

**Record of the Minutes of the
Beaumont Basin Committee Meeting of the
Beaumont Basin Watermaster
Special Meeting
Wednesday, March 6, 2019**

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 11:02 a.m.

II. Roll Call

<i>City of Banning</i>	<i>Arturo Vela</i>	<i>Present</i>
<i>City of Beaumont</i>	<i>Kyle Warsinski</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.

Hannibal Blandon was present as consultant and engineer for the Beaumont Basin Watermaster.

Staff present were: Bill Clayton, Mark Swanson, James Bean and Erica Gonzales from BCVWD. Also present was BCVWD Legal Counsel James Markman.

Members of the public who registered and / or attended were: John Covington, David Armstrong, Mike Kostelecky, Kathryn Hallberg, Matt Porras and Jennifer Ares.

III. Pledge of Allegiance

Chairman Vela led the pledge of allegiance.

IV. Public Comments: None.

V. Consent Calendar

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

1. Meeting Minutes for February 6, 2019

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

VI. Reports

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

No report.

B. Report from Hydrogeological Consultant – Thomas Harder, Thomas Harder & Co.

Mr. Blandon advised that Mr. Harder was unable to attend the meeting.

C. Report from Legal Counsel – Thierry Montoya, Alvarado Smith

Legal Counsel Thierry Montoya reported that the resolution amending the judgment correcting the scrivener's error was filed with the court and the court will probably sign it before the March 11 Order to Show Cause hearing which would be the last chance for members of the Basin to raise any challenge or comment.

VII. Discussion Items

A. Discussion Regarding Draft Resolution No. 2019-01 Amending the Judgment at the Riverside Superior Court's Request to Correct a Clerical Error – An Incorrect Reference to "8,610 Acre Feet" on Judgment, Page 7, Line 26 – Correcting Such to "8,650 Acre Feet"

Recommendation: That the Watermaster Committee adopt Resolution 2019-01.

Legal Counsel Thierry Montoya indicated no discussion is warranted; the Resolution has been approved and submitted to the Court.

It was moved by Member Zoba and seconded by Member Warsinski to adopt Resolution 2019-01.

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

B. Discussion Regarding the 2018 Draft Annual Report and Review of Comments Received by the Consultant.

Recommendation: Pending.

Engineer Blandon indicated that comments were received and he noted some corrections that will be incorporated into a final report.

Blandon indicated he would address policies to address certain issues including transfer of overlying water rights to appropriators, and accounting for groundwater losses.

A study was completed last year identifying certain losses from the Basin depending on where imported water is recharged. The report concluded that a significant amount of groundwater is lost. The means of follow up and implementation remain in question, Blandon said.

A study regarding accounting for return flows will be completed by mid-2019, Blandon noted. The Watermaster may consider a policy to account for the return flows when the time comes.

Blandon reminded the Committee about amendments to storage agreements adding storage capacity to total 260,000 acre feet. The individual agreements may not have been amended to reflect current storage limits, and he advised future discussion.

Chair Vela indicated that the suggestions were made to include these items in the report for tracking purposes. Mr. Jagers noted there are many things to work out such as forms that are indicated in the Rules and Regulations but are not readily available and he wondered whether letters to overliers regarding the adjustments of their rights in 2013 were sent. He suggested the Rules and Regulations need work to focus on these activities and others. BCVWD believes it appropriate to form an ad hoc committee to bring the rules current to today's basin management.

Mr. Blandon noted that the issue of transfer of overlying rights to appropriators was discussed a number of times during 2018 with no consensus regarding timing of when an overlying right becomes an appropriate right.

BCVWD Counsel Jim Markman indicated that over the years, he has spoken to various overlyers who are trying to monetize their rights more quickly or in addition to what they need for development. He explained that the mechanism is a conversion where the overlyer forgoes pumping the amount of water necessary to serve a project on his property, and that amount of water goes to the public water supplier who is required to serve the project. This has been done in the Chino Basin for 40 years. The Beaumont Basin judgment is different in that it is more complex, Markman explained. He said the transfer appears to occur for two reasons: when someone hooks up a meter and starts serving potable water to a development or as it goes on over time. The calculation of the amount of water that has converted is reported annually to the Watermaster through meter readings (deemed to have been pumped) and the overlyer has a right backing up that pumping. Markman posited that it appears the transfer is annual and can only be transferred when the water is actually moving through the meter; that is the mechanism. He acknowledged there are ambiguities in the judgment.

