

Notice and Agenda of a Meeting of the Beaumont Basin Watermaster

Wednesday, August 1, 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: _____)

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. Correspondence dated July 27, 2018 from Yucaipa Valley Water District - Transfer of 59.89 Acre Feet of Overlying Water Rights in the Beaumont Basin for Tract Nos. 32702-1 (121 lots) and 32702-2 (41 lots) Pursuant to Beaumont Basin Watermaster Resolution No. 2017-02 [Page 4 of 31]

VI. Consent Calendar

A. Meeting Minutes

1. Meeting Minutes for June 6, 2018 [Page 8 of 31]

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 July 24, 2018 [Memorandum No. 18-15, Page 16 of 31]

Recommendation: Pending.

B. A comparison of Production and Allowable Extractions through June 2018 [Memorandum No. 18-16, Page 27 of 31]

Recommendation: No Recommendation. For Information Purposes Only.

- C. Discussion Regarding the Perfection of Appropriative Rights Following the Conversion of Overlying Water Rights to Appropriative Rights [Memorandum No. 18-17, Page 28 of 31]

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.
- F. Discussion of Overlyer return flow credit and how it might be managed

X. Comments from the Watermaster Committee Members

XI. Announcements

- A. The next regular meeting of the Beaumont Basin Watermaster is scheduled for Wednesday, October 3, 2018 at 10:00 a.m.

XII. Adjournment

Correspondence



Yucaipa Valley Water District

12770 Second Street • P. O. Box 730 • Yucaipa, California 92399-0730
(909) 797-5117 • Fax: (909) 797-6381 • www.yvwd.dst.ca.us

July 27, 2018

Mr. Dan Jagers, Secretary
Beaumont Basin Watermaster
c/o Beaumont Cherry Valley Water District
560 Magnolia Avenue
Beaumont, California 92223

Thierry Montoya
Alvarado Smith
1 MacArthur Place, Suite 200
Santa Ana, California 92707

Hannibal Blandon
ALDA Engineering
5928 Vineyard Avenue
Alta Loma, California 91701

Subject: Transfer of 59.89 Acre Feet of Overlying Water Rights in the Beaumont Basin for Tract Nos. 32702-1 (121 lots) and 32702-2 (41 lots) Pursuant to Beaumont Basin Watermaster Resolution No. 2017-02

Gentlemen:

The Yucaipa Valley Water District has accepted the transfer of Overlying Water Rights from Oak Valley Partners for Tract Nos. 32702-1 and 32702-2 (162 lots) pursuant to Beaumont Basin Watermaster Resolution No. 2017-02 adopted on August 30, 2017.

The attached correspondence dated July 5, 2018, confirms the transfer of 59.89 acre-feet of overlying water rights from Oak Valley Partners and the acceptance of said overlying-appropriative water rights by Yucaipa Valley Water District.

Sincerely,

/s/ Joseph B. Zoba

Joseph B. Zoba
General Manager

Copies to:

- John Ohanian, Oak Valley Partners
- Mike Turner, Argent Management

July 5, 2018

Joe Zoba
General Manager
Yucaipa Valley Water District
12770 Second Street
Yucaipa, CA 92399

RE: Summerwind Trails - Transfer of Overlying Water Rights for Water
Service - Tracts 32702-1 & 32702-2, 162 Single Family Residential Lots

Dear Mr. Zoba:

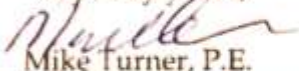
This letter is written on behalf of San Gorgonio Land, LLC, the owner and developer of the residential portion of the Summerwind Ranch Project in Calimesa. Argent Management, LLC is the managing arm for San Gorgonio Land, LLC.

We are hereby requesting to transfer 59.89 acre-feet of the Summerwind Ranch Beaumont Basin Overlyer Water Rights to Tracts 32702-1 (121 lots) and 32702-2 (41 lots) to provide potable water requirements for 246 residential single family lots. These three Tracts encompass approximately 31.4 acres and are included within APN's 413-290-035 and 413-290-036 per the attached Exhibit 1.

The merchant builder for these two Tracts is D.R. Horton Los Angeles Holding Company, Inc., a California Corporation, and MPH Homebuilders 2000 L.P., a California limited partnership. Upon this transfer, we understand that D.R. Horton and MPH Homebuilders 2000 L.P. will be exempt from paying the District's Supplemental Water Facility Capacity Charge pursuant to the District's Resolution No. 2017-23, Section 2.D.

If acceptable to you, please indicate so with your approval signature below.

Very truly yours,



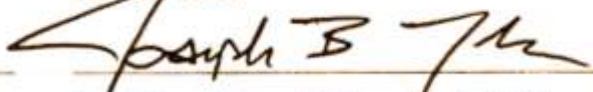
Mike Turner, P.E.
Corporate VP, Land Development
Argent Management, LLC

CONCURRENCE:



John Ohanian - Oak Valley Partners

APPROVAL:



Joe Zoba - General Manager, YVWD

CORPORATE OFFICE
2392 Morse Ave, Irvine, CA 92614 • MAIN 949 777 4000 • FAX 949 777 4050 • www.ArgentManagementLLC.com

[illegible]

Consent Calendar

**Record of the Minutes of the
Beaumont Basin Committee Meeting of the
Beaumont Basin Watermaster
Regular Meeting
Wednesday, June 6, 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 10:00 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>Joseph Zoba</i>	<i>Absent</i>

Thierry Montoya was present representing legal counsel for the Beaumont Basin Watermaster.

Tom Harder was present as consultant and engineer for the Beaumont Basin Watermaster.

Members of the public who registered or attended were: Mike Kostecky, David Fenn, Bruce Granlund, and John Covington.

III. Pledge of Allegiance

Chairman Vela led the pledge of allegiance.

IV. Public Comments: *None.*

V. Correspondence: *None.*

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 March 28, 2018

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

VII. Reports

- A. Report from Engineering Consultant – Tom Harder, ALDA Engineering

Mr. Harder requested that any comments on the draft Beaumont Basin Storage Loss Analysis to be submitted soon.

- B. Report from Legal Counsel – Thierry Montoya, Alvarado Smith

Legal Counsel Thierry Montoya drew attention to the May 15, 2018 water right transfer memorandum in follow up to a request at the prior meeting regarding transfer of overlying rights to appropriate rights via sale or other transfer permitted by the judgment.

VIII. Discussion Items

- A. Status Report on Beaumont Basin Water Level Monitoring Program through May 29, 2018

Recommendation: No recommendation.

Engineer Hannibal Blandon advised that a new temporary probe has been installed at Well 29. At Oak Valley #5 a communications cable is not working, but water levels have been stable within 6 feet. The Noble Creek observation wells have seen a significant rise over the last year and a half. On the south side, the Summit Cemetery varies due to pumping at a nearby well. The Sun lakes well is fairly flat. On the east, Banning well 8 had lost the probe. It will be pulled and a new probe will be installed this summer. Well 15 has a flat levels, but Well 9 shows some fluctuating due to nearby pumping. Two wells centrally located show significant variation due to pumping. Potential for additional monitoring wells is being pursued on a property owned by the Catholic Diocese, and at YVWD Lift Station #2.

