

SAN GORGONIO PASS WATER AGENCY
1210 Beaumont Avenue, Beaumont, CA
Special Board of Directors Meeting
Public Hearing - SGPWA Facility Capacity Fee
Agenda
July 27, 2015 at 7:00 p.m.

1. Call to Order, Flag Salute and Roll Call

2. Adoption and Adjustment of Agenda

3. 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.

4. New Business (Discussion and Possible Action)

A. Consideration of Resolution No. 2015-05* Adoption of Facility Capacity Fee and Public Hearing *(Page 2)

5. Topics for Future Agendas

6. Announcements

A. Regular Board Meeting, August 3, 2015 at 1:30 p.m.

B. Special Board Meeting, August 6, 2015 at 6:00 p.m.

C. Engineering Workshop, August 10, 2015 at 1:30 p.m.

7. 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: www.sgpwa.com (3) Any person with a disability who requires accommodation in order to participate in this meeting should call 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.

MEMORANDUM

TO: Board of Directors

FROM: General Manager

RE: Adoption of Facility Capacity Fee

DATE: July 27, 2015

Summary:

The Agency has worked on adopting a facility capacity fee off and on for the past five years. The purpose of this proposed Board action is to consider the Nexus Study ("Study") and to formally adopt the fee that has been discussed on numerous occasions.

The Study prepared for the Board Hearing on July 27, 2015 has been updated as a result of the City of Calimesa revising its land use plans to increase planned industrial development from 412,000 square feet to 18,700,000 square feet by 2035 ("Calimesa Update"). The effect of this increase in industrial use demand for water has the effect of reducing the Facility Fee Component from \$177.64 per EDU to \$170.89 per EDU.

The Calimesa Update does not affect the ability of the Board to consider the adoption of the Findings and Facility Capacity Fee Study because its impact is to reduce the overall fee to all development and thus does not result in harm to potential new water users. The Study was revised and new calculations made to assure that the Facility Capacity Fee does not exceed the reasonable cost of providing the service for which the fee is charged.

As soon as the Calimesa Update was calculated to be included in the Study, the Riverside BIA was notified by email and a copy of the updated Study was sent to them on July 22, 2015.

Background:

The San Geronio Pass Water Agency Act empowers the Agency to adopt a facility capacity fee to fund infrastructure and additional water

supplies. This is similar to developer-based fees imposed by other public agencies, including water agencies, school districts, cities, and counties, throughout California. The need to adopt and implement such a fee is acute, as without it the Agency will not have sufficient funding to procure the additional water supplies needed to meet future water demands.

The Agency has considered various revenue generating options over the past two decades, including adopting a facility capacity fee and adopting a standby charge. Neither has been adopted by the Board, though the Board has discussed each of these over the years.

Approximately a year ago, the Board directed staff to update the previous capacity fee nexus study and to bring it to the Board for consideration. A workshop was held on June 26, 2014 to gather input from the public on the nexus study process. The Agency contracted with David Taussig & Associates, who produced an earlier facility capacity fee nexus study, to produce a new one that reflects current demographics and facility plans.

Detailed Report:

Details on the need for the fee and the nexus of the fee will be presented at the Board meeting. The fee is needed in order to fund procurement of additional long-term supplemental water supplies for the region. Most of the fee is in the cost of new long-term water rights. A small portion of the fee is associated with additional infrastructure needed to augment conveyance capacity to the region and storage of the additional water supplies.

Assuming the Board adopts the fee, the next step would be for staff to pursue cooperative agreements with either retail water agencies or land use planning agencies, as identified in the SGPWA Act, to enable the Agency to collect the fee on new construction. The cooperative agreements will include such issues as:

- Total water use for a new development would be calculated based on local retail water agency standards.
- Water purchased with funds from a particular project would be reserved for that project.

- Developers would receive credits upon payment to the Agency in the event of overlapping water supply capacity fees such that a developer would not have to pay twice for the same water.

Upon adoption of a cooperative agreement with another public agency, be it a city, county, or retail water agency, the Agency would ensure that future development within that entity's service area would be covered in the Agency's urban water management plan and that entity would have a right to expect future water supplies (subject to availability) to be provided by the Agency for that development.

