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EXEMPT FROM FILING FEES
PER GOV. CODE § 6103

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

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

13 Plaintiffs,

14 v.

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

17 Defendants.

Case No. CIV 208568

**CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
RESPONSE TO WATERMASTER'S
MOTION TO ADJUST FREE
PRODUCTION ALLOWANCE FOR
WATER YEAR 2023-2024**

Date: June 9, 2023
Time: 9:30 a.m.
Dept: 1
Judge: Honorable Craig G. Riemer
Action Filed: November 21, 1990

21 **And All Related Cross Actions**

23 **INTRODUCTION**

24 The California Department of Fish and Wildlife (Department) respectfully submits this
25 Response in support of the Mojave Water Agency's (Watermaster) Motion to Adjust Free
26 Production Allowance for Water Year 2023-2024 (2023-2024 Rampdown Motion). Specifically,
27 the Department supports the 2023-2024 Rampdown Motion's request to maintain Free Production
28

1 Allowance (FPA) at 20.5% for Water Year 2023-2024 in the Baja Subarea (Baja), to continue to
2 comply with the *City of Barstow v City of Adelanto* Judgment entered on January 10, 1996
3 (Judgment), and to explore additional actions to ensure the sustainability of the Mojave Basin
4 Area (Basin). Further, the Department supports the Watermaster’s request in the 2023-2024
5 Rampdown Motion to rampdown the Alto Subarea’s (Alto) production FPA to 50% of Base
6 Annual Production (BAP). However, the Department does not support the 2023-2024
7 Rampdown Motion’s request to foreclose rampdowns in Alto for a five-year period.

8 **THE EVIDENCE SUBMITTED BY THE WATERMASTER ENGINEER TO THE**
9 **WATERMASTER BOARD AND THIS COURT FOR WATER YEAR 2023-2024**
10 **SUPPORTS MAINTAINING FPA FOR THE BAJA SUBAREA AT 20.5%**

11 For the 2023-2024 Water Year, the evidence submitted by the Watermaster Engineer,
12 including his Declaration attached to the 2023-2024 Rampdown Motion, the Watermaster’s
13 Twenty-Ninth Annual Report, and the presentations made by the Watermaster Engineer to the
14 Watermaster Board indicate that maintaining FPA in Baja at 20.5% of BAP is warranted. First,
15 the Watermaster Engineer concludes that the FPA is within 5% of BAP, as required by the
16 Judgment, and current water production and consumptive use have plummeted in Baja by close to
17 44% since the year 2020. (Declaration of Robert C. Wagner in Support of the 2023-2024
18 Rampdown Motion, Exhibit C to 2023-2024 Rampdown Motion at p. 6.) In fact, the verified
19 production as calculated by the Watermaster Engineer for water year 2021-2022 is below the
20 current PSY. (2023-2024 Rampdown Motion Exhibit C at p. 3.) The Watermaster Board
21 therefore has recommended that the Baja FPA be maintained at 20.5% of the BAP this water
22 year. (2023-2024 Rampdown Motion at pp. 6-8.) The Department agrees.

23 **THE WATERMASTER’S RECOMMENDATIONS FOR ALTO**

24 The Watermaster Engineer also recommends that FPA be reduced in Alto from 54.5% to
25 50% of FPA for the 2023-2024 water year. (2023-2024 Rampdown Motion p. 7, 2023-2024
26 Rampdown Motion Exhibit C at pp. 3-6.) The Department supports this recommendation. The
27 Department agrees with the Watermaster Engineer that it is inappropriate to count deep
28 percolating rainwater as part of PSY, when rainwater has not likely percolated beyond the root
zone for many years in Alto. (2023-2024 Rampdown Motion Exhibit C at pp. 3-6.) New analysis

1 should be completed regarding deep percolating groundwater during the current dry period Alto
2 has experienced over the past 25 years that demonstrates deep percolation is occurring, before any
3 such water is considered available for pumping. For this reason, FPA in Alto should be reduced
4 in water year 2023-2024 to 50% of BAP.

