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*Exempt from filing fee pursuant to
Gov't. Code Section 6103*

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8 MOJAVE WATER AGENCY

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

12 Coordination Proceeding Special Title
13 (Cal. Rules of Court, rule 3.550)

14 **MOJAVE BASIN WATER CASES**

15 **CITY OF BARSTOW,**

16 Plaintiff,

17 vs.

18 **CITY OF ADELANTO, et al.,**

19 Defendant.

20 **AND RELATED CROSS ACTIONS**

JCCP NO.: 5265

Dept. 7, Riverside Superior Court
Hon. Craig G. Riemer, Judge Presiding by
assignment of the Chief Justice

CASE NO.: CIV208568

**NOTICE OF SERVING COURT'S
RULING OF JULY 3, 2024 AND PROOF
OF SERVICE THEREON**

Assigned for All Purposes to Dept. 7,
Hon. Craig G. Riemer, Judge Presiding by
assignment of the Chief Justice

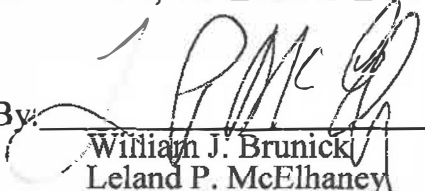
22 **PLEASE TAKE NOTICE THAT** Defendant/Cross-Complainant Mojave Water
23 Agency's Motion to Adjust Free Production Allowance for Water Year 2024-2025, heard on
24 June 24, 2024 before the Honorable Craig G. Riemer, Judge Presiding by assignment of the
25 Chief Justice in Department 7 of the above-entitled court, hereby serves the Ruling on
26 Watermaster's Motion to Adjust Free Production Allowance for Water Year 2024-2025 dated
27 July 3, 2024.

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

Dated: July 8, 2024


BRUNICK, McELHANEY & KENNEDY PLC

By: 

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

EXHIBIT 1

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF RIVERSIDE

CASE TITLE: Mojave Basin Water Cases / City of Barstow v. City of Adelanto	Department 1	JUL - 3 2024
CASE NO.: CIV208568 / JCCP5265		J. Castillo 
DATE: June 27, 2024		

PROCEEDING: Ruling on the Watermaster’s Annual Motion to Adjust Free Production Allowance for Water Year 2024-2025

WATERMASTER’S MOTION TO REVISE PSY AND ADJUST FPA

The Mojave Water Agency, appointed as the Watermaster pursuant to the judgment in case #CIV208568, has moved for an annual adjustment of the free production allowance (FPA) regarding some of the five subareas in the Mojave Basin.

In 2022, the Court ordered the Watermaster to re-evaluate the production safe yield (PSY) of each of the subareas in the basin, and to seek the Court’s approval of those revised estimates as soon as possible thereafter. (9-16-22 order, p. 1.) The Watermaster has done so. Although its current motion does not expressly seek approval of those revised estimates, the Watermaster subsequently clarified that it is asking the Court to approve the revised PSY for each subarea. (Responses to Questions by Court [hereinafter, Responses], p. 4, #9.)

In evaluating those requests, the Court has considered the following:

- The Watermaster’s motion filed 5-1-24;
- The Watermaster’s Annual Report lodged 5-3-24;
- Phelan Pinon Hills Community Services District’s partial joinder filed 5-10-24;
- Golden State Water Company’s opposition, and the declarations of Moore, Abrams, and Hastings in support of that opposition, all filed 5-21-24;
- The response filed by the California Department of Fish and Wildlife, and the declarations of Custis and Johnson in support of that response, all filed on 5-21-24;
- Comments by the City of Victorville and the Victorville Water District on the Watermaster’s motion, filed 5-30-24;
- The Watermaster’s Responses submitted at the 6-24-24 hearing; and
- The arguments offered at the hearing by the Watermaster and other interested parties.

The Watermaster’s motion is granted in part and denied in part as explained below.

Revised PSY – In General

The Watermaster proposes to increase the PSY in all five subareas as follows:

Subarea	Existing PSY in acre feet	Proposed PSY for 2024-2025 in acre feet	Amount of Proposed Increase in acre feet	Percentage Increase
Alto	59,409	62,005	2,596	4.4%
Baja	12,189	12,749	560	4.6%
Centro	21,088	31,420	10,332	49.0%
Este	4,728	6,582	1,854	39.2%
Oeste	1,712	3,634	1,922	112.3%

In general, the Court approves the Watermaster’s proposed PSY for each subarea. However, that approval is without prejudice to challenges to the manner in which the Watermaster has calculated PSY and the sufficiency of the factual investigation on which those calculations are based. For example, Golden State Water Company intends to bring a motion seeking the relief described in its opposition to the Watermaster’s motion. Any such motion by Golden State shall be filed no later than 7-25-24, or by such later date to which the Watermaster may agree.

