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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAY 24 2017

B. Ellico-Mestas

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

CITY OF BARSTOW, et al.

Plaintiffs,

CITY OF ADELANTO, et al.,

Defendants.

And All Related Cross Actions

Case No. CIV 208568

**CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
RESPONSE TO WATERMASTER'S
MOTION TO ADJUST FREE
PRODUCTION ALLOWANCE FOR
WATER YEAR 2017-2018**

**[DECLARATIONS OF ALISA
ELLSWORTH AND KIT CUSTIS IN
SUPPORT THEREOF FILED
CONCURRENTLY HEREWITH]**

**Date: June 9, 2017
Time: 8:30 a.m.
Dept: 1**

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TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY OF ARGUMENT	4
II. BACKGROUND AND HISTORY OF RAMPDOWN MOTIONS AND ORDERS	5
III. ALL OF THE EVIDENCE SUBMITTED TO THE WATERMASTER BOARD AND THIS COURT FOR WATER YEAR 2017-2018 BY THE WATERMASTER ENGINEER SUPPORTS A 5% RAMPDOWN OF THE FREE PRODUCTION ALLOWANCE FOR THE BAJA SUBAREA.....	10
IV. THE DEPARTMENT SUPPORTS THE WATERMASTER ENGINEER'S RECOMMENDATION FOR A 5% REDUCTION IN THE FREE PRODUCTION ALLOWANCE FOR WATER YEAR 2017-2018 IN THE BAJA SUBAREA	11
A. Department Comment Letters	12
B. The Declaration Of Kit Custis, Registered Geologist, Supports A Five Percent Rampdown	13
C. A Five Percent Rampdown Will Help Protect the Biological Resources In The Baja Subarea And Camp Cady Wildlife Area, Which The Department Owns And Manages.	15
V. THE DEPARTMENT'S ACTIVITIES SUPPORT THE BAJA SUBAREA	17
VI. CONCLUSION	18

TABLE OF AUTHORITIES

Page

CASES

City of Barstow v Mojave Water Agency
(2000) 23 Cal. 4th 12245

STATUTES

Fish & Game Code, § 711.7.....5, 15

Fish & Game Code, § 1802.....5

1
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1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 The California Department of Fish and Wildlife (Department) respectfully submits this
3 Response in support of the Mojave Water Agency's (Watermaster) Motion to Adjust the Free
4 Production Allowance in the Baja Subarea (Baja) at 40% for Water Year 2017-2018 and
5 continue reduction in 5% increments as required by the Judgment.

6 Although the Department previously agreed to the entry of a Court Order in 2010, which
7 only required a 2.5% per year reduction through 2014-2015, the Court decided on June 23, 2015
8 and last year in 2016 to accept the overwhelming evidence presented by the Watermaster
9 Engineer, and additional evidence set forth in the Declarations of Alisa Ellsworth and Kit Custis
10 filed in support of the Department's Response, to reduce the Free Production Allowance a full
11 5% to 45%.

12 Review of the evidence submitted in 2015 by the Watermaster and the independent review
13 conducted by the Department in 2015 showed that the 2.5% Rampdown for five years resulted in
14 continued overdraft, continued declining water levels in the Baja Subarea, continued depletion of
15 water from storage and further damage to riparian resources at Camp Cady Wildlife Area. The
16 Court correctly reinstated a 5% rampdown in Baja in 2015 and 2016.

17 The evidence presented in WY 2017-2018 compels a continuing 5% rampdown. The
18 certainty requested by all parties is best met by complying with the requirements of the Judgment
19 as the operative management strategy. The current evidence submitted to the Court by the
20 Watermaster Engineer and the Department shows that the following negative impacts on the Baja
21 Subarea have occurred:

- 22 • The long term rate of groundwater levels in the Baja Subarea continued to decline by
23 about two feet a year;
- 24 • The declining water levels in the Baja Subarea have had a continuing significant negative
25 effect on the biological resources in and around the Department's Camp Cady Wildlife
26 Management Area (Camp Cady) located in the downstream area of Baja;
- 27 • Groundwater storage has decreased.
- 28 • The Baja Subarea remains in overdraft and the current conditions are unsustainable.

1 Respectfully, the Department at this time strongly supports the provisions of the Judgment
2 as the operative management strategy and agrees with the Watermaster Engineer's
3 recommendation that a 5% Rampdown in the Baja Subarea to 40% of the Base Annual
4 Production should be imposed. The Department additionally believes that the rampdown should
5 continue until the Baja Subarea is in balance and sustainable.

6 **II. BACKGROUND AND HISTORY OF RAMPDOWN MOTIONS AND ORDERS**

7 The background of the Mojave Basin's Physical Solution is set forth in detail in
8 Watermaster's Motion and the Department incorporates that background summary herein.
9 (Notice of Motion and Motion to Adjust Free Production Allowance for Water Year 2017-2018;
10 Memorandum of Points and Authorities and Declaration of Robert C. Wagner in Support
11 Thereof.) (2017-2018 Rampdown Motion.) In summary, the original complaint in this matter
12 was filed by the City of Barstow on May 30, 1990. On January 10, 1996, the Court entered a
13 Judgment that addressed the overdraft situation in all five subareas and determined that the
14 Mojave Basin Area (Basin) had been in a state of overdraft since at least the 1950's. The Court
15 approved a Stipulated Judgment for each of the five subareas in the Basin. The Stipulated
16 Judgment was upheld on appeal in *City of Barstow v Mojave Water Agency* (2000) 23 Cal. 4th
17 1224.

