

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9

10 UNITED STATES OF AMERICA,
11 Plaintiff,
12 v.
13 FALLBROOK PUBLIC UTILITY
14 DISTRICT, *et al.*,
15 Defendants.

Case No. 51cv1247-GPC-RBB

**ORDER OVERRULING
OBJECTIONS AND APPROVING
ANNUAL WATERMASTER
REPORT FOR WATER YEAR
2016-2017**

16
17 The above-entitled action came on for hearing on April 5, 2019 on Objections
18 of Rancho California Water District (“RCWD”), Western Municipal Water District
19 (“WMWD”), Fallbrook Public Utility District (“FPUD”), Eastern Water Municipal
20 District (“EWMD”), and Metropolitan Water District (“MWD”) (collectively the
21 “Objectors”) to the Annual Watermaster Report for Water Year 2016-17 (“Annual
22 WM Report”), the responses of Plaintiff-Intervenors Cahuilla Band of Indians
23 (“Cahuilla Band”) and Ramona Band of Cahuilla (“Ramona Band”) (collectively the
24 “Tribes”), and the Watermaster’s response. (Dkt. Nos. 5667, 5668, 5670, 5671,
25 5675, 5690, 5691, 5694.) The Objectors argue that the Steering Committee should
26 not be responsible for the proposed \$60,000 in Watermaster costs for his
27 involvement in the Anza Settlement Proceeding which solely involve the Tribes.
28

1 William J. Brunick, Esq. appeared on behalf of the Watermaster of the Santa
2 Margarita River Watershed, Manuel Serpa, Esq., attorney for EMWD, and James
3 Gilpin, Esq., attorney for RCWD, appeared on behalf of the Objectors. Curtis
4 Berkey, Esq. appeared on behalf of Intervenor-Plaintiff Ramona Band of Cahuilla,
5 and Patrick Barry, Esq. and Bruce Bernard, Esq. appeared on behalf of the United
6 States. Having reviewed and considered the Objections, responses, and the
7 arguments of the parties, the Court OVERRULES the Objections and APPROVES
8 the Annual Watermaster's Report for Water Year 2016-17.

9 **Background**

10 On January 25, 1951, the United States of America filed a complaint "to quiet
11 title to its rights to the use of waters of the Santa Margarita River systems in San
12 Diego and Riverside counties, California." *United States v. Fallbrook Pub. Util.*
13 *Dist.*, 347 F.2d 48, 51 (9th Cir. 1965). The Court entered a series of forty-four
14 Interlocutory Judgments ("IJ"). *Id.* at 61. Each interlocutory judgment made
15 findings of fact and conclusions of law regarding the hydrology and water rights
16 associated with particular sub-areas within the adjudication.

17 On November 8, 1962, the Court entered Interlocutory Judgment No. 41
18 which addressed the water rights as to the Tribes' reservations within the Santa
19 Margarita River Watershed. (Dkt. No. 4430.) The Court recognized the Ramona
20 Band and Cahuilla Band's federal water rights, including groundwater rights, in
21 amounts "sufficient for the present and future needs of the Indians," with a priority
22 date of 1891 for the Ramona Band and 1875 for the Cahuilla Band. (*Id.* at 1, 4¹.)
23 At the time, the Court did not quantify the Tribes' water rights, but reserved
24 jurisdiction "to make such findings of fact, conclusions of law and judgment
25 provisions in the future should the need occur." (*Id.* at 24.) The Court issued a Final
26 Judgment and Decree on May 8, 1963. (Dkt. No. 4489.) On appeal, the Ninth
27

28 ¹ Page numbers are based on the CM/ECF pagination.

