

Notice and Agenda of a Meeting of the Beaumont Basin Watermaster

Wednesday, June 6, 2018 at 10:00 a.m.

Meeting Location:

Beaumont Cherry Valley Water District
560 Magnolia Avenue
Beaumont, California 92223
(951) 845-9581

Watermaster Members:

City of Banning
City of Beaumont
Beaumont Cherry Valley Water District
South Mesa Water Company
Yucaipa Valley Water District

I. Call to Order

II. Roll Call

City of Banning: Arturo Vela (Alternate: Luis Cardenas)

City of Beaumont: Amer Jakher (Alternate: Kyle Warsinski)

Beaumont Cherry Valley Water District: Daniel Jagers (Alternate: Tony Lara)

South Mesa Water Company: George Jorritsma (Alternate: Dave Armstrong)

Yucaipa Valley Water District: Joseph Zoba (Alternate: Jennifer Ares)

III. Pledge of Allegiance

IV. Public Comments At this time, members of the public may address the Beaumont Basin Watermaster on matters within its jurisdiction; however, no action or discussion may take place on any item not on the agenda. To provide comments on specific agenda items, please complete a Request to Speak form and provide that form to the Secretary prior to the commencement of the meeting.

V. Correspondence

A. None

VI. Consent Calendar

A. Meeting Minutes

1. Meeting Minutes for March 28, 2018 [\[Page 4 of 27\]](#)

VII. Reports

A. Report from Engineering Consultant - Hannibal Blandon, ALDA Engineering

B. Report from Legal Counsel - Keith McCullough/Thierry Montoya, Alvarado Smith

VIII. Discussion Items

A. Status Report on Water Level Monitoring throughout the Beaumont Basin through May 29, 2018 [\[Memorandum No. 18-12, Page 11 of 27\]](#)

Recommendation: No recommendation.

B. Consideration of the Watermaster Budget for Fiscal Year 2018-19 [\[Memorandum No. 18-13, Page 21 of 27\]](#)

Recommendation: That the Watermaster Committee approve the budget for Fiscal Year 2018-19 and authorize the preparation of an Independent Accountant's Financial Report for Fiscal Year 2017-18.

- C. Review of a Memorandum Regarding the Transfer and Conversion of Overlying Water Rights to Appropriative Rights and Accounting for Such [Memorandum No. 18-14, Page 24 of 27]

Recommendation: Pending.

IX. Topics for Future Meetings

- A. Development of a methodology and policy to account for new yield from capturing local stormwater in the basin.
- B. Development of a methodology and policy to account for groundwater storage losses in the basin resulting from the spreading of additional water sources.
- C. Development of a methodology and policy to account for recycled water recharge.
- D. Develop a protocol to increase the accuracy and consistency of data reported to the Watermaster.
- E. Develop a policy to account for transfers of water that may result when an Appropriator provides water service to an Overlying Party.

X. Comments from the Watermaster Committee Members

XI. Announcements

- A. The next regular meeting of the Beaumont Basin Watermaster is scheduled for Wednesday, August 1, 2018 at 10:00 a.m.

XII. Adjournment

Consent Calendar

**Record of the Minutes of the
Beaumont Basin Committee Meeting of the
Beaumont Basin Watermaster
Regular Meeting
Wednesday, March 28, 2018**

Meeting Location:

Beaumont-Cherry Valley Water District
560 Magnolia Avenue
Beaumont, CA 92223

I. Call to Order

Chairman Arturo Vela called the meeting to order at 10:04 a.m.

II. Roll Call

<i>City of Banning</i>	<i>Arturo Vela</i>	<i>Present</i>
<i>City of Beaumont</i>	<i>Amer Jakher</i>	<i>Present</i>
<i>Beaumont Cherry Valley Water District</i>	<i>Daniel Jagers</i>	<i>Present</i>
<i>South Mesa Water Company</i>	<i>George Jorritsma</i>	<i>Present</i>
<i>Yucaipa Valley Water District</i>		<i>Absent</i>

Keith McCollough was present representing legal counsel for the Beaumont Basin Watermaster.

Hannibal Blandon and Tom Harder were present as consultants and engineers of the Beaumont Basin Watermaster.

Members of the public who registered or attended were: William Clayton, Mike Kostelecky, Claudeen Diaz.

III. Pledge of Allegiance

Chairman Vela led the pledge of allegiance.

IV. Public Comments

None.

V. Correspondence

- A. Correspondence dated March 21, 2018 from Yucaipa Valley Water District – transfer of Overlying Water Rights in the Beaumont Basin for Tract No. 32702 (141 lots) and Tract No. 32702-5 (105 lots) Pursuant to Beaumont Basin Watermaster Resolution 2017-02

Mr. Dan Jagers requested clarification on whether this is an end-of-the-year tally. Legal Counsel McCollough responded he would have to look at the resolution to determine when the rights transfer, whether it is an end-of-the-year or date of transfer of the overlying rights to the appropriator. Mr. Jagers said he believes it is the end-of-the-year remainder of allocation after consumption, and noted this transfer request is 90.94 acre-feet, but if the overlyer's use is greater there may be a discrepancy based on the concept in the adjudication. If use is under, there may be a return to allocation.

Chair Vela recollected that during the discussion of the 2017 resolution, Mr. Zoba recommended that the development group make a request for service via a letter to YVWD, and then YVWD would forward that letter to the Watermaster Committee. At the end of the year, the accounting would be summarized in the annual report.

Mr. Jagers wondered whether 90.94 AF is enough for this development, or if additional supply is needed, would there be an opportunity to true up the overlyer rights. Mr. McCollough noted that the resolution specified what rights would be assigned to which parcel, and the request would need to be trued with the resolution and the pro-rata share under the new safe yield redetermination.

Engineer Hannibal Blandon explained the process. Mr. Jagers recommended further clarification of transfers moving forward in time, to maintain an accounting. He noted that when transfers were made in the past, it was by resolution. Chairman Vela recalled that a specific table to track water transfers was to be included in the annual report; the intent was not to have a resolution each time, but he agreed that an accounting is important.

Mr. Jagers pointed out that unused allocation goes back into the reallocation pool to be distributed back to all of the members until needed. Mr. Blandon confirmed that whatever is not produced goes back to the pool for distribution to appropriators. Chairman Vela suggested agendizing this topic in the future for further discussion.

Mr. John Ohanian from Oak Valley Partners said he believed the original thought process was that the overlyers would exchange their rights for service; that is what he is doing here. YVWD then accepts the responsibility for water use, as the amount the District said was needed had been given. He understood that the amount of his overlyer right would float with the amount of the safe yield.

VI. Consent Calendar

It was moved by Member Jorritsma and seconded by Member Jagers to approve the Meeting Minutes of the following dates:

1. Meeting Minutes for February 7, 2018

AYES: Jagers, Jakher, Jorritsma, Vela
NOES: None.
ABSTAIN: None.
ABSENT: Zoba
STATUS: Motion Approved

VII. Reports

- A. Report from Engineering Consultant - Hannibal Blandon, ALDA Engineering

Mr. Blandon drew attention to copies of the final 2017 Consolidated Annual Report.