18 The Department is a party to the Judgment and has statutory and common law
19 responsibilities with regard to fish and wildlife resources, including their habitats. (Fish & Game
20 Code, § 711.7; § 1802.)) The Department owns and manages lands in the Mojave Basin,
21 including Camp Cady Wildlife Area (Camp Cady) in the Baja Subarea. (Declaration of Alisa
22 Ellsworth in Support of the Department of Fish and Wildlife's Response to Watermaster's Motion
23 to Adjust Free Production Allowance for the 2017-2018 Water Year) (Ellsworth Decl. ¶¶ 1, 2.)
24 The Department also owns and manages the Mojave Narrows Regional Park and the Mojave
25 River Fish Hatchery in the Alto Subarea. The Department is a member of the Baja Subarea
26 Advisory Committee. (Ellsworth Decl. ¶¶ 1, 2.)

27 The Judgment established a limit on the amount of water each Subarea could produce in
28 one year without having to purchase replacement water, known as "Free Production Allowance

1 (FPA).” Pursuant to the gradual Rampdown required in the Judgment, Exhibit H in the Judgment
2 *requires* Watermaster to recommend a five percent (5%) decrease in the FPA for a Subarea,
3 when that Subarea’s FPA exceeds its estimated Production Safe Yield (PSY) by five percent (5%)
4 or more. (2017-2018 Rampdown Motion at p. 4:20-25; Ellsworth Decl. ¶ 15, Exh. C (Exhibit H
5 of Judgment, H-1:27-H-2:13.)

6 The Judgment also established each producer’s initial “Base Annual Production (BAP).” A
7 producer’s BAP was based upon that producer’s highest year of water production during the base
8 period of 1986-1990. The Base Annual Production Right is the right of each producer to a
9 *percentage* of the FPA within a given Subarea. (2017-2018 Rampdown Motion at p. 4:5-9.)

10 A summary of the recent history of Rampdown Motions and Orders is provided for the
11 convenience of the court.¹ In 2008, the Department and the Watermaster Engineer recommended
12 that a ten year moratorium on Rampdown be lifted and that Baja be reduced from 75% to 60% of
13 Base Annual Production. The Department stated at the time that an accelerated Rampdown from
14 75% down to 60% would be in compliance with a December 2005 Court Order because Baja had
15 “materially exceeded” water production in 2003-2004. However, the Department ultimately
16 agreed not to oppose a compromise of a Rampdown to only 70%, even though that was much less
17 protective of natural resources. (Ellsworth Decl. ¶ 6.) The court stated that “The Baja Subarea
18 shall return to the Judgment and its provisions as the operative management strategy.” (Ellsworth
19 Decl. ¶ 6.)

20 In 2009, after reviewing relevant data, and pursuant to the requirements in the Judgment,
21 the Department and Watermaster Engineer recommended an additional Rampdown of 5% to
22 65%. That recommendation was based, in part, on data that showed water levels at the Harvard
23 Road well had continued to decline, and water tables throughout Camp Cady were below Exhibit
24 H values. The Court imposed a 2.5% Rampdown in 2009. (Ellsworth Decl. ¶ 7.)

25 In 2010, the Watermaster Engineer stated that despite a decline in water production in Baja
26 of 20% over the past two years, water levels continued to decline at about two feet per year

27 ¹ The Department requests that the court take judicial notice of the Judgment, Motions,
28 Responses, Declarations and Orders previously filed in this case regarding Rampdown.

1 throughout Baja overall and continued to have a negative effect on the biological resources at
2 Camp Cady. Contrary to the requirements of the Judgment to recommend a 5% Rampdown,
3 Watermaster Engineer proposed an option with a guaranteed 2.5% Rampdown per year for five
4 years. The Department considered the proposal and agreed to a compromise because it would
5 allow for all parties to plan ahead, and could avoid time-consuming and costly court preparations
6 each year. Although this alternative option would result in a longer time to bring the basin into
7 balance, the Department did not oppose it as long as certain conditions were met and as long as
8 balance in the Baja Subarea was achieved during that five year period. Thus, on July 16, 2010,
9 the Court issued an order reducing the Free Production Allowance for Baja by 2.5% down to 65%
10 for Water Year 2010-2011 and also ordered the continued reduction of 2.5% per year for the next
11 four years. (Ellsworth Decl. ¶ 8.)

