



San Bernardino Valley Water Conservation District

Helping Nature Store Our Water

BOARD OF DIRECTORS MEETING AGENDA

Wednesday, April 27, 2022 – 1:30 p.m.

Anyone wishing to listen to or participate in the meeting can join via Zoom:

Call in (669) 900-6833, Meeting ID: 825 8484 4364

To join the Zoom Meeting on <https://us02web.zoom.us/j/82584844364>

While the District makes every attempt to follow all guidance re COVID-19 safety protocols, the District cannot assure in-person attendees that they will not be exposed to COVID-19 or persons who have been so exposed, and attendees are advised to exercise caution in limiting their own incidences of exposure, particularly those who may be in groups at higher risk of infection, or serious symptoms of COVID-19 if infected.

Note: Copies of staff reports and other documents relating to the items on this agenda are on file at the District office 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 office and in the Agenda Package on the District's website. 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 a participant at this meeting you will need special assistance, the District will attempt to accommodate you in every reasonable manner. Please contact Athena Lokelani at (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.

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.

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BOARD OF DIRECTORS

Division 1:
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Division 2:
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Division 4:
John Longville

Division 5:
Melody McDonald

GENERAL MANAGER

Daniel B. Cozad

3. **GUEST RECOGNITION/SELF INTRODUCTIONS**

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

– 10 minutes

Article 1, Section 75560 of the California Water Code requires that a Water Conservation District that proposes to levy a groundwater charge "...shall annually cause to be made an engineering investigation and report upon groundwater conditions of the District." District staff will present the annual Bunker Hill Engineering Investigation Report and review the Groundwater Replenishment Program annual budget. District staff is recommending to the District's Board of Directors that an increase take place for fiscal year 2022-2023 in the amount of \$15.27 groundwater charge per acre-foot (af) for all groundwater production. As requested by the San Bernardino Basin Groundwater Council ("Council:), the District is also considering the addition of a Replenishment/Sustainability component to the groundwater charge, to be imposed on entities subject to the District's Groundwater Charge that are not members of the Council. The Council supports phasing in this charge over several years The proposed amount of such component is \$18.37 per acre foot but for the upcoming water year is proposed at the phase-in rate of seven dollars and thirty-five cents (\$7.35) per acre foot. District staff will present any written comments received and the board will hear oral comments.

- *Open Public Hearing*
- *Receive Public Comments or Testimony*
- *Groundwater Charge for FY 2022-2023 (M#1864).....5*
- *Provide any comments on Resolution No.599 18*
- *Close Public Hearing*

5. **CONSENT CALENDAR**

- A. Approval of Board Minutes, April 13, 202225

6. **COMMITTEE REPORTS /ACTION ITEMS**

Action Items

- A. AGREEMENT AND ELECTION TO PREFUND EMPLOYER CONTRIBUTIONS TO A DEFINED BENEFIT PENSION PLAN WITH THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM INTERNAL REVENUE CODE SECTION 115 CALIFORNIA EMPLOYERS' PENSION PREFUNDING TRUST – 5 Minutes (M#1865)32

Presenter: *Betsy Miller*

Recommendation: The Finance and Administration Committee recommend the Board: 1) Approve an Agreement and Election to Prefund Employer Contributions to a Defined Benefit Pension Plan; 2) Approve the Delegation of Authority to Request Disbursements to the General Manager; 3) Authorize the Board President to sign the Agreement and all associated documents; and 4) Approve as part of the annual budget an amount of up to two years annual CalPERS regular costs plus \$50,000 for future unfunded liabilities for deposit into the California Employers' Pension Prefunding Trust from reserves.

7. **INFORMATION ITEMS:**

- A. Future Agenda Items & Staff Tasks

8. **UPCOMING MEETINGS:**

- A. May 3-5, 2022 ACWA Spring Conference, Sacramento
- B. May 4, 2022 USAR WIFA Meeting, 8:30 a.m. at Valley Municipal
- C. May 9, 2022 Association of San Bernardino Special Districts Dinner hosted by Mojave Water Agency, 6:00 p.m., at the Courtyard Marriott in Hesperia
(Topic: The Secret Sauce for Successful Grant Applications)
- D. May 10, 2022 San Bernardino Valley Municipal Water District Board Engineering Workshop, 2:00 p.m. at Valley Municipal
- E. May 11, 2022 USAR WIFA Technical Advisory Committee Meeting, 8:30 a.m. at Valley Municipal
- F. May 11, 2022 Board of Directors Meeting, 9:00 a.m. at Conservation District
- G. May 11, 2022 A Wellspring of Celebration (90th Anniversary), 6:00 p.m., Cuttle Weir
- H. May 12, 2022 San Bernardino Valley Municipal Water District Board Policy Workshop, 2:00 p.m. at Valley Municipal
- I. May 17, 2022 San Bernardino Valley Municipal Water District Board of Directors Meeting, 2:00 p.m. at Valley Municipal
- J. May 19, 2022 San Bernardino Valley Municipal Water District Board Resources Workshop, 2:00 p.m. at Valley Municipal
- K. May 25, 2022 USAR WIFA Technical Advisory Committee Meeting, 8:30 a.m. at Valley Municipal
- L. May 30, 2022 Office Closed in Observance of Memorial Day
- M. June 8, 2022 Board of Directors Meeting, 1:30 p.m. at Conservation District
- N. June 20, 2022 Association of San Bernardino Special Districts Dinner, 6:00 p.m. hosted by the Conservation District, location TBD
- O. July 4, 2022 Office Closed in Observance of Independence Day
- P. July 5, 2022 Operations Committee, 9:00 a.m., location TBD
- Q. July 19, 2022 Big Bear Watermaster Committee, 1:30 p.m. at Conservation District
- R. July 20, 2022 San Bernardino Valley Conservation Trust, 1:30 p.m., Conservation District
- S. July 27, 2022 Finance & Administration Committee, 1:30 p.m. at Conservation District

T. August 12, 2022

Southern California Water Conference, 8:00 a.m.-1:00
p.m., Ontario Double Tree Hotel

9. **CLOSED SESSION**

1. The Board will meet in Closed Session under authority of Government Code §54956.9 (a), in order to discuss existing litigation, Endangered Habitats League et al. vs. U.S. Army Corps of Engineers, Central District Court Case no. Case No.: 2:16-cv-09178-MWF-E.

2. The Board may convene in Closed Session for Conference to discuss Real Property Negotiation pursuant to Government Code §54956.8; Owner: Southern California Edison East End Hydroelectric Generation Plant property located on various parcels and easements in Mill Creek and Santa Ana River Canyons, Negotiator: Daniel Cozad and David Cosgrove Owner: Southern California Edison Negotiators Allison, Bahen, Property Manager and Steven Powell, Vice President.

10. **ADJOURN MEETING.** The next regularly scheduled Board meeting for May 11, 2022, at 1630 W. Redlands Blvd., Suite A, Redlands, CA 92373 at 9:00 a.m. and via teleconference/Zoom.



**San Bernardino Valley
Water Conservation District**
Helping Nature Store Our Water

Memorandum No. 1864

To: Board of Directors

From: Finance & Administration Committee
Betsy Miller, Assistant General Manager

Date: April 27, 2022

Subject: Groundwater Charge for FY 2022-2023

RECOMMENDATION

Recommend approval and adoption of Resolution No. 599 approving an adjustment of the Groundwater Charge in the unitary amount of \$15.27 per acre-foot, for both agricultural and non-agricultural production. This change represents a five (5%) percent increase from the rates in effect for the prior year. In addition, approve a Sustainability Component of the Groundwater Charge in the amount of \$7.35, which represents the stepped increase in the phase-in period of such charge.

BACKGROUND

The District reviewed and approved its annual Engineering Investigation for the 2022-23 water year (“EI”) on March 9, 2022. At the prior meeting on February 9, 2022, the District reviewed its Preliminary Groundwater Enterprise Budget for the upcoming year, and the Board gave staff direction on the advertised proposed Groundwater Charge rate to include in public notices. That advertised rate was \$15.27 per acre-foot, which represents a five (5%) percent increase from the rates in effect for the prior year, which is less than published cost of living increases year-to-year over the same period. The Board also gave direction on a step increase in the Sustainability Component of the Groundwater Charge, which is paid in order to “level the playing field” on costs of basin-benefitting water supply and recharge enhancement by the Groundwater Council, to \$7.35.

Today’s public hearing is held consistent with applicable statutes governing Groundwater Charge processes. Notices of today’s public hearing, and the April 13 public meeting, were published on the District’s website, and in the San Bernardino County Sun and the Highland Community News on March 4th, 11th, and 18th. Mailed notice was also provided to all reporting groundwater producers on February 23, 2022. This provides more than the required forty-five (45) days between the date of that mailed notice and the proposed actual imposition of the Groundwater Charge on April 27, 2022, per California Constitution Article XIII D, Sec. 6(a)(2).

As it has in the past, the decision to fix the Groundwater Charge rate comes with a series of findings regarding agricultural and non-agricultural groundwater production, annual and cumulative change in storage, and overall basin conditions. These findings are based upon the Engineering Investigation and required by statute.

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The findings, and the support for them, are set out in detail in the “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” (“Resolution”), which is attached hereto, and submitted for the Board and public review. That Resolution also contains background and factual findings with respect to the Sustainability Component of the Groundwater Charge. District staff has endeavored to comply with all procedural requirements applicable to the Groundwater Charge.

DISCUSSION

The recommendation from staff to adjust the Groundwater Charge rate is a function of the Groundwater Enterprise Budget, based on anticipated expenditures for the upcoming year. These topics were reviewed in detail by staff and the District Board on February 9, 2022. The staff report accompanying the February 9, 2022, review detailed budget revenue and expense projections, identified budget presumptions, and described the recent history of Groundwater Charge amounts and the initiation and implementation of the Sustainability Component. In the interest of avoiding repetition, that staff report is attached hereto, and its contents are incorporated herein by reference.

On balance, in considering the Budget, the Board directed that the “noticed” rate would be as set forth above, representing both the step increase in the five-year phase in of the Groundwater Charge Sustainability Component, which moves from \$4.41 to \$7.35 per acre foot, and a five (5%) increase in the Groundwater Charge rate, from \$14.41 to \$15.27 per acre foot. Those are the rates that have been proposed for consideration, and which were the subject of public review and comment both at the April 13, 2022, public meeting, and today’s April 27, 2022, public hearing. Obviously, the actual rate levied may vary, per Board direction and any public comments received.

POLICY CONSIDERATIONS

Staff has previously provided a projection of groundwater production and revenue generated by the existing rate and the proposed expenditures for the Groundwater Enterprise Budget, to which proceeds from the proposed rates will be applied. The Finance and Administration Committee concurred in staff’s assessment that a five (5%) percent increase was warranted, both to address ongoing expenditures and capital project needs, and to stem the use of Rate Stabilization Funds.

FISCAL IMPACT

The development and coordination of the Groundwater Charge is supported by the Groundwater Recharge Enterprise. The impact to reserves without an increase is approximately \$31,778.

