

Notice and Agenda of a Meeting of the Beaumont Basin Watermaster

Wednesday, August 5, 2020 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

**This meeting is available by calling
(888) 475-4499 using passcode 997-7493-5433#**

**View live presentation material at
<https://zoom.us/j/99774935433>**

**There will be no public physical location for
attending this meeting in person.**

I. Call to Order

II. Roll Call

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

City of Beaumont: _____ (Alternate: Kyle Warsinski)

Beaumont Cherry Valley Water District: Daniel Jaggers (Alternate: Mark Swanson)

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. Consent Calendar

A. Meeting Minutes

1. Meeting Minutes for February 5, 2020 [Page 4 of 100]

2. Meeting Minutes for June 3, 2020 [Page 12 of 100]

VI. Reports

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

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

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

VII. Discussion Items

- A. Status Report on Water Level Monitoring throughout the Beaumont Basin through July 20, 2020 [Memorandum No. 20-12, Page 21 of 100]
Recommendation: No recommendation.
- B. A Comparison of Production and Allowable Extractions through June 2020 [Memorandum No. 20-13, Page 31 of 100]
Recommendation: No recommendation - For informational purposes only.
- 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) [Memorandum No. 20-14, Page 32 of 100]
Recommendation: No recommendation - For informational purposes only.
- D. Discussion Regarding Various Legal Memorandums Regarding the Transfer of Overlying Water Rights to Appropriative Rights [Memorandum No. 20-15, Page 34 of 100]

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

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, December 2, 2020 at 10:00 a.m.
 - ii. Wednesday, February 3, 2021 at 10:00 a.m.

XI. Adjournment

Consent Calendar

DRAFT

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

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>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 (BBWM). Hannibal Blandon and Thomas Harder were present as engineers for the BBWM.

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

Members of the public who registered and / or attended: Steve Lehtonen, Jeff Davis, David Fenn and Ron Duncan from the San Geronio Pass Water Agency (SGPWA), Jennifer Ayres from Yucaipa Valley Water District (YVWD), John Covington from the Morongo Band of Mission Indians, Fran Flanders, and Jim Ohanian

III. Pledge of Allegiance

Chairman Vela led the pledge of allegiance.

IV. Public Comments:

None.

V. Consent Calendar

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

1. Meeting Minutes for December 4, 2019

AYES:	Jaggars, Vela, Warsinski, Zoba
NOES:	None.
ABSTAIN:	Jorritsma
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.

No report.

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

Mr. Montoya reported that he followed up in response to a public comment from Mr. Wood of Sharondale with a voice mail message explaining that the reduction in their water rates was likely due to a ramp-down given to all members pursuant to storage losses. Montoya said he had not heard back from Mr. Wood.

Mr. Montoya reported he received an email from Member Zoba raising some objections to the vote taken on the allocation of water rights.

VII. Discussion Items

A. Reorganization of the Beaumont Basin Watermaster Committee - Chairman, Vice-Chairman, Secretary, and Treasurer

It was moved by Member Jaggars and seconded by Member Zoba to continue with the current officers:

- *Chair Arturo Vela*
- *Vice Chair George Jorritsma*
- *Secretary Dan Jaggars*
- *Treasurer Joe Zoba*

and approved by the following vote:

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

B. Consideration of the Watermaster Budget for Fiscal Year 2019-2020 and Fiscal Year 2020-2021

Treasurer Zoba explained the budget process.

It was moved by Member Jagers and seconded by Member Jorritsma to approve the Watermaster Budget for Fiscal Year 2019-2020 and Fiscal Year 2020-2021 and approved by the following vote:

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

C. Status Report on Water Level Monitoring throughout the Beaumont Basin through January 23, 2020

Recommendation: No recommendation.

Engineering Consultant Hannibal Blandon explained that no new wells have been added to the program. Sixteen existing wells continue to be monitored for water level, and two for barometric pressure, he said.

Yucaipa 34 has seen a significant drop, Blandon advised, and explained a problem with the probe. There has been no significant production in the area of Oak Valley 5, he continued, but water levels continue to decline.

The Noble Creek observation wells show that the aquifer continues to rise, Blandon said. There have been no significant changes at other wells, he said. The Banning wells continue to recover, he added.

A communications cable at Banning M9 needs replacement, and potential replacement is needed again at Valley 5, Blandon noted.

D. A Comparison of Production and Allowable Extractions through December 2019.

Recommendation: No recommendation. Information only.

Mr. Blandon compared production and allowable extractions through the end of 2019. For the four appropriators, it takes into consideration the transfer of overlying rights that occurred from Oak Valley Partners to YVWD, allocating the full amount of 1,399 acre-feet (AF). The amount of water imported in 2019 was 13,895 AF. Total production, Blandon stated, was 14,121 which is 71 percent of the allowable amount.

The City of Banning exceeded its total and will be using some of its storage account, Blandon noted. Member Jagers suggested adjustments be made to the BCVWD and City of Banning accounts due to some deliveries made from BCVWD's Well 25 in 2019 to the City of Banning as part of its co-ownership. Member Jagers explained the well co-ownership and processes. Member Zoba asked if there was a way to provide the information to Mr. Blandon more quickly; Mr. Jagers suggested reporting quarterly. Member Zoba suggested a quarterly report on the BBWM agenda, Jagers was amenable.

E. Consideration of Change Order No. 2 for Task Order No. 17 for the Development of a Return Flow Methodology for the Beaumont Basin

Recommendation: That the Watermaster Committee approve Change Order No. 2 to Task Order No. 17 for the sum not to exceed \$27,850.00 and to direct the Treasurer to invoice specific Appropriators based on anticipated benefits.

Mr. Harder advised that ALDA Inc. and Thomas Harder & Company have been working over the past year on evaluating return flow by appropriator and a draft technical memo was finished last October. Significant comments were received, and a scope of services has been produced to address those comments. Included in the Change Order are items such as re-evaluation of indoor/outdoor water use estimates, landscape irrigation efficiency assumptions, additional water delivery account types, and accounting for pipeline losses, Harder stated. He detailed the related tasks and methodology and advised the Committee about some of the comments that will be addressed.

The initial budget for the project was about \$40,000, Harder noted. A change order over the summer totaled \$4,780 for reconciling the water account types, and this change order is \$27,850 which brings the revised budget to \$72,770, Harder advised.

Member Jagers suggested that the districts provide their data on water losses to Harder. Member Zoba suggested dropping Task 4 on pipeline and sewer losses; Mr. Harder explained this analysis would result in a detailed estimate. Member Zoba pointed out that return flows in general

do not comply with the basin plan objective and suggested the quality issues should be addressed, which would further increase the cost. He questioned the value of the study. Chair Vela suggested further analysis of needs. Mr. Harder indicated he could look at the recommended information and revise the scope of services.

The original task, Harder pointed out, was to receive credit from the appropriators for water that they are using and is returning to the groundwater. Zoba explained his quality concerns in response to a question from Chair Vela. Member Jagers added that there are sources of higher quality water also being added to the basin and the Committee should take a holistic approach to all water quality issues that take place over time in the basin.

Member Zoba pointed out that state regulations will require reduction of losses and said he did not see value in accounting for that. Chair Vela said system losses are real, and although a leaky system should not be rewarded, the analysis seems worthwhile. Member Jagers suggested that an accounting of losses and how they affect the adjudicated basin and safe yield would be of value whether credit is given or not.

Per the request of Mr. Harder, the City of Banning will provide data on infiltration and inflow to its plant during rain events.

Mr. Harder will revise the scope of services with Task 4 remaining, for consideration at the next meeting.

F. 2019 Annual Report Status and Rescheduling

Recommendation: That the Board considers moving the April meeting to its regular schedule on the first Wednesday of the month.

Mr. Blandon said he had anticipated having a draft of the annual report to present at this meeting, but some needed data is not yet available. In order to accommodate preparation of the report, Blandon recommended moving the March 25 meeting to April 1. Blandon noted that the draft report would be available at the April meeting, and a final report at the June meeting.

Member Jagers pointed out that the SGPWA has begun operating their recharge ponds and there are some deliveries being made. Mr. Blandon indicated he was aware.

Member Zoba asked Mr. Blandon how the overlying water right transfer between Oak Valley Partners and YVWD would be handled in the 2019 report. Mr. Blandon noted that in previous discussion (Item VII. D) it

was stated that YVWD would receive 1,399 AF for 2019, so for 2018 is 181.4; for 2019 it is 1,398.9. Member Zoba clarified that the full amount would be transferred; Mr. Blandon confirmed.

It was moved by Member Zoba and seconded by Member Jorritsma to move the April meeting to its regular schedule on the first Wednesday of the month in 2020 and thereafter. The motion was approved by the following vote:

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

G. 2018 Consolidated Annual Report and Engineering Report – Presentation of Final Report

Recommendation: That the Watermaster Committee adopts the Final 2018 Consolidated Annual Report and Engineering Report.

Mr. Blandon reviewed the process of the preparation of the 2018 report and shared highlights.

Resolution 2017-01 allowed the SGPWA to store up to 10,000 AF of imported water in the basin, Blandon reminded the Committee. Groundwater production total listed by appropriators totaled 15,026 AF for 2018, Blandon stated, and Member Vela pointed out this will require a minor adjustment. Mr. Blandon agreed, based on the transfers between Beaumont and Banning.

Mr. Blandon explained the report makes some recommendations: some work has been done to develop a policy to account for groundwater storage losses, but it has not yet been finalized; and develop a protocol to increase accuracy and consistency of data reporting.

Member Jaggers shared a handout from March 2019 and noted the changes had not been reflected in the report. He said he believes Banning and BCVWD have come to terms on the amount of water delivered to Banning: approximately 119.75 AF through 2018, and provided documentation, requesting the report include the data. Jaggers also noted some corrections to the handout. Mr. Blandon acknowledged the revisions.

Mr. Jagers advised that BCWVD and Banning will meet to assure the numbers are in agreement then will forward that to the consultant and bring back the information to the Watermaster.

Member Zoba noted that at the last meeting, Counsel Montoya had addressed the intent of Form 5 and whether the parties (YVWD and Oak Valley Partners) intended to transfer all of the overlying water rights from Oak Valley to YVWD, and asked if any correspondence had been received from the parties to disagree with that intent. Mr. Montoya said he had not. Member Zoba asked if Mr. Montoya's view had changed at all whether that was intended to be the full transfer. Mr. Montoya responded that his comments were his comments at the last meeting.

Member Zoba expressed concern that the annual report is inconsistent with the judgment, specifically the transfer of 180 AF is not done by Form 5 which is required by the Watermaster. The net result in Table 3.7 and 3.8 is wrong, Zoba continued, and said he thinks they will always be wrong in every annual report moving forward. He indicated his intent to vote against approval of the annual report.

It was moved by Member Jagers and seconded by Member Jorritsma to adopt the Final 2018 Consolidated Annual Report and Engineering Report including the clarifications on the water transfers between Beaumont-Cherry Valley Water District and the City of Banning from production at Well 25 and delivered to a point of connection to the City of Banning, as reflected in the handout and minor verbal modification noted by Member Jagers. The motion was approved by the following vote:

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

Mr. Blandon clarified that the 2018 report will reflect the conditions as of the end of 2018; anything that happened in 2019 will not be included and will be part of the 2019 report.

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.

- C. Discussion of return flow credit and how it might be managed.
- D. Quarterly production reports for City of Banning through jointly owned well

IX. Comments from the Watermaster Committee Members:

Member Zoba explained the website is making a transition to a WordPress format so there may be glitches over the next few weeks. Mr. Jagers advised that he had tried to retrieve the minutes from the last meeting and currently only page 1 was shown.

X. Announcements

- A. The next regular meeting of the Beaumont Basin Watermaster is scheduled for Wednesday, April 1, 2020 at 10:00 a.m.
- B. Future Meeting Dates:
 - i. Wednesday, June 3, 2020 at 10:00 a.m.
 - ii. Wednesday, August 5, 2020 at 10:00 a.m.
 - iii. Wednesday, October 7, 2020 at 10:00 a.m.
 - iv. Wednesday, December 2, 2020 at 10:00 a.m.
 - v. Wednesday, February 3, 2021 at 10:00 a.m.

XI. Adjournment

Chairman Vela adjourned the meeting at 11:15 a.m.

Attest:

DRAFT UNTIL APPROVED

Daniel Jagers, Secretary
Beaumont Basin Watermaster

DRAFT

**Record of the Minutes of the
Beaumont Basin Committee Meeting of the
Beaumont Basin Watermaster
Regular Meeting
Wednesday, June 3, 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 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 (BBWM). Hannibal Blandon and Thomas Harder were present as engineers for the BBWM.

Staff present: Mark Swanson and Erica Gonzales from BCVWD.

Members of the public who registered and / or attended: None acknowledged on the teleconference.

III. Pledge of Allegiance

Tabled due to teleconference limitations.

IV. Public Comments:

None.

V. Reports

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

Mr. Blandon advised that the 2019 Draft Report will be presented at the August 2020 meeting provided that public meetings are allowed by that time.

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

Mr. Harder noted a data request from Joe Reichenberger who indicated that the website is down. Mr. Zoba noted that the Committee is in the process of transitioning to a WordPress site and should be back up by the end of the week.

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

Mr. Montoya reported that he received an email from Art Vela regarding the interest of the City of Banning to add another well to the Beaumont Basin and requested policies and procedures. Upon research, Mr. Montoya discovered the adoption of a Riverside County ordinance regarding well installation and maintenance. Montoya discussed with Mr. Jagers the need for policy regarding well requests, locations, backup supporting information, and engineering documentation for the Watermaster to make an informed decision.

Mr. Vela added that the proposed well location is near the intersection of Wilson and Highland Home roads. He said he would keep the group apprised and would more than likely submit a formal letter.

Mr. Jagers advised that the Watermaster had adopted the Riverside County standards and there is one additional item to provide for groundwater monitoring. BCWVD is also looking at re-drilling Wells 1 and 2, existing wells which have reached the end of their service lives, Jagers advised, as well as drilling two wells in the future. He indicated he will submit a similar letter.

VI. Discussion Items

- A. Status Report on Water Level Monitoring throughout the Beaumont Basin through May 18, 2020

Recommendation: No recommendation.

Engineering Consultant Hannibal Blandon explained that after four months of not checking wells, they were visited on May 19. The Watermaster has 16 monitoring wells of the goal of 18 in the basin, he noted, and said that based on the location of the potential wells described by Banning and BCWVD, the engineer may use them as monitoring wells.

Mr. Blandon pointed to Oak Valley Well 5 and reported there have been problems with communicating with the probe and suggested the cable may need replacement again.

Mr. Blandon pointed out that water level in the Noble Creek observation wells has risen by approximately 90 feet over the last 40 years and it has been fairly stable over the last two years, but with a 60-foot rise over the last two months, which continues to increase. He explained additional water level trends and equipment issues.

To address all the equipment repair, Mr. Blandon estimated costs between \$2,000 and \$2,500. In response to Chair Vela, Mr. Bandon said he would coordinate with YVWD staff to make the request to the manufacturer, and he will check on the amount available in the budget.

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

Recommendation: No recommendation. Information only.

Mr. Blandon compared production and allowable extractions through April 2020. Actual production has been 3,442 for a total of 37.7 percent production. He noted the numbers change with additional summer production and as additional water is spread.

Chair Vela noted that the San Gorgonio Pass Water Agency (SGPWA) delivered imported water to the City of Banning last month which will needed to be updated in the table.

Member Jagers identified that the SGPWA delivered approximately 215 AF of water to their Fiesta storage facility in December 2019. Between BCVWD and the SGPWA approximately 2,000 AF was delivered in March, which is part of the 3,100 AF shown as imported water. A portion of that was delivered to the SGPWA's ponds to alleviate concern about possible carryover water left in San Luis Reservoir due to rain, Jagers continued. Deliveries were stopped in March due to COVID-19, and restarted in May, Jagers advised. He said he believes that the SGPWA agreement with the BBWM for the storage account requires them to determine if anyone wants that water supply before it is credited to them; Jagers said he did not receive an inquiry. With a new general manager expected at the SGPWA, Jagers recommended review of the agreement to assure the approach is understood by all parties regarding recharge and what is offered or ordered by the BBWM members and others. He suggested tracking the storage account on a chart.

In December, the YVWD submitted a Form 5 Notice of Adjustment Rights for transfer of overlying water rights from the Oak Valley Partners, and there was discussion, Jagers reminded the Committee. He said he did not feel this was resolved to where it should be showing up on the chart and this appears to need future discussion, Jagers stated. He pointed to Resolution 2017-02 adopted by the Board related to the transfer of overlier rights and indicated there were several things this Committee resolved to do when those transfers were made. He suggested agendizing the discussion.

In response to Mr. Jagers, Engineer Bandon noted that the 1,399 AF was added to the report based on discussion during the meetings. He noted this would impact the 2019 report and must be documented and concurred with agendizing for the next meeting to resolve the issue.

Chair Vela asked that the record reflect that there are questions regarding the 1,399 AF under the YVWD column of the report, and this issue can be included as a future agenda item. Mr. Zoba disagreed, and pointed out this document is prepared by the consultant and is consistent with the adjudication, with the judgment, and with the Form 5 that was filed. He suggested this is not the appropriate item under which to have this discussion.

To track the SGPWA deliveries, Mr. Bandon suggested a line to be added to the report "SGPWA spread X number of acre-feet through April 2020." Mr. Jagers clarified that his concern is to memorialize other additions to the Beaumont Basin groundwater.

C. Updated 2018 Consolidated Annual Report and Engineering Report – Delivery of Final Report

Recommendation: Information only.

Mr. Bandon reminded that the final 2018 report was approved at the February 5 meeting with agreement that the report include only events and actions that took place in 2018. Bandon reported that all 2019 items were excluded, and a note was placed at the bottom of each page that this version supersedes that dated February 5, 2020. Committee members have a pdf of the report, and hard copies will be delivered at the August meeting, provided the meeting takes place, Bandon advised.

