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Government Code § 6103

Attorneys for
Antelope Valley Watermaster

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

Coordination Proceeding,
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

LASC Case No.: BC 325201

**ANTELOPE VALLEY GROUNDWATER
CASES**

Assigned to the Hon. Jack Komar, Judge of the
Santa Clara Superior Court

Santa Clara Court Case No. 1-05-CV-049053

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF AMENDMENTS TO
ANTELOPE VALLEY WATERMASTER
RULES AND REGULATIONS;
DECLARATION OF JOSHUA
MONTROYA; EXHIBITS A-F**

Date: To Be Determined
Time: To Be Determined
Dept: By Courtcall

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on a date and time determined by the Court, the Antelope Valley Watermaster ("Watermaster") will and hereby does move for an order of the Court approving amendments to the Antelope Valley Watermaster Rules and Regulations by adding new Sections 11.g, 14.n.viii and 14.o.

The Watermaster has both the power and the duty to adopt rules and regulations after noticed public hearings and unanimous consent of the Watermaster Board. Having now held such


1 public hearings and having obtained the unanimous consent of the Board, the Watermaster moves
2 this Court to approve the amendments to the Rules and Regulations by adding new Sections 11.g,
3 14.n.viii and 14.o as set forth in Exhibits B, D and F to this motion.

4 This motion is based on the notice, the memorandum of points and authorities in support
5 thereof, the declaration of Joshua Montoya and Exhibits A-F, and all pleadings, documents and
6 evidence on file in this action, and on such oral and documentary evidence as may be presented at
7 the hearing on this motion, and on other matters as are properly before the Court.

8 Respectfully submitted,

9 Dated: August 2, 2023

PRICE, POSTEL & PARMA LLP

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11 By: 
12 CRAIG A. PARTON
13 Attorneys for
14 Antelope Valley Watermaster
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Antelope Valley Watermaster (“Watermaster”) has both the power and the duty to
4 adopt rules and regulations and to obtain their approval by this Court consistent with the terms of
5 the Antelope Valley Judgment and Physical Solution (“Judgment”). The Court previously
6 approved final comprehensive Antelope Valley Watermaster Rules and Regulations (the “Rules
7 and Regulations”) by Order dated September 29, 2020.

8 **A. ADDITION OF NEW SECTION 11.g**

9 The Watermaster Board properly noticed a public hearing with respect to a proposed
10 amendment to the Rules and Regulations, which would add new Section 11.g to establish a policy
11 that delinquent Replacement Water Assessments (“RWAs”) shall be due and payable at a variable
12 rate equal to the RWA rate in-effect on the date such delinquent amounts are actually paid to the
13 Watermaster. This is authorized by the Judgment to the extent an RWA payment should align
14 with the actual cost to the Watermaster of Replacement Water, which changes depending on the
15 year in which the Replacement Water is purchased. (*See* Judgment Paragraph 9.2 (the amount of
16 RWAs shall be the amount of excess Production “multiplied by the cost to the Watermaster of
17 Replacement Water, including any Watermaster spreading costs”).) This interpretation is
18 consistent with the purpose and intent of the Judgment which is to protect the health of the Basin
19 by replacing every acre-foot of Groundwater Produced in excess of a Party’s Production Right.
20 The Watermaster conducted such public hearing, and then voted unanimously to amend the Rules
21 and Regulations by adding new Section 11.g. (See Declaration of Joshua Montoya, Exhibits A-B.)
22 By this motion the Watermaster seeks the Court’s approval of the aforementioned amendment to
23 the Rules and Regulations pursuant to the Judgment.

24 **B. ADDITION OF NEW SECTION 14.n.viii**

25 The Watermaster Board properly noticed a public hearing with respect to a proposed
26 amendment to the Rules and Regulations, which would add new Section 14.n.viii (and re-number
27 current Sections 14.n.viii and 14.n.ix to 14.n.ix and 14.n.x, respectively) to clarify the
28 Watermaster’s inherent authority under the Judgment to reduce or rescind previously approved

1 New Production applications in the event there is insufficient Imported Water to replace all such
2 Production. On September 20, 2021, the Court approved an amendment to the R&Rs adding new
3 Section 14.n setting forth various limitations on New Production, which were made applicable
4 retroactively to all New Production applications approved prior to the date of the amendment, and
5 therefore the provisions of new Section 14.n.viii would also be applicable retroactively. The
6 Watermaster conducted such public hearing, and then voted unanimously to amend the Rules and
7 Regulations by adding new Section 14.n.viii. (See Declaration of Joshua Montoya, Exhibits C-D.)
8 By this motion the Watermaster further seeks the Court's approval of the aforementioned
9 amendment to the Rules and Regulations pursuant to the Judgment.

