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

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

11
12 Coordination Proceeding Special Title
13 (Cal. Rules of Court, rule 3.550)

14 **MOJAVE BASIN WATER CASES**

15 **CITY OF BARSTOW,**

16 Plaintiff,
17 vs.

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

19 Defendant.

20 **AND RELATED CROSS ACTIONS**

JCCP NO.: 5265

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

CASE NO.: CIV 208568

**WATERMASTER'S RESPONSE TO
OBJECTIONS TO MOTION TO
ADJUST FREE PRODUCTION
ALLOWANCE FOR WATER YEAR
2023-2024**

Date: June 9, 2023
Time: 1:30 p.m.
Dept.: 1

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23 Certain objections to the Watermaster's motion to adjust Free Production Allowance
24 ("FPA") for Water Year 2023-2024 (hereafter, "the Rampdown motion") have been filed by the
25 State of California (Department of Fish and Wildlife), the City of Hesperia, the City of
26 Victorville (Victorville Water District), and Newberry Springs Recreational Lakes Association.
27 Without attempting to address all of the comments made therein, the Watermaster attempts to
28 address the major issues raised, as follows:

**WATERMASTER'S RESPONSE TO OBJECTIONS TO MOTION TO ADJUST FREE PRODUCTION
ALLOWANCE FOR WATER YEAR 2023-2024**

1 **1. PSY for the Alto Subarea.**

2 Several parties have suggested no further rampdown in the Alto Subarea should occur
3 until the Watermaster Engineer completes his Production Safe Yield (PSY) analysis in
4 December 2023; the City of Victorville also suggests FPA should not be reduced because FPA
5 and PSY are both 54.4%. Watermaster responds by noting that at its March 22, 2023 public
6 meeting, the Watermaster Engineer discussed and explained the basis for his recommendation
7 that PSY for the Alto Subarea should be reduced to 59,409 acre-feet -- which equates to
8 reducing PSY to 50%. Following public discussion of the recommendation, the Watermaster
9 adopted its Engineer's recommendation to reduce PSY for the Alto Subarea of 59,409 acre-feet
10 which, under the terms of the Judgment, warrants a reduction of FPA in the Alto Subarea to
11 50%. Accordingly, the Watermaster has already adopted a reduction of PSY in the Alto Subarea
12 which, in turn, warrants a reduction of FPA to 50%. The Department of Fish and Wildlife also
13 supports the proposed reduction.

14 The primary focus of the PSY analysis to be completed in December 2023 is the PSY for
15 the other four subareas. Although it is possible the December 2023 PSY analysis might suggest
16 a slight modification of the Alto Subarea PSY, the December 2023 analysis likely will not
17 change significantly, or at all, the PSY for the Alto Subarea.

18 **2. Whether FPA in the Alto Subarea should remain unchanged for 5 years after PSY**
19 **and FPA are both reduced to 50%?**

20 The Department of Fish & Wildlife objects to Watermaster's recommendation that the
21 reduced FPA in the Alto Subarea remain unchanged for a period of five years (to allow for
22 further monitoring to determine the longer term effects of the FPA reduction to 50%).
23 Watermaster explained the reasoning for that recommendation in the Rampdown motion, and
24 herein only notes further that Watermaster will continue to monitor and report annually to the
25 court the conditions in the Alto Subarea; if conditions change in a way that would warrant a
26 different approach, that will be reported to the court as well, along with the Watermaster's
27 recommendations to address those changed conditions.

1 **3. Implication of consumptive use data and other factors.**

2 The Watermaster and the Watermaster Engineer take into account all relevant factors,
3 including consumptive use data. There has been no significant variation in consumptive use
4 detected during the last 5 years in the Alto Subarea; nonetheless, that data is taken into
5 consideration by the Watermaster and its Engineer.

6 **4. Effects of recent atmospheric rivers.**

7 The long-range effects, if any, on this groundwater basin of the recent atmospheric rivers
8 and the large snowpack in northern California are speculative and sometimes exaggerated. The
9 Watermaster's recommendations, however, are based on long-term trends based upon reliable
10 groundwater data and other relevant factors. The recent storms have resulting in about 100,000
11 acre-feet of recharge in the Alto Subarea; this is only 15 months of pumping demand. Moreover,
12 the City of Hesperia's Exhibit B specifically notes that, "While California's surface water
13 conditions have greatly improved this year *following three years of historic drought, several*
14 *water supply challenges remain . . . in overdrafted groundwater basins that are slow to*
15 *recover,"* and "Californians should continue to use water wisely to help the state adapt to a
16 *hotter, drier future.*"

17 **5. Watermaster's obligations to meet replacement water obligations.**

18 The argument that Watermaster has collected many millions of dollars in replacement
19 water assessment payments, but failed to use that money to meet its replacement water
20 obligations, is incorrect. Pursuant to water storage agreements between the Watermaster and
21 MWA, in the Alto Subarea alone as of September 30, 2022, there is presently 121,000 acre-feet
22 of pre-stored water for replacement obligations. When replacement water assessment payments
23 are received, a corresponding amount of pre-stored water is removed from the storage account.
24 As of September 30, 2022, in the five subareas, there is a total of more than 170,000 acre-feet
25 of pre-stored water for this purpose. Additionally, in water year 2021-2022, MWA delivered
26 2,010 acre-feet of purchased supplemental water of which 1,905 acre-feet was delivered to the
27 Centro Subarea.

