

**RESOLUTION NO. 553**

**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**, The District has presented a budget showing the needs and uses of the Groundwater Charge for 2017-2018 water year; and

**WHEREAS**, at the regular meeting of the Board of Directors on March 15, 2017, the District accepted an engineering investigation report, relating to groundwater conditions in the Bunker Hill Basin underlying the District boundaries; and

**WHEREAS**, the Engineering Investigation and preliminary Groundwater Enterprise Budget and rate options were presented to the Basin Technical Advisory Commission on April 3, 2017; and

**WHEREAS**, The BTAC and Basin Producers, as well as the District, have proposed a Groundwater Council, and in connection with that proposal are currently exploring alternative funding sources and approaches to offsetting the costs of the management and replenishment of regional groundwater basin supplies, and allocating such costs to users, but such alternative remains in the discussion stages; and

**WHEREAS**, the District provided mailed notice to all groundwater producers within its District boundaries of a public meeting held on April 12, 2017, and public hearings held on April 26, 2017 and May 31, 2017 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 Board of Directors has conducted a public meeting on April 12, 2017, and a public hearing on April 26, 2017, and continued that public hearing to May 31, 2017 to receive comment and evidence submitted by the public at such hearing; and

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

**WHEREAS**, the District has made available by wide distribution a Groundwater Enterprise Budget identifying the proposed use of the estimated Groundwater Charge proceeds, which will be subsequently incorporated in the District budget; and

**WHEREAS**, the District's ad valorem tax revenues are limited and the District has experienced a decrease in revenues from interest on reserves, which is expected to remain at a low rate; 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 2015 to Fall 2016, is an increase of 16,820 acre-feet or more.
- 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 -566,555 acre-feet or more.
- C. Total Groundwater Production from the Bunker Hill Basin from the Preceding Water Year July 1, 2015 to June 30, 2016 is 158,028 acre-feet.
- D. Estimate of the Annual Change in Storage for the Current Water Year (July 1, 2016 to June 30, 2017) in the Bunker Hill Basin is -32,500 acre-feet or more.
- E. Estimate of the Annual Change in Storage for the Ensuing Water Year (July 1, 2017 to June 30, 2018) in the Bunker Hill Basin is -332 acre-feet.
- F. Average Annual Change in Storage for the Immediate Past Ten Water Years in the Bunker Hill Basin is -28,293 acre-feet or more.
- G. Estimated Amount of Agricultural Water Withdrawn from the Groundwater Supplies of the District for the Ensuing Water Year (July 1, 2017 to June 30, 2018) is 15,988 acre-feet.
- H. Estimated Amount of Other-than-Agricultural Water Withdrawn from the Groundwater Supplies of the District for the Ensuing Water Year (July 1, 2017 to June 30, 2018) is 91,495 acre-feet.
- I. Estimated Amount of Water Necessary for Surface Distribution for the Ensuing Water Year (July 1, 2017 - June 30, 2018) within the Bunker Hill Basin is 67,613 acre-feet.
- J. Estimated Amount of Water Necessary for Surface Distribution for the Ensuing Water Year (July 1, 2017 - June 30, 2018) for the District is 52,754 acre-feet.
- K. 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 (July 1, 2017 to June 30, 2018) is 144,044 acre-feet.
- L. 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 743,099 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 \$3.36 per acre-foot for agricultural water (§75508), and in the amount of \$12.08 per acre-foot for non-agricultural water the latter being 3.59 times the agricultural rate. The comparative difference in rates is consistent with Water Code Section 75594 whose constitutionality is currently under review in *City of San Buenaventura v. United Water Conservation District*, presently briefed and awaiting hearing before the California Supreme Court in Case No. S226036 (review granted of Second Appellate District, Division Six, Case No. B251810). Further, the amount of non-agricultural production in the District is roughly five times that of agricultural production, based upon findings Nos. 1(G) and (H) above, which is proportional to the Water Code section 75594 legislated differential in rates based upon the type of use, and is also therefore proportional to the benefit of the District's groundwater recharge activities to the different types of users. Late charges on delinquent accounts will be 1%

