

**Record of the Minutes of the
Beaumont Basin Committee Meeting of the
Beaumont Basin Watermaster
Regular Meeting
Wednesday, August 5, 2020**

Meeting Location:

*There was no public physical meeting location due to the coronavirus pandemic.
Meeting held via video teleconference pursuant to:
California Government Code Section 54950 et. seq. and
California Governor's Executive Orders N-29-20 and N-33-20*

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>Kyle Warsinski</i>	<i>Present</i>
<i>Beaumont-Cherry Valley Water District</i>	<i>Daniel Jaggers</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 (BBWM). Hannibal Blandon and Thomas Harder were present as engineers for the BBWM.

Members of the public who registered and / or attended:

*Jennifer Ares, Yucaipa Valley Water District
Madeline Blua, Yucaipa Valley Water District
Bryan Brown, Meyers Nave
William Clayton, Beaumont Cherry Valley Water District
John Covington, Beaumont Cherry Valley Water District / Morongo
Lance Eckhart, San Geronio Pass Water Agency
Allison Edmisten, Yucaipa Valley Water District
Erica Gonzales, Beaumont Cherry Valley Water District
Lonni Granlund, Yucaipa Valley Water District
Mike Kostelecky, Yucaipa Valley Water District
Steve Lehtonen, San Geronio Pass Water Agency
Jim Markman, Richards, Watson & Gershon
Joyce McIntire, Yucaipa Valley Water District
Greg Newmark, Meyers Nave
Matt Porras, Yucaipa Valley Water District
Mark Swanson, Beaumont Cherry Valley Water District
Dave Armstrong – South Mesa Water Company*

III. Pledge of Allegiance

Chair Vela led the pledge.

IV. Public Comments:

None.

V. Consent Calendar

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

1. Meeting Minutes for February 5, 2020
2. Meeting Minutes for June 3, 2020

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

VI. Reports

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

Mr. Blandon noted that the Draft Annual Report was scheduled to be presented at this meeting but has been postponed to October due to not meeting in person.

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

No report.

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

Mr. Montoya advised that he had received a letter from the City of Beaumont requesting appointment of a member and alternate, and he has sent a draft motion for court approval of the appointment. Beaumont will send the resumes and declarations of the candidates for appointment of the required designated member and alternate.

VII. Discussion Items

- A. Status Report on Water Level Monitoring throughout the Beaumont Basin through July 20, 2020

Recommendation: No recommendation.

Engineering Consultant Hannibal Blandon pointed to the northwest portion of the Basin and advised that in the last year water level at Yucaipa Well No. 34 has declined by 5 feet. The most significant decline, he continued, has been in Oak Valley Well No. 5 which has not been pumped for quite a while but has dropped almost 30 feet in the last year.

Water levels in the deep aquifer continue to increase, he noted, with 60 feet over the last four years, whereas the shallow aquifer levels have plateaued over the last two years, he explained.

He compared Sun Lakes and Summit Cemetery well levels and advised that Banning Well M-8 continues to decline. Beaumont-Cherry Valley Water District (BCVWD) Wells 2 and 25 show higher highs and lower lows over the last few months, he noted. Blandon said he understands that BCVWD has been pumping one of the nearby wells which may result in the decline. Member Jagers explained that Well 2 is in close proximity to Well 3 which was returned to service a month ago and this likely affected Well 2.

Mr. Blandon pointed to BCVWD Well 29 and Tukwet Canyon Well B which are located in the northwesterly portion of the Basin but have not seen the decline as have Yucaipa Well 34 and Oak Valley Well 5.

Mr. Blandon reported that Oak Valley Well 5 seems to have collapsed. The probe and communications cable have been removed and will not reinstall until the well is back in service, he said. Mr. Zoba indicated that the well is not on near-term efforts.

Mr. Blandon indicated there may be another Oak Valley well nearby that can be used; he will explore the option.

Mr. Blandon reminded the Committee of equipment repairs needed.

B. A Comparison of Production and Allowable Extractions through June 2020

Recommendation: No recommendation. Information only.