Counsel Markman also pointed to the BBWM policy that if an overlyer does not pump its overlying allocation in a given year, the amount not pumped is distributed into the storage accounts for all of the appropriators on a pro-rata basis – so it cannot be counted twice. Those two things occur annually, he stated. Markman said he had read of other things being done and has been in meetings where developers or landowners ask for early allocations leading to the question whether the public water supplier can serve anywhere within the service area with this add-on production right, because it is being forgone by the overlyer. If nothing is being built, the overlyer would have forgone it anyway, and then the lack of production would have been distributed to everyone else's storage account, Markman pointed out. He recommended walking back the procedure and further study by the Watermaster Committee to create a policy to reconcile all of the viewpoints and different potential accountings. The result may entail an amendment to the judgment that is clear and can be put in front of the court.

Markman counseled that the BCWVD does not see the transfer occurring until the water flows with an accounting every year including the unpumped water that is distributed every year to the appropriators. He indicated support for formation of an ad hoc committee.

Member Zoba said he believes the current wording in the draft annual report makes sense and suggested that some of the discussion seemed opportunistic to create a third party beneficiary which would receive this water. An overlyer has three options to use their water: pump it and use it on the property, not pump it (at which point it becomes an unused overlying right and is distributed to the appropriators) or transfer it. He disagreed with Markman's conclusion, saying the adjudication does not create a gray area where an overlyer forgoes production and that is still

considered an unused overlying water right. Once a permanent transfer is completed, the accounting is simple – the overlyer forgoes their production and at that point, it becomes an appropriative right. It is still tracked as part of the safe yield, he continued.

Chair Vela pointed out that the Rules and Regulations Subsection B reads that when an overlying party receives water service, the overlying party shall forbear the use of that volume. This ties into Resolution 2017-02, which approves the transfer of overlying water rights. He believes this indicates the transfer occurring when the water service is provided to those specific parcels. The letters from overlyers also state that the transfer is for the specific parcels, he added.

Member Zoba noted that this verbiage dates back to the original transfers of Sunny Cal parcels in 2005 or 2006. Now there is a point where an overlyer indicating to the Watermaster that they will forgo this water prior to the actual service taking place – an accelerated transfer. This fits more cleanly into SB 610 and SB 21 to guarantee a 20-year supply so as development occurs, there is not a last minute wait to determine if there is water available when a meter goes in and a house is built, Zoba said. There are policies in place to assure there is water available for a development long before the building permit is actually issued, he said, and when entering a development agreement, it is necessary to know whether there is water supply. Zoba stated he believes it is clear when the transfer takes place.

Chair Vela noted that the water is there and the conditions in SB 610 would be met, but the transfer itself is not perfected until those parcels actually receive service. Mr. Jagers pointed to Rules and Regulations Section 7.2 and 7.3, and posited that the Watermaster should formalize a clear transfer policy. Zoba disagreed; suggesting the accounting seems straightforward.

Member Jagers noted the policy to account for transfers of water topic has been on the agenda as a future item for some time (item VIII e), but has not yet been addressed and the language in the draft report is setting a precedent. Jagers said he does not feel that this discussion has been finalized and he recommended modification of report item 3.4.2 to identify what the transfers were, but to strike out some of the language about when it is available for use. He indicated that item VIIIE should be addressed before appearing in writing in an annual report.

Counsel Markman pointed out that there are thousands of entitled houses on hold since 2008 for which the agencies may have to meet water demands. The purpose of a conversion as indicated in the judgment is to know that there will be a water supply ready to use by the public water supplier when property builds out parcel by parcel, Markman explained. It was never meant to be an early transfer from

overlying to appropriate use because a developer with an economic motive makes a transfer ten years before construction. During the ten-year period, all the appropriators not in that service area are not going to receive their proportionate share of the unpumped overlying water. The purpose, Markman continued, is to make water available when the project is built; the water is not there to move abstractly and use anywhere wanted – that is an inflated water right – the other pumpers get nothing from that, which is directly contrary to the rule adopted indicating a pro-rata share of unpumped water. This boils down to who gets to use more water, Markman stated. The language of the judgment, Markman pointed out, states that when potable water is supplied to be put to use – not to be put to use 10 years later – that's the reason for the accounting mentioned by Mr. Jagers, he said. In most adjudications, Markman continued, the conversion occurs when the demand is created for the appropriative water from the water supplier. He acknowledged the judgment is ambiguous, but he believes it has always meant that the water is ready to be supplied when it converts. He indicated support for Mr. Jagers' position and urged the Committee to take a hard look at the policy and understand its implications – an add-on water right that could diminish someone else's due to early transfers.

