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**Exempt from Filing Fees  
Government Code § 6103**

5 Attorneys for  
6 Antelope Valley Watermaster

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**  
10

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

Judicial Council Coordination  
Proceeding No. 4408

12  
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

15  
16 **NOTICE OF MOTION AND MOTION**  
17 **FOR APPROVAL OF AMENDMENTS TO**  
18 **ANTELOPE VALLEY WATERMASTER**  
**RULES AND REGULATIONS;**  
**DECLARATION OF PATRICIA ROSE;**  
**EXHIBITS A-D**

19  
20 Date: September 20, 2021  
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 September 20, 2021 at 9:00 a.m., or as soon thereafter  
24 as may be heard, the Antelope Valley Watermaster ("Watermaster") will and hereby does move  
25 for an order of the Court approving amendments to the Antelope Valley Watermaster Rules and  
26 Regulations by amending Section 13.f.ii and adding new Section 14.n.

27 The Watermaster has both the power and the duty to adopt rules and regulations after  
28 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 amending Section 13.f.ii  
3 and adding new Section 14.n as set forth in Exhibits B and D to this motion.

4 This motion is based on the notice, the memorandum of points and authorities in support  
5 thereof, the declaration of Patricia Rose and Exhibits A-D, 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 23, 2021

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. AMENDMENT TO SECTION 13.f.ii**

9 The Watermaster Board properly noticed a public hearing with respect to a proposed  
10 amendment to the Rules and Regulations, which would amend Section 13.f.ii to reduce  
11 Watermaster General Counsel, Engineer and Staff time involved in reviewing and verifying the  
12 legal authority of a Party to transfer water rights that are actually owned by another Party  
13 pursuant to a private agreement, and further to avoid Watermaster exposure to involvement in  
14 legal disputes between third-parties related to whether and to what extent the transferor has  
15 authority to transfer the water rights. The Watermaster conducted such public hearing, and then  
16 voted unanimously to amend the Rules and Regulations by amending Section 13.f.ii. (See  
17 Declaration of Patricia Rose, Exhibits A-B.) By this motion the Watermaster seeks the Court’s  
18 approval of the aforementioned amendment to the Rules and Regulations pursuant to the  
19 Judgment.

20 **B. ADDITION OF NEW SECTION 14.n**

21 The Watermaster Board properly noticed a public hearing with respect to a proposed  
22 amendment to the Rules and Regulations, which would add new Section 14.n to enable the  
23 Watermaster to prevent Material Injury resulting from overuse of groundwater by New  
24 Production applicants. The Watermaster conducted such public hearing, and then voted  
25 unanimously to amend the Rules and Regulations by adding new Section 14.n. (See Declaration  
26 of Patricia Rose, Exhibits C-D.) By this motion the Watermaster further seeks the Court’s  
27 approval of the aforementioned amendment to the Rules and Regulations pursuant to the  
28 Judgment.

1 **II. THE AMENDMENTS TO THE RULES AND REGULATIONS HAVE BEEN**  
2 **PROPOSED AND DISCUSSED AT PUBLIC HEARINGS, UNANIMOUSLY**  
3 **ADOPTED BY THE BOARD, AND ARE NOW SUBJECT TO APPROVAL BY**  
4 **THIS COURT**

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

9 In accordance with these requirements, the proposed amendments to the Rules and  
10 Regulations to amend Section 13.f.ii and add new Section 14.n were both considered at properly  
11 noticed public hearings. (See Judgment Paragraph 18.4.2; Declaration of Patricia Rose, Exhibits  
12 A and C.) After the appropriate noticed public hearings, and after discussion, the Watermaster  
13 unanimously adopted the proposed amendments to the Rules and Regulations amending Section  
14 13.f.ii and adding new Section 14.n. (See attached Exhibits B and D.)

15 Since the Rules and Regulations are critical to the functioning and sustainability of the  
16 Judgment and Physical Solution, and since the proposed amendments to the Rules and  
17 Regulations have been properly considered in the public forum and unanimously adopted by the  
18 Watermaster Board at public hearings held on April 28, 2021, and July 28, 2021, this Court  
19 should approve the amendments to the Rules and Regulations contained in Exhibits B and D.

20 **III. CONCLUSION**

21 For all the foregoing reasons, the Watermaster's motion requesting this Court to approve  
22 the amendments to the Rules and Regulations by amending Section 13.f.ii and adding new  
23 Section 14.n should be granted.

24 Respectfully submitted,

25 Dated: August 23, 2021

PRICE, POSTEL & PARMA LLP

27 By: 

CRAIG A. PARTON

Attorneys for

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 Secretary to the Board of the Antelope Valley Watermaster.

2. At its regular meeting on March 24, 2021, the Watermaster Board considered a proposed amendment to the Watermaster Rules and Regulations which would amend Section 13.f.ii to reduce Watermaster General Counsel, Engineer and Staff time involved in reviewing and verifying the legal authority of a Party to transfer water rights that are actually owned by another Party pursuant to a private agreement, and further to avoid Watermaster exposure to involvement in legal disputes between third-parties related to whether and to what extent the transferor has authority to transfer the water rights.

3. At its regular meeting on March 24, 2021, the Watermaster Board directed that the proposed amendment to the Rules and Regulations amending Section 13.f.ii be circulated for public comment ahead of its next regular meeting for consideration and adoption.