ATTACHMENTS OR MATERIALS

Groundwater Budget and staff report from February 9, 2022
Groundwater Charge Resolution No. 599

APPROVALS

Recommended by the Finance & Administration Committee
Reviewed by District Counsel



**San Bernardino Valley
Water Conservation District**
Helping Nature Store Our Water

Memorandum No. 1839

To: Board of Directors
From: Daniel Cozad, General Manager
Date: February 9, 2022
Subject: Budget Planning for Groundwater Enterprise for 2022-2023, Proposed Groundwater Council Operations and Maintenance Fee and Advertised Groundwater Charge

RECOMMENDATION

Review, discuss and approve issues for inclusion in the 2022-2023 Groundwater Enterprise Budget and provide direction to staff on Public Notice for the Groundwater Charge.

BACKGROUND

Each year, San Bernardino Valley Water Conservation District (District) staff projects revenue and expense estimates for the Groundwater Enterprise, as underlying support for the Board to determine a proposed amount for the Groundwater Charge, for Public Notice purposes. The estimated amount included in the public notice does not set the charge, but does provide public notice of the potential proposed rate, for discussion purposes.

Following this analysis, the proposed Groundwater Charge rate is noticed in the newspaper and via mail to groundwater producers, and an opportunity is provided to the public to provide feedback at a Public Meeting and a Board Public Hearing to determine the annual groundwater charge. It is now time to consider that process again for the 2022-23 Groundwater Charge.

Groundwater Charge rates held steady (\$3.23 Agricultural/\$11.62 Non-Agricultural) from 2014 to 2016. In 2017, the rate was increased by 4%, with the previously-established Rate Stabilization Reserve fund used to moderate rate increases. In 2018, the Board approved an additional 4% increase in Non-Agricultural rates. That same year, in response to legal developments¹, the Board determined that Agricultural rates should be incrementally raised over time, to match Non-Agricultural rates. The Board opted for a three-year phased approach to equalize Agricultural and Non-agricultural rates, relying again

¹ See, *City of San Buenaventura v. United Water Conservation District* (2017) 3 Cal. 5th 1191, which among other things, called into question the constitutionality of the rate differentials between the two types of rates, formerly required by Water Code section 75594. See discussion, *infra*.

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on the Rate Stabilization Reserve fund to bridge transitional shortfalls. In 2019 and 2020, the Board approved a 5% increase in Non-Agricultural rates, while Agricultural rates continued to be raised incrementally to match Non-Agricultural rates. There was no opposition to this change. For three years, the Rate Stabilization Reserve fund underwrote the shift from differential Agricultural and Non-Agricultural rates to a unitary rate, of \$13.85/AF

In 2021, the Board approved a change to rates increasing the unitary rate by 5% to \$14.54/AF and adding a replenishment sustainability component for SB County entities.

Over this same time period, Bunker Hill Groundwater Basin producers collaborated with the District to develop and approve a Groundwater Council (GC), formalized in 2018. The Groundwater Council offers a cooperative vehicle whereby members have created a method to equitably allocate basin recharge operations and maintenance costs, and to provide funding for basin replenishment with imported water, whenever feasible. Following two years of implementation, the GC payments and Groundwater Charge rates have proven effective to recover the majority of costs for the Groundwater Enterprise, as well as providing a cooperative regional funding source for taking advantage of variable imported water supplies, for local recharge.

DISCUSSION

The Groundwater Enterprise fund revenue has met its expenditures for the past six years. Based on performance for the first half of the fiscal year, staff has projected a budget for Groundwater Enterprise operations and updated capital expenses. Staff has estimated a preliminary Groundwater Charge rate and initial GC revenue budget needed to offset these expenses. Staff has coordinated this cost with the GC, and GC members have supported the proposal.

The GC effectively serves as an alternative method for members to cover the District groundwater recharge operations costs, previously paid through the Groundwater Charge. The GC agreement was effective on February 27, 2018, and Fiscal Year 2018-2019 was the first budget year to utilize the GC funding mechanism. The City of Redlands joined the GC in 2021.

Budget Approach:

The budget approach recommended by staff includes the following efforts and activities:

- Develop and review the draft budget with the GC and Groundwater Charge partners
- Utilize the Groundwater Enterprise Budget to develop the proposed Groundwater Charge
- Review the draft budget with the Finance & Administration Committee or in a Board Workshop before submitting it to the Board for approval
- Review other budgets with appropriate partners and stakeholders, as appropriate
- Utilize feedback from all of the above in the development of the final budget proposal

Assumptions

The budget process is expected to use similar assumptions, based on the same factors, as the previous budgets. The budget also includes the following specific assumptions:

Revenue:

- Groundwater Charge revenue is based on actual charges paid in the prior year, with a review from the GC agencies
- GC revenue as calculated by the Equitable Allocation Model (“EAM”²) and paid by GC member agencies
- Producers who are not parties to the GC will continue to pay the Groundwater Charge
- Property tax will be estimated at the 2021 actual receipts
- Mining revenue will be estimated based on lease guaranteed annual minimum payments
- Interest revenue will be based on investment forecasts
- Consideration of the needs of the Active Recharge Transfer Project capital costs and limited interest income
- Revenue for Wash Plan Implementation from the Conservation Trust

Expenses:

- Expenses are estimated on a zero basis, or actual costs/estimates modified based on specific needs and actual 2020 costs.
- Board administrative costs and Staff COLA increases are based on Bureau of Labor Statistics CPI-U All West at 6.1% based on actual December 2021 rate of 7.1 but subtracting 1% raised in the last budget year https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm
- Utilities increase at approximately 5-7%, based on sector CPI or projected rate changes
- Salary forecast includes raise pool of up to 5% as a percentage of total salaries
- Miscellaneous expenses are generally increased at 5% where no other basis is available

During the 2016 budget process, the Board requested the full cost of capital improvements, repairs, and equipment in the budget. CEIP Costs are included at budget time as there are some operating revenue paid to capital projects and some capital funding of annual costs such as salaries and etc. CEIP costs in the current Groundwater Enterprise budget include the following:

- Mill Creek Diversion improvements, permitting, and construction
- Permitting for Mill Creek facilities
- Design and construction of the Mentone shop
- Replacement of heavy equipment
- On-going security repairs such as fencing, gates, boulders, and other barriers
- On-going land management such as removal of invasive, high-water-use species
- Design of the ARTP Projects

Based on the year-to-date budget information and the assumptions listed above, staff projects that a 5% increase in the Groundwater Charge is needed for 2022-2023.

² The EAM is the Groundwater Council’s method of assigning cost burdens to basin maintenance and operations, and to investments for purchase of imported water supplies, when available. It tries to balance historic water rights with later increases or decreases in production, to allocate burdens with an eye to respecting established rights, and current demand patterns of use. It therefore assigns costs based on equal weight to members’ (or their predecessors’) historical production (from 1959-1963), and more current production (from 2015-2019).

Legal Changes and the Move to a Unitary Rate

Throughout our history, the District has incorporated all requirements of the California Water Code (CWC), Prop 218, and Prop 26 into the rate setting process for the Groundwater Charge. We continue to carefully monitor legal cases related to the interpretation of voter initiatives, including Proposition (Prop) 13, Prop 218 and Prop 26, which seek to alter local governments' ability to raise taxes and fees without voter approval.

In *City of San Buenaventura v. United Water Conservation District, supra*, the California Supreme Court ruled that Groundwater Charges are not subject to Prop 218, but must meet the requirements of Prop 26. This requires that the charge or fee must 1) be no more than necessary to cover the costs of the activity; and 2) be allocated in a manner that bears a fair or reasonable relationship to the burdens or benefits from the activity. Further, the Court essentially invalidated CWC Section 75594, which required a 3-5:1 Non-Agricultural to Agricultural ratio for the charge. Before this decision, the District followed the requirements of CWC Section 75594, which resulted in a reduced Groundwater Charge for Agricultural production, which was also applied to parks, golf courses, schools, and cemeteries. This requirement that the Groundwater Charge be allocated in a manner related to the burden and benefit of the recharge replaced the statutorily-dictated cost ratio and, consistent with historical rate development, the District will continue to set the annual charge as necessary to recover the costs for the service provided (see attached Table on GW Charge History).

In setting the 2018 rates under these new legal parameters, the District did not believe there was sufficient factual record on variable costs between the Agricultural or Non-agricultural uses of groundwater production available to propose a defensible distinction of rate, based on relative burdens and benefits of the two categories of uses. No further information has become available since that time. Further, the District has not attempted to allocate its internal costs or field maintenance expenses based upon the distinction in use. Because Agricultural production is not limited to specific geographic areas within the District's boundaries, nor are District facilities designated solely, or even primarily, to Agricultural or Non-Agricultural use, the District Board approved a unitary rate for all production, regardless of type of use.

This change affected 30 producers producing approximately 10,815 acre feet from 52 wells. These producers paid groundwater charges of approximately \$35,879 in 2017. These users effectively received an increase in per acre foot rates of groundwater charges, due to the court-mandated discontinuance of the protected rate status for Agricultural use. Under a unitary rate in 2017, these 30 producers would have paid approximately \$131,300, with six users likely to be significantly affected due to the amount of recent production. These are primarily municipal users that now pay through the Groundwater Council.

To address these impacts to producers, the Board approved the utilization of the Groundwater Charge Stabilization Reserve over a three-year transition process, in which the Agricultural rate incrementally increased to a level of the Non-Agricultural rate. In 2018, staff undertook significant efforts to inform these producers of the change and provide multiple opportunities to participate in the process of setting the groundwater charge. Staff took the following actions at the Board's direction:

1. Produced and distributed information for all producers on the *Ventura v. UWCD* case and its implications
2. Held an informational workshop to explain the case, its effect on the Groundwater Charge and invited participants to attend the February 14 Board meeting to select the advertised rate
3. Mailed and advertised notices of Groundwater Charge change, including the potential phase-in period
4. Coordinated with Groundwater Council members
5. April 7th Public Meeting at Board meeting
6. April 21th Public Hearing to adopt rate at Board Meeting
7. Mailed an information sheet with the rate changes after adoption.

Throughout this time, including the informational workshop, Public Meeting, and Public Hearing, no Agricultural users indicated any opposition to the changes in rates. Certain Agricultural users who reached out for additional information noted their support for the Board's three-year transition process.

Groundwater Sustainability and Replenishment

The Board, as part of last year's rate setting process approved a request from the GC to include a Replenishment/Sustainability component, as part of the Groundwater Charge. This component serves to make sure that those basin producers who are not GC members contribute proportionately to replenishment supplies, which GC members fund through their participation in the GC. This portion of the groundwater charge would be remitted after collection by the District to the GC, which would then use it to purchase imported water from San Bernardino Valley Municipal Water District, to replenish the basin.

On October 12, 2020, the GC approved a plan to achieve full financial participation from those remaining agencies that produce groundwater from the basin but have not yet become GC members. The replenishment component of the Groundwater Charge is in a proportionate amount so as to assure ratable contribution by such producers to basin wide replenishment efforts, and funding, now implemented by the GC and its members. This charge component is assessed as permitted under the District's organic act, and constitutional requirements, on San Bernardino County production within the District's jurisdictional boundaries, and in a manner whose results would mimic the allocations through the GC's EAM.