interest per month in accordance with Water Code §75615 et seq. and any additional actual costs to collect delinquent amounts not paid by August 1, 2017 and February 1, 2018. Deposit or prepayment of production costs may be made by written agreement with the District. Direct production of water for agricultural use on Golf Courses by the owners of the course will be set at a rate equal to the Agricultural rate, in accordance with California Water Code §75592 and §75594. Exemptions: Notwithstanding the foregoing, for producers who can demonstrate either (1) that their production for the water year is restricted to basic, personal 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 in either instance, the 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 provided the producer documents its exemption prior to bi-annual collection of 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. The District General Manager is authorized to waive late fees with explanation and request from payees or if the cost of recovery outweighs the fee to be collected.

Additionally, in accordance with the Groundwater Council or similar organizational structure currently under study, participants may agree on a mechanism to provide funding for the procurement of additional import water and support the percolation of water for the groundwater basin. The District is mindful that such process, and the funding mechanisms it may generate, may result in overlap with the District's existing groundwater charge, and the District has committed that it will work to assure that basin producers do not face duplicative charges. Pending approval and funding of the Groundwater Council, however, and identification of its funding sources, the District's groundwater charge remains necessary to fund the items identified in the District's Groundwater Enterprise Budget.

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. There is an evolving issue under the law regarding whether the District's groundwater charge is a "property-related charge" for purposes of determining the applicability of Article XIID of the California Constitution. (See, e.g., *Great Oaks Water Company v. Santa Clara Valley Water District*, South Appellate District, Case No. H035260; *City of San Buenaventura v. United Water Conservation District*, presently pending before the California Supreme Court in Case No. S226036 (review granted of Second Appellate District, Division Six, Case No. B251810) The District believes that its charge likely is not a "property-related charge," based on the findings regarding the charge recited below, but in acknowledging the evolving law on this point, has endeavored to comport with all procedural requirements attendant to a water-related, property-related charge under Article XIID.
- B. 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 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 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.
- C. 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. In addition, published notice was provided in the San Bernardino Sun on March 3, March 10, and March 17, 2017 and in the Highland Community News on March 3, March 10, and March 17, 2017. 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. That notice also reflected the rate and method of calculation for this consumption-based charge, which provided notice of the basis of the charge.
- D. The proposed groundwater charges, and engineering investigation prepared by the District, were reviewed at a public meeting held April 12, 2017, and public hearings held April 26, 2017 and May 31, 2017. 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 15, 2017, and was discussed at the Basin Technical Advisory Commission on April 3, 2017.

- E. The groundwater charge is being levied to assist in offsetting the costs of the District's Groundwater Enterprise in providing groundwater supplies, groundwater recharge facilities, and recharge management and administration for the benefit of groundwater producers within the District. The Groundwater Enterprise Budget includes, but is not limited to, funding the following:
1. Making available the District's Santa Ana River 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's 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. Pursuing various environmental permits and related permissions to continue the maintenance and operation of the District's Facilities for the future and to provide for potential expansion of facilities for Bunker Hill recharge;
  6. Investigation and implementation of improvements to groundwater recharge infrastructure;
  7. Reporting to groundwater producers and other interested parties of groundwater recharge activities and conditions, including but not limited to the daily flow report;
  8. 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
  9. Administrative support, training and overhead for all the above-listed activities.
- F. The total amount of estimated revenues from the groundwater charge is estimated at approximately \$737,026 based on production reported for the 2016-2017 water year. These revenues do not fully recover expected cost and will not exceed the costs of providing the services as detailed above, in that the District's Groundwater Enterprise Budget for fiscal year 2017-2018 proposes \$766,507.
- G. 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.
- H. 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.
- I. 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 31<sup>st</sup> day of May 2017, by the following roll-call vote:

YES: 4	DIRECTORS:	Corneille, Longville, Harrison, Raley
NO:	DIRECTORS:	
ABSTAIN:	DIRECTORS:	
ABSENT: 1	DIRECTORS	McDonald

ATTEST:

*Richard Corneille*

Richard Corneille, President

  
Danfel Cozad, Secretary