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

12 Coordination Proceeding Special Title
13 (Cal. Rules of Court, rule 3.550)

JCCP NO.: 5265

14 **MOJAVE BASIN WATER CASES**

Dept. 1, Riverside Superior Court
Hon. Craig G. Riemer, Judge Presiding

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

CASE NO. CIV 208568

16 Plaintiff,

**NOTICE OF MOTION AND MOTION
TO ADJUST FREE PRODUCTION
ALLOWANCE FOR WATER YEAR
2023-2024; MEMORANDUM OF
POINTS AND AUTHORITIES AND
DECLARATION OF ROBERT C.
WAGNER IN SUPPORT THEREOF**

17 vs.

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

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

DATE: June 9, 2023
TIME: 1:30 p.m.
DEPT: 1

25 **AND RELATED CROSS-ACTIONS**
26
27

1 Defendant/Cross-Complainant, Mojave Water Agency, acting in its capacity as the Mojave Basin Area
2 Watermaster, will respectfully move, pursuant to paragraph 24(o) and Exhibit H of the Judgment in the
3 above entitled case, for the court's approval of the Watermaster's recommendation in its Twenty-Ninth
4 Annual Report to adjust the Free Production Allowance (FPA) for each of the five (5) Subareas (Alto,
5 Baja, Centro, Este and Oeste) of the Mojave Basin as set forth herein for the 2023-24 Water Year.

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

10
11 Dated: May 1, 2023

BRUNICK, McELHANEY & KENNEDY PLC

12
13 BY: WJ 13
14 WILLIAM J. BRUNICK, ESQ.
15 LELAND P. McELHANEY, ESQ.
16 Attorneys for Defendant/Cross-Complainant,
17 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 overdrafted 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 existing in the
26 Basin by the creation of a Physical Solution for the Basin's five distinct, but hydrologically interrelated
27 Subareas (Alto, Baja, Centro, Este, and Oeste). The court determined that all five (5) Subareas of the

1 Basin had been in a state of overdraft since at least the 1950's, that the economy and population overlying
2 the Basin had dramatically grown in reliance upon the overdraft, and that all producers had contributed
3 to the overdraft. The court's Physical Solution established a limit on the amount of water each Subarea
4 could produce in one year before having to purchase replacement water. This is known as the Free
5 Production Allowance (FPA). The Judgment also established each producer's Base Annual Production
6 (BAP). A producer's BAP is based upon that producer's highest year of water production during the
7 base period of 1986-1990. A producer's BAP serves as the basis for the producer's Base Annual
8 Production Right (BAPR). BAPR is the right of each producer to a percentage of the FPA within a given
9 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 3, 2022 and September 16, 2022, the court entered its orders on Watermaster's Motion to Adjust FPA for Water Year 2022-23 (attached as Exhibit A). As a result, FPA for Water Year 2022-23 was set as follows:

<u>Subarea</u>	<u>2022-23 FPA</u>
Alto	54.4% of BAP
Baja	20.5% of BAP
Centro	60% of BAP
Este	60% of BAP
Oeste	55% of BAP

IV.

RECOMMENDED ADJUSTMENTS TO FPA FOR WATER YEAR 2023-24

The Watermaster conducted public hearings on February 22, 2023, and March 22, 2023, held separate workshops in each of the five subareas (flyers attached as EXHIBIT B), and adopted the FPA recommendations for the five Subareas for Water Year 2023-24, as required by the Judgment and consistent with previous direction from the court as follows:

<u>Subarea</u>	<u>2023-24 FPA Recommendation</u>
Alto	50% of BAP
Baja	20.5% of BAP

1	Centro	55% of BAP
2	Este	55% of BAP
3	Oeste	50% of BAP

4 The table on page 37, Chapter 5, of the Twenty-Ninth Annual Report of the Mojave Basin Area
5 Watermaster shows the BAP, the FPA for 2022-23, the estimated PSY, the difference between them as
6 a percentage of BAP as well as the 2021-22 Verified Production for each Subarea.

7 The basis of the recommendation for each Subarea is described in the declaration of Robert C.
8 Wagner, Watermaster Engineer attached as Exhibit C. Of note, Mr. Wagner's supporting declaration
9 makes the following additional observations:

10 The current water year is expected to be wetter than average based on the precipitation in
11 the upper Mojave watershed through the end of April 2023. However, as shown wet periods and
12 dry periods are part of the average water supply, and one wet year does not change the analysis
13 for long term average water supply. Consequently, the current year's storms do not factor into
14 the analysis herein regarding PSY or FPA for Alto.

15 Further, both the annual water supply from local precipitation and runoff, and the
16 availability of supplemental water for import are unknown in advance. The purchase and recharge
17 of supplemental water always occurs either in arrears or as pre-storage (MWA imports water that
18 is credited to its storage account for later use). The factors that affect PSY, long term average
19 supply, and consumptive use of production are relatively stable from year to year. Consequently,
20 PSY need not be evaluated on an annual basis, but instead every 5 to 10 years, or if basin
21 hydrologic conditions change, or consumptive uses change. The preliminary recommendation
22 for PSY for Alto will result in the importation of supplemental water (on an average basis) of
23 18,277 acre feet. However, the basin's response to recharge of this amount of water in addition
24 to basin stresses will not be known for several years. While the reevaluation of PSY may result
25 in a different value than proposed herein, it is my recommendation that FPA in Alto remain at
26 50% for the next five water years (Watermaster will evaluate and report to the court annually on
27 conditions in Alto as required by the Judgment).

1 (Wagner Declaration, 5:20-6:9)

2 Watermaster received and considered oral comments and correspondence from the Department
3 of Fish and Wildlife, the City of Hesperia and other producers within the Subareas. The written
4 comments received by Watermaster during its public hearings of February and March are attached as
5 Exhibit D.

6 **V.**

7 **QUANTIFYING PRODUCTION NOT UNDER THE JUDGMENT**

8 Since June 2021, Watermaster, pursuant to the Court's orders has taken all reasonable steps to
9 identify any unauthorized production within the basin area pumping in excess of 10 acre-feet per year.
10 Watermaster legal counsel filed an action in San Bernardino County against those identified in the first
11 phase of identification, which included 61 parties in the Este and Oeste Subareas. The second phase
12 identification is almost complete and initially includes 50 additional parties in the Alto, Centro and Baja
13 Subareas. A summary of the actions and steps taken to coordinate the San Bernardino case with the
14 existing Riverside County case is detailed in Watermaster's Report to the Court dated November 30,
15 2022, Supplemental Report dated January 23, 2023 and an additional Supplemental Reported filed
16 concurrently with this motion. The most recent action was to grant MWA's Petition to coordinate the
17 Riverside Superior Court litigation with the San Bernardino Superior Court litigation so that all matters
18 would be heard in Riverside County Superior Court.

19 **VI.**

20 **RELATED MWA ACTIVITIES**

21 In April of 2022, the MWA authorized the development of a drought resiliency program for
22 importation of supplemental water supply into the basin area for drought management purposes. The
23 plan is currently being developed and is expected to be completed by June 2023. Funding for the
24 additional water purchases was also included in MWA's budget for 2022-23. As a first step. prior to
25 finalization of the plan, the MWA authorized up to 5,000 acre-feet to be delivered to the Centro Subarea
26 for supply augmentation.

1 In April 2022 , the MWA adopted Ordinance No. 14 for the administration of minimal producer
2 wells permitted on or after July 1, 2022. This Ordinance requires that those with approved permits on
3 or after July 1, 2022 pay for one acre-foot of water to replenish the basin area. Additionally, the
4 Ordinance provides that minimal producers production shall be confined to the parcel on which the water
5 production facility exists, that sale or transfer of pumped water off the property or parcel is prohibited
6 and such minimal producer's status would move to the new owner on any sale or alienation of the
7 property or parcel.

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

13 Geotechnical and geohydrology investigations in the upper Alto, Oeste and western Este
14 Subareas continued, these will provide better information and data to use in determining the best
15 locations for future off-river recharge basins. Demonstration groundwater recharge facilities in the upper
16 Alto, Oeste and Este Subareas have been developed on sites owned by MWA. In 2020 MWA recharged
17 15 acre-feet of water into the Este Subarea during the demonstration. Grant funding was obtained in
18 2022 to build a larger more permanent recharge site in the Este Subarea. Two monitoring wells were
19 installed in the west Victorville area to help characterize the subsurface geology and provide permanent
20 high-quality groundwater monitoring data points, and two similar wells were also installed in Oeste.
21 Each of these studies will characterize surface infiltration rates, subsurface hydrogeologic zones and
22 properties, groundwater levels, hydraulic properties and alluvial sediments of the aquifer as well as
23 identify favorable areas for recharge facilities and help assess the regional suitability of the projects. The
24 Agency's groundwater model for the upper Mojave River Basin will be updated as part of the ongoing
25 investigations.

26 MWA purchased 10 new weather stations in 2022 to be installed throughout its service area and
27 also funded USGS to install 2 new stream gaging locations along the Mojave River at Hodge in the

1 Centro Subarea and at Daggett in the Baja Subarea. This will greatly augment its already extensive
2 network for monitoring of supply and basin management purposes.

3 **VII.**

4 **CONCLUSION**

5 Any delay in implementation of the Judgment will jeopardize the Mojave Basin Area
6 sustainability. The Judgment continues to provide the mechanism through the Physical Solution and
7 Rampdown to achieve a sustainable water supply in the Mojave Basin Area. A substantial amount of
8 investment by all parties to the Judgment has occurred over the last 30 years. The Mojave Water Agency,
9 in support of the physical solution, constructed water supply facilities for delivering and storing water
10 from the State Water Project (SWP) to meet needs in every Subarea. These include 14 recharge facilities
11 and two major pipelines nearly 150 miles in length. The Physical Solution will work under the Judgment
12 if implemented to its fullest extent. The only solutions to chronic overdraft and to achieving
13 sustainability are to purchase imported water or to reduce pumping. In order to achieve and maintain
14 balance in each of the Subareas, further Rampdowns in all Subareas will be considered by the
15 Watermaster annually. Droughts will continue to affect basin supplies and the availability of imported
16 water from the SWP in the future, although the recent storm activity and MWA's increased State Water
17 Project water allocation this year (which will make additional supplemental water available) gives reason
18 for some cautious optimism.

