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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
(Cal. Rules of Court, rule 3.550)

13 **MOJAVE BASIN WATER CASES**

14
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. Harold Hopp, Judge Presiding

LEAD CASE NO.: CIV208568
Coordinated with San Bernardino Superior
CASE NO.: CIVSB 2218461

**REQUEST FOR JUDICIAL NOTICE IN
OPPOSITION TO MOTION OF
SHADOW MOUNTAIN RANCH, LLC,
TO INTERPRET AND CLARIFY
JUDGMENT**

Date: February 7, 2024

Time: 8:30 a.m.

Dept.: 1

RESERVATION NO.: 001680774956

Assigned for All Purposes to Dept. 1,
Hon. Harold Hopp, Judge Presiding

24 **REQUEST FOR JUDICIAL NOTICE**

25 Pursuant to Evidence Code, sections 452 and 453 and California Rules of Court, rules
26 3.1113(1) and 3.1306(c), cross-defendant and court-appointed Watermaster in this proceeding,
27 the Mojave Water Agency (hereafter, "MWA"), respectfully requests that the Court take judicial
28

REQUEST FOR JUDICIAL NOTICE

1 of the trial court's Attached Amended Statement of Decision dated January 3, 1996 (Exhibit 1
2 hereto) wherein the court made the following findings of fact and law in this proceeding, after
3 trial -- in support of MWA's opposition to the motion of Shadow Mountain Ranch, LLC
4 (hereafter, "SMR") to clarify and interpret the court's January 10, 1996 Judgment and Physical
5 Solution.

6 Under section 452(d), the court may take judicial notice of the "Records . . . of any court
7 of this state." Under section 453, this request is conditionally mandatory and should be granted
8 if (a) sufficient notice is given to the adverse party (SMR), and (b) the court is furnished with
9 sufficient information to enable it to take notice of the matter. (*People v. Maxwell* (1978) 78
10 Cal.App.3d 123, 130-131.)

11 MWA respectfully requests that judicial notice be taken of the trial court's Attached
12 Amended Statement of Decision, wherein the court made the following findings of fact and law:

13 "The surface flow on the Mojave River is the **main** source of water supply. . . .[and] The
14 absorption, percolation and mounding of the flood flows is **the major source** of
15 replenishment to the groundwater areas"

16 (Exhibit 1, Attached Amended Statement of Decision, p. 4.)

17 "Supplemental water is defined as 'an additional source of water that is above the natural
18 water supply for that area.' [RT 175:17-19]"

19 (Exhibit 1, Attached Amended Statement of Decision, p. 20.)

20 "The Mojave Basin is composed of several alluvial filled valleys. The valleys *and*
21 *basins* are filled with alluvial sediment washed down from the surrounding
22 mountains. *There are several faults that obstruct groundwater flow.*"

23 (Exhibit 1, Attached Statement of Decision, p. 3, emphasis added.)

24 "The Mojave River Basin [referred to in the Judgment as the Mojave Basin Area]
25 is divided into five subareas. The Helendale fault separates the Alto and Centro
26 Subareas. The Waterman Fault separates the Centro and Baja Subareas. The Oeste
27 Subarea is west of the alto Subarea. The Este Subarea is east of the Alto Subarea
28 and south of the Centro Subarea. (RT 122-124, Exhibit 4003)

1 (Exhibit 1, Attached Statement of Decision, p. 6.)

2 “There are areas of the basin where there is very little groundwater movement and very
3 little recharge.”

4 (Exhibit 1, Attached Statement of Decision, p. 6.)

5 By its service of this request, MWA provides SMR and all parties with sufficient notice
6 to enable SMR and such parties to respond to the request, and furnished sufficient information
7 to enable the Court to take judicial notice of the trial court’s January 3, 1996, Attached
8 Amended Statement of Decision (Exhibit 1 hereto).

9 **LEGAL STANDARD**

10 Judicial notice may be taken of the “(d) Records of (1) any court of this state . . .” (Evid.
11 Code § 452.) “What is more, the court’s discretion to take judicial notice of these matters
12 disappears – and the court becomes obligated to judicially notice these matters – if the moving
13 party gives adequate advance notice.” (*Licudine v. Cedars-Sanai Medical Center* (2016) 3
14 Cal.App.5th 881, 902.) “The trial court shall take judicial notice of any matter specified in
15 Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the
16 request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the
17 request; and (b) Furnishes the court with sufficient information to enable it to take judicial
18 notice of the matter.” (Evid. Code § 453.)

19 **THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE TRIAL COURT’S**
20 **FINDINGS**

21 **1. The Mojave River is not the only source of water supply in the Mojave Basin Area.**

22 As noted, the trial court found and determined that the “surface flow on the Mojave River
23 is the **main** source of water supply. . . .[and the] absorption, percolation and mounding of the
24 flood flows is **the major source** of replenishment to the groundwater areas” in the Mojave
25 Basin Area (emphasis added). From the trial court’s findings that the Mojave River is “the **main**
26 source of water supply” and flood flows are “**the major source** of replenishment to the
27 groundwater areas,” it follows by necessary implication that the trial court also found that other,
28 lesser sources of replenishment to groundwater exist in the Mojave Basin Area. Otherwise, the

1 court would have found that the Mojave River is the “only” source of water supply, and flood
2 flows are the “only” source of replenishment to the groundwater areas.

3 Therefore, the trial court’s above quoted findings of fact support MWA’s contention that
4 the aquifers beneath SMR’s property are part of the natural water supply within the Mojave
5 Basin Area’s adjudicated boundaries, and counters SMR’s contention that the Mojave River is
6 the “only” water source that is adjudicated in, and the subject of this proceeding. Further
7 countering SMR’s claim, the January 10, 1996 judgment provides:

8 “a. Jurisdiction. This Court has jurisdiction to enter Judgment declaring and
9 adjudicating the rights to reasonable and beneficial use of water by the Parties in the
10 **Mojave Basin Area** pursuant to Article X, Section 2 of the California Constitution. This
11 Judgment constitutes and adjudication of water rights of the **Mojave Basin Area**
12 pursuant to Section 37 of chapter 2146 of Statutes of 1959 (‘the MWA Act’).

13 (January 10, 1996, Judgment, p. 3, emphasis added.)

14 **2. Because they are part of the natural water supply within the adjudicated**
15 **boundaries of the Mojave Basin Area, the aquifers beneath SMR’s property cannot be**
16 **characterized as “supplemental water.”**

17 As noted, the trial court also found that: “Supplemental water is defined as ‘an additional
18 source of water that is **above the natural water supply for that area.**’” (Exhibit 1, Attached
19 Amended Statement of Decision, p. 20, emphasis added.) Therefore, because they are part of
20 the natural water supply within the adjudicated boundaries of the Mojave Basin Area, the
21 aquifers beneath SMR’s property cannot be characterized as “supplemental water.”

22 The trial court’s finding – that a natural water supply within the adjudicated boundaries
23 cannot be characterized as supplemental water – should not be disturbed now, more than 28
24 years after trial court’s statement of decision and entry of the Judgment in this action.

25 **3. In 1996, it was understood by the stipulating parties and the court that certain areas**
26 **of the Mojave Water Basin had little hydrologic connectivity; nonetheless, the court**
27 **determined to include those areas within the Basin’s adjudicated boundaries.**

28 The trial court’s Attached Amended Statement of Decision notes, “There are areas of the

1 basin where there is very little groundwater movement and very little recharge;" nonetheless,
2 the court determined to include those areas within the Judgment's adjudicated boundaries. In
3 this connection, the court noted:

4 "The Mojave Basin is composed of several alluvial filled valleys. The valleys *and*
5 *basins* are filled with alluvial sediment washed down from the surrounding
6 mountains. *There are several faults that obstruct groundwater flow.*"

7 (Exhibit 1, Attached Statement of Decision, p. 3, emphasis added.)

8 "The Mojave River Basin [referred to in the Judgment as the Mojave Basin Area]
9 is divided into five subareas. The Helendale fault separates the Alto and Centro
10 Subareas. The Waterman Fault separates the Centro and Baja Subareas. The Oeste
11 Subarea is west of the alto Subarea. The Este Subarea is east of the Alto Subarea
12 and south of the Centro Subarea. (RT 122-124, Exhibit 4003)

13 (Exhibit 1, Attached Statement of Decision, p. 6.)

14 "There are areas of the basin where there is very little groundwater movement and
15 very little recharge."

16 (Exhibit 1, Attached Statement of Decision, p. 6, emphasis added.)

17 **Conclusion**

18 For the reasons stated herein, the Mojave Water Agency respectfully requests that the
19 Court take judicial notice of the trial court's Attached Amended Statement of Decision, pursuant
20 to Evidence Code, sections 452(d) and 453, and California Rules of Court, Rules 3.1113(l) and
21 3.1306(c).

