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

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF RIVERSIDE
11

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

13
14 **Plaintiffs,**

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

17 **Defendants.**
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Case No. CIV 208568

**CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
RESPONSE TO WATERMASTER'S
MOTION TO ADJUST FREE
PRODUCTION ALLOWANCE FOR
WATER YEAR 2022-2023**

21 **And All Related Cross Actions**
22
23

Date: June 2, 2022
Time: 1:30 p.m.
Dept: 1
RES159238747335

1 **INTRODUCTION**

2 The California Department of Fish and Wildlife (Department) respectfully submits this
3 Response in support of the Mojave Water Agency’s (Watermaster) Motion to maintain Free
4 Production Allowance (FPA) at 22.5% for Water Year 2022-2023 (2022-2023 Rampdown
5 Motion) in the Baja Subarea (Baja), and to continue to comply with the *City of Barstow v City of*
6 *Adelanto* Judgment entered on January 10, 1996 (Judgment) and to explore additional actions to
7 ensure the sustainability of the Mojave Basin Area (Basin). Further, the Department supports the
8 Watermaster’s request in the 2022-2023 Rampdown Motion to maintain the Alto Subarea’s (Alto)
9 production FPA at 55% of Base Annual Production (BAP) for both agricultural and non-
10 agricultural uses.

11 **THE EVIDENCE SUBMITTED TO THE WATERMASTER BOARD AND THIS COURT**
12 **FOR WATER YEAR 2022-2023 BY THE WATERMASTER ENGINEER SUPPORTS**
13 **MAINTAINING FPA FOR THE BAJA SUBAREA AT 22.5%**

14 For the 2022-2023 Water Year, the evidence submitted by the Watermaster Engineer,
15 including his Declaration attached to the 2022-2023 Rampdown Motion, the Watermaster’s
16 Twenty-Eighth Annual Report, and the presentations made by the Watermaster Engineer to the
17 Watermaster Board indicate that maintaining FPA in Baja at 22.5% of BAP is warranted. First,
18 the Watermaster Engineer concludes that pursuant to the Judgment, the FPA is extremely close to
19 the goal of getting PSY to within 5% of BAP, and current water production and consumptive use
20 have plummeted in Baja by close to 31%. (Declaration of Robert C. Wagner in Support of the
21 2022-2023 Rampdown Motion, p. 4.) Second, he concludes that the changes in production in
22 Baja might be permanent and the decline in water levels in wells in the Baja area might have
23 slowed. (*Ibid.*). The Watermaster board therefore has recommended that the Baja FPA be
24 maintained at 22.5% of the BAP this water year. (2022-2023 Rampdown Motion at pp. 6-8.) The
25 Department agrees.
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THE WATERMASTER'S RECOMMENDATIONS FOR ALTO

The Watermaster Engineer also recommends that FPA be maintained in Alto at 55% of FPA for both agricultural and non-agricultural uses. (2022-2023 Rampdown Motion pp. 6-8.) The Department supports this recommendation, since FPA is within 5% of PSY. The Department also supports the end of the differential between agricultural and non-agricultural uses ordered by this Court for the 2021-2022 water year and now continued by the Watermaster in its recommendation for the 2022-2023 water year.

The Department continues to be concerned by the long-term change in climactic conditions, including the likely long-term changes in precipitation for the Basin. This issue must continue to be analyzed and the Watermaster must continue its activities and policies that assist in managing the Basin in this new normal. The parties to the adjudication must work with the Watermaster to find solutions to this long term problem that affects every party to the adjudication.

CONCLUSION

For the foregoing reasons, the Department respectfully requests that the Court set the FPA in the Baja Subarea at 22.5% of BAP and in the Alto Subarea at 55% of BAP for 2022-2023 Water Year.

Dated: May 19, 2022

Respectfully Submitted,
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Department of Fish & Wild Life

DECLARATION OF SERVICE BY E-MAIL AND OVERNIGHT COURIER

Case Name: **City of Barstow v. City of Adelanto**
Case No.: **CIV 208568**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with **Federal Express overnight courier service**. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.

On May 19, 2022, I served the attached: **CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE'S MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO WATERMASTER'S MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR WATER YEAR 2022-2023**, by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

William J. Brunick Brunick, McElhaney & Kennedy, APC 1839 Commercenter West San Bernardino, CA 92423-3130 E-mail Address: bbrunick@bmklawplc.com Mojave Water Agency Defendant/Cross-Complainant	Valerie Wiegenstein Watermaster Services Manager Mojave Water Agency 13846 Conference Center Drive Apple Valley, CA 9230 E-mail Address: vwiegenstein@MojaveWater.org
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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 19, 2022, at Los Angeles, California.

Ernestina Provencio

Declarant

/s/ Ernestina Provencio

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO}

I am employed in the County of the San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 13846 Conference Center Drive, Apple Valley, California 92307.

On May 23, 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:

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE'S MEMORANDUM OF POINTS AND AUTHORITIES IN REPOSNSE TO WATERMASTER'S MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR WATER YEAR 2022-2023

 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 23, 2022 at Apple Valley, California.



Jeffrey D. Ruesch

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Haskins, James J.
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Hass, Pauline L.
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Mojave Basin Area Watermaster Service List as of May 23, 2022

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Attn: Jeremy McDonald
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Mojave Basin Area Watermaster Service List as of May 23, 2022

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Mojave Basin Area Watermaster Service List as of May 23, 2022

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Mojave Basin Area Watermaster Service List as of May 23, 2022

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Mojave Basin Area Watermaster Service List as of May 23, 2022

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