D. Consideration of Change Order No. 2 for Task Order No. 17 for the Development of a Return Flow Methodology for the Beaumont Basin

Recommendation: That the Watermaster Committee consider the approval of basic tasks 1 through 6 and optional tasks 7 and 8 as presented under Change Order No. 2. The estimate to complete the basic tasks 1 through 6 is \$25,510.00 while the estimated cost to complete optional tasks 7 and 8 is an additional \$43,750.00. If approved, the Watermaster Committee should direct the Treasurer to invoice specific Appropriators based on anticipated benefits.

Mr. Harder reviewed the history of the item. He pointed out that significant comments were received at the October 2019 Board meeting resulting in changes to the original scope of work. The recommendation was to return at the February meeting to address the scope and comments.

The nature of the October comments, Harder explained, related to the accounting for indoor and outdoor water use, refinement of categories, accounting for pipeline leakage, and lag time factor over time. The scope of work in February included seven tasks to address the comments, Harder continued.

The original proposed budget amendment to address the Return Flow Methodology was \$27,850, Harder noted, but there was concern over the depth of detail and projected water quality impacts that were not included in the scope. Harder presented a revised scope which reduced the cost to \$25,510. Evaluating Water Quality was added as an optional task, Harder noted. Including the water quality would add about \$43,750 to the cost, he advised. Tasks 1 through 8 would total \$69,060.

Mr. Jorritsma noted that the South Mesa Water Company is not included in this. Harder concurred and noted that by virtue of its location within the BCVWD, the City of Beaumont is included.

Mr. Warsinski clarified that the SMWC and the City of Beaumont would not derive any benefit from the study and were therefore not included for billing purposes in the original task order that was approved.

Member Zoba concurred with Mr. Jorritsma that tasks 1 through 6 would be divided between YVWD, BCVWD, and the City of Banning; however he said Task 8 appears to be a requirement of the maximum benefit obligations with the regional board and tracking salt content is important to YVWD and the City of Beaumont.

Chair Vela concurred and noted concern regarding the assumptions included in the analysis and that it is important for all to understand the impacts and determine how to approach each one. Mr. Jagers and Mr. Warsinski indicated interest in Task 7 - Accounting for Pipeline Losses and Infiltration and Inflow.

It was moved by Member Zoba and seconded by Member Jagers to approve basic tasks 1 through 6 of Task Order 17 for a sum not to exceed \$25,510 and directed the Treasurer to invoice specific Appropriators Yucaipa Valley Water District, Beaumont-Cherry Valley Water District and the City of Banning based on anticipated benefits. The motion was approved by the following vote:

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

It was moved by Member Zoba and seconded by Member Vela to approve optional tasks 7 and 8 as new Task Order 22 for a sum not to exceed \$41,410 and directed the Treasurer to invoice specific Appropriators Yucaipa Valley Water District, Beaumont-Cherry Valley Water District, the City of Beaumont and the City of Banning based on anticipated benefits. The motion was approved by the following vote:

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

VII. 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.

Member Jagers reminded the Committee of his earlier comments related to Item VI-B and recommended moving forward with an ad hoc committee. Chair Vela appointed the City of Beaumont and Yucaipa Valley Water District.

C. Discussion of return flow credit and how it might be managed.

D. Quarterly production reports for City of Banning through jointly owned well

The following topics were added:

E. Review of the SGPWA Storage Account agreement, activity and accounting

- F. Review of Resolution 2017-02, the amended Rules of the Watermaster and the judgement, and the YVWD Notice of Adjustment of Right of an Overlier Party due to Proposed Provision of Water Service by an Appropriator dated December 2017 and determination of what constitutes perfection of water right (under Legal Review)
- G. 2019 Draft Report
Requested by Mr. Blandon. Mr. Jaggars suggested making legal counsel available to Mr. Blandon for guidance. Chair Vela concurred. Mr. Montoya noted the importance of time frame of documents and order of precedence.

VIII. Comments from the Watermaster Committee Members:

None.

IX. Announcements

- A. The next regular meeting of the Beaumont Basin Watermaster is scheduled for Wednesday, August 5, 2020 at 10:00 a.m.
- B. Future Meeting Dates:
 - i. Wednesday, October 7, 2020 at 10:00 a.m.
 - ii. Wednesday, December 2, 2020 at 10:00 a.m.
 - iii. Wednesday, February 3, 2021 at 10:00 a.m.

X. Adjournment

Chairman Vela adjourned the meeting at 11:04 a.m.

Attest:

DRAFT UNTIL APPROVED

Daniel Jaggars, Secretary
Beaumont Basin Watermaster

Reports

Discussion Items

BEAUMONT BASIN WATERMASTER

MEMORANDUM NO. 20-12

Date: August 5, 2020

From: Hannibal Blandon, ALDA Inc.

Subject: Status Report on Water Level Monitoring throughout the Beaumont Basin through July 20, 2020

Recommendation: No recommendation.

At the present time, there are 16 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 7 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. Through the summer of 2019 water levels at these two wells have been fairly steady; however, over the last year a significant decline has been observed. A six-foot decline has been recorded at YVWD 34 over the last 18 months. The decline at Oak Valley 5 has been steeper with a drop 24 feet in the last year despite of the fact that this well has not been pumped since the last fall. The monitoring probe has been removed from Oak Valley 5 because the well seems to be blocked with no possibility of lowering the probe to its original location. The probe will be reinstalled at this well after YVWD refurbishes this well for domestic production.
- ✓ Figure No. 3 – Two of the Noble Creek observation wells are presented in this figure representing the shallow and deep aquifers. From the summer of 2016 through the spring of 2018, the water level in the monitoring well with perforations in the shallow aquifer increased over 90 feet; over the last two years, the level at this well has been fairly flat. In the deeper aquifer, the increase in water level has been steady since the summer of 2016 continuing to increase to this date. Over the last four years, the water level in the deeper aquifer has increased close to 60 feet.
- ✓ 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 and it is currently at the same level as when monitoring began in the summer of 2015.

- ✓ 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 four years, a somewhat significant and steady decline, close to 23 feet, was recorded at Banning M-8 between the summer of 2015 and the winter of 2017. The probe at Banning M-8 was removed in late January 2018 and was reinstalled in May 2019; since, the water level declined and additional 10 ft. hitting bottom at an elevation of 2,047 ft. Water level at Banning M-9 has fluctuated in a 17-foot range, between 2,130 ft and 2,147 ft. since monitoring began in the summer of 2015.
- ✓ Figure No. 6 illustrate recorded water level at BCVWD No. 2 and BCVWD No. 25. Water levels at these two wells follow seasonal pumping patterns. Levels at these two wells peak in the spring to begin a gradual decline into the fall to later recover again. This was observed during the 2016-19 period; however, in 2020 the decline seems to be steeper than in previous years specially at BCVWD No. 2.
- ✓ Figure No. 7 depicts the recorded water level at the two newest observation wells, BCVWD No. 29 and Tukwet Canyon Well "B". BCVWD No. 29 is a pumping well that is now more actively used to meet peak summer demands. Water level at this well experienced a slight decline of 3 ft in the summer with additional declines anticipated into the mid Fall. Tukwet B is a dedicated monitoring well in the southern portion of the basin with minimal fluctuations in levels since the probe was installed in the spring of 2019.

New Monitoring Wells

During the last reporting period, no additional monitoring wells have been added.

New Equipment Installation

None during the reporting period.

Troubleshooting Issues

The following malfunctioning issues were encountered during our July 21, 2020 field visit:

- ✓ Banning M-9 – Communications cable continues not to communicate with water level probe. Data continues to be stored, but it can only be retrieved by pulling the entire cable out. A new communications cable needs to be ordered for this well.

- ✓ Oak Valley No. 5 – The casing in this well seems to have collapsed and as a result the communications cable and monitoring probe have been pulled. The equipment will be reinstalled in this well once YVWD refurbishes the well for domestic purposes.
- ✓ The water level meter broke again and needs to be repaired and/or replaced.

New Monitoring Sites

Due to the current pandemic, all communications with owners of potential well sites have stalled. We will restart communications in the future as the country gradually goes back to normal. The following sites are being considered:

- ✓ Catholic Dioceses of San Bernardino-Riverside counties, near Rancho Calimesa Mobile Home Park has three abandoned wells. Two of these wells cannot be used at this time because the probe could not be lowered; however, the third site has great potential. This well is approximately 400 ft deep and the water level is at approximately 160 feet below ground.
- ✓ Sharondale Well No. 1 – This well is operated by Clearwater Operations. We initiated contact with this company to install a water level probe at this well, but progress has not been made.
- ✓ At Plantation by the Lake, another potential monitoring well site, communications with owner have not been reestablished.

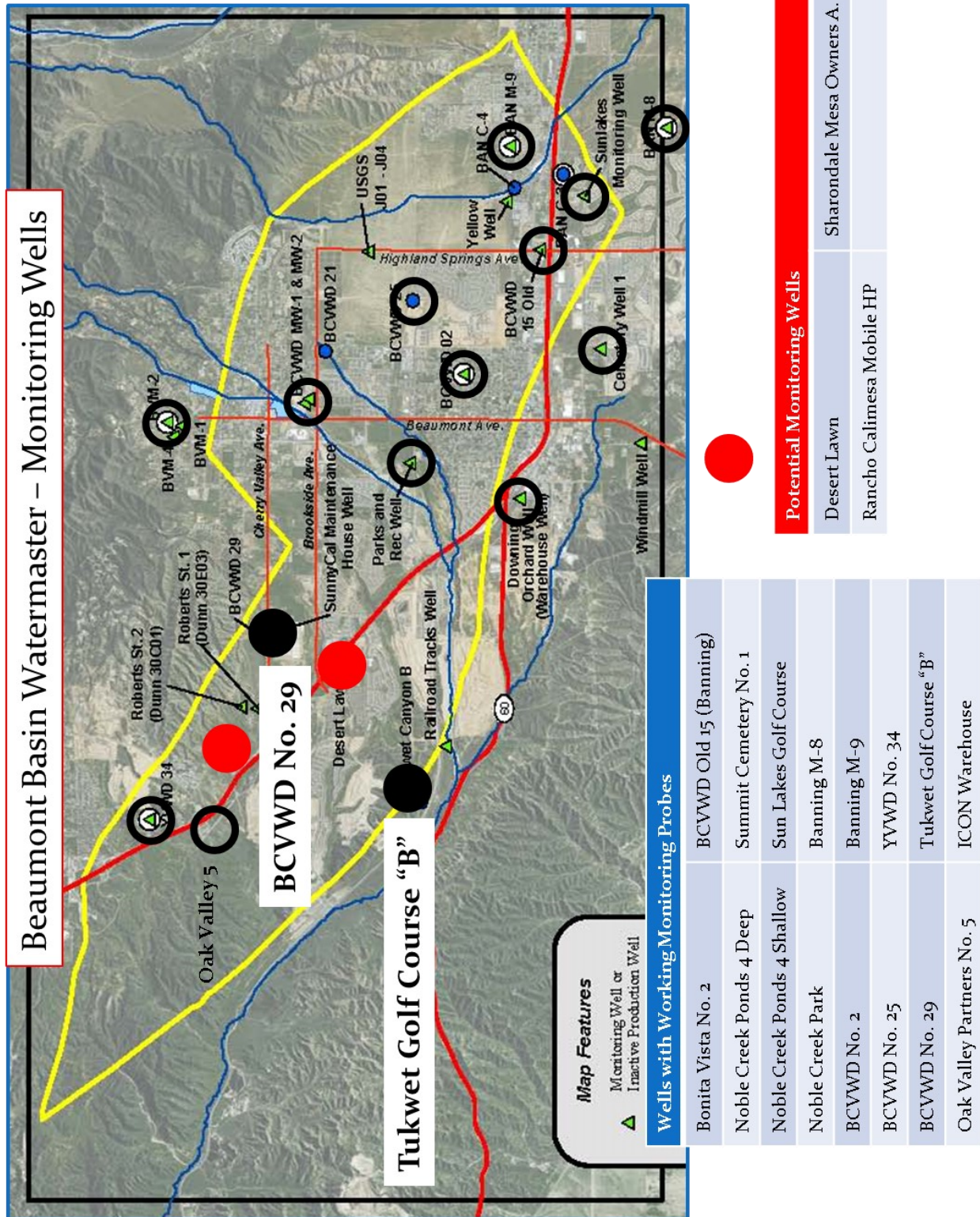


Figure No. 2
Static Groundwater Elevations at YVWD No. 34 and Oak Valley No. 5
 (July 29, 2015 through Jul 20, 2020)

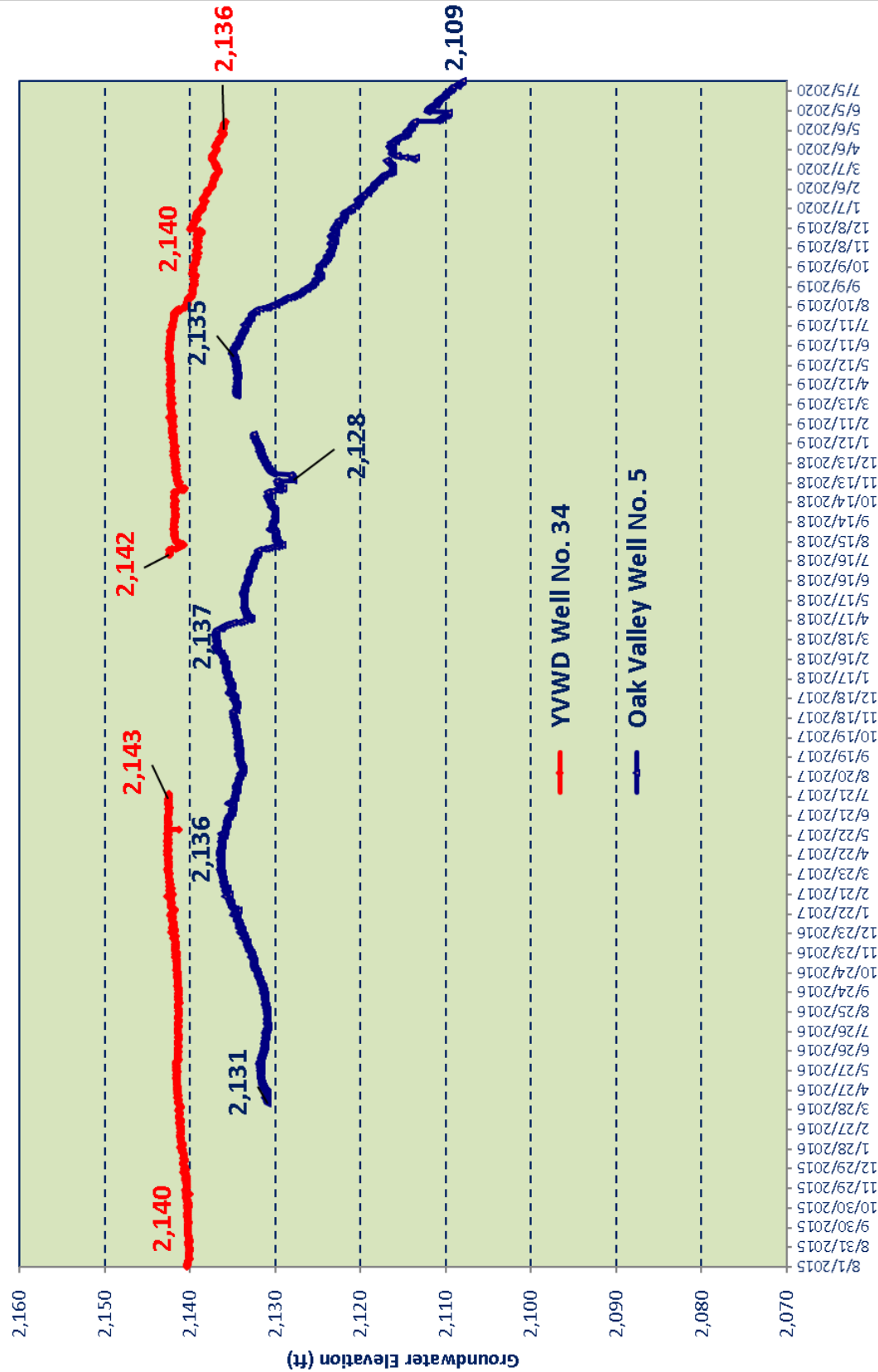


Figure No. 3
Static Groundwater Elevations at Noble Creek Obs. Well 4S and 4D
 (May 28, 2015 through Jul 20, 2020)

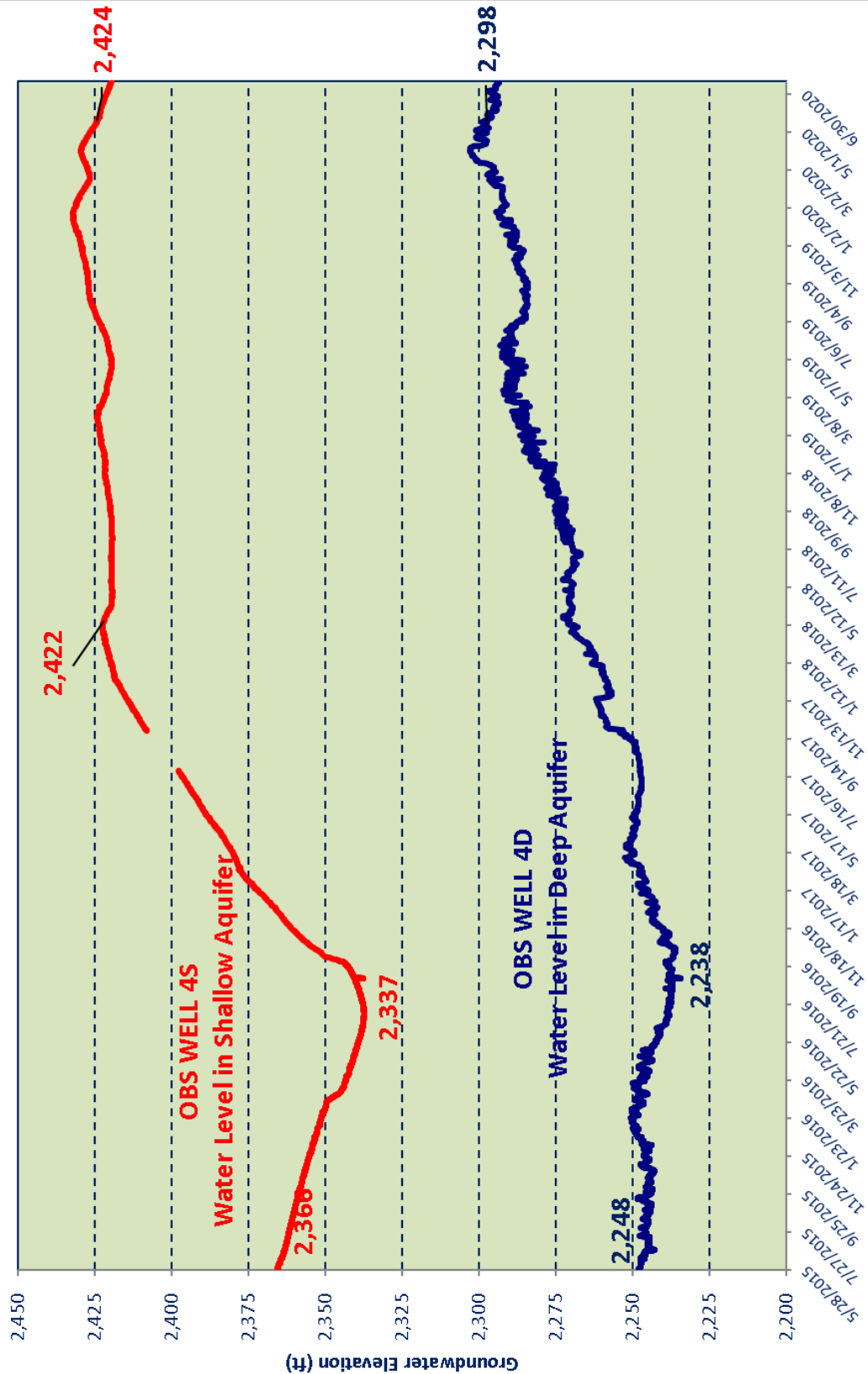


Figure No. 4
Static Groundwater Elevations at Summit Cemetery and Sun Lakes Wells
 (May 28, 2015 through Jul 20, 2020)

