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Mojave Basin Judgment



JUDGMENT AFTER TRIAL

JANUARY 10, 1996

**MOJAVE BASIN AREA ADJUDICATION
CITY OF BARSTOW, ET AL V. CITY OF ADELANTO, ET AL
RIVERSIDE COUNTY SUPERIOR COURT CASE NO. 208568**



CHAMBERS OF
VICTOR MICELI
JUDGE OF THE SUPERIOR COURT

Superior Court
STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

COURTHOUSE
4050 MAIN STREET
RIVERSIDE, CALIFORNIA 92501

January 10, 1996

TO: ALL PARTIES LISTED ON THE ATTACHED MAILING LIST
FROM: E. MICHAEL KAISER, JUDGE *by ss*
SUBJECT: CITY OF BARSTOW VS CITY OF ADELANTO, Case No.: 208568

The Judgment in the above-entitled case was signed on January 10, 1996. Please find attached the amended two pages of Exhibit B, Table B-1.

Please find attached two amended pages of Exhibit B, Table B-1.

~~12/10/92~~
~~01/10/93~~
~~02/02/93~~
~~04/18/93~~
~~04/26/93~~
09/25/95

EXHIBIT B
TABLE B-1
TABLE SHOWING BASE ANNUAL PRODUCTION AND
BASE ANNUAL PRODUCTION RIGHT OF EACH PRODUCER WITHIN ALTO SUBAREA
TOGETHER WITH FREE PRODUCTION ALLOWANCES
FOR FIRST FIVE YEARS OF THE JUDGMENT

ALTO SUBAREA PRODUCER	BASE ANNUAL ¹ PRODUCTION	BASE ANNUAL ² PRODUCTION	FREE PRODUCTION ALLOWANCES (ACRE-FEET)				
	(ACRE-FEET)	RIGHT (PERCENT)	FIRST YEAR	SECOND ³ YEAR	THIRD ³ YEAR	FOURTH ³ YEAR	FIFTH ³ YEAR
SAN BERNARDINO CO SERVICE AREA 70J	1,005	0.8213	1,005	954	904	854	804
SAN BERNARDINO CO SERVICE AREA 70L	355	0.2901	355	337	319	301	284
SAN FILIPPO, JOSEPH & SHELLEY	35	0.0286	35	33	31	29	28
SILVER LAKES ASSOCIATION	3,987	3.2583	3,987	3,787	3,588	3,388	3,189
SOUTHDOWN, INC	1,519	1.2414	1,519	1,443	1,367	1,291	1,215
SOUTHERN CALIFORNIA WATER COMPANY	940	0.7682	940	893	846	799	752
SPRING VALLEY LAKE ASSOCIATION	3,056	2.4974	3,056	2,903	2,750	2,597	2,444
SPRING VALLEY LAKE COUNTRY CLUB	977	0.7984	977	928	879	830	781
STORM, RANDALL	62	0.0507	62	58	55	52	49
SUDMEIER, GLENN W	121	0.0989	121	114	108	102	96
SUMMIT VALLEY RANCH	452	0.3694	452	429	406	384	361
TATRO, RICHARD K & SANDRA A	280	0.2288	280	266	252	238	224
TATUM, JAMES B	829	0.6775	829	787	746	704	663
TAYLOR, ALLEN C / HAYMAKER RANCH	456	0.3727	456	433	410	387	364
THOMAS, S DALE	440	0.3596	440	418	396	374	352
THOMAS, WALTER	36	0.0294	36	34	32	30	28
THOMPSON, JAMES A	418	0.3416	418	397	376	355	334
THOMPSON, RODGER	76	0.0621	76	72	68	64	60
THRASHER, GARY	373	0.3048	373	354	335	317	298
THUNDERBIRD COUNTY WATER DISTRICT	118	0.0964	118	112	106	100	94
TURNER, ROBERT	70	0.0572	70	66	63	59	56
VAIL, JOSEPH B & PAULA E	126	0.1030	126	119	113	107	100
* VAN BURGER, CARL	710	0.5802	710	674	639	603	568
VAN LEEUWEN FAMILY TRUST	341	0.2787	341	323	306	289	272

* Durston Well, location 06N/04W-18F, APN 468-151-11 - water production right of 357 acre/feet, claimed by Durston/Van Burger/CVB Investments and Industrial Asphalt. Product right to be determined in a subsequent severed proceeding, jurisdiction reserved.

~~12/10/92~~
~~01/20/93~~
~~02/03/93~~
~~04/10/93~~
~~04/28/93~~
09/25/95

EXHIBIT B
TABLE B-1
TABLE SHOWING BASE ANNUAL PRODUCTION AND
BASE ANNUAL PRODUCTION RIGHT OF EACH PRODUCER WITHIN CENTRO SUBAREA
TOGETHER WITH FREE PRODUCTION ALLOWANCES
FOR FIRST FIVE YEARS OF THE JUDGMENT

CENTRO SUBAREA PRODUCER	BASE ANNUAL ¹ PRODUCTION	BASE ANNUAL ² PRODUCTION	FREE PRODUCTION ALLOWANCES (ACRE-FEET)				
	(ACRE-FEET)	RIGHT (PERCENT)	FIRST YEAR	SECOND ³ YEAR	THIRD ³ YEAR	FOURTH ³ YEAR	FIFTH ³ YEAR
AGCON, INC	0	0.0000	0	0	0	0	0
AGUAYO, JEANETTE L	212	0.3742	212	201	190	180	169
ATCHISON, TOPEKA, SANTA FE RAILWAY CO	120	0.2118	120	114	108	102	96
AVDEEF, THOMAS	34	0.0600	34	32	30	28	27
AZTEC FARM DEVELOPMENT COMPANY (Now, Virgil Gorman)	220	0.3883	220	209	198	187	176
BARNES, PAY - EXECUTOR OF ESTATE OF WAYNE BARNES	243	0.4289	243	230	218	206	194
BROMMER, MARVIN	361	0.6372	361	342	324	306	288
BURNS, RITA J & PAMELA E	16	0.0282	16	15	14	13	12
CHAPA, LARRY R	96	0.1694	96	91	86	81	76
CHOI, YONG IL & JOUNG AE	38	0.0671	38	36	34	32	30
CHRISTISON, JOEL	75	0.1324	75	71	67	63	60
COOK, KWON W	169	0.2983	169	160	152	143	135
DE VRIES, NEIL	3,800	6.7070	3,800	3,610	3,420	3,230	3,040
DESERT COMMUNITY BANK	156	0.2753	156	148	140	132	124
DURAN, FRANK T	50	0.0883	50	47	45	42	40
GAINES, JACK	117	0.2065	117	111	105	99	93
GESIRIECH, WAYNE	121	0.2136	121	114	108	102	96
GORMAN, VIRGIL	138	0.2436	138	131	124	117	110
GRIEDER, RAYMOND H & DORISANNE	30	0.0530	30	28	27	25	24
GRILL, NICHOLAS P & MILLIE D	21	0.0371	21	19	18	17	16
GROEN, CORNELIS	1,043	1.8409	1,043	990	938	886	834
HANIFY, DBA - WHITE BEAR RANCH	152	0.2683	152	144	136	129	121
HARMSSEN, JAMES & RUTH ANN	1,522	2.6863	1,522	1,445	1,369	1,293	1,217
HARPER LAKE COMPANY	1,433	2.5293	1,433	1,361	1,289	1,218	1,146

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MOJAVE WATER AGENCY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE

CITY OF BARSTOW, et al,

Plaintiff,

v.

CITY OF ADELANTO, et al,

Defendant.

MOJAVE WATER AGENCY,

Cross-complainant,

v.

ANDERSON, RONALD H. et al,

Cross-defendants.

CASE NO. 208568

ASSIGNED TO JUDGE KAISER
DEPT.4 FOR ALL PURPOSES

JUDGMENT AFTER TRIAL

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10 Exhibit "A" - Map entitled, "Map showing Mojave Water
11 Agency, Mojave River, Mojave Basin Area and Hydrologic Subareas and
12 Limits of Adjudicated Area Together with Geologic and Other
Pertinent Features."

13 Exhibit "B" - Tables entitled, "Table B-1: Table Showing
14 Base Annual Production, Base Annual Production Right of Each
15 Producer Within Each Subarea, and Free Production Allowance for
16 Subareas for First Five Years of the Judgment" and "Table B-2:
17 Table Showing Total Water Production for Aquaculture and
18 Recreational Lake Purposes."

19 Exhibit "C" - Engineering Appendix.

20 Exhibit "D" - Time Schedules.

21 Exhibit "E" - List of Producers and Their Designees.

22 Exhibit "F" - Transfers of Base Annual Production Rights.

23 Exhibit "G" - Subarea Obligations.

24 Exhibit "H" - Biological Resource Mitigation.

25 Exhibit "I" - Map Showing Potential Groundwater Recharge
26 Areas

27

28

1 I. INTRODUCTION

2 A. The Complaint. The original complaint herein was filed
3 by the City of Barstow and Southern California Water Company
4 (collectively "Plaintiffs") in San Bernardino Superior Court, North
5 Desert District, on May 30, 1990 as Case No. BCV6672, and
6 transferred to Riverside County Superior Court on November 27,
7 1990. Plaintiffs allege that the cumulative water Production
8 upstream of the City of Barstow Overdrafted the Mojave River
9 system, and request an average Annual flow of 30,000 acre-feet of
10 surface water to the City of Barstow area. The complaint also
11 includes a request for a writ of mandate to require the Mojave
12 Water Agency ("MWA") to act pursuant to its statutory authority to
13 obtain and provide Supplemental Water for use within the Mojave
14 Basin Area.

