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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

SEP 27 2018

L. Freeland

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 RESPONSE TO
ORDER SETTING STATUS
CONFERENCE**

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

Date: October 12, 2018
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1 **I. INTRODUCTION**

2 The California Department of Fish and Wildlife (Department or CDFW) respectfully
3 submits this Response to Order Setting Status Conference filed July 9, 2018 following a hearing
4 held on July 6, 2018 on the Mojave Water Agency's (Watermaster) Motion to Adjust Free
5 Production Allowance for Water Year 2018-2019 (2018-2019 Rampdown Motion). At the July
6 6th hearing, the Court granted the Watermaster's Motion, including a rampdown to 35% in the
7 Baja Subarea (Baja) and scheduled a follow-up status conference to address a number of issues
8 related to the condition of the Baja Subarea in the Mojave Basin.

9 At the hearing on the Watermaster's Motion, a number of issues were raised with respect to
10 the continued loss of groundwater in Baja and the significant negative effect on the residents and
11 the natural resources of Baja. As argued in the pleadings and at the hearing, the continued decline
12 in water levels is predicted for the foreseeable future, despite many years spent by the parties and
13 Watermaster attempting to address the problem. Because Baja remains in overdraft, which means
14 that the rate of water leaving the basin through excess pumping and other factors is more than the
15 amount of recharge to the basin through natural water supply and return flows, the physical
16 solution has not been successful in addressing the problems in Baja. While the Department urged
17 a further rampdown to 35% of Base Annual Production for this water year and future years in the
18 Baja Subarea as necessary, the Department additionally believes that other actions, within the
19 bounds of the Judgment can be done immediately and are necessary, such as:

- 20 • A reevaluation and adjustment of the Production Safe Yield using the most recent
21 estimates of consumptive use and long-term net average annual natural water supply;
- 22 • Continued rampdown, using a revised Production Safe Yield, until all of the carryover is
23 eliminated while simultaneously implementing additional solutions because rampdown
24 alone will not solve the problem of overdraft in the Baja Subarea;
- 25 • Purchase and retirement of Base Annual Production by Watermaster and others, including
26 CDFW, as a means to equitably address the overdraft and declining water levels;
- 27 • Purchase, delivery, recharge and storage of wet water by Watermaster or Mojave Water
28 Agency (MWA) in the Baja Subarea; and

- 1 • The scheduling by this Court of regular status conference hearings and reports on progress.
2 CDFW also recommends:
- 3 • That an independent study be commissioned by the Watermaster, with input by the parties,
4 to evaluate aspects of the Physical Solution in order to provide additional information and
5 to recommend tools, either by amending the Judgment or otherwise, to stabilize the
6 groundwater levels in the Baja Subarea and address the continuing overdraft in the Baja
7 Subarea.

8 **II. CDFW RESPONSE TO ORDER SETTING STATUS CONFERENCE**

- 9 **A. Paragraph I. a. Has Paragraph 19 of the Judgment been replaced by**
10 **the provisions in the 12-05-02 Amendment drafted by the Watermaster?**
11 **No.**

12 A copy of the Amendment to Paragraph 19 of the Judgment dated 12-05-02 is attached to
13 the Declaration of Marilyn H. Levin as Exhibit A. (Levin Decl., Exh. A.). In the CDFW's
14 opinion, the provisions in the 12-05-02 Amendment relate to language from two other
15 documents--a Court of Appeal Stipulation for Settlement approved on August 6, 2002 (Cardozo
16 Appellants) and an August 8, 2002 Stipulation and Intervention and Entry of Judgment (Jess
17 Ranch) filed in the Riverside Superior Court. (Levin Decl., Exh. A.) The two paragraphs in the
18 12-05-02 Amendment to Paragraph 19 of the Judgment were added paragraphs 19 (a) and 19 (b)
19 but were not intended to and did not delete or replace the entirety of the original Paragraph 19.

20 This interpretation is bolstered by the additional jurisdictional language in the Judgment
21 and by the Stipulation for Settlement and Order signed by the Honorable James Ward of the
22 Court of Appeal on August 6, 2002 in which he stated that "a judgment shall be prepared
23 *incorporating* the provisions of paragraph 19 (a)." (emphasis added.) As noted in the Status
24 Conference Order, the additional paragraphs 19 (a) and (b) have entirely different provisions than
25 the original paragraph 19, and while these paragraphs might have more appropriately been
26 "incorporated" and added to a different or new section of the Judgment, a commonsense reading
27 of the Judgment suggests that they were not intended to delete a very important Jurisdictional
28 provision. It is probable that the provisions were added to a stand alone section in the Judgment

1 that could potentially accommodate additional language but not replace the Jurisdictional
2 paragraph 19.