- B. Consideration of the Watermaster Budget for Fiscal Year 2018-19

Recommendation: That the Watermaster Committee approve the budget for Fiscal Year 2018-019 and authorize the preparation of an Independent Accountant's Financial Report for Fiscal Year 2017-18.

Member Zoba introduced the budget. Typically, invoices are sent to the Watermaster Committee members when a task order or special project is approved, or administrative funds need replenishment. As such, there is no immediate need to collect additional funds from the members.

The current balance as of the end of April is \$213,502 which is sufficient to continue, said Zoba.

It was moved by Member Jagers and seconded by Member Jakher to approve the budget for Fiscal Year 2018-019 and authorize the preparation of an Independent Accountant's Financial Report for Fiscal Year 2017-18.

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

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

Legal Counsel Thierry Montoya noted there have been recent transfers of overlying water rights to appropriators. Overlying rights can be severed and sold, consistent with California statutes. Once that happens, the right is no longer tied to the property and the interest can transfer. Outside of the judgment, the right becomes an appropriative right. Section 3 of the judgment regarding adjustments and transfers of rights is consistent with case law in providing an overlying party shall forbear the use of the volume of the overlying right earmarked by an appropriative party; the appropriative party providing such service shall have the right to produce the volume of water forgone by the overlying party.

Mr. Montoya continued; the appropriative nature takes place as set forth in a resolution, for example in the Oak Valley resolution. Once water service is provided by the appropriator for that property, that amount then transfers to an appropriative right. Therefore, he admonished, it becomes very important to include in annual reports the columns advising the public and the Board what overlying rights were transferred, the total amount of the right, and what amount becomes a transferred appropriative right based on the dates of service, parcels being serviced, and the amounts.

Mr. Vela asked about limitations on area of use. Mr. Montoya clarified that it is being transferred for water service. California law requires proof of water rights for development, not paper water rights. Mr. Jagers added that the overlying right is assigned to certain properties within the adjudication. Mr. Montoya specified that the overlying rights are tied to the parcels.

Mr. Jagers asked if more water is transferred to the appropriator than is provided for the development on an annual basis, does that appropriator then secure the leftover supply for their use. Mr. Montoya noted the intent of the transfer is to give all overlying rights but not all need to be used; the rights are correlative to the basin as a whole. Only what is going to be serviced back to the parcel would transfer to the appropriator.

Mr. Montoya identified the difference as a delta which is a correlative right and could be arguably used by other parties. In the case of a decrease in safe yield, the overlying right would decrease, and so would the appropriative right, as the appropriator is only taking the amount of water forgone by the overlyer.

Thus is not true of an increase; overlying rights holders would not have an increase in their rights. By transfer, the right is intended to be fully divested from the property and becomes appropriative. The appropriative rights holder would not have the benefit of the increase in yield because the rights are correlative and are for the benefit of everyone.

The Watermaster would have to look at the judgment and clarify the issue: the overlying party would not enjoy benefit of increased safe yield, as that is inconsistent with correlative rights law.

Chair Vela suggested investigating this further for the purposes of accounting and tracking.

Mr. Montoya continued, in response to Mr. Jagers: the overlying water rights holder has forgone its overlying right and it has become appropriative only to the extent that the appropriator is providing that water back for use on a particular overlying parcel. The overlyer might still have overlying rights for what is not being used. Mr. Jagers asked if that goes back into the pool to be redistributed; Mr. Montoya replied it could; but if the overlyer wants water service for only a fraction of the overlying rights, the overlying right remains in the ownership of the overlyer, unused. If unused, pursuant to the judgment, it would be redistributed.

Mr. Jorritsma asked if an appropriator takes over additional properties would the percentages allotted in the judgment change; Mr. Montoya said it would not.

Mr. Zoba suggested tasking Mr. Montoya with identifying how the processes would work. He suggested a separate category to track overlying rights and appropriative rights. He noted that it was not the original intent that overlying water rights have to be used on that parcel.

Mr. Zoba suggested Counsel develop this as a resolution which would identify the issues, make is available for overlyers to view, then incorporate it into the Watermaster Rules and Regulations.

Engineer Blandon pointed out some issues and addressed some questions to Mr. Montoya. Mr. Montoya defined that the overlying right is parcel specific. The rights become converted pursuant to the judgment and are forgone by the overlying party when the appropriator serves water for those parcels; so three columns would be needed on the report. Some lots may be developed before others. Mr. Blandon related a scenario in which an area of development may use more than its percentage of allocated water. Mr. Montoya noted that this has not been specified down to the parcel level.

Mr. Montoya noted that when an overlying right is converted, it becomes part of one bucket. Mr. Zoba noted there will need to be a third bucket to account for issues such as time for development, and recalculation of safe yield.

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 (*August agenda*)
- 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
- F. Discussion of overlyer return flow credit and how it might be managed

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, August 1, 2018 at 10:00 a.m.

XII. Adjournment

Chairman Vela adjourned the meeting at 10:48 a.m.

Attest:

DRAFT UNTIL APPROVED

Daniel Jagers, Secretary
Beaumont Basin Watermaster

Reports

Discussion Items

BEAUMONT BASIN WATERMASTER

MEMORANDUM NO. 18-15

Date: August 1, 2018

From: Hannibal Blandon, ALDA Inc.

Subject: Status Report on Water Level Monitoring throughout the Beaumont Basin through July 24th, 2018

Recommendation: Pending.

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. Water levels at YVWD No. 34 have not been monitored since June 2017 due to a combination of equipment malfunctioning (communication cables and monitoring probes) and vandalism. Earlier in the year the water level probe and barometric probe were stolen from the site; a new communications cable and water level probe were installed during our May 2018 visit, but they were also vandalized and stolen. Upon consultation with YVWD's operations staff, a new padlock was installed at the site and a new water level and barometric pressure probes installed.
- ✓ At Oak Valley No. 5 water level rose over six feet since the water level probe was installed in March of 2016; however, we have not been able to communicate with the probe over the last four months. While a new communications cable could be installed at this well, we had difficulties removing the existing cable from inside the well in the past. Probe continues to record water levels at existing well.
- ✓ 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 increased 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 July 2018. 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 is slightly lower. 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.
- ✓ Figure No. 6A illustrates the influence of the recently activated BCVWD No. 3 on water levels at Well No.2. during the July 7th to July 10th period. Well No. 3 is located approximately 300 ft. to the south of Well No. 2. During this 3-day period a decline of approximately 10 ft. in water elevation was recorded at Well No. 2 followed by a steady recovery.
- ✓ Figure No. 6B illustrates water level fluctuations at BCVWD No. 25 as a result of TOU scheduling. While Figure 6 depicts average water levels over a 24-hour period, an hour interval is used in Figure 6B. This latter figure indicates that water levels quickly recover to near static levels once Well No. 25 is turned off during On-Peak hours. A decline of approximately 65 ft. has been recorded at this well during operational hours.

