flows and Consumptive Use, and (3) without resulting in a long-term net reduction
of groundwater in storage in the Subarea." (Judgment, p. 4, II. A. 4.aa.)

⁴ The Department requests that the court take judicial notice of the Judgment, Motions,
Responses, Declarations and Orders previously filed in this case regarding Rampdown.

1 on production set forth as a formula in the 2005 Court Order. The Department ultimately agreed
2 to a compromise of only a 5% rampdown to 70% of Base Annual Production. The court lifted the
3 moratorium, ordered a rampdown of 5% and stated in its September 10, 2008 Order that “The
4 Baja Subarea shall return to the Judgment and its provisions as the operative management
5 strategy.” (2018 Ellsworth Decl. at p. 6, ¶ 6.) In 2009, after reviewing relevant data, and pursuant
6 to the requirements in the Judgment, the Department and Watermaster Engineer recommended to
7 the Watermaster Board a rampdown of 5% to 65%. That recommendation was based, in part, on
8 data that showed water levels at one of the Camp Cady wells, the Harvard Road well, had
9 continued to decline, and water tables throughout Camp Cady were below Exhibit H values.
10 Based upon the vote of the Watermaster Board, the Court imposed only a 2.5% rampdown. (2018
11 Ellsworth Decl. at pp. 6-7, ¶ 7.)

12 In 2010, the Watermaster Engineer stated that despite a decline in water production in Baja
13 of 20% from the pumping during the prior two years, water levels continued to decline at about
14 two feet per year throughout Baja overall. This decline continued to have a negative effect on the
15 biological resources at Camp Cady. Contrary to the requirements of the Judgment for a further
16 5% reduction in FPA, the Watermaster Engineer proposed a guaranteed 2.5% Rampdown per
17 year for five years. The Department did not oppose the Watermaster Engineer’s proposal as long
18 as certain conditions were met and as long as balance in Baja was achieved during that five year
19 period. Thus, on July 16, 2010, the Court issued an order reducing the FPA for Baja by 2.5%
20 down to 65% for WY 2010-2011 and also ordered the continued reduction of 2.5% per year for
21 the next four years through WY 2014-2015. (2018 Ellsworth Decl. at p. 7, ¶ 8.)

22 In 2011, notwithstanding a recommendation by the Watermaster Engineer that additional
23 rampdown of 2.5% in Baja was necessary because overdraft continued in Baja, the Watermaster
24 Board initially did not include a recommendation for a 2.5% Rampdown in Baja. At the March
25 2011 Watermaster Board meeting, the Department urged the Watermaster Board to modify its
26 proposed recommendation for the Baja Subarea to include a reduction of 2.5% in compliance
27 with the Court Order; otherwise, the Department would be forced to recommend a rampdown of
28 5% as per the Judgment. After much discussion by the Board and after considering advice from

1 Board counsel, a Rampdown of 2.5% to 62.5% of BAP was adopted by the Board and ordered by
2 the Court. (2018 Ellsworth Decl. at pp. 7-8, ¶ 9.)

3 From 2012 through 2014, the Watermaster Engineer concluded each year that the FPA in
4 Baja exceeded the Production Safe Yield by more than 5% of BAP. (2018 Ellsworth Decl. pp. 8-
5 9, ¶¶ 10-12.) He also concluded that current water production and consumptive use exceeded the
6 average net long-term supply in Baja and that water level hydrographs continued to decline. The
7 Department submitted comments each year in support of the additional Rampdown in Baja and
8 set forth its concerns that the continued overdraft in Baja caused continued depletion of water
9 from storage and further damage to riparian resources at Camp Cady by the lowering of the water
10 levels in Baja. (2018 Ellsworth Decl. pp. 8-9, ¶¶ 10-12.) In some years, water production in Baja
11 increased. In 2012, water production increased from 2010-2011 by 4,832 acre-feet, an increase of
12 19.8% throughout Baja. (2012-2013 Rampdown Motion at p. 9:7-14; 2012 Wagner Decl. ¶¶ 11-
13 13.) In 2012, 2013 and 2014, the Watermaster and the Department recommended a further 2.5%
14 Rampdown of production and the Court ordered a Rampdown of 2.5% in Baja from 60% of BAP
15 in 2012 to 55% of BAP in 2014. (2018 Ellsworth Decl. at pp. 8-9, ¶¶ 10-12; 2013-2014
16 Rampdown Motion at p. 5:7-25.)