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

- 22 (1) **ALTO:** Set FPA in Alto at 50% of BAP (five-year hold, see 7:10-27)
- 23 (2) **BAJA:** Set FPA in Baja at 20.5% of BAP
- 24 (3) **CENTRO:** Set FPA in Centro at 55% of BAP
- 25 (4) **ESTE:** Set FPA in Este at 55% of BAP; and
- 26 (5) **OESTE:** Set FPA in Oeste at 50% of BAP.
- 27

1 Dated: May 1, 2023

BRUNICK, McELHANEY & KENNEDY PLC

2
3 BY: WJ Brunick
4 WILLIAM J. BRUNICK, ESQ.
5 LELAND P. McELHANEY, ESQ.
6 Attorneys for Defendant/Cross-Complainant,
7 MOJAVE WATER AGENCY
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EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

CASE TITLE: City of Barstow v. City of Adelanto	Department 1	<div style="text-align: center;"> FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE JUN 03 2022 <i>L. Howell</i> </div>
CASE NO.: CIV208568		
DATE: June 3, 2022		

PROCEEDING: Order (1) Granting in part the Watermaster's Motion to Adjust the Free Production Allowances for Water Year 2022-2023; (2) Issuing an Order to Show Cause re Further Rampdown for Alto; and (3) Directing the Watermaster to Report on Efforts 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) regarding some of the five subareas. After consideration of the moving papers, the response by the California Department of Fish and Wildlife supporting the motion, the "Opposition/Response" of Mitsubishi Cement Corporation, and the oral comments made at the hearing on June 2, 2022, on behalf of the Watermaster, Mitsubishi, the Newberry Springs Recreational Lake Association, the Department of Fish and Wildlife, the Phelan Pinon Hills Community Services District, and Van Dam Ranch, the Court rules as follows:

Centro:

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 Centro is reduced to 60% of BAP for Water Year 2022-2023.

Este:

The Watermaster proposed that the FPA be reduced from 65% of BAP to 60%. However, the Watermaster also asked the Court to consider a reduction of only 2.5%.

The Court does not find any justification for a reduction of less than 5% in this subarea. Rampdowns may be ordered when FPA exceeds PSY. That is the case in this subarea: FPA is 13,493, and PSY is only 4,728.

A rampdown may be appropriate even if verified production does not *currently* exceed PSY. The Court reiterates its finding and its reasoning as recorded in its order of July 23, 2019:

"The Court finds that, although the current FPA greatly exceeds PSY, the area is not being overdrafted because verified production is below PSY. Therefore, no immediate rampdown is [currently] necessary to reduce overdrafting. Nevertheless, given that the Judgment limits rampdowns to 5% per year, the FPA should be ramped down now so that, if production increases in the future, the FPA will be low enough to ensure that the increased pumping does not exceed PSY. By this Order, the Court notifies the producers in

Este that the Court intends to impose a rampdown of 5% per year until FPA is approximately equal to PSY.”

For that reason, the Court believes that Este’s FPA should have been ramped down long ago, and the Court regrets not having started doing so before 2019.

Mr. Chuck Bell argued to the Watermaster that the residents of Lucerne Valley “need time to adjust to the inevitable future of less water availability and its economic and environmental consequences” The Court does not find that argument persuasive, given that the judgment was entered 30 years ago, and that the Court warned Este producers three years ago that the Court intended to bring FPA in line with PSY by ramping down by 5% each year.

Moreover, the annual production in the Este subarea is only 4,304, less than a third of FPA. Therefore, a rampdown of FPA for a full 5% would not prevent production from the subarea as a whole from continuing at present levels.

The Court acknowledges that, although the reduction of FPA does not limit production in the subarea as a whole, it can have adverse effects on individual producers. In particular, Mitsubishi Cement Corporation argued that it would be affected because any reduction in FPA also reduces its carry-over rights. The Court does not find that to be a reason to refrain from implementing a rampdown of a full 5%. Mitsubishi has enjoyed unimpaired carry-over rights for decades longer than it would have had the Court ramped down FPA in a timely fashion. It is not in a position to complain now. Besides, the reduction of carryover rights is a consequence of a reduction in FPA. If that were enough to prevent a rampdown, no rampdown would ever occur.

The Court approves the Watermaster’s proposed 5% reduction. The Court orders that the FPA for all producers in Este is reduced to 60% of BAP for Water Year 2022-2023.

Oeste:

The Watermaster proposed that the FPA be reduced from 60% of BAP to 55%. However, the Watermaster also asked the Court to consider a reduction of only 2.5%.

No one offered any evidence or argument to support a rampdown limited to 2.5% in Oeste. The Court does not find any justification for a reduction of less than 5%. Rampdowns are generally ordered when FPA exceeds PSY. That is the case in this subarea: FPA is 4,355 and PSY is only 1,712. For the reasons explained above regarding Este, the Court believes that FPA should have been ramped down long ago, and the Court regrets not having started doing so earlier.

The Court approves the Watermaster’s proposed 5% reduction. The Court orders that the FPA for all producers in Oeste is reduced to 55% of BAP for Water Year 2022-2023.

Alto:

The FPA is currently set at 55% of BAP for all producers. The Watermaster initially proposed that the FPA remain at 55%, because the “FPA is about equal to PSY under long-term water supply assumptions.”

The Court does not find that reasoning to be persuasive, for the following reasons:

- The Court does not have confidence that, in these times of climate disruption, it is prudent to rely upon the accuracy of those long-term supply assumptions, at least in the short term. As Mr. Wagner states, if the judgment were being negotiated today, it would be more prudent to select “a shorter, drier planning period (hydrologic base period) for local supply . . . , resulting in a lower estimated Production Safe Yield and consequently lower annual Free Production Allowance.” (Wagner Decl., p. 6, ll. 18-21.)
- “Alto experienced about 51,000 acre-feet of groundwater depletion.” Mr. Wagner, the Watermaster’s engineer, opined that that depletion resulted from the fact that production exceeded PSY and that the drought had greatly reduced natural water supplies flowing into the basin. Moreover, Wagner acknowledged that, with minor exceptions, the depletion of groundwater storage had worsened over each of the last 10 years. (See 28th Annual Report, Figure 3-18.) He also opined that a rampdown of FPA would tend to reduce the magnitude of that depletion in the future.

In the Court’s tentative ruling, it expressed the intention to reject the Watermaster’s proposal and instead impose a rampdown of between 0.5% and 5.0%. At the hearing, the Watermaster’s engineer and counsel endorsed the Court’s tentative ruling. Specifically, they endorsed a rampdown of 5%, even though that would reduce FPA to a level below PSY.

The Court does not adopt either the Watermaster’s initial proposal, for the reasons stated above. Nor does it adopt the 5% rampdown proposed by the Court, because Alto’s FPA exceeds its PSY by only 0.6% of BAP, and because the parties have not had sufficient opportunity to respond to the Court’s proposal. Instead, the Court orders that the FPA for all producers in Alto is reduced by 0.5% to 54.5% of BAP for Water Year 2022-2023.

Baja:

In June of 2021, the Watermaster proposed that the FPA be reduced from 25% of BAP to 20%. The Court declined to approve that proposal because it would have resulted in a 20% reduction in FPA in a single year, which the Court found to be unreasonably burdensome. Instead, the Court ordered that the FPA be reduced by 2.5% of BAP, which was equivalent to 10% of the prior FPA. As a result, the FPA for all producers in Baja was reduced to 22.5% of BAP for Water Year 2021-2022.

This year, the Watermaster proposed that the FPA for Baja remain at 22.5%. In support of that recommendation, it noted that water production has declined significantly since 2020, down to 12,867, and that the decrease in production “might be” permanent. It also stated that the decline in water levels in some wells “might be” slowing.

While those are hopeful developments, the Court is not persuaded that those possibilities are sufficiently likely to form the basis for a decision to keep FPA where it is. FPA in Baja still exceeds PSY by 6.8%. Accordingly, in its tentative ruling, the Court rejected the Watermaster’s proposal, and announced its intention to ramp down the FPA in Baja, but as it did last year, to limit the rampdown to about 10% of the total FPA.

At the hearing, the Watermaster endorsed that alternative, as did the Department of Fish and Wildlife. The Newberry Springs Recreational Lake Association opposed it, arguing that the

production had decreased almost to the level of the PSY. The Court does not find that argument persuasive. As the Court explained in relation to Este and Oeste, there are good reasons to ramp down FPA even when production is less than or close to PSY. To the extent that the Association also argued that a reduction of FPA would result in greater purchases of replacement water, that is not persuasive because, if that were sufficient to defeat a rampdown, rampdowns would never occur when any producers in the subarea were producing at or above their share of the existing FPA.

Mr. Van Dam of Van Dam Ranch opposed any reduction in FPA because a lower FPA results in lower credit limits and reduced liquidity for his agricultural operation. The Court is not persuaded that those reasons justify a suspension of rampdowns for Baja, given that its FPA still exceeds its PSY.

The Court orders that the FPA for all producers in Baja is reduced by 2.0% to 20.5% of BAP for Water Year 2022-2023.

ORDER TO SHOW CAUSE

All interested parties are ordered to appear on August 25, 2022, at 1:30 P.M. in Department 1 and show cause, if any exists, why the Free Production Allowance for Alto should not be reduced by another 4.5% for Water Year 2022-2023.

Any response to this order, either in support of or in opposition to the proposed additional rampdown, shall be filed and served no later than August 5, 2022. It would be helpful if the parties would address the following questions:

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

UNAUTHORIZED PRODUCTION

In June of 2021, the Court directed 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. The Court also directed that, 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.

The Watermaster has initiated efforts to do so in Este and Oeste. The Watermaster is ordered:

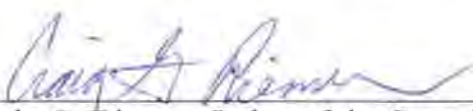
- To continue those efforts in those two subareas.
- To expand those efforts into the other three subareas, with the goal that all producers (a) who are suspected of producing more than 10 acre-feet but (b) who decline to stipulate to the judgment shall be named as cross-defendants in the Watermaster's cross-complaint (if the filing of that pleading is approved at the hearing later this month) and served with that cross-complaint no later than June 1, 2023.
- To meet and confer with the Phelan Pinon Hills Community Services District to explore any manner in which that CSD might be to assist in those efforts.
- To continue to cooperate with San Bernardino County Sheriff and San Bernardino County Code Enforcement in efforts to locate and abate the illegal cultivation of marijuana.
- To continue to explore the possibility of cooperation with San Bernardino County concerning permitting authority for new or expanded wells.
- To meet with appropriate legislators to explore the introduction of legislation to amend the statutes prescribing the powers of the Mojave Water Agency in such a way as to grant the MWA authority over the issuance of permits for new or expanded wells.