Revised PSY – Oeste

Although the Court generally accepts the proposed PSYs, it does not approve the proposed PSY for Oeste. The Watermaster recommended that the PSY be set at a number “equal to the average pumping of the past 5 years, 3,634 acre-feet.” (Decl. of Wagner, p. 6.) As noted in the Court’s tentative ruling, the Court has reservations about the PSY for Oeste for multiple reasons.

Initially, the Court is not clear as to which five years the Watermaster is referring. Is it water years 2020 through 2024? Is it water years 2019 through 2023, since 2024 is not yet finished? Or is it to the last five years of the 2001-2020 period that the Watermaster is relying upon for the calculations regarding Alto and Centro (Responses, p. 3, #6), given the clarification at the hearing that the Watermaster’s reference to “the last 20 years” was intended to mean water years 2001 through 2020?

Second, the Court is troubled by the reliance upon a span of only five years. As noted in the tentative ruling, the judgment requires PSY to be based upon “a sequence of years that is representative of long-term average annual natural water supply to the

Subarea” (Judgment, p. 11.) At the hearing, Mr. Wagner opined that the “last five years” are representative of the last 20 years.

That assertion raises several concerns. First, in the context of the judgment, the Court is not sure that the average over a 20-year period constitutes a “long-term” average.

The Court is also concerned about apparent inconsistencies in the Watermaster’s position. The Watermaster’s Responses say that if the “Watermaster relied solely on data from the last 20 year period, the PSY would be approximately 4,300, not 3,634.” (Responses, p. 5, #15.) But it appears to the Court that if the last five years are representative of the last 20 years, then the calculations based on those two periods should be approximately the same, not dramatically different.

Furthermore, the representation that the PSY would be 4,300 if one were to rely on the 20-year period also appears to contradict the declaration of the Watermaster’s engineer, in which he represented: “Assuming the average pumping for the past 20 years, the PSY would be 2,983 acre-feet.” (Wagner decl., p. 6.)

Another inconsistency in the Watermaster’s representations concerning Oeste causes the Court concern. The engineer’s declaration says: “The UMBM indicates a loss in storage of 1,588 acre-feet per year for the past 20 years.” (Wagner decl., p. 6.) But the Responses represent that the loss for the last five years is 822 acre-feet per year. (Responses, p. 5, #17.) Both of those statements may be true, because the 20-year average could be 1,588 even though the 5-year average is only 822. But the Watermaster’s failure to stick with a consistent time period does not assist the Court in evaluating the evidence presented and does not enhance the Watermaster’s credibility.

Further, the motion appears to be inconsistent with the Annual Report. The motion says that the PSYs for Oeste, Este, and Baja are calculated on the basis of 5-year or 20-year periods. But the Annual Report, at p. 38, states: “PSY is based on long term average water supply (1931-1990)”

Most importantly, the assertion that the subarea continues to lose storage at the rate of 822 acre-feet per year is inconsistent with the Watermaster’s justification for the proposed increase in PSY. The Watermaster’s engineer opined that the PSY should be set at 3,634, reasoning: “Assuming water levels are indicating little or no loss of storage, the PSY would be about equal to pumping,” and that average pumping is 3,634. (Wagner decl., p. 6.) But if it is true that the subarea is losing 822 acre-feet per year, then the assumption that the average level of pumping is resulting in “little or no loss of storage” is false.

For all these reasons, the Court declines to adopt the recommended PSY for Oeste. The PSY will remain at 1,712 for now. If the Watermaster recommends another increase

in the future, the motion shall be supported by evidence and analysis that address each of the concerns described above.

Revised PSY – Baja

The Court approves, for water year 2024-2025 only, a PSY for Baja of 12,749. The evidentiary basis for that increase is unclear. Table 5-1, at pages 43 and 44 of the Annual Report, says that the PSY for Baja is 14,544 if based on water years 1931-1990, and 10,866 if based on water years 2001-2020.

FPA for Este:

Despite the increase of PSY to 6,582, the FPA for water year 2023-2024 (11,568) continues to greatly exceed it.

The only reason that the subarea is not being overdrafted is because verified production (4,114 in 2023-2024) is below PSY. In recent years, the Court has ramped-down the FPA in this and some other subareas in which production is below PSY to further the goal that, if production increases in the future, the FPA will be low enough to prevent free production in excess of PSY.