12 In February, 2011, notwithstanding a recommendation by the Watermaster Engineer that
13 additional rampdown in Baja was necessary at the “compromised” level of 2.5% because
14 overdraft continued in Baja, the Watermaster Board initially did not include a recommendation
15 for a 2.5% rampdown in Baja. This proposed action by the Watermaster, in not ramping down
16 production in Baja by 2.5% in 2011, would not have been in compliance with either the 2010
17 Court Order or the recommendation of the Watermaster Engineer. At the March 23, 2011
18 Watermaster Board meeting, the Department urged the Watermaster Board to modify its proposed
19 recommendation for the Baja Subarea to include a reduction of 2.5% in compliance with the
20 Court Order; otherwise, the Department would be forced to recommend to the Court a rampdown
21 of 5% as per the original Judgment. After much discussion by the Board and after considering
22 advice from Board counsel, a rampdown of 2.5% was adopted by the Board and implemented by
23 the Court. (Ellsworth Decl. ¶ 9.)

24 In 2012, the Watermaster Engineer concluded that Free Production Allowance in Baja
25 again exceeded the Production Safe Yield. (Ellsworth Decl. ¶ 10.) He also concluded that
26 current water production and consumptive use exceeded the average net long-term supply in Baja
27 and that water level hydrographs continued to decline. Specifically, the Watermaster stated that
28 water production in Baja increased from 2010-2011 by 4,832 acre-feet, an increase of 19.8%

1 throughout Baja. (2012-2013 Rampdown Motion at p. 9:7-14; 2012-2013 Wagner Declaration at
2 ¶¶ 11-13.) The Department supported the Watermaster Engineer's recommendation that Free
3 Production Allowance in Baja be set at 60% for Water Year 2012-13 and reduced 2.5% per year
4 for the next two years, through 2014-15, consistent with the Court's Order. On July 17, 2012, the
5 Court ordered a Rampdown of 2.5% in Baja to 60%. (Ellsworth Decl. ¶ 10.)

6 In 2013, the Free Production Allowance in Baja again exceeded the Production Safe Yield
7 by more than 5%. (2013-2014 Rampdown Motion, at p. 5:7-25.) In addition, Baja continued in
8 overdraft and water level hydrographs continued to decline. (Ellsworth Decl. ¶11.) The
9 Watermaster Board recommended that Baja be reduced by 2.5% to 57.5% that year, and another
10 2.5% through 2014-15, consistent with the Court's 2010 order. The Department submitted
11 comments on March 27, 2013 in support of the additional rampdown in Baja and set forth its
12 concerns that the continued overdraft in Baja would cause continued depletion of water from
13 storage and further damage to riparian resources at Camp Cady Wildlife Area. (Ellsworth Decl. ¶
14 11.) On August 9, 2013, the court granted the Watermaster's 2013-2014 Rampdown Motion.
15 (Ellsworth Decl. ¶ 11.)

16 In 2014, the Free Production Allowance in Baja again exceeded the Production Safe Yield
17 by more than 5% of the Base Annual Production. Watermaster Engineer concluded that Baja
18 continued in overdraft. ((2014-2015 Rampdown Motion). The Watermaster Board recommended
19 that Baja be reduced by 2.5% to 55%, consistent with the Court's 2010 order. (2014-2015
20 Rampdown Motion, at pgs. 6:14, 22; 11:20-27; 12:1-13; Exhibit B, 2014-2015 Wagner
21 Declaration ¶¶ 18, 19, 20, 21, 22; p. 34 of the 21st Annual Report.) The Department submitted
22 comments on February 19, 2014 and March 17, 2014 in support of the additional rampdown in
23 Baja and set forth its concerns that the continued overdraft in Baja will cause continued depletion
24 of water from storage and further damage to riparian resources at Camp Cady Wildlife Area.
25 (2014-2015 Rampdown Motion, Exhibit C.) (Ellsworth Decl. ¶ 12.)

26 In 2015, the Watermaster Engineer and the Board recommended a full 5% rampdown in
27 Baja to 50% of BAP concluding that the FPA exceeded the Production Safe Yield by more than
28 5% of BAP, and that negative impacts were occurring in BAJA including sustained overdraft, and

1 declining water levels. In addition, the Board also requested the possibility of considering other
2 alternatives including a “differential” Rampdown. (2015-2016 Rampdown Motion at pgs. 6:22-
3 26; 10-15. ; 2015-2016 Wagner Declaration ¶¶ 7, 17-31.) The Department submitted letters in
4 support of the 5% Rampdown and against alternative approaches on February 18, 2015 and
5 March 18, 2015. (2015-2016 Rampdown Motion, Exhibit C; Ellsworth Decl. ¶ 13.)²
6 The Court ultimately rejected other alternatives for Baja and granted the Watermaster’s Motion
7 in its entirety. (Ellsworth Decl ¶ 13.)

8 In 2016, the Watermaster Engineer concluded the Free Production Allowance exceeded the
9 Production Safe Yield by more than 5%, that the Baja Subarea continued in overdraft and water
10 level hydrographs continued to decline. The Watermaster Engineer recommended that the Baja
11 Subarea Free Production Allowance be reduced by 5% to 45% of Base Annual Production. (2016-
12 2017 Rampdown Motion, Wagner Declaration ¶ 23:78.) The Department submitted comments to
13 the Watermaster on February 16, 2016 and March 14, 2016 in support of the additional 5%
14 rampdown in the Baja Subarea and set forth its concerns that the continued overdraft in Baja
15 would cause continued depletion of water from storage and further damage riparian resources at
16 Camp Cady. (Ellsworth Decl. ¶ 14.) The Court approved the Watermaster Board
17 recommendations for Rampdown, including the 5% Rampdown in Baja on August 8, 2016.
18 (2017-2018 Rampdown Motion, Exh. A.)

