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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 AND RELATED CROSS ACTIONS

CASE NO.: CIV 208568

**WATERMASTER'S REPLY TO
CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE RESPONSE TO 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

19
20 Watermaster filed quite early its Response to the Court's Order to Show Cause.
21 Watermaster did so with the hope its Response would elicit responses thereto from other
22 stakeholders. Watermaster succeeded in that goal, as shown by the brief recently filed by the
23 California Department of Fish and Wildlife (hereafter, "CDFW").

24 At the risk of oversimplification, Watermaster's Response to the OSC sought to
25 demonstrate, in substance, that the Court has authority to reduce FPA below PSY *upon*
26 *Watermaster's recommendation to do so*; however, in its May 1, 2022 report to the Court (after
27 following the procedures mandated in the Watermaster Rules and Regulations for making its

28 **WATERMASTER'S REPLY TO CDFW RESPONSE**

1 recommendations to the Court), Watermaster did not recommended for the Alto subarea a
2 further reduction in FPA for the current water year.

3 Nonetheless, CDFW in effect argues the Court may disregard the Watermaster's
4 recommendation, and make its own determination FPA should be reduced further:

5 The Watermaster has made its recommendation and it is up to the Court to now agree or
6 disagree with that recommendation and make its ruling and decide what changes are to
7 be made to the FPA based upon its powers pursuant to paragraph 24, subsection (o) of
8 the judgment.

9 (CDFW Response, 3:7-9.)

10 However, subsection (o) of paragraph 24, in pertinent part, plainly states:

11 In the event Watermaster recommends *in its report to the Court* that the Free Production
12 Allowance for any subarea may need to be increased or reduced, the court shall conduct
13 a hearing . . . upon Watermaster's recommendations and may order such changes in Free
14 Production Allowance.

15 (Emphasis added.)

16 Therefore, subsection (o) grants the Court authority to approve or disapprove of "such
17 changes" in FPA that are recommended in the Watermaster's annual report to the Court.
18 Subsection (o) does not authorize a reduction in FPA where, as here, the Watermaster has not
19 recommended a further reduction in FPA. And the Watermaster cannot recommend a reduction
20 of FPA below PSY in the Alto subarea until the Watermaster has itself complied with the
21 requirements for making that recommendation mandated in the Watermaster Rules and
22 Regulations.

23 In its Ruling on the motion, the Court observed: "At the hearing, the Watermaster's
24 engineer and counsel endorsed the Court's tentative ruling. Specifically, they endorsed a
25 rampdown of 5%, even though that would reduce FPA to a level below PSY." That was not
26 recommended, however, in the Watermaster's annual report, or in Watermaster's motion for
27 approval of its annual report. Most importantly, the Alto subarea stakeholders were not provided
28 with any notice that, at the hearing on its motion, Watermaster would recommend that FPA be
reduced below PSY.

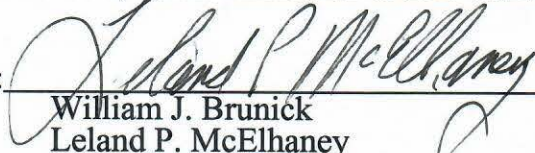
As previously noted, without first complying with the procedures mandated for doing so

1 in the Watermaster Rules and Regulations, the Watermaster is precluded from recommending
2 a further reduction in FPA. That has not yet been done regarding the inquiry as to whether FPA
3 should be reduced below PSY in the Alto subarea.

4 Accordingly, for the reasons previously stated in its earlier Response to the Order to
5 Show Cause, and those stated herein, Watermaster respectfully disagrees with CDFW's
6 suggestion the Court has authority to reduce FPA below PSY in the Alto subarea where, as here,
7 the Watermaster has not yet recommended "such changes."

8 Dated: August 5, 2022

BRUNICK, MCELHANEY & KENNEDY PLC

9
10 By: 
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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 August 5, 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 REPLY TO CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE RESPONSE TO 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 5, 2022 at Apple Valley, California.



Jeffrey D. Ruesch

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Mojave Basin Area Watermaster Service List as of August 05, 2022

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Mojave Basin Area Watermaster Service List as of August 05, 2022

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Mojave Basin Area Watermaster Service List as of August 05, 2022

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Mojave Basin Area Watermaster Service List as of August 05, 2022

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Mojave Basin Area Watermaster Service List as of August 05, 2022

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