

RESOLUTION NO. R-18-05

ADOPTING RULES AND REGULATIONS CONCERNING THE PROCESS AND PROCEDURES FOR NEW PRODUCTION REQUESTS AND REVIEW OF WELL APPLICATIONS FOR NEW OR REPLACEMENT PRODUCTION WELLS

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 new production requests and review of new or replacement production well applications, and that the Watermaster Board directed at its Board meeting on January 24, 2018 that rules and regulations relating to new production requests and review of new or replacement production well applications be drafted and made 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 new production requests and review of new or replacement production well applications were provided by the Watermaster for review during a thirty day public comment period and for consideration and approval at the Watermaster Board’s regular meeting on February 28, 2018; and

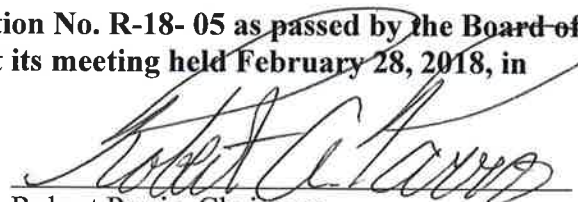
WHEREAS, the Watermaster held the public hearing at its meeting on February 28, 2018 where it received and considered public comment on the draft rules and regulations relating to new production requests and review of new or replacement production well applications and wishes now to adopt those proposed 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, that the Watermaster Board unanimously adopts the rules and regulations concerning new production requests and review of new or replacement production well applications as expressed in the February 15, 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 new production requests and review of new or replacement production well applications pursuant to the terms of the Judgment.

I certify that this is a true copy of Resolution No. R-18- 05 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held February 28, 2018, in Palmdale, California.

Date: 2/28/18

ATTEST: Patricia Rose
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 January 29, 2018, I posted on the Watermaster's website a notice of a public hearing on proposed rules and regulations concerning new production and well applications for new or replacement production wells. 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 February 28, 2018 at 10:00 a.m. as part of the regular meeting of the Antelope Valley Watermaster. On January 29, 2018, I also posted on the Watermaster's website the draft memorandum prepared by Todd Groundwater, the Watermaster Engineer, and dated February 15, 2018. That memorandum (subsequently slightly corrected in a March 2, 2018 memorandum by Todd Groundwater) contained draft rules and regulations concerning new production and well applications for new or replacement production wells. A true and correct copy of the March 2, 2018 memorandum containing the draft rules and regulations is attached hereto as Exhibit B, and was posted on the Watermaster's website on March 5, 2018.

3. On January 29, 2018, 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-18-05 which is the resolution concerning new production and well applications for new or replacement production wells adopted by the Board of Directors of the Antelope Valley Watermaster at its regular Board meeting on February 28, 2018.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 17th day of March, 2018, at Palmdale, California.



Patricia Rose

FINAL EDITS TO:

Procedures for New Production Requests and for Review of Well Applications for New or Replacement Production Wells by the Antelope Valley Watermaster Engineer, February 28, 2018

Based on Comments from the Advisory Committee 02-21-2018

SECTION X –NEW OR REPLACEMENT WELL APPLICATIONS AND NEW PRODUCTION REQUESTS

1.1. Purpose.

New and replacement wells drilled in the Adjudication Area of the Antelope Valley are subject to approval by the Antelope Valley Watermaster. A new well is any well that does not presently exist but is proposed to be constructed. A replacement well is a specific kind of new well that is located within 300 feet of an existing well and owned by the same Party that intends to construct the new well. The following sections describe the procedures to be followed by the Watermaster Engineer for evaluating requests for new and replacement wells and to make recommendations to the Watermaster for approval or denial. These procedures incorporate requirements in the Judgment and support the Watermaster Engineer's duties to provide proper water accounting and tracking of groundwater production.

Procedures for applications for new and replacement wells would involve an initial determination as to whether or not a party has a known right to produce groundwater under the Judgment. For applicants without a known right, the well application may relate to whether the well will be used by an "unknown" member of the Small Pumper Class or for New Production. For completeness, these procedures also include how to address applicants that may be unknown members of the Small Pumper Class or applicants for New Production.