1 Circuit Court of Appeals affirmed in part, reversed in part and remanded with
2 instructions. *Fallbrook Pub. Util. Dist.*, 347 F.2d at 61. Pursuant to the Ninth
3 Circuit’s mandate, on April 6, 1966, the Court entered a Modified Final Judgment
4 and Decree that incorporated Interlocutory Judgment No. 41. (Dkt. No. 4768 at 9-
5 13.) In that Modified Final Judgment, the Court “retain[ed] continuing jurisdiction
6 of this cause as to the use of all surface waters within the watershed of the Santa
7 Margarita River and all underground or sub-surface waters within the watershed of
8 the Santa Margarita River” (*Id.* at 14.)

9 The Santa Margarita River Watershed primarily consists of three groundwater
10 basins: 1) the Santa Margarita Groundwater Basin, located along the Santa Margarita
11 River at Camp Pendleton; 2) the Murrieta-Temecula Groundwater Basin, located
12 along Murrieta and Temecula creeks in the Upper Santa Margarita River Watershed;
13 and 3) the Anza Groundwater Basin, located along Cahuilla Creek in the upper
14 portion of the Santa Margarita River Watershed. (Dkt. No. 5667 at 3.)

15 On February 3, 1989, the Court issued an order appointing a Steering
16 Committee. (Dkt. No. 4805.) The Order states that the “membership of the Steering
17 Committee shall be composed of representatives from the substantial water users
18 within the Santa Margarita watershed.” (*Id.* at 1.) The initial members of the
19 Steering Committee were the United States of America, Fallbrook Public Utility
20 District and Rancho California Water District. (*Id.*) The Order provides that “[a]ny
21 party participating as a member of the Steering Committee shall share the costs, fees
22 and expenditures of the Watermaster, along with any other party, as specified by the
23 Court.” (*Id.* at 2.) It also states that the “Steering Committee shall review the budget
24 and proposed expenditures of the Watermaster and make its recommendation with
25 respect thereto.” (*Id.*) Currently, the Steering Committee is now comprised of the
26 following members: United States of America, Pechanga Band of Luiseno Mission
27
28

1 Indians, FPUD, RCWD, EMWD, MWD, and WMWD.² (Dkt. No. 5667-1, Plazjer
2 Decl. ¶ 5.)

3 On March 13, 1989, the Court issued an order appointing a Watermaster to
4 administer and enforce the provisions of the Modified Final Judgment and Decree
5 and subsequent orders of the Court. (Dkt. No. 4809.) One of the duties of the
6 Watermaster is to provide an annual water report that summarizes his findings and
7 conclusions. (*Id.* at 3-5.) Initially, the Watermaster fees and expenses were paid by
8 the existing Steering Committee members - the United States, FPUD and RCWD.
9 (*Id.* at 6.) The order also provided that the “Court shall retain the right upon its own
10 motion or the motion of any party to assess any other party using water under the
11 provisions of the applicable judgments, decrees and Orders for the Santa Margarita
12 River watershed for the costs, fees and expenditures of the Watermaster.” (*Id.* at 6-
13 7.)

14 In 2006, the Tribes successfully moved to intervene as Plaintiffs. (Dkt. Nos.
15 4904, 4907, 4919.) On January 23, 2007, Cahuilla Band and Ramona Band filed
16 their complaints in intervention. (Dkt. Nos. 4920 at 5; 4921 at 1.) The Tribes filed
17 first amended complaints in intervention in July 2007. (Dkt. Nos. 4936, 4937.)
18 Then, the Tribes were granted leave to file second amended complaints in
19 interventions which were filed on September 18, 2009 which seek to quantify the
20 Tribes’ water rights. (Dkt. Nos. 5181, 5182.)

21 On November 30, 2016, Michael Preszler was appointed the Watermaster of
22 the Santa Margarita River Watershed after the prior Watermaster retired. (Dkt. Nos.
23 5531, 5551.)

24 The Annual WM Report proposes a Watermaster budget for year 2018-2019
25 to be \$791,733. (Dkt. No. 5665-1, Annual WM Report at p. 111, Table 13.2.) The
26

27
28 ² The United States of America and Pechanga Band of Luiseno Mission Indians do not object to the Annual Watermaster Report.

