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6 **MOJAVE WATER AGENCY**

NO FEE PER GOV'T. CODE SEC. 6103

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

DEC 09 2005



7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF RIVERSIDE**

10
11 CITY OF BARSTOW, et al.

12 Plaintiff,

13 vs.

14 CITY OF ADELANTO, et al.,

15 Defendant.

16 AND RELATED CROSS ACTIONS

CASE NO. 208568

17 } **[Proposed]**
ORDER GRANTING MOTION TO
ADJUST FREE PRODUCTION
ALLOWANCE IN THE BAJA
SUBAREA FOR WATER YEAR
2005-2006

Assigned for All Purposes to:
Judge E. Michael Kaiser, Dept. 3

18 On May 27, 2005, the Court heard the motion of Defendant/Cross-Complainant
19 Mojave Water Agency (MWA), acting in its capacity as Watermaster, to adjust the Free
20 Production Allowance (FPA) in the various Subareas. On June 15, 2005 the court issued its
21 ruling, but deferred any ruling on the recommendation for the Baja Subarea. The Court
22 directed MWA and the Baja Subarea Advisory Committee (BSAC) to meet and submit a
23 recommendation to the Court.

24 The above entitled action came on for hearing on September 9, 2005 before the
25 Honorable E. Michael Kaiser, Judge of the Superior Court, on the motion of
26 Defendant/Cross-Complainant, MWA, acting in its capacity as Watermaster, pursuant to the
27 Judgment entered January 10, 1996, Paragraph 24 (o), seeking an adjustment in FPA. The
28

[PROPOSED] ORDER GRANTING MOTION TO
ADJUST FREE PRODUCTION ALLOWANCE IN THE BAJA SUBAREA (2005-06)

1 court having reviewed and considered the moving, opposing, and reply papers, and the
2 arguments of counsel, and good cause appearing, hereby grants the motion on the following
3 terms as to the Baja Subarea defined in the Judgment of January 10, 1996 for Water Year
4 2005-2006.

5 **BAJA SUBAREA**

- 6 1. The Baja residents will work with the County of San Bernardino to encourage
7 enforcement of the provisions of Development Code Section 810.0605 -- 810.0615
8 restricting water use on fallowed lands for irrigation and development of recreational
9 lakes. The Watermaster supports the Baja residents in this endeavor.
- 10 2. Base Annual Production Rights (BAP) are to remain with the land(s) where water is
11 presently being used. This condition applies to all producers. Changes in purpose or
12 place of use will result in continued Rampdown pursuant to the terms of Judgment (to
13 the indicated Rampdown amount at the time of change). An individual farmer,
14 farming operation, or farming entity, may use its FPA (Carryover is subject to the
15 limitations outlined below) on any of its various fields currently in production, or any
16 fields that were subject to farming during the adjudicated Base Period (1986-1990).
17 All producers will have FPA set at 75% beginning October 1, 2005 for a period of
18 Ten (10) years except as otherwise stated herein.
- 19 3. Transfers will not be allowed for any purpose except as outlined below:
- 20 a) Substitution of one owner for another (a sale or some other transaction) with no
21 change in purpose or place of use and the subsequent production by the new
22 owner to be treated as if the original owner were still the producer.
- 23 b) Partial transfer of FPA or BAP will be allowed but the transferred portion to be
24 immediately ramped down to the then indicated Rampdown amount. The
25 remaining portion will remain at 75% as long as the purpose or place of use
26 does not change.
- 27 4. Carryover transfers of any kind are not allowed. Carryover may be used on the land(s)
28 where it originates, only by the current producer. Carryover can be accrued for two

1 years. All existing and current Producers of recirculated water (referred to as the
2 “Recreational Lakes”), in the Baja Subarea as defined in the Judgment and identified
3 in Table B-2 of Exhibit “B” of the Judgment shall continue to have the right under
4 Paragraph 34 of the Judgment and Exhibit “F” of the Judgment to purchase any
5 Carryover Right or any portion thereof pursuant to the rules and procedures set forth
6 in Exhibit “F”. All Producers may continue to sell, assign, transfer, license, or lease
7 any Carryover Right or portion thereof to Recreational Lakes as provided in the
8 Judgment.

9 5. The Ten (10) Year Moratorium will be revisited by the Watermaster and the Court if it
10 is found that, 1) new agricultural production has been identified to be in non-
11 compliance with the San Bernardino County Development code relating to limiting
12 new production in the Baja area, or 2) if the annual production as recorded by the
13 Watermaster materially exceeds that of the 2003-04 Water Year. If such events are
14 demonstrated to have occurred, the Watermaster shall recalculate basin Free
15 Production Allowance and the necessary Rampdown needed to bring the Baja Subarea
16 into balance as required by the Judgment and will present these findings and
17 recommendations to the Court for Rampdown in the next Water Year.

18 6. MWA will examine and consider the following in the Baja Subarea:

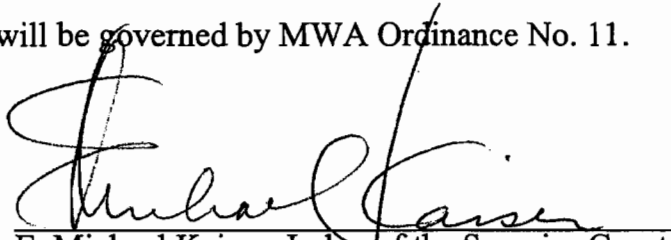
- 19 a) The effect of continued upstream population growth on water supply of all
20 downstream users and Subareas.
- 21 b) The effect of continued improvements in flood control measures designed to
22 eliminate major fast-moving floods and to replace them with “trickle effect”
23 water to the Baja Subarea.
- 24 c) The effectiveness of the pipeline in improving groundwater levels through
25 replacement water.
- 26 d) If the “physical solution” was equitable to Baja and to determine the need for
27 make-up water to be supplied to Baja by upstream Subareas.
- 28 e) The accuracy of current measuring estimates of underground flow into the

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Baja.

- f) An acceptably accurate estimate of the total groundwater storage in the Baja Subarea within 1,000 feet of surface and within 2,000 feet of surface.
- 7. Watermaster shall publish a list of those producers who have FPA based upon the Alternative Rampdown Proposal adopted in this order and a list of producers whose FPA is determined by the terms of the Judgment entered January 10, 1996. Watermaster shall publish the list not less than once each year.
- 8. In 2015 a recommendation and report will be made to the Court as to the need for Rampdown and other appropriate actions necessary to ensure water availability in the Baja Subarea.
- 9. Baja Subarea minimal producers will be governed by MWA Ordinance No. 11.

Date: 12-29, 2005


E. Michael Kaiser, Judge of the Superior Court

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 22450 Headquarters Drive, Apple Valley, California.

On January 5, 2006, I served the foregoing document(s) described as: **ORDER GRANTING MOTION TO ADJUST FREE PRODUCTION ALLOWANCE IN THE BAJA SUBAREA FOR WATER YEAR 2005-2006** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes, addressed as follows:

SEE ATTACHED SERVICE LIST

XX **BY MAIL AS FOLLOWS:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Bernardino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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 January 5, 2006, at Apple Valley, California.



Valerie Wiegenstein

Mojave Basin Area Watermaster's Baja Service List as of January 04, 2006

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Mojave Basin Area Watermaster's Baja Service List as of January 04, 2006

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Mojave Basin Area Watermaster's Baja Service List as of January 04, 2006

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