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8 MOJAVE WATER AGENCY

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF RIVERSIDE**

11
12 CITY OF BARSTOW, et al

13 Plaintiff,

14 v.

15 CITY OF ADELANTO, et al

16 Defendant.

17
18 **AND RELATED CROSS ACTIONS**

CASE NO.: CIV 208568

**WATERMASTER'S RESPONSE TO THE
COURT'S JUNE 3, 2022 ORDER TO
SHOW CAUSE**

Date: August 25, 2022

Time: 1:30 p.m.

Dept: 1

Assigned for All Purposes to:
Hon. Craig G. Riemer, Judge Presiding

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21 Watermaster responds to the Court's June 3, 2022 Order to Show Cause, as follows:

22 **I.**

23 **INTRODUCTION**

24 In its June 3, 2022 Minute Order, the Court ordered all parties to appear on August 25,
25 2022, at 1:30 p.m. in Department 1 to show cause, if any exists, why the Alto subarea's Free
26 Production Allowance ("FPA") should not be reduced by an additional 4.5% for Water Year
27 2022-2023. An additional 4.5% reduction in FPA would reduce FPA to a level below the
28 calculated Production Safe Yield (PSY"). However, citing comments in the declaration provided

WATERMASTER'S RESPONSE TO THE COURT'S JUNE 3, 2022 ORDER TO SHOW CAUSE

1 by the Watermaster’s engineer, the Court noted the PSY is based upon long-term supply
2 assumptions that may no longer be accurate, at least in the short term.

3 For the August 25, 2022 hearing, the Court made the following specific inquiries:

- 4 1. Under the terms of the judgment, does the Court have the authority to reduce FPA below
5 PSY? If so:
 - 6 a. Under what circumstances?
 - 7 b. Do those circumstances exist now, or are they likely to exist in Alto in the coming
8 year?
- 9 2. If the judgment provides the court with the discretion to order such a further rampdown
10 under the current conditions, should the Court nevertheless refrain from doing so?

11 The judgment states that, upon Watermaster’s recommendation, the Court may reduce
12 FPA provided the reduction does not exceed 5% of BAP in a single year. While the judgment
13 does not specifically state, one way or the other, whether the Court may reduce FPA below PSY,
14 the judgment’s definition of PSY clearly implies FPA may be reduced below previous PSY
15 assumptions when, as now, there is evidence of a “long-term” net reduction in water storage.¹

16 As indicated in the Watermaster engineer’s recent declaration and testimony in support
17 of the Rampdown motion heard on June 3, 2022: the Alto subarea experienced significantly
18 declining water storage levels during the last 10 years, and a 51,000 acre-foot decline in water
19 storage in 2021-2022 Water Year; a further significant decline in water storage is probable in
20 the 2022-2023 Water Year; and further declines in water storage are likely as a result of the
21 continuing drought conditions.

22 For the reasons explained herein, Watermaster believes that when there is compelling
23 evidence of a long-term net reduction in water storage in a subarea, and Watermaster
24 recommends doing so, the Court has authority to reduce FPA below PSY.

25 ///

26
27 ¹ The judgment defines PSY, in part, as “The highest average Annual Amount of water that
28 can be produced from a Subarea: . . . (3) without resulting in a **long-term net reduction of
groundwater in storage** in the Subarea.” (Emphasis added.)

1 II.

2 **APPLICABLE PROVISIONS OF THE JUDGMENT**

3 Paragraph 24(o) of the judgment provides that the Watermaster shall recommend and
4 obtain the Court's approval for "changes" to Free Production Allowance (FPA):

5 24. Powers and Duties. Subject to the continuing supervision and control of the Court,
6 Watermaster shall have and may exercise the following express powers, and shall
perform the following duties . . . :

7 (o) Free Production Allowance. Not later than the end of the 1997-1998 Water Year, and
8 Annually thereafter, to recommend in the Watermaster Annual Report an adjustment, if
needed, to the Free Production Allowance for any Subarea. . . . Following the 1997-1998
9 Water Year, or any time thereafter, **Watermaster shall obtain prior court approval for
10 any increase or reduction of any subarea's Free Production Allowance.** In no event
shall a reduction in any Year for a Subarea exceed five percent of the aggregate Base
11 Annual Production of that Subarea. **In the event Watermaster recommends in its
report to the Court that the Free Production allowance for any Subarea may need
12 to be increased or reduced,** the Court shall conduct a hearing, after notice given by
Watermaster according to paragraph 36, **upon Watermaster's recommendations and
may order such changes** in Subarea Free Production Allowance. . . . [emphasis added]