4. On March 25, 2021, I posted on the Watermaster's website the language of the proposed amendment to the Rules and Regulations amending Section 13.f.ii 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 April 28, 2021. A true and correct copy of the notice of public hearing is attached hereto as Exhibit A.

5. At the April 28, 2021 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 amending Section 13.f.ii.

6. Attached hereto as Exhibit B is a true and correct copy of Resolution No. R-21-13, which is the resolution adopted by the Watermaster Board at its April 28, 2021 meeting to unanimously adopt the proposed amendment to the Rules and Regulations by amending Section 13.f.ii.

1           7.       At its regular meetings on March 24, 2021, and April 28, 2021, the Watermaster  
2 Board considered a proposed amendment to the Watermaster Rules and Regulations which would  
3 add new Section 14.n to limit New Production applicants to the quantity specified in their  
4 application, and further provide that New Production applicants can be enjoined from Producing  
5 in excess of the amount approved in their application regardless of whether they pay Replacement  
6 Water Assessments on such excess Production.

7           8.       After consideration of the proposed new Section 14.n at its April and May 2021  
8 regular meetings, the Watermaster Board directed the Watermaster General Counsel to  
9 incorporate certain revisions to the proposed new Section 14.n, including but not limited to  
10 specific requirements for reasonable and beneficial use determinations.

11          9.       At a special meeting on June 30, 2021, the Watermaster Board considered  
12 revisions to the proposed new Section 14.n, and directed that the proposed amendment be  
13 circulated for public comment ahead of its next regular meeting for consideration and adoption.

14          10.      On June 30, 2021, I posted on the Watermaster's website the language of the  
15 proposed amendment to the Rules and Regulations adding new Section 14.n for a public comment  
16 period ahead of the next regular Board meeting, and also a notice of a public hearing on adoption  
17 of said amendment to occur on July 28, 2021. A true and correct copy of the notice of public  
18 hearing is attached hereto as Exhibit C.

19          10.      At the July 28, 2021 public hearing, after a presentation by the Watermaster Staff  
20 and Watermaster General Counsel, and comments by the Advisory Committee and the public, the  
21 Watermaster Board voted unanimously to approve the proposed amendment to the Rules and  
22 Regulations adding new Section 14.n.

23          11.      Attached hereto as Exhibit D is a true and correct copy of Resolution No. R-21-24,  
24 which is the resolution adopted by the Watermaster Board at its July 28, 2021 meeting to  
25 unanimously adopt the proposed amendment to the Rules and Regulations by adding new Section  
26 14.n.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 16<sup>th</sup> day of August, 2021, at Palmdale, California.

  
\_\_\_\_\_  
Patricia Rose

## **Exhibit A**



## ANTELOPE VALLEY WATERMASTER PUBLIC HEARING

### Amendments to the Antelope Valley Watermaster Rules and Regulations

#### TO: ANTELOPE VALLEY GROUNDWATER PRODUCERS

The ANTELOPE VALLEY WATERMASTER set 10:00 a.m. on Wednesday, April 28, 2021, 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 amendments to the Antelope Valley Watermaster Rules and Regulations (Section 13.f.ii and Section 14.n). Due to the COVID-19 response the Public Hearing may be held via teleconference. A copy of the proposed amendments will be available at [www.avwatermaster.net](http://www.avwatermaster.net).

At that hearing, the Watermaster will consider public comments on the Proposed amendments to the Antelope Valley Watermaster Rules and Regulations (Section 13.f.ii and Section 14.n). Written comments may be made in advance of the public hearing to the Watermaster Administrator; Matthew Knudson at [mknudson@avwatermaster.net](mailto:mknudson@avwatermaster.net) or by mail at Antelope Valley Watermaster, PO Box 3025 , Quartz Hill, CA 93586.

Posted By Patricia Rose

Date: March 25, 2021

The proposed additions to the existing language in R&Rs Section 13.f.ii are indicated in ***bold italics*** as follows:

*“ii. The request will identify both the rights holder and the transferee. Unless clearly stated otherwise in the Transfer Request Form, the rights holder will retain responsibility for the Administrative Assessments on the transferred rights, if any. Watermaster Staff will confirm that all overdue assessments associated with the Parties involved in the transfer are settled before the transfer request will be considered by the Watermaster Engineer. The Transfer Request Form must bear the notarized signatures of both the rights holder and the transferee. Watermaster Staff will not consider a Transfer Request Form without the notarized signatures of all Parties thereto. **A Party may not transfer water rights not owned by that Party pursuant to the terms of the Judgment, regardless of whether the Party may be entitled to use such water rights pursuant to a lease agreement or other private contract.** The Watermaster may, but is not required to, investigate a Party’s legal authority to enter into a transfer, or a person’s authority to execute a Transfer Request Form on behalf of a Party thereto. Any costs or legal fees incurred by the Watermaster for such investigation, in the Watermaster’s sole discretion, shall be borne by the Party submitting the request, payable to the Watermaster prior to submittal of the Transfer Request to the Watermaster Engineer for hydrologic review and Material Injury analysis. Watermaster may require a person, Party or Parties requesting a transfer to indemnify the Watermaster, as a condition for approving the transfer, for any costs and legal fees incurred by the Watermaster resulting from a challenge to that person, Party or Parties’ legal authority to entered into such transfer, or to a person’s authority to execute a Transfer Request Form on behalf of a Party thereto.”*

