

SAN GORGONIO PASS WATER AGENCY
1210 Beaumont Avenue, Beaumont, CA
Board of Directors Engineering Workshop
Agenda
June 11, 2018 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 Revised Surplus Water Agreement with Valley District* (p. 2)**
- 4. Discussion of Agency Exchanges and Future Water Owed**
- 5. Announcements**
 - A. San Gorgonio Pass Regional Water Alliance, June 20, 2018 at 5:00 p.m. – Banning City Hall
 - B. Finance and Budget Workshop, June 25, 2018 at 1:30 p.m.
 - C. Regular Board Meeting, July 2, 2018 at 1:30 p.m.
- 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.

SURPLUS WATER SALE AGREEMENT

This Surplus Water Sale Agreement (“Agreement”) is made and entered into as of ____ day of _____, 2018, by and between the SAN GORGONIO PASS WATER AGENCY ("Agency") and SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT (“District”). Agency and District are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

RECITALS

A. Agency and District are state water contractors and regional water agencies that provide water on a wholesale basis to retail water providers and other public agencies within their respective service areas. There are two retail water providers that are within the service areas of both Agency and District. Those retailers are the Yucaipa Valley Water District and the South Mesa Water Company (collectively referred to as “Retailers”); and

B. Agency desires additional water supplies of all kinds to improve its water supply reliability, including wet year yield; and

C. Agency and District have a long history of cooperative efforts to serve water to their respective service areas, including water exchanges and sharing capacity in the East Branch Extension; and

D. District anticipates that from time to time, it may have surplus State Water Project water (“Surplus Water”) that is surplus to the needs of its retail customers; and

E. District has adopted its Ordinance 79 which establishes procedures for the surplus and sale of surplus State Water Project Water; and

F. District desires to provide Agency the first right of refusal to purchase up to 5,000 acre-feet of District’s Surplus Water per calendar year; and

G. Agency desires to purchase Surplus Water from District under the terms and conditions set forth in this Agreement and in a manner that is consistent with Ordinance 79.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

1. Term of Agreement.

The term of this Agreement shall commence on January 1, 2018 and end on December 31, 2032. ("Term").

2. Purchase and Sale of Surplus Water.

(a) District may determine, in its sole discretion, the amount of Surplus Water that will be available for purchase during each calendar year of the term of this Agreement. Notwithstanding the foregoing, if District determines that Surplus Water is available, District shall provide Agency the right of first refusal to purchase up to the first 5,000 acre feet of said Surplus Water.

(b) On or before June 15 of each year during the Term, District shall provide notice to Agency of the amount of Surplus Water that is available for purchase for that calendar year. Agency shall then have 30 days from the date of said notice to notify District of the amount of said Surplus Water that it wishes to purchase for that applicable year.

3. Purchase Price for Surplus Water.

The purchase price for Surplus Water delivered by District to Agency shall be the sum of the costs as calculated in subsections (a) and (b) below.

(a) The cost of the water shall be based on the State Water Project Table A allocation

as determined for the applicable year as follows:

Final SWP Allocation	Cost Per Acre-Foot
0 - 20%	\$400
21 - 40%	\$300
41 - 60%	\$200
61 - 100%	\$100

(b) The power cost to move the Surplus Water through the State Water Project facilities, District facilities, and then to the Point of Delivery as defined herein, shall be paid as follows: (i) Agency shall pay to District power costs at the power cost rate established for the State Water Project for the applicable year. The actual power costs shall be reconciled on or before the end of the calendar year following the year of the delivery. In the event it is determined that Agency has underpaid power costs, Agency shall make payment for the amount owed to District within 30 days of said determination. In the event it is determined that Agency has overpaid power costs, Agency may elect to either receive payment from District within 30 days from the date of said determination or to apply said amount as a credit toward power costs for a subsequent year.

(c) On or before expiration of each 5-year period during the Term, the Parties shall meet and confer in good faith in regard to whether the amount and/or calculation of the purchase price should be changed. In the event the Parties cannot agree as to a new or different amount or calculation, then either Party shall have the right to terminate this Agreement. Unless a Party elects to so terminate this Agreement, the purchase price then in effect shall remain in effect unless or until the Parties reach an agreement to make any such change.