The hearing of the Study has been noticed, published and made available to the public as required by law.

The nexus study identifies two components of the fee—a water supply component, based on the number of acre-feet that would be used by a new development, and a facility component. The amount of the facility component is approximately \$171 per equivalent dwelling unit (EDU). The infrastructure to be funded through the fee includes additional capacity in the Foothill Pipeline and a storage facility in the Beaumont Basin. Other facilities considered in previous versions of the nexus study have been deleted in this version.

For the water component of the fee, the amount identified in the study is \$6231 per acre-foot of new water. Thus, the amount of the fee for any new home would be based on the expected water use of that home and could vary depending on location, type of development, size of lot, number of bathrooms, etc. At this time, the average water use per single family home in the region is approximately 0.548 acre-feet per year. Using this as an average, the water component of the fee for a typical average home at this time would be approximately \$3415. As homes become more water-smart in the future, this figure could be reduced significantly.

Fiscal Impact:

Adoption of the fee would have a net positive impact on the Agency. It would enable the Agency, assuming that cooperative agreements are successfully negotiated, to augment its revenues so that infrastructure and new water supplies could be funded. The capacity

fee revenues would combine with revenues from water sales and general fund tax revenues to purchase additional long-term water supplies. Facilities would be constructed using capacity fees and general fund revenues. No funds from water sales would be used to construct or purchase capacity in facilities.

Relationship to Strategic Plan:

The strategic plan calls for the Agency to develop a regional financing plan for the future. The capacity fee has long been an integral part of a regional financing plan, and is thus an integrated part of the Agency's strategic plan and 2010 urban water management plan. In addition, the capacity fee and Study are consistent with the Agency's 2010 urban water management plan.

Recommendation:

Staff recommends that the Board adopt Resolution 2015-05 adopting a capacity fee and directing staff to negotiate cooperative agreements with local water districts and/or land use planning agencies.

RESOLUTION NO. 2015-05

RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SAN GORGONIO PASS WATER AGENCY
TO ADOPT FACILITY CAPACITY FEES FOR
FACILITIES AND WATER

WHEREAS, the San Gorgonio Pass Water Agency (SGPWA) is a public agency formed and existing pursuant to Article 101 of the California Water Code Appendix (SGPWA Act) in 1961, and

WHEREAS, SGPWA entered into a contract with the California Department of Water Resources (DWR) in 1962 for a Table A amount of water capacity in the California State Water Project (SWP) which is currently 17,300 acre feet per year (AFY) to bring supplemental water to the SGPWA service area, and

WHEREAS, there is a need to meet future increasing demands for SGPWA supplemental water to the SGPWA service area which will require additional water facilities to be constructed to distribute water and to acquire additional water rights to meet the future increasing demands, and

WHEREAS, Section 101 – 27.1(a) of the SGPWA Act authorizes SGPWA to impose a facility capacity fee, which is in the nature of a connection fee, for the right to make a new retail connection to the water distribution system of any retail water distributor that is located within the boundaries of the SGPWA and that obtains all or any portion of its water supplies from SGPWA, and

WHEREAS, Section 101- 27.1(c) also provides the facility capacity fee referred to in subdivision (a) shall be adopted, established, and imposed only following a public hearing and in accordance with the requirements set forth in Chapter 5 (commencing with Section 66000 of Division 1 of Title 7 of the Government Code as it now exists or may hereafter be amended, and

WHEREAS, the Facility Capacity Fee as set forth in the SGPWA Act, Sections 101 – 27.1 (a) through (i) will assist to fund (1) the purchase of capacity in existing pipeline systems owned by other public agencies; (2) and additional basin recharge project for underground water storage in the Beaumont groundwater basin, including land purchases associated with such basin activity; and (3) the purchase of new water and/or water rights and entitlements to meet future water demand, and

WHEREAS, pursuant to Section 101 – 27.1 of the SGPWA Act, SGPWA has prepared a Capacity Fee Study (Study) to support the need for additional water facilities and new water and/or water rights in that the existing facilities are not adequate to meet the future increasing water needs in the SGPWA service area, and