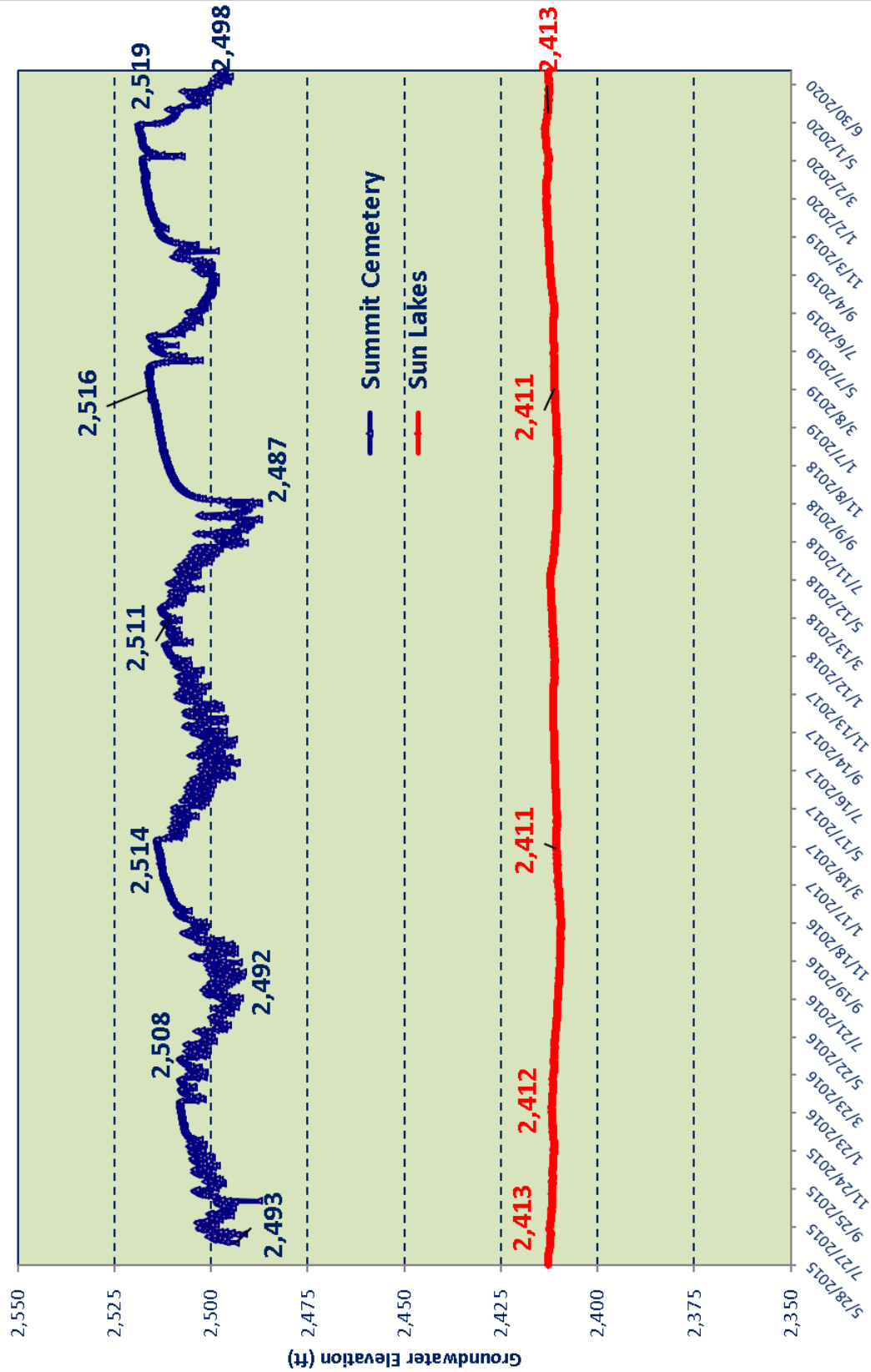


Figure No. 5
Static Groundwater Elevations in the Banning Area
 (May 28, 2015 through Jul 20, 2020)

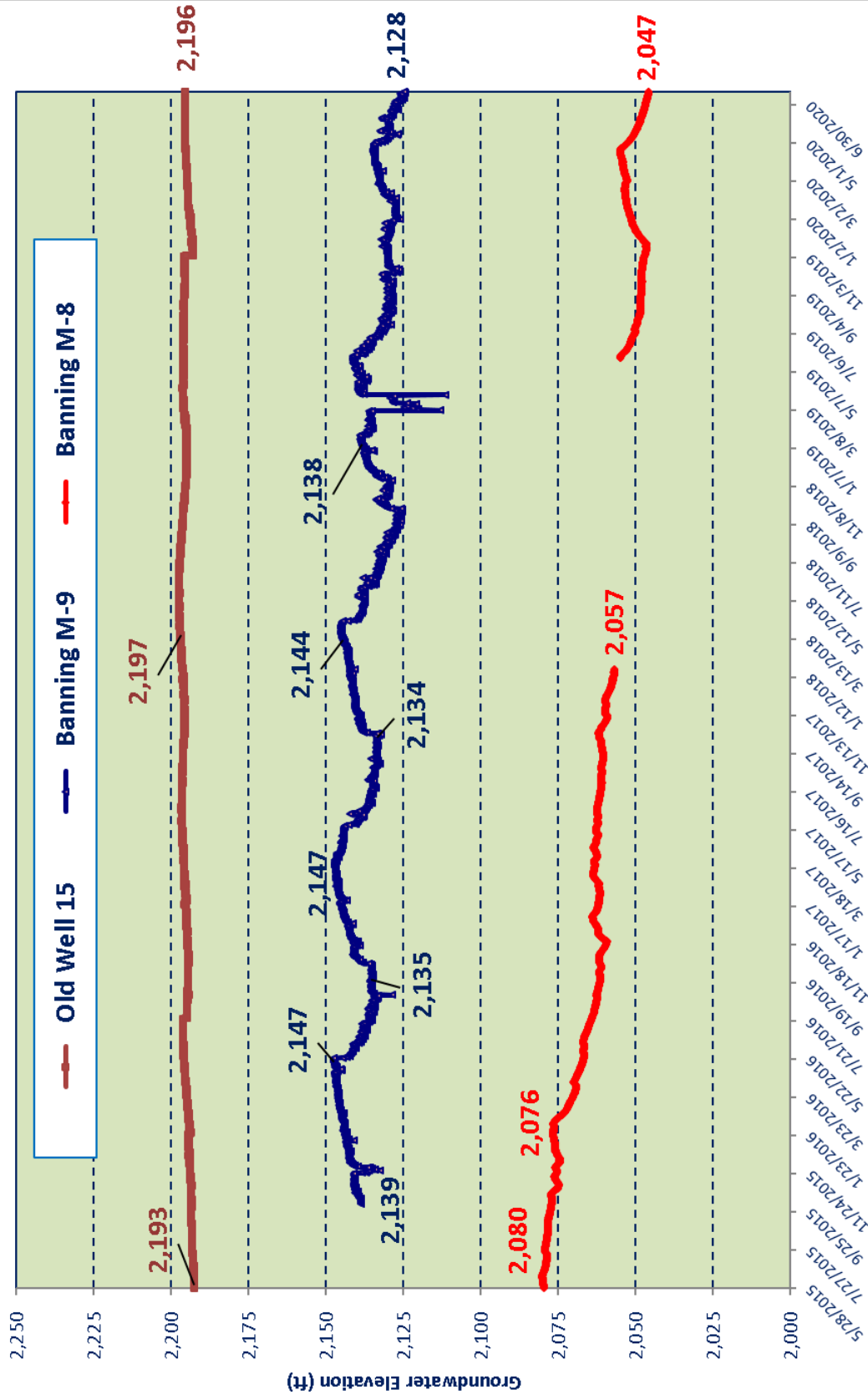


Figure No. 6
Static Groundwater Elevations at BCVWD Wells No. 2 and 25
 (May 28, 2015 through Jul 20, 2020)

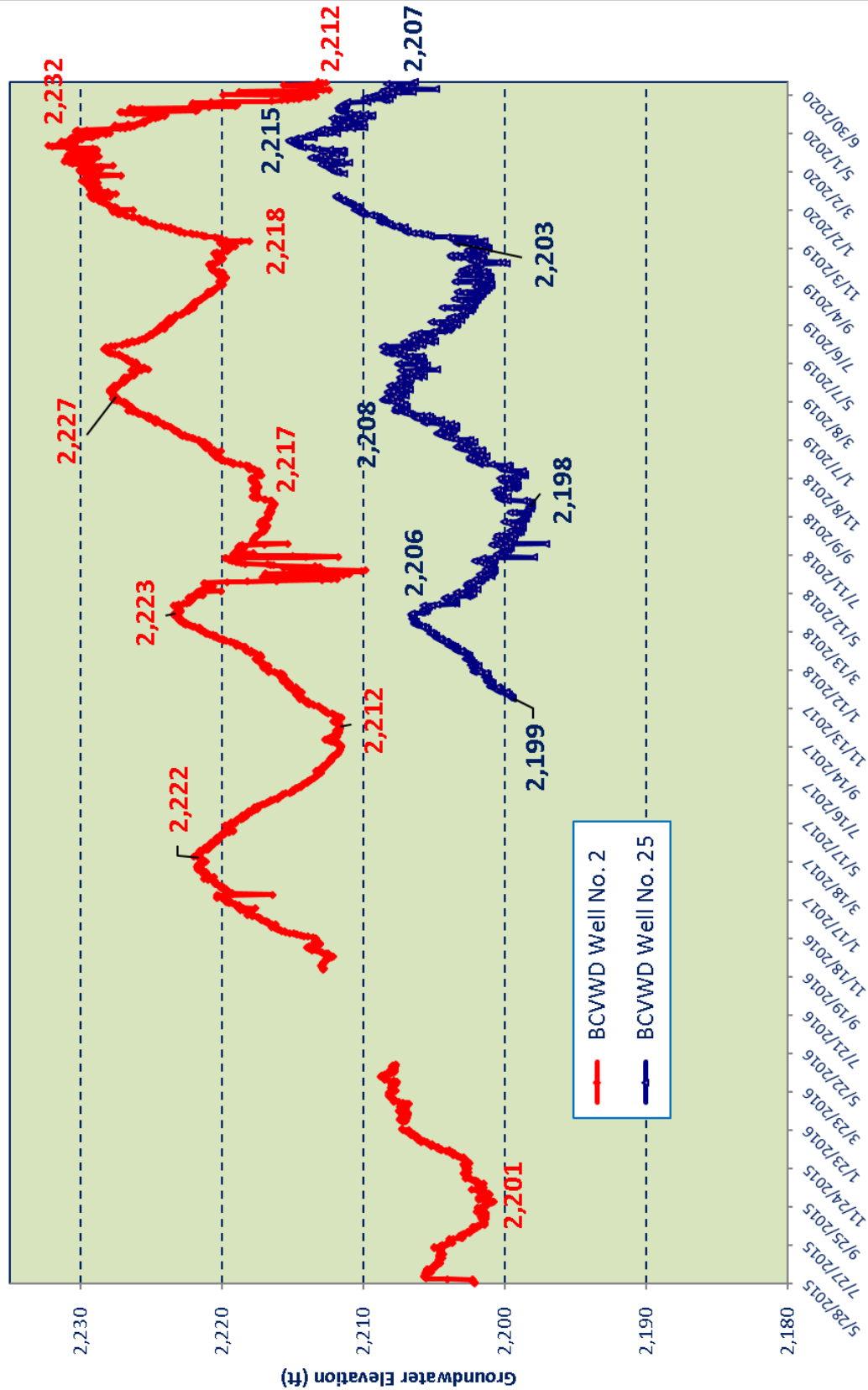
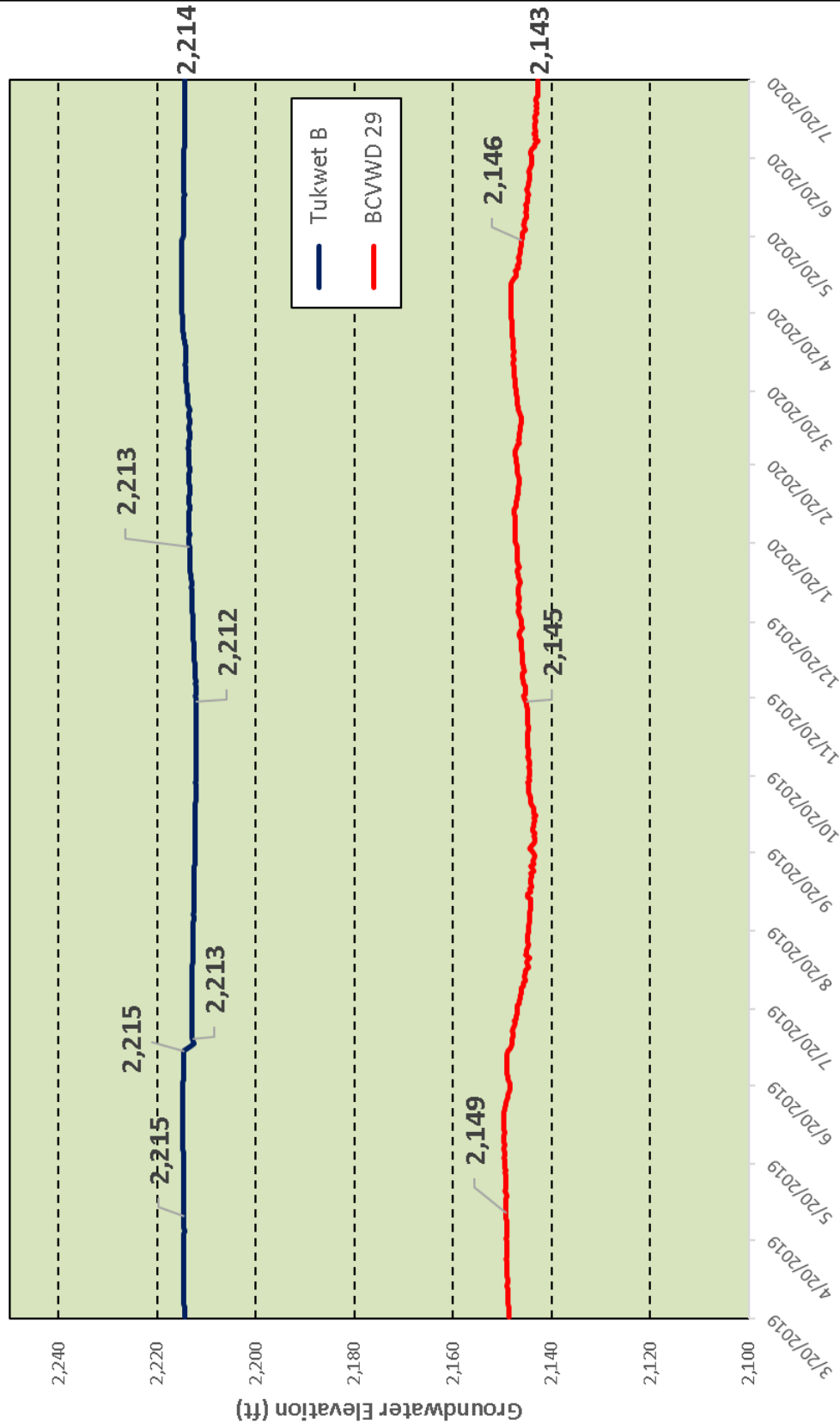


Figure No. 7
Static Water Level at BCVWD No. 29 and Tukwet Cyn Well B
 Mar 20, 2019 through Jul 20, 2020



BEAUMONT BASIN WATERMASTER

MEMORANDUM NO. 20-13

Date: August 5, 2020

From: Hannibal Blandon, ALDA Inc.

Subject: A Comparison of Production and Allowable Extractions through June 2020

Recommendation: No recommendation - For informational 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 a) unused production by overlying users from 2015 transferred to appropriators for 2020, b) transfers of overlying water rights from Oak Valley Partners to YVWD to serve certain parcels within the basin, and c) imported water spreading. This sum is compared against actual production through June 2020.

Total production by Appropriators for the first six months of the year was 6,679 ac-ft; imported water spreading for the same period was reported at 4,508 ac-ft. Allowable production for the reporting period was estimated at 10,522 ac-ft. The table below presents the above comparison for all Appropriators in ac-ft.