To explain, the idea would be to track the GC expenditures for imported recharge water over a defined time period (for this cycle, only two years of data would be available), come up with a normalized annual estimate (perhaps a rolling average of all years until five have passed, then a rolling five year average), as the benchmark of total water replenishment expenditures benefitting the basin. The total production ratio of the Other Producers during that same period, as compared to the GC members, would then be determined, to derive a "reasonable relationship" between the benefits achieved by Other Producers from GC recharge. The proportionate ratio of the total production from the Other Producers would then be applied to the normalized basin recharge expenditure figure, to determine the aggregate amount to be collected from the Other Producers, as part of the Groundwater Charge. That total monetary sum would then be allocated among the Other Producers pursuant to the EAM allocation. In this way, the total amount of groundwater charge raised by this Replenishment/Sustainability component paid by such Other Producers, in aggregate, would be no more than their proportionate benefit from basin recharge generally. The total cost would therefore not exceed the cost of the recharge activity basin wide, and the burden to

Other Producers would be based on their production as a group, allocated among them individually in the same manner as the GC does with its members. The goal would be to meet Proposition 26 requirements for total costs and reasonable benefit, while use of the EAM would “carry forward” for the Other Producers the GC’s balance between historical rights and present production, and place all basin producers, both GC members and Other Producers, on an even footing.

Staff used the same methodology to calculate a rate for non-GC member producers in the District boundary³. The replenishment/sustainability fee is estimated in Table 2, and would be up to \$20.00 per AF of production.

Staff reviewed these analyses with the GC and with the District’s Finance and Administration Committee. In recognition of concerns Staff proposed a phase-in period of five or more years to implement the fee, and reduce “rate shock.” The GC approved this phase-in period, and other elements implemented by the District Board. Last year staff conducted outreach to the producers affected by the proposed change to obtain feedback. No producers indicated resistance to the new component.

POLICY CONSIDERATIONS

The Board provides direction to staff on the appropriate Groundwater Charge rate to advertise in the notices for the public meeting and hearing. Staff has reviewed the groundwater recharge operational costs to date for FY21-22 and Groundwater Recharge Enterprise revenue likely to be generated by the Groundwater Charge and the Groundwater Council. Staff believes that these data provide sufficient information to project the 2022-2023 Groundwater Recharge Enterprise needs. Following this analysis, staff recommends that the Board advertise a 5% increase in rates for the upcoming fiscal year. The recommendation is in keeping with prior Board direction to limit annual rate increases to 3-5% except in cases of significant policy or economic change. Because the Board acted proactively last year the 5% is still adequate for operations even though it is lower than overall inflation for the period.

ALTERNATIVES

Potential Board actions include:

- Direct staff to advertise a 5% rate increase in notices and direct staff to advertise and continue phase in of the replenishment/sustainability component of ultimately up to \$20 per Acre Foot at full phase in in four more years.
- Provide staff direction to alter assumptions or other rate calculation methodology and the authority for selecting another advertised rate.

FISCAL IMPACT

The annual development of the Groundwater Charge rate is supported by the Groundwater Recharge Enterprise. Without the proposed 5% rate increase in FY22, the impact to the Rate Stabilization Fund would be approximately \$31,778. The GC has recommended the proposed budget and will approve the budget in February or April. The replenishment/sustainability component is revenue neutral to the District as it would be segregated for exclusive use for transfer to the GC for purchased imported water.

³ The City of Redlands is not included in the analysis, since it is expected to become a member of the Council.

POTENTIAL MOTIONS

1. Move to direct staff to advertise a 5% increase in the overall groundwater charge and continue the phase in of the Sustainability replenishment component.
2. Direct staff to advertise a 5% rate increase in notices year two of the replenishment/sustainability component ultimately up to \$20 per Acre Foot.
3. Move to direct staff to advertise another rate and approve the budget plan as shown herein.

ATTACHMENTS OR MATERIALS

- Draft Groundwater Enterprise Budget
- Groundwater Production and Charge Revenue Projection
- Replenishment/Sustainability Cost Assessment Tables

RESOLUTION NO. 599

**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 FOR FISCAL YEAR 2022-2023**

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 revenues for 2022-2023 water year; and

WHEREAS, at the regular meeting of the Board of Directors on March 09, 2022, the District accepted an Engineering Investigation report, relating to groundwater conditions in the Bunker Hill Basin underlying the District boundaries; and

WHEREAS, the Preliminary Groundwater Enterprise Budget and rate recommendations were presented to the Groundwater Council on January 27, 2022, and publicly reviewed at the District's Board meeting of February 9, 2022; and

WHEREAS, Certain Basin Producers, as well as the District, have formed a Groundwater Council ("GC"), and in connection with that Groundwater Council have entered into the San Bernardino Basin Groundwater Council Framework Agreement ("GC Agreement"), which includes regional cooperation among its member entities to perform an annual review of the needs for, 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 agreed Equitable Allocation formula developed as part of the GC Agreement. The GC Agreement likewise includes a mechanism for contribution by its member entities toward procuring funds to secure additional imported water supplies for recharge of the Bunker Hill Basin, when such supplies are available, the costs of which are allocated pursuant to a replenishment/sustainability component cost-sharing structure, to recharge additional imported water purchased by the GC; and

WHEREAS, the California Supreme Court decision in the case of *City of San Buenaventura v. United Water Conservation District*; Case No. S226036 ("Ventura Decision") resolved previously 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 in compliance with the procedural and constitutional requirements clarified by the California Supreme Court in the Ventura Decision, shifted its groundwater charge to eliminate differentials in agricultural and non-agricultural uses, having implemented a three-year rate stabilization mechanism to ease the transition of agricultural users, who historically paid lower per acre/foot rates, to a unitary rate that is more in line with current legal guidance; and

WHEREAS, the District provided mailed notice to all groundwater producers within its District boundaries of a public meeting held on April 13, 2022, and a public hearing held on April 27, 2022, 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 conducted a public meeting on April 13, 2022, and a public hearing on April 27, 2022, to receive comment and evidence submitted by the public at such hearing; and

WHEREAS, the District has made available by wide distribution, beginning on February 9, 2022, 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 Board has considered the Engineering Investigation report, applicable groundwater enterprise budgets, and considered all comments and evidence presented to it at the public meetings and hearings; and

WHEREAS, the District's ad valorem tax revenues are limited, and the District receives relatively low return in the way of interest on reserves; 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; and

WHEREAS, pursuant to a request received from the GC, the District is including within its groundwater charge for the 2022-2023 cycle a Replenishment/Sustainability component, to be imposed on entities subject to the District's Groundwater Charge that are not members of the GC. This Replenishment/Sustainability component is designed to assure that all users of the Bunker Hill Basin who profit from not only the maintenance and operation by the District of groundwater recharge facilities serving the Bunker Hill Basin, but also the acquisition and application to basin recharge of imported water supplies funded and secured through the auspices of the GC, contribute ratably, proportionately to those contributions of the members of the GC, toward such efforts, which efforts inure to the benefit of the basin as a whole, and each of its users who benefit from the GC water supply enhancement efforts. The GC supports phasing in this charge over several years; and

WHEREAS, the amount of the proportionate share of non-Groundwater Council member sustainability requirements, and its cost, have been derived from the application of the Equitable Allocation Model utilized by the GC, which takes the production of producers (or their predecessors) over the Base Period of 1959-1963, and the rolling most recent five-year period, (currently 2016-2020), to weight evenly the considerations of the exercise of historical rights and current production patterns, for the purposes of assigning the costs of imported basin recharge enhancement by the GC, at the imported water rate of \$118.40/af. For non-Groundwater Council members within the District's boundaries, this results in 807 acre feet of sustainability need, which amounts to a total water cost of \$95,554. Per the Western Judgment Watermaster, this group of non-Groundwater Council members' production for 2020 was a total of 5,203 acre feet. To assign a per acre foot rate of sustainability cost to actual production, the \$95,554 cost is divided by 2020 actual production from such users, yielding a per acre rate of \$18.37; and

WHEREAS, based on this calculation, the Replenishment/Sustainability component charge is \$18.37 per acre foot. Because this represents a substantial one-time increase compared to prior District groundwater charges, this rate component is proposed to be phased in over a five-year period, increasing 20% per year until the \$18.37 acre foot amount is achieved, in order to allow for transition of payment and budgeting for affected users. As such, the proposed initial phase-in amount of such charge component is \$7.35 per acre foot to be applicable to the current year's groundwater charge. This amount will be revisited yearly, since groundwater charges are established annually, but the current intention is to have the Replenishment/Sustainability Component increase by one-fifth each year, until the full proportionate rate of \$18.37 is achieved; and

WHEREAS, the \$18.37 per acre foot figure is proportional to the benefit received by non-Groundwater Council members, because it is derived from the amount of production in 2020 of those non Groundwater Council members within the District's jurisdiction of 5203 acre feet, which when divided by the total Equitable Allocation sustainability need attributable to such users, at 807 acre feet and a total cost of \$95,554, yields a per acre foot amount of \$18.37; and

WHEREAS, the Replenishment/Sustainability charge component will not be assessed or collected from those Riverside County producers who extract water from the basin directly under the rights adjudicated in the Western Judgment, *Western Municipal Water District of Riverside County et al. v. East San Bernardino County Water District et al.*, Riverside County Superior Court Case No. 78426, because under that judgment, the allocation of production rights of such users from the basin are fixed, and does not vary with enhanced supplies contributed by the GC or those acting in concert with it. In addition, because to the extent such users are themselves contractors under the State Water Project, and because the GC's enhanced supplies are secured from the San Bernardino Valley Municipal Water District's State Water Project allocation, such users are contractually precluded from State Water Project purchases from any State Water Project contractor other than their own, and as such, these users do not receive proportionate benefit from the GC's imported water supply enhancement activities.

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 2020 to Fall 2021, is a decrease of 93,846 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 -580,031 acre-feet or more.
- C. Total Groundwater Production from the Bunker Hill Basin from the Preceding Water Year July 1, 2020 to June 30, 2021 is 173,171 acre-feet.
- D. Estimate of the Annual Change in Storage for the Current Water Year (July 1, 2021 to June 30, 2022) in the Bunker Hill Basin is -79,759 acre-feet or more.
- E. Estimate of the Annual Change in Storage for the Ensuing Water Year (July 1, 2022 to June 30, 2023) in the Bunker Hill Basin is -5,943 acre-feet.
- F. Average Annual Change in Storage for the Immediate Past Ten Water Years in the Bunker Hill Basin is -32,822 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, 2022 to June 30, 2023) is 9,503 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, 2022 to June 30, 2023) is 95,690 acre-feet.
- I. Estimated Amount of Water Necessary for Surface Distribution for the Ensuing Water Year (July 1, 2022 - June 30, 2023) within the Bunker Hill Basin is 77,235 acre-feet.
- J. Estimated Amount of Water Necessary for Surface Distribution for the Ensuing Water Year (July 1, 2022 - June 30, 2023) for the District is 54,552 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, 2022 to June 30, 2023) is 131,381 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 791,171 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. The District likewise undertakes habitat enhancement and preservation measures, providing an important source of offsetting mitigation land for disturbances occasioned by the maintenance of existing groundwater recharge facilities, and the development of new ones.

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 GC, the District may be asked to help fund regional purchases of imported water to augment native water supplies. 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 herein shall be used for such purposes.

Section 4. The Board of Directors hereby levies, assesses and affixes a groundwater charge in the amount of \$15.27 per acre foot of water produced, to be applicable to all production (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. The Board of Directors likewise hereby levies, assesses and affixes a Replenishment/Sustainability component of groundwater charge in the amount of \$7.35 per acre foot of water produced, to be applicable to all production (agricultural and non-agricultural use) by users within the Bunker Hill Basin who are not GC members. 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, 2022 and February 1, 2023.

