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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

CITY OF BARSTOW, et al.,

Plaintiffs,

v.

CITY OF ADELANTO, et al.,

Defendants.

And All Related Cross-Actions

Case No. CIV208568 / JCCP5265

**CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE'S OPPOSITION TO
WATERMASTER'S MOTION FOR
DETERMINATION OF HYDROLOGIC
BASE PERIOD FOR PRODUCTION
SAFE YIELD CALCULATIONS**

**[Concurrently filed with Supporting
Declarations of Aaron Johnson and James
Blanke]**

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Time: 8:30 a.m.

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Judge: Hon. Craig C. Reimer, Retired

Action Filed: November 21, 1990

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INTRODUCTION

The Mojave Water Agency, as Watermaster, moves for an order requiring future Production Safe Yield (PSY) calculations to be based on a 20-year hydrologic base period of 2001 to 2020 (Motion). While the California Department of Fish and Wildlife (Department) generally supports an adaptive approach to integrating new information and methods in the Judgment and physical solution, Watermaster has not adequately established how changing the hydrologic base period will change the elements of PSY calculations for each of the Mojave Basin's Subareas.

Neither the Judgment nor Watermaster's Rules and Regulations provide a methodology for determining an appropriate hydrologic base period. In the absence of a set procedure, Watermaster argues the proposed revision satisfies the requirements of a decades-old trial exhibit, Bulletin No. 84, and that it is consistent with the Judgment's definition of PSY. But Watermaster's motion lacks evidence and analyses of long-term water supply on a Subarea-wide basis, or of how the proposed new base period would be incorporated into a PSY analysis, or of how the proposed period captures "recent cultural conditions," an undefined concept for this specific Basin and each of its Subareas. Given Watermaster's failure to conceptually or quantitatively explain how the establishment of a different base period would improve PSY estimates, it is not possible to provide a meaningful response or informed position on Watermaster's proposed change to the base period. (Decl. of Aaron Johnson in Support of Cal. Dept. of Fish and Wildlife's Opp'n to Watermaster's Mot. for Determination of Hydrologic Base Period for Production Safe Yield Calculations (Johnson Decl.), ¶ 8, p. 3.)

The Motion is also poorly timed. According to Watermaster, its Regional Mojave Basin Model (RMBM), when complete, may suggest different hydrologic base periods on a Subarea basis. For this reason, the hydrologic base period should be considered concurrently with a future update to the PSY, rather than now without the RMBM.

Accordingly, the Department respectfully opposes the Motion as insufficient to establish the order requested therein.

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BACKGROUND

I. THE DEPARTMENT AND THE PUBLIC TRUST

The Department is the trustee agency for California’s fish and wildlife resources, including their habitats. (Fish & G. Code, §§ 711.7, 1802.) The Department owns land within the Basin’s Baja Subarea (Camp Cady Wildlife Area) and Alto Subarea (Mojave Narrows Regional Park and Mojave River Hatchery) and is an ex- officio member of these Subareas Advisory Committees. (Johnson Decl., ¶¶ 3, 4, pp. 2-3.) The Department also regularly attends Watermaster meetings, hearings, and workshops, and provides verbal and written comments to Watermaster, including voicing concerns over significant decreases in the Baja Subarea’s water supply and the risk of losing groundwater-dependent vegetation under Watermaster’s proposed hydrologic base period. (*Id.* at ¶ 12, p. 4.) Thus, the Department has extensive knowledge of the Basin’s workings and history, and involvement in the daily management of critical public trust resources within the Basin.

The public trust doctrine represents the state’s authority to exercise continuous supervision and control over ecological and recreational interests that are dependent on navigable waters of the state, tributary non-navigable waters of the state, and the lands underlying those waters. (*Nat. Audubon Soc’y v. Super. Ct.* (1983) 33 Cal.3d 419, 425, 426 (*Audubon Society*)) [“Before state courts and agencies approve water diversions, they should consider the effect of such diversions upon interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests”].) The doctrine extends to groundwater and its effects on public trust resources. (*Envtl. Law Found. v. State Wat. Res. Control Bd.* (2018) 26 Cal.App.5th 844, 859, 863 [duty to consider adverse impacts of groundwater extraction on public trust resource and to preserve public interest in resources].) Therefore, before state courts and agencies approve water diversions or water uses, they must consider the effect of such uses upon interests protected by the public trust and attempt to avoid or minimize any harm to those interests. (*Audubon Society, supra*, 33 Cal.3d at p. 426.)