17 In 2015, after the five year alternative Rampdown, with still no balance in Baja, the
18 Watermaster Engineer and the Board recommended a full 5% Rampdown in Baja to 50% of BAP,
19 concluding that the FPA exceeded the PSY by more than 5% of BAP, and that permanent,
20 negative impacts were occurring in Baja. (2015-2016 Rampdown Motion at pp. 6:22-26; 10-15;
21 2015-2016; Wagner Decl. ¶¶ 7, 17-31.) In addition, the Board requested the possibility of
22 considering other scenerios including a “differential” Rampdown, with different Rampdown
23 percentages applying to larger producers versus smaller producers. (2015-2016 Rampdown
24 Motion pp. 12-13; 2015 Custis Decl. pp.16-17, ¶¶ 22-25.) The Department submitted letters in
25 March, 2015 in support of the 5% Rampdown, but did not support the “differential” Rampdown.
26 2018 Ellsworth Decl., p. 9, ¶ 13.) The Court ultimately rejected the arguments for a “differential”
27 Rampdown for Baja and granted the Watermaster’s Motion in its entirety. The Court ordered a
28 reduction to the FPA of a full 5%, because evidence showed that the 2.5% Rampdown for five

1 years resulted in continued overdraft, continued declining water levels in the Baja Subarea,
2 continued depletion of water from storage and further damage to riparian resources at Camp
3 Cady. (2018 Ellsworth Decl. at p. 9, ¶ 13.) In 2016, the Watermaster Engineer recommended,
4 and the Court imposed, a 5% Rampdown to 45% of BAP. (2016-2017 Rampdown Motion; 2016
5 Wagner Decl. ¶ 23:78; 2018 Ellsworth Decl. at pp. 9-10, ¶ 14).

6 In 2017, the Watermaster Engineer recommended and the Court approved, a further 5%
7 reduction. The Watermaster Engineer stated in his recommendation that “[a]s reported to the
8 Court in 2016, long-term overdraft has resulted in severe depletion in water in storage in Baja to
9 the point where the basin may not be a reliable water supply during periods of extended drought
10 without the actual importation of supplemental water....” (2018 Ellsworth Decl., at p.10, ¶ 15;
11 2017 Ellsworth Decl. ¶ 16, Exh. D; 2017 Wagner Decl. ¶ 22: 20-22); 2017 Custis Decl. Exhs.13a
12 and b.) Importantly, the Watermaster Engineer stated that the Judgment allows the Baja
13 producers to continue to pump in excess of FPA for many years without importing water, because
14 in addition to 31,080 acre-feet of FPA for Water Year 2016-2017, there is also 24,829 acre-feet of
15 Carryover available to Baja. (2017 Wagner Decl. ¶ 5:12; ¶ 22:20-21; ¶ 24:6; ¶ 25:21-24; ¶ 26.)

16 **III. THE EVIDENCE SUBMITTED TO THE WATERMASTER BOARD AND**
17 **THIS COURT FOR WATER YEAR 2018-2019 BY THE WATERMASTER**
18 **ENGINEER SUPPORTS A 5% RAMPDOWN FOR THE BAJA SUBAREA**

19 For the 2018-2019 Water Year, the evidence submitted by the Watermaster Engineer,
20 including his memoranda dated February 28 and March 28 submitted to the Board, indicates that
21 an additional Rampdown of 5% in Baja to 35% of BAP is warranted. First, the Watermaster
22 Engineer concludes that pursuant to the Judgment, the FPA exceeds the PSY by more than 5% of
23 BAP, and current water production and consumptive use exceed the average net long-term supply
24 in Baja. He further concludes that “water levels continue to decline in 2016-2017 (Figure 3-14 of
25 the 24th Annual Report) as much as 100 feet in some areas and continue to fall at the rate of 1 to
26 2 feet per year, which represents a depletion of water in storage of more than 400,000 acre-feet
27 since 1996.” Moreover, the Watermaster Engineer states that the depletion of storage is likely to
28 continue for many years, that long-term water levels indicate that Baja remains in overdraft and

1 current conditions are unsustainable. (2018 Wagner Decl. at p. 5, ¶ 13: 3-10; 2018 Ellsworth
2 Decl. at pp. 10-11, ¶¶16-17.)