Although these procedures focus primarily on production wells, an approval process for non-production wells is also included. Non-production wells include piezometers, monitoring wells, and cathodic protection wells that will pump only minimal amounts of groundwater associated with well construction and/or groundwater sampling.

Procedures herein are not meant to duplicate or replace well permitting and well abandonment procedures implemented by Kern, Los Angeles, and San Bernardino counties. Both counties are cooperating with the Watermaster; we will obtain final well completion reports and abandonment records to the Watermaster for wells inside the adjudication area, as available.

1.2. Basis.

The Judgment allows Parties to change a point of extraction for any Production Right so long as such change of a point of extraction does not cause Material Injury (§17). A replacement well located within 300 feet of a Party's existing well is not considered a change in point of extraction (§17). Any Party seeking to construct a new well in order to change a point of extraction for any Production Right shall notify the Watermaster of the location of a new point of extraction and the intended place of use of the water produced at least 90 days in advance of drilling any new well (§17.1).

The United States can change its point(s) of extraction for the Federal Reserved Water Right at the sole discretion of the United States to any point or points within the boundaries of Edwards Air Force Base or Plant 42. The point(s) of extraction for the Federal Reserved Water Right may be changed to points outside the boundaries of Edwards Air Force Base or Plant 42, provided such change in a point of

extraction does not cause Material Injury. The United States shall consider information in its possession regarding the effect of Production from the intended new point of extraction on the Basin and on other Producers (§17.2). The Watermaster Engineer has a duty to track locations and amounts of groundwater production and therefore, is requiring the U.S. to submit Change in Point of Extraction forms for record-keeping purposes.

With regard to applications for New Production, the Watermaster shall consider and determine whether to approve applications for New Production after consideration of the recommendation of the Watermaster Engineer (§18.4.9). The process and requirements for New Production applications are described in Section 18.5.13 of the Judgment (§18.5.13.1 through 18.5.13.4). In addition, the Watermaster decision on a New Production application may be subject to Court Review (pursuant to §20.3) (§18.5.13.4).

1.3. Process for Review of Well Applications

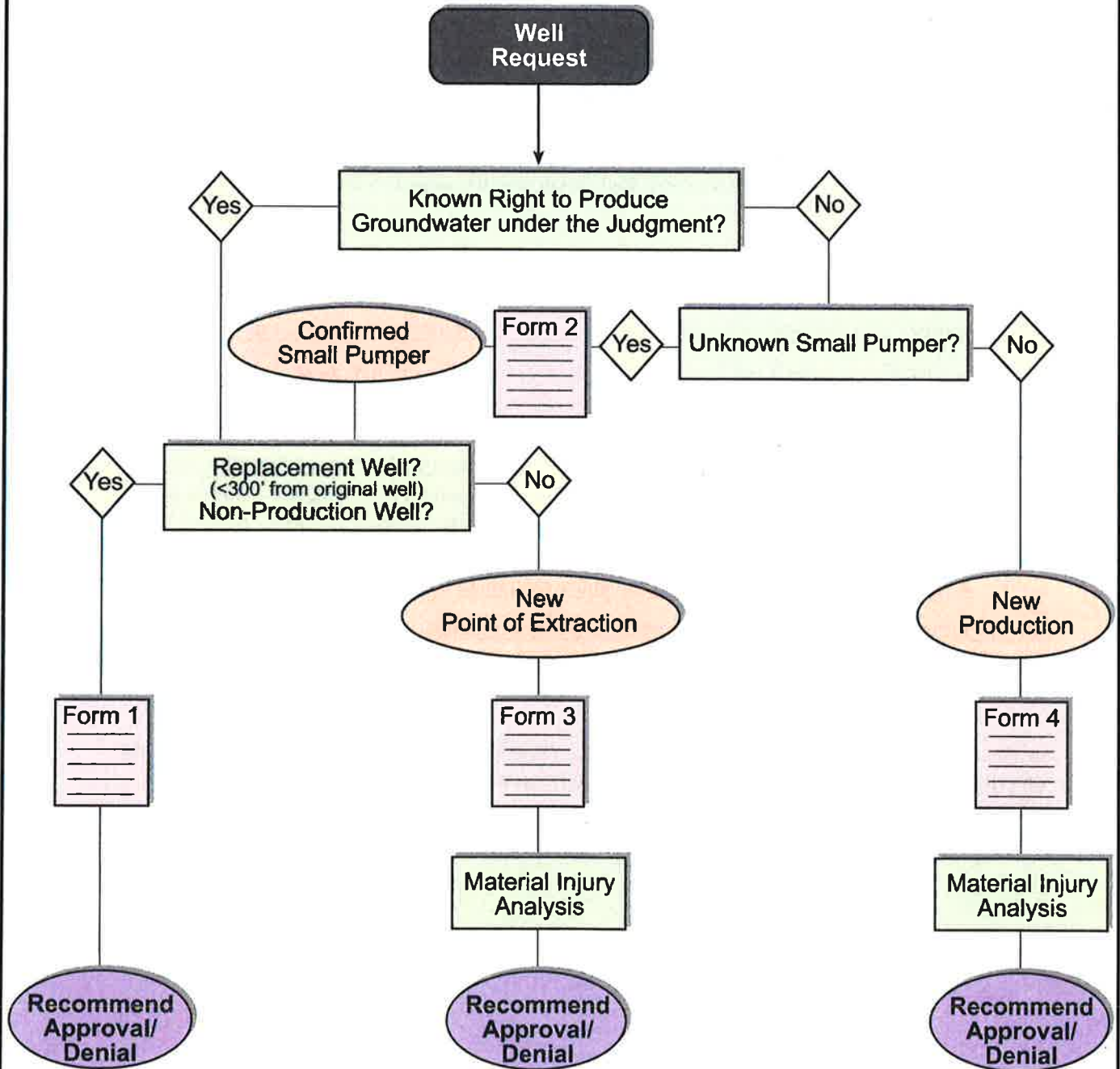
Prior to approval of a well application, the Watermaster Board must make the following findings:

- Applicant has a known right to produce groundwater under the Judgment, or qualifies as an unknown small pumper, or is a non-pumper with no pumping rights but agrees to purchase replacement water.
- Applicant with a right to produce groundwater requests a replacement well (within 300 feet of an existing well) or a new well from a new point of extraction; or applicant is a non-pumper with no pumping rights and requests a well for new production; or applicant requests a non-production well.
- Applicant's well will not cause material injury as defined by the Judgment and these rules.

The Watermaster Board shall adopt the findings upon recommendation of the Watermaster Engineer at a regular or special meeting of the Watermaster Board. The Watermaster shall deny any well application where these findings cannot be made.

In order to allow the Board to make these findings, the Watermaster Engineer will follow a process described in the following sections for review of well approval applications. This process is shown schematically by the flow chart on Figure 1.

**Figure 1: Process for Well Application Review
Watermaster Engineer**



Notes:

- Form 1: Replacement Well Application (for Existing Production Rights)
- Form 2: Small Pumper Qualifying Documentation
- Form 3: New Point of Extraction Application
- Form 4: New Production Application

February 2018

There are four questions associated with the review process:

1. Does the Applicant have a known right to produce groundwater under the Judgment?
2. Does the Applicant qualify as an unknown Small Pumper?
3. Is there be a change in a point of extraction (i.e., request for a new well more than 300 feet from the original well)?
4. Is there a Material Injury associated with any change in point of extraction or new production?

The answers to these questions ultimately lead to a Watermaster Engineer recommendation for approval or denial of the well application based on the findings from this process. The following sections outline the procedures that the well applicants must follow and forms that must be completed for the Watermaster Engineer to recommend that the Watermaster Board make the necessary findings. The Watermaster will consider this recommendation and approve or deny the application. The components of this review process are is summarized below and discussed in more detail in the sections that follow.

Known Right to Produce Groundwater. If the Applicant has a known right to produce groundwater under the Judgment and is requesting a replacement well. Applicant will need to provide the applicable information in Section 1.4 and on Form 1, as described below. This process is illustrated on the left side of **Figure 1**, ending with the subsequent recommendation for approval or denial.

New Point of Extraction. For new wells other than replacement wells, the Applicant will need to provide the applicable information in Section 1.4 and on Form 3, as described below. This is considered a **change in point of extraction** and is illustrated in the central portion of the flow chart on **Figure 1** (New Point of Extraction flow path), ending in subsequent recommendation of approval or denial.