10 **C. ADDITION OF NEW SECTION 14.o**

11 The Watermaster Board properly noticed a public hearing with respect to a proposed
12 amendment to the Rules and Regulations, which would add new Section 14.o to impose penalties
13 on Parties with New Production rights who fail to comply with their monitoring and reporting
14 obligations. The Watermaster conducted such public hearing, and then voted unanimously to
15 amend the Rules and Regulations by adding new Section 14.o. (See Declaration of Joshua
16 Montoya, Exhibits E-F.) By this motion the Watermaster further seeks the Court's approval of
17 the aforementioned amendment to the Rules and Regulations pursuant to the Judgment.

18 **II. THE AMENDMENTS TO THE RULES AND REGULATIONS HAVE BEEN**
19 **PROPOSED AND DISCUSSED AT PUBLIC HEARINGS, UNANIMOUSLY**
20 **ADOPTED BY THE BOARD, AND ARE NOW SUBJECT TO APPROVAL BY**
21 **THIS COURT**

22 Pursuant to the Judgment, the Watermaster has the express power and duty to adopt rules
23 and regulations. (See Paragraphs 18.4 and 18.4.2 of the Judgment.) The Judgment explicitly
24 provides that the Court may approve rules and regulations prepared by the Watermaster Engineer
25 and adopted by the Watermaster. (Judgment Paragraph 18.4.2.)

26 In accordance with these requirements, the proposed amendments to the Rules and
27 Regulations to add new Sections 11.g, 14.n.viii and 14.o were considered at properly noticed
28 public hearings. (See Judgment Paragraph 18.4.2; Declaration of Joshua Montoya, Exhibits A, C

1 and E.) After the appropriate noticed public hearings, and after discussion, the Watermaster
2 unanimously adopted the proposed amendments to the Rules and Regulations adding new
3 Sections 11.g, 14.n.viii and 14.o. (See attached Exhibits B, D and F.)

4 Since the Rules and Regulations are critical to the functioning and sustainability of the
5 Judgment and Physical Solution, and since the proposed amendments to the Rules and
6 Regulations have been properly considered in the public forum and unanimously adopted by the
7 Watermaster Board at public hearings held on May 24, 2023, and July 26, 2023, this Court should
8 approve the amendments to the Rules and Regulations contained in Exhibits B, D and F.

9 **III. CONCLUSION**

10 For all the foregoing reasons, the Watermaster's motion requesting this Court to approve
11 the amendments to the Rules and Regulations by adding new Sections 11.g, 14.n.viii and 14.o
12 should be granted.

13 Respectfully submitted,

14 Dated: August 2, 2023

PRICE, POSTEL & PARMA LLP

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16 By: 

CRAIG A. PARTON

17 Attorneys for
18 Antelope Valley Watermaster
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DECLARATION OF JOSHUA MONTOYA

I, JOSHUA MONTOYA, 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 Hallmark Group and serve as Administrator to the Antelope Valley Watermaster.

2. At its regular meeting on February 22, 2023, the Watermaster Board considered a proposed amendment to the Watermaster Rules and Regulations which would add new Section 11.g to establish a policy that delinquent Replacement Water Assessments (“RWAs”) shall be due and payable at a variable rate equal to the RWA rate in-effect on the date such delinquent amounts are actually paid to the Watermaster.

3. At its regular meeting on February 22, 2023, the Watermaster Board directed that the proposed amendment to the Rules and Regulations adding new Section 11.g be circulated for public comment for consideration and adoption.

4. On April 25, 2023, I posted on the Watermaster’s website the language of the proposed amendment to the Rules and Regulations adding new Section 11.g for a public comment period ahead of the next regular meeting, and also a notice of a public hearing on adoption of said amendment to occur on May 24, 2023. A true and correct copy of the notice of public hearing is attached hereto as Exhibit A.

5. At the May 24, 2023 public hearing, after a presentation by the Watermaster Staff and Watermaster General Counsel, and comments by the Advisory Committee and the public, the Watermaster Board voted unanimously to approve the proposed amendment to the Rules and Regulations adding new Section 11.g.

6. Attached hereto as Exhibit B is a true and correct copy of Resolution No. R-23-36, which is the resolution adopted by the Watermaster Board at its May 24, 2023 meeting to unanimously adopt the proposed amendment to the Rules and Regulations by new Section 11.g.

7. At its regular meetings on February 22, 2023, and April 26, 2023, the Watermaster Board considered a proposed amendment to the Watermaster Rules and Regulations which would add new Section 14.n.viii to clarify the Watermaster’s inherent authority under the Judgment to

1 reduce or rescind previously approved New Production applications in the event there is
2 insufficient Imported Water to replace all such Production.

3 8. At its regular meeting on April 26, 2023, the Watermaster Board directed that the
4 proposed amendment to the Rules and Regulations adding new Section 14.n.viii be circulated for
5 public comment ahead of its next regular meeting for consideration and adoption.