22 Dated: January 25, 2024

BRUNICK, McELHANEY & KENNEDY PLC

23
24 By: 

William J. Brunick

Leland P. McElhaney

Attorneys for Defendant/Cross-complainant,
MOJAVE WATER AGENCY

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REQUEST FOR JUDICIAL NOTICE

EXHIBIT 1



E. Michael Kaiser
Judge
Riverside Superior Court

Date: January 3, 1996

To: ALL COUNSEL

From: E. MICHAEL KAISER

Subject: ATTACHED AMENDED STATEMENT OF DECISION

The only amendment is on page 26,
paragraph 7.

RECEIVED
JAN 10 1996
96 JAN -5 AM 10:59

CLERK'S CERTIFICATE OF MAILING

(Original copy, duly executed, must be attached to
original document at time of filing)

(Unsigned copy must accompany document being mailed)

208568

I ARTHUR A. SIMS, Clerk of the Superior Court of California, for the County of Riverside, do hereby certify that I am not a party to the within action or proceeding; that on the _____ day of January, 1996, I served a copy of the paper to which this certificate is attached, to wit:

AMENDED STATEMENT OF DECISION

accompanied by an unsigned copy of this certificate, by depositing said copy enclosed in a sealed envelope with postage thereon fully prepaid, in the United States post office mail box at the City of Riverside, California, addressed as follows:

SEE ATTACHED MAILING LIST

Dated: _____ ARTHUR A. SIMS, Clerk

By _____, Deputy

1013a CCP
331.1 (8/82)

CLERK'S CERTIFICATE OF MAILING

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CONSOLIDATED SUPERIOR/MUNICIPAL COURTS
MINUTES RIVERSIDE COUNTY

Case No.: 208568 Date: 1/2/96 Dept.: 4
Case Name: CITY OF BARSTOW V CITY OF ADELANTO
Counsel: See attached mailing list

Court Rptr: none
Proceeding: AMENDED STATEMENT OF DECISION

PROCEDURAL HISTORY

The original complaint was filed in this action by the City of Barstow and the Southern California Water Company on May 30, 1990. The complaint alleges that the cumulative water production upstream of Barstow has overdrafted the Mojave River System to the detriment of plaintiffs. The complaint requests that the defendants guarantee an average annual flow of 30,000 acre-feet to the Barstow area. The complaint also requests a writ of mandate against the Mojave Water Agency ("MWA") to compel it to perform its duties and to import water from the State Water Project. The defendants served with a summons and complaint have either answered, been given open extensions to answer, been dismissed, or had defaults entered against them.

On July 26, 1991, MWA filed its first amended cross-complaint in the case. The MWA first amended cross-complaint names substantially all water producers within the boundaries of the Mojave River Watershed, including parties downstream of Barstow. The MWA cross-complaint requests a declaration that the available native water supply is inadequate to meet the demands of the combined parties and a determination of the water rights of whatever nature within the MWA boundaries and the Mojave River Watershed.

On July 3, 1991, Arc Las Flores Limited Partnership ("Arc Las Flores") filed a cross-complaint for declaratory relief seeking a declaration that the overlying and riparian rights of Arc Las Flores be determined to be prior and paramount to any rights of the plaintiffs or other appropriators. The cross-complaint names the City of Barstow and the Southern California Water Company, as well as "Doe" defendants.

A cross-complaint was filed by the City of Adelanto.

KAISER ,Judge

BURNS(ss) ,Clerk

Cross-Defendants Manuel Cardozo, et al., object to the proceedings on the grounds that all water producers have not been named. It is clear from the record that the majority if not all of the substantial users were served and either stipulated, defaulted or appeared at trial. It would have been impractical to include all such parties.

"The line must be drawn somewhere in order to bring the proceeding within practical bounds, and it would have been impossible to reach a solution of the problems involved and to render a valid judgment if jurisdiction to make an allocation depends upon the joinder of every person having some actual or potential right to the water in the basin and its sources of supply...." (City of Pasadena v City of Alhambra (1949) 33 Cal. 3d 908, at 920).

On October 16, 1991, the court ordered a litigation standstill. The purpose of the standstill was to give the parties time to negotiate a settlement and develop a solution to the overdraft.

To facilitate the gathering of data, the establishment of principles, the drafting of a stipulated judgment and physical solution, a Mojave Basin Adjudication Committee was formed. (Exhibit 4016)

Bill Dendy was hired to be the facilitator for the group. Mr. Dendy was paid by the Mojave Water Agency with contributions from other agencies and private individuals. (RT 399)

The work of the committee resulted in a stipulated interlocutory order and judgment filed on September 23, 1993.

Several non-stipulating parties requested a trial. On April 20, 1994, the court issued a memorandum setting forth the trial issues. A trial date was set for February 2, 1995, and trial commenced on February 6, 1995.

The above-entitled cause came on regularly for trial on February 6, 1995, and was tried on in Department 4 of the above-entitled court, the Honorable E. Michael Kaiser, Judge, presiding without a jury.

Oral and documentary evidence was introduced on behalf of the respective parties and the cause argued and submitted for decision. The court, having considered the evidence, heard the arguments of counsel and being fully advised, issues the following Statement of Decision:

FACTS

The source of the Mojave River lies in the San Bernardino Mountains. There the rainfall and snow run-off give rise to the West Fork of the Mojave River and Deep Creek. These tributaries join at the foothills of the San Bernardino Mountains, at a point commonly known as "The Forks", to form the Mojave River. From The Forks, the river flows north 12 miles to Victorville, then continues 18 miles to Helendale. The Mojave River then turns northeast and continues past Barstow to Afton, approximately 90 miles from its beginning. The river then flows to its terminus in Silver Lake. (Exhibit 4066)

The Mojave Basin is composed of several alluvial filled valleys. The valleys and basins are filled with alluvial sediment washed down from the surrounding mountains. There are several faults that obstruct groundwater flow.

"The principal water-bearing formations in the Mojave River Basin are the alluvial fan deposits (alluvium) and the Mojave River channel deposits. The river channel deposits are the most important aquifer in the basin and probably the most permeable of the water-bearing formations. The river channel deposits range from 1/4 to 1-1/2 miles wide, receive recharge from the Mojave River, and are as much as 200 feet thick (Hardt, 1971).

Throughout most of the Mojave River Basin the river channel deposits are bounded on the sides and bottom by the alluvium. Where the alluvium is predominantly clay, the flow of groundwater is restricted to the channel deposits. Where the alluvium is predominantly sand and gravel, groundwater generally flows from the channel deposits into the alluvium. The alluvium present throughout the Mojave River Basin ranges in thickness from a few inches to about 1,000 feet thick and contains most of the groundwater in storage in the basin. About 80 percent of the total basin recharge is from the Mojave River (Hardt, 1971).

The classification of groundwater in the river channel deposits depends on the relative permeability of the underlying alluvium or the presence of shallow bedrock. In areas where the permeability of the alluvium is low, groundwater flow is restricted to the channel deposits. In this case, the groundwater is appropriately classified as a subterranean stream. Also, where the Mojave River passes through narrow gaps or canyons carved into impermeable bedrock, groundwater in the channel deposits constitutes a subterranean stream.

In areas where the bounding alluvium is relatively permeable groundwater migrates from the channel deposits into the alluvium. Through this mechanism most of the Mojave River Basin is recharged. In this case, groundwater flow is not restricted at the boundary of

the channel deposits and the appropriate classification of groundwater in the channel deposits is percolating water.

In general, groundwater in the alluvium is appropriately classified as percolating groundwater. The groundwater cannot be called a subterranean stream because flow in the alluvium is not bounded by definite channels. The groundwater cannot be classified as underflow of the Mojave River because the groundwater does not have the third characteristic of underflow described in Los Angeles vs. Pomeroy.