3 **B. Paragraphs 1.a. i. and ii.- Does the Court have inherent jurisdiction?**

4 The CDFW defers to the Watermaster to answer yes to the question. Throughout the
5 Judgment, there are expressions of the court's continuing or reserved or inherent jurisdiction. As
6 noted above, the express reservation of continuing jurisdiction to amend the Judgment remains in
7 the original Paragraph 19. In addition, the Judgment (Paragraph II. A. 1 a.) includes an initial
8 Jurisdictional paragraph: "This Court has jurisdiction to enter Judgment declaring and
9 adjudicating the rights to reasonable and beneficial use of water by the Parties in the Mojave
10 Basin Area pursuant to Article X, Section 2 of the California Constitution." (Judgment, p 3.). The
11 Judgment (Paragraph V. A. 21) further addresses a need for flexibility and retained jurisdiction: "
12 It is essential that this Physical Solution provide maximum flexibility and adaptability in order
13 that the Court may be free to use existing and future technological, social, institutional and
14 economic options in order to maximize reasonable beneficial use of the waters of the Basin Area.
15 To that end, the Court's retained jurisdiction may be utilized where appropriate, to supplement
16 the Physical Solution." Paragraph 24 (o) sets forth the powers and duties of the Watermaster
17 "subject to the continuing supervision and control of the court"....or as "hereafter ordered or
18 authorized by the Court in the exercise of its continuing jurisdiction."

19 **C. Paragraph 1.b.i What factual findings would be required to justify an
20 amendment to paragraph 24 (o)?**

21 With respect to accelerating Rampdown at this time to more than 5% per year without more
22 information about its impact on stabilizing groundwater levels or its impact on the parties to the
23 Judgment, the CDFW defers to the Watermaster. However, factual findings can be found in the
24 Rampdown Declarations filed by the Watermaster Engineer as well as the CDFW Declarations
25 including but not limited to the following:

- 26 1) Water levels in Baja continue to decline 1-2 feet per year.

- 1 2) 408,000 acre feet of water has been lost since 1996.¹
- 2 3) The public trust resources of the Basin and in Baja have been impacted by the
- 3 overdraft, and by the failure to provide wet water for the continuing deficit in Baja.

4 **D. Paragraph 1.b. ii. What factual findings would be required to justify an**

5 **amendment to paragraph 11, the “Exercise of Carryover” provision in the**

6 **Judgment?**

7 The CDFW believes that amending the Judgment with respect to carryover, along with the

8 other management tools mentioned above, may be one of the ways to address this surplus of

9 carryover. The factual findings necessary to amend the Judgment could be found in those set

10 forth in the Declaration of Kit Custis in Support of CDFW’s Response to Order Setting Status

11 Conference (Custis Decl.) and in the CDFW Response to the Watermaster’s Motion to Adjust

12 Free Production Allowance for the 2018-19 Water Year, including Declarations of Kit Custis and

13 Alisa Ellsworth. For example, the factual findings could include:

14 1) There are 23,808 acre feet of carryover available in the Baja Subarea for WY 2017-

15 2018 (unused FPA on page 15 of 16, Table B, 2016-17 24th Annual Watermaster Report);

16 2) The Production Safe Yield (PSY) number that controls the recommendation of a 5%

17 Rampdown actually is much lower than has been calculated for the previous years and needs to

18 be reduced from 20,000 to approximately 13,000. A reduction of the PSY would result in a

19 possible continuing 5% Rampdown and would eliminate carryover more quickly which would

20 then require the purchase of supplemental water. (Custis Decl. at p.3-18, ¶¶ 6-30, Exhs. 1-5.)

21 Without a reduction in PSY, the water supply deficit in the Baja Subarea will continue unless wet

22 water is imported to Baja to erase the shortage.

23 3) For many years, the full 5% Rampdown in Baja, as required by the Judgment,

24 did not take place and therefore parties in Baja were able to supplement their Free Production

25 Allowance with carryover and were not required to pay assessments for the purchase of

26 supplemental water. The existence of the huge amount of carryover has contributed to a

27 _____

28 ¹ From Figure 3-20 in 2016-2017 24th Annual Report.

