



San Bernardino Valley Water Conservation District

Helping Nature Store Our Water

BOARD OF DIRECTORS MEETING AGENDA

Wednesday, April 28, 2021 – 1:30 p.m.

In accordance with [Governor Newsom's Executive Order N-25-20 and N-29-20](#), this meeting is being conducted via teleconference/Zoom. Anyone wishing to join the meeting can join via

Zoom: Call in (669) 900-6833, Meeting ID: 983 3980 6548

To join the Zoom Meeting online: <https://zoom.us/j/98339806548>

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 Districts 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 an attendee or a participant at this meeting you will need special assistance, the District will attempt to accommodate you in every reasonable manner. Please contact 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:
Richard Corneille

Division 2:
David E. Raley

Division 3:
Robert Stewart

Division 4:
John Longville

Division 5:
Melody McDonald

GENERAL MANAGER

Daniel B. Cozad

3. 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 2021-2022 in the amount of \$14.54 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 \$22.04 per acre foot but could range from \$2.50-\$20 per acre foot over time depending on the phase-in period approved. District staff will present any written comments received and the board will hear oral comments.

- Open Public Hearing
- Receive Public Comments or Testimony
- Provide any comments on Resolution No.584 4
- Close Public Hearing

4. CONSENT CALENDAR

- A. Approval of Board Minutes, April 14, 2021 11
- B. Approval of Outreach Workshop Minutes, April 14, 2021 17

5. COMMITTEE REPORTS /ACTION ITEMS

Committee Reports

- A. AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT FOR ON-CALL BIOLOGICAL SERVICES WITH ORIGIN BIOLOGICAL (M#1779)- 5 minutes..... 19

Presenter: Betsy Miller

Recommendation: Staff recommends that the Board amend the Contract Services Agreement for Professional Services (Agreement) with Origin Biological (Consultant) for biological services to increase the not-to-exceed amount by \$84,500.

- B. REQUEST FOR LETTER OF SUPPORT FOR SBVMWD SEVEN OAKD DAM WATER CONSERVATION COMMUNITY PROJECT FUNDING REQUEST (M#1780)- 5 minutes..... 24

Presenter: Daniel Cozad

Recommendation: Staff recommends that the Board submit a letter of support for San Bernardino Valley Municipal Water District's (Valley District) Seven Oaks Dam Water Conservation Community Project Funding Request.

6. INFORMATION ITEMS:

- A. Active Recharge Transfer Projects Status Report No. 6 29
- B. Future Agenda Items & Staff Tasks

7. UPCOMING MEETINGS:

- A. May 4, 2021 San Bernardino Valley Municipal Water District Board of Directors Meeting, 2:00 p.m. at Valley Municipal

- B. May 6, 2021 San Bernardino Valley Municipal Water District Board Resources Workshop, 2:00 p.m. at Valley Municipal
- C. May 11, 2021 San Bernardino Valley Municipal Water District Board Engineering Workshop, 2:00 p.m. at Valley Municipal
- D. May 12, 2021 Board of Directors Meeting, 1:30 p.m. at Conservation District
- E. May 12-13, 2021 ACWA 2021 Virtual Spring Conference (*deadline to register May 7*)
- F. May 13, 2021 San Bernardino Valley Municipal Water District Board Policy Workshop, 2:00 p.m. at Valley Municipal
- G. May 18, 2021 San Bernardino Valley Municipal Water District Board of Directors Meeting, 2:00 p.m. at Valley Municipal
- H. May 31, 2021 Office Closed in Observance of Memorial Day
- I. June 9, 2021 Board of Directors Meeting, 1:30 p.m. at Conservation District
- J. July 5, 2021 Office Closed in Observance of Independence Day
- K. July 13, 2021 Big Bear Watermaster Committee, 1:30 p.m. at Conservation District
- L. July 19, 2021 San Bernardino Valley Conservation Trust, 1:30 p.m.,

8. **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 will meet in closed session under authority of Government Code §54956.8 regarding the potential renewal of lease of various properties located within section 11 and 12 more specifically described in “Mineral Lease for Extraction of Sand and Gravel Materials” dated November 1, 2011. The discussion will concern the price and terms of a potential renewal of the lease. The District’s negotiators are Daniel Cozad and David Cosgrove. The party with whom the District will negotiate is Cemex Materials Pacific, LLC, and its negotiators are Sean Palmer and Christine Jones.

9. **ADJOURN MEETING.** The next regularly scheduled Board meeting for May 12 via Zoom.

RESOLUTION NO. 584

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

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

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

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

WHEREAS, The District has presented a budget showing the needs and uses of the Groundwater Charge revenues for 2021-2022 water year; and

WHEREAS, at the regular meeting of the Board of Directors on March 10, 2021, 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 11, 2021; 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 14, 2021, and a public hearing held on April 28, 2021, 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 14, 2021, and a public hearing on April 28, 2021, 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 10, 2021, 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 2021-2022 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 2015-2019), 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 1086 acre feet of sustainability need, which amounts to a total water cost of \$128,593. Per the Western Judgment Watermaster, this group of non-Groundwater Council members' production for 2019 was a total of 5086 acre feet. To assign a per acre foot rate of sustainability cost to actual production, the \$128,593 cost is divided by 2019 actual production from such users, yielding a per acre rate of \$22.04; and

WHEREAS, based on this calculation, the Replenishment/Sustainability component charge is \$22.04 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 \$22.04 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 \$4.41 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 \$22.04 is achieved; and

WHEREAS, the \$22.04 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 2019 of those non Groundwater Council members within the District's jurisdiction of 5836 acre feet, which when divided by the total Equitable Allocation sustainability need attributable to such users, at 1086 acre feet and a total cost of \$128,593, yields a per acre foot amount of \$22.04; 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 2019 to Fall 2020, is a decrease of 67,875 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 -486,185 acre-feet or more.
- C. Total Groundwater Production from the Bunker Hill Basin from the Preceding Water Year July 1, 2019 to June 30, 2020 is 154,155 acre-feet.
- D. Estimate of the Annual Change in Storage for the Current Water Year (July 1, 2020 to June 30, 2021) in the Bunker Hill Basin is -5,623 acre-feet or more.
- E. Estimate of the Annual Change in Storage for the Ensuing Water Year (July 1, 2021 to June 30, 2022) in the Bunker Hill Basin is -4, 219 acre-feet.
- F. Average Annual Change in Storage for the Immediate Past Ten Water Years in the Bunker Hill Basin is -13,477 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, 2021 to June 30, 2022) is 11,569 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, 2021 to June 30, 2022) is 91,135 acre-feet.
- I. Estimated Amount of Water Necessary for Surface Distribution for the Ensuing Water Year (July 1, 2021 - June 30, 2022) within the Bunker Hill Basin is 79,655 acre-feet.
- J. Estimated Amount of Water Necessary for Surface Distribution for the Ensuing Water Year (July 1, 2021 - June 30, 2022) for the District is 56,307 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, 2021 to June 30, 2022) is 128,173 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 619,981 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 \$14.54 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 \$4.41 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, 2021 and February 1, 2022

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 2021-2022 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 2021-2022 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 through 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.
- 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 12, 19 and 26, 2021. All such notices identified the prior and proposed rate for agricultural and non-agricultural water, the estimated total revenue to be collected from the charge, and the time and place for public hearing at a public meeting at which parties objecting to the charge could appear and be heard. That notice also reflected the rate and method of calculation for this consumption-based charge, which provided notice of the basis of the charge.
- D. The proposed groundwater charges, and Engineering Investigation report prepared by the District, were reviewed at a public meeting held April 14, 2021, and a public hearing held April 28, 2021. 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 10, 2021 and was discussed at the Groundwater Council on April 12, 2021.
- 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 insure the availability of sufficient infrastructure to accommodate needed groundwater recharge; and defense and protection of the District's water rights and manner of operations; and performing such maintenance of other parties' diversion works, recharge basins and canals as requested and per prior agreements.
 5. Pursuing various environmental permits and related permissions to continue the maintenance and operation of the District's Facilities for the future and to provide for

potential expansion of facilities for Bunker Hill 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 \$1,263,295 based on production reported for the 2020-2021 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 2020-2021 water year from non-GC members, the estimated groundwater revenues from non-GC members is \$77,446. 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 2021-2022 proposes total expenditures of \$1,525,543. The remaining funds are to be paid by the District's capital and groundwater reserves.

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 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 28th day of April 2021, by the following roll-call vote:

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

Melody McDonald, President

Daniel Cozad, Secretary

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT
GROUNDWATER PUBLIC MEETING/BOARD OF DIRECTORS MEETING

MINUTES OF APRIL 14, 2021
1:30 pm.

President McDonald called the meeting of the Board of Directors to order at 1:33 pm by teleconference and Zoom meeting; all those in attendance stood for the pledge of allegiance led by President McDonald.

ROLL CALL:

BOARD MEMBERS PRESENT:

Melody McDonald, President
Richard Corneille, Vice President
David E. Raley, Director
Robert Stewart, Director
John Longville, Director (Arrival 1:47 p.m.)

BOARD MEMBERS ABSENT:

None

GENERAL COUNSEL PRESENT:

David Cosgrove, Rutan & Tucker

STAFF PRESENT:

Daniel Cozad, General Manager
Betsy Miller, Land Resources Manager/Assistant General Manager
Erwin Fogerson, Senior Engineer/Project Manager
Katelyn Scholte, Assistant Engineer
Athena Lokelani, Administrative Specialist

GUESTS PRESENT:

T. Milford Harrison, San Bernardino Valley Municipal Water District
June Hayes, San Bernardino Valley Municipal Water District
Susan Longville, San Bernardino Valley Municipal Water District
David E. Smith, East Valley Water District
Willow Green, Tetra Tech
Jesus Gastelum, Elsinore Valley Municipal Water District
Kimberli Munkres, Thunderwheel Communications

1. PUBLIC PARTICIPATION

President McDonald announced that any person 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

There were none.

