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Exempt from Filing Fees
Government Code § 6103

7 Attorneys for
8 Antelope Valley Watermaster

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

16 **NOTICE OF MOTION AND MOTION**
17 **FOR APPROVAL OF RULES AND**
18 **REGULATIONS CONCERNING**
19 **STORAGE AGREEMENTS;**
20 **DECLARATION OF PATRICIA ROSE;**
21 **EXHIBITS A-C**

Date: August 9, 2018
Time: 9:00 a.m.
Dept: By Courtcall

22 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

23 PLEASE TAKE NOTICE that on August 9, 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 storage agreements.

27 The Antelope Valley Watermaster has both the power and the duty to adopt rules and
28

1 regulations concerning storage agreements after a noticed public hearing and unanimous consent
2 of the Watermaster Board. Having now held that public hearing and having obtained the
3 unanimous consent of the Board, the Antelope Valley Watermaster moves this Court to approve
4 the rules and regulations concerning storage agreements 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: June 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 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 concerning storage agreements 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 storage agreements, 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
10 storage agreements 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 storage agreements (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 storage
24 agreements (see attached Exhibit C).

25 Since rules and regulations concerning storage agreements 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 June 27, 2018, this Court

1 should approve the rules and regulations concerning storage agreements 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 storage agreements should be granted.

5
6 Respectfully submitted,

7 Dated: June 28, 2018

PRICE, POSTEL & PARMA LLP

8
9 By: Craig A. Parton
10 CRAIG A. PARTON
11 Attorneys for
12 Antelope Valley Watermaster
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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



June 27, 2018

REVISED 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
Legal Counsel

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

Re: Draft Groundwater Storage Agreements Section for the Rules and Regulations

The proposed process and procedures for implementing Storage Agreements in compliance with the Final Judgment are presented on the following pages. If approved by the Court, this final revised text will be included in the Antelope Valley Watermaster Rules and Regulations (R&Rs). Previous drafts of this text have been reviewed more than four times each by the Advisory Committee and the Watermaster Board. A 30-day comment period as required by the Judgment was initiated on April 20, 2018 and a public hearing was held on May 23, 2018 to consider approval of the text for use in the R&Rs. At the May hearing, representatives of Antelope Valley-East Kern Water Agency (AVEK) requested additional time for consideration and comments; on June 15, 2018, edits were made to the text to incorporate AVEK comments. The revised text was approved at the Watermaster Board meeting on June 27, 2018, where final minor edits were made based on additional comments discussed at the meeting. This final revised memorandum will be presented to the Court for approval.

SECTION X – GROUNDWATER STORAGE AGREEMENTS

1. **Purpose.** All Parties to the Judgment have the right to store water in the Basin pursuant to a Storage Agreement with the Watermaster. Stored Water is defined as “water held in storage in the Basin, as a result of direct spreading or other methods, for subsequent withdrawal and use pursuant to agreement with the Watermaster and as provided for in this Judgment.” (§3.5.49). All Stored Water shall be covered by a Storage Agreement. Storage Agreements provide a method for accounting how the Stored Water will be recharged, recovered and used. The provided information will be used by the Watermaster Engineer to track water use, to support a basin-wide water balance, and to ensure that the Stored Water is managed according to the Storage Agreement.
2. **Water Sources and Methods.** Storage Agreements can be used for direct recharge of various water sources including imported water, recycled water, or other water not part of the Native Safe Yield, typically referred to as water banking. Storage Agreements are also required to convert Carry Over Water generated by non-use of Native Safe Yield to Stored Water at the end of the ten-year Carry Over period. Carry Over Water includes Native Safe Yield not Produced due to in-lieu purchases of imported water (§15.1), Native Safe Yield not Produced for other reasons (§15.3), and Imported Water Return Flow rights that are not Produced (§15.2). Carry Over Water¹ is not Stored Water, although Carry Over Water can be converted to Stored Water at the end of the Carry Over period by entering into a Storage Agreement.
3. **Basis.** Storage Agreement rules shall be uniformly applicable. The Watermaster shall promptly enter into Storage Agreements with the Parties at their request, provided that all past due assessments, interest, and penalties have been settled prior to the date of the agreement. The Watermaster shall not enter into Storage Agreements with non-Parties unless such non-Parties become expressly subject to the provisions of this Judgment and the jurisdiction of the

¹ Producers may carry over rights to its unproduced portion of its Production Rights and its unproduced portion of its Imported Water Return Flows for up to ten years. Carry Over Production Rights and Imported Water Return Flows not produced by the end of the tenth year revert to the benefit of the Basin and the Producer no longer has a right to this Carry Over Water unless it is stored pursuant to a Storage Agreement.

Court. Storage Agreements shall expressly preclude operations which will cause a Material Injury on any Producer (§14).

