

# EXHIBIT 3

**Antelope Valley Watermaster Board**  
**Regular Meeting Agenda**  
**Wednesday, October 25, 2017 – 10:00 a.m.**  
**Location: Antelope Valley – East Kern Water Agency**  
**6500 West Avenue N, Palmdale, CA 93551**  
**Teleconference: 1 (646) 749-3112 Access Code: 415-379-189**

**BOARD OF DIRECTORS**

Robert Parris, AVEK Water Agency – Chairperson  
Dennis Atkinson, Landowners – Vice Chairperson  
Adam Arika, Los Angeles County Waterworks District 40  
John Calandri, Landowners  
Leo Thibault, Public Water Suppliers

Posted: 10/13/17 @ 1:00pm By: <u>Patricia Rose</u> Patricia Rose Interim Secretary
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**WATERMASTER ENGINEER**

Phyllis Stanin, Todd Groundwater

*Note: To comply with the Americans with disabilities Act, to participate in any Watermaster meeting please contact Patti Rose at 661-943-3201 at least 48 hours prior to a Watermaster meeting to inform us of your needs and to determine if accommodation is feasible.*

- 1) **Call to Order**
- 2) **Roll Call**
- 3) **Adoption of Agenda**
- 4) **Public comments for non-agenda items.** (This portion of the agenda allows an individual the opportunity to address the Board on any item regarding Watermaster business that is NOT ON THE AGENDA. Without acting or entering a dialogue with the public, Board members may ask clarifying questions about topics posed by the public. Your matter may be referred to the administrator and/or advisory committee.)
- 5) **Consent Agenda**
  - A. Payment of the bills through October 13, 2017
  - B. Approval of the minutes of the special meeting held September 18, 2017
  - C. Financial Report for August 2017 and September 2017
- 6) **Advisory Committee Report**
- 7) **Engineer's Report – Phyllis Stanin**
  - A. Status Update – Issue Papers
    - a. Draft Administrative Assessment Section of Rules and Regulations
    - b. Pre-Rampdown Production for Non-Overlying Producers and Other Producers
    - c. Application of Carry Over Water
  - B. Future Items for Discussion
    - a. Process for implementing metering requirements
    - b. New Well Applications by Parties outside of the Judgement
    - c. Adjudication boundaries
    - d. Timing of annual Report and Monitoring Requirements

**8) Watermaster Attorney Recruitment – Interviews**

**10:30 a.m. Jennifer Spaletta**

**11:30 a.m. Craig Parton**

**9) Action Items**

A. Discussion and possible action on the selection of the Watermaster Attorney.

a. Advisory Committee Report

B. Discussion and possible action on providing staff direction to draft a Professional Service Agreement (PSA) with the selected Watermaster Attorney for future Board approval.

**10) Staff Report's**

**11) Board Members Request for Future Agenda Items**

**12) Adjournment**

Regular Meeting  
October 25, 2017

**Pre-Rampdown Production For  
Non-Overlying Producers and Other Producers**



October 18, 2017

## REVISED DRAFT ISSUE PAPER

**To:** Dennis LaMoreaux, Chair  
Antelope Valley Watermaster Advisory Committee

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

**Re:** Pre-Rampdown Production for Non-Overlying Producers and Other Producers

The Judgment does not specify Pre-Rampdown Production for the Non-Overlying Producers (Exhibit 3 of the Judgment) or for the Federal, State, and City of Lancaster Producers, although such production totals have been defined for Overlying Producers (Exhibit 4 of the Judgment). In addition, it does not define Pre-Rampdown Production for other Producers in the Judgment, such as the Non-Stipulating Parties (referred to as the Supporting Landowner Parties in Paragraph VII, a through h, Statement of Decision). The reason(s) that Pre-Rampdown Production for Producers other than the Overlying Producers is absent from the Judgment and has not been researched independently by the Watermaster Engineer; the application of previously-undefined Pre-Rampdown Production to the Judgment will require a legal determination.

