

RESOLUTION NO. 570

**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 2019-20 water year; and

WHEREAS, at the regular meeting of the Board of Directors on February 13, 2019, 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 Committee on April 8, 2019; and

WHEREAS, The BTAC and Basin Producers, as well as the District, have formed a Groundwater Council, and in connection with that Groundwater Council have entered into the San Bernardino Basin Groundwater Council Framework Agreement ("GC Agreement"), which includes the annual review and funding of various maintenance costs for facilities used to replenish the Bunker Hill Basin, including facilities owned or managed by the District, pursuant to an Equitable Allocation formula developed as part of the GC Agreement; and

WHEREAS, the California Supreme Court on December 4, 2017 issued its decision in the case of *City of San Buenaventura v. United Water Conservation District*; Case No. S226036 ("Ventura Decision") which resolved outstanding legal issues relating to the procedures and constitutional requirements attending the levy and collection of groundwater charges under applicable authorizing statutes pertaining to water conservation districts like the District; and

WHEREAS, under that opinion, the California Supreme Court clarified that such groundwater charges are not "property related charges" under California Constitution Article XIII D (Proposition 218), but did affirm that such charges are governed by California Constitution Article XIII C (Proposition 26), such that the charge must be set at a rate that in the aggregate is no more than is necessary to cover the reasonable costs of the governmental activity for which it is charged, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity; and

WHEREAS, the California Supreme Court's opinion in the Ventura Decision cast serious legal doubt on the continuing validity of the statutory differentials in groundwater charge rates provided under Water Code section 75594, which dictates that groundwater charges for non-agricultural uses be three to five times greater than agricultural uses; and

WHEREAS, the District desires to comply with the procedural and constitutional requirements clarified by the California Supreme Court in the Ventura Decision, while at the same time understanding that agricultural producers within the District may bear a short-term transitional burden from elimination of statutorily-dictated rate differentials in groundwater charges, and

WHEREAS, the District provided mailed notice to all groundwater producers within its District boundaries of a public meeting held on April 10, 2019, and a public hearing held on April 24, 2019, 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 10, 2019, and a public hearing on April 24, 2019, 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, beginning on February 13, 2019, 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 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 2017 to Fall 2018, is an decrease of -46,268 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 -569,198 acre-feet or more.
- C. Total Groundwater Production from the Bunker Hill Basin from the Preceding Water Year July 1, 2017 to June 30, 2018 is 161,708 acre-feet.
- D. Estimate of the Annual Change in Storage for the Current Water Year (July 1, 2018 to June 30, 2019) in the Bunker Hill Basin is -77,468 acre-feet or more.
- E. Estimate of the Annual Change in Storage for the Ensuing Water Year (July 1, 2019 to June 30, 2020) in the Bunker Hill Basin is -5,921 acre-feet.
- F. Average Annual Change in Storage for the Immediate Past Ten Water Years in the Bunker Hill Basin is -13,862 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, 2019 to June 30, 2020) is 11,065 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, 2019 to June 30, 2020) is 95,056 acre-feet.
- I. Estimated Amount of Water Necessary for Surface Distribution for the Ensuing Water Year (July 1, 2019 - June 30, 2020) within the Bunker Hill Basin is 76,743 acre-feet.
- J. Estimated Amount of Water Necessary for Surface Distribution for the Ensuing Water Year (July 1, 2019 - June 30, 2020) for the District is 53,963 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, 2019 to June 30, 2020) is 136,493 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 783,159 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 hydrogeological 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, though depending on the decision making processes of the Groundwater Council, the District may be asked to help fund regional purchases of imported water to augment native water supplies, in amounts presently unknown. 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 \$13.19, to be applicable to both agricultural and non-agricultural use. The Board imposes this unitary rate in response to, and in an attempt to comply with, the Ventura Decision, but also because the District has not historically segregated either facilities or groundwater charge-funded efforts based on agricultural vs. non-agricultural use basis. Nor has the District undertaken studies to isolate a predominantly agricultural producing zone or region within the District boundaries, and even if such an area were to be isolated, there is some question based on existing facts and circumstances whether the benefits and burdens of the District's groundwater management and replenishment services could support a rate differential based on agricultural use. 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, 2019 and February 1, 2020