Unknown Small Pumper. The Watermaster Administrative staff or Watermaster Engineer will assist a pumper with the determination if they could potentially be an unknown Small Pumper. If so, an unknown Small Pumper can demonstrate their eligibility as a Small Pumper Class Member under the Judgment by providing the information in Section 1.5, including information for Form 2, as described below (see **Figure 1**). A confirmed Small Pumpers can then request a replacement well by providing the applicable information in Section 1.4, including Form 1, as described below (represented as the flow path ending in approval/denial of Form 1 on **Figure 1**). For new wells that are not replacement wells, the Applicant will need to provide change in point of extraction information in Section 1.5 below (**New Point of Extraction** represented as the Form 3 flow path on **Figure 1**).

New Production. If the applicant has no production rights, including being ineligible for the Small Pumper Class, they will also need to submit a New Production Application. The Applicant will also need to provide the information in Section 1.7, including completion of Form 4, as described below. This is illustrated on the right side of **Figure 1** by the New Production/Form 4 flow path.

Material Injury. A Material Injury review is required if there is a **new point of extraction** or **new production** (Forms 3 and 4 on **Figure 1**). If there is no evidence of Material Injury, the Watermaster

Engineer will recommend approval by the Watermaster; if there is evidence for a potential Material Injury that cannot be mitigated, the Watermaster Engineer will recommend denial by the Watermaster.

Non-Production Wells. To apply for a new non-production well, including piezometers, monitoring wells, and cathodic protection wells, the applicant can also use Form 1. Installation of non-production wells will not be subject to a Material Injury analysis as long as there is a reasonable demonstration that only minimal amounts of groundwater will be used and the use is associated with well construction or groundwater sampling.

1.4. Requests for New or Replacement Wells from Applicants with Known Rights to Produce Groundwater.

Parties with a right to produce groundwater under the Judgment include the State of California; the U.S. Federal Government; parties listed on Exhibit 3 (Non-Overlying Producers), Exhibit 4 (Overlying Producers), and Exhibit C (Small Pumper Class); the Non-Stipulating Parties; and other parties identified in the Judgment as having a right to produce groundwater (e.g., Phelan Pinon Hills CSD, City of Lancaster). This section of the R&Rs describes a process whereby those with known rights to produce groundwater can request new or replacement wells.

The Judgment allows Parties to change a point of extraction for any Production Right so long as such change of a point of extraction does not cause Material Injury (§17). In addition, a replacement well located within 300 feet of a Party's existing well is not considered a change in point of extraction (§17). Any Party seeking to construct a new well in order to add a new point of extraction for any Production Right shall notify the Watermaster of the location of a new point of extraction and the intended place of use of the water produced at least 90 days in advance of drilling any new well (§17.1).

The United States can change its point(s) of extraction for the Federal Reserved Water Right at the sole discretion of the United States to any point or points within the boundaries of Edwards Air Force Base or Plant 42 and not be subject to Material Injury review. The point(s) of extraction for the Federal Reserved Water Right may be changed to points outside the boundaries of Edwards Air Force Base or Plant 42, provided such change in a point of extraction does not cause Material Injury. The United States shall consider information in its possession regarding the effect of Production from an intended new point of extraction on the Basin and on other Producers (§17.2).

Because the change in point of extraction could potentially result in a Material Injury analysis, the U.S. Federal Government will also be subject to notification requirements in §17.1 and submittal of a well application for all new or replacement wells associated with these procedures. The Watermaster Engineer acknowledges that the U.S. can change a point of extraction within its boundaries at its sole discretion without a Material Injury analysis; nonetheless, the Watermaster Engineer has a duty to track locations and amounts of groundwater production and therefore, is requiring the U.S. to submit Change in Point of Extraction forms for record-keeping purposes.

With regard to Small Pumper Class members, the Judgment further states that their pumping rights are not transferable separately from the parcel of property on which the water is pumped unless the Small

Pumper Class member received Court approval to move their water right to another parcel they own. If a Small Pumper Class member parcel is sold, absent a written contract stating otherwise and subject to the provisions of the Judgment, the water right for that Small Pumper Class member parcel shall transfer to the new owners of that 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. (§5.1.3.3).

