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*Exempt from filing fee pursuant to
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7 Attorneys for Defendant\Cross-Complainant,
8 MOJAVE WATER AGENCY

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

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.: CIV208568

**NOTICE OF COURT'S JUNE 9, 2023
ORDER, AND PROOF OF SERVICE
THEREON**

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

22 **TO THE PARTIES ABOVE-NAMED AND THEIR COUNSEL OF RECORD:**

23 **PLEASE TAKE NOTICE THAT** on June 9, 2023, the Court issued its Order on
24 Defendant/Cross-Complainant Mojave Water Agency's Motion to Adjust Free Production
25 Allowance for Water Year 2023-2024. A true and correct copy of the Order is attached as
26 Exhibit 1 hereto.

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A copy of the Order and Proof of Service are attached hereto.

Dated: June 13, 2023

BRUNICK, McELHANEY & KENNEDY PLC

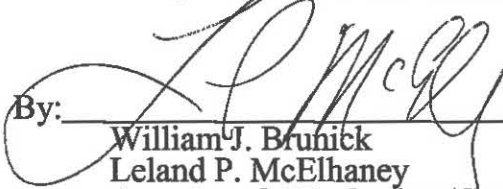
By: 
William J. Brunick
Leland P. McElhaney
Attorneys for Defendant/Cross-complainant,
MOJAVE WATER AGENCY

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

CASE TITLE: Mojave Basin Water Cases / City of
Barstow v. City of Adelanto

Department 1

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

CASE NO.: JCCP5265 / CIV208568

JUN 09 2023

DATE: June 9, 2023

MA L. Howell

PROCEEDING: Ruling on the Watermaster's Annual Motion to Adjust Free
Production Allowance for Water Year 2023-2024; Order to Watermaster

Watermaster's Motion to Adjust FPA

The City of Hesperia's request for judicial notice is granted as to Exhibits A and B, but otherwise denied.

The Watermaster's motion is granted in part and denied in part as follows.

Este:

The FPA (12,523) greatly exceeds the PSY (4,728). The Watermaster recommends that the FPA be reduced from 60% of BAP to 55%.

The Court adopts that recommendation. The verified production does not currently exceed PSY, and thus the area is not currently being overdrafted. However, the FPA should be ramped down now so that, if production increases in the future, the FPA will be low enough to ensure that any producer exceeding PSY will be charged for that excessive production.

The Court orders that the FPA for all producers in Este shall be reduced to 55% of BAP for Water Year 2023-2024.

Oeste:

The FPA (4,011) greatly exceeds the PSY (1,712). The Watermaster recommends that the FPA be reduced from 55% of BAP to 50%.

The Court adopts that recommendation. The verified production does not currently exceed PSY, and thus the area is not currently being overdrafted. However, the FPA should be ramped down now so that, if production increases in the future, the FPA will be low enough to ensure that any producer exceeding PSY will be charged for that excessive production.

The Court orders that the FPA for all producers in Oeste shall be reduced to 50% of BAP for Water Year 2023-2024.

Centro:

The FPA (31,260) greatly exceeds the PSY (21,088). The Watermaster recommends that the FPA be reduced from 60% of BAP to 55%.

The Court adopts that recommendation. The verified production does not currently exceed PSY, and thus the area is not currently being overdrafted. However, the FPA should be ramped down now so that, if production increases in the future, the FPA will be low enough to ensure that any producer exceeding PSY will be charged for that excessive production.

The Court orders that the FPA for all producers in Centro shall be reduced to 55% of BAP for Water Year 2023-2024.

Baja:

The FPA (12,213) marginally exceeds the PSY (12,189). The Watermaster recommends that FPA continue at 20.5% of BAP.

The Court adopts that recommendation. The Court orders that the FPA for all producers in Baja shall be 20.5% of BAP for Water Year 2023-2024.

Alto:

The FPA (64,337) exceeds both the previously set PSY (64,406) and the Watermaster's revised PSY (59,409). The Watermaster recommends that the FPA be reduced from 54.4% of BAP to 50%.