6 10. On April 25, 2023, I posted on the Watermaster's website the language of the
7 proposed amendment to the Rules and Regulations adding new Section 14.n.viii for a public
8 comment period ahead of the next regular Board meeting, and also a notice of a public hearing on
9 adoption of said amendment to occur on May 24, 2023. A true and correct copy of the notice of
10 public hearing is attached hereto as Exhibit C.

11 10. At the May 24, 2023 public hearing, after a presentation by the Watermaster Staff
12 and Watermaster General Counsel, and comments by the Advisory Committee and the public, the
13 Watermaster Board voted unanimously to approve the proposed amendment to the Rules and
14 Regulations adding new Section 14.n.viii.

15 11. Attached hereto as Exhibit D is a true and correct copy of Resolution No. R-23-35,
16 which is the resolution adopted by the Watermaster Board at its May 24, 2023 meeting to
17 unanimously adopt the proposed amendment to the Rules and Regulations by adding new Section
18 14.n.viii.

19 12. At its regular meeting on June 28, 2023, the Watermaster Board considered a
20 proposed amendment to the Watermaster Rules and Regulations which would add new Section
21 14.o to impose penalties on Parties with New Production rights who fail to comply with their
22 monitoring and reporting obligations.

23 13. At its regular meeting on June 28, 2023, the Watermaster Board directed that the
24 proposed amendment to the Rules and Regulations adding new Section 14.o be circulated for
25 public comment ahead of its next regular meeting for consideration and adoption.

26 14. On June 28, 2023, I posted on the Watermaster's website the language of the
27 proposed amendment to the Rules and Regulations adding new Section 14.o for a public comment
28 period ahead of the next regular Board meeting, and also a notice of a public hearing on adoption

1 of said amendment to occur on July 26, 2023. A true and correct copy of the notice of public
2 hearing is attached hereto as Exhibit E.

3 15. At the July 26, 2023 public hearing, after a presentation by the Watermaster Staff
4 and Watermaster General Counsel, and comments by the Advisory Committee and the public, the
5 Watermaster Board voted unanimously to approve the proposed amendment to the Rules and
6 Regulations adding new Section 14.o.

7 16. Attached hereto as Exhibit F is a true and correct copy of Resolution No. R-23-57,
8 which is the resolution adopted by the Watermaster Board at its July 26, 2023 meeting to
9 unanimously adopt the proposed amendment to the Rules and Regulations by adding new Section
10 14.o.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct. Executed this 31 day of July, 2023, at Palmdale, California.

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15 Joshua Montoya
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Exhibit A

ANTELOPE VALLEY WATERMASTER PUBLIC HEARING

Antelope Valley Watermaster Amendment to Rules and Regulation for Repayment of Delinquent Replacement Water Assessments

TO: ANTELOPE VALLEY GROUNDWATER PRODUCERS

The ANTELOPE VALLEY WATERMASTER set 10:00 a.m. on Wednesday, May 24, 2023, at Antelope Valley-East Kern Water Agency, 6450 W Avenue N, Palmdale, CA 93551, as the time and place for a Public Hearing on the proposed Amendment to the Antelope Valley Watermaster's Rules and Regulation for Repayment of Delinquent Replacement Water Assessments. A copy of the proposed amendment is set forth in the attached memorandum and will be available at www.avwatermaster.net.

At that hearing, the Watermaster will consider public comments on the proposed Amendment to the Antelope Valley Watermaster's Rules and Regulation for Repayment of Delinquent Replacement Water Assessments. Written comments may be made in advance of the public hearing to the Watermaster Administrator; Jim Beck at info@avwatermaster.net or by mail at Antelope Valley Watermaster, 500 Capitol Mall Suite 2350, Sacramento, CA 95814.



PRICE, POSTEL & PARMA LLP

MEMORANDUM

TO: Antelope Valley Watermaster Board DATE: February 7, 2023
FROM: Craig A. Parton FILE NO.: 23641-1
General Counsel to the Watermaster
SUBJECT: Delinquent Replacement Water Assessment Rates

As the Watermaster has sought to collect delinquent Replacement Water Assessments (“RWAs”) from various Parties, it has become apparent that, due to the time involved in the legal process, the Watermaster may be unable to purchase all the Replacement Water necessary to replace the Groundwater Produced by such delinquent Parties in excess of their Production Right. This problem arises from the gap in time between: (1) the date the delinquent Party is invoiced for RWAs, calculated using the RWA rate for that year; and (2) the date the Watermaster eventually collects the RWA payment through the legal process, by which time the RWA rate has usually increased. This delay in collecting delinquent RWAs means that cash payments at the RWA rate set forth in the original invoice are insufficient to purchase all the Replacement Water necessary to satisfy the delinquent Party’s Replacement Obligations.

