



October 20, 2017

REVISED DRAFT MEMORANDUM

To: Robert Parris, Chair
Antelope Valley Watermaster Board of Directors

From: Phyllis Stanin, Vice President/Principal Geologist
Kate White, Senior Engineer
Todd Groundwater, Watermaster Engineer

Re: **Administrative Assessments**
Issues to be Resolved and Draft Text for the Rules and Regulations

This draft memorandum provides preliminary information regarding administrative assessments for possible inclusion in the Antelope Valley Watermaster Rules and Regulations (also referred to as R&Rs herein). The purpose of this memorandum is to provide sufficient information to facilitate discussion by the Advisory Committee on issues and procedures for implementation of Administrative Assessment and to develop draft text for editing and incorporation into the R&Rs.

It is difficult to provide this information in its proper context because other related sections in the R&Rs have not yet been completed. Some of these undeveloped sections are referenced for clarity. Although the R&Rs are meant to develop processes and procedures to implement the Judgment rather than simply repeat text in the Judgment, some sections or definitions are provided for context. The text below also highlights issues that, once resolved, will require additional editing for inclusion in the R&Rs. Applicable paragraphs from the Judgment (¶) are provided throughout the text for reference.

SECTION X - ADMINISTRATIVE ASSESSMENTS

1.1. Purpose.

Administrative Assessments are charged by the Watermaster to cover costs to be incurred by the Watermaster in administering the Judgment in the coming

year (§13.5.3). Administrative Assessments fund the Administrative Budget, which is adopted by the Watermaster (§19.1). Annual Administrative costs for the coming year are estimated in the Administrative Budget.

1.2. Basis.

The Administrative Assessments are levied uniformly on an annual basis against each acre-foot of: (1) a party's Production Right, (2) a party's right to produce Imported Water Return Flows, (3) a party's production subject to a Replacement Water Assessment and (4) a party's production in excess of the sum of amounts in (1) through (3) above during the Rampdown period¹. Administrative assessments are not levied against production of Stored Water or production of Carry Over water (§19.1).

Production Right is defined in the Judgment as "the amount of Native Safe Yield that may be Produced each Year free of any Replacement Water Assessment and Replacement Obligation. The total of the Production Rights decreed in this Judgment equals the Native Safe Yield. A Production Right does not include any right to Imported Water Return Flows pursuant to Paragraph 5.2" (§13.5.32). Production Rights include Overlying Production Rights (Exhibit 4 of the Judgment), Small Pumper Class Production Rights (Exhibit C), Federal Reserved Water Right (§15.1.4), State of California (§15.1.5), and Non-Overlying Production Rights (Exhibit 3). In addition, the Judgment determined that eight Non-Stipulating Parties (referred to as the Supporting Landowner Parties in the Statement of Decision) also have a Production Right (§15.1.10).

The Judgment also provides for rights to produce groundwater that are not Production Rights. Unless otherwise provided in the Judgment, Administrative Assessments are levied against: (1) the actual Production based on those rights that are subject to the Replacement Water Assessment and (2) during the Rampdown period, the actual Production that is not subject to the Replacement Water Assessment.

¹ Rampdown is defined as "the period of time for Pre-Rampdown Production to be reduced to the native Safe Yield in the manner described in this Judgment" (§13.5.37). The Rampdown Period is determined to begin on "January 1 following entry of this Judgment and continuing for the following seven (7) Years" (§18.2). For this Judgment, entered on December 23, 2015, the Rampdown Period is from January 1, 2016 through December 31, 2022.

1.3. Types of Production Subject to Administrative Assessments.

Administrative Assessments are referred to herein as either Fixed or Variable Administrative Assessments.

- **Fixed Administrative Assessments** are based on each acre foot of a Party's Production Right as described in Sections 1.4. a). below (¶15.1) and are levied at the beginning of the year.
- **Variable Administrative Assessments** are based on either (1) production by a Party in excess of the Production Right or (2) the right to produce Imported Water Return Flows. These assessments are levied each Spring once the Production for the year to which the Administrative Assessment applies is reported; the right to produce Imported Water Return Flows is determined for the current year based on an average of the amounts of imported water used in the five preceding years (¶15.2.2). Variable Administrative Assessments are collected on:
 - each acre foot (AF) of a Party's right to produce Imported Water Return Flows (see R&R Section XX on Imported Water Return Flows) (¶15.2)
 - each acre foot of a Party's production for which a Replacement Water Assessment has been imposed (see R&R Section XX on Replacement Water Assessment) (¶19.2)
 - each acre foot used of a Non-Overlying Production Right holders' allocation of the unused Federal Reserved Water Right (see R&R Section XX on Federal Reserved Water Right) (¶19.1)
 - each acre foot during Rampdown of a Party's production in excess of the sum of its Production Right, Imported Water Return Flows, and Production subject to a Replacement Water Assessment.