Consistent with that goal, the Watermaster recommends that FPA be reduced by 5% from 55% of BAP to 50% of BAP. The Court approves the Watermaster's proposed 5% reduction. The Court orders that the FPA for all producers in Este shall be reduced to 50% of BAP for Water Year 2024-2025.

FPA for Oeste:

For water year 2023-2024, the FPA governing parties' production is 50% of BAP, or 3,548 acre-feet. That greatly exceeds the PSY (1,712). As noted above, however, the Watermaster recommends that the PSY be set at 3,634, a number that the Watermaster characterizes as the "more conservative estimate[]." (Responses, p. 5, #17.) Because 3,634 is so close to the current FPA, the Watermaster recommends that the FPA remain at 50% of BAP.

The Court is not persuaded. Unless and until the Watermaster persuades the Court that the PSY should be raised, the Court is going to assume that the current PSY reflects the best estimate. Moreover, the Court does not consider a resolution that allows a greater level of production to be the most conservative approach. Given that the goal of this judgment is to bring free production down into balance with available supply, the Court resolves any doubts in favor of lower rather than greater production.

Accordingly, the Court declines to adopt the Watermaster's recommended FPA. The Court orders that the FPA for all producers in Oeste shall be reduced by 5% of BAP to 45% of BAP for Water Year 2024-2025.

FPA for Baja:

For water year 2023-2024, the FPA governing parties' production is 20.5% of BAP, or 13,562 acre-feet. The new PSY is 12,749. The Watermaster recommends that the FPA remain at 20.5%, arguing that the water levels in Baja have stabilized.

In its tentative ruling, the Court was skeptical: "Little if any analysis is offered in support of that proposal. It does not offer evidence that Baja is now stabilized. At most it says that the drop in some water levels has slowed (suggesting that the drops in most water levels have continued to drop at faster rate), and that water levels have recovered in some wells (suggesting that most wells have continued to drop). (Wagner decl., p. 5.) Besides, the issue is not whether there is balance between PSY and the current level of production within a subarea, but rather whether the FPA exceeds the PSY."

At the hearing, the Watermaster directed the Court to the Annual Report, figure 3-14, "Baja Subarea Hydrographs 2024." That page consists of a map surrounded by 34 impossibly small graphs. After reviewing that page on the Watermaster's website, where the graphs could be enlarged to make them somewhat more readable, they appear to show that the water level in some wells have increased; in some, leveled off; in some, declined; and in the rest the levels fluctuate to a degree that no trend can be clearly determined. Taken as a whole, it does not appear from that evidence that Baja has yet reached a point of equilibrium.

At 20.5% of BAP, the FPA in Baja is 13,562. As noted above, the revised PSY is 12,749. Assuming that the 12,749 PSY urged by the Watermaster is correct, FPA exceeds PSY by 813. Therefore, there is still room to reduce FPA without dropping below PSY.

The Court declines to adopt the Watermaster's recommendation that the FPA for Baja remain at 20.5% of BAP. Instead, the Court orders that the FPA for all producers in Baja is reduced by 1.0% to 19.5% of BAP for Water Year 2024-2025.

FPA for Alto:

The FPA is currently set at 50.4% of BAP. The Watermaster proposes to increase the FPA to 53.3%.

The Court is not inclined to increase FPA at this time. Given the unfortunate history of this basin, the Court is aggressive in reducing FPA, even when the FPA is relatively close to PSY, as shown in the case of Baja, above. By contrast, the Court will be slow to increase FPA.

As mentioned above, the Court has previously determined that it lacks the power under the judgment to set the FPA lower than the PSY. However, once the FPA has been reduced to a point that is relatively close to the PSY, the Court does not intend to micromanage the FPA each year, increasing it some years and decreasing it in others. The

producers are entitled to more predictability, and the Court and the Watermaster would benefit from the opportunity to evaluate the accuracy of the model when applied for a longer period of time. If and when the water levels in Alto show increasing stability over several years, and when the storage levels are able to climb out of the “Area of Concern” where they have resided since about 2014 (Annual Report, figure 3-8), the Court is likely to gradually increase the FPA. However, it will not do so the first time that the FPA is less than the PSY, especially when that imbalance occurred because the PSY is increased as the result of a recalculation.