15 B. The MWA Cross-Complaint. On July 26, 1991, the MWA filed
16 its first amended cross-complaint in this case. The MWA first
17 amended cross-complaint and its ROE amendments name Producers who
18 collectively claim substantially all rights of water use within the
19 Mojave Basin Area, including Parties downstream of the City of
20 Barstow. The MWA cross-complaint, as currently amended, requests
21 a declaration that the available native water supply to the Mojave
22 Basin Area (not including water imported from the California State
23 Water Project) is inadequate to meet the demands of the combined
24 Parties and requests a determination of the water rights of
25 whatever nature within the MWA boundaries and the Mojave Basin
26 Area. The MWA has named as Parties several hundred Producers
27 within the Basin Area.

28 ///

1 C. The Arc Las Flores Cross-Complaint. On July 3, 1991, Arc
2 Las Flores filed a cross-complaint for declaratory relief seeking
3 a declaration of water rights of certain named cross-defendants and
4 a declaration that the appropriative, overlying and riparian rights
5 of Arc Las Flores be determined to be prior and paramount to any
6 rights of the Plaintiffs and other appropriators.

7 D. Stipulation and Trial. On October 16, 1991, the Court
8 ordered a litigation standstill. The purpose of the standstill was
9 to give the parties time to negotiate a settlement and develop a
10 solution to the overdraft existing in the Mojave River Basin.

11 A committee of engineers and attorneys, representing a variety
12 of water users and interests throughout the Mojave River Basin, was
13 created to develop a physical solution to the water shortage
14 problem. The work of the committee resulted in a stipulated
15 interlocutory order and judgment, which was entered by the court on
16 September 23, 1993.

17 Several non-stipulating parties requested a trial. On April
18 20, 1994, the Court issued a memorandum setting forth the trial
19 issues. This cause came on regularly for trial on February 6,
20 1995, and was tried in Department 4 of the above-entitled Court,
21 the Honorable E. Michael Kaiser, Judge, Presiding, without a jury.
22 Oral and documentary evidence was introduced on behalf of the
23 respective parties and the cause was argued and submitted for
24 decision.

25 ///

26 ///

27 ///

28 ///

1 II. DECREE

2 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

3 A. JURISDICTION, PARTIES, DEFINITIONS.

4 1. Jurisdiction and Parties.

5 a. Jurisdiction. This Court has jurisdiction to
6 enter Judgment declaring and adjudicating the rights to reasonable
7 and beneficial use of water by the Parties in the Mojave Basin Area
8 pursuant to Article X, Section 2 of the California Constitution.
9 This Judgment constitutes an adjudication of water rights of the
10 Mojave Basin Area pursuant to Section 37 of Chapter 2146 of
11 Statutes of 1959 ("the MWA Act").

12 b. Parties. All Parties to the MWA cross-
13 complaint are included in this Judgment. The MWA has notified
14 those Persons claiming any right, title or interest to the natural
15 waters within the Mojave Basin Area to make claims. Such notice
16 has been given: 1) in conformity with the notice requirements of
17 Water Code §§ 2500 et seq.; 2) pursuant to Section 37 of the MWA
18 Act; and 3) pursuant to order of this Court. Subsequently, all
19 Producers making claims have been or will be included as Parties.
20 The defaults of certain Parties have been entered, and certain
21 named cross-defendants to the MWA cross-complaint who are not
22 Producers have been dismissed. All named Parties who have not been
23 dismissed have appeared herein or have been given adequate
24 opportunity to appear herein. The Court has jurisdiction of the
25 subject matter of this action and of the Parties hereto.

26 c. Minimal Producers. There are numerous Minimal
27 Producers in the Basin Area and their number is expected to
28 increase in the future. In order to minimize the cost of

1 administering this Judgment and to assure that every Person
2 producing water in the Basin Area participates fairly in the
3 Physical Solution, MWA shall:

4 i. within one Year following entry of this
5 Judgment, prepare a report to the Court: 1) setting forth the
6 identity and verified Base Annual Production of each Minimal
7 Producer in each Subarea of the Basin Area; and 2)
8 recommending a proposed system of Minimal Producer
9 Assessments. The system of Minimal Producer Assessments shall
10 achieve an equitable allocation of the costs of the Physical
11 Solution that are attributable to Production of verified Base
12 Annual Production amounts by Minimal Producers in each Subarea
13 to and among such Minimal Producers. Minimal Producer
14 Assessments need not be the same for existing Minimal
15 Producers as for future Minimal Producers.

16 ii. within one Year following entry of this
17 Judgment, prepare a report to the Court setting forth a
18 proposed program to be undertaken by MWA, pursuant to its
19 statutory authority, to implement the proposed system of
20 Minimal Producer Assessments. The Court may order MWA to
21 implement the proposed program or, if MWA's statutory
22 authority is inadequate to enable implementation, or if either
23 the proposed program or the proposed system of Minimal
24 Producer Assessments is unacceptable to the Court, the Court
25 may then order MWA either to implement an alternative program
26 or system, or in the alternative, to name all Minimal
27 Producers as Parties to this litigation and to serve them for
28 the purpose of adjudicating their water rights.

1 Any Minimal Producer whose Annual Production exceeds ten (10) acre-
2 feet in any Year following the date of entry of Judgment shall be
3 made a Party pursuant to Paragraph 12 and shall be subject to
4 Administrative, Replacement Water, Makeup Water and Biological
5 Resources Assessments. Any Minimal Producer who produced during
6 the 1986-1990 period may become a Party pursuant to Paragraph 40
7 with a Base Annual Production Right based on such Minimal
8 Producer's verified Base Annual Production. To account properly
9 for aggregate Production by Minimal Producers in each Subarea,
10 Table B-1 of Exhibit B shall include an estimated aggregate amount
11 of Base Annual Production by all Minimal Producers in each Subarea.
12 The Base Annual Production of any Minimal Producer who becomes a
13 Party shall be deducted from the aggregate amount and assigned to
14 such Minimal Producer.

15 2. Physical and Legal Complexity. The physical and
16 legal issues of the case as framed by the complaint and cross-
17 complaints are extremely complex. Production of more than 1,000
18 Persons producing water in the Basin Area has been ascertained. In
19 excess of 1,000 Persons have been served. The water supply and
20 water rights of the entire Mojave Basin Area and its hydrologic
21 Subareas extending over 4000 square miles have been brought into
22 issue. Most types and natures of water right known to California
23 law are at issue in the case. Engineering studies by the Parties,
24 jointly and severally, leading toward adjudication of these rights
25 and a Physical Solution, have required the expenditure of over two
26 Years' time and hundreds of thousands of dollars.

27 3. Need for a Declaration of Rights and Obligations and
28 for Physical Solution. A Physical Solution for the Mojave Basin

1 Area based upon a declaration of water rights and a formula for
2 Intra- and Inter-Subarea allocation of rights and obligations is
3 necessary to implement the mandate of Article X, Section 2 of the
4 California Constitution and California water policy. Such Physical
5 Solution requires the definition of the individual rights of all
6 Producers within the Basin Area in a manner which will equitably
7 allocate the natural water supplies and which will provide for
8 equitable sharing of costs for Supplemental Water. Nontributary
9 supplemental sources of water are or will be available in amounts,
10 which when combined with water conservation, water reclamation,
11 water transfers, and improved conveyance and distribution methods
12 within the Basin Area, will be sufficient in quantity and quality
13 to assure implementation of a Physical Solution. Sufficient
14 information and data are known to formulate a reasonable and just
15 allocation of existing water supplies as between the hydrologic
16 Subareas within the Basin Area and as among the water users within
17 each Subarea. Such Physical Solution will allow the public water
18 supply agencies and individual water users within each hydrologic
19 Subarea to proceed with orderly water resource planning and
20 development. It will be necessary for MWA to construct conveyance
21 facilities to implement the Physical Solution. Absent the
22 construction of conveyance facilities, some Subareas may be
23 deprived of an equitable share of the benefits made possible by the
24 Physical Solution. Accordingly, this Physical Solution mandates
25 the acquisition or construction of conveyance facilities for
26 importation and equitable distribution of Supplemental Water to the
27 respective Subareas. Such construction is dependent on the
28 availability of appropriate financing, and any such financing

1 assessed to the Parties will be based upon benefit to the Parties
2 in accordance with the MWA Act.