The proposed language for new R&Rs Section 14.n is as follows:

*“n. Limitations On All New Production.*

- i. Because the Watermaster Engineer’s Material Injury analysis for a New Production application (Sections 7.b.xi and 14.m of these Rules and Regulations) is based upon a specific quantity of New Production per Year as specified in the application, the specific quantity of New Production approved by the Watermaster in any application shall be the maximum amount allowed to be Produced in any given Year, subject to the provisions of this Section 14.n.*
- ii. Notwithstanding the limitations in Section 14.n.i above, and subject to the Production reduction requirements in Section 14.n.iii below, a Party may exceed the quantity of New Production approved by the Watermaster by up to 20% in any given Year, with a maximum of up to 5 acre-feet per year in excess of the Party’s approved New Production quantity.*
- iii. Notwithstanding the excess Production permissible pursuant to Section 14.n.ii above, if a Party Produces in excess of the quantity of New Production approved by the Watermaster in*

*any given Year, by any amount, then in the following Year the Party's allowed Production shall be reduced by the same amount it overproduced in the prior Year. A Party's reduced Production pursuant to this Section 14.n.iii in any given Year, if any, shall be the baseline Production amount for the purposes of calculating the amount of excess production permissible pursuant to Section 14.n.ii above.*

- iv. *If a Party exceeds the quantity of New Production approved by the Watermaster by more than the amount allowed in Section 14.n.ii above for two (2) consecutive Years, then, at the Watermaster's discretion, the approval of the Party's New Production application may be revoked, in which case the Party may be required to re-submit its application for New Production, specifying a quantity of New Production no less than the average Production by that Party for the prior two (2) Years and providing additional documentation and information justifying the reasonableness of the proposed increased use. In the event a Party continues to Produce Groundwater after having its New Production application approval revoked pursuant to this Section 14.n.iv, the Watermaster may, at its discretion, seek an injunction prohibiting any additional Production until re-submittal of a New Production application with additional documentation and information as necessary pursuant to this Section 14.n.iv, as well as pursue all other legal remedies available to the Watermaster under the Judgment and these Rules and Regulations.*
- v. *All Parties shall be required to comply with the limitations on New Production in this Section 14.n, regardless of whether the Party's New Production application was approved prior or subsequent to the Court's approval of this Section 14.n. Notwithstanding the foregoing, no Party shall be subject to the penalties or Production reduction requirements under this Section 14.n for any Production that occurred in a Year prior to, or in the same Year as, the Court's approval of this Section 14.n.*
- vi. *Nothing in this Section 14.n shall be construed to relieve any Party from the obligation to pay Replacement Water Assessments for all New Production, including but not limited to any Production in excess of the quantity of New Production approved by the Watermaster."*

The proposed amendment to the New Production Application (Form 4) would add the following language to the end of the applicant declaration on page 2 of 2 under "SIGNATURES":

*"I further understand and agree that the quantity of New Production, if any, approved by the Watermaster pursuant to this application shall be the maximum amount of New Production that I can Produce in any given Year. I certify that I will comply with the restrictions set forth in Section 14.n of the Watermaster Rules and Regulations setting forth limitations on New Production."*

## **Exhibit B**



## RESOLUTION NO. R-21-13

### ADOPTING REVISIONS TO RULES AND REGULATIONS SECTION 13.f.ii RELATING TO PARTIES' AUTHORITY TO SUBMIT TRANSFER REQUESTS

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, at its December 2, 2020 special meeting, the Watermaster Board directed Staff and General Counsel to generate revisions to the final Rules and Regulations to clarify that any transfer request must be submitted by the Party that owns the water rights being transferred, and may not be submitted by a lessee, assignee, or sublessee under an ancillary private agreement; and

WHEREAS, the Watermaster General Counsel and Watermaster Staff have developed language to implement the aforementioned directive from the Watermaster Board, and have proposed amending Section 13.f.ii of the rules and regulations as follows (additions to existing language are indicated in **bold underlined text**):

*"ii. The request will identify both the rights holder and the transferee. Unless clearly stated otherwise in the Transfer Request Form, the rights holder will retain responsibility for the Administrative Assessments on the transferred rights, if any. Watermaster Staff will confirm that all overdue assessments associated with the Parties involved in the transfer are settled before the transfer request will be considered by the Watermaster Engineer. The Transfer Request Form must bear the notarized signatures of both the rights holder and the transferee. Watermaster Staff will not consider a Transfer Request Form without the notarized signatures of all Parties thereto. **A Party may not transfer water rights not owned by that Party pursuant to the terms of the Judgment, regardless of whether the Party may be entitled to use such water rights pursuant to a lease agreement or other private contract.** The Watermaster may, but is not required to, investigate a Party's legal authority to enter into a transfer, or a person's authority to execute a Transfer Request Form on behalf of a Party thereto. Any costs or legal fees incurred by the Watermaster for such investigation, in the Watermaster's sole discretion, shall be borne by the Party submitting the request, payable to the Watermaster prior to submittal of the Transfer Request to the Watermaster Engineer for hydrologic review and Material Injury analysis. Watermaster may require a person, Party or Parties requesting a transfer to indemnify the Watermaster, as a condition for*