The condition of being 'confined to a reasonably well defined space and moving in a course' means that underflow must be limited or restricted by a definable boundary. Once the groundwater has left the river channel deposits and is flowing in the alluvium, there are no known lateral flow boundaries that restrict the flow of groundwater to a course associated with the course of the Mojave River. Additionally, groundwater table contour maps show that in the vicinity of the Glen Road Wells, the flow direction is to the northeast. This direction is away from the river, not parallel to the river (Department of Water Resources, 1967; Mojave Water Agency, 1983). " (Exhibit 4012)

The Mojave River groundwater basin is the subsurface reservoir which yields water to wells drilled in the area. The groundwater basin area, or valley fill area contains shallow, permeable alluvial deposit, and is underlaid and surrounded by relatively impermeable rock. (Exhibit 4006)

The surface flow on the Mojave River is the main source of water supply. The Mojave River Channel has the ability to absorb significant amounts of the flood flows that pass through the river's various reaches. The water absorbed in the stream channel then percolates downward to the waterbearing formations. The absorption, percolation and mounding of the flood flows is the major source of replenishment to the groundwater areas. (Exhibit 4006, Exhibit 4067) (RT 173,174)

Subsurface flow into the Alto Subarea is derived from three localities: along the western boundary from percolation of run-off from Sheep Creek and Buckthorn Wash; as subsurface flow from Lucerne Valley; and as percolation from run-off at the foot of the San Bernardino Mountains. (Exhibit 4067)

At several places along the Mojave River Channel, shallow alluvial sections underlaid by near-surface, topographically high masses of bedrock obstruct groundwater underflow and serve to perpetuate conditions of rising groundwater. This rising groundwater condition occurs at four locations: the Upper Narrows, Lower Narrows, near Camp Cady and at Afton. (Exhibit 4006) (RT 254)

The defendants City of Adelanto and Manuel Cardoza, et al., contend that the Mojave River Basin is a watercourse consisting of known and defined bed, banks, surface and subsurface flow.

Mr. Roy Hampson testified that there is a difference in the permeability or transmissibility of the younger alluvium and the older alluvium. The difference in transmissibility would limit recharge from the younger alluvium to the older alluvium. (RT 3306, 3307)

Based on the character of the water (the chemical constituents), Mr. Hampson concludes: 1) the water in the younger alluvium and the older alluvium is from two different sources. (RT 3346) 2) the Mojave River does not provide recharge to the older alluvium. (RT 3403)

Mr. Hampson further opined that known bed and banks can be inferred by comparing the character of the surface water with water drawn from wells in the area in question. The comparison of the character of the water and the existence of the less permeable older alluvium allows one to conclude that defined bed and banks exist.

The court rejects his hypothesis. There are too many other factors and opinions that are not consistent with Mr. Hampson's opinion.

The preponderance of the evidence indicates that surface flow percolates into the groundwater system. The water near the surface is forced by gravity into the deeper beds. As the more porous soils become saturated, mounding occurs which causes flow into the less porous soil (older alluvium) and/or spreading laterally into the younger alluvium.

If the water in Adelanto's wells was from two different sources then one would expect a greater overdraft in the wells farthest from the river. Other than a change in the fluoride level of Adelanto well number 8, (RT 3357) there is no evidence that wells located at a greater distance from the river are experiencing any greater overdraft than those adjacent to the river.

In the Alter Base Water Supply report (Exhibit 2378), there is a suggestion that some of the wells at George AFB draw from two different aquifers. A source of groundwater is identified that has a component of flow in a southwest to northeast direction. The southwest to northeast flow is consistent with the groundwater contours in Bulletin 84. (Exhibit 4006)

The depth of wells would lead to the conclusion that the water is being produced from the younger alluvium and/or younger river deposits. Thus, the water produced is percolating water and not subsurface flow.

In areas where wells have penetrated older sediments, there is a mixing of poorer quality water from the older sediments and better quality water from the younger sediments. There are areas of the basin where there is very little groundwater movement and very little recharge. The urban development and the decline in water levels throughout the basin results in a change in groundwater characteristics. (Exhibit 4006)

The weight of the evidence leads to the conclusion that there is some surface and subsurface flow, but this surface and subsurface flow percolates into the groundwater system.

The area geology, groundwater contour levels and storage basins as described in Bulletin 84, all support the conclusion that the Mojave River Basin is an inter-connected groundwater storage area. (RT 125-133,137,140,141,160,163)

Mr. Stetson testified that the basins are inter-connected. (RT 117) The testimony of well levels by witnesses Ledford, Fitzwater, DeVries, Gorman and Goren are supportive of the conclusion that the surface and subsurface flow percolates into the groundwater system as the flows proceed downstream. "In times of storm flow, the waters of the Mojave River are confined to the canyon-like sections which open to broad absorptive areas. When storm flows occur, there is a rapid absorption of water which percolates downward to the water table underlying the absorptive areas. The absorbed and percolated water creates a ridge or mound of groundwater which rises and widens as more water is absorbed. If the storm flow is of sufficient duration, the groundwater mound rises until the groundwater surface is in contact with the stream bed.

When the storm flows cease, the groundwater mound below the channel begins to decline or flatten out and will eventually conform to the groundwater level of the basin. This type of ground water movement can result in a situation in which the level of water in wells adjacent to the river declines, while water levels in wells farther from the river rise." (Exhibit 4067)

The Mojave River Basin is divided into five subareas. The Helendale Fault separates the Alto and Centro Subareas. The Waterman Fault separates the Centro and Baja Subareas. The Oeste Subarea is west of the Alto Subarea. The Este Subarea is east of the Alto Subarea and south of the Centro Subarea. (RT 122-124, Exhibit 4003)

Because the basins are interrelated, a part of the surface and subsurface in-flow to one basin is out-flow to the other basins. At Barstow, the surface flow is entirely storm flow from run-off originating in the San Bernardino Mountains. (Exhibit 4006)

There has been a decline in the amount of flow from a given storm that reaches the downstream portions of the river.

Extractions of groundwater in the Alto Basin has lowered the water table, thus increasing the ability of the river and channel to absorb storm flows. As more water is absorbed in the Alto Basin, less water is available for recharge in the river's downstream reaches. (RT 140,144)(Exhibit 4006)

There is no doubt that the Mojave River Basin is in overdraft. The overdraft began in the early fifties and continues with the biggest increase in the overdraft occurring in the 1980-1990 period. (Exhibit 4008,4008A,4010)(RT 141-151, 256) It is reasonable to conclude that a continued overdraft will eventually result in a depletion of supply. (RT 151)

The present consumptive use by agriculture, when combined with surface water and subsurface water out-flow plus phreatophyte use exceeds the basin water supply.

The same is true of urban use.

The total water supply to the basin is either 78,600 acre-feet per year (Exhibit 4013) or 75,710 acre-feet per year (Exhibit 2550). Using either number, the basin can only be brought into safe yield by reducing production and/or importing water.

LEGAL ANALYSIS

California Water Law recognizes the right of each owner of property to the use of a stream on property adjacent to the stream and the right of the owner of property overlying percolating ground water to the use of water within the groundwater basin.

The riparian right and the overlying right extend only to the amount of water that can be reasonably and beneficially used on the land. (Lux v Haggin (1886) 69 Cal. 255, Katz v Walkinshaw (1903) 141 Cal. 116)

The riparian right is a right to the use of a stream in common with the equal and correlative right of other riparians.

The overlying right is analogous to the riparian right in that the overlying right is a right shared and is a correlative right as among overlying owners. As between water users of equal status, the water rights are correlative. (Tulare Dist. v Lindsay-Strathmore (1935) 3 Cal. 2d 489, 525)

The principle of reasonable and beneficial use was proposed, adopted by the Legislature and approved by the people in an amendment to the California Constitution in 1928. (Cal. Const. Article XIV, § 3 now Article X, § 2) All water use is now governed by Article X, section 2 of the California Constitution, and accordingly, all use of water in this state must conform to the

standard of reasonable use. The courts have concurrent jurisdiction with the State Water Resources Control Board to enforce this constitutional mandate. (Wright v Goleta Water Dist. (1985) 174 Cal. App. 3d 74,87,89)

The strict adherence to a priority of right and a correlative right among water users of equal status, creates uncertainty and potential economic consequences for those with a lower priority of use.

In view of the competing interests and the priorities of use set forth in the Water Code section 106, an equitable apportionment of water is the solution which protects the riparian, overlying and junior users' rights to a reasonable and beneficial use of water.

In City of Los Angeles v City of San Fernando (1975) 14 Cal. 3d 199,265, the Supreme Court stated: "A true equitable apportionment would take into account many more factors". The Court cited with approval, the case of Nebraska v Wyoming (1945) 325 US 589.

The factors to be considered in the equitable apportionment of water rights include:

"...the economy of a region may have been established on the basis of junior appropriations. So far as possible, those established uses should be protected, though strict application of the priority rule might jeopardize them. Apportionment calls for the exercise of an informed judgment on a consideration of many factors. Priority of appropriation is the guiding principle. But physical and climatic conditions, the consumptive use of water in the several sections of the river, the character and rate of return flows, the extent of established uses, the availability of storage water, the practical effect of wasteful uses on downstream areas, the damage to upstream areas as compared to the benefits to downstream areas if a limitation is imposed on the former - these are all relevant factors. They are merely an illustrative, not an exhaustive catalogue. They indicate the nature of the problem of apportionment and the delicate adjustment of interests which must be made." (Nebraska v Wyoming, supra)

The factors set forth in the Nebraska case assist in defining the reasonable and beneficial use mandates of Article 10 section 2 of the California Constitution.