	City of Banning	Beaumont Cherry Valley Water District	South Mesa Mutual Water Company	Yucaipa Valley Water District	Total
Transfer of Overlying Rights from 2015	1,450	1,962	576	627	4,614
Transfer of Overlying Rights from OVP to YVWD	0	0	0	1,399	1,399
Imported Water	250	4,258	0	0	4,508
Total	1,700	6,220	576	2,026	10,522
Production	856	4,918	113	792	6,679
% of Total	50.4%	79.1%	19.6%	39.1%	63.5%

It should be noted that the SGPWA spread an additional 214 ac-ft of imported water in the basin.

BEAUMONT BASIN WATERMASTER

MEMORANDUM NO. 20-14

Date: August 5, 2020

From: Thomas Harder, Thomas Harder & Company

Subject: 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: No recommendation - For informational purposes only.

On June 3, 2020, the Beaumont Basin Watermaster Board (Watermaster) authorized Thomas Harder & Co. (TH&Co) and Alda Engineering to proceed with our scope of work to update the return flow accounting methodology and conduct a water quality impact evaluation related to potential total dissolved solids (TDS) changes in groundwater associated with return flow. The scope of work was divided into eight tasks as follows:

1. Modifications to Indoor/Outdoor Water Use
2. Further Evaluation of Landscape Irrigation Efficiency
3. Incorporation of Additional Water Delivery Account Types
4. Other Changes
5. Application of Refined Methodology to Recent Data
6. Finalize Return Flow Methodology Technical Memorandum
7. Accounting for Pipeline Losses and Infiltration and Inflow
8. Analyze Potential Changes in TDS concentration in Groundwater Associated with Return Flow

As per Watermaster's direction, Tasks 1 through 6 were authorized as a budget amendment to Task Order 17. Tasks 7 & 8 were authorized as a new Task Order 22.

TH&Co has initiated the work related to both Task Orders (17 and 22). For Task Order 17 Return Flow Methodology, we have begun work to modify the indoor/outdoor water use assumptions and have begun evaluating landscape irrigation efficiency. For Task Order 22 Analyses of Potential Water Quality Changes, we have developed a TDS baseline for the basin and modified the Beaumont Basin groundwater flow model to include a solute transport code (MT3D) in order to evaluate potential changes in TDS concentration from return flow contribution. We are currently establishing the initial TDS loading parameters for the unsaturated zone.

We are planning to submit the revised draft Return Flow Methodology Technical Memorandum at the October 2020 Watermaster meeting. We are also on schedule to present preliminary results of the water quality evaluation at the October 2020 Watermaster meeting.

BEAUMONT BASIN WATERMASTER

MEMORANDUM NO. 20-15

Date: August 5, 2020

From: Joseph Zoba, Treasurer

Subject: Discussion Regarding Various Legal Memorandums Regarding the Transfer of Overlying Water Rights to Appropriative Rights

At the Beaumont Basin Watermaster meeting on June 3, 2020, Thierry Montoya was requested to provide a memorandum regarding Resolution No. 2017-2. This legal memorandum was planned to be part of the report from legal counsel as Agenda Item V.C.

On Thursday, July 30, 2020, Watermaster Committee member Dan Jagers requested that this specific item be provided as a discussion item instead of a report from legal counsel. See attached email message.

On Thursday, July 30, 2020, Legal Counsel Montoya forwarded correspondence from Meyers Nave and an Agreement between Oak Valley and Yucaipa Valley Water District. See attached email message.

The following documents have been attached to this memorandum to provide reference information to facilitate the discussion. The index page numbers are shown in the upper right of each page.

- Transfer and Conversion of Overlying Water Rights to Appropriative Rights and Accounting for Such - May 15, 2018..... Page 3 of 66
- Follow-up to the May 15, 2018 Memorandum - July 16, 2018..... Page 7 of 66
- Water Rights Transfer from Overlying to Appropriative - Accounting for Such - September 5, 2018..... Page 11 of 66
- Transfer and Accounting of Oak Valley Partners L.P.s ("OVP") Overlying Water Rights Transfer to Yucaipa Valley Water District ("YVWD") - July 20, 2020 Page 16 of 66
- Yucaipa Valley Water District's Response to the July 20, 2020 Memorandum - July 30, 2020 Page 44 of 66

RE: *EXTERNAL*BBW Memorandum with Exhibits



Jagers, Dan (BCVWD) <dan.jagers@bcvwd.org>

To: 'Thierry Montoya'; George Jorritsma; Arturo Vela; Kyle Warsinski; Joseph Zoba

Cc: Donna Heflin

Reply

Reply All

Forward

...

Thu 07/30/2020 2:36 PM

You replied to this message on 07/30/2020 4:05 PM.

All,

I would like to request a discussion item be added to the Beaumont Basin Watermaster meeting Agenda for the next meeting entitled "Discussion of Legal Counsel Report regarding Water Transfer and Accounting".

Due to the fact this item is to be provided as a Legal Counsel Report as identified by Joe Zoba at the June 3, 3030 meeting, the BBWM Board members may need a spot to further discuss Legal Counsels Report regarding this matter should we find the need to resolve this item further. I would not like to wait until a future meeting to finalize discussion of this item due to the need to complete the 2019 annual report.

Joe, Please let me know if you would like me to work up a quick staff report on this item and if so, please provide the time and date you would like this item to you for distribution. I seems you usually put out the agenda on Sunday for the BBWM but I will accommodate your schedule for distribution.

Sincerely,

Dan Jagers
BCVWD

FW: July 20, 2020 Memorandum Re: Transfer and Accounting of Oak Valley Partners, L.P.'s Over...



Thierry Montoya <tmontoya@alvaradosmith.com>

To: George Jorritsma; Jagers, Dan (BCVWD); Arturo Vela; Kyle Warsinski; Joseph Zoba

Thu 07/30/2020 6:51 PM

Reply

Reply All

Forward

...



Letter to Montoya re July 20, 2020 Memoradum.pdf
302 KB



Oak Valley Agreement.pdf
4 MB

I received the email and attachments today and sharing it with the Board.

**Thierry R. Montoya**

Equity Shareholder

tmontoya@alvaradosmith.com | **BIO**

1 MacArthur Place, Suite 200, Santa Ana, CA 92707

714.852.6800 **AlvaradoSmith.com** **Excellence in Practice. Diversity in People.**

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

May 15, 2018



MEMORANDUM

TO: Beaumont Basin Watermaster (“BBW”)
 FROM: Thierry Montoya
 DATE: May 15, 2018
 RE: Transfer and Conversion of Overlying Water Rights to Appropriative Rights and Accounting for Such

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

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

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

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

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

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

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

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

II. When does the overlying right become appropriative?

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

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

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

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

Follow-up to the May 15, 2018 Memorandum

July 16, 2018



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

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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.

4673476.2 -- N1356.1

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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.

Water Rights Transfer from Overlying to Appropriative - Accounting for Such

September 5, 2018



MEMORANDUM

TO: Beaumont Basin Watermaster ("BBW")
 FROM: Thierry Montoya
 DATE: September 5, 2018
 RE: Water Rights Transfer from Overlying to Appropriative—Accounting For Such

At the August 1, 2018 BBW meeting, the issue of the accounting for the transfer of overlying water rights to a BBW appropriator was discussed and the need for follow-up analysis of this issue was requested.

Effect of a Transfer of Overlying Water Rights to an Appropriator

The Judgment Pursuant to Stipulation Adjudicating Groundwater Rights in the Beaumont Basin (the "Judgment"), February 4, 2004, defines "overlying parties" as "...owners of land which overlies the Beaumont Basin and have exercised Overlying Water Rights to pump therefrom." See, Judgment, Introduction, section 3(O), lines 13-17. Appropriators hold an interest in "...the amount of Safe Yield remaining after satisfaction of Overlying Water Rights." See, Judgment, Introduction, section 3(C), lines 3-4.

The Judgment and BBW's own Rules and Regulations, adopted June 8, 2004 (the "Rules," allow for the transfer of an overlying water right and when transferred to an appropriative party, the former overlying water right becomes an appropriative right "...to the extent their respective properties [the Overlying Properties] receive water service from an Appropriative Party..." See, Judgment, Declaration and Adjustment of Rights, section 1, lines 7:28-8:5. The Judgment further has a provision for the accounting of such transferred rights—from overlying to appropriative—stating, "[t]o the extent any Overlying Party requests, and uses its Exhibit "B", Column 4 water to obtain water service from an Appropriative Party, an equivalent volume of potable groundwater shall be earmarked by the Appropriative Party which will serve the Overlying Party, up to the volume of the Overlying Water Rights as reflected in Column 4 of Exhibit "B" attached hereto, for the purpose of serving the Overlying Party." See, Judgment, Declaration and Adjustment of Rights, section 3(B), lines 15-22. In the event that "...the Overlying Party receives water service as provided...the Overlying Party shall forebear the use of that volume of the Overlying Water Right earmarked by the Appropriative Party. The Appropriator Party providing such service shall have the right to produce the volume of water foregone by the Overlying Party, in addition to other rights otherwise allocated to the Appropriator Party." See, Judgment, Declaration and Adjustment of Rights, section 3(C), lines 8:28-9:7; section G, lines 11:9-14; 12:4-7.

The Judgment and the Rules are consistent with California law holding that an overlying water right can be terminated, transferred, or abandoned—and when such occurs, the former overlying right becomes appropriative in nature. See, *Fall River Valley Irr. Dist. v. Mt. Shasta Power Corp.* (1927) 202 Cal. 56, 65-- riparian and overlying water rights may also be

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abandoned by both the concurrence of an intent to abandon and the act of relinquishing possession.

A. The Extent of the Appropriative Right Does Not Exceed The Amount of Water Actually Put to Beneficial Use

On an accounting level, when an overlying party agrees to forebear all of its overlying rights and the appropriative party is fully accounting for these rights as part of its overall water planning for the purpose of serving the overlying party, then the entire volume of the former overlying right should be allocated to the appropriative party. See, Judgment, Declaration and Adjustment of Rights, section 3(C), lines 8:28-9:7; section G, lines 11:9-14; 12:4-7. Such would be consistent with the language in the Judgment and Rules, and represents the intent of the parties that stipulated to the Judgment, specifically: “Whereas, the Overlying and Appropriative Defendants wish to secure the provision and availability of a reliable, affordable, long-term water supply for the area within plaintiff’s jurisdiction, making reasonable and beneficial use of the native groundwater in the Beaumont Basin...” See, Stipulation for Entry of Judgment, II. Recitals, 4:6-10.

There is also concurrence for this accounting rationale in California precedent. 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. See, *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. When the intent of the transfer from overlying water right to appropriative, is to divest all overlying rights to the appropriator for water service—the entire quantity of the overlying water right becomes an appropriative water right—a usufructuary right for the purpose of providing water service to the overlying property. See, Judgment, Declaration and Adjustment of Rights, section 3(C), lines 8:28-9:7; section G, lines 11:9-14; 12:4-7; See, Stipulation for Entry of Judgment, II. Recitals, 4:6-10.

In cases of phased developments or properties that have not been fully developed to their lawful extent, *i.e.*, consistent with current zoning, there is no direct precedent addressing the accounting of an appropriative water right. However, the Judgment and Rules sections cited to above suggest that when an appropriator holding former overlying water rights sufficient to serve the entire property based on its lawful, development potential—then all of the appropriative water right is usufructuary for the purpose of servicing the overlying property.

There are cases holding that an appropriator must actually apply the water to some beneficial purpose. See, *Central Delta Water Agency v. State Water Resources Control Board* (2004) 124 Cal.App.4th 245, 253. That requirement would be met by the very fact that the transfer of an overlying water right to an appropriator for its subsequent water service to the overlying property is a beneficial use in nature, and the appropriator would be planning for and earmarking such transferred rights in its water planning. See, Judgment, Declaration and Adjustment of Rights, section 3(C), lines 8:28-9:7; section G, lines 11:9-14; 12:4-7; See, Stipulation for Entry of Judgment, II. Recitals, 4:6-10; 23 C.C.R. §663. Moreover, a transfer of an overlying water right to an appropriative one, for water service from the appropriator to the overlying property—effectively swaps the beneficial use of an overlying right to provide

4673476.3 -- N1356.1

September 5, 2018

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domestic/irrigation water usage to a beneficial “municipal” use that would characterize an appropriative use. See, 23 C.C.R. §660; 661; 663.

B. When an Transferred Overlying Right Exceeds The Amount of Water Actually Required to be Put to Beneficial Use of the Property

An appropriation is “...then complete in the sense that the rights of the appropriator cannot be defeated by acts done or appropriations attempted to be made by others after such diversions and while he is proceeding with reasonable diligence to apply the water appropriated by him to the purpose contemplated.” See, *Simons v. Inyo Cerro Gordo Min. & Power Co.* (1920) 48 Cal.App. 524, 537. Again, an appropriative right is usufructuary and does not exceed the amount of water actually put to beneficial use--said in another way—“actual diversion (the taking of possession) creates the right; actual use (the amount in possession) measures the right.” See, *Simons, infra*, at 538.

In instances where an overlying right exceeds what is presently required to develop a property, a full transfer of the overlying right to the appropriator pursuant to the Judgment where the overlying party refrains from its use of that right, creates the appropriative right, and grants to the appropriator a “reasonable time” to put that water to beneficial use. To constitute a valid appropriation of water, three elements must always be present: i) an intent to apply it to some existing or contemplated beneficial use; ii) an actual diversion from the natural channel by some mode sufficient for the purpose; and iii) an application of the water within a reasonable time to some beneficial use. See, *Simons, supra*, at 537. Obviously in the context of an adjudicated basin, the first two conditions are met by a transfer agreement where the overlying party agrees to forego its rights, refrains from pumping and the appropriator agrees to provide water service in exchange, investing in the necessary infrastructure to make that possible. The key condition would be the third—and the appropriator “...cannot be defeated by acts done or appropriations attempted to be made by others after such diversion and while he is proceeding with reasonable diligence to apply the water appropriated by him to the purpose contemplated.” See, *Simons, supra*, at 537. So, reasonable time is afforded the appropriator to put the water to actual beneficial use, which could take into account water planning based on economic trends indicating the full beneficial use of the transferred water right.

Best Procedures

Pursuant to the Judgment, Rules, and relevant precedent, an overlying party’s transfer of its water rights to an appropriator for subsequent water service, such that the overlying party foregoes the use of its former overlying water right—transfers the nature of the overlying water right to an appropriative water right, beneficial in nature, and one which would vest upon the transfer. Accounting for this transfer as part of the “safe yield” analysis would be required, such that the amount of the former overlying water right should be noted as being transferred to an appropriator on a date specific, and, in the cases of phased developments, it may be useful, from an accounting standpoint, to note how much of the overall appropriative right has been put to municipal use per-phase--although the entire amount of the former overlying water right would effectively be transferred to the appropriator as a beneficial use.

September 5, 2018

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In the case of a appropriated water right acquired, but not yet put to full beneficial use, the appropriator should make the case for actual use based on planning and intent.

Transfer and Accounting of Oak Valley Partners L.P.s (“OVP”) Overlying Water Rights Transfer to Yucaipa Valley Water District (“YVWD”)

July 20, 2020



MEMORANDUM

TO: Beaumont Basin Watermaster ("BBW")
FROM: Thierry Montoya
DATE: July 20, 2020
RE: Transfer and Accounting of Oak Valley Partners, L.P.'s ("OVP") Overlying Water Rights Transfer to Yucaipa Valley Water District ("YVWD")

BBW has requested a legal opinion to address the water transfer accounting issue arising from YVWD's assertion that the totality of OVP's formerly overlying water rights should be transferred to YVWD's BBW storage account based on an "...October 9, 2018 water service date..." as suggested in YVWD's November 20, 2019 "Form 5-Notice to Adjust Rights of an Overlying Party Due to Proposed Provision of Water Service by an Appropriator" ("Form 5"). Addressing the issue of the timing of overlying rights transfer to an appropriate water service provider consistent with the Stipulated Judgment for the adjudication of the Beaumont Basin, BBW adopted Resolution No. 2017-02 on August 30, 2017.

SUMMARY OF LEGAL OPINION

Pursuant to Resolution No. 2017-02, OVP expressed its intent to assign its adjudicated overlying water rights to YVWD and thereafter to rely on YVWD to provide water service to its phased residential development projects. OVP identified the number of acre feet of water adjudicated under the then-current determined Safe Yield of the Basin and the parcels of land to which that water related by recitation of the applicable APNs. Upon YVWD's water transfer and service confirmation letters to BBW, YVWD's storage account was credited in the amount of OVP overlying water rights that OVP transferred to YVWD in exchange for its water service, in the amounts and during the year that the transfer and water service occurred. Accordingly, in 2018 YVWD received credit for 180.4 acre-feet of OVP's formerly overlying water rights. See, **Exhibits 1-4**, below.

On November 20, 2019, BBW received YVWD's Form 5 requesting that BBW recognize the transfer of the entirety of OVP's overlying water rights to YVWD based on an assumed October 9, 2018 water service date. However, based on information supplied to BBW it does not appear that YVWD committed to provide water service to the entirety of OVP's APNs identified in Resolution No. 2017-02 on October 9, 2018. Rather it appears that YVWD has obligated itself to serve water to some of the APNs identified by OVP in Resolution No. 2017-02 on an incremental basis.

Resolution No. 2017-02 confirms OVP's and YVWD's water transfer and accounting intentions, *i.e.*, OVP's overlying water rights transfer to YVWD upon YVWD providing a water service commitment to OVP as to the parcels for which the water service commitment applies. Resolution No. 2017-02 establishes the timing of BBW's recognition of the transfer of overlying rights as of the date that a water service commitment is provided for the

July 20, 2020

Page 2

specific parcels for which the commitment is made – the nature of the right changes from overlying to appropriative with the applicable obligor. This is consistent with the Basin Stipulated Judgment, BBW's Rules and Regulations, and existing case law.

RELEVANT FACTS

1. On August 30, 2017, the BBW's Board approved Resolution No. 2017-02, "A RESOLUTION OF THE BEAUMONT BASIN WATERMASTER APPROVING THE TRANSFER OF OVERLYING WATER RIGHTS TO SPECIFIC PARCELS." See, **Exhibit 1** to this Memorandum.