4. **Accounting.** Parties that store water shall provide the Watermaster sufficient information so that the Watermaster Engineer can calculate additions, extractions and losses of water stored under Storage Agreements and maintain an annual account of all such water. A portion of the Stored Water may be unrecoverable. Accounting done by the Watermaster Engineer under this Paragraph shall be considered ministerial (§18.5.14 and §14).
5. **General Conditions Governing Storage Agreements.** Storage Agreements shall be for the accounting of the groundwater storage capacity of the Basin.
 - a. **Preexisting Banking.** Nothing in the Judgment limits or modifies the existing operation of the preexisting banking projects as listed in the Paragraph 14 of the Judgment, which includes preexisting banking projects of “AVEK, District No. 40, Antelope Valley Water Storage LLC, Tejon Ranchcorp and Tejon Ranch Company, Sheep Creek Water Co., Rosamond Community Services District and Palmdale Water District” (§14). Further, the Judgment states that it does not limit or modify the “performance of preexisting exchange agreements of the Parties” (§14). To identify the projects to which these conditions apply, preexisting banking projects will be required to provide information to the Watermaster Engineer that demonstrates existing operations as of the date of the Final Judgment.
 - b. **Submittal of CEQA Documents and Storage/Use Documents.** For pre-existing banking facilities and projects, the owner shall submit copies of any CEQA and storage/use documents to the Watermaster Engineer. These will be available for review by other Parties to the Judgment.
 - c. **Export of Stored Water.** If Littlerock Creek Irrigation District or Palmdale Water District stores water in the Basin, it shall not export that Stored Water from its service area (§14). AVEK, Littlerock Creek Irrigation District or Palmdale Water District may enter into exchanges of their State Water Project “Table A” Amounts. Any Stored Water that originated as State Water Project water imported by AVEK, Palmdale Water District or Littlerock Creek Irrigation District may be exported from the Basin for use in a portion of the service area of any city or public agency, including State Water Project Contractors, that are Parties to this action at the time of this

Judgment and whose service area includes land outside the Basin. AVEK may export any of its Stored State Project Water to any area outside its jurisdictional boundaries and the Basin provided that all water demands within AVEK's jurisdictional boundaries are met. Any Stored Water that originated as other imported water may be exported from the Basin, subject to a requirement that the Watermaster Engineer make a technical determination of the percentage of the Stored Water that is unrecoverable and that such unrecoverable Stored Water is dedicated to the Basin.

- d. **Use of Stored Water for Replacement Water Obligations.** If, pursuant to a Storage Agreement, a Party has provided for pre-delivery or post-delivery of Replacement Water for the Party's use, the Watermaster shall credit such water to the Party's Replacement Water Obligation at the Party's request (§14). Pre-delivery could occur when a Party transfers existing water in storage to the Watermaster prior to pumping water that otherwise would incur a Replacement Water Assessment. Post-delivery could occur when a Party provides written confirmation that a firm supply of that Party's water for storage within the year following the production that resulted in a Replacement Water Obligation will be transferred to the Watermaster when available. (see Replacement Water Obligation Section XX of the R&Rs for more detail)
- e. **Material Injury Determination.** Approval of Storage Agreements will be based on the determination that there will be no Material Injury. Material Injury could include overdraft, water quality degradation, liquefaction, land subsidence, and other injury caused by lowering or elevating groundwater levels or changes in groundwater in storage. The analysis may also consider project benefits, as well as the State Water Resources Control Board Recycled Water Policy and other policies that are in place to encourage and enhance groundwater recharge.
- f. **Storage and Use of Stored Water.** A Party subject to a Storage Agreement must report annually to the Watermaster the sources and amounts of water stored pursuant to a Storage Agreement and the amount of Stored Water recovered in the prior year.

6. Storage Agreements for Water Storage Facilities (Water Banking).

Groundwater Storage Agreements for water banking facilities shall be an

agreement between the owner/operator and the Watermaster and may include conditions to assure that no Material Injury will occur. Groundwater Storage Agreements may include the following:

- Source(s) and quality of the water to be stored.
- Identification of lands to be used for recharge, if applicable.
- General description of the delivery and recharge methods, projected annual delivery rates, methods of measurement (i.e., metering), and projected infiltration rates.
- Conceptual design of applicable recharge facilities including locations, depths, and construction details of spreading basins, trenches or infiltration galleries, vadose zone wells, injection wells, or other methods.
- Environmental documentation and associated hydrology and geologic studies for the proposed project.
- General description of the extraction methods and facilities, including identification of the well(s) used for recovery (including well construction and capacity).
- Provide the Watermaster, prior to recovery, with the anticipated recovery quantity, rate of recovery, and location and construction of wells used for recovery (if not provided in the bulleted item above).
- Provide the Watermaster, by March 15 of each year, with an annual accounting of source(s), volumes, and locations of water recharged and/or stored and the amount of water that has been stored specifically for export out of the adjudicated area, when known. Water quality reporting can be extended to April 15 if data are not available by March 15.
- Provide the Watermaster, by March 15 of each year, with an annual accounting of volumes and locations of recovery and the amount of the recovery, if any, that is delivered outside of the adjudicated area.