Mr. Blandon compared production and allowable extractions through June 2020. The City of Banning has imported 250 AF whereas BCVWD has imported close to 4,300 feet, for a total of 4,550 AF. Allowable production for the agencies is 10,500 AF and actual production for the year is 63 percent of the allowable. This is dependent on imported water, he noted.

- C. Update on Progress to Develop a Return Flow Accounting Methodology (Task 17) and Conduct a Water Quality Impact Evaluation for the Beaumont Basin Adjudicated Area (Task 22)

Recommendation: Information only.

Mr. Tom Harder reminded the Committee that a scope of work and cost estimate had been presented at the last meeting and advised that work has begun on eight tasks. He anticipates providing a revised technical memo of the Return Flow Methodology at the next meeting in October.

The last two tasks were approved as a new Task Order 22, a water quality impact evaluation, Harder reminded. This work has also begun, he noted and preliminary results are anticipated at the October 2020 Committee meeting.

- D. Discussion Regarding Various Legal Memorandums Regarding the Transfer of Overlying Water Rights to Appropriative Rights

Member Zoba introduced the discussion item. Legal Counsel Montoya explained that the Watermaster requested Alvarado Smith to analyze the water transfer and accounting of Oak Valley Partners' (OVP) overlying water rights transferred to Yucaipa Valley Water District (YVWD). He pointed to the July 20, 2020 memorandum which speaks to the YVWD's Resolution 2017-02 which complies with the stipulated judgment.

Prior to that, Montoya continued, OVP on July 5, 2017 had asked the BBWM to convert its overlying rights as reduced by the judgment to a parcel-by-parcel basis.

The resolution signified a change in the character of the water via change of use, Montoya explained. The July 20 Memorandum speaks to YVWD's November 29, 2019 Form 5 which serves as a notice provision of the water transfers. The Memo also speaks to the 180.4 AF of former OVP overlying water rights transferred to YVWD based on YVWD's notices of water service commitments to specific OVP tract numbers.

On July 30, 2020, Montoya said, Alvarado Smith received a new agreement regarding consideration for overlying water rights transfers dated June 2, 2020 which was not addressed in the July 20 Memo. The Oak Valley Development Company / OVP and YVWD agreement appears to be a marked departure from Resolution 2017-02 and its overlying request for water service, he explained.

The June 2, 2020 agreement contains some inaccuracies, Montoya continued. Form 5 is not a water transfer mechanism, it is a notice provision, he explained. The Watermaster has never produced any water service commitments from YVWD to OVP other than reflected in the 180.4 AF transferred to OVP tracts.

The June 2, 2020 memo also contains a new forbearance by OVDC / OVP provision which has never previously been offered to the Watermaster or counsel, Montoya noted. Forbearance is an aspect of water transfer, he explained, but for it to have any meaning, OVDC / OVP would have to ask YVWD to provide water service for all parcels, a request that YVWD would then accept.

Alvarado Smith had not had the opportunity to analyze the new June 2, 2020 agreement for today's meeting, Montoya advised. Based on review, the June 2 agreement raises some issues worthy of analysis and Watermaster consideration, he added. First, did OVDC / OVP obligate itself to transfer all of its overlying water rights to YVWD, and second, did YVWD obligate itself to provide water service to all of OVDC / OVP's parcels at any time, Montoya noted.

Forbearance may be meaningless and revocable unless YVWD issued a water service letter to provide water to all their parcels, Montoya noted.

Member Jagers pointed out that one of the key provisions in Resolution 2017-02 identifies that whereas OVP intends to secure commitments from the YVWD to provide service and requests that when these commitments are made and water service is provided to the designated parcels, that the overlying water rights for those parcels are transferred, Jagers read. He said discussion is needed on what is water service and past procedure. The overlying theme of the judgment seems to be providing for service to the overlies for conversion of their properties in some future developed condition, Jagers noted. Is it a conversion right to be used for beneficial use on those particular parcels listed under the judgement, as they convert, he asked.

Mr. Jagers pointed to the legal recommendation that Resolution 2017-02 should be followed. The judgment clearly identifies what constitutes water service and the earmarked water transfers when service is provided, he stated. Jagers questioned: Does the intent to serve various parcels constitute water service, and that water is available to the appropriator in whole, or does it convert parcel by parcel along the lines of what has been done with the identification of those water commitments and the transfer in conjunction with Resolution 2017-02?