In order to rectify this problem moving forward, General Counsel recommends establishing a policy that delinquent RWAs shall be due and payable at a variable rate equal to the RWA rate in-effect on the date such delinquent amounts are actually paid to the Watermaster. This is authorized by the Judgment to the extent an RWA payment should align with the actual cost to the Watermaster of Replacement Water, which changes depending on the year in which the Replacement Water is purchased. (*See Judgment ¶ 9.2 (the amount of RWAs shall be the amount of excess Production “multiplied by the cost to the Watermaster of Replacement Water, including any Watermaster spreading costs”).*) This interpretation is consistent with the purpose and intent of the Judgment which is to protect the health of the Basin by replacing every acre-foot of Groundwater Produced in excess of a Party’s Production Right.

In order to effectuate this policy, General Counsel recommends adding a new Section 11.g to the Rules and Regulations (“R&Rs”) as follows:

“g. Delinquent Replacement Water Assessments shall be due and payable at the Replacement Water Assessment Rate in effect on the date the Watermaster receives such delinquent payment, notwithstanding a lower Replacement Water Assessment rate stated in the original invoice.”

General Counsel requests that the Board review and provide comments on the above proposed addition to the R&Rs. Once the language, as the same may be revised, is acceptable, the Board should direct the Watermaster Administrator to post this proposed addition to the R&Rs online for a 30-day public review period ahead of a hearing on adoption at the next regular Board meeting.

Exhibit B

RESOLUTION NO. R-23-36

ADOPTING RULES AND REGULATIONS SECTION 11.g RELATING TO DELINQUENT REPLACEMENT WATER ASSESSMENT RATES

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 on various subjects in order to further the objectives of the Judgment; and

WHEREAS, at its regular meeting on June 24, 2020, the Watermaster Board unanimously adopted the final comprehensive rules and regulations reflected in the April 27, 2020 draft posted on the Watermaster website with modifications, with the exception of Section 9 relating to Storage Agreements, which was subsequently unanimously adopted by the Watermaster Board at its July 23, 2020 regular meeting; and

WHEREAS, the final comprehensive rules and regulations were approved by order of the Court dated September 29, 2020; and

WHEREAS, the Watermaster General Counsel has recommended to the Watermaster Board adding a new Section 11.g to the Rules and Regulations as follows:

“g. *Delinquent Replacement Water Assessments shall be due and payable at the Replacement Water Assessment Rate in effect on the date the Watermaster receives such delinquent payment, notwithstanding a lower Replacement Water Assessment rate stated in the original invoice*”; and

WHEREAS, the proposed language adding new Section 11.g set forth above, was posted on the Watermaster’s website for public comment on April 25, 2023, ahead of the Watermaster Board’s consideration and approval thereof at its regular meeting on May 24, 2023; and

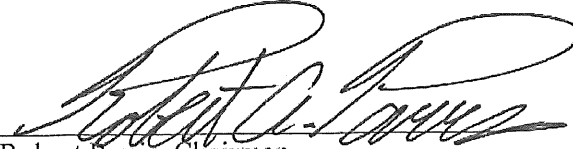
WHEREAS, the Watermaster Board held a public hearing at its regular meeting on May 24, 2023, where it received and considered public comment on the proposed language adding Section 11.g set forth above, and wishes now to adopt said addition of Section 11.g to the Rules and Regulations into the previously adopted Rules and Regulations, and to seek approval by the Court of such addition to the Rules and Regulations pursuant to the terms of the Judgment; and

WHEREAS, the purpose and intent of the addition of Section 11.g to the Rules and Regulations is to enable the Watermaster to collect delinquent Replacement Water Assessments (“RWAs”) at a variable rate equal to the RWA rate in-effect on the date such delinquent amounts are actually paid to the Watermaster, which will further the purpose and intent of the Judgment which is to protect the health of the Basin by replacing every acre-foot of Groundwater Produced in excess of a Party’s Production Right.

NOW, THEREFORE, BE IT RESOLVED, the Watermaster Board unanimously adopts the addition of Section 11.g to the Rules and Regulations as set forth above, with modifications, if any, as directed by the Board after the public hearing, and directs the Watermaster General Counsel to bring a motion before the Court, seeking the Court's approval of said addition to the Rules and Regulations pursuant to the terms of the Judgment.

I certify that this is a true copy of Resolution No. R-23-36 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held on May 24, 2023, in Palmdale, California.

