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7	Attorneys for Defendant\Cross-Complainant, MOJAVE WATER AGENCY				
9	SUPERIOR COURT OF THE STATE OF CALIFORNIA				
10	IN AND FOR THE COUNTY OF RIVERSIDE				
11 12	Coordination Proceeding Special Title (Cal. Rules of Court, rule 3.550)	JCCP NO.: 5265 Lead Case No: CIV 208568			
13	MOJAVE BASIN WATER CASES	Dept. 1, Riverside Superior Court Hon. Harold W. Hopp, Judge Presiding			
14 15 16 17 18 19 20 21	CITY OF BARSTOW, Plaintiff, vs. CITY OF ADELANTO, et al., Defendant. AND RELATED CROSS ACTIONS	NOTICE OF SERVING THE COURT'S OCTOBER 23, 2024 ORDER (1) GRANTING THE MOTION OF GOLDEN STATE WATER COMPANY TO ENFORCE JUDGMENT; (2) ESTABLISHING A PROCEDURE FOR MOTIONS TO APPROVE RECALCULATED PRODUCTION SAFE YIELD; (3) POSING QUESTIONS TO BE ANSWERED BY THE WATERMASTER IN THE NEXT MOTION FOR ADJUSTMENTS TO FREE PRODUCTION ALLOWANCE; AND PROOF OF SERVICE THEREON			
222 223 224 225 226 227 228		Hearing Date: October 22, 2024 Time: 1:30 p.m. Dept.: M302, Menifee Justice Center Reservation ID: 562595011427 Hon. Craig G. Riemer, Retired Judge of the Riverside Superior Court, sitting by Assignment of the Chief Justice			

NOTICE OF SERVING THE COURT'S OCTOBER 23, 2024 ORDER

PLEASE TAKE NOTICE THAT defendant/cross-complainant, Mojave Water Agency, acting as Watermaster for the Mojave Basin Area, and pursuant to the Court's Order of October 23, 2024, hereby serves the Court's Order: (1) Granting the Motion of Golden State Water Company to Enforce Judgment; (2) Establishing a Procedure for Motions to Approve Re-Calculated Production Safe Yield; (3) Posing Questions To Be Answered By The Watermaster In The Next Motion For Adjustments To Free Production Allowance; and, Proof of Service Thereon.

A copy of the Court's October 23, 2024 Order is attached hereto as Exhibit A.

Dated: October 24, 2024 BRUNICK, McELHANEY & KENNEDY PLC

By: Leland P. McElhaney

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

EXHIBIT "A"

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

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KBR

Plaintiff:
CITY OF BARSTOW

vs

Defendant:
CITY OF ADELANTO

COUNTY OF ADELANTO

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE

OCT 2 3 2024

A. Alvarado

CASE NUMBER:
CIV208568

DOCUMENT COVERSHEET

Full Document Title:

Order (1) Granting the Motion to Enforce Judgment (2) Establishing a Procedure for Motions

to Approve Re-Calculated Production Safe Yield; (3) Posing Questions to be Answered by

the Watermaster

(If the document is not officially billed, provide the description of what is being filled.)

Other File Clerk Notes:

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

CASE TITLE	: City of Barstow v. City of Adelanto	Department 1	
CASE NO.:	CIV208568		
DATE:	October 23, 2024		

PROCEEDING: Order (1) Granting the Motion of Golden State Water Company to Enforce the Judgment; (2) Establishing a Procedure for Motions to Approve Re-Calculated Production Safe Yield; (3) Posing Questions to Be Answered by the Watermaster in the Next Motion for Adjustments to Free Production Allowance.

MOTION TO ENFORCE JUDGMENT

Golden State Water Company ("Golden State") moved to "enforce" the judgment in this case. Newberry Springs Recreational Lakes Association ("Newberry") supported the motion. The Mojave Water Agency ("Watermaster"), the City of Hesperia, the City of Victorville and the Victorville Water District all opposed the motion.

After the issuance of a tentative decision on October 21, 2024, the matter was heard on October 22, 2024. All parties who chose to speak submitted on the tentative ruling. The matter was taken under submission to allow the Court to prepare a formal order consistent with its tentative ruling.