Article 10 section 2 of the Constitution defines a riparian right as a right to use "no more than so much of the flow thereof as may be required or used consistently with this section." The use of water is thus confined to a reasonable and beneficial use that avoids "the waste or unreasonable use or unreasonable method of use of water ... the conservation of such waters to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare."

Since riparian rights are correlative as among riparians and overlying rights are correlative as among overlying users, the constitutional mandate of reasonable and beneficial use dictates an equitable apportionment of all rights when a water basin is in overdraft.

The overdraft in the Mojave Basin has existed for over 40 years. An owner who believes that he possesses a priority of right may file an action to protect this priority. Having failed to do so, the court may, under the doctrine of equitable apportionment, establish a safe yield for the basin and establish each owner/users' proportionate share based on reasonable and beneficial uses. The failure of the holder of a priority right to protect this right is in direct conflict with the public trust doctrine and the constitutional mandate to put the water resources of this state to beneficial use to the fullest extent possible. No water right affords entitlement to water in excess of the constitutional limitations. (City of Los Angeles v City of San Fernando, supra)

In the Mojave Basin, all sources of water are hydrologically connected and inter-related. An overdraft in the Alto Basin affects the ability of storm flows to recharge the Centro and Baja Basins. Overdraft in the Centro Basin affects the ability of storm flows to recharge the Baja Basin. To a lesser degree, overdraft in the Este Basin and Oeste Basin affects the recharge of the Alto Basin.

The surface and subsurface flows charge the groundwater storage basins. The flow of water and the percolation of water is not such that the Mojave Basin can be identified as a river system. One cannot say that groundwater is divorced from and unrelated to surface flow. The waters are inter-related, not only as to source, but also as to cause and effect related to use.

The substantial inter-relationship of groundwater and surface water requires that the rights in both shall be correlative.

Having found that all rights are correlative, a just and fair result is achieved by establishing a physical solution which limits each user to a proportionate equitable share of the total amount available.

"This does not mean that the Pasadena decision fell short of reaching a fair result on the facts there presented ... The issue before the court was whether water rights should be allocated according to priority of appropriation or according to prescriptive principles. In deciding for the latter, the court stated that under the priority rule, 'certain of the later appropriations would be completely eliminated.' whereas the prescriptive solution would serve the public interest because 'a pro tanto reduction of the amount of water devoted to each present use would normally be less disruptive than total elimination of some of the uses.' (City of Los Angeles v City of San Fernando, supra, page 266)

California Constitution Article XIV, section 3 now Article X, section 2 was adopted for the purpose of redefining water rights rather than merely providing remedies for the invasion of such rights. The amendment only regulates the use and enjoyment of a property right for the public benefit, for which reason the vested right theory cannot stand in the way of the operation of the amendment as a police measure. (Gin S. Chow v City of Santa Barbara (1933) 217 Cal. 701-703)

When a basin is in overdraft and the supply of water is insufficient to meet the needs of the basin, each user is limited to his proportionate equitable share of the total amount available, giving due consideration to achieving a balance in the basin.

"The use of the entire flow of a stream, surface or underground for sub-irrigation cannot be held to be a reasonable use of water in an area of such need. ..." (Tulare Dist. v Lindsay-Strathmore Dist. (1935) 3 Cal. 2d 489, 526)

"Although, as we have said, what is a reasonable use of water depends on the circumstances of each case, such an inquiry cannot be resolved in vacuo isolated from statewide considerations of transcendent importance. Paramount among these we see the ever increasing need for the conservation of water in this state, an inescapable reality of life quite apart from its express recognition in the 1928 amendment" (Joslin v Marin Muni. Water Dist. (1967) 67 Cal. 2d 132-140)

The overdraft of an entire, inter-related water basin cannot be held to be a reasonable use of water. There is no property right in an unreasonable use. (Joslin v Marin Muni. Water Dist. supra) Having determined that an overdraft exists and that the overdraft amounts to an unreasonable use of water, the court has the authority to draft and impose a physical solution which requires all users to share equitably in the cost and reduction of use, to safe yield. (Los Angeles v San Fernando supra, Pasadena v Alhambra (1945) 33 Cal. 2d 708, Rancho Santa Margarita v Vail (1938) 11 Cal. 2d 501)

CONCLUSIONS

A. DEVELOPMENT OF THE STIPULATED JUDGMENT

1. The process by which the Judgment Pursuant to Stipulation was negotiated was fair and equitable. All interested parties had the right and ability to provide in-put to the drafting process. [RT 400,401,403,404]

2. The Base Annual Production figures in Table B-1 of the Judgment Pursuant to Stipulation were based upon analyses

performed by the firm of James C. Hanson, Consulting Civil Engineers; 6,800 production facilities were identified and catalogued; 2,700 were reviewed and 1,400 facilities were included in the adjudication. [RT 1060:19-1061:5] The determination of water production for the various production facilities for the years 1986 through 1990 were conducted on a fair, equitable and comprehensive basis.

3. At trial less than twenty parties opposed the terms of the Judgment Pursuant to Stipulation. None of the opposing parties were from the Baja Subarea.

4. Any stipulating party has the ability to ask the court to be relieved from its stipulation if the final judgment is substantially different from the Judgment Pursuant to Stipulation and if such difference has a material adverse impact on the rights of such stipulating party.

5. The Physical Solutions provisions for groundwater and stream water management are fair and equitable and supported by reasonable engineering data and assumptions.

B. PHYSICAL SOLUTION USING FREE PRODUCTION ALLOWANCE

1) The Judgment Pursuant to Stipulation proposes to eliminate continued overdraft by annually setting a Free Production Allowance in each subarea and allocating it to producers. (Exhibit 401) If a party produces water in excess of that allowance, a replacement assessment will be imposed to replace such excess production. The assessment will be based on the costs of supplemental water. The allowance would be gradually lowered over a period of five years. After that time, further adjustments in the production allowance might be made based on engineering studies. This includes the possibility that the production allowance may be reduced further. If the underlying assumptions of availability of supplemental water prove to be faulty for any reason, the court has continuing jurisdiction and can make adjustment in the production allowances. [RT 790:18-791:1]

2) The court finds that elimination of the overdraft may occur at different times in the different subareas. The Judgment Pursuant to Stipulation provides sufficient flexibility, combined with continuing jurisdiction by the court, to meet the future needs of the Mojave River Basin. Sufficient groundwater remains in storage to give sufficient time for the stipulated judgment to bring the groundwater basin back into balance without significant harm. [RT 877-882]

3) The stipulated judgment attempts to "ramp down" to Production Safe Yield by means of a twenty percent (20%) decrease in the Free Production Allowance from the total base production

amount for each subarea over a period of 5 years (five percent per year for the next four years). [RT 156:20-28] After five years of ramp down under the Physical Solution to eighty percent (80%) of Base Annual Production, the Free Production Allowance will begin to approximate the Production Safe Yield of the Basin Area on an average, but not perhaps as to all subareas (using for example the production safe yield calculations in Exhibit 4013 as calculated for 1990 conditions). [RT 358:3-360:10] If there is still overdraft after the end of the first five years of the stipulated judgment, then the subareas in overdraft will be further ramped down after the fifth year to Production Safe Yield. [RT 361:2-15; 753:16-18]

4) The regulation of Free Production Allowance which would be imposed under the terms of the Judgment Pursuant to Stipulation is imposed on an equitable basis. Such regulation is necessary to ensure that maximum beneficial use is made of a limited resource, the water supply of the Mojave River Basin, and to protect the public interest. The court finds that such regulation does not constitute a taking of private property within the meaning of the United States or California Constitutions.

5) The stipulated judgment provides flexibility to allow the watermaster and the court to consider any and all relevant factors and give them whatever weight is deemed appropriate in the determination of a Free Production Allowance for each subarea. It is important to keep enough dewatered storage to pick up the natural inflow. [RT 890:2-25; 891:1-11] [RT 881:13-882:16]

C. PERIODIC DETERMINATION OF SAFE YIELD

1. The average annual natural consumptive safe yield of water which can be consumed in the Basin Area is equivalent to the annual water supply net of out-flows and other losses. [RT 1042:10-19] Because some of the water produced for use in the Basin Area returns to the groundwater and is available for additional production, the Production Safe Yield is greater than the Consumptive Safe Yield. The percentage return flow varies with the mix of types of water uses, which reflects the cultural conditions existing at any point in time. To the extent imported water is used to satisfy water uses, the Production Safe Yield is greater than that solely attributable to the natural supply. Production Safe Yield is a management tool used to determine the amount of supplemental water necessary to meet the annual deficit indicated by the safe yield calculation. [RT 831:5-14;]

2. Production Safe Yield is the yield that can safely be produced by pumping water from the basin without causing an adverse effect, assuming that water is actually imported to replace the deficit. [RT 822:1-4] Production Safe Yield is always based on a particular cultural condition. [RT 470:17-475:1] If production

were limited to the natural supply, then production would be limited to 104,800 acre feet annually; the impact on the economy if the production were cut back from 223,000 acre feet to 104,800 acre feet per annum would be dramatic and severe. [RT 962:7-963:5]

3. The determination of safe yield in the stipulated judgment and as expressed in table C-1 (Exhibit 4013) is consistent with the definition in the case of City of Los Angeles v City of San Fernando, supra, at page 278-279.

