

RESOLUTION NO. R-18-19

ADOPTING RULES AND REGULATIONS CONCERNING TRANSFERS

WHEREAS, the Antelope Valley Watermaster, formed by the Antelope Valley Groundwater Cases Final Judgment (“Judgment”), Santa Clara Case No. 1-05-CV-049053 signed December 23, 2015, is to administer the Judgment; and

WHEREAS, the Judgment provides that the Watermaster Engineer shall prepare Rules and Regulations in relation to the request, review and approval of transfers, and that the Watermaster Board directed at its regular Board meeting on March 28, 2018 that all Parties be notified that Draft Rules and Regulations relating to transfers were available for public review, and to circulate those Draft Rules and Regulations for public comment before their adoption by the Watermaster Board; and

WHEREAS, those Draft Rules and Regulations relating to transfers were provided by the Watermaster for review during a 30-day public comment period and for consideration and approval at the Watermaster Board's regular meeting on April 25, 2018 and, after modification in part, again at the regular meeting of the Watermaster Board on May 23, 2018; and

WHEREAS, the Watermaster Board, voted unanimously to adopt Resolution R-18-12 at the regular meeting of the Watermaster Board on April 25, 2018 whereby the Board approved Draft Rules and Regulations contained in the April 20, 2018 memorandum from the Watermaster Engineer; and

WHEREAS, that April 20, 2018 memorandum from the Watermaster Engineer was subsequently modified in part by a memorandum from the Watermaster Engineer dated May 8, 2018; and

WHEREAS, the Watermaster held a public meeting on May 23, 2018 where it received and considered public comment on the modified Draft Rules and Regulations contained in that May 8, 2018 memorandum from the Watermaster Engineer relating to transfers and wishes now to adopt those modified Rules and Regulations and to seek the approval by the Court of these Rules and Regulations pursuant to the terms of the Judgment.

NOW THEREFORE BE IT RESOLVED, the Watermaster Board unanimously adopts the Rules and Regulations relating to transfers expressed in the May 8, 2018 memorandum from the Watermaster Engineer with modifications, if any, as directed by the Board after the public hearing and directs General Counsel to bring a motion before the Court seeking the Court's approval of these Rules and Regulations concerning transfers pursuant to the terms of the Judgment.

I certify that this is a true copy of Resolution No. R-18-19 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held May 23, 2018, in Palmdale, California.

Date: 5/23/18

ATTEST: Patricia Rose
Patricia Rose – Interim Secretary

Robert Parris
Robert Parris, Chairman

The Rules and Regulations are meant to develop processes and procedures to implement the Judgment rather than simply repeat portions of the Judgment. However, relevant sections and definitions from the Judgment are included for context and to facilitate proper determination of Transfer eligibility. Paragraphs from the Judgment (¶) are referenced where applicable.

A legal determination will be necessary for some of the details provided herein. In particular, the paragraphs on Transfers (¶16) in the Judgment specifically allow transfers of Production Rights. The Production Right definition in the Judgment (¶3.5.32) states that the sum of those rights equals the Native Safe Yield; the definition specifically excludes any right to Imported Water Return Flows (¶3.5.32). Yet Paragraph 15 of the Judgment allows transfers of the Carry Over water from Imported Water Return Flows (¶15.2, last sentence). Further, Paragraphs 15.1, 15.2, and 15.3 all state that transfers are allowed for stored Carry Over water (pursuant to a Storage Agreement). This Memorandum is being transmitted to the Watermaster Legal Counsel for review prior to final approval by the Watermaster Board.

SECTION X – TRANSFERS

1.1. Purpose

The Judgment allows Production Rights and certain other rights to be transferred among Parties as provided in this section. Transfers can provide flexibility to the Parties with respect to timing and location of groundwater production while maintaining consistency with the purposes of the Judgment and compliance with the Physical Solution.

1.2. Basis

Transfers of Production Rights are allowed in the Judgment as follows: “Pursuant to terms and conditions to be set forth in the Watermaster rules and regulations, and except as otherwise provided in this Judgment, Parties may transfer all or any portion of their Production Right to another Party so long as such transfer does not cause Material Injury. All transfers are subject to hydrologic review by the Watermaster Engineer.” (¶16.1). One-time temporary transfers, multi-year transfers, and permanent transfers of a Production Right are allowed between Parties.

