

**SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS**

**BOARD MEETING/PUBLIC HEARING
AGENDA**

April 28, 2010 - 1:30 p.m.

Location--1630 West Redlands Boulevard, Suite A, Redlands, California

Note: Copies of staff reports and other documents relating to the items on this agenda are on file at the District offices and are available for public review during normal District business hours. New information relating to agenda topics listed, received, or generated by the District after the posting of this agenda, but before the meeting, will be made available upon request at the District offices.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

1. PUBLIC PARTICIPATION

Members of the public may address the Board of Directors on any item that is within the jurisdiction of the Board; however, no action may be taken on any item not appearing on the agenda unless the action is otherwise authorized by Subdivision (b) Section 54954.2 of the Government Code.

2. ADDITIONS/DELETIONS TO AGENDA

Section 54954.2 provides that a legislative body may take action on items of business not appearing on the posted agenda under the following conditions: (1) an emergency situation exists, as defined in Section 54956.5; (2) a need to take immediate action and the need for action came to the attention of the District subsequent to the agenda being posted; and (3) the item was posted for a prior meeting occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

3. CONSENT CALENDAR

- Approval of the Board Minutes, April 14, 2010
- Approval of the Un-Audited Financials, March 2010

4. REPORTS AND INFORMATION ITEMS:

It is the intention of the San Bernardino Valley Water Conservation District to comply with the Americans with Disabilities Act (ADA) in all respects. If you need special assistance with respect to the agenda or other written materials forwarded to the members of the Board for consideration at the public meeting, or if as an attendee or a participant at this meeting you will need special assistance, the District will attempt to accommodate you in every reasonable manner. Please contact Ms. Shanae Smith (909-793-2503) at least 48 hours prior to the meeting to inform her of your particular needs and to determine if accommodation is feasible. Please advise us at that time if you will need accommodations to attend or participate in meetings on a regular basis.

- A. Monthly Activity Reports, and/or Comments by Board Members
- B. Board Committee Reports
 - Administrative Committee (Melody McDonald)
- C. Finance Supervisor's Report (Samantha Brown)
- D. Assistant General Manager's Report (Claud Seal)
- E. General Manager's Report (Robert Neufeld)
- F. Information Items
- G. Future Agenda Items and Staff Tasks
- H. Revenue Producing Activities

5. **ACTION ITEMS, NEW BUSINESS**

A. **ADOPTION OF ADDENDUM TO 2010 EI REPORT**

Recommendation: Review and approve Addendum to the Engineering Investigation

B. **PUBLIC HEARING RELATED TO ADOPTION OF GROUNDWATER CHARGE**

Recommendation: Open and conduct a public hearing regarding the proposed adjustment to the District's groundwater charge rate, and consider and adopt Resolution No 458, to raise the current amount of the groundwater charge of \$2.18 per acre-foot for groundwater production for agricultural purposes to \$2.51, and raise the current amount of \$7.85 per acre-foot for groundwater production for non-agricultural purposes to \$9.05, for the ensuing year (July 1, 2010 to June 30, 2011) subject to certain exceptions.

C. **ADOPTION OF REVISED STRATEGIC PLAN**

Recommendation: Review and Approve Revised Strategic Plan

D. **CONSIDER ADDING CHECK REGISTER TO BOARD MEETING PACKAGES FOR BOARD REVIEW AND APPROVAL, AS REQUESTED BY DIRECTOR RALEY**

E. **APPROVE AMENDMENT TO GENERAL COUNSEL CONTRACT**

Recommendation: Authorize Board President to Execute Second Amendment to General Counsel Contract, Adjusting the Rate for Services

F. **CONSIDER PROPOSED U.S. FORESTRY GRANT ACCEPTANCE**

Recommendation: Authorization to accept participation into a \$10,000 Grant Study to Improve the Use of Local Native Plant Sources for Potential Restoration Opportunities

6. **UPCOMING MEETINGS:**

- | | |
|--------------------|--|
| 1. May 3, 2010- | Basin Technical Advisory Committee, San Bernardino Valley Municipal Water District, 1:30 p.m. |
| 2. May 4-7, 2010 - | ACWA Spring Conference and Exhibition, Monterey |
| 3. May 7, 2010 | Redlands Chamber of Commerce Rise 'n Shine Redlands, University of Redlands, Redlands, 7:00 a.m. |

4. May 11-12, 2010 - Special Districts Legislative Days, Sacramento
5. May 13, 2010- Upper Santa Ana Water Resources Association, District Office, 9:30 a.m.
6. May 13, 2010- San Bernardino Area Chamber of Commerce and the Sun -34th Annual Law Enforcement Recognition Dinner, National Orange Show, San Bernardino, 6:00 p.m.
(Board Approval Required)
7. May 17, 2010- Association of the San Bernardino County Special Districts' Dinner, (TBA)
8. May 28, 2010- Riverside County Water Symposium, Palm Springs Convention Center **(Board Approval Required)**
9. June 3, 2010- Three Valley's Municipal Water District Leadership Breakfast, Sheraton Fairplex Suites, Pomona, 7:30-9:00 a.m. **(Board Approval Required)**
10. June 16-18, 2010- 2010 WESTCAS Annual Conference, Catamaran Resort Hotel & Spa, San Diego **(Board Approval Required)**

7. CLOSED SESSION

Under the authority of Government Code Section 54957(b), the Board may recess to Closed Session regarding a personnel matter;

and/or

Under the authority of Government Code Section 54956.9(c), the Board may recess to Closed Session to consider whether to initiate litigation;

and/or

Under the authority of Government Code Section 54956.9(b)(3)(a), and Section 54956.9(c), and Section 54956.9(b)(1), the Board may recess to Closed Session to confer with legal counsel regarding significant exposure to litigation in one case.

- 8. ADJOURN MEETING.** The next regular Board meeting will be on May 12, 2010 at 1:30 p.m., at District Headquarters, 1630 W. Redlands Blvd., Redlands, CA.

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS

MINUTES OF THE BOARD MEETING OF
April 14, 2010
1:30 P.M.

President Clare Henry Day called the Board Meeting of the Board of Directors to order at 1:30 p.m. All present stood for the pledge of allegiance, led by President Day.

ROLL CALL:

BOARD MEMBERS PRESENT:

Clare Henry Day, President
Melody McDonald, Vice President
Manuel Aranda, Director
Arnold Wright, Director
John Longville, Director (1:47 P.M.)
David E. Raley, Director

BOARD MEMBERS ABSENT:

Richard Corneille, Director

GENERAL COUNSEL PRESENT:

David Cosgrove, Rutan & Tucker, LLP

STAFF PRESENT:

R. Robert Neufeld, General Manager
Claud Seal, Assistant General Manager/District Engineer
Samantha Brown, Finance Supervisor
Lisa Pierce, GIS Coordinator
Shanae Smith, Executive Assistant II

GUESTS PRESENT:

Steve Copeland
Max Rosouli, Riverside Municipal Utilities Department
Greg Gage, City of San Bernardino Municipal Utilities Department
Christine Goeyvarts, Robertson's Ready Mix
Tim Gosney, Lagerloff, Senecal and Gosney

Robert Tincher, San Bernardino Valley Municipal Water District
Charles Roberts, Highland Community News
Stacy Aldstadt, City of San Bernardino Municipal Water District
Matthew Litchfield, City of San Bernardino Municipal Water District
Don Lee, Tetrattech

1. PUBLIC PARTICIPATION

President Clare Henry Day announced this as the time for any persons present, who so desire, to make an oral presentation to the Board of Directors. Hearing none, the meeting proceeded with the published agenda items.

2. ADDITIONS/DELETIONS TO AGENDA

There were no additions/deletions to the agenda.

3. PUBLIC MEETING RELATED TO ADOPTION OF THE GROUNDWATER CHARGE

President Day opened the Public Meeting related to the adoption of the groundwater charge. Robert Neufeld said that staff would present the annual Bunker Hill Basin Engineering Investigation Report and review the Groundwater Replenishment Program annual budget. Mr. Neufeld stated that staff is recommending to the Board to raise the current amount of the groundwater charge of \$2.18 per acre-foot for agricultural purposes to \$2.51, and raise the current amount of \$7.85 per acre-foot for groundwater production for non-agricultural purposes to \$9.05, for the ensuing water year (July 1, 2010 – June 30, 2011). He introduced Assistant General Manager/District Engineer, Claud Seal who presented the Engineering Investigation. After the presentation, Mr. Neufeld reported that the District had received one written letter of protest from the City of San Bernardino Municipal Water Department (SBMWD) dated April 6, 2010. David Cosgrove noted the letter would become part of the proceedings for this year's groundwater charge. Vice President McDonald acknowledged a verbal objection to the groundwater charge increase from Kevin Milligan from the City of Riverside. Stacey Aldstadt, General Manager of SBMWD, clarified the purpose of SBMWD's continued protests is regarding the relationship between the costs of services provided by the District. Ms. Aldstadt said SBMWD does not oppose the District's current mission, as it provides a valuable service to the valley. Mr. Cosgrove stated SBMWD is raising appeal objections regarding the requirements of the Proposition 218 to the proceedings. The letter states the District met all applicable requirements of Proposition 218, but feels however, revenues of the charge exceed the cost of groundwater services on a cumulative basis and that overhead charges are excessive, and urges that the District keep the charge at a steady rate. A discussion ensued regarding the distinctions between the District's charge, and the charge detailed in the Parajo case. Mr. Neufeld stated the Board will consider at the April 28, 2010 Public Hearing, the second meeting of the groundwater procedure where the Board will be asked to consider adoption of the groundwater charge. President Day asked if there were any other comments from the audience. Hearing none, President Day made a motion to close the Public Meeting.

It was moved by Director Day and seconded by Director Longville to Close the Public Meeting Related to the Adoption of the Groundwater Charge. The motion carried 5-1-0, with Director Wright abstaining due to a possible conflict of interest and Director Corneille noted absent.

4. CONSENT CALENDAR

The minutes of the March 24, 2010 minutes were reviewed.

It was moved by Director Wright and seconded by Director Raley to approve the Minutes of the March 24, 2010 Board meeting. The motion carried 5-1-0, with Director McDonald abstaining due to her absence from the meeting, and Director Corneille noted absent.

5. REPORTS AND INFORMATION ITEMS

A. Monthly Activity Reports, and/or Comments by Board Members

Director Raley reported attending the Redlands Chamber of Commerce (RCC) meeting; the Special Board meeting regarding the Strategic Plan and the Administrative Committee meeting.

Director Aranda reported attending a WESTCAS conference call; the RCC Candidate Forum Rise 'n Shine; Special Board meeting regarding the Strategic Plan and the Upper Santa Ana Water Resources Association (USAWRA) where he presented a legislative report.

Director Longville reported attending the District's Sexual Harassment Workshop. He reported the completion of his yard which uses a very low amount of water, a 1/3 reduction to his water bill and that it is first lawn in the City of San Bernardino permitted to do so.

Director Wright reported attending the Special Board meeting regarding the Strategic Plan; and the Administrative Committee meeting and Sexual Harassment Workshop.

Director McDonald reported attending the Administrative Committee meeting; and the Special Board meeting regarding the Strategic Plan and the USAWRA meeting.

Director Day reported attending the Special Board meeting regarding the Strategic Plan; Administrative Committee meeting and Sexual Harassment Workshop.

B. Board Committee Reports

This item was covered earlier in the meeting.

C. Financial Supervisor's Report

No report was given at this meeting.

D. Assistant General Manager's Report

Mr. Seal announced that the amount of water flowing from the Seven Oaks Dam (SOD) for the Santa Ana River (SAR) was less than 70 cfs, and 35 cfs from Mill Creek. On May 4, 2010, a high flow test will be performed to test the newly repaired gates, releasing 1,500 to 2,000 cfs of water to establish the effect of high water flows on the District's system. Southern California Edison (SCE) had to discontinue water flow to their pipeline as a result of the recent earthquake. Flows have resumed to Power Plant No. 3, giving the District, East Valley Water District (EVWD), Bear Valley Mutual Water Company (BVMWC) and the City of Redlands an opportunity to obtain clean water that will not sit behind the dam. Director Raley requested information regarding the Bunker Hill Dike as it relates to the District's boundary. Ms. Aldstadt said that it is located at the 10 FWY and 215 FWY interchange near the fault. In addition, Director Raley requested clarification regarding the basin safe yield-average. Robert Tincher stated that the basin has been overproduced since 1983. A discussion ensued regarding the depletion of basin resources.

E. General Manager's Report

Mr. Neufeld reported that at the April 12, 2010 Administrative Committee meeting, staff was directed to bring back a balanced budget to the April 22, 2010 Administrative Committee meeting. He reported that within the first six months of the year, through the period ending in December, savings in excess of a half million dollars to the District's budget, as we are now conducting budget reviews on a regular basis and looking to balancing the budget 2010-2011 budget.

Mr. Neufeld reported that at the April 7, 2010 Special Board Meeting, the Strategic Plan was presented by himself and Will McMullan of W. McMullan and Associates. Based on the comments from the public and Board of Directors, the plan was revised and mailed to a list of recipients on April 12, 2010. Mr. Neufeld invited guests to attend the Public Hearing on April 28, 2010, where the Board of Directors will consider adoption of the strategic plan.

F. Information Items

Information items for this meeting were reviewed and filed.

G. Future Agenda Items and Staff tasks

Vice President McDonald requested that staff add an item to the agenda regarding revenue producing activity, as discussed at the April 12, 2010 Administrative Committee

meeting. Director Raley requested the check register of the District's expenditures to be added as an item on the April 28, 2010 Board agenda.

6. ACTION ITEMS, NEW BUSINESS

A. Discuss and Consider Adoption of Ordinance 2010-1, an Amendment to Ordinance 95-1

Mr. Cosgrove stated there were two actions before the Board regarding Ordinance 2010-1, enacting the requested revisions to the Board of Directors compensation; if adopted, it would be appropriate to consider Resolution No. 457, which will reduce the number of authorized meetings from 10 to 9, and forgo the automatic 5% annual increase. Vice President McDonald inquired about the cost associated with publishing the notice in the local newspaper. A Discussion ensued regarding the cost of publishing the notice compared to the costs incurred for the additional meeting and the 5% annual increase, as opposed to the possible savings associated with the adoption of the ordinance. Of note, Mr. Neufeld acknowledged a correspondence on behalf of Director Corneille regarding his support of the adoption of the Ordinance 2010-1 and Resolution No. 457. After a lengthy discussion, the following motion was made:

It was moved by Director Raley and seconded by Director Longville to Adopt Ordinance 2010-1, an Amendment to Ordinance 95-1. By roll call vote, the motion carried 5-1-0, with Directors McDonald and Aranda voting no, and Director Corneille noted absent from the vote.

B. Discuss and Consider Adoption of Resolution No. 457

It was moved by Director Longville and seconded by Director Raley to Adopt Resolution No. 457, Implementing Various Policies Set by Ordinance 2010-1 Relating to Compensation to District Directors For Services on Behalf of the District. The motion carried 6-0, by roll call vote, with Director Corneille noted absent from the meeting.

C. Discuss and Consider Sponsoring Loma Linda Chamber of Commerce and Adding to the 2010-2011 Budget

Mr. Neufeld said staff had no recommendation for this item, as there had been no specific requests or direction from the Board to participate in the sponsorship. Director Aranda said he would obtain additional information from the LLCC and bring back to the Board for review. A discussion ensued regarding the District's participation in various chamber of commerce events and sponsorships.

It was moved by Director Aranda and seconded Director Longville to Table the Action for the Proposal until Additional Information is Brought Forth.

The motion carried 6-0, with Director Corneille noted absent from the meeting.

- D. Discuss and Consider Official Vote for the Regular Special Districts Member and the Alternate Special Districts Member of the Local Agency Formation Commission (LAFCO)

It was moved by Director Longville and seconded by Director McDonald to Cast a Vote for James Curatalo for the Position of the Regular Special District Member of the Local Agency Formation Commission (LAFCO)., By roll call vote, the motion carried 6-0, with Director Corneille noted absent from the meeting.

It was moved by Director McDonald and seconded by Director Aranda to Cast a Vote for Robert Smith for the Position of the Alternate Special District Member of the Local Agency Formation Commission (LAFCO). By roll call vote, the motion carried 6-0, with Director Corneille noted absent from the meeting.

- E. Discuss and Consider an Amendment to W. McMullan and Associates Contract

Mr. Neufeld stated that staff has provided three options for additional services performed by the strategic planning facilitator that may be needed to complete the plan for the Board's consideration. Samantha Brown stated that Mr. McMullan prepared an amendment that entailed facilitating an additional meeting to prepare possible revisions to the plan for the April 28, 2010 Board meeting, and possible subsequent meetings. A discussion ensued regarding the additional costs associated with the amendment.

A motion was made by Director Raley and seconded by Director Longville to Disallow Authorization of Additional Amendments to the W. McMullan Associate Contract. The motion carried 5-1-0, with Director McDonald opposed and Director Corneille noted absent from the meeting.