A group of Public Water Suppliers<sup>1</sup> has proposed a methodology for developing Pre-Rampdown Production for the Exhibit 3 Producers based on average production for 2011 and 2012, as submitted to the Court during Phase IV of the trial. This methodology was apparently used to define Pre-Rampdown Production for about half of the Overlying Producers in Exhibit 4 of the Judgment.

The purpose of this Issue Paper is to provide information to illustrate how this methodology might be applied to Exhibit 3 Producers or other parties that do not have a defined Pre-Rampdown Production number in the Judgment, if determined to be appropriate. This Issue Paper is not a recommendation for application of the methodology; further, it does not determine that Pre-Rampdown Production in excess of the Production Right is applicable to these parties, recognizing that this requires a legal determination. Rather, the information is provided to facilitate discussion by the Advisory Committee and determination by the Watermaster Board regarding potential assignment of Pre-Rampdown Production for these

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<sup>1</sup> Referred to as the Public Water Suppliers Steering Committee.

Producers. Relevant portions of the Judgment and production data related to this methodology are summarized below.

## RELEVANT PORTIONS OF THE JUDGMENT

Pre-Rampdown Production is defined as *“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).

Production Right is defined 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...”* (§3.5.32).

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 Judgment describes the rampdown period and process in Paragraph 8.3 as follows:

*...During Years three through seven of the Rampdown Period, the amount that each Party may Produce from the Native Safe Yield will be progressively reduced, as necessary, in equal annual increments, from its Pre-Rampdown Production to its Production Right... (§8.3).*

These definitions may indicate that production reductions during the Rampdown Period apply only to parties that are allocated a portion of the Native Safe Yield<sup>2</sup>, which would include the Producers on Exhibits 3 and 4, as well as State Production Rights. Federal rights are not subject to Rampdown (see below). It is assumed that members of the Small Pumper Class are also not subject to a Pre-Rampdown production amount other than their Production Right, given the small amount of Production Right, the large numbers of Producers, and the details provided in the Judgment regarding their Production Rights (§5.1.3).

Pre-Rampdown Production for each of the Overlying Producers is quantified on Exhibit 4. However, Exhibit 3 does not contain similar information on Pre-Rampdown Production for the Non-Overlying Producers. The Judgment also does not define the Federal or State Pre-Rampdown Production but does state that *“The Federal Reserved Water Right to Produce 7,600 acre-feet per Year is not subject to Rampdown or any reduction including Pro-Rata Reduction due to Overdraft”* (§5.1.4).

For completeness, available information is also summarized herein on other Producers with rights to produce groundwater (but without a Production Right), including the City of Lancaster. For example, the City of Lancaster can produce up to 500 AFY for reasonable and

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<sup>2</sup> Producers allocated a portion of the Native Safe Yield include Overlying Producers (Exhibit 4), Non-Overlying Producers (Exhibit 3), California State Production Right, Federal Production Right, and Small Pumper Class. In addition, the Non-Stipulating parties are also included as having a Production Right.

beneficial uses at its National Soccer Complex until recycled water becomes available (§5.1.7). Consistent with the purpose of this Issue Paper, no recommendation is included as to whether a Pre-Rampdown Production is applicable to these other Producers; again, a legal determination will be required.

Finally, the Statement of Decision identifies eight parties with a right to produce groundwater, which were brought into the Judgment after the Physical Solution (Exhibit A) had been finalized (see Paragraph VII, *a* through *h*, Statement of Decision). Pre-Rampdown Production was not addressed in the Statement of Decision, but the parties were defined as Non-Stipulating Parties, which have a Production Right linked to the Native Safe Yield (§5.1.10).