13 Paragraph "2.a." of Exhibit H to the Judgment provides that, when the FPA exceeds the
14 estimated PSY by 5% or more, Watermaster shall recommend a reduction of the FPA equal to
15 a full five percent of the aggregate subarea BAP, to wit:

16 Pursuant to Paragraph 24(o) of the Judgment, the Watermaster in recommending
17 an adjustment in Free Production Allowance, shall compare the Free Production
Allowance with the estimated Production Safe Yield. In the event the Free Production
18 Allowance exceeds the estimated Production Safe Yield by five percent or more,
Watermaster shall recommend a reduction of the Free Production Allowance equal to a
19 full five percent of the aggregate Subarea Base Annual Production. . . .

20 Therefore, based upon paragraph 24(o) and Exhibit H of the judgment, the Court is
21 specifically authorized, upon the Watermaster's recommendation, to reduce FPA, provided the
22 reduction does not exceed 5% of a Subarea's aggregate BAP in any given year.

23 III.

24 **WATERMASTER RULES AND REGULATIONS**

25 The Watermaster's Rules and Regulations revised October 29, 2008, specify the
26 procedures the Watermaster must follow to determine and finalize its recommendation for
27 reduction of FPA, for the Court's approval:

28 ///

1 15.A. *Preliminary Determinations and Recommendations.* Not later than March 1 of
2 each year, Watermaster shall make a determination of the Production Safe Yield
3 of each Subarea and a preliminary recommendation for any adjustment of the Free
4 Production Allowance. Said determination and preliminary recommendation shall
5 be made in the form of a report containing a statement of the considerations,
6 calculations and factors utilized by Watermaster in arriving at said Production
7 Safe Yield and preliminary recommendation for adjustment of the Free
8 Production allowance.

9 B. *Notice of Hearing.* A copy of said preliminary recommendation shall be mailed
10 to all Designees not later than March 1 along with a notice of a hearing thereon
11 to be commenced not later than April 1 at which time objections or suggested
12 corrections or modifications to said recommendation shall be considered.

13 C. *Final Recommendation.* Not later than May 1 Watermaster shall submit to the
14 Court and shall mail to each Designee a copy of its recommendation as to the Free
15 Production Allowance for each Subarea for the next year. Upon approval of a free
16 Production Allowance for each Subarea by the Court, Watermaster shall notify
17 each Designee as to such Producer's share of the Free Production Allowance for
18 the next year.

19 Thus, the foregoing spells out the procedures to be followed by the Watermaster in
20 formulating and finalizing its recommendation for reducing FPA, for the Court's approval.

21 IV.

22 THE COURT'S "AUTHORITY"

23 Based upon the foregoing provisions of the judgment and the Watermaster Rules and
24 Regulations, the Court's "authority" to reduce FPA is conditioned upon the Watermaster's
25 recommendation that such action be taken. And when the available evidence demonstrates the
26 existence or likelihood of a "long-term" net reduction in water storage, and the Watermaster
27 recommends doing so, the Court has authority to order a reduction of FPA below PSY.

28 Should additional authority to do so be needed beyond that noted above, paragraph 19
of the Judgment provides the Court may:

... modify, amend or amplify any of the provisions of this Judgment or to add to the provisions thereof consistent with the rights herein decreed; provided, that nothing in this paragraph shall authorize either a reduction of the Base Annual Production Right of any Party, except in accordance with the rules set forth in Exhibit "F", or a reduction of the Base flow portion of any Subarea Obligation."

Therefore, when current conditions warrant, there also is nothing within Paragraph 19 that would preclude the Court from modifying, amending or amplifying the provisions of the Judgment to allow it to reduce FPA below the PSY estimates established decades ago.

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V.

IS REDUCING FPA BELOW PSY WARRANTED NOW?

The stated goal of the Judgment is to protect the Basin from further depletion and overdraft. When the Basin is in the midst of a severe and prolonged drought and the available evidence indicates the existence or likelihood of a long-term net reduction in storage in a Subarea, those conditions warrant a reduction of FPA below PSY, upon the Watermaster's recommendation -- at least until such time as a relative balance is achieved between inflow and outflow, or until it appears likely the prolonged drought condition is ending.

