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FILED
Superior Court of California
County of Los Angeles
05/09/2022
Sherri R. Carter, Executive Officer / Clerk of Court
By: E. Garcia Deputy

Attorneys for Main San Gabriel Basin Watermaster

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

UPPER SAN GABRIEL VALLEY
MUNICIPAL WATER DISTRICT,

Plaintiff,

vs.

CITY OF ALHAMBRA,

Defendant.

Case No: C 924 128

Assigned for all purposes to:
Honorable Maureen Duffy-Lewis
Dept. 38

**[PROPOSED] ORDER APPROVING
CYCLIC STORAGE AGREEMENT**

Hearing
Date: May 9, 2022
Time: 9:30 a.m.
Dept.: Dept. 38
RES ID: 898338509961

1 The petition of the Main San Gabriel Basin Watermaster (“Watermaster”) for approval of
2 the Cyclic Storage Agreement among Watermaster, Metropolitan Water District of Southern
3 California and Upper San Gabriel Valley Municipal Water District, came on regularly for
4 hearing on May 9, 2022, in Department 38 of the above-entitled Court before the Honorable
5 Maureen Duffy-Lewis, judge presiding and specially assigned. Fred Fudacz and Alfred Smith
6 appeared for Watermaster.

7 Good cause appearing therefor,

8 IT IS HEREBY ORDERED:

9 The Cyclic Storage Agreement among Watermaster, Metropolitan Water District of
10 Southern California and Upper San Gabriel Valley Municipal Water District, attached hereto as
11 Exhibit A, is hereby approved.

12
13
14 Date: 05/09/2022



Maureen Duffy-Lewis

Maureen Duffy-Lewis, Judge,
Los Angeles Superior Court
Maureen Duffy-Lewis / Judge

EXHIBIT A

**CYCLIC STORAGE AGREEMENT AMONG
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
UPPER SAN GABRIEL VALLEY MUNICIPAL WATER DISTRICT
AND MAIN SAN GABRIEL BASIN WATERMASTER**

This Cyclic Storage Agreement (“Agreement”) is made as of March 01, 2022, by and among the METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (“Metropolitan”), a public agency of the State of California, UPPER SAN GABRIEL VALLEY MUNICIPAL WATER DISTRICT (“Upper District”), a public agency of the State of California, and the MAIN SAN GABRIEL WATERMASTER (“Watermaster”), a court empowered entity appointed by the Superior Court of the State of California in and for the County of Los Angeles, in connection with Civil Action No. 924128, entitled, “Upper San Gabriel Valley Municipal Water District v. City of Alhambra, et al” (the “Basin Adjudication”).

RECITALS

- A. Metropolitan is a wholesale provider to its 26 member agencies, created under The Metropolitan Water District Act (“MWD Act”). Wat. Code appen., §§ 109-25, 109-130.
- B. Metropolitan secures water for its member agencies, including Upper District, primarily by importing water from the California State Water Project (“SWP”) and the Colorado River.
- C. Upper District is a member public agency of Metropolitan and a wholesale water provider with a service area overlying the Main San Gabriel Basin (“Basin”), a groundwater basin located in Los Angeles County. Upper District was created under the Municipal Water District Law of 1911. Cal. Wat. Code, §§ 71000 et seq.

D. Water rights have been adjudicated in the Basin according to the Judgment in the Basin Adjudication. The Judgment established Watermaster as the regulatory agency responsible for managing the Basin and authorized Watermaster to purchase supplemental water when an individual producer's production in the Basin exceeds his/her share of the operating safe yield, and for other purposes, hereafter referred to as "supplemental water requirements". The Judgment was most recently amended in 2012 in response to increasing uncertainties affecting the availability of local and supplemental water supplies. The 2012 Judgment amendment includes provisions to allow the Watermaster increased flexibility to acquire and store water during wet years for use during dry years. Upper District is responsible pursuant to the Judgment to provide supplemental imported water to Watermaster for recharge of the Basin on behalf of Upper District's member agencies ("Responsible Agency").

E. Pursuant to section 34(n) of the Judgment, Watermaster is authorized to enter into cyclic storage agreements for utilization of groundwater storage capacity in the Basin for cyclic storage of supplemental water for subsequent recovery or Watermaster credit to the storing entity with all such agreements to be in accord with Uniform Rules and Conditions adopted by Watermaster.

F. Through this Agreement, the Parties intend to provide for the delivery of water by Metropolitan to Upper District in advance of demand for the water by Upper District to meet its supplemental water delivery requirements to Watermaster.