Date: 05/24/2023


Robert Parris, Chairman

ATTEST: 
Jessica Alwan – Secretary

Exhibit C

ANTELOPE VALLEY WATERMASTER PUBLIC HEARING

Antelope Valley Watermaster Amendment to Rules and Regulation Placing Additional Limitations on New Production Rights

TO: ANTELOPE VALLEY GROUNDWATER PRODUCERS

The ANTELOPE VALLEY WATERMASTER set 10:00 a.m. on Wednesday, May 24, 2023, at Antelope Valley-East Kern Water Agency, 6450 W Avenue N, Palmdale, CA 93551, as the time and place for a Public Hearing on the proposed Amendment to the Antelope Valley Watermaster's Rules and Regulation Placing Additional Limitations on New Production Rights. A copy of the proposed amendment is set forth in the attached memorandum and will be available at www.avwatermaster.net.

At that hearing, the Watermaster will consider public comments on the proposed Amendment to the Antelope Valley Watermaster's Rules and Regulation Placing Additional Limitations on New Production Rights. Written comments may be made in advance of the public hearing to the Watermaster Administrator; Jim Beck at info@avwatermaster.net or by mail at Antelope Valley Watermaster, 500 Capitol Mall Suite 2350, Sacramento, CA 95814.



PRICE, POSTEL & PARMA LLP

MEMORANDUM

TO: Antelope Valley Watermaster Board DATE: April 26, 2023
FROM: Craig A. Parton FILE NO.: 23641-1
General Counsel to the Watermaster
SUBJECT: Additional Limitations on New Production Rights

At its January 2023 regular meeting, the Watermaster Board asked whether and to what extent approval of New Production applications may be conditioned upon the availability of sufficient Imported Water to replace such Production in any given year. Specifically, the Watermaster Board expressed concern that New Production applicants should be made aware that the right to New Production is not guaranteed, and may be reduced or even eliminated in the event there is insufficient Imported Water to replace all New Production. As discussed below, the terms of the Judgment suggest that such a limitation on New Production is appropriate and in some circumstances may be necessary to avoid Material Injury. Although not required for the Watermaster to enforce such a limitation, General Counsel recommends an amendment to the Rules and Regulations (“R&Rs”) to add new Section 14.n.viii as set forth herein.

“New Production” is defined as “[a]ny Production of Groundwater from the Basin not of right under this Judgment, as of the date of this Judgment.” (§ 3.5.20.) Any New Production “must comply with the New Production Application Procedure specified in Paragraph 18.5.13.” (§ 9.2.2.) “[T]he Watermaster, as part of the New Production Application Procedure, has the authority to determine whether [an applicant] has established that the proposed New Production is a reasonable and beneficial use in the context of other existing uses of Groundwater and then-current Basin conditions,” and “the Watermaster’s determinations as to the approval, scope, nature and priority of any New Production is reasonably necessary to the promotion of the State’s interest in fostering the most reasonable and beneficial use of its scarce water resources.” (*Ibid.*) Each New Production applicant must agree “to pay the applicable Replacement Water Assessment [“RWA”] for any New Production.” (§ 18.5.13.1.11.) “The Watermaster Engineer shall not make recommendation for approval of an application to commence New Production of Groundwater unless the Watermaster Engineer finds, after considering all the facts and circumstances including any requirement that the applicant pay a [RWA] required by this Judgment or determined by the Watermaster Engineer to be required under the circumstances, that such New Production will not cause Material Injury.” (§ 18.5.13.2.) The Engineer may only waive payment of RWAs for New Production applications that are limited to domestic use for one single-family household, so long as the Engineer determines that such New Production is *de*

Memo to: Antelope Valley Watermaster Board
Re: Additional Limitations on New Production Rights
April 26, 2023
Page 2

*minimis. (Ibid.)*¹ Finally, in limited circumstances, the R&Rs allow some New Production to be satisfied by a transfer of water rights in lieu of payment of RWAs. (R&Rs § 13.c.vii.)

Under the foregoing provisions of the Judgment, all but a very limited category of New Production must be offset by payment of RWAs in order to avoid Material Injury, subject to an opportunity to make an in-kind payment of RWAs “on a special, limited basis.” It is therefore inherent in the Judgment that the Watermaster has the authority to reduce or rescind previously approved New Production applications in the event there is insufficient Imported Water to replace all such Production.

On September 20, 2021, the Court approved an amendment to the R&Rs adding new Section 14.n which sets forth various limitations on New Production. (*See* attached General Counsel Memorandum dated June 30, 2021.) The provisions of Section 14.n were made applicable retroactively to all New Production applications approved prior to the date of the amendment. (Current R&Rs § 14.n.viii.) In order to document and clarify the above-stated limitations on New Production, General Counsel recommends amending the R&Rs to add new Section 14.n.viii as follows (current Sections 14.n.viii and 14.n.ix will be re-numbered 14.n.ix and 14.n.x, respectively):

“vii. Contingent Upon Availability of Imported Water. Notwithstanding anything to the contrary in these Rules and Regulations or the Watermaster’s approval of the New Production application, in the event there is insufficient Imported Water available to replace some or all of the Party’s New Production, the Watermaster may, in the Watermaster’s sole discretion, amend or revoke its approval of the Party’s New Production application in order to ensure that all New Production is replaced with Imported Water, consistent with the intent of the Judgment and to protect the health of the Basin.”