The Watermaster is also ordered to consider different or additional means by which information concerning the location and extent of water production within the basin can be obtained more accurately, more easily, and more quickly, whether by means of mandatory disclosures, mandatory installation of flow meters or similar devices, or otherwise.

The Watermaster shall file and serve a detailed report regarding all these efforts no later than December 2, 2022, and again concurrently with the filing of the Watermaster's next Motion to Adjust the Free Production Allowances, i.e., the motion to be heard sometime in June 2023 for Water Year 2022-2023.

SERVICE

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

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

SEP 16 2022

DATE: September 16, 2022

L. Howell

PROCEEDING: Order (1) Discharging Order to Show Cause Why the FPA of Alto Should Not Be Reduced by Another 4.5% of BAP, (2) Reducing the FPA in Alto by Another 0.1% of BAP, and (3) Directing the Watermaster to Re-Evaluate PSY for the Entire Basin

Background:

In its order filed 6-3-22, the Court reduced the FPA in the Alto Subarea from 55% to 54.5, a reduction of 0.5%. In addition, the Court ordered all interested parties "to appear on August 25, 2022, at 1:30 P.M. in Department 1 and show cause, if any exists, why the Free Production Allowance for Alto should not be reduced by another 4.5% for Water Year 2022-2023." That return date was later continued to September 16 2022.

Responses to the that OSC were filed by the Watermaster (on 6-28-22), the California Department of Fish and Wildlife (on 8-4-22), Mitsubishi Cement Corporation (on 8-4-22), the Silver Lakes Association (on 8-5-22), and the CalPortland Company (on 9-6-22). In addition, the Watermaster filed a reply to the DF&W's response (on 8-5-22). After considering the arguments raised in those responses, the Court issued a tentative ruling substantially the same as this order. No oral arguments, objections, or opposition was offered at the hearing on the OSC.

Order:

Accordingly, the Court rules as follows:

The order to show cause is discharged.

The free production allowance for all producers in the Alto Subarea is reduced by an additional 0.1 percent, for a total reduction of 0.6 percent, to 54.4 percent of BAP for Water Year 2022-2023.

The Watermaster shall re-evaluate the PSY for each of the five subareas in the basin. If possible, that new formulation shall be the foundation of the recommendations for adjustments to FPA for the Water Year 2023-2024. If that re-evaluation cannot be completed soon enough to be used for that purpose, it shall be completed as soon as possible and the Court's approval shall be sought as soon as possible thereafter.

Analysis:

There Is No Procedural Impediment to a Reduction of FPA Below PSY

The judgment requires the Watermaster to make annual recommendations to the court to adjust FPA "if needed." (§ 24(o).) In determining whether an adjustment is needed, the

Watermaster must “be guided by the factors set forth in Exhibit ‘C’” (§ 24(o).) The scope of those factors is broad. They include “all pertinent hydrologic data and estimates,” changes in storage, changes in the factors listed in Table C-1, and the factors listed in § 2.a of Exhibit H. (Exhibit C, § A.)

Beyond necessity, there are only two restrictions on placed on the Watermaster when deciding upon its recommendations to the Court. First, paragraph 24(o) provides that the Watermaster cannot recommend a reduction in FPA for a Subarea in an amount that would “exceed five percent of the aggregate Base Annual Production of that Subarea.” Second, paragraph 2.a. of Exhibit H provides that the Watermaster must “compare the Free Production Allowance with the estimated Production Safe Yield. In the event the Free Production 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 full five percent of the aggregate Subarea Base Annual Production.”

The restrictions placed upon the Court when ruling on those recommendations are few. If the Watermaster recommends a change, the Court must “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.” (*Ibid.*)

However, the judgment contemplates annual recommendations to the Court by the Watermaster. (§ 24(o).) So do the Watermaster’s own rules. (Rule 15.) Moreover, those rules require the Watermaster to give notice of its preliminary recommendation, conduct a public hearing concerning that preliminary recommendation, and then make a final recommendation to the Court, all by prescribed dates. The Watermaster did not, in either its preliminary or final recommendation, recommend that the FPA for Alto be reduced below PSY. Indeed, it did not recommend any reduction for Alto whatsoever. Because it did not recommend a reduction by the prescribed deadlines, and because therefore no notice was given of any such potential reduction, the Watermaster asserts that the Court cannot reduce the FPA below PSY at this procedural juncture.

Two premises appear to underlie that conclusion. One is that, unless the Watermaster first makes a recommendation concerning a subarea’s FPA, the Court cannot adjust the FPA. The Court agrees. (§ 24(o).)

The second premise appears to be that, when considering what adjustment should be made, the Court is somehow limited by the Watermaster’s recommendation. Specifically, the Watermaster opines: “Subsection (o) does not authorize a reduction in FPA where, as here, the Watermaster has not recommended a further reduction in FPA.” (Reply to DF&W, p. 2.) With that premise, the Court does not agree.

The Court’s role is not simply to approve or veto the Watermaster’s recommendation. To the contrary, the judgment provides that “[t]he Court’s review shall be *de novo* and the Watermaster[’s] decision or action shall have no evidentiary weight in such proceeding.” (§ 36(d).) In other words, the Court is not bound by the recommendation of the Watermaster as to

what changes are or are not necessary. Instead, the Court is charged with drawing its own conclusions from the evidence, which may differ from the Watermaster's conclusions.

In short, while the Court cannot act until the Watermaster has submitted its recommendations, and while the Court must conduct a noticed hearing on those recommendations, the Court thereafter can make whatever adjustment is called for by the Court's interpretation of the evidence, limited only by the 5%-per-annum maximum reduction.

The Court has implicitly applied that interpretation of the judgment repeatedly when ruling on the last four annual adjustment motions, regarding both Alto and other subareas.

- In 2019, the Watermaster recommended that the FPA for agricultural producers in Alto remain at 80%. The Court instead reduced it to 75%. In the same motion, the Watermaster recommended that the FPA for both Centro and Este remain at 80%. The Court rejected those recommendations and reduced both to 75%.
- In 2020, the Watermaster recommended that the FPA for agricultural producers in Alto be reduced to 70%. The Court instead reduced it to 65%. At the same time, the Watermaster recommended that Oeste be reduced to 70%. Instead, the Court reduced it to 65%, and abolished the differential rampdowns between agricultural producers and M&I producers in Oeste.
- In 2021, contrary to the recommendation of the Watermaster regarding Alto, the Court eliminated the differential between agricultural producers and M&I producers, and imposed a reduction to 55%. In the same order, the Court rejected the recommendation that Baja be reduced to 20%, and instead reduced it to 22.5%.
- In 2022, the Watermaster recommended that Baja stay at 22.5%. Instead, the Court reduced its FPA to 20%.

Thus, over the last four water years, the Court has sometimes adopted the Watermaster's recommendations, sometimes imposed a lesser reduction than recommended, and sometimes imposed a greater reduction. Occasionally, it also restructured the rampdowns by eliminating pre-existing differentials between different types of users, without any recommendation by the Watermaster to do so. Were the Watermaster's interpretation of the judgment correct, then the Court acted beyond its authority every time that its order varied from the Watermaster's recommendation. Neither the Watermaster nor any other party has ever questioned the Court's authority to order reductions in the FPA that differ from what the Watermaster has recommended. That silence is an implicit acknowledgement that the Court is not limited by the nature of the Watermaster's recommendation, or by the extent of the recommended reduction, but only by whether the Watermaster has made a recommendation regarding that subarea's FPA for the Court to consider.

Here, the Watermaster recommended that no adjustment be made to the FPA for Alto. The issue of whether any adjustment of Alto's FPA was needed was thereby put on the table for decision. Notice was given of the Watermaster's annual adjustment motion. After the hearing on that motion on 6-2-22, the Court determined that it would hold an additional hearing on 8-25-22

concerning the specific issue of whether Alto's FPA should be reduced below PSY. (Order of 6-3-22.) That hearing was ultimately continued to 9-16-22, and notice of that continuance was given. That is more than sufficient to satisfy the notice requirement in paragraph 36, which does not prescribe any minimum period of notice at all.

The procedural prerequisites of a recommendation and notice having been satisfied, the Court may decide at this time whether Alto's FPA should be reduced to a level below the currently estimated PSY.

Substantive Restrictions on the Reduction of FPA Below PSY

The Court agrees with Mitsubishi that the judgment does not contemplate reductions in FPA below PSY. Although the judgment does not expressly state such a limitation, the underlying theme of the physical solution is that the parties have the right to produce water for beneficial use up to FPA so long as that level of production is sustainable. As the judgment puts it: "A fundamental premise of the Physical Solution is that all Parties will be allowed, subject to this 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 according to the methods set forth herein." (Judgment, ¶V(A)(22).) The "sustainable" level of production is the PSY. Thus, the parties have the right to produce without charge up to the PSY. The language of the statement of decision confirms that there is no power to rampdown FPA below PSY.

Re-Evaluating PSY

PSY is defined as "[t]he highest average Annual Amount of water that can be produced from a Subarea: (1) over a sequence of years that is representative of long-term average annual natural water supply to the Subarea net of long-term average annual natural outflow 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." (Judgment, ¶II(A)(4)(aa).)

Over the last three years, Alto's FPA has been reduced to just above PSY. Nevertheless, the storage levels have continued to drop, just as they have been for the last 10 years. If FPA is reduced to PSY, but groundwater storage is still declining notwithstanding the purchase and supply of replacement water, it's logical to question whether the PSY calculations are founded on correct assumptions.

For instance, the present calculation of PSY has been based on a 60-year study of flows from 1930 to 1990. The Court questions whether a 60-year period in the middle of the 20th century is still an appropriately representative period from which to measure the long-term averages specified in the definition of PSY, especially given the 32 years that have passed since 1990 and the climatic disruptions that we have been experiencing during that time.