- B. Report from Legal Counsel – Keith McCollough, Alvarado Smith

Legal Counsel Keith McCollough all issues have been resolved with the San Geronio Pass Agency relative to the settlement agreement and the storage agreement has been executed.

VIII. Discussion Items

- A. Status Report on Beaumont Basin Water Level Monitoring Program through March 19, 2018

Recommendation: No recommendation.

Engineer Hannibal Blandon noted he has been talking to Tom Harder about one or two additional monitoring wells in the Banning area.

At Yucaipa 34 last week, two probes (water level and barometric) were gone. Staff will try to fish them out of the bottom of the well if they are there. In the Noble Creek area, the shallow aquifer levels have increased by 85 feet in the last few months.

Mr. Blandon reported on monitoring of existing wells. He noted that Banning 8 has appeared to collapse. The probe has been removed and it remains to be determined whether it will be available for monitoring again.

BCVWD wells 2 and 25 have increased water levels. Wells outside the Banning area are also being sought to monitor water levels.

Equipment needed includes a new water level probe, communication cable, and a barometric pressure probe. These are being ordered.

B. 2017 Consolidated Annual Report and Engineering Report

Recommendation: That the Watermaster Committee members adopt the Final 2017 Consolidated Annual Report and Engineering Report.

Engineer Hannibal Blandon reminded the Committee that the draft report was presented at the January meeting. The requests have been included. He shared additional comments that were received.

He pointed out the 100-year histogram was replaced with the 25-year rainfall histograms and discussed the section on water quality. Mr. Jaggars suggested including both histograms.

It was moved by Member Jaggars and seconded by Member Jakher to adopt the Final 2017 Consolidated Annual Report and Engineering Report.

AYES:	Jaggars, Jakher, Jorritsma, Vela
NOES:	None.
ABSTAIN:	None.
ABSENT:	Zoba
STATUS:	Motion Approved

C. Presentation of Recharge and Recovery Scenarios for Analysis to Estimate Losses in the Beaumont Basin – Project Progress Update

Recommendation: No recommendation.

Engineer Tom Harder presented a contour map and pointed out that when artificial recharge is done, it creates a mound that can accelerate the flow out of the basin if it is not captured. Losses occur mainly in the southwest portion and west side of the basin. Depending on how the basin is pumped it can influence these losses.

Six scenarios were analyzed and baseline loss was determined to be about 20 percent of recharge. Adding the SGPWA recharge projections to the model, the loss estimate increases by 1,900 AF, about 15 percent of the water put in. Increased basin pumping reduced the loss, so wells should be located to take advantage of the down gradient.

Mr. Harder detailed additional scenarios. He opined, "this is quite a bit of loss."

In conclusion, Mr. Harder recommended accounting for these water losses in the water budget to make it an accurate accounting of the water in the basin. Basin losses are very sensitive to the volume of recharge and the location and pump rate of downgradient production wells.

Harder detailed his recommended use of the calibrated numerical model on an annual basis. He also pointed out that the Basin is bifurcated, and each side is hydrologically distinct, but one side affects the other. How to handle pumping from outside the basin should also be considered when incorporating into the water budget.

Mr. Harder fielded questions from the Committee members regarding the details of the models. Chairman Vela suggested reviewing the draft report, and providing comments to the Engineer. It will return to the Committee in final form. Mr. Harder pointed out a protocol for addressing losses in the future should be identified.

D. Presentation of Production and Allowable Extractions through February 2018

Recommendation: No recommendation.

Engineer Blandon introduced the new topic and discussed the production numbers of the appropriators and transfers of overlying water rights for each agency, amount of water spread, and total actual production.

Chairman Vela asked about showing the transfers from overlyers to appropriators. Mr. Blandon noted that carryover at the end of the year will need to be adjusted on the books. Mr. Jagers added that once the resolutions are reviewed, there will be more focus on how this will be reported.

E. Consideration of a Change in the Rate of Professional Fees for Legal Expenses Charged by Alvarado Smith

Recommendation: That the Watermaster Committee members approve the rate adjustment of \$10/hour, resulting in a rate of \$275/hour for general counsel activities and \$285/hour for litigation activities.

Chair Vela explained the request.

It was moved by Member Jorritsma and seconded by Member Jagers to approve the rate adjustment of \$10/hour.

AYES:	Jagers, Jakher, Jorritsma, Vela
NOES:	None.
ABSTAIN:	None.
ABSENT:	Zoba
STATUS:	Motion Approved

IX. Topics for Future Meetings

Mr. Jagers suggested the overlayer return flow credit, as broached by Tony Lara at the last meeting, is important and needs to move forward. Mr. Blandon indicated this could be revisited. Chair Vela indicated that will be agendaized for the June meeting.

X. Comments from the Watermaster Committee Members

There were no comments.

XI. Announcements

- A. The next regular meeting of the Beaumont Basin Watermaster is scheduled for Wednesday, June 6, 2018 at 10:00 a.m.

XII. Adjournment

Chairman Vela adjourned the meeting at 11:12 a.m.

Attest:

DRAFT UNTIL APPROVED

Tony Lara, Secretary
Beaumont Basin Watermaster

Discussion Items

BEAUMONT BASIN WATERMASTER

MEMORANDUM NO. 18-12

Date: June 6, 2018

From: Hannibal Blandon, ALDA Inc.

Subject: Status Report on Water Level Monitoring throughout the Beaumont Basin through May 29, 2018

Recommendation: No recommendation.

At the present time, there are 14 monitoring wells collecting water level information on an hourly basis at various locations throughout the basin. In addition, there are two monitoring probes collecting barometric pressures at opposite ends of the Beaumont Basin. The location of active monitoring wells is depicted in the attached Figure No. 1.

Water levels at selected locations are depicted in Figures 2 through 6 and are described as follows:

- ✓ Figure No. 2 – Water levels at YVWD Well No. 34 and Oak Valley Well No. 5 are considered representative of basin conditions in the Northwest portion of the basin. At YVWD No. 34 the water level is fairly stable; it has increased a mere three feet over the last 2 years. Data for the last eight months was not recorded at this location despite of the fact that a new water level probe was installed in November 2017. A second water level probe was installed during our January visit to the site as the previous probe recorded information was erroneous; however, the new probe was missing during our visit on March 20th, along with the barometric pressure probe. A new probe and communications cable was installed during our May visit on a temporary basis. At Oak Valley No. 5 water level rose over six feet since the water level probe was installed in March of 2016. While the probe continues to record data on an hourly basis, the communications cable was not working during our May visit. A new communications cable could be installed at this well; however, we had difficulties removing the existing cable from inside the well in the past.
- ✓ Figure No. 3 – Two of the Noble Creek observation wells are presented in this figure representing the shallow and deep aquifers. In the shallow aquifer, the water level has increase close to 85 feet over the last 18 months from a low of 2,337 ft. to 2,422 ft., recorded at the end of March 2018; current water level is at 2,420 ft. Levels in the deep aquifer have risen recently to their highest elevation (2,271 ft) since the summer of 2015.
- ✓ Figure No. 4 – Southern Portion of the Basin. Water level at the Summit Cemetery well is highly influenced by a nearby pumping well that is used to irrigate the

cemetery grounds. The water level at this well continues to fluctuate over a 20-foot band. Conversely, the water level at the Sun Lakes well has fluctuated minimally over the same period as it decreased one foot.

