

RESOLUTION NO. 534

**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 2016-2017 water year; and

WHEREAS, at the regular meeting of the Board of Directors on March 9, 2016, the District accepted an engineering investigation report, prepared by District Staff with the assistance of the agencies in the basin under the direction of Daniel Cozad, General Manager 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 4, 2016; and

WHEREAS, the State Legislature enacted the Groundwater Sustainability Act in 2014, and the BTAC and Basin Producers have proposed a Groundwater Sustainability Council with an alternative approach to paying groundwater producers requisite costs in an alternative manner under agreement; and

WHEREAS, the District provided mailed notice to all groundwater producers within its District boundaries of a public meeting held on April 13, 2016, and a public hearing held on April 27, 2016, 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 13, 2016, and a public hearing on April 27, 2016, to receive comment and evidence submitted by the public at such hearing; and

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

WHEREAS, the District has made available by wide distribution a Groundwater Enterprise Budget identifying the estimated use of the 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 2014 to Fall 2015, is a decrease of -47,570 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 -583,447 acre-feet or more.
- C. Total Groundwater Production from the Bunker Hill Basin from the Preceding Water Year July 1, 2014 to June 30, 2015 is 169,866 acre-feet.
- D. Estimate of the Annual Change in Storage for the Current Water Year (July 1, 2015 to June 30, 2016) in the Bunker Hill Basin is -84,647 acre-feet or more.
- E. Estimate of the Annual Change in Storage for the Ensuing Water Year (July 1, 2016 to June 30, 2017) in the Bunker Hill Basin is 2,701 acre-feet.
- F. Average Annual Change in Storage for the Immediate Past Ten Water Years in the Bunker Hill Basin is -36,461 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, 2016 to June 30, 2017) is 11,098 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, 2016 to June 30, 2017) is 103,183 acre-feet.
- I. Estimated Amount of Water Necessary for Surface Distribution for the Ensuing Water Year (July 1, 2016 - June 30, 2017) within the Bunker Hill Basin is 66,338 acre-feet.
- J. Estimated Amount of Water Necessary for Surface Distribution for the Ensuing Water Year (July 1, 2016 - June 30, 2017) for the District is 53,704 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, 2016 to June 30, 2017) is 144,425 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 812,519 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 \$3.23 per acre-foot for agricultural water (§75508), and in the amount of \$11.62 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 pending 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 approximately five times that of agricultural production, based upon findings Nos. 1(G) and (H) above, which is within 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 set. and any additional actual costs to collect delinquent amounts not paid by February 1, 2017 and August 1, 2017. 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 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 Sustainability Act the groundwater producers and regional managers in the basin have proposed a Groundwater Sustainability Council or similar organizational structure that may 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 Sustainability 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 4, March 11, and March 18, 2016 and in the Highland Community News on March 4, March 11, and March 18, 2016. 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 13, 2016, and a public hearing held April 27, 2016. 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 9, 2016, and was discussed at the Basin Technical Advisory Commission on April 13, 2016.
- 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
 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 \$860,558 based on production reported for the 2014-2015 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 2016-2017 proposes \$860,558.
- 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.

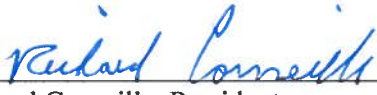
Section 7. The Board of Directors further finds that the groundwater charge adopted herein is statutorily exempt from CEQA under Title 14, California Code of Regulations Sections 15273, 15301, and 15306. The action contemplated herein constitutes a structuring and establishment of a charge which will 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 27th day of April 2016, by the following roll-call vote:

YES: 5 DIRECTORS: Corneille, McDonald, Longville, Aranda & Raley
NO: DIRECTORS:
ABSTAIN: DIRECTORS:
ABSENT: DIRECTORS

ATTEST:



Richard Corneille, President



Daniel Cozad, Secretary