*approving the transfer, for any costs and legal fees incurred by the Watermaster resulting from a challenge to that person, Party or Parties' legal authority to enter~~ed~~ into such transfer, or to a person's authority to execute a Transfer Request Form on behalf of a Party thereto.";* and

WHEREAS, in addition to the proposed language revising Section 13.f.ii as set forth above, Watermaster General Counsel recommended that the following condition #8 be added to the list of conditions on transfers on page 2 of the Transfer Request Form:

*"8. The Seller/Transferor must be the owner of the water rights pursuant to the Judgment. No Party may transfer water rights held pursuant to a lease agreement or other private contract with the actual water rights owner.";* and

WHEREAS, the proposed language revising Section 13.f.ii, and the proposed addition of condition #8 to the Transfer Request Form set forth above, were both considered by the Watermaster Board at its regular meeting on March 24, 2021, and the Watermaster Board directed that the proposed changes and additions be circulated for public comment ahead of its next regular meeting for consideration and adoption; and

WHEREAS, the proposed language revising Section 13.f.ii set forth above was posted on the Watermaster website on March 25, 2021 for review during a 30-day public comment period and for consideration and approval at the Watermaster Board's regular meeting on April 28, 2021; and

WHEREAS, the Watermaster Board held a public hearing at its regular meeting on April 28, 2021, where it received and considered public comment on the proposed language revising Section 13.f.ii set forth above, and wishes now to adopt said revisions to Section 13.f.ii of 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 April 28, 2021, the Watermaster Board held a public hearing where it received and considered public comment on the proposed addition of condition #8 to the Transfer Request Form set forth above, and wishes now to approve said addition; and

WHEREAS, the purpose and intent of the revisions to Section 13.f.ii of the rules and regulations and the addition of condition #8 to the Transfer Request Form is to reduce Watermaster General Counsel, Engineer and Staff time involved in reviewing and verifying the legal authority of a Party to transfer water rights that are actually owned by another Party pursuant to a private agreement, and further to avoid Watermaster exposure to involvement in legal disputes between third-parties related to whether and to what extent the transferor has authority to transfer the water rights.

NOW, THEREFORE, BE IT RESOLVED, the Watermaster Board unanimously adopts the revisions to Section 13.f.ii of 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 addition of condition #8 to the Transfer Request Form as set forth above.

I certify that this is a true copy of Resolution No. R-21-13 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held on April 28, 2021, in Palmdale, California.

Date: 4/28/21

Robert Parris  
Robert Parris, Chairman

ATTEST: Patricia Rose  
Patricia Rose – Secretary

## **Exhibit C**



**ANTELOPE VALLEY WATERMASTER**

**PUBLIC HEARING NOTICE**

**Amendment to Rules & Regulations**

**TO: ANTELOPE VALLEY GROUNDWATER PRODUCERS**

Notice is hereby given that the Board of Directors of the Antelope Valley Watermaster ("Board") will be holding a regular Board meeting at 10:00 a.m. on Wednesday, July 28, 2021, via Zoom teleconference

**Website:** <https://zoom.us/j/687127281> **Access Code:** 687 127 281

**Teleconference:** (669)900-6833

At that meeting, the Board will consider possible action to adopt a proposed new Section 14.n to the Watermaster Rules and Regulations, a copy of the June 30, 2021, memorandum is attached for a minimum 30-day public comment period as required by Paragraph 18.4.2 of the Judgment.

Written comments on the proposed Antelope Valley Watermaster Rules and Regulations may be made in advance of the public hearing to the Watermaster Administrator; Matthew Knudson at [mknudson@avek.org](mailto:mknudson@avek.org) or to the Watermaster Secretary, Patti Rose at [prose@avwatermaster.net](mailto:prose@avwatermaster.net) or by mail at Antelope Valley Water Master, 5022 West Avenue N, Suite 102 # 158, Palmdale, CA 93551.



PRICE, POSTEL & PARMA LLP

## MEMORANDUM

TO: Antelope Valley Watermaster Board      DATE: June 30, 2021  
FROM: Craig A. Parton  
General Counsel to the Watermaster      FILE NO.: 23641-1  
Cc: Watermaster Engineer  
SUBJECT: Limitations on New Production Rights – Revisions to R&Rs Section 14.n

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In a memorandum to the Watermaster Board dated September 23, 2020, the Watermaster General Counsel opined that the Judgment and the Rules and Regulations are silent as to any limitations on New Production. The Watermaster General Counsel concluded that, given the importance of the Material Injury analysis in determining whether to approve a New Production application, an applicant for New Production should be limited to the quantity of New Production specified in the application, and should not be allowed to Produce in excess of the approved amount and merely pay additional Replacement Water Assessments (“RWA”) without further consequence. The Watermaster General Counsel also concluded that New Production applicants can be enjoined from Producing in excess of the amount approved in their application, regardless of whether they pay RWAs on such excess Production. Without such limitations on New Production, the New Production Material Injury analysis would be rendered largely meaningless.