In addition to adding the above amendment to the R&Rs, General Counsel recommends amending the New Production Application (Form 4) by adding the following sentence to the end of the applicant declaration on page 2 of 3 under SIGNATURES:

“I understand and agree that the Watermaster’s approval of New Production rights, if any, is not permanent, and may be amended or revoked, at the Watermaster’s sole discretion, consistent with the Rules and Regulations and the Judgment, in the event there is insufficient Imported Water to replace some or all of the approved New Production.”

The Watermaster Engineer supports the revisions to the R&Rs, but has noted that the Board could consider making an exception for New Production that provides the sole source of drinking water supply for a single-family household. As noted above, domestic use for a single-family household is the only circumstance in which the Judgment allows the Watermaster Engineer to consider New Production as *de minimis*. Specifically, in the event of a future

¹ The Watermaster Engineer currently requires all New Production applicants to pay RWAs, including New Production for domestic use by a single-family household, even though such New Production could be deemed *de minimis*. This protects the Basin from cumulative impacts from overdraft and, in turn, Material Injury.

shortage of Imported Water, the Board could decide to allow domestic wells serving a single family household to continue Producing Groundwater contingent upon payment of RWAs so that the Watermaster can acquire Replacement Water when it becomes available to make up the deficit. With proper accounting and management, Material Injury could be avoided. This consideration recognizes the relatively small amount of production associated with domestic wells and the fact that overdraft conditions are evaluated over an average hydrologic period rather than on a single dry-year basis.

During the Board's consideration of these proposed amendments at its February 2023 regular meeting, Dwayne Chisam questioned whether the amendments conflict with AVEK's enabling act, specifically the requirement that AVEK distribute and apportion water purchased from the State of California or obtained from any other source as equitably as possible. (*See* AVEK Agency Act § 98-61.1.) Watermaster General Counsel discussed this question with AVEK representatives and does not believe there is a conflict between AVEK's enabling act and the proposed amendments to the R&Rs. The Watermaster's contingent approval of New Production will have no impact on AVEK's ability to distribute and apportion water it acquires from the State of California or elsewhere pursuant to its enabling act.

The Watermaster General Counsel requests that the Board review and provide comments on the above proposed addition to the R&Rs and New Production Application. Once the language, as the same may be revised, is acceptable, the Board should direct the Watermaster Administrator to post this proposed addition to the R&Rs online for a 30-day public review period ahead of a hearing on adoption at the next regular Board meeting.

Exhibit D

RESOLUTION NO. R-23-35

**ADOPTING RULES AND REGULATIONS SECTION 14.n.viii
RELATING TO LIMITS ON NEW PRODUCTION**

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 on various subjects in order to further the objectives of the Judgment; and

WHEREAS, at its regular meeting on June 24, 2020, the Watermaster Board unanimously adopted the final comprehensive rules and regulations reflected in the April 27, 2020 draft posted on the Watermaster website with modifications, with the exception of Section 9 relating to Storage Agreements, which was subsequently unanimously adopted by the Watermaster Board at its July 23, 2020 regular meeting; and

WHEREAS, the final comprehensive rules and regulations were approved by order of the Court dated September 29, 2020; and

WHEREAS, the Watermaster General Counsel has recommended to the Watermaster Board adding a new Section 14.n.viii to the Rules and Regulations as follows (current Sections 14.n.viii and 14.n.ix to be re-numbered 14.n.ix and 14.n.x, respectively):

“viii. Contingent Upon Availability of Imported Water. Notwithstanding anything to the contrary in these Rules and Regulations or the Watermaster’s approval of the New Production application, in the event there is insufficient Imported Water available to replace some or all of the Party’s New Production, the Watermaster may, in the Watermaster’s sole discretion, amend or revoke its approval of the Party’s New Production application in order to ensure that all New Production is replaced with Imported Water, consistent with the intent of the Judgment and to protect the health of the Basin”; and

WHEREAS, in addition to the proposed language adding new Section 14.n.vii as set forth above, the Watermaster General Counsel recommended to the Watermaster Board amending the New Production Application (Form 4) by adding the following sentence to the end of the applicant declaration on page 2 of 3 under SIGNATURES:

“I understand and agree that the Watermaster’s approval of New Production rights, if any, is not permanent, and may be amended or revoked, at the Watermaster’s sole discretion, consistent with the Rules and Regulations and the Judgment, in the event there is insufficient Imported Water to replace some or all of the approved New Production.”