Mr. John O'Hanian from Oak Valley Partners, the subject overliyer of the conversation, addressed the Committee. He indicated the overliyers have always felt that they had rights that were being taken advantage of. The transfer to YVWD is in expectation of water service to each homebuyer with the commitment of a will-serve letter and 20-year supply. To make the conversion when the meter service is turned on does not make sense to the developers, he said. It makes sense to transfer the appropriative right to the district which will serve the water. He requested that any adjustment to policy will make sure the overliyer retains the right to its annual production.

In response to Chair Vela, Mr. Blandon noted that groundwater production and annual basin report must be submitted to the state by April 1. Approval of the production side of the report could be done at the March 27 meeting with a draft annual report attached, he said and suggested documenting the transfers to YVWD but not including them as part of the accounting until the issue is resolved.

Member Jorritsma said he realized that with the accounting as it had been done, he would be giving up some of his unused overliyer supply and noted that the person who is taking that supply is also irrevocably committing himself to provide that water indefinitely to that particular parcel(s). He said he would be willing to sacrifice a little of the overliyer rights if he does not have to make such a commitment.

Cahir Vela said he felt comfortable including language in the annual report that represents the facts that are not currently in debate: letters have been received requesting the transfer, commitment has been made to discuss and finalize a policy, and once completed the annual report would be revisited and adjustments made. Member Zoba added that it should be included that the water has been pumped. Mr. Jagers pointed out that the water, however, was not served to that property. This is the continuing gray area and has not been clearly vetted.

Member Zoba expressed concern about the concept posited by Counsel Markman; that the water should be held up for private and free gain. He does not want policy set based on unused overlying water right, he said. At issue is a clear, defined policy to be vetted by the Watermaster as a whole, Jagers noted. Zoba suggested the two meet as an ad hoc to draft a policy for the next meeting.

Accounting for the water pumped by Yucaipa Valley might be a caveat in the annual report, but the real issue is what to do with the acre-feet that was transferred and pumped, Vela noted. It should not come out of YVWD's storage account, Zoba suggested. Blandon explained that if the report were revised it would be a temporary withdrawal from the account until the issue is resolved, and put back in a subsequent report. Regardless of where the water rights come from, the water was produced, Blandon pointed out. The state is interested in the amount of water that was produced.

Further discussion ensued about the ambiguity of the perfection of the right. Zoba posited that the transfer letter does not create the demand; it creates the relinquishment of a right – that is when the perfection takes place, as someone is forgoing use. Chair Vela agreed this is the ambiguity under discussion. Zoba suggested that if the overlayers could continue to pump the water, there could be a great deal of over- and double production.

Jagers reiterated the request for a policy with a clear path and meets the intent of the adjudication. If not resolved by the next meeting, Chair Vela suggested the engineer submit the minimum report to the state as suggested by Mr. Blandon. With Committee member consensus, Mr. Blandon will have said report ready for approval at the March 27 meeting.

VIII. 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

Mr. Jagers suggested an ad hoc committee to be instituted to review and update the Rules and Regulations, and suggested a letter to the overlyers regarding an adjustment to their rights due to the recalculation of the safe yield. Counsel Montoya said he did not believe such a letter was sent and agreed one should be sent. Mr. Montoya will consult the Rules and Regulations to determine whether a letter is required, and Mr. Blandon will bring back a draft for discussion at the March 27 meeting.

IX. Comments from the Watermaster Committee Members

None.

X. Announcements

- A. The next regular meeting of the Beaumont Basin Watermaster is scheduled for Wednesday, March 27, 2019 at 10:00 a.m.

XI. Adjournment

Chairman Vela adjourned the meeting at 12:14 p.m.

Attest:



Daniel Jagers, Secretary
Beaumont Basin Watermaster