

RESOLUTION NO. R-18-01

ADOPTING RULES AND REGULATIONS CONCERNING ADMINISTRATIVE ASSESSMENTS

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 Administrative Assessments, and that the Watermaster Board directed at its Special Board meeting on December 6, 2017 that all Parties be notified that Draft Rules and Regulations contained in a memorandum from the Watermaster Engineer to the Watermaster Board dated November 29, 2017 and relating to Administrative Assessments 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 Administrative Assessments 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 January 24, 2018; and

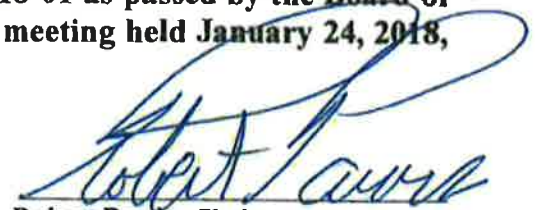
WHEREAS, the Watermaster held a public hearing at its meeting on January 24, 2018 where it received and considered public comment on the Draft Rules and Regulations relating to Administrative Assessments and wishes now to adopt those proposed Rules and Regulations and to seek the approval by the Court 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 Administrative Assessments expressed in the November 29, 2017 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 Administrative Assessments pursuant to the terms of the Judgment.

I certify that this is a true copy of Resolution No. R-18-01 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held January 24, 2018, in Palmdale, California.

Date: 1/24/18

ATTEST: 
Patricia Rose – Interim Secretary


Robert Parris, Chairman

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DECLARATION OF PATRICIA ROSE

I, PATRICIA ROSE, have personal knowledge of the matters stated in this declaration and if called to testify could and would competently do so.


1. I am employed by the Antelope Valley East Kern Water Agency and serve as the Interim Secretary to the Board of the Antelope Valley Watermaster.

2. On December 19, 2017, I posted on the Watermaster's website a notice of a public hearing on proposed rules and regulations concerning administrative assessments. A true and correct copy of that notice is attached hereto as Exhibit A. That notice states that the public hearing was to take place on January 24, 2018 at 10:00 a.m. as part of the regular meeting of the Antelope Valley Watermaster. On December 19th I also posted on the Watermaster's website the final draft memorandum prepared by Todd Groundwater, the Watermaster Engineer, and dated November 29, 2017. That memorandum contained draft rules and regulations concerning administrative assessments. A true and correct copy of that November 29, 2017 memorandum containing the draft rules and regulations is attached hereto as Exhibit B.

3. On December 19, 2017, I e-mailed both Exhibit A and Exhibit B to the list of parties maintained by the Watermaster in accordance with Sections 18.4.4, 20.6, and 20.7 of the Judgment.

4. Attached hereto as Exhibit C is a true and correct copy of Resolution No. R-18-01 which is the resolution concerning administrative assessments adopted by the Board of Directors of the Antelope Valley Watermaster at its regular Board meeting on January 24, 2018.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 5th day of February, 2018, at Palmdale, California.


Patricia Rose

SECTION X - ADMINISTRATIVE ASSESSMENTS

1.1. Purpose.

Administrative Assessments are charged by the Watermaster to cover costs to be incurred by the Watermaster in administering the Judgment in the coming year (§3.5.3).

Administrative Assessments fund the Administrative Budget, which is adopted by the Watermaster (§9.1). Annual Administrative costs for the coming year are estimated in the Administrative Budget.

1.2. Basis.

Administrative Assessments are levied uniformly on an annual basis against each acre-foot of: (1) a party's Production Right, (2) a party's right to produce Imported Water Return Flows, (3) a party's production subject to a Replacement Water Assessment and (4) a party's production in excess of the sum of amounts in (1) through (3) above during the Rampdown period¹. Administrative assessments are not levied against production of Stored Water or production of Carry Over water (§9.1).

Production Right is defined in the Judgment as "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). Production Rights include Overlying Production Rights (Exhibit 4 of the Judgment), Small Pumper Class Production Rights (Exhibit C), Federal Reserved Water Right (§5.1.4), State of California (§5.1.5), and Non-Overlying Production Rights (Exhibit 3). In addition, the Judgment determined that eight Non-Stipulating Parties (referred to as the Supporting Landowner Parties in the Statement of Decision) also have a Production Right (§5.1.10).