- ✓ Figure No. 5 illustrates levels at three wells owned by the City of Banning in the Southeast portion of the basin. While water level at the Old Well No. 15 (Chevron Well) has been fairly flat over the last two years, a somewhat significant and steady decline, close to 23 feet, has been recorded at Banning M-8. The probe at Banning M-8 was removed during our visit in late January 2018 as there seems to be an obstruction in the well at a depth of approximately 350 ft below ground. City staff has indicated that the pump at this well will be pulled in the summer at which time we may have an opportunity to use this well again. Water level at Banning M-9 has fluctuated within a 10-15 feet range during the same period.
- ✓ Figure No. 6 illustrate recorded water level at BCVWD No. 2 and the new monitoring well BCVWD No. 25. Over the last two years, the level at BCVWD No. 2 has increased by over 20 feet topping in May 2017 at an elevation of 2,218 ft.; current water level elevation is at the highest point since the monitoring program began. The level at this well declined by ten feet before recovering again over the last six months. Water level at BCVWD No. 25 seems to be in sync with BCVWD No. 2 based on the short recording period of only six months. During the last two months, BCVWD No. 25 has been used intermittently as illustrated in the supplemental figure.

Troubleshooting Issues

The following malfunctioning issues were encountered during our May 29, 2018 field visit:

- ✓ YVWD Well No. 34 – A new probe and communications cable was installed at this well during our visit. This installation is temporary until a new communications cable and a Barologger are delivered from Solinst for installation in late June.
- ✓ Banning M-8 – The water level probe was removed from this well during our January visit since the well is obstructed at approximately 350 feet below ground. City staff has indicated that the existing pump at this well will be pulled during the summer. At that time, we may be able to resume monitoring operations at this well.
- ✓ Barometric Probe at Banning M-9 stop working on New Year's Day. Probe was reset after the regular Board meeting in February 7th, 2018 and worked fine until May 15th when it stopped working. A new probe has been ordered for this well.
- ✓ Oak Valley No. 5 – Communications cable is not working and may be difficult to remove from inside the well. Water level probe continues to record levels on an hourly basis.

New Monitoring Sites

None during the reporting period were added

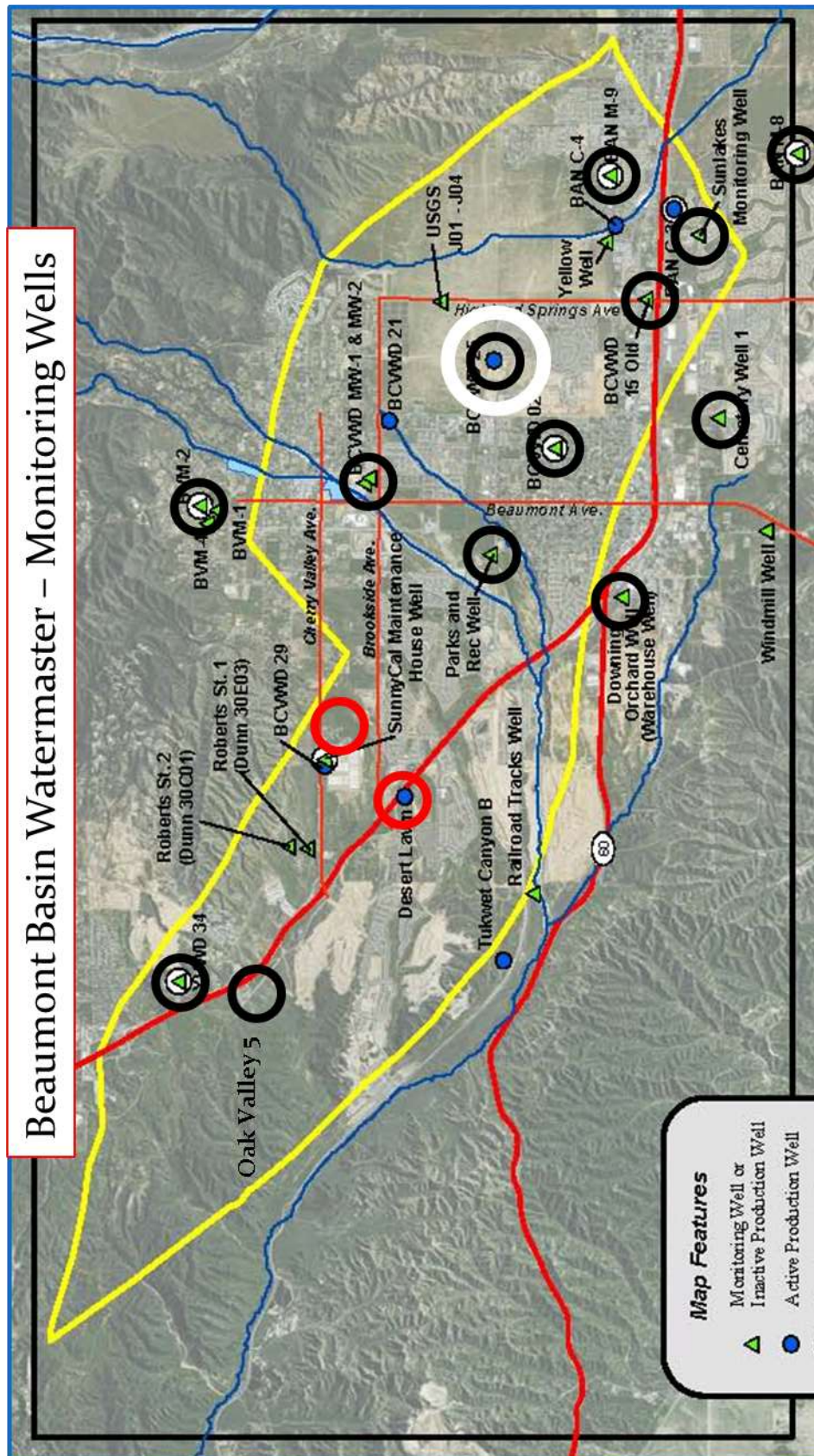
Potential New Monitoring Sites

Potential new monitoring sites include:

- A new well abandoned well located approximately 0.4 miles north of Banning M-9
- Sharondale Home Owner Association wells
- Rancho Calimesa Mobile Home Park
- Desert Lawn
- Sunny Cal Ranch Area
- Plantation by the Lake well

New Equipment Requirements

- A 750 ft sounding probe
- A 350 ft communications cable for YVWD Well No. 34
- A barometric pressure probe for YVWD Well No. 34
- A barometric pressure probe for Banning M-9



Wells with Working Monitoring Probes	
Bonita Vista No. 2	BCVWD Old 15 (Banning)
Noble Creek Ponds 4 Deep	Summit Cemetery No. 1
Noble Creek Ponds 4 Shallow	Sun Lakes Golf Course
Noble Creek Park	Banning M-8
BCVWD No. 2	Banning M-9
BCVWD No. 25	YVWD No. 34
Oak Valley Partners No. 5	ICON Warehouse



Potential Monitoring Wells

Desert Lawn	Sunny Cal Ranch Area
Rancho Calimesa Mobile HP	Sharondale Mesa Owners A.