- F. Consider Approval of the Forms for Contracts for Aggregate Mining

Mr. Neufeld said staff had taken a closer look at companies currently operating on the District's facilities for the purpose of cleaning the spreading basins, removing and stockpiling materials at no cost to the District. Staff assessed the possibility of developing a new revenue stream for the District. Mr. Cosgrove said staff is looking for Board approval of the new forms of the contracts and direction to begin contract negotiations to bring back to the Board for approval. Mr. Neufeld estimated that an additional \$100,000 a year in revenue would be realized by the District. A Discussion ensued regarding the ACWA/JPIA contract template currently utilized by the District, and the differences between aggregate mining and mining currently performed by CEMEX and Robertson's Ready Mix.

It was moved by Director Longville and seconded by Director Wright to Approve the Forms for Contracts for Aggregate Mining. The motion carried 6-0, with Director Corneille noted absent from the meeting.

7. UPCOMING EVENTS

There was no discussion on this item.

8. CLOSED SESSION

At 4:00 p.m., it was moved by Director Day and seconded by Director Aranda to adjourn to Closed Session, Government Code Section 54957(b), to discuss a personnel matter, and Government Code Section 54956.9(b)(3)(a), and Section 54956.0(c), and Section 54956.0(b)(1), confer with legal counsel regarding significant exposure to litigation in one case. The motion carried 6-0, with Director Corneille noted absent.

The Closed Session adjourned at 6:45 p.m., and the regular meeting reconvened, with no reportable action under Government Code 54957.1.

9. ADJOURN MEETING

At 6:45 p.m., the meeting adjourned to the Regular Board meeting scheduled for April 28, 2010, at 1:30 p.m., at District Headquarters, 1630 W. Redlands Blvd., Suite A, Redlands, CA.

R. Robert Neufeld
Secretary of the Board



SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

Established 1932

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The Un-Audited Financials Will Be Distributed at the Board Meeting

BOARD
OF
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Arnold L. Wright
John Longville

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To: Board of Directors

From: Claud Seal, Jr., AGM/District Engineer

Date: April 28, 2010

Subject: 2010 Addendum to the Engineering Investigation

RECOMMENDATION

Review and approve the 2010 Addendum to the Engineering Investigation.

BACKGROUND

1. The original 2010 Engineering Investigation was presented to the Board of Directors on March 10, 2010.
2. Modifications have been made by the engineering staff to the report that has affected the predicted numerical values and conclusions of the entire report.
3. The EI report calculations and conclusions are based on well water withdrawal and static water levels reported by District and non-District entities throughout the Bunker Hill Basin during a 12-month time period. Over 50% of the wells that data have been gathered from are not within the District's boundaries and information is very seldom timely, or in some cases willingly provided.
4. The District's second invoicing period for a given water year is mailed after January 1st of each year. The reported water withdrawal quantities of well owners within the District's boundaries historically have not been complete in January, February, or March of the following year, when the new EI report is being prepared.
5. The 2010 EI Report preparation effort had the benefit of being investigated and compiled by Lisa Pierce, using updated well data acquired from San Bernardino Valley Municipal Water District's (SBVMWD) GIS staff. Ms. Pierce, under the direction of Claud Seal, the District's Engineer, was able to update the well production and water elevation values for over 200 wells. This was an increase over past years, and offers a more comprehensive view of the groundwater regime. Even given this updated method, Ms. Pierce, as persistent and persevering as she was, could not acquire, compile, and evaluate all the field data in time to provide an accurate EI Report for the March 10th, legally required public report period. More data were discovered, verified, compiled, and reported after March 10th that presented

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a more accurate picture for the 12-month reporting period. A revised addendum was required. This is the second year in a row that an addendum had to be issued due to late reporting and data acquisition.

6. All EI Report numerical values were affected in some form as a result of incorporating the additional data. The most significant change was the predicted District wide agricultural (“ag”) and non agricultural (“non-ag”) water that will be withdrawn during the ensuing year. The District’s proposed budget has been adjusted to the higher withdrawal levels.
7. In order to alleviate this reoccurring problem of not having enough time to acquire, collate, calculate, edit, print, and present future EI Reports in the prescribed time frames, the District needs to reevaluate its invoicing and reporting milestones to be able to report as accurate and up to date information as possible while maintaining adequate labor hours availability for data acquisition, evaluating, printing, and reporting. Staff recommendations for this topic will be presented at a future date, when more staff and Board of Directors time is available to consider the options.

FISCAL IMPACT

1. The initial March 10, 2010 EI Report calculated the Ensuing Year (2010-11) agricultural and nonagricultural water production to be 13,488 af and 84,063 af respectively. The addendum shows recalculated values of 15,102 af and 109,304 af respectively. Those differentials increase the District’s projected groundwater related revenues from \$683,547 to \$1,027,107.
2. While mathematically the addendum EI Report indicates substantially higher potential revenues, the reality is those past years’ records indicate actual revenues received were about 70% to 80% of the predicted revenues. There is no reason to believe groundwater related revenues received during the ensuing water year will exceed past years’ performances.

AMPLIFYING INFORMATION

Sometime within the next two to three months, staff will present recommended alternatives to the exiting groundwater charges invoicing, data gathering, and EI reporting procedures.



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To: Board of Directors

From: Robert Neufeld, General Manager
David Cosgrove, General Counsel

Date: April 28, 2010

Subject: Groundwater Charge – for Water Year 2010 - 2011

RECOMMENDATION:

Following receipt of comment and testimony at the public hearing, approve and adopt Resolution No. 458, establishing the Groundwater Charge for the 2010 – 2011 water year at the rates of \$9.05 for non-agricultural purposes, and \$2.51 per acre foot for agricultural purposes, subject to certain exemptions.

BACKGROUND

Water Code Sections 75500 et seq. set out the authority and procedures for the Water Conservation District to establish an annual groundwater charge, based on production of groundwater from the portions of the Bunker Hill Basin underlying the District's boundary. The California Legislature has specifically found and declared, in Water Code Section 75521, that such groundwater charges are "in furtherance of district activities in the protection and augmentation of the water supplies for users within the District or zone or zones thereof which are necessary for the public health, welfare, and people of this state."

The San Bernardino Valley Water Conservation District has fixed and levied this charge since 1994. The charge is used, in connection with interest on District reserves, and revenues from mining leases on District lands, to fund the District's water recharge and facilities maintenance programs.

As part of the process of setting the groundwater charge, the District prepares and presents an Annual Engineering Investigation, reflecting conditions in The Bunker Hill Basin, tallying accumulated changes in storage, estimating production, and assessing recharge capacity. This Engineering Investigation was presented to the Board on March 10, 2010. Since then, District staff has received additional data regarding surface diversions and groundwater production from various areas within the District, and presented the Engineering Investigation to the Upper Santa Ana Water Resources Association, and has amended the Engineering Investigation accordingly. A presentation on an Addendum to the Engineering Investigation was presented to the Board on April 14, 2010, at the Public Meeting held on the groundwater charge, and will be made at the Public Hearing on April 28, 2010.

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Notice of the District's proposal to establish the groundwater charge at the rates of \$9.05 for water produced for non-agricultural purposes, and \$2.51 for agricultural purposes, was sent by first class mail on March 12, 2010 to all reporting groundwater producers as reflected in the District's records. That Notice included notice of a Public Meeting held April 14, 2010, and a public hearing scheduled for April 28, 2010. In addition, notice of the Public Meeting and hearing, and the proposed charge, was published weekly in the San Bernardino Sun on March 14, March 21, and March 28, 2009. Staff has prepared a Declaration of Notice detailing these various notice efforts, which will be made a part of the record of proceedings on this year's groundwater charge.

Under the amended Engineering Investigation, it is estimated that production of non-agricultural water from the District for the ensuing water year will be 109,304 acre feet. Agricultural water production estimates for the year are 15,102 acre feet. At present production estimates, the proposed groundwater charge rates would yield an estimate of \$1,027,000 revenue, rounded.

Staff's recommendation for increasing the groundwater rate for the upcoming water year, in lieu of a stable or reduced rate, is driven in large part by the recent sharp decline in District's mining royalty revenues. From a monthly revenue of almost \$120,000 in August of 2005, revenues were \$3,077 for February, 2010. Interest revenue on reserves has declined as well. Given the projected stagnancy in the economy, there is little reason to expect any substantial recovery for the upcoming year in these important components of the District's overall revenue picture.

Water Code Section 75596 provides that the groundwater charge may not be set in an amount exceeding that "deemed necessary by the District Board to be used in furtherance of District purposes in the replenishment, augmentation, and production of water supplies for users within in the District." The estimated groundwater charge revenue is \$1,027,000. As shown in the schedule appended as Attachment A, this is less than the amount the District anticipates spending on its capital improvements supporting groundwater charge services for the upcoming year. The figures in the attached schedule are taken from the District's preliminary budget for the upcoming fiscal year. This preliminary budget is to be reviewed and analyzed by the Board prior to the initiation of its fiscal year beginning July 1, 2009, and may be subject to revision.

As such, the proposed amount of the rate will not result in revenues in excess of those required to continue the District's groundwater recharge programs, facilities operation and maintenance, and participation in regional programs for groundwater recharge preservation and management.

THE PAJARO VALLEY CASE AND PROPOSITION 218

The adjustment to the groundwater charge rate proceeds against a somewhat uncertain legal backdrop again this year. In reviewing and establishing the charge, the District has been mindful of the decision of the California Court of Appeal, Sixth Appellate District, in Pajaro Valley Water Management Agency v. Amrhein (1997) 150 Cal.App.4th 1364. There, attempting to apply the decision of the California Supreme Court in Bighorn-Desert View Water Agency v. Verjil (2006) 39 Cal.4th 205, the court found a groundwater augmentation charge imposed by the Pajaro Valley Water Management Agency constituted a "charge incidental to property ownership" under the meaning of Article XIID, Section 6 of the California Constitution.

As such, the Pajaro Valley court found the groundwater augmentation charge was subject to requirements of California's Proposition 218.

Conservation District staff has examined this case closely, and believes that its groundwater charge continues to bear factual and contextual differences from the one considered in Pajaro Valley, supporting a conclusion that such differences would call for a different result regarding the applicability of the Conservation District's charge to the requirements of Proposition 218. One such distinction is the nature of the parties paying the charge. In Pajaro Valley, over 3,000 of 3,660 wells subject to the charge were operated for residential uses. The Pajaro Valley court suggested this was an important factor in applying the rule of Bighorn-Desert View Water Agency v. Verjil, in which the California Supreme Court held that charges for direct-delivery water service, after payment of capacity charges, subjected those charges to initiative, and in this sense were essentially equivalent to charges under Article XIII D, Section 6. In so doing, the Pajaro Valley court suggested that a charge not related to such residential uses, or charges associated with uses of property for agricultural or business pursuits, might call for a different result.

Conservation District staff has reviewed groundwater production records from the immediately preceding water year, and finds no appreciable indication that any of those reporting and paying its groundwater charge are extractors using the groundwater supplies for direct residential use. Based on the distinction suggested by the Pajaro Valley court itself, therefore, the Conservation District's groundwater charge appears materially different.

The issue of the applicability of Proposition 218 strictures to a Conservation District's groundwater charge, under the very statutes the District is proceeding under here, is presently under review by the Third District Court of Appeal in North San Joaquin Water Conservation District v. Howard Jarvis Taxpayers Association, et al., Case No. C059758. In that case, the Third District Court of Appeal specifically asked for supplemental briefing on the issues whether a groundwater charge imposed under these statutes constituted a "property-related charge" subject to Proposition 218, and whether the Pajaro Valley case was properly decided. (See, Letter from Third District Court of Appeal, dated January 8, 2010, Attachment B.) Both the North San Joaquin Water Conservation District, and ACWA, filed briefs on this issue, marshalling many of the agreements the District has been making about the inapplicability of Proposition 218 to this charge. (Copies of both briefs are appended as Attachments C and D.) Oral argument in this case remains pending, and the District expects a decision within the water year that the proposed charge is applicable to, if not sooner.

Until further clarification comes from the North San Joaquin Conservation District case, however, the Pajaro Valley decision materially clouds the issue of whether Proposition 218 applies to the Conservation District's groundwater charge. As such, District staff has endeavored to comply in all respects with those requirements of Proposition 218 it believes would apply to the groundwater charge, should a court determine Proposition 218 is applicable.

Toward this end, Section 5 of proposed Resolution No. 458 contains a number of findings which make reference to either the applicability or the requirements of Proposition 218, and its application to charges "upon a person as an incident of property ownership."

These include:

1. Recitation of mailed Notice, which went out to all parties identified in the District's record as active groundwater producers. The Notice indicates the amount of the groundwater charge, and identifies that the ultimate amount charged will depend upon production. This was followed by a second notice, also sent to those producers who reported groundwater production in the last year, that identifies the County Assessor parcel numbers on which the well is located, and the estimated amount of the charge, combining the proposed rate, and last year's production figures, and adjusting for the production expected in the ensuing water year, as reflected by the District's Engineering Investigation.
2. Notice of a public hearing held not less than 45 days after mailing of the Notice. Here, the Notice was mailed on March 12, 2010, such that the hearing on April 28, 2010 falls outside the 45 day period. Of course, both the charge and the Engineering Investigation have been subject to public review at additional meetings also, as reflected in the Resolution No. 458 recitals.
3. An indication that the revenues to be derived from the charge will not exceed the funds required to provide the property-related service. In this regard, the Resolution contains a descriptive listing of the "service" provided by the District for groundwater producers, at Section 5(D). Based upon the estimates of agricultural and non-agricultural production, staff has estimated that some \$1,027,000 would be obtained from groundwater charge revenues. Staff has likewise prepared the proposed budget for expenditures in the upcoming fiscal year. According to this proposed budget, the District proposes over \$3,000,000 of capital improvement expenditures, in addition to field construction costs, purchases of field equipment, and maintenance and operation expenses. These expenses alone well exceed the anticipated groundwater charge revenues, even without considering any administrative support or other overhead load factor on such costs. In addition, it should be noted that even at the rates of \$9.05 and \$2.51, the Conservation District's groundwater charge remains substantially less than similar charges imposed by other agencies. Staff has conducted a survey of certain such charges, which indicates the following rates per acre foot:

a)	Central San Joaquin Water Conservation District	\$5.88 ag \$29.40 non-ag (residential users presumed to produce ½ afy)
b)	North San Joaquin Water Conservation District	\$21.40 non-ag; \$4.28 ag
c)	United Water Conservation District	\$58.50 non-ag; \$19.50 ag

d)	Water Replenishment District	\$181.85
e)	Orange County Water District	non-irrigation \$249 irrigation \$124.50

The Conservation District's rate is well below these other agencies' rates.

4. A finding that the revenues derived from the fee shall not be used for any purpose other than that for which the charge is imposed. The District has always kept a separate accounting of the groundwater charge revenues it receives, and will continue to do so. In addition, Resolution No. 458 contains a requirement that District staff generate a report at the end of the water year (defined in Water code Section 75507 as July 1 to June 30), explaining what revenues were derived from the groundwater charge, and explaining how, and in what amount, such proceeds were directed toward services provided by the District. (See Resolution No. 458, Section 6.) This report will provide a basis for the Board to assure the groundwater charge revenues are being applied to the services it offers to groundwater extractors, and will provide a ready reference for those paying the charge to review, and assess, the District's use of their funds. Since the defined "water year" is not finished, this report for year 2009-10 cannot yet be prepared. For information purposes, however, staff has compiled such a report for the earlier year, 2008-2009, and it is appended as Attachment E. That report shows that some \$384,000 were spent on groundwater services in excess of groundwater revenues.
5. A finding that the amount of the charge imposed on any individual payor shall not exceed the proportional cost of the service attributable to the property. Here, the nature of the charge provides the correlation necessary, because the amount of the charge to be paid varies directly with the amount of groundwater production, and varies directly with utilization of the services provided by the District. In addition, the proportionality of the charge, which Water Code section 75594 dictates must set the non-agricultural rate three to five times above the agricultural rate, is met with the production history of groundwater in the District. The District's proposed rate for non-agricultural production is 3.6 times the agricultural rate, but production of non-agricultural water is estimated to be 7.2 times agricultural. The disproportionate production therefore supports the lesser differential here, and is also consistent with the statute.
6. The service for which the charge is imposed must actually be used by or immediately available to the owner of the property in question. Here, because the charge is assessed only against those actually extracting groundwater, the very structure of the charge meets this requirement. There is no "standby" component to the groundwater charge.
7. A finding that the charge is not imposed for "general governmental services." Again, here the structure of the charge meets this requirement, because unlike

police, fire, or other traditional municipal services, the District's groundwater services are available to, and utilized by, those actually extracting groundwater.

It should also be noted that, under California Constitution Article XIII D, Section 6(C), charges for water are excepted from requirements for majority votes. If Article XIII D applies to the Conservation District's groundwater charge at all, the District must be as a water charge, and, therefore, the Conservation District staff does not believe the California Constitution requires the District to submit this charge for voter approval.