5 The Department, however, does not support the Watermaster's request that the Court
6 order, in advance, a 5-year hold on rampdowns in the Alto subarea. (2023-2024 Rampdown
7 Motion pp. 7, 10.) There is insufficient evidence at this time demonstrating that no further
8 rampdowns would be necessary for five years, and providing such an up-front suspension appears
9 to be inconsistent with the Judgment's requirement for annual recommendations as to
10 adjustments, if needed, within any subarea, guided by annual calculations of storage and other
11 pertinent data. (Judgment ¶ 24(o).) As the Watermaster Engineer admits, he is performing a new
12 PSY calculation and will complete that calculation in December 2023. (2023-2024 Rampdown
13 Motion Exhibit C at p. 2.) It is inappropriate to prejudge this PSY analysis and to order a 5-year
14 hold without the benefit of that analysis. If the new PSY analysis shows that Alto's current FPA
15 is within 50% of BAP, and groundwater storage in Alto increases, or at least does not decrease,
16 then Alto may not face a rampdown in the coming years. However, the Department sees no
17 reason to decide on the rampdown for Alto in advance of and without the benefit of this new PSY
18 analysis and in the absence of the crucial data all parties and this Court receive every year. The
19 Department therefore requests that this Court deny this portion of the 2023-2024 Rampdown
20 Motion.

21 The Department continues to be concerned by the long-term change in climatic
22 conditions, including the likely long-term changes in precipitation for the Basin. These likely
23 long-term changes in precipitation must continue to be analyzed and considered as part of the
24 Judgment's implementation, including by considering climatic changes and recent hydrologic
25 data in the new PSY analysis. Such analysis and consideration is critical to successful
26 implementation of the Watermaster's activities and policies that assist in managing the Basin
27 under this new normal.

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CONCLUSION

For the foregoing reasons, the Department respectfully requests that the Court 1) set the FPA in the Baja Subarea at 20.5% of BAP for the 2023-2024 water year; 2) set the FPA in the Alto Subarea at 50% of BAP for the 2023-2024 water year; and 3) not order a 5-year hold on any Alto rampdown for the reasons stated above.

Dated: May 26, 2023

Respectfully submitted,

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LA1990CV1678
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DECLARATION OF SERVICE BY E-MAIL ad OVERNIGHT COURIER

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

Case No.: **CIV 208568**

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

On May 26, 2023, I served the **CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE'S MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO WATERMASTER'S MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR WATER YEAR 2023-2024** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 26, 2023, at Los Angeles, California.

Beatriz Davalos

Declarant



Signature

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO}

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

On May 30, 2023, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing each document being served, to each Party or its designee according to the official service list, a copy of which is attached hereto, and which shall be maintained by the Mojave Basin Area Watermaster pursuant to Paragraph 37 of the Judgment. Served documents will be posted to and maintained on the Mojave Water Agency's internet website for printing and/or download by Parties wishing to do so.

Document(s) filed with the court and served herein are described as follows:

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE'S MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO WATERMASTER'S MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR WATER YEAR 2023-2024

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 30, 2023 at Apple Valley, California.



Jeffrey D. Ruesch

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Calimesa, CA 92320-1301

Attn: Brian E. Bolin
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Attn: Nick Grill (terawatt@juno.com)
Grill, Nicholas P. and Millie D. (via email)
35350 Mountain View Road
Hinkley, CA 92347-9613

Gubler, Hans
P. O. Box 3100
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Attn: Tamara J Skoglund
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Gulbranson, Merlin (via email)
511 Minnesota Ave W
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Gutierrez, Jose and Gloria
24116 Santa Fe
Hinkley, CA 92347

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(hackbarthoffice@gmail.com)
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12221 Poplar Street, Unit #3
Hesperia, CA, CA 92344-9287

Attn: Doug and Cheryl Hamilton
Hamilton Family Trust
19945 Round Up Way
Apple Valley, CA 92308-8338

Attn: William Handrinos
Handrinos, Nicole A.
1140 Parkdale Rd.
Adelanto, CA 92301-9308

Attn: Donald F. Hanify
Hanify, Michael D., dba - White Bear Ranch
PO BOX 1021
Yermo, CA 92398-1021

Attn: Matt Wood
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Hanson Aggregates WRP, Inc. (via email)
P. O. Box 1115
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Attn: Mary Jane Hareson
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1737 Anza Avenue
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Attn: Kenny Harmsen (harmscow@aol.com)
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Hass, Pauline L.
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Helendale Community Services District (via email)
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Mojave Basin Area Watermaster Service List as of May 30, 2023

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Attn: Jeff Gallistel
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Attn: Jeremy McDonald
(jmcDonald@cityofhesperia.us)
Hesperia - Golf Course, City of (via email)
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Hesperia, CA 92345-3493