Figure No. 2
Static Groundwater Elevations at YVWD No. 34 and Oak Valley No. 5
 (July 29, 2015 through May 29, 2018)

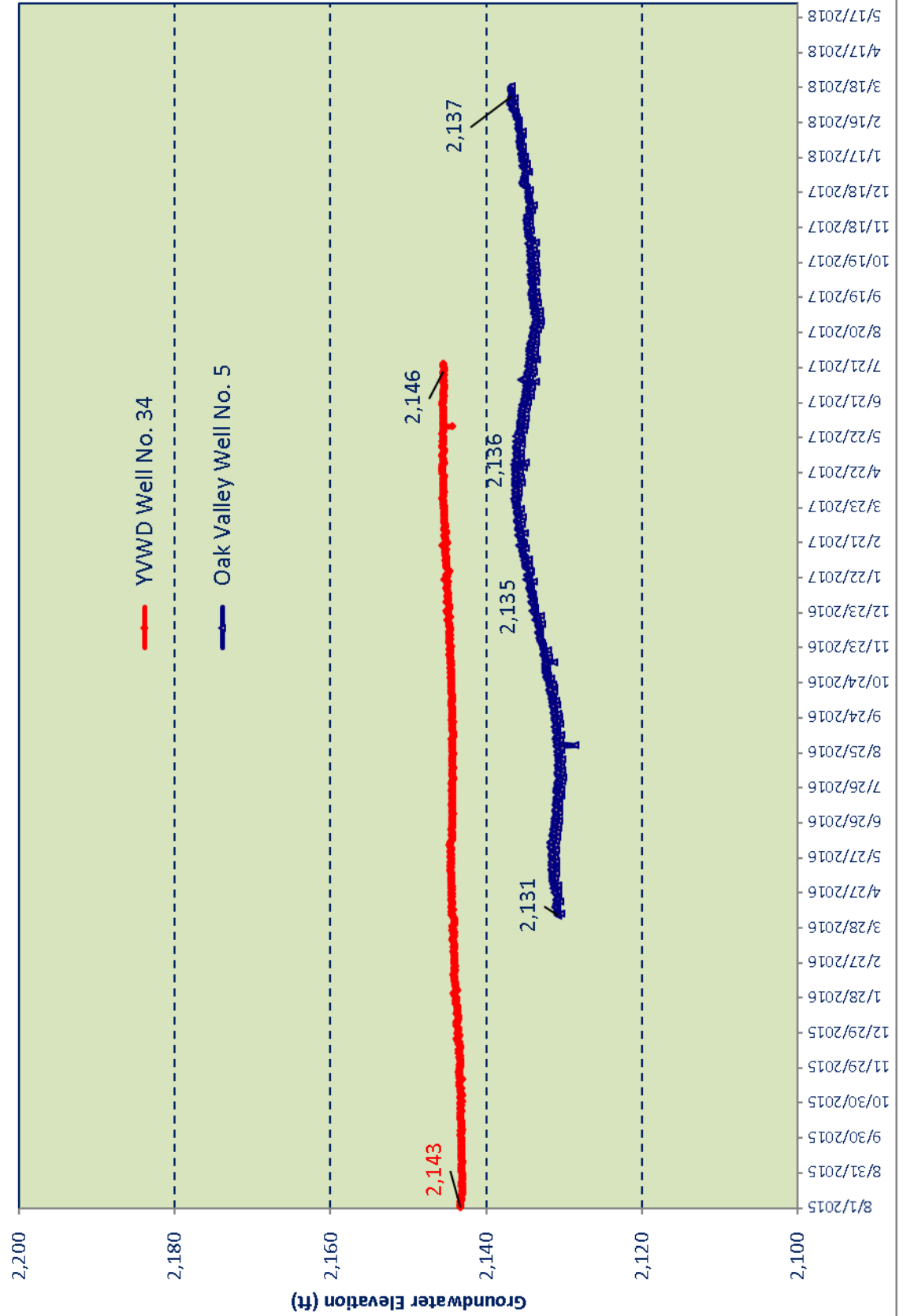


Figure No. 3
Static Groundwater Elevations at Noble Creek Obs. Well 4S and 4D
 (May 28, 2015 through May 29, 2018)