"Basically, safe yield was deemed equivalent to an adjusted figure for net groundwater recharge, consisting of (A) recharge from (1) native precipitation and associated runoff, (2) return flow from delivered imported water, and (3) return flow from delivered groundwater less (B) losses incurred through natural groundwater depletions consisting of (1) subsurface outflow (2) excessive evaporative losses in high groundwater areas and through vegetation along streams, (3) groundwater infiltration into sewers, and (4) rising water outflow, or water emerging from the ground and flowing past Gauging Station No. F57 down the river channel to the sea."

The determination of safe yield in the stipulated judgment is not inconsistent with the case of Hi-Desert County Water Dist. v Blue Skies Country Club Inc. (1994) 23 C.A. 4th 1723).

4. After an initial five year period, the stipulated judgment requires that the Watermaster, as an agent of the court, review the Free Production Allowance for each subarea and to recommend any necessary adjustments, taking into consideration various specified factors, including the Production Safe Yield for each subarea. Free Production Allowance must be steadily reduced until it does not exceed the Production Safe Yield. [RT 436:5-14; 439:3-440:3; 781:23-782:6]

D. EFFECT OF STIPULATED JUDGMENT ON AGRICULTURE

1. The stipulated judgment is fair and equitable to agriculture, and in particular to the non-stipulating farmers.

2. The economic evidence indicates that as to dairy operations, water costs are not a large enough portion of total costs to have a material impact on the economics of the operations. Dairy operations will not be significantly impacted by the judgment.

3. The economic evidence indicates that alfalfa farming constitutes a large portion of the agricultural operations of the Basin. A significant number of alfalfa farmers currently operate on a marginal basis and will be forced out of business in the next 10 years by economic factors, regardless of whether the stipulated

judgment is imposed. However, the stipulated judgment affords certain distinct benefits to agriculture which would not be available in the absence of the stipulated judgment.

4. The benefits to agriculture of the stipulated judgment include the following: The ramp down facilitates asset management and debt management, including time to replant fields which have useful terms of 5-10 years, and time to restructure loans. The ramp down provides time for development of a water market and avoids unnecessary termination of grower operations. The transfer provisions allow inefficient operations to transfer water to recover part of their investments, allows farmers to sell or purchase water without the need to transfer land, to try to achieve optimum operations, and allows land to earn income while not being used for crops. (Exhibits 4056 and 4057)

5. The stipulated judgment would provide an equitable and reasonable method for existing agriculture operations to make adjustments to become more efficient. The transfers of water which are allowed could help a particular operation achieve higher efficiency or could provide a return on investments to those operators who either reduce or cease agriculture.

6. The ramp down, transfers and assessments will provide means and incentives to agriculture operations to achieve greater efficiency in water use.

E. SPECIFIC PROVISIONS OF THE STIPULATED JUDGMENT

1. The declaration of rights of subareas and producers in the stipulated judgment is fair and equitable and is in accordance with the equitable apportionment guidelines stated in the case of Los Angeles v San Fernando (1975) 14 Cal. 3d 199, 265-267.

2. Injunctions contained in the judgment are fair and equitable. Their purposes are as follows: a) The injunction against unauthorized production is to insure that production beyond the Free Production Allowance would be subject to assessment under the judgment so that parties could not circumvent the judgment; [RT 508:4-17] b) The injunction against change in purpose of use without notice to the watermaster was to prevent increase in consumptive use by new use without watermaster adjustment to base production right; [RT 508:18-509:5] c) The injunction against unauthorized recharge allows the watermaster to control storage capacity, to best address the overdraft and to insure its maximum beneficial use; [RT 509:7-22] d) The injunction against transportation outside the basin prevents worsening of the overdraft by preventing Basin Area supplies from being moved outside of the Basin; [RT 509:24-510:3] e) The injunction against impeding storm flows seeks to maintain the historic average

recharge from periodic storm flows which is one of the principal sources of recharge for downgradient subareas without interference from upstream diversions. It will also benefit riparian vegetation in the lower subareas. [RT 510:4-511:0]

F. IDENTIFICATION OF SUBAREAS, SUBAREA

1. It is fair and equitable to maintain certain flow requirements between subareas as part of the physical solution. Flows to downstream subareas will be maintained either by supplemental water through the river and conveyance facilities, by purchase of transferred water by the watermaster, or by reductions in consumptive use. [RT 892:9-18; 910:14-18; 911:3-913:14]

2. The flow requirements between subareas are as follows: a) Este to Alto 200 acre-feet average annual subsurface flow as estimated in Bulletin 84; b) Oeste to Alto 800 acre-feet average annual subsurface flow as estimated in Bulletin 84; c) Alto to Centro 21,000 acre-feet average annual surface flow as measured at the lower narrows (and maintained by an immediate replacement water obligation in the transition zone to form a water bridge down to the Helendale Fault) plus a 2,000 acre-feet average annual subsurface flow as estimated in Bulletin 84; d) Centro to Baja 1,200 acre-feet average annual subsurface flow as estimated in Bulletin 84; e) Baja to the Mojave Basin 400 acre-feet average annual subsurface flow as estimated in Bulletin 84; f) these estimates and other subsurface estimates will need to be up-dated by the use of monitoring wells which will determine the water table slope at the boundaries. [RT 128:27-130:14]

The transition zone has a fairly stable water level. It is necessary to maintain that water level so that the surface flows passing the Lower Narrows and the subsurface inflow into the transition zone will reach the Helendale Fault, and hence downstream subareas; the flows at the Helendale Fault will in the future be measured using monitoring wells to insure that water levels are maintained within the transition zone. [RT 320:9-321:9]

G. ASSESSMENTS

1. The assessments imposed by the stipulated judgment are fair and equitable. It is not appropriate to require the Mojave Water Agency (MWA) to impose an ad valorem tax as part of the Physical Solution. Such a tax is not within the scope of the judgment, and is within the political prerogative of MWA.

2. Assessments apply to all production regardless of the type of use.

3. Administrative assessments are fair and necessary to pay the costs of monitoring and enforcing the terms of the judgment.

4. Replacement assessments or net production assessments are imposed to the extent a party has overproduced, and thus contributed to a greater extent to the overdraft.

a) Section 37 (b) of the MWA Act authorizes the charging of a net production assessment for production in excess of the Production Safe Yield. The stipulated judgment establishes that assessment in the form of a replacement assessment ("net production assessment"). Section 37 (b) does not authorize a gross assessment on water production.

b) A net production assessment is equitable because it gives a general priority to those who are currently beneficially using water. [RT 449:8-22] A gross production assessment would be a disincentive to conservation of water because it would mean charging the same to a new developer as to those with continuous historical pumping (most typically, the small agricultural operations); and would be inequitable to those historic producers by causing them to share in new development costs. [RT 450:1-8] A gross production assessment was objected to by agricultural producers who claimed it would put them out of business immediately. [RT 453:7-14]

c) A net production assessment is also equitable because it requires replacement water to be returned to the subarea from which it was overproduced, thereby restoring the balance to that particular subarea and not allowing other subareas which are overproducing to benefit from the payments in another subarea where there is not overproduction.

d) A net production assessment is fair and practical because new producers who increase the overdraft will likely have to pay for the cost of importing their own water. It will increase conservation by municipal users because increased rates will have a direct impact on the amount of consumption by a customer. [RT 841:16-22]

e) Payment for purchase of water above Free Production Allowance could cause some inefficient farm operations to go out of business. [RT 941:18-23]

5. Makeup assessments are necessary to assure subarea obligations are met and that the entire Basin stays in balance.

6. Biological assessments are a fair means of protecting biological resources of the Basin.

7. The court has broad authority to impose assessments to bring groundwater in the Basin Area within balance. Forni v State Water Resources Control Board (1976) 54 Cal. App. 3d 743. The assessments imposed by the stipulated judgment are fair and equitable.

H. BASE ANNUAL PRODUCTION RIGHTS

1. The amount of Base Annual Production right for each party as listed in Table B-1 of the Judgment Pursuant to Stipulation is fair and equitable. [Except as specified herein as to Jess Ranch]

2. The procedure for determining the Base Annual Production rights was complete, fair and accurate.

3. The use of the 1986-1990 time period was fair and reasonable. As noted below, adjustments were made in particular cases where appropriate.

