

SAN GORGONIO PASS WATER AGENCY
1210 Beaumont Avenue, Beaumont, CA
Board of Directors Engineering Workshop
Agenda
August 11, 2014 at 1:30 p.m.

- 1. Call to Order, Flag Salute and Roll Call**
- 2. Public Comment**

Members of the public may address the Board at this time concerning items relating to any matter within the Agency's jurisdiction. To comment on specific agenda items, please complete a speaker's request form and hand it to the board secretary.
- 3. Discussion of Draft Third Joint Facilities Agreement* (Page 2)**
- 4. Construction Update**
- 5. Announcements**
 - A Regular Board Meeting, August 18, 2014 at 1:30 p.m.
 - B. Finance and Budget Workshop, August 25, 2014 at 1:30 p.m.
 - C. San Gorgonio Pass Regional Water Alliance – Technical Committee Meeting
- August 27, 2014 at 4:00 p.m. – Banning City Hall Conference Room
 - D. San Gorgonio Pass Regional Water Alliance Meeting
- August 27, 2014 at 6:00 p.m. – Banning City Council Chambers
- 6. Adjournment**

***Information included in Agenda Packet**

(1) Materials related to an item on this Agenda submitted to the Board of Directors after distribution of the agenda packet are available for Public inspection in the Agency's office at 1210 Beaumont Avenue, Beaumont during normal business hours. (2) Pursuant to Government Code section 54957.5, non-exempt public records that relate to open session agenda items and are distributed to a majority of the Board less than seventy-two (72) hours prior to the meeting will be available for public inspection at the Agency's office, located at 1210 Beaumont Avenue, Beaumont, California 92223, during regular business hours. When practical, these public records will also be made available on the Agency's Internet Web site, accessible at <http://www.sgpwa.com>." (3) Any person with a disability who requires accommodation in order to participate in this meeting should telephone the Agency (951 845-2577) at least 48 hours prior to the meeting in order to make a request for a disability-related modification or accommodation.

DRAFT Third Joint Facilities Agreement Between San Bernardino Valley Municipal Water District and San Gorgonio Pass Water Agency

This THIRD JOINT FACILITIES AGREEMENT ("Agreement") is made by and between the SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT, a municipal water district ("District") and the SAN GORGONIO PASS WATER AGENCY, a public agency ("Agency"). The District and Agency may be referred to herein individually as "Party" and collectively as "Parties."

RECITALS

A. Water Supply Contract. The Parties, and the Department of Water Resources of the State of California ("DWR") in 1961 and 1962, entered into long-term water supply contracts providing that DWR will supply certain quantities of water from the State Water Resources Development System terminus at the Devil Canyon Power Plant ("East Branch") to District and Agency on certain terms and conditions (collectively referred to as "Water Supply Contract").

B. Joint Facilities Agreements ("First and Second Agreements"). On July 16, 1970, the District and the Agency executed an agreement entitled "Joint Facilities Agreement" ("First Agreement") which provides for their joint participation in the construction of certain pipeline facilities (Attachment A). The Parties entered into an additional agreement entitled "Second Joint Facilities Agreement", dated February 10, 1986 ("Second Agreement") which provides for the participation by Agency in additional facilities already constructed by District and in future additional facilities to be constructed by District (Attachment B). The Second Agreement further provides that Agency shall be entitled to the use of District facilities for the transmission of State Water Project Water and Agency's capacity rights in said facilities as set forth in the First Agreement and in the Second Agreement. For purposes of convenience, these two agreements are referred to as the "First and Second Agreements" herein.

C. East Branch Extension. Thereafter, in 1995 and 1996, the Parties and DWR entered into Agreements to extend the East Branch to a point near the Agency's northern boundary. These agreements are entitled the California Aqueduct East Branch Extension To San Gorgonio Pass Participation Agreement [Preliminary Design], dated November 27, 1995 (Attachment C), as well as said Participation Agreement [Final Design], dated August 17, 1996 (Attachment D), as well as amendments thereto (collectively referred to as "Participation Agreement"). The Participation Agreement provides for the extension of the State Water Project Facility, Edmund G. Brown California Aqueduct, East Branch from Devil Canyon Power Plant through District's service area to Agency's service area near Little San Gorgonio Creek and South Noble Creek Spreading Grounds (referred to as the "East Branch Extension"). In 1998, pursuant to the Participation Agreement, the Parties agreed to participate in Phase 1 of the East Branch Extension and for the District and the Agency to assign and lease certain facilities to DWR ("EBX 1"). DWR agreed to proceed with design and construction of Phase 2 facilities ("EBX 2") upon request of District and Agency (Attachment E). On ___ 20 __, the District and the Agency requested the design and construction of EBX 2.