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Hesperia, CA 92345-3493

Attn: Jeremy McDonald
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Attn: Lori Clifton (lclifton@robar.com)
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Attn: Katherine Hill (Khill9@comcast.net)
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Bakersfield, CA 93390-0001

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39392 Burnside Loop
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Hunt, Ralph M. and Lillian F.
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Mojave Basin Area Watermaster Service List as of May 30, 2023

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Jackson, James N. Jr Revocable Living Trust
1245 S. Arlington Avenue
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Attn: Lawrence Dean
Jackson, Ray Revocable Trust No. 45801
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Redlands, CA 92375-1450

Attn: Audrey Goller
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Jamboree Housing Corporation (via email)
15940 Stoddard Wells Rd - Office
Victorville, CA 92395-2800

Attn: Gary A. Ledford
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Jess Ranch Water Company (via email)
906 Old Ranch Road
Florissant, CO 80816-

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8626 Deep Creek Road
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Johnson, Paul - Industrial (via email)
10456 Deep Creek Road
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Dammeron Valley, UT 84783-5211

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Johnston, Harriet and Johnston, Lawrence W.
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Hesperia, CA 92340-1472

Attn: Magdalena Jones
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Jones Trust dated March 16, 2002 (via email)
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Jones, Joette
81352 Fuchsia Ave.
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Attn: Paul Jordan
Jordan Family Trust
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Barstow, CA 92311-2057

Attn: Ray Gagné
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Lucerne Valley, CA 92356

Attn: Lee Logsdon
Juniper Riviera County Water District
P. O. Box 618
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Kim, Seon Ja
34981 Piute Road
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Koering, Richard and Koering, Donna
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Attn: Catherine Cerri
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Lake Arrowhead Community Services District
(via email)
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Mojave Basin Area Watermaster Service List as of May 30, 2023

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(HandleWithClaire@aol.com;
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(PhillipLam99@Yahoo.com)
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864 Sapphire Court
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Newberry Springs, CA 92365

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Upland, CA 91785-0670

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Lin, Kuan Jung and Chung, Der-Bing
2026 Turnball Canyon
Hacienda Heights, CA 91745-

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12318 Post Office Rd
Lucerne Valley, CA 92356-

Attn: Gwen L. Bedics
Lucerne Valley Mutual Water Company
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Lucerne Valley, CA 92356

Attn: Nancy Lan
Lake Waikiki
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La Puente, CA 91744-4816

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Attn: Billy Liang
Liang, Yuan - I and Tzu - Mei Chen
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Chino, CA 91710-3196

Attn: Manshan Gan
Lo, et al.
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Low, Dean (via email)
3 Panther Creek Ct.
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Tustin, CA 92780-7053

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Lawson, Ernest and Barbara
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Attn: Sepoong & Woo Poong Lee
Lee, et al., Sepoong and Woo Poong
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Lenhart, Ronald and Toni
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Eloy, AZ 85131-8002

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tony.pena@libertyutilities.com)
Liberty Utilities (Apple Valley Ranchos
Water) Corp. (via email)
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Apple Valley, CA 92307

Attn: Neal Davies (ndavies@terra-gen.com;
dkelly@terra-gen.com)
Lockhart Land Holding, LLC (via email)
43880 Harper Lake Road
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Lua, Michael T. and Donna S.
18838 Aldridge Place
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Mojave Basin Area Watermaster Service List as of May 30, 2023

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Barstow, CA 92311-4162

Attn: Maria Martinez
M.B. Landscaping and Nursery, Inc.
6831 Lime Avenue
Long Beach, CA 90805-1423

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46622 Fairview Road
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Attn: Jimmy Berry
Manning, Sharon S.
19332 Balan Road
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McKinney, Paula
144 East 72nd
Tacoma, WA 98404-1060

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31314 Clay River Road
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Yucca Valley, CA 92284-9228

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Mojave Basin Area Watermaster Service List as of May 30, 2023

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NSSL, Inc. (via email)
9876 Moon River Circle
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Nuñez, Luis Segundo
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Attn: Pearl or Gail Nunn
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Porter, Timothy M.
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Mojave Basin Area Watermaster Service List as of May 30, 2023

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Attn: Ian Bryant
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Attn: David Kelly Gray
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Attn: Dale W. Ruisch
Ruisch Trust, Dale W. and Nellie H.
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Attn: Jafar Rashid
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Attn: Sara Fortuna (sarajfortuna@gmail.com;
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Saba Family Trust dated July 24, 2018 (via
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212 Avenida Barcelona
San Clemente, CA 92672-5468

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