3 In addition to the above, the Watermaster Engineer gave two Powerpoint presentations to
4 the Watermaster Board in February and March, 2018 regarding the Baja Subarea that, among
5 other things stated: 1) Watermaster is directed by paragraph 24 and Exhibit H of the Judgment to
6 ramp down production by 5%; 2) the recommendation is based on review of water supply
7 conditions in each subarea and water level changes; 3) water production exceeds supply and Free
8 Production Allowance exceeds Production Safe Yield; 4) the Free Production Allowance in Baja
9 exceeded the Production Safe Yield by 10.9% of the Base Annual Production; 5) the proposed
10 Free Production Allowance for 2018-2019 is a Rampdown from 40% to 35% of BAP for Baja;
11 and 6) in Baja, water levels continue to decline, water production exceeds supply, water supply is
12 limited, overdraft has continued for decades with a decline in the riparian forest and a declining
13 water table. See Declaration of Kit Custis in Support of the Department of Fish and Wildlife's
14 Response to Watermaster's Motion to Adjust Free Production Allowance For the 2017-2018
15 Water Year (2018 Custis Decl. at p. 11, ¶ 10 L, Exhs. 13a and b); (2018 Ellsworth Decl. at p. 11,
16 ¶ 18.).

17 The Watermaster Engineer further stated in his supporting declaration that "The Physical
18 Solution envisioned that reduction in FPA would be a mechanism to allocate the cost of arresting
19 overdraft to individuals that pumped in excess of their FPA. In the case of Baja, the reduction in
20 pumping has created a large pool of carryover FPA that can be utilized by large pumpers to
21 forestall the need to purchase supplemental water. The continued over pumping since entry of
22 Judgment and the limited natural water supply has continued to lower groundwater levels
23 resulting in depletion of water in storage. In order to prevent an eventual exhaustion of the water
24 supply in Baja and to return to sustainability, imported water is needed." (2018 Wagner Decl. at
25 pp. 5-6, ¶ 16; 2018 Ellsworth Decl. at pp. 1718, ¶ 30). However, the estimates by the
26 Watermaster Engineer indicate that the 23,808 acre-feet of Carryover FPA available to satisfy
27 over-production will allow pumpers to avoid paying for Replacement Water until at least WY
28

1 2036-37.⁵ The Watermaster Engineer concludes that “[a]s a result, replacement water purchases
2 to offset overdraft will not occur for 20 years; water levels will continue to decline.” (2018
3 Ellsworth Decl. at p. 11, ¶ 17, Exh. D; 2018 Wagner Decl. at p. 5, ¶ 15:18-21.) He notes that
4 “[g]iven the hydrologic experience for the last 25 years and the changes in land use and cultural
5 practices that have occurred, it may be necessary to re-evaluate the PSY and Baja water supply.
6 (Wagner Decl. at p. 3, ¶ 5:3-5.)

7 The existence of this large pool of carryover means that despite the continued Rampdown,
8 many producers are not required to reduce pumping or be faced with paying for Replacement
9 Water. They can simply continue to pump their share of FPA and Carryover for many years.⁶
10 This continued over production will further lower groundwater levels until Carryover is fully
11 depleted, resulting in depletion of water in storage. Therefore, in order to prevent an eventual
12 exhaustion of the water supply in Baja and to return to sustainability, either the subarea needs to
13 import an additional supply of water, or the Carryover needs to be eliminated through some other
14 mechanism.

15 **IV. THE DEPARTMENT SUPPORTS THE WATERMASTER ENGINEER’S**
16 **RECOMMENDATION FOR A 5% REDUCTION IN THE FREE**
17 **PRODUCTION ALLOWANCE FOR WATER YEAR 2018-2019 IN THE BAJA**
18 **SUBAREA**

19 For the Water Year 2018-2019, Baja continues to be in a constant state of overdraft. The
20 verified production in the Baja Subarea and the Free Production Allowance continue to be greater

21 ⁵ “Replacement Water” -Water purchased by Watermaster or otherwise provided to satisfy
22 a Replacement Obligation. (Judgment, p. 4., II. 4. ee.)