D. Ownership Rights in Facilities. Pursuant to the First and Second Agreements, the Parties currently own the following capacity rights in the following facilities, as quantified by cubic feet per second (“cfs”):

1. Reach 1: Foothill Pipeline from Devil Canyon Power Plant to Junction, Foothill Pipeline near Cone Camp Road. District - 256 cfs; Agency - 32 cfs; Total - 288 cfs.
2. Reach 2A: Junction Foothill Pipeline near Cone Camp Road to Crafton Hills Pumping Station.
 - (a) Foothill Pipeline. District – 32 cfs; Agency – 16 cfs; Total – 48 cfs.
 - (b) Santa Ana River Crossing (“SARC”) Pipeline. District - 32 cfs; Agency - 16 cfs; Total – 48 cfs.
 - (c) Greenspot Pump Station. District - 4 cfs; Agency: 16 cfs; Total – 20 cfs,
 - (d) Morton Canyon Pipeline. District – 32 cfs; Agency – 16 cfs; Total – 48 cfs.
 - (e) Greenspot Pipeline. District – 32 cfs; Agency – 16 cfs; Total – 48 cfs.
3. Reach 3: Crafton Hills Pumping Station to Garden Air Creek, south of the county line.
 - (a) Crafton Hills Pumping Station. District – 16 cfs; Agency – 16 cfs; Total – 32 cfs.
 - (b) Crafton Hills Pipeline. District – 40 cfs; Agency – 32 cfs; Total – 72 cfs.
 - (c) Bryant Pipeline. District – 40 cfs; Agency – 32 cfs; Total 72 cfs.
4. Reach 4: Garden Air Creek to the terminus at Noble Creek.
 - (a) Singleton Pipeline. Agency – 32 cfs; Total – 32 cfs.
 - (b) Cherry Valley Pump Station. Agency – 16 cfs; Total – 16 cfs.
 - (c) Noble Creek Pipeline. Agency – 32 cfs; Total – 32 cfs.

E. East Branch Extension Improvements. DWR, District, and Agency desire to expand and improve the East Branch Extension with projects commonly known as EBX 1 Improvements and EBX 2. Such expansion and improvements will alter the percentage ownership of certain reaches of the East Branch Extension set forth in the First and Second Agreements (commonly known as “Proportional Use Facility Factor”), causing changes in the financial arrangements among DWR, District, and Agency.

F. Change in Ownership Rights. The ownership of certain reaches of the East Branch Extension will change, at the completion of construction, as set forth in Amendment No. 1 to the Participation Agreement and to the California Aqueduct East Branch Extension to San Gorgonio Pass Agreement To Assign Capacity Rights And Right of Way In Existing Facilities, dated August, 1999 (“1999 Amendment”). District and Agency desire to amend the 1999 Amendment to change certain Proportional Use Facility Factors and the percentage ownership of certain reaches of the East Branch Extension.

G. Coordination and Support; EBX Joint Powers Agreement Relating to the Operation and Maintenance of the East Branch Extension. District and Agency recognize that they each have beneficial interests in the East Branch Extension and each desires to coordinate and support the efforts of the other in meeting the retail water demands within their respective service areas. At this time, District and the Agency are collectively negotiating with DWR to define and provide the responsibilities for operations, maintenance, communication, and control of the entire East Branch Extension (“EBX Joint Powers Agreement”). This Agreement is separate and independent of the EBX Joint Powers Agreement and therefore is not impacted, nor does it relate in any way, to said negotiations and any resultant agreements.

H. Need for Agreement. The Parties need to enter into this Agreement in order to clarify, memorialize, and set forth certain joint ownership issues and principles related to ownership, operation, and maintenance costs of the series of facilities known collectively as the East Branch Extension of the California Aqueduct, from the Devil Canyon Hydroelectric Plant in San Bernardino to the terminus of the East Branch Extension in Cherry Valley.

AGREEMENT

1. Incorporation Of Recitals. The Recitals set forth above are incorporated herein and made an operative part of this Agreement.

2. Phase I Foothill Pipeline (Reach 1).

(a) Option To Purchase 32 CFS. Agency shall have the option to purchase an additional 32 cfs of capacity rights in the Phase I Foothill Pipeline (Reach 1) from District on or before December 31, 2023 (“Option”). Said Option may be exercised by Agency providing written notice to District of its desire to exercise the Option. The Parties shall then engage in good faith negotiations to develop an agreement with terms and conditions for said purchase and sale including, but not limited to, price and terms of payment. Price shall be based largely on depreciated value of the original Foothill Pipeline. In the event the Parties are not able to reach an agreement on said terms and conditions within a reasonable period of time, either Party may provide written notice to the other Party that said negotiations will end.

