



March 2, 2018

FINAL MEMORANDUM

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

cc: Craig Parton,
Price Postel & Parma LLP, Watermaster Legal Counsel

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

Re: Procedures for New Production Requests and for Review of Well Applications for New or Replacement Production Wells by the Antelope Valley Watermaster Engineer

This memorandum describes draft procedures for review and subsequent approval or denial of requests for new production and Well Applications for new or replacement production wells from:

- applicants with a right to produce groundwater under the Judgment¹, and
- applicants not identified in the Judgment as having a right to produce groundwater.

Applicants that are not identified individually in the Judgment as having rights to produce groundwater are referred to herein as applicants with “unknown production rights.” The procedures in this section of the Rules and Regulations describe a process whereby production rights, if any, for these applicants can be defined. Note that production rights for this usage is not capitalized to avoid confusion with the term Production Rights defined in the Judgment that is specifically linked to the Native Safe Yield.

This draft text is being provided to the Advisory Committee, the Watermaster Board, and posted to the Watermaster website for comments, edits, and subsequent inclusion in the Antelope Valley Watermaster Rules and Regulations (R&Rs). Pending legal review and final edits, the Board will approve the text for use in the R&Rs.

The process incorporates four separate forms that will be developed once the draft procedures have been finalized. Information to be included on the forms are listed herein for illustration and

¹ Parties with a right to produce groundwater under the Judgment include the State of California; the U.S. Federal Government; parties listed on Exhibit 3 (Non-Overlying Producers), Exhibit 4 (Overlying Producers), and Exhibit C (Small Pumper Class); the Non-Stipulating Parties, and other parties identified in the Judgment as having a right to produce groundwater, such as Phelan Piñon Hills Community Services District and the City of Lancaster.

consideration by the Board. Once the procedures are finalized, forms will be posted on the Watermaster website, the name of each form will be incorporated into the R&R text, and the list of items to be included on the forms may be removed from this text to avoid duplication.

According to the Judgment (¶18.4.2), the Watermaster will adopt the R&Rs and provide them to the Court for approval. Prior to adoption, the Watermaster must hold a public hearing on the R&Rs. Draft Rules and Regulations must be provided to all parties 30 days prior to the date of the hearing (¶18.4.2). Because sections of the R&Rs are being developed over time, this process is being repeated as portions of the R&Rs are ready for adoption. This draft text on the review procedures for New or Replacement Well Applications is being provided to all parties 30 days prior to a public hearing scheduled for February 28, 2018.

Because the R&Rs are being developed over time by section, the draft text provided herein likely includes more context or references to the Judgment than will be needed when incorporated into the final R&Rs. It is recognized that this draft text may be edited for clarity as new sections are added to the R&Rs. All new or revised draft text will be available for review by the Advisory Committee and the public before approval by the Board and incorporation into the R&Rs.

SECTION X –NEW OR REPLACEMENT WELL APPLICATIONS AND NEW PRODUCTION REQUESTS

1.1. Purpose.

New and replacement wells drilled in the Adjudication Area of the Antelope Valley are subject to approval by the Antelope Valley Watermaster. A new well is any well that does not presently exist but is proposed to be constructed. A replacement well is a specific kind of new well that is located within 300 feet of an existing well and owned by the same Party that intends to construct the new well. The following sections describe the procedures to be followed by the Watermaster Engineer for evaluating requests for new and replacement wells and to make findings to the Watermaster for approval or denial. These procedures incorporate requirements in the Judgment and support the Watermaster Engineer’s duties to provide proper water accounting and tracking of groundwater production.

Procedures for applications for new and replacement wells would involve an initial determination as to whether or not a party has a known right to produce groundwater under the Judgment. For applicants without a known right, the well application may relate to whether the well will be used by an “unknown” member of the Small Pumper Class or for New Production. For completeness, these procedures also include how to address applicants that may be unknown members of the Small Pumper Class or applicants for New Production.

Although these procedures focus primarily on production wells, an approval process for non-production wells is also included. Non-production wells include piezometers, monitoring wells, and cathodic protection wells that will pump only minimal amounts of groundwater associated with well construction and/or groundwater sampling.

Procedures herein are not meant to duplicate or replace well permitting and well abandonment procedures implemented by Kern, Los Angeles, and San Bernardino counties. Both counties are cooperating with the Watermaster; we will obtain final well completion reports and abandonment records to the Watermaster for wells inside the adjudication area, as available.