1 continuing overdraft in the Baja Subarea, and without wet water being recharged in the Baja
2 Subarea, the water levels have continued to decline.

3 **E. Paragraph 1.b.iii. What would be the procedure for litigating an amendment to**
4 **the Judgment?**

5 In order to amend the Judgment as indicated above, the procedure, in the opinion of
6 CDFW, would be the following:

- 7 1. A Motion to amend the Judgment would be filed by a party or the
8 Watermaster. For a more negotiated approach, a Party or the
9 Watermaster could prepare suggested amendments to be discussed at
10 additional Watermaster meetings or a special meeting or Workshop over
11 a few months in all the basins, including Baja.
- 12 2. For example, with respect to eliminating carryover, amendments to
13 Paragraph 11 and the Rules and Regulations (paragraph 16, p. 20; Exhibit
14 A-2, subsection g.) could be proposed that would require that Free
15 Production Allowance is utilized first, not carryover, and that
16 accumulation of carry over is limited or eliminated after the first year.
- 17 3. Written comments on final proposed amendments could be submitted
18 over a month or two, and then the Watermaster Board could hold a
19 number of additional meetings to discuss the proposed amendments.
20 Ultimately the Watermaster Board would vote on the proposed
21 amendments.
- 22 4. The Court could recommend the appointment of a special master to assist
23 the Court and the parties in agreeing on amendments to the Judgment that
24 would possibly include those suggested above and any other ones, to
25 equitably deliver water where needed.
- 26 5. Assuming the Watermaster Board approves the amendments, the
27 Watermaster attorney would prepare a Motion to Amend the Judgment
28 and file it with the Court.
6. A court hearing on the Motion to Amend the Judgment would be held.

29 **F. Paragraph 1.c. i, ii, iii. If in the years from 2005 to 2015 the Watermaster Board**
30 **recommended less than a required 5% Rampdown, are there consequences in**
31 **the Judgment?**

32 In each of the years between 2005 to 2015, there were different alternatives suggested by
33 the Watermaster and adopted by the Court, many times in opposition by the CDFW, and
34 sometimes in a compromise with CDFW. A review of the Motions, the Oppositions/Responses,
35 and the final Order of the Court in each of those years would be more instructive to answer the
36 question and CDFW defers to the Watermaster on providing the documentation. Moreover, with
37
38

1 respect to the question as to whether the Judgment defines the consequences or whether the
2 violations justify the imposition of a rampdown of more than 5% in one year as a remedy, the
3 CDFW defers to the Watermaster on those followup questions.

4 **G. Paragraph 1.d. e. f. Questions regarding the December 29, 2005 Order.**

5 CDFW defers at this time to the Watermaster to respond to the Court's question of whether
6 the decision to request less than 5% required under Exhibit H, paragraph 2.a meant that the Court
7 intended to have a greater than 5% rampdown in subsequent years. However, the following is an
8 explanation of the history and circumstances surrounding the 2005 Court Order and the lifting of
9 the Moratorium in 2008.

10 On December 29, 2005, the Court issued an Order that attempted to address many of the
11 concerns raised by the Baja parties. Many months prior to the Order, in November, 2004, the
12 Baja Subarea Advisory Committee began to submit letters to the Watermaster and the Court
13 raising many of the same issues of concern that are present today and that were addressed by the
14 final Order in 2005. A copy of the transmittal from the Watermaster to the attorney representing
15 CDFW is attached to the Levin Declaration as Exh. B.

16 After many months of discussions and negotiations, the Watermaster recommended a
17 "compromise" to enter into the 2005 Order. (A copy of the Order Granting Motion to Adjust
18 Free Production Allowance in the Baja Subarea for Water Year 2005-2006 dated 12/29/2005 and
19 a copy of the Court Reporter's Transcript dated September 9, 2005 are attached as Nos. 3 and 7
20 respectively to Watermaster's Lodging of Documents [Lodged Documents, Nos. 3 and 7]). The
21 2005 Order provided for a moratorium at 75% with the ability to "revisit" the Moratorium based
22 upon the two conditions set forth in paragraph 5.