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23 _____
24 ² In 2015-2016, the Watermaster Engineer concluded that even if a 5% Rampdown is imposed,
25 given the use of carryover rights and transfers in Baja, pumping in Baja can continue at current
26 levels without Replacement Obligations past 2018-2019 and there will be no Subarea obligation
27 to purchase imported water to help “balance” Baja until 2021-2022 or 2022-23 when the unused
28 Free Production Allowance has been exhausted. (2015-2016 Rampdown Motion at pgs. 12:16-
19; 13: 8-10; 2015-2016 Wagner Declaration ¶¶ 21, 25., Exh. 11; 2015-2016 Custis Decl. ¶¶
6(G), 9(H), 22, Exh. 9.)

1 **III. ALL OF THE EVIDENCE SUBMITTED TO THE WATERMASTER BOARD**
2 **AND THIS COURT FOR WATER YEAR 2017-2018 BY THE**
3 **WATERMASTER ENGINEER SUPPORTS A 5% RAMPDOWN OF THE**
4 **FREE PRODUCTION ALLOWANCE FOR THE BAJA SUBAREA**

5 For the 2017-2018 Water Year, all the evidence submitted by the Watermaster Engineer
6 to the Watermaster Board and this court concludes that an additional Rampdown of five percent
7 (5%) in the Baja Subarea to 40% of BAP is warranted and that Watermaster expects to
8 recommend additional Rampdown beyond the current year to 35% (2018-2019.)

9 First, the Watermaster Engineer concludes that pursuant to the Judgment, the FPA exceeds
10 the PSY by more than 5% of BAP, and current water production and consumptive use exceed the
11 average net long-term supply in Baja. (Wagner Declaration ¶ 22: 20-22.) Mr. Wagner further
12 concludes that water levels continue to decline (Figure 3-13 of the 23rd Annual Report), Baja
13 remains in overdraft, current conditions are unsustainable and that the Baja subarea has lost
14 384,000 acre feet of groundwater storage since 1996. (Wagner Declaration ¶ 22: 22-27.)

15 Agendas for the Watermaster public hearings on February 22, 2017 and March 22, 2017
16 include Memoranda from the Watermaster Engineer in which he recommends a 5% Rampdown
17 to 40% of BAP for Water Year 2017-2018. Specifically, in the February 22, 2017 Memorandum,
18 Mr. Wagner states that "...As reported to the Court in 2016, long term overdraft has resulted in
19 severe depletion in water in storage in Baja to the point where the basin may not be a reliable
20 water supply during periods of extended drought without the actual importation of supplemental
21 water. The Baja Subarea has lost 354,000 acre-feet of groundwater storage since
22 1996...(Watermaster Annual Report 2016.)" The Watermaster Engineer further states that
23 Watermaster "expects to recommend additional Rampdown beyond the current year
24 recommendation, to 35% (2018-2019), and pause, to ascertain whether or not water levels in Baja
25 stabilize. Water supply conditions in Baja remain critical as pumping is greater than long term
26 average recharge." (Ellsworth Decl. ¶ 16, Exh. D; Wagner Decl. ¶ 22.)

27 In addition to the above, the Watermaster Engineer presented two Powerpoints to the
28 Watermaster Board stating the following regarding the Baja Subarea: 1) Watermaster is directed
by paragraph 24 and Exhibit H of the Judgment to a 5% Rampdown; 2) the recommendation is

1 based on review of water supply conditions in each subarea and water level changes; 3) water
2 production exceeds supply and Free Production Allowance exceeds Production Safe Yield; 4) the
3 Free Production Allowance in the Baja Subarea exceeded the Production Safe Yield by 15.7% of
4 the Base Annual Production; 5) the proposed Free Production Allowance for 2017-2018 is a
5 Rampdown from 45% to 40% for the Baja Subarea; and 6) in the Baja Subarea, water levels
6 continue to decline, water production exceeds supply, water supply is limited, overdraft has
7 continued for decades with a decline in the riparian forest and a declining water table. (Ellsworth
8 Decl. ¶17.) Declaration of Kit Custis in Support of the Department of Fish and Wildlife’s
9 Response to Watermaster’s Motion to Adjust Free Production Allowance For the 2017-2018
10 Water Year (Custis Decl. ¶ 26, Exhibits 13A and B.))

11 The Watermaster Engineer stated in his supporting declaration this year that the problem of
12 sustained overdraft is critical and that Rampdown should continue until FPA is within 5% of PSY
13 and that this will occur in WY 2018-2019. (Wagner Decl. ¶ 26.) In addition, Mr. Wagner also
14 noted that the Judgment allows the Baja producers to continue to pump in excess of FPA for
15 many years without importing supplemental water because in addition to 31,080 acre-feet of FPA
16 for Water Year 2016-2017, there is also 24,829 acre-feet of Carryover available to Baja. (Wagner
17 Decl. ¶ 5:12; ¶ 22:20-21; ¶ 24:6; ¶ 25:21-24; ¶ 26.) Last year, the Watermaster Engineer noted
18 that “an evaluation of hydrologic conditions at that time, including water level declines will
19 inform the decision to halt Rampdown. (2016-2017 Rampdown Motion at pg. 10:20-23; 2016-
20 2017 Wagner Decl. ¶ 23:7-10.) Any decision to “pause” rampdown, as mentioned by the
21 Watermaster Engineer following a 2018-2019 rampdown to 35%, should be based upon a
22 thorough evaluation of whether the Basin is in balance and sustainable. (Custis Decl. ¶ 23, Table
23 4, 8E; Ellsworth Decl. ¶ 16:4-8.)