EXEMPTION FOR SMALL PRODUCERS

As part of its analysis of the groundwater production last year, staff determined that there are few reporting producers who show production of two acre feet or less. Because direct residential use is generally considered to be approximately one-half acre foot per household per year, this would likewise indicate few of the non-agricultural producers are extracting groundwater as ultimate residential users. Moreover, application of the groundwater rates to production of two acre feet or less would result in annual revenues of \$18.10 or less per producer. Staff believes that administrative and collection costs of such minimal amounts, from such a limited number of users, justified exempting such users from the charge, and has continued this exemption enacted last year.

COMMENTS RECEIVED

To date, staff has received only one written comment on the proposed charge as of the date of the preparation of this report, from the City of San Bernardino Municipal Water Department, discussed at length at the Public Meeting held April 14, 2010.

Staff will attempt to address any additional comments that may be made after the preparation of this staff report at the public hearing.

RESOLUTION NO. 458

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT ESTABLISHING A GROUNDWATER CHARGE ON THE PRODUCTION OF GROUNDWATER WITHIN DISTRICT BOUNDARIES, AND MAKING CERTAIN FINDINGS RELATIVE THERETO

WHEREAS, California Water Code, Division 21, Part 9 provides authority for the San Bernardino Valley Water Conservation District to consider and impose a groundwater charge on groundwater production within the District; and

WHEREAS, the California Legislature has found, in Water Code Section 75521, that such groundwater charges are in furtherance of District activities in the protection and augmentation of water supplies for users, which are necessary for the public health, welfare and safety; and

WHEREAS, Water Code Section 75523 allows for the use of proceeds from a groundwater charge for any District purposes, which may be authorized by law; and

WHEREAS, at the regular meeting of the Board of Directors on March 10, 2010, the District accepted an engineer's investigation and report, prepared by the Consultant Engineer and District Engineer, relating to groundwater conditions in the Bunker Hill Basin underlying the District boundaries; and

WHEREAS, an Addendum to that report was reviewed and considered by the Board on April 28, 2010; and

WHEREAS, the District provided mailed notice to all groundwater producers within its District boundaries of a public meeting held on April 14 2010, and a public hearing held on April 28, 2010, inviting all groundwater producers and all persons interested in the condition of groundwater or surface water supplies of the District to appear and submit evidence, and inviting all water producers to examine the engineering investigation report; and

WHEREAS, the Engineering Investigation was presented to the Upper Santa Ana Water Resources Association on April 8, 2010; and

WHEREAS, the Board of Directors has conducted a public meeting on April 14 2010, and a public hearing on April 28, 2010, and has received both comment and evidence submitted by the public at such hearing; and

WHEREAS, the Board has considered the engineering report and investigation and the Addendum, and considered all comments and evidence presented to it at the public meetings and hearing; and

WHEREAS, the District's ad valorem tax revenues are limited and the District is experiencing a decrease in mining lease revenues and revenues from interest on reserves; and

WHEREAS, on the basis of all evidence presented, including the engineering investigation and report and such public comment, the Board has determined that it is appropriate and in the best interests of the District and all those water users who rely, directly or indirectly, on the District's services, to levy a groundwater charge as further provided herein.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT AS FOLLOWS:

Section 1. As required by Water Code Section 75574, the Board hereby makes the following findings:

- A. Annual Change in Storage in those portions of the Bunker Hill Basin lying within the District's boundaries ("Bunker Hill Basin" herein), Fall 2008 to Fall 2009, is an increase of 11,041 acre-feet.
- B. Accumulated Change in Storage in the Bunker Hill Basin as of the Last Day of the Preceding Water Year (using 1993 as base year) is - 350,959 acre-feet.
- C. Total Groundwater Production from the Bunker Hill Basin from the Preceding Water Year October 2008 to September 2009 is 186, 279 acre-feet, of which 79,519 was within the District's boundaries.
- D. Estimate of the Annual Change in Storage for the Current Water Year (October 1, 2009 to September 30, 2010) in the Bunker Hill Basin is - 8,628 acre-feet.
- E. Estimate of the Annual Change in Storage for the Ensuing Water Year (October 1, 2010 to September 30, 2011) in the Bunker Hill Basin is - 8628 acre-feet.
- F. Average Annual Change in Storage for the Immediate Past Ten Water Years in the Bunker Hill Basin is - 33,051 acre-feet.
- G. Estimated Amount of Agricultural Water Withdrawn from the Groundwater Supplies of the District for the Ensuing Water Year (October 1, 2010 to September 30, 2011) is 15,102 acre-feet.
- H. Estimated Amount of Other-than-Agricultural Water Withdrawn from the Groundwater Supplies of the District for the Ensuing Water Year (October 1, 2010 to September 30, 2011) is 9,304 acre-feet.
- I. Estimated Amount of Water Necessary for Surface Distribution for the Ensuing Water Year (October 1, 2010 to September 30, 2011) within the Bunker Hill Basin is 71,405, of which 59,527 is within the District boundaries..
- J. The Amount of Water which is Necessary for the Replenishment of the Groundwater Supplies of the Bunker Hill Basin to maintain constant groundwater supplies for the Ensuing Water Year (October 2010 to September 30, 2011) 128,720 acre-feet.
- K. The Amount of Water which is Necessary from all sources, including natural recharge to bring the basin back to its "full" condition of 1993 is 518,799 acre-feet.

Section 2. The Board of Directors hereby finds that the entire District constitutes a single zone of benefit for the imposition of this charge. The basis for this finding is that the entire portion of the basin underlying the District boundary is fed by the same naturally occurring surface flows. Although the basin may be divided into various subparts, because of hydrogeologic conditions these areas are interconnected, and water recharged by the District from its existing recharge facilities contributes to underground "flows" which eventually reach other subparts of the basin. Thus, the District's recharge inures to the benefit of users in other areas by enhancing the availability of water supplies throughout the basin. In addition, the District maintains both the availability of surface water flows for groundwater recharge, and the facilities for accommodating the recharge, whether by the District or by other parties pursuant to collaborative regional groundwater management efforts.

Section 3. The Board finds that there is no past accumulation of the amount of water necessary to be replaced in the intake areas of the groundwater basins within the District to prevent the landward movement of salt water into the fresh groundwater body, or to prevent subsidence of the land within the District, either in the past water year or the proceeding 10 years, nor is there likely to be any amount of water necessary for these purposes in the ensuing water

year. The Board further finds that the District is not obligated by contract to purchase any water. The Board also finds that further recharge of the basin is required based upon the findings related to change in storage stated in Section 1 above, to prevent depletion or degradation to the basin's groundwater supplies, to enhance both the availability and accessibility of such supplies, and to replenish, augment, and protect such supplies, and that the proceeds of the groundwater charge established hereon shall be used for such purposes.

Section 4. The Board of Directors hereby levies, assesses and affixes a groundwater charge in the amount of \$2.51 per acre-foot for agricultural water, and in the amount of \$9.05 per acre-foot for non-agricultural water. Notwithstanding the foregoing, for producers who can demonstrate either (1) that their production for the water year is restricted to basic, residential use limited to the property on which the applicable groundwater production facility is based; or (2) that their production for the water year is restricted to agricultural use limited to the property on which the applicable groundwater production facility is based, and total cumulative production for the applicable producer within the District is not in excess of two (2) acre feet over the course of the water year; such production shall be exempted from the groundwater charge. In establishing this exemption, the Board finds that the likely revenues to be derived from the groundwater production subject to the exemption is outweighed by the administrative burdens in administering and collecting the charge.

Section 5. In connection with fixing the groundwater charge as set forth in Section 4 above, the Board of Directors makes the following findings:

- A. The groundwater charge is imposed upon the action of extraction of groundwater from the basin underlying the District's boundaries, and not on property or groundwater extraction facilities as such. The groundwater charge will be incurred by groundwater producers through their voluntary action of groundwater production. The groundwater charge is not one for direct retail water delivery by the District to groundwater extractors, but rather relates to the District's service of maintaining groundwater supplies, recharge facilities, and management of both for groundwater extractors within the District. The District maintains no pipes, canals or other facilities directly connecting District facilities to the groundwater extractors' property or pumping facilities. In addition, parties subject to the groundwater charge are not property owners, per se, but predominantly either public or private entities involved in the business of providing water, or persons or entities involved in irrigation, for agricultural-related activities, and for uses of water exceeding what would be required for basic residential use of the property.
- B. The District has provided notice of the proposal for imposition of the groundwater charge through a number of different avenues. Mailed notice was provided to all operators reflected on the District's records as containing active groundwater production facilities within the District, on March 12 and again on April 21, 2010. In addition, published notice was provided in the San Bernardino Sun on March 14, March 21, and March 22, 2010. All such notices identified the prior and proposed existing rate for agricultural and non-agricultural water, the estimated total revenue to be collected from the charge, and the time and place for public hearing at a public meeting at which parties objecting to the charge could appear and be heard.
- C. The proposed groundwater charge, and engineering investigation prepared by the District, were reviewed at a public meeting held April 14, 2010, and a public hearing held April 28, 2010. In addition, the engineering investigation prepared by the District was presented to and reviewed with the Board of Directors at a public meeting on March 10, 2010, and was presented to the Upper Santa Ana Resources Association on April 8, 2010.
- D. The groundwater charge is being levied to assist in offsetting the costs of the District's service in providing groundwater supplies, groundwater recharge facilities, and recharge management and administration for the benefit of groundwater producers within the District. The services include, but are not limited to, the following:

1. Making available the District's water rights, in an amount no less than 10,400 acres per foot per year, for recharge into the Bunker Hill Basin;
 2. Conducting groundwater recharge activities by diverting both Santa Ana River and Mill Creek water supplies into District recharge facilities;
 3. Applying the District's experience and expertise in directing groundwater recharge effectively and efficiently, administering the physical recharge of groundwater both directly for the District and its water supplies, and recharging on behalf of other entities, including exchanges under the Santa Ana River/Mill Creek Cooperative Water Project Agreement;
 4. Maintaining and operating the District's diversion works, recharge basins and canals to insure the availability of sufficient infrastructure to accommodate needed groundwater recharge; and defense and protection of the District's water rights and manner of operations;
 5. Investigation and implementation of improvements to groundwater recharge infrastructure;
 6. Reporting to groundwater producers and other interested parties of groundwater recharge activities and conditions, including but not limited to the daily flow report;
 7. Conducting engineering analyses, such as the District's annual engineering investigation, designed to provide information regarding the District's groundwater basin and groundwater recharge facilities; and
 8. Serving as Lead Agency in the conduct and implementation of the Upper Santa Ana Wash Land Management Plan ("Wash Plan"), which will harmonize groundwater recharge operations with competing uses in portions of the Upper Santa Ana River particularly suited for groundwater recharge, including preserving both existing and potential future sites for groundwater recharge facilities; and
 9. Administrative support and training for all the abovelisted activities.
- E. The total amount of estimated revenues from the groundwater charge is estimated at approximately \$1,027,000. These revenues will not exceed the costs of providing the services as detailed above, in that the District's currently proposed budget for the upcoming fiscal year proposes equipment purchases, facility maintenance costs, and capital improvement expenditures in excess of \$3,000,000.00, exclusive of any considerations of consultant, administrative, or overhead cost factors that might otherwise be attributable to the full cost of such matters.
- F. The amount of groundwater charge paid by each individual payor will not exceed the benefit of the Conservation District's services to such parties, because the structure of the groundwater charge is such that the amount paid varies in direct proportion to the amount of groundwater supplies extracted, and therefore is proportional to the benefit each individual payor receives from the District's services, and the rate differential between agricultural and non-agricultural use does not exceed the differential in production within the District for such uses, and is within the limits dictated by Water Code Section 75594.
- G. The District's services are immediately available to all parties subject to the charge, because the charge is limited to those extracting groundwater, and therefore able to take advantage of the District's services relative to groundwater recharge activities, facilities, and programs.
- H. The District's services are directed toward groundwater production and extractors, and are not generally available to parties not involved with groundwater extraction, as are other general governmental

services such as police, fire, library, or other broad governmental services. The District's service is directed toward, and of benefit to, parties utilizing and extracting groundwater in the District.

Section 6. District staff is directed to prepare a report at the end of the water year for which the charge levied herein is imposed, detailing the revenues collected from the groundwater charge, and describing the purposes and expenses to which such revenues were applied toward the services detailed in Section 5(D) above.

Section 7. The Board of Directors further finds that the groundwater charge adopted herein is statutorily exempt from CEQA under Title 14, California Code of Regulations Sections 15273, 15301, and 15306. The action contemplated herein constitutes a structuring and establishment of a charge which will be used in part for meeting operating expenses and for purchasing or leasing equipment and materials. To the extent the groundwater charge revenues will be applied to groundwater testing, these activities fit within Title 14, California Code of Regulations Section 15306. Such activities involve the occasional taking of groundwater samples by means of temporary equipment, which will not cause any alteration to the land, and consist solely of information gathering. To the extent any portion of the funds is directed to maintenance, operation, or repair of existing facilities, involving no or negligible expansion of existing uses, these activities fit within Title 14, California Code of Regulations Section 15301. To the extent any portion of the funds is directed to construction or establishment of new facilities, environmental review of such facilities will occur at such time those facilities are proposed, and the nature, location, scope, and function of such potential future facilities becomes known. Under each of the above-referenced exemptions, therefore, the Board of Directors finds that the levy and implementation of the groundwater charge is therefore properly exempt from CEQA.

Section 8. The General Manager is hereby authorized and directed to provide notice to operators of the levy of the groundwater charge, as provided for in Water Code Section 75610.

PASSED, APPROVED AND ADOPTED at a regular meeting of the Board of Directors this 28th day of April 2010, by the following roll-call vote:

YES:	DIRECTORS:
NO:	DIRECTORS:
ABSTAIN:	DIRECTORS:
ABSENT:	DIRECTORS:

ATTEST:

Clare Henry Day, President

R. Robert Neufeld, Secretary

ATTACHMENT A

Capital Expenditures

	<u>Santa Ana River</u>			<u>Mill Creek</u>			<u>Totals</u>	
<u>Materials</u>	\$ 24,900.00	60 % upgrade old property	<u>Materials</u>	\$ 16,600.00	40 % upgrade old property	<u>Materials</u>	\$ 41,500.00	
	\$ 6,000.00	piping		\$ 50,000.00	replace gates & valves (DWR)		\$ 56,000.00	
							\$ -	
<u>Fencing</u>	\$ 345,000.00	Replace 3000LF	<u>Fencing</u>	\$ 345,000.00	Replace 3000LF	<u>Fencing</u>	\$ 690,000.00	
							\$ -	
<u>Concrete Structures</u>	\$ 100,000.00	5 structures for the 3 new basins	<u>Concrete Structures</u>	\$ 160,000.00	8 structures for 6 new basins	<u>Concrete Structures</u>	\$ 260,000.00	
	\$ 30,000.00	River Pick Up Diversion					\$ 30,000.00	
							\$ -	
<u>Canals/Pipelines</u>	\$ 50,000.00	structure inlet	<u>Canals/Pipelines</u>	\$ 200,000.00	new canals between the basins	<u>Canals/Pipelines</u>	\$ 250,000.00	
	\$ 30,000.00	hydraulic actuaries					\$ 30,000.00	
	\$ 500,000.00	physical upgrades to Canal (Op Study)					\$ 500,000.00	
	\$ 100,000.00	new greenspot road improvement					\$ 100,000.00	
	\$ 50,000.00	old greenspot road culvert					\$ 50,000.00	
							\$ -	
<u>Basins</u>	\$ 150,000.00	3 new spreading basins	<u>Basins</u>	\$ 48,000.00	cleanout of 8 basins	<u>Basins</u>	\$ 198,000.00	
	\$ 30,000.00	cleanout of 5 basins		\$ 300,000.00	6 new basins		\$ 330,000.00	
							\$ -	
<u>Equipment</u>	\$ 120,000.00	60 % used small dozer	<u>Equipment</u>	\$ 80,000.00	40 % used small dozer	<u>Equipment</u>	\$ 200,000.00	
	\$ 48,000.00	60 % used blade 10'		\$ 32,000.00	40 % used blade 10'		\$ 80,000.00	
							\$ -	
<u>Building</u>			<u>Building</u>	\$ 500,000.00	remove Lockheed Bldgs	<u>Building</u>	\$ 500,000.00	
							\$ -	
<u>Engineering Services</u>	\$ 400,000.00	Design for clarification facilities	<u>Engineering Services</u>	\$ 20,000.00	environmental Lockheed Bldgs	<u>Engineering Service:</u>	\$ 420,000.00	
	\$ 50,000.00	Environmental for clarification facilities						
	<u>\$ 2,033,900.00</u>			<u>\$1,751,600.00</u>			<u>\$ 3,735,500.00</u>	

ATTACHMENT B

621 CAPITOL MALL, 10th FLOOR
SACRAMENTO, CA 95814-4719
(916) 854-0209
www.courtinfo.ca.gov

OFFICE OF THE CLERK

Court of Appeal

THIRD APPELLATE DISTRICT
STATE OF CALIFORNIA

DEENA C. FAWCETT
CLERK/ADMINISTRATOR

COLETTE M. BRUGGMAN
ASSISTANT CLERK/ADMINISTRATOR

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DARLENE A. WARNOCK
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KECIA WORLEY
TORI VOSS
CARRIE R. WHITNEY
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RECEIVED

JAN 11 2010

GEN'L COUNSEL

January 8, 2010

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2291 West March Lane, Suite B-100
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Trevor A. Grimm
Howard Jarvis Taxpayers Foundation
921 Eleventh Street, Suite 1201
Sacramento, CA 95814

Re: North San Joaquin Water Conservation District v. Howard Jarvis Taxpayers
Association et al.
C059758
San Joaquin County No. SV266837

Dear Counsel:

The parties are directed to provide supplemental letter briefs discussing whether the District's groundwater charge is "assessed . . . upon [a] parcel of property or upon [a] person as an incident of property ownership" such that it is subject to Proposition 218. (Cal. Const., art. XIII D, § 3, subd. (a).) The parties' briefs shall also discuss whether the groundwater charge is "for a property-related service" (*id.*, § 2, subds. (e), (h)) and shall include a discussion of whether *Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal.App.4th 1364 was correctly decided.