- A pre-determined loss of the total amount of Stored Water by a technical determination by the Watermaster of the percentage of the Stored Water that is unrecoverable².
- Details sufficient to establish that the operations will not cause a Material Injury.
- The Watermaster Engineer may include conditions of approval for the proposed water banking facilities and operations that requires future documentation that the project remains in compliance with the original non-Material Injury determination.

7. Storage Agreements for Carry Over Water. Carry Over Water converted to Stored Water is already part of the Native Safe Yield in the groundwater basin and is not subject to the documentation requirements for source water and recharge facilities as listed for the water banking projects in item 6 above. In addition, Carry Over water converted to Stored Water would not be subject to the losses that may be associated with surface recharge (e.g., evaporation). Documentation of the recovery of Stored Water applies as follows:

- General description of the extraction methods and facilities, including identification of the well(s) used for recovery (including well construction and capacity).
- Provide the Watermaster, prior to recovery, with the anticipated recovery quantity, rate of recovery, and location and construction of wells used for recovery (if not provided in the bulleted item above).
- Provide the Watermaster, by March 15 of each year, with an annual accounting of volumes and locations of recovery.
- The Judgment specifically limits transfers of water by Antelope Valley United Mutuals Group (AVUMG) (as listed in ¶13.5.5 of the Judgment), including any transfer of Carry Over water converted to a Storage Agreement (¶16.3). Such a transfer by a member of the AVUMG may only be to or amongst other members of the AVUMG (¶16.3), unless a

² It is the understanding of the Watermaster Engineer that preexisting water banking projects in the Antelope Valley adjudicated area use a 10 percent loss factor based on previous analyses. This value may be used by the Watermaster Engineer as a minimum loss for a new storage agreement to account for significant project uncertainty such as exact timing of recharge/recovery (when losses would vary) or loss from subsurface outflow.

Public Water Supplier assumes service of an AVUMG member's shareholders (§16.3.1).

8. **Watermaster Investigation.** The Watermaster may request additional information and investigate any existing or proposed Groundwater Storage Project, including physical inspection of the storage and/or recovery facilities. Storage Agreement parties may be requested to confer and cooperate with the Watermaster Engineer or staff, and to provide such additional information, data, and/or physical access, as may be reasonably required to complete the investigation.

Exhibit C

RESOLUTION NO. R-18-16

ADOPTING RULES AND REGULATIONS CONCERNING STORAGE AGREEMENTS

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 Storage Agreements; and

WHEREAS, on April 19, 2018 the Watermaster posted a notice of a public hearing to take place on May 23, 2018 regarding proposed Rules and Regulations relating to Storage Agreements, and on April 23, 2018 the Watermaster posted a draft memorandum prepared by Todd Groundwater that contained those draft Rules and Regulations relating to Storage Agreements; and

WHEREAS, a public hearing was held on May 23, 2018 where additional comments were received on that draft memorandum which then resulted in a revised draft memorandum by Todd Groundwater dated June 15, 2018; and

WHEREAS, draft Rules and Regulations relating to Storage Agreements were provided by the Watermaster for review during a more than 30-day public comment period and for consideration and approval at the Watermaster Board's regular meeting on June 27, 2018; and

WHEREAS, the Watermaster held a public hearing at its meeting on June 27, 2018 where it received and considered public comment on the Draft Rules and Regulations relating to Storage Agreements 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 Storage Agreements expressed in the June 15, 2018 memorandum from the Watermaster Engineer with modifications, if any, as directed by the Board after the public hearing and directs General Counsel to bring a motion before the Court seeking the Court's approval of these Rules and Regulations relating to Storage Agreements pursuant to the terms of the Judgment.

I certify that this is a true copy of Resolution No. R-18-16 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held June 27, 2018, in Palmdale, California.

Date: 6/27/18

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.

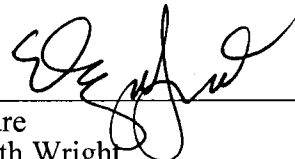
5 On July 2, 2018, I served the foregoing document described **NOTICE OF MOTION AND**
6 **MOTION FOR APPROVAL OF RULES AND REGULATIONS CONCERNING STORAGE**
7 **AGREEMENTS; DECLARATION OF PATRICIA ROSE; EXHIBITS A-C** on all interested
parties in this action by placing the original and/or true copy.

8 ☒ **BY ELECTRONIC SERVICE:** I posted the document(s) listed above to the Santa Clara
9 County Superior Court Website @ www.scefilng.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 July 2, 2018, at Santa Barbara, California.

15
16 
17 _____
Signature
Elizabeth Wright