If that is not the most representative period, should a different period be defined? Mr. Wagner has stated that, if the judgment were being negotiated today, it would be more prudent to select "a shorter, drier planning period (hydrologic base period) for local supply . . . , resulting in a

lower estimated Production Safe Yield and consequently lower annual Free Production Allowance.” (Wagner Decl., p. 6, ll. 18-21.) Is the Watermaster bound to rely upon what appears at this point in time to be a less-than-prudent period?

The Court acknowledges that the Watermaster re-evaluated PST three years ago. However, in his 2019 declaration, Mr. Wagner suggests that the changes were largely driven by changes in consumptive use, and did not consider changes in supply. At the time he stated:

Periodic updates to PSY are necessary to capture changes in land use that may occur over time. Irrigation patterns, cropping, general land uses, consumptive use of water and patterns of return flow for example affect PSY. **The long-term average annual supply is generally based on the period 1930-31 to 1989-90.** The PSY update is focused on changes in consumptive uses from those reported by Webb [Albert. A. Webb and Associates]. The consumptive use is evaluated annually by the Watermaster Engineer and reported in Chapter 3 of the annual report....

The current PSY estimate includes long-term water supply as specified in the Judgment, consumptive uses for 2017-2018, phreatophyte use as indicated in the Judgment, Subarea subsurface obligations and surface obligations....

(2019 Wagner declaration, p. 3, ll. 5-17, emphasis added.) Thus, the 2019 re-evaluation appears to re-evaluate all of the relevant factors except for supply. Why, with an additional and more recent 30 years of data, should the PSY calculation continue to rely upon the prior 60-year period for defining the long-term average? At the very least, should not the past 32 years of data be added to the original 60 years?

For all these reasons, the Court declines to order rampdown of FPA below PSY. Instead, the Court will order FPA to equal to PSY, by reducing FPA by an additional 0.1 percent to 54.4%, and shall order the Watermaster to re-evaluate PSY in all subareas as part of its annual motion in June of 2023.

SERVICE

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

MOJAVE BASIN AREA WATERMASTER

ALTO SUBAREA WORKSHOP

**Discussion of Court Order
related to re-evaluation of
Production Safe Yield and
the proposed Free
Production Allowance for
Water Year 2023-24**

**March 7, 2023
10:00-11:30 a.m.**

**Mojave Water Agency Office
13846 Conference Center Drive
Apple Valley, California 92307
760-946-7000
Website: www.mojavewater.org**



The Court's most recent order was distributed to all parties on September 19, 2022. The Watermaster is providing an opportunity for Alto parties to ask questions and better understand the Court's order related to re-evaluation of Production Safe Yield. Additionally, the proposed adjustment to Alto Free Production Allowance for Water Year 2023-24 will be discussed, which is currently being circulated for comment by the Watermaster.

Interested parties are encouraged to participate in this in-person informal workshop along with MWA and Watermaster staff.

If you have any questions, please feel free to contact the Watermaster at 760-946-7000.

MOJAVE BASIN AREA WATERMASTER

ESTE SUBAREA WORKSHOP

**Discussion of Court Order
related to re-evaluation of
Production Safe Yield and
the proposed Free
Production Allowance for
Water Year 2023-24**

**March 7, 2023
2:00-3:00 p.m.**

**Mojave Water Agency Office
13846 Conference Center Drive
Apple Valley, California 92307
760-946-7000**

Website: www.mojavewater.org



The Court's most recent order was distributed to all parties on September 19, 2022. The Watermaster is providing an opportunity for Este parties to ask questions and better understand the Court's order related to re-evaluation of Production Safe Yield. Additionally, the proposed adjustment to Este Free Production Allowance for Water Year 2023-24 will be discussed, which is currently being circulated for comment by the Watermaster.

Interested parties are encouraged to participate in this in-person informal workshop along with MWA and Watermaster staff.

If you have any questions, please feel free to contact the Watermaster at 760-946-7000.

MOJAVE BASIN AREA WATERMASTER

OESTE SUBAREA WORKSHOP

**Discussion of Court Order
related to re-evaluation of
Production Safe Yield and
the proposed Free
Production Allowance for
Water Year 2023-24**

**March 7, 2023
3:00 - 4:00 p.m.**

**Mojave Water Agency Office
13846 Conference Center Drive
Apple Valley, California 92307
760-946-7000**

Website: www.mojavewater.org



The Court's most recent order was distributed to all parties on September 19, 2022. The Watermaster is providing an opportunity for Oeste parties to ask questions and better understand the Court's order related to re-evaluation of Production Safe Yield. Additionally, the proposed adjustment to Oeste Free Production Allowance for Water Year 2023-24 will be discussed, which is currently being circulated for comment by the Watermaster.

Interested parties are encouraged to participate in this in-person informal workshop along with MWA and Watermaster staff.

If you have any questions, please feel free to contact the Watermaster at 760-946-7000.

MOJAVE BASIN AREA WATERMASTER

CENTRO SUBAREA WORKSHOP

**Discussion of Court Order
related to re-evaluation of
Production Safe Yield and
the proposed Free
Production Allowance for
Water Year 2023-24**

**March 14, 2023
1:00 - 2:00 p.m.**

**City of Barstow
220 East Mountain View St., Ste. A
Barstow, California**



The Court's most recent order was distributed to all parties on September 19, 2022. The Watermaster is providing an opportunity for Centro parties to ask questions and better understand the Court's order related to re-evaluation of Production Safe Yield. Additionally, the proposed adjustment to Centro Free Production Allowance for Water Year 2023-24 will be discussed, which is currently being circulated for comment by the Watermaster.

Interested parties are encouraged to participate in this in-person informal workshop along with MWA and Watermaster staff.

If you have any questions, please feel free to contact the Watermaster at 760-946-7000.

Website: www.mojavewater.org

MOJAVE BASIN AREA WATERMASTER

BAJA SUBAREA WORKSHOP

**Discussion of Court Order
related to re-evaluation of
Production Safe Yield and
the proposed Free
Production Allowance for
Water Year 2023-24**

**March 14, 2023
2:30 - 3:30 p.m.**

**City of Barstow
220 East Mountain View St., Ste. A
Barstow, California**



The Court's most recent order was distributed to all parties on September 19, 2022. The Watermaster is providing an opportunity for Baja parties to ask questions and better understand the Court's order related to re-evaluation of Production Safe Yield. Additionally, the proposed adjustment to Baja Free Production Allowance for Water Year 2023-24 will be discussed, which is currently being circulated for comment by the Watermaster.

Interested parties are encouraged to participate in this in-person informal workshop along with MWA and Watermaster staff.

If you have any questions, please feel free to contact the Watermaster at 760-946-7000.

Website: www.mojavewater.org

EXHIBIT C

1 William J. Brunick, Esq. (State Bar No 46289)
2 Leland P. McElhaney, Esq. (State Bar No. 39257)
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8 Attorneys for Defendant/Cross-Complainant
MOJAVE WATER AGENCY

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF RIVERSIDE**

12 CITY OF BARSTOW, et al.,)

13 Plaintiff,)

14 vs.)

15 CITY OF ADELANTO, et al.,)

16 Defendant,)

LEAD CASE NO. CIV208568
JCCP5265 MOJAVE BASIN WATER
CASES

**DECLARATION OF ROBERT C.
WAGNER, P.E. IN SUPPORT OF
MOTION TO ADJUST FREE
PRODUCTION ALLOWANCE FOR
WATER YEAR 2023-2024**

Assigned for All Purposes to:
Hon. Craig G. Riemer, Judge Presiding
Dept. 1

DATE: June 9, 2023

TIME: 1:30 pm

DEPT: 1

Reservation ID:

22 AND RELATED CROSS ACTIONS)
23)

24 I, Robert C. Wagner, declare as follows:

25 I am a licensed Civil Engineer in the State of California and President of the firm of Wagner and
26 Bonsignore, Consulting Civil Engineers in Sacramento, California. A copy of my professional resume
27 is attached as Exhibit 1 and list of sources used in support of this declaration is attached as Exhibit 2. I
28

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

7 In my capacity as Engineer for the Mojave Basin Area Watermaster, I have reviewed the Motion
8 to Adjust FPA for Water Year 2023-24 and the Watermaster's Twenty-Ninth Annual Report. Each of
9 the facts set forth in the Motion to Adjust FPA for Water Year 2023-24 are true and correct to the best
10 of my knowledge and I could competently testify thereto.

11 I have reviewed the recommended adjustments to FPA for Water Year 2023-24 set forth in the
12 pending motion and each of the recommendations set forth therein for each of the Subareas is consistent
13 with my opinions and recommendations as conveyed to the Watermaster. The recommendation to adjust
14 FPA for each Subarea was presented at the February 22, 2023 and the March 22, 2023 hearings held by
15 Watermaster as required by the Judgment. Watermaster's recommendation is guided by the Court's
16 Order from September 16, 2022.

17 The Court wrote in its September 16, 2022 Order:

18 "The Watermaster shall re-evaluate the PSY for each of the five subareas in the basin. If possible,
19 that new formulation shall be the foundation of the recommendations for adjustments to FPA for the
20 Water Year 2023-2024. If that re-evaluation cannot be completed soon enough to be used for that
21 purpose, it shall be completed as soon as possible and the Court's approval shall be sought as soon as
22 possible thereafter."

23 Watermaster has been unable to fully evaluate a new Production Safe Yield (PSY) for each of
24 the five Subareas due to staffing and the complexity of this type of analysis, in time for the 2023-24
25 Water Year. The re-evaluation of PSY for each of the five Subareas is expected to be completed by
26 December 1, 2023. However, for the Alto Subarea, as described below, we have provided a preliminary
27 reduction in the PSY for the near term, that results in a reduction in Alto FPA. Watermaster will provide
28 a more detailed analysis and recommendation for Court consideration by December 1, 2023.

///

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

<u>Subarea</u>	<u>Base Annual Production</u>	<u>2022-23 FPA</u>	<u>Production Safe Yield</u>	<u>Percent Difference¹</u>	<u>2021-22 Verified Production</u>
Alto	116,412	64,337	59,409 ²	4.2%	74,581
Baja	66,157	12,213	12,189	4.9%	10,521
Centro	51,030	31,260	21,088	19.9%	15,442
Este	20,205	12,523	4,728	38.6%	4,114
Oeste	7,095	4,011	1,712	32.4%	2,893

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

²See discussion below for the Alto Subarea.