Section 5. 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 semi-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.

(1). To the extent that a party who is a member of the GC has paid a maintenance and operation charge through the Equitable Allocation based upon an approved budget for the GC that includes the maintenance and operations costs reflected in the District's budget showing the needs and uses of the groundwater charge for 2022-2023 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 the non-Replenishment/Sustainability component of groundwater charges due from that party's production for the applicable water year. If a GC member 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 GC, 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 GC Equitable Allocation do not double-pay for their proportionate cost of the District's services.

(2). To the extent that a party who is a member of the GC has paid a contribution for groundwater replenishment/sustainability through the Equitable Allocation based upon an approved budget for the GC that includes the purchase of imported water supplies for replenishment of the basin for 2022-2023 water year, and such payment is remitted to the GC, the General Manager is authorized to credit such Equitable Allocation payment as payment in full for the Replenishment/Sustainability component of groundwater charges due from that party's production for the applicable water year. If a GC member remits its Equitable Allocation for replenishment/sustainability to the GC, but in that same water year leaves or otherwise ceases to participate in the GC, 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 apportioned to the GC's replenishment/sustainability activities so remitted will be used as a prepayment offset for the Replenishment/ Sustainability component of groundwater charges otherwise due from such party's production. The purpose for this credit is to assure that parties contributing to the GC's replenishment/sustainability component of the GC Equitable Allocation do not double-pay for their proportionate share of such efforts.

C. The District has been in discussions with various Riverside County entities who propose to be Ex Officio members of the GC, 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 this 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 though any such agreement do not double-pay for their proportionate cost of the District's services.

Section 6. 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, on February 23, 2022.
- 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 and in the Highland Community News on March 4, 11 and 18, 2022. All such notices identified the prior and proposed rates, 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 13, 2022, and a public hearing held April 27, 2022. 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 9, 2022 was discussed at the Groundwater Council on February 14, 2022, and was approved by the District’s Board on March 9, 2022.
- 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 per 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 ensure 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 Basin recharge, including the preservation, enhancement, and management of habitat areas;
 - 6. Investigation and implementation of improvements to groundwater measurement and 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 Bunker Hill groundwater basin and the District's groundwater recharge facilities;
 9. Participating in, and serving as the accounting arm for the collection of, both facilities maintenance and operations funds and contributions for the GC; and Replenishment/Sustainability funds, for proportionate contribution to import water supply efforts by producers who are not members of the Groundwater Council, but who still benefit from the regional efforts at maintaining Bunker Hill Basin groundwater supplies;
 10. Administrative support, training and overhead for all the above-listed activities.
- F. The total amount of estimated revenues from the groundwater charge, including the Replenishment/Sustainability component, is estimated at approximately \$1,488,360 based on production reported for the 2021-2022 water year. This amount does not consider offsets as provided in Section 5(b)(1) and (2) above for GC members. The specific total amount of groundwater charge revenues from non-GC members cannot be accurately stated at this time, because the amount of credits for GC member Equitable Allocations are dependent on yearly budgeting by the GC. Based on the last year's Equitable Allocation determinations, however, applied to production from the 2021-2022 water year from non-GC members, the estimated groundwater revenues from non-GC members is \$95,554. 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 2022-2023 proposes total expenditures of \$1,737,023. The remaining funds are to be paid by the District's capital and groundwater reserves, lease payments from Valley District and Western and Exchange Plan management reimbursements.
- 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, and the burden each producer puts on the basin, ratably to such user's production.

Section 7. Notwithstanding Water Code Section 75523, and to assure the proportionate benefit of the Replenishment/Sustainability charge between those who pay it and those who are members of the Groundwater Council, all revenues collected by the District from the Replenishment/Sustainability component will be separately accounted for and maintained in a discrete fund by the District, and shall not be commingled with any other District funds or revenues. The proceeds of such Replenishment/Sustainability charge shall be devoted and applied exclusively to Bunker Hill Basin maintenance and water supply enhancement efforts in conjunction with the Groundwater Council, whether by way of direct payment to the Groundwater Council in connection with such efforts, or as directly applied by the District in cooperation with the Groundwater Council toward such efforts.

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 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 2022, by the following roll-call vote:

YES:
NO:
ABSTAIN:
ABSENT:
ATTEST:

DIRECTORS:
DIRECTORS:
DIRECTORS:
DIRECTORS:

Melody McDonald, President

Daniel Cozad, Secretary

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS MEETING

MINUTES OF APRIL 13, 2022
1:30 p.m.

President McDonald called the Board of Directors meeting to order at 1:30 p.m. by in-person, teleconference, and Zoom meeting. All those in attendance stood for the pledge of allegiance led by President McDonald. It was noted that Director Longville has been unable to attend the March 9, 2022, and today's meeting due to illness; his absences for both are noted as excused.

ROLL CALL:

BOARD MEMBERS PRESENT:

Melody McDonald, President
Richard Corneille, Vice President
Robert Stewart, Director
David E. Raley, Director

BOARD MEMBERS ABSENT:

John Longville, Director

GENERAL COUNSEL PRESENT:

David Cosgrove, District Counsel

STAFF PRESENT:

Betsy Miller, Assistant General Manager
Milan Mitrovich, Land Resources Manager
Katelyn Scholte, Principal Engineer
Athena Lokelani, Administrative Specialist
Angie Quiroga, Administrative Analyst
Jazmin Serrato, Intern

GUESTS PRESENT:

T. Milford Harrison, San Bernardino Valley Municipal Water District
June Hayes, San Bernardino Valley Municipal Water District
Paul Kielhold, San Bernardino Valley Municipal Water District
Joanna Gibson, San Bernardino Valley Municipal Water District
Willow Green, Tetra Tech

1. PUBLIC PARTICIPATION

President McDonald announced that any persons present, who so desired, may make an oral presentation to the Board of Directors. There being none, the meeting continued with the posted agenda items.

2. ADDITIONS/DELETIONS TO AGENDA

Ms. Miller requested that Item E: Agreement and Election to Prefund Employer Contributions to a Defined Benefit Pension Plan with the California Public Employees' Retirement System Internal Revenue Code Section 115 California Employers' Pension Prefunding Trust be deferred to the April 27 Board meeting, in order for staff to have additional time to review and update the fiscal impacts to the District.

3. GUEST RECOGNITIONS/SELF INTRODUCTIONS

Ms. Miller introduced staff present, President McDonald introduced the Conservation District Board and the guests listed above introduced themselves.

4. UPPER SANTA ANA RIVER HCP UPDATE

Ms. Gibson shared a PowerPoint presentation on the Upper Santa Ana River Habitat Conservation Plan (River HCP). She provided a brief summary of the Santa Ana River Watershed, including additional challenges and cumulative impacts of water projects. The River HCP will provide an Endangered Species Act permit for 20 covered species, provide federal regulatory assurances that there will be no additional requirements for "take" of those covered species, streamline development of over 100 water agency facility projects and operations activities, provide an additional 4 million AF of water over fifty years, and protect and manage habitat for covered species. Ms. Gibson reviewed the Conservation Strategy: 1) protect and enhance existing habitat, 2) reduce threats to covered species, 3) create more habitat, and 4) establish additional populations. A detailed presentation ensued. The Wildlife Agency Draft of the River HCP was completed in October 2020, and the DEIR Public Comment Period was May 17-July 16, 2021. The current timeline was reviewed: 1) Revised HCP, DEIR response to comments and draft NEPA are anticipated for Quarter 2 of 2022, 2) Draft final HCP, prepare draft NEPA for the Federal Register, and ensure consistency between HCP and EIR is anticipated for Quarters 2/3 of 2022, and 3) Publish NEPA & HCP in Federal Register, adopt Final EIR and NEPA determination, USFWS to issue Biological Opinion and Incidental Take Permit is anticipated for Quarter 4 of 2022. The Board thanked Ms. Gibson for her detailed presentation. It was noted that spadefoot toad tadpoles were found across from District property on the Harmony property now owned by Valley Municipal. Director Raley asked for additional information on the Joint Powers Authority (JPA) being developed for the River HCP. Ms. Gibson said that the JPA will be formed to handle the implementation of the Plan, ensure all projects move forward consistent with the HCP, and ensure mitigation is provided in compliance with the HCP. She said that the Upper Santa Ana Resource Alliance has been identified as the JPA. The general managers' of the participating water agencies have been meeting regularly through last year. Ms. Gibson is preparing the necessary financial materials to set up the JPA; these materials will be forwarded to partner agencies for review and comment. The JPA has to be implemented prior to issuance of the incidental take permit. There will be an annual cost share amongst the permittees of the HCP. All eleven members of the water agencies partnering on the HCP will be part of the JPA.

5. PUBLIC MEETING RELATED TO ADOPTION OF THE GROUNDWATER CHARGE

Mr. Cosgrove provided a verbal overview of the groundwater rate selection process, as detailed in the memo on package page 6. The draft groundwater resolution is shown on package page 20. He indicated that the proposed increase to the groundwater charge is 5%, to a unitary amount of \$15.27 per acre foot. In addition, the sustainability component is recommended to increase to \$7.31 per acre foot, representing a step increase to the approved phase-in approach. Mr. Cosgrove noted that the Draft Engineering Investigation report was presented on February 9, and the final was approved on March 9. He noted that the Engineering Investigation Report presentation is available today if any member of the public should request it. There was no member of the public that requested the presentation. The notices of today's public meeting and the April 27 public hearing have been published in Highland Community News and the San Bernardino Sun. Mr. Cosgrove reviewed Proposition 26. He indicated that a detailed budgetary

review of the groundwater enterprise was presented to the Board on February 9, and that those documents are included in today's package.

President McDonald opened the public meeting. No public comments, written or verbal, have been received on the groundwater charge to date. She asked if any public wished to comment on the groundwater charge or engineering investigation report. There being none she closed the Public Meeting.

It was moved by Director Raley and seconded by Vice President Corneille to continue this matter to the April 27 Groundwater Public Hearing. The motion carried 4-0, with all Board members present voting in the affirmative. Director Longville was absent from the vote.

**President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Absent
Director Raley: Yes
Director Stewart: Yes**

6. CONSENT CALENDAR

It was moved by Vice President Corneille and seconded by Director Raley to approve the Consent Calendar: Item A: Board Minutes, March 9, 2022; Item B: Expenditure Report, March 2022; and Item C: Absence Excusal for Board Member, March 9, 2022. The motion carried 4-0, with all Board members present voting in the affirmative. Director Longville was absent from the vote.

**President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Absent
Director Raley: Yes
Director Stewart: Yes**

7. COMMITTEE REPORTS/ACTION ITEMS

A. FINANCE & ADMINISTRATION COMMITTEE VERBAL UPDATE

Ms. Miller provided a verbal update on this item. She stated that the Finance & Administration Committee met on March 23. They discussed the 3rd Quarter Unaudited Financial Report and reviewed a preliminary draft of the District budget for Fiscal Year 2022-2023. She said that the Wash Plan revenue that is being expended from reserves was discussed. Staff is reviewing the Wash Plan items and methods for allocation to the appropriate cost center. She also noted that Director Raley commended staff for coming in under budget. Staff does not anticipate that expenses for FY23 will vary significantly from the current year. The draft District budget will be reviewed at the April 27 Budget Workshop to be held immediately following the Board meeting/Groundwater Public Hearing. Director Raley said that the financials look to be in good standing, and said that the District has good staff keeping everything in order. President McDonald thanked Director Raley for his report and thanked staff for their hard work and efficiency.