The public trust doctrine also imposes a duty of continuing supervision over the taking and use of water affecting public trust resources. (*Audubon Society, supra*, 33 Cal.3d at p. 447.) In

1 exercising sovereign power to protect water resources in the public interest, neither the state nor a
2 court is confined by past water allocation decisions that may be incorrect in light of current
3 knowledge, or inconsistent with current needs. (*Ibid.*) Rather, the Court must continually
4 consider the effects of groundwater pumping on public trust resources such as endangered species
5 and riparian habitats.

6 **II. THE JUDGMENT**

7 The 1996 Judgment After Trial (Judgment), to which the Department is a party, declared
8 that the Basin and each of its Subareas have been in a continuous state of system-wide overdraft
9 for many years. (Judgment, ¶¶ II(B)(7), p. 14, see also *id.* at subd. (C)(10)(a), p. 20.) The
10 Judgment established the Basin’s “Production Safe Yield,” i.e., “[t]he highest average Annual
11 Amount of water that can be produced from a Subarea: (1) over a sequence of years that is
12 representative of long-term average annual natural water supply to the Subarea net of long-term
13 average annual natural outflow from the Subarea, (2) under given patterns of Production, applied
14 water, return flows and Consumptive Use,¹ and (3) without resulting in a long-term net reduction
15 of groundwater in storage in the Subarea.” (Judgment, ¶ II(A)(4)(aa), p. 11.)

16 The Judgment placed a limit, called Free Production Allowance (FPA),² on the amount of
17 water that can be produced annually from a Subarea without a Replacement Obligation.³
18 Specifically, Watermaster must recommend a five-percent decrease to a Subarea’s FPA when it
19 exceeds the Subarea’s estimated PSY by five-percent or more, on an annual water year basis.
20 (Judgment, ex. H, ¶ 2(a), pp. H-1 – H-2.) A Subarea may therefore be required to ramp down
21 production by a full five-percent. And, in considering whether to increase or decrease a

22 ⁴ “Consumption” or “Consumptive Use” means “[t]he permanent removal of water from
23 the Mojave Basin Area through evaporation or evapo-transpiration. . . .” (Judgment, ¶ II(A)(4)(j),
p. 9.)

24 ² FPA means “[t]he total amount of water, and any Producer’s share thereof, that may be
25 Produced from a Subarea each Year free of any Replacement Obligation.” (Judgment,
¶ II(A)(4)(k), p. 9.)

26 ³ “Replacement Obligation” means “[t]he obligation of a Producer to pay for Replacement
27 Water for Production from a Subarea in any Year in excess of the sum of such Producer’s share
of that Year’s [FPA] for the Subarea plus any Production pursuant to a Carry Over Right.”
28 (Judgment, ¶ II(A)(4)(dd), p. 12.) A “Producer” is a person, other than a Minimal Producer, who
produces water. (*Id.* at ¶ II(A)(4)(y), p. 11.)

1 Subarea’s FPA, Watermaster *must* consider the consumptive use of water by riparian habitat, the
2 protection of public trust resources, including the species listed in Judgment Exhibit H, Table
3 H- 1, and the riparian habitat areas, and whether an increase would be detrimental to the
4 protection of public trust resources. (*Id.* at ex. H, ¶ 2(a), p. H-2, italics added.)

5 The Judgment established each Producer’s initial Base Annual Production (BAP), i.e.,
6 “[t]he verified maximum Year Production, in acre feet, for each Producer for the five year Period
7 1986-1990 as set forth in Table B-1 of [Judgment] Exhibit B ...” and their “relative Annual
8 right ... to the [FPA] within a given Subarea, expressed as a percentage of the aggregate of all
9 Producers’ [BAP] in the Subarea.” (Judgment, ¶¶ II(A)(4)(f), (g), pp. 7, 8.)

10 The Judgment expressly declares that it “and the Physical Solution take into consideration
11 the unique physical and climatic conditions of the Mojave Basin Area, the Consumptive Use of
12 water in the several sections of the Basin, the character and rate of return flows, the extent of
13 established uses, the availability of storage water, the relative benefits and detriments between
14 upstream areas and downstream areas if a limitation is imposed on one and not the other, *and the*
15 *need to protect public interest and public trust concerns.*” (Judgment, ¶ II(C)(10)(h), pp. 20-21,
16 italics added.) Accordingly, Watermaster must consider the protection of public trust resources
17 and determine whether an FPA adjustment would be detrimental to their protection.