23 The pleadings filed by CDFW in 2005 (then Department of Fish and Game-DFG) stated the
24 following and were prescient: "In DFG's view, it is unnecessary and inappropriate to fix
25 rampdown at 75% for ten years, absent significant triggers to re-open the Court's decision.
26 *Ramping down at least to the point where excess unused FPA are removed from the system is a*
27 *necessary precedent to making the Physical Solution work in Baja."* A Declaration filed by Mr.
28 Thomas Bilhorn, DFG's expert, concluded that: "unless rampdown and importation of water

1 occurs in the Baja SubArea, the aquifer systems both near-river and off, will continue a steady
2 decline in groundwater elevation, causing further loss of habitat and future cost of area-wide well
3 deepening.” A copy of the DFG September 2, 2005 Response to Watermaster’s Supplemental
4 Report to the Court Re Baja Subarea Recommendations and a copy of the 2005 Declaration of
5 Thomas Bilhorn in Support of DFG Response to Watermaster’s Supplement Report to the Court
6 Re Baja Subarea Recommendations are attached to the Levin Declaration as Exh. C. In the 2005
7 Transcript, the Court agreed to adopt the “materially exceeds” language proposed by CDFW.

8 CDFW can answer the Court’s question that one of those conditions occurred in the 2006-
9 2007 Water Year because in that year the production was 33,572 representing a 13.48 percent
10 increase over the 2003-2004 Water year (29,594). However, this fact was only brought to the
11 Court’s attention in the 2008 hearing when the CDFW filed a Response to Motion to Adjust Free
12 Production Allowance for the 2008-2009 Water Year and a Response to Paragraph 6 (a)- (f) in
13 which CDFW sought to lift the Moratorium because the annual production as recorded by the
14 Watermaster in 2006-2007 materially exceeded that of the 2003-2004 Water Year.² A copy of the
15 July 18, 2008 Transcript is attached as No. 10 to the Watermaster Lodged Documents. Copies of
16 the Statement of Decision, the Order, and the CDFW Pleadings are attached to the Levin Decl.,
17 Exhibits D, E, and F. In the September 10, 2008 Statement of Decision and the Order Granting
18 Motion to Adjust Free Production Allowance, the Court concluded that the 2006-2007 production
19 in Baja materially exceeded that of the 2003-2004 Water Year by a 13.48 percent increase and
20 therefore triggered a reevaluation of the moratorium and other conditions. Therefore, in 2008, the
21 court found that the Moratorium as of 2008 would be lifted.

22 The Court also concluded that: 1) the FPA should be set at 70%; 2) “There shall be no
23 limitations on transfers and only one year of Carryover will be allowed with any accrued second
24 year Carryover that had been allowed under the December 29, 2005 order shall expire effective
25 the date of the order herein.” The court explicitly stated that “The Baja Subarea shall return to the

26 _____
27 ² The Annual Report lags behind the Motion to Adjust Free Production Allowance by
28 approximately one and ½ or two water years.

1 Judgment and its provisions as the operative management strategy.” However, it is noted that the
2 parties did not request that the Court apply the rampdown retroactively to 2006-2007 and 2007-
3 2008.

4 With respect to the remaining questions in 1. d.e.f., CDFW defers to the Watermaster.

5 **H. Paragraph 1.h. Questions Regarding Watermaster Rules and Regulations.**

6 CDFW defers to the Watermaster to answer whether there are regulatory reforms that, if
7 adopted, would tend to decrease the rate of overdrafting of Baja. This question from the Court
8 may require additional time and effort by the Watermaster and parties to the Judgment.

9 It is CDFW’s understanding that the last time the Watermaster revised the Rules and
10 Regulations was on October 29, 2008. For the Court’s convenience, a copy of the Rules and
11 Regulations are attached to the Levin Declaration as Exhibit G.

12 **I.1.i. Are there any other potential means of accelerating progress toward the day
13 when the overdrafting of Baja has ended and which of those means are being
14 pursued by Watermaster and what progress has been made?**

15 **A. Declaration of Kit Custis.**

16 Kit Custis, the CDFW expert, has suggested that the Production Safe Yield and its
17 consumptive use and long term net average natural water supply components must be reevaluated
18 in order to achieve a correct water balance in the Baja Subarea. (Declaration of Kit Custis in
19 Support of the CDFW Response to Order Setting Status Conference [Custis Decl. at pp 3-8, ¶¶ 6-
20 30, Exhs.1-5.)