The parties shall simultaneously file and serve their supplemental letter briefs on or before January 29, 2010. Counsel are to provide an original and 4 copies of the briefs with an attached proof of service to this court.

Very truly yours,

DEENA C. FAWCETT
Clerk/Administrator

By: 
Deputy Clerk

cc: See Mailing List

ATTACHMENT C

Jennifer L. Spaletta
jspaletta@herumcrabtree.com

February 5, 2010

VIA FEDERAL EXPRESS – OVERNIGHT DELIVERY

Hon. Arthur G. Scotland
California Court of Appeal
Third Appellate District
621 Capitol Mall, 10th Floor
Sacramento, CA 95814-4719

Re: North San Joaquin Water Conservation District/Appeal
San Joaquin County Superior Court Case No. SV 266837
Court of Appeal No. C059758

Dear Presiding Justice Scotland:

Respondent North San Joaquin Water Conservation District respectfully submits this letter brief in response to the Court's January 8, 2010 request to address (1) whether the District's groundwater charge is "assessed...upon [a] parcel of property or upon [a] person as an incident of property ownership" such that it is subject to Proposition 218 (Cal. Const., art. XIII D, § 3, subd. (a)); (2) whether the groundwater charge is "for a property-related service" (*id.*, § 2, subds. (d), (h)); and (3) whether *Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal.App.4th 1364 was correctly decided. We address each issue in turn:

Is the District's groundwater charge "assessed...upon [a] parcel of property or upon [a] person as an incident of property ownership" such that it is subject to Proposition 218?

To address this question, we must look at who pays the District's charge, and why. The District's April 2007 Engineer's Report summarized different water users subject to the charge, and the magnitude of their respective use:

Estimated Groundwater Use 2005-2006				
Use Code	Description	Quantity	AFA/Unit	Total AFA
0	Single Family Dwelling	100 each	0.5	50
51	Rural Residential	2428 each	1	2,428
52	Rural Residential, 2+ Residences	250 each	2	500
291	Nursery	716 Acres	4	2,864
352	Large Winery	10 each	4	40
353	Small Winery	6 each	2	12
-	Misc. Commercial	100 each	0.5	50
401	Irrigated Orchard	8,185 acres	2.8	22,918
420	Irrigated Vineyard	45,309 acres	1.5	67,964
450	Irrigated Row Crops	7,204 acres	2.8	20,171
460	Irrigated Pasture	11,070 acres	4	44,280
462	Horse Ranch	40 each	2	80
471	Dairy	27 each	5	135
480	Poultry Ranch	13 each	5	65
-	Ag. Residences	1,028 each	1	1,028
-	Golf Courses	592 acres	4	2,368
-	Cemeteries	83 acres	4	332
-	Lodi Schools*			27
-	City of Lodi	-	-	9,300
-	Lockeford Community SVC District	-	-	520
-	County Service Areas	-	-	232
-	Micke Grove park	62 acres	4	248
-	Micke Grove Golf Course	87 acres	4	348
	Subtotal			175,960
	Less Surface Water			-3000
	TOTAL			172,960
	*Not included in City or Service Areas			

Amended Clerks' Transcript on Appeal, vol. 1, page 12.

The District's charge is not assessed on every parcel of property in the District, and in fact, is not assessed based on property ownership at all. Rather, the District's charge is imposed on each acre-foot of water extracted for a given use type. See Amended Clerk's Transcript on Appeal, vol. 1, page 1.

For ease of administration, the District used property ownership records for the sole purpose of generating the initial list of persons and entities who may be subject to the charge because their property includes a well. The District then reduced or amended this list based on who stated that they are or are not pumping groundwater from a well located on that parcel. See Amended Clerk's Transcript on Appeal, vol. 1, page 2. The District's Resolution adopting the charge specifies that the charges will be revised to reflect "actual use measured by the property owner." See Amended Clerk's Transcript on Appeal, vol. 1, page 1.

Using the City of Lodi as an example, the City's wells extract 9,300 acre-feet of groundwater annually. See Amended Clerks Transcript on Appeal, vol. 1, page 12. However, this amount of water clearly is not used on the parcel where the City's wells are located. Rather, it is distributed for use throughout the City on lands owned by both the City and its numerous residents, as well as for domestic consumption. Thus, to the extent that the extracted groundwater is used on the parcel from which it is extracted (such as in the case of a rural residence or some irrigated agriculture) that fact is coincidental, but not determinative of how or why the District imposes and collects the charge at issue.

For these reasons, the District's groundwater charge is not "assessed...upon [a] parcel of property or upon [a] person as an incident of property ownership" such that it is subject to Proposition 218. That said, the District did not seek a legal determination to this effect in the trial court because it had conservatively opted to comply with the notice, hearing and majority protest procedures in Proposition 218 for fees and charges, even though the charge might not be subject to Proposition 218. Ironically, the District made this decision to hopefully avoid litigation and encourage public input.

If this Court were to agree, as a matter of law, that the District's charge is not subject to Proposition 218, all of the other disputed issues in this case become moot.

Is the District's groundwater charge "for a property-related service" as that term is used in Proposition 218?

Cal. Const. Art. 13D, §2 defines "a property-related service" as a "public service having a direct relationship to property ownership."

The District clearly provides a "water service" in augmenting and protecting the groundwater supplies, but this service is not directly related to property ownership. Rather, it is related to the health of the underlying groundwater resource and the benefits that groundwater users in the District can expect to receive from that resource.

The groundwater augmented and protected by the District's program lies underneath all of the property in the District's boundaries, but is not used by every property owner. Rather, only those who choose to pump and use water benefit from the District's services. Others may choose to receive water from a surface water supply source, such as the Mokelumne River, or choose not to take water from any source, such as those who farm dry-land pasture. Further, some who use the water subject to the charge, will not be property owners at all, such as those who lease, rather than own, homes or ranches.

Further, even the right to extract groundwater in California is not necessarily tied to property ownership. California law recognizes two forms of groundwater rights: overlying and appropriative. *Katz v. Walkinshaw* (1903) 141 Cal.116, 134-36 (overlying groundwater users share the use of the groundwater supply with other overlying users for beneficial purposes, similar to riparian rights); *Corona Foothill Lemon Co. v. Lillibridge* (1937) 8 Cal.2d 522, 525-31 (water that is available surplus to the needs of overlying owners is available for appropriation for use on other property). Overlying rights grant the owner of land the right to extract the groundwater from beneath his or her property and use it on the overlying parcel. *Katz* at 134-36. Appropriative groundwater rights, by contrast, relate to the right to extract water and convey it to use on non-overlying lands. *Katz* at 135-36. All municipal groundwater use (other than water use on public lands like parks) is deemed appropriative. *San Bernardino v. Riverside* (1921) 186 Cal. 7, 25.

Thus, in the case of the District, the charge is imposed on appropriative groundwater extraction (by the City of Lodi, for example), as well as on the appropriative groundwater use by those in irrigated agriculture who are pumping groundwater and conveying it for use on non-overlying parcels. It is only for those rural residential users and a portion of the irrigated agriculture groundwater users who are exercising overlying groundwater rights that the argument can be made that the use of groundwater relates at all to the ownership of the real property to which the water is applied.

Yet, even then, the District's charge is not related to the overlying owners' property ownership. Rather, it is related to the District's program of augmenting and protecting the area's groundwater supplies, which are in a state of critical overdraft. See Amended Clerk's Transcript on Appeal, vol. 1, pages 9-14. The charge applies to anyone extracting groundwater, whether based on an overlying right, appropriative right, or any other right.

Further, even if a compelling argument could be made that a charge on the exercise of overlying groundwater rights is "property-related" this argument assumes that those who pay the charge are in fact paying it on water that they have extracted using their overlying rights. Due to the overdrafted nature of the groundwater basin underlying the District, this finding cannot be made. Further, the relationship between the charge and property ownership for overlying owners is, at most, an indirect relationship rather than a "direct" relationship as defined in Cal. Const. Art. 13D, § 2.

Under California law, an overlying owner only has the correlative right to share in the "safe yield" of the basin. See *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 925-26. Because the Eastern San Joaquin County groundwater basin is in a state of critical overdraft, where annual extractions significantly exceed the basin's safe yield, the overlying groundwater right holders in the District are not limiting their groundwater use, and hence the acre-feet subject to the District's charge, to safe-yield extractions. Similarly, appropriators in the basin are not limiting their extractions to only "surplus" water since there is no surplus water in an overdrafted basin.

To address this obvious problem, the District was formed for the purpose of managing and augmenting the insufficient natural groundwater supplies. Reporter's Transcript 19-47:1. The District's program, funded by the groundwater charge at issue, is providing supplemental water supplies to the basin – supplies that would otherwise not be there. Each person who pays the charge is paying for the ability to access and use this extra water – which is a fee for a service that goes beyond any property-related rights of those who must pay the charge. Rather, the service is designed to provide supplemental water for the District's water users, regardless of whether or not their water rights are based on property ownership or otherwise.

***Was Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal.App.4th 1364 correctly decided?**

The *Pajaro* court clearly struggled with the issue of whether the groundwater charge imposed by Pajaro Valley Water Management Agency was or was not subject to Proposition 218 – deciding first that it was not, and then feeling compelled to change its decision after the Supreme Court's decision in *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205. See *Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal.App.4th 1364, 1384-1393.

The struggle was warranted. The mix of different water user types in the Pajaro Valley Water Management Agency subject to that agency's charge are similar to the mix of different water user types in the District – including rural residences who use

groundwater for domestic purposes, and irrigated agricultural and municipalities that use groundwater for commercial purposes. See *Pajaro*, 150 Cal.App.4th at 1390. However, in *Pajaro*, the "large majority" of those subject to the charge were using water for domestic or residential purposes. (Conversely, here, the vast majority of the water use in the District subject to the charge is non-residential (see chart above)).

In *Bighorn*, the California Supreme Court reasoned that charges for domestic or residential water service delivery, even if consumption based, were properly characterized as a "property-related service" and subject to Proposition 218. *Bighorn* 39 Cal.4th at 217. In *Pajaro*, the Sixth District court of appeal explained the difficulty in extending this rationale from *Bighorn* to domestic use of pumped groundwater, and then even further to commercial use of pumped groundwater. In the end, the *Pajaro* court felt compelled to find that the charge at issue there was subject to Proposition 218 because of the nature of overlying groundwater rights and the fact that the vast majority of those subject to *Pajaro*'s charge were using water for residential or domestic purposes. *Pajaro* 150 Cal.App.4th at 1390.

The District believes that *Pajaro* was decided incorrectly in this respect. As outlined above, groundwater charges based on extraction and use are not imposed on parcels of property, nor are they directly related to property ownership. They are imposed as a result of the choice by the person subject to the charge to use a particular type of water – groundwater – from a critically overdrafted groundwater basin. Neither *Pajaro* Water Management Agency nor North San Joaquin Water Conservation District are obligated to serve water to every property owner, nor do they. In fact, unlike *Bighorn* Desert View Water Agency, which has an obligation to provide domestic water service to residents in a roughly 42-square mile area of San Bernardino County (39 Cal.4th at 209), neither the Agency or the District have a similar obligation.


Rather, the Agency and the District operate programs to manage and augment groundwater supplies that are then available to those who choose to extract groundwater from overdrafted basins. To ensure that those benefiting from the District's and Agency's services are the same group paying for these services, the charges to fund the services are imposed only on those who pump groundwater based on the amount pumped. Because the nature of these water services are the management and protection of overdrafted groundwater basins, and not the provision of domestic surface water supplies to every property owner within the public entities' service area, the service is not connected closely enough to property ownership to be deemed a "property-related service" for the purposes of Proposition 218.

Hon. Arthur G. Scotland
California Court of Appeal
Third Appellate District
February 5, 2010
Page 7

Further, in the case of the District, the vast majority of the water use subject to the charge is for non-domestic use, unlike both *Bighorn* and *Pajaro*. Thus, the Sixth Circuit's rationale for extending the holding from *Bighorn* to the groundwater charges imposed by *Pajaro* cannot be applied to the District's groundwater charge at issue here.

Respectfully submitted,

HERUM CRABTREE
A Professional Corporation

By: 
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1 **PROOF OF SERVICE**

2 I, Carol Bracken, certify and declare:

3 I am over the age of 18 years and not a party to this action. My business address is:

4 HERUM CRABTREE, 2291 West March Lane, Suite B100, Stockton, California 95207. On the
5 date set forth below, I served the following document(s):

6 **SUPPLEMENTAL LETTER BRIEF REGARDING PAJARO VALLEY WATER**
7 **MANAGEMENT AGENCY**

8 ☒ **BY U.S. MAIL.** By enclosing the document(s) in a sealed envelope addressed to the
9 person(s) set forth below, and placing the envelope for collection and mailing, following
10 our ordinary business practices. I am readily familiar with this business's practice for
11 collecting and processing of correspondence for mailing. On the same day that
12 correspondence is placed for collection and mailing, it is deposited in the ordinary course
13 of business with the United States Postal Service, in a sealed envelope with postage fully
14 prepaid.

15 ☐ **BY FACSIMILE.** By use of facsimile machine, telephone number (209) 472-7986. I
16 caused the facsimile machine to print a transmission record of the transmission, a copy of
17 which is attached to this declaration. The transmission was reported as complete and
18 without error. [Cal. Rule of Court 2.301 and 2.306]

19 ☐ **BY OVERNIGHT DELIVERY.** By enclosing the document(s) in an envelope or
20 package provided by an overnight delivery carrier with postage thereon fully prepaid.
21 [Code Civ. Proc., §§ 1013(c), 2015.5.] The envelope(s) were addressed to the person(s)
22 as set forth below.

23 ☐ **BY ELECTRONIC MAIL (EMAIL).** By sending the document(s) to the person(s) at
24 the email address(es) listed below.

25 **PLEASE SEE SERVICE LIST**

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct.

28 Dated: February 5, 2010


CAROL BRACKEN

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ATTACHMENT D

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

DIVISION
CASE NO. C059758

NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT,
Plaintiff and Respondent,

vs.

HOWARD JARVIS TAXPAYERS ASSOCIATION, ET AL.,
Defendant and Appellants.