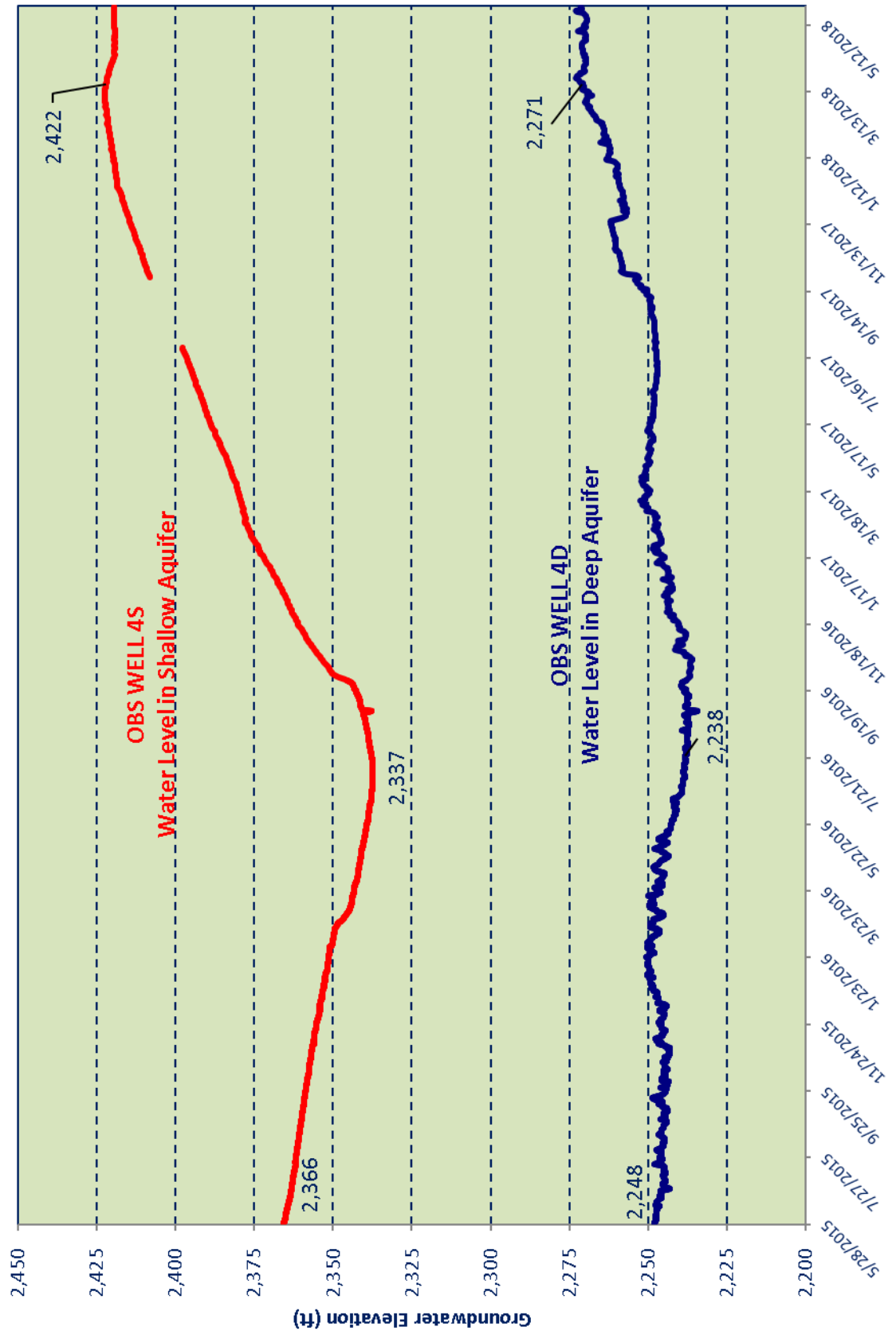


Figure No. 4
Static Groundwater Elevations at Summit Cemetery and Sun Lakes Wells
 (May 28, 2015 through May 29, 2018)

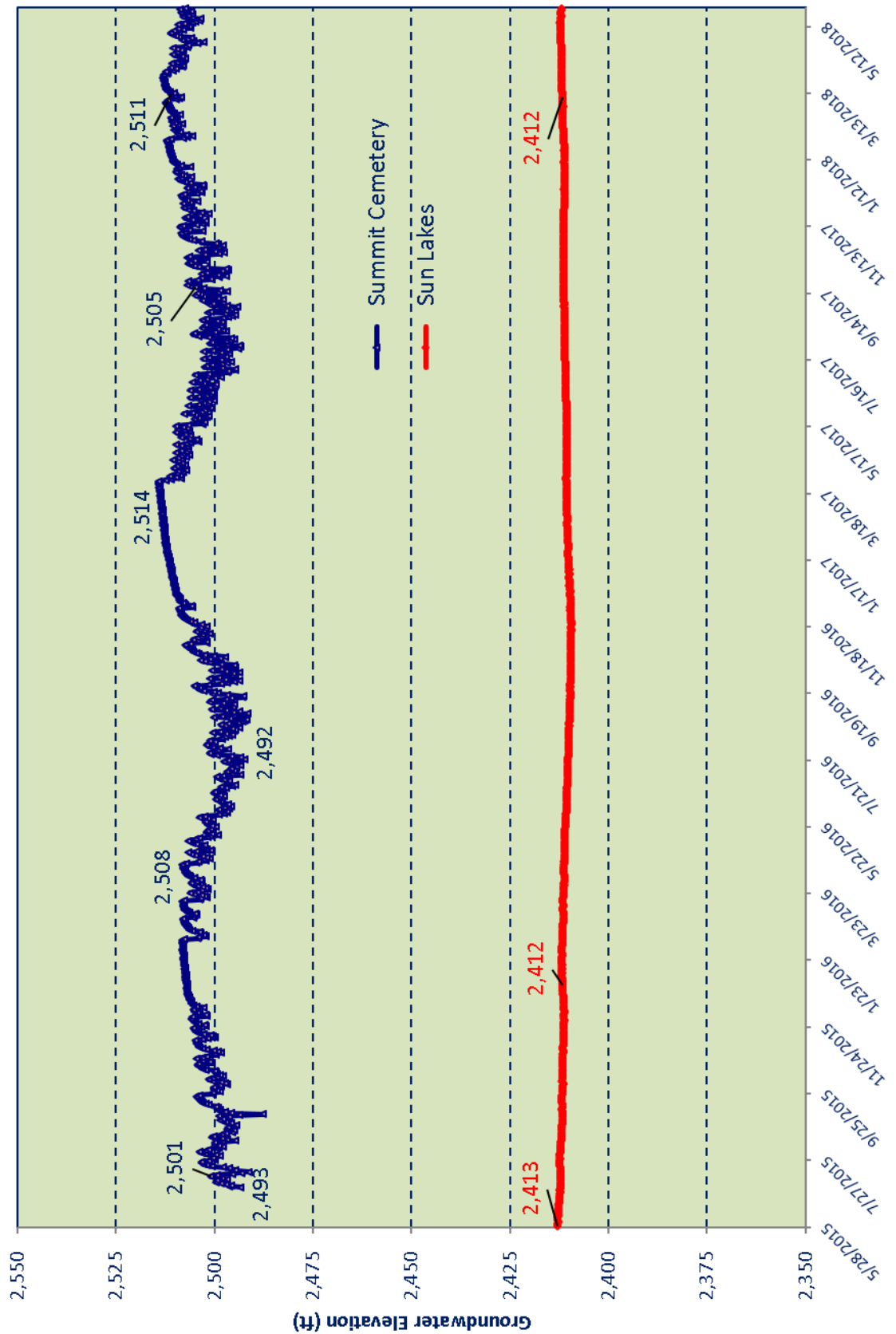


Figure No. 5
Static Groundwater Elevations in the Banning Area
 (May 28, 2015 through May 29, 2018)