### **METHODOLOGY FOR ESTABLISHING PRE-RAMPDOWN PRODUCTION FOR THE NON-OVERLYING PRODUCERS**

A group of the Public Water Suppliers has recommended that Pre-Rampdown Production for those Parties listed on Exhibit 3 be defined as the average of their Production in the years 2011 and 2012, as submitted to the Court during Phase IV of the trial (filed July 19, 2013<sup>3</sup>). That document is attached to this memorandum for reference as **Attachment 1**. This methodology was used to define the Pre-Rampdown Production amounts for 47 of the 104 Overlying Producers in Exhibit 4 of the Judgment. The Watermaster Engineer has not researched reasons for applying or not applying the methodology to any particular Exhibit 4 Producer, as this involves a legal determination.

**Table 1** below contains the 2011/2012 average production using production data listed in the July 19, 2013 filing for the Non-Overlying Producers in Exhibit 3. For reference and context, **Table 1** also includes the Production Right and 2016 Production. As suggested by the method, the 2011/2012 average would be used for the Pre-Rampdown Production Right. During Year 3 of the Rampdown Period (2018), this amount would be reduced in equal annual increments in years 3 through 7 of the Rampdown Period to reach the final Production Right.

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<sup>3</sup> Amended Statement of Partial Decision for Phase IV Trial with Party Name Corrections, Antelope Valley Groundwater Cases, Superior Court of the State of California County of Los Angeles – Central District, July 19, 2013.

**Table 1: Non-Overlying Producers 2011/2012 Average Production and Production Rights**

<b>Producer (Exhibit 3 of the Judgment)</b>	<b>Average 2011 and 2012 Production (AF)</b>	<b>Production Rights (AF)</b>	<b>2016 Total Groundwater Production (AF)</b>
Boron Community Services District	230.50	50.00	193.74
California Water Service Company	631.50	343.14	358.10
Desert Lake Community Services District	42.75	73.53	0.00
Littlerock Creek Irrigation District	1,420.19	796.58	1,327.10
Los Angeles County Waterworks District No. 40, Antelope Valley	18,601.12	6,789.26	16,001.90
North Edwards Water District	102.92	49.02	75.57
Palm Ranch Irrigation District	1,230.50	465.69	1,198.00
Palmdale Water District	7,283.76	2,769.63	8,473.40
Quartz Hill Water District	1,479.35	563.73	1,793.60
Rosamond Community Services District	2,990.78	404.42	2,300.00
West Valley County Water District	Not listed in 7/19/13 filing	40.00	129.38

For Desert Lake CSD, the 2011 and 2012 average production amount (42.75 AF-yellow highlighted value in **Table 1**) is less than its Production Right and would not be applicable as a Pre-Rampdown Production Right; as such, its Production Right (73.53 AF) could be used for its Pre-Rampdown Production. Average 2011 and 2012 production for West Valley County Water District was not listed in the Phase IV July 19, 2013 Court filing; accordingly, its Production Right (40 AF – see **Table 1**) could be used for its Pre-Rampdown Production, similar to Desert Lake CSD.

**Table 2** lists the 2011/2012 average production for the Federal, State, and City of Lancaster Producers as contained in the July 19, 2013 filing. The table also provides each Production Right and 2016 Production, when available, for reference. The Federal water right is included in **Table 2** for completeness, but is not subject to Rampdown (§5.1.4 in the Judgment).



**Table 2: Federal<sup>4</sup>, State, and City of Lancaster Production Rights and 2016 Production**

Federal, State and City of Lancaster Rights	Average 2011 and 2012 Production (AF)	Production Rights or Rights to Produce Groundwater	2016 Total Groundwater Production (AF)
Federal Reserved Water Right	Not subject to Rampdown	7,600.00	1,094.01
<b>State of California (207 AF total) from:</b>			
Department of Water Resources	54.05	104.00	Not Reported
Department of Parks and Recreation	1.44	9.00	Not Reported
Department of Transportation	15.56	47.00	Not Reported
State Lands Commission	0.00	3.00	Not Reported
Department of Corrections and Rehabilitation	0.00	3.00	Not Reported
50th District Agricultural Association	0.00	32.00	Not Reported
Department of Veteran Affairs	0.00	3.00	Not Reported
Highway Patrol	0.00	3.00	Not Reported
Department of Military	0.00	3.00	Not Reported
<b>City of Lancaster</b>	<b>506.63</b>	<b>500.00</b>	<b>558.00</b>

The average 2011/2012 production totals for the various State Departments (yellow highlighted values in Table 2) are less than the corresponding Production Rights. Therefore, the respective Department Production Right could be designated as the Pre-Rampdown Production. For the City of Lancaster, the 2011/2012 average production could be used as its Pre-Rampdown Production, consistent with the methodology for parties in Table 1, if Rampdown applies to the City of Lancaster production.