21 According to Mr. Custis, a first step toward achieving a water balance in the Baja Subarea,
22 would be to re-evaluate Baja’s Production Safe Yield (PSY), so that there is no surplus or deficit
23 in the calculation of the PSY using the hydrological factors and water budget methodology of
24 Table C-1 of Exhibit C of the Judgment. Once the PSY is re-evaluated, a rampdown of FPA
25 should be continued until production is within 5% of the re-evaluated PSY as required in
26 paragraphs 24(o) of the Judgment and 2(a) of Exhibit H.

27 In order to re-evaluate PSY, the components of PSY have to be separately analyzed.
28

1 The Judgment defines PSY in paragraph 4(aa) as the highest average annual amount of
2 water that can be produced from a Subarea given these three provisions:

- 3 (1) over a sequence of years that is representative of long-term average annual natural
4 water supply to the Subarea net of long-term average annual natural outflow from
5 the Subarea,
- 6 (2) under given patterns of Production, applied water, return flows and Consumptive
7 Use, and
- 8 (3) without resulting in a long-term net reduction of groundwater in storage in the
9 Subarea.

10 (Custis Decl. at p 3, ¶ 8.)

11 According to Mr. Custis, the long-term net average annual natural water supply, a
12 component of PSY, has been re-evaluated in recent years for the Baja Subarea as set forth in Mr.
13 Custis's Declaration, Exhibit 3, Table 5-2, footnotes 2, 4, 5 and 8. The most recent re-evaluation
14 of the long-term net average natural water supply in Baja prepared by Mr. Wagner, the
15 Watermaster Engineer, resulted in an increase from 5,500 acre-feet per year (AFY) in WY 1996-
16 97 to 11,428 AFY in WY 2016-17. (24th Annual Report.) This increase in PSY is significant
17 because it increased the amount of groundwater production available for the Baja Subarea.

18 (Custis Decl. at pp 4-5, ¶ 15, Exh. 3.)

19 Once the long-term net average annual natural water supply is properly determined, the
20 second component in the calculation of PSY is determining the consumptive use of groundwater
21 production in a Subarea. An accurate estimate of consumptive use is critical because any
22 groundwater production that isn't consumed is assumed to return to the groundwater basin (return
23 flow), thereby reducing the potential negative effects of overproduction on the amount of
24 groundwater storage in the Subarea. However, the recent 2016 update of the consumptive uses
25 for all water uses in the Baja Subarea was presented in a February 22, 2017 powerpoint by the
26 Watermaster Engineer, R.C. Wagner. The 2016 estimate of overall Baja Subarea average
27 consumptive use was 85.4% (0.854) of production. The consumptive use value of 85.4% is
28 greater than the approximate 65% average consumption for agriculture and urban uses assumed

1 by the Watermaster in Tables 5-1 or 5-2 (Custis Decl. at pp 4-5, ¶ 15, Exhs. 2 and 3.)³ The
2 continued use of a reduced consumptive use value results in an underestimate of the outflow, and
3 thereby an overestimate of the net available water supply. Therefore, any re-evaluation of PSY
4 must utilize the most up to date estimates of consumptive use and return flow to obtain the best
5 current estimate of the value of PSY. (Custis Decl. at p. 5, ¶ 19.)

6 When groundwater production is equal to the value of PSY, there should be no long-term
7 surplus or deficit calculated using the Judgment Table C-1 methodology. In other words, the
8 groundwater production should equal the long-term net average annual water supply. This is not
9 the case in the current Tables 5-1 and 5-2. In both tables a deficit is calculated. For example, in
10 Table 5-2, WY 2016-17, the deficit is 5,458 AFY when the production in the Baja Subarea was
11 25,919 AFY. This means that the current estimated PSY of approximately 20,000 AFY results in
12 long-term negative imbalance, or deficit, between the water supplied and water consumed in the
13 Baja Subarea. To remedy the supply and consumption imbalance, either the PSY has to be
14 lowered to prevent a deficit, or wet water equal to or greater than the deficit has to be imported to
15 recharge the Baja Subarea, or a combination. (Custis Decl. at p. 6, ¶¶ 20-23.)

16 Mr. Custis has re-calculated the PSY value for the Baja Subarea by assuming the current
17 average consumptive use value of 85.4% and the updated long-term net average annual natural
18 water supply values of 11,428 AFY. The re-calculated PSY value is approximately 13,380
19 instead of 20, 679. (Custis Decl. at p. 6, ¶¶ 24-25.)

