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12 INTERESTED PARTY,
13 Newberry Community Services District

*Exempt from filing fee -
Government code sections 6103 & 26857*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF RIVERSIDE**

16 CITY OF BARSTOW, et al.,

17 Plaintiff,

18 v.

19 CITY OF ADELANTO,

20 Defendants.

Case No.: CIV 208568

ICJ: Hon. Craig G. Reimer
DEPT: 1

**SUPPLEMENTAL BRIEF OF
NEWBERRY COMMUNITY SERVICES
DISTRICT REGARDING MOTION OF
JIM AND ELLEN JOHNSON;
DECLARATION OF JODI HOWARD IN
SUPPORT OF SUPPLEMENTAL BRIEF**

Date: October 17, 2019
Time: 1:30 p.m.
Dept.: 1

21 **AND RELATED CROSS ACTIONS**

22 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

23 **I.**

24 **INTRODUCTION**

25 On June 26, 2019, this Court issued a tentative ruling on the motion by James and
26 Ellen Johnson to consider modifications to the judgment. The Court issued two tentative
27 rulings on June 26, 2019, and continued the motion to October 17, 2019 at 1:30 p.m. for
28 further hearing. The purpose of the continuance was to allow interested parties to submit
supplemental briefs on the motion by August 29, 2019.

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**SUPPLEMENTAL BRIEF OF NEWBERRY SPRINGS COMMUNITY SERVICES DISTRICT REGARDING
MOTION OF JIM AND ELLEN JOHNSON; DECLARATION OF JODI HOWARD IN SUPPORT OF SUPPLEMENTAL BRIEF**

1 Newberry Community Services District (NCSD) hereby submits a supplemental brief
2 in support of the Court's tentative ruling as to whether the judgment should be modified as
3 follows:

- 4 1. To allow producers whose proportional share of FPA has been reduced below
5 10 AFY definition of Minimal Producers to be allowed to take the 10 AFY
6 allowed Minimal Producers before having to pay for replacement water.

7 II.

8 **NCSD SUPPORTS THE COURT'S TENTATIVE RULING**
9 **TO ALLOW PRODUCERS WHOSE PROPORTIONAL SHARE OF FPA**
10 **WHEN REDUCED BELOW 10 AFY, TO BE ALLOWED TO TAKE THE**
11 **10 AFY FOR MINIMAL PRODUCERS BEFORE**
12 **HAVING TO PAY FOR REPLACEMENT WATER**

13 NCSD is a community service district serving the citizens of Newberry Springs since
14 1958. NCSD has a volunteer fire department, a park and recreation department, street
15 lighting and has water powers. NCSD uses approximately 11-12 AFY per year. Under the
16 proposed ramp down, NCSD would have an allotment less than that of a residential user.
17 Such an outcome punishes NCSD and its citizens to a status below a residential user. The
18 modification of the judgment is necessary to reflect the practical effect of the ramp down that
19 was not considered at the time of the original judgment.

20 The Court's tentative ruling recognizes the inequity and disproportionate effect of the
21 ramp down and amends the judgment to be consistent with practical realities of NCSD's
22 water usage.

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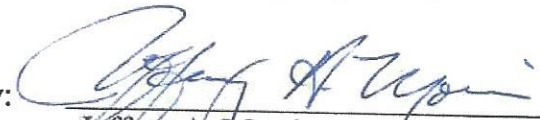
III.

CONCLUSION

Based on the foregoing, NCSD supports the Court's tentative ruling to modify the judgment and set the minimum of 10 acre feet a year even though the ramp down would be below that figure.

Dated: August 28, 2019

DEVANEY PATE MORRIS & CAMERON LLP

Bv: 

Jeffery A. Morris
David R. Plancarte
Attorneys for STIPULATOR and
INTERESTED PARTY,
Newberry Community Services District

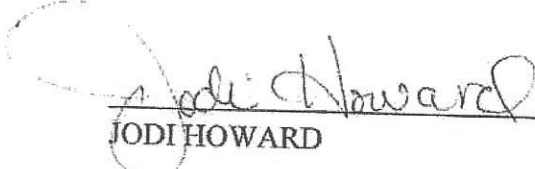
1 DECLARATION OF JODI HOWARD IN SUPPORT OF SUPPLEMENTAL BRIEF
2 OF NEWBERRY SPRINGS COMMUNITY SERVICES DISTRICT REGARDING
3 MOTION OF JIM AND ELLEN JOHNSON

4 I, Jodi Howard, declare as follows:

5 1. I am the General Manager of the Newberry Community Services District. I
6 have personal knowledge of the statements contained within this declaration and can
7 competently testify thereto, if called as a witness.

8 2. Newberry Community Services District provides the citizens in the community
9 with a volunteer fire department, a park and recreation department, street lighting and has
10 water powers. Currently, water usage for the District exceeds 10 acre feet a year. A ramp
11 down taking Newberry Community Services District to a FPA below 10 acre feet a year has
12 a significant impact on the community and providing services. Modifying the judgment to
13 set a floor at 10 acre feet a year before having to pay for replacement water, is reasonable
14 and would benefit the citizens of Newberry Community Services District.

15 I declare under penalty of perjury under the law of the State of California that the
16 foregoing is true and correct and that this declaration was executed on August 27, 2019, at
17 Newberry Springs, California.

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21 JODI HOWARD
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CITY OF BARSTOW, et al. v. CITY OF ADELANTO, et al.
Riverside County Superior Court Case No. CIV 208568

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PROOF OF SERVICE

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I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of Riverside in the office of a member of the bar of this court at whose direction the service was made. My business address is One Better World Circle, Suite 300, Temecula, California 92590.

On August 29, 2019, I served the following document(s): **SUPPLEMENTAL BRIEF OF NEWBERRY COMMUNITY SERVICES DISTRICT REGARDING MOTION OF JIM AND ELLEN JOHNSON; DECLARATION OF JODI HOWARD IN SUPPORT OF SUPPLEMENTAL BRIEF** on the interested parties in this action, as follows:

BY EMAIL OR ELECTRONIC TRANSMISSION TO: The Watermaster and its counsel at: watermaster@mojavewater.org, and I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful;

BY MESSENGER SERVICE TO: THE WATERMASTER via First Legal, a professional messenger service for service; A Declaration of Messenger will subsequently be filed; and Via, Watermaster to all parties to the action, pursuant to the Judgment of this case and the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B which provides that service to be the responsibility of the Watermaster and paragraph 10.D, which provides that a party's service obligation is satisfied upon delivery of a copy of the conformed documents as filed with the Court. As of today, the Watermaster has not set a service fee. Per the Watermaster's request, I will cause a check to be delivered to Watermaster upon being notified of the Watermaster's service costs.

Mojave Basin Area Watermaster
c/o Valerie L. Wiegenstein,
Watermaster Services Manager
13846 Conference Center Drive
Apple Valley, CA 92307-4377

BY MAIL. I caused such envelope, as indicated on the addresses noted below and/or the attached service list, with postage thereon fully prepaid to be placed in the United States mail at Temecula, California. I am readily familiar with the firm's business practice for collection and processing of correspondence for mailing with the United States Postal Service and that the foregoing document was placed for collection and mailing in accordance with ordinary business practices pursuant to Code of Civil Procedure, Section 1013a.

William J. Brunick
Leland P. McElhaney
Brunick, McElhaney & Kennedy PLC
1839 Commercenter West
San Bernardino, CA 92408-3303
bbrunick@bmbmlawoffice.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 29, 2019 at Temecula, California.


Ruth Ann Elphic