18 **III. HYDROLOGIC BASE PERIOD**

19 As noted by Watermaster, “[a]ny attempt to establish PSY starts with the selection of an
20 appropriate ‘hydrologic base period’ for determining average water supply and outflow,
21 consumptive uses, return flow, etc.” (Mot., p. 3, lines 5-6.) While the base period was initially
22 determined to span 60 years, from 1931 to 1990, the Judgment itself does not expressly define the
23 concept of a hydrologic base period, specify the period to be used, or provide a methodology for
24 determining it. (Johnson Decl., ¶ 8, p. 3; see generally Judgment.)

25 The Court questioned whether Watermaster’s recent PSY calculations were founded on
26 correct assumptions, including whether it should continue to rely on the initial 60-year base
27 period. (See September 6, 2022 Order, pp. 4-5 [“At the very least, should not the past 32 years of
28 data be added to the original 60 years?”].) Since the Judgment requires PSY to be based on “a

1 sequence of years that is representative of the long-term average[.]” (Judgment, ¶ II(A)(4)(aa), p.
2 11), last year the Court directed Watermaster to answer the following questions in Watermaster’s
3 next motion to adjust the FPA:

- 4 a. Is the 1931-1990 timeframe representative of the climate in the basin?
- 5 b. How long is “long-term” [within the meaning of the Judgment]? 20 years? 30
6 years? 40 years? Longer?
- 7 c. Should the Court establish a different base period to be used when adjusting PSY
8 and FPA and when questioning the accuracy of the Watermaster’s model or
9 recommendations? If so, when should that period begin and end?

10 (October 23, 2024 Order, p. 6.) The Department has since followed this issue with great interest,
11 especially because Watermaster’s prior two FPA/PSY motions, including the supporting
12 declarations and technical memoranda, and its 2024 PSY & Consumptive Use Report (upon
13 which the current PSY recommendations are based) already used the 20-year base period
14 proposed in the Motion. (Johnson Decl., ¶ 7, p. 3.)

15 **ARGUMENT**

16 **I. WATERMASTER’S MOTION IS INSUFFICIENT TO SUPPORT ITS REQUEST FOR AN** 17 **ORDER REDETERMINING THE HYDROLOGIC BASE PERIOD**

18 Watermaster bases its Motion on provisions of the Judgment and on the Department of
19 Water Resources’ 1967 Bulletin No. 84 (Bulletin). As noted above, the Judgment itself does not
20 define the concept of a hydrologic base period, specify the period to be used, provide a
21 methodology for determining it, or provide a process for revising it. And although the Bulletin
22 was a trial exhibit, it was not incorporated into the Judgment.

23 Watermaster argues that the required elements for an appropriate hydrologic base period are
24 described within the Judgment’s definition of PSY as (1) net average annual natural water supply
25 and (2) patterns of production, applied water, return flows and consumptive use. (Mot., pp. 5-6.)
26 But the Motion fails to provide sufficient evidence and analysis to accept Watermaster’s
27 interpretation. Nor has Watermaster provided sufficient evidence and analysis to establish the
28 appropriateness of shortening the base period or changing it to 2001-2020.

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1 **A. There Is Insufficient Evidence of Long-Term Average Water Supply**

2 Insufficient information is provided on the long-term average water supply. While the PSY
3 analysis required by the Judgment is performed on a Subarea basis, the Motion only provides
4 information on flow conditions at The Forks, a location relevant primarily to inflow to the Alto
5 Subarea. Additional information is needed to show 2001-2020 conditions relative to long-term
6 water supplies at areas near the boundary of Alto with Centro (historically based on
7 measurements at the Mojave River at Lower Narrows USGS gage 10261500) and at areas near
8 the boundary of Centro and Baja (historically based on measurements at the Mojave River at
9 Barstow USGS gage 10262500). (Decl. of James Blanke in Support of Cal. Dept. of Fish and
10 Wildlife's Opp'n to Watermaster's Mot. for Determination of Hydrologic Base Period for
11 Production Safe Yield Calculations (Blanke Decl.), ¶ 8(d), pp. 5-6; Johnson Decl., ¶ 10.)