B. AD HOC AUDIT COMMITTEE VERBAL UPDATE

Director Raley provided a verbal update on this item. The Ad Hoc Audit Committee met on March 30. He said that four proposals were received. He said that there is a policy that requires the District to change auditors every five years, unless the staff conducting the audit change. He indicated that the firm that was chosen by the Ad Hoc Audit Committee is Rogers, Anderson, Malody & Scott, LLP (RAMS), which is the firm that has previously served as the District's auditor. He noted that the staff reviewing and preparing the audit report will be completely different, so it is acceptable to continue with this firm. It is the Committee's recommendation to continue with RAMS; this item will be presented to the Board for a vote later in the agenda. Vice President Corneille indicated that Ms. Miller will take over as General Manager in May, so the District's management staff will have changed as well.

C. OPERATIONS COMMITTEE VERBAL UPDATE

Vice President Corneille provided a verbal report of the meeting held on April 4. He noted that the Operations Committee received a PowerPoint presentation by Field Supervisor Manuel Colunga on field operations and maintenance. The Mentone Shop and Mill Creek Diversion gate preorder were discussed at the meeting, and will be presented as action items later on today's agenda. The draft ARTP Status Update No. 10 was reviewed by the Committee as well, ahead of the ARTP Policy Committee meeting scheduled for April 25. The Capital Improvement Budget was reviewed and the committee provided feedback. The next quarterly Operations Committee meetings will be held on July 5 and October 4. Director Stewart said that he looks forward to these planning projects moving into construction at the proper time. Director Raley asked what is needed to ensure the Groundwater Council continues to operate, and expressed concern over the last meeting being canceled. Ms. Scholte explained that the Groundwater Council approved their budget at a previous meeting, so the meeting was cancelled due a lack of agenda items. The Groundwater Council will be discussing renewal of the Council in the near future.

D. 3RD QUARTER UNAUDITED FINANCIALS FOR 2021-2022

Director Raley said that the finances are doing quite well. Ms. Miller noted a typo on the Quarterly Investment Report, shown on page 52, where the actual yield is .25% LAIF and .2% for CalTrust. Vice President Corneille asked when the District's Wash Plan implementation costs will be reimbursed by the Conservation Trust. Ms. Quiroga discussed this reimbursement to the District. She indicated that the Trust will reimburse the District after the miners pay their portion of the endowment; however, some costs can be reimbursed at this time. Vice President Corneille asked how the District is going to budget for the significant consultant expenses due to the recently approved ARTP contracts. Director Raley noted that ARTP funds are separate from operating expenses. Ms. Miller said that the past full year of Wash Plan implementation allows staff to better estimate future costs. She indicated that the District is being reimbursed by Task Force members for Wash Plan permitting costs.

It was moved by Director Raley and seconded by Vice President Corneille to approve the 3rd Quarter Unaudited Financials for 2021-2022. The motion carried 4-0, with all Board members present voting in the affirmative. Director Longville was absent from the vote.

**President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Absent
Director Raley: Yes
Director Stewart: Yes**

E. AGREEMENT AND ELECTION TO PREFUND EMPLOYER CONTRIBUTIONS TO A DEFINED BENEFIT PENSION PLAN WITH THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM INTERNAL REVENUE CODE SECTION 115 CALIFORNIA EMPLOYERS' PENSION PREFUNDING TRUST

This item was deferred until April 27.

F. UNAUDITED FINANCIAL REPORT, FEBRUARY 2022

Ms. Miller introduced this item for discussion, noting its inclusion on package page 68. She indicated that the interest income continues to be below budget due to market factors, and that the District is receiving mining income higher than anticipated due to an increase in construction. Ms. Miller said that District received a reimbursement payment of \$70,099 from the City of Redlands for Wash Plan permitting expenses undertaken on behalf of the Task Force. Ms. Quiroga said that the costs associated with cashing out Mr. Cozad's vacation are shown on the report. She said in January they discussed spreading the vacation and sick time payout across several months to balance it, but then we considered the adjustment of overhead at the end of the year so it was shifted back. She said that the financials depict expenses for general fund to be higher due to the cash out of professional time off (PTO). This will be adjusted under the compensated absences reserve, which is a reserve for the cash out of PTO. She said that the Land Resource Enterprises will pay the Brownstein, Hyatt, Farber, Schreck, LLP expenses in support of the BLM/District land exchange because the District will receive the majority benefit from the land exchange, and therefore will absorb the costs. Director Raley said that the District may have to review our accrual for sick leave and vacation time so that the budget is not impacted by future separations or retirements. He said that if we put it in a separate account that the budget will not be impacted as much. Ms. Miller noted that the majority of Mr. Cozad's PTO will come from the compensated absences reserve.

It was moved by Vice President Corneille and seconded by Director Stewart to approve the Unaudited Financial Reports from March 2022. The motion carried 4-0, with all Board members present voting in the affirmative. Director Longville was noted absent from the vote.

**President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Absent
Director Raley: Yes
Director Stewart: Yes**

G. AUDITOR PROCUREMENT AND SELECTION FOR 2022

Director Raley reviewed this item, beginning on package page 74. He noted that RAMS fee is higher than others, but that includes closing support and that they are familiar with the District's operations.

It was moved by Director Raley and seconded by Vice President Corneille to approve a three-year contract with Rogerson, Anderson, Malody and Scott, LLP for auditing services based on performance. The motion carried 4-0, with all Board members present voting in the affirmative. Director Longville was noted absent from the vote.

**President McDonald: Yes
Vice President Corneille: Yes**

Director Longville: Absent
Director Raley: Yes
Director Stewart: Yes

H. MENTONE SHOP IMPROVEMENTS CONSTRUCTION AWARD OF CONTRACT

Ms. Scholte reviewed this item, noting its inclusion beginning on package page 77. She said that staff was able to finalize work with CS-NK to obtain a complete bid package, and a proposal for water extensions in case fire sprinklers are needed. As noted within memo, this is a multi-part contract with the total projects costs estimated at \$425,500. Ms. Scholte said that the RFP link was included in the memo, and it is located on the District website.

It was moved by Director Stewart and seconded by Director Raley to accept the bid of CS-NK Construction Services in the amount of \$294,065 for the design/build project, accept the proposal for \$19,308.40 from CS-NK Construction Services to construct water and electrical service to the new shop, approve an agreement with CS-NK Construction Services in the total amount of \$313,373.40 for design and construction services, approve a contingency fund of \$7,000 for the design phase of the project and a contingency fund of \$29,406 for the construction phase of the project, authorize the General Manager to approve the expenditure of the contingency funds, as needed, for verified quantity overruns for this unit priced design-build contract and order any necessary changes or additions in work performed under the contract with CS-NK Construction for the construction phase, authorize the General Manager to spend up to \$70,000 to obtain permits, install a septic system, additional property fencing, general cabinetry and shelving, fuel and pesticide storage, and perform field testing, authorize the General Manager to accept the work when completed and execute and file the Notice of Completion. The motion carried 4-0, with all Board members present voting in the affirmative. Director Longville was noted absent from the vote.

President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Absent
Director Raley: Yes
Director Stewart: Yes

I. MILL CREEK DIVERSION AND DEBRIS MANAGEMENT IMPROVEMENT PROJECT –
SLUICE GATE PURCHASE

Ms. Scholte introduced this item for discussion, noting its inclusion on package page 112. She said that staff is working to finalize the 404 permit and updating the 401 permits. She reviewed the background of the project and discussed the sluice gates. Staff is recommending pre-purchasing the gates so as not to delay the project. As noted within the memo, two quotes were received from Muller and Waterman. Ms. Scholte noted that the lead time for Mueller is shorter and their costs are lower at \$93,143, so staff recommend the District select Mueller. Vice President Corneille noted that the Operations Committee reviewed this project and concur with staffs recommendation. Director Raley asked the total cost of this project. Ms. Scholte said that the total cost is \$1.4 million. Director Raley asked what the benefit is. Ms. Scholte said that the goal of the project is to decrease the amount of sand and debris that enters our facility during recharge, therefore decreasing the need for basin maintenance time and costs as well as

the number of sand stockpiles the District has on its property. The District may need to pay to move those stockpiles. Director Stewart discussed the soft plugs, noting that the trash racks may help the diversion will survive storms and limit permitting needs. Ms. Scholte provided clarifications on the soft plugs and the large debris that this project will address. The plans for this project were provided as a handout to the Board. Ms. Scholte said that this project is expected to decrease the District's reoccurring maintenance costs.

It was moved by Vice President Corneille and seconded by Director Stewart to find the purchase of the sluice gates in advance of construction bidding is in the best interest of the project, accept the quote from Mueller (Hydrogate), and authorize the General Manager to purchase the sluice gates and any incidental costs related to shipping, construction coordination, and site inspection for gate installation by Mueller (Hydrogate) for an amount not to exceed a total of \$100,000. The motion carried 4-0, with all Board members present voting in the affirmative. Director Longville was noted absent from the vote.

**President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Absent
Director Raley: Yes
Director Stewart: Yes**

J. GENERAL MANAGER DISCRETIONARY BONUS

Mr. Cosgrove introduced this item for discussion, noting its inclusion on package page 125. He provided a brief summary of the General Manager contract provision on discretionary bonus in consideration of achievement of District objectives. He said that the maximum discretionary bonus is 5% of the General Manager's salary, which is \$14,769 for fiscal year 2021-2022. Vice President Corneille expressed his appreciation for Mr. Cozad's work and said the bonus was earned and well deserved. President McDonald said that Mr. Cozad's performance over the past twelve years has been amazing.

It was moved by Director Raley and seconded by Vice President Corneille to award a discretionary bonus to Daniel Cozad, retiring General Manager, in the amount of \$14,769 for his achievements during fiscal year 2021-2022. The motion carried 4-0, with all Board members present voting in the affirmative. Director Longville was noted absent from the vote.

**President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Absent
Director Raley: Yes
Director Stewart: Yes**

K. BOARD MEETING CALENDAR REVISIONS

This item was included on package page 127. The revisions include changing the May 11 Board meeting time from 1:30 p.m. to 9:00 a.m., and includes revised dates for the Operations Committee quarterly meetings.

It was moved by Vice President Corneille and seconded by Director Stewart to approve the Board Meeting Calendar Revisions for 2022. The motion

**carried 4-0, with all Board members present voting in the affirmative.
Director Longville was noted absent from the vote.**

**President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Absent
Director Raley: Yes
Director Stewart: Yes**

8. INFORMATION ITEMS

A. WASH PLAN IMPLEMENTATION UPDATE

Mr. Mitrovich provided a verbal update. He said that Mikael Romich will begin the California Gnatcatcher surveys next week; there will be three rounds from April-June. The slender horned spineflower restoration program is being completed by Dudek and had its first field meeting. The SBKR monitoring program data analysis is being done by USGS. The District completed the data collection for this analysis last fall. Ms. Miller said that the original population estimate for SBKR was approximately 1500; the analysis performed shows that there are an estimated 2851 SBKR present within the Wash Plan Preserve. Mr. Mitrovich noted that the interns and himself will be going out to the field to perform field surveys of vegetation to further inform the results of the SBKR monitoring by allowing us to understand how the habitat within the trapped areas (vegetation, bare ground, soil type) affects the presence and abundance of SBKR. The District hosted a meeting with the wildlife agencies and other partners to discuss our SBKR monitoring protocol and share the resulting data analysis conducted by USGS. There was 100% participation at the meeting from all those invited. President McDonald said that she is excited hear the numbers of SBKR and the impact of our work in the wash. Ms. Miller concurred and said that the methodology the District is using is also being used in other parts of Southern California, which provides a strong precedent. There are two species of kangaroo rats found in the Wash; one is endangered, and the other is not. This study is focused on SBKR specifically. In regard to vegetation mapping project, aerial images to support the vegetation classification there will be taken later this month. Mr. Mitrovich said that the vegetation map is estimated to be produced this fall. Director Stewart said that the District has more drought years than wet years, so a dry year will likely provide a better baseline for the District. Ms. Miller said that the District plan to update the mapping portion throughout Wash Plan implementation, but classification system will not need to be re-developed.