23 ⁶ For example, as stated earlier, the Department’s share of FPA (at 45% of BAP) in WY
24 2016-2017 was 415 acre feet. In addition, the Department had 461 acre-feet of Carryover in WY
25 2016-2017 from the previous year. The Department pumped 84 acre-feet in WY 2016-2017.
26 Therefore, its available Carryover from the previous year was used first and the 415 acre feet of
27 BAP was carried over to WY 2017-2018. Any producer’s unused share of FPA becomes
28 Carryover in the next year. The replacement obligation occurs only when the sum of a Producer’s
share of the FPA and Carryover are exceeded in any year. Any water pumped beyond a
producer’s share of the FPA and its carryover must be replaced by either payment to the
Watermaster of a replacement fee to be used to acquire additional water or through purchasing
unused water rights within Baja from another party to the Judgment. The Department does not
transfer its Carryover to any other party. (Judgment, p. 4, II. A. 4. dd; p. 21, II. C. 11.) (Custis
Decl. at p. 6, ¶ 7. E. ft. 1; Exhs. 10a, 10b and 10c.)

1 than the Production Safe Yield by more than 5%. The Watermaster Board therefore has
2 recommended that the Baja FPA be reduced by 5% to 35% of the BAP this water year, consistent
3 with paragraph 24 (o) and Exhibit H of the Judgment. (2018-2019 Rampdown Motion at p. 6;
4 2018 Ellsworth Decl. at p. 10, ¶ 16, Exh. C; 2018 Custis Decl. at p. 5, ¶ 8A.) The Department
5 agrees.

6 **A. Department Comment Letters**

7 The Department submitted comment letters to the Watermaster Board on February 16, 2018
8 and March 15, 2018 in support of the Watermaster Engineer recommendation of an additional 5%
9 rampdown in Baja and set forth its concerns that the continued overdraft in Baja will cause
10 continued depletion of water from storage and further damage riparian resources at Camp Cady.
11 (2018 Ellsworth Decl. at pp. 3-4, ¶¶ 3A-E; and p. 10, ¶ 16, Exh. B; 2018-2019 Rampdown
12 Motion, Exh. 3). In these 2018 Department Letters, the Department concludes as follows:

13 1. The Department agrees with the Watermaster Engineer's conclusions that pursuant to
14 the Judgment and based upon the continuing declining water levels in the Baja Subarea, the
15 continuing overdraft and the unsustainable conditions, additional Rampdown is warranted.

16 2. The Department agrees with the Watermaster Engineer's recommendation that FPA
17 in Baja be set at 35% for the Water Year 2018-2019 because, among other things, the continued
18 overdraft in Baja will cause continued depletion of water from storage and further damage
19 riparian resources at Camp Cady if the Free Production allowance exceeds the production Safe
20 Yield by 10.9% of BAP and the current water production and consumptive use exceed the
21 average net long-term supply in Baja.

22 3. The Department's position is also based upon an additional analysis conducted by the
23 Department that concluded that water levels, as measured in 2011 in Camp Cady, have declined
24 during the past eight years. Further, that the five year alternative Rampdown, and other
25 alternative Rampdown approaches throughout the history of the implementation of the Judgment
26 at various times, have not resulted in ensuring a healthy and sustainable groundwater basin.

27 4. A full 5% Rampdown would be consistent with the Court's own conclusion reached
28

1 in 2008 when it lifted a 10 year moratorium and stated that “Baja shall return to the Judgment and
2 its provisions as the operative management strategy.”

3 5. In addition to the Rampdown, however, the Department continues to evaluate
4 additional approaches to bring the Basin into balance and to help stop the decline in water levels
5 each year from existing pumping including the purchase of Base Annual Production in order to
6 retire these production rights, supporting the implementation of land use limitations and
7 supporting the purchase of imported water for Baja. The continued decline in water levels is
8 unsustainable. (2018 Ellsworth Decl. at pp. 3-4, ¶ 3 A-E; and p. 10, ¶ 16, Exh. B; 2018 Custis
9 Decl. Tables 2, 3 in Exhibits 4 and 5).