WHEREAS, the Study meets the requirements of Section 101 – 27.1 and Government Code Section 66013 to ensure that the Facility Capacity Fee does not exceed the estimated reasonable

cost of providing the service for which the fee is imposed and provides a clear and concise document that will serve as the basis for the proposed fee levels, and

WHEREAS, SGPWA has provided all of the notices prior to and conducted a public hearing on July 27, 2015 required by Section 101 – 27.1 (c) of the Agency Act, and

WHEREAS, SGPWA after close of the hearing considered the Study, and proposed Findings,

NOW THEREFORE BE IT HEREBY RESOLVED

1. That the Findings as set forth on Attachment 1 concerning the Study are hereby adopted
2. That the Study is here hereby adopted
3. That the Facility Capacity Fees as set forth in the Study and on Attachment 2 hereof are hereby adopted.
4. The General Manager is authorized to contract with the counties in which it is located and with cities within the SGPWA for the collection of the Facility Capacity Fee along with building permit fees or other fees related to the improvement of property, or may contract for collection of the Facility Capacity Fees by the water retail distributors (SGPWA Act 101 – 27.1 (f)).
5. The Facility Capacity Fee shall be automatically adjusted without further action of the Board effective on July 1st of each year, beginning July1, 2016 by a percentage equal to the change in Construction Cost Index for Los Angeles as published by Engineering New Record for the preceding twelve months.
6. The Facility Fee shall be reviewed periodically as determined by the General Manager to determine if changes are needed and reasonable in unit prices, facility requirements, water demands and demographics in order to ensure that Facility Fee cost allocations are reasonable and that collections over time will fund the required facilities.
7. The Water Capacity Fee shall be reviewed annually in the month of July, commencing 2016 to adjust the Water Capacity Fee by a reasonable percentage based on the cost of actual water purchases, an updated water rights appraisal or comparisons of recent purchases of additional water rights by statewide municipalities and special districts over the preceding twelve months.
8. The General Manager is further authorized to take any and all other actions to implement and carry out this resolution.

AYES:

NOES:

DATE: July 27, 2015

SAN GORGONIO PASS WATER AGENCY

By _____
Secretary of the Board of Directors

**ATTACHMENT “1”
FINDINGS
SUPPORTING THE ADOPTION OF FACILITY CAPACITY FEES**

I. INTRODUCTORY FINDINGS

- a. The San Geronio Pass Water Agency (“Agency”) is one of 29 State Water Contractors, and is a special act district formed, existing and exercising its powers and purposes pursuant to specific enactment by the California Legislature. (San Geronio Pass Water Agency Law, Wat. Code-App. §101-1, *et seq.*, hereinafter referred to as the “Agency Act.”). Its boundaries extend through the cities of Calimesa, Beaumont, and Banning and Riverside County areas from Cherry Valley to Cabazon.
- b. The Agency is mandated by the Legislature to import supplemental water and to protect and enhance local water supplies to serve the needs of present and future water users and to sell imported water to local water districts within the Agency service area, and in so doing to give the highest priority to eliminating groundwater overdraft conditions within any agency or district receiving State Water Project (“SWP”) water delivered by the Agency. (Cal. Wat. Code-App. §§ 101-15 & 15.5; see also *Swanson v. Marin Municipal Water Dist.* (1976) 56 Cal.App.3d 512, 524 [water district has a “continuing obligation to exert every reasonable effort to augment its available water supply in order to meet increasing demands”]; *Glenbrook Development Co. v. City of Brea* (1967) 253 Cal.App.2d 267, 277 [“county water district has a mandatory duty of furnishing water to inhabitants within the district’s boundaries.”].)
- c. The Agency is authorized to establish and impose a facility capacity fee (“FCF”), “in the nature of a connection fee, for the right to make a new retail connection to the water distribution system of any retail water distributor with the agency” that obtains any portion of its water supply from the Agency. (Cal. Wat. Code-App. § 101-27.1(a).)
- d. The California Environmental Quality Act (“CEQA”) requires public agencies to analyze the water supply impacts of projects, including estimations of project water demand and evidence of adequate long-term water supplies. Failure to do so can result in a court-ordered revocation of project approvals and permits. For example, in *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, the Court of Appeal determined that a water district water supply assessment failed to provide firm assurance of adequate water supplies for a residential project. This was based in part on uncertainties and a failure to discuss the contingent nature of identified supplies. As a result, the project’s environmental impact report failed to meet CEQA’s requirements. Similarly, in *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, the Court of Appeal determined that a biological waste composting facility was required to have completed a water supply assessment and failure to do so resulted in an environmental impact report that

failed to adequately address the issue of water supply for the facility. This was due to the environmental impact report's identified water supplies being purely speculative.