Resolution No. 2017-02's "Recitals" section states, in relevant part:

"WHEREAS, [OVP] was designated as holding Overlying Water Rights within the Adjudication, with an overall water amount of 1806 acre-feet/year spread over 5,331.65 acres under the then-specified Safe Yield of the basin as described in the Adjudication [Stipulated Judgment]. As specified in the Adjudication [Stipulated Judgment], OVP's property consists of numerous assessor parcels that are identified within Exhibit D of the Adjudication [Stipulated Judgment] ('OVP Adjudication Parcels'). Section III 3(G) of the Adjudication [Stipulated Judgment] outlines OVP's intended development of its property and specifies the process that OVP may utilize to arrange the transfer of its Overlying Water Rights to particular development parcels eventually to be serviced by one or more retail water service providers upon annexation...";

"WHEREAS, OVP now desires to have its designated Overlying Water Rights acknowledged in the Adjudication [Stipulated Judgment] assigned to the requisite Assessor Parcel Numbers within the Summerland Ranch Specific Plan ("Project") that correlate to certain of the OVP Adjudication Parcels [the specific parcels being identified by Assessor Parcel numbers and attached to the Stipulated Judgment as Exhibit "D"]..."; and,

"WHEREAS, OVP further intends to secure commitments from the [YVWD] to provide water service to development phases of the Project, and requests that when those commitments are made and water service provided to the designated Project parcels that the Overlying Water Rights for those Project parcels be transferred to [YVWD] consistent with the Adjudication [Stipulated Judgment]."

Resolution No. 2017-02 confirms the BBW's approval of the transfer of "...all of OVP's Overlying Water Rights to the Project parcels listed on Exhibit 1 attached hereto to provide for the development phases of the Project by OVP and its successors/assigns..." BBW also requested that "YVWD...report to Watermaster when it has provided retail water service to various properties making up portions of the Project and Watermaster shall account for the same consistent with Section VI, 5, W. of the Adjudication [Stipulated Judgment]." See, Resolution No. 2017-02, sections 1, 2.

July 20, 2020

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2. On March 21, 2018, YVWD advised BBW that its "...Board of Directors...accepted the transfer of... [90.94 acre-feet of overlying water rights] from Overlying Water Rights from...[OVP] for Tract No. 32701 (141 lots) and Tract No. 32702-5 (105 lots) pursuant to...[BBW] Resolution No. 2017-02, adopted on August 30, 2017. See, **Exhibit 2** to this Memorandum. This letter is not in the form of a customary "will serve" letter from the water service entity. Nor is there a specific identification of the relationship between San Gorgonio Land, LLC and OVP. These are issues that presumably could be readily resolved, and this memo makes that assumption.

YVWD's storage account was credited for the 90.94 acre-fee as a 2018 transfer.

3. On July 27, 2018, YVWD advised BBW that it had "...accepted the transfer of [59.89 acre-feet of overlying rights] from...[OVP] for Tract Nos. 32702-1 and 32702-2 (162 lots) pursuant to...[BBW] Resolution No. 2017-02, adopted on August 30, 2017." See, **Exhibit 3** to this Memorandum.

YVWD's storage account was credited for the 59.89 acre-fee as a 2018 transfer.

4. On September 26, 2018, YVWD advised BBW that it "...accepted the transfer of [29.57 acre-feet of] Overlying Water Rights from [OVP] for Tract Nos. 32702-3 (80 lots) pursuant to...Resolution No. 2017-02..." See, **Exhibit 4** to this Memorandum.

YVWD's storage account was credited for the 29.57 acre-fee as a 2018 transfer.

5. On November 20, 2019, YVWD submitted its "Form 5" to BBW. Form 5 states, in pertinent part, that as YVWD "...proposes to provide retail water service to...[OVP]... and that all original 1,806 / revised 1,398.90 acre feet ("Earmarked Water") of Overlying Water Rights will be transferred to the Appropriator...[YVWD] when the Overlying Party...[OVP] received water service on October 9, 2018. Form 5 requested that "...BBW reduce the amount of...[OVP's]...Overlying Water Right(s)..by the amount of Earmarked Water [1,398.90 acre-feet] and adjust the Appropriative Water Rights of the Appropriator [YVWD] effective on the day when water service is first provided [the October 9, 2018 date] by the Appropriator [YVWD]." Emphasis in original. See, **Exhibit 5** to this Memorandum.

YVWD requests that BBW agree to credit its water storage account in the full amount of OVP's former overlying water rights [1,398.90 acre-feet] pursuant to Form 5's "October 9, 2018" water service date. On June 3, 2020 BBW requested a legal opinion on this issue.

RESOLUTION 2017-02 SHOULD BE FOLLOWED

Section 3 of the Stipulated Judgment, Adjustment of Rights and BBW's Rules and Regulations, Section 7, Adjustment of Rights, (collectively "Adjudication") provide, in relevant part, that when an "Overlying Party shall forebear the use of that volume of the Overlying Water Right earmarked by the Appropriator Party...The Appropriator Party providing such service shall have the right to produce the volume of water foregone by the Overlying

July 20, 2020
Page 4

Party, in addition to the other rights otherwise allocated to the Appropriator Party.” See, Adjudication, Section 3, Adjustment of Rights, 3(c).

Resolution No. 2017-02 complies with these provisions by providing that the transfer of OVP’s overlying water rights to appropriative status occurs “[o]nce OVP and/or its successor(s) secures commitments from [YVWD] to provide water service to the development phases of the Project, and when water service is provided to the designated Project parcels...” When those conditions are met, “...then the overlying water rights for those Project parcels shall be transferred to the [YVWD].”

Resolution No. 2017-02’s conditions are also consistent with case law holding that overlying water rights may be abandoned by both the concurrence of an intent to abandon, and the act of relinquishing possession. See, *Fall River Valley Irr. Dist. v. Mt. Shasta Power Corp.* (“*Fall River*”) (1927) 202 Cal. 56, 65, and subsequent cases.

In 2018, 180.4 acre-feet of former OVP overlying water transferred to YVWD as its appropriative water based on YVWD’s notices of water service commitments to OVP’s Tracts Nos.: 32701 (141 lots); 32702-5 (105 lots); 32702-1 and 32702-2 (162 lots); and, 32702-3 (80 lots). See, **Exhibits 2-4**. YVWD’s water service commitment letters identified the date on which the overlying water right[s] transferred -- based on the Resolution’s triggering terms -- *i.e.*, the date the appropriator begins providing water service to a specific parcel[s], and further identified the quantity of water rights transferred based on the safe yield calculation (OVP’s adjusted rights).

However, Form 5 cannot confirm OVP’s intent to abandon any of its overlying water rights in exchange for YVWD’s provision of water service to any of its parcels. *Id.* Form 5 is written in the future conditional, specifically that “...YVWD proposes to provide retail water service to...[OVP]..” not that it has. Form 5 also fails to identify any amount of OVP’s overlying water rights that are to be attributable to specific property in exchange for YVWD’s water service.

Form 5 is ambiguous and cannot support its central premise, *i.e.* that OVP intended to, and did, transfer its 1,398.90 acre-feet of overlying water rights to YVWD on October 9, 2018. In fact, **Exhibits 2-4** contradict the assertion in Form 5 that anything other than 180.4 acre-feet in total was transferred as between OVP and YVWD in 2018.

Ambiguity aside, OVP and YVWD applied for and concurred with BBW’s adoption of Resolution 2017-02 as the method for confirming the water transfers from OVP to YVWD. That Resolution is consistent with the Stipulated Judgment and with case law precedent. Resolution 2017-02’s terms and procedures were previously adhered to by OVP and YVWD, and, as a binding Resolution, its terms should continue to define the process and the time of accounting for the water transfer[s] as between OVP and YVWD.

EXHIBIT 1

RESOLUTION NO. 2017-02**A RESOLUTION OF THE BEAUMONT BASIN WATERMASTER APPROVING THE
TRANSFER OF OVERLYING WATER RIGHTS TO SPECIFIC PARCELS**

WHEREAS, the Stipulated Judgment establishing the Beaumont Basin Watermaster (Riverside Superior Court Case No. 389197) ("Adjudication") was filed with the Superior Court of California, County of Riverside on February 4, 2004; and

WHEREAS, Oak Valley Partners, L.P. ("OVP") was designated as holding Overlying Water Rights within the Adjudication, with an overall water amount of 1806 acre-feet/year spread over 5,331.65 acres under the then-specified Safe Yield of the basin as described in the Adjudication. As specified in the Adjudication, OVP's property consists of numerous assessor parcels that are identified within Exhibit D of the Adjudication ("OVP Adjudication Parcels"). Section III, 3(G) of the Adjudication outlines OVP's intended development of its property and specifies the process that OVP may utilize to arrange the transfer of its Overlying Water Rights to particular development parcels eventually to be serviced by one or more retail water service providers upon annexation; and

WHEREAS, OVP now desires to have its designated Overlying Water Rights acknowledged in the Adjudication assigned to the requisite Assessor Parcel Numbers within the Summerwind Ranch Specific Plan ("Project") that correlate to certain of the OVP Adjudication Parcels; and

WHEREAS, the OVP Adjudication Parcels listed on Exhibit D of the Adjudication that correlate to the Project parcels and which total 2409.02 acres include the following parcel numbers from Exhibit D:

- 413-040-002;
- 413-160-003 through 007;
- 413-170-020, 021, 023, 027 through 031, 033, and 035;
- 413-180-017 and 019;
- 413-190-001 and 011;
- 413-200-002, 010, 014, 015, 020, 023, 024, 026 through 030, and 034 through 037;
- 413-290-003 and 007;
- 413-460-038; and

WHEREAS, the Assessor Parcel Numbers for the Project parcels that correlate to the above-designated OVP Adjudication Parcels as contained in Exhibit D to the Adjudication are listed and specified in Exhibit 1 attached hereto; and

WHEREAS, OVP desires that Watermaster approve the transfer of all of OVP's Overlying Water Rights designated within the Adjudication to the Project parcels identified in Exhibit 1 attached hereto for the development of the Project by OVP and its successors and/or assigns; and

WHEREAS, OVP further intends to secure commitments from the Yucaipa Valley Water District to provide water service to development phases of the Project, and requests that when those commitments are made and water service is provided to the designated Project parcels that the Overlying Water Rights for those Project parcels be transferred to the Yucaipa Valley Water District ("YVWD") consistent with the Adjudication.

NOW, THEREFORE, BE IT RESOLVED BY THE BEAUMONT BASIN WATERMASTER as follows:

1. Transfer of Overlying Water Rights. Watermaster hereby approves the transfer of all of OVP's Overlying Water Rights to the Project parcels listed on Exhibit 1 attached hereto to provide for the development phases of the Project by OVP and its successors/assigns. OVP shall immediately inform Watermaster of any successor or assign who takes ownership of one or more Project parcels listed on Exhibit 1 to which Overlying Water Rights have been transferred. As of this time, the amount of water associated with the OVP Overlying Water Rights is consistent with the relationship between the redetermined safe yield (6700 acre-feet) and the original Safe Yield (8650 acre-feet), or in other words 77.5% of the original amount identified to OVP in Exhibit B to the Adjudication.

2. Transfer of Rights on Confirmed Water Service by YVWD. Once OVP and/or its successor(s) or assigns secures commitments from the Yucaipa Valley Water District to provide water service to the development phases of the Project, and when water service is provided to the designated Project parcels, then the overlying water rights for those Project parcels shall be transferred to YVWD. YVWD shall report to Watermaster when it has provided retail water service to various properties making up portions of the Project and Watermaster shall account for the same consistent with Section VI, 5. W. of the Adjudication.

3. Use of Wells. The existing and future wells on the Project parcels may be used to extract water for use on the Project parcels and/or any remaining OVP parcels, consistent with the Adjudication and current and future Watermaster rules, regulations and policies.

4. Further Documentation or Action. The Chief of Watermaster Services or Watermaster Engineer is hereby authorized and directed to execute such further documents and instruments, and take such further action, as shall be reasonably required to carry out the purposes and intent of this resolution.

5. Effective Date. The effective date of this resolution is August 30, 2017.

PASSED AND ADOPTED by the Beaumont Basin Watermaster this 30th day of August 2017.

BEAUMONT BASIN WATERMASTER

By: 
Art Vela, Chairman of the
Beaumont Basin Watermaster

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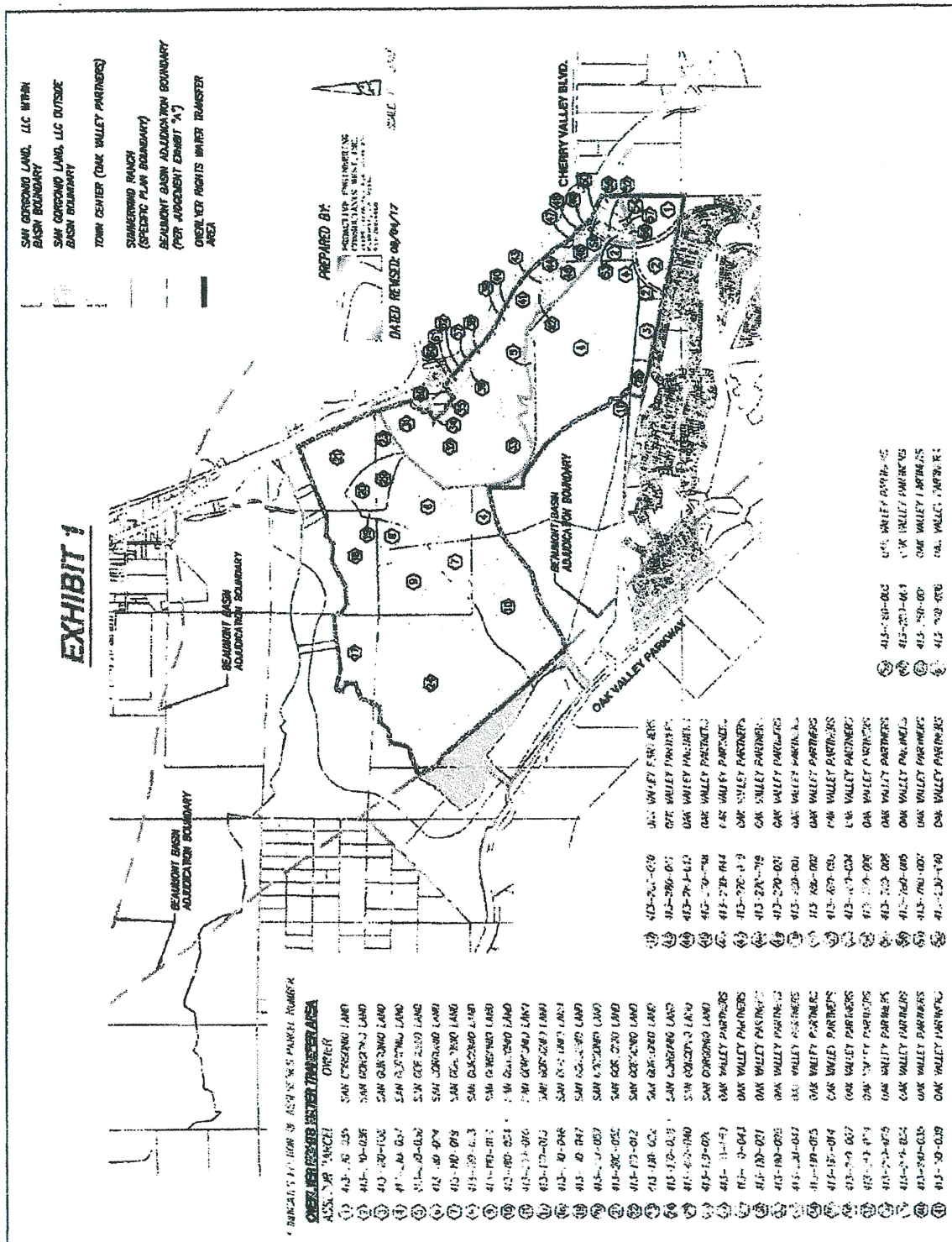


EXHIBIT 2



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

March 21, 2018

Mr. Tony Lara, 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

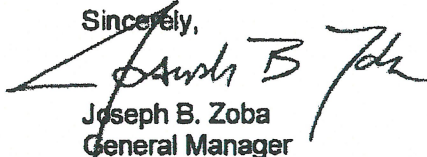
Subject: Transfer of Overlying Water Rights in the Beaumont Basin for Tract No. 32702 (141 lots) and Tract No. 32702-5 (105 lots) Pursuant to Beaumont Basin Watermaster Resolution No. 2017-02

Gentlemen:

On March 20, 2018, the Board of Directors of the Yucaipa Valley Water District accepted the transfer of Overlying Water Rights from Oak Valley Partners for Tract No. 32702 (141 lots) and Tract No. 32702-5 (105 lots) pursuant to Beaumont Basin Watermaster Resolution No. 2017-02 adopted on August 30, 2017.

The attached correspondence dated March 9, 2018, confirms the transfer of 90.94 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,


Joseph B. Zoba
General Manager

Copies to:

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

4/2/2018 cc Jagers
Lara

Directors and Officers

CHRISTOPHER MANN
Division 1

BRUCE GRANLUND
Division 2

JAY BOGH
Division 3

LONNI GRANLUND
Division 4

THOMAS SHALHOUB
Division 5

JOSEPH B. ZOBA
General Manager
and Secretary

|Management

March 9, 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 & 32702-5, 246 Single Family Residential Lots

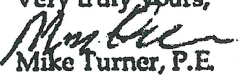
Dear Mr. Zoba:

This letter is written on behalf of San Geronio 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 Geronio Land, LLC.

We are hereby requesting to transfer 90.94 acre-feet of the Summerwind Ranch Beaumont Basin Overlyer Water Rights to Tracts 32702 (141 lots) and 32702-5 (105 lots) to provide potable water requirements for 246 residential single family lots. These three Tracts encompass approximately 56 acres and are included within APN 413-290-037 per the attached Exhibit 1.

