



April 12, 2018

DRAFT MEMORANDUM

To: Robert Parris, Chair
Antelope Valley Watermaster Board of Directors

Dennis LaMoreaux, Chair
Antelope Valley Watermaster Advisory Committee

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

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

Re: **Draft Carry Over Water Section for the Rules and Regulations**

The proposed process and procedures for Carry Over Water in compliance with the Final Judgment are presented on the following pages. This draft text is provided for final comments, edits, and subsequent inclusion in the Antelope Valley Watermaster Rules and Regulations (R&Rs). Previous drafts of this text have been reviewed by the Advisory Committee and the Watermaster Board; comments and additional edits have been incorporated into this draft memorandum. Specifically, the text has been re-organized for consistency with formats used in other sections of the Rules and Regulations.

Pending legal review, a 30-day comment period, and final edits, the Board will hold a public hearing to consider approval of the text for use in the R&Rs. The text will then be presented to the Court for approval.

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 Carry Over Water eligibility. Paragraphs from the Judgment (¶) are referenced where applicable.

SECTION X – CARRY OVER WATER

1.1. Purpose

Carry Over Water is defined as “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). The types of rights that can be retained as Carry Over Water, as well as the Parties eligible for Carry Over Water, are described in the following sections.

1.2. Sources of Carry Over Water

The Judgment identifies two types of rights that can be converted to Carry Over Water – unused portions of a Party’s Production Right or the unused Right to Imported Water Return Flows.

The Judgment defines Production Right as follows: “The amount of the 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, emphasis added). Note that *Production Right* is explicitly tied to the allocation of Native Safe Yield, which is determined to be 82,300 AFY (¶4.1). The rights to produce groundwater that add up to this Native Safe Yield¹ are the only rights that are a *Production Right*, by definition. Collectively, these definitions indicate that parties without a Production Right as determined by the Judgment, would not be eligible for Carry Over Water.

The Judgment defines Imported Water Return Flows as follows: “Imported Water that net augments the Basin Groundwater supply after use.” (¶3.5.16). The Judgment further notes that the Imported Water Return Flows are not part of the Native Safe Yield (¶5.2.1). Currently, Imported Water Return Flows from Agricultural Imported Water use are 34% and Imported Water Return Flows from Municipal and Industrial Imported Water use are 39% of the amount of Imported Water used. (¶5.2.1). Please refer to Section X of the Rules and Regulations for details on the rights to Imported Water Return Flows.

1.3. Producers Eligible for Carry Over Water

The Judgment specifies that only three Producer classes are eligible for Carry Over Water: Overlying Producers (¶5.1.1 – Exhibit 4 of the Judgment), State of California Water Right (¶5.1.5), and Non-Overlying Producers (¶5.1.6 – Exhibit 3 of the Judgment).

1.4. Rights and Conditions Eligible for Carry Over Water

Section 15 of the Judgment provides three conditions eligible for Carry Over Water, including *In Lieu Production Right Carry Over* (¶15.1), *Imported Water Return Flow Carry Over* (¶15.2), and

¹ Production Rights under the Judgment are: Overlying Production Rights (58,322 AFY), Non-Overlying Production Rights (12,345 AFY), Federal Reserved Water Right (7,600 AFY), Small Pumper Class Rights (3,806 AFY), and the California Production Right (207 AFY), the sum of which was rounded to 82,300 AFY.

Production Right Carry Over (¶15.3). Relevant text from Section 15 of the Judgment is summarized below².

1.4.1 In Lieu Production Right Carry Over (¶15.1)

“Any Producer identified in Paragraph 5.1.1³, 5.1.5⁴, and 5.1.6⁵ can utilize In Lieu Production by purchasing imported Water and foregoing Production of a corresponding amount of the annual Production of Native Safe Yield provided for in paragraph 5 herein. In Lieu Production must result in a net reduction of annual Production from the Native Safe Yield in order to be entitled to the corresponding Carry Over benefits under this paragraph. In Lieu Production does not make additional water from the Native Safe Yield available to any other Producer.”

Additional conditions applicable to this section and other Carry Over Water are provided in Section 1.4.4.

1.4.2 Imported Water Return Flow Carry Over (¶15.2)

“If a Producer identified in paragraph 5.1.1, 5.1.5, and 5.1.6 fails to produce its full amount of Imported Water Return Flows in the Year following the Year in which the Imported Water was brought into the Basin, the Producer may Carry Over its right to the unproduced portion of its Imported Water Return Flows for up to ten (10) years.”