3 4. Definitions. As used in this judgment, the
4 following terms shall have the meanings herein set forth:

- 5 a. Afton - The United States Geological Survey gauging
6 station "Mojave River at Afton, CA."
- 7 b. Annual or Year - As used in this Judgment refers to
8 the Annual period beginning October 1 and ending
9 September 30 of the following Year.
- 10 c. Aquaculture Water - Water so identified in Exhibit
11 "B". Such water may be used only for fish breeding
12 and rearing. The Annual Consumptive Use of such
13 water in acre-feet is equal to the water surface
14 area, in acres, of the fish rearing facilities
15 multiplied by seven (feet).
- 16 d. Assessments - Those Assessments levied and
17 collected pursuant to this judgment including
18 Replacement Water, Makeup Water, Administrative and
19 Biological Resource Assessments.
- 20 e. Barstow - The United States Geological Survey
21 Gauging Station "Mojave River at Barstow, CA."
- 22 f. Base Annual Production - The verified maximum Year
23 Production, in acre-feet, for each Producer for the
24 five Year Period 1986-1990 as set forth in Table
25 B-1 of Exhibit "B", except where otherwise noted
26 therein. The maximum Year Production for each
27 Producer was verified based on one or more of the
28 following: flow meter readings, electrical power

1 or diesel usage records or estimated applied water
2 duty. The Base Annual Production for recreational
3 lakes in the Baja Subarea and for Aquaculture shall
4 be equal either to the area of water surface
5 multiplied by seven feet or to verified Production,
6 whichever is less. The five Year period 1986-1990
7 shall also be the time period for which Base Annual
8 Production for Minimal Producers shall be
9 calculated.

10 g. Base Annual Production Right - The relative Annual
11 right of each Producer to the Free Production
12 Allowance within a given Subarea, expressed as a
13 percentage of the aggregate of all Producers' Base
14 Annual Production in the Subarea. The percentage
15 for each Producer is calculated by multiplying that
16 Producer's Base Annual Production in a Subarea
17 times one hundred (100) and dividing the result by
18 the aggregate Base Annual Production for all
19 Producers in the Subarea. The percentage shall be
20 rounded off to the nearest one ten-thousandth of
21 one per cent.

22 h. Base Flow - That portion of the total surface flow
23 measured Annually at Lower Narrows which remains
24 after subtracting Storm Flow.

25 i. Carry Over Right - The right of a Producer to delay
26 and accumulate the Production of such Producer's
27 share of a Subarea Free Production Allowance until
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1 and only until the following Year free of any
2 Replacement Water Assessment.

3 j. Consumption or Consumptive Use - The permanent
4 removal of water from the Mojave Basin Area through
5 evaporation or evapo-transpiration. The
6 Consumptive Use rates resulting from particular
7 types of water use are identified in Paragraph 2 of
8 Exhibit "F".

9 k. Free Production Allowance - The total amount of
10 water, and any Producer's share thereof, that may
11 be Produced from a Subarea each Year free of any
12 Replacement Obligation.

13 l. Groundwater - Water beneath the surface of the
14 ground and within the zone of saturation; i.e.,
15 below the existing water table, whether or not
16 flowing through known and definite channels.

17 m. Harper Lake Basin - That portion of the Centro
18 Subarea identified as such on Exhibit "A".

19 n. Lower Narrows - The United States Geological Survey
20 gauging station "Mojave River near Victorville,
21 CA."

22 o. Makeup Water - Water needed to satisfy a Minimum
23 Subarea Obligation.

24 p. Makeup Obligation - The obligation of a Subarea to
25 pay for Makeup Water to satisfy its Subarea
26 Obligation.

27 q. Minimal Producer - Any Person whose Base Annual
28 Production, as verified by MWA is not greater than

1 ten (10) acre-feet. A Person designated as a
2 Minimal Producer whose Annual Production exceeds
3 ten (10) acre-feet in any Year following the date
4 of entry of Judgment is no longer a Minimal
5 Producer.

6 r. Minimum Subarea Obligation - The minimum Annual
7 amount of water a Subarea is obligated to provide
8 to an adjoining downstream Subarea or the
9 Transition Zone or, in the case of the Baja
10 Subarea, the minimum Annual Subsurface Flow at the
11 MWA eastern boundary toward Afton in any Year, as
12 set forth in Exhibit "G".

13 s. Mojave Basin Area or Basin Area - The area shown on
14 Exhibit "A" that lies within the boundaries of the
15 line labelled "Limits of Adjudicated Area" which
16 generally includes the area tributary to the Mojave
17 River and its tributaries except for such area not
18 included within the Mojave Water Agency's
19 jurisdiction.

20 t. MWA - Cross complainant Mojave Water Agency.

21 u. Overdraft - A condition wherein the current total
22 Annual Consumptive Use of water in the Mojave Basin
23 Area or any of its Subareas exceeds the long term
24 average Annual natural water supply to the Basin
25 Area or Subarea.

26 v. Party (Parties) - Any Person(s) named in this
27 action who has intervened in this case or has
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1 become subject to this Judgment either through
2 stipulation, default, trial or otherwise.

3 w. Person(s) - Any natural person, firm, association,
4 organization, joint venture, partnership, business,
5 trust, corporation, or public entity.

6 x. Produce - To pump or divert water.

7 y. Producer(s) - A Person, other than a Minimal
8 Producer, who Produces water.

9 z. Production - Annual amount of water produced,
10 stated in acre-feet of water.

11 aa. Production Safe Yield - The highest average Annual
12 Amount of water that can be produced from a
13 Subarea: (1) over a sequence of years that is
14 representative of long-term average annual natural
15 water supply to the Subarea net of long-term
16 average annual natural outflow from the Subarea,
17 (2) under given patterns of Production, applied
18 water, return flows and Consumptive Use, and (3)
19 without resulting in a long-term net reduction of
20 groundwater in storage in the Subarea.

21 bb. Purpose of Use - The broad category of type of
22 water use including but not limited to municipal,
23 irrigation, industrial, aquaculture, and lakes
24 purposes. A change in Purpose of Use includes any
25 reallocation of water among mixed or sequential
26 uses, excluding direct reuse of municipal
27 wastewater.

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- 1 cc. Recirculated Water - Water that is Produced but not
2 consumed by the Parties listed in Table B-2 of
3 Exhibit "B" and then returned either to the Mojave
4 River or to the Groundwater basin underlying the
5 place of use.
- 6 dd. Replacement Obligation - The obligation of a
7 Producer to pay for Replacement Water for
8 Production from a Subarea in any Year in excess of
9 the sum of such Producer's share of that Year's
10 Free Production Allowance for the Subarea plus any
11 Production pursuant to a Carry Over Right.
- 12 ee. Replacement Water - Water purchased by Watermaster
13 or otherwise provided to satisfy a Replacement
14 Obligation.
- 15 ff. Responsible Party - The Person designated by a
16 Party as the Person responsible for purposes of
17 filing reports and receiving notices pursuant to
18 the provisions of this Judgment.
- 19 gg. Stored Water - Water held in storage pursuant to a
20 Storage Agreement with Watermaster.
- 21 hh. Storm Flow - That portion of the total surface flow
22 originating from precipitation and runoff without
23 having first percolated to Groundwater storage in
24 the zone of saturation and passing a particular
25 point of reckoning, as determined annually by the
26 Watermaster.

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- 1 ii. Subareas - The five Subareas of the Mojave Basin
2 Area -- Este, Oeste, Alto, Centro and Baja -- as
3 shown on Exhibit "A".
- 4 jj. Subarea Obligation - The average Annual amount of
5 water that a Subarea is obligated to provide to an
6 adjoining downstream Subarea or the Transition Zone
7 or, in the case of the Baja Subarea, the average
8 Annual Subsurface Flow toward Afton at the MWA
9 eastern boundary as set forth in Exhibit "G".
- 10 kk. Subsurface Flow - Groundwater which flows beneath
11 the earth's surface.
- 12 ll. Supplemental Water - Water imported to the Basin
13 Area from outside the Basin Area, water that would
14 otherwise be lost from the Basin Area but which is
15 captured and made available for use in the Basin
16 Area, or any Producer's share of Free Production
17 Allowance that is not Produced and is acquired by
18 Watermaster pursuant to this Judgment.
- 19 mm. Transition Zone - The portion of the Alto Subarea,
20 shown on Exhibit "A", that lies generally between
21 the Lower Narrows and the Helendale Fault.
- 22 nn. Watermaster - The Person(s) appointed by the Court
23 to administer the provisions of this Judgment.

24 5. Exhibits. The following exhibits are attached to this
25 Judgment and made a part hereof.

26 Exhibit "A" - Map entitled, "Map showing Mojave Water
27 Agency, Mojave River, Mojave Basin Area and Hydrologic Subareas and
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1 Limits of Adjudicated Area Together with Geologic and Other
2 Pertinent Features."

3 Exhibit "B" - Table entitled, "Table B-1: Table Showing
4 Base Annual Production and Base Annual Production Right of Each
5 Producer Within Each Subarea, and Free Production Allowances for
6 Subareas for First Five Years after entry of the Interlocutory
7 Judgment" and "Table B-2: Table Showing Total Water Production for
8 Aquaculture and Recreational Lake Purposes."

9 Exhibit "C" - Engineering Appendix.

10 Exhibit "D" - Time Schedules.

11 Exhibit "E" - List of Producers and Their Designees.

12 Exhibit "F" - Transfers of Base Annual Production Rights.

13 Exhibit "G" - Subarea Obligations.

14 Exhibit "H" - Biological Resource Mitigation.

15 Exhibit "I" - Map Showing Potential Groundwater Recharge
16 Areas

17 B. DECLARATION OF HYDROLOGIC CONDITIONS.

18 6. Mojave Basin Area as Common Source of Supply. The
19 area shown on Exhibit "A" as the Mojave Basin Area is comprised of
20 five Subareas. The waters derived from the Mojave River and its
21 tributaries constitute a common source of supply of the five
22 Subareas and of the Persons producing therefrom.