The merchant builder for these two Tracts is Lennar Homes of California, Inc., a California Corporation. Upon this transfer, we understand that Lennar Homes 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 Onanian - Oak Valley Partners

APPROVAL:

 3/21/2018
Joe Zoba - General Manager, YVWD

CORPORATE OFFICE
2382 Morse Ave, Irvine, CA 92614 • MAIN 949 777 4000 • FAX 949 777 4050 • www.ArgentManagementLLC.com

EXHIBIT 3



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 Overlyier 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.

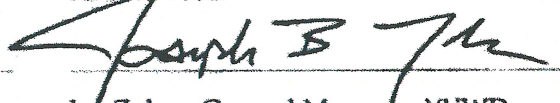
Very truly yours,


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

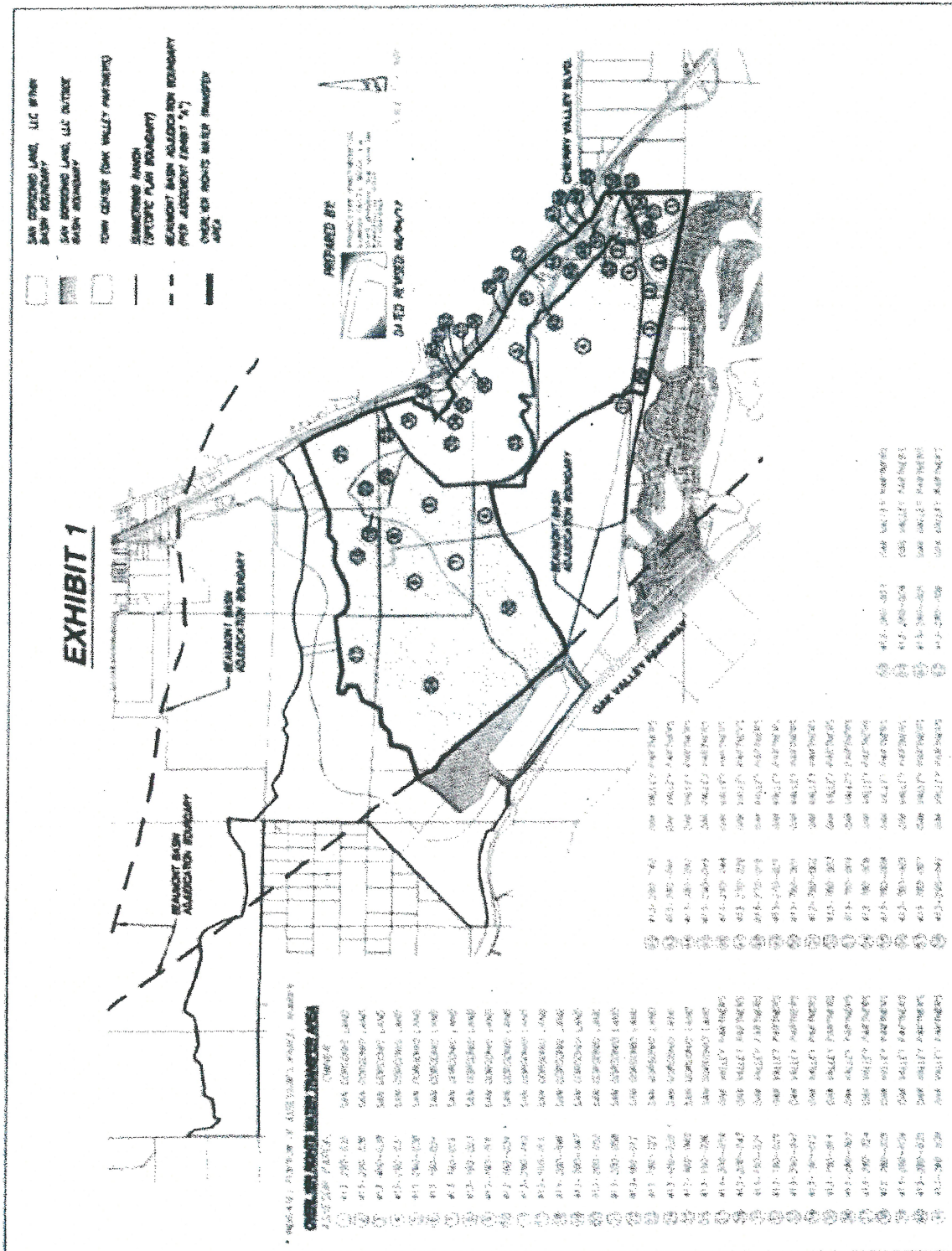


EXHIBIT 4



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

September 26, 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 29.57 Acre Feet of Overlying Water Rights in the Beaumont Basin for Tract No. 32702-3 (80 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. 32702-3 (80 lots) pursuant to Beaumont Basin Watermaster Resolution No. 2017-02 adopted on August 30, 2017.

The attached correspondence dated September 17, 2018, confirms the transfer of 29.57 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,

Joseph B. Zoba
General Manager

Copies to:

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

Directors and Officers

CHRISTOPHER MANN
Division 1

BRUCE GRANLUND
Division 2

JAY BOGH
Division 3

LONNI GRANLUND
Division 4

THOMAS SHALHOUB
Division 5

JOSEPH B. ZOBA
General Manager
and Secretary

Beaumont Basin Watermaster - October 3, 2018 - Page 3 of 39

|Management

September 17, 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 - Tract 32702-3, 80 Single Family Residential Lots

Dear Mr. Zoba:


This letter is written on behalf of San Geronio 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 Geronio Land, LLC.

We are hereby requesting to transfer 29.57 acre-feet of the Summerwind Ranch Beaumont Basin Overlyer Water Rights to Tract 32702-3 (80 lots) to provide potable water requirements for 80 residential single family lots. This Tract encompasses approximately 20.0 acres and is included within APN 413-290-037 per the attached Exhibit 1.

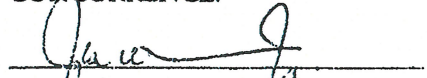
The merchant builder for this Tract is Meritage Homes of California, Inc., a California Corporation. Upon this transfer, we understand that Meritage Homes will be exempt from paying the District's Supplemental Water Facility Capacity Charge pursuant to the District's Resolution No. 2017-23, Section 2.D.

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

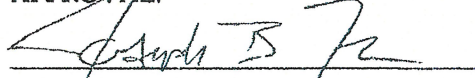
Very truly yours,


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

CONCURRENCE:


John Ohanian - Oak Valley Partners

APPROVAL:


Joe Zoba - General Manager, YVWD

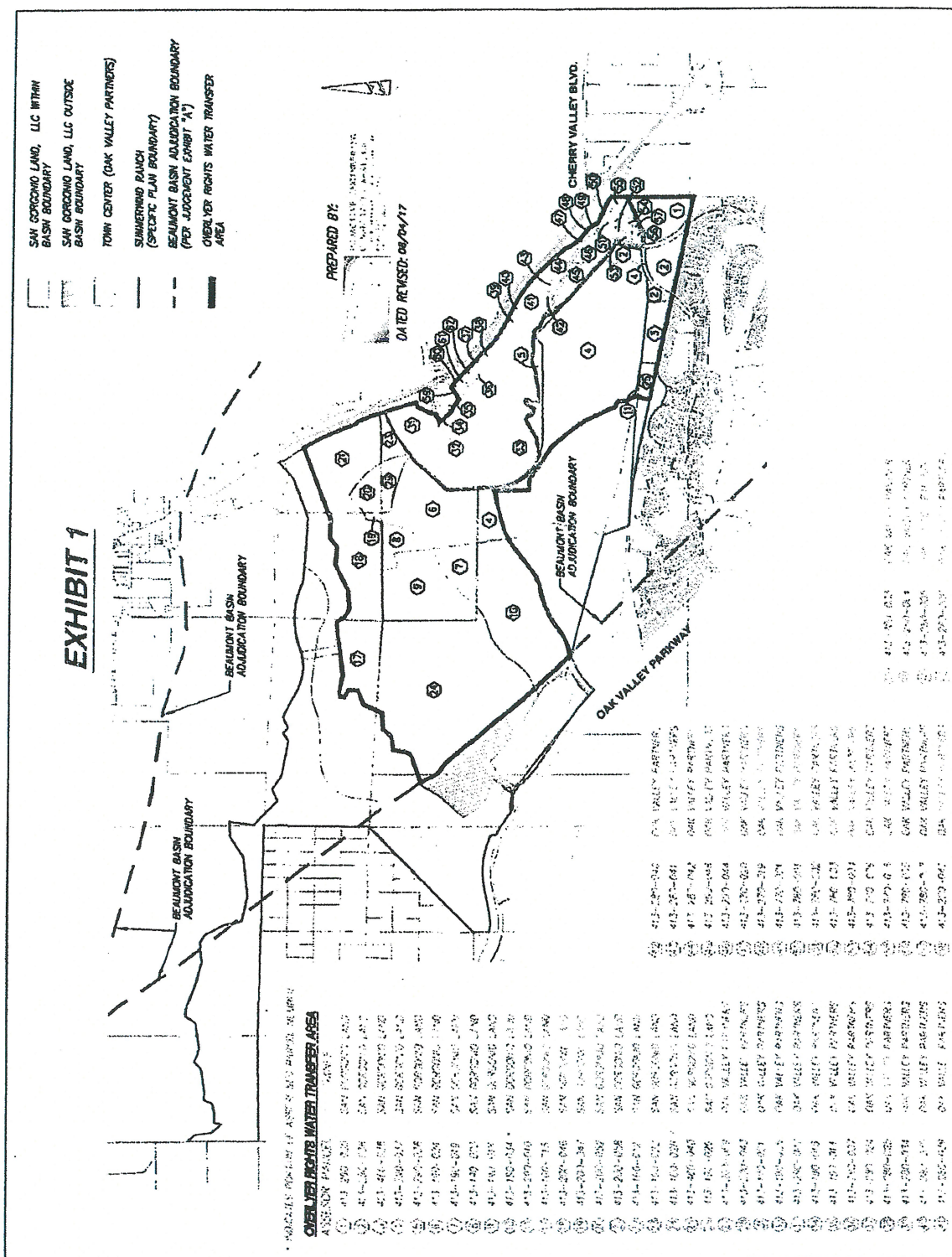


EXHIBIT 5

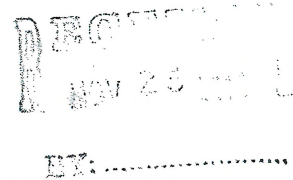


Yucaipa Valley Water District

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November 20, 2019

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



Subject: Transmittal of Executed Beaumont Basin Watermaster Form 5 - *Notice to Adjust Rights of an Overlying Party Due to Proposed Provision of Water Service by an Appropriator*

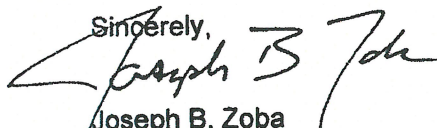
Dear Mr. Jagers:

On November 19, 2019, the Yucaipa Valley Water Board of Directors authorized the execution and acceptance of Beaumont Basin Watermaster Form 5 related to the transfer of overlying water rights from Oak Valley Development Company / Oak Valley Partners to the Yucaipa Valley Water District. This form provides that the original 1,806 acre feet, now the revised 1,398.90 acre feet of overlying water rights based on the redetermination of safe yield, is transferred to the Yucaipa Valley Water District. The Parties to Form 5 recognize that the transferred overlying water rights will be adjusted for Yucaipa Valley Water District in the future each time the redetermination of safe yield is calculated.

A copy of the fully executed Beaumont Basin Watermaster Form 5 *Notice to Adjust Rights of an Overlying Party Due to Proposed Provision of Water Service by an Appropriator* is attached. Please file this document as part of the permanent records of the Beaumont Basin Watermaster.

Thank you.

Sincerely,


Joseph B. Zoba
General Manager

attachment

Copies to:

- Hannibal Blandon, Alda Engineering
- Thierry Montoya, Alvarado Smith

Chris Mann
Division 1

Bruce Granlund
Division 2

Jay Bogh
Division 3

Lonni Granlund
Division 4

Joyce McIntire
Division 5

Beaumont Watermaster - Form 5

NOTICE TO ADJUST RIGHTS OF AN OVERLYING PARTY DUE TO PROPOSED PROVISION OF WATER SERVICE BY AN APPROPRIATOR

Please take notice that Yucaipa Valley Water District ("Appropriator") proposes to provide retail water service to Oak Valley Partners ("Overlying Owner") and that all original 1,806 / revised 1,398.90 acre feet ("Earmarked Water") of Overlying Water Rights will be transferred to the Appropriator when the Overlying Owner received water service on October 9, 2018.

Notice is hereby given that the Watermaster will reduce the Overlying Owner's Overlying Water Right(s) (as shown in Exhibit B, Column 4 of the Judgment and modified by the redetermination of safe yield) by the amount of Earmarked Water and adjust the Appropriative Water Rights of the Appropriator effective on the day when water service is first provided by the Appropriator.

OVERLYING OWNER

Oak Valley Development Company /
Oak Valley Partners

Overlying Party

John Ohanian

Authorized Agent - Print Name

Director of Development
Title

[Signature]
Signature

11/18/2019

Date

Post Office Box 645

Calimesa, California 92320

Address for Notice

(909) 795-8941

Telephone

johanian@tvqllc.com

Email Address

APPROPRIATOR

Yucaipa Valley Water District

Appropriator Party

Joseph B. Zoba

Authorized Agent - Print Name

General Manager

Title

[Signature]
Signature

Nov. 19, 2019

Date

Post Office Box 730

Yucaipa, California 92399

Address for Notice

(909) 797-5119 x2

Telephone

jzoba@yvwd.us

Email Address

For Watermaster Use
Date Form is Received:
Date Earmarked Water is First Used:

Joseph Zoba

From: Thierry Montoya <tmontoya@alvaradosmith.com>
Sent: Tuesday, January 22, 2019 1:37 PM
To: Hannibal Blandon; Joseph Zoba
Subject: RE: Transfer of Overlying Rights from Oak Valley Partners to YVWD for Annual Report

Hannibal,

The report need not include my memoranda and letters, as that discussed legal issues broader than this specific transfer. This type of transfer is fully covered under the Judgment and its Rules and Regulations. The report should be limited to the transfer documents, the Resolution, and YVWD's letters.

Thank you.

From: Hannibal Blandon [mailto:Blandona@aldaengineering.com]
Sent: Tuesday, January 22, 2019 12:15 PM
To: 'Joseph Zoba' <jzoba@yvwd.us>
Cc: Thierry Montoya <tmontoya@alvaradosmith.com>
Subject: RE: Transfer of Overlying Rights from Oak Valley Partners to YVWD for Annual Report

Joe:

Thank you for the lengthy and clear explanation you provided; it is well appreciated.

The September 5th, 2018 letter written by Mr. Montoya finally makes this very clear.

Allow me to summarize some key points to make sure we have mutual understanding.

- 1.- During CY 2018 a combined total of 180.40 ac-ft were transferred from Oak Valley Partners' overlying rights into YVWD's appropriative rights
- 2.- As a result OVP's overlying right is reduced by same amount to 1,218.50 ac-ft.
- 3.- OVP's reduced overlying right of 1,218.50 ac-ft minus their 2018 production, estimated at 2.5 ac-ft, or 1,216.00 ac-ft will be transferred to Appropriators in 2023, based on the five-year rule, and distributed based on the percentages described in the Judgment.
- 4.- YVWD will make use of the 180.40 ac-ft of water transferred from OVP in any way YVWD desires. YVWD could pump it or simply store it regardless of the stage of development at the OVP's parcels.

Section 3.4.2 (Transfer of Overlying Rights for Service by an Appropriator) was introduced in the 2017 Annual Report to document the implications of Resolution 17-02 (OVP's transfers to YVWD). I plan to expand that section to discuss the actual transfers and a summary of Mr. Montoya's Sept 5th letter. I will like to include the three letters that YVWD provided to the Watermaster (dated 3/28/18, 8/1/18, and 10/3/18) as well as Mr. Montoya's September 5th letter into an appendix in the report. In subsequent years, 2019 and beyond, we will document additional transfers and include copies of the letters documenting the transfer like the 2.65 ac-ft documented in your Jan 11, 2019 letter.

Your thoughts.

Hannibal Blandon
ALDA Inc.
909-587-9916

From: Joseph Zoba <jzoba@yvwd.us>
Sent: Monday, January 21, 2019 11:38 PM
To: Hannibal Blandon <Blandona@aldaengineering.com>
Cc: Thierry Montoya <tmontoya@AlvaradoSmith.com>
Subject: RE: Transfer of Overlying Rights from Oak Valley Partners to YVWD for Annual Report

Hannibal – The May 15, 2018 legal memorandum was updated with a memorandum dated July 16, 2018, and September 5, 2018. Both memorandums are attached for your reference.

Thanks for the open dialogue on this transfer issue. We are finally seeing the conversion of Overlying Rights to Appropriative Rights after fifteen years.

I provided a couple of thoughts below for you and Thierry.

Joe

The process of converting Overlying Water Rights to Appropriative Rights consists of the following five steps:

1. **Consolidation and Identification of Overlying Water Rights to Specific Parcels** – This step is completed by adopting a resolution by the Watermaster.
2. **Transfer of Overlying Water Rights to an Appropriator** – This step involves a letter from the Developer to the Appropriator. This transfer letter documents the relinquishment of production rights by the Overlyer in exchange for water service. Notice that the transfer of water rights letter is signed by both the developer and a representative of Oak Valley Partners. I cannot see how Oak Valley Partners can make a claim to the overlying water right, especially since there is likely a separate contrat between Oak Valley Partners and the developer facilitating the transfer of water rights.
3. **Acceptance of Overlying Water Rights by the Appropriator** – This step involves formal action by the legislative body of the Appropriator.
4. **Notice of Acceptance of Overlyer Water Rights by the Appropriator** – This step involves a letter to the Watermaster notifying them of the transfer. At this point, the transferred water rights should be in full control of the Appropriator.
5. **Execution of a Development Agreement** – A development agreement is executed by the Appropriator based on the completion of the four steps above.

In 2018, the Yucaipa Valley Water District used this process to transfer 180.40 acre-feet of Overlying-Appropriative Rights as provided below.