24 **IV. THE DEPARTMENT SUPPORTS THE WATERMASTER ENGINEER’S**
25 **RECOMMENDATION FOR A 5% REDUCTION IN THE FREE**
26 **PRODUCTION ALLOWANCE FOR WATER YEAR 2017-2018 IN THE BAJA**
27 **SUBAREA**

27 For the Water Year 2017-2018, the Baja Subarea continues in overdraft. The verified
28 production in the Baja Subarea and the Free Production Allowance continue to be greater than the

1 Production Safe Yield by more than 5% . The Watermaster Board has recommended that the Baja
2 Subarea Free Production Allowance be reduced by 5% to 40% of the Base Annual Production this
3 water year, consistent with paragraph 24 (o) and Exhibit H of the Judgment. (2017-2018
4 Rampdown Motion; Ellsworth Decl. ¶ 15, Exh. C; Custis Decl. ¶ 8A.). The Department
5 submitted comments to the Watermaster on February 15, 2017 and March 14, 2017, in support of
6 the additional rampdown in the Baja Subarea and set forth its concerns that the continued
7 overdraft in Baja will cause continued depletion of water from storage and further damage
8 riparian resources at Camp Cady Wildlife Area. (Ellsworth Decl. ¶ 15, Exh. C.)

9 **A. Department Comment Letters**

10 The Department submitted comment letters to the Watermaster Board
11 on February 15, 2017 and March 14, 2017 in support of the Watermaster Engineer
12 recommendation of an additional 5% rampdown in the Baja Subarea and set forth its concerns
13 that the continued overdraft in Baja will cause continued depletion of water from storage and
14 further damage riparian resources at Camp Cady Wildlife Area. (Ellsworth Decl. ¶ 3 A-D, 15,
15 Exh. B; 2016-2017 Rampdown Motion, Exh. C). In these letters, the Department concludes as
16 follows:

17 1. The Department agrees with the Watermaster engineer's conclusions that pursuant to
18 the Judgment and based upon the continuing declining water levels in the Baja Subarea, the
19 continuing overdraft and the unsustainable conditions, additional Rampdown is warranted;

20 2. The Department agrees with the Watermaster engineer's recommendation that FPA in
21 Baja be set at 40% for the Water Year 2017-2018 because, among other things, the continued
22 overdraft in Baja will cause continued depletion of water from storage and further damage
23 riparian resources at Camp Cady if the Free Production allowance exceeds the production Safe
24 Yield by 15.7% of the BAP;

25 3. The Department's position is also based upon an additional analysis conducted by the
26 Department that 1)water levels have declined in and around Camp Cady during the past seven
27 years; 2) that the five year alternative 2.5% rampdown pursuant to the Court's 2010 Order, and
28 other alternative rampdown approaches throughout the history of the implementation of the

1 Judgment at various times, have not resulted in ensuring a healthy and sustainable groundwater
2 basin;

3 4. A full 5% Rampdown would be consistent with the Court's own conclusion reached
4 in 2008 when it lifted a 10 year moratorium and stated that "Baja shall return to the Judgment and
5 its provisions as the operative management strategy."

6 5. The Department has additionally been engaged in numerous activities during the past
7 year and has taken steps to achieve water conservation within the Mojave Basin Area including
8 the exploration of the purchase of existing water rights using funds from the Biological
9 Resources Trust Fund in order to additionally address the problem of continued overdraft in
10 BAJA. (Ellsworth Decl. ¶ 3, A-D, ¶ 15, Exh. B; (Custis Decl. Tables 2, 3 in Exhibits 4 and 5.)

11 **B. The Declaration of Kit Custis, Registered Geologist, Supports a Five**
12 **Percent Rampdown**

13 In preparation for Rampdown recommendations and hearing, the Department authorized
14 Mr. Kit Custis, registered Geologist to review hydrogeologic reports, groundwater elevation
15 records for the Baja Subarea, and other relevant documents and studies including prior
16 Watermaster Annual Reports, the January and July 2013 Todd Engineering reports , the 2015 and
17 2016 Watermaster meeting Powerpoint presentations by Watermaster Engineer, the 2015-2016
18 and 2017-2018 Rampdown Motions and Wagner Declarations, the 2016-2017 and 2017-2018
19 Powerpoint presentations by Watermaster Engineer, the declarations of Department staff,
20 including the Ellsworth Declarations, various U.S. Geological Survey Investigations and relevant
21 portions of the Stipulated Judgment, including Exhibit H. (Custis Decl.¶ 6.)

