

William J. Brunick, Esq. (State Bar No 46289)
Leland P. McElhaney, Esq. (State Bar No. 39257)
BRUNICK, McELHANEY & KENNEDY PLC
1839 Commercenter West
San Bernardino, California 92408-3303

NO FEE PER GOV'T. CODE SEC. 6103

MAILING:
P.O. Box 13130
San Bernardino, California 92423-3130

Telephone: (909) 889-8301
Facsimile: (909) 388-1889

Attorneys for Defendant/Cross-Complainant
MOJAVE WATER AGENCY

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

CITY OF BARSTOW, et al.,

Plaintiff,

vs.

CITY OF ADELANTO, et al.,

Defendant,

CASE NO. CIV 208568

**NOTICE OF MOTION AND MOTION
TO ADJUST FREE PRODUCTION
ALLOWANCE FOR WATER YEAR
2022-2023; MEMORANDUM OF
POINTS AND AUTHORITIES AND
DECLARATION OF ROBERT C.
WAGNER IN SUPPORT THEREOF**

Assigned for All Purposes to:
Judge Craig Riemer
Dept. 1

**DATE: June 2, 2022
TIME: 1:30 p.m.
DEPT: 1
Reservation ID: 159238747335**

AND RELATED CROSS ACTIONS

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:


Please take notice that on June 2, 2022 at 1:30 p.m., or as soon thereafter as counsel may be heard, in Department 1 of the above entitled court located at 4050 Main Street, Riverside, California, Defendant/Cross-Complainant, Mojave Water Agency, acting in its capacity as the Mojave Basin Area

1 Watermaster, will respectfully move, pursuant to paragraph 24(o) and Exhibit H of the Judgment in the
2 above entitled case, for the court's approval of the Watermaster's recommendation in its Twenty-Eighth
3 Annual Report to adjust the Free Production Allowance (FPA) for each of the five (5) Subareas (Alto,
4 Baja, Centro, Este and Oeste) of the Mojave Basin as set forth herein for the 2022-23 Water Year.

5 This motion is based upon this notice, the Memorandum of Points and Authorities, the Twenty-
6 Eighth Annual Report of the Watermaster lodged with the court concurrently with this motion, the
7 Declaration of Robert C. Wagner, the pleadings, papers, and records on file and upon such other further
8 evidence, both oral and documentary, that may be presented at the hearing on this motion.

9
10 Dated: May 2, 2022

BRUNICK, McELHANEY & KENNEDY PLC

11
12 BY: 
13 WILLIAM J. BRUNICK, ESQ.
14 LELAND P. McELHANEY, ESQ.
15 Attorneys for Defendant/Cross-Complainant,
16 MOJAVE WATER AGENCY
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **BACKGROUND**

4 The original complaint was filed by the City of Barstow et al. on May 30, 1990 and alleged that
5 the cumulative water production upstream of the City of Barstow had over drafted the Mojave River
6 System and it requested that the Mojave Water Agency (MWA) be ordered to obtain and provide
7 supplemental water for use within the Mojave Basin Area (Basin). MWA filed its First Amended Cross-
8 Complaint naming substantially all producers of water within the Basin, including parties downstream
9 of the City of Barstow, and requested a determination of all the water production from whatever source
10 within the Basin.

11 After extensive negotiations, parties representing over 80% of the verified water production in
12 the Basin agreed to a stipulated Judgment which established a Physical Solution to the water supply
13 problems. A trial of the claims of non-stipulating parties was held and the final Judgment after trial
14 adopted the Physical Solution set forth in the stipulated Judgment.

15 The Cardozo Group of the non-stipulating parties appealed the Judgment that was entered by the
16 Superior Court. Following opinions by the Court of Appeal and Supreme Court, the Judgment as to the
17 stipulating parties was affirmed but reversed as to the Cardozo Group of non-stipulating parties. This
18 essentially excluded the Cardozo Group from the stipulated Judgment, including the assessment
19 provisions. As of August 23, 2002, Jess Ranch Water Co. (JRWC), previously a non-stipulating party,
20 entered into a settlement agreement in which it stipulated to the Judgment. An amendment to the
21 Judgment was filed on December 5, 2002 which incorporated the changes with respect to the Cardozo
22 Group and JRWC.

23 **II.**

24 **THE JUDGMENT'S PHYSICAL SOLUTION**

25 On January 10, 1996 the court entered a Judgment which addressed the overdraft situation
26 existing in the Basin by the creation of a Physical Solution for the Basin's five distinct, but hydrologically
27 interrelated Subareas (Alto, Baja, Centro, Este, and Oeste). The court determined that all five (5)

1 Subareas of the Basin had been in a state of overdraft since at least the 1950's, that the economy and
2 population overlying the Basin had dramatically grown in reliance upon the overdraft, and that all
3 producers had contributed to the overdraft. The court's Physical Solution established a limit on the
4 amount of water each Subarea could produce in one year before having to purchase replacement water.
5 This is known as the Free Production Allowance (FPA). The Judgment also established each producer's
6 Base Annual Production (BAP). A producer's BAP is based upon that producer's highest year of water
7 production during the base period of 1986-1990. A producer's BAP serves as the basis for the producer's
8 Base Annual Production Right (BAPR). BAPR is the right of each producer to a percentage of the FPA
9 within a given Subarea.

10 Although the serious nature of the overdraft warranted an immediate reduction for all water
11 production within the Basin, the Court approved a gradual reduction in production in order to soften the
12 economic impact upon producers. Therefore, the Judgment sets forth the terms for a gradual reduction
13 or Rampdown of the FPA for all parties. After the first five years of the Judgment, the FPA for all parties
14 was set at eighty percent (80%) of their original BAP. The Judgment also provides that the court can
15 review and adjust, as necessary, the FPA for each Subarea on an annual basis.

16 Since entry of Judgment in January of 1996, the Parties to the Adjudication and the Court have
17 attempted to achieve sustainability in the Mojave Basin Area by use of the tools within the Judgment to
18 finance the importation of supplemental water in implementing the Physical Solution. The Physical
19 Solution mandates the definition of the individual rights of all Producers within the Basin Area which
20 will equitably allocate the natural water supplies and will provide sharing of costs for supplemental water
21 in each Subarea.

22 The waters derived from the Mojave River constitute a common source of supply for the five
23 Subareas. Each Party has a declared production right in his or her respective Subarea to produce water
24 for his or her use against other producers located in the Subarea. In addition, Producers within certain
25 Subareas have rights as against those in adjoining upstream Subareas to receive average annual water
26 supplies and in any one year to receive minimum annual water supplies equal to the amounts set forth in
27 Exhibit G of the Judgment in addition to any storm flows. Exhibit G establishes these Subarea rights and

obligations to insure historical flows to each Subarea within the Basin Area. Producers in the respective Subareas shall have the obligation to provide the following minimum annual subsurface flows and/or base flow per year:

Subsurface Obligations

Este to Alto	200 acre-feet	
Oeste to Alto	800 acre-feet	
Alto to Centro	2,000 acre-feet	(21,000 acre-feet surface obligation)
Centro to Baja	1,462 acre-feet	
Baja to Afton	0 acre-feet	(400 acre-feet obligation was relieved by Court, 2006)

In summary, a Party's existing Production Right would be exercised within the respective Subarea and the Parties' guaranteed subsurface flows, are set forth above. Sixty-year average (1931-1990) storm flow is assumed to be available to the Subareas from the Mojave River system. The water supply is episodic and assumed to repeat in the future as in the past. Each respective Subarea is assumed to receive the historic storm flow, as supply, on a long-term average basis, but not in any given year. The Subarea rights and obligations were decreed by the Judgment. A fundamental premise of the Physical Solution is that all Parties will be allowed, subject to the Judgment, to produce sufficient water to meet their reasonable beneficial use requirements. To the extent that production by a Producer in any Subarea exceeds such Producer's share of the Free Production Allowance of that Subarea, Watermaster will provide replacement water to replace such excess production at the current replacement water rate. To the extent that any Subarea incurs a Makeup Obligation, Watermaster will provide supplemental water to satisfy such Makeup Obligation at the current makeup water rate.

III.

NECESSITY FOR ADJUSTMENT

Pursuant to the gradual Rampdown required in the Judgment, by the 1997-98 Water Year, each producer's FPA was set at eighty percent (80%) of that producer's BAP specified by the Judgment. Exhibit H of the Judgment requires Watermaster to recommend a decrease in the FPA for a Subarea when that Subarea's FPA exceeds its estimated Production Safe Yield (PSY) by five percent (5%) or

more. Pursuant to Paragraph 24(o) of the Judgment, the Watermaster is required to make a recommendation to the Court for adjusting the FPA of each Subarea, if necessary.

The Watermaster Engineer has tracked and calculated consumptive use within the five Subareas on an annual basis. The Court in its hearing of July 6, 2018, and Status Conference of October 12, 2018, asked that the Watermaster Engineer complete the update to consumptive use and any other necessary updates to the Production Safe Yield elements. In 2019, the Watermaster Engineer completed an update to Production Safe Yield and Consumptive Use for each Subarea at the court's request (filed May 1, 2019). Previously, PSY was updated in August 2000. The report provided the basis for Watermaster's recommendations for Water Year 2019-20 and for future recommendations.

On June 4, 2021, the court entered its order on Watermaster's Motion to Adjust FPA for Water Year 2021-22 (attached as Exhibit A). As a result, FPA for Water Year 2021-22 was set as follows:

<u>Subarea</u>	<u>2021-22 FPA</u>
Alto	55% of BAP
Baja	22.5% of BAP
Centro	65% of BAP
Este	65% of BAP
Oeste	60% of BAP

IV.

RECOMMENDED ADJUSTMENTS TO FPA FOR WATER YEAR 2022-23

The Watermaster conducted public hearings on February 23, 2022, and March 23, 2022, and adopted the FPA recommendations for the five Subareas for Water Year 2022-23, as required by the Judgment and consistent with previous direction from the court as follows:

<u>Subarea</u>	<u>2022-23 FPA Recommendation</u>
Alto	55% of BAP
Baja	22.5% of BAP
Centro	60% of BAP
Este	60% of BAP

The table on page 36, Chapter 5, of the Twenty-Eighth Annual Report of the Mojave Basin Area Watermaster shows the BAP, the FPA for 2021-22, the estimated PSY, the difference between them as a percentage of BAP as well as the 2020-21 Verified Production for each Subarea.

The conditions in each Subarea are described in the declaration of Robert C. Wagner, Watermaster Engineer attached as Exhibit B. Of note, Mr. Wagner's supporting declaration makes the following additional observations:

. . . During 2020-21, inflow measured at Deep Creek and West Fork Mojave River (Forks), as reported by the United States Geological Survey (USGS) was 4,213 acre-feet or about 6.4% of the 60-year based period average (65,538 acre feet). During the recent 10-year period 2012 to 2021, inflow at the Forks, as reported by USGS has only been 43.3% (28,404 acre-feet) of the 60-year base period average (see Mojave River Flow at The Forks on Exhibit 4). During 2020-21 the measured inflow at the Forks was the second driest of the past 91 years. Last year Alto experienced about 51,000 acre feet of groundwater depletion (Watermaster's Annual Report, Table 3-2).

(Wagner Dec., 3:13-19)

If the Judgment were being drafted today, and having the benefit of hindsight, I think it is probable that a shorter, drier planning period (hydrologic base period) for local supply would be selected. . . . the Judgment can solve the issues related to drought, by reducing FPA (without reducing PSY) for successive years to raise money to buy water for import and recharge. After achieving the goal of raising funds to purchase water and subsequently importing and recharging, FPA could then revert to the level indicated by the long term PSY.

(Wagner Dec., 6:18-24)

Of further note, on April 28, 2022, as part of its Emergency Drought Response Pilot Program, MWA approved the purchase of up to 5,000 acre-feet of State Water Project water for recharge in the Centro Subarea. MWA will continue to develop and fund a drought plan to import additional waters into the area for recharge in the next three to six months.

1 Watermaster received and considered oral comments and correspondence from the Department
2 of Fish and Wildlife and other producers within the Subareas. The written comments received by
3 Watermaster during its public hearings of February and March are attached as Exhibit C. In
4 consideration of comments received at the March public hearing, Watermaster requested that the court
5 consider an alternate Rampdown in Este and Oeste of 2.5% (see Wagner Declaration Exhibit B; page 4,
6 line 14 and 26).

7 **V.**

8 **QUANTIFYING PRODUCTION NOT UNDER THE JUDGMENT**

9 In June 2021 the Court in its order directed Watermaster to “take all reasonable steps to identify
10 any unauthorized production within the basin and to bring that production into compliance with the
11 Judgment” and if necessary, “the Watermaster shall seek the assistance of the Court in compelling that
12 compliance.” Additionally, the Court indicated that if “unauthorized production is being conducted by
13 a non-party, the Watermaster shall initiate an action for injunctive relief as expressly authorized by
14 section 12 of the Judgment.”

15 In compliance with the Court’s direction, the Watermaster Engineer is in the process of
16 completing the first phase of a two phased process to identify, document, and quantify any pumping in
17 excess of 10 acre-feet per year and to bring an action before the Court to consider. The first phase
18 includes those parties believed to be pumping greater than 10 acre-feet in the Este and Oeste Subareas.
19 In the first phase we have identified 65 potential parties who own 73 separate parcels that might be
20 pumping in excess of 10 acre-feet per year based on the best information available at the time we
21 identified them. In some instances, we have been contacted by landowners who claim our estimates are
22 incorrect. We are currently working on developing land use and crop use estimates that are better
23 informed from additional investigation. Such work involves obtaining permissions from landowners to
24 access their properties, the installation of flow meters and collection of local climate data from specific
25 planted fields. These efforts are complicated and therefore time consuming. The future second phase
26 will encompass the Alto, Centro and Baja Subareas and follow the same process that is being developed
27 for Este and Oeste.

1 Watermaster anticipates filing with the court a motion for leave to amend its First Amended
2 Cross-Complaint to name as additional parties to the adjudication those property owners and other
3 persons who are not presently parties to the Judgment who are producing more than 10 acre-feet of Basin
4 groundwater annually (Non-Party Producers), or who are using Basin groundwater for the unlawful
5 cultivation of cannabis (Cannabis Growers, see Point VI below). As to the Non-Party Producers, they
6 will again be encouraged to stipulate to the Physical Solution in the Judgment or be required to prove-
7 up their claimed water right. As to the Cannabis Growers, the Mojave Water Agency will seek injunctive
8 relief to preclude and prohibit such persons from using Basin groundwater for the unlawful cultivation
9 of cannabis, and also will seek the assistance of the San Bernardino County Sheriff's office to end that
10 unlawful activity.

11 **VI.**

12 **CANNABIS WATER USE UPDATE**

13 In the past two years, there has been a significant increase in water being used to support the
14 growth of hemp and cannabis within the adjudicated area. MWA and Watermaster completed a survey
15 of aerial photographs taken in May of 2021 in order to locate and estimate the production for these uses.
16 It is estimated that water use for these uses is as much as 4,000 acre-feet, which was double the previous
17 estimate. San Bernardino County prohibits outdoor cultivation of cannabis. The data and information
18 collected from the survey was provided to the San Bernardino County Sheriff's Department in October
19 2021. The Sheriff's Department has a dedicated Marijuana Enforcement Team to combat illicit grow
20 operations and is now making headway on this ongoing problem. Additionally, the County has adopted
21 an abatement order and is now issuing various code enforcement violations to property owners who are
22 identified by the Sheriff's Department as having illicit grow operations.

23 **VII.**

24 **MINIMAL PRODUCERS AND MWA ORDINANCE NO. 14**

25 Under the Judgment, MWA is responsible for the Minimal Producers in the Mojave Basin Area.
26 Minimal Producer water use had been fairly stable and not increasing until about 2015. In 2015 it was
27 concluded that most of the increases that were occurring were from smaller producers that had begun to

1 exceed the Minimal Producer limit of 10 acre-feet. Watermaster engaged with many of these parties and
2 some of these parties voluntarily stipulated to the Judgment over a two-year period. There are still some
3 of those parties that did not stipulate and will be subject to the process identified in Section V for future
4 inclusion into the Judgment through a separate action filed with the Court.

5 Due to the influx of cannabis growing, we have seen small grow operations that we don't think
6 are using more than 10 acre-feet per year but are contributing greatly as a whole to increases in Minimal
7 Producer water use in the Basin Area. In order to deal with this problem, MWA adopted an Ordinance
8 for the regulation of future Minimal Producers (MWA Ordinance No. 14, attached as Exhibit D). The
9 Ordinance was adopted on April 14, 2022 and becomes effective July 1, 2022 for those new small users
10 who are issued a well permit from the County of San Bernardino on or after that date. The Ordinance
11 provides for a charge to be levied on new Minimal Producers which will be used by MWA for purchasing
12 imported water for the five (5) Subareas.