3. PUBLIC MEETING RELATED TO THE ADOPTION OF THE GROUNDWATER CHARGE

President McDonald opened the Groundwater Public Meeting. The recommended increase for the groundwater charge is to \$14.54 per acre foot for all groundwater production with the recommended sustainability component of \$22.04 per acre foot to be phased in over time, ranging from \$2.50-\$20 per acre foot. Mr. Cozad presented a PowerPoint presentation shown beginning on package page 5. This information was also presented at the Groundwater Producers public meeting held on March 24. The Equitable Cost-Sharing Method for Sustainability was reviewed in detail. Vice President Corneille asked about the party gap. Mr. Cozad said that the production during and prior to adjudication were compared and if you are producing more than you were during the adjudication period there was a gap. The gap would need filled before the sustainability step. The sustainability portion is what it takes to get to reliability for the 2040 projection. Director Raley asked how the District's water rights factor into the rate. Mr. Cozad said that the Groundwater Council and groundwater charge payees are paying for the operations and maintenance costs of the system rather than providing the District a credit for the water it recharges. Mr. Cosgrove said that the basin recharge performed by the Conservation District is an existing ambient baseline for the basin; instead of taking a per acre foot credit, the decision was made that the groundwater producers would support an ambient baseline by supporting our facilities and maintenance. Director Raley expressed concern that the producers outside of the basin may not be paying the groundwater charge. Mr. Cozad said that there are a small number of producers that are not in the District boundary and would not be GC members in San Bernardino County. The GC is working to create an equitable situation for all and will provide recommendations in the near future.

Review of presentation continued. Mr. Cozad noted that a Groundwater Producers meeting was held to discuss the groundwater charge and sustainability component; attendees included Conservation District staff, Elsinore Valley Municipal Water District and the City of Riverside. The minutes from this meeting were included on package page 27. President McDonald thanked Ms. Scholte for her great work on the equitable allocation model (EAM). The draft Groundwater Resolution No. 584 is included on package page 21. Mr. Cosgrove said that most of the revisions are shown on package page 22, which discuss the Groundwater Council and EAM calculations, including the estimated phase-in of the sustainability component. However, the groundwater charge and sustainability component will be calculated and approved each year per statute. Mr. Cosgrove noted that the amounts collected for sustainability will be kept separate from the regular groundwater charge as noted in Section 7 of the draft Groundwater Resolution. Vice President Corneille suggested revising the verbiage in Section 6 (F) to reflect that the groundwater charge and groundwater council assessment revenues are separate funds which pay the charge. He asked why reference to the agricultural and non-agricultural groundwater production is still noted within resolution. Mr. Cosgrove indicated that it is still required under statute. Director Longville spoke in support of Vice President Corneille's suggestions. Mr. Cozad said that no written or verbal comments have been received by staff. President McDonald closed the groundwater public meeting. She noted that the hearing will be held April 28.

4. CONSENT CALENDAR

It was moved by Vice President Corneille and seconded by Director Longville to approve the Consent Calendar: Item A: Board Minutes, March 10, 2021 and Item B: Expenditure Report, March 2021. The motion carried 5-0, with all Board members present voting in the affirmative.

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

5. COMMITTEE REPORTS/ACTION ITEMS

A. FINANCE & ADMINISTRATION COMMITTEE VERBAL UPDATE

Director Raley provided a verbal update of the Finance & Administration Committee held on March 24. He indicated that the Committee met and discussed the 3rd Quarter Unaudited Financials for 2020-2021 as found later on this agenda and endorsed the groundwater charge as previously discussed. This item was received and filed.

B. 3RD QUARTER UNAUDITED FINANCIALS FOR 2020-2021

This item is included on package page 46. Mr. Cozad reviewed this item in brief. The Quarterly Investment Report is included on package pages 50 and 51.

It was moved by Director Raley and seconded by Director Longville to approve the 3rd Quarter Unaudited Financial Reports for 2020-2021. The motion carried 5-0, with all Board members present voting in the affirmative.

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

C. UNAUDITED FINANCIAL REPORTS, FEBRUARY 2021

Mr. Cozad introduced this item for discussion, noting its inclusion beginning on package page 52. The District has received reimbursement from the Conservation Trust for staff cost related to SBCTA.

It was moved by Director Longville and seconded by Director Stewart to approve the Unaudited Financial Reports for March 2021. The motion carried 5-0, with all Board members present voting in the affirmative.

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

D. TECHNICAL ASSISTANCE AGREEMENT WITH U.S. GEOLOGICAL SURVEY, WESTERN ECOLOGICAL RESEARCH CENTER, FOR DEVELOPMENT OF A SAN BERNARDINO KANGAROO RAT MONITORING PROTOCOL

Ms. Miller introduced this item for discussion, noting its inclusion on package page 58. The new draft agreement was emailed to the Board for review. She indicated that the agreement with U.S. Geological

Survey (USGS) is to develop a monitoring protocol for the San Bernardino Area Kangaroo Rat (SBKR) as required by the Wash Plan and Plunge Creek Conservation Project. The agreement is not-to-exceed \$54,438.44. The monitoring protocol development is a one time cost; however, monitoring will be done annually. After the District collects three to five years of data, it is recommended that we review the monitoring protocol to evaluate its efficiency and effectiveness. Director Raley asked why it is not a Conservation Trust expense. Ms. Miller indicated that a significant portion is covered by the Wash Plan monitoring. This is coming to the Board separately due to time constraints. Mr. Cozad said that it primarily supports the Wash Plan implementation and is paid by the endowment. Director Stewart said that he is pleased that someone is stepping up to perform this activity. He expressed a desire to keep a close eye on the District's efforts toward this process, including the effects of droughts on the SBKR population. Ms. Miller said that the statistical approach selected by the District is already in use by Western Riverside and the Woolly-star Preserve Area and is being considered by Valley Municipal for the River HCP Preserve.

It was moved by Vice President Corneille and seconded by Director Stewart to approve the agreement with U.S. Geological Survey in an amount not-to-exceed, \$54,438.44. The motion carried 5-0, with all Board members present voting in the affirmative.

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

6. INFORMATION ITEMS

A. WASH PLAN IMPLEMENTATION AND STATE PERMITTING UPDATE

Ms. Miller provided a verbal update. The Wash Plan was selected for a regional award. Staff and District Counsel continues to work on the Bureau of Land Management (BLM) Land Exchange. Mr. Cosgrove said that BLM is evaluating the District's historic rights on their property. They are working on title report issues, regulatory and appraisal items. Mr. Cozad said that the Department of Justice reviews the title. Vice President Corneille asked what Brownstein Hyatt Farber Sreck are assisting with. Mr. Cozad indicated that they are assisting with the appraisal and keeping the process moving forward. They will likely be retained through at least through the completion of the appraisal process. Director Raley asked if the District has performed an appraisal before. Mr. Cosgrove said that one appraisal was completed before the Wash Plan was reconfigured and that the appraisal has to be completed within six months of the Land Exchange. Brief discussion ensued regarding Land Exchange. Ms. Miller said that the Wash Plan implementation is underway. The spineflower restoration has begun by IERCD and surveys for cactus wren and California gnatcatcher have begun this week. She said that with the approval that occurred today, that the SBKR protocols should be done by August. This item was received and filed.

B. GENERAL MANAGER'S REPORT AND MONTHLY RECHARGE REPORT

Mr. Cozad indicated that the written General Manager's Report was included in the Board package on pages 71 through 74. He said that this has been a dry year, but that there is flow in the main canal and noted that SOD testing will take place April 15. Staff put out Request for Proposal for architecture services for the Mentone Shop. The Conservation Trust meeting was cancelled because it was scheduled for the same time as the BTAC and the only item on the agenda were financials. Mr. Cozad

noted the Redlands Plaza COVID-19 rent deferrals in the amount of \$46,432.39; we intend to review this item with tenants near July for repayment. The District is reviewing and providing input on the Integrated Regional Water Management Plan; this item will come to the Board agenda in June. Vice President Corneille asked when the District will go back to in person meetings. Mr. Cozad indicated that the District is following the directives of the county. The Monthly Recharge Report was included on package page 75. This item was received and filed.

C. CONSTRUCTION PROJECTS/ARTP VERBAL UPDATE

Mr. Fogerson stated that an Active Recharge Transfer Project (ARTP) Policy Committee was held yesterday. Staff had a kickoff meeting with San Bernardino County Flood Control District (Flood Control) and are working on feasibility study. He is working on an RFP to assist with project analysis. The District received two responses to Mentone Shop RFP. Mr. Fogerson said that staff resubmitted the environmental documents to Flood Control for the Mill Creek project; the engineering resubmittal is still underway. Director Stewart asked how long it will take to get Mill Creek plan check completed. Mr. Fogerson indicated that it is unlikely the District will receive permits until the end of the year. Vice President Corneille requested the ARTP status report be included in the next Board meeting packet.

D. FUTURE AGENDA ITEMS AND STAFF TASKS

Director Raley requested a plan and budget review for the completion of the Wash Plan; including the land exchange. Vice President Corneille asked for the Capital Improvement Plan budget be sent to the Operations Committee members for review.