Mr. Mitrovich discussed Wash Plan permitting. He said that a meeting with COE on the 404 permit was held on March 11. The public notice timing was discussed and a draft notice was prepared by the consultant with staff support from the District. The public notice will be posted by the COE for the programmatic permitting project. The Regional Board also attended the March 11 meeting. Mr. Mitrovich noted that the draft waste discharge requirements were received by the District and comments were provided to the Regional Board and are under their internal review. Ms. Miller said that staff received the draft on Friday and responded with comments on Monday. Mr. Mitrovich said that staff met with CDFW to discussing permitting for maintenance activities on March 11, and on March 24 staff met with them to discuss the mitigation proposal. It was confirmed that the mitigation for the District basins can be layered with mitigation for the Wash Plan ITP and CDFW's 2081. The District continues to work with CDFW on the 2081 permit, and CDFW has requested additional information along with a field visit. Staff met with FWS on March 10 related to the potential use of a Safe Harbor Agreement for the Mill Creek permits. A

survey recommendation report is to be completed by AECOM next week. Mr. Colunga and Mr. Mitrovich met with USGS in the field to survey for spadefoot toad on District property. This species, which was found north of Mill Creek on lands owned by Valley Municipal, may be listed by FWS. The jurisdictional delineation for Mill Creek should be completed in May.

Mr. Cosgrove reviewed the land exchange, noting that the appraisal is still under review and will hopefully be completed by May. He said that staff has engaged with BLM on exceptions to the title report and are awaiting feedback from their solicitor. They have been provided with the preliminary title report, and a chart explaining the exceptions. Ms. Miller and Mr. Mitrovich are working on the proposed conditions for the right of way. Director Stewart said that part of being scrappy is being responsive to comments, and he appreciates staff responding promptly. This item was received and filed.

B. WASH PLAN TRAILS STATUS REPORT

Ms. Miller noted this item's inclusion on package page 129. The City of Redlands has requested a five-party agreement which will include the District, City of Redlands, City of Highland, Robertson's Ready Mix and CEMEX. This agreement was drafted and sent by District legal counsel to the cities for review prior to forwarding on to the mining partners. The MOU was approved by Highland, but Redlands has asked for the funding agreement prior to MOU approval. There have been no comments on the five-party agreement received to date. This item was received and filed.

C. GENERAL MANAGER'S REPORT AND MONTHLY RECHARGE REPORT

Ms. Miller indicated that the written General Manager's Report was included in the Board package on pages 130 through 134. She noted that the District posted the vacant Assistant Engineer position in early February, but only limited responses were received. Staff updated the position information and reposted to the District website, the American Society of Civil Engineers website, and BC Water Jobs website, with a closing date of May 6. Ms. Scholte has already received inquiries from potential applicants. Vice President Corneille asked if the District would consider a new graduate. Ms. Miller and Ms. Scholte indicated that the revised job posting allows new graduates to apply. BLM has requested approximately 250 yard of sand. IERCD continues their outreach efforts on behalf of the District. Ms. Miller attended one of their presentations to a kindergarten class. Mr. Mitrovich also made a presentation to his sons' fifth grade classroom; she passed around the thank you card he received from the class. Mr. Cozad has been selected for ACWA's Excellence in Leadership award, the Plunge Creek project was selected as a finalist for ACWA's Innovation Award, and the Watershed Connect program was selected for ACWA's Claire A. Hill Award. Staff continues to work on the 90th Anniversary Celebration to be held on May 11. The support letter for Valley Municipal is shown on package page 135. Ms. Miller had an interview with Spectrum News for a series on solutions in water management. Copies of flyers and postcards prepared for outreach events were shared with the Board. Ms. Miller said that the District has held kickoff meetings for all three awarded ARTP contracts. She noted that on package 133 there is a picture showing Mr. Fogerson opening a retirement gift given to him by staff. He has retired from full time employment, and began as a retired annuitant on April 1. Ms. Scholte has been promoted to Principal Engineer. A photo was shown on package page 134 of Mr. Mitrovich presenting science lecture to his son's class. President McDonald commended staff on their outreach efforts. Vice President Corneille noted that Ms. Miller has been attending meetings on climate change in Redlands, by the Accelerate Neighborhood Climate Action (ANCA) group. He is also becoming involved with ANCA and making climate change presentations. t. He said that it is nice to see our new general manager getting involved in community activities. President

McDonald noted that Paula Hess of Realtors Magazine has reached out to her and wants to interview her on water issues facing us today. The Monthly Recharge Report is included on package page 136. This item was received and filed.

D. FUTURE AGENDA ITEMS AND STAFF TASKS

There were none discussed.

9. MONTHLY BOARD MEMBER MEETING REPORTS AND/OR BOARD MEMBER COMMENTS

Director Stewart attended the Valley Municipal Policy Workshop on March 10, Big Bear Watermaster Committee (BBWM) on March 22 and Finance & Administration Committee on March 23. He attended the Operations Committee and Basin Technical Advisory Committee (BTAC) on April 4.

Vice President Corneille attended the Association of San Bernardino County Special Districts (ASBCSD) dinner on March 21, the Ad Hoc Audit Committee on March 30 and Operations Committee on April 4.

President McDonald attended the Valley Municipal Engineering Workshop on April 12, ASBCSD Board meeting on April 11 and Valley Municipal Resources Workshop and Highland Area Chamber of Commerce (HACC) Installation Dinner on April 7. She attended the USAR WIFA meeting on April 6, Outreach 90th Celebration Event Planning meeting on April 5 and BTAC and Operations Committee on April 4. She attended Women in Water meeting, ACWA State Legislative Committee on April 1, and ACWA/JPIA meeting on March 30. She attended the ACWA Board meeting on March 24 and 25, ASBCSD Dinner on March 15 and HACC Luncheon on March 22 and Valley Municipal Policy Workshop on March 10. She attended the Valley Municipal Board Workshop on March 14 and their regular Board meeting on March 15.

Director Raley attended the ASBCSD Dinner meeting on March 21, BBWM on March 22 and Finance & Administration Committee on March 23. He attended the Ad Hoc Audit Committee on March 30, and Valley Municipal Resources Workshop on April 7.

It was moved by Director Raley and seconded by Vice President Corneille to approve Director Longville's ACWA Spring Conference Travel Request for the amount of \$3,560.93. The motion carried 4-0, with all Directors present voting in the affirmative. Director Longville was noted absent from the vote.

**President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Absent
Director Raley: Yes
Director Stewart: Yes**

10. UPCOMING MEETINGS

Vice President Corneille noted the Upper Santa Ana River Water Forum will be held on April 27 at ESRI from 11:00 am. to 1:00 p.m. Mr. Harrison invited staff to the water forum and congratulated Ms. Miller and Ms. Scholte on their promotions.

11. CLOSED SESSION

It was moved by Vice President Corneille and seconded by Director Raley to adjourn to Closed Session. The motion carried 4-0, with all Directors present voting in the affirmative. Director Longville was noted absent from the vote.

**President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Absent
Director Raley: Yes
Director Stewart: Yes**

General Counsel announced that the meeting would adjourn to a closed session to discuss all posted agenda items.

At 4:05 p.m. the meeting reconvened into open session. Mr. Cosgrove noted that there was no reportable action during closed session.

12. ADJOURN MEETING

It was moved by Vice President Corneille and seconded by Director Stewart to adjourn. The motion carried 4-0, with all Directors present voting in the affirmative. Director Longville was noted absent from the vote.

**President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Absent
Director Raley: Yes
Director Stewart: Yes**

At 4:06 p.m. the meeting adjourned to the Board meeting/Groundwater Public Hearing scheduled for 1:30 p.m. on April 27, 2022, in-person, teleconference, and Zoom meeting.

Daniel B. Cozad
General Manager



San Bernardino Valley Water Conservation District

Helping Nature Store Our Water

Memorandum No. 1865

To: Board of Directors

From: Betsy Miller, Assistant General Manager

Date: April 27, 2022

Subject: Agreement and Election to Prefund Employer Contributions to a Defined Benefit Pension Plan with the California Public Employees' Retirement System (CalPERS) Internal Revenue Code Section 115 California Employers' Pension Prefunding Trust (CEPPT)

RECOMMENDATION

The Finance and Administration Committee recommend the Board: 1) Approve an Agreement and Election to Prefund Employer Contributions to a Defined Benefit Pension Plan; 2) Approve the Delegation of Authority to Request Disbursements to the General Manager; 3) Authorize the Board President to sign the Agreement and all associated documents; and 4) Approve as part of the annual budget an amount of up to two years annual CalPERS regular costs plus \$50,000 for future unfunded liabilities for deposit into the California Employers' Pension Prefunding Trust from reserves.

BACKGROUND

This action considers approval of an agreement with CalPERS to participate in the California Employers' Pension Prefunding Trust (CEPPT) in order to pre-fund pension liabilities. Many counties, cities, and Special Districts in California have created IRS Section 115 Trusts which can be used by governments to fund essential governmental functions such as pension liabilities. The advantage of a Section 115 Trust is that the funds deposited may be invested in higher-yielding instruments than allowed by Government Code for Special Districts in California. Funds deposited into a Section 115 Trust are irrevocable and can only be used for the specific purposes for which the trust was created.

Prefunding the pension contribution through this Section 115 Trust fund under CEPPT will allow the District to grow assets for future pension contributions and create a contingency reserve for the future pension payments should Unfunded Actuarial Liabilities (UAL) be identified for the District by CalPERS in the future.

DISCUSSION

A Section 115 Irrevocable Trust allows the District to invest assets to fund future pension contributions over shorter time horizons than the pension fund, and to secure potentially better yields than other short-term alternatives such as the Local Agency Investment Fund (LAIF). The District has utilized a Section 115 Irrevocable Trust for Other Post Employment Benefits (retiree health coverage) for the past four years. The CEPPT funds

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BOARD OF DIRECTORS

Division 1:
Richard Corneille

Division 2:
David E. Raley

Division 3:
Robert Stewart

Division 4:
John Longville

Division 5:
Melody McDonald

GENERAL MANAGER

Daniel B. Cozad

would be eligible to cover all of the District's defined benefit pension costs or UAL costs at any time, but may not be used for other obligations. CEPPT does not have a minimum contribution or required annual contribution amount, and the District will be able to make deposits into CEPPT at any time.