13 VIII.

14 RELATED MWA ACTIVITIES

15 MWA has begun evaluating the feasibility of a large-scale Groundwater Banking Program. The
16 technical study will evaluate water banking alternatives and associated necessary capital improvements,
17 financial benefits and implications, Basin effect, environmental permitting requirements, coordination
18 with the Judgment and other technical issues associated with initiating a groundwater bank. Work began
19 in February 2020 and will be a multi-year study.

20 Demonstration groundwater recharge facilities in the upper Alto, Oeste and Este Subareas have
21 been developed on sites owned by MWA. Each of these studies will characterize surface infiltration
22 rates, subsurface hydrogeologic zones and properties, groundwater levels, hydraulic properties and
23 alluvial sediments of the aquifer as well as identify favorable areas for recharge facilities and help assess
24 the regional suitability of the project.

25 "Cash for Grass" water conservations programs initiated and implemented by MWA have
26 resulted in the removal of 3.2 million square feet of turf. In the last 10 years, water conservation efforts
27 have reduced water consumption by more than 30 percent.

IX.

CONCLUSION

Any delay in implementation of the Judgment, will jeopardize the Mojave Basin Area sustainability. The Judgment continues to provide the mechanism through the Physical Solution and Rampdown to achieve a sustainable water supply in the Mojave Basin Area. A substantial amount of investment by all parties to the Judgment has occurred over the last 29 years. The Mojave Water Agency, in support of the physical solution, constructed water supply facilities for delivering and storing water from the State Water Project (SWP) to meet needs in every Subarea. These include 14 recharge facilities and two major pipelines nearly 150 miles in length. The Physical Solution will work under the Judgment if implemented to its fullest extent. The only solutions to chronic overdraft and to achieving sustainability is to purchase imported water or to reduce pumping. In order to achieve and maintain balance in each of the Subareas, further Rampdowns in all Subareas will be considered by the Watermaster annually. The extended drought will continue to affect basin supplies and the availability of imported water from the SWP.

Based upon the foregoing and the Declaration of Robert C. Wagner, filed concurrently herewith, and the court's prior rulings, Watermaster requests that the Court grant this motion and implement the recommended FPA for each Subarea as follows:

- (1) **ALTO**: Set FPA in Alto at 55% of BAP
- (2) **BAJA**: Set FPA in Baja at 22.5% of BAP
- (3) **CENTRO**: Set FPA in Centro at 60% of BAP
- (4) **ESTE**: Set FPA in Este at 60% of BAP; and
- (5) **OESTE**: Set FPA in Oeste at 55% of BAP.

Dated: May 2, 2022

BRUNICK, McELHANEY & KENNEDY PLC

BY: 

WILLIAM J. BRUNICK, ESQ.

LELAND P. McELHANEY, ESQ.

Attorneys for Defendant/Cross-Complainant,
MOJAVE WATER AGENCY

EXHIBIT A

JUN 10 2021

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

CASE TITLE: City of Barstow v. City of Adelanto

Department 1

CASE NO.: CIV208568

JUN 04 2021

DATE: June 4, 2021

L. Howell

PROCEEDING: Order (1) Granting the Watermaster's Motion to Adjust the Free Production Allowances for Water Year 2021-2022 and (2) Directing the Watermaster to Abate Unauthorized Production

Annual Adjustment of FPA

The Mojave Water Agency, appointed as the Watermaster in this action, moved for an annual adjustment of the free production allowance (FPA) within each of the five subareas. After consideration of the moving papers, the submissions by the California Department of Fish and Wildlife supporting the motion, the opposition of the Newberry Springs Recreational Lake Association, the joinder in the motion by the Helendale Community Services District, the "Supplemental Statement" by the Phelan Pinon Hills Community Services District, and the comments by numerous other parties and individuals who appeared at the hearing on June 3, 2021, the Court rules as follows:

Centro:

The Watermaster proposed that the FPA be reduced from 70% of BAP to 65%. The Court approves that proposal. The Court orders that the FPA for all producers in Centro is reduced to 65% of BAP for Water Year 2021-2022.

Este:

The Watermaster proposed that the FPA be reduced from 70% of BAP to 65%. The Court approves that proposal. The Court orders that the FPA for all producers in Este is reduced to 65% of BAP for Water Year 2021-2022.

Oeste:

The Watermaster proposed that the FPA be reduced from 65% of BAP to 60%. The Court approves that proposal. The Court orders that the FPA for all producers in Oeste is reduced to 60% of BAP for Water Year 2021-2022.

Alto:

The FPA is currently set at 65% of BAP for agricultural producers and 55% of BAP for municipal and industrial producers (M&I). The Watermaster proposed that the FPA for agricultural producers be reduced from 65% to 60%, and that the FPA for M&I remain at 55%.

The Court does not approve that proposal, both because it would prolong a differential FPA between different types of uses, contrary to the judgment, and because it would result in the

FPA continuing to exceed the PSY for the subarea as a whole. Instead, the Court orders that the FPA for agricultural producers is reduced by 10% of BAP. As a result, the FPA for all producers in Alto is 55% of BAP for Water Year 2021-2022.

Baja:

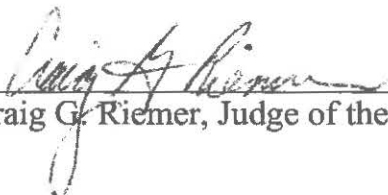
The Watermaster proposed that the FPA be reduced from 25% of BAP to 20%. The Court does not approve that proposal because it would result in a 20% reduction in FPA in a single year, which the Court finds to be unreasonably burdensome. Instead, the Court orders that the FPA be reduced by 2.5% of BAP, which is equivalent to 10% of FPA. As a result, the FPA for all producers in Baja is 22.5% of BAP for Water Year 2021-2022.

Unauthorized Production

In the Watermaster's motion, in the joinder filed by the Helendale Community Services District, and in comments at the hearing, concern was expressed regarding the apparent increase in unauthorized production in the basin, particularly for the purpose of raising marijuana. Helendale CSD asked the Court to specifically direct the Watermaster to enforce the Judgment in this regard.

Without finding that the Watermaster has been failing to do so, the Court expressly directs the Watermaster to take all reasonable steps to identify any unauthorized production within the basin and to bring that production into compliance with the Judgment. If reasonably necessary, the Watermaster shall seek the assistance of the Court in compelling that compliance. In particular, if any such unauthorized production is being conducted or permitted by a party subject to the injunction in section 14 of the Judgment, the Watermaster shall apply to this department for an order to show cause why that party should not be found to be in contempt. If the unauthorized production is being conducted by a non-party, the Watermaster shall initiate an action for injunctive relief as expressly authorized by section 12 of the Judgment.

Counsel for the Watermaster shall serve copies of this order on all parties by mail forthwith, and shall file a proof of service within seven days of the date of mailing.



Craig G. Riemer, Judge of the Superior Court

EXHIBIT B

William J. Brunick, Esq. (State Bar No 46289)
 Leland P. McElhaney, Esq. (State Bar No. 39257)
BRUNICK, McELHANEY & KENNEDY PLC
 1839 Commercenter West
 San Bernardino, California 92408-3303

NO FEE PER GOV'T. CODE SEC. 6103

MAILING:
 P.O. Box 13130
 San Bernardino, California 92423-3130

Telephone: (909) 889-8301
 Facsimile: (909) 388-1889

Attorneys for Defendant/Cross-Complainant
 MOJAVE WATER AGENCY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE

CITY OF BARSTOW, et al.,

Plaintiff,

vs.

CITY OF ADELANTO, et al.,

Defendant,

CASE NO. CIV 208568

**DECLARATION OF ROBERT C.
 WAGNER, P.E. IN SUPPORT OF
 MOTION TO ADJUST FREE
 PRODUCTION ALLOWANCE FOR
 WATER YEAR 2022-2023**

Assigned for All Purposes to:
 Judge Craig Riemer
 Dept. 1

DATE: June 2, 2022

TIME: 1:30 p.m.

DEPT: 1

Reservation ID: 159238747335

AND RELATED CROSS ACTIONS

I, Robert C. Wagner, declare as follows:

I am a licensed Civil Engineer in the State of California and President of the firm of Wagner and Bonsignore, Consulting Civil Engineers in Sacramento, California. A copy of my professional resume is attached as Exhibit 1 and list of sources used in support of this declaration is attached as Exhibit 2. I serve in the capacity of Engineer for the Mojave Basin Area Watermaster in performance of its duties

specified on Exhibit 3. I am providing the following information in support of Watermaster's recommendations regarding Free Production Allowance (FPA) and to address other matters related to water supply use and disposal within the five Subareas. I incorporate by reference, as though fully set forth herein, my declarations and all attachments thereto that were filed with the court in this action in support of prior Motions to Adjust FPA.

In my capacity as Engineer for the Mojave Basin Area Watermaster, I have reviewed the Motion to Adjust FPA for Water Year 2022-23 and the Watermaster's Twenty-Eighth Annual Report. Each of the facts set forth in the Motion to Adjust FPA for Water Year 2022-23 are true and correct to the best of my knowledge and I could competently testify thereto.

I have reviewed the recommended adjustments to FPA for Water Year 2022-23 set forth in the pending motion and each of the recommendations set forth therein for each of the Subareas are consistent with my opinions and recommendations as conveyed to the Watermaster. The recommendation to adjust FPA for each Subarea was presented at the February 23, 2022 and the March 23, 2022 hearings with the Watermaster.

The Production Safe Yield (PSY) estimate includes long-term hydrology as specified in the Judgment, consumptive uses for 2017-18 (updated), phreatophyte use as indicated in the Judgment, Subarea subsurface obligations and surface obligations between Alto and Centro (there are no other surface obligations in the Judgment). Table 5-1 (Watermaster's Annual Report, page 40) shows the current PSY calculation.

The following table shows the current FPA for each Subarea and the estimated PSY.

<u>Subarea</u>	<u>Base Annual Production</u>	<u>2021-22 FPA</u>	<u>Production Safe Yield</u>	<u>Percent Difference¹</u>	<u>2020-21 Verified Production</u>
Alto	116,412	65,051	64,406	0.6%	77,891
Baja	66,157	16,697	12,189	6.8%	12,867
Centro	51,030	33,801	21,088	24.9%	18,132
Este	20,205	13,493	4,728	43.4%	4,304
Oeste	7,095	4,355	1,712	37.3%	3,560

¹This value represents the percent of BAP that PSY departs from FPA.

The Judgment's purpose is to balance supply and demand and allocate the cost to parties that over pump FPA.

The following is the recommendation for setting FPA for Water Year 2022-23:

<u>Subarea</u>	<u>Proposed 2022-23 Free Production Allowance</u>
Alto	55% of Base Annual Production
Centro	60% of Base Annual Production
Baja	22.5% of Base Annual Production
Este	60% of Base Annual Production
Oeste	55% of Base Annual Production

Alto – 55% of BAP

FPA is within 5% of PSY of BAP (0.6%) and thus, Exhibit H does not compel Watermaster to recommend Rampdown. During 2020-21, inflow measured at Deep Creek and West Fork Mojave River (Forks), as reported by the United States Geological Survey (USGS), was 4,213 acre-feet or about 6.4% of the 60-year base period average (65,538 acre-feet). During the recent 10-year period, 2012 to 2021, inflow at the Forks, as reported by USGS has only been 43.3% (28,404 acre-feet) of the 60-year base period average (see Mojave River Flow at The Forks on Exhibit 4). During 2020-21 the measured inflow at the Forks was the second driest of the past 91 years. Last year Alto experienced about 51,000 acre-feet of groundwater depletion (Watermaster's Annual Report, Table 3-2). Additional Rampdown in Alto would allow for the importation of water to offset the shorter-term reduction in natural supply. However, we are not recommending Rampdown in Alto for the 2022-23 Water Year as FPA is about equal to PSY under long-term water supply assumptions. We will continue evaluating the basin conditions and may consider the need for additional Rampdown for the 2023-24 Water Year and future years.

Centro – 60% of BAP

FPA in Centro exceeds PSY by more than 5% of BAP (24.9%). In order to balance FPA with PSY under the Judgment additional Rampdown is required. It is recommended that Centro FPA be reduced by 5% to 60% for Water Year 2022-23. If the Court approves this recommendation, FPA in Centro will exceed PSY by more than 5% of BAP (20.2%).

Baja – 22.5% of BAP

FPA in Baja exceeds PSY by more than 5% of BAP (6.8%). In 2021 the Court ordered a Rampdown of 2.5% in Baja. Since 2020, water production declined about 31% from 18,677 acre-feet to 12,867 acre-feet. We expect additional decline of about 1,500-2,000 acre-feet in 2022. These changes in land use, that might be permanent, may have an impact on the PSY calculation and thus warrant additional investigation. An evaluation of water levels indicates that water levels in some wells in areas where water production has declined might be slowing the downward decline. Based on the foregoing, it is recommended that the Baja Subarea FPA remain at 22.5% of BAP for the 2022-23 Water Year.

Este – 60% of BAP

FPA in Este exceeds PSY by more than 5% of BAP (43.4%). Water levels in Este are stable as water production has declined. Water production has declined in Este from 15,700 acre-feet in 1990 to 4,304 acre-feet in 2021. In order to balance FPA with PSY under the Judgment additional Rampdown is required. It is recommended that Este FPA be reduced by 5% to 60% for Water Year 2022-23.

At its March 2022 meeting, Watermaster requested that the Court consider a lesser Rampdown of 2.5% in Este to acknowledge that there is a relative balance between supply and demand over the last 25 plus years. Unlike the condition in Baja, as noted above, FPA in Este still greatly exceeds the PSY. If the Court approves the Watermaster alternative request of 2.5%, FPA in Este will exceed PSY by more than 5% of BAP (40.8%). If the Court approves the recommendation as indicated for a 5% Rampdown, FPA in Este will also exceed PSY by more than 5% as a percentage of BAP (38.6%).

Oeste – 55% of BAP

FPA in Oeste exceeds PSY by more than 5% of BAP (37.3%). Some water levels in Oeste exhibit steady decline and others are stable, although variable, over the past 15 years. Water levels in Oeste wells will decline as population growth increases water demands. In order to balance FPA with PSY under the Judgment, additional Rampdown is required. It is recommended that Oeste FPA be reduced by 5% to 55% for Water Year 2022-23.

At its March 2022 meeting, Watermaster requested that the Court consider a lesser Rampdown of 2.5% to acknowledge the relative balance (although somewhat variable) between supply and demand over the past 15 plus years. Unlike the condition in Baja, as noted above, FPA in Oeste still greatly

1 exceeds the PSY. If the Court approves the Watermaster alternative request, FPA in Oeste will exceed
2 PSY by more than 5% of BAP (34.8%). If the Court approves the recommendation as indicated for a
3 5% Rampdown, FPA in Oeste will also exceed PSY by more than 5% of BAP (32.3%).

4 At the hearing on June 3, 2021, the Court asked specific questions related to drought, climate
5 change and the fundamental assumptions regarding the hydrologic base period that the Judgment is based
6 upon (1931-1990). I interpret the Court's questions to mean, if we had the benefit of foresight in 1991,
7 or hindsight today, would we have picked a different planning period for the basis of the water supply
8 for the Judgment. The Court asked:

9 "THE COURT: All right. And then from the moving papers themselves, points and authorities,
10 there is this line: "Sixty-year average storm flow is assumed to be available to the subareas from
11 the Mojave River system," end quote. Those 60 years are from 1931 to 1990. Given what's
12 happened in the last 30 years, Mr. Wagner, is that still a reasonable assumption?"

13 *And*

14 "THE COURT: All right. I guess my question is this: When this Judgment was crafted, as you
15 say, the fundamental assumptions at that time was that the experience between -- in the 60 years
16 between 1931 and 1990 would repeat. Would that be a fair assumption to make if one were
17 drafting this Judgment today?"

18 To address these questions it is noted that there are only three sources of water available to the
19 Mojave Basin Area: 1) Rainfall and runoff to the Mojave River from the San Bernardino Mountains, 2)
20 Depletion of groundwater in the underlying aquifers, 3) Imported water from the State Water Project
21 (SWP) from Mojave Water Agency's entitlement.

22 Both of the Court's inquiries relate to the potential that the long-term average local supply will
23 not occur during a short time period but over a sufficiently long period to result in undesirable impacts
24 to the groundwater resources (similar to the drought scenario of 1946-65). In such a case the basin
25 actually experienced only about 51% of the long-term average or about 33,400 acre-feet of inflow at the
26 Forks.

