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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF RIVERSIDE

13 Case No.: CIV208568

14 Coordination Proceeding Special Title
(Cal. Rules of Court, Rule 3.550)

JCCP NO. 5265
CIV 208568 (~~Lead Case No.~~)

15 **MOJAVE BASIN WATER CASES**

Dept. 1, Riverside County Superior Court,
Hon. Harold W. Hopp, Judge Presiding

17 CITY OF BARSTOW,

Plaintiff,

**DECLARATION OF KIT CUSTIS IN
SUPPORT OF THE CALIFORNIA
DEPARTMENT OF FISH AND
WILDLIFE'S RESPONSE TO
WATERMASTER'S MOTION TO
ADJUST FREE PRODUCTION
ALLOWANCE FOR THE 2024-2025
WATER YEAR**

19 v.

21 CITY OF ADELANTO, ET AL,

Defendants.

Date: June 4, 2024

Time: 8:30 a.m.

Dept.: 1

Judge: Honorable Harold W. Hopp

Assigned for All Purposes to Dept. 1,
Honorable Harold W. Hopp, Judge Presiding
by Assignment

1 **DECLARATION OF KIT CUSTIS**

2 I, Kit Custis, declare:

3 1. I am presently employed by the California Department of Fish and Wildlife
4 (“Department”) as a retired annuitant as a Senior Engineering Geologist and have been employed
5 by the Department for 17 years. My current duties are to provide hydrogeologic assessments and
6 recommendations to the Department.

7 2. I have a Bachelor’s and Master’s degree in Geology from California State University
8 at Northridge. I have completed additional graduate studies as a PhD student in Hydrological
9 Sciences at U.C. Davis. I have worked for 45 years as a professional engineering geologist and
10 hydrogeologist. I hold licenses in California as a Registered Professional Geologist (PG 3942),
11 Certified Engineering Geologist (EG 1219), and Certified Hydrogeologist (HG 254). I have
12 worked in consulting and as an employee of the State of California. As a state employee, I have
13 worked for the State Water Resources Control Board (“State Water Board”), the Central Valley
14 Regional Water Quality Control Board, the California Geological Survey, and the Department. A
15 copy of my curriculum vitae is attached as Attachment 1.

16 3. I have provided expert witness testimony on groundwater issues for the Department
17 in State Water Board hearings on water rights involving the Victor Valley Water Reclamation
18 Authority (Mojave River); the North Gualala Water Company (North Fork Gualala River); El Sur
19 Ranch (Big Sur River); and the City of Solvang (Santa Ynez River). In addition, I have provided
20 reviews of other water rights applications and provided hydrogeologic assessments for the
21 Department on the Carmel River, Mammoth Creek, Santa Maria River, Little Shasta River
22 Valley, Garcia River, South Fork Kern River, and Fish Spring Hatchery and Fish Slough in
23 Owens Valley. I have also provided declarations in support of the Department’s Responses to
24 Watermaster’s Motions to Adjust Free Production Allowance for Water Years (WY) 2015-16;
25 2016-17; 2017-18; 2018-19; and 2019-20.

26 4. I am providing the following information and opinions in support of the
27 Department’s Response to Watermaster’s Motion to Adjust Free Production Allowance For
28

1 Water Year 2024-2025 and the declaration of Watermaster Engineer Robert C. Wagner
2 (“Watermaster Engineer”) in support thereof (“2024 Wagner Declaration”).

3 5. The following facts are true and correct to the best of my belief and if called to
4 testify, I could and would testify completely thereto. Except where otherwise indicated below, I
5 make this declaration on personal knowledge.

6 6. I have been asked by the Department to review the judgment in *City of Barstow, et*
7 *al., v. City of Adelanto, et al.*, Riverside County Superior Court Case No. 208568 (“Judgment”),
8 including Exhibit H to the Judgment (“Exhibit H”), and reports, studies, and recommendations
9 regarding the annual adjustment of Production Safe Yield (“PSY”) and Free Production
10 Allowance (“FPA”) for the Alto, Centro, and Baja subareas (hereinafter “Alto,” “Centro,” and
11 “Baja”) and render an opinion on whether the recommendations for changes in PSY and FPA in
12 the Watermaster’s Motion to Adjust Free Production Allowance For Water Year 2024-2025
13 (2024-2025 FPA Motion) negatively impact the water needs of the habitat and species protected
14 under the Judgment.

15 7. In addition to the documents I reference herein, I also reviewed the following
16 documents to prepare my declaration:

17 A. The March 13, 2003, URS Corporation report on the Mojave River
18 Transition Zone Recharge Project, Phase I Report, Transition Zone
19 Hydrogeology, 3 Plates, Appendices A to H, 112 pages, available at:
20 <https://www.mojavewater.org/data-maps/regional-studies/>.

21 B. The December 21, 2023, Watermaster’s Status Report Regarding
22 Production Safe Yield and Free Production Allowance Calculations, 3 pages, and
23 the CDFW Response to Watermaster’s Status Report dated January 21, 2024.

24 C. April 1, 2024, Watermaster letter titled California Department of Fish
25 and Wildlife Comments to Watermaster, in response to March 19, 2024, letter
26 from A. Johnson, CDFW, regarding Updates to Production Safe Yield and Free
27 Production Allowance for 2024-25, 2 pages, Exhibit D, in 2024-2025 FPA
28 Motion, pdf pp. 410, 411.

1 D. April 12, 2024, Robert Wagner, P.E., A. Leonardo Urrego-Vallowe,
2 memorandum titled Response to comments on Transition Zone Water Balance
3 memorandum, dated February 28, 2024, comments for Golden State Water
4 Company in documents 6E, 6F and 6G, 16 pages, Exhibit D, in 2024-2025 FPA
5 Motion, pdf pp. 412, 427.

6 E. April 16, 2024, Robert Wagner, P.E., A. Leonardo Urrego-Vallowe,
7 memorandum titled Response to questions regarding well H1-2, PSY calculation
8 and Alto model, in response to email from A. Johnson, CDFW, 3 pages, Exhibit
9 D, in 2024-2025 FPA Motion, pdf pp. 428-430.

10 8. Paragraph 2a in Exhibit H reads: “In considering whether to increase or decrease the
11 Free Production Allowance in a Subarea, Watermaster shall, among other factors, take into
12 consideration for the areas shown on Figure H-1, the Consumptive Use of water by riparian
13 habitat, the protection of public trust resources, including the species listed in Table H-1 and the
14 riparian habitat areas shown on Figure H-1, and whether an increase would be detrimental to the
15 protection of public trust resources.”¹

16 9. The 2024-2025 FPA Motion and the 2024 Wagner Declaration provide
17 recommendations for updated PSY, consumptive uses, and FPA for WY 2024-25. The
18 Watermaster Engineer also provided the February 28, 2024, report titled “Production Safe Yield
19 & Consumptive Use Update”² (“2024 PSY Update”) detailing the water supply updates for Alto,
20 Centro (and the Transition Zone between the Alto and Centro subareas³), and Baja, as well as the
21 Mojave Water Agency’s (“MWA”) Upper Mojave River Basin Integrated Surface
22 Water/Groundwater Model⁴ (“Upper Mojave River Basin Model”). These documents recommend

23 ¹ Exhibit H is attached as Attachment D to the Declaration of Aaron Johnson in Support of
24 the Department’s Response to the Watermaster’s 2024-2025 FPA Motion.

25 ² Mojave Water Agency Watermaster, Production Safe Yield & Consumptive Use Update
26 with Appendices A-G (February 28, 2024) prepared by Wagner & Bonsignore, included as
27 Exhibit 5 to Exhibit C (2024 Wagner Declaration) in 2024-2025 FPA Motion, pdf pp. 196-303.

28 ³ Paragraph 4.mm in the Judgment defines the Transition Zone as the portion of the Alto
Subarea that lies generally between the Lower Narrows and the Helendale Fault (see Figure 3-6 in
the Watermaster’s Thirtieth Annual Report, n. 22, *infra*, pdf p. 40).

⁴ Wood Environment & Infrastructure Solutions, Inc. Project Completion Report –
Integrated Surface Water/Groundwater Model, Upper Mojave River Basin (October 29, 2021) in

1 increasing PSY in Alto and Centro, as well as increases in the FPA of Alto from 50.4% to 53.3%
2 (+2.9%) of Base Annual Production (“BAP”) and Centro from 55.0% to 60% (+5%) of BAP. The
3 Watermaster recommends holding FPA in Baja and Oeste at 20.5% and 50% of BAP,
4 respectively, and ramping down Este to 50% (-5%) of BAP. This is the first time since the
5 Judgment was entered to correct the overdraft in the Mojave River Basin that there has been a
6 recommendation to allow an increase in pumping in any of the subbasins.

7 10. Based on my review of the relevant documents referenced herein, my analysis of the
8 changes in groundwater levels in and adjacent to the Table H-2, H1-1, and H1-2 monitoring wells
9 in Exhibit H in Alto and the H3-1 and H3-2 wells and other monitoring wells in Baja at the Camp
10 Cady Wildlife Area (“Camp Cady”), I have concluded it is premature to increase the FPA in Alto
11 and Centro. My conclusion is based on the past and continuing harm to the riparian habitat and
12 other public trust resources in Camp Cady and Baja and the insufficient amount of data and study
13 regarding: 1) the potential impacts to groundwater levels; 2) impacts downstream to Baja; and 3)
14 impacts to public trust resources. The following facts have informed my conclusion:

15 A. The depth of groundwater in Alto around wells H1-1 and H1-2 exceed
16 the maximum depth below ground listed in Table H-2 in Exhibit H. This
17 exceedance of Table H-2 depths to groundwater in Alto suggests that the
18 proposed increase in PSY and FPA in Alto and Centro may be detrimental to
19 public trust resources because, among other reasons, the increase in pumping may
20 cause the groundwater levels to decrease further.

21 B. The proposed increase in PSY and FPA for Centro depends on the
22 assumption that Centro has captured all of the reduction in gaged surface water
23 that historically reached Baja. If the gaged surface water reaching Centro is not
24 equal to the amount assumed in the proposed WY 2024-25 water budget in Table
25 5-1, a proposed increase in PSY and FPA in Centro is premature.

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Appendix G in Exhibit 5 to Exhibit C (2024 Wagner’s Declaration) in 2024-2025 FPA Motion
2024, pdf pp. 304-376.

1 C. The depths of groundwater in Baja at Camp Cady measured in wells H3-
2 1 and H3-2 exceed the maximum depth below ground listed in Table H-2 on
3 Exhibit H.

4 D. The average annual surface water supplied by the Mojave River to Baja
5 has significantly decreased in the last 20 years, from 16,406 acre-feet per year
6 (“afy”) to 7,500 afy based on river flow measurements taken at the U.S.
7 Geological Survey (“USGS”) Barstow Gauge #10262500, which is approximately
8 five miles upstream from the Centro-Baja boundary at the Waterman Fault (also
9 known as the Camp Rock-Harper Lake Fault).⁵ This indicates that the
10 groundwater depths in Camp Cady and Baja have decreased in part due to the
11 reduction in flows from the other subareas, including Alto and Centro. My
12 analysis and conclusions indicate that any increase in pumping in Centro and Alto
13 will continue to reduce the water being delivered to Baja and lead to future
14 reductions in water levels. Until the average annual surface water supplied to Baja
15 returns to the levels assumed in the Judgment and what has historically been
16 provided, it would be premature to allow increased pumping in Alto and Centro,
17 which would come at the expense of Baja.