The following is the recommended FPA for Water Year 2023-24:

<u>Subarea</u>	<u>Proposed 2023-24 Free Production Allowance</u>
Alto	50% of Base Annual Production
Centro	55% of Base Annual Production
Baja	20.5% of Base Annual Production
Este	55% of Base Annual Production
Oeste	50% of Base Annual Production

Alto – 50% of BAP

During 2021-22, inflow measured at Deep Creek and West Fork Mojave River, as reported by the United States Geological Survey (USGS), was 19,641 acre-feet or about 30% of the 60-year base period average (65,538 acre-feet). During the recent 11-year period, 2012 to 2022, inflow at the Forks, as reported by USGS was 42% (27,607 acre-feet) of the 60-year base period average (Exhibit 4). Given the drier than average inflow to Alto during the past 11 years, I recommend a reduction in FPA in Alto.

In order to reduce FPA from 54.4 % to 50%, a reduction in the PSY must be considered for the Alto Subarea. Table 5-1 of the Watermaster's annual report has been modified (Exhibit 5) to show a reduction in PSY in Alto from 64,406 acre feet currently to 59,409 acre feet. The primary reason for the

1 reduction is the elimination of a line item in the estimated long term average water supply that was
2 originally considered when the Judgment was first adopted. The item, “Deep Percolation of
3 Precipitation” relates to water from rainfall that percolates beyond the root zone of plants (native desert
4 or otherwise) and thus becomes groundwater supply. This value was originally estimated by the
5 California Department of Water Resources (DWR) in Bulletin 84, published in 1967 (Bulletin 84).

6 During extended dry periods it is unlikely that there is sufficient precipitation to cause percolation
7 past the root zone. For example, precipitation as measured at Victorville in 2021-22 was about 2.6
8 inches, all of which would be consumed by evaporation and evapotranspiration (DWR considered 8
9 inches as the minimum precipitation that would result in any recharge). For this reason, we propose
10 removing that element of the supply from the current calculation. We have also made minor adjustments
11 in imports related to wastewater discharges that are variable over time. These adjustments result in a
12 change in the PSY from 64,406 acre feet to 59,409. To more fully evaluate PSY, it is necessary to
13 investigate consumptive use of production, return flow of production, water use by riparian habitat,
14 gaged and ungaged inflow, mountain front recharge, estimates of inflow and outflow to and from the
15 Transition Zone and evaluate the changes in water levels over time. Ultimately the variation in water
16 levels will guide Watermaster in setting Free Production Allowance.

17 Also shown on Exhibit 5 are two alternatives based on different hydrologic base periods. The
18 period 1946-1965 was a 20-year dry period that produced about 50% of the long-term average inflow to
19 Alto, measured at the Forks. The more recent period, 1999-2022 produced about 78% of the long-term
20 average inflow. In the first case, the resulting FPA would be about 37.5% and about 45% in the second
21 case. These are estimates based on a preliminary evaluation to capture a range of possibilities for
22 determining Alto PSY.

23 Mojave Water Agency has recently developed a numerical groundwater model of the Upper
24 Mojave River Basin, inclusive of a portion of Este and Oeste. The model is a useful tool to estimate the
25 elements of water supply and change in storage necessary to establish a new PSY. Based on preliminary,
26 model output, the estimated loss in storage (deficit) in the Alto subarea between 1951 and 2017 was
27 between 16,800 acre feet and 18,500 acre feet per year (Exhibit 6). The current estimate of the deficit
28 in Alto, 18,277 acre feet, assuming an FPA of 50% as proposed herein, agrees well with the preliminary

1 model output. The modeling effort is currently ongoing and expected to be completed by December 1,
2 2023.

3 Based on the foregoing we proposed, reducing Alto PSY to 59,409 acre feet and setting FPA at
4 50% of BAP (see Exhibit 5).

5 Accounting for inflow at the Forks, return flows of production, and consumptive uses and outflow
6 from the Alto subarea, Alto experienced about 33,800 acre-feet of groundwater depletion in Water Year
7 2021-22 (Watermaster's 29th Annual Report, Table 3-2, pg. 31). Additional Rampdown in Alto, based
8 on a Free Production Allowance of 50%, would provide for the importation of about 18,277 acre feet of
9 supplemental water per year to offset the deficit, as measured against the long term average water supply
10 conditions (1931-1990) (see Exhibit 5).

11 At its March 22, 2023 hearing, Watermaster adopted a recommendation for the 2023-24 Water
12 Year to set Production Safe Yield at 59,409 acre feet. This reduction in PSY, resulted in a reduction of
13 FPA to 50% of BAP (see Exhibit 5). It is important to note that a shorter-term deficit in Alto might be
14 as much as 30,000 acre feet (Exhibit 5) if drier than average conditions persist. In recognition of the
15 potential shortfall in the long-term supply conditions, Mojave Water Agency, separately from its duties
16 as Watermaster is in the process of developing a Drought Protection Plan in order to import an additional
17 12,000 acre feet of State Water Project water per year, (subject to availability). It is expected that the
18 Policy will be adopted by September 30, 2023.

19 Exhibit 4 shows inflow at the Forks (USGS stream gages at Deep Creek and West Fork Mojave
20 River since 1931). As shown, there have been multiple wet and dry periods of inflow since 1931. The
21 current water year is expected to be wetter than average based on the precipitation in the upper Mojave
22 watershed through the end of April 2023. However, as shown wet periods and dry periods are part of
23 the average water supply, and one wet year does not change the analysis for long term average water
24 supply. Consequently, the current year's storms do not factor into the analysis herein regarding PSY or
25 FPA for Alto.

26 Further, both the annual water supply from local precipitation and runoff, and the availability of
27 supplemental water for import are unknown in advance. The purchase and recharge of supplemental
28 water always occurs either in arrears or as pre-storage (MWA imports water that is credited to its storage

1 account for later use). The factors that affect PSY, long term average supply, and consumptive use of
2 production are relatively stable from year to year. Consequently, PSY need not be evaluated on an
3 annual basis, but instead every 5 to 10 years, or if basin hydrologic conditions change, or consumptive
4 uses change. The preliminary recommendation for PSY for Alto will result in the importation of
5 supplemental water (on an average basis) of 18,277 acre feet. However, the basin's response to recharge
6 of this amount of water in addition to basin stresses will not be known for several years. While the
7 reevaluation of PSY may result in a different value than proposed herein, it is my recommendation that
8 FPA in Alto remain at 50% for the next five water years (Watermaster will evaluate and report to the
9 court annually on conditions in Alto as required by the Judgment).

10
11 **Centro – 55% of BAP**

12 PSY for Centro will be reevaluated within the next year and a recommendation provided to
13 Watermaster and the Court during the 2023-24 Water Year. As FPA remains higher than PSY in Centro,
14 pursuant to the Judgment, additional rampdown is warranted. We note that it is unlikely that PSY will
15 increase for the Centro subarea upon reevaluation. The primary reason is that the long-term average
16 water supply (1931-1990) is already included in the PSY estimate. It is not expected that the inflow to
17 Centro on an average basis will increase. MWA has already provided supplemental water to Centro as
18 a precursor to implementation of a Drought Protection Plan.

19
20 **Baja – 20.5% of BAP**

21 PSY for Baja will be reevaluated within the next year and a recommendation provided to
22 Watermaster and the Court during the 2023-24 Water Year. As FPA is within 5% of PSY (4.9%) in
23 Baja, additional Rampdown is not required. We note that the water production in Baja has declined
24 about 44% since 2020 to 10,521 acre-feet.

25
26 **Este – 55% of BAP**

27 PSY for Este will be reevaluated within the next year and a recommendation provided to
28 Watermaster and the Court during the 2023-24 Water Year. As FPA remains higher than PSY in Este,

1 pursuant to the Judgment, additional rampdown is warranted. We note that as water levels are relatively
2 stable, it is likely that PSY is higher than currently indicated, however, it is unlikely that PSY is
3 sufficiently higher to avoid additional rampdown.

4
5 **Oeste – 50% of BAP**

6 PSY for Oeste will be reevaluated within the next year and a recommendation provided to
7 Watermaster and the Court during the 2023-24 Water Year. As FPA remains higher than PSY in Oeste,
8 pursuant to the Judgment, additional rampdown is warranted. We note that as water levels are relatively
9 stable, it is likely that PSY is higher than currently indicated, however, it is unlikely that PSY is
10 sufficiently higher to avoid additional rampdown.

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

13 Dated: May 1, 2023

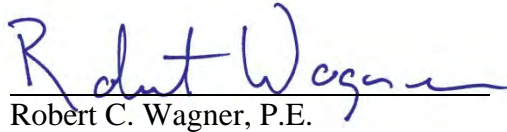
14 
15 Robert C. Wagner, P.E.

EXHIBIT 1

Wagner & Bonsignore

Consulting Civil Engineers, A Corporation

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

Martin Berber, P.E.
Patrick W. Ervin, P.E.
David P. Lounsbury, P.E.
Vincent Maples, P.E.
Leah Orloff, Ph.D., P.E.
David H. Peterson, C.E.G., C.H.G.
Ryan E. Stolfus

ROBERT C. WAGNER PROFESSIONAL RESUME

REGISTRATION:

Civil Engineer, California (License No. 52903)

EDUCATION:

B.S. Civil Engineering – California State University, Sacramento – 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 No. 38, Staten Island, San Joaquin County
- District Engineer for Reclamation District No. 341, Sherman Island, Sacramento County
- District Engineer for Reclamation District No. 348, New Hope Tract, San Joaquin County
- District Engineer for Reclamation District No. 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

“Fundamentals of Groundwater Hydrology”, UC Berkeley Extension, July 2002

EXHIBIT 2

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 - Mojave River At Afton, CA
- Precipitation Records
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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.

