



March 9, 2018

DRAFT MEMORANDUM

To: Dennis LaMoreaux, Chair
Antelope Valley Watermaster Advisory Committee

Robert Parris, Chair
Antelope Valley Watermaster Board

cc: Craig Parton, Price Postel & Parma LLP
Watermaster Legal Counsel

From: Phyllis Stanin, Vice President/Principal Geologist
Kate White, Senior Engineer
Todd Groundwater, Watermaster Engineer

Re: Procedures for Request, Review, and Approval of Transfers

This Draft Memorandum presents the procedures for request, review, and approval of Transfers, as defined in the Judgment. The purpose of this memorandum is to provide draft procedures for review and comment by the Advisory Committee, the Watermaster Board, and the public.

These draft procedures are being posted on the Watermaster website more than 30 days in advance of a Public Hearing, tentatively scheduled for April 25, as part of the Watermaster Board regular meeting. At the Public Hearing, the Watermaster Board will consider comments and edits to the transfer procedures. The final procedures will be approved by the Watermaster and presented to the Court for approval to include in the Antelope Valley Watermaster Rules and Regulations.

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 may be necessary for some of the details provided herein. Therefore, this Memorandum is also being transmitted to the Watermaster Legal Counsel for review as directed 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). Both one-time temporary 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:

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).

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).

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*).

Stored Production Rights or Carry Over Water: “**In Lieu Production Right Carry Over**...The Producer may transfer any Carry Over water or Carry Over water stored pursuant to a Storage Agreement.” (§15.1).

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).

1.4. Types of Transfers Not Allowed

Transfers are not allowed by the Judgment for:

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

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).

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).

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. 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 outstanding assessments associated with the Parties involved in the transfer are paid before the transfer request will be considered by the Watermaster Engineer.

1.6. 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.

1.7. Approval of Transfers

Based on the information 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.

1.8. 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

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.

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.