New Equipment Installation

- ✓ YVWD Well No. 34 – A temporary probe was installed at this well during our May visit as we waited for the right length communication cable to arrive from Solinst. This probe was stolen/destroyed by vandals who may have had access to the on-site padlock. A new 300 ft communications cable and probe were installed to monitor water levels. A new barometric probe was also installed to monitor barometric pressure in the northern portion of the basin. A new padlock was installed to minimize future acts of vandalism.

Troubleshooting Issues

The following malfunctioning issues were encountered during our July 25, 2018 field visit:

- ✓ YVWD Well No. 34 – The site has been vandalized and the water level probe installed during our May visit stolen. New probes were installed, as documented earlier in this TM, and a new padlock to minimize vandalism.
- ✓ 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 is currently working fine despite of intermittent malfunctions in the past.
- ✓ 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

- An abandoned well near YVWD Lift Station No. 2 was inspected as a potential monitoring well. It was determined that the well could not be used due to probe not able to go down between casing and pump column.
- A second location in that vicinity was also inspected yielding negative results.

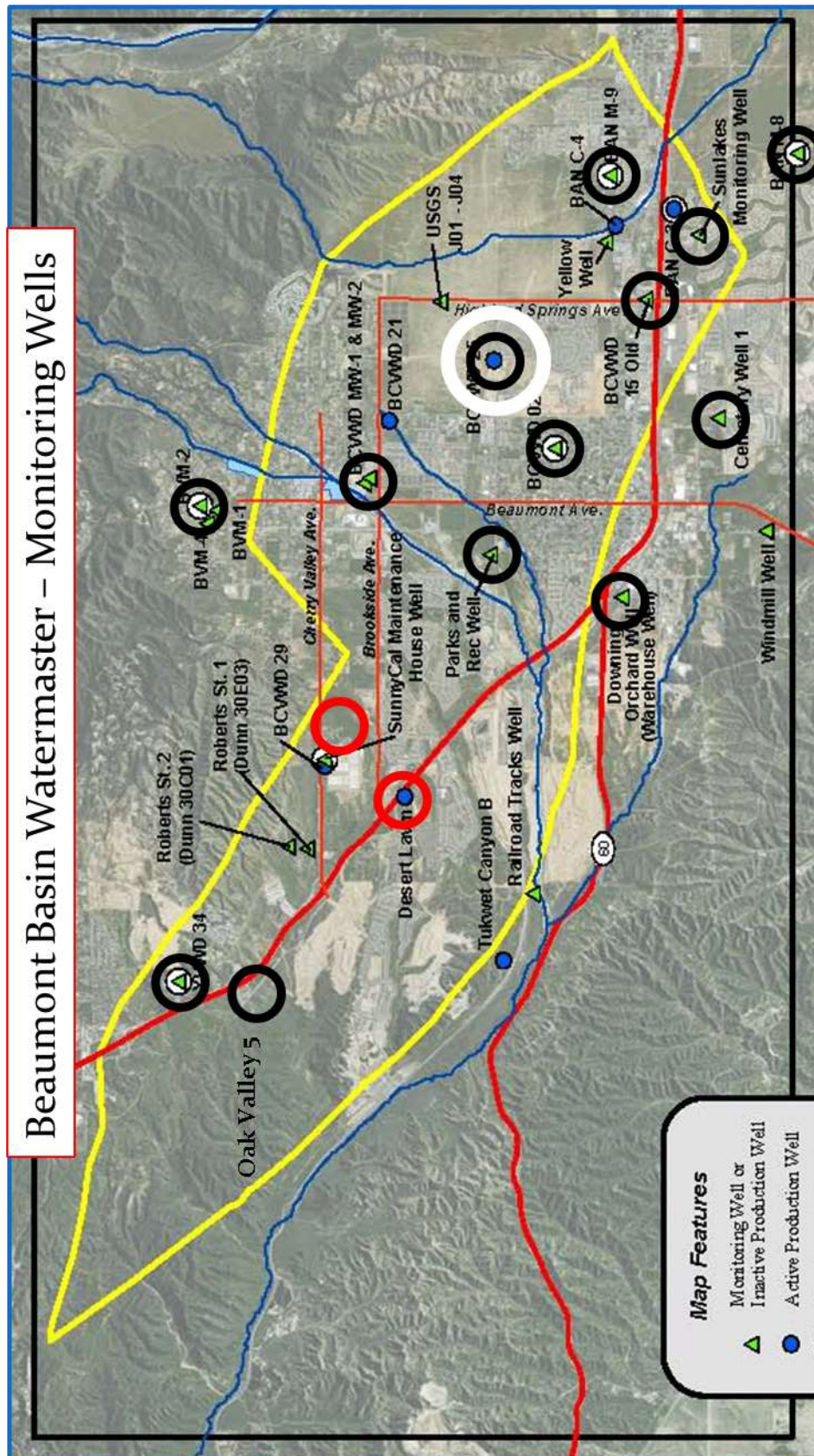
Potential New Monitoring Sites

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 350 ft communications cable for the Chevron Well (Banning)



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 Well No. 5
 (July 29, 2015 through Jul 24, 2018)