Member Zoba pointed to legal opinions included in the agenda packet and indicated they are clear in terms of the transfer of water. Overlying

water rights have essentially three phases, he noted: 1. Overlier could use the water on their property, 2. Overlier could opt not to use it on their property at which point it comes back as an unused overlying water right and that gets distributed, and 3. It can be transferred to an appropriator for an appropriative use. It seems clear that the agreement provides for that and it is clear that Oak Valley has forgone its right, Zoba opined.

Zoba cautioned against making up portions of the judgment that don't exist and pointed to section 3B regarding transfer of overlying rights to appropriative use. The intent has to do with projects, not individual lots, he opined. The intent stated in the judgment and the transfers taking place have to do with a master planned community, not on a lot-by-lot basis, he said. Zoba explained the history and development of Form 5. He stated that the record shows a progressive process by YVWD and BBWM; there is nothing inconsistent with the judgment and the overlying water rights should be transferred as of the effective date of the Form 5 signed by OVP.

Mr. Jagers pointed to the judgment section 3C and recalled legal opinions regarding when credit was to be given for the timing of the conversions and definition of "receives water service."

Member Warsinski indicated he had read the documents and noted that the transfer of rights has been consistent with Resolution 2017-02 and subsequent documents provided by YVWD regarding the transfers to certain tract map numbers moving towards development. He said he believes this is consistent with the judgment and appropriate for BBWM to recognize those transfers of the earmarked rights into appropriative rights. It did not get down to metering of each house, which is a cumbersome and onerous process, he opined.

But when YVWD was requesting transfer of an amount of acre-feet for a tract map which is going to be developed within a certain amount of time, Warsinski stated, that is the most appropriate time to transfer those earmarked rights into appropriative rights. It did not get down to exactly when water was served, he noted, but it is apparent what YVWD and OVP were doing and the timing was going to be soon, which met the intent of the judgment, he said.

Warsinski pointed to the Alvarado Smith memo dated July 16, 2018 which referenced Water Code 1241 and a five-year period in which a transferred overlier right to appropriative right needs to be utilized. The YVWD tract maps would coincide with water being served to those parcels when each home was constructed within the five years, he noted. If that did not occur, Warsinski continued, the memo states that the State Water Resources Control Board does not permit revival of that appropriative right. He deferred to legal counsel to address.

Warsinski said that in his opinion, what was being done before made sense. YVWD's legal premise has merit, he noted, but Warsinski said he would rather wait to comment until BBWM legal has had time to analyze it.

Member Jorritsma said he leans toward what was done in the past – transfer the amount of water requested for the tract and not set a precedent, otherwise all those water rights just sit out there and are applied to YVWD at the expense of the rest of the members. The right should be applied as the parcels are developed and it seems to be so in the Alvarado Smith opinion.

Chair Vela agreed that it is critical to remain in compliance with the judgment. Resolution 2017-02 was developed by the group and vetted by legal counsel to assure compliance with the judgment. The Resolution provides guidelines and a process by which the water transfers are going to occur, Vela said. Subsequent to the approval of 2017-02, the Watermaster received notice and request from YVWD for transfers to be made from OVP to YVWD and those requests were compliant with 2017-02 and its intent, he stated.

It was not until the request for transfer of all of the OVP's right in September 20, 2019 that the perfection of the water right was questioned, Vela said. He indicated he will rely on legal counsel to review and determine impact.

Member Zoba read Section 3 B of the judgment and pointed out the capitalization of "Overlying Party," meaning a specific defined term; therefore, Section C applies to OVP, and OVP received water service on October 9, 2018, so YVWD followed the judgment. He reminded the Committee that the ad hoc committee of himself, Member Jaggars and counsel Montoya discussed these things which are now being altered to suit the need. He opined that the judgment is clear.

Chair Vela invited public comment.

