



IRVINE RANCH WATER DISTRICT

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April 20, 2016

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

Subject: Basin Production Percentage and Basin Equity Assessment – April 20 Hearing

Dear Mike:

At the Orange County Water District (OCWD) Board meeting on April 20, 2016, the Board will be considering the determination of the Basin Production Percentage (BPP) and Basin Equity Assessments (BEA) for the upcoming water year. The BPP is to represent the ratio between all groundwater to be produced and all water from groundwater and supplemental sources, for the ensuing water year. The BEA is to be imposed on production in excess of the BPP consistent with the OCWD District Act, with BEA proceeds to be used to equalize the cost of water to all Groundwater Producer Agencies (Producers) and to acquire replenishment water. The purpose of this letter is to protest the proposed actions. Our objections are based on OCWD's practice of not considering recycled water produced by Irvine Ranch Water District (IRWD) as a supplemental source in the calculation of the amount of IRWD production that is subject to the BEA and the resulting financial impacts. The letter is also a protest to the application of the BPP without consideration of the demand for IRWD's recycled water.

IRWD has previously expressed concern to OCWD that IRWD's recycled water should be included as a supplemental source when calculating BEA charges to be paid by IRWD. OCWD's practice of excluding IRWD's recycled water unfairly lowers the amount of groundwater that IRWD can produce within the BPP and substantially increases the cost of water to IRWD. This year *especially*, the economic penalty to IRWD as a result of this practice will be severe. Our specific comments and objections are listed below:

- 1) Recycled water is a source of water outside the watershed of the Santa Ana River, and meets the definition of "supplemental source." Excluding it from total water demand is in conflict with the OCWD District Act and California policy.***

"Supplemental sources" are defined as sources outside the watershed. The interpretation of "outside the watershed" clearly means something other than the physical address of IRWD's Michelson Water Recycling Plant. This interpretation is reinforced by the reference within the

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District Act to all supplemental water as produced “within the district.” Consistent with California law and policy, “outside the watershed” logically means water not taken from a source that is flowing to the replenishment of the groundwater basin, such as a stream or other recharge source. IRWD’s recycled water is produced from wastewater that would otherwise be treated and discharged to the ocean. Like water produced from OCWD’s GWRS or desalinated ocean water, IRWD’s recycled water offsets demand that must otherwise be satisfied by imported water. Whether it is pumped from the ground for reuse (like GWRS) or applied directly for reuse (like recycled water), the net benefit to meeting total demand is the same. To penalize direct application for reuse is contrary to state policy advocating the reuse of wastewater. It also contradicts OCWD’s practice of how it counts the water it recycles through the GWRS for the benefit of all Producers.

The original drafters of the “supplemental sources” definition within the District Act recognized that imported water, the supplemental source that was available at the time of adding the BEA/BPP statute to the Act, was only one of a category that would eventually include other sources. This is clear by the use of phrasing “such as, but not limited to, water produced from the Metropolitan Water District.”

2) Exclusion of recycled water from the computation of the BPP is not required by the OCWD Act or the legislative history of the BEA/BPP provisions.

In the BPP/BEA powers provision, the District Act refers to “total water needs” broadly. This can be read in harmony with the supplemental sources definition’s use of the phrasing “such as but not limited to”. None of the Act’s phrasing indicates an intent to exclude recycled water as a supplemental supply.

The legislative history shows that “reclaimed water” was added to the definition of “supplemental sources” in 1991 and taken back out in 1995, but reveals no legislative intent other than a desire not to discourage reclaimed water use as the rationale for both the 1991 and 1995 amendments. In addition, the legislative history provides no rationale that reclaimed water was excluded by the existing definition.

The 1995 change was described in the legislative history as a technical cleanup change, giving no indication of the potentially severe economic effect of excluding recycled water as a supplemental source. Such a severe impact cannot be reconciled with a change described as technical. The logical interpretation is that the 1991 change was made only to clarify the definition in an abundance of caution, and the 1995 change restored the original definition, which as described above shows no intent to exclude recycled water demand.

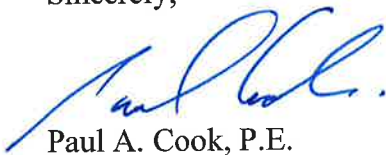
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3) *The exclusion of IRWD's recycled water as a supplemental source is discriminatory and results in financial impacts. It also unfairly causes the threshold for what would be considered "export" to be lowered.*

OCWD's powers for the establishment of the BPP and BEAs permit some latitude to manage pumping. However, IRWD should not be required to pay BEA or prematurely apply its BEA exemption credits to offset the BEA on account of its production and use of recycled water. The practice of excluding recycled water as a supplemental source from the BEA calculations results in substantial financial impacts that likely invalidate the assessment. In addition, the practice unfairly calculates a lower threshold for the lawful export of water outside OCWD's boundaries. We believe that IRWD's recycled water is improperly excluded as a supplemental source of supply because all recycled water use offsets imported water use. Even if OCWD does not consider recycled water a supplemental source but considers it to be an uncategorized source, in order to be consistent with the Act's references to "total water needs" in the use of BPP and BEAs, the BPP must be applied to IRWD's recycled water demand, and only groundwater production in excess of IRWD's total demands should be assessed the BEA. Otherwise the exclusion of the IRWD's recycled water demand operates as a *de facto* production limitation for which IRWD should be compensated by OCWD consistent with the District Act.

We ask that you consider and address the concerns as set forth in this letter which should be considered as our protest or objection, and that you provide a copy of this letter to each of your Board members for their review in conjunction with the April 20 hearing. I look forward to discussing our concerns in greater detail with you, your staff, and legal counsel. Please contact me at (949) 453-5590 so that we can schedule a meeting to discuss these concerns.

Sincerely,



Paul A. Cook, P.E.
General Manager

cc: OCWD Board of Directors
OCWD Legal Counsel
IRWD Board of Directors
IRWD Legal Counsel