10 **B. The Declaration of Kit Custis, Registered Professional Geologist, Supports**
11 **a Five Percent Rampdown**

12 In preparation for Rampdown recommendations and hearing, the Department authorized
13 Mr. Kit Custis, registered Professional Geologist, to review various studies, reports, reviews and
14 evidence regarding the Baja subarea water levels. (2018 Custis Decl. at pp. 3-4, ¶ 6.) Mr. Custis
15 makes the following conclusions based upon his review and analysis of the documents and
16 studies listed in his Declaration, the development of the exhibits attached to his declaration and an
17 analysis of changes in groundwater levels in and adjacent to Camp Cady (2018 Custis Decl. at pp.
18 5-9, ¶¶ 8A-K.)

19 A. The verified production in the BAJA Subarea and the Free Production
20 Allowance continue to be greater than the Production Safe Yield by more than 5%, as reported in
21 the Watermaster’s 24th Annual Report for Water Year 2016-2017 (Chapter 5, page 34 (as set
22 forth in 2018 Custis Decl. at p. 5, ¶ 8A, Exh. 2, 3 and 9.)

23 B. Declines in shallow groundwater levels continue to occur and groundwater
24 levels at Camp Cady Wildlife Area have not stabilized as of July 2017, as reported by the U.S.
25 Geological Service. (2018 Custis Decl. at p. 5, ¶ 8B, Exhs. 4, 5, 7 and 8.)

26 C. Shallow groundwater levels at Camp Cady have declined at least 1.70 feet since
27 water year 2011, as shown in his Exhibit 4. The continuing decline in groundwater levels since
28 2011 has resulted in a condition where all of the measurements of the shallow groundwater

1 exceed the critical depth of 7 to 10 feet needed for a healthy riparian forest (as shown in various
2 USGS Reports on the Mojave River, and Exhibit H of the Judgment). (2018 Custis Decl. at p. 5, ¶
3 8C, pp. 12-14, ¶¶14B, 14G and 14H.)

4 D. In calculating when FPA will theoretically be within 5% of PSY, it is important
5 to note a number of facts shown in the available documentation. The projected groundwater
6 production rate where the Free Production Allowance (FPA) will meet the estimated Production
7 Safe Yield (PSY) is calculated at 31% of the Base Annual Production (BAP) for Baja according
8 to the 24th Annual Watermaster's Report WY 2016-2017, p. 34 in Chapter 5, attached as Exhibit
9 9; (PSY@20,679 acre-feet / BAP@66,157 acre-feet = 31%.) (2018 Custis Decl. at p. 5, ¶ 8D.)

10 E. In addition to calculating when FPA will theoretically be within 5% of PSY, it
11 is also important to note the amount of Carryover that exists. In addition to 27,860 acre-feet of
12 FPA for WY 2017-2018, there is also 23,808 acre-feet of Carryover (or unused FPA) available in
13 Baja. Carryover allows Baja producers to continue to pump in excess of FPA for many years
14 without having to pay to import Replacement Water during Rampdown and that allows producers
15 to avoid Replacement Water assessment for at least the next 20 years, until 2036-2037. The
16 continued overdraft will therefore continue to occur until Carryover is retired or depleted, or
17 water is imported from outside Baja. (2018 Custis Decl. at pp. 6,8 ¶¶ 8E, 8K.)

18 F. The depth to shallow groundwater in 16 of the 17 shallow wells within
19 and in the vicinity of Camp Cady is greater than 10 feet, a depth where riparian forests become
20 highly stressed, as shown in his Exhibit 4. Two additional shallow wells, P4 and P10, have gone
21 dry, for a total of eight dry shallow wells. (Custis Decl. at pp. 6-7, ¶ 8F, Exh. 4.)

22 G. The depth to shallow groundwater in 9 of the 17 shallow wells within and in
23 the vicinity of Camp Cady is greater than 20 feet, a depth where mesquite may not be able to
24 survive, as shown in his Exhibit 4. (2018 Custis Decl. p. 6, ¶ 8G:21-23, Exh. 4.) The depth to
25 groundwater in all measurable shallow wells continues to increase. (2018 Custis Decl. at p. 7. ¶
26 8G, Exh. 4.)