18 E. The uncertainty in the annual volume of inflow from Alto to Centro also
19 creates uncertainty as to why Baja has experienced a significant reduction in
20 average annual surface water supplied by the Mojave River and whether any of
21 the upstream subareas have benefited from the reduction in supply to Baja.

22 F. The recommendation to keep the FPA in Baja the same as last year at
23 20.5% is consistent with my findings and the conclusion by the Watermaster
24 Engineer that the groundwater levels in the Baja have begun to stabilize and that
25 any increase in water levels and further protection of the public trust resources
26 would require a return of the inflows from Centro to Baja to their historical levels.

27 _____
28 ⁵ Tables 1 and 2 in Appendix E in Exhibit 5 to Exhibit C (2024 Wagner’s Declaration) in
2024-2025 FPA Motion, pdf pp. 267-268.

1 11. In addition to my opinion regarding the proposed changes to FPA in the WY 2024-
2 2025 FPA, I have the following recommendations and conclusions regarding the updated Upper
3 Mojave River Basin Model that must be put in place before the model can be used to change the
4 current approach to the Mojave River Basin:

5 A. The updated Upper Mojave River Basin Model suggests that if 17,500
6 afy of wet replacement water is recharged into Alto for the next 20 years, the river
7 flow through the Lower Narrows will increase an average of 9,800 afy.⁶ This
8 increase in flow through the Lower Narrows will likely benefit Centro but may
9 not benefit Baja. The updated Upper Mojave River Basin Model should be
10 expanded to include Centro and Baja to help reduce the uncertainty in knowledge
11 about the hydrology of the Transition Zone, the inflows to Centro, the transport
12 efficiency of water through Centro to Baja, and to assess how best to improve the
13 groundwater levels in Centro and Baja

14 B. Although the updated Upper Mojave River Basin Model suggests that
15 the river flow at the Lower Narrows will increase an average of 9,800 afy, this has
16 not happened yet. To increase pumping is therefore premature based on the model
17 predictions. Once it is confirmed that the 9,800 afy increase has occurred, then
18 this question can be revisited. The model has not demonstrated that such an
19 increase is occurring now, and pumping now based on additional water that does
20 not yet exist would be a mistake.

21 12. For the convenience of the Court, I have prepared the following tables and figures
22 and reviewed documents to explain my analysis and conclusions:

23 A. Attachment 2 to my declaration is the image and cross-section from the
24 March 24, 2010, memorandum by the Watermaster Engineer titled, "Report on
25 Upper Narrows Exhibit H Well."⁷ The image shows the relocated new well H1-2

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27 ⁶ Appendix G in Exhibit 5 to Exhibit C (2024 Wagner's Declaration) in 2024-2025 FPA
Motion 2024, pdf pp. 278-303.

28 ⁷ Memorandum by Watermaster Engineer R.C. Wagner, "Report on Upper Narrows
Exhibit H Well" (March 24, 2010) in Exhibit D in 2024-2025 FPA Motion, pdf pp. 436-438.

1 with a cross-section line. The image and cross-section show that at point #1, just
2 southwest outside of the flood plain, the new well H1-2 has a ground elevation of
3 2,774 feet. The cross-section indicates an assumed water level at an elevation of
4 2,762.37 feet. A new well was needed to replace the original well that was
5 destroyed by flooding. This assumed water level is based on water level criteria of
6 a maximum depth below ground of seven feet for well H1-2 in Table H-2 in
7 Exhibit H, which is taken from the ground surface elevation of 2,769.3 feet at
8 point #2. The elevation of 2,762 feet is assumed to be the elevation of the new
9 maximum depth threshold for well H1-2 to be used when evaluating compliance
10 with the Table H-2 threshold.

11 B. In addition to elevation surveys in Attachment 2, a recent 2023 survey
12 was done by Merrell Johnson Engineers⁸ that shows the locations of four H1
13 wells, one of which is the re-located new well H1-2, State well number
14 05N04W23R07, the southeastern well. The table on the sheet gives the elevations
15 and coordinates for various points associated with each well. The elevations listed
16 for the new H1 wells range from approximately 2,780 to 2,781 feet. The 2023
17 wellhead ground surface elevations are approximately seven feet higher than the
18 2,774-foot elevation shown in Attachment 2. Currently, it is not certain if this
19 increase in the ground surface is being used as the reference elevation in
20 calculating groundwater elevations. Regardless of the reference elevation, the
21 actual elevation to the Table H-2 trigger for well H1-2 in Exhibit H is still 2,762
22 feet.

23 C. Attachment 3 to my declaration is a hydrograph of well H1-2 taken from
24 the CDWR CASGEM⁹ website. A dashed line has been added to the graph at the

25 ⁸ Merrell Johnson Engineering, Inc., Well Survey Exhibit sheet with survey results for the
26 well H1-2 well cluster, State Well Nos. 05N04W23R03, 05N04W23R04, 05N04W23R05, and
05N04W23R07 (September 22, 2023) in Exhibit D in 2024-2025 FPA Motion, pdf p. 439.

27 ⁹ Historical groundwater level data for Alto, Centro and Baja Subareas from the USGS's
28 National Water Information System website accessed through MWA's water data website
(<https://www.mojavewater.org/data-maps/water-levels-water-quality/>) and the public portal of the

1 2,762-foot trigger elevation. The hydrograph shows that since just before 2016,
2 the groundwater elevation at well H1-2 has generally been below the trigger
3 elevation on Table H-2 in Exhibit H, except during the most recent winter.

4 D. Attachment 4 to my declaration is Table 3.4 taken from pdf page 92 in
5 the July 2013 report by Todd Engineers with Kennedy/Jenks Consultants, titled
6 “Final Report Conceptual Hydrogeologic Model and Assessment of Water Supply
7 and Demand for the Centro and Baja Management Subareas Mojave River
8 Groundwater Basin.”¹⁰ Table 3.4 shows the average annual discharges at the four
9 USGS Mojave River gauges within the Mojave River Basin Adjudication area,
10 with statistics on the changes in flow and recharge from 1931 through 2010. The
11 table has been modified by highlighting two time periods, the 1931-1990 base
12 period and the 1991-2010 post-base period. The table gives the measured values
13 of flow and recharge (i.e., the difference between gauges) and the relative
14 percentage of change for each gauge through time and as a percentage of the
15 inflow at the Forks gauge. This table clearly shows that while there has been an
16 increase in the 1991-2010 post-period at the Forks over the base period, there has
17 been a decline in flow downstream of the Lower Narrows. The table shows upper
18 Alto experienced an increase in recharge of several hundred percent between
19 1991 and 2010, relative to the base period, while Centro and Baja experienced
20 less recharge than the base period amount.

21 E. Attachment 5 to my declaration is a bar graph plotting the historical
22 flows at the USGS Barstow Gauge #10262500 between 1931 and 2023. The
23 graph shows the total annual flow at the gauge and a 20-year running average

24 _____
25 California Department of Water Resources Statewide Groundwater Elevation Monitoring online
system website (<https://www.mojavewater.org/data-maps/casgem/>).

26 ¹⁰ Todd Engineers with Kennedy/Jenks Consultants, “Final Report Conceptual
27 Hydrogeologic Model and Assessment of Water Supply and Demand for the Centro and Baja
Management Subareas Mojave River Groundwater Basin” (July 2013), prepared for Mojave
28 Water Agency. The report is available at: [https://www.mojavewater.org/data-maps/regional-
studies/](https://www.mojavewater.org/data-maps/regional-studies/).

1 starting in 1951. Two horizontal dashed lines are drawn at the approximate values
2 of 16,406 afy and 7,500 afy. These two lines are the average annual surface water
3 inflows evaluated in the proposed 2024-2025 PSY calculation for Baja.¹¹ Flow
4 data were downloaded from the USGS website: <https://waterdata.usgs.gov>.

5 F. Attachment 6 to my declaration is an image map Figure 2 of Baja taken
6 from a January 2013 Todd Engineers report titled “Final Report Hydrogeologic
7 Investigation of Camp Cady Wildlife Area Newberry Springs, CA.”¹² The map
8 shows the central portion of Baja, the boundary with Centro identified as the
9 Camp Rock-Harper Lake Fault (referred to hereinafter as the “Waterman Fault”),
10 the Calico Fault, and other faults, the outline of the Department’s Camp Cady,
11 and names of various surrounding mountains and roads.

12 G. Attachment 7 to my declaration is MWA’s Baja Subarea Hydrographs
13 for 2024 map¹³ with well H3-1 (Table H-2 in Exhibit H) hydrograph highlighted
14 with a red box and a red circle around the well location. Well H3-1 is part of a
15 cluster of multiple depth monitoring wells maintained by the USGS. The State
16 well number for well H3-1 is 10N03E27J005S. Groundwater level measurements
17 in the California Department of Water Resources Statewide Groundwater
18 Elevation Monitoring (“CDWR CASGEM”) database¹⁴ indicate the well went
19 continuously dry in November 2007, except for one measurement at a depth of
20 44.33 feet on September 16, 2021. The groundwater levels in the four other
21 deeper wells in the cluster continue to decline. The maximum depth threshold for

22 _____
23 ¹¹ Tables 1 and 2 in Appendix E in Exhibit 5 to Exhibit C (Wagner’s Declaration) in 2024-
2025 FPA Motion, pdf pp. 267-268.

24 ¹² Todd Engineers, “Final Report Hydrogeologic Investigation of Camp Cady Wildlife
25 Area Newberry Springs, CA” (January 2013), prepared for California Department of Fish and
Game and Mojave Water Agency. The report is available at [https://www.mojavewater.org/data-](https://www.mojavewater.org/data-maps/document-library/)
[maps/document-library/](https://www.mojavewater.org/data-maps/document-library/).

26 ¹³ Mojave Water Agency, Mojave River Subarea Hydrograph Map Sheets (2024):
27 AltoWestHydro2024, AltoEastHydro2024, AltoTZHydro2024, CentroHydro2024, and
BajaHydro2024. The map sheets are available at: [https://www.mojavewater.org/data-maps/map-](https://www.mojavewater.org/data-maps/map-gallery/page/2/)
[gallery/page/2/](https://www.mojavewater.org/data-maps/map-gallery/page/2/).

28 ¹⁴ Historical groundwater level data for Alto, Centro and Baja Subareas from the USGS’s
National Water Information System website, n. 9, *supra*.

1 well H3-1 in Table H-2 in Exhibit H is seven feet below the ground surface.

2 H. Attachment 8 to my declaration is a 2023 Camp Cady Hydrographs Map
3 provided to Department employee Aaron Johnson in April 2023 by MWA staff.
4 The image map shows the locations of monitoring wells installed by the
5 Department in 2011 and the cluster of wells at well H3-2. Since installation in
6 2011, the shallow groundwater levels have declined below the depth of the well,
7 causing eight of the 11 shallow monitoring wells to go dry. Shallow wells that
8 still measure groundwater are those near the Camp Cady ponds. The depth of
9 groundwater in the H3-2 well cluster ranges from approximately 14 to 16 feet
10 below the ground surface. The maximum depth to groundwater for well H3-2 in
11 Table H-2 in Exhibit H is plus one foot above the ground surface.

