



March 18, 2020

Mr. Mike Markus
General Manager
Orange County Water District
18700 Ward Street
Fountain Valley, CA 92708

Subject: Draft 2018-19 Engineer's Report on Groundwater Conditions, Water Supply and Basin Utilization in the Orange County Water District (February 2020)

Mike:

We have reviewed the draft Engineer's Report for 2018-19 that is included in Orange County Water District ("OCWD") Board of Director's agenda packet for March 18, 2020. After reviewing the report, Irvine Ranch Water District ("IRWD") renews its objections to OCWD's refusal to treat IRWD's recycled water as a Supplemental Source of water within the meaning of Section 31.5 of the OCWD Act. OCWD's actions violates applicable State law for all of the reasons, among others, stated in our attorney's letters to the OCWD Board dated April 11, 2017, November 15, 2017, and my letter of February 20, 2019, which letters we incorporate by reference into this letter.

Further, IRWD objects to any calculation of a production limitation or surcharge that is calculated based on groundwater used within the district, rather than groundwater produced, as specified by the OCWD Act, as further explained in its briefing before the Court in the Phase 2a proceedings in the pending case of *IRWD v. OCWD* (Los Angeles County Superior Court, Case No. BS168278).

IRWD also objects to the statement at page 15 of the draft Report that the OCWD Act provides regulatory powers to OCWD. As held by the Court in deciding the Phase 2 proceedings, "the Legislature did not empower OCWD with broad regulatory authority." (Sep. 30, 2019 Order on Phase 2 of Trial at p. 6.) As discussed in IRWD's February 20, 2019 letter, nothing contained within OCWD Act Section 2, which sets forth OCWD's powers, expressly authorizes OCWD to promulgate regulations.

The draft Engineer Report also states for the first time that: "The OCWD Board of Directors may approve a surcharge, in an amount to be determined in its discretion, for production by a producer in excess of any approved BPP or production limitation." This language implies that OCWD has the authority to impose production limitations and surcharges on individual producers. The OCWD Act makes clear that "requirements and limitations provided for in this

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act may be imposed upon, and applied to, *all* persons and producers within the district...."
(OCWD Act, § 31.5, subd. (a), emphasis added.) Nothing in the OCWD Act allows for OCWD
to establish surcharges that do not apply generally to all producers.

We appreciate your response in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul A. Cook".

Paul A. Cook, P.E.
General Manager

cc: OCWD Board of Directors