- e. The Agency Board of Directors ("Agency Board") has determined that "existing water importation, production, treatment, transportation, or delivery facilities or other related works are inadequate to meet anticipated demand." Therefore the Agency is mandated by the Legislature to raise money and develop facilities to meet the needs of retail water agencies within its service area as part of its "mandatory duty of furnishing water to [existing] inhabitants within the [Agency service area]" and its "continuing obligation to exert every reasonable effort to augment its available water supply in order to meet increasing demands." (Cal. Wat. Code-App. § 101-27.1(b); *Glenbrook Development Co. v. City of Brea* 253 Cal.App.2d at p. 277; *Swanson v. Marin Municipal Water Dist.* 56 Cal.App.3d at p. 524.)

II. STATEMENT OF NEED

- a. The Agency was formed in 1961 with the knowledge that at some time in the future, water demand in its service area would exceed available local water supply. That time is at hand and the Agency must plan ahead to have sufficient water supply available to support existing and new development.
- b. In *San Timeteo Watershed Management Authority v. City of Banning* (RCSC Case No. RIC 389197) [the "Beaumont Basin Adjudication"], the court determined that pumping from the Beaumont Groundwater Basin ("BSU") to supply groundwater to local users exceeded the natural recharge of the basin. The court allowed the parties to continue to exceed the natural recharge of the BSU temporarily to create dewatered storage—essentially an underground reservoir—and to have time to find other ways to balance supply and demand. Once the "temporary surplus" called for in that adjudication is fully-withdrawn, however, water demand in dry years will outstrip currently available supply for existing and future development. A watermaster was appointed to manage the BSU through controlled overdraft (temporary surplus) through 2013. The BSU is now required to operate in a balanced condition, replacing an amount of water equal to the amount removed from the basin to meet local demands, over time. The BSU Adjudication is an official document of the State of California, on file with the Riverside County Superior Court and on file with SGPWA.
- c. The 2010 Urban Water Management Plan for the San Geronio Pass Water Agency ("2010 SGPWA UWMP"), adopted and published by the Agency Board in December 2010, is the main water planning document for the Agency in its service area, pursuant to law. The 2010 SGPWA UWMP projects estimates of water supply and demand for the Agency service area to the year 2035.
- d. The Agency is mandated by the UWMP Act to provide reasonable, conservative estimates of water use based on demand projections provided by retail agencies

within its service area. The Agency is required by the UWMP Act to rely on these retail agency-provided numbers in its projections. Thus the 2010 SGPWA UWMP notes on page 2-2 that the demand numbers on which the plan relies “are derived entirely from data provided by each retail water agency in recent coordination activities...”

- e. The 2010 SGPWA UWMP charts the discrepancy between future demand and supply in its “Section 5 Water Reliability.” In all dry year types, beginning in 2015, significant amounts of supplemental short-term water will be needed from the Agency to meet demands in the Agency service area. Any Agency water withdrawn from groundwater storage in dry years to meet these short-term needs must have been stored previously in wet years.
- f. In order to facilitate storage and conjunctive use to benefit existing development in dry years or during periods of significant water supply interruption, the Agency must have additional storage, transmission, and groundwater percolation capacity to take advantage of peak water availability on short notice in wet months and/or years.
 - i. For example, “Article 21” water is a classification under the Agency’s contract for SWP water with the Department of Water Resources. This water is outside of various agencies percentages of “Table A” water that they are allocated every year. DWR declares when this type of “bonus” water is available on short notice. So if an agency desires to take advantage of Article 21 water when it becomes available, that agency must have sufficient pipeline capacity to move the water to its area and must have sufficient capacity to store it to use later. If an agency relies primarily on groundwater storage and not surface water in a reservoir, then the agency must have sufficient percolation capacity to recharge a substantial amount of water on short notice.
- g. New development will need additional facilities for the same reliability purposes as existing development—that is, increased capacity to take more water on short notice when it is available to store it for when it is not available. New development, however, adds to total water demand. It thus adds to the capacity or size of the facilities needed by existing development. It also creates the need for some facilities solely on its own. Some, but not all, new development will also need new permanent water rights (see Section IV.d.ii, below). Section 5 of the 2010 SGPWA UWMP projects that new development will require additional permanent water rights prior to 2035 to meet long-term average annual demand.
- h. The 2010 SGPWA UWMP notes that existing “facilities do not provide sufficient capacity to recharge all imported water supply that may be available in a given year. Conditions in the SWP may require that SGPWA use its Table A allocation over a shorter period of time (e.g. six month window as opposed to spread evenly over the course of the year). This would require SGPWA to plan for surplus capacity. Moreover, SGPWA plans to obtain supplemental sources of imported