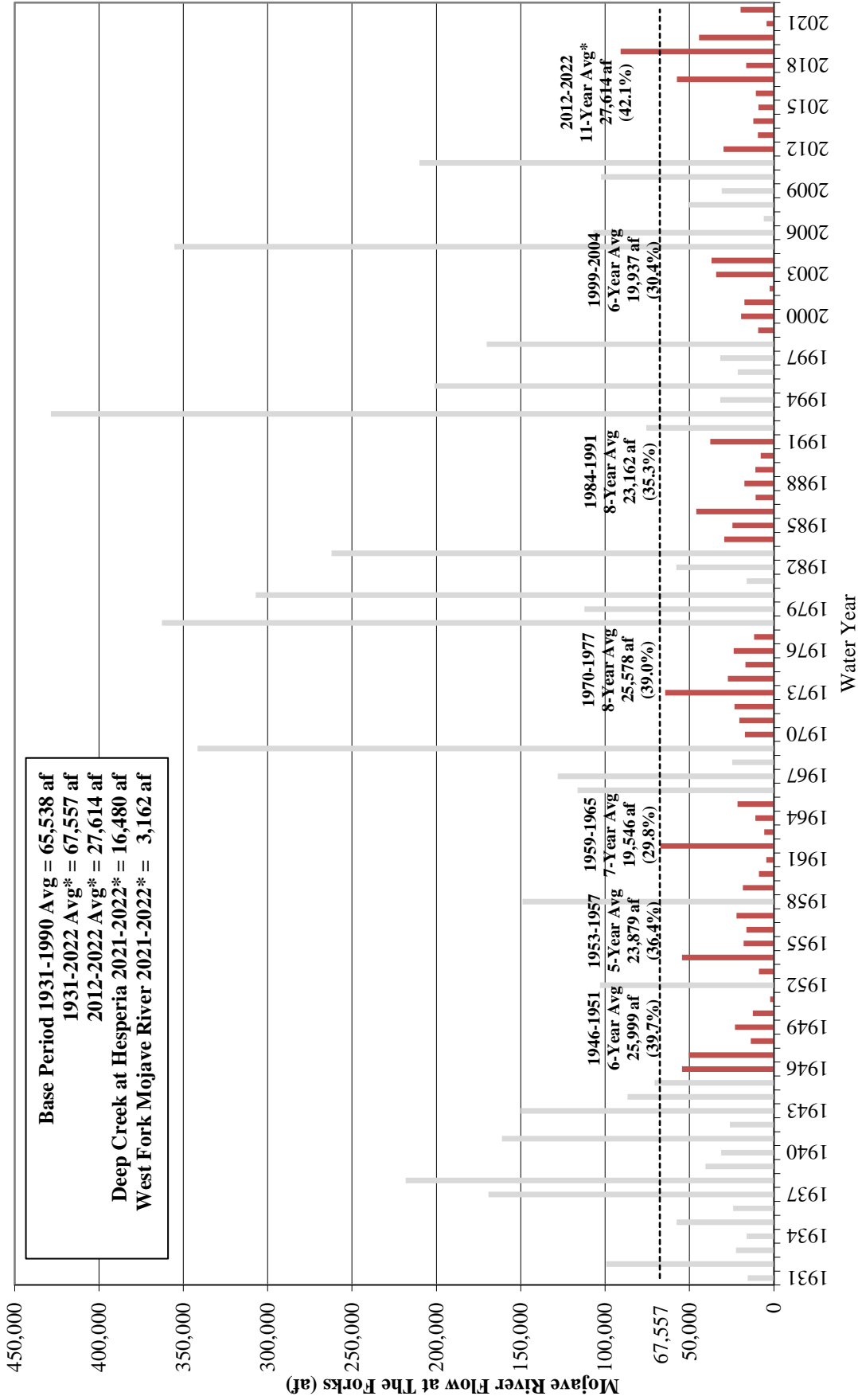
Watermaster’s powers and duties are specified in Paragraph 24 (a) through (x) and include all of the data collection and analyses and functions reported to Court in the Watermaster Annual Reports. The engineer is responsible to Watermaster and the Court to ensure that requirements as set forth in 24 (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 - 2022

* Preliminary data, subject to revision.



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 5

TABLE 5-1 MODIFIED

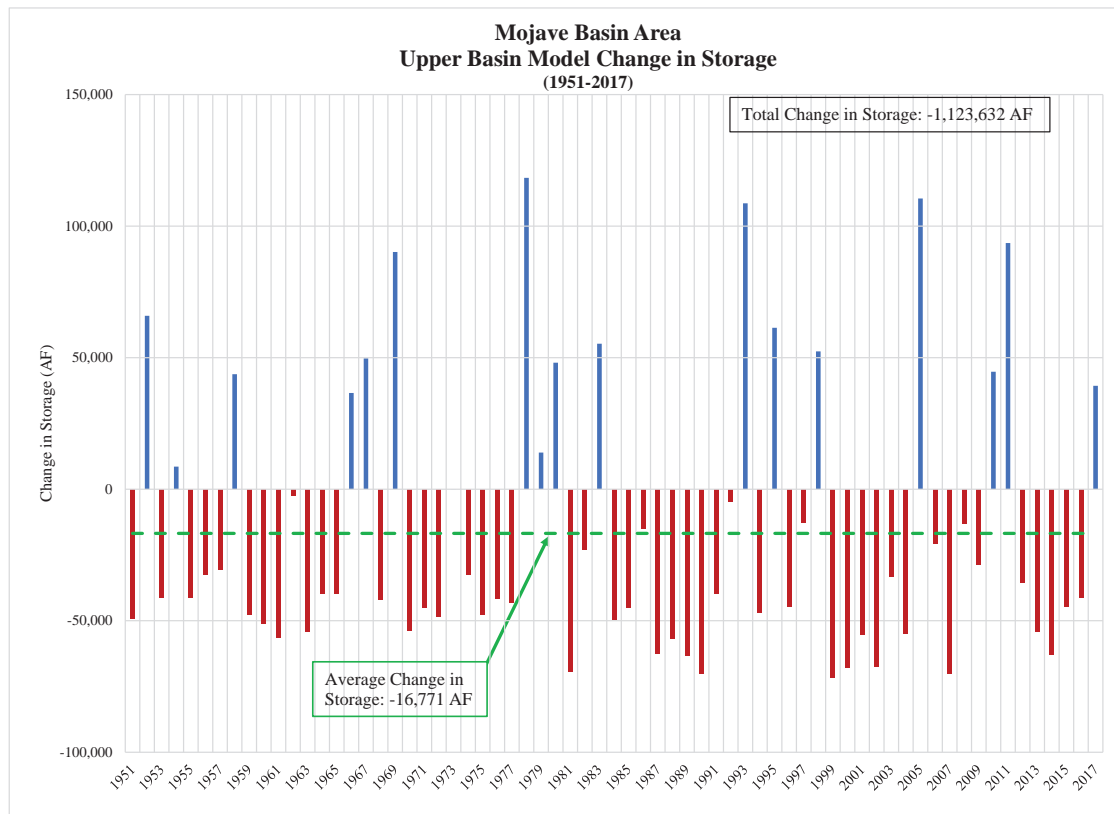
**ALTO SUBAREA HYDROLOGICAL INVENTORY BASED ON DIFFERENT SUPPLY ASSUMPTIONS
1931-1990 LONG TERM AVERAGE WATER SUPPLY, 1946-1965 AVERAGE WATER SUPPLY, 2012-2021
AVERAGE WATER SUPPLY AND 2017-18 CONSUMPTIVE USE, RETURN FLOW AND IMPORTS**

(ALL AMOUNTS IN ACRE-FEET)

WATER SUPPLY	<u>1946-1965</u>	<u>1931-1990</u>	<u>1931-1990</u>	<u>1999-2022</u>
Surface Water Inflow	33,204	68,500 ¹	68,500 ¹	53,552
Subsurface Inflow	1,000	1,000	1,000	1,000
Deep Percolation of Precipitation	0	3,500	0	0
Imports ⁷	737	2,234	737	737
TOTAL	34,941	75,234	70,237	55,289
CONSUMPTIVE USE AND OUTFLOW				
Surface Water Outflow	11,610	33,600 ²	33,600 ²	22,993
Subsurface Outflow	2,000	2,000	2,000	2,000
Consumptive use				
Agriculture ¹⁰	1,311	1,311	1,311	1,311
Urban ^{10,11}	40,603	40,603	40,603	40,603
Phreatophytes	11,000	11,000	11,000	11,000
TOTAL	66,524	88,514	88,514	77,907
Surplus / (Deficit)	(31,583)	(13,280)	(18,277)	(22,618)
Total Estimated Production ¹³	77,686	77,686	77,686	77,686
PRODUCTION SAFE YIELD¹⁴	46,103	64,406	59,409	55,068
FPA @ 50%		59,282	59,282	

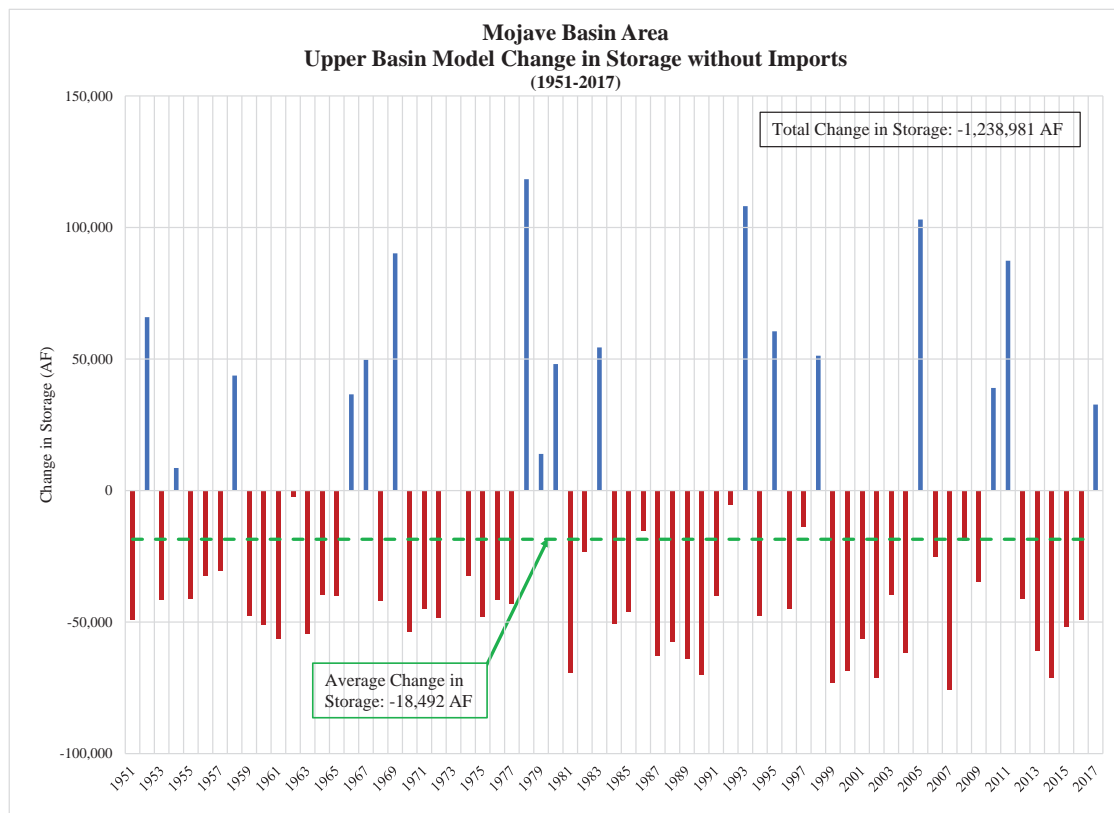
EXHIBIT 6

4/20/2023



G:\MOJAVE WATERMASTER - 3040\Analysis\3040-318M-Kapo Upper Basin Model WBE EDITs.xlsx

4/20/2023



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EXHIBIT D



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 20, 2023

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 2023-2024

Dear Watermaster Board Members,

The California Department of Fish and Wildlife (Department) has reviewed the memorandum entitled “Consider proposed Recommendation for Free Production Allowance for Water Year 2023-2024” prepared by Robert C. Wagner, Watermaster Engineer, dated February 22, 2023, and the Watermaster Engineer slideshow presentation at the February 22, 2023, Watermaster Board meeting entitled “FPA Recommendation for Water Year 2023-24”.