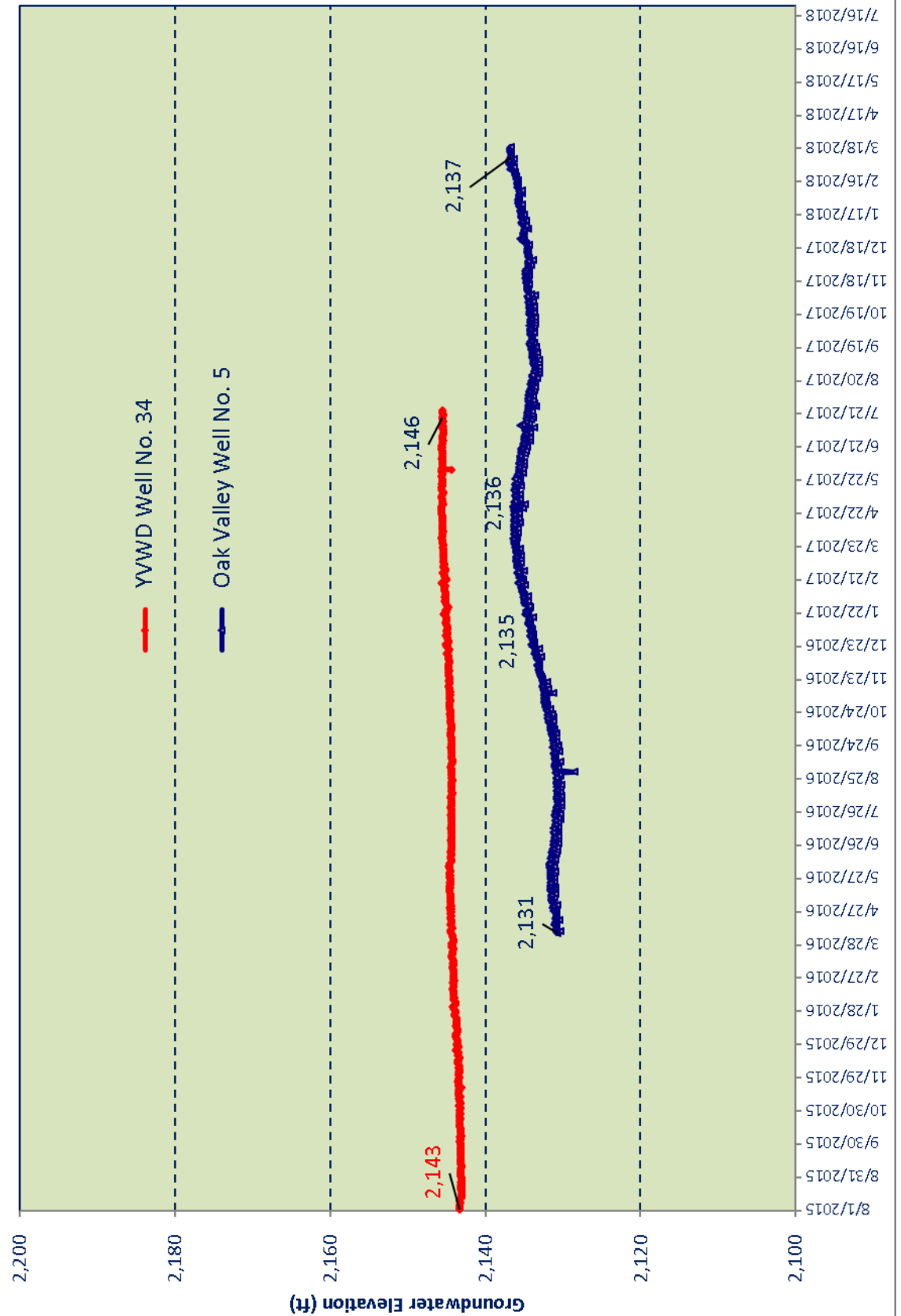


Figure No. 3
Static Groundwater Elevations at Noble Creek Obs. Well 4S and 4D
 (May 28, 2015 through Jul 24, 2018)

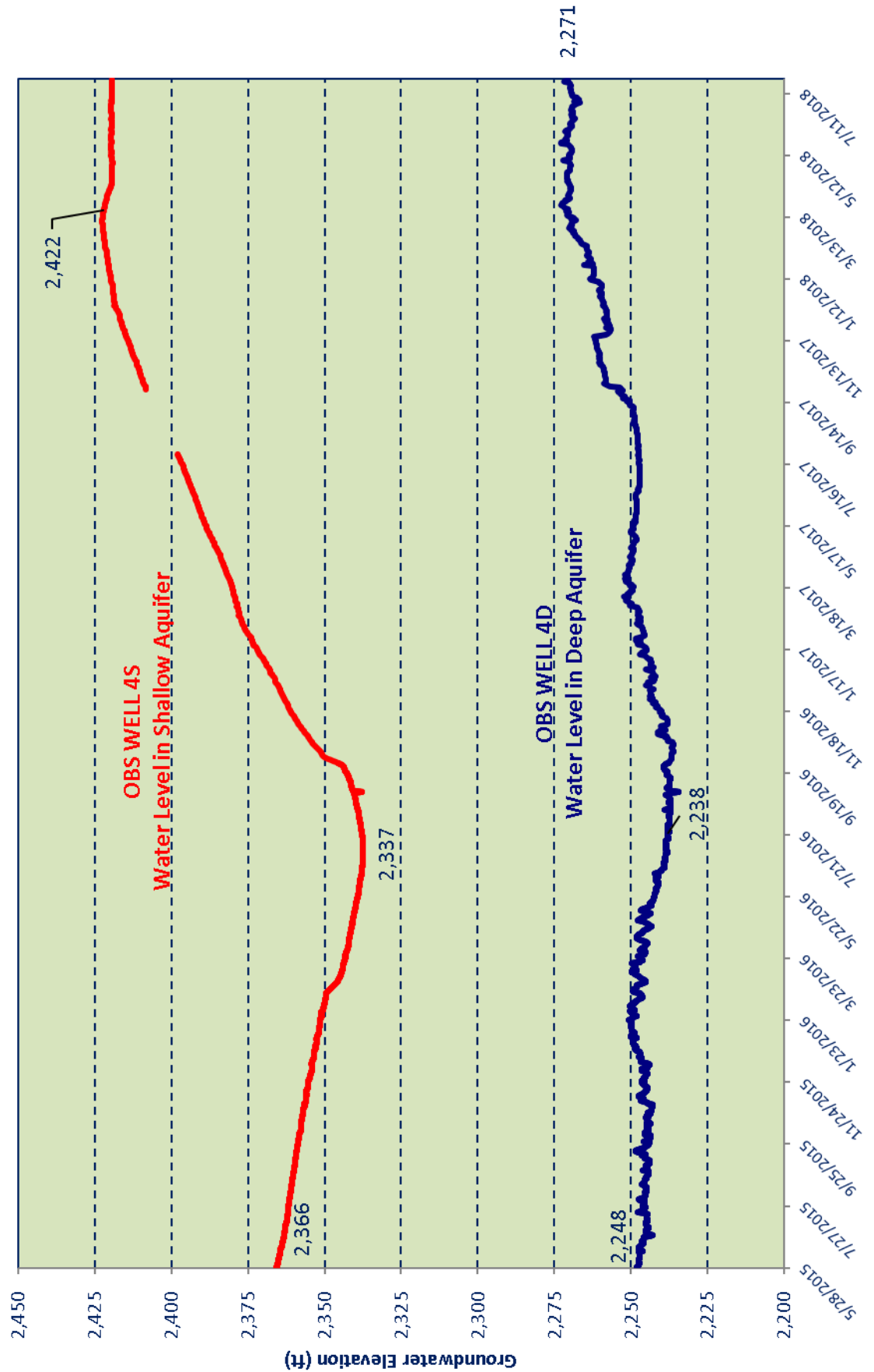


Figure No. 4
Static Groundwater Elevations at Summit Cemetery and Sun Lakes Wells
 (May 28, 2015 through Jul 24, 2018)

