

**DRAFT**

**Record of the Minutes of the  
Beaumont Basin Committee Meeting of the  
Beaumont Basin Watermaster  
Regular Meeting  
Wednesday, August 1, 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 10:03 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>Present</i>

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

*Tom Harder and Hanibal Blandon were present as consultants and engineers for the Beaumont Basin Watermaster.*

*Staff present were: Mark Swanson, Bill Clayton, James Bean and Erica Gonzales from BCVWD.*

*Members of the public who registered or attended were: Fran Flanders, Ashley Gibson, David Fenn, and Luis Cardenas.*

**III. Pledge of Allegiance**

*Chairman Vela led the pledge of allegiance.*

**IV. Public Comments: None.**

**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

Mr. Zoba indicated this correspondence has been before the Committee previously. No action is required.

## VI. Consent Calendar

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

1. Meeting Minutes for June 6, 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 presented a Powerpoint on Developing Methodology to Account for Return Flow Recharge. He pointed out that return flow is included in the water budget for the Beaumont Basin and is part of the safe yield. He addressed the interest in crediting return flow that occurs on overlying appropriator service areas to the appropriators; a parcel-by-parcel estimate would need to be made.*

*Mr. Harder also presented information on basin losses.*

*Mr. Harder reported on comment received regarding the report on basin losses. The City of Banning asked about recharge, and Mr. Harder noted the bulk water in question recharged at the Noble Creek facility is accounted for in the model; recharge elsewhere in the basin is not. The purpose of the memo was to provide a magnitude of losses and what affects losses, then develop a method to account for the loss. Additional analysis can be done.*

*Another question, stated Mr. Harder, was whether irrigation return flows should be accounted for and if it impacts losses. He said they should, but they are minor. As return flows increase in the basin, those losses will increase.*

*The final question, Mr. Harder noted, was regarding wells outside the adjudicated area and whether those affect the losses. There is some hydrologic separation between the Beaumont Basin and the Banning*

*Basin but losses are affected by a combination of activities on either side including increased pumping. To limit losses may involve some coordination.*

*Mr. Harder indicated he would like to finalize the Tech Memo and reminded everyone about submitting comments.*

*Mr. Jagers reiterated that activities could be tailored to minimize losses: how much to recharge, how conjunctive use is done, and how pumping is managed. BCVWD has the ability to pump and deliver to other areas including Banning, and in the future to Yucaipa, to minimize losses. He said he views the Tech Memo as a general view of the basin and tool to assist agencies in tuning their activities to minimize loss and monitor it over time. He noted that too much recharge in one spot creates a condition of loss.*

*Chairman Vela indicated future discussion would be needed on what is to be done and how to implement.*

*Engineer Blandon added that at this point, monitoring wells are lacking in key locations, and at some point, more will be needed to better understand the loss.*

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

*Legal Counsel Thierry Montoya advised that a court hearing is set on September 17 for the appointment of BCVWD's alternate member, Mark Swanson.*

*Mr. Montoya reported that counsel has researched the transfer of overlying rights to an appropriator. As a matter of the agreement, and of law, the overlying right is culminated then switched to an appropriative right. Counsel looked at the concept of when the appropriative right "perfects," and becomes an appropriative right put to beneficial use for that party, it would not be subject to another appropriator's claims for all or a portion of the former overlying right because of non-use.*

**VIII. Discussion Items**

**A. Status Report on Water Level Monitoring throughout the Beaumont Basin through July 24, 2018**

Recommendation: No recommendation.

*Engineer Hannibal Blandon reported that 14 wells are currently being monitored. New wells are being sought in the central western portion of*

*the basin. Some issues with vandalism have been experienced at Yucaipa Well 34, and at Well 5, the cable is stuck but continues to record data. He noted that graphs show data interruption for Yucaipa 34 and Oak Valley 35.*

*Mr. Blandon gave an overview of the graphs. He updated the Committee on the search for additional monitoring well sites and advised there may be an opportunity to bring back observation well Banning 8 if the City pulls the pump. The loss of probes at Yucaipa 34 appears to be theft: cables cut and probe removed. The lock has been replaced and security added.*

*Chairman Vela noted that City of Banning plans to relocate Joshua Palmer Way in the next four to six months will affect the Banning 15 monitoring well near the Chevron station.*

B. Comparison of Production and Allowable Extractions through June 2018

Recommendation: No recommendation. Information only.

*Engineer Blandon reviewed the report. There is a total production right of about 12,000 acre-feet and a total of 5,241 acre-feet was produced; an overall average of 43 percent of the allowable right.*

C. Discussion Regarding the Perfection of Appropriative Rights Following the Conversion of Overlying Water Rights to Appropriative Rights

Recommendation: No recommendation.

