Action Item 2

The Law of the River: Regulating the Colorado River

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Disclaimer: This presentation is intented to provide a generalized introductory overview of the subject matter discussed herein. This presentation is intended to also be considered as part of a more comprehensive oral presentation, and as such, there are potentially important exceptions and qualifications that are not reflected in this presentation. Lastly, this presentation is not intended to provide legal advice or to establish an attorney-client relationship.

Colorado River – Law of the River

- The Colorado River is one of the largest water resources serving Southern California, and has been the subject of substantial development and regulation over the years
- The "Law of the River" refers to the complex make up of case law, decisions, treaties, and other agreements that regulate and restrict the use of the water supplied by the Colorado River
- Creates certain assumed allocations and priorities

How Does California Split Up Its Share?

- California is allotted 4.4 maf from the Colorado River
- Seven of California's water agencies and municipalities, entered into the "Seven Party Agreement" to establish the apportionment and priority for the water that is allotted to California from the Colorado River as follows:
  - First priority – PVID properties [first three priorities limited to 3.85 MAF]
  - Second priority – Yuima project
  - Third Priority – IID/PVID
  - Fourth Priority – 550,000 AF to Met or COLA
  - Fifth – 550,000 AF to MET,COLA, and 112,000 AF City/County of San Diego
  - Sixth – 300,000AF to IID and PVID
  - Seven – All remaining water to agricultural uses in Colorado River Basin

Present Perfected Rights

- The Law of the River relies on a series of agreements and cases that separate different types of water rights
- The most senior of these rights are referred to as "present perfected rights"
- While not expressly defined in any particular document, "present perfected rights" or "PPRs," are generally understood to refer to those water rights that were established and in effect by June 1929.
- Supreme Court recognized these rights in 1979 – see Arizona v. California, 439 U.S. 419

Presented Perfected Rights (Cont'd)

- PPRs are valuable because they are the most senior water right that applies to the Colorado River
- In general, even when curtailment orders are issued, PPRs will be the last rights impacted by such orders
- PPRs are not limitless, and they are subject to the restrictions that were imposed when the rights were originally created – i.e. agricultural/domestic use

Speculative Use of PPR Water

- PPR water within California is still subject to the limitations of California law, and federal regulation
- Palo Verde Irrigation District and others receive water to be provided to their users, and generally has a set allocation of PPR water.
  - For PVID customers certain PPR holders must use the water on their land
- Water pumped and used from the Colorado River still must be used in accordance with the requirements of the Law of the River.

Can Other Users Acquire PPR Rights?

- Yes, certain recognized PPRs, such as some of those allocated to PVID are tied to specific properties, and their established water usage at the time of creation of the PPR.
- These rights can be acquired by new entities if those entities purchase the properties in question
- However, these rights are still restricted in their use, and must be used in accordance with the relevant restrictions

Transferring PPR Water

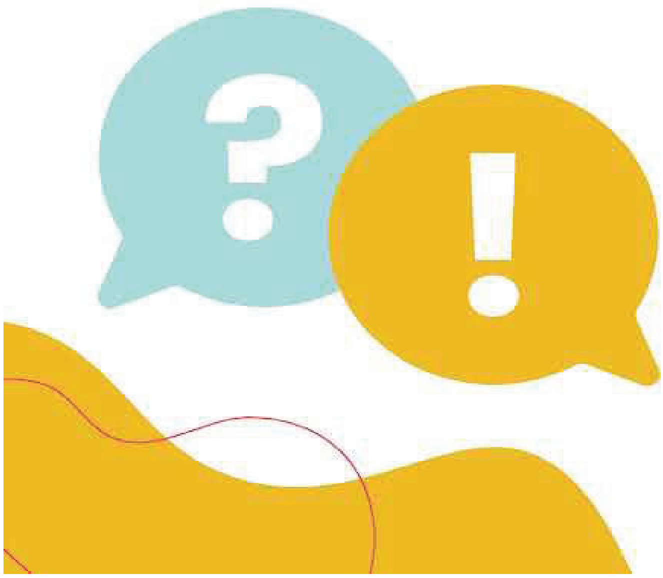
- Members to the Seven Party Agreement have worked together to assist in the transfer of certain water rights to each other to transition those water rights to serve domestic, rather than agricultural uses
- San Diego has entered into agreements with IID to transfer water to San Diego
- Metropolitan Water District has the ability to use any water not used by PVID up to 420,000 AF to bring the water to Southern California domestic users
- In practice, these transfers can be complicated, and may not be practical.

Met/PVID Fallowing & Forbearance Agreement (2004)

- PVID has the highest priority water rights to the Colorado River within California pursuant to the Law of the River, and as expressly recognized by the 1931 Seven Party Agreement
- Starting in the 2000s Met began to have trouble securing sufficient water to collect all of its allotment as reflected in the 1931 Seven Party Agreement
- The Fallowing Agreement creates a process by which PVID landowners can agree to fallow certain portions of their agricultural lands, in exchange for compensation from Met
- If PVID owners do not utilize their water, then that water would then be transferred to Met to be used throughout Southern California

Looking Ahead

- New agreements and allegiances
- Political and environmental landscape is changing
- New development in Arizona, Nevada, and other states that could utilize Colorado River have increased demand
- Federal curtailment and conservation directives can change
- Many existing federal programs and agreements are set to expire in 2026, and must be re-negotiated



THANK YOU!

ANY QUESTIONS?