1 anticipated Watermaster costs associated with the Anza Settlement process is
2 \$60,000, or about 8% of the total Watermaster budget. (Dkt. No. 5691, Preszler
3 Decl. ¶ 11.)

4 On December 17, 2018, the Watermaster filed the Annual WM Report. (Dkt.
5 No. 5665.) Pursuant to the 30 day objection period, on January 11, 2019, RCWD
6 filed an Objection to the Watermaster's anticipated expenses in connection with the
7 Anza Settlement Proceeding. (Dkt. No. 5667.) On the same day, WMWD and
8 FPUD filed a Notice of Joinder in the Objection. (Dkt. Nos. 5668, 5670.) On
9 January 16, 2019, EWMD filed a Notice of Joinder in the Objection, and on January
10 22, 2019, MWD also filed a Notice of Joinder in the Objection. (Dkt. Nos. 5671,
11 5675.) On March 8, 2019, Plaintiff-Intervenors Cahuilla Band and Ramona Band
12 filed a response to the Objections. (Dkt. No. 5690.) On March 20, 2019, the
13 Watermaster filed a response. (Dkt. No. 5691.)

14 **Discussion**

15 The Objectors argue that the Watermaster's anticipated expenses in
16 connection with the Anza Settlement Proceeding of about \$60,000 should not be
17 assessed by the Steering Committee members because none of the members are
18 parties to the Anza Settlement Proceeding. Instead, the \$60,000 should be assessed
19 to the Tribes as they are involved in the Anza Settlement Proceeding.

20 The Objectors contend that their members are public agencies, many of which
21 have responsibilities to their ratepayers. The Watermaster did not start work in the
22 Anza basin until about 2006 when Cahuilla Band and Ramona Band filed motions
23 to intervene as Intervenors and now the Anza Settlement Proceeding has become the
24 largest single task for the allocation of the Watermaster's billable hours. Objectors
25 do not believe the intent of the original Steering Committee order was to have the
26 existing members fund on-going extensive efforts outside their service areas.
27 Because the 1989 order allows the Court to "assess any other party using water under
28

1 the provisions of the applicable judgments, decrees and Orders for the Santa
2 Margarita River Watershed for the costs, fees and expenditures for the
3 Watermaster”, (Dkt. No. 4809 at 6-7), the Court should direct that the Tribes pay for
4 any amounts that the Watermaster spends on their settlement.

5 Ramona Band and Cahuilla Band respond with five arguments. First, they
6 argue that the Objectors incorrectly assert that no Steering Member has interests or
7 rights in Anza. The United States is a member of the Steering Committee from its
8 creation and represents the interests of the Tribes as trustee under federal law. *See*
9 *Criteria and Procedures for the Participation of the Federal Government in*
10 *Negotiations for the Settlement of Indian Water Rights Claims*, 55 Fed. Reg. 9223
11 (Mar. 12, 1990) (“Indian water rights are vested property rights for which the United
12 States has a trust responsibility, with the United States holding legal title to such
13 water in trust for the benefit of the Indians.”). Even IJ 41 acknowledged that the
14 United States holds the tribal water rights and resources in trust on behalf of the
15 Tribes. (Dkt. No. 4430, ¶ 14 at 23.) Furthermore, the United States representative
16 on the Steering Committee stated that he speaks for both Camp Pendleton and the
17 Bureau of Indian Affairs because he is the representative on the Steering Committee
18 and that Camp Pendleton is funding the share of the Watermaster budget to be paid
19 by the United States. (Dkt. No. 5690-1, Berkey Decl., Ex. B, Steering Committee
20 Meeting dated Oct. 20, 2015.)