On Appeal From a Judgment by the Superior Court, San Joaquin
County, Case No. SV266837, Hon. Elizabeth Humphreys

**ASSOCIATION OF CALIFORNIA WATER
AGENCY'S PETITION TO FILE AMICUS BRIEF
AND AMICUS BRIEF ON BEHALF OF
PLAINTIFF & RESPONDENT**

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Table of Contents

	<u>Page</u>
APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF	1
INTRODUCTION	1
THE AMICUS CURIAE	1
INTEREST OF AMICUS CURIAE	2
FUNDING AND AUTHORS	4
CONCLUSION.....	4
BRIEF OF AMICUS CURIAE	5
I. INTRODUCTORY STATEMENT.....	5
II. ARGUMENT: “WATER SERVICE” ENCOMPASSES MANY DIFFERENT KINDS OF WATER SERVICE, NOT JUST “INFRASTRUCTURE TO TAP” SERVICE	8
A. <i>HJTA v. City Of Salinas</i> And Government Code Section 53750 subdivision (m) Support The Argument That Water Service Encompasses Basin Replenishment	8
B. Case Law Fails To Support Treating One Water Service Differently From Another	11
C. What Constitutes “Water Service” Ranges Widely From District To District, But It Still Remains “Water Service”	13
D. HJTA’s Proposed Scheme Is Unworkable	14
III. CONCLUSION	16

Table of Authorities

	<u>Page</u>
 Cases	
<i>Bighorn-Desert View Water Agency v. Verjil</i> (2006) 39 Cal.4 th 205	11, 12
<i>HJTA v. City of Salinas</i> (2002) 98 Cal. App. 4 th 1351	7, 8, 9, 10
<i>Pajaro Valley Water Management Agency v. Amrhein</i> (2007) 150 Cal. App. 4 th 1364	11, 12
<i>Richmond v. Shasta Community Services District</i> (2004) 32 Cal. 4 th at p. 409	12
<i>Rincon Del Diablo Municipal Water Dist. v. San Diego County Water Authority</i> (2004) 121 Cal. App. 4 th 813	11
 Statutes	
Cal. Wat. Code, § 515	11
Government Code section 53750	8, 10, 11
Government Code section 53750(m)	10
Pub. Util. Code, § 12801	13
Wat. Code, §§ 74030 et seq.; 75522; 75596	13
 Other Authorities	
Article XIII D, § 6(c) of the California Constitution	passim
The Pajaro Valley Water Management Agency Act (Wat. Code App.), sections 124-101, 102	14
 Rules	
California Rules of Court, rule 8.25(b)	1
California Rules of Court, rule 8200	1

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE

BRIEF

INTRODUCTION

Pursuant to California Rules of Court, rule 8.200(c), the Association of California Water Agencies (“ACWA”) respectfully requests leave to file the attached brief as an amicus curiae in support of Plaintiff and Respondent North San Joaquin Water Conservation District (“District”). This application is timely, as it is made within 14 days after the filing of the last Appellants’ Reply Brief on the merits (September 25, 2009), and pursuant to California Rules of Court, rule 8.25(b).

THE AMICUS CURIAE

ACWA is a voluntary non-profit, nonpartisan, statewide organization comprised of public water agencies and cities. ACWA’s 450 public agency members, cities, county water districts, municipal water districts, irrigation districts, California water districts, municipal utility districts, public utility districts, a metropolitan water district, a county water authority, and a variety of other local public agencies are responsible for 90% of the water delivered to communities, farms and businesses in California. Together, ACWA and its members play an active role in managing the state’s water resources and promoting investments in water use efficiency, water recycling, groundwater and surface water management and conservation, and providing a water service to property owners and consumers throughout the state.

In fulfilling its role, ACWA identifies issues of concern to the water industry and the public it serves; accumulates and then

communicates the best available scientific and technical information to the public and policy makers; facilitates consensus building; develops reasonable goals and objectives for water resources management; advocates sound legislation; promotes local services agencies as the most efficient means of providing water services; and fosters cooperation among all interest groups concerned with the stewardship of California's water resources.

ACWA's board of directors and executive committee is advised by its Legal Affairs Committee, which is comprised of member agency attorneys from all regions of the State. The Legal Affairs Committee monitors litigation of concern to ACWA members and identifies those cases that may have a substantial statewide impact. The Committee has identified this case as being of such significance.

INTEREST OF AMICUS CURIAE

Article XIII D, section 6 subdivision (c), of the California Constitution, provides, "Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area." (Cal. Const. art. XIII D, § 6(c).) However, all property related fees and charges, including those exempt from the election requirement, are subject to the notice, hearing, and majority protest procedures of article XIII D, § 6(a), as well as the substantive requirements of §6(b). (Cal. Const. art. XIII D, § 6 subdivision (a), (b).)

This case presents critical questions affecting all of ACWA's members: What is the scope of the exemption from the voter approval requirement in Article XIII D § 6(c) as it pertains to water? ACWA's members include domestic water providers, agricultural water providers, urban water suppliers, rural water suppliers, suppliers that rely on pipes, suppliers that rely on canals, suppliers that manage and replenish groundwater basins, suppliers that provide a combination of various types of water delivery service, water wholesalers, and water retailers that supply municipal and industrial users. In short, ACWA's member public agencies provide every conceivable type of water service to their property owners, tenants, and other customers throughout the state. Many of the fees and charges imposed by ACWA's members are subject to the procedural and substantive requirements of article XIII D, section 6 subdivision (a) and (b) because they are fees or charges imposed on property or upon persons as an incident of property ownership, including user fees for a property related water service. However, ACWA's members believe that most of these fees and charges may be imposed without the additional voter approval requirement because of the clear exemption for "sewer, water, and refuse collection service." (Cal. Const. art. XIII D, § 6(c).)

Specifically at issue here is the important question of whether a groundwater pumping and replenishment charge, which is one method of providing water and water service, falls within the exemption from the voter approval requirement in article XIII D, section 6 subdivision (c)? Appellants contend that the voter approval exemption applies only to fees and charges for water delivered directly to property

through pipes or other conveyance facilities, and not to water service that is provided indirectly through other means such as groundwater replenishment. Because ACWA's members serve water to their customers in a variety of different manners and by a variety of different means, this narrow view of the election exemption makes no sense, either practically, or as a matter of statutory construction.

In that many of ACWA's member public agencies rely on fees and charges as the primary source of revenue, they are vitally interested in the outcome of any litigation relating to the scope of article XIII D. Clarity on this issue is necessary so that ACWA's members can comply with the law, budget accordingly, and continue to provide quality service to their constituents.

FUNDING AND AUTHORS

This Amicus Brief is funded entirely by ACWA. It is authored by Sophie N. Froelich of Nossaman LLP and Daniel S. Hentschke, General Counsel, San Diego County Water Authority.

CONCLUSION

For the foregoing reasons, the amicus curiae respectfully request that the Court accept the accompanying brief for filing in this case.

October 9, 2009

Nossaman LLP
Sophie N. Froelich

By:



Sophie N. Froelich

Attorneys for Amicus Curiae Association of
California Water Agencies

BRIEF OF AMICUS CURIAE

I. INTRODUCTORY STATEMENT

Proposition 218, adopted by the voters in November 1996, added article XIII D to the California Constitution and, among other things, fundamentally changed the law relating to imposition of property related fees and charges. It added new notice, hearing, protest, and, in some instances, voter approval requirements. This case involves the scope of the exemption from voter approval for property related fees imposed by public agencies that provide the water for domestic, commercial, industrial, and agricultural purposes throughout the state. It arises in the context of an agency that provides water that replenishes a groundwater basin from which overlying property owners and appropriators draw water for ultimate consumption. The fee in this case is imposed on the act of pumping water out of the groundwater basin and is used to pay for service provided by a water agency that imports water and recharges it into the basin for later withdrawal. In this way, the agency keeps the common pool full; without this service, water would be unavailable for consumption.

Article XIII D, section 6 subdivision (c) of the California Constitution provides, "Except for fees or charges for sewer, water, and refuse collection service, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the

agency, by a two-thirds vote of the electorate residing in the affected area.” (Referred to herein as the “voter exemption requirement.”).

Appellants in this case, Howard Jarvis Taxpayers Association (“HJTA”) and various individuals, argue that in the case of water related fees and charges the exemption from the voter approval requirement in encompasses only one thing: water services, which they define as “charges that pay for a service delivered to the payer’s property.” (Opening Br. at p. 10.) Essentially, Appellants are attempting to confine narrowly the exemption from voter approval to “water services” by agencies that deliver water through pipes or other infrastructure directly to property owners. According to HJTA, if a water agency provides any service other than direct delivery of water to customers, it will not qualify as water service exempt from the voter approval requirement.

But that is not what the Constitution provides. The Constitution exempts from the voter approval requirement fees and charges for “sewer, water, and refuse collection service.” (Cal. Const. art. XIII D, § 6 subdivision (c).) Regardless of whether this provision is interpreted broadly to exempt “water” generally, or more narrowly to exempt “water service,” the result is the same: “Water” and “water service” are, if not identical, still broad enough terms to cover the type of governmental service that is in question in this case, as well as the variety of different methods that public agencies throughout the state use to provide water to customers, whether part of the end of the supply where the water is applied directly to the final customer, or to other steps in that service chain.

As set forth in detail below, there are three fundamental problems with HJTA's argument. First, it ignores the holding of *HJTA v. City of Salinas* (2002) 98 Cal. App. 4th 1351 and the plain language and legislative history of Government Code section 53750 subdivision (m), one of Proposition 218's enabling statutes. In that respect, HJTA's theory ignores the fact that the "direct/indirect" service dichotomy has never been accepted by the courts, and indeed, the only court to have considered the issue at all (albeit indirectly) has implied that no such construct exists. Second, it ignores the fact that water is served by public agencies throughout the State by a variety of different means and methods. The argument neglects to take into account the complex nature of water services, reflected in the Legislature's creation of many different kinds of water agencies to manage California's precious and diminishing water resources. Finally, the voter approval structure that HJTA proposes is overbroad and unworkable. It creates situations where consumers in neighboring water districts, or even neighbors in the same water district, either get to vote or not based on whether water is delivered to them by infrastructure-type service connections to their property, or through pumping out of a common pool such as a groundwater basin. In short, HJTA's argument is invalid, and the lower court's opinion should be affirmed.

**II. ARGUMENT: “WATER SERVICE” ENCOMPASSES
MANY DIFFERENT KINDS OF WATER SERVICE, NOT
JUST “INFRASTRUCTURE TO TAP” SERVICE**

**A. *HJTA v. City Of Salinas* And Government Code
Section 53750 subdivision (m) Support The Argument
That Water Service Encompasses Basin
Replenishment**

Article XIII D, § 6 section (c), provides an exception to the voter from the voter approval requirement for “sewer, water, and refuse collection services.” Relying primarily on *Salinas*, HJTA argues that the exemption is for “water services” alone, and not “water.” Reliance on *Salinas*, however, is misplaced. Both *Salinas*, and the statute it discusses, Government Code section 53750, support ACWA’s position that a water service charge exempt from the voter approval requirement encompasses a groundwater basin replenishment fee, charged to the end user who draws water from a well.

In *Salinas*, the Court of Appeal for the Sixth Appellate District considered whether a storm drainage fee imposed by the city for management of storm water runoff from certain areas of each parcel in the city was a property related fee that required voter approval under section 6(c), or whether it was an exempt water or sewer service charge. (*Id.*, at p. 1352-1354.) In holding that the fee was subject to the voter approval requirements, the court of appeal characterized the trial court’s ruling as follows: The trial court held that the fee did not violate section 6(c) because “it met the exemption for fees for sewer and water services.” *Id.*, at pp. 1353.

HJTA seizes on this language, arguing that a fee for “water services” is the only fee encompassed by section 6, subdivision (c)’s voter exemption. Opening Br. at p. 16. This argument ignores the rest of the ruling in *Salinas*, however. Citing Government Code section 53750, the *Salinas* court held that the “average voter would envision ‘water service’ as the *supply of water for personal, household, and commercial use*, not a system or program that monitors storm water for pollutants, carries it away [from property], and discharges it into the nearby creeks, rivers and ocean.” (*Id.*, at p. 1358 emphasis added.)

As an initial matter, it is unclear that *Salinas* controls the outcome here because it is so factually different from this case. *Salinas* involved a fee imposed for collecting and disposing of stormwater drainage. It did not involve delivery of water to property, it involved the problem of handling of water that falls on and drains off of property.

To the extent that *Salinas* might govern or be instructive in this case, however, it fully supports Respondent’s position. Here, the charge pays for either infrastructure or a supply of water that ultimately reaches an end user. As such it fits squarely within the definition of water service set forth in *Salinas*. To explain, the groundwater basin here is drawn upon or used by the many different commercial businesses, agricultural concerns, and residents within the District’s boundaries. San Joaquin’s charge is a charge levied to replenish a groundwater basin that is in overdraft, or, in certain cases, to provide for infrastructure that will carry water to the end user. As such, the water service, in this case, is partly the conveyance of water

to property owners, and partly the resupply of water to a groundwater basin that others then tap into via wells or their own infrastructure. In either case, it constitutes the “supply of water for personal, household, and commercial use.” (*Salinas, supra*, 98 Cal. App. 4th at p. 1358.) *Salinas* makes no distinction between the supply being brought to the ultimate user via infrastructure or taps, or whether it is placed in the ground and then withdrawn by a private party. The service at issue has still been provided: The groundwater basin has been replenished by water provided by the District. The same would be true of course of all of ACWA’s members who are groundwater management districts charged with managing basins in overdraft or storing water.

This interpretation of *Salinas* also reflects the definition of water in Government Code section 53750(m). Government Code section 53750, which was “enacted to explain some of the terms used in article[] ... XIII D, defines ‘water’ as ‘any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water.’” (*Salinas*, 98 Cal. App. 4th at p. 1358, citing Gov. Code, § 53750 subd. (m).) As a general rule, the “water” provided by public agencies in California is not simply the wet substance we all drink. Rather, it is the pumps, pipes, aqueducts, canals, injection wells, extraction wells, dams, reservoirs, lakes, flumes, treatment plants, desalination plants, and other facilities, by which water is produced, stored, supplied, treated, and distributed throughout the state. In the context of public water agencies, “water” is “water service.” It is that simple.

As the plain language of section 53750 makes clear, the “production” and the “supply” of water is included within the scope of

“water” in section 6, subdivision (c), along with the provision of infrastructure to provide water to the end user. This definition reflects the definition of water service as set forth in the Water Code: “Water service means the sale, lease, rental, furnishing, or delivery of water for beneficial use, and includes, but is not limited to, contracting for that sale, lease, rental, furnishing, or delivery of water, except bottled water.” (Cal. Wat. Code, § 515.)

Here, like many of ACWA’s members’ charges, the District’s charge is used both to construct infrastructure to carry water to the end user, and to re-supply the water in the overdrafted basin. That the end user does not get the water directly from San Joaquin’s infrastructure is immaterial. Government Code section 53750 defines water service to be a supply of water, and it makes no distinction between the supply of water directly to the end user through pipes, and the supply of water indirectly to the basin from which the end user then pumps the water from a well.

B. Case Law Fails To Support Treating One Water Service Differently From Another

The issue of voter approval should not turn on whether water is delivered as a commodity directly to property owners. Certainly, case law interpreting Proposition 218 suggests as much.

Water is a commodity, and “[u]nder California case law, water rates are considered user or commodity charges because they are based on the actual consumption of water.” (*Rincon Del Diablo Municipal Water Dist. v. San Diego County Water Authority* (2004) 121 Cal. App. 4th 813, 819; *see, also, Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal. App. 4th 1364, 1387

(describing water as a commodity).) Commodity rates and user fees for water are subject to article XIII D. (*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 217.)

To date, many of the cases considering whether the particular water service at issue is subject to the voter approval requirement in section 6(c) have focused on the provision of “direct” water services such as charges for water delivery from a pipeline to land, or from a water system to the tap. (See, e.g., *Bighorn, supra*, 39 Cal. 4th at p. 217; *Richmond v. Shasta Community Services District* (2004) 32 Cal. 4th at pp. 409, 426-427.) The cases have concluded that the notice and hearing provisions of Proposition 218 apply to these charges.

But none of the published Court of Appeal or Supreme Court cases to date have considered this particular theory advanced by HJTA, namely, that when the water service is indirect or provided to property owners in a manner other than via a pipeline or tap to the property in question, the service is therefore subject to the voter approval requirement.

The only case that has come close to considering this issue is *Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal. App. 4th 1364. In *Pajaro*, the court held that there was *no material difference* between a charge on groundwater extraction and a charge on delivered water for the “purposes of Article XIII D’s restrictions on fees and charges” and that the groundwater extraction charges were subject to Proposition 218. (*Id.* at p. 1389.) The court explained further that its holding should “*not* be understood to imply that the charge is necessarily subject to all of the restrictions imposed by article XIII D on charges incidental to property ownership. This case

presents no occasion to determine whether this or a similar charge may fall within any of the express exemptions or partial exemptions set forth in” section 6(c). (*Id.*, at 1394 n. 21; emphasis added.)

Pajaro implies that HJTA’s proffered theory is invalid. If charges for delivered water (through a tap or pipeline or canal to property) and charges for groundwater extraction are not materially different, then there is no justification at all for the distinction between direct “pipeline to tap” and indirect “water importation to basin” water services such as the ones at issue here. The provision of water remains just that, the provision of water, no matter how it is delivered to the end user.

**C. What Constitutes “Water Service” Ranges Widely
From District To District, But It Still Remains
“Water Service”**

As discussed above, water service takes a variety of forms. HJTA’s argument flatly ignores the varied nature of what constitutes water service varies from district to district, and among agencies, depending on the kind of service provided.

California has various different kinds of water agencies and water management agencies, including but not limited to groundwater management agencies, water wholesalers, and water retailers that sell directly to end water users. For example, East Bay Municipal Utility District is a local agency that provides water directly to residential, agricultural and commercial water users. (*See*, Pub. Util. Code, § 12801; <http://www.ebmud.com/about_ebmud/overview/> (as of October 9, 2009).) Respondent in this case, North San Joaquin Water Conservation District (“San Joaquin”), is a public agency that

provides water to a groundwater basin in overdraft, and indirectly to those water users within its boundaries, by importing water to replenish the groundwater basin, among other things. (Statement of Decision, at p. 4; Wat. Code, §§ 74030 et seq.; 75522; 75596; Stipulated Facts Nos. 1, 29.) Other agencies, such as the Pajaro Valley Water Management Agency (“PVWMA”), have similar mandates: To manage water resources in a manner fair to all users, by managing local groundwater resources to prevent long term overdraft, to conserve water, and to meet the needs of agriculture, industry, and urban communities within its boundaries. (PVWMA Act (Wat. Code App.) §§ 124-101, 102.)