7. MONTHLY BOARD MEMBER MEETING REPORTS, AND/OR BOARD MEMBER COMMENTS

Vice President Corneille attended the Wash Plan Task Force meeting on March 24, Redlands Rise N Shine on April 2 and the ARTP Policy Committee on April 13. He attended the Valley Municipal Engineering Workshop on April 13 and chaired the Advisory Commission on Water Policy (Advisory Commission) on April 8.

Director Raley attended the Valley Municipal Policy Workshop on March 11 and April 8, Big Bear Watermaster Committee (BBWM) on March 23 and Basin Technical Advisory Committee (BTAC) on April 5. He attended the Valley Municipal Engineering Workshop on April 13 and reviewed Conservation Trust documents on April 12. He attended the Finance & Administration Committee on March 24.

Director Stewart attended the BBWM on March 23, Advisory Commission on April 8 and Finance & Administration Committee on March 24.

Director Longville attended the Valley Municipal Board meeting on March 16 and April 6. He attended the Finance & Administration Committee on March 24.

President McDonald attended the Valley Municipal Engineering Workshop on April 13, Association of Special Districts of San Bernardino (ASBCSD) on April 12 and ACWA State Legislative meeting on April 9. She attended the Valley Municipal Policy Workshop on April 8 and March 11, Valley Municipal Board meeting on March 16 and April 6. She attended the BTAC meeting on April 5, Valley Municipal Resources Workshop on April 1 and Federal Affairs Committee meeting, Highland Area Chamber of Commerce on March 25 and ASBCSD on March 15. She attended the ACWA State Legislative meeting on March 13.

8. UPCOMING MEETINGS

There were none discussed.

9. CLOSED SESSION

There was none held.

10. ADJOURN MEETING

It was moved by Director Stewart and seconded by Director Raley to adjourn. The motion carried 5-0, with all Directors present voting in the affirmative.

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

At 3:38 pm, the meeting adjourned to the Board/Groundwater Public Hearing scheduled for 1:30 pm on April 28, 2021, via Zoom.

Daniel B. Cozad
General Manager

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT
OUTREACH WORKSHOP

MINUTES OF April 14, 2021
3:00 P.M.

President McDonald called the Outreach Workshop to order at 3:39 p.m.

BOARD MEMBERS PRESENT:

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

BOARD MEMBERS ABSENT:

None

GENERAL COUNSEL PRESENT:

David Cosgrove, Rutan & Tucker, LLP

STAFF PRESENT:

Daniel Cozad, General Manager
Athena Lokelani, Administrative Specialist
Betsy Miller, Land Resource Manager/Assistant General Manager

GUESTS PRESENT:

Kimberli Munkres, ThunderWheel Communications

1. PUBLIC COMMENT

There was no public comment.

2. DISCUSSION ITEMS

A. OUTREACH PRESENTATION

Ms. Munkres presented an overview of this item. She reviewed, in brief, the communication resources access sheet that was sent out to the Board for review included on package page 30. The document contains hyperlinks to presentation resources. She will send out the document separately to ensure hyperlinks are activated. Ms. Munkres reviewed the Outreach presentation in detail. She reviewed the website and the plan for updates to it. Vice President Corneille noted

old documents, including projects that are shown on the website. He suggested that each director review their bio and update them for the website. President McDonald suggested archiving old documents. Ms. Munkres continued with a review of the presentation, including tactical objectives. Vice President Corneille said that the District should incorporate some photos and videos of its recharge facilities and operations to showcase its primary function to the public on its website. He indicated that this might include pictures, or videos of field staff taking measures and recharge basins. The Outreach Committee met on February 19 and approved the approach included within the presentation. Director Longville spoke in support of the approach. The Board thanked Ms. Munkres for her excellent presentation.

3. ADJOURN MEETING

It was moved by Director Longville and seconded by Director Stewart to adjourn. The motion carried 5-0, with all Directors present voting in the affirmative.

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

At 4:20 p.m., the meeting adjourned to the next regular Board Meeting scheduled for May 12, 2021, at 1:30 p.m. at District Headquarters, 1630 W. Redlands Blvd., Redlands, CA.

Daniel B. Cozad, General Manager



**San Bernardino Valley
Water Conservation District**

Helping Nature Store Our Water

Memorandum No. 1779

To: Board of Directors

From: Betsy Miller, Land Resources Manager/AGM

Date: April 28, 2021

Subject: Amendment to Professional Services Agreement for On-Call Biological Services with Origin Biological

RECOMMENDATION

Staff recommends that the Board amend the Contract Services Agreement for Professional Services (Agreement) with Origin Biological (Consultant) for biological services to increase the not-to-exceed amount by \$84,500.

BACKGROUND

On March 11, 2020, the Board ratified a Contract Services Agreement for Professional Services (Agreement) with Origin Biological for on-call biological services to an amount not-to-exceed \$100,000. On April 22, 2020, the Board approved Amendment One to the Agreement to increase the not-to-exceed amount by \$143,560 for work related to the pre-paid services agreement for services by the San Bernardino Valley Conservation Trust in support of San Bernardino County Transit Authority (SBCTA), including tasks that require state and/or federal permits for handling San Bernardino kangaroo rat. On July 8, 2020, the Board approved Amendments Two and Three to the Agreement to increase the not-to-exceed amount by \$176,505 to support tasks associated with a second pre-paid services agreement to support SBCTA and permit conditions required by the Safe Harbor Agreement for our Plunge Creek Restoration Project, respectively.

DISCUSSION

District staff does not possess state and federal permits required to conduct surveys for San Bernardino kangaroo rat, and we seek to utilize this Agreement for such tasks related to our operations, general land stewardship, Wash Plan implementation, Capital Improvement Projects, and Community Mitigation Program.

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

In order to fulfill these obligations and retain capacity for District projects, staff recommends increasing the not-to-exceed amount of the Agreement by \$84,500. The increase in funds would be utilized as shown in Amendments 4 and 5 below:

Contract	Amount	Projects	Funding
On-Call Agreement	\$100,000	Biological support for District and Trust projects	Approved FY21 budget for Professional Services and Wash Plan Year 1 implementation
Amendment 1	\$143,560	Trust support of SBCTA 210 project	Prepaid Services Agreement from SBCTA to Trust
Amendment 2	\$62,930	Trust support of SBCTA 210 project	Prepaid Services Agreement from SBCTA to Trust
Amendment 3	\$113,575	Plunge Creek Restoration Project Safe Harbor Agreement	Grant and District Capital Reserve programmed for Plunge Creek Restoration Project
Amendment 4	\$59,500	Wash Plan Implementation	Wash Plan Endowment pending Board of Directors approval of FY22 budget
Amendment 5	\$25,000	Mill Creek Spreading Grounds Permits	Professional Services (Land Resource Fund) pending Board of Directors approval of FY 22 budget

FISCAL IMPACT

The increase of \$84,500 will be funded through the Wash Plan endowment in the amount of \$59,500, with the remaining \$25,000 paid by the District through the Land Resource Fund.

POTENTIAL MOTIONS

1. Move to amend the Contract Services Agreement for Professional Services with Origin Biological for biological services to increase the not to exceed amount to \$84,500.
2. Move to table consideration of the issue and request the Finance & Administration Committee to review the item and provide a recommendation.
3. Table the item to a future meeting for consideration.

ATTACHMENTS OR MATERIALS

Amendments 4 and 5 to Professional Services Agreement for On-Call Biological Services by and between the San Bernardino Valley Water Conservation District and Origin Biological

Attachment 1

4th Amendment to February 24, 2020 On-Call Biological Services Agreement

Scope of Work

This amendment includes tasks to support Upper Santa Ana River Wash Habitat Conservation Plan Implementation - Year 2, including surveys for slender-horned spineflower, California gnatcatcher, cactus wren, and San Bernardino kangaroo rat. Surveys will take place within suitable habitat or other areas as directed by SBVWCD staff within the Wash Plan Preserve as defined in the Upper Santa Ana River Wash HCP.

Task 1. SHSF Surveys

All known slender-horned spineflower patches that overlap the Wash Plan will be visited during the 2022 growing and blooming period (typically February to June). From the slender-horned spineflower database, these will include the following patches: 1-7, 10, 13, 15, and 88-99. One complete survey of each patch or location will be conducted when it is confirmed the species has reproductive growth or bloom.

If any SHSF populations are observed from the field efforts, methodology present in SAIC (2010) and previously coordinated with USFWS will be followed to adequately map the population and for new patches, measure the vegetation (as described in section 5.1.2 of the Wash Plan). A patch is defined as a delineated area occupied by a continuous distribution of spineflower individuals. Patches are determined to be distinct from adjacent patches if they are separated by more than 5 meters. Any new patches not in the current geodatabase will be assigned a permanent number for tracking purposes. "Outlier" plants are individual spineflower or small group of individuals with a coverage area less than 0.25 m² (2.7 ft²) that are located more than 1 meter (3.3 feet) but within 5 meters (16 feet) from a patch. Individual outliers are recorded as points instead of a polygon to provide better detail of how they relate to patches and sub-patches. To delineate a SHSF patch, pin flags are used. A circular area with a radius of at least 15 meters will be surveyed around each patch to ensure that the maximum boundary of the patches are identified. Once the perimeter of a patch is confirmed, it will be recorded using a sub-meter GPS, as will any outliers. For interannual comparison, occupied area and numbers of spineflower in each patch will be measured. For small numbers, direct counts of entire patches will be completed when feasible. For large numbers of plants, sampling with quadrats will be completed. As the density of individuals can vary considerably within each spineflower patch, area-weighted density will be used as described in SAIC (2010).

This methodology may be revised or altered following direction from SBVWCD staff.