(b) Extension/Renewal Of Option. In the event the Option expires, or is about to expire, without Agency exercising its right to purchase the 32 cfs, the Parties will engage in good faith negotiations to develop an agreement for the extension of the Option or a new Option. In the event the Parties are not able to reach an agreement on said terms and conditions within a reasonable period of time, either Party may provide written notice to the other Party that said negotiations will end.

(c) Operation And Maintenance Rates And Charges. Agency shall pay the rates and charges imposed by District for operation and maintenance of the Phase I Foothill Pipeline (Reach 1) which apply to the ownership of 64 cfs of capacity in said facility (Agency’s current ownership of 32 cfs plus 32 cfs which is the subject of the Option). Agency shall be responsible for paying said rates and charges which are imposed as of January 1, 2014. Agency shall make payment of said rates and charges in accordance with the imposition and collection procedures that apply to all other customers who are subject to said rates and charges. Said rates and

charges shall be established by District's Board of Directors from time to time. In the event that (i) the Option expires without extension or renewal; or (ii) the Parties do not agree on terms and conditions for the purchase and sale of said 32 cfs capacity and end negotiations, then District shall refund to Agency the amount Agency paid for such rates and charges prior to the date of expiration/termination of the Option or the end of the negotiations.

3. Agency Retention Of Ownership. The Parties previously entered into certain agreements and arrangements whereby District obtained certain rights to buy back from Agency 16 cfs capacity rights that District had sold or otherwise conveyed to Agency. District hereby releases, waives and otherwise elects not to pursue any such buyback rights in the facilities set forth below. Therefore, said previous agreements and arrangements, which provided such buyback rights, are hereby superseded and otherwise deemed to be null and void including, but not limited to, all previous exhibits related to ownership of the various facilities collectively known as the East Branch Extension. The facilities that are subject to this release of the buyback capacity rights are as follows:

- (a) SARC Pipeline (part of Reach 2a);
- (b) Greenspot Pump Station (Reach 2b);
- (c) Morton Canyon Connector Pipeline (Reach 2b);
- (d) Greenspot Pipeline (Reach 2c);
- (e) Yucaipa Pipeline (Reach 3d);
- (f) Mill Creek and related facilities.

4. Ownership Of East Branch Extension – Phase I And II Facilities. Upon completion and approval of EBX2, Agency shall obtain and otherwise be deemed to own the capacity rights in the facilities as set forth in Exhibit A attached hereto and incorporated herein by reference.

(a) Yucaipa Connector Pipeline (Reach 3d). Agency will own 64 cfs of capacity in the Crafton Hills Reservoir and in Reach 3a (Crafton Hills Pump Station to Crafton Hills Reservoir). Agency shall be entitled to maintain 64 cfs of capacity except when the Crafton Hills Reservoir is being bypassed. In that event, Agency shall be entitled to 16 cfs of capacity rights in the Yucaipa Connector (Reach 3d) in order to be able to continue service in conjunction with other EBX facilities.

5. Terminal Tank Facility. In the event Agency elects, in its sole discretion, during the term of this Agreement, to construct a terminal tank facility associated with the East Branch Extension, the Parties will then engage in good faith negotiations to develop a cost sharing agreement to share in the cost of construction. Said cost sharing shall be apportioned pursuant to the demonstrated value to District of the facility(ies) and this shall also be the subject of said negotiation. In the event the Parties are not able to reach an agreement on said terms and conditions within a reasonable period of time, either Party may provide written notice to the other Party that said negotiations will end. In that case, District shall not be entitled to use nor receive any benefit from said facility(ies).

6. Use Of Available Capacity. For the period from the effective date of this Agreement to the date that EBX2 is completed and placed into operation, either Party may request from the other Party the right to utilize a portion of the unused capacity owned by the other Party in one or more Reaches. Such a request shall be made pursuant to the following procedure:

(a) The requesting Party shall submit a written request to the other Party which sets forth the requested amount of capacity and the requested time period for such use. The Party that receives the request shall then determine, in its sole discretion, whether to provide such capacity and shall set forth in writing the terms and conditions for any such use.

(b) In the event the Parties agree upon the use of available capacity as set forth herein, the requesting Party shall pay to the other Party a wheeling charge of \$25 per acre-foot of water wheeled through that Party's unused capacity. The Party that provides the capacity shall be responsible for monitoring the amount of water that is wheeled through the applicable facility(ies) and shall then submit a written statement to the requesting Party which sets forth the amount due and owing. Such costs shall be billed to the requesting Party on a quarterly basis.

7. General Provisions.

(a) Compliance With Legal, Regulatory, and Permit Requirements. The Parties shall perform their respective activities under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Each Party shall be liable to the other Parties for all violations of laws and regulations in connection with the respective activities.

(b) Effective Date. This Agreement shall be effective on the date of full execution of this Agreement by both parties ("Effective Date").