22 Mr. Custis makes the following conclusions based upon his review of the documents and
23 studies listed in his Declaration, the development of the exhibits attached to his declaration and an
24 analysis of changes in groundwater levels in and adjacent to Camp Cady (Custis Decl. ¶¶ 8 A-J.)

25 A. The verified production in the BAJA Subarea and the Free Production
26 Allowance continue to be greater than the Production Safe Yield by more than 5% , as reported
27 in the Watermaster's 23rd Annual Report for Water Year 2015-2016 (Chapter 5, page 33 (as
28 shown in Custis Decl. Exhibits 2 and 3.)

1 B. Declines in shallow groundwater levels continue to occur and groundwater
2 levels at Camp Cady Wildlife Area have not stabilized as of January, 2017, as reported by the
3 U.S. Geological Service (and as shown in his attached Exhibits 4,5, 7 and 8).

4 C. Shallow groundwater levels at Camp Cady have declined at least 1.22 to 6.91
5 feet since water year 2011, as shown in his Exhibit 4. The continuing decline in groundwater
6 levels since 2011 has resulted in a condition where all of the measurements of the shallow
7 groundwater exceed the critical depth of 7 to 10 feet needed for a healthy riparian forest (as
8 shown in various USGS Reports on the Mojave River, and Exhibit H of the Judgment). (Custis
9 Decl. ¶¶ 8 C, 14A, 14G and 14H.)

10 D. The projected groundwater production rate where the Free Production
11 Allowance (FPA) will meet the estimated Production Safe Yield (PSY) is calculated at 31% of
12 the Base Annual Production (BAP) for the BAJA Subarea according to Water Year (WY) 2015-
13 2016 Annual Watermaster's Report, p. 33 in Chapter 5, attached as Exhibit 9; (PSY@20,679
14 acre-feet / BAP@66,157 acre-feet = 31%)(Custis Decl. ¶ 8D.)

15 E. The depth to shallow groundwater in 16 of the 17 shallow wells within
16 and in the vicinity of Camp Cady is greater than 10 feet, a depth where riparian forests become
17 highly stressed, as shown in his Exhibit 4. Two additional shallow wells, P2 and P5, have gone
18 dry, for a total of six dry shallow wells. (Custis Decl. ¶ 8F, Exh. 4.)

19 F. The depth to shallow groundwater in 8 of the 17 shallow wells within and in
20 the vicinity of Camp Cady is greater than 20 feet, a depth where mesquite may not be able to
21 survive, as shown in his Exhibit 4. The depth to groundwater in all measurable shallow wells
22 continues to increase. (Custis Decl. ¶ 8G, Exh. 4.)

23 G. The long term rate of decline as of January 2017 in 4 of the 28 shallow,
24 intermediate and deep wells within and in the vicinity of Camp Cady is greater than the reported
25 BAJA Subarea long-term average of 2 feet per year, as shown in his Exhibits 4 and 5 and as
26 previously reported in the Watermaster Engineer's 2015 Declaration, Exhibit B of the 2015-2016
27 Motion (page 4, line 4). The long term rate of decline in 3 of these 4 wells can no longer be
28 measured because the wells are now dry. (Custis Decl. ¶ 8H, Exh. 4)

1 H. While the 5% Rampdown approved for each of the last two years was
2 necessary, it has not yet resulted in stable groundwater levels at Camp Cady. (Custis Decl. ¶ 8 (I.)

3 I. Because of the continued groundwater level decline, surface water recharge is
4 less effective at raising and maintaining shallow groundwater water levels in the vicinity of Camp
5 Cady. (Custis Decl., ¶¶ 17-22, Exhs.4-8.)

6 J. If Rampdown continues to be reduced at 5% increments annually, FPA will
7 theoretically be within 5% of PSY in WY 2018-2019. (Wagner Decl. ¶ 26: 25-27.). However, as
8 also noted in Wagner Declaration, in addition to 31,080 acre-feet of FPA for WY 2016-2017,
9 there is also 24,829 acre-feet of carryover/unused FPA available in the BAJA Subarea. This
10 carryover allows Baja producers to continue to pump in excess of FPA for many years (possibly
11 2023-2024) without having to pay for or bring in supplemental water during Rampdown.
12 (Wagner Decl. ¶ 25: 21-24; Custis Decl. ¶¶ 8E, 23, Exhibit 11, Table 4.)

13 Based upon these conclusions, Mr. Custis rendered his opinion that the annual Rampdown
14 for the Free Production Allowance in the Baja Subarea should continue at the 5% rate, as required
15 by the Judgment for the 2017-2018 Water Year and be reduced from 45% to 40% (Custis Decl.
16 ¶¶ 6-9; Exhibits 2,3,4,5,7,8.) In addition, Mr. Custis prepared numerous Tables and Figures to
17 explain his conclusions, all of which support his opinion regarding the need for the continuing 5%
18 Rampdown until the basin is in balance and sustainable. (Custis Decl., ¶¶ 7-27, Exhs. 2-13, Exh.
19 11-Table 4.)