The Court now rules as follows:

The motion is granted. Specifically, the Watermaster is ordered as follows:

- 1. To re-calculate the Production Safe Yield ("PSY") for the Centro subarea and for the Alto subarea, including the Transition Zone.
- 2. In the process of re-evaluating PSY for those two subareas, to re-evaluate both (a) the sufficiency of any factual investigation conducted to quantify the factors to be used in those calculations, and (b) the reliability of any assumptions or estimates that the Watermaster relies upon when empirical data is not available to quantify factors.
- 3. Thereafter, to draft a report regarding the Watermaster's findings and to include that report in its 31st Annual Report, i.e., the report concerning Water Year 2023-2024.
- 4. To recommend a plan to improve the collection of hydrologic data that would be relevant to calculations of PSY in the future. In doing so, to consider the recommendations contained in Section 6.0 of the report of Anthony Brown which marked Exhibit 1 to Golden State's motion filed 9-5-24, except that paragraph 4 on page 32 (GSWC 34) is modified to read: "Based on results from the above, Watermaster should determine whether Producers in Alto have met, are currently meeting, and in the future are likely to continue to meet their obligations under the Judgment."

- 5. To recommend a timeline by which the recommended plan could reasonably be implemented.
- 6. To include both the plan and the timeline in the Watermaster's 32nd Annual Report, i.e., for Water Year 2024-2025.

Several parties filed objections, sometimes to the arguments raised by other parties, sometimes to the briefs filed by other parties, and sometimes to the evidence submitted by other parties. All those objections are overruled.

Analysis:

Curiously, the notice of motion does not identify what the Watermaster should be ordered to do to achieve the general goal of enforcing the Judgment. Instead, the notice of motion merely refers to the proposed order. The Court interpreted the motion to be seeking the relief described above. At the hearing, Golden State confirmed that the Court's interpretation was correct.

The Judgment requires the Watermaster to "rely upon and use the best available records and data to support the implementation of this Judgment. Where actual records of data are not available, Watermaster shall rely on and use sound scientific and engineering estimates." (Judgment, sec. 24(w). In substance, the motion merely sought to require the Watermaster to revisit his calculations of the Production Safe Yield ("PSY") for Alto and Centro to confirm that the Watermaster is complying with those requirements. Given the limited relief sought by Golden State's motion, the moving party's burden was not to prove that the Watermaster had failed to meet those standards, but only to present evidence sufficient to raise a substantial question as to the extent of the Watermaster's compliance. In short, it was to establish probable cause for further investigation regarding compliance. The evidence offered by Golden State and Newberry met that burden.

All objections to the evidence are overruled because the Court was not making any factual findings. Instead, the evidence was considered only to determining whether there was a substantial question regarding the sufficiency of the Watermaster's factual investigation and the reliability of the Watermaster's estimates and analysis to merit an order directing the Watermaster to revisit those topics. Therefore, the objections were not material to the Court's analysis.

Regarding Paragraph 1 of the Order.

The Upper Mojave River Basin Model is used, *inter alia*, to establish PSY. (Am. Oppo., p. 9.) That model was used to calculate the PSY for Alto subarea, or at least that portion of Alto that is outside the Transition Zone. The Watermaster has committed to revise the model by the end of this year by extending it to include the Transition Zone, the Centro subarea, and the Baja subarea. (Am. Oppo., Am. Decl. of Wagner, Ex. 1, p. 11.) The Court expects, therefore, that the Watermaster would have re-evaluated the PSY for Alto, Centro, and Baja prior to the next annual report and motion to adjust FPA even if the Court had not specifically ordered it to do so.

Regarding Paragraph 2 of the Order.

As noted above, the Watermaster is required to "rely upon and use the best available records and data to support the implementation of this Judgment. Where actual records of data are not available, Watermaster shall rely on and use sound scientific and engineering estimates." (Judgment, sec. 24(w). Accordingly, the Court expects that, whether the Watermaster is expressly ordered to do so or not, the Watermaster reevaluates those factors as a matter of course whenever it revises PSY. Otherwise, the Court would have no basis for determining that the Watermaster's PSY recommendations were based on the best data reasonably available and the estimates that best reflect current science, as the Judgment requires.

That is not to say that the Watermaster is to engage in all possible factual data collection efforts. The Judgment must be interpreted to impose an obligation only to obtain data that is reasonably available. A determination of reasonability involves the comparison (a) of the cost to obtain those records or to generate that data (b) to the value of the data likely to be obtained or generated.

Regarding Paragraph 3 of the Order.

If potentially relevant data exists or could be generated but the Watermaster has determined that the cost of doing so is unreasonable, the report shall explain the basis for that conclusion.

Regarding Paragraph 4 of the Order.