BCVWD Legal Counsel Jim Markman referred to his work on the judgment seven or eight years ago and indicated the important thing is to get a policy on transfers or conversions that is clear and upon which all agree so that a firm opinion can be given that a transfer actually entitles an agency to the water. He pointed out that the key term is "water service" which means a conversion, as defined by the writer of the judgment. Without it, overlies who are not exercising their right could, instead of distribution among appropriators, sell the right and create competition among the agencies. The conversion would be addressed in the Will-Serve Letter, he continued. This conversion right also exists in the Chino Basin, Markman pointed out. The Ohanian

agreement indicates that the overlier is selling or leasing that water, Markman opined, in the interim to YVWD which creates monetary consideration flowing to that developer. If that were the intent of the judgment, it would say that water rights are transferable. The land brings with it a water right that can be converted to serve a project, Markman noted, and that puts a lot of value in the hands of the overlying owner. The problem, he said, is there is no value until they sell or participate in development of their land.

In good faith, BCVWD does not believe this is a broad transfer provision, it is a conversion provision, Markman stated. So, at the point of a Will-Serve Letter for part of a large development or all of a small development, that is when service is ready for the project and billing begins and when the conversion should occur, Markman opined.

Mr. Greg Newmark of Meyers Nave, Special Counsel for YVWD, pointed out that Mr. Montoya had not had an opportunity to review the additional documentation provided by YVWD and had not reached an opinion on the effect of the agreement. Newmark agreed with Markman that the attorneys could have a productive discussion prior to debate.

Newmark concurred that the most important guiding principle is the judgment itself. The court will interpret the judgment and try to define the intent of the parties as they were entering the agreement, he noted. Mr. Markman had indicated some knowledge of intent, Newmark said, but there is nothing in water law that would preclude the type of water rights transfer between OVP and YVWD.

Newmark said he believes YVWD has complied with the intent of the parties of the judgment and it is not as vague as Mr. Markman suggested. The only way to change is to modify the judgment, and the parties could do that, Newmark advised. He said he believes the provision was to enable developers to use the value of their water rights to develop their property, and that is what should be considered in how it is applied. Continuing a benefit to the other member appropriator water agencies the expense of the appropriator is not likely to be interpreted as the intent of the parties as reflected in the judgment, Newmark stated.

The main thing that Resolution 2017-02 did was to allow OVP to load the entirety of its water rights under the judgment onto 39 of their 89 parcels, Newmark noted. They could access the entirety of their overlying right to facilitate the development of one set of parcels. The Watermaster rules and regulations were amended by Resolution 2019-02, he continued, regarding the way the rights were to be transferred using Form 5 and changed the procedure from just a notice provision. These are rights, not discretionary calls that the Watermaster Committee may decide, he advised. With that amendment, the

provisions of 2017-02 are limited, Newmark posited. YVWD's position is that once it has complied with the provisions of the judgment, it is ministerial for the Watermaster to make the transfer of credits as set forth in the revised Section 7.

YVWD does not agree that the Form 5 constitutes a request, or that the Watermaster needs to agree, Newmark continued. The requirements of the judgment have been satisfied; there is no discretion to deny the parties their rights, Newmark posited.

Mr. Newmark stated that it is not a reasonable interpretation of the intent of the parties under the judgment to suggest that water only transfers meter by meter or lot by lot when the intent of the parties was to allow the overlying party to transfer the rights before the development happens, at the water supply assessment phase to show that there is water available to serve that development. The appropriator, he said, needs to have possession of the water before it serves it.

Once there is commitment of service to the parcel is when the rights transfer to the appropriator, Newmark stated. It was also suggested, Newmark continued, that the water is only supposed to be used to serve a particular parcel or projects. He said he does not believe that is what was contemplated by the judgment, and Section 2 makes it clear that appropriators can use their production rights anywhere within their service area. Both OVP and YVWD are entitled to their rights under the judgment, he concluded.

Member Jagers noted that a conclusion is needed and said he hears different opinions on the judgment and its intent. It seems there is an impasse at the moment on what constitutes water service, he observed, and said further discussion between legal counsel may be productive.

Member Warsinski agreed with Member Jagers that Mr. Montoya should review the new document and digest Mr. Newmark's comments. He referenced the language of the judgment – "receives water service" and how to figure out what "water service" means. It should be done on a Will-Serve Letter basis, he suggested, and noted the attorneys can work it out. Mr. Warsinski noted he has also been working with the judgment for eight or nine years and has had the opportunity to work with the people who drafted the judgment and said it was his understanding that the intent of the process was to convert water rights.