The Court orders that the FPA for all producers in Alto remains at 50.4% of BAP for Water Year 2024-2025

FPA for Centro:

The existing FPA for Centro is 55 percent of BAP, or 28,067 acre-feet. As noted in the chart above, however, the revised PSY is 31,420 acre-feet, 49 percent higher than the prior estimation. The difference between the existing FPA and the new PSY is 3,353 acre-feet, or 6.6% of BAP. Accordingly, the Watermaster proposes to reduce that differential by 5% by increasing the FPA from 55% of BAP to 60%.

The magnitude of the Watermaster’s recommended increase is presumably a reflection of the provision in the judgment that the annual reduction of FPA in any subarea may not exceed 5% of BAP. (Judgment, p. 33.) The apparent reason for such a limitation is to moderate the impact of any such reduction on the affected producers. As the Watermaster notes, there is no comparable limit on the speed at which the Court may *increase* FPA. (Responses, p. 6.) Thus, the Court could increase the FPA by the 5% recommended or by the full 6.6%.

Nevertheless, the Court declines to do either at this time. In addition to the reservations described above concerning a possible increase of FPA in Alto, the Court is concerned about the affect of increased pumping on the public trust resources. The Court also notes that the model the Watermaster is developing does not yet extend to Centro, suggesting that the proposed PSY may not be accurate. On the other hand, the water storage in Centro is well above the Area of Concern. (Annual Report, figure 3-19.) Moreover, the degree to which FPA has fallen below PSY is greater in Centro (6.6%) than in Alto (4.4%).

In consideration of those conflicting factors, the Court finds that the FPA should be increased to move toward equalization of FPA and PSY, but that it should be done in a cautious and incremental manner. The Court orders that the FPA for all producers in Centro shall be increased by 1% from 55% of BAP to 56% of BAP for Water Year 2024-2025.

FUTURE MOTIONS TO ADJUST FPA

Regarding subsequent motions to adjust FPA:

1. The Court found it very cumbersome to search for documents referred in the points and authorities or Mr. Wagner's declaration. For instance, a reference to a document merely as "Appendix A of Exhibit 5" (Wagner decl., p. 3) does not materially assist the Court in locating the document when the moving papers are over 450 pages long. Accordingly, in any future motions to adjust FPA, every page of the declaration of the Watermaster's engineer and every page of any evidence authenticated by that declaration shall be sequentially numbered. All citations in either the memorandum of points and authorities or the engineer's declaration to any of that evidence shall include the page number on which that evidence appears.

2. If the parties are interesting in doing so, upon request the Court will reserve sufficient time on the hearing date to allow the parties to review the evidence in an oral presentation via PowerPoint or some similar means. Any such PowerPoint slides shall be shared with counsel for other represented parties at least five days in advance of the hearing.

3. Any expert opinions offered either in support of or in opposition to any motion shall be limited to opinions that (a) are stated to be more likely than not true and (b) are supported by such analysis and evidence to allow a finder of fact to understand the reasons for that opinion.

4. In the Court's tentative ruling, the Court had questioned Mr. Wagner's representations regarding FPA, all of which were higher than that calculated by the Court. At the hearing, Mr. Wagner explained that his calculations of FPA included, not only the production by parties who were subject to the judgment, but also minimal producers and other producers who are not parties to the judgment. In the next motion to adjust FPA:

4.a. The motion shall clearly distinguish between the FPA of parties to the judgment and the production by nonparties.

4.b. If the motion describes the production of nonparties, it shall explain the significance of that production to the Court's consideration of proposed changes to the FPA of parties. In particular, it shall answer the following questions:

- i. Does "Producer" as defined in the judgment (at p. 11) include nonparty pumpers?
- ii. Does "Free Production Allowance," as defined in the judgment (at p. 9), include water pumped by nonparty pumpers?

- iii. Does the judgment require the Court to consider nonparty production when determining whether, and to what extent, the FPA of the parties to the judgment should be reduced? If not, does it allow the Court to do so?
5. The motion shall address the evidentiary basis for the proposed PSY for Baja.

SERVICE

Counsel for the Watermaster shall (a) serve copies of this order on all parties by mail forthwith and (b) file a proof of service within seven days of the date of mailing.



Craig G. Riemer, Retired Judge of the Riverside Superior Court, by Assignment of the Chief Justice

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.

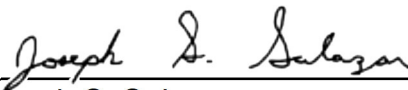
On July 8, 2024, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing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

Ruling on the Watermaster's Annual Motion to Adjust Free Production Allowance for Water Year 2024-2025

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 July 8, 2024 at Apple Valley, California.



Joseph S. Salazar

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Mojave Basin Area Watermaster Service List as of July 08, 2024

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