20 **C. A Five Percent Rampdown Will Help Protect The Biological Resources In**
21 **The Baja Subarea And Camp Cady Wildlife Area, Which The Department**
22 **Owns And Manages**

23 As stated above, the Department has statutory and common law responsibilities to protect
24 fish and wildlife resources and habitats in the Baja Subarea, which are held in trust for the people
25 of the State of California by the Department. (Fish & Game Code, § 711.7.) The Department's
26 expertise and interest in this adjudication and in the Baja Subarea are significant and should be
27 relied upon by the Court.

28 Continuing rampdown is important because the continuing decline in water levels in Baja
has had a significant negative effect on the biological resources at the Department's Camp Cady

1 and on the Baja Subarea. (Ellsworth Decl.¶¶ 18-21.) Camp Cady consists of 1,866 acres
2 acquired for the public between 1979 through 2001 for a total cost of \$2,046,481 in state bonds.
3 Camp Cady had extensive surface water and riparian habitat when it was acquired. The natural
4 vegetation, especially riparian vegetation, in the Baja Subarea, is dependent on groundwater. The
5 roots of these groundwater dependent plants (called phreatophytes) must be able to reach
6 groundwater to survive. Declining groundwater levels have caused the death of large stands of
7 mesquite, cottonwoods, and willows (all phreatophytes) at Camp Cady and throughout the
8 Mojave River in the Baja Subarea. (Ellsworth Decl.¶¶ 18-21.)

9 Notwithstanding the decline, Camp Cady still contains valuable riparian habitat. Riparian
10 habitat is a rare habitat type in the desert. Desert riparian habitat serves as critical bird breeding
11 habitat, as well as important migratory stopover sites and wintering areas for many bird species.
12 One hundred six species of birds have been documented using riparian habitat at Camp Cady
13 (Patrick William Tennant; Impacts of Saltcedar on the Avian Community of a Mojave Desert
14 Wildlife Area May, 2002), including the state-listed endangered willow flycatcher and state and
15 federally-listed endangered least Bell's vireo (Draft Camp Cady Wildlife Area Land Management
16 Plan July 2005). (Ellsworth Decl.¶ 19.)

17 Camp Cady was purchased for its surface water and associated riparian habitat values.
18 When running and pooled surface water was present, cottonwoods and willows were abundant
19 with a dense understory of honey mesquite. The Mojave River historically surfaced in the center
20 of Camp Cady and generally flowed from late October to August. The months of September and
21 October are generally the driest. These surface flows have ceased in recent years as a result of the
22 declining groundwater levels throughout the Mojave Basin. At the time of its acquisition in 1979,
23 Camp Cady contained an extensive mesquite bosque of more than 500 acres, about 60 acres of
24 cottonwood/willow forest, three groundwater-fed riverbed ponds totaling six acres, and other
25 locations within the riverbed with seasonal springs and seeps. By 1997, primarily agricultural
26 groundwater pumping and consumption of water had caused a loss of more than 400 acres of
27 mesquite, the riverbed ponds and seeps had been lost, and remaining cottonwood willow was
28 limited to mostly mature trees. By 2003, the cottonwood/willow stands consisted of mostly

1 mature trees with scattered patches of mesquite, which were unhealthy with sparse leaves.
2 Because the surrounding area continues to be overdrafted without basin recharge, less water has
3 been available to support riparian and aquatic habitats. The cottonwood/willow forest at Camp
4 Cady may persist and remain healthy when water table depths do not exceed about seven feet and
5 become highly stressed when depths exceed 10 feet. Mesquites may not be able to survive a
6 water table drop to below 15-20 feet (Draft Camp Cady Wildlife Area Land Management Plan,
7 July 2005). (Ellsworth Decl. ¶ 20.)

8 The Baja Subarea is undergoing rapid environmental change due to groundwater
9 drawdown, causing the death of deep-rooted, native vegetation and the reactivation of wind-
10 blown sand. The loss of near-surface water has converted a vegetated area of the 1960's to a dry,
11 migrating dune field that inundates both vegetation and buildings. The Department is now faced
12 with the daunting task of trying to stabilize blowing sand, removing non-native salt cedar, and
13 restoring the severely degraded riparian system at Camp Cady. (Ellsworth Decl. ¶ 21.)

14 **V. THE DEPARTMENT'S ACTIVITIES SUPPORT THE BAJA SUBAREA**

15 The Department continues to do what it can to decrease water use by non-native vegetation
16 within the Mojave River watershed and the Baja Subarea. Beginning in 1996 and continuing to
17 the present, the Department has requested the use of the Biological Resources Trust Fund as well
18 as other funding sources to support the continued removal of non- native tamarisk, to develop a
19 pilot program for native species, and to seek the purchase of private property along the Mojave
20 River to reduce pumping and/or to protect riparian habitat and species. The Department is
21 continually exploring opportunities for assisting in the sustainability of the Mojave Basin and the
22 Baja Subarea, including the purchase of existing water rights in the Baja Subarea using funds
23 from the Biological Resources Trust Fund in order to additionally address the problem of
24 continued overdraft in that Subarea. (Ellsworth Decl. ¶¶ 22-28.)