23 7. Existence of Overdraft. In each and every Year, for
24 a period in excess of five (5) years prior to the May 30, 1990
25 filing date of Plaintiffs' Complaint, the Mojave Basin Area and
26 each of its respective Subareas have been and are in a state of
27 Overdraft, and it is hereby found that there is no water available

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1 for Production from the Basin Area or any Subarea therein except
2 pursuant to this Judgment.

3 C. DECLARATION OF RIGHTS AND OBLIGATIONS.

4 8. Production Rights of the Parties. The Base Annual
5 Production and Base Annual Production Right of each Party are
6 declared as set forth in Table B-1 of Exhibit "B". Certain Parties
7 also have the right to continue to Produce Recirculated Water in
8 the amounts set forth in Table B-2 of Exhibit "B", subject to the
9 following:

10 a. Aquaculture. Two of the Producers listed in
11 Table B-2 of Exhibit "B", California Department of Fish and Game
12 Mojave River Fish Hatchery (Hatchery) and Jess Ranch Water Company
13 (Jess), Produce Recirculated Water for Aquaculture. The Hatchery
14 and Jess or their successors or assignees shall have the right to
15 continue to Produce up to the amounts listed in Table B-2 of
16 Exhibit "B" as Recirculated Water for Aquaculture on the property
17 where it was used in the Year for which Base Annual Production was
18 verified. Production of such amount of Recirculated water by Jess
19 shall be free of any Replacement Water Assessments, Makeup Water
20 Assessments or Administrative Assessments but shall be subject to
21 Biological Resources Assessments and each Jess well producing
22 Recirculated Water shall be subject to an Annual administrative fee
23 equal to the lowest Annual fee paid to MWA by a Minimal Producer.
24 Neither the Hatchery nor Jess Recirculated Water may be transferred
25 or used for any other purpose or transferred for use on any other
26 property, except as provided in Paragraph 7 of Exhibit "F" for the
27 Hatchery. Any Production of Recirculated Water by Jess in excess
28 of the amount shown in Table B-2 shall be subject to all

1 Assessments. Production of Recirculated Water by the Hatchery will
2 be subject to the rules set forth in Paragraph 7 of Exhibit "F".
3 All Jess Aquaculture Recirculated Water shall be discharged
4 immediately and directly to the Mojave River.

5 b. Camp Cady. One Producer listed in Table B-2 of
6 Exhibit "B", California Department of Fish and Game-Camp Cady (Camp
7 Cady), Produces Recirculated Water for Lakes containing Tui Chub,
8 an endangered species of fish. Camp Cady or its successors or
9 assignees shall have the right to continue to Produce up to the
10 amount listed in Table-B-2 of Exhibit "B" as Recirculated Water at
11 Camp Cady. Production of each amount of Recirculated water shall
12 be free of any Assessments. Camp Cady Recirculated Water may not
13 be transferred or used for any other purpose or transferred for use
14 on any other property. Any Production of Recirculated Water by
15 Camp Cady in excess of the amount shown in Table B-2 of Exhibit "B"
16 shall be subject to all Assessments except Biological Resource
17 Assessments. All Camp Cady Recirculated Water shall be allowed to
18 percolate immediately and directly to the Groundwater basin
19 underlying Camp Cady.

20 c. Recreational Lakes in Baja Subarea. All
21 Producers listed in Table B-2 of Exhibit "B" except the Hatchery,
22 Jess and Camp Cady Produce Recirculated Water for recreational
23 lakes in the Baja Subarea. Such Producers or their successors or
24 assignees shall have the right to continue to Produce up to the
25 amounts identified in Table B-2 of Exhibit "B" as Recirculated
26 Water for use in recreational lakes on the property where it was
27 used in the Year for which Base Annual Production was verified,
28 free of any Replacement Water Assessments, Makeup Water

1 Assessments, or Administrative Assessments, but such Production
2 shall be subject to any Biological Resource Assessment. Each well
3 producing such Recirculated Water shall be subject to an Annual
4 administrative fee equal to the lowest Annual fee paid by a Minimal
5 Producer. Recirculated Water cannot be transferred or used for any
6 other purpose. All recreational lake Recirculated Water shall be
7 allowed to percolate immediately and directly to the Groundwater
8 basin underlying the recreational lake.

9 9. MWA Obligations. The Physical Solution is intended
10 to provide for delivery and equitable distribution to the
11 respective Subareas by MWA of the best quality of Supplemental
12 Water reasonably available. MWA shall develop conveyance or other
13 facilities to deliver this Supplemental Water to the areas depicted
14 in Exhibit "I," unless prevented by forces outside its reasonable
15 control such as an inability to secure financing consistent with
16 sound municipal financing practices and standards.

17 a. Secure Supplemental Water. MWA, separate and
18 apart from its duties as the initial Watermaster designated under
19 this Judgment, shall exercise its authority under Sections 1.5 and
20 15 of the MWA Act to pursue promptly, continuously and diligently
21 all reasonable sources to secure Supplemental Water as necessary to
22 fully implement the provisions of this Judgment.

23 b. Supplemental Water Prices. The MWA shall
24 establish fair and equitable prices for Supplemental Water
25 delivered to the Watermaster under this Judgment.

26 c. Supplemental Water Delivery Plan. Not later
27 than September 30, 1996, MWA shall prepare a report on potential
28 alternative facilities or methods to deliver Supplemental Water to

1 the areas shown on Exhibit "I." The report shall include, for each
2 alternative, a development time schedule, a summary of cost
3 estimates, an analysis of the relative benefits to Producers in
4 each Subarea and an analysis of alternative methods of financing
5 and cost allocation, including any state or federal sources of
6 funding that may be available.

7 d. Water Delivery Cost Allocation. The report
8 required by subdivision (c) above shall recommend methods of
9 financing and cost allocation that are based on benefits to be
10 received. MWA's cost allocation plan shall be subject to Court
11 review as provided in subdivision (f) below to verify that costs
12 are allocated fairly and according to benefits to be received. The
13 MWA financing and cost allocation plan may include a mix of revenue
14 sources including the following:

15 (1) Developer or connection fees to the
16 extent MWA can demonstrate a nexus, as
17 required by law, between the fees and the
18 impact of the development upon the water
19 resources of the Mojave Basin Area and
20 each subarea thereof;

21 (2) Other methods of financing available to
22 MWA, including but not limited to
23 property based taxes, assessments or
24 standby charges;

25 (3) Water sales revenues, but only to the
26 extent other sources are not available or
27 appropriate, and in no event shall the
28 water sales price to cover facility

1 capital costs exceed a rate equal to
2 fifty percent of the variable cost rate
3 charged to MWA under its contract for
4 water delivery from the California State
5 Water Project;

6 e. Legislative Changes. MWA shall seek promptly
7 to have enacted amendments to the MWA Act (Water Code Appendix,
8 Part 97) that allow MWA to implement any methods of governmental
9 financing available to any public entity in California.

10 f. Court Review and Determination of Benefit. Not
11 later than September 30, 1996, MWA shall submit its report to the
12 Court in a noticed motion pursuant to Paragraph 36. The report
13 shall set forth MWA's recommendations as to the following: (1)
14 which alternatives should be implemented; (2) methods of cost
15 allocation for the recommended alternatives; (3) financing for the
16 recommended alternatives; and (4) a time schedule to complete the
17 recommended alternatives. The Court may approve or reject the
18 recommendations. The Court may further order the use of
19 alternatives and time schedules or it may order additional studies
20 and resubmittals, as it may deem proper.

21 10. Priority and Determination of Production Rights.
22 The water rights involved herein are of differing types and
23 commenced at different times. Many of the rights involved are
24 devoted to public uses. The Declaration of Water Rights that is
25 part of the judgment and the Physical Solution decreed herein takes
26 into consideration the competing priorities which have been
27 asserted in addition to the equitable principles applicable to
28 apportionment of water in this situation. The following factors

1 have been considered in the formulation of each Producer's Base
2 Annual Production Right:

3 a. The Mojave Basin Area and each of its hydrologic
4 Subareas have continuously for many Years been in a state of
5 system-wide Overdraft;

6 b. All Producers have contributed to the Overdraft;

7 c. None of the priorities asserted by any of the
8 Producers is without dispute;

9 d. Under the complex scheme of California water
10 law, the allocation of water and rights mechanically based upon the
11 asserted priorities would be extremely difficult, if not
12 impossible, and would not result in the most equitable
13 apportionment of water;

14 e. Such mechanical allocation would, in fact,
15 impose undue hardship on many Parties;

16 f. There is a need for conserving and making
17 maximum beneficial use of the water resources of the State;

18 g. The economy of the Mojave Basin Area has to a
19 great extent been established on the basis of the existing
20 Production;

21 h. The Judgment and Physical Solution take into
22 consideration the unique physical and climatic conditions of the
23 Mojave Basin Area, the Consumptive Use of water in the several
24 sections of the Basin, the character and rate of return flows, the
25 extent of established uses, the availability of storage water, the
26 relative benefits and detriments between upstream areas and
27 downstream areas if a limitation is imposed on one and not the

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1 other, and the need to protect public interest and public trust
2 concerns.