Production from Stored Water and/or Carry Over water is excluded from the Administrative Assessment (¶19.1). Administrative Assessments are discussed separately for Parties with a right to produce groundwater that are not Production Rights in Section 1.4. b) below.

1.4. Administrative Assessments are Levied Against:

a) **Production Rights.** Each acre foot of a Party's Production Right (¶15.1 *Allocation of Rights to Native Safe Yield*). These include:

- **Non-Overlying Production Rights.** (Exhibit 3 of the Judgment).
- **Overlying Production Rights.** (Exhibit 4 of the Judgment)

- **Small Pumper Class.** This assessment is based on the allocation of 1.2 acre-feet per year per household or parcel, whichever is the case; metered Production shall be assessed in accord with the actual Production (§5.1.3).
 - **Federal Reserved Water Rights.** Rights shall be subject to the Administrative Assessment only on the actual Production by the United States (§5.1.4).
 - **State of California Production Rights.** All production is subject to Administrative Assessment except in emergency situations (§5.1.5).
 - **Non-Stipulating Parties.** The eight Supporting Landowner Parties (VII., a through h) in the Statement of Decision were determined to have a Production Right as Non-Stipulating Parties (Final Judgment, §3.c). As provided in Paragraph 5.1.10 of the Physical Solution, Non-Stipulating Parties with a Production Right “shall be subject to all provisions of this Judgment, including reduction in Production necessary to implement the Physical Solution and the requirements to pay assessments...” (§5.1.10). Accordingly, Administrative Assessments apply to the Non-Stipulating Parties Production Right.
- b) **Additional Rights to Produce Groundwater.** Administrative Assessments for parties with rights to produce groundwater as specified in the Judgment include:
- **City of Lancaster.** The City can produce up to 500 acre feet of groundwater for reasonable and beneficial uses at its National Soccer Complex. Such production shall only be subject to Administrative Assessment and no other assessments. The City of Lancaster will stop producing groundwater and will use recycled water supplied from District No. 40, when it becomes available, to meet the reasonable and beneficial water uses of the National Soccer Complex (§5.1.7).
 - **Antelope Valley Joint Union High School District.** In addition to its Exhibit 4 Production Right, Antelope Valley Joint Union High School District (AVJUHS) can additionally produce up to 29 AF of groundwater for reasonable and beneficial uses on its athletic fields and other public spaces. When recycled water becomes available to Quartz Hill High School at a price equal to or less than the lowest cost of any of the following: Replacement Obligation, Replacement Water, or other water that is delivered to AVJUHS at Quartz Hill High School, AVJUHS will stop producing the 29 acre feet of groundwater

allocated to it and use recycled water as a replacement. AVJUHSD retains its production rights and allocation pursuant to Exhibit 4 (¶5.1.8). The application of an Administrative Assessment is not specified in the Judgment for this additional right, but it is assumed that the Administrative Assessment would apply to each acre foot of actual production. A legal determination may be needed regarding assessments against this production.

- **Construction of Solar Power Facilities.** Any Party may produce groundwater in excess of its Production Right allocated to it in Exhibit 4 for the purpose of constructing a facility located on land overlying the Basin that will generate, distribute or store solar power through and including December 31, 2016 and shall not be charged a Replacement Water Assessment or incur a Replacement Obligation for such Production in excess of its Production Rights. Any amount of such production in excess of the Production Right through and including December 31, 2016 shall be reasonable to accomplish such construction but shall not exceed 500 acre-feet per Year for all Parties using such water (¶5.1.9). Although the Judgment specifies that the production is not subject to a Replacement Water Assessment, no specification is included for an Administrative Assessment. However, given that it involves production by Exhibit 4 parties in excess of the Production Right, an Administrative Assessment appears applicable.
- **Non-Pumper Class Rights.** “The Non-Pumper Class members claim the right to Produce Groundwater from the Native Safe Yield for reasonable and beneficial uses on their overlying land as provided for in this Judgment...” (¶5.1.2). However, paragraph 9.2.2 notes that the entire Native Safe Yield is being applied to reasonable and beneficial uses in the Basin. Members of the Non-Pumper Class do not and have never Produced Groundwater for reasonable beneficial use as of the date of this Judgment (¶9.2.2), which modifies their rights to produce groundwater except as provided in this Judgment. Although the information on Non-Pumper Class Rights does not specify an Administrative Assessment, Paragraph 9.2.1 “specifically provides for imposition of a Replacement Water Assessment on Non-Pumper Class members.” (¶9.2.1). Given that an Administrative Assessment is imposed on water subject to Replacement Water, it is assumed that an Administrative Assessment applies to actual production by Non-Pumper Class Members, if any.