I. CONTINUING JURISDICTION, CONTINUING ENGINEERING STUDIES

1. The stipulated judgment provides flexibility to meet future needs and developments by providing for continuing jurisdiction by the court.

2. The stipulated judgment recognizes that information about the water supply and hydro-geology of the Basin is not complete and provides for continuing studies and provides flexibility in the management of the Basin and administration of the judgment, to reflect changes needed in light of new and additional information.

3. Table C-1 of the Judgment Pursuant to Stipulation reflects the methodology to be used in future years to determine whether additional ramp down or adjustment will be needed after the initial five year period. The numbers therein are illustrative and are to be used for that purpose only.

J. TRANSFERS

1. Transfers of Free Production Allowance which are authorized by the Judgment Pursuant to Stipulation (within the Basin area only) are consistent with the California law and will help direct water to the highest beneficial uses. The controls on transfers as specified in the Judgment Pursuant to Stipulation will adequately protect third parties affected by the transfers.

2. This court has jurisdiction to implement a Physical Solution which establishes certain and transferable water rights. The California legislature encourages such a solution in Water Code section 109.

3. Transfers under the stipulated judgment are reasonable, beneficial and equitable because they will reduce reliance on imported water, encourage highest and best use of water, prevent economic hardship, and will not result in harmful third party impacts. [RT 710:20-711: 7; 711:9-11; 711:20-25; 717:26-7183; 698:20-23; 700:20-27; 701:18-25] Transfers of free production rights from one use to another, and from one place to another within the Basin Area, will be evaluated by the watermaster as to the consumptive use impact with the subarea. [RT 269:15-25] Transfers to a higher consumptive use will be adjusted so that the transferable right is less; however, transfers to a lower consumptive use will not trigger a readjustment in the Base Annual Production right, therefore benefitting the basin balance. [RT 788:5-19; 456:1-458:5] The same impact and rule applies to those who do not transfer their unassessed right to another party, but who change their use without changing ownership; a change in use which results in an increased consumptive use shall be reported to the watermaster and, if permanent, will result in a reduction in that producer's free production allowance. [RT 458:6-459:25]

K. APPOINTMENT OF A WATERMASTER

1. The California legislature recognizes that many water management decisions can best be made at a local or regional level, to the end that local and regional operational flexibility will maximize efficient use of water supplies and further the policies of the California Constitution. Water Code section 380(c), (d). The MWA is the most appropriate entity to serve as watermaster because it has regional authority pursuant to its statute to import supplemental water and manage the water supplies, but has no vested right in any particular production. It has the staff and resources to competently prepare the reports and monitor production and flows. The Judgment Pursuant to Stipulation appoints MWA as Watermaster.

L. MINIMAL PRODUCERS

1. The Physical Solution exempts minimal producers (defined as producers of 10 acre-feet annually or less) from the terms and provisions of the Physical Solution consistent with the exemption of users of minor quantities of water from State Board adjudications found in Water Code sections 2502 and 2503.

2. Minimal producers should be administratively dealt with by the MWA pursuant to its statutory powers. The court will review the MWA proposed legislation to see that it is equitable. [RT 424:21-426:16]

3. Minimal producers who wish to become a party to the judgment can agree to pay assessments under the judgment and transfer their production rights. [RT 426:28-427:6] Those who do not wish to become parties can produce water outside of the jurisdiction of the judgment until the court approves a program for the MWA to implement which will assure fair participation in the Physical Solution.

4. The MWA has attempted to identify all water producers. Because of the size of the area and the number of producers, some producers or individuals may have not been actually aware of the pending litigation.

Production beginning after the 1986-1990 period can be characterized as follows:

- a. Owned property, but has not produced water in excess of 10 acre-feet at any time between 1980 and 1995;
- b. Owns the property and actively farmed prior to 1986, but hasn't produced water since 1986; or
- c. Purchased property after 1990 and begins production after 1990.

Pursuant to paragraph 40 of the stipulated judgment, a procedure is established for a party who produces or begins to produce water after 1990, absent any production during the base production period, to intervene and become bound by the terms of the judgment.

After entry of final judgment, the MWA will record the judgment pursuant to Section 41 of the stipulated judgment with the County of San Bernardino Recorder's Office, which recordation should give notice to all affected producers.

The court finds that this is a fair and equitable method of dealing with production proposed by individuals or entities not producing from the Basin Area during the 1986-1990 base period.

M. SUPPLEMENTAL WATER

1. The evidence indicates that there will be a source of imported water.

2. To the extent imported water is not completely consumed, it will benefit the Basin and all producers, including

those who did not pay replacement assessments, by relieving the cumulative overdraft.

3. Under the stipulated judgment, sufficient water will be made available through all those mechanisms that are listed in the stipulated judgment, including importation of water, conservation due to pricing, and watermaster purchase and retirement of Free Production Allowance. [RT 876:22-25; 706:25-28] Supplemental water is defined as "an additional source of water that is above the natural water supply for that area". [RT 175:17-19] If supplemental water is not available, then in order to balance the basin, there would have to be a reduction in the consumptive use of the natural water supply through pricing or watermaster purchase of Free Production Allowance. [RT 693:20-23] While supplemental water is not the sole source of solving the problem of overdraft, to the extent that it needs to be used to help solve the problem, it will be found and made available. [RT 656:27-657:5; 574:28-575:7]

4. Eighty percent (80%) of the MWA state project contract amount of 50,800 acre-feet Table A Annual Entitlement is available to the MWA on an average annual basis. [RT 924:3-7] In addition, in wet years, the state water project has surplus water available at not more than the variable cost of such water. [RT 176:24-28] The MWA has the underground storage space to store large quantities of surplus water and eventually treat it as a fixed independent source of supplemental water. [RT 178:17-20]

5. The MWA has the authority to levy ad valorem taxes.

In addition to ad valorem tax revenues, the MWA has other sources of financing and funding to purchase water available to it. These include, but are not limited to:

- a) Pumping Assessments: 97-16
- b) Zone of Benefit Assessments: 97-38
- c) Improvement Districts: 97-40
- d) General Obligation Bonds: 97-21; 97-29
- e) Revenue Bonds
- f) State and Federal Loans and Grants

In addition to the assessments allowed by the stipulated judgment, the MWA will continue to use the funding mechanisms pursuant to its Act to plan for, purchase and deliver supplemental water.

6. The MWA has opportunities from sources outside its boundaries who want to sell water to the MWA. Some of the potential transferrers who have water available are Broomieside Ranch, Turlock Irrigation District, Cadiz Land Company, Hacienda Ranch, Conaway Ranch and Yuba County Water District. In addition, in any given year, entitlement from other state water project

contractors is available on a year-to-year basis. Permanent sale of entitlement water among state contractors is a possibility. The only restriction preventing the MWA from purchasing such excess entitlement is the inability to pay for it. [RT 550:15-555:14;947:1-25;175:4-12; 175:25-176:23]

N. BENEFITS TO THE ENVIRONMENT

1. The Judgment Pursuant to Stipulation does not dedicate water in any specific amount to the phreatophytes. The stipulated judgment will attempt to obtain the water table levels that the California Department of Fish and Game set forth as being proper to sustain those habitat areas; however, natural conditions such as fires and floods could affect the extent of riparian habitat for the purposes of safe yield calculations. [RT 783:1-9]

2. Phreatophyte (riparian vegetation) use in the Mojave River generally increases with higher groundwater levels and decreases with lower groundwater levels. Based on aerial photographs and unit water use values of 3.9 acre-feet per acre, the average annual water use for the long term 1931-1990 period was estimated at 22,100 acre-feet for the Mojave River area. During the 1986-1990 drought period, average annual phreatophyte use was estimated to be 7,500 acre-feet per year. (Exhibit 2433)

Mr. Kuykendall testified that the consumptive use of phreatophytes for the total basin is 40,000 acre-feet. (RT 1933)

The stipulated judgment relies on a basin phreatophyte consumptive use of 7,500 acre-feet. This discrepancy in the consumptive use by phreatophytes will affect the validity of any basin safe yield calculation. Therefore, the watermaster is directed to conduct a study of the basin phreatophyte consumptive use.

3. Groundwater level standards have been established at certain points in riparian areas to insure that water tables are maintained at sufficient levels to insure riparian growth.

4. There is however, in the stipulated judgment, a recognition that in some riparian areas, there might need to be extraordinary efforts to protect the habitat, and the stipulated judgment provides a mechanism which is called a Biological Resources Trust Fund which is funded by assessments on all production and which is capped at one million dollars in 1993 dollars. The fund can be used by Fish and Game to construct wells, irrigate vegetation, do studies or other projects.