*Legal Counsel Thierry Montoya continued discussion regarding the transfer of overlying rights to an appropriator, pointing out the example of Yucaipa Valley WD (YVWD) and Oak Valley's transfer. The issue is that Oak Valley has transferred its overlying rights to Yucaipa, so that YVWD can then provide water service to a phased residential community. Such use would be a beneficial use, and would perfect the appropriative right once all or relative chunks of the formerly overlying water right are used to provide water service to the residential development. This is clear under case law.*

*The key is that the appropriative right is perfected when the water is applied to a beneficial use, and the appropriative right would vest upon the completion of the last act; in this instance YVWD beginning to send out water for household use.*

*Then, if the project is not entirely built out, or if it is built in phases but with large gaps of time, Mr. Montoya posited that the water is ready to be put to beneficial use but has not yet been perfected. There is no statutory or common-law requirement relative to the length of time that the water must be used to accrue a right. In the SWRCB permitted*

*transfers of appropriative right, they impose a five-year non-use period, then if the right is not used it is up for another appropriator to say they need it. Then the State Water Resources Control Board (SWRCB) would have a hearing to determine whether there is non-use, whether the five-year rule may apply or whether there are any factors to extend the five-year rule.*

*Everyone has correlative rights for the benefit of sharing the basin, and it is all subject to beneficial usage. Using that as guidance, the five-year rule is something the Committee may want to consider including these types of contract terms in transfers in the future.*

*Mr. Montoya advised that although there is no hard and fast rule, the Committee must be mindful of this area of equitable consideration. Regarding the example of Oak Valley, YVWD is beginning to perfect some rights but if there is indication of activity on the project and the rights may be perfected in time, law would say that if the equitable evidence is convincing then they should be provided additional time.*

*For accounting purposes, Counsel Montoya suggested a column of quantity transferred and a column of perfected appropriative rights (the date it is put to use).*

*Member Jorritsma asked about specification of certain parcels. Mr. Montoya said he believes it is not meaningful that the water must go to a particular parcel. Member Jagers asked for clarification of "beneficial use." Counsel Montoya stated that case law defines beneficial use as when it is actually perfected and applied to beneficial use. Chairman Vela suggested it could be perfected when the meter is dropped in the box. Member Jagers pointed out the landscape of water use is changing with recent bills to reduce water supply both outdoors and indoors. BCVWD will be using a conservative approach to analyze water use to avoid coming up short. If not accurately accounted for, that may provide an opportunity for agencies to question. Counsel Montoya concurred, noting the perfection is 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 a beneficial use. Therefore, if water remains in the appropriative column for a time that is deemed by parties to be too long before it is actually perfected and vests, then other appropriators can say they want some of that water.*

*Member Jagers shared an example of a developer holding more overlie right than the District believes necessary for their project. Mr. Montoya indicated he believes the District could make a deal with the developer to take all the overlying right as the property has other potential uses, which must be accounted for. If the uses do not come to fruition over a period, other appropriators could say those unperfected rights may be put to beneficial use now. Jagers suggested a concept that the unconsumed appropriative right goes into a pool, which would then be*

*reallocated in a manner similar to the adjudication, therefore providing beneficial use.*

*Counsel Montoya agreed the foundation for such transfers is in the judgment, and it makes sense to firm up these concepts now via discussion between appropriators.*

*Member Zoba indicated he has always viewed the Watermaster as an accounting firm for these types of transfers. He pointed to a concept in the stipulated judgment that there would be a conversion of overlying to appropriative rights and these are now coming about. He postulated that the SWRCB policy does not apply to the Watermaster at all and a five-year plan should not be considered.*

*Mr. Zoba pointed to Engineer Blandon's chart presented earlier and reminded the members that correspondence presented to the Committee in March included the overlying party committing to YVWD to forever forgo pumping and extracting that overlying right. In favor of that, YVWD made commitments to make sure that there will be water for the property when it develops, when it occurs. When the transfer occurred in March, YVWD immediately put that water to an appropriative use, which is shown on the chart as extracted and consumed in 2018 in the YVWD service area. There is nothing in the adjudication that says that appropriative right must be used on that specific property. Appropriative water may be used anywhere within the service area, not just within the Beaumont Basin.*

*The correspondence today, Zoba continued, transfers another 60 acre-feet to YVWD, which will be used. That perfects the transfer of overlying to appropriative rights. The five year policy makes no sense, he stated, and advised that flexibility must be maintained. He said he does not believe the memo from legal counsel applies, and YVWD has perfected the rights transferred to it and stands to successfully manage the right as stored water or used water. He requested modification of the memo.*

*Counsel Montoya reiterated there is no statutory time limit for use. The SWRCB five-year limit does not apply in this case, but it was the closest example of time guidance. The intent of these cases is to allow flexibility to the appropriate party due to equitable consideration for time, types of use, manner of use, and what has occurred over time.*

*Member Zoba also pointed out that developers provide water rights in lieu of Developer Impact Fees for water supply, and if the right is instead allocated to a pool, then YVWD incurs a financial loss.*

*Mr. Jagers indicated the goal is to establish a process, as uses will change over time. Counsel Montoya advised members to assure flexibility for use when drafting transfer agreements. Member Vela suggested discussion on how the transfer modifies the exhibits within the adjudication, as the recalculation of safe yield is coming soon.*

*Member Jahker noted that some developments take a long time, and concurred with Member Zoba's prior comments.*

*Chairman Vela concluded the discussion, requesting Mr. Montoya revise the memo. It will be revised after Mr. Montoya returns from vacation later in August, and sent out for comment.*

## **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 Overlier return flow credit and how it might be managed
- G. GIS system

## **X. Comments from the Watermaster Committee Members**

*Chair Vela welcomed Mr. Mark Swanson.*

## **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**

*Chairman Vela adjourned the meeting at 11:24 a.m.*

Attest:

*DRAFT UNTIL APPROVED*

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Daniel Jagers, Secretary  
Beaumont Basin Watermaster