12 Even if the parties agreed to follow the methodology in the Bulletin, there is insufficient
13 evidence to support Watermaster's claim that the proposed 2001-2020 hydrologic base period
14 meets the Bulletin's standards. Specifically, Watermaster argues that the proposed base period
15 "is representative of the 'long-time average water supply' (with a differential of only 6%)." (Mot., p. 4, lines 21-23.) But this six percent reduction of water supply only applies to the Alto
16 Subarea, where inflow is measured at the Forks. (Johnson Decl., ¶ 10, p. 4.) Watermaster failed
17 to provide information regarding reductions in the other Subareas' water supplies. (*Ibid.*) Where
18 is the evidence showing that the Baja Subarea has only suffered a six percent decline of long-term
19 average water supply?
20

21 In responses to Watermaster's motions to adjust PSY and set annual FPA for Water Years
22 2025-2026 and 2024-2025, the Department argued that significant reductions in surface flow have
23 occurred during the proposed base period, as measured at the Barstow USGS gage. (Johnson
24 Decl., ¶ 13, p. 4.) This reduced water supply has degraded public trust resources by reducing
25 groundwater recharge in Baja from stormflow events, especially public trust resources in Baja
26 and Camp Cady where groundwater levels remain far below the depths noted in the Judgment
27 Exhibit H, Table H-2 as required to support healthy native riparian vegetation. (*Ibid.*)

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1 As documented by Todd Engineers' 2013 Report, titled "Conceptual Hydrogeologic Model
2 and Assessment of Water Supply and Demand for the Centro and Baja Management Subareas
3 Mojave River Groundwater Basin" (2013 Todd Report), during more recent periods the Mojave
4 River loses flow volume as it moves through the Alto and Centro Subareas at a higher rate than
5 was experienced in the 1931-1990 time period. In Table 3.4, Todd presents the percent of
6 discharge at The Forks at downstream locations during the 1931-1990 base period: seventy-nine
7 percent (79%) at Lower Narrows (that is, 79% of the flow measured at The Forks is measured at
8 Lower Narrows), twenty-six percent (26%) at Barstow (that is, 26% of the flow measured at The
9 Forks is measured at Barstow), and thirteen percent (13%) at Afton (that is, 13% of the flow
10 measured at The Forks is measured at Afton). (See <[https://www.mojavewater.org/wp-](https://www.mojavewater.org/wp-content/uploads/2022/10/FINAL-REPORT-BAJA-CENTRO-BCM-without-Appendices.pdf)
11 [content/uploads/2022/10/FINAL-REPORT-BAJA-CENTRO-BCM-without-Appendices.pdf](https://www.mojavewater.org/wp-content/uploads/2022/10/FINAL-REPORT-BAJA-CENTRO-BCM-without-Appendices.pdf)> p.
12 3-42 [as of September 29, 2025].) Using the same methodology as the 2013 Todd Report, the
13 percent of discharge at The Forks at downstream locations during the proposed 2001-2020 base
14 period is thirty-eight percent (38%) at Lower Narrows, eleven percent (11%) at Barstow, and four
15 percent (4%) at Afton. This shows a substantial reduction in water supply to the Centro and Baja
16 Subareas compared to the 1931-1990 base period, due to lower flow at Lower Narrows and
17 Barstow, respectively. (Blanke Decl., ¶ 8(d), p. 6.)

18 Absent a comparison of 1931-1990 and 2001-2020 flows at Lower Narrows, Barstow, and
19 Afton, in addition to the Forks, it is not possible to provide a meaningful response or informed
20 position on how the 2001-2020 period relates to long-term average water supply. (Blanke Decl.,
21 ¶ 8(d), p. 6.)

22 **B. Watermaster Has Not Explained How the Proposed New Base Period Will**
23 **Be Incorporated Into a PSY Analysis of Depletions**

24 Pumping has resulted in increased recharge from the Mojave River to groundwater, or
25 decreased discharge from groundwater to the Mojave River. (Blanke Decl., ¶ 8(e)(ii), pp. 7-8.)
26 Depletions of the Mojave River due to groundwater pumping increased from the 1931-1990 time

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period to the 2001-2020 time period.⁴ (*Ibid.*) In the California Department of Water Resources (DWR) 2024 draft report titled “Depletions of Interconnected Surface Water: An Introduction” (DWR Report), DWR concludes that “absent other changes in water use, pumping from groundwater basins with [interconnected surface water] will, over time, reduce volumes of surface water bodies by an amount approximately equal to the volume of pumped water. (See https://s3.amazonaws.com/og-production-open-data-cnra-892364687672/resources/218e3361-c142-400f-a97f-5dfa79cd4997/depletionsofisw_paper1_intro_draft.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIAJJIENTAPKHZMIPXQ%2F20250925%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Date=20250925T212157Z&X-Amz-Expires=86400&X-Amz-SignedHeaders=host&X-Amz-Signature=4941ed3f6c7e4f4d6e537c49f01e0506a0100bbac04936362ebf3291ff106255) at p. 19 [as of September 29, 2025].) As a portion of the groundwater pumped in the Mojave Basin is returned to the groundwater system, it would be expected that the long-term depletion of streamflows in the Mojave River would equal the consumptive use of groundwater. (Blanke Decl., ¶ 8(e)(ii), p. 7.)