27 H. The long term rate of decline as of July 2017 in 7 of the 28 shallow,
28 intermediate and deep wells within and in the vicinity of Camp Cady is greater than the reported

1 Baja long-term average of 1 to 2 feet per year. (2018 Custis Decl. at p. 7, ¶ 8H, Exh. 4,5; 2018
2 Wagner Decl. at p. 5, ¶ 13: 5-7.) The long term rate of decline in 8 wells can no longer be
3 measured because the wells are now dry. (2018 Custis Decl. at p. 7, ¶ 8H, Exh. 4.)

4 I. The compromise Rampdown of 2.5% from WY 2009-10 to WY 2014-15 did
5 not result in stable groundwater levels at Camp Cady and while necessary, the 5% Rampdown
6 approved for each of the last three years has not yet resulted in stable groundwater levels at Camp
7 Cady (2018 Custis Decl. at p. 7, ¶ 8I.)

8 J. Because of the continued groundwater level decline, surface water recharge is
9 less effective at raising and maintaining shallow groundwater water levels in the vicinity of Camp
10 Cady. (2018 Custis Decl. at p. 7, ¶ 8J, Exhs. 4-8.)

11 Based upon these conclusions, Mr. Custis rendered his opinion that the annual
12 Rampdown for FPA in Baja should continue at the 5% rate for WY 2018-2019 and be reduced
13 from 40% to 35%, and continue to be reduced in 5% increments annually as necessary for the
14 sustainability of the Basin. In addition, Mr. Custis agreed with the Watermaster Engineer that in
15 order to prevent an eventual exhaustion of the water supply in Baja, imported water is needed.
16 (2018 Custis Decl. pp. 5-8, ¶¶ 7-9; Exhs. 2,3,4,5,7,8; 2018 Wagner Decl. at p. 6 ¶16.) In addition,
17 Mr. Custis prepared numerous Tables and Figures to explain his conclusions, all of which support
18 his opinion regarding the need for the continuing 5% rampdowns until Baja is in balance and
19 sustainable. (2018 Custis Decl. pp. 5-24, ¶¶ 7-28, Exhs. 2-13.)

20 **C. A Five Percent Rampdown Will Help Protect The Biological Resources In**
21 **Baja And The Camp Cady Wildlife Area**

22 As stated above, the Department has statutory and common law responsibilities to protect
23 fish and wildlife resources and habitats in Baja, which are held in trust for the People of the State
24 of California by the Department. (Fish & Game Code, § 711.7.) The Department's expertise and
25 interest in this adjudication and in Baja are significant and should be relied upon by the Court.

26 Continuing rampdown is crucial. The continuing decline in water levels in Baja has had a
27 significant negative effect on the biological resources at the Department's Camp Cady and on
28 Baja. (2018 Ellsworth Decl. at pp. 12-14, ¶¶ 19-22.) Camp Cady consists of 1,866 acres

1 acquired for the public between 1979 through 2001 for a total cost of \$2,046,481 in state bonds.
2 Camp Cady had extensive surface water and riparian habitat when it was acquired. The natural
3 vegetation, especially riparian vegetation, in Baja is dependent on groundwater. The roots of
4 these groundwater dependent plants (called phreatophytes) must be able to reach groundwater to
5 survive. Declining groundwater levels have caused the death of large stands of mesquite,
6 cottonwoods, and willows (all phreatophytes) at Camp Cady and throughout the Mojave River in
7 Baja. (2018 Ellsworth Decl. at pp. 12-14, ¶¶ 19-22.)

8 Notwithstanding the decline, Camp Cady still contains valuable riparian habitat. Riparian
9 habitat is a rare habitat type in the desert. Desert riparian habitat serves as critical bird breeding
10 habitat, as well as important migratory stopover sites and wintering areas for many bird species.
11 One hundred six species of birds have been documented using riparian habitat at Camp Cady
12 (Patrick William Tennant; Impacts of Saltcedar on the Avian Community of a Mojave Desert
13 Wildlife Area May, 2002), including the state-listed endangered willow flycatcher and state and
14 federally-listed endangered least Bell's vireo. (2018 Ellsworth Decl. at pp. 12-14, ¶¶ 20-21.)