The Watermaster Board directed the Watermaster General Counsel to provide proposed revisions to the Rules and Regulations and New Production Application (Form 4) that would implement these limitations on New Production. In consultation with the Watermaster Engineer, the Watermaster General Counsel originally proposed that the Board consider approving a new Section 14.n of the Rules and Regulations, applicable to all New Production. After consideration at the April and May 2021 regular meetings, the Watermaster Board directed the Watermaster General Counsel to incorporate certain revisions to the proposed new Section 14.n, including but not limited to specific requirements for reasonable and beneficial use determinations, which revisions are reflected in the redlines below:

“n.      *Limitations On All New Production.*

i.      *Purpose, Place and Quantity of Use. Because the Watermaster Engineer’s Material Injury analysis and reasonableness of use determination for a New Production application (Sections 7.b.xi and 14.m of these Rules and Regulations) is based upon a specific quantity of New Production per Year as specified in the application, the specific quantity of New Production approved by the Watermaster in any application shall be the maximum amount*

~~allowed to be~~ such Party may Produced in any given Year, subject to the provisions of this Section 14.n. Furthermore, because the Watermaster Engineer “shall determine whether a Party or Person seeking to commence New Production has established the reasonableness of the New Production in the context of all other uses of Groundwater in the Basin at the time of the application, including whether all of the Native Safe Yield is then currently being used reasonably and beneficially” (Judgment ¶ 18.5.13 (emphasis added)), the specific purpose and place of use of the proposed New Production set forth in the application (Judgment ¶ 18.5.13.1.2) shall be the only purpose and use for which such New Production is granted.

ii. Limited Exceedance of Approved Quantity. Notwithstanding the limitations on quantity of New Production in Section 14.n.i above, and subject to the Production reduction requirements in Section 14.n.iii below, a Party may exceed the quantity of New Production approved by the Watermaster by up to 20% in any given Year, with a maximum of up to 5 acre-feet per year in excess of the Party's approved New Production quantity.

iii. Pro Rata Reduction for Exceedance of Approved Quantity. Notwithstanding the excess Production permissible pursuant to Section 14.n.ii above, if a Party Produces in excess of the quantity of New Production approved by the Watermaster in any given Year, by any amount, then in the following Year the Party's allowed Production shall be reduced by the same amount it overproduced in the prior Year. A Party's reduced Production pursuant to this Section 14.n.iii in any given Year, if any, shall be the baseline Production amount for the purposes of calculating the amount of excess production permissible pursuant to Section 14.n.ii above.

iv. Penalties for Exceedance of Approved Quantity. If a Party exceeds the quantity of New Production approved by the Watermaster by more than the amount allowed in Section 14.n.ii above for two (2) consecutive Years, then, at the Watermaster's discretion, the approval of the Party's New Production application may be revoked, in which case the Party may be required to re-submit its application for New Production, specifying a quantity of New Production no less than the average Production by that Party for the prior two (2) Years and providing additional documentation and information justifying the reasonableness of the proposed increased use, which application shall be subject to a de novo Material Injury analysis by the Watermaster Engineer. In the event a Party continues to Produce Groundwater after having its New Production application approval revoked pursuant to this Section 14.n.iv, the Watermaster may, at its discretion, seek an injunction prohibiting any additional Production until re-submittal of a New Production application with additional documentation and information as necessary pursuant to this Section 14.n.iv, as well as pursue all other legal remedies available to the Watermaster under the Judgment and these Rules and Regulations.

v. Penalties for Change in Approved Purpose or Place of Use. In the event the Watermaster obtains evidence that a Party has changed the purpose or place of use specified



in the Party's approved New Production application, then, at the Watermaster's discretion, the approval of the Party's New Production application may be revoked, in which case the Party may be required to re-submit its application for New Production, specifying a new purpose and place of use, which shall be subject to de novo review by the Watermaster Engineer for the purpose of conducting a Material Injury analysis and determining the reasonableness of such proposed purpose and place of use in accordance with Paragraph 18.5.13 of the Judgment. In the event a Party continues to Produce Groundwater after having its New Production application approval revoked pursuant to this Section 14.n.v, the Watermaster may, at its discretion, seek an injunction prohibiting any additional Production until re-submittal of a New Production application with additional documentation and information as necessary pursuant to this Section 14.n.v, as well as pursue all other legal remedies available to the Watermaster under the Judgment and these Rules and Regulations.

vi. Reasonableness Determination Required. In accordance with Paragraph 18.5.13 of the Judgment, in addition to a Material Injury analysis, the Watermaster Engineer shall make a written determination as to whether the proposed purpose, place, and quantity of use in a New Production application is reasonable and beneficial in the context of all other uses of Groundwater in the Basin at the time of the application, including but not limited to Article X, Section 2 of the California Constitution (Judgment ¶ 9.2.2).

vii. Metering and Production Reporting Required. No application for New Production shall be approved until the applicant has complied with the Production monitoring requirements of Section 15 of these Rules and Regulations. In addition, any Party who fails to submit an annual Production report with the Watermaster in any given year in accordance with Paragraph 18.5.12 of the Judgment and Section 15 of these Rules and Regulations shall automatically have its New Production rights revoked without notice until all delinquent annual Production reports are submitted.

viii. Retroactive Effect. All Parties shall be required to comply with the limitations on New Production in this Section 14.n, regardless of whether the Party's New Production application was approved prior or subsequent to the Court's approval of this Section 14.n. ~~Notwithstanding the foregoing, no Party shall be subject to the penalties or Production reduction requirements under this Section 14.n for any Production that occurred in a Year prior to, or in the same Year as, the Court's approval of this Section 14.n.~~

vix. Replacement Water Assessments. Nothing in this Section 14.n shall be construed to relieve any Party from the obligation to pay Replacement Water Assessments for all New Production, including but not limited to any Production in excess of the quantity of New Production approved by the Watermaster (Judgment ¶ 18.5.13.1.11)."