O. TREATMENT OF UNIOQUE SITUATIONS

1) Verde Ranch Producers

The Verde Ranch provisions are designed to deal with a unique situation in that some of the water produced by the California Department of Fish and Game fish hatchery is discharged into a tail water system which is commingled with water produced by several of the Verde Ranch producers. All of the Verde Ranch producers make beneficial and consumptive use of a portion of this tail water supply. It was therefore necessary to establish an accounting procedure so that each of the producers would participate equitably in the ramp down along with all other producers in the Alto subarea. The Verde Ranch provisions allow the Verde Ranch producers to continue their existing arrangements regarding the tail water system, while at the same time meeting their responsibility for alleviating the overdraft.

2) Rancho Las Flores

Rancho Las Flores is the only significant producer who is a true surface water diverter. Thus, its access to water supply varies widely from year to year depending on whether it is a wet year or dry year. The other producers rely on production from a groundwater basin and can generally get the same amount of water whether or not it rained in that year. The years used in the judgment to determine production rights were generally dry with below average stream flows and did not reflect the water available to Rancho Las Flores over a more representative period of wet and dry years. In order to treat Rancho Las Flores on an equivalent basis with pumpers from the groundwater basins, the long term average available to Rancho Las Flores was the basis for calculation of its right, and that was seen as a fair representation of the impact of its consumptive use on the water supply of the basin. Rancho Las Flores' base production number was calculated by taking the 19 year average diversion, and adjusting that number to the amount that would have been available to the ranch if the 60 year average water supply had occurred during that 19 year period. Rancho Las Flores' Base Annual Production number using that formula was actually less than the highest year during the base period. [RT 584:12-586:28]

3) Baja and Other Recreational Lakes

Recreational lakes in Baja requested their production right not be based on production, but on evaporation rate because of location in or near porous soil. In order to maintain lake levels, the production facilities are run at a high rate, but most of the water just percolates back into the ground through the bottom of the lakes. The lakes' production rights are tied to their consumptive use, which is a very low percentage of what they

pump. If they cease their lake use, they only have a transferable right to the amounts consumed by evaporation, a very small portion of their actual pumping. The Basin was protected by that consumptive use approach. [RT 487:21-490:11]

Other recreational lakes, such as those surrounded by subdivisions which are more settled in their location, are given base production rights based on their production, but if they ever decide to cease their production and transfer their free production rights, they can only transfer their consumptive use portion of those rights just the same as the recreational ski lakes. [RT 490:12-492:12]

4) Jess Ranch

Jess Ranch claims gross production for the year 1986 of 18,625 acre-feet. Jess Ranch contends that its gross annual production for the year 1986 should be considered as Jess Ranch's Base Annual Production Right for implementation of the Physical Solution.

Jess Ranch presented evidence of riparian, overlying and pre-1914 appropriative rights. An appropriative right is initiated by the exercise of control over a quantity of water put to a beneficial use. (People v. Shirokan (1980) 26 Cal. 3d 301) Generally, riparian rights have priority over appropriators and the appropriator only has a right to the use of surplus water.

A complete analysis of the Jess Ranch's water rights claim is unnecessary. First, there is no surplus, therefore there is no water available for the appropriative right. Second, the priority rule would lead to a reduction in some uses below any beneficial use and eliminate some later appropriations. No matter what the claimed right, only reasonably beneficial uses qualify. Third, the exercise of either the riparian or overlying right is correlative to the rights of all of the other users in the basin. Thus, Jess Ranch's Base Annual Production right must be determined on an equitable apportionment basis.

Prior to 1986, Jess Ranch changed its intended purpose of use from agriculture to commercial and residential. In 1984, Jess Ranch sought and obtained permission from the San Bernardino County Board of Supervisors to convert its 1,447 acres of property from agriculture to urban use. In this process an Environmental Impact Report was prepared and adopted by the Board on June 11, 1984. In adopting the report, the Board made a Finding of Impact concerning Regional Overdraft of Groundwater. The finding, acquiesced in by Jess Ranch, indicated that although 22,000 acre-feet of water were being pumped on the property, only 1,800 acre-feet were consumptively used. At full build-out, with no agriculture retained, the Board found that consumptive use on the property would be reduced to 1,300 acre-feet per year. (Exhibits 4081-4082)

According to the owners of Jess Ranch, in statements filed with the Public Utilities Commission, the residential and commercial project on the site will require no more than 4,000 to 4,500 acre-feet applied water at full build-out. (Exhibit 4035)

During the period 1986 to 1990, water application categories of uses on the Jess Ranch included housing, greenbelt maintenance, dust control, chicken raising, sheep raising, tree maintenance, lake evaporation, pond cleaning, agriculture and trout production.

The water application on the Jess Ranch results in two types of water use. One is for aquaculture which consists primarily of recirculated water: a large amount of water is pumped into the trout lakes and flows through at a rapid rate as is necessary to raise the trout. This results in very little consumptive use and/or evaporation off the surface of the lakes. The remainder flows out the other end of the lakes.

The drainage of tail water coming off the lakes is applied to irrigation. [RT 505] The amount of water applied to irrigation was not established by the evidence.

In 1986, Jess Ranch estimated that 600 acres were in agricultural production. However, other documents set the agricultural production at 300 acres (Exhibit 4033) or 400 acres (Exhibit 4082). Jess Ranch also contended that soil conditions had an affect on application rates, requiring more water. [RT 2235:10-16, RT 3041 5-6] Jess Ranch allegedly used more water to increase crop yield. (RT 3175:17-3176:5) However, as far back as 1918, the water duty for Mojave River bottom land was only 16 acre feet per acre. (Exhibit 3059)

In arriving at the opinion of agriculture use set forth below, the court finds the testimony of Mr. Beeby persuasive. [RT 3470-3473]

Jess Ranch argues that it is inequitable for the court to decide the reasonableness of its use because no other producer was investigated. Jess Ranch overlooks the investigations by Mr. Hansen and the work done by the Mojave Water Agency to verify the production of the stipulating parties.

Jess Ranch placed in issue its' water rights and the reasonableness of its' use. Therefore, the court must make factual determinations to decide the issue of Jess Ranches' proportionate equitable share of the available water.

"Thus, it seems evident that the overriding principle governing the use of water in California is that such use be reasonable. However, as repeated on innumerable occasions, what is reasonable use or reasonable method of use of water is a question

of fact to be determined according to the circumstances in each particular case (Joslin v Marin Muni. Water Dist., supra, at page 139; Gin S. Chow v City of Santa Barbara, supra, at page 706). As the court put it in Tulare Dist. v Lindsay-Strathmore Dist. (1935) 3 Cal. 2d 489, 567 [45 P.2d 972], 'What is a beneficial use, of course, depends upon the facts and circumstances of each case. What may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time.' (Italics added.)"

"Likewise, the claim that respondents' use of water is beneficial does not bring it within the constitutional postulate of reasonableness. As emphasized in Joslin, 'beneficial use' cannot be equated with 'reasonable use,' and 'the mere fact that a use may be beneficial to a riparian's lands is not sufficient if the use is not also reasonable within the meaning of section 3 of article XIV ...' (Joslin v Marin Muni. Water Dist., supra, at page 143)". (People Ex Rel. State Water Resources Control Bd. v Forni 54 C.A. 3d 743; 126 Cal. Rptr. 851)

Jess Ranch failed to establish that its use of 18,625 acre-feet in 1986 was a reasonable and beneficial use.

Jess Ranches' Base Annual production right is related to its agriculture use 600 acres at 10 acre-feet per acre, the evaporation from the lakes 90 surface acres at 7 acre-feet per acre, the home use 50 acre-feet and greenbelt irrigation 80 acres at 10 acre-feet per acre for a Base Annual production of 7,480 acre-feet. Based on the court's conclusions, Jess Ranches' table B-2 calculation is just a matter of mathematics. (Exhibit 4001)

P. CITY OF ADELANTO ISSUES

1. With respect to alleged violations of the California Constitution and Water Code section 275 as to waste, unreasonable use and trespass, no evidence was introduced that the proposed judgment constitutes an unreasonable use, trespass or waste of water. Based upon evidence presented at trial, Adelanto has not established that the water use of any named cross-defendant is unreasonable or wasteful [RT 653:17-654:15].

2. Based upon evidence presented at trial, Adelanto has not established that any of the named cross-defendants have trespassed or are trespassing on the water rights of the City of Adelanto. Adelanto has failed to demonstrate either legally or factually two crucial elements of the doctrine of trespass. It has not demonstrated a legally sufficient present possessory interest of a "paramount" water right not subject to application of the standard of reasonable and beneficial use pursuant to the California Constitution, nor has it demonstrated that such interest

suffers any real injury from imposition of the proposed judgment. (See, Tulare Irrigation District v Lindsay-Strathmore Irrigation District (1935) 3 Cal. 2d 489). There is no vested property right in a water supply for any purpose. The vested property right is only in the use of the water, and that use is subject to reasonable regulation by the State. United States v California Water Resources Control Board, 182 Cal. App. 3d 82. Adelanto presented no evidence that upstream municipalities were producing from an underground stream.