- **Additional Production by the State of California.** As provided in Paragraph 5.1.5 of the Judgment, the State of California is allowed to produce groundwater in excess of its Production Right under certain conditions. “All production by the State of California shall also be subject to the Administrative Assessment ... except in emergency situations as provided in Paragraph 5.1.5.4.3 below.” (¶5.1.5). The emergency situation allows for the Department of Military to produce groundwater “in an amount necessary to protect and promote public health and safety during an event deemed to be an emergency by the Department of Military...” (¶5.1.5.4.3). Except in this case, an Administrative Assessment would be applicable to all production in excess of its Production Right (as well as on its Production Right as provided in Section 1.4 a) above).
- **Phelan Pinon Community Services District (Phelan).** Phelan can export groundwater from the Adjudication Area for delivery to its service area outside of the adjudication boundary, subject to the following conditions (¶6.4.1.2):
 - pumping does not exceed 1,200 AFY,
 - pumping does not cause Material Injury,
 - Phelan pays a Replacement Water Assessment pursuant to Paragraph 9.2,
 - Phelan pays any other costs deemed necessary to protect Production Rights decreed in the Judgment.

Given that an Administrative Assessment is imposed on water subject to Replacement Water, it is assumed that an Administrative Assessment applies to actual production by Phelan.

- c) **Imported Water Return Flows.** Each acre foot of a Party's right to produce Imported Water Return Flows (¶5.2, Rights to Imported Water Return Flows).
- d) **Replacement Water Assessment.** Each acre foot of a Party's Production for which a Replacement Water Assessment has been imposed (¶9.2, Replacement Water Assessment).
- e) **Excess Production.** During the Rampdown Period, each acre foot of a Party's Production in excess of the sum of the rights in 1.4.a/1.4b, the right to Produce Imported Water Return Flows and the water subject to the Replacement Water Assessment [(a) through (d) above], excluding Production from Stored Water and/or Carry Over water (¶9.1).

During Rampdown, the Administrative Assessment shall be no more than five dollars per acre foot, or as ordered by the Court upon petition of the Watermaster (¶9.1).

1.5. Administrative Assessments are Not Levied Against:

- a) **Carry Over Water.** Administrative Assessments on Carry Over Water have already been paid through levy against Production Rights and rights to Imported Water Return Flows.
- b) **Emergency Military Use.** The Department of Military may Produce additional groundwater in an amount necessary to protect and promote public health and safety during an event deemed to be an emergency by the Department of Military pursuant to California Government Code sections 8567 and 8571, and California Military and Veterans Code sections 143 and 146. Such Production shall be free from any assessment, including any Administrative, Balance, or Replacement Water Assessment (¶15.1.5.4.3).
- c) **Stored Water.** For Stored Water that originated as Carry Over Water, Administrative Assessments have already been paid through levy against Production Rights. Administrative Assessments are also not levied against other types of Stored Water (e.g., imported, recycled, or other Stored Water not part of the Native Safe Yield).

1.6. Assessment Procedure.

Administrative Assessments shall be levied and collected in accordance with the following procedures and schedules.

Table 1: Administrative Assessment Timetable

Item	Available	Approval or Due
Administrative Budget, Administrative Assessment rate, and Replacement Water Assessment rate for following year	September Board meeting and no later than October 1	November Board meeting and no later than December 1
Production Report Form	January 15	March 1
Fixed Administrative Assessment	January 15	March 1 Due April 1 Delinquent
Variable Administrative Assessment	May 1	July 1 Due August 1 Delinquent

Note: Dates are draft and subject to revision.