A report will be prepared to summarize the methods and results of the survey and data collection. The report will provide an analysis to compare 2021 population numbers to previously collected data and will include rainfall analysis.

Cost: \$3,000

Task 2. CAGN Surveys

Based on polygons provided by Conservation District staff, about 300 acres will be included as part of the Wash Plan CAGN year 1 surveys and monitoring. Conservation District staff have received USFWS approval to survey up to 100 acres per day with each 100-acre survey area covered a total of three (3) times through the breeding season. Therefore, the total survey effort will be 9 survey days. Surveys will be spaced to occur in early April, early May, and early June. For positive occurrences, time will be spent mapping movements in order to ascertain approximate use areas or breeding territories. Nests that may be incidentally found will be recorded and tracked, although not closely approached unless USFWS provides permission or the nest cycle is complete.

Mikael Romich will be the surveyor and holds a federal permit for CAGN playback, which will be used while walking meandering transects within suitable habitat. Mr. Romich also formerly held an authorization for CAGN nest monitoring on his permit until USFWS removed it when they determined they would approve nest monitoring on a project-by-project basis.

A report will be prepared to summarize the methods and results of the survey and data collection. The report will provide maps and a database of all positive CAGN occurrences and nests with a discussion on the number of individual territories thought to have been found. The discussion will also include any specific data on CAGN nest timing, success, and substrate. In addition, the database will include positive occurrences of all other special-status species detected during the survey, which may include least Bell's vireo, loggerhead shrike, and cactus wren.

Cost: \$6,500

Task 3. SBKR Surveys

Surveys for SBKR will be conducted following a percent-area occupied protocol, including collection of covariate data, to be prepared by U.S. Geological Survey. USGS staff will provide standardization training and will assist with up to one week of surveys.

Cost: \$50,000

Attachment 2

5th Amendment to February 24, 2020 On-Call Biological Services Agreement

Scope of Work

This amendment includes tasks to support state and federal permitting efforts for the Mill Creek Operations Study Area. Mr. Romich has previously conducted species and habitat surveys within the Study Area to document baseline biological conditions in order to conduct a biological impact analysis (direct and indirect) of the Mill Creek operations and determine the conservation value of areas outside of operations. Specific tasks will include biological expertise necessary to develop the applications required to obtain the state and federal permits, such as biological literature reviews, vegetation mapping, focused species assessments, protocol surveys, and other items as directed by SBVWCD staff in support of obtaining regulatory permits.

Cost: \$25,000



**San Bernardino Valley
Water Conservation District**

Helping Nature Store Our Water

Memorandum No. 1780

To: Board of Directors

From: Daniel Cozad, General Manager

Date: April 28, 2021

Subject: Request for Letter of Support for SBVMWD Seven Oaks Dam Water Conservation Community Project Funding Request

RECOMMENDATION

Staff recommends that the Board submit a letter of support for San Bernardino Valley Municipal Water District’s (Valley District) Seven Oaks Dam Water Conservation Community Project Funding Request.

BACKGROUND AND DISCUSSION

Valley District is submitting a Community Project Funding request via Representative Pete Aguilar (CA-31) to modify the Seven Oaks Dam project to include water conservation as an officially authorized purpose. Valley District has been working with the Army Corps of Engineers to determine the best approach to achieve this alteration to the operation of the Dam so that this piece of infrastructure can provide as many community benefits as possible. This funding request would support the necessary feasibility study and Valley District is asking for \$2.5 million of federal support to complete this requirement of the project.

The alteration to the purpose of the dam would provide added water supply reliability for the region, providing an additional 15,000 AFY of valuable water resources to our region as well as potential habitat enhancements along the Santa Ana River. The Dam is already constructed, and Valley District believes it should be operated for multiple purposes in order to maximize the value of taxpayer dollars spent, including improving water conservation, water quality, and benefiting habitat downstream.

Valley District submitted a request to the Conservation District on April 12 asking for a letter of support for this project. Attachment 1 is Valley District’s letter request to Congressman Aguilar. Attachment 2 is a letter of support from the Conservation District for the Board’s review and direction.

1630 W. Redlands Blvd, Suite A
Redlands, CA 92373
Phone: 909.793.2503
Fax: 909.793.0188
www.sbvwd.org Email: info@sbvwd.org

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

POTENTIAL MOTIONS

1. Authorize the Board President to sign and submit the letter of support shown in Attachment 2.
2. Direct staff to not submit a letter of support for this project.

ATTACHMENTS OR MATERIALS

Attachment 1: Valley District's Letter Request to Congressman Aguilar dated April 9, 2021

Attachment 2: Letter of Support from the Conservation District to Congressman Aguilar
Regarding the Seven Oaks Dam Water Conservation Community Project Funding Request

April 9, 2021

The Honorable Pete Aguilar
United States House of Representatives
Washington, DC 20515

RE: Support for San Bernardino Valley Municipal Water District (Valley District) Seven Oaks Dam Water Conservation Community Project Funding Request

Dear Representative Aguilar:

On behalf of the San Bernardino Valley Municipal Water District and the fourteen retail water agencies that we serve, we request your continued support of our efforts to add water conservation as an authorized purpose of the Seven Oaks Dam through a Community Project Funding Request in the FY22 Energy and Water Appropriations bill.

We are grateful for your work through the Water Resources Development Act of 2020 where Congress required the Secretary to “*expedite the completion of a feasibility study*” and if “*justified in a completed report, ... proceed directly to preconstruction planning, engineering, and design of the project*” for the Seven Oaks Dam to include water conservation as an authorized purpose.

As we continue to work with the U.S. Army Corps of Engineers (Corps), we ask for your support to ensure that the community has the resources it needs to complete the required study and proceed to making formal changes to the operation of the dam in order to ensure that the water captured behind the dam is put to beneficial use in line with our adjudicated water rights. Over 700,000 people within our community rely upon the San Bernardino Basin for a reliable water supply. We are dedicated to maximizing the benefits of local rainfall during wet years by storing it in our aquifer for use during dry years.

The project, Santa Ana River Mainstem, was originally authorized in Section 401(a) of the Water Resources Development Act of 1986 (P.L. 99-662). The original authorization for the construction of the Seven Oaks Dam along the Santa Ana River included only one purpose - flood control. However, operating the Seven Oaks Dam for water supply purposes will make our region more resilient to future climate change conditions and increase the reliability of our local supply.

Given the importance of managing water resources for the long-term health and prosperity of the region, we ask for your continued support of the project so that our agency can work with regional stakeholders to utilize this infrastructure asset for both flood control and water supply benefits. In addition to providing critical water resources, this project will also help protect and enhance downstream habitat while preserving the ecological function of the Santa Ana River and its habitat for many species—including the Santa Ana Sucker.

Board of Directors and Officers

JUNE HAYES
Division 1

GIL BOTELLO
Division 2

SUSAN LONGVILLE
Division 3

T. MILFORD HARRISON
Division 4

PAUL KIELHOLD
Division 5

HEATHER DYER
CEO/General Manager

Board of Directors and Officers

JUNE HAYES
Division 1

GIL J. BOTELLO
Division 2

SUSAN LONGVILLE
Division 3

T. MILFORD HARRISON
Division 4

PAUL R. KIELHOLD
Division 5

HEATHER DYER
General Manager

We recognize the importance of managing our natural resources and strategically using public infrastructure for multiple benefits and respectfully request your support in this initiative.

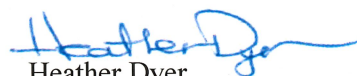
Thank you for your ongoing commitment to helping our community meet its critical water supply needs.

If you have any questions or concerns, please contact Heather Dyer at heatherd@sbyvwd.com or (909) 387-9200.

Sincerely,



Paul Kielhold
Board President



Heather Dyer
CEO/General Manager



San Bernardino Valley Water Conservation District

Helping Nature Store Our Water

April 28, 2021

The Honorable Pete Aguilar
United States House of Representatives
Washington, DC 20515

RE: Support for San Bernardino Valley Municipal Water District (Valley District) Seven Oaks Dam Water Conservation Project and Federal Funding Request

Dear Representative Aguilar:

On behalf of the San Bernardino Valley Water Conservation District Board of Directors, we support the San Bernardino Valley Municipal Water District's efforts to add water conservation as an authorized purpose of the Seven Oaks Dam. The project for flood control, Santa Ana River Mainstem included in Section 401(a) of the Water Resources Development Act of 1986 (P.L. 99-662), authorized the construction of the Seven Oaks Dam along the Santa Ana River for flood control.

In WRDA 2020, Congress directed the Secretary to "expedite the completion of a feasibility study" and, if justified in a completed report, ... proceed directly to preconstruction planning, engineering, and design of the project" for the Seven Oaks Dam to include water conservation as an authorized purpose.

Given the importance of managing water resources for the region's long-term health, we support Valley District's efforts to work with the Corps to utilize this existing asset for flood control and water conservation. In addition to providing additional water resources for the Inland Empire, the project will also help conserve and maintain natural rivers and streams that provide habitat for species—including the Santa Ana Sucker.

As regional stakeholders in the health of our water resources, we fully support the renewed efforts for Community Project Funding (CPF) requests. Once implemented, this project will benefit the entire region—from ratepayers to critical habitat along the river.

Thank you for your ongoing support of our local community and its critical water needs.

If you have any questions or concerns, please contact us at 909-793-2503.