These examples demonstrate that water services encompass much, much more than simply “water to tap” deliveries. Water service varies with the needs of a particular community, and it is not confined to service to those who can tap in directly to the water by turning on the faucet. Water service in California clearly includes the management of a scarce resource: Water. Common sense dictates that water service, whether it is by direct delivery to customers, or involves an intermediate step of delivery into a common pool such as a groundwater basin, is all water service.

D. HJTA’s Proposed Scheme Is Unworkable

HJTA proposes a fee model that not only has no support in law and makes no sense, but which would also be unworkable for many of ACWA’s members. This is particularly true for smaller and more rural districts like North San Joaquin. North San Joaquin has a number of farmers who draw water from irrigation canals, but it also

has other water users who tap into the groundwater basin directly via wells on their property. (*See*, Reply Br. at p. 17)

In a district like North San Joaquin, HJTA's theory of water service would require two separate kinds of water charges: One levied on those farmers who take the water from the irrigation canals via pipes or other infrastructure, and one levied on well users. The former charge would be exempt from the voter approval requirement, and the latter would be subject to it.

The problem with this dual charge system is threefold. First, it defies common sense. As set forth above, many of ACWA's member agencies provide water both directly to property owners through agency pipes and service connection, and also through refilling of the groundwater basin from which other overlying property owners or appropriators pump. In some cases, the appropriators then deliver the water to others for ultimate consumption. But it's all the same water, so it makes no sense to say that "water" or "water service" for the purpose of the exemption includes one type of water delivery, but excludes another means of providing the same water for ultimate consumption. Such a construction would mean that some water agency fees are exempt from the election requirement, yet others may be imposed only after an election.

Second, the water generally comes from the same place, it is imported and either directly delivered or placed by the agency into the groundwater basin, and then is drawn from the basin for ultimate consumption. The water in the groundwater basin is there in part because San Joaquin levies a charge on all groundwater users so that it can buy replacement water to put back into the basin. Whether the

end user taps into that replacement water from by using a well or an irrigation canal makes no difference to the end result, which is that the end user uses water from the groundwater basin that is replenished by the district. It would be inequitable for some users to be subject to a fee without voter approval, yet others only be subject to a fee for the same water if after compliance with the voter approval requirements.

Finally, the system HJTA proposes would cause increased expenses for ACWA's members. In any system where there would be an individual who draws water from a basin via a well on his or her own property and another individual who farms using water from a canal or irrigation pipe, there would be one charge that is subject simply to notice and hearing procedures, and another subject to a vote. Balloting and running an election is an expensive undertaking. Many districts have very limited budgets, particularly in this difficult economic climate. For many, the system would be far too expensive to maintain, and small districts would be unable to fulfill their legislative mandates of preserving and managing a rapidly-dwindling natural resource.

III. CONCLUSION

ACWA's member agencies provide different kinds of water services, many of which are within the scope of Proposition 218. These various kinds of water services that fall within Proposition 218's purview can include groundwater management and replenishment as well as direct service to rate payers through irrigation canals, infrastructure and taps. Because the definition of water services in the Water Code and the Government Code is much broader than simply services to users who can turn on a tap or plug

into an irrigation system, all of these water service charges are exempt from the 2/3 voter requirement in Section 6(c). Accordingly, the lower court's decision must be upheld.

Dated:

Nossaman LLP

By: _____
Sophie-Nicole Froelich


Attorneys for Amicus Curiae Association of
California Water Agencies

RULE 14(c)(1) CERTIFICATION

As required by Rule 14(c)(1) of the California Rules of Court, I certify that this brief and the application contains 4191 words. In making this certification, I have relied upon the word count function of Microsoft Word, the computer program used to prepare the brief.

October 9, 2009

Nossaman LLP
Sophie N. Froelich

By: _____
Sophie N. Froelich
Attorneys for Amicus Curiae Association of
California Water Agencies

PROOF OF SERVICE

The undersigned declares:

I am employed in the County of San Francisco, State of California. I am over the age of 18 and am not a party to the within action; my business address is c/o Nossaman LLP, 50 California Street, 34th Floor, San Francisco, CA 94111.

On October 9, 2009, I served the foregoing Association of California water agency's Petition to File Amicus Brief and Amicus Brief on behalf of plaintiff & respondent on parties to the within action as follows:

- ☒ (By U.S. Mail) On the same date, at my said place of business, an original enclosed in a sealed envelope, addressed as shown on the attached service list was placed for collection and mailing following the usual business practice of my said employer. I am readily familiar with my said employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service, and, pursuant to that practice, the correspondence would be deposited with the United States Postal Service, with postage thereon fully prepaid, on the same date at San Francisco, California.
- ☐ (By Facsimile) I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e), to the number(s) listed on the attached sheet. Said transmission was reported complete and without error. A transmission report was properly issued by the transmitting facsimile machine, which report states the time and date of sending and the telephone number of the sending facsimile machine. A copy of that transmission report is attached hereto.
- ☐ (By Overnight Service) I served a true and correct copy by overnight delivery service for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.
- ☐ (By Electronic Service) By emailing true and correct copies to the persons at the electronic notification address(es) shown on the accompanying service list. The document(s) was/were served electronically and the transmission was reported as complete and without error.

Executed on October 9, 2009.

- ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ☐ (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Joanne Koch

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ATTACHMENT E

San Bernardino Valley Water Conservation District

	GW direct expenses	
	Jul '08 - Jun 09	Jul '08 - Jun 09
Ordinary Income/Expense		
Income		
4020 · Groundwater Charge		
4021 · Assessments - Ag	497,263.41	497,263.41
Total 4020 · Groundwater Charge	497,263.41	497,263.41
Total Income	497,263.41	497,263.41
Expense		
5100 · Professional Service		
Total 5100 · Professional Service	417,588.04	125,276.41 30 percent
5200 · Field Operations		
Total 5200 · Field Operations	10,096.87	10,096.87
5300 · Vehicle Operations		
Total 5300 · Vehicle Operations	17,305.56	17,305.56
5400 · Utilities		
Total 5400 · Utilities	4,575.72	2,287.86 50 percent
6000 · General Administration		
Total 6000 · General Administration	21,430.16	10,715.08 50 percent
6100 · Benefits		
Total 6100 · Benefits	268,480.70	80,544.21 30 percent
6200 · Salaries		
Total 6200 · Salaries	526,509.74	157,952.92 30 percent
6300 · Insurance		
Total 6300 · Insurance	23,297.52	6,989.26 30 percent
6400 · Board of Directors' Expenses		
Total 6400 · Board of Directors' Expenses	152,303.18	45,690.95 30 percent
6500 · Administrative/Staff Expenses		
Total 6500 · Administrative/Staff Expenses	27,747.85	8,324.36 30 percent
Total Expense	1,469,335.34	465,183.48
Net Ordinary Income	-972,071.93	32,079.93

San Bernardino Valley Water Conservation District

	<u>Jul '08 - Jun 09</u>	<u>Jul '08 - Jun 09</u>
Other Income/Expense		
Other Expense		
7000 · Construction		
7030 · Concrete Structures	2,382.09	2,382.09
7050 · Basins	31,016.50	31,016.50
Total 7000 · Construction	<u>33,398.59</u>	<u>33,398.59</u>
7100 · Land & Buildings		
7120 · Land	0.00	0.00
Total 7100 · Land & Buildings	<u>0.00</u>	<u>0.00</u>
7200 · Equipment & Vehicles		
7230 · Field Equipment	1,418.32	1,418.32
7240 · Office Equipment	0.00	0.00
7250 · New Vehicle	2,869.85	2,869.85
Total 7200 · Equipment & Vehicles	<u>4,288.17</u>	<u>4,288.17</u>
7400 · Professional Services		
7438 · Engineering Services -Other	378,482.98	378,482.98
Total 7400 · Professional Services	<u>378,482.98</u>	<u>378,482.98</u>
Total Other Expense	<u>416,169.74</u>	<u>416,169.74</u>
Net Other Income	<u>-416,169.74</u>	<u>-416,169.74</u>
Net Income	<u><u>-1,388,241.67</u></u>	<u><u>-384,089.81</u></u>

Note: This does not include any allocated overhead.



SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

Established 1932

1630 West Redlands Boulevard, Suite A
Redlands, CA 92373-8032
(909) 793-2503
Fax: (909) 793-0188

P.O. Box 1839
Redlands, CA 92373-0581
Email: info@sbvwcd.dst.ca.us
www.sbvwd.dst.ca.us

To: Board of Directors

From: Robert Neufeld, General Manager

Date: April 28, 2010

Subject: CONSIDER ADDING CHECK REGISTER TO BOARD MEETING PACKAGES

RECOMMENDATION

Consider adding check register to the monthly Board meeting packages, as requested by Director Raley.

BACKGROUND

At the April 14, 2010 Board meeting, Director Raley requested that staff add the check register for to the District's monthly expenditures to the Board meeting packages for review and approval by the full Board. Staff is requesting direction from the Board.

FISCAL IMPACT

There is no fiscal impact for this item.

BOARD
OF
DIRECTORS

Richard W. Corneille
Clare Henry Day

Arnold L. Wright
John Longville

David E. Raley
Melody McDonald
Manuel Aranda, Jr.

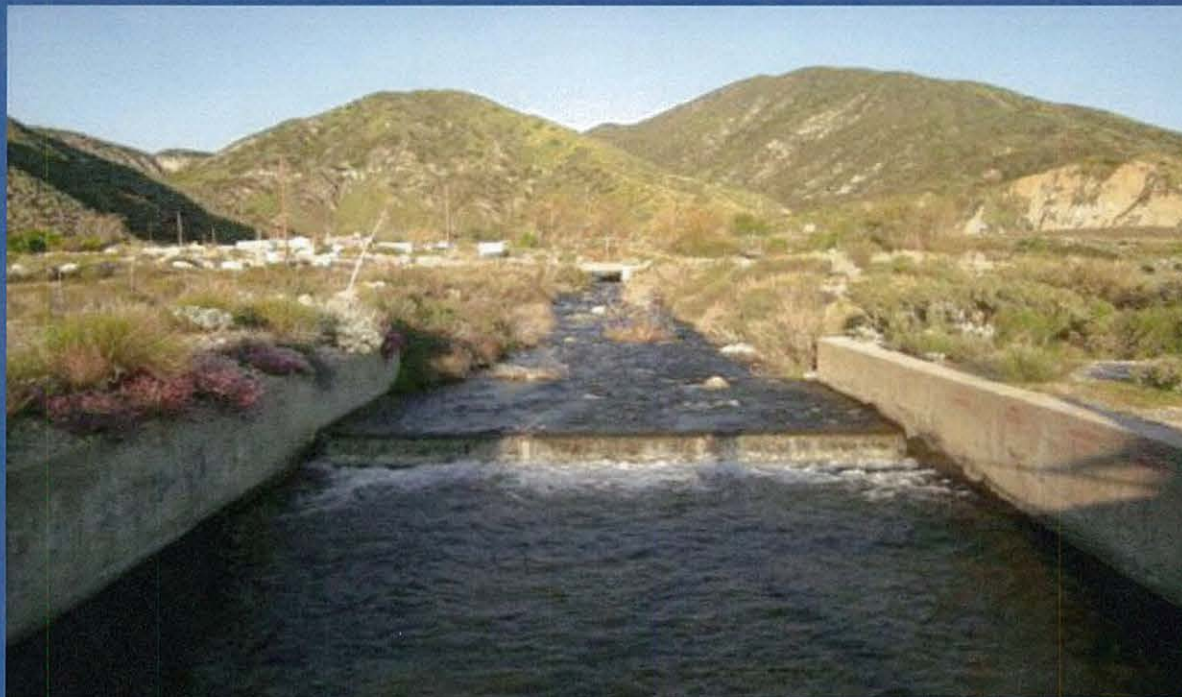
GENERAL
MANAGER

R. Robert Neufeld

San Bernardino Valley Water Conservation District

Preliminary
Strategic Framework
Presentation

A Preliminary 5-Year, High-Level Framework for Board Consideration



Preliminary Draft for Review by Board of Directors

Forward

This document presents a preliminary draft, high-level overview of San Bernardino Valley Water Conservation District's strategic direction for the next 5-years. Its purpose is to summarize the general, concepts and framework for the District's proposed vision and future direction, its long-term goals and approach.

The content of this preliminary document is based on inputs from and summary of: 1) Board Director, Staff and third-party responses obtained from a 2009 Planning Survey, 2) working information and meeting inputs provided by District Board of Directors and Staff, 3) existing District reports and documentation, and 4) authorized input from other sources familiar with the District and its operation. All inputs and contributions to the planning effort have been accepted as valid without further research or verification.

At this stage of the planning process, the accompanying preliminary document was intended to serve as a preliminary draft for review and discussion by the District's Board of Directors on April 7, 2010.

Comments on this preliminary draft document are welcomed from the District Board of Directors and the public prior to and during the forthcoming April 28, 2010 review meeting.



Preliminary Draft for Review by Board of Directors

Executive Summary

The San Bernardino Valley Water Conservation District (SBVWCD or District) is responsible for capturing and recharging local runoff to replenish local groundwater supplies. Originally organized as a Water Conservation Association in 1910, the SBVWCD became a Water Conservation District in the 1930's under the Water Conservation Act of 1931. Since that time, the SBVWCD has operated as a Special District with the primary goal of conserving water via recharge facilities located in two areas near the Santa Ana River and Mill Creek.

Recently however, the District has experienced financial and other difficulties following a long but successful defense against consolidation under LAFCO 3076. The District now finds itself in a challenging period with an uncertain future regarding its role in local water affairs and its contribution to the San Bernardino Valley community which it serves. In response to these challenges, the District has undertaken a strategic planning process to define its future goals and direction, and to create a vision for how it will serve the community over the next 5 years. This preliminary document is a result of the District's vision and efforts to plan effectively for its future service to the community.

The District is unique among other agencies in the region in that it controls significant parcels of land, in addition to performing various services that help conserve water in a densely populated region and State beleaguered by extended drought. The District also holds significant water rights as part of its original charter formation. It is this combination of water and land assets, together with a clear vision for the future that defines how it plans to serve the inhabitants of the San Bernardino Valley Watershed.

The District's vision entails an expanded organization that makes full use of its assets to benefit the community. Its current status is that of a small Water Conservation District focused on groundwater recharge of local runoff. Its historic contribution to the Valley's water supply is not obvious to most citizens, and its existence and value added is relatively unknown. The District however, sees things differently. Its new vision for the future is to use the District's unique land and water assets to provide the community with a much broader array of benefits. They envision a Resource Management and Water Conservation Authority that not only provides expanded services in water resource management, but that also provides environmental conservation and recreation resource opportunities for the Region by using its unique land assets and the vision of its stakeholders.

Six areas of strategic focus and their respective long-term goals are proposed by the District:

- o **Secure Organizational Foundation**
 - A renewed, financially viable District organization with a secure foundation to better serve the community
- o **Water Resource Conservation and Management**
 - Increased, enhanced contribution to Basin water resource conservation and management
- o **Environmental Conservation and Sustainability**
 - District-managed lands under effective stewardship for environmental conservation, habitat preservation and mitigation
- o **Water Use Conservation**
 - Programs and services to improve non-retail, outdoor water use efficiency and conservation in the Valley Watershed
- o **Community Recreation Resources**
 - New recreation, park, open space, and trail opportunities for the San Bernardino Valley community
- o **Integrated Resource Management**
 - Serve as regional model for integrated land/water environmental conservation and management of natural resources.

