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**EXEMPT FROM FILING FEES
PER GOV. CODE § 6103**

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF RIVERSIDE

11
12 **CITY OF BARSTOW, et al.**

13
14 **Plaintiffs,**

15
16 **CITY OF ADELANTO, et al.,**

17 **Defendants.**

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 2021-2022**

18
19
20
21 **And All Related Cross Actions**

Date: June 3, 2021
Time: 1:30 p.m.
Dept: 1
RES246665

1 **INTRODUCTION**

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 (FPA) to 20% for Water Year 2021-2022 (2021-2022 Rampdown Motion)
5 in the Baja Subarea (Baja), to continue reduction in 5% increments as required by the *City of*
6 *Barstow v City of Adelanto* Judgment entered on January 10, 1996 (Judgment) and to explore
7 additional actions to ensure the sustainability of the Mojave Basin Area (Basin). Further, the
8 Department supports the Watermaster’s request in the 2021-2022 Rampdown Motion to
9 rampdown the Alto Subarea’s (Alto) agricultural production FPA to 60% of Base Annual
10 Production (BAP) for agricultural uses and supports the ultimate end of the differential rampdown
11 between agricultural and non-agricultural uses in Alto.

12 **THE EVIDENCE SUBMITTED TO THE WATERMASTER BOARD AND THIS COURT**
13 **FOR WATER YEAR 2021-2022 BY THE WATERMASTER ENGINEER SUPPORTS A**
14 **5% RAMPDOWN FOR THE BAJA SUBAREA**

15 For the 2021-2022 Water Year, the evidence submitted by the Watermaster Engineer,
16 including his Declaration attached to the 2021-2022 Rampdown Motion, the Watermaster’s
17 Twenty-Seventh Annual Report, and the presentations made by the Watermaster Engineer to the
18 Watermaster Board at the February 24 and March 24, 2021 Watermaster hearings indicate that an
19 additional rampdown of 5% in Baja to 20% of BAP is warranted. First, the Watermaster
20 Engineer concludes that pursuant to the Judgment, the FPA exceeds the PSY by more than 5% of
21 BAP, and current water production and consumptive use exceed the average net long-term supply
22 in Baja. (Declaration of Robert C. Wagner in Support of the 2021-2022 Rampdown Motion, pp.
23 2-4.) Second, he concludes that “Overdraft continues as water levels continue to fall (Figure 3-
24 14, Watermaster Annual Report). Continuous declines result from pumping in excess of supply.”
25 (*Ibid.*). The Watermaster board therefore has recommended that the Baja FPA be reduced by 5%
26 to 20% of the BAP this water year, consistent with paragraph 24 (o) and Exhibit H of the
27 Judgment. (2021-2022 Rampdown Motion at pp. 6-9.) The Department agrees.
28

1 **THE WATERMASTER’S RECOMMENDATIONS FOR ALTO**

2 The Watermaster Engineer not only recommends a rampdown of 5% for Baja. The
3 Watermaster Engineer and the Watermaster also recommend a 5% rampdown for all agricultural
4 users in Alto from 65% of FPA to 60% of FPA. (2021-2022 Rampdown Motion pp. 6-7.) This is
5 required to end the differential rampdown that has occurred in Alto between the agricultural uses
6 and the municipal and industrial uses. The differential rampdown is contrary to the terms of the
7 Judgment, which states that “the Parties are estopped and barred from asserting special priorities
8 or preferences” and that the Watermaster shall act without favor to any “purpose of use.”
9 (Judgment at ¶¶ 10, 23(a).)

10 Based upon this analysis, the Department supports the Watermaster’s request in the 2021-
11 2022 Rampdown Motion to rampdown the Alto’s FPA to 60% of BAP for agricultural uses.
12 However, the Department does not support a continued differential rampdown in Alto between
13 agriculture and municipal and industrial uses. The Department hopes and expects that such
14 differential will be eliminated over the coming years.

15 **CONCLUSION**

16 For the foregoing reasons, the Department respectfully requests that the Court set the FPA
17 in the Baja Subarea at 20% for 2021-2022 Water Year. In addition, the Department supports a
18 5% rampdown in Alto of agricultural uses to 65% from 60% of FPA.

19 Dated: May 20, 2021

Respectfully Submitted,
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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **City of Barstow, et al. v. City of Adelanto, et al., and All Related Cross Actions**

Case 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 20, 2021, 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 2021-2022** by placing a true copy thereof enclosed in a sealed envelope with the **Federal Express overnight courier service**, addressed as follows:

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Valerie Wiegenstein
Watermaster Services Manager
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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 29, 2021, at Los Angeles, California.

Carol Chow

Declarant

/s/ Carol Chow

Signature



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Delivery Confirmation

Submission ID		Date Received		
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New Case	Case Number	Case Type	Court Location	
No	CIV208568	Civil	Riverside	
Fee Waiver or Other Exemption				
Exempt Pursuant to G.C. §6103				
Filing as an Attorney	Bar Number	Attorney for		
Yes	217556	California Department of Fish and Wildlife		
Documents				
1 CDFD MEMO OF P&A IN RESP TO WATERMASTER'S MOT TO ADJUST FREE PROD ALLOW FOR WATER YEAR 2021-2022				
Notes / Special Instructions				
IMPORTANT: This document serves as a confirmation of delivery only and the submitted documents have not yet been processed and/or filed by the Superior Court of California, County of Riverside.				

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.

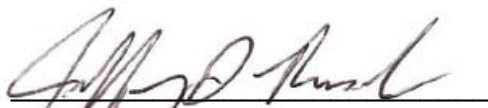
On May 21, 2021, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing 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 2021-2022

 X I, Jeffrey D. Ruesch, declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 21, 2021 at Apple Valley, California.



Jeffrey D. Ruesch

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Attn: William Handrinos
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Mojave Basin Area Watermaster Service List as of May 21, 2021

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Mojave Basin Area Watermaster Service List as of May 21, 2021

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Mojave Basin Area Watermaster Service List as of May 21, 2021

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Mojave Basin Area Watermaster Service List as of May 21, 2021

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Mojave Basin Area Watermaster Service List as of May 21, 2021

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Mojave Basin Area Watermaster Service List as of May 21, 2021

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