The Court adopts that recommendation in part. As the Court noted in 2022, the PSY for Alto is clearly incorrect, since the subarea had experienced 51,016 acre feet of groundwater depletion in 2020-2021 even though the estimated PSY was only slightly less than the FPA. Accordingly, the Court ordered the Watermaster to re-evaluate the PSY. The Watermaster has done so, albeit on the basis of what it labels a preliminary analysis.

In opposing the recommendation, the Victorville Water District raises three criticisms. The Court does not find any of them to be persuasive.

First, it criticizes the reliance upon estimates rather than "actual data." To the Court's understanding, all calculations of PSY are estimates. PSY is incapable of precise determination, and certainly cannot be confidently predicted for the coming year. Whether measuring the current conditions or the conditions as they may exist in the future, all determinations of PSY are estimates. As conditions change, those estimates must be revised.

Second, it urges the Court to wait until the analysis of the PSY in Alto and the other subareas is completed in December of this year. The Court declines to wait, for three reasons. (1) Mr. Wagner indicated that, although there is additional analysis to be

done between now and December of 2023, he does not expect his final estimate of PSY to change materially from the preliminary estimate. (2) The Watermaster indicated that the accuracy of the revised PSY may not be known for another five years. (3) In the Court's mind, waiting for more precise information is not a viable action, because Alto's groundwater continues to be depleted. In water year 2021-2022, the subarea lost another 33,383 in groundwater storage. (29th Annual Report, p. 31, table 3.2.) Although Mr. Wagner estimates that the extraordinary precipitation in December of 2022 and in January and February of 2023 will result in 100,000 acre feet of recharge in Alto, the trend over the last 12 years has been one of continued depletion of groundwater. The Alto subarea can ill afford to simply maintain the status quo until a more complete analysis is possible. The status quo is one in which the subarea continues to lose tens of thousands of acre feet of groundwater storage per year. Finally,

Third, VWD asserts that, even under the new PSY, the spread between the current FPA and the recommended FPA is less than five percent, and therefore an adjustment in FPA is "not necessary." The VWD confuses when the Watermaster is *required* to recommend a reduction with when the Watermaster *may* recommend a reduction. That the judgment does not require the Watermaster to recommend an adjustment to FPA does not mean that it is precluded from doing so, or that the Court cannot consider that recommendation.

The City of Hesperia also opposes the proposed reduction of PSY. It argues that the decision should be deferred until the "atmospheric river events during 2022-2023" can be addressed by the Watermaster. But as Hesperia acknowledges, the Watermaster addressed that in the motion itself, concluding that one wet winter does not overcome the effects of the prolonged drought. And although the Court accepts Hesperia's observation that this year's rains provide "the Watermaster and MWA with substantial access to replacement water," the availability of imported water is not a factor affecting PSY.

Hesperia also urges the Court to defer any further rampdown until the Watermaster has completed its re-evaluation of PSY and has considered four other factors. For the same reasons as described above in response to the VWD's objections, the Court is not persuaded. In light of the continuing depletion of Alto's groundwater, the Court finds that the most prudent course of conduct is to act sooner rather than later. While the information available to the Court may not be perfect, it is the best evidence available at the present time. Moreover, it is not contradicted by any evidence cited by Hesperia.

Hesperia asserts that the Watermaster is failing to "take into account all available hydrologic data." It is not clear what currently existing data Hesperia claims is being overlooked. For instance, when discussing R-Cubed, Hesperia does not claim that relevant data currently exists. Instead, it says that any ruling on the rampdown

recommendation should be continued “until such time as the Watermaster can conduct further studies to determine the impact of the R-Cubed project”

Hesperia also asserts that “[t]he Watermaster has failed to manage the Basin in accordance with the Judgment” because “the Watermaster did not deliver imported water as it was obliged to do.” If that is the case, Hesperia is free to bring a motion to instruct the Watermaster, or even to replace the Watermaster. However, no such motion is before the Court at the present time.

The objections of Mitsubishi, Robertson’s, and CalPortland are largely subsumed within the arguments presented by Hesperia.