12 Alto Subarea

13 13. My conclusions for the PSY and FPA in Alto and my disagreement with the
14 Watermaster's conclusions and recommendations are based on the following:

15 A. The proposal to increase PSY in Alto is in part due to the results of the
16 updated Upper Mojave River Basin Model.¹⁵ The updated Upper Mojave River
17 Basin Model was only done for upper Alto, the upper portion of the Transition
18 Zone, and those portions of the Este and Oeste Subareas adjacent to Alto.¹⁶ The
19 updated Upper Mojave River Basin Model was originally developed in 2007 for
20 MWA as a predictive tool for the Regional Recharge and Recovery (R3)
21 project.¹⁷ The updated Upper Mojave River Basin Model extends the spatial
22 boundaries of the original Upper Mojave River Basin Model to include the upper
23 Basin watersheds of Deep Creek and West Fork and is a fully integrated

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25 ¹⁵ Wood Environment & Infrastructure Solutions, Inc. Project Completion Report –
26 Integrated Surface Water/Groundwater Model, Upper Mojave River Basin, n. 4, *supra*.

27 ¹⁶ Figure 8 (“Water Budget Subareas”) in Exhibit 5 to Exhibit C (2024 Wagner
28 Declaration) in 2024-2025 FPA Motion, pdf p. 291.

¹⁷ Appendix G in Exhibit 5 to Exhibit C (2024 Wagner Declaration) in 2024-2025 FPA
Motion, pdf p. 279.

1 groundwater/surface-water numerical model. The calibration period for the update was
2 also extended and covers water years from 1951 up to WY 2020.

3 B. Hydraulic parameters for the updated Upper Mojave River Basin Model
4 are distributed by zones based on the previous USGS 2001 groundwater model,
5 Stamos et al., 2001, and USGS WRI 01-4002.^{18,19} The updated Upper Mojave
6 River Basin Model was used to estimate the average inflow for WYs 2001
7 through 2020 for the Alto Subarea Mountain Front Recharge and the Este/Oeste
8 inflow. (See Table 1 in Appendix A in 2024 Wagner Declaration²⁰). The updated
9 Upper Mojave River Basin Model estimated an annual average groundwater
10 storage deficit of 17,475 acre-feet versus an average of 15,914 acre-feet
11 calculated by using the Judgment’s Table C-1 PSY method in Table 5-1 in the
12 Annual Reports.^{21,22}

13 C. Table 5-1 calculates a surplus or deficit water balance from a subarea’s
14 water inflows minus the water outflows. The water balance is then added to or
15 subtracted from the total estimated production to arrive at the PSY value.²³ The
16 Watermaster Engineer recommends using the 20-year 2001-2020 average
17 groundwater storage deficit estimated by the updated Upper Mojave River Basin
18 Model with the 2022 water year production.^{24,25} This results in the PSY value
19
20

21 ¹⁸ *Ibid.*

22 ¹⁹ Stamos, C.L., Martin, P., Nishikawa, T. and Cox, B.F., titled “Simulation of Ground-
23 Water Flow in the Mojave River Basin, California,” v. 3 (2001) *U.S. Geological Survey’s Water
Resources Investigations Report 01-4002*. The report is available at
<https://www.mojavewater.org/data-maps/regional-studies/>.

24 ²⁰ Appendix A in Exhibit 5 to Exhibit C (2024 Wagner Declaration) in 2024-2025 FPA
Motion, pdf p. 215.

25 ²¹ *Id.* at pdf pp. 207-210.

26 ²² The Mojave Basin Area Thirtieth Annual Report of the Mojave Basin Area
Watermaster, Water Year 2022-23 (May 1, 2024), p. 42/pdf p. 73. Annual reports are available at:
<https://www.mojavewater.org/basin-management/watermaster/reports/>.

27 ²³ *Ibid.*

28 ²⁴ *Ibid.*

²⁵ Exhibit 5 to Exhibit C (2024 Wagner Declaration) in 2024-2025 FPA Motion, pdf pp.
201-203.

1 increasing from the current 59,409 acre-feet and an FPA of 50.4% to 62,005 acre-
2 feet and an FPA of 53.3% being recommended for WY 2024-25.²⁶

3 D. However, a requirement of the Judgment in Paragraph 2a in Exhibit H is
4 when "...considering whether to increase or decrease the Free Production
5 Allowance in a Subarea, Watermaster shall, among other factors, take into
6 consideration for the areas shown on Figure H-1 the Consumptive Use of water
7 by riparian habitat, the protection of public trust resources, including the species
8 listed in Table H-1 and the riparian habitat areas shown on Figure H-1, and
9 whether an increase would be detrimental to the protection of public trust
10 resources." There are three Exhibit H, Table H-2 wells in upper Alto: well H1-2
11 (State well ID 05N04W23R07)²⁷ in the upstream portion of the Mojave Narrows
12 Park; well H1-1 (State well ID 06N04W30K16S)²⁸ in the upper portion of the
13 Transition Zone; and well H2 (State well ID 07N05W24R08) in the middle
14 portion of the Transition Zone. (See Exhibit H, Figure H-1 maps.) Table H-2 in
15 Exhibit H establishes the maximum depth to groundwater at seven feet below the
16 ground for both wells H1-1 and H1-2. Shallow groundwater levels in well H1-1
17 have been below a depth of seven feet since approximately 2010.²⁹

18 E. Further, Well H1-2 was relocated early in the year 2008 because the
19 storm events in 2005 damaged the original well.³⁰ The relocated well H1-2 was
20 placed upstream of the original well H1-2 at a higher elevation and outside of the
21 floodplain, which required resurveying the ground surface, the measurement
22 reference point, and the adjacent riverbed elevations.³¹ The ground surface

23 ²⁶ *Ibid.*

24 ²⁷ Well H1-2 monitors the shallow groundwater levels in the upstream portion of the Alto
Mojave Narrows Park Riparian Zone. (See Exhibit H, Figure H-1, p. 1.)

25 ²⁸ Well H1-1 monitors the shallow groundwater levels in the upstream portion of the Alto
Transition Zone. (See Exhibit H, Figure H-1, p. 2.)

26 ²⁹ The Mojave Basin Area Thirtieth Annual Report of the Mojave Basin Area
Watermaster, Water Year 2022-23, n. 22, *supra*, Figure 3-9 at pdf p. 44.

27 ³⁰ Mojave Well H1-2 Log 05N04W23_E074683:
<https://cadwr.app.box.com/v/WellCompletionReports/file/462850229403>.

28 ³¹ Memorandum by Watermaster Engineer R.C. Wagner, "Report on Upper Narrows

1 elevation at the new well H1-2 was measured at approximately 2,774 feet (See
2 Attachment 2). Subsequent changes raised the ground surface elevation at the
3 well, requiring another survey of the wellhead ground surface elevation and
4 reference points. This Merrell Johnson 2023 survey found that the ground surface
5 rose approximately seven feet from 2,774 feet to approximately 2,781 feet.³²

6 F. The Merrell Johnson 2023 survey of the ground surface elevation at well
7 H1-2 is important because the reference elevation for measuring depth to
8 groundwater may have changed. The most recent depth-to-water data in the
9 CDWR CASGEM³³ database indicates that the 2,774-foot pre-2023 survey
10 ground surface elevation is still being used. (see Attachment 3) It is unclear if this
11 is the correct reference elevation today.

12 G. The Watermaster Engineer determined that for the new well H1-2, the
13 Exhibit H, Table H-2 maximum elevation of seven feet below the riverbed is
14 2,762.37 feet (see Attachment 2), which corresponds to a depth of approximately
15 12 feet from the 2,774 foot pre-2023 reference elevation and approximately 19
16 feet from the 2,781 foot post-2023 reference elevation. Therefore, it appears from
17 the evidence that the maximum depth to groundwater at well H1-2 is now
18 approximately five to 12 feet greater than the reference seven-foot maximum
19 depth as indicated in the Judgment. Note that the revised maximum depth is not
20 measured from the riverbed.

21 H. In addition, Attachment 3 is a hydrograph for well H1-2 taken from the
22 CDWR CASGEM³⁴ website on April 24, 2024. The well identified as
23 05N04W23R007S, 345012N1172606W002, and FG H1-2 Narrow Park-d is the

24 Exhibit H Well,” n. 7, *supra*.

25 ³² Merrell Johnson Engineering, Inc., Well Survey Exhibit sheet with survey results for
the well H1-2 well cluster, State Well Nos. 05N04W23R03, 05N04W23R04, 05N04W23R05,
and 05N04W23R07 (September 22, 2023), n. 8, *supra*

26 ³³ Historical groundwater level data for Alto, Centro and Baja Subareas from the USGS’s
National Water Information System website, n. 9, *supra*.

27 ³⁴ Historical groundwater level data for Alto, Centro and Baja Subareas from the USGS’s
National Water Information System website, n. 9, *supra*.

1 2008 replacement well H1-2, which has well perforations from 10 to 25 feet
2 below the ground surface. (See AltoWestHydro2024 map sheet.)³⁵ The Exhibit H,
3 Table H-2 trigger level for well H1-2 is drawn on Attachment 3, the CDWR
4 CASGEM hydrograph, at approximately 2,762 feet based on the Wagner 2010
5 memorandum.³⁶

6 I. Assuming that the correct Exhibit H, Table H-2 trigger elevation for
7 well H1-2 is 2,762.37 feet, the new well H1-2 hydrograph, Attachment 3, shows
8 that periodically, since approximately 2016, the depth to groundwater in the
9 Mojave River riparian area adjacent to the new well H1-2 has been greater than
10 seven feet below the riverbed.

11 J. The historical groundwater levels in the upstream portions of the Mojave
12 Narrows Park area since 2016 have exceeded the maximum seven-foot depth
13 required by the Judgment in Exhibit H, Table H-2, suggesting that the water
14 management of Alto in recent years has not protected public trust resources.

15 K. The fact that the groundwater level in new well H1-2 chronically
16 exceeds the maximum depth allowed by the Judgment speaks against the proposal
17 to increase the PSY for WY 2024-2025 because the additional FPA would
18 encourage additional groundwater production, thereby lowering the groundwater
19 level further.

20 L. Therefore, the Watermaster's proposed increase in the PSY for WY
21 2024-2025 in the Alto Subarea from 59,409 acre-feet to 62,005 acre-feet and FPA
22 from 50.4% of BAP to 53.3% of BAP is premature.

23 M. The updated Upper Mojave River Basin Model simulation suggests that
24 when the most recent annual average groundwater storage deficit of

25 _____
26 ³⁵ Mojave Water Agency, Mojave River Subarea Hydrograph Map Sheets (2024):
27 AltoWestHydro2024, AltoEastHydro2024, AltoTZHydro2024, CentroHydro2024, and
28 BajaHydro2024, n. 13, *supra*.

³⁶ Memorandum by Watermaster Engineer R.C. Wagner, "Report on Upper Narrows
Exhibit H Well," n. 7, *supra*.

1 approximately 17,500 acre-feet is recharged in upper Alto on average each year
2 for the next 20 years with wet replacement water, not paper water, i.e., transfers
3 of FPA or carryover, an average of approximate 9,800 afy of additional surface
4 water will flow downstream of USGS Lower Narrows gauge #10261500.³⁷

5 N. This average increase of 9,800 acre-feet per year that results from
6 importing and recharging a total of 380,000 AF over the next 20 years, should
7 increase water availability downstream of the Lower Narrows (i.e., Centro and
8 potentially Baja).³⁸

9 O. If the updated Upper Mojave River Basin Model simulation results are
10 correct, the increase in flow downstream of Lower Narrows with the additional
11 380,000 acre-feet of recharge in the upper Alto Subarea is likely the result of an
12 increase in baseflow because of a rise in the shallow groundwater levels in the
13 Mojave Narrows Regional Park area. This rise in shallow groundwater may
14 extend upstream as far as the new well H1-2 to encompass the entire Lower
15 Narrow Riparian Area. (See Exhibit H, Figure 1, p. 1.)

