

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

I. INTRODUCTORY FINDINGS

- a. The San Geronio Pass Water Agency (“Agency” or “SGPWA”) 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, Water. 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 unincorporated Riverside County areas from Cherry Valley to Cabazon.
- b. The Agency has a mandatory duty 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”), 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 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 must 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." The proposed Facility Capacity Fees are necessary to fund such facilities (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 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 Beaumont Basin 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. a 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 provide 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 32 cubic foot per second ("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 July 21, 2015 Capacity Fee Study for San Geronio Pass Water Agency ("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 FCF 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 FCF 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 FCF 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 FCF 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 the 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 FCF 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 to 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 32 CFS capacity from San Bernardino Valley Municipal Water District (“SBVMWD”) because the 32 CFS 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 of 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 administering 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 FCF 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 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 without further Board action in the month of July 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.

- 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 FCF 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 component 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.
 - ii. The Water Capacity Fee component 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.
 - iii. The General Manager is further authorized to take any and all actions to implement and carry out the FCF program and its implementing resolution. The Agency Board finds that its review process will prevent the FCF 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 FCF program except agency overhead in a separate FCF account. ([Cal. Gov.](#) Code. § 66013(c).)
- b. The Agency Board will account for the FCF 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 FCF 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 FCF 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 FCF 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 FCF 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 FCF 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 FCF 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 FCF set forth in Resolution 2015-05 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 FCF 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 Cal.4th 409, the California Supreme Court held that facility capacity fees are 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 FCF only goes into effect at the election of the development.
- b. The Agency Board finds that the FCF 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.