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REVISED DRAFT ISSUE PAPER

To: Dennis LaMoreaux, Chair
Antelope Valley Watermaster Advisory Committee

Robert Parris, Chair
Antelope Valley Watermaster Board

cc: Craig A. Parton, Price Postel & Parma LLP
Antelope Valley Watermaster Legal Counsel

From: Phyllis Stanin, Vice President/Principal Geologist
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Re: Order of Water Use Under the Judgment

This Draft Issue Paper recommends an order for sequential use by Producers of their various groundwater rights (e.g., Production Rights, Carry Over, Imported Water Return Flows, etc.) as interpreted from the Judgment. The Issue Paper recommends an order that complies with the Judgment, provides information for a dialog with Producers for planning purposes, and ensures proper water accounting by the Watermaster Engineer.

An additional objective of this Issue Paper is to provide a summary of various types of water accounts and related sections of the Judgment pertaining to associated requirements on the use of those accounts. The summary information contained herein can be included in initial sections of the Rules and Regulations to provide context and understanding for the various sections within that document. Although the Rules and Regulations are meant to develop processes and procedures to implement the Judgment rather than simply repeat portions of the Judgment, inclusion of summary information can provide needed context and make the Rules and Regulations more accessible. Paragraphs from the Judgment (¶) are referenced where applicable.

This Draft Issue Paper is being presented to the Advisory Committee, Antelope Valley Watermaster Board, and Watermaster Counsel to facilitate review and discussion on the order of water use by Producers. After incorporation of comments, the Draft Issue Paper will be posted for a 30-day comment period, reviewed during a Public Hearing, approved by the Board, and submitted to the Court for final approval.

GROUNDWATER RIGHTS UNDER THE JUDGMENT

The distinct types of groundwater accounts that may be available for a Producer's use are listed below.

"Production Right. The amount of Native Safe Yield that may be Produced each Year free of any Replacement Water Assessment and Replacement Obligation. The total of the Production Rights decreed in this Judgment equals the Native Safe Yield. A Production Right does not include any right to Imported Water Return Flows pursuant to Paragraph 5.2." (¶3.5.32).

"Pre-Rampdown Production. The reasonable and beneficial use of Groundwater, excluding Imported Water Return Flows, at a time prior to this Judgment, or the Production Right, whichever is greater." (¶3.5.28).

Unused Federal Reserved 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." (¶5.1.4.1).

"Carry Over. The right to Produce an unproduced portion of an annual Production Right or a Right to Imported Water Return Flows in a Year subsequent to the Year in which the Production Right or Right to Imported Water Return Flows was originally available." (¶3.5.9).

"Imported Water Return Flows. Imported Water that net augments the Basin Groundwater supply after use." (¶3.5.16).

"Stored Water. Water held in storage in the Basin, as a result of direct spreading or other methods, for subsequent withdrawal and use pursuant to agreement with the Watermaster and as provided for in this Judgment. Stored Water does not include Imported Water Return Flows." (¶3.5.49).

Transfers. "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).

"New Production. Any Production of Groundwater from the Basin not of right under this Judgment, as of the date of this Judgment." (¶3.5.20).

Other types of water (non-groundwater) are also available for use but are not included in this hierarchy. These include in-lieu production (¶15.1), recycled water (¶5.3), and imported or local surface water. In-lieu production use is encouraged as it reduces groundwater pumping directly. Use of these other water sources is also encouraged if groundwater pumping can be reduced.

ORDER OF GROUNDWATER USE

The Judgment provides flexibility to Producers to accumulate and access a variety of water accounts as described above. The Watermaster Engineer does not wish to dictate which accounts a Producer may access unless limited by the Judgment or other practical considerations. Nonetheless, it is incumbent on the Watermaster Engineer to develop a system of water accounting that complies with the Judgment. Therefore, the Judgment has been reviewed for requirements and restrictions on use of water accounts.

In brief, the Judgment requires that the Production Right be used first before any other water is used. An exception to this is the option for In Lieu Production, whereby Imported Water is purchased to preserve the Production Right and the Production Right is subject to Carry Over. Two additional types of water, the unused Federal Reserved Water Right and the Rampdown Production amounts, are restricted with respect to the timing of the use. Because these two types of water must be used in the year that they are available, these accounts are prioritized for use.

