

**SUPPLEMENTAL STATEMENT TO MOJAVE BASIN AREA WATERMASTER
TWENTY-SEVENTH ANNUAL REPORT AND MOTION TO ADJUST FREE
PRODUCTION ALLOWANCE FOR WATER YEAR 2021-2022
ATKINSON, ANDELSON, LOYA, RUUD & ROMO**

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SERVICES DISTRICT, MOJAVE ADJUDICATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

CITY OF BARSTOW, et al.,
Plaintiffs,

v.

CITY OF ADELANTO, et al.,
Defendants.

AND RELATED CROSS ACTIONS.

Case No. CIV 208568

**SUPPLEMENTAL STATEMENT TO
MOJAVE BASIN AREA
WATERMASTER TWENTY-SEVENTH
ANNUAL REPORT AND MOTION TO
ADJUST FREE PRODUCTION
ALLOWANCE FOR WATER YEAR 2021-
2022**

Judge: Hon. Craig G. Reimer, Presiding
Dept.: 1
Date: June 3, 2021, 1:30 P.M.

This Statement is filed to supplement the Mojave Basin Area Watermaster's Twenty-Seventh Annual Report ("Report") and Motion to Adjust Free Production Allowance for Water Year 2021-2022 ("Motion"), filed with the Court on April 28, 2021. While Phelan Piñon Hills Community Services District ("Phelan Piñon Hills") is not submitting a formal opposition to the Motion, Phelan Piñon Hills respectfully submits the following requests to supplement the Watermaster's Report particularly subject matter identified in the noticed Motion.

CIV 208568

SUPPLEMENTAL STATEMENT TO WATERMASTER REPORT AND MOTION TO
ADJUST FREE PRODUCTION ALLOWANCE

I. Phelan Piñon Hills Respectfully Requests that the Court Direct the Mojave Basin Area Watermaster to Investigate and Identify Whether Water Used for Such Unlawful Growing Operations as Discussed in the Motion is Authorized by the Judgment, Especially before Ramping Down Lawful Users so as to Protect those Established Water Rights.

The Mojave Basin Area Watermaster identified in its Motion that cannabis growing operations are occurring, but what remains unclear and unestablished is whether these operations are conducted by authorized water users. *See*, Motion at pg. 8. Thus, Phelan Piñon Hills requests that the Court direct the Watermaster to investigate whether the extractions and water use of these operations are authorized by the Judgment.

As is discussed by the Watermaster in Section VI of the Memorandum of Points and Authorities in support of the Motion, there has been a significant increase in water being used to support the growth of hemp and cannabis within the adjudicated area. *See*, Motion at pg. 8. While the Watermaster accurately express this point in the Motion, the concern that unauthorized water users will negatively impact the parties subject to the Judgment cannot be downplayed as the Watermaster does so in the Motion.

As part of the Watermaster's Report, Chapter 2 considers the quantification of water production not under the Judgment. This is done through the process of reviewing aerial photographs throughout the Basin to identify potential uses greater than 10 Acre-Feet Annually ("AFA"). The Watermaster's Report notes that this approach has brought some success, including the voluntary submission of at least 7 pumpers not then-subject to the Judgment. Further, the Watermaster notes that information obtained via aerial photographs has been supplemented by information from local residents and water purveyors as well as physical inspection of identified properties. The dissonance that needs to be addressed, however, lies in the Watermaster's conclusion that the total minimal producer estimated usage includes all unauthorized uses and does not impact the parties relative to the Production Safe Yield. *See*, Motion at pg. 9.

In coming to the conclusion that the minimal producers' estimated usage does not impact the parties, the Watermaster's Report does not address the problem presented by the unauthorized

1 water users in the Basin from illegal cannabis cultivation sites. This point is particularly important
2 to ensure that lawful users such as Phelan Piñon Hills are not ramped down unnecessarily or too a
3 greater extent than warranted especially if unlawful extractions are occurring, which appears to be
4 the case as set forth herein and the accompanying declaration and supporting evidence.

5 The water requirements for cannabis plants near the requirements for such common
6 Central Valley crops as Almonds, and such water requirements are only heightened in the warm-
7 arid climate of the Mojave Basin. Furthermore, this problem is not one that can be ignored and
8 characterized as not impacting the parties. As an example reportedly, by February of this year San
9 Bernardino County Sheriffs had already seized over 54,000 plants in the Mojave Basin area in
10 2021 alone, including from sites in the Oeste Sub-Area with one operation in Phelan and another
11 in El Mirage where nearly 19,000 plants were seized from this one grow site. It now being May,
12 these numbers have likely only increased.

13 For these reasons, Phelan Piñon Hills respectfully requests that the court direct the
14 Watermaster to investigate whether the extractions and water use of these operations are
15 authorized by the Judgement and then to report back to the Court for the Court to make
16 determinations.