21 Second, the Tribes assert that the settlement process is nearing completion
22 with April 1, 2019 as the target date for a settlement agreement. (Dkt. No. 5672.)
23 Once the settlement agreement is signed, the Watermaster’s role will be substantially
24 diminished as the focus will be on the U.S. Department of the Interior for its review,
25 the federal Office of Management and Budget for its review and Congress for its
26 approval. Congress will be asked to appropriate funds to implement the Tribes’
27
28

1 settlement. Because the Watermaster's work will be reduced in the coming months,
2 the Court should not impose cost-sharing on the Anza parties.

3 Third, the Tribes argue that the Watermaster's work on the Anza Settlement
4 falls within the purview of the Steering Committee's responsibility to "assist the
5 Court and to facilitate [the *Fallbrook*] litigation" and is not limited to specific areas.

6 Fourth, the Objectors' implication that the Tribes have not contributed their
7 share of the costs is incorrect. For example, in 2018, Ramona Band secured a
8 \$600,000 grant under Proposition 1 Integrated Regional Water Management Grant
9 Program from the California Department of Water Resources to allow the U.S.
10 Geological Survey ("USGS") to undertake the first phase of the massive
11 groundwater study for the Anza and Cahuilla groundwater basins. (Dkt. No. 5690-
12 1, Berkey Decl. ¶ 6.) Because of the grant, the Ramona Band has entered into
13 contract with the USGS. (*Id.*) The Tribes claim that the study will extend beyond
14 the Tribes' settlement but also will yield hydrologic information indispensable for
15 the Watermaster's ability to administer and enforce IJ Nos. 41, and 33.

16 Finally, the Tribes claim that the Watermaster frequently devotes substantial
17 amount of time to projects that benefit a small subset of the Steering Committee
18 members without these members having to pay project-specific costs. To implement
19 such a practice would be difficult to implement. The Watermaster works on the
20 *Fallbrook* case as a whole and not for individual members of the Steering
21 Committee or other individual water users in the watershed.

22 The Watermaster asserts that the Watermaster and the Steering Committee
23 perform services for the Santa Margarita water basin as a whole and the Objectors'
24 effort to "Balkanize" the watershed into independent areas was not the intent of the
25 Modified Final Judgment. He explains that each Steering Committee member pays
26 equal shares (1/7th) of the Watermaster costs; therefore, each Steering Committee
27 member is anticipated to pay \$8,571.43 for budget year 2018-2019 for the
28

1 Watermaster's participation in the Anza Settlement. (Dkt. No. 5691, Preszler Decl.
2 ¶ 11.) Participation in the Anza Settlement process is not the largest single
3 expenditure by the Watermaster. (*Id.* ¶ 12.) The Watermaster also spends time on
4 other assignments in the Anza/Cahuilla Basins such as "1) requesting, receiving, and
5 processing water use data from users in the basin, 2) requesting, receiving and
6 processing water quality data in the basin, and 3) investigation of potential water
7 quantity and quality threats to the basin." (*Id.* ¶ 13.) Moreover, the United States is
8 a primary participant in the Anza Settlement process representing the Cahuilla Band
9 of Indians and the Ramona Band of Cahuilla Indians as the Tribe's federal trustee.
10 (*Id.* ¶ 7.)

11 After careful review of the Modified Final Judgment and Decree, the Order
12 for the Appointment of a Steering Committee, and the Order for the Appointment of
13 a Watermaster, the Court concludes that the Court's jurisdiction covers the entire
14 Santa Margarita River Watershed, (Dkt. No. 4768 at 14), the Watermaster's duties
15 also cover the entire Santa Margarita River Watershed, (Dkt. No. 4809), and the
16 Steering Committee members consist of substantial water users within the Santa
17 Margarita Watershed, and their purpose is to assist the Court and facilitate litigation,
18 (Dkt. No. 4805).