Summary of Assigned Overlying-Appropriative Rights	Watermaster Notification Date	Earmarked Amount (acre feet)
Assignment No. 1 to Yucaipa Valley Water District	3/28/2018	90.94
Assignment No. 2 to Yucaipa Valley Water District	8/1/2018	59.89
Assignment No. 3 to Yucaipa Valley Water District	10/3/2018	29.57
Total		180.40

Upon transfer and acceptance by the Yucaipa Valley Water District, we are able to: (1) store this water in the Beaumont Basin for future use; or (2) pump and use this water "...anywhere within [the District's] service area. (Section III.2. of the Judgment). In 2018, the District elected to pump this water from the Beaumont Basin as discussed at our meetings. In future years, the District will decide whether this quantity of water is produced or stored, regardless of the status of the development project.

Once the Overlying Party transfers the water rights to an Appropriator, the Overlying Party no longer has access to that supply

The following questions were provided in your email message below:

1.- Considering that YVWD extended their commitment to serve the parcels, but did not serve any in 2018, from an accounting point of view YVWD did not accrued any overlying rights on this water and OVP retained its overlying right in its entirety (1,398.9 ac-ft based on the revised safe yield of 6,700 ac-ft/yr).

Answer – Yucaipa Valley Water District received a transfer of overlying water rights in Step 2 above and Oak Valley relinquished their Overlying production rights. It would not make sense for an Overlyer to transfer water rights to an Appropriator and still utilize those rights. Additionally, based on these transfers, Yucaipa Valley Water District increased groundwater production from Well 48, even though we could have added this transferred water right to our storage account.

2.- Assuming that YVWD provides 50.0 ac-ft of water for beneficial use to the OVP development in 2019, then YVWD would have accrued 50.0 ac-ft of Appropriate right and OVP would have reduced its Overlying right by same amount to 1,348.9 ac-ft (1,398.9 minus 50.0). If this is the case, then the difference between OVP's reduced Overlying right (1,348.9 ac-ft) and its production, estimated at 2.5 ac-ft, or 1,346.4 ac-ft would be available for transferring this unused right to the various appropriators in the basin based on the five year lag, as stipulated in the Judgment

Answer – Once the Overlyer transfers water rights to the Appropriator, the amount of Overlying Water Rights are reduced and the Appropriative Rights are increased regardless of production by an Appropriator. This accounting should be referenced as Overlying-Appropriative Rights to distinguish between Overlying Rights and Appropriative Rights.

Thanks again for the discussion.

Joe

Joseph Zoba, General Manager
Yucaipa Valley Water District
Phone: (909) 797-5119
Email: jzoba@yvwd.us

From: Hannibal Blandon <Blandona@aldaengineering.com>
Sent: Monday, January 21, 2019 5:37 PM
To: 'Thierry Montoya' <tmontoya@alvaradosmith.com>
Cc: Joseph Zoba <jzoba@yvwd.us>
Subject: Transfer of Overlying Rights from Oak Valley Partners to YVWD for Annual Report

Mr. Montoya:

Per Mr. Zoba's letters to the BBW dated March 21, 2018 and July 27, 2018, YVWD accepted the transfer of a combined total of 160.83 ac-ft of Overlying Water Rights from Oak Valley Partners to provide water service to Oak Valley residential community.

Per your May 15, 2018 Memorandum, under Item II (Page 2) for the Overlying right from OVP to become YVWD's Appropriate Right, two conditions need to be met; i) YVWD commits to do so; and ii) YVWD begins providing water service to OVP's parcel(s). When these two conditions are met, OVP's overlying water right becomes YVWD's appropriate right.

Based on my interpretation of the above, could you please check the following statements to make sure we are on the same page since this needs to be properly documented in the annual report.

- 1.- Considering that YVWD extended their commitment to serve the parcels, but did not serve any in 2018, from an accounting point of view YVWD did not accrued any overlying rights on this water and OVP retained its overlying right in its entirety (1,398.9 ac-ft based on the revised safe yield of 6,700 ac-ft/yr)
- 2.- Assuming that YVWD provides 50.0 ac-ft of water for beneficial use to the OVP development in 2019, then YVWD would have accrued 50.0 ac-ft of Appropriate right and OVP would have reduced its Overlying right by same amount to 1,348.9 ac-ft (1,398.9 minus 50.0). If this is the case, then the difference between OVP's reduced Overlying right (1,348.9 ac-ft) and its production, estimated at 2.5 ac-ft, or 1,346.4 ac-ft would be available for transferring this unused right to the various appropriators in the basin based on the five year lag, as stipulated in the Judgment.

I am in the process of writing a new section in the annual report to document and account for this type of right conversion and I want to make sure that my interpretation is correct.

Your feedback will be greatly appreciated.

Best regards

Hannibal Blandon
ALDA Inc.
909-587-9916

Yucaipa Valley Water District's Response to the July 20, 2020 Memorandum

July 30, 2020



July 30, 2020

Via E-mail and U.S. Mail

Thierry Montoya, Esq.
Alvarado Smith
1 MacArthur Place, Suite 200
Santa Ana, CA 92707
E-Mail: tmontoya@alvaradosmith.com

Re: July 20, 2020 Memorandum Re: Transfer and Accounting of Oak Valley Partners, L.P.'s ("OVP") Overlying Water Rights Transfer to Yucaipa Valley Water District ("YVWD")

Dear Mr. Montoya:

We have received your July 20, 2020 memorandum titled "Transfer and Accounting of Oak Valley Partners, L.P.'s ("OVP") Overlying Water Rights Transfer to Yucaipa Valley Water District ("YVWD")," which is directed to the Beaumont Basin Watermaster ("BBW"). In the Memorandum, you opine that the Form 5 entered into between YVWD and OVP "is ambiguous and cannot support its central premise, *i.e.* that OVP intended to, and did, transfer its 1,398.90 acre-feet of overlying water rights to YVWD on October 9, 2018." (Memorandum, p. 4.) The Memorandum also states that "Form 5 cannot confirm OVP's intent to abandon any of its overlying water rights in exchange for YVWD's provision of water service to any of its parcels." (*Id.*) We are writing to provide you with additional information that you did not have available to you when you prepared the Memorandum and which demonstrates not only a clear intent by OVP to transfer all of its overlying water rights to YVWD on October 9, 2018, but also that YVWD has committed to provide water service to the entirety of OVP's APNs identified in Resolution No. 2017-02.

On June 2, 2020, Oak Valley Development Company, LLC, successor in interest to OVP (collectively, "OVDC/OVP"), and YVWD entered into an Agreement Regarding Consideration for Overlying Water Rights Transfer ("Agreement") (attached hereto as Exhibit A). The Agreement provides for the manner in which OVDC/OVP will receive consideration for the transfer of its "Overlying Water Rights," as that term defined in the February 4, 2004 *Judgment Pursuant to Stipulation Adjudicating Groundwater Rights in the Beaumont Basin* ("Stipulated Judgment"). The parties entered into the Agreement "in furtherance of the Stipulated Judgment provisions that anticipate and facilitate the transfer of OVDC/OVP's Overlying Water Rights to Appropriator Parties like YVWD in order to allow development of OVDC/OVP's land overlying the basin." (Agreement, Recital H.) As

provided below, the Agreement unambiguously demonstrates that OVP intended to transfer the totality of its Overlying Water Rights on October 9, 2018, that OVP agreed to forebear from pumping on any of its lands and that YVWD earmarked a volume of water equivalent to the Overlying Water Rights in accordance with the Stipulated Judgment:

- OVDC/OVP represented and warranted that it “transferred all legal right, title, and interest in the Overlying Water Rights to YVWD on October 9, 2018, as confirmed in the Form 5” (Agreement, Section 1.C.)
- The Agreement provides that “[e]ffective October 9, 2018, a volume of potable groundwater equivalent to the volume of the Overlying Water Rights (1,398.9 acre feet or as may be adjusted from time to time pursuant to the Stipulated Judgment) was earmarked by YVWD pursuant to Section III.3. of the Stipulated Judgment.” (Agreement, Section 2.)
- The Agreement provides that “[e]ffective October 9, 2018, OVDC/OVP shall forebear the use of the Overlying Water Rights.” (Agreement, Section 3.) Furthermore, OVDC/OVP covenanted “it will not build, construct or operate any well or other extraction facility to produce or pump groundwater from, beneath or tributary to any parcel of land listed on Exhibit D¹ of the Stipulated Judgment” and “that neither it nor any of its successors or assigns will ‘produce’ or ‘pump’ ‘groundwater’ (as those terms are defined in the Stipulated Judgment as of the Effective Date of this Agreement) from, beneath or tributary to any parcel of land listed on Exhibit D of the Stipulated Judgment.” (*Id.*, Sections 3.A and 3.B.)
- Under the Agreement, OVP and YVWD also consented to the recording of a Memorandum of Agreement for Transfer of Water Rights in Real Property (“MOA”). (Agreement, Section 3.) The MOA ensures the foregoing representations, warranties and covenants regarding the transfer, earmark and forbearance of Overlying Water Rights are “binding upon and inure to the benefit of the successors and assigns of the respective parties hereto . . . shall run with the Land, and shall be binding upon the successors and assigns of Landowner [*i.e.*, OVDC] with respect to ownership of the Land or any portions thereof.”

The Agreement also shows that OVP’s transfer of the Overlying Water Rights to YVWD on October 9, 2018 under the Form 5 is consistent with the Stipulated Judgment as modified Resolution No. 2019-02 *Amending Section 7 of the Rules and Regulations of the Beaumont Basin Watermaster*. As the Agreement unambiguously demonstrates, OVP has exercised its rights with respect to the Overlying Water Rights by transferring them to YVWD and has

¹ The parcels listed on Exhibit D include OVP’s APNs identified in Resolution No. 2017-02. Thus, the covenants and agreements related to earmarking and forbearance described in the Agreement apply to the same parcels identified in Resolution No. 2017-02.

agreed to forbear the use of those rights. (Resolution No. 2019-02, Section 7.0 and 7.0(b).) For its part, also consistent with the Stipulated Judgment, YVWD has earmarked a volume of groundwater equivalent to the totality of the transferred rights. (*Id.*, Section 7.0(a).) As described above, these agreements will be recorded so that they bind and inure to the benefit of the successors and assigns of the parties and run with the land in perpetuity.

We hope this additional information clarifies OVP's and YVWD's intent with respect to the November 19, 2019 Form 5. As the foregoing information shows, (1) OVP transferred its Overlying Water Rights on October 9, 2018 and (2) YVWD committed to provide water service to the entirety of OVP's APNs identified in Resolution No. 2017-02 on October 9, 2018.² If you would like to discuss this matter further, please contact me at (213) 253-4479.

Very truly yours,



Gregory J. Newmark
Attorney at Law

Enclosure

cc: Mr. Joseph Zoba, (jzoba@yvwd.dst.ca.us)
Dave Wysocki, Esq. (dwysocilaw@gmail.com)
Bryan K. Brown, Esq. (bbrown@meyersnave.com)

3564309.2

² As stated above, the parties' agreements and covenants regarding earmarking and forbearance, as recorded under the MOA, apply to the parcels identified in Resolution No. 2017-02.

AGREEMENT REGARDING CONSIDERATION FOR OVERLYING WATER RIGHTS TRANSFER

This AGREEMENT REGARDING CONSIDERATION FOR OVERLYING WATER RIGHTS TRANSFER ("Agreement") is entered into as of June 2, 2020 ("**Effective Date**"), by and between OAK VALLEY DEVELOPMENT COMPANY, LLC, A Texas Limited Liability Company successor in interest to Oak Valley Partners, L.P., a Texas limited partnership ("**OVDC/OVP**"), and YUCAIPA VALLEY WATER DISTRICT, a county water district organized and existing under the County Water District Law (Water Code §30000 *et. seq.*) ("**YVWD**"). OVDC/OVP and YVWD are sometimes referred to herein individually as "**Party**" and collectively as "**Parties**".

RECITALS

- A. On February 4, 2004, *A Judgment Pursuant to Stipulation Adjudicating Groundwater Rights in the Beaumont Basin* was filed with the Superior Court of the State of California for the County of Riverside as Case No. RIC 389197 ("**Stipulated Judgment**") and established the Beaumont Basin Watermaster ("**Watermaster**").
- B. The Stipulated Judgment identified and defined Appropriator Parties along with their respective Appropriative Water Rights, Overlying Parties along with their respective Overlying Water Rights, and the provides for the Adjustment of Rights which allows for the transfer of Overlying Water Rights to an Appropriator Party.
- C. The Stipulated Judgment decreed that YVWD is an Appropriator Party and has Appropriative Water Rights.
- D. The Stipulated Judgment decreed that OVDC/OVP is an Overlying Party and has Overlying Water Rights in the quantity of 1,806 acre feet. On February 4, 2015, the Watermaster reevaluated the safe yield of the Beaumont Basin pursuant to Section V.5.Y. of the Stipulated Judgment and adjusted the OVDC/OVP's Overlying Water Rights to 1,398.9 acre feet. The Parties recognize that the transferred Overlying Water Rights will be adjusted every ten years consistent with the Stipulated Judgment which may increase or decrease such Overlying Water Rights.
- E. The Stipulated Judgment sets forth, in Paragraph III.3, a process to effectuate the transfer of Overlying Water Rights to an Appropriator Party. These provisions of the Stipulated Judgment were modified on June 5, 2019, when the Watermaster adopted Resolution No. 2019-02 *Amending Section 7 of the Rules and Regulations of the Beaumont Basin Watermaster*. Under these modified provisions, Overlying Water Rights are transferred to an Appropriator Party by filing a "Form 5," which provides notice of the Adjustment of Rights. The process for transferring Overlying Water Rights under Resolution No. 2019-02 involves notifying the Watermaster by filing Form 5, as outlined below.

7.0 In General. *Overlying Parties shall have the right to exercise their respective Overlying Water Rights except to the extent provided in Section III, Paragraph 3, entitled Adjustment of Rights, of the Judgment. (Judgment, p. 8, lines 12-14).*

- (a) *To the extent any Overlying Party requests and uses its adjudicated water rights to obtain water service from an Appropriator Party, an equivalent volume of potable groundwater shall be earmarked by the Appropriator Party which will serve the Overlying Party, up to the volume of the Overlying Water Rights as reflected in Column 4 of Exhibit "B" of the Judgment, for the purpose of serving the Overlying Party. (Judgment, p. 8, lines 15-22).*
- (b) *When an Overlying Party receives water service as provided for in paragraph 7(a), the Overlying Party shall forbear the use of that volume of the Overlying Water Right earmarked by the Appropriator Party. The Appropriator Party providing such service shall have the right to produce the volume of water foregone by the Overlying Party, in addition to other rights otherwise allocated to the Appropriator Party. (Judgment, p. 8, line 28 – p. 9, line 7).*
- (c) *Should the volume of the Overlying Water Right equal or exceed the volume of potable groundwater earmarked as provided in paragraph 7(a), the Appropriator Party which will serve the Overlying Party shall:*
 - (i) *Impose potable water charges and assessments upon the Overlying Party and its successors in interest at the rates charged to the then-existing regular customers of the Appropriator Party, and*
 - (ii) *Not collect from such Overlying Party any development charge that may be related to the importation of water into the Beaumont Basin.*
- (d) *If an Appropriator Party provides recycled water to serve an overlying use served with groundwater, then the Overlying Water Right shall not be diminished by the receipt of recycled water.*

7.1 Notice of Adjustment of Rights from an Overlying Pumper to an Appropriator. *The Overlying Pumper and Appropriator shall complete a Notice of Adjustment of Rights (Form 5 - Notice to Adjust Rights of an Overlying Party due to Proposed Provision of Water Service by an Appropriator) and file it with the Watermaster.*

- (a) *Accounting for Transfers.* *Watermaster shall maintain an accounting of acquisitions by Appropriators of water otherwise subject to Overlying Water Rights as the result of the provision of water service by an Appropriator. The Watermaster shall maintain an accounting of all transfers, and such accounting shall be included in the Annual Report and other relevant Watermaster reports as appropriate.*

F. YVWD provided drinking water service to the OVDC/OVP parcels on October 9, 2018, as provided for in subparagraph III.3.B of the Stipulated Judgment.

- G. In accordance with the Resolution No. 2019-02 process for transferring Overlying Water Rights, the Parties prepared and executed a Form 5 to transfer “all original 1,806 / revised 1,398.90 acre feet” of OVDC/OVP’s Overlying Water Rights to YVWD. The Form 5 was executed by OVDC/OVP on November 18, 2019, and by YVWD on November 19, 2019, and was filed with the Watermaster on November 20, 2019. This completed the transfer of OVDC/OVP’s Overlying Water Rights, with an effective date of October 8, 2018.
- H. The Parties enter into this Agreement with the intention of memorializing the manner in which OVDC/OVP will receive consideration for the transfer of its Overlying Water Rights. OVDC/OVP transferred its Overlying Water Rights with the intention of reducing the amount of development fees that would have to be paid to YVWD to develop its parcels while also obtaining valuable monetary consideration, as provided herein. YVWD enters into this Agreement to promote development in its service area, to increase its Appropriative Water Rights by the Adjustment of Rights procedure set forth in the Stipulated Judgment and to increase its entitlement to a local and reliable groundwater source in exchange for reasonable consideration. The consideration YVWD will provide to OVDC/OVP consists of payments over time until the Parties’ agreed-upon consideration provision is fully performed or the Agreement terminates. The Parties enter into this Agreement in furtherance of the Stipulated Judgment provisions that anticipate and facilitate the transfer of OVDC/OVP’s Overlying Water Rights to Appropriator Parties like YVWD in order to allow development of OVDC/OVP’s land overlying the basin.