16 P. The increased flow through the Lower Narrows may also increase
17 groundwater levels at well H1-1. (See Exhibit H, Figure H-1, p. 2.)

18 Q. Only when an increase in groundwater elevation in Alto occurs such that
19 the elevation of groundwater at well H1-1 and new well H1-2 stay within the
20 seven-foot depth maximum in Table H-2 in Exhibit H may an increase in PSY be
21 justified.

22 R. Until groundwater elevations at wells H1-1 and H1-2 rise to comply
23 with Exhibit H, Table H-2 in the Judgment, an increase in PSY will “be
24 detrimental to the protection of public trust resources.” (Exhibit H, paragraph 2a.)
25 Therefore, the proposed increase in PSY should be denied.

26
27 ³⁷ Section 4.1 in Appendix G in Exhibit 5 to Exhibit C (2024 Wagner Declaration) in
28 2024-2025 FPA Motion, pdf p. 282.

³⁸ *Ibid.*

1 Centro Subarea

2 14. My conclusions for the PSY and FPA in Centro and my disagreement with the
3 Watermaster’s conclusions and recommendations are based on the following:

4 A. Attachment 4 to my declaration shows that stream discharge into the
5 Adjudication area at the Mojave Forks has increased over the base period (1931-
6 1990) during the post-base (1991-2010) and post-Judgment (1996-2010) periods
7 while decreasing at the Lower Narrows, Barstow, and Afton gauges.

8 B. Net recharge has increased in upper Alto (the Forks to Lower Narrows)
9 and decreased for the Transition Zone, Centro (Lower Narrows to Barstow) and
10 Baja (Barstow to Afton). The percentage of inflow at the Mojave Forks that
11 reaches the Barstow gauge #10262500 declined from 26% in the base period
12 (1930-1990) to 15% in the post-Judgment period (1991-2010).

13 C. In addition, Golden State Water Company’s (“Golden State”) recent
14 February 27, 2024, letter to the Mojave Watermaster Board³⁹ raised the issue of
15 the amount of surface water reaching Centro being different from what is assumed
16 in Table 5-1 PSY calculation based on a February 23, 2024, study by aquilogic.⁴⁰
17 The aquilogic 2024 study compared measured flows at the USGS Lower Narrows
18 gauge to past flows measured at two USGS intermittent river gauges in Centro
19 upstream of the USGS Barstow gauge.

20 D. The aquilogic 2024 study also evaluated historical groundwater
21 extractions and compared them to estimates of river recharge to assess whether
22 “...extractions may account for the fate of the Transition Zone stream recharge”
23 and whether “...groundwater extractions, on average, may remove an equivalent
24 volume of net stream recharge from the Transition Zone.”

25 _____
26 ³⁹ Letter to the Watermaster Board from Brownstein Hyatt Farber Schreck, LLP, on behalf
27 of Golden State Water Company to the Mojave Watermaster, for the April 4, 2024, Agency
28 Technical Advisory Committee Meeting (February 27, 2024) in Exhibit D in 2024-2025 FPA
Motion, pdf pp. 384-388.

⁴⁰ aquilogic memorandum, titled “Progress Report and Mojave Basin Transition Zone
Water Budget” (February 23, 2024) in Exhibit D in 2024-2025 FPA Motion, pdf pp. 389-401.

1 E. Golden State concluded from the aquilologic 2024 study that “...
2 groundwater pumping within the Transition Zone, along with environmental uses,
3 remove the additional recharge from the Transition Zone. Given this evidence of
4 stream losses in the Transition Zone, surface water inflow into the Centro Subarea
5 cannot equal stream discharge measured at the Lower Narrows gage.”

6 F. In fact, the USGS Barstow gauge #10262500 shows a decline in surface
7 water flow reaching the gauge in recent years
8 (<https://waterdata.usgs.gov/monitoring-location/10262500/>).

9 G. Attachment 5 to my declaration is a bar graph showing the total flow
10 measured at the USGS Barstow gauge from WY 1931 to WY 2023, with a 20-
11 year running average starting from WY 1951. The proposed PSY Table 5-1 in the
12 Watermaster’s Thirtieth Annual Report WY 2022-23⁴¹ calculations for both the
13 Centro and Baja subareas have lowered the surface water flow at the Barstow
14 gauge from a previously assumed value of 16,406 afy⁴² to a recent WY 2001-
15 2020 20-year average of 7,500 afy, a reduction of 8,904 afy. Horizontal dashed
16 lines are drawn on Attachment 5 for 16,406 afy and 7,500 afy.

17 H. Attachment 5 also shows that the 20-year running average has
18 periodically declined since 1951. The declines are associated with the time
19 between major storm years. As the time since the last major storms increases, the
20 20-year average declines.

21 I. In addition, the reduction in stormflow at Barstow may also be caused
22 by an increase in the volume of surface water infiltrating upstream of the Barstow
23 gauge (see Attachment 4).

24
25
26 ⁴¹ The Mojave Basin Area Thirtieth Annual Report of the Mojave Basin Area
Watermaster, Water Year 2022-23, n. 22, *supra*.

27 ⁴² The Mojave Basin Area Twenty-Ninth Annual Report of the Mojave Basin Area
28 Watermaster, Water Year 2021-22 (May 1, 2023).

1 J. The 8,906 afy reduction in surface water outflow from Centro to Baja
2 effectively creates a corresponding increase in the water balance surplus for
3 Centro.

4 K. The reduction in outflow to Baja combined with other changes in
5 Centro's water budget results in the surplus increasing from 423 acre-feet in WY
6 2021-2022 to 11,540 acre-feet for the WY 2024-2025 PSY calculation. (Compare
7 Table 5-1 in the Twenty-Ninth Watermaster Annual Report WY 2021-2022⁴³ to
8 Table 5-1 in the Watermaster's Thirtieth Annual Report WY 2022-2023.⁴⁴)

9 L. Therefore, and most important, the increase in the water balance surplus
10 caused by the reduction in surface water flow to Baja is the major factor in the
11 recommendation to increase the Centro PSY from 21,088 afy to 31,420 afy, and
12 the FPA from 55% to 60%.⁴⁵ Essentially, Centro is increasing its pumping at
13 Baja's expense and receiving credit for reducing the inflow to Baja. In my opinion
14 this is improper and contrary to the Judgment, which seeks to protect the public
15 trust resources in Baja.

16 M. Finally, all the studies cited above demonstrate that the unmeasured
17 losses and gains to the Mojave River throughout the Transition Zone could
18 potentially be a sizeable portion of the total surface water flowing into Centro.
19 The inability to directly measure these inflows and outflows of surface water
20 creates a large uncertainty in the estimate of the total inflow to Centro, and
21 therefore an uncertainty in the calculation of the Centro PSY and FPA. This
22 provides an additional reason for the Watermaster and this Court to hold the PSY
23 and FPA steady and not increase the pumping in Centro at Baja's expense.

24 N. The Department, therefore, also supports expanding the Upper Mojave
25 River Basin Model to include all the Transition Zone, and Centro and Baja. An

26 ⁴³ *Ibid.*

27 ⁴⁴ The Mojave Basin Area Thirtieth Annual Report of the Mojave Basin Area
Watermaster, Water Year 2022-23, n. 22, *supra*.

28 ⁴⁵ Exhibit 5 to Exhibit C (2024 Wagner Declaration) in 2024-2025 FPA Motion, n. 25,
supra.

1 expanded model would provide a better understanding of the groundwater and
2 surface water interactions between Alto, Centro, and Baja and allow for the
3 analysis of various water management alternatives.

4 Baja Subarea

5 15. My conclusions for the PSY and FPA in Baja and my recommendations are based on
6 the following:

7 A. The Baja Subarea is the most downstream basin in the Mojave River
8 Basin Adjudication area and is the last to receive Mojave River stormflows.⁴⁶

9 B. The main source of natural recharge to Baja is stormflow on the Mojave
10 River. (See Table 5-1 in Watermaster Annual Reports.)

11 C. The boundary between the Baja and Centro Subareas is the Waterman
12 Fault approximately five miles downstream from the USGS Barstow gauge
13 #10262500, attached as Attachment 6 to my declaration.⁴⁷

14 D. Therefore, the stormwater inflow to Baja is estimated from the
15 measurements at the Barstow gauge, with an assumed rate of riverbed infiltration
16 in the five miles to the Waterman Fault boundary.

17 E. The Judgment provided a table in Exhibit C, paragraph B.2 of the
18 Barstow gauge to Waterman Fault flow adjustments. The latest Watermaster
19 Engineer's WY 2024-2025 PSY calculation assumes that the Mojave River flow
20 measured at Barstow can be used "...to estimate flow at Waterman Fault, thence
21 inflow to the Baja Subarea."⁴⁸

22 F. As Attachment 4 demonstrates, like Centro, the volume of stormflow
23 reaching Baja has decreased relative to the Judgment 1931-1990 baseline period.

24 ⁴⁶ Figure 1 ("Mojave Water Agency and Adjudicated Subarea Boundaries Map") in
25 Exhibit 5 to Exhibit C (2024 Wagner Declaration) in 2024-2025 FPA Motion, pdf p. 204.

26 ⁴⁷ Todd Engineers, "Final Report Hydrogeologic Investigation of Camp Cady Wildlife
27 Area Newberry Springs, CA," n. 12, *supra*.

28 ⁴⁸ Appendix A ("Evaluations of Potential Mojave River Recharge Losses Between
Barstow and Waterman Fault") to memorandum by Watermaster Engineer R.C. Wagner, titled
"Analysis of Baja Water Supply and Outflow, with Appendices A through D" (January 24, 2012),
p. 17, attached to Brill, K., Executive Officer memorandum to Watermaster, titled "Consider
Proposed Changes to Baja Subarea Water Supply and Outflow" (February 22, 2012).

1 Total river flow measured at the Barstow gauge declined to 80% of the baseline
2 during the post-baseline period from 1991 to 2010.

3 G. As discussed above, Attachment 5 shows that during the last 20 years,
4 the average flow at the Barstow gauge has declined to approximately 7,500 afy
5 from 16,406 afy.

6 H. The latest Watermaster Engineer's 2024-2025 PSY calculation uses the
7 7,500 acre-feet per year value as the gaged inflow to Baja. (See Table 5-1 (2001-
8 2020) in the Watermaster's Thirtieth Annual Report WY 2022-23, p. 44, pdf p.
9 75.⁴⁹) The previous year's Baja PSY calculation assumed that the surface water
10 inflow was the sum of the Barstow gauged flow of 16,406 afy and 952 afy
11 ungauged tributary inflow for a total of 17,358 afy. (See Table 5-1 (1931-1990) of
12 Watermaster's Thirtieth Watermaster Annual Report WY 2022-23, p. 43, pdf p.
13 74.⁵⁰)

14 I. As discussed above, the cause of the recent reduction in average
15 Barstow gauge flow is uncertain. Whether the loss is due to increased infiltration
16 in Centro or flows never reaching it, Baja's long-term reduction in water supply is
17 being used to benefit the upstream subareas. Baja has now reduced its FPA 79.5%
18 from the entry of the Judgment, far above the other subareas.

