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

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

Judicial Council Coordination
Proceeding No. 4408

13 **ANTELOPE VALLEY GROUNDWATER**
14 **CASES**

LASC Case No.: BC 325201

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 RULES AND
REGULATIONS CONCERNING CARRY
OVER WATER; DECLARATION OF
PATRICIA ROSE; EXHIBITS A-C**

19 Date: June 27, 2018
20 Time: 9:00 a.m.
21 Dept: By Courtcall

22 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on June 27, 2018 at 9:00 a.m., or as soon thereafter as the
24 matter may be heard, by Courtcall, the Antelope Valley Watermaster (or "Moving Party") will
25 and hereby does move for an order of the Court approving rules and regulations unanimously
26 adopted by the Antelope Valley Watermaster concerning Carry Over Water.

27 The Antelope Valley Watermaster has both the power and the duty to adopt rules and
28 regulations concerning Carry Over Water after a noticed public hearing and unanimous consent of

1 regulations concerning Carry Over Water after a noticed public hearing and unanimous consent of
2 the Watermaster Board. Having now held that public hearing and having obtained the unanimous
3 consent of the Board, the Antelope Valley Watermaster moves this Court to approve the rules and
4 regulations concerning Carry Over Water contained in Exhibit B to this motion.

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

9 Respectfully submitted,

10 Dated: May 28, 2018

PRICE, POSTEL & PARMA LLP

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12 By: Craig A. Parton
13 CRAIG A. PARTON
14 Attorneys for
15 Antelope Valley Watermaster
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1 **MEMORANDUM OF POINT AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Antelope Valley Watermaster (“Watermaster”) has both the power and the duty to
4 adopt rules and regulations concerning Carry Over Water and to obtain their approval by this
5 Court consistent with the terms of the Antelope Valley Judgment and Physical Solution
6 (“Judgment”). The Watermaster Board properly noticed a public hearing with respect to the
7 proposed rules and regulations concerning Carry Over Water, conducted that public hearing, and
8 then voted unanimously to adopt the attached rules and regulations (see Exhibit C). By this
9 motion the Watermaster seeks the Court’s approval of the rules and regulations concerning Carry
10 Over Water pursuant to the Judgment.

11 **II. RULES AND REGULATIONS PREPARED BY THE WATERMASTER ENGINEER**
12 **HAVE BEEN PROPOSED AND DISCUSSED AT A PUBLIC HEARING AND**
13 **UNANIMOUSLY ADOPTED BY THE BOARD AND ARE NOW SUBJECT TO**
14 **APPROVAL BY THIS COURT**

15 Pursuant to the Judgment, the Watermaster has the express power and duty to adopt rules
16 and regulations. (See Sections 18.4 and 18.4.2 of the Judgment). The Judgment explicitly
17 provides that the Court may approve rules and regulations prepared by the Watermaster Engineer
18 and adopted by the Watermaster (Section 18.4.2).

19 In accordance with these requirements, the Watermaster Engineer proposed draft rules and
20 regulations concerning Carry Over Water (see attached Exhibit B). A properly noticed public
21 hearing was held to consider and discuss the proposed rules and regulations (see Section 18.4.2;
22 Declaration of Patricia Rose, Exhibit A). After the appropriate noticed public hearing, and after
23 discussion, the Watermaster unanimously adopted the rules and regulations concerning Carry
24 Over Water (see attached Exhibit C).

25 Since rules and regulations concerning Carry Over Water are critical to the functioning
26 and sustainability of the Judgment and Physical Solution, and since the Watermaster Engineer has
27 proposed draft rules and regulations that have been properly considered in the public forum and
28 unanimously adopted by the Watermaster Board at its public hearing on May 23, 2018, this Court

1 should approve the rules and regulations concerning Carry Over Water contained in Exhibit B.

2 **III. CONCLUSION**

3 For all the foregoing reasons, the Watermaster's motion requesting this Court to approve
4 rules and regulations concerning Carry Over Water should be granted.

5
6 Respectfully submitted,

7 Dated: May 28, 2018

PRICE, POSTEL & PARMA LLP

8
9 By: Craig A. Parton

10 CRAIG A. PARTON

11 Attorneys for
12 Antelope Valley Watermaster

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 April 19, 2018, I posted on the Watermaster's website a notice of a public hearing on proposed rules and regulations concerning Carry Over Water. 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 May 23, 2018 at 10:00 a.m. as part of the regular meeting of the Antelope Valley Watermaster. On April 20, 2018, I posted on the Watermaster's website a draft memorandum prepared by Todd Groundwater and dated April 12, 2018. The April 12, 2018 memoranda contained draft rules and regulations concerning Carry Over Water. A true and correct copy of that April 12, 2018 memorandum containing the draft rules and regulations is attached hereto as Exhibit B.