28 Therefore, the claim that Watermaster has failed to meet its replacement water
WATERMASTER'S RESPONSE TO OBJECTIONS TO MOTION TO ADJUST FREE PRODUCTION
ALLOWANCE FOR WATER YEAR 2023-2024

1 obligations is simply not true.

2 In this same vein, it also is argued that MWA has \$160,000,000 “in reserves” which are
3 not being used to purchase supplemental water to replenish the groundwater basin. Actually,
4 \$160,000,000 is the *total money MWA has on hand*. It is not the amount of its “reserves.” That
5 total sum is used to pay MWA operating expenses, its contractual obligations to the Department
6 of Water Resources for the fixed and variable costs related to the State Water Project, employee
7 salaries, bond debt servicing, etc., and “reserves” for other contingencies such as extremely large
8 payments that may be required to pay MWA’s share of the costs to construct the contemplated
9 Delta tunnel project. In fact, MWA’s 2023-2024 budget that was adopted on May 4, 2023,
10 outlines its intention to purchase over 49,926 acre-feet of supplemental water. During the budget
11 process and public hearings (starting in December 2022), MWA evaluated its long-term
12 financial status and management of annual fluctuations in the State Water Project (SWP) and
13 MWA’s intention to use cash reserves to manage that volatility and purchase water from the
14 SWP. Since February 2023, MWA has delivered approximately 24,000 acre-feet of SWP water
15 to the Mojave Basin.

16 In any event, as noted above, the Watermaster has met, and continues to meet, its
17 replacement water obligations, and any suggestion to the contrary is simply not true.

18 **6. Impacts of the R-Cubed project**

19 It also is argued that the R-Cubed project has caused subsidence in some areas, and its
20 impacts need to be further studied and incorporated into Watermaster FPA recommendations.
21 Watermaster responds by noting that the R-Cubed project accounts for only a few thousand acre-
22 feet per year, while over pumping in the Basin since 1950 has caused a 1.2 million acre foot
23 groundwater decline. Any subsidence noted is clearly the result of decades of groundwater over
24 pumping; the R-Cubed project’s contribution to subsidence, if any, is speculative and, at most,
25 likely very minor. Moreover, the impacts of the R-Cubed project are determined by water levels
26 in the Lower Narrows; subsidence has occurred in dry lake areas, not in proximity to the Alto
27 Subarea.

28 **7. MWA’s drought resiliency program.**

1 It also is argued that MWA's drought resiliency program should be considered to
2 determine whether to adjust FPA. However, MWA's drought resiliency program is intended
3 primarily to backstop further FPA reductions during drought periods.

4 Respectfully submitted,

BRUNICK, McELHANEY & KENNEDY PLC

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6
7 By: _____


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Mojave Basin Water Cases JCCP5265

On June 2, 2023, I served the following entitled document: **WATERMASTER'S RESPONSE TO OBJECTIONS TO MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR WATER YEAR 2023-2024** on the interested parties in this action in the manner described below, addressed as follows:

SEE ATTACHED FOR SERVICE LIST

 (BY OVERNIGHT COURIER SERVICE): I caused such envelopes to be delivered via overnight courier service to the addressee(s) described above.

Executed June 2, 2023, in the City of San Bernardino, State of California.

P. Jo Anne Ouhuis

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

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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.

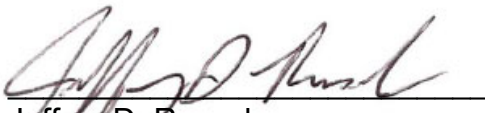
On June 2, 2023, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing 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:

WATERMASTER'S RESPONSE TO OBJECTIONS TO 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 June 2, 2023 at Apple Valley, California.



Jeffrey D. Ruesch

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Mojave Basin Area Watermaster Service List as of June 02, 2023

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Mojave Basin Area Watermaster Service List as of June 02, 2023

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Mojave Basin Area Watermaster Service List as of June 02, 2023

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Mojave Basin Area Watermaster Service List as of June 02, 2023

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Mojave Basin Area Watermaster Service List as of June 02, 2023

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Mojave Basin Area Watermaster Service List as of June 02, 2023

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Mojave Basin Area Watermaster Service List as of June 02, 2023

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