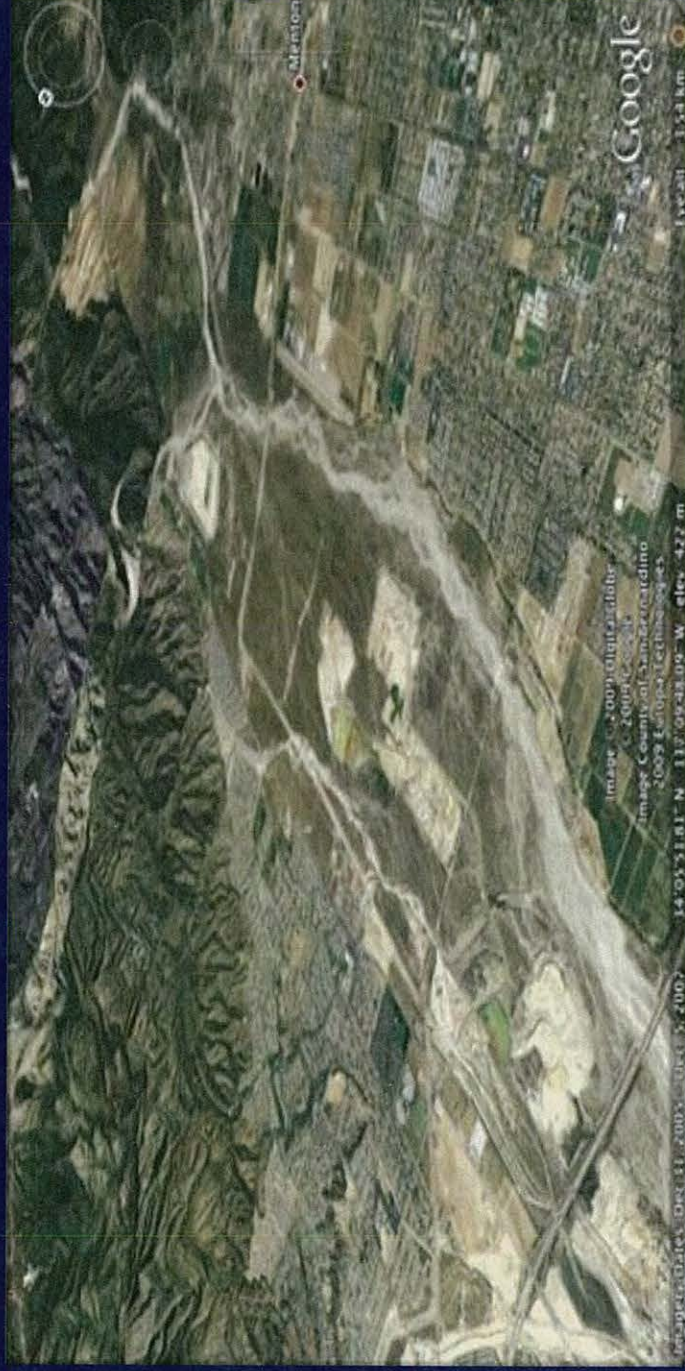
The District plans a three-phase, structured strategic effort: 1) Fix and preserve - its core functions and financial/organizational viability, 2) Initial progress - to expand its water and land activities through partnership with other entities, organizations, and the community at large, and 3) Careful evolution - developing new initiatives, services and benefits for the community consistent with the long-term strategy. Central to the District's proposed strategy is a purposeful shift towards external affairs; outreach, collaboration, partnership, and joint cooperation with others. It is the District's view that water and environmental issues in California have evolved to a point of complexity where individual initiatives and solutions are less effective, and greater community benefit can be achieved through cooperative efforts.

The accompanying preliminary "Strategic Framework" document summarizes the District's general approach to achieving its goals over the next 5 years. This is a preliminary draft document meant for review and discussion by the District Board of Directors on April 07, 2010.



Preliminary Draft for Review by Board of Directors

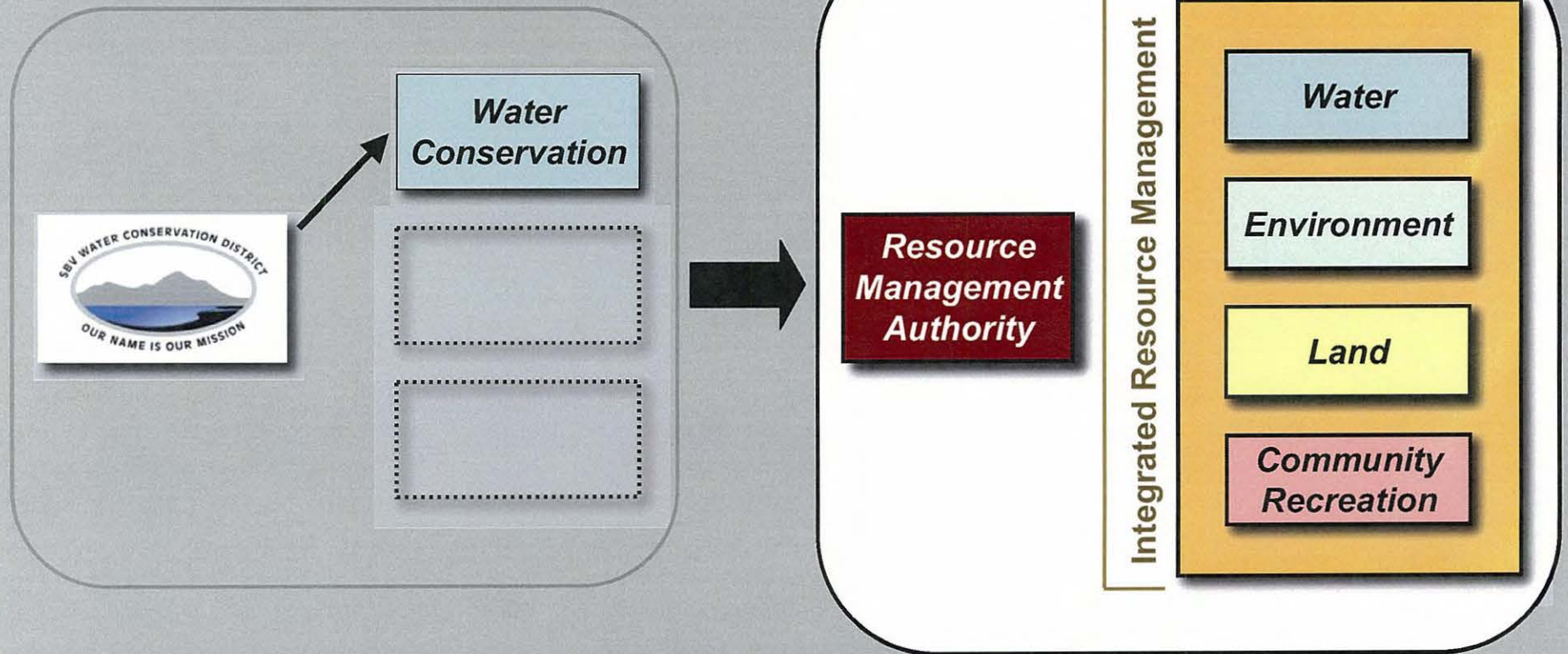
Seeing Things Differently.....



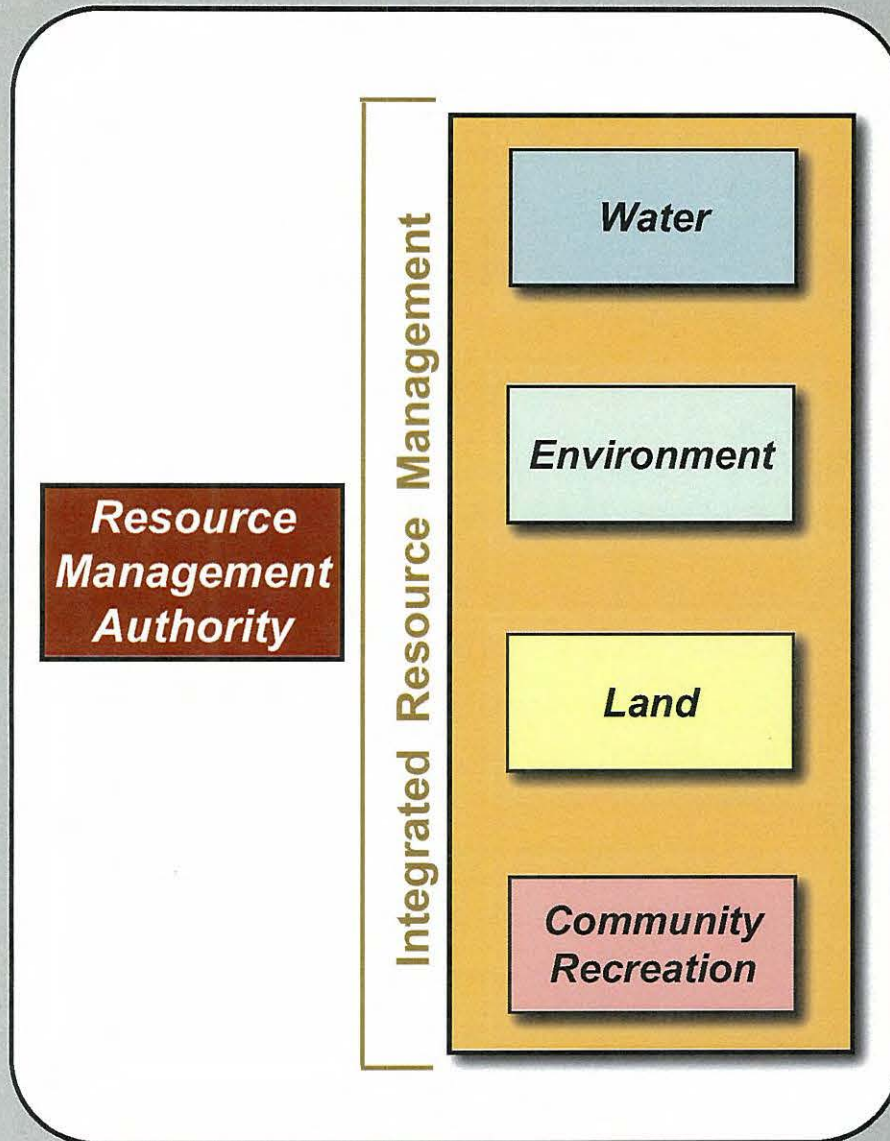
The District Has Chosen a Future Direction Involving Expanded Service and Stewardship for the Community

From

To



The New Organization's Purpose Would be Bound by Common Threads



Conservation Water Resources

Stewardship

Sustainability

Innovation

Education

*Community-
Building*



The District's Proposed Mission Will Change - Broadening in Scope and Role

***The Resource Management and Water
Conservation Authority, as trustee,
develops, integrates, and manages
natural resources for the inhabitants of
the San Bernardino Valley Watershed to
maximize their use in an environmentally
and economically responsible manner.***



Proposed District Goals Reflect Short-Term Realities and Long-Term Vision and Intention

Short-Term (1 year or <)

- ☐ Reliability of GW Charges
 ☐ Wetlands Plans Approved
 ☐ Obtain Seven Oaks Dam Property
 ☐ Balance the Budget
 ☐ Clarify District Water Rights
 ☐ Charge for aggregate

Plan Elements and Long-Term Goals (3-5 years)

Secure Organization Foundation	<i>A renewed, financially viable District organization with secure foundation to better serve the community</i>
Water Resource Conservation & Management	<i>Increased/enhanced contribution to Basin water resource conservation and management</i>
Environmental Conservation & Sustainability	<i>Effective stewardship of District-managed lands for environmental conservation, habitat preservation, and mitigation</i>
Water Use Conservation	<i>Programs and services to improve non-retail, outdoor water use efficiency and conservation in the Valley watershed</i>
Community Recreation Resources	<i>New recreation, park, open-space, and trail opportunities for the Valley community</i>
Integrated Resource Management	<i>Serve as a regional model for integrated land/water/environmental conservation and management of natural resources</i>



Major Assumptions Underlie the Strategy

The District entity is no longer viable or sustainable in its current form and there is an urgent need to transform the organization

District has flexibility to devote its assets to support implementation of the strategy and long-term operation

Consolidation with another agency is still a serious possibility

District will verify actual needs of the community and adjust strategic goals/plans/priorities accordingly

District land, water and other assets are integrated with regional management mechanisms within 12 months of plan approval

LAFCO approval of new District authorities will be obtained no later than December 2011

The District Board of Directors will adopt the strategic plan April, 2010 and authorize staff to proceed with dispatch

All potential revenue mechanisms will be available to the District



Phased Approach for the District's Chosen Strategic Direction

Fix/Preserve Foundation

Act quickly to "stabilize" the District's current situation. Rebuild financial foundation with goal of creating secure platform for renewal & progress

Examples:

- o Stabilize finances - control costs
- o Generate short-term income
- o Wash plan implemented or re-tooled
- o Adopt strategic plan
- o Lay groundwork for key strategic initiatives/future revenue streams
- o Initiate legal/legislative process to re-charter District
- o Build support, identify partners
- o Secure District land/water assets



Initial Progress

Begin initial migration toward desired niche. Target high-payoff/low-risk strategic activities that add more value for community and that yield financial, support base, capability, and image gains.

Examples:

- o Engage partners (non-compete)
- o Initiate early projects in water resource, environmental conservation and recreation
- o Continue to secure organization foundation
- o Reorganize as appropriate
- o Upgrade/expand facilities
- o Add capability



Careful Evolution

Lead, facilitate, or collaborate on key initiatives in water, environmental conservation and recreation resources consistent with new charter, role, mission, vision.

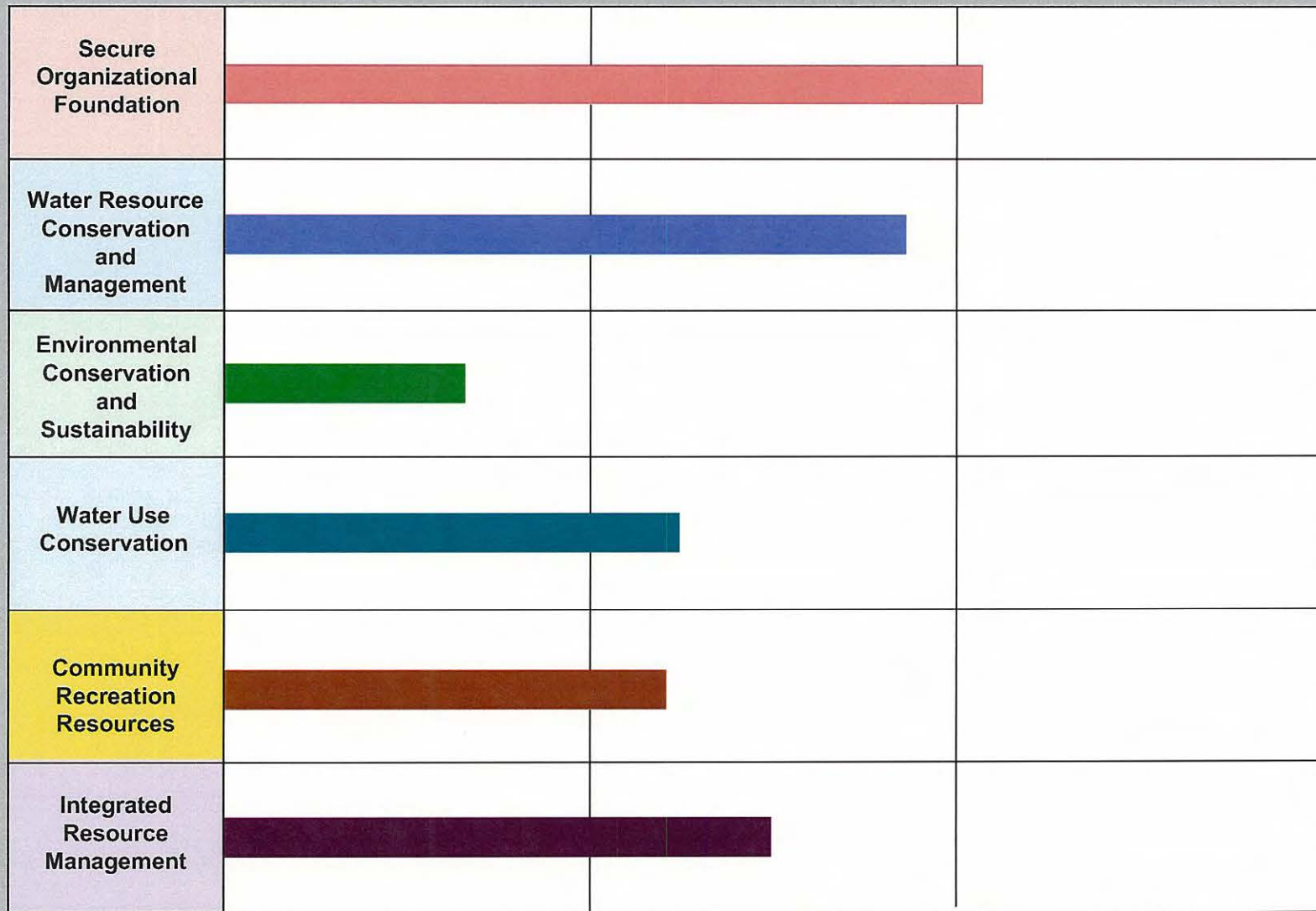
Examples:

- o Wetlands treatment
- o Recycled water marketing
- o Recreation areas
- o Environmental mitigation
- o Form new partnerships
- o Expand role and services