25 It is expected that removal of non-native tamarisk will contribute to the recovery of native
26 riparian habitat and reduce the amount of water consumed by non-native vegetation. (Ellsworth
27 Decl. ¶ 21.) Based upon a pilot program established in 2015 to evaluate the potential suitability
28 and sustainability of various native plants for the reintroduction of native vegetation at Camp

1 Cady, the Department prepared an interim progress report titled “Camp Cady Wildlife
2 Management Area Riparian Restoration/Revegetation Demonstration Study” in July of 2015.
3 The study showed that eleven of the thirteen species chosen for revegetation showed a reasonable
4 level of success. Based upon the initial success of the project, a second phase of the revegetation
5 project was implemented at Camp Cady Wildlife Area in September of 2015. It is anticipated
6 that the results of a second interim study will be used to provide a recommendation on
7 revegetation with native species at Camp Cady and in the Baja Subarea. (Ellsworth Decl. ¶ 23.)

8 In December, 2014, the Department applied jointly with a non-profit conservancy for a
9 \$1.3 million grant from the United States Fish and Wildlife Service to facilitate the purchase of
10 1631.67 acres of private property along the Mojave River to protect riparian habitat and
11 threatened and endangered species. (Ellsworth Decl., ¶ 25.) The funds were awarded to a non-
12 profit conservancy in November, 2015. The Department has completed a Conceptual Area
13 Protection Plan (CAPP) for the portion of the Mojave River identified in the grant and is
14 presently working with the California Wildlife Conservation Board, USFWS and the conservancy
15 to implement the CAPP and the grant. These continuing actions are necessary to finalize the
16 acquisition of the property which includes significant riparian habitat in the Transition Zone of
17 the Mojave River. (Ellsworth Decl., ¶ 25.)

18 During the 2016-2017 fiscal year the Department utilized Trust Funds with Watermaster
19 approval for various enhancements of biological resources in Baja. In addition, Department staff
20 attended numerous meetings related to the Baja Subarea. The Department participated in a Baja
21 community meeting on September 20, 2016 related to the Baja Area Wide Sustainability Plan.
22 The Department also attended in person, and spoke in support of a 5% Rampdown for the Baja
23 Subarea at the February 22 and March 22, 2017 Watermaster Board meetings. (Ellsworth Decl. .
24 ¶¶ 26, 27, ¶ 3, Exh. B.)

25 VI. CONCLUSION

26 For the foregoing reasons, the Department respectfully requests that the Court set the Free
27 Production Allowance in the Baja Subarea at 40% for 2017-2018 Water Year.

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Dated: May 24, 2017

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LA1990CV1678

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **CITY OF BARSTOW ,et al. v. CITY OF ADELANTO; and ALL RELATED CROSS ACTIONS**

No.: **CIV 208568**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On May 24, 2017, I served the attached:

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE'S MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO WATERMASTER'S MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR WATER YEAR 2017-2018

by placing a true copy thereof enclosed in a sealed envelope with the **[FED-EX overnight courier service]**, addressed as follows:

William J. Brunick, Esq.
Brunick, McElhaney & Beckett
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San Bernardino, CA 92412

Valerie Wiegenstein
Watermaster Services Manager
Mojave Water Agency
13846 Conference Center Drive
Apple Valley, CA 92307

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 24, 2017, 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.

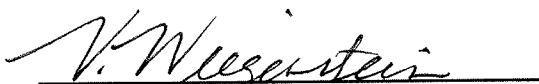
On May 24, 2017, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing each document being served, to each Party or its designee according to the official service list, a copy of which is attached hereto, and which shall be maintained by the Mojave Basin Area Watermaster pursuant to Paragraph 37 of the Judgment. Served documents will be posted to and maintained on the Mojave Water Agency's internet website for printing and/or download by Parties wishing to do so.

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

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE'S MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO WATERMASTER'S MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR WATER YEAR 2017-2018

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 24, 2017 at Apple Valley, California.



Valerie Wiegstein

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12019 Kalnor Ave
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P. O. Box 337
Daggett, CA 92327-0337
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Golden State Water Company (via email)
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Gordon Acres Water Company
P. O. Box 1035
Lucerne Valley, CA 92356-1035
Attn: Denise Johnson

Gray, George F. and Betty E.
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Calimesa, CA 92320-1301

Green Acres Estates
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Hamilton Family Trust
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Apple Valley, CA 92308-8338
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1140 Parkdale Rd.
Adelanto, CA 92301-9308
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Hanson Aggregates WRP, Inc. (via email)
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Harper Lake, LLC (via email)
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Mojave Basin Area Watermaster Service List as of May 24, 2017

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Hesperia - Golf Course, City of (via email)
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Mojave Basin Area Watermaster Service List as of May 24, 2017

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Mojave Basin Area Watermaster Service List as of May 24, 2017

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Liang, Yuan - I and Tzu - Mei Chen
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Lo, et al.
2826 Sycamore Lane
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Lucerne Valley Partners
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Lucerne Vista Mutual Water Company (via email)
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Mojave Basin Area Watermaster Service List as of May 24, 2017

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Attn: Eugene R. & Vickie R. Bird

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Attn: Robert Saidi

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Mojave Basin Area Watermaster Service List as of May 24, 2017

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Mojave Basin Area Watermaster Service List as of May 24, 2017

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