G. To provide for the spreading of water for cyclic storage, Watermaster and the Los Angeles County Flood Control District have entered into an agreement whereby the Flood Control District will undertake the responsibilities associated with actual spreading operations in the Basin.

H. The Parties are entering into this Agreement for the purpose of giving Metropolitan the right to use up to 200,000 acre-feet of space in the Basin pursuant to the terms of this Agreement. The Parties intend for this Agreement to terminate and replace their Cyclic Storage Agreement No. AO1637, entered into on July 1, 1985 and subsequently amended eleven times, with the eleventh amendment made as of August 1, 2019.

COVENANTS

In consideration of the above recitals, covenants, and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IT IS AGREED:

1. Definitions

The definitions contained in the Judgment as of the date of this Agreement, are hereby incorporated by this reference and made a part hereof.

2. Priority of Agreement Within the Basin

Since Upper District is a Responsible Agency, as defined in the Judgment, and since Metropolitan is a supplier of supplemental water to Upper District and will be providing such water when available to enable Upper District to satisfy supplemental water requirements placed on Upper District by Watermaster, the rights granted under this Agreement shall have equivalent priority with rights granted Responsible Agencies under other Cyclic Storage Agreements entered into by Watermaster pursuant to its Uniform Rules and Conditions of Cyclic Storage Agreements.

3. Storage of Metropolitan Water

Upper District hereby agrees to enter into a cyclic storage arrangement with Metropolitan through this Cyclic Storage Agreement and terminate their prior Cyclic Storage Agreement No.

AO1637. In order to manage its water resources, Metropolitan may store water with Upper District through the delivery of water in advance of Upper District's purchase of that water. Metropolitan may request that Upper District accept delivery of water for storage through direct spreading or injection, or through in-lieu means ("Metropolitan's Cyclic Storage"). Upper District may accept delivery of Metropolitan water through written confirmation to Metropolitan, for each delivery, that the water may be delivered to the Basin for future purchase by Upper District, in accordance with the terms of this Agreement.

The San Gabriel Exchange and Purchase Agreement executed between San Gabriel Valley Municipal Water District ("San Gabriel") and Metropolitan in September 2013, provides for a Metropolitan Cyclic Storage that may hold water delivered directly through Metropolitan's spreading connection or through sale or exchange between Metropolitan and San Gabriel. Watermaster agrees to transfer and to perform accounting for transfers from San Gabriel's cyclic storage account to Metropolitan's Cyclic Storage Account when Metropolitan and San Gabriel jointly make such request.

Watermaster agrees that Metropolitan's Cyclic Storage shall occupy space in the Basin pursuant to the Judgment. Watermaster agrees that Metropolitan's Cyclic Storage shall be credited to Metropolitan and shall occupy up to 200,000 acre-feet of space until such time as purchased from Metropolitan by Upper District to meet its supplemental water requirements to Watermaster. Upon purchase of the water by Upper District, that water shall be credited to the supplemental water requirements of Upper District in accordance with the Judgment.

All water stored in Metropolitan's account pursuant to this Agreement shall be: (i) spread by the Los Angeles County Flood Control District in accordance with its agreement with Watermaster; (ii) transferred by Watermaster from the San Gabriel cyclic storage account upon

request by San Gabriel and Metropolitan; (iii) or pursuant to other arrangements approved by Watermaster. The time, place, and amount of such spreading within the Basin shall be approved in advance by Watermaster. Notwithstanding any other provisions of this Agreement, Watermaster reserves the right to order the cessation or reduction in delivery rate of water being spread for cyclic storage if, in its judgment, Watermaster determines:

a) That water previously authorized to be stored under this Agreement would cause the elevation of the groundwater in the Basin to adversely affect the Basin's highest utilitarian operation; or

b) That such cessation or reduction in delivery rate is necessary to prorate the cyclic storage rights of all Responsible Agencies in the Basin; or

c) That the spreading of supplemental water would be jeopardized by the continued spreading of water for cyclic storage when considering the necessity to protect the elevation of the Baldwin Park Key Well or to protect basin water quality.

During periods of delivery, Metropolitan shall issue a monthly report to Upper District and to Watermaster indicating the amount of water which Metropolitan has delivered and caused to be spread hereunder for storage in Metropolitan's account. Such report shall be subject to Watermaster's verification.

4. Delivery, Amount, and Ownership of Stored Water

The amount of water to be stored in the Basin for Metropolitan under this Agreement shall not exceed 200,000 acre-feet at any point in time. Prior to each delivery of water by Metropolitan into the Cyclic Storage Account, the Parties shall mutually agree to: (1) the amount, location, and timing of actual water delivered pursuant to this Cyclic Storage

Agreement; and (2) a schedule by which Upper District shall purchase the stored water. Any amendment to the delivery schedule shall require mutual written agreement.