(c) Term and Termination. The term of this Agreement shall be from the Effective Date to the date of completion of performance of the services under this Agreement. This Agreement shall remain in effect during the term unless earlier terminated under the following procedures:

(i) Notice and Opportunity to Cure. If any Party to this Agreement believes that any of the other Parties has failed to perform any obligation of that Party in accordance with the terms of this Agreement ("Default"), the Party alleging the Default shall provide written notice ("Default Notice") to the other Party, setting forth the nature of the alleged Default. Unless otherwise provided by a specific term of this Agreement, the Party claimed to be in Default shall have: (i) with respect to a Default involving the payment of money, ten (10) days after its receipt of the Default Notice to completely cure such Default, and (ii) with respect to any other type of Default, thirty (30) days from the receipt of the Default Notice to completely cure such Default or, if such Default cannot reasonably be cured within such thirty (30) day period, to commence the cure of such Default within the thirty (30) day period and diligently prosecute the cure to completion thereafter. If the Party claimed to be in Default does not cure such Default within the time periods and procedures as set forth herein, the Party alleging Default may then pursue the applicable legal and equitable remedies.

(d) Indemnification. Each Party (“Indemnitor”) hereby agrees to defend, indemnify and hold free and harmless the other Parties (“Indemnitees”) from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, personal injury, death or property damage, arising from or connected with Indemnitor’s activities under this Agreement, including any Worker’s Compensation suits, liability, or expense, arising from or connected with services performed on behalf of Indemnitor by any person pursuant to this Agreement, whether such claims, damages, liabilities, costs and/or judgments are based upon alleged negligence, a dangerous condition of public property, or any other theory of liability. Indemnitor’s duty to indemnify the Indemnitees shall survive the expiration or other termination of this Agreement as to any injuries, occurrences or claims occurring or alleged to have occurred prior to its expiration or termination.

(e) Relationship of the Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, or partnership or joint venture, or any association between the Parties, and none of the provisions contained in this Agreement or any act of the Parties shall be deemed to create any relationship other than as specified herein, nor shall this Agreement be construed, except as expressly provided herein, to authorize any of the Parties to act as the agent for the other.

(f) Entire Agreement. This Agreement is intended by the Parties as a complete and exclusive statement of the terms of their agreement and it supersedes all prior agreements, written or oral, as to this subject matter. This Agreement may be modified only upon the mutual written agreement of the Parties hereto.

(g) Notices. Written notices to be given to either Party must be given by personal delivery or by registered or certified mail addressed and delivered as set forth below. Other correspondence and invoices may be sent by first-class mail, addressed and delivered as set forth below:

San Geronio Pass Water Agency
1210 Beaumont Avenue
Beaumont, CA 92223
(951) 845-2577
Attn: General Manager

San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, CA 92408
(909) 387-9211
Attn: General Manager

(h) Representation of Authority. Each Party represents to the other that it has the authority to enter into this Agreement and that the individual signing this Agreement on behalf of their respective Parties has the authority to execute this Agreement and to bind their respective Parties to the terms and conditions of this Agreement.

(i) Invalidity and Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its respective duly authorized officers.

SAN GORGONIO PASS WATER AGENCY

By: _____

Title: _____

SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT

By: _____

Title: _____

EAST BRANCH EXTENSION - PHASE I & II FACILITIES
FIRM CAPACITY
EXHIBIT A - July 23, 2013

Foothill Pipeline:	
REACH 1:	Capacity: 252 cfs
SBVMWD:	188 cfs
SGPWA:	64 cfs
REACH 2a:	Capacity: 252 cfs
SBVMWD:	188 cfs
SGPWA:	64 cfs

REACH 2b:	
Greenspot P.S. Firm Capacity:	70 cfs
SBVMWD:	54 cfs
SGPWA:	16 cfs
(3) 10 cfs pumps, (2) 20 cfs pumps	
M.C.C. Pipeline:	Capacity: 70 cfs
SBVMWD:	54 cfs
SGPWA:	16 cfs

REACH 2c:	
G.S. Pipeline:	Capacity: 70 cfs
SBVMWD:	54 cfs
SGPWA:	16 cfs

REACH 2d:	Capacity: 175 cfs
Mentone Pipeline South	SBVMWD: 127 cfs
	SGPWA: 48 cfs
Citrus Reservoir:	Storage: 400 af

REACH 2e:	
Citrus P.S.:	Firm Capacity: 160 cfs
	SBVMWD: 112 cfs
	SGPWA: 48 cfs
(2) 10 cfs pumps, (2) 20 cfs pumps	
(4) 25 cfs pumps	
Mentone Pipeline East:	Capacity: 160 cfs
	SBVMWD: 112 cfs
	SGPWA: 48 cfs