Sincerely,

Melody McDonald
Board President

Cc: Representative Jay Obernolte

1630 W. Redlands Blvd, Suite A
Redlands, CA 92373
Phone: 909.793.2503
Fax: 909.793.0188
www.sbvwd.org Email: info@sbvwd.org

**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



San Bernardino Valley Water Conservation District

Helping Nature Store Our Water

ARTP Status Report No.6

To: Partnership Agreement Policy Committee
From: Erwin Fogerson, Senior Engineer/Project Manager
Date: April 13, 2021
Subject: Active Recharge Project Status Report

BACKGROUND

The boards of the San Bernardino Valley Water Conservation District (Conservation District) and San Bernardino Valley Municipal Water District (Valley District) have agreed to draw from the best of both districts to promote a brighter future for groundwater storage and protection of threatened species in the region. This collaborative effort has been realized through the execution of the Partnership Agreement for Active Recharge Project Development under the Upper Santa Ana River Habitat Conservation Plan (Agreement).

The Agreement includes the requirement for the formation of a Partnership Agreement Policy Committee to review and advise the Conservation District staff on a number of items covered in the Agreement. The committee is to meet quarterly throughout the duration of the development of Active Recharge Transfer Projects. Major items of work in the partnership include:

- The Conservation District will provide up to 295 acres of conservation easements to the San Bernardino Valley Conservation Trust, to help offset the environmental impacts of active recharge projects being undertaken to enhance groundwater recharge and storage.
- Valley District will provide funding to the Conservation District for building new recharge projects for each acre of conservation easement the Conservation District transfers to the trust.
- Valley District will fund a permanent endowment with the Conservation Trust to support the management of habitat mitigation land.
- Valley District will transfer to the Conservation District the implementation, management, and eventual ownership of the following tentative list of proposed Active Recharge Projects:
 1. Mill Creek Diversion (expansion, construction, and operations)
 2. Plunge Creek Basins 1 (construction and operations)
 3. Plunge Creek Basins 2 (construction and operations)
 4. City Creek Basins (construction and operations)
 5. Waterman Percolation Basins (reconstruction and maintenance)
 6. East Twin Creek Basin (repairs and maintenance)

- The Conservation District will develop plans, specifications, estimates and bid packages (Construction Package) on planned projects and submit to the Committee for review and concurrence.
- Valley District will draft, and process all required permits and any items of work required under NEPA or CEQA including Water Rights.

This status report is a summary of work completed to date on these major items and provides a look ahead to the planned work in the upcoming quarter.

PROGRAM UPDATE

Conservation Easement (CE) Payment Obligation

The agreement requires payment of 50% of the funds for the CE at completion of the Due Diligence which was paid on June 20, 2019. The remainder is paid when obligated by commitment or by January 8, 2022.

The total paid to date is \$18,437,500. As of this report, the threshold for additional payment has not been reached.

Conservation Easement Usage Status (295 Acres initially set aside)

Covered Activity (project)	Implementing Agency	Easement Area required (ac)	Easement recordation date	Remaining Available Acreage
				295

Program Management

The following items of work have been performed:

1. A draft Program Management plan to guide the long-term implementation of the program is being developed. The outline of that plan was presented and discussed at the previous meetings.
2. A planning level Memo of Understanding (MOU) has been developed and adopted by SBVWCD and SBFCD and a kickoff meeting and field meeting have been held. Monthly meetings will be scheduled to help keep the coordination and approval processes moving forward. Temporary access to the facilities will be provided.
3. A Request of Qualifications (RFQ) was used to develop a list of qualified consultants to use for proposal requests. A summary matrix of the fourteen consulting firms based on category and type of work for which they are qualified .
4. An RFP is being developed for support analysis work on the site feasibility study that is required by SBCFCD.
5. An overall program budget and funding/reporting format is being developed (draft attached)
6. First SBC Flood meeting held (minutes attached) and monthly coordination meetings scheduled.

Active Recharge Transfer Projects (as listed in the Agreement) PS&E Status

Project Name	Project Priority	Current Plan Phase	CEQA Status	Required Agreements / Permits w/ status	Construction Target date	Recent Activity
Mill Creek Diversion	3	Concept	Not started	ACOE – Not started SBCFCD – Not Started	Not determined	None
Plunge Creek Basin 1 &2 (now Plunge Creek Quarry Basins)	1	Concept	Not started	RRM – Initiated Concept Level Discussion SBCFCD – Initiated through MOU (attached)	Start 2021	Alternative location and layout completed and labeled ‘Former Plunge Creek Silt Pond Quarry Basin’ (see exhibit) A coordination with the City of Highland occurred regarding the diversion structure and the Orange Street bridge replacement project.
City Creek	2	Not determined	Not started	SBCFCD – Initiated through MOU	Not determined	None
Waterman Spreading Grounds	2	Not determined	Not started	SBCFCD - Initiated through MOU	Not determined	Performed additional view reviews and added upper basin restoration to River HCP in addition to the planned diversion structure enhancement
Twin Creek	1	Concept	Not started	SBCFCD – Initiated through MOU	Not determined	Completed preliminary spillway sizing

Additional Active Recharge Transfer Projects (not listed in the Agreement) Status

Project Name	Project Priority	Current Plan Phase	CEQA Status	Required Agreements / Permits w/ status	Construction Target date	Recent Activity
Oak Creek Basin	1	Concept		SBVMWD – Initiated Concept Level Discussion SBCFCD – Initiated through MOU	Not determined	Project includes diversions from Oak Creek and from Tract 14326 Revised concept design of basin layout and re-submitted to SBVMWD SBVMWD to complete habitat surveys based on concept design
Lynwood Basins	1	Concept		none	Not determined	Field review only

“Next Steps” - Planned Work upcoming Quarter

Project	Planned Activity
Mill Creek Diversion	none
Plunge Creek Quarry Basins	Start analysis of concept design as part of SBCFCD Feasibility Study. Submit preliminary concept of diversion to City of Highland to analyze potential impacts to future bridge project.
City Creek	none
Waterman Spreading Grounds	Start analysis of concept design as part of SBCFCD Feasibility Study

“Next Steps” - Planned Work upcoming Quarter Continued

Twin Creek	Start analysis of concept design as part of SBCFCD Feasibility Study
Oak Creek Diversion	Start analysis of concept design as part of SBCFCD Feasibility Study; initiate some bio-surveys for further refinement of layout
Lynwood Basins	Start analysis of concept design as part of SBCFCD Feasibility Study

EXHIBITS

1. SBVWCD / SBCFCD MOU
2. Former Plunge Creek Silt Pond Quarry Basin Location Map
3. Former Plunge Creek Silt Pond Quarry Basin Layout Exhibit
4. Oak Creek Basin Concept Plan

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

21-140

SAP Number

San Bernardino County Flood Control District

Department Contract Representative
Telephone Number

Michael Fam, P.E.
(909) 387-8120

Contractor

San Bernardino Valley Water
Conservation District

Contractor Representative
Telephone Number

Melody McDonald
(909) 793-2503

Contract Term

Original Contract Amount

Amendment Amount

Total Contract Amount

Cost Center

Briefly describe the general nature of the contract:

Planning Memorandum of Understanding with the San Bernardino Valley Water Conservation District for Stormwater Recharge at Flood Control Facilities.

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ *see attached*
Sophie A. Akins, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

▶ *Andy Silao*
Andy Silao, P.E.

Date

1/27/2021

Reviewed/Approved by District

▶ *Brendon Biggs*
Brendon Biggs, Chief Flood Control Engineer

Date

1-27-21

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

SAP Number

San Bernardino County Flood Control District

Department Contract Representative	Michael Fam, P.E.
Telephone Number	(909) 387-8120
Contractor	San Bernardino Valley Water Conservation District
Contractor Representative	Melody McDonald
Telephone Number	(909) 793-2503
Contract Term	
Original Contract Amount	
Amendment Amount	
Total Contract Amount	
Cost Center	

Briefly describe the general nature of the contract:

Planning Memorandum of Understanding with the San Bernardino Valley Water Conservation District for Stormwater Recharge at Flood Control Facilities.

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Sophie Akins*
Sophie A. Akins, Deputy County Counsel

Date January 6, 2021

Reviewed for Contract Compliance

► _____
Andy Silao, P.E.

Date _____

Reviewed/Approved by District

► _____
Brendon Biggs, Chief Flood Control Engineer

Date _____

**Planning Memorandum of Understanding
by and between the San Bernardino County Flood Control District and
San Bernardino Valley Water Conservation District**

RECITALS

WHEREAS, the San Bernardino County Flood Control District (FCD) was created by the San Bernardino County Flood Control Act of 1939, California Water Code Appendix section 43-1 *et seq.* (Flood Control Act). The Flood Control Act specifies that the FCD's primary purpose is to provide for the control of flood and storm waters and, secondarily, to conserve such flood and storm waters, and other waters, for beneficial uses in FCD's district area by spreading, storing, retaining, and through percolation.

WHEREAS, in 1910, the Water Conservation Association (WCA) was organized to conserve the water of the Santa Ana River by storing it in the groundwater basin for future use. In 1931, local citizens voted to create the **San Bernardino Valley Water Conservation District (SBVWCD)** as a public agency to protect against the excessive export of the local surface water by downstream agencies. WCA was dissolved in the early 1940s, and all land and water property were transferred to SBVWCD.

WHEREAS, SBVWCD is now constituted as a water conservation district, duly formed and existing under the authority of California Water Code sections 74000 *et. seq.* SBVWCD has as its primary purpose the capture, spread, and recharge of water, both native and imported, over groundwater recharge facilities it owns, operates, and leases, and the stewardship of lands for compatible water supply and quality, mineral production, and the preservation of sensitive habitats.

WHEREAS, FCD owns and operates a number of flood control facilities within SBVWCD's boundaries.