Until such time as Upper District purchases the stored water in accordance with Section 8, the water shall be accounted for in the Cyclic Storage Account, pursuant to Section 5.

5. Cyclic Storage Account

Watermaster agrees to perform accounting of spreading and transfer deliveries and purchases pursuant to this Agreement (the “Cyclic Storage Account”, or “Account”) and to report all spreading and extraction activities in compliance with the Judgment. Upper District will account for all spreading and transfer deliveries in and out of the Cyclic Storage Account and will maintain a record of the balance of water in the Cyclic Storage Account. The Parties to this Agreement will confirm accounting of transactions and balance at the end of each fiscal year for inclusion in the Watermaster Annual Report.

6. Delivery from the Cyclic Storage Account

Metropolitan shall deliver water to Upper District from the Cyclic Storage Account in accordance with the purchase schedule agreed to by the parties pursuant to Section 4. Metropolitan will bill Upper District for the water at the time of such deliveries in accordance with Section 8. In the event Upper District does not meet its purchase obligation in accordance with Sections 4 or 8, Metropolitan retains the prerogative to meet regular untreated water demands by Upper District either from water stored in its Cyclic Storage Account or from water in its distribution system. Metropolitan need not provide advance notice to Upper District when it exercises its prerogative under this Section.

7. Loss of Water

There shall be no losses assigned to Metropolitan's Cyclic Storage account as a result of the delivery process into the account. Water delivered into this Cyclic Storage Account shall be fully credited to Metropolitan's Account. Losses may be assigned to Metropolitan's Cyclic Storage Account only for water stored in the account after delivery. Watermaster may determine and assign losses in water stored in Metropolitan's Account in the Basin, assuming that cyclic-stored water floats on top of the groundwater supplies. Such losses shall be determined by accounting for all losses of natural water which would have replenished the Basin had water not been in cyclic storage, and Watermaster shall apportion such losses among all storing entities pursuant to and in accordance with Watermaster's Uniform Rules and Conditions governing cyclic storage by Responsible Agencies.

8. Obligation for Purchase and Payment

Upper District agrees to purchase water from Metropolitan's Cyclic Storage Account in accordance with Sections 4 and 6 of this Agreement, but no later than the termination of this Agreement. Upper District shall be billed by and pay Metropolitan in accordance with the billing and payment provisions in Metropolitan's Administrative Code, as amended over time. The purchase of water from Metropolitan's Cyclic Storage Account shall be equivalent to the sale and delivery of water for purposes of applying the provisions of Metropolitan's Administrative Code. Payments to Metropolitan for such sale of water from its Cyclic Storage Account shall be calculated using Metropolitan's rate for full service untreated water in effect at the time of the sale of water to Upper District. The sale of water from Metropolitan's Cyclic Storage Account to Upper District shall be included in the calculation of the Upper District's Ten-Year Rolling Sales Average for purposes of Metropolitan's Readiness-to-Serve Charge at

the time stored water is sold to Upper District. The Metropolitan Capacity Charge shall not apply to cyclic water sales because Metropolitan shall deliver water for storage at its discretion.

9. Rent or Offset Credit

Unless otherwise separately agreed in writing for any specific delivery, it is hereby agreed that there shall be no charge, rent assessment, or expense incurred by Metropolitan by reason of the use of the Basin allowed hereunder, nor is there any credit or offset for the benefits thereof, nor shall there be any charge to Metropolitan for the use of physical facilities including service connections, flood control channels, spreading basins or hydrologic services utilized in connection with the use of the Basin allowed herein.

10. Indemnity Clause

Neither Metropolitan nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution of water supplied or delivered by Metropolitan to Upper District after such water has been delivered to Upper District; nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water beyond the point of such delivery; and Upper District shall indemnify and hold harmless Metropolitan and its officers, agents, and employees from any such damages or claims of damages, and shall reimburse Metropolitan for costs of repair of Metropolitan's facilities and other damages resulting from the operations of Upper District or the Watermaster. Neither Upper District nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution of water prior to such water being delivered to Upper District; nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling,

use, disposal, or distribution of such water prior to its delivery to Upper District, excepting, however, claims by Metropolitan for costs of repair to Metropolitan's facilities and other damages resulting from the operations of Upper District or the Watermaster; and Metropolitan shall indemnify and hold harmless Upper District and its officers, agents, and employees from any such damages or claims of damages, except claims by Metropolitan for costs of repair of Metropolitan's facilities and other damages resulting from the operations of Upper District or the Watermaster.