1.2. Basis.

The Judgment allows Parties to change a point of extraction for any Production Right so long as such change of a point of extraction does not cause Material Injury (§17). A replacement well located within 300 feet of a Party’s existing well is not considered a change in point of extraction (§17). Any Party seeking to construct a new well in order to change a point of extraction for any Production Right shall notify the Watermaster of the location of a new point of extraction and the intended place of use of the water produced at least 90 days in advance of drilling any new well (§17.1).

The United States can change its point(s) of extraction for the Federal Reserved Water Right at the sole discretion of the United States to any point or points within the boundaries of Edwards Air Force Base or Plant 42. The point(s) of extraction for the Federal Reserved Water Right may be changed to points outside the boundaries of Edwards Air Force Base or Plant 42, provided such change in a point of extraction does not cause Material Injury. The United States shall consider information in its possession

regarding the effect of Production from the intended new point of extraction on the Basin and on other Producers (§17.2). The Watermaster Engineer has a duty to track locations and amounts of groundwater production and therefore, is requiring the U.S. to submit Change in Point of Extraction forms for record-keeping purposes.

With regard to applications for New Production, the Watermaster shall consider and determine whether to approve applications for New Production after consideration of the findings of the Watermaster Engineer (§18.4.9). The process and requirements for New Production applications are described in Section 18.5.13 of the Judgment (§18.5.13.1 through 18.5.13.4). In addition, the Watermaster decision on a New Production application may be subject to Court Review (pursuant to §20.3) (§18.5.13.4).

1.3. Process for Review of Well Applications

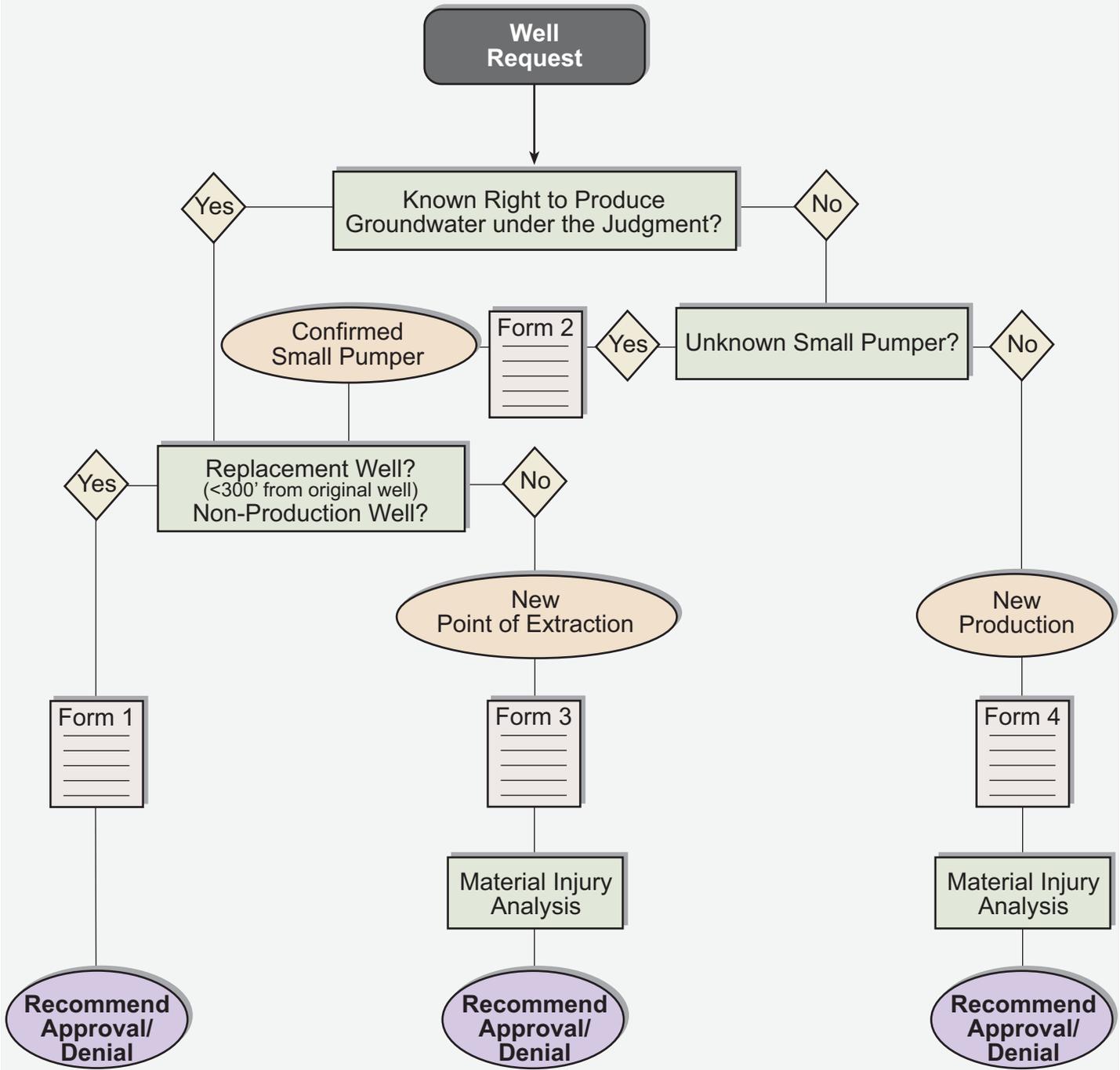
Prior to approval of a well application, the Watermaster Board must make the following findings:

- Applicant has a known right to produce groundwater under the Judgment, or qualifies as an unknown small pumper, or is a non-pumper with no pumping rights but agrees to purchase replacement water.
- Applicant with a right to produce groundwater requests a replacement well (within 300 feet of an existing well) or a new well from a new point of extraction; or applicant is a non-pumper with no pumping rights and requests a well for new production; or applicant requests a non-production well.
- Applicant's well will not cause material injury as defined by the Judgment and these rules.

The Watermaster Board shall adopt the findings upon recommendation of the Watermaster Engineer at a regular or special meeting of the Watermaster Board. The Watermaster shall deny any well application where these findings cannot be made.

In order to allow the Board to make these findings, the Watermaster Engineer will follow a process described in the following sections for review of well approval applications. This process is shown schematically by the flow chart on **Figure 1**.

**Figure 1: Process for Well Application Review
Watermaster Engineer**



Notes:

- Form 1: Replacement Well Application (for Existing Production Rights)
- Form 2: Small Pumper Qualifying Documentation
- Form 3: New Point of Extraction Application
- Form 4: New Production Application

February 2018



There are four questions associated with the review process:

1. Does the Applicant have a known right to produce groundwater under the Judgment?
2. Does the Applicant qualify as an unknown Small Pumper?
3. Is there be a change in a point of extraction (i.e., request for a new well more than 300 feet from the original well)?
4. Is there a Material Injury associated with any change in point of extraction or new production?

The answers to these questions ultimately lead to a Watermaster Engineer recommendation for approval or denial of the well application based on the findings from this process. The following sections outline the procedures that the well applicants must follow and forms that must be completed for the Watermaster Engineer to recommend that the Watermaster Board make the necessary findings. The process is summarized below and discussed in more detail in the sections that follow.

Known Right to Produce Groundwater. If the Applicant has a known right to produce groundwater under the Judgment and is requesting a replacement well. Applicant will need to provide the applicable information in Section 1.4 and on Form 1, as described below. This process is illustrated on the left side of **Figure 1**, ending with the subsequent recommendation for approval or denial.

New Point of Extraction. For new wells other than replacement wells, the Applicant will need to provide the applicable information in Section 1.4 and on Form 3, as described below. This is considered a **change in point of extraction** and is illustrated in the central portion of the flow chart on **Figure 1** (New Point of Extraction flow path), ending in subsequent recommendation of approval or denial.

Unknown Small Pumper. The Watermaster Administrative staff or Watermaster Engineer will assist a pumper with the determination if they could potentially be an unknown Small Pumper. If so, an unknown Small Pumper can demonstrate their eligibility as a Small Pumper Class Member under the Judgment by providing the information in Section 1.5, including information for Form 2, as described below (see **Figure 1**). A confirmed Small Pumpers can then request a replacement well by providing the applicable information in Section 1.4, including Form 1, as described below (represented as the flow path ending in approval/denial of Form 1 on **Figure 1**). For new wells that are not replacement wells, the Applicant will need to provide change in point of extraction information in Section 1.5 below (**New Point of Extraction** represented as the Form 3 flow path on **Figure 1**).

New Production. If the applicant has no production rights, including being ineligible for the Small Pumper Class, they will also need to submit a New Production Application. The Applicant will also need to provide the information in Section 1.7, including completion of Form 4, as described below. This is illustrated on the right side of **Figure 1** by the New Production/Form 4 flow path.

Material Injury. A Material Injury review is required if there is a **new point of extraction** or **new production** (Forms 3 and 4 on **Figure 1**). If there is no evidence of Material Injury, the Watermaster Engineer will recommend approval by the Watermaster; if there is evidence for a potential Material Injury that cannot be mitigated, the Watermaster Engineer will recommend denial by the Watermaster.

Non-Production Wells. To apply for a new non-production well, including piezometers, monitoring wells, and cathodic protection wells, the applicant can also use Form 1. Installation of non-production wells will not be subject to a Material Injury analysis as long as there is a reasonable demonstration that only minimal amounts of groundwater will be used and the use is associated with well construction or groundwater sampling.