WHEREAS, SBVWCD has identified FCD's facilities into which storm water flows may be diverted for water recharge purposes, provided such use will not impair the primary purpose and function of FCD facilities, which is and is to remain to maintain adequate flood protection for the safety and protection of the public.

WHEREAS, the potential for such recharge use is at this time conceptual, and requires additional study, including the identification of eligible facilities, the amount and quality of storm water flows potentially available for recharge, the location and capacity of facilities to accommodate such flows, the secondary impacts such recharge might have on groundwater levels, migration of contaminant plumes, sand and gravel extraction or other land uses in the vicinity, subsidence protection, endangered and sensitive species habitat preservation, and related concerns.

WHEREAS, SBVWCD has preliminarily identified FCD facilities for future study of potential recharge, which facilities are more specifically depicted in Exhibit 1 hereto ("Initial Facilities").

WHEREAS, FCD and SBVWCD wish to enter into this Planning Memorandum of Understanding (MOU) to describe, in general terms, their interests in coordinating their efforts to plan and evaluate the practical, environmental, and financial feasibility of such combined use of FCD's facilities.

WHEREAS, as provided herein, this MOU is for undertaking investigations and feasibility studies in contemplation of possible future use of FCD facilities, and at this juncture does not commit either party to any project or future agreement. Any specific agreed-upon use of FCD facilities for recharge will be set forth in a separate water spreading agreement between the parties, for which the requisite California Environmental Quality Act (CEQA) analysis shall be conducted prior to entering into future agreements to approve or implement any specific project.

NOW, THEREFORE, it is mutually agreed as follows:

1. Recitals.

The recitals set forth above are true and correct and incorporated herein.

2. Term.

This MOU shall have a term of 10 years from the date on which the last party executes this MOU unless earlier terminated as set forth herein. This MOU may be extended by the parties for up to two (2) subsequent 10-year periods, pursuant to written amendment signed by both parties. Either party may terminate this MOU by providing the other party with ninety (90) written notice, provided, however, that termination of this MOU shall not terminate any water spreading agreements the Parties may have entered into as of the date this MOU itself is terminated, and any such water spreading agreements shall be governed by their own termination provisions, if any.

3. General Planning Efforts.

3.1 Preliminary Report. In order to evaluate the Initial Facilities (see Exhibit 1) for the use of storm water recharge, SBVWCD shall prepare and submit to FCD a preliminary report, in a form to mutually agreed upon by the parties, identifying the particular FCD facility, the anticipated amount of storm water to be captured and diverted to that facility, and any SBVWCD improvements anticipated to be required for use of the FCD facility for storm water diversion, storage, or recharge. Parties agree to hold one or more scoping meetings where FCD will provide information relating to its operational, engineering, and environmental constraints and SBVWCD will provide concepts to address those constraints while meeting the need and purposes each of the projects. FCD will provide access to the Initial Facilities to SBVWCD, without charge, to conduct field investigations and surveys necessary to finalize the concept designs. Such investigations and field studies by SBVWCD may include, but are not limited to, surveys, soil borings or tests, geologic sampling, plant or animal habitat counts or surveys, or water quality, quantity, or flow measurements or sampling, so long as such

investigations and field studies do not materially impact FCD's maintenance of use of the Initial Facilities. SBVWCD will prepare and submit the Preliminary Report for sites individually or as groups to address such constraints, impacts of the project(s) as an initial step in the permitting process.

3.2 Assessment of Preliminary Report and Planning. Once the preliminary report is submitted by SBVWCD for the specific use of a particular FCD facility, the parties shall allocate sufficient staff time and resources to evaluate the joint use/operation of that existing FCD facility for continued effective use for adequate flood control purposes, in conjunction with proposed storm water recharge. During this evaluation process, SBVWCD shall provide to FCD all of the details associated with the proposed use for each FCD facility including, but not limited to, concept-level construction plans and specifications for any proposed improvements or modifications to the FCD facility (including a statement as to which entity will own the improvements after a project specific agreement terminates), a permit plan identifying any permits or clearances required from any agency or regulatory authority other than FCD or SBVWCD, and a proposed operational plan for each FCD facility. To the extent access rights are indicated as necessary or appropriate for storm water recharge in a FCD facility, the parties shall meet and confer to delineate the scope and extent of such access rights. This information will also include the amount of estimated storm water recharge for each facility, and expected quality of such water.

3.3 Assessment of Secondary Effects of Recharge. SBVWCD's Preliminary Report shall also consider the potential secondary effects of storm water recharge to the environment, including, but not limited to, an evaluation of whether such activities will introduce water quality pollutants or mobilize existing groundwater contamination, or will cause land subsidence, liquefaction, or seepage to low lying lands in any basin to be impacted by the replenishment activities of SBVWCD. The parties acknowledge that SBVWCD will be the agency leading this evaluation as it has the appropriate expertise concerning storm water recharge and the water quality. FCD will independently review SBVWCD's evaluation.

3.4 Considering the statutory purposes of the FCD and the goals of SBVWCD, both parties agree that they will determine, on a case by case basis, which agency will be in charge of seeking permits for projects and which agency will be the "Lead Agency" for purposes of complying with CEQA. The responsibility for CEQA compliance and permits shall be specified in a water spreading agreement.

3.5 SBVWCD will work cooperatively with FCD towards SBVWCD's goal of maximizing the quantity of storm water recharge from the existing FCD's facilities, while maintaining or improving the protection of the public from the dangers of flooding.

4. Primacy of FCD Use.

4.1 The parties obligations set forth hereunder shall be subject to the primary purpose of FCD and FCD facilities pursuant to the Flood Control Act to protect property and the public from flood waters. The use of FCD facilities for flood control purposes shall be paramount.

4.2 In determining whether to enter into a water spreading agreement, for joint use of an FCD facility for water recharge, FCD shall have the sole discretionary authority to determine what constitutes "adequate flood protection" for the operation of its facilities and to determine whether a proposed recharge activity is consistent with and compatible with its uses of a facility.

4.3 FCD shall have the sole discretionary authority to determine which of its facilities are available for use in re-charge activities proposed by the SBVWCD. Any prospective use of any FCD facility shall be subject to the parties' approval of a water spreading agreement.

5. No Implied Covenants.

Based on the FCD priorities set forth in the Flood Control Act and FCD's discretion provided in this MOU, as well as the general planning nature of this MOU, FCD and SBVWCD acknowledge and agree that no implied covenants attach to this MOU, including, but not limited to, the implied covenant of good faith and fair dealing. Nothing set forth herein shall be deemed to bind FCD's Board of Supervisors to approve a water spreading agreement. Notwithstanding anything to the contrary herein, FCD and its Board of Supervisors retain the sole discretion to authorize the use of FCD facilities for storm water recharge.

6. Assignment.

This MOU may not be assigned by either party without the written consent of the other party.

7. Indemnification and Insurance.

7.1 FCD agrees to indemnify, defend (with counsel approved by SBVWCD) and hold harmless SBVWCD, its employees, officers, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability resulting from FCD's negligent acts or omissions which arise from FCD's performance of its obligations under this MOU.

7.2 SBVWCD agrees to indemnify, defend (with counsel approved by FCD) and hold harmless the FCD, its employees, officers, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability resulting from the SBVWCD's

negligent acts or omissions which arise from the SBVWCD's performance of its obligations under this MOU.

7.3 In the event FCD and/or SBVWCD is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this MOU, FCD and/or SBVWCD shall indemnify the other to the extent of its comparative fault.

7.4 FCD and SBVWCD shall maintain throughout the term of this MOU such policies of insurance or legally sufficient self-insurance for Automobile Liability, Comprehensive General Liability, and Workers' Compensation that are adequate to protect against all liabilities and indemnification responsibilities arising out of the performance of the terms, conditions or obligations of this MOU.

8. **Jurisdiction.** This MOU shall be governed by the laws of the State of California. If a court of competent jurisdiction declares any portion of this MOU invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purposes of this MOU are frustrated. Any dispute or action to enforce any obligation under this MOU shall be filed and resolved in a Superior Court in San Bernardino County, California. In the event of litigation arising from this MOU, each party to the MOU shall bear its own costs, including attorneys' fees.

9. **Signatures.** This MOU may be signed in counterparts, each of which shall constitute an original, and such counterparts shall together constitute one and the same agreement. The parties shall be entitled to sign and transmit an electronic signature of this MOU (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed MOU upon request.

10. **Flood Control District Clause.**

All of the FCD's revenues as defined below, have been pledged to secure the payment of the principal and interest on certain bonds and refunding bonds ("Bonds") issued by the FCD in May 2007. The pledge constitutes a first lien on the revenues for the payment of the Bonds. Any payments under this MOU are subject to the prior pledge of revenues described above. FCD payments pursuant to this MOU will be made to the extent there are sufficient funds available after payment of the Bonds. For purposes of this paragraph, "revenues" shall mean all income and revenue received by the FCD from the operation or ownership of the flood and storm water control and conservation facilities ("Flood Control System") of the FCD (including but not limited to, all real and personal property, or any interest therein, and all additions, improvements, betterments and extensions thereto), determined in accordance with Generally Accepted Accounting Principles, including all ad valorem property taxes received by the FCD pursuant to Article XIII A of the Constitution of the State of California and Section 95 et seq. of the California Revenue and Taxation Code, all rents, royalties and license and permit fees and charges received by the FCD, investment income and all other money howsoever derived by the FCD from the operation or

ownership of the Flood Control System or arising from the Flood Control System, but excluding (a) ad valorem property taxes levied to pay any voter approved general obligation indebtedness of the FCD, (b) assessments levied pursuant to Section 43-7 or Section 43-26.9 of the San Bernardino County Flood Control Act (Cal. Water Code App. Sect. 43-1 et seq.), and (c) grants, advances or contributions in aid of construction, except to the extent such grants are unrestricted and available for any expenditure of the FCD.