water and to use SWP Article 21 water whenever possible. The timing of supplemental sources of imported water are *[sic]* not known, but could also require deliveries to occur over a shorter time-period. Article 21 water is declared on a weekly basis, thus its use is highly limited by the capacity of conveyance and recharge facilities.”

- i. The Agency Board finds that a need exists for new facilities to convey and store water when it is available to increase water supply reliability for existing and future development. The Agency Board finds substantial evidence in the record to support this conclusion.

III. REGIONAL, INTEGRATED SYSTEM

- a. SGPWA owns and maintains the Regional, Integrated System (“SGPWA System”) consisting of water storage and conveyance facilities that provides benefit to all lands within SGPWA boundaries by providing access to an imported water supply through the SWP. Each facility within the system provides delivery of water for groundwater basin replenishment, storage for local use when imported water is in short supply, or direct delivery to retail agencies. SGPWA will need to construct new facilities within this system to augment current storage capacity and delivery capabilities in order to meet the demands of current and future development. Thus, imported water stored in the Beaumont Basin, or any other groundwater basin, by SGPWA can be locally used as part of a conjunctive use program in time of shortage, allowing SGPWA imported water supplies to be beneficially used by water users within the SGPWA service area. The integrated system will provide the central core access to a water supply for lands that would not otherwise have such access during prolonged periods of limited imported water deliveries and during years of surplus. For example, the Beaumont Basin Recharge Facility, more fully described in Section V.1 of the Study, provides an interconnected system of water delivery to local water agencies that overlie the Beaumont and Banning groundwater basins. The Beaumont Basin Recharge Facility adds recharge capacity and storage to an overdrafted basin in order to provide reliable water supplies to both new and existing development within the entire SGPWA service area.
- b. The SGPWA System will increase reliability for all development, both existing and future, throughout the Agency service area in wet, average, and dry years through conjunctive use. The SGPWA System will provide additional capacity, conveyance, recharge, and storage facilities for SWP water that may be filled in wet months and/or years, and drawn down in dry months and/or years.
 - i. In wet years the Agency will be able to take all of its available Table A allotment, any future acquired short- or long-term water transfers, and even “bonus” Article 21 water because the SGPWA System provides the capacity to move, recharge, and store that water. This capability is currently nonexistent.

- ii. Conjunctive use of the abundant groundwater storage in the Agency service area provides the flexibility needed for the Agency to manage its supply and protect users in its service area from significant supply shortfalls.
 - 1. The Beaumont Basin Recharge Facility will benefit future development by increasing the BSU's recharge capacity to take advantage of dewatered storage to store supplemental water when future water demand reaches the point where it becomes necessary. Through conjunctive use the Agency will be able to store water when it is available during wet months or years and then withdraw that water as needed during dry months and/or years.
- iii. The SGPWA System will benefit both existing and future development by providing increased reliability and supply in wet, average, and dry years through conjunctive use. Through conjunctive use the Beaumont Avenue Recharge Facility will act as an additional storage facility for SWP water that may be filled in wet months and/or years, and drawn down in dry months and/or years.
- iv. The 16 CFS Capacity from San Bernardino Valley Municipal Water District will benefit future development by providing the needed capacity to bring in supplemental water when future water demand reaches the point where it becomes necessary.
- c. As Appendix B of the Study notes, "in order to meet average delivery of SWP water to the Agency's service area, the Agency must have the ability to convey and store SWP water during the multiple-wet years to utilize this water during multiple-dry years. The implementation of recharge facilities in the Beaumont groundwater basin will provide the Agency the terminal storage to implement the required conjunctive use program to fully utilize the Agency's Table A amount and be able to provide water to its retail customers during protracted drought periods."
- d. The Agency Board finds that the SGPWA System is necessary to fulfill the Agency's legislative mandate to import supplemental water and to protect and enhance local water supplies to serve the needs of present and future water users. The Agency Board finds substantial evidence in the record to support this conclusion.