19 J. The Watermaster Engineer has recommended using an alternative
20 method to determine the WY 2024-2025 Baja PSY based on the change in the
21 groundwater levels rather than the Table 5-1 Watermaster Annual Report water
22 balance PSY method.⁵¹ Specifically, the alternative PSY method assumes that
23 when the groundwater levels flatten or stabilize, i.e., there is zero change in
24

25 _____
26 ⁴⁹ The Mojave Basin Area Thirtieth Annual Report of the Mojave Basin Area
Watermaster, Water Year 2022-23, n. 22, *supra*.

27 ⁵⁰ The Mojave Basin Area Thirtieth Annual Report of the Mojave Basin Area
Watermaster, Water Year 2022-23, n. 22, *supra*.

28 ⁵¹ Appendix E in Exhibit 5 to Exhibit C (2024 Wagner Declaration) in 2024-2025 FPA
Motion, pp.4-5/pdf pp. 262-263.

1 groundwater storage, it indicates that the current production volume is
2 approximately equal to the PSY.

3 K. While this alternative method for determining PSY is theoretically valid,
4 there is a problem with Baja and Centro. The hydrogeology of these subbasins,
5 specifically the faulting, does not allow for uniform recharge distribution, which
6 can result in regions where groundwater levels continue to decline when others
7 stabilize.

8 L. Attachment 7 to my declaration is the 2024 Baja Subarea Hydrographs
9 map published by the Watermaster,⁵² which shows groundwater levels in the
10 upstream wells around Daggett beginning to stabilize. The stabilization of
11 groundwater levels in the wells downstream of the Calico Fault (to the right) is
12 mixed.

13 M. As Attachment 6 shows, Camp Cady is in the downstream portion of
14 Baja, and because of this and the disruption of groundwater flow by faults, it has
15 experienced a steady decline in groundwater levels for decades.

16 N. The depths of groundwater in Baja at Camp Cady measured in wells H3-
17 1 and H3-2 exceed the maximum depth below ground listed in Table H-2 in
18 Exhibit H.

19 O. Attachment 8 to my declaration is a 2023 map of the Camp Cady area
20 with hydrographs for the monitoring wells, which MWA staff produced for the
21 Department. The map shows that groundwater levels are declining except for the
22 wells in the central area of Camp Cady near the ponds: wells H3-2, P6, P7, and
23 P8.

24 P. Many of the shallowest Camp Cady wells have gone dry because the
25 groundwater levels are below the bottom of the well. The stability of the
26 groundwater levels at those dry wells is unknown.

27 ⁵² Mojave Water Agency, Mojave River Subarea Hydrograph Map Sheets (2024):
28 AltoWestHydro2024, AltoEastHydro2024, AltoTZHydro2024, CentroHydro2024, and
BajaHydro2024, n. 13, *supra*.

1 Q. While the flattening of groundwater levels near the central area of Camp
2 Cady is a sign that groundwater pumping in Baja may start to match the water
3 supply, the current depth of water at these wells is far below the maximum depth
4 to groundwater allowed by Table H-2 in Exhibit H to protect public trust
5 resources, including the species listed in Table H-1 in Exhibit H and the riparian
6 habitat areas shown in Figure H-1 in Exhibit H. (Exhibit H, paragraph 2a.) (Aaron
7 Johnson’s declaration in support of the Department’s response to the
8 Watermaster’s 2024-2025 FPA Motion provides details on historical changes in
9 vegetation and wildlife at Camp Cady.)⁵³

10 R. In addition, the decline in groundwater levels in Baja has resulted in a
11 loss of riparian habitat with a decline in the acres of phreatophytes.

12 S. The Watermaster Engineer is proposing for the WY 2024-2025 Baja
13 Subarea PSY Table 5-1 calculation that the phreatophyte consumptive use be
14 reduced from 2,000 afy⁵⁴ to 984 afy.⁵⁵

15 T. This reduction in phreatophyte water use is an average of the years 2019
16 to 2022, obtained using satellite imagery from the OpenET website and focused
17 only on the Camp Cady riparian habitat.⁵⁶

18 U. Although this recent average of phreatophyte water use may reflect
19 current conditions at Camp Cady, holding phreatophyte use to less than 50% of
20 the initial value used to calculate PSY and FPA appears to indicate that recovery

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23 ⁵³ Declaration of Aaron Johnson in Support of the Department of Fish and Wildlife’s
Response to Watermaster’s Motion to Adjust Free Production Allowance for the 2024-2025
Water Year, ¶¶ 41-50.

24 ⁵⁴ Lines, G. and Bilhorn, T. 1996. [Riparian Vegetation and Its Water Use During 1995](#)
[Along the Mojave River, Southern California](#). *Water-Resources Investigations Report 96-4241*.
25 U.S. Geological Survey. The report is available at: [http://www.mojavewater.org/data-](http://www.mojavewater.org/data-maps/document-library/)
[maps/document-library/](http://www.mojavewater.org/data-maps/document-library/).

26 ⁵⁵ Compare Table 5-1 (1931-1990) and Table 5-1 (2001-2020) in the Mojave Basin Area
27 Thirtieth Annual Report of the Mojave Basin Area Watermaster, Water Year 2022-23, n. 22,
supra.

28 ⁵⁶ Appendix E in Exhibit 5 to Exhibit C (2024 Wagner Declaration) in 2024-2025 FPA
Motion, pp.2-4/pdf pp. 260-262.

1 or replacement of the lost vegetation is not part of the Watermaster's management
2 plan for Baja.

3 V. In my opinion, the change from the use of a water budget to measure
4 PSY in Baja to the use of relative groundwater levels is not the optimal way to
5 measure PSY and the Watermaster should continue to follow the water budget
6 approach. In a flashy system like the Mojave Desert system, the groundwater
7 levels will necessarily fluctuate from year to year. While the data on water level
8 stability are important to verify that the PSY is correct, it should not be in and of
9 itself the measurement of PSY.

10 W. Further, while my opinion is that the groundwater levels in Baja may be
11 reaching stability, for the water levels in Baja to increase in the future and for us
12 to be sure that Baja is stabilizing, it is crucial that the surface water flowing from
13 Centro to Baja be returned to its historical levels. This will require the upper
14 subareas, such as Alto and Centro, to either reduce, or at least maintain, current
15 pumping and PSY levels and allow for the return to historical levels of surface
16 water flow in the future. In my opinion, it is the overproduction in Alto and
17 Centro that have reduced the surface water flows to Baja, and thus have allowed
18 and will continue to allow Alto and Centro to pump at the expense of Baja.
19 Reducing production or PSY in Baja will do nothing to change this imbalance and
20 return the surface water flows to Baja to their historical levels.

21 16. Based on my review of the documents referenced herein, including Exhibit H, my
22 own preparation of the various figures and tables attached to my declaration, my analysis of the
23 changes in groundwater levels in Alto, Centro, and Baja, and my conclusions stated herein, it is
24 my opinion that the WY 2024-2025 PSY and FPA for Alto and Centro is premature and should
25 remain the same as the WY 2023-2024 PSY and FPA values because an increase will be
26 detrimental to the protection of public trust resources. The WY 2024-2025 PSY and FPA for Baja
27 can remain the same as last year, with the recommendation that further study be conducted on
28 what actions can be taken to provide a supplemental water supply that brings the entire subarea

1 back to the condition that was anticipated at the start of the Judgment. In addition, I recommend
2 that the Upper Mojave River Basin Model be expanded to include all of the Transition Zone, and
3 Centro and Baja to provide a more accurate analysis of the flow of water in the Mojave River
4 Basin Adjudicated area, the impacts of pumping and recharge on the subarea groundwater levels,
5 the effects of the changes in groundwater elevation on the riparian habitat and public trust
6 resources, and to provide a tool for evaluation potential remediation measures needed to restore
7 the riparian habitats lost since the start of the Judgment.

8 I declare under penalty of perjury, under the laws of the State of California, that the
9 foregoing is true and correct.

10 Executed on May 21, 2024 in Fair Oaks, California.

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12 
13 KIT CUSTIS

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ATTACHMENT 1

Kit H. Custis
Engineering Geologist, Hydrogeologist

Professional Experience

2007 - present Senior Engineering Geologist, CA Dept. of Fish and Wildlife, retired annuitant (CDFW)
 2006 - present Consulting Engineering Geologist and Hydrogeologist, Fair Oaks, CA
 2008-2020 - Engineering Geologist and Hydrogeologist, part-time, MBI-PMC, Rancho Cordova, CA
 2004-2006 - Senior Engineering Geologist (Specialist), DOC-Office of Mine Reclamation (OMR)
 1999-2004 - Senior Engineering Geologist (Specialist), DOC-California Geological Survey (CGS)
 1998 - Engineering Geologist, Central Valley Regional Water Quality Control Board, Sacramento
 1989-1998 - Engineering Geologist, California Department of Conservation (DOC)
 1988-1989 - Engineering Geologist, Luhdorff and Scalmanini, Woodland, CA
 1988 - Hydrogeologist, Herzog Associates, Sacramento, CA
 1984-1988 - Senior Engineering Geologist (Supervisory), California State Water Resources Control Board
 1981-1983 - Consulting Geologist, Los Angeles, CA
 1980-1981 - Engineering Geologist, Ertec Western, Inc. (Formerly Fugro), Long Beach, CA
 1977-1979 - Engineering Geologist, Foundation Engineering Co., Tarzana, CA

Education

B.S., Geology, 1977, California State University, Northridge, California
 M.S., Geology, 1984, California State University, Northridge, California
 Ph.D. program in Hydrologic Sciences, 1990-1997, University of California, Davis

Professional Licenses

California Professional Geologist, PG #3942
 California Certified Engineering Geologist, EG #1219
 California Certified Hydrogeologist, HG #254
 CA SMARA Mine Inspector Certificate No. 18259

Professional Experience

Forty-three years of experience in engineering geology and hydrology, including groundwater and surface water impacts, subterranean stream flow, groundwater contamination, water resources, water rights, stormwater pollution, fluvial studies of watersheds, mine reclamation, acid mine drainage, evaluation of slope stability, landslide hazards, seismic hazards, soil erosion, and geophysical surveys. Work experience in both private consulting and government.

Projects included:

- California Department of Fish and Wildlife, working part-time as a retired annuitant on ground water issues related to water rights and 1600 permitting in California. Current and past projects include:
 - Advised CDFW staff on L.A. Department of Water and Power's Well 385R/386R Groundwater Pumping Test at 5 Bridges and Fish Slough in Owens Valley. Advised on monitoring requirements for 60-day long-term pumping test. Reviewed and commented on findings and impacts to 300-acre 5 Bridges Impact Area and 188-acre Fish Slough Ecological Reserve from operational pumping of these wells.