27 As shown on the Exhibit 4 (Mojave River Flow at The Forks), there are long periods of below
28 average inflow. Consequently it is necessary to import more water than the expected deficit, in some

1 series of years to augment supply for drought protection. It is also necessary to purchase and import
2 SWP water whenever it is available. At any time in the future, extended drought in Northern California
3 will limit the amount of imported water that is available, thus exacerbating local drought conditions.

4 The availability of local water supply and the availability of imported SWP water are both critical
5 to the long-term reliable water supply for the Basin Area. Equally important is the extent to which the
6 ground water basins can be stressed without recharge over a period of time without undesirable impacts.
7 When there is a shortage of local supply and a shortage of imported supply, depletion of groundwater in
8 the underlying aquifers is the only available supply.

9 To address the Court's inquiry: The sixty year base period average (65,538 acre-feet, 1931-1990)
10 is likely to be repeated at some point in the future. The USGS records show that there are multiple years
11 of above average inflow at the Forks, following extended dry periods (Exhibit 4). Although it has been
12 dry for 11 years and the drought conditions may continue in following years, it is a reasonable
13 assumption that it will rain again. The management issue is how to raise money to offset overdraft in
14 the shorter term. The Judgment provides for this by adjustments to Free Production Allowance. The
15 adjustments can be made beyond the estimated Production Safe Yield, if it is desirable to raise money
16 for purchases of imported water. The Judgment also allows for purchase and pre-storage of Replacement
17 Water for future obligations.

18 If the Judgment were being drafted today, and having the benefit of hindsight, I think it is
19 probable that a shorter, drier planning period (hydrologic base period) for local supply would be selected,
20 resulting in a lower estimated Production Safe Yield, and consequently lower annual Free Production
21 Allowance. However, the Judgment can solve the issues related to local drought, by reducing FPA
22 (without reducing PSY) for successive years to raise money to buy water for import and recharge. After
23 achieving the goal of raising funds to purchase water and subsequently importing and recharging, FPA
24 could then revert to the level indicated by the long term PSY.

25 Climate change projections suggest there will be less snowpack and more rainfall, and longer
26 droughts in the future. Such conditions may continue to affect the reliability and timing of the
27 availability of the SWP to provide water for import. If future availability of SWP water declines then
28 there will be a higher cost and higher risk associated with foregone imported water purchases.

1 In June 2021 the Court in its order directed Watermaster to take all reasonable steps to identify
2 any unauthorized production within the basin and to bring that production into compliance with the
3 Judgment and if necessary, the Watermaster shall seek the assistance of the Court in compelling that
4 compliance. Additionally, the Court indicated that if unauthorized production is being conducted by a
5 non-party, the Watermaster shall initiate an action for injunctive relief as expressly authorized by section
6 12 of the Judgment.

7 In compliance with the Court's direction, I am in the process of completing the first phase of a
8 two phased process to identify, document, and quantify any pumping in excess of 10 acre-feet per year
9 and to bring an action before the Court to consider. The first phase includes those parties believed to be
10 pumping greater than 10 acre-feet in the Este and Oeste Subareas. In the first phase we have identified
11 65 potential parties who own 73 separate parcels that might be pumping in excess of 10 acre feet per
12 year based on the best information available at the time we identified them. In some instances, we have
13 been contacted by landowners who claim our estimates are incorrect. I am currently working on
14 developing land use and crop use estimates that are better informed from additional investigation. Such
15 work involves obtaining permissions from landowners to access their properties, the installation of flow
16 meters and collection of local climate data from specific planted fields. These efforts are complicated
17 and therefore time consuming. The future second phase will encompass the Alto, Centro and Baja
18 Subareas and follow the same process that is being developed for Este and Oeste.

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

21 Dated: May 2, 2022

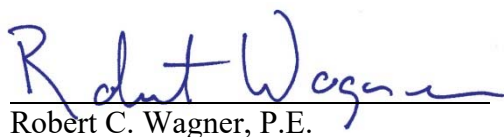
22 
23 Robert C. Wagner, P.E.

EXHIBIT 1

Wagner & Bonsignore

Consulting Civil Engineers, A Corporation

Nicholas F. Bonsignore, P.E.
Robert C. Wagner, P.E.
Paula J. Whealen

David H. Peterson, CEG, CHG
David P. Lounsbury, P.E.
David Houston, P.E.
Vincent Maples, P.E.
Patrick W. Ervin, P.E.
Martin Berber, P.E.
Ryan E. Stolfus

James C. Hanson, P.E.
Henry S. Matsunaga

ROBERT C. WAGNER PROFESSIONAL RESUME

REGISTRATION:

Civil Engineer, California (License No. 52903)

EDUCATION:

B.S. Civil Engineering – California State University, Sacramento, CA - 1988

EXPERIENCE:

Mr. Wagner is the president of Wagner & Bonsignore Engineers and is a Registered Civil Engineer in California, with 25 years experience in water resources management, water right analysis, surface and groundwater water hydrology and land use evaluations for municipal and agricultural projects. Mr. Wagner has been the court appointed engineer for the Mojave Watermaster for over 20 years and has provided expert witness testimony on various matters related to water resources and water rights in court and before the State Water Resources Control Board. Mr. Wagner has demonstrated expertise in areas of consumptive use analysis, watershed hydrology, facility design for storm water capture and analysis of return flow to support water transfers, administration of court ordered judgments and water supply sustainability.

Mr. Wagner serves a wide variety of private and public clients throughout California, managing projects from concept to implementation. Mr. Wagner's work includes pre-1914 appropriative water right investigation, analysis of riparian and overlying water rights and appropriative rights administered by the State Water Resources Control Board.

Mr. Wagner has demonstrated communication skills to work with a wide range of legal and technical professional and stakeholder groups. He has strong organizational and analytical skills and a recognized ability to provide cost effective solutions to difficult water resource problems.

RECENT EXPERIENCE INCLUDES THE FOLLOWING:

District Engineer for Reclamation District 38 Staten Island, San Joaquin County

District Engineer for Reclamation District 341 Sherman Island, Sacramento County

District Engineer for Reclamation District 348 New Hope Tract, San Joaquin County

District Engineer for Reclamation District 800 Cosumnes River, Sacramento County

Provide engineering consulting services on behalf of Antelope Valley East Kern Water Agency in connection with quantification of return flow from water used for irrigation and other uses.

Provide engineering consulting services on behalf of Los Angeles World Airports in connection with quantifying water use from various sources for irrigation.

Provide engineering consulting services on behalf of San Joaquin County in connection with water right applications and water resources management within San Joaquin County.

Provide engineering services for Chino Basin Water Conservation District, San Bernardino County in connection with storm water recharge in Chino Basin.

Watermaster Engineer for Orange County Water District; perform analysis of hydrologic and water quality data for the Santa Ana River Watershed for Water Year 2009-10; distinguish storm flow and base flow at Prado Dam and at Riverside Narrows, preparation of portions of the Watermaster's annual report to the Court.

Provide engineering services for Lake Alpine Water Company / Alpine County in connection with the State Water Resources Control Board water right hearing and hydrology of South Fork Stanislaus River for State Filed Application 5648.

Provide Engineering services for Natomas Mutual Water Company, in connection with the water rights. Evaluation of water rights for 51,000 acres of agricultural operation, water right analysis and water transfers.

Provide engineering services on behalf of City of Sacramento in connection with the Water Resources of the American River.

Provide engineering services on behalf of City of Ukiah in connection with water rights and hydrology of the Russian River, Mendocino County.

Provide engineering services on behalf of Sonoma County Water Agency in connection with development of agricultural reuse project for use of treated wastewater for vineyard irrigation.

Provide engineering services in connection with analysis of water production and hydrologic data for development of water use agreements for over 100 growers in the Dry Creek Valley in Sonoma County.

Provide engineering services for City of Santa Maria in connection with the hydrologic resources of the Santa Maria Groundwater Basin.

Engineering expert in the matter of Bonadiman v. Evans in San Bernardino Superior Court on behalf of prevailing party Evans. Research and documentation of water development and water right acquisition dating to 1883.

Provide engineering services for The Wildlands Conservancy in connection with water resource matters for extensive land holdings in San Bernardino and Kern Counties.

Provide engineering services for Wells Fargo Bank in connection with the analysis of water rights and water availability on the Kern River.

Watermaster Engineer for the Mojave Basin Area Watermaster in the matter of the Mojave River Adjudication, City of Barstow, et al, vs. City of Adelanto, et al. Collection and analysis of data for preparation of Annual Watermaster Report, including groundwater production and hydrology studies of the Mojave River System and groundwater basin in connection with storm flow base flow separation determination and the analysis of water transfers and land use changes. Preparation of Annual Watermaster report.

Provide engineering services on behalf of the Mojave Water Agency in connection with Mojave Basin Area Adjudication. Coordinate activities for professional and sub-professional staff for collection, analysis and verification of water production records for approximately 7,000 wells in the Mojave River Basin. Participate in meetings of the Joint Engineer-Attorney Drafting Committee formed to negotiate and draft the Stipulated Judgment. Participation in the drafting and ongoing revisions of the Watermaster Rules and Regulations.

Provide engineering services in connection with for the Warren Valley Basin Watermaster, San Bernardino County. Analysis of groundwater production records and basin hydrology for preparation of Annual Watermaster Report.

Provide engineering services in connection with work for East Valley Water District, San Bernardino County, regarding the analysis of surface and subsurface hydrology of the Santa Ana River and the availability of water for the Seven Oaks Dam Project and fully appropriated listing of the Santa Ana River.

Provide engineering services on behalf of Kirkwood Associates before the State Water Resources Control Board in the matter of South Fork American River Hearings, October 1995. Analysis of the South Fork American River and Caples Creek hydrology in connection with same.

Provide engineering services in connection with work for High Desert Water District, San Bernardino County, regarding the analysis of water quality and ground water elevation data for monitoring the potential impacts of ground water extractions from the Ames Valley Basin.

Provide engineering services in connection with work for Hidden Valley Lake Community Services District, Lake County, regarding the hydrologic analysis of Upper Putah Creek Watershed and the Coyote Valley groundwater basin in support of amendments to fully appropriated stream status and applications to appropriate surface and subsurface water from Putah Creek; continued monitoring of the Coyote Valley groundwater basin in connection with administration of water rights.

CONTINUING EDUCATION

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“Fundamentals of Water Rights and Colorado River Issues”, University of Nevada, Las Vegas January 1998

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EXHIBIT 2

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EXHIBIT 3

Duties of the Watermaster and Engineer as outlined in the Judgment

MWA was appointed as the initial Watermaster and has duties separate from the Court Appointed Watermaster. MWA Obligations under the Judgment are specified in paragraph 9.0 as follows:

“The Physical Solution is intended to provide delivery and equitable distribution to the respective Subareas by MWA of the best quality of Supplemental Water reasonably available. MWA shall develop conveyance or other facilities to deliver this Supplemental Water to the areas depicted in Exhibit “I” unless prevented by forces outside its reasonable control such as the inability to secure financing consistent with the sound municipal financing practices and standards. “

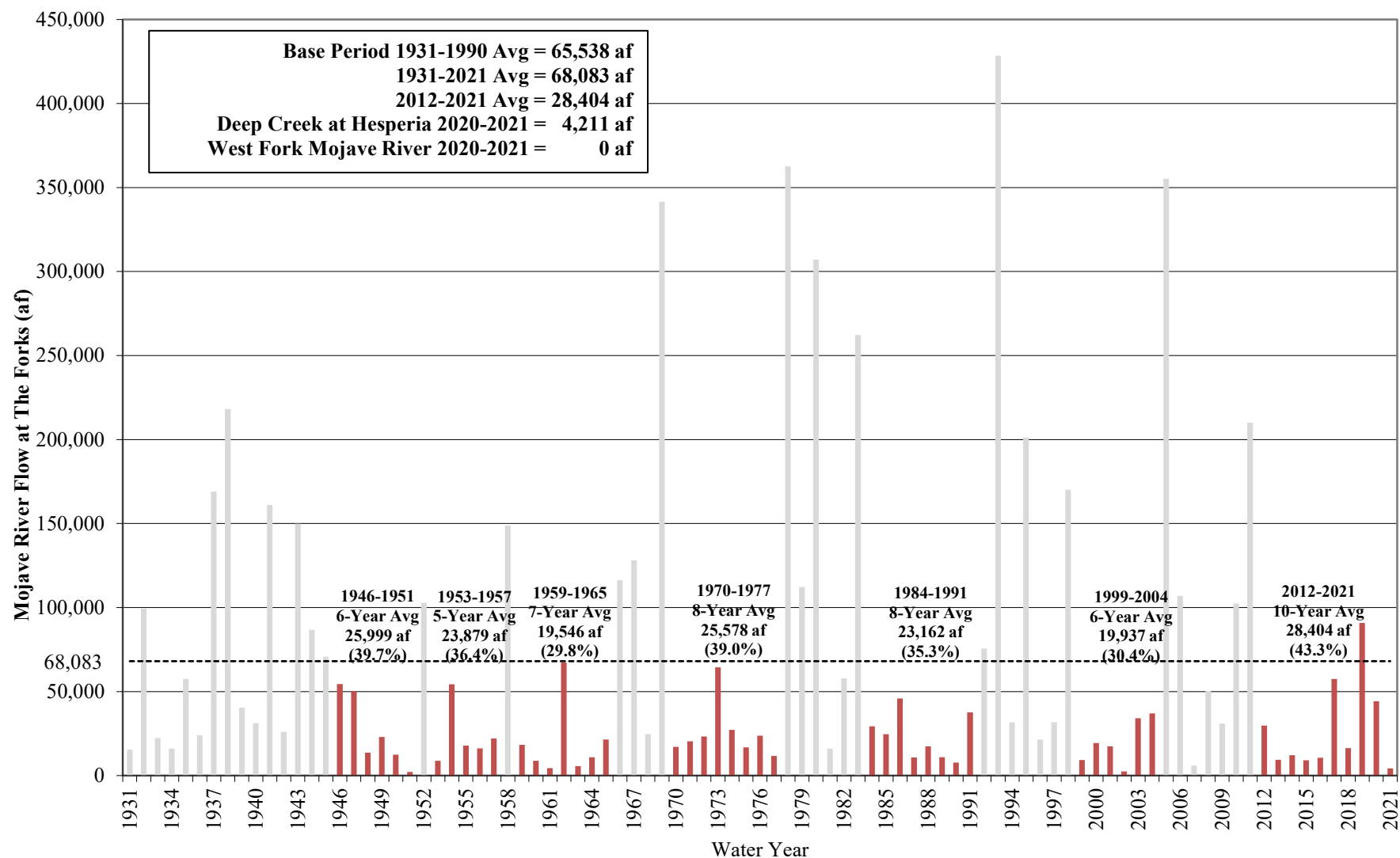
MWA’s obligations under the Judgment relate to purchasing, importing and recharging the groundwater basin with supplemental water. MWA has engaged in various activities since implementation of the Judgment to meet this obligation including acquisition of additional State Water Project Entitlement and development of conveyance, recharge and extraction facilities, and the financing of those facilities.

Watermaster’s powers and duties are specified in Paragraph 24 (a) through (x) and include all of the data collection and analyses and functions reported to Court in the Watermaster Annual Reports. The engineer is responsible to Watermaster and the Court to ensure that requirements as set forth in 24 (a) through (x) are carried out as intended and consistent with the Physical Solution embodied in the Judgment. The activities described in this declaration are a result of Watermaster exercising its obligations under the Judgment. The Watermaster staff and the engineer’s duties on behalf of Watermaster include some or all of the following annually:

- Interpret and enforce the Rules and Regulations
- Calculate Subarea Make Up Obligations, and Producer Replacement Water Obligations
- Evaluate various methods of monitoring and measuring and work with producers to ensure production data is reliable
- Collect and evaluate Hydrologic, and Climate data, and monitor and evaluate phreatophyte consumptive use
- Prepare detailed producer consumptive use analyses for estimating supply to the basin from return flows of production
- Evaluate crop water requirements and various categories of water use
- Evaluate and process transfers for producers
- Maintain a database of individual producers water use, property location, wells, water production, etc.
- Calculate individual assessments as required by the Judgment
- Hold public hearings as required
- Calculate Free Production Allowance and make recommendations for adjustments
- Prepare annual report the Court on the above and all matters as delineated in Paragraph 24 (a) through (x) of Judgment.