Additional conditions applicable to this section and other Carry Over Water are provided in Section 1.4.4.

1.4.3 Production Right Carry Over (¶15.3)

“If a Producer identified in paragraph 5.1.1, 5.1.5, and 5.1.6 fails to Produce its full Production Right in any Year, the Producer may Carry Over its right to the unproduced portion of its Production Right for up to ten (10) Years.”

Additional conditions applicable to this section and other Carry Over Water are provided in Section 1.4.4.

1.4.4 Conditions Applying to All Carry Over Water (¶15.1, ¶15.2, and ¶15.3)

For each of the three types of Carry Over Water summarized above, the following conditions apply:

- A Producer may Carry Over its right to the unproduced portion of its Production Right or Imported Water Return Flows for up to ten (10) Years.
- A Producer must Produce its full current Year’s Production Right before any Carry Over Water, or any other water, is Produced. Carry Over Water will be produced on a first-in, first-out basis.

² Please refer to Section 15 of the Judgment for full text on Carry Over.

³ Parties listed in Exhibit 4 of the Final Judgment.

⁴ State of California.

⁵ Parties listed in Exhibit 3.

- At the end of the Carry Over period, the Producer may enter into a Storage Agreement with the Watermaster to store unproduced portions, subject to terms and conditions in the Watermaster’s discretion.
- Any such Storage Agreements shall expressly preclude operations, including the rate and amount of extraction, which will cause a Material Injury to another Producer or party, any subarea or the Basin.
- If not converted to a Storage Agreement, Carry Over Water not Produced by the end of the tenth Year reverts to the benefit of the Basin and the Producer no longer has a right to the Carry Over Water.
- The Producer may transfer any Carry Over Water or Carry Over Water stored pursuant to a Storage Agreement.

Please see Section X on Transfers and Section X on Storage Agreements in the Rules and Regulations for more information.

1.5. Other Rights and Producer Classes Not Eligible for Carry Over Water

As described in Sections 1.3 and 1.4 above, the Judgment (¶15) specifies the three Producers classes and conditions eligible for those Producers to convert unused Production Rights or unused Rights to Imported Water Return Flows to Carry Over Water. The detailed Producers and conditions described in the Judgment under which Carry Over water applies indicate that other Producer classes of Production Rights, including the Small Pumper Class and the Federal Water Right, are not eligible for Carry Over. If the Federal Water right is not eligible for Carry Over, then it follows that any unused portion of that right assigned to other parties is also not eligible for Carry Over.

The Pre-Rampdown Production amounts over the Production Right are not eligible for Carry Over water. That amount does not qualify for Carry Over Water because the portion of the Pre-Rampdown Production above the Production Right is not part of the Native Safe Yield or the Supplemental Safe Yield of the Basin.

In addition, the Non-Stipulating Parties are specifically excluded from Carry Over Water, even though the Judgment indicates that these producers have a Production Right⁶ (¶15.1.10). Collectively, the information in the Judgment – including the definition of Production Right and the exclusion of other Parties in Section 15 – also indicates that Producers without a Production Right or a Right to Imported Water Return Flows are not eligible for Carry Over Water, unless obtained through a transfer⁷.

⁶ According to information provided by attorneys for Clan Keith/Leisure Lake, the Supporting Landowner Parties are included in the Non-Stipulating Parties, with a Production Right described in the Judgment (¶15.1.10). According to Paragraph 5.1.10, the Non-Stipulating Parties “shall not be entitled to benefits provided by Stipulation, including but not limited to Carry Over pursuant to Paragraph 15...”

⁷ All transfers are subject to hydrologic review by the Watermaster Engineer (¶16.1). Please see Section X of the Rules and Regulations for specific information on Transfers.

Using the information above as criteria, a partial list of those Parties not eligible for Carry Over Water include:

- City of Lancaster
- Antelope Valley Joint Union High School District (regarding the right to produce up to 29 AFY over its Exhibit 4 Production Right)
- Phelan Pinon Hills CSD
- Non-Stipulating Parties (referred to as the Supporting Landowner Parties in the Statement of Decision, §VII, *a* through *h*)
- Federal Reserved Right (including unused rights assigned to others)
- Small Pumpers Class
- Members of the Non-Pumper Class.