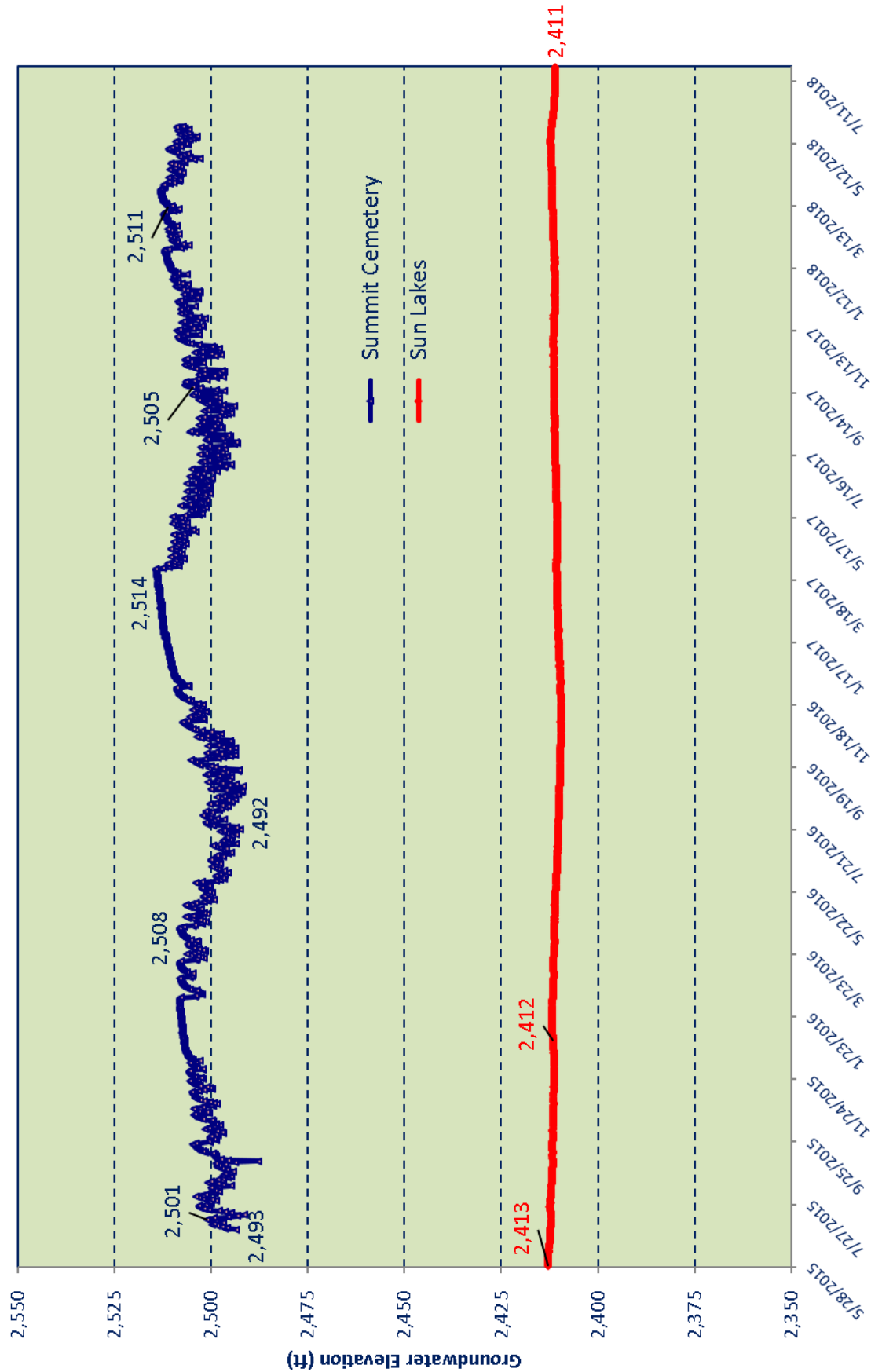


Figure No. 5
Static Groundwater Elevations in the Banning Area
 (May 28, 2015 through Jul 24, 2018)

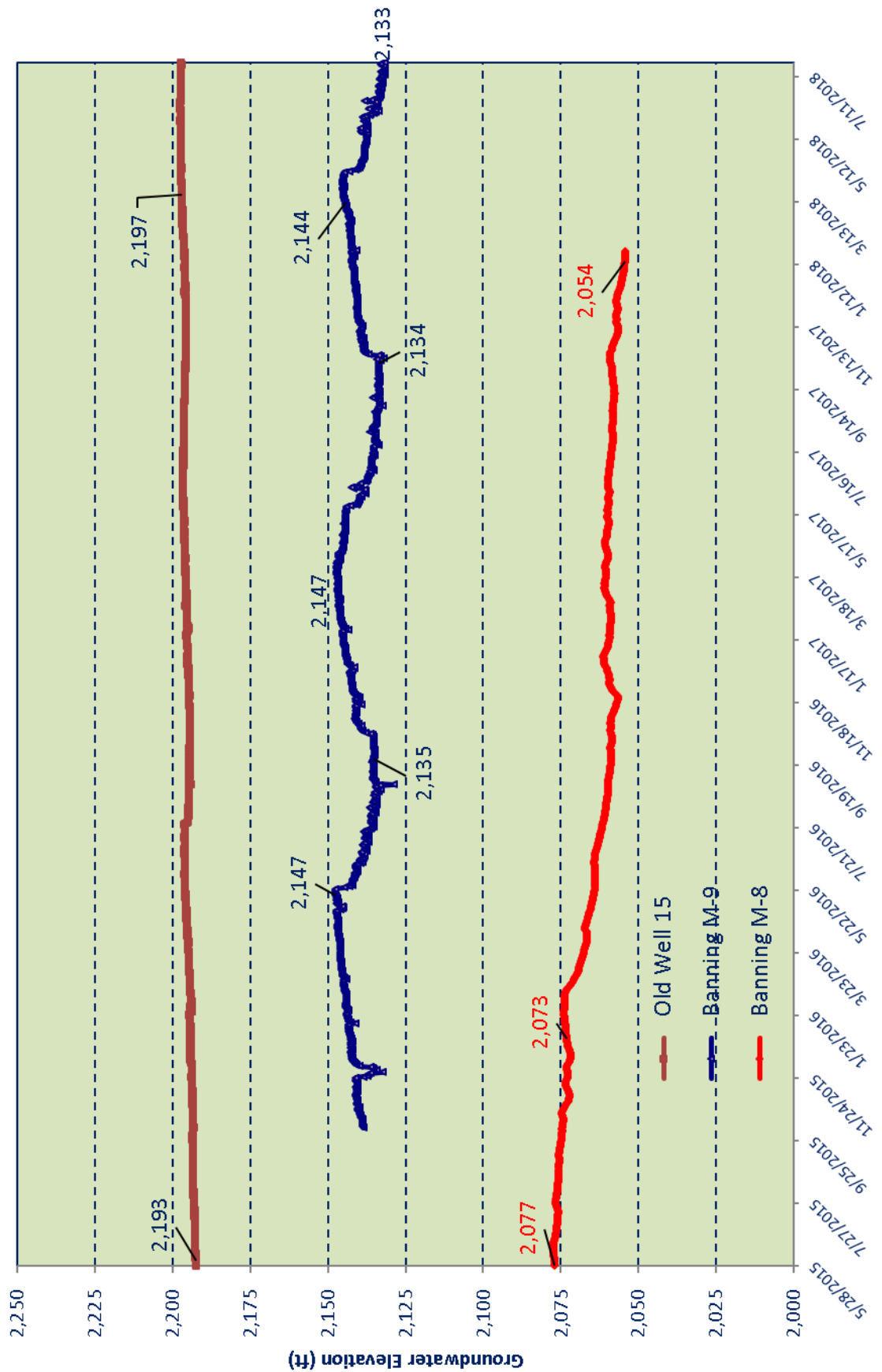


Figure No. 6
Static Groundwater Elevations at BCVWD Wells No. 2 and 25
 (May 28, 2015 through Jul 24, 2018)