EXHIBIT 4

Mojave River Flow at The Forks Water Years 1931 - 2021



Note: Discharge of Mojave River at The Forks from the addition of values as reported from USGS stations at West Fork Mojave River Near Hesperia, CA (10261000), and Deep Creek Near Hesperia, CA (10260500) from 1931-1971, the greater of 10260500 and Mojave River Below Forks Reservoir Near Hesperia, CA (10261100) from 1972-1974, and the addition of West Fork Mojave River Above Mojave River Forks Reservoir Near Hesperia, CA (10260950) and 10260500 from 1975-Present.

EXHIBIT C



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
787 North Main Street, Suite 220
Bishop, CA 93514
www.wildlife.ca.gov

EXHIBIT C
GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 18, 2022

Mojave Basin Area Watermaster
Mojave Water Agency
13846 Conference Center Drive
Apple Valley, CA 92307-4377

Subject: Watermaster Proposed Recommendation for Free Production Allowance
for Water Year 2022-2023

Dear Watermaster Board Members,

The California Department of Fish and Wildlife (Department) has reviewed the memorandum entitled “Proposed Recommendation for Free Production Allowance for Water Year 2022-2023” prepared by Robert C. Wagner, Watermaster Engineer, dated February 23, 2022, and the Watermaster Engineer slideshow presentation at the February 23, 2022 Watermaster Board meeting entitled “FPA Recommendation for Water Year 2022-23”.

The Department is the state trustee agency for the fish and wildlife resources of the state and is a party to the Judgment After Trial, dated January 10, 1996 (Judgment). In addition, the Department is a landowner in two of the five subareas as shown in Exhibit A of the Judgment, the Baja and Alto Subareas, and is an ex-officio member of both Subarea Advisory Committees. In the Baja Subarea, the Department owns the Camp Cady Wildlife Area (Camp Cady) and in the Alto Subarea the Department owns the Mojave Narrows Regional Park and Mojave River Fish Hatchery.

The Department initially purchased Camp Cady in 1979 and then expanded its ownership through the purchase of the Hilarides parcel in 2001. Camp Cady consists of 1,866 acres for the public and was purchased for a total cost of \$2,046,481 in state bonds. The original 1979 acquisition had extensive surface water and riparian habitat when it was acquired. The continued decline in water levels in the Baja Subarea since 1979 has had a significant negative effect on the biological resources at Camp Cady and in the Baja Subarea more generally.

The Department purchased the Mojave Narrows Regional Park in 1968 in large part for the extensive riparian habitat existing along the Mojave River which flows through the park. The Department entered into a cooperative agreement for the Operation and Maintenance of the Mojave Narrows Regional Park (also known as the Mojave River Wildlife Area) with the County of San Bernardino in August of

1969. Further, the Mojave River Fish Hatchery was purchased in December of 1969 and is currently managed by the Department as a fish hatchery.

The Department has been actively involved every year since the entry of the Judgment in 1996 in seeking to protect the Mojave Basin Area, protecting publicly owned lands and key habitat and species in the Mojave Basin Area, working to match production in the Baja Subarea and other Subareas to available natural inflows and return flows, implementing water conservation measures and urging compliance with the Judgment. The annual rampdown hearing was held on June 3, 2021. On June 4, 2021, Judge Riemer signed an Order implementing a 2.5% reduction to base annual production in the Baja Subarea rather than the 5% reduction proposed by the Watermaster, which he found unreasonably burdensome. The Judge also ordered that free production allowance in the Alto subarea be set to 55% of base annual production for all producers, thereby eliminating the previous differential that existed between agricultural and municipal/ industrial users.

WATERMASTER RECOMMENDATION

The Department has reviewed the Watermaster Engineer's analysis and conclusions, as well as his recommendations for production levels in the 2022-2023 Water Year. At this time, the Department agrees with the Watermaster Engineer's conclusions that a pause in the reductions in the Baja Subarea is warranted with free production allowance remaining at 22.5% of base annual production for the 2022-2023 Water Year. The Watermaster has proposed 5% reductions to free production allowance for the Centro, Este, and Oeste subareas. The Department supports rampdown in these basins until the free production allowance is within 5% of the production safe yield as required by the Judgment.

ADDITIONAL ACTIVITIES

The Department has also been engaged during the past year in numerous activities to implement the Habitat Water Supply Management Plan for the Adjudicated Area of the Mojave River Basin. The Department requested funding for five projects utilizing the Biological Resources Trust Fund as approved at the July 28, 2021, Mojave Water Agency (MWA) Watermaster Board meeting for a total dollar amount of \$147,000. These projects include 1) Mojave River Fuels Reduction and Weed Eradication, 2) Camp Cady Riparian Restoration and Monitoring, 3) Camp Cady Pivot Repairs, 4) Camp Cady Pond Restoration, and 5) Mojave Narrows Regional Park Well Measurement. The proposed activities are proceeding described in our July 19, 2021, Biological Resources Trust Fund Request letter in close coordination with project partners including MWA, the Mojave Desert Resource Conservation District (MDRCD), and Quail Forever. The Camp Cady Pond Restoration work has been completed.

In addition to the projects described above, Department staff attended numerous meetings including Technical Advisory Committee and associated ad hoc cannabis related meetings, Watermaster meetings, and the Court hearing via telephone on June 3, 2021. The Department continues to work diligently on cannabis issues within our Law Enforcement Division, Habitat Conservation Planning, and Lands Programs.

Thank you for this opportunity to communicate the Department's position regarding the Watermaster Engineer's recommendations for free production allowance for Water year 2022-2023. In summary, the Department supports a pause in the rampdown in the Baja Subarea for the 2022-2023 Water Year to further evaluate groundwater response to reduced pumping, as well as the conclusion that a five per cent (5%) rampdown of free production allowance in the Centro, Este, and Oeste Subareas is necessary. The Department will be attending the March 2022 Watermaster meeting as this matter is formally discussed and considered by the Watermaster Board.

Sincerely,

DocuSigned by:

6477ACD4E0DE4DB...

Aaron Johnson
Senior Environmental Scientist
Inland Deserts Region

cc:

CDFW

Chris Hayes
Alisa Ellsworth
Nancee Murray

Department of Justice

Marilyn H. Levin
Noah GoldenKrasner

Silver Valley Realty RECEIVED
MOJAVE WATER AGENCY

44244 NATIONAL TRAILS HIGHWAY
NEWBERRY SPRINGS, CA 92365

Fred Stearn, Broker 22 MAR -7 AM 8:47
License #00703404

(760) 257-3560

March 3, 2022

Ms. Valerie Wiegenstein, Services Manager
Mojave Basin Area Watermaster
C/O Mojave Water Agency
13846 Conference Center Drive
Apple Valley, CA 92307

SUBJECT: FREE PRODUCTION ALLOWANCE FOR WATER YEAR 2022-23 FOR THE BAJA
BASIN

Dear Ms. Wiegenstein:

In regards the many years that 5% free production reductions were not imposed in the Baja water basin, when they seem to have been required by Paragraph 24 of the 1996 Judgment After Trial, it is my suggestion to the Watermaster, and the California Fish & Wildlife agency and the Court, that it make up for past injustice to the Environmental Justice Focus Areas of Newberry Springs and Daggett, in the Baja Basin, with an additional 5% rampdown imposed by the Court for the 2022-23 water year.

The authority for the additional 5% rampdown in the Baja Basin would have a legal basis in the language of Exhibit "H", in the 1996 Judgment.

This is a low income, low education community without any strong political representation to defend community resources, hence the millionaire alfalfa farmers have proceeded over the years to overdraft our Baja water basin, without regard for the environmental consequences to our low income population.

A map in the August 2020 Countywide Plan, on page 3-49 identifies Newberry Springs and Daggett as Environmental Justice Focus Areas. Under the heading of Objectives on Page 3-48, it states "...elimination of groundwater threats."

Thank you for your consideration of this matter.

Sincerely,

Frederic Stearn

cc: leslie macnair, regional manager, region 6, california fish & wildlife dept.

Newberry Springs Community Alliance

P.O. Box 11
Newberry Springs, CA 92365
newberrysprings@mail.com

March 8, 2022

Valerie Wiegenstein, Director of Basin Management & Resources Planning
Mojave Basin Area Watermaster
Mojave Water Agency
13846 Conference Center Drive
Apple Valley, California 92307
vwiegenstein@mojavewater.org

Sent via e-mail.

Re: 2022-2023 Free Production Allowance For The Baja Basin.

Dear Ms. Wiegenstein,

Regarding the Free Production Allowance for the Baja Basin during the 2022-2023 period, we wish to request an additional 5-percent reduction in the water pumping allowance.

The current water measurement data calls for an additional 5-percent ramp-down under 'Exhibit H' of the January 10, 1996, Judgment.

Due to the failure, in some years, to enact a full ramp-down when called for under the Judgment, the low-income and disadvantaged residents of Newberry Springs have suffered a continuing low water table that has increased their expenses in the pumping of residential water. Their decreased water table has also negatively impacted the quality of their drinking water.

Newberry Springs is an economically disadvantaged community. It needs to recover its water losses for future development. The unsustainable alfalfa farming in the desert and the inappropriate massive desert lakes for visual pleasure provide no benefit to the overall community.

We ask that the Judgment of 1996 be enforced.

Cordially,

TS

Ted Stimpfel, Executive Director
Newberry Springs Community Alliance

To: Watermaster Bd. – Bill Brunick – Bob Wagner

From: Chuck Bell - ESTE Subarea Advisory Committee - 760
964 3118

Date: 3/21/22

RE: Comment/Request – ESTE FPA – March 23, 2022
Watermaster Hearing – Agenda #7:

As an alternative to another 5% ramp down to 60% - the Committee and Lucerne Valley Econ. Dev. Assoc. strongly requests that it be 2.5%.

Rationale:

For years the Watermaster has recommended no ramp down in Este after the initial 20% due to significant reduction in pumping (primarily due to the recession in the mid-90's that devastated Lucerne Valley's historic economy) and due to subsequent production remaining within the boundaries of PSY. The former judges complied.

The current judge ended that practice with mandating 5% reductions. We are fully aware of the Judgment's focus on the

amount of FPA relative to PSY. But it also deals with equity, fairness, etc. We have the history of suspended ramp downs – smaller reductions (ie: Baja) over time – the Watermaster and Court recognizing the reality of what’s happening (or not) on the ground in our communities.

Bottom-line: Este’s verified production since the mid 90’s has been equivalent or close to our PSY. Based on our current and projected economics – there is no reason to assume production will increase – (certainly not more major farming) - other than what is revealed after the Watermaster brings in those w/o water rights who are “pumping outside the Judgment” – and we eventually rid the area of illegal marijuana cultivation and its water use which is not reported. (Most of it has been verified by Eng. Bob Wagner). The adjudicated parties are mostly reporting – paying assessment and bio. fees – while others are pumping more than 10 ac’/yr. and getting a free ride.

Our water levels have remained stable since the mid 90’s based on checks on a regular basis. (Your Water Resources Dept. does great work). Example: My Ag. well was at 187’ on 10/28/21 and 183’ on 3/16/22. My domestic well was at 185’ on 10/28/21 and 181’ on 3/16/22. The rise was probably due to pumping cone recovery over the winter – but nevertheless an indication of the continued stability – even with the “outside pumping” and marijuana water use.

The State has designated Lucerne Valley as a "Severely Disadvantaged Community". We need time to adjust to the inevitable future of less water availability and its economic and environmental consequences (ie fallowed fields and blowing dirt – mutual water companies scrambling for make-up water, etc. etc.).

We are not prepared to address the Court directly through intervention especially with the fees. We ask that the Watermaster change its recommendation to 2.5% - or at the very least -represent our position at the hearing. And as we have asked before – request the judge to do a 'drive-around' with us to better understand the ramifications of his decisions.

Thank You.

Chuck

EXHIBIT D

ORDINANCE NO. 14**AN ORDINANCE OF THE MOJAVE WATER AGENCY FOR REGULATION OF
MINIMAL PRODUCERS AND ESTABLISHING THE
MINIMAL PRODUCERS PROGRAM**

WHEREAS the Board of Directors of the Mojave Water Agency (MWA) hereby finds:

1. The Mojave Water Agency in City of Barstow, et al. v. City of Adelanto, et al. (Riverside County Superior Court Case No. 208568) is directed to implement a Minimal Producers Program for water wells or facilities that produce up to ten acre-feet per water year. Such a Program "shall achieve an equitable allocation of the costs of the Physical Solution that are attributable to Production" by Minimal Producers.
2. The Judgment in City of Barstow, et al. v. City of Adelanto, et al., supra, enjoins any water production within the Mojave Basin except pursuant to the provisions of the Judgment and the Minimal Producers Program adopted by MWA and approved by the Court after entry of Judgment. MWA began the Minimal Producer Monitoring Program in order to better understand water use by Minimal Producers and their impact upon the Basin. Through the monitoring program MWA has catalogued thousands of wells and accumulated data on water use by Minimal Producers. MWA continues to gather and analyze data regarding water use by Minimal Producers.
3. After undertaking this process the Board of Directors has determined that the pools for Minimal Producers established in the Judgment are sufficient for existing Minimal Producers. The Board of Directors has also determined that these pools have been exhausted and it is necessary to establish a program to regulate new Minimal Producers. Furthermore, given the thousands of wells and the vast number of Minimal Producers already identified by MWA, the Board of Directors finds that it would be too costly for MWA to attempt to manage a program that encompasses all Minimal Producers. New Minimal Producers are identifiable through the issuance of a well permit deemed approved by San Bernadino County. Therefore, the Board of Directors has determined that it is necessary to distinguish between Minimal Producers existing before July 1, 2022 and after. This distinction is necessary because:
 - a. The Mojave Basin is currently in a state of overdraft;
 - b. All new production by Minimal Producers starting on or after July 1, 2022 will contribute to the overdraft and such production needs to be regulated in order to assure an adequate water supply within the Basin;
 - c. The Minimal Producers Program will take effect July 1, 2022; and
 - d. The Judgment allows for the distinction.

4. In order to acquire more supplemental water to recharge the Mojave Basin, the Board of Directors finds that it has become necessary to implement an annual Minimal Producers Fee that shall only be applicable to those Minimal Producers whose production, as identified through the issuance of a well permit, begins on or after July 1, 2022.

Be it ordained by the Board of Directors of the Mojave Water Agency as follows:

**CLASSIFICATION OF MINIMAL PRODUCERS UNDER THE JUDGMENT
IN THE CITY OF BARSTOW, ET AL. V. CITY OF ADELANTO, ET AL.
(RIVERSIDE COUNTY SUPERIOR COURT CASE NO. 208568) AND
ESTABLISHMENT OF THE MINIMAL PRODUCERS PROGRAM:**

Section 1. Definition of Minimal Producers. Minimal Producers are defined in the Judgment as "Any Person whose Base Annual Production, as verified by MWA is not greater than ten (10) acre-feet" and who has not stipulated to the Judgment. A Person designated as a Minimal Producer whose Annual Production exceeds ten (10) acre-feet in any year following the date of entry of Judgment is no longer a Minimal Producer and is subject to the terms of the Judgment.

Section 2. Minimal Producers Fee. A Minimal Producers Fee shall be paid each year during the tax collection process to MWA by every Minimal Producer whose water production began on or after July 1, 2022. The Minimal Producers Fee shall be the total variable rate to be charged per one acre-foot for replacement water for purposes of the Mojave Basin Area Judgment for the fiscal year for which the fee is charged. The Minimal Producers Fee is a charge for water and is not a parcel charge. The Minimal Producers Fee shall be collected in the same manner, by the same persons, at the same time as, and together and not separately from, the collection of annual county ad valorem property taxes imposed upon real property. Failure to pay the fee on time shall subject the Minimal Producer to an additional penalty charge of \$25.00. Minimal Producers Fees not paid shall be considered delinquent and MWA may collect this amount as a lien on the San Bernardino County tax rolls.

Section 3. Exemption of Minimal Producers existing prior to July 1, 2022. Minimal Producers who began water production prior to July 1, 2022 shall not be subject to the Minimal Producers Fee, pursuant to the Agency Act, but records will be maintained and catalogued by MWA regarding pre-July 1, 2022 Minimal Producers. All Minimal Producers whose well permit applications were deemed approved by the San Bernardino County Department of Public Health on or before July 1, 2022 shall not be subject to the Minimal Producers Fee. Replacement wells for Minimal Producers existing prior to July 1, 2022 also shall not be subject to the Minimal Producers Fee.

Section 4. Funds used to purchase supplemental water. All funds collected by MWA pursuant to Minimal Producers water charges, including penalty fees, shall be used to acquire supplemental water to help recharge the Mojave Basin area and associated administrative costs. MWA shall keep all funds collected under this Program separate

from other funds and MWA shall provide an annual financial report on the status of these funds. Water charges from each sub-area will be used for water deliveries in that Subarea.