11. Term

The term of this Agreement shall commence on the date and year listed at the beginning of the Agreement and shall terminate ten (10) years thereafter. An extension of this term can be made upon mutual written agreement of the Parties. Watermaster shall report its intention to consider an extension of this Agreement in its minutes of a meeting held prior to its meeting when any such extension shall be acted upon.

12. Termination

In the event of a material breach hereunder, any party hereto may terminate this Agreement upon thirty (30) days' written notice to the other Parties hereto. Metropolitan may require amendment of this Agreement, or its termination, upon sixty (60) days' written notice if its Administrative Code is amended to change (i) the manner in which Metropolitan sets its water rates and charges for the sale and delivery of water (the rate structure), (ii) designations of classes of water service, or (iii) conditions of water service, in a manner which requires amendment of this Agreement. In the event this Agreement must be so amended, it shall be amended to provide water rates and charges applicable to water service for untreated water applicable to all of Metropolitan's member public agencies, except for any charge specifically set to recover costs incurred to meet peak distribution demands. In the event such an amendment to this Agreement cannot be obtained

from any Party, this Agreement may be terminated by Metropolitan upon sixty (60) days' written notice to the other Parties hereto.

In the event of termination with less than one-year notice, the Agreement shall continue for one year only for purposes of implementing deliveries from the San Gabriel Exchange and Purchase Agreement, Watermaster shall provide one-year notice of intent not to extend or to terminate this Agreement.

13. Purchase of Water After Termination

Upon notice of termination, Upper District is obligated to purchase all water remaining in the Metropolitan Cyclic Storage Account within 90 days. During this period, all untreated water demands from Upper District to Metropolitan will be met with Metropolitan's Cyclic Storage. Until the Cyclic Storage Account is depleted, Upper District shall not obtain water from sources other than Metropolitan with the exception of local resource projects developed to offset imported water requirements.

14. Notices

Any notice required hereunder may be given by mail, postage prepaid, addressed as follows:

To: Upper San Gabriel Valley Municipal Water District
602 E. Huntington Drive, Suite B
Monrovia, CA 91016
Attention: Tom A. Love, General Manager

To: Metropolitan Water District
700 N. Alameda Street
Los Angeles, CA 90012
Attention: Deven Upadhyay, Chief Operating Officer

To: Main San Gabriel Basin Watermaster
725 N. Azusa Avenue
Azusa, CA 91702
Attention: Anthony Zampello, Executive Officer

15. Interpretation

The Parties have developed this Agreement jointly and in consultation with their respective legal counsel. No ambiguity shall be resolved against any Party on the premise that it or its attorneys were responsible for drafting this Agreement or any of its terms.

16. Governing Law

This Agreement shall be construed in accordance with and be governed by the laws of the State of California.

17. Counterparts

This Agreement may be executed in counterparts, and signatures transmitted via facsimile or electronic mail shall be deemed to be originals.

18. No Third Party Rights

This Agreement does not create any rights enforceable by any person or entity that is not a Party to this Agreement.

19. Authority

The Parties represent that the persons executing this Agreement on their behalf are authorized to do so.

20. Assignment

No Party shall assign its rights under this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date and year listed at the beginning of the Agreement.

Approved as to form:

Upper San Gabriel Valley
Municipal Water District

Steven O'Neill
Olivarez Madruga Lemieux O'Neill, LLP

DocuSigned by:
By: Steven O'Neill
73F5513FD25E409
General Counsel

DocuSigned by:
By: Thomas A Love
836E77F78E384AC
Tom A. Love
General Manager

Date: 3/7/2022

Date: 3/8/2022

Approved as to form:

The Metropolitan Water District
of Southern California

Marcia L. Scully
General Counsel

DocuSigned by:
By: Marcia Scully
9D1F0C9E7D578409
General Counsel

DocuSigned by:
By: Adel Hagekhalil
8E4063CE85EF4D2
Adel Hagekhalil
General Manager

Date: 3/14/2022

Date: 3/14/2022

Approved as to form:

Main San Gabriel Basin Watermaster

Frederic A. Fudacz
Nossaman LLP

DocuSigned by:
By: Frederic A. Fudacz
928E53514AC5438
General Counsel

DocuSigned by:
By: Tony Zampielo
33E0A801B00B411
Anthony Zampielo
Executive Director

Date: 3/9/2022

Date: 3/14/2022