1.4. Requests for New or Replacement Wells from Applicants with Known Rights to Produce Groundwater.

Parties with a right to produce groundwater under the Judgment include the State of California; the U.S. Federal Government; parties listed on Exhibit 3 (Non-Overlying Producers), Exhibit 4 (Overlying Producers), and Exhibit C (Small Pumper Class); the Non-Stipulating Parties; and other parties identified in the Judgment as having a right to produce groundwater (e.g., Phelan Pinon Hills CSD, City of Lancaster). This section of the R&Rs describes a process whereby those with known rights to produce groundwater can request new or replacement wells.

The Judgment allows Parties to change a point of extraction for any Production Right so long as such change of a point of extraction does not cause Material Injury (§17). In addition, a replacement well located within 300 feet of a Party's existing well is not considered a change in point of extraction (§17). Any Party seeking to construct a new well in order to add a new point of extraction for any Production Right shall notify the Watermaster of the location of a new point of extraction and the intended place of use of the water produced at least 90 days in advance of drilling any new well (§17.1).

The United States can change its point(s) of extraction for the Federal Reserved Water Right at the sole discretion of the United States to any point or points within the boundaries of Edwards Air Force Base or Plant 42 and not be subject to Material Injury review. The point(s) of extraction for the Federal Reserved Water Right may be changed to points outside the boundaries of Edwards Air Force Base or Plant 42, provided such change in a point of extraction does not cause Material Injury. The United States shall consider information in its possession regarding the effect of Production from an intended new point of extraction on the Basin and on other Producers (§17.2).

Because the change in point of extraction could potentially result in a Material Injury analysis, the U.S. Federal Government will also be subject to notification requirements in §17.1 and submittal of a well application for all new or replacement wells associated with these procedures. The Watermaster Engineer acknowledges that the U.S. can change a point of extraction within its boundaries at its sole discretion without a Material Injury analysis; nonetheless, the Watermaster Engineer has a duty to track locations and amounts of groundwater production and therefore, is requiring the U.S. to submit Change in Point of Extraction forms for record-keeping purposes.

With regard to Small Pumper Class members, the Judgment further states that their pumping rights are not transferable separately from the parcel of property on which the water is pumped unless the Small Pumper Class member received Court approval to move their water right to another parcel they own. If a Small Pumper Class member parcel is sold, absent a written contract stating otherwise and subject to

the provisions of the Judgment, the water right for that Small Pumper Class member parcel shall transfer to the new owners of that parcel. The pumping rights of Small Pumper Class Members may not be aggregated for use by a purchaser of more than one Small Pumper Class Member's property. (¶15.1.3.3).

Applicants with known production rights requesting to install a replacement well within 300 feet of an existing well or a new non-production well must provide the following information.

Form 1 Information (Replacement Well Application for Existing Production Rights or New Non-Production Well)

- Property owner's name, mailing address, parcel APN number and property address (if different than mailing address), email and phone number.
- Location and description of existing and new/replacement wells: use (domestic, agricultural, etc.), construction date, diameter, casing materials, depth, surface seal material and depth, screened interval, pumping capacity (gallons per minute), annual production (acre-feet/year), latitude and longitude (or X,Y coordinates), ground surface elevation, depth to water, status (active, inactive), site plan showing existing and new/replacement well locations, and a copy of the DWR Well Completion Report, if available.
- Abandonment plans for existing well, if applicable.
- Proposed new/replacement well construction, driller, contact information.
- Estimate of production capacity (gpm) and future annual production from the replacement well.
- Well locations and distance between replacement well and existing well.
- If a new well is proposed in order to stop sharing an existing well (also see requirements described in Section 1.6 below):
 - Estimate of annual production from the shared well for the 1946 to 2015-time period by year (if not provided above).
 - Estimate of future annual production from replacement well(s) and from the previously shared well (not to exceed 3 AFY each unless a Replacement Water Assessment is paid).
 - Well locations and distance between replacement well(s) and shared well.
- Agreement that the well will be metered (unless Small Pumper Class²) in accordance with the metering requirements in Section XX of these R&Rs.
- Any other information requested by the Watermaster Engineer that is needed to evaluate the well application.

