

FOX CANYON GROUNDWATER MANAGEMENT AGENCY

A STATE OF CALIFORNIA WATER AGENCY



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INTERIM EXECUTIVE OFFICER

Arne Anselm

October 23, 2024

Board of Directors
Fox Canyon Groundwater Management Agency
800 South Victoria Avenue
Ventura, CA 93009-1600

SUBJECT: Policy Advisory Committee Request for Technical Advisory Committee Consultation on Del Norte Mutual Water Company (WMID 3500) Basin Assessment Protest – (New Item)

RECOMMENDATIONS: (1) Receive a presentation from Agency staff on the Las Posas Valley (LPV) Watermaster Policy Advisory Committee (collectively, the PAC) request for LPV Watermaster Technical Advisory Committee (collectively, the TAC) consultation on Del Norte Mutual Water Company's protest to payment of Water Year (WY) 2023 LPV Adjudication Basin Assessment; and (2) Deny the PAC request for TAC consultation and refer the matter back to the PAC for deliberation and recommendation.

BACKGROUND:

The LPV Adjudication Judgment (Judgment) requires the Watermaster to levy and collect a Basin Assessment from Water Right Holders: "Watermaster shall set, levy, and collect Basin Assessments and fees from Water Right Holders[.]" (Judgment, § 7.1.) The Judgment also provides that the Watermaster "may reduce the amount of the Basin Assessments levied on Water Right Holders that pay an assessment to [United Water Conservation District] if Watermaster determines, after Committee Consultation, that such a reduction is appropriate as a matter of equity." (Judgment, § 7.9.)

DISCUSSION:

On December 15, 2023, with the adoption of Resolution 2023-03¹, Watermaster Board adopted a \$64 WY 2023 Basin Assessment and levied it in two equal installments, effective March 1, 2024, and June 1, 2024, although the second installment was later rescinded by the Watermaster Board with the adoption of Resolution 2024-04².

On April 18, 2024, DNMWC submitted a written protest challenging payment of the WY 2023 Basin Assessment, claiming its WY 2023 Basin Assessment should be reduced under Section 7.9 of the Judgment because it paid assessments to United Water Conservation District (attached as Exhibit 26A). Subsequently, on July 12, 2024, DNMWC submitted a second protest letter

¹ Resolution 2023-03: https://s42135.pcdn.co/wp-content/uploads/2024/04/Resolution-2023-03_website.pdf

² Resolution 2024-04: <https://s42135.pcdn.co/wp-content/uploads/2024/07/Resolution-2024-04.pdf>

invoking Sections 9.2.1.1 and 9.2.1.2 of the Judgment, which prescribe potential avenues for resolving Basin Management Actions before Judicial Review (attached as Exhibit 26B).

DNMWC's total WY 2023 Basin Assessment was \$75,272.96 with an additional \$112.55 in accrued interest. DNMWC has protested the full amount because, "DNWC is informed and believes the Watermaster assessment is for activities and administration that either duplicate the activities of the UWCD or has no benefit to DNWC and its Shareholders."

On July 17, 2024, Watermaster staff submitted DNMWC's protest letters to the PAC for consultation as required by Section 7.1 of the Judgment (attached as Exhibit 26C).

The PAC discussed the issue at its August 1 and 15, 2024 meetings and submitted their recommendation report on August 16, 2024 (attached as Exhibit 26D). The PAC states that, "There are clearly policy aspects to the second question, but there are hydrogeological aspects to it, as well, and the PAC determined that without a technical foundation, it cannot develop any policy recommendations for the Watermaster. As such, at this juncture, the PAC recommends, per Section 6.4 of the Judgment, that Watermaster assign this issue to TAC for review. Once a TAC recommendation report has been developed and returned to the PAC, the PAC can discuss the policy implications and develop a recommendation report to the Watermaster regarding the Del Norte protest."

Under the Judgment, the "PAC is the primary advisory body to Watermaster on policy-related matters of a non-technical nature to be considered by Watermaster," while the "TAC is the primary advisory body to Watermaster on all matters requiring expertise to be considered by Watermaster relating to Groundwater management and sustainability of the Basin." (Judgment, § 6.10.1, 6.11.1.)

Although the PAC's responsibilities are limited to "policy-related matters of a non-technical nature," the PAC may request that the Watermaster assign **a matter involving a technical question** to TAC for review and issuance of a Recommendation Report to Watermaster." (Judgment, § 6.4 (emphasis added).) But the DNMWC protest does not involve a "technical question." Basin Assessments are calculated based on a Water Right Holder's annual allocation once calculated by staff, reviewed and approved by the PAC and the TAC, and adopted by your Board. (Judgment, §§ 4.2, 7.2.) Nor does adjustment of Basin Assessments under Section 7.9 of the Judgment require any "technical foundation" or understanding of "hydrogeological aspects" of the LPV Basin. Section 7.9 of the Judgment authorizes the Watermaster to reduce the Basin Assessments of those "Water Right Holders that pay an assessment to United Water Conservation District[.]" Consideration of factors other than whether the Water Right Holder paid an assessment to United Water Conservation District are irrelevant. The only issue is whether the Water Right Holder paid a United Water Conservation District assessment, which does not involve technical experience or expertise. Finally, the plain language of Section 7.9 is clear that any decision to reduce a Basin Assessment shall be determined "as a matter of equity" rather than on any technical basis or evaluation.

CONCLUSION:

Whether DNMWC's WY 2023 Basin Assessment should be reduced under Section 7.9 of the Judgment does not involve a technical matter. Watermaster forwarded the matter to the PAC, as required by the Judgment, for its members and their constituents to provide policy opinions and recommendations on whether DNMWC should be allowed to avoid paying its total WY 2023 Basin

Assessment only because it paid a United Water Conservation District assessment the same year. No technical assistance or evaluation from the TAC would aid the PAC in providing a recommendation on this issue. Accordingly, staff recommends that your Board deny the PAC request for TAC consultation on the DNMWC protest, and direct staff to return the item to the PAC for their consideration with direction to prepare and provide a recommendation report to the Watermaster no later than November 8, 2024.

This letter has been reviewed by Agency Counsel. If you have any questions, please call me at (805) 654 2954.

Sincerely,



Kudzai Farai Kaseke (PhD, PH, PMP, CSM)
Assistant Groundwater Manager

Attachments:

- Exhibit 26A – Del Norte Water Company Protest Letter (April 18, 2024)
- Exhibit 26B – Del Norte Water Company Protest Letter (July 12, 2024)
- Exhibit 26C – Watermaster Memo to PAC (July 17, 2024)
- Exhibit 26D – PAC Recommendation Report Letter (August 16, 2024)