11. **Amendments; Entire Agreement.** Any amendments to this MOU, including but not limited to, the addition of FCD facilities, shall be set forth in a writing signed by both parties. This MOU contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all other prior negotiations, understandings or contracts.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized officers or representatives as of the last day and year appearing below.

**SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT**

By: 
President, Board of Directors

SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT

▶ 
Curt Hagman, Board Chairman

Dated: **FEB 09 2021**

SIGNED AND CERTIFIED THAT A
COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD
Lynna Monell, Clerk of the Board

By: 
Deputy



APPROVED AS TO LEGAL FORM:

Michelle D. Blakemore, County Counsel


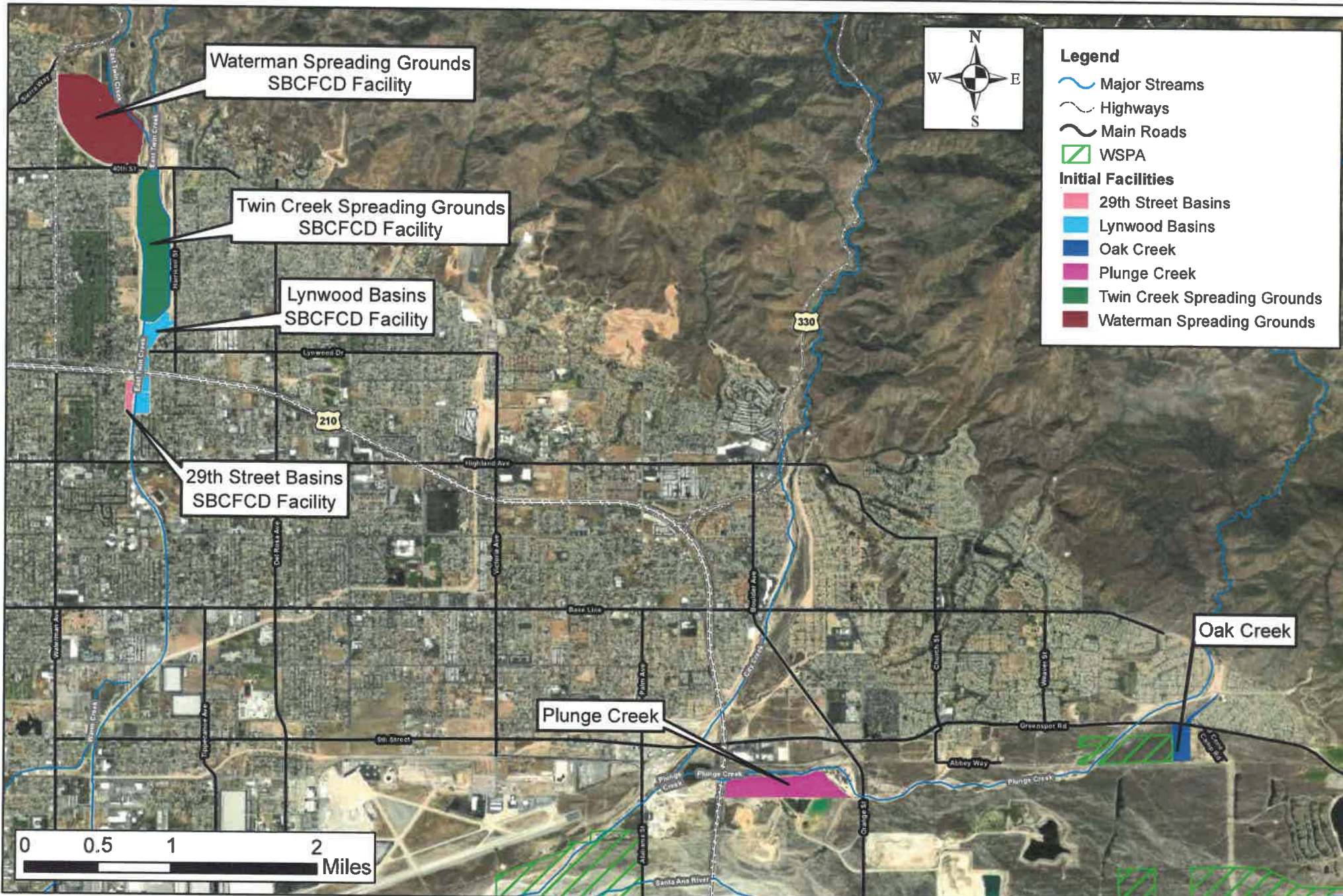
By: 
Sophie A. Akins
Deputy County Counsel

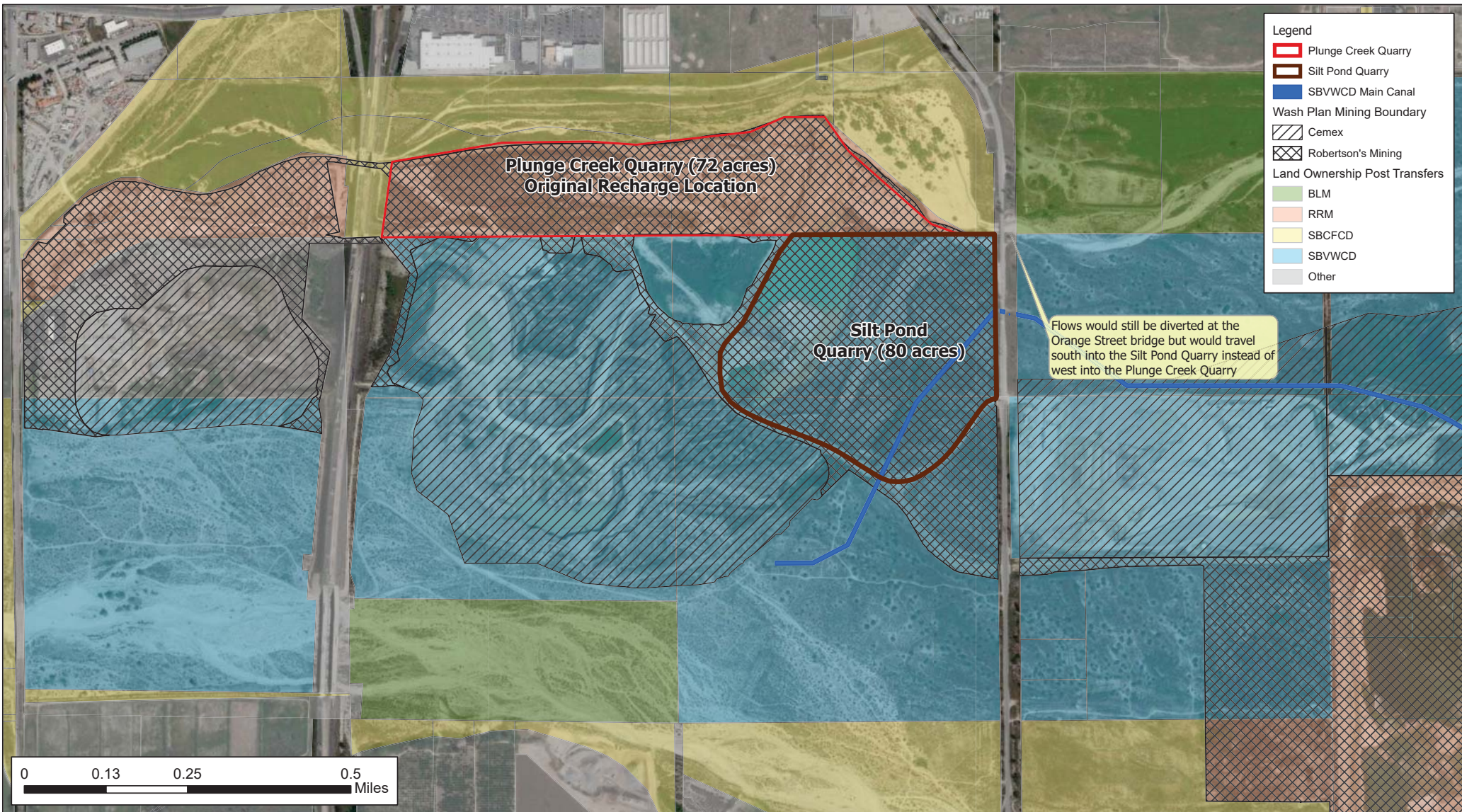
Exhibit 1: Initial Facility Study Area Planning MOU SBCFCD and SBVWCD