Depletions have increased in the Mojave Basin over time. Pumping volume in the Mojave Subarea was relatively low in the 1930’s and 1940’s, increased rapidly in the 1950’s, and slowly rose through the 1960’s, 1970’s, and 1980’s. The volume of pumping began to decrease in the 1990’s and continues to decrease through today. How depletions will impact the current and proposed hydrologic base period depends on the quantity of pumping and on the length of time between when pumping occurs and when impacts are seen in the Mojave River. The DWR

⁴ Depletions are conditions where groundwater pumping results in reductions in flow or water levels of interconnected surface water. where interconnected surface water is surface water that is hydrologically connected at any point by a continuous saturated zone to the underlying aquifer. (See <https://s3.amazonaws.com/og-production-open-data-cnra-892364687672/resources/218e3361-c142-400f-a97f-5dfa79cd4997/depletionsofisw_paper1_intro_draft.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIAJJIENTAPKHZMIPXQ%2F20250925%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Date=20250925T212157Z&X-Amz-Expires=86400&X-Amz-SignedHeaders=host&X-Amz-Signature=4941ed3f6c7e4f4d6e537c49f01e0506a0100bbac04936362ebf3291ff106255> as of September 29, 2025.)

1 Report notes, “[d]epletions occurring today are a function of pumping that occurred both very
2 recently and, potentially, decades ago.” ([https://s3.amazonaws.com/og-production-open-data-
3 cnra-892364687672/resources/218e3361-c142-400f-a97f-
4 5dfa79cd4997/depletionsofisw_paper1_intro_draft.pdf?X-Amz-Algorithm=AWS4-HMAC-
5 SHA256&X-Amz-Credential=AKIAJJIENTAPKHZMIPXQ%2F20250925%2Fus-east-
6 1%2Fs3%2Faws4_request&X-Amz-Date=20250925T212157Z&X-Amz-Expires=86400&X-
7 Amz-SignedHeaders=host&X-Amz-
8 Signature=4941ed3f6c7e4f4d6e537c49f01e0506a0100bbac04936362ebf3291ff106255](https://s3.amazonaws.com/og-production-open-data-cnra-892364687672/resources/218e3361-c142-400f-a97f-5dfa79cd4997/depletionsofisw_paper1_intro_draft.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIAJJIENTAPKHZMIPXQ%2F20250925%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Date=20250925T212157Z&X-Amz-Expires=86400&X-Amz-SignedHeaders=host&X-Amz-Signature=4941ed3f6c7e4f4d6e537c49f01e0506a0100bbac04936362ebf3291ff106255)> at p. 19
9 [as of September 29, 2025].) Thus, the 1931-1990 time period will likely see depletions resulting
10 from the low-pumping periods of the 1930’s and 1940’s, and impacts of earlier time periods with
11 even lower pumping, such as the 1920’s. Conversely, some impacts of the high pumping volumes
12 at the end of the 1931-1990 base period, such as the 1980’s, may not be substantially seen in the
13 river system until after the end of the present 1931-1990 base period. This contrasts with the
14 proposed 2001-2020 base period. While this period shows declining groundwater production, the
15 lag between pumping and river depletion means that depletions occurring during this period are
16 more associated with pumping in the earlier portion of the base period and in the years preceding
17 the base period, a time of relatively high pumping. (Blanke Decl., ¶ 8(e)(ii), pp. 7-8; see 2013
18 Todd Report, Figure 3.6 <[https://www.mojavewater.org/wp-content/uploads/2022/10/FINAL-
19 REPORT-BAJA-CENTRO-BCM-without-Appendices.pdf](https://www.mojavewater.org/wp-content/uploads/2022/10/FINAL-REPORT-BAJA-CENTRO-BCM-without-Appendices.pdf), p. 62> [as of September 29, 2025].)