Does the currently available evidence indicate the likelihood of a **long-term net reduction** in water storage in the Alto subarea? During the last 10 years, the Alto subarea has suffered significant declines in water storage; in the 2021-2022 Water Year, the Alto subarea suffered a 51,000 acre feet decline in water storage; the Watermaster engineer anticipates the Alto subarea will experience an additional significant decline in water storage during the 2022-2023 Water Year, and into the foreseeable future because of the continuing drought conditions. Such long-term and continuing declines in water storage in the Alto subarea may well warrant further reduction of FPA below the current PSY assumptions.

Therefore, following the procedural steps and safeguards mandated in the judgment and in the Watermaster Rules and Regulations, and upon Watermaster's recommendation to do so, the Court clearly has authority to order FPA reduced below PSY.

VI.

CONCLUSION

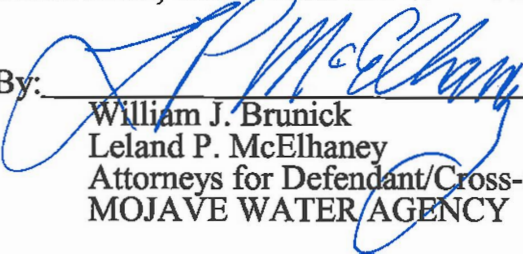
Absent Watermaster's recommendation to do so, questions could be raised as to the Court's "authority" to reduce FPA below PSY or, indeed, at all. Accordingly, the more prudent course -- and the one most likely to eliminate any question as to the Court's "authority" to reduce FPA in the Alto subarea below the estimated PSY -- would be for the Watermaster and the Court to follow the aforesaid procedures mandated in the judgment and in the Watermaster Rules and Regulations, and then approve the Watermaster's recommendation to reduce FPA below PSY.

1 Therefore, Watermaster recommends the Court direct Watermaster to consider and make
2 a recommendation as to whether FPA in the Alto subarea should be reduced an additional 4.5%
3 (i.e., below the currently estimated PSY), and to follow the procedural steps for making that
4 recommendation as mandated in the Watermaster Rules and Regulations and in the judgment.

5 As part of that determination and during that process, Watermaster may also consider
6 other alternatives in addition to, or in lieu of, further reductions in FPA, including without
7 limitation the infusion or spreading of Watermaster-purchased supplemental water into the Alto
8 subarea, as called for in the Mojave Water Agency's drought remediation program.

9 Dated: June 27, 2022

BRUNICK, McELHANEY & KENNEDY PLC

10
11 By: 
12 William J. Brunick
13 Leland P. McElhaney
14 Attorneys for Defendant/Cross-complainant,
15 MOJAVE WATER AGENCY

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PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO}

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


On June 28, 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:

WATERMASTER'S RESPONSE TO THE COURT'S JUNE 3, 2022 ORDER TO SHOW CAUSE

 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 June 28, 2022 at Apple Valley, California.



Jeffrey D. Ruesch

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Attn: Paul Johnson
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7603 Hazeltine
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Attn: Camille Yusufov
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Frazier, et al.
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Attn: Deborah A. Friend
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Attn: Mark Asay (bettybrock@ironwood.org;
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Fundamental Christian Endeavors, Inc. (via email)
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Newberry Springs, CA 92365

Gabrych, Eugene
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Mojave Basin Area Watermaster Service List as of June 28, 2022

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Mojave Basin Area Watermaster Service List as of June 28, 2022

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Mojave Basin Area Watermaster Service List as of June 28, 2022

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Attn: Lee Logsdon
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Mojave Basin Area Watermaster Service List as of June 28, 2022

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Attn: Robert Lawrence Jr.
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Attn: Sepoong & Woo Poong Lee
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Lee, Vin Jang T.
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Lenhert, Ronald and Toni
10083 Deep Creek Rd.
Apple Valley, CA 92308-8322

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Upland, CA 91785-0670

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Liang, Yuan - I and Tzu - Mei Chen
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Water) Corp. (via email)
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Low, Dean (via email)
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Mojave Basin Area Watermaster Service List as of June 28, 2022

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Mojave Basin Area Watermaster Service List as of June 28, 2022

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