Applicants with known production rights requesting to install a replacement well within 300 feet of an existing well or a new non-production well must provide the following information.

Form 1 Information (Replacement Well Application for Existing Production Rights or New Non-Production Well)

- Property owner's name, mailing address, parcel APN number and property address (if different than mailing address), email and phone number.
- Location and description of existing and new/replacement wells: use (domestic, agricultural, etc.), construction date, diameter, casing materials, depth, surface seal material and depth, screened interval, pumping capacity (gallons per minute), annual production (acre-foot/year), latitude and longitude (or X,Y coordinates), ground surface elevation, depth to water, status (active, inactive), site plan showing old-existing and new/replacement well locations, and a copy of the DWR Well Completion Report, if available.
- Abandonment plans for existing well, if applicable.
- Proposed new/replacement well construction, driller, driller address, email and phone number/contact information.
- Estimate of production capacity (gpm) and future annual production from the new/replacement well.
- Well locations and distance between new-replacement well and the old-existing well.
- If a new well is proposed in order to stop sharing an existing well (also see requirements described in Section 1.6 below):
 - Estimate of annual production from the shared well for the 1946 to 2015-time period by year (if not provided above).
 - Estimate of future annual production from new-replacement well(s) and from the previously shared well (not to exceed 3 AFY each).
 - Well locations and distance between new-replacement well(s) and shared well.
- Agreement that the well will be metered (unless Small Pumper Class²) in accordance with the metering requirements in Section XX of these R&Rs.

² The Watermaster is tasked with monitoring all the Safe Yield components (18.5.1). As per Section 5.1.3.2 of the Judgment "The primary means for monitoring the Small Pumper Class Members' Groundwater use under the Physical Solution will be based on physical inspection by the Watermaster, including the use of aerial photographs and satellite imagery. All Small Pumper Class Members agree to permit the Watermaster to subpoena the electrical meter records associated with their Groundwater wells on an annual basis. Should the Watermaster develop a reasonable belief that a Small Pumper Class Member household is using in excess of 3

- Any other information requested by the Watermaster Engineer that is needed to evaluate the well application.
- Payment of a well application fee as set by the Watermaster to recover costs of review.

Applicants with known production rights requesting to install a new well at a new point of extraction must provide the following information.

Form 3 Information (New Point of Extraction Application)

- Property owner’s name, mailing address, parcel APN number where the new point of extraction will be located and property address (if different than mailing address), email and phone number.
- Location and description of each existing well on the well owner’s property: use (domestic, agricultural, etc.), construction date, diameter, casing material, depth, screened interval, pumping capacity (gallons per minute), annual production (acre-feet/year), latitude and longitude, ground surface elevation, depth to water, status (active, inactive), site plan showing old and new well locations, and a copy of the DWR Well Completion Report, if available.
- Proposed new well construction, driller, driller address, email and phone number.
- Estimate of production capacity and future annual production from the new well.
- Well locations and distance between the new and existing wells.
- If a new well is proposed in order to stop sharing an existing well (Also see requirements described in Section 1.6 below):
 - Estimate of annual production from the shared well for the 1946 to 2015-time period by year (if not provided above).
 - Estimate of future annual production from new well(s) and from the previously shared well (not to exceed 3 AFY each).
 - Well locations and distance between new well(s) and shared well.
- A written statement, ~~signed by a California licensed and registered professional civil engineer with expertise in groundwater hydrology, determining that~~ describing why the nNew Production point of extraction will not cause Material Injury (¶18.5.13.1.10, additional expertise added).
- Agreement that the well will be metered (unless Small Pumper Class) in accordance with the metering requirements in Section XX of these R&Rs.
- Any other information requested by the Watermaster Engineer that is needed to evaluate the well application.
- Payment of a well application fee as set by the Watermaster to recover costs of review.

1.5. Requests for New or Replacement Wells from Unknown Small Pumpers.

acre-feet per Year, the Watermaster may cause to be installed a meter on such Small Pumper Class Member’s well at the Small Pumper Class Member’s expense.”