REACH 3a:	
Crafton Hills P.S.:	Firm Capacity: 135 cfs
	SBVMWD: 71 cfs
	SGPWA: 64 cfs
(2) 10 cfs pumps, (2) 20 cfs pumps	
(3) 25 cfs pumps	
Crafton Hills Pipeline:	Capacity: 135 cfs
	SBVMWD: 71 cfs
	SGPWA: 64 cfs

REACH 3b:	
Crafton Hills Reservoir:	Storage: 220 af
Bryant Pipeline:	Capacity: 128 cfs
	SBVMWD: 64 cfs
	SGPWA: 64 cfs
Carter street valve vault	

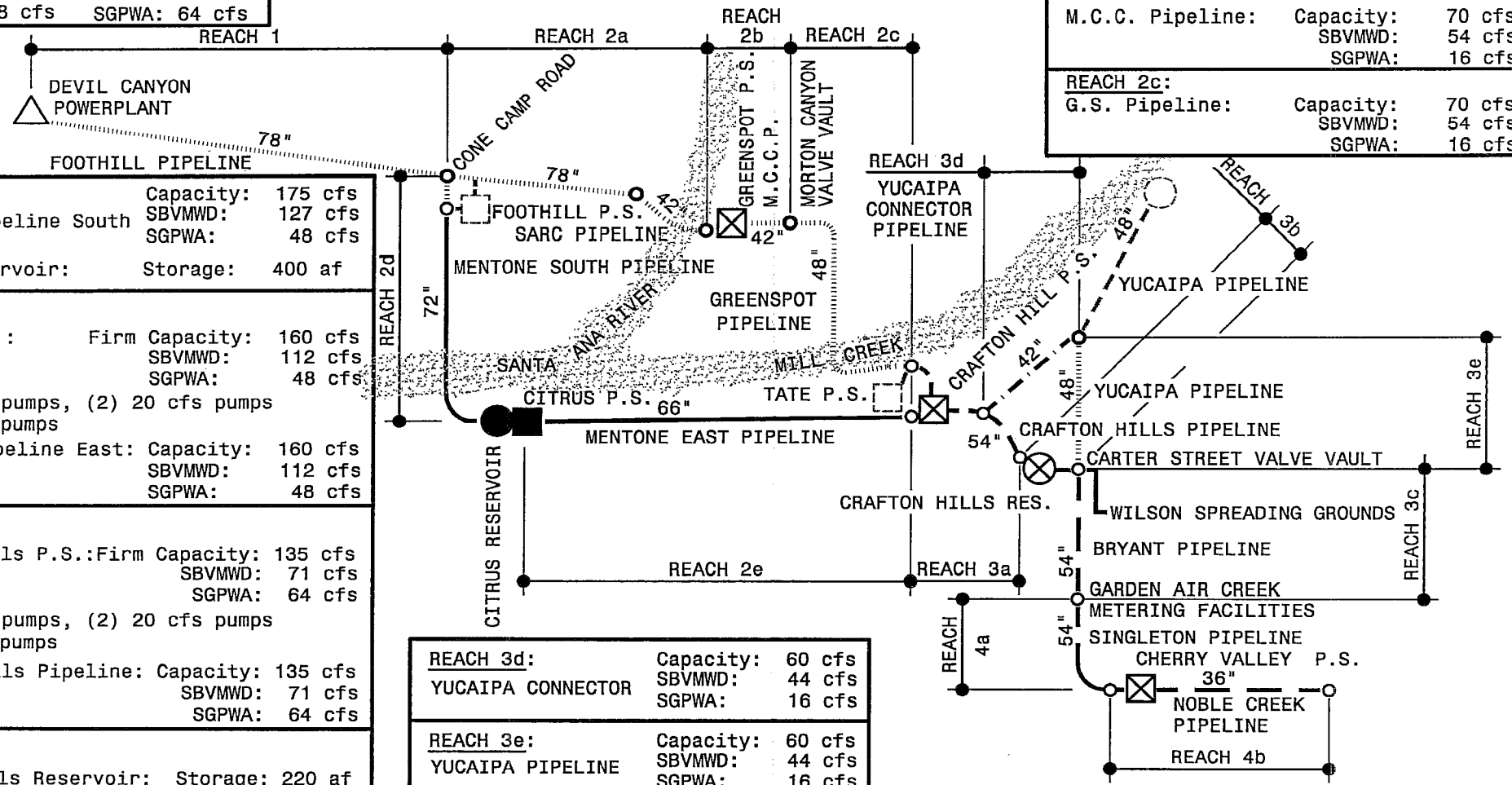
REACH 3c:	
Bryant Pipeline:	Capacity: 104 cfs
	SBVMWD: 40 cfs
	SGPWA: 64 cfs
Singleton Pipeline:	Capacity: 104 cfs
(to Sta. 428+25)	SBVMWD: 40 cfs
	SGPWA: 64 cfs