15 Camp Cady was purchased for its surface water and associated riparian habitat values.
16 When running and pooled surface water was present, cottonwoods and willows were abundant
17 with a dense understory of honey mesquite. The Mojave River historically surfaced in the center
18 of Camp Cady and generally flowed in winter months from late October, early November to
19 August, with the months of September and October generally the driest. These surface flows
20 have ceased in recent years as a result of the declining groundwater levels throughout the Mojave
21 Basin. (2018 Ellsworth Decl. at p. 13, ¶ 21.) At the time of its acquisition in 1979, Camp Cady
22 contained an extensive mesquite bosque of more than 500 acres, about 60 acres of
23 cottonwood/willow forest, three groundwater-fed riverbed ponds totaling six acres, and other
24 locations within the riverbed with seasonal springs and seeps. By 1997, primarily agricultural
25 groundwater pumping and consumption of water had caused a loss of more than 400 acres of
26 mesquite, the riverbed ponds and seeps had been lost, and remaining cottonwood willow was
27 limited to mostly mature trees.

1 By 2003, the cottonwood/willow stands consisted of mostly mature trees with scattered
2 patches of mesquite, which were unhealthy with sparse leaves. Because the surrounding area
3 continues to be overdrafted without basin recharge, less water has been available to support
4 riparian and aquatic habitats. The cottonwood/willow forest at Camp Cady may persist and
5 remain healthy when water table depths do not exceed about seven feet and become highly
6 stressed when depths exceed 10 feet. Mesquites may not be able to survive a water table drop to
7 below 15-20 feet. (2018 Ellsworth Decl. at p. 13, ¶ 21.)

8 Baja is undergoing rapid environmental change due to groundwater drawdown, causing the
9 death of deep-rooted, native vegetation and the reactivation of wind-blown sand. The loss of
10 near-surface water has converted a vegetated area of the 1960's to a dry, migrating dune field that
11 inundates both vegetation and buildings. The Department is now faced with the daunting task of
12 trying to stabilize blowing sand, removing non-native salt cedar, and restoring the severely
13 degraded riparian system at Camp Cady. (2018 Ellsworth Decl. at pp. 13-14, ¶ 22.)

14 **V. THE DEPARTMENT'S ACTIVITIES SUPPORT THE BAJA SUBAREA**

15 The Department continues to do what it can to decrease water use by non-native vegetation
16 within the Mojave River watershed and Baja. Since 1996 when the Judgment was entered, the
17 Department has removed approximately 30-40 acres of tamarisk (a nonnative phreatophyte that
18 consumes large quantities of water) at Camp Cady. The Department has received funds from the
19 Biological Resources Trust Fund as well as other funding sources to support the continued
20 removal of non- native tamarisk, to develop a pilot program for native species, and to seek the
21 purchase of private property along the Mojave River to reduce pumping and/or to protect riparian
22 habitat and species. The Department is continually exploring opportunities for assisting in the
23 sustainability of the Mojave Basin and Baja, including the purchase of existing water rights in
24 Baja using funds from the Biological Resources Trust Fund in order to additionally address the
25 problem of continued overdraft in that Subarea. (2018 Ellsworth Decl. at pp. 14-18, ¶¶ 23-28.)

26 It is expected that removal of non-native tamarisk will contribute to the recovery of native
27 riparian habitat and reduce the amount of water consumed by non-native vegetation. (2018
28 Ellsworth Decl. at p. 14, ¶ 23.) Based upon a pilot program developed in early 2015 to evaluate

1 the potential suitability and sustainability of various native plants for the reintroduction of native
2 vegetation at Camp Cady, the Department, in collaboration with other entities including Quail
3 Forever, began the planting of native riparian species to determine their success for survival and
4 production. Based upon the initial success of the project, a second phase of the revegetation
5 project was implemented at Camp Cady in September of 2015. In May, 2017 the Department
6 prepared an interim progress report titled "Camp Cady Wildlife Management Area Riparian
7 Restoration/Revegetation Demonstration Study" that showed that several species were showing
8 excellent success depending upon soil type. Additional funding has been provided by the
9 Biological Resources Trust Fund to purchase additional plants and set up an irrigation system. It
10 is anticipated that the results of a second interim study will be used to provide a recommendation
11 on revegetation with native species at Camp Cady and in Baja. (2018 Ellsworth Decl. at pp. 14-
12 15, ¶ 24.)