17 **II. The Investigation Requested by Phelan Piñon Hills Should be Completed Prior to**
18 **Ramping-Down Lawful Water Users under the Judgment.**

19 The investigations requested by Phelan Piñon Hills above should be completed prior to
20 ramping down lawful water users so as to ensure that unlawful users do not benefit to the
21 detriment of lawful water users such as Phelan Piñon Hills.

22 The Watermaster recognizes in its Motion that any unauthorized production eventually will
23 impact the parties. See, Motion at pg. 9. Accordingly, Phelan Piñon Hills is seeking to be proactive
24 to avoid results that inconsistent with the Judgment and detrimental to parties such as itself. Of
25 concern is that the Watermaster is recommending additional rampdowns in Free Production
26 Allowance (“FPA”) without evaluating the extent of unauthorized water use within the Basin and
27 recommending proper enforcement actions, which means unauthorized water users are – freely
28 and improperly – extracting water from the Basin while lawful users are subject to rampdowns.

To continue this practice would be inequitable and would subordinate the existing water rights of lawful users such as Phelan Piñon Hills. For these reasons, Phelan Piñon Hills respectfully requests that the Court direct the Watermaster to conduct the necessary investigations and evaluate the extent of such unauthorized water users in the Basin prior to effectuating rampdowns on lawful water users subject to the Judgment.

III. Even Assuming Cannabis Growing Operations are Extracting under Valid Overlying Rights, the Recent Ruling in the Case of *Willis v. Los Angeles County Waterworks District No. 40*, F082469, JCCP No. 4408 (Cal. Ct. App. 5th Mar. 16, 2021) Requires Reconsideration of these Rights in Relation to Historically Active Pumpers.

In the recently published of *Willis v. Los Angeles County Waterworks District No. 40*, F082469, JCCP No. 4408 (Cal. Ct. App. 5th Mar. 16, 2021), California's Fifth Appellate District Court upheld the subordination of dormant overlying rights in an adjudicated groundwater basin, noting that that prospective future uses of significant unexercised correlative water rights may be conditioned and subordinated to protect existing uses and reliance interests. *See, Willis* at 45.

The situation here involving cannabis growing operations has the potential to address the issue of these unaccounted for water users, whether lawful or unlawful. While Phelan Piñon Hills is satisfied that the Court will consider the requests above, even if the Watermaster finds that some grow operations are now operating and extracting water under valid overlying rights, the *Willis* case dictates that such previously dormant rights are subordinate to pumpers who have actively extracted from the Basin. New cannabis grow operations or any new operation regardless of the type, even if asserting that water supply comes from overlying rights, would accordingly be subordinate to the rights of those active water users subject to the Judgment.

For these reasons, Phelan Piñon Hills requests that the Court direct the Watermaster to properly consider the *Willis* case in its investigations and evaluations of the water for previously discussed cannabis grow operations at question.

IV. Reducing FPA for Phelan Piñon Hills Goes Against Water Code Section 106.3 and the State's Policy that Every Human Being has the Right to Safe, Clean, Affordable, and Accessible Water Adequate for Human Consumption, Cooking, and Sanitary

1 **Purposes.**

2 Reducing the FPA at this time for Phelan Piñon Hills – and likely other lawful water rights
3 holders – also flies in the face of Water Code section 106.3 and the State’s policy that every
4 human being has the right to safe, clean, affordable, and accessible water adequate for human
5 consumption, cooking, and sanitary purposes. By ramping down lawful users such as Phelan
6 Piñon Hills without determining who or what entity is unlawfully extracting flies in the face, if not
7 outright defiance, of section 106.3 so as to ensure a safe, reliable supply exists for those receiving
8 water including from public water suppliers such as Phelan Piñon Hills.

9 Accordingly, Phelan Piñon Hills respectfully requests that the Court direct the
10 Watermaster to conduct the investigations and evaluations necessary for making a proper
11 recommendation prior to effectuating rampdowns on lawful water users within the Basin.

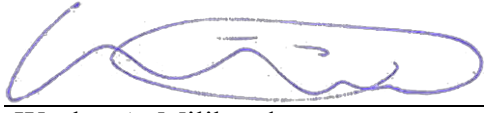
12 **V. Conclusions**

13 Phelan Piñon Hills appreciates the efforts made by the Mojave Basin Area Watermaster in
14 accounting for unauthorized water users within the Basin, but more needs to be done to protect the
15 Basin, the existing lawful users and the long-term sustainability of this natural resource. That
16 being said, Phelan Piñon Hills would respectfully request the foregoing directives be offered in
17 order to require the Watermaster to more thoroughly investigate and evaluate unauthorized water
18 users when making a recommendation as to the FPA of lawful water producers within the Basin.
19 The increased frequency with which these unauthorized users have exploited the water resources
20 of the Basin demands, at a minimum, a closer watch on such activities so as to fairly consider all
21 uses of water within the Basin, and the continued rampdown of lawful water users in light of the
22 numerosity of unauthorized water users in the Basin must be reconsidered.