REACH 3d:	Capacity: 60 cfs
YUCAIPA CONNECTOR	SBVMWD: 44 cfs
	SGPWA: 16 cfs

REACH 3e:	Capacity: 60 cfs
YUCAIPA PIPELINE	SBVMWD: 44 cfs
	SGPWA: 16 cfs

REACH 3e:	Capacity: 64 cfs
SINGLETON PIPELINE	SBVMWD: 0 cfs
	SGPWA: 64 cfs

REACH 4b:	
Cherry Valley P.S.:	Firm Capacity: 52 cfs
	SBVMWD: 0 cfs
	SGPWA: 52 cfs
(2) 8 cfs pumps, (1) 16 cfs pumps	
(1) 20 cfs pumps	
Noble Creek Pipeline:	Capacity: 52 cfs
	SBVMWD: 0 cfs
	SGPWA: 52 cfs



LEGEND:

- Existing SBVMWD Facilities (NOT USED for SWP)
- Existing SBVMWD Facilities
- Existing EBX Phase I Pipelines and Facilities
- NEW EBX Phase I Pipeline (Crafton Hills Enlargement)
- NEW EBX Phase II Pipelines and Facilities

SECOND JOINT FACILITIES AGREEMENT

Between

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

and

SAN CORGONIO PASS WATER AGENCY

SECOND JOINT FACILITIES AGREEMENT

This Second Joint Facilities Agreement is made by and between the SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT, a municipal water district organized and existing under the provisions of the Municipal Water District Law of 1911, as amended, herein called the "District", and the SAN GORGONIO PASS WATER AGENCY, a public agency created and existing under the San Gorgonio Pass Water Agency Law, herein called the "Agency", pursuant to the provisions of Sections 71722-71723 of the water code, Section 15 subdivision 18 of the San Gorgonio Pass Water Agency Law and any other applicable provisions of law.

Background Material

1. Previous Joint Facilities Agreement.

The parties hereto entered into a "Joint Facilities Agreement" dated July 16, 1970, herein called "First Agreement," providing for their joint participation in the construction of certain pipeline facilities on the terms and conditions and contingencies specified therein. A copy is attached as Exhibit "A."

2. Facilities Constructed to Date by District with Participation by Agency.

Pursuant to the said Agreement, the District has constructed certain facilities and the Agency has participated in the cost thereof as follows:

a. The District's Phase I Foothill Pipeline, a 75 inch inside diameter pipeline from the California Aqueduct at Devil Canyon to Waterman Canyon identified in the First

Agreement as "Section One".

b. The District's Phase II Foothill Pipeline, a 78 inch inside diameter pipeline from Waterman Canyon to near the mouth of the Santa Ana River Canyon near Mentone.

3. Facilities Constructed to Date by District Without Participation by Agency.

The District has also undertaken and constructed certain additional facilities in which the Agency has elected not to participate, and pursuant to paragraph fourth of the First Agreement there is no option pursuant to said Agreement for the Agency to participate in future sections. Said additional existing facilities are as follows:

- a. Greenspot Pipeline Phase I
- b. SARC Pipeline
- c. Greenspot Pipeline Phase II and appurtenances

4. Payments by Agency Pursuant to First Agreement.

Pursuant to the First Agreement the Agency has made payments of \$167,705.04 to the District.

Prior to the time when water will be first transported through the District's facilities for the Agency the Agency is obligated under the terms of the First Agreement to pay the amount by which the proportional cost of the facilities in which it has participated exceeds the incremental cost, in the net amount of \$2,504,216.96, as shown by Exhibit "B."

5. Participation by Agency in Additional Facilities.

It is the desire of the parties hereto to provide for the participation by the Agency in certain of the additional

facilities already constructed by the District and in certain additional facilities to be constructed by District upon the terms and conditions hereinafter specified.

Agreements

6. Proposed Additional Facilities.

District agrees to construct starting early in 1986, certain new facilities, as shown in Exhibit "D", in which Agency shall participate to the extent that the bids for the work to be constructed are acceptable to both the District and the Agency as follows:

a. Facility 1

1. Greenspot Pipeline Phase III (48 inch inside diameter) extending from the Zanja-Tate Meter Station to the Tate Pumping Station with related facilities consisting of a tie to the Bear Valley Highline and an extension to the Zanja near the Boullioun Box called the Boullioun Box Pipeline.

2. Yucaipa Pipeline (48 inch inside diameter) extending from the Southern California Edison Mill Creek 2-3 Powerhouse Afterbay to the Wilson Creek Spreading Grounds in Yucaipa.

b. Facility 2

1. The Tate Pipeline (36 Inch inside diameter) extending from the Tate Pumping Station to the City of Redlands Tate Treatment Plant influent line.