- Advise CDFW and the State Attorney General Office on groundwater issues related to the Mojave Basin Area Adjudication.
 - Advised CDFW staff on the groundwater pumping impacts to the 6,700-acre Canebrake Ecological Reserve in the South Fork Valley of the Kern River from the Onyx Ranch's change in point of diversion on the South Fork of the Kern River. The review included analysis and comments on vegetation and habitat impacts based on the groundwater model developed for the Onyx Ranch.
 - Testified for CDFW at State Water Resource Control Board (SWRCB) Water Rights hearings on City of Solvang's underflow water rights on the Santa Ynez River.
 - Testified for CDFW at State Water Resource Control Board (SWRCB) Water Rights hearings on El Sur Ranch's underflow water rights on the Big Sur River.
 - Testified for CDFW at SWRCB Water Rights hearings on North Gualala Water Company's subterranean stream channel determination on the North Fork of the Gualala River (see *North Gualala Water Company v. State Water Resources Control Board*).
 - Testified for CDFW at SWRCB Water Rights hearings on Victor Valley Water Reclamation Authority's (VWVRA) change in point of use in the Mojave River discharge permit.
 - Testified for CDFW at California Energy Commission on the permit condition requirements for High Desert Power Plant's impacts on the Mojave River environment with the use of recycled water from the Victor Valley Water Reclamation Authority's (VWVRA).
 - Represented CDFW on the technical advisory committee for Joseph Sax's 2002 White Paper on the Legal Classification of Groundwater in California (Sax Report).
 - Developed and conducted in-house Groundwater Training for CDFW staff in Region 1.
 - Lectured at the CDFW's Watershed Academy on landslide and fluvial issues related to the protection of waterways, including bank stability and channel restoration methods.
 - Advised CDFW staff on the groundwater pumping impacts Carmel River, Mammoth Creek, Santa Maria River, Little Lake Valley, Shasta River, Salinas River, and various desert solar projects.
 - Advised CDFW regions on groundwater contaminant issues related to property acquisitions for wildlife preserves.
- For Michael Baker International (formerly PMC) I work part-time on mine reclamation and geologic elements of CEQA documents and Surface Mining and Reclamation Act (SMARA) mine reclamation plans and mine inspections. Projects included conducting annual SMARA inspections and Financial Assurance Cost Estimates (FACE) reviews for Santa Clara and Siskiyou Counties. CEQA preparation of Coldstream Specific Plan, Town of Truckee, California, for development of 178+ acre previous aggregate mining site; Omya Limestone mine, Lucerne Valley, CEQA preparation for a revised reclamation plan and preparation of the FACE. Prepared revised reclamation plan and CEQA documents for Imperial County's Holtville Borrow Site. Provided review of Reclamation Plan

Amendment and landslide hazard assessments at Permanente Limestone Quarry, for Santa Clara County. Provided local government agencies geotechnical review and comments on various development projects during the permitting process.

- As a private consultant I've worked as a sub-consultant and advised non-profits organizations on groundwater management, groundwater contamination investigations and cleanups, storm water permits, water quality risk assessments, and regulatory compliance. Various projects throughout the Central Valley of California.
- California Department of Conservation, Office of Mine Reclamation, served 10 years in State Office of Mine Reclamation providing technical expertise to Local Agencies and the State Mining and Geology Board (SMGB) on stability of mine slopes and hydrology on mines throughout California. Provided technical training to lead agencies on mine slope stability assessment methods and regulatory requirements. Provided expert testimony at County Planning Commissions, County Board of Supervisors, and State Mining and Geology Board. Provided technical consulting on groundwater issues to Department of Fish and Wildlife through an inter-agency contract. Prepared a remediation plan to abate acid mine drainage from the abandoned Spenceville copper mine for the CDFW. Provided oversight for CDFW on the development and awarding of the 9-million-dollar contract to remediate Spenceville Mine.
- California Geological Survey (CGS), formerly Division of Mines and Geology, conducted engineering geology studies and regulatory reviews for projects throughout California. Work included evaluation of geologic and seismic hazards studies for hospitals and school sites, general plans and seismic safety elements. Senior technical lead on fluvial geomorphic studies in the north coast of California as part of the multi-agency North Coast Watershed Assessment Program (NCWAP). Prepared two reports for the U.S. Environmental Protection Agency on the application of geophysical methods to acid mine drainage investigations. Lectured at the CDFW's Watershed Academy on landslide and fluvial issues related to protection of waterways including bank stability and channel restoration methods. Participated in a GEOSAR interferometric radar project consortium consisting of the California Department of Conservation, Calgis Inc., and NASA's Jet Propulsion Laboratory that evaluated the application of radar derived DEMs to subsidence on mined lands. Project funding was provided by the US Department of Defense's Defense Advanced Research Projects Agency (DARPA).
- California Department of Parks and Recreation, Off-Highway Vehicle Division, while at CGS provided geotechnical expertise on erosion and sedimentation controls for trails and staging areas including assessment of storm water control measures.
- Luhdorff and Scalmanini, Woodland, as staff hydrogeologist conducted hydrogeologic evaluations of ground water resources and potential for ground water contamination, water well design, oversight of Sacramento Area Water Works Association groundwater monitoring program, and development and design of data base and computer mapping applications.
- Herzog Associates, Sacramento, as staff geologist conducted geotechnical studies for slope stability and landslide potential at hillside home sites in Napa Valley, Phase I site assessments for property transfers and ground water resource assessments.

- California State Water Resources Control Board and Central Valley Regional Water Quality Control Board, as a Senior Engineering Geologist developed a statewide ground water pollution management program, the AB1803 Follow-Up Program, which conducted investigations to find sources of known pollution of public drinking-water wells. As program director provided technical guidance for over 50 professional staff at the State and Regional Water Boards. At the Central Valley Regional Board case officer on 30 contaminated soil and groundwater site cleanups, prepared Waste Discharge Requirements and National Pollutant Discharge Elimination System permits, Monitoring and Reporting Programs and Cleanup and Abatement Orders.
- Earth Western, Long Beach, as staff engineering geologist conducted field mapping and site investigations for geologic and soils engineering studies in California, Arizona, and Nevada. Projects included seismic and geologic hazard studies of the major dams in Arizona, project geologist at Palos Verde Nuclear Project, MX missile project verification and aggregate resource studies in Nevada and Utah, and site geologist for hillside grading for Mission Viejo developments.
- Foundation Engineering, Inc., Tarzana, as staff engineering geologist conducted field mapping, subsurface investigations for geologic and soils engineering studies in the greater Los Angeles area. Projects included geotechnical studies for hillside home and tract development, assessment of slope stability and rock fall hazards, and Alquist-Priolo seismic safety studies.

Professional Affiliations

National Ground Water Association, Member
 Association of Engineering Geologist, Member
 California Groundwater Association, Member
 Geological Society of America, Member

Papers and Publications

Custis, K., 2005-06, Slope Stability for Mined Lands, presentation as part of the Department of Conservation, Office of Mine Reclamation's Workshops for lead agency and mine operator staff on Preparation and Review of Reclamation Plans.

Fuller, M.S., Curless, J.M., Custis, K., and Purcell, M.G., 2004, Maps and GIS data for the Albion River Watershed, Mendocino County, California, Watershed Mapping Series, Map Set 8 CGS CD 2004-03 MAPS.

M.S. Fuller, W.D. Haydon, M.G. Purcell and K. Custis, 2002, GIS Data and Geologic Report for the Watershed Mapping Series, Map Set 5, Gualala River Watershed, Sonoma and Mendocino Counties, California, CGS CD 2002-08 MAPS.

Custis, Kit H., 2001, Digital Elevation Models: Uses and Challenges in Managing California's Groundwater *in* The Challenges of Quality and Quantity, 23rd Biennial Groundwater Conference and 10th Annual Meeting of the Groundwater Resources Association of California October 30-31, 2001, Radisson Hotel, Sacramento, California.

Custis, K., 1997, Seminar on Slope Stability Methods for Mined Lands, seminar for lead agency and OMR staff, Department of Conservation, Office of Mine Reclamation.

D.B. Levy, K.H. Custis, W.H. Casey and P.A. Rock, 1995, Geochemistry and physical limnology of an acidic pit lake, in *Tailings and Mine Waste '96*, A.A. Balkema, Rotterdam, pages 479-489.

D.B. Levy, K.H. Custis, W.H. Casey and P.A. Rock, 1997a, The Aqueous Geochemistry of the Abandoned Spenceville Copper Pit, Nevada County, California, *Journal of Environmental Quality*, Vol. 26, no. 1, January-February 1997, pages 233-243.

D.B. Levy, K.H. Custis, W.H. Casey and P.A. Rock, 1997, A comparison of metal attenuation in mine residue and overburden material from an abandoned copper mine, *Applied Geochemistry*, Vol. 12, No. 2, March 1997, pages 203-211.

Custis, Kit, 1994, Application of geophysics to acid mine drainage investigations, volume I — literature review and theoretical background, California Department of Conservation, Office of Mine Reclamation, 801 K Street, Sacramento, CA, 100p. USEPA PB95-191268, EPA No. 530-R-95-013a

Custis, Kit, 1994, Application of geophysics to acid mine drainage investigations, volume II — site investigations, California Department of Conservation, Office of Mine Reclamation, 801 K Street, Sacramento, CA, 100p. USEPA PB95-191276, EPA No. 530-R-95-013b

Custis, Kit, 1984, Geology and dike swarms of the Homer Mountain area, San Bernardino County, California, unpublished MS Thesis, 168 pp.

D.L. Lamar, J. L. Smith, J. W. La Violette, K. Custis, and P.J. Scrivner, 1983, Application of private site-specific data to regional evaluation of earthquake and faulting potential in Southern California, USGS Open File Report 83-834, 218 pp.

Carlisle, D., Agyakawa, Y.N., and Custis, K., 1982, Hydrothermal Mineralization and Intermineral Intrusives Associated with Transverse Fractures in the Eastern Mojave, Desert, San Bernardino County, California, *in* *Geology and Mineral Wealth of the California Transverse Ranges*, South Coast Geological Society, pages 350-353.

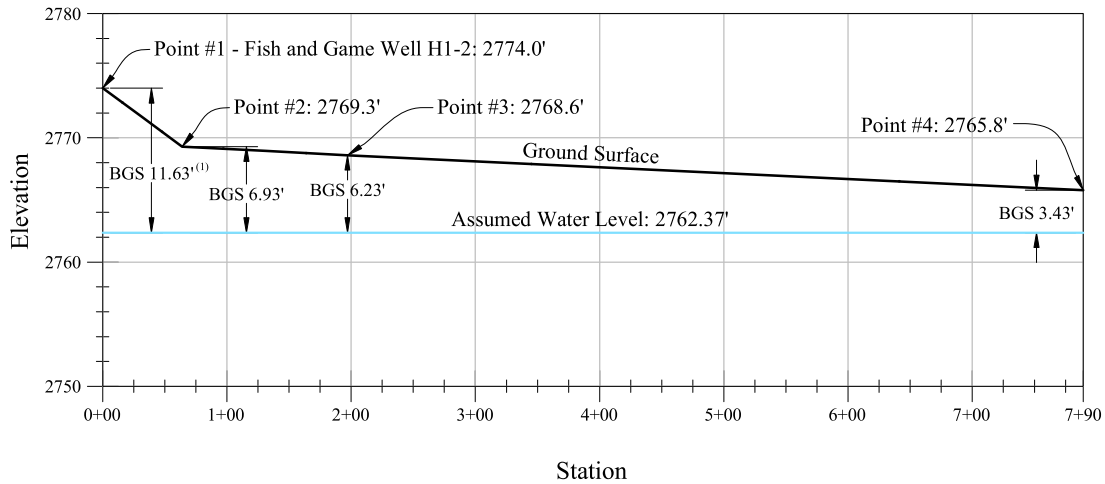
Awards

State Mining and Geology Board, 2006, Recognition of Distinguished Service to the Office of Mine Reclamation.

Governor's Environmental and Leadership Award, 2002, Watershed Management, Spenceville Wildlife Area and Mine Reclamation, Nevada County, received along with CCDFW and DOC team members and Walker and Associates consultants, project consultant.

Department of Fish and Game, Director's Achievement Award, 2002, for Cleanup and Closure of Spenceville Mine Site.

ATTACHMENT 2



Notes:
⁽¹⁾ Actual measurement.
 BGS = Below Ground Surface.