20 The concept that pumping has resulted in increased recharge over time is documented in
21 Table 3.4 of the 2013 Todd Report, which shows that the average recharge from the Mojave
22 River during the 1931-1990 base period is 13,633 acre-feet (AF) from The Forks to Lower
23 Narrows, 34,907 AF from Lower Narrows to Barstow, and 8,802 AF from Barstow to Afton.
24 (<[https://www.mojavewater.org/wp-content/uploads/2022/10/FINAL-REPORT-BAJA-
25 CENTRO-BCM-without-Appendices.pdf](https://www.mojavewater.org/wp-content/uploads/2022/10/FINAL-REPORT-BAJA-CENTRO-BCM-without-Appendices.pdf)> at p. 3-42 [as of September 29, 2025].) Using the
26 same methodology as the 2013 Todd Report, the average recharge from the Mojave River during
27 the proposed 2001-2020 base period is 36,835 AF from The Forks to Lower Narrows, 17,296 AF
28 from Lower Narrows to Barstow, and 4,703 AF from Barstow to Afton. This shows an increase in

1 recharge of 170% from The Forks to Lower Narrows, likely due to groundwater production.
2 Further, this shows a decrease in recharge of 50% from Lower Narrows to Barstow, and a
3 decrease in recharge of 47% from Barstow to Afton, likely due to reduced availability of surface
4 water flow for recharge. While the overall recharge was similar in the 1931-1990 base period
5 (57,341 AF) and the 2001-2020 time period (58,834 AF), there was a large shift in recharge with
6 much more recharge occurring between The Forks and Lower Narrows and much less from the
7 Lower Narrows to Barstow and to Afton. (Blanke Decl., ¶ 8(e)(ii), pp. 8-9.)

8 Issues would arise if pumping-related depletions were combined with natural recharge
9 processes under the water balance approach defined in Judgment Table C-1 and implemented in
10 Annual Reports as Table 5-1. If depletions are combined with natural recharge processes and
11 depletions existing in the 1931-1990 base period, the total value would be reflected as an
12 increased difference between surface water inflow and surface water outflow in the Alto Subarea.
13 The Alto Subarea would likely see an increase in PSY from this scenario as the full volume of
14 available surface water continues to enter, pumping-induced depletions are able to capture more
15 of that water, and a reduced volume of water exits the Subarea. (Blanke Decl., ¶ 8(e)(iii), p. 9.)

16 Thus, if additional depletions are not distinguished from 1931-1990 depletions and natural
17 recharge processes, pumping in Alto resulting in lower groundwater levels and inducing more
18 recharge from the Mojave River would result in a higher PSY. A higher PSY would allow for
19 more pumping, starting a cycle of more depletions and future PSY increases. This would
20 negatively affect the water needs of the public trust resources the Judgment specifically protects,
21 as less water would be available to the Baja Subarea due to upstream capture. The additional
22 pumping could also harm habitat and species in Centro and Alto protected in the Judgment. To
23 avoid negatively affecting the water needs of the habitat and species protected under the
24 Judgment, Watermaster must provide details on how the proposed base period would be
25 implemented in the PSY process, notably accounting for increases in depletions between the
26 proposed and existing base periods. (Blanke Decl., ¶ 8(e)(iii), pp. 9-10.)

27 Absent details on how the proposed base period would be implemented in the PSY process
28 to avoid negatively affecting the water needs of the habitat and species protected under the

Judgment, notably accounting for increases in depletions between the proposed and existing base periods, it is not possible to provide a meaningful response or informed position on Watermaster's proposed 2001-2020 base period. (Blanke Decl., ¶ 8(e)(iii), p. 10.)

C. There Is Insufficient Information on How the Proposed New Base Period Will Be Incorporated Into a PSY Analysis of Riparian Health

Use of the proposed 2001-2020 hydrologic base period has the potential to introduce changes in the water balance that are not associated with cultural conditions or natural water supply but specifically associated with the areal extent and health of riparian vegetation. (Blanke Decl., ¶ 8(e), p. 6.) The areal extent and health of riparian vegetation has declined from the 1931-1990 time period to the 2001-2020 time period, with a corresponding reduction in water use by the riparian vegetation. (Johnson Decl., ¶ 14; see also May 21, 2024 Decl. of Aaron Johnson in Support of the Cal. Dept. of Fish and Wildlife's Response to Watermaster's Mot. to Adjust FPA for the 2024-2025 Water Year, ¶¶ 40-51, pp. 17-25.) Issues could arise if water, newly available due to declining riparian habitat caused by overproduction, were combined with natural riparian use under the water balance approach defined in Judgment Table C-1 and shown in Annual Reports as Table 5-1. If water newly available due to declining riparian habitat caused by overproduction were combined with natural riparian use, the total value would be reflected in a reduction in the Consumptive Use and Outflow term of "Phreatophytes." Such a reduction would result in an increase in the PSY, negatively affecting the water needs of the habitat and species protected under the Judgment. (Blanke Decl., ¶ 8(e)(iii), pp. 9-10.)