In summary, Pre-Rampdown Production could be established for Producers in the Judgment, if applicable to Rampdown reductions, using the following criteria:

- 1. Average 2011/2012 Production is greater than the Production Right.** The average would be used as the Pre-Rampdown Production amount. From 2018 through 2022, the Pre-Rampdown Production would be reduced in equal increments each year to reach the Production Right.

<sup>4</sup> 2016 production based on final data received 8-10-2017.

2. **Average 2011/2012 is less than or equal to the Production Right.** Pre-Rampdown Production is defined as the Production Right and held constant during the rampdown period (2016-2022).

### NON-STIPULATING PARTIES

Additional Production Rights are assigned to the Non-Stipulating Parties (referred to as the Supporting Landowner Parties in the Statement of Decision, §VII, *a* through *h*). These parties are listed in **Table 3** below, along with each respective Production Right.

**Table 3: Non-Stipulating Parties and Production Rights**

Non-Stipulating Parties	Production Right (AFY)
Desert Breeze MHP, LLC	18.1
Milana VII, LLC dba Rosamond Mobile Home Park	21.7
Reesdale Mutual Water Company	23
Juanita Eyherabide, Eyherabide Land Co., LLC and Eyherabide Sheep Company	12
Clan Keith Real Estate Investments, LLC dba Leisure Lake Mobile Estates	64
White Fence Farms Mutual Water Company No. 3	4
LV Ritter Ranch, LLC	0
Robar Enterprises, Inc., HI-Grade Materials, Co., and CJR, a General Partnership	200

These Parties were determined to be Non-Stipulating Parties in a Trial Stipulation<sup>5</sup>, dated September 28, 2015. These Non-Stipulating Parties were not included in Phase IV of the trial (filed July 19, 2013) and, as such, average production for 2011 and 2012 is not available in that document (**Attachment 1**). In addition, 2016 production for these parties was not reported. However, these production amounts were apparently provided in other Trial Stipulations and could be used for the purposes of Pre-Rampdown Production totals, if warranted. As with other Pre-Rampdown Production totals discussed in this Issue Paper, the applicability of a Pre-Rampdown Production other than the Production Right and the applicable amounts will require a legal determination.

**ATTACHMENT 1:** Amended Statement of Partial Decision for Phase IV Trial with Party Name Corrections, July 19, 2013.

<sup>5</sup> Trial Stipulation for Admission of Evidence by Non-Stipulating Parties and Waiver of Procedural and Legal Objections to Claims by Stipulating Parties Pursuant to Paragraph 5.1.10 of the [Proposed] Judgment and Physical Solution, September 28, 2015.

Regular Meeting  
October 25, 2017

## Application for Carry Over Water



October 18, 2017

## REVISED DRAFT ISSUE PAPER

**To:** Dennis LaMoreaux, Chair  
Antelope Valley Watermaster Advisory Committee

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

**Re:** Application of Carry Over Water

This Draft Issue Paper discusses the application of Carry Over Water as defined in the Judgment. The primary purpose of the Issue Paper is to provide information on the details of Carry Over Water, as interpreted from the Judgment, to ensure proper water accounting by the Watermaster Engineer. Once the proper determination is clear, the information in the Issue Paper will be revised and expanded for inclusion 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, for the purposes of this Issue Paper, 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.