13 In December, 2014, the Department applied jointly with a non-profit conservancy for a
14 \$1.3 million grant from the United States Fish and Wildlife Service to facilitate the purchase of
15 1631.67 acres of private property along the Mojave River to protect riparian habitat and
16 threatened and endangered species. The funds were awarded to a non-profit conservancy in
17 November, 2015. The Department has completed a Conceptual Area Protection Plan (CAPP) for
18 the portion of the Mojave River identified in the grant and is presently working with the
19 California Wildlife Conservation Board, the United States Fish and Wildlife Service and the
20 conservancy to implement the CAPP and the grant. These continuing actions are necessary to
21 finalize the acquisition of the property which includes significant riparian habitat in the Transition
22 Zone of the Mojave River. (2018 Ellsworth Decl. p. 16, ¶ 26.) The project should be complete
23 by the end of 2018.

24 In 2018, Department staff attended meetings related to Baja. The Department participated
25 in person and spoke in support of a 5% Rampdown for Baja at the February 28 and March 28,
26 2018 Watermaster Board meetings. The Department is continually supporting and evaluating
27 additional options, including the purchase of Base Annual Production rights and importation of
28 water to Baja to bring Baja into hydrologic balance. (2018 Ellsworth Decl. at p. 17, ¶¶ 28-31.)

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VI. CONCLUSION

For the foregoing reasons, the Department respectfully requests that the Court set the Free Production Allowance in the Baja Subarea at 35% for 2017-2018 Water Year and recommend that the Watermaster undertake additional actions to bring imported water to the Baja Subarea.

Dated: May 29, 2017

Respectfully Submitted,
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MARILYN H. LEVIN
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Attorneys for
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LA1990CV1678

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **CITY OF BARSTOW ,et al. v. CITY OF ADELANTO; and ALL RELATED CROSS ACTIONS**

No.: **CIV 208568**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On May 30, 2018, I served the attached:

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE'S MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO WATERMASTER'S MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR WATER YEAR 2018-2019

by placing a true copy thereof enclosed in a sealed envelope with the **[FED-EX overnight courier service]**, addressed as follows:

William J. Brunick, Esq.
Brunick, McElhaney & Beckett
1839 Commercenter West
San Bernardino, CA 92412

Valerie Wiegenstein
Watermaster Services Manager
Mojave Water Agency
13846 Conference Center Drive
Apple Valley, CA 92307

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 30, 2018, at Los Angeles, California.

Blanca Cabrera
Declarant



Signature

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 May 30, 2018, 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:

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE'S MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO WATERMASTER'S MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR WATER YEAR 2018-2019

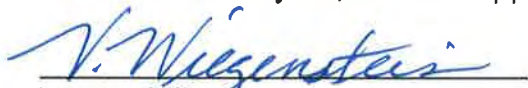
DECLARATION OF KIT CUSTIS IN SUPPORT OF THE DEPARTMENT OF FISH AND WILDLIFE'S RESPONSE TO WATERMASTER'S MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR THE 2018-2019 WATER YEAR

DECLARATION OF ALISA ELLSWORTH IN SUPPORT OF THE DEPARTMENT OF FISH AND WILDLIFE'S RESPONSE TO WATERMASTER'S MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR THE 2018-2019 WATER YEAR

DECLARATION OF MARILYN H. LEVIN IN SUPPORT OF THE DEPARTMENT OF FISH AND WILDLIFE'S RESPONSE TO WATERMASTER'S MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR WATER YEAR 2018-2019

 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 May 30, 2018 at Apple Valley, California.



Valerie Wiegenstein

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Gabrych, Eugene
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Mojave Basin Area Watermaster Service List as of May 30, 2018

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Mojave Basin Area Watermaster Service List as of May 30, 2018

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Mojave Basin Area Watermaster Service List as of May 30, 2018

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Lake Wainani Owners Association
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Mojave Basin Area Watermaster Service List as of May 30, 2018

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Mojave Basin Area Watermaster Service List as of May 30, 2018

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