A transfer of a Production Right can also occur as a result of a property sale. In this case, the Production Rights would transfer to the new owner of the property associated with that sale as indicated by the definition of Party in the Judgment. “Party (Parties). Any Person(s) that has (have) been named and served or otherwise properly joined, or has (have) become subject to this Judgment and any prior judgments of this Court in this Action and all their respective heirs, successors-in-interest and assigns. For purposes of this Judgment, a “Person” includes any natural person, firm, association, organization, joint venture, partnership, business, trust, corporation, or public entity.” (¶3.5.27).

In addition to Production Rights, certain other rights to produce groundwater can be transferred as provided in **Section 1.3** below.

The Watermaster Engineer will record all transfers as dictated in the Judgment: “**Transfers.** On an annual basis, the Watermaster shall prepare and maintain a report or record of any transfer of Production Rights among Parties. Upon reasonable request, the Watermaster shall make such report or record available for inspection by any Party. A report or records of transfer of Production Rights under this Paragraph shall be considered a ministerial act.” (¶18.4.8).

1.3. Types of Transfers Allowed

Transfers are allowed for the following Parties under the described conditions:

1.3.1 Overlying Production Right Parties (Exhibit 4): “Overlying Production Rights may be transferred pursuant to the provisions of Paragraph 16 of this Judgment.” (¶15.1.1.3).

1.3.2 Overlying Production Right Parties (Exhibit 4) Transfers to Non-Overlying Production Right Holders (Exhibit 3): “Overlying Production Rights that are transferred to Non-Overlying Production Right holders shall remain on Exhibit 4 and be subject to adjustment as provided in Paragraph 18.5.10, but may be used anywhere in the transferee’s service area.” (¶16.2).

1.3.3 State of California Internal Transfers: “The State of California’s Production Right in the amount of 207 acre-feet per Year is allocated separately to each of the State agencies, departments, and associations as listed below in Paragraph 5.1.5.2. Notwithstanding the separate allocations, any Production Right, or portion thereof, of one of the State agencies, departments, and associations may be transferred or used by the other State agencies, departments, and associations on parcels within the Basin. This transfer shall be done by agreement between the State agencies, departments, or associations without a Replacement Water Assessment and *without the need for Watermaster approval*. Prior to the transfer of another State agency, department, or association’s Production Right, the State agency, department, or association receiving the ability to use the Production Right shall obtain written consent from the transferor. Further, the State agency, department, or association receiving the Production Right shall notify the Watermaster of the transfer.” (¶15.1.5.1, *emphasis added*).

1.3.4 Carry Over Water or Stored Carry Over water: “The Producer may transfer any Carry Over water or Carry Over water stored pursuant to a Storage Agreement.” (last sentence of ¶15.1, ¶15.2, and ¶15.3). This applies to all or part of Carry Over water or Stored Carry Over water from: In Lieu Production Right (¶15.1), Imported Water Return Flows (¶15.2), or a Production Right (¶15.3). Other water stored pursuant to a Storage Agreement may be transferred through changes in the existing Storage Agreement.

1.3.5 Antelope Valley United Mutuals Group Transfer Limitations: “**Limitation on Transfers of Water by Antelope Valley United Mutuals Group.** After the date of this Judgment, any Overlying Production Rights pursuant to Paragraph 5.1.1, rights to Imported Water Return Flows pursuant to Paragraph 5.2, rights to Recycled Water pursuant to Paragraph 5.3 and Carry Over water pursuant to Paragraph 15 (including any water banked pursuant to a Storage Agreement with the Watermaster) that are at any time held by any member of the Antelope Valley United Mutuals Group may only be transferred to or amongst other members of the Antelope Valley United Mutuals Group, except as provided in Paragraph 16.3.1. Transfers amongst members of the Antelope Valley United Mutuals Group shall be separately reported in the Annual Report of the Watermaster pursuant to Paragraphs 18.4.8 and 18.5.17. Transfers amongst members of the Antelope Valley United Mutuals Group shall not be deemed to constitute an abandonment of any member’s non-transferred rights.” (§16.3).