The defendant City of Adelanto claims an adjudicated water right established by a stipulation between the parties in the case of Bennette v. Adelanto Farms, Case No. 29513, San Bernardino Superior Court.

Plaintiff Bennette alleged that the defendants had diverted water from plaintiff's property and were using the diverted water on non-riparian land. (Exhibit 2013) The parties settled the lawsuit. Plaintiff Bennette stipulated that defendant Adelanto Farms could have the use of one hundred inches of water.

This stipulation created no water right that enures to the benefit of defendant City of Adelanto. The stipulation is binding on the parties only. The stipulation concerned a riparian right which can only be utilized on riparian land. The stipulation and pleadings implied a diversion of water. No evidence was submitted that defendant City of Adelanto complied with Water Code section 4999.

Adelanto claims that the Bennette right is a prescriptive right. [RT 3276-3326] this contention fails because the water right was not the subject of an adverse use claim but a claim of right under the stipulation. The stipulation certainly cannot affect the rights of other riparians.

A riparian right may not be used for municipal purposes.

The City of Adelanto has appropriative rights to waters of the Mojave River System as evidenced by License 6506 issued by the State Water Resources Control Board (1,810 acre-feet per year). The Tabela B-1 allocation, designated Adelanto/George Air Force Base, is subject to the resolution of the dispute between the City of Adelanto and George Air Force Base.

Q. ISSUES AS TO CROSS-DEFENDANTS MANUEL CARDOZA, ET AL.

The cross-defendants Manuel Cardozo, et al. did not prove any water right.

The Cardozo defendants contend that they are riparian/overlying owners and therefore have a priority of use. The mere fact that these defendants are pumping water from wells

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does not establish a riparian/overlying right. The Cardozo defendants did not prove the existence of known and defined channels. Therefore, the water they are pumping could just as easily be groundwater. Does the failure to prove a riparian/overlying right necessarily establish a groundwater right? Not necessarily.

The McCulloch Properties Deed; September 30, 1975 to Manuel Cardozo clearly excepts "underground water". (Exhibit 1054)

The Lewis Deed, July 28, 1980 to Manuel Cardozo, grants 860 acre-feet of ground water as determined by the Mojave Water Agency adjudication. (Exhibit 1054)

A number of other deeds reference reservations in deeds from the Arrowhead Lake Co. These earlier deeds may have conveyed or reserved water rights. The defendants' parcels are divisions of larger parcels. Thus, there may be no riparian rights existing on the subdivisions.

The filing of the notice of extraction required by Water Code section 4999 is not dispositive on the issue of the type of water rights.

R. RULINGS APPLICABLE TO ALL OPPOSING PARTIES.

1. No party presented sufficient evidence of riparian rights. The opposing parties did not present sufficient evidence of chain of title to establish the existence of riparian rights to any property. No party presented evidence that the property claimed to be riparian has always been held as part of a parcel which is riparian.

2. No party presented sufficient evidence of a subterranean stream for a particular well location.

3. No opposing party presented any evidence that the Judgment Pursuant to Stipulation, if imposed of them, including the assessments contained therein, would economically harm them.

4. The court finds that imposing the terms of the Judgment Pursuant to Stipulation on the overlying and riparian water rights holders would be fair and equitable.

5. No opposing party presented any evidence that the Judgment Pursuant to Stipulation, if imposed of them, including the assessments contained therein, would economically harm them.

For all the foregoing reasons, the court finds as follows:

1. The Mojave River Basin is in overdraft.

2. The procedure used to set the Free Production Allowance and the establishment of a five year ramp down period is fair and equitable.

3. The provisions of the Judgment Pursuant to Stipulation are fair and equitable.

4. The provision of the Judgment Pursuant to Stipulation allow for adjustments to balance the basin and allow for reduction in production to achieve a basin safe yield.

5. The terms and conditions of the Judgment Pursuant to Stipulation will become the Court's final judgment.

6. Cross-defendant City of Adelanto and Cross-defendants Cardozo are entitled to a Base Annual Production Right and a Free Production Allowance as set forth in Table B-1 of the Stipulated Judgment.

7. At the trial of this case, the following individuals appeared in pro per requesting consideration of their circumstances:

a. John Wakula. Mr. Wakula was served on February 4, 1993 and his default was taken on January 28, 1995. He owns one parcel, APN number 469-011-04 at 50 acres. Mr. Wakula was verified at 291 acre-feet based on 40 acres of alfalfa farming. Judgment will be entered against Mr. Wakula. His Table B-1 amount will be 291 acre feet.

The Mojave Water Agency is reviewing the Free Production Allowance of the individuals listed below:

b. Robert Kasner. Mr. Kasner was served on March 28, 1993. His default was requested on January 28, 1995, and he filed an answer on February 1, 1995.

c. Thomas Hamm III. Mr. Hamm is not currently named and has not been served in this case by the MWA. He was treated as a minimal producer.

d. Vernon Lynch. Mr. Lynch was served on March 24, 1993, but was dismissed on August 6, 1993 based on responses to special interrogatories which indicated minimal status. He filed an answer on October 14, 1994.

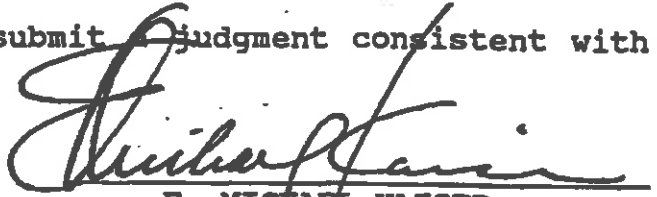
e. Alejandro Pacheco. Mr. Pacheco is not currently named and has not been served in this case by the MWA.

f. Richard Fortytune. Mr. Fortytune is not currently named and has not been served in this case by the MWA. He was treated as a minimal producer.

g. Leroy Pittman. Mr. Pittman was served on October 19, 1992. His default was taken on August 17, 1994.

h. Edwin Evenson. Mr. Evenson was served on March 1, 1993. His default was taken on August 17, 1994.

The MWA will prepare and submit a judgment consistent with this opinion.



E. MICHAEL KAISER
Judge of the Superior Court

The Court received a number of letters concerning its intended decision. The Court will attempt to answer the expressed concerns.

The Mojave River Basin has had more water taken out of it than nature has returned. This overdraft commenced in the early 1950's and continues to this date.

The long term average natural water supply is 78,600 acre-feet per year. There is consumptive use by vegetation and surface and subsurface outflow. These uses amount to 15,760 acre-feet per year. This leaves a basin safe yield of 62,900 acre-feet per year.

Safe yield is defined as "the maximum quantity of water which can be withdrawn annually from a groundwater supply under a given set of conditions without causing an undesirable result. 'The phrase 'undesirable result' is understood to refer to a gradual lowering of the groundwater levels result in eventually in depletion of the supply'." (Los Angeles v San Fernando (1975) 14 Cal. 3d 278)

The present basin overdraft is 72,200 acre-feet per year. The present overdraft in the Alto Basin is 23,300 acre-feet per year and as of 1990 there was 960,000 acre-feet of groundwater stored in the Alto Basin. All of the groundwater in storage is not available for use because a continuing overdraft will affect water quality and require the drilling of new wells. If the overdrafting continues, eventually there will be no water.

In the court's view, a reduction in production to the safe yield level of 62,000 acre-feet per year would have adverse economic consequences for the Mojave River Basin. Therefore, the production safe yield was used, as a guideline, to allow the communities and agriculture to adjust.

Some suggested giving agriculture the water. However, agricultural production exceeds the basin safe yield. A reduction in agricultural use, with no water going to the communities, would not benefit anyone.

There were complaints about the 1986-90 base period. But, there had to be a starting point and it should be remembered that the production will be reduced by 20 percent over the next four years. Each year the watermaster must report to the court and further reductions in production will be made, if necessary.

It is clear from the evidence that there are probably more claimed water rights than there is water. Any determination in the priority of water rights would result in the elimination of some water rights and the reduction of others.

There will be an increase cost for water, as state project water is brought in. Water conservation will also be necessary.

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 January 25, 2024, 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:

REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO MOTION OF SHADOW MOUNTAIN RANCH, LLC, TO INTERPRET AND CLARIFY JUDGMENT

 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 January 25, 2024 at Apple Valley, California.



Jeffrey D. Ruesch

Mojave Basin Area Watermaster Service List as of January 25, 2024

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Mojave Basin Area Watermaster Service List as of January 25, 2024

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Mojave Basin Area Watermaster Service List as of January 25, 2024

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Mojave Basin Area Watermaster Service List as of January 25, 2024

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Mojave Basin Area Watermaster Service List as of January 25, 2024

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