2. Tate Pumping Station, and related communication facilities, designed to pump water from near the end of the Greenspot Phase III Pipeline to the City of Redlands Tate Treatment Plant with a first phase pumping capacity of 20 cfs

with provision for a future expansion to 32 cfs.

c. Facility 3

1. Greenspot Pumping Station designed to pump water from the end of the SARC Pipeline to the Greenspot Pipeline. Said station shall have a first phase capacity of 20 cfs.

d. Facility 4

1. Certain other facilities that may be required and are agreed on by both the District and Agency.

The District shall not be obligated to build anything beyond these facilities.

7. Construction of Facilities.

It shall be the responsibility of the District to acquire right-of-way, employ engineers, let contracts for the construction of the facilities, provide construction inspection and contract administration, and generally to be responsible for the project; provided that the District shall consult with the Agency and give it reasonable opportunity to review plans, specifications, costs and procedures and to make suggestions in regard to all matters of concern to it. Subject to availability of such insurance at reasonable cost, the District shall obtain liability and other insurance in connection with the construction which shall cover the Agency upon the same basis as the District, with coverages and limits in amounts mutually acceptable, and the cost thereof shall be charged to the project. District shall not award contract(s) for any facilities as described in paragraph 6 of this agreement for a period of at least ten working days after bids for said facilities have been opened and

made available to the Agency, unless the Agency shall give approval to do so at an earlier date. Timing of the bids shall be jointly scheduled between the parties to provide adequate time for review, analysis and approvals. During said ten working day period Agency shall have the option to withdraw from further participation in each facility if it deems the cost excessive. Agency shall not withdraw from Facility 1 without withdrawing from Facility 2, nor from Facility 2 without also withdrawing from Facility 3. In the absence of notice of withdrawal by the Agency delivered to the District within said ten working day period, or upon earlier approval by the Agency, District may proceed with each facility from which the Agency has not withdrawn, and the Agency shall be obligated to pay its proportionate share of the costs as specified herein. If Agency withdraws from one or more facilities, District shall not be obligated to proceed further with such facilities, nor, if the District elects to defer construction of such facilities to a later date, to submit any later bid thereon to the Agency for its participation, except as may later be agreed upon by the parties. It is the intent of the parties to cooperate with respect to construction of any future facilities upon the basis of the principles upon which this agreement and the First Agreement are based.

8. Payment by Agency for Existing Facilities.

Unless Agency withdraws from all facilities as listed in paragraph 6, Agency shall be obligated to make payments to District on the terms hereinafter provided in paragraph 10 for the existing facilities as follows:

a. Phase I and II Foothill Pipeline in the amount of \$2,504,216.96.

b. SARC Pipeline in the amount of \$282,801.55 as shown in Exhibit "C".

c. Greenspot Pipeline Phase I in the amount of \$411,214.27 as shown in Exhibit "C".

d. Greenspot Pipeline Phase II in the amount of \$1,726,788.59 as shown in Exhibit "C".

9. Basis for Payment by Agency for New Facilities.

a. Greenspot Pipeline Phase III, Yucaipa Pipeline and Tate Pipeline. For such facilities Agency's share of the costs shall be one-third of the construction, engineering, inspection, and right-of-way costs.

b. Tate Pumping Station and related facilities, and Greenspot Pumping Station. For such facilities Agency's share of the costs shall be one-half of the construction, engineering, inspection, and right-of-way costs and other related costs.

The District acknowledges that the Agency has paid the sum of \$100,000 as a portion of such costs. If the Agency withdraws from further participation in all facilities, said sum shall not be refundable.

10. Schedule of Payments.

For the facilities described in paragraph 9, District shall prepare a monthly schedule of estimated payments required for engineering and design, construction, inspection, and right-of-way, indicating the amount of such payments which it is

estimated will be required over the next succeeding 3 month period and the projected due date for each payment. Said schedule shall be updated not less frequently than monthly. Said schedule shall show the respective portions of said costs which are to be borne by the Agency and the District. Not less than 5 working days prior to the time any estimated payment is due, Agency shall transmit funds to District to cover such payment (including both the Agency's and the District's share thereof) in full. The first payment shall include any costs previously incurred by the District for the facilities described in paragraph 9 in excess of the \$100,000 previously advanced by the Agency. Adjustment shall be made on subsequent payments for any amounts by which the estimate is in excess of, or below, the actual cost. The payments shall be applied to cover the Agency's share of the costs on a current basis, and the portion of the payments which covers the District's share of the costs shall be applied in reduction of the amounts due from Agency to District to cover the Agency's share of the cost of existing facilities as set forth in paragraph 8. If the Agency makes full payment of the costs set forth in paragraph 8, it shall thereafter pay only its share of the estimated construction and related costs for the facilities described in paragraph 9. If upon completion of the work provided for herein (or the facilities in which Agency participates) the amounts due to the District from the Agency as set forth in paragraph 8 have not been fully paid, Agency shall be obligated to pay the balance only (1) upon the construction or use of additional District facilities for the benefit of the Agency and upon its request, or (2) upon construction or use by

the Agency of alternate facilities in place of participating in future phases, if any, of the District facilities provided for herein. Interest shall not accrue on amounts unpaid by Agency until such time as payment thereof is delinquent.

