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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 v.

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

17 Defendants.
18

Case No. CIV 208568

**CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE'S RESPONSE TO
JUNE 3, 2022 ORDER TO SHOW CAUSE**

Date: August 25, 2022

Time: 1:30 p.m.

Dept.: 1

Judge: Honorable Craig G. Riemer

19 **AND ALL RELATED CROSS ACTIONS**
20

21 **INTRODUCTION**

22 The California Department of Fish and Wildlife (Department) submits the following
23 response to the Court's June 3, 2022, Order to Show Cause. In its Order to Show Cause, the
24 Court ordered the parties to show cause why the Alto subarea's free production allowance (FPA)
25 should not be reduced by an additional 4.5% for Water Year 2022-2023, which would bring the
26 FPA below the production safe yield (PSY) for Water Year 2022-2023. Specifically, the Court
27 stated as follows:
28

1 In its response to the Court, the Watermaster argues that the Court should send the
2 proposed reduction of FPA to below PSY back to the Watermaster for a recommendation.
3 (Watermaster Response to Order to Show Cause p. 4.) The Department disagrees with this
4 contention. The Watermaster has already made its recommendation to the Court about the
5 reduction of FPA for Water Year 2022-2023. The Court’s Order to Show Cause is simply a
6 continuation of the hearing and approval or disapproval of the Watermaster’s recommendation.
7 The Watermaster has made its recommendation and it is up to the Court to now agree or disagree
8 with that recommendation and make its ruling and decide what changes are to be made to the
9 FPA based upon its powers pursuant to paragraph 24, subsection (o) of the judgment. If based
10 upon the changes to storage and long-term drought the Court feels it is necessary to reduce FPA
11 to below PSY and order a full 5% reduction, that is within the Court’s power to do so and to do so
12 immediately without sending it back to the Watermaster.

13 **The Watermaster Has the Power to Recalculate PSY**

14 The definition of PSY in paragraph 4, subsection aa of the judgment is:

15 The highest average Annual Amount of water that can be produced from a Subarea:
16 (1) over a sequence of years that is representative of long-term average annual
17 natural water supply to the Subarea net of long-term average annual natural outflow
18 from the Subarea, (2) under given patterns of Production, applied water, return
flows and Consumptive Use, and (3) without resulting in a long-term net reduction
of groundwater in storage in the Subarea.

19 The Department believes that going forward into Water Year 2022-2023 and beyond it is
20 crucial that the Watermaster rethink the way it calculates PSY for the various suabareas. Given
21 climate change, the ongoing drought, and the severe changes in water storage in Alto, the
22 Department would argue that there is right now “a long-term net reduction of groundwater in
23 storage in [Alto],” such that the PSY needs to be recalculated to take this current mega-drought
24 into consideration. The long-term average annual natural water supply has drastically been
25 reduced, much more than the Watermaster’s current calculations indicate, and there is a need
26 moving forward for a new calculation. The Department therefore maintains that the Court should
27
28

1 order the Watermaster for Water Year 2022-2023 to review its PSY determination for all subareas
2 and take into account the long-term net reductions of groundwater storage in the subareas.

3 **The Court Should Reduce FPA in Alto Immediately**

4 The Department shares the Watermaster’s concerns regarding the depletion of water
5 storage in the Alto subarea. As the Watermaster states in its response to the Order to Show
6 Cause, the Watermaster points out that storage has declined 51,000 acre-feet in the 2021-2022
7 water year alone. (Watermaster Response to Order to Show Cause p.5.) The Watermaster
8 engineer believes that this decline will continue into the foreseeable future. (*Ibid.*) The drought
9 has, in fact, only gotten worse since the measurements were taken for the Watermaster Engineer’s
10 2020-2021 annual report. Therefore, the Court not only has the authority to reduce FPA to below
11 PSY in the Alto subarea, but the Court should exercise that authority now, before water levels get
12 to the point that numerous wells start drying up.

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CONCLUSION

Pursuant to paragraph 24, subsection (o) and Exhibit H to the judgment, the Court has the authority to set FPA to any number that will stabilize the Alto subarea and reduce the amount water storage lost in that subarea that is vital to the Basin and all subareas downgradient from Alto. This includes reducing FPA to below PSY. Here, the Watermaster has made a recommendation and motion to the Court pursuant to the judgment to reduce FPA in Alto. The Court has continued the question of the rampdown in Alto and set this Order to Show Cause. Therefore, the Court has retained jurisdiction to rule on the Watermaster’s motion in regards to the Alto subarea rampdown and should immediately order that the Alto subarea be ramped down an additional 4.5%. This will at least be one step toward maintaining sufficient water levels in the Alto subarea to avoid the worst consequences of this continuing drought. In addition, in future Water Years the Court should order the Watermaster to recalculate the PSY of the various subareas taking into account the long-term net reductions of groundwater storage in the subareas.

Dated: August 4, 2022

Respectfully Submitted,

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DECLARATION OF SERVICE BY E-MAIL ad OVERNIGHT COURIER

Case Name: **City of Barstow, et al. v. City of Adelanto, et al.,**

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 the **Federal Express** 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 August 4, 2022, I served the **CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE'S RESPONSE TO JUNE 3, 2022 ORDER TO SHOW CAUSE** 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:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 4, 2022, at Los Angeles, California.

Beatriz Davalos

Declarant



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 August 4, 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 RESPONSE TO 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 August 4, 2022 at Apple Valley, California.



Jeffrey D. Ruesch

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Mojave Basin Area Watermaster Service List as of August 04, 2022

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Mojave Basin Area Watermaster Service List as of August 04, 2022

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Mojave Basin Area Watermaster Service List as of August 04, 2022

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Mojave Basin Area Watermaster Service List as of August 04, 2022

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Mojave Basin Area Watermaster Service List as of August 04, 2022

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Mojave Basin Area Watermaster Service List as of August 04, 2022

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