² The Watermaster is tasked with monitoring all the Safe Yield components (18.5.1). As per Section 5.1.3.2 of the Judgment "The primary means for monitoring the Small Pumper Class Members' Groundwater use under the Physical Solution will be based on physical inspection by the Watermaster, including the use of aerial photographs and satellite imagery. All Small Pumper Class Members agree to permit the Watermaster to subpoena the electrical meter records associated with their Groundwater wells on an annual basis. Should the Watermaster develop a reasonable belief that a Small Pumper Class Member household is using in excess of 3 acre-feet per Year, the Watermaster may cause to be installed a meter on such Small Pumper Class Member's well at the Small Pumper Class Member's expense."

- Payment of a well application fee as set by the Watermaster to recover costs of review.

Applicants with known production rights requesting to install a new well at a new point of extraction must provide the following information.

Form 3 Information (New Point of Extraction Application)

- Property owner’s name, mailing address, parcel APN number where the new point of extraction will be located and property address (if different than mailing address), email and phone number.
- Location and description of each existing well on the well owner’s property: use (domestic, agricultural, etc.), construction date, diameter, casing material, depth, screened interval, pumping capacity (gallons per minute), annual production (acre-feet/year), latitude and longitude, ground surface elevation, depth to water, status (active, inactive), site plan showing old and new well locations, and a copy of the DWR Well Completion Report, if available.
- Proposed new well construction, driller, driller address, email and phone number.
- Estimate of production capacity and future annual production from the new well.
- Well locations and distance between the new and existing wells.
- If a new well is proposed in order to stop sharing an existing well (Also see requirements described in Section 1.6 below):
 - Estimate of annual production from the shared well for the 1946 to 2015-time period by year (if not provided above).
 - Estimate of future annual production from new well(s) and from the previously shared well (not to exceed 3 AFY each unless a Replacement Water Assessment is paid).
 - Well locations and distance between new well(s) and shared well.
- A written statement describing why the new point of extraction will not cause Material Injury.
- Agreement that the well will be metered (unless Small Pumper Class) in accordance with the metering requirements in Section XX of these R&Rs.
- Any other information requested by the Watermaster Engineer that is needed to evaluate the well application.
- Payment of a well application fee as set by the Watermaster to recover costs of review.

1.5. Requests for New or Replacement Wells from Unknown Small Pumpers.

Some well owners may not be identified individually in the Judgment as having rights to produce groundwater, but may qualify as an unknown Small Pumper as defined by the Judgment. Such well owners must first provide Small Pumper Class qualifying documentation and be confirmed as a member of the Small Pumper Class. The procedures in this section of the Rules and Regulations describe a process whereby production rights, if any, for these applicants can be defined. This process must be completed first before an applicant can request a new or replacement well.

The Small Pumper Class is defined in the Judgment as: “All private (i.e., non-governmental) Persons and entities that own real property within the Basin, as adjudicated, and that have been pumping less than 25 acre-feet per Year on their property during any Year from 1946 to the present. The Small Pumper Class excludes the defendants in Wood v. Los Angeles Co. Waterworks Dist. 40, et al., any Person, firm, trust, corporation, or other entity in which any such defendants has a controlling interest or which is related to or affiliated with any such defendants, and the representatives, heirs, affiliates, successors-in-interest or assigns of any such excluded party. The Small Pumper Class also excludes all Persons and entities that are shareholders in a mutual water company. The Small Pumper Class does not include those who opted out of the Small Pumper Class.” (§3.5.44).

The Judgment also states: “The Small Pumper Class shall be permanently closed to new membership upon issuance by the Court of its order granting final approval of the Small Pumper Class Settlement (the “Class Closure Date”), after the provision of notice to the Class of the Class Closure Date. Any Person or entity that does not meet the Small Pumper Class definition prior to the Class Closure Date is not a Member of the Small Pumper Class. Similarly, any additional household constructed on a Small Pumper Class Member parcel after the Class Closure Date is not entitled to a Production Right as set forth in Paragraphs 5.1.3 and 5.1.3.1.” (§5.1.3.5).

The Judgment acknowledges that there are unknown members of the Small Pumper Class: “Unknown Small Pumper Class Members are defined as: (1) those Persons or entities that are not identified on the list of known Small Pumper Class Members maintained by class counsel and supervised and controlled by the Court as of the Class Closure Date; and (2) any unidentified households existing on a Small Pumper Class Member parcel prior to the Class Closure Date. Within ten (10) Court days of the Class Closure Date, class counsel for the Small Pumper Class shall publish to the Court website and file with the Court a list of the known Small Pumper Class Members.” (§5.1.3.6). “Given the limited number of additions to the Small Pumper Class during the more than five Years since the initial notice was provided to the Class, the Court finds that the number of potentially unknown Small Pumper Class Members and their associated water use is likely very low, and any Production by unknown Small Pumper Class Members is hereby deemed to be de minimis in the context of this Physical Solution and shall not alter the Production Rights decreed in this Judgment. However, whenever the identity of any unknown Small Pumper Class Member becomes known, that Small Pumper Class Member shall be bound by all provisions of this Judgment, including without limitation, the assessment obligations applicable to Small Pumper Class Members.” (§5.1.3.7).