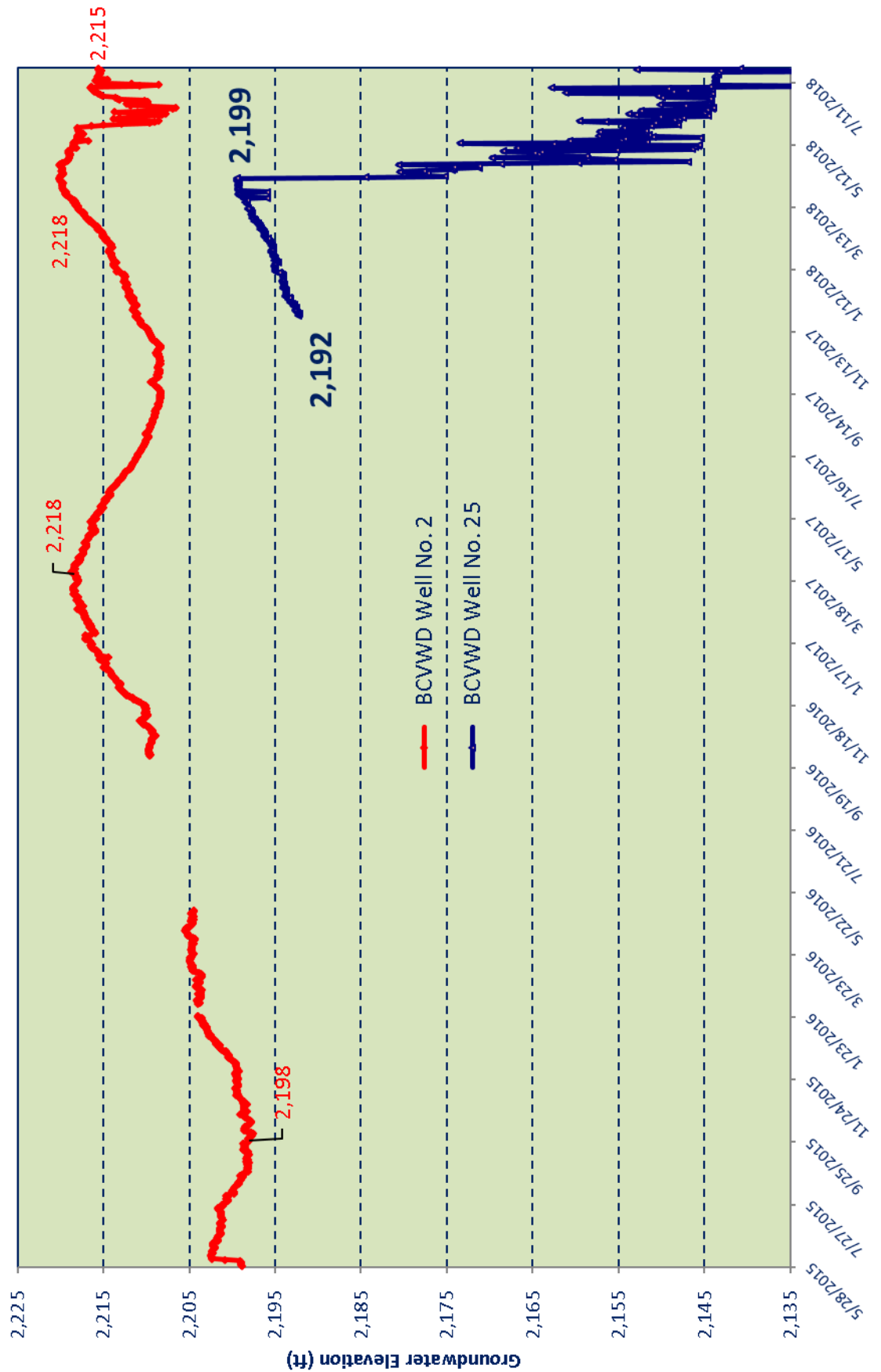


Figure No. 6A
Influence of BCVWD No. 3 Over BCVWD No. 2
Depth of Water Over Probe
 (Jul 5th, 2018 at 6:00 AM to July 11th at 10:00 AM)