This Draft Issue Paper is being presented to the Advisory Committee to facilitate discussion on the Carry Over Water issues. After considering comments from the Advisory Committee and others, a revised Issue Paper will be presented to the Watermaster Board for additional comments and direction.

We recognize that a legal determination may be necessary for some of the details provided herein. Our goal is to provide a starting point for comments and further analysis by others to achieve a collective understanding of how specific portions of the Judgment will be implemented.

## 1. KEY DEFINITIONS

The Judgment defines Carry Over Water 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). This definition suggests that there are only two sources of Carry Over Water – the Production Right and 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 Yield<sup>1</sup> 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.

Further, these definitions indicate that Carry Over would not apply to the Pre-Rampdown Production amount, if higher than the Production Right. The Judgment also limits the number of parties eligible for Carry Over Water to three Producer classes with Production Rights as explained below. Specifics on conditions and producers eligible for Carry Over are discussed in the following sections.

## 2. CONDITIONS AND PRODUCERS ELIGIBLE FOR CARRY OVER AS SPECIFIED IN THE JUDGMENT

Section 15 of the Judgment provides three eligible conditions under which Carry Over Water is entitled, including *In Lieu Production Right Carry Over* (¶15.1), *Imported Water Return Flow Carry Over* (¶15.2), and *Production Right Carry Over* (¶15.3). Further, 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). Relevant text from Section 15 of the Judgment is summarized below<sup>2</sup>.

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<sup>1</sup> 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.

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

**2-1. In Lieu Production Right Carry Over (¶15.1)**

“Any Producer identified in Paragraph 5.1.1, 5.1.5, and 5.1.6 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 type and other types of Carry Over Water are provided in Section 2-4 of this Issue Paper.

**2-2. 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 type and other types of Carry Over Water are provided in Section 2-4 of this Issue Paper.

**2-3. Production Right Carry Over (¶15.1)**

“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 type and other types of Carry Over Water are provided in Section 2-4 of this Issue Paper.

**2-4. 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:

- The 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.
- 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.

Additional details regarding transferred Carry Over Water will be developed for the Transfer section of the Rules and Regulations. However, it is assumed that the 10-year time frame associated with the Carry Over Water begins when the water is first designated as Carry Over Water and does not change due to a transfer. For example, if a Carry Over account is transferred in Year 9, it remains Year-9 Carry Over in the recipient's account.

The requirement to use Carry Over Water on a first-in, first-out basis will also apply to the transfer. Accordingly, the recipient of transferred Carry Over Water will need to compare the initial time that the transferred water was first designated as Carry Over Water with the initial time of other Carry Over designations that the recipient may already have in its account.

### **3. PARTIES NOT ELIGIBLE FOR CARRY OVER WATER**

As discussed above, Section 15 specifies the three classes of Production Rights that are eligible for the three conditions of Carry Over Water in the Judgment. This indicates that other classes of Production Rights including the Small Pumper Class and the Federal Water Right are not eligible for Carry Over. It follows that if the Federal Water right is not eligible for Carry Over, then any unused portion of that right assigned to other parties is also not eligible for Carry Over.

In addition, the Non-Stipulating Parties are specifically excluded from Carry Over Water, even though the Judgment indicates that these producers have a Production Right<sup>3</sup> (§15.1.10). Collectively, the information in the Judgment – including the definition of Production Right and the exclusion of others in Section 15 – also indicates that Producers without a Production Right, but with a right to produce groundwater under

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<sup>3</sup> 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...”

the Judgment, are not eligible for Carry Over Water, unless obtained through a transfer<sup>4</sup>.

Using the information above as criteria, a partial list of those parties not eligible for Carry Over Water would 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.

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<sup>4</sup> All transfers are subject to hydrologic review by the Watermaster Engineer (§16.1). All transfers are also pursuant to Section 16 and other requirements or limitations in the Judgment – for example, see the limitations on Carry Over Water transfers by the Antelope Valley United Mutuals Group (§16.3). Additional details regarding transfers will be developed for the Rules and Regulations document.