IV. THE STUDY REPRESENTS A FAIR ALLOCATION OF THE COSTS OF THE SGPWA SYSTEM AND FUTURE PERMANENT WATER PURCHASES

- a. The purpose of the Study is to ensure that the facility capacity fee does not exceed the estimated reasonable cost of providing the service for which the fee is imposed and to provide a clear and concise document that will serve as the basis for the proposed fee level.

- b. The Study calculates the need for new water facilities through the year 2035. It does so for two reasons: 1) the Agency Board determined that projecting demand for facilities through that year (vs. ultimate buildout) is reasonable because it is consistent with local agency UWMPs and water demand estimates, and; 2) that year allowed the Study to draw from and be consistent with the 2010 SGPWA UWMP, the main water planning document for the Agency service area.

- c. The City of Calimesa notified the Agency it had updated its land use plan on July 20, 2015 (“Calimesa Update”) which increased its industrial square footage from 412,000 square feet to 18,700,000 square feet in 2035. Upon verifying the impact of the Calimesa Update on the Study, the Agency modified the Study to include such information on July 21, 2015. It is fair and reasonable to proceed with the hearing on the Study and adoption of the findings and the Resolution adopting the Study and implementing the facility Capacity Fee on July 27, 2015 for the following reasons:
 - 1. All notices, publication and availability of the study as required by law have been complied with by the Agency.
 - 2. Only Riverside BIA requested a special notice of the hearing which was provided by the Agency on July 13, 2015
 - 3. A copy of the Study was sent to the Riverside BIA on July 13, 2015.
 - 4. As soon as the Calimesa Update impact on the Study was verified on July 21, 2015, the Agency notified Riverside BIA by e-mail on July 22, 2015.
 - 5. A copy of the Updated Study was sent by e-mail to Riverside BIA on July 22, 2015.
 - 6. The result of the Calimesa Update on the Study was to reduce the Facility Fee component from \$178 per EDU to \$171 per EDU.
 - 7. The calculation of the effect of the Calimesa Update reducing the fee to \$171 per EDU was completed using the same methodology applied in a consistent manner as the calculation to derive the cost of \$178 per EDU.
 - 8. The reduction in the Capacity Fee does not harm the users to which the fee is charged because it reduces their costs.
 - 9. It is reasonable for the public to expect that hearings on Facility Capacity Fees will result in changes to the fee based on comments and concerns of the Agency Directors, Agency staff, other public agencies and members of the public.
 - 10. The reduction of the fee from \$178 per EDU to \$171 per EDU is only a 4% change in the fee which is not a material change and does not deprive any affected party or member of public of its rights to provide meaningful information at the hearing

