SUPERIOR COURT OF CALIFORNIA

COUNTY OF IMPERIAL

MICHAEL ABATTI, TRUSTEE OF THE MICHAEL AND KERRI ABATTI FAMILY TRUST and MIKE ABATTI FARMS, LLC, a California limited liability company,

Plaintiffs and Petitioners,

vs.

IMPERIAL IRRIGATION DISTRICT and DOES 1-10,

Defendants and Respondents.

Case No. ECU07980

RULING AND ORDER ON PETITIONER'S OSC RE:CONTEMPT

The Order to Show Cause re: Contempt came on regularly for hearing on February 4, 2020 in Department 9 of the above-entitled court, Hon. L. Brooks Anderholt, judge presiding. Lee Hejmanowski appeared on behalf of Petitioner Michael Abatti, and Robert Bailey appeared on behalf of Respondent Imperial Irrigation District ("IID"). At hearing, the court made preliminary findings and rulings on a number of threshold issues. The court ruled that it had already determined that the moving papers made a prima facie showing that necessitated the current hearing on contempt. The court also found that it has jurisdiction to hear this matter as it retains jurisdiction to enforce its previous Judgment as a prohibitory injunction pending appeal, absent a stay by either this court or the appellate court. The court

declined to hear the newly added request to enforce the Judgment pursuant to Code of Civil Procedure § 128, and limited the issue to what was presented in the original papers: whether or not IID violated the Judgment in this case and thus committed contempt of court. The court also rejected the argument that the water user, Heber Geothermal ("HGC") was an indispensable party as the other party to the contract in question, as the question before the court was whether or not IID's entering into the contract constituted contempt which does not require jurisdiction over that third party.

The court, having read and considered the moving, opposition, and reply papers and contents of the file, and heard argument of counsel, and having taken the matter under submission, now rules and orders as follows:

Petitioner's position is that IID has violated this court's Judgment by entering into a new agreement entitled Amendment No. 1 to the Amended and Restated Water Supply Agreement, hereinafter referred to as "the Agreement", that raises the maximum amount of water provided to HGC by 500 acre feet per year. As noted by the court at hearing, the amendment modifies substantial terms from the Amended and Restated Water Supply Agreement signed in 2015 and is thus a new agreement. The question before the court is whether or not the terms of the Agreement violate the court's previous Judgment. Petitioner asserts that under the Judgment IID cannot agree to provide any new water to any lower priority user during times of shortage until after higher priority users receive their full allotment. Petitioner relies on language in the Declaratory Judgment issued on August 25, 2017 which states that IID "is not empowered to enter into any new contracts committing to the provision of water to any non-domestic or non-agricultural user which guarantees the supply of water during times of shortage". However, that sentence continues on to qualify that what IID cannot do is guarantee water "in a manner that is inconsistent with the Court's findings in its August 15, 2017 Statement of Decision in this action."

So, the question is whether the Agreement is inconsistent with the findings in the Statement of Decision. At issue, particularly, are several clauses in the Agreement between IID and HGC. While Petitioner asserts that the court must give effect to every clause of a contract and

not allow any to subsume another, the court notes that it is well established that the court is required to consider the contract as a whole, and use each clause to help interpret the other, per Civil Code § 1641.

At hearing, the court heard from both parties as to section 6.8 of the Agreement which states that if and when the volume of water available to IID from the Colorado River is reduced by a governmental agency, IID may reduce the maximum use amount of HGC but the ratio of the reduction in the maximum use amount to the total reduction of water available to IID from the Colorado River shall not exceed the ratio of the maximum use amount to the current total amount of water available to IID from the Colorado River in other years. Essentially, if IID's water from the Colorado River is decreased by 2%, IID may only reduce the water to HGC by 2% under this particular clause. As support for the argument that this violates the Judgment, Petitioner points to language in the Statement of Decision finding that the 2013 Equitable Distribution Plan ("EDP") violated the "no injury" rule and the "appurtenancy rule" and that "the only source of water from which [IID] supplies its users is derived from the water rights acquired through the agricultural interests in the Imperial Valley." (Statement of Decision, page 6 lines 4-9). The court notes that it did find that water is appurtenant to the land; however, that rule does not apply only to agricultural land. While IID's water supplies are derivative of the original agricultural water rights in the Imperial Valley, water is appurtenant to the land in the Imperial Valley served by IID's water system. HGC occupies some land in the Imperial Valley in IID's service area, and that land has appurtenant water rights. IID has a right to add new water users who occupy land in the service area, as each parcel of land has its own right to water, though priorities and amounts of water may vary. It is up to IID management and the IID Board to ensure water is delivered in times of shortage consistent with the court's Judgment and Statement of Decision.