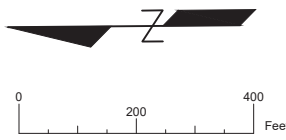
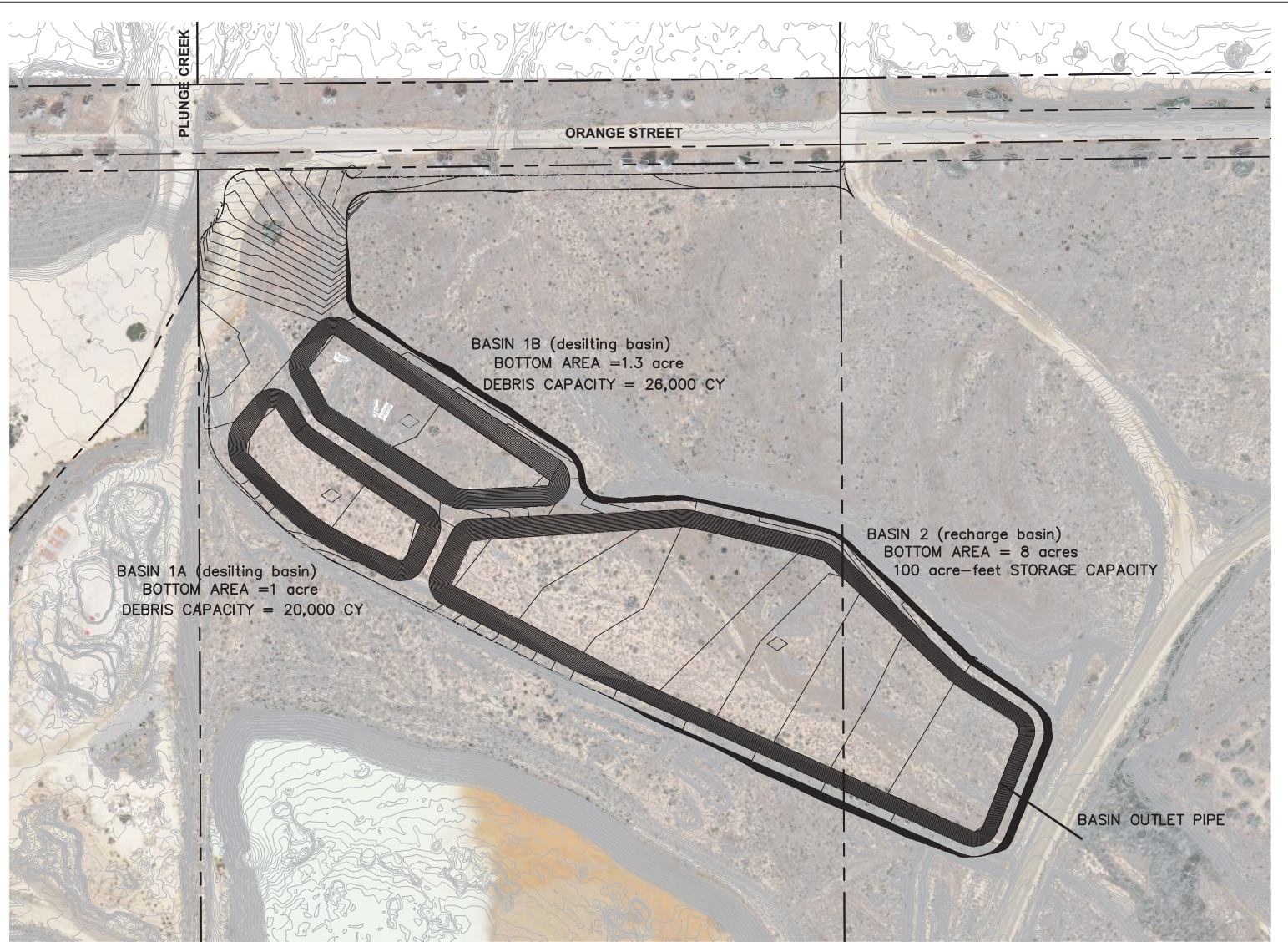
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 Source: SBVWCD, CASIL, SBVMWD
 GIS Contact: Katelyn Scholte
 M:\Active Recharge\SBCFCD MOU Maps
 November 4, 2020



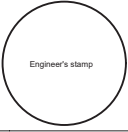
Alternate Plunge Creek Recharge Location Active Recharge Transfer Projects

Coordinate System:
 NAD 1983 StatePlane California V FIPS 0405 Feet
 Projection: Lambert Conformal Conic
 Datum: North American 1983
 Source: SBVWCD, CASIL, SBVMWD
 GIS Contact: Katelyn Scholte
 M:\Active Recharge\SBVWCD Proposal for Active Recharge Projects\Maps\Plunge Creek
 March 31, 2021





NO.	DATE	REVISIONS	APPROVED	DATE
1				
2				
3				
4				
5				
6				
7				



Prepared under the supervision of: _____
 DRAWN BY: _____
 DESIGNED BY: _____
 CHECKED BY: _____



**SAN BERNARDINO VALLEY
 WATER CONSERVATION DISTRICT**

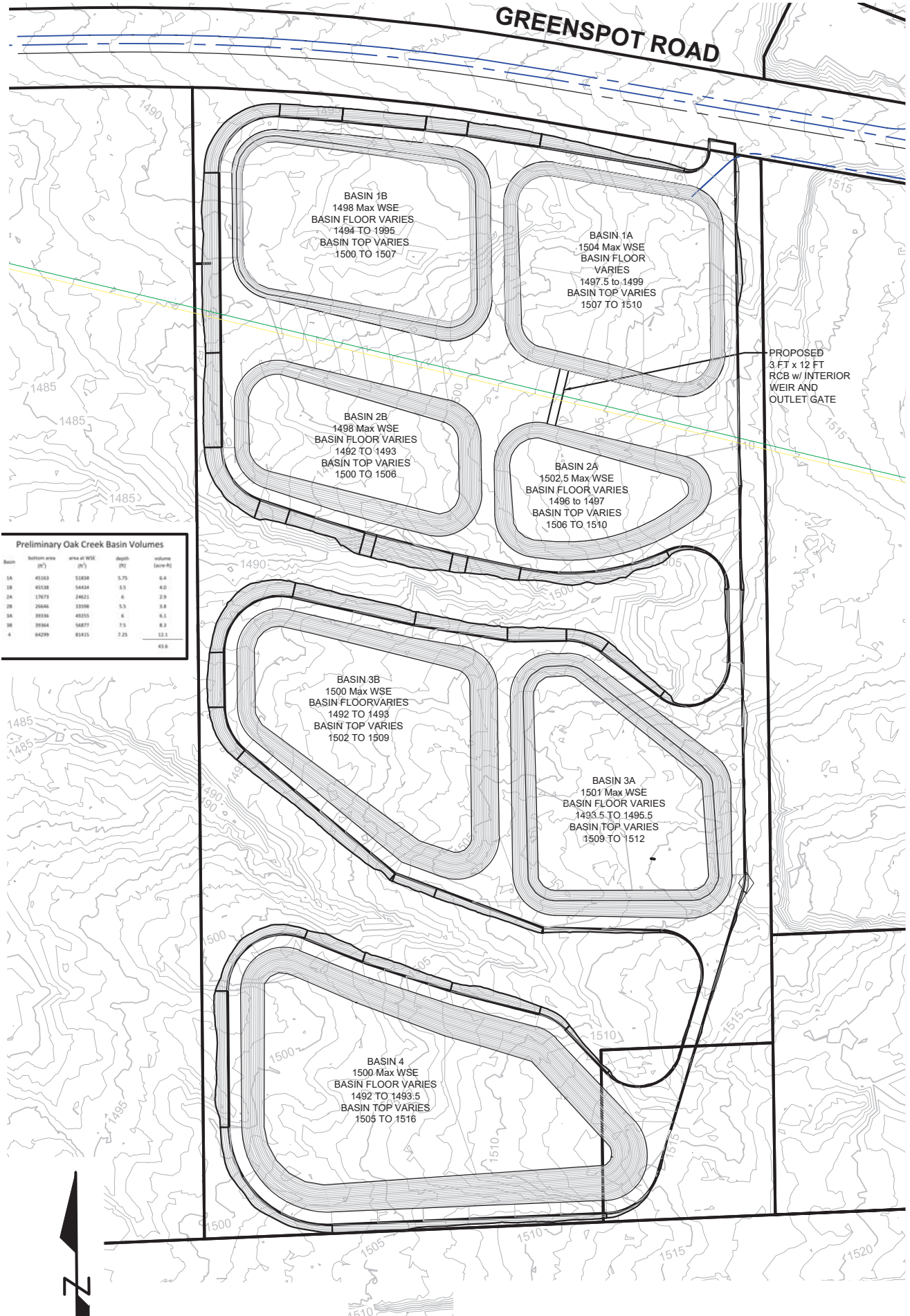
PLUNGE CREEK FORMER SILT POND QUARRY
 PRELIMINARY INTERIM CONDITION SITE PLAN

PROJECT NO. SBVWCD - s1
 SHEET 1
 OF 5

UNDERGROUND SERVICE ALERT
 CALL TOLL FREE
1-800-227-2600
 TWO WORKING DAYS BEFORE YOU DIG

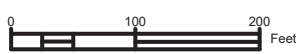
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 Plotted by: JFerguson

GREENSPOT ROAD



Preliminary Oak Creek Basin Volumes

Basin	bottom area (sq ft)	area at WSE (sq ft)	depth (ft)	volume (acre-ft)
1A	45163	53238	5.75	6.4
1B	45128	54634	5.5	6.0
2A	17672	24621	6	2.0
2B	25646	33596	5.5	3.8
3A	39336	49255	6	6.1
3B	39364	56877	7.5	8.3
4	64299	83415	7.25	12.3
				43.6



CONCEPT PLAN Alt. 2



2021 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. 13 Board Meeting
Jan. 27 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. 14 Board Meeting
Jul. 28 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. 10 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. 11 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. 10 Board Meeting
Engineering Investigation Report Presentation
Mar. 24 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. 8 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. 14 Board Meeting
Public Meeting/Groundwater Charge
Apr. 28 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. 13 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 12 Board Meeting

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. 10 Board Meeting
Nov. 24 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. 9 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. 8 Board Meeting
(@ 9:30 a.m.)
Holiday Luncheon