That request is granted as to hydrologic data relevant to the PSY of Alto and Centro. The Watermaster is already "working on studying the riparian vegetation using satellite-based remote sensing tools to update consumptive use values for Phreatophytes." (Am. Oppo., Am. Decl. of Wagner, Ex. 1, p. 10.) Similarly, the Watermaster said that it will study the possibility of using remote sensing to measure surface flow and the Watermaster is not opposed to using remote sensing technologies to measure consumptive agricultural use. (*Ibid.*) At some unspecified date after February of 2022, the Watermaster installed a new stream flow gage at Hinkley Road, apparently at the urging of Golden State. (*Id.*, p. 11; Am. Oppo., p.1.) The Watermaster may be able to recommend other ways in which the hydrologic data can be enhanced at a reasonable cost. Certainly, nowhere in the Watermaster's opposition does the Watermaster contend that it is impossible to enhance the collection of relevant data at a reasonable cost. Besides, the motion seeks only that Brown's recommendations be considered by the Watermaster; it does not order the Watermaster to adopt each of those recommendations.

PROCEDURE FOR MOTIONS TO APPROVE RE-CALCULATED PSY.

1. As ordered above, the Watermaster is ordered to revise the estimated PSY for Alto (including the Transition Zone) and Centro. In the Court's order filed 7-3-24, the Court denied the Watermaster's request that the Court approve a revised PSY for Oeste. The

Court also limited its approval of the revised PSY for Baja to a single year. Thus, the Court expects a motion for approval of revised PSYs not only for Alto and Centro, but also for Oeste and Baja.

- 2. Any motion for approval of a revised PSY for Oeste shall address the concerns raised by the Court at pages 2-4 of its 7-3-24 order.
- 3. Any motion for approval of a revised PSY for Baja shall address the concerns raised by the Court at page 4 of its 7-3-24 order.
- 4. The motion for approval of revised PSYs shall be filed with the annual motion to adjust Free Production Allowance ("FPA"), with both types of relief being sought in a single motion. The Court waives CRC rule 3.3113(d), limiting the length of memoranda of points and authorities.
- 5. The memoranda and evidence filed in opposition to a motion shall be subject to the same directions regarding the Watermaster's memoranda and evidence. Thus, stated more broadly, every page of the declarations submitted by any party either in support of or in opposition to a motion, and every page of any evidence authenticated by that declaration, shall be sequentially numbered. All citations in either a memorandum of points and authorities or a declaration to any of that evidence shall include the page number on which that evidence appears.
- 6. All evidence upon which a party intends to rely in support of its position shall be set forth in detail in declarations or exhibits filed either by that party or some other party. That evidence shall not consist merely of conclusions or opinions. To the contrary, the evidence must be sufficient in both quantity and quality to persuade the Court to reach the same conclusion on its own analysis. To meet that standard, the evidence should be detailed. Moreover, the significance of that evidence—i.e., why that evidence, if believed, supports the party's position—should be clearly explained. In short, the party's written arguments and evidence should be sufficient, without further evidence or explanation, to persuade the Court of the merit of the party's contentions.
- 7. 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 and the weight of that opinion.
- 8. At the hearing, any party wishing to visually illustrate for the Court the party's factual contentions regarding the merits of the motion and the evidence supporting those contentions may do so. That presentation shall be made by counsel, shall be illustrated through a Power Point or similar presentation, and shall be limited to the evidence previously filed in the form of declarations or exhibits. No later than five court days before the hearing, copies of the Power Point slides that a party intends to use shall be shared with every other party that has filed documents supporting or opposing the motion.

- 9. During the hearing, the Court may ask questions of counsel concerning the parties' respective contentions and the evidence the parties rely upon to support their contentions. If counsel is not able to adequately answer the Court's question, counsel may call upon a witness to do so through oral testimony. Any such answer should be limited to the evidence previously filed in connection with this action. If the witness needs to refer to other evidence in order to fully answer the Court's question, the witness shall advise the Court that the evidence goes beyond the written evidentiary record developed for the motion.
- 10. In the event that extra-record evidence is offered, the Court may or may not permit that evidence to be received. If extra-record evidence is received through a witness's testimony, the Court may permit cross- examination of that witness, may permit rebuttal witnesses, or may continue the hearing, in the Court's discretion.
- 11. The motion and any opposition shall clearly distinguish between the FPA of parties to the judgment and the production by nonparties.
- 12. The Watermaster shall schedule and host an informal conference concerning the combined motions to approve PSY and adjust FPA. At the conference, the Watermaster shall preview the upcoming motion and the evidence supporting it. The purpose of the conference shall be to identify any factual or legal issues that may justify additional attention in the moving papers. The conference shall be conducted prior to the motion being filed. The Watermaster shall give notice by mail to all parties no later than 14 days before the conference. The Court shall attempt to attend, but the conference shall be conducted regardless of whether the Court is in attendance. Notice shall be given to the Court by email to Jennifer.castillo@riverside.courts.ca.gov.