Staff evaluated two primary administrators of Section 115 Irrevocable Trusts: 1) California Public Employees Retirement System (CalPERS) and 2) Public Agency Retirement Services (PARS). Based on this review, staff found CalPERS to provide the best value and cost-effectiveness. CalPERS is a State agency that does not retain any profit from operation of the Trust. CEPPT is a self-funded, not-for-profit trust in which participant employers pay for all expenses via a participation fee, which is currently 25 basis points of the assets under management or \$2,500 for each one million dollars in managed assets. The District retains the right to terminate or transfer funds to another qualified trust with no termination or transfer fees.

Investment Approach:

As part of the budget process, the District would assess its expected CalPERS normal cost and allocate the same amount for investment in CEPPT, as well as \$50,000 to be used for future unfunded liability payments. Providing excess reserves are available, the District would fund this investment with the equivalent of two years costs for regular PERS payments plus \$50,000 for unfunded liabilities, or \$377,180 in the initial year. This will allow these funds to earn a return while payments are made from the Trust for the following year. During future annual budget processes, if reserves are needed to meet capital or operating costs, contribution may be deferred or eliminated, and CEPPT funds could cover pension costs for at least two years. CEPPT returns have been in the range of 4%-7.6% over the past ten years; with similar returns, staff estimates \$15,000-\$28,500 in annual savings from the use of CEPPT compared to directly funding pension obligations.

FISCAL IMPACT

After initial setup fees of approximately \$1000, the annual investment fees are estimated at \$500 in CEPPT expenses. Given present yield history, the investments' earnings are expected to exceed those available to California Special Districts by approximately \$21,875 per year.

POTENTIAL MOTIONS

1. Move to 1) Approve an Agreement and Election to Prefund Employer Contributions to a Defined Benefit Pension Plan; 2) Approve the Delegation of Authority to Request Disbursements to the General Manager; 3) Authorize the Board President to sign the Agreement and all associated documents; and 4) Approve as part of the annual budget an amount of up to two years annual CalPERS regular costs plus \$50,000 for future unfunded liabilities for deposit into the California Employers' Pension Prefunding Trust from reserves.
2. Move to direct staff to evaluate alternative investment approaches.
3. Defer action on setting up a CEPPT.

ATTACHMENTS OR MATERIALS

1. Agreement and Election to Prefund Employer Contributions to a Defined Benefit Pension Plan
2. Delegation of Authority to Request Disbursements California Employers' Pension Prefunding Trust (CEPPT)

CALIFORNIA EMPLOYERS' PENSION PREFUNDING TRUST PROGRAM

**AGREEMENT AND ELECTION
OF**

San Bernardino Valley Water Conservation District

(NAME OF EMPLOYER)

**to Prefund Employer Contributions to a Defined Benefit
Pension Plan**

WHEREAS (1) Government Code (GC) Section 21711(a) establishes in the State Treasury the California Employers' Pension Prefunding Trust Fund (CEPPT), a special trust fund for the purpose of allowing eligible employers to prefund their required pension contributions to a defined benefit pension plan (each an Employer Pension Plan) by receiving and holding in the CEPPT amounts that are intended to be contributed to an Employer Pension Plan at a later date; and

WHEREAS (2) GC Section 21711(b) provides that the California Public Employees' Retirement System (CalPERS) Board of Administration (Board) has sole and exclusive control of the administration and investment of the CEPPT, the purposes of which include, but are not limited to (i) receiving contributions from participating employers; (ii) investing contributed amounts and income thereon, if any, in order to receive yield on the funds; and (iii) disbursing contributed amounts and income thereon, if any, to pay for costs of administration of the CEPPT and to deposit employer contributions into Employer Pension Plans in accordance with their terms; and

WHEREAS (3) San Bernardino Valley Water Conservation District
(NAME OF EMPLOYER)

(Employer) desires to participate in the CEPPT upon the terms and conditions set by the Board and as set forth herein; and

WHEREAS (4) Employer may participate in the CEPPT upon (i) approval by the Board and (ii) filing a duly adopted and executed Agreement and Election to Prefund Employer Contributions to a Defined Benefit Pension Plan (Agreement) as provided in the terms and conditions of the Agreement; and

WHEREAS (5) The CEPPT is a trust fund that is intended to perform an essential governmental function (that is, the investment of funds by a State, political subdivision or 115 entity) within the meaning of Internal Revenue Code (Code) Section 115 and Internal Revenue Service Revenue Ruling 77-261, and as an Investment Trust Fund, as defined in Governmental Accounting Standards Board (GASB) Statement No. 84, Paragraph 16, for accounting and financial reporting of fiduciary activities from the

external portion of investment pools and individual investment accounts that are held in a trust that meets the criteria in Paragraph 11c(1).

WHEREAS (6) The CEPPT is not a Code Section 401(a) qualified trust and the assets held in the CEPPT are not assets of any Employer Pension Plan or any plan qualified under Code Section 401(a).

NOW, THEREFORE, BE IT RESOLVED THAT EMPLOYER HEREBY MAKES THE FOLLOWING REPRESENTATION AND WARRANTY AND THAT THE BOARD AND EMPLOYER AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

A. Employer Representation and Warranty

Employer hereby represents and warrants that it is the State of California or a political subdivision thereof, or an entity whose income is excluded from gross income under Code Section 115(1).

B. Adoption and Approval of the Agreement; Effective Date; Amendment

(1) Employer's governing body shall elect to participate in the CEPPT by adopting this Agreement and filing with the Board a true and correct original or certified copy of this Agreement as follows:

Filing by mail, send to: CalPERS
CEPPT
P.O. Box 1494
Sacramento, CA 95812-1494

Filing in person, deliver to: CalPERS Mailroom
CEPPT
400 Q Street
Sacramento, CA 95811

(2) Upon receipt of the executed Agreement, and after approval by the Board, the Board shall fix an effective date and shall promptly notify Employer of the effective date of the Agreement. Employer shall provide the Board such other documents as the Board may request, including, but not limited to a certified copy of the resolution(s) of the governing body of Employer authorizing the adoption of the Agreement and documentation naming Employer's successor entity in the event that Employer ceases to exist prior to termination of this Agreement.

(3) The terms of this Agreement may be amended only in writing upon the agreement of both the Board and Employer, except as otherwise provided herein. Any such amendment or modification to this Agreement shall be adopted and executed in the same manner as required for the Agreement. Upon receipt of the executed amendment or modification, the Board shall fix the effective date of the amendment or modification.

(4) The Board shall institute such procedures and processes as it deems necessary to administer the CEPPT, to carry out the purposes of this Agreement, and to maintain the tax-exempt status of the CEPPT. Employer agrees to follow such procedures and processes.

C. Employer Reports Provided for the Board's Use in Trust Administration and Financial Reporting and Employer Contributions

(1) Employer shall provide to the Board a defined benefit pension plan cost report on the basis of the actuarial assumptions and methods prescribed by Actuarial Standards of Practice (ASOP) or prescribed by GASB. Such report shall be for the Board's use in trust administration and financial reporting and shall be prepared at least as often as the minimum frequency required by applicable GASB Standards. This defined benefit pension plan cost report may be prepared as an actuarial valuation report or as a GASB compliant financial report. Such report shall be:

- 1) prepared and signed by a Fellow or Associate of the Society of Actuaries who is also a Member of the American Academy of Actuaries or a person with equivalent qualifications acceptable to the Board;
- 2) prepared in accordance with ASOP or with GASB; and
- 3) provided to the Board prior to the Board's acceptance of contributions for the reporting period or as otherwise required by the Board.

(2) In the event that the Board determines, in its sole discretion, that Employer's cost report is not suitable for the Board's purposes and use or if Employer fails to provide a required report, the Board may obtain, at Employer's expense, a report that meets the Board's trust administration and financial reporting needs. At the Board's option, the Board may recover the costs of obtaining the report either by billing and collecting such amount from Employer or through a deduction from Employer's Prefunding Account (as defined in Paragraph D(2) below).

(3) Employer shall notify the Board in writing of the amount and timing of contributions to the CEPPT, which contributions shall be made in the manner established by the Board and in accordance with the terms of this Agreement and any procedures adopted by the Board.

(4) The Board may limit Employer's contributions to the CEPPT to the amount necessary to fully fund the actuarial present value of total projected benefit payments not otherwise prefunded through the applicable Employer Pension Plan (Unfunded PVFB), as set forth in Employer's cost report for the applicable period. If Employer's contribution would cause the assets in Employer's Prefunding Account to exceed the Unfunded PVFB, the Board may refuse to accept the contribution. If Employer's cost report for the applicable period does not set forth the Unfunded PVFB, the Board may

refuse to accept a contribution from Employer if the contribution would cause the assets in Employer's Prefunding Account to exceed Employer's total pension liability, as set forth in Employer's cost report.

(5) No contributions are required. Contributions can be made at any time following the effective date of this Agreement if Employer has first complied with the requirements of this Agreement, including Paragraph C.

(6) Employer acknowledges and agrees that assets held in the CEPPT are not assets of any Employer Pension Plan or any plan qualified under Code Section 401(a), and will not become assets of such a plan unless and until such time as they are distributed from the CEPPT and deposited into an Employer Pension Plan.

D. Administration of Accounts; Investments; Allocation of Income

(1) The Board has established the CEPPT as a trust fund consisting of an aggregation of separate single-employer accounts, with pooled administrative and investment functions.

(2) All Employer contributions and assets attributable to Employer contributions shall be separately accounted for in the CEPPT (Employer's Prefunding Account). Assets in Employer's Prefunding Account will be held for the exclusive purpose of funding Employer's contributions to its Employer Pension Plan(s) and defraying the administrative expenses of the CEPPT.

(3) The assets in Employer's Prefunding Account may be aggregated with the assets of other participating employers and may be co-invested by the Board in any asset classes appropriate for a Code Section 115 trust, subject to any additional requirements set forth in applicable law, including, but not limited to, subdivision (d) of GC Section 21711. Employer shall select between available investment strategies in accordance with applicable Board procedures.

(4) The Board may deduct the costs of administration of the CEPPT from the investment income of the CEPPT or from Employer's Prefunding Account in a manner determined by the Board.

(5) Investment income earned shall be allocated among participating employers and posted to Employer's Prefunding Account daily Monday through Friday, except on holidays, when the allocation will be posted the following business day.

(6) If, at the Board's sole discretion and in compliance with accounting and legal requirements applicable to an Investment Trust Fund and to a Code Section 115 compliant trust, the Board determines to its satisfaction that all obligations to pay defined benefit pension plan benefits in accordance with the applicable Employer Pension Plan terms have been satisfied by payment or by defeasance with no remaining risk regarding the amounts to be paid or the value of assets held in the

CEPPT, then the residual Employer assets held in Employer's Prefunding Account may be returned to Employer.

E. Reports and Statements

(1) Employer shall submit with each contribution a contribution report in the form and containing the information prescribed by the Board.

(2) The Board, at its discretion but at least annually, shall prepare and provide a statement of Employer's Prefunding Account reflecting the balance in Employer's Prefunding Account, contributions made during the period covered by the statement, investment income allocated during such period, and such other information as the Board may determine.

F. Disbursements

(1) Employer may receive disbursements from the CEPPT not to exceed, on an annual basis, the amount of the total annual Employer contributions to Employer's Pension Plan for such year.

(2) Employer shall notify the Board in writing in the manner specified by the Board of the persons authorized to request disbursements from the CEPPT on behalf of Employer.