3 In consideration of the foregoing factors, and in
4 accordance with the terms and conditions of this Judgment, the
5 Parties are estopped and barred from asserting special priorities
6 or preferences.

7 11. Exercise of Carry Over Rights. The first water
8 Produced by a Producer during any Year shall be deemed to be an
9 exercise of any Carry Over Right. Such Carry Over Right may be
10 transferred in accordance with Exhibit "F".

11 12. Production Only Pursuant to Judgment. This
12 Judgment, and the Physical Solution decreed herein, addresses all
13 Production within the Mojave Basin Area. Because of the existence
14 of Overdraft, any Production outside the framework of this Judgment
15 and Physical Solution will contribute to an increased Overdraft,
16 potentially damage the Mojave Basin Area and public interests in
17 the Basin Area, injure the rights of all Parties, and interfere
18 with the Physical Solution. Watermaster shall bring an action or
19 a motion to enjoin any Production that is not pursuant to the terms
20 of this Judgment.

21 13. Declaration of Subarea Rights and Obligations. In
22 the aggregate, Producers within certain Subareas have rights, as
23 against those in adjoining upstream Subareas, to receive average
24 Annual water supplies and, in any one Year, to receive minimum
25 Annual water supplies equal to the amounts set forth in Exhibit
26 "G", in addition to any Storm Flows. In turn, in the aggregate,
27 Producers within certain Subareas have an obligation to provide to
28 adjoining downstream Subareas such average Annual water supplies in

1 the amounts and in the manner set forth in Exhibit "G". In any one
2 Year, Producers within certain Subareas have an obligation to
3 provide to adjoining downstream Subareas such minimum Annual water
4 supplies in the amounts and in the manner set forth in Exhibit "G".
5 The Producers in the Baja Subarea have an obligation to provide
6 average and minimum Subsurface Flows toward Afton at the MWA
7 eastern boundary equal to the amounts shown in Exhibit "G".
8 Producers in each of the Subareas have rights in the aggregate, as
9 against each adjoining downstream Subarea or, in the case of the
10 Baja Subarea, as against flows at the MWA eastern boundary toward
11 Afton, to divert, pump, extract, conserve, and use all surface
12 water and Groundwater supplies originating therein or accruing
13 thereto, and so long as the adjoining downstream Subarea
14 Obligations are satisfied under this Judgment and there is
15 compliance with all of its provisions. Watermaster shall maintain
16 a continuing account of the status of each Subarea's compliance
17 with its Subarea Obligation, including any cumulative credits or
18 debits and any requirement for providing Makeup Water. The
19 accounting and determinations relative to Subarea Obligations shall
20 be made in accordance with procedures set forth in Exhibit "G".
21

22 III. INJUNCTION

23 14. Injunction Against Unauthorized Production. Each
24 and every Party, its officers, agents, employees, successors, and
25 assigns, is ENJOINED AND RESTRAINED from Producing water from the
26 Basin Area except pursuant to the provisions of the Physical
27 Solution in this Judgment.

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1 15. Injunction Re Change in Purpose of Use Without
2 Notice Thereof to Watermaster. Each and every Party, its officers,
3 agents, employees, successors, and assigns, is ENJOINED AND
4 RESTRAINED from changing its Purpose of Use at any time without
5 first notifying Watermaster of the intended change.

6 16. Injunction Against Unauthorized Recharge. Each and
7 every Party, its officers, agents, employees, successors and
8 assigns, is ENJOINED AND RESTRAINED from claiming any right to
9 recapture Water that has been recharged in the Basin Area except
10 pursuant to a Storage Agreement with Watermaster. This provision
11 does not prohibit Parties from importing Supplemental Water into
12 the Basin Area for direct use.

13 17. Injunction Against Transportation from Mojave Basin
14 Area. Except upon further order of the Court, each and every
15 Party, its officers, agents, employees, successors and assigns, is
16 ENJOINED AND RESTRAINED from transporting water hereafter Produced
17 from the Basin Area to areas outside the Basin Area.

18 18. Injunction Against Diverting Storm Flows. No Party
19 may undertake or cause the construction of any project that will
20 directly reduce the amount of Storm Flow that would otherwise go
21 through the naturally occurring hydrologic regime to a downstream
22 Subarea or that will reduce the surface area over which Storm Flow
23 currently occurs by alteration to the bed of the Mojave River.
24 This paragraph shall not prevent any flood control agency or
25 municipality from taking such emergency action as may be necessary
26 to protect the physical safety of its residents and its structures
27 from flooding. Any such action shall be done in a manner that will
28 minimize any reduction in the quantity of Storm Flows.

1 IV. CONTINUING JURISDICTION

2 19. Jurisdiction Reserved. Full jurisdiction, power and
3 authority are retained by and reserved to the Court for purposes of
4 enabling the Court upon the application of any Party, by a motion
5 noticed in accordance with the notice procedures of Paragraph 36
6 hereof, to make such further or supplemental order or directions as
7 may be necessary or appropriate for interim operation before the
8 Physical Solution is fully operative, or for interpretation,
9 enforcement or carrying out of this Judgment, and to modify, amend
10 or amplify any of the provisions of this Judgment or to add to the
11 provisions thereof consistent with the rights herein decreed;
12 provided, that nothing in this paragraph shall authorize either a
13 reduction of the Base Annual Production Right of any Party, except
14 in accordance with the rules set forth in Exhibit "F", or a
15 reduction of the Base Flow portion of any Subarea Obligation.

16
17 V. Physical Solution

18 A. GENERAL

19 20. Purpose and Objective. The Court hereby declares
20 and decrees that the Physical Solution herein contained: 1) is a
21 fair and equitable basis for satisfaction of all water rights in
22 the Mojave Basin Area; 2) is in furtherance of the mandate of the
23 State Constitution and the water policy of the State of California;
24 and 3) takes into account applicable public trust interests; and
25 therefore adopts and orders the Parties to comply with the Physical
26 Solution. As noted in Paragraph 3 of this Judgment, the
27 declaration of rights and obligations of the Parties and Subareas
28 is a necessary component of this Physical Solution. The purpose of

1 the Physical Solution is to establish a legal and practical means
2 for making the maximum reasonable beneficial use of the waters of
3 the Basin Area by providing for the long-term conjunctive
4 utilization of all water available thereto to meet the reasonable
5 beneficial use requirements of water users therein.

6 21. Need for Flexibility. It is essential that this
7 Physical Solution provide maximum flexibility and adaptability in
8 order that the Court may be free to use existing and future
9 technological, social, institutional and economic options in order
10 to maximize reasonable beneficial use of the waters of the Basin
11 Area. To that end, the Court's retained jurisdiction may be
12 utilized where appropriate, to supplement the Physical Solution.

13 22. General Pattern of Operations. The Producers will
14 be divided into five Subareas for purposes of administration. The
15 Subarea rights and obligations are herein decreed. A fundamental
16 premise of the Physical Solution is that all Parties will be
17 allowed, subject to this Judgment, to Produce sufficient water to
18 meet their reasonable beneficial use requirements. To the extent
19 that Production by a Producer in any Subarea exceeds such
20 Producer's share of the Free Production Allowance of that Subarea,
21 Watermaster will provide Replacement Water to replace such excess
22 Production according to the methods set forth herein. To the
23 extent that any Subarea incurs a Makeup Obligation, Watermaster
24 will provide Supplemental Water to satisfy such Makeup Obligation
25 according to the methods set forth herein. For the initial five
26 (5) full Years after entry of this Judgment (including any
27 interlocutory Judgment), the Free Production Allowance for each
28 Subarea shall be set as the amount of water equal to the following

percentages of the aggregate Base Annual Production for that Subarea:

	<u>Judgment Year</u>	<u>Percentage</u>
1993-1994	First Full Year	100
1994-1995	Second Full Year	95
1995-1996	Third Full Year	90
1996-1997	Fourth Full Year	85
1997-1998	Fifth Full Year	80

The extent of Overdraft now varies between Subareas and the reasonableness of any physical solution as applied to each Producer depends in part upon such Producer's foreseeable needs and the present and future availability of water within the Subarea in which each Producer is located. The Physical Solution described in this Judgment in part generally contemplates (i) initially allowing significant unassessed production on a substantially uniform basis for all Producers and Subareas and (ii) a phasing in of the monetary obligations necessary to obtain Supplemental Water. The above two provisions will affect each Subarea differently, may not be sufficient to ultimately eliminate the condition of Overdraft in each Subarea and could result in increased Overdraft within a Subarea. Any adverse impact to any Subarea caused by the implementation of the provisions shall be the responsibility of the Producers in each such Subarea.

B. ADMINISTRATION.

23. Administration by Watermaster. Watermaster shall administer and enforce the provisions of the Judgment and any subsequent instructions or orders of this Court.

///

1 (a) Standard of Performance. Watermaster shall, in
2 carrying out its duties, powers and responsibilities herein, act in
3 an impartial manner without favor or prejudice to any Subarea,
4 Producer, Party or Purpose of Use.