QUESTIONS TO BE ADDRESSED IN THE NEXT MOTION TO ADJUST FPA.

In its next motion for adjustments to FPA, the Watermaster shall, and any other party may, address the following questions:

- 1. If the motion describes the production of nonparties:
 - a. What is the significance of that production to the Court's consideration of proposed changes to the FPA of parties?
 - b. Does "Producer" as defined in the judgment (at p. 11) include nonparty pumpers?
 - c. Does "Free Production Allowance," as defined in the judgment (at p. 9), include water pumped by nonparty pumpers?
 - d. 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?

- 2. Exhibit G, paragraph 1, refers to "average Annual and minimum Annual Subsurface Flows and/or Base Flows per Year." Does the Judgment set a minimum annual subsurface flow that must be met each year, or only establish the requisite average annual flows?
- 3. The Watermaster has stated that, except for consumptive uses in the TZ, all the water that flows into the TZ passes the Helendale Fault into the Centro subarea. (Am. Oppo., p. 3.)
 - a. Is that conclusion true for both surface and subsurface flows?
 - b. Are there measurements that supports that conclusion?
 - c. What other evidence supports that conclusion?
- 4. If one wanted to measure surface flow from the TZ into Centro, could that be done? If so, how? To what extent, if any, does the Watermaster currently do so?
- 5. The Watermaster has said that the Wild Crossing stream gage was discontinued because it was unreliable. What was the reason for that unreliability?
- 6. If one wanted to measure subsurface flow from the TZ into Centro, could that be done? If so, how? To what extent, if any, does the Watermaster currently do so?
- 7. Other than precipitation, does all inflow into Centro come from the TZ?
- 8. The Judgment requires PSY to be based on "a sequence of years that is representative of the long-term average." In the motion to enforce the judgment, both the Watermaster and Victorville criticized Golden State for cherry-picking a misleadingly short time frame for comparing groundwater levels. Similarly, in its 7-3-24 order, the Court criticized the Watermaster for relying on short timeframes and inconsistent timeframes. Sometimes the Watermaster has cited to the 1931-1990 average, but other times the WM has relied on 20-year or even 5-year averages.
- a. Is the 1931-1990 timeframe representative of the climate in the basin today?
 - b. How long is "long-term?" 20 years? 30 years? 40 years? Longer?
- c. Should the Court establish a different base period to be used when adjusting PSY and FPA and when questioning the accuracy of the Watermaster's model or recommendations? If so, when should that period begin and end?

Issues to be addressed only if the party believes it is relevant to the motion:

- I. The Watermaster has stated (Am. Oppo., p. 2) that "the Alto Subarea Producers have met their Subarea Obligations" What are those obligations? In particular:
 - A. What obligations if any does the Alto subarea as a whole owe to Centro?
 - B. What obligations if any does the Transition Zone owe to Centro?

- C. Is Exhibit G to the Judgment properly interpreted to mean that neither the Alto subarea as a whole nor the Transition Zone in particular have any obligation to provide to Centro a particular average annual or minimum annual subsurface flow? To provide to Centro as particular average annual Base Flow? If so, why is that the most reasonable interpretation?
- D. To what extent, if any, can the magnitude of those obligations be modified? In other words, are they set by the judgment for all time, or only initially?
- II. Page 7 of the Amended Opposition says that Alto owes 2,000 AFY of subsurface flow to Centro, but in the next sentence says that Alto owes that 2,000 AFY to the TZ. Which is correct?
- III. The 2,000 AFY obligation was confirmed in 2006. Is it ever subject to adjustment? If so, how often should it be reevaluated?

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 & Riemer, Retired Judge of the Riverside Superior Court, by Assignment of the Chief Justice

Page 7 of 7

Notice has been printed for the following Firm/Attorneys or Parties: CIV208568

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PROOF OF SERVICE

STATE OF CALIFORNIA } COUNTY OF SAN BERNARDINO}

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

On October 28, 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:

NOTICE OF SERVING THE COURT'S OCTOBER 23, 2024 ORDER (1) GRANTING THE MOTION OF GOLDEN STATE WATER COMPANY TO ENFORCE JUDGMENT; (2) ESTABLISHING A PROCEDURE FOR MOTIONS TO APPROVE RECALCULATED PRODUCTION SAFE YIELD; (3) POSING QUESTIONS TO BE ANSWERED BY THE WATERMASTER IN THE NEXT MOTION FOR ADJUSTMENTS TO FREE PRODUCTION ALLOWANCE; AND PROOF OF SERVICE THEREON

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

Executed on October 28, 2024 at Apple Valley, California.

And

Jeffrey D. Ruesch

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