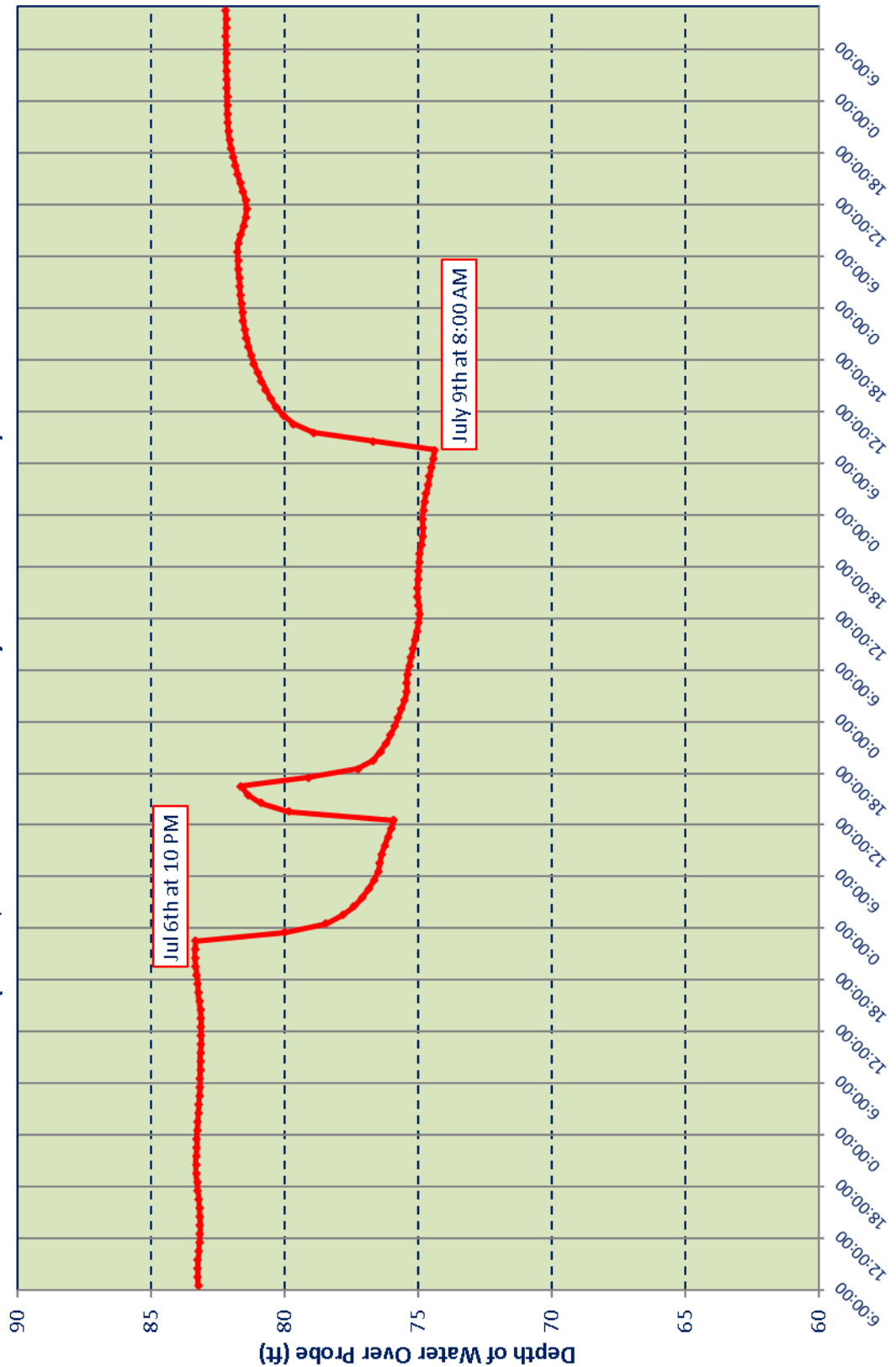
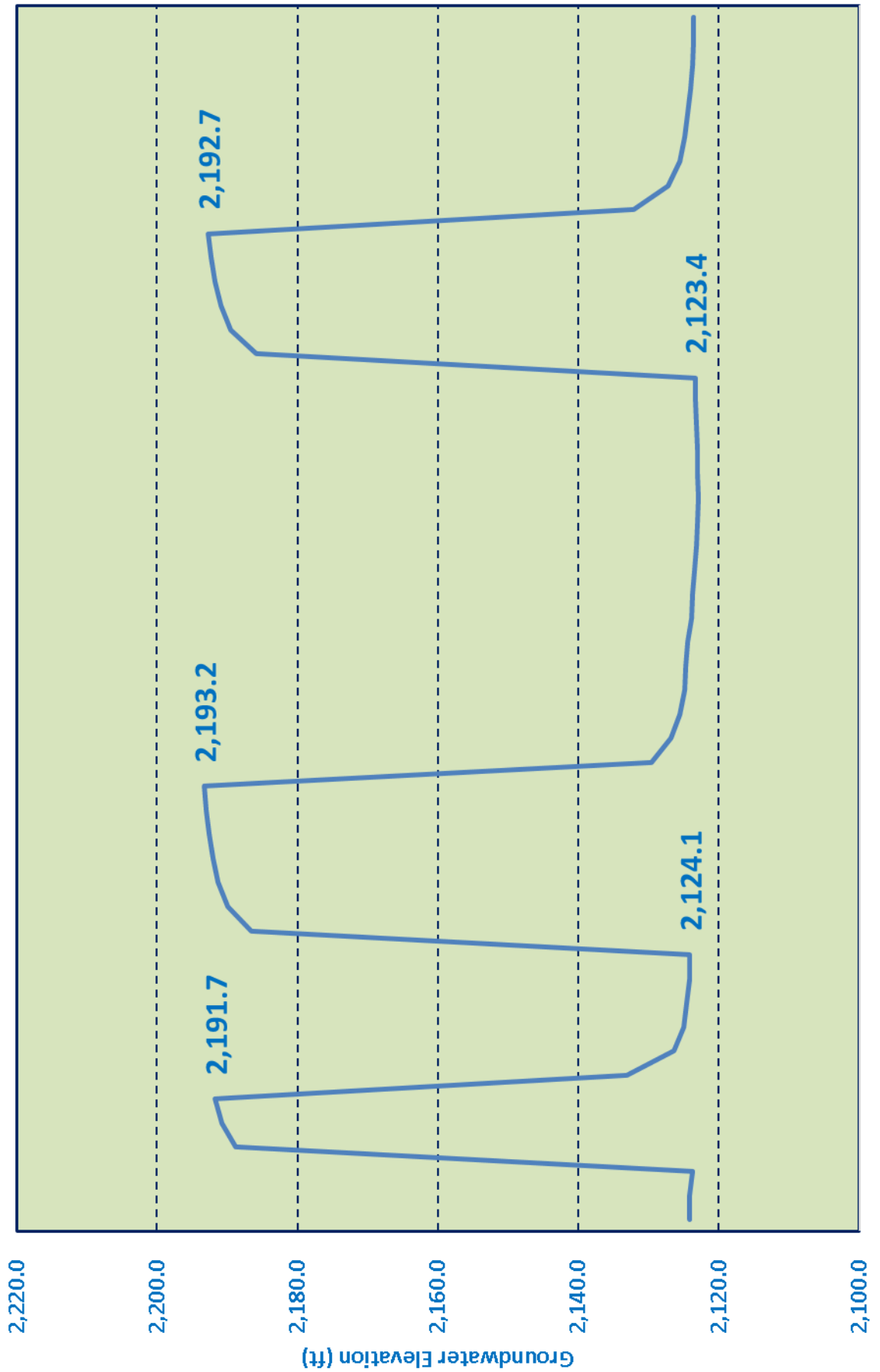


Figure 6B
BCVWD No. 25 - Groundwater Elevation(ft)
 Jul 22nd to Jul 24th, 2018



BEAUMONT BASIN WATERMASTER

MEMORANDUM NO. 18-16

Date: August 1, 2018

From: Hannibal Blandon, ALDA Inc.

Subject: A comparison of Production and Allowable Extractions through June 2018

Recommendation: No Recommendation. For Information Purposes Only.

The purpose of this Technical Memorandum is to present a comparison of production rights from the basin against actual production by Appropriators. Production rights consist of the sum of Unused Production by Overlying Users from 2013 transferred to Appropriators for 2018 and Imported Water Spreading. This sum is compared against actual production through Jun 2018.

During the first six months of the year a total of 5,241 ac-ft of water were produced from the basin while 5,720 ac-ft of imported water were spread at the Noble Creek spreading grounds. Unused production by Overlying users for 2013 was estimated at 6,365 ac-ft. The table below presents the above comparison for all Appropriators; all numbers shown in ac-ft, except as noted.