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In addition to the above amendment to the Rules and Regulations, the Watermaster General Counsel recommends amending the New Production Application (Form 4) by adding the following language to the end of the applicant declaration on page 2 of 2 under “SIGNATURES”:

*“I further understand and agree that the purpose, place and quantity of New Production, if any, approved by the Watermaster pursuant to this application shall be the only purpose and place, and the maximum amount, of New Production that I can Produce in any given Year. I certify that I will comply with the restrictions set forth in Section 14.n of the Watermaster Rules and Regulations setting forth limitations on New Production, and that my failure to comply with these restrictions may result in a revocation of my New Production rights.”*

The Watermaster General Counsel requests that the Board review and provide comments on the above proposed addition to the Rules and Regulations and New Production Application (Form 4). Once the language, as revised, is acceptable, the Board should direct Watermaster Staff to post this proposed addition to the Rules and Regulations online for a 30-day public review period ahead of a public hearing on adoption at the next regular Board meeting. A clean version of the above revised Section 14.n of the Rules and Regulations is provided on the following pages for ease of reference.

**Proposed New Section 14.n: Limitations On All New Production.**

i. Purpose, Place and Quantity of Use. Because the Watermaster Engineer's Material Injury analysis and reasonableness of use determination for a New Production application (Sections 7.b.xi and 14.m of these Rules and Regulations) is based upon a specific quantity of New Production per Year as specified in the application, the specific quantity of New Production approved by the Watermaster in any application shall be the maximum amount such Party may Produce in any given Year, subject to the provisions of this Section 14.n. Furthermore, because the Watermaster Engineer "shall determine whether a Party or Person seeking to commence New Production has established the reasonableness of the New Production in the context of all other uses of Groundwater in the Basin at the time of the application, including whether all of the Native Safe Yield is then currently being used reasonably and beneficially" (Judgment ¶ 18.5.13 (emphasis added)), the specific purpose and place of use of the proposed New Production set forth in the application (Judgment ¶ 18.5.13.1.2) shall be the only purpose and use for which such New Production is granted.

ii. Limited Exceedance of Approved Quantity. Notwithstanding the limitations on quantity of New Production in Section 14.n.i above, and subject to the Production reduction requirements in Section 14.n.iii below, a Party may exceed the quantity of New Production approved by the Watermaster by up to 20% in any given Year, with a maximum of up to 5 acre-feet per year in excess of the Party's approved New Production quantity.

iii. Pro Rata Reduction for Exceedance of Approved Quantity. Notwithstanding the excess Production permissible pursuant to Section 14.n.ii above, if a Party Produces in excess of the quantity of New Production approved by the Watermaster in any given Year, by any amount, then in the following Year the Party's allowed Production shall be reduced by the same amount it overproduced in the prior Year. A Party's reduced Production pursuant to this Section 14.n.iii in any given Year, if any, shall be the baseline Production amount for the purposes of calculating the amount of excess production permissible pursuant to Section 14.n.ii above.

iv. Penalties for Exceedance of Approved Quantity. If a Party exceeds the quantity of New Production approved by the Watermaster by more than the amount allowed in Section 14.n.ii above for two (2) consecutive Years, then, at the Watermaster's discretion, the approval of the Party's New Production application may be revoked, in which case the Party may be required to re-submit its application for New Production, specifying a quantity of New Production no less than the average Production by that Party for the prior two (2) Years and providing additional documentation and information justifying the reasonableness of the proposed increased use, which application shall be subject to a de novo Material Injury analysis by the Watermaster Engineer. In the event a Party continues to Produce Groundwater after having its New Production application approval revoked pursuant to this Section 14.n.iv, the



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Watermaster may, at its discretion, seek an injunction prohibiting any additional Production until re-submittal of a New Production application with additional documentation and information as necessary pursuant to this Section 14.n.iv, as well as pursue all other legal remedies available to the Watermaster under the Judgment and these Rules and Regulations.

v. Penalties for Change in Approved Purpose or Place of Use. In the event the Watermaster obtains evidence that a Party has changed the purpose or place of use specified in the Party's approved New Production application, then, at the Watermaster's discretion, the approval of the Party's New Production application may be revoked, in which case the Party may be required to re-submit its application for New Production, specifying a new purpose and place of use, which shall be subject to de novo review by the Watermaster Engineer for the purpose of conducting a Material Injury analysis and determining the reasonableness of such proposed purpose and place of use in accordance with Paragraph 18.5.13 of the Judgment. In the event a Party continues to Produce Groundwater after having its New Production application approval revoked pursuant to this Section 14.n.v, the Watermaster may, at its discretion, seek an injunction prohibiting any additional Production until re-submittal of a New Production application with additional documentation and information as necessary pursuant to this Section 14.n.v, as well as pursue all other legal remedies available to the Watermaster under the Judgment and these Rules and Regulations.