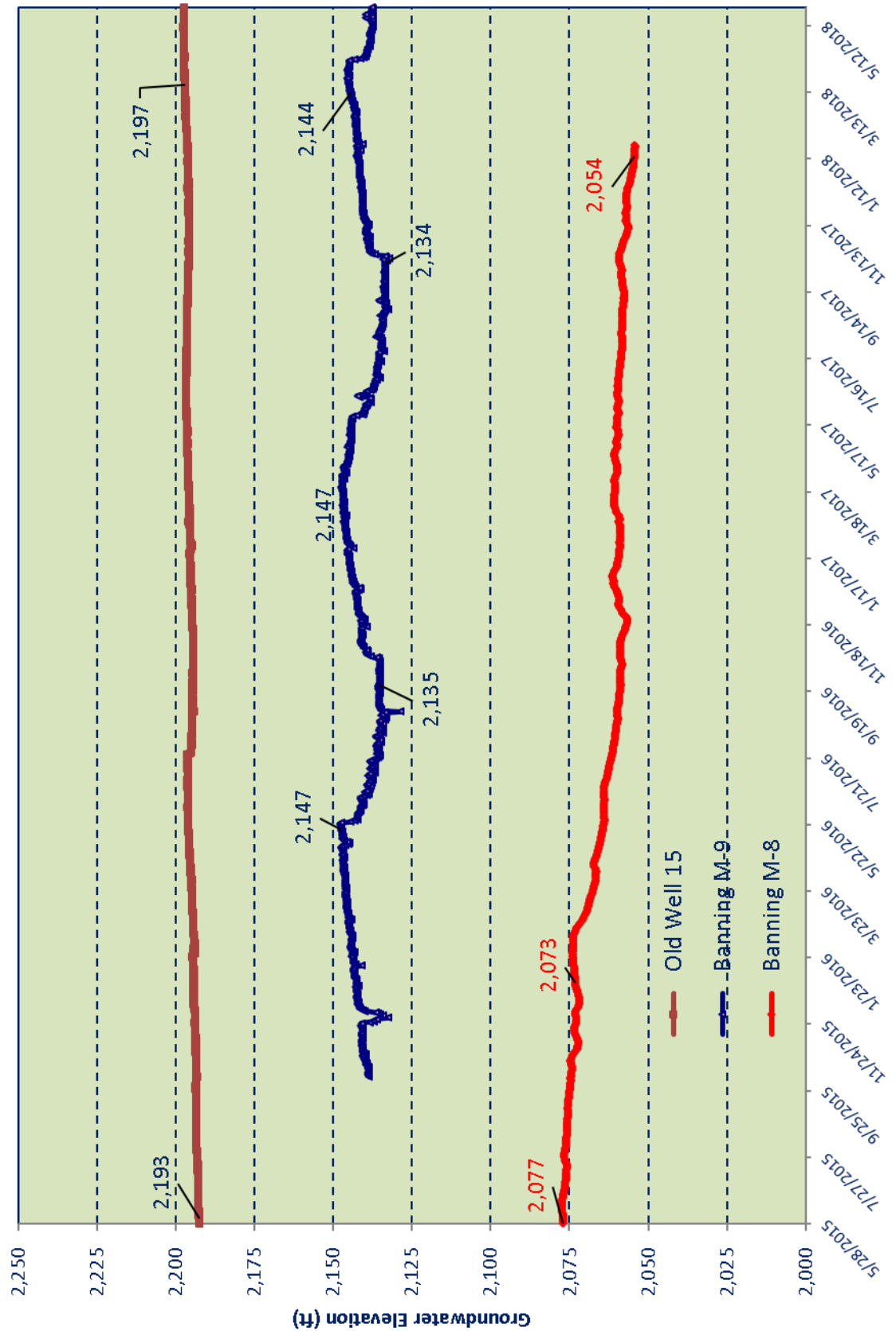
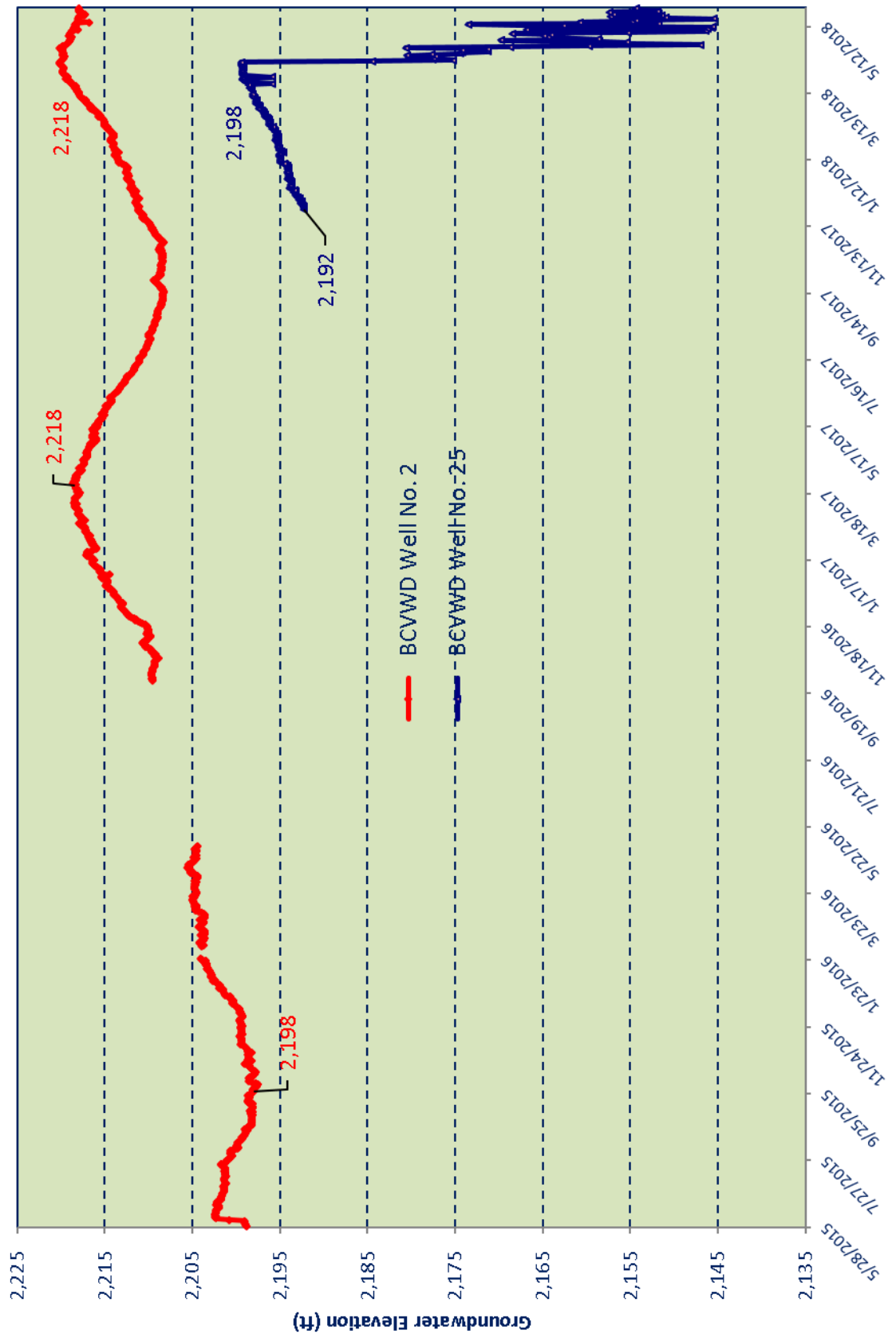
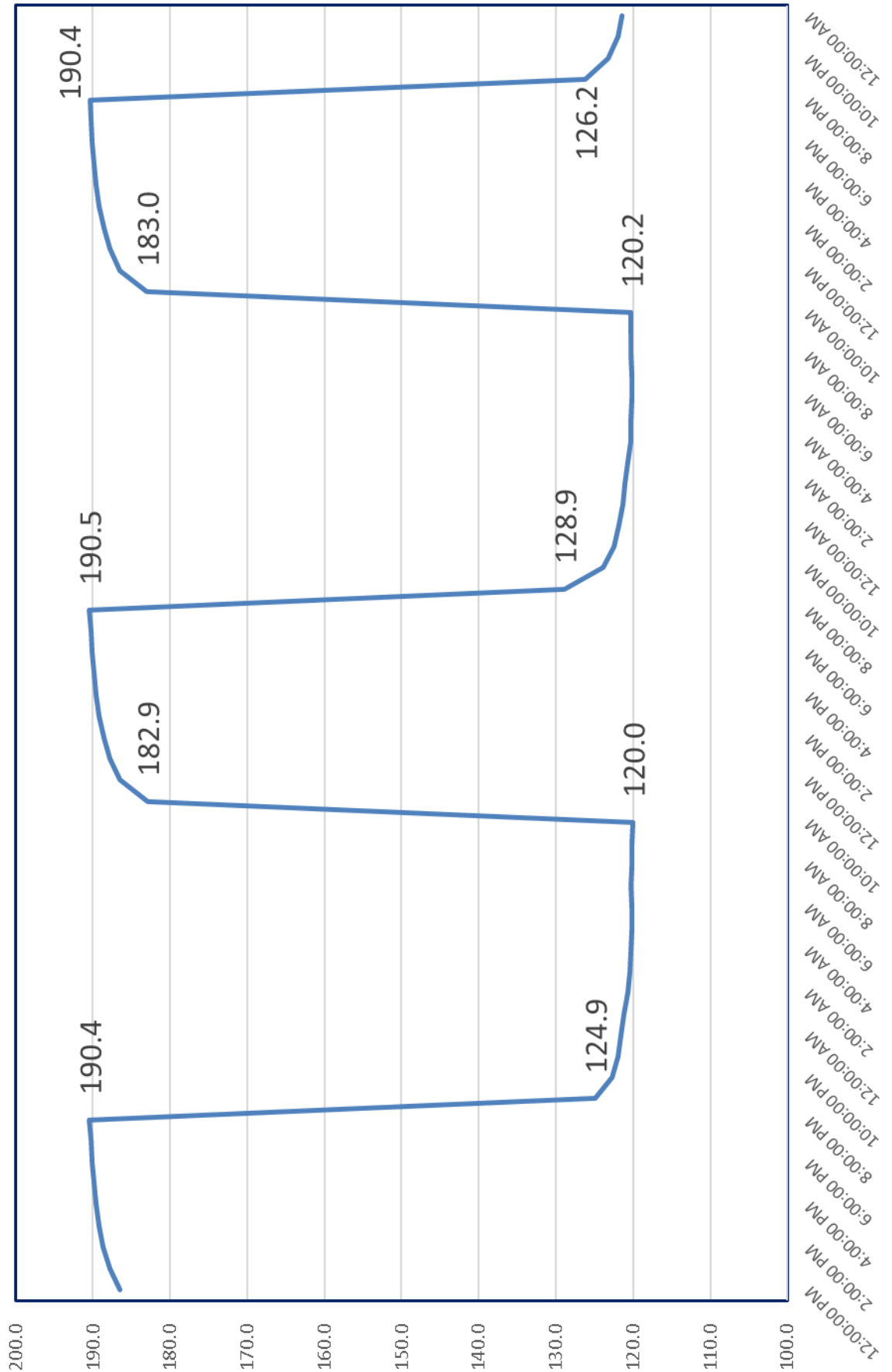