Section 5. Minimal Producers production non-transferable. Minimal Producers are not subject to the Judgment and production shall be confined to the parcel on which the water production facility exists. Sale or transfer of pumped water off the property or parcel is prohibited. Such Minimal Producer's status would move to the new owner on any sale or alienation of the property or parcel.

Section 6. Monitoring Wells, Rules and Regulations. MWA staff is authorized to monitor wells to assure compliance and establish rules and regulations to implement the Program.

Section 7. Annual Production greater than ten acre-feet. Any Minimal Producer who produces more than ten acre-feet in any given year shall no longer be considered a Minimal Producer and shall become a Party subject to the provisions of the Judgment.

Section 8. Enforcement. The Board of Directors may direct staff to bring a civil action seeking enforcement, including injunctive relief, of the provisions of this Ordinance. This enforcement provision is in addition to all other enforcement provisions, including those in the Agency Act, the Judgment, and otherwise provided by law.

Section 9. Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Directors declares that it would have passed this Ordinance, and each section, subsection, clause, sentence, or phrase thereof irrespective of the fact that any new or more other sections, subsections, clauses, sentences or phrases may be declared invalid or unconstitutional.

Section 10. Effective Date. This Ordinance shall be in full force and effect upon July 1, 2022, and shall be published in full in a newspaper of general circulation within ten (10) days from the date of adoption.

Passed and adopted this 14th day of April 2022, by the following vote:

Ayes: Cox, Ventura, Anderson, Page, Roelle, Hayhurst, Limbaugh

Noes: None

Abstain: None

Absent: None



Michael Limbaugh
Secretary, Board of Directors



Jeanette Hayhurst
President, Board of Directors

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 2, 2022, 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:

NOTICE OF MOTION AND MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR WATER YEAR 2022-2023; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF ROBERT C. WAGNER IN SUPPORT THEREOF.

 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 2, 2022 at Apple Valley, California.



Jeffrey D. Ruesch

Mojave Basin Area Watermaster Service List as of May 02, 2022

Attn: Roberto Munoz
35250 Yermo, LLC
11273 Palms Blvd., Ste. D.
Los Angeles, CA 90066-2122

Attn: John McCallum
Abshire, David V.
P. O. Box # 2059
Lucerne Valley, CA 92356-2059

Attn: Daniel Best
Adelanto, City Of
11600 Air Expressway
Adelanto, CA 92301-1914

(adesdevon@gmail.com)
Ades, John and Devon (via email)

Attn: Pedro Dumaua
(pdumaua@ducommun.com)
Aerochem, Inc. (via email)
4001 El Mirage Rd.
Adelanto, CA 92301-9489

Attn: Lori Clifton
(lclifton@robarenterprises.com)
Agcon, Inc. (via email)
17671 Bear Valley Road
Hesperia, CA 92345-4902

Attn: Chun Soo and Wha Ja Ahn
(chunsooahn@naver.com)
Ahn Revocable Living Trust (via email)
P. O. Box 45
Apple Valley, CA 92307-0001

Attn: Simon Ahn (ssahn58@gmail.com)
Ahn Revocable Trust (via email)
29775 Hunter Road
Murrieta, CA 92563-6710

Attn: Chun Soo Ahn
(davidahnmd@gmail.com,
chunsooahn@naver.com)
Ahn, Chun Soo and David (via email)
P. O. Box 45
Apple Valley, CA 92307-0001

Attn: Chun Soo Ahn (chunsooahn@naver.com)
Ahn, Chun Soo and Wha Ja (via email)
P. O. Box 45
Apple Valley, CA 92307-0001

Ake, Charles J. and Marjorie M.
2301 Muriel Drive, Apt. 67
Barstow, CA 92311-6757

Attn: Paul Tsai (paul@ezzlife.com)
America United Development, LLC (via email)
19625 Shelyn Drive
Rowland Heights, CA 91748-3246

Attn: Ana Chavez
American States Water Company
160 Via Verde, Ste. 100
San Dimas, CA 91773-5121

Anderson, Ross C. and Betty J.
13853 Oakmont Dr.
Victorville, CA 92395-4832

Attn: Daniel B. Smith (avfwd@gmail.com)
Apple Valley Foothill County Water District
(via email)
22545 Del Oro Road
Apple Valley, CA 92308-8206

Attn: Matthew Patterson
Apple Valley Heights County Water District
P. O. Box 938
Apple Valley, CA 92308-0938

Attn: Mathew Schulenberg
Apple Valley Unified School District
12555 Navajo Road
Apple Valley, CA 92308-7256

Attn: Emely and Joe Saltmeris
Apple Valley View Mutual Water Company
P. O. Box 3680
Apple Valley, CA 92307-0072

Attn: Tina Kuhns
Apple Valley, Town Of
14955 Dale Evans Parkway
Apple Valley, CA 92307-3061

Archibek, Eric
41717 Silver Valley Road
Newberry Springs, CA 92365-9517

Attn: Blaine Bilderback
Atchison, Topeka, Santa Fe Railway Company
2301 Lou Menk Drive, GOB-3W
Fort Worth, TX 76131-2825

Attn: Blaine Bilderback
(Blaine.Bilderback@bnsf.com)
Atchison, Topeka, Santa Fe Railway Company
(via email)
2650 Lou Menk Drive, MOB-2
Fort Worth, TX 76131-2825

Avila, Angel and Evalia
1523 S. Visalia
Compton, CA 90220-3946

Attn: Sheré R. Bailey
(LegalPeopleService@gmail.com)
Bailey 2007 Living Revocable Trust, Sheré R.
(via email)
10428 National Blvd
Los Angeles, CA 90034-4664

Attn: Daniel Shaw (barhwater@gmail.com)
Bar H Mutual Water Company (via email)
P. O. Box 844
Lucerne Valley, CA 92356-0844

Barber, James B.
43774 Cottonwood Road
Newberry Springs, CA 92365

Attn: Casey Slusser
(barlenwater@hotmail.com;
casey.slusser@gmail.com)
Bar-Len Mutual Water Company (via email)
P. O. Box 77
Barstow, CA 92312-0077

Attn: Curtis Palmer
Baron, Susan and Palmer, Curtis
141 Road 2390
Aztec, NM 87410-9322

Attn: Jennifer Riley (hriley@barstowca.org)
Barstow, City of (via email)
220 East Mountain View Street -Suite A
Barstow, CA 92311

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

Mojave Basin Area Watermaster Service List as of May 02, 2022

Attn: Remo E. Bastianon
Bastianon Revocable Trust
9484 Iroquois Rd.
Apple Valley, CA 92308-9151

Attn: Mike Beinschroth
(Beinschroth@gmail.com)
Beinschroth Family Trust (via email)
18794 Sentenac
Apple Valley, CA 92307-5342

Beinschroth, Andy Eric
6719 Deep Creek Road
Apple Valley, CA 92308-8711

Attn: Chuck Bell (Chuckb193@outlook.com;
Chuckb193@outlook.com)
Bell, Charles H. Trust dated March 7, 2014
(via email)
P. O. Box 193
Lucerne Valley, CA 92356-0193

Best, Byron L.
21461 Camino Trebol
Lake Forest, CA 92630-2011

Borja, Leonil T. and Tital L.
20784 Iris Canyon Road
Riverside, CA 92508-

Box, Geary S. and Laura
P. O. Box 402564
Hesperia, CA 92340-2564

Attn: Marvin Brommer
Brommer House Trust
9435 Strathmore Lane
Riverside, CA 92509-0941

Attn: Paul Johnson
Brown, Bobby G. and Valeria R.
26776 Vista Road
Helendale, CA 92342-9789

Brown, Jennifer
10001 Choiceana Ave.
Hesperia, CA 92345

Bruneau, Karen
19575 Bear Valley Rd.
Apple Valley, CA 92308-5104

(irim@aol.com)
Bryant, Ian (via email)
15434 Sequoia Avenue - Office
Hesperia, CA 92345-1667

(bubierbear@msn.com)
Bubier, Diane Gail (via email)
46263 Bedford Rd.
Newberry Springs, CA 92365-9819

Attn: Noah Furie
Budget Finance Company
1849 Sawtelle Blvd., Ste. 700
Los Angeles, CA 90025-7012

Bunnell, Dick
8589 Volga River Circle
Fountain Valley, CA 92708-5536

(kjbco@yahoo.com)
Bush, Kevin (via email)
7768 Sterling Ave.
San Bernardino, CA 92410-4741

Attn: Shanna Ghale (shanna.ghale@associa.us)
Calico Lakes Homeowners Association (via
email)
11860 Pierce Street, Suite 100
Riverside, CA 92505-5178

Attn: Michael P. Naze
(michael.naze@dot.ca.gov)
California Department Of Transportation (via
email)
464 W. 4th Street
San Bernardino, CA 92401-1407

Attn: Robert W. Bowcock
CalMat Company
405 N. Indian Hill Blvd.
Claremont, CA 91711-4614

Attn: Catalina Fernandez-Moores
(cfernandez@calportland.com)
CalPortland Company - Agriculture (via email)
P. O. Box 146
Oro Grande, CA 92368-0146

Attn: Catalina Fernandez-Moores
(cfernandez@calportland.com)
CalPortland Company - Oro Grande Plant (via
email)
P. O. Box 146
Oro Grande, CA 92368-0146

Attn: Tony Camanga
Camanga, Tony and Marietta
48924 Bedford Rd.
Newberry Springs, CA 92365

Attn: Myron Campbell II
Campbell, M. A. and Dianne
12526 Donegal Way
Houston, TX 77047-2810

Carlton, Susan
P.O. Box 193
Yermo, CA 92398-0193

Attn: Kevin Mangold
Casa Colina Foundation
P.O. Box 1760
Lucerne Valley, CA 92356

Attn: Danielle Stewart
(danielle.stewart@wildlife.ca.gov;
Richard.Kim@wildlife.ca.gov;
Alisa.Ellsworth@wildlife.ca.gov)
CDFW - Camp Cady (via email)
4775 Bird Farm Road
Chino Hills, CA 91709-3175

Attn: Beahta Davis
CDFW - Mojave Narrows Regional Park
777 E. Rialto Avenue
San Bernardino, CA 92415-1005

Mojave Basin Area Watermaster Service List as of May 02, 2022

Attn: Paco Cabral
(paco.cabral@wildlife.ca.gov;
rebecca.jones@wildlife.ca.gov)
CDFW - Mojave River Fish Hatchery (via
email)
12550 Jacaranda Avenue
Victorville, CA 92395-5183

Attn: Alejandra Silva
(alejandrav.silva@cemex.com)
Cemex, Inc. (via email)
16888 North E. Street
Victorville, CA 92394-2999

Attn: Mary Tarrab
Center Water Company
P. O. Box 616
Lucerne Valley, CA 92356-0616

Attn: Allene Rozell Cherie Krack
Chafa, Larry R. and Delinda C.
21643 Park Villa Dr.
Katy, TX 77450-3912

Attn: Mary M Ross
Chamisal Mutual Water Company
1442 El Mirage Road
El Mirage, CA 92301-9500

Attn: Carl Pugh (cpugh3@aol.com)
Cheyenne Lake, Inc. (via email)
44658 Valley Center Rd
Newberry Springs, CA 92365-

Choi, Yong Il and Joung Ae
34424 Mountain View Road
Hinkley, CA 92347-9412

(joan.chong7@gmail.com;
joancksp@hotmail.com)
Chong, Joan (via email)
10392 Shady Ridge Drive
Santa Ana, CA 92705-7509

Christison, Joel
P. O. Box 2635
Big River, CA 92242-2635

Attn: Hwa-Yong Chung
Chung, et al.
11446 Midway Ave.
Lucerne Valley, CA 92356-8792

Clark, Arthur
P. O. Box 4513
Blue Jay, CA 92317-4513

Attn: Erik Archibek
Clark, Gary and Beth A.
2443 Topanga Dr.
Bullhead City, AZ 86442-8464

Attn: Manoucher Sarbaz
Club View Partners
9903 Santa Monica Blvd., PMB #541
Beverly Hills, CA 90212-1671

Conner, William H.
11535 Mint Canyon Rd.
Agua Dulce, CA 91390-4577

Contratto, Ersula
21814 Hinkley Road
Barstow, CA 92311

Attn: George Starke
Corbridge, Linda S.
8743 Vivero St
Rancho Cucamonga, CA 91730-

Cross, Francis and Beverly
156 W 100 N
Jerome, ID 83385-5256

Cross, Sharon I.
P. O. Box 922
Lucerne Valley, CA 92356

Attn: Jay Hooper (jayho123@gmail.com)
Crown Cambria, LLC (via email)
9860 Gidley St.
El Monte, CA 91731-1110

Attn: Alessia Morris
Crystal Lakes Property Owners Association
P. O. Box 351
Yermo, CA 92398

(dacostadean@gmail.com)
DaCosta, Dean Edward (via email)
32307 Foothill Road
Lucerne Valley, CA 92356-8526

Attn: Crystal Romero
(daggettsd@outlook.com;
daggettwater427@gmail.com)
Daggett Community Services District (via
email)
P. O. Box 308
Daggett, CA 92327-0308

Attn: Steve and Dana Rivett
Daggett Ranch, LLC
P. O. Box 112
Daggett, CA 92327-0112

Attn: James Kelly
(James.Kelly@clearwayenergy.com)
Daggett Solar Power 3 LLC (via email)
5780 Fleet Street, Suite 130
Carlsbad, CA 92008-4715

(ron@dadcopowerandlights.com)
Dahlquist, George R. (via email)
8535 Vine Valley Drive
Sun Valley, CA 91352-

Darr, James S.
40716 Highway 395
Boron, CA 93516

Attn: Alan L. De Jong
De Jong Family Trust
46561 Fairview Road
Newberry Springs, CA 92365-9230

Mojave Basin Area Watermaster Service List as of May 02, 2022

Attn: Randy Wagner
Dennison, Quentin D. - Clegg, Frizell and Joke
44579 Temescal Street
Newberry Springs, CA 92365

Attn: Marie McDaniel
Desert Dawn Mutual Water Company
P. O. Box 392
Lucerne Valley, CA 92356-0392

Attn: Zaritsky Penny
(pennyzaritsky2000@yahoo.com)
Desert Girlz LLC (via email)
10757 Lincoln Road
Lucerne Valley, CA 92356-7

Attn: Denise Courtney
Desert Springs Mutual Water Company
P. O. Box 396
Lucerne Valley, CA 92356-0396

Attn: Debby Wyatt
DLW Revocable Trust
13830 Choco Rd.
Apple Valley, CA 92307-5525

Attn: Judith Dolch-Partridge, Trustee
Dolch Living Trust Robert and Judith
4181 Kramer Lane
Bellingham, WA 98226-7145

Donaldson, Jerry and Beverly
16736 B Road
Delta, CO 81416-8501

Attn: Jeffery Lidman
Dora Land, Inc.
P. O. Box 1405
Apple Valley, CA 92307-0026

Attn: David Dorrance
Dorrance, David W. and Tamela L.
2027 Valleria Court
Sugar Land, TX 77479-

Attn: David Looper
Douglas, Tina
P.O. Box 1730
Lucerne Valley, CA 92356-

Dowell, Leonard
345 E Carson St.
Carson, CA 90745-2709

Evenson, Edwin H. and Joycelaine C.
P. O. Box 66
Oro Grande, CA 92368-0066

Attn: Stephanie L. Evert
(severt2166@aol.com)
Evert Family Trust (via email)
19201 Parker Circle
Villa Park, CA 92861-1302

Eygnor, Robert E.
23032 Bryman Road
Oro Grande, CA 92368-9642

Attn: David Dittenmore
(d2dittemore@bop.gov)
Federal Bureau of Prisons, Victorville (via email)
P. O. Box 5400
Adelanto, CA 92301-5400

Fejfar, Monica Kay
34080 Ord Street
Newberry Springs, CA 92365-9791

(afc30@yahoo.com)
Fernandez, Arturo (via email)
28 Calle Fortuna
Rancho Santa Margarita, CA 92688-2627

Ferro, Dennis and Norma
1311 1st Ave. N
Jacksonville Beach, FL 32250-3512

(ropingmom3@yahoo.com)
Finch, Jenifer (via email)
9797 Lewis Lane
Apple Valley, CA 92308-8357

Attn: Alex and Jerrica Liu
(alexliu1950@gmail.com;
alexroseanneliu@yahoo.com)
First CPA LLC (via email)
10045 Brockway St.
El Monte, CA 91733-1107

Attn: Carl Fischer (carlsfischer@hotmail.com;
fischer@fischercompanies.com)
Fischer Revocable Living Trust (via email)
1372 West 26th St.
San Bernardino, CA 92405-3029