These provisions for the scheduling of payments are intended to supersede anything to the contrary in the First Agreement.

11. Option of District to Advance Funds in Event of Agency Shortage.

In the event the Agency does not have sufficient funds to cover the payments provided for herein, District shall have the option, but shall not be required, to advance funds to cover the deficiency. In such event such advance by the District shall be added to the balance to be paid by the Agency upon the construction or use of additional or alternate facilities as provided above in paragraph 10, or shall be paid in such other manner as the parties may agree.

12. Existing and New District facilities to be available for use by Agency.

Upon payment of all of the amounts due hereunder in connection with such facilities (exclusive of any amounts not yet due under the terms of paragraph 10), Agency shall be entitled to the use of the following District facilities for the transmission of State Project Water directly or by exchange acceptable to District:

- a. Phase I Foothill Pipeline
- b. Phase II Foothill Pipeline

- c. SARC Pipeline
- d. Greenspot Pipeline Phase I, II and III
- e. Yucaipa Pipeline
- f. Tate Pumping Station
- g. Greenspot Pumping Station
- h. Tate Pipeline;

provided, however, that if the Agency decides to withdraw from participation in construction of any of the above facilities pursuant to paragraph 7 hereof, Agency shall not be entitled to the use of such facility, if constructed.

Agency's capacity rights in the said facilities shall be as set forth in the First Agreement and in Exhibit "E" to this Second Agreement upon the terms provided herein. The District may make use of any capacity of the Agency in the facilities at times when the Agency does not require its use, but the District shall bear any additional costs such use may occasion the Agency. The Agency may temporarily utilize the facilities in excess of its share provided said use does not interfere with the utilization of the facilities by the District and provided prior written approval for said use is obtained from the District. Such use by the Agency shall be only with the written approval of the District, which shall specify the amount of proposed excess use and the period of time over which it shall occur and shall include the additional variable maintenance and operation costs based on such additional capacity for such temporary period. The Agency's right to use of District facilities shall not be assignable without the consent of the District.

13. Maintenance and Operation of Facilities.

The District shall maintain and operate the facilities, and when the Agency requires water to be delivered through the facilities, the District shall deliver it up to the maximum rate for which facilities have been constructed for the benefit of the Agency or such increased rate as may be acceptable to both of the parties. Any loss of water occurring in transit shall be shared proportionally between the parties based upon the quantities in transit for each. The District shall not be liable for failure to make delivery caused by conditions beyond its control.

14. Cost of Maintenance and Operation.

Until water shall be transported through the facilities for the Agency, the District shall pay all costs of maintaining and operating the facilities. Thereafter, fixed costs shall be shared by the parties in the respective portions of the facilities in the ratios of their respective capacities therein and the variable costs shall be shared proportionally to the amount of water transported for each party.

15. Cost Arbitration.

In case the parties fail to agree as to the amount of any costs mentioned in this agreement or the apportionment to be made under this agreement such matters shall be resolved by arbitration with each party appointing one arbitrator and the two arbitrators appointing a third.

16. Ownership.

Title to the joint facilities shall be vested exclusively in the District, subject only to the contractual rights of the Agency provided for herein; but this contract shall

run with and bind the facilities designated herein for joint use. Subject to the availability of such insurance at reasonable cost, the District shall obtain liability and other insurance coverage upon the facilities which shall cover the Agency upon the same basis as the District, with coverages and limits in amounts mutually acceptable, and the cost thereof shall be shared by the parties as part of the fixed operational costs.

17. Shutdown.

The District may temporarily discontinue or reduce the delivery of water to the Agency hereunder for the purposes of necessary investigation, inspection, maintenance, repair or replacement of any of the facilities necessary for the delivery of the Agency's water to it. The District shall notify the Agency as far in advance as possible of any such discontinuance or reduction except in cases of emergency in which case notice need not be given.

In the event of any discontinuance or reduction of scheduled deliveries to the Agency, it may elect to receive the amount of water which otherwise would have been delivered to it during such period under the water delivery schedule for that year at other times during that year or in succeeding years to the extent that such delivery capacity in the joint facilities is available, up to the capacity constructed for the use of the Agency, and additionally to the extent such election is consistent with the District's overall delivery ability from and through the joint facilities considering the then current delivery requirements of the District and the Agency.

18. Determinations not to be Unreasonable.