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ELECTRONICALLY RECEIVED
Superior Court of California,
County of San Diego
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FILED
Clerk of the Superior Court

JAN 26 2023

By: J. Pascual, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION

MARK COZIAHR, on behalf of himself and all
others similarly situated,

PLAINTIFF,

vs.

OTAY WATER DISTRICT; and DOES 1 through
200, inclusive,

DEFENDANTS.

Case No. 37-2015-00400000-CU-MC-CTL

CERTIFIED CLASS ACTION

Plaintiff's [Proposed] Judgment

DEPT: C-67
JUDGE: Hon. Eddie C. Sturgeon

The above-entitled action was tried in two phases. The Court conducted the Phase 1 proceeding on December 17, 2020. The Court issued the Phase 1 Statement of Decision on March 4, 2021 (Phase 1 Statement of Decision) ruling in favor of the named petitioner/plaintiff Mark Coziahr and the certified class (Petitioner Class) and against the Defendant Otay Water District. The Phase 1 Statement of Decision ruled that Otay "has failed to demonstrate by substantial evidence that its 2013 and 2017 tiered water rates were proportional to the cost of service attributable to each customer's parcel, as required by Proposition 218." (Phase 1 Statement of Decision at 31:21-23.)

The Court conducted the Phase 2 proceeding on the remedies to be awarded on April 4, 2022. The Court having considered the trial materials, the record, and argument of counsel in

1 briefing and at trial, and GOOD CAUSE APPEARING THEREFOR,

2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

3 1. Proposition 218 (Article XIII D of the Constitution) governs Otay water rates
4 charged to the single family residential customer class, including the Petitioner Class. Pursuant
5 to Proposition 218, Otay Water District's water charges "shall not exceed the proportional cost
6 of the service attributable to the parcel." (Cal. Const. art. XIII D, § 6(b)(3).)

7 2. Otay Water District bears the burden of proof to show that the tiered water rates
8 charged to the single family residential customer class do not exceed the proportional cost of the
9 service attributable to the parcel. (Cal. Const. art. XIII D, § 6(b)(5).)

10 3. Otay Water District failed to demonstrate by substantial evidence that withstands
11 independent review that the tiered water rates imposed on the Petitioner Class by Otay Water
12 District's 2013 and 2017 ratemakings did not exceed the proportional cost of providing water
13 service to each class member's parcel, as required by Proposition 218. (Cal. Const. art. XIII D, §
14 6(b)(3).)

15 4. Judgment is hereby entered in favor of Plaintiff Mark Cozhiar and a Certified
16 Plaintiff Class of All single-family residential customers of the Otay Water District who received
17 water service after July 14, 2014 and to the present, against Defendant Otay Water District.

18 5. The Court has calculated the amount of a refund based on the uniform rates
19 (Alternative 2) of Plaintiffs' expert. The uniform rates are the total revenue requirement, divided
20 by the total projected water usage, as adjusted annually based on water rate increases.

21 6. The total refund for overcharges reflects the difference between the cost to
22 provide water service at the uniform rates during the class period and the tiered rates imposed
23 during the class period.

24 7. The Petitioner Class is awarded \$18,105,256.60 to refund the amount class
25 members paid for water in excess of Otay's proportional cost of providing water service to each
26 class member's parcel from July 14, 2014 through June 30, 2021, and increasing by \$208,762.50
27 each month thereafter until Otay Water District imposes water rates consistent with the
28 requirements of California Constitution Article XIII D, section 6(b)(3). The estimated refund is

1 reasonable in light of the evidence and methodologies presented by the parties. Individual class
2 member refunds will be determined during the allocation phase, with any adjustments to be made
3 in light of customer billing upon this Court's consideration.

4 8. The Petitioner Class is awarded Pre-judgment interest and Post-judgment interest
5 as set forth in California Civil Code 3287 and California Government Code section 970.1(c).
6 Pre-judgment interest shall accrue at a rate equal to the weekly average one year constant
7 maturity United States Treasury yield, but shall not exceed 7 percent per annum. Post-judgment
8 interest shall accrue at a rate equal to the weekly average one year constant maturity United
9 States Treasury yield at the time of the judgment plus 2 percent, but shall not exceed 7 percent
10 per annum.

11 9. Otay Water District is ordered to impose future water rates consistent with the
12 requirements of California Constitution Article XIII D, section 6(b)(3), and may use tiers, a
13 uniform rate, or any other method, provided Otay Water District complies with California
14 Constitution Article XIII D, section 6(b)(3).

15 10. Otay Water District is ordered to impose new water rates consistent with the
16 requirements of California Constitution Article XIII D, section 6(b)(3) by the later of (a) January
17 1, 2023, or (b) not more than 9 months after Otay Water District fully exhausts its right to appeal
18 the Judgment, if an appeal is taken.

19 11. Plaintiff and the Certified Plaintiff Class are the prevailing parties and entitled to
20 costs.

21 12. This Court retains jurisdiction including jurisdiction to hear a request for
22 attorney's fees under the common fund doctrine and/or pursuant to Code of Civil Procedure
23 section 1021.5, costs, expenses, and service awards, if any, to enforce the Judgment, and to
24 address pre-judgment interest calculations. The Court grants an extension of time for good cause,
25 including to promote efficiency, to file a motion for attorney's fees, costs, expenses, and service
26 awards. Any such motion may be filed within 60 days after the expiration of the time for filing a
27 notice of appeal or, if a notice of appeal is timely filed, within 40 days of the date the Court of
28 Appeal sends a copy of the remittitur to this Court, whichever is later.

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13. The parties also agreed in principle at the April 4 trial to extend deadlines consistent with the above, and will file any agreement with the clerk.

14. Otay Water District is ordered to notify the class of this Judgment within 60 days after the expiration of the time for filing a notice of appeal or, if a notice of appeal is timely filed, within 40 days of the date the Court of Appeal sends a copy of the remittitur to this Court, whichever is later.

Dated: Jan. 26, 2022


HON. EDDIE C. STURGEON
JUDGE OF THE SUPERIOR COURT

Eddie C. Sturgeon, Judge
"nunc pro tunc to August 30, 2022"