vi. Reasonableness Determination Required. In accordance with Paragraph 18.5.13 of the Judgment, in addition to a Material Injury analysis, the Watermaster Engineer shall make a written determination as to whether the proposed purpose, place, and quantity of use in a New Production application is reasonable and beneficial in the context of all other uses of Groundwater in the Basin at the time of the application, including but not limited to Article X, Section 2 of the California Constitution (Judgment ¶ 9.2.2).

vii. Metering and Production Reporting Required. No application for New Production shall be approved until the applicant has complied with the Production monitoring requirements of Section 15 of these Rules and Regulations. In addition, any Party who fails to submit an annual Production report with the Watermaster in any given year in accordance with Paragraph 18.5.12 of the Judgment and Section 15 of these Rules and Regulations shall automatically have its New Production rights revoked without notice until all delinquent annual Production reports are submitted.

viii. Retroactive Effect. All Parties shall be required to comply with the limitations on New Production in this Section 14.n, regardless of whether the Party's New Production application was approved prior or subsequent to the Court's approval of this Section 14.n..

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ix. Replacement Water Assessments. Nothing in this Section 14.n shall be construed to relieve any Party from the obligation to pay Replacement Water Assessments for all New Production, including but not limited to any Production in excess of the quantity of New Production approved by the Watermaster (Judgment ¶ 18.5.13.1.11)."

**Proposed addition to applicant declaration on page 2 of 2 under "SIGNATURES" of the New Production Application (Form 4):**

"I further understand and agree that the purpose, place and quantity of New Production, if any, approved by the Watermaster pursuant to this application shall be the only purpose and place, and the maximum amount, of New Production that I can Produce in any given Year. I certify that I will comply with the restrictions set forth in Section 14.n of the Watermaster Rules and Regulations setting forth limitations on New Production, and that my failure to comply with these restrictions may result in a revocation of my New Production rights."



## **Exhibit D**

## RESOLUTION NO. R-21-24

### ADOPTING RULES AND REGULATIONS SECTION 14.n 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, at its September 23, 2020 special meeting, the Watermaster Board directed Staff and General Counsel to provide proposed revisions to the Rules and Regulations and New Production Application (Form 4) that would limit New Production applicants to the quantity specified in their application, and further providing that New Production applicants can be enjoined from Producing in excess of the amount approved in their application regardless of whether they pay Replacement Water Assessments on such excess Production; and

WHEREAS, the Watermaster General Counsel and Watermaster Staff developed language to implement the aforementioned directive from the Watermaster Board, and after consideration thereof at the April and May 2021 regular meetings, the Watermaster Board directed the Watermaster General Counsel to incorporate certain revisions to the proposed new Section 14.n, including but not limited to specific requirements for reasonable and beneficial use determinations; and

WHEREAS, in accordance with the aforementioned direction of the Watermaster Board, the Watermaster General Counsel and Watermaster Staff have proposed adding new Section 14.n to the Rules and Regulations as follows:

“n. Limitations On All New Production.

i. Purpose, Place and Quantity of Use. Because the Watermaster Engineer’s Material Injury analysis and reasonableness of use determination for a New Production application (Sections 7.b.xi and 14.m of these Rules and Regulations) is based upon a specific quantity of New Production per Year as specified in the application, the specific quantity of New Production approved by the Watermaster in any application shall be the maximum amount such Party may Produce in any given Year, subject to the provisions of this Section 14.n. Furthermore, because the Watermaster Engineer “shall determine whether a Party or Person seeking to commence New Production has established the reasonableness of the New Production in the context of all other uses of Groundwater in the Basin at the time of the application, including whether all of the Native Safe Yield is then currently being used reasonably and

beneficially” (Judgment ¶ 18.5.13 (emphasis added)), the specific purpose and place of use of the proposed New Production set forth in the application (Judgment ¶ 18.5.13.1.2) shall be the only purpose and use for which such New Production is granted.

ii. Limited Exceedance of Approved Quantity. Notwithstanding the limitations on quantity of New Production in Section 14.n.i above, and subject to the Production reduction requirements in Section 14.n.iii below, a Party may exceed the quantity of New Production approved by the Watermaster by up to 20% in any given Year, with a maximum of up to 5 acre-feet per year in excess of the Party’s approved New Production quantity.

iii. Pro Rata Reduction for Exceedance of Approved Quantity. Notwithstanding the excess Production permissible pursuant to Section 14.n.ii above, if a Party Produces in excess of the quantity of New Production approved by the Watermaster in any given Year, by any amount, then in the following Year the Party’s allowed Production shall be reduced by the same amount it overproduced in the prior Year. A Party’s reduced Production pursuant to this Section 14.n.iii in any given Year, if any, shall be the baseline Production amount for the purposes of calculating the amount of excess production permissible pursuant to Section 14.n.ii above.