Collectively, these Judgment sections indicate that pumpers meeting the definition of a Small Pumper as of December 23, 2015 are included in the Judgment and bound by the Judgment. Once identified, unknown Small Pumpers will need to agree to be bound by all the terms of the Judgment and be listed as a member of the Small Pumper Class under the Judgement.

Unknown Small Pumper’s request for a replacement well must contain information to demonstrate eligibility as a Small Pumper Class Member under the Judgment (Form 2 on **Figure 1**) and must contain the information requested in Section 1.4 above (Form 1 on **Figure 1**). For new wells other than replacement wells, change in point of extraction information is needed (Form 3 on **Figure 1**).

Well Applicants who seek eligibility for the Small Pumper Class shall supply the following:

Form 2 Information (Small Pumper Qualifying Documentation)

- Property owner's name, mailing address, parcel APN number and property address (if different than mailing address), email and phone number.
- Location and description of existing well: use (domestic, agricultural, etc.), construction date, diameter, casing material, depth, screened interval, pumping capacity (gallons per minute), annual production (acre-feet/year), latitude and longitude, ground surface elevation, depth to water, and a copy of the DWR Well Completion Report, if available.
- Proof that the well on the owner's property has been pumped between 1946 and 2015 and the production amount has always been less than 25 acre-feet per year (AFY) during any year between 1946 and 2015 (§3.5.44). Supporting documentation should include all pertinent information available as listed below:
 - Documentation that the well was drilled on the property prior to December 23, 2015 (e.g., County well permit, DWR Well Completion Report, etc.).
 - If sufficient documentation is not provided in bullet above, property owner agrees to allow Watermaster Engineer or designated agent access to the property at a mutually-agreed upon time to physically inspect the well and property.
 - Uses of the existing well including domestic, irrigation, livestock, etc. Also provide an estimate of annual household occupancy (number of residents), history of land irrigation and acreage, and history of livestock/animals that resided on the property and that relied on the well during the 1946 to 2015-time period.
 - land deed/parcel information indicating use of land and/or historical aerial photographs of land showing land use.
 - other pertinent information that demonstrates the use and production amounts of the well during the 1946 to 2015-time period.
- Statement affirming that the applicant and parcel associated with this request are not part of the Non-Pumper Class, nor a shareholder in a mutual water company, nor opted out of the Small Pumper Class (§3.5.44).
- Statement affirming that the applicant and associated parcel is for private (i.e., non-governmental) use and that the applicant owns the property (§3.5.44).
- Statement that the applicant agrees to be bound by all provisions of the Judgment, including without limitation, the assessment obligations applicable to Small Pumper Class Members (§5.1.3.7).
- Notarized affidavit confirming:
 - the well was active and that total water use on property was below 25 AFY in any year from 1946 to December 23, 2015.
 - the Small Pumper Class Member will not pump more than 3 AFY from the well unless a Replacement Water Assessment is paid, recognizes that the rights are not transferable from the parcel, and agrees to be bound by all applicable terms in the Judgment.
 - that the other information and statements provided are true.
- Payment of a well application fee as set by the Watermaster to recover costs of material review.

1.6. Requests for a New Well from Small Pumper Class Members that Currently Share a Well but want to Segregate those Rights and use Individual Wells.

The Judgment permits Small Pumpers to share a well: “A Small Pumper Class Member who is lawfully, by permit, operating a shared well with an adjoining Small Pumper Class Member, shall have all of the same rights and obligations under this Judgment without regard to the location of the shared well, and such shared use is not considered a prohibited transfer of a pumping right under Paragraph 5.1.3.3.” (¶5.1.3).

An applicant who wants to drill a new well in lieu of using a shared well will retain their status as a member of the Small Pumper Class with a right to produce no more than 3 AFY from the applicant’s parcel without paying a Replacement Water Assessment. Even though this new well would appear be considered New Production as defined by the Judgment, there would be no Material Injury because pumping is not increased. Therefore, the requirements for New Production (Form 4) are waived for the Small Pumper Class member.

If the new well is within 300 feet of the shared well, the Applicant would need to submit Form 1. If the new well is greater than 300 feet from the shared well, it is considered a new point of extraction and the Applicant would need submit Form 3.