1
2 DATED: May 20, 2021

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

3
4 BY:



5 Wesley A. Miliband
6 PHELAN PIÑON HILLS COMMUNITY
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8 ADJUDICATION
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PROOF OF SERVICE

(CODE CIV. PROC. § 1013A(3))

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I am employed in the County of Sacramento, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 2151 River Plaza Drive, Suite 300, Sacramento, California 95833-4130.

On May 20, 2021, I served the following 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: **SUPPLEMENTAL STATEMENT TO MOJAVE BASIN AREA WATERMASTER TWENTY-SEVENTH ANNUAL REPORT AND MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR WATER YEAR 2021-2022** on the interested parties in this action as follows:

SERVICE LIST ATTACHED

- ☒ **BY EMAIL:** My electronic service address is 2151 River Plaza Drive, Suite 300, Sacramento, California 95833-4130. Based on a written agreement of the parties pursuant to California Code of Civil Procedure § 1010.6 to accept service by electronic means, at , I sent such document(s) to the email address(es) listed above or on the attached Service List. Such document(s) was scanned and emailed to such recipient(s) and email confirmation(s) will be maintained with the original document in this office indicating the recipients' email address(es) and time of receipt pursuant to CCP § 1013(a).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 20, 2021, at Sacramento, California.



Elena Barnett

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Gabrych, Eugene
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Fallbrook, CA 92028

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Attn: Mitch Hammack
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Mojave Basin Area Watermaster Service List as of April 28, 2021

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358 Chorus
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Adelanto, CA 92301-9308

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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Mojave Basin Area Watermaster Service List as of April 28, 2021

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906 Old Ranch Road
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Attn: Lee Logsdon
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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Attn: Sepoong & Woo Poong Lee
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Irvine, CA 92620-

Attn: Brad Francke
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Low, Dean (via email)
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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Mojave Basin Area Watermaster Service List as of April 28, 2021

Attn: Barbara Davison
Bass Trust, Newton T.
14924 Chamber Lane
Apple Valley, CA 92307-4912

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Attn: Mike Beinschroth
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Beinschroth Family Trust (via email)
18794 Sentenac
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Beinschroth, Andy Eric
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Attn: Chuck Bell (chuckb@sisp.net)
Bell, Charles H. Trust dated March 7, 2014
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Best, Byron L.
21461 Camino Trebol
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9435 Strathmore Lane
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Attn: Paul Johnson
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Attn: Kevin Mangold
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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Cross, Francis and Beverly
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Attn: Steve and Dana Rivett
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Daggett, CA 92327-0112

Attn: Beahta Davis
CDFW - Mojave Narrows Regional Park
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Attn: Denise Courtney
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Attn: Judith Dolch-Partridge, Trustee
Dolch Living Trust Robert and Judith
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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Attn: Donald F. Hanify
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Attn: Matt Wood (Matt.Wood@Hanson.com)
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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Attn: Gretchen Horton
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Attn: Norman A. Howard
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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Attn: Lee Logsdon
Juniper Riviera County Water District
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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Mojave Basin Area Watermaster Service List as of April 28, 2021

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Yes	241283	Defendant, Helendale Community Service District	
Documents			
1 Substitution of Attorney			
2 Supplemental Statement and Motion to Adjust Free Production Allowance			
3 Declaration of Don Bartz			
4 Declaration of Kimberly Cox			
5 Declaration of Kelly Gregg			
6 Joinder to Motion			
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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.

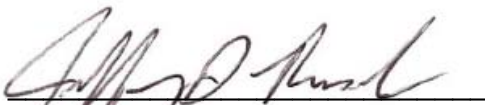
On May 21, 2021, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing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

SUPPLEMENTAL STATEMENT TO MOJAVE BASIN AREA WATERMASTER TWENTY-SEVENTH ANNUAL REPORT AND 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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19945 Round Up Way
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Attn: William Handrinos
Handrinos, Nicole A.
1140 Parkdale Rd.
Adelanto, CA 92301-9308

Attn: Donald F. Hanify
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Attn: Matt Wood (Matt.Wood@Hanson.com)
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Corona, CA 92878-1115

Attn: Mary Jane Hareson
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Mojave Basin Area Watermaster Service List as of May 21, 2021

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Hensley, Mark P.
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Hert, Scott
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Attn: Janie Martinez
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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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