The District is Affected by the Wash Plan Level of Resources

Category of Strategic Activity



Low

Moderate

High

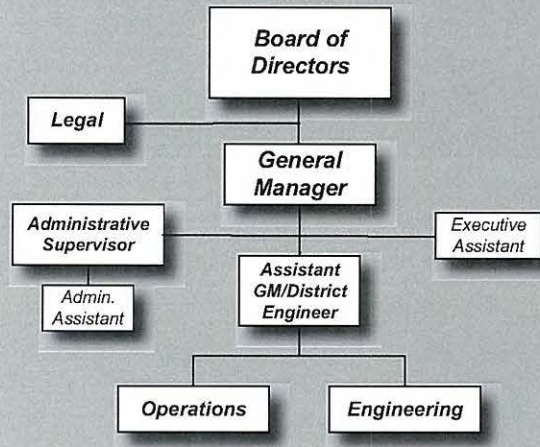
Approximate Level of District Strategic Resources



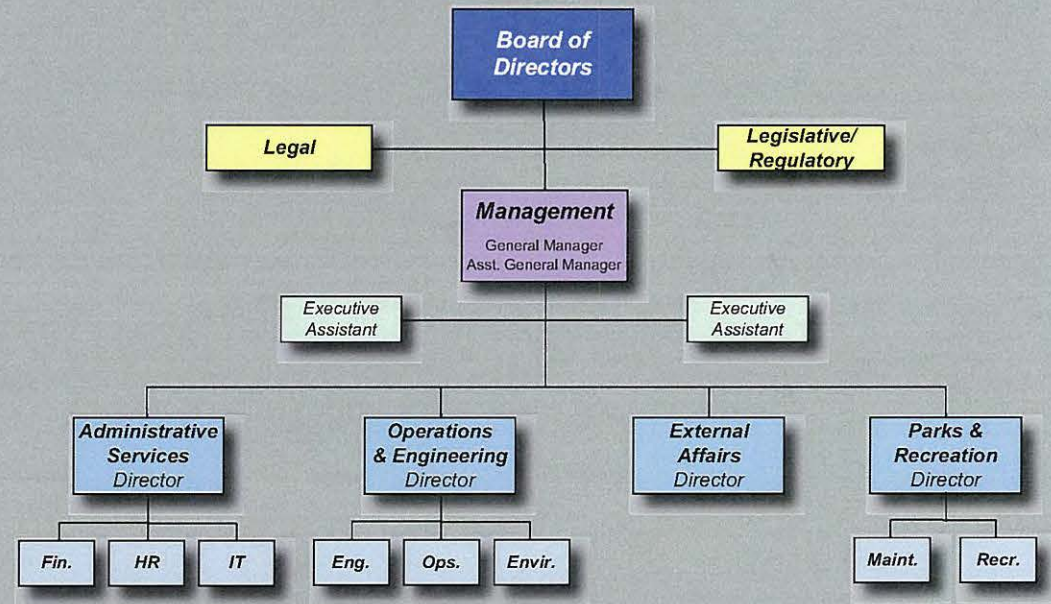
Preliminary Draft for Review by Board of Directors

The District Would Evolve to a New Organization Structure

Current



Potential



- o As District activity levels and finances expand, so would need for additional staff and capabilities.
- o Staffing growth would still occur if Wash Plan is implemented, but in different technical areas and at a potentially reduced level
- o Staffing increases would be subject to prior approval by Board of Directors



Revenues Would be Derived Primarily From Water, Resource Development and Possibly, Environmental Mitigation Activities

Secure Organizational Foundation

- o Increased reliability of groundwater charge
- o Aggregate mining charges/mining fees/mining lease income
- o Retail aggregate sales yard
- o Sale of treated water from wetlands created on District property
- o Property sale
- o Income development of District property
- o Investment portfolio income
- o Special use fees (e.g. special use recreation)
- o Property access fees for small-scale aggregate mining
- o Grant and other funding

Water Resource Conservation & Management

- o Groundwater recharge services for other agencies/municipalities
- o Sale of treated water from wetlands created on District property
- o Groundwater storage banking/withdrawal charges
- o O&M/Management of recharge facilities owned by other agencies
- o Funding contributions from partners on joint projects/initiatives
- o Groundwater charge (may be temporary)
- o Water management & operation of transmission facilities
- o Grant and other funding

Environmental Conservation and Sustainability

- o Environmental mitigation land banking using District property
- o Grant and other funding

Water Use Conservation

- o Grant and other funding
- o Fees from landscaper water use conservation certification programs
- o Fees from outdoor water conservation training and workshops
- o Revenues generated by the other plan elements and activities

Community Recreation Resources

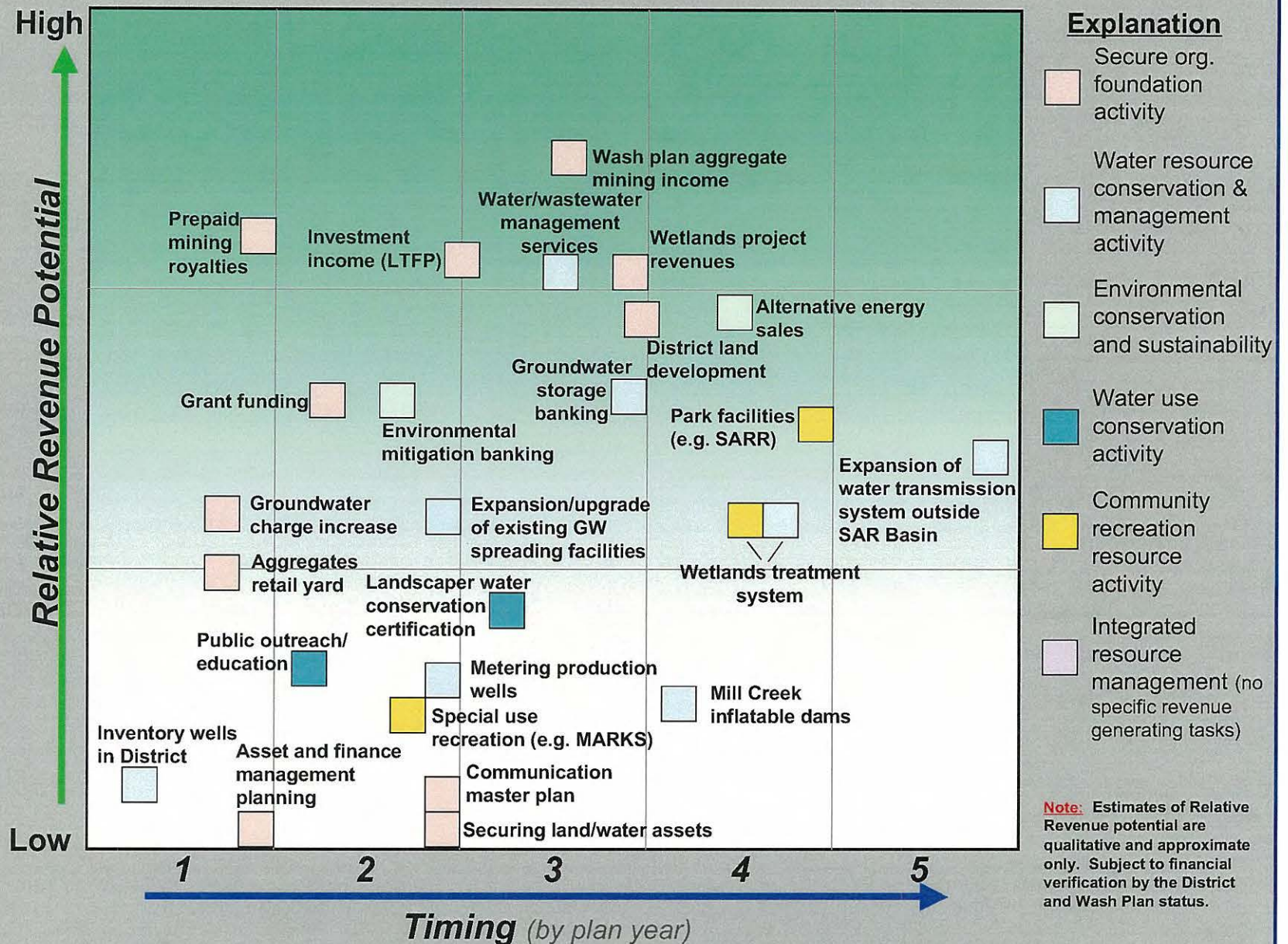
- o Park/facility user and access fees
- o Tax or other revenues derived under new District powers
- o Contractual fees/revenues for lease/use of District property by other entities for park or recreation use
- o Grant and other funding

Integrated Resource Management

- o Grant and other funding
- o Revenues generated by the other plan elements and activities
- o No other revenue sources identified



Relative Revenue Potential of Strategic Projects During Implementation*

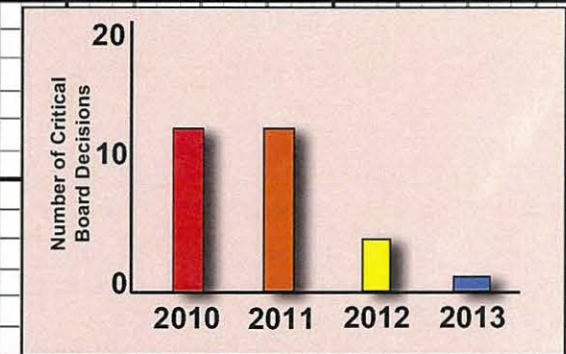


Many Critical Board Decisions Occur Early in the Plan

Strategic Category	Critical Board Decisions	Year Qtr. Mo.	2010				2011				2012				2013				2014																				
			Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4																	
			J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	
Secure Organizational Foundation	Adoption of strategic plan			▲																																			
	Decision on Wash Plan			▲																																			
	Approval of proposed District mission			▲																																			
	Approval of GM/AGM hires and staffing plans										▲																												
	Approval of LAFCO application & legislation				▲						▲						▲																						
	Approval of wetland recycled water plans																																						
	Approval of asset management plan									▲																													
	Approval of stakeholder agreements for water spreading, etc.										▲																												
	Approval of wetlands treatment agrmt./funding												▲																										
Water Resource Conservation & Management	Adoption of District facilities management plan				▲																																		
	Adopt agreements to manage & operate all GW spreading basins (services to other agencies)										▲																												
	Approval to solicit wastewater contracts										▲																												
	Adoption of all funding agreements																																						
Environmental Conservation/Sustainability	Decide land use designations - District parcels						▲																																
	Approval of environmental plans for lands										▲																												
	Approval to partner with environmental groups										▲																												
Water Use Conservation	Approve water conservation plan																																						
	Approvals to contract for consulting services																																						
	Approvals to form agreements with key environmental groups																																						
	Approve funding for conservation initiatives																																						
	Approve contract for educational facilities																																						
Community Recreation Resources	Approval to hire consultant to develop recreational plan for District				▲																																		
	Authorize relocation of MARKS to Mill Creek							▲																															
	Approve formation of Parks Dept. within District																																						
	Approve construction funding for SARR Park																																						
Integrated Resource Mgmt.	Approval for District SCADA system																																						

Number of Critical Board Decisions

Year	Number of Critical Board Decisions
2010	12
2011	12
2012	3
2013	1



Accountability for Implementation Rests With the Board and GM

Groups/ Individuals Category of Plan-Related Activity	Governance			Management			Legal	Prof. Services			Stakeholders			
	Board of Directors	Committees		General Manager	Assistant General Manager	Financial Supervisor	Legal Counsel	Technical	Political/ Legislative	Other	Water Community	Project Partners	Producers	Public
Plan Adoption	A/R			R	R	C	C		C		C	C	C	C
Manage/Implement Tasks				A/R	R	R	I	R	R			R		
Progress Monitoring				A/R	R	R					I	I	I	I
Status Reporting	I			A/R	R	R								
Plan Budgeting	A/C	C		R	R	R								
Risk Management	A			R	C	C	C	C	C	C				
Expenditure Authorization	A			R	C	C								
Change Approvals	A/C	C		R	C	C	C							
Contractor Coordination				A/R	R	R	I							
Recommendations	I	C/I		A/R	C	C	C							
Legal Matters	A			R	I	I	R/C							
Contractual Agreements	A			R	I	C	C					C/I		
External Commun./Coord.				A/R	R/C						I	I	I	I
"Technical" Execution				A/R	R/C		C	R	R			I	I	
District Re-Chartering	A			R	C	C	R		C/R					C
District Reorganization	A/C	C		R	R	C	C		C/R					C
External Communications	A/C	C		R	R/C		C				I	I	I	I
Regulatory Affairs	I			A/R	C		C		C					
Legislative Affairs	A/C	C		R	C				C					
Financial Supervision				A/R	R/C	R								

R = Responsible for executing the task A = Accountable for the results C = Consulted prior to action or decision I = Informed



Preliminary Draft for Review by Board of Directors

Preliminary Plan Milestones

2014

- o District infrastructure expanded
- o GW storage banking initiated
- o Alternative energy powers ops.

2013

- o Wetlands operational
- o Construct optimization study facilities
- o Operations optimized - SCADA in-place

2012

- o Wetland funding arrangements in-place
- o District serving as SBBA recharge/ops agency
- o First park recreation facility open to public

2011

- o All District land/water assets harmonized
- o Legislature/LAFCO approves reorganization
- o Wetlands recycled water plans approved
- o First environmental mitigation agreement signed

2010

- o Strategic framework adopted by Board of Directors
- o District finances stabilized
- o Wash Plan implemented or re-tooled
- o Coordinate with LAFCO on activation of latent powers



Next Steps in the District's Planning Process

- ☒ ***Issue summary draft of high-level strategic framework for Board review/comment***
- ☐ ***Discuss and consider adoption at April 7th Board workshop***
 - *A public meeting to discuss the preliminary framework will be held on April 28, 2010*
- ☐ ***Staff revises/finalizes preliminary strategic framework sections per Board feedback***
- ☐ ***Staff continues early implementation of activities when approved by Board***
- ☐ ***Final preliminary draft strategic framework issued to Board by Staff***
- ☐ ***Staff begins implementation of preliminary strategic framework activities***
- ☐ ***Staff reports progress/status regularly to Board and Committees***
- ☐ ***Staff adjusts/amends preliminary strategic framework as appropriate with Board approval during implementation period as conditions change and/or new information emerges***
- ☐ ***Preliminary strategic framework and progress reviewed annually with Board of Directors at conclusion of each fiscal year***





SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

Established 1932

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Staff Report and Additional Materials for Item E Will Be Distributed At the Board Meeting

BOARD
OF
DIRECTORS

Richard W. Corneille
Clare Henry Day

Arnold L. Wright
John Longville

David E. Raley
Melody McDonald
Manuel Aranda, Jr.

GENERAL
MANAGER

R. Robert Neufeld



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To: Board of Directors

From: Claud Seal, Jr., AGM/District Engineer

Date: April 28, 2010

Subject: Proposed Forestry Grant Acceptance

RECOMMENDATION

Approval to accept participation into a \$10,000 grant study to improve the use of local native plant sources for potential restoration opportunities.

BACKGROUND

Seed and native plant sources do not often take advantage of local genetics. The partnership with Riverside-Corona Resource Conservation District (RCRCD), California Native Plant Society (CNPS), Inland Empire Resource Conservation District (IERCD), and Three Sisters Farm (Local Farm) will permit the District's involvement with the research and development of locally grown native plants and seeds that will be used for mitigation and restoration educational outreach goals with the community. It will also build strategic alliances for regional watershed sustainability benefits.

FISCAL IMPACT

The long term cost to the District is \$3,000 spread over 16 to 18 months, or averaging about 188 to 167 \$/month. The rest of Lisa's labor costs (about 10 to 16 hours/week) would be reimbursed to the District by the Forestry Service, including overhead expenses, within 30 days of reimbursement request.

AMPLIFYING INFORMATION

Staff feels the benefits of our participation in the program would be in several areas:

1. Easier to receive additional grants for not only dealing with native plant seeds marketing and development, and other grants dealing with land remediation and redevelopment. This would support the District's goal of environmental participation and development.
 2. The District's outreach program would be expanded by working with area governmental, environmental, agricultural, and business groups.
 3. The District's own land could be used for prototypical plant development.
-

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4. The native seed plant seed market is small but growing. Some native seeds sell for as much as 65 \$/lb. Already one local farmer is interested in the program and has dedicated an acre to the process.

Alluvial Scrub Native Plant Materials Project Seeking Native Plant Enthusiasts!

This U.S. Forest Service funded project will develop native plant palettes for the restoration of alluvial scrub habitats in the upper Santa Ana River Watershed within Riverside and San Bernardino Counties.

The project will begin to develop a program to train local farmers about the production of genetically appropriate seeds for local habitat restoration and rehabilitation projects.

We will also study the need for local native seeds by a variety of potential users and aim to link seed producers to the users of seeds.

The goal is to build an economic model of seed use and seed production of genetically appropriate seeds for our region.

We welcome calls and e-mails for additional information.



Erigeron linearifolius
Goldenbush



Alluvial Scrub Vegetation



Hesperoyucca whipplei
chaparral yucca



Lepidospartum squamatum
Scale-broom



Lupinus excubitus
Grape-hod Lupine



Eriogonum densifolium ssp. *sanctorum*
Santa Ana River Woolly Star

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