If either of the Parties that share a well are not listed as a member of the Small Pumper Class (i.e., are unknown Small Pumpers), they will have to first demonstrate eligibility as a Small Pumper Class Member under the Judgment as provided in Section 1.5 of the R&Rs (Form 2 on **Figure 1**). The Applicant requesting the new well will need to provide the information listed in Section 1.4 of the R&Rs (Form 1 on **Figure 1** if the new well is within 300 feet of the shared well or Form 3 on **Figure 1** if the new well is greater than 300 feet from shared well).

1.7. Request for New Production from New Wells.

New Production is defined as: “Any Production of Groundwater from the Basin not of right under this Judgment, as of the date of this Judgment.” (¶3.5.20).

The Non-Pumper Class is defined as: “All private (i.e., non-governmental) Persons and entities that own real property within the Basin, as adjudicated, that are not presently pumping water on their property and did not do so at any time during the five Years preceding January 18, 2006. The Non-Pumper Class includes the successors-in-interest by way of purchase, gift, inheritance, or otherwise of such Non-Pumper Class members’ land within the Basin. The Non-Pumper Class **excludes** (1) all Persons to the extent their properties are connected to a municipal water system, public utility, or mutual water company from which they receive water service, (2) all properties that are listed as “improved” by the Los Angeles County or Kern County Assessor's offices, unless the owners of such properties declare under penalty of perjury that they do not pump and have never pumped water on those properties, and (3) those who opted out of the Non-Pumper Class. The Non-Pumper Class does not include landowners who have been individually named under the Public Water Suppliers' cross-complaint, unless such a landowner has opted into such class.” (¶3.5.22, *emphasis added*).

The Non-Pumper Class Rights are stated as: “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. On September 22, 2011, the Court approved the Non-Pumper Class Stipulation of Settlement through an amended final judgment that settled the Non-Pumper Class’ claims against the Public Water Suppliers (“Non-Pumper Class Judgment”). ... This Judgment is consistent with the Non-Pumper Class Stipulation of Settlement and Judgment. Future Production by a member of the Non-Pumper Class is addressed in the Physical Solution.” (¶5.1.2). “The Non-Pumper Class members shall have no right to transfer water pursuant to this Judgment.” (¶5.1.2.1).

The Judgment provides a summary of the Non-Pumper Class Stipulation of Settlement and also indicates that New Production for the Non-Pumper Class members may be subject to a replacement assessment: **“The Non-Pumper Class Stipulation of Settlement, executed by its signatories and approved by the Court in the Non-Pumper Class Judgment, specifically provides for imposition of a Replacement Water Assessment on Non-Pumper Class members.** This Judgment is consistent with the Non-Pumper Class Stipulation of Settlement and Judgment. The Non-Pumper Class members **specifically agreed to pay a replacement assessment if that member produced “more than its annual share” of the Native Safe Yield less the amount of the Federal Reserved Right.** (See Appendix B at paragraph V, section D. Replacement Water.) In approving the Non-Pumper Class Stipulation of Settlement this Court specifically held in its Order after the Hearing dated November 18, 2010, that “the court determination of physical solution cannot be limited by the Class Settlement.” The Court also held that the Non-Pumper Class Stipulation of Settlement “may not affect parties who are not parties to the settlement.”” (¶9.2.1, *emphasis added*).

Non-Pumper Class Stipulation of Settlement (Appendix B, paragraph V, section D) “Replacement Water. The Settling Parties recognize the right of any Settling Party to produce groundwater from the Basin above their share of the Native Safe Yield, subject to the Physical Solution and to any Replacement Assessment. The Settling Parties agree to provide or purchase Imported Water for all groundwater pumping that exceeds a Settling Party’s share of the Federally Adjusted Native Safe Yield. The Settling Parties agree that any Settling Party who produces more than its annual share of the Federally Adjusted Native Safe Yield in any year will be responsible to provide Replacement Water or pay a Replacement Assessment to the Watermaster so that the Watermaster can purchase Imported Water to recharge the Basin.”

Finally, the Judgment requires “...any New Production, including that by a member of the Non-Pumper Class, must comply with the New Production Application Procedure specified in paragraph 18.5.13...” (¶9.2.2). Additional requirements on the Non-Pumper Class, as well as requirements of “the Watermaster’s determination as to the approval, scope, nature and priority of any New Production” is provided in the remaining portions of Paragraph 9.2.2. Sections under Paragraph 18.5.13 provide the framework of the **New Production Application Procedure**, including provision of a written application (¶18.5.13.1) and “payment for review, field investigation, reporting, and hearing, and other associated costs, incurred by the Watermaster and Watermaster Engineer in processing the application for New Production.” (¶18.5.13.1.1).