Absent details on how the proposed base period would be implemented in the PSY process to avoid negatively affecting riparian vegetation, it is not possible to provide a meaningful response or informed position on whether the 2001-2020 period would negatively affect the water needs of the habitats and species protected under the Judgment. (Blanke Decl., ¶ 8(e), p. 10; Johnson Decl., ¶¶ 8, 10, 11, 15, 17, 18, pp. 3-5.)

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1 **D. There Is Insufficient Evidence and Analysis of “Cultural Conditions”**

2 Watermaster suggests that the current 1931-1990 base period does not “‘include recent
3 cultural conditions’ (as required by DWR Bulletin No. 84)” but the “the proposed twenty-year
4 hydrologic base period from 2001-2020 [does] include ‘recent cultural conditions.’” (Mot., pp. 3-
5 4.) Historically, Watermaster has generally discussed “cultural conditions” in consumptive use
6 reporting, but the term itself is not defined in the Judgment or the Bulletin.

7 Watermaster posits that “cultural conditions” are a component of PSY, i.e., the “given
8 patterns of Production, applied water, return flows and Consumptive Use.” (Mot., pp. 5-6; see
9 Judgment, ¶ II(A)(4)(aa), p. 11.) However, the Motion lacks evidence and analysis of those PSY
10 components, including how the proposed 20-year base period is most appropriate in light of those
11 specific “cultural conditions.” Watermaster merely states, “The 2001-2020 hydrologic base
12 period also reflects the dryer⁵ cultural conditions now being experienced in the Basin” (Mot., p. 6,
13 lines 8-10) and summarily concludes, “the proposed twenty-year hydrologic base period from
14 2001-2020 includes ‘recent cultural conditions’” (Mot., p. 4, lines 1-2) without providing any
15 specific evidence and analysis.

16 The Department declines to speculate. Rather, Watermaster must identify and characterize
17 each Subarea’s cultural conditions and analyze how the proposed new hydrologic base period is
18 more appropriate in light of those specific cultural conditions. Absent this information, it is not
19 possible to provide a meaningful response or informed position on the proposed change. (Blanke
20 Decl., ¶ 8(a), pp. 3-4.)

21 **II. THE BULLETIN IS NOT A GOVERNING DOCUMENT**

22 According to Watermaster, the 1967 Bulletin is a “primary source of guidance” for
23 selecting an appropriate hydrologic base period. (Mot., p. 3.) And although the Bulletin is not
24 incorporated into the Judgment, Watermaster’s engineer relied on it to establish PSY for Alto and
25 Centro in making recommendations for Water Year 2024-2025: “[W]e updated the hydrologic
26 base period for purposes of establishing PSY for Alto and Centro (2001-2020). This period is
27 consistent with guidance from the [Bulletin] that was used as guidance for the base period on the

28 ⁵ Dryness is not a cultural but a climate condition.

1 Judgment. [¶] . . . For purposes of establishing PSY, and recommending FPA, 2011-2020 is an
2 acceptable base period” (Mojave Basin Watermaster Feb. 28, 2024 “Production Safe Yield
3 & Consumptive Use Update, Feb. 28, 2024, Mem., pp. 2-3, available at
4 <[https://www.mojavewater.org/wp-](https://www.mojavewater.org/wp-content/uploads/2024/05/20240501_Motion_Adjust_FPA_2024-2025_Water_Year.pdf)
5 [content/uploads/2024/05/20240501_Motion_Adjust_FPA_2024-2025_Water_Year.pdf](https://www.mojavewater.org/wp-content/uploads/2024/05/20240501_Motion_Adjust_FPA_2024-2025_Water_Year.pdf)> [as of
6 September 29, 2025.]) Indeed, the Motion quotes the same language that Watermaster’s engineer
7 excerpted from the Bulletin.

8 Similar to the inquiry in the Court’s September 16, 2022 Order, the Department questions
9 whether a 58-year old trial exhibit is relevant to Basin management in 2025. The information
10 presented in the Bulletin is not consistent with the current state of science and hydrology.
11 Notably, it does not address depletions and does not adequately recognize public trust resources
12 such as native riparian vegetation. (Blanke Decl., ¶ 8(c), p. 5.)