11. Other than Riverside BIA, there has been no requests of the Agency for a copy of the Study.
12. The board finds substantial evidence in the record to support the conclusion to proceed with the adoption of the Facility Capacity fee on July 27, 2015.
- d. To accurately allocate costs in accordance with law, the Study allocates the cost of the SGPWA System between existing development and new development, and allocates the costs by type of development by using a single metric: equivalent dwelling units (“EDUs”) for new construction.
 - e. The Study also breaks up the facility capacity fee into two components: the facility capacity fee component and the water capacity fee component.
 - i. The facility capacity fee component will be required of all new development, regardless of the water capacity fee component. Regardless of the amount of water required, all new development will benefit from the increased reliability provided by the SGPWA System.
 - ii. The water capacity fee component will only be required of new development if the retail agency tasked with supplying water to that development determines that additional supplemental water is needed. Whether sufficient supply will be able meet a specific project’s demand will be determined on a project-by-project basis in coordination with retail water distributors.
 - f. The Study divides the cost of some of the SGPWA System Facilities between existing development and new development, given the water supply reliability needs of both groups. The facility capacity fee component is only required of new development. Existing development will pay for its share of the cost of the facilities through water rates and other sources of SGPWA revenues and assets.
 - iii. As detailed in Section V of the Study, to determine the benefit to new development of the Agency portion of the SGPWA System, the Study divided the total projected water demand in the year 2035 by the amount of that total demand attributable to new development. This new development is responsible for a portion of the costs of the facilities listed above as follows: new development is responsible for 80% of the costs of the Beaumont Basin Recharge Facility and 100% of the 16 CFS capacity from SBVMWD because the 16cfs capacity from SBVMWD will only benefit new development.
 - g. When the estimated total SGPWA System cost allocated to new development (\$10,983,000) is divided by the estimated demand for facilities created by that new development by 2035, the result is a facility capacity fee component of \$170.04 per equivalent dwelling unit (“EDU”).

- h. The Agency received appraisal information from Lynn Takaichi of Kennedy/Jenks Consultants. Mr. Takaichi is one of the leading experts on the subject of water transfers and water pricing in the State of California. Mr. Takaichi estimated that the cost of additional water rights (the water capacity fee component) to be \$6200.00 per acre-foot. This information is included in the study as Appendix D entitled "Water Rights Appraisal."
- i. The Agency Board finds that the allocation the cost of the SGPWA System between existing development and new development, and the allocation by type of development does not exceed the estimated reasonable cost of providing the service for which the fee is imposed. The Agency Board finds substantial evidence in the record to support this conclusion.

V. AGENCY ADMINISTRATIVE OVERHEAD

- a. The Agency is entitled by law to recover the reasonable costs associated with administrating the facility capacity fee program as part of the "estimated reasonable cost of providing the service for which the fee or charge is imposed..." (Cal. Gov. Code § 66013(a); Cal. Wat. Code-App. § 101-27.1(d).) The Agency Board determined that the reasonable cost of administering the facility capacity fee program is .50%.
- b. As detailed in Tables 9 and 12 of the Study, the administrative overhead for the facility capacity fee component is \$.86 per EDU and the administrative fee for the water capacity fee component is \$31.00 per acre-foot respectively. As described more fully in the Nexus Study, these represent reasonable administrative overhead costs for the maintenance of these funds and for administrative costs associated with the procurement of a new water source.
- c. The total facility capacity fee component, including administrative overhead, is \$170.89 per EDU.
- d. The total water capacity fee component, including administrative overhead, is \$6,231.00 per acre-foot.
- e. The Agency Board finds that the administrative overhead does not exceed the estimated reasonable cost of providing the service for which the fee is imposed. The Agency Board finds substantial evidence in the record to support this conclusion.

VI. PERIODIC FEE REVIEW

- a. To continue to collect sufficient funds to cover the costs of new facilities, the facility capacity fee component will be automatically increased in the month of July of each year, beginning in July, 2016, by a percentage equal to the change in Construction Cost Index for Los Angeles as published by Engineering News Record for the preceding twelve months.

- b. The Agency Board recognizes in accordance with California law that some level of uncertainty is a permanent, inherent feature of modern water management, and as such, long-term water planning involves expectations and not certainties. The Agency Board thus will periodically review the facility capacity fee structure and adjust the fee to reflect the estimated reasonable cost of providing the service for which the fee is charged.
 - i. The Facility Capacity Fee shall be automatically adjusted without further action of the Board effective on July 1st of each year, beginning July 1, 2016 by a percentage equal to the change in Construction Cost Index for Los Angeles as published by Engineering News Record for the preceding twelve months.
 - ii. The Facility Fee shall be reviewed periodically as determined by the General Manager to determine if changes are needed and reasonable in unit prices, facility requirements, water demands and demographics in order to ensure that Facility Fee cost allocations are reasonable and that collections over time will fund the required facilities.
 - iii. The Water Capacity Fee shall be reviewed annually in the month of July, commencing 2016 to adjust the Water Capacity Fee by a reasonable percentage based on the cost of actual water purchases, an updated water rights appraisal or comparisons of recent purchases of additional water rights by statewide municipalities and special districts over the preceding twelve months.
 - iv. The General Manager is further authorized to take any and all actions to implement and carry out the Facility Capacity Fee program and its implementing resolution. The Agency Board finds that its review process will prevent the facility capacity fee from exceeding the estimated reasonable cost of providing the service for which the fee is charged. The Agency Board finds substantial evidence in the record to support this conclusion.