In accordance with the Judgment, “All Parties or Person(s) seeking approval from the Watermaster to commence New Production of Groundwater shall submit a written application to the Watermaster Engineer which shall include the following:” (¶18.5.13.1).

Form 4 Information (New Production Application)

- Payment of an application fee sufficient to recover all costs of application review, field investigation, reporting, and hearing, and other associated costs, incurred by the Watermaster and Watermaster Engineer in processing the application for New Production (¶18.5.13.1.1).
- Written summary describing the proposed quantity, sources of supply, reason of use, purpose of use, place of use, manner of delivery, and other pertinent information regarding the New Production (¶18.5.13.1.2).
- Maps identifying the location of the proposed New Production, including Basin Subarea (¶18.5.13.1.3).
- Well information including proposed well design, estimated annual pumping, and agreement to install a meter in accordance with the Rules & Regulations. Plus, a statement that once the well is installed, the applicant will provide water well permits, specifications and well-log reports, pump specifications and testing results, and water meter specifications associated with the New Production (¶18.5.13.1.4).
- Written confirmation that applicant has obtained all necessary entitlements and permits including all applicable Federal, State, County, and local land use entitlements and other permits necessary to commence the New Production (¶18.5.13.1.5).
- Written confirmation that applicant has complied with applicable laws and regulations including all applicable Federal, State, County, and local laws, rules and regulations, including but not limited to, the California Environmental Quality Act (Public Resources Code §§ 21000, et. seq.) (¶18.5.13.1.6).
- Preparation of a water conservation plan, approved and stamped by a California licensed and registered professional civil engineer with expertise in groundwater hydrology, demonstrating that the New Production will be designed, constructed and implemented consistent with California best water management practices (¶18.5.13.1.7).
- Preparation of an analysis of the economic impact of the New Production on the Basin and other Producers in the Subarea of the Basin (¶18.5.13.1.8).
- Preparation of an analysis of the physical impact of the New Production on the Basin and other Producers in the Subarea of the Basin (¶18.5.13.1.9).
- A written statement, signed by a California licensed and registered professional civil engineer with expertise in groundwater hydrology, determining that the New Production will not cause Material Injury (¶18.5.13.1.10, expertise in groundwater hydrology added).
- Written confirmation that the applicant agrees to pay the applicable Replacement Water Assessment for any New Production (¶18.5.13.1.11).
- Other pertinent information which the Watermaster Engineer may require (¶18.5.13.1.12).

1.8. Material Injury Determination.

Upon receipt the appropriate completed and accurate form (Form 3 or Form 4), the Watermaster Engineer will determine if the change in point of extraction or New Production will cause a Material Injury. The Judgment states “**3.5.18 Material Injury.** Material Injury means impacts to the Basin caused by pumping or storage of Groundwater that: **3.5.18.1** Causes material physical harm to the Basin, any Subarea, or any Producer, Party or Production Right, including, but not limited to, Overdraft, degradation of water quality by introduction of contaminants to the aquifer by a Party and/or transmission of those introduced contaminants through the aquifer, liquefaction, land subsidence and other material physical injury caused by elevated or lowered Groundwater levels. Material physical harm does not include "economic injury" that results from other than direct physical causes, including any adverse effect on water rates, lease rates, or demand for water. **3.5.18.2** If fully mitigated, Material Injury shall no longer be considered to be occurring.”

“**18.5.13.2 Finding of No Material Injury.** The Watermaster Engineer shall not make recommendation for approval of an application to commence New Production of Groundwater unless the Watermaster Engineer finds, after considering all the facts and circumstances including any requirement that the applicant pay a Replacement Water Assessment required by this Judgment or determined by the Watermaster Engineer to be required under the circumstances, that such New Production will not cause Material Injury. If the New Production is limited to domestic use for one single-family household, the Watermaster Engineer has the authority to determine the New Production to be *de minimis* and waive payment of a Replacement Water Assessment; provided, the right to Produce such *de minimis* Groundwater is not transferable, and shall not alter the Production Rights decreed in this Judgment.”

Factors to be considered in the Material Injury analysis include those sustainability indicators defined in the Sustainable Groundwater Management Act.

1. Chronic lowering of groundwater levels, including adverse impacts to neighboring wells
2. Reduction of groundwater storage
3. Degraded water quality
4. Land subsidence that substantially interferes with land use
5. Depletions of interconnected surface water such that beneficial uses of the surface water are impacted, and
6. Any other considerations identified by the Watermaster Engineer relevant to evaluating whether material physical harm is caused to the Basin, and Subarea, or any Producer, Party, or Production Right.

If the change in point of extraction or New Production cause these conditions to occur in a significant and unreasonable manner, the Watermaster Engineer may determine that the production will result in Material Injury.