“Nothing in Paragraph 16.3 shall prevent Antelope Valley United Mutuals Group members from transferring Overlying Production Rights to Public Water Suppliers who assume service of an Antelope Valley United Mutuals Group member’s shareholders.” (§16.3.1).

1.3.6 Transferred Water Retains its Original Source Type: For example, a transfer of a Production Right will remain a Production Right; a transfer of Carry Over water will remain Carry Over water and will also retain the same number of years for which it has already been carried over; a transfer of stored Carry Over water pursuant to a Storage Agreement will remain stored water. All other requirements for each type of water in the Judgment will also apply to the transferred water type.

1.4. Conditions and Assumptions for Transfers

1.4.1 Transfers to Parties and Non-Parties: Any Party to the Judgment can transfer to any other Party except for limitations in the Judgment contained in these Rules and Regulations (see **Section 1.5** below). Any Transferee must be, or become a Party to the Judgment.

1.4.2 Severability of Rights and Land: Overlying landowners may transfer all or part of their Production Right or Carry Over Water to another Party while retaining ownership of all or part of their land. Similarly, landowners may sell the land without transferring the Production Right or Carry Over Water.

1.4.3 Voting Rights: Except for certain permanent transfers of all rights as may be permitted under the Judgment or a court order, the Transferor will retain any voting rights associated with the Antelope Valley Watermaster.

1.4.4 Type of Water Transferred: If the type of water is not stated in the transfer form (i.e., Production Right or Carry Over Water), the Watermaster Engineer will assume that the transfer is first part or all of the Transferor’s Production Right.

1.4.5 Unused Portion of Transfer Water: Any transferred water not used by the Transferee in the year of the transfer will be assumed to be Carry Over water for the Transferee, unless the Watermaster Engineer is notified otherwise.

1.4.6 Compliance with Rules and Regulations: Both the Transferor and Transferee will be in compliance with the approved Rules and Regulations associated with this Judgment as a condition of an approved transfer including payment of assessments, production reporting, and Meter Requirements.

1.5. Types of Transfers Not Allowed

Transfers are not allowed by the Judgment for:

1.5.1 Non-Pumper Class: “The Non-Pumper Class members shall have no right to transfer water pursuant to this Judgment.” (§15.1.2.1).

1.5.2 Small Pumper Class: “The pumping rights of Small Pumper Class Members are not transferable separately from the parcel of property on which the water is pumped, provided however a Small Pumper Class Member may move their water right to another parcel owned by that Small Pumper Class Member with approval of the Court. If a Small Pumper Class Member parcel is sold, absent a written contract stating otherwise and subject to the provisions of this Judgment, the water right for that Small Pumper Class Member parcel shall transfer to the new owners of that Small Pumper Class Member parcel. The pumping rights of Small Pumper Class Members may not be aggregated for use by a purchaser of more than one Small Pumper Class Member’s property.” (§15.1.3.3). “In recognition of his service as class representative, Richard Wood has a Production Right of up to five 5 acre-feet per Year for reasonable and beneficial use on his parcel free of Replacement Water Assessment. This Production Right shall not be transferable and is otherwise subject to the provisions of this Judgment. (§15.1.3.8).

1.5.3 Non-Stipulating Parties: “**Production Rights Claimed by Non-Stipulating Parties.** Any claim to a right to Produce Groundwater from the Basin by a Non-Stipulating Party shall be subject to procedural or legal objection by any Stipulating Party. Should the Court, after taking evidence, rule that a Non-Stipulating Party has a Production Right, the Non-Stipulating Party shall be subject to all provisions of this Judgment, including reduction in Production necessary to implement the Physical Solution and the requirements to pay assessments, but *shall not be entitled* to benefits provided by Stipulation, including but not limited to Carry Over pursuant to Paragraph 15 and *Transfers pursuant to Paragraph 16.*” (§15.1.10, *emphasis added*).

1.5.4 Boron Community Services District: “Notwithstanding section 16.1, the Production Right of Boron Community Services District shall not be transferable. If and when Boron Community Services District permanently ceases all Production of Groundwater from the Basin, its Production Right shall be allocated to the other holders of Non-Overlying Production Rights, except for West Valley County Water District, in proportion to those rights.” (§16.4).

