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ORANGE COUNTY WATER DISTRICT
ORANGE COUNTY'S GROUNDWATER AUTHORITY

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April 15, 2020

Mr. Paul Cook
General Manager
Irvine Ranch Water District
P.O. Box 57000
Irvine, CA 92619-7000

Subject: Basin Production Percentage, Basin Equity Assessment and Production Limitation and Surcharge – April 15, 2020 OCWD Public Hearing

Dear Mr. Cook:

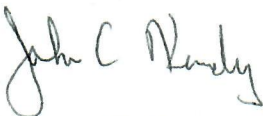
This letter responds to your April 15, 2020 letter, which reiterates prior claims made by IRWD that OCWD's annual basin production percentage ("BPP") calculation is illegal because it excludes IRWD's recycled water from the definition of "supplemental sources." IRWD's claims are incorrect; OCWD cannot legally include "local" recycled water as part of supplemental sources. As indicated by the Court in its Phase 1 ruling in the pending case of *IRWD v. OCWD* (Los Angeles County Superior Court, Case No. BS168278), Section 31.5(c) of the OCWD Act expressly limits supplemental sources of water to those "outside the watershed of the Santa Ana River." IRWD's recycled water is not included in supplemental sources for purposes of calculating the BPP because it is produced within that watershed.

In response to IRWD's objection to the calculation of the proposed production limitation and surcharge, the OCWD Act authorizes OCWD to adopt production limitations "in the protection of water supplies for users within the district" (OCWD Act § 31.5(a)), as further explained in OCWD's briefing before the Court in the Phase 2a proceedings of the above referenced action. The production limitation is an important tool in OCWD's toolbox of measures it can take to protect the Basin from prolonged overdraft and other undesirable results. Imposing a penalty against those producers that extract more than 100% of their total water demand within OCWD is a reasonable step needed to ensure the Basin is protected. Additionally, IRWD's allegation that the surcharge is unconstitutional is plainly mistaken. The surcharge is a penalty designed to punish and deter violations of the production limitation, and it therefore must impose a sufficient cost on violators so as to accomplish that purpose. It is not a rate or a revenue generating measure, and it does not trigger the same cost of service proportionality considerations that might otherwise pertain to assessments otherwise intended to generate revenue.

Paul Cook
April 15, 2020
Page 2

Finally, IRWD's objection to the practice of excluding Basin Equity Assessment ("BEA")-Exempt groundwater from the numerator and including it in the denominator when in calculates the BPP was rejected by the Court in Phase 2 of the above referenced action. If the BEA-Exempt groundwater were included in both portions of the BPP formula, the resulting BPP would be a higher ratio than what OCWD has determined is appropriate for Basin management purposes; this would allow producers (including those that do not pump BEA-exempt groundwater) to pump more groundwater without penalty, thereby both frustrating OCWD's Basin management objectives and potentially increasing the Basin overdraft condition. Because OCWD's deduction of BEA-exempt groundwater from the numerator when it sets the BPP avoids artificially inflating the BPP and these resulting adverse consequences, it is rational and consistent with the OCWD Act.

Sincerely,



for Michael R. Markus, P.E., D.WRE, BCEE, F.ASCE
General Manager

cc OCWD Board of Directors