Attn: Paul Johnson
Fisher Trust, Jerome R.
7603 Hazeltine
Van Nuys, CA 91405

Attn: Camille Yusuf
(Allen@skylinecompany.com)
Foothill Estates MHP, LLC (via email)
9454 Wilshire Blvd., Ste. 920
Beverly Hills, CA 90212-2925

(cfrates@renewablegroup.com)
Frates, D. Cole (via email)
113 S La Brea Ave., 3rd Floor
Los Angeles, CA 90036-2998

Attn: Martin Frazier
Frazier, et al.
8707 Deep Creek Rd
Apple Valley, CA 92308-

Attn: Deborah A. Friend
Friend, Joseph and Deborah
P. O. Box 253
Barstow, CA 92312-0253

Attn: Mark Asay (bettybrock@ironwood.org;
waltbrock@ironwood.org)
Fundamental Christian Endeavors, Inc. (via email)
49191 Cherokee Road
Newberry Springs, CA 92365

Gabrych, Eugene
2006 Old Highway 395
Fallbrook, CA 92028

Gabrych, Eugene
2006 Old Highway 395
Fallbrook, CA 92028-8816

Attn: Mitch Hammack
Gabrych, Eugene
34650 Minneola Rd
Newberry Springs, CA 92365-

Mojave Basin Area Watermaster Service List as of May 02, 2022

Gaeta, Miguel and Maria
9366 Joshua Avenue
Lucerne Valley, CA 92356-8273

Attn: Jay Storer
Gaeta, Trinidad
10551 Dallas Avenue
Lucerne Valley, CA 92356

Attn: Bruce Gaines (bgaines4@verizon.net)
Gaines Family Trust, Jack and Mary (via email)
8225 Marina Pacifica Drive N.
Long Beach, CA 90803-7006

Garcia, Daniel
223 Rabbit Trail
Lake Jackson, TX 77566-3728

Attn: Sang Hwal Kim
Gardena Mission Church, Inc.
P. O. Box 304
Lucerne Valley, CA 92356-0304

Garg, Om P.
358 Chorus
Irvine, CA 92618-1414

Attn: Brent Peterson
Gayjikian, Samuel and Hazel
34534 Granite Road
Lucerne Valley, CA 92356-

Attn: Jeffrey Edwards
(jedwards@fbremediation.com)
GenOn California South, LP (via email)
P. O. Box 337
Daggett, CA 92327-0337

Attn: Nereida Gonzalez
(ana.chavez@gswater.com,
Nereida.Gonzalez@gswater.com)
Golden State Water Company (via email)
160 Via Verde, Ste. 100
San Dimas, CA 91773-5121

Attn: Gina Pellegrini
Gordon Acres Water Company
P. O. Box 1035
Lucerne Valley, CA 92356-1035

Gray, George F. and Betty E.
975 Bryant
Calimesa, CA 92320-1301

Attn: Brian E. Bolin
Green Acres Estates
P. O. Box 29
Apple Valley, CA 92307-0001

Attn: Nick Grill (terawatt@juno.com)
Grill, Nicholas P. and Millie D. (via email)
35350 Mountain View Road
Hinkley, CA 92347-9613

Gubler, Hans
P. O. Box 3100
Landers, CA 92285

Attn: Tamara J Skoglund
(TamaraMcKenzie@aol.com)
Gulbranson, Merlin (via email)
511 Minnesota Ave W
Gilbert, MN 55741-

Gutierrez, Jose and Gloria
24116 Santa Fe
Hinkley, CA 92347

Attn: Bryan C. Haas and Mary H. Hinkle
(resrv4you@aol.com)
Haas, Bryan C. and Hinkle, Mary H. (via email)
14730 Tigertail Road
Apple Valley, CA 92307-5249

(hackbarthoffice@gmail.com)
Hackbarth, Edward E. (via email)
12221 Poplar Street, Unit #3
Hesperia, CA, CA 92344-9287

Attn: Doug and Cheryl Hamilton
Hamilton Family Trust
19945 Round Up Way
Apple Valley, CA 92308-8338

Attn: William Handrinos
Handrinos, Nicole A.
1140 Parkdale Rd.
Adelanto, CA 92301-9308

Attn: Donald F. Hanify
Hanify, Michael D., dba - White Bear Ranch
PO BOX 1021
Yermo, CA 92398-1021

Attn: Matt Wood (Matt.Wood@Hanson.com)
Hanson Aggregates WRP, Inc. (via email)
P. O. Box 1115
Corona, CA 92878-1115

Attn: Mary Jane Hareson
Hareson, Nicholas and Mary
1737 Anza Avenue
Vista, CA 92084-3236

Attn: Kenny Harmsen (harmsencow@aol.com)
Harmsen Family Trust (via email)
23920 Community Blvd.
Hinkley, CA 92347-9721

Harter, Joe and Sue
10902 Swan Lake Road
Klamath Falls, OR 97603-9676

(harvey1.92356@gmail.com)
Harvey, Lisa M. (via email)
P. O. Box 1187
Lucerne Valley, CA 92356-

Haskins, James J.
11352 Hesperia Road, #2
Hesperia, CA 92345-2165

Hass, Pauline L.
P. O. Box 273
Newberry Springs, CA 92365-

Attn: Craig Carlson (kcox@helendalecsd.org;
ccarlson@helendalecsd.org)
Helendale Community Services District (via email)
P. O. Box 359
Helendale, CA 92342-0359

Attn: Joshua Behnke
Helendale School District
P. O. Box 249
Helendale, CA 92342-0249

Mojave Basin Area Watermaster Service List as of May 02, 2022

Attn: Jeff Gallistel
Hendley, Rick and Barbara
P. O. Box 972
Yermo, CA 92398-0972

Hensley, Mark P.
35523 Mountain View Rd
Hinkley, CA 92347-9613

Attn: Jeremy McDonald
(jmcDonald@cityofhesperia.us)
Hesperia - Golf Course, City of (via email)
9700 Seventh Avenue
Hesperia, CA 92345-3493

Attn: Janie Martinez
(janieMartines@gmail.com)
Hesperia Venture I, LLC (via email)
10 Western Road
Wheatland, WY 82201-8936

Attn: Jeremy McDonald
(jmcDonald@cityofhesperia.us)
Hesperia Water District (via email)
9700 7th Avenue
Hesperia, CA 92345-3493

Attn: Jeremy McDonald
(tsouza@cityofhesperia.us)
Hesperia, City of (via email)
9700 Seventh Avenue
Hesperia, CA 92345-3493

Attn: Patricia Mohr (ghd123@earthlink.net)
Hettinga Revocable Trust (via email)
7280 Eucalyptus Ave
Ontario, CA 91762-7704

Attn: Lisset Sardeson
Hi Desert Mutual Water Company
23667 Gazana Street
Barstow, CA 92311

(leehiett@hotmail.com)
Hiett, Harry L. (via email)
P. O. Box 272
Daggett, CA 92327-0272

Attn: Robert W. Bowcock
High Desert Associates, Inc.
405 North Indian Hill Blvd.
Claremont, CA 91711-4614

Attn: Lori Clifton
(lclifton@robarenterprises.com)
Hi-Grade Materials Company (via email)
17671 Bear Valley Road
Hesperia, CA 92345-4902

Attn: Frank Hilarides
Hilarides 1998 Revocable Family Trust
37404 Harvard Road
Newberry Springs, CA 92365

Attn: Katherine Hill (Khill9@comcast.net)
Hill Family Trust and Hill's Ranch, Inc. (via email)
84 Dewey Street
Ashland, OR 97520-

Attn: Mary Thomas
Hitchin Lucerne, Inc.
P. O. Box 749
Lucerne Valley, CA 92356-0749

Ho, Ting-Seng and Ah-Git
P.O. Box 20001
Bakersfield, CA 93390-0001

Attn: Joan Rohrer
Hollister, Robert H. and Ruth M.
2832 Buendia
Mission Viejo, CA 92691-

Attn: Jeffrey R Holway and Patricia Gage
(patricia.gage@yahoo.com)
Holway Jeffrey R and Patricia Gage (via email)
1401 Wewatta St. #1105
Denver, CO 80202-1348

Holway, Jeffrey R
1401 Wewatta St. #1105
Denver, CO 80202-1348

Attn: Katherine K Hsu
Holy Heavenly Lake, LLC
1261 S. Lincoln Ave.
Monterey Park, CA 91755-5017

Attn: Paul Hong
Hong, Paul B. and May
P. O. Box #1432
Covina, CA 91722-0432

Attn: Sandra D. Hood
Hood Family Trust
2142 W Paseo Del Mar
San Pedro, CA 90732-4557

Attn: Gretchen Horton
Horton Family Trust
47716 Fairview Road
Newberry Springs, CA 92365-9258

Attn: David Howard
Howard, et al.
PO Box 10
Park City, MT 59063-

(dell2342008@gmail.com)
Hu, Minsheng (via email)
33979 Fremont Road
Newberry Springs, CA 92365-9136

Attn: Ester Hubbard
Hubbard, Ester and Mizuno, Arlean
47722 Kiloran St.
Newberry Springs, CA 92365-9529

Attn: John Driscoll
Huerta, Hector
P. O. Box 2190
Temecula, CA 92593-2190

(hunt5089@outlook.com)
Hunt, Connie (via email)
39392 Burnside Loop
Astoria, OR 97103-8248

Attn: Ralph Hunt
Hunt, Ralph M. and Lillian F.
P. O. Box 603
Yermo, CA 92398-0603

Attn: Daniel and Karen Gray
(calivolunteer@verizon.net)
Hyatt, James and Brenda (via email)
31726 Fremont Road
Newberry Springs, CA 92365

(stevekim1026@gmail.com)
Im, Nicholas Nak-Kyun (via email)
23329 Almarosa Ave.
Torrance, CA 90505-3121

Mojave Basin Area Watermaster Service List as of May 02, 2022

Irvin, Bertrand W.
3224 West 111th Street
Inglewood, CA 90303-

Attn: Sebastian Marzaro (italmood@aol.com)
Italmood Inc., et. al. (via email)
80 Maple Road
Easton, CT 06612-1036

Attn: James Jackson Jr.
Jackson, James N. Jr Revocable Living Trust
1245 S. Arlington Avenue
Los Angeles, CA 90019-3517

Attn: Lawrence Dean
Jackson, Ray Revocable Trust No. 45801
P.O. Box 8250
Redlands, CA 92375-1450

Attn: Audrey Goller
(linda.rainer@newportpacific.com)
Jamboree Housing Corporation (via email)
15940 Stoddard Wells Rd - Office
Victorville, CA 92395-2800

Attn: Gary A. Ledford
(gleddream@gmail.com)
Jess Ranch Water Company (via email)
906 Old Ranch Road
Florissant, CO 80816-

Johnson, Carlean
8626 Deep Creek Road
Apple Valley, CA 92308

Attn: Paul Johnson
(johnsonfarming@gmail.com)
Johnson, Paul (via email)
10456 Deep Creek Road
Apple Valley, CA 92308-8330

Johnson, Ronald
1156 Clovis Circle
Dammeron Valley, UT 84783-5211

Attn: Lawrence W. Johnston
Johnston, Harriet and Johnston, Lawrence W.
P. O. Box 401472
Hesperia, CA 92340-1472

Attn: Magdalena Jones
(mygoldenbiz9@gmail.com)
Jones Trust dated March 16, 2002 (via email)
35424 Old Woman Springs Road
Lucerne Valley, CA 92356-7237

Jones, Joette
81352 Fuchsia Ave.
Indio, CA 92201-5329

Attn: Paul Jordan
Jordan Family Trust
1650 Silver Saddle Drive
Barstow, CA 92311-2057

Attn: Ray Gagné
Jubilee Mutual Water Company
P. O. Box 1016
Lucerne Valley, CA 92356

Attn: Lee Logsdon
Juniper Riviera County Water District
P. O. Box 618
Lucerne Valley, CA 92356-0618

Attn: Ash Karimi
Karimi, Hooshang
1254 Holmby Ave
Los Angeles, CA 90024-

Attn: Robert R. Kasner
(Robertkasner@aol.com)
Kasner Family Limited Partnership (via email)
11584 East End Avenue
Chino, CA 91710-

(Robertkasner@aol.com)
Kasner, Robert (via email)
11584 East End Avenue
Chino, CA 91710-1555

Katcher, August M. and Marceline
47887 Palo Verde Lane
Newberry Springs, CA 92365-9096

Kemp, Robert and Rose
48441 National Trails Highway
Newberry Springs, CA 92365

Attn: Peggy Shaughnessy
Kemper Campbell Ranch
10 Kemper Campbell Ranch Road - Office
Victorville, CA 92395-3357

Kim, Jin S. and Hyun H.
6 Orange Glen Circle
Irvine, CA 92620-1264

Attn: Alan and Annette De Jong
Kim, Joon Ho and Mal Boon Revocable Trust
46561 Fairview Road
Newberry Springs, CA 92365-9230

(juskim67@yahoo.com)
Kim, Ju Sang (via email)
1225 Crestview Dr
Fullerton, CA 92833-2206

Kim, Seon Ja
34981 Piute Road
Newberry Springs, CA 92365-9548

Attn: Richard Koering
Koering, Richard and Koering, Donna
40909 Mountain View Road
Newberry Springs, CA 92365-9414

Kosharek, John and Joann
P. O. Box 357
Newberry Springs, CA 92365-0357

Attn: Catherine Cerri
(ccerri@lakearrowheadcsd.com)
Lake Arrowhead Community Services District
(via email)
P. O. Box 700
Lake Arrowhead, CA 92352-0700

Attn: Daniel Lindenman
(happytiredwaterdog@yahoo.com)
Lake Jodie Property Owners Association (via email)
909 Armory Road, #126
Barstow, CA 92311-5460

Attn: Nancy Lan
Lake Waikiki
230 Hillcrest Drive
La Puente, CA 91744-4816

Mojave Basin Area Watermaster Service List as of May 02, 2022

Attn: c/o J.C. UPMC, Inc Lori Rodgers
(timrohmbuilding@gmail.com)
Lake Wainani Owners Association (via email)
2812 Walnut Avenue, Suite A
Tustin, CA 92780-7053

(PhillipLam99@Yahoo.com)
Lam, Phillip (via email)
864 Sapphire Court
Pomona, CA 91766-5171

(jlanglely@kurschgroup.com)
Langley, James (via email)
12277 Apple Valley Road, Ste. #120
Apple Valley, CA 92308-1701

Langley, Michael R. and Sharon
P. O. Box 524
Yermo, CA 92398-0524

Attn: Vanessa Laosy
Lavanh, et al.
18203 Yucca St.
Hesperia, CA 92345-

Attn: Robert Lawrence Jr.
Lawrence, William W.
P. O. Box 98
Newberry Springs, CA 92365

Lawson, Ernest and Barbara
20277 Rock Springs Road
Apple Valley, CA 92308-8740

Attn: Anna K. Lee (aklee219@gmail.com)
Lee, Anna K. and Eshban K. (via email)
10979 Satsuma St
Loma Linda, CA 92354-6113

Lee, Doo Hwan
P. O. Box 556
Lucerne Valley, CA 92356-0556

Attn: Sepoong & Woo Poong Lee
Lee, et al., Sepoong and Woo Poong
#6 Ensueno East
Irvine, CA 92620-

Attn: Eric Archibek
Lee, Vin Jang T.
41717 Silver Valley Road
Newberry Springs, CA 92365

Lenhert, Ronald and Toni
10083 Deep Creek Rd.
Apple Valley, CA 92308-8322

Attn: Brad Francke
LHC Alligator, LLC
P. O. Box 670
Upland, CA 91785-0670

Attn: Billy Liang
Liang, Yuan - I and Tzu - Mei Chen
4192 Biscayne St
Chino, CA 91710-3196

Attn: Eric Larsen
(eric.larsen@libertyutilities.com;
tony.pena@libertyutilities.com)
Liberty Utilities (Apple Valley Ranchos
Water) Corp. (via email)
P. O. Box 7005
Apple Valley, CA 92307

Attn: James Lin
Lin, Kuan Jung and Chung, Der-Bing
2026 Turnball Canyon
Hacienda Heights, CA 91745-

Attn: Manshan Gan
Lo, et al.
5535 North Muscatel, Avenue
San Gabriel, CA 91776-1724

Attn: Patricia Miranda
Lopez, Baltazar
12318 Post Office Rd
Lucerne Valley, CA 92356-

(lowgo.dean@gmail.com)
Low, Dean (via email)
3 Panther Creek Ct.
Henderson, NV 89052-