The Judgment also provides for rights to produce groundwater that are not Production Rights. Unless otherwise provided in the Judgment, Administrative Assessments are levied against: (1) the actual Production based on those rights that are subject to the Replacement Water Assessment and (2) during the Rampdown period, the actual Production that is not subject to the Replacement Water Assessment.

¹ Rampdown is defined as "the period of time for Pre-Rampdown Production to be reduced to the native Safe Yield in the manner described in this Judgment" (§3.5.37). The Rampdown Period is determined to begin on "January 1 following entry of this Judgment and continuing for the following seven (7) Years" (§8.2). For this Judgment, entered on December 23, 2015, the Rampdown Period is from January 1, 2016 through December 31, 2022.

1.3. Types of Production Subject to Administrative Assessments.

Administrative Assessments are referred to herein as either Fixed or Variable Administrative Assessments.

- **Fixed Administrative Assessments** are based on each acre foot of a Party's Production Right as described in Section 1.4 a). below (¶5.1) and are levied at the beginning of the year in which the Production Right occurs.
- **Variable Administrative Assessments** are based on either (1) production by a Party in excess of the Production Right or (2) the right to produce Imported Water Return Flows. Administrative assessments on production under (1) above are levied each Spring after total Production is reported for the preceding year; administrative assessments on the right to produce Imported Water Return Flows under (2) above are determined for the current year based on an average of the amounts of imported water used in the five preceding years (¶5.2.2). Variable Administrative Assessments are collected on:
 - each acre foot (AF) of a Party's right to produce Imported Water Return Flows (see R&R Section XX on Imported Water Return Flows) (¶5.2)
 - each acre foot of a Party's production for which a Replacement Water Assessment has been imposed (see R&R Section XX on Replacement Water Assessment) (¶9.2)
 - each acre foot used of a Non-Overlying Production Right holders' allocation of the unused Federal Reserved Water Right (see R&R Section XX on Federal Reserved Water Right) (¶9.1)
 - each acre foot during Rampdown of a Party's production in excess of the sum of its Production Right, Imported Water Return Flows, and Production subject to a Replacement Water Assessment.

Production from Stored Water and/or Carry Over water is excluded from the Administrative Assessment (¶9.1).

1.4. Administrative Assessments are Levied Against:

- a) **Production Rights.** Each acre foot of a Party's Production Right (¶5.1 *Allocation of Rights to Native Safe Yield*). These include:
- **Non-Overlying Production Rights.** (Exhibit 3 of the Judgment).
 - **Overlying Production Rights.** (Exhibit 4 of the Judgment).
 - **Small Pumper Class.** This assessment is based on the allocation of 1.2 acre-feet per year per household or parcel, whichever is the case; metered Production shall be assessed in accord with the actual Production (¶5.1.3).

- **Federal Reserved Water Rights.** Rights shall be subject to the Administrative Assessment only on the actual Production by the United States (§5.1.4).
 - **State of California Production Rights.** All production is subject to Administrative Assessment except in emergency situations (§5.1.5).
 - **Non-Stipulating Parties.** The eight Supporting Landowner Parties (VII., a through h) in the Statement of Decision were determined to have a Production Right as Non-Stipulating Parties (Final Judgment, §3.c). As provided in Paragraph 5.1.10 of the Physical Solution, Non-Stipulating Parties with a Production Right “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...” (§5.1.10). Accordingly, Administrative Assessments apply to the Non-Stipulating Parties Production Right.
- b) **Additional Rights to Produce Groundwater.** Administrative Assessments for parties with rights to produce groundwater as specified in the Judgment include:
- **City of Lancaster.** The City can produce up to 500 acre feet of groundwater for reasonable and beneficial uses at its National Soccer Complex. Such production shall only be subject to Administrative Assessment and no other assessments. The City of Lancaster will stop producing groundwater and will use recycled water supplied from District No. 40, when it becomes available, to meet the reasonable and beneficial water uses of the National Soccer Complex (§5.1.7).
 - **Antelope Valley Joint Union High School District.** In addition to its Exhibit 4 Production Right, Antelope Valley Joint Union High School District (AVJUHS) can additionally produce up to 29 AF of groundwater for reasonable and beneficial uses on its athletic fields and other public spaces. When recycled water becomes available to Quartz Hill High School at a price equal to or less than the lowest cost of any of the following: Replacement Obligation, Replacement Water, or other water that is delivered to AVJUHS at Quartz Hill High School, AVJUHS will stop producing the 29 acre feet of groundwater allocated to it and use recycled water as a replacement. AVJUHS retains its production rights and allocation pursuant to Exhibit 4 (§5.1.8). The application of an Administrative Assessment is not specified in the Judgment for this additional right, but it is assumed that the Administrative Assessment would apply to each acre foot of actual production.
 - **Construction of Solar Power Facilities.** Any Party may produce groundwater in excess of its Production Right allocated to it in Exhibit 4 for the purpose of constructing a facility located on land overlying the Basin that will generate, distribute or store solar power through and including December 31, 2016 and shall not be charged a Replacement Water Assessment or incur a Replacement Obligation for such Production in excess of its Production Rights. Any amount of such