WHEREAS, the proposed language adding new Section 14.n.viii, and the proposed amendment to New Production Application (Form 4) set forth above, were both posted on the Watermaster’s website for public comment on April 25, 2023, ahead of the Watermaster Board’s consideration and approval thereof at its regular meeting on May 24, 2023; and

WHEREAS, the Watermaster Board held a public hearing at its regular meeting on May 24, 2023, where it received and considered public comment on the proposed language adding Section 14.n.viii set forth above, and wishes now to adopt said addition of Section 14.n.viii to the Rules and Regulations into the previously adopted Rules and Regulations, and to seek approval by the Court of such addition to the Rules and Regulations pursuant to the terms of the Judgment; and

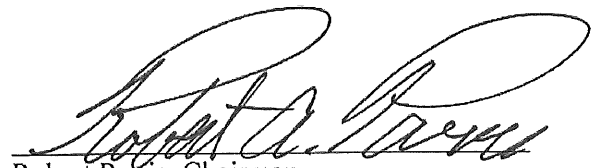
WHEREAS, also at its regular meeting on May 24, 2023, the Watermaster Board held a public hearing where it received and considered public comment on the proposed amendment to New Production Application (Form 4) set forth above, and wishes now to approve said amendment; and

WHEREAS, the purpose and intent of the addition of Section 14.n.viii to the Rules and Regulations and the amendment to New Production Application (Form 4) is to enable the Watermaster to prevent Material Injury resulting from overuse of groundwater by New Production applicants in the event there is insufficient Imported Water to replace such Production in any given year.

NOW, THEREFORE, BE IT RESOLVED, the Watermaster Board unanimously adopts the addition of Section 14.n.viii to the Rules and Regulations as set forth above, with modifications, if any, as directed by the Board after the public hearing, and directs the Watermaster General Counsel to bring a motion before the Court, seeking the Court's approval of said addition to the Rules and Regulations pursuant to the terms of the Judgment, and further approves the proposed amendment to New Production Application (Form 4) as set forth above.

I certify that this is a true copy of Resolution No. R-23-35 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held on May 24, 2023, in Palmdale, California.

Date: 05/24/2023


Robert Paffis, Chairman


ATTEST: 
Jessica Alwan – Secretary

Exhibit E

ANTELOPE VALLEY WATERMASTER PUBLIC HEARING

Antelope Valley Watermaster Amendment to Rules and Regulations for Delinquent Annual Production Reports

TO: ANTELOPE VALLEY GROUNDWATER PRODUCERS

The ANTELOPE VALLEY WATERMASTER set 10:00 a.m. on Wednesday, July 26, 2023, at Antelope Valley-East Kern Water Agency, 6450 W Avenue N, Palmdale, CA 93551, as the time and place for a Public Hearing on the proposed Antelope Valley Watermaster Amendment to Rules and Regulations for Delinquent Annual Production Reports. A copy of the proposed Amendment to Rules and Regulations for Delinquent Annual Production Reports will be available at www.avwatermaster.net.

At that hearing, the Watermaster will consider public comments on the Antelope Valley Watermaster's proposed Amendment to Rules and Regulations for Delinquent Annual Production Reports. Written comments may be made in advance of the public hearing to the Watermaster Administrator: Jim Beck at info@avwatermaster.net or by mail at Antelope Valley Watermaster, 500 Capitol Mall Suite 2350, Sacramento, CA 95814.



PRICE, POSTEL & PARMA LLP

MEMORANDUM

TO: Antelope Valley Watermaster Board DATE: June 28, 2023
FROM: Craig A. Parton FILE NO.: 23641-1
General Counsel to the Watermaster
SUBJECT: Amendment to Rules & Regulations Regarding New Production Reporting

According to the Watermaster Engineer, a significant number of Parties with approved New Production rights are failing to submit annual Production reports.¹ A full accounting of production in the Basin is fundamental to the primary responsibilities of the Watermaster Engineer to monitor Safe Yield components and conduct Material Injury analyses. Annual Production reporting is also essential to the Watermaster's Assessment procedures and is particularly important for New Production Parties because those who are not reporting their annual Production are also not paying or are underpaying annual Replacement Water Assessments. After discussions with the Watermaster Engineer and Administrator regarding non-compliance with Production reporting requirements by New Production Parties, General Counsel recommends amending the Rules and Regulations to add new Section 14.o as follows:

“o. Failure to Comply With New Production Reporting Requirements. Consistent with the Production reporting requirements set forth in Paragraph 18.5.12 of the Judgment and Sections 7.b.x and 15.l of these Rules & Regulations, all Parties with New Production rights must submit an annual Production report to the Watermaster Engineer. In the event a Party with approved New Production rights fails to timely submit an annual Production report, then: (i) such Party will automatically be invoiced for the full amount of approved New Production rights; and (ii) approval of the Party's New Production application will automatically be suspended unless and until such Party submits all past-due annual Production reports and pays all past-due Replacement Water Assessments. ~~The invoice for the full amount of approved New Production as set forth above shall not be amended, nor shall any payments thereon be refundable, in the event a subsequently submitted Production report demonstrates that less than the full amount of New Production rights were utilized in the applicable year.~~ If a Party with approved New Production rights has not yet drilled the well associated with such New Production Rights or does not produce water from such well, such Party must still submit an annual Production report providing an update to the Watermaster regarding the status of the well.”