Transfers have been talked about, Warsinski continued, but no one has ever done a transfer and there have been opportunities with developers who wanted to transfer water rights to BCVWD for money, and it was never done. It comes back to the judgment, as the contemplations

within the judgment were always conversions to the appropriator to serve a project, Warsinski said.

Member Zoba indicated he was part of the group that transitioned from the San Timoteo Watershed Management Authority to the Beaumont Basin Watermaster who sat down with developers, landowners and attorneys to draft the documents. His institutional knowledge, he stated, is what he is trying to convey in letters and interpretation of the judgment, he said. Landowners wanted certainty that they would receive water service so there was no hiccups in the development process and the ability to transfer water early, Zoba said. The key provision is that when the large landowner forgoes a well and moves to municipal water service – that is the receiving of water service and that conversion of not pumping a well and instead paying a higher rate and receiving treated water from an appropriator. Zoba said he appreciates the discussion and believes this will end up in the right place.

In response to Member Jorritsma, Mr. Montoya said he would look at the agreement and acknowledged the concepts offered by Mr. Markman and Mr. Newmark. He said he does not believe the judgment is written in that kind of expansive manner that the two suggest. He said he is not against the idea of changing it to bring it up to more current language and needs.

Water service, Montoya continued, has never been what water being provided. He said he thinks the judgement and case law define water service as a commitment from YVWD to provide service. He said he is hung up on not seeing that commitment from YVWD for the balance of the project. He said he will look at the judgment again and the new agreement provided by YVWD and will reach out to Mr. Markman and Mr. Newmark. Even if the language needs to be changed to facilitate transfers, Montoya continued, certainly that is what the stipulated judgment wants to encourage.

Chair Vela acknowledged the lack of agreement and indicated it is important to include legal counsel and agencies that want to be included in the discussions.

Member Jagers concurred and indicated BCVWD counsel would be interested in participating to get this resolved in a public forum and suggested a special meeting. Warsinski concurred. Member Jorritsma stressed an equitable conclusion.

Member Zoba added he would not object to Mr. Montoya reaching out to Markman or Newmark prior to a future meeting.

Mr. Montoya agreed counsel should get together and find common ground to achieve a fair playing field for everyone. Modifications should be made to the judgment if necessary, he noted.

Zoba pointed out there are additional stakeholders who might be interested in making alterations. He recommended working within the judgment. Vela agreed that the goal should be to come to consensus under the existing guidelines of the judgment. Restructuring the judgment should not be the first option considered, he said.

A special meeting was scheduled for August 27, 2020 at 9 a.m.

VIII. Topics for Future Meetings

- A. Development of a methodology and policy to account for groundwater storage losses in the basin resulting from the artificial recharge of water resources.
- B. Development of a methodology and policy to account for recycled water recharge.

IX. Comments from the Watermaster Committee Members:

Member Jaggars noted that as of August 3, BCVWD in conjunction with the San Geronio Pass Water Agency is recharging 24 cubic feet per second. He acknowledged the SGPWA new General Manager Lance Eckhart.

Chair Vela advised that due to the Apple Fire, the City of Banning lost power for a couple of days in the canyon where most of its water is obtained. The emergency intertie with BCVWD has been opened for the co-owned wells in the Beaumont Basin, so there will likely be an uptick in the City's production during the next report.


X. Announcements

- A. The next regular meeting of the Beaumont Basin Watermaster is scheduled for Wednesday, October 7, 2020 at 10:00 a.m.
- B. Future Meeting Dates:
 - i. Wednesday, August 27, 2020 at 9:00 a.m. (Special Meeting)
 - ii. Wednesday, December 2, 2020 at 10:00 a.m.
 - iii. Wednesday, February 3, 2021 at 10:00 a.m.

XI. Adjournment

Chairman Vela adjourned the meeting at 11:37 a.m.

Attest:

A handwritten signature in blue ink, appearing to read 'D. Jagers', is written over a horizontal line.

Daniel Jagers, Secretary
Beaumont Basin Watermaster