4. **Delivery of Water.**

(a) Point of Delivery. The physical point of delivery (“Point of Delivery”) of Surplus Water pursuant to this Agreement includes, but is not limited to, the following locations:

Delivery Location	Reach Number
Various locations in the San Bernardino Basin	EBX – 1, 2A, 2B, 2C
Various locations in the Yucaipa Basin	EBX – 3B
Various locations in the Beaumont Basin;	EBX – 4A, 4B

(b) Delivery Schedule. District will cooperate with Agency to coordinate for the delivery at the Point of Delivery upon a mutually agreeable delivery schedule.

5. **Use of Water in the San Gorgonio Pass Water Agency Service Area.** Agency shall only purchase the amount of Surplus Water that it is able to put to beneficial use within its service area.

6. **Initial Resale of Surplus Water.** During the applicable year, Agency shall first offer to sell fifty percent (50%) of any Surplus Water to the Retailers based on the following conditions:

(a) All Surplus Water sold to the Retailers shall be based on the pricing policy established by the Agency.

(b) If the quantity of Surplus Water available to the Agency from the District is less than 2,000 acre feet and more than 1,000 acre feet, each Retailer shall be able to purchase from the Agency a minimum quantity of 250 acre feet, plus the remaining Initial Resale of Surplus Water divided between the Retailers based on the proportional amount of imported purchased from the Agency over the previous three calendar years. If one Retailer elects not to purchase any share, or elects to purchase less than its share, then the balance of Initial Resale of Surplus Water shall be made available to the other Retailer.

(c) If the quantity of Surplus Water available to the Agency from the District is equal to or greater than 2,000 acre feet, each Retailer shall be able to purchase from the Agency a minimum quantity of 500 acre feet, plus the remaining Initial Resale of Surplus Water divided between the Retailers based on the proportional amount of imported purchased from the Agency over the previous three calendar years. If one Retailer elects not to purchase any share, or elects to purchase less than its share, then the balance of Initial Resale of Surplus Water shall be made available to the other Retailer.

(d) Each Retailer shall notify Agency within 15 days of receiving a written offer as to whether, and to what extent, each Retailer desires to purchase Surplus Water.

(e) In the event the Retailers elect not to purchase all of the water described in this Section, Agency may purchase the remainder of the Initial Resale of Surplus Water.

6. **Regulatory Requirements.** The implementation of this Agreement shall be subject to satisfaction by District and Agency of applicable legal and regulatory requirements.

7. **Default and Termination.** In the event either Party fails to make any payment under this Agreement when due, or fails to perform any obligation otherwise required by this Agreement, the non-defaulting Party shall demand in writing that the defaulting Party cure such non-performance. The defaulting Party shall have ninety (90) days after receipt of such demand to cure. In the event the defaulting Party fails to cure a default within the ninety (90) day period, the non-defaulting Party may pursue any applicable action in law or equity including, but not limited to, termination, specific performance and/or damages for breach of this Agreement.

8. **Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between the Parties. This Agreement cannot be amended except in writing signed by both Parties.

9. **No Waiver.** Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right and shall not preclude such Party

from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

10. Notices. All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one (1) day after being deposited for next day delivery with an overnight courier. Each such notice or communication shall be addressed to the Parties at their respective addresses set forth next to their signatures below, or such other address as a Party notifies the other in writing.

11. Severability. If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

IN WITNESS WHEREOF, the Parties have executed this agreement as of the date first written above.

DISTRICT:

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

AGENCY:

SAN GORGONIO PASS WATER
AGENCY

By: _____

Name: _____

Title: _____

Address: _____

By: _____

Name: _____

Title: _____

Address: _____

EXHIBIT A

Resale of Surplus Water Examples

Amount of Surplus Water	SGPWA	Total Retailer Share	Amount to Each Retailer	
			SMWC	YVWD
1,000 AF < x < 2,000 AF	50%	50%	250 AF + PROPORTION	250 AF + PROPORTION
> 2,000 AF	50%	50%	500 AF + PROPORTION	500 AF + PROPORTION

PROPORTION: Any remainder of Retailer Share will be proportioned per Section 6 of this agreement, in proportion to the amount of SWP water each retailer purchased over the previous three (3) years