Figure No. 6
Static Groundwater Elevations at BCVWD Wells No. 2 and 25
 (May 28, 2015 through May 29, 2018)



BCVWD No. 25 - Water Depth over Probe (ft) May 27 to May 29 - TOU



BEAUMONT BASIN WATERMASTER

MEMORANDUM NO. 18-13

Date: June 6, 2018

From: Joseph Zoba, Treasurer

Subject: Consideration of the Watermaster Budget for Fiscal Year 2018-19

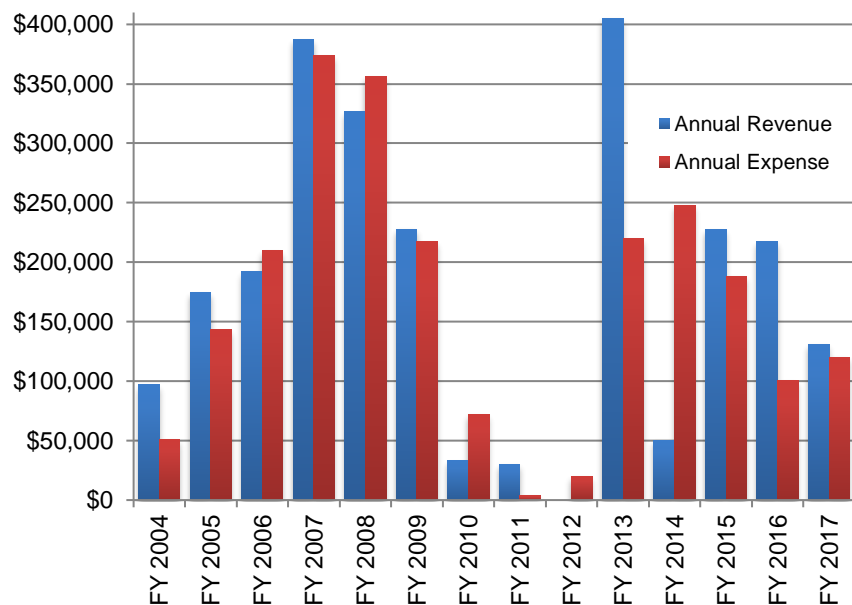
Recommendation: That the Watermaster Committee approve the budget for Fiscal Year 2018-19 and authorize the preparation of an Independent Accountant's Financial Report for Fiscal Year 2017-18.

The Treasurer of the Beaumont Basin Watermaster sends invoices to Watermaster Committee members when one of the following events occur: (1) the Watermaster Committee approve a task order; (2) The Watermaster Committee approves a special project; (3) when a budget is approved to replenish the anticipated administrative funds for the year; or (4) when the administrative funds have been depleted.

As of April 30, 2018, the Watermaster had an operating fund balance of \$259,034.89 in a designated account at Bank of America.

Based on the typical expenses incurred by the Beaumont Basin Watermaster, the estimated annual contribution for each member agency will be \$0 at this time for routine administrative expenses. The Watermaster Treasurer will continue the practice of sending invoices to Watermaster Committee members when specific task orders are approved throughout the fiscal year.

The following illustration provides a summary of the annual revenues and expenses of the Beaumont Basin Watermaster since its formation in 2004.



Beaumont Basin Watermaster**Fiscal Year 2018-19 Operating Budget****Month Ending April 2018**

	Fiscal Year 2017-18		Fiscal Year 2018-19	Notes
	Account Number	Actual Funding Contributions	Budget	
OPERATING REVENUE:				
Carryover from Fiscal Year 2018	--	\$189,260.11	\$213,502	Estimated Carryover for FY2019
City of Banning	3120	\$40,481.95	**	Continue policy and practice of sending invoices to Watermaster members as expenses are approved.
City of Beaumont	3105	\$28,934.45	**	
Beaumont Cherry Valley Water District	3110	\$40,481.95	**	
South Mesa Mutual Water Company	3125	\$40,481.95	**	
Yucaipa Valley Water District	3115	\$40,481.99	**	
Total Operating Revenue		\$380,122.40	\$213,502	

	Fiscal Year 2017-18		Fiscal Year 2018-19	Notes
	Account Number	Estimated Year-End Expenses	Budget	
OPERATING EXPENSES:				
Bank Fees & Interest	5000	-\$80	\$100	
Miscellaneous & Meetings	5010	\$0	\$0	
Acquisition/Computation & Annual Report	5020	\$100,000	\$100,000	
Annual Audit	5040	\$1,200	\$1,200	
Engineering - General	5060	\$5,000	\$15,000	
Monitoring & Data Acquisition	5063	\$23,000	\$25,000	
Meter Installation & Repair	5064	\$0	\$10,000	
Legal Expenses	5070	\$37,500	\$20,000	
Reserves	5080	\$0	\$0	
Total Operating Expense		\$166,620.00	\$171,300	