Lua, Michael T. and Donna S.
18838 Aldridge Place
Rowland Heights, CA 91748-4890

Attn: Gwen L. Bedics
Lucerne Valley Mutual Water Company
P. O. Box 1311
Lucerne Valley, CA 92356

Attn: Manoucher Sarbaz
Lucerne Valley Partners
9903 Santa Monica Blvd., PMB #541
Beverly Hills, CA 90212-1671

Attn: Marian Walent
(LVVVMC677@gmail.com)
Lucerne Vista Mutual Water Company (via
email)
P. O. Box 677
Lucerne Valley, CA 92356-0677

Attn: Carolyn J. Luckey
Luckey 2010 Revocable Trust
10967 Kelvington Ln
Apple Valley, CA 92308-3647

Attn: Kelly Darren (dkelly@terra-gen.com)
Luz Solar Partners Ltd. IX (via email)
437 Madison Ave., 22nd Floor, Ste. A
New York, NY 10022

Attn: Eugene R. & Vickie R. Bird
M Bird Construction
1613 State Street, Ste. 10
Barstow, CA 92311-4162

Attn: Maria Martinez
M.B. Landscaping and Nursery, Inc.
20300 Figueroa Street
Carson, CA 90745-1212

Mojave Basin Area Watermaster Service List as of May 02, 2022

Attn: Robert Saidi
Mahjoubi, Afsar S.
46622 Fairview Road
Newberry Springs, CA 92365

Attn: Nichola Hawes Stein
Maloney, Janice
P. O. Box 356
Los Gatos, CA 95030-0356

Attn: Jimmy Berry
Manning, Sharon S.
19332 Balan Road
Rowland Heights, CA 91748-4017

Attn: Allen Marcroft
Marcroft, James A. and Joan
P. O. Box 519
Newberry Springs, CA 92365

Attn: James M. Hansen, Jr.
(gmmrcwd@gmail.com; gm@mrcwd.org)
Mariana Ranchos County Water District (via email)
9600 Manzanita Street
Apple Valley, CA 92308-8605

Marshall, Charles
32455 Lakeview Road
Newberry Springs, CA 92365-9482

Martin, Michael D. and Arlene D.
32942 Paseo Mira Flores
San Juan Capistrano, CA 92675

Attn: Rod Sexton
McCollum, Charles L.
15074 Spruce St
Hesperia, CA 92345-2950

McKinney, Paula
144 East 72nd
Tacoma, WA 98404-1060

Attn: Olivia L. Mead
Mead Family Trust
31314 Clay River Road
Barstow, CA 92311-2057

Attn: David I. Milbrat
Milbrat, Irving H.
P. O. Box 487
Newberry Springs, CA 92365-0487

Attn: Donna Miller
Miller Living Trust
7588 San Remo Trail
Yucca Valley, CA 92284-9228

Attn: David Rib (drib@mitsubishicement.com)
Mitsubishi Cement Corporation (via email)
5808 State Highway 18
Lucerne Valley, CA 92356-8179

Attn: Philip Mizrahie
Mizrahie, et al.
4105 W. Jefferson Blvd.
Los Angeles, CA 90048-

Attn: Thomas A. Hrubik (tahgolf@aol.com)
MLH, LLC (via email)
P. O. Box 2611
Apple Valley, CA 92307-0049

Attn: Amy Langston (alangston@mdlt.org)
Mojave Desert Land Trust (via email)
P. O. Box 1544
Joshua Tree, CA 92252-0849

Attn: Mahnas Ghamati
(mahnaz.ghamati@atlantica.com)
Mojave Solar, LLC (via email)
42134 Harper Lake Road
Hinkley, CA 92347-9305

Attn: Doug Kerns
(tmccarthy@mojavewater.org)
Mojave Water Agency (via email)
13846 Conference Center Drive
Apple Valley, CA 92307-4377

Attn: Manoucher Sarbaz
Monaco Investment Company
9903 Santa Monica Blvd., PMB #541
Beverly Hills, CA 90212-1671

Attn: Ken Elliot (Billie@ElliotPlace.com)
Morris Trust, Julia V. (via email)
7649 Cypress Dr.
Lanexa, VA 23089-9320

Moss, Lawrence W. and Helen J.
38338 Old Woman Springs Road Spc# 56
Lucerne Valley, CA 92356-8116

Attn: Jennie Most
Most Family Trust
23780 Cuyama Road
Apple Valley, CA 92307-6723

Attn: Dennis Hills
Mulligan, Robert and Inez
35575 Jakobi Street
Saint Helens, OR 97051-1194

Murphy, Jean
46126 Old National Trails Highway
Newberry Springs, CA 92365-9025

(z.music5909@gmail.com)
Music, Zajo (via email)
43830 Cottonwood Rd
Newberry Springs, CA 92365-8510

Attn: James Hansen
(gm@marianaranchoscwd.org)
Navajo Mutual Water Company (via email)
21724 Hercules St.
Apple Valley, CA 92308-8490

Attn: Billy Liang (flossdaily@hotmail.com; asaliking@yahoo.com)
New Springs Limited Partnership (via email)
4192 Biscayne St.
Chino, CA 91710-3196

Attn: Jodi Howard
Newberry Community Services District
P. O. Box 206
Newberry Springs, CA 92365-0206

Attn: Jeff Gaastra (jeff@weaponsedge.com)
Newberry Springs Recreational Lakes
Association (via email)
32935 Dune Road, Space 10
Newberry Springs, CA 92365-

Attn: Mary Ann Norris
Norris Trust, Mary Ann
29611 Exeter Street
Lucerne Valley, CA 92356-8261

Mojave Basin Area Watermaster Service List as of May 02, 2022

Attn: Kenton Eatherton
(keatherton@verizon.net)
NSSLIC, Inc. (via email)
9876 Moon River Circle
Fountain Valley, CA 92708-7312

Núñez, Luis Segundo
9154 Golden Seal Court
Hesperia, CA 92345-0197

Attn: Pearl or Gail Nunn
Nunn Family Trust
P. O. Box 545
Apple Valley, CA 92307-0010

Attn: Jeff Gaastra (jeffgaastra@gmail.com;
andy@seesmachine.com;
bbswift4044@cox.net)
O. F. D. L., Inc. (via email)
32935 Dune Road, #10
Newberry Springs, CA 92365-9175

Attn: Chun Soo Ahn (chunsooahn@naver.com)
Oasis World Mission (via email)
P. O. Box 45
Apple Valley, CA 92307-0001

Attn: Kody Tompkins
(ktompkins@barstowca.org)
Odessa Water District (via email)
220 E. Mountain View Street, Suite A
Barstow, CA 92311-2888

Attn: Dorothy Ohai
Ohai, Reynolds and Dorothy
13450 Monte Vista
Chino, CA 91710-5149

Attn: Craig Maetzold
(craig.maetzold@omya.com)
Omya California, Inc. (via email)
7225 Crystal Creek Rd
Lucerne Valley, CA 92356-8646

Attn: Nick Higgs
Oro Grande School District
P. O. Box 386
Oro Grande, CA 92368-0386

Attn: Taghi Shoraka
P and H Engineering and Development
Corporation
1423 South Beverly Glen Blvd. Apt. A
Los Angeles, CA 90024-6171

Attn: Jessica Bails (J4Dx@pge.com)
Pacific Gas and Electric Company (via email)
22999 Community Blvd.
Hinkley, CA 92347-9592

Pak, Kae Soo and Myong Hui Kang
P. O. Box 1835
Lucerne Valley, CA 92356-1835

Patino, José
3914 W. 105th Street
Inglewood, CA 90303-1815

(wndrvr@aol.com)
Paustell, Joan Beinschroth (via email)
10275 Mockingbird Ave.
Apple Valley, CA 92308-8303

Pearce, Craig L.
127 Columbus Dr
Punxsutawney, PA 15767-1270

Perko, Bert K.
P. O. Box 762
Yermo, CA 92398-0762

Pettigrew, Dan
285 N Old Hill Road
Fallbrook, CA 92028-2571

Attn: Sean Wright (swright@pphcsd.org;
dbartz@pphcsd.org; llowrance@pphcsd.org)
Phelan Piñon Hills Community Services
District (via email)
4176 Warbler Road
Phelan, CA 92371-8819

Attn: John Poland
Poland, John R. and Kathleen A.
5511 Tenderfoot Drive
Fontana, CA 92336-1156

Polich, Donna
75 3rd Avenue #4
Chula Vista, CA 91910-1714

Porter, Timothy M.
34673 Little Dirt Road
Newberry Springs, CA 92365-9646

Attn: Carin McKay
Precision Investments Services, LLC
791 Price Street, #160
Pismo Beach, CA 93449-2529

Price, Donald and Ruth
933 E. Virginia Way
Barstow, CA 92311-4027

Pruett, Andrea
P. O. Box 37
Newberry Springs, CA 92365

(s_quakenbush@yahoo.com)
Quakenbush, Samuel R. (via email)
236 Iris Drive
Martinsburg, WV 25404-1338

Attn: Ron Herrmann
Quiros, Fransisco J. and Herrmann, Ronald
35969 Newberry Rd
Newberry Springs, CA 92365-9438

Attn: Elizabeth Murena
(waterboy7F8@msn.com; etminav@aol.com)
Rancheritos Mutual Water Company (via
email)
P. O. Box 348
Apple Valley, CA 92307

Reed, Mike
9864 Donaldson Road
Lucerne Valley, CA 92356-8105

(LucerneJujubeFarm@hotmail.com)
Rhee, Andrew N. (via email)
P. O. Box 989
Lucerne Valley, CA 92356-0989

Attn: Kelly Rice
Rice, Henry C. and Diana
31823 Fort Cady Rd.
Newberry Springs, CA 92365-

Mojave Basin Area Watermaster Service List as of May 02, 2022

Attn: Ian Bryant
Rim Properties, A General Partnership
15434 Sequoia Road
Hesperia, CA 92345-1667

Attn: Josie Rios
Rios, Mariano V.
P. O. Box 1864
Barstow, CA 92312-1864

Rivero, Fidel V.
612 Wellesly Drive
Corona, CA 92879-0825

(RayRizvi@Yahoo.com)
Rizvi, S.R Ali (via email)
10917 Admirals Bay St.
Victorville, CA 92392-4819

Attn: Jackie McEvoy
Robertson's Ready Mix
P.O. Box 3600
Corona, CA 92878-3600

Attn: Susan Sommers
Rossi Family Trust, James Lawrence Rossi
and Naomi
P. O. Box 120
Templeton, CA 93465-0120

Attn: John D. Zemanek (jz@zmlawpc.com)
Royal Way (via email)
11845 Olympic Boulevard, Suite 625
Los Angeles, CA 90064-

Attn: Sam Marich
Rue Ranch, Inc.
P. O. Box 133109
Big Bear Lake, CA 92315-8915

Attn: Dale W. Ruisch
Ruisch Trust, Dale W. and Nellie H.
10807 Green Valley Road
Apple Valley, CA 92308-3690

Attn: Sherwin Shoraka
S and B Brothers, LLC
1423 S. Beverly Glen Blvd., Ste. A
Los Angeles, CA 90024-6171

Attn: Jafar Rashid
(jr123realestate@gmail.com)
S and E 786 Enterprises, LLC (via email)
3300 S. La Cienega Blvd.
Los Angeles, CA 90016-3115

Attn: Sara Fortuna (sarajfortuna@gmail.com;
fourteengkids@aol.com)
Saba Family Trust dated July 24, 2018 (via
email)
212 Avenida Barcelona
San Clemente, CA 92672-5468

Attn: Kanoe Barker (kanobarker@yahoo.com)
Sagabean-Barker, Kanoeokelani L. (via
email)
42224 Valley Center Rd
Newberry Springs, CA 92365

(BILLU711@Yahoo.com)
Samra, Jagtar S. (via email)
10415 Edgebrook Way
Northridge, CA 91326-3952

Attn: Rebecca Mancha
San Bernardino Co Barstow - Daggett Airport
777 E. Rialto Ave
San Bernardino, CA 92415-1005

Attn: Jared Beyeler
(waterquality@sdd.sbcounty.gov)
San Bernardino County - High Desert
Detention Center (via email)
222 W. Hospitality Lane, 2nd Floor - SDW
San Bernardino, CA 92415-0415

Attn: Trevor Leja
(trevor.leja@sdd.sbcounty.gov)
San Bernardino County Service Area 29 (via
email)
222 W. Hospitality Lane, 2nd Floor (Spec
San Bernardino, CA 92415-0450

Attn: Jared Beyeler
(ssamaras@sdd.sbcounty.gov;
jbeyeler@sdd.sbcounty.gov;
waterquality@sdd.sbcounty.gov)
San Bernardino County Service Area 42 (via
email)
222 W. Hospitality Lane, 2nd Floor
San Bernardino, CA 92415-0450

Attn: Jared Beyeler
(ssamaras@sdd.sbcounty.gov;
jbeyeler@sdd.sbcounty.gov;
waterquality@sdd.sbcounty.gov)
San Bernardino County Service Area 64 (via
email)
222 W. Hospitality Lane, 2nd Floor - SDW
San Bernardino, CA 92415-0450

Attn: Jared Beyeler
(ssamaras@sdd.sbcounty.gov;
jbeyeler@sdd.sbcounty.gov;
waterquality@sdd.sbcounty.gov)
San Bernardino County Service Area 70J (via
email)
222 W. Hospitality Lane, 2nd Floor - SDW
San Bernardino, CA 92415-0450

Attn: Michelle Scray (mcscray@aol.com)
Scray, Michelle A. Trust (via email)
16869 State Highway 173
Hesperia, CA 92345-9381

Attn: Jackie McEvoy (jackiem@rrmca.com)
Service Rock Products Corporation (via email)
P. O. Box 3600
Corona, CA 92878-3600

Attn: Rod Sexton
Sexton, Rodney A. and Sexton, Derek R.
P.O. Box 155
Rim Forest, CA 92378-

Attn: Chris Cummings
Sheep Creek Water Company
P. O. Box 291820
Phelan, CA 92329-1820

Sheng, Jen
5349 S Sir Richard Dr
Las Vegas, NV 89110-0100

(gloriasheppard14@gmail.com)
Sheppard, Thomas and Gloria (via email)
33571 Fremont Road
Newberry Springs, CA 92365-9520

Short, Jerome E.
P. O. Box 1104
Barstow, CA 92312-1104

Mojave Basin Area Watermaster Service List as of May 02, 2022

Attn: Westly Campbell
Silver Lakes Association
P. O. Box 179
Helendale, CA 92342-0179

Attn: Nepal Singh (NepalSingh@yahoo.com)
Singh, et al. (via email)
4972 Yearling Avenue
Irvine, CA 92604-2956

Attn: Denise Smith
Smith, Denise dba Amerequine Beauty, Inc
P. O. Box 188
Newberry Springs, CA 92365-0188

Smith, Porter and Anita
8443 Torrell Way
San Diego, CA 92126-1254

Attn: Steve Kim (stevekim1026@gmail.com)
Snowball Development, Inc. (via email)
P. O. Box 2926
Victorville, CA 92393-2926

Attn: Chan Kyun Son
Son's Ranch
P. O. Box 1767
Lucerne Valley, CA 92356

Attn: Jason Lamoreaux
(JL@LamorGroup.com)
Soppeland Revocable Trust (via email)
12138 Industrial Blvd, Ste 100
Victorville, CA 92395-4757

Attn: Erika Clement
(Shannon.Oldenburg@SCE.com;
erika.clement@sce.com)
Southern California Edison Company (via
email)
2 Innovation Way, 2nd Floor
Pomona, CA 91768-2560

Attn: Joshua Eberhardy
(joshua.eberhardy@mineralstech.com)
Specialty Minerals, Inc. (via email)
P. O. Box 558
Lucerne Valley, CA 92356-0558

Sperry, Wesley
P. O. Box 303
Newberry Springs, CA 92365-0303

Spillman, James R. and Nancy J.
12132 Wilshire
Lucerne Valley, CA 92356-8834

Attn: Eric Miller (emiller@svla.com;
alogan@svla.com;)
Spring Valley Lake Association (via email)
SVL Box 7001
Victorville, CA 92395-5107

Attn: Mitchell Brown
Spring Valley Lake Country Club
7070 SVL Box
Victorville, CA 92395-5152

Attn: Father Sarapamon
St. Antony Coptic Orthodox Monastery
P. O. Box 100
Barstow, CA 92311-0100

(chiefgs@verizon.net)
Starke, George A. and Jayne E. (via email)
8743 Vivero Street
Rancho Cucamonga, CA 91730-1152