Incorporating these two guidelines, water accounts have been categorized into three groups for use as listed below. Category 1 water is to be used in full before Category 2; Category 2 water would also likely be used in full before Category 3 (although not required by the Judgment). When several different types of water are in one category, the Producer can use them at their discretion in any order and percentage. Producers may not have all categories of water available to them at all times.

Category 1

Production Rights from Native Safe Yield

Category 2

Unused Federal Reserved Water Rights

Rampdown Production (amount above Production Right)

Category 3

Imported Water Return Flows

Carry Over Water

Stored Water

New Production

Other Rights to Produce Water

Transfers are not listed above because the transferred water will retain the same category as the source water (e.g., transferred Production Rights will be Category 1 water, ~~transferred Imported Water Return Flows will be Category 3 water~~, transferred Carry Over water will be Category ~~4~~3 water and will also retain the same number of years for which it has already been carried over, transferred Stored ~~Carry Over~~ water pursuant to a Storage Agreement will be Category ~~5~~3 water, etc.). Because a Category 1 Production Right must be fully produced prior to any other water, a transfer of another Producer's Category 1 Production Right must also be fully produced before water in any other category.

DISCUSSION AND RELEVANT JUDGMENT TEXT

Category 1. Production Rights. All Production Rights from Native Safe Yield must be used before using other types of groundwater. As per the Judgment: “A Producer must Produce its full current Year’s Production Right before any Carry Over water is Produced.” (§15.1) and “A Producer must Produce its full Production Right before any Carry Over water, *or any other water*, is Produced.” (§15.2 and §15.3, *emphasis added*).

Category 2. Unused Federal Reserved Water Rights and Rampdown Production above Production Right. Producers with Unused Federal Reserved Water Rights and/or Rampdown Production above their Production Right can use these water sources once they have used all Production Rights from Native Safe Yield for the year. These two sources are prioritized because they are not subject to Carry Over and will not be available in subsequent years if not produced in the year available. Additional relevant information and limitations from the Judgment are included below.

Category 3. Imported Water Return Flows, Carry Over Water, Stored Water, New Production, and Other Rights to Produce Water. These Category 3 water types can be used after a Producer uses its Production Rights (Category 1) and electively uses its Category 2 water (Unused Federal Reserved Water Rights and Rampdown Production above Production Right) since Category 2 water cannot be carried over.

REPORTING

All Producers are required¹ to provide the Watermaster with a detailed annual accounting of the water used in the previous calendar year. This information will be documented by Producers on an Annual Water Production Report form. These forms will be available on the Watermaster website and are due by March 1, 2018 for 2017 water use. Annual Water Production Report forms will also be mailed or emailed to Producers with addresses or emails on record.

In future years, the Antelope Valley Watermaster Annual Report will contain tables with the types of water available for each party for use that year². However, much of this data was not available for the 2016 Annual Report. Accordingly, the Watermaster will post tables on its website to assist with completing 2017 Production Reporting forms; tables will include:

¹ “**18.5.12 Production Reports.** The Watermaster Engineer shall require each Producer, other than unmetered Small Pumper Class Members, to file an annual Production report with the Watermaster. Producers shall prepare the Production reports in a form prescribed by the rules and regulations. The Production reports shall state the total Production for the reporting Party, including Production per well, rounded off to the nearest tenth of an acre foot for each reporting period. The Production reports shall include such additional information and supporting documentation as the rules and regulations may reasonably require.”

² The Watermaster will be requesting that the due date for Annual Reports be permanently moved from April 1 to August 1 to better accommodate collection and analysis of the required data.

- Rampdown amounts for 2016-2023
- Production Rights and other rights to produce water for each Party
- Unused Federal Reserved Water Rights available for use in 2017
- Imported Water Return Flows available in 2017, and
- Carry Over Water available in 2017.

Water available for use in 2018 will be tallied once the 2017 Annual Water Production Reports are received and the 2017 Annual Report is complete. Each Producer is responsible for keeping track of their production throughout each year to ensure that they do not incur Replacement Water Assessments unintentionally. Producers who pump more than 10 acre-feet per year (AFY) are also required to submit quarterly production meter reading reports by the end of the first month after each quarter (January 31, April 30, July 31, and October 31). Additional metering requirements are included in the Rules and Regulations and posted on the Watermaster website.