VII. FACILITY CAPACITY FEE ACCOUNT

- a. As required by law, the Agency Board will deposit all funds from the facility capacity fee program except agency overhead in a separate facility capacity fee account. (Cal. Gov. Code. § 66013(c).)
- b. The Agency Board will account for the facility capacity fee funds in a manner to avoid any commingling with other funds of the Agency, except for investments, and shall expend facility capacity fee funds solely for the purposes for which they were collected. (Cal. Gov. Code. § 66013(c).)
- c. Any interest income earned from the investment of funds in the facility capacity fee account should be deposited in that account. (Cal. Gov. Code. § 66013(c).)

- d. The Agency Board will include the following information in its annual financial report (Cal. Gov. Code. § 66013(e).):
 - i. A description of the funds deposited in the facility capacity fee account. (Cal. Gov. Code. § 66013(d)(1).)
 - ii. The beginning and ending balance of the account and the interest earned from investment of funds in the account. (Cal. Gov. Code. § 66013(d)(2).)
 - iii. The amount of facility capacity fee revenue collected in that fiscal year. (Cal. Gov. Code. § 66013(d)(3).)
 - iv. An identification of each of the following:
 - 1. Each water facility or water right on which funds were expended and the amount of the expenditure for each facility or water right, including the percentage of the total cost of the facility or water right that was funded with facility capacity fee funds if more than one source of funding was used. (Cal. Gov. Code. § 66013(d)(4)(A).)
 - 2. Each water facility or water right on which funds were expended that was completed during that fiscal year. (Cal. Gov. Code. § 66013(d)(4)(B).)
 - 3. Each water facility or water right purchase that is anticipated to be undertaken in the following fiscal year. (Cal. Gov. Code. § 66013(d)(4)(C).)
 - v. A description of each interfund transfer or loan made from the facility capacity fee account. The information provided in the case of an interfund transfer shall identify the water facilities or water rights on which the transferred funds are, or will be, expended. The information shall include the date on which the loan will be repaid and the rate of interest that the fund will receive on the loan. (Cal. Gov. Code. § 66013(d)(5).)

VIII. REASONABLENESS OF FACILITY CAPACITY FEE

- a. There is a reasonable relationship between the Facility Capacity Fee and the benefit to new and existing development within the Agency service area. Those benefits include, but are not limited to, the need to ensure water reliability for both existing and new development and the need to supply water to new development.
- b. The Facility Capacity Fee set forth in Resolution does not exceed the estimated reasonable cost to the Agency of providing the service for which the fee is charged.

- c. The allocation of costs to existing development to pay for a percentage of the costs of new water facilities is proportional to the benefits received from those facilities by existing development.
- d. The Agency Board finds that the facility capacity fee will not exceed the estimated reasonable cost of providing the service for which the fee is charged. The Agency Board finds substantial evidence in the record to support this conclusion.

IX. PROPOSITION 218 DOES NOT APPLY TO FACILITY CAPACITY FEES UNDER GOVERNMENT CODE § 66013

- a. In *Richmond v. Shasta Community Services District* (2004) 32 Ca1.4th 409, the California Supreme Court held that facility capacity fees were not property-related fees under Article XIII D of the California Constitution (Proposition 218) because they are only charged to development that elects to connect to the local agency's water infrastructure. Therefore the facility capacity only goes into effect at the election of the development.
- b. The Agency Board finds that the facility capacity fee is not a property-related fee and is thus not subject to the requirements of Proposition 218. The Agency Board finds substantial evidence in the record to support this conclusion.