Upper Narrows Estimated
 Water Level

Fish and Game Riparian
 Habitat Area

San Bernardino County, California

Wagner & Bonsignore
 Consulting Civil Engineers, A Corporation

ATTACHMENT 3

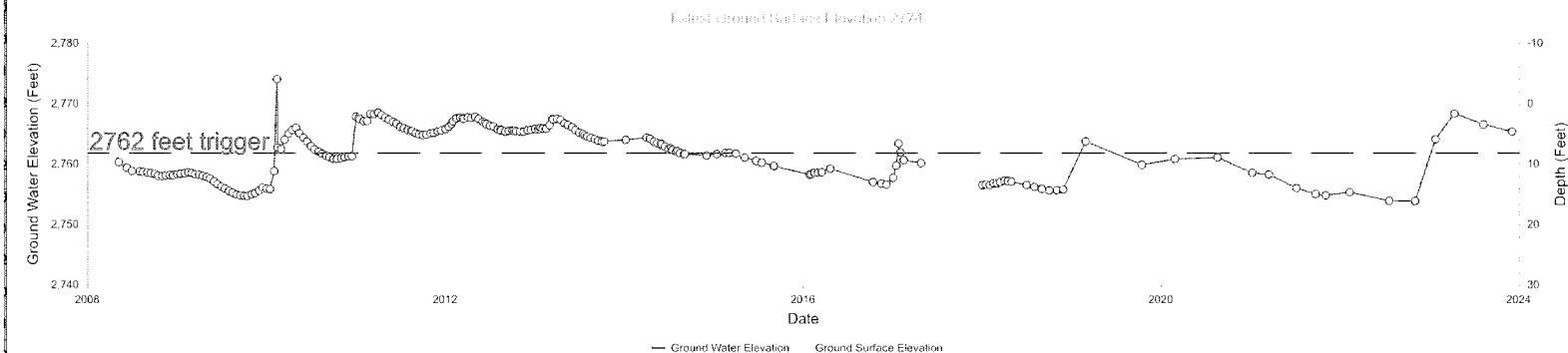


Elevation Readings - 345012N1172606W002 (05N04W20R0075)

Reading Detail

Reading Type	Groundwater Elevation	GS to WS	RP to WS
Groundwater Measurement	2,768.340	5.880	9.880

345012N1172606W002 - Hydrograph



345012N1172606W002

Local Well Designation	FG H1-2 Narrow Park-d
Latitude/Longitude	34.5012 / -117.260564
Basin	Upper Mojave River Valley
Well Use	Observation
Total Depth	30
Screen Intervals	No
Well Status	Active

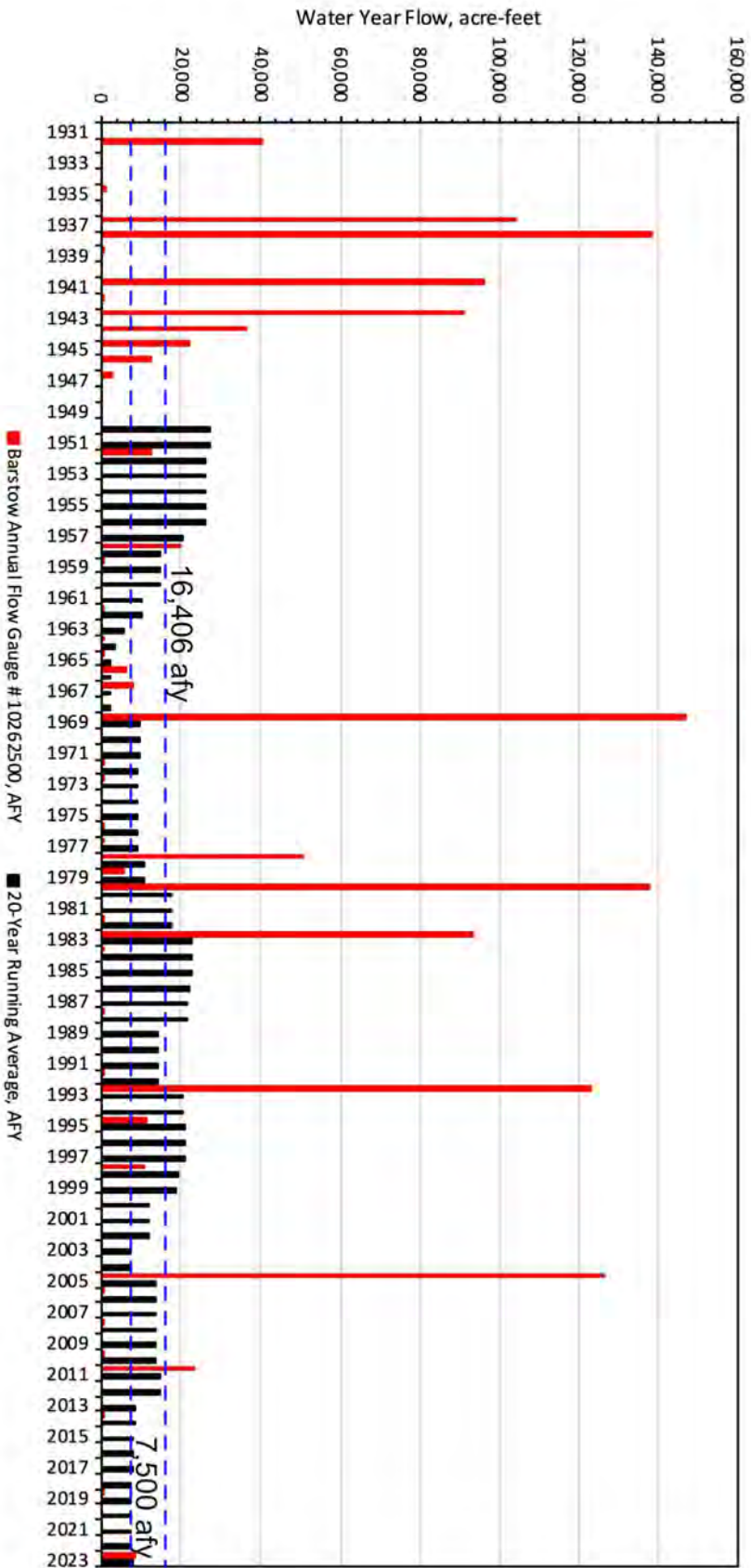
ATTACHMENT 4

Table 3.4
Average Annual Mojave River Discharge and Net Recharge for Selected Periods

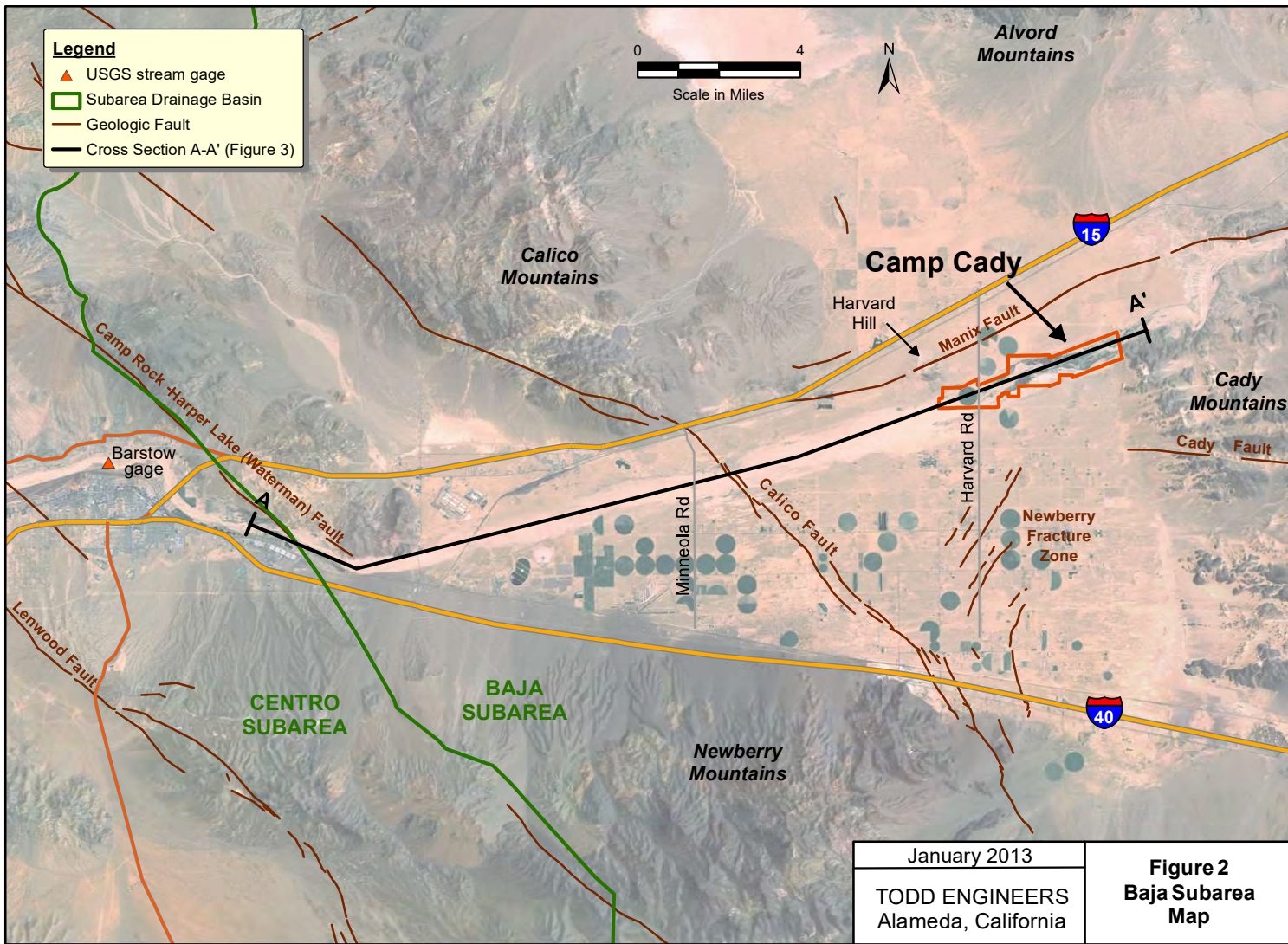
Time Period (Water Year to Water Year)	Stream Discharge				Net Recharge (Leakage less Baseflow)			
	The Forks	Lower Narrows	Barstow	Afton	The Forks To Lower Narrows	Lower Narrows To Barstow	Barstow to Afton	Total (The Forks to Afton)
	Average (AFY)				Average (AFY)			
base period (1931-90)	65,589	51,956	17,050	8,247	13,633	34,907	8,802	57,342
early base period (1931-45)	79,435	68,849	35,107	16,662	10,587	33,742	18,445	62,773
middle base period (1946-68)	40,565	31,956	2,733	1,214	8,608	29,223	1,519	39,350
late base period (1969-90)	79,802	59,497	18,848	9,449	20,304	40,649	9,399	70,353
post base period (1991-10)	89,293	42,176	13,558	5,948	47,117	28,618	7,610	83,345
post Judgment (1996-10)	67,225	26,561	9,150	3,339	40,664	17,411	5,811	63,885
recent wet period (1993-05)	105,774	57,163	20,813	8,984	48,612	36,349	11,829	96,790
	% of Average Discharge for Base Period				% of Average Net Recharge for Base Period			
base period (1931-90)	100%	100%	100%	100%	100%	100%	100%	100%
early base period (1931-45)	121%	133%	206%	202%	78%	97%	210%	109%
middle base period (1946-68)	62%	62%	16%	15%	63%	84%	17%	69%
late base period (1969-90)	122%	115%	111%	115%	149%	116%	107%	123%
post base period (1991-10)	136%	81%	80%	72%	346%	82%	86%	145%
post Judgment (1996-10)	102%	51%	54%	40%	298%	50%	66%	111%
recent wet period (1993-05)	161%	110%	122%	109%	357%	104%	134%	169%
	% of Discharge at The Forks							
base period (1931-90)	100%	79%	26%	13%				
early base period (1931-45)	100%	87%	44%	21%				
middle base period (1946-68)	100%	79%	7%	3%				
late base period (1969-90)	100%	75%	24%	12%				
post base period (1991-10)	100%	47%	15%	7%				
post Judgment (1996-10)	100%	40%	14%	5%				
recent wet period (1993-05)	100%	54%	20%	8%				