5 (b) Removal of Watermaster. Full jurisdiction, power
6 and authority are retained and reserved by the Court for the
7 purpose of enabling the Court on its own motion, or upon
8 application of any Party, and upon notice in accordance with the
9 notice procedures of paragraph 36 hereof, and after hearing
10 thereon, to remove any appointed Watermaster and substitute a new
11 Watermaster in its place. The Court shall find good cause for the
12 removal of Watermaster upon a showing that Watermaster has failed
13 to perform its duties, powers and responsibilities in an impartial
14 manner, or has otherwise failed to act in the manner consistent
15 with the provisions set forth in this Judgment or subsequent order
16 of the Court.

17 (c) MWA Appointed as Initial Watermaster. The MWA is
18 hereby appointed, until further order of the Court, as Watermaster
19 to administer and enforce the provisions of this Judgment and any
20 subsequent orders of this Court issued in the performance of its
21 continuing jurisdiction. In carrying out this appointment, MWA
22 shall segregate and separately exercise in all respects the
23 Watermaster powers delegated by the Court under this Judgment from
24 MWA's statutory powers. All funds received, held, and disbursed by
25 MWA as Watermaster shall be by way of separate Watermaster
26 accounts, subject to separate accounting and auditing. Meetings
27 and hearings held by the MWA Board of Directors when acting as
28 Watermaster shall be noticed and conducted separately from MWA

1 meetings. All Watermaster staff and consultant functions shall be
2 separate and distinct from MWA staff and consultant functions;
3 provided, however, that pursuant to duly adopted Watermaster rules,
4 which shall be subject to review according to Paragraph 36 hereof,
5 Watermaster staff and consultant functions may be accomplished by
6 MWA staff and consultants, subject to strict time and cost
7 accounting principles so that Watermaster functions, and the
8 Assessments provided under this Judgment, do not subsidize, and are
9 not subsidized by, MWA functions. Subject to these principles, MWA
10 shall implement practicable cost efficiencies through consolidation
11 of Watermaster and MWA staff and consultant functions.

12 24. Powers and Duties. Subject to the continuing
13 supervision and control of the Court, Watermaster shall have and
14 may exercise the following express powers, and shall perform the
15 following duties, together with any specific powers, authority and
16 duties granted or imposed elsewhere in this Judgement or hereafter
17 ordered or authorized by the Court in the exercise of its
18 continuing jurisdiction:

19 a. Rules and Regulations. To adopt any and all
20 appropriate rules and regulations for conduct pursuant to this
21 Judgment after public hearing. Notice of hearing and a copy of the
22 proposed rules and regulations, and any amendments thereof, shall
23 be mailed to all Parties thirty days prior to the date of the
24 hearing thereon.

25 b. Employment of Experts and Agents. To employ
26 such administrative personnel, engineering, legal, accounting, or
27 other specialty services and consulting assistants as may be deemed
28 appropriate in carrying out the terms of this Judgment.

1 c. Makeup and Replacement Obligations. To
2 determine the Makeup Obligations for each Subarea and Replacement
3 Obligations for each Producer and each Subarea, pursuant to the
4 terms of the Judgment.

5 d. Measuring Devices, etc. To adopt rules and
6 regulations regarding determination of amounts of Production and
7 installation of individual water meters. The rules and regulations
8 shall provide for approved devices or methods to measure or
9 estimate Production. Producers who meter Production on the date of
10 entry of this Judgment shall continue to meter Production.
11 Thereafter, Producers who do not meter Production on the effective
12 date of entry of this Judgment may be required by Watermaster rules
13 and regulations to install water meters upon a showing that then
14 employed measurement devices or methods do not accurately determine
15 actual Production. The rules and regulations shall require that
16 within three Years after the date of entry of this Judgment, any
17 Producer who provides piped water for human Consumption to more
18 than five service connections shall have installed an individual
19 water meter on each service connection.

20 e. Hydrologic Data Collection. To install, operate
21 and maintain such wells, measuring devices and/or meters necessary
22 to monitor stream flow, precipitation and groundwater levels and to
23 obtain such other data as may be necessary to carry out the
24 provisions of this Judgment, including a study of the Basin Area
25 phreatophyte consumptive use.

26 f. Assessments. To set, levy and collect all
27 Assessments specified herein.

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1 g. Purchase of and Recharge with Supplemental
2 Water. In accordance with Paragraph 27, to the extent Supplemental
3 Water is available and is reasonably needed for Replacement Water
4 or Makeup Water, to use Replacement Water Assessment proceeds to
5 purchase Replacement Water, and to use Makeup Water Assessment
6 proceeds to purchase Makeup Water and to have such Replacement
7 Water and Makeup Water provided to the appropriate Subarea as soon
8 as practicable. Watermaster may prepurchase Supplemental Water and
9 apply subsequent Assessments towards the costs of such
10 prepurchases.

11 h. Water Quality. To take all reasonable steps to
12 assist and encourage appropriate regulatory agencies to enforce
13 reasonable water quality regulations affecting the Basin Area,
14 including regulation of solid and liquid waste disposal.

15 i. Notice List. To maintain a current list of
16 Responsible Parties to receive notice hereunder.

17 j. Annual Administrative Budget. To prepare a
18 proposed administrative budget for each Year, hold hearings
19 thereon, and adopt an administrative budget according to the time
20 schedule set forth in Exhibit "D". The administrative budget shall
21 set forth budgeted items and Administrative Assessments in
22 sufficient detail to show the allocation of the expense among the
23 Producers. Following the adoption of the budget, expenditures
24 within budgeted items may thereafter be made by Watermaster in the
25 exercise of powers herein granted, as a matter of course.

26 k. Annual Report to Court.

27 (1) To file an Annual report with this Court
28 not later than April 1 of each Year beginning April 1 following the

1 first full Year after entry of Judgment. Prior to filing the
2 Annual report with the Court, Watermaster shall notify all Parties
3 that a draft of the report is available for review and shall
4 provide notice of a hearing to receive comments and recommendations
5 for changes in the report. The public hearing shall be conducted
6 on the same date and at the same place as the hearings required by
7 Paragraphs 3 and 4 of Exhibit "D". The notice of hearing may
8 include such summary of the draft report as Watermaster may deem
9 appropriate. Watermaster shall also distribute the report to the
10 Parties requesting copies.

11 (2) The Annual report shall include an Annual
12 fiscal report of the preceding Year's operation and shall include
13 details as to operation of each of the Subareas and an audit of all
14 Assessments and expenditures pursuant to this Physical Solution and
15 a review of Watermaster activities pursuant to this Judgment. The
16 Annual report shall include a compilation of at least the
17 following:

18 Determinations and data required by:

- 19 i) Paragraph 24(c) (Makeup and Replacement Obligations)
- 20 ii) Paragraph 24(e) (Hydrologic Data Collection)
- 21 iii) Paragraph 24(g) (Purchase of and Recharge with
22 Supplemental Water)
- 23 iv) Paragraph 24(i) (Notice List)

24 Rules and regulations adopted pursuant to:

- 25 v) Paragraph 24(a) (Rules and Regulations)
- 26 vi) Paragraph 24(d) (Measuring Devices, etc.)
- 27 vii) Paragraph 24(s) (Storage Agreements)

28 Reports required by:

- viii) Paragraph 24(j) (Annual Administrative Budget)
- ix) Paragraph 24(n) (Transfers)
- x) Paragraph 24(o) (Free Production Allowance)
- xi) Paragraph 24(p) (Production Reports)
- xii) Exhibit "D" (Prior Year Report)
- xiii) Exhibit "F" (Transfers of Base Annual Production Rights)
- xiv) Exhibit "G" (Status of Subarea Obligation)
- xv) Exhibit "H" (Biological Resource Mitigation)

1. Investment of Funds. To hold and invest any funds in investments authorized from time to time for public agencies in the State of California.

m. Borrowing. To borrow in anticipation of receipt of Assessment proceeds in an amount not to exceed the Annual amount of Assessments levied but uncollected.

n. Transfers. To prepare on an Annual basis and maintain a report or record of any transfer of Base Annual Production Rights. Such report or record shall be available for inspection by any Party upon reasonable notice to the Watermaster.

o. Free Production Allowance. Not later than the end of the 1997-1998 Water Year, and Annually thereafter, to recommend in the Watermaster Annual Report an adjustment, if needed, to the Free Production Allowance for any Subarea. In making its recommendation, Watermaster shall be guided by the factors set forth in Exhibit "C", including but not limited to an annual calculation of the change of water in storage. The Annual report shall include all assumptions and calculations relied upon in making its recommendations. Following the 1997-1998 Water Year,

1 or any time thereafter, Watermaster shall obtain prior Court
2 approval for any increase or reduction of any Subarea's Free
3 Production Allowance. In no event shall a reduction in any Year
4 for a Subarea exceed five percent of the aggregate Base Annual
5 Production of that Subarea. In the event Watermaster recommends in
6 its report to the Court that the Free Production Allowance for any
7 Subarea may need to be increased or reduced, the Court shall
8 conduct a hearing, after notice given by Watermaster according to
9 paragraph 36, upon Watermaster's recommendations and may order such
10 changes in Subarea Free Production Allowance. The most recent
11 Subarea Free Production Allowances shall remain in effect until
12 revised according to this Paragraph 24(o).

