

# Notice and Agenda of a Special Meeting of the Beaumont Basin Watermaster

Thursday, August 27, 2020 at 9:00 a.m.

---

## 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 998-2706-9353#**

**View live presentation material at**  
<https://zoom.us/j/99827069353>

**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 Jagers (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 August 5, 2020 [Page 3 of 80]

### **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. Discussion Regarding Various Legal Memorandums Regarding the Transfer of Overlying Water Rights to Appropriative Rights [Memorandum No. 20-16, Page 15 of 80]

## **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**



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

**Meeting Location:**

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

**I. Call to Order**

*Chairman Arturo Vela called the meeting to order at 10:00 a.m.*

**II. Roll Call**

<i>City of Banning</i>	<i>Arturo Vela</i>	<i>Present</i>
<i>City of Beaumont</i>	<i>Kyle Warsinski</i>	<i>Present</i>
<i>Beaumont-Cherry Valley Water District</i>	<i>Daniel 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.*

*Members of the public who registered and / or attended:*

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

### **III. Pledge of Allegiance**

*Chair Vela led the pledge.*

### **IV. Public Comments:**

*None.*

### **V. Consent Calendar**

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

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

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

### **VI. Reports**

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

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

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

*No report.*

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

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

### **VII. Discussion Items**

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

Recommendation: No recommendation.

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

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

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

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

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

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

*Mr. Blandon reminded the Committee of equipment repairs needed.*

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

Recommendation: No recommendation. Information only.

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

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

Recommendation: Information only.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Chair Vela invited public comment.*

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **VIII. Topics for Future Meetings**

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

### **IX. Comments from the Watermaster Committee Members:**

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

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

### **X. Announcements**

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

## **XI. Adjournment**

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

Attest:

*DRAFT UNTIL APPROVED*

---

Daniel Jagers, Secretary  
Beaumont Basin Watermaster

# BEAUMONT BASIN WATERMASTER

## MEMORANDUM NO. 20-16

**Date:** August 27, 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, Legal Counsel Thierry Montoya was requested to provide a memorandum regarding Resolution No. 2017-2. The information provided by Legal Counsel Thierry Montoya was anticipated to be included as a report from legal counsel at the August 5, 2020 meeting. However, on Thursday, July 30, 2020, Watermaster Committee member Dan Jagers requested that the report 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.

At the Watermaster meeting on August 5, 2020, the Watermaster Committee members discussed the attached material. The Watermaster Committee members requested the respective legal counsel from each agency to conduct a teleconference with Legal Counsel Thierry Montoya and report back at this special meeting as a discussion item.

The following documents have been attached to this memorandum 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



Jaggers, Dan (BCVWD) &lt;dan.jaggers@bcvwd.org&gt;

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 Jaggers  
BCVWD

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



Thierry Montoya &lt;tmontoya@alvaradosmith.com&gt;

To: George Jorritsma; Jaggers, 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



May 15, 2018  
Page 2

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.

///

///

May 15, 2018  
Page 3

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.<sup>1</sup> 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.<sup>2</sup> 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

---

<sup>1</sup> *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.

<sup>2</sup> *In the Matter of Permit 14595, WR 80-16* (1980) “The amount of beneficial use is the basis, measure and limit of an appropriative right in this state.”

4673476.2 -- N1356.1



July 16, 2018

Page 2

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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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

---

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

<sup>4</sup> *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."

<sup>5</sup> *Smith v. Hawkins* (1895) 110 Cal. 122, 127.

<sup>6</sup> *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.

<sup>7</sup> *Bloss v. Rahilly* (1940) 16 Cal.2d 70.

4673476.2 -- N1356.1

July 16, 2018

Page 3

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



September 5, 2018

Page 2

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.4<sup>th</sup> 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

Page 3

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

Page 4

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

Page 3

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.