1.5.5 Other Rights to Produce Groundwater: Transfers of rights to produce groundwater by the City of Lancaster or Phelan Pinon Hills Community Services District are not allowed.

1.5.6 Rampdown Production Above Production Right: Except for a transfer of all rights associated with a property sale, transfers are not allowed for the Pre-Rampdown Production amount in excess of the Production Right or for the incremental Rampdown in excess of the Production Right that is allowed to be pumped during the Rampdown Period.

1.5.7 Rights to Pump Imported Water Return Flows: Because the definition of Production Right “does not include any right to Imported Water Return Flows pursuant to Paragraph 5.2,” the transfer of the rights to Imported Water Return Flows is not allowed. However, if Imported Water Return Flows are not produced in the year in which they are available, Imported Water Return Flows can be converted to Carry Over water (§15.2) and that Carry Over water can be transferred (§15.2) (see **Section 1.3.4** above).

1.5.8 Unused Federal Water Right: “In the event the United States does not Produce its entire 7,600 acre-feet in any given Year, the unused amount in any Year will be allocated to the Non-Overlying Production Rights holders, except for Boron Community Services District and West Valley County Water District, in the following Year, in proportion to Production Rights set forth in Exhibit 3.” (§15.1.4.1). Because “(t)his *Production of unused Federal Reserved Water Right Production does not increase any Non-Overlying Production Right holder’s decreed Non-Overlying Production Right amount or percentage...*” (§15.1.4.1, *emphasis added*), transfers of the unused Federal Water Right are not allowed.

1.6. Transfer Requests

Prior to a transfer, Parties are required to submit a Transfer Request Form to the Watermaster for review. The form will include specific information required for the Watermaster Engineer to record and track each transfer and to conduct a hydrologic review, including a Material Injury analysis. Although all transfers will be subject to hydrologic review by the Watermaster Engineer, no Material Injury analysis will be required on a transfer that results from a property sale.

The request will identify both the rights holder and the transferee. Unless clearly stated otherwise in the Transfer Request, the rights holder will retain responsibility for the Administrative Assessments on the transferred rights, if any. Administrative staff will confirm that all overdue assessments associated with the Parties involved in the transfer are settled before the transfer request will be considered by the Watermaster Engineer.

1.7. Hydrologic Review and Material Injury Analysis

Although transfers will be managed within the Native Safe Yield as defined by the Judgment, transfers may change the distribution of pumping in the basin spatially and/or over time. The Watermaster

Engineer will conduct a hydrologic review and Material Injury analysis on all transfers¹ that considers whether the transfer will have the potential to:

cause material physical harm to the Basin, any Subarea, or any Producer, Party, or Production Right including, but not limited to, Overdraft, degradation of water quality by introduction of contaminants to the aquifer by a Party and/or transmission of those introduced contaminants through the aquifer, liquefaction, land subsidence and other material physical injury caused by elevated or lowered groundwater levels. Material physical harm does not include "economic injury" that results from other than direct physical causes, including any adverse effect on water rates, lease rates, or demand for water. (§3.5.81.1).

The Watermaster Engineer must make the finding that the transfer will not cause, or will fully mitigate (§3.5.81.2) the potential for, Material Injury in order for the transfer to be approved by the Board.

1.8. Approval of Transfers

Based on the information, recommendation, and Material Injury analysis provided by the Watermaster Engineer, the Watermaster Board must make the following findings in order to approve the transfer:

- the transfer complies with the Judgment
- the transfer does not cause Material Injury.

1.9. Documentation of Transfers

The Watermaster Engineer shall maintain a record of all transfers and assign the transferred water to the transferee's proper water account. In general, the original type of the transferred right will be maintained after the transfer. For example, a transfer of all or part of a Production Right will be a transferred Production Right for the transferee. Similarly, a transfer of Carry Over Water will be maintained as Carry Over Water for the transferee and will also retain the number of years associated with the original transferor's Carry Over Water account. Upon reasonable request, the Watermaster shall make transfer records available for inspection by any Party. Transfer records also will be summarized in the Annual Report. A report or records of transfers under this Paragraph shall be considered a ministerial act.

¹ Except those that result from a property sale and those among State agencies for the State of California Production Right as provided in §5.1.5.1.