13 p. Production Reports. To require each Producer to
14 file with Watermaster, pursuant to procedures and time schedules to
15 be established by Watermaster, a report on a form to be prescribed
16 by Watermaster showing the total Production of such Party for each
17 reporting period rounded off to the nearest tenth of an acre foot,
18 and such additional information and supporting documentation as
19 Watermaster may require.

20 q. Production Adjustment for Change in Purpose of
21 Use. If Watermaster determines, using the Consumptive Use rates
22 set forth in Exhibit "F", that a new Purpose of Use of any
23 Producer's Production for any Year has resulted in a higher rate of
24 Consumption than the rate applicable to the original Purpose of Use
25 of that Producer's Production in the Year for which Base Annual
26 Production was determined, Watermaster shall use a multiplier (1)
27 to adjust upward such Production for the purpose of determining the
28 Producer's Replacement Water Assessment and, (2) to adjust upward

1 the Free Production Allowance portion of such Production for the
2 purpose of determining the Producer's Makeup Water Assessment. The
3 multiplier shall be determined by dividing the number of acre feet
4 of Consumption that occurred under the new Purpose of Use by the
5 number of acre feet of Consumption that would have occurred under
6 the original Purpose of Use for the same Production.

7 r. Reallocation of Base Annual Production Rights.

8 To reallocate annually the Base Annual Production Rights in each
9 Subarea to reflect any permanent transfers of such Rights among
10 Parties.

11 s. Storage Agreements. To enter into Storage
12 Agreements with any Party in order to accommodate the acquisition
13 of Supplemental Water. Watermaster may not enter into Storage
14 Agreements with non-Parties unless such non-Parties become subject
15 to the provisions of this Judgment and the jurisdiction of the
16 Court. Such Storage Agreements shall by their terms preclude
17 operations which will have a substantial adverse impact on any
18 Producer. If a Party pursuant to a Storage Agreement has provided
19 for predelivery or postdelivery of Replacement Water for the
20 Party's use, Watermaster shall at the Party's request credit such
21 water to the Party's Replacement Obligation. Watermaster shall
22 adopt uniformly applicable rules for Storage Agreements.
23 Watermaster shall calculate additions, extractions and losses of
24 water stored under Storage Agreements and maintain an Annual
25 account of all such water.

26 t. Subarea Advisory Committee Meetings. To meet on
27 a regular basis and at least semi-annually with the Subarea
28 Advisory Committees to review Watermaster activities pursuant to

1 this Judgment and to receive advisory recommendations from the
2 Subarea Advisory Committees.

3 u. Unauthorized Production. To bring such action
4 or motion as is necessary to enjoin unauthorized Production as
5 provided in Paragraph 12 hereinabove.

6 v. Meetings and Records. To ensure that all
7 meetings and hearings by Watermaster shall be noticed and conducted
8 according to then current requirements of the Ralph M. Brown Act,
9 Government Code Sections 54950, et seq. Watermaster files and
10 records shall be available to any person according to the
11 provisions of the Public Records Act, Government Code §§ 6200 et
12 seq.

13 w. Data, Estimates and Procedures. To rely on and
14 use the best available records and data to support the
15 implementation of this Judgment. Where actual records of data are
16 not available, Watermaster shall rely on and use sound scientific
17 and engineering estimates. Watermaster may use preliminary records
18 of measurements, and, if revisions are subsequently made,
19 Watermaster may reflect such revisions in subsequent accounting.
20 Exhibit "C" sets forth methods and procedures for determining
21 surface flow components. Watermaster shall use either the same
22 procedures or procedures that will yield results of equal or
23 greater accuracy.

24 x. Biological Resource Mitigation. To implement
25 the Biological Resource Mitigation measures set forth in Exhibit
26 "H" herein.

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1 C. ASSESSMENTS

2 25. Purpose. Watermaster shall levy and collect
3 Assessments from the Parties based upon Production in accordance
4 with the time schedules set forth in Exhibit "D". Watermaster
5 shall levy and collect such Assessments as follows:

6 a. Administrative Assessments. Administrative
7 Assessments to fund the Administrative Budget adopted by the
8 Watermaster pursuant to Paragraph 24(j) shall be levied uniformly
9 against each acre foot of Production. A Producer who does not
10 Produce in a given Year shall pay an Administrative Assessment in
11 amount equal to the lowest MWA assessment for Minimal Producers for
12 that Year.

13 b. Replacement Water Assessments. Replacement
14 Water Assessments shall be levied against each Producer on account
15 of such Producer's Production, after any adjustment pursuant to
16 Paragraph 24(q), in excess of such Producer's share of the Free
17 Production Allowance in each Subarea during the prior Year.

18 c. Makeup Water Assessments. Makeup Water
19 Assessments shall be levied against each Producer in each Subarea
20 on account of each acre-foot of Production therein which does not
21 bear a Replacement Assessment hereunder, after any adjustment
22 pursuant to Paragraph 24(q), to pay all necessary costs of
23 satisfying the Makeup Obligation, if any, of that Subarea.

24 d. Biological Resource Assessment. To establish
25 and, to the extent needed, to maintain the Biological Resource
26 Trust Fund balance at one million dollars (in 1993 dollars)
27 pursuant to Paragraph 24(x) and Exhibit "H", a Biological Resource
28 Assessment in an amount not to exceed fifty cents (in 1993 dollars)

1 for each acre-feet of Production shall be levied uniformly against
2 each producer except the California Department of Fish and Game.

3 e. MWA Assessment of Minimal Producers. The MWA
4 shall identify and assess Minimal Producers through its own
5 administrative procedures, and not acting as Watermaster.

6 26. Procedure. Each Party hereto is ordered to pay the
7 Assessments herein provided for, which shall be levied and
8 collected in accordance with the procedures and schedules set forth
9 in Exhibit "D". Any Assessment which becomes delinquent, as
10 defined in Paragraph 7 of Exhibit "D", shall bear interest at the
11 then current San Bernardino County property tax delinquency rate
12 Said interest rate shall be applicable to any said delinquent
13 Assessment from the due date thereof until paid. Such delinquent
14 Assessment, together with interest thereon, costs of suit,
15 attorneys fees and reasonable costs of collection, may be collected
16 pursuant to motion giving notice to the delinquent Party only, or
17 Order to Show Cause proceeding, or such other lawful proceeding as
18 may be instituted by the Watermaster; and shall, if provided for in
19 the MWA Act, constitute a lien on the property of the Party as of
20 the same time and in the same manner as does the tax lien securing
21 County property taxes. The Watermaster shall Annually certify a
22 list of all such unpaid delinquent Assessments to the MWA (in
23 accordance with applicable provisions of the MWA Act). The MWA (in
24 accordance with applicable provisions of the MWA Act) shall include
25 the names of those Parties and the amounts of the liens in its list
26 to the County Assessor's Office in the same manner and at the same
27 time as it does its administrative assessments. MWA shall account
28 for receipt of all collections of Assessments collected pursuant to

1 this Judgment, and shall pay such amounts collected pursuant to
2 this Judgment to the Watermaster. The Watermaster shall also have
3 the ability to enjoin production of those Persons who do not pay
4 Assessments pursuant to this Judgment.

5 27. Availability of Supplemental Water. All
6 Replacement and Makeup Water Assessments collected by the
7 Watermaster shall be used to acquire Supplemental Water from MWA.
8 Watermaster shall determine when to request Supplemental Water from
9 MWA and shall determine the amount of Supplemental Water to be
10 requested. MWA shall use its best efforts to acquire as much
11 Supplemental Water as possible in a timely manner. If MWA
12 encounters delays in the acquisition of Supplemental Water which,
13 due to cost increases, results in collected assessment proceeds
14 being insufficient to purchase all Supplemental Water for which the
15 Assessments were made, MWA shall purchase as much water as the
16 proceeds will allow when the water becomes available. If available
17 Supplemental Water is insufficient to meet all Makeup and
18 Replacement Water obligations, Watermaster shall allocate the
19 Supplemental Water for delivery to the Subareas on an equitable and
20 practicable basis pursuant to duly adopted Watermaster rules and
21 regulations, giving preference to: First, Transition Zone
22 Replacement Water Obligations as set forth in Exhibit "G"; Second,
23 Makeup Water Obligations; and Third, other Replacement Water
24 Obligations. MWA may acquire Supplemental Water at any time. MWA
25 shall be entitled to enter into a Storage Agreement with
26 Watermaster to store water MWA acquires prior to being paid to do
27 so by Watermaster. Such water, including such water acquired and
28 stored prior to the date of this Judgment or prior to the entry of

1 a Storage Agreement, may later be used to satisfy MWA's duty under
2 this paragraph.

3 28. Use of Replacement Water Assessment Proceeds and
4 Makeup Water Assessment Proceeds. The Proceeds of Replacement
5 Water Assessments and any interest accrued thereon shall only be
6 used for the purchase of Replacement Water for that Subarea from
7 which they were collected. In addition, the proceeds of
8 Replacement Water Assessments collected on account of Production in
9 the Transition Zone, except as provided in Exhibit "G", shall only
10 be used for the purchase of Replacement Water for the Transition
11 Zone, and the proceeds of Replacement Water Assessments collected
12 on account of Production in that portion of the Baja Subarea
13 downstream of the Calico-Newberry fault shall only be used for the
14 purchase of Replacement Water for that portion of the Baja Subarea
15 downstream of the Calico-Newberry fault. The proceeds of Makeup
16 Water Assessments and any interest accrued thereon shall only be
17 used for the purchase of Makeup Water to satisfy the Makeup
18 Obligation for which they are collected.