- a) **Administrative Budget.** The Watermaster shall make available to all Parties its proposed Administrative Budget, Administrative Assessment rate, and Replacement Water Assessment rate for the following calendar year at the time of its September meeting and no later than October 1. The Watermaster will hold a public hearing to receive comments on the proposed Administrative Budget and Assessment rate and adopt its final Budget and Assessment rate at its November meeting and no later than December 1.
- b) **Production Report.** By January 15 of each year the Watermaster will mail all Producers a form requesting reporting of total Production, imported water use, Carry Over water use, and Stored Water use for the preceding year. The forms are to be returned by March 1.
- c) **Fixed Administrative Assessment.** By January 15 of each year the Watermaster shall invoice all Producers with Production Rights identified in Section 1.4.a. above for the Administrative Assessments on these Production Rights. These annual Administrative Assessments are fixed and are based on the Producer's Production Rights. Fixed Administrative Assessments are due on March 1 and will become delinquent on April 1 of each year.
- d) **Variable Administrative Assessment.** By May 1 of each year the Watermaster shall invoice all Producers for use or rights of following in the previous year:
 - Rights to produce groundwater identified in Section 1.4.b. above

- Right to Imported Water Return Flows
- Replacement Water Obligations
- During Rampdown, a Party's Production in excess of the sum of its Production Right, Imported Water Return Flows, and Replacement Water Assessment, excluding Production from Stored Water and/or Carry Over water.
- Unused Federal Reserved Water Right allocation used by the Non-Overlying Production Rights holders.

These Variable Administrative Assessments are due on **July 1** and will become delinquent on **August 1** of each year.

- e) **Delinquency.** Assessments become delinquent one month after the date it is due (**April 1** for delinquent Fixed Administrative Assessments and **August 1** for delinquent Variable Administrative Assessments). Delinquent Assessments shall bear interest at the then current real property tax delinquency rate for the county in which the property of the delinquent Party is located. This interest rate shall apply to any said delinquent assessment from the due date thereof until paid. The delinquent assessment, together with interest thereon, costs of suit, attorney's fees and reasonable costs of collection, may be collected pursuant to (1) motion by the Watermaster giving notice to the delinquent Party only, (2) Order to Show Cause proceeding, or (3) such other lawful proceeding as may be instituted by the Watermaster or the Court. The delinquent assessment shall constitute a lien on the property of the Party as of the same time and in the same manner as does the tax lien securing county property taxes.
- f) **United States.** The United States shall not be subject to payment of interest absent congressional waiver of immunity for the imposition of such interest. The United States shall not be subject to costs and fees absent congressional waiver of immunity for such costs and fees. The property of the United States shall not be subject to any lien.
- g) **Delinquency List.** The Watermaster shall annually certify a list of all such unpaid delinquent assessments. This list will be presented at the **September Watermaster Board meeting and no later than October 1.** The Watermaster shall include the names of those Parties and the amounts of the liens in its list to the County Assessor's Office in the same manner and at the same time as it does its Administrative Assessments.
- h) **Accounting.** The Watermaster shall account for receipt of all collections of assessments and shall pay such amounts collected to the Watermaster. The

Watermaster shall also have the ability to seek to enjoin Production of those Parties, other than the United States, who do not pay assessments pursuant to the Judgment.

1.7. Special Billing and Payment Procedures for Assessments on Small Pumper Class Members

As provided in Section 1.4 a) above, the Administrative Assessment on the unmetered Small Pumper Class is based on the allocation of 1.2 acre-feet per year per household or parcel, whichever is the case; metered Production shall be assessed in accord with the actual Production (¶5.1.3). The current list of small pumpers includes approximately 4,292 parties, none of which are currently required to have meters. In consideration of typical Administrative Assessments in the range of \$1/AF to \$5/AF, each of 4,292 parties would owe \$1.20 to \$6.00 per year (totaling \$5,150.40 to \$25,752.00). The significant costs for a billing system to accommodate this number of accounts for such small amounts per account presents a challenge to annual invoicing procedures. Importantly, processing these individual small amounts may cost more than each payment is worth.

It seems reasonable for the Watermaster to explore alternatives to establishing 4,292 separate accounts with annual invoices of only a few dollars each.

Alternatives to explore include:

- Unmetered Small Pumpers could be asked to pay assessments for multiple years, recognizing that a five-year assessment would raise the bill from \$6.00 to only \$30.00.
- One generic invoice could be mass-mailed to all unmetered Small Pumpers, given the large number of identical assessments. Payments could be recorded in a simple spreadsheet outside of the typical accounting system.
- A direct payment option could be set up for unmetered Small Pumpers. They could be reminded annually of payment via email.
- Administrative Assessments on unmetered Small Pumpers could be added as a special assessment to property tax bills.
- Defer or waive administrative assessments on unmetered Small Pumpers.

These and other options should be considered to lower administrative billing and accounting costs.