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, including the areas identified along the Mojave River in Exhibit H of the Judgment, working to match production in the Baja Subarea and other Subareas to available groundwater, natural inflows and return flows, implementing water conservation measures and urging compliance with the Judgment. The annual hearing to consider reductions in free production allowance (“rampdown”) was held on June 2, 2022. On June 3, 2022, Judge Riemer signed an Order requiring various reductions of free production allowance (FPA) for all subbasins. Specifically, the Court ordered that the FPA be reduced for Water Year 2022-2023 in Alto by 0.5% to 54.5% of base annual production (BAP), in Baja by 2% to 20.5% of BAP, in Centro by 5% to 60% of BAP, in Este by 5% to 60% of BAP, and in Oeste by 5% to 55% of BAP.

WATERMASTER RECOMMENDATION

The Department has reviewed the Watermaster Engineer’s analysis and conclusions, as well as his recommendations for production levels in the 2023-2024 Water Year. The Department agrees with the Watermaster Engineer’s conclusion that a reduction in FPA in the Baja Subarea is not required pursuant to the Judgment and that FPA should remain at 20.5% of BAP since FPA is within 5% of production safe yield (PSY) as established by the Judgment. The Watermaster has also proposed rampdown for Alto (4.4% reduction to 50% BAP), Centro (5% reduction to 55% BAP), Este (5% reduction to 55% BAP), and Oeste (5% reduction to 50% BAP). The Department supports the continued reductions of FPA in these basins until the free production allowance is within 5% of the PSY as required by the Judgment. We also note that the Watermaster Engineer’s February 22, 2023, memo includes the recommendation to hold FPA at 50% of BAP in Alto for 5 years. The Department does not believe that holding FPA at 50% of BAP is consistent with the Judgment, which requires an annual evaluation of whether FPA is within 5% of PSY. In addition, until the Watermaster’s re-evaluation of PSY calculations have been completed, the Department does not believe there is currently sufficient information to evaluate holding FPA reductions.

ADDITIONAL ACTIVITIES

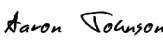
The Department has also been engaged during the past year in numerous activities to implement the Habitat Water Supply Management Plan for the Adjudicated Area of the Mojave River Basin. The Department requested funding for five projects utilizing the Biological Resources Trust Fund as approved at the July 27, 2022,

Mojave Water Agency (MWA) Watermaster Board meeting for a total dollar amount of \$72,000. These projects include 1) Mojave River Fuels Reduction and Weed Eradication, 2) Camp Cady Riparian Restoration and Monitoring, 3) Camp Cady Field Pivot Repairs, 4) Palisades Ranch Post-Fire Riparian Restoration, and 5) Mojave Narrows Regional Park Well Measurement. The projects are proceeding as described in our July 1, 2022, Biological Resources Trust Fund Request letter, in close coordination with project partners including MWA, the Mojave Desert Resource Conservation District (MDRCD), and Quail Forever.

In addition to the projects described above, Department staff attended numerous meetings including Technical Advisory Committee, regular meetings with MWA and Watermaster staff, ad hoc cannabis related meetings, Watermaster meetings, and the FPA court hearing on June 2, 2022 (by telephone). 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 2023-2024. In summary, the Department supports the Watermaster's 2023-2024 FPA rampdown recommendations, however we do not believe that a pause in ramp down in the Alto Subarea in future years is consistent with the Judgment or until PSY can be re-evaluated. The Department will be attending the March 22, 2023, Watermaster meeting as this matter is formally discussed and considered by the Watermaster Board.

Sincerely,

DocuSigned by:

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Senior Environmental Scientist
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Mojave Basin Area Watermaster
March 20, 2023
Page 4

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City of Hesperia

Gateway to the High Desert

March 22, 2023

Watermaster c/o
MOVAJE WATER AGENCY
13846 Conference Center Drive
Apple Valley, CA 92307

Subject: Mojave River Basin – Alto Subarea
Free Production Allowance (FPA) for Water Year 2023-24

Ladies and Gentlemen,

The Mojave Basin Judgment's, dated January 10, 1996, primary objective was to manage Basin overdraft. The Court appointed Mojave Water Agency (MWA) as Watermaster (WM) for the Basin. For Water Year 2023-24, WM has determined that each Subarea is in overdraft to some extent due to the use of water by all producers¹ and proposes a Free Production Allowance (FPA) reduction to 50% in the Alto Subarea due to:

1. **Well Water Levels** – water levels in some wells show a continuing downward trend in response to drier than average water supply during the past 11 years.
2. **Deep Creek and West Fork Mojave River Flows** – 2020-21 inflow to the Alto Subarea was 30% of the 60-year base period average².
3. **Groundwater Basin Depletion** – the Alto Subarea experienced a volume depletion of 33,383 acre-feet in water year 2021-22³.

The purpose of the ramp down is not to cause a reduction in pumping but a reduction in FPA to cause imported water supply purchases to offset the deficits⁴. Watermaster proposes that the FPA remain for the next 5 years to complete a water supply investigation and to develop flexible basin management tools for long term sustainability. MWA is implementing a drought protection plan that will import water for recharge as needed in addition to the water purchases by watermaster parties pursuant to the Judgment⁵.

¹ Draft Twenty-Ninth Annual Report of the Mojave Basin Area Watermaster, Water Year 2021-22, February 22, 2023, Summary of the Judgment, page 4.

² Draft Twenty-Ninth Annual Report of the Mojave Basin Area Watermaster, Water Year 2021-22, February 22, 2023, Summary of the Judgment, page 19.

³ Draft Twenty-Ninth Annual Report of the Mojave Basin Area Watermaster, Water Year 2021-22, February 22, 2023, Summary of the Judgment, page 38.

⁴ Draft Twenty-Ninth Annual Report of the Mojave Basin Area Watermaster, Water Year 2021-22, February 22, 2023, Summary of the Judgment, page 37.

⁵ Draft Twenty-Ninth Annual Report of the Mojave Basin Area Watermaster, Water Year 2021-22, February 22, 2023, Summary of the Judgment, page 38.



The City of Hesperia (City) opposes the unilateral ramp down for the following reasons:

1. Water Management

An underlying assumption of the Judgment is that sufficient water will be made available to meet the needs of the Basin in the future from a combination of natural supply, imported water, water conservation, water reuse, and transfers of FPA among parties⁶. The Judgment specifies factors that must be taken into consideration by WM in development of the FPA adjustment recommendation. Exhibit H of the Judgment provides that in the event that the FPA exceeds the PSY by 5% or more of the Subarea BAP, WM shall recommend a reduction in FPA equal to a full 5% of the aggregate subarea BAP⁷. The percent difference for the Alto Subarea does not trigger the proposed ramp down as shown on page 37. Therefore, a ramp down should not be recommended.

WM is required to administer the Judgment and the Physical Solution and is responsible for monitoring flows, verifying water production, reporting to the Court, collecting assessments, and conducting studies⁸. WM is monitoring flows, verifying water production, reporting to the Court, and collecting assessments; however, WM is not administering the Physical Solution nor conducting studies – or not sharing results of the studies – necessary to effectively manage the Basin. The Physical Solution and Basin Management Studies needed to improve Basin management are presented in later sections.

2. Imported Water Deliveries

All water produced in excess of any Producers share of the FPA must be replaced by the Producer, normally by payment to WM for funds sufficient to purchase Replacement Water. WM then assumes responsibility for replacing such excess production⁹. The table below summarizes Replacement Water requirements for each water year together with amounts of imported water delivered by MWA to the Alto Subarea.

Water Year	Alto Subarea Replacement Water Obligations (AF)	Alto Subarea Imported Water Deliveries (AF)	Alto Subarea Unused FPA (AF)
'18-'19	14,721	5,904	21,382
'19-'20	18,791	8,234	17,621
'20-'21	24,767	36	14,499
'21-'22	23,069	12	13,558

As shown in the above table, current FPA Replacement Obligations are not being met resulting

⁶ Draft Twenty-Ninth Annual Report of the Mojave Basin Area Watermaster, Water Year 2021-22, February 22, 2023, Summary of the Judgment, page 5.

⁷ Draft Twenty-Ninth Annual Report of the Mojave Basin Area Watermaster, Water Year 2021-22, February 22, 2023, Summary of the Judgment, page 36.

⁸ Draft Twenty-Ninth Annual Report of the Mojave Basin Area Watermaster, Water Year 2021-22, February 22, 2023, Summary of the Judgment, page 8.

⁹ Draft Twenty-Ninth Annual Report of the Mojave Basin Area Watermaster, Water Year 2021-22, February 22, 2023, Summary of the Judgment, pages 5 and 6.



in additional ramp down recommendations. Until WM manages the basin in accordance with the Judgment, it should not recommend additional ramp downs. During the 2019 Court proceeding, WM indicated that new revenues created by the 2019 ramp down would be used to increase imported water deliveries. However, as shown on the table below, production in the Alto Subarea exceeds unproduced supplies by approximately 10,000 AF over the past 2 water years. WM received the Replacement Water payments, Hesperia has paid \$3.7 million for replacement water, but WM did not deliver imported water.