iv. Penalties for Exceedance of Approved Quantity. If a Party exceeds the quantity of New Production approved by the Watermaster by more than the amount allowed in Section 14.n.ii above for two (2) consecutive Years, then, at the Watermaster’s discretion, the approval of the Party’s New Production application may be revoked, in which case the Party may be required to re-submit its application for New Production, specifying a quantity of New Production no less than the average Production by that Party for the prior two (2) Years and providing additional documentation and information justifying the reasonableness of the proposed increased use, which application shall be subject to a de novo Material Injury analysis by the Watermaster Engineer. In the event a Party continues to Produce Groundwater after having its New Production application approval revoked pursuant to this Section 14.n.iv, the Watermaster may, at its discretion, seek an injunction prohibiting any additional Production until re-submittal of a New Production application with additional documentation and information as necessary pursuant to this Section 14.n.iv, as well as pursue all other legal remedies available to the Watermaster under the Judgment and these Rules and Regulations.

v. Penalties for Change in Approved Purpose or Place of Use. In the event the Watermaster obtains evidence that a Party has changed the purpose or place of use specified in the Party’s approved New Production application, then, at the Watermaster’s discretion, the approval of the Party’s New Production application may be revoked, in which case the Party may be required to re-submit its application for New Production, specifying a new purpose and place of use, which shall be subject to de novo review by the Watermaster Engineer for the purpose of conducting a Material Injury analysis and determining the reasonableness of such proposed purpose and place of use in accordance with Paragraph 18.5.13 of the Judgment. In the event a Party continues to Produce Groundwater after having its New Production application approval revoked pursuant to this Section 14.n.v, the Watermaster may, at its discretion, seek an injunction prohibiting any additional Production until re-submittal of a New Production application with additional documentation and information as necessary pursuant to this Section 14.n.v, as well as pursue all other legal remedies available to the Watermaster under the Judgment and these Rules and Regulations.

vi. Reasonableness Determination Required. In accordance with Paragraph 18.5.13 of the Judgment, in addition to a Material Injury analysis, the Watermaster Engineer shall make a written determination as to whether the proposed purpose, place, and quantity of



use in a New Production application is reasonable and beneficial in the context of all other uses of Groundwater in the Basin at the time of the application, including but not limited to Article X, Section 2 of the California Constitution (Judgment ¶ 9.2.2).

vii. Metering and Production Reporting Required. No application for New Production shall be approved until the applicant has complied with the Production monitoring requirements of Section 15 of these Rules and Regulations. In addition, any Party who fails to submit an annual Production report with the Watermaster in any given year in accordance with Paragraph 18.5.12 of the Judgment and Section 15 of these Rules and Regulations shall automatically have its New Production rights revoked without notice until all delinquent annual Production reports are submitted.

viii. Retroactive Effect. All Parties shall be required to comply with the limitations on New Production in this Section 14.n, regardless of whether the Party's New Production application was approved prior or subsequent to the Court's approval of this Section 14.n.

ix. Replacement Water Assessments. Nothing in this Section 14.n shall be construed to relieve any Party from the obligation to pay Replacement Water Assessments for all New Production, including but not limited to any Production in excess of the quantity of New Production approved by the Watermaster (Judgment ¶ 18.5.13.1.11)."; and

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

"I further understand and agree that the purpose, place and quantity of New Production, if any, approved by the Watermaster pursuant to this application shall be the only purpose and place, and the maximum amount, of New Production that I can Produce in any given Year. I certify that I will comply with the restrictions set forth in Section 14.n of the Watermaster Rules and Regulations setting forth limitations on New Production, and that my failure to comply with these restrictions may result in a revocation of my New Production rights."

WHEREAS, the proposed language adding new Section 14.n, and the proposed amendment to New Production Application (Form 4) set forth above, were both considered by the Watermaster Board at its regular meeting on June 30, 2021, and the Watermaster Board directed that the proposed addition and amendment be circulated for public comment ahead of its next regular meeting for consideration and adoption; and

WHEREAS, the proposed language adding new Section 14.n set forth above and the amendment to the New Production Application (Form 4) set forth above were both posted on the Watermaster website on June 30, 2021 for public comment ahead of the Watermaster Board's consideration and approval thereof at its regular meeting on July 28, 2021; and

WHEREAS, the Watermaster Board held a public hearing at its regular meeting on July 28, 2021, where it received and considered public comment on the proposed language adding Section 14.n set forth above, and wishes now to adopt said addition of Section 14.n 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 July 28, 2021, 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 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.

NOW, THEREFORE, BE IT RESOLVED, the Watermaster Board unanimously adopts the addition of Section 14.n 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-21-24 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held on July 28, 2021, in Palmdale, California.**

Date:

July 28, 2021

  
Robert Parris, Chairman

ATTEST:

  
Patricia Rose – Secretary

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.

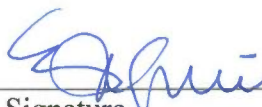
5 On August 23, 2021, I served the foregoing document described as **NOTICE OF**  
6 **MOTION AND MOTION FOR APPROVAL OF AMENDMENTS TO ANTELOPE**  
7 **VALLEY WATERMASTER RULES AND REGULATIONS; DECLARATION OF**  
8 **PATRICIA ROSE; EXHIBITS A-D** on all interested parties in this action by placing the original  
and/or true copy.

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

11 ☒ (*STATE*) I declare under penalty of perjury under the laws of the State of California that  
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  
13 this Court at whose direction the service was made.

14  
15 Executed on August 23, 2021, at Santa Barbara, California.

16  
17   
18 Signature  
Elizabeth Wright