	Banning	BCVWD	SMWC	YVWD	Total
Transfer of Overlying Rights from 2013	2,001	2,706	794	864	6,365
YTD Imported Water Spreading	280	5,440	0	0	5,720
Total	2,281	8,146	794	864	12,085
YTD Production	499	4,502	148	92.1	5,241`
% of Total	21.9%	55.3%	18.7%	10.7%	43.3%

BEAUMONT BASIN WATERMASTER

MEMORANDUM NO. 18-17

Date: August 1, 2018

From: Joseph Zoba, Treasurer

Subject: Discussion Regarding the Perfection of Appropriative Rights Following the Conversion of Overlying Water Rights to Appropriative Rights

Recommendation: Pending.

On July 16, 2018, the Beaumont Basin Watermaster Committee members received a memorandum regarding the timing for perfection of appropriative rights following 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.



MEMORANDUM

TO: Beaumont Basin Watermaster ("BBW")
FROM: Thierry Montoya
DATE: July 16, 2018
RE: Subject

Following-up on our May 31, 2018, memorandum addressing the Transfer of Overlying Water Rights to a BBW Appropriator, and our discussion of such at the June 6, 2018 BBW Public Meeting, there were some follow-up questions regarding what is the period of time for an appropriator to perfect the appropriative right, and what would happen in the case of when a transferred overlying right is partially used.

This Memorandum addresses those questions.

Duration of Use Required to Perfect the Appropriative Right

An appropriative water right is a usufructuary right to divert a specific quantity of water subject to the limitations dictated by the facts and circumstances of each specific transfer.¹ So, for instance in the Oak Valley/Yucaipa Valley Water District transfer, discussed at the June 6, 2018 BBW Public Meeting, the facts and circumstances of that transfer dictate the specific quantify of water, *i.e.*, water that was formerly Oak Valley's overlying right was transferred to Yucaipa Valley Water District so it could provide water service to its residential development. A formerly overlying right now becoming an appropriative right as the May 31, 2018 memorandum set forth in greater detail.

Although an appropriative right is considered usufructuary, it is distinct from a riparian or overlying right in terms of the fact that an appropriative right is subject to quantification based upon actual use. The appropriator, therefore, possesses a right to use a specific quantity of water, *i.e.* as is set forth in the transfer noted above.² As against a challenge from a subsequent appropriator[s], the prior appropriator is entitled to the amount of water necessary to satisfy its reasonable and beneficial need. Turning to the Oak Valley/Yucaipa Valley Water District transfer discussed above and in greater depth in the May 31, 2018 memorandum, the transfer grants to Yucaipa Valley Water District the specific water rights that were transferred to it as are necessary to satisfy its reasonable and beneficial need—here, the right to provide water service to the Oak Valley residential community.

As residential communities may be constructed in phases and an appropriator holding water rights to service the entire community may not be exercising all of their water

¹ *Joerger v. Pacific Gas & Electric Co.* (1929) 207 Cal. 8, 26; *Scott v. Fruit Growers' Supply Co.* (1927) 202 Cal. 47, 55; *Stevens v. Oakdale Irr. Dist.* (1939) 13 Cal.2d 343, 350-351.

² *In the Matter of Permit 14595, WR 80-16* (1980) "The amount of beneficial use is the basis, measure and limit of an appropriative right in this state."
4673476.2 -- N1356.1

July 16, 2018

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rights to that specific residential community until full build-out occurs, the issue addressed by some BBW members was what is the duration of use required to perfect the appropriative right under a phased development circumstance?

The appropriator's right is perfected when water is applied to a beneficial use, *i.e.*, residential usage in terms of our example. There is no statutory or common-law requirement related to the length of time that the water must be used to accrue a right. The appropriative vests upon completion of the last act which is application of water to a beneficial use in the amount that is equivalent to the maximum quantity actually put to beneficial use.³

Going back to the Oak Valley/Yucaipa Valley Water District transfer, for instance, Yucaipa Valley Water District has the appropriative right to use all of the water transferred to it by Oak Valley, but only the water that is actually supplied to the residential community are appropriative water rights that have vested to Yucaipa Valley Water District for that beneficial usage. Those that have yet to be used for the purposed of supplying drinking water for Oak Valley's community have not yet vested as appropriative rights; so, how long can they remain in that unvested state?

Water Code § 1241 states that nonuse for a period of five years results in a forfeiture of the appropriative right. This term is used in licenses of permits issued by the State Water Resources Control Board and subject to revocation for nonuse for that five year period.⁴ This same five year period is used in non-SWRCB matters as the proper measure of time for the forfeiture of an appropriator's right for a failure to use the water for a beneficial purpose.⁵ California cases addressing this issue of nonuse have included a period of five consecutive years immediately preceding the filing of an action to foreclose an unused appropriative right. This has lead to cases in which the appropriator attempts to revive the right by putting it to beneficial use, or trying to upon the commencement of an action. The SWRCB does not permit revival, but in the realm of California courts, it is a factual issue and revival is possible; unpublished decisions hold otherwise, but unpublished decisions do not carry the weight of law, they are merely instructive, if anything at all.⁶

An appropriator has several excuses to a nonuse within five year claim, for instance, the reference to events precluding the appropriator from using the water and that they are beyond the control of the appropriator.⁷ In the case of a phased residential construction process, the sale of a project to another developer, the lack of funding but efforts to secure new funding, the bankruptcy of a developer but the attempted marketing of the project to another, are all examples of "events" precluding the appropriator from using the water for its beneficial

³ *In the Matter of Permit 14595*, WR 80-16 (1980).

⁴ *Eaton v. SWRCB* (1959) 171 Cal.App.2d 409, 415; *Water Code* § 1241, "Such a reversion shall occur upon a finding by the [SWRCD] following notice to the permittee and a public hearing if requested by the permittee."

⁵ *Smith v. Hawkins* (1895) 110 Cal. 122, 127.

⁶ *In the Matter of Statement of Water Diversion and Use S015151* (2002) WR 2002-10; *B.J.B. A California Limited Partnership v. Evans* (2000) Fourth District Court of Appeal E024886/E024887 (Super. Ct. No. SCU06305) pages 39-45.

⁷ *Bloss v. Rahilly* (1940) 16 Cal.2d 70.
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usage, but may allow it addition time for it to do so as such factors tend to be beyond the control of the appropriator.

Best Procedures

Going forward, BBW should promote water transfers where they benefit the basin and support the concept of conjunctive usage, *i.e.* not injuring the right of other users. However, the five year usage deadline should be considered in terms of a appropriative water rights vesting deadline—although events beyond the control of the appropriator could still be invoked to avoid forfeiture as that is possible under California law, if appropriate.

In the instances of water transfers from overlying right holder[s] to appropriative party[ies] the conversion of such rights, *i.e.*, when the rights actually vest as they are being used in a beneficial manner, will need to be accounted for as part of the “safe yield” analysis as differentiating them from the total available appropriative rights that have yet to be converted to a vested appropriative water right.