19 29. MWA Annual Report to the Watermaster. MWA shall
20 Produce and deliver to Watermaster an Annual written report
21 regarding actions of MWA required by the terms of this Judgment.
22 The report shall contain: 1) a summary of the actions taken by MWA
23 in identifying and assessing Minimal Producers, including a report
24 of Assessments made and collected; 2) a summary of other MWA
25 activities in collecting Assessment on behalf of Watermaster; 3) a
26 report of water purchases and water distribution for the previous
27 Year; 4) actions taken to implement its Regional Water Management
28 Plan, including actions relating to conveyance facilities referred

1 to in this Judgment. The MWA report will be provided to
2 Watermaster not less than 30 days prior to the Annual Watermaster
3 report to the Court required by this Judgment.

4 D. SUBAREA ADVISORY COMMITTEES.

5 30. Authorization. The Producers in each of the five
6 Subareas are hereby authorized and directed to cause committees of
7 Producer representatives to be organized and to act as Subarea
8 Advisory Committees.

9 31. Composition and Election. Each Subarea Advisory
10 Committee shall consist of five (5) Persons who shall be called
11 advisors. In the election of advisors, every Party shall be
12 entitled to one vote for every acre-foot of Base Annual Production
13 for that Party in that particular Subarea. Parties may cumulate
14 their votes and give one candidate a number of votes equal to the
15 number of advisors to be elected multiplied by the number of votes
16 to which the Party is normally entitled, or distribute the Party's
17 votes on the same principle among as many candidates as the Party
18 thinks fit. In any election of advisors, the candidates receiving
19 the highest number of affirmative votes of the Parties are elected.
20 Elections shall be held upon entry of this Judgment and thereafter
21 every third year. In the event a vacancy arises, a temporary
22 advisor shall be appointed by unanimous decision of the other four
23 advisors to continue in office until the next scheduled election.
24 The California Department of Fish and Game shall serve as a
25 permanent ex-officio member of the Alto and Baja Subarea Advisory
26 Committees. Rules and regulations regarding organization, meetings
27 and other activities shall be at the discretion of the individual

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1 Subarea Advisory Committees, except that all meetings of the
2 committees shall be open to the public.

3 32. Compensation. The Subarea Advisory Committee
4 members shall serve without compensation.

5 33. Powers and Functions. The Subarea Advisory
6 Committee for each Subarea shall act in an advisory capacity only
7 and shall have the duty to study, review and make recommendations
8 on all discretionary determinations made or to be made hereunder by
9 Watermaster which may affect that Subarea.

10 E. TRANSFERABILITY.

11 34. Assignment, Transfer, etc. of Rights. In order to
12 further the purposes of this Judgment and Physical Solution, any
13 Base Annual Production Right, or any portion thereof, may be sold,
14 assigned, transferred, licensed or leased pursuant to the rules and
15 procedures set forth in Exhibit "F".

16 F. MISCELLANEOUS PROVISIONS.

17 35. Water Quality. Nothing in this Judgment shall be
18 interpreted as relieving any Party of its responsibilities to
19 comply with state or federal laws for the protection of water
20 quality or the provisions of any permits, standards, requirements,
21 or orders promulgated thereunder.

22 36. Review Procedures. Any action, decision, rule or
23 procedure of Watermaster pursuant to this Judgment shall be subject
24 to review by the Court on its own motion or on timely motion by any
25 Party, as follows:

26 a. Effective Date of Watermaster Action. Any
27 order, decision or action of Watermaster pursuant to this Judgment
28 on noticed specific agenda items shall be deemed to have occurred

1 on the date of the order, decision or action.

2 b. Notice of Motion. Any Party, may, by a
3 regularly noticed motion, petition the Court for review of
4 Watermaster's action or decision pursuant to this Judgment. The
5 motion shall be deemed to be filed when a copy, conformed as filed
6 with the Court, has been delivered to Watermaster together with the
7 service fee established by Watermaster sufficient to cover the cost
8 to photocopy and mail the motion to each Party. Watermaster shall
9 prepare copies and mail a copy of the motion to each Party or its
10 designee according to the official service list which shall be
11 maintained by Watermaster according to Paragraph 37. A Party's
12 obligation to serve notice of a motion upon the Parties is deemed
13 to be satisfied by filing the motion as provided herein. Unless
14 ordered by the Court, any such petition shall not operate to stay
15 the effect of any Watermaster action or decision which is
16 challenged.

17 c. Time for Motion. A motion to review any
18 Watermaster action or decision shall be filed within ninety (90)
19 days after such Watermaster action or decision, except that motions
20 to review Watermaster Assessments hereunder shall be filed within
21 thirty (30) days of mailing of notice of the Assessment.

22 d. De Novo Nature of Proceeding. Upon filing of a
23 petition to review Watermaster action, the Watermaster shall notify
24 the Parties of a date when the Court will take evidence and hear
25 argument. The Court's review shall be de novo and the Watermaster
26 decision or action shall have no evidentiary weight in such
27 proceeding.

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1 e. Decision. The decision of the Court in such
2 proceeding shall be an appealable Supplemental Order in this case.
3 When the same is final, it shall be binding upon Watermaster and
4 the Parties.

5 f. Payment of Assessments. Payment of Assessments
6 levied by Watermaster hereunder shall be made pursuant to the time
7 schedule in Exhibit "D"; notwithstanding any motion for review of
8 Watermaster actions, decisions, rules or procedures, including
9 review of Watermaster Assessments.

10 37. Designation of Address for Notice and Service. Each
11 Party shall designate the name and address to be used for purposes
12 of all subsequent notices and service herein, either by its
13 endorsement on the Stipulation for Judgment or by a separate
14 designation to be filed within thirty (30) days after Judgment has
15 been entered. Said designation may be changed from time to time by
16 filing a written notice of such change with Watermaster. Any Party
17 desiring to be relieved of receiving notices of Watermaster
18 activity may file a waiver of notice on a form to be provided by
19 Watermaster. Watermaster shall maintain at all times a current
20 list of Parties to whom notices are to be sent and their addresses
21 for purposes of service. Watermaster shall also maintain a full
22 current list of names and addresses of all Parties or their
23 successors, as filed herein. Copies of such lists shall be
24 available to any Person. If no designation is made, a Party's
25 designee shall be deemed to be, in order of priority: i) the
26 Party's attorney of record; ii) if the Party does not have an
27 attorney of record, the Party itself at the address on the
28 Watermaster list.

1 38. Service of Documents. Delivery to or service upon
2 any Party by Watermaster, by any other Party, or by the Court, of
3 any document required to be served upon or delivered to a Party
4 under or pursuant to the Judgment shall be deemed made if made by
5 Deposit thereof (or by copy thereof) in the mail, first class,
6 postage prepaid, addressed to the designee of the Party and at the
7 address shown in the latest designation filed by that Party.

8 39. No Abandonment of Rights. It is in the interest of
9 reasonable beneficial use of the Basin Area and its water supply
10 that no Party be encouraged to take and use more water in any Year
11 than is actually required. Failure to Produce all of the water to
12 which a Party is entitled hereunder shall not, in and of itself, be
13 deemed or constitute an abandonment of such Party's right, in whole
14 or in part.

15 40. Intervention After Judgment. Any person who is not
16 a Party or successor to a Party and who proposes to Produce water
17 from the Basin Area may seek to become a Party to this Judgment
18 through a Stipulation for Intervention entered into with
19 Watermaster. Watermaster may execute said Stipulation on behalf of
20 the other Parties herein but such Stipulation shall not preclude a
21 Party from opposing such Intervention at the time of the Court
22 hearing thereon. Said Stipulation for Intervention must thereupon
23 be filed with the Court, which will consider an order confirming
24 said intervention following thirty (30) days' notice to the
25 Parties. Thereafter, if approved by the Court, such intervenor
26 shall be a Party bound by this Judgment and entitled to the rights
27 and privileges accorded under the Physical Solution herein.

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1 41. Recordation of Notice. MWA shall within sixty (60)
2 days following entry of this Judgment record in the Office of the
3 County Recorder of the County of San Bernardino a notice
4 substantially complying with the notice content requirements set
5 forth in Section 2529 of the California Water Code.

6 42. Judgment Binding on Successors, etc. Subject to
7 specific provisions hereinbefore contained, this Judgment and all
8 provisions thereof are applicable to and binding upon and inure to
9 the benefit of not only the Parties to this action, but as well to
10 their respective heirs, executors, administrators, successors,
11 assigns, lessees, licensees and to the agents, employees and
12 attorneys in fact of any such Persons.

13 43. Costs. No Party stipulating to this Judgment shall
14 recover any costs or attorneys fees in this proceeding from another
15 stipulating Party.

16 44. Entry of Judgment. The Clerk shall enter this
17 Judgment.

18 Dated: JAN 10 1996

19 E. MICHAEL KAISER

20 E. Michael Kaiser, Judge
21 Superior Court of the State
22 of California for the
23 County of Riverside
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