3. Water Reuse/Return Flow

Water Reuse or Return Flow is part of the water supply¹⁰. Table 5-1 does not include return flow for each water year. Instead, it relies on a 2018 Water Consumptive Use Study prepared by WM. In WM's Annual Report, it indicates that it conducts a consumptive use analysis annually and fine tunes the assumptions as individual producers' use and each subarea's hydrology are greater understood¹¹. WM is not complying with its obligation to conduct annual consumptive use studies.

The 2018 study indicates that all indoor domestic use is assumed to be 100% return flow and all outdoor use is considered to be 100% consumed. Further, 51% of water use is for indoor uses. For the High Desert Communities, outdoor uses are limited and the 2018 Report assumptions are inaccurate. WM, in accordance with the Judgment, should complete a study to develop more accurate water consumptive use estimates.

Lastly, WM is ignoring wastewater system operation changes in the Alto Subarea. VVWRA is bringing two Sub-Regional Wastewater Treatment Plants on line that will provide recycled water supplies to meet irrigation demands resulting in demand reductions and Alto Subarea recharge. When operating at capacity, these plants will generate approximately 2,000 AFY of recycled water supplies for irrigation uses and Alto Subarea recharge.

Prior to recommending water ramp down, the Court should require WM to complete a consumptive use study that accurately reflects current water management practices.

4. On-River Pumping

WM indicates that Mojave River well levels are falling due to on-river pumping and limited imported water deliveries as presented above. Regarding on-river pumping, MWA constructed the Regional Recharge and Recovery Project (R³) intended as a management tool that could be used to help manage where water is recharged and pumped in the Alto Subarea in order to alleviate basin pumping stresses¹². R³ is located upstream of the Narrows stream gage. MWA has expanded R³ providing greater capacity to the City of Victorville and creating new supplies to the City of Adelanto and the project is planned to deliver up to 14,000 AFY. The City of Hesperia has raised concerns regarding drastic static water level changes along the River that may lead to land subsidence. R³ production has resulted in water elevation changes of more than 60 feet in wells located upstream of R³ production facilities. The following table documents R³ historic production:

¹⁰ Draft Twenty-Ninth Annual Report of the Mojave Basin Area Watermaster, Water Year 2021-22, February 22, 2023, Summary of the Judgment, page 36.

¹¹ Draft Twenty-Ninth Annual Report of the Mojave Basin Area Watermaster, Water Year 2021-22, February 22, 2023, Summary of the Judgment, page 29.

¹² Draft Twenty-Ninth Annual Report of the Mojave Basin Area Watermaster, Water Year 2021-22, February 22, 2023, Summary of the Judgment, page 16.



Water Year	R ³ Production (AF)
'18-'19	4,782
'19-'20	4,220
'20-'21	2,281
'21-'22	4,117

With implementation of R³, MWA reduced production costs for the City of Victorville. The groundwater aquifer that overlies the City of Victorville contains constituents that exceed drinking water contaminant levels. Victorville historically treated these water supplies - treatment results in higher operations and maintenance costs. Victorville, through an interconnection, supplied water to Adelanto. After R³, Victorville blended R³ supplies with local production, rather than costly treatment, to achieve water quality standards.

In addition to "water levels in some wells show a continuing downward trend in response to drier than average water supply during the past 11 years", greater on-river pumping and inconsistent imported water deliveries for recharge are contributing factors to in-river well level declines. R³ project has led to greater in-river production, and lower water levels while water levels in the Victorville area are rising. The R³ project has triggered both the 2019 ramp down and the proposed 2023 ramp down. Therefore, WM has effectively transferred water production costs from Victorville and Adelanto to other Alto Subarea producers. WM should not recommend a ramp down until R³ operational impacts are thoroughly evaluated.

5. Groundwater Banking Program

MWA began evaluating the feasibility of a large-scale Groundwater Banking Program. Work began in February 2020. Geotechnical and geohydrology investigations in the upper Alto Subarea continue, these will provide better information and data to use in determining the best locations for future off-river pumping. Investigations will characterize the subsurface infiltration rates, subsurface hydrogeologic zones and properties, groundwater levels, hydraulic properties and alluvial sediments of the aquifer as well as identify favorable areas for recharge facilities and help assess the regional suitability of the projects. The Agency's groundwater model for the upper Mojave River Basin will be updated as part of the ongoing investigations¹³. Since the study began in 2020, preliminary findings are likely available. WM has not shared any of the feasibility study findings with the City.

The City, in collaboration with San Bernardino County Flood Control, is planning a number of flood control and recharge basin projects that will be located off-river. Basins will attenuate runoff to protect downstream communities from flooding and will be designed to recharge recycled water developed at VVWRA's Hesperia Subregional Plant together with imported water recharge. The City requests that these projects be included MWA's investigations.

WM should share technical study findings with the City, all area producers, and the Court prior to recommending a ramp down.

¹³ Draft Twenty-Ninth Annual Report of the Mojave Basin Area Watermaster, Water Year 2021-22, February 22, 2023, Summary of the Judgment, page 16.



6. Conclusions

In light of the far above average rainfall occurring this year (2022-2023), last year's precipitation being 112% of the Base Period Average¹⁴ and the need for further investigation, WM should not recommend a ramp down. In addition to the above arguments, the City requests that WM re-evaluate data collection locations. Wells along the river are influenced by R³; therefore, should not be used for Basin storage calculations. The City's nearby wells – water levels are considerably different than in river well levels – would more accurately estimate water storage volumes. The Narrows gage is located upstream of VVWRA's wastewater effluent discharge - 2021-22 discharge was 15,095 AF – and does not accurately measure water conveyed to the lower subareas. The City also recommends changes to the storm water management requirement of the judgment. During severe winter storms, capture and recharge of storm water in the Alto Subarea is effective water management.

Thank you for your consideration regarding changing the ramp down recommendation. If you have any questions or require additional information, please advise.

Sincerely,

Michael Thornton, City Engineer

cc. Nils Bentsen, City of Hesperia, City Manager
Rachel Molina, City of Hesperia, Assistant City Manager
Casey Brooksher, City of Hesperia, Finance Director
Pam Lee, Aleshire & Wynder, LLP, City Attorney

¹⁴ Draft Twenty-Ninth Annual Report of the Mojave Basin Area Watermaster, Water Year 2021-22, February 22, 2023, Summary of the Judgment, page 19.

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Mojave Basin Water Cases JCCP5265

On May 1, 2023, I served the following entitled document:
**NOTICE OF MOTION AND MOTION TO ADJUST FREE PRODUCTION
ALLOWANCE FOR WATER YEAR 2023-2024; MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION OF ROBERT C. WAGNER IN SUPPORT
THEREOF** on the interested parties in this action in the manner described below,
addressed as follows:

XX BY MAIL AS FOLLOWS: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Bernardino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

 X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct

P. Jo Anne Quihuis

P. Jo Anne Quihuis

SERVICE LIST

The Mojave Water Agency, as the Mojave Basin Area Watermaster vs. All Persons Who are not presently parties to the comprehensive groundwater adjudication in the City of Barstow, et al., v. City of Adelanto, et al., Riverside Superior Court Case No. CIV208568, and are either producing more than 10 acre-feet of Basin groundwater annually, or using Basin groundwater for unlawful purposes, and Does 1 through 2,000

San Bernardino Superior Court Case No.: CIVSB 2218461

Mojave Basin Water Cases JCCP5265

Shunxing Weng 135 W. Newmark Ave., Apt. A Monterey Park, California 91754	Defendant, In Pro Per
Jasper Young Kim 2665 Amber Wood Pl. Thousand Oaks, California 91362	Defendant, In Pro Per
Kyung Ja Kim 9494 Baker Rd Lucerne Valley, California 92356	Defendant, In Pro Per
Chong C. Kim 9494 Baker Rd. Lucerne Valley, California 92356	Defendant, In Pro Per
Kyung P. Kim 15565 Meridian Rd. Lucerne Valley, California 92356	Defendant, In Pro Per
Jae Hwan Lee 1520 James M. Wood Blvd. Los Angeles, California 90015	Defendant In Pro Per
Byung Koo Chin 15648 Meridian Rd. Lucerne Valley, California 92356	Defendant In Pro Per
The Chin Family Life Estate Trust 15648 Meridian Rd. Lucerne Valley, California 92356	Defendant In Pro Per
Law Offices of Matthew C. Mullhofer, PC Matthew C. Mullhofer, Esq. 18012 Sky Park Circle, Ste. 100A Irvine, California 92614 Telephone: (714) 827-9955 Facsimile: (714) 827-9966 E-Mail: mcm@matthewcmullhofer.com	Attorneys for Defendant, Jing Chen

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Cameron H. Totten Paul P. Cheng Gene S. Lizaso PPRC Law, APC 790 E. Colorado Blvd., Suite 260 Pasadena, California 91101 Tele: (626) 356-8880 Fax: (888) 231-8196 E-Mail: litigation@pprclaw.com	Attorneys for Defendant, Weilong Huang
--	---

updated 04.18.23

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.

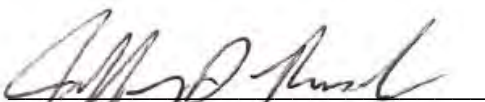
On May 1, 2022, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing 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 2023-2024; 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 1, 2023 at Apple Valley, California.



Jeffrey D. Ruesch

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Attn: Mary Tarrab
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Attn: Mary M Ross
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Mojave Basin Area Watermaster Service List as of May 01, 2023

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Lucerne Valley, CA 92356-0392

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Desert Girlz LLC (via email)
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Attn: Denise Courtney
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Apple Valley, CA 92307-5525

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Mojave Basin Area Watermaster Service List as of May 01, 2023

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Jackson, James N. Jr Revocable Living Trust
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Jackson, Ray Revocable Trust No. 45801
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Redlands, CA 92375-1450

Attn: Audrey Goller
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Attn: Lee Logsdon
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Mojave Basin Area Watermaster Service List as of May 01, 2023

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Mojave Basin Area Watermaster Service List as of May 01, 2023

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Mojave Basin Area Watermaster Service List as of May 01, 2023

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