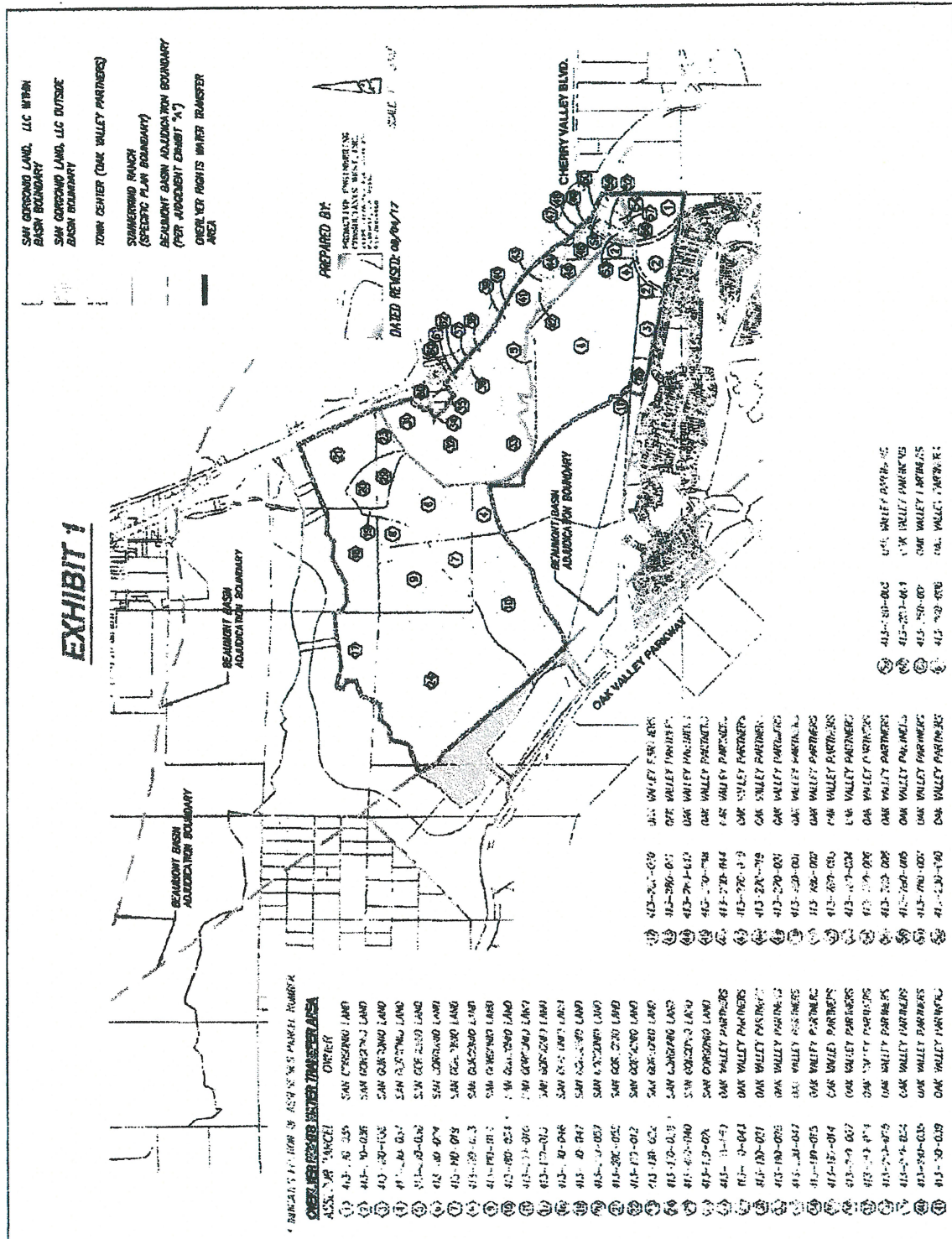
5. Effective Date. The effective date of this resolution is August 30, 2017.

**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

45543111 - N1356.1





# **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](http://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

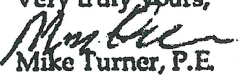
Dear Mr. Zoba:

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

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

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

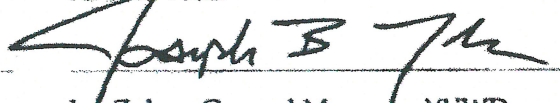
Very truly yours,

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

CONCURRENCE:

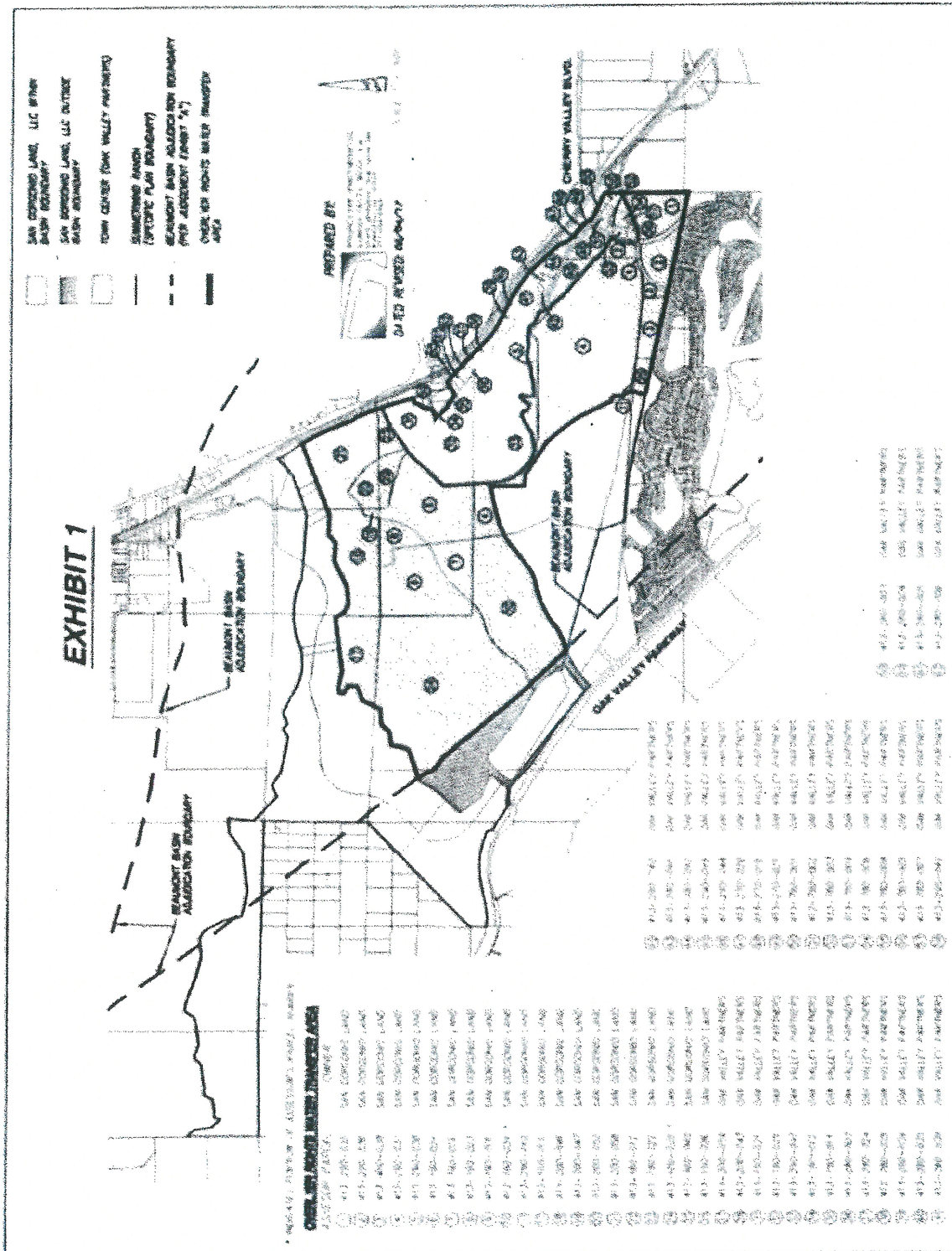
  
John Ohanian - Oak Valley Partners

APPROVAL:

  
Joe Zoba - General Manager, YVWD

CORPORATE OFFICE  
2392 Morse Ave, Irvine, CA 92614 • MAIN 949 777 4000 • FAX 949 777 4050 • [www.ArgentManagementLLC.com](http://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](http://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.