Revenue Over / (Under) Expenses	\$213,502	\$42,202
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Beaumont Basin Watermaster
Monthly Expense Overview - Fiscal Year 2017-2018

Account Number		Approved Budget	Fiscal Year																			
2017		2017	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Year-To-Date	
OPERATING EXPENSES:																						
	5000	\$500.00	\$0.00																			
	5010	\$500.00																				
	5020	\$90,000.00																				
	5040	\$2,500.00																				
	5060	\$20,000.00																				
	5083	\$20,000.00																				
	5064	\$10,000.00																				
	5070	\$20,000.00																				
	5070	\$20,000.00																				
	5080	\$15,000.00																				
	5910	\$0.00																				
	5915	\$0.00																				
Total Operating Expense		\$178,050.00	\$178.87	\$6,758.31	\$10,280.10	\$6,985.33	\$74,550.72	\$14,393.46	\$4,067.00	\$1,983.57	\$1,590.85	\$299.30	\$0.00	\$0.00	\$121,087.51							

BEAUMONT BASIN WATERMASTER

MEMORANDUM NO. 18-14

Date: June 6, 2018

From: Joseph Zoba, Treasurer

Subject: Review of a Memorandum Regarding the Transfer and Conversion of Overlying Water Rights to Appropriative Rights and Accounting for Such

Recommendation: Pending.

On May 15, 2018, the Beaumont Basin Watermaster Committee members received a memorandum summarizing the transfer and conversion of overlying water rights (attached).

The purpose of this memorandum is to provide an opportunity for legal counsel to discuss this topic with the Watermaster Committee and for the Watermaster Committee to consider the creation of a category of "Transferred Overlying Right" to properly account for the transfer and conversion of overlying water rights.



MEMORANDUM

TO: Beaumont Basin Watermaster ("BBW")

FROM: Thierry Montoya

DATE: May 15, 2018

RE: Transfer and Conversion of Overlying Water Rights to Appropriative Rights and Accounting for Such

Recent resolution requesting the transfer of overlying water rights to a BBW appropriator in exchange for that appropriator's water service to a development on land subject to the overlying right has raised BBW comment regarding the nature of such transferred water rights--do such remain overlying following a transfer, or do they become appropriative and, if so, when--, and how to account for such. This Memorandum addresses such issues.

- I. The affirmative transfer of Overlying Water Rights to an Appropriator, changes the characteristic of the former overlying right to one of an appropriative nature.

Riparian and overlying water rights are analogous in California law and are generally defined as a property right attaching to a watercourse [riparian], with overlying rights being appurtenant to real property overlying source of percolating ground water. As a general rule, the legal principles applicable to the exercise of riparian rights are similarly applicable to overlying rights. See, *Tehachapi-Cummings County Water Dist. v. Armstrong*, (1975) 49 Cal.App.3d 992, 1001-1002. Such water rights are not inviolate and can be terminated, transferred, or abandoned.

- For instance, when the transfer of title to the water right is conveyed, as separate from the land, such effectuates a permanent severance of the right from the land—thereby resulting in the loss of the riparian or overlying right. Once the water right is severed, the parcel ceased to be riparian or overlying. See, *Gould v. Stafford* (1891) 91 Cal. 146, 155. In this instance, the grantee [the party acquiring the transferred water right] would obtain an appropriative water right. See, *Chino Land & Water Co. v. Lewis Investment Co.* 2004 Cal.App. Unpub. 2003 WL 25934516.
- Riparian and overlying water rights may also be abandoned by both the concurrence of an intent to abandon and the act of relinquishing possession. See, *Fall River Valley Irr. Dist. v. Mt. Shasta Power Corp.* (1927) 202 Cal. 56, 65.

BBW's own rules account for the transfer of overlying rights by the holders of such to successors and assigns of their choosing, in a manner that is consistent with precedent. Section 3, Adjustment of Rights, of the Stipulated Judgment establishing the Beaumont Basin

May 15, 2018

Page 2

Watermaster (Riverside Superior Court Case No. 389197) and BBW Rules and Regulations Section 7, Adjustment of Rights, (collectively “Adjudication”). Such provide, in relevant part, that when an “Overlying Party shall forebear the use of that volume of the Overlying Water Right earmarked by the Appropriator Party...The Appropriator Party providing such service shall have the right to produce the volume of water foregone by the Overlying Party, in addition to the other rights otherwise allocated to the Appropriator Party.” See, Adjudication, Section 3, Adjustment of Rights, 3(c). That is akin to an overlying party’s transfer of the right, or an affirmative consent to abandon its use of the overlying right in favor of having an appropriator provide it with water service. Under the relevant authority cited above, under case law, the overlying right would then become appropriative as it is now used in that manner. That is what the Adjudication also provides.

This is illustrated by Resolution No. 2017-02 under which Oak Valley Partners, L.P. (“OVP”) expressly assigned its overlying water rights to the Yucaipa Valley Water District (“YVWD”) to allow YVWD to provide water service to its residential development project. Such a clear intention to abandon and OVP’s express act of approving such a transfer in writing, represents a clear and unequivocal intent by OVP to abandon its overlying rights in favor of YVWD acquiring such appropriative rights to provide water service to its planned development.

So in such circumstances, where an overlying water rights holder affirmatively agrees to transfer or assign its water rights to an appropriator, which accepts such, then the overlying right ceases to exist and becomes an appropriative right based on the Adjudication and relevant case law.

II. When does the overlying right become appropriative?

As the transfer of an overlying water right requires the concurrence of an intent to abandon and the act of relinquishing possession—such has been set forth in BBW’s resolution language’s own terms. For example, Resolution No. 2017-2 provides that the transfer of OVP’s overlying water rights to appropriative rights held by YVWD occurs “[o]nce OVP and/or its successor(s) secures commitments from [YVWD] to provide water service to the development phases of the Project, and when water service is provided to the designated Project parcels, then the overlying water rights for those Project parcels shall be transferred to the [YVWD].” Two conditions are required to be met once YVWD would acquire appropriative rights to provide water service to OVP’s development: i) once its commits to do so; and, ii) once it begins providing water service to OVP’s parcel[s]. When these conditions are met, OVP’s overlying water right become YVWD’s appropriative rights.

Such language is consistent with the case law cited above in terms of an overlying party’s clear intent to transfer the water to an appropriator, and the appropriator’s acceptance of such in terms of providing water service.

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May 15, 2018

Page 3

III. How best to account for the transfer of overlying water rights to appropriative rights?

Our water rights reporting should account for the following: i) identifying resolutions that transfer overlying water rights to an appropriator by resolution # and BBW adoption date; ii) the date on which the overlying water right[s] transfers from the overlying party to the appropriator—based on the resolution’s triggering terms--, *i.e.*, the date the appropriator begins providing water service to a specific parcel[s]; iii) the quantity of water rights transferred based on the safe yield calculation. The overlying water rights need to be adjusted based on the safe yield calculation so all water rights are accounted for as part of the transfer; and, iv) the remaining overlying water rights that have not yet been transferred to appropriative status—as the triggering condition for the transfer has not yet occurred, *i.e.*, the appropriator has not yet provided the water service on the overlying party’s project/parcel.