20 Therefore, if the PSY is re-evaluated using the components set forth above, rampdown to
21 the recalculated PSY results in production in Baja equal to the long-term net average natural
22 water supply so the long-term deficit is reduced to zero. Therefore, groundwater levels should
23 stabilize at or above a minimum operating level as discussed in the 2016-2017 24th Annual
24 Watermaster Report at pages 27-29. A continuation of the 5% FPA Rampdown to a lower PSY
25 would have the benefit of using up Carryover at a faster rate than currently anticipated assuming
26

27
28 ³ From Table 5-2: $(12,100 \text{ AFY} + 4,800 \text{ AFY}) / 25,919 \text{ AFY} = 0.652$ or 65.2%.

1 that production continues at the current rate. Assuming that it does, carryover could be used up
2 by the time Rampdown is completed. (Custis Decl. at pp. 6-7, ¶¶ 22-30.)

3 **B. Declaration of Alisa Ellsworth.**

4 CDFW continues to utilize the Judgment and additional activities to attempt to address the
5 overdraft in the Baja Subarea and at Camp Cady. CDFW is engaged in the process of
6 implementing the Judgment as a party and as an ex-officio member of the Alto and Baja Subarea
7 Advisory committees. With respect to the Baja Subarea Advisory Committee, Ms. Ellsworth has
8 attended two meetings this calendar year, on June 18th and July 18th . In addition, the Baja
9 Subarea Advisory Committee held two other meetings in April and May, 2018, but Ms. Ellsworth
10 was unable to attend because she was not timely informed of the meetings. The agendas, notes
11 and associated handouts from those meetings are attached to the Ellsworth Declaration as Exhibit
12 B along with various emails and attached materials from the Baja Subarea Advisory Committee
13 Chairperson. (Ellsworth Decl. at p. 3, ¶ 5, Exh. B.)

14 Another means of addressing Baja issues is the Judgment's Biological Resources Trust
15 Fund account (Exhibit H in the Judgment). Utilizing the funds from this account, with approval
16 from the Watermaster, CDFW has been able to fund many activities during the implementation of
17 the Judgment. CDFW has submitted its most recent request for Biological Resource Trust funds
18 for activities proposed for the upcoming year to the Watermaster for approval at its September 26,
19 2018 Board meeting. One funding request by CDFW this year would allow funds to be utilized
20 to research available Base Annual Production (BAP) and carryover in the Baja Subarea that could
21 be purchased and retired. This purchase and retirement of water rights would implement one of
22 the immediate solutions proposed for helping to alleviate continued overdraft in the Baja Subarea
23 and the declining water table that has affected Camp Cady and the Baja Subarea. Hopefully, the
24 Watermaster and MWA could implement a similar program. (Ellsworth Decl. at pgs 3-4, ¶¶ 7-
25 8.)

26 In addition to attending meetings of the Watermaster Board, Ms. Ellsworth listens to the
27 audio versions of meetings of both the Watermaster and MWA Boards when possible. CDFW
28 became aware that the Watermaster took action in March of 2018 to request that an Ad Hoc

1 Committee be established at Mojave Water Agency, an agency with duties separate from the
2 Court Appointed Watermaster, to recommend possible solutions to the overdraft in the Baja
3 Subarea. That Ad Hoc Committee will evidently be discussing its report on September 27, 2018
4 at the MWA Board Meeting, and the Court can hopefully request a report from the Watermaster.
5 (Ellsworth Decl. at p. 3, ¶ 6.)

6 Moreover, at an August 23, 2018 Mojave Water Agency Board meeting, one of the retiring
7 Board Members asked that the \$500,000 in the budget be used to buy water and to put it in the
8 pipeline down to Baja. A second director noted that the MWA does have money in the budget
9 and would also like to put some wet water into the pipeline that was built with taxpayer money as
10 a token to the community at the end of the service area. (Ellsworth Decl. at p. 3, ¶ 6.)

11 The Mojave Water Agency actions could supplement the Watermaster Board activities in
12 helping to solve the overdraft in the Baja Subarea. MWA could analyze the most effective way
13 to obtain and utilize funds to buy and import wet water or buy up and retire permanent water
14 rights.