3. On April 25, 2018, I e-mailed 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-18-17 which is the resolution concerning Carry Over Water adopted by the Board of Directors of the Antelope Valley Watermaster at its regular Board meeting on May 23, 2018.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 25th day of May, 2018, at Palmdale, California.


Patricia Rose

Exhibit A

ANTELOPE VALLEY WATERMASTER
PUBLIC HEARING NOTICE
GROUNDWATER STORAGE AGREEMENTS
AND CARRY OVER WATER

DATED: April 19, 2018

TO: ANTELOPE VALLEY GROUNDWATER PRODUCERS

The ANTELOPE VALLEY WATERMASTER set 10:00 a.m. on Wednesday, May 23, 2018, at Antelope Valley-East Kern Water Agency, 6450 West Avenue N, Palmdale, CA 93551, as the time and place for a Public Hearing on Groundwater Storage Agreements and Carry Over Water. The Judgment in the Antelope Valley Groundwater Cases requires the Watermaster Engineer to propose, adopt and maintain; rules and regulations regarding approving procedures for approving groundwater storage agreements and carry over water under the judgment. A copy of the proposed process will be available at www.avwatermaster.net on April 20, 2018.

At that hearing, the Watermaster will consider public comments on the Final Drafts for Groundwater Storage Agreements and Carry Over Water. Written/email comments may be made in advance of the public hearing to the Watermaster Administrator, P.O. Box 3025, Quartz Hill, CA 93586 or by email at info@avwatermaster.net.

Posted: April 19, 2018

By:



Patricia Rose Interim Secretary

Exhibit B



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.” (§13.5.9). 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.” (§13.5.32, emphasis added). Note that *Production Right* is explicitly tied to the allocation of Native Safe Yield, which is determined to be 82,300 AFY (§14.1). 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.” (§13.5.16). The Judgment further notes that the Imported Water Return Flows are not part of the Native Safe Yield (§15.2.1). 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. (§15.2.1). 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 (§15.1.1 – Exhibit 4 of the Judgment), State of California Water Right (§15.1.5), and Non-Overlying Producers (§15.1.6 – 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 (§5.1.10). 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 (§5.1.10). 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 (§6.1). 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.

Exhibit C

RESOLUTION NO. R-18-17

ADOPTING RULES AND REGULATIONS CONCERNING CARRY OVER WATER

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 Carry Over Water, and that the Watermaster Board directed at its regular Board meeting on April 25, 2018 that all Parties be notified that Draft Rules and Regulations relating to Carry Over Water were available for public review, and to circulate those Draft Rules and Regulations for public comment before their adoption by the Watermaster Board; and

WHEREAS, those Draft Rules and Regulations relating to Carry Over Water were provided by the Watermaster for review during a 30-day public comment period and for consideration and approval at the Watermaster Board's regular meeting on May 23, 2018; and

WHEREAS, the Watermaster held a public hearing at its meeting on May 23, 2018 where it received and considered public comment on the Draft Rules and Regulations relating to Carry Over Water and wishes now to adopt those proposed Rules and Regulations and to seek the approval by the Court of these Rules and Regulations pursuant to the terms of the Judgment.

NOW THEREFORE BE IT RESOLVED, the Watermaster Board unanimously adopts the Rules and Regulations relating to Carry Over Water expressed in the April 12, 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 Carry Over Water pursuant to the terms of the Judgment.

I certify that this is a true copy of Resolution No. R-18-17 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held May 23, 2018, in Palmdale, California.

Date: 5/23/18

ATTEST: Patricia Rose
Patricia Rose – Interim Secretary

Robert Parris
Robert Parris, Chairman

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

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

5 On May 29, 2018, I served the foregoing document described **NOTICE OF MOTION**
6 **AND MOTION FOR APPROVAL OF RULES AND REGULATIONS CONCERNING**
7 **CARRY OVER WATER; DECLARATION OF PATRICIA ROSE; EXHIBITS A-C** on all
interested parties in this action by placing the original and/or true copy.

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

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

12 ☐ (*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.

13
14 Executed on May 29, 2018, at Santa Barbara, California.

15
16 
17 Signature
Elizabeth Wright