production in excess of the Production Right through and including December 31, 2016 shall be reasonable to accomplish such construction but shall not exceed 500 acre-feet per Year for all Parties using such water (§5.1.9). Although the Judgment specifies that the production is not subject to a Replacement Water Assessment, no specification is included for an Administrative Assessment. However, given that it involves production by Exhibit 4 parties in excess of the Production Right, an Administrative Assessment appears applicable.

- **Non-Pumper Class.** “The Non-Pumper Class members claim the right to Produce Groundwater from the Native Safe Yield for reasonable and beneficial uses on their overlying land as provided for in this Judgment...” (§5.1.2). However, paragraph 9.2.2 notes that the entire Native Safe Yield is being applied to reasonable and beneficial uses in the Basin. Members of the Non-Pumper Class do not and have never Produced Groundwater for reasonable beneficial use as of the date of this Judgment (§9.2.2), which modifies their rights to produce groundwater except as provided in this Judgment. Although the information on Non-Pumper Class Rights does not specify an Administrative Assessment, Paragraph 9.2.1 “specifically provides for imposition of a Replacement Water Assessment on Non-Pumper Class members.” (§9.2.1). Given that an Administrative Assessment is imposed on water subject to Replacement Water, it is assumed that an Administrative Assessment applies to actual production by Non-Pumper Class Members, if any.
- **Additional Production by the State of California.** As provided in Paragraph 5.1.5 of the Judgment, the State of California is allowed to produce groundwater in excess of its Production Right under certain conditions. “All production by the State of California shall also be subject to the Administrative Assessment ... except in emergency situations as provided in Paragraph 5.1.5.4.3 below.” (§5.1.5). The emergency situation allows for the Department of Military to produce groundwater “in an amount necessary to protect and promote public health and safety during an event deemed to be an emergency by the Department of Military...” (§5.1.5.4.3). Except in this case, an Administrative Assessment would be applicable to all production in excess of its Production Right (as well as on its Production Right as provided in Section 1.4 a) above).
- **Phelan Pinon Community Services District (Phelan).** Phelan can export groundwater from the Adjudication Area for delivery to its service area outside of the adjudication boundary, subject to the following conditions (§6.4.1.2):
 - pumping does not exceed 1,200 AFY,
 - pumping does not cause Material Injury,
 - Phelan pays a Replacement Water Assessment pursuant to Paragraph 9.2,
 - Phelan pays any other costs deemed necessary to protect Production Rights decreed in the Judgment.

Given that an Administrative Assessment is imposed on water subject to Replacement Water, it is assumed that an Administrative Assessment applies to actual production by Phelan.

- c) **Imported Water Return Flows.** Each acre foot of a Party's right to produce Imported Water Return Flows (§5.2, Rights to Imported Water Return Flows).
- d) **Replacement Water Assessment.** Each acre foot of a Party's Production for which a Replacement Water Assessment has been imposed (§9.2, Replacement Water Assessment).
- e) **Excess Production.** During the Rampdown Period, each acre foot of a Party's Production in excess of the sum of the rights in 1.4.a) or 1.4.b), the right to Produce Imported Water Return Flows and the water subject to the Replacement Water Assessment [(a) through (d) above], excluding Production from Stored Water and/or Carry Over water (§9.1).

During Rampdown, the Administrative Assessment shall be no more than five dollars per acre foot, or as ordered by the Court upon petition of the Watermaster (§9.1).