19 From the outset, it was the purpose of the Steering Committee members, as
20 substantial water users, to bear the costs and fees of the Watermaster despite the
21 existence of thousands of parties in the case that would not contribute to these costs
22 and fees. Contrary to the Objector's argument, no prior court orders specify that the
23 Watermaster's work would be limited to the Steering Committee's "service areas."
24 (*See* Dkt. No. 5667 at 7 ("Rancho does not believe the intent of the original Order
25 was to have the existing members continue to fund on-going extensive efforts
26 outside of their service areas.")). The Objectors' proposal to parcel out the
27 Watermaster's work on the Anza Settlement would set a precedent that would be
28

1 difficult to implement and manage. Any work by the Watermaster conducted
2 outside the Steering Committee's members' geographic purview would be subject
3 to challenge and does not align with the purpose of the Steering Committee.

4 However, the Court recognizes the Objectors' concern. At the hearing,
5 EMWD additionally argued that a one-time or small ongoing assessment should be
6 imposed throughout the basin so that the Steering Committee members are not
7 bearing all of the Watermaster's costs. (Dkt. No. 5696 at 14-16.) In considering the
8 equities of a potential assessment, the Court notes that Steering Committee members
9 are the "substantial water users" in the Watershed. (Dkt. No. 5665-1 at 71; see also
10 Dkt. No. 5665-3, App'x B at 17-44.) In fact, in order to be a Steering Committee
11 member, the member must be a "substantial water user." (Dkt. No. 4805 at 1.)
12 Substantial water users are those who "irrigate eight or more acres or who produce
13 or use an equivalent quantity of water." (Dkt. No. 5665-1 at 29, 71; see also Dkt.
14 No. 4814 at 9 ("minimum acreage irrigated by a substantial water user is eight
15 acres").) In the Annual WM Report, the Objectors' annual production and use of
16 water in 2017 ranged from the thousands to ten thousands acre feet, (Dkt. No. 5665-
17 3, App'x B at 17-44), while Cahuilla Band's estimated annual water use, in 2016-
18 17, was around 18 or 63 acre feet per year³, (Dkt. No. 5665-1 at 91), and Ramona
19 Band's production of water was 1.49 acre feet in 2016-17, (id. at 92). Therefore, the
20 Tribes' water usage and production pale in comparison to the Objectors' use and
21 production of water. Therefore, if an assessment were imposed, the Steering
22 Committee members would significantly bear more of the Watermaster's costs than
23 the Tribes, as non-substantial water users. Therefore, the \$8,571.43 for each
24 individual entity of the Steering Committee to pay for the Watermaster's costs for
25 the year 2018-19 is not burdensome or unfair.

26
27
28 ³ The Annual WM Report notes that domestic water use on the Cahuilla Indian Reservation is not measured. (Dkt. No. 5665-1 at 91.)

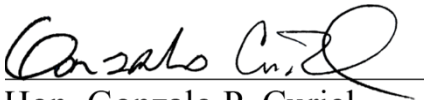
Moreover, as argued by the Tribes, there is overlap between work conducted with the Anza Settlement and the other basins making it difficult to parcel out costs. For example, Ramona Band's \$600,000 grant to allow USGS to undertake the first phase of the massive groundwater study for the Anza and Cahuilla groundwater basins will provide hydrologic information indispensable for the Watermaster's ability to administer and enforce IJ Nos. 41, and 33. (Dkt. No. 5690-1, Berkey Decl. ¶ 6.) Furthermore, contrary to the Objections that no Steering Committee members have any rights or interests in the Anza basin, the United States is a Steering Committee member that acts as a trustee to the Tribes and has an interest in the Anza Settlement. Finally, the success of the Anza Settlement Proceeding would provide an overall benefit to the entire Santa Margarita River Watershed. Litigating the Tribes' water rights would have, whether directly or indirectly, affected all users in the Watershed. At this time, the Court does not find good reason to assess the Tribes for the Watermaster's work in the Anza Settlement Proceeding.

Conclusion

Based on the above, the Court **OVERRULES** the Objections and **APPROVES** the Annual Watermaster Report for Water Year 2016-17.

IT IS SO ORDERED.

Dated: May 21, 2019


Hon. Gonzalo P. Curiel
United States District Judge