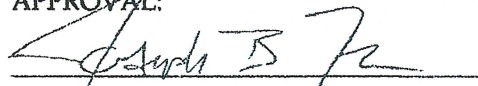
Very truly yours,

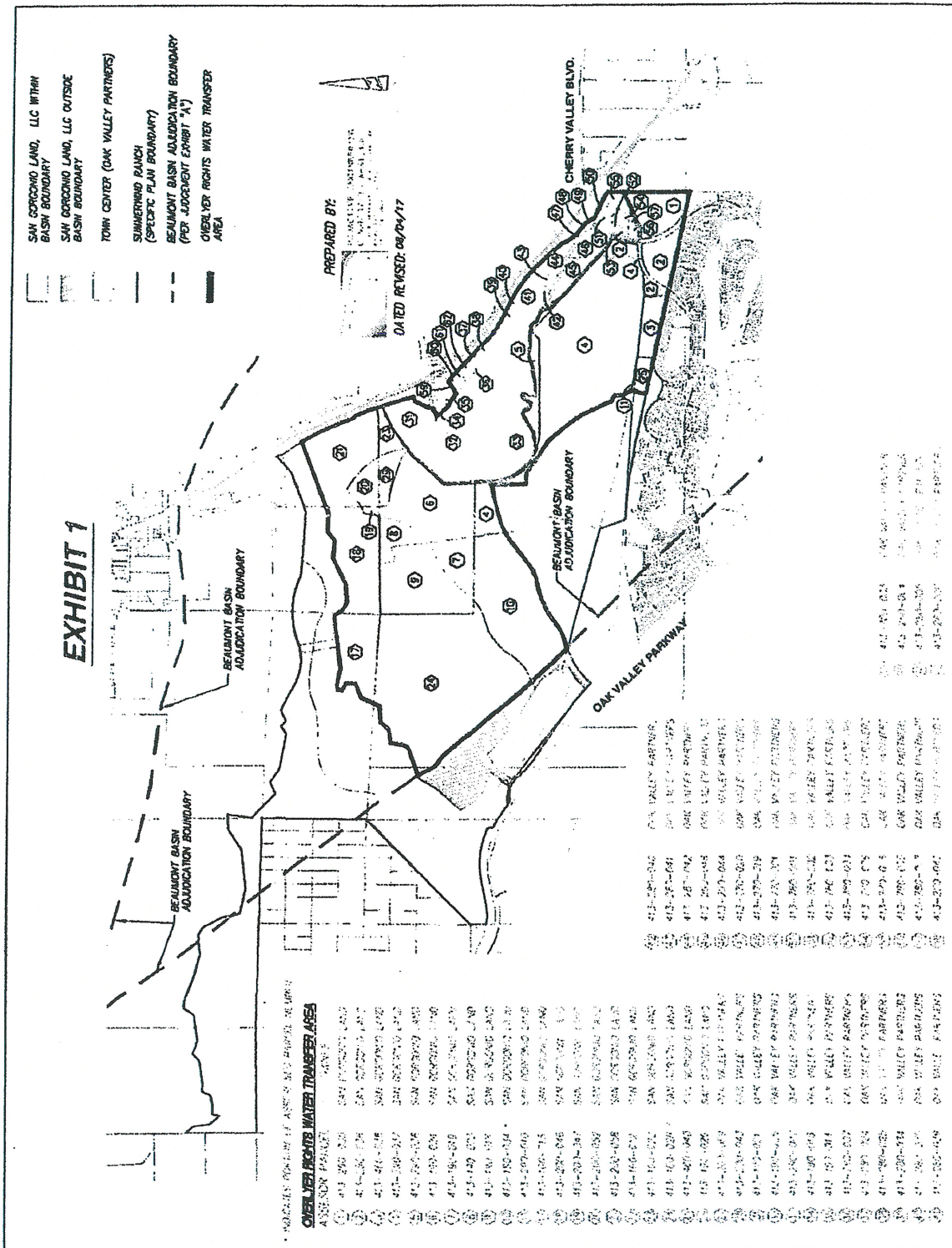
  
Mike Turner, P.E.  
Corporate VP, Land Development  
Argent Management, LLC

CONCURRENCE:

  
John Ohanian - Oak Valley Partners

APPROVAL:

  
Joe Zoba - General Manager, YVWD





# EXHIBIT 5

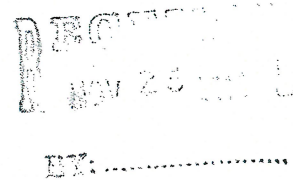


# Yucaipa Valley Water District

12770 Second Street • Post Office Box 730 • Yucaipa, California 92399-0730  
(909) 797-5117 • Fax: (909) 797-6381 • [www.yvwd.dst.ca.us](http://www.yvwd.dst.ca.us)

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*

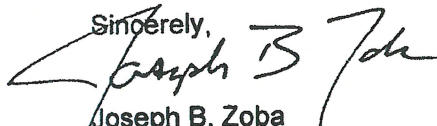
Dear Mr. Jagers:

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 5<sup>th</sup>, 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 5<sup>th</sup> 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 5<sup>th</sup> 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](mailto:jzoba@yvwd.us)>  
**Sent:** Monday, January 21, 2019 11:38 PM  
**To:** Hannibal Blandon <[Blandona@aldaengineering.com](mailto:Blandona@aldaengineering.com)>  
**Cc:** Thierry Montoya <[tmontoya@AlvaradoSmith.com](mailto: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
<b>Total</b>		<b>180.40</b>

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](mailto:jzoba@yvwd.us)



**From:** Hannibal Blandon <[Blandona@aldaengineering.com](mailto:Blandona@aldaengineering.com)>  
**Sent:** Monday, January 21, 2019 5:37 PM  
**To:** 'Thierry Montoya' <[tmontoya@alvaradosmith.com](mailto:tmontoya@alvaradosmith.com)>  
**Cc:** Joseph Zoba <[jzoba@yvwd.us](mailto: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](mailto: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 D<sup>1</sup> 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

<sup>1</sup> 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.<sup>2</sup> 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

<sup>2</sup> 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 20<sup>th</sup> 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