Because the re-evaluation of PSY is not final, and because there is a chance that the final PSY could be slightly higher, the Court declines to adopt the full amount of the rampdown recommended by the Watermaster, 4.4%. Instead, the Court will impose a rampdown of 90% of that figure. Accordingly, The Court orders that the FPA for all producers in Alto shall be 50.4% of BAP for Water Year 2023-2024. That order is made without prejudice to a motion by any party to modify either the PSY, the FPA, or both after December 1, 2023.

The Court acknowledges that the Watermaster proposes to hold the FPA for Alto at 50% for the next five years. No decision on that recommendation is necessary until next year. The Court will evaluate that recommendation at that time.

Other Orders

1. In its Supplemental Report filed 5-1-23, the Watermaster described its unsuccessful attempts to persuade the County of San Bernardino to impose conditions on the issuance of well permits, such as a requirement that the permittee be required to install a measuring device. It encouraged the Court to address the issue with the County, which is a party to the action. In response to the Court’s question, counsel for the Watermaster opined that the Court has the power under the the Judgment to order the County to impose such a requirement. The County denied that the Court has such authority.

To explore that issue, the Watermaster is ordered to prepare and file a motion for an order directing the County to impose that or similar conditions. The motion shall be supported by a memorandum explaining (1) the Court’s authority to require the County to exercise its permitting discretion in a particular way, and (2) why it is appropriate to exercise that authority by issuing the particular order proposed by the Watermaster. The hearing on such a motion shall be scheduled for a date no earlier than September 11, 2023, in Department 1.

2. The order coordinating the City of Barstow v. City Adelanto with the Mojave Water Agency v. All Persons was filed in JCCP5265 on 2-17-23, and an order

assigning Craig Riemer of the Riverside Superior Court as the coordination trial judge was filed 4-4-23 and served on the Watermaster. As yet, no portion of the file in the San Bernardino Superior Court has been received by Riverside Superior Court. Counsel for the Watermaster is ordered to file a notice of coordination in Mojave Water Agency v. All Persons, San Bernardino Superior Court Case Number CIVSB2218461. The notice shall attach copies of the 2-17-23 and 4-4-23 orders and shall provide notice of the following portion of this order:

Pursuant to the Order Granting Petition for Coordination in JCCP5265, by which San Bernardino Superior Court Case Number CIVSB2218461 has been coordinated in case JCCP5265, and the Order Assigning Coordination Trial Judge, by which Judge Craig G. Riemer of Riverside Superior Court has been appointed as the coordination trial judge, IT IS ORDERED that San Bernardino Superior Court Case Number CIVSB2218461 be transferred to Riverside Historic Courthouse, Department 1, for all purposes. Case JCCP5265 is designated the master file.

3. 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

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Mojave Basin Water Cases JCCP5265

On June 13, 2023, I served the following entitled document: **NOTICE OF COURT'S JUNE 9, 2023 ORDER, AND PROOF OF SERVICE THEREON** 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

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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10 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.

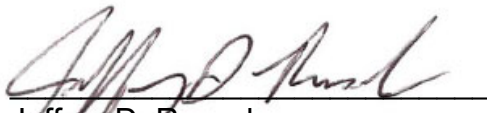
On June 13, 2023, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing 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:

NOTICE OF COURT'S JUNE 9, 2023 ORDER, AND PROOF OF SERVICE THEREON

 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 13, 2023 at Apple Valley, California.



Jeffrey D. Ruesch

Mojave Basin Area Watermaster Service List as of June 13, 2023

Attn: Roberto Munoz
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Attn: Mathew Schulenberg
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Attn: Emely and Joe Saltmeris
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Mojave Basin Area Watermaster Service List as of June 13, 2023

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Mojave Basin Area Watermaster Service List as of June 13, 2023

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Mojave Basin Area Watermaster Service List as of June 13, 2023

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Jackson, Ray Revocable Trust No. 45801
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Attn: Lee Logsdon
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Mojave Basin Area Watermaster Service List as of June 13, 2023

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Mojave Basin Area Watermaster Service List as of June 13, 2023

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Mojave Basin Area Watermaster Service List as of June 13, 2023

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