13 Addressing depletions may not be necessary for the goals of the Bulletin, but they are
14 critical for a proposed change in the Basin’s hydrologic base period. Increases in depletions in
15 one Subarea would increase recharge and likely increase PSY for that Subarea. Further, that
16 increased recharge would reduce downstream flows and likely reduce recharge and water
17 availability in downstream subareas. Recharge has increased in the Alto Subbasin between the
18 1931-1990 base period and the proposed 2001-2020 base period, and Mojave River flow has
19 decreased over time as a percent of flow at The Forks, largely because of this change in recharge
20 or depletion. (Blanke Decl., ¶ 8(c), Attachments 2, 3.)

21 Further still, additional impacts to the PSY could occur from how the Bulletin addresses
22 water use of riparian native vegetation. As quoted in the Motion, the Bulletin states: “An
23 example by which the amount of annual overdraft could be reduced and the annual amount of
24 safe yield could be increased significantly would be by economically removing and controlling
25 the amount of riparian native vegetation.” (Bulletin, pp. 103-104.) Suggesting removal of riparian
26 native habitat, a public trust resource, to increase safe yield is contrary to the Judgment,
27 specifically Exhibit H. The approach to consideration of a change in base period should be
28

1 performed with methods consistent with the current state of science and hydrology, appropriately
2 addressing impacts of depletion and of riparian water use.

3 **III. WATERMASTER’S MOTION IS PREMATURE**

4 As the Court suggested in its October 23, 2024 Order, the issue of determining an
5 appropriate hydrologic base period should be adjudicated concurrently with a motion to adjust the
6 FPA. Watermaster states that the RMBM, “when completed and calibrated may suggest a
7 different hydrologic base period for the entire Basin, or even for certain Subareas of the Basin.”
8 (Mot., p. 6.) Having admitted that the RMBM is an important tool needed to inform both the
9 hydrologic base period and resulting PSY (Johnson Decl., ¶ 16) and given that additional party
10 and judicial resources will likely be needed to adjudicate the model, why is Watermaster
11 undertaking this significant effort to change the base period before the RMBM is complete? In
12 short, this is a wasteful exercise. Changing the hydrologic base period should be done
13 concurrently with a future update to PSY, upon the RMBM’s completion. (Johnson Decl., ¶ 16.)

14 **CONCLUSION**

15 For all the foregoing reasons, the Department respectfully urges the Court to deny
16 Watermaster’s motion to redetermine the hydrologic base period.

17
18 Dated: October 7, 2025

Respectfully submitted,

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23 

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28 LA1990CV1678

**DECLARATION OF SERVICE BY E-MAIL AND OVERNIGHT
COURIER**

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

Case No.: **CIV208568 (Lead)**

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

On October 8, 2025, I served the **CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE'S OPPOSITION TO WATERMASTER'S MOTION FOR DETERMINATION OF HYDROLOGIC BASE PERIOD FOR PRODUCTION SAFE YIELD CALCULATIONS** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America, the foregoing is true and correct and that this declaration was executed on October 8, 2025, at Los Angeles, California.

Blanca Cabrera
Declarant



Signature

PROOF OF SERVICE

**STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO}**

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

On October 8, 2025, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing each document being served, to each Party or its designee according to the official service list, a copy of which is attached hereto, and which shall be maintained by the Mojave Basin Area Watermaster pursuant to Paragraph 37 of the Judgment. Served documents will be posted to and maintained on the Mojave Water Agency's internet website for printing and/or download by Parties wishing to do so.

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

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE'S OPPOSITION
TO WATERMASTER'S MOTION FOR DETERMINATION OF
HYDROLOGIC BASE PERIOD FOR PRODUCTION SAFE YIELD
CALCULATIONS**

 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 October 8, 2025 at Apple Valley, California.



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Mojave Basin Area Watermaster Service List as of October 08, 2025

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Attn: Jeffrey Edwards
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Mojave Basin Area Watermaster Service List as of October 08, 2025

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Mojave Basin Area Watermaster Service List as of October 08, 2025

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Mojave Basin Area Watermaster Service List as of October 08, 2025

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Lin, Kuan Jung and Chung, Der-Bing
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Mojave Basin Area Watermaster Service List as of October 08, 2025

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Mojave Basin Area Watermaster Service List as of October 08, 2025

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Mojave Basin Area Watermaster Service List as of October 08, 2025

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