¹ “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.” (Judgment at ¶ 18.5.12.)

Memo to: Antelope Valley Watermaster Board
Re: Amendment to Rules & Regulations Regarding New Production Reporting
June 28, 2023
Page 2

The Watermaster General Counsel requests that the Board review and provide comments on the above proposed addition to the Rules and Regulations. Once the language, as the same may be revised, is acceptable, the Board should direct the Watermaster Administrator to post this proposed addition to the Rules and Regulations online for a 30-day public review period ahead of a hearing on adoption at the next regular Board meeting.

Exhibit F

RESOLUTION NO. R-23-57

**ADOPTING RULES AND REGULATIONS SECTION 14.o
RELATING TO NON-COMPLIANCE WITH NEW PRODUCTION REPORTING**

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 on various subjects in order to further the objectives of the Judgment; and

WHEREAS, at its regular meeting on June 24, 2020, the Watermaster Board unanimously adopted the final comprehensive rules and regulations reflected in the April 27, 2020 draft posted on the Watermaster website with modifications, with the exception of Section 9 relating to Storage Agreements, which was subsequently unanimously adopted by the Watermaster Board at its July 23, 2020 regular meeting; and

WHEREAS, the final comprehensive rules and regulations were approved by order of the Court dated September 29, 2020; and

WHEREAS, the Watermaster General Counsel has recommended to the Watermaster Board adding a new Section 14.o to the Rules and Regulations as follows:

“o. Failure to Comply With New Production Reporting Requirements. Consistent with the Production reporting requirements set forth in Paragraph 18.5.12 of the Judgment and Sections 7.b.x and 15.l of these Rules & Regulations, all Parties with New Production rights must submit an annual Production report to the Watermaster Engineer. In the event a Party with approved New Production rights fails to timely submit an annual Production report, then: (i) such Party will automatically be invoiced for the full amount of approved New Production rights; and (ii) approval of the Party’s New Production application will automatically be suspended unless and until such Party submits all past-due annual Production reports and pays all past-due Replacement Water Assessments. If a Party with approved New Production rights has not yet drilled the well associated with such New Production Rights or does not produce water from such well, such Party must still submit an annual Production report providing an update to the Watermaster regarding the status of the well.; and

WHEREAS, the proposed language adding new Section 14.o set forth above, was posted on the Watermaster’s website for public comment on June 28, 2023, ahead of the Watermaster Board’s consideration and approval thereof at its regular meeting on July 26, 2023; and

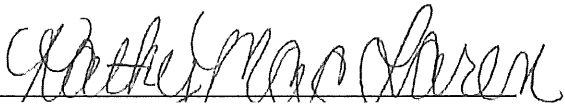
WHEREAS, the Watermaster Board held a public hearing at its regular meeting on July 26, 2023, where it received and considered public comment on the proposed language adding Section 14.o set forth above, and wishes now to adopt said addition of Section 14.o to the Rules and Regulations into the previously adopted Rules and Regulations, and to seek approval by the Court of such addition to the Rules and Regulations pursuant to the terms of the Judgment; and

WHEREAS, the purpose and intent of the addition of Section 14.o to the Rules and Regulations is to ensure that Parties with approved New Production rights comply with their annual reporting obligations under the Judgment.

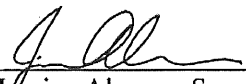
NOW, THEREFORE, BE IT RESOLVED, the Watermaster Board unanimously adopts the addition of Section 14.o to the Rules and Regulations as set forth above, with modifications, if any, as directed by the Board after the public hearing, and directs the Watermaster General Counsel to bring a motion before the Court, seeking the Court's approval of said addition to the Rules and Regulations pursuant to the terms of the Judgment.

I certify that this is a true copy of Resolution No. R-23-57 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held on July 26, 2023, in Palmdale, California.

Date: 7/26/2023



Kathy MacLaren, Vice-Chairperson

ATTEST: 
Jessica Alwan – Secretary


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I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 200 East Carrillo Street, Fourth Floor, Santa Barbara, California 93101.

☒ **BY ELECTRONIC SERVICE:** I posted the document(s) listed above to the Santa Clara County Superior Court Website @ www.scefilings.org and Glotrans website in the action of the Antelope Valley Groundwater Cases.

☒ (*STATE*) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (*FEDERAL*) I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.


Signature
Elizabeth Wright