Storm, Randall
51432 130th Street
Byars, OK 74831-7357

Sudmeier, Glenn W.
14253 Highway 138
Hesperia, CA 92345-9422

Attn: Alexandra Lioanag
(sandra@halannagroup.com)
Summit Valley Ranch, LLC (via email)
220 Montgomery Street, Suite PH-10
San Francisco, CA 94104-3433

Attn: Mark Richardson
(mark@richardsonsrv.com)
Sundown Lakes, Inc. (via email)
2141 Chelsea Road
Palos Verdes, CA 90274-

Attn: Clenera, LLC (cre.notices@clenera.com)
Sunray Land Company, LLC (via email)
P. O. Box 2576
Boise, ID 83701-2576

Attn: Venny Vasquez (Ibaroldi@synagro.com)
Synagro-WWT, Inc. (dba Nursury Products,
LLC) (via email)
P. O. Box 1439
Helendale, CA 92342-

Attn: Russell Szykowski
Szykowski, Ruth J.
46750 Riverside Rd.
Newberry Springs, CA 92365-9738

Attn: Bill and Elizabeth Tallakson
(billtallakson@sbcglobal.net)
Tallakson Family Revocable Trust (via email)
11100 Alto Drive
Oak View, CA 93022-9535

Tapie, Raymond L.
73270 Desert Greens Dr N
Palm Desert, CA 92260-1206

(jerryteisan@gmail.com)
Teisan, Jerry (via email)
P. O. Box 2089
Befair, WA 98528-2089

Thayer, Sharon
35924 Harvard Drive
Newberry Springs, CA 92365-9637

Attn: Stephen Thomas
Thomas, Stephen and Lori
4890 Topanga Canyon Bl.
Woodland Hills, CA 91364-4229

Attn: Lynnette L. Thompson
Thompson Living Trust, James A. and Sula B.
22815 Del Oro Road
Apple Valley, CA 92308

Attn: Rodger Thompson
Thompson Living Trust, R.L. and R.A.
9141 Deep Creek Road
Apple Valley, CA 92308-8351

Thrasher, Gary
14024 Sunflower Lane
Oro Grande, CA 92368-9617

Mojave Basin Area Watermaster Service List as of May 02, 2022

Attn: Christine Bispo
Thunderbird County Water District
P. O. Box 1105
Apple Valley, CA 92307-1105

Attn: Jim Hoover
Triple H Partnership
35870 Fir Ave
Yucaipa, CA 92399-9635

Attn: Mike Troeger (mjtroege@yahoo.com)
Troeger Family Trust, Richard H. (via email)
P. O. Box 882
Wrightwood, CA 92397

Turner, Terry
726 Arthur Lane
Santa Maria, CA 93455-7403

Attn: Aurelio Ibarra (aibarra@up.com;
powen@up.com)
Union Pacific Railroad Company (via email)
HC1 Box 33
Kelso, CA 92309-

Vaca, Andy and Teresita S.
5550 Avenue Juan Bautista
Riverside, CA 92509-5613

Attn: Dean Van Bastelaar
Van Bastelaar, Alphonse
45475 Martin Road
Newberry Springs, CA 92365-9625

Attn: Glen and Jennifer Van Dam
(gvandam@verizon.net)
Van Dam Family Trust, Glen and Jennifer (via
email)
3190 Cottonwood Avenue
San Jacinto, CA 92582-4741

Attn: Eldert and Susan Van Dam
Van Dam Revocable Trust, E and S
26599 Community Blvd.
Barstow, CA 92311-9779

Attn: Jacob Bootsma
Van Leeuwen Trust, John A. and Letie
44128 Silver Valley Road
Newberry Springs, CA 92365-9588

Attn: Traci Hoops
Vanhoops Holdings, LP
8328 Valmont Road
Boulder, CO 80301-4813

Attn: John Driscoll
Vernola Trust, Pat and Mary Ann
P. O. Box 2190
Temecula, CA 92593-2190

Attn: John Nahlen
Victor Valley Community College District
18422 Bear Valley Road
Victorville, CA 92395-5850

Attn: Deidra Hitt
Victor Valley Memorial Park
17150 C Street
Victorville, CA 92395-3330

Attn: Arnold Villarreal
(avillarreal@victorvilleca.gov;
ccun@victorvilleca.gov)
Victorville Water District, ID#1 (via email)
P. O. Box 5001
Victorville, CA 92393-5001

Attn: Arnold Villarreal
(avillarreal@victorvilleca.gov;
kmetzler@victorvilleca.gov)
Victorville Water District, ID#1 (via email)
P. O. Box 5001
Victorville, CA 92393-5001

Attn: Arnold Villarreal
(sashton@victorvilleca.gov;
avillarreal@victorvilleca.gov;
dmathews@victorvilleca.gov)
Victorville Water District, ID#2 (via email)
P. O. Box 5001
Victorville, CA 92393-5001

Vogler, Albert H.
17612 Danbury Ave.
Hesperia, CA 92345-7073

Attn: Joan Wagner
Wagner Living Trust
22530 Calvert Street
Woodland Hills, CA 91367-1704

Attn: Christian Joseph Wakula
Wakula Family Trust
11741 Ardis Drive
Garden Grove, CA 92841-2423

(Jlow3367@gmail.com)
Wang, Steven (via email)
2551 Paljay Avenue
Rosemead, CA 91770-3204

Attn: Barbara Allard-Ward
(kenbombero@aol.com; allardward@aol.com)
Ward, Ken and Barbara (via email)
14141 State Hwy 138
Hesperia, CA 92345-9339

Ward, Raymond
P. O. Box 358
Newberry Springs, CA 92365-0358

Weems, Lizzie
15940 Stoddard Wells Rd
Victorville, CA 92395-2800

Weeraisinghe, Maithri N.
P. O. Box 487
Barstow, CA 92312-0487

(andrewwerner11@gmail.com)
Werner, Andrew J. (via email)
1718 N Sierra Bonita Ave
Los Angeles, CA 90046-2231

Attn: James Woody
West End Mutual Water Company
P. O. Box 1732
Lucerne Valley, CA 92356

Mojave Basin Area Watermaster Service List as of May 02, 2022

West, Howard and Suzy
9185 Loma Vista Road
Apple Valley, CA 92308-0557

Attn: Chung Cho Gong
Western Horizon Associates, Inc.
P. O. Box 397
Five Points, CA 93624-0397

Wiener, Melvin and Mariam S.
1626 N. Wilcox Avenue
Los Angeles, CA 90028-6234

Witte, E. Daniel and Marcia
31911 Martino Drive
Daggett, CA 92327-9752

(thechelseaco@yahoo.com)
Yang, Zilan (via email)
428 S. Atlantic Blvd #205
Monterey Park, CA 91754-3228

Attn: Thierry R. Montoya
(tmontoya@alvaradosmith.com)
AlvaradoSmith, APC (via email)
1 MacArthur Place
Suite 200
Santa Ana, CA 92707-5941

Attn: W.W. Miller, Esq.
Atkinson, Andelson, Loya-Ruud & Romo
3612 Mission Inn Avenue, Upper Level
Riverside, CA 92501

Attn: Piero C. Dallarda, Esq.
(piero.dallarda@bbklaw.com)
Best, Best & Krieger LLP (via email)
P.O. Box 1028
Riverside, CA 92502-

Attn: Terry Caldwell, Esq.
Caldwell & Kennedy
15476 West Sand Street
Victorville, CA 92392

West, Jimmie E.
P. O. Box 98
Oro Grande, CA 92368-0098

Attn: Genaro Zapata
Westland Industries, Inc.
520 W. Willow St.
Long Beach, CA 90806-2800

Attn: Manoucher Sarbaz
Wilshire Road Partners
9903 Santa Monica Blvd., PMB #541
Beverly Hills, CA 90212-1671

Attn: Mark J. Cluff
WLSR, Inc.
236 E. Country Club Drive
Henderson, NV 89015-7404

Attn: Christine M. Carson, Esq.
(ccarson@awattorneys.com)
Aleshire & Wynder, LLP (via email)
2361 Rosecrans Avenue
Suite 475
El Segundo, CA 90245-4916

Attn: Alison Paap (apaap@agloan.com)
American AgCredit (via email)
42429 Winchester Road
Temecula, CA 92590-2504

Attn: Christopher L. Campbell, Esq.
Baker, Manock & Jensen
5260 N. Palm Avenue, 4th Floor
Fresno, CA 93704-2209

Attn: Stephanie Osler Hastings, Esq.
(SHastings@bhfs.com)
Brownstein Hyatt Farber Schreck, LLP (via email)
1021 Anacapa Street, 2nd Floor
Santa Barbara, CA 93101-2102

Attn: Alexander Devorkin, Esq.
California Department of Transportation
100 South Main Street, Suite 1300
Los Angeles, CA 90012-3702

Attn: Andrew Werner
(awerner@renewablegroup.com)
Western Development and Storage, LLC (via email)
113 S. La Brea Ave, Floor 3
Los Angeles, CA 90036-2998

Attn: Thomas G. Ferruzzo
(tferruzzo@ferruzzo.com)
Wet Set, Inc. (via email)
44505 Silver Valley Road, Lot #5
Newberry Springs, CA 92365-9565

Attn: Connie Tapie
(praisethelord77777@yahoo.com)
Withey, Connie (via email)
P. O. Box 3513
Victorville, CA 92393-3513

Attn: David A. Worsey
Worsey, Joseph A. and Revae
P. O. Box 422
Newberry Springs, CA 92365-0422

Attn: Eric L. Dunn, Esq.
(edunn@awattorneys.com)
Aleshire & Wynder, LLP (via email)
2361 Rosecrans Avenue
Suite 475
El Segundo, CA 90245-4916

Attn: Wesley A. Miliband, Esq.
(wes.miliband@aalrr.com)
Atkinson, Andelson, Loya, Ruud & Romo (via email)
2151 River Plaza Drive
Suite 300
Sacramento, CA 95833-

Attn: Eric L. Garner, Esq.
(eric.garner@bbklaw.com)
Best, Best & Krieger LLP (via email)
3750 University Avenue
3rd Floor
Riverside, CA 92502-1028

Attn: William J. Brunick, Esq.
(bbrunick@bmklawplc.com)
Brunick, McElhaney & Kennedy PLC (via email)
1839 Commercenter West
P.O. Box 13130
San Bernardino, CA 92423-3130

Attn: Nancy McDonough
California Farm Bureau Federation
2300 River Plaza Drive
Sacramento, CA 95833

Mojave Basin Area Watermaster Service List as of May 02, 2022

Attn: Jeffery L. Caufield, Esq.
(Jeff@caufieldjames.com)
Caufield & James, LLP (via email)
2851 Camino Del Rio South, Suite 410
San Diego, CA 92108-

Attn: Michael G. Colantuono, Esq.
Colantuono, Highsmith & Whatley, PC
300 South Grand Avenue, Ste 2700
Los Angeles, CA 90071-3137

Attn: Dawn Martin
(Dawn.Martin@cc.sbcounty.gov)
County of San Bernardino, County Counsel
(via email)
385 N. Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415-0140

Attn: Robert E. Dougherty, Esq.
Covington & Crowe
1131 West 6th Street
Suite 300
Ontario, CA 91762

Attn: Ed Dygert, Esq.
Cox, Castle & Nicholson
2049 Century Park East, 28th Floor
Los Angeles, CA 90067

Attn: Marilyn Levin, Dep
(Marilyn.Levin@doj.ca.gov)
Department of Justice (via email)
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013

Attn: Noah GoldenKrasner, Dep
(Noah.GoldenKrasner@doj.ca.gov)
Department of Justice (via email)
300 S. Spring Street, Suite 1700
Los Angeles, CA 90013

Attn: James S. Heiser, Esq.
Ducommun, Inc.
23301 S. Wilmington Avenue
Carson, CA 90745

Attn: Thomas G. Ferruzzo, Esq.
(tferruzzo@ferruzzo.com)
Ferruzzo & Ferruzzo, LLP (via email)
3737 Birch Street, Suite 400
Newport Beach, CA 92660

Attn: Toby Moore, PhD, PG, CHG
(TobyMoore@gswater.com)
Golden State Water Company (via email)
160 W. Via Verde, Suite 100
San Dimas, CA 91773-

Attn: Michelle McCarron
(mmccarron@gdblawoffices.com;
andre@gdblawoffices.com)
Green de Bortnowsky, LLP (via email)
30077 Agoura Court, Suite 210
Agoura Hills, CA 91301-2713

Attn: Paige Gosney, Esq.
(paige.gosney@greshamsavage.com;Dina.Snid
er@GreshamSavage.com)
Gresham, Savage, Nolan & Tilden, LLP (via
email)
550 E Hospitality Ln, Ste. 500
San Bernardino, CA 92408-4208

Attn: Calvin R. House, Esq.
Gutierrez, Preciado & House
3020 E. Colorado BLVD
Pasadena, CA 91107-3840

Attn: Curtis Ballantyne, Esq.
Hill, Farrer & Burrill
300 S. Grand Avenue, 37th Floor
1 California Plaza
Los Angeles, CA 90071

Attn: Michael Turner, Esq.
(mturner@kasdandclaw.com)
Kasdan, LippSmith Weber Turner, LLP (via
email)
19900 MacArthur Blvd., Suite 850
Irvine, CA 92612-

Attn: Thomas S. Bunn, Esq.
(TomBunn@lagerlof.com)
Lagerlof, Senecal, Gosney & Kruse, LLP (via
email)
301 N. Lake Avenue, 10th Floor
Pasadena, CA 91101-5123

Attn: Fred J. Knez, Esq.
Law Offices of Fred J. Knez
6780 Indiana Ave, Ste 150
Riverside, CA 92506-4253

Attn: Robert C. Hawkins, Esq.
(rhawkins@earthlink.net)
Law Offices of Robert C. Hawkins (via email)
14 Corporate Plaza, Suite 120
Newport, CA 92660

Attn: Arthur G. Kidman, Esq.
McCormick, Kidman & Behrens
695 Town Center Drive, Suite 400
Costa Mesa, CA 92626-7187

Attn: Valerie L. Wiegstein
(watermaster@mojavewater.org)
Mojave Basin Area Watermaster (via email)
13846 Conference Center Drive
Apple Valley, CA 92307

Attn: Kathy Cortner
(kcortner@mojavewater.org)
Mojave Water Agency (via email)
13846 Conference Center Drive
Apple Valley, CA 92307

Attn: Frederic A. Fudacz, Esq.
(ffudacz@nossaman.com)
Nossaman LLP (via email)
777 South Figueroa Street, 34th Floor
Los Angeles, CA 90017-

Attn: Kieth Lemieux
(KLemieux@omlowlaw.com)
Olivarez Madruga Lemieux O'Neill, LLP (via
email)
500 South Grand Avenue, 12th Floor
Los Angeles, CA 90071-2609

Attn: Betsy Brunswick (bmb7@pge.com)
Pacific Gas and Electric Company (via email)
77 Beale Street, B28P
San Francisco, CA 94105-1814

Attn: Steven B. Abbott, Esq.
(sabbott@redwineandsherrill.com;
fluna@redwineandsherrill.com)
Redwine and Sherrill (via email)
3890 Eleventh Street
Suite 207
Riverside, CA 92501-

Attn: James L. Markman, Esq.
Richards, Watson & Gershon
1 Civic Center Circle
P.O. Box 1059
Brea, CA 92822-1059

Attn: Elizabeth Hanna, Esq.
Rutan & Tucker
P.O. Box 1950
Costa Mesa, CA 92626

Mojave Basin Area Watermaster Service List as of May 02, 2022

Attn: Randall R. Morrow, Esq.
(rmorrow@sempra.com)
Sempra Energy Law Department (via email)
Office of the General Counsel
555 West Fifth Street, Suite 1400
Los Angeles, CA 90013-1011

Attn: Shannon Oldenburg, Esq.
(shannon.oldenburg@sce.com)
Southern California Edison Company
Legal Department (via email)
P.O. Box 800
Rosemead, CA 91770

Attn: Mary Howard
Southern California Gas Company
Transmission Environmental Consultant
P. O. Box 2300, ML9314
Los Angeles, CA 91313-2300

Attn: Rick Ewaniszyk, Esq.
The Hegner Law Firm
14350 Civic Drive
Suite 270
Victorville, CA 92392

Attn: Agnes Vander Dussen Koetsier
(beppeauk@aol.com)
Vander Dussen Trust, Agnes & Edward (via email)
P.O. Box 5338
Blue Jay, CA 92317-

Attn: Robert C. Wagner, P.E.
(rcwagner@wbecorp.com)
Wagner & Bonsignore
Consulting Civil Engineers (via email)
2151 River Plaza Drive, Suite 100
Sacramento, CA 95833-4133