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April 11, 2017

Via UPS Overnight Mail

Board of Directors for the
Orange County Water District
18700 Ward Street
Fountain Valley, CA 92708

Attn: Dennis Bilodeau, Board President

Re: Proposed 2017-18 Basin Equity Assessment

Dear Directors:

I am submitting this letter on behalf of the Irvine Ranch Water District ("IRWD") to object to the proposed Basin Equity Assessment ("BEA") for the year 2017-18 to be established by the Orange County Water District ("OCWD"). IRWD objects to the proposed BEA on all of the grounds set forth in its First Amended Petition for Writ of Mandate and Complaint for Reverse Validation and Declaratory Relief filed on June 17, 2016 in Case No. BS168278. As stated in IRWD's Complaint, IRWD believes that the BEA is unlawful, among other reasons, because it penalizes a producer's production and use of recycled water. That penalty arises because OCWD improperly interprets the term "Supplemental Sources" in Section 31.5(c)(1) of the OCWD Act to not include recycled water. The OCWD Act expressly states that the purpose of the BEA is to equalize each producer's water cost and to acquire additional water for replenishment of the Basin. The potential inequity which the BEA is meant to address arises when one producer overproduces groundwater because it is cheaper than other supplemental sources of water, which places a greater strain on the groundwater basin ("Basin") (to the detriment of all groundwater producers), while another producer avoids overproduction of groundwater by using supplemental sources of water, which are typically more expensive than groundwater to produce. Accordingly, pursuant to Section 31.5(j)(2) of the OCWD Act, OCWD levies the BEA on each acre foot of groundwater that an entity produces over the Basin Production Percentage ("BPP"). By doing so, producers are incentivized to use supplemental sources for their water needs above the BPP, and producers who do pump groundwater in excess of the BPP pay the BEA which OCWD can use to acquire additional replenishment water to compensate for the overproduction.

That same inequity arises when OCWD fails to recognize recycled water as a Supplemental Source. By using recycled water instead of producing groundwater, IRWD reduces the overall demand on the Basin to the benefit of all producers (and also reduces the strain on MWD imported water supplies to the region). Indeed, if recycled water were not used,

IRWD would have the right to produce a greater amount of groundwater. An increased production of groundwater would, in turn, place a greater demand on the Basin's resources. In response, OCWD may have to either lower the Basin Production Percentage or increase the Replenishment Assessment, which would only cause a detriment to all producers. Thus, IRWD's recycled water program produces benefits for the Basin and the region, yet OCWD penalizes the use of recycled water by not including it as a Supplemental Source.

Contrary to how it treats recycled water, OCWD does not penalize other supplemental sources of water that originate within the watershed. OCWD apparently interprets the definition of "Supplemental Sources" in Section 31.5 of the OCWD Act to exclude all supplemental sources of water that physically originate within the watershed. Despite that interpretation of Section 31.5 as applied to recycled water, OCWD does not apply the same interpretation to "conserved" water and treated groundwater from the Arlington Desalter and San Bernardino Valley MWD's High Groundwater Mitigation Project, even though those sources of water physically originate within the watershed. (Refer to OCWD's Engineer's Report.)

Instead of treating similarly situated water in a similar fashion, OCWD has created a third category of water that is applied only to recycled water, namely "neutral" water. Yet, nowhere in the OCWD Act is there any reference to, or approval of, a third category of water called neutral water.

Accordingly, IRWD respectfully requests that OCWD establish a BEA for the year 2017-18 in a manner that recognizes that recycled water is a Supplemental Source within the meaning of Section 31.5 of the OCWD Act. Failure to do so, or even to provide a lower BEA rate for those producers (such as IRWD) which use a significant amount of recycled water instead of producing more groundwater, is inconsistent with the language, policy and intent of the OCWD Act.

Very truly yours,



Edward J. Casey

EJC/ysr

cc: Michael Markus, OCWD General Manager
[Via UPS Overnight Mail]
Joel D. Kuperberg, OCWD General Manager
[Via Email]
Doug Reinhart, IRWD Board President
[Via Email]
Paul Cook, IRWD General Manager
[Via Email]