NOW, THEREFORE, in consideration of the mutual covenants and conditions stated herein and other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Representations and Warranties by OVDC/OVP.** OVDC/OVP represents and warrants to YVWD, as of the date on which this Agreement is executed, that:
 - A. When OVDC/OVP transferred its Overlying Water Rights to YVWD on October 9, 2018, OVDC/OVP had complete, undivided, unencumbered, and valid legal right, title, interest, and authority to make said transfer Overlying Water Rights to YVWD.
 - B. Prior to transferring its Overlying Water Rights to YVWD on October 9, 2018, OVDC/OVP did not grant, demise, assign, lease, option or otherwise encumber the Overlying Water Rights.
 - C. OVDC/OVP transferred all legal right, title, and interest in the Overlying Water Rights to YVWD on October 9, 2018, as confirmed in the Form 5 attached hereto as Exhibit 1.
2. **Earmark of All Overlying Water Rights.** Effective October 9, 2018, a volume of potable groundwater equivalent to the volume of the Overlying Water Rights (1,398.9 acre feet or as may be adjusted from time to time pursuant to the Stipulated Judgment) was earmarked by YVWD pursuant to Section III.3. of the Stipulated Judgment.
3. **Forbearance by OVDC/OVP.** Effective October 9, 2018, OVDC/OVP shall forbear the use of the Overlying Water Rights. OVDC/OVP covenants that neither it nor any of its successors or assigns will “produce” or “pump” “groundwater” (as those terms are defined

in the Stipulated Judgment as of the Effective Date of this Agreement) from, beneath or tributary to any parcel of land listed on Exhibit D of the Stipulated Judgment.

- A. OVDC/OVP covenants that it will not build, construct, or operate any well or other extraction facility to produce or pump groundwater from, beneath or tributary to any parcel of land listed on Exhibit D of the Stipulated Judgment.
- B. OVDC/OVP covenants that, within one year of the Effective Date of this Agreement, it will abandon or destroy any and all wells or other extraction facilities that produce or pump groundwater from, beneath or tributary to any parcel of land listed on Exhibit D of the Stipulated Judgment in compliance with the standards set forth in the most current version of California Department of Water Resources Bulletin 74.
- C. OVDC/OVP consents to the recording of the Memorandum of Agreement for Transfer of Water Rights in Real Property attached hereto as Exhibit 2.

4. Consideration to be Provided Over Time by YVWD.

- A. Initial Annual YVWD Consideration. Within 30 days following the approval of this Agreement by the Yucaipa Valley Water District Board of Directors, YVWD will pay OVDC/OVP \$331,259.52 for the 2,797.80 acre feet [1,398.90 acre feet x 2 years] of transferred water rights in Calendar Year 2018 and Calendar Year 2019.
- B. Adjusted Annual YVWD Consideration. On or before April 1, 2021, and annually thereafter on or before each subsequent April 1 until the termination of this Agreement, YVWD will pay OVDC/OVP the Adjusted Annual YVWD Consideration calculated as follows: ((1,398.90 AF or the adjusted volume of OVDC/OVP's Overlying Water Rights per the Stipulated Judgment as of December 31 of the calendar year preceding the payment) minus (the Cumulative Total Offset Volume, as defined in Section 4.C.i below) multiplied by (\$118.40/AF or the lowest cost category of imported water sold by the San Bernardino Valley Municipal Water District (SBVMWD) during the calendar year preceding the Adjusted Annual YVWD Consideration payment [e.g., SBVMWD adopted Resolution No. 888, which set a Tier II Seasonal Storage rate at \$118.40/AF, which is the lowest cost category of imported water received by YVWD in 2020])).
- C. New Development Consideration. On June 2, 2020, YVWD adopted Resolution No. 2020-30, *A Resolution of the Yucaipa Valley Water District Setting Forth and Updating the Calculation for Facility Capacity Charges Related to the Purchase of Permanent Supplemental Water Resources for New Development Within Riverside County*. This Resolution, and subsequent updates, set forth a Supplemental Water Facility Capacity Charge to the following development areas that will be used to determine the amount of development fees applicable to particular developments on OVDC/OVP parcels. Developer payments of these fees will be used to fund additional payment of New Development Consideration to OVDC/OVP. The amount of New Development Consideration to be paid to OVDC/OVP will be determined by YVWD as follows:
 - Summerwind Ranch at Oak Valley: 34% of the Supplemental Water Facility Capacity Charge.

- Oak Valley Development Company: 100% of the Supplemental Water Facility Capacity Charge.
 - Other Applicable Developments: 50% of the Supplemental Water Facility Capacity Charge.
- i. New Development Consideration payments to OVDC/OVP will be made, in accordance with the percentages listed above, on a quarterly basis from funds received, if any, by YVWD in connection with development of the parcels. Along with each New Development Consideration payment, YVWD will include a statement of the number of acre feet offset by the development and the Cumulative Total Offset Volume. The Cumulative Total Offset Volume is the sum of water offset by new development under this Agreement and will be used to calculate the Adjusted Annual YVWD Consideration thereafter.
- D. Full Satisfaction of YVWD Consideration Obligations. The consideration obligations of YVWD under this Agreement will be fully satisfied upon YVWD's New Development Consideration payment along with a statement of a Cumulative Total Offset Volume equal to or in excess of the adjusted volume of OVDC/OVP's Overlying Water Rights per the Stipulated Judgment as of December 31 of the calendar year preceding the payment.
5. Term of Agreement. The term of this Agreement will begin with the Effective Date and will end either when YVWD fully satisfies its consideration obligations, as provided in Section 4.D, or on the 20th anniversary of the Effective Date, whichever occurs first.
6. Indemnity.
- A. OVDC/OVP, at its sole cost and expense, agrees to defend, protect, indemnify and hold YVWD harmless from and against any and all Indemnified Losses (as defined herein) incurred by YVWD relating to, resulting from or otherwise attributable to, directly or indirectly, to any of the following: the breach of any of the representations and warranties set forth in Section 1; or the transfer of the Overlying Water Rights from OVDC/OVP to YVWD, effective October 9, 2018.
- B. As used in this Section 6, "Indemnified Losses" means incurred losses, liabilities, liens, costs and expenses, cost of replacement water (including, without limitation, fees of consultants, attorneys and other experts) and any other incurred obligations, penalties, fines, impositions, fees, levies, lien removal or bonding costs, claims, litigation, demands, causes of action (including, without limitation, any common law cause of action), damages (including any actual, punitive or consequential damages under any statutory or common law cause of action), defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind and nature whatsoever, including interest thereon. Indemnified Losses as used in this Section 6 shall not exceed the total combined value of the consideration under Sections 4.A. and 4.B. of this Agreement.
- C. Separate and independent from its indemnity obligation, OVDC/OVP, at its own expense, agrees to defend, with counsel of YVWD's choosing, any claims,

litigation, demands, causes of action (including, without limitation, any common law cause of action) asserted against YVWD that would, in whole or in part, be covered by the indemnity obligations in the Section 6.

7. **Survival of Terms.** The provisions of Sections 1, 3 and 6 shall survive termination of this Agreement.
8. **Dispute Resolution.** All disputes regarding the interpretation, enforcement and implementation of this Agreement or any provisions hereof shall be resolved as set forth in this Section 8.
 - A. **Notice of Dispute.** A Party may invoke the dispute resolution provisions of this Agreement by providing written notice of the nature and basis of the dispute to the other Party. The Party receiving the notice shall provide a written response within 15 calendar days setting forth its position on the dispute.
 - B. **Notice of Mediation.** If the Party invoking these dispute resolution provisions is not satisfied with the other Party's written response to the notice of dispute, the Party invoking these dispute resolution provisions may provide written notice demanding mediation of the dispute. Within ten 15 calendar days of the notice demanding mediation, the Parties shall either agree upon a mediator or each Party shall provide the names of two mediators confirmed to be available to resolve the dispute. If the Parties cannot agree upon a mutually acceptable mediator within an additional five calendar days, a mediator shall be selected at random from the mediators proposed by all Parties.
 - C. **Mediation Process and Payment.** Within 20 days of the selection of the mediator, or such longer period of time as mutually agreed upon by the Parties, the Parties shall participate in at least one full day session with the mediator in an effort to resolve the dispute. At the conclusion of the full day mediation session, the Parties may agree to continue with the mediation process. Alternatively, at any time after the conclusion of the first mediation session, any Party may provide written notice of an impasse. The costs charged by the mediator shall be borne equally by the Parties. The mediation process describe herein shall not be considered a "litigation or other action" with regard to Section 9.C [Attorneys' Fees], and the Parties shall bear their own fees and costs associated with participation in the mediation process.
 - D. **Agreement Not to Sue During Dispute Resolution.** Except as otherwise provided below, the Parties hereby agree and covenant that they will not initiate or maintain any suit with respect to the interpretation, enforcement and implementation of this Agreement unless the dispute resolution provisions set forth above have been exhausted and an impasse declared. However, this Agreement Not to Sue will not apply to prevent any Party from initiating or maintaining any suit necessary to prevent irreparable harm, including but not limited to loss of its claim due to passage of the relevant statute of limitations for that claim, that could otherwise occur during the time necessary to pursue the dispute resolution procedures set forth herein.

9. **General Provisions.**

- A. *Amendment.* This Agreement may be amended or modified only by a written instrument executed by all of the Parties to this Agreement.
- B. *Jurisdiction and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding any choice of laws provision that would apply the laws of any other jurisdiction. Any suit, action, or proceeding brought in connection with this Agreement shall be brought and maintained exclusively in the Superior Court of San Bernardino County, California and the Parties agree to submit to the jurisdiction of that court.
- C. *Attorneys' Fees and Costs.* The prevailing Party in any litigation or other action to enforce or interpret this Agreement shall be entitled to reasonable attorneys' fees, expert witnesses' fees, costs of suit, and other and necessary disbursements in addition to any other relief deemed appropriate by a court of competent jurisdiction.
- D. *Headings.* The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Parties to this Agreement.
- E. *Construction and Interpretation.* This Agreement has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.
- F. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and, except as expressly provided in this Agreement, supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.
- G. *Successors and Assigns.* Neither Party may assign its interests in or obligations under this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld or delayed. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the respective Parties to this Agreement.
- H. *No Third Party Beneficiaries.* This Agreement shall not create any right or interest in any non-Party or in any member of the public as a third party beneficiary nor may any such non-Party or member of the public enforce any provision of this Agreement.
- I. *Waivers.* Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement and forbearance to enforce one or more of the rights or remedies provided in this Agreement shall not be deemed to be a waiver of that right or remedy.

- J. *Necessary Actions.* Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.
- K. *Notices.* All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing unless provided otherwise in this Agreement and shall be deemed to have been duly given and received on: (i) the date of service if served personally on the Party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as provided below. Except as provided otherwise in this Agreement, email addresses are provided for courtesy copies only, and notice may not be given by email. Either Party may change the place for the giving of notice to it by thirty (30) days prior written notice to the other Party as provided herein.

If to OVDC/OVP: Oak Valley Partners, L.P.
Attn: John Ohanian
Post Office Box 645
Calimesa, California 92320
Email: johanian@tvglc.com

With a copy to: Oak Valley Partners, L.P.
Attn: Craig Martin
2242 Good Hope Road
Prosper, Texas 75078
Email: cmartin@tvglc.com

If to YVWD: Yucaipa Valley Water District
Attn: General Manager
Post Office Box 730
Yucaipa, California 92399
Email: jzoba@yvwd.us

With a copy to: Law Office of David Wysocki
Attn: David Wysocki
543 E. Mariposa Drive
Redlands, California 92373
Email: dwysockilaw@gmail.com

- L. *Authority.* Each signatory of this Agreement represents and warrants that s/he is authorized to execute this Agreement on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.
- M. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall

constitute but one and the same instrument. Signatures may be delivered electronically or by facsimile and shall be binding upon the Parties as if they were originals.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

OAK VALLEY DEVELOPMENT COMPANY, LLC,
a Texas Limited Liability Company

By:  _____ +
Craig Martin, President

YUCAIPA VALLEY WATER DISTRICT,
a California County Water District


By:  _____
Chris Mann, President

Exhibit 1

Executed Beaumont Basin Watermaster Form 5

Notice to Adjust Rights of and Overlying Party due to Proposed Provision of Water Service by an Appropriator

Beaumont Watermaster - Form 5

NOTICE TO ADJUST RIGHTS OF AN OVERLYING PARTY DUE TO PROPOSED PROVISION OF WATER SERVICE BY AN APPROPRIATOR

Please take notice that Yucaipa Valley Water District ("Appropriator") proposes to provide retail water service to Oak Valley Partners ("Overlying Owner") and that all original 1,806 / revised 1,398.90 acre feet ("Earmarked Water") of Overlying Water Rights will be transferred to the Appropriator when the Overlying Owner received water service on October 9, 2018.

Notice is hereby given that the Watermaster will reduce the Overlying Owner's Overlying Water Right(s) (as shown in Exhibit B, Column 4 of the Judgment and modified by the redetermination of safe yield) by the amount of Earmarked Water and adjust the Appropriative Water Rights of the Appropriator effective on the day when water service is first provided by the Appropriator.

OVERLYING OWNER

Oak Valley Development Company /
Oak Valley Partners

Overlying Party

John Ohanian

Authorized Agent - Print Name

Director of Development
Title

[Signature]
Signature
11/18/2019

Date

Post Office Box 645

Calimesa, California 92320

Address for Notice

(909) 795-8941

Telephone

johanian@tvglc.com

Email Address

APPROPRIATOR

Yucaipa Valley Water District

Appropriator Party

Joseph B. Zoba

Authorized Agent - Print Name

General Manager

Title

[Signature]
Signature
Nov. 19, 2019

Date

Post Office Box 730

Yucaipa, California 92399

Address for Notice

(909) 797-5119 x2

Telephone

jzoba@yvwd.us

Email Address

For Watermaster Use
Date Form is Received:
Date Earmarked Water is First Used:

Exhibit 2

Memorandum of Agreement for Transfer of Water Rights in Real Property

3524802.1

**Recording Requested by
and When Recorded, Return to:**

Yucaipa Valley Water District
P.O. Box 730
Yucaipa, California 92399-0730
Attention: General Manager

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

**MEMORANDUM OF AGREEMENT FOR
TRANSFER OF WATER RIGHTS IN REAL PROPERTY**

This MEMORANDUM OF AGREEMENT FOR TRANSFER OF WATER RIGHTS IN REAL PROPERTY ("Memorandum") is entered into this ____ day of _____, 20__, by and between the YUCAIPA VALLEY WATER DISTRICT, a county water district ("YVWD"), and OAK VALLEY DEVELOPMENT COMPANY, LLC, A Texas Limited Liability Company successor in interest to Oak Valley Partners, L.P., a Texas limited partnership ("Landowner").

This Memorandum is made with reference to the following:

A. Landowner is the owner of certain real property in the County of Riverside, State of California, which is legally described in Exhibit "A" attached hereto and incorporated herein (the "Land").

B. YVWD is an Appropriator Party and Landowner is an Overlying Party pursuant to that certain Judgment Pursuant to Stipulation Adjudicating Groundwater Rights in the Beaumont Basin, Case No. RIC 389197, which was filed in the Superior Court of Riverside County, California on February 4, 2004 (the "Stipulated Judgment"). The purpose of the Stipulated Judgment is to adjudicate the water rights pertaining to certain real property located in the County of Riverside, State of California, including without limitation the Land. The Stipulated Judgment is incorporated herein by reference.

C. The Stipulated Judgment provides a process to effectuate the transfer of Overlying Water Rights to an Appropriator Party. These provisions of the Stipulated Judgment were modified on June 5, 2019, under Resolution No. 2019-02 Amending Section 7 of the Rules and Regulations of the Beaumont Basin Watermaster. Under these modified provisions, Overlying Water Rights are transferred to an Appropriator Party by filing a "Form 5," which provides notice of the "Adjustment of Rights." The parties hereto prepared and executed a Form 5 to transfer and earmark "all original

1,806 / revised 1,398.90 acre feet” of Landowner’s Overlying Water Rights to YVWD. The Form 5 was executed by Landowner on November 18, 2019, and by YCWD on November 19, 2019, and was filed with the Watermaster on November 20, 2019 (“Form 5”). This completed the transfer of Landowner’s Overlying Water Rights to YVWD, with an effective date of October 8, 2018.

D. The Stipulated Judgment further provides that when an Overlying Party receives water service as provided in the Stipulated Judgment, the Overlying Party shall forbear the use of that volume of the Overlying Water Rights earmarked by the Appropriator Party, and the Appropriator Party providing such service shall have the right to produce the volume of water foregone by the Overlying Party, in addition to other rights otherwise allocated to the Appropriator Party.

E. By this Memorandum, YVWD and Landowner desire to memorialize certain water rights of Landowner and YVWD pertaining to the Land.

NOW, THEREFORE, YVWD and Landowner hereby agree as follows:

1. Landowner shall forbear the use of the volume of the Overlying Water Rights for the Land earmarked by YVWD under the Form 5, and YVWD shall have the right to produce the volume of water foregone by Landowner, in addition to other rights otherwise allocated pursuant to the Stipulated Judgment.

2. Landowner covenants that it will not build, construct or operate any well or other extraction facility to produce or pump groundwater from, beneath or tributary to any parcel of land listed on Exhibit D of the Stipulated Judgment.

3. Landowner covenants that it will abandon or destroy any and all wells or other extraction facilities that produce or pump groundwater from, beneath or tributary to any parcel of land listed on Exhibit D of the Stipulated Judgment in compliance with the standards set forth in the most current version of California Department of Water Resources Bulletin 74.

4. This Memorandum shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. This Memorandum shall run with the Land, and shall be binding upon the successors and assigns of Landowner with respect to ownership of the Land or any portions thereof.

5. Any capitalized term used, but not defined, in this Memorandum shall have the meaning provided in the Stipulated Judgment.

6. This Memorandum is not intended as a full description of the terms and conditions of the transfer of water rights pertaining to the Land pursuant to the Stipulated Judgment. This Memorandum shall not replace, alter, or modify any term or condition set forth in the Stipulated Judgment, nor shall it be used to interpret the terms and conditions of the Stipulated Judgment.

7. This Memorandum may be executed in counterparts, and all counterparts so executed shall constitute one agreement binding on both parties hereto, notwithstanding that both parties are not signatories to the original or same counterpart.

IN WITNESS WHEREOF, YVWD and Landowner have entered into this Memorandum effective as of the date first set forth above.

[Signatures on Next Page]

YVWD:

YUCAIPA VALLEY WATER DISTRICT, a
county water district

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

LANDOWNER:

OAK VALLEY PARTNERS, LP, a Texas limited
partnership

By: _____,
its general partner

By: _____

Name: _____

Its: _____

EXHIBIT A
LEGAL DESCRIPTION OF LAND
[To Be Inserted]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____

(Seal)

3484844.2

Adjournment