1.5. Administrative Assessments are Not Levied Against:

- a) **Carry Over Water.** Administrative Assessments on Carry Over Water have already been paid through levy against Production Rights and rights to Imported Water Return Flows.
- b) **Emergency Military Use.** The Department of Military may Produce additional groundwater in an amount necessary to protect and promote public health and safety during an event deemed to be an emergency by the Department of Military pursuant to California Government Code sections 8567 and 8571, and California Military and Veterans Code sections 143 and 146. Such Production shall be free from any assessment, including any Administrative, Balance, or Replacement Water Assessment (§5.1.5.4.3).
- c) **Stored Water.** For Stored Water that originated as Carry Over Water, Administrative Assessments have already been paid through levy against Production Rights. Administrative Assessments are also not levied against other types of Stored Water (e.g., imported, recycled, or other Stored Water not part of the Native Safe Yield).

1.6. Assessment Procedure.

Administrative Assessments shall be levied and collected in accordance with the following procedures and schedules.

Table 1: Administrative Assessment Timetable

Item	Available	Approval or Due
Administrative Budget, Administrative Assessment rate, and Replacement Water Assessment rate for following year	September Board meeting and no later than October 1	November Board meeting and no later than December 1
Fixed Administrative Assessment	January 15	March 1 Due April 1 Delinquent
Variable Administrative Assessment	May 1	July 1 Due August 1 Delinquent

Note: Dates subject to revision if approved by the Watermaster.

- a) **Administrative Budget.** The Watermaster shall make available to all Parties its proposed Administrative Budget, Administrative Assessment rate, and Replacement Water Assessment rate for the following calendar year at the time of its September meeting and no later than October 1. The Watermaster will hold a public hearing to receive comments on the proposed Administrative Budget and Assessment rate and adopt its final Budget and Assessment rate at its November meeting and no later than December 1.
- b) **Fixed Administrative Assessment.** By January 15 of each year the Watermaster shall invoice all Producers with Production Rights identified in Section 1.4 a) above for the Administrative Assessments on these Production Rights. Fixed Administrative Assessments are due on March 1 and will become delinquent on April 1 of each year.
- c) **Variable Administrative Assessment.** By May 1 of each year the Watermaster shall invoice all Producers for use or rights in the previous year as follows:
 - Rights to produce groundwater identified in Section 1.4 b) above
 - Right to Imported Water Return Flows
 - Replacement Water Obligations
 - During Rampdown, a Party's Production in excess of the sum of its Production Right, Imported Water Return Flows, and Replacement Water Assessment, excluding Production from Stored Water and/or Carry Over water
 - Unused Federal Reserved Water Right allocation used by the Non-Overlying Production Rights holders.

These Variable Administrative Assessments are due on July 1 and will become delinquent on August 1 of each year.

- d) **Delinquency.** Assessments become delinquent one month after the date it is due (April 1 for delinquent Fixed Administrative Assessments and August 1 for delinquent Variable Administrative Assessments). Delinquent Assessments shall bear interest at the then current real property tax delinquency rate for the county in which the property of the delinquent Party is located. This interest rate shall apply to any said delinquent assessment from the due date thereof until paid. The delinquent assessment, together with interest thereon, costs of suit, attorney's fees and reasonable costs of collection, may be collected pursuant to (1) motion by the Watermaster giving notice to the delinquent Party only, (2) Order to Show Cause proceeding, or (3) such other lawful proceeding as may be instituted by the Watermaster or the Court. The delinquent assessment shall constitute a lien on the property of the Party as of the same time and in the same manner as does the tax lien securing county property taxes (§18.4.12).
- e) **United States.** The United States shall not be subject to payment of interest absent congressional waiver of immunity for the imposition of such interest. The United States shall not be subject to costs and fees absent congressional waiver of immunity for such costs and fees. The property of the United States shall not be subject to any lien (§18.4.12).
- f) **Delinquency List.** The Watermaster shall annually certify a list of all such unpaid delinquent assessments (§18.4.12). This list will be presented at the September Watermaster Board meeting and no later than October 1. The Watermaster shall include the names of those Parties and the amounts of the liens in its list to the County Assessor's Office in the same manner and at the same time as it does its Administrative Assessments (§18.4.12).
- g) **Accounting.** The Watermaster shall account for receipt of all collections of assessments and shall pay such amounts collected to the Watermaster. The Watermaster shall also have the ability to seek to enjoin Production of those Parties, other than the United States, who do not pay assessments pursuant to the Judgment (§18.4.12).

1.7. Special Billing and Payment Procedures for Assessments on Small Pumper Class Members.

Procedures and billing options for the large number of Small Pumper Class members are being considered to lower administrative billing and accounting costs. These procedures and billing processes will be incorporated when finalized.