Section 5. Notwithstanding the unitary rate set above, the District recognizes that the elimination of the previously statutorily-directed rate differential between agricultural and non-agricultural uses may cause some short-term transitional financial hardship on certain users that previously paid the lower agricultural rate. In recent years, the District has accumulated a Rate Stabilization Fund, which it has drawn from to reduce the year-by-year step increases occasioned by the increases in costs of the services the District provides. In order to alleviate burdens on certain agricultural producers from compliance with the Ventura Decision, and consistent with the discretion for application of groundwater charge proceeds granted to the District under Water Code section 75523, the District has determined to draw on this fund to subsidize a portion of the rate increase on certain agricultural use producers for the upcoming water year. Those Agricultural producers eligible for the Rate Stabilization offset shall be those whose pumped groundwater is applied directly to production of agricultural products or livestock, or is directly applied to landscape watering for cemeteries or golf courses. The District's Rate Stabilization Fund shall be used to offset the costs for such producers on a per acre foot basis of production, in the amount of \$3.65 per acre foot, which will reduce the "effective rate" such producers pay to \$9.54 per acre foot. In making this determination, the Board of Directors also indicates its intent to continue to utilize the Rate Stabilization Fund in additional amounts for the next upcoming water years which along with the use of Rate Stabilization Funds this year, will provide the last two of a three-step phasing of rates to bring those eligible agricultural producers' rates to an amount equal to the rates paid by all other users at the end of three years.

Section 6. Exemptions:

A. Notwithstanding the foregoing, for producers who can demonstrate 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, and 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.

B. To the extent that a party who is a member of the Groundwater Council has paid a maintenance and operation charge through the Equitable Allocation based upon an approved budget for the Groundwater Council that includes the maintenance and operations costs reflected in the District's budget showing the needs and uses of the Groundwater Charge for 2019-20 water year, and such payment is remitted to the District, the General Manager is authorized to accept such Equitable Allocation payment as payment in full for groundwater charges due from that party's production for the applicable water year. If a party remits its Equitable Allocation for maintenance and operation costs to the District, but in that same water year leaves or otherwise ceases to participate in the Groundwater Council, the District's then-current groundwater charges shall apply to such party's production for the entire water year, and that party's amount of the Equitable Allocation so remitted will be used as a

prepayment offset for groundwater charges otherwise due from such party's production. The purpose for this credit is to assure that parties contributing to the maintenance and operations component of the Equitable Allocation do not double-pay for their proportionate cost of the District's services.

C. The District has been in discussions with various Riverside County entities who propose to be Ex Officio members of the Groundwater Council, and who may, by separate agreement with the District, agree to fund portions of the maintenance and operations costs of existing recharge facilities. To the extent such an agreement is reached, and a party otherwise subject to the District's groundwater charge contributes in such a way that its payment is remitted to the District; the General Manager is authorized to provide discharges and credits to such Ex Officio members in the same manner as for Groundwater Council members, provided above. The purpose for this credit is to assure that parties contributing to the maintenance and operations of the District through any such agreement do not double-pay for their proportionate cost of the District's services.

Section 7. In connection with fixing the groundwater charge as set forth in Section 4 above, the Board of Directors makes the following findings:

- A. Consistent with the Ventura Decision, the District's groundwater charge is not a "property-related charge" for purposes of determining the applicability of Article XIII D of the California Constitution. Notwithstanding, the District has provided mailed notice of the proposed charge and the amounts proposed to be charged to all known groundwater producers within its jurisdictional boundaries.
- 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 1, 8 and 15, 2019, and in the Highland Community News on March 1, 8 and 15, 2019. All such notices identified the prior and proposed 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 report prepared by the District, were reviewed at a public meeting held April 10, 2019, and a public hearing held April 24, 2019. In addition, the Engineering Investigation report prepared by the District was presented to and reviewed with the Board of Directors at a public meeting on February 13, 2019, and was discussed at the Basin Technical Advisory Committee on April 8, 2019.
- 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 acre feet 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 State Project Water and 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; and performing such maintenance of other parties' diversion works, recharge basins and canals as requested and per prior agreements.
 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;
 9. Participating in, and serving as the accounting arm for the collection of, facilities maintenance and operations funds and contributions for the Groundwater Council; and
 10. 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 \$972,859 based on production reported for the 2018-2019 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 2019-2020 proposes total expenditures of \$1,251,466.
- 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.

Section 8. 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 properly exempt from CEQA.

Section 9. 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 24th day of April 2019, by the following roll-call vote:

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

ATTEST:



Daniel Cozad, Secretary



Richard Corneille, President