(3) Employer's request for disbursement shall be in writing signed by Employer's authorized representative, in accordance with procedures established by the Board, and the Board may rely conclusively upon such writing. The Board may, but is not required to, require that Employer certify or otherwise demonstrate that amounts disbursed from Employer's Prefunding Account will be used solely for the purposes of the CEPPT. However, in no event shall the Board have any responsibility regarding the application of distributions from Employer's Prefunding Account.

(4) No disbursement shall be made from the CEPPT which exceeds the balance in Employer's Prefunding Account.

(5) Requests for disbursements that satisfy the above requirements will be processed on at least a monthly basis.

(6) The Board shall not be liable for amounts disbursed in error if it has acted upon the written instruction of an individual authorized by Employer to request disbursements, and is under no duty to make any investigation or inquiry about the correctness of such instruction. In the event of any other erroneous disbursement, the extent of the Board's liability shall be the actual dollar amount of the disbursement, plus interest at the actual earnings rate but not less than zero.

G. Costs of Administration

Employer shall pay its share of the costs of administration of the CEPPT, as determined by the Board and in accordance with Paragraph D.

H. Termination of Employer's Participation in the CEPPT

(1) The Board may terminate Employer's participation in the CEPPT if:

- (a) Employer's governing body gives written notice to the Board of its election to terminate; or
- (b) The Board determines, in its sole discretion, that Employer has failed to satisfy the terms and conditions of applicable law, this Agreement or the Board's rules, regulations or procedures.

(2) If Employer's participation in the CEPPT terminates for either of the foregoing reasons, all assets in Employer's Prefunding Account shall remain in the CEPPT, except as otherwise provided below, and shall continue to be invested and accrue income as provided in Paragraph D, and Employer shall remain subject to the terms of this Agreement with respect to such assets.

(3) After Employer's participation in the CEPPT terminates, Employer may not make further contributions to the CEPPT.

(4) After Employer's participation in the CEPPT terminates, disbursements from Employer's Prefunding Account may continue upon Employer's instruction or otherwise in accordance with the terms of this Agreement.

(5) After Employer's participation in the CEPPT terminates, the governing body of Employer may request either:

- (a) A trustee to trustee transfer of the assets in Employer's Prefunding Account to a trust dedicated to prefunding Employer's required pension contributions; provided that the Board shall have no obligation to make such transfer unless the Board determines that the transfer will satisfy applicable requirements of the Code, other law and accounting standards, and the Board's fiduciary duties. If the Board determines that the transfer will satisfy these requirements, the Board shall then have one hundred fifty (150) days from the date of such determination to effect the transfer. The amount to be transferred shall be the amount in Employer's Prefunding Account as of the date of the transfer (the "transfer date") and shall include investment earnings up to an investment earnings allocation date preceding the transfer date. In no event shall the investment earnings allocation date precede the transfer date by more than 150 days.

- (b) A disbursement of the assets in Employer's Prefunding Account; provided that the Board shall have no obligation to make such disbursement unless the Board determines that, in compliance with the Code, other law and accounting standards, and the Board's fiduciary duties, all of Employer's obligations for payment of defined benefit pension plan benefits and reasonable administrative costs of the Board have been satisfied. If the Board determines that the disbursement will satisfy these requirements, the Board shall then have one hundred fifty (150) days from the date of such determination to effect the disbursement. The amount to be disbursed shall be the amount in Employer's Prefunding Account as of the date of the disbursement (the "disbursement date") and shall include investment earnings up to an investment earnings allocation date preceding the disbursement date. In no event shall the investment earnings allocation date precede the disbursement date by more than 150 days.

(6) After Employer's participation in the CEPPT terminates and at such time that no assets remain in Employer's Prefunding Account, this Agreement shall terminate. To the extent that assets remain in Employer's Prefunding Account, this Agreement shall remain in full force and effect.

(7) If, for any reason, the Board terminates the CEPPT, the assets in Employer's Prefunding Account shall be paid to Employer to the extent permitted by law and Code Section 115 after retention of (i) an amount sufficient to pay the Unfunded PVFB as set forth in a current defined benefit pension plan(s) cost report prepared in compliance with ASOP and the requirements of Paragraph C(1), and (ii) amounts sufficient to pay reasonable administrative costs of the Board. Amounts retained by the Board to pay the Unfunded PVFB shall be transferred to (i) another Code Section 115 trust dedicated to prefunding Employer's required pension contributions, subject to the Board's determination that such transfer will satisfy applicable requirements of the Code, other law and accounting standards, and the Board's fiduciary duties or (ii) Employer's Pension Plan, subject to acceptance by Employer's Pension Plan.

(8) If Employer ceases to exist but Employer's Prefunding Account continues to exist, and if no provision has been made to the Board's satisfaction by Employer with respect to Employer's Prefunding Account, the Board shall be permitted to identify and appoint a successor to Employer under this Agreement, provided that the Board first determines, in its sole discretion, that there is a reasonable basis upon which to identify and appoint such a successor and provided further that such successor agrees in writing to be bound by the terms of this Agreement. If the Board is unable to identify or appoint a successor as provided in the preceding sentence, then the Board is authorized to appoint a third-party administrator or other successor to act on behalf of Employer under this Agreement and to otherwise carry out the intent of this Agreement with respect to Employer's Prefunding Account. Any and all costs associated with such appointment shall be paid from the assets attributable to Employer's Prefunding Account. At the Board's option, and subject to acceptance by Employer's Pension Plan,

the Board may instead transfer the assets in Employer's Prefunding Account to Employer's Pension Plan and terminate this Agreement.

(9) If the Board determines, in its sole discretion, that Employer has breached the representation and warranty set forth in Paragraph A., the Board shall take whatever action it deems necessary to preserve the tax-exempt status of the CEPPT.

I. Indemnification

Employer shall indemnify, defend, and hold harmless CalPERS, the Board, the CEPPT, and all of the officers, trustees, agents and employees of the foregoing from and against any loss, liability, claims, causes of action, suits, or expense (including reasonable attorneys' fees and defense costs, lien fees, judgments, fines, penalties, expert witness fees, appeals, and claims for damages of any nature whatsoever) not charged to the CEPPT and imposed as a result of, arising out of, related to or in connection with (1) the performance of the Board's duties or responsibilities under this Agreement, except to the extent that such loss, liability, suit or expense results or arises from the Board's own gross negligence, willful misconduct or material breach of this Agreement, or (2) without limiting the scope of Paragraph F(6) of this Agreement, any acts taken or transactions effected in accordance with written directions from Employer or any of its authorized representatives or any failure of the Board to act in the absence of such written directions to the extent the Board is authorized to act only at the direction of Employer.

J. General Provisions

(1) Books and Records

Employer shall keep accurate books and records connected with the performance of this Agreement. Such books and records shall be kept in a secure location at Employer's office(s) and shall be available for inspection and copying by the Board and its representatives.

(2) Notice

(a) Any notice or other written communication pursuant to this Agreement will be deemed effective immediately upon personal delivery, or if mailed, three (3) days after the date of mailing, or if delivered by express mail or e-mail, immediately upon the date of confirmed delivery, to the following:

For the Board:

Filing by mail, send to:
CalPERS
CEPPT
P.O. Box 1494
Sacramento, CA 95812-1494

Filing in person, deliver to:
CalPERS Mailroom
CEPPT
400 Q Street
Sacramento, CA 95811

For Employer:

San Bernardino Valley Water
1630 W. Redlands Blvd.
Redlands, CA 92373

(b) Either party to this Agreement may, from time to time by notice in writing served upon the other, designate a different mailing address to which, or a different person to whom, all such notices thereafter are to be addressed.

(3) Survival

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of this Agreement shall survive the termination of this Agreement.

(4) Waiver

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

(5) Necessary Acts; Further Assurances

The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

(6) Incorporation of Amendments to Applicable Laws and Accounting Standards

Any references to sections of federal or state statutes or regulations or accounting standards shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

(7) Days

Wherever in this Agreement a set number of days is stated or allowed for a particular event to occur, the days are understood to include all calendar days, including weekends and holidays, unless otherwise stated.

(8) No Third Party Beneficiaries

Except as expressly provided herein, this Agreement is for the sole benefit of the parties hereto and their permitted successors and assignees, and nothing herein, expressed or implied, will give or be construed to give any other person any legal or equitable rights hereunder. Notwithstanding the foregoing, CalPERS, the CEPPT, and all of the officers, trustees, agents and employees of CalPERS, the CEPPT and the Board shall be considered third party beneficiaries of this Agreement with respect to Paragraph I above.

(9) Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

A majority vote of Employer's Governing Body at a public meeting held on the 27 day of the month of April in the year 2022, authorized entering into this Agreement.

Signature of the Presiding Officer: _____

Printed Name of the Presiding Officer: Melody McDonald, President

Name of Governing Body: SBVWCD Board of Directors

Name of Employer: San Bernardino Valley Water Conservation District

Date: _____

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
ARNITA PAIGE
DIVISION CHIEF, PENSION CONTRACT AND PREFUNDING PROGRAMS
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

To be completed by CalPERS
The effective date of this Agreement is: _____



California Public Employees' Retirement System
 California Employers' Pension Prefunding Trust (CEPPT)
 400 Q Street, Sacramento, CA 95811
 www.calpers.ca.gov

Delegation of Authority to Request Disbursements
 California Employers' Pension Prefunding Trust
 (CEPPT)

RESOLUTION
 OF THE

SBVWCD Board of Directors

(GOVERNING BODY)

OF THE

San Bernardino Valley Water Conservation District

(NAME OF EMPLOYER)

The SBVWCD Board of Directors delegates to the incumbents
 (GOVERNING BODY)

in the positions of General Manager and
 (TITLE)

_____, and/or
 (TITLE)

_____, authority to request on behalf of the
 (TITLE)

Employer disbursements from the Pension Prefunding Trust and to certify as to the purpose
 for which the disbursed funds will be used.

By _____

Title President

Witness _____

Date _____



2022 Board Calendar - San Bernardino Valley Water Conservation District

JANUARY						
S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Jan. 12 Board Meeting
Jan. 26 2nd Qtr. Finance & Admin Mtg.

JULY						
S	M	T	W	Th	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Jul. 5 Operations Committee Mtg.
Jul. 13 Board Meeting
Jul. 27 4th Qtr. Finance & Admin Mtg.

FEBRUARY						
S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28					

Feb. 9 Board Meeting

AUGUST						
S	M	T	W	Th	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Aug. 10 Board Meeting

MARCH						
S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Mar. 9 Board Meeting
Engineering Investigation Report Presentation
Mar. 23 3rd Qtr. Finance & Admin Mtg.

SEPTEMBER						
S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

Sept. 14 Board Meeting

APRIL						
S	M	T	W	Th	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Apr. 4 Operations Committee Mtg.
Apr. 13 Board Meeting
Public Meeting/Groundwater Charge
Apr. 27 Board Meeting
Public Hearing/Groundwater Charge

OCTOBER						
S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Oct. 4 Operations Committee Mtg.
Oct. 12 Board Meeting

MAY						
S	M	T	W	Th	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

May 11 Board Meeting @ 9:00 a.m.

NOVEMBER						
S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

Nov. 9 Board Meeting
Nov. 16 1st Qtr. Finance & Admin Mtg.

JUNE						
S	M	T	W	Th	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Jun. 8 Board Meeting

DECEMBER						
S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Dec. 14 Board Meeting (@ 9:30 a.m.)
Annual Luncheon