ATTACHMENT 5

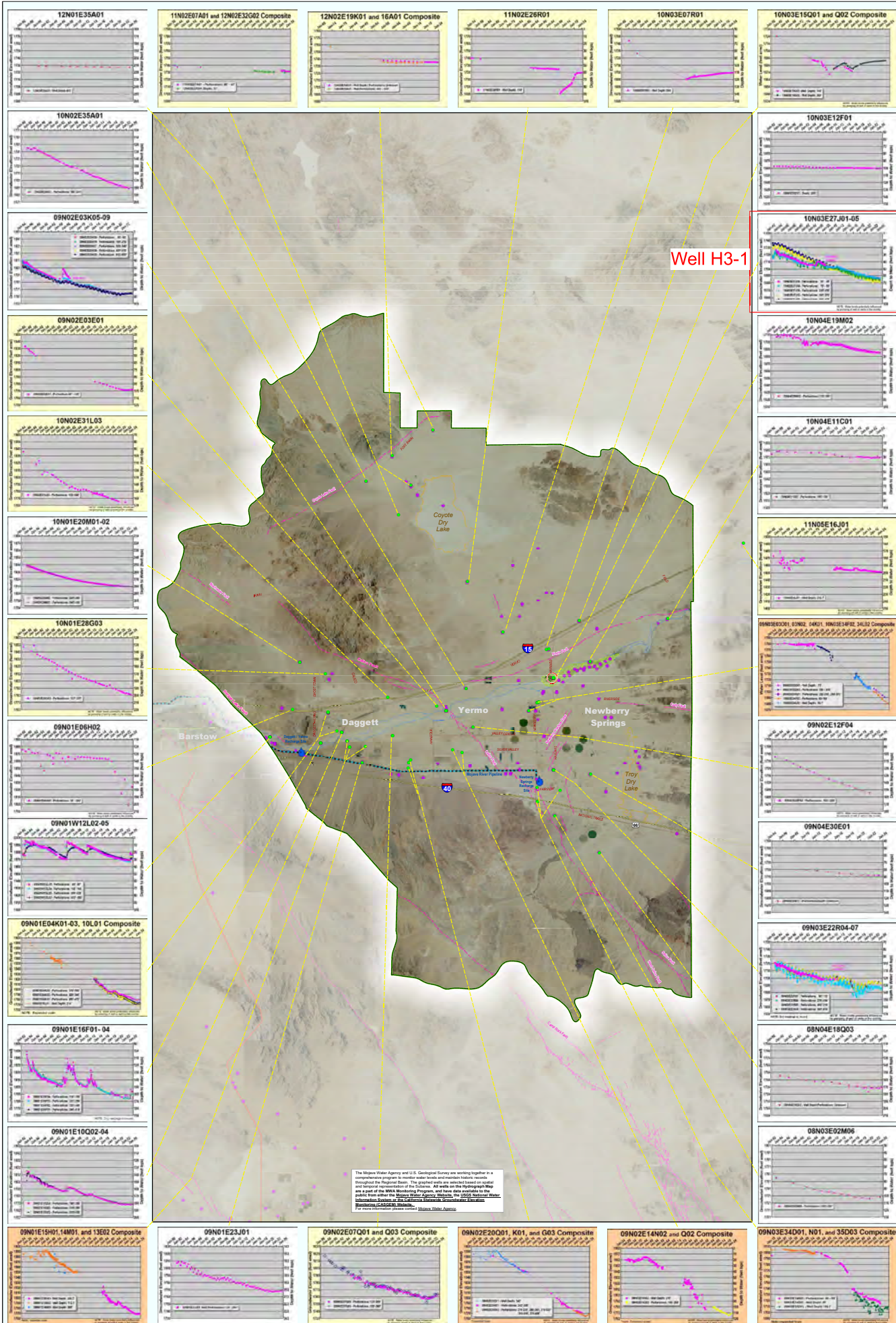
Historical Flows at Barstow Gauge USGS #10262500 WYs 1931 to 2023



ATTACHMENT 6



ATTACHMENT 7



Well H3-1

The Mojave Water Agency and U.S. Geological Survey are working together in a comprehensive program to monitor water levels and monitor historic records (1900-2024) for the Mojave Subarea. The program will be completed in 2024 and support implementation of the Scheme. All wells on the Hydrograph Map are part of the MWA Monitoring Program, and have data available to the public from either the Mojave Water Agency Website, the USGS National Water Information System, or California Geologic Survey Website.

Mojave Water Agency | U.S. Geological Survey | Mojave Water Agency

Baja Subarea Hydrographs 2024

Data Sources:
 MWA, US Census, USGS, WRI, DWR, Basin 54, 1967, Data, January 2024, Mojave Water Agency, Water Resources Department

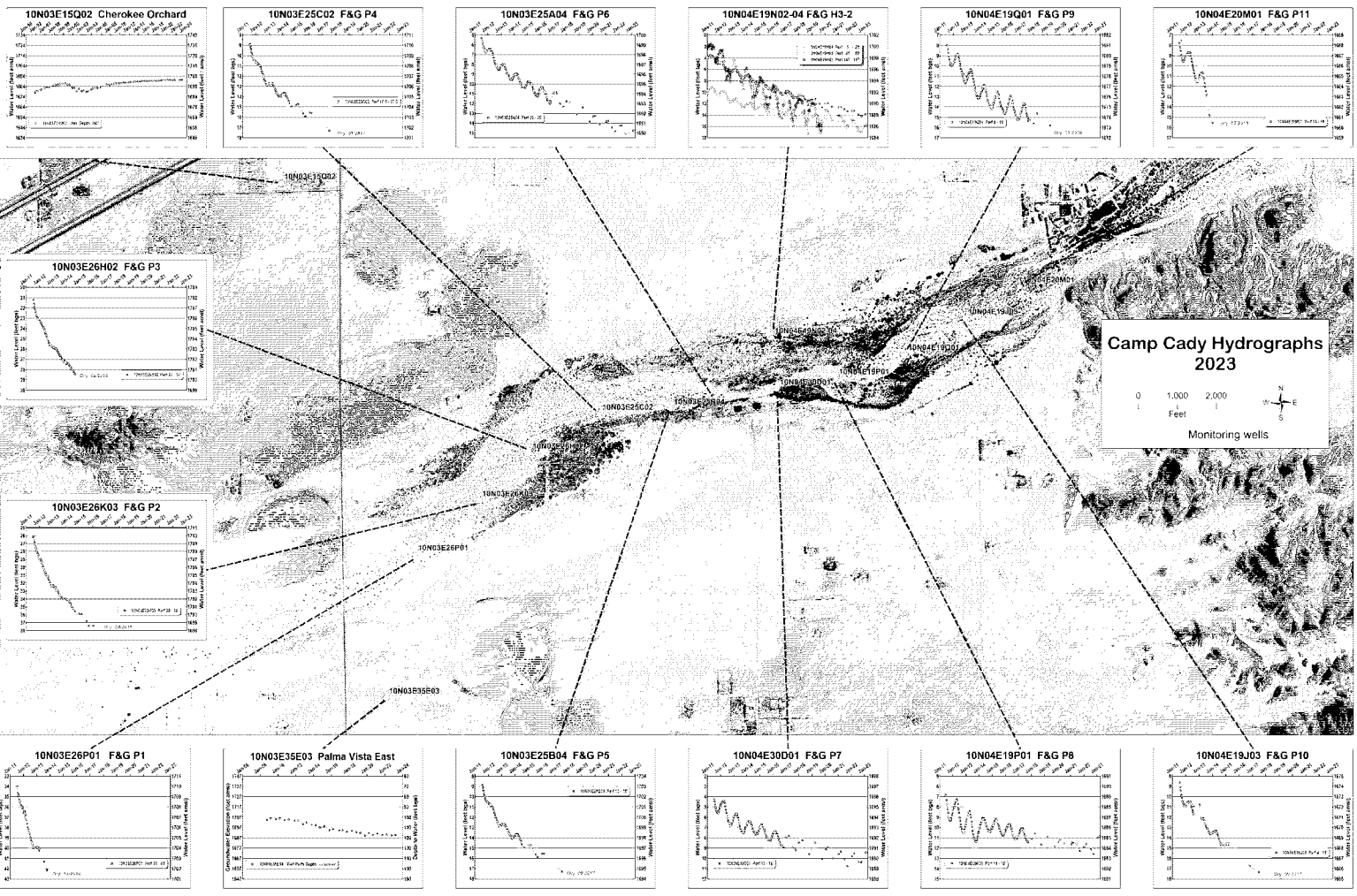
Legend:
 ● Graphed Wells
 ● MWA Monitoring Program Wells
 ■ Exhibit H Riparian Habitat Area
 ■ MWA Recharge Site
 --- CA Geologic Faults (CGS, USGS)
 --- MWA Recharge Pipeline

Record Legend:
 ■ Recent record
 ■ Long-term record (begins ~1950 to ~1980)
 ■ Very long-term record (begins ~1920)

Scale: 0 2 4 Miles

North Arrow: N

ATTACHMENT 8



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 May 21, 2024, I served the **DECLARATION OF KIT CUSTIS IN SUPPORT OF THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE'S RESPONSE TO WATERMASTER'S MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR THE 2024-2025 WATER YEAR** 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:

William J. Brunick, Esq.
Leland P. McElhaney, Esq.
Brunick, McElhaney & Kennedy PLC
1839 Commercenter West
San Bernardino, CA 92423-3130
E-Mail: bbrunick@bmklawplc.com
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Attorneys for Defendant/Cross-Complainant Mojave Water Agency

Valerie Wiegenstein
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Mojave Water Agency
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E-Mail: vwiegenstein@mojavewater.org
E-Mail: jruesch@mojavewater.org

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 May 21, 2024, at Los Angeles, California.

Beatriz Davalos

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.

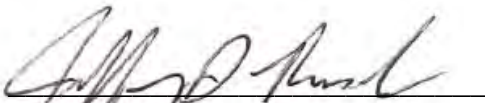
On May 22, 2024, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster’s Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing 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:

DECLARATION OF KIT CUSTIS IN SUPPORT OF THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE’S RESPONSE TO WATERMASTER’S MOTION TO ADJUST FREE PRODUCTION ALLOWANCE FOR THE 2024-2025 WATER YEAR

 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 22, 2024 at Apple Valley, California.



Jeffrey D. Ruesch

Mojave Basin Area Watermaster Service List as of May 22, 2024

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Mojave Basin Area Watermaster Service List as of May 22, 2024

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