15 It is important to note that the MWA Obligations under the Judgment can be of assistance
16 to the Watermaster to fulfill its duties as well. As stated in Exhibit 3 of Robert Wagner's
17 Declaration in Support of the 2018-2019 Motion to Adjust Free Production Allowance filed
18 previously in support of the Rampdown, MWA and MWA as the Watermaster have different
19 obligations under the Judgment. MWA has obligations that relate to purchasing, importing and
20 recharging the groundwater basin with supplemental water. While MWA has, according to Mr.
21 Wagner, engaged in various activities to meet this obligation, including acquisition of additional
22 state project water and development of conveyance, recharge and extraction facilities, including
23 financing of those facilities, there are hopefully additional actions that can be taken immediately.
24 The MWA obligations are specified in paragraph 9 of the Judgment as follows: "The Physical
25 Solution is intended to provide delivery and equitable distribution to the respective Subareas by
26 MWA of the best quality of Supplemental Water reasonably available. MWA shall develop
27 conveyance or other facilities to deliver this Supplemental Water to the areas depicted in Exhibit
28

1 “T” unless prevented by forces outside its reasonable control such as the inability to secure
2 financing consistent with the sound municipal financing practices and standards.”

3 **J. Paragraphs 2-10. Procedural Questions for Watermaster.**

4 CDFW defers to the Watermaster to answer these questions.

5 **K. Paragraph 11. Authority for a Differential Rampdown in Alto and Oeste.**

6 CDFW defers to the Watermaster to answer this question at this time. However, CDFW
7 owns the Mojave Narrows Regional Park and the Fish Hatchery in Alto and will be evaluating the
8 authority to implement a differential rampdown in any of the Basins, as well as the impact of any
9 change to the differential rampdown in Alto.

10 **III. CONCLUSION**

11 The Department respectfully provides a Response to the Order Setting Status Conference
12 and recommends that the Court request that the Watermaster take the actions set forth in the
13 Introduction in order to begin to stabilize groundwater levels in the Baja Subarea including: (1)
14 Utilize the most recent estimates of consumptive use and long-term net average annual natural
15 water supply in a reevaluation of the Production Safe Yield for the Baja subarea; (2) In the re-
16 evaluation of Production Safe Yield the Watermaster should use the methodology in Judgment
17 Table C-1 to re-calculate the balance between water supplies, and water consumptive uses and
18 outflows, so that there is neither a surplus nor a deficit; 3) Utilize the re-evaluation in
19 recommending additional rampdown; 4) Purchase and retire BAP; 5) Purchase and deliver wet
20 water to Baja; 6) Identify and discuss possible amendments to the Judgment to address carryover.
21 In addition, the Court should schedule regular status conferences or reports on progress made by
22 the Watermaster and others on those actions.

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1 Lastly, the Court should request that an independent study be undertaken, through the
2 Watermaster, to stabilize the groundwater levels and address the containing overdraft in the Baja
3 Subarea.

4 Dated: September 26, 2018

Respectfully Submitted,

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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 September 27, 2018, I served the attached:

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE'S RESPONSE TO ORDER SETTING STATUS CONFERENCE

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 September 27, 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 September 27, 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 RESPONSE TO ORDER SETTING STATUS CONFERENCE

DECLARATION OF ALISA ELLSWORTH IN SUPPORT OF THE DEPARTMENT OF FISH AND WILDLIFE'S RESPONSE TO ORDER SETTING STATUS CONFERENCE

DECLARATION OF KIT CUSTIS IN SUPPORT OF THE DEPARTMENT OF FISH AND WILDLIFE'S RESPONSE TO ORDER SETTING STATUS CONFERENCE

DECLARATION OF MARILYN H. LEVIN IN SUPPORT OF THE DEPARTMENT OF FISH AND WILDLIFE'S RESPONSE TO ORDER SETTING STATUS CONFERENCE

 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 September 27, 2018 at Apple Valley, California.


Valerie Wiegenstein

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Mojave Basin Area Watermaster Service List as of September 27, 2018

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Mojave Basin Area Watermaster Service List as of September 27, 2018

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Mojave Basin Area Watermaster Service List as of September 27, 2018

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Mojave Basin Area Watermaster Service List as of September 27, 2018

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Mojave Basin Area Watermaster Service List as of September 27, 2018

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Mojave Basin Area Watermaster Service List as of September 27, 2018

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