Petitioner's assertion that no new water may be delivered during times of shortage to lower priority users at the sake of higher priority users is also contrary to other findings in the Statement of Decision. The court noted that "an equitable distribution plan could be structured to ensure that every class of users has its water reduced equally, with each class

of user bearing the same proportionate shortfall in water appropriation when demand exceeds supply." (Statement of Decision, page 5, lines 18-20.) The court also found that "contracts for water delivery between [IID] and industrial water users could be written to state that the water delivered under such contracts is subject to proportionate reductions in apportionment commensurate with the apportionments to all other classes of water users." (Statement of Decision, page 5, lines 24-27).

The court contemplated various scenarios and found that equal reduction across the board in times of shortage was a possibility as was subjecting water delivery contracts to proportionate reductions. As clarified by IID in response to the court's questioning at hearing, section 6.8 of the Agreement states that the limitation on the ratio reduction "shall be separate from and in addition to any allocation authorized pursuant to the Equitable Distribution Plan" which means that if an EDP is in place that reduces industrial users by 3% in times of shortage and the water from the Colorado River is reduced by 2%, that IID would be able to reduce water to HGC under the Agreement by a total of 5%. The court's concern in the Judgment and the Statement of Decision was ensuring that IID did not "prioritize other groups of water users, in addition to domestic water users, over farmers." (Statement of Decision, page 5, line 21.) Based on the construction of this clause and the subsequent explanation at hearing, there is no indication that IID is prioritizing HGC over agricultural water users at this time under the terms of the Agreement.

Petitioner argues that the permissive language in the Agreement is contrary to the Judgment, as allowing IID the discretion to withhold water is not the same as requiring IID to withhold water from HGC in times of shortage. The language at issue in the Agreement includes section 6.7 which states that "IID shall have the right to apportion HGC's water as an Industrial User", section 6.8 which states that "IID may reduce the Maximum Use Amount", and sections 7.3 and 8.2, which state that various factors "may prevent IID from delivering a fixed amount of water." At hearing, IID argued that the use of this discretionary language means that there is no guarantee of water to HGC. IID further noted that sections 7.3 and 8.2 in the Agreement indicate that "restraint, prohibition, or enjoinder by proper judicial, civil or military

authority" are among reasons that IID may not be able to deliver a fixed amount of water to HGC. The court notes that the Board members of IID are elected and have taken oaths which require them to follow the law. IID stated at hearing that it intends to follow any court orders. The very nature of IID vests discretion in its Board and management that this court has no jurisdiction to direct absent an abuse of that discretion. Allusions to that discretion vested in the Board by the voters in an agreement with a third party is not by itself a violation of the Judgment, and the court must assume, in the absence of actions taken to the contrary, that the Board intends to use that discretion to abide by all laws, including court orders.

ORDER

In light of the foregoing, the court finds that Respondent Imperial Irrigation District is not guilty of contempt of court based upon Amendment No. 1 to the Amended and Restated Water Supply Agreement between IID and HGC, as the terms of the Agreement do not violate the court's Judgment from August 25, 2017 nor is it inconsistent with the findings in the court's Statement of Decision from August 15, 2017 upon which the Judgment was based.

IT IS SO ORDERED.

Dated: FEB 0 7 2020

L. BROOKS ANDERHOLT
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF IMPERIAL
939 Main St
El Centro, CA 92243

Michael Abatti Plaintiff/Petitioner, vs. **Imperial Irrigation District** Defendant/Respondent	Case No.**ECU07980** **DECLARATION of MAILING**

To All Parties Listed Below:
State of California, County of Imperial

I, the undersigned, certify under penalty of perjury, that I am a Deputy Clerk of the above entitled Court and not a party to the within action; that I mailed a true and correct copy on 02/07/2020 of **Ruling and Order on Petitioner's OSC Re: Contempt** to each of the persons listed below, by depositing such notice in the United States Mail, enclosed in sealed envelopes with postage prepaid:

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Date: 02/07/2